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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

D.D., individually and on behalf of all other
persons similarly situated,

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

ASSIGNED FOR ALL PURPOSES TO JUDGE
STUART M. RICE, DEPT. 001

**PLAINTIFF’S UNOPPOSED NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action Filed: February 14, 2023
Trial Date: None assigned

Date: August 7, 2023
Time: 10:30 a.m.

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 7, 2023, at 10:30 am, or as soon thereafter as this matter may be heard in Department 001 of the above captioned Court, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiff D.D. (“Plaintiff”) will move, and hereby does move, for preliminary approval of a proposed class action settlement (the “Settlement”) in this Action.

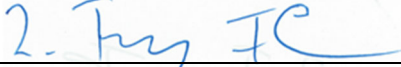
Defendant Niantic, Inc. (“Niantic” or “Defendant”) does not oppose this motion.

This Motion is made on the grounds that all parties in this action have executed a class Settlement Agreement, the terms of which are fair, reasonable, and fall within the range of possible approval. Plaintiff asks the Court to enter the accompanying [Proposed] Order Preliminarily Approving Class Action Settlement (the “[Proposed] Preliminary Approval Order”), which authorizes the certification of a Settlement Class for settlement purposes only and the establishment of a hearing date for the consideration of final approval of the Settlement and related deadlines.

The Motion is based on the Declaration of Philip L. Fraietta and its Exhibits, including the Settlement Agreement; the [Proposed] Preliminary Approval Order submitted herewith; the Memorandum of Points and Authorities filed herewith; the pleadings and papers on file in this Action; and such other evidence and argument as may subsequently be presented to the Court.

Dated: March 1, 2023

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff D.D. (“Plaintiff”), a minor, now moves for preliminary approval of the class action
4 settlement in this case. The Settlement Agreement (hereafter, “Settlement”) and its exhibits are
5 attached as Exhibit 1 to the concurrently filed Declaration of Philip L. Fraietta (“Fraietta Decl.”).¹
6 This case concerns allegations that Defendant deceptively marketed and sold in-game items and in-
7 game currency for its popular online video game, Pokémon Go (hereinafter, “*Pokémon GO*”).
8 Plaintiff alleges that these items and in-game currency are frequently purchased by minors who were
9 unable to exercise their unrestricted rights under state laws to rescind contracts into which they entered
10 with Defendant. Plaintiff seeks to represent a class of all persons in the United States who, while
11 under the age of 18, made a purchase within *Pokémon GO*.

12 Defendant vigorously denies Plaintiff’s allegations, and continued litigation poses risks to
13 Plaintiff and the putative class he seeks to represent. Absent settlement, Defendant would challenge
14 the pleadings, oppose class certification, move for summary judgment, litigate the case at trial, and
15 appeal any victory for Class Members. Victory for the Defendant at any one of those steps would
16 leave putative class members without any relief whatsoever.

17 Recognizing the risk and uncertainty of protracted litigation, the parties participated in a full-
18 day mediation session with Gregory Lindstrom of Phillips ADR, followed by many months of follow-
19 on settlement discussions. These efforts resulted in a Settlement Agreement that provides substantial
20 benefits to the proposed Class. Specifically, the Settlement will require Niantic to change its practices
21 with respect to minors in the United States to ensure that its refund policies are put in full compliance
22 with California Family Code §§ 6701 and 6710, which Plaintiff’s counsel estimates has a value of up
23 to tens of millions of dollars to the Settlement Class. The settlement benefits are summarized as
24 follows:

25 1) For all refund requests processed by Niantic, which currently includes purchases from the
26 Google Play Store, Niantic will implement a dedicated process to address refund requests, subject to
27 confirmation of minority. The personnel staffing this dedicated process will receive further training

28 _____
¹All other exhibits and declarations referenced in this brief are also attached as exhibits to the
Fraietta Declaration.

1 regarding how to analyze and process such refund requests in accordance with applicable law.
2 Settlement, § IV.39.e.

