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Dec 15 2020

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NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

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

IN RE APPLE IPHONE ANTITRUST
LITIGATION

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

DONALD R. CAMERON, *et al.*,

Plaintiffs,

v.

APPLE INC.,

Defendant.

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

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER RE:
VALIDATION PROTOCOL**

Judge: Hon. Yvonne Gonzalez Rogers;
Hon. Thomas S. Hixson

1 Plaintiff Epic Games, Inc. (“Epic”), the Developer Plaintiffs, the Consumer Plaintiffs
2 and Defendant Apple Inc. (“Apple”) (collectively, “the Parties,” and individually, a “Party”)
3 submit the following protocol to govern the use and validation of the Parties’ respective
4 document culling and review efforts.

5 Validation of Apple’s TAR Process

- 6 1. Apple is using Technology Assisted Review (“TAR”) to select the documents that will
7 be subject to human review or produced without human review. The steps described in
8 the following paragraphs 2 through 7 shall be completed separately for the following
9 document populations (a) and (b): (a) Apple’s total TAR population comprised of (i) the
10 documents collected by Apple for the custodians and time periods identified initially in
11 the class action cases (“Apple’s Class Action Collection”) and (ii) the documents
12 collected by Apple for the custodians added following the filing of the *Epic* litigation,
13 as well as the documents collected by Apple for additional time periods for certain class
14 action custodians (“Apple’s *Epic* Collection”); and (b) Apple’s *Epic* Collection alone.
- 15 2. At the substantial completion of its TAR process, Apple shall disclose the number of
16 documents to which the TAR process has been applied, the number of documents either
17 reviewed or produced without human review as a result of its TAR process, and the
18 number of documents excluded from human review and production based on its TAR
19 process.
- 20 3. Apple shall gather: (1) a random sample of 500 documents from those produced or
21 withheld as privileged (the “Reviewed Responsive/Produced Documents”); (2) a
22 random sample of 500 documents from those unproduced documents identified as non-
23 responsive during the course of the review (the “Unproduced Reviewed Nonresponsive
24 Documents”); and (3) a random sample of 500 documents from those unproduced
25 documents that were unreviewed at the time of validation (the “Unreviewed
26 Documents”) (collectively, these samples are the “TAR Validation Samples”).
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- 1 4. The TAR Validation Samples shall be coded by an SME, *i.e.*, an attorney employee of
2 outside counsel, who is knowledgeable about the subject matter of the litigation and
3 assigned to work on the above-captioned cases. For purposes of the SME's validation
4 review, the SME will not be provided with any information regarding how any
5 document in the TAR Validation Samples was initially categorized during the course of
6 the review.
- 7 5. The estimated recall of the review will then be calculated as follows: the total number
8 of documents produced or withheld as privileged that were correctly identified as
9 responsive, divided by the sum of: (1) the total number of documents produced or
10 withheld as privileged that were correctly identified as responsive; (2) the number of
11 unproduced reviewed documents incorrectly marked nonresponsive; and (3) the number
12 of unproduced unreviewed but responsive documents. For purposes of the foregoing
13 recall calculation: (1) the total number of documents produced or withheld as privileged
14 that were correctly identified as responsive will be calculated by multiplying the
15 number of documents produced or withheld as privileged by the percentage of the 500
16 Reviewed Responsive/Produced Documents that were responsive (as determined by the
17 SME); (2) the unproduced reviewed documents incorrectly marked nonresponsive will
18 be calculated by multiplying the total number of documents marked as nonresponsive
19 by the percentage of the 500 Unproduced Reviewed Nonresponsive Documents that
20 were incorrectly marked as nonresponsive (as determined by the SME); and (3) the
21 unproduced unreviewed but responsive documents will be calculated by multiplying the
22 total number of unproduced unreviewed documents by the percentage of the 500
23 Unreviewed Documents subsequently coded responsive by the SME.
- 24 6. In calculating recall, Apple shall not consider in its calculation any set of documents it
25 reasonably expects to constitute 2% or more of documents produced from the universe
26 of documents to which TAR was applied that comprises (a) duplicates or near
27 duplicates of one another; (b) documents automatically generated by the same or similar
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1 source; (c) documents automatically sent from the same or similar sender; or (d) any
2 other category of documents identified as responsive on a categorical basis.

