



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1378/5/7/20

BETWEEN:

(1) EPIC GAMES, INC.
(2) EPIC GAMES INTERNATIONAL S.À.R.L

Claimants

and

(1) ALPHABET INC.
(2) GOOGLE LLC
(3) GOOGLE IRELAND LIMITED
(4) GOOGLE COMMERCE LIMITED
(5) GOOGLE PAYMENT LIMITED

Defendants

ORDER

UPON hearing counsel for all parties at a case management conference on 6 December 2021

AND UPON the US Parties (defined below) (which includes the first Claimant and the second to fourth Defendants) being subject to a Stipulated Amended Protective Order (“**SAPPO**”) and a Stipulated Amended Supplemental Protective Order governing production of protected non-party materials and information (“**SASPO**”) issued, in the US Proceedings (defined below) on 22 October 2021 and annexed hereto (collectively, the "**US Protective Orders**")

AND UPON the US Parties (defined below) having designated information and material for protection in the US Proceedings (defined below) in accordance with the US Protective Orders

AND UPON the Claimants and the Defendants (together, the “**Parties**”) having agreed that disclosure given in the US Proceedings (defined below) shall stand as disclosure in these

proceedings given the particular circumstances of this case, including the commonality of parties, the direct overlap in certain issues, and the fact that a significant review exercise by the US Parties has already commenced

AND UPON the Parties having agreed that disclosure given in the US Proceedings (defined below) should be supplemented as necessary by targeted additional UK disclosure in respect of any UK-specific custodians and/or issues

AND UPON the Parties having agreed that notwithstanding the collateral use restrictions that arise under Rule 102 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the "**CAT Rules**") and paragraph 7 of the SAPO, there would be efficiencies, in the highly specific circumstances of this case, if the Parties' and the US Parties' respective legal teams, experts and witnesses were able to discuss and freely share materials (i) that are subject to the US Protective Orders; and (ii) first produced in these proceedings through supplemental disclosure.

AND UPON the Parties having agreed to the terms of this Order

IT IS ORDERED BY CONSENT THAT:

1. For the purposes of this Order:
 - (a) "**Confidential Material**" refers to (i) documents or information designated as "CONFIDENTIAL" under the SAPO or (ii) documents or information first produced in these proceedings that is (or is likely to be) accorded confidential treatment pursuant to Rule 99 and/or Rule 101 of the CAT Rules.
 - (b) "**Designated In-House Counsel**" means, for each Party, the two In-House Counsel named in Part A of Annex A to this Order who (i) have no involvement or reasonably foreseeable involvement in competitive decision-making, and (ii) may be provided access to Confidential and Highly Confidential Material in these proceedings.
 - (c) "**Designating Party**" means a Party, US Party or third-party that designated information that it produces in these proceedings, or has produced or subsequently produces in the US Proceedings, as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material.

- (d) **"Expert"** means a person named in Part A of Annex A to this Order or bound by the US Protective Orders with specialised knowledge or experience in a matter pertinent to these proceedings who has been retained by a Party to serve as an expert witness or as a consultant in these proceedings or the US Proceedings.
- (e) **"External Counsel"** means any counsel and instructing solicitors named in Part A of Annex A to this Order or bound by the US Protective Orders who are not employees of a Party but are retained to represent or advise a Party and are instructed in these proceedings or the US Proceedings by that Party.
- (f) **"Highly Confidential Material"** refers to: (i) documents or information designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" under the SAPO; or (ii) extremely sensitive and confidential documents or information:
 - (i) disclosure of which to another Party or third party would create a substantial risk of serious harm that could not be avoided by less restrictive means; and
 - (ii) is (or is likely to be) accorded confidential treatment pursuant to Rule 99 and/or Rule 101 of the CAT Rules.
- (g) **"In-House Counsel"** refers to qualified lawyers named in Part A of Annex A to this Order or bound by the US Protective Orders who are employees of a Party, or a Party's affiliate, and who have responsibility for managing this action.
- (h) **"Non-Party Highly Confidential Material"** refers to third party documents or information designated as "NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" under the SASPO or extremely sensitive and confidential third party documents or information:
 - (i) disclosure of which to a Party or another third party would create a substantial risk of serious harm that could not be avoided by less restrictive means; and

- (ii) is (or is likely to be) accorded confidential treatment pursuant to Rule 99 and/or Rule 101 of the CAT Rules.
- (i) "**Professional Vendors**" means those persons or entities named in Part A of Annex A to this Order or bound by the US Protective Orders that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organising, storing, or retrieving data in any form or medium and their employees and subcontractors).
- (j) "**Protected Material**" means any material that is designated as "Confidential Material", "Highly Confidential Material" or "Non-Party Highly Confidential Material" pursuant to the US Protective Orders or this Order.
- (k) "**Receiving Party**" means a Party or US Party that received Protected Material in the US Proceedings or in these proceedings, as applicable.
- (l) "**US Parties**" means the first Claimant, the second to fourth Defendants, Google Asia Pacific Pte. Limited and Google Payment Corp.
- (m) "**US Proceedings**" means the case of *Epic Games Inc. v. Google LLC et al.*, (Case No. 3:20-cv-05671-JD) taking place before the United States District Court for the Northern District of California (San Francisco Division) and any appeals to Courts of competent jurisdiction.

SCOPE

2. The protections conferred by this Order on Protected Material apply also to:
 - (a) any information copied or extracted from Protected Material;
 - (b) all copies, excerpts, summaries, or compilations of Protected Material; and
 - (c) any testimony, conversations, or presentations that reveal Protected Material.
3. The protections conferred by this Order do not apply to the following information:
 - (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order

or either of the US Protective Orders, including becoming part of the public record through trial or otherwise; and

- (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

COLLATERAL USE OF MATERIALS FIRST PRODUCED IN THESE PROCEEDINGS

4. Rule 102 of the CAT Rules is dispensed with only to the extent that materials, including Protected Materials, first produced in these proceedings through supplemental disclosure and any work product derived or containing excerpts from those materials, may be shared with the US Parties and their 'House Counsel', 'Outside Counsel of Record' and 'Experts' in the US Proceedings (each as defined in the SAPO) provided that:

- (a) any materials designated Confidential Material pursuant to this Order may be shared only with those groups and individuals with whom Protected Material designated as 'CONFIDENTIAL' may be shared pursuant to the SAPO;
- (b) any materials designated Highly Confidential Material pursuant to this Order may be shared only with those groups and individuals with whom Protected Material designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" may be shared pursuant to the SAPO; and
- (c) any materials designated Non-Party Highly Confidential Material pursuant to this Order may be shared only with those groups and individuals with whom Protected Material designated as 'NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY' may be shared pursuant to the SASPO.

ACCESS TO AND USE OF INFORMATION DESIGNATED AS “CONFIDENTIAL”

5. Subject to paragraph 4, Confidential Material may be disclosed only to the categories of persons and under the conditions described in this Order and may be used only for

purposes of prosecuting, defending or attempting to settle these proceedings or of discussing the US Proceedings.

6. Unless otherwise ordered by the Tribunal or permitted in writing by the Designating Party, a Receiving Party may disclose any Confidential Material only to:
 - (a) the Receiving Party's External Counsel to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (b) the officers, directors, and employees (including In-House Counsel) of the Receiving Party named in Part A of Annex A to this Order to whom disclosure is reasonably necessary because they either have responsibility for making decisions dealing directly with these proceedings or are assisting External Counsel with these proceedings, and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (c) the Experts of the Receiving Party to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (d) the Tribunal and its personnel (and any appeal Court of competent jurisdiction and its personnel);
 - (e) Professional Vendors to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (f) the author or recipient of a document containing the information or a custodian or other person who otherwise lawfully possessed or knew the information; and
 - (g) any current employee of the Designating Party.

