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Attorneys for Defendant APPLE INC.

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15 UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
17 OAKLAND DIVISION  
18

19 EPIC GAMES, INC.,

Plaintiff, Counter-  
defendant

20 v.

21 APPLE INC.,

22 Defendant,  
23 Counterclaimant.  
24

Case No. 4:20-cv-05640-YGR-TSH

**NOTICE OF FILING OF DEFENDANT  
APPLE INC.'S DEPOSITION  
DESIGNATIONS**

1 PLEASE TAKE NOTICE that Apple Inc. filed the following deposition designations this  
2 morning pursuant to Pretrial Order No. 2:

- 3 1. Joe Babcock
- 4 2. Joe Kreiner
- 5 3. Haseeb Malik
- 6 4. David Nikdel
- 7 5. Nicholas Penwarden
- 8 6. Mark Rein
- 9 7. Alec Shobin
- 10 8. Daniel Vogel

11 Dated: April 27, 2021

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

12 By: /s/ Rachel S. Brass  
13 Rachel S. Brass

14 Attorney for Defendant Apple Inc.  
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Apple Inc.'s Deposition Designations

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8. Vogel, Daniel .....	309

**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Joe Babcock  
(February 12, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
16 minutes 36 seconds	36 seconds

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 OAKLAND DIVISION  
4

5 EPIC GAMES, INC., )  
6 ) CASE NO.  
7 PLAINTIFF, COUNTER-DEFENDANT, ) 4:20-CV-05640-YGR  
8 )  
9 VS. )  
10 )  
11 APPLE INC., )  
12 )  
13 DEFENDANT, COUNTERCLAIMANT. )  
14 \_\_\_\_\_ )  
15 )  
16 IN RE APPLE IPHONE ANTITRUST ) CASE NO.  
17 LITIGATION ) 4:11-CV-06714-YGR  
18 \_\_\_\_\_ )  
19 )

20 --- CAPTION CONTINUED ON FOLLOWING PAGE ---

21 \*\*\* HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER \*\*\*

22 REMOTE PROCEEDINGS OF THE  
23 VIDEOTAPED DEPOSITION OF JOE BABCOCK  
24 FRIDAY, FEBRUARY 12, 2021

25 JOB NO. 4453692  
REPORTED BY KIMBERLY EDELEN,  
CSR. NO. 9042, CRR, RPR.  
PAGES 1 - 241

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THE REPORTER: Mr. Babcock, could you raise  
your right hand, please.

You do solemnly swear that the testimony  
you're about to give shall be the truth, the whole  
truth and nothing but the truth?

THE WITNESS: Yes.

EXAMINATION

Q Good morning, Mr. Babcock. Can you please  
state and spell your name for the record.

A Sure. It's Joe Babcock, J-o-e,  
B-a-b-c-o-c-k.

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Q You worked at Epic until March 2020? 09:20:56

A That's correct. 09:20:59

Q What was your position? 09:21:00

A Chief financial officer. 09:21:03

Q How long had you held that position? 09:21:06

A Boy, probably ten years in that role. 09:21:11

There was a point where I came on as the title of 09:21:19

controller. There wasn't a CFO at the time, and 09:21:22

then I was promoted into that role roughly ten years 09:21:25

ago. 09:21:29

Q And when did you join as controller? 09:21:29

A 2006. 09:21:31

Q So from approximately 2006 until 09:21:34

approximately 2010, you served as controller? 09:21:38

A That's about right, yes. 09:21:41

Q And then you were promoted into the 09:21:43

position of CFO; is that correct? 09:21:45

A Correct. 09:21:47

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Q Please tell me what your job responsibilities were at Epic. 09:22:14  
09:22:16

A Sure. I oversaw all aspects of the financial operations of the company and some administrative functions. 09:22:19  
09:22:24  
09:22:27

Q When you say "finance," what do you mean by 09:23:00



1 that? 09:23:05

2 A I mean aspects of creating financial 09:23:05

3 presentations for the board of directors or managing 09:23:09

4 that process, managing the accounting and overall 09:23:12

5 kind of bookkeeping and payroll of the company, you 09:23:16

6 know, completion of the annual audit, things like 09:23:22

7 that. 09:23:24

8 Q Taxes? 09:23:28

9 A Taxes, yes. 09:23:29

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Do you remember specifically when in

09:25:16

January 2020 you announced your retirement?

09:25:17

A I had a conversation with Tim probably

09:25:21

the -- maybe the second week in January. I'm not

09:25:22

exactly sure of the date.

09:25:30

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Q Okay. And who replaced you as CFO? 09:28:47

A A gentleman named Randy Gelber. 09:29:02

Q And did he come from within the company or  
was he an external hire? 09:29:09  
09:29:12

A He did. Well, he was an external hire  
about a year prior to my leaving and was brought in  
the role of, I believe, it was director or maybe VP  
of business development. 09:29:16  
09:29:19  
09:29:21  
09:29:28

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Q In September 2019, was the trend for revenues related to Fortnite a declining trend over the course of 2019?

A I don't have that information available. But I -- my guess is that it probably -- probably was in a total basis. But, you know, what you need to kind of understand about how these games work is that they all have a launch period that is usually -- there's a ton of excitement and virality around the game, and that may spike.

And then the goal of a company like ours is

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1 to make sure that we, kind of, try to flatten that 11:57:27  
2 tail out. You know, there will be a tail over time. 11:57:30  
3 You know, a movie kind of goes up and 11:57:33  
4 straight down from a loss in DVD sales. But a 11:57:37  
5 video game -- if you can, in a live-feed video game 11:57:40  
6 like this, you can try to maintain that tail as long 11:57:42  
7 as possible. And that's kind of what's going on 11:57:44  
8 here. 11:57:48  
9 So I think that's what David's referring 11:57:49  
10 to. I mean, you can't always expect this enormous 11:57:52  
11 growth curve. You need to be real. And so we 11:57:55  
12 should be thinking about a declining revenue state 11:58:01  
13 going forward. But this wasn't raising red flags or 11:58:04  
14 anything. 11:58:10

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Q Okay. If we wanted to calculate the gross profit margin for Fortnite alone in 2018, could we do that? 13:40:19  
13:40:26  
13:40:30  
A Gross profit margin for Fortnite in 2018. 13:40:35  
Are you defining gross profit margin as just the gross revenue less the direct costs associated with it? 13:40:37  
13:40:46  
13:40:49  
Q Well, if you were going to do it, what 13:40:51

HIGHLY CONFIDENTIAL

1 would you include as input? 13:40:53

2 A Well, I think when people ask for a margin 13:40:57

3 related to a product line, a lot of times they're 13:41:00

4 looking for it to be -- like what's termed as "fully 13:41:03

5 loaded," which means, you know, there's people 13:41:07

6 costs, development costs, like the ongoing costs in 13:41:09

7 there. 13:41:14

8 And Epic systems aren't created or 13:41:15

9 maintained to do that. So when somebody says like, 13:41:18

10 Hey, give me a format P&L, like that's extremely 13:41:22

11 difficult. You can't really put that together for 13:41:27

12 Fortnite itself because of our financial systems. 13:41:30

13 But if you were saying just the gross 13:41:34

14 revenue less some of those direct costs, like we saw 13:41:35

15 before, including costs of sales, I think that's -- 13:41:38

16 that's probably possible. 13:41:40

17 Q But you didn't create -- you didn't 13:41:43

18 maintain a Fortnite specific P&L? 13:41:45

19 A No. 13:41:47

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(Deposition Exhibit 351

13:44:34

was marked for identification.)

13:44:34

BY MS. BRASS:

13:45:07

Q And Exhibit 351 is numbered EPIC\_04537390

13:45:07

to 4537404.

13:45:13

Q Do you recognize Exhibit 351?

13:47:40

A I do.

13:47:43



1 So is this something that you prepared or 13:48:14

2 that was prepared at your direction? 13:48:16

3 A I participated in the preparation of it 13:48:20

4 with Randy Gelber. 13:48:22

5 Q Is it accurate, to the best of your 13:48:30

6 understanding? 13:48:32

7 A Well, to the -- 13:48:32

8

9 THE WITNESS: -- best of my knowledge, yes. 13:48:38

10

11 Q And it was prepared by the finance 13:48:40

12 department during the period of the transition of 13:48:42

13 CFO from you to Randy; is that correct? 13:48:43

14 A It was prepared by -- as I mentioned, a 13:48:46

15 joint effort between the finance department and the 13:48:50

16 corporate development department. 13:48:52

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In the projections, you are projecting the

13:51:15

cost of the Epic Games Store here to continue to

13:51:20

exceed the revenue generated by the Epic Games

13:51:24

Store; is that correct?

13:51:27

A That's correct.

13:51:34

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1 Q And the costs will exceed revenue as 13:51:36

2 projected by approximately \$216 million? 13:51:40

3 A That's correct. 13:51:48

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12 Q And we talked about that you did not track 13:52:23

13 or forecast profit margin by a specific product. 13:52:26

14 Did you track profit margin across 13:52:36

15 different platforms? 13:52:39

16 A No. 13:52:42

17 Q Did you track expenses across different 13:52:45

18 platforms? 13:52:47

19 A No. 13:52:49

20 Q Did you track development costs by 13:52:51

21 platform? 13:52:54

22 A No. 13:52:56

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Q We looked earlier today at some of your

14:58:08

25

monthly flash reports.

14:58:10

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HIGHLY CONFIDENTIAL

1 Do you remember seeing those? 14:58:12

2 A We do. I do. 14:58:14

3 Q Okay. And they described your revenue by 14:58:15

4 platform in a given month for Fortnite. 14:58:21

5 Do you remember that? 14:58:25

6 A Uh-huh. I do. 14:58:26

7 Q And PlayStation 4 was the largest 14:58:29

8 revenue-generating platform in each of the flash 14:58:33

9 reports we looked at, correct? 14:58:38

10 A In the ones we looked at today, yes. 14:58:42

11 Q Yeah. 14:58:44

12 And iOS was the lowest or the second 14:58:47

13 lowest -- if Android was listed, Android was lower 14:58:52

14 than iOS, but of the platforms listed for Fortnite, 14:58:57

15 iOS was always the lowest or the second lowest if 14:59:00

16 Android was listed, correct? 14:59:03

17 A Yes. 14:59:05

18 Q So it generated less revenue than 14:59:05

19 PlayStation 4, correct? 14:59:10

20 A Correct. 14:59:11

21 Q Less revenue than the Xbox? 14:59:14

22 A Yes. 14:59:17

23 Q Less revenue than Switch? 14:59:19

24 A Yes. 14:59:23

25 Q And less revenue than PCs? 14:59:24

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Q And can you describe for me, in your own words, the Unreal Engine business model?

A You know, the Unreal Engine business model is it provides the most compelling technology to game developers and content developers to offer experiences to their consumers.

And, you know, I think one of the differentiating models is -- for that, is that we said we weren't going to monetize on, you know, an ad basis or anything like that. We said -- or a pay-to-play, kind of, license basis. But we -- I think Tim has always said, Hey, you only pay us if

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1 you succeed, so we succeed when you succeed, and we 15:08:40

2 want to help you get there. 15:08:44

3 That's kind of the underlying ethos of the 15:08:46

4 business model for the engine. 15:08:50

5 So it would be -- for most game developers, 15:08:59

6 it's free. They're able to build a game with it for 15:09:02

7 free. And then if they sell a product down the 15:09:05

8 road, they would owe us a royalty. So if they 15:09:07

9 succeed, we can participate in that success. 15:09:10

10 MS. BRASS: Zac, can you please load the 15:09:26

11 next exhibit. 15:09:28

12 (Deposition Exhibit 358 15:09:29

13 was marked for identification.) 15:09:29

14 MS. BRASS: And it should be Exhibit 358, 15:09:51

15 which begins on EPIC\_04462249 and ends on 15:09:53

16 EPIC\_04462269. 15:10:06

17 THE WITNESS: Okay. 15:10:36

18 BY MS. BRASS: 15:10:36

19 Q And what is Exhibit 358? 15:10:37

20 A It looks like it's the Unreal Engine EULA, 15:10:41

21 end user license agreement. 15:10:48

22 Q Okay. And this is signed or agreed to by 15:10:49

23 people who want to use Unreal Engine, including 15:10:52

24 those who are going to use it only for free; is that 15:10:55

25 correct? 15:10:57

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Q When you were CFO, did Epic Games calculate gross margins on the Unreal Engine? 15:13:15

A No. 15:13:24

MS. BRASS: Zac, can we please load Exhibit 359, which is EPIC\_04540976 through 0979. 15:13:29

(Deposition Exhibit 359 was marked for identification.) 15:13:49

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As you said, this is an e-mail you're 15:15:26  
copied on between the bankers and Dara dated -- the 15:15:28  
final e-mail from Dara is February 19, 2020. The 15:15:36  
bankers, that's Raine and Credit Suisse; is that 15:15:39  
correct? 15:15:46

A Yes. 15:15:47

Q And that's in connection with the 15:15:48  
fundraising project that you described earlier; is 15:15:49  
that correct? 15:15:51

A Yes. E2. 15:15:51

Q And is E2 and Project Empire, are they the 15:15:55  
same thing? 15:15:58

A Yes, I think so. 15:15:59

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Q And do you agree with her statement that 15:19:00  
the engine business is 100 percent gross margin? 15:19:01  
A No, not necessarily. I would ask where 15:19:07  
the -- are there any hosting costs in here, and -- 15:19:08  
you know, it's a pretty broad estimate. But there's 15:19:13  
not a whole lot of direct costs like there are -- 15:19:22  
like if you're comparing it to something like 15:19:24  
Fortnite, there's really not a whole lot of direct 15:19:26  
costs, other than deploying it under CDN. 15:19:31

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MS. BRASS: Zac, can you mark Exhibit 360, 15:23:36

please. 15:23:39

(Deposition Exhibit 360 15:23:39

was marked for identification.) 15:23:39

MS. BRASS: For the record, this is 15:25:00

EPIC\_00143735. 15:25:02

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Q Okay. Is this document in a format of the kind that you saw in the course of your work as CFO at Epic?

15:25:57  
15:25:59  
15:26:04  
15:26:05

A Yes.

And would you have endeavored to make them accurate at the time of creation?

15:26:30  
15:26:34  
15:26:37

A Yes.

Q And this was something created for and used

15:26:56

1 by members in the finance organization; is that 15:26:58  
2 correct? 15:27:02  
3 A Yes. 15:27:03  
4  
5 Justin, can you please load Exhibit 361. 15:27:11  
6 (Deposition Exhibit 361 15:27:15  
7 was marked for identification.) 15:27:15  
8  
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14 Q Is this document familiar to you either in 15:28:06  
15 form or in content? 15:28:09  
16 A In context it is. I just -- you know, both 15:28:14  
17 of the last two documents you showed me are 15:28:22  
18 extraordinarily early on in the Fortnite forecasting 15:28:25  
19 process, so it's a bit fuzzy. And we were 15:28:33  
20 struggling to forecast back then. We didn't know 15:28:38  
21 exactly what -- what we were dealing with. 15:28:42  
22 Q Do you -- 15:28:54  
23 A As I referenced before, I said to you, in 15:28:56  
24 2018, we had no idea how up or down 2020 would look. 15:28:58  
25 As evidenced by these two forecasts that 15:29:03

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1 we're seeing just several months apart, it was just 15:29:07  
2 extraordinarily difficult to try to forecast this 15:29:10  
3 game, as it was taking off like it was. From our 15:29:13  
4 perspective, it was some wild growth. 15:29:17

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10 Q And do you understand this to be a forecast 15:29:47  
11 or a P&L for the conclusion of Q1 2018? 15:29:50

12 A It's -- it's very difficult to tell here. 15:30:04  
13 I can tell you about what I'm seeing in Columns J, K 15:30:12  
14 and L. This is a very rough -- this is not a 15:30:15  
15 finished product. And I'm not sure if this is 15:30:18  
16 actuals or a forecast at this moment. 15:30:27

17 Q Sitting here today, you can't remember one 15:30:30  
18 way or another; is that correct? 15:30:33

19 A No, I can't. 15:30:34

20 Q And this was created, however, by the 15:30:37  
21 finance organization, by you and your reports; is 15:30:39  
22 that correct? 15:30:46

23 A Probably accumulated by, but -- you know, 15:30:48  
24 for example, my reports and I -- like we don't have 15:30:52  
25 direct access -- or did I? -- I guess, at this time, 15:30:58

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HIGHLY CONFIDENTIAL

1 probably to systems that would have shown us things 15:31:01  
2 like average hours played per MAU. That all comes 15:31:03  
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13 Zac, can we please load Exhibit 362. And 15:31:40  
14 that is a presentation labeled EPIC\_00191127 through 15:31:47  
15 191131. 15:31:57  
16 (Deposition Exhibit 362 15:31:59  
17 was marked for identification.) 15:31:59  
18  
19 BY MS. BRASS: 15:33:18  
20 Q Do you recognize this document, 15:33:19  
21 Mr. Babcock? 15:33:20  
22 A You know, it -- in form, I do, but I don't 15:33:21  
23 think I had anything to do with this one. If this 15:33:24  
24 was a presentation of year-to-date February 2020 15:33:27  
25 results, and presented in the late March board 15:33:32

Page 192

1 meeting, I was not -- I did not attend that. 15:33:36

2 Q Okay. This is after you had resigned and 15:33:39

3 retired; is that correct? 15:33:42

4 A Yes. 15:33:43

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**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Joe Kreiner  
(February 5, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
1 hour 13 minutes 25 seconds	5 minutes 44 seconds

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
  
Defendant,  
Counterclaimant.

---

IN RE APPLE IPHONE  
ANTITRUST LITIGATION

Case No. 4:11-cv-06714  
YGR

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(caption cont'd)

1 DONALD R. CAMERON, et al.,  
2 Plaintiffs,  
3 vs. Case No. 4:19-cv-03074  
YGR  
4 APPLE INC.,  
5 Defendant.

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9 \*\*HIGHLY CONFIDENTIAL\*\*  
10 ZOOM DEPOSITION OF JOE KREINER & EPIC GAMES, INC'S  
11 30(b)(6) CORPORATE REPRESENTATIVE  
12 (Reported Remotely via Video & Web Videoconference)  
13 Raleigh, North Carolina (Deponent's location)  
14 Friday, February 5, 2021  
15 Volume I  
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STENOGRAPHICALLY REPORTED BY:  
21 REBECCA L. ROMANO, RPR, CSR, CCR  
California CSR No. 12546  
22 Nevada CCR No. 827  
Oregon CSR No. 20-0466  
23 Washington CCR No. 3491  
24 JOB NO. 4450721  
25 PAGES 1 - 297

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THE COURT REPORTER: If you could raise  
your right hand for me, please.

THE DEPONENT: (Complies.)

THE COURT REPORTER: You do solemnly 12:22:22  
state, under penalty of perjury, that the testimony  
you are about to give in this deposition shall be  
the truth, the whole truth and nothing but the  
truth?

THE DEPONENT: I do. 12:22:22

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EXAMINATION

BY MR. SRINIVASAN:

Q. Good morning, Mr. Kreiner. For the 09:21:26  
record, can you state your full name and spell --  
spell it for us, please.

A. Sure. It's Joseph Kreiner. My last name  
is spelled K-R-E-I-N-E-R.

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23 Did you join Epic in 2011?

24 A. Yes.

25 Q. Okay. And can you kind of briefly give 09:25:40



1 us an overview of what you did when you started at 09:25:43

2 Epic, what roles you had, and building up to the

3 role you currently have?

4 A. Sure. I joined Epic in 2011 as business

5 development for Unreal Engine. Over time my 09:25:55

6 current role is vice president of business develop.

7 That includes business development for the

8 Epic Games Store, business development for Epic

9 Online Services, and managing first-party relations

10 with Sony, Microsoft, and Nintendo. 09:26:15

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(Exhibit 0068 was marked for  
identification by the court reporter and is  
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Q. Okay. And, Mr. Kreiner, we can -- I'm just going to ask you a question. And if you need to look at it more -- the document more, you can do that. 09:31:58

Have you seen this document before?

A. I don't believe so.

Q. Okay. So this is a notice that Apple served on your company, Epic, asking for testimony on behalf of the company on several topics. So I'm just going to ask you about a subset of these. There are 40 topics -- 43 topics, actually. And you're -- through your counsel, we understood that there are about a half dozen that you are -- have been designated for. 09:32:09  
09:32:32

So maybe -- let me just direct you to the ones that are relevant to you, and you can let me know that you're ready -- hopefully, that you are prepared to testify about them. 09:32:46

1 So if you can turn to page 6, the first 09:32:48

2 number on page 6 is 8. And I'll just read that.

3 "Distribution (whether online, through

4 brick-and-mortar stores, or through online stores

5 such as Amazon.com) of each of your apps, web apps, 09:33:05

6 in-app products, and software, the commissions,

7 fees, costs, and expenses paid in connection with

8 each such distribution channel, and the margins and

9 net profits received by you relative to prices

10 charged." 09:33:22

11 We understood, Mr. Kreiner, that you

12 would be testifying on this topic with respect to

13 consoles and gift cards. Are you prepared to do

14 that?

15 A. Yes. 09:33:33

16 Q. Okay. And then No. 10 -- I'm just going

17 to cover all of them so we can take care of this at

18 once.

19 Topic No. 10 -- rather than read it out

20 loud, maybe for the sake of efficiency here, if you 09:33:43

21 take a look at No. 10, are you prepared to testify

22 about No. 10?

23 A. Yes.

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Q. (By Mr. Srinivasan) So is that -- so  
with that clarification in mind, Mr. Kreiner, are  
you ready to testify about 10 through 13? 09:34:18

A. Yes.

Q. Okay. And if you can flip to or scroll  
down to -- the next topic is on page 9, which is  
Topic 28, which is "Agreements or contracts  
relating to providing or directing your apps, web  
apps, in-app products, software, or app  
marketplace, including any relating to distribution  
on an exclusive basis." 09:34:36

And, again, I understand that you were  
designated for this topic with respect to consoles? 09:34:53

A. Yes.

Q. And then if you can scroll to the next  
one, No. 32, Topic 32, again restricted to  
consoles. Is that something you're ready to 09:35:10

1 testify about? 09:35:12

2 A. Yes.

3 Q. And one last one on the next page,

4 Topic 40, Epic's "effort to bundle its digital

5 products, app, web apps, software, in-app products 09:35:26

6 with any hardware devices," is that something that

7 you are ready to -- to testify about today?

8 A. Yes. That's correct.

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Q. (By Mr. Srinivasan) So, Mr. Kreiner,  
take a look at Exhibit 71 if you would. And let me  
know when you've had a chance to skim it.

For the record, Exhibit 71 was produced 09:38:35  
by Epic bearing Bates number 1983020 through  
1983026. It is a document dated May 31st, 2017,

[REDACTED]  
[REDACTED]

Mr. Kreiner, this is a letter agreement 09:39:05  
addressed to you.

Do you recall this agreement?

A. Yes.

MR. CLARKE: Jay, can I just clarify. I  
think this is Exhibit 69. You might have misspoken 09:39:13  
and said 71.

MR. SRINIVASAN: Okay. Thank you for  
that. Yes, it is Exhibit 69. And thanks for that  
clarification.

[REDACTED] 09:39:23

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Q. (By Mr. Srinivasan) Okay. And in

09:45:25

Page 36

1 looking at Section 2.3 here, though, when they do 09:45:27

2 say -- you know, it's in -- it's in the page with

3 the number that ends in 22. The provision says,

4 [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 And so I guess I'll just ask you just

10 about that quote I just read specifically. What 09:46:05

11 did that mean in terms of Epic's obligation?

12 A. The intent there was to have the cost of

13 digital goods and Fortnite to be equivalent across

14 [REDACTED]

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(Exhibit 0070 was marked for  
identification by the court reporter and is  
attached hereto.)

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Q. Terrific. And for the record, while you  
review it, Exhibit 70 is a letter agreement dated 09:49:49  
[REDACTED]  
[REDACTED]  
[REDACTED]

Mr. Kreiner, do you recall this  
agreement? 09:50:10

A. Yes.

Q. Okay. And I want to take you to 2.3.3,  
which is the one that says "Reporting." And is it 09:50:44

1 your understanding that this provision requires

09:50:54

2 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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THE DEPONENT: It was my general

15

understanding that, yes, those players would spend

09:52:29

16

more money.

17

Q. (By Mr. Srinivasan) Okay. And if you

18

can -- and turning back to Exhibit 70 here. If --

19

if you look at 2.3.2, is -- is 2.3.2 -- what is

20

your understanding of provision 2.3.2, which is

09:52:50

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(Exhibit 0071 was marked for

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identification by the court reporter and is

15

attached hereto.)

09:53:47

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So Exhibit 71 for the record is another

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letter agreement, this one dated September 18th,

09:54:13

21

[REDACTED]

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[REDACTED]

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[REDACTED]

24

Mr. Kreiner, again, this is a letter

25

agreement dated -- sorry -- addressed to you.

09:54:27



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Do you recall this agreement?

09:54:31

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A. Yes.

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[Redacted text block containing multiple lines of blacked-out content]

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(Exhibit 0072 was marked for  
identification by the court reporter and is  
attached hereto.)

Q. (By Mr. Srinivasan) So, for the record,  
Exhibit 72 is a PowerPoint deck titled  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
represent that this came from your files.

And so, first of all, do you -- do you  
recognize this deck?

A. I remember receiving it, yeah. 10:10:02



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(Exhibit 0073 was marked for  
identification by the court reporter and is  
attached hereto.)

[REDACTED]

signed by Joe Babcock for Epic and Phillip  
Rosenberg for Sony.

Q. (By Mr. Srinivasan) Mr. Kreiner, do you  
recall this agreement? 10:14:07

A. Yes.

Q. Okay. And what is your understanding of  
what this agreement -- the -- what is your  
understanding of the purpose of this agreement?

A. Yeah, this agreement is Sony PlayStation 10:14:19

1 refining the requirements around supporting 10:14:23

2 cross-play. And, you know, cross-play was a new --

3 a new feature. And those previous letters were

4 kind of the first of its kind for Sony. This is a

5 more formal agreement that's meant to go out to a 10:14:40

6 wider developer base than just Epic.

7 Q. Got it.

8 And do you recall when this agreement was

9 executed?

10 A. Offhand, no. 10:15:08

11 Q. I'm sorry. I'll just direct you to it.

12 It says in the third line there that it's effective

13 as of September 2019.

14 Does that roughly comport with your

15 understanding? 10:15:18

16 A. Yes.

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Q. Okay. And do you know why Xbox wasn't included in the original agreement that authorized cross-platform play with a PC?

10:19:54

A. Sony was very concerned about giving Xbox a competitive edge by allowing it.

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19 Q. (By Mr. Srinivasan) Okay. Great. Let's  
20 look at the next exhibit, which will be 74. 10:22:07  
21 (Exhibit 0074 was marked for  
22 identification by the court reporter and is  
23 attached hereto.)  
24 Q. (By Mr. Srinivasan) I don't think it's  
25 up yet. Okay. 74 should be up. 10:22:26

1 And while you're taking a look at that, 10:22:33

2 Mr. Kreiner, for the record, Exhibit 74 is an

3 [REDACTED]

4 [REDACTED]

5 that starts with Bates number ending in 810 and 10:22:56

6 going through Bates number ending in 856.

7 And, Mr. Kreiner, do you recall seeing

8 this agreement before?

9 A. Yes, I've seen this before.

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

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24 Do these agreements cover just Fortnite,

25 or do they cover all digital products distributed

10:48:55





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(Exhibit 0077 was marked for

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identification by the court reporter and is

10:53:32

16

attached hereto.)

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MR. SRINIVASAN: And while you take a

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look at that, for the record Exhibit 77 is an

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assignment and assumption agreement dated

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June 28th, 2018. It is -- has the first page as

10:54:06

21

the Bates number ending in 632 and goes all the way

22

to the page with Bates number ending in 662.

23

Q. (By Mr. Srinivasan) Mr. Kreiner, do you

24

recognize this agreement?

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A. I recognize the agreement that's attached

10:54:34

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to Exhibit A.

10:54:36

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Q. (By Mr. Srinivasan) Okay. As you noted,

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Mr. Kreiner, let's go to -- I guess it's the

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Exhibit A to this agreement, which starts on page

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number ending in 637. And this part of the

25

agreement, which is -- well, I'll say it for the

10:56:16

Page 79

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Do you recognize this agreement?

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A. Yes.

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1 (Exhibit 0079 was marked for 11:18:05  
2 identification by the court reporter and is  
3 attached hereto.)

4 MR. SRINIVASAN: Okay. Sorry. It's  
5 loading a little slower. 11:18:29

6 Q. (By Mr. Srinivasan) Exhibit 79 is a

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(Exhibit 0081 was marked for  
identification by the court reporter and is  
attached hereto.)

Q. (By Mr. Srinivasan) Okay. 81 is there. 11:23:27

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19 Q. Yeah. So you mentioned -- before we get  
20 to GeForce Now, I'm just going to ask about one 11:33:22  
21 other service, which is Microsoft's xCloud. Do  
22 you know if -- if Fortnite is available through  
23 that service?

24 A. It is not.

25 Q. Okay. And was that a decision -- a 11:33:32



1 deliberate decision made by Epic not to offer it on 11:33:34

2 that service?

3 A. Yes.

4 Q. And what was the basis for that decision?

5 A. We viewed Microsoft's efforts with 11:33:44

6 xCloud to be competitive with our PC offerings.

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Q. Okay. Now, you mentioned GeForce Now.

14

Can you describe what GeForce Now is?

15

A. Yes. It -- it operates as a cloud gaming 11:35:35

16

PC rental service. So a player subscribes to

17

GeForce Now. They get access to a high-end gaming

18

PC that exists in -- in a cloud environment, and

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then can log into their existing digital

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storefronts like -- like Steam or the Epic Games 11:35:59

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Store.

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Q. And what GeForce Now -- by the way, do you know who -- what company distributes GeForce Now? 11:36:31

A. It's Nvidia.

Q. So Nvidia -- essentially, you would -- you would log in with your low-performance machine; but, through the cloud, you would essentially be -- you would have access to a high-performance machine to play your games. Is that the idea? 11:36:43

A. Yes. That's my understanding.

Q. Okay. And I think you mentioned that Fortnite is available on GeForce Now. Is that -- did I get that right? 11:36:56

A. That's correct in that a user using that service has access to their library of games on multiple storefronts.

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2 Q. Okay. And did -- did you partner with  
3 somebody to do the actual physical distribution?

4 A. Yes. We partnered with multiple  
5 companies to do physical distribution.

11:43:02

6 Q. And what were the names of those  
7 companies?

8 A. It would have been Gearbox for physical  
9 Fortnite, and Warner Bros. for the more recent  
10 physical offerings that are code in a box.

11:43:15

11 Q. Got it. And we'll break those apart. So  
12 Gearbox was the only company that actually  
13 distributed the game on disk for you?

14 A. That's correct.

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[REDACTED]

Can you explain the process of physical distribution and what the various parties in the chain are?

A. Sure. So and -- and this is minorly -- well, it's different per platform. But, in general, the way this works is, for a physical disk, the first party -- or in the case of the Nintendo Switch, the cartridge -- the first party requires those to be created at one of their locations. And they typically take a fixed per-disk fee that -- that is charged and collects, at which then gearbox pays that fee in -- in this particular case in -- on behalf of Epic and passes the cost through to us.

11:44:35

11:44:54

11:45:18

HIGHLY CONFIDENTIAL

1 And then Gearbox arranges with the -- the 11:45:20  
2 retailers to purchase the disks at a wholesale  
3 price. The retailers mark it up and make a profit  
4 off of that.

5 Q. Okay. And is the way Epic is 11:45:33  
6 compensated, is it related to the retail price  
7 that's ultimately set by the retailer? Is there --  
8 how does Epic get compensated for a physical  
9 product?

10 A. It would be the wholesale price minus the 11:45:51  
11 platform fee minus the Gearbox fee.

12 Q. Okay. And do you have a sense of what --  
13 like an estimate of what the percentage would be  
14 that Epic would receive compared to what the retail  
15 price would be? 11:46:09

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Q. Okay. And flipping back, then, to the digital side of it, have you ever attempted to

12:04:25

[REDACTED]

[REDACTED]

A. No.

Q. So that's never been anything you've engaged in at all?

12:04:40

A. I might have, you know, joked in passing to -- to a member of -- of, you know, Sony, Microsoft, or Nintendo that we would like it to be less, but it was never pursued at any length.

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Q. Okay. And what is it that they do for you that you feel like 30 percent is a fair number?

A. In particular those three platforms, we have weekly marketing meetings with them to discuss merchandising Fortnite in the best way possible. 12:05:38

We are a significant revenue generator for all three of those platforms, probably in the top five, you know, revenue sources for them. So they have a vested interest in promoting Fortnite. 12:05:56

We receive significant store placement that we do not have to pay for. We do pay for some, but we receive significant free placement.

The marketing teams between Epic and the first parties coordinates events and social media. 12:06:14

So we see that as an ongoing relationship that is driving value for Epic.



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Q. Have you ever succeeded in negotiating an exception to any of the -- of the requirement that you have to go through the Microsoft commerce engine? 12:10:08

A. No.

Q. Have you tried to do that?

A. No. 12:10:17

Q. Okay. Have you tried to negotiate around the requirement that you have to go through Microsoft to make your products available on the Xbox?

A. No. But let me go back to the previous 12:10:27

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THE DEPONENT: It's not my understanding

20

that we have made.

12:14:02

21

Q. (By Mr. Srinivasan) Okay. What about

22

for Microsoft?

23

A. No.

24

[REDACTED]

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So I want to go to Exhibit 80, and that  
was the one that was too small to read. So I think 01:07:28  
the -- there we go. It's going -- it's going to  
get shared on the screen. And so hopefully you can  
see it. It's still pretty small.

And, Mr. Kreiner, have -- this relates to  
the issue of the -- the terms of the various 01:08:37

1 agreements that Apple -- excuse me -- that Epic 01:08:40

2 has. And I know you're here just for the consoles.

3 So my question to you, sir, is, first of all, have

4 you seen this chart before?

5 A. Not at any length, no. 01:08:56

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10 Q. And right next to it there's a next 01:09:07

11 column right over that says "Platform Fee

12 Percentage."

13 Do you see that?

14 A. Yes.

15 [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20 Q. And that's consistent with what your 01:09:28

21 testimony was earlier this morning, correct?

22 A. That's correct.

23 Q. Okay. And, by the way, it goes on -- and

24 I should scroll down because there's a few more

25 games for -- listed also. That first three entries 01:09:42

1 were for Fortnite?

01:09:46

2 A. Uh-huh.

3 Q. There's then a separate entry for Rocket

4 League and "Third Party Publishing - Dauntless" and

5 [REDACTED] [REDACTED]

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MR. SRINIVASAN: And Exhibit 81, for the record, while the technical folks blow this up, is from the same document we just discussed, which is Epic Bates Number 03848271, but it is a PDF of the second tab on this Excel sheet which is financials.

01:11:46

Q. (By Mr. Srinivasan) And in -- and, Mr. Kreiner, if you can see on Exhibit 81, there -- first of all, it's titled "Epic Games Non-GAAP Consolidated Financials."

01:12:12

Do you see that?

A. Yes.

Q. And, again, this is something we received. It's the same file that we just looked at from Epic. You can see -- I just want to direct you to the -- the -- the part that says "Fortnite."

01:12:20

And under it, it lists the three consoles -- PS4, Xbox One, Switch -- then PC, and then the two mobile platforms, iOS and Android.

01:12:37



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Do you see that?

01:12:43

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A. Yes.

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1 I think we -- you testified that the 01:19:32  
2 revenue numbers for Apple in terms of 2018 in terms  
3 of its relative share of overall revenue coming in  
4 for Fortnite was about 6 to 7 percent.

5 Would you agree with that? 01:19:48

6 A. Yes, that's what you said, and I agreed  
7 to it.

8 Q. And would you -- would you agree that  
9 that percentage seems to carry forward for 2019 as  
10 well? 01:20:00

11 A. I'm not doing the math in my head, but it  
12 does appear that's the case.

13 Q. And same for 2020?

14 A. Yeah.

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But, on the other hand, you know, is 01:25:14

there any other way in which Epic has distributed  
its products on the internet, you know, separate  
and apart from a store like the Steam store or the  
Epic Games Store?

A. Yes. We would sell our retail products 01:25:32

1 on retailer websites; so, you know, BestBuy.com, 01:25:34

2 Walmart.com, GameStop.com, Amazon.com.

3 Q. Okay. And so in those cases you're

4 talking about either the physical disk back when

5 you were selling physical disks or the -- the 01:25:48

6 code-in-a-box-type concept; is that right?

7 A. You're correct.

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1 (Exhibit 0083 was marked for 01:38:05  
2 identification by the court reporter and is  
3 attached hereto.)

4 MR. SRINIVASAN: So, Mr. Kreiner, I think  
5 it's Exhibit 83 in the folder, when you get a 01:38:13  
6 chance.

7 And while you're taking a look at that,  
8 I'll just say for the record Exhibit 83 is an email  
9 chain involving Mr. Kreiner, Danny Block, and  
10 others at Epic from July of 2019, with the subject 01:38:27  
11 line "Fortnite Card Economics." And the Bates  
12 number ends on the first page 567, and it carries  
13 over into a second page ending in 568.

14 Q. (By Mr. Srinivasan) So, Mr. Kreiner, I  
15 don't know if -- have you had a chance to look at 01:38:46  
16 this email?

17 A. Yes.

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Q. And the economics, then, are described here, right, where he goes through the different layers that take their various pieces of the cut.

And I think, if you roll it up to the top of the email, you know, it's -- it's somewhere about -- looks like -- as you -- as Danny says there, looks closer to 36.5 percent.

And -- and, again, is that sort of consistent with the interrogatory response where

01:40:00

01:40:15

1 you talked about Epic receiving 70 to -- 60 to 01:40:18

2 70 percent?

3 A. Yes.

4 Q. Okay. Okay. And so would you -- is it

5 fair to say that this email reflects sort of the 01:40:27

6 broad economics of how the gift card/POSA card

7 process works at Epic?

8 A. Yes.

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Q. Okay. And then how do you account for those bundles? In other words, is it just the same as the card that we just described, or is there a different set of economics for that?

01:43:03

A. It's a different set of economics. So in charge Epic for generating those codes. Typically, these bundles are done as a marketing exercise and Epic's not compensated. There have been a few

01:43:20

[Redacted]

Q. Can you get into why that's the case? In other words, why were you getting compensated early on and then aren't getting compensated anymore? You know, one might think it would intuitively go the other way. Is there -- is there a reason for

01:44:07



1 that? 01:44:10

2 A. I think our initial discussions with  
3 Microsoft and Nintendo and Sony, all of those  
4 parties are just used to paying for these kind of  
5 bundles. They're coming from the more traditional 01:44:21  
6 game development world where you're bundling the  
7 game that someone pays up front for. And, you  
8 know, even early on in Fortnite, you were buying  
9 Save the World.

10 As the game progressed, it became more 01:44:36  
11 about Battle Royale. It's a free-to-play game. So  
12 we were more interested in being distributed to new  
13 users. Someone's buying a console; they're a new  
14 user in that ecosystem. You'd rather them get  
15 exposed to Fortnite immediately. 01:44:54

16 So we just declined to pursue financial  
17 gain, and the first parties were happy to oblige  
18 us.

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Do you think Epic should pay less than 01:48:28  
30 percent to the consoles as far as the  
commission?

A. No. I feel like they generate  
significant user acquisition and revenue for us,  
that they're a primary venue for us to generate 01:48:43  
revenue, and that they earn their 30 percent.

Q. And -- and so you're -- if I understand  
it, you don't think it's -- you don't think they  
should pay less because they are generating a big  
volume. Is that -- you're sort of tying it to the 01:48:57  
amount of the volume of revenue they bring in?

A. Certainly that. But also we have a very  
good working relationship with those platforms.  
They do a lot of networking and marketing on Epic's  
behalf. 01:49:13

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Q. (By Mr. Srinivasan) Okay. And do you understand that the 30 percent commission that you're paying is actually just for payment processing alone?

THE DEPONENT: No, it's not. They do quite a bit more than just process payments.

Q. Okay. I think you mentioned earlier this morning, you know, the -- the additional things that they do. And I'm going to read some. I'm just -- if I got this right, I try to write --

01:52:24

1 write this down -- they had weekly meetings that 01:52:27

2 they were a significant revenue generator, that

3 they gave you store placement, that -- free store

4 placement in addition to what you were advertising,

5 marketing terms of -- around events and social 01:52:43

6 media. And -- and I think that's all I got.

7 First of all, was that an accurate list

8 of what you had said earlier?

9 A. Yes. They do more than that.

10 Q. Okay. And, please, what else do they do, 01:52:56

11 in your mind, to merit the 30 percent commission?

12 A. They have marketed Fortnite at physical

13 events, like PAX or, you know, trade shows. They

14 take out retail ads for -- for Fortnite on

15 occasion. Social media posts, focused blog posts 01:53:20

16 on Fortnite content. They retweet many of Epic's

17 social media posts surrounding content in Fortnite.

18 And we also get -- have done things like

19 dash callouts inside of PlayStation. When a user

20 logs in, they get notified Fortnite's got a new 01:53:45

21 content drop.

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Q. Okay. And you had testified earlier that all three consoles do not allow Epic to set up its own payment mechanism, correct?

THE DEPONENT: Correct.

Q. (By Mr. Srinivasan) I'm sorry. I didn't -- correct. Yeah. 01:54:40

So do you view that as being unfair in any way that they won't let you process your own payment -- they won't let Epic process its own payment?

A. No, I don't think that's unfair. 01:54:54

Q. So it's -- it's typically -- would you 01:55:08

1 agree that it's typically something that users 01:55:11  
2 prefer, that they're able to deal with the console  
3 on a global basis rather than having to enter their  
4 information for every vendor?

5 A. I don't know about preferred, but it's 01:55:22  
6 the standard practice.

7 Q. Okay. And do you -- do you agree that it  
8 makes it easier for users to handle it that way?

9 A. Yes.

10 Q. Okay. What about the idea of having your 01:55:34  
11 own direct distribution option on these platforms.  
12 You testified earlier that the consoles won't allow  
13 you, for instance, to distribute directly on them,  
14 correct?

15 A. Correct. 01:55:55

16 Q. Do you -- do you view that as unfair that  
17 they won't let you do that?

18 A. No.

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1 said you can't price elsewhere lower than what you 01:56:29

2 price on -- on my platform, correct?

3 A. Yes. They impose significant

4 restrictions on us.

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19 Q. Sure. Do you -- you had said earlier

20 that each one of the three consoles mandates that 01:57:10

21 Epic provide, you know, basically best pricing

22 on -- on their respective consoles, correct?

23 A. Uh-huh. Yes.

24 Q. And, in other words, you're not -- Epic

25 is not free to price Fortnite differently on Xbox 01:57:22

1 versus the PlayStation, correct? 01:57:27

2 A. That's correct.

3 Q. And do you view that restriction as  
4 anticompetitive?

5 A. My personal opinion is it can be a little 01:57:36

6 anticompetitive; but given the way we operate  
7 Fortnite on all seven platforms, it's a way to  
8 prevent players from jumping around on platforms  
9 and having a bad experience.

10 Q. How would they -- how would they have a 01:57:59

11 bad experience -- how would a player have a bad  
12 experience if a certain platform, you know, priced  
13 the digital products differently?

14 A. Well, you would see lots of arbitrage  
15 between platforms. You'd have users, you know, 01:58:14

16 buying one to use on another. It causes a lot of  
17 users logging in and logging out. It's the --  
18 while -- while they would look like they're, you

19 know, potentially saving money, it's just a bad  
20 experience. You would feel bad for somebody that 01:58:33

21 had purchased something on PlayStation and then see  
22 that it's available for less money on Xbox.

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22 (Exhibit 0084 was marked for  
23 identification by the court reporter and is  
24 attached hereto.)

25 THE DEPONENT: Is that Exhibit 84?

02:09:54

Page 189

HIGHLY CONFIDENTIAL

1 Q. (By Mr. Srinivasan) Yeah, it'll be 02:09:55

2 Exhibit 84.

3 And so while you look at this,

4 Mr. Kreiner, Exhibit 84 is an email chain involving

5 Mr. Kreiner and others, including a Phil Rosenberg 02:10:16

6 at Sony. It is dated February -- the top email is

7 dated February 20th, 2018. It has the subject line

8 "Fortnite cross-play." And it's a Bates number

9 ending in 199.

10 So, Mr. Kreiner, do you recall this email 02:10:35

11 exchange?

12 A. Vaguely, sure.

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(Exhibit 0088 was marked for identification by the court reporter and is attached hereto.)

Q. (By Mr. Srinivasan) So, Mr. Kreiner, we'll get a new document up. While it's coming up -- I don't know if it's up yet. It will be Exhibit 88. But I don't know if it's populated yet. I guess it has.

02:42:37

A. Yes, it has.

Q. Okay. Great. Let me introduce the exhibit, and I'll ask you some questions about it.

02:42:52

Exhibit 88 is a one-page email chain with the top email being from Mr. Kreiner to Danny Block sent on September 12th, 2018, with the subject line "Cross-wallet."

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21                   Emu Servais wrote to you with -- with a  
22                   summary, it looks like, of a table that, at least  
23                   as of September 2018, gives the state of play for  
24                   cross-wallet and cross-play for the various  
25                   platforms.

02:44:53

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Would you agree with that?

02:44:53

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A. Yes.

