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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

Wolfire Games, LLC, William Herbert and
Daniel Escobar, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

Valve Corporation,

Defendant.

CASE NO. 2:21-CV-563

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs Wolfire Games, LLC, William Herbert, and Daniel Escobar (“Plaintiffs”) bring
2 this action against Valve Corporation (“Valve”) under federal and state antitrust laws and state
3 unfair competition laws, seeking public injunctive relief and damages, and allege as follows:

4 **OVERVIEW OF THE ACTION**

5 1. Video games are a vital part of American culture and industry. Many millions of
6 Americans play video games, creating hundreds of thousands of skilled jobs across the country
7 with a focus on computer science, artistry, and innovation. Personal Computer (“PC”) games, a
8 subset of video games, alone generate at least \$30 billion worldwide annually.

9 2. Of those sales, approximately 75% flow through the online storefront of a single
10 company, Valve. Valve’s online game store, the “Steam Store,” dominates the distribution of PC
11 games. And Valve uses that dominance to take an extraordinarily high cut from nearly every sale
12 that passes through its store—30%. This 30% commission yields Valve over \$6 billion dollars in
13 annual revenue. For everyone else, it yields higher prices and less innovation.

14 3. Valve is able to extract such high fees because it actively suppresses competition to
15 protect its market dominance. Many other game stores have tried to charge lower fees, in the
16 range of 10-15%, but they have all failed to achieve significant market share. This is because
17 Valve abuses its market power to ensure game publishers have no choice but to sell most of their
18 games through the Steam Store, where they are subject to Valve’s 30% toll.

19 4. Valve knows that for PC games to succeed they must, with rare exceptions, be
20 compatible with Valve’s PC Desktop Gaming Platform—the “Steam Gaming Platform.” Valve’s
21 Steam Gaming Platform provides a software environment where gamers can maintain their library
22 of games, connect with others for social networking and multiplayer gaming, and access other
23 ancillary services provided by Valve, like the tracking of gaming achievements. The Steam
24 Gaming Platform is by far the largest PC Desktop Gaming Platform in the United States (and the
25 world), and PC game publishers consider it essential for their games to be compatible with the
26 Steam Gaming Platform. Otherwise, they cannot reach the vast majority of their potential
27 customers.

1 5. Valve takes advantage of the must-have nature of its Steam Gaming Platform to
2 exploit publishers and consumers. The scheme is straightforward. If a game publisher wants to
3 sell games that are enabled for the Steam Gaming Platform, Valve requires the publisher to sell the
4 vast majority of its games through Valve’s Steam Store. And when the game publisher sells
5 through the Steam Store, Valve takes its 30% cut of nearly every sale.¹ Through this scheme,
6 Valve leverages the dominance it has in the PC Desktop Gaming Platform Market from its control
7 of the Steam Gaming Platform (where games are played) to keep prices high, and to gain and
8 maintain dominance in the separate market for PC Desktop Game Distribution (where games are
9 bought and sold).

10 6. While gamers, publishers, and industry insiders sometimes colloquially refer to
11 Steam as a single product, there are in fact two separate components to Steam—the *Steam Gaming*
12 *Platform* (where games are played) and the *Steam Store* (where games are bought and sold).
13 Valve’s scheme ties the two together so Valve can dominate both. Absent Valve’s anticompetitive
14 conduct, robust competition could take place in these separate markets, with game distributors
15 offering games for any PC Desktop Gaming Platform, and PC Desktop Gaming Platforms
16 connecting to a multitude of game distributors. Valve abuses its market power from the Steam
17 Gaming Platform to block these competitive possibilities so it can continue to capture 30% of
18 most PC Desktop Games sold.

19 7. Valve’s scheme has been wildly successful. One former Valve employee aptly
20 described the Steam Store as a “virtual printing press” that imposes a “30% tax on an entire
21 industry.”² Innovation is the engine of the video game industry, but Valve’s imposition of this tax
22 suppresses innovation and output across the industry and elevates the prices of PC Desktop
23

24 ¹ Effective as of October 1, 2018, Valve has three tiers for its commission fee: 30% on all of a
25 game’s earnings under \$10 million; 25% on all of a game’s earnings between \$10 million and \$50
26 million; and 20% on all of a game’s earnings over \$50 million. The vast majority of sales to
consumers through the Steam Store are at the 30% commission rate.

27 ² Andrew McMahon, *Former Valve Employee Says Steam Was Killing PC Gaming, Epic Games*
28 *Is Saving It*, TWINFINITE (Apr. 8, 2019), <https://twinfinite.net/2019/04/former-valve-employee-says-steam-was-killing-pc-gaming-epic-games-is-saving-it/>.

1 Games. Forced to pay Valve's tax, game publishers invest less in creating new games and must
2 charge higher prices, therefore selling fewer games to consumers. The only one benefitting is
3 Valve, which makes astronomical profits.

4 8. Although Valve's financials are secret given its status as a private corporation, the
5 market for PC Desktop Game Distribution (defined and described further below) is worth
6 approximately \$30 billion annually. With the Steam Store's 75% share, that means approximately
7 \$22.5 billion in sales occur through the Steam Store per year. Yet Valve devotes a miniscule
8 percentage of its revenue to maintaining and improving the Steam Store, and dedicates very few
9 employees to that effort. Thus, Valve receives about \$6 billion or more per year from
10 commissions largely just for serving as a middleman between publishers and gamers. With
11 roughly 360 employees, Valve's per-employee profit is around \$15 million, making Valve, by that
12 metric, one of the most profitable companies in the world.

13 9. It is not enough for Valve to require game publishers to sell most of their games
14 through the Steam Store and pay Valve a 30% commission on most sales. Valve also imposes
15 pricing restraints that inflate prices across the market in order to protect Valve's monopoly
16 position and power in the relevant markets. Through these restraints, Valve prevents other game
17 stores from gaining share by competing with the Steam Store on price. Valve blocks pro-
18 competitive price competition through two main provisions—the Steam Key Price Parity
19 Provision and the Price Veto Provision.

20 10. **Steam Key Price Parity Provision.** Valve nominally allows game publishers to
21 make some limited third-party sales of Steam-enabled games through its "Steam Keys" program.
22 Steam Keys are alphanumeric codes that can be submitted to the Steam Gaming Platform by
23 gamers to access a digital copy of the purchased game within the Steam Gaming Platform, even
24 when the game is not purchased through the Steam Store. Steam Keys can be sold by rival
25 distributors including the Humble Store, Amazon, GameStop, and Green Man Gaming.

26 11. But Valve has rigged the Steam Keys program so that it serves as a tool to maintain
27 Valve's dominance. Among other things, Valve imposes a price parity rule (the "Steam Key Price
28

1 Parity Provision”) on anyone wanting to sell Steam Keys through an alternative distributor. Put
2 explicitly by Valve, “We want to avoid a situation where customers get a worse offer on the Steam
3 store.”³ But that is equivalent to preventing gamers from obtaining a *better* offer from a
4 competing distributor. The effect of this rule is to stifle price competition.

5 12. Because of this rule, Valve can stop competing game stores from offering
6 consumers a lower price on Steam-enabled games in order to shift volume from the Steam Store to
7 their storefronts. Even if a rival game store were to charge game publishers a lower commission
8 than Valve’s high 30% fee, the distributor would not gain more sales because the game publishers
9 could not charge a lower price in its store. Game publishers and consumers suffer because this
10 rule keeps Valve’s high 30% commission from being subject to competitive pressure.

11 13. This Price Parity Provision is one of the reasons why Valve has been able to
12 continue to charge an inflated 30% commission for many years, even as that commission is plainly
13 above the levels that would prevail in a competitive market. Competition would normally force
14 such an inflated commission to come down to competitive levels—but Valve’s restraints prevent
15 those competitive forces from operating as they would in a free market.

16 14. Because of Valve’s restraint, publishers cannot utilize alternative distributors to
17 avoid the 30% tax that Valve has set for the market. Thus, they reluctantly market their games
18 primarily through the dominant Steam Store where Valve takes its 30% fee. While several
19 distributors have tried to compete with Valve by charging lower commissions on Steam Keys,
20 those efforts have largely failed to make a dent in the Steam Store’s market share because
21 publishers using those distributors had to charge the same inflated prices they set on the Steam
22 Store.

23 15. Moreover, even if a game publisher wanted to scale up its use of Steam Keys to
24 promote competition, Valve has made it clear that it would shut down such efforts. When Valve
25 recognizes that a game publisher is selling a significant volume of Steam Keys relative to its
26

27 ³ Steamworks Documentation, Steam Key Rules and Guidelines,
28 <https://partner.steamgames.com/doc/features/keys>.

1 Steam Store sales, Valve can, at its own discretion, threaten the game publisher and refuse to
 2 provide more Steam Keys. Thus, Valve uses the Steam Key program as another tool to ensure that
 3 the vast majority of sales take place on the Steam Store, where Valve gets its 30% commission on
 4 nearly every sale.

5 16. **Price Veto Provision.** Valve also requires game publishers to agree to give Valve
 6 veto power over their pricing in the Steam Store and across the market generally (the “Price Veto
 7 Provision”). Valve selectively enforces this provision to review pricing by game publishers on PC
 8 Desktop Games that have *nothing* to do with the Steam Gaming Platform at all. Through this
 9 conduct, prices set in the Steam Store serve as a benchmark that leads to inflated prices for
 10 virtually all PC Desktop Games.

11 17. As explained by the founder and CEO of Epic Games (“Epic”), one company that
 12 has tried to compete against Valve, “Steam has veto power over prices, so if a multi-store
 13 developer wishes to sell their game for a lower price on the Epic Games store than Steam, then: 1.)
 14 Valve can simply say ‘no.’”⁴ Valve makes every game publisher accessing the Steam Gaming
 15 Platform agree to this Price Veto Provision.

16 18. Valve uses this provision to further enforce price parity and prevent rival game
 17 distributors from gaining volume by competing on price.⁵ And by inhibiting rival distributors
 18 from competing on price—even when selling games that have nothing to do with the Steam
 19 Gaming Platform—Valve inhibits *potential* competition against the Steam Gaming Platform as
 20 well, because rival gaming platforms cannot encourage usage by connecting to lower-priced
 21 distributors. Valve therefore protects its monopoly position in both of the relevant markets—the
 22
 23

24 _____
 25 ⁴ Tim Sweeney (@TimSweeneyEpic), Twitter (Jan 30, 2019, 9:29 AM),
<https://twitter.com/timsweeneyepic/status/1090663312814157824?lang=en>.

26 ⁵ This provision could also be considered a “most favored nations” (“MFN”) provision, which
 27 are often unlawful. A typical MFN provision would mandate that publishers sell their games for
 28 prices that are equal or higher than the Steam Store price on other storefronts. Valve’s provision is
 even worse because Valve can veto or review pricing for any reason at all.

1 markets for PC Desktop Game Distribution and PC Desktop Gaming Platforms—through this
2 provision.

3 19. In addition to its tie between the Steam Gaming Platform and the Steam Store, and
4 these contractual provisions, Valve has engaged in a number of other anticompetitive acts which
5 further cement its dominance and increase its anticompetitive toll.

6 20. For example, Valve has set up visibility in its Steam Store to focus on games that
7 are nominally “on sale” to gamers. Knowing that the best way to reach their audience is through
8 discounting, game publishers must artificially inflate their list prices so they have headroom for
9 discounting. But the “sale” price is not consistently available, and therefore some gamers pay an
10 artificially inflated list price for the game. These supracompetitive prices increase Valve’s cut,
11 force gamers to overpay, and prevent publishers from setting the most efficient game prices they
12 could in the first place. Even worse, these supracompetitive prices are transmitted across the
13 broader market by the contractual restraints discussed above.

14 21. Ultimately, the only way for game publishers to avoid Valve’s anticompetitive
15 scheme is to avoid the Steam Gaming Platform altogether, and not sign any agreements or
16 contracts with Valve. But time and time again, when publishers or other market participants have
17 tried to create or utilize alternative PC Desktop Gaming Platforms, they have failed to obtain
18 sufficient scale to challenge Valve because of Valve’s dominance and anticompetitive restraints.
19 These failed efforts include ones by the largest gaming and technology companies in the world,
20 such as Electronic Arts (“EA”), Microsoft, Amazon, and Epic. The failure of these deep-pocketed
21 companies is instructive, showing that Valve’s monopoly power in both the PC Desktop Gaming
22 Platform (through the Steam Gaming Platform) and PC Desktop Game Distribution (through the
23 Steam Store) markets is durable and virtually impossible to overcome given the conduct
24 challenged in this action.

25 22. At bottom, Valve’s scheme imposes a massive tax on the PC Desktop Gaming
26 industry. Game publishers are forced to use the Steam Store and give Valve 30% of nearly every
27 sale if they want to gain access to the Steam Gaming Platform—access they need in order to sell
28

1 their games. In order to afford Valve’s 30% commission, game publishers must raise their prices
2 to consumers and can afford to invest fewer resources in innovation and creation. Gamers are
3 injured by paying higher retail prices caused by Valve’s high commissions. Competition, output,
4 and innovation are suppressed, in ways that can never be fully redressed by damages alone. Thus,
5 in addition to damages, injunctive relief removing Valve’s anticompetitive provisions is necessary
6 to bring competition to the market and benefit the public as a whole.

7 **PARTIES**

8 23. Defendant Valve Corporation is a Washington Corporation with a principal place
9 of business at 10400 NE 4th ST, Suite 1400, Bellevue, Washington, 98004-5174. Valve, an
10 American video game developer, publisher, and digital distribution company, operates a PC
11 Desktop Gaming Platform (the “Steam Gaming Platform”) and a PC Desktop Game Distributor
12 (the “Steam Store”). As discussed herein, the Steam Store extracts an anticompetitive fee of 30%
13 from nearly every computer game sold in the United States.

14 24. Plaintiff Wolfire Games, LLC (“Wolfire Games”) is a video game publisher
15 headquartered in San Francisco, California. Wolfire Games has entered into Steam Distribution
16 Agreements with Valve to make Wolfire Games’ PC Desktop Games compatible with the Steam
17 Gaming Platform, and to sell its PC Desktop Games through the Steam Store. As a result of
18 Defendant’s anticompetitive practices, Wolfire Games has paid supracompetitive commissions to
19 Valve for each sale of its PC Desktop Games through the Steam Store.

20 25. Plaintiff William Herbert is a resident of Florida. Mr. Herbert has purchased PC
21 Desktop Games through the Steam Store. As a result of Defendant’s anticompetitive practices,
22 Mr. Herbert has paid supracompetitive prices for PC Desktop Games.

23 26. Plaintiff Daniel Escobar is a resident of New York, New York. Mr. Escobar has
24 purchased PC Desktop Games through the Steam Store. As a result of Defendant’s
25 anticompetitive practices, Mr. Escobar has paid supracompetitive prices for PC Desktop Games.

JURISDICTION AND VENUE

1
2 27. Plaintiffs bring this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C.
3 §§ 15 and 26, to recover treble damages and costs of suit, including reasonable attorneys' fees,
4 against Defendant for the injuries to Plaintiffs and the Class, alleged herein, arising from
5 Defendant's violations of Section 2 of the Sherman Act, 15 U.S.C. § 2, and Section 1 of the
6 Sherman Act, 15 U.S.C. § 1. Plaintiffs also assert claims under Washington's Consumer
7 Protection Act, RCW 19.86, seeking treble damages and injunctive relief under RCW 19.86.090.

8 28. The Court has subject matter jurisdiction over this action pursuant to Sections 4 and
9 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, as well as pursuant to 28 U.S.C. §§ 1331 and
10 1337(a). The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28
11 U.S.C. § 1367.

12 29. This Court has personal jurisdiction over Valve because Valve's headquarters are
13 located in Bellevue, Washington. Valve has engaged in sufficient minimum contacts with the
14 United States and has purposefully availed itself of the benefits and protections of both United
15 States and Washington law such that the exercise of jurisdiction over Valve would comport with
16 due process. Valve also has entered into agreements with publishers and consumers that require
17 related disputes to be litigated in this District.

18 30. Valve also is subject to personal jurisdiction because either directly or through its
19 agents or affiliates Valve transacted business throughout the United States, including in this
20 District, that was directly related to the claims at issue in this action.

21 31. Additionally, the Court has jurisdiction over Valve because it has its principal place
22 of business in Washington State.

23 32. Venue is proper in the United States District Court for the Western District of
24 Washington because Defendant Valve consented to being sued in this District.

25 33. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) and 22 because
26 Valve is found in and transacts business in this District.

1 39. Due to memory constraints on early PCs, early PC Desktop Games were originally
2 stored almost entirely on disks, such as floppy disks or, later, plastic optical disks. As PC hard
3 drives and internal memory grew in size, however, while games came on disks, the user could
4 install a large number of files directly on their PC to allow the game to run better and smoother.
5 Over time, storage and memory technology improved exponentially on both the PC and disk level,
6 and PC Desktop Games grew substantially in size. Eventually, most PC Desktop Games came on
7 CDs or DVDs.

8 40. For most of the history of the PC Desktop Game industry, gamers bought PC
9 Desktop Games at brick-and-mortar locations, such as electronics stores, because the internet did
10 not exist when publishers first sold PC Desktop Games. Even after the internet became broadly
11 available, download speeds were initially so slow that obtaining PC Desktop Games digitally
12 online proved impractical.

13 41. When internet speeds increased exponentially, video game publishers began
14 distributing their games digitally. Unlike physical copies, when games are purchased digitally
15 consumers can download the game directly to their PC. There is no need to visit a physical
16 distribution outlet and obtain physical media for the game. Today, the substantial majority of PC
17 Desktop Game sales are digital, through digital distributors (of which the Valve Steam Store is the
18 undisputed dominant player, discussed below).

19 **A. Overview of the Relevant Markets**

20 42. In addition to publishing its own PC Desktop Games, Valve competes in two
21 separate but related relevant economic markets—the market for PC Desktop Game Distribution
22 and the market for PC Desktop Gaming Platforms. In the market for PC Desktop Game
23 Distribution, distributors intermediate transactions between game publishers and gamers, allowing
24 gamers to purchase PC Desktop Games from publishers. In the market for PC Desktop Gaming
25 Platforms, competing platforms provide a local and online space where gamers can play, maintain,
26 communicate with others, and track progress and achievements on their PC Desktop Games.
27 These platforms also provide important social networking features generally. While multiplayer
28

1 games were popular before the COVID-19 pandemic, cooperative online gaming and socializing
2 through gaming has surged as Americans of all ages have socialized on gaming platforms.

3 **1. PC Desktop Games**

4 43. Both relevant markets have their contours defined by PC Desktop Games. PC
5 Desktop Games are a distinct set of video games that are not interchangeable with other types of
6 video games, including console games and mobile games.

7 44. Video games are generally developed for specific hardware systems, like PCs or
8 consoles. Versions or editions of video games that are designed for specific hardware systems do
9 not function on alternative hardware systems. For example, a PC Desktop version of a game will
10 not function on the PlayStation. Game developers and publishers incur costs when trying to port
11 their games from one hardware system to the other, including development costs, organizational
12 costs, and quality control costs.

13 45. Nonetheless, some publishers develop different versions of the same game for
14 different hardware systems. But even for games that are implemented across multiple hardware
15 systems, the hardware-specific versions of those games are not interchangeable, meaning an Xbox
16 version of a game is not interchangeable with a PC version of a game.

17 46. First, gamers make conscious choices about which hardware systems to utilize, and
18 experience lock-in effects caused by their systems of choice. For example, a gamer that owns an
19 Xbox along with several Xbox accessories such as controllers cannot use the PlayStation edition
20 of a game without duplicating all of their hardware purchases. In this regard, a major advantage
21 and differentiator for the PC as a hardware system is that most people have access to a PC already
22 due to work or school, and therefore there are no additional hardware costs required for gameplay.

23 47. Second, even for gamers who already own multiple hardware systems—like
24 gamers that own both a PC and an Xbox—versions of the same game are not interchangeable.
25 This is because different hardware systems offer different functionality and features. Relative to
26 consoles, PCs offer more immersive and customizable control options for gamers. PC Desktop
27 gamers can plug in the equivalent of a console controller and use that for gaming purposes, but
28

1 they also can use a keyboard and mouse, joystick, and numerous other types of controls. This
2 flexibility in controller type is a major reason gamers will choose PC Desktop gaming over
3 console gaming, because console gamers can only use the console manufacturer’s controllers, or
4 authorized third-party controllers. In contrast, PC gaming controls are largely confined only by
5 the gamer’s imagination and wallet.

6 48. As another industry analyst put it, “PC gaming offers a seriously high-level of
7 customization, which is a driving force behind its’ popularity. You can build a PC to fit a wide
8 range of budgets and needs. A PC is also upgradeable so you can always keep up with the latest
9 tech or even start smaller and build over time.”⁶ Conversely, “[m]ost games on a mobile device
10 are going to be smaller and much-less graphically intense than a PC or console version” and
11 “[a]lthough consoles aren’t as powerful as high-end gaming PCs, they are cheaper to purchase.”⁷

12 49. The power and flexibility of PC games drives users to select them for video gaming
13 over other types of devices. PC games are considered the “high end” of the broader gaming
14 universe, with consoles at the next level down and mobile gaming at the very low end of the
15 broader universe.

16 50. Gamers cannot play games from previous generations of console systems on newer
17 generations of console systems without modifications by publishers. In contrast, PC users can
18 play the same games on machine after machine, subject only to the operating system environment
19 in which they operate (*e.g.*, a game published for Windows cannot be played on a Mac).

20 51. In the modern era, gaming systems also typically feature gaming platforms, which
21 are software systems that allow gamers to readily access and play their library of digital games.
22 Gaming platforms also allow users to access ancillary services that enhance their gaming
23
24

25 ⁶ Tony Brown: *Mobile vs. PC vs. Console Gaming: Which Is Best?*, GAMESPACE.COM (Aug
26 5, 2020), <https://www.gamespace.com/all-articles/news/mobile-vs-pc-vs-console-gaming-which-is-best/>.

27 ⁷ *Id.*

1 experience, such as through social networking, achievement tracking, and the ability to obtain
2 digital goods for their games and their platform account.

3 52. Console hardware systems, for example, a PlayStation, provide a single pre-
4 installed gaming platform on the console. For PCs, as detailed further below, there are multiple
5 PC Desktop Gaming Platforms available, including Steam, EA Origin, Epic Games Store, and
6 Ubisoft Connect. Unlike console hardware systems, Gamers can install multiple PC Desktop
7 Gaming Platforms on their PCs if so desired.

8 53. Gamers experience lock-in effects from the use of specific gaming platforms.
9 Gamers develop large game libraries on the platform(s) of their choice, along with social networks
10 and other features. This makes it less likely the gamer will switch platforms or view versions of
11 games enabled for different platforms as interchangeable. A gamer that has an extensive list of
12 friends on the Steam Gaming Platform along with a large library of games is less likely to
13 purchase the Xbox edition of the game, even if she owns an alternative platform like the Xbox.

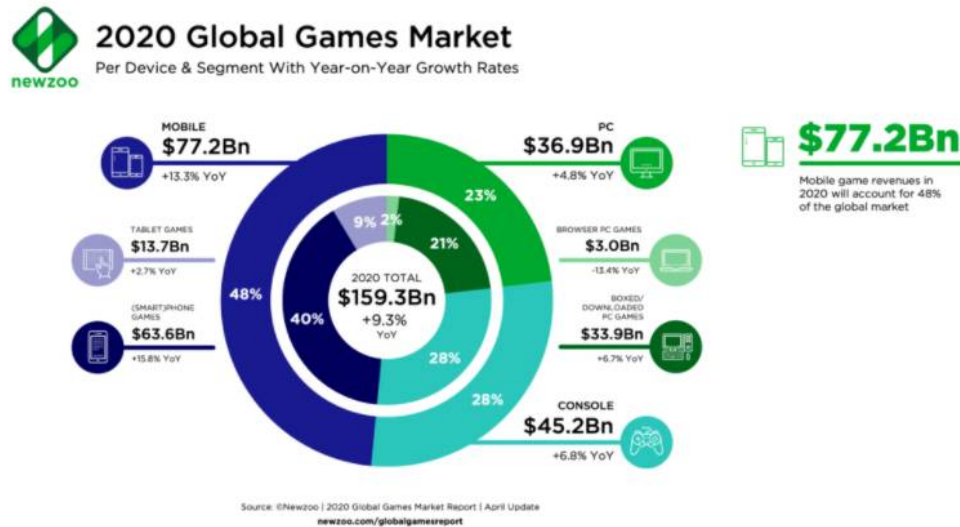
14 54. Moreover, games that are released on multiple platforms and allow online
15 multiplayer gaming do not always allow the players on each platform to game together. For
16 example, a game released on both PC Desktop and PlayStation does not necessarily allow the PC
17 Desktop gamers to play with the PlayStation gamers. The same is true across PC Desktop Gaming
18 Platforms like the Steam Gaming Platform and the EGS Platform—while both platforms utilize
19 PC hardware, it is still not guaranteed that multiplayer functionality will work across platforms.
20 Therefore, if a gamer has built a large social network on a specific gaming platform, she may lose
21 access to the ability to enjoy multiplayer games with others in her social network if she switches
22 gaming platforms.

23 55. Industry participants and analysts typically consider PC Desktop Games as a
24 distinct product category from both console and mobile games.⁸ Epic, for example, recently stated

26 ⁸ The Editorial Team: *Segmenting The Video Market 101*, DFC INTELLIGENCE (May 7, 2019),
27 <https://www.dfcint.com/dossier/segmenting-video-game-market/>; Market Analysis Report,
28 Gaming Market Size, Share & Trends Analysis Report By Device (Console, Mobile, Computer),

1 in pretrial filings that its main competitor for the distribution of PC Desktop Games is Valve; *not*
 2 general game distributors like GameStop.

3 56. As another example, in the below market summary, the website NewZoo breaks the
 4 Global Games market into three categories: PC Games (including both Desktop and non-Desktop,
 5 *e.g.*, browser-based, PC Games), Console games, and Mobile games:⁹



15 57. Another category of games at the very low end of the broader gaming universe is
 16 browser games playable on websites like Facebook and others. Before mobile devices and games
 17 grew in popularity, browser-based games like Farmville were a popular way to enjoy low-fidelity
 18 social games. Given the limited technical capabilities web browsers have historically provided,
 19 these browser-based games were largely “casual” games meant to cater to a broad audience.

20 Although these browser-based games were technically run from PCs, they were not installed on

21
 22 By Type (Online, Offline), By Region (North America, Europe, APAC, LATAM, MEA), And
 23 Segment Forecasts, 2018 – 2025, GRAND VIEW RESEARCH (Jan, 2018),
<https://www.grandviewresearch.com/industry-analysis/gaming-industry>.

24 ⁹ Tom Wijman, *The World’s 2.7 Billion Gamers Will Spend \$159.3 Billion on Games in 2020;*
 25 *The Market Will Surpass \$200 Billion by 2023*, NEWZOO (May 8, 2020),
 26 [https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-](https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/)
 27 [2020-2023/](https://newzoo.com/insights/articles/newzoo-games-market-numbers-revenues-and-audience-2020-2023/). This analysis also subdivides the \$36.9 billion PC Games Market into a \$33.9 billion
 28 “Boxed/Downloaded PC Games” market (a.k.a. PC Desktop Games) and a \$3 billion “Browser
 PC Games” market, which as mentioned above, is trending downwards and primarily competes
 against Mobile Games.

1 the user’s machine, were limited by the capabilities of internet browser interfaces, and were
2 inferior to mobile games in that such browser-based games traditionally tethered the gamer to the
3 PC itself, preventing gamers from squeezing in a short session while waiting for the bus on their
4 mobile device. As smartphones gained in popularity starting in 2007, web browser game
5 developers shifted more and more resources to mobile gaming. Today, although web browser
6 games still exist, they are much rarer than before and primarily compete with mobile games.

7 58. Valve also recently emphasized the distinctions between the different types of
8 gaming markets in a response to a third-party subpoena in an antitrust case between Epic and
9 Apple pending in the Northern District of California. There Valve explained that it “does not
10 compete in the mobile app market at issue,” “Valve does not make or sell phones, tablets, or video
11 games for mobile devices, or otherwise compete in the mobile market,” and “Steam users cannot
12 buy or use mobile apps on Steam.”¹⁰ Valve made all these concessions to maintain that it should
13 not be subject to discovery in the *Epic* case because it was not in the same relevant market as the
14 two litigants.

15 59. For the reasons discussed above, PC Desktop Games are not reasonably
16 interchangeable with other types of games. A hypothetical monopolist in the PC Desktop Games
17 Publishing market—*i.e.*, a hypothetical company that was the sole publisher of PC Desktop
18 Games—could profitably impose a small but significant and non-transitory increase in price
19 (“SSNIP”). Due to the lock-in effects and other factors above, such a SSNIP would not cause
20 gamers to switch away from PC Desktop Games in sufficient numbers to make the price increase
21 unprofitable.

22 60. For example, if a game cost \$49.99 on PC and console, a 5% SSNIP by a
23 hypothetical monopolist of PC Desktop Games would push the game’s price up to \$52.50 on the
24 PC. For the reasons discussed above, a sufficient number of PC Desktop Gamers would not
25 switch away from the PC to a console system so as to make the price increase unprofitable to the
26 hypothetical monopolist of PC Desktop Games. The price increase in this instance would

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28 ¹⁰ *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR (N.D. Cal. 2021) (Dkt. No. 346).

1 generally not lead the vast majority of gamers to purchase the game on a console instead, because
 2 the slight increase would not outweigh the reasons the gamer wanted it on PC in the first place.
 3 Moreover, if the gamer did not already own a console, they will not spend the hundreds of dollars
 4 for a new console just to buy the console version of the game due to the PC version price increase.

5 2. ***PC Desktop Gaming Platforms***

6 61. A technology platform is a product or service that “creates value by facilitating
 7 exchanges between two or more interdependent groups, usually consumers and producers.”¹¹

8 Technology platforms “create communities and markets with network effects that allow users to
 9 interact and transact.”¹²

10 62. Technology platforms play an increasingly important role in the nation’s economy,
 11 and due to their strong network effects, can often yield immense power and influence for the
 12 companies that control them. As the House of Representatives Subcommittee on Antitrust found,
 13 technology platform providers can act as gatekeepers over key channels of distribution, allowing
 14 incumbent platforms to “pick winners and losers throughout our economy.”¹³ Such platforms can
 15 “wield tremendous power” by “charging exorbitant fees, imposing oppressive contract terms, and
 16 extracting valuable data from the people and businesses that rely on them.”¹⁴ In many cases, the
 17 Congressional Report found that the competitive process in platform markets shifts from
 18 “competition in the market to competition *for* the market.”¹⁵

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 22 ¹¹ Alex Moazed: *Platform Business Model – Definition – What is it? –Explanation*, APPLICO,
<https://www.applicoinc.com/blog/what-is-a-platform-business-model/>.

23 ¹² *Id.*

24 ¹³ Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the
 Judiciary, *Investigation of Competition in Digital Markets* (October 6, 2020)
 25 [https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=449](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519)
 26 [3-519](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519) (“Digital Markets Report”) at 6.

27 ¹⁴ *Id.*

28 ¹⁵ *Id.* at 37 (*citing* Chicago Booth Stigler Ctr. For The Study Of Econ. & State, Stigler Cmte. On
 Dig. Platforms 9 (2019)) (emphasis added).

1 63. A “PC Desktop Gaming Platform” is a type of technology platform that performs
2 several functions while connecting PC Desktop Gamers and PC Desktop Publishers. First, a PC
3 Desktop Gaming Platform provides a centralized location for gamers to maintain a library of
4 digital games. Second, the platform allows users to access ancillary services such as social
5 networking, achievement tracking, and the ability to obtain digital goods for their games and their
6 platform account. Valve’s offering in the market for PC Desktop Gaming Platforms is the Steam
7 Gaming Platform.

8 64. Given the unique functionality each PC Desktop Gaming Platform provides and the
9 lack of interoperability between PC Desktop Gaming Platforms, a game publisher must make
10 platform-specific versions of their games. For example, a publisher may make a version of its
11 game that is enabled for the Steam Gaming Platform and a separate version of its game that is
12 enabled for the platform component of the Epic Games Store (the “EGS Platform”). Publishers
13 generally want to publish game versions for multiple gaming platforms so they can reach a broad
14 swath of their target audience on the other “side” of the platforms—gamers themselves.

15 65. Publishers likewise face high switching costs when considering alternative gaming
16 platforms. Games are often published for use on particular platforms in order to leverage
17 platform-specific features like multiplayer, automatic updates, and social networking features.
18 Publishers must often write platform-specific code that makes it costly to publish their games
19 simultaneously on multiple platforms. Therefore, creating alternative versions of games is costly,
20 as shown by the presence of publishers that publish their games solely for the Steam Gaming
21 Platform.

22 66. Gamers want to participate in gaming platforms so they can maintain their library
23 of games, conveniently access previously purchased software, and access ancillary services
24 available on the platform, including social networking. Gamers also want the ability to change
25 hardware systems, such as a new computer, while maintaining access to their library of games.
26 Finally, gamers want the ability to install or remove local copies of games while maintaining
27 ownership of their digital copies.

1 67. Due to PC Desktop Gaming Platforms’ network effects, gamers also face high
2 switching costs when considering the use of alternative PC Desktop Gaming Platforms or the use
3 of other gaming systems generally. Switching away from a PC Desktop Gaming Platform
4 involves foregoing all of the benefits and features that gamers find desirable on the platform,
5 including their pre-existing social network and access to all of their other games already on the
6 platform. Switching to alternative gaming systems outside of the market for PC Desktop Gaming
7 Platforms (such as consoles) also involves substantial upfront investment for new hardware,
8 including the console itself, a set of controllers, and the costs for games (including console
9 versions of any previously-purchased games).

10 68. That is demonstrated through evidence about the behavior of PC Desktop Gamers
11 and how they interact with PC Desktop Gaming Platforms. If a PC Desktop Gaming Platform
12 obtains an exclusive sales contract with a game publisher, gamers using other PC Desktop Gaming
13 Platforms often react negatively, because they want to use the PC Desktop Gaming Platform of
14 their choice and not lose the benefits that have locked them into that PC Desktop Gaming Platform
15 over time.

16 69. The exclusive release of *Borderlands 3* as enabled for the EGS Platform (rather
17 than the Steam Gaming Platform), for example, triggered a backlash among some gamers, with
18 reactions including “calls for boycotts, Youtube rants, conspiracy theories and review bombing.”¹⁶
19 One user started a petition on the “r/gaming” online Reddit community. That user argued, “We
20 can’t just let Epic Games keep buying out exclusives to their [expletive] launcher. This is very
21 anti consumer and it is literally epic paying millions to 2k [*Borderlands 3*’s publisher] just to
22 [expletive] over us the buyers. I really suggest everyone on pc to boycott the game until it releases
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26 ¹⁶ Dave Thier, *Rage Over Borderlands 3's Epic Games' Store Exclusivity Is More Legitimate*
27 *Than It Seems*, FORBES (Apr. 8, 2019),
<https://www.forbes.com/sites/davidthier/2019/04/08/rage-over-borderlands-3s-epic-games-store-exclusivity-is-more-legitimate-than-it-seems/?sh=46028b247b50>.
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1 on steam so Epic does not get any of our money.”¹⁷ If the use of one PC Desktop Gaming
2 Platform were fully interchangeable with the use of another, there would be no objection or protest
3 to the exclusive launch of a game on an alternative PC Desktop Gaming Platform, and instead
4 gamers would freely switch to the EGS Platform. That platforms within the relevant market are
5 not interchangeable demonstrates that the products at issue in the relevant market are not
6 interchangeable with products outside the relevant market.

7 70. PC Desktop Gaming Platforms are not interchangeable with other gaming systems
8 that utilize non-PC hardware, including smartphones (mobile games) or console systems. As
9 discussed above, Valve emphasized this distinction in its response to a third-party subpoena in the
10 case *Epic vs. Apple* where Valve explained: “Valve does not compete in the mobile app market at
11 issue,” “Valve does not make or sell phones, tablets, or video games for mobile devices, or
12 otherwise compete in the mobile market,” and “Steam users cannot buy or use mobile apps on
13 Steam.”¹⁸

14 71. More broadly, PC Desktop Gaming Platforms also are not reasonably
15 interchangeable with other types of technology platforms (as defined above) because only PC
16 Desktop Gaming Platforms focus on and are designed around PC Desktop Gaming. Users seek
17 out and use PC Desktop Gaming Platforms primarily for PC Desktop Gaming, and they do not
18 view other types of technology platforms as a substitute for the services PC Desktop Gaming
19 Platforms provide. Moreover, users will typically access multiple different technology platforms
20 in addition to PC Desktop Gaming Platforms because those other platforms provide different uses
21 than PC Desktop Gaming Platforms (even if those other platforms provide limited gaming
22 options).

