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**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