Case Nos. 21-16506 & 21-16695

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Epic Games, Inc.,
Plaintiff, Counter-defendant – Appellant, Cross-Appellee,

v.

Apple Inc.,
Defendant, Counterclaimant – Appellee, Cross-Appellant.

Appeal from the United States District Court
Northern District of California
The Honorable Yvonne Gonzalez Rogers, Presiding
Case No. 4:20-cv-05640-YGR-TSH

BRIEF OF AMICI CURIAE CHAMBER OF PROGRESS AND NETCHOICE IN SUPPORT OF REHEARING PETITION BY DEFENDANT, COUNTERCLAIMANT, AND CROSS-APPELLANT APPLE INC.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record states that, as nonprofit entities organized under § 501(c)(6) of the Internal Revenue Code, amici curiae Chamber of Progress and NetChoice L.L.C. have issued no stock. Consequently, no parent corporation nor any publicly held corporation could or does own 10% or more of their stock.

s/Steven A. Hirsch
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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

Federal Statutes

Miscellaneous

STATEMENT PURSUANT TO FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than the amici curiae, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

I. AMICI'S IDENTITIES, INTERESTS, AND AUTHORITY TO FILE THIS BRIEF

Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, to promote innovation and economic growth, and to empower technology customers and users. In keeping with that mission, Chamber of Progress believes that allowing a diverse range of app-store models and philosophies to flourish will benefit everyone—the consumer, the store owner, and application developers.

Chamber of Progress's work is supported by its corporate partners; but its partners do not sit on its board of directors and do not have a vote on, or veto over, its positions. Chamber of Progress does not speak for individual partner companies, and it remains true to its stated principles even when its partners disagree.[1]

[1] Chamber of Progress's partners include Airbnb, Amazon, Apple, Automattic, Chime, Circle, CLEAR, Coinbase, Creative Juice, Cruise,

NetChoice is a national trade association of online businesses that share the goal of promoting free enterprise and free expression on the internet. NetChoice's members operate a variety of popular websites, apps, and online services, including Meta (formerly Facebook), YouTube, and Etsy.[2] NetChoice's guiding principles are (1) promoting consumer choice, (2) continuing the successful policy of "light-touch" internet regulation, and (3) fostering online competition to provide consumers with an abundance of services.

Both amici are concerned that the panel's new "categorical legal bar" rule will render key evidence, precedents, and policies irrelevant when courts are trying to decide whether a UCL claim should survive after parallel antitrust claims have failed. In this case, for example, the new rule allowed a UCL claim and related injunction to survive without any regard for the procompetitive rationales that doomed the parallel antitrust claims. The new rule likewise enabled the panel to dismiss

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DoorDash, Earnin, Google, Grayscale, Grubhub, Heirloom Carbon, Instacart, itselectric, Lyft, Meta, Paradigm, Pindrop, Ripple, SmileDirectClub, StubHub, Turo, Uber, Waymo, Zillow, and Zoox.

[2] A list of NetChoice's members is available at https://netchoice.org/about/.

potentially relevant legal precedents and policies that could have usefully informed its decision.

By filing blanket consents, all parties have granted Chamber of Progress and NetChoice permission to file this amicus brief. *See* Fed. R. App. P. 29(a); Circuit Advisory Committee Note to Rule 29-3.

II. INTRODUCTION[3]

Apple's rehearing petition demonstrates that the panel created a new legal rule that contravenes both Circuit and California precedent. Under that rule, "a UCL claim is not barred where the parallel antitrust claim fails on *evidentiary* (as distinguished from *legal*) grounds."[4]

This rule places a novel federal restriction on California's *Chavez* doctrine, which provides that a UCL "unfairness" claim fails when a parallel antitrust claim was rejected because the challenged conduct was found ***not*** to be an unreasonable restraint of trade.[5] The doctrine's

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[3] Throughout this brief, unless otherwise indicated, italics were added to quotations, while internal brackets, ellipses, quotation marks, citations, footnotes, and the like were omitted from them.

[4] Apple Inc.'s Petition for Panel Rehearing or Rehearing En Banc at p. 2.

