

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Cheryll Dougherty, et al. v. Zynga Inc.

Dougherty v. Zynga · No. 25-cv-04051-SI · Decided December 30, 2025

SUMMARY

The United States District Court for the Northern District of California orders plaintiffs to submit supplemental briefing on whether extraordinary circumstances disfavor transfer of the proposed class action to the Southern District of New York. The court states that it is inclined to grant Zynga Inc.’s transfer motion based on a forum selection clause in the applicable Take-Two Terms of Service and directs plaintiffs to file a brief of no more than five pages by January 12, 2026.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Susan Illston
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 30, 2025
DOCKET	25-cv-04051-SI
DISPOSITION	other
PROCEDURAL POSTURE	In a proposed class action alleging violations of California consumer law and the federal Video Privacy Protection Act, the court considered Zynga's motion to compel arbitration or, alternatively, transfer venue. The court ordered supplemental briefing from plaintiffs concerning enforcement of the forum-selection clause and vacated the hearing.
STANDARD OF REVIEW	A party seeking to avoid a forum-selection clause bears a heavy burden to establish that the clause is unenforceable. For a transfer analysis, the relevant question identified by the court was whether extraordinary circumstances unrelated to the convenience of the parties clearly disfavor transfer.
PRECEDENTIAL VALUE	Unpublished interlocutory district-court order directing supplemental briefing; limited precedential value.

TOPICS

- venue
- forum non conveniens
- arbitration
- class actions
- civil procedure

PRACTICE AREAS

civil procedure

consumer protection

commercial litigation

QUESTIONS PRESENTED

1. Whether plaintiffs should be required to provide supplemental briefing on whether extraordinary circumstances clearly disfavor transfer under the forum-selection clause.
2. Whether the court should vacate the scheduled hearing pending supplemental briefing.

HOLDINGS

1. The court ordered plaintiffs to file a supplemental brief addressing whether extraordinary circumstances unrelated to the convenience of the parties clearly disfavor transfer to the Southern District of New York.

KEY QUOTATIONS

“As the ones “seeking to avoid a forum selection clause,” plaintiffs “bear[] a ‘heavy burden’ to establish a ground upon which [the Court] will conclude the clause is unenforceable.”” (1)

“addressing whether “extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer.”” (1)

FACTUAL BACKGROUND

Plaintiffs brought a proposed class action alleging violations of California consumer law and the federal Video Privacy Protection Act. Their claims were allegedly governed by the Take-Two Terms of Service, which contained a forum-selection clause. Zynga moved to compel arbitration or alternatively transfer venue, and plaintiffs' opposition concentrated on arbitration rather than the venue issue.

PROCEDURAL HISTORY

Plaintiffs filed a proposed class action against Zynga. Zynga moved to compel arbitration or alternatively transfer the case to the Southern District of New York. Plaintiffs' opposition focused primarily on arbitration and addressed venue in approximately one page. The court stated that it was inclined to grant transfer based on a forum-selection clause in the applicable Take-Two Terms of Service, but ordered plaintiffs to submit supplemental briefing before ruling.

DISPOSITION

other

CASES CITED

- Doe 1 v. AOL LLC, 552 F.3d 1077, 1083 (9th Cir. 2009)
- M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 17 (1972)
- Atl. Marine Const. Co., Inc. v. U.S. Dist. Ct., 571 U.S. 49, 52 (2013)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
CHERYLL DOUGHERTY, et al., Case No. 25-cv-04051-SI 8 Plaintiffs, ORDER FOR
SUPPLEMENTAL 9 v. BRIEFING AND VACATING HEARING 10 ZYNGA INC., 11
Defendant. 12 13 Now pending before the Court are multiple motions by defendant Zynga, Inc. in
this 14 proposed class action case alleging violations of California consumer law and the federal
Video 15 Privacy Protection Act.

The Court advises the parties that it is inclined to grant defendant's motion 16 to transfer venue to
the Southern District of New York, in light of the forum selection clause 17 contained in the Take-
Two Terms of Service applicable to plaintiffs' claims.

However, the Court 18 finds supplemental briefing from plaintiffs would be helpful. Plaintiffs'
opposition to the motion to 19 compel arbitration or, alternatively, transfer venue focuses almost
entirely on the arbitration 20 agreement and devotes only one page to venue question. See Dkt.
No. 41.

As the ones "seeking to 21 avoid a forum selection clause," plaintiffs "bear[] a 'heavy burden' to
establish a ground upon which 22 [the Court] will conclude the clause is unenforceable." See Doe
1 v. AOL LLC, 552 F.3d 1077, 1083 23 (9th Cir. 2009) (quoting *M/S Bremen v. Zapata Off-Shore*
Co., 407 U.S. 1, 17 (1972)).

Accordingly, 24 plaintiffs are ORDERED to file a supplemental brief—not to exceed five pages in
length— 25 addressing whether "extraordinary circumstances unrelated to the convenience of the
parties clearly 26 disfavor a transfer." See *Atl. Marine Const. Co., Inc. v. U.S. Dist. Ct.*, 571 U.S.
49, 52 (2013)). 27 Plaintiffs' brief is due no later than January 12, 2026.

1 later date if it determines that oral argument is needed. 2 3 IT IS SO ORDERED. 4 || Dated:
December 30, 2025 Stn Ml ee 5 eee em SUSAN ILLSTON 6 United States District Judge 7 8 9 10
11 12 © 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28