3 7. Apple shall provide the other Parties with the recall calculations based on its TAR
4 Validation Samples. For Apple, a recall rate of 70% (75% with respect to Apple's *Epic*
5 Collection), as confirmed by an SME shall be considered presumptively acceptable, and
6 if another Party believes that additional documents should be produced after a 70%
7 recall rate (75% with respect to Apple's *Epic* Collection) is achieved and confirmed by
8 an SME, that Party must make a detailed showing as to how the probative value
9 outweighs the burden of further document review. If a recall rate of 70% (75% with
10 respect to Apple's *Epic* Collection) is not achieved by Apple, Apple shall continue to
11 produce documents until a further validation test adhering to the above requirements
12 confirms that 70% (75% with respect to Apple's *Epic* Collection) recall has been
13 achieved, unless otherwise agreed to by the Parties.

14 8. If Apple has previously validated a document production as described above and
15 achieved the designated recall objective, Apple need not repeat validation of that
16 production unless any changed circumstances (such as the additional collection of
17 documents) are mathematically significant enough potentially to cause Apple to fail to
18 reach the designated recall objective with respect to that document production.

19 Validation of Epic's Linear Review Process

20 9. Epic is using linear review of documents that hit on agreed upon search terms to
21 identify documents responsive to requests for production served on it. At the
22 substantial completion of its linear review process, Epic shall disclose the number of
23 documents that hit on the agreed search terms, the number of documents produced or
24 withheld as privileged, and the number of documents identified as non-responsive
25 during the course of the review.

26 10. Epic shall gather: (1) a random sample of 500 documents from those produced or
27 withheld as privileged (the "Reviewed Responsive/Produced Documents"); and (2) a
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1 random sample of 500 documents from those unproduced documents identified as non-
2 responsive during the course of the review (the “Unproduced Reviewed Nonresponsive
3 Documents”) (collectively, these samples are the “Epic Validation Samples”).

4 11. The Epic Validation Samples shall be coded by an SME, *i.e.*, an attorney employee of
5 outside counsel, who is knowledgeable about the subject matter of the litigation and
6 assigned to work on the above-captioned cases. For purposes of the SME’s validation
7 review, the SME will not be provided with any information regarding how any
8 document in the Epic Validation Samples was initially categorized during the course of
9 the review.

10 12. The estimated recall of the review will then be calculated as follows: the total number
11 of documents produced or withheld as privileged that were correctly identified as
12 responsive, divided by the sum of: (1) the total number of documents produced or
13 withheld as privileged that were correctly identified as responsive; and (2) the number
14 of unproduced reviewed documents incorrectly marked nonresponsive. For purposes of
15 the foregoing recall calculation: (1) the total number of documents produced or
16 withheld as privileged that were correctly identified as responsive will be calculated by
17 multiplying the number of documents produced or withheld as privileged by the
18 percentage of the 500 Reviewed Responsive/Produced Documents that were responsive
19 (as determined by the SME); and (2) the unproduced reviewed documents incorrectly
20 marked nonresponsive will be calculated by multiplying the total number of documents
21 marked as nonresponsive by the percentage of the 500 Unproduced Reviewed
22 Nonresponsive Documents that were incorrectly marked as nonresponsive (as
23 determined by the SME).

24 13. In calculating recall, Epic shall not consider in its calculation any set of documents it
25 reasonably expects to constitute 2% or more of documents produced that comprises (a)
26 duplicates or near duplicates of one another; (b) documents automatically generated by
27 the same or similar source; (c) documents automatically sent from the same or similar
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1 sender; or (d) any other category of documents identified as responsive on a categorical
2 basis.

3 14. Epic shall provide the other Parties with the recall calculations based on the Epic
4 Validation Samples. A recall rate of 75% as confirmed by an SME shall be considered
5 presumptively acceptable, and if another Party believes that additional documents
6 should be produced after a 75% recall rate is achieved and confirmed by an SME, that
7 Party must make a detailed showing as to how the probative value outweighs the burden
8 of further document review. If a recall rate of 75% is not achieved, Epic shall produce
9 documents until a further validation test adhering to the above requirements confirms
10 that 75% recall has been achieved, unless otherwise agreed to by the Parties.

11 Parties Exempted from Validation

12 15. A Party is not obligated to conduct validation if it has conducted exhaustive linear
13 review of every document in its document collection, which does not exceed 2500
14 documents.

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17 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.**
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1 Dated: December 14, 2020

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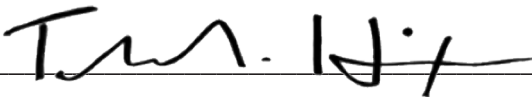
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11
12 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

13
14 DATED: December 15, 2020



15 THE HONORABLE UNITED STATES
16 MAGISTRATE JUDGE THOMAS S. HIXSON

17
18 **E-FILING ATTESTATION**

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

22
23 _____
24 */s/ Jay P. Srinivasan*
25 Jay P. Srinivasan