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25 ¹⁷ u/Mattmo831, reddit, *Can we please boycott Borderlands 3 and the Epic Games Store*, (Apr. 3
26 2019 6:14 PM),
27 https://www.reddit.com/r/gaming/comments/b8xswj/can_we_please_boycott_borderlands_3_and_the_epic/.

28 ¹⁸ *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR (N.D. Cal. 2021) (Dkt. No. 346).

1 72. For example, although Facebook allows for some online gaming, the types of
2 games available on Facebook are limited in type and scope, and the Facebook platform is used
3 primarily for social networking and social media purposes. Although PC Desktop Gaming
4 Platforms have social networking functionality, that functionality is meant to facilitate and add to
5 a PC Desktop Gaming experience rather than act as the main purpose the user accesses the
6 platform in the first place. The “Desktop” in the title “PC Desktop Gaming Platform Market”
7 draws a distinction between browser-based games and games intended for download and
8 installation on a PC Desktop Gaming Platform. As discussed above, such browser-based games
9 are not reasonably interchangeable with full-fledged PC Desktop Games.

10 73. The use of a game on a particular PC Desktop Gaming Platform also is not
11 interchangeable with the use of a game on a PC without a PC Desktop Gaming Platform. Due to
12 the features provided by PC Desktop Gaming Platforms, publishers only distribute games that are
13 enabled for PC Desktop Gaming Platforms to meet the demands of their customers, to ensure
14 Digital Rights Management protocols are followed, and to provide a mechanism to deliver updates
15 and patches to gamers. Thus, as a practical matter few games are played today on the PC without
16 a PC Desktop Gaming Platform.

17 74. As an economic matter, PC Desktop Gaming Platforms are distinct from the PC as
18 a platform. The PC is itself a platform that connects publishers of PC software to PC users,
19 generally using PC operating systems like Windows, macOS, or Linux. But PC Desktop Gaming
20 Platforms are functionally platforms within the PC platform—the PC Desktop Gaming Platforms
21 themselves create network effects between PC Desktop Game Publishers and PC Desktop Gamers
22 within the PC platform, and provide ancillary services like social networking connecting to
23 gaming that would not be available on the PC without a PC Desktop Gaming Platform.

24 75. There is little cross elasticity of demand between the use of PC Desktop Gaming
25 Platforms and the use of other gaming platforms. A hypothetical monopolist in the PC Desktop
26 Gaming Platform Market could profitably impose a small but significant and non-transitory
27 increase in price (“SSNIP”) and, due to the lock-in effects and other factors above, such a SSNIP
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1 would not cause a sufficient number of gamers or publishers to switch away from the use of PC
2 Desktop Gaming Platforms to render the SSNIP unprofitable to the hypothetical monopolist.

3 **3. PC Desktop Game Distribution**

4 76. The “PC Desktop Game Distribution” market encompasses distributors of PC
5 Desktop Games. Distributors are companies that compete to attract game publishers to sell
6 through their storefronts, as well as compete to attract gamers to their storefronts to purchase those
7 PC Desktop Games. PC Desktop Game Distributors thus intermediate transactions between
8 publishers and gamers. Competitors in this market include both online and brick-and-mortar
9 distributors.

10 77. The global market for PC Desktop Game Distribution is worth at least \$30 billion
11 annually.¹⁹ As noted above, most distribution of PC Desktop Games today occurs digitally via the
12 internet. One market commentator, for example, noted recently that, “If you’re playing on PC,
13 then you probably know that the physical market for games has but disappeared.”²⁰

14 78. Valve is a competitor in the PC Desktop Game Distribution Market through the
15 Steam Store. The Steam Store sells only PC Desktop Games that are enabled for the Steam
16 Gaming Platform.

17 79. This digital distribution model for PC Desktop Games is a relatively new
18 phenomenon. Widespread digital distribution of PC Desktop Games did not begin in earnest until
19 the 2000s. Prior to the 2000s, brick-and-mortar distributors such as Best Buy and GameStop
20 dominated the market for PC Desktop Game Distribution.

21 80. The early online distribution platforms were bought up by the dominant game
22 distributors (for example, early online distributor Stardock was eventually purchased by
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25 ¹⁹ PC Video Game Sales Soared in 2020, DFC INTELLIGENCE (Feb 2, 2021),
26 <https://www.dfcint.com/pc-vide-game-sales-2020/>.

27 ²⁰ Graham ‘Peter’ van der Made: *digital vs. physical games price* (June 21, 2017),
28 <https://it.inceconsulting.com/qy1wa/8ac80a-digital-vs-physical-games-price>.

1 GameStop in 2011). But by 2013, the Steam Store had become dominant, with seven straight
2 years of more than doubling its annual sales volume.²¹

3 81. The trend toward digital distribution for PC Desktop Games recently accelerated
4 dramatically as a result of the global pandemic. Data published in January 2021 indicates that
5 many consumers are increasingly spending their time at home playing video games.²² For
6 example, at the very beginning of the pandemic in March 2020, Steam saw its concurrent user
7 count surge to what was then an all-time high of over 20 million gamers,²³ and the demand for
8 digital distribution of PC Desktop Games has only grown since then.

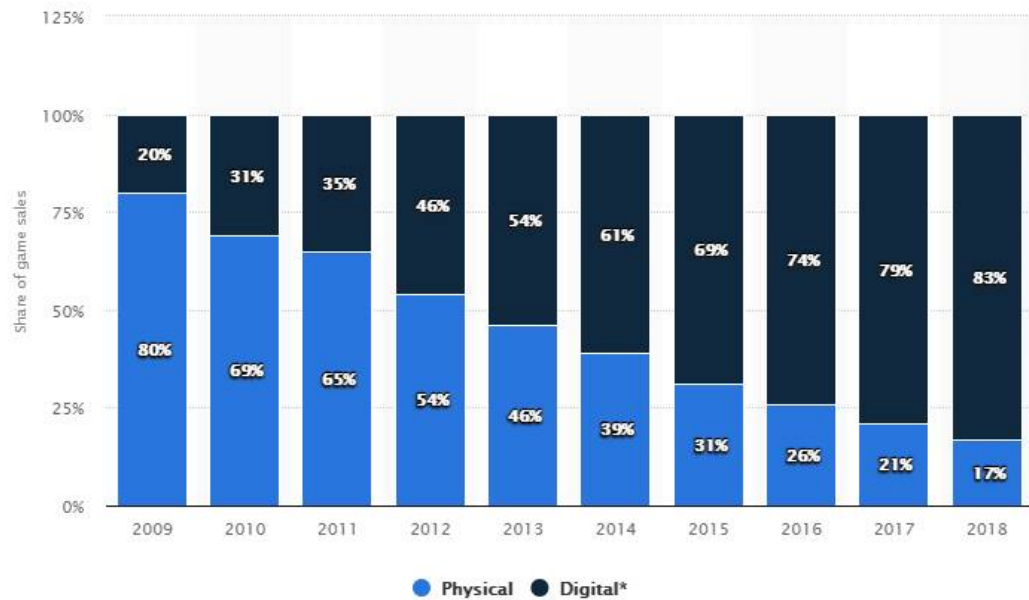
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²¹ Kartik Mudgal, *Valve releases PR; Steam userbase doubles in 2011, Big picture mode coming soon*, GAMINGBOLT (Jan. 2012), <http://gamingbolt.com/valve-releases-pr-steam-userbase-doubles-in-2011-big-picture-mode-coming-soon>.

²² Increase in video game sales during the coronavirus (COVID-19) pandemic worldwide as of March 2020, STATISTA (Jan. 29, 2021), <https://www.statista.com/statistics/1109977/video-game-sales-covid/>.

²³ Noah Smith, *The giants of the video game industry have thrived in the pandemic. Can the success continue?*, THE WASHINGTON POST (May 12, 2020), <https://www.washingtonpost.com/video-games/2020/05/12/video-game-industry-coronavirus/>.

1 82. The below diagram underscores how prevalent digital distribution of PC Desktop
 2 Games has become, rising from 20% of PC game sales in 2009 to 83% of PC game sales in
 3 2018:²⁴



15 83. The PC Desktop Game Distribution Market is distinct from the PC Desktop
 16 Gaming Platform Market. Product offerings in the PC Desktop Game Distribution Market do not
 17 include services associated with the PC Desktop Gaming Platform Market, including (1) the
 18 ability to play purchased games, (2) the ability to automatically maintain the game and ensure
 19 updates are applied, (3) the ability to track achievements and other milestones in the game and
 20 advertise such achievements to others, or (4) the ability to social network with others using games.

21 84. This distinction also is demonstrated by the Steam Keys program, which
 22 demonstrates it is possible to allow any PC Desktop Game Distributor, including Valve’s rivals, to
 23 sell games that can be played on the Steam Gaming Platform. Moreover, the PC as a hardware

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 26 ²⁴ *Breakdown of U.S. computer and video game sales from 2009 to 2017, by delivery format*,
 27 STATISTA (Jan. 29, 2021), <https://www.statista.com/statistics/190225/digital-and-physical-game-sales-in-the-us-since-2009/#:~:text=In%202018%2C%20a%20record%2083,is%20immediately%20ready%20to%20pla>
 28 y.

1 system is not a purely “closed” system like those offered in the video game console market, as
2 demonstrated by the variety of PC Desktop Gaming Platforms available for use by consumers.

3 85. Many competitors have offerings in only one of the two relevant markets. Pure
4 distributors like Green Man Gaming or GameStop do not offer PC Desktop Gaming Platforms, but
5 instead market digital versions of games that can be played on PC Desktop Gaming Platforms
6 other companies operate. And as discussed below, when EA launched its Origin PC Desktop
7 Gaming Platform, it encouraged distribution of Origin-enabled games through many non-EA
8 distributors, including Amazon, Impulse, and Direct2Drive.

9 86. The distribution of PC Desktop Games is not reasonably interchangeable with the
10 distribution of other types of games because, for the reasons discussed above, PC Desktop Games
11 are not reasonably interchangeable with other categories of games. Distribution of PC Desktop
12 Games is therefore not reasonably interchangeable with distribution of other categories of games.
13 Therefore, there is not a significant positive cross elasticity of demand between the distribution of
14 PC Desktop Games and the distribution of other types of video games such as console or mobile
15 games.

16 87. A hypothetical monopolist in the PC Desktop Game Distribution Market could
17 profitably impose a small but significant and non-transitory increase in price (“SSNIP”) and, due
18 to the lock-in effects and other factors above, such a SSNIP would not cause an unprofitable
19 number of gamers or publishers to switch their desired format of games (for example, to console
20 or mobile) and therefore switch away from the PC Desktop Game Distribution Market.

21 **B. Valve—A PC Desktop Game Publisher Turned Gaming Platform Monopolist**

22 88. Valve was founded in 1996 by former Microsoft employees and originally operated
23 solely as a video game development company. Valve’s first product was the critically-acclaimed
24 PC Desktop Game, Half-Life, in 1998. It is remembered as one of the more notable games
25 released that year, comparable to other 1998 titles like Metal Gear Solid, Zelda: Ocarina of Time,
26 Pokemon Red & Blue, Fallout 2, Baldur’s Gate, Rainbow Six, Starcraft, Tribes, Myth 2, House of
27 the Dead, Castlevania: Symphony of the Night, and Thief: The Dark Project. After Half-Life
28

1 became hugely popular, Valve published other popular games such as Counter-Strike and Half-
2 Life 2. Valve also began developing the Steam Gaming Platform to address a common issue in
3 multiplayer games at the time—that different gamers had different versions of the game and
4 therefore could not play with each other online.

5 89. Valve launched the Steam Gaming Platform in 2003. At launch, the Steam Gaming
6 Platform centered primarily on providing a patch and update process for Valve-developed games.
7 Patches fix “bugs” in a game’s software after initial release, while updates often incorporate new
8 functionality or content into the game. Prior to introducing the Steam Gaming Platform, Valve
9 encountered problems with attempting to provide patches and updates for its games, which created
10 problems for Valve because its games often involved an online multiplayer component that
11 required the various copies of games that users owned to interact with each other. Because users
12 often obtained different versions of the games (*e.g.*, v1, v1.1, v1.2, etc.), they could have
13 compatibility problems which would prevent them from playing together. The Steam Gaming
14 Platform provided a central location for Valve customers to receive those software updates and
15 keep their games up to date.

16 90. In 2004, Valve pivoted its strategy when it introduced its new game, Half-Life 2.
17 With that game release, Valve created a new storefront, the Steam Store. Now, in addition to
18 purchasing the game at a regular brick-and-mortar distributor (*e.g.*, GameStop), consumers could
19 directly purchase and download the game digitally from the Steam Store. Valve required both
20 digital and physical purchasers of the game, however, to use the Steam Gaming Platform to play
21 Half-Life 2. Users that purchased the game using traditional distribution channels were provided
22 with codes they could submit to the Steam Gaming Platform to add Half-Life 2 to their libraries,
23 along with an installer for the Steam Gaming Platform so the Steam Gaming Platform could be
24 readily installed on their PC. Valve required all players to log into Valve Corporation’s servers
25 through Steam in order to run Half-Life 2 at all, even if they bought a physical copy, and
26 consumers could not access the game unless they created an account on Valve’s servers with their
27
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1 personal information, permanently locked their purchased key to that account, and allowed Valve
2 to track all activity within the game and add or remove files to the player's hard drive at will.

3 91. Initially, Valve sold the games it published only through the Steam Store (and the
4 Steam Store sold only Valve-published games). But Valve eventually became a full-fledged
5 distributor of PC Desktop Games when it began offering games published by third parties, such as
6 Ragdoll Kung Fu and Darwinia. Valve kept a 30% portion of the revenue paid by purchasers for
7 sales of these third-party games, functioning as the digital equivalent of a physical distributor.
8 And because the publishers' alternative option—physical distributors—typically charged equal or
9 even higher commissions to cover labor and other expenses, Valve was able to do so as well even
10 though Valve's variable costs in delivering digital content were (and remain) minimal.

11 92. Under competition, economics predicts that pricing should approach variable costs,
12 and therefore Valve's 30% commission should have decreased dramatically. Yet Valve has
13 maintained its 30% fee for nearly all games sold through the Steam Store, demonstrating that the
14 market for PC Desktop Game Distribution is not competitive.

15 93. Over time, Valve added features to the Steam Gaming Platform. These included
16 social networking features, communities of game "modders," and an achievement system where
17 gamers could track their progress on games. Today, gamers with Steam Gaming Platform
18 accounts can create a social network of friends and teammates that any game on the platform can
19 access. This means that gamers do not need to search for their friends each and every time they
20 purchase a new computer game or want to play a game they already own with friends; they can log
21 on to the Steam Gaming Platform and can see who is online or invite friends through the platform
22 to join them in a game.

23 94. These additions further increased the network effects on the Steam Gaming
24 Platform, cementing Valve's dominance in the PC Desktop Gaming Platform Market. In 2017,
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1 the Steam Gaming Platform reported 67 million monthly active users.²⁵ And by 2020, the Steam
 2 Gaming Platform reported 120 million monthly active users, 62.6 million daily active users, 24.8
 3 million peak concurrent users, and 2.6 million per month first-time purchasers.²⁶ The Steam
 4 Gaming Platform grew from offering seven games in 2004 to over 45,000 by 2021.²⁷

5 95. In addition, the Steam store gives Valve direct access to private business
 6 information of almost every competing development studio, including who bought their games,
 7 when customers played them, who they played them with, what they said to each other while
 8 playing, which regions the players live in, when the publishers accessed their financial
 9 information, and much more. Through the Steam key program, Valve also has detailed internal
 10 information about the operations of competing storefronts that offer Steam keys, like Itch.io,
 11 Humble Bundle, and others. Valve has a team of data scientists devoted to analyzing and
 12 monetizing all of this harvested data that is comparable in size to the team Valve devotes to
 13 customer support for the entirety of the Steam store.

14 **II. VALVE POSSESSES MONOPOLY POWER IN THE RELEVANT MARKETS**
 15 **FOR PC DESKTOP GAMING PLATFORMS AND PC DESKTOP GAME**
 16 **DISTRIBUTION**

17 96. As discussed above, separate relevant markets exist for PC Desktop Gaming
 18 Platforms and PC Desktop Game Distribution. The PC Desktop Gaming Platform Market is
 19 where games are maintained and played. The PC Desktop Game Distribution Market is where
 20

21 ²⁵ Monthly active users refers to the number of unique customers who interacted with a product
 22 or service of a company within a month. A monthly active users is an industry key performance
 23 indicator that measures online user engagement, used by internet businesses, including social
 24 networking, online gaming, and mobile app companies. *See E-commerce & Saas, What are*
 25 *Monthly Active Users (MAU)?*, CORPORATE FINANCE INSTITUTE, [https://corporatefinanceinstitute.com/resources/knowledge/ecommerce-saas/monthly-active-users-
 mau/](https://corporatefinanceinstitute.com/resources/knowledge/ecommerce-saas/monthly-active-users-mau/).

26 ²⁶ Rich Stanton, *Steam had 120 million monthly users in 2020*, PC GAMER (Jan 13, 2021),
 27 <https://www.pcgamer.com/steam-had-120-million-monthly-users-in-2020/>.

28 ²⁷ *See steamspy, SUMMARY, OVERALL*, <https://steamspy.com/year/>.

1 games are bought and sold. Valve enjoys a dominant market position in both of these relevant
2 markets, with monopoly and market power in each.

3 **A. The Steam Gaming Platform Is Dominant in the PC Desktop Gaming**
4 **Platform Market**

5 97. The vast majority of all PC Desktop Games are played today on the Steam Gaming
6 Platform. As explained by an EA executive, PC game publishers “want to be where the players
7 are,” which in the case of PC Desktop Games means the Steam Gaming Platform.²⁸ During the
8 COVID-19 pandemic, for example, there were more than 22 million concurrent users on the Steam
9 Gaming Platform in a single day, and over 6.2 million gamers playing games at the same time.²⁹
10 Publishers need to sell games that are enabled for the Steam Gaming Platform to ensure they can
11 reach their consumers, providing Valve with immense market power in the PC Desktop Gaming
12 Platform Market.

13 98. The PC Desktop Gaming Platform Market has many barriers to entry that are
14 typical of technology platforms, and which reinforce Valve’s dominance and monopoly power in
15 the market for PC Desktop Gaming Platforms. As discussed in the Congressional Report on
16 Competition in Digital Markets, these barriers to entry include network effects,³⁰ switching
17 costs,³¹ the accumulation of data,³² and economies of scale and scope.³³ All of these barriers to
18 entry apply to the PC Desktop Gaming Platform Market in general, and to the Steam Gaming
19 Platform in particular.

