

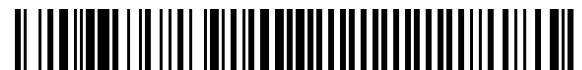
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: EPIC! CREATIONS, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11161 (JTD) (Jointly Administered)
Claudia Z. Springer, Chapter 11 Trustee, Plaintiff, vs. Google LLC, Voizzit Technology Private Ltd. Voizzit Information Technology LLC Vinay Ravindra Rajendran Vellapalath Defendants.	Adv. Pro. No. 24-50233 (JTD) (Jointly Administered) Re: Adv. D.I. 1

**GOOGLE LLC’S MOTION TO DISMISS COMPLAINT FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
TURNOVER OF ESTATE PROPERTY AND
RECORDS, AND TO ENFORCE THE AUTOMATIC STAY**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable to this adversary proceeding pursuant to Federal Rules of Bankruptcy Procedure 7012(b), Defendant Google LLC (“Google”), by and through its undersigned counsel, respectfully submits this motion (the “Motion”) and requests the dismissal of all claims against Google asserted in the *Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Complaint”) filed by Claudia Z.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).



Springer, as the Chapter 11 Trustee (the “Trustee”) for the estates of Epic! Creations, Inc. (“Epic”), Neuron Fuel, Inc., (“Neuron Fuel”) and Tangible Play, Inc. (“Tangible Play,” and collectively with Epic and Neuron Fuel, the “Debtors”).

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief sought in this Motion is predicated on Civil Rule 12(b)(6), made applicable herein pursuant to Bankruptcy Rule 7012(b).

3. Pursuant to Local Bankruptcy Rule 9013-1(f), Google consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

4. A concise statement of the relevant facts, with supporting references, presenting succinctly the background of the questions involved is set forth in the *Declaration of James C. Vandermark in Support of Google LLC’s Motion to Dismiss Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Vandermark Dec.”) and incorporated herein as set forth at length.

RELIEF SOUGHT

5. Google respectfully requests entry of an order, substantially in the form of the proposed order filed simultaneously with the instant Motion, dismissing Google from the

adversary proceeding, with prejudice, because: (i) any relief requested in the Complaint has already been provided to the Trustee and is therefore moot; and (ii) Google did not violate the automatic stay.

BASIS FOR RELIEF

6. The Complaint arises from a dispute between the Trustee and the other defendants named in this action (the “Voizzit Defendants”) related to certain assets on platforms maintained by Google. The Trustee and the Voizzit Defendants have filed multiple complaints, motions, and other filings, including most recently an action filed by the Voizzit Defendants in India against, among others, the Trustee and an affiliate of Google. Google does not currently take a position with regards to the disputes between the Trustee and the Voizzit Defendants, which this Court is best suited to decide. Google previously advised the Trustee of this and the fact that Google could not turn over control of certain accounts because the Debtors’ rights to the accounts was unclear. Despite Google’s representations, the Trustee filed the instant action against Google seeking: (i) the turnover of assets which the Trustee asserts belong to the Debtors’ estates, and (ii) damages based on the allegation that Google violated section 362(a)(3) of the Bankruptcy Code by not turning over control of the disputed accounts prior to this adversary proceeding.

7. The Trustee’s claims for injunctive relief against Google to prevent any changes to the accounts utilized by Debtors (Count I) and turnover of such accounts (Count II) are moot. Google has already provided all identified accounts to the Trustee making Google’s continued involvement in this adversary proceeding unwarranted.

8. The Trustee’s claim for damages pursuant to section 362(a)(3) of the Bankruptcy Code is also unwarranted. Google turned over control of accounts it determined rightfully belonged to the Debtors; however, the Trustee was advised the other accounts could be turned over

because the Debtors' rights to the other accounts was not clear. Google's inability to turnover accounts to the Trustee, is not an action that gives rise to a stay violation under section 362(a)(3) of the Bankruptcy Code. Therefore, because the Trustee cannot establish a claim for relief as against Google under Count III, which should also be dismissed as to Google.

9. Based on the foregoing and the reasons and arguments more fully set forth fully in the Memorandum of Law filed herewith, all claims against Google as asserted in the Complaint should be dismissed.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

WHEREFORE, Google respectfully requests that the Court enter an Order granting this Motion and dismissing all claims against Google in the Complaint with prejudice.