3 2) Niantic will, in processing any direct requests for refunds of PokéCoins (in-game currency)
4 purchased on Apple or Samsung, in its standard response redirecting users to Apple or Samsung, add
5 language in substantially the following form: “Please note that app store refund policies may vary
6 based on the location of user and the age of user, including legal minority, at the time of purchase,
7 as may be required by applicable law.” Settlement, § IV.39.b.i.

8 3) For Google Play Store purchases for which Niantic is permitted to process direct refunds, in
9 its standard response for U.S. users seeking additional information about the purchase, Niantic will
10 add language to prompt users to indicate whether the purchase of in-game items and in-game
11 currency was made when the user was a minor without parental consent, except as prohibited by
12 local law. Settlement, § IV.39.b.ii.

13 4) Niantic will, in its public-facing Pokémon GO Help Center, for help pages currently
14 referencing assistance with refunds for PokéCoin purchases: i) Add specific links to Apple, Google,
15 and Samsung In-App Purchase refund policies for reference; ii) Add language in substantially the
16 following form: “Please note that app store refund policies may vary based on the location of user
17 and the age of user, including legal minority, at the time of purchase, as may be required by
18 applicable law.”; and d) Niantic will also add these Pokémon GO Help Center changes into the in-
19 app Help sections on the same topics. Settlement, § IV.39.c.

20 5) Subject to court approval, Defendant will separately pay Class Counsel’s attorneys’ fees and
21 expenses in an amount up to \$875,000. *Id.* at § VII.49. Defendant has also agreed, upon approval
22 by the Court, to pay up to \$1,500 to the named Plaintiff as an incentive award for his efforts in this
23 matter. *Id.* at § VII.51. These fees and service awards do not reduce any other form of relief made
24 available to Class Members. *Id.* at § VII.

25 This is an outstanding result, particularly taking into account the novelty of the case and the
26 risks to Plaintiff and putative Class Members going forward. Plaintiff’s case faces unique hurdles at
27 the class certification stage, as there are unsettled issues regarding whether the class may be subject
28 to arbitration agreements, whether Plaintiff and Class Members were actually injured, and whether

1 there exists a ripe dispute between the Parties. Despite this fact, the Settlement Agreement provides
2 significant, meaningful injunctive relief, which by Plaintiff's counsel's estimation, is valued up to tens
3 of millions of dollars without Class Members giving up their right to pursue damages claims in the
4 future. See Fraietta Decl. ¶ 5. In sum, the Settlement represents a resounding victory for Plaintiff and
5 the Class.

6 Accordingly, Plaintiff asks this Court to enter an Order Preliminarily Approving Class Action
7 Settlement, which is attached to the Settlement as Exhibit 1, and submitted again with this motion.
8 That Order will: (1) Grant preliminary approval of the Settlement; (2) Certify the Settlement Class
9 for settlement purposes; (3) Establish procedures for giving notice to members of the Settlement
10 Class; (4) Approve forms of notice to Class Members; (5) Mandate procedures and deadlines for
11 exclusion requests and objections; and (6) Set a date, time, and place for a final approval hearing.

12 **II. DUNK/KULLAR ANALYSIS**

13 **A. Summary Of The Case**

14 This is a putative class action concerning allegations that Defendant deceptively marketed and
15 sold in-game items and in-game currency for its popular online video game, *Pokémon GO*. Plaintiff
16 alleges that these items and in-game currency are frequently purchased by minors who were unable
17 to exercise their unrestricted rights under state laws to rescind contracts into which they entered with
18 Defendant. Plaintiff seeks to represent a class of all persons in the United States who, while under
19 the age of 18, made a purchase within *Pokémon GO*.

