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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,
Plaintiff,
vs.
APPLE INC.,
Defendant.

AND RELATED COUNTERCLAIM

Case No. 4:20-cv-05640-YGR
**TRIAL ORDER NO. 4 RE:
(1) ADMINISTRATIVE MOTIONS TO SEAL;
AND (2) PARTIAL RULING ON EXPERT
OBJECTIONS**
Re: Dkt. Nos. 489, 509, 518, 520

TO ALL PARTIES AND COUNSEL OF RECORD:

The Court issues this Order with respect to several items on the docket:

1. Administrative Motions to Seal Expert Written Direct Examination

The Court is in receipt of various motions to seal portions of the parties’ expert written direct examinations. Having carefully considered the parties’ arguments, supporting declarations, and declarations filed by third parties, the Court finds as follows:¹

| Expert Written Direct Paragraph or Footnote Number | Affected Party | Ruling |
|--|----------------|--|
| Epic Games’ Motion to Seal (Dkt. No. 509)² | | |
| Evans Opening 43 | IDC | DENY. IDC files no supporting declaration to justify sealing. |
| Evans Opening FN3 | Apple, IDC | DENY. IDC files no supporting |

¹ As with the prior motions to seal, if the Court chooses to unseal material for use at trial, it will give the parties a chance to respond. Where this Order seals a cited exhibit, the sealing shall apply to the underlying exhibit, not the citation.

² The Court addressed sealing of the written direct examination of Epic Games’ expert Mr. Barnes in an earlier order. (See Dkt. No. 548.)

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| 1 | | | declaration to justify sealing. Apple does not seek to seal. |
| 2 | Evans Opening 51 | Samsung | DENY. Samsung files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 3 | Evans Opening FN5 | Samsung | DENY. Samsung files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 4 | Evans Opening 53 | App Annie | DENY. App Annie files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). ³ |
| 5 | Evans Opening 74 | IDC | DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 6 | Evans Opening 79 | IDC | DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 7 | Evans Opening 80 | App Annie | DENY. App Annie files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 8 | Evans Opening 81 | IDC | DENY. IDC files no supporting declaration. <i>See</i> Civ. L. R. 79-5(e)(2). |
| 9 | Evans Opening 88 | Google | GRANT to the extent shown in Dkt. No. 535-1. This contains Google's confidential business information, including internal surveys and analysis, which competitively harm Google through disclosure. (Dkt. No. 535 ¶ 7.) Google only requests sealing specific numbers based on its survey data, which makes the request narrowly tailored. |
| 10 | Evans Opening FN27 | Google | DENY. Google does not seek to seal. |
| 11 | Evans Opening 107 | Microsoft | DENY. Microsoft does not seek to seal. |
| 12 | Evans Opening 141 | Apple | DENY. This reveals no confidential information. |
| 13 | Evans Opening 149 | Apple | GRANT. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 14 | Evans Opening FN46 | Apple | DENY. This concerns Mr. Barnes' analysis of Apple's profitability, |

³ App Annie had earlier filed a motion to seal certain exhibits, but did not seek to seal the expert written direct examinations then pending.

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| 1 | | | not Apple's internal data. The Court has already unsealed this data. (<i>See</i> Dkt. No. 548.) |
| 2 | | | |
| 3 | Evans Opening Table 3 | Apple | GRANT. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 4 | | | |
| 5 | Evans Opening 153 | Apple | GRANT. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 6 | | | |
| 7 | Evans Opening FN47 | Apple | DENY. This reveals no confidential information. |
| 8 | Evans Opening FN48 | Apple | DENY. This reveals no confidential information. |
| 9 | Evans Opening FN49 | Apple | DENY. This reveals no confidential information. |
| 10 | Evans Opening FN50 | Apple | DENY. This reveals no confidential information. |
| 11 | | | |
| 12 | Evans Opening Figure 2 | Apple | GRANT as to number. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 13 | | | |
| 14 | Evans Opening 154 | Apple | GRANT. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 15 | Evans Opening FN51 | Apple | DENY. This reveals no confidential information. |
| 16 | Evans Opening FN52 | Apple | DENY. This reveals no confidential information. |
| 17 | | | |
| 18 | Evans Opening 172 | Valve | GRANT. This contains Valve's confidential business information. (<i>See</i> Dkt. No. 569 ¶ 10.) |
| 19 | Evans Opening 173 | Valve | DENY. This reveals no confidential information. |
| 20 | Evans Opening FN65 | Valve | DENY. This reveals no confidential information. |
| 21 | | | |
| 22 | Evans Opening 177 | Microsoft, Valve | GRANT. This contains Valve's confidential business information. (<i>See</i> Dkt. No. 569 ¶ 11.) Microsoft does not seek to seal. |
| 23 | | | |
| 24 | Evans Opening 182 | Apple | GRANT as to last sentence only. This contains Apple's confidential financial information. (<i>See</i> Dkt. No. 540 ¶ 18.) |
| 25 | | | |
| 26 | Evans Opening 183 | Apple | DENY. This reveals no confidential information. |
| 27 | Evans Opening 184 | Apple | DENY. This reveals no confidential information. |
| 28 | Evans Opening FN74 | Apple | DENY. This reveals no |

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| 1 | | | confidential information. |
| 2 | Evans Opening Figure 3 | Apple | DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case. |
| 3 | | | |
| 4 | Evans Opening 188 | Apple | DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case. |
| 5 | | | |
| 6 | Evans Opening Table 7 | Apple | DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case. |
| 7 | | | |
| 8 | Evans Opening 189 | Apple | DENY. This contains primarily historical confidential information that does not outweigh its relevance to the case. |
| 9 | | | |
| 10 | Evans Opening FN77 | Apple | DENY. This reveals no confidential information. |
| 11 | | | |
| 12 | Evans Opening Figure 4 | Apple | DENY. This reveals no confidential information. |
| 13 | | | |
| 14 | Evans Opening FN105 | Apple | GRANT. This contains Apple's confidential technical information. (See Dkt. No. 540 ¶ 18.) |
| 15 | | | |
| 16 | Evans Opening 229 | Apple | DENY. This reveals no confidential information. |
| 17 | | | |
| 18 | Evans Opening Figure 5 | Apple | GRANT. This contains Apple's confidential technical information that could be used to evade security protocols if disclosed. (See Dkt. No. 540 ¶ 18.) |
| 19 | | | |
| 20 | Evans Opening FN108 | Apple | DENY. This reveals no confidential information. |
| 21 | | | |
| 22 | Evans Opening 241 | Match | GRANT. This contains Match's confidential business information that could cause competitive harm to Match. (See Dkt. No. 570 ¶ 5.) |
| 23 | | | |
| 24 | Evans Opening 242 | Microsoft | DENY. Microsoft does not seek to seal. |
| 25 | | | |
| 26 | Evans Opening 270(i) | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 27 | | | |
| 28 | Evans Opening Table 8 | Apple, App Annie | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| | | | |
| | Evans Opening 288 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |

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| 1 | Evans Opening 295 | Apple | DENY. This reveals no confidential information. |
| 2 | | | |
| 3 | Evans Opening FN126 | Apple | GRANT as to number only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 4 | | | |
| 5 | Rossi Opening 49 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 6 | | | |
| 7 | Cragg Rebuttal 9 | Spotify | GRANT as to bullet 3 after "Moreover." This discloses Spotify's confidential business information and could harm Spotify in negotiations with content owners and distributors. (Dkt. No. 575 ¶ 7.) |
| 8 | | | |
| 9 | | | |
| 10 | Cragg Rebuttal 56 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.) |
| 11 | | | |
| 12 | Cragg Rebuttal Figure 4 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.) |
| 13 | | | |
| 14 | Cragg Rebuttal 57 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 15 | | | |
| 16 | Cragg Rebuttal 65 | Spotify | DENY. Spotify does not seek to seal. |
| 17 | Cragg Rebuttal 69 | Spotify | DENY. Spotify does not seek to seal. |
| 18 | Cragg Rebuttal 70 | Spotify | GRANT as to clause beginning with "which it estimates." This discloses Spotify's confidential marketing spending data that could harm Spotify competitively by informing competitors' business decisions. (Dkt. No. 575 ¶ 14.) |
| 19 | | | |
| 20 | | | |
| 21 | | | |
| 22 | Cragg Rebuttal Figure 8 | Spotify | GRANT. This discloses Spotify's confidential business data that could harm Spotify competitively if disclosed. (Dkt. No. 575 ¶ 15.) The relevant portion of the information is already disclosed in the paragraphs 70 and 71. |
| 23 | | | |
| 24 | | | |
| 25 | | | |
| 26 | Cragg Rebuttal 71 | Spotify | GRANT. This discloses Spotify's confidential business data that could harm Spotify competitively if disclosed. (Dkt. No. 575 ¶ 15.) |
| 27 | | | |
| 28 | Cragg Rebuttal FN10 | Spotify | DENY. Spotify does not seek to seal. |

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| 1 | Cragg Rebuttal 94 | Apple | DENY. This reveals no confidential information. |
| 2 | Cragg Rebuttal Figure 18 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.) |
| 3 | Cragg Rebuttal 95 | Apple, App Annie | DENY. This reveals no confidential information. App Annie files no supporting declaration. |
| 4 | Cragg Rebuttal Figure 19 | App Annie | DENY. App Annie files no supporting declaration. See Civ. L. R. 79-5(e)(2). |
| 5 | Cragg Rebuttal 99 | Apple | DENY. This reveals no confidential information. |
| 6 | Cragg Rebuttal Figure 21 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 7 | Cragg Rebuttal 100 | Apple | GRANT as to numerical reference only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 8 | Cragg Rebuttal Figure 22 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 9 | Cragg Rebuttal 102 | Apple | GRANT as to phrase beginning with "as of 2019" only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 10 | Cragg Rebuttal Figure 23 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 11 | Cragg Rebuttal 103 | Apple | DENY. Dr. Hitt discloses the same type of analysis and data. |
| 12 | Cragg Rebuttal Figure 24 | Apple | DENY. Dr. Hitt discloses the same type of analysis and data. |
| 13 | Cragg Rebuttal 105 | Apple | DENY. Dr. Hitt discloses the same type of analysis and data. |
| 14 | Cragg Rebuttal Figure 25 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 15 | Evans Rebuttal Table of Contents | Apple | DENY. This reveals no confidential information. |
| 16 | Evans Rebuttal 2 | Apple | DENY. This reveals no confidential information. |
| 17 | Evans Rebuttal FN11 | Samsung | DENY. Samsung files no supporting declaration. See Civ. L. R. 79-5(e)(2). |

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| 1 | Evans Rebuttal 34 | Apple, Google | DENY. This contains no confidential information that outweighs the public interest in disclosure. |
| 2 | | | |
| 3 | Evans Rebuttal FN34 | Google | DENY. This contains no confidential information that outweighs the public interest in disclosure. |
| 4 | | | |
| 5 | Evans Rebuttal FN 38 | Apple | DENY. This reveals no confidential information. |
| 6 | | | |
| 7 | Evans Rebuttal 36 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 8 | | | |
| 9 | Evans Rebuttal 40 | Apple | DENY. This reveals no confidential information. The mere existence of P&L statements is not confidential. |
| 10 | | | |
| 11 | Evans Rebuttal 42 | Apple | DENY. This information is general and highly relevant to the claims. |
| 12 | | | |
| 13 | Evans Rebuttal 43 | Apple | DENY. The existence of P&L statements and other profit calculations are not sealable. |
| 14 | | | |
| 15 | Evans Rebuttal 44 | Apple | GRANT as to numerical reference only. This contains Apple's confidential financial information that can be referred to generally. (See Dkt. No. 540 ¶ 18.) |
| 16 | | | |
| 17 | Evans Rebuttal 45 | Apple | GRANT as to sentence beginning with "Apple's internal profitability benchmarking analysis shows, as well as the sentence following. This contains Apple's confidential financial information that can be referred to generally. (See Dkt. No. 540 ¶ 18.) |
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| 22 | Evans Rebuttal FN50 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 23 | | | |
| 24 | Evans Rebuttal FN52 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 25 | | | |
| 26 | Evans Rebuttal FN54 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 27 | | | |
| 28 | Evans Rebuttal 46 | Apple | DENY. This reveals no confidential information. |
| | Evans Rebuttal 47 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |

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| 1 | Evans Rebuttal 49 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 2 | | | |
| 3 | Evans Rebuttal FN58 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 4 | | | |
| 5 | Evans Rebuttal FN59 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 6 | | | |
| 7 | Evans Rebuttal 52 | Valve | DENY. Valve does not seek to seal. |
| 8 | Evans Rebuttal FN65 | Valve | DENY. Valve does not seek to seal. |
| 9 | Evans Rebuttal 64 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 10 | | | |
| 11 | Evans Rebuttal 71 | Apple | GRANT as to the clause after the colon only. This contains Apple's confidential financial information. (See Dkt. No. 540 ¶ 18.) |
| 12 | | | |
| 13 | Evans Rebuttal 74 | Apple | DENY. This information has already been disclosed by Barnes. |
| 14 | Lee Rebuttal 35 | Apple | DENY. This reveals no confidential information. |
| 15 | Lee Rebuttal FN18 | Apple | DENY. This reveals no confidential information. |
| 16 | Lee Rebuttal 63 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 17 | Lee Rebuttal FN30 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 18 | Lee Rebuttal 67 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 19 | Lee Rebuttal 68 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 20 | Lee Rebuttal FN37 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 21 | Lee Rebuttal FN38 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 22 | Lee Rebuttal FN39 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 23 | Lee Rebuttal 99 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 24 | Lee Rebuttal FN76 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 25 | Lee Rebuttal 119 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
| 26 | Lee Rebuttal FN89 | Apple | DENY. Apple does not request sealing. (See Dkt. No. 540 ¶ 17.) |
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| 1 | Mathiowetz Rebuttal 12 | Apple | DENY. This reveals no confidential information. |
| 2 | Mathiowetz Rebuttal 70 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 540 ¶ 18.) |
| 3 | Mathiowetz Rebuttal 71 | Apple | DENY. This reveals no confidential information. |
| 4 | Apple's Motion to Seal (Dkt. No. 489) | | |
| 5 | Hitt 61 | Apple | DENY. This concerns a third-party's study of the gaming industry. |
| 6 | Hitt 117 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 489-1 ¶ 8.) |
| 7 | Hitt 184 | Google | GRANT as to the number shown at the end of the paragraph. This discloses Google's confidential financial data that could harm Google competitively if disclosed. (Dkt. No. 535 ¶ 8.) |
| 8 | Hitt Figure 46 | Google | GRANT. This discloses Google's confidential financial data that could harm Google if disclosed. (Dkt. No. 535 ¶ 8.) |
| 9 | Hitt 187 | Apple | GRANT. This contains Apple's confidential financial information. (See Dkt. No. 489-1 ¶ 8.) |
| 10 | Hitt 209-11 | Google | GRANT as to the numbers cited in Dkt. No. 535-2. This discloses Google's confidential internal analyses. (Dkt. No. 535 ¶ 8.) While highly relevant, the specific numbers are not necessary to understand the analysis. |
| 11 | Hitt 213 | Google | DENY. This information is highly relevant to the case and Google does not articulate concrete competitive harm from disclosure. |
| 12 | Hitt 260 | Nintendo | DENY. This contains no confidential information as to Nintendo. |
| 13 | Hitt Figure 4 | Microsoft, Nintendo | GRANT. This discloses Microsoft's confidential business data. (Dkt. No. 567.) The Court granted to seal the underlying agreement. |
| 14 | Hitt Figure 5 | Roblox | GRANT. This discloses Roblox's confidential business data. (Dkt. No. 573.) The Court granted to seal the underlying agreement. |

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| 1 | Hitt Figure 22 | Apple, Spotify | GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 9.) The relevant aspect of the information is disclosed in paragraph 102, which reduces the public's need to know the specific numbers. |
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| 7 | Hitt Figure 23 | Spotify | GRANT. This reveals Spotify's confidential business information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 11.) The relevant aspect of the information is disclosed in paragraph 102, which reduces the public's need to know the specific numbers. |
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| 13 | | | |
| 14 | Hitt Figure 24 | Spotify | GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 9.) The relevant aspect of the information is disclosed in paragraph 103, which reduces the public's need to know the specific numbers. |
| 15 | | | |
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| 20 | Hitt Figure 25 | Spotify | GRANT. This reveals Spotify's confidential financial information the disclosure of which could disadvantage Spotify in negotiations, such as with advertisers. (Dkt. No. 575 ¶ 12.) The relevant aspect of the information is disclosed in paragraph 104, which reduces the public's need to know the specific numbers. |
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| 27 | Hitt Figure 27 | Apple | DENY. This reveals no confidential information. |
| 28 | Hitt Figure 47 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 489-1 ¶ 10.) |

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| 1 | Schmalensee 95 | Apple | DENY. This refers to Dr. Evans' hypothetical analysis of Apple's profits and does not disclose any confidential information. |
| 2 | Schmalensee 170 | Apple | GRANT. This contains Apple's confidential business information. (See Dkt. No. 489-1 ¶ 8.) |
| 3 | LaFontaine 100 | Google | GRANT. as shown in Dkt. No. 535-3. This concerns Google's confidential internal analyses data analysis. (Dkt. No. 535 ¶ 9.) |
| 4 | Rubin 57 | Google | GRANT as to the first two sentences and the last sentence only. This concerns Google's internal review process and app store security statistics. While highly relevant to the present case as providing comparison with a key competitor, Google is a third-party whose conduct is not at issue in this case. Disclosure of the information could allow malicious actors to exploit security risks in Google's process and thus cause substantial harm. (Dkt. No. 535 ¶ 10.) |
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17 Written testimony of each expert shall not post until the witness takes the stand. Before
18 posting the written testimony, the parties shall provide to the Court a highlighted version of the
19 redactions. The parties shall meet and confer regarding the timing of the exchange.

20 **2. Objections to Written Direct Testimony**

21 The Court is further in receipt of several objections to the expert written direct testimony.
22 (Dkt. Nos. 518, 520.) Apple's objections to Dr. Athey are **OVERRULED** as the testimony does not
23 constitute additional opinions. Apple's objections to Prof. Mickens are **OVERRULED** as being
24 overly technical and harmless. Apple's objections to Dr. Evans are **OVERRULED** as to paragraphs
25 48-50 and **SUSTAINED** as to paragraph 39. That testimony shall be struck from the written direct
26 examination. Apple's objections to Dr. Cragg are **SUSTAINED** as to the "coefficients" discussion
27 in paragraph 26 and **OVERRULED** as to the rest.

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The Court shall address the remaining objections in a separate order.

This Order terminates docket numbers 489 and 509.

IT IS SO ORDERED.

Dated: May 9, 2021



**YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE**