	Case 4:20-cv-05640-YGR Document 4	95 Filed 04/27/21 Page 1 of 321
1 2 3 4 5 6 7 8 9 10 11 12 13	<ul> <li>THEODORE J. BOUTROUS JR., SBN 132099 tboutrous@gibsondunn.com</li> <li>RICHARD J. DOREN, SBN 124666 rdoren@gibsondunn.com</li> <li>DANIEL G. SWANSON, SBN 116556 dswanson@gibsondunn.com</li> <li>JAY P. SRINIVASAN, SBN 181471 jsrinivasan@gibsondunn.com</li> <li>GIBSON, DUNN &amp; CRUTCHER LLP</li> <li>333 South Grand Avenue</li> <li>Los Angeles, CA 90071</li> <li>Telephone: 213.229.7000</li> <li>Facsimile: 213.229.7520</li> <li>VERONICA S. MOYÉ (Texas Bar No. 24000092; pro hac vice) vmoye@gibsondunn.com</li> <li>GIBSON, DUNN &amp; CRUTCHER LLP</li> <li>2100 McKinney Avenue, Suite 1100</li> <li>Dallas, TX 75201</li> <li>Telephone: 214.698.3100</li> <li>Facsimile: 214.571.2900</li> </ul>	<ul> <li>MARK A. PERRY, SBN 212532 mperry@gibsondunn.com</li> <li>CYNTHIA E. RICHMAN (D.C. Bar No. 492089; pro hac vice) crichman@gibsondunn.com</li> <li>GIBSON, DUNN &amp; CRUTCHER LLP 1050 Connecticut Avenue, N.W.</li> <li>Washington, DC 20036</li> <li>Telephone: 202.955.8500</li> <li>Facsimile: 202.467.0539</li> <li>ETHAN DETTMER, SBN 196046</li> <li>edettmer@gibsondunn.com</li> <li>ELI M. LAZARUS, SBN 284082</li> <li>elazarus@gibsondunn.com</li> <li>GIBSON, DUNN &amp; CRUTCHER LLP</li> <li>555 Mission Street</li> <li>San Francisco, CA 94105</li> <li>Telephone: 415.393.8200</li> <li>Facsimile: 415.393.8306</li> <li>Attorneys for Defendant APPLE INC.</li> </ul>
14		
15	UNITED STATE	S DISTRICT COURT
16		
17		DISTRICT OF CALIFORNIA ND DIVISION
18	UARLAI	
19	EPIC GAMES, INC.,	Case No. 4:20-cv-05640-YGR-TSH
20	Plaintiff, Counter- defendant	NOTICE OF FILING OF DEFENDANT APPLE INC.'S DEPOSITION
21	V.	DESIGNATIONS
22	APPLE INC.,	
23	Defendant,	
24	Counterclaimant.	
25		
26		
27		
28		
Dunn & LLP	NOTICE OF FILING OF DEFENDANT APPLE INC	2.'S DEPOSITION DESIGNATIONS, 4:20-cv-05640-YGR

Gibson, Crutcher

	Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 2 of 321			
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	<ol> <li>Joe Kreiner</li> <li>Haseeb Malik</li> </ol>			
5	4. David Nikdel			
6	<ol> <li>5. Nicholas Penwarden</li> <li>6. Mark Rein</li> </ol>			
7	7. Alec Shobin			
8	8. Daniel Vogel			
9				
10	Dated: April 27, 2021 Respectfully submitted,			
11	GIBSON, DUNN & CRUTCHER LLP			
12	Dry /a/ Dachal C Dyaga			
13	By: <u>/s/ Rachel S. Brass</u> Rachel S. Brass			
14				
15	Attorney for Defendant Apple Inc.			
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28				
Gibson, Dunn & Crutcher LLP	1 NOTICE OF FILING OF DEFENDANT APPLE INC.'S DEPOSITION DESIGNATIONS, 4:20-CV-05640-YGR			

Apple Inc.'s Deposition Designations

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2.	Kreiner, Joe	
	Malik, Haseeb	
	Nikdel, David	
	Penwarden, Nicholas	
6.	Rein, Mark	
7.	Shobin, Alec	
	Vogel, Daniel	
	-	

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

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

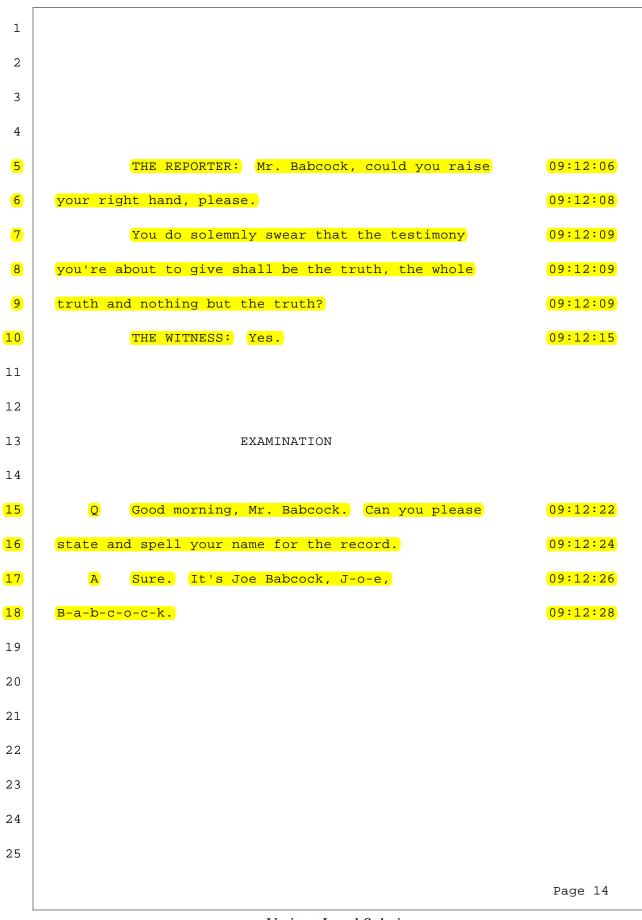
#### Time

Apple Inc.'s Designations	Epic Games, Inc.'s Designations
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16 minutes 36 seconds	36 seconds

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1 2 3 4	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION
4 5	EPIC GAMES, INC., ) ) CASE NO.
6	PLAINTIFF, COUNTER-DEFENDANT, ) 4:20-CV-05640-YGR
7	VS.
8	APPLE INC.,
9	DEFENDANT, COUNTERCLAIMANT. )
10 11	) IN RE APPLE IPHONE ANTITRUST ) CASE NO. LITIGATION ) 4:11-CV-06714-YGR
12 13	CAPTION CONTINUED ON FOLLOWING PAGE
14 15 16	*** HIGHLY CONFIDENTIAL UNDER PROTECTIVE ORDER ***
17	REMOTE PROCEEDINGS OF THE
18	VIDEOTAPED DEPOSITION OF JOE BABCOCK
19	FRIDAY, FEBRUARY 12, 2021
20	
21	
22	JOB NO. 4453692
0.0	REPORTED BY KIMBERLY EDELEN,
23	CSR. NO. 9042, CRR, RPR. PAGES 1 - 241
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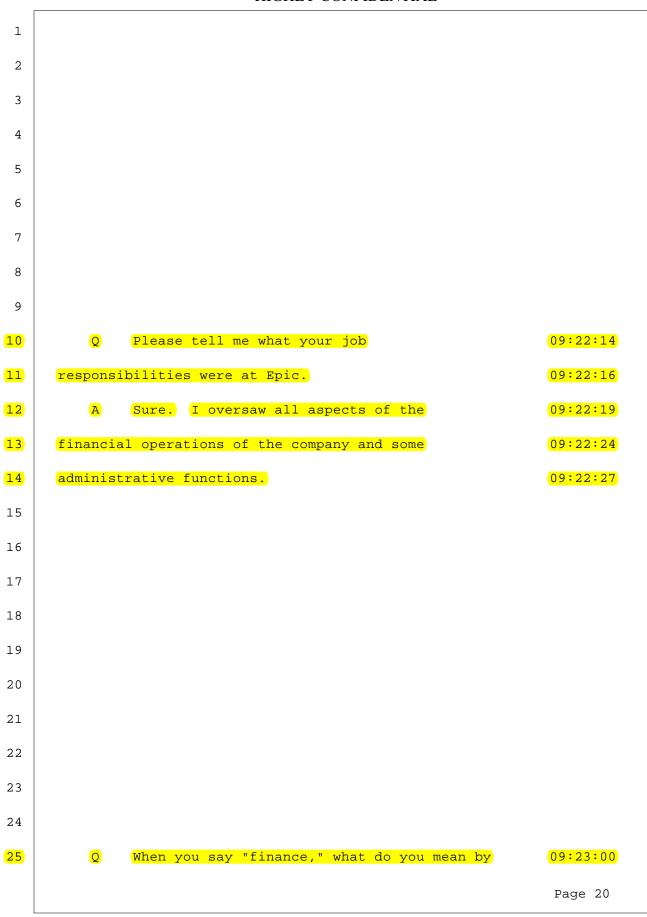


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б			
7			
8	Q	You worked at Epic until March 2020?	09:20:56
9	A	That's correct.	09:20:59
10	Q	What was your position?	09:21:00
11	A	Chief financial officer.	09:21:03
<mark>12</mark>	Q	How long had you held that position?	09:21:06
<mark>13</mark>	A	Boy, probably ten years in that role.	09:21:11
<mark>14</mark>	There wa	as a point where I came on as the title of	09:21:19
<mark>15</mark>	control:	ler. There wasn't a CFO at the time, and	09:21:22
<mark>16</mark>	then I v	was promoted into that role roughly ten years	09:21:25
<mark>17</mark>	ago.		09:21:29
18	Q	And when did you join as controller?	09:21:29
<mark>19</mark>	A	2006.	09:21:31
20	Q	So from approximately 2006 until	09:21:34
21	approxi	mately 2010, you served as controller?	09:21:38
22	A	That's about right, yes.	09:21:41
23	Q	And then you were promoted into the	09:21:43
24	positio	n of CFO; is that correct?)	09:21:45
25	A	Correct.	09:21:47
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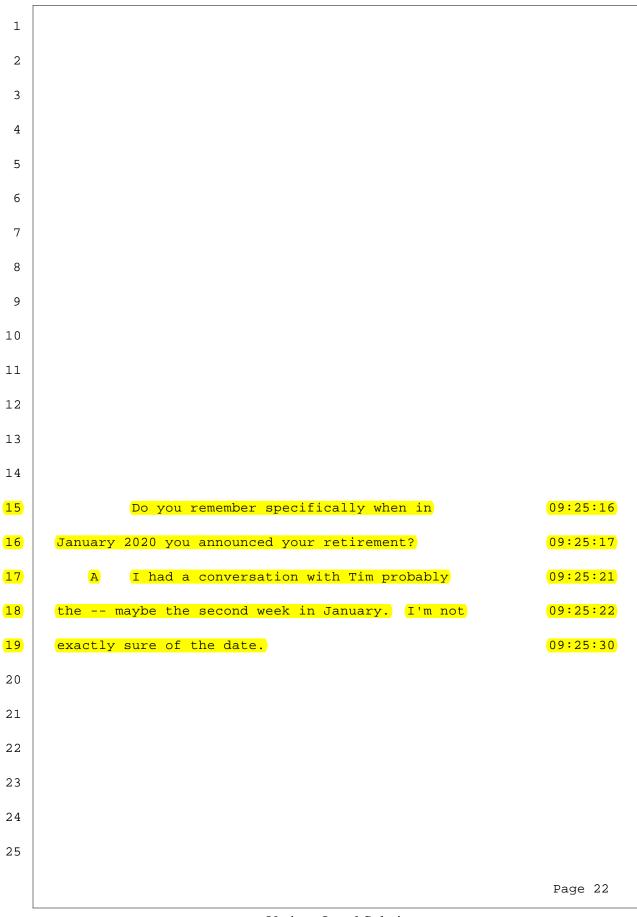


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that?		09:23:05
A	I mean aspects of creating financia	al 09:23:05
present	ations for the board of directors or	managing 09:23:09
<mark>that pr</mark>	ocess, managing the accounting and ov	verall 09:23:12
<mark>kind of</mark>	bookkeeping and payroll of the compa	any, you 09:23:16
<mark>know, c</mark>	ompletion of the annual audit, things	s like 09:23:22
that.		09:23:24
Q	Taxes?	09:23:28
A	Taxes, yes.	09:23:29

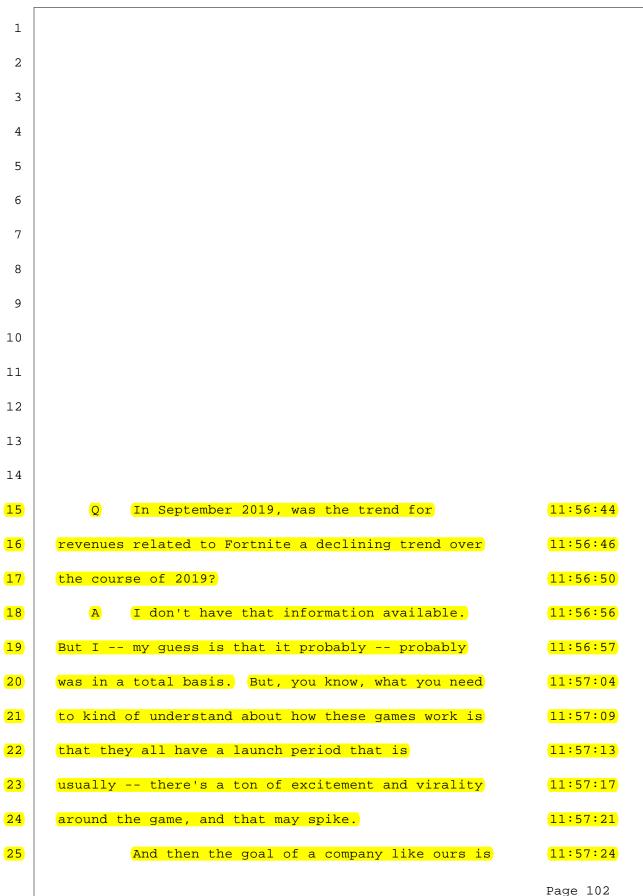
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1		
2		
3		
4	Q Okay. And who replaced you as CFO?	09:28:47
5	A gentleman named Randy Gelber.	09:29:02
6	Q And did he come from within the company or	09:29:09
<mark>7</mark>	was he an external hire?	09:29:12
8	A He did. Well, he was an external hire	09:29:16
9	about a year prior to my leaving and was brought in	09:29:19
10	the role of, I believe, it was director or maybe VP	09:29:21
11	of business development.	09:29:28
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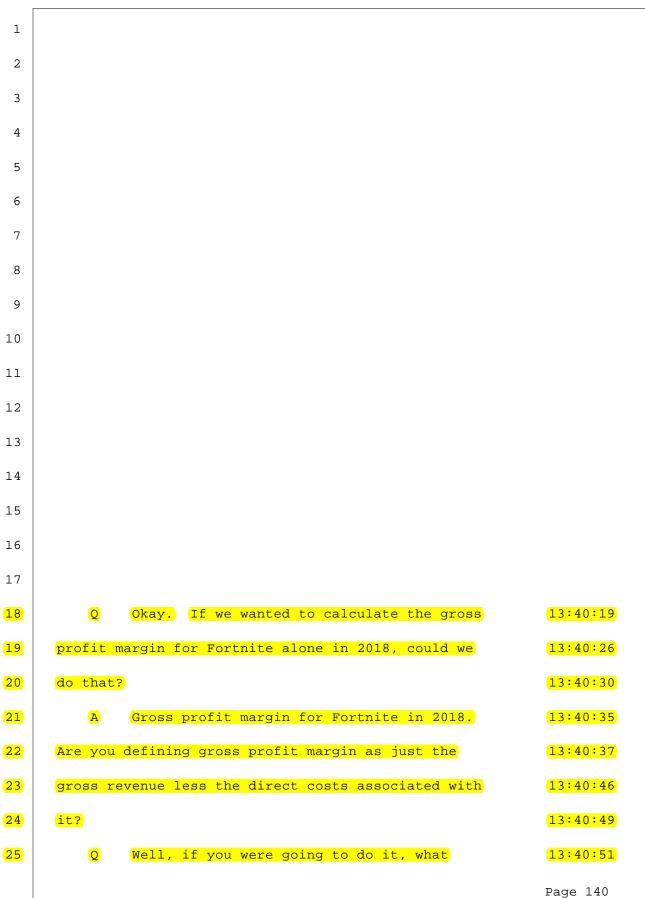
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to maleo o		
LO MAKE S	sure that we, kind of, try to flatten that	11:57:27
<mark>tail out.</mark>	You know, there will be a tail over time.	11:57:30
	You know, a movie kind of goes up and	11:57:33
<mark>straight</mark>	down from a loss in DVD sales. But a	11:57:37
<mark>video gam</mark>	ne if you can, in a live-feed video game	11:57:40
<mark>like this</mark>	, you can try to maintain that tail as long	11:57:42
as possib	ole. And that's kind of what's going on	11:57:44
here.		11:57:48
	So I think that's what David's referring	11:57:49
to. <mark>I me</mark>	ean, you can't always expect this enormous	11:57:52
<mark>growth cu</mark>	rve. You need to be real. And so we	11:57:55
should be	e thinking about a declining revenue state	11:58:01
going for	ward. But this wasn't raising red flags or	11:58:04
anything.		11:58:10

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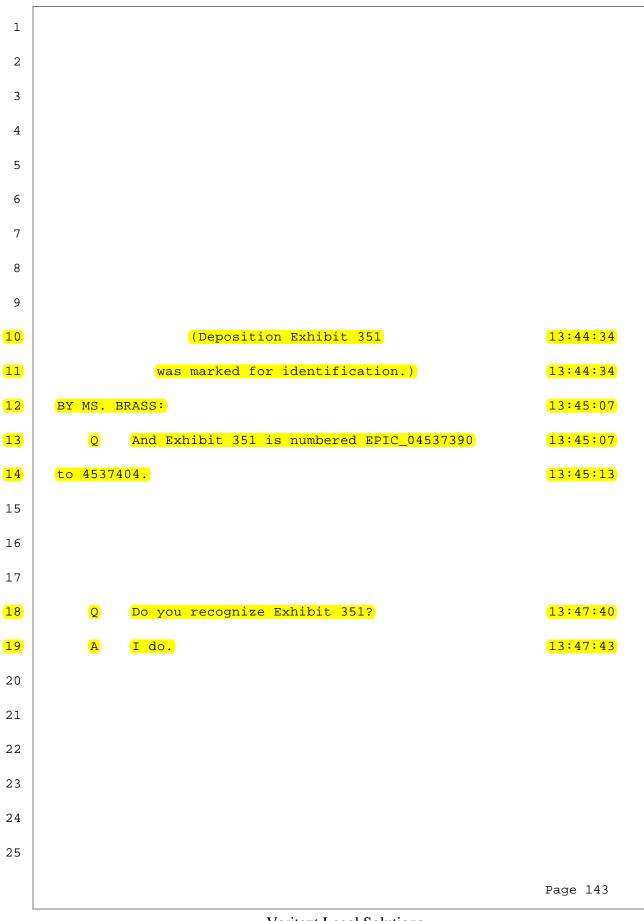


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A		
A	Well, I think when people ask for a margin	13:40:
elated	to a product line, a lot of times they're	13:41:0
ooking	for it to be like what's termed as "fully	<mark>13:41:</mark>
<mark>oaded ,</mark>	" which means, you know, there's people	13:41:
osts,	development costs, like the ongoing costs in	13:41:
here.		13:41:
	And Epic systems aren't created or	13:41:
naintai	ned to do that. So when somebody says like,	13:41:
ley, gi	ve me a format P&L, like that's extremely	13:41:
lifficu	lt. You can't really put that together for	<mark>13:41:</mark>
<mark>ortnit</mark>	e itself because of our financial systems.	13:41:
	But if you were saying just the gross	13:41:
evenue	less some of those direct costs, like we saw	<mark>13:41:</mark>
	less some of those direct costs, like we saw including costs of sales, I think that's	
<mark>pefore,</mark>		13:41:
<mark>pefore,</mark>	including costs of sales, I think that's	13:41: 13:41:
oefore, that's Q	including costs of sales, I think that's	13:41: 13:41: 13:41:
before, that's Q	including costs of sales, I think that's probably possible. But you didn't create you didn't	13:41: 13:41: 13:41: 13:41:
before, that's Q maintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	13:41: 13:41: 13:41: 13:41:
before, that's Q maintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	13:41: 13:41: 13:41: 13:41:
chat's Q naintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	13:41: 13:41: 13:41: 13:41:
before, that's Q maintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	13:41: 13:41: 13:41: 13:41:
before, that's Q maintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	13:41: 13:41: 13:41: 13:41:
before, that's Q maintai	including costs of sales, I think that's probably possible. But you didn't create you didn't n a Fortnite specific P&L?	(13:41: (13:41: (13:41: (13:41: (13:41: (13:41:

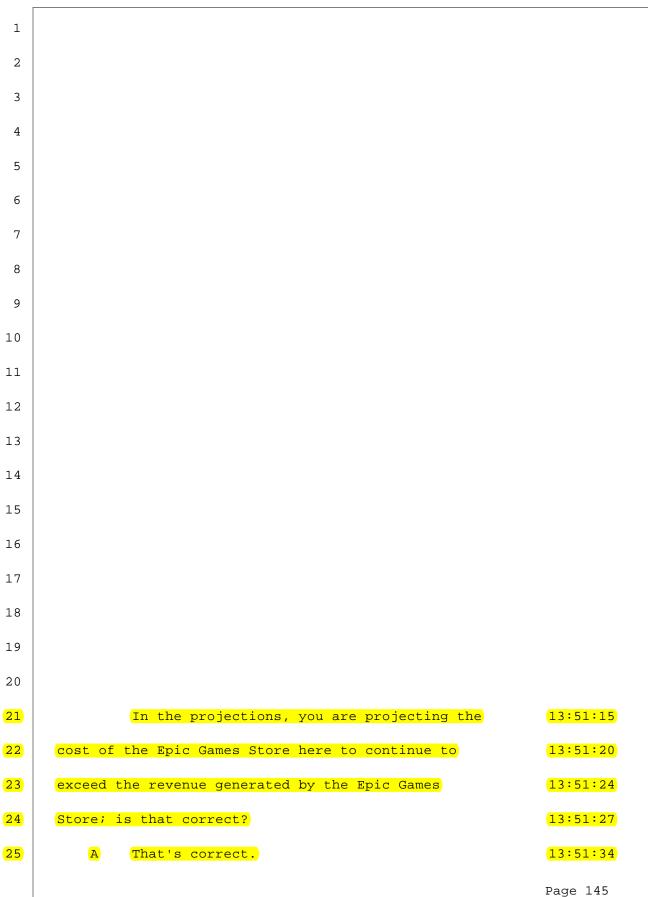
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	So is this something that you prepared or	13:48:14
<mark>that wa</mark>	s prepared at your direction?	13:48:16
A	I participated in the preparation of it	13:48:20
<mark>with Ra</mark>	ndy Gelber.	13:48:22
Q	Is it accurate, to the best of your	13:48:30
underst	anding?	13:48:32
A	Well, to the	13:48:32
	THE WITNESS: best of my knowledge, yes.	13:48:38
Q	And it was prepared by the finance	13:48:40
<mark>lepartm</mark>	ent during the period of the transition of	13:48:42
CFO fro	m you to Randy; is that correct?	13:48:43
A	It was prepared by as I mentioned, a	13:48:46
<mark>joint e</mark>	ffort between the finance department and the	13:48:50
corpora	te development department.	13:48:52
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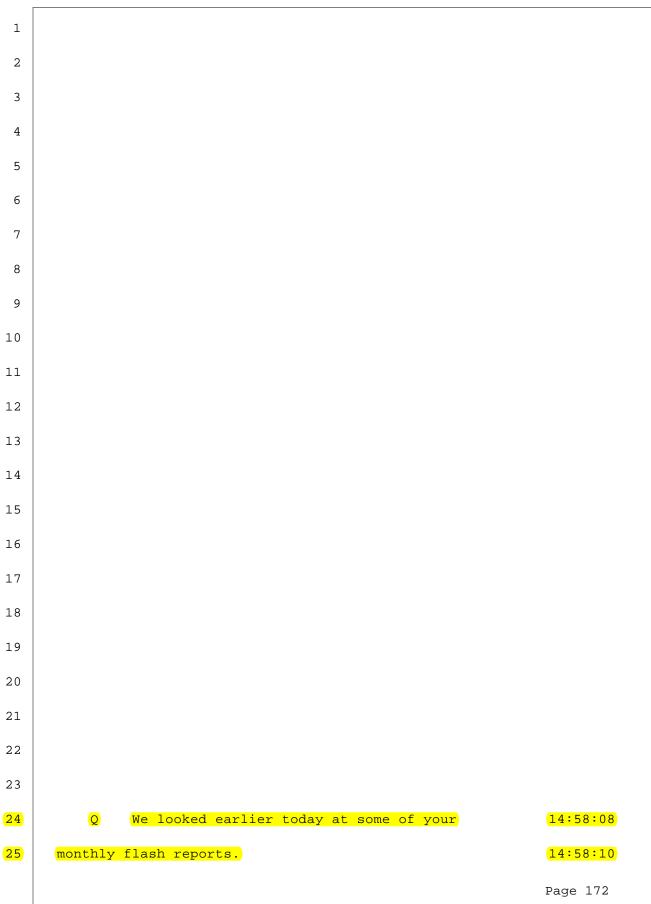
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1	Q	And the costs will exceed revenue as	13:51:36
2	projecte	d by approximately \$216 million?	13:51:40
3	A	That's correct.	13:51:48
4			
5			
6			
7			
8			
9			
10			
11			
<mark>12</mark>	Q	And we talked about that you did not track	13:52:23
<mark>13</mark>	or forec	ast profit margin by a specific product.	13:52:26
<mark>14</mark>		Did you track profit margin across	13:52:36
<mark>15</mark>	<mark>differen</mark>	t platforms?	13:52:39
<mark>16</mark>	A	No.	13:52:42
<mark>17</mark>	Q	Did you track expenses across different	13:52:45
<mark>18</mark>	platform	s?	13:52:47
<mark>19</mark>	A	No.	13:52:49
20	Q	Did you track development costs by	13:52:51
21	platform	<mark>?</mark>	13:52:54
22	A	No.	13:52:56
23			
24			
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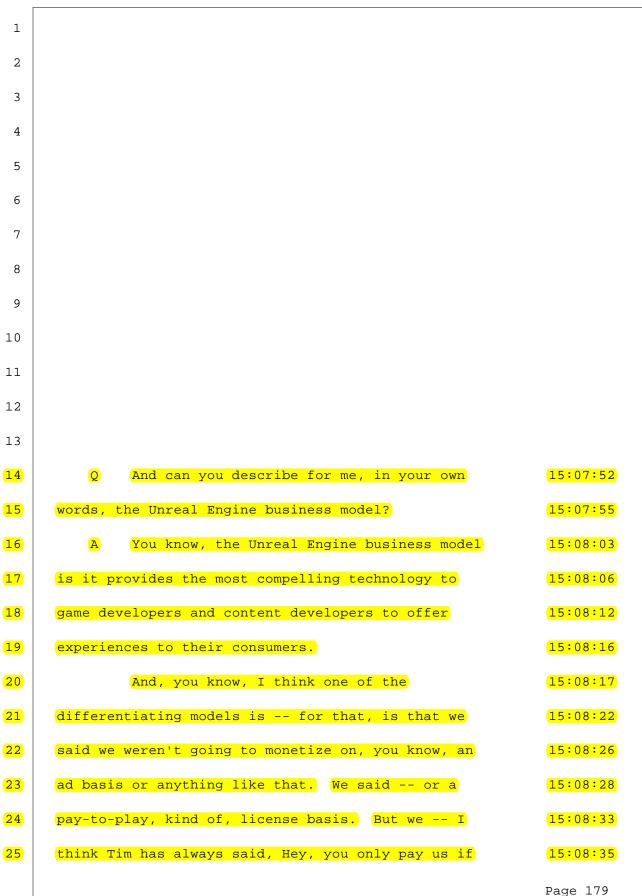
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1		Do you remember seeing those?	14:58:12
2	A	We do. I do.	14:58:14
<mark>3</mark>	Q	Okay. And they described your revenue by	14:58:15
4	platfor	m in a given month for Fortnite.	14:58:21
5		Do you remember that?	14:58:25
6	A	Uh-huh. I do.	14:58:26
<mark>7</mark>	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
<mark>10</mark>	A	In the ones we looked at today, yes.	14:58:42
<mark>11</mark>	Q	Yeah.	14:58:44
<mark>12</mark>		And iOS was the lowest or the second	14:58:47
<mark>13</mark>	lowest	if Android was listed, Android was lower	14:58:52
<mark>14</mark>	than iO	S, but of the platforms listed for Fortnite,	14:58:57
<mark>15</mark>	<mark>iOS was</mark>	always the lowest or the second lowest if	14:59:00
<mark>16</mark>	Android	was listed, correct?	14:59:03
<mark>17</mark>	A	Yes.	14:59:05
<mark>18</mark>	Q	So it generated less revenue than	14:59:05
<mark>19</mark>	PlaySta	tion 4, correct?	14:59:10
<mark>20</mark>	A	Correct.	14:59:11
21	Q	Less revenue than the Xbox?	14:59:14
<mark>22</mark>	A	Yes.	14:59:17
<mark>23</mark>	Q	Less revenue than Switch?	14:59:19
<mark>24</mark>	A	Yes.	14:59:23
<mark>25</mark>	Q	And less revenue than PCs?	14:59:24
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-			
1	A	You said "Switch," right?	14:59:26
2	Q	Yes.	14:59:28
3	A	Yeah, I there may have been a launch	14:59:29
<mark>-4</mark>	period	where Switch may have been higher or	14:59:31
5	somethi	ng, but in general, less than Switch.	14:59:33
6	Q	And less than PCs as well, correct?	14:59:38
7	A	Yes.	14:59:40
8			
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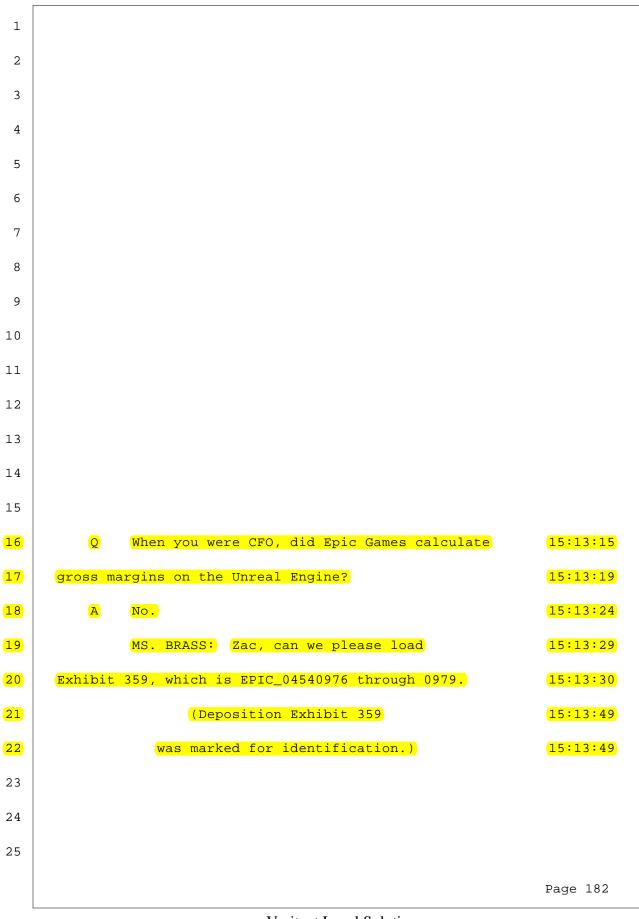
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1	you succeed, so we succeed when you succeed, and we	15:08:40
2	want to help you get there.	15:08:44
3	That's kind of the underlying ethos of the	15:08:46
4	business model for the engine.	15:08:50
5	So it would be for most game developers,	15:08:59
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
<mark>12</mark>	(Deposition Exhibit 358	15:09:29
<mark>13</mark>	was marked for identification.)	15:09:29
<mark>14</mark>	MS. BRASS: And it should be Exhibit 358,	15:09:51
<mark>15</mark>	which begins on EPIC_04462249 and ends on	15:09:53
<mark>16</mark>	EPIC_04462269.	15:10:06
<mark>17</mark>	THE WITNESS: Okay.	15:10:36
<mark>18</mark>	BY MS. BRASS:	15:10:36
<mark>19</mark>	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
		Page 180

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1	A Correct.	15:10:59
2	Q And I'll ask you to turn to the page	15:11:03
3	numbered 04462255. It's the seventh page of the	15:11:05
4	document. And it says, in the middle of the page,	15:11:12
5	"5 Royalty."	15:11:18
6	A Yeah.	15:11:25
7	Q Okay. And the first sentence says "You	15:11:25
8	agree to pay Epic a royalty equal to five percent of	15:11:26
9	all worldwide gross revenue actually attributable to	15:11:29
10	each product regardless of whether the revenue is	15:11:32
11	received by you or any other person or legal entity,	15:11:35
12	as follows," and then there are a series of more	15:11:38
<mark>13</mark>	specific terms for specific uses.	15:11:43
14	Is that fair to say?	15:11:46
<mark>15</mark>	A Yes.	15:11:48
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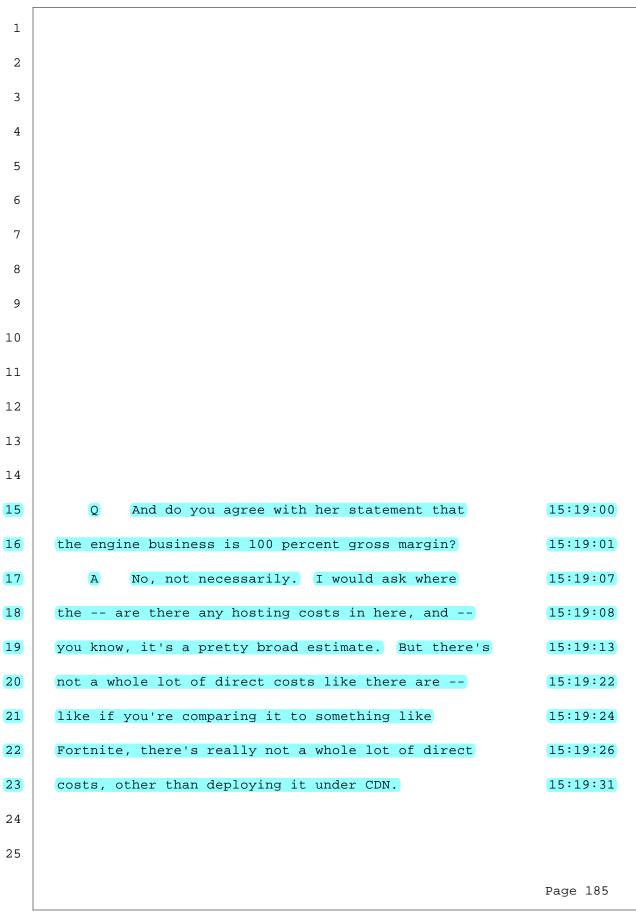
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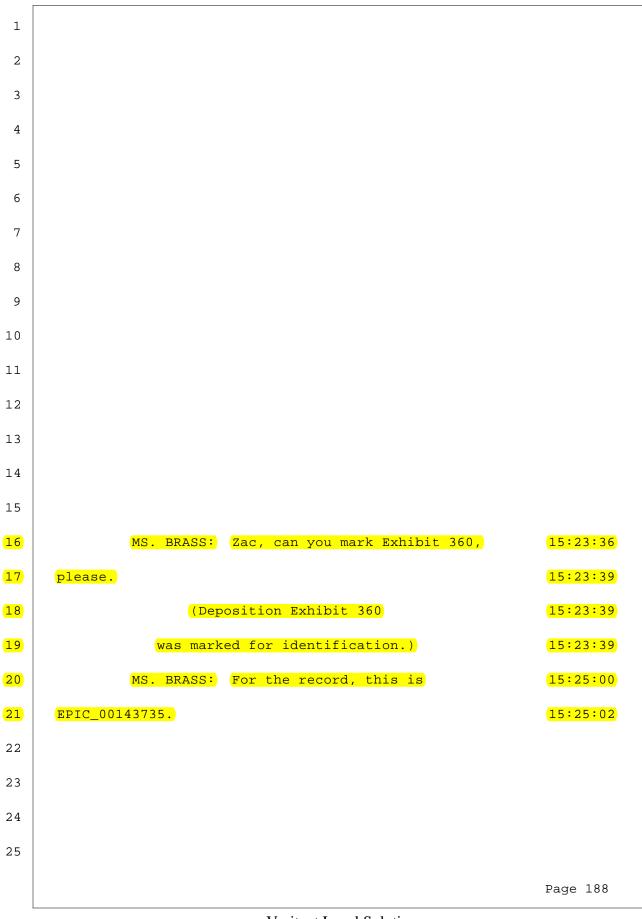
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1		
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5	As you said, this is an e-mail you're	15:15:26
<mark>6</mark>	copied on between the bankers and Dara dated the	15:15:28
7	final e-mail from Dara is February 19, 2020. (The	15:15:36
8	bankers, that's Raine and Credit Suisse; is that	15:15:39
9	correct?	15:15:46
10	A Yes.	15:15:47
11	Q And that's in connection with the	15:15:48
<mark>12</mark>	fundraising project that you described earlier; is	15:15:49
<mark>13</mark>	that correct?	15:15:51
<mark>14</mark>	A Yes. E2.	15:15:51
<mark>15</mark>	Q And is E2 and Project Empire, are they the	15:15:55
<mark>16</mark>	same thing?	15:15:58
<mark>17</mark>	A Yes, I think so.	15:15:59
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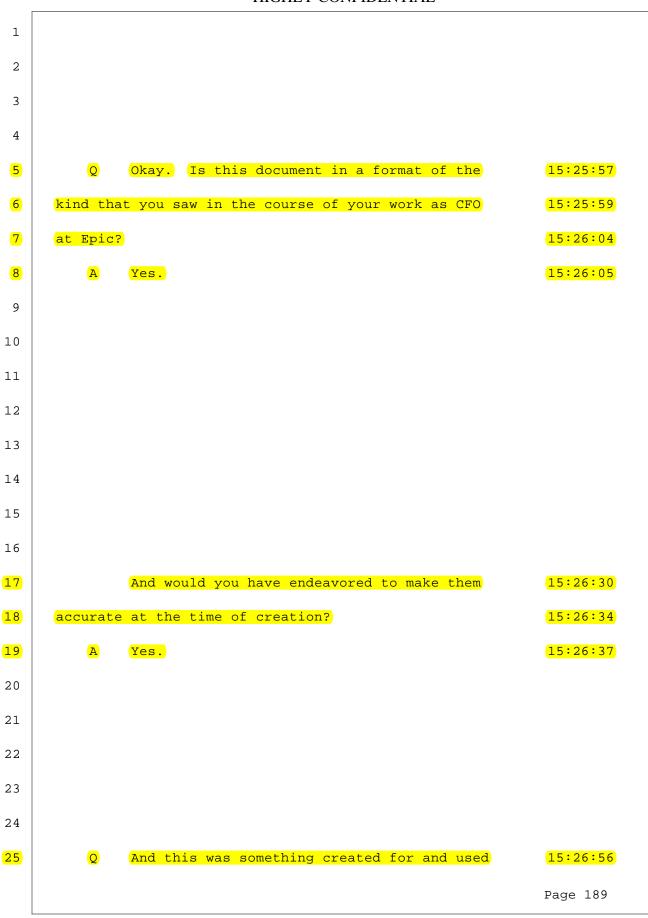
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1	by members in the finance organization; is that	15:26:58
2	correct?	15:27:02
<mark>3</mark>	A Yes.	15:27:03
4		
5	Justin, can you please load Exhibit 361.	15:27:11
6	(Deposition Exhibit 361	15:27:15
7	was marked for identification.)	15:27:15
8		
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13		
14	Q (Is this document familiar to you either in	15:28:06
<mark>15</mark>	form or in content?	15:28:09
<mark>16</mark>	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
<mark>18</mark>	extraordinarily early on in the Fortnite forecasting	15:28:25
<mark>19</mark>	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
<mark>22</mark>	Q Do you	15:28:54
<mark>23</mark>	A As I referenced before, I said to you, in	15:28:56
<mark>24</mark>	2018, we had no idea how up or down 2020 would look.	15:28:58
<mark>25</mark>	As evidenced by these two forecasts that	15:29:03
		Page 190

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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
5		
б		
7		
8		
9		
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
<mark>15</mark>	finished product. And I'm not sure if this is	15:30:18
<mark>16</mark>	actuals or a forecast at this moment.	15:30:27
<mark>17</mark>	Q Sitting here today, you can't remember one	15:30:30
<mark>18</mark>	way or another; is that correct?	15:30:33
<mark>19</mark>	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
		Page 191

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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
3		
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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
<mark>15</mark>	(191131.)	15:31:57
<mark>16</mark>	(Deposition Exhibit 362	15:31:59
<mark>17</mark>	was marked for identification.)	15:31:59
18		
<mark>19</mark>	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

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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
<mark>3</mark>	retired; is that correct?	15:33:42
<mark>4</mark>	A Yes.	15:33:43
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		Page 193