7. Confidential Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorised under this Order.

ACCESS TO AND USE OF INFORMATION DESIGNATED AS “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY”

8. Subject to paragraph 4, Highly Confidential Material may be disclosed only to the categories of persons and under the conditions described in this Order and may be used only for purposes of prosecuting, defending or attempting to settle these proceedings or of discussing the US Proceedings.
9. Unless otherwise ordered by the Tribunal or permitted in writing by the Designating Party, a Receiving Party may disclose any Highly Confidential Material only to:
 - (a) the Receiving Party's External Counsel to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders and their support staff;
 - (b) the Designated In-House Counsel of the Receiving Party named in Part A of Annex A to this Order, who have signed an undertaking in accordance with Part B of Annex A to this Order;
 - (c) the Experts of the Receiving Party to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (d) the Tribunal and its personnel (and any appeal Court of competent jurisdiction and its personnel);
 - (e) Professional Vendors to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;

- (f) the author or recipient of a document containing the information or a custodian or other person who otherwise lawfully possessed or knew the information; and
 - (g) any current employee of the Designating Party.
10. Highly Confidential Material:
- (a) may only be transmitted to Designated In-House Counsel through a password-protected Secured File Transfer Protocol (SFTP), and if downloaded, the Designated In-House Counsel must download and store such documents in a secure location that cannot be accessed by others, and shall delete them within 14 days after receipt.
 - (b) may also be made available:
 - (i) in in-person meetings where the documents remain in the possession of External Counsel;
 - (ii) via screen-sharing technology; or
 - (iii) through a document review platform with printing and downloading disabled.
11. Notwithstanding the preceding paragraph, any lawyers' work product containing Highly Confidential Material may be transmitted to Designated In-House Counsel via corporate/firm e-mail accounts, provided, however, exhibits to the foregoing that are or contain Highly Confidential Material documents may not be transmitted via e-mail.
12. Highly Confidential Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorised under this Order.

**ACCESS TO AND USE OF INFORMATION DESIGNATED AS "NON-PARTY
HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY"**

13. Non-Party Highly Confidential Material produced by third parties in the US Proceedings may not be produced in these proceedings without: (i) an order from the

Tribunal under Rule 63 of the CAT Rules; or (ii) the written permission of the (third party) Designating Party.

14. Subject to paragraph 4, Non-Party Highly Confidential Material may be disclosed only to the categories of persons and under the conditions described in this Order and may be used only for purposes of prosecuting, defending or attempting to settle these proceedings or of discussing the US Proceedings.
15. Unless otherwise ordered by the Tribunal or permitted in writing by the Designating Party, a Receiving Party may disclose any Non-Party Highly Confidential Material only to:
 - (a) the Receiving Party's External Counsel to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders and their support staff;
 - (b) the Experts of the Receiving Party to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (c) the Tribunal and its personnel (and any appeal Court of competent jurisdiction and its personnel);
 - (d) Professional Vendors to whom disclosure is reasonably necessary for these proceedings and who have signed an undertaking in accordance with Part B of Annex A to this Order or are bound by the US Protective Orders, and their support staff;
 - (e) the author or recipient of a document containing the information or a custodian or other person who otherwise lawfully possessed or knew the information.
16. Non-Party Highly Confidential Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorised under this Order.

THIRD-PARTY CONFIDENTIAL INFORMATION SOUGHT TO BE PRODUCED IN THESE PROCEEDINGS

17. In the event that a Party is required to produce a third party's confidential information in its possession (the “**Obligated Party**”), and the Obligated Party or one of its affiliates is subject to an agreement which prevents the production of the third party's confidential information in these proceedings, then the Obligated Party shall:
 - (a) promptly notify in writing the third party of the requirement to produce the third party’s confidential information;
 - (b) promptly provide the third party with a copy of this Order and a reasonably specific description of the information that must be produced; and
 - (c) make the information requested available for inspection by the third party.
18. If the third party fails to object or make an application to the Tribunal to prevent disclosure within 14 days of receiving the notice and accompanying information, the Obligated Party may produce the third party's confidential information, subject to the terms of this Order.
19. If the third party objects or makes an application to prevent disclosure within 14 days of receiving such a notice, the Obligated Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the third party before a determination by the Tribunal.
20. Absent an order to the contrary, the third party shall bear the costs of relief sought from the Tribunal in respect of its confidential information.

UNAUTHORISED DISCLOSURE OF PROTECTED MATERIAL

21. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorised under this Order, the Receiving Party must immediately:
 - (a) notify in writing the Designating Party of the unauthorised disclosures;
 - (b) use its best efforts to retrieve all unauthorised copies of the Protected Material;

- (c) inform the person or persons to whom unauthorised disclosures were made of all the terms of this Order; and
- (d) request such person or persons to give a signed undertaking to the Tribunal in the terms of Part B of the Annex to this Order.

PROTECTED MATERIAL ORDERED TO BE PRODUCED IN OTHER PROCEEDINGS

22. If a Party is served with an order issued by a court, arbitral, administrative, or legislative body that compels disclosure of any information or items designated in these proceedings as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material, that Party must:
- (a) promptly notify in writing the Designating Party, including a copy of the relevant order;
 - (b) promptly notify in writing the person who caused the order to be issued that some or all of the material sought is subject to this Order, including a copy of this Order; and
 - (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

DESIGNATION

23. The process by which Parties designate material first disclosed in the US Proceedings as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material shall be governed by the terms of the US Protective Orders. All designations applied to Protected Materials first disclosed in the US Proceedings shall stand in these proceedings. The process by which Parties designate material first disclosed in these proceedings as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material shall be governed by paragraphs 24 to 31 of this Order.
24. Each Party that designates information or items first disclosed in these proceedings for protection under this Order must take care to limit any such designation to specific material that qualifies under the CAT Rules.

25. The Designating Party must designate for protection, in a specific document or set of documents first disclosed in these proceedings, only those parts that qualify for protection under this Order in accordance with Rule 101 of the CAT Rules. Mass, indiscriminate or routinised designations are prohibited.
26. Rule 101 of the CAT Rules is dispensed with only for Confidential Material, Highly Confidential Material and Non-Party Highly Confidential Material which is first disclosed in the US Proceedings and governed by the terms of the US Protective Orders.
27. If it comes to a Designating Party's attention that information or items first produced and designated for protection in these proceedings do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation or of the lesser designation such information or items qualify for and under which they are accordingly re-designated.
28. The Designating Party must affix the legend "CONFIDENTIAL" (to Confidential Material), "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (to Highly Confidential Material), or "NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" (to Non-Party Highly Confidential Material) to each page that contains Protected Material.
29. The use of a document as an exhibit in a witness statement shall not, without Party consent or further order, in any way affect its designation as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material.
30. Transcripts of hearings containing Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material shall have an obvious legend on the title page that the transcript contains Protected Material, and the title page shall be followed by a list of all pages that have been designated as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material. The Designating Party shall inform the transcriber of these requirements. Any transcript that is prepared shall be treated during a period of 21 days as if it had been designated as Highly Confidential Material in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated (or as non-confidential if no confidentiality claims are made).

31. For information produced in some form other than documentary and for any other tangible items, that the Designating Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” (to Confidential Material), “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (to Highly Confidential Material) or “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” (to Non-Party Highly Confidential Material). If affixing the appropriate legend on a container is not feasible, the Designating Party shall find another means to identify the information, for example through a cover letter or other communication.

CHALLENGING CONFIDENTIALITY DESIGNATIONS

32. Subject to paragraphs 23 and 47, any Party may challenge a designation of material as being Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material at any time.
33. Unless a prompt challenge to a designation is necessary to avoid foreseeable, substantial unfairness, unnecessary costs, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a designation by electing not to mount a challenge promptly after the original designation is disclosed.
34. The challenging Party shall initiate the dispute resolution process by providing written notice which:
 - (a) states each designation it is challenging;
 - (b) describes the basis for each challenge; and
 - (c) states the challenge to confidentiality is being made in accordance with this paragraph.
35. The Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly within 14 days of the date of service of notice. The challenging party must:
 - (a) explain the basis for its belief that the confidentiality designation was not proper; and

- (b) give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation.

