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17	UNITED STATES I	DISTRICT COURT
18	NORTHERN DISTRIC	CT OF CALIFORINIA
19	K.W., a minor and through K.W.'s guardian, Jillian Williams; and JILLIAN WILLIAMS,	Case No. 3:21-cv-00976-CRB
20	individually, on behalf of themselves and all others similarly situated,	CLASS ACTION
21	Plaintiffs,	PLAINTIFFS' OPPOSITION TO
22	VS.	DEFENDANT'S MOTION TO DISMISS OR COMPEL ARBITRATION AND
23	EPIC GAMES, INC., a Maryland corporation, Defendant.	REQUEST FOR DISCOVERY
24		Hearing Date: April 29, 2021 Hearing Time: 10:00 AM
25		Complaint Filed: February 8, 2021
26		Trial Date: None Set
27		
28		Case No. 3:21-cy-00976



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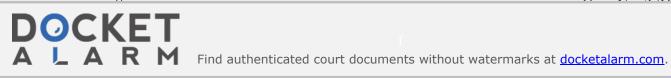


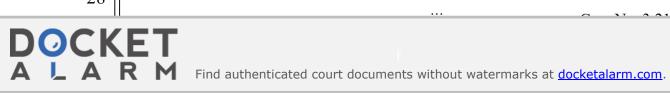
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1 2

INTRODUCTION

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

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

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

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

¹ In this brief, we cite documents filed in the *C.W.* and *Epic v. Apple* cases in this court and 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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