Dated: December 23, 2024
Wilmington, Delaware

WHITE AND WILLIAMS LLP

/s/ Michael Ingrassia
Michael A. Ingrassia (No. 7068)
600 N. King Street, Suite 800
Wilmington, Delaware 19801
Tel: (302) 467-4503
Fax: (302) 467-4550
Email: ingrassiam@whiteandwilliams.com

-and-

James C. Vandermark (admitted *pro hac vice*)
Morgan S. Birch (admitted *pro hac vice*)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103
Tel: (215) 864-6857
Email: vandermarkj@whiteandwilliams.com
birchm@whiteandwilliams.com

Counsel to Google LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: EPIC! CREATIONS, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11161 (JTD) (Jointly Administered)
Claudia Z. Springer, Chapter 11 Trustee, Plaintiff, vs. Google LLC, Voizzit Technology Private Ltd. Voizzit Information Technology LLC Vinay Ravindra Rajendran Vellapalath Defendants.	Adv. Pro. No. 24-50233 (JTD) (Jointly Administered) Re: Adv. D.I. 1

**DECLARATION OF JAMES C. VANDERMARK IN SUPPORT OF GOOGLE LLC’S
MOTION TO DISMISS COMPLAINT FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, TURNOVER OF ESTATE
PROPERTY AND RECORDS, AND TO ENFORCE THE AUTOMATIC STAY**

I, James C. Vandermark, declare under penalty of perjury:

1. I am an attorney at White and Williams LLP (“W&W”), attorneys for Google LLC (“Google”), Defendant in the above-captioned adversary proceeding.
2. I submit this Declaration in support of *Google LLC’s Motion to Dismiss Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Motion”) and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).

accompanying *Memorandum of Law in Support of Google LLC's Motion to Dismiss Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay*, (the "Opening Brief")² wherein Google requests entry of an order dismissing the claims asserted against Google by the Trustee in the Complaint filed in the above-captioned adversary proceeding.

3. Upon receipt of the Trustee's letter directed to Google's General Counsel (*see* Compl. at Exh. A.), W&W, on October 14, 2024, immediately contacted the Trustee to discuss, among other things, the status of the Chapter 11 Cases, the Trustee's requested turnover of any funds collected by Google relating to certain accounts, and the Trustee's request to change the administrators on the Google accounts. *Id.*

4. On that same day, the Parties, through counsel, conferred and W&W advised the Trustee of certain concerns related to identifying the relevant accounts, potential non-debtor interests therein, as well as requirements imposed on Google under the Stored Communications Act. *See generally*, 11 U.S.C. § 2701, *et seq.* (the "SCA").

5. On October 15, 2024, the Parties, through counsel, again met to discuss the accounts. Following that meeting, the Trustee provided additional information for some, but not all, accounts alleged to be the property of the Debtors' estates.

6. On October 16, 2024, W&W advised the Trustee, if she required information from Google, that Google had agreed to accept by email a subpoena requesting all parties with administrative status for the Google Accounts at issue. Google never received a subpoena from the Trustee.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Opening Brief.

7. Also, on October 16, 2024, W&W advised the Trustee that Google had tasked its engineers to determine how to provide the Debtors' employees with access to certain accounts that were determined as belonging to Epic. W&W requested additional information for other accounts from Trustee and advised that such additional information was necessary for placing a hold on revenue generating accounts. The information was requested to ensure Google did not risk inadvertently impacting accounts with similar names, but unassociated with, Debtors.

8. After the Trustee provided tax identification numbers for the Debtors, Google was able to identify certain revenue generating accounts and place a hold on each of those accounts. Google was also able to make some determinations related to the accounts utilized by Epic. Based on determinations related to accounts for Epic, W&W provided the Trustee with a form of order that would provide the Trustee with sole control of certain accounts for Epic and resolve potential issues under the SCA.

9. On October, 21, 2024, based on information available, W&W advised the Trustee that Google was not able to make determinations regarding accounts utilized by other Debtors and specifically noted concerns related to the potential claims arising under the laws of India.³

10. On October 22, 2024, W&W again met with the Trustee's counsel to discuss the ongoing account identification issues and reiterated that Google could not make a determination of the competing rights to those accounts asserted by the Trustee and non-debtors. The Trustee never provided anything to show the Debtors' rights to any other Google accounts. Instead, later that day, the Trustee's counsel provided a further revised draft of the form of order for turnover of accounts for just Epic.

³ Google's concerns were later revealed to be well-founded. On December 16, 2024, the Trustee commenced another adversary proceeding against the Voizzit Entities, predicated upon the Voizzit Entities commencement of an action in India to dispute the ownership of certain applications and projects, including some with Google. *See* Case No. 24-50280 (JTD) at Adv. D.I. 1.

11. On October 24, 2024, W&W provided a revised form of order and the Parties continued to exchange revisions to the proposed form of order relating to accounts for Epic until its submission on October 30, 2024 (the “Agreed Order”).

12. On November 4, 2024, the Court entered the Agreed Order providing for the turnover of certain accounts for Epic (the “Epic Workspace Accounts”). *See* Main Case at D.I. 241.

