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10 Attorneys for Defendant
11 CEC ENTERTAINMENT, INC.

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA
14

15 DENISE KELLER, an individual, on behalf of
16 herself and all others similarly situated,

17 Plaintiff,

18 v.

19 CEC ENTERTAINMENT, INC., a Kansas
20 corporation, and DOES 1-10,

21 Defendants.

Case No. 11-cv-00629 WQH-POR

The Hon. William Q. Hayes

**CEC ENTERTAINMENT, INC.'S
NOTICE OF MOTION AND MOTION TO
DISMISS COMPLAINT**

CLASS ACTION

JURY TRIAL DEMANDED

Hearing Date: June 13, 2011, 11:00 a.m.,
Courtroom 4

NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT

22 TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE that on June 13, 2011, at 11:00 a.m., or as soon
24
25

1 thereafter as their matter may be heard in the courtroom of the Honorable William Q. Hayes,
2 Defendant CEC Entertainment, Inc. (“Chuck E. Cheese” or “CEC”) moves the Court pursuant to
3 Rules 12(b)(1), 12(b)(6), and 12(f) of the Federal Rules of Civil Procedure for an order
4 dismissing Denise Keller’s Complaint or, in the alternative, striking certain portions thereof.
5

6 Chuck E. Cheese bases this Motion on the following grounds:

7 1. The games identified by the Plaintiff in the Complaint and allegedly
8 available for play at Chuck E. Cheese restaurants are a far cry from those found to constitute
9 illegal games in California and outside of the state, and do not constitute the “slot” machines that
10 the California legislature intended to penalize criminally. The Complaint, therefore, fails to state
11 a claim upon which relief can be granted and should be dismissed or, alternatively, the statute
12 held unconstitutionally overbroad and vague under both the United States and California
13 Constitutions as applied to the kiddie arcade games referenced in the Complaint and vague as to
14 the definition of “slot machines.”
15

16 2. Even assuming the games identified in the Complaint constitute illegal
17 gaming devices (which they do not), the Complaint fails to state claims for which relief can be
18 granted against Chuck E. Cheese for unfair business practices, rescission of contract, breach of
19 implied contract, and declaratory judgment because Plaintiff, by her own allegations, was a
20 repeat participant in what she now describes as illegal gambling. Plaintiff’s claims are barred by,
21 among other things, Plaintiff’s lack of standing due to California’s strong public policy against
22 lending the judicial process to admitted gamblers and the doctrine of *in pari delicto*.
23

24 3. Plaintiff’s claim for declaratory judgment is redundant and duplicative of
25 Plaintiff’s other claims for relief and, on that independent basis, it should be dismissed.

26 4. Plaintiff seeks to represent a purported class pursuant to *both* Rules
27 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure (the “Federal Rules”), and yet the
28

1 predominant relief sought by Plaintiff is money damages, not injunctive relief. Consequently,
2 the claim for relief pursuant to Rule 23(b)(2) should be dismissed or, alternatively, stricken.

3 5. Plaintiff's claim for attorneys' fees predicated on her California Unfair
4 Competition Law ("Section 17200") claim should be dismissed or, alternatively, the relief
5 stricken because attorneys' fees are not available where a plaintiff, such as Plaintiff, fails to seek
6 the validation of a fundamental constitutional right or statutory policy.
7

8 This Motion is based upon this Notice of Motion and Motion, the attached
9 Memorandum of Points and Authorities, and all of the pleadings, records, and papers on file in
10 this matter, as well as such other oral and/or legal authority as may be presented at or before the
11 time of the hearing of this Motion.

12 **CERTIFICATE OF SERVICE**

13 This is to certify that all counsel of record who are deemed to have consented to
14 electronic service are being served with a copy of this document via the Court's CM/ECF system
15 per Local Rule 5.4(c) on this the 6th day of May, 2011.

16 /s/Christopher J. Cox

17 Christopher J. Cox

18 DATED: May 6, 2011

19 WEIL, GOTSHAL & MANGES, LLP

20 By /s/ Christopher J. Cox

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