[5] *See Chavez v. Whirlpool Corp.*, 93 Cal. App. 4th 363, 375 (2001).

common-sense rationale is that a business practice cannot be both reasonable and unfair.[6] But the panel lost sight of that rationale when it held that the *Chavez* doctrine applies only where the parallel antitrust claims failed due to the application of a "*categorical legal bar*" to antitrust liability—that is, due to a legal "safe harbor"—as opposed to a "*proof deficiency*" that left the plaintiff unable to establish an unreasonable restraint of trade under the antitrust laws. *Epic Games, Inc. v. Apple, Inc.,* --- F.4th ----, Nos. 21-16506 & 21-16695, 2023 WL 3050076, at *33 (9th Cir. Apr. 24, 2023) [hereinafter *Epic*].

Amici concur in Apple's objections to the panel's new categorical-legal-bar rule. We write to add that in many cases, the new rule will effectively negate the key evidence, precedents, and policies that doomed the plaintiff's parallel antitrust claims and that likewise should inform the decision whether the plaintiff's UCL claim therefore also must fail. *See* Part III.A., below.

Evidentiary negation. In this case, the evidence effectively negated by the new rule proved that there were strong procompetitive rationales for Apple's anti-steering provision, which bars apps that

[6] *See id.* at 374.

route users to sites outside the App Store's "walled garden"[7] when making in-app purchases.[8] The anti-steering provision thus provides direct support for two App Store rules that were found to be procompetitive and that are critical to Apple's "walled garden" approach to hosting app sales: the rule that in-app purchases can be made only through Apple's in-app payment processor ("the IAP restriction"); and the rule that apps can be distributed to iOS devices only through the App Store ("the distribution restriction"). The district court found that the procompetitive rationales offered for Apple's anti-steering provision were "coextensive" with the ones that Apple had successfully invoked to justify its IAP and distribution restrictions under the Sherman Act Rule of Reason.[9] *See* Part III.B., below. But the panel's new rule effectively

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[7] Amici do not mean to suggest that Apple's comparatively restrictive "walled garden" approach is the only safe or desirable one—only that Apple should be free to differentiate its store from others by promising enhanced security and privacy, and that consumers should be free to choose between competing app store models (as Chamber of Progress argued in the merits-phase amicus brief that it submitted in this matter. *See* DktEntry 105).

[8] This restriction, set forth in Guideline 3.1.1, is the only remaining anti-steering provision challenged by Epic and thus the only one subject to the district court's UCL-based injunction.

[9] *See Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1013 (N.D. Cal. 2021) (referring back to procompetitive rationales summarized in

negated that same evidence in the context of adjudicating Epic's parallel UCL claim. This was not merely error, but the inauguration of a new legal framework that guarantees future error.

Here, evidence of the anti-steering provision's procompetitive rationales was both abundant and vital to the proper adjudication of Epic's flawed UCL claim. *See* Part III.B., below. Besides device security and privacy, those rationales included protecting app users from dangerous frauds, such as the financial exploitation of minors through unsupervised in-app-purchases that use third-party payment-processing mechanisms. Negating that evidence in the UCL context not only resulted in the wrong result here, but also makes the public worse off by improperly labeling commercial practices "unfair," and thus violative of the UCL, when they are in fact procompetitive.

Legal negation. The panel's new "categorical-legal-bar" rule not only negates consideration of relevant *evidence* of procompetitive rationales but also relevant *legal precedents and policies* bearing on the legality of anti-steering provisions. *See* Part III.C., below. There is no

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Facts, Part V.A. of the opinion); *id*. at 1002 (Facts, Part V.A.2., summarizing Apple's "business justifications for its app distribution restrictions").

logical way that the U.S. Supreme Court's decision upholding a credit-card anti-steering policy in *Ohio v. American Express Co.*[10] can be simply brushed aside as categorically irrelevant to Epic's UCL anti-steering claim in this case—yet that is what the panel did here, chiefly because *Amex* did not announce a "blanket approval" of anti-steering provisions. *Epic*, 2023 WL 3050076, at *33. The categorical-legal-bar rule also forecloses any consideration of whether a court's forcing Apple to host links and invitations to competing (but potentially less-safe and less-secure) payment processors constitutes "unjustified and unduly burdensome" compelled speech in violation of the First Amendment.[11]

As organizations dedicated to promoting the well-informed and competition-enhancing regulation of online commerce, amici urge reconsideration of a legal rule that effectively blinds courts to some of the most important public-policy issues and precedents implicated by parallel UCL claims. For these reasons, as set forth in more detail below, the Court should grant the en banc review requested by Apple.