13. On November 8, 2024, after Google provided the Trustee with sole control of Epic Workspace Accounts, the Trustee advised Google that unauthorized persons had transferred a project from Google Cloud (the “Epic Cloud Project”) to the other defendants named in the Complaint (the “Voizzit Defendants”). In response, Google, through counsel, confirmed that Google would investigate the matter.

14. On November 9, 2024, Google, through counsel, confirmed that control of the Epic Cloud Project was moved from Epic to one of the Voizzit Defendants.

15. On November 18, 2024, the Trustee filed the Complaint and filed a motion for a temporary restraining order that would provide for the turnover of certain property in the control of the Voizzit Defendants, including the Epic Cloud Project.

16. On November 19, 2024, the Court entered the *Order Granting Chapter 11 Trustee’s Motion for a Temporary Injunction* (the “TRO”). Immediately after entry of the TRO, Google began taking the necessary steps to comply with the provisions therein, including effectuating the transfer of identified accounts and projects. By November 20, 2024, Google, through counsel, confirmed to Trustee that the ordered transfers were in process. W&W also advised that, although Google could proceed with the transfer of the Epic Cloud Project, it would be better if the Voizzit Defendants completed the transfer. As the Trustee was advised, the transfer would be fairly simply

for the Voizzit Defendants as they had control of the project but could take Google significant time, depending on the size, scope and nature of the project and that Google could not guarantee the transfer would not impact the operations of the Epic Cloud Project.

17. On November 23, 2024, after the deadline set forth in the TRO for the Voizzit Defendants to turnover the Epic Cloud Project, the Trustee confirmed that Google should proceed with the process for the transfer of the Epic Cloud Project.

18. By November 26, 2024, Google, through counsel, advised the Trustee that it had completed the transfer of the Epic Cloud Project.

19. On December 2, 2024, W&W advised the Trustee that, if there were any additional Play Store Accounts not previously provided (specifically those for StoryMagic, Inc., Voizzit Technology Private Limited, and any additional accounts for Epic), the Trustee would need to provide the separate tax identification numbers in order for Google to identify any relevant accounts. The Trustee has not provided any additional tax identification numbers.

20. With the exception of potential Play Store Accounts referenced in Paragraph 19, Google has confirmed that all of the accounts and projects identified in the TRO have been turned over to the Trustee. To date, Google is not aware of (nor has the Trustee identified) any property of the Debtors' estates on Google platforms that has not been turned over to the Trustee.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 23, 2024

/s/ James C. Vandermark

James C. Vandermark

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: EPIC! CREATIONS, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11161 (JTD) (Jointly Administered)
Claudia Z. Springer, Chapter 11 Trustee, Plaintiff, vs. Google LLC, Voizzit Technology Private Ltd. Voizzit Information Technology LLC Vinay Ravindra Rajendran Vellapalath Defendants.	Adv. Pro. No. 24-50233 (JTD) (Jointly Administered) Re: Adv. D.I. 1

**MEMORANDUM OF LAW IN SUPPORT OF GOOGLE LLC'S MOTION TO DISMISS
COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF, TURNOVER OF ESTATE PROPERTY
AND RECORDS, AND TO ENFORCE THE AUTOMATIC STAY**

WHITE AND WILLIAMS LLP

Michael A. Ingrassia (No. 7068)
600 N. King Street, Suite 800
Wilmington, Delaware 19801
Tel: (302) 467-4503
Fax: (302) 467-4550
Email: ingrassiam@whiteandwilliams.com

Dated: December 23, 2024
Wilmington, Delaware

James C. Vandermark (admitted *pro hac vice*)
Morgan S. Birch (admitted *pro hac vice*)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103
Tel: (215) 864-6857
Email: vandermarkj@whiteandwilliams.com
birchm@whiteandwilliams.com

