

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EPIC GAMES, INC.,
Plaintiff,

vs.

APPLE INC.,
Defendant.

APPLE INC.,
Counterclaimant,

v.

EPIC GAMES, INC.,
Counter-Defendant.

Case No. 4:20-cv-05640-YGR

PRETRIAL ORDER NO. 5

Dkt. Nos. 475, 476

TO ALL PARTIES AND COUNSEL OF RECORD:

The Court issues this Pretrial Order regarding trial logistics.

1. Media and Special Access. The Court has received responses to Pretrial Order No. 4 from (1) The Reporters Committee for Freedom of the Press and 18 Media Organizations (“Media Coalition”) (Dkt. No. 475); and (2) counsel for class plaintiffs in the related actions, *In re Apple iPhone Antitrust Litigation*, 4:11-cv-06714-YGR, and *Donald R. Cameron, et. al., v. Apple Inc.*, 4:19-cv-03074-YGR. (Dkt. No. 476)¹ Based on a review of the responses, the Court **HEREBY ORDERS** as follows:

¹ The Court notes that there was an error in Pretrial Order No. 4 regarding class plaintiffs’ counsel (2:17-18). The sentence there is **AMENDED** to read: “Similarly, the attorneys for the Class Plaintiffs shall meet and confer amongst themselves to determine the manner in which the attorneys shall be selected and shall provide the Court with its proposed protocol by Friday, April 23, 2021.”

1 *Media Access:* The Court **ADOPTS** the Media’s Coalitions proposal as follows: **on or**
 2 **before noon PDT on the Friday before a trial week**, the Media Coalition **SHALL** file with the
 3 Court—and provide via email to the Court’s Media Liaison, Nicholas Jackson—a pool schedule
 4 indicating which of the two reporters listed in the response (Dkt. No. 475) will provide pool
 5 coverage for each day of the trial. Any necessary changes to the pool schedule for a given day
 6 **SHALL** be communicated to the Court via Chambers email and to Mr. Jackson **at least 48 hours in**
 7 **advance**. So long as these names and changes are timely conveyed, these selected reporters are
 8 **AUTHORIZED** to enter the Ronald V. Dellums Federal Building & United States Courthouse and
 9 the specific courtroom (Courtroom 1) in accordance with the pool schedule provided to Court.²

10 Daily pool reports **SHALL** be made electronically available to all journalists and/or news
 11 organizations who request them by the end of each trial day. Any journalist and/or news
 12 organization who wishes to receive daily pool reports may contact counsel for the Media Coalition
 13 at ktownsend@rcfp.org to facilitate that access.

14 *Special Access:* The Court **ADOPTS** counsel for class plaintiffs’ proposal as follows: **on or**
 15 **before noon PDT on the Friday before a trial week**, counsel for class plaintiffs **SHALL** file with
 16 the Court a schedule indicating which specific individual attorney will attend each day of the trial.

17 The Court **ADOPTS** the proposed schedule as follows:

- 18 • Week 1: M-W: developer counsel; Th-F: consumer counsel;
- 19 • Week 2: M-W: consumer counsel; Th-F: developer counsel;
- 20 • Week 3: M-W: developer counsel; Th-F: consumer counsel; and

21 _____
 22 ² Each designated pool reporter **SHALL** have a press credential and/or other photo
 23 identification that can be checked against the pool schedule when they arrive at the courthouse.
 24 Members of the news media who serve as pool reporters **SHALL** also comply with the Court’s
 25 health and safety protocols while in the courthouse, including by wearing a protective face
 26 covering. Members of the news media who serve as pool reporters **SHALL** further comply with the
 27 Court’s General Order 58 which permits the text functions (and only the text functions) of
 28 electronic devices (such as typing documents, emailing, text messaging, and tweeting) to be used
 29 in a non-disruptive manner in the courtroom while proceedings are in session. *See* General Order
 30 No. 58, *Regulating Possession and Use of Electronic Devices in the Courthouse*, available at
https://www.cand.uscourts.gov/filelibrary/144/GO-58_Eff_9-15-2015.pdf (Oct. 20, 2005, as
 amended, Sept. 15, 2015). Outlets do exist in the courtroom’s public gallery which designated
 pool reporters may use. However, they may want to bring an extension cord to make access
 easier.

- Week 4 (if trial is ongoing): split evenly between consumer and developer counsel.

Any necessary changes to the schedule for a given day **SHALL** be communicated to the Court via Chambers email **at least 48 hours in advance**. So long as these names and changes are timely conveyed, these selected attorneys are **AUTHORIZED** to enter the Ronald V. Dellums Federal Building & United States Courthouse and the specific courtroom (Courtroom 1) in accordance with the schedule provided to Court.

Other Access: Other remaining counsel for class plaintiffs and members of the news media not serving as the designated pool reporters on a given trial day may listen to livestreamed audio of the trial on the designated telephone line provided by the Court. *See* Pretrial Order No. 4 (Dkt. No. 468).³ As stated in Pretrial Order No. 4, to access this telephone line, requests from remaining counsel and the media should be submitted through the following online form by **Thursday, April 29, 2021**: <https://www.surveymonkey.com/r/Epic-Apple>.

2. Public Access. As discussed in Pretrial Order No. 4, the telephone number for general public access will be publicized on the Court's website at either <https://www.cand.uscourts.gov/judges/gonzalez-rogers-yvonne-ygr/> or <https://cand.uscourts.gov/epic-games-inc-v-apple-inc/>. Such telephone numbers along with the access codes shall be posted on these websites on or before Friday, April 30, 2021.

The general public, including members of the media and attorneys for class plaintiffs in the related actions, may access a box account containing exhibits and demonstratives used that day of trial at the following link: <http://tinyurl.com/epicvapple>. Such link shall also be posted to the Court's websites above on or before Friday, April 30, 2021. The parties are **ORDERED** to comply with the requirements of Pretrial Order No. 4 in uploading documents to this box account.


3. Public Health Considerations. The Court has contemplated the parties' request to have the examining attorneys and the testifying witnesses forgo a mask during the trial. Having balanced considerations relating to the ongoing coronavirus pandemic, to the health and safety of

³ The Court's staff **SHALL** automatically mute those who dial-in to that designated telephone line in order to minimize background noise.

1 the public and Court staff, and to evaluating the credibility of the witnesses in this action, the
2 Court reaffirms its prior order that the questioning attorneys **MUST** wear masks. Credibility is not
3 at issue for these attorneys. With respect to the witnesses, as described and discussed before, the
4 Court will provide transparent masks for the witnesses. The parties may, however, at their
5 choosing, substitute full face shields to be used by testifying witnesses in lieu of the transparent
6 face mask.

7 **IT IS SO ORDERED.**

8 Dated: April 26, 2021


9 **YVONNE GONZALEZ ROGERS**
10 **UNITED STATES DISTRICT JUDGE**

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