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[10] 138 S. Ct. 2274 (2018).

[11] *See Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372 (2018).

III. ARGUMENT

A. The panel's new "categorical legal bar" rule effectively negates evidence of procompetitive rationales when courts are deciding the fate of a parallel UCL claim.

As nonprofits concerned about the sound regulation of internet commerce, amici urge reconsideration of the panel's new "categorical legal bar" rule, which renders critical public-policy concerns irrelevant when adjudicating parallel UCL claims. And that is consequential, because a court's acceptance of a flawed UCL claim can wreak as much harm on a business and on the public interest as its acceptance of a flawed antitrust claim.

The public-policy concerns to which amici refer form an integral part of antitrust analysis whenever courts applying the Sherman Act Rule of Reason consider evidence of the "procompetitive rationales" for the defendant's conduct.[12] Those rationales bear directly on the second and third steps of the Rule of Reason analysis, which require the defendant to prove a "procompetitive rationale" for a restraint of trade

[12] A procompetitive rationale is "a [1] nonpretextual claim that the defendant's conduct is [2] indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal." *Epic*, 2023 WL 3050076, at *20 (brackets added by Court).

and then, if the defendant carries that burden, require the plaintiff to prove that the procompetitive efficiencies could be reasonably achieved through less-anticompetitive means. *See Ohio v. American Express Co.*, 138 S. Ct. 2274, 2284 (2018) [hereinafter "*Amex*"].

Just as the second and third steps of the Sherman Act Rule of Reason analysis hinge on evidence about the defendant's procompetitive rationales, so, too, may the "tethering" and "balancing" tests used in UCL competition cases. Logically, the same evidence of procompetitive rationales that matters in the Sherman Act Rule of Reason context ought to matter as well when determining whether, under the UCL's "tethering" test, the challenged conduct (1) threatens an incipient violation of the antitrust laws, (2) has competitive effects comparable to a violation of those laws, or (3) significantly threatens or harms competition. *See Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187 (1999). Likewise, the same procompetitive-rationales evidence that matters in the Sherman Act Rule of Reason context ought to matter when determining whether, under the UCL's "balancing" test, the defendant's procompetitive "reasons, justifications and motives" outweigh the alleged victim impact. *See Nationwide*

Biweekly Admin., Inc. v. Superior Court, 9 Cal. 5th 279, 303 n.10 (2020). The UCL's general purposes likewise demonstrate a concern with procompetitive rationales: The UCL "governs anti-competitive business practices as well as injuries to consumers, and has as a major purpose the preservation of fair business competition." *Cel-Tech,* 20 Cal. 4th at 180; *accord Walker v. Countrywide Home Loans, Inc.*, 98 Cal. App. 4th 1158, 1169 (2002).

Yet the panel's new rule abandons all interest in procompetitive-rationales evidence when it comes to determining the viability of parallel UCL claims. As Apple's PFR demonstrates, the new rule jettisons any consideration of procompetitive rationales in favor of a categorical approach that asks only whether the challenged conduct falls within a safe harbor established in antitrust law.

As discussed below, applying the categorical-legal-bar rule in this case effectively negated a substantial body of procompetitive-rationales evidence bearing on the viability of Epic's UCL claim.

B. In this case, the new rule effectively negated key evidence that Apple's anti-steering provision protects consumers from pernicious and deceptive off-app services and content.

At trial, Apple submitted substantial evidence of the pro-competitive rationales for its walled-garden approach to hosting third-party apps. The district court cited to a number of those rationales in the second and third steps of its Rule of Reason analysis. Among other things, the court found that Apple implemented its various "walled garden" policies "to improve device security and user privacy—thereby enhancing consumer appeal and differentiating iOS devices and the App Store from those products' respective competitors." *Epic*, 2023 WL 3050076, at at *20. And on appeal, the panel agreed that, "throughout the record, Apple ma[de] clear that by improving security and privacy features, it is tapping into consumer demand and differentiating its products from those of its competitors—goals that are plainly procompetitive rationales." *Id.* at *21.