Counsel to Google LLC

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
BACKGROUND	3
A. The Google Accounts	3
B. The Debtor’s Chapter 11 Cases.	3
C. Google’s Good Faith Efforts Since the Commencement of The Chapter 11 Cases	4
D. The Adversary Proceeding.....	5
LEGAL ARGUMENT.....	7
A. Legal Standard for Motion to Dismiss Under Civil Rule 12(b)(6).	7
B. Counts I and II Should be Dismissed as Against Google Because There is No Relief to Be Granted.	8
C. Count III Against Google Should Be Dismissed Because the Trustee Has Not Alleged Nor Can the Trustee Prove Google Willfully Violated the Automatic Stay.	9
CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	8
<i>City of Chicago v. Fulton</i> , 592 U.S. 154 (2021).....	2, 10
<i>In re BSA</i> , 642 B.R. 504 (Bankr. De. 2022)	10
<i>Phillips v. Cnty. of Allegheny</i> , 515 F.3d 224 (3d Cir. 2008).....	8
<i>Wilkerson v. New Media Tech. Charter Sch., Inc.</i> , 522 F.3d 315 (3d Cir. 2008).....	8
<i>Zazzali v. Wavetronix, LLC (In re DBSI, Inc.)</i> , 445 B.R. 351 (Bankr. D. Del. 2011)	8
STATUTES	
11 U.S.C.	
§ 303(f).....	3
§ 362.....	2, 3, 6, 10
§ 2701, <i>et seq.</i>	4, 5
OTHER AUTHORITIES	
Fed. R. Civ. P. 12(b)(6).....	1, 7
Fed. R. Bankr. P. 7012(b)	1

Pursuant to Federal Rule of Civil Procedure 12(b)(6), made applicable to this adversary proceeding pursuant to Federal Rules of Bankruptcy Procedure 7012(b), Defendant Google LLC (hereafter, “Google”), by and through its undersigned counsel, respectfully submits this Memorandum of Law in support of *Google’s Motion to Dismiss the Trustee’s Complaint for a Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Motion”), which seeks the dismissal of all claims against Google in the Complaint filed by the Chapter 11 Trustee (the “Trustee”) for the estates of Epic! Creations, Inc. (“Epic”), Neuron Fuel, Inc., (“Neuron Fuel”) and Tangible Play, Inc. (“Tangible Play,” and collectively with Epic and Neuron Fuel, the “Debtors”), and relies upon the *Declaration of James C. Vandermark in Support of Google LLC’s Motion to Dismiss Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Vandermark Dec.”), and in support of the Motion states as follows:

PRELIMINARY STATEMENT

This adversary proceeding arises from a dispute between the Trustee and the other defendants named in this action (the “Voizzit Defendants”) over certain assets on platforms maintained by Google. The Trustee and the Voizzit Defendants have filed multiple complaints, motions, and other filings, including most recently an action filed by the Voizzit Defendants in India against, among others, the Trustee and an affiliate of Google. Google does not currently take a position with regards to the disputes between the Trustee and the Voizzit Defendants, which this Court is best suited to decide. Google previously advised the Trustee of this and the fact that Google could not turn over control of certain accounts because the Debtors’ rights to the accounts was unclear. Despite Google’s representations, the Trustee filed the instant action against Google

seeking: (i) the turnover of assets which the Trustee asserts belong to the Debtors' estates, and (ii) damages based on the allegation that Google violated section 362(a)(3) of the Bankruptcy Code by not turning over control of the disputed accounts prior to this adversary proceeding. The Trustee's claims and Google's continued involvement in this adversary proceeding are unwarranted. As discussed in detail below, the Trustee's claims against Google are now either moot or unsupported by law.

The Trustee's claims for a temporary restraining order and injunctive relief preventing Google from authorizing any changes to the Debtors' Google accounts (Count I) and turnover of such accounts (Count II) are entirely moot. In the period of time since the Complaint was filed, Google has provided all identified accounts to the Trustee. In addition, the Trustee has established a suitable, Court approved avenue to request additional information from Google, should the need arise. Google's continued involvement in this adversary proceeding is now unwarranted. Consequently, Counts I and II of the Complaint against Google are moot and should be dismissed.

Count III of the Complaint alleges Google willfully violated the automatic stay under section 362(a)(3) of the Bankruptcy Code based solely on the allegation that Google refused to turn over certain accounts on platforms maintained by Google. However, the Trustee did not adequately assert (and the facts would not support any assertion) that Google took any action to obtain possession and/or control of property of the Debtors' estates. The Trustee merely asserts that Google did not turnover property of the Debtors' estates, which Google disputes. Even so, the refusal to turnover property of a debtor's estate is insufficient for purposes of a claim under 362(a)(3) of the Bankruptcy Code. *See City of Chicago v. Fulton*, 592 U.S. 154, 161 (2021). Moreover, the Trustee's and the Voizzit Defendants' competing claims to the accounts and separate actions filed by both parties against Google (both attempting to pit Google against the other party

to obtain control of the accounts) demonstrates that Google has been put into an impossible position. The Trustee's allegation that Google willfully violated the automatic stay prior to an adjudication of the disputes with the Voizzit Defendants is spurious and unhelpful to an efficient and proper resolution. Since the Trustee's claims for relief pursuant to § 362(a)(3) are unjustified and unsupported, Count III as against Google should also be dismissed.

BACKGROUND

A. The Google Accounts

Upon information and belief, prior to the Petition Date, certain accounts were established for the Debtors' use of products and services from Google, including but not limited to, the Google Play Store² for the Debtors' software applications (the "Play Store Accounts"), the Google Cloud Platform for software development and the storage of records, data, communications and other information (the "Cloud Projects"), and Google Workspace which provides collaboration and productivity software (the "Workspace Accounts").

B. The Debtor's Chapter 11 Cases.

On June 4-5, 2024 (the "Petition Date"), GLAS Trust Company LLC and other lenders filed an involuntary chapter 11 petition against each Debtor, commencing these cases (the "Chapter 11 Cases"). *See* Case No. 24-11161 (JTD) (the "Main Case") at D.I. 1. On June 27, 2024, the Court entered an Order pursuant to section 303(f) of the Bankruptcy Code (the "303(f) Order") prohibiting the Debtors from transferring any of their respective property interests outside the ordinary course of business until the Court ruled on the involuntary petitions. The 303(f) Order

² The Google Play Store is Google's official pre-installed app store on Android-certified devices. It provides access to content on Google Play, including apps, books, magazines, music, movies, and television programs.

also required the Debtors to provide weekly financial reports to the petitioning creditors disclosing all disbursements of estate funds. *See* Main Case at D.I. 69.

On September 23, 2024, the United States Trustee for Region 3 appointed Claudia Z. Springer as chapter 11 trustee of each Debtor, subject to approval by the Court. *See* Main Case at D.I. 152. On October 7, 2024, this Court entered an order approving the appointment of the Trustee. *See* Main Case at D.I. 180.

C. Google’s Good Faith Efforts Since the Commencement of The Chapter 11 Cases

On September 30, 2024, the Trustee wrote to Google’s General Counsel requesting the turnover of certain accounts on the Google platform (the “Letter”). *See* Complaint at Ex. A. On October 14, 2024, Google, through counsel, contacted the Trustee to discuss, among other things, the Letter, the status of the Chapter 11 Cases, the Trustee’s requested turnover of any funds collected by Google relating to the Play Store Accounts, and the Trustee’s request for control over other Workspace Accounts and Cloud Projects. *See* Complaint., ¶ 30. That same day, the Parties conferred, and counsel for Google advised the Trustee of certain concerns including concerns related to potential non-debtor interests and requirements imposed on Google under the Stored Communications Act. *See generally*, 11 U.S.C. § 2701, *et seq.* (the “SCA”). *See* Vandermark Dec. at ¶ 4.

Representatives of Google and the Trustee worked diligently over the next couple of weeks to identify relevant accounts and attempted to resolve concerns related to non-debtor interests and SCA issues. *See* Vandermark Dec. at ¶¶ 5-10. The efforts by Google and the Trustee resulted in Google being able to place a hold on the identified Play Store Accounts and the submission of a proposed Agreed Order (as defined below) to provide the Trustee with control over the Workspace Accounts previously utilized by Epic. *See id.* at ¶¶ 10-11. While additional accounts associated

with the Debtors were identified, Google advised that it could not make a determination of the competing rights to those accounts asserted by the Trustee and non-debtors. *Id.* at ¶ 10.

On November 4, 2024, the Court entered the *Agreed Order Regarding Google Workspace Account for Epic! Creations, Inc.* (the “Agreed Order”), which Google had consented to and provided for the turnover of the Workspace Accounts for Epic. *See* Main Case at D.I. 241.

On November 8, 2024, after Google provided the Trustee with sole control of Epic’s Workspace Accounts, the Trustee advised Google that it had discovered that unauthorized users had transferred a Cloud Project to the Voizzit Defendants.³ *See* Vandermark Dec. at ¶ 13. In response, Google confirmed that it would investigate the matter. *See id.* After investigating the issue, Google was able to confirm that Epic’s Cloud Project was moved from Epic’s organization to one of the Voizzit Defendants. *See id.* at ¶ 14.

D. The Adversary Proceeding

After learning that Epic’s Cloud Project was transferred to the Voizzit Defendants, the Trustee commenced the instant adversary proceeding by filing the Complaint in this Court on November 18, 2024 (the “Complaint”). *See* Adv. Pro. 1. The Complaint asserts various counts against Google and the Voizzit Defendants. Only three of the claims asserted in the Complaint relate to Google, through which the Trustee seeks the following relief:

Count I: a temporary, preliminary and permanent injunction against (1) Google (a) from accepting, authorizing, or implementing any changes to the Debtor’s Google accounts by any entity or person other than the Trustee; and (b) from transferring any funds Google is holding related to the Debtors including the Google accounts to any entity or person other than the Trustee;

³ The Complaint defines Defendants Voizzit Technology Private Ltd., (“Voizzit India”) Voizzit Information Technology LLC (“Voizzit UAE”), Vinay Ravindra (“Ravindra”) and Rajendran Vellapalath (“Vellapalath”), collectively as the “Voizzit Defendants.”

