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Consumer Plaintiffs*

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 **IN RE APPLE iPHONE ANTITRUST
LITIGATION**

Case No. 4:11-cv-06714-YGR-TSH

**ORDER GRANTING ~~[PROPOSED]~~
SUPPLEMENTAL PROTECTIVE
ORDER GOVERNING DISCOVERY
FROM ZYNGA, INC.**

Hon. Yvonne Gonzalez Rogers

16 DONALD R. CAMERON, et al.,

17 Plaintiffs,

Case No. 4:19-cv-03074-YGR

18 v.

19 APPLE INC.,

20 Defendant.

21 EPIC GAMES, INC., et al.,

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

22 Plaintiff, Counter-defendant,

23 v.

24 APPLE INC.,

25 Defendant, Counterclaimant.

1 Having considered Consumer Plaintiffs' Administrative Motion for Entry of Supplemental
 2 Protective Orders and any opposition(s) filed in response thereto, and good cause appearing, the
 3 Court hereby grants the motion and enters the following order:

4 **A. GENERAL PROVISIONS**

5 1. The definitions, terms and provisions contained in the Stipulated Amended
 6 Protective Order on January 21, 2021 (Case No. 4:11-cv-06714-YGR, Dkt. No. 381; Case No.
 7 4:19-cv-03074-YGR, Dkt. No. 252) (the "Protective Order") shall be incorporated herein by
 8 reference as though fully set forth herein; provided, however, that in the event of a conflict between
 9 any definition, term or provision of this Supplemental Protective Order and any definition, term or
 10 provision of the Protective Order, this Supplemental Protective Order will control with respect to
 11 such conflict.

12 2. The definitions, terms and provisions contained in this Supplemental Protective
 13 Order shall apply only to those Discovery Materials produced by Zynga¹, and nothing herein shall
 14 provide any rights or protections to the Parties to the Litigations² beyond those set forth in the
 15 Protective Order.

16 **B. ADDITIONAL DEFINITIONS**

17 1. Business Consultant: a consultant advising on or involved in competitive decision-
 18 making.

19 2. Party: A named Plaintiff or Defendant in the Litigations; but not any other
 20 individuals or entities listed on the docket, including those variously listed as "Interested Party"
 21 "Respondent" or "Miscellaneous".

22 3. Party Expert: with respect to "ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE
 23 COUNSEL EYES ONLY", a person with specialized knowledge or experience in a matter
 24 _____

25 ¹ The term "Zynga" shall include any entity that responds to subpoenas served on Zynga Inc.
 26 in the Litigations. References to "competitors" within this Supplemental Protective Order shall be
 interpreted to mean competitors of Zynga Inc. and its parents and subsidiaries.

27 ² Litigations shall mean *In re Apple iPhone Antitrust Litigation*, Case No. 4:11-cv-06714-
 28 YGR; *Cameron v. Apple Inc.*, Case No. 4:19-cv-03074-YGR; and *Epic Games, Inc. v. Apple Inc.*,
 Case No. 4:20-cv-05640.

1 pertinent to the Litigations who: (1) has been retained by a Party or its counsel to serve as an expert
2 witness or as a consultant in this action; (2) is not a current employee or current Business
3 Consultant of a Party, Zynga, or of any Zynga competitor, or otherwise currently involved in
4 competitive decision-making for a Party, Zynga, or for any Zynga competitor; (3) has not been a
5 past employee or Business Consultant of a Party, Zynga, or Zynga's competitor, or otherwise been
6 involved in competitive decision-making for a Party, Zynga, or Zynga's competitor; and (4) at the
7 time of retention, is not anticipated to become an employee or Business Consultant of a Party,
8 Zynga, or of any Zynga competitor, or to be otherwise involved in competitive decision-making for
9 a Party, Zynga, or for any Zynga competitor. If, while this action is pending, a Party learns that any
10 of its retained experts or consultants as defined herein is anticipating to become, or has become, an
11 employee or Business Consultant of a Party, Zynga, or any Zynga competitor, or otherwise
12 involved in competitive decision-making for a Party, Zynga, or any Zynga competitor, the Party
13 learning such information shall promptly disclose the information to Zynga.