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21 ²⁸ Chaim Gartenberg, *EA games are returning to Steam along with the EA Access subscription*
22 *service*, THE VERGE (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

23 ²⁹ James Batchelor, *Record number of Steam users online during coronavirus outbreak*, GAMES
24 *INDUSTRY.BIZ* (Mar. 16, 2020), <https://www.gamesindustry.biz/articles/2020-03-16-record-number-of-steam-users-online-during-coronavirus-outbreak>.

25 ³⁰ Digital Markets Report at 40.

26 ³¹ *Id.* at 41.

27 ³² *Id.* at 42-44.

28 ³³ *Id.* at 45.

1 99. As the Digital Market Report finds, “Online platforms display strong network
2 effects because they connect disparate market segments.”³⁴ Here, the Steam Gaming Platform
3 connects gamers to gamers and gamers to publishers. As more gamers engage with the Steam
4 Gaming platform, its value increases for both gamers (direct network effects through the ability of
5 gamers to find others to play games with and to develop a more robust social network) and
6 publishers (indirect network effects through access to more gamers). In turn, more publishers on
7 the Steam Gaming Platform increases its value for gamers (further indirect network effects).

8 100. Moreover, “[i]n many cases, large technology firms can maintain market power in
9 part because it is not easy for users to switch away from the incumbent’s technology.”³⁵ That is
10 certainly the case for the Steam Gaming Platform because, as detailed above, a user’s game library
11 and data in the form of achievements and social connections create strong lock-in effects. If a
12 gamer switches PC Desktop Gaming Platforms, she is foregoing the use of her entire game library
13 on the Steam Gaming Platform, which could represent hundreds or thousands of dollars in
14 purchases. As also detailed above, publishers also face significant costs in switching PC Desktop
15 Gaming Platforms.

16 101. Further, “[t]he accumulation of data can serve as another powerful barrier to entry
17 for firms in the digital economy” and “data-rich accumulation is self-reinforcing.”³⁶ As explained
18 by the American Bar Association’s Antitrust Law Section:³⁷

19 Big data and data analytics can create and amplify feedback effects. For example, more
20 people using a product can mean that more data, and more diverse data, will be collected,
21 allowing the company to both improve its products as well as potentially identify and offer
22 new ones. This in turn can attract more customers, leading to a positive feedback loop,

22 _____
23 ³⁴ Digital Markets Report at 41.

24 ³⁵ *Id.*

25 ³⁶ *Id.* at 42.

26 ³⁷ American Bar Association’s Antitrust Law Section, *Artificial Intelligence & Machine*
27 *Learning: Emerging Legal and Self-Regulatory Considerations* (September 30, 2019)
28 https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/comments/october-2019/clean-antitrust-ai-report-pt1-093019.pdf (“ABA Big Data Report”) at 30 (citing ALLEN GRUNES & MAURICE STUCKE, *BIG DATA AND COMPETITION POLICY* 163 (2016)).

1 helping a company to grow and potentially dominate the market. Indeed, data-driven
2 markets may “tip towards one or two products or platforms.”

3 102. As noted, Valve also collects detailed data on game usage, game preferences, social
4 networks, and other facets of its Steam Gaming Platform. This creates market power because
5 “new users and greater engagement bring in more data” for Valve, which enables it “to improve
6 user experiences and develop new products—in turn capturing more data.”³⁸

7 103. As Valve is a game publisher itself, Valve also is in a position to access detailed
8 information about its competitors’ businesses. Valve is the gatekeeper for the Steam Gaming
9 Platform, and sets the terms and conditions on which its game-publisher rivals can access the
10 Steam Store and the Steam Gaming Platform. This allows Valve to put its thumb on the scale to
11 favor or punish specific games or publishers, or change the rules when Valve feels threatened in
12 any way by specific game publishers or rivals in the markets for PC Desktop Gaming Platforms
13 and PC Desktop Game Distribution. Valve’s ability to function as a gatekeeper distorts
14 competition because its rivals must weigh the risks of retaliation.

15 104. As owner of the Steam Store, which is the primary means of access to the Steam
16 Gaming Platform, Valve has further gatekeeping power over its rivals and the market as a whole.
17 For one, Valve has unlimited power to promote Valve’s own games on the store. Valve can add
18 demo versions of its games directly to every consumer’s library, and ensure its own games are at
19 the top of sale queues presented to users. Valve also can monitor point-of-sale transactions and
20 microtransactions for all of its competitors’ games to improve its own business strategy.

21 105. Valve can also refuse to feature games that it considers threatening, or otherwise
22 punish such games and reduce their visibility on the Steam Store. It is not unusual for games
23 developed by insider friends or relatives of Valve employees to mysteriously have much greater
24 visibility on the store than those by outsiders.

25 106. Valve further has the ability to reject games from its store at any moment, even
26 after they have launched. Valve can retroactively remove games that consumers have already

27 _____
28 ³⁸ Digital Markets Report at 42.

1 bought, deleting them from their hard drive. These decisions can be arbitrary. Games can be
2 removed because they offend the sensibilities of a specific reviewer, even if they would have been
3 accepted by a different one. This can also give governments power over business in other
4 countries. For example, the Steam Store in China has banned all but 53 of the 21,131 games
5 available internationally.

6 107. Due to its large market share and immense user base, game publishers generally
7 consider the Steam Gaming Platform a must-have. As put by one game publisher, “As a
8 developer, it’s scary to have one entrenched company dominating all of PC games since we are
9 completely at Valve’s mercy.”³⁹

10 108. EA is a major publisher of games, earning \$5.5 billion in gaming revenue per
11 year.⁴⁰ As detailed below, EA spent approximately eight years on a business strategy to grow its
12 own PC Desktop Gaming Platform, Origin, by mandating that all games published by EA be
13 played on the Origin Platform. Despite its commercial success as a publisher, EA was unable to
14 get its PC Desktop Gaming Platform off the ground. In 2019, EA abandoned its PC Desktop
15 Gaming Platform strategy and began selling its games enabled for the Steam Gaming Platform
16 again.⁴¹

17 109. As detailed below in Section IV, other large game publishers that similarly engaged
18 in strategies to avoid the Steam Gaming Platform, including Microsoft, Humble Publishing, and
19 Epic, likewise failed to develop a robust commercial strategy away from the Steam Gaming
20 Platform. This shows that even the largest publishers in the world consider the Steam Gaming
21
22

23 ³⁹ Nick Statt, *Epic vs. Steam: The Console War Reimagined On The PC*, THE VERGE (Apr. 16,
24 2019), <https://www.theverge.com/2019/4/16/18334865/epic-games-store-versus-steam-valve-pc-gaming-console-war-reimagined>.

25 ⁴⁰ Top 10 Biggest Video Game Companies in the World, ALL TOP EVERYTHING,
26 <https://www.alltopeverything.com/top-10-biggest-video-game-companies/>.

27 ⁴¹ Chaim Gartenberg, *EA games are returning to Steam along with the EA Access subscription*
28 *service*, THE VERGE (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

1 Platform a must-have, and illustrates that creating a rival PC Desktop Gaming Platform is virtually
2 impossible given Valve’s conduct and dominance.

3 110. There are very few PC games that have found success outside of the Steam Gaming
4 Platform, and such games typically require a long history of recognition and success before they
5 can attempt to thrive without the Steam Gaming Platform. For example, League of Legends was
6 released in 2009, before the Steam Gaming Platform had cemented its hold on the PC Desktop
7 Gaming Platform Market. Riot, the publisher of League of Legends, has been able to circumvent
8 Valve’s dominance, but only because it has such a large, entrenched, and longtime user base that
9 is willing to use Riot’s League of Legends’ launcher (essentially a rival platform) instead of the
10 Steam Gaming Platform. Such games are few and far between—the Steam Store has over 45,000
11 games available—whereas the number of PC Desktop Game franchises that can avoid the Steam
12 Gaming Platform entirely can be counted on two hands.⁴²

13 111. Valve has also increased its monopoly power through the sale and facilitation of
14 ancillary services on the Steam Gaming Platform. For example, Valve runs a “Steam Workshop,”
15 which it describes as a “central hub of player-created content and tools to publish, organize, and
16 download that content into your games.”⁴³

17 112. Participants on the Steam Gaming Platform can create digital goods and
18 modifications in the Steam Workshop that can be sold to other gamers. By creating a marketplace
19 for these digital goods, Valve creates another aspect of the Steam Gaming Platform that keeps
20 users and publishers tied to the platform. And this marketplace provides ancillary revenue for
21 Valve. When digital goods are sold through the Steam Workshop, Valve collects 75% of the sale
22
23
24

25 ⁴² See steamspy, SUMMARY, OVERALL, <https://steamspy.com/year/>.

26 ⁴³ Steam Community, Steam Workshop, About Workshop,
27 [https://steamcommunity.com/workshop/workshopsubmitinfo/#:~:text=The%20Steam%20Worksh
op%20is%20a,that%20content%20into%20your%20games.](https://steamcommunity.com/workshop/workshopsubmitinfo/#:~:text=The%20Steam%20Worksh,op%20is%20a,that%20content%20into%20your%20games.)

1 price, leaving 25% for the creator.⁴⁴ Valve has bragged about how much money it pays such
 2 creators of digital goods, claiming it paid more than \$57 million to Steam Workshop creators.⁴⁵
 3 But the \$57 million in payments to creators implies Valve made \$171 million profit from setting
 4 up an online forum where one can submit finished 3D models.⁴⁶ This highlights Valve’s ability to
 5 extract supracompetitive profits through its market dominance.

6 113. Given these facts, it is clear that Valve has the ability to increase prices and reduce
 7 output in the PC Desktop Gaming Platform Market, and thus has monopoly power in that market.

8 **B. The Steam Store is Dominant in the PC Desktop Game Distribution Market**

9 114. As discussed above, the Steam Gaming Platform is the dominant *platform* where
 10 gamers maintain and play their PC Desktop Games. Because it mandates the use of its Steam
 11 Store if publishers want access to the Steam Gaming Platform, Valve has also become the
 12 dominant *distributor* of PC Desktop Games, with at least 75% market share.

13 115. Today, there are a number of competitors that do, or could, compete with Valve’s
 14 Steam Store in the PC Desktop Game Distribution Market. These actual and potential competitors
 15 include Amazon, GameStop, Walmart, Target, and a number of smaller online storefronts, like
 16 Green Man Gaming and Humble Bundle.

17 116. In practice, however, when these distributors sell a PC Desktop Game, they are
 18 typically selling a “Steam Key” version of the game—a digital “key” that allows the customer to
 19 download and maintain the game through the Steam Gaming Platform. Even though such sales
 20 are for PC Desktop Games enabled for the Steam Gaming Platform, they are a small share of the
 21 market.

22 117. As detailed herein, because of Valve’s anticompetitive restrictions, gamers do not
 23 reap any benefits by shopping at rival distributors, which explains why Valve’s market share of
 24 _____

25 ⁴⁴ Tim Colwill, *Valve is not your friend, and Steam is not healthy for gaming; The illusion behind*
 26 *the “Good Guy Valve” reputation*, POLYGON (May 16, 2017),
<https://www.polygon.com/2017/5/16/15622366/valve-gabe-newell-sales-origin-destructive>.

27 ⁴⁵ *Id.*

28 ⁴⁶ *Id.*

1 the PC Desktop Game Distribution Market remains over 75% notwithstanding numerous potential
2 and actual competitors in the distribution market.

3 118. Valve knows the Steam Gaming Platform is a must-have for game publishers, and
4 takes advantage of that fact by providing access to the Steam Gaming Platform only if game
5 publishers also utilize Valve's Steam Store. Thus, because the Steam Gaming Platform is a must-
6 have, the Steam *Store* is also a must-have—even though the Steam Store does not offer unique
7 marketing or distribution features. This gives Valve a gatekeeper role, allowing Valve to wield
8 extreme power over publishers of PC Desktop Games. Valve can establish terms and conditions
9 that publishers have to comply with, including excessive commissions and the anticompetitive
10 restraints detailed below.

11 119. And because digital distribution is now by far the most dominant form of
12 distribution of PC Desktop Games, Valve's Steam Store is not only the largest digital distributor
13 but is also the largest PC Desktop Game distributor. Given its unassailable dominance, it has the
14 ability to increase prices and reduce output in the PC Desktop Game Distribution Market—a
15 power it has abused, as discussed below—and thus has monopoly power in that market.

16 **III. STEAM HAS ILLEGALLY MONOPOLIZED THE MARKET FOR PC DESKTOP** 17 **GAME DISTRIBUTION**

18 120. Digital game distribution began in 1983 with the GameLine service for the Atari
19 2600, which allowed users to rent and download games over telephone lines. They gradually
20 expanded the services they provided and became America Online (“AOL”) in 1991.

21 121. AOL launched with a number of games, including Neverwinter Nights, an online
22 multiplayer game based on Dungeons & Dragons. Thousands of publishers sold games and other
23 software online through AOL, in the form of demos or Shareware (*i.e.*, software available for free
24 but with a fee requested for continued use). Often publishers would distribute the full product
25 online, but lock some functionality behind a registration code, which could be purchased directly
26 from the developer. Other times they distributed a demonstration (“demo”) version of the product,
27 and provided instructions for the consumer to purchase the full product.

1 122. In the early 2000s, AOL was in decline, and there was a void in the market for
2 digital distribution of games on PC. Many competitors rushed to fill this void, including Amazon,
3 GameStop, Microsoft, EA, IGN, GOG, Direct2Drive, Stardock, and others. Publishers normally
4 sold their products directly to consumers via their own website, and used these other services to
5 provide additional convenience for users who wanted a more store-like experience. One of the
6 earliest digital distribution platforms was Stardock Central, which was released in 2001. In this
7 fledgling stage of the market, there was vibrant competition between these digital distributors.

8 123. That changed, however, when Valve released its blockbuster hit Half-Life 2. As
9 discussed above, Valve mandated that *all* purchasers of Half-Life 2 use the Steam Gaming
10 Platform to install and maintain Half-Life 2. Thus Valve did what smaller publishers (Stardock)
11 or non-publishers (GameStop and Direct2Drive) could not do—use a blockbuster hit to force its
12 gaming platform onto the market. After forcing gamers to use the Steam Gaming Platform to play
13 Half-Life 2, the Steam Gaming Platform quickly grew and provided Valve with a massive
14 incumbency advantage and overall dominance in the market for PC Desktop Gaming Platforms, as
15 alleged above.

16 124. Valve has used that dominance to likewise dominate the market for PC Desktop
17 Game *Distribution*. Valve has not maintained dominance in distribution because the Steam Store
18 offers a particularly compelling or unique distribution option relative to other distributors.
19 Instead, Valve used the power it possesses as the gatekeeper to the Steam Gaming Platform to
20 force PC Desktop Game publishers to agree to anticompetitive agreements that distort competition
21 and ensure Valve can extract billions of dollars per year from publishers and gamers alike.

22 **A. Valve Mandates That All Publishers Distribute the Vast Majority of Their**
23 **Steam-Enabled Games Through Valve’s Steam Store**

24 125. As detailed above, publishers and gamers view the Steam Gaming Platform as a
25 must-have platform. That means that the vast majority of PC Desktop Game publishers seeking to
26 reach their customers must sell Steam-enabled games.

27 126. Valve requires that publishers wishing to sell Steam-enabled games sign up as a
28

1 Steamworks Partner with Valve. Doing so allows game publishers to create custom computer
2 code needed to work with the Steam Gaming Platform, including software to configure patches for
3 customers, Steam’s digital rights management scheme, and other features of the Steam Gaming
4 Platform.

5 127. But Valve also requires the game publisher to list its games for sale on the Steam
6 Store. As explained in Valve’s Release Process, all Steam-enabled games published for use on the
7 platform must be configured for immediate listing in the Steam Store. After a game publisher
8 clicks “Release App” to Steam, a number of actions occur including “publishing the store
9 package” which means that Valve makes the game available for purchase in the Steam Store.⁴⁷

10 128. By rule, therefore, the game publisher begins selling its game through the Steam
11 Store. And the only way a game publisher can sell Steam-enabled games outside of the Steam
12 Store is through the “Steam Keys” program, which Valve keeps severely limited in scope.

13 129. Steam Keys are alpha-numeric codes that can be submitted to the Steam Gaming
14 Platform to access a digital copy of the purchased game within the Steam Gaming Platform.
15 These Steam Keys are sold by rival distributors including Amazon, GameStop, and Green Man
16 Gaming. When a gamer purchases a Steam Key from a rival distributor, they can open the Steam
17 Gaming Platform software on their PC and submit the code to add the game in question to their
18 Steam library—as if they had purchased the game from the Steam Store directly.

19 130. Valve keeps such sales limited in scope and imposes anticompetitive restraints on
20 publishers’ ability to offer their Steam-Key-enabled games for less on competing stores. As
21 explained by Valve in its developer policy document, “If we detect that you have requested an
22 extreme number of keys and you aren’t offering Steam customers a good value, we may deny your
23 request.”⁴⁸ Valve also tells game publishers that “Steam keys cannot be sold on other sites *unless*

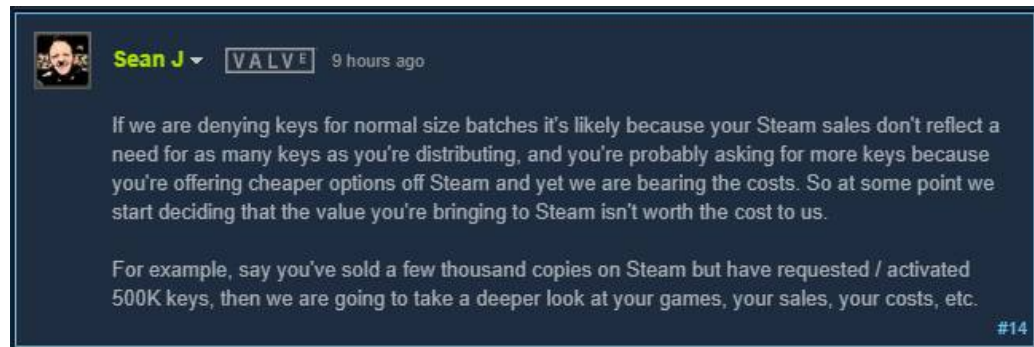
24

25 ⁴⁷ STEAMWORKS, Steamworks Documentation, Release Process,
26 <https://partner.steamgames.com/doc/store/releasing>.

27 ⁴⁸ STEAMWORKS, Steamworks Documentation, Features, Steam Keys,
28 <https://partner.steamgames.com/doc/features/keys>.

1 *the product is also available for purchase on Steam at no higher a price than is offered on any*
 2 *other service or website.*”⁴⁹

3 131. Valve’s vaguely worded language gives it full discretion to enforce its rules in a
 4 way that restrains price competition. Valve does not quantify what “extreme number” means, nor
 5 does Valve define “a good value.” But Valve has used its power to enforce these provisions
 6 against game publishers that have attempted to use Steam Keys to drive price competition. For
 7 example, in a Steamworks Development thread from August of 2017, one Valve employee told a
 8 game publisher that it denies access to Steam Keys (*i.e.*, it denies access to the Steam Gaming
 9 Platform) “*because you’re offering cheaper options off Steam.*” A screenshot of the message
 10 appears below:



17 132. Because Valve requires that (1) every Steam-enabled game must be listed in the
 18 Steam Store and (2) a game publisher’s use of Steam Keys must be limited to a small percentage
 19 of sales at no lower price, Valve effectively mandates that all game publishers sell the vast
 20 majority of their Steam-enabled games through the Steam Store. Any publisher that does not
 21 abide by this requirement is subject to discipline by Valve.

22 133. Through these rules, Valve has economically coerced game publishers into paying
 23 Valve excessive 30% commissions on nearly every game sale. Because the Steam Gaming
 24 Platform is a must-have, game publishers cannot avoid the Steam Store and therefore must accede
 25 to Valve’s demands.

26

27 ⁴⁹ *Id.* (emphasis added). Valve does allow discounts on other storefronts provided the publisher
 28 gives “a comparable offer to Steam customers within a reasonable amount of time.”

1 134. In addition, unlike other distributors, which freely sell multiple versions of games
2 designed for different platforms, Valve does not sell games enabled for other gaming platforms in
3 the Steam Store. As discussed below, for example, when EA attempted to launch its own PC
4 Desktop Gaming Platform Origin, Valve refused to sell Origin-enabled versions of games through
5 the Steam Store. At the time, EA explained: “At present, there is only one download service
6 [Steam] that will not allow this relationship. . . [The Steam Store] has imposed a set of business
7 terms for developers hoping to sell content on that service—many of which are not imposed by
8 other online game services.”⁵⁰

9 135. In a competitive market, publishers could put pressure on Valve’s grossly inflated
10 30% commission by selling a substantial portion of their games through distributors that charge
11 lower commissions. The publisher could steer purchasers to the lower-cost stores by charging
12 lower prices, which would force Valve to lower its commission in an effort to compete on price
13 with its PC Desktop Game Distribution rivals. That would promote competition in the PC
14 Desktop Game Distribution Market and would lead to overall lower (and more competitive)
15 prices, benefiting game publishers and consumers alike.

16 **B. Valve Distorts Competition Through The Steam Key Price Parity Provision**

17 136. As mentioned above, Valve mandates that the vast majority of game sales occur
18 through the Steam Store, and blocks or threatens game publishers that attempt to sell a significant
19 share of their games elsewhere through Steam Keys. But even for the small percentage of game
20 sales that Valve allows to occur via the Steam Keys program, Valve imposes punitive contractual
21 restrictions that ensure such sales do not allow for meaningful competition across storefronts in
22 the PC Desktop Game Distribution Market.

23 137. Specifically, by agreeing to its Steamworks agreement, Valve mandates to
24 publishers that “You should use keys to sell your game on other stores in a *similar way to how*
25 *you sell your game on Steam*” (the “Price Parity Provision”). Valve interprets the “similar way”
26

27 ⁵⁰ Wesley Yin-Poole, *Why you can't buy Crysis 2 from Steam*, EURO-GAMER (July 7, 2011),
28 <https://www.eurogamer.net/articles/2011-07-07-why-you-cant-buy-crysis-2-from-steam>.


1 language here to include price, and has cracked down on publishers that offer a better deal on
 2 competitive storefronts by excluding (or threatening to exclude) them from the Steam Gaming
 3 Platform.

4 138. Valve polices its Steam Key policies with game publishers and ensures they abide
 5 by the Valve Steam Key policies, including the Price Parity Provision, whenever game publishers
 6 request Steam Keys to distribute through alternative venues. A copy of the “prompt” screen for
 7 publishers requesting keys appears below:

8

Select Type > Select Tag > Select Package > Enter Quantity > Confirmation

9

10  **Key Type: Digital Store**
 When handling keys from digital stores, it is usually best to request a small batch for each store separately. That way you can tag and track the keys from each retailer to better tell how each digital store is performing and whether those keys are ending up in the hands of customers.

11

12 **PLEASE CONFIRM YOUR REQUEST**

Receiver 2 (383818) Appids: 1129310

13 Requesting: 1,000
 Tagged as: "Keymailer"

14

15 Before completing your key request, please review and agree that you understand the following:

16 I understand that I need to sell my game on other stores in a similar way to how I am selling my game on Steam. I agree that I am not giving Steam customers a worse deal.

17 I understand that while it's OK to run a discount on different stores at different times, I agree to give the same offer to Steam customers within a reasonable amount of time.

18 I understand that if I request an extreme number of keys and I'm not offering Steam customers a fair deal, or if my sole business is selling Steam keys and not offering value to Steam customers, my request may be denied and I may lose the privilege to request keys.

19 Valve reserves the right to deny keys or revoke key requesting privileges for partners that are abusing them or disadvantaging Steam customers.

20 Please use the box below to tell us more about your intended use of these keys so that we can help make sure you are requesting the right quantity for your needs.

21

22 454 of 500 characters remaining

23

24

25

26 139. Thus, in order to receive any Steam Keys at all, the publisher must agree that “*I*
 27 *understand that I need to sell my game on other stores in a similar way to how I am selling my*
 28

1 *game on Steam*” and that *“I agree that I am not giving Steam customers a worse deal.”* The
2 publisher must also agree that *“I understand that while it’s OK to run a discount on different*
3 *stores at different times, I agree to give the same offer to Steam customers within a reasonable*
4 *amount of time.”*

5 140. Removing all doubts about its policing power, Valve also “reserves the right” to
6 “deny keys” or “revoke key requesting privileges” if they “disadvantage” “Steam customers.”
7 And while this language is couched in terms of protecting “Steam customers,” this is a charade.
8 Those customers are the same ones that can (and do) purchase Steam Keys on other storefronts
9 besides the Steam Store. They are harmed when they cannot find games for lower prices
10 elsewhere because Valve has restrained price competition through its Price Parity Provision.

11 141. Moreover, Valve explicitly instructs publishers that Valve enforces this provision
12 to *“avoid a situation where customers get a worse offer on the Steam store.”*⁵¹ Put another way,
13 Valve uses this restriction to prevent customers from getting a **better** deal anywhere other than on
14 the Steam Store. Thus, rival distributors have no meaningful way to attract publisher customers
15 and take away share from Valve, because their efforts to compete on price (*e.g.*, by charging
16 lower commissions) are blocked by Valve’s price parity requirements.

17 142. Steamworks Development is a forum where publishers can interact with Valve
18 employees and get clarity on the rules and policies of Valve. On this forum, when one publisher
19 asked Valve about the “rules regarding distributing/selling a game outside of steam” in a thread
20 called “Patreon and steam keys” dated July 2, 2017, “TomG” of Valve explained how the policing
21 system works. Specifically, he explained, *“The biggest takeaway is, don’t disadvantage Steam*
22 *customers.* For instance, it wouldn’t be fair to sell your DLC [downloadable content] for \$10 on
23 Steam if you’re selling it for \$5 or giving it as a reward for \$5 donations. We would ask that
24 Steam customers get that lower \$5 price as well.”

25
26
27 ⁵¹ Steamworks Documentation, Steam Key Rules and Guidelines,
28 <https://partner.steamgames.com/doc/features/keys>.

1 143. Again, this “fairness” rationale is pretextual, since gamers purchasing Steam Keys
2 and other Steam-enabled content *are* Steam customers. Gamers using the Steam Gaming Platform
3 that purchase Steam-enabled games and content elsewhere for a lower price *benefit* from lower
4 prices; they are not disadvantaged. It is Valve’s scheme that imposes a 30% tax across the
5 industry that is unfair. Valve’s statement in actuality means “don’t disadvantage the Steam
6 [Store].”

7 144. Because Valve controls the flow of games through the Steam Gaming Platform, it
8 can exercise this power to coerce publishers and gamers that dare purchase games through
9 alternative distribution venues. Gamers and publishers can achieve no meaningful benefit from
10 using alternative distribution venues for Steam-enabled games under Valve’s rules, and publishers
11 face grave threats to their businesses if they incur Valve’s wrath.

12 145. Valve has gone so far as to prevent publishers from *telling* consumers about its
13 30% fee. While publishers can advertise alternative storefronts, publishers cannot disclose to
14 gamers the amount of the commission Valve collects. This prevents even soft non-price steering
15 to stores where the publisher may be able to collect a higher proportion of revenue on the sale of
16 Steam Keys, like the Humble Store.

17 **C. Valve Restrains Competition Through the Price Veto Provision**

18 146. In its publisher documentation, Valve makes explicit that “*Initial pricing as well as*
19 *proposed pricing adjustments will be reviewed by Valve* and are usually processed within one or
20 two business days.”⁵² Valve uses this provision to review pricing of game publishers who sell
21 Steam-enabled games, even when they are selling versions of games that have nothing to do with
22 the Steam Gaming Platform at all. Valve enforces the Price Veto Provision at will against
23 publishers that engage in competitive strategies.

24 147. Valve has actively enforced this provision against game publishers that were selling
25 their games for lower prices elsewhere. In response to one inquiry from a game publisher, for
26

27 ⁵² STEAMWORKS, Steamworks Documentation, Store Presence, Pricing,
28 <https://partner.steamgames.com/doc/store/pricing>.

1 example, Valve explained: “We basically see any selling of the game on PC, Steam key or not, as
2 a part of the same shared PC market- so even if you weren’t using Steam keys, *we’d just choose to*
3 *stop selling a game if it was always running discounts of 75% off on one store but 50% off on*
4 *ours. . . . That stays true, even for DRM-free sales or sales on a store with its own keys like*
5 *UPLAY or Origin.”*

6 148. Thus, Valve explicitly enforces this provision against publishers that are selling PC
7 Desktop Games that have nothing to do with Steam at all, by threatening to remove games from
8 the Steam Store. As explained by the founder and CEO of Epic, “Steam has veto power over
9 prices, so if a multi-store developer wishes to sell their game for a lower price on the Epic Games
10 store than Steam, then: 1.) Valve can simply say ‘no.’”⁵³

11 149. Through this provision, Valve gains the ability to control—and threaten—
12 publishers who attempt to steer customers to alternative PC Desktop Game Distribution Platforms.
13 If publishers do not abide by Valve’s mandates, they run the risk of losing access to the Steam
14 Gaming Platform altogether which would be devastating to their business.

15 150. Through the Price Veto Provision, Valve distorts competition not only over Steam-
16 enabled versions of PC Desktop Games, but *all* PC Desktop Games. And this distortion occurs in
17 *both* of the relevant markets—the PC Desktop Gaming Platform Market and the PC Desktop
18 Game Distribution Market.

19 151. The best way for rival PC Desktop Gaming Platforms like the EGS Platform to
20 make inroads against the Steam Gaming Platform would be to grow usage on their platforms on
21 both the gamer and publisher sides of the market. One potential way to do so would be to steer
22 gamers and publishers to the platform using price, encouraging additional platform growth by
23 connecting to distributors charging lower commissions to publishers and gamers.

24 152. But through the Price Veto Provision, Valve has the ability to control publishers’
25 retail prices, and in combination with the Price Parity Provision, set a benchmark price for the
26

27 ⁵³ Tim Sweeny (@timsweenyepic), Twitter (Jan 30, 2019, 9:29 AM),
28 <https://twitter.com/timsweenyepic/status/1090663312814157824?lang=en>.

1 market. Thus, even if a rival platform is charging commissions lower than Valve's 30% toll,
 2 gamers will not switch platforms because they receive little or no price benefit as publishers
 3 cannot sustain lower retail prices on competing platforms.

4 153. The impact of Valve's Price Veto Provision is evident in game prices across
 5 platforms. It would be in the economic self-interest of a publisher to sell its games for lower retail
 6 prices through lower-commission distributors. If another distributor charges a lower commission,
 7 the publisher could lower prices on the rival distributor, steering customers towards the rival
 8 distributor, or compel Valve to lower Valve's own supracompetitive commissions.

9 154. In actuality, however, prices are remarkably consistent across distributors and PC
 10 Desktop Gaming Platforms, regardless of each distributor's commission. One reason for this price
 11 consistency is that Valve has enforced the Price Veto Provision against publishers that have tried
 12 to price lower through other distributors, even when those publishers are selling games for use on
 13 other PC Desktop Gaming Platforms, like the EGS Platform. For example, the following chart
 14 shows prices as gathered from the Steam Store, the Epic Games Store, and GameStop websites on
 15 April 16, 2021.

Game Title	Price on Steam	Price on Epic Games Store	Price on GameStop
Scarlet Hood and the Wicked Wood	\$ 14.99	\$ 14.99	N/A
Control	\$ 29.99	\$ 29.99	N/A
Doom VFR	\$ 29.99	N/A	\$ 29.99
Prev (2017)	\$ 29.99	N/A	\$ 29.99
Red Dead Redemption 2	\$ 59.99	\$ 59.99	\$ 59.99
Final Fantasy XIV Online: Complete Edition	\$ 59.98	N/A	\$ 59.99
Disco Elysium	\$ 39.99	\$ 39.99	N/A
Outriders	\$ 59.99	\$ 59.99	\$ 59.99
Before Your Eyes	\$ 9.99	\$ 9.99	N/A
Biomutant	\$ 59.99	\$ 59.99	N/A

1 155. Valve has also threatened publishers that offered lower prices on other platforms,
2 insisting that customers using the Steam Store should get a similar deal or else Valve may remove
3 the publisher's games from the Steam Gaming Platform altogether. Valve has also interrogated
4 publishers about their deals on smaller platforms like Humble Bundle or Discord that offer lower
5 commission rates than Steam. For example, Valve contacted publishers who released their games
6 at a lower price on those competing platforms to demand similar deals on Steam. Because of
7 Valve's pressure tactics, publishers were forced to revise their deals with Humble Bundle and
8 Discord or withdraw their games from those platforms all together.

9 **D. The Steam Store's Discovery Algorithm Works With Valve's Price Parity**
10 **Requirements to Artificially Inflate Prices Across the Industry**

11 156. The anticompetitive effects of Valve's conduct are compounded by Valve's low-
12 quality approach to selecting games for promotion in its Steam Store. Once a publisher uploads its
13 game for distribution on the Steam Store, its next challenge is to attract users. Although word of
14 mouth helps, the main way a publisher can initially attract user interest is by figuring out the best
15 ways to show up in Steam Store searches. Valve makes clear to publishers that the best way to
16 show up in user searches, under its discovery algorithm, is by discounting one's game.

17 157. Given the need for a discount to be seen, publishers must inflate the list prices for
18 their games on the Steam Store. This allows publishers to offer discounts off those list prices that
19 then cause the Steam Store's algorithm to pick them up as "deals" for users, and therefore promote
20 the games more heavily on the store's various search pages.

21 158. The problem this creates is that, as discussed above, Valve insists that publishers
22 offer games for the same price on both the Steam Store and on other storefronts. That means a
23 publisher must list its games at the inflated price everywhere, regardless of whether another
24 storefront or other PC Game Distributor charges lower commissions that would allow the
25 publisher to charge consumers lower list prices (and for consumers to pay lower amounts as a
26 result).

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1 **E. Valve Uses its Key-Based Model to Block Competition for Third-Party**
2 **Distribution**

3 159. As described above, Valve sometimes issues Steam Keys to publishers to distribute
4 a small percentage of their Steam-enabled games, subject to the Price Parity Provision, via
5 competing stores.

6 160. A Steam Key simply consists of a string of 15 letters and numbers, such as
7 “P77LR-8VFW0-MZ5G3,” which when entered into the Steam Gaming Platform, grants the user
8 access to the corresponding product. A granted Steam Key Request results in a text file filled with
9 many Steam Keys. The publisher can then send this file to a store which in turn offers those
10 Steam Keys to customers, so that the customers can conveniently enable their purchased games on
11 the Steam Gaming Platform.

12 161. This system is simple but insecure. At any stage of this process, a bad actor with
13 access to this text file can secretly copy or remove some or all of these Steam Keys, and resell
14 them without compensating the publisher. The bad actor can even sell the same Steam Key
15 multiple times, and the Steam Key will only work for the first player who adds it to her personal
16 Steam Account. The publisher also faces the risk that when they sell a Steam Key, they are selling
17 to a reseller outside of the publisher’s control. Relatedly, a Steam Key purchaser faces the risk
18 that she is not buying a valid *bona fide* key, but is instead sold a fraudulent key that will not
19 successfully add the game to their Steam Gaming Platform library.

20 162. These flaws have created a “grey” market wherein Steam Key resellers or
21 fraudsters sell Steam-enabled games without permission of the publisher. Moreover, because the
22 publisher is no longer the seller of the Steam Key, the publisher could not abide by the Steam Key
23 Price Parity Provision even if the publishers desired to do so. As the price of second-hand Steam
24 Keys is generally lower, the value of first-hand sales from the publisher lessens as well. These
25 harms make it so publishers are wary about using Steam Keys at all, let alone at scale.

26 163. Humble Bundle is an organization that originally offered “bundles” in which
27 customers would pay whatever price they want in order to purchase multiple games at once. Users
28

1 could choose how much of their payment they wanted to direct to each publisher, or to a charity of
2 their choice. This event proved very popular with both customers and publishers, selling hundreds
3 of thousands of bundles in each event, and transferring millions of dollars to publishers and
4 charities. After the initial “Humble Indie Bundle” event in 2010, Humble Bundle began
5 organizing similar events of increasing scale and frequency.

6 164. Due to the prevalence of the Steam Gaming Platform, customers requested that
7 Humble Bundle include Steam Keys in their events for convenience, and Humble Bundle
8 complied. Unfortunately, the inherent security flaws in Steam Keys caused problems. Customers
9 often only locked some of the Steam Keys in the bundle to their personal Steam Account, and had
10 other Steam Keys left over. Because they are just strings of text, customers could easily resell
11 keys that they did not want, which were pushed to the grey market. This made publishers
12 reluctant to participate in Humble Bundle events, because the publishers lost control over the price
13 and distribution of their Steam Keys, preventing them from abiding by the Steam Key Price Parity
14 Provision, and undercutting the value of their products.

15 165. Humble Bundle solved this problem by working with Valve to create a direct
16 integration between the Humble Bundle store and the Steam Gaming Platform. Humble Bundle
17 customers would purchase a bundle, and then choose whether to download the games directly, or
18 to link the games to a specific Steam account. If the customer chose the latter, the integration
19 would automatically add all of the games to the customer’s Steam Account for use in the Steam
20 Gaming Platform.

21 166. Sales of these games were guaranteed to be legitimate, because Valve added the
22 games directly to the gamer’s Steam account on the Steam Gaming Platform. Because Steam
23 Keys were never directly exposed, this system was much more secure. Humble Bundle’s sales
24 increased, in large part because publishers no longer feared their Steam Keys would end up in the
25 grey market, with charitable donations eventually adding up to over \$190 million through the
26 Humble Bundle program.

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1 167. But after Humble Bundle’s distribution of Steam-enabled games began to scale,
2 Valve abruptly removed the secure integration between Humble Bundle and the Steam Gaming
3 Platform. Humble Bundle and others asked for an explanation, but Valve never provided one. By
4 that point, however, Humble Bundle customers were used to being able to link Humble Bundle
5 purchases to their Steam Account, so Humble Bundle felt it had no choice but to resume selling
6 insecure Steam Keys.

7 168. After Valve terminated the direct integration system, Humble Bundle’s sales
8 growth declined. The grey market returned in force, and publishers became more and more
9 reluctant to participate in Humble Bundle events, decreasing the quantity and quality of products
10 available to Humble Bundle customers. Humble Bundle has since switched the majority of its
11 business to publishing games, which are sold in the Steam Store, and to subscription-based sales.

12 169. There is no legitimate technical or other justification for Valve cutting off the direct
13 integration that it had previously made available to Humble Bundle. Providing additional
14 distribution options for the Steam Gaming Platform, like the Humble Bundle, would be in the
15 economic self-interest of Valve in the absence of its tying strategy. Doing so would help grow the
16 Steam Gaming Platform by attracting publishers and gamers, and therefore increase output. In
17 fact, Valve’s rivals in the market for PC Desktop Gaming Platforms, including Ubisoft and Epic
18 Games, offer similar “keyless” distribution programs. For example, the EGS Platform began
19 offering keyless integration with other game stores so that an EGS-enabled game purchased on a
20 third-party game store is instantly loaded into a gamer’s EGS library, thereby allowing publishers
21 to avoid the risks inherent to key-based distribution models.⁵⁴

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24 _____
25 ⁵⁴ Epic Games, *Development Update: Self-Refund, Keyless Partner Integration and Changes to*
26 *Ownership Authorization*, [https://www.epicgames.com/store/en-US/news/development-update-](https://www.epicgames.com/store/en-US/news/development-update-self-refund-keyless-partner-integration-and-changes-to-ownership-authorization)
27 [self-refund-keyless-partner-integration-and-changes-to-ownership-authorization](https://www.epicgames.com/store/en-US/news/development-update-self-refund-keyless-partner-integration-and-changes-to-ownership-authorization) (May 18, 2020)
28 (“Players will no longer need to take additional steps to redeem a key which often includes
exchanging 20-digit redemption codes. Instead, this provides more confidence knowing a
purchase is coming from a legitimate source and that it is directly attributed to your linked Epic
Games account.”).

1 170. Ultimately, Valve's termination of Humble Bundle's keyless integration with the
2 Steam Platform can only be explained by anticompetitive motive—Valve terminated this
3 integration with its Steam Platform because its Steam Store offering faced increased competition.
4 Valve's reversal has caused significant harm to publishers and consumers, because it increased the
5 growth of the grey market and made even the limited Steam Key sales that take place today
6 insecure and unreliable.

7 171. A keyless system can be operated at low cost for stores like Humble Bundle, as
8 demonstrated by the fact that Valve actually did so with Humble Bundle several years ago and the
9 fact that Valve's PC Desktop Gaming Platform rivals do so in the market today. By purposefully
10 keeping a low-quality distribution model for Steam Keys, Valve undermines the ability of rival PC
11 Desktop Game Distributors to achieve sufficient scale to challenge the dominance of the Steam
12 Store, and harms publishers and gamers.

13 **IV. ATTEMPTS AT ENTRY INTO THE RELEVANT MARKETS HAVE FAILED**
14 **BECAUSE OF VALVE'S CONDUCT**

15 172. As discussed above, the only meaningful way for game publishers and gamers to
16 avoid Valve's anticompetitive scheme is to avoid using the Steam Gaming Platform at all. If a
17 publisher's games are not enabled for the Steam Gaming Platform, the publisher can avoid
18 Valve's anticompetitive restraints, selling its games for whatever price it wants and keeping a
19 competitive level of profit and setting a lower retail price for gamers. Unfortunately, however,
20 there are no economically viable alternatives to the Steam Gaming Platform, and publishers
21 therefore largely view the Steam Gaming Platform as a must-have.

22 173. That is not for lack of trying. As detailed below, many sophisticated and well-
23 established companies, including technology giants and leading game publishers, have tried to
24 create alternative PC Desktop Gaming Platforms to rival the Steam Gaming Platform. But by
25 being the first in the field of PC Desktop Gaming Platforms in the mid 2000's, Valve secured a
26 massive incumbency advantage that is virtually impossible to overcome.

1 174. Any potential competitor against the Steam Gaming Platform in the PC Desktop
2 Gaming Platform Market needs to overcome the Steam Gaming Platform’s immense network
3 effects caused by extensive game libraries already purchased by players, the social networking
4 features on the Steam Gaming Platform, the achievement system embedded into the Steam
5 Gaming Platform, and the game modification (“modding”) community that exists on the Steam
6 Gaming Platform. Rivals would need to convince gamers and publishers to abandon all of these
7 features and the benefits of the world’s largest PC desktop gaming community to leave Steam and
8 join them. When those advantages are combined with Valve’s illegal conduct, it is virtually
9 impossible for a rival to create a commercially viable competitor to the Steam Gaming Platform.

10 175. Well-established companies with strong financial backing have put substantial time
11 and effort into trying to dent the Steam Gaming Platform’s dominance. They have largely failed
12 even though Valve has approximately only 360 employees,⁵⁵ versus over 9,000 for EA, 160,000
13 for Microsoft, and over 570,000 for Amazon.

14 176. The failure of these companies to meaningfully compete against the Steam Gaming
15 Platform shows it is virtually impossible as an economic matter to compete against the Steam
16 Gaming Platform. The Steam Gaming Platform has well-cemented dominance in the PC Desktop
17 Gaming Platform Market, and given its unique and strong network effects, that is unlikely to
18 change. These advantages are reinforced by Valve’s anticompetitive conduct discussed above, as
19 Valve retaliates against game publishers and other platforms that try to introduce competition.

20 177. Valve’s nearly insurmountable advantages in the market for PC Desktop Gaming
21 Platforms ensure that it is also well positioned to maintain its dominance in PC Desktop Game
22 Distribution as well. Valve’s monopolization scheme means that if a publisher wants to utilize the
23 must-have Steam Gaming Platform, the publisher must also use Valve’s Steam Store. Thus,
24 Valve’s market power derived from the Steam Gaming Platform extends into market power for the
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27 ⁵⁵ Andy Chalk, *Valve denies wrongdoing in skin gambling legal rumblings: “no factual or legal*
28 *support for these accusations”*, PC GAMER (Oct. 18, 2016), [https://www.pcgamer.com/valve-](https://www.pcgamer.com/valve-misses-deadline-to-respond-to-washington-state-gambling-regulator-but-says-its-coming-soon/)
[misses-deadline-to-respond-to-washington-state-gambling-regulator-but-says-its-coming-soon/](https://www.pcgamer.com/valve-misses-deadline-to-respond-to-washington-state-gambling-regulator-but-says-its-coming-soon/).

1 Steam Store as well. This is true even though the Steam Store itself does not have significant
 2 network effects, barriers to entry, or other plausible economic justifications for why a single
 3 company should be able to achieve a 75% share on the merits in the presence of numerous
 4 competitors. To the contrary, Valve’s market power in PC Desktop Game Distribution can only
 5 be explained through the anticompetitive conduct alleged herein.

6 **1. *Electronic Arts (“EA”)***

7 178. Electronic Arts Inc. is one company that tried, and failed, to enter the PC Desktop
 8 Gaming Platform Market. EA is an American video game company headquartered in Redwood
 9 City, California, and is the second-largest gaming company in the Americas and Europe. A
 10 publicly traded company, EA currently maintains a \$41.36 billion market capitalization.⁵⁶

11 179. On June 3, 2011, EA attempted to enter the relevant markets with its own vertically
 12 integrated Platform/Distribution product named “Origin.” Similar to the Steam Gaming Platform,
 13 Origin was designed to be a “direct-to-consumer gaming platform”⁵⁷ where gamers could
 14 download and maintain their Origin-enabled games. Although Origin originally offered only EA
 15 developed games, EA soon after announced releases from other major publishers, including
 16 Warner Bros., THQ, and Capcom Entertainment, Inc.⁵⁸

17 180. Contemporaneous news articles described how the Origin Platform “presents the
 18 biggest threat to Steam’s dominance yet”⁵⁹ Origin achieved a user base of more than 50
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22 ⁵⁶ MarketWatch, Quotes, Stocks, EA Overview,
<https://www.marketwatch.com/investing/stock/ea>.

23 ⁵⁷ Press Release, *EA Launches Origin*,
https://s22.q4cdn.com/894350492/files/doc_news/archive/582630.pdf.

24 ⁵⁸ Press Release, *Origin Expands to Offer Games from Major Publishers*,
https://s22.q4cdn.com/894350492/files/doc_news/archive/618584.pdf.

25 ⁵⁹ Fred Dutton, *Steam vs. Origin: Is Competition Good for Gamers?*, EUROGAMER, (Dec 19,
 26 2011), <https://www.eurogamer.net/articles/2011-08-30-steam-vs-origin-is-competition-good-for-gamers-article>.
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 28

1 million total registered users, and EA was well positioned to have a viable gaming platform given
2 its marquee titles including SimCity, The Sims, and Battlefield 3.⁶⁰

3 181. To help get Origin off the ground, EA mandated that all EA games at that point in
4 time would need to use the Origin Platform, even if purchased through alternative distributors. As
5 a result of that strategy, EA withdrew its games from the Steam Store which does not allow
6 publishers to sell versions of games created for other platforms in the Steam Store. While other
7 distributors like GameStop were happy to sell Origin-enabled versions of games, Valve would not
8 do so through its store. EA explained “At present, there is only one download service [Steam] that
9 will not allow this relationship. . . .Steam has imposed a set of business terms for developers
10 hoping to sell content on that service—many of which are not imposed by other game services.”⁶¹

11 182. EA sold its own games outside of the Steam Store until 2019, when EA announced
12 a return to the Steam Gaming Platform because “[EA] want[s] to be where the players are.”⁶² As
13 one article put it, “It has been a long and largely fruitless road for Origin, EA’s PC gaming client
14 that it had planned on building into a rival of Valve’s Steam. What was originally supposed to
15 have been the chief antagonist to Steam in the ongoing PC gaming platform wars instead is best
16 described as a failure to launch.”⁶³ EA was relegated to being yet another publisher paying
17 excessive 30% commissions to Valve on nearly every game sold through the Steam Store.

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20 ⁶⁰ Chris Pereira, *EA Boss Addresses Virtual Reality’s “Dork Factor,” Origin Vs. Steam*,
21 GAMESPOT (June 30, 2014), <https://www.gamespot.com/articles/ea-boss-addresses-virtual-reality-s-dork-factor-origin-vs-steam/1100-6420827/>.

22 ⁶¹ Wesley Yin-Poole, *Why you can't buy Crysis 2 from Steam*, EUROGAMER (July 7, 2011),
23 <https://www.eurogamer.net/articles/2011-07-07-why-you-cant-buy-crysis-2-from-steam>.

24 ⁶² Chaim Gartenberg, *EA games are returning to Steam along with the EA Access subscription*
25 *service*, THE VERGE (Oct. 29, 2019), <https://www.theverge.com/2019/10/29/20937055/ea-games-steam-access-subscription-service-pc-storefront-jedi-fallen-order-sales>.

26 ⁶³ Timothy Geigner, *EA To Rebrand Its Origin Platform As It Bows Out Of The PC Gaming*
27 *Platform Wars*, TECHDIRT (Sep. 16, 2020),
<https://www.techdirt.com/articles/20200916/09394245318/ea-to-rebrand-origin-platform-as-it-bows-out-pc-gaming-platform-wars.shtml>.

1 **2. Discord**

2 183. Released in 2015, Discord serves as another example of a failed attempt to compete
3 in the relevant markets against the Steam Gaming Platform and Steam Store. Discord is an app
4 that offers text messaging, voice and video calling for gamers to communicate with friends while
5 playing a game.⁶⁴ Discord has experienced rapid growth since it launched, reporting 8.9 million
6 daily users in 2017 and then 100 million daily users in 2020.⁶⁵

7 184. In August 2018, Discord attempted to enter the relevant markets through a
8 vertically integrated Platform/Store product. At the time, a media intelligence company
9 purportedly called Discord the “biggest threat [Steam’s] faced in years.”⁶⁶

10 185. With such a large user base already registered in Discord for voice communications
11 and social networking, Discord appeared to be a formidable competitor to the Steam Gaming
12 Platform/Store. Discord enticed gamers and publishers with attractive offerings, for example,
13 exclusive periods of curated games, usually 90 days, for free.⁶⁷ Just a few months after the initial
14 release, further enticing developers, Discord announced that all developers—regardless of size—
15 could self-publish games.

16 186. Even more significantly, Discord announced a 90/10 revenue split. Publishers
17 would pay just a 10% commission—that is, one-third of the size of Valve’s.⁶⁸ When Discord
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20 ⁶⁴ Kaylee Fagan, *Everything you need to know about Discord, the app that over 250 million*
21 *gamers around the world are using to talk to each other*, INSIDER (OCT. 12, 2020),
<https://www.businessinsider.com/how-to-use-discord-the-messaging-app-for-gamers-2018-5>.

22 ⁶⁵ *Id.*

23 ⁶⁶ Stefanie Fogel, *SuperData: Discord Is a ‘Major Threat’ To Steam*, VARIETY (July 2, 2018),
<https://variety.com/2018/gaming/news/superdata-discord-vs-steam-1202863853/>.

24 ⁶⁷ *Discord Store Global Beta Is Live!*, DISCORD (blog) (Oct. 16, 2019),
25 <https://blog.discord.com/discord-store-global-beta-is-live-38bfd044d648>.

26 ⁶⁸ *Why not 90/10?*, DISCORD (blog) (Dec. 14, 2018), [https://blog.discord.com/why-not-90-10-](https://blog.discord.com/why-not-90-10-3761ebef4eab)
27 [3761ebef4eab](https://blog.discord.com/why-not-90-10-3761ebef4eab); Austen Goslin, *In the race to beat Steam, the Discord Store just made a huge*
move, POLYGON (Dec. 14, 2018), [https://www.polygon.com/2018/12/14/18140790/discord-](https://www.polygon.com/2018/12/14/18140790/discord-store-self-publishing-revenue-split)
28 [store-self-publishing-revenue-split](https://www.polygon.com/2018/12/14/18140790/discord-store-self-publishing-revenue-split).

1 announced its new initiative, it openly questioned, “[w]hy does it cost 30% to distribute games?”⁶⁹
 2 Discord concluded that it “[t]urns out, it does not cost 30% to distribute games in 2018.”⁷⁰
 3 Discord settled on 10% because it “covers [its] operating costs,” but also added, “we’ll explore
 4 lowering it by optimizing our tech and making things more efficient.”⁷¹

5 187. Despite its massive user base and a pro-developer and pro-consumer approach,
 6 Discord never gained any traction. By early 2019, Discord started to “downscale” its efforts in
 7 favor of a model where gamers would gain access to a pool of games for a monthly fee, a service
 8 called Nitro.⁷² By October 2019, Discord announced: “The Nitro Games catalogue will be
 9 removed on October 15th, 2019” because “it became clear that while we and some of you love
 10 these games, the truth is the vast majority of Nitro subscribers didn’t play them.”⁷³

11 188. Despite Discord’s failure to enter the relevant markets, Valve recognized a nascent
 12 threat on the horizon. As Discord was increasingly gaining influence and power as a
 13 communications tool for gamers, Valve began copying Discord’s features one-by-one in Steam.
 14 For example, Valve introduced “Steam Chat,” which provides a friends list, secure voice chat, and
 15 group channels. A reporter for Business Insider put it succinctly: “Steam’s update takes many
 16 cues from Discord, including a suspiciously similar user interface” that looks “almost exactly the
 17 same.”⁷⁴

19 ⁶⁹ *Id.*

20 ⁷⁰ *Id.*

21 ⁷¹ *Why not 90/10?*, DISCORD (blog) (Dec. 14, 2018), <https://blog.discord.com/why-not-90-10-3761ebef4eab>.

22 ⁷² James Batchelor, *Discord Game Store refocuses on Nitro subscription, devs can now sell*
 23 *games directly*, GAMEINDUSTRY.BIZ, (Mar. 14, 2019),
 24 <https://www.gamesindustry.biz/articles/2019-03-14-discord-game-store-refocuses-on-nitro-subscription-as-servers-allow-devs-to-sell-games-directly>.

25 ⁷³ *What’s Coming for Nitro*, DISCORD (blog) (Sep. 12, 2019), <https://blog.discord.com/whats-coming-for-nitro-a732ddc4b5b1>.

26 ⁷⁴ Sean Wolfe, *The new and improved Steam Chat is here to take on Discord — here’s how the*
 27 *two apps compare*, BUSINESS INSIDER (Jul. 28, 2018), <https://www.businessinsider.com/steam-chat-update-vs-discord-2018-7>.

1 189. As pointed out in the Congressional Report on Competition in Digital Markets,
2 dominant digital platforms often surveil “other businesses to identify potential rivals, and have
3 ultimately bought out, copied, or cut off their competitive threats.”⁷⁵ That is exactly what Valve
4 did to Discord.

5 3. *Microsoft, Amazon, Google*

6 190. In 2012, Microsoft released the Microsoft Store (formerly known as Windows
7 Store) as its digital distribution platform, including for PC Desktop Games. Unlike other stores,
8 Microsoft merged its other distribution channels into a single storefront, including games
9 operating on both Windows, and its video game console, Xbox. The creation of a cross-console
10 storefront later enabled a cross-platform capability (PC to Xbox), such that a Microsoft Store user
11 can move between game play between consoles without needing to purchase the game on the
12 separate devices (Xbox Play Anywhere). In turn, the Windows Store could become a “near-
13 omnipresent digital storefront, giving Microsoft a captive audience for its library of software, and
14 not coincidentally acts as a challenge to Steam’s market dominance.”⁷⁶ Microsoft also leveraged
15 the dominance of the Windows operating system by having its store pre-installed on Windows-
16 based PCs.

17 191. To grow its share of the PC Desktop Gaming Platform Market, Microsoft began
18 distributing many PC games published by Microsoft or its subsidiaries exclusively through the
19 Microsoft Store. This included Sea of Thieves, Age of Empires, and Microsoft Flight Simulator.
20 On March 5, 2019, in an effort to recruit more publishers to its platform, the Microsoft Store
21 changed its standard revenue split to 85/15 (or sometimes 95/5 under certain conditions).⁷⁷

22 _____
23 ⁷⁵ Digital Markets Report at 6.

24 ⁷⁶ Thomas Wilde, *After battling Microsoft in video games for years, Valve’s Steam is on a*
25 *collision course with Apple*, GEEKWIRE (May 28, 2018), <https://www.geekwire.com/2018/valve-3/>.

26 ⁷⁷ Microsoft Store Team, *Updated Microsoft Store App Developer Agreement: New Revenue*
27 *Share*, MICROSOFT (Mar. 6, 2019)
<https://blogs.windows.com/windowsdeveloper/2019/03/06/updated-microsoft-store-app-developer-agreement-new-revenue-share/>.

1 192. Despite these efforts, Microsoft was unable to grow its share of either the PC
 2 Desktop Gaming Platform Market or the PC Desktop Game Distribution Market to commercially
 3 viable levels. Microsoft has since retreated from its exclusives strategy, and in May 2019,
 4 Microsoft announced it would bring more games to the Steam Gaming Platform. As an insider
 5 remarked on Microsoft's surrender to the Steam Gaming Platform, Microsoft "has given up
 6 entirely on that vision . . . to dethrone Steam."⁷⁸

7 193. Microsoft is not the only tech giant that attempted entry into the PC Desktop
 8 Gaming Platform Market. Amazon, through the Twitch Store, opened a joint platform/storefront
 9 in April 2017, heralded as "one of the biggest challenges yet to Steam."⁷⁹ It was shuttered 18
 10 months later.⁸⁰

11 194. Google also launched a competitive offering, Google Stadia, meant to be "the
 12 future of gaming."⁸¹ Yet a February 26, 2021 article announced it has "absolutely crumbled under
 13 expectations."⁸²

14 4. *Epic Game Store*

15 195. The Epic Game Store ("EGS") is a vertically integrated Platform/Store offered by
 16 games publisher Epic. It is currently the leading alternative to the Steam Gaming Platform, but,
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19 ⁷⁸ Nick Statt, *Microsoft will distribute more Xbox titles through Steam and finally support Win32*
 20 *games*, THE VERGE (May 30, 2019), [https://www.theverge.com/2019/5/30/18645250/microsoft-](https://www.theverge.com/2019/5/30/18645250/microsoft-xbox-game-studios-publishing-valve-steam-32-bit-windows)
 21 [xbox-game-studios-publishing-valve-steam-32-bit-windows](https://www.theverge.com/2019/5/30/18645250/microsoft-xbox-game-studios-publishing-valve-steam-32-bit-windows).

22 ⁷⁹ Rich McCormick, *Twitch will start selling games and giving its streamers a cut*, THE VERGE
 (Feb. 27, 2017), <https://www.theverge.com/2017/2/27/14748896/twitch-sell-games-streamers-cut>.

23 ⁸⁰ Bryon Rose, *Twitch Game Store Shutting Down After November 27*, GAMEREVOLUTION
 24 (Nov. 16, 2018), [https://www.gamerevolution.com/news/458393-twitch-game-store-shutting-](https://www.gamerevolution.com/news/458393-twitch-game-store-shutting-down)
[down](https://www.gamerevolution.com/news/458393-twitch-game-store-shutting-down).

25 ⁸¹ Ian Sheer, *Google Stadia wants to be the future of gaming. So do Microsoft, Sony and Amazon*,
 26 CNET (Dec. 17, 2019), [https://www.cnet.com/news/google-stadia-wants-to-be-the-future-of-](https://www.cnet.com/news/google-stadia-wants-to-be-the-future-of-gaming-so-do-microsoft-sony-and-amazon/)
[gaming-so-do-microsoft-sony-and-amazon/](https://www.cnet.com/news/google-stadia-wants-to-be-the-future-of-gaming-so-do-microsoft-sony-and-amazon/).

27 ⁸² Cade Onder, *Damning Google Stadia Report Reveals Why It's Failing*, SCREENRANT (Feb.
 28 26, 2021), <https://screenrant.com/google-stadia-damning-report-failing/>.

1 even after pouring an enormous amount of money into its efforts to compete recently, Epic has
2 been unable to make significant inroads into the Steam Gaming Platform’s dominance.

3 196. Epic is behind the gaming phenomenon, Fortnite, which earned over \$4 billion
4 between its launch in September 2017 and the summer of 2019.⁸³ Fortnite’s user base gave Epic a
5 strong foundation from which to launch its PC Desktop Game Distribution storefront, which Epic
6 started because, as its CEO explained, “Stores extract an enormous portion of game industry
7 profits and are ripe for disruption.”⁸⁴ As a prominent game publisher, Epic wanted to avoid
8 paying third parties excessive commissions, and also to bring about a low-commission model for
9 game publishers generally.

10 197. To attract publishers to its new storefront, Epic offered publishers a much lower
11 commission than the Steam Store, 12% instead of Valve’s 30%. As Epic recently stated in pretrial
12 filings, “Epic decided to charge developers a 12% revenue share after it concluded that 12% would
13 be competitive, sufficient to cover its costs of distribution and allow for further innovation and
14 investment in EGS.”⁸⁵ In other words, Epic determined that a 12% commission was more than
15 sufficient to cover its costs for creating and maintaining a PC Desktop Game Distribution
16 storefront, and—at least, in a competitive market unaffected by anticompetitive restraints—allow
17 it to go toe-to-toe with other market participants, including, most prominently, Steam. And to
18 attract gamers to its new platform, Epic began giving away large volumes of games for free
19 through its storefront. In 2020 alone, Epic reported that users obtained \$749 million in free games
20 through the EGS.⁸⁶

21 _____
22 ⁸³ Jason M. Bailey, *Fortnite Maker Wants to Sell More Games, and Build a Platform to Do It*,
23 THE NEW YORK TIMES (Aug. 27, 2019),
<https://www.nytimes.com/2019/08/27/business/steam-epic-games-store.html>.

24 ⁸⁴ *Id.*

25 ⁸⁵ *Epic Games, Inc. v. Apple Inc.*, 4:20-cv-05640-YGR (N.D. Cal. 2021) (Dkt. No. 407 at p. 134),
26 [https://www.courtlistener.com/recap/gov.uscourts.cand.364265/gov.uscourts.cand.364265.407.0.p
df.](https://www.courtlistener.com/recap/gov.uscourts.cand.364265/gov.uscourts.cand.364265.407.0.pdf)

27 ⁸⁶ Epic Games Store 2020 Year in Review, EPIC (Jan. 28, 2021),
<https://www.epicgames.com/store/en-US/news/epic-games-store-2020-year-in-review>.

1 198. Publishers welcomed the competition EGS brought to the market. As one
2 independent game publisher explained, this competition was a “very good thing for the
3 industry.”⁸⁷ The CEO of Paradox Interactive explained that “Competition from Epic Games Store
4 Will Benefit Both Players and Game Publishers.”⁸⁸

5 199. EGS has also deployed a strategy wherein it gives publishers “some combination of
6 marketing commitments, development funding, or revenue guarantees” in exchange for a promise
7 to not release their games on any alternative platforms during a preset exclusivity window. Epic
8 has deployed this strategy for high-profile games, including *Borderlands 3*, a marquee game from
9 developer Gearbox Software and publisher 2K games.⁸⁹ Notwithstanding this strategy,
10 *Borderlands 3* has since been released through the Steam Store and is enjoying commercial
11 success there.⁹⁰

12 200. Epic obtains this exclusivity in order to compete with the Steam Gaming Platform;
13 by doing so, it draws in users wanting the most popular new games and can kickstart network
14 effects on the EGS Platform. However, the “exclusives” strategy has caused backlash from
15 gamers who are irritated they either need to wait for a Steam-enabled release or use a PC Desktop
16 Gaming Platform they do not prefer. As one article explains, “Poaching titles from Steam isn’t the
17
18

19 ⁸⁷ Rami Ismail, Jeremy Peel, Rachel Watts, *Rami Ismail: “We’re seeing Steam bleed...that’s a
20 very good thing for the industry”*, PCGAMES (Mar. 20, 2019), <https://www.pcgamesn.com/rami-ismail-interview>.

21 ⁸⁸ Tomas Franzese, *Paradox Interactive CEO Thinks Competition from Epic Games Store Will
22 “Benefit Both Players and Game Publishers”*, DUALSHOCKERS (2020),
<https://www.dualshockers.com/epic-games-store-benefits-players-paradox-interactive/>.

23 ⁸⁹ Kyle Orland, *Borderlands 3 is the next big Epic Games Store exclusive*, ARS TECHNICA
24 (Apr. 3, 2019), <https://arstechnica.com/gaming/2019/04/borderlands-3-is-the-next-big-epic-game-store-exclusive/#:~:text=Borderlands%20is%20the%20latest,13%20launch%20through%20April%202020>.

25
26 ⁹⁰ Rana Muneeb, *Borderlands 3 Is Doing Well On Steam Despite Epic Store Exclusivity*,
27 SEGMENTNEXT (Oct. 28, 2020), <https://segmentnext.com/2020/03/17/borderlands-3-steam-epic-store/>.

1 best of practices, especially when such an immense amount of backlash is received from fans far
2 and wide.”⁹¹

3 201. Despite the frustrations Epic’s strategy created, it helped spur growth for the EGS
4 Platform. But, even with these aggressive tactics, the EGS Store has been unable to reroute a
5 significant share of the PC Desktop Game Distribution Market away from Valve and the Steam
6 Store. Analyzing 2019 figures, one industry analyst explained that, despite its dogged efforts,
7 EGS likely had a market share “a little above 2%” and that “Epic games paid more than their
8 market share to get that market share. They spent \$880M for revenue of \$680M.”⁹²

9 202. The 2020 figures are roughly similar to those reported in 2019. The most recent
10 year-in-review report for the EGS reports that PC desktop gamers spent \$700 million on the EGS,
11 which includes approximately \$435 million of sales from Epic’s proprietary games.⁹³ And EGS
12 ended up giving away more product (\$749 million) than it actually earned through the storefront
13 (\$700 million).⁹⁴ As the PC Desktop Game Distribution Market is roughly \$36 billion, Epic’s
14 market share is only around 1.9%, even after roughly two years of aggressive and well-funded
15 competition against the Steam Store.

16 203. Recent court filings submitted by Epic Games indicate that Epic Games has been
17 operating its EGS offering at a loss for years, with losses increasing over time. As explained by
18 one industry analyst, “Two years and four months after its inception on December 4, 2018, the
19 Epic Games Store hasn’t done much for its parent company aside from being one of its biggest
20 money losers. This is according to court documents shared by a ResetEra user, which reveal that

21
22
23 ⁹¹ Ryan Epps, *Epic Games Store Exclusivity Was A Mistake For Borderlands 3*, THEGAMER
24 (Sep. 18, 2019), <https://www.thegamer.com/borderlands-3-epic-games-store-mistake/>.

25 ⁹² Avihay Hermon, *Epic Games Store, behind the numbers*, MEDIUM (Feb. 6, 2020),
<https://medium.com/@h.avihay/epic-games-store-behind-the-numbers-fe7ddef4e00c>.

26 ⁹³ Epic Games Store 2020 Year in Review, EPIC GAMES (Jan. 28, 2021),
<https://www.epicgames.com/store/en-US/news/epic-games-store-2020-year-in-review>.

27 ⁹⁴ *Id.*

1 the fledgling Steam competitor had cost Epic Games approximately \$181 million and \$273 million
2 in losses in 2019 and 2020, respectively.”⁹⁵

3 204. EGS is therefore yet another example of how even a well-funded publisher with a
4 huge userbase cannot put a dent in the Steam Store’s market share.

5 **V. VALVE’S ANTICOMPETITIVE PRACTICES DIRECTLY HARM BOTH GAME**
6 **PUBLISHERS AND GAME PURCHASERS**

7 205. Valve’s founder has admitted that Steam is a “tremendously profitable” endeavor.⁹⁶
8 On a per-employee basis, Valve is perhaps the most profitable company in the world, outpacing
9 tech giants like Google and Apple.⁹⁷ By 2015, Valve earned more than \$2 billion per year in
10 profit, which is more than \$6 million per employee.⁹⁸

11 206. Today, it makes even more than that. As discussed above, the market for PC
12 Desktop Game Distribution is worth at least \$30 billion worldwide, and Steam sells around 75%
13 of those games. Valve therefore earns roughly 30% of \$22.5 billion per year in commissions, or
14 around \$6.75 billion annually—all for simply acting as a middleman between gamers and
15 publishers. With roughly 360 employees, Valve now makes over \$15 million per employee, per
16 year, from Steam Store commissions.

17 207. These profit levels far exceed what would occur in a competitive market. Valve
18 maintains them through the anticompetitive means described above, coming at the expense of the
19 publishers who create the games and the gamers who play them.

20 _____
21 ⁹⁵ Tsing Mui, *Epic Games Store Faces at Least \$330 Million in Unrecouped Costs, Won’t Be*
22 *Profitable until 2023 at Earliest*, The FPS Review (April 9, 2021),
<https://www.thefpsreview.com/2021/04/09/epic-games-store-faces-at-least-330-million-in-unrecouped-costs-wont-be-profitable-until-2023-at-earliest/>.

23 ⁹⁶ Oliver Chiang, *Valve And Steam Worth Billions*, FORBES (Feb. 15, 2011),
24 <https://www.forbes.com/sites/oliverchiang/2011/02/15/valve-and-steam-worth-billions/?sh=71e1de5d33f4>.

25 ⁹⁷ *Id.*

26 ⁹⁸ Matthew Ball, Jacob Navok, *Epic Games Primer (Pts II+III): Epic Games Store & Epic*
27 *Games Publishing*, MATTHEWBALL.VC (May 18, 2020),
<https://www.matthewball.vc/all/epicprimer2>.

1 208. A survey of game publishers confirms that the Valve 30% commission is excessive.
2 When asked “Do you think that Steam, in its current form, justifies a 30% cut of your game’s
3 revenue?”, only 6% of publishers thought the Steam commission was justified.⁹⁹ Executive
4 Fredrik Wester of Paradox Interactive, the publisher of Cities: Skylines and Surviving Mars,
5 described the 30% fee as “outrageous,” stating “I think the platform holders are taking too much
6 money. Everyone in the press here, just quote me on that.”¹⁰⁰ As explained by Tim Sweeney, the
7 CEO and founder of publisher Epic Games, “The 30% store tax usually exceeds the entire profits
8 of the developer who built the game that’s sold.”¹⁰¹

9 209. The 30% figure actually understates how much revenue publishers receive on a net
10 basis. Valve first takes 10-20% to cover taxes and chargebacks, lowering the revenue percentage
11 even further. Publishers typically net about 50-60% of every sale made through the Steam Store,
12 even though they are the entity responsible for bringing the game to market in the first place.

13 210. Consumers are harmed as well by the higher prices that result. In 2019, for
14 example, game publisher Deep Silver sold its game Metro Exodus on Steam for \$60. It then
15 began an exclusive contract with Epic at the retail price of \$50 through the EGS Store for the
16 EGS-enabled version of its game, withdrawing the Steam-enabled version from the Steam
17 Store.¹⁰² This strategy made Deep Silver better off, as it would collect 88% of \$50, or \$44, when
18 selling through the EGS Store—rather than 70% of \$60 (\$42) on Steam. And it made consumers
19
20

21 ⁹⁹ Ben Kuchera, *Does Valve deserve Steam’s 30 percent cut? Many developers say no*,
22 POLYGON (Jan 24, 2019), <https://www.polygon.com/2019/1/24/18196154/steam-developers-revenue-epic-games-store>.

23 ¹⁰⁰ Kyle Orland, *Paradox exec: Steam’s 30% fee is “outrageous”*, ARS TECHNICA (July 1,
24 2019), <https://arstechnica.com/gaming/2019/07/paradox-exec-steams-30-percent-fee-is-outrageous/>.

25 ¹⁰¹ *Id.*

26 ¹⁰² Kyle Orland, *Metro Exodus comes to Steam after a year of Epic Games Store exclusivity*,
27 ARS TECHNICA (Feb. 7, 2020), <https://arstechnica.com/gaming/2020/02/epic-games-store-snags-metro-exodus-away-from-steam/>.

1 better off from a price perspective, as they would pay \$50 rather than \$60.¹⁰³ Deep Silver's
 2 strategy shows how a significant portion of the benefits from competition in the PC Desktop
 3 Gaming Digital Distribution Market would flow to consumers, and both publishers and gamers
 4 would be better off.

5 211. Another example underscoring how removing Valve's anticompetitive restraints
 6 would benefit both publishers and gamers is found in the Fortnite strategy Epic Games deployed
 7 on the iPhone. Like Steam, Apple charges a 30% commission on every game sale on the
 8 iPhone.¹⁰⁴ To avoid this anticompetitive fee, Epic Games introduced an alternative payment
 9 method that would give a 20% discount on all purchases through Epic's new payment method.¹⁰⁵
 10 Epic explained that this strategy was a "competitive alternative" to Apple which "enabled Epic to
 11 pass along its cost savings."¹⁰⁶ This real-world example demonstrates how publishers will steer
 12 consumers to lower-cost options for purchases if they are able to do so, passing on a portion of
 13 cost savings to consumers.

14 212. As another example, when EA brought its game collection back to Steam after
 15 abandoning its exclusive Origin strategy, EA raised prices.¹⁰⁷ The Mass Effect Collection, for
 16 example went from £23 to £30, an increase of roughly 30%.¹⁰⁸ This shows that when publishers
 17 sell through the Steam Store, they are forced to raise prices for gamers in order to pay for Valve's
 18 excessive commissions.

19
 20 ¹⁰³ Valve has since added language to its publisher agreements that inhibit strategies like the one
 21 Deep Silver employed with Metro Exodus once a game is listed on the Steam Store.

22 ¹⁰⁴ Apple's control over iPhone app sales and the 30% commission it charges for distributing
 23 those apps is currently the subject of multiple antitrust lawsuits in the Northern District of
 California.