The two "walled garden" policies challenged by Epic are Apple's rules that (1) in-app purchases on iOS devices must use Apple's in-app payment processor, or "IAP" ("the IAP restriction") and (2) apps may be distributed to iOS devices exclusively through Apple's App Store ("the

distribution restriction"). As the district court correctly discerned, the procompetitive rationales offered for those practices and the procompetitive rationales offered for its anti-steering provision are "coextensive"[13]—because *without the anti-steering provision, there can be no "walled garden*."

Metaphorically, the anti-steering provision in App Guideline 3.1.1 prohibits app developers from installing their own exit doors and escape hatches in the "wall" that Apple's IAP and distribution restrictions have erected around the App Store's garden. The anti-steering provision thus preserves the wall's integrity by banning from the App Store any app featuring "buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase." 559 F. Supp. 3d at 944 n.191. Without the anti-steering provision, there would be no "wall" to speak of because consumers could be lured outside the wall to make their in-app purchases, effectively defeating the IAP restriction as well as the relatively stringent app-review procedures that the distribution restriction enables.[14] As Apple's Senior Director of

[13] *See Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 1013 (N.D. Cal. 2021).

[14] Although the anti-steering provision relates more directly to the IAP

App Review put it, "[w]hen users utilize external payment links, they are thus no longer utilizing a payment mechanism that Apple secures, verifies, and protects from fraud."[15]

Accordingly, the procompetitive rationales that justify Apple's IAP and distribution restrictions likewise justify the anti-steering provision. Those rationales include Apple's contention that "prohibitions on third-party app stores helps ensure a safe and secure ecosystem," which in turn "benefits both users, who enjoy stronger security and privacy, and developers, who benefit from a larger audience drawn by these features." 559 F. Supp. 3d at 1002. More specifically, the district court found that the challenged practices further security in the "broad" sense of enhancing privacy, quality, and trustworthiness, *id.* at 1006–07, and in the "narrow" sense of thwarting social-engineering attacks that

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restriction than to the distribution restriction, what's at issue here are the procompetitive rationales for "Apple's design of the [entire] iOS ecosystem." *Epic*, 2023 WL 3050076, at *27. As the district court noted, "[b]ecause Apple has created an ecosystem with interlocking rules and regulations, it is difficult to evaluate any specific restriction in isolation or in a vacuum." 559 F. Supp. 3d at 1013. Because the anti-steering provision represents a critical component of that ecosystem, it effectively supports the distribution restriction as well.

[15] SER-214 ¶ 15.

evade a mobile device's operating-system defenses by tricking users into granting access, *id.* at 1003–05.[16] The appellate panel largely accepted these safety-and-security rationales in affirming the district court's rejection of Epic's Sherman Act claims.

Those same rationales, as a matter of logic and common sense, should have played *some* role—possibly a decisive one—in determining whether Epic's claim that Apple's anti-steering provision violates the UCL could survive after Epic failed to prove an unreasonable restraint of trade under the antitrust laws. But the panel's new categorical-legal-bar rule effectively negated Apple's evidence of procompetitive rationales, distorting the panel's analysis and likely altering its ultimate decision.

Absent the new rule, applying the traditional *Chavez* doctrine would have automatically resulted in granting full weight to a substantial body of evidence bearing on the procompetitive rationales for Apple's anti-steering provision. As Apple pointed out to the district court, Guideline 3.1.1 has formed one of the backbones of the App

[16] The district court also "*partially* accepted Apple's argument that it implemented the restrictions to be compensated for its IP investment." *Epic*, 2023 WL 3050076, at *20 (emphasis in original).

