Case No. 25-2935

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EPIC GAMES, INC.

Plaintiff-Appellee

v.

APPLE, INC.,

Defendant-Appellant

On Appeal from the United States District Court
for the Northern District of California
No. 4:20-cv-05640-YGR (Yvonne Gonzalez Rogers, District Judge)

AMICUS BRIEF BY THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANT-APPELLANT, URGING REVERSAL

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A. Disclosure Statement

The Civil Justice Association of California is a public benefit nonprofit corporation. It does not have any parent companies. No publicly held company has a 10% or greater ownership interest in the entity.

B. Table of Contents

C. Table of Authorities

Cases

Statutes

Rules

D. Identity of the Amicus Curiae

Founded in 1979, the Civil Justice Association of California (CJAC) is dedicated to improving the civil liability system as it affects California businesses, in the legislature, the regulatory arena, and the courts. CJAC's membership base consists of businesses and associations from a broad cross-section of California industries.

An important part of CJAC's work is identifying cases in the appellate courts that may affect those not directly involved in the appeal. Through the filing of amicus curiae briefs such as this one, CJAC seeks to bring the concerns of the business community to the attention of the appellate courts. CJAC hopes that, by providing a broader perspective on the issues being decided, it will assist those courts in arriving at sound decisions in the best interests of all those who may be affected.

CJAC has identified this case as one that warrants filing an amicus curiae brief for two reasons:

1. The District Court's injunction orders changes to the business environment that will have effects that reach far beyond the litigants. Because the District Court awarded the injunction in a

single-plaintiff lawsuit, none of the protections for the public interest that would accompany class action litigation or a lawsuit by the United States applied. Instead, the District Court adopted a remedy urged by a single self-interested competitor. Although that issue was addressed in the earlier appeal from the injunction (*Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 1003 (9th Cir. 2023)), the Court should revisit the issue because just last week the United States Supreme Court made clear that a district court's jurisdiction to order relief is restricted to the parties before it. *Trump v. Casa, Inc.*, No. 24A884, slip op. at 8 (U.S. Jun 27, 2025) ("we consistently rebuffed requests for relief that extended beyond the parties").

2. In direct contradiction to the ruling of a California Court of Appeal addressing the same business practice that Epic challenged in this lawsuit, the District Court found that Epic had proved a violation of the Unfair Competition Law even though the practice did not violate the antitrust laws. If this Court allows that interpretation of California law to stand, other District Courts in California may come to the same incorrect conclusion.

E. Authorship of the Brief

Calvin House, CJAC's counsel, authored the entire brief. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than CJAC and its members contributed money that was intended to fund preparing or submitting the brief.

F. Argument

i. The Court should reexamine the propriety of the broad injunction that the District Court issued.

Apple challenged the District Court's award of broad relief on its direct appeal from the District Court's injunction, but this Court rejected the challenge in a couple of sentences. 67 F.4th at 103. Apple, with the support of several amici, raised the issue in a petition for a writ of certiorari, but the Supreme Court denied the petition. *Apple Inc. v. Epic Games, Inc.*, ___U.S.___ [144 S.Ct. 681, 217 L.Ed.2d 382] (2024).

Although those rulings would normally settle the issue, this Court has recognized that "[b]ecause permanent injunctive relief controls future conduct, we are sensitive to the need for modification when circumstances change." *Toussaint v. McCarthy*, 801 F.2d 1080,

1090 (9th Cir. 1986). Justice Cardozo explained the principle in his eloquent way as follows:

> A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need. The distinction is between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative. . . . [A] court does not abdicate its power to revoke or modify its mandate if satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong.

United States v. Swift & Co., 286 U.S. 106, 114-15 (1932) (citations omitted). "An intervening judicial opinion" is the sort of changed circumstance that "may require modification of an injunction." *Toussaint*, *supra*, 801 F.2d at 1090.

Last week, the Supreme Court issued an "intervening judicial opinion" that would justify modifying the District Court's injunction. In *Trump v. Casa, Inc.*, *supra*, the Court ruled that "universal injunctions" (by which the order of a single United States District Judge bars executive officials from applying a policy to anyone in the country) are illegal, because "Congress has granted federal courts no such power." *Trump v. Casa, Inc.*, slip op. at p. 5. Although the

decision dealt with injunctions barring enforcement of one of the president's executive orders, its reasoning applies to all district court injunctions. That reasoning calls into serious question the legality of the injunction on which the decision under appeal is based.

Interpreting the grant of federal jurisdiction over suits "in equity," the Court explained that the grant "encompasses only those sorts of equitable remedies 'traditionally accorded by courts of equity' at our country's inception." Slip op. at p. 5. At that time, "suits in equity were brought by and against individual parties." Slip op. at p. 6. Over the Court's history, it "consistently rebuffed requests for relief that extended beyond the parties." Slip op. at p. 6.

Rejecting an argument that the injunctions before it were consistent with the principle that courts may fashion a remedy that awards "complete relief," the Court stated that the principle does *not* justify "the award of relief to nonparties." Slip op. at p. 15. When this Court affirmed the District Court's injunction, it did so based on Epic's argument that the injunction was justified as an award of complete relief. This Court's decision found it sufficient that the injunction was "tied to Epic's injuries." (67 F.4th at p. 1003.)

Considering the Supreme Court's ruling that relief cannot be extended beyond the parties, this Court should revisit that conclusion.

The restructuring that the District Court ordered is problematic for the same reasons that the Supreme Court ruled that the universal injunctions against the president's executive order were problematic – it adjudicates the rights of parties that were not before the District Court. Therefore, it does not take account of the specific circumstances of their relationships with Apple and Epic. As the Supreme Court noted, a class action under Federal Rule of Civil Procedure 23 provides the necessary protection for the interests of all who would be affected by the restructuring, not just those of a private party with its own ax to grind:

> Rule 23 requires numerosity (such that joinder is impracticable), common questions of law or fact, typicality, and representative parties who adequately protect the interests of the class.

Slip op., at pp. 13-14.

> Rule 23's limits on class actions underscore a significant problem with universal injunctions. A "'properly conducted class action,'" we have said, "can come about in federal courts in just one way—through the procedure set out in Rule 23." *Smith v. Bayer Corp.*, 564 U. S. 299, 315

> (2011);Fed. Rule Civ. Proc. 23(a) ("One or more members of a class may sue or be sued as representative parties on behalf of all members *only if*" Rule 23(a)'s requirements are satisfied (emphasis added)). Yet by forging a shortcut to relief that benefits parties and nonparties alike, universal injunctions circumvent Rule 23's procedural protections and allow "'courts to "create de facto class actions at will."'" *Smith*, 564 U. S., at 315 (quoting *Taylor v. Sturgell*, 553 U. S. 880, 901 (2008)). Why bother with a Rule 23 class action when the quick fix of a universal injunction is on the table?

Slip op., at p. 14.

ii. The District Court's judgment should be vacated because it rests on a faulty interpretation of California law.

California's Unfair Competition Law broadly prohibits "any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code, § 17200.) The California Supreme Court has recognized that the broad sweep of the law can give rise to "amorphous" definitions that "provide too little guidance to courts and businesses." *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 973 P.2d 527, 543 (Cal. 1999). It has sympathized with the concern that California businesses need "to know, to a reasonable certainty, what conduct California law prohibits and what it permits."

> An undefined standard of what is "unfair" fails to give businesses adequate guidelines as to what conduct may

> be challenged and thus enjoined and may sanction arbitrary or unpredictable decisions about what is fair or unfair. In some cases, it may even lead to the enjoining of procompetitive conduct and thereby undermine consumer protection, the primary purpose of the antitrust laws.

Ibid.

This Court should not allow the district courts in this Circuit to contribute to uncertainty about application of the Unfair Competition law, by ignoring appellate decisions that are directly on point. Here, Apple moved to set aside the District Court's judgment based on a published decision from the Sixth District Court of Appeal that ruled the business practice that Epic challenged was lawful. *Beverage v. Apple, Inc.*, 320 Cal. Rptr. 3d 427 (Ct. App. 2024). Federal courts applying the Unfair Competition Law "must follow the decisions of intermediate state courts in the absence of convincing evidence that the highest court of the state would decide differently." *Stoner v. N.Y. Life Ins. Co.*, 311 U.S. 464, 467 (1940).

Although neither Epic nor the District Court could point to any evidence that the California Supreme Court would rule differently, the District Court refused to set aside the injunction on the ground that *Beverage* "did not change California law." 1-ER-50. But that is

precisely the reason that the judgment should have been set aside. *Beverage* did not change the law. The Court of Appeal applied settled California law to determine that Apple had *not* violated the Unfair Competition Law. The District Court's interpretation of the law was incorrect.

June 30, 2025

Respectfully submitted,

GUTIERREZ, PRECIADO & HOUSE, LLP

s/ Calvin House

G. Certificate of Compliance under Rule 32(g)(1)

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32 (a)(7)(B) because

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s/ Calvin House

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Dated: June 30, 2025