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Testimony of Christopher L. Lebsock
Korean National Assembly hearing

A. Introduction.

Good afternoon. My name is Christopher Lebsock, and I am honored by this opportunity to address the Korean National Assembly on the matter of global antitrust enforcement.

I am a U.S. antitrust attorney with the law firm Hausfeld LLP ("Hausfeld"). My firm has offices in the U.S. and in Europe, and I work in San Francisco. Hausfeld is a recognized leader in antitrust litigation. We have successfully resolved antitrust claims brought against hundreds of companies in many industries. Today, there are no bigger monopolists than Apple and Google, and we have years of experience litigating against them as well.

In 2021, Hausfeld brought a trailblazing class action lawsuit against Google in the U.S. for levying an anticompetitive 30% tax on app developers for all revenue earned from paid apps and in-app products.[1] Google settled with our small app developer clients for $90 million in 2022.[2]

My firm has also initiated claims against Google and Apple in the United Kingdom and we are representing app developers in other European jurisdictions, as well. The central premise of these lawsuits is that Google and Apple are abusing their market power to set app commissions at an anticompetitive and inflated price. The commissions charged by Google and Apple take many billions of dollars every year from app developers, and they are unfairly high. App developers are being forced to transfer a substantial portion of their revenue to Apple and Google, and this injures consumers as well. Economists recognize that anticompetitive taxes on business can slow employee hiring, and reduce innovation. It can also increase

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[1] https://www.hausfeld.com/fr-be/news/google-sued-for-excessive-and-unlawful-charges-on-its-google-play-store/
[2] https://www.hausfeld.com/en-us/news/hausfeld-announces-preliminary-approval-of-90-million-settlement-in-trailblazing-antitrust-class-action-against-google/

prices for consumers. The goal of antitrust law is to promote innovation and to lower prices for consumers through competition.

B. Update on litigation and regulations against Google and Apple globally.

In December 2023, a U.S. jury in a lawsuit named *Epic v. Google* unanimously found that Google had monopolized the Android app distribution and Android in-app billing services markets worldwide, excluding China. The court in that case is now deciding how to remedy Google's anticompetitive conduct. In the lead up to the *Epic* trial, Google settled claims from consumers and U.S. state attorneys general for $700 million.[3]

There are similar claims against Google pending in Australia[4], the UK[5], the Netherlands[6], and Portugal.[7] We understand that litigation is likely in other jurisdictions as well.

Apple is also facing claims in U.S. federal court from a class of consumers accusing Apple of monopolizing the app market, causing consumers to pay higher prices.[8] It has previously settled claims made by a class of app developers.[9] In the UK, Apple is facing a suit alleging that it charged UK-based app developers unfair commission fees on purchases of apps and other content.[10] Apple faces similar claims in countries including the Netherlands[11] and Portugal.[12]

Apple has also been investigated by governmental regulators. In June 2024, the European Commission announced its preliminary view that Apple's App Store rules are in breach of the EU's Digital Markets Act, as they prevent app developers from freely steering consumers to alternative channels for offers and content.[13] In

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[3] https://www.reuters.com/legal/transactional/google-us-states-defend-700-mln-play-store-antitrust-settlement-2024-04-18/

[4] https://www.theguardian.com/technology/2024/mar/17/epic-games-vs-apple-vs-google-australia-lawsuits-alleged-market-power (app developer); https://www.businessnewsaustralia.com/articles/australian-app-developers-to-fight-apple--google-in-class-action-lawsuit.html (app developers).

[5] https://www.forbes.com/sites/emmawoollacott/2024/08/27/google-faces-another-lawsuit-over-play-store-policies/ (app developers).

[6] https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2023:8425&showbutton=true&keyword=mededingingsrecht&idx=1 (consumers).

[7] https://www.hausfeld.com/en-gb/news/apple-and-google-collective-actions-launched-in-portugal/ (consumers).

[8] https://www.reuters.com/legal/transactional/apple-app-store-consumer-class-action-set-february-2026-jury-trial-2024-07-12/

[9] https://www.nytimes.com/2021/08/26/technology/apple-settles-app-store-lawsuit.html

[10] https://www.theregister.com/2024/04/12/apple_competition_app_store_uk/

[11] https://appstoresclaims-site-production.s3-eu-west-1.amazonaws.com/Dagvaarding-Stichting-app-stores-claim-Apple-c.s.-01042022.pdf (consumers); https://righttoconsumerjustice.nl/sites/default/files/case-downloads/apple-nl/2021-05-14-apple-letter-before-claim.pdf (app developers).

[12] https://iusomnibus.eu/wp-content/uploads/2022/03/Press-Release-Ius-Omnibus-v-Apple-2022.pdf (consumers).

[13] https://ec.europa.eu/commission/presscorner/detail/en/IP_24_3433

July 2024, the Competition Commission of India concluded that Apple exploited its dominant position in the market for app stores.[14]

Investigations into Apple's anticompetitive behavior in app distribution are also pending in other countries including Australia[15], Brazil[16], and Mexico.[17] The U.S. Department of Justice has asserted in a recent lawsuit against Apple that the company's dominance in the premium smartphone market has allowed Apple to engage in anticompetitive conduct in its app store.[18]

C. Google and Apple's 30% share is unjust and anticompetitive.

I would like to turn for a minute to the societal cost of Google and Apple's conduct. The commission structures imposed by Apple and Google on app store transactions is at least two to three times higher than they would be able to charge in a competitive market without their illegal behavior.