Store's protections and has been critical to Apple's ability to offer a curated app-store environment.[17] Guideline 3.1.1 enables Apple to ensure that users who purchase digital goods or services in an app receive what they paid for, on the actual terms that they were informed of and agreed to, and that the payment will occur in a secure manner, protected against fraud and theft of their personal information.[18] In combination with Apple's IAP restriction, Guideline 3.1.1 equalizes the playing field for every user and every developer, so that every user knows that any IAP purchase from any developer's app available in the App Store will occur in a safe and verified manner.[19] By contrast, steering consumers to external payment mechanisms exposes them much more frequently to the risks of external payment links and consequently undermines user confidence in the safety, security, and reliability of digital content purchases and mechanisms.[20]

By preventing end-runs around Apple's IAP restriction, Guideline 3.1.1 also makes it possible for the App Store to effectively deploy a

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[17] SER-212 ¶ 11.

[18] SER-212 ¶ 11.

[19] SER-212 ¶ 11.

[20] SER-214 ¶ 16.

"content check" feature that protects users against unintended or fraudulent purchases and an "ask to buy" feature that allows parents to approve or block a child's in-app purchases.[21] The latter feature, in particular, comports with the growing public concern—reflected in recent legislation[22]—over children's online safety and privacy.

Yet the panel effectively negated all this evidence when it upheld the district court's ruling that the anti-steering provision violates the UCL. *See Epic*, 2023 WL 3050076, at *31–33. It is as though the antitrust analysis occurred in a different legal universe than the one in which the UCL analysis took place, making it impossible for key facts to

[21] SER-212–213 ¶ 12.

[22] For example, the recently enacted California Age-Appropriate Design Code Act (AB 2233) will require online businesses that are likely to be accessed by children to comply with numerous requirements, most of which involve safeguarding children's data privacy. *See also* Utah's S.B. 152 ("Social Media Regulation Amendments Bill"), https://le.utah.gov/~2023/bills/static/SB0152.html, and Connecticut's S.B. 3 ("An Act Concerning Online Privacy, Data and Safety Protections"), https://www.cga.ct.gov/asp/CGABillStatus/cgabillstatus.asp?selBillType=Bill&bill_num=SB3. Amici have criticized certain aspects of these bills and mention them here only to show that Apple's "ask to buy" feature accords with the zeitgeist.

travel from one realm to the other. What split the antitrust and UCL realms apart was, of course, the categorical-legal-bar rule.

C. The panel's new rule also effectively negates precedents and policies bearing on whether a UCL claim can survive the failure of a parallel antitrust claim.

The panel's categorical-legal-bar rule also effectively negates precedents and policies that should inform the analysis of parallel UCL claims. In so doing, the new rule again makes it difficult or impossible to bring important policy concerns to bear on the question whether a UCL claim can survive the failure of a parallel antitrust claim.

In the district court and in this Court, for example, Apple argued that the U.S. Supreme Court's *Amex* decision precluded UCL liability here. *See Epic*, 2023 WL 3050076, at *33. There were many reasons why this argument deserved at least serious consideration. Like this case, *Amex* concerned the legality and competitive effects of an anti-steering policy implemented by a two-sided transaction platform. *Amex*, 138 S. Ct. at 2285–87. The decision explained in broadly applicable terms the unique economics of such platforms, elucidating general principles that, on their face, appear at least potentially relevant here.

Id.[23] And the Supreme Court concluded that, far from having anticompetitive effects, Amex's business model, including its anti-steering policy, had "spurred robust interbrand competition" and "had increased the quality and quantity of [the relevant] transactions," which is, "after all, . . . the primary purpose of the antitrust laws." *Id.* at 2290.

But the panel's categorical-legal-bar rule allowed it—indeed, required it—to brush *Amex* aside with little or no analysis. In the panel's view, the *Amex* argument failed because Apple could not "explain how *Amex*'s fact-and-market-specific application of the first prong of the Rule of Reason establishes a *categorical rule approving anti-steering provisions*, much less one that sweeps beyond the Sherman Act to reach the UCL." *Epic*, 2023 WL 3050076, at *33. Thus, the panel found *Amex* irrelevant mainly because it did not announce a "*blanket approval*" of anti-steering provisions. *Id.*

Our point here is not to argue that *Amex*, a Sherman Act case, necessarily dictated the fate of Epic's UCL claim, or that no conceivable basis existed for distinguishing *Amex* on its facts. Our point, rather, is