20 Under California law, and equivalent law in states nationwide, minors have the right to
21 disaffirm contracts such as those at issue here. See Cal. Fam. Code § 6710. By no later than the filing
22 date of his lawsuit, Plaintiff disaffirmed all of his in-app purchases made through *Pokémon GO* to-
23 date and requested a refund. Plaintiff alleges Defendant's representations that the purchases are non-
24 refundable violates Plaintiff's and other Class Members' right to disaffirm their contracts with
25 Defendant and obtain a refund. Plaintiff also alleges that Defendant's business practices violate Cal.
26 Fam. Code § 6701 which states that a "minor cannot ... [m]ake a contract relating to any personal
27 property not in the immediate possession or control of the minor" because both in-game items and in-
28 game currency sold to Plaintiff and Class Members are personal property, and according to

1 Defendant's Terms of Use, Defendant explicitly maintains possession and/or control over the in-game
2 items and in-game currency and virtual items sold to Plaintiff and the Class Members. Therefore,
3 Plaintiff's lawsuit seeks (1) declaratory judgment that he and other class members are entitled to a
4 refund of their purchases pursuant to Cal. Fam. Code § 6701 and § 6710; and (2) that Defendant's
5 conduct is unlawful and unfair under Bus. & Prof. Code § 17200 et seq. ("UCL"). Defendant denies
6 Plaintiff's allegations, including that Plaintiff or the putative class are entitled to relief under the
7 California Family Code or that any of its business practices were unfair in any way.

8 **B. Summary Of The Pre-suit Investigation**

9 Prior to engaging with Defendant, Plaintiff's counsel conducted an extensive pre-suit
10 investigation into the factual underpinnings of the practices challenged in this action, as well as the
11 applicable law. Fraietta Decl. ¶¶ 4-5. Plaintiff's counsel reviewed Defendant's terms of service,
12 Plaintiff's purchase history documents, and the refund policies of the platforms where Plaintiff made
13 his purchases of in-game currency and virtual items. *Id.* Further, Plaintiff's counsel thoroughly
14 investigated Defendant's publicly available financial information and player demographics.

15 **C. Summary Of Settlement Negotiations**

16 The Parties agreed to mediate prior to Plaintiff filing his claims against Niantic. This full-day
17 mediation occurred with Gregory Lindstrom of Phillips ADR on September 8, 2022. It was
18 unsuccessful. Thereafter, however, the parties continued to engage in arm's length negotiations
19 facilitated through Mr. Lindstrom. These efforts culminated in a term sheet executed by the Parties
20 on November 9, 2022. Fraietta Decl. ¶ 3. Over the next few months, the parties exchanged edits to
21 the draft long form settlement agreement, which was executed on January 6, 2023. *Id.* As part of this
22 confidential mediation process, Defendant provided Plaintiff's Counsel with information about the
23 putative class. *Id.* ¶ 4.

24 **D. Summary Of The Risks Of Achieving And Maintaining Class Action Status**

25 The value of the Settlement that the Parties negotiated is outstanding in light of the risks and
26 complexity of the case, the expense and likely duration of continued litigation, and the stage of
27 proceedings. Plaintiff's complaint is still subject to pleading challenges and unique issues with
28 regards to class certification and summary judgment (i.e., issues regarding arbitration, whether

1 Plaintiff and Class Members were actually injured, and whether there exists a ripe dispute between
2 the Parties). For example, a federal court in the Northern District of California recently dismissed
3 similar claims on these grounds, leaving the class members in that case with no recovery whatsoever.
4 *See V.R. v. Roblox Corp.* (N.D. Cal. Jan. 25, 2023) 2023 WL 411347. Even if Plaintiff prevailed at
5 every step of the way on the merits, Defendant would challenge the amount of damages and would
6 seek to offset any recovery by each Class Member against the value that each Class Member already
7 received before they disaffirmed their contracts. Additionally, there are multiple risks associated with
8 achieving and maintaining class action status. For example, Defendant would argue that this case is
9 not maintainable as a class action for damages because not every Class Member would want to
10 disaffirm their contracts with Defendant. No matter what the outcome, absent settlement, this case
11 would likely consume trial and appellate court resources for years.

12 In light of the strengths and weaknesses of these claims, the Court is provided with sufficient
13 information to make an independent determination that the consideration being received for the
14 release of class members' claims is reasonable. As aforementioned, the Settlement does not release
15 any claims for damages. Instead, the settlement only releases class members' claims for injunctive
16 and/or declaratory relief. *See* Settlement ¶ 44. In exchange for that release, the settlement provides
17 meaningful and significant injunctive relief.

18 The process of settlement negotiations further supports approval of the Settlement. For
19 example, the “presence of a neutral mediator [is] a factor weighing in favor of a finding of non-
20 collusiveness.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 946; *see*
21 *also Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 965 (“We put a good deal of stock
22 in the product of an arms-length, non-collusive, negotiated resolution”). Here, the negotiations were
23 conducted by experienced class action counsel, with significant assistance from an experienced
24 mediator, Gregory Lindstrom of Phillips ADR. *See* Fraietta Decl. ¶ 3. Thus, counsel's assessment
25 and judgment are entitled to a presumption of reasonableness.

26 **III. LEGAL STANDARD**

27 A class action settlement requires court approval. Fed. R. Civ. P. 23(e).² The trial court has

28 ² California courts frequently look to Rule 23 of the Federal Rules of Civil Procedure, and to federal cases decided thereunder, for guidance. *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.#

1 broad discretion to determine whether a class settlement is fair. *Rebney v. Wells Fargo Bank* (1990)
2 220 Cal.App.3d 1117, 1138. The trial court’s decision whether to approve a class settlement is
3 reviewed on appeal under a deferential abuse of discretion standard. *See Kullar v. Foot Locker Retail,*
4 *Inc.* (2008) 168 Cal. App 4th 116, 128.

5 Approval of class action settlements involves a two-step process. The Court starts with a
6 preliminary determination whether the proposed settlement appears to be fair and is “within the range
7 of possible approval.” *Alaniz v. California Processors, Inc.* (N. D. Cal. 1976) 73 F.R.D. 269, 273,
8 *cert. denied sub nom. Beaver v. Alaniz* (1978) 439 U.S. 837. If so, the Court can schedule a final
9 approval hearing where a more in-depth review of the settlement terms will take place. *See Manual*
10 *for Complex Litigation, 3d Edition*, § 633 at 236-38 (hereinafter “Manual”). Preliminary approval
11 does not require an answer to the ultimate question of whether the proposed settlement is fair and
12 adequate. *See Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

13 Nevertheless, a review of the standards applied in determining whether a settlement should be
14 given *final* approval is helpful during the preliminary approval phase. First, there is the strong judicial
15 policy of encouraging compromises, particularly in class actions. *See Manual*, §23.11 at 166
16 (“Beginning with the first [pretrial] conference, and from time to time throughout the litigation, the
17 court should encourage the settlement process.”); *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d 1326,
18 1331 (“Particularly in class action suits, there is an overriding public interest in favor of settlements”).

19 Second, one consideration in evaluating the fairness of a proposed settlement is the likelihood
20 of recovery balanced against the benefits of settlement. Such a comparison, however, must be
21 tempered by recognition that compromise involves concessions by all parties. “The trial court should
22 not make a proponent of a proposed settlement justify each term of settlement against a hypothetical
23 or speculative measure of what concessions might have been gained; inherent in compromise is a
24 yielding of absolutes and an abandoning of highest hopes.” *Cotton v. Hinton, supra*, 559 F.2d at
25 1330. Indeed, “the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its
26 own judgment for that of counsel.” *Id.* Thus, “the role of a court in passing upon the propriety of the
27 settlement of a derivative or other class action is a delicate one,” considering “the uncertainties of law
28

1 and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any
2 litigation to completion.” *Newman v. Stein* (2d Cir. 1972) 464 F.2d 689, 691-93.