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Q. And then the next one is PS4. And as of September 2018, there is no -- this reflects that there's no cross-wallet and there's cross-play but only with PCs, Macs, and mobile, correct? 02:46:05

A. That's what this indicates, yes.

Q. In this chart. And then you have Nintendo, which is no for cross-wallet but yes for cross-play. Is that consistent with your recollection? 02:46:48

A. Yes, that's correct. And that's still the case today.

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(Exhibit 0090 was marked for  
identification by the court reporter and is  
attached hereto.)



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[Redacted text block containing approximately 20 lines of blacked-out content]

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(Exhibit 0091 was marked for  
identification by the court reporter and is  
attached hereto.)

Q. (By Mr. Srinivasan) So, Mr. Kreiner, I  
think we have available now Exhibit 91. Exhibit 91  
is a -- again, I think it's maybe a text exchange  
between a Devin Winterbottom and yourself on  
September 25th, 2018. And it's -- it's a single  
page, and it's Bates number ending in 676.

03:03:14

So, Mr. Kreiner, first of all, is this a  
text exchange, if you recognize this format?

03:03:41

A. I don't recognize this format; so I don't  
know.

Q. Okay. Have you -- do you text as part of  
your work functions ever?

03:03:53

A. On occasion.

Q. Okay. And is -- is Mr. Winterbottom  
somebody who you work with?

A. Yes.

Q. Would it surprise you if you had texted

03:04:03

1 him in the September 2018 time frame?

03:04:06

2 A. No, it would not.

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21 (Exhibit 0092 was marked for  
22 identification by the court reporter and is  
23 attached hereto.)  
24 MR. SRINIVASAN: Okay. So the next  
25 exhibit is Exhibit 92. And 92 is a two-page email 03:10:38

Page 225

1 chain, again mostly -- almost all the substances is 03:10:41

2 on page 1. The top email is from Joe Kreiner to

3 Ed Zobrist and some others at Epic Games sent on

4 April 24th, 2020, with the subject line "Your POV

5 on possible payment options." And the first page 03:11:01

6 ends with Bates number -- or ends with the Bates

7 number ending in 047.

8 Q. (By Mr. Srinivasan) Mr. Kreiner, do you

9 recall this email exchange?

10 A. Yes. 03:11:16

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Did -- is this a discussion of what ultimately happened on mobile, where the direct payment option dropped the price of V-Bucks compared to what it used -- what it was before? 03:12:53

A. No. This is proposing charging -- or providing 18 percent more V-Bucks if someone used Epic payment services versus a lower price.

Q. Got it. So here the price would be the same, but you would get 18 percent more V-Bucks for that same dollar value; is that right? 03:13:13

A. Correct.

Q. Okay. And that's what was being considered here. And you respond and say, "We did agree to keep identical pricing across all 03:13:26

1 platforms with Microsoft, Sony, and Nintendo." 03:13:31

2 And then -- but you say, "That being  
3 said, all they care about is that we are not using  
4 arbitrage to direct sales away from their  
5 platform." And then you say, "They are entirely

03:13:41

6 self-serving; so making mobile less attractive  
7 would likely work for them."

8 Do you know what you meant by that?

9 A. Yeah. I was giving Ed my interpretation  
10 of what Sony, Microsoft, and Nintendo would --  
11 would say to us if we decided to implement this  
12 strategy.

03:13:54

13 Q. And you're saying, though, initially that  
14 they would be okay with something like this,  
15 correct?

03:14:06

16 A. That's my supposition here. I'm not sure  
17 if that actually would have been correct.

18 Q. Well, I mean, he then -- he then says, "I  
19 think the idea is for the exact same purchase price  
20 a mobile player would get 18 percent more V-Bucks  
21 if they chose our payment system versus the Apple  
22 or Google payment system." And to which you  
23 respond, "Making it more advantageous to buy on  
24 mobile than on console is not an option."

03:14:18

25 Do you see that?

03:14:32

1 A. Yes. 03:14:33

2 Q. Is that your final sort of opinion on  
3 this, that once you understood that this was -- a  
4 way in which mobile pricing might give you more  
5 value would not be okay with the consoles? 03:14:43

6 A. Yes, that was my opinion.  
7 [Redacted]  
8 [Redacted]  
9 [Redacted]  
10 [Redacted] [Redacted]

11 [Redacted]  
12 [Redacted]  
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16 [Redacted]  
17 [Redacted]

18 MR. CLARKE: Objection.  
19 [Redacted]  
20 [Redacted]  
21 [Redacted]  
22 [Redacted]

24 Q. (By Mr. Srinivasan) You had -- did you  
25 ever have a discussion with any of these console 03:15:44



1 folks about this idea, or this was just your --

03:15:46

2 your supposition?

3 A. This was just my supposition.

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Q. And, now, is that 12 percent commission  
for payment processing alone?

A. No. That is for using the Epic Games  
payment flow.

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Q. Well, I'm saying, you know, somebody  
might ask you, you know, "Joe, you're charging me  
12 percent on -- on every sale on your store.  
What -- what are you charging me for? My payment  
processing doesn't cost 12 percent. What are you  
charging me for?"

03:32:28

A. Sure. The services we provide game  
developers are CDN hosting, player support,  
marketing of their games, and handling of refunds.

03:32:41

Q. Anything else?

A. I'm -- I mean, there's lots of technical  
support. We also waive on Unreal Engine royalties  
if the game is using Unreal Engine, which are  
typically 5 percent. So there's a benefit to game  
developers for shipping the games if they're using  
Unreal Engine on the Epic Games Store.

03:33:02

Q. What else do you provide for developers?

03:33:25

1 Or is that a pretty compressive list? 03:33:27

2 A. No. We also have a supporter/creator

3 marketing program where currently Epic pays

4 influencers a 5 percent-of-sales fee if they

5 successfully refer a paying customer into our 03:33:39

6 ecosystem to go buy a game or in-app transactions.

7 And then we also do social -- you know

8 social media for game launches, video promotions.

9 We've done featuring at physical events, such as

10 E3. And we do sponsorships of the video games -- 03:34:03

11 the video games awards as well as other events

12 where we feature games that are available on the

13 Epic Games Store.

14 Q. So --

15 A. So significant marketing interaction. 03:34:21

16 Q. So the 12 percent is not limited to just

17 a payment processing fee?

18 A. Correct.

19 Q. And it sounds like it -- it's tied into

20 these broader ecosystem benefits that you provide 03:34:31

21 to your developers?

22 A. That's correct.

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Q. Okay. Is -- is the Epic Games Store profitable at a 12 percent commission?

A. It's not profitable today because we're in growth mode and focused on acquiring users. So we're spending significant amounts of money acquiring exclusive content and giving free games away. So those -- those investment costs are significant. I would expect, eventually, for us to be able to turn a profit.

03:35:07

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(Exhibit 0095 was marked for

25

identification by the court reporter and is

04:02:37

Page 252

1 attached hereto.) 04:02:37

2 MR. SRINIVASAN: This will be Exhibit 95.

3 THE DEPONENT: Okay.

4 MR. SRINIVASAN: Okay. Sorry. My

5 computer is little slower than yours. Go ahead and 04:03:06

6 take a look at Exhibit 95, Mr. Kreiner, and I'll

7 read it into the record, and then we can talk about

8 it.

9 Exhibit 95 is a PowerPoint deck titled

10 "Epic Games Store, Review of Performance and 04:03:24

11 Strategy, October 25th, 2019." It starts with

12 Bates number ending in 277 and goes through Bates

13 number ending in 297.

14 Q. (By Mr. Srinivasan) And the -- the --

15 the page that I'd like to direct your attention to, 04:03:48

16 Mr. Kreiner, it's numbered 17; it's Slide 17. And

17 the Bates number, the control number there at the

18 bottom, ends in 293.

19 A. Okay.

20 Q. And the title is "5 Year P&L and User 04:04:02

21 Forecast."

22 And, you know, I -- first of all, do you

23 recall this deck in particular?

24 A. Not in particular. This is a -- a common

25 format that we use on a recurring basis. 04:04:17

1 Q. Okay. So this is the type of deck that 04:04:20

2 you would commonly receive?

3 A. Yeah.

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So current -- let's take a look at this model -- first of all, the document we're looking at from October of 2019 indicates that at the current business model at a 12 percent commission the -- the Epic Games Store was not projecting to make any money five years out under either model, correct? 04:06:57

A. Yes, although that's based on a pessimistic model of recouping minimum guarantees. 04:07:12

Q. Okay. And, currently, I think you testified already that the game -- that the game store, as it stands today in early 2021, is still not making money, correct? 04:07:29

A. That's my understanding.

Q. Okay. And in -- and if -- and is it your testimony, then, that there will be more current versions of this document at Epic that would show a -- a different story? 04:07:41

A. Yes.

1 Q. Okay. What has changed about the 04:07:56  
2 projections, to the extent that you know, to  
3 suggest that, you know, that the picture is not  
4 as -- is not what's portrayed here on this slide?

5 A. We have been more successful at 04:08:12  
6 recovering our minimum guarantees with more recent  
7 launches. We're much farther ahead in user  
8 acquisition than these models assumed.

9 You know, in 2020 we had a very  
10 significant user acquisition event in giving away 04:08:29  
11 Grand Theft Auto V, and that reset a lot of the  
12 expectations because we have many more people  
13 coming to the store purchasing games.

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(Exhibit 0096 was marked for identification by the court reporter and is attached hereto.)

04:12:02

MR. SRINIVASAN: 96 is a email chain of several pages. The top chain is from Scott Adams at Epic Games to a number of folks, including Mr. Kreiner. The top email is dated May 1st, 2019.

04:12:30

[REDACTED]

The first page has a Bates number ending in 569, and it goes through -- the final page has a Bates number ending in 577.

04:12:46

Q. (By Mr. Srinivasan) Mr. Kreiner, do you -- first of all, have you had a chance to look at this email?

A. Yes.

04:13:00

1 Q. And do you recall this email chain from 04:13:07

2 when you received it?

3 A. Yes, I do.

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9 Q. And what was the issue here? Do you

10 recall?

04:13:37

11 A. Yes. In particular, this is related to

12 Ubisoft. And what was occurring -- yeah. What was

13 occurring was hackers had identified that, if you

14 purchased an Ubisoft game via the Epic Games Store,

15 The Division 2 and Anno 17 -- or 1800, in this

04:14:04

16 particular case, if you refunded it via our

17 automated refund system, Ubisoft was not

18 recognizing the refund.

19 So you could create a bunch of Epic

20 accounts, purchase the Ubisoft games, refund them,

04:14:23

21 and then hackers were selling the accounts in the

22 gray market as containing those games because

23 Ubisoft was not -- not removing the games from the

24 user's account in a timely fashion.

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(Exhibit 0097 was marked for

25

identification by the court reporter and is

04:17:27

Page 263

1 attached hereto.) 04:17:27

2 MR. SRINIVASAN: This will be

3 Exhibit 99 -- or 97.

4 THE DEPONENT: I'm sorry. Are you

5 skipping exhibits or -- 04:17:51

6 Q. (By Mr. Srinivasan) No. I think I

7 just -- I screwed up the number. Yes, it's 97.

8 A. Okay.

9 Yes. I remember this email.

10 Q. Yeah. Okay. 04:18:01

11 MR. SRINIVASAN: So just for the record,

12 Exhibit 97 is a, you know, single-page email chain.

13 The top email is from Tim Sweeney to Joe Kreiner

14 and Steve Allison dated May 11th, 2019. Subject

15 "Apology - Epic Games Store woes." 04:18:17

16 Q. (By Mr. Srinivasan) And so, Mr. Kreiner,

17 you've anticipated my question. You do recall this

18 email, correct?

19 A. Yes.

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23 Q. (By Mr. Srinivasan) Do you recall that  
24 the rate of fraud was surpassing 70 percent and  
25 approaching 90 percent, first of all?

04:19:36

Page 265

1 A. Specifically, I don't remember the 04:19:40

2 numbers. But this email states it; so I would

3 imagine that's correct.

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19 (Exhibit 0098 was marked for  
20 identification by the court reporter and is 04:23:10  
21 attached hereto.)

22 MR. SRINIVASAN: And Exhibit 98 is a  
23 two-page email chain. The originating email is  
24 from Hector Sanchez to various people, including  
25 Mr. Kreiner. It was sent on September 9th, 2019, 04:23:42

1 with the subject line "Epic Key sales." 04:23:46

2 Q. (By Mr. Srinivasan) Mr. Kreiner, do you

3 remember this email chain?

4 A. Not really, but it was definitely sent to

5 me. 04:24:02

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**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Haseeb Malik  
(February 12, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
9 minutes 14 seconds	1 minute 31 seconds

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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)  
IN RE APPLE iPHONE TRUST ) Case No. 4:11-cv-06715YGR  
) 4:11-cv-06714-YGR and  
LITIGATION ) 4:19-cv-03074-YGR  
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\*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

REMOTE VIDEOTAPED DEPOSITION OF HASEEB MALIK

Friday, February 12, 2021

Volume I

Reported by:

NADIA NEWHART

CSR No. 8714

Job No. 4453673

PAGES 1 - 198

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14 While you were at Epic Games, what was your

15 position?

09:22:04

16 A Director of mobile publishing.

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(Exhibit 506 was marked for identification  
and is attached hereto.)

BY MR. DOREN:

Q And, Mr. Malik, the next exhibit will be 10:56:37

Exhibit 506. It's a multipage document bearing  
Bates numbers EPIC\_00407322 through 332. And it is  
a series of -- it looks like a text string between  
you and Mr. Payne on -- from Saturday, August 3,  
2019. 10:57:06

Just wait for that to come up, and please  
take the time you need to review it.

MS. MOSKOWITZ: It's not a text chain. I  
think this would have been a Hangouts in the  
production format. 10:57:19

MR. DOREN: Thank you.

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First of all, Mr. Malik, do you -- have you had a chance to review Exhibit 506?

A Yeah, for the -- yeah, I -- I tried to go through the 11 pages as quick as I could. 11:02:48

Q Yeah. And to the extent you need more time with the document along the way, you just tell me.

Now, do you recognize this as a Hangout exchange between yourself and Mr. Payne from August 2019? 11:03:06

A Yes.

Q And what is a Hangout?

A It's Google's chat client.

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15 Q And your next entry -- entry says (as read): 11:11:46

16 "And for God's sake, why do we hate

17 Apple?"

18 And that was a question you had on August 3,

19 2019, correct?

20

21 THE WITNESS: I -- yeah. As you can tell by

22 my tonality in this conversation, I appear quite

23 frustrated as a new employee not being able to

24 figure out how to effectively do my job. And so I

25 am wondering why we are struggling with the 11:12:22



1 platforms I'm supposed to work on.

2 BY MR. DOREN:

3 Q And your perception at the time was that Epic

4 hated Apple, correct?

5 A The language I'm using here is me trying to 11:12:32

6 figure out why the relationship is not the same as

7 what I'm used to at other companies.

8 Q With Apple?

9 A With -- with Apple, uh-huh.

10 Q And what you wrote was (as read): 11:12:44

11 "And for God's sake, why do we hate

12 Apple," correct?

13 A That's what I wrote.

14 Q And that was the question you had as of that

15 date, correct? 11:12:56

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24 A Yeah. So look, I -- so as I mentioned, I was

25 having a pretty tough time at this period of being 11:13:09

1 there for a few months and not understanding why we  
2 were having some of the challenges we were having  
3 with mobile coming -- that I am coming from a -- a  
4 pretty strong mobile background, and this felt  
5 different to me for the world's largest game. 11:13:27

6 Q And -- and what challenges did you believe  
7 that the company was having with mobile after --  
8 once you had been at the company for three months?

9 A So the Android ones which were, as I  
10 mentioned, numerous steps imposed by the operating 11:13:39  
11 system to -- to scale the game -- so you have to  
12 remember, if my -- if my job performance is -- is  
13 based on growing the mobile -- mobile users but I'm  
14 running into these hurdles, it's quite frustrating.

15 And then regarding Apple, by this time, I've 11:13:58  
16 already encountered a number of delays and so on in  
17 the review process. And so I am trying to figure  
18 out through talking to this colleague on why we're  
19 having all of these delays through the review  
20 process and -- and so on with Apple. 11:14:12

21 Q And what review process are you talking  
22 about?

23 A So sometimes it takes a long time to get a --  
24 a Fortnite build -- or it took a long time to get a  
25 Fortnite build through the review process at Apple 11:14:26

1 relative to the speed in which the same builds would

2 go through on the other platforms.

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Q And if you go down further at 8- -- or sorry,

13:58:21, Mr. Payne says (as read):

"I don't have the impression that

our relationship is regularly

11:34:19

antagonistic. Epic has been

on-stage in several big Apple

presentations in the last couple of

years."

Do you see that?

11:34:27

A Uh-huh, yes, I see that.

Q And you -- and you understand that to mean

that Epic had made -- created opportunities for Epic

to present at Apple events, correct?

A From my understanding, the company had been

11:34:41

invited to share games in the past on -- at

worldwide developer conference. So that's where I

was -- this is all sort of coming from, and it -- it

should be better than the way it is.

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20 Q Hi, Mr. Malik. We are preparing the next 11:58:14

21 exhibit in order, which will be Exhibit 507, which

22 is a deck entitled "Fortnite Mobile Adam Sussman

23 Onboarding - January 2020."

24 And it -- it -- the first page bears your

25 name and Brian Chu's name. The document is Bates 11:58:39

Page 126

1 numbers EPIC\_00126433 through 487.

2 So once that comes up, take the time to

3 familiarize yourself with it, but to the extent I

4 have specific questions, I will direct you to the --

5 the places that I have questions about.

11:59:01

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10 (Exhibit 507 was marked for identification

11:59:15

11 and is attached hereto.)

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Q Mr. Malik, have you had an opportunity to review Exhibit 507?

A Yes. 12:02:49

Q And this document is entitled "Adam Sussman Onboarding - January 2020."

Do you recall this document?

A Yes, I -- I do.

Q And what is it? 12:03:02

A This was a collection of slides that leadership asked us to pull together to be shared with Adam Sussman when he joined the company.

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(Exhibit 508 was marked for identification  
and is attached hereto.)

12:31:27

BY MR. DOREN:

Q Mr. Malik, you were presented with  
Exhibit 508, which is a document bearing Bates  
numbers EPIC\_00385868 through 902.

It begins with an email from you to  
Devin Winterbottom with attachments, "Mobile  
Business Update - March 2020," and it does indeed  
include or is followed by a deck entitled "Mobile  
Business Update - March 2020."

12:31:41

Can you please just take a moment to  
familiarize yourself with this document. And as  
with the last deck, I will point you to specific  
areas of interest.

12:32:05

A Okay.



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Q And have you had an opportunity to review

Exhibit 508?

A Yes. This looks like the mobile business --

Q Let me ask, let me ask, let me ask.

And do you recognize this document?

12:33:35

A Yes, I recognize this document.

Q And what is it?

A This is the mobile business update dated

March 2020.

Q And what was -- why was this document

12:33:46

created?

A As far as I recall, I believe this was to be

presented to (technical difficulty.)

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A I believe this presentation was put together  
to be presented to Adam Sussman.

Q And who prepared this -- this presentation? 12:34:24

A All of the people on that -- on -- which was  
the mobile team at Epic. So you're number 5870, all  
the people on this slide participated in putting  
this presentation together.

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12 (Exhibit 510 was marked for identification  
13 and is attached hereto.)

14 BY MR. DOREN:

15 Q Mr. Malik, you have in front of you 12:44:56  
16 Exhibit 510, which is a three-page document bearing  
17 Bates numbers EPIC\_00428883 through 885.

18 If you could please take a moment to review  
19 this email string.

20 A Okay. 12:45:51

21 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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18 Q And who was the source of that information to

19 you?

20 A So again, like I had mentioned before, 01:52:41

21 these -- me carrying out these things was under the

22 direction of Epic leadership and the people that

23 were above me. So Ed Zobrist, Matt Weissinger and

24 so on.

25 Q You were just following orders? 01:53:00

1           A    Just following orders.

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11                   (Exhibit 511 was marked for identification

12                   and is attached hereto.)

13           BY MR. DOREN:

14           Q    Exhibit 511 is another email string.  It

15           begins on EPIC\_00431657 to 659.  And the top email           01:53:30

16           on the first page of Exhibit 511 is from

17           Adam Sussman to you, dated Friday the 24th of

18           January of 2020.

19                   Can you please take a moment, please, and

20           review Exhibit 511.   01:53:50

21           A    Okay.

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22 Q Okay. Then on January 23rd, at 1:48 p.m.,  
23 you send this string -- you forward this string to  
24 Adam Sussman, correct?

25 A Yes. I was asked to catch Adam up on all 01:58:11

Page 180



**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of David Nikdel  
(February 8, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
8 minutes 58 seconds	10 seconds



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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
  
Defendant,  
Counterclaimant.

---

IN RE APPLE IPHONE  
ANTITRUST LITIGATION

Case No. 4:11-cv-06714  
YGR

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(caption cont'd)

1 DONALD R. CAMERON, et al.,  
2 Plaintiffs,  
3 vs. Case No. 4:19-cv-03074  
YGR  
4 APPLE INC.,  
5 Defendant.

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9 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*  
10 ZOOM DEPOSITION OF DAVID NIKDEL  
11 (Reported Remotely via Video & Web Videoconference)  
12 Raleigh, North Carolina (Deponent's location)  
13 Monday, February 8, 2021  
14 Volume I  
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STENOGRAPHICALLY REPORTED BY:  
21 REBECCA L. ROMANO, RPR, CSR, CCR  
California CSR No. 12546  
22 Nevada CCR No. 827  
Oregon CSR No. 20-0466  
23 Washington CCR No. 3491  
24 JOB NO. 4435328  
25 PAGES 1 - 227

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THE COURT REPORTER: If you could raise  
your right hand for me, please.

THE DEPONENT: (Complies.)

THE COURT REPORTER: You do solemnly  
state, under penalty of perjury, that the testimony 09:10:02  
you are about to give in this deposition shall be  
the truth, the whole truth and nothing but the  
truth?

THE DEPONENT: I do.

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EXAMINATION

Q. Good morning, Mr. Nikdel. Could you state your full name for the record, please. 09:10:25

A. David Abbas Nikdel.

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Q. All right. Tell me what your current position is at Epic.

09:12:25

A. My current position at Epic is as senior online and game play programmer. That means that I work on the back-end services for Fortnite currently.

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20 Q. (By Ms. Yang) Okay. Mr. Nikdel, I 01:35:27

21 direct your attention to the document that we've

22 marked as Exhibit 161, which is Bates-numbered

23 Epic\_00420862.

24 A. Okay.

25 Q. And this is an email from Ed Zobrist on 01:35:43

Page 164

1 April 24, 2020; is that correct? 01:35:47

2 A. That is correct.

3 Q. Do you remember receiving this email at

4 the time?

5 A. Yes, I do. 01:35:56

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20 Q. And what was the role that you had with 01:36:59

21 respect to Project Liberty?

22 A. I was brought in to assess technical

23 feasibility.

24 Q. And what do you mean by "technical

25 feasibility"? 01:37:16

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And so part of your role in Project

Liberty was to make sure that Epic would be able to  
implement a payment mechanism that would function  
properly?

A. That's correct. Well, specifically, we 01:39:24  
already had a payment mechanism that functioned  
properly. The intention was to expose it on that  
particular platform.

Q. And another objective you had in 01:39:39  
designing -- in evaluating technical feasibility of  
Project Liberty was whether it could be done in a  
way that would not be obvious to Apple?

A. That was something that we had 01:39:55  
investigated to see if it would make sense to put  
effort towards as a means of contingency planning.

1 Q. And what was the result of that 01:40:01  
2 investigation?  
3 A. So the -- the end conclusion was that we  
4 decided not to do anything out of the ordinary with  
5 our implementations with respect to, like, 01:40:09  
6 obfuscating the code other than having it not  
7 enabled at the time that we submitted.  
8 Q. What were the obfuscation tactics that  
9 Epic considered?  
10  
11 THE DEPONENT: Well -- sorry. We  
12 generally looked at -- so we do encrypt some pieces  
13 of -- of the build for preventing users from  
14 investigating them until we're ready to go live  
15 with them. We looked at maybe doing that. We 01:40:42  
16 decided not to do that.  
17 The -- there was generally just sort of,  
18 like, a question of how obvious would it be from  
19 anybody who was to dump strings on the app, for  
20 instance, which was a mechanism that users would 01:40:55  
21 often use to look at a build.  
22 We also didn't want anybody -- Apple  
23 notwithstanding, anybody, users included, to -- to  
24 understand that we were thinking about doing this  
25 until we decided to actually pull the trigger and 01:41:12

1 enable it. But I don't think that decision was 01:41:14

2 made until pretty late in the process.

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1 And so -- so what Epic wanted to not be 01:44:44

2 obvious to Apple was the ability of Version 13.40

3 to add the interface for the web payment process?

4 A. The -- yeah, the -- the ability to turn

5 on multiple payment processors was not enabled in 01:45:11

6 13.40. So we did not want to be -- we did not want

7 that to be part of the evaluation.

8 Q. And if it was part of the evaluation,

9 would Epic have expected Apple to reject that app,

10 the update? 01:45:27

11 A. If we had enabled multiple payment

12 providers and then submitted it, I believe Apple

13 would have rejected it, yes.

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Q. (By Ms. Yang) If you could open Exhibit  
162, which is the document bearing Bates Number  
EPIC\_04040995. And just let me know when you are  
there.  
A. Okay.

1 Q. All right. Do you recognize this 02:00:19

2 document?

3 A. Yes, I do.

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Q. And Epic didn't implement its payment -- 02:01:51  
it's Epic direct payment hotfix into any of the  
consoles; is that correct?

A. The -- the 13.40 build did technically  
contain the same code for supporting multiple  
payment providers that was submitted to the 02:02:08  
consoles, but we haven't hotfixed on more than one  
payment provider on any other console other than  
Apple and Google.

1 Q. Is it consistent with your understanding 02:13:18

2 that iOS is a relatively small market for Fortnite?

3 A. I mean, the iOS is a very large market in

4 general. Compared to the other consoles in

5 Fortnite in particular, yes, it's -- it's 02:13:29

6 comparative small.

7 Q. Right. So looking at this chart, PS4,

8 that platform has almost 40 percent of all

9 projected revenue for Fortnite in 2020; is that

10 correct? 02:13:43

11 A. That's correct.

12 Q. Compared to 5.8 percent for iOS?

13 A. Correct.

14 Q. And, similarly, Xbox One is 24.0 percent?

15 A. Yes. That's correct. 02:13:58

16 Q. And that's multiples higher than iOS?

17 A. That is four times higher than iOS.

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Q. What was Epic's expectation as to whether or not iOS and Google Play players would migrate to other platforms if Fortnite become unavailable in iOS and Google Play? 02:15:02

THE DEPONENT: So I think it's an important distinction -- I think it's an important distinction to look at the fact that what's actually being said here is that 44 percent of players already played on multiple platforms. So the expectation we had was that anyone who was already on more than one platform would be able to 02:15:17 02:15:29

1 continue to play on the other platforms that they 02:15:32  
2 already played on. There's no statement as to  
3 expectations for users to migrate.  
4 Q. (By Ms. Yang) And that's because  
5 Fortnite is a game that enables cross-play and 02:15:46  
6 cross-progression; is that correct?  
7 A. If you're lucky enough to have more than  
8 one device to play on, yes.  
9 Q. And it seems like 44 percent of the  
10 revenue in April 2020 came from people who had more 02:15:59  
11 than one device?  
12 A. 44 percent of the iOS revenue came from  
13 people who also had another device, yes.  
14 Q. And for those people it would have been a  
15 fairly seamless experience to transfer from playing 02:16:13  
16 Fortnite on iOS to transfer to play on whatever  
17 other platform they had?  
18  
19 THE DEPONENT: Yeah. I think it's  
20 reasonable to assume that they started playing on 02:16:23  
21 one of the other platforms since -- since iOS is  
22 a -- was a later release target for us. The fact  
23 that there -- it's possible to make purchases using  
24 mobile is somewhat attractive to people who play  
25 console primarily. But I don't think that, for 02:16:42

1 mobile-centric players, it would be particularly 02:16:47  
2 easy for them to move over, especially given the  
3 way in which you play tends to be different when  
4 you're playing mobile.

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1 Q. Was the Project Liberty team given 02:35:13  
2 specific instructions not to reveal Epic direct  
3 payment plans to Apple before it launched?

4 A. Our general instructions for -- for all  
5 of Fortnite are not to talk about anything until 02:35:25  
6 it's launched outside of the company. That's just  
7 general policy.

8 Q. Were there any specific instructions  
9 given about sensitivity of Project Liberty in  
10 particular? 02:35:45

11 A. There were -- it was on a need-to-know  
12 basis. That's true.

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1 MS. YANG: All right. If you could turn 02:36:50

2 to the document that we've marked as Exhibit 164 --

3 (Exhibit 0164 was marked for

4 identification by the court reporter and is

5 attached hereto.) 02:36:58

6 MS. YANG: -- which is Bates Number

7 EPIC\_00181306.

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15 Q. (By Ms. Yang) Okay. Do you recognize 02:37:32

16 this document?

17 A. Let's see.

18 Yes, I believe I recall this one.

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**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Nicholas Penwarden  
(January 26, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
27 minutes 18 seconds	3 minutes 13 seconds

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
  
Defendant,  
Counterclaimant.

---

IN RE APPLE IPHONE  
ANTITRUST LITIGATION

Case No. 4:11-cv-06714  
YGR

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(caption cont'd)

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

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12 ZOOM DEPOSITION OF NICHOLAS PENWARDEN & EPIC GAMES,

13 INC'S 30(b)(6) CORPORATE REPRESENTATIVE

14 (Reported Remotely via Video & Web Videoconference)

15 Chapel Hill, North Carolina (Deponent's location)

16 Tuesday, January 26, 2021

17 Volume I

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19

20

STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4430767

25 PAGES 1 - 248

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THE COURT REPORTER: You do solemnly  
state under penalty of perjury that the testimony  
you are about to give in this deposition shall be  
the truth, the whole truth, and nothing but the  
truth?

09:13:38

THE DEPONENT: I do.

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Q. And when did you start your job at

Epic Games?

09:16:16

A. I started in 2011, April -- April 2011, I

believe.