- 36. If a Party:
 - (a) has undertaken the process prescribed by paragraphs 32 to 35 above; or
 - (b) establishes that the Designating Party is unwilling to undertake the process prescribed by paragraphs 32 to 35 above in a timely manner;
 - (c) the challenging Party shall file and serve an application supported by evidence to re-designate or de-designate material under this Order within 14 days of the parties agreeing that the process prescribed by paragraphs 32 to 35 above will not resolve their dispute.

- 37. The Parties shall continue to afford the material subject to any challenge the level of protection to which it is entitled under the Designating Party's designation until the Tribunal determines any application made or agreement is reached otherwise by the Parties.

- 38. When Confidential, Highly Confidential Material or Non-Party Highly Confidential Material has been re-designated (whether as non-confidential or as a different confidentiality category) in the US Proceedings, that re-designation shall apply automatically in these proceedings. Each Designating Party whose documents have been re-designated in the US Proceedings shall use best endeavours to inform the Receiving Parties' External Counsel in these proceedings of all such re-designations promptly.

TERMINATION

- 39. In respect of documents or information which maintain their designation as "CONFIDENTIAL", "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY" under the US Protective Orders, the treatment of Protected Material following termination of these proceedings shall be governed by the terms of the US Protective Orders. For the purposes of this Order, termination of these proceedings shall be

deemed to occur on the later of (i) dismissal of all claims and defences, (ii) entry of a final judgment herein after the completion and exhaustion of all appeals, or (iii) settlement of the case.

40. In respect of other documents or information which maintain their designation as Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material, each Receiving Party must return all Protected Material to the Producing Party or destroy such material within 60 days of the termination of these proceedings.
41. For the avoidance of doubt, no Receiving Party is obligated to return or destroy Protected Material until 60 days following the termination of these proceedings, notwithstanding final disposition (as defined in Section 4 of the SAPO) of the US Proceedings.
42. The obligations contained in the undertakings provided pursuant to this Order and Rule 102 of the CAT Rules shall continue to apply following termination of these proceedings and each of the Parties shall continue to treat all Confidential Material, Highly Confidential Material and Non-Party Highly Confidential Material in accordance with this Order unless the Designating Party consents until the Party has confirmed to the Designating Party that all relevant Protected Material held by it or on its behalf has been destroyed.
43. For the avoidance of doubt, none of the obligations imposed by this Order shall prevent External Counsel from retaining and/or disclosing any information contained within any Protected Material which is required to be retained and/or disclosed by operation of law or by order of a court of competent jurisdiction or by a regulatory or other body having jurisdiction over the External Counsel.

GENERAL

44. Any Party that is a beneficiary of the protections of this Order may enter a written agreement releasing any other Party from one or more requirements of this Order even if the conduct subject to the release would otherwise violate the terms of this Order, without application to the Tribunal.
45. This Order is made without prejudice to any right any Party or third-party otherwise would have:

- (a) to object to disclosing or producing any information on any ground not addressed in this Order; or
 - (b) to object on any ground to use in evidence of any of the material covered by this Order.
- 46. Any Party may not file in the public record in these proceedings any Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material or otherwise rely on any Confidential Material, Highly Confidential Material or Non-Party Highly Confidential Material during any public hearings without:
 - (a) written permission from the Designating Party; or
 - (b) an order secured after appropriate notice to all interested persons.
- 47. The specific arrangements for and use of Confidential Material, Highly Confidential Material and Non-Party Highly Confidential Material at trial shall be the subject of determination at a subsequent CMC.
- 48. Any Party may seek to amend the list of persons set out at Part A to Annex A by providing written notice of at least 14 days to all other Parties. If the other Parties provide their consent to the admission of a person during the notice period, that person shall immediately be admitted once they have signed an undertaking in accordance with Part B of Annex A to this Order. During the notice period -
 - (a) the Party seeking to amend the list may, in an urgent case, write to the Tribunal seeking its approval to the proposed amendment if consent from the other Parties has not been received within 24 hours of a request having been made;
 - (b) any other Party may write to the Tribunal and to the Party seeking the amendment to raise any reasoned objection thereto. If such objection is taken, the amendment sought shall not be made pending the Tribunal's determination on such objection.
- 49. Nothing in these provisions should be construed as prohibiting a Party from seeking additional protections.

50. The Parties shall provide the Tribunal and their respective External Counsel with all amendments, variations and replacements of, and written agreements in connection with, the US Protective Orders promptly after execution.

51. There shall be liberty to apply.

The Hon Mr Justice Marcus Smith
President

Dr Catherine Bell CB

Andrew Young QC

Made: 15 December 2021

Drawn: 15 December 2021

ANNEX A

PART A: RELEVANT UK ADVISERS

This Part contains the names, for each party, of relevant UK advisers:

Epic Games, Inc.; Epic Games International S.À R.L

Officers, Directors & Employees

In-House Counsel

Designated In-House Counsel

- Jessica Medina, Counsel
- Dan Taskalos, Counsel

External Counsel

Clifford Chance LLP

- Elizabeth Morony, Partner
- Anna Henderson, Senior Associate
- Carla Lewis, Senior Associate
- Ben Jasper, Senior Associate
- Oliver Carroll, Associate
- Ji Eun Park, Associate
- Simone Matthews, Associate
- Tom Dyer, Associate
- Deon Fang, Associate
- Leo Lou, Associate
- Jaime Streete, Associate
- Kieran Varghela, Associate
- George Tyler, Associate
- Saskia Mondon-Ballantyne, Associate
- Chloe Lettington, Trainee Solicitor

- Euan Lynch, Trainee Solicitor
- Dave McCartney, Senior Case Manager
- Steven Cornwall, Case Manager

Counsel

- Mark Brealey QC
- Daisy Mackersie

Experts

Professional Vendors

Alphabet Inc.; Google LLC; Google Ireland Limited; Google Commerce Ltd; Google Payment Limited

Officers, Directors & Employees

- Zanna Iscenko, Senior Economist, Google

In-House Counsel

- *[not currently used]*

Designated In-House Counsel

- Ken Maikish, Senior Litigation Counsel, Google
- Kate Shires, Legal Counsel, Google

External Counsel

Counsel

- Josh Holmes QC, Barrister, Monckton Chambers
- Thomas Sebastian, Barrister, Monckton Chambers
- Jack Williams, Barrister, Monckton Chambers

Solicitors

- David Cran, Partner, RPC
- Lambros Kilaniotis, Partner, RPC
- Sarah Mountain, Senior Associate, RPC
- Leonia Chesterfield, Senior Associate, RPC
- Sophie Tuson, Senior Associate, RPC
- Thomas McCall, Associate, RPC
- Samuel Coppard, Associate, RPC
- Ellie Ward, Associate, RPC
- Harvey Briggs, Trainee Solicitor, RPC
- Courtney Brotherson, Trainee Solicitor, RPC
- Andy Hodgson, Paralegal, RPC

- Alexander Waksman, Partner, gunnercooke LLP

Experts

- Stephen Lewis, Partner, RBB Economics
- Simon Bishop, Partner, RBB Economics
- Paul Reeve, Principal, RBB Economics
- Charles Nicholson, Associate Principal, RBB Economics
- Nuno Alvim, Associate Principal, RBB Economics
- Jakub Redlicki, Senior Associate, RBB Economics
- Nikta Kermani, Associate, RBB Economics

Professional Vendors

- *[not currently used]*

PART B: FORM OF UNDERTAKINGS
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1. I, _____ [print or type full name], of _____ [print or type full address], have read in its entirety and understand the Order that was issued by the Competition Appeal Tribunal on [date]. I agree to comply with and to be bound by all the terms of this Order and I understand that proceedings for contempt of court may be brought in respect of a failure to comply with the terms of this Order.
2. I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order.
3. I will use the information or items that are subject to this Order only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction (save for information or items originating from my client, subject to their consent).
4. I further agree to submit to the jurisdiction of the Competition Appeal Tribunal for the purpose of enforcing the terms of this Order, even if such enforcement proceedings occur after termination of these proceedings.
5. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my English agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: _____

Address: _____

Printed name: _____

Signature: _____

ANNEX B
US PROTECTIVE ORDERS

1 Karma M. Giulianelli (SBN 184175)
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13 *Co-Lead Counsel for the Proposed Class in In*
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27 *Co-Lead Counsel for the Proposed Class in In*
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[Additional counsel appear on signature page]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

*In re Google Play Consumer Antitrust
Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust
Litigation*, Case No. 3:20-cv-05792-JD

State of Utah et al. v. Google LLC et al., Case
No. 3:21-cv-05227-JD

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

**STIPULATED ~~[PROPOSED]~~
AMENDED PROTECTIVE
ORDER**

Judge: Hon. James Donato

Nos.: 3:21-md-02981-JD; 3:20-cv-05671-JD;
3:20-cv-05761-JD; 3:20-cv-05792-JD;
3:21-cv-05227-JD

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

5 On December 10, 2020, the Court entered a Stipulated Protective Order in the following
6 cases: Case No. 3:20-cv-05671-JD, Dkt. No. 110, approving Dkt. No. 106-1; Case No. 3:20-cv-
7 05761-JD, Dkt. No. 117, approving Dkt. No. 109-1; Case No. 3:20-cv-05792; JD, Dkt. No. 78,
8 approving Dkt. No. 76-1. On July 20, 2021, the Court entered an Order Determining Cases to be
9 Related with respect to the case entitled *State of Utah, et al. v. Google LLC et al.*, Case No. 3:21-
10 cv-5227-JSC, which consolidated that case with the aforementioned cases into MDL Case No.
11 2981 (the “Litigation”). The Parties acknowledge that the Stipulated Protective Order requires
12 amendment to govern the production by and to the Plaintiff States of Discovery Materials (as
13 defined below).

14 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following
15 Stipulated Amended Protective Order (“Protective Order”). The Parties acknowledge that this
16 Order does not confer blanket protections on all disclosures or responses to discovery and that
17 the protection it affords from public disclosure and use extends only to the limited information
18 or items that are entitled to confidential treatment under the applicable legal principles. The
19 Parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Amended
20 Protective Order does not entitle them to file confidential information under seal; Civil Local
21 Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied
22 when a Party seeks permission from the Court to file material under seal.

23 **2. DEFINITIONS**

24 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.
26
27

1 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
2 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
3 of Civil Procedure 26(c).

4 2.3 Counsel (without qualifier): State AGO Attorneys, Outside Counsel of Record,
5 and House Counsel (as well as their support staff).

6 2.4 Designated House Counsel: For each Party, up to two House Counsel who may be
7 provided access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in
8 this matter.

9 2.5 Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other things,
14 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
15 responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
17 the Litigation who: (1) has been retained by a Party or its counsel to serve as an expert witness or
18 as a consultant in this action; (2) is not a current employee or current business consultant of a
19 Party or of a Party’s competitor, or otherwise currently involved in competitive decision-making
20 for a Party or a Party's competitor; (3) has not, within the 12 months preceding the entry of this
21 Protective Order, been an employee or business consultant of a Party or a Party’s competitor, or
22 otherwise been involved in competitive decision-making for a Party or a Party's competitor; and
23 (4) at the time of retention, is not anticipated to become an employee or business consultant of a
24 Party or a Party’s competitor, or to be otherwise involved in competitive decision-making for a
25 Party or a Party's competitor. If, while this action is pending, a Party learns that any of its
26 retained experts or consultants as defined herein is anticipating to become, or has become, an
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1 employee or business consultant of a Party or a Party’s competitor, or otherwise involved in
2 competitive decision-making for a Party or a Party’s competitor, the Party learning such
3 information shall promptly disclose the information to the other Parties.

4 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
5 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
6 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
7 less restrictive means.

8 2.9 House Counsel: attorneys who are members in good standing of at least one state
9 bar, who are employees of a Party, or a Party’s affiliate, and who have responsibility for
10 managing this action. House Counsel does not include Outside Counsel of Record, any other
11 outside counsel, or State AGO Attorneys.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
13 entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a Party but are
15 retained to represent or advise a Party and have appeared in this action on behalf of that Party or
16 are affiliated with a law firm which has appeared on behalf of that Party.

17 2.12 Party: any party to this action, including all of its officers, directors, employees,
18 consultants, retained experts, Outside Counsel of Record (and their support staffs), and State
19 AGO Attorneys.

20 2.13 Plaintiff States or States: states, commonwealths, territories, or districts within the
21 United States that are plaintiffs in the action styled *State of Utah, et al. v. Google LLC, et al.*, No.
22 3:21-cv-05227-JD.

23 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.15 Professional Vendors: persons or entities who are not employees of a Party but are
26 retained to provide litigation support services (e.g., photocopying, videotaping, translating,
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1 preparing exhibits or demonstrations, and organizing, storing, reviewing or retrieving documents
2 or data in any form or medium and their employees and subcontractors).

3 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

5 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material.

6 2.18 State AGO Attorneys: attorneys employed by the Plaintiff States’ attorneys
7 general offices (including retained attorneys and contract attorneys), as well as their support staff,
8 where the attorneys and support staff have access to internal State attorneys general office
9 information technology systems in the ordinary course of their employment responsibilities and
10 have been informed of their obligations to comply with this agreement. The obligation to inform
11 support staff is met once a state AGO attorney informs a supervising member of the support staff
12 about the obligations of this agreement.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from Protected
16 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
17 testimony, conversations, or presentations by Parties or their Counsel that might reveal
18 Protected Material. However, the protections conferred by this Stipulation and Order do not
19 cover the following information: (a) any information that is in the public domain at the time of
20 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a
21 Receiving Party as a result of publication not involving a violation of this Order, including
22 becoming part of the public record through trial or otherwise; and (b) any information known to
23 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
24 disclosure from a source who obtained the information lawfully and under no obligation of
25 confidentiality to the Designating Party. In addition, nothing in this Protective Order alters the
26 rights and obligations of the parties under the confidentiality agreements or other protective
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1 orders pursuant to which some Defendants produced documents in response to civil
2 investigative demands by certain States, except as modified by the Stipulation and Order re:
3 Documents Google Produced to the States in Response to Civil Investigative Demands (Case
4 3:21-md-02981, Dkt. #109). Any use of Protected Material at trial shall be governed by a
5 separate agreement or order.

6 **4. DURATION**

7 Even after final disposition of this Litigation, the confidentiality obligations imposed by
8 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court
9 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
10 claims and defenses in this action, with or without prejudice; or (2) entry of a final judgment
11 herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
12 of this action, including the time limits for filing any motions or applications for extension of time
13 pursuant to applicable law.

14 **5. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
16 or Non-Party that designates information or items for protection under this Order must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards. At
18 the reasonable request of any Party, the Designating Party must designate for protection, in a
19 specific document or set of documents, only those parts that qualify for protection under this
20 Order, so that other portions of the material, documents, items, or communications for which
21 protection is not warranted are not swept unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
23 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
24 unnecessarily encumber or retard the case development process or to impose unnecessary
25 expenses and burdens on other Parties) expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that it designated
2 for protection do not qualify for protection at all or do not qualify for the level of protection
3 initially asserted, that Designating Party must promptly notify all other Parties that it is
4 withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
6 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
7 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
8 designated before the material is disclosed or produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic documents,
11 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
12 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
13 EYES ONLY" to each page that contains protected material.

14 A Party or Non-Party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has indicated which
16 material it would like copied and produced. During the inspection and before the designation, all
17 of the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
18 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or portions thereof,
20 qualify for protection under this Order. Then, before producing the specified documents, the
21 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
22 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected
23 Material.

24 (b) for testimony given in deposition or in other pretrial or trial proceedings,
25 that the Designating Party identify on the record, before the close of the deposition, hearing, or
26 other proceeding, all protected testimony and specify the level of protection being asserted. When
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1 it is impractical to identify separately each portion of testimony that is entitled to protection and it
2 appears that substantial portions of the testimony may qualify for protection, the Designating
3 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
4 a right to have up to 21 days after the transcript of the proceedings becomes available to identify
5 the specific portions of the testimony as to which protection is sought and to specify the level of
6 protection being asserted. Only those portions of the testimony that are appropriately designated
7 for protection within the 21 days shall be covered by the provisions of this Stipulated Protective
8 Order. Alternatively, a Designating Party may specify, at the deposition or up to 21 days
9 afterwards if that period is properly invoked, that the entire transcript shall be treated as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 The use of a document as an exhibit at a deposition shall not in any way affect its
12 designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
13 ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on the title page
15 that the transcript contains Protected Material, and the title page shall be followed by a list of all
16 pages (including line numbers as appropriate) that have been designated as Protected Material
17 and the level of protection being asserted by the Designating Party. The Designating Party shall
18 inform the court reporter of these requirements. Any transcript that is prepared before the
19 expiration of a 21-day period for designation shall be treated during that period as if it had been
20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
21 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
22 actually designated.

23 (c) for information produced in some form other than documentary and for any
24 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
25 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
26 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If affixing the appropriate

1 legend on a container is not feasible, the Designating Party shall find another means to identify
2 the information, for example through a cover letter or other communication.

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 designate qualified information or items does not, standing alone, waive the Designating Party's
5 right to secure protection under this Order for such material. Upon timely correction of a
6 designation, the Receiving Party must make reasonable efforts to assure that the material is
7 treated in accordance with the provisions of this Order.

8 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
12 burdens, or a significant disruption or delay of the Litigation, a Party does not waive its right to
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the
14 original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
16 process by providing written notice of each designation it is challenging and describing the basis
17 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
18 notice must recite that the challenge to confidentiality is being made in accordance with this
19 specific paragraph of the Protective Order. The Parties shall attempt to resolve each challenge in
20 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
21 forms of communication are not sufficient) within 14 days of the date of service of notice. In
22 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
23 designation was not proper and must give the Designating Party an opportunity to review the
24 designated material, to reconsider the circumstances, and, if no change in designation is offered,
25 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
26 stage of the challenge process only if it has engaged in this meet and confer process first or
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1 establishes that the Designating Party is unwilling to participate in the meet and confer process in
2 a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
4 intervention, the Challenging Party shall file and serve a motion to re-designate or de-designate
5 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 14
6 days of the Parties agreeing that the meet and confer process will not resolve their dispute. Each
7 such motion must be accompanied by a competent declaration affirming that the movant has
8 complied with the meet and confer requirements imposed in the preceding paragraph.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
10 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
11 unnecessary expenses and burdens on other Parties) may expose the Challenging Party to
12 sanctions. All Parties shall continue to afford the material in question the level of protection to
13 which it is entitled under the Designating Party's designation until the Court rules on the
14 challenge.

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
18 defending, or attempting to settle this Litigation, and such Protected Material shall not be used for
19 any other business purpose, in connection with any other legal proceeding, or for any other
20 purpose whatsoever. Such Protected Material may be disclosed only to the categories of persons
21 and under the conditions described in this Order.¹ When the litigation has been terminated, a
22 Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

23 _____
24 ¹ In the event a Non-Party witness is authorized to receive Protected Material that is to be used
25 during his/her deposition but is represented by an attorney not authorized under this Order to
26 receive such Protected Material, the attorney must provide prior to commencement of the
27 deposition an executed "Acknowledgment and Agreement to Be Bound" in the form attached
28 hereto as Exhibit A. In the event such attorney declines to sign the "Acknowledgment and
Agreement to Be Bound" prior to the examination, the Parties, by their attorneys, shall jointly
seek a protective order from the Court prohibiting the attorney from disclosing Protected Material
in order for the deposition to proceed.

1 The parties understand that some of the State AGO Attorneys prosecuting this matter are
2 also prosecuting antitrust enforcement actions against some Defendants in other venues. Nothing
3 in this Order or the Stipulated Supplemental Protective Order Governing Production of Protected
4 Non-Party Materials (Case No. 3:21-md-02981-JD (N.D. Cal.), ECF No. 44), including as
5 amended, precludes State AGO Attorneys with access to information subject to this Protective
6 Order from prosecuting such other actions, so long as they comply with their obligations under
7 this Protective Order and any protective orders or confidentiality agreements governing such
8 other actions. To prevent inadvertent disclosure, Discovery Materials produced to States in this
9 case will be housed in a separate database only accessed by State AGO Attorneys.

10 Protected Material must be stored and maintained by a Receiving Party at a location and
11 in a secure manner that ensures that access is limited to the persons authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
13 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
18 Bound” (Exhibit A);

19 (b) State AGO Attorneys who have appeared on behalf of Plaintiff States in
20 this litigation, who are actively prosecuting the Litigation, or to whom it is reasonably necessary
21 to disclose the information for purposes of this litigation; State AGO Attorneys who have
22 appeared will maintain a list of Attorneys as well as supervisors of support staff subject to this
23 section;

24 (c) the officers, directors, and employees (including House Counsel) of the
25 Receiving Party to whom disclosure is reasonably necessary because they either have
26 responsibility for making decisions dealing directly with the litigation in this action or are
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1 assisting outside counsel in preparation for proceedings in this action, and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (d) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
5 and Agreement to Be Bound” (Exhibit A);

6 (e) the Court and its personnel;

7 (f) stenographic reporters, videographers and their respective staff,
8 professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably
9 necessary for this Litigation and who have signed the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A);

11 (g) during their depositions, witnesses in the action that are not otherwise
12 authorized to receive CONFIDENTIAL Information pursuant to Section 7.2(a)-(f) or (h)-(i) to
13 whom disclosure is reasonably necessary and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A), unless the Designating Party objects to such disclosure or
15 except as otherwise ordered by the Court. Receiving Parties shall give the Designating Party
16 reasonable notice if they expect to provide a witness, during a deposition, with Protected Material
17 pursuant to this Section 7.2(g). Pages of transcribed deposition testimony or exhibits to
18 depositions that reveal Protected Material must be separately bound by the court reporter and may
19 not be disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (h) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information; and

22 (i) any current employee of the Designating Party.

23 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
24 Information or Items. Unless otherwise ordered by the Court or permitted in writing by the
25 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

1 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
2 employees of Outside Counsel of Record to whom it is reasonably necessary to disclose the
3 information for this Litigation and who have signed the “Acknowledgment and Agreement to Be
4 Bound” (Exhibit A);

5 (b) State AGO Attorneys who have appeared on behalf of Plaintiff States in
6 this Litigation, who are actively prosecuting the Litigation, or to whom it is reasonably necessary
7 to disclose the information for purposes of this Litigation; State AGO Attorneys who have
8 appeared will maintain a list of Attorneys as well as supervisors of support staff subject to this
9 section;

10 (c) Designated House Counsel of the Receiving Party (i) who has no
11 involvement in competitive decision-making, (ii) to whom disclosure is reasonably necessary for
12 this litigation, (iii) who has signed the “Acknowledgment and Agreement to Be Bound” that is
13 attached hereto as Exhibit A, and (iv) as to whom, at least 14 days prior to the disclosure of any
14 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” information, the Party that seeks
15 to disclose to Designated House Counsel has disclosed to the Designating Party (1) the full name
16 of the Designated House Counsel and the city and state of his or her primary place of work, and
17 (2) the Designated House Counsel’s current and reasonably foreseeable future primary job duties
18 and responsibilities in sufficient detail to determine if House Counsel is involved, or may become
19 involved, in any competitive decision-making. If a Party objects to the Designated House
20 Counsel, that Party must do so in writing within 14 days of the identification of the Designated
21 House Counsel. The Parties shall meet and confer to try to resolve the matter by agreement within
22 seven days of any such written objection. If no agreement is reached, the Designating Party may
23 file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
24 applicable) objecting to the disclosure. For the avoidance of doubt, if the Designating Party has
25 moved the Court to object to the disclosure, no disclosure shall be made until the Court has ruled
26 on such objection. Documents designated as HIGHLY CONFIDENTIAL—ATTORNEYS’

1 EYES ONLY may only be transmitted to Designated House Counsel through a password-
2 protected Secured File Transfer Protocol (SFTP), and the Designated House Counsel must
3 download and store such documents in a secure location that cannot be accessed by others, and
4 shall delete them within 14 days after receipt. Additional acceptable forms of disclosure of
5 HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY documents include: in-person
6 meetings where the documents remain in the possession of Outside Counsel; screen-sharing
7 technology; or through a document review platform with printing and downloading disabled.
8 Notwithstanding the foregoing, summaries, memoranda, drafts, briefs, court filings, expert
9 reports, outlines, and other attorney work product containing HIGHLY CONFIDENTIAL—
10 ATTORNEYS’ EYES ONLY Information may be transmitted to Designated House Counsel via
11 corporate/firm e-mail accounts; provided, however, exhibits to the foregoing that are HIGHLY
12 CONFIDENTIAL—ATTORNEYS’ EYES ONLY documents may not be transmitted via e-mail.

13 (d) Experts of the Receiving Party (1) to whom disclosure is reasonably
14 necessary for this litigation and (2) who have signed the “Acknowledgment and Agreement to Be
15 Bound” (Exhibit A);

16 (e) the Court and its personnel;

17 (f) stenographic reporters, videographers and their respective staff,
18 professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably
19 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
20 Bound” (Exhibit A); and

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information; and

23 (h) any current employee of the Designating Party.

24 **7.4 Purposefully Left Blank.**

1 **8. *Purposefully left blank.***

2 **9. SOURCE CODE**

3 (a) To the extent the production of source code becomes necessary, the Parties
4 reserve their rights to modify this order as necessary to protect such materials and information,
5 and the Parties shall meet and confer in good faith regarding such modifications. No Party will
6 be required to produce source code until modifications to this order relating to the protection of
7 source code have been entered by the Court.

8 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
9 **OTHER LITIGATION**

10 If a Party is served with a subpoena issued by a court, arbitral, administrative, or
11 legislative body, or with a court order issued in other Litigation that compels disclosure of any
12 information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall
15 include a copy of the subpoena or court order;

16 (b) promptly notify in writing the person who caused the subpoena or order to
17 issue in the other Litigation that some or all of the material covered by the subpoena or order is
18 subject to this Protective Order. Such notification shall include a copy of this Stipulated
19 Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by
21 the Designating Party whose Protected Material may be affected.²

22 If the Designating Party timely³ seeks a protective order, the Party served with the
23 subpoena or court order shall not produce any information designated in this action as

24 ² The purpose of imposing these duties is to alert the interested parties to the existence of this
25 Protective Order and to afford the Designating Party in this case an opportunity to try to protect
its confidentiality interests in the court or other tribunal from which the subpoena or order issued.

26 ³ The Designating Party shall have at least 14 days from the service of the notification pursuant to
27 Section 10(a) to seek a protective order, unless a shorter period applies under the rules of the
Court or other tribunal from which the subpoena or order issued, in which case such rules shall
apply.

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a
2 determination by the court or other tribunal from which the subpoena or order issued, unless the
3 Party has obtained the Designating Party’s permission. The Designating Party shall bear the
4 burden and expense of seeking protection in that court or other tribunal of its confidential material
5 – and nothing in these provisions should be construed as authorizing or encouraging a Receiving
6 Party in this action to disobey a lawful directive from another court or tribunal with appropriate
7 jurisdiction.

8 10.1 If, under any public records or other relevant law any Protected Material is subject
9 to any form of compulsory process in a Plaintiff State, or is demanded from a Plaintiff State, such
10 State shall notify in writing the Designating Party whose Protected Material may be affected
11 within 10 business days of receiving the process or demand and before producing Protected
12 Material, unless state statute, or court order or other public adjudicatory body requires that the
13 State produce the Protected Material in a shorter time frame. The State shall not produce the
14 Protected Material in response to such compulsory process or public records request unless the
15 State deems that it is required by law to do so and provides 10 business days’ notice of its intent
16 to do so to the Designating Party, unless state statute, or court order or other public adjudicatory
17 body requires that the State produce the Protected Material in a shorter time frame. However, if a
18 State denies a public records or similar request and the denial is not challenged, the State does not
19 need to provide notice pursuant to this paragraph. If Protected Material is requested for disclosure
20 under a state’s public information act or the equivalent, this Order prohibits disclosure to the
21 extent the state’s public information act or the equivalent provides an exception for disclosure of
22 information protected by court order. Nothing contained herein shall alter or limit the obligations
23 of a State that may be imposed by statute or court order regarding the disclosure of documents
24 and information supplied to the State.

1 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
2 **THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a Non-
4 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
6 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
7 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
10 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
11 Party shall:

12 1. promptly notify in writing the Requesting Party and the Non-Party
13 that some or all of the information requested is subject to a confidentiality agreement with a Non-
14 Party;

15 2. promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Litigation, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 3. make the information requested available for inspection by the
19 Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this Court
21 within 14 days of receiving the notice and accompanying information, the Receiving Party may
22 produce the Non-Party’s confidential information responsive to the discovery request. If the Non-
23 Party timely objects or seeks a protective order, the Receiving Party shall not produce any
24 information in its possession or control that is subject to the confidentiality agreement with the
25 Non-Party before a determination by the Court.⁴ Absent a Court order to the contrary, the Non-

26 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality
27 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality
28 interests in this court.

1 Party shall bear the burden and expense of seeking protection in this Court of its Protected
2 Material.

3 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
8 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
9 made of all the terms of this Order, and (d) request such person or persons to execute the
10 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11 Unauthorized or inadvertent disclosure shall not change the confidentiality designation
12 status of any disclosed material or waive the right to maintain the disclosed material as
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” In
14 addition, for the avoidance of doubt, if Protected Material is disclosed to any person or in any
15 circumstance not authorized under this Stipulated Protective Order, the Designating Party
16 reserves all rights to seek further appropriate relief from the Court.

17 **13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain produced material is
19 subject to a claim of privilege or other protection, the obligations of the Receiving Parties are
20 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
21 modify whatever procedure may be established in an e-discovery order that provides for
22 production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),
23 the production of a privileged or work-product-protected document is not a waiver of privilege or
24 protection from discovery in this case or in any other federal or state proceeding. For example,
25 the mere production of privileged or work-product-protected documents in this case as part of a
26 mass production is not itself a waiver in this case or any other federal or state proceeding.

1 **14. MISCELLANEOUS**

2 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
3 seek its modification by the Court in the future. Furthermore, without application to the Court,
4 any party that is a beneficiary of the protections of this Order may enter a written agreement
5 releasing any other party hereto from one or more requirements of this Order even if the conduct
6 subject to the release would otherwise violate the terms herein.

7 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
8 Order no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
10 Party waives any right to object on any ground to use in evidence of any of the material covered
11 by this Protective Order.

12 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable
13 laws and regulations relating to the export of technical data contained in such Protected Material,
14 including the release of such technical data to foreign persons or nationals in the United States or
15 elsewhere. Upon notice that a Party seeks to remove certain Protected Material from the United
16 States, the Producing Party shall be responsible for identifying any such controlled technical data,
17 and the Receiving Party shall take measures necessary to ensure compliance.

18 14.4 Filing Protected Material. Without written permission from the Designating Party
19 or a Court order secured after appropriate notice to all interested persons, a Party may not file in
20 the public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
22 under seal pursuant to a Court order authorizing the sealing of the specific Protected Material at
23 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
24 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
25 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
26 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the Court, then the
27

1 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
2 79-5(e)(2) unless otherwise instructed by the Court.

3 14.5 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of
4 this Stipulated Protective Order as of the date counsel for such party executes this Stipulated
5 Protective Order, even if prior to entry of this Order by the Court.

6 **15. FINAL DISPOSITION**

7 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
8 Receiving Party must return all Protected Material to the Producing Party or destroy such
9 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
10 compilations, summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
12 submit a written certification to the Producing Party (and, if not the same person or entity, to the
13 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
14 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
15 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
17 retain an archival copy of all pleadings, motions and trial briefs (including all supporting and
18 opposing papers and exhibits thereto), written discovery requests and responses (and exhibits
19 thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or
20 introduced into evidence at any hearing or trial, and their attorney work product which refers or is
21 related to any CONFIDENTIAL and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” information for archival purposes only. Any such archival copies that contain or
23 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
24 (DURATION). Notwithstanding the foregoing in this Paragraph 15, the Plaintiff States agree to
25 return, destroy, or maintain all Protected Material in accordance with this Agreement subject to
26 any restrictions contained in any of the States’ document retention laws or policies.

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Dated: October 11, 2021

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Glenn D. Pomerantz

Counsel for Defendants Google LLC et al.

ORDER

Pursuant to stipulation, it is so ordered, except that in those cases where the stipulated protective order conflicts with the Court's standing orders (e.g., with respect to the filing of discovery motions), the Court's standing orders will control.

DATED: 10/22/2021



HON. JAMES DONATO
United States District Court Judge

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E-FILING ATTESTATION

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

 /s/ Brian Christensen
Brian Christensen

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al., Case
No. 3:20-cv-05671-JD

*In re Google Play Consumer Antitrust
Litigation*, Case No. 3:20-cv-05761-JD

*In re Google Play Developer Antitrust
Litigation*, Case No. 3:20-cv-05792-JD

State of Utah et al. v. Google LLC et al., Case
No. 3:21-cv-05227-JD

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

**STIPULATED ~~PROPOSED~~
AMENDED SUPPLEMENTAL
PROTECTIVE ORDER GOVERNING
PRODUCTION OF PROTECTED
NON-PARTY MATERIALS**

Judge: Hon. James Donato

Nos.: 3:21-md-02981-JD; 3:20-cv-05671-JD;
3:20-cv-05761-JD; 3:20-cv-05792-JD;
3:21-cv-05227-JD

1 WHEREAS, on May 20, 2021, the Court entered a Stipulated Protective Order Governing
2 Production of Protected Non-Party Materials (the “Non-Party Protective Order”) in the above-
3 captioned cases. See Case No. 3:21-md-02981-JD, Dkt. No. 44;

4 WHEREAS on July 20, 2021, the Court entered an Order Determining Cases to be
5 Related with respect to the case entitled *State of Utah, et al. v. Google LLC et al.*, Case No. 3:21-
6 cv-5227-JSC, which consolidated that case into MDL Case No. 2981 (the “Litigation”). The
7 Parties acknowledge that certain protective orders require amendment to govern the production
8 by and to the Plaintiff States;

9 WHEREAS on December 10, 2020, the Court entered a Stipulated Protective Order in the
10 following cases: Case No. 3:20-cv-05671-JD, Dkt. No. 110, approving Dkt. No. 106-1; Case No.
11 3:20-cv-05761-JD, Dkt. No. 117, approving Dkt. No. 109-1; Case No. 3:20-cv-05792; JD, Dkt.
12 No. 78, approving Dkt. No. 76-1, and Parties have concurrently submitted an amendment to that
13 Stipulated Protective Order to govern the production by and to the Plaintiff States (“Amended
14 Protective Order”);

15 WHEREAS, Section 11(a) of the Amended Protective Order states that its provisions
16 should not “be construed as prohibiting a Non-Party from seeking additional protections”;

17 WHEREAS, materials that Parties intend to produce in the Litigations may contain
18 information that is subject to contractual obligations to a Non-Party, including but not limited to
19 non-disclosure agreements between a Party and Non-Party, or may otherwise contain Non-Party
20 Protected Material (as defined herein);

21 WHEREAS, Parties have served subpoenas pursuant to Rule 45 of the Federal Rules of
22 Civil Procedure on Non-Parties;

23 WHEREAS, certain Non-Parties have expressed concerns regarding the production of
24 competitively sensitive information to Parties in the Litigations absent certain additional
25 protections beyond those set forth in the Amended Protective Order;

26 WHEREFORE, IT IS HEREBY ORDERED that documents or information disclosed or
27 produced by Non-Parties or by Parties to the extent such documents or information are designated

Nos.: 3:21-md-02981-JD; 3:20-cv-05671-JD;
3:20-cv-05761-JD; 3:20-cv-05792-JD;
3:21-cv-05227-JD

1 as containing Non-Party Protected Material in connection with the Litigations shall be subject to
2 the following provisions (the “Amended Supplemental Protective Order”):

3 1. GENERAL PROVISIONS

4 1.1 The definitions, terms and provisions contained in the Amended Protective
5 Order shall be incorporated herein by reference as though fully set forth herein; provided,
6 however, that in the event of a conflict between any definition, term, or provision of this
7 Amended Supplemental Protective Order and any definition, term, or provision of the Amended
8 Protective Order, this Amended Supplemental Protective Order will control with respect to such
9 conflict.

10 1.2 The definitions, terms and provisions contained in this Amended
11 Supplemental Protective Order shall apply only to those Discovery Materials designated as Non-
12 Party Protected Material in accordance with this Amended Supplemental Protective Order, and
13 nothing herein shall provide any rights or protections to the Parties to the Litigations beyond
14 those set forth in the Amended Protective Order.

15 2. DEFINITIONS

16 2.1 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery in the Litigations as “NON-
18 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY.”

19 2.2 Non-Party Protected Material: sensitive Non-Party confidential
20 information or documents, disclosure of which to another Party or Non-Party could create a
21 substantial risk of serious harm to the Non-Party.

22 3. SCOPE

23 3.1 This Amended Supplemental Protective Order covers not only documents
24 designated “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”,
25 but also any information copied, excerpted, or summarized from documents with such
26 designation and any testimony, conversations, or presentations by Counsel that might reveal
27 information from documents with such designation. However, the protections conferred by this

1 Amended Supplemental Protective Order do not cover the following: (a) any documents or
2 information that is in the public domain at the time of disclosure to a Receiving Party or becomes
3 part of the public domain after its disclosure to a Receiving Party for reasons not involving a
4 violation of this Amended Supplemental Protective Order or the Amended Protective Order,
5 including becoming part of the public record through trial or otherwise; and (b) any documents or
6 information known to the Receiving Party prior to the disclosure or obtained by the Receiving
7 Party after the disclosure from a source who obtained the document or information lawfully and
8 under no obligation of confidentiality to the Designating Party.

9 3.2 Nothing in these provisions should be construed as prohibiting a Non-Party
10 from seeking additional protections.

11 4. DESIGNATION AND USE OF NON-PARTY PROTECTED MATERIAL

12 4.1 In order for materials produced in discovery to qualify for protection as
13 “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY”, the
14 Designating Party must affix the legend “NON-PARTY HIGHLY CONFIDENTIAL –
15 OUTSIDE COUNSEL EYES ONLY” to each page of any document for which the Designating
16 Party seeks protection under this Amended Supplemental Protective Order;

17 4.2 Unless otherwise ordered by the Court or permitted by all implicated Non-
18 Parties, a Receiving Party may disclose documents and information designated as “NON-PARTY
19 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” to the following only:

20 (a) The Receiving Party’s Outside Counsel of Record in this action, as
21 well as employees of Outside Counsel of Record to whom it is reasonably necessary to disclose
22 the documents or information for this litigation and who have signed the “Acknowledgment and
23 Agreement to be Bound” (Exhibit A to the Amended Protective Order);

24 (b) State AGO Attorneys who have appeared on behalf of Plaintiff
25 States in this litigation, who are actively prosecuting the Litigation, or to whom it is reasonably
26 necessary to disclose the information for purposes of this litigation; State AGO Attorneys who
27 have appeared will maintain a list of Attorneys as well as supervisors of support staff subject to

1 this section;

2 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
3 necessary for the Litigations and (2) who have signed the “Acknowledgment and Agreement to
4 be Bound” (Exhibit A to the Amended Protective Order);

5 (d) The Court and its personnel;

6 (e) Stenographic reporters, videographers, and their respective staff,
7 professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably
8 necessary for these Litigations and who have signed the “Acknowledgment and Agreement to be
9 Bound” (Exhibit A to the Amended Protective Order);

10 (f) The author or recipient of a document containing the information or
11 custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing and Filing under Seal. A Party may not file in the public record in
13 this action any Non-Party Protected Material. Non-Party Protected Material may be filed only
14 under seal pursuant to a Court order authorizing the sealing of the specific Non-Party Protected
15 Material at issue. A Party that seeks to file under seal any Non-Party Protected Material must
16 comply with Civil Local Rule 79-5. In addition to the requirements of Civil Local Rule 79-5(e),
17 the Party seeking to file under seal any Non-Party Protected Material should identify the Non-
18 Party whose Non-Party Protected Material has been designated as “NON-PARTY HIGHLY
19 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” and serve the supporting declaration
20 on the Non-Party so that Non-Party has the opportunity to file a declaration establishing that all of
21 the designated material is sealable pursuant to Civil Local Rule 79-5(e). If a Receiving Party’s or
22 Non-Party’s request to file Non-Party Protected Material under seal pursuant to Civil Local
23 Rule 79-5(e) is denied by the Court, then the Receiving Party may file the Protected Material in
24 the public record pursuant to Civil Local Rule 79-5(e)(2), unless otherwise instructed by the
25 Court.

26 4.4 Use of Non-Party Protected Material at Depositions. Except as may
27 otherwise be ordered by the Court, any person may be examined as a witness at deposition and

1 may testify concerning Non-Party Protected Material to the extent such person was the author,
2 recipient, or custodian of the material, or otherwise possessed or had prior knowledge of such
3 material. For clarity,

4 (a) A present director, officer, agent, employee and/or designated Rule
5 30(b)(6) witness of a Non-Party may be examined and may testify concerning Non-Party
6 Protected Material, but to the extent a document is designated as NON-PARTY HIGHLY
7 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s
8 Protected Material, all such materials, of which such person did not have prior knowledge, should
9 be redacted prior to introducing any such document for examination;

10 (b) A former director, officer, agent, and/or employee of Non-Party
11 may be interviewed or examined and may testify concerning Non-Party Protected Material to the
12 extent such person was the author, recipient, or custodian of the material, or otherwise possessed
13 or had prior knowledge of such material, but to the extent a document is designated as NON-
14 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY and contains
15 another Non-Party’s Protected Material, all such materials, of which such person did not have
16 prior knowledge, should be redacted prior to introducing any such document for examination;

17 (c) Any other witness may be examined at deposition or otherwise
18 testify concerning any document containing Non-Party Protected Material which appears on its
19 face or from other documents or testimony to have been received from, communicated to, or
20 otherwise made known to that witness as a result of any contact or relationship with the Non-
21 Party, but to the extent a document is designated as NON-PARTY HIGHLY CONFIDENTIAL –
22 OUTSIDE COUNSEL EYES ONLY and contains another Non-Party’s Protected Material, all
23 such materials, of which such person did not have prior knowledge, should be redacted prior to
24 introducing any such document for examination; and

25 (d) At deposition, any person other than (i) the witness, (ii) the
26 witness’s outside attorney(s), and (iii) any Person(s) qualified to receive documents designated as
27 NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY under this

1 Amended Supplemental Protective Order shall be excluded from the portion of the examination
2 concerning such information, unless the Non-Party or the witness appearing on behalf of the Non-
3 Party whose Non-Party's Protected Material is at issue consents to that person's attendance. If
4 the witness is represented by an outside attorney who is not qualified under this Amended
5 Supplemental Protective Order to receive such information, then prior to the examination, the
6 outside attorney shall be requested to sign and provide a signed copy of the "Acknowledgment
7 and Agreement to be Bound" attached as Exhibit A to the Protective Order, and to confirm that he
8 or she will comply with the terms of this Amended Supplemental Protective Order and maintain
9 the confidentiality of information contained within documents designated as NON-PARTY
10 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY. In the event that such
11 outside attorney declines to sign the "Acknowledgment and Agreement to be Bound" prior to the
12 examination, the Non-Party may seek a protective order from the Court, in a motion to which the
13 Parties will not object, prohibiting such outside attorney from disclosing Non-Party Protected
14 Material.

15 4.5 Use of Designated Material at Hearings. A Party must not disclose NON-
16 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information,
17 directly or indirectly, in an open hearing without prior consent from the Non-Party or without
18 authorization from the court. If the disclosing party anticipates disclosing any NON-PARTY
19 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information in any open
20 hearing, the disclosing party must notify the Non-Party of its intent to disclose such material at
21 least four (4) business days in advance of such disclosure, or, if such notice is not possible, as
22 soon as is reasonably practicable, and describe the materials to be disclosed with reasonable
23 particularity, so that the Non-Party has the opportunity to file an objection to such disclosure and
24 establish that the materials to be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and
25 the Court's standing orders. If such notice is not given or the Non-Party files such an objection,
26 the Disclosing Party must request that the courtroom be sealed, and that only those authorized to
27 review NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY

1 information remain present during the presentation of such material, unless the Court orders
2 otherwise.

3 4.6 Use of Designated Material at Trial. Any Party that discloses any NON-
4 PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY materials on any
5 trial exhibit list exchanged with an opposing Party, or that is disclosed to the Court, must disclose
6 such materials to the implicated Non-Party no later than two (2) business days after such
7 exchange or disclosure, and describe the materials with reasonable particularity, so that the Non-
8 Party has the opportunity to file an objection to such disclosure and establish that the materials to
9 be disclosed are sealable pursuant to Civil Local Rule 79-5(e) and the Court’s standing orders. If
10 such notice is not given or the Non-Party files such an objection, the Disclosing Party must
11 request that the courtroom be sealed, and that only those authorized to review NON-PARTY
12 HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY information remain present
13 during the presentation of such material, unless the Court orders otherwise.

14 Dated: October 11, 2021

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By: /s/ Yonatan Even
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Counsel for Defendants Google LLC et al.

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Counsel for Defendants Google LLC et al.

ORDER

Pursuant to stipulation, it is so ordered.

DATED: October 22, 2021



HON. JAMES DONATO
United States District Judge