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14

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**
18

19
20 **IN RE GOOGLE PLAY STORE**
ANTITRUST LITIGATION
21 **THIS DOCUMENT RELATES TO:**
22 *Epic Games, Inc. v. Google LLC et al.*, Case
23 No. 3:20-cv-05671-JD
24

Case No. 3:21-md-02981-JD

Case No. 3:20-cv-05671-JD

JOINT STIPULATION AND
[PROPOSED] ORDER REGARDING
EPIC GAMES, INC.'S REQUEST FOR
PRELIMINARY RELIEF

Judge: Hon. James Donato

1 Plaintiff/Counter-Defendant Epic Games, Inc. (“Epic”) and Defendants/Counterclaimants
2 Google LLC; Google Ireland Limited; Google Commerce Limited; Google Asia Pacific Pte. Ltd.;
3 and Google Payment Corp. (collectively “Google,” and together with Epic the “Stipulating
4 Parties”), through their respective attorneys of record and without waiving any rights, claims, or
5 defenses except as expressly provided below, hereby stipulate to the following:
6

7 On April 28, 2022, Epic filed a Motion for Preliminary Injunction (ECF No. 213; the
8 “Motion”) seeking an order enjoining Google from “removing . . . or otherwise making
9 unavailable the app Bandcamp . . . on the basis that Bandcamp offers in-app payments through
10 means other than Google Play Billing.” Consistent with the Court’s guidance at the May 12, 2022
11 status conference encouraging the parties to confer in an effort to resolve the Motion and the relief
12 sought therein (ECF No. 230), the Stipulating Parties have met and conferred on the issues
13 presented by the Motion.
14

15 NOW, THEREFORE, the Stipulating Parties agree as follows (the “Agreement”):

- 16 1. Google agrees that, for as long as this Agreement remains in effect and effective
17 immediately, it will not remove from, de-list, refuse to list on, or otherwise make
18 unavailable the Bandcamp app on the Google Play Store (“Google Play”), nor will
19 Google reject, unreasonably delay, or refuse to distribute updates of the Bandcamp
20 app, on the basis that the Bandcamp app or updates to the app offer in-app
21 purchases of digital goods or services through means other than Google Play’s
22 billing system. For the avoidance of doubt, Google reserves the right to enforce all
23 other provisions of the Google Play Developer Distribution Agreement (DDA) and
24 Google Play Developer Program Policies to the extent such enforcement is
25 consistent with the terms of this Agreement.
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- 1 2. Beginning June 1, 2022, Epic shall pay into a mutually acceptable escrow account,
2 on a monthly basis, the applicable fee under the DDA on all revenue collected for
3 in-app transactions of digital goods and services in the Bandcamp app distributed
4 through Google Play, which the Stipulating Parties agree, assuming the Bandcamp
5 app maintains its current business model and practices, is 10% for the duration of
6 this Agreement. Epic will provide Google with a monthly accounting of all in-app
7 digital goods and services purchased in the prior month on the Bandcamp app
8 distributed through Google Play sufficient to permit Google to verify the accuracy
9 of the amounts paid into escrow in accordance with this Agreement.
10
- 11 3. The Stipulating Parties reserve and do not waive any defenses, rights, or claims for
12 relief with respect to these actions, including (i) Epic's Complaint and any
13 amendment thereto and (ii) Google's Answers, Defenses, and Counterclaims to
14 Epic Games, Inc.'s First Amended Complaint for Injunctive Relief and any
15 amendment thereto. Google also reserves and does not waive any of the terms of
16 the DDA or any rights under or related to that agreement. Google expressly
17 reserves the right to pursue any remedies available under law or equity, including
18 but not limited to, for breaches of the DDA, and to establish its entitlement to
19 damages, including but not limited to funds placed by Epic in escrow (as
20 referenced in paragraph 2 above).
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- 22 4. If, in a final judgment, Google's recovery on such claims or remedies is equal to or
23 exceeds the amount placed in escrow by Epic, then Epic shall consent to the release
24 of the funds in escrow to Google and pay Google the difference between the funds
25 in escrow and the amount awarded to Google in the final judgment. If, in a final
26 judgment, Google's recovery on such claims, if any, is less than the amount placed
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1 in escrow, then Epic shall consent to release to Google the amount awarded to
2 Google in the final judgment, and the remaining funds in the escrow account shall
3 be returned to Epic. If, in a final judgment, Epic prevails and Google has no
4 recovery on such claims, then Google shall consent to the release of all funds in the
5 escrow account to Epic.
6

7 5. This Agreement does not apply to any app except the Bandcamp app (i.e. the app
8 Bandcamp made available as of May 18, 2022 and that is the subject of the
9 Motion), and the Stipulating Parties reserve all rights with respect to all other apps.

10 6. Pursuant to this stipulation, the Stipulating Parties agree that the Motion shall be
11 deemed provisionally denied as moot without prejudice in light of the Agreement
12 set forth herein. Epic reserves and does not waive the right to pursue the relief
13 sought in the Motion in the event the Agreement is breached by Google or
14 terminated for any reason, and Google reserves any defenses thereto.
15

16 7. This Agreement is effective when filed, and terminates on the earlier of:

17 a. The date of a final judgment or other disposition of this action (*Epic Games,*
18 *Inc. v. Google LLC et al.*, Case No. 3:20-cv-05671-JD) at the trial court
19 level.
20

21 b. Sixty days after Google or Epic notifies counsel of record for the other
22 party, in writing, that it is terminating this Agreement.
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1 Dated: May 20, 2022

CRAVATH, SWAINE & MOORE LLP
Christine Varney (*pro hac vice*)
Katherine B. Forrest (*pro hac vice*)
Gary A. Bornstein (*pro hac vice*)
Timothy G. Cameron (*pro hac vice*)
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Lauren A. Moskowitz (*pro hac vice*)
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M. Brent Byars (*pro hac vice*)

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8 Respectfully submitted,

9 By: /s/ Lauren A. Moskowitz
Lauren A. Moskowitz

10 *Counsel for Plaintiff Epic Games, Inc.*

12 Dated: May 20, 2022

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Rishi P. Satia

16 Respectfully submitted,

17 By: /s/ Brian C. Rocca
Brian C. Rocca

19 Dated: May 20, 2022

O'MELVENY & MYERS LLP
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Ian Simmons
Benjamin G. Bradshaw
Stephen J. McIntyre

22 Respectfully submitted,

23 By: /s/ Ian Simmons
Ian Simmons

1 Dated: May 20, 2022

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Jonathan I. Kravis
Dane P. Shikman

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6 Respectfully submitted,

7 By: /s/ Glenn D. Pomerantz
8 Glenn D. Pomerantz

9 *Counsel for Defendants Google LLC et al.*

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11 **E-FILING ATTESTATION**

12 I, Kuruvilla Olasa, am the ECF User whose ID and password are being used to file
13 this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the
14 signatories identified above has concurred in this filing.

15
16 /s/ Kuruvilla Olasa
Kuruvilla Olasa

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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3 DATED: _____

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HON. JAMES DONATO
U.S. District Judge

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