3 Third, there are no firm rules for evaluating a settlement. Not even the size of the recovery
4 relative to claimed damages is absolutely determinative. Thus, in *City of Detroit*, for example, an
5 objection was asserted in a class action settlement on the grounds that the settlement’s benefits were
6 only 12% of the recovery sought. The court rejected this contention: “The fact that a proposed
7 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that
8 the proposed settlement is grossly inadequate and should be disapproved.” *City of Detroit v. Grinnell*
9 *Corp.* (2d Cir. 1974) 495 F.2d 448, 455. The court continued: “In fact there is no reason, at least in
10 theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a
11 single percent of the potential recovery.” *Id.* at n.2; *accord 7-Eleven Owners for Fair Franchising v.*
12 *Southland Corp.* (2000) 85 Cal. App 4th 1135, 1150.

13 Factors to be considered by the court in evaluating a proposed settlement may include, among
14 others, some or all of the following: The experience and views of counsel; the risks, complexity,
15 expense and likely duration of continued litigation; the strengths of plaintiff’s case; the amount
16 offered in settlement; and the stage of proceedings. *Officers for Justice v. Civil Service Comm’n* (9th
17 Cir. 1982) 688 F.2d 615, 625.

18 In preliminarily evaluating the adequacy of a proposed settlement, particular attention should
19 be paid to the process of settlement negotiations. Where negotiations were conducted by experienced
20 class action counsel, assisted by a respected mediator, counsel’s assessment and judgment are entitled
21 to a presumption of reasonableness, and the court is entitled to rely heavily upon their opinion. *Boyd*
22 *v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 622-23; *see also In re M.L. Stern Overtime Litig.*
23 (S.D. Cal. Apr. 13, 2009) 2009 WL 995864, at *5 (granting preliminary approval, stating “the
24 settlement was reached with the supervision and assistance of an experienced and well-respected
25 independent mediator”).

26 **IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED**

27 The Settlement Class consists of “[a]ll persons in the United States who made a purchase in
28 Pokémon Go while under the age of 18.” Settlement, § III.34.

1 California courts often certify a settlement class for the purpose of approving a settlement.
2 *See Wershba v. Apple Computer* (2001) 91 Cal. App.4th 224. C.C.P. § 382 establishes a two-step
3 analysis for determining whether class certification is appropriate: The class must be ascertainable
4 and there must be a well-defined community of interest in the questions of law and fact at issue.
5 *Vasquez v. Superior Ct.* (1971) 4 Cal. 3d 800, 809. The Settlement Class satisfies this standard.
6 Where, as here, a plaintiff seeks “uniform relief,” class certification is appropriate. *I.B. by & through*
7 *Bohannon v. Facebook, Inc.* (N.D. Cal. 2015) 82 F. Supp. 3d 1115, 1131 (“Plaintiffs’ injunctive and
8 declaratory relief claims readily meet the requirements of Rule 23(b)(2)[,] Plaintiffs contend that
9 Facebook has acted on grounds that apply generally to the class—refusing to refund purchases that
10 are void or voidable under California law.”); *In re Yahoo Mail Litig.* (N.D. Cal. 2015) 308 F.R.D.
11 577, 600 (holding that the requirements of Rule 23(b)(2) were satisfied where “all emails sent from
12 and to [an electronic communication service provider’s] subscribers are subject to the same
13 interception and scanning processes”); *see also Campbell v. Facebook, Inc.*, Case No. 4:13-cv-05996-
14 PJH, ECF No. 235 (N.D. Cal. Apr. 26, 2017) (granting preliminary approval of settlement based on
15 alleged conduct of uniformly intercepting content of private Facebook messages without user
16 consent).

17 **A. The Class Is Numerous**

18 Numerosity is met if a proposed class is so large that joinder of all members would be
19 impracticable. Code Civ. Proc. § 382; Cal. Civ. Code § 1781(b)(1). Here, the class includes millions
20 of Class Members, so numerosity requirement is satisfied. *Delarosa v. Boiron, Inc.*, 275 F.R.D. 582,
21 587 (C.D. Cal. 2011) (“classes of forty or more are considered sufficiently numerous.”).

22 **B. An Ascertainable Class Exists**

23 Ascertainability is satisfied when the class definition is “sufficient to allow a member of [the
24 class] to identify himself or herself as having a right to recover based on the [class] description.” *Noel*
25 *v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980. Here, the manner in which the class is defined
26 enables an objective determination of whether a person is or is not a member. Indeed, Class Members
27 identified themselves to Defendant before making purchases. Compl. ¶ 30. This is sufficient. *I.B.*
28 *by & through Bohannon*, 82 F. Supp. 3d at 1126 (“Here, both the class and subclass, as defined, are
readily ascertainable by the Court: the first includes all minors who used Facebook during a certain

1 time period, according to Facebook’s own records; the second includes all minors during that same
2 time period who purchased Facebook Credits through their accounts, again utilizing Facebook’s
3 records.”); *see also Noel*, 7 Cal. 5th at 987 (reversing trial court who found that a class defined as
4 “[a]ll persons who purchased the Ready Set Pool at a Rite Aid store located in California within the
5 four years preceding the date of the filing of this action” was not ascertainable).

6 **C. There Is A Well-Defined Community Of Interest In The Questions Of**
7 **Law And Fact Involved**

8 The community of interest requirement consists of (1) predominant questions of law or fact,
9 (2) class representatives whose claims and defenses are typical of the class, and a (3) plaintiff who
10 can adequately represent the class. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470. The
11 proposed Settlement Class satisfies each of these requirements.

12 **1. Predominant Questions Of Law And Fact Exist**

13 The “predominance” requirement does not mean that all questions of law or fact must be
14 common to every class member. Indeed, a single common question will satisfy the rule. *Collins v.*
15 *Rocha* (1972) 7 Cal. 3d 232, 238. Likewise, a class action is appropriate even if each member of the
16 class may at some point be required to make an individual showing as to his or her eligibility for
17 recovery or as to the amount of his or her damages. *Vasquez*, 4 Cal. 3d at 815-816.

18 Here, the common “issue” in this litigation is whether Defendant’s refund policies have
19 interfered with Class Members’ rights to seek refunds under Cal. Fam. Code §§ 6701 and 6710. If
20 the answer is yes, then Defendant would need to provide a method to request a refund to Class
21 Members and update its policies to adequately notify Class Members of their right to disaffirm
22 contracts. If the answer is no, Class Members would not be entitled to a remedy under this lawsuit.
23 No significant individualized issues remain. *I.B. by & through Bohannon*, 82 F. Supp. 3d at 1128
24 (“Plaintiffs raise common questions which lend themselves to resolution through common answers,
25 and the injunctive ... relief sought by Plaintiffs could benefit the class as a whole, including those
26 who have reached the age of majority but transacted with Facebook whilst minors.”).

27 **2. The Class Representative’s Claims Are Typical Of The**
28 **Claims Of The Other Class Members**

A plaintiff’s claims are “typical” of the class members’ claims where they stem from the same
practice and are based on the same legal theories. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.

1 “[T]he typicality requirement may be satisfied even if there are factual distinctions between the claims
2 of the named plaintiff[] and those of the class members [or] differences in the amount of damages
3 claimed” *Id.* The typicality requirement is met here because Plaintiff asserts the same legal claims
4 as the Class Members, arising from the same facts – while he was a minor, he purchased in-game
5 items and in-game currency from Defendant that were represented as non-refundable. *I.B. by &*
6 *through Bohannon*, 82 F. Supp. 3d at 1129 (“The Court finds that I.B. and J.W.’s claims are
7 reasonably co-extensive with the claims of the non-named class members, and that they have satisfied
8 Rule 23(a)’s typicality requirement.”).

9 **D. Adequacy**

10 The “adequacy” requirement is satisfied where Plaintiff’s counsel are experienced, qualified,
11 and capable, and the Plaintiff’s interests are not antagonistic to the interests of the class members.
12 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Adequacy is presumed where a fair
13 settlement was negotiated at arm’s length. 2 *Newberg on Class Actions, supra*, §11.28, at 11-59.
14 Counsel and Plaintiff here have vigorously and competently pursued the Class Members’ claