

1 THEODORE J. BOUTROUS JR., SBN 132099
tboutrous@gibsondunn.com

2 RICHARD J. DOREN, SBN 124666
rdoren@gibsondunn.com

3 DANIEL G. SWANSON, SBN 116556
dswanson@gibsondunn.com

4 JAY P. SRINIVASAN, SBN 181471
jsrinivasan@gibsondunn.com

5 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
6 Los Angeles, CA 90071-3197
Telephone: 213.229.7000
7 Facsimile: 213.229.7520

8 VERONICA S. LEWIS (Texas Bar No.
24000092; *pro hac vice*)
9 vlewis@gibsondunn.com

10 GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201
11 Telephone: 214.698.3100
Facsimile: 214.571.2900

12 MARK A. PERRY, SBN 212532
mperry@gibsondunn.com

13 CYNTHIA E. RICHMAN (D.C. Bar No.
14 492089; *pro hac vice*)
crichman@gibsondunn.com

15 GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
16 Washington, DC 20036-5306
Telephone: 202.955.8500
17 Facsimile: 202.467.0539

18 E. JOSHUA ROSENKRANZ (*pro hac vice*)
jrosenkranz@orrick.com

19 ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
20 New York, NY 10019-6142
Telephone: 212.506.5000
21 Facsimile: 212.506.5151

22 WILLIAM F. STUTE (*pro hac vice*)
wstute@orrick.com

23 ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
24 Washington, DC 20005-1706
Telephone: 202.339.8400
25 Facsimile: 202.339.8500

26 **Attorneys for Defendant and Counterclaimant**
APPLE INC.

PAUL R. RIEHLE (SBN 115199)
paul.riehle@faegredrinker.com

FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510

CHRISTINE A. VARNEY (*pro hac vice*)
cvarney@cravath.com

KATHERINE B. FORREST (*pro hac vice*)
kforrest@cravath.com

GARY A. BORNSTEIN (*pro hac vice*)
gbornstein@cravath.com

YONATAN EVEN (*pro hac vice*)
yeven@cravath.com

LAUREN A. MOSKOWITZ (*pro hac vice*)
lmoskowitz@cravath.com

M. BRENT BYARS (*pro hac vice*)
mbyars@cravath.com

CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

Attorneys for Plaintiff and Counter-Defendant
EPIC GAMES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,
Plaintiff and Counter-Defendant,

vs.

APPLE INC.,
Defendant and Counterclaimant.

CASE NO. 4:20-cv-05640-YGR
**JOINT STATEMENT CONCERNING
TRIAL**

Pursuant to Federal Rule of Civil Procedure 38(d), Defendant Apple Inc. (“Apple”) and Epic Games, Inc. (“Epic”) by and through their respective counsel, hereby state as follows:

On August 13, 2020, Epic filed a Complaint for Injunctive Relief against Apple under federal antitrust and California competition law (Dkt. 1), in which Epic seeks only equitable relief and will not amend to seek monetary damages.

On September 8, 2020, Apple filed its Answer and Defenses to Epic’s Complaint for Injunctive Relief, set forth several Counterclaims, including claims for alleged breach of contract and tortious interference by Epic, and “demand[ed] a trial by jury on all issues so triable.” (*See* Dkt. 66 at 64.)

During the September 28, 2020, hearing on Epic’s Motion for a Preliminary Injunction, the Court indicated that it “[did not] want to try two cases” and was “inclined to try both cases at once,” and asked the parties to inform the Court by 5:00 PM PT on September 29, 2020, whether either party demands a jury trial. (Tr. at 91:25-93:13, 100:19-22.)

Epic and Apple have met and conferred, and the parties agree that Epic’s claims and Apple’s counterclaims should be tried by the Court, and not by a jury. Therefore, with Epic’s consent, Apple hereby withdraws its demand for a jury trial pursuant to Federal Rule of Civil Procedure 38(d). The

1 parties respectfully request that the case (including any claims and counterclaims) proceed to a bench
2 trial on a schedule determined by the Court.

3
4 DATED: September 29, 2020

GIBSON, DUNN & CRUTCHER LLP

5
6 By: /s/ Richard Doren

7 Richard J. Doren

8 *Attorney for Defendant and Counterclaimant*
9 *Apple Inc.*

10 DATED: September 29, 2020

CRAVATH, SWAINE & MOORE LLP

11
12 By: /s/ Katherine Forrest

13 Katherine B. Forrest

14 *Attorney for Plaintiff and Counter-Defendant*
15 *Epic Games., Inc.*

16
17
18
19 **DECLARATION REGARDING CONCURRENCE**

20 I, Richard Doren, am the ECF user whose identification and password are being used to file
21 this JOINT STATEMENT CONCERNING TRIAL OF COUNTERCLAIMS. In compliance with
22 Civil Local Rule 5-1(i)(3), I hereby attest that all of the signatories listed above have concurred in
23 this filing.
24

25
26 DATED: September 29, 2020

GIBSON, DUNN & CRUTCHER LLP

27 /s/ Richard Doren

28 Richard J. Doren