

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:07-CV-275-D

SILICON KNIGHTS, INC.,)
)
 Plaintiff,)
)
 v.) **ORDER**
)
 EPIC GAMES, INC.,)
)
 Defendant.)

This case comes before the court on defendant's motion (DE #192) to consider the supplemental declarations by two of its attorneys in connection with the motion to compel which defendant filed on 14 August 2008 (DE #170). The declarations supplement a declaration by another attorney for defendant (DE #170-2) filed with the motion to compel. The supplemental declarations respond to statements in a declaration (DE #191-3) by an attorney for plaintiff filed in opposition to the motion to compel, and to related arguments by plaintiff in its memorandum (DE #191), concerning the adequacy of defendant's efforts to confer with plaintiff prior to filing the motion to compel, as required under Fed. R. Civ. P. 37(a)(1) and Local Civ. R. 7.1(c), E.D.N.C.

The Local Rules prohibit replies on discovery motions. Local Civ. R. 7.1(f)(2), 26.1(d)(3), E.D.N.C. While the supplemental declarations do not formally constitute a reply, they are in the nature of a reply. Moreover, the court is concerned about permitting supplemental submissions, as here, that relate to a matter ancillary to the merits of a motion, as important as that matter is.

Nevertheless, under the circumstances presented in this particular instance, the court believes it appropriate to exercise its discretion to allow defendant's motion and consider the supplemental declarations. Allowance of the supplemental declarations on this occasion shall not be deemed to

indicate that the court will allow such supplemental declarations under similar circumstances in the future.

IT IS THEREFORE ORDERED that defendant's motion is ALLOWED. The court will consider the supplemental declarations subject to the motion in deciding defendant's motion to compel of 14 August 2008.

SO ORDERED, this 17th day of September, 2008.



James E. Gates
United States Magistrate Judge