14 4. “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”
15 Information or Items: “Confidential Information or Items” produced by Zynga, that contains the
16 following types of extremely sensitive information—algorithms and source code; non-public,
17 commercially sensitive customer lists or communications; non-public financial, marketing, or
18 strategic business planning information; non-public information regarding prices, costs, margins, or
19 other financial metrics; information relating to research, development, maintenance, improvement,
20 testing of, or plans for existing or proposed future products; non-public information concerning
21 Zynga's data protection practices or security protocols; evaluation of the strengths or vulnerabilities
22 of Zynga's product offerings, including non-public pricing and cost information; confidential
23 contractual terms, proposed contractual terms, or negotiating positions (including internal
24 deliberations about negotiating positions) taken with respect to Zynga, Zynga's partners and
25 affiliates, or competitors to Zynga; information relating to pending or abandoned patent
26 applications that have not been made available to the public; confidential submissions to
27 governmental entities describing Zynga's legal positions or theories; personnel files; sensitive
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1 personally identifiable information; commercially sensitive information about advertising including
2 financial metrics, contracts, platforms use, performance, methodology, strategy, or otherwise
3 commercially sensitive advertising information; commercially sensitive information about cloud
4 computing resources provided either by Zynga or a third-party provider, including historical or
5 forward-looking analyses and projections, pricing structures or financial metrics, usage metrics,
6 infrastructure, or contracts; commercially sensitive information about licensing, royalties, and fees
7 to acquire content or intellectual property; and communications that disclose any such information.

8 **C. ADDITIONAL PROTECTIONS FOR ACCESS TO AND USE OF ZYNGA**
9 **PROTECTED MATERIALS**

10 1. Manner of Designating “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE
11 COUNSEL EYES ONLY” Information or Items. Designation in conformity with this Supplemental
12 Protective Order requires:

13 (a) for information in documentary form (e.g., paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that
15 Zynga affix the legend “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
16 ONLY” to each page of any document for which Zynga seeks protection under this Supplemental
17 Protective Order. If only a portion or portions of the material on a page qualifies for protection,
18 Zynga also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
19 the margins).

20 If Zynga makes original documents or materials available for inspection, it need not
21 designate them for protection until after the inspecting Party has indicated which material it would
22 like copied and produced. During the inspection and before the designation, all of the material
23 made available for inspection shall be deemed “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE
24 COUNSEL EYES ONLY.” After the inspecting Party has identified the documents it wants copied
25 and produced, Zynga must determine which documents, or portions thereof, qualify for protection
26 under this Supplemental Protective Order. Then, before producing the specified documents, Zynga
27 must affix the appropriate legend (“ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL
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1 EYES ONLY”) to each page that contains such material. If only a portion or portions of the
2 material on a page qualifies for protection, Zynga also must clearly identify the protected portion(s)
3 (e.g., by making appropriate markings in the margins.)

4 (b) for testimony given in deposition or in other pretrial proceedings not
5 involving the court, that Zynga identify on the record, before the close of the deposition, hearing, or
6 other proceeding, all protected testimony. When it is impractical to identify separately each portion
7 of testimony that is entitled to protection and it appears that substantial portions of the testimony
8 may qualify for protection, Zynga may invoke on the record (before the deposition, hearing, or
9 other proceeding is concluded) a right to have up to 21 days to identify the specific portions of the
10 testimony as to which protection is sought. Only those portions of the testimony that are
11 appropriately designated for protection within the 21 days shall be covered by the provisions of this
12 Supplemental Protective Order. Alternatively, Zynga may specify, at the deposition or up to 21
13 days afterwards if that period is properly invoked, that the entire transcript shall be treated as
14 “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.” With respect to
15 trial, Zynga can petition the Court for appropriate protective measures which shall be requested in
16 advance of evidence being taken.

17 Zynga and the Parties shall give the other parties notice if they reasonably expect a
18 deposition, hearing, or other proceeding to include “ZYNGA HIGHLY CONFIDENTIAL –
19 OUTSIDE COUNSEL EYES ONLY” Information or Items so that the other parties can ensure that
20 only authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A to the Protective Order) are present at those proceedings. The use of a document as an
22 exhibit at a deposition shall not in any way affect its designation as “ZYNGA HIGHLY
23 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”

24 Transcripts containing “ZYNGA HIGHLY CONFIDENTIAL – OUTSIDE
25 COUNSEL EYES ONLY” Information or Items shall have an obvious legend on the title page that
26 the transcript contains such material, and the title page shall be followed by a list of all pages
27 (including line numbers as appropriate) that have been designated as “ZYNGA HIGHLY
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