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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORINIA

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,

vs.

EPIC GAMES, INC., a Maryland corporation,

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

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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).[1] 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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