#### 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

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

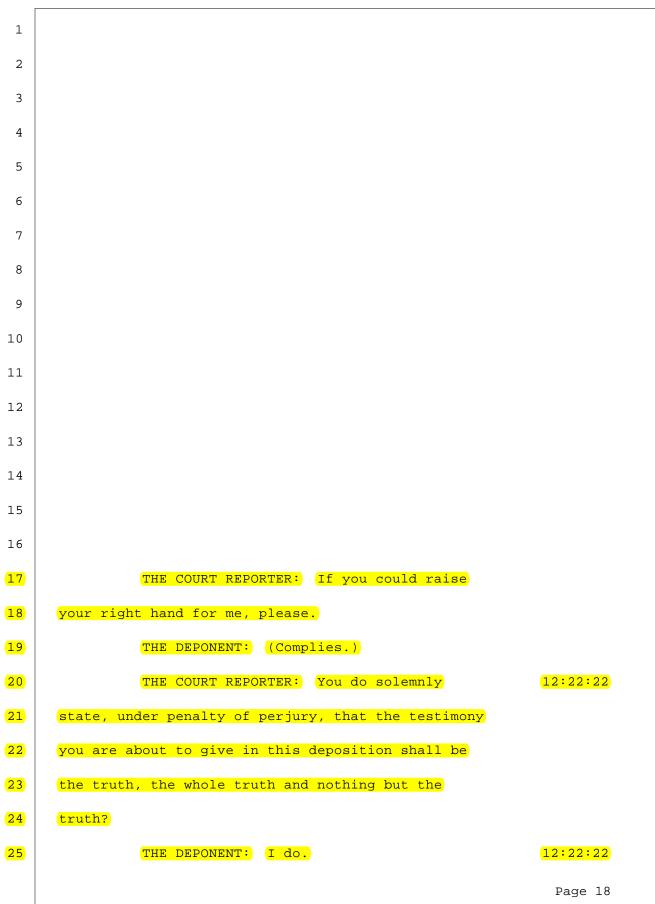
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	UNITED STATES DISTRICT COURT	
	NORTHERN DISTRICT OF CALIFORNIA	
	OAKLAND DIVISION	
	EPIC GAMES, INC.,	
	Plaintiff,	
	Counter-defendant,	
	vs. Case No. 4:20-	-cv-05640
	YGR	
	APPLE INC.,	
	Defendant,	
	Counterclaimant.	
-	ANTITRUST LITIGATION YGR	
	(caption cont'd)	
		Page 1
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1	DONALD R. CAMERON, et al.,
2	Plaintiffs,
3	vs. Case No. 4:19-cv-03074 YGR
4	APPLE INC.,
5	Defendant.
6	
7	
8	
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
16	
17	
18	
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. 4450721
25	PAGES 1 - 297
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8	EXAMINATION
9	BY MR. SRINIVASAN:
10	Q. Good morning, Mr. Kreiner. For the 09:21:26
11	record, can you state your full name and spell
<mark>12</mark>	spell it for us, please.
13	A. Sure. It's Joseph Kreiner. My last name
<mark>14</mark>	is spelled K-R-E-I-N-E-R.
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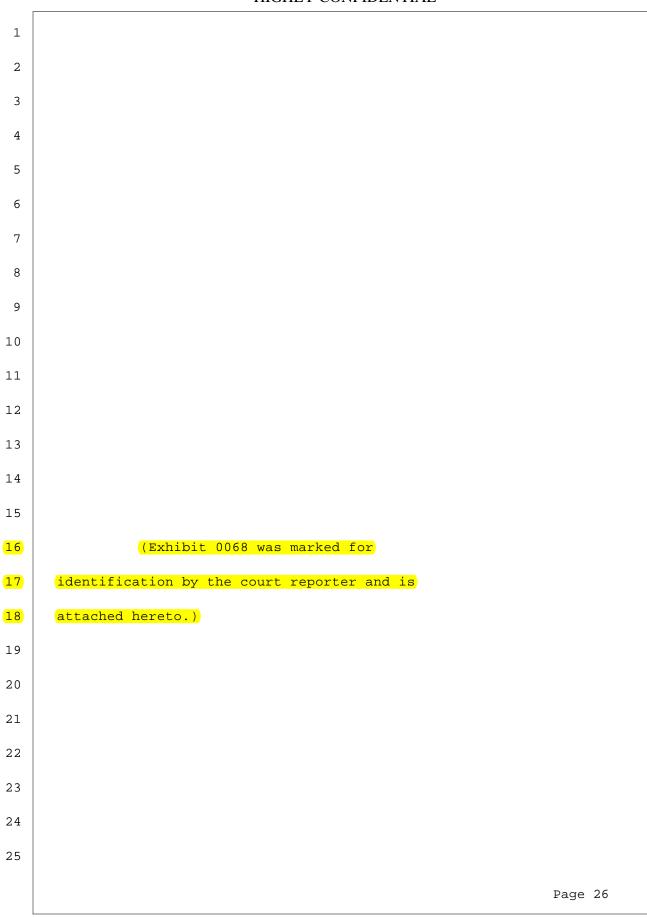
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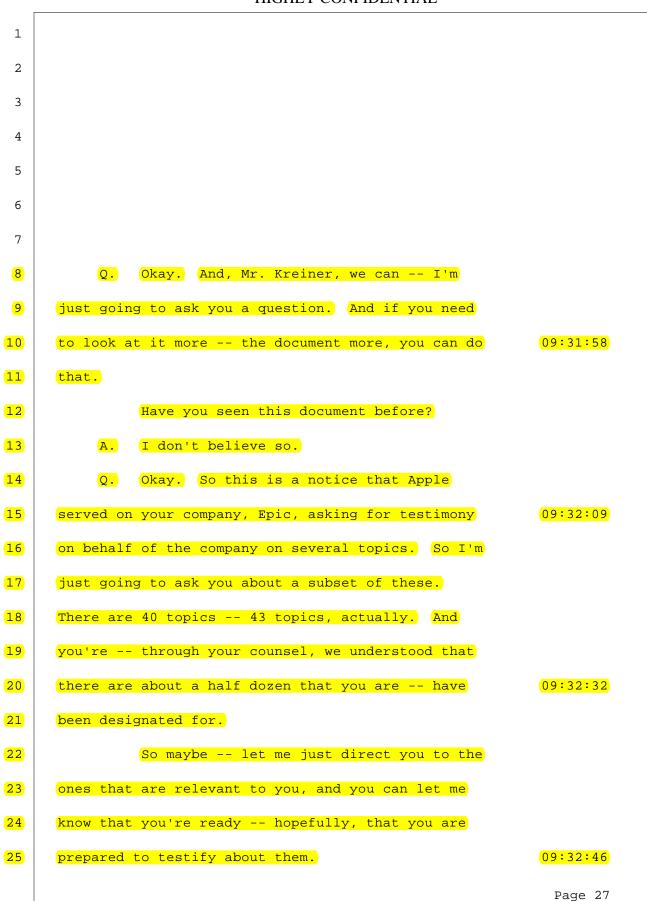
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1	us an overview of what you did when you started at	09:25:43
2	Epic, what roles you had, and building up to the	
3	role you currently have?	
4	A. Sure. I joined Epic in 2011 as business	
5	development for Unreal Engine. Over time my	09:25:55
6	current role is vice president of business develop.	
<mark>7</mark>	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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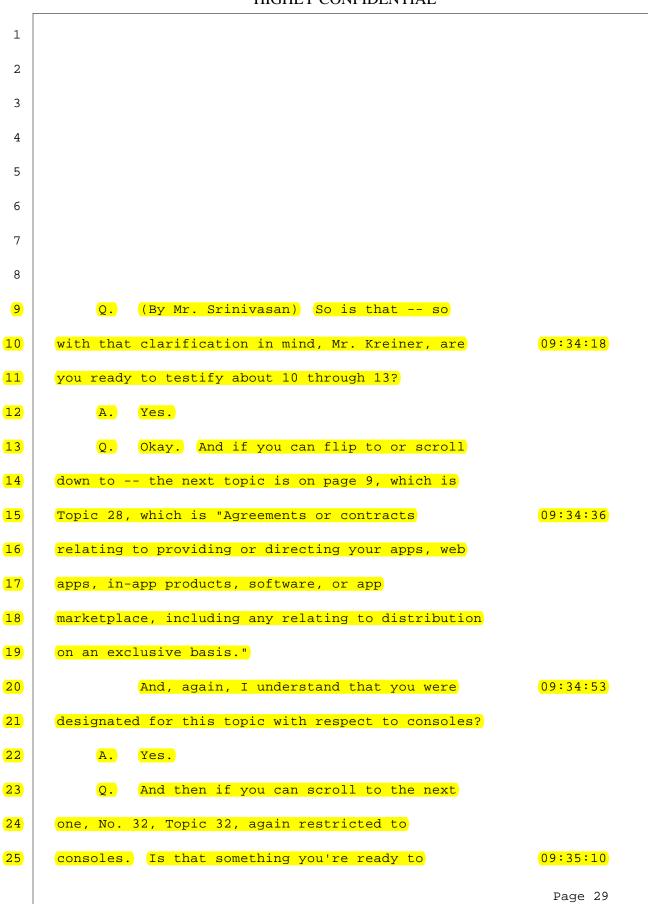
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1	So if you can turn to page 6, the first	09:32:48
2	number on page 6 is 8. And I'll just read that.	
<mark>3</mark>	"Distribution (whether online, through	
4	brick-and-mortar stores, or through online stores	
5	such as Amazon.com) of each of your 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	
<mark>12</mark>	would be testifying on this topic with respect to	
<mark>13</mark>	consoles and gift cards. Are you prepared to do	
14	that?	
<mark>15</mark>	A. Yes.	09:33:33
<mark>16</mark>	Q. Okay. And then No. 10 I'm just going	
<mark>17</mark>	to cover all of them so we can take care of this at	
<mark>18</mark>	once.	
<mark>19</mark>	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	
<mark>22</mark>	about No. 10?	
23	A. Yes.	
24		
25		
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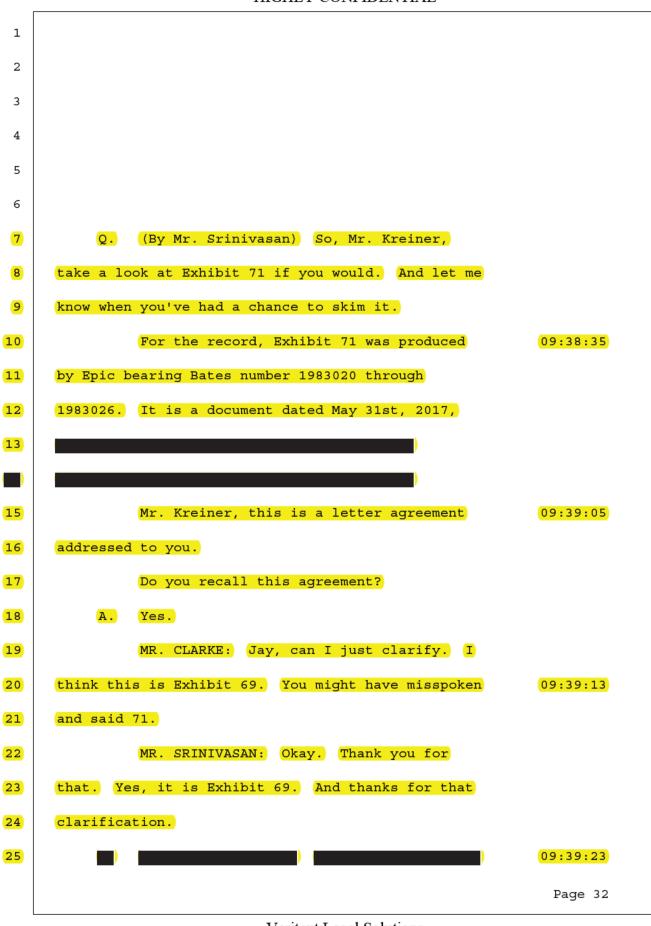
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1	testify about?	09:35:12
2	A. Yes.	
<mark>3</mark>	Q. And one last one on the next page,	
4	Topic 40, Epic's "effort to bundle its digital	
5	products, app, web apps, software, in-app products	09:35:26
<mark>6</mark>	with any hardware devices," is that something that	
7	you are ready to to testify about today?	
8	A. Yes. That's correct.	
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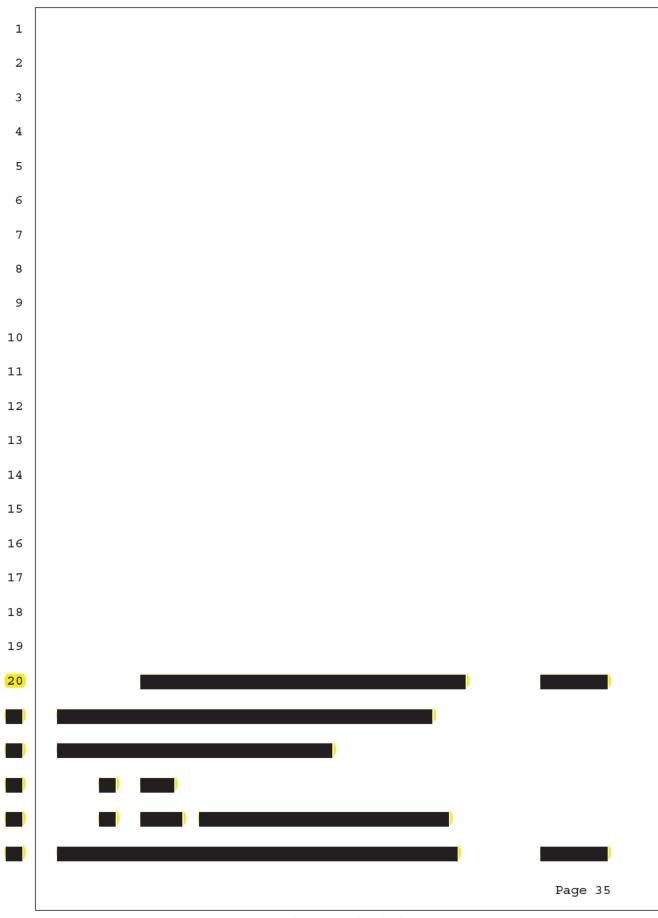
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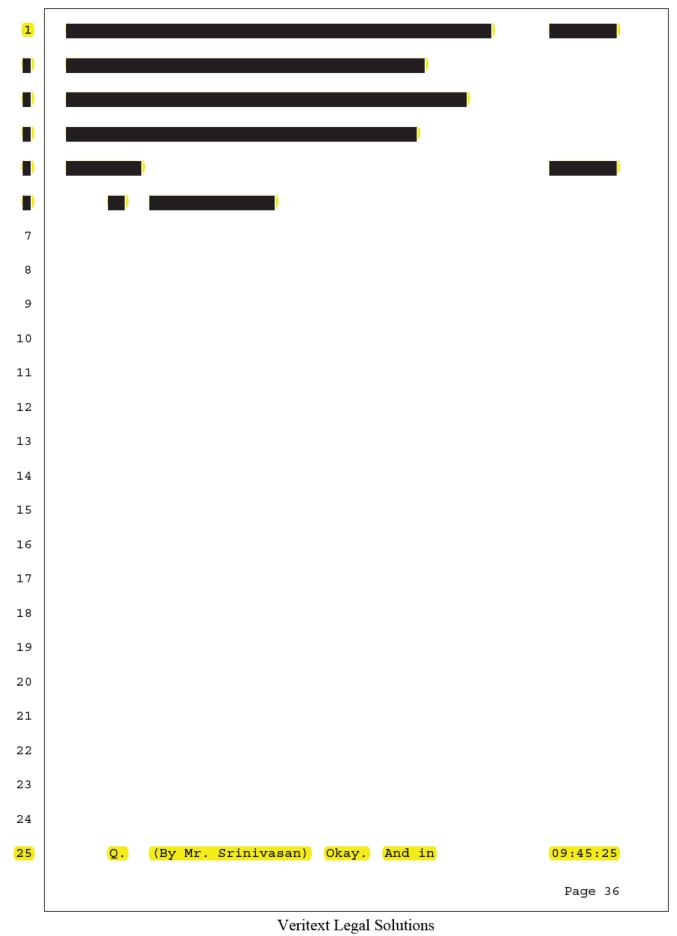
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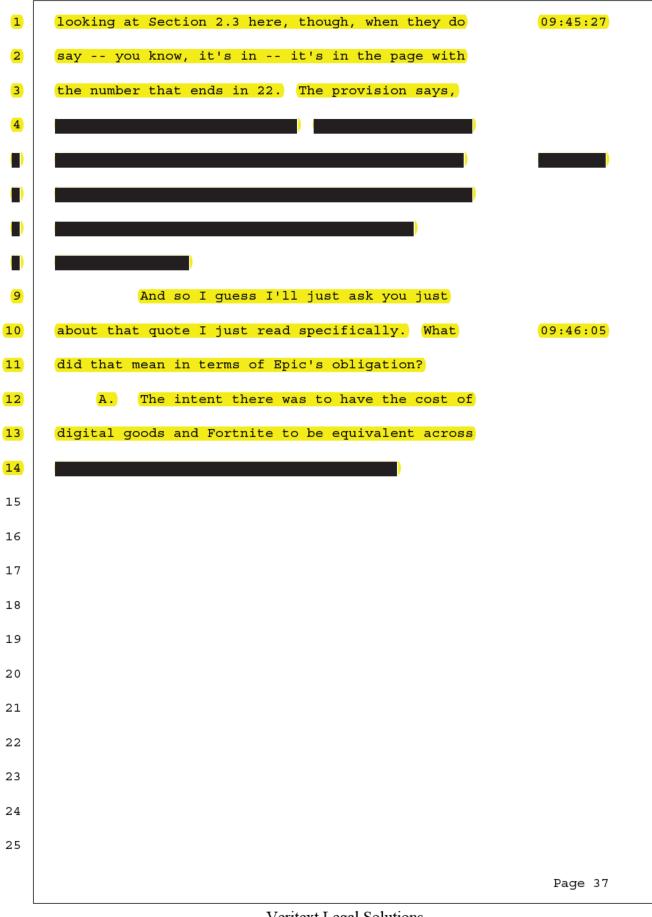
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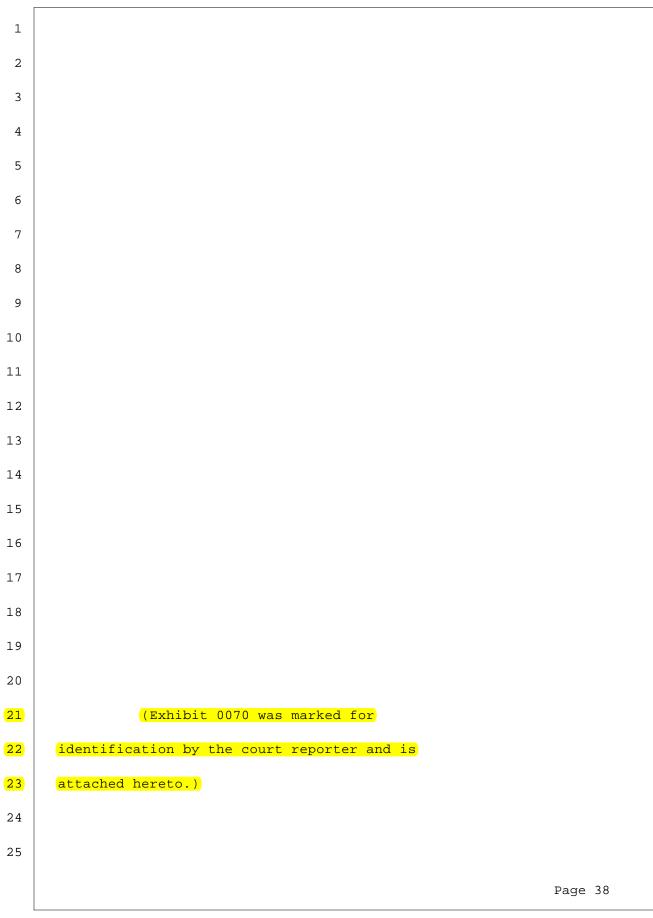
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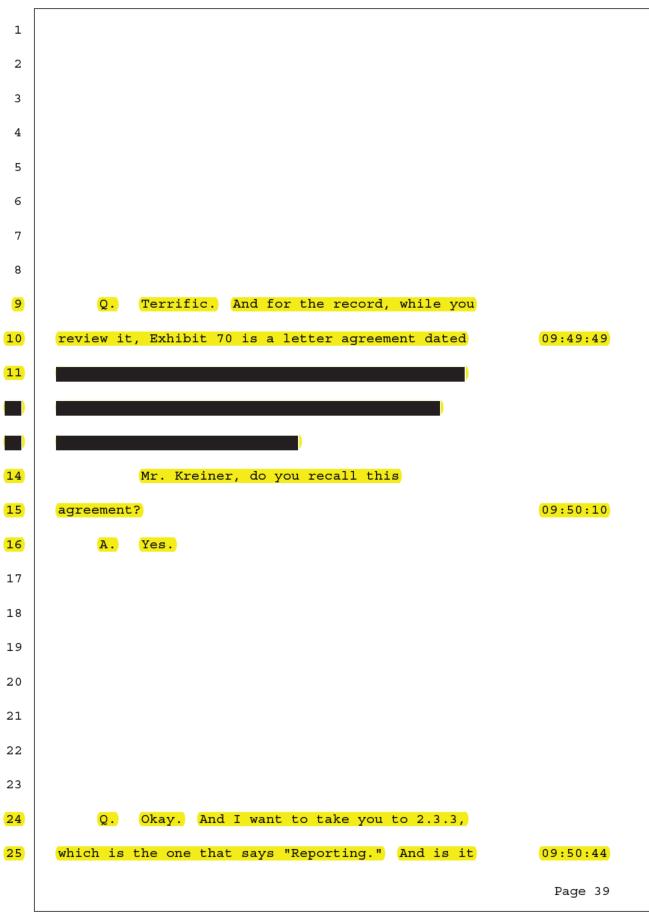
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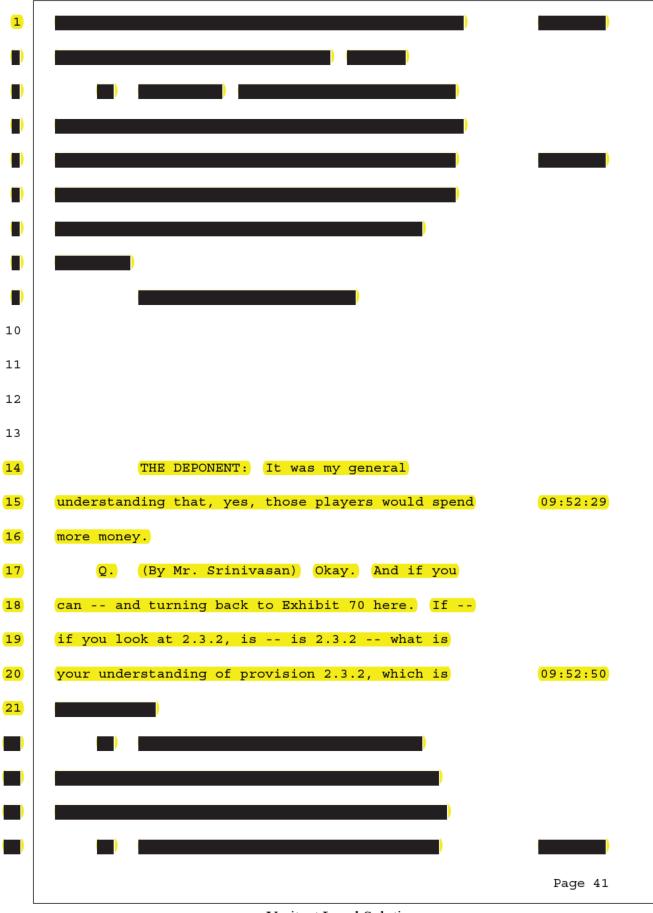
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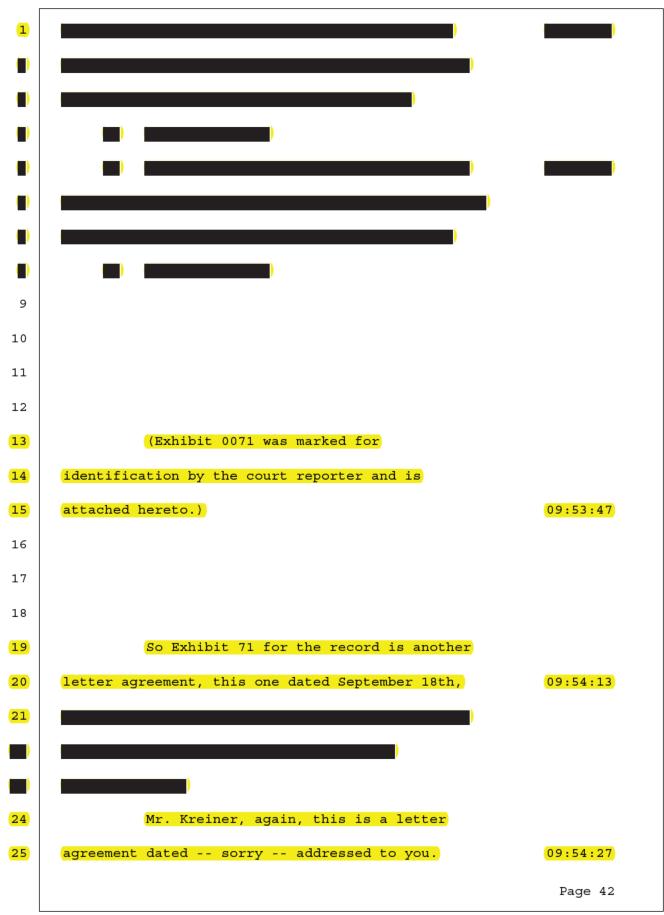
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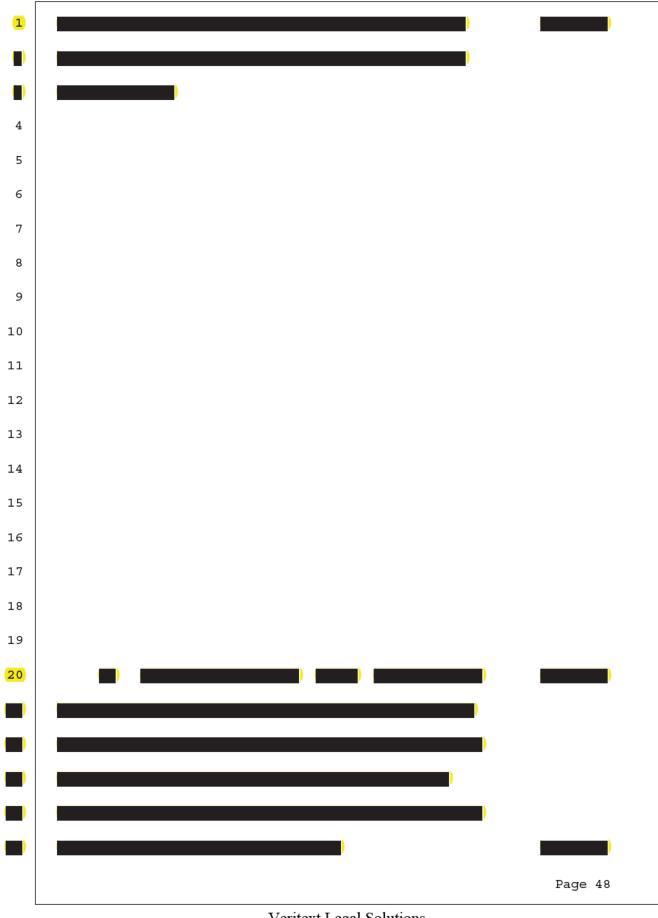
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1		Do you recall this agreement?	09:54:31
2	A.	Yes.	
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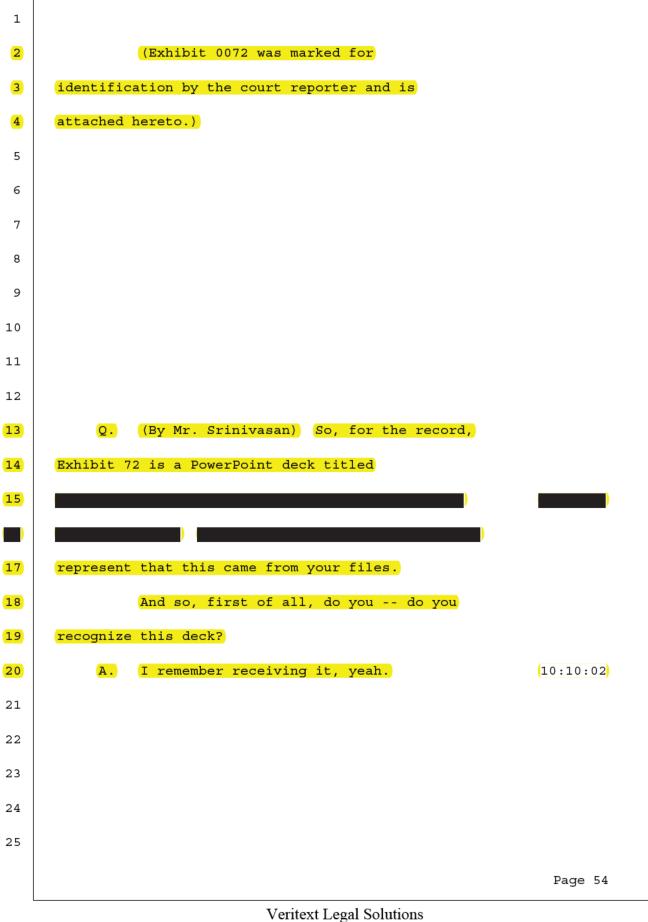
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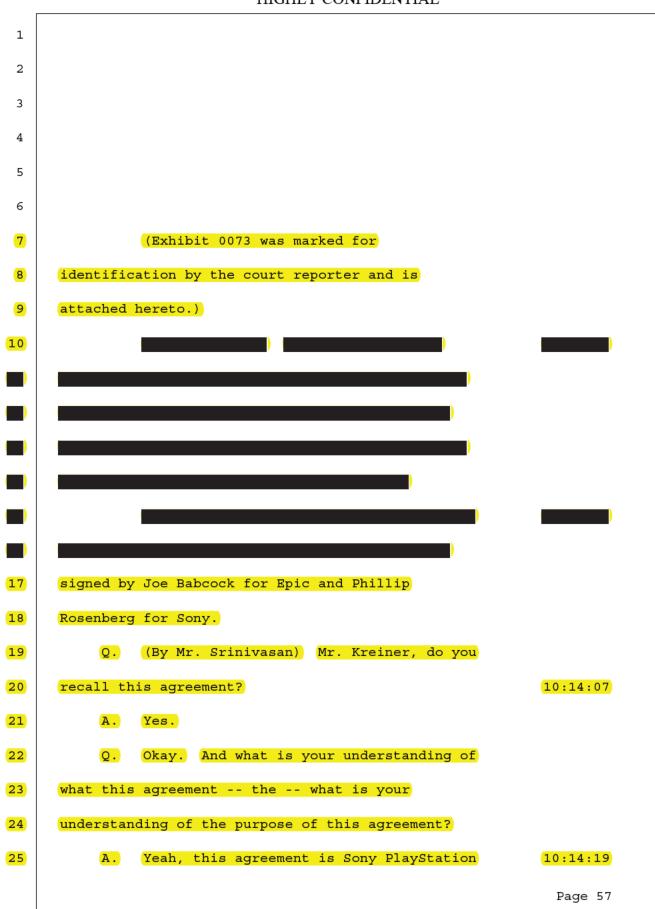
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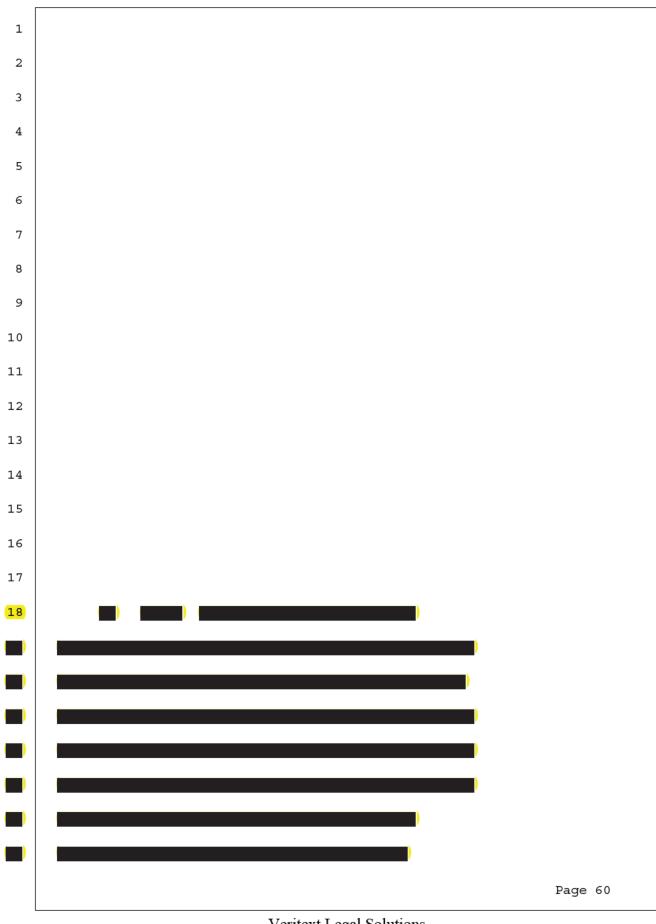
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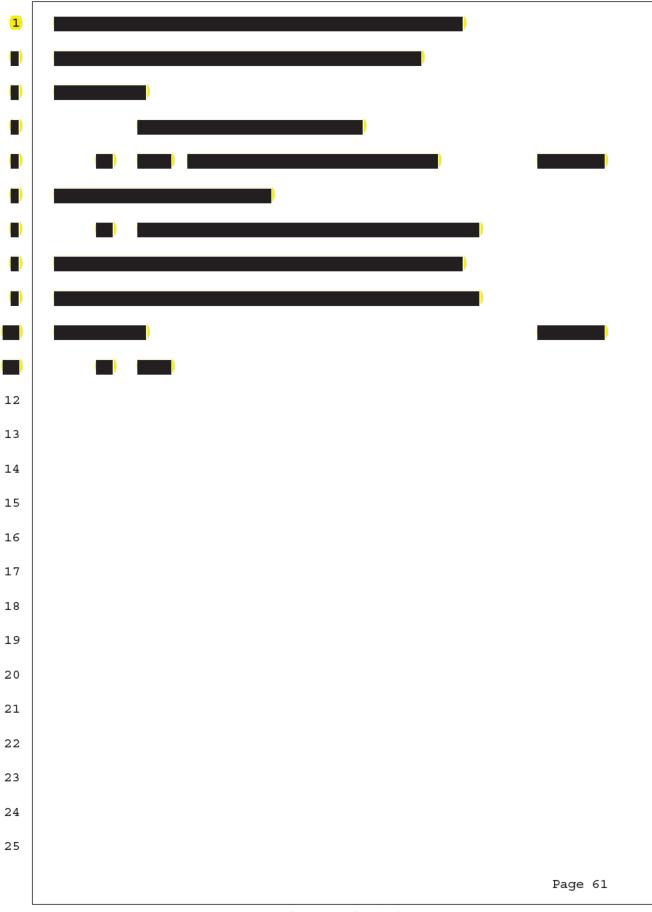
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1	refining the requirements around supporting	10:14:23
2	cross-play. And, you know, cross-play was a new	
<mark>3</mark>	a new feature. And those previous letters were	
4	kind of the first of its kind for Sony. This is a	
5	more formal agreement that's 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?	
<mark>10</mark>	A. Offhand, no.	10:15:08
<mark>11</mark>	Q. I'm sorry. I'll just direct you to it.	
<mark>12</mark>	It says in the third line there that it's effective	
<mark>13</mark>	as of September 2019.	
<mark>14</mark>	Does that roughly comport with your	
<mark>15</mark>	understanding?	10:15:18
<mark>16</mark>	A. Yes.	
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		Page 58
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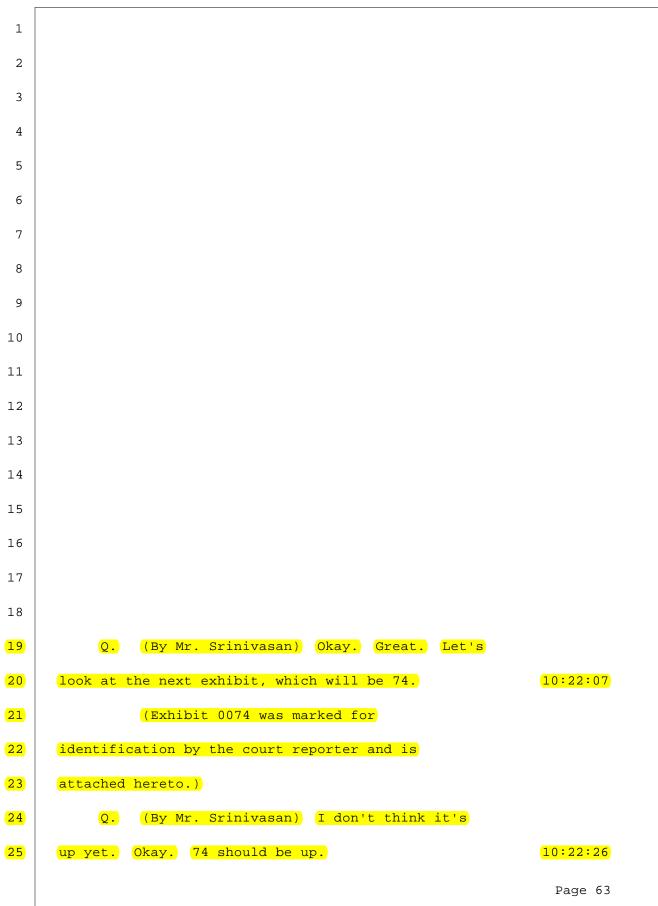
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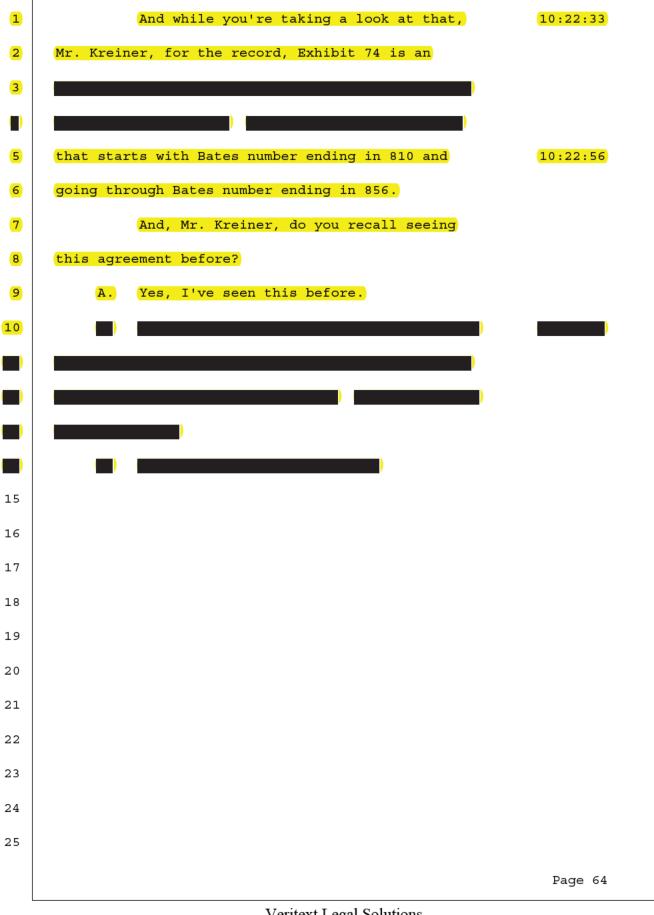
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1		
2		
3	Q. Okay. And do you know why Xbox wasn't	
4	included in the original agreement that authorized	
<mark>5</mark>	cross-platform play with a PC?	10:19:54
6	A. Sony was very concerned about giving Xbox	
7	a competitive edge by allowing it.	
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		Page 62

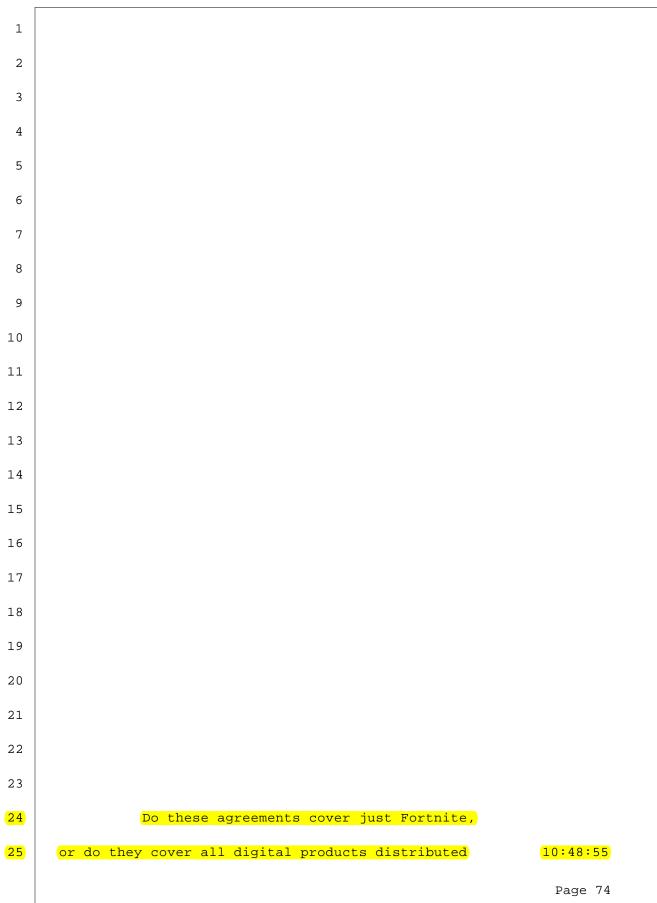
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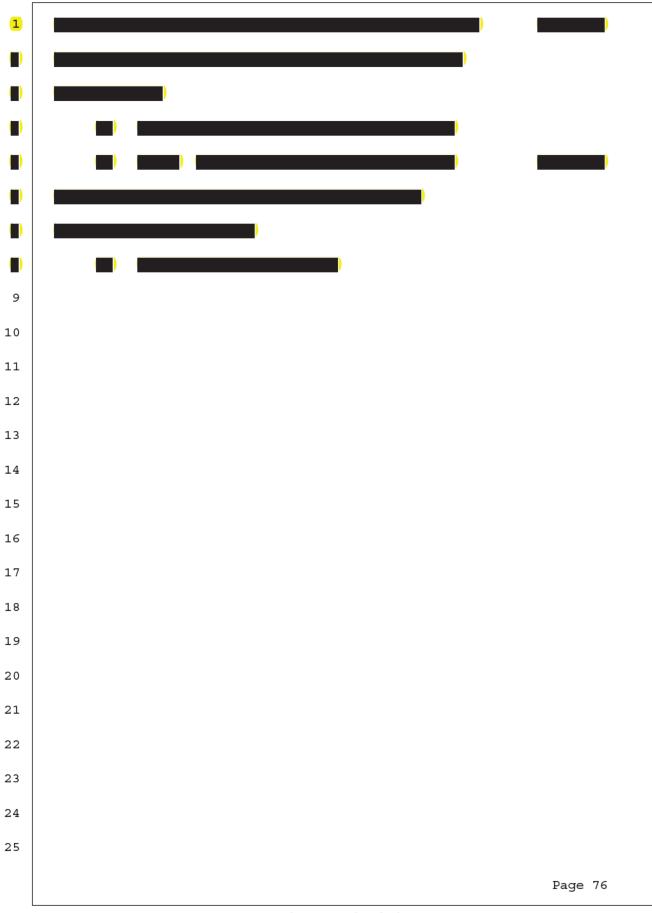
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1	by Epic on the PlayStation?	10:48:59
2		
3	THE DEPONENT: The GDPA is a generic	
4	document that would cover all submitted games by	
5	Epic. The letters that we've been looking at were	10:49:11
6	specific to Fortnite.	
7	Q. (By Mr. Srinivasan) Okay. Thank you.	
8	And let's focus on let's focus on	
9		
13	A. That would be accurate, yes.	
14	Q. Okay. And that Epic is subject to	
15		
		Page 75
ı		

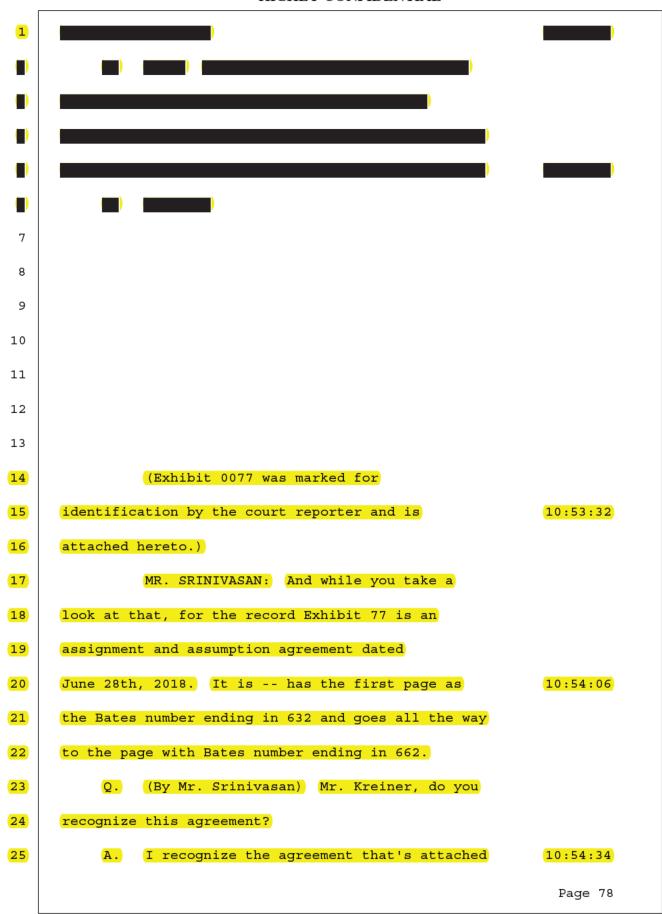
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1	to Exhibit A.	10:54:36
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21	Q. (By Mr. Srinivasan) Okay. As you noted,	
22	Mr. Kreiner, let's go to I guess it's the	
23	Exhibit A to this agreement, which starts on page	
24	number ending in 637. And this part of the	
<mark>25</mark>	agreement, which is well, I'll say it for the	10:56:16
		Page 79

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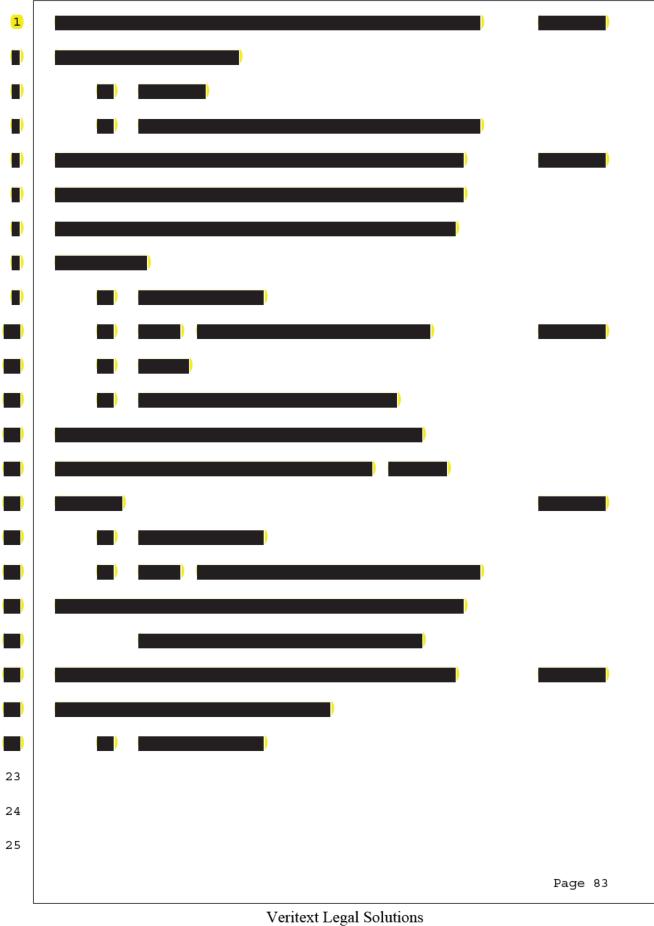


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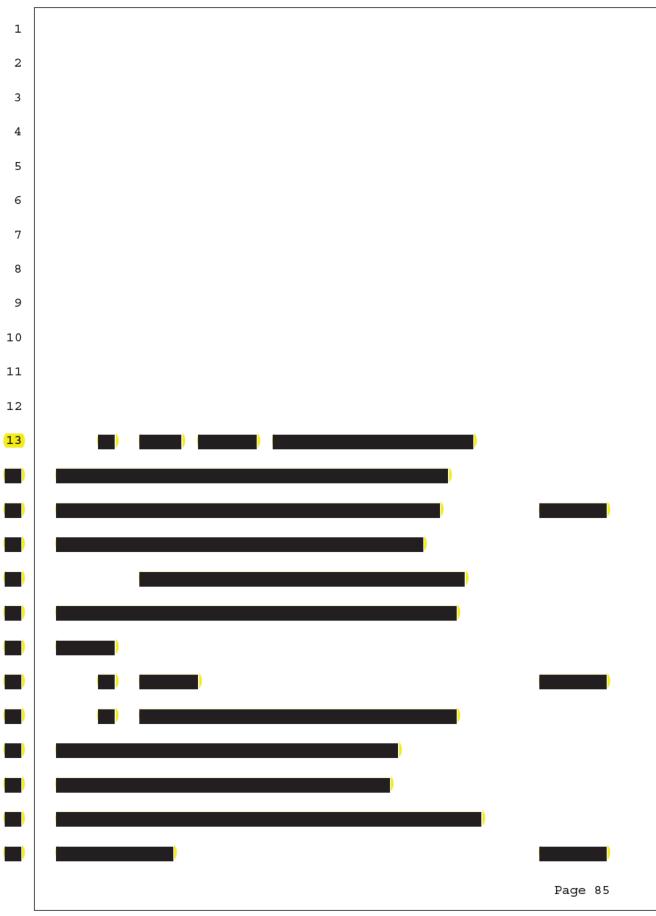
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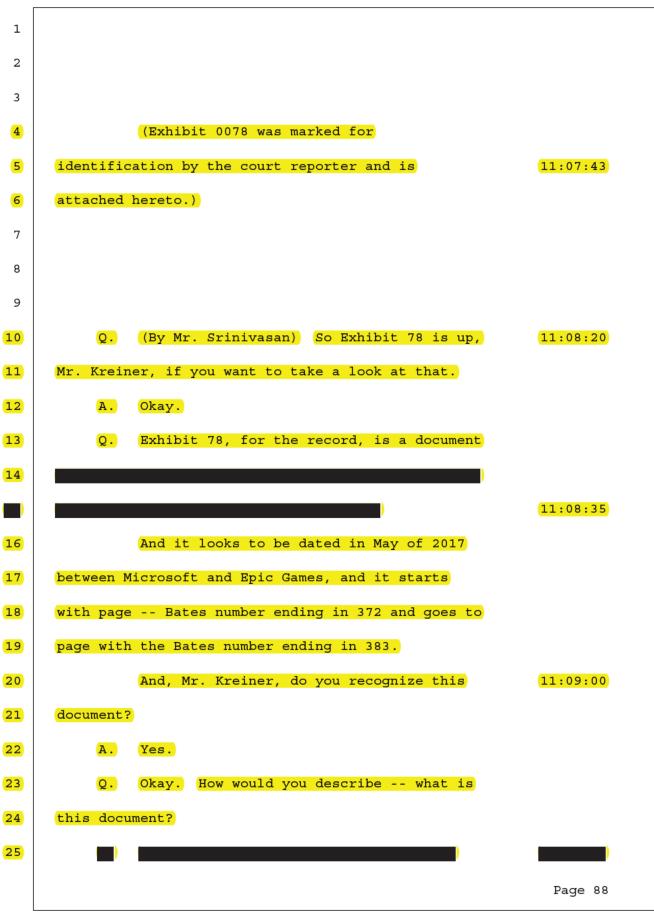


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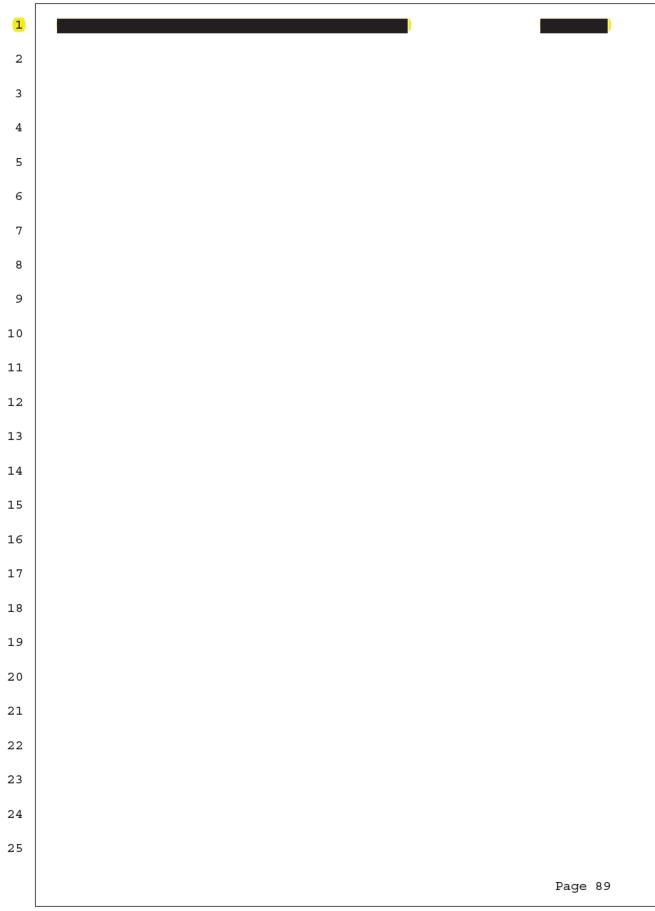


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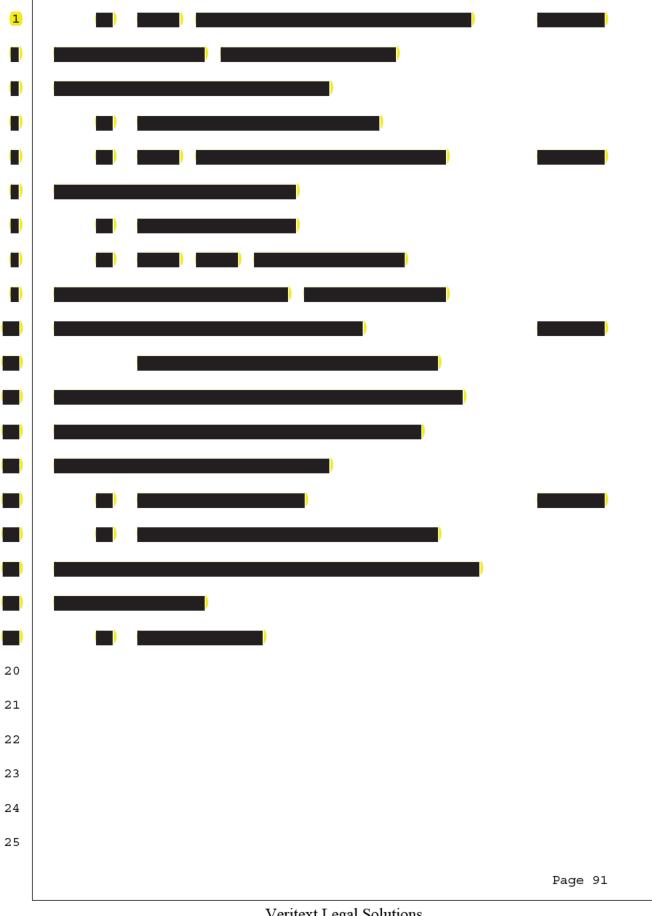
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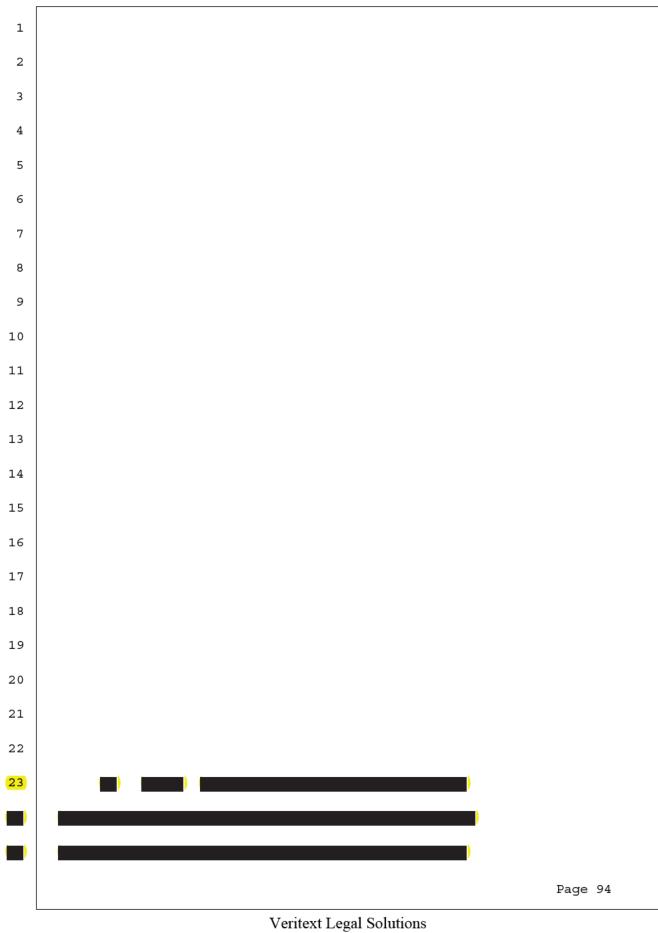


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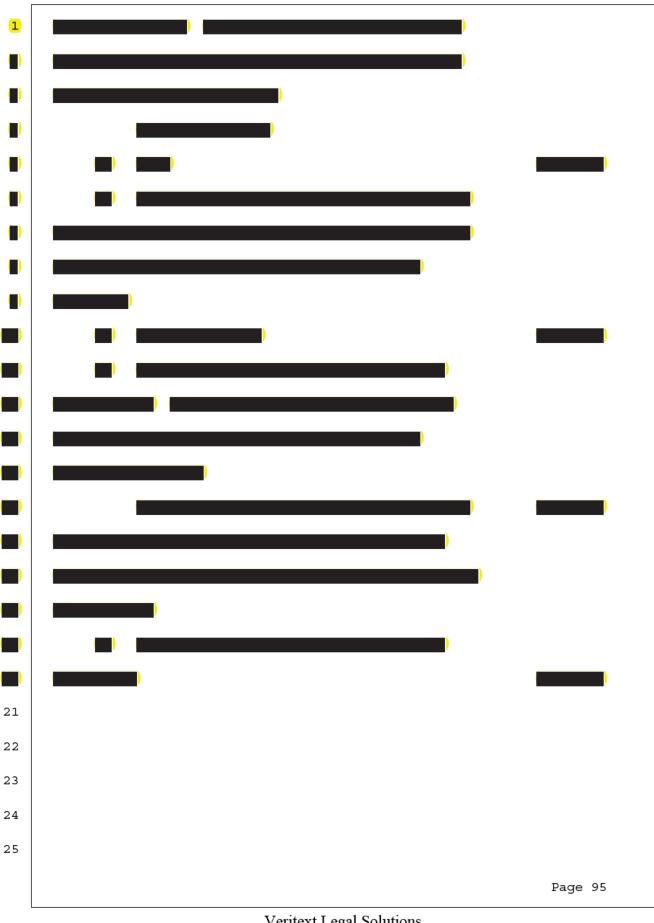
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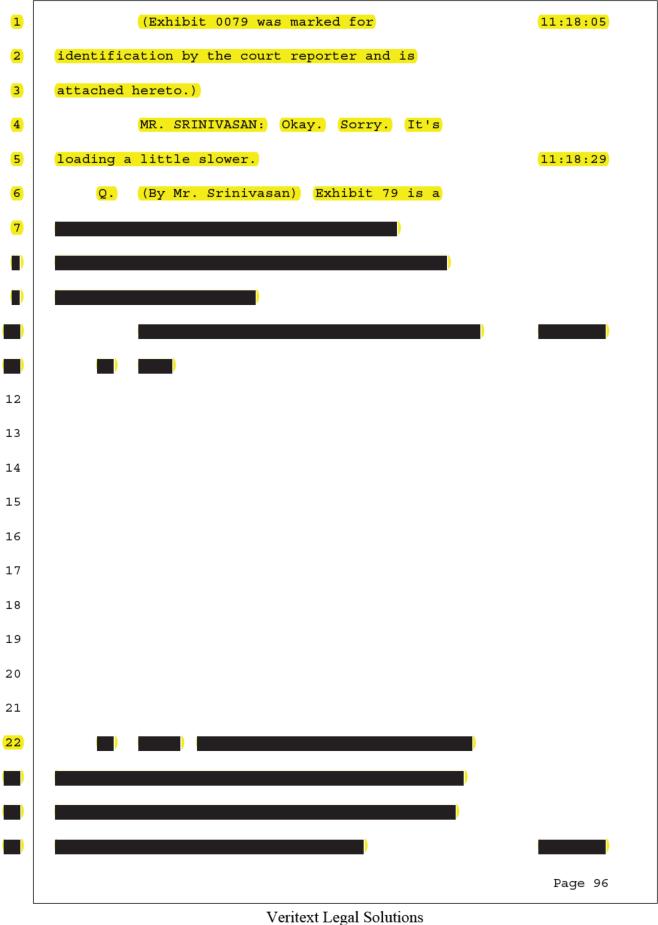


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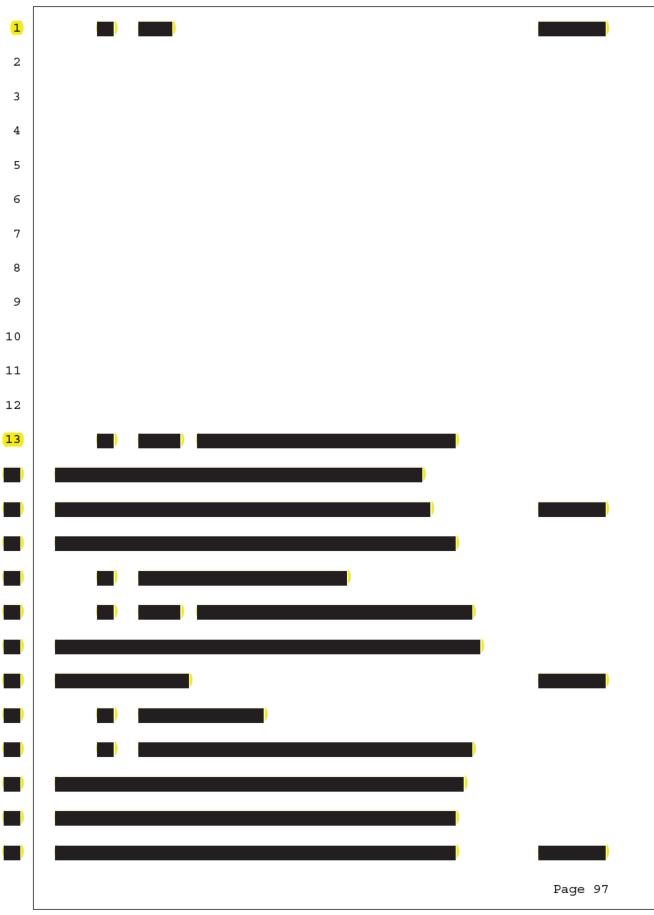
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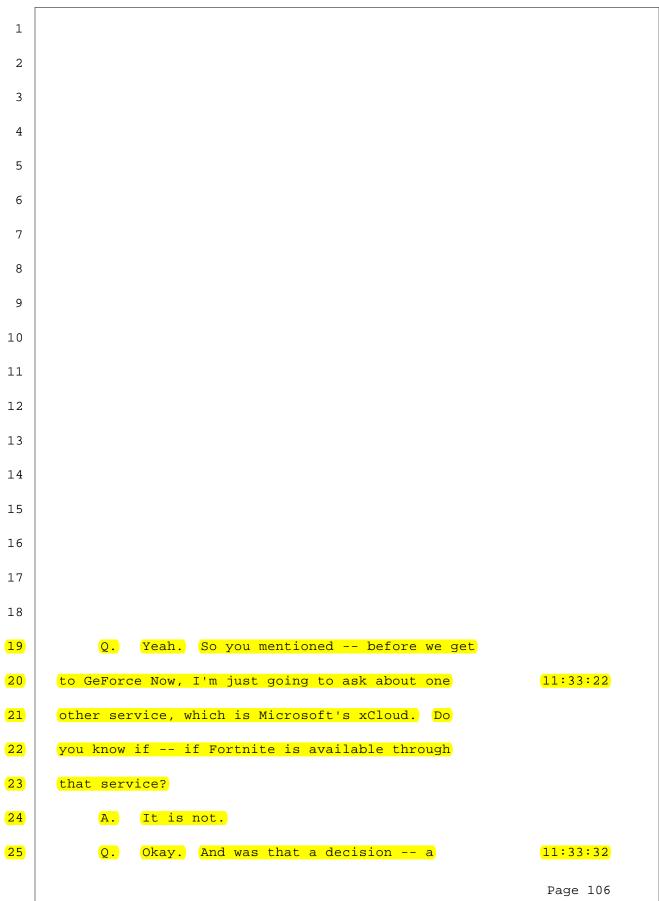
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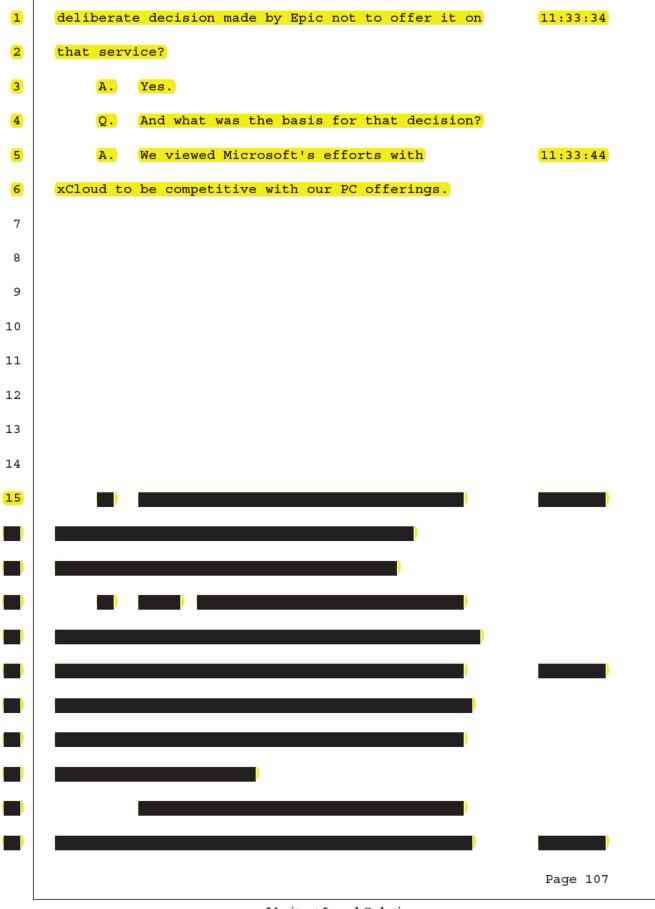
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7	(Exhibit 0081 was marked for
8	identification by the court reporter and is
9	attached hereto.)
10	Q. (By Mr. Srinivasan) Okay. 81 is there. 11:23:27
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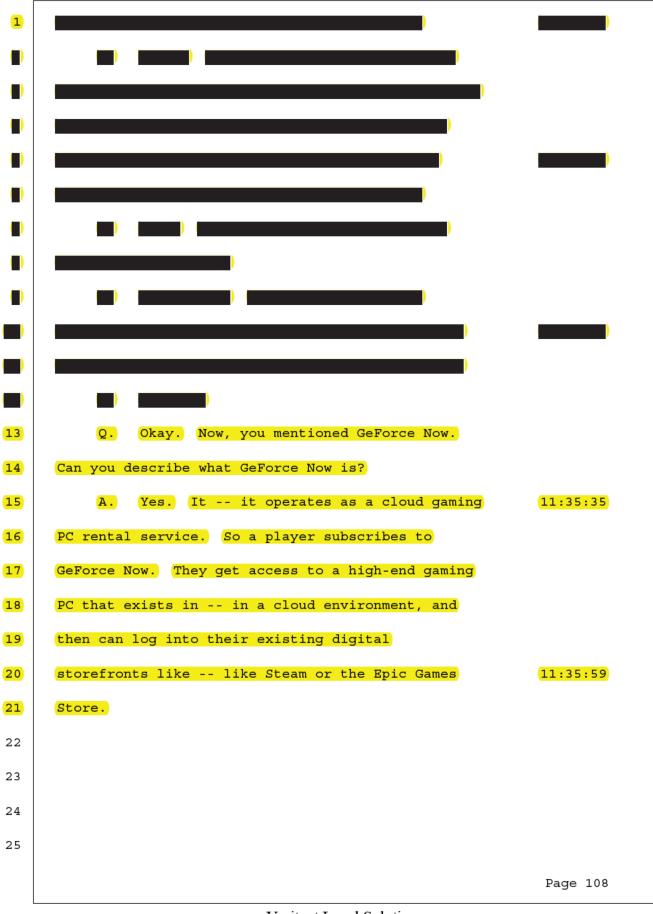
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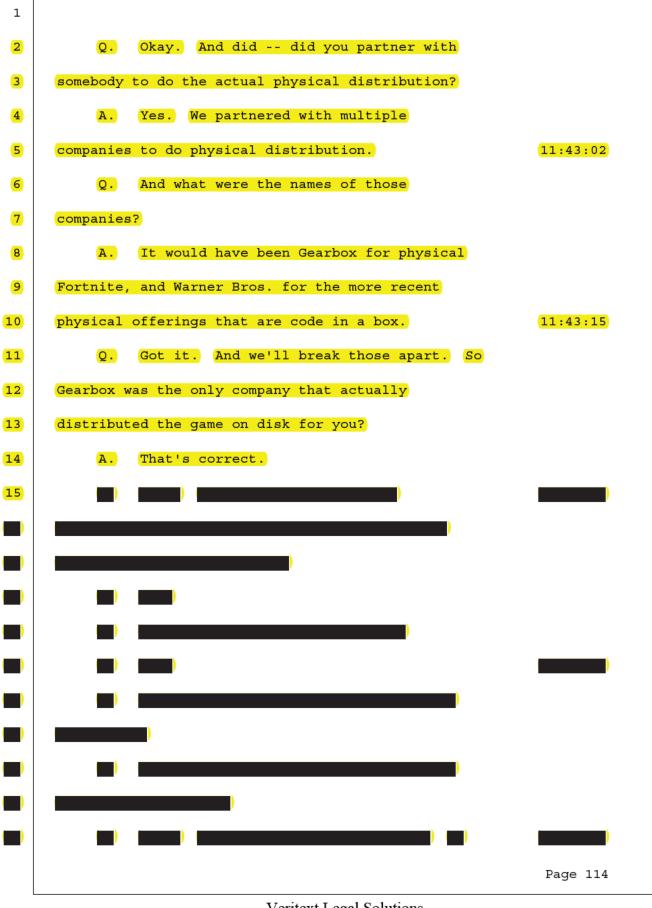
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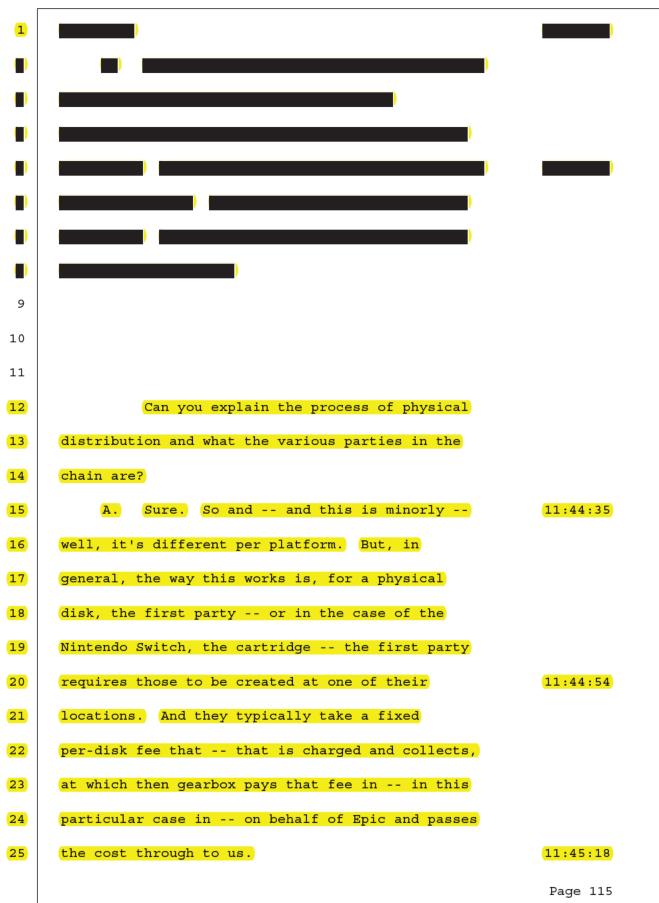
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4	Q. And what GeForce Now by the way, do	
<mark>5</mark>	you know who what company distributes GeForce	11:36:31
6	Now?	
7	A. It's Nvidia.	
8	Q. So Nvidia essentially, you would	
9	you would log in with your low-performance machine;	
10	but, through the cloud, you would essentially be	11:36:43
11	you would have access to a high-performance machine	
<mark>12</mark>	to play your games. Is that the idea?	
13	A. Yes. That's my understanding.	
14	Q. Okay. And I think you mentioned that	
<mark>15</mark>	Fortnite is available on GeForce Now. Is that	11:36:56
<mark>16</mark>	did I get that right?	
<mark>17</mark>	A. That's correct in that a user using that	
18	service has access to their library of games on	
<mark>19</mark>	multiple storefronts.	
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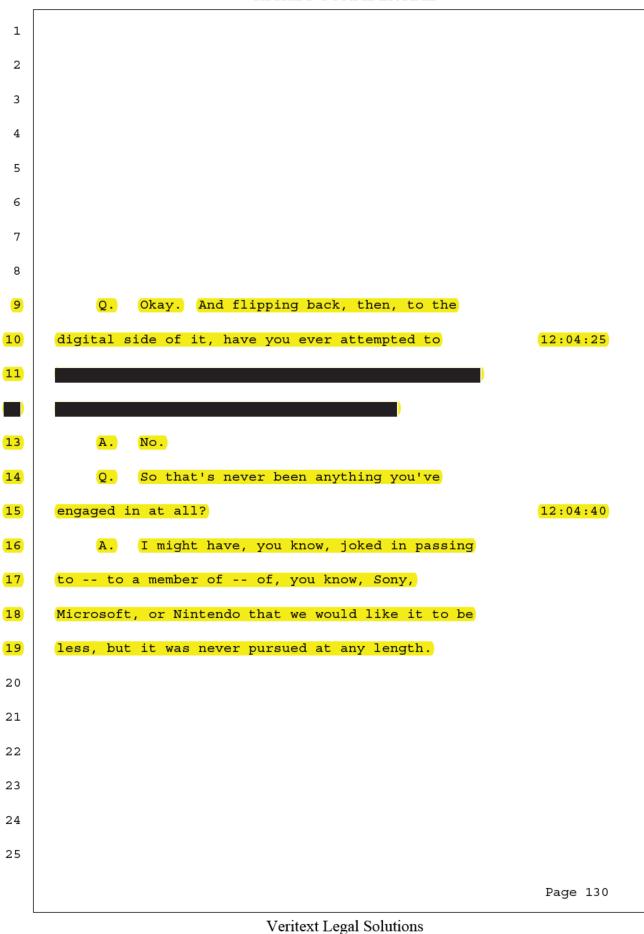


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1	And then Gearbox arranges with the the	11:45:20
2	retailers to purchase the disks at a wholesale	
3	price. The retailers mark it up and make a profit	
4	off of that.	
5	Q. Okay. And is the way Epic is	11:45:33
6	compensated, is it related to the 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
1	platform fee minus the Gearbox fee.	
12	Q. Okay. And do you have a sense of what	
L3	like an estimate of what the percentage would be	
L4	that Epic would receive compared to what the retail	
15	price would be?	11:46:09
16		
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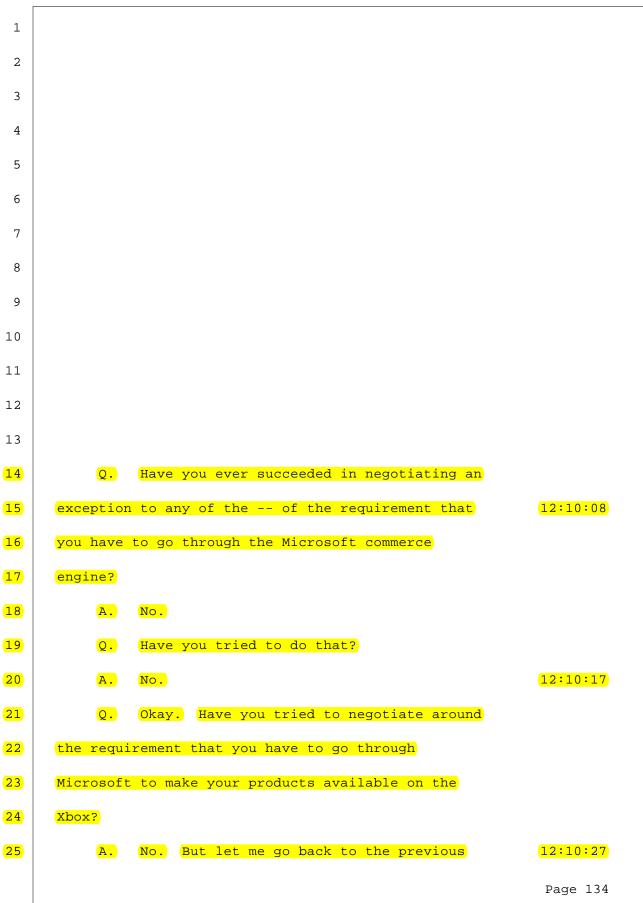
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1		
2	Q. Okay. And what is it that they do for	
3	you that you feel like 30 percent is a fair number?	
4	A. In particular those three platforms, we	
5	have weekly marketing meetings with them to discuss	12:05:38
6	merchandising Fortnite in the best way possible.	
7	We are a significant revenue generator	
8	for all three of those platforms, probably in the	
9	top five, you know, revenue sources for them. So	
10	they have a vested interest in promoting Fortnite.	12:05:56
11	We receive significant store placement	
12	that we do not have to pay for. We do pay for	
13	some, but we receive significant free placement.	
14	The marketing teams between Epic and the	
15	first parties coordinates events and social media.	12:06:14
16	So we see that as an ongoing relationship	
17	that is driving value for Epic.	
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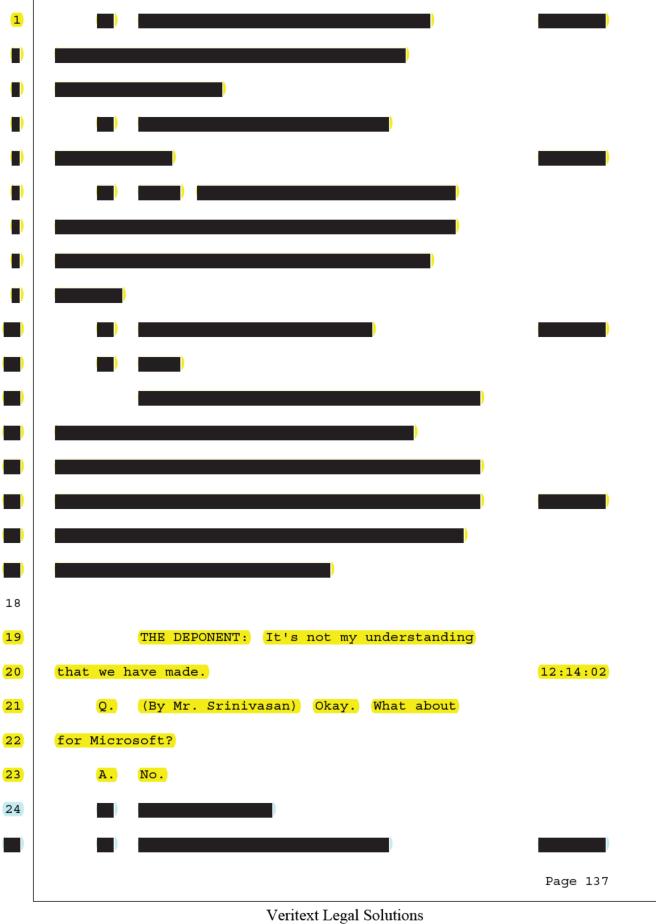
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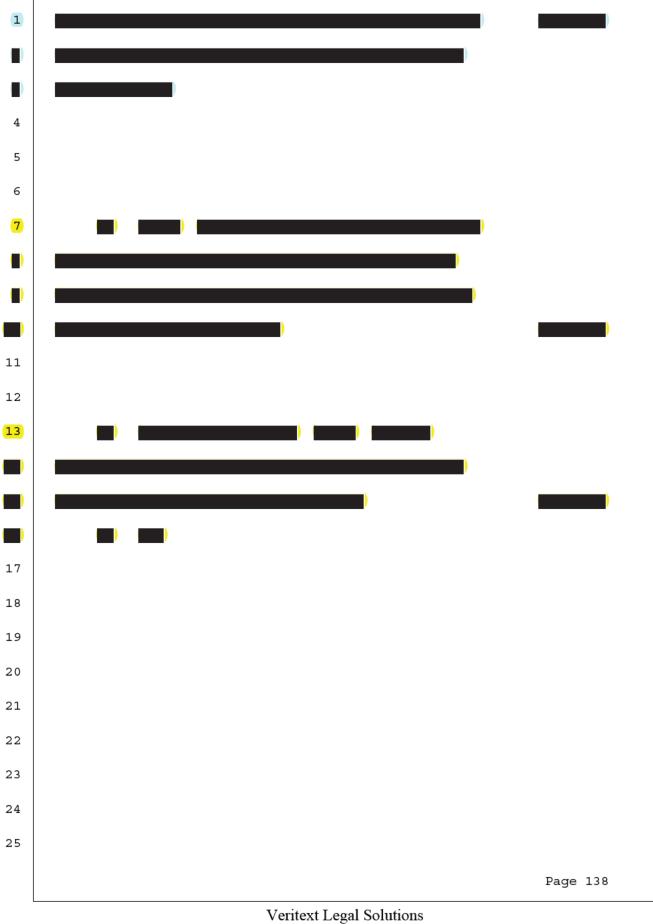


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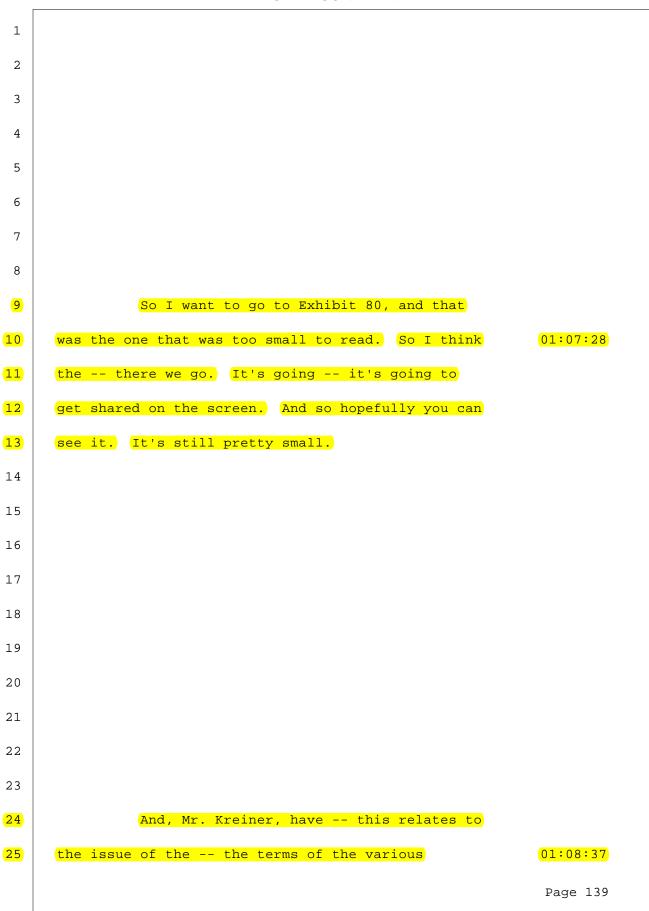


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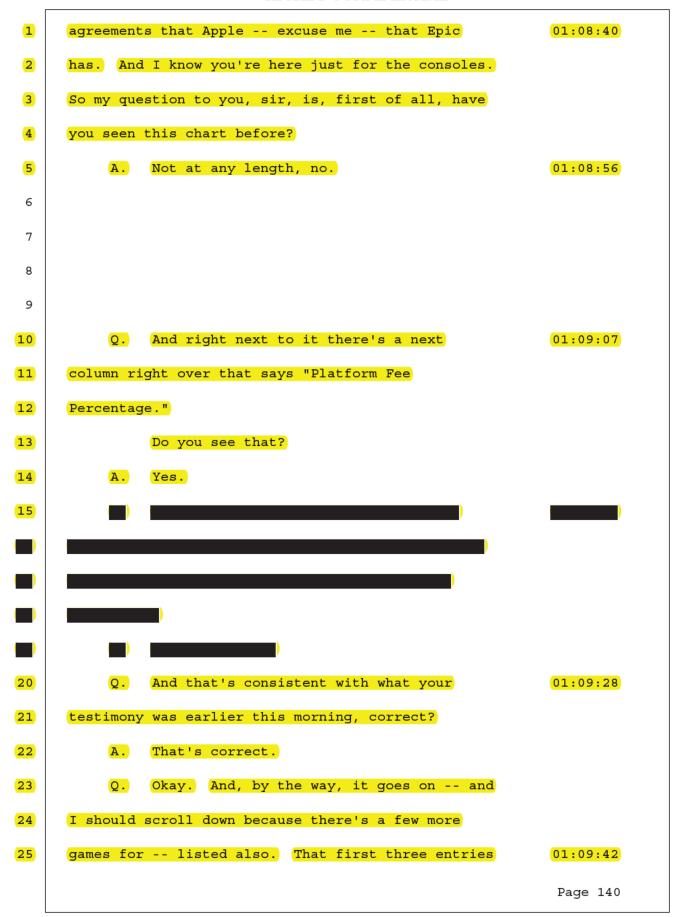
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8	MR. SRINIVASAN: And Exhibit 81, for the	
9	record, while the technical folks blow this up, is	
10	from the same document we just discussed, which is	01:11:46
11	Epic Bates Number 03848271, but it is a PDF of the	
12	second tab on this Excel sheet which is financials.	
13	Q. (By Mr. Srinivasan) And in and,	
14	Mr. Kreiner, if you can see on Exhibit 81, there	
<mark>15</mark>	first of all, it's titled "Epic Games Non-GAAP	01:12:12
<mark>16</mark>	Consolidated Financials."	
17	Do you see that?	
18	A. Yes.	
<mark>19</mark>	Q. And, again, this is something we	
20	received. It's the same file that we just looked	01:12:20
21	at from Epic. You can see I just want to direct	
22	you to the the the part that says "Fortnite."	
23	And under it, it lists the three	
24	consoles PS4, Xbox One, Switch then PC, and	
25	then the two mobile platforms, iOS and Android.	01:12:37
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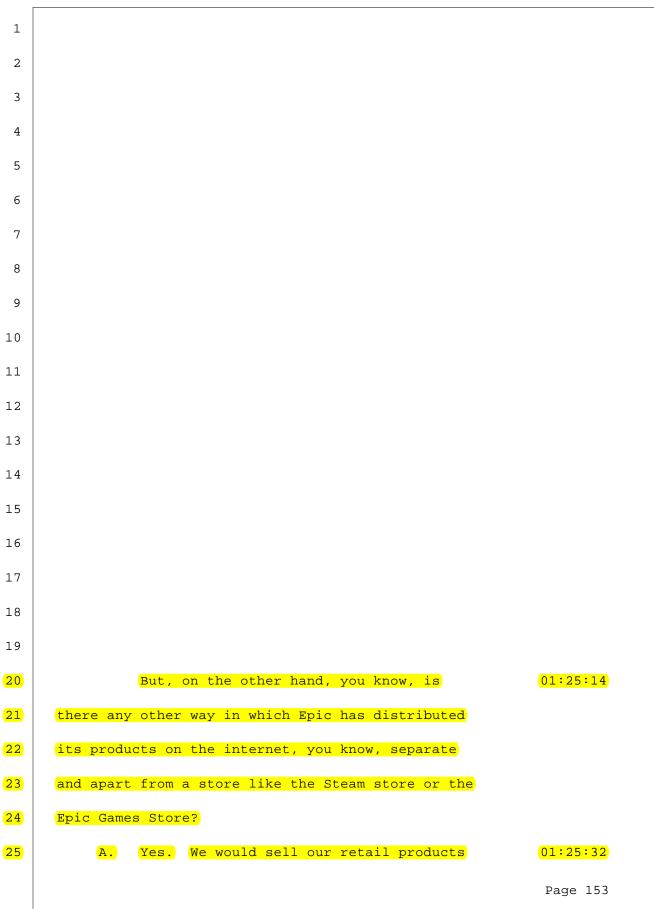
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1		Do you see that?	01:12:43
2	A.	Yes.	
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1		I think we you testified that the	01:19:32
2	revenue 1	numbers for Apple in terms of 2018 in terms	
<mark>3</mark>	of its re	elative share of overall revenue coming in	
<mark>4</mark>	for Fort	nite 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 perc	centage seems to carry forward for 2019 as	
<mark>10</mark>	well?		01:20:00
<mark>11</mark>	A.	I'm not doing the math in my head, but it	
<mark>12</mark>	does appe	ear that's the case.	
<mark>13</mark>	Q.	And same for 2020?	
<mark>14</mark>	A.	Yeah.	
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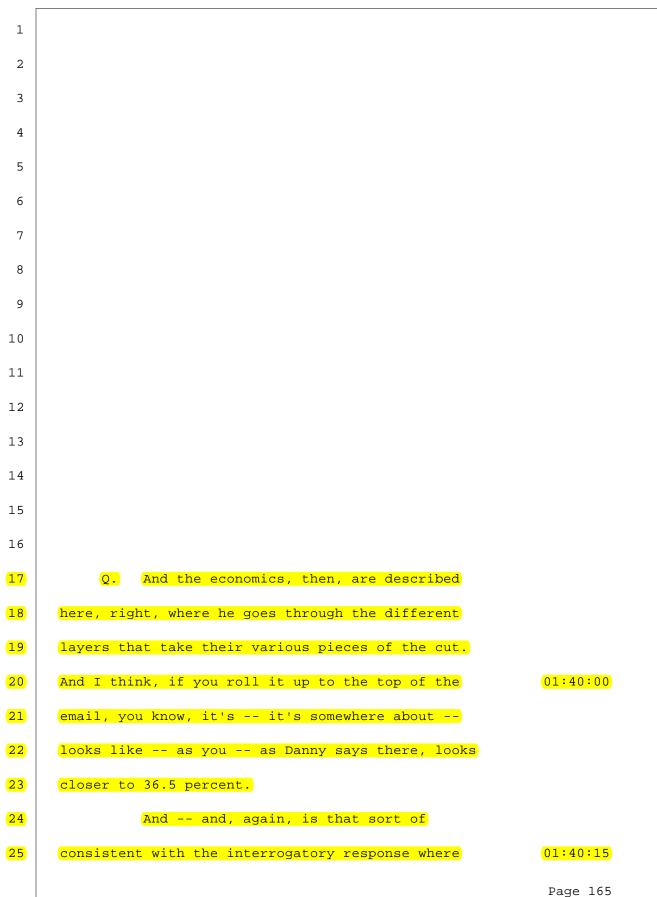
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on retailer websites; so, you know, BestBuy.com,	01:25:34
Walmart.com, GameStop.com, Amazon.com.	
Q. Okay. And so in those cases you're	
talking about either the physical disk back when	
you were selling physical disks or the the	01:25:48
code-in-a-box-type concept; is that right?	
A. You're correct.	
	Page 154

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1	(Exhibit 0083 was marked for	01:38:05
2	identification by the court reporter and is	
<mark>3</mark>	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	
<mark>12</mark>	number ends on the first page 567, and it carries	
<mark>13</mark>	over into a second page ending in 568.	
<mark>14</mark>	Q. (By Mr. Srinivasan) (So, Mr. Kreiner, I	
<mark>15</mark>	don't know if have you had a chance to look at	01:38:46
<mark>16</mark>	this email?	
<mark>17</mark>	A. Yes.	
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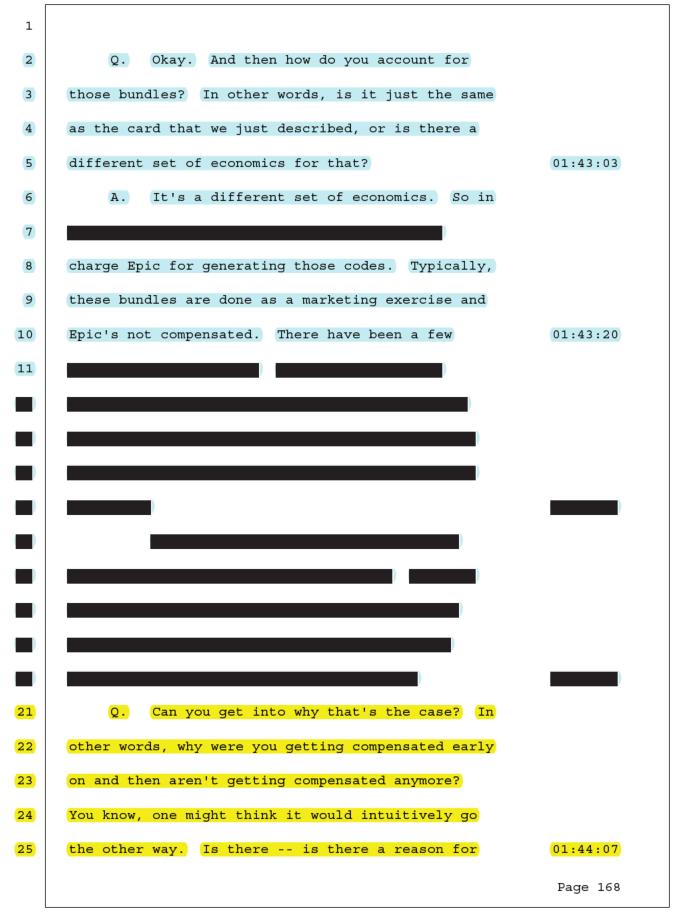
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70 perce	lt?	
A.	Yes.	
Q.	Okay. Okay. And so would	.you is it
<mark>fair to s</mark>	ay that this email reflects	sort of the 01:40
broad eco	nomics of how the gift card	/POSA card
process v	orks at Epic?	
A.	Yes.	

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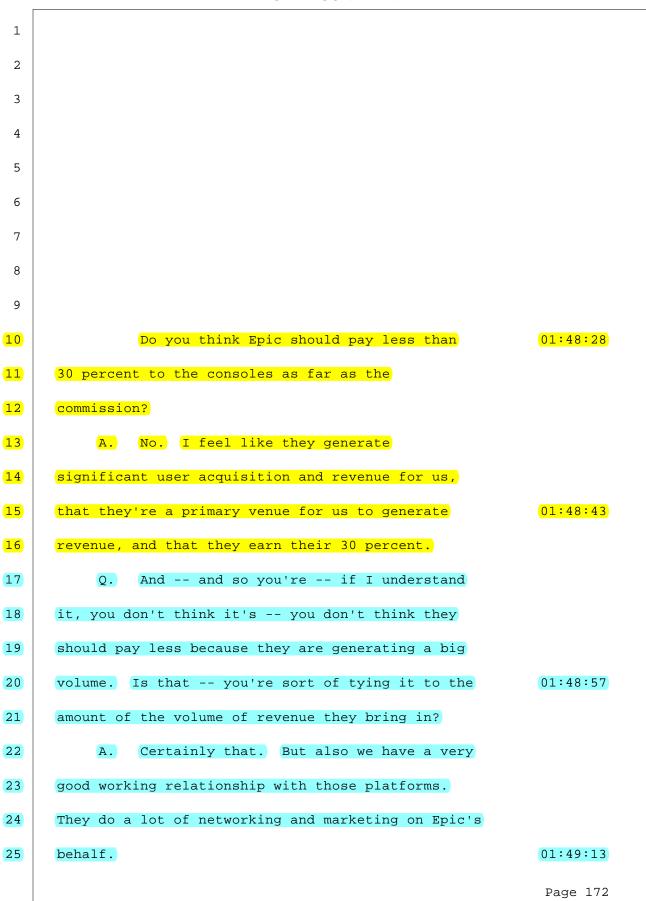


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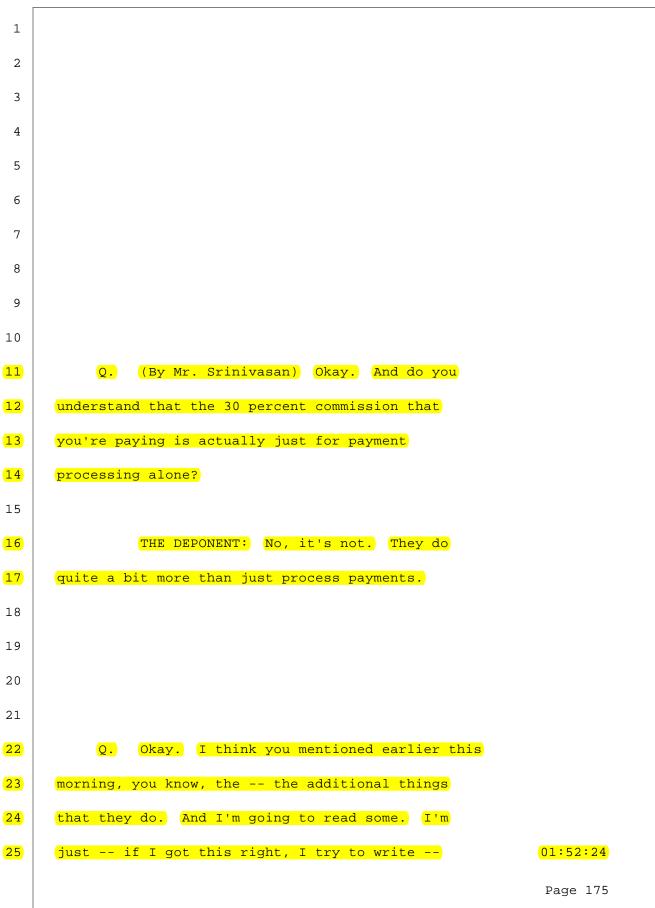
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1	that?	01:44:10
2	A. I think our initial discussions with	
3	Microsoft and Nintendo and Sony, all of those	
4	parties are just used to paying for these kind of	
5	bundles. They're coming from the more traditional	01:44:21
6	game development world 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	
<mark>15</mark>	exposed to Fortnite immediately.	01:44:54
<mark>16</mark>	So we just declined to pursue financial	
17	gain, and the first parties were happy to oblige	
18	us.	
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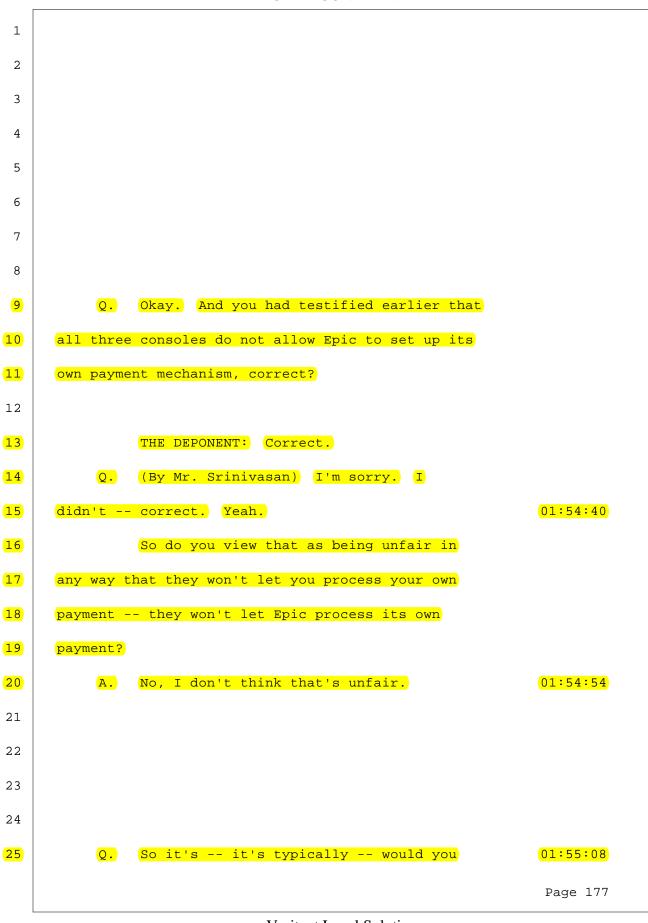
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1	write this down they had weekly meetings that	01:52:27
2	they were a significant revenue generator, that	
<mark>3</mark>	they gave you store placement, that free store	
4	placement in addition to what you were advertising,	
5	marketing terms of around 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?	
<mark>12</mark>	A. They have marketed Fortnite at physical	
<mark>13</mark>	events, like PAX or, you know, trade shows. They	
14	take out retail ads for for Fortnite on	
<mark>15</mark>	occasion. Social media posts, focused blog posts	01:53:20
<mark>16</mark>	on Fortnite content. They retweet many of Epic's	
<mark>17</mark>	social media posts surrounding content in Fortnite.	
<mark>18</mark>	And we also get have done things like	
<mark>19</mark>	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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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?	
<mark>15</mark>	A. Correct.	01:55:55
<mark>16</mark>	Q. Do you do you view that as unfair that	
<mark>17</mark>	they won't let you do that?	
18	A. No.	
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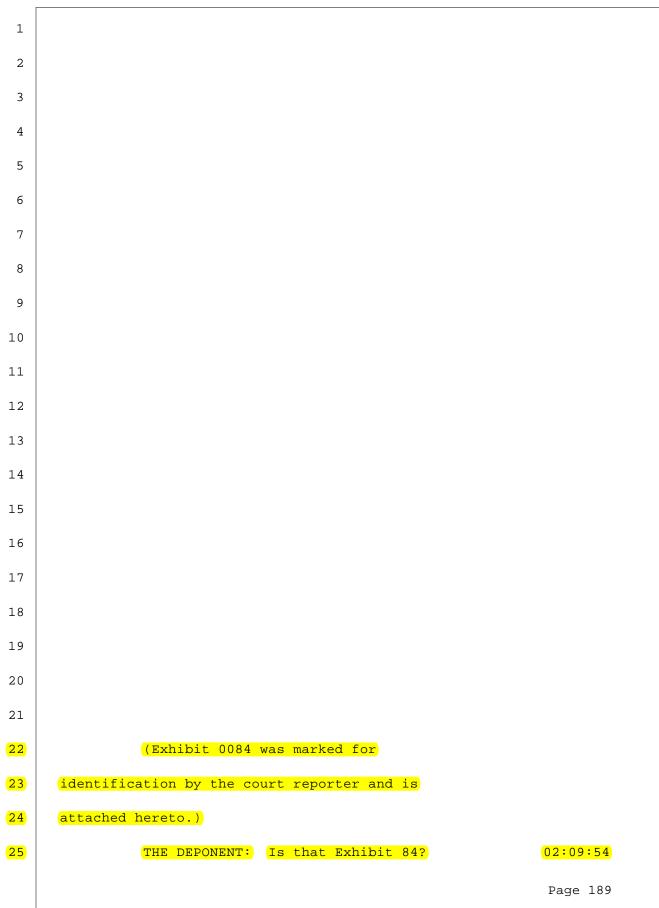
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1	said you can't price elsewhere lower than what you	01:56:29
2	price on on my platform, correct?	
<mark>3</mark>	A. Yes. They impose significant	
4	restrictions on us.	
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<mark>19</mark>	Q. Sure. 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
		Page 179

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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	
<mark>7</mark>	Fortnite on all seven platforms, it's a way to	
8	prevent players from jumping around on platforms	
9	and having a bad experience.	
<mark>10</mark>	Q. How would they how would they have a	01:57:59
<mark>11</mark>	bad experience how would a player have a bad	
<mark>12</mark>	experience if a certain platform, you know, priced	
<mark>13</mark>	the digital products differently?	
14	A. Well, you would see lots of arbitrage	
<mark>15</mark>	between platforms. You'd have users, you know,	01:58:14
<mark>16</mark>	buying one to use on another. It causes a lot of	
<mark>17</mark>	users logging in and logging out. It's the	
<mark>18</mark>	while while they would look like they're, you	
<mark>19</mark>	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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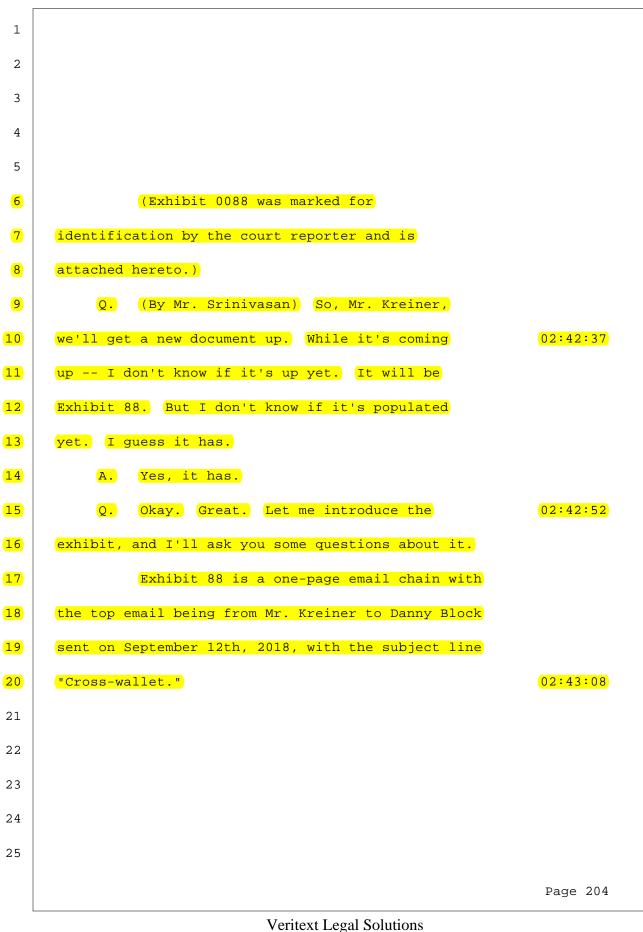
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1	Q. (By Mr. Srinivasan) Yeah, it'll be	02:09:55
2	Exhibit 84.	
3	And so while you look at this,	
<mark>4</mark>	Mr. Kreiner, Exhibit 84 is an email chain involving	
5	Mr. Kreiner and others, including a Phil Rosenberg	02:10:16
6	at Sony. It is dated February the top email is	
<mark>7</mark>	dated February 20th, 2018. It has the subject line	
8	"Fortnite cross-play." And it's a Bates number	
9	ending in 199.	
<mark>10</mark>	So, Mr. Kreiner, do you recall this email	02:10:35
<mark>11</mark>	exchange?	
<mark>12</mark>	A. Vaguely, sure.	
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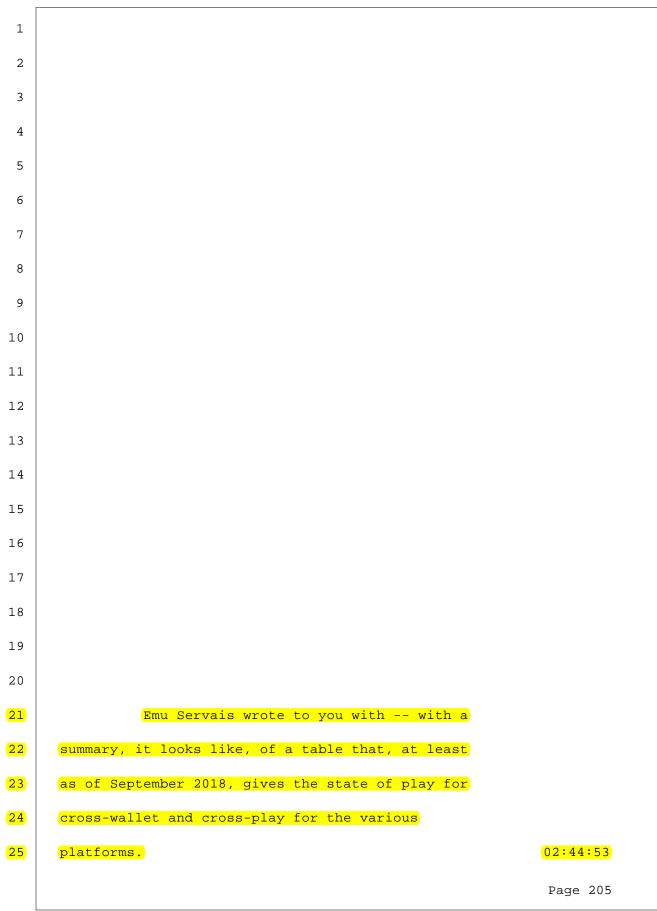
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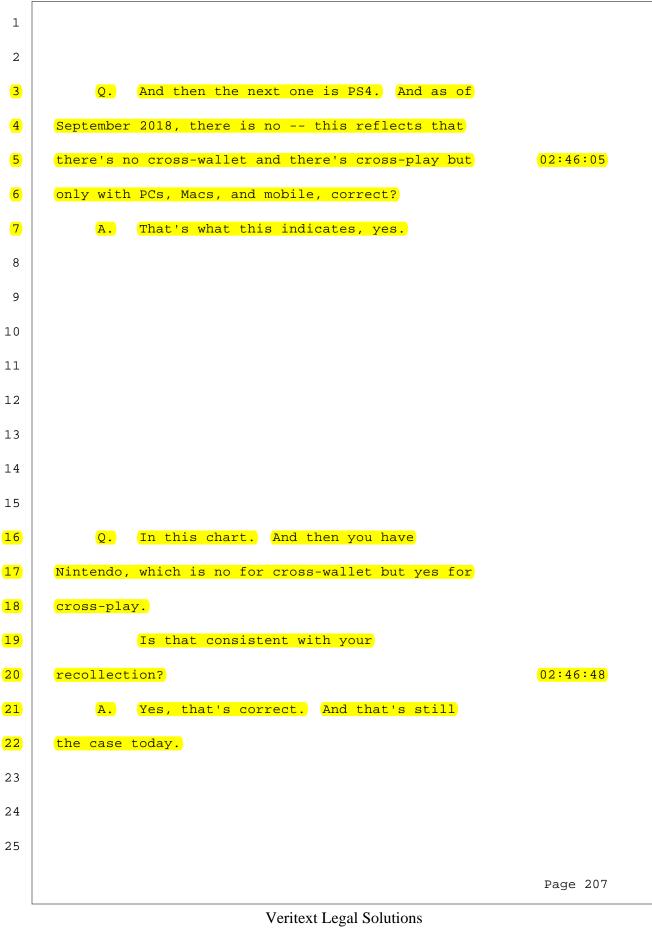
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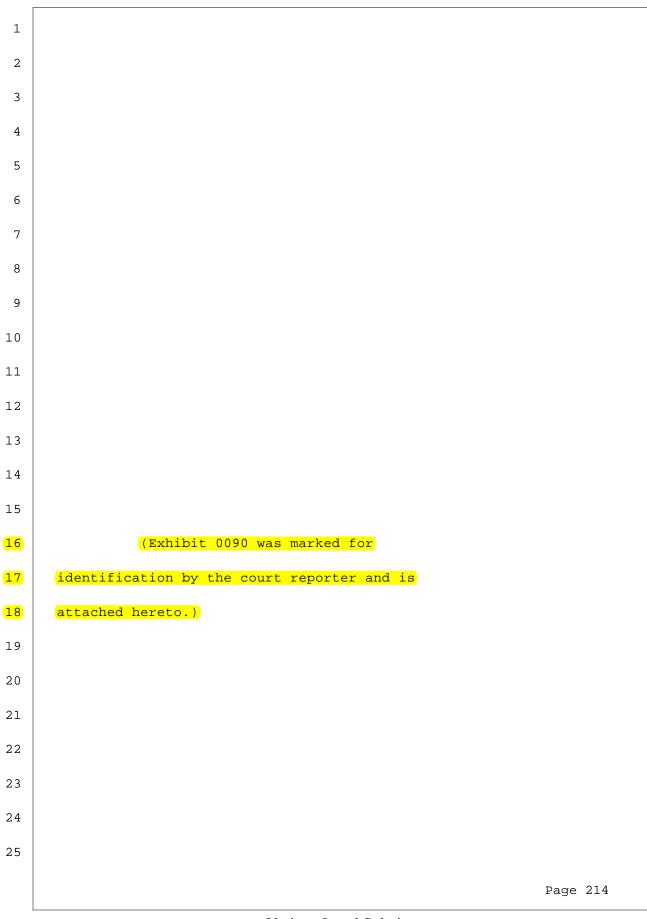
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 134 of 321 HIGHLY CONFIDENTIAL

1		Would you agree with that?	02:44:53
2	<mark>.</mark>	Yes.	
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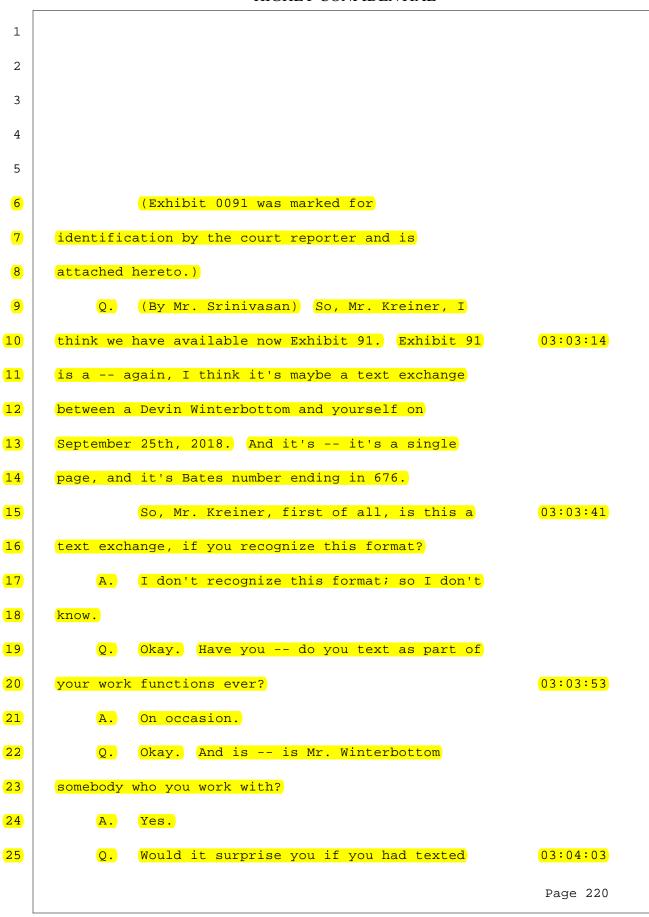
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 136 of 321 HIGHLY CONFIDENTIAL



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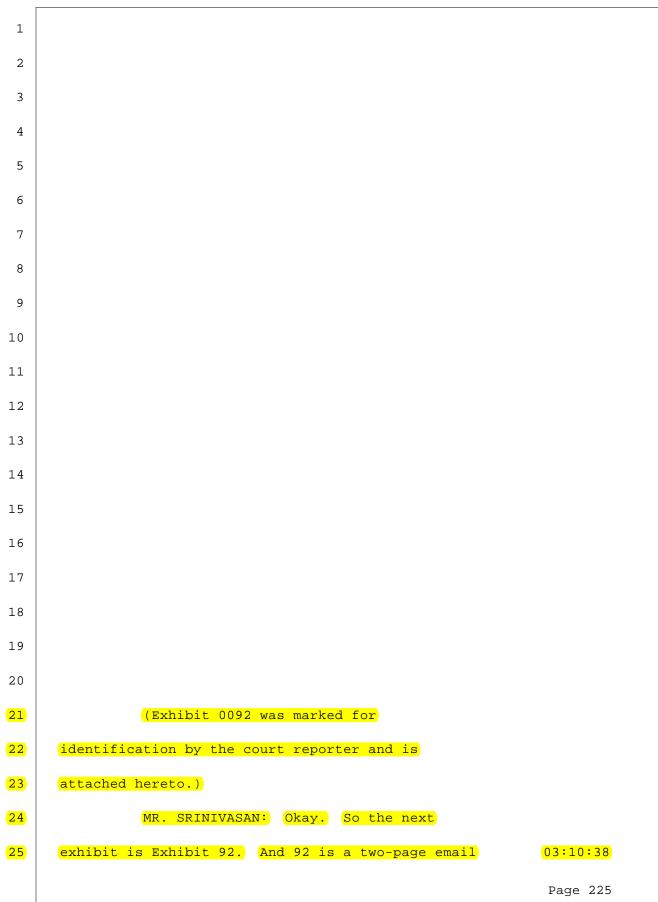
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 138 of 321 HIGHLY CONFIDENTIAL



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1	him in the September 2018 time frame?	03:04:06
2	A. No, it would not.	
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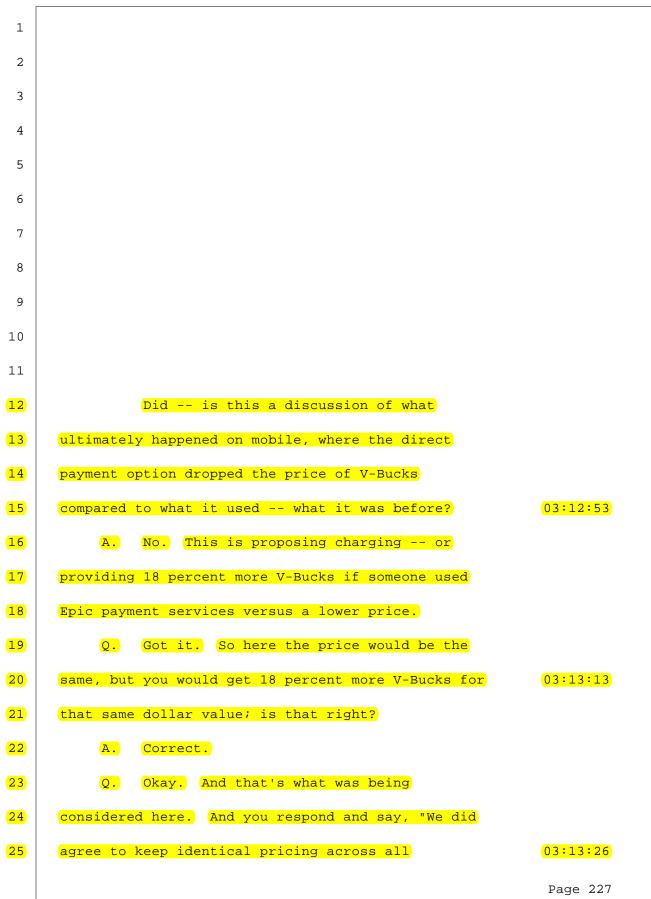
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 140 of 321 HIGHLY CONFIDENTIAL



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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				
<mark>7</mark>	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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		Page 226			
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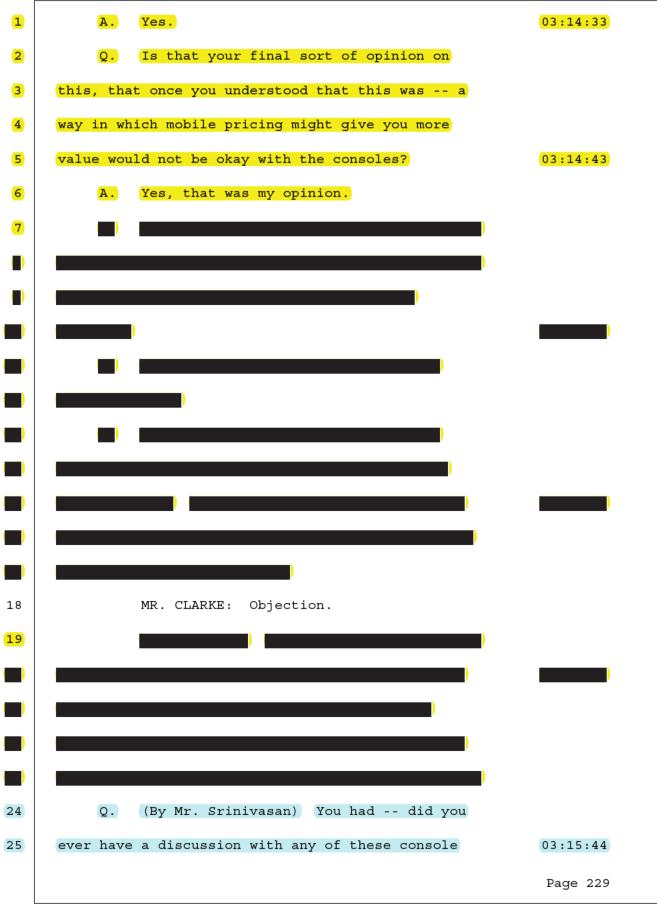
### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 142 of 321 HIGHLY CONFIDENTIAL



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1	platforms with Microsoft, Sony, and Nintendo.")	03:13:31
2	And then but you say, "That being	
<mark>3</mark>	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	03:13:54
11	would say to us if we decided to implement this	
<mark>12</mark>	strategy.	
<mark>13</mark>	Q. And you're saying, though, initially that	
14	they would be okay with something like this,	
<mark>15</mark>	correct?	03:14:06
<mark>16</mark>	A. That's my supposition here. I'm not sure	
<mark>17</mark>	if that actually would have been correct.	
18	Q. Well, I mean, he then he then says, "I	
<mark>19</mark>	think the idea is for the exact same purchase price	
20	a mobile player would get 18 percent more V-Bucks	03:14:18
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."	
25	Do you see that?	03:14:32
		Page 228

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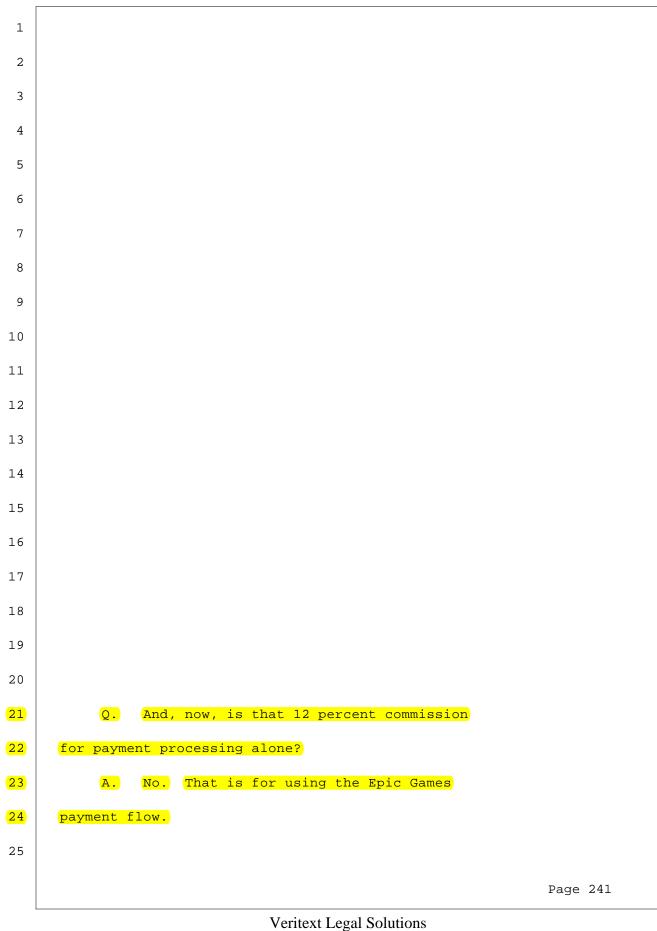


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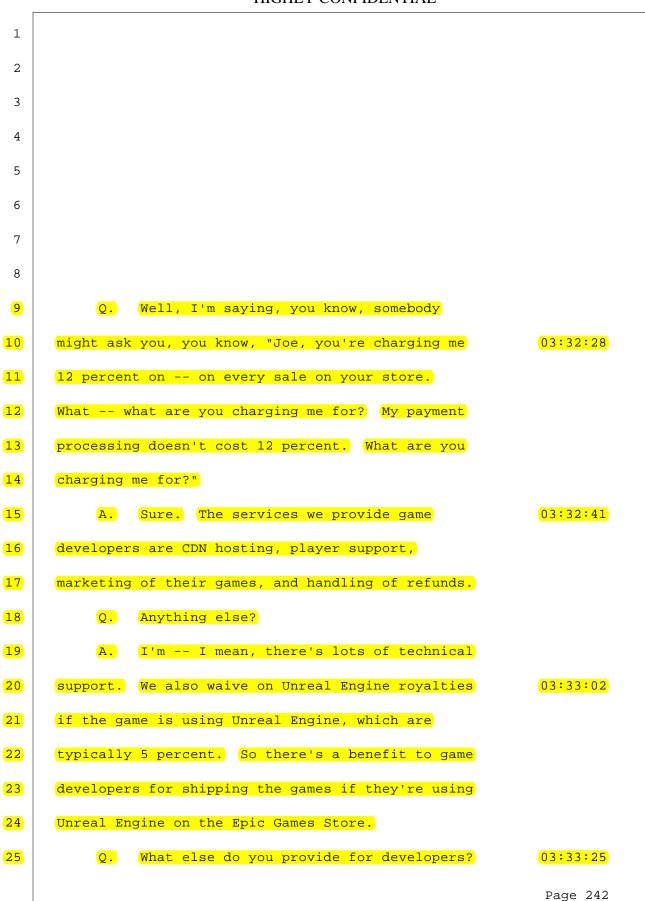
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 145 of 321 HIGHLY CONFIDENTIAL

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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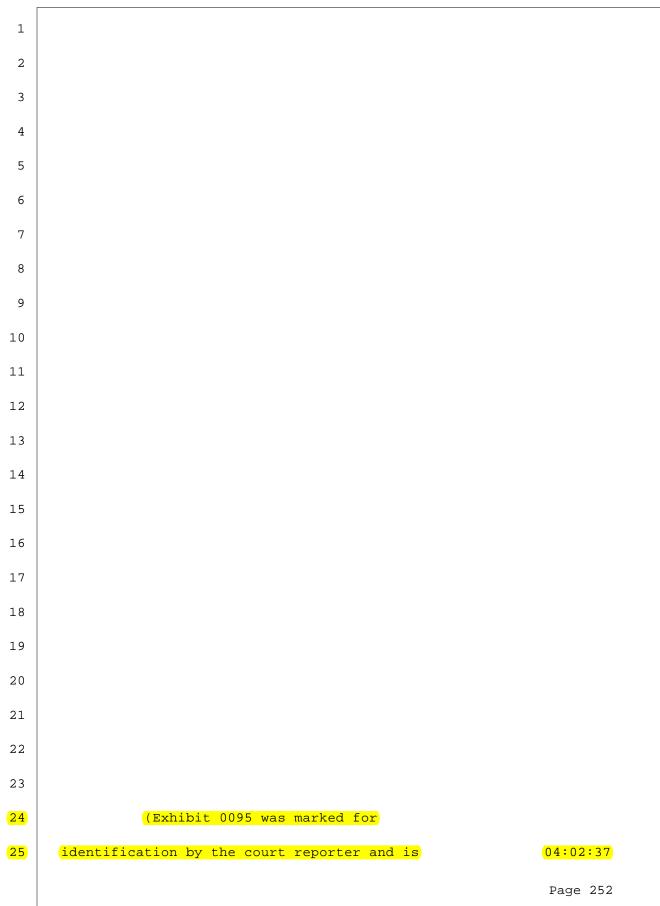
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 148 of 321 HIGHLY CONFIDENTIAL

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	
<mark>13</mark>	Epic Games Store.	
14	Q. So	
<mark>15</mark>	A. So significant marketing interaction.	03:34:21
<mark>16</mark>	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	( <mark>03:34:31</mark> )
21	to your developers?	
22	A. That's correct.	
23		
24		
25		
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1		
2	Q. Okay. Is is the Epic Games Store	
3	profitable at a 12 percent commission?	
4	A. It's not profitable today because we're	
5	in growth mode and focused on acquiring users. So	03:35:07
6	we're spending significant amounts of money	
<mark>7</mark>	acquiring exclusive content and giving free games	
8	away. So those those investment costs are	
9	significant. I would expect, eventually, for us to	
10	be able to turn a profit.	03:35:28
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2	MR. SRINIVASAN: This will be Exhibit 95.	
	MR. SRINIVASAN. IIIIS WIII DE EXHIDIC 95.	
3	THE DEPONENT: Okay.	
4	MR. SRINIVASAN: Okay. Sorry. My	
<mark>5</mark> c	omputer is little slower than yours. Go ahead and	04:03:06
6 t	ake a look at Exhibit 95, Mr. Kreiner, and I'll	
<mark>7</mark> r	ead it into the record, and then we can talk about	
8 <mark>i</mark>	t.	
9	Exhibit 95 is a PowerPoint deck titled	
10 "	Epic Games Store, Review of Performance and	04:03:24
11 S	trategy, October 25th, 2019." It starts with	
12 B	ates number ending in 277 and goes through Bates	
<mark>13 n</mark>	umber ending in 297.	
<mark>14</mark>	Q. (By Mr. Srinivasan) And the the	
<mark>15</mark> t	he page that I'd like to direct your attention to,	04:03:48
<mark>16</mark> M	r. Kreiner, it's numbered 17; it's Slide 17. (And	
<mark>17 t</mark>	he Bates number, the control number there at the	
<mark>18</mark> b	ottom, ends in 293.	
<mark>19</mark>	A. Okay.	
20	Q. And the title is "5 Year P&L and User	04:04:02
21 F	orecast."	
22	And, you know, I first of all, do you	
23 r	ecall this deck in particular?	
24	A. Not in particular. This is a a common	
25 f	ormat that we use on a recurring basis.	04:04:17
		Page 253

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1	Q.	Okay.	So this is the type of deck that	04:04:20
2	you would	common	ly receive?	
3	<mark>.</mark>	Yeah.		
4				
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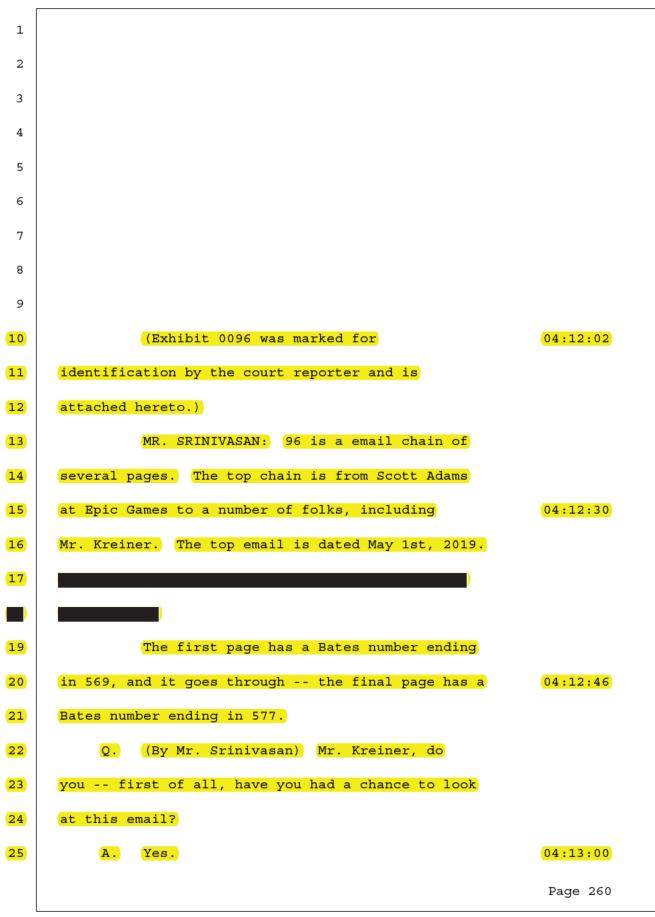
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 153 of 321 HIGHLY CONFIDENTIAL

1		
2		
3	So current let's take a look at this	
4	model first of all, the document we're looking	
5	at from October of 2019 indicates that at the	04:06:57
6	current business model at a 12 percent commission	
7	the the Epic Games Store was not projecting to	
8	make any money five years out under either model,	
9	correct?	
10	A. Yes, although that's based on a	04:07:12
11	pessimistic model of recouping minimum guarantees.	
<mark>12</mark>	Q. Okay. And, currently, I think you	
<mark>13</mark>	testified already that the game that the game	
<mark>14</mark>	store, as it stands today in early 2021, is still	
<mark>15</mark>	not making money, correct?	04:07:29
<mark>16</mark>	A. That's my understanding.	
17	Q. Okay. And in and if and is it your	
18	testimony, then, that there will be more current	
19	versions of this document at Epic that would show	
20	a a different story?	04:07:41
21	A. Yes.	
22		
23		
24		
25		
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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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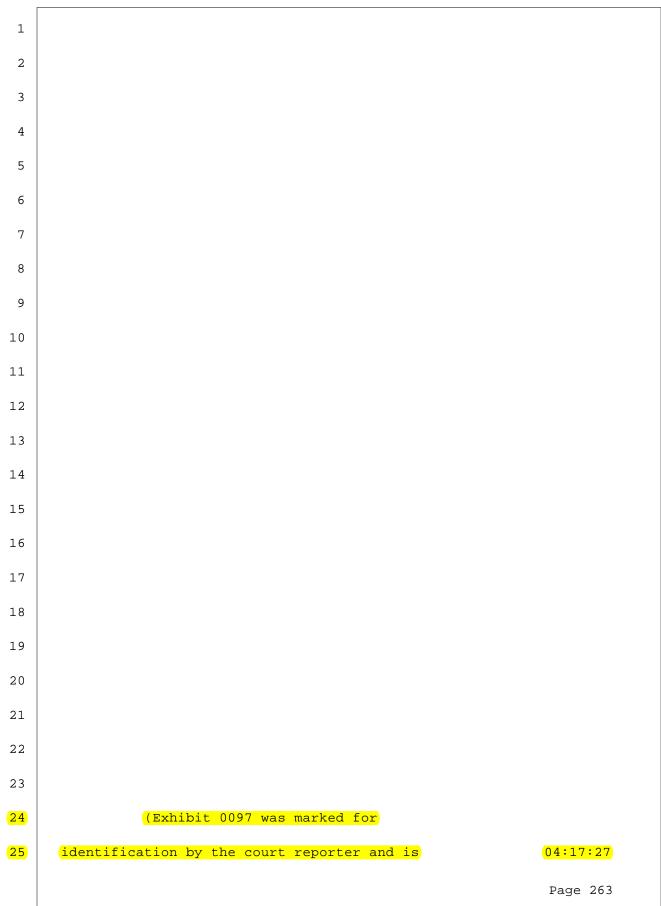
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 155 of 321 HIGHLY CONFIDENTIAL



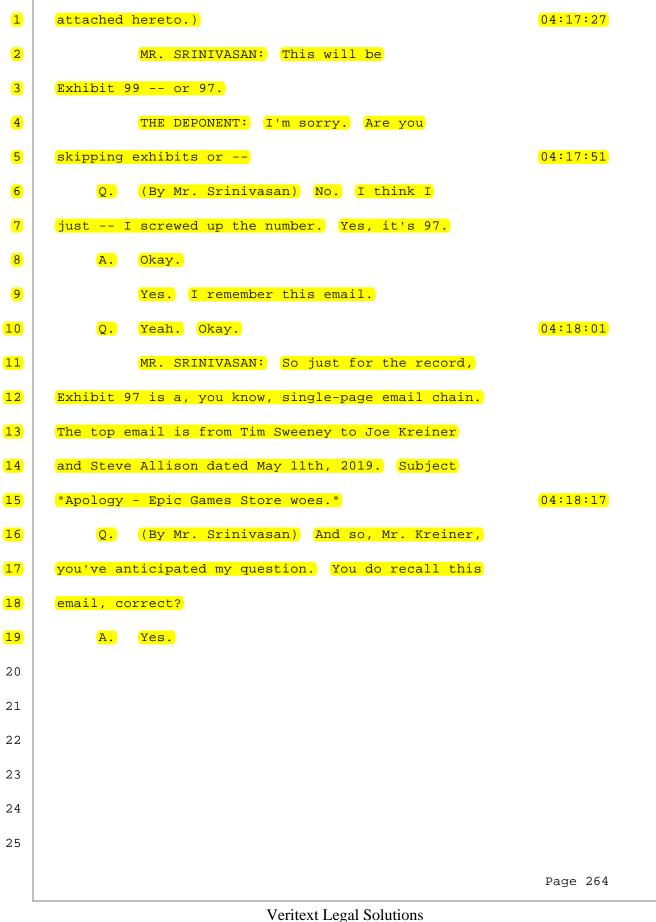
Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 156 of 321 HIGHLY CONFIDENTIAL

1	Q. And do you recall this email chain from	04:13:07
2	when you received it?	
<mark>3</mark>	A. Yes, I do.	
4		
5		
6		
7		
8		
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.	
25		
		Page 261

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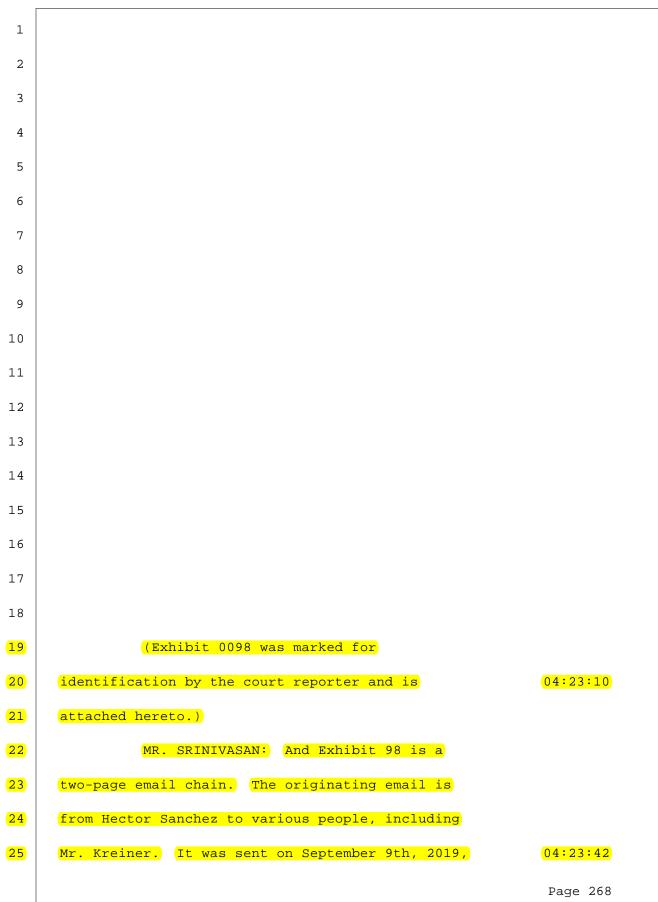
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1	A.	Specifically, I don't remember the	04:19:40
2	numbers.	But this email states it; so I would	
3	<mark>imagine t</mark>	hat's correct.	
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1	with the subject line "Epic Key sales."	04:23:46
2	Q. (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.)

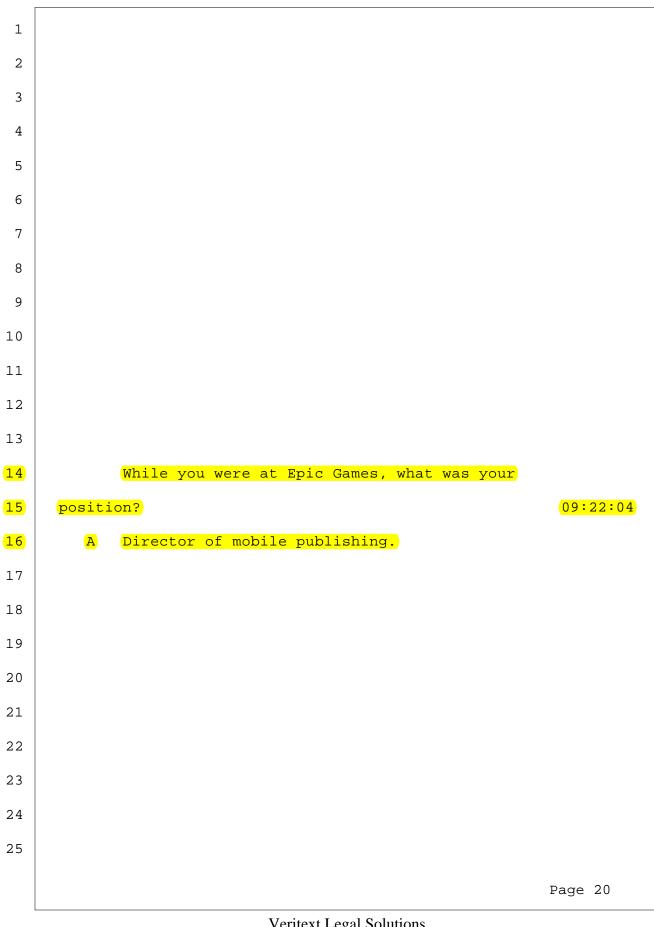
## Deposition Designation of Haseeb Malik (February 12, 2021)

## Time

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

# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 164 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\* 1 UNITED STATES DISTRICT COURT 2 FOR THE NORTHERN DISTRICT OF CALIFORNIA OAKLAND DIVISION 3 4 5 ) б IN RE APPLE iPHONE TRUST ) Case No. 4:11-cv-06715YGR ) 4:11-cv-06714-YGR and 7 LITIGATION ) 4:19-cv-03074-YGR ) 8 9 10 11 12 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\* REMOTE VIDEOTAPED DEPOSITION OF HASEEB MALIK 13 14 Friday, February 12, 2021 15 Volume I 16 17 18 19 Reported by: NADIA NEWHART 20 CSR No. 8714 21 Job No. 4453673 22 PAGES 1 - 198 23 24 25 Page 1

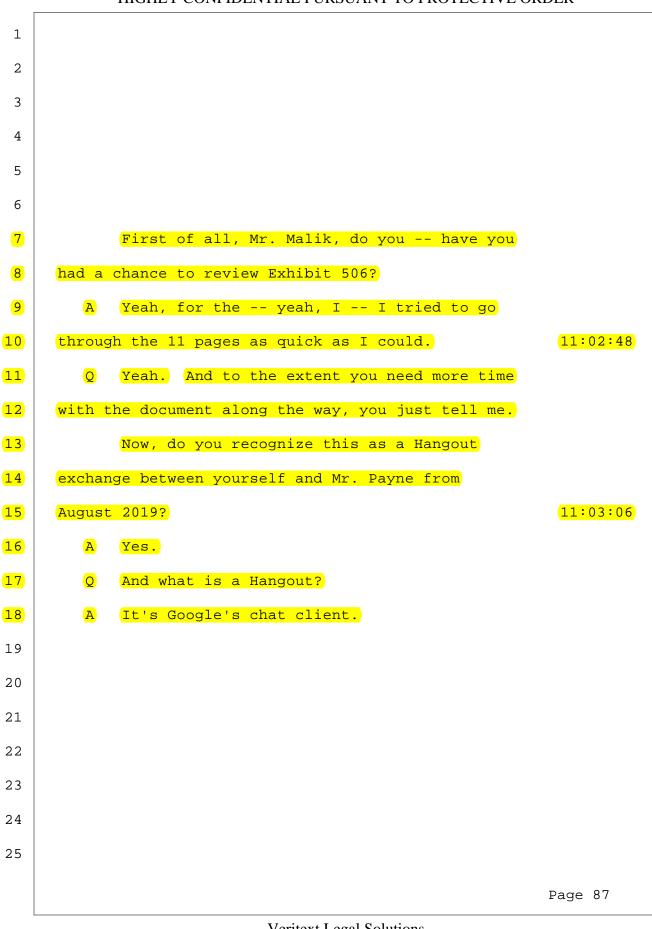
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 165 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



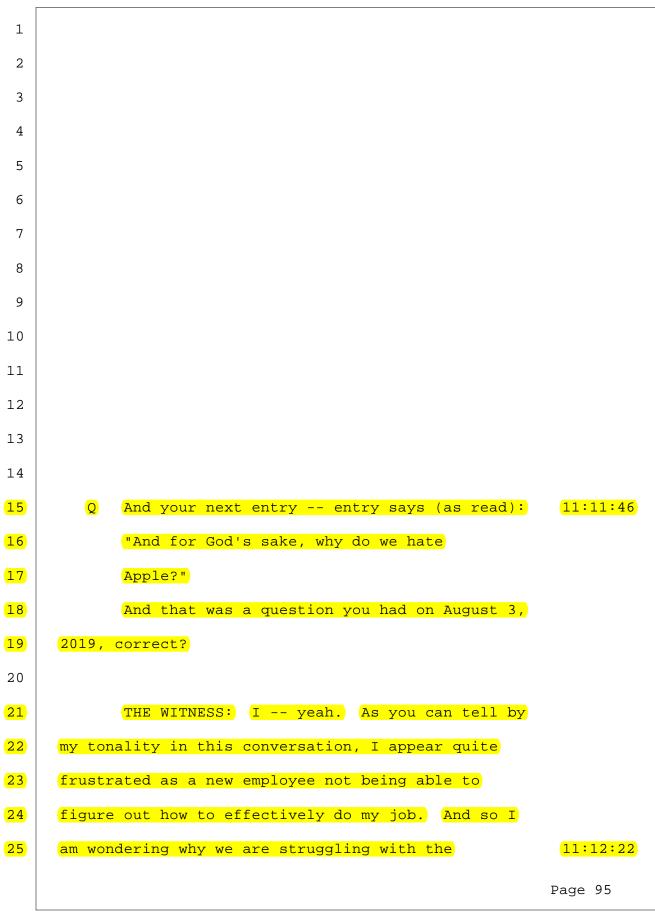
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1		
2	(Exhibit 506 was marked for identification	
<mark>3</mark>	and is attached hereto.)	
4	BY MR. DOREN:	
5	Q And, Mr. Malik, the next exhibit will be	10:56:37
6	Exhibit 506. It's a multipage document bearing	
7	Bates numbers EPIC_00407322 through 332. And it is	
8	<mark>a series of it looks like a text string between</mark>	
9	you and Mr. Payne on from Saturday, August 3,	
10	2019.	10:57:06
<mark>11</mark>	Just wait for that to come up, and please	
<mark>12</mark>	take the time you need to review it.	
<mark>13</mark>	MS. MOSKOWITZ: It's not a text chain. I	
<mark>14</mark>	think this would have been a Hangouts in the	
<mark>15</mark>	production format.	<mark>10:57:19</mark>
<mark>16</mark>	MR. DOREN: Thank you.	
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1	platfo	rms I'm supposed to work on.	
2	BY MR.	DOREN:	
<mark>3</mark>	Q	And your perception at the time was that Epic	
<mark>4</mark>	hated	Apple, correct?	
<mark>5</mark>	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	
<mark>12</mark>		Apple, " correct?	
<mark>13</mark>	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
			Page 96
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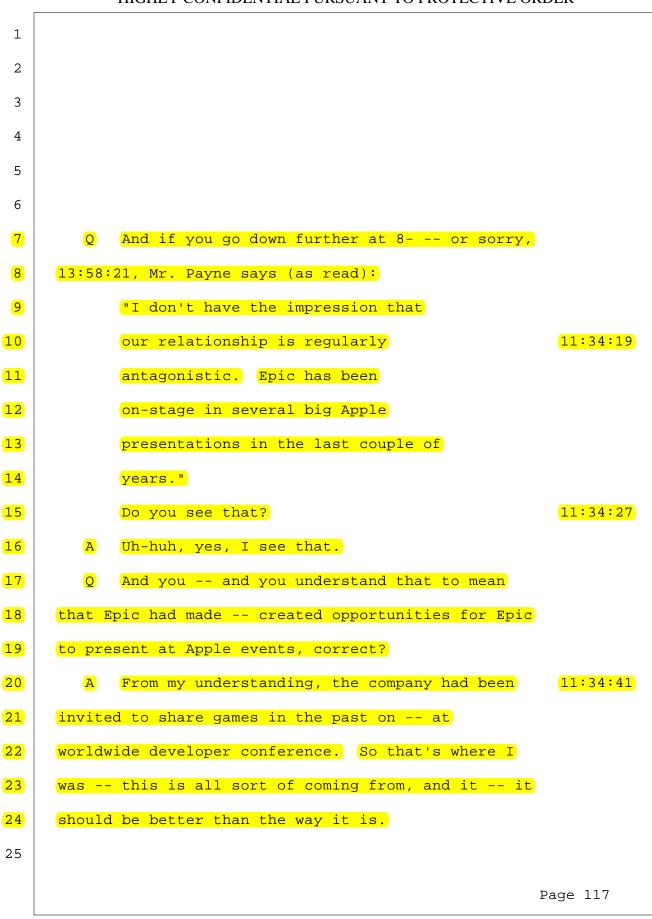
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1	there for a few months and not understanding why we	
2	were having some of the challenges we were having	
3	with mobile coming that I am coming from a a	
4	pretty strong mobile background, and this felt	
5	different to me for the world's largest 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
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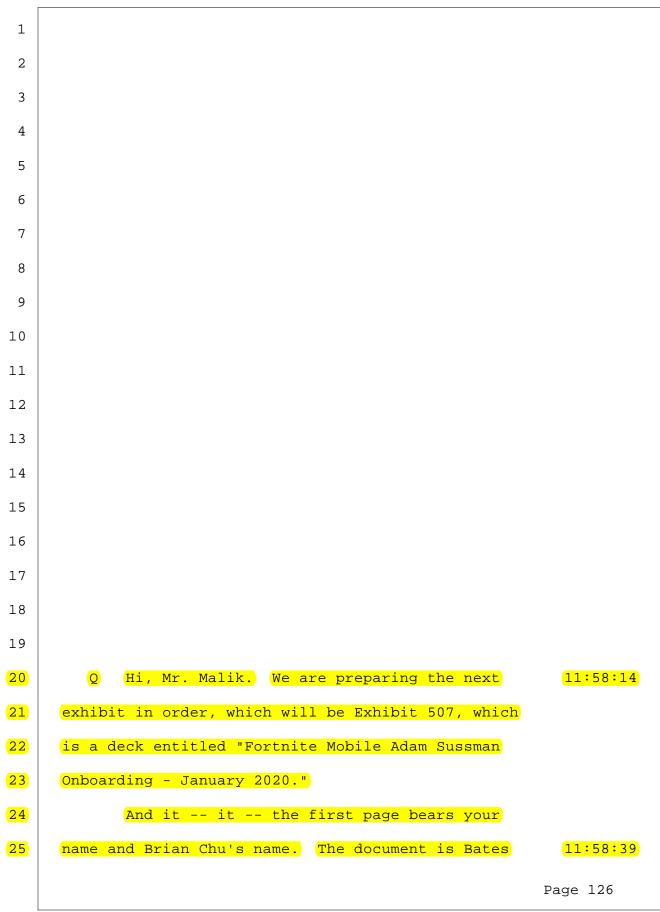
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 171 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1	relative to the speed in which the same builds would
2	go through on the other platforms.
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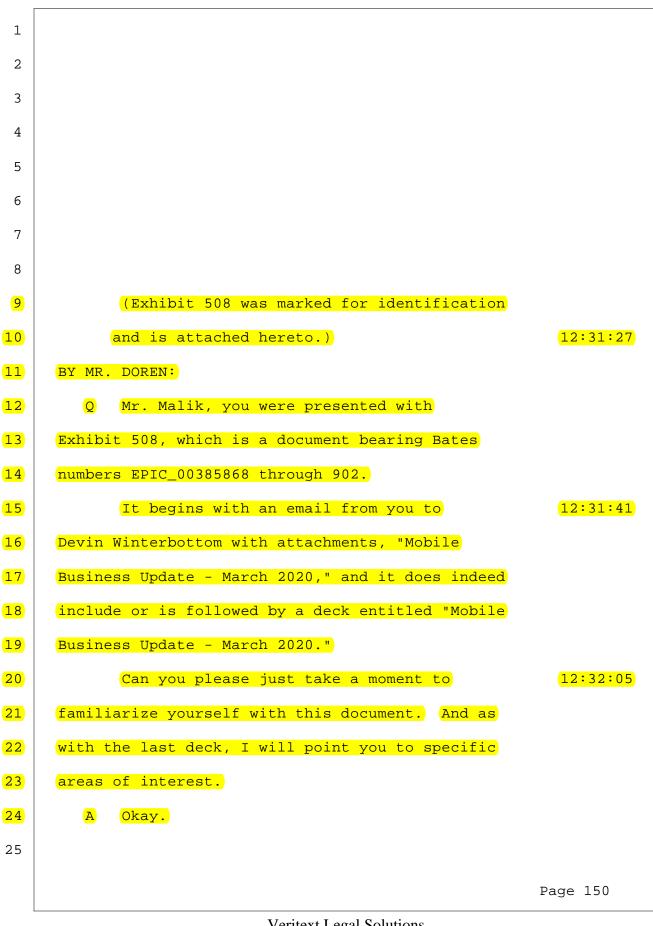
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1	numbers EPIC_00126433 through 487.
2	So once that comes up, take the time to
3	familiarize yourself with it, but to the extent I
<mark>4</mark>	have specific questions, I will direct you to the
5	the places that I have questions about. 11:59:01
6	
7	
8	
9	
<mark>10</mark>	(Exhibit 507 was marked for identification) (11:59:15)
<mark>11</mark>	and is attached hereto.)
12	
13	
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	Page 127
	Veritext Legal Solutions

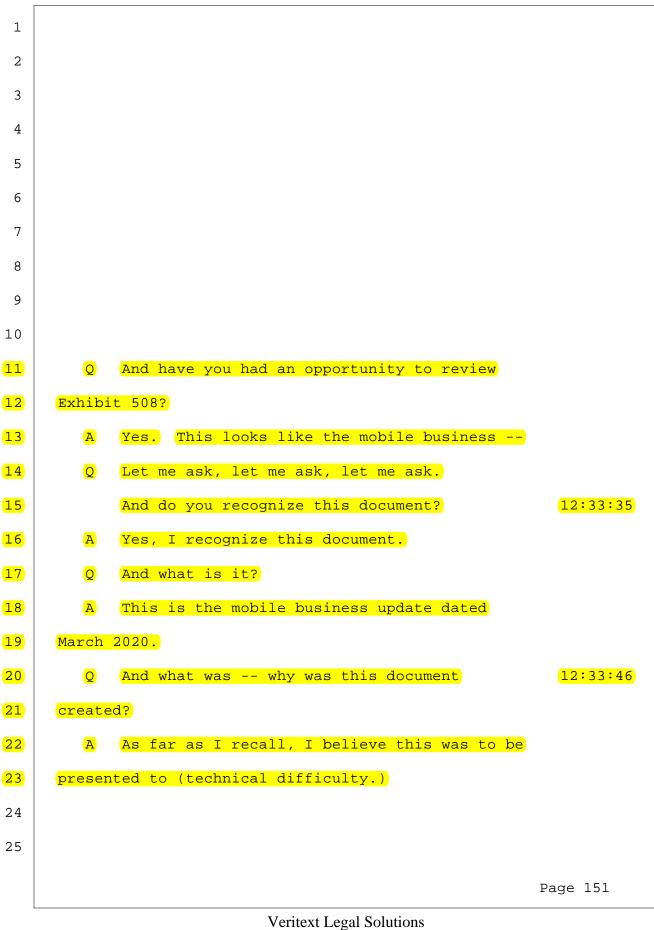
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 175 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

1			
2			
3	Q	Mr. Malik, have you had an opportunity to	
4	review	Exhibit 507?	
5	A	Yes.	12:02:49
6	Q	And this document is entitled "Adam Sussman	
7	Onboar	ding - January 2020."	
8		Do you recall this document?	
9	A	Yes, I I do.	
10	Q	And what is it?	12:03:02
11	A	This was a collection of slides that	
<mark>12</mark>	leader	ship asked us to pull together to be shared	
<mark>13</mark>	with A	dam Sussman when he joined the company.	
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			Page 128
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 176 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



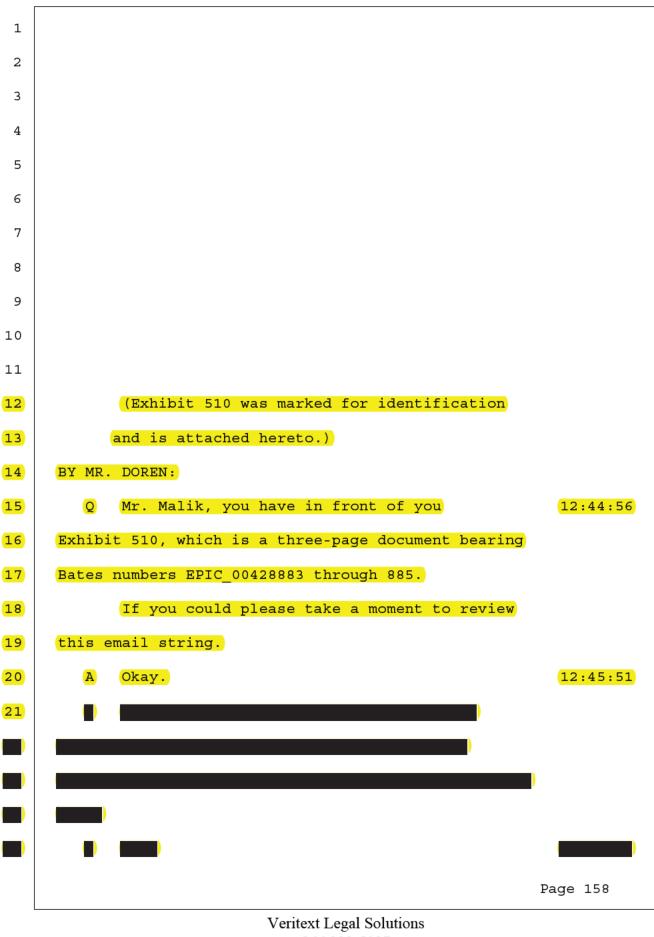
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 177 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 178 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

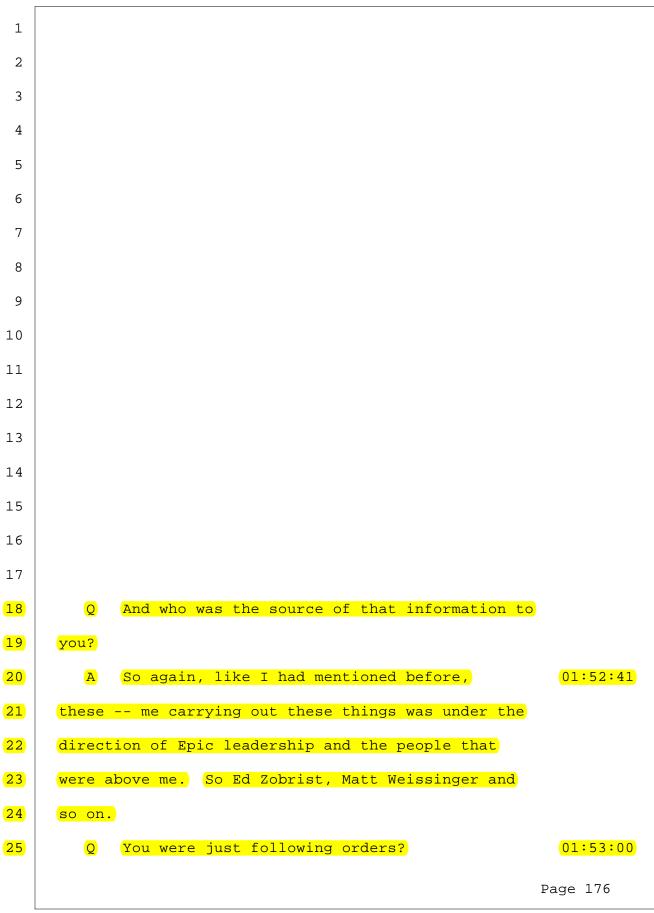
1		
2		
<mark>3</mark>	A I believe this presentation was put together	
4	to be presented to Adam Sussman.	
5	Q And who prepared this this presentation?	12:34:24
6	A All of the people on that on which was	
7	the mobile team at Epic. So you're number 5870, all	
8	the people on this slide participated in putting	
9	this presentation together.	
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		Page 152

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 179 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



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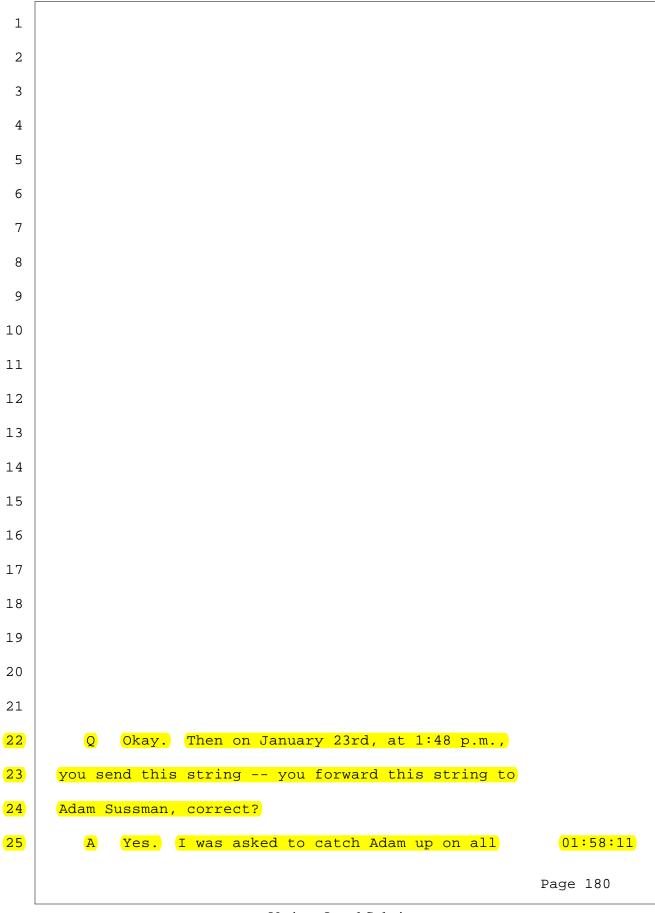
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 180 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 181 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*

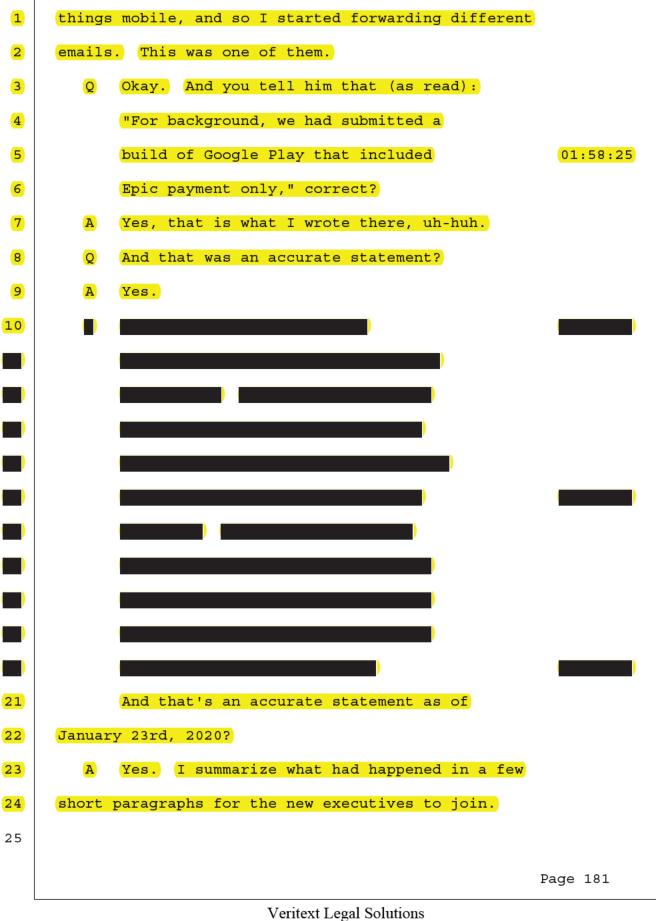
1	A Just following orders.
2	
3	
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б	
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11	(Exhibit 511 was marked for identification
12	and is attached hereto.)
<mark>13</mark>	BY MR. DOREN:
14	Q Exhibit 511 is another email string. It
<mark>15</mark>	begins on EPIC_00431657 to 659. And the top email 01:53:30
<mark>16</mark>	on the first page of Exhibit 511 is from
<mark>17</mark>	Adam Sussman to you, dated Friday the 24th of
18	January of 2020.
<mark>19</mark>	Can you please take a moment, please, and
20	review Exhibit 511. 01:53:50
21	A Okay.
22	
23	
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25	
	Page 177
	Veritext Legal Solutions

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 182 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



# Veritext Legal Solutions 866 299-5127

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 183 of 321 \*\* HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER \*\*



#### 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

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

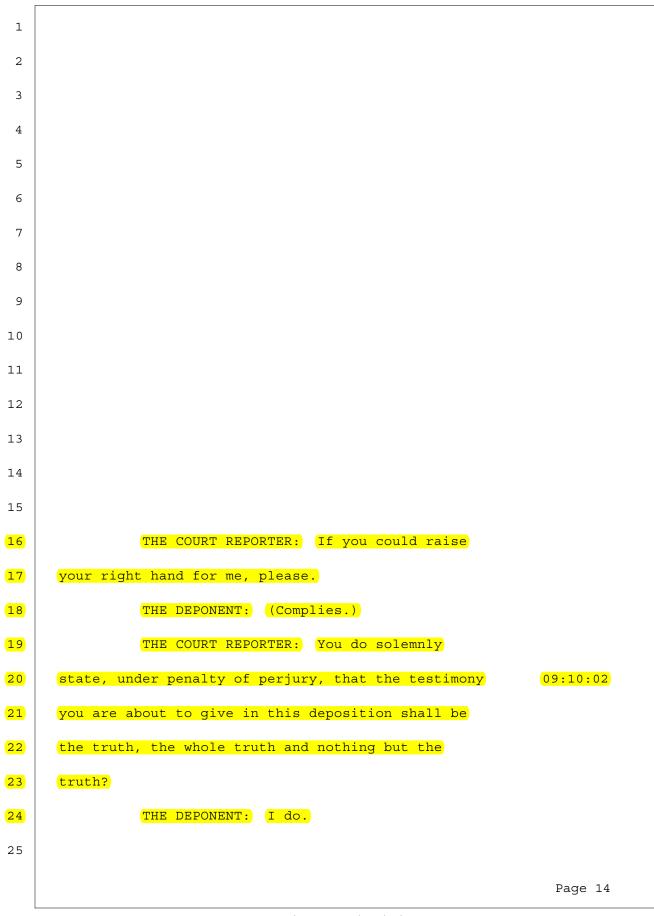
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 185 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

_			
	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 Case No. 4:11-cv-06714		
	ANTITRUST LITIGATION YGR		
	(caption cont'd)		
	Page 1		
	Veritext Legal Solutions		
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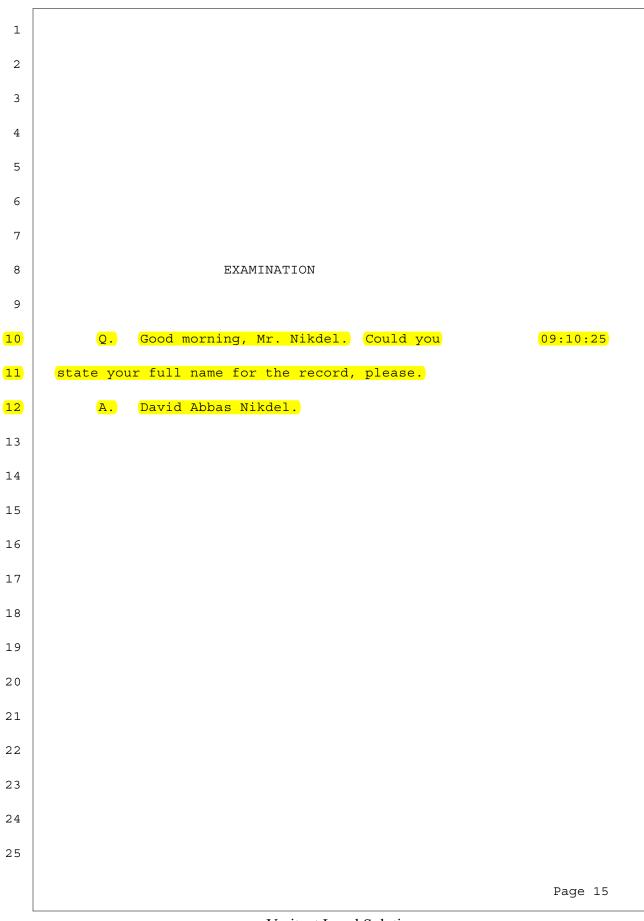
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 186 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1	DONALD R. CAMERON, et al.,
2	Plaintiffs,
3	vs. Case No. 4:19-cv-03074 YGR
4	APPLE INC.,
5	Defendant.
6	
7	
8	
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
15	
16	
17	
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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. 4435328
25	PAGES 1 - 227
	Page 2

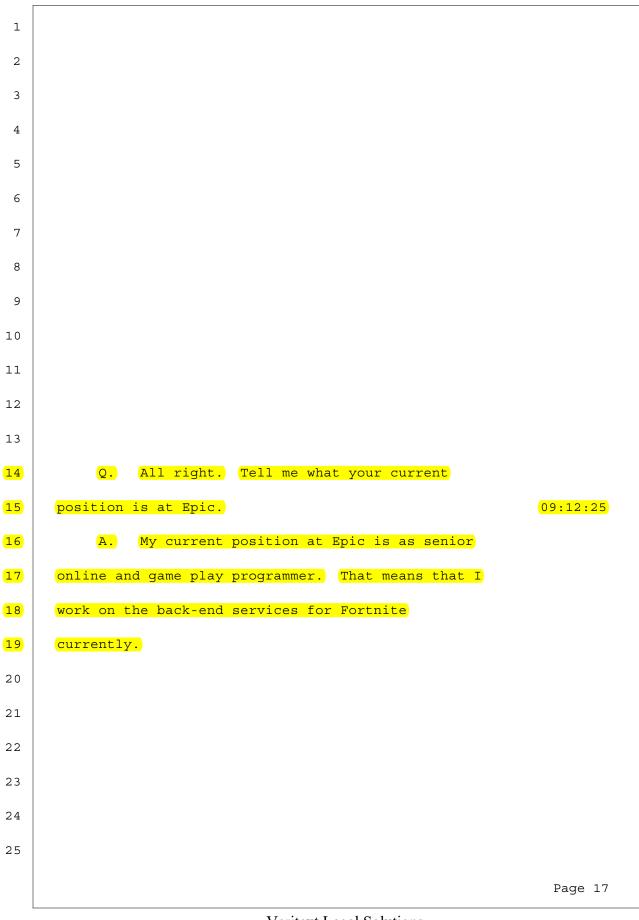
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 187 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



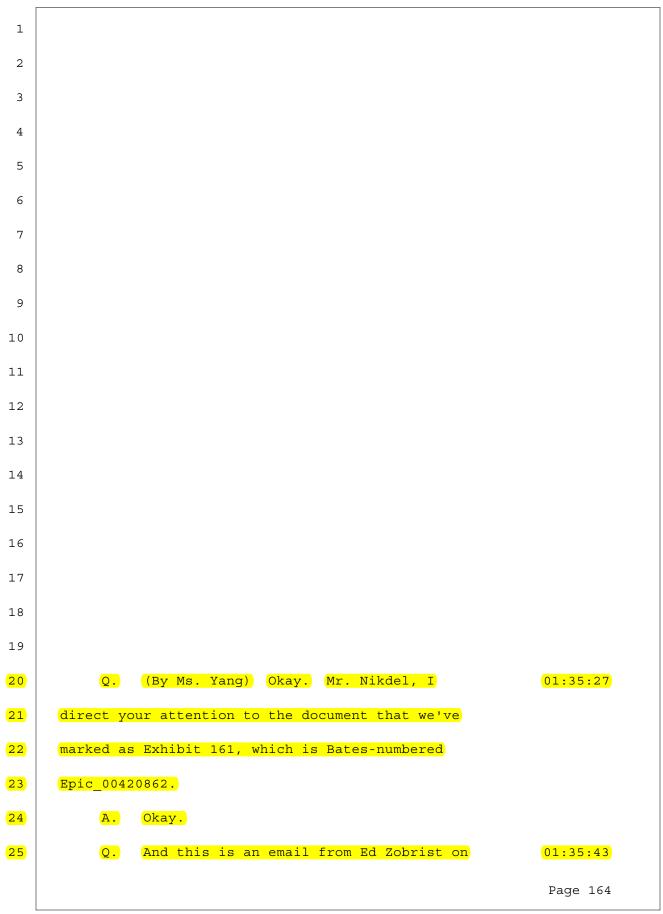
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 188 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 189 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 190 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



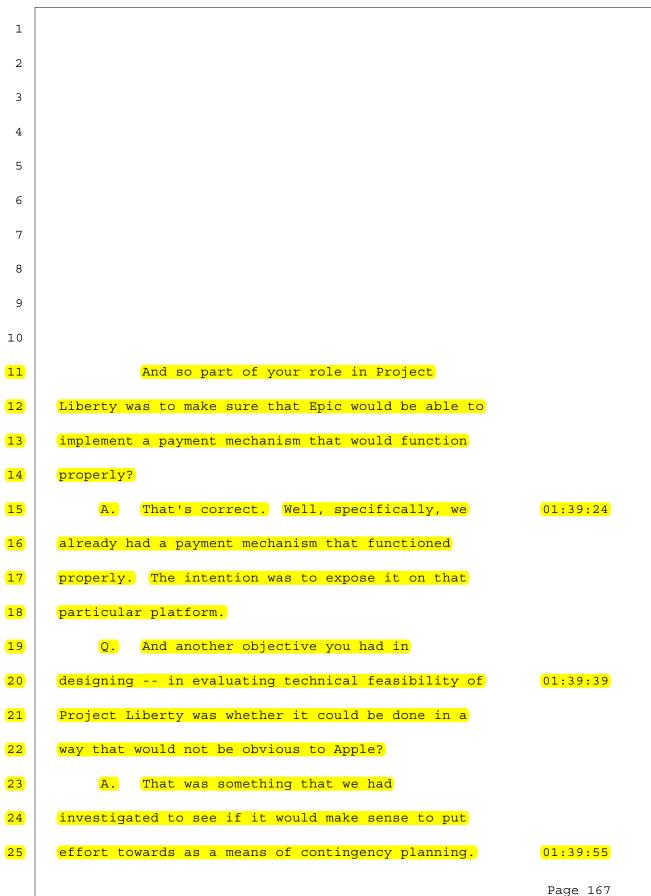
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 191 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

2	<mark>A.</mark>	That is correct.	
3	Q.	Do you remember receiving this email at	
4	the time?		
5	A.	Yes, I do.	01:35:56
6			
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19			
20	Q.	And what was the role that you had with	01:36:59
21	respect to	Project Liberty?	
22	<b>A</b> .	I was brought in to assess technical	
23	feasibilit	cy.	
24	Q.	And what do you mean by "technical	
25	feasibilit	<u>ΣΥ"?</u>	01:37:16
			Page 165

# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 192 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1	A. Would it technically be possible to 01:37:17
2	provide Epic payments on these platforms and
3	whether or not and how much time it would take
4	to do so.
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	Page 166
	Veritext Legal Solutions

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 193 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 194 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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	
<mark>15</mark>	with them. We looked at maybe doing that. We	01:40:42
<mark>16</mark>	decided not to do that.	
<mark>17</mark>	The there was generally just sort of,	
<mark>18</mark>	like, a question of how obvious would it be from	
<mark>19</mark>	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
		Page 168

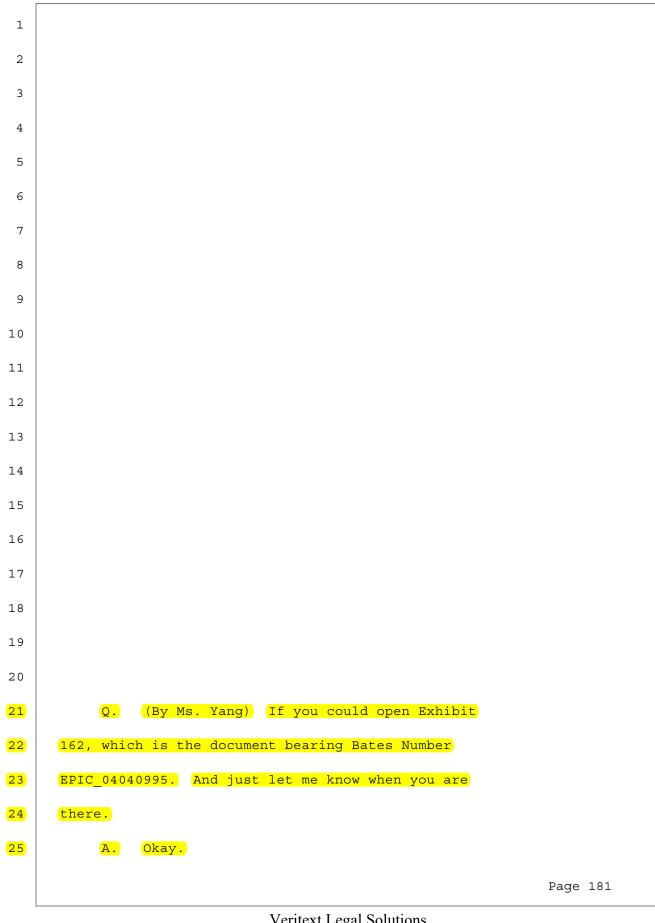
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 195 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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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# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 196 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1	And so so what Epic wanted to not be	01:44:44
2	obvious to Apple was the ability of Version 13.40	
<mark>3</mark>	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	
<mark>13</mark>	would have rejected it, yes.	
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		Page 172
	Veritext Legal Solutions	

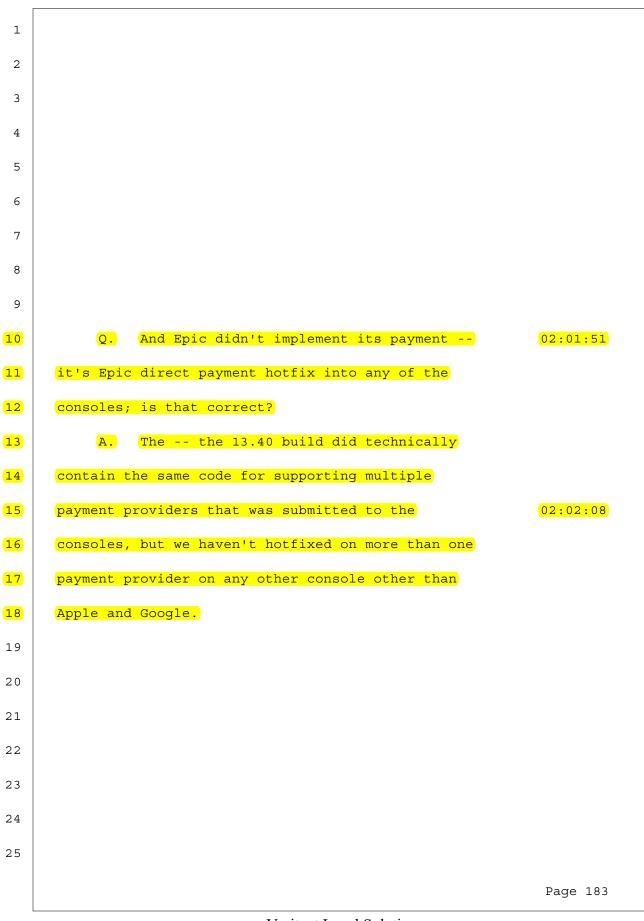
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 197 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 198 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1	Q.	All right.	Do you recognize this	02:00:19
2	document?			
<mark>3</mark>	<mark>.</mark>	Yes, I do.		
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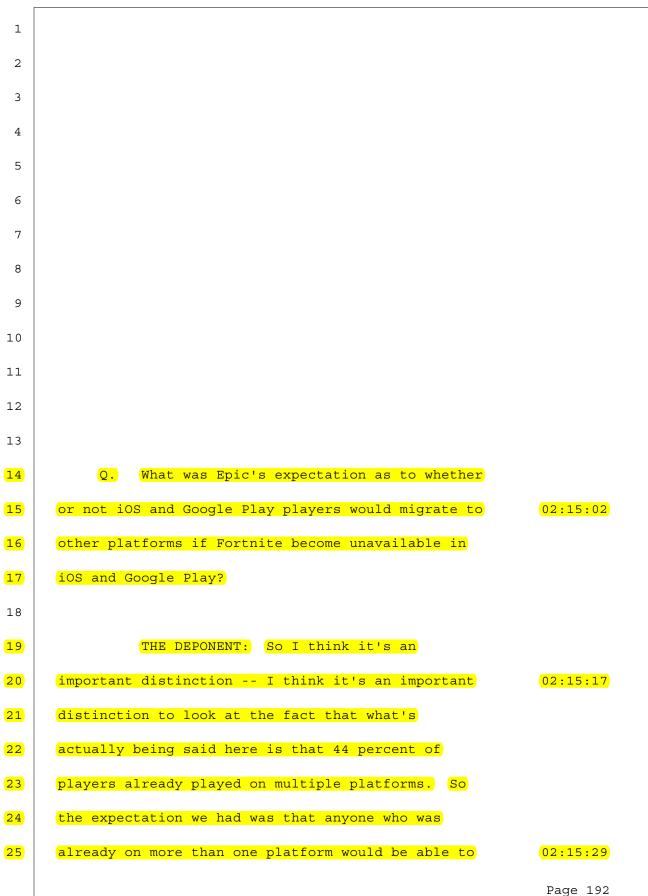
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 199 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 200 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

1	Q. Is it consistent with your understanding	02:13:18
2	that iOS is a relatively small market for Fortnite?	
<mark>3</mark>	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?	
<mark>15</mark>	A. Yes. That's correct.	02:13:58
<mark>16</mark>	Q. And that's multiples higher than iOS?	
<mark>17</mark>	A. That is four times higher than iOS.	
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		Page 191
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 201 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 202 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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	
<mark>15</mark>	fairly seamless experience to transfer from playing	02:16:13
<mark>16</mark>	Fortnite on iOS to transfer to play on whatever	
<mark>17</mark>	other platform they had?	
18		
<mark>19</mark>	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
		Page 193

# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 203 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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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		Page 194

# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 204 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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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		Page 208
	Veritext Legal Solutions	

# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 205 of 321 HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER

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.	
8		
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14		
<mark>15</mark>	Q. (By Ms. Yang) Okay. Do you recognize	02:37:32
<mark>16</mark>	this document?	
<mark>17</mark>		
	A. Let's see.	
<mark>18</mark>	A. Let's see. Yes, I believe I recall this one.	
<mark>18</mark> 19		
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19 20 21 22 23 24		Page 209

Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 206 of 321

#### 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

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

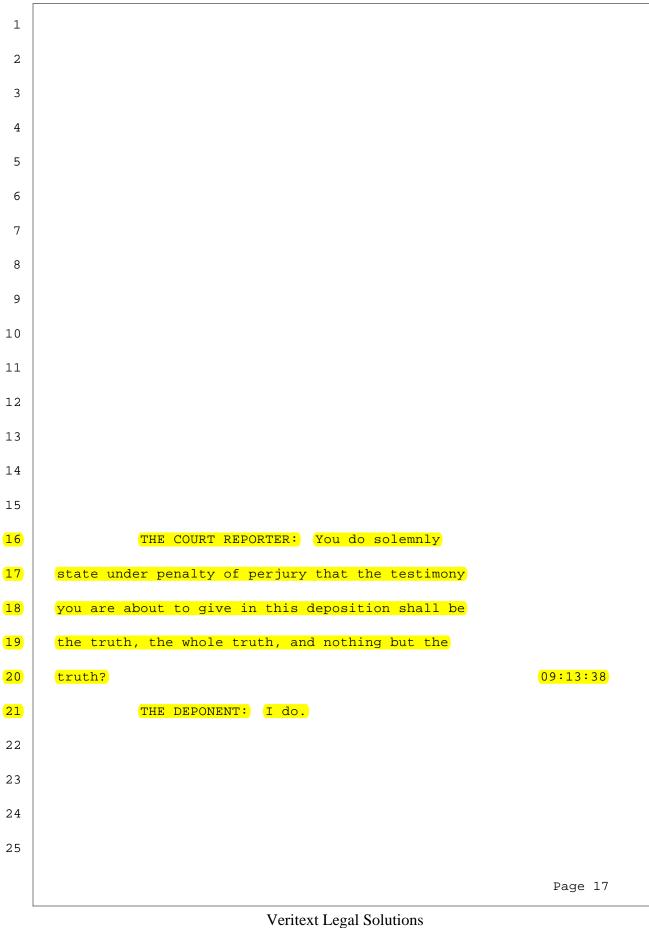
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 207 of 321

1 2	UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA			
3	OAKLAND DIVISION			
4				
5	EPIC GAMES, INC.,			
6	Plaintiff,			
	Counter-defendant,			
7				
	vs. Case No. 4:20-cv-05640			
8	YGR			
	APPLE INC.,			
9				
	Defendant,			
10	Counterclaimant.			
11				
12	IN RE APPLE IPHONE Case No. 4:11-cv-06714			
	ANTITRUST LITIGATION YGR			
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	Page 1			
	Veritext Legal Solutions			

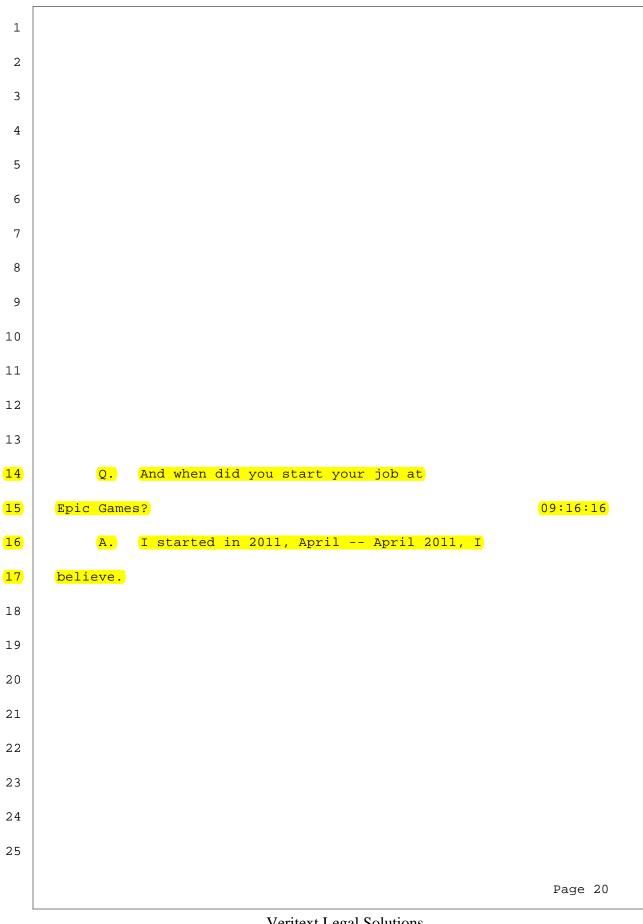
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 208 of 321

1 2	DONALD R. CAMERON, et al., Plaintiffs,
3	vs. Case No. 4:19-cv-03074 YGR
4	APPLE INC.,
5	Defendant.
6	
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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
18	
19	
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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. 4430767
25	PAGES 1 - 248
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 209 of 321



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 210 of 321



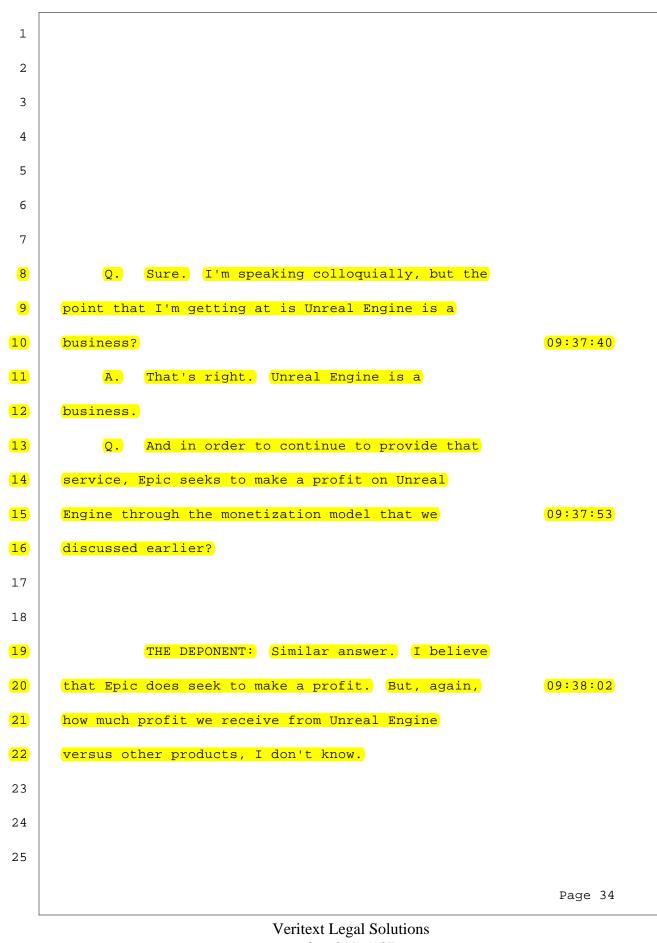
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 211 of 321

Q. And what are your current	
responsibilities as the vice president of	09:16:59
engineering?	
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	09:17:15
sort of engineering processes and practices that we	
have at Epic on those teams.	

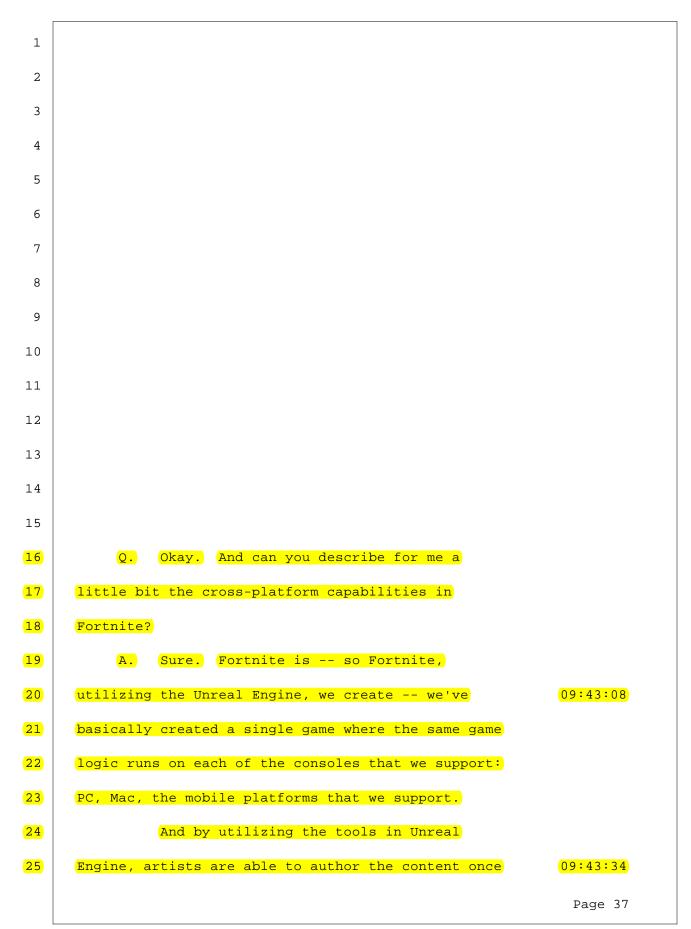
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 212 of 321

	And do you know how the how Epic	09:31:54
monetizes	the Unreal Engine?	
<mark>.</mark>	<mark>I do.</mark>	
	After the first million dollars of gross	
revenue,	licensees who use the engine are or pay	09:32:05
5 percent	of their revenue as a royalty to Epic.	
Q.	And is that is that in perpetuity?	
A.	As far as I'm aware, yes.	
		Page 30

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 213 of 321



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 214 of 321



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 215 of 321

and then the engine handles a lot of the	09:43:3
platform-specific differences related to, for	
instance, graphics techniques or how to play audio	
on individual devices.	
For all of the platforms on which	
Fortnite is available, are there differences	09:44:2
between the user experience on each of those	
different platforms between consoles, mobile,	
tablets, and whatnot?	
A. In terms of the game play experience	
itself, we do our best to it's let me	09:44:3
rephrase that.	
It's fundamentally the same game. So it	
is the same game mechanics. Players on different	
platforms can participate in the same game at the	
same time all playing by the same rules. The	09:44:4
	Page 3

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# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 216 of 321

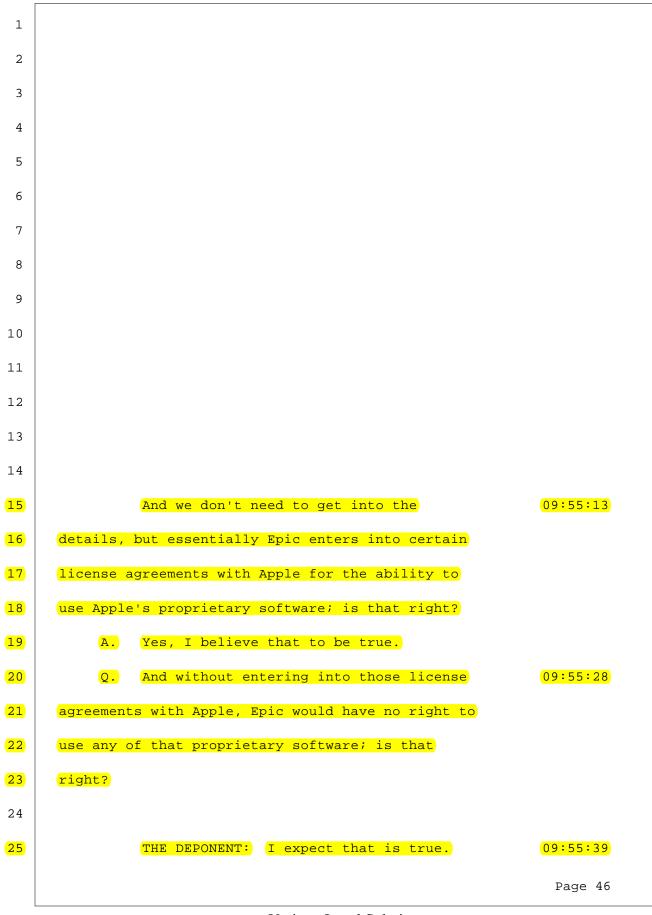
1	differences are primarily visual or related to	09:44:55
2	(input.)	
3	So some players will use a keyboard and	
4	mouse; some players, a controller; some players, a	
5	touchscreen interface, of course, particularly on	09:45:06
6	mobile devices. And, again, in terms of the visual	
7	quality, depending 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.	
12		
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17		
18	Q. And what about are all of the same	
<mark>19</mark>	features in the games in terms of purchases, skins,	
20	dances, and whatnot the same across all of the	09:46:01
21	platforms?	
<mark>22</mark>	A. I believe that they are.	
<mark>23</mark>	Q. And so if somebody has Fortnite on a	
24	PlayStation 4 and they log in and to to	
<mark>25</mark>	access the app on their iPhone, they have access to	09:46:16
		Page 39

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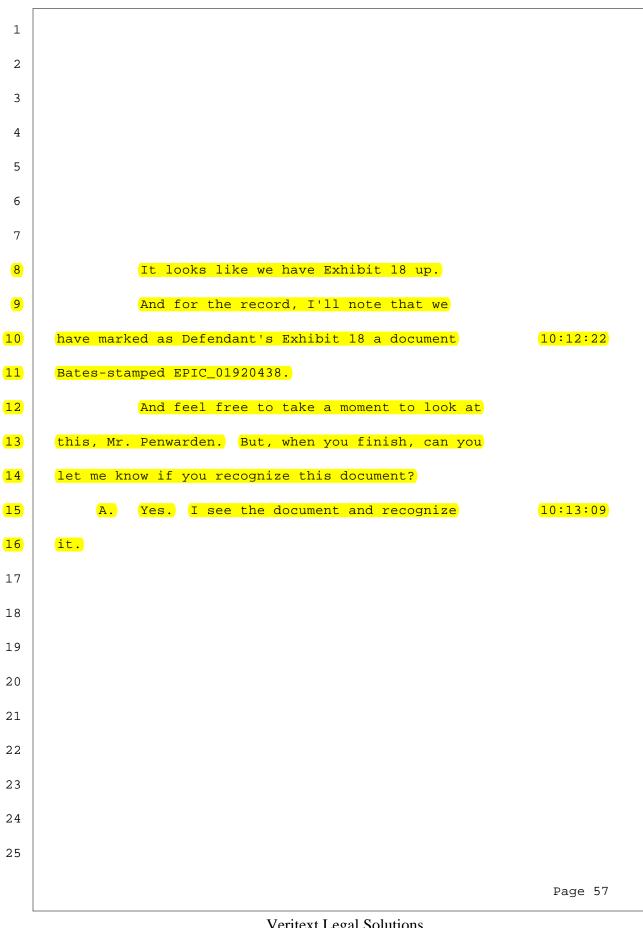
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1	the same the same content that they have	09:46:20
2	purchased, for example?	
<mark>3</mark>	A. I believe that you have access to all the	
4	same content across all the content that you own	
5	across platforms.	09:46:33
6	Q. And is it also true for 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
<mark>11</mark>	A. Yes. We call it cross-progression, but	
<mark>12</mark>	your progression through the game is is	
<mark>13</mark>	maintained across platforms.	
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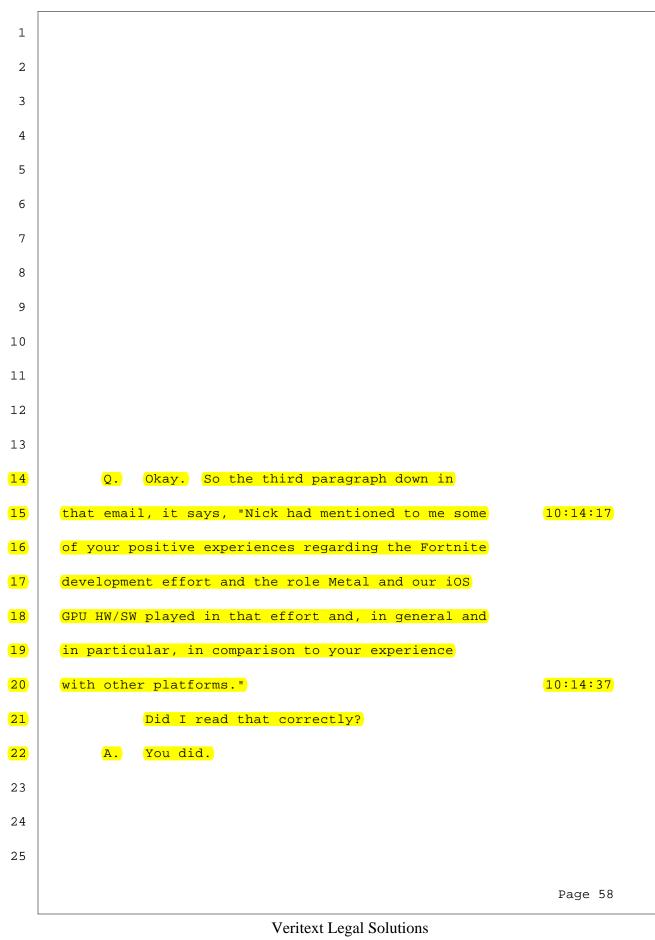
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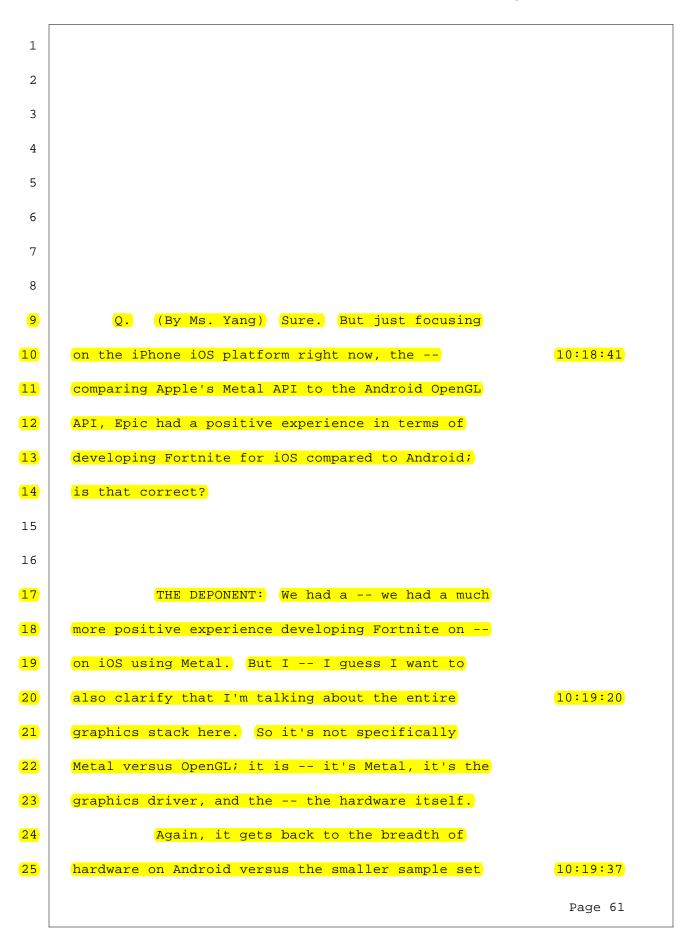
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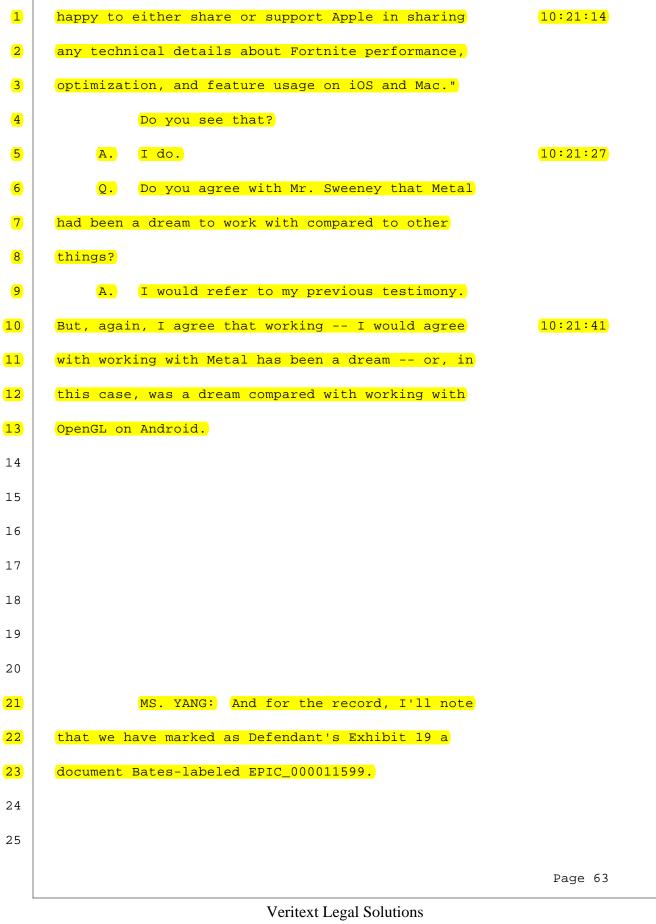
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1	on Apple.	10:19:41
2	Q. (By Ms. Yang) Sure.	
<mark>3</mark>	But you would agree that Metal Apple's	
4	proprietary Metal software was part of the reason	
5	why the development experience on the iOS	10:19:50
6	platform was better in this case than 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	
<mark>12</mark>	whether Metal was the reason or the predominant	
<mark>13</mark>	reason or a significant factor. I'm not sure.	
<mark>14</mark>	OpenGL could also perform similarly well or be made	
<mark>15</mark>	to perform similarly well, I believe.	10:20:34
<mark>16</mark>	However, I would also say that getting	
<mark>17</mark>	Fortnite running on iOS using Metal was a very	
<mark>18</mark>	positive experience and, again, easier than the	
<mark>19</mark>	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	
<mark>22</mark>	the email from Mr. Sweeney responding. (At the top)	
<mark>23</mark>	of the page, he says, "Yes, we'd be happy to share	
<mark>24</mark>	some quotes on Metal, which had been a dream to	
<mark>25</mark>	work with compared to other things. And we're	10:21:11
		Page 62

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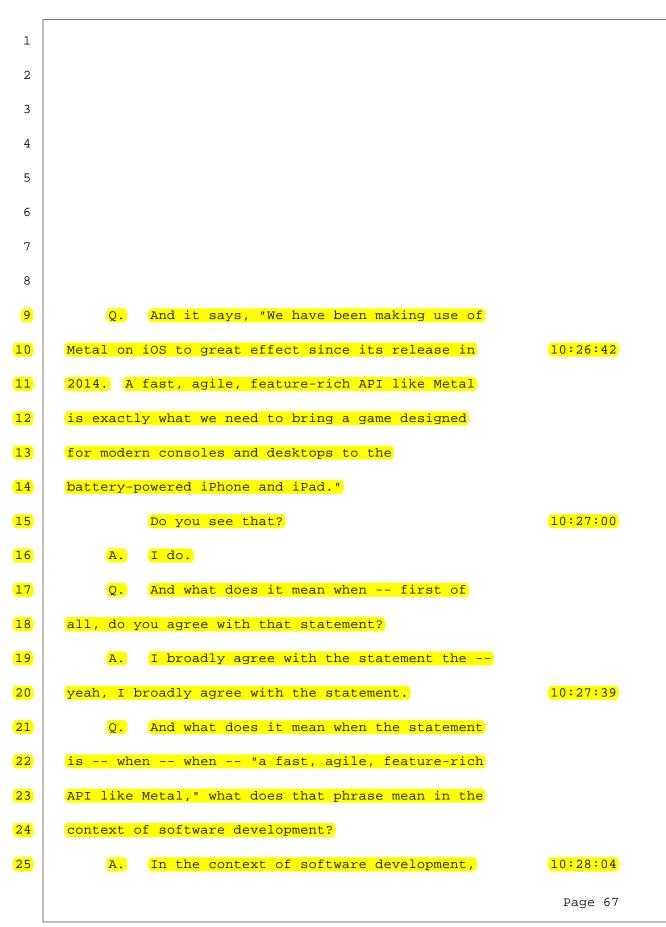
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1	But my fi	rst que	stion will	just	be the s	ame 1	thing.	(	L0:22:35	
2		Do you	recognize	the o	document?	?				
3	A.	<mark>Yes, I</mark>	recognize	the o	document.					
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1		
2	Q. Okay. And then the next part of that	
<mark>3</mark>	email says, "Here is a starting point: (The)	
4	performance and features of Metal allowed us to	
5	bring the full Fortnite Battle Royale experience	10:25:17
6	to iOS quickly and at higher quality than is	
7	possible with OpenGL."	
8	Did I read that correctly?	
9	A. You did.	
10	Q. And is that a sentence that you wrote in	10:25:29
11	this email?	
<mark>12</mark>	A. I believe it is, yes.	
<mark>13</mark>	Q. And do you still agree with that sentence	
14	today?	
<mark>15</mark>	A. I do, with the same context that I gave	10:25:39
<mark>16</mark>	above. Actually, I think the the line above	
17	that states it pretty well that the performance	
<mark>18</mark>	gain over OpenGL, I later qualify that as Android	
<mark>19</mark>	was the was, I say here, "the number one	
<mark>20</mark>	differentiator that allowed us to get Battle Royale	10:26:01
21	running on iOS faster than on Android."	
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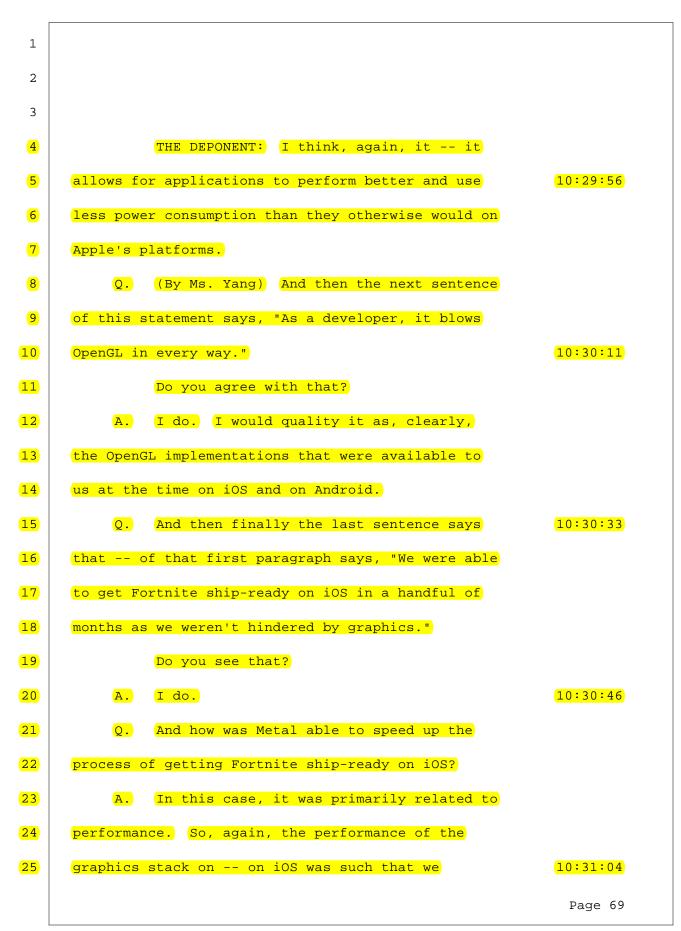
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1	"fast" here is referring to performance, "agile" is	10:28:06
2	referring to changing of features so addition of	
3	new functionality and "feature-rich" is the	
4	extent of features supported by the API.	
5	Q. And according to this statement, these	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	
<mark>12</mark>	and desktops to a mobile device like an iPhone or	
13	iPad?	
<mark>14</mark>	A. In the context of Metal, one of the	
<mark>15</mark>	goals, as I understand it, that the engineering	10:29:03
<mark>16</mark>	team had was to reduce the CPU cost at the driver	
<mark>17</mark>	level. So reducing CPU cost gets back to the	
18	performance differences that I was referring to	
<mark>19</mark>	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	
<mark>25</mark>	that right?	10:29:47
		Page 68

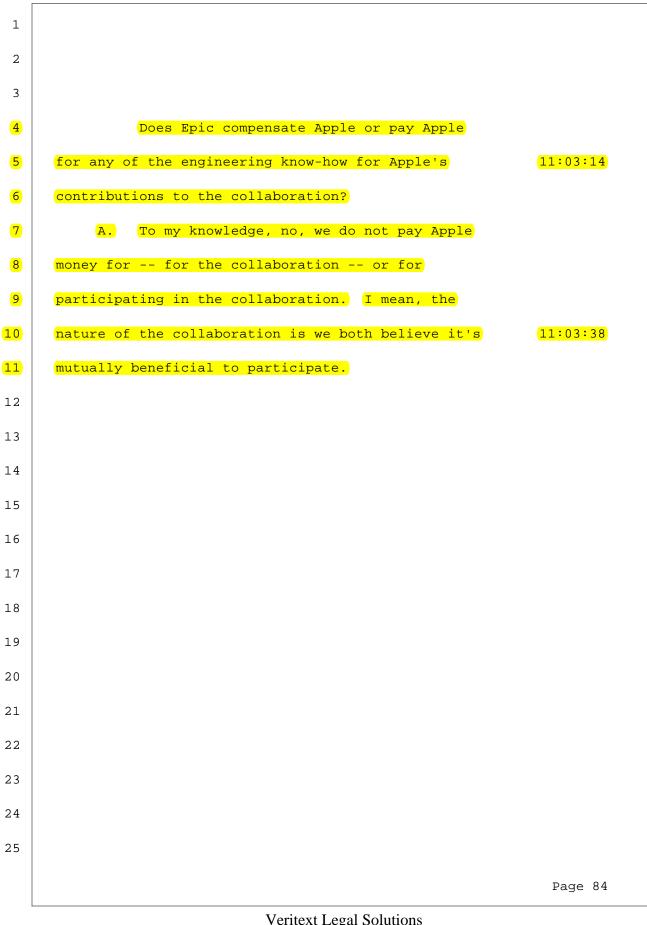
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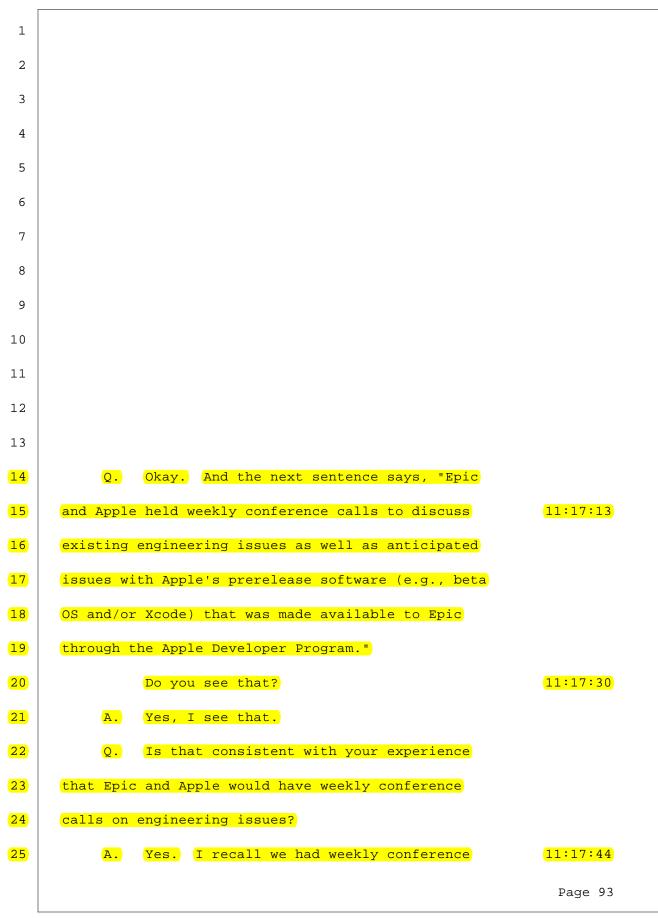
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1	didn't have to spend as much time optimizing for	10:31:09
2	iOS to get it ready for ship.	
3	Q. So, as a result, Epic was label to launch	
4	Fortnite on iOS faster?	
5	A. Yes, we were able to launch Fortnite on	10:31:27
6	iOS than we would have been 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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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.	
<mark>12</mark>	Q. Okay. About how many Apple engineers	
13	would participate in those calls?	
14	A. (I don't recall an exact number.) (I would)	
<mark>15</mark>	say on the order of two to four in most cases.	11:18:34
<mark>16</mark>	Q. And how long would those calls last?	
<mark>17</mark>	A. I'm not sure. I would say most of the	
<mark>18</mark>	calls would take somewhere between 30 minutes and	
<mark>19</mark>	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
		Page 94

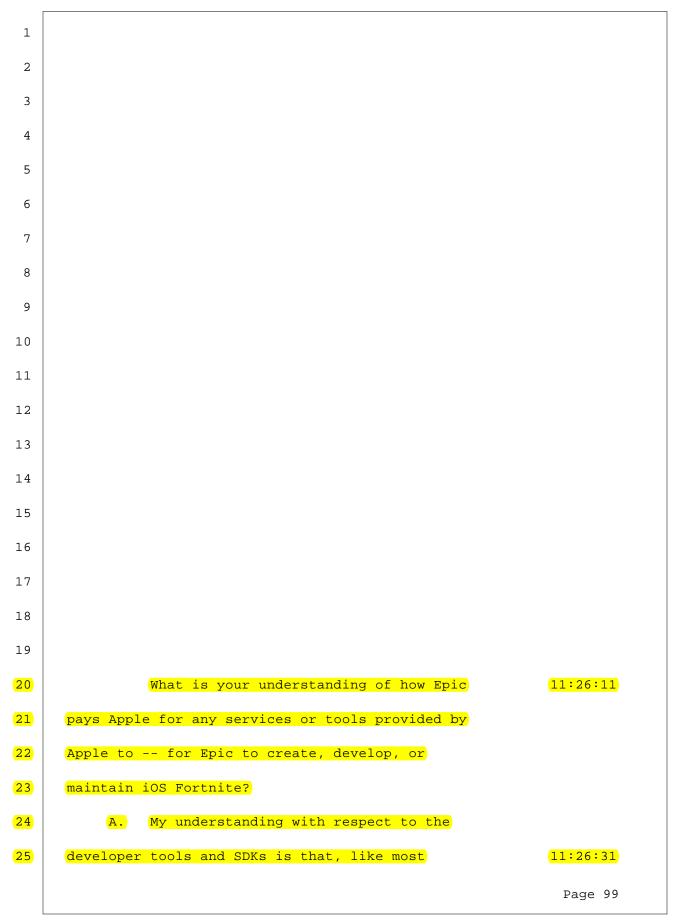
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1	resolution of the graphic driver bugs in iOS and	11:19:14
2	macOS; memory usage and bugs affecting Epic's	
3	ability to implement and support iOS and macOS	
4	features; investigation into rendering issues in	
5	Fortnite caused by Apple's Metal software; and	11:19:28
6	Epic's testing and providing feedback on Apple	
<mark>7</mark>	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	
<mark>14</mark>	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
		Page 95

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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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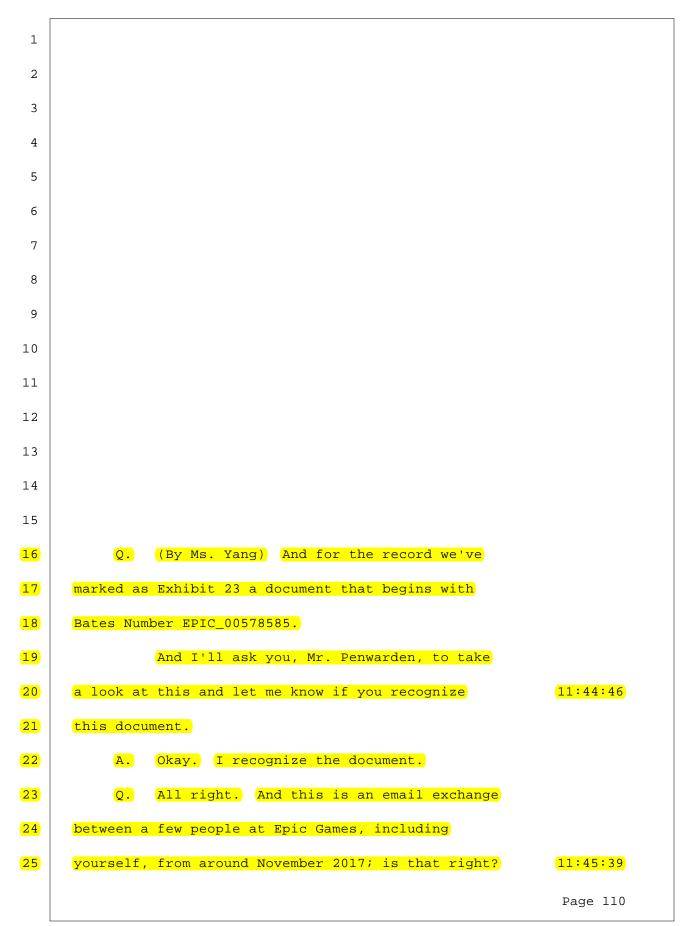
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1	platforms, Apple provides those SDKs and tools for	11:26:37
2	a nominal fee, similar to to other platforms in	
3	order to encourage I expect in order to	
<mark>4</mark>	encourage developers to create software for the	
<mark>5</mark>	platforms.	11:26:54
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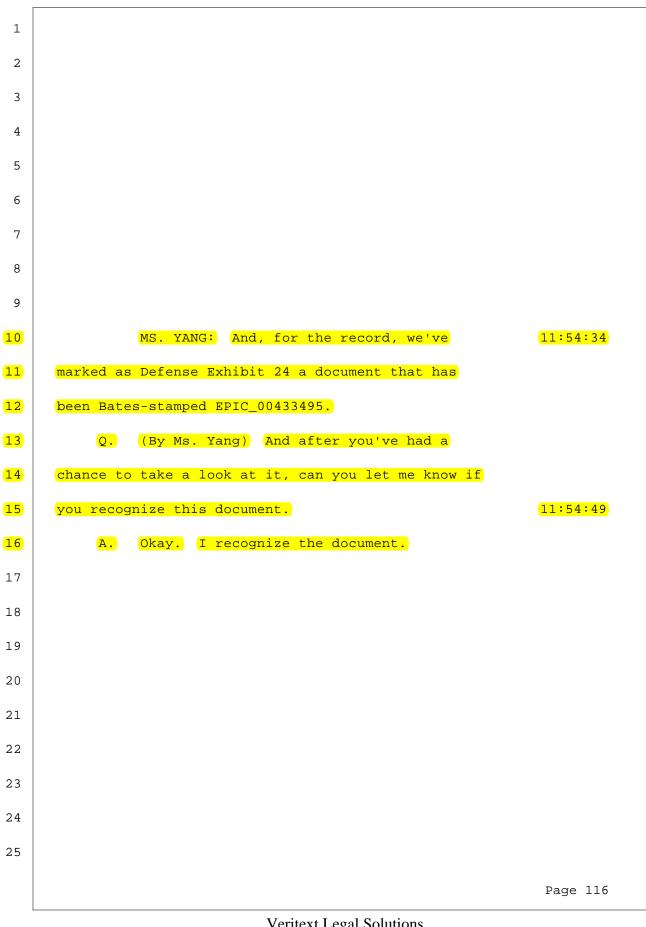
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1	A. That's right. 11:45:44
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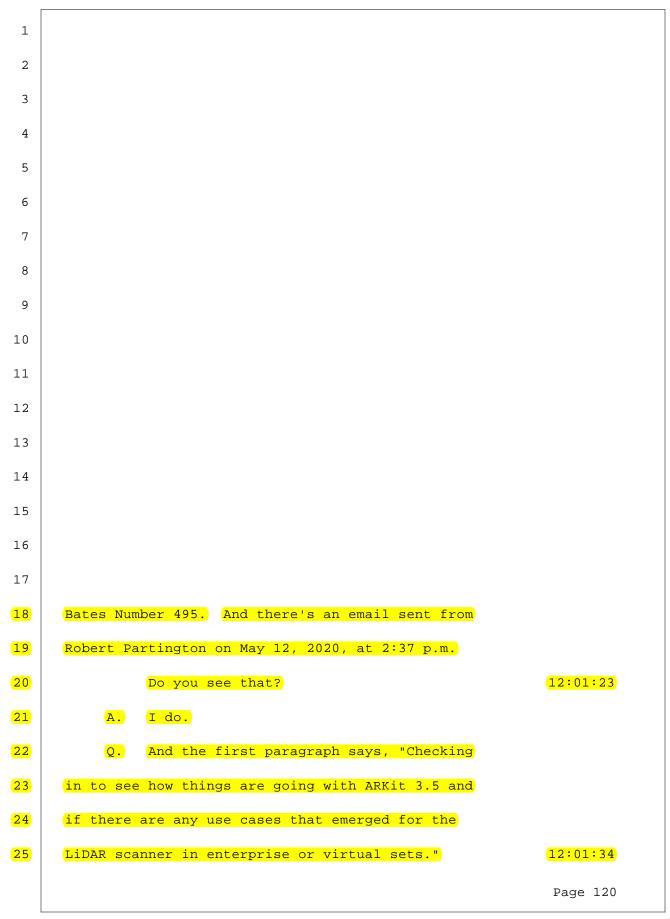
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4	Q. Was that a frequent type of communication	
5	that Epic would have with Apple in terms of Apple	11:57:38
6	previewing new features that it was working on?	
7	A. That would happen time from time to	
8	time. I'm trying to I'm struggling with the	
9	word "frequent" that you used.	
10	We would, from to time to time, be	11:57:57
11	informed by Apple of new functionality coming on	
<mark>12</mark>	Apple's platforms.	
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1	Do you see that?	12:01:40
2	A. I see that, yes.	
<mark>3</mark>	Q. Can you explain what the context for that	
<mark>4</mark>	discussion is?	
<mark>5</mark>	A. My understanding is that Rob is asking	12:01:46
<mark>6</mark>	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.	
<mark>12</mark>	Q. And then the next sentence says, "We are	
<mark>13</mark>	ramping up for virtual WWDC, and I want to get UE	
14	in the best position for any opportunities that	
<mark>15</mark>	start to pop up."	12:02:27
<mark>16</mark>	Do you see that?	
<mark>17</mark>	A. I do.	
<mark>18</mark>	Q. And just to be clear, WWDC is referring	
<mark>19</mark>	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?	
<mark>24</mark>	A. I understand that to be the case, yes.	
<mark>25</mark>	Q. What types of opportunities would pop up	12:02:48
		Page 121
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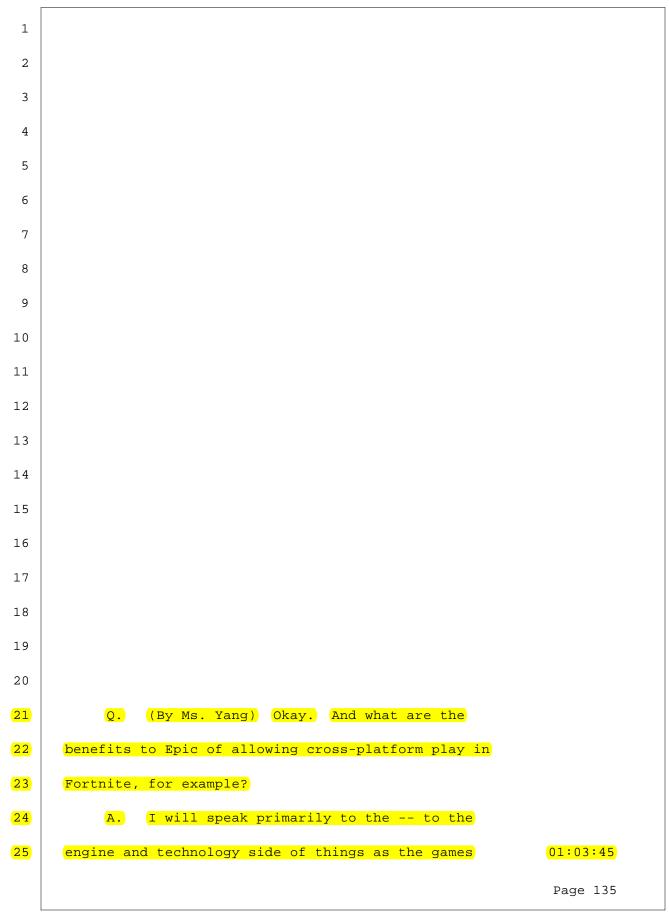
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1	for the Unreal Engine at the Worldwide Developer	12:02:51
2	Conference?	
<mark>3</mark>	A. I'm not sure I I entirely agree with	
4	the premise of the question. The I think the	
5	my understanding is the opportunities that Rob is	12:03:17
6	referring to would be opportunities to show	
<mark>7</mark>	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	
<mark>14</mark>	that start to pop up."	
15	Is that correct? That's what it says?	12:03:53
<mark>16</mark>	A. That is what Robert's email says, yes.	
<mark>17</mark>	Q. Yup.	
<mark>18</mark>	So Unreal Engine, as we discussed	
<mark>19</mark>	earlier, is a product that Epic makes available to	
20	third-party developers; is that correct?	12:04:10
21	A. That's correct.	
<mark>22</mark>	Q. Were there ever any instances in which	
23	Unreal Engine or other Epic products were, for	
<mark>24</mark>	example, featured at Apple's Worldwide Developer	
<mark>25</mark>	Conferences?	12:04:23
		Page 122

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1	A. In the past we have participated in	12:04:27
2	Apple's Worldwide Developer Conference and shown	
3	technical demonstrations that were developed using	
4	Unreal Engine.	
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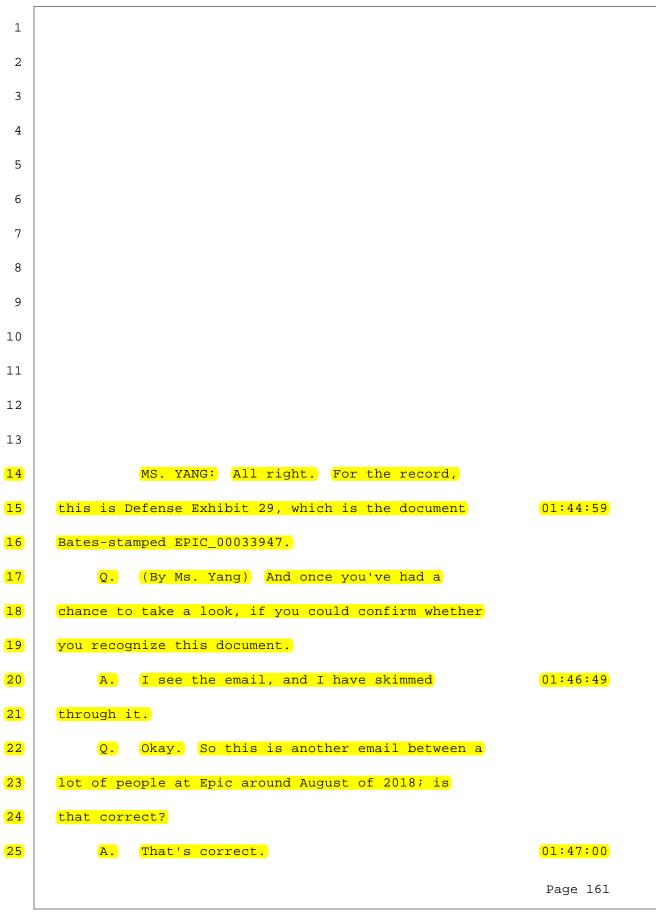
1	and business side of things, again, is not really	01:03:49
2	my role at Epic.	
3	But on the technology side one of the	
4	benefits is that it it aids us in proving out	
5	the technology of Unreal Engine, again running the	01:04:03
6	same content or substantially similar content	
7	and same game across 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	
<mark>13</mark>	engineering that goes into each each platform	
<mark>14</mark>	that we support, but we substantively support the	
<mark>15</mark>	same game across across multiple platforms.	01:04:38
<mark>16</mark>	Q. And then end users have the choice of	
<mark>17</mark>	which platform or platforms that they would like to	
18	choose to be able to play Epic Epic games like	
<mark>19</mark>	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.	
<mark>23</mark>	Q. Including some players players have	
<mark>24</mark>	the option to choose more than one platform to play	
<mark>25</mark>	Fortnite?	01:05:08
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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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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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1 2 When was Metal first released? 0. I believe it was June 2014 when the first 3 Α. version of Metal was released. 4 5 б 7 8 9 10 Q. (By Mr. Even) At the time was Metal a 04:42:18 developers' dream come true? 11 Α. 12 No. 13 14 Q. (By Mr. Even) Back in 2014, did Apple reach out to Epic and ask to collaborate on Metal? 04:42:30 15 Apple approached Epic in early 2014 to --16 Α. 17 to disclose that they were working on Metal and to get our feedback on the API and what they were 18 19 doing and to help get -- or to get Unreal Engine 20 running on Metal so that they could understand how 04:42:57 21 the API works and performs with a -- with a AAA console-style graphics workload. 22 23 Q. What, if anything, has Epic done from 24 2014 through 2018 that contributed to Metal 25 becoming such a good platform by 2018? 04:43:23 Page 243

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1		
2		
3	THE DEPONENT: Throughout the years	
4	between from 2014 to 2018, Epic and Apple	
5	collaborated to so on our side, we continued to	04:43:41
6	invest time and and engineering into supporting	
7	new features on Metal to to improving and	
8	optimizing the engine on Metal and investigating	
9	bugs that we found that were unique to Metal that	
10	were typically in the driver or in the	04:44:05
11	implementation of Metal, and then working with	
12	Apple to be able to provide the GPU software team	
13	with repro cases and information about about	
14	those issues so that they could fix those issues in	
15	Metal.	04:44:28
	Metal.	04:44:28
15	Metal.	04:44:28
<b>15</b> 16	Metal.	04:44:28
<b>15</b> 16 17	Metal.	04:44:28
15 16 17 18	Metal.	04:44:28
15 16 17 18 19	Metal.	04:44:28
15 16 17 18 19 20	Metal.	04:44:28
15 16 17 18 19 20 21	Metal.	04:44:28
15 16 17 18 19 20 21 22	Metal.	04:44:28
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> </ol>	Metal.	04:44:28
<ol> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	Metal.	04:44:28 Page 244

### 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

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

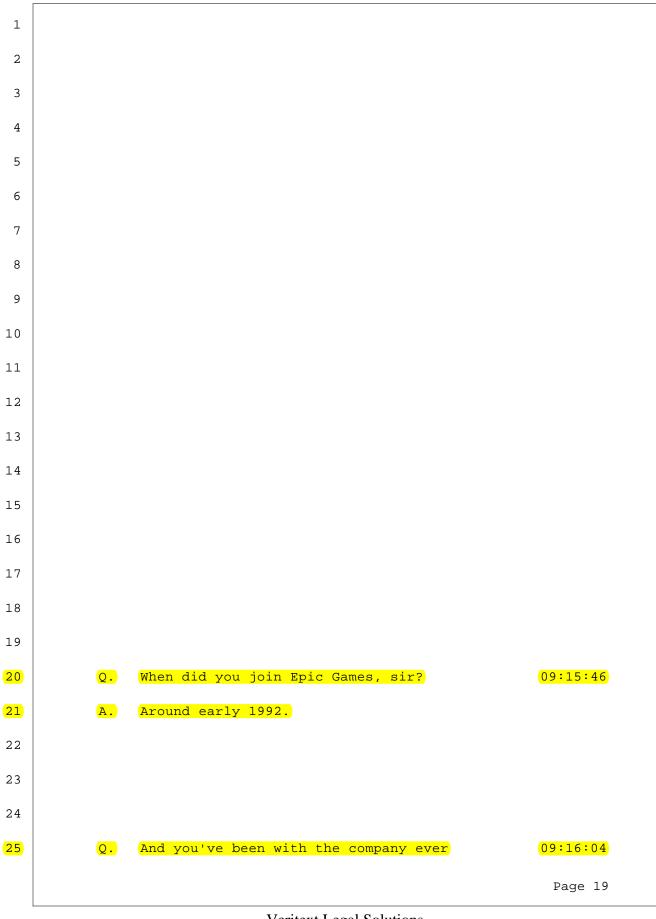
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 253 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

_		_	
	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 Case No. 4:11-cv-06714		
-	ANTITRUST LITIGATION YGR		
-			
	(caption cont'd)		
	Page 1		
	Veritext Legal Solutions	-	

## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 254 of 321 \*\*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.
6	
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8	
9	
10	
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
17	
18	
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. 4453817
25	PAGES 1 - 161
	Page 2

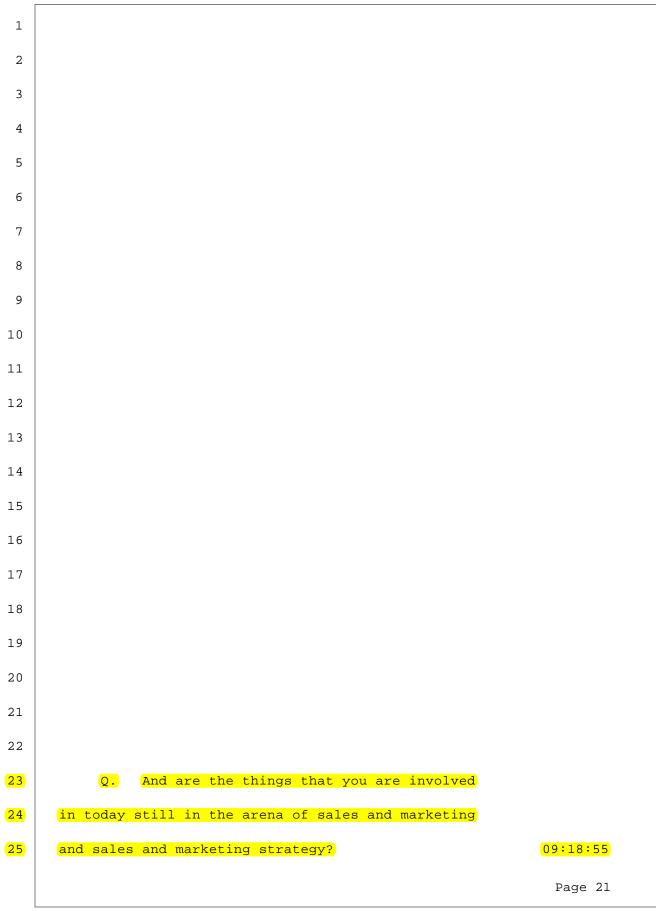
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 255 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 256 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	since?	09:16:06
2	A. Yes.	
3		
4		
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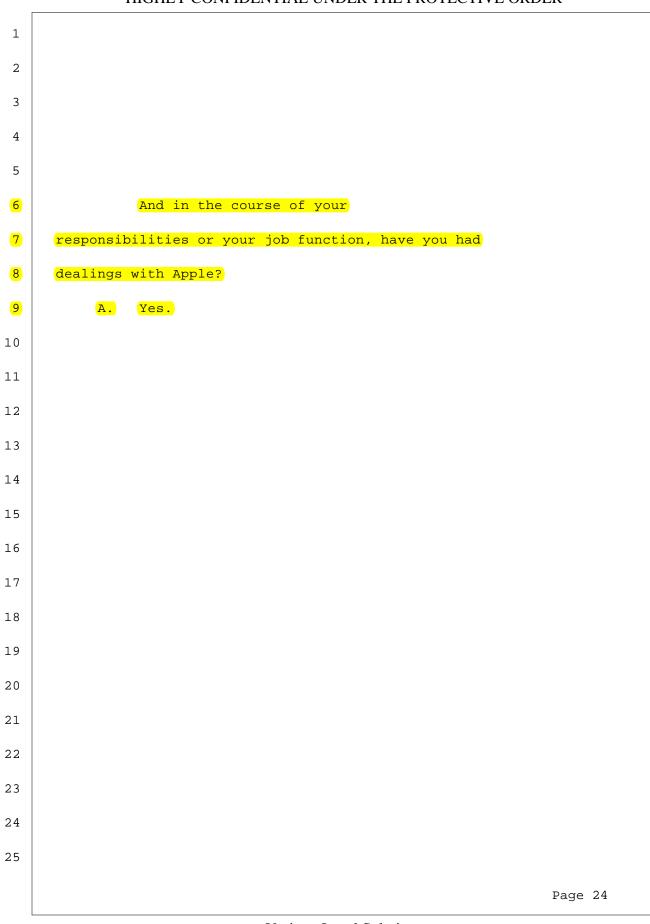
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 257 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



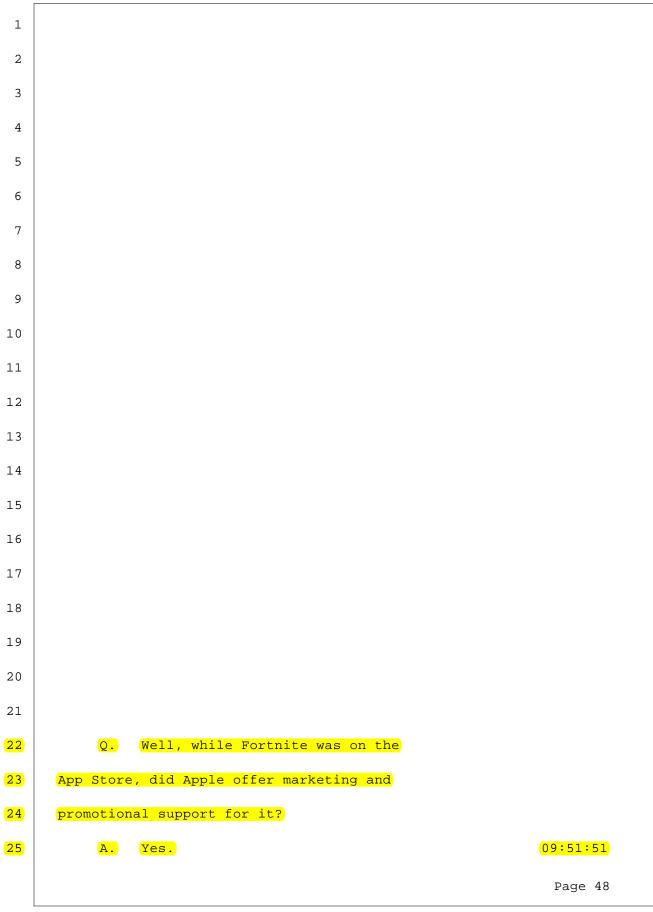
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 258 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	<mark>.</mark>	Typically, yes.	09:18:57
2			
3			
4			
5			
6			
7			
8		And do you currently sit on the board of	
9	directors	s 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.	
13			
14			
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16			
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			Page 22
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## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 259 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



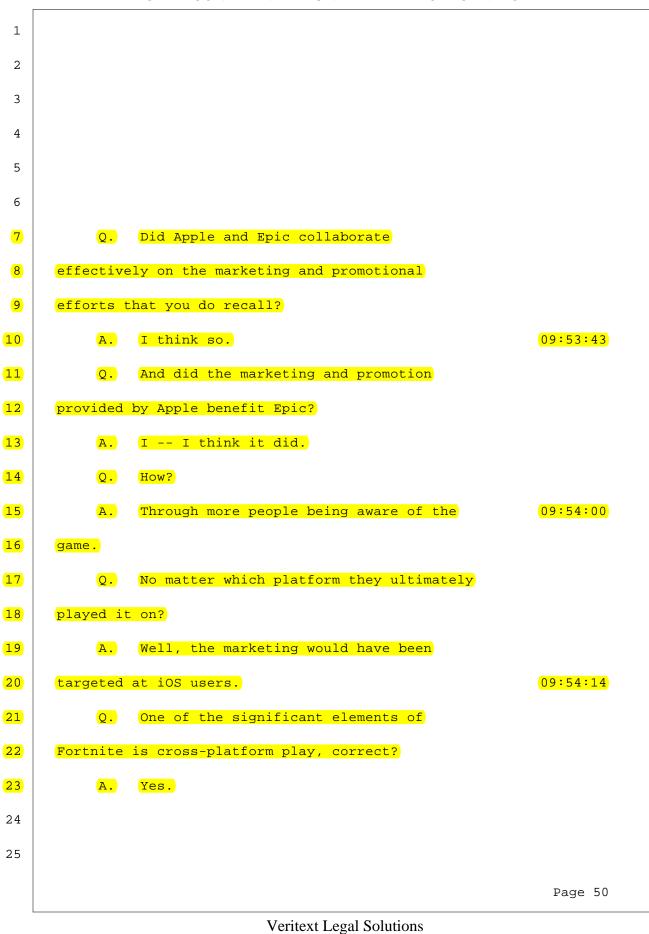
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 260 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



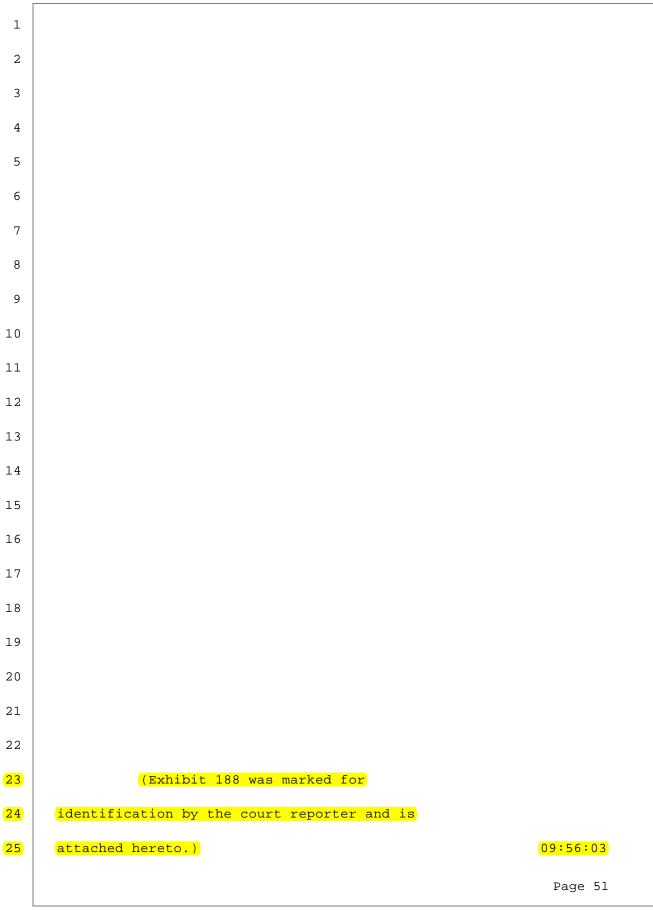
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 261 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

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	
<mark>4</mark>	when you had something important going on.	
5	Q. You mean	<mark>09:52:08</mark>
<mark>6</mark>	A. Sorry. Apple would feature Fortnite	
<mark>7</mark>	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
<mark>11</mark>	A. It means they would give it a prominent	
<mark>12</mark>	placement on one of the pages of the App Store.	
13		
14		
15		
<mark>16</mark>	Q. What other sorts of promotion and	
17	marketing did Apple provide for Fortnite?	
<mark>18</mark>	A. One time they put us up on stage and they	
<mark>19</mark>	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.	
22		
23		
24		
25		
		Page 49
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 262 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



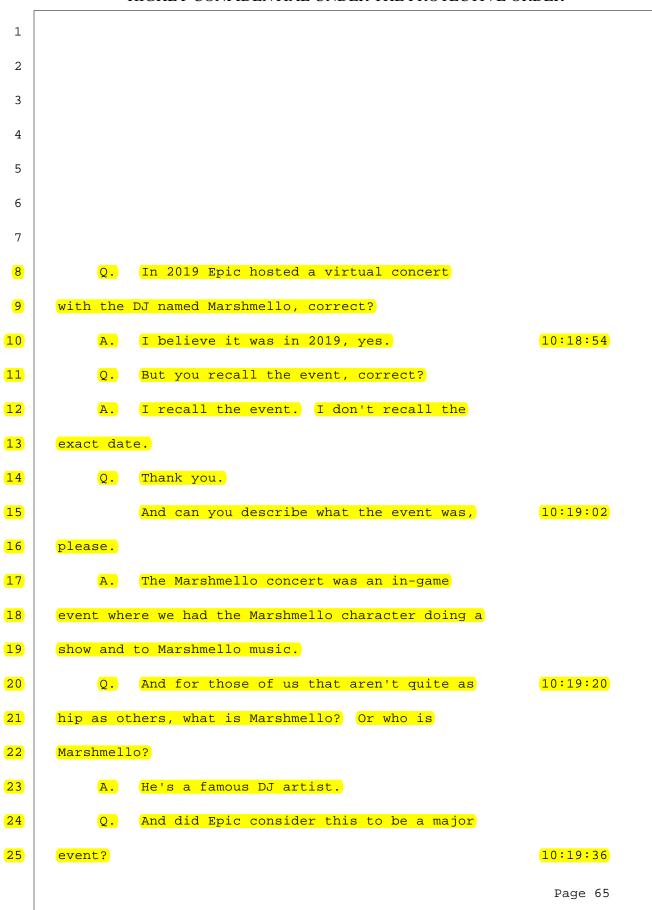
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 263 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 264 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	Q.	(By Mr. Doren) Mr. Rein, while you	09:56:08
2	review tha	t, I will describe for the record that	
3	this Exhib	oit 188 is a two-page document which	
4	contains a	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		(By Mr. Doren) Thank you very much, sir.	
10		First of all, do you recognize this as an	09:57:02
11		n in which you participated including	
12		pic colleagues on January from	
13	January 17		
14	A.	les.	
15			
16			
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			Page 52
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 265 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 266 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	<mark>.</mark> A.	Yes, I believe we did.	10:19:38
2	Q.	And when you say it was "an in-game	
3	experienc	e," was it within Fortnite?	
4	<mark>.</mark>	It was within Fortnite.	
5	Q.	And was it available on all platforms?	10:19:47
6	<mark>.</mark>	Yes, I believe it was.	
7	Q.	Meaning mobile and consoles and PCs?	
8	<mark>.</mark>	Yes, whatever within Fortnite.	
9	Wherever	you played it.	
10	Q.	Was it available on the web-based	10:20:07
<mark>11</mark>	versions	of Fortnite?	
<mark>12</mark>	<mark>.</mark>	What web-based versions of Fortnite?	
<mark>13</mark>	Q.	Those available, for example, through	
<mark>14</mark>	GeForce?		
<mark>15</mark>	<mark>.</mark>	It should have been, yes.	10:20:22
<mark>16</mark>	Q.	Thank you.	
<mark>17</mark>		And did viewers purchase tickets to	
<mark>18</mark>	attend th	at event?	
<mark>19</mark>	<mark>.</mark>	No.	
20	Q.	It was free?	10:20:30
21	<mark>.</mark>	It was a free event.	
22	Q.	And did Apple offer marketing support for	
23	the Marsh	mello event?	
24	<mark>.</mark>	I believe they did.	
<mark>25</mark>	Q.	And do you recall what it was?	10:20:47
			Page 66
		Varitart Lagal Solutions	

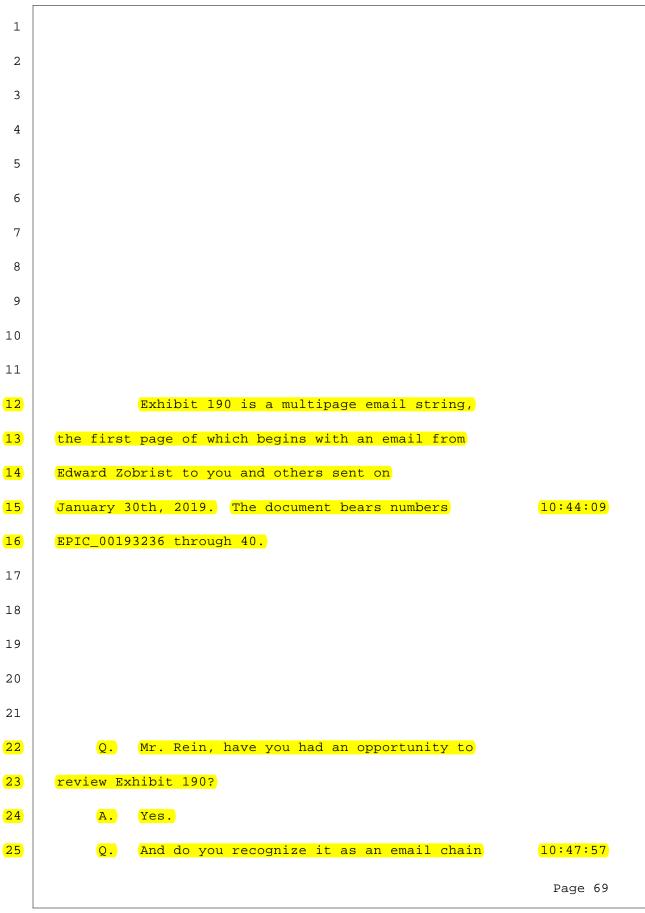
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 267 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

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,	
<mark>4</mark>	what do you mean?	
<mark>5</mark>	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	
<mark>10</mark>	event?	10:21:19
11	A. Apple Music did some advertising, some	
<mark>12</mark>	outdoor advertising, I believe.	
<mark>13</mark>	Q. Do you recall?	
<mark>14</mark>	A. And featured and featured music from	
<mark>15</mark>	the event in Apple Music.	10:21:32
<mark>16</mark>	Q. And did you consider that to be a benefit	
<mark>17</mark>	to Epic's profile?	
18		
19		
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.	
<mark>23</mark>	Q. (By Mr. Doren) And do you consider that	
<mark>24</mark>	to be a good thing?	
25	A. If you like that kind of music, it's a	10:22:02
		Page 67

## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 268 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	good thing, yes. (10:22:0	4
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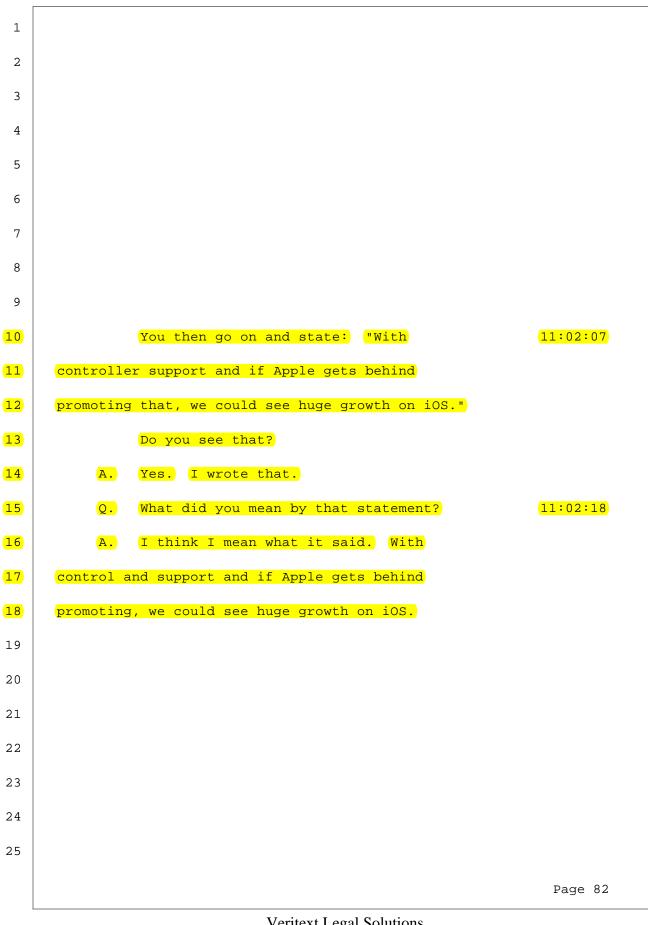
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 269 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 270 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	among various Epic employees, including yourself,	10:48:01
2	from January of 2019?	
3	A. Yes.	
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		Page 70

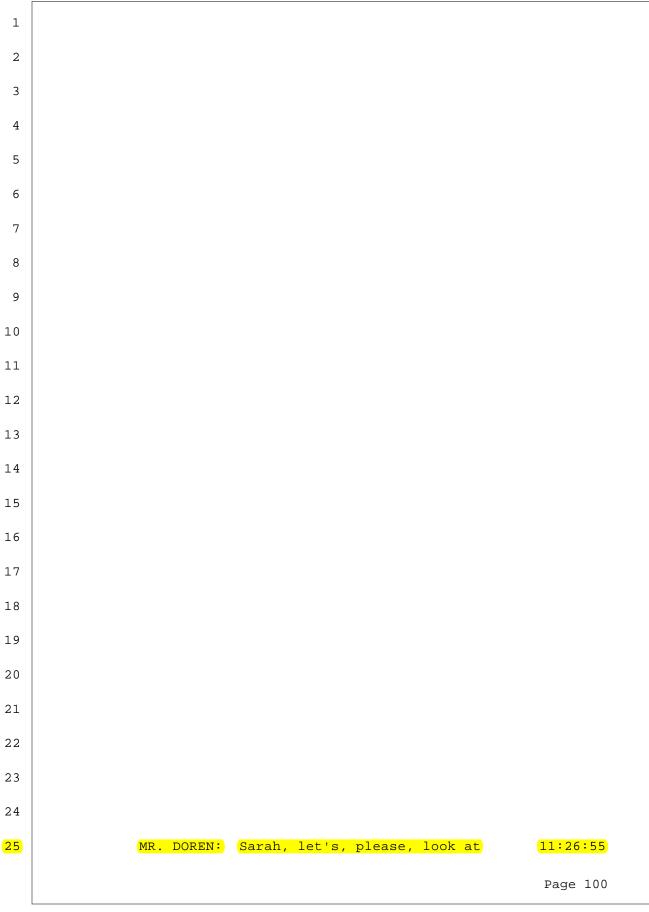
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 271 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



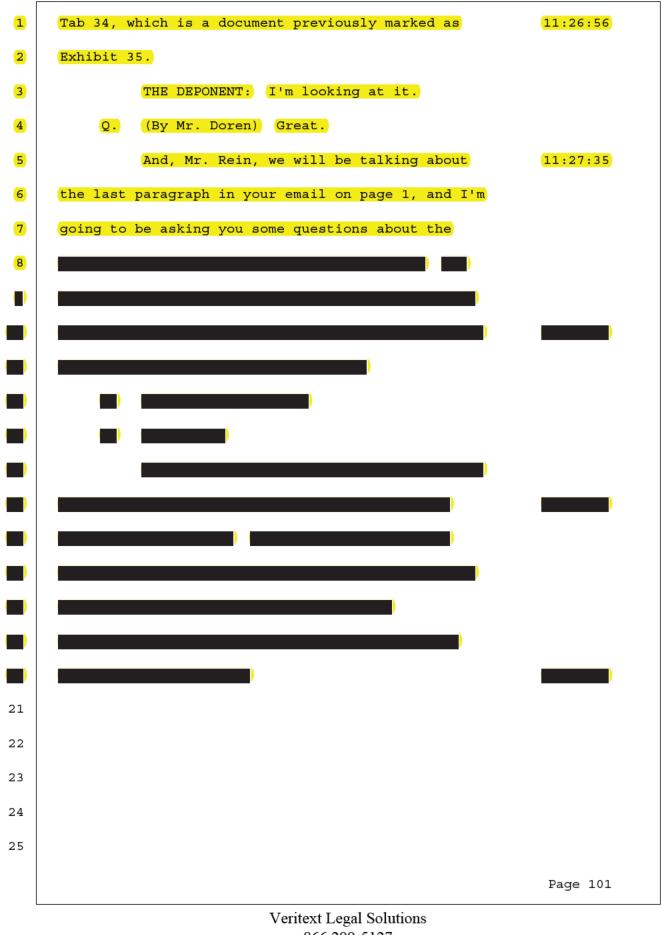
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 272 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

1	
2	And you mentioned that and why is it a
<mark>3</mark>	good thing to have Apple advertise your product?
4	A. Any almost any advertising for your
5	product is a good thing. 11:08:18
6	Q. And Apple is a a well-known brand?
7	A. Yes.
8	Q. And a highly regarded brand?
9	A. Yes.
<mark>10</mark>	Q. And being affiliated with Apple is 11:08:28
11	beneficial to Epic?
12	A. I believe it's beneficial to Fortnite
<mark>13</mark>	when they are marketing Fortnite.
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	Page 87
	Veritext Legal Solutions

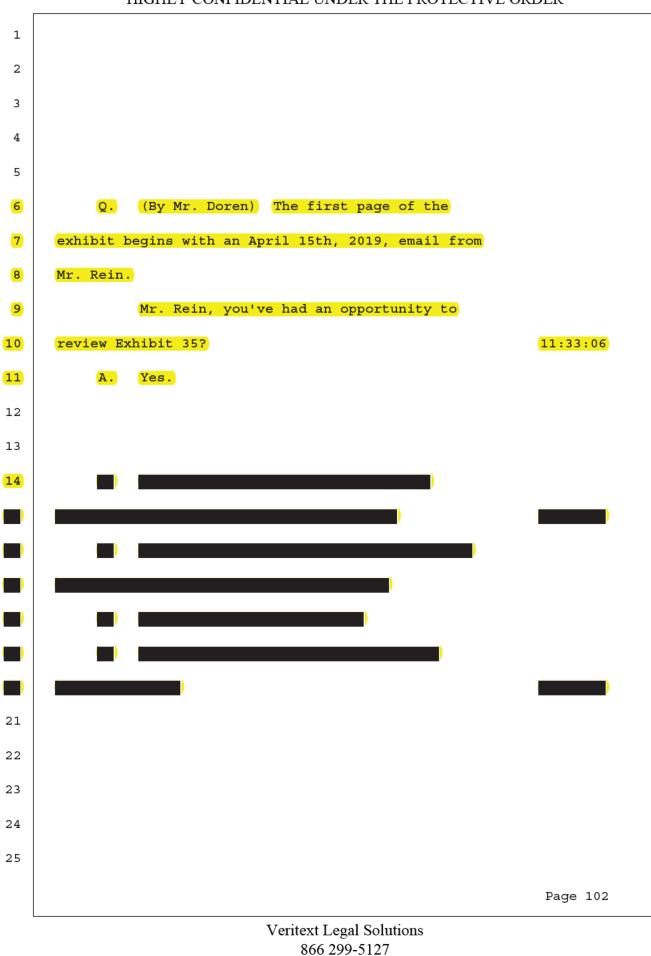
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 273 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



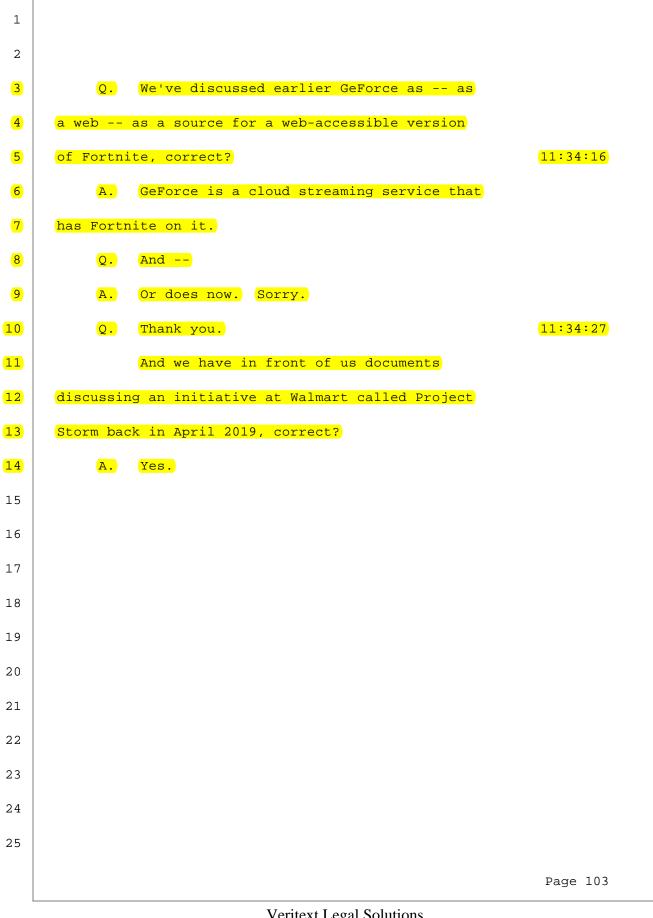
#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 274 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 275 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 276 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

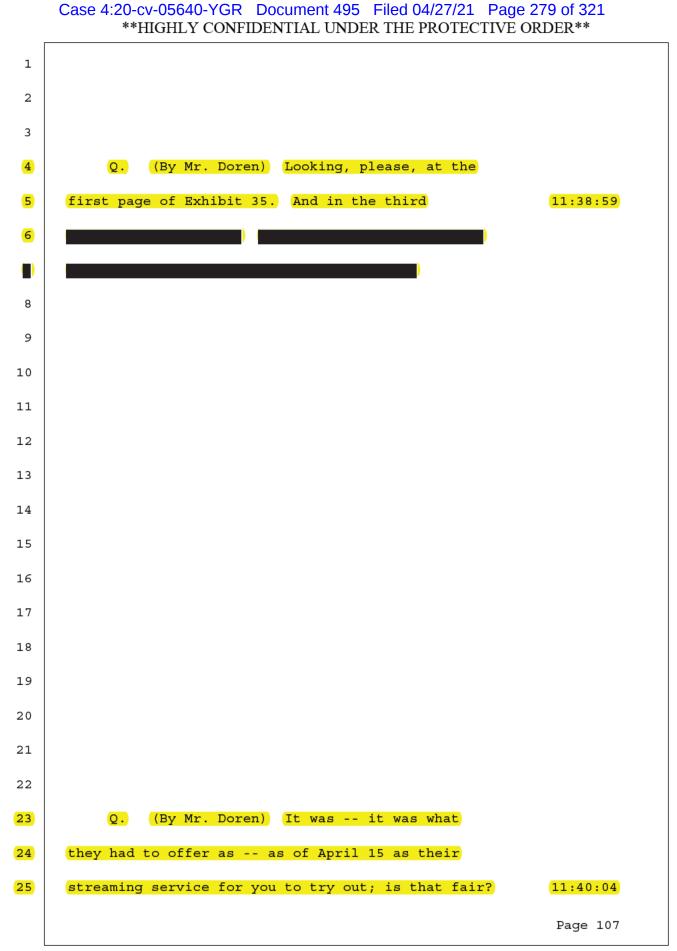


## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 277 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

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9	Q.	Is that a trend in gaming, the	
10	cloud-bas	ed streaming?	11:35:47
11	Α.	I don't know if I'd say it's a trend.	
12	There are	companies attempting to do it.	
13	Q.	Do you consider that to be the future of	
14	gaming?		
15	Α.	Not really.	11:36:02
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Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 278 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*





