

1 THEODORE J. BOUTROUS JR., SBN 132099  
2 tboutrous@gibsondunn.com  
3 RICHARD J. DOREN, SBN 124666  
4 rdoren@gibsondunn.com  
5 DANIEL G. SWANSON, SBN 116556  
6 dswanson@gibsondunn.com  
7 JAY P. SRINIVASAN, SBN 181471  
8 jsrinivasan@gibsondunn.com  
9 JASON C. LO, SBN 219030  
10 jlo@gibsondunn.com  
11 GIBSON, DUNN & CRUTCHER LLP  
12 333 South Grand Avenue Los Angeles, CA  
13 90071-3197 Telephone: 213.229.7000  
14 Facsimile: 213.229.7520

15 VERONICA S. MOYE (Texas Bar No.  
16 24000092; *pro hac vice*)  
17 vmoye@gibsondunn.com  
18 GIBSON, DUNN & CRUTCHER LLP  
19 2100 McKinney Avenue, Suite 1100  
20 Dallas, TX 75201  
21 Telephone: 214.698.3100  
22 Facsimile: 214.571.2900

23 *Attorneys for Defendant, APPLE INC.*

MARK A. PERRY, SBN 212532  
mperry@gibsondunn.com  
CYNTHIA E. RICHMAN (D.C. Bar No.  
492089; *pro hac vice*)  
crichman@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Telephone: 202.955.8500  
Facsimile: 202.467.0539

ETHAN DETTMER, SBN 196046  
edettmer@gibsondunn.com  
GIBSON, DUNN & CRUTCHER LLP  
555 Mission Street  
San Francisco, CA 94105-0921  
Telephone: 415.393.8200  
Facsimile: 415.393.8306

24 UNITED STATES DISTRICT COURT  
25 NORTHERN DISTRICT OF CALIFORNIA  
26 OAKLAND DIVISION

27 EPIC GAMES, INC.,  
28 Plaintiff, Counter-defendant,  
v.  
APPLE INC.,  
Defendant, Counterclaimant.

CASE NO. 4:20-CV-05640-YGR

APPLE INC.'S TENTATIVE INITIAL  
WITNESS LIST

The Honorable Yvonne Gonzalez Rogers  
Trial: May 3, 2021

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Pursuant to Pretrial Order No. 1 (ECF No. 371) and the Court’s Standing Order re: Pretrial Instructions in Civil Cases, Defendant and Counterclaimant Apple Inc. (“Apple”) serves its Tentative Initial Witness List of trial witnesses, other than for impeachment or rebuttal, reserving its rights to supplement or amend its list for good cause or in response to Epic Games, Inc.’s (“Epic”) witness list and/or other pre-trial disclosures. Apple also reserves the right to substitute deposition designations for live testimony, and vice versa, including based on the availability or non-availability of any witness to appear at trial.

DATE: March 19, 2021

**GIBSON DUNN & CRUTCHER LLP**

*/s/ Richard J. Doren*  
Richard J. Doren

*Attorney for Defendant and Counterclaimant  
Apple Inc.*

**APPLE WITNESS LIST**

<b><u>Witness</u></b>	<b><u>Apple’s Brief Statement of Substance of Testimony</u></b>	<b><u>Estimated Length of Direct Examination</u></b>	<b><u>Estimated Length of Cross-Examination</u></b>	<b><u>Estimated Length of Re-Direct Examination</u></b>	<b><u>Appearance</u></b>
<b><u>Apple Witnesses</u></b>					
Tim Cook, Chief Executive Officer*	Apple’s corporate values; development and launch of the App Store; competition faced by Apple.	1 hour	1 hour	10 minutes	Live, in person
Craig Federighi, Senior Vice President, Software Engineering*	iOS operating system; competition faced by Apple; Apple’s investment and efforts to combat malware, spyware, and other issues relating to app security and iOS device user protection.	2 hours	1 hour	10 minutes	Live, in person
Matt Fischer, Vice President, App Store	Marketing of apps available in the App Store; competitors and competition in the sale of apps and the different app marketplaces; Apple’s business relationships with app developers.	See Epic’s list for estimated lengths of examinations.			Live, in person

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Eric Friedman, Head of Fraud Eng., Algorithms, and Risk	Apple's investment and efforts to combat fraud, malware, spyware, and other issues relating to app security and iOS device user protection.	1 hour	15 minutes	5 minutes	Live, in person
Eric Gray, Director, Commerce & Payments*	Design and operation of Apple's payment processing policies and practices.	1 hour	15 minutes	5 minutes	Live, in person
Mark Grimm, Game Development Manager	The tools, services, and benefits that Apple provides to developers, including services and support Apple provided to Epic; Apple's relationship with Epic; Epic's breaches of its agreements with Apple and Epic's other misconduct.	1 hour	30 minutes	5 minutes	Live, in person
C.K. Haun, Senior Director, Developer Technical Services	App Store policies and guidelines; the App Store business model; Apple's policies relating to App Store commissions and developer price selection; technical services Apple provides to app developers.	30 minutes	15 minutes	5 minutes	Live, in person

APPLE INC.'S TENTATIVE INITIAL WITNESS LIST  
Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Trystan Kosmyka, Senior Director, Marketing*	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Shaan Pruden, Senior Director, Partnership Management and Worldwide Developer Relations	The tools, services, and benefits that Apple provides to developers, including services and support Apple provided to Epic.	1 hour	15 minutes	5 minutes	Live, in person
Phil Schiller, Apple Fellow*	Development and launch of the App Store; App Store policies and guidelines; the App Store business model; the App Store commission; app distribution; iOS operating system; competition faced by Apple; design, development, launch, and marketing of the iPhone.	6 hours	4 hours	1 hour	Live, in person
Michael Schmid, Head of Game Business*	The tools, services, and benefits that Apple provides to developers, including to Epic; Apple's relationship with Epic,	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.

APPLE INC.'S TENTATIVE INITIAL WITNESS LIST  
Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Apple’s Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Development, App Store	Epic’s breaches of its agreements with Apple, and Epic’s other misconduct.				
Document Custodian	Admission of business records and other documents in Apple’s possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.
<b><u>Epic Witnesses</u></b>					
Steve Allison, General Manager, Epic Games Store	The Epic Games Store business model and financial projections; the Epic Games Store’s revenue split; the Epic Games Store’s market share.	<i>See Epic’s list for estimated lengths of examinations.</i>			Live, in person, or by deposition designation.

<u>Witness</u>	<u>Apple’s Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Andrew Grant, Engineering Fellow	Enforcement of platform rules; <i>Fortnite</i> anti-cheat measures; the importance to Apple’s brand of protecting user privacy and security; Epic’s use of Apple-provided tools and services; Epic’s interest in workarounds to undercut Apple’s 30% commission; Epic’s efforts to subvert app review; Epic’s campaign against app stores.	<i>See Epic’s list for estimated lengths of examinations.</i>			Live, in person, or by deposition designation.
Joseph Kreiner, Vice President, Business Development	Benefits of cross-platform play; Epic’s relationships with console manufacturers, including contractual terms, commissions paid by Epic, and payment processing terms; fraud on the Epic Games Store.	<i>See Epic’s list for estimated lengths of examinations.</i>			Live or by deposition designation. If appearing live, Mr. Kreiner may request leave to appear remotely.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Thomas Ko, Senior Director, Head of Online Business Strategy and Operations	Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person, or by deposition designation.
Mark Rein, Vice President, Business Development	The Epic Games Store business model and commission; benefits of Apple marketing and other support provided to Epic; Epic's plans and practices concerning distribution through iOS, competing platforms, and alternative channels; Epic's campaign against app stores.	30 minutes	15 minutes	10 minutes	Live, in person, or by deposition designation.



<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Tim Sweeney, Chief Executive Officer*	Epic's business model, operations, and strategy; Epic's financial performance; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability; Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Daniel Vogel, Chief Operating Officer	Epic's exploration of sideloading on iOS and Android; Epic's launch of <i>Fortnite</i> outside of the Google Play Store; security of <i>Fortnite</i> and the Epic Games Store, including the Xsolla payment processor; concerns over cross-platform arbitrage of "V-bucks" purchases; Epic's attempts to avoid Apple's App Store review process; Epic's campaign against app stores.	30 minutes	15 minutes	10 minutes	Live, in person
Matthew Weissinger, Vice President, Marketing*	Epic's pricing and marketing activities, including as to <i>Fortnite</i> ; <i>Fortnite</i> 's profit margin; <i>Fortnite</i> 's weaknesses on mobile systems relative to game consoles; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person.
Document Custodian	Admission of business records and other documents in Epic's possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.

APPLE INC.'S TENTATIVE INITIAL WITNESS LIST  
Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Joseph Babcock, Former Chief Financial Officer	Epic's financial performance; Epic's business model and strategy; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability.	30 minutes	10 minutes	N/A	Deposition Designation
Marc Hutcheson, Marketing Manager (former Epic)	Apple's marketing support of Epic and <i>Fortnite</i> ; Epic's violations of agreements with Apple and related rules; the Epic Games Store's operations and customer acquisition strategies.	30 minutes	10 minutes	N/A	Deposition Designation
Haseeb Malik, Marketing Manager (former Epic)	Tools, services, and benefits that Apple provided to Epic; platforms on which Epic makes its games available; Epic's campaign against app stores.	30 minutes	10 minutes	N/A	Deposition Designation
David Nikdel, Lead, Online Gameplay Systems	Engineering and technology benefits received from Apple; quality of non-iOS platforms; Epic's direct payment hotfix.	15 minutes	5 minutes	N/A	Deposition Designation

## APPLE INC.'S TENTATIVE INITIAL WITNESS LIST

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

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Nick Penwarden, Vice President, Engineering	The Unreal Engine business model; iOS and Android proprietary software and tools; engineering support from Apple; cross-platform play.	15 minutes	5 minutes	N/A	Deposition Designation
Alec Shobin, Senior Marketing Manager	Marketing for mobile games; the App Store review process; Epic's campaign against app stores.	30 minutes	10 minutes	N/A	Deposition Designation
<b><u>Third Party Witnesses</u></b>					
Vivek Sharma, Vice President, Gaming, Facebook, Inc.	TBD after Apple deposes this individual.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Lori Wright, Vice President, Xbox Business Development, Microsoft Corporation	TBD after Apple deposes this individual.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Benjamin Simon, Founder and Chief Executive Officer, Yoga Buddhi Co.	TBD after Apple deposes this individual.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.