[23] *Cf.* DX-3120.003–.005 (Apple expert report explaining how App Store functions as two-sided transaction platform).

that the categorical-legal-bar rule effectively supplanted any serious discussion of those questions—to the detriment of sound decision-making informed by relevant precedent, economic principles, and business realities. Whatever *Amex* could have taught us about the competitive effects of anti-steering policies implemented by two-sided transaction platforms was lost—never brought to bear on a case that was at least plausibly similar. Even a decision explaining why *Amex* is *distinguishable* would have provided more useful guidance to lower courts and to the public than a decision wielding the comparatively blunt instrument of a previously nonexistent categorical rule.

Another legal issue that the categorical-legal-bar rule would foreclose is whether forcing Apple to host links to non-IAP payment methods on its App Store constitutes a form of "compelled speech" that violates the First Amendment. Apple did not brief this theory on appeal—but if it had, the categorical-legal-bar rule would have eliminated it from consideration. Presumably the rule will have a similar analysis-truncating effect in future cases.

To be sure, laws compelling the disclosure of "purely factual and uncontroversial information about the terms under which services will

be available . . . should be upheld" unless "unjustified or unduly burdensome." *Nat'l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2372 (2018). But if *this* case doesn't present an instance of "unjustified and unduly burdensome" compelled commercial speech, it's hard to imagine one that would. It is indeed unjustified and unduly burdensome to require a business to host a link to a competing service when use of that service has the potential to undermine the safety and privacy measures for which the hosting business is known and by which it differentiates its product and justifies its higher commissions. Indeed, such a requirement appears to be unprecedented. It's like requiring Volvo—a luxury-car company that touts the safety of its cars[24]—to post ads inside its cars for the economical Ford Fiesta, a car reputed (fairly or unfairly) to be among the *least* safe,[25] on the theory that omitting

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[24] *See* Volvo, "What If Feeling Safe Can Make You Feel Truly Free," https://www.volvocars.com/us/for-life/?gclid=CjwKCAjwkLCkBhA9EiwAka9QRsBZHvY_25eD3neOEPKPS9rUqD-YoZxBAI1fr-PhxfDfkg51SauWBRoCXIAQAvD_BwE&gclsrc=aw.ds.

[25] *See, e.g.,* Harding Mazzotti LLP, "Car Safety: Which Cars are the Safest, & Which Cars are the Least Safe?" https://www.1800law1010.com/blog/car-safety-which-cars-are-the-safest-which-cars-are-the-least-safe/#:~:text=The%20least%20safe%20car%2C%20according,%2C%20a%20four%2Ddoor%20minicar; https://www.dlawgroup.com/top-safest-

mention of the cheaper but less-safe product "decrease[s] consumer information" and "enabl[es] supracompetitive profits." *Epic*, 2023 WL 3050076, at *32. Safety considerations aside, requiring *any* business to advertise or facilitate access to its competitors' products seems unprecedented. To use another analogy: It's like forcing all of Disneyland's restaurants to display QR codes guiding visitors to Uber Eats alternatives available for pickup just outside the park, thus reducing Disney's control over park visitors' food experience.

In sum: The panel's categorical-legal-bar rule has the effect of placing blinders on a court—occluding its view of important evidence, precedents, and policies—when deciding the important question whether a UCL claim can survive the failure of a parallel antitrust claim. For all these reasons, the en banc court should review the panel decision and reject its new rule.

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most-dangerous-cars-2022/#sec2.

IV. CONCLUSION

For all the reasons stated above and in Apple's rehearing petition, the panel's decision should be reheard by the en banc Court insofar as the decision affirmed the UCL judgment and injunction.

Respectfully submitted,

DATED: June 20, 2023

s/ Steven A. Hirsch

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UNITED STATES COURT OF APPEALS
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Signature s/Steven H. Hirsch **Date** June 20, 2023
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **BRIEF OF AMICI CURIAE CHAMBER OF PROGRESS AND NETCHOICE IN SUPPORT OF REHEARING PETITION BY DEFENDANT, COUNTERCLAIMANT, AND CROSS-APPELLANT APPLE INC.** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 31, 2022. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

DATED: June 20, 2023

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