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16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **OAKLAND DIVISION**

19
20 EPIC GAMES, INC.,
21 Plaintiff and Counter-defendant,
22 vs.
23 APPLE INC.,
24 Defendant and Counterclaimant.

No. 4:20-CV-05640-YGR-TSH

**DECLARATION OF M. BRENT BYARS
IN SUPPORT OF PLAINTIFF
EPIC GAMES, INC.'S OPPOSITION TO
DEFENDANT APPLE INC.'S MOTION
FOR STAY OF INJUNCTION PENDING
APPEAL**

Date: Nov. 16, 2021, 2 p.m. (noticed date)

Nov. 9, 2021, 2 p.m. (stipulated date
pending Court approval)

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez-Rogers

1 I, M. Brent Byars, declare as follows:

2 1. I am an attorney at the law firm of Cravath, Swaine & Moore LLP, and am one of
3 the attorneys representing Epic Games, Inc. (“Epic”) in this action. I am admitted to appear
4 before this Court *pro hac vice*.

5 2. I submit this declaration in support of Epic’s Opposition to Apple Inc.’s (“Apple”)
6 Motion for Stay of Injunction Pending Appeal. The contents of this declaration are based on my
7 personal knowledge. If called as a witness, I could and would competently testify thereto.

8 3. Attached as **Exhibit A** is a true and correct copy of an article by Chance Miller,
9 *Apple describes Epic Games ruling as a ‘resounding victory’ for the App Store*, 9to5Mac
10 (September 10, 2021), <https://9to5mac.com/2021/09/10/apple-epic-games-ruling-statement/>.

11 4. Attached as **Exhibit B** is a true and correct copy of an article by Adi Robertson
12 and Zoe Schiffer, *Tim Cook tells Apple employees he’s ‘looking forward to moving forward’ after*
13 *Epic ruling*, The Verge (September 17, 2021), [https://www.theverge.com/2021/9/17/2](https://www.theverge.com/2021/9/17/2679724/tim-cook-epic-apple-antitrust-ruling-employee-meeting)
14 [679724/tim-cook-epic-apple-antitrust-ruling-employee-meeting](https://www.theverge.com/2021/9/17/2679724/tim-cook-epic-apple-antitrust-ruling-employee-meeting).

15 5. Attached as **Exhibit C** is a true and correct copy of a letter written by
16 Gary A. Bornstein to Mark A. Perry dated September 14, 2021, with two redactions concerning
17 sensitive information. The redactions that appear in this exhibit conceal solely Apple’s bank
18 account and routing numbers.

19 6. Attached as **Exhibit D** is a true and correct copy of a letter written by
20 Gary A. Bornstein to Mark A. Perry dated September 12, 2021.

21 7. Attached as **Exhibit E** is a true and correct copy of an article written by Juli
22 Clover, *Epic Games Asks Apple to Restore Fortnite in South Korea Following Ban on In-App*
23 *Purchase Requirement*, MacRumors (September 9, 2021), [https://www.macrumors.com/2](https://www.macrumors.com/2021/09/09/epic-games-fortnite-south-korea/)
24 [021/09/09/epic-games-fortnite-south-korea/](https://www.macrumors.com/2021/09/09/epic-games-fortnite-south-korea/).

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1 8. Attached as **Exhibit F** is a collection of true and correct screenshots of the App
2 Store pages for *PlayerUnknown's Battlegrounds* ("PUBG"), *Mortal Kombat* and *Hello Neighbor*,
3 which show in-app purchase options. The table below lists the respective page numbers for each
4 in the Exhibit. The screenshots were taken on October 18, 2021 and October 19, 2021.

App	Exhibit Pages
<i>PUBG</i>	1-2
<i>Mortal Kombat</i>	3-4
<i>Hello Neighbor</i>	5-6

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8 9. Attached as **Exhibit G** is an article by Chance Ivey, *Hello Neighbor Mod Kit*
9 *Released, Mod Contest Announced*, Unreal Engine (October 6, 2017), [https://www.unrealengine](https://www.unrealengine.com/en-US/blog/hello-neighbor-mod-kit-released-mod-contest-announced)
10 [.com/en-US/blog/hello-neighbor-mod-kit-released-mod-contest-announced](https://www.unrealengine.com/en-US/blog/hello-neighbor-mod-kit-released-mod-contest-announced).

11 10. Attached as **Exhibit H** is a collection of true and correct screenshots of the App
12 Store pages for *Unreal Remote*, *Unreal Remote 2*, *Unreal Match 3*, *Action RPG Game Sample*,
13 *Live Link Face* and *Live Link VCAM*. The table below lists the respective page numbers for each
14 in the Exhibit. The screenshots were taken on October 18, 2021.

App	Exhibit Pages
<i>Unreal Remote</i>	1-2
<i>Unreal Remote 2</i>	3-4
<i>Unreal Match 3</i>	5-6
<i>Action RPG Game Sample</i>	7-8
<i>Live Link Face</i>	9-10
<i>Live Link VCAM</i>	11-12

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21 11. Attached as **Exhibit I** is an article by Kate Park, *Epic Games asks Apple to*
22 *reinstate Fortnite in South Korea after new law*, TechCrunch (September 9, 2021), [https://](https://techcrunch.com/2021/09/09/epic-games-asks-apple-to-reinstate-fortnite-in-south-korea-after-new-law/)
23 [techcrunch.com/2021/09/09/epic-games-asks-apple-to-reinstate-fortnite-in-south-korea-after-](https://techcrunch.com/2021/09/09/epic-games-asks-apple-to-reinstate-fortnite-in-south-korea-after-new-law/)
24 [new-law/](https://techcrunch.com/2021/09/09/epic-games-asks-apple-to-reinstate-fortnite-in-south-korea-after-new-law/).

25 12. Attached as **Exhibit J** is an article by Michael Potuck, *Spotify happy with Epic vs.*
26 *Apple ruling but says more Apple legislation is 'urgent'*, 9to5Mac (September 10, 2021),
27 [https://9to5mac.com/2021/09/10/spotify-happy-epic-vs-apple-ruling-wants-more-apple-](https://9to5mac.com/2021/09/10/spotify-happy-epic-vs-apple-ruling-wants-more-apple-legislation/)
28 [legislation/](https://9to5mac.com/2021/09/10/spotify-happy-epic-vs-apple-ruling-wants-more-apple-legislation/).