Count II: turnover pursuant to sections 542(a) and (e) of certain property and recorded information, including, among other things, (i) funds received in exchange for the Debtors' products and services through the Google Play Store; and (ii) software code, email servers, and other data hosted and/or stored on Google's various platforms; and

Count III: actual and punitive damages under 11 U.S.C. § 362 for willful violation of the automatic stay.

Simultaneously with the commencement of this adversary proceeding, the Trustee also filed the *Trustee's Motion for Entry of Temporary Restraining Order* (the "TRO Motion"). See Adv. D.I. 2. The relief requested of Google in the TRO Motion is a near carbon copy of the relief requested in Counts I and II of the Complaint. Relevant to the instant Motion, the TRO Motion requested, *inter alia*, that Google "provide the Trustee with complete control of the Google Accounts and account access along with all records of the Google Accounts." See *id.* at ¶ 1(b).

On November 19, 2024, the Court entered the *Order Granting Chapter 11 Trustee's Motion for a Temporary Injunction* (the "TRO"). See Adv. D.I. 14. In relevant part, Paragraph 2 of the TRO provides for the turnover of the following accounts (the "Google Accounts"):

Google Workspace account for the Following Domain Names:

@getepic.com
@tangibleplay.com
@playosmo.com
@tynker.com

Google Cloud accounts with the following project info:

Project ID: epic-jenkins
Project Number: 1011349847158

Google Play Store accounts for the entities below (tax id numbers to be provided by the Trustee to Google to the extent she has them)

Epic@ Creations, Inc.
Epic Creations Inc.
StoryMagic, Inc.
Tangible Play Inc.
Neuron Fuel, Inc.
Voizzit Technology Private Limited

On December 3, 2024, the Court entered the *Order Granting Chapter 11 Trustee’s Motion for a Preliminary Injunction* (the “Preliminary Injunction,” and collectively, with the TRO, the “Injunction”). *See* Adv. D.I. 36. The Preliminary Injunction merely extended the TRO and was otherwise identical in directing Google to provide the Trustee with complete control of the Google Accounts. *See* Preliminary Injunction, at ¶ 2; TRO at ¶ 2.

Google is in complete compliance with the Injunction. Immediately after entry of the TRO, Google began taking the necessary steps to comply with the provisions of the Injunction, including effectuating the transfer of identified Google Accounts. *See* Vandermark Dec. at ¶ 16. By November 20, 2024, Google confirmed with the Trustee that the ordered transfers were in process. *See id.*

By November 26, 2024, Google completed the transfer of all Google Accounts, including the Cloud Project associated with Epic and the Workspace and Play Store Accounts for Tangible Play and Neuron Fuel. *See id.* at ¶ 18. The only exception were certain Play Store Accounts (specifically those identified in the TRO as belonging to StoryMagic, Inc., Voizzit Technology Private Limited, and any additional accounts for Epic), for which the Trustee has not yet provided the necessary tax id numbers. *See id.* at ¶ 19.

To date, Google is not aware of (nor has the Trustee identified) any additional Google Accounts or other property of the Estate, not already in the possession or control of the Trustee. *See id.* Therefore, Google has fully complied with the Injunction.

LEGAL ARGUMENT

A. Legal Standard for Motion to Dismiss Under Civil Rule 12(b)(6).

Federal Rule of Civil Rule 12(b)(6) allows a party to move for dismissal of an action arising from a plaintiff’s “failure to state a claim upon which relief may be granted.” Fed. R. Civ. P. 12(b)(6). “[W]hen the allegations in a complaint, however true, could not raise a claim of

entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Id.* at 558; *see also Wilkerson v. New Media Tech. Charter Sch., Inc.*, 522 F.3d 315, 322 (3d Cir. 2008); *Zazzali v. Wavetronix, LLC (In re DBSI, Inc.)*, 445 B.R. 351, 354 (Bankr. D. Del. 2011).

“[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* at 555; *see also Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232 (3d Cir. 2008). Unless the plaintiff has “nudged [its] claims across the line from conceivable to plausible, [its] complaint must be dismissed.” *Twombly*, 550 U.S. at 570. A claim is facially plausible only “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

B. Counts I and II Should be Dismissed as Against Google Because There is No Relief to Be Granted.

Counts I and II of the Complaint should be dismissed as to Google for failing to state a claim upon which relief can be granted. First, Google disputes it had possession or control over the property at issue in this adversary proceeding in order to turnover such property to the Trustee. Google provides certain platforms and services to customers; however, Google does not take possession of customers’ property when customers utilize the platforms and services. Google’s customers remain in control of their own property.