For example, the video game company Epic has recently set up its own app store in the European Union.[19] Epic charges a 12% commission in its Epic Games Store.[20] Epic's CEO Tim Sweeney explained that the 12% commission still allows Epic to net around 5% of the in-app purchase price as profit.[21] The CEO of Paddle, a company that provides payment solutions for digital goods, wrote in a sworn declaration that Paddle charges an average of 6 to 7% per transaction.[22]

Internal analyses prepared by Google and Apple also demonstrate that they can charge lower commissions, but they have no incentive to do so without competitive pressure. Google calculated in their internal financial documents that the cost to Google for providing its in-app payment processing services is only 6% of the

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[14] https://www.reuters.com/technology/india-antitrust-probe-finds-apple-abused-position-apps-market-2024-07-12/

[15] https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25

[16] https://mlexmarketinsight.com/news/insight/apple-queried-by-brazil-s-cade-about-compliance-with-european-dma

[17] https://www.reuters.com/technology/mexico-launches-antitrust-probe-digital-goods-services-sector-2023-07-03/

[18] Complaint, *United States of America, et. al. v. Apple Inc.,* No. 2:24-cv-04055 (D.N.J.) (Mar. 21, 2024) ¶ 11 ("By maintaining its monopoly over smartphones, Apple is able to harm consumers in a wide variety of additional ways…. Apple also prohibits the creation and use of alternative app stores curated to reflect a consumer's preferences with respect to security, privacy, or other values."); *id.* ¶¶ 54-55 (Apple uses control over app distribution to "dictate how developers innovate for the iPhone" and other smartphones, driving users away from products that threaten its monopoly).

[19] https://www.barrons.com/news/epic-launches-own-app-store-fortnite-back-for-iphones-in-europe-e793f2f4

[20] https://www.wired.com/story/epic-games-store-eu-launch-vs-apple/

[21] Exhibit A, https://x.com/TimSweeneyEpic/status/1120441795010338816?lang=en

[22] Exhibit B, Declaration of Christian Bailey Owens, *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-05640 (N.D. Cal.) (Mar. 13, 2024), ECF No. 897-2, ¶ 18 ("Across all of our customers and transactions, the average effective commission Paddle charges is in the range of 6% to 7%.").

transaction price.[23] Apple has also recognized in internal studies that a substantially lower commission would still be profitable for it.[24]

Were competitors able to compete freely, the commission structures may be even lower than these examples. The average fees on credit card transactions in the U.S. are between 1.5% and 3.5%.[25] And no one doubts that millions and millions of credit card transactions are processed safely and securely every day.

D. Features of U.S. antitrust law.

The U.S. antitrust law encourages private plaintiffs to bring antitrust lawsuits to recover treble damages. As the U.S. Supreme Court recognized many years ago, the antitrust law brings "to bear the pressure of 'private attorneys general' on a serious national problem for which public prosecutorial resources are deemed inadequate".[26]

U.S. courts have also recognized that one of the pressures that private plaintiffs face is the risk of retaliation from a defendant with whom they have a business relationship.[27] Class actions are one way to guard against this risk.[28] A U.S. Court of Appeals also found that injunctions may be necessary to prevent a defendant from retaliating.[29] Therefore, U.S. Courts have held that while businesses generally have the freedom to choose with whom they work, this principle does "not apply where there is a purpose to create or maintain a monopoly" and "to frustrate litigation."[30]

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[23] Exhibit C, Transcript of Proceedings, *In re Google Play Store Antitrust Litigation,* No. 21-md-02931-JD (N.D. Cal.) (May 23, 2024) at 95 (According to Epic's economics expert, "from the testimony I gave at trial and documents that Google produced, Google's—Google currently believes that their average cost is about 6 percent" for use of Google Play Billing.); *id.* at 102 (According to the Court, "We did see some internal Google financial documents calculating the cost of the 6 percent figure").

[24] Exhibit D, Evidentiary Hearing Vol. 4 Transcript, *Epic Games, Inc. v. Apple, Inc.,* No. C 20-05640 (N.D. Cal.) (Testimony of Carson Oliver) (May 17, 2024) 602:25-605:5.

[25] https://www.forbes.com/advisor/business/credit-card-processing-fees/

[26] *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 151 (1987).

[27] *See, e.g.*, *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 746 (1977) ("[D]irect purchasers sometimes may refrain from bringing a treble-damages suit for fear of disrupting relations with their suppliers."); *Natchitoches Parish Hosp. Serv. Dist. v. Tyco Int'l., Ltd.*, 247 F.R.D. 253, 273 n.6 (D. Mass. 2008) ("Distributor class members may be reluctant to bring actions against manufacturers, and thus 'a class action may be the only practical method for resolving their claims.'"); *In re Indus. Diamonds Antitrust Litig.*, 167 F.R.D. 374, 386 (S.D.N.Y. 1996) (finding class action superior method of adjudicating case where, among other things, some class members "still depend on [the defendants] for their supply of industrial diamond products and may be hesitant to disrupt those relationships."); 6 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 18.41 (4th ed. 2002) ("Class actions perform an important function in cases where individual franchisees or purchasers are reluctant to sue because they fear economic reprisal." (citing cases)).

[28] *Id.*

[29] *Bergen Drug Co. v. Parke, Davis & Co.*, 307 F.2d 725, 728 (3d Cir. 1962).

[30] *Id.*

E. Closing

In closing, laws or other policies that protect consumers and companies from retaliation when they bring good faith antitrust litigation would help promote a free and competitive economy by giving them the confidence to enforce antitrust laws for the betterment of society. Vigorous antitrust enforcement for well over 100 years in the United States demonstrates that freedom to compete is key to innovation and it promotes economic growth.

Thank you for your time and for giving me the opportunity to speak today.

/s/ Christopher L. Lebsock

Christopher L. Lebsock

EXHIBIT A

Post

Tim Sweeney ✔
@TimSweeneyEpic

Why 12%? We chose this number to provide a super-competitive deal for partners while building an enduring and profitable store business for Epic.

From that 12%, we net around 5% after direct costs and that could grow to 6-7% with greater economies of scale.

5:38 PM · Apr 22, 2019

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EXHIBIT B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC.,	No. 4:20-CV-05640-YGR-TSH
Plaintiff, Counter-defendant,	**DECLARATION OF CHRISTIAN BAILEY OWENS**
v.	The Honorable Yvonne Gonzalez Rogers
APPLE INC.,	
Defendant, Counterclaimant.	

1   I, Christian B. Owens, declare as follows:

2   1.   I founded Paddle.com Market Limited ("Paddle") in 2012 and serve as its

3   executive chairman. Previously, I was the CEO of Paddle.

4   2.   My responsibilities over the years have included making operational decisions for

5   Paddle, overseeing its strategy, and making key decisions for the company.

6   3.   I submit this declaration in support of Epic's Motion to Enforce Injunction.

7   **I. Introduction**

8   4.   I submit this declaration because the steps Apple is taking purportedly to comply

9   with the injunction entered by this Court do not realistically allow developers of iOS applications

10   to make their users aware of, and link users to, web-based purchase options.

11   5.   I understand this Court ordered Apple to remove from its App Review Guidelines

12   Apple's prohibition on developers incorporating into their app "buttons, links and other calls to

13   action" encouraging users to complete purchases outside the app rather than within the app. I

14   understand the Court found that Apple's prohibition shielded Apple from competition by

15   preventing developers from "communicat[ing] lower prices on other platforms either within iOS

16   or to users obtained from the iOS platform."

17   6.   Paddle has the capability to support payments for digital goods on iOS, including

18   web purchases launched from iOS app developers' websites. It was Paddle's hope that with the

19   injunction in place, Paddle could offer developers a payment solution that would help developers

20   take advantage of their new ability to let users link out of their iOS apps to make web-based

21   purchases.

22   7.   I have reviewed the submission that Apple made with this Court on January 16,

23   2024, which Apple styled as its "Notice of Compliance" (the "Notice"). As set forth in that

24   submission, Apple claims that it now allows developers to choose to use third-party payment

25   solutions.

26   8.   But this "choice" is illusory. Apple's revised App Review Guidelines and policies

27   outlined in its Notice would still foreclose Paddle from offering its solution to iOS app developers

28   who include an external purchasing link in their iOS app. Apple has encumbered any attempt at

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1   linking outside of the app with so many layers of technical and financial hurdles that I would

2   expect no or almost no developer to utilize the new external link entitlements Apple now offers.

3   For example, Apple mandates that external links may not be displayed within any "purchase

4   flow," which is where they might be useful to users; they may only utilize static URLs,

5   preventing any dynamism in pricing, special sales, or even linking to any specific product page.

6   9.   Apple has also implemented a new 27% fee that it will charge if a user of an iOS

7   app elects to use other web-based purchase options through an allowed link (or 12% for apps that

8   qualify for Apple's Small Business Program). Apple's new fee means that to present any pricing

9   benefit to developers and users, the developer would have to find a payment solution that would

10   service payments on its website for less than a 3% fee. Paddle cannot charge a 3% commission

11   for its services without losing money. Just the cost to clear transactions Paddle handles (i.e., out

12   of pocket fees Paddle must pay to financial intermediaries) would amount to around 4%, on

13   average, for the transactions likely to be carried out on an iOS app developer's website. This is

14   without even accounting for Paddle's other substantial costs to run its business and offer other

15   billing services. I expect that is true of other similarly situated providers, given the underlying

16   economics of taking payments.

17   10.   In short, Apple's new fee makes it financially unattractive for developers to choose

18   a different payment solution than Apple's and would prevent any meaningful competition

19   between payment solutions servicing web-based purchases and Apple's IAP. Apple's

20   contemplated path forward would thus foreclose developers from using Paddle's solution or other

21   potential alternatives.

22   **II. Overview of Paddle**

23   11.   I have worked in the technology and software industry my whole career. I

24   successfully started my first software company when I was 16. My company sold its software

25   internationally, and I found that I was spending a lot of time resolving payment issues, like

26   managing tax compliance and foreign exchange fees in different countries. This gave me the idea

27   of creating a one-stop solution to help developers sell their digital products globally seamlessly.

28   This idea ultimately became Paddle.

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1   12.   Paddle offers an end-to-end payment solution that allows developers to sell their

2   products internationally over the web while maintaining compliance with different countries'

3   legal, regulatory, and tax obligations. Paddle currently transacts in around 30 different currencies

4   and regularly adds support for additional currencies when requested by developers.

5   13.   Paddle handles every aspect of a transaction. This includes checkout, billing,

6   invoicing, tax calculation and remittance, chargeback services, refunds, subscription

7   management, analytics, and cross-platform support.

8   14.   With respect to payment methods, Paddle accepts a wide range of credit cards,

9   including Visa, Mastercard, American Express, Discover, and others. Paddle accepts Apple Pay

10   on Safari and Google Pay in Google Chrome. Paddle also accepts PayPal, Alipay, IDEAL and

11   wire transfers. With respect to payment processing, Paddle relies on trusted and secure payment

12   processors such as PayPal and Stripe. Paddle does not itself directly process payments.

13   15.   In connection with providing these services, Paddle serves as a merchant of record

14   for software companies in connection with sales of their digital products. In other words, software

15   companies sell their digital products to Paddle, and Paddle resells them to customers. By serving

16   as the merchant of record, Paddle assumes liability for the transaction, including compliance with

17   local laws in each jurisdiction. Paddle is able to serve as the merchant of record while still

18   allowing the software companies that use Paddle to maintain a relationship with the customer in

19   their capacity as licensor and developer of the product.

20   16.   Paddle has grown significantly since its founding in 2012. Paddle is available in

21   over 200 countries around the world. Paddle has hundreds of employees with offices in several

22   countries, including in the UK, United States, and Argentina, and has thousands of customers.

23   They range from small software developers who offer 99 cent apps to large enterprises such as

24   3Commas, Tailwind, and Geoguessr. Paddle's customers include companies that sell their digital

25   products on a subscription basis, and Paddle offers sophisticated billing and customer service

26   infrastructure to support those customers. Paddle has been used as a billing method in connection

27   with tens of millions of transactions.

28   17.   Paddle's solution is available across a variety of platforms. Paddle offers a web-

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1   based solution. Paddle also offers a solution that is accessible through native apps on both PCs

2   and Macs.

3   18.   Paddle makes money by charging for its services on a per-transaction basis.

