IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

APPLE INC., Movant v. BASECAMP, LLC, Defendant.	Case No. 21-cv-3860 Underlying Litigation: *Cameron v. Apple Inc.,* No. 4:19-cv-3074 *In re Apple iPhone Antitrust Litigation,* No. 4:11-cv-6714 U.S. District Court for the Northern District Of California

MEMORANDUM OF LAW IN SUPPORT OF APPLE INC.'S MOTIONS TO TRANSFER THE MOTION TO COMPEL AND EXPEDITE PROCEEDINGS

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Apple Inc. ("Apple") submits this Motion to Transfer the Motion to Compel and Motion to Expedite these proceedings (the "Transfer Motion"). Apple incorporates by reference its separate Motion to Compel certain documents from Basecamp LLC ("Basecamp") (the "Compel Motion"), including the Declaration of Michael R. Huttenlocher, dated July 19, 2021, appended thereto.

PRELIMINARY STATEMENT[1]

On December 8, 2020, Apple served Basecamp with a Rule 45 subpoena (the "Subpoena") seeking documents highly relevant to two ongoing antitrust class action cases brought against Apple in the Northern District of California before U.S. District Judge Yvonne Gonzalez Rogers and U.S. Magistrate Judge Thomas S. Hixson. These two class actions, one brought by a putative class of app developers and the other by a putative class of app consumers, essentially assert the same claims against Apple as asserted in a related, third antitrust action, filed in August 2020 by Epic Games, Inc. ("Epic"), the developer of the popular *Fortnite* video game, and which recently concluded in a three-week bench trial on May 24, 2021.[2] Judge Gonzalez Rogers and Magistrate Judge Hixson are intimately familiar with the facts of these complex antitrust cases, and Magistrate Judge Hixson has issued at least eighteen orders deciding at least 25 discovery disputes that arose in the coordinated discovery proceedings required of these three actions, including disputes involving third party subpoenas.

On December 22, 2020, Basecamp interposed a set of objections and, later, produced a limited number of documents in response to the Subpoena. Basecamp, however, objected to and

[1] Apple respectfully refers this Court to the Declaration of Michael R. Huttenlocher, dated July 19, 2021, appended hereto, for a more fulsome recitation of the factual background.

[2] A fourth antitrust action filed by app marketplace SaurikIT, LLC in December 2020 has been related to these cases and is also pending before Judge Gonzales Rogers and Magistrate Judge Hixson. *SaurikIT, LLC v. Apple, Inc.*, 20-cv-8733-YGR.

did not produce any documents responsive to requests 10, 11, and 25 (the "Relevant Requests"). The Relevant Requests seek documents, information, and communications relating to Basecamp's relationship to and involvement with the Coalition for App Fairness (the "Coalition"), and communications between Basecamp (including Basecamp's *counsel*) and any app developer regarding the subject matter of the antitrust litigation brought against Apple and/or matters relating to app marketplaces and Apple's guidelines and policies. In its written objections to the Relevant Requests, Basecamp objected on the basis of relevance but agreed that it would meet and confer with Apple to agree upon a reasonable scope of production. Notably, Basecamp did not interpose any specific privilege objections to any of the Relevant Requests.

Apple and Basecamp met and conferred several times concerning the Relevant Requests but could not come to agreement on a scope of production. Basecamp claimed that the requested documents were irrelevant and too burdensome; Basecamp failed to articulate the alleged undue burden or the costs associated of a search and production of relevant documents. After Apple served a similar subpoena upon the Coalition, its PR firm and its executive director, as well as Coalition members, including Yoga Buddhi Co., ("Yoga Buddhi") and Match Inc. ("Match"), Basecamp (who is represented by the same counsel as the Coalition, Yoga Buddhi, and Match) asserted an additional frivolous objection, namely that the documents and communications sought by the Relevant Requests were protected from disclosure by the First Amendment. On July 1, 2021, Apple and Basecamp met and conferred about this newly asserted First Amendment objection. Basecamp continued to stand on its blanket First Amendment objection to the Relevant Requests, and refused to have the dispute heard by Magistrate Judge Hixson despite his having heard and provided expedited decisions on more than a dozen discovery disputes in these antitrust cases (including third party subpoenas)."

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