24 ¹⁰⁵ *Epic Games Inc. v. Apple Inc.*, 4:20-cv-05640-YGR, Complaint For Injunctive Relief,
 (August 13, 2020 N.D. Cal. 2021) (Dkt. No. 1) ("Epic Complaint"), pp. 6-7.

25 ¹⁰⁶ *Id.*

26 ¹⁰⁷ Alex Gervas, *EA's return to Steam brings higher prices*, THE COURIER ONLINE,
<https://www.thecourieronline.co.uk/prices-increase-for-ea-games-in-steam/>.

27 ¹⁰⁸ *Id.*

1 213. The 30% commission Valve charges is supracompetitive, greatly exceeding the
2 costs of providing digital distribution for PC Games. As noted, the EGS Store only charges a 12%
3 commission to publishers. Epic recently stated in pretrial filings that “Epic decided to charge
4 developers a 12% revenue share after it concluded that 12% would be competitive, sufficient to
5 cover its costs of distribution and allow for further innovation and investment in EGS.”

6 214. Discord’s competitive service charged publishers only 10%, because “it doesn’t
7 cost 30% to distribute games.”¹⁰⁹ And as mentioned above, Microsoft offered a 5% commission
8 to publishers that could show the sale took place because of their own marketing efforts (as
9 opposed to a 15% commission if the customer made the purchase due to Microsoft’s marketing
10 efforts).

11 215. While physical distributors may have historically charged a price comparable to
12 Valve’s 30%, such distributors had substantial costs like real estate and salaries, as well as limited
13 shelf space for which publishers vied by agreeing to pay the higher commission. All of those are
14 costs and limitations that Valve largely avoids by focusing only on digital distribution.

15 216. Moreover, while some gaming console companies like Sony charge equal or higher
16 commissions for their closed console systems, they face far different economic circumstances.
17 Console manufacturers sell their single-purpose gaming hardware at or below cost to ensure that a
18 sufficient number of consumers will purchase the console and be reachable by publishers.
19 Console makers do this because game development for consoles is often a lengthy and expensive
20 process—far more expensive than development for mobile platforms—and the console makers
21 need to try to assure publishers that there will be a large enough user base for it to be worth the
22 publishers’ investment in developing a game for use on the console. The console makers’
23 commission rates are then the primary source of profit that they receive across the entire
24 ecosystem, and without those commissions, console makers would be unwilling to sell their
25

26
27 ¹⁰⁹ Ali Jones, *Discord’s store offers devs 90% revenue because “it doesn’t cost 30% to distribute*
28 *games”*, PC GAMES (Dec. 14, 2018), <https://www.pcgamesn.com/discord-store-revenue-split>.

1 consoles at a loss and/or promote the general use of the console. Valve’s Steam Gaming Platform
2 is purely software, which means it does not incur hardware costs at all.

3 217. Recognizing the anticompetitive effects platform gatekeepers can cause by
4 charging excessive commissions, regulators and governments are increasingly skeptical of
5 business models like the one Valve employs with the Steam Gaming Platform and the Steam
6 Store, because their operating costs are so much lower than the commission they charge would
7 suggest.¹¹⁰ As former Apple App Store executive, Phillip Shoemaker, told the New York Times,
8 “30 percent is way too much,” and the App Store (which is equivalent to the Steam Store) “should
9 [charge] closer to” the three percent that credit card companies charge to process payments given
10 Apple’s relatively minimal variable costs for processing transactions.¹¹¹

11 218. The practice of extracting 30% of every software sale associated with the
12 underlying platform is one of the principal bases for a congressional report into Apple’s and other
13 large technology companies’ monopolistic and anticompetitive practices. The House of
14 Representatives Subcommittee on Antitrust, Commercial and Administrative Law’s October 2020
15 report further concluded there were serious competition problems with such businesses.

16 219. For example, the report begins by stating that “numerous businesses described how
17 dominant platforms exploit their gatekeeper power to dictate terms and extract concessions that no
18 one would reasonably consent to in a competitive market . . . [T]heir dependence on these
19 gatekeepers to access users and markets requires concessions and demands that carry significant
20 economic harm, but that are ‘the cost of doing business.’”¹¹² Just as “Apple’s dominance in [the
21 mobile operating system market] has enabled it to . . . exert monopoly power in the mobile app
22

23 ¹¹⁰ Jess Conditt, *Apple’s App Store antitrust questions will be uncomfortable for Valve*,
24 ENGADGET (July 29, 2020), <https://www.engadget.com/apple-google-valve-steam-antitrust-hearings-app-store-221442066.html>.

25 ¹¹¹ Jack Nicas, *How Apple’s 30% App Store Cut Became a Boon and a Headache*, THE NEW
26 YORK TIMES (Aug. 14, 2020), <https://www.nytimes.com/2020/08/14/technology/apple-app-store-epic-games-fortnite.html>.

27 ¹¹² Digital Markets Report at 11.
28

1 store market . . .”, Steam’s position as the dominant PC Gaming Platform enables it to exploit
2 game publishers and customers.¹¹³

3 220. While the report claims “Apple established its 30% commission on paid apps in
4 2009 with the introduction of the App Store, and that rate has become the industry standard,”¹¹⁴ it
5 was in fact Steam that first developed the 30% store commission. As one reporter explained,
6 “Apple’s App Store antitrust questions will be uncomfortable for Valve” because while
7 “Lawmakers came for the App Store,” they “could’ve been discussing Steam.”¹¹⁵

8 221. Valve’s supracompetitive 30% toll has also reduced output in the relevant markets.
9 If Valve charged a lower commission, there would be lower retail prices available to gamers. At
10 lower prices, gamers would purchase more games, increasing output.

11 222. Valve’s anticompetitive conduct also decreases output by decreasing the number of
12 additional games in the market. Publishers must undertake a cost/benefit analysis to determine
13 whether the largely fixed costs of game development could be recouped through sales to gamers.
14 If publishers made greater margins per sale (as they would be able to do if commissions were
15 lower across the industry), then they would develop more games and, by virtue of that expanded
16 development, there would be a higher level of quantity and variety in the marketplace.

17 223. Valve’s conduct has also decreased quality in the market. Because of Valve’s
18 excessive fees, publishers have attempted a number of workaround strategies that have led to
19 consumer backlash. If Valve charged competitive commissions, the economic incentive to attempt
20 such strategies would decrease, benefitting publishers and consumers.

21 224. As one executive from EA explained, “Since the time we removed our games from
22 Steam, there’s been this dramatic increase in the number of gaming services, which you would
23

24 ¹¹³ Digital Markets Report at 16.

25 ¹¹⁴ *Id.* at 98.

26 ¹¹⁵ Jess Conditt, *Apple’s App Store antitrust questions will be uncomfortable for Valve*,
27 ENGADGET (July 29, 2020), <https://www.engadget.com/apple-google-valve-steam-antitrust-hearings-app-store-221442066.html>.

1 think would be really good for players. But I think in many cases, it's the exact opposite. It
2 creates more difficulty for players, and providing player choice — from my perspective and
3 speaking on behalf of EA — is really critical. It's an opportunity to make it possible for people to
4 play where they want, to reduce that fragmentation and make it more frictionless. . . . Reducing
5 that fragmentation is really important. It's the most player-first thing we can do.”¹¹⁶

6 225. Because Valve enjoys such strategic advantages in the relevant markets, it also
7 does not provide a competitive level of quality to publishers in terms of the Steam Store because it
8 does not need to do so in order to maintain market share (and power). Valve prioritizes which
9 games are shown to potential customers using an automatic algorithm, presumably to save costs,
10 that can unfairly harm publishers trying to get visibility for their products. Valve has few, if any,
11 dedicated marketing staff to help publishers market their games. If the market for PC Desktop
12 Game Distribution were competitive, Valve would be forced to offer a competitive level of quality
13 in its store as well, benefiting both publishers and gamers.

14 226. Epic CEO Tim Sweeney stated that if Steam did not charge such a highly inflated
15 commission, “Epic would hastily organize a retreat from exclusives (while honoring our partner
16 commitments) and consider putting our own games on Steam,” which would be a “glorious
17 moment in the history of PC gaming, and would have a sweeping impact on other platforms for
18 generations to come.”¹¹⁷

19 227. Instead, Valve announced facial changes to its pricing structure that are not real
20 changes at all, because they only reduce the marginal commission for the most successful games,
21 and then only if a publisher sells more than preset amounts of a single game in a year. In reality,
22 the vast bulk of games do not sell anywhere near the levels needed to trigger the lower marginal
23 commissions in Valve's new structure, meaning that Valve is essentially charging the exact same
24 commissions as always, just prettied up by some PR.

25 _____
26 ¹¹⁶ Brendan Sinclair, *EA returns to Steam*, GAMEINDUSTRY.BIZ (OCT. 29, 2019),
<https://www.gamesindustry.biz/articles/2019-10-29-ea-returns-to-steam>.

27 ¹¹⁷ Tim Sweeney (@timsweeneyepic), Twitter (Apr. 24, 2019, 6:05 PM),
28 <https://twitter.com/timsweeneyepic/status/1121218551342350336?lang=en>.

1 228. If Valve did not block price competition for Steam-enabled games, gamers and
 2 publishers would be able to have a seamless and non-fragmented platform *while also* enjoying the
 3 benefits of price competition in the distribution market. That would improve quality for gamers
 4 and publishers alike, all while lowering prices for everyone.

5 229. Valve’s conduct harms quality in other ways. Valve reinvests a miniscule portion
 6 of its revenue into improving and maintaining the Steam Store, with very few personnel allocated
 7 to Steam Store business development, customer support, and engineering. Competing stores
 8 generally offer superior infrastructure and support, despite their much smaller market share.

9 230. This lack of investment can also be seen in Valve’s inadequate moderation over the
 10 Steam Community. Valve maintains a section titled “Family Friendly,” but this section includes
 11 Steam reviews and message boards that often contain foul language and ethnic slurs. For
 12 example, regarding the family-friendly dollhouse game “The Sims 4”, Valve’s forum contains a
 13 guide titled “How to fry a kid in The Sims.”¹¹⁸ The Anti-defamation League has written a report
 14 indicating that 23% of Steam users report being exposed to “extremist white supremacist
 15 ideology,” and that 75% of players of Valve games DOTA 2 and Counter-strike have experienced
 16 harassment.¹¹⁹

17 CLASS ACTION ALLEGATIONS

18 231. Plaintiffs bring this action on behalf of themselves and, under Federal Rules of
 19 Civil Procedure 23(a) and (b)(3), as representatives of a Class defined as follows:

20 All persons and entities who, directly or through an agent, purchased or sold a PC game on
 21 the Steam Store in the United States from January 28, 2017 through the present (the “Class
 22 Period”). Excluded from the Class are Defendant and its employees, parents, and
 23 subsidiaries.

23 232. Both buyers (gamers) and sellers (publishers) are direct purchasers of the Steam
 24 Store’s intermediation service. When a gamer makes a purchase through the Steam Store, the
 25 _____

26 ¹¹⁸ @doshein, *How to fry a kid in The Sims*,
<https://steamcommunity.com/sharedfiles/filedetails/?id=2460422496>.

27 ¹¹⁹ Anti-Defamation League, *This is Not a Game: How Steam Harbors Extremists*,
 28 <https://www.adl.org/steamextremism>.

1 gamer pays the full retail price to Valve directly, including Valve's commission. Gamers are the
2 immediate buyers from Valve, the Defendant in this antitrust case.

3 233. Publishers are also direct purchasers of Valve's services in the PC Desktop Gaming
4 Digital Distribution Market. Valve's commission is taken from publishers before they receive
5 funding from sales made through the Steam Store. Valve's contracts with publishers state the
6 terms and conditions under which the publisher sells games through the Steam Store, including the
7 commission schedule that the publisher will pay.

8 234. **Numerosity.** Members of the Class are so numerous that joinder is impracticable.
9 Plaintiffs do not know the exact size of the Class but believe that there are at least millions of class
10 members geographically dispersed throughout the United States.

11 235. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class.
12 Plaintiffs and all members of the Class were damaged by the same wrongful conduct of Valve.
13 Specifically, Valve's wrongdoing caused class members to pay inflated commissions to Valve.
14 Publishers had an inflated commission withheld from their net proceeds of every sale, and gamers
15 paid inflated retail prices directly to Valve.

16 236. Plaintiffs will fairly and adequately protect and represent the interests of the Class.
17 The interests of Plaintiffs are coincident with, and not antagonistic to, those of the Class.
18 Accordingly, by proving their own claims, Plaintiffs will prove other class members' claims as
19 well.

20 237. **Adequacy of Representation.** Plaintiffs are represented by counsel who are
21 experienced and competent in the prosecution of class action antitrust litigation. Plaintiffs and
22 their counsel have the necessary financial resources to adequately and vigorously litigate this class
23 action. Plaintiffs can and will fairly and adequately represent the interests of the Class and have
24 no interests that are adverse to, conflict with, or are antagonistic to the interests of the Class.

25 238. There is an alignment of interests, and no conflict of interest, between gamers and
26 publishers that use Steam's services in the PC Desktop Gaming Digital Distribution Market.
27 Valve's excessive commissions harm both sets of class members. Both sets of class members
28

1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **Sherman Act Section 2—Monopolization of the PC Desktop Game Distribution Market**
4 **(15 U.S.C. § 2)**

5 242. The foregoing paragraphs are incorporated by reference as though fully set forth
6 herein.

7 243. Valve has willfully acquired and maintained monopoly power in the relevant
8 markets for PC Desktop Gaming Platforms and PC Desktop Game Distribution.

9 244. Valve possesses monopoly power in the relevant markets for PC Desktop Gaming
10 Platforms and PC Desktop Game Distribution. Valve has the power to control prices or exclude
11 competition in the relevant markets.

12 245. Valve has 75% or more market share in each of the relevant markets, and there are
13 substantial barriers to new entry in each relevant market.

14 246. Valve has willfully acquired and maintained monopoly power in the relevant
15 markets, by means of predatory, exclusionary, and anticompetitive conduct, including but not
16 limited to market-wide price controls, coercion of disloyal publishers, and de-facto tying, as
17 alleged herein.

18 247. Valve has coerced publishers into agreeing to offer prices at the same price across
19 all PC Desktop Game Distributors, regardless of whether competing distributors charge a lower
20 commission or otherwise charge lower prices than Valve.

21 248. Valve has coerced publishers into listing games at higher prices due to the need to
22 “discount” game prices in order to be discovered on Valve’s Steam Store.

23 249. Valve’s threats and coercion have impeded competitors’ ability to attract more
24 publishers and gamers to their PC Desktop Game storefronts.

25 250. Valve has coerced publishers into listing their games for higher prices market-wide,
26 else face exclusion from the Steam Store and Steam Gaming Platform.

1 271. Valve's threats and coercion have impeded competitors' ability to attract more
2 publishers and gamers to their PC Desktop Game Platforms.

3 272. Valve has coerced publishers into listing their games for higher prices market-wide,
4 even for versions of PC Desktop Games not enabled for the Steam Gaming Platform, else face
5 exclusion from the Steam Store and Steam Gaming Platform.

6 273. Valve's conduct is not justified, because its conduct does not enhance overall
7 efficiency or make the relevant markets more efficient.

8 274. Valve's conduct has had a substantial effect on interstate commerce.

9 275. Plaintiffs and all those in the Class have been or will be injured in their property as
10 a result of Valve's conduct.

11 276. Plaintiffs and all those in the Class have suffered and will suffer injury of the type
12 that the antitrust laws were intended to prevent. Plaintiffs have been and will be injured by the
13 harm to competition as a result of Valve's conduct.

14 **FOURTH CAUSE OF ACTION**

15 **Sherman Act Section 2—Attempted Monopolization of the PC Desktop Gaming Platform**
16 **Market (15 U.S.C. § 2)**

17 277. The foregoing paragraphs are incorporated by reference as though fully set forth
18 herein.

19 278. In the relevant market for PC Desktop Gaming Platforms, Valve has engaged in
20 predatory, exclusionary, and anticompetitive conduct, including but not limited to market-wide
21 price controls, coercion of disloyal publishers, as alleged herein.

22 279. Valve's conduct has had an anticompetitive effect in the relevant market for PC
23 Desktop Gaming Platforms.

24 280. Valve's conduct has no legitimate business purpose or procompetitive effect.

25 281. Valve has engaged in that conduct with the specific intent of monopolizing the
26 relevant market for PC Desktop Gaming.

27
28

1 **SIXTH CAUSE OF ACTION**

2 **Washington State Consumer Protection Act RCW 19.86**

3 294. The foregoing paragraphs are incorporated by reference as though fully set forth
4 herein.

5 295. The claims alleged above constitute unfair methods of competition under
6 Washington State law provisions 19.86.020, 19.86.040, and 19.86.030.

7 296. Valve is engaged in unfair and deceptive practices in commerce, which impact the
8 public interest and cause injury to business and property.

9 297. Valve's contracts, combinations, or conspiracies with game publishers are
10 anticompetitive restraints that have the purpose and effect of fixing and inflating prices in the
11 relevant markets.

12 298. The contracts, combinations, or conspiracies at issue are in restraint of trade.

13 299. Valve's monopolization and attempted monopolization have the purpose and effect
14 of fixing and inflating prices in the relevant markets.

15 300. As such, class members are entitled to damages and an injunction under Revised
16 Code of Washington 19.86.090.

17 **PRAYER FOR RELIEF**

18 *Wherefore, Plaintiffs request the following relief:*

19 (a) Injunctive relief benefiting the class and the public, including a permanent
20 injunction barring Valve's unlawful restraints;

21 (b) Damages in an amount to be determined;

22 (c) Treble damages;

23 (d) Attorneys' fees;

24 (e) Costs;

25 (f) Pre-judgment and post-judgment interest at the maximum rate permitted
26 under the law;

27 (g) Punitive damages; and
28

1 (h) Declaratory relief, including but not limited to a declaration and judgment
2 that Valve’s conduct alleged in the Complaint violates the laws alleged in the Complaint; and
3 Such other and further relief as the Court deems proper and just.

4 **JURY DEMAND**

5 Pursuant to Federal Rule of Civil Procedure 38, Plaintiffs, on behalf of themselves and the
6 proposed Class, demand a trial by jury on all issues so triable.

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1 DATED: April 27, 2021

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3 CONSTANTINE CANNON LLP

QUINN EMANUEL URQUHART &
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By /s/ Alicia Cobb

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Valve Has Come to 'Dominate' PC Gaming Market by Suppressing Competition, Antitrust Class Action Alleges](#)