4   Paddle's default fee is 5% of the purchase price plus a further $0.50 per transaction. Paddle also

5   enters into bespoke pricing arrangements with certain developers. For example, Paddle charges

6   lower prices to developers that have large transaction volumes and offers discounted pricing to

7   certain smaller developers who sell digital products for very low prices—what we refer to in the

8   industry as "microtransactions." For microtransactions, Paddle offers a fee based on a percentage

9   of the purchase price (typically around 10% or lower), without an additional flat fee component.

10   This makes it economical for developers to use Paddle even if their transactions are very small.

11   Across all of our customers and transactions, the average effective commission Paddle charges is

12   in the range of 6% to 7%.

13   19.   Paddle's solution is highly secure. Paddle is in compliance with multiple industry

14   security standards, including the Payment Card Industry Data Security Standard and the SOC 2

15   standard for internal controls. Paddle reviews all of the digital products that are sold using its

16   solution and is routinely subject to successful external security audits by third parties. Paddle also

17   has structured its solution to leverage the security advantages of trusted third parties. Specifically,

18   as stated above, Paddle uses known and highly secure third parties like PayPal and Stripe to

19   process transactions. Paddle also relies on secure third parties to store sensitive information such

20   as credit card information. In addition, Paddle monitors transactions for indicia of fraud by

21   allocating fraud scores and reviewing transactions as appropriate. Paddle also is in compliance

22   with multiple stringent data security regulatory schemes, including the California Consumer

23   Privacy Act (the "CCPA") and General Data Protection Regulation (the "GDPR").

24   **III. Paddle's Payment Solution for iOS App Developers**

25   20.   Paddle has received many requests over the years from iOS app developers to use

26   Paddle's solution. But, unfortunately, Apple's rules have historically restricted Paddle's use on

27   iOS. These rules included, among other things, anti-steering restrictions that prohibited

28   developers from directing potential purchasers of digital goods to the developers' own websites,

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1   where alternative payment solutions such as Paddle's could be used.

2   21.   As someone who has been in the payments industry for over a decade, and in

3   connection with my role at Paddle, I carefully monitor developments within the payments

4   industry. I had been monitoring this litigation at a high level with great interest, because, as I

5   understood it, if Epic were to prevail, it could mean that app developers could include links in

6   their iOS apps that would take users to a web-based purchase using Paddle's payment solution.

7   22.   On September 10, 2021, this Court granted an injunction in this litigation

8   restraining Apple from, among other things, prohibiting developers from including in their apps

9   "external links, or other calls to action that direct customers to purchasing mechanisms."

10   23.   After becoming aware of this development shortly after the Court entered its order,

11   I set up a team within Paddle to look into how we might make our solution available to iOS app

12   developers. We developed broad capabilities to support iOS app developers' use of Paddle. Our

13   capabilities include making Paddle's solution available for the purchase of digital goods from an

14   iOS app developer's website.

15   24.   Based on my experience in the industry and feedback we have received from

16   customers over the years, Paddle's solution would be an attractive option for iOS app developers.

17   Paddle's solution, like Apple's existing one, could be used to handle transactions, subscription

18   management, tax compliance, and pricing localization. But Paddle also can offer iOS app

19   developers additional features not available with Apple's solution, including cross-platform

20   support, direct customer support, and refund processing, among others.

21   25.   With cross-platform support, iOS app developers could use Paddle's solution

22   across a range of platforms where they sell digital products. By contrast, Apple's solution is

23   limited solely to apps downloaded on Apple's App Store. Paddle's solution also would allow

24   developers to continue to be in the driver's seat of their own customer relationships. They are able

25   to offer input regarding bespoke refund policies and have greater access to their customers

26   including fielding questions or concerns from customers. By contrast, Apple requires developers

27   to essentially sever the link with their customers, such that their customers have to rely on Apple

28   to manage the customer, end to end.

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26.   Paddle would also charge much less to iOS app developers than Apple does. For transactions completed on an iOS app developer's website, Paddle would utilize its default pricing of 5% + $0.50, or a 10% without any flat fee in the case of microtransactions. By contrast, Apple charges developers 30% (or 15% in some cases).

IV. Apple's Notice

27.   Paddle has the capability to support transactions for digital goods made through an iOS app developer's website. But based on my review of Apple's Notice, the new hurdles that Apple imposes would as a practical matter prevent iOS app developers from using an external purchasing link within their app and then using Paddle's solution, or any other alternative payment option, on their website. These new hurdles include the following:

28.   First, Apple mandates that any external links not be displayed within the normal "purchase flow," significantly limiting the ability of developers to direct users to such links. Apple instead requires that the link directing a customer to an external purchase option be located in only a single location within the app, and must direct the customer to a set location on the external website. *See* Notice. Ex. 1 at 44 (Apple's new App Store Review Guidelines). This is a significant concern because, based on my experience in the payments industry, purchasers of digital goods would ordinarily expect to be able to find available purchase options during the process of identifying and selecting a potential digital good for purchase. As a result, many potential purchasers who might otherwise be interested in a potential alternative payment solution may not find and use it. Moreover, this process would result in the customer having to essentially start a transaction from scratch from the website, including re-entering log-in information and re-locating whatever digital product they wished to purchase. This would introduce a tremendous amount of friction into the purchasing process, even for those potential users that successfully find and click an external purchasing link within the app. Notably, developers can only avoid these frictions by continuing to make their purchases in the app using Apple IAP.

29.   These frictions also stand in stark contrast to the streamlined design of payment solutions like Paddle's. Paddle's solutions are designed to streamline the payment process, including when it occurs on a developer's website after a user clicks an external purchasing link.

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1   We streamline the payment flow because it is common knowledge in the industry, and also our

2   experience, that customers will abandon transactions that are unduly cumbersome to complete,

3   such as those exemplified by the payment flow that Apple mandates.

4   30.   Second, Apple requires that any developer that wishes to include a link to its

5   website has to "complete and submit a request form to Apple providing details about its app, the

6   External Purchase Link it wishes to include, and the website domain to which the External

7   Purchase Link will direct users." *Id*. at 6. This application process is unduly onerous and I am

8   concerned that it will deter developers from seeking to use a payment solution like Paddle's.

9   Moreover, this process would limit external links solely to pre-approved static URLs. As a result,

10   developers would lose flexibility in how they use a solution like Paddle's on their website, as

11   Apple's process would preclude them from offering dynamic pricing or special sales.

12   31.   Third, Apple would further discourage purchases on alternative platforms by

13   presenting users with what we in the industry call a "scare screen" if they were to follow a link

14   outside the iOS app. In this case, the scare screen would warn customers that they are about to be

15   directed to an external website whose security Apple cannot ensure. Notice at Ex. 3 (screenshot

16   from Apple's online developer guidelines). As described above, Paddle's solution is highly

17   secure. Yet the scare screen Apple proposes would unjustifiably cast doubt on the security of *any*

18   out-of-app purchase, including web-based purchases made through Paddle's widely used secure

19   solution.

20   32.   Fourth, Apple plans to introduce a new fee that would make purchases on

21   alternative platforms reached through a link financially unattractive to developers. In its Notice,

22   Apple says that "Apple will apply a 27% commission to transactions for digital goods and

23   services that take place on a developer's website within seven days after a user taps through an

24   External Purchase Link from the system disclosure sheet to an external website . . . . Developers

25   eligible for and participating in the App Store Small Business Program will be charged a 12%

26   commission on purchases made within seven days after a user taps on an External Purchase Link

27   and continues from the system disclosure sheet to an external website." Notice at 12. Apple

28   already charges a 30% fee (15% in some instances) for in-app purchases. In other words,

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1   developers would be paying Apple the same fee as before, minus 3%. Apple's new fee is thus

2   almost the same as its previous one, even though Apple would not be providing any payment

3   services in connection with transactions that utilize alternative payment solutions.

4   33.   This new fee puts solutions like Paddle's in an untenable financial situation. As a

5   result of this economic structure, Paddle would have to reduce the commission it charges to less

6   than 3% in order to even compete on price with Apple. But charging such a low commission

7   would not be feasible for Paddle. Paddle's business model has certain fixed costs built in. The

8   cost of paying payment processors to process the transaction, alone, is around 3% on average for

9   our transactions today, and would likely be closer to 4% for our iOS solution based on the

10   anticipated smaller transaction size for iOS transactions. Paddle also has additional costs to run its

11   business and provide other services to its customers—services that Apple otherwise would be

12   responsible for if Apple IAP were being used. As a result, Paddle would not be able to compete

13   on price without losing substantial money. Based on my experience, I believe other payment

14   solutions and payment processors would face the same structural economic problem, given that

15   the cost of payment processing alone (without accounting for other payment services of the sort

16   Paddle offers) typically costs around at least 3-4%.

17   34.   Thus, even though Paddle has the capability to offer developers a payment solution

18   that I believe is both better and cheaper than Apple IAP, the new fee that Apple now imposes will

19   prevent iOS app developers from using an external purchasing link in their apps, and thus prevent

20   Paddle from providing its payment solution for use with such links.

21   *   *   *

22   35.   In sum, the new hurdles that Apple now imposes make it all but impossible for

23   iOS app developers to use an alternative solution like Paddle's. Apple's restrictions and

24   requirements mean that using an external link to make purchases on an alternative platform would

25   cost more to developers than Apple IAP and would be much more cumbersome for users and

26   developers alike. Given my experience in the payments industry, I believe that the frictions and

27   financial barriers that Apple imposes are not unique to Paddle, but would affect other payment

28   solution providers in similar ways.

DECLARATION OF CHRISTIAN B. OWENS   9   CASE NO. 4:20-CV-05640-YGR-TSH

1   I declare under penalty of perjury of the laws of the United States of America that the

2   foregoing is true and correct. This declaration was executed this __13__ day of March 2024, in

3   ___Bath, UK_____.

4

5   CHRISTIAN B. OWENS

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DECLARATION OF CHRISTIAN B. OWENS   10   CASE NO. 4:20-CV-05640-YGR-TSH

1   I, Gary A. Bornstein, am the ECF User whose ID and password are being used to file this

2 Declaration of Benjamin Simon in Support of Epic Games, Inc.'s Motion to Enforce Injunction.

3 In compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this

4 document has been obtained from the signatory.

5

6   */s/ Gary A. Bornstein*
                                                     Gary A. Bornstein

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DECLARATION OF CHRISTIAN B. OWENS   11   CASE NO. 4:20-CV-05640-YGR-TSH

EXHIBIT C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE GOOGLE PLAY STORE   )
ANTITRUST LITIGATION,   )
) **NO. 21-md-02981-JD**
)
_____)
THIS DOCUMENT RELATES TO:)
)
EPIC GAMES, INC.,   )
)
        Plaintiff,   )
)
  VS.   ) **NO. 20-cv-05671-JD**
)
GOOGLE, LLC., et al.,   )
)
        Defendants.   )
_____)

San Francisco, California
Thursday, May 23, 2024

TRANSCRIPT OF PROCEEDINGS

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported By: Ruth Levine Ekhaus, RMR, RDR, FCRR
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17
     Also Present: **Michael Lyons**
18   **Douglas Bernheim**
                         Steven Tadelis
19   **Matthew Gentzkow**
                         Gregory Leonard
20

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1 something like 27 percent. It was about a 3 percent discount,

2 which turned out to be nothing, because if you don't use Google

3 Play, you've got to pay somebody, and that usually paid them 3

4 or 4 percent. So you ended up still paying 30 percent, it's

5 just that only 27 percent went to Google as opposed to the full

6 30.

7   So what do you do about that 27 percent?

8   DR. TADELIS: So it was 26, but who's counting.

9   THE COURT: Yeah. All right. Okay. You are, you're

10 the economist.

11   DR. TADELIS: So I have no beef with Google charging

12 26 percent or 16 percent or 73 percent for whatever they want

13 to charge on distribution.

14   My beef is with the delta between charging without Google

15 Play Billing and charging with Google Play Billing.

16   In other words, the added fee to use Google Play Billing,

17 on top of all the other benefits they claim developers are

18 getting, should be no less than the cost for Google to deliver

19 those services; and currently that 4 percent is less than their

20 cost.

21   So going exactly to your concern, if I'm a developer and

22 now Google is offering me user-choice billing -- which,

23 importantly, does not sever the tie physically; user-choice

24 billing says you could use something else in addition to Google

25 Play Billing.

1   **THE COURT:** I'm with you on that. Let's assume --

2   **DR. TADELIS:** But let's assume there is --

3   **THE COURT:** It's all gone.

4   **DR. TADELIS:** -- a tie but they just --

5   **THE COURT:** It's a new day. A developer can do

6 anything he or she wants.

7   **DR. TADELIS:** Perfect.

8   And then Google says, "If you want to use our system

9 completely, including Google Play Billing, you'll pay us, say,

10 30 percent. If you don't want to use Google Play Billing,

11 you're going to pay us 26 percent" -- which means that to not

12 use Google Play Billing, it would only be beneficial for a

13 developer if they could find a payment solution product that is

14 less than 4 percent.

15   That doesn't exist today because the costs of a billing

16 solution product are higher than 4 percent.

17   **THE COURT:** Well, then how would you formulate what

18 Google could do?

19   **DR. TADELIS:** So from testimony I gave at trial and

20 documents that Google produced, Google's -- Google currently

21 believes that their average cost is about 6 percent. So that

22 would be a floor on what they could charge for the added use of

23 Google Play Billing.

24   In the remedy, there's actually a call for Google to

25 release that number to the -- I forget the name of the

1   committee. It's not the audit committee --

2   **THE COURT:** Yeah. I should jump in.

3   We're not doing committees.

4   **DR. TADELIS:** Okay.

5   **THE COURT:** If there's an issue with enforcement, you

6   will turn to the Court, but I'm not --

7   **DR. TADELIS:** Then Google will --

8   **THE COURT:** We're not -- that's -- that's way too much

9   for this case.

10   But I'm not sure I'm understanding. So here's what I'm

11   thinking: A developer decides to use her own billing system.

12   It's a completely self-contained ecosystem. You buy through my

13   app, you pay me through my billing system. Okay. Nothing to

14   do with Google other than being on the Google --

15   **DR. TADELIS:** It was like a different app store?

16   **THE COURT:** Well, no, they're -- they're on a Google

17   app store --

18   **DR. TADELIS:** Oh, they're on a Google app store.

19   **THE COURT:** -- but they're going to do all of their

20   business with you, financially, as a user, through their own

21   in-app billing service that doesn't use Google Pay.

22   So you're saying that Google should be able to charge that

23   developer 6 percent of that transaction?

24   **DR. TADELIS:** No. I'm saying that Google would not be

25   charging them for billing. I'm not preventing Google from

1 charging for the fact that they have been discovered through

2 Google Play -- the Google Play Store, et cetera.

3   If Google is providing -- let's make it simple -- two

4 different services, distribute through Google Play, don't use

5 Google Play Billing, there's going to be a fee for that.

6   **THE COURT:** And how does this stop -- how is that fee

7 to be set?

8   **DR. TADELIS:** Google decides what that fee is.

9   **THE COURT:** Okay. And the idea is that if Google sets

10 it too high, the developer will just opt out?

11   **DR. TADELIS:** The developer might choose not to

12 distribute through Google Play.

13   **THE COURT:** Okay. So I don't have to be involved in

14 regulating that fee at all?

15   **DR. TADELIS:** Absolutely not.

16   **THE COURT:** Okay. So in other words, your proposal is

17 just -- just -- just decouple billing --

18   **DR. TADELIS:** It's decoupling --

19   **THE COURT:** -- from Google billing.

20   **DR. TADELIS:** -- and making sure that the extra cost

21 to use Google Play Billing is no less -- the extra price, or

22 fee, to use Google Play Billing is no less than the cost for

23 Google to provide that product.

24   **THE COURT:** Why do I have to give antitrust attention

25 to that?

1   If the developer can do whatever he or she wants, what

2 difference does it make?

3   **DR. TADELIS:** Could I direct you to one of the slides

4 that I actually used in testimony, Your Honor?

5   **THE COURT:** I don't have that here.

6   **DR. TADELIS:** Oh, no. It's in the -- oh, sorry.

7   (Pause in proceedings.)

8   **THE COURT:** Okay.

9   **DR. TADELIS:** This is Slide Number 8 --

10   **THE COURT:** Yes.

11   **DR. TADELIS:** -- in my slide deck.

12   This is a slide that I used in my testimony, and it --

13 it's a slide that comes from Google. I have added on what you

14 see here in red.

15   And what Google did in this slide, as part of their

16 internal deliberations, they called it game theorizing price

17 level. "Game theory" is a fancy word for a set of tools to

18 analyze strategic interactions. So this is basically

19 strategically choosing a price level.

20   They start by saying: Some large developers would take

21 advantage of billing optionality no matter the price.

22   What they mean by that is, they'll say, "You can use

23 Google Play Billing. We're charging you 30 percent. If you

24 don't use Google Play Billing, we're still charging you

25 30 percent."

1   They might still choose to do that. That's that initial

2 jump you see at the very left where it goes, like, from zero to

3 the core strategic asset. And that's trying to describe those

4 developers who would choose their own billing system regardless

5 of the fee.

6   Now, what they next do is show that you have to give

7 enough of a discount -- that's what you call on the billing

8 optionality discount on top -- to reach that zone where you see

9 the blue line curving up; that's when developers would start

10 integrating alternative billing solutions.

11   So what's the idea there?

12   So let's take the current user choice billing that we

13 know. Google says: If you're not using Google Play Billing,

14 we're only going to charge you 26 percent. Use whatever you

15 want.

16   Now, of course, if any billing solution is going to cost

17 me more than 4 percent, I, as a developer, would make a mistake

18 by choosing that, so I'll just stick with Google Play Billing.

19 That's why that blueline is not budging when you go from 30 to

20 26.

21   It's only when you go to something, and again, if this

22 graph is done to scale, which I'm assuming here, you'd have to

23 go down to something like 22, 21 percent to start getting that

24 pickup -- which makes sense because if you would actually turn

25 to what is Slide 3 in the deck that I just gave you, you see

1   that pretty much if you ignore micropayments, nothing is

2   cheaper than 6.1 percent as a billing solution.

3   And Square, for example, is not that prominent. If we

4   take PayPal, that's a very prominent global provider,

5   8.8 percent. That would mean that that discount would have to

6   be on the order of 9 percent for a developer to say, "Okay. I

7   will now use PayPal instead of Google Play Billing."

8   That's what this describes here.

9   So what Google is able to do by playing with these two

10   prices, the bundle versus only distribution, is replace the

11   coercive tie with a tie through economic incentives. And as

12   long as they're pricing the delta below their costs, this is

13   not different, conceptually, from predatory pricing, so to

14   speak. That's the idea here.

15   **THE COURT:** In other words -- that makes sense to me.

16   So no below-cost pricing, basically. Okay.

17   **DR. TADELIS:** Exactly.

18   **THE COURT:** And is it your understanding that costs is

19   something that can be easily determined through GAAP

20   procedures?

21   I mean, I hear in other cases tremendous fights about what

22   constitutes cost. So this has to be something that is a

23   readily measurable number.

24   **DR. TADELIS:** Yes, I believe that is feasible, not too

25   difficult.

1	**THE COURT:** Why do you believe that?
2	**DR. TADELIS:** Here's what I would look for. I've been
3	teaching cost allocations for economic decisions for about
4	20 years, so I'm going to share exactly what I would share in
5	my MBA classroom.
6	If we take the product Google Play Billing, there are
7	going to be costs associated with it. Those costs are going to
8	start with the obvious variable costs of payment processing.
9	Those are typically on the order of 2 1/2 to 3-plus percent.
10	Then on top of that, you're going to need, say, servers
11	that are dedicated to that. You're going to need customer
12	service to deal with fraud, and you're going to need some
13	engineering that deals with fraud detection. In other words,
14	there will be someone at Google who is in charge of Google Play
15	Billing. There will be an army of people and services under
16	that person that is part of that business.
17	The test that I want is simple: If you shut that down,
18	what falls off your balance sheet?
19	Those are the costs.
20	**THE COURT:** Did we see any records to that effect at
21	the trial? I don't remember.
22	**DR. TADELIS:** I have not seen records of that.
23	**THE COURT:** We saw some cost records, as I recall, but
24	was it for this?
25	**MR. EVEN:** I believe what we saw, internal analysis by

1 Google that reached a bottom-line number in the 6 to -- I think

2 in the 6 percent range where Google said, "At 6 percent, we

3 think we're kind of breaking even, and we think that the cost

4 to developers from others would be 10 percent."

5   **THE COURT:** We did see some internal Google financial

6 documents calculating the cost of the 6 percent figure.

7   **MR. EVEN:** I believe they were kind of strategic

8 analysis of Google in other areas where they said, "We talked

9 to the finance folks, and the finance folks told us 6 percent

10 is, more or less, roughly our internal cost."

11   Back at the time. Obviously, these things changes from

12 year over year.

13   **THE COURT:** All right. Thank you. Okay.

14   **MR. POMERANTZ:** My name is Glenn Pomerantz.

15   That is not what that evidence showed. That was not the

16 financial analysis as -- I think Mr. Even was saying it was

17 strategic analysis.

18   The kind you're talking about, really a careful

19 consideration of the costs, that's not what was in evidence in

20 this case.

21   **THE COURT:** Okay. I'll go back and look, but

22 all right.

23   Okay. Well, who's handling this for the defendant?

24   Dr. Leonard. Okay.

25   **DR. LEONARD:** I think this --

1   **THE COURT:** It seems like a relatively straightforward

2 solution from your colleague.

3   **DR. LEONARD:** Well, I'll disagree with that a little

4 bit.

5   First of all, I'm Greg Leonard, just to identify myself.

6   Let me just start at the end. Is 4 percent, you know,

7 enough of a floor on the price of Google Play Billing for

8 rivals to complete?

9   We actually have evidence about that because we have

10 developers in the case who testified about it. And, in fact,

11 Mr. Sweeney testified that to get -- I think he called it an

12 equivalent to Google Play Billing would be 2 to 4 percent. So

13 4 percent, obviously, should be enough for Epic to do it.

14   There are other -- if you look at -- I don't want to go

15 through them all, but on page 12 of my slide deck, you'll see

16 some other evidence that I summarized on that point.

17   The other thing I want to get to is: If the floor is to

18 be set according to cost, there's, first of all, a question of

19 what cost are we talking about?

20   And Your Honor may be familiar in antitrust predatory

21 pricing cases, you know, you could look at average variable

22 cost.

23   Here, as I understand the proposed injunction, they're

24 saying you should look at average total cost. And that really

25 has the danger of chilling competition -- right? -- because it

EXHIBIT D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable YVONNE GONZALEZ ROGERS, Judge

EPIC GAMES, INC.,   )   **Evidentiary Hearing**
)
          Plaintiff,   )   **Volume 4**
)
   vs.   )   NO. C 20-05640 YGR
)
APPLE, INC.,   )   Pages 562 - 710
)
          Defendant.   )   Oakland, California
_____)   Friday, May 17, 2024

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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                  (Appearances continued next page)

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      Proceedings reported by electronic/mechanical stenography;
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--o0o--

I N D E X

E X H I B I T S

--o0o--

1   the usage of digital goods and services that are happening for

2   out-of-app transactions.

3   And so what they have done is reflect that in the

4   effective commission rate, which is in every case lower than

5   the actual commission rate.

6   And what that means is that users who are purchasing

7   outside of the app are using the digital goods and services

8   purchased outside of the app using Apple's multi-platform

9   rule, and the consumption and usage of those digital goods and

10   services is significantly higher in the app than the

11   percentage of revenue that Apple is capturing for commissions

12   on those.

13   **BY MS. RICHMAN:**

14   **Q.** Mr. Oliver, is there data available to you about what

15   percentage of revenues developers are able to steer to their

16   website?

17   **A.** Yes. We see examples that range from 25 percent up to

18   50 percent.

