

MATTHEW J. ADLER (SBN 273147)
Matthew.Adler@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
Four Embarcadero Center, 27th Floor
San Francisco, California 94111-4180
Telephone: 415-591-7500
Facsimile: 415-591-7510

JEFFREY S. JACOBSON (*pro hac vice*)
Jeffrey.Jacobson@faegredrinker.com
FAEGRE DRINKER BIDDLE & REATH LLP
1177 Avenue of the Americas, 41st Floor
New York, New York 10036-2714
Telephone: 212-248-3140
Facsimile: 212-248-3141

Attorneys for Defendant
EPIC GAMES, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

K.W., a minor and through K.W.'s guardian,
Jillian Williams, and JILLIAN WILLIAMS,
individually, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

EPIC GAMES, INC.,

Defendant.

Case No. 3:21-cv-00976-CRB

**DEFENDANT EPIC GAMES, INC.'S
NOTICE OF MOTION AND
MOTION TO STAY ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: April 2, 2021
Time: 10:00 a.m.
Ctroom: 6 – 17th Floor
Judge: Hon. Charles R. Breyer

Action Filed: February 8, 2021
Trial Date: None set

NOTICE OF MOTION AND MOTION – SUMMARY OF ARGUMENT

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 2, 2021 at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 6, 17th Floor of the above Court, located at 450 Golden Gate Avenue, San Francisco, California, 94102, Defendant Epic Games, Inc. (“Epic Games”) will and hereby does move for an order staying all further proceedings in this action pending the outcome of nationwide class action settlement approval proceedings in *Zanca, et al. v. Epic Games, Inc.*, No. 21-CVS-534 (N.C. Super. Ct., Wake County).

Plaintiffs in this case, according to the facts pleaded in their Complaint and the claims they assert, are members of the putative settlement class in *Zanca*. Under North Carolina state court rules, which mirror Fed. R. Civ. P. 23 in all relevant respects, Plaintiffs in this case have the opportunity to opt out of the *Zanca* settlement, but may not purport to exercise anyone else’s right to do so. Alternatively, they may participate in the *Zanca* settlement and/or raise objections to it.

While the class action settlement approval process is underway in *Zanca*, Epic Games respectfully seeks a stay of this action, for three reasons. First, the *Zanca* court’s Preliminary Approval Order enjoins all members of the putative settlement class, including Plaintiffs, from pursuing separate litigation while the settlement approval process is underway. This Court should give effect to that order. Second, even without regard to that order, this Court should allow the settlement process to proceed without interference as a matter of comity. Third, it is most appropriate for the *Zanca* court to resolve, in the context of an objection or opt-out request, whether K.W. and Ms. Williams have a claim. This is because neither K.W. nor Ms. Williams made a purchase from Epic Games, but Epic Games nevertheless already has honored K.W.’s disaffirmation request and thereby mooted whatever claims he might once have had.

The Motion is based on the Memorandum of Points and Authorities, the Declaration of Jeffrey S. Jacobson and exhibits thereto, as well as all papers and pleadings on file herein, and such argument as properly may be presented at a hearing.

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2 Dated: February 26, 2021

FAEGRE DRINKER BIDDLE & REATH LLP

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4 By: /s/ Jeffrey S. Jacobson

Jeffrey S. Jacobson (*pro hac vice*)

Matthew J. Adler

6 Attorneys for Defendant

7 EPIC GAMES, INC.
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