Second, even if Google did have possession of estate property by virtue of providing platforms and services, Google has already turned over access and control of all Google Accounts

to the Trustee. *See supra* at ¶¶ 14 at n.3, 17 - 20. The only exception is certain Play Store Accounts for which the Trustee has not provided tax id numbers. *See id.* at ¶ 19. To the extent the Trustee is able to provide the relevant tax id numbers, Google would transfer control of any associated Play Store Accounts to the Trustee. *See supra* at ¶ 33.

Finally, to the extent that the Trustee requires further information related to the Google Accounts, or any other alleged accounts at issue, Google has, on numerous occasions, informed the Trustee that Google would accept service of a subpoena via email. To date, Google has not received a subpoena from the Trustee; however, Google continues to be available to respond to a subpoena via email.⁴ *See supra* at ¶ 6.

Therefore, because (i) Google has already provided all identified Google Accounts to the Trustee, and (ii) the Trustee already has an appropriate, Court approved avenue to request additional information from Google, Google's continued involvement in this adversary proceeding is moot and unwarranted. Thus, this Court should grant this Motion and dismiss Counts I and II with respect to Google.

C. Count III Against Google Should Be Dismissed Because the Trustee Has Not Alleged Nor Can the Trustee Prove Google Willfully Violated the Automatic Stay.

Count III of the Complaint should be dismissed as to Google. Even taking the Complaint's allegations as true, Google cannot be found to have willfully violated the automatic stay because Google never acted in a manner to take control or possession of property of the Debtors' estates.

⁴ The Trustee has already been provided with Court authority to serve subpoenas upon Google pursuant to the *Order Granting Chapter 11 Trustee's Motion for Order Authorizing the Trustee to Conduct Rule 2004 Examinations and to Issue Subpoenas in Support Thereof*. *See* Main Case at D.I. 294.

The Supreme Court in *City of Chicago v. Fulton* made clear that “mere retention of estate property after filing of a bankruptcy petition does not violate § 362(a)(3) of the Bankruptcy Code.” 592 U.S. 154, 161 (2021). In *Fulton*, the Supreme Court reasoned that the “most natural reading” of section 362(a)(3) prohibits “affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition is filed.” *Id.* at 154. The Court further noted that section 362(a)(3) “implies that something more than merely retaining power is required to violate the disputed provision.” *See id.* at 158, 161 (finding that section 362(a)(3) was not intended to be an “enforcement arm of sorts for §542(a)”; *In re BSA*, 642 B.R. 504, 578 n. 362 (Bankr. De. 2022) (Section “362(a)(3) prohibits affirmative actions, not passive actions...”).

The sole basis for the Trustee’s claim that Google violated section 362(a)(3) of the Bankruptcy Code is set forth in Paragraph 77 of the Complaint, which states:

Google’s refusal to turn over the Google Accounts to the Trustee constitutes an “act to obtain possession of the property of the estate or of property from the estate or to exercise control over property of the estate” and therefore violate 11 U.S.C. § 362(a)(3).

See Complaint, ¶ 77 (emphasis added). As made clear in *Fulton*, the failure to turn over property of a debtor’s estate does not give rise to a claim under section 362(a)(3) of the Bankruptcy Code. The Trustee’s sole claim is that Google refused to turn over property of the Debtors’ estates. Since there is no other basis for the alleged stay violation by Google, the claims as asserted against Google in Count III should be dismissed.

Moreover, the Trustee’s allegation that Google’s refusal to turnover the Google Accounts is misleading and misplaced. Google did not simply refuse to turnover accounts. The fact is Google worked with the Trustee to obtain the Agreed Order and to provide the Trustee with control of the Epic Workspace Accounts pursuant to the Agreed Order. *See* Vandermark Dec. at ¶¶ 8 - 13. However, the Trustee could not provide Google with anything to confirm the Debtors’ rights to

the other Google Accounts which prevented Google from turning over such accounts without a Court order. *See Vandermark Dec. at ¶ 10.*

As discussed above, Google disputes ever having possession or control over property of the Debtors' estates. The Trustee's own assertions show that the Voizzit Defendants – not Google – had possession of the property sought by Trustee. *See Complaint, ¶¶ 54-61.* The Trustee also makes clear that what she was seeking from Google was assistance in taking possession of the property away from the Voizzit Defendants. *See Complaint, ¶¶ 38 – 53.* Although Google was able to make certain determinations regarding Epic's Workspace Accounts and assist the Trustee with gaining control of those accounts, Google repeatedly advised the Trustee that it could not make similar determinations regarding the Debtors' rights to any other Google Account. *See Vandermark Dec. at ¶¶ 9-10.* The Trustee never provided Google with anything to support the Debtors' rights to the other Google Accounts. *See Vandermark Dec. at ¶ 10.* Requiring Google to make a determination as to which party had a right to the other Google Accounts would have placed Google in the position of deciding the dispute between the Trustee and Voizzit Defendants. Those disputes and determinations regarding the Debtors' property are best decided by this Court, which necessitated the instant action and entry of the TRO.

Since the TRO was entered by this Court, Google has turned over all of the Google Accounts with the exception of certain Play Store Accounts for which the Trustee has not yet provided the necessary tax id numbers. *See Vandermark Dec. at ¶¶ 17 – 20.* While Google cannot make a determination of the rights of the Trustee and the Voizzit Defendants in these matters, Google has and continues to comply with any determinations by this Court with regards to other parties' interests. If this Court determines that the Google Accounts or any other accounts are estate property, Google will similarly comply with such determination. It is unclear what further

cooperation the Trustee would have expected from Google short of choosing sides in the dispute that the Trustee has with the Voizzit Defendants.

In short, Google never took any action to obtain possession and/or control over Debtors' assets. Google disputes the misleading allegation that Google refused to turn over the Google Accounts without the context that the Trustee could not establish a right to the Google Accounts. Therefore, Google requests that this Court dismiss Count III with respect to Google.

CONCLUSION

WHEREFORE, for the reasons set forth herein, Google respectfully requests entry of an order, substantially in the form attached to the Motion, dismissing all counts against Google in the Complaint, and all claims and causes of action asserted against Google therein, with prejudice.

Dated: December 23, 2024
Wilmington, Delaware

WHITE AND WILLIAMS LLP

/s/ Michael A. Ingrassia
Michael A. Ingrassia (No. 7068)
600 N. King Street, Suite 800
Wilmington, Delaware 19801
Tel: (302) 467-4503
Fax: (302) 467-4550
Email: ingrassiam@whiteandwilliams.com

-and-

James C. Vandermark (admitted *pro hac vice*)
Morgan S. Birch (admitted *pro hac vice*)
1650 Market Street
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103
Tel: (215) 864-6857
Email: vandermarkj@whiteandwilliams.com
birchm@whiteandwilliams.com

Counsel to Google LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: EPIC! CREATIONS, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11161 (JTD) (Jointly Administered)
Claudia Z. Springer, Chapter 11 Trustee, Plaintiff, vs. Google LLC, Voizzit Technology Private Ltd. Voizzit Information Technology LLC Vinay Ravindra Rajendran Vellapalath Defendants.	Adv. Pro. No. 24-50233 (JTD) (Jointly Administered) Re: Adv. D.I. 1

ORDER GRANTING DEFENDANT GOOGLE LLC'S MOTION TO DISMISS

Upon the motion (the “Motion”) of Google LLC (“Google”), Defendant in the above-captioned adversary proceeding, for entry of an Order dismissing the claims asserted against Google by Claudia Z. Springer, not individually but as the Chapter 11 Trustee (the “Trustee”) of the estates of Epic! Creations, Inc., Neuron Fuel, Inc., and Tangible Play, Inc. (collectively, the “Debtors”) in its *Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the “Complaint”); and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).

and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated February 29, 2012; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the Court having reviewed Motion and its supporting memorandum of law; and the Court having determined that the legal and factual bases set forth in the Motion and its supporting memorandum of law establish just cause for the relief granted herein; and all objections to the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED that:

1. The Motion is GRANTED in its entirety.
2. All claims and causes of action asserted in the Complaint against Google are DISMISSED WITH PREJUDICE.
3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation or enforcement of this Order.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: EPIC! CREATIONS, INC., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 24-11161 (JTD) (Jointly Administered)
Claudia Z. Springer, Chapter 11 Trustee, Plaintiff, vs. Google LLC, Voizzit Technology Private Ltd. Voizzit Information Technology LLC Vinay Ravindra Rajendran Vellapalath Defendants.	Adv. Pro. No. 24-50233 (JTD) (Jointly Administered) Re: Adv. D.I. 1

CERTIFICATE OF SERVICE

I, James C. Vandermark, hereby certify that on December 23, 2024, I caused true and correct copies of:

- *Google LLC's Motion to Dismiss Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, Turnover of Estate Property and Records, and to Enforce the Automatic Stay* (the "**Motion**").

to be served on all parties receiving notice via the Court's electronic filing system including Claudia Z Springer, as Chapter 11 Trustee.

Dated: December 23, 2024

/s/ James C. Vandermark
James C. Vandermark

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Epic! Creations, Inc. (9113); Neuron Fuel, Inc. (8758); and Tangible Play, Inc. (9331).