19   **Q.** Is that data or your -- the case studies that you're

20   referring to?

21   **A.** Those are the case studies I'm referring to.

22   **Q.** And is there any repository of data that you have access

23   to that would show that?

24   **A.** Not that I know of.

25   **Q.** Apple doesn't have visibility into that?

1   **A.**   No.   Which is a part of the reason that we had to hire AG

2   to help us understand that.

3   **Q.**   And so has your team endeavored to study leakage?

4   **A.**   We have, to the best of our ability.

5   **Q.**   And how have you done that?

6   **A.**   When we have -- one, we've worked with parties like AG on

7   understanding the overall kind of business that flows through

8   the App Store and -- and getting a better view on that.

9   We also have received a variety of different data points

10   from different developers and other public sources that help

11   us understand leakage across different categories.

12   **Q.**   And do you understand that some of that -- those case

13   studies are among the materials that the Court has asked you

14   to produce?

15   **A.**   Yes.

16   **Q.**   Okay. All right. Why don't we switch away from the AG

17   report and go to the price committee deck.

18   How did AG's work inform the working group's

19   recommendation to the price committee?

20   **A.**   We use it in a couple of different ways.

21   **Q.**   Can you explain the ways?

22   **A.**   Yes. I'm sorry. So first, on Slide 9.6.

23   **MS. RICHMAN:**   I apologize for the size of the font,

24   Your Honor.

25   **THE WITNESS:**   So in this slide, we incorporated the

1   data points provided by AG and their bottoms-up value

2   comparables analysis that we just walked through. And that is

3   reflective of the costs of replacement for developers of the

4   subcomponents of value that Apple provides to developers.

5   **THE COURT:** So why didn't you have here when you

6   presented this deck, looking just at the discovery since we

7   were talking about that, that the estimated costs for

8   developers, at least large developers, was 5 percent, not

9   21 percent? Why didn't you divide that out? Or did you do

10   that somewhere else in this deck?

11   **THE WITNESS:** We talked about it as a factor that --

12   that guides us to the lower end of the boundary shown on -- on

13   the deck.

14   **THE COURT:** Where?

15   **THE WITNESS:** So we talked about one of the

16   reasons -- like the 5 percent was the larger developers. So

17   that was one of the factors that we discussed in presenting

18   this.

19   **THE COURT:** You discussed it orally, it's not in the

20   deck?

21   **THE WITNESS:** That's correct.

22   **THE COURT:** And is that the same for the distribution

23   at scale, the 4 percent relates to large developers, the

24   25 percent to small?

25   **THE WITNESS:** That's generally correct, yes.

1   **THE COURT:** And is that the same for the 3 and 16,

2   that the 3 percent is for large developers and the 16 percent

3   relates to small?

4   **THE WITNESS:** Yes.

5   **THE COURT:** So if I added up those on the low end for

6   large developers, five plus four plus three, that would be 12?

7   **THE WITNESS:** That's correct. But there are other

8   factors that influence the -- where you land in the range.

9   **BY MS. RICHMAN:**

10   **Q.** And, Mr. Oliver, have you endeavored to add up the low end

11   and the high end of this range here?

12   **A.** Yes.

13   **Q.** And do you know what the ranges are?

14   **A.** It's -- it's a pretty large range. It goes from I think

15   about 18 percent all the way up to 90-plus percent.

16   **THE COURT:** I thought it was 12.3.

17   **THE WITNESS:** Sorry. 12.3, yes. Apologies.

18   **BY MS. RICHMAN:**

19   **Q.** Just to focus on the first category of platform

20   technology, would the category --

21   **THE COURT:** Hold on. Hold on. Hold on. So

22   12.3 percent relative to the large developers, right?

23   **THE WITNESS:** Again, that's one factor is the size,

24   but, yes.

25   **THE COURT:** 12.3 percent to the set of developers who

1   you're charging 27 percent, right?

2   THE WITNESS: For the first seven days.

3   THE COURT: Okay. So where is the delta between the

4   27 percent and the 12.3 percent? How did you justify the

5   other 15 percent that you're charging them? Where is that?

6   THE WITNESS: So there are a variety of different

7   factors. Some of them are included in the notes here that

8   guide us within the range that is provided here.

9   I would argue that the 5, 4, and 3 percent numbers that

10   you're referencing are not reflective of some key unique

11   attributes to Apple's ecosystem and tools and technologies.

12   Our focus on user trust and privacy and those elements are not

13   valued in the comparables, as AG notes here.

14   BY MS. RICHMAN:

15   Q. Mr. Oliver, under the category of platform technology,

16   there are a couple of ranges there. Do you see that?

17   A. I do, yes.

18   Q. And one is 5 to 20 percent?

19   A. Yes.

20   Q. And the other is .3 to 6 percent?

21   A. That's correct.

22   Q. And what do those different ranges reflect?

23   A. As we discussed yesterday, that reflects the different

24   ranges for platform technology with and without demand

25   generation.

1   Q. And does the App Store provide demand generation?

2   A. I would clarify it's not the App Store but Apple's

3   platform technology provides demand generation, yes.

4   Q. So is .3 the correct lower bound to incorporate into the

5   calculation? Or is it 5 percent?

6   A. No. We thought the -- the appropriate range was 5 to

7   20 percent when we were looking at this.

8   Q. Okay. Thank you.

9   And if you add up 5 percent plus 3 percent plus 4 percent

10 plus 5 percent, what does that equal?

11 A. That's 17 percent.

12 Q. Where else --

13   THE COURT: You're charging 27.

14   THE WITNESS: Yes, Your Honor.

15   THE COURT: Yeah, so you're still charging an extra

16 third.

17   THE WITNESS: I would argue that the effective rate

18 is 18 percent.

19   THE COURT: Well, that's a big assumption. The

20 actual price that they're paying on every sale within a

21 seven-day period is 27 percent. Right?

22   THE WITNESS: That's correct.

23   THE COURT: And your assumptions are just that,

24 they're assumptions. There's actually no data for it.

25   THE WITNESS: That's not true.