

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

8 JEFFREY S. JACOBSON (*pro hac vice*)  
9 Jeffrey.Jacobson@faegredrinker.com  
10 FAEGRE DRINKER BIDDLE & REATH LLP  
11 1177 Avenue of the Americas, 41st Floor  
12 New York, New York 10036-2714  
13 Telephone: 212-248-3140  
14 Facsimile: 212-248-3141

15 Attorneys for Defendant  
16 EPIC GAMES, INC.

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

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

24 Plaintiffs,

25 v.

26 EPIC GAMES, INC.,

27 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.  
Ctm: 6 – 17th Floor  
Judge: Hon. Charles R. Breyer

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

1                    **NOTICE OF MOTION AND MOTION – SUMMARY OF ARGUMENT**

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

3                    PLEASE TAKE NOTICE that on April 23, 2021 at 10:00 a.m., or as soon thereafter as the  
4 matter may be heard, in Courtroom 6, 17th Floor of the above Court, located at 450 Golden Gate  
5 Avenue, San Francisco, California, 94102, Defendant Epic Games, Inc. (“Epic Games”) will and  
6 hereby does move for an order: (1) dismissing Plaintiffs’ claims for lack of standing pursuant to  
7 Federal Rule of Civil Procedure 12(b)(1); or, in the alternative, (2) compelling arbitration of  
8 Plaintiffs’ claims.

9                    **Motion to Dismiss For Lack of Standing.** Plaintiff K.W. claims to have established an  
10 account with Epic Games to play *Fortnite*, a highly popular video game published by Epic Games.  
11 Contrary to the allegations in Plaintiffs’ Complaint, neither K.W. nor his mother, Plaintiff Jillian  
12 Williams, ever had any transactions with Epic Games. Within Plaintiffs’ *Fortnite* player account,  
13 two purchases were made from Epic Games, one on March 29, 2020 (for \$9.99), and one on July  
14 19, 2020 (for \$9.89). The method of payment used for these transactions belonged to a third party,  
15 not to K.W. or Jillian Williams. Plaintiffs, therefore, do not have standing to sue regarding these  
16 transactions. Further, notwithstanding these facts, Epic Games immediately honored Plaintiffs’  
17 request to “disaffirm” these transactions and refunded all monies spent within K.W.’s account. This  
18 action by Epic Games mooted Plaintiffs’ claims, and they should be dismissed under Rule 12(b)(1).

19                    **Motion to Compel Arbitration.** All persons who open a *Fortnite* account must  
20 affirmatively agree to the *Fortnite* End User License Agreement (“EULA”). The EULA’s first  
21 page advises all persons seeking to open a *Fortnite* account that (1) “[t]his agreement contains a  
22 binding, individual arbitration and class-action waiver provision,” and (2) “[t]o enter into this  
23 license agreement, you must be an adult of the legal age of majority,” and that “[i]f you are under  
24 the legal age of majority, your parent or legal guardian must consent to this agreement.” By creating  
25 a *Fortnite* account, either minor Plaintiff K.W. misrepresented his age to Epic Games, or else  
26 Plaintiff Jillian Williams, K.W.’s mother, agreed to the EULA on K.W.’s behalf. Purchases,  
27 moreover, must be made by *adults* who must agree to the EULA when they enter payment  
28 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.

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<b>Page</b>
INTRODUCTION.....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	3
ARGUMENT .....	9
I.    The Court Should Dismiss This Action for Lack of Subject-Matter Jurisdiction. ....	9
A.    Epic Games’ Acceptance of K.W.’s Disaffirmation Renders the Case Moot. ....	9
B.    Plaintiffs Made No Purchases from Epic Games and Therefore Lack Standing.....	12
II.   Alternatively, the Court Should Compel Arbitration.....	13
A.    K.W.’s Account’s Acceptance of the EULA is Binding.....	13
B.    This Dispute Falls Squarely Within the Scope of the Agreement. ....	17
CONCLUSION .....	18

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Am Express Co. v. Italian Colors Rest.</i> , 133 S. Ct. 2304 (2013).....	13
<i>AT&amp;T Mobility LLC v. Concepcion</i> , 563 U.S. 333 (2010).....	13, 14
<i>Bishop Paiute Tribe v. Inyo Cty.</i> , 863 F.3d 1144 (9th Cir. 2017).....	9
<i>Burnand v. Irigoyen</i> , 30 Cal.2d 861 (1947).....	10
<i>Campbell-Ewald Co. v. Gomez</i> , 136 S. Ct. 663 (2016).....	11
<i>City of Erie v. Pap’s A.M.</i> , 529 U.S. 277 (2000).....	9
<i>Daugherty v. Experian Info. Solutions, Inc.</i> , 847 F. Supp. 2d 1189 (N.D. Cal. 2012).....	14
<i>Dean Witter Reynolds, Inc. v. Byrd</i> , 470 U.S. 213 (1985).....	14
<i>Deck v. Spartz, Inc.</i> , No. 2:11-cv-1123-JAM-DAD, 2011 WL 7775067 (E.D. Cal. Sept. 27, 2011).....	10
<i>E.K.D. ex rel. Dawes v. Facebook, Inc.</i> , 885 F. Supp. 2d 894 (S.D. Ill. 2012).....	16
<i>Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs., Inc.</i> , 528 U.S. 167 (2002).....	13
<i>Gillis v. Whitley’s Disc. Auto Sales, Inc.</i> , 319 S.E.2d 661 (N.C. App. 1984).....	10
<i>Graf v. Match.com, LLC</i> , No. CV 15-3911 PA, 2015 WL 4263957 (C.D. Cal. July 10, 2015).....	16
<i>Hastings v. Dollarhide</i> , 24 Cal. 195 (1864).....	10
<i>Heidbreder v. Epic Games, Inc.</i> , 438 F. Supp.3d 591 (E.D.N.C. 2020).....	14, 15, 16
<i>I.B. ex rel. Fife v. Facebook, Inc.</i> , 905 F. Supp.2d 989 (N.D. Cal. 2012).....	10

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