

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 OAKLAND DIVISION

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6 IN RE APPLE iPHONE TRUST) Case No. 4:11-cv-06715YGR
7 LITIGATION) 4:11-cv-06714-YGR and
8) 4:19-cv-03074-YGR
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△ DEFENDANT △	United States District Court Northern District of California
	Case No. <u>4:20-cv-05640-YGR</u>
	Case Title <u>Epic Games, Inc. v. Apple, Inc.</u>
	Exhibit No. <u>DX-3041</u>
	Date Entered _____ Susan Y. Soong, Clerk
	By: _____, Deputy Clerk

12 ** HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER **

13 REMOTE VIDEOTAPED DEPOSITION OF HASEEB MALIK

14 Friday, February 12, 2021

15 Volume I

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19 Reported by:

20 NADIA NEWHART
21 CSR No. 8714
22 Job No. 4453673
23 PAGES 1 - 198

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While you were at Epic Games, what was your
position?

09:22:04

A Director of mobile publishing.

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2 (Exhibit 506 was marked for identification
3 and is attached hereto.)

4 BY MR. DOREN:

5 Q And, Mr. Malik, the next exhibit will be 10:56:37
6 Exhibit 506. It's a multipage document bearing
7 Bates numbers EPIC_00407322 through 332. And it is
8 a series of -- it looks like a text string between
9 you and Mr. Payne on -- from Saturday, August 3,
10 2019. 10:57:06

11 Just wait for that to come up, and please
12 take the time you need to review it.

13 MS. MOSKOWITZ: It's not a text chain. I
14 think this would have been a Hangouts in the
15 production format. 10:57:19

16 MR. DOREN: Thank you.

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7 First of all, Mr. Malik, do you -- have you
8 had a chance to review Exhibit 506?

9 A Yeah, for the -- yeah, I -- I tried to go
10 through the 11 pages as quick as I could.

11:02:48

11 Q Yeah. And to the extent you need more time
12 with the document along the way, you just tell me.

13 Now, do you recognize this as a Hangout
14 exchange between yourself and Mr. Payne from
15 August 2019?

11:03:06

16 A Yes.

17 Q And what is a Hangout?

18 A It's Google's chat client.

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15 Q And your next entry -- entry says (as read): 11:11:46

16 "And for God's sake, why do we hate
17 Apple?"

18 And that was a question you had on August 3,
19 2019, correct?

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21 THE WITNESS: I -- yeah. As you can tell by
22 my tonality in this conversation, I appear quite
23 frustrated as a new employee not being able to
24 figure out how to effectively do my job. And so I
25 am wondering why we are struggling with the 11:12:22

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1 platforms I'm supposed to work on.

2 BY MR. DOREN:

3 Q And your perception at the time was that Epic
4 hated Apple, correct?

5 A The language I'm using here is me trying to 11:12:32
6 figure out why the relationship is not the same as
7 what I'm used to at other companies.

8 Q With Apple?

9 A With -- with Apple, uh-huh.

10 Q And what you wrote was (as read): 11:12:44
11 "And for God's sake, why do we hate
12 Apple," correct?

13 A That's what I wrote.

14 Q And that was the question you had as of that
15 date, correct? 11:12:56

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24 A Yeah. So look, I -- so as I mentioned, I was
25 having a pretty tough time at this period of being 11:13:09

1 there for a few months and not understanding why we
2 were having some of the challenges we were having
3 with mobile coming -- that I am coming from a -- a
4 pretty strong mobile background, and this felt
5 different to me for the world's largest game.

11:13:27

6 Q And -- and what challenges did you believe
7 that the company was having with mobile after --
8 once you had been at the company for three months?

9 A So the Android ones which were, as I
10 mentioned, numerous steps imposed by the operating
11 system to -- to scale the game -- so you have to
12 remember, if my -- if my job performance is -- is
13 based on growing the mobile -- mobile users but I'm
14 running into these hurdles, it's quite frustrating.

11:13:39

15 And then regarding Apple, by this time, I've
16 already encountered a number of delays and so on in
17 the review process. And so I am trying to figure
18 out through talking to this colleague on why we're
19 having all of these delays through the review
20 process and -- and so on with Apple.

11:13:58

11:14:12

21 Q And what review process are you talking
22 about?

23 A So sometimes it takes a long time to get a --
24 a Fortnite build -- or it took a long time to get a
25 Fortnite build through the review process at Apple

11:14:26

1 relative to the speed in which the same builds would
2 go through on the other platforms.

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7 Q And if you go down further at 8- -- or sorry,

8 13:58:21, Mr. Payne says (as read):

9 "I don't have the impression that

10 our relationship is regularly

11:34:19

11 antagonistic. Epic has been

12 on-stage in several big Apple

13 presentations in the last couple of

14 years."

15 Do you see that?

11:34:27

16 A Uh-huh, yes, I see that.

17 Q And you -- and you understand that to mean

18 that Epic had made -- created opportunities for Epic

19 to present at Apple events, correct?

20 A From my understanding, the company had been

11:34:41

21 invited to share games in the past on -- at

22 worldwide developer conference. So that's where I

23 was -- this is all sort of coming from, and it -- it

24 should be better than the way it is.

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Q Hi, Mr. Malik. We are preparing the next 11:58:14

exhibit in order, which will be Exhibit 507, which

is a deck entitled "Fortnite Mobile Adam Sussman

Onboarding - January 2020."

And it -- it -- the first page bears your

name and Brian Chu's name. The document is Bates

11:58:39

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1 numbers EPIC_00126433 through 487.
2 So once that comes up, take the time to
3 familiarize yourself with it, but to the extent I
4 have specific questions, I will direct you to the --
5 the places that I have questions about. 11:59:01

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10 (Exhibit 507 was marked for identification 11:59:15
11 and is attached hereto.)

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Q Mr. Malik, have you had an opportunity to
review Exhibit 507?

A Yes.

12:02:49

Q And this document is entitled "Adam Sussman
Onboarding - January 2020."

Do you recall this document?

A Yes, I -- I do.

Q And what is it?

12:03:02

A This was a collection of slides that
leadership asked us to pull together to be shared
with Adam Sussman when he joined the company.

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9 (Exhibit 508 was marked for identification
10 and is attached hereto.)

12:31:27

11 BY MR. DOREN:

12 Q Mr. Malik, you were presented with
13 Exhibit 508, which is a document bearing Bates
14 numbers EPIC_00385868 through 902.

15 It begins with an email from you to
16 Devin Winterbottom with attachments, "Mobile
17 Business Update - March 2020," and it does indeed
18 include or is followed by a deck entitled "Mobile
19 Business Update - March 2020."

12:31:41

20 Can you please just take a moment to
21 familiarize yourself with this document. And as
22 with the last deck, I will point you to specific
23 areas of interest.

12:32:05

24 A Okay.

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11 Q And have you had an opportunity to review
12 Exhibit 508?

13 A Yes. This looks like the mobile business --

14 Q Let me ask, let me ask, let me ask.
15 And do you recognize this document? 12:33:35

16 A Yes, I recognize this document.

17 Q And what is it?

18 A This is the mobile business update dated
19 March 2020.

20 Q And what was -- why was this document 12:33:46
21 created?

22 A As far as I recall, I believe this was to be
23 presented to (technical difficulty.)

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3 A I believe this presentation was put together
4 to be presented to Adam Sussman.

5 Q And who prepared this -- this presentation? 12:34:24

6 A All of the people on that -- on -- which was
7 the mobile team at Epic. So you're number 5870, all
8 the people on this slide participated in putting
9 this presentation together.

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12 (Exhibit 510 was marked for identification
13 and is attached hereto.)

14 BY MR. DOREN:

15 Q Mr. Malik, you have in front of you 12:44:56
16 Exhibit 510, which is a three-page document bearing
17 Bates numbers EPIC_00428883 through 885.

18 If you could please take a moment to review
19 this email string.

20 A Okay. 12:45:51

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

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18 Q And who was the source of that information to
19 you?

20 A So again, like I had mentioned before, 01:52:41
21 these -- me carrying out these things was under the
22 direction of Epic leadership and the people that
23 were above me. So Ed Zobrist, Matt Weissinger and
24 so on.

25 Q You were just following orders? 01:53:00

Page 176

1 A Just following orders.

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11 (Exhibit 511 was marked for identification

12 and is attached hereto.)

13 BY MR. DOREN:

14 Q Exhibit 511 is another email string. It

15 begins on EPIC_00431657 to 659. And the top email

01:53:30

16 on the first page of Exhibit 511 is from

17 Adam Sussman to you, dated Friday the 24th of

18 January of 2020.

19 Can you please take a moment, please, and

20 review Exhibit 511.

01:53:50

21 A Okay.

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22 Q Okay. Then on January 23rd, at 1:48 p.m.,
23 you send this string -- you forward this string to
24 Adam Sussman, correct?

25 A Yes. I was asked to catch Adam up on all 01:58:11

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1 things mobile, and so I started forwarding different
2 emails. This was one of them.

3 Q Okay. And you tell him that (as read) :

4 "For background, we had submitted a
5 build of Google Play that included
6 Epic payment only," correct? 01:58:25

7 A Yes, that is what I wrote there, uh-huh.

8 Q And that was an accurate statement?

9 A Yes.

10 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

21 And that's an accurate statement as of
22 January 23rd, 2020?

23 A Yes. I summarize what had happened in a few
24 short paragraphs for the new executives to join.

25