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25 K.W., a minor through K.W.’s guardian, Jillian Williams,
26 and Jillian Williams, individually, on behalf of themselves
27 and all others similarly situated

28 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

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

23 Plaintiffs,

24 vs.

25 EPIC GAMES, INC., a Maryland corporation,

26 Defendant.

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

CLASS ACTION

**PLAINTIFFS’ OPPOSITION TO
DEFENDANT’S MOTION TO DISMISS
OR COMPEL ARBITRATION AND
REQUEST FOR DISCOVERY**

Hearing Date: April 29, 2021

Hearing Time: 10:00 AM

Complaint Filed: February 8, 2021

Trial Date: None Set

Case No. 3:21-cv-00976

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INTRODUCTION

1
2 If its arguments here reflect reality, the business success of *Fortnite* depends on Epic Games
3 selling virtual stuff to millions of children and then pretending, like Captain Renault in *Casablanca*,
4 that it is “shocked, shocked” to find out it is selling virtual stuff to children. Class action claims first
5 filed here in *C.W. v. Epic Games, Inc.*, Case No. 4:19-cv-03629-YGR, sought to assert legal rights
6 of children taken advantage of in *Fortnite*. As described in our opposition to the motion to stay,
7 Epic Games seeks to evade this Court’s jurisdiction over those class claims so that it might conclude
8 a settlement in North Carolina state court that would not get approved here. (*See* Dkt. 21 at 1-3).

9 In *C.W.*, a minor *Fortnite* player no different from the plaintiff here brought class claims
10 seeking declaratory, injunctive, and monetary relief from Epic Games on causes of action founded
11 on a minor’s legal right to disaffirm purchases of virtual items made in *Fortnite* and related theories.
12 (*See C.W.* Dkt. 56 ¶¶ 57-61).¹ Epic Games moved to compel arbitration arguing that C.W. accepted
13 license agreements containing arbitration provisions, including one that “required affirmative
14 acceptance by an adult.” (*C.W.* Dkt. 21 at 4). Judge Gonzalez Rogers denied the motion because
15 C.W. had disaffirmed those agreements, thus eliminating any contractual basis upon which he could
16 be made to arbitrate. *See Doe v. Epic Games, Inc.*, 435 F. Supp. 3d 1024, 1038 (N.D. Cal. 2020).

17 Epic Games later tried a motion to dismiss that argued that because C.W.’s *Fortnite*
18 purchases were concluded in the Apple (iTunes) and Sony (PlayStation) marketplaces, C.W. had no
19 disaffirmation claim directly against Epic Games. (*C.W.* Dkt. 59 at 11; 64 at 7-8). Judge Gonzales
20 Rogers rejected that argument as well, pointing out in the process that it was inconsistent with Epic
21 Games’ judicial admissions in *Epic Games, Inc. v. Apple Inc.*, Case No. 4:20-cv-5640, in which it
22 said that the Apple marketplace was “a payment processing platform for selling digital in-app
23 content to consumers from which [Epic Games] collects 70 percent of the consumer’s payment.”
24 *C.W. v. Epic Games, Inc.*, 2020 WL 5257572, at *1 (N.D. Cal. Sept. 3, 2020) (cleaned up).

25 Having survived its motions, *C.W.* was the only class action against Epic Games that was
26

27 ¹ In this brief, we cite documents filed in the *C.W.* and *Epic v. Apple* cases in this court and
28 accessible through CM/ECF. This court may take judicial notice of those records under Fed. R.
Evid. 201, *see U.S. v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980), and we request that it do so.

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