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Q. And what are your current responsibilities as the vice president of engineering? 09:16:59

A. I am responsible for the engineering team that -- that create Unreal Engine. I'm responsible for the engineering team that work on Fortnite. And then, more generally, I'm responsible for the sort of engineering processes and practices that we have at Epic on those teams. 09:17:15

1 And do you know how the -- how Epic 09:31:54

2 monetizes the Unreal Engine?

3 A. I do.

4 After the first million dollars of gross

5 revenue, licensees who use the engine are -- or pay 09:32:05

6 5 percent of their revenue as a royalty to Epic.

7 Q. And is that -- is that in perpetuity?

8 A. As far as I'm aware, yes.

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Q. Sure. I'm speaking colloquially, but the point that I'm getting at is Unreal Engine is a business?

09:37:40

A. That's right. Unreal Engine is a business.

Q. And in order to continue to provide that service, Epic seeks to make a profit on Unreal Engine through the monetization model that we discussed earlier?

09:37:53

THE DEPONENT: Similar answer. I believe that Epic does seek to make a profit. But, again, how much profit we receive from Unreal Engine versus other products, I don't know.

09:38:02

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Q. Okay. And can you describe for me a little bit the cross-platform capabilities in Fortnite?

A. Sure. Fortnite is -- so Fortnite, utilizing the Unreal Engine, we create -- we've basically created a single game where the same game logic runs on each of the consoles that we support: PC, Mac, the mobile platforms that we support.

And by utilizing the tools in Unreal Engine, artists are able to author the content once

1 and then the engine handles a lot of the 09:43:37  
2 platform-specific differences related to, for  
3 instance, graphics techniques or how to play audio  
4 on individual devices.

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14 For all of the platforms on which  
15 Fortnite is available, are there differences 09:44:22  
16 between the user experience on each of those  
17 different platforms between consoles, mobile,  
18 tablets, and whatnot?

19 A. In terms of the game play experience  
20 itself, we do our best to -- it's -- let me 09:44:35  
21 rephrase that.

22 It's fundamentally the same game. So it  
23 is the same game mechanics. Players on different  
24 platforms can participate in the same game at the  
25 same time all playing by the same rules. The 09:44:49

1 differences are primarily visual or related to 09:44:55  
2 input.  
3 So some players will use a keyboard and  
4 mouse; some players, a controller; some players, a  
5 touchscreen interface, of course, particularly on 09:45:06  
6 mobile devices. And, again, in terms of the visual  
7 quality, depending on the performance  
8 characteristics of the hardware, some platforms  
9 will use lower polygon models or lower resolution  
10 textures or different rendering techniques that are 09:45:29  
11 more apt for the particular platform.  
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18 Q. And what about -- are all of the same  
19 features in the games in terms of purchases, skins,  
20 dances, and whatnot the same across all of the 09:46:01  
21 platforms?  
22 A. I believe that they are.  
23 Q. And so if somebody has Fortnite on a  
24 PlayStation 4 and they log in and -- to -- to  
25 access the app on their iPhone, they have access to 09:46:16



1 the same -- the same content that they have 09:46:20

2 purchased, for example?

3 A. I believe that you have access to all the

4 same content across -- all the content that you own

5 across platforms. 09:46:33

6 Q. And is it also true for -- you will have

7 to forgive my ignorance here, but I don't know if

8 there are levels in Fortnite or if there's some way

9 of tracking your progress on the game. Is that

10 maintained across the different platforms? 09:46:46

11 A. Yes. We call it cross-progression, but

12 your progression through the game is -- is

13 maintained across platforms.

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And we don't need to get into the 09:55:13

details, but essentially Epic enters into certain  
license agreements with Apple for the ability to  
use Apple's proprietary software; is that right?

A. Yes, I believe that to be true.

Q. And without entering into those license 09:55:28

agreements with Apple, Epic would have no right to  
use any of that proprietary software; is that  
right?

THE DEPONENT: I expect that is true. 09:55:39

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It looks like we have Exhibit 18 up.

And for the record, I'll note that we

have marked as Defendant's Exhibit 18 a document

10:12:22

Bates-stamped EPIC\_01920438.

And feel free to take a moment to look at

this, Mr. Penwarden. But, when you finish, can you

let me know if you recognize this document?

A. Yes. I see the document and recognize

10:13:09

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Q. Okay. So the third paragraph down in that email, it says, "Nick had mentioned to me some of your positive experiences regarding the Fortnite development effort and the role Metal and our iOS GPU HW/SW played in that effort and, in general and in particular, in comparison to your experience with other platforms." 10:14:17 10:14:37

Did I read that correctly?

A. You did.

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Q. (By Ms. Yang) Sure. But just focusing on the iPhone iOS platform right now, the -- 10:18:41  
comparing Apple's Metal API to the Android OpenGL API, Epic had a positive experience in terms of developing Fortnite for iOS compared to Android; is that correct?

THE DEPONENT: We had a -- we had a much more positive experience developing Fortnite on -- on iOS using Metal. But I -- I guess I want to also clarify that I'm talking about the entire 10:19:20  
graphics stack here. So it's not specifically Metal versus OpenGL; it is -- it's Metal, it's the graphics driver, and the -- the hardware itself.

Again, it gets back to the breadth of hardware on Android versus the smaller sample set 10:19:37

1 on Apple. 10:19:41

2 Q. (By Ms. Yang) Sure.

3 But you would agree that Metal -- Apple's  
4 proprietary Metal software was part of the reason  
5 why the development experience on the iOS 10:19:50  
6 platform was better in this case than for  
7 developing for Android?

8

9 THE DEPONENT: To be honest, I'm not  
10 sure. I think the -- specifically to your question 10:20:08  
11 that Metal is -- I take your question to be asking  
12 whether Metal was the reason or the predominant  
13 reason or a significant factor. I'm not sure.  
14 OpenGL could also perform similarly well or be made  
15 to perform similarly well, I believe. 10:20:34

16 However, I would also say that getting  
17 Fortnite running on iOS using Metal was a very  
18 positive experience and, again, easier than the  
19 experience we had on Android platforms.

20 Q. (By Ms. Yang) All right. And we can 10:20:59  
21 actually, then, look at the top of the page here in  
22 the email from Mr. Sweeney responding. At the top  
23 of the page, he says, "Yes, we'd be happy to share  
24 some quotes on Metal, which had been a dream to  
25 work with compared to other things. And we're 10:21:11

1 happy to either share or support Apple in sharing 10:21:14  
2 any technical details about Fortnite performance,  
3 optimization, and feature usage on iOS and Mac."

4 Do you see that?

5 A. I do. 10:21:27

6 Q. Do you agree with Mr. Sweeney that Metal  
7 had been a dream to work with compared to other  
8 things?

9 A. I would refer to my previous testimony.

10 But, again, I agree that working -- I would agree 10:21:41  
11 with working with Metal has been a dream -- or, in  
12 this case, was a dream compared with working with  
13 OpenGL on Android.

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21 MS. YANG: And for the record, I'll note

22 that we have marked as Defendant's Exhibit 19 a

23 document Bates-labeled EPIC\_000011599.

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25

1 But my first question will just be the same thing.

10:22:35

2 Do you recognize the document?

3 A. Yes, I recognize the document.

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Q. Okay. And then the next part of that email says, "Here is a starting point: The performance and features of Metal allowed us to bring the full Fortnite Battle Royale experience to iOS quickly and at higher quality than is possible with OpenGL." 10:25:17

Did I read that correctly?

A. You did.

Q. And is that a sentence that you wrote in this email? 10:25:29

A. I believe it is, yes.

Q. And do you still agree with that sentence today?

A. I do, with the same context that I gave above. Actually, I think the -- the line above that states it pretty well that the performance gain over OpenGL, I later qualify that as Android was the -- was, I say here, "the number one differentiator that allowed us to get Battle Royale running on iOS faster than on Android." 10:26:01

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Q. And it says, "We have been making use of Metal on iOS to great effect since its release in 2014. A fast, agile, feature-rich API like Metal is exactly what we need to bring a game designed for modern consoles and desktops to the battery-powered iPhone and iPad."

10:26:42

Do you see that?

10:27:00

A. I do.

Q. And what does it mean when -- first of all, do you agree with that statement?

A. I broadly agree with the statement the -- yeah, I broadly agree with the statement.

10:27:39

Q. And what does it mean when the statement is -- when -- when -- "a fast, agile, feature-rich API like Metal," what does that phrase mean in the context of software development?

A. In the context of software development,

10:28:04

1 "fast" here is referring to performance, "agile" is 10:28:06  
2 referring to changing of features -- so addition of  
3 new functionality -- and "feature-rich" is the  
4 extent of features supported by the API.

5 Q. And according to this statement, these 10:28:32  
6 are all characteristics that Apple's Metal software  
7 has?

8 A. Yes. I think that's right.

9 Q. And why is that useful -- why are --  
10 those features in the Metal API, why are those 10:28:46  
11 useful to help bring a game designed for consoles  
12 and desktops to a mobile device like an iPhone or  
13 iPad?

14 A. In the context of Metal, one of the  
15 goals, as I understand it, that the engineering 10:29:03  
16 team had was to reduce the CPU cost at the driver  
17 level. So reducing CPU cost gets back to the  
18 performance differences that I was referring to  
19 earlier. In addition, reducing CPU costs reduces  
20 battery consumption, which -- which gets to the 10:29:28  
21 part of battery-powered iPhone and iPad.

22 Q. And so having a fast, agile, feature-rich  
23 API like Metal will actually improve the  
24 performance of apps on battery-powered devices; is  
25 that right? 10:29:47

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THE DEPONENT: I think, again, it -- it allows for applications to perform better and use less power consumption than they otherwise would on Apple's platforms. 10:29:56

Q. (By Ms. Yang) And then the next sentence of this statement says, "As a developer, it blows OpenGL in every way." 10:30:11

Do you agree with that?

A. I do. I would qualify it as, clearly, the OpenGL implementations that were available to us at the time on iOS and on Android.

Q. And then finally the last sentence says that -- of that first paragraph says, "We were able to get Fortnite ship-ready on iOS in a handful of months as we weren't hindered by graphics." 10:30:33

Do you see that?

A. I do. 10:30:46

Q. And how was Metal able to speed up the process of getting Fortnite ship-ready on iOS?

A. In this case, it was primarily related to performance. So, again, the performance of the graphics stack on -- on iOS was such that we 10:31:04

1 didn't have to spend as much time optimizing for 10:31:09

2 iOS to get it ready for ship.

3 Q. So, as a result, Epic was label to launch

4 Fortnite on iOS faster?

5 A. Yes, we were able to launch Fortnite on 10:31:27

6 iOS than we would have been able to had -- had --

7 iOS's graphics stack had the same performance

8 characteristics that it did prior to Metal. That's

9 an accurate statement.

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Does Epic compensate Apple or pay Apple  
for any of the engineering know-how for Apple's  
contributions to the collaboration? 11:03:14

A. To my knowledge, no, we do not pay Apple  
money for -- for the collaboration -- or for  
participating in the collaboration. I mean, the  
nature of the collaboration is we both believe it's 11:03:38  
mutually beneficial to participate.

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Q. Okay. And the next sentence says, "Epic and Apple held weekly conference calls to discuss existing engineering issues as well as anticipated issues with Apple's prerelease software (e.g., beta OS and/or Xcode) that was made available to Epic through the Apple Developer Program."

11:17:13

Do you see that?

11:17:30

A. Yes, I see that.

Q. Is that consistent with your experience that Epic and Apple would have weekly conference calls on engineering issues?

A. Yes. I recall we had weekly conference

11:17:44

1 calls set up between our engineering team and the 11:17:47

2 GPU software team at Apple.

3 Q. Did you participate in those weekly

4 conference calls?

5 A. I used to participate in them. I don't 11:17:57

6 recall specifically what years or time frame, but

7 from time to time.

8 Q. Sure. But some engineering team at Epic

9 has weekly conference calls with an engineering

10 team at Apple; is that right? 11:18:14

11 A. Yes, that's my understanding.

12 Q. Okay. About how many Apple engineers

13 would participate in those calls?

14 A. I don't recall an exact number. I would 11:18:34  
15 say on the order of two to four in most cases.

16 Q. And how long would those calls last?

17 A. I'm not sure. I would say most of the  
18 calls would take somewhere between 30 minutes and

19 an hour. I'm trying to remember as well -- I  
20 believe on the Epic side, we would typically have 11:18:58

21 anywhere between three and six engineers

22 participate in those conference calls.

23 Q. All right. The next sentence of the  
24 response says, "These calls covered the following

25 Fortnite-related topics: discovery and 11:19:11



1 resolution of the graphic driver bugs in iOS and 11:19:14  
2 macOS; memory usage and bugs affecting Epic's  
3 ability to implement and support iOS and macOS  
4 features; investigation into rendering issues in  
5 Fortnite caused by Apple's Metal software; and 11:19:28  
6 Epic's testing and providing feedback on Apple  
7 developer tools."

8 Do you see that?

9 A. I do.

10 Q. And is that accurate to the best of your 11:19:37  
11 knowledge?

12

13 THE DEPONENT: I believe that is -- that  
14 is an accurate statement. During the -- during our  
15 development of Fortnite Unreal Engine on Apple 11:19:56  
16 platforms, we frequently find driver bugs that  
17 cause either graphics glitches or instability in  
18 our products.

19 Sorry. The -- the instability noted is  
20 most often in the drivers for macOS or iOS. They 11:20:15  
21 manifest as bugs in Fortnite or in Unreal Engine.  
22 So we use these conference calls as a way to raise  
23 these issues with the engineering team at Apple so  
24 that they can go and investigate the issues  
25 themselves and hopefully fix the -- the issues 11:20:34

1 in -- in Metal or in -- in drivers so that when -- 11:20:38  
2 so that in the next release of either iOS or  
3 macOS, as it were, those bugs are not present.

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20                   What is your understanding of how Epic                   11:26:11

21   pays Apple for any services or tools provided by

22   Apple to -- for Epic to create, develop, or

23   maintain iOS Fortnite?

24           A.   My understanding with respect to the

25   developer tools and SDKs is that, like most                   11:26:31

1 platforms, Apple provides those SDKs and tools for 11:26:37  
2 a nominal fee, similar to -- to other platforms in  
3 order to encourage -- I expect in order to  
4 encourage developers to create software for the  
5 platforms. 11:26:54

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Q. (By Ms. Yang) And for the record we've marked as Exhibit 23 a document that begins with Bates Number EPIC\_00578585.

And I'll ask you, Mr. Penwarden, to take a look at this and let me know if you recognize this document. 11:44:46

A. Okay. I recognize the document.

Q. All right. And this is an email exchange between a few people at Epic Games, including yourself, from around November 2017; is that right? 11:45:39

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A. That's right.

11:45:44

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MS. YANG: And, for the record, we've 11:54:34  
marked as Defense Exhibit 24 a document that has  
been Bates-stamped EPIC\_00433495.

Q. (By Ms. Yang) And after you've had a  
chance to take a look at it, can you let me know if  
you recognize this document. 11:54:49

A. Okay. I recognize the document.

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Q. Was that a frequent type of communication that Epic would have with Apple in terms of Apple previewing new features that it was working on? 11:57:38

A. That would happen time -- from time to time. I'm trying to -- I'm struggling with the word "frequent" that you used.

We would, from to time to time, be informed by Apple of new functionality coming on Apple's platforms. 11:57:57



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Bates Number 495. And there's an email sent from

Robert Partington on May 12, 2020, at 2:37 p.m.

Do you see that?

12:01:23

A. I do.

Q. And the first paragraph says, "Checking

in to see how things are going with ARKit 3.5 and

if there are any use cases that emerged for the

LiDAR scanner in enterprise or virtual sets."

12:01:34

1 Do you see that? 12:01:40

2 A. I see that, yes.

3 Q. Can you explain what the context for that

4 discussion is?

5 A. My understanding is that Rob is asking 12:01:46

6 whether or not we have customers with a use case

7 for the LiDAR scanner that Apple would be able to

8 highlight to other developers at Worldwide

9 Developer Conference, presumably for the purpose of

10 showing off the features and work that they've 12:02:10

11 developed.

12 Q. And then the next sentence says, "We are

13 ramping up for virtual WWDC, and I want to get UE

14 in the best position for any opportunities that

15 start to pop up." 12:02:27

16 Do you see that?

17 A. I do.

18 Q. And just to be clear, WWDC is referring

19 to Apple's Worldwide Developer Conference; is that

20 correct? 12:02:37

21 A. I believe that's so.

22 Q. And then UE in that context is referring

23 to the Unreal Engine?

24 A. I understand that to be the case, yes.

25 Q. What types of opportunities would pop up 12:02:48

1 for the Unreal Engine at the Worldwide Developer 12:02:51  
2 Conference?

3 A. I'm not sure I -- I entirely agree with  
4 the premise of the question. The -- I think the --  
5 my understanding is the opportunities that Rob is 12:03:17  
6 referring to would be opportunities to show  
7 features and functionality at Worldwide Developer  
8 Conference that use the Apple SDK in question  
9 here -- or in this case, the -- the hardware, the  
10 LiDAR scanner on the iPad. 12:03:43

11 Q. Well, specifically, I'm asking about the  
12 Unreal Engine. He says, "I want to get Unreal  
13 Engine in the best position for any opportunities  
14 that start to pop up."

15 Is that correct? That's what it says? 12:03:53

16 A. That is what Robert's email says, yes.

17 Q. Yup.

18 So Unreal Engine, as we discussed  
19 earlier, is a product that Epic makes available to  
20 third-party developers; is that correct? 12:04:10

21 A. That's correct.

22 Q. Were there ever any instances in which  
23 Unreal Engine or other Epic products were, for  
24 example, featured at Apple's Worldwide Developer  
25 Conferences? 12:04:23

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A. In the past we have participated in 12:04:27  
Apple's Worldwide Developer Conference and shown  
technical demonstrations that were developed using  
Unreal Engine.

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21 Q. (By Ms. Yang) Okay. And what are the  
22 benefits to Epic of allowing cross-platform play in  
23 Fortnite, for example?

24 A. I will speak primarily to the -- to the  
25 engine and technology side of things as the games

01:03:45

Page 135

1 and business side of things, again, is not really 01:03:49

2 my role at Epic.

3 But on the technology side one of the

4 benefits is that it -- it aids us in proving out

5 the technology of Unreal Engine, again running the 01:04:03

6 same content -- or substantially similar content

7 and same game across multiple platforms.

8 Q. And so Epic can develop the game once,

9 and then it can be used in a variety of different

10 platforms; is that correct? With some adjustments 01:04:23

11 with each platform, I understand.

12 A. There's some additional work and

13 engineering that goes into each -- each platform

14 that we support, but we substantively support the

15 same game across -- across multiple platforms. 01:04:38

16 Q. And then end users have the choice of

17 which platform or platforms that they would like to

18 choose to be able to play Epic -- Epic games like

19 Fortnite; is that correct?

20 A. Yeah. Players are allowed to choose 01:04:56

21 which -- which platforms they want to play Fortnite

22 on.

23 Q. Including some players -- players have

24 the option to choose more than one platform to play

25 Fortnite? 01:05:08

1           A.   That's right.  Players may play Fortnite           01:05:09  
2   on several different platforms.

3           Q.   And that includes different platforms in  
4   terms of you can have the option of playing on a  
5   console versus playing on a mobile versus playing           01:05:19  
6   on tablet?

7           A.   Yes.  A Fortnite player can choose to  
8   play on their phone in the morning and on a console  
9   in the evening if that's what they so choose.

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MS. YANG: All right. For the record,  
this is Defense Exhibit 29, which is the document 01:44:59  
Bates-stamped EPIC\_00033947.

Q. (By Ms. Yang) And once you've had a  
chance to take a look, if you could confirm whether  
you recognize this document.

A. I see the email, and I have skimmed 01:46:49  
through it.

Q. Okay. So this is another email between a  
lot of people at Epic around August of 2018; is  
that correct?

A. That's correct. 01:47:00



1 Q. So looking at the second page of the -- 01:47:04  
2 the second page of the email, the page that ends  
3 with Bates Number 948, in the middle of the page  
4 there's an email from Arjan Brussee on August 8th,  
5 2018, at 4:59 p.m. 01:47:15

6 Do you see that?

7 A. I do.

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Q. When was Metal first released?

A. I believe it was June 2014 when the first version of Metal was released.

Q. (By Mr. Even) At the time was Metal a developers' dream come true? 04:42:18

A. No.

Q. (By Mr. Even) Back in 2014, did Apple reach out to Epic and ask to collaborate on Metal? 04:42:30

A. Apple approached Epic in early 2014 to -- to disclose that they were working on Metal and to get our feedback on the API and what they were doing and to help get -- or to get Unreal Engine running on Metal so that they could understand how the API works and performs with a -- with a AAA console-style graphics workload. 04:42:57

Q. What, if anything, has Epic done from 2014 through 2018 that contributed to Metal becoming such a good platform by 2018? 04:43:23

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THE DEPONENT: Throughout the years  
between -- from 2014 to 2018, Epic and Apple  
collaborated to -- so on our side, we continued to 04:43:41  
invest time and -- and engineering into supporting  
new features on Metal to -- to improving and  
optimizing the engine on Metal and investigating  
bugs that we found that were unique to Metal that  
were typically in the driver or in the 04:44:05  
implementation of Metal, and then working with  
Apple to be able to provide the GPU software team  
with repro cases and information about -- about  
those issues so that they could fix those issues in  
Metal. 04:44:28

**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Mark Rein  
(February 10, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
14 minutes 53 seconds	19 seconds

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
  
Defendant,  
Counterclaimant.

---

IN RE APPLE IPHONE  
ANTITRUST LITIGATION

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Case No. 4:11-cv-06714  
YGR

(caption cont'd)

\*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

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11 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

12 ZOOM DEPOSITION OF MARK REIN

13 (Reported Remotely via Video & Web Videoconference)

14 Ocala, Florida Deponent's location)

15 Wednesday, February 10, 2021

16 Volume I

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STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4453817

25 PAGES 1 - 161

Page 2

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20 Q. When did you join Epic Games, sir? 09:15:46

21 A. Around early 1992.

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25 Q. And you've been with the company ever 09:16:04

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since?

09:16:06

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A.

Yes.

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23 Q. And are the things that you are involved

24 in today still in the arena of sales and marketing

25 and sales and marketing strategy?

09:18:55

Page 21

1 A. Typically, yes. 09:18:57

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8 And do you currently sit on the board of

9 directors for Epic?

10 A. Yes. 09:19:21

11 Q. And how long have you been on the board?

12 A. Since we created the board.

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And in the course of your

responsibilities or your job function, have you had

dealings with Apple?

A. Yes.

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22 Q. Well, while Fortnite was on the  
23 App Store, did Apple offer marketing and  
24 promotional support for it?

25 A. Yes.

09:51:51

1 Q. Okay. And what sort of marketing and 09:51:51

2 promotional support did Apple provide?

3 A. Apple would feature your app occasionally

4 when you had something important going on.

5 Q. You mean -- 09:52:08

6 A. Sorry. Apple would feature Fortnite

7 occasionally when we had something important going

8 on.

9 Q. And what does that mean in the context of  
10 an App Store to feature it? 09:52:15

11 A. It means they would give it a prominent

12 placement on one of the pages of the App Store.

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16 Q. What other sorts of promotion and

17 marketing did Apple provide for Fortnite?

18 A. One time they put us up on stage and they

19 demonstrated Fortnite at one of their -- I can't

20 remember if it was a developer conference or a 09:52:54

21 product launch.

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Q. Did Apple and Epic collaborate

effectively on the marketing and promotional

efforts that you do recall?

A. I think so.

09:53:43

Q. And did the marketing and promotion

provided by Apple benefit Epic?

A. I -- I think it did.

Q. How?

A. Through more people being aware of the

09:54:00

game.

Q. No matter which platform they ultimately

played it on?

A. Well, the marketing would have been

targeted at iOS users.

09:54:14

Q. One of the significant elements of

Fortnite is cross-platform play, correct?

A. Yes.

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(Exhibit 188 was marked for

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identification by the court reporter and is

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attached hereto.)

09:56:03

Page 51

1 Q. (By Mr. Doren) Mr. Rein, while you 09:56:08

2 review that, I will describe for the record that

3 this Exhibit 188 is a two-page document which

4 contains an email string, and the first page of the

5 exhibit is EPIC\_00010165. 09:56:18

6 Please take a moment and review that

7 document.

8 THE DEPONENT: Yup. I've reviewed it.

9 Q. (By Mr. Doren) Thank you very much, sir.

10 First of all, do you recognize this as an 09:57:02

11 email chain in which you participated including

12 various Epic colleagues on January -- from

13 January 17th, 2018?

14 A. Yes.

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Q. In 2019 Epic hosted a virtual concert with the DJ named Marshmello, correct?

A. I believe it was in 2019, yes. 10:18:54

Q. But you recall the event, correct?

A. I recall the event. I don't recall the exact date.

Q. Thank you.

And can you describe what the event was, 10:19:02

please.

A. The Marshmello concert was an in-game event where we had the Marshmello character doing a show and to Marshmello music.

Q. And for those of us that aren't quite as hip as others, what is Marshmello? Or who is Marshmello? 10:19:20

A. He's a famous DJ artist.

Q. And did Epic consider this to be a major event? 10:19:36

1 A. Yes, I believe we did. 10:19:38

2 Q. And when you say it was "an in-game

3 experience," was it within Fortnite?

4 A. It was within Fortnite.

5 Q. And was it available on all platforms? 10:19:47

6 A. Yes, I believe it was.

7 Q. Meaning mobile and consoles and PCs?

8 A. Yes, whatever -- within Fortnite.

9 Wherever you played it.

10 Q. Was it available on the web-based 10:20:07

11 versions of Fortnite?

12 A. What web-based versions of Fortnite?

13 Q. Those available, for example, through

14 GeForce?

15 A. It should have been, yes. 10:20:22

16 Q. Thank you.

17 And did viewers purchase tickets to

18 attend that event?

19 A. No.

20 Q. It was free? 10:20:30

21 A. It was a free event.

22 Q. And did Apple offer marketing support for

23 the Marshmello event?

24 A. I believe they did.

25 Q. And do you recall what it was? 10:20:47

1 A. I believe they did some sort of featuring 10:20:52

2 on the store.

3 Q. And when you say featuring on the store,

4 what do you mean?

5 A. I think they wrote a story about it or 10:21:01

6 placed a Fortnite imagery in -- in -- in a featured

7 location on App Store.

8 Q. And do you recall any other marketing or

9 promotion that Apple did with Epic around the

10 event? 10:21:19

11 A. Apple Music did some advertising, some

12 outdoor advertising, I believe.

13 Q. Do you recall?

14 A. And featured -- and featured music from

15 the event in Apple Music. 10:21:32

16 Q. And did you consider that to be a benefit

17 to Epic's profile?

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20 THE DEPONENT: I -- it helped get more 10:21:49

21 people to listen to the music that was from the

22 Fortnite Marshmello concert, perhaps.

23 Q. (By Mr. Doren) And do you consider that

24 to be a good thing?

25 A. If you like that kind of music, it's a 10:22:02

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good thing, yes.

10:22:04

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12 Exhibit 190 is a multipage email string,

13 the first page of which begins with an email from

14 Edward Zobrist to you and others sent on

15 January 30th, 2019. The document bears numbers 10:44:09

16 EPIC\_00193236 through 40.

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22 Q. Mr. Rein, have you had an opportunity to

23 review Exhibit 190?

24 A. Yes.

25 Q. And do you recognize it as an email chain 10:47:57

1 among various Epic employees, including yourself, 10:48:01

2 from January of 2019?

3 A. Yes.

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You then go on and state: "With 11:02:07  
controller support and if Apple gets behind  
promoting that, we could see huge growth on iOS."

Do you see that?

A. Yes. I wrote that.

Q. What did you mean by that statement? 11:02:18

A. I think I mean what it said. With  
control and support and if Apple gets behind  
promoting, we could see huge growth on iOS.

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And you mentioned that -- and why is it a good thing to have Apple advertise your product?

A. Any -- almost any advertising for your product is a good thing. 11:08:18

Q. And Apple is a -- a well-known brand?

A. Yes.

Q. And a highly regarded brand?

A. Yes.

Q. And being affiliated with Apple is beneficial to Epic? 11:08:28

A. I believe it's beneficial to Fortnite when they are marketing Fortnite.



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MR. DOREN: Sarah, let's, please, look at

11:26:55

Page 100

1 Tab 34, which is a document previously marked as 11:26:56

2 Exhibit 35.

3 THE DEPONENT: I'm looking at it.

4 Q. (By Mr. Doren) Great.

5 And, Mr. Rein, we will be talking about 11:27:35

6 the last paragraph in your email on page 1, and I'm

7 going to be asking you some questions about the

8 [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

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Q. (By Mr. Doren) The first page of the exhibit begins with an April 15th, 2019, email from Mr. Rein.

Mr. Rein, you've had an opportunity to review Exhibit 35?

11:33:06

A. Yes.

[REDACTED]

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Q. We've discussed earlier GeForce as -- as  
a web -- as a source for a web-accessible version  
of Fortnite, correct?

11:34:16

A. GeForce is a cloud streaming service that  
has Fortnite on it.

Q. And --

A. Or does now. Sorry.

Q. Thank you.

11:34:27

And we have in front of us documents  
discussing an initiative at Walmart called Project  
Storm back in April 2019, correct?

A. Yes.

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Q. Is that a trend in gaming, the  
cloud-based streaming? 11:35:47

A. I don't know if I'd say it's a trend.  
There are companies attempting to do it.

Q. Do you consider that to be the future of  
gaming?

A. Not really. 11:36:02

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4 Q. (By Mr. Doren) Looking, please, at the

5 first page of Exhibit 35. And in the third

11:38:59

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23 Q. (By Mr. Doren) It was -- it was what

24 they had to offer as -- as of April 15 as their

25 streaming service for you to try out; is that fair?

11:40:04

Page 107

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A. What I played in our office that date.

11:40:07

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[REDACTED]

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Q. Do you know what factors went into setting the 12 percent commission level? 11:42:45

A. Yes.

Q. What do you know about that?

A. The -- the cost of operating the service went into -- was one of the factors in deciding what was a fair amount to charge. 11:43:05

Q. And when you say cost of operating the service, what service are you referring to?

A. The service of -- that we provide to -- to games that are sold in the Epic Games Store.

Q. You mean the payment processing service or do you mean something more than that? 11:43:22

A. I'm -- payment processing would be one of the costs.

Q. What other costs went into it?

A. Some of the others could be the -- the actual distribution cost, the internet bandwidth cost, the -- you know, the -- the cost of maintaining it. 11:43:36

Q. Maintaining the store?

A. Yes. 11:43:54

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22 (Exhibit 198 was marked for  
23 identification by the court reporter and is  
24 attached hereto.)

25 Q (By Mr. Doren) Mr. Rein, you are

12:23:32

1 presented with Exhibit 198, which is a three-page 12:23:35

2 document which contains an email chain. The first

3 email on the document at the top of the first page

4 is dated March 14th, 2018 from Canon Pence to

5 Daniel Vogel, with cc's to others, including 12:23:59

6 yourself. The document bears Bates

7 No. EPIC\_01919888, et cetera.

8 Please take a moment and review this

9 document.

10 A. Okay. I reviewed it. 12:24:57

11 Q. Mr. Rein, you had an opportunity to

12 review Exhibit 198?

13 A. Yes.

14 Q. And is this an email string that you

15 received on March 14th, 2018 from Mr. Pence? 12:25:05

16 A. It appears to be, yes.

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**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Alec Shobin  
(January 22, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
10 minutes 26 seconds	38 seconds

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
  
Defendant,  
Counterclaimant.

---

IN RE APPLE IPHONE  
ANTITRUST LITIGATION

Case No. 4:11-cv-06714  
YGR

---

(caption cont'd)

1 DONALD R. CAMERON, et al.,

2 Plaintiffs,

3 vs.

Case No. 4:19-cv-03074

YGR

4 APPLE INC.,

5 Defendant.

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10 ZOOM DEPOSITION OF ALEC SHOBIN

11 (Reported Remotely via Video & Web Videoconference)

12 Raleigh, North Carolina (Deponent's location)

13 Friday, January 22, 2021

14 Volume I

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STENOGRAPHICALLY REPORTED BY:

21 REBECCA L. ROMANO, RPR, CSR, CCR

California CSR No. 12546

22 Nevada CCR No. 827

Oregon CSR No. 20-0466

23 Washington CCR No. 3491

24 JOB NO. 4422886

25 PAGES 1 - 259

Page 2

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EXAMINATION

First, would you state and spell your

full name, please.

A. Alec Shobin. A-L-E-C, S-H-O-B-I-N.

Q. Who is your current employer, Mr. Shobin?

A. Epic Games.

09:04:16

Q. And what city and state do you live in?

A. Raleigh, North Carolina.



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21 Q. You began working at Epic Games in

22 January of 2019?

23 A. That is correct.

24 Q. What is your current title there?

25 A. It should be marketing manager.

09:08:11

1 Q. Has that title changed during your time 09:08:16

2 at Epic?

3 A. No.

4 Q. What are your current responsibilities?

5 A. I do Fortnite marketing. 09:08:29

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Q. Okay. In your participation in 10:24:59

Project Liberty, were you aware of any goals to  
challenge the revenue share of the PlayStation or  
Xbox platform?

A. I wasn't aware of any kind of stated  
goals by leadership in those regards. 10:25:21

Q. Were you aware of any goals in  
Project Liberty to challenge the revenue share of  
Samsung's Galaxy platform?

A. I was not aware of any goals of  
Project Liberty that were intended to challenge 10:25:45

Samsung.

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24 Q. You were -- you were averse to the risk

25 that as a result of what Epic did in

10:30:56

Page 59

1 Project Liberty, Fortnite might be removed from the 10:31:01

2 App Store; is that accurate?

3 A. I was -- I was averse to any possible

4 risk that would jeopardize Fortnite's availability

5 on the App Store. 10:31:14

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Q. What do you think you know that Sony charges in commissions? 10:59:51

A. I heard previously it was around 30 percent.

Q. Okay. And you never questioned during any Project Liberty meeting, why are we challenging the Apple 30 percent but not the Sony 30 percent? 11:00:03

A. I don't know if I questioned that during a meeting. I'm sure I brought that up casually with a colleague.

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Q. Okay. And even though you didn't know whether that information was accurate, you were comfortable with the goals of Project Liberty to challenge the 30 percent commission charged by Apple and Google; is that accurate? 11:00:57

A. I'm always in favor of helping developers get better terms. 11:01:13

Q. Well, then, why wouldn't you be in favor of lowering the commission at Microsoft and at Sony?

A. My focus at that time was on mobile, so I was focused on those platforms. 11:01:27

Q. Well, but there were people on Project Liberty whose focus was on Microsoft and Sony, right?

A. Yeah. Some of those people sat in meetings. 11:01:44

Q. And they never raised their hand and said, look, if we're going to make life better for developers, we ought to challenge the Sony and Microsoft commissions? None of them raised that 11:01:53

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issue?

11:01:55

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A. I don't recall if that was raised in a

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meeting.

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20 Q. And in the Project Liberty meetings, no 11:17:40

21 one asked what Samsung charges on the Galaxy store

22 in commission?

23 A. I can't recall that coming up.

24 Q. And in the Project Liberty meetings, no

25 one ever mentioned what Samsung charges for its 11:17:58

1 Galaxy store? 11:18:00

2 A. I don't recall.

3 Q. In the Project Liberty meetings, no one

4 raised their hand and said, hey, while we're going

5 after these platforms, we should go after Samsung 11:18:14

6 too?

7 A. I don't recall.

8 Q. In the Project Liberty meetings, no one

9 raised their hand and said, hey, while we're trying

10 to lower the commission for all developers, maybe 11:18:27

11 we should look into what Samsung charges other

12 developers?

13 A. I don't recall.

14 Q. In the Project Liberty meetings, when

15 you're talking about the fairness or unfairness of 11:18:40

16 the Apple and Google commission, nobody thought to

17 compare that and say, well, what does Samsung

18 charge?

19 A. I don't recall.

20 Q. Is it your understanding the reason that 11:18:56

21 there were no discussions of Samsung was because

22 Mr. Sweeney was not interested in targeting

23 Samsung?

24 A. I don't recall that either.

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We were talking about Project Liberty and  
the team members. You mentioned there are about  
100 and 200 members. To your knowledge -- well, 11:35:51  
first, is -- is Project Liberty still a thing at  
Epic? Is that still a team at Epic?  
A. I mean, some of the -- some members  
from -- that were involved in Project Liberty have  
meetings. 11:36:21

1 Q. So there are still Project Liberty 11:36:24

2 meetings ongoing?

3 A. Yes, I believe so.

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19 Q. Since August 2020, has the subject of

20 Samsung's commission ever been raised at a 11:37:37

21 Project Liberty meeting?

22 A. I don't recall that subject being raised.

23 Q. Since August 2020, has the subject of

24 Microsoft's commission ever been raised at a

25 Project Liberty meeting? 11:37:54

1 A. I don't recall that subject being raised 11:38:00

2 at a meeting.

3 Q. And is it also correct that you don't

4 recall the subject of Sony's commission ever being

5 raised at a Project Liberty meeting since August 11:38:08

6 2020?

7 A. I don't recall Sony's commission coming

8 up in a Project Liberty meeting since August 2020.

9 Q. Have there been -- we talked about the

10 fact that one goal of Project Liberty was to 11:38:21

11 challenge the 30 percent commission charged by

12 Google and Apple. Since August 2020, have there

13 been additional goals sought by Project Liberty?

14 A. I don't believe any additional goals have

15 been discussed. 11:38:50

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24 Q. (By Mr. Lo) Exhibit 12 is now up, sir,

25 EPIC\_00173272. Take a look at that, and I'm going 04:21:55

Page 228

1 to be asking you about the exchange with Matthew 04:22:02

2 Bengston on the bottom of page 2.

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18 Q. It's an email from Mr. Bengston to you,

19 correct?

20 A. It appears. It's addressed to me. I 04:26:35

21 think there are a number of people on this thread.

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24 Q. On his third point, last sentence on this

25 page, it says "our strategy." And the full 04:26:58

1 sentence is: "Our strategy for releasing in iOS 04:27:00  
2 first is mostly to disallow Google from having any  
3 reasons for rejecting the app when we submit to the  
4 Play Store, as it is likely they will know exactly  
5 what we are doing here." 04:27:15

6 Do you see that sentence?

7 A. I see that sentence.

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Q. Have you developed an understanding that if something is up on the Apple store, it is less likely to be rejected by Google in its review process?

A. Like reading this, I am not -- I don't think that's necessarily sound logic. 04:29:09

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Q. (By Mr. Lo) Exhibit 13 is -- looks like  
to be a PowerPoint presentation, EPIC\_00126602. 04:34:53

My first question is actually going to be  
do you know who created this document, and if you  
don't, then I may not have any other questions for  
you.

A. Yeah, it looks familiar.

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Q. This particular deck, was it created by the Epic side or the Apple side or something else? 04:36:05

A. This was created by Epic to update Apple to the latest stuff in Fortnite.

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Q. (By Mr. Lo) Take a look at 14. And while you're doing that, Exhibit 14 is -- the top email is from Andrew Grant to Mr. Shobin, EPIC\_00198749.

04:42:09

Q. All right. The earliest email in this chain is by you, and you were looking for information on how quickly players migrate onto a mobile update, correct?

04:44:15

A. Yeah. I wanted to understand how quickly players were getting a new client update.

Q. And the reason you were doing that was you were anticipating that there would be an update with the hot fix inside, yes?

04:44:35

A. Yeah. I believe we were trying to figure out if -- how many people would get the -- the build, I think 13.40.

04:44:58

Q. Right. Because you wanted the -- you wanted to maximize the number of players who had 13.40 before you triggered implementation -- before Epic triggered implementation of the hot fix, correct?

04:45:14

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Q. (By Mr. Lo) You were asking for this information because Epic was trying to maximize the number of users who had updated to 13.4 before Epic implemented direct payments within 13.4? That's why you were asking for this information, correct? 04:45:25

A.

I don't -- I don't know if it is -- if I was looking to -- or if anyone here is necessarily looking to maximize. I think there was an ask just to like better understand how quickly players get a new build so we had some kind of frame of reference. 04:45:58

**Epic Games, Inc. v. Apple Inc., No. 4:20-cv-05640-YGR-TSH (N.D. Cal.)**

**Deposition Designation of Daniel Vogel  
(February 15, 2021)**

**Time**

<b>Apple Inc.'s Designations  (Yellow Highlight)</b>	<b>Epic Games, Inc.'s Designations  (Blue Highlight)</b>
4 minutes 49 seconds	N/A

HIGHLY CONFIDENTIAL

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,  
Plaintiff,  
Counter-defendant,

vs.

Case No. 4:20-cv-05640  
YGR

APPLE INC.,  
Defendant,  
Counterclaimant.

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IN RE APPLE IPHONE  
ANTITRUST LITIGATION

Case No. 4:11-cv-06714  
YGR

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(caption cont'd)

1 DONALD R. CAMERON, et al.,  
2 Plaintiffs,  
3 vs. Case No. 4:19-cv-03074  
YGR  
4 APPLE INC.,  
5 Defendant.

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10 \*\*HIGHLY CONFIDENTIAL\*\*  
11 ZOOM DEPOSITION OF DANIEL VOGEL & EPIC GAMES,  
12 INC.'S 30(b)(6) CORPORATE REPRESENTATIVE  
13 (Reported Remotely via Video & Web Videoconference)  
14 Cary, North Carolina (Deponent's location)  
15 Monday, February 15, 2021  
16 Volume I

20 STENOGRAPHICALLY REPORTED BY:  
21 REBECCA L. ROMANO, RPR, CSR, CCR  
California CSR No. 12546  
Nevada CCR No. 827  
22 Oregon CSR No. 20-0466  
23 Washington CCR No. 3491  
24 JOB NO. 4453645  
25 PAGES 1 - 265



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EXAMINATION

Q. Could you please just state and spell  
your full name, please.

A. My name is Daniel Vogel. ( ) 09:09:05

Q. Who is your current employer?

A. Epic Games.

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(Exhibit 525 was marked for identification by the court reporter and is attached hereto.)

MR. LO: We have marked, as Exhibit 525, the 30(b)(6) notice.

09:11:55

confirm, I want to confirm that you understand you are being designated on the following topics: 2, 6, 14, 18, 19, 32 as to mobile, 33, 34, 36, and 41.

09:12:15

Q (By Mr. Lo) Do I have that correct?

A. I do not have a way to verify that.

Mr. Even would have to verify that.

MR. LO: I'm okay with counsel verifying as well.

09:12:52

MR. EVEN: I believe that is correct, subject to the limitations that the parties have discussed over time.

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(Exhibit 528 was marked for  
identification by the court reporter and is  
attached hereto.) 10:35:55

Q (By Mr. Lo) Mr. Vogel, we've put up  
Exhibit 528. Go ahead and take a look at that, and  
whenever you are ready, my first question is: Is  
this an email you received in the ordinary course  
of your work at Epic? 10:36:08

A. Okay. Let me take two minutes to read  
it.

Q. Please.

A. I have skimmed the email.

Q. All right. Is this an email that you 10:38:23

1 received in the cour- -- ordinary course of your 10:38:25

2 business at Epic?

3 A. I -- I am on the cc, so I assume I

4 received the email.

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22 (Exhibit 529 was marked for  
23 identification by the court reporter and is  
24 attached hereto.)

25 Q (By Mr. Lo) We've marked, as 529, an 11:10:27

1 email that you sent. 11:10:36

2 Take a look at that, and when you are

3 ready, my first question is: Is this an email that

4 you sent in August of 2018 in the ordinary course

5 of your work at Epic? 11:10:45

6 A. Okay. Let me read it.

7 I have skimmed the email.

8 Q. This email relates to the security flaw

9 that was in the initial launcher for Android,

10 correct? 11:15:12

11 A. I believe this email covers the issue

12 reported by Google Project Zero.

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20 Q. (By Mr. Lo) By the way, you are the 11:29:31

21 chief operating officer currently; is that right?

22 A. That is my title.

23 Q. How long have you held that title?

24 A. I want to say since somewhere in 2019. I

25 might be off by a year. 11:29:52

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Q. (By Mr. Lo) Okay. So prior to August 2020, why didn't Epic lower the price of V-Bucks for -- for people who were purchasing them on the PC if the fee structure was lower for Epic on PC? 11:42:51

THE DEPONENT: Lowering the price of V-Bucks unilaterally on a single platform would result in arbitrage, and I believe there might be other contractual requirements there, but I am not sure. But the main thing, definitely arbitrage. 11:43:13

Q. (By Mr. Lo) Okay. But it -- why is arbitrage -- why is arbitrage a concern? Don't you want your users to pay the least amount for V-Bucks that they can? Why is that a concern? 11:43:39

THE DEPONENT: Arbitrage, generally, is a concern to avoid, say, a Xbox player feeling forced to purchase on PC to -- for a lower price, say, hence identical pricing. 11:44:01

Q. (By Mr. Lo) Why is that -- I guess the question is: Why is that a bad thing if they can get a lower price by going to a PC and then going back to the Xbox to play? 11:44:23



1 A. It presumes having a PC. 11:44:25

2 Q. Okay. And so for those don't have a PC,  
3 then they just pay a little bit more.

4 What's -- what's the concern with that,  
5 from Epic's perspective? 11:44:36

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7 THE DEPONENT: And, again, this is me,  
8 not talking about on behalf of Epic. But it is my  
9 understanding that we wanted to avoid arbitrage  
10 on -- between platforms and having players, 11:44:57  
11 therefore, purchase on the platform they are not  
12 actually playing on.

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