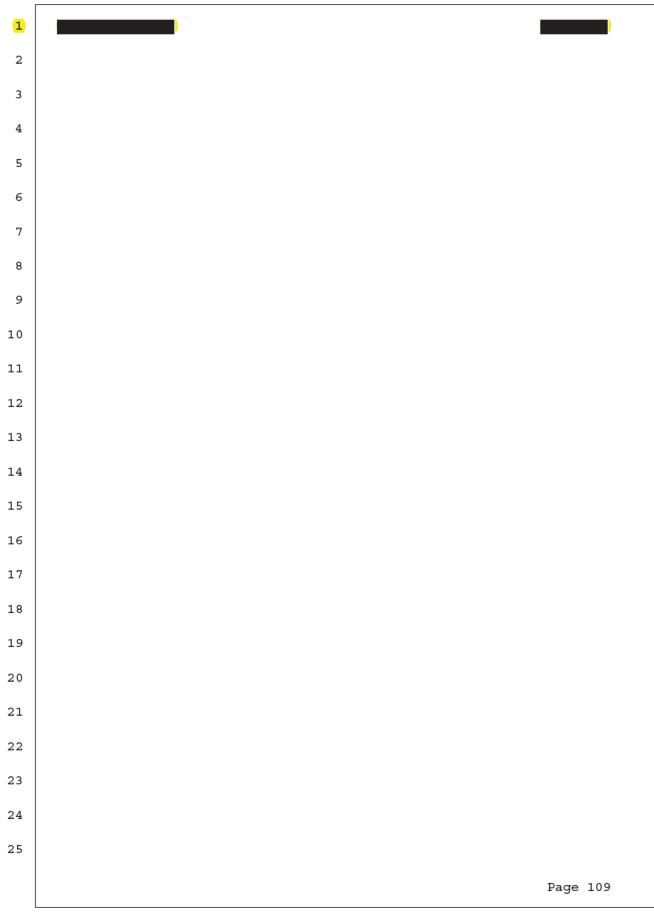
# Veritext Legal Solutions 866 299-5127

Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 280 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



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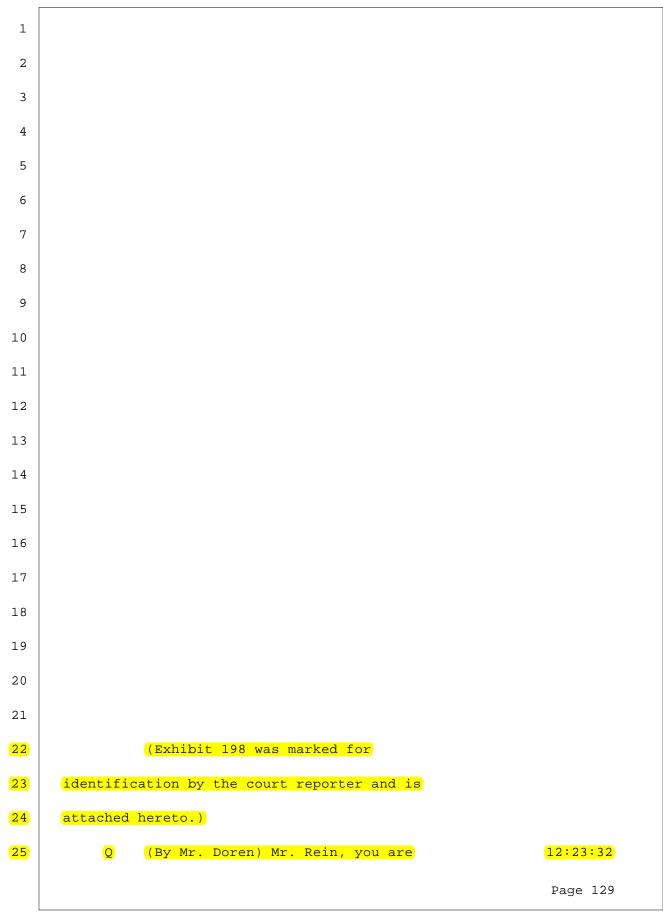
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 281 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 282 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

	**HIGHLY CONFIDENTIAL UNDER THE PROTECTIV.	LOKDEK
1		
2		
3		
4	Q. Do you know what factors went into	
5	setting the 12 percent commission level?	11:42:45
6	A. Yes.	
7	Q. What do you know about that?	
8	A. The the cost of operating the service	
9	went into was one of the factors in deciding	
10	what was a fair amount to charge.	11:43:05
<mark>11</mark>	Q. And when you say cost of operating the	
<mark>12</mark>	service, what service are you referring to?	
<mark>13</mark>	A. The service of that we provide to	
<mark>14</mark>	to games that are sold in the Epic Games Store.	
<mark>15</mark>	Q. You mean the payment processing service	11:43:22
<mark>16</mark>	or do you mean something more than that?	
<mark>17</mark>	A. I'm payment processing would be one of	
<mark>18</mark>	the costs.	
<mark>19</mark>	Q. What other costs went into it?	
20	A. Some of the others could be the the	11:43:36
21	actual distribution cost, the internet bandwidth	
22	cost, the you know, the the cost of	
<mark>23</mark>	maintaining it.	
<mark>24</mark>	Q. Maintaining the store?	
25	A. Yes.	<mark>11:43:54</mark>
		Page 110

#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 283 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*



## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 284 of 321 \*\*HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER\*\*

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	
<u> </u>	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?	
<mark>13</mark>	A. Yes.	
<mark>14</mark>	Q. And is this an email string that you	
<mark>15</mark>	received on March 14th, 2018 from Mr. Pence?	12:25:05
<mark>16</mark>	A. It appears to be, yes.	
17		
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		Page 130
	Veritext Legal Solutions	

#### 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

Apple Inc.'s Designations	Epic Games, Inc.'s Designations	
(Yellow Highlight)	(Blue Highlight)	
10 minutes 26 seconds	38 seconds	

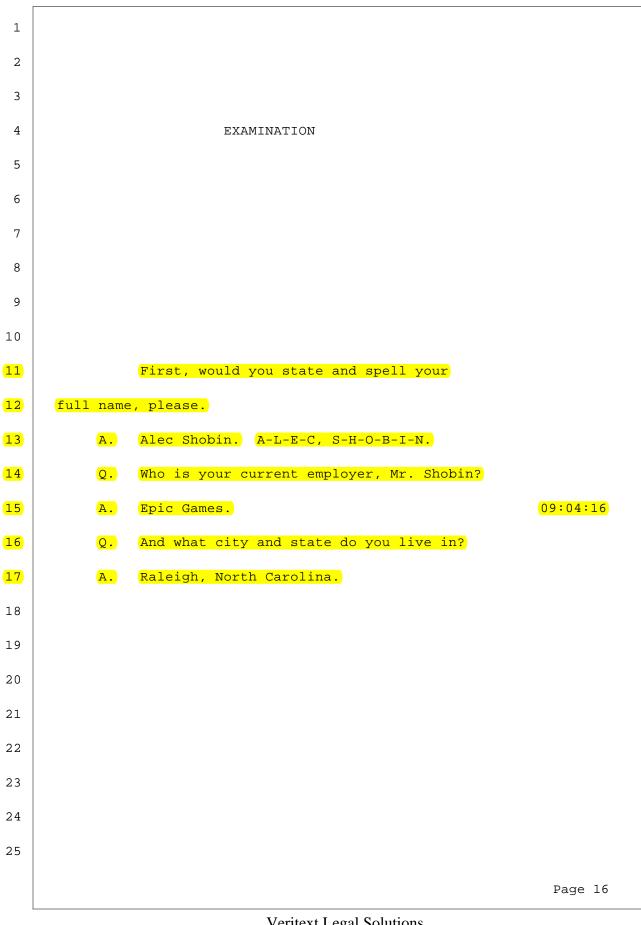
# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 286 of 321

1	UNITED STATES DISTRICT COURT		
2	NORTHERN DISTRICT OF CALIFORNIA		
3	OAKLAND DIVISION		
4			
5	EPIC GAMES, INC.,		
6	Plaintiff,		
	Counter-defendant,		
7			
	vs. Case No. 4:20-cv-05640		
8	YGR		
	APPLE INC.,		
9			
	Defendant,		
10	Counterclaimant.		
11			
12	IN RE APPLE IPHONE Case No. 4:11-cv-06714		
	ANTITRUST LITIGATION YGR		
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	Veritext Legal Solutions		

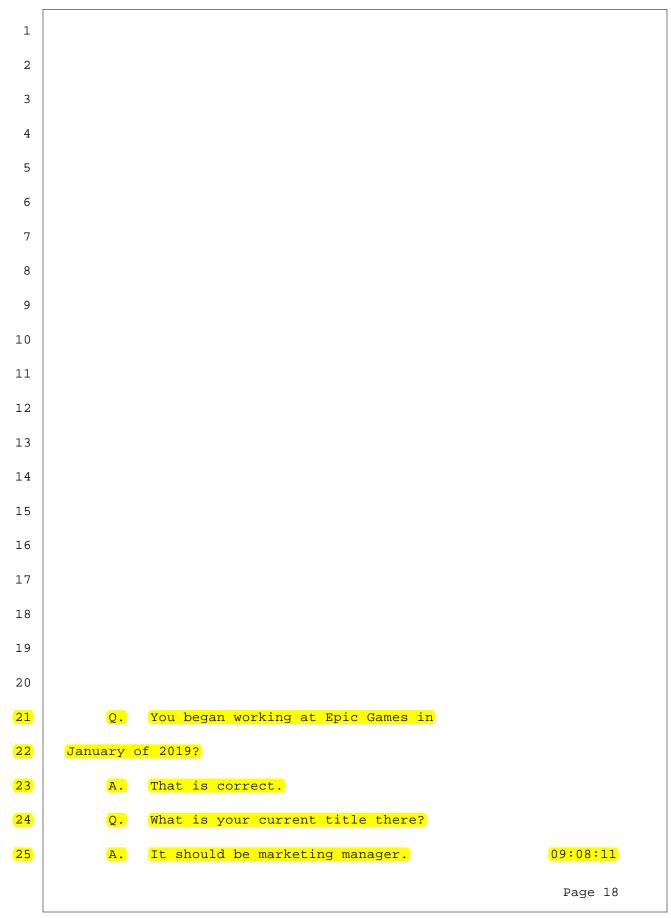
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 287 of 321

1	DONALD R. CAMERON, et al.,
2	Plaintiffs,
3	vs. Case No. 4:19-cv-03074 YGR
4	APPLE INC.,
5	Defendant.
6	
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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
15	
16	
17	
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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. 4422886
25	PAGES 1 - 259
	Page 2

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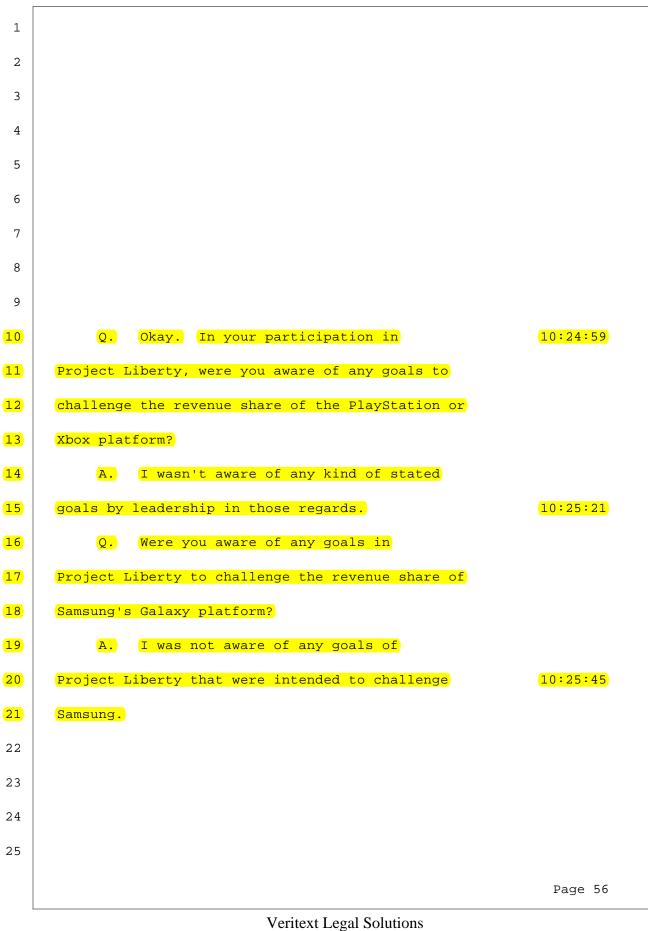
### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 289 of 321



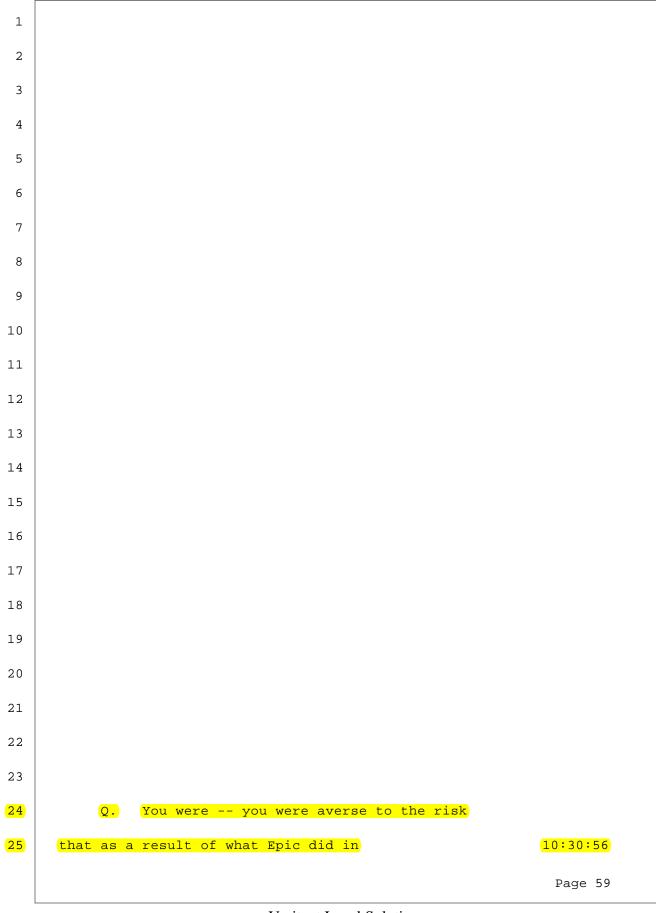
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 290 of 321

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?	
<mark>5</mark>	A.	I do Fortnite marketing.	09:08:29
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#### Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 291 of 321



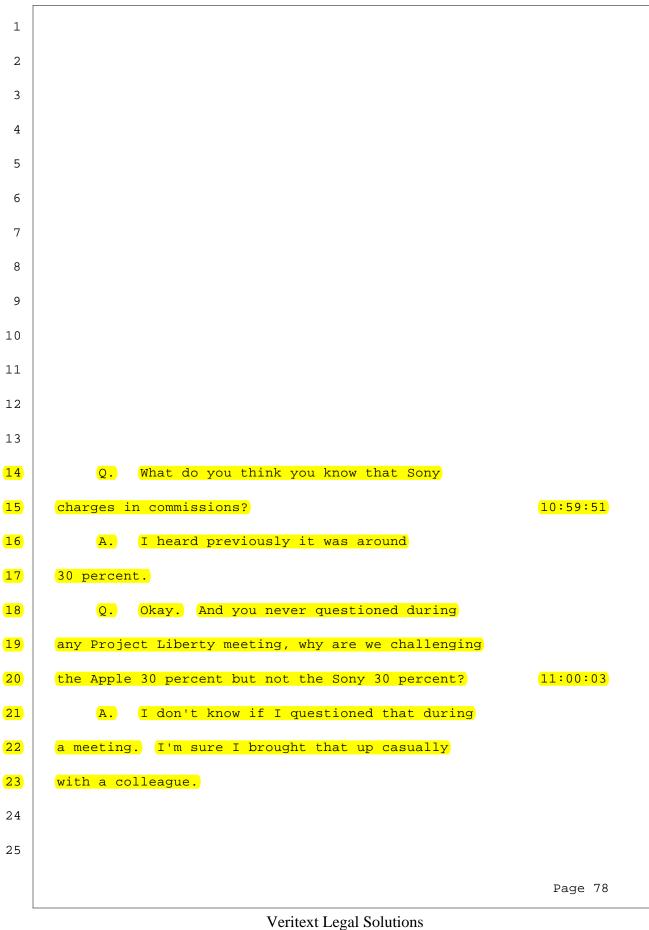
## Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 292 of 321



# Case 4:20-cv-05640-YGR Document 495 Filed 04/27/21 Page 293 of 321

Project Liberty, Fortnite might be removed from the	10:31:01
App Store; is that accurate?	
A. I was I was averse to any possible	
risk that would jeopardize Fortnite's availability	
on the App Store.	10:31:14
	Page 60

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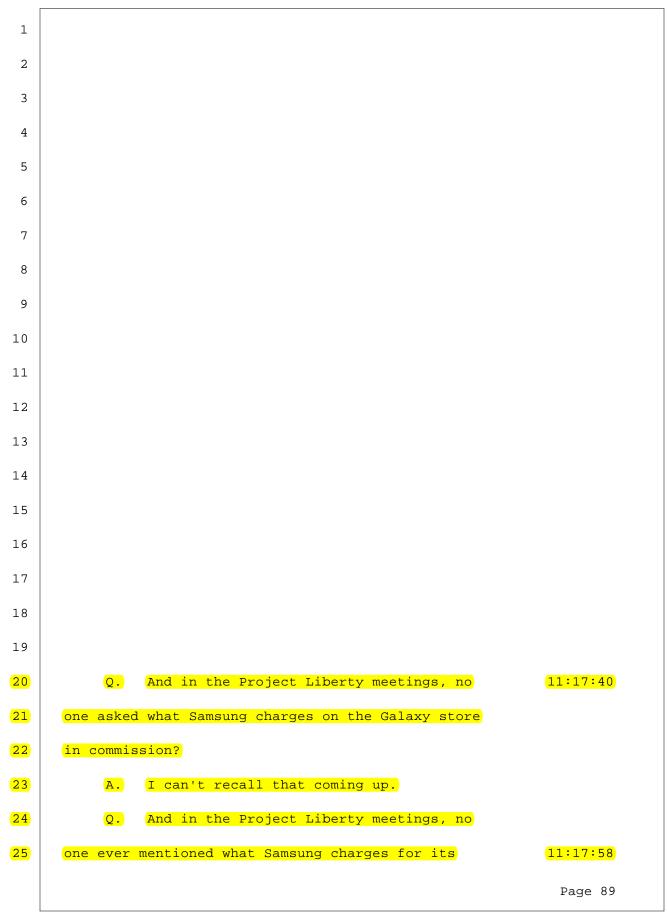
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5	Q. Okay. And even though you didn't know	<mark>11:00:57</mark>
6	whether that information was accurate, you were	
7	comfortable with the goals of Project Liberty to	
8	challenge the 30 percent commission charged by	
9	Apple and Google; is that accurate?	
10	A. I'm always in favor of helping developers	11:01:13
11	get better terms.	
<mark>12</mark>	Q. Well, then, why wouldn't you be in favor	
<mark>13</mark>	of lowering the commission at Microsoft and at	
<mark>14</mark>	Sony?	
<mark>15</mark>	A. My focus at that time was on mobile, so I	11:01:27
<mark>16</mark>	was focused on those platforms.	
<mark>17</mark>	Q. Well, but there were people on	
<mark>18</mark>	Project Liberty whose focus was on Microsoft and	
<mark>19</mark>	Sony, right?	
20	A. Yeah. Some of those people sat in	11:01:44
21	meetings.	
22	Q. And they never raised their hand and	
<mark>23</mark>	said, look, if we're going to make life better for	
<mark>24</mark>	developers, we ought to challenge the Sony and	
<mark>25</mark>	Microsoft commissions? None of them raised that	<mark>(11:01:53</mark> )
		Page 79

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1	issue?		11:01:55
2	A.	I don't recall if that was raised in a	
3	meeting.		
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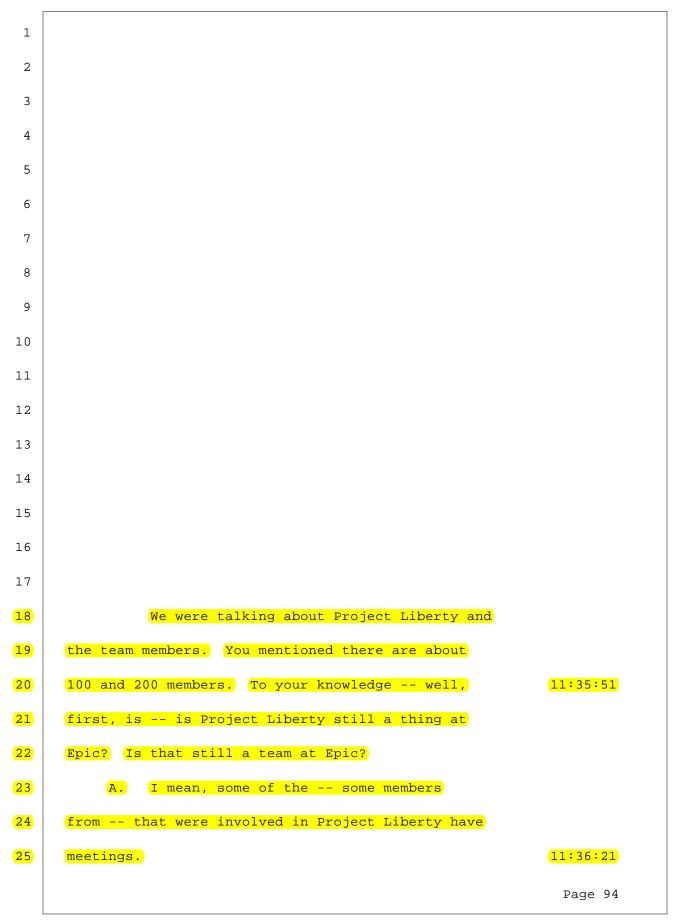
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1	Galaxy store?	11:18:00
2	A. I don't recall.	
3	Q. (In the Project Liberty meetings, no one)	
<mark>4</mark>	raised their hand and said, hey, while we're going	
5	after these platforms, we should go after Samsung	11:18:14
6	too?	
7	A. I don't recall.	
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	
<mark>12</mark>	developers?	
<mark>13</mark>	A. I don't recall.	
<mark>14</mark>	Q. In the Project Liberty meetings, when	
<mark>15</mark>	you're talking about the fairness or unfairness of	11:18:40
<mark>16</mark>	the Apple and Google commission, nobody thought to	
<mark>17</mark>	compare that and say, well, what does Samsung	
<mark>18</mark>	charge?	
<mark>19</mark>	A. I don't recall.	
<mark>20</mark>	Q. Is it your understanding the reason that	11:18:56
21	there were no discussions of Samsung was because	
<mark>22</mark>	Mr. Sweeney was not interested in targeting	
<mark>23</mark>	Samsung?	
<mark>24</mark>	A. I don't recall that either.	
25		
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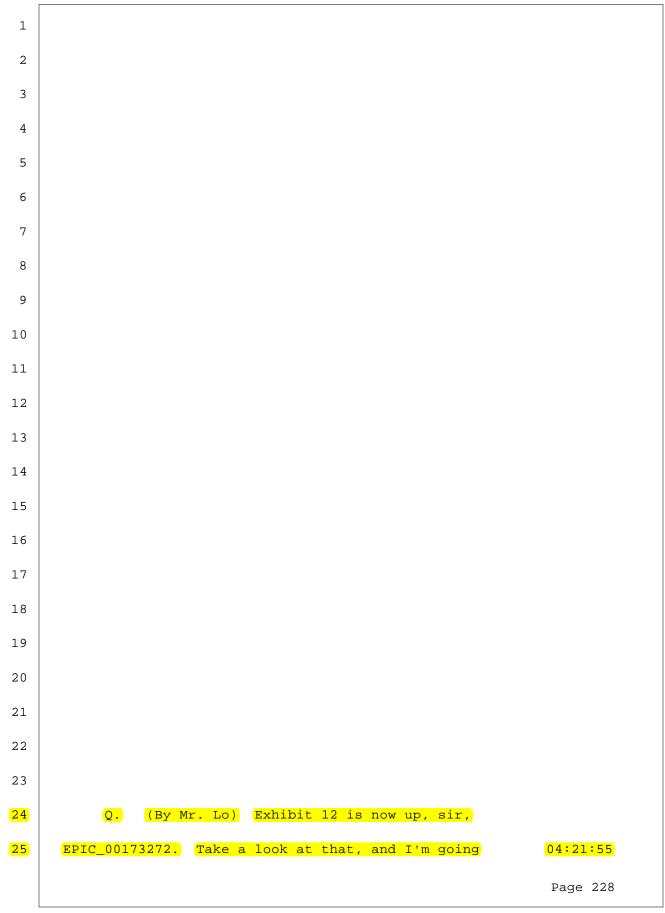
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1	Q. So there are still Project Liberty	11:36:24
2	meetings ongoing?	
3	A. Yes, I believe so.	
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<mark>19</mark>	Q. Since August 2020, has the subject of	
20	Samsung's commission ever been raised at a	11:37:37
21	Project Liberty meeting?	
22	A. I don't recall that subject being raised.	
<mark>23</mark>	Q. Since August 2020, has the subject of	
<mark>24</mark>	Microsoft's commission ever been raised at a	
<mark>25</mark>	Project Liberty meeting?	11:37:54
		Page 95

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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
<mark>11</mark>	challenge the 30 percent commission charged by	
<mark>12</mark>	Google and Apple. Since August 2020, have there	
<mark>13</mark>	been additional goals sought by Project Liberty?	
<mark>14</mark>	A. I don't believe any additional goals have	
<mark>15</mark>	been discussed.	11:38:50
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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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<mark>18</mark>	Q. It's an email from Mr. Bengston to you,	
<mark>19</mark>	correct?	
<mark>20</mark>	A. It appears. It's addressed to me. I	04:26:35
21	think there are a number of people on this thread.	
22		
23		
<mark>24</mark>	Q. On his third point, last sentence on this	
<mark>25</mark>	page, it says "our strategy." And the full	04:26:58
		Page 229

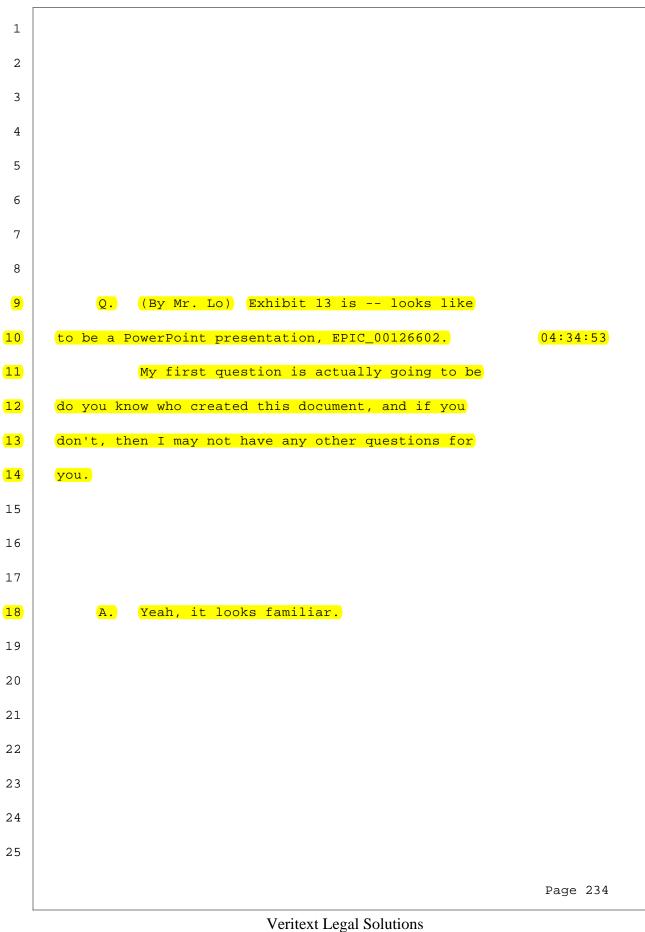
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1	sentence is: "Our strategy for releasing in iOS	04:27:00
2	first is mostly to disallow Google from having any	
3	reasons for rejecting the app when we submit to the	
4	Play Store, as it is likely they will know exactly	
5	what we are doing here."	04:27:15
6	Do you see that sentence?	
7	A. I see that sentence.	
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11	Q. Have you developed an understanding that
12	if something is up on the Apple store, it is less
13	likely to be rejected by Google in its review
14	process?
15	A. Like reading this, I am not I don't 04:29:09
16	think that's necessarily sound logic.
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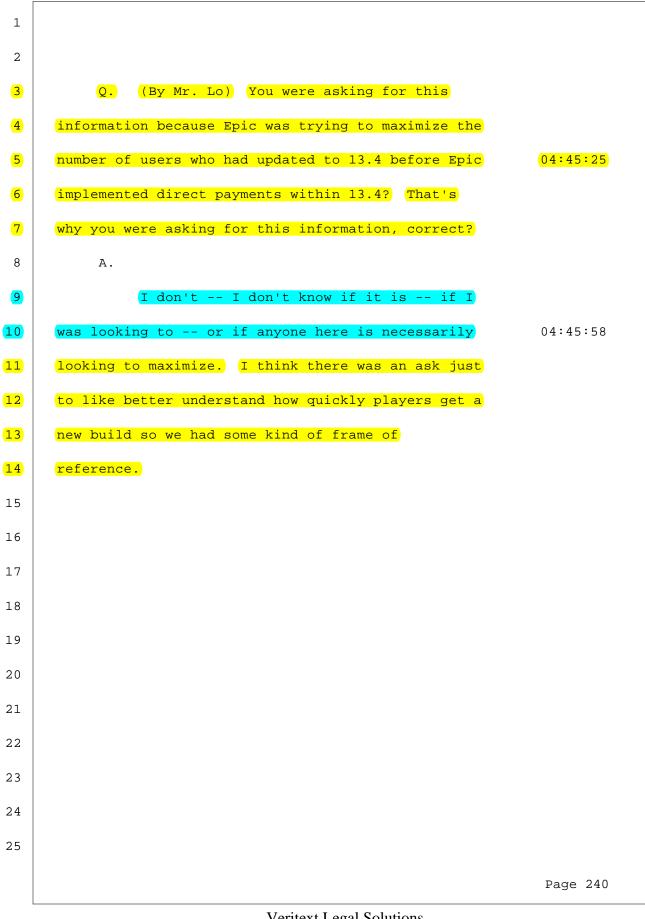
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1		
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5	Q. This particular deck, was it created by	04:36:05
6	the Epic side or the Apple side or something else?	
7	A. This was created by Epic to update Apple	
8	to the latest stuff in Fortnite.	
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1		
2	Q. (By Mr. Lo) Take a look at 14. And	
<mark>3</mark>	while you're doing that, Exhibit 14 is the top	
4	email is from Andrew Grant to Mr. Shobin,	
5	EPIC_00198749.	04:42:09
6		
7		
8		
9	Q. All right. The earliest email in this	
10	chain is by you, and you were looking for	04:44:15
<mark>11</mark>	information on how quickly players migrate onto a	
12	mobile update, correct?	
13	A. Yeah. I wanted to understand how quickly	
14	players were getting a new client update.	
<mark>15</mark>	Q. And the reason you were doing that was	04:44:35
<mark>16</mark>	you were anticipating that there would be an update	
<mark>17</mark>	with the hot fix inside, yes?	
<mark>18</mark>	A. Yeah. I believe we were trying to figure	
<mark>19</mark>	out if how many people would get the the	
20	build, I think 13.40.	04:44:58
21	Q. Right.	
22	Because you wanted the you wanted to	
23	maximize the number of players who had 13.40 before	
24	you triggered implementation before Epic	
<mark>25</mark>	triggered implementation of the hot fix, correct?	04:45:14
		Page 239

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## 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

Apple Inc.'s Designations	Epic Games, Inc.'s Designations
(Yellow Highlight)	(Blue Highlight)
4 minutes 49 seconds	N/A

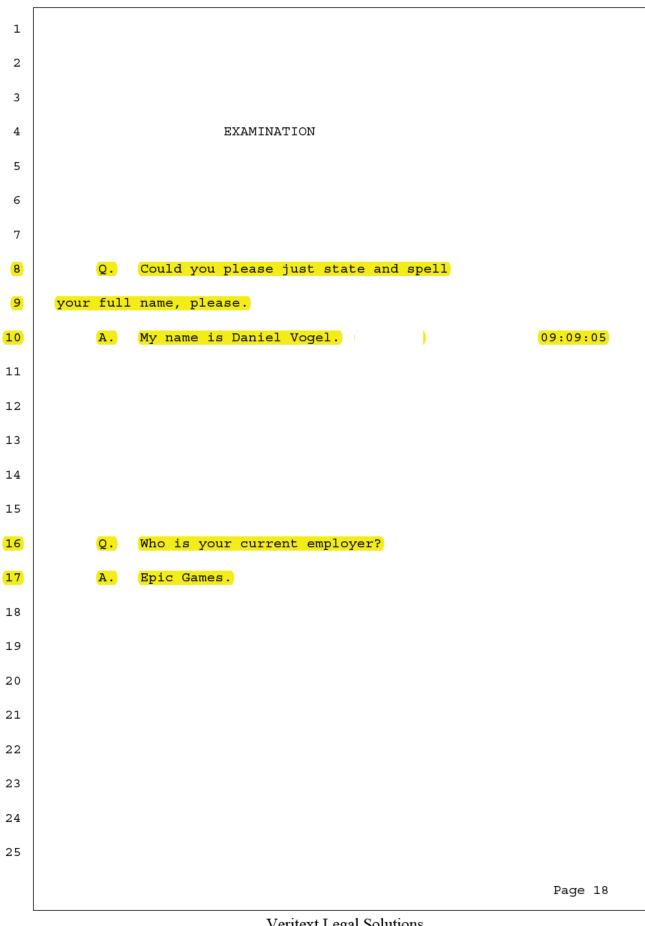
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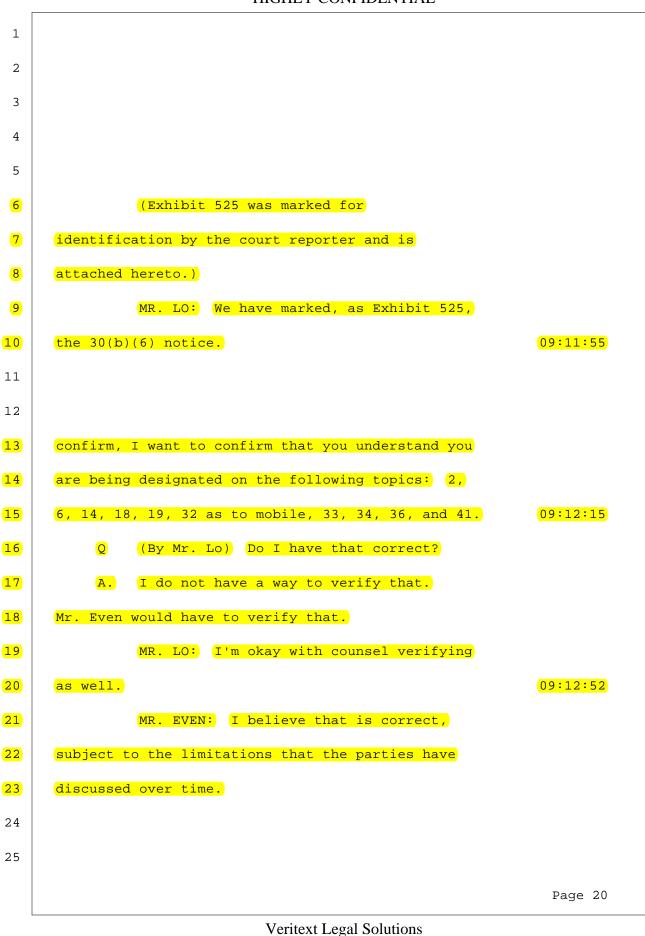
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1	DONALD R. CAMERON, et al.,
2	Plaintiffs,
3	vs. Case No. 4:19-cv-03074 YGR
4	APPLE INC.,
5	Defendant.
6	
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9	
10	**HIGHLY CONFIDENTIAL**
11	ZOOM DEPOSITION OF DANIEL VOGEL & EPIC GAMES,
12	INC.'S 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
17	
18	
19	
20	STENOGRAPHICALLY REPORTED BY:
	REBECCA L. ROMANO, RPR, CSR, CCR
21	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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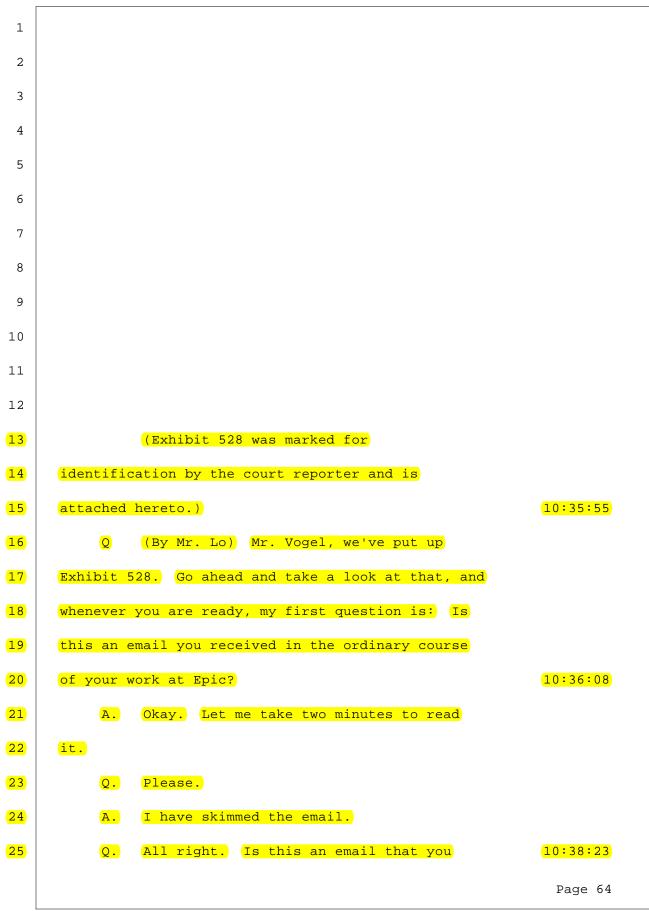
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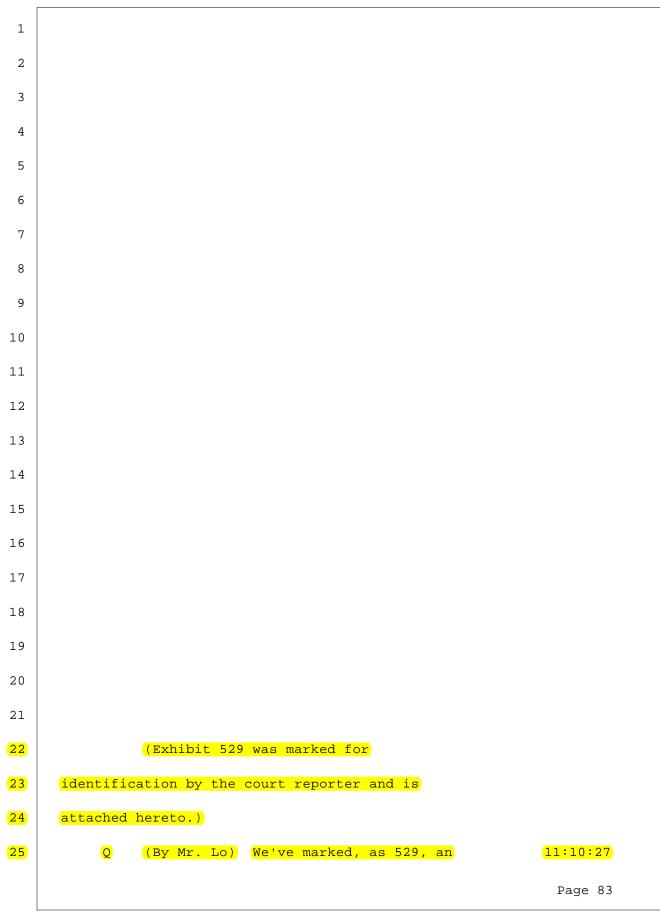
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1	received in the cour ordinary course of your	10:38:25
2	business at Epic?	
3	A. I I am on the cc, so I assume I	
4	received the email.	
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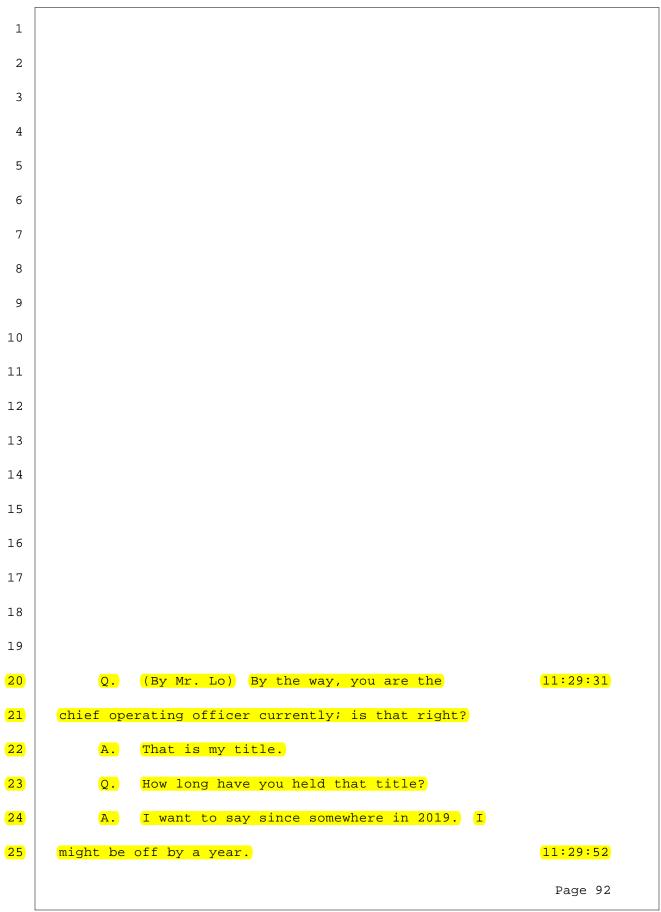
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1	email that you sent.	11:10:36
2	Take a look at that, and when you are	
<mark>3</mark>	ready, my first question is: Is this an email that	
4	you sent in August of 2018 in the ordinary course	
5	of your work at Epic?	(11:10:45)
6	A. Okay. Let me read it.	
<mark>7</mark>	I have skimmed the email.	
8	Q. This email relates to the security flaw	
9	that was in the initial launcher for Android,	
<mark>10</mark>	correct?	11:15:12
11	A. I believe this email covers the issue	
<mark>12</mark>	reported by Google Project Zero.	
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1		
2	Q. (By Mr. Lo) Okay. So prior to	
3	August 2020, why didn't Epic lower the price of	
4	V-Bucks for for people who were purchasing them	
5	on the PC if the fee structure was lower for Epic	11:42:51
6	on PC?	
7		
8	THE DEPONENT: Lowering the price of	
9	V-Bucks unilaterally on a single platform would	
10	result in arbitrage, and I believe there might be	11:43:13
11	other contractual requirements there, but I am not	
<mark>12</mark>	sure. But the main thing, definitely arbitrage.	
<mark>13</mark>	Q. (By Mr. Lo) Okay. But it why is	
14	arbitrage why is arbitrage a concern? Don't you	
<mark>15</mark>	want your users to pay the least amount for V-Bucks	11:43:39
<mark>16</mark>	that they can? Why is that a concern?	
17		
<mark>18</mark>	THE DEPONENT: Arbitrage, generally, is a	
<mark>19</mark>	concern to avoid, say, a Xbox player feeling forced	
20	to purchase on PC to for a lower price, say,	11:44:01
21	hence identical pricing.	
<mark>22</mark>	Q. (By Mr. Lo) Why is that I guess the	
23	question is: Why is that a bad thing if they can	
24	get a lower price by going to a PC and then going	
25	back to the Xbox to play?	11:44:23
		Page 102

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Г		
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
6		
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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