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12	UNITED STATES DISTRICT COURT					
13	NORTHERN DISTRICT OF CALIFORNIA					
14	SAN FRANCISCO DIVISION					
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16 17 18 19 19 20 21 22 23 24 225 26 27	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 (1) DISMISS FOR LACK OF STANDING PURSUANT TO F.R.C.P. 12(B)(1) OR, IN THE ALTERNATIVE, (2) COMPEL INDIVIDUAL ARBITRATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT Date: April 23, 2021 Time: 10:00 a.m. Ctrm: 6 – 17th Floor Judge: Hon. Charles R. Breyer Action Filed: February 8, 2021 Trial Date: None set				
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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 23, 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: (1) dismissing Plaintiffs' claims for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1); or, in the alternative, (2) compelling arbitration of Plaintiffs' claims.

Motion to Dismiss For Lack of Standing. Plaintiff K.W. claims to have established an account with Epic Games to play *Fortnite*, a highly popular video game published by Epic Games. Contrary to the allegations in Plaintiffs' Complaint, neither K.W. nor his mother, Plaintiff Jillian Williams, ever had any transactions with Epic Games. Within Plaintiffs' *Fortnite* player account, two purchases were made from Epic Games, one on March 29, 2020 (for \$9.99), and one on July 19, 2020 (for \$9.89). The method of payment used for these transactions belonged to a third party, not to K.W. or Jillian Williams. Plaintiffs, therefore, do not have standing to sue regarding these transactions. Further, notwithstanding these facts, Epic Games immediately honored Plaintiffs' request to "disaffirm" these transactions and refunded all monies spent within K.W.'s account. This action by Epic Games mooted Plaintiffs' claims, and they should be dismissed under Rule 12(b)(1).

Motion to Compel Arbitration. All persons who open a Fortnite account must affirmatively agree to the Fortnite End User License Agreement ("EULA"). The EULA's first page advises all persons seeking to open a Fortnite account that (1) "[t]his agreement contains a binding, individual arbitration and class-action waiver provision," and (2) "[t]o enter into this license agreement, you must be an adult of the legal age of majority," and that "[i]f you are under the legal age of majority, your parent or legal guardian must consent to this agreement." By creating a Fortnite account, either minor Plaintiff K.W. misrepresented his age to Epic Games, or else Plaintiff Jillian Williams, K.W.'s mother, agreed to the EULA on K.W.'s behalf. Purchases, moreover, must be made by adults who must agree to the EULA when they enter payment information. Plaintiffs, therefore, must arbitrate their claims as required by the EULA.



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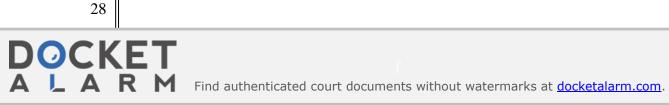
These Motions are based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support, the Declarations of Jeffrey S. Jacobson and John Farnsworth, and exhibits thereto, as well as all papers and pleadings on file herein, and such argument as properly may be presented at a hearing. Dated: March 15, 2021 FAEGRE DRINKER BIDDLE & REATH LLP By: /s/ Jeffrey S. Jacobson Jeffrey S. Jacobson (pro hac vice) Matthew J. Adler Attorneys for Defendant EPIC GAMES, INC.



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