

1 Paul J. Riehle (SBN 115199)
2 paul.riehle@faegredrinker.com

3 **FAEGRE DRINKER BIDDLE & REATH LLP**
4 Four Embarcadero Center, 27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7500

5 Christine A. Varney (*pro hac vice*)
6 cvarney@cravath.com

7 **CRAVATH, SWAINE & MOORE LLP**
8 825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000

9 *Counsel for Plaintiff Epic Games, Inc.*

Glenn D. Pomerantz (SBN 112503)
glenn.pomerantz@mto.com

MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071
Telephone: (213) 683-9100

Brian C. Rocca (SBN 221576)
brian.rocca@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105-1596
Telephone: (415) 442-1000

Counsel for Google LLC et al.

10

11 *Additional counsel appear on signature page*

12

UNITED STATES DISTRICT COURT

13

NORTHERN DISTRICT OF CALIFORNIA

14

SAN FRANCISCO DIVISION

15

16 IN RE GOOGLE PLAY STORE ANTITRUST
17 LITIGATION

Case No. 3:21-md-02981-JD

18

THIS DOCUMENT RELATES TO:

**JOINT STATEMENT ON SCHEDULE FOR
POST-TRIAL MOTIONS AND REMEDIES**

19

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

20

21

22

23

24

25

26

27

28

1 In advance of the January 18, 2024 conference, the Parties respectfully submit this Joint
 2 Statement regarding a briefing schedule for any post-trial motions and a proposed process relating
 3 to future proceedings regarding a remedial order. (*See* MDL Dkt. No. 868-1.) The Parties have
 4 met and conferred and jointly propose the schedule and process described below.

5 **A. JMOL AND NEW TRIAL MOTIONS BRIEFING**

6 **1. Briefing Schedule for JMOL and New Trial Motions**

7 Google anticipates filing a motion for judgment as a matter of law and a motion for a new
 8 trial pursuant to Rules 50 and 59 of the Federal Rules of Civil Procedure, respectively (“JMOL and
 9 New Trial Motions”). Rather than file two separate motions with two separate sets of briefs,
 10 Google proposes to address both motions in a single brief. The Parties propose the following
 11 schedule for briefs addressing both motions:

Proposed Deadline	Event
February 1, 2024	Google’s Opening Brief
March 7, 2024	Epic’s Opposition Brief
March 28, 2024	Google’s Reply Brief

12
13
14
15
16 **2. JMOL and New Trial Motions Briefing Page Limits**

17 Google requests the following page limits for the consolidated briefing on both motions: 40
 18 pages for opening brief, 40 pages for opposition brief and 25 pages for reply brief. Google’s
 19 request for 40 pages reflects approximately 25 pages for a renewed motion for judgment as a matter
 20 of law—comparable to this Court’s standing allocation for analogous summary judgment
 21 motions—and the standard 15 pages for a new trial motion. Indeed, the standard for granting
 22 summary judgment ‘mirrors’ the standard for judgment as a matter of law, such that ‘the inquiry
 23 under each is the same,’ *Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 150 (2000), “the
 24 difference being that district courts evaluate Rule 50(a) motions in light of the trial record rather
 25 than the discovery record,” *Dupree v. Younger*, 598 U.S. 729, 731–32 (2023). The trial record is
 26 far more extensive than the record generally submitted on summary judgment or that was before
 27 the Court at summary judgment in this case. Google notes that Epic’s proposed 25-page limit is
 28 less than Google would receive for simply filing two standalone 15-page motions. Epic states that

1 Google presented an oral Rule 50(a) motion and filed a document regarding its arguments.
 2 However, the Court limited Google’s written filing to two pages and instructed Google at the time
 3 of its Rule 50(a) motion to “just roll through it” because Google was “just putting your
 4 placeholder” and “can do the details there later.” Trial Tr. 3214:24-3218:24.

5 Epic opposes Google’s requested page limits and proposes 25 pages for opening brief, 25
 6 pages for opposition brief and 15 pages for reply brief. The Court’s Standing Order for Civil Cases
 7 states that “[e]xcept for summary judgment and class certification motions, opening and
 8 opposition briefs may not exceed 15 pages”. (Standing Order for Civil Cases Before Judge
 9 James Donato, ¶ 18 (emphasis in the original).) Google has already made an oral motion for
 10 judgment as a matter of law and filed a document setting out its arguments. (MDL Dkt. No. 825.)
 11 And the Court is already deeply versed in the trial evidence. A 25-page brief is more than adequate
 12 to address the overlapping issues in Google’s Rule 50 and Rule 59 motions, which have already
 13 been presented to the Court and which relate to a record the Court already knows.

14 **B. REMEDIES PROCESS**

15 In order to advance the remedies process, and subject to approval of the Court, the Parties
 16 jointly propose to engage in the meet-and-confer process below intended to identify and narrow
 17 any disputes. The Parties respectfully request to be heard regarding next steps on February 1,
 18 2024, or as soon thereafter as the Court’s calendar would allow.

Proposed Deadline	Event
January 19, 2024	Epic provides Google with a good-faith written articulation of the remedies it intends to seek, with sufficient specificity to enable Google to evaluate the proposal and articulate good-faith objections. Epic reserves the right to supplement the proposal.
January 19 to January 29, 2024	Parties meet and confer on Epic’s requested remedies and a process and schedule for reaching a final judgment on remedies. As part of this meet-and-confer process, Google provides written good-faith objections to Epic’s requested remedies by no later than January 28, including but not limited to objections to the necessity for, and feasibility of, any proposed remedies. Google reserves the right to supplement its objections.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

January 30, 2024 at Noon	Parties file a joint statement with the Court at noon, or on such earlier date and time as the court may order to allow for the hearing to proceed on February 1, reflecting their joint or respective proposals on a process and schedule for reaching a final judgment on a remedy.
February 1, 2024	Requested hearing.

1 Dated: January 11, 2024

CRAVATH, SWAINE & MOORE LLP
Christine Varney (*pro hac vice*)
Gary A. Bornstein (*pro hac vice*)
Timothy G. Cameron (*pro hac vice*)
Yonatan Even (*pro hac vice*)
Lauren A. Moskowitz (*pro hac vice*)
Justin C. Clarke (*pro hac vice*)
Michael J. Zaken (*pro hac vice*)
M. Brent Byars (*pro hac vice*)

6 FAEGRE DRINKER BIDDLE & REATH LLP
Paul J. Riehle (SBN 115199)

8 Respectfully submitted,

9 By: s/ Gary A. Bornstein
Gary A. Bornstein

10 *Counsel for Plaintiff Epic Games, Inc.*

12 Dated: January 11, 2024

MUNGER, TOLLES & OLSON LLP
Glenn D. Pomerantz
Kyle W. Mach
Kuruvilla Olasa
Justin P. Raphael
Jonathan I. Kravis
Lauren Bell

16 Respectfully submitted,

17 By: s/ Glenn D. Pomerantz
Glenn D. Pomerantz

19 *Counsel for Defendants Google LLC et al.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CIVIL L.R. 5-1(i)(3) ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), the filer of this document attests that concurrence in the filing of the document has been obtained from each of the other signatories.

By: Dane P. Shikman
Dane P. Shikman