## APPLE INC.'S TENTATIVE INITIAL WITNESS LIST

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

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Shelley Gould, President, Co-Founder, Neuro-Fin d/b/a SmartStops	TBD after Apple deposes this individual.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Aashish Patel, Nvidia Corporation	Tools, services, and support that Apple provided to Nvidia; distribution on competitor platforms and through alternative channels; communications with Apple; compliance with Apple's App Review Guidelines; Nvidia's affiliation with Epic.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Adrian Ong, Senior Vice President of Operations, Match Group	Tools, services, and support that Apple provided to Match Group; distribution on competitor platforms and through alternative channels; communications with Apple; compliance with Apple's App Review Guidelines; Match's affiliation with Epic.	15 minutes	5 minutes	N/A	Deposition Designation

## APPLE INC.'S TENTATIVE INITIAL WITNESS LIST

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

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Scott Forstall, former Senior Vice President, iOS Software	Differences between mobile devices and PCs; security and privacy considerations for mobile devices; historical App Store policies and practices.	45 minutes	5 minutes	N/A	Deposition Designation
Ron Okamoto, former Vice President, Worldwide Developer Relations	App Store policies and guidelines; the App Store business model; resources, tools, software, content, and services, made available to app developers, including pursuant to the Apple Developer Agreement and Program License Agreement; app development for macOS; transformation of the application software business.	30 minutes	5 minutes	N/A	Deposition Designation
Phillip Shoemaker, former Technology Director, App Review	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	30 minutes	5 minutes	N/A	Deposition Designation

## APPLE INC.'S TENTATIVE INITIAL WITNESS LIST

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

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<b><u>Apple Expert Witnesses</u></b>					
Richard Schmalensee	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct) <sup>1</sup>	3 hours and 30 minutes	30 minutes	Live, in person
Lorin Hitt	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	3 hours and 30 minutes	30 minutes	Live, in person
Francine LaFontaine	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	2 hours and 30 minutes	20 minutes	Intends to appear live and in person, but may request leave to appear remotely.
Daniel Rubinfeld	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	2 hours	20 minutes	Live, in person

<sup>1</sup> Apple's position is that with written directs, any live introduction should be limited to one hour. Epic disagrees with Apple's position.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
James Malackowski	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour and 30 minutes	20 minutes	Live, in person
Aviel Rubin	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	2 hours and 30 minutes	20 minutes	Live, in person
Dominique Hanssens	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour	20 minutes	Live, in person

APPLE INC.'S TENTATIVE INITIAL WITNESS LIST  
Case No. 4:20-cv-05640-YGR-TSH



**CERTIFICATE OF SERVICE**

I, Betty X. Yang, hereby certify that I am a citizen of the United States, over the age of eighteen, and not a party to this action. I hereby certify that on March 19, 2021, I delivered the foregoing **APPLE INC.’S TENTATIVE INITIAL WITNESS LIST**, via the Court’s ECF system, to the following counsel in this action and the related actions:

PAUL R. RIEHLE  
paul.riehle@faegredrinker.com  
**FAEGRE DRINKER BIDDLE &  
REATH LLP**

CHRISTINE A. VARNEY  
cvarney@cravath.com  
KATHERINE B. FORREST  
kforrest@cravarth.com

GARY A. BORNSTEIN  
gbornstein@cravarth.com

YONATAN EVEN  
yeven@cravath.com

LAUREN A. MOSKOWITZ  
lmoskowitz@cravath.com

M. BRENT BYARS  
mbyars@cravath.com  
**CRAVATH, SWAINE & MOORE LLP**

*Counsel to Epic Games, Inc.*

STEVE W. BERMAN  
steve@hbsslaw.com  
ROBERT F. LOPEZ  
robl@hbsslaw.com

SHANA E. SCARLETT  
shanas@hbsslaw.com

BENJAMIN J. SIEGEL  
bens@hbsslaw.com

**HAGENS BERMAN SOBOL SHAPIRO  
LLP**

*Interim Class Counsel for the Developer  
Plaintiffs*

MARK C. RIFKIN  
rifkin@whafh.com  
RACHELE R. BYRD  
byrd@whafh.com

MATTHEW M. GUINEY  
guiney@whafh.com

BRITTANY N. DEJONG  
dejong@whafh.com

**WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP**

*Interim Class Counsel for the Consumer  
Plaintiffs*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 19th day of March, 2021, at Dallas, Texas.

*/s/ Betty X. Yang*

\_\_\_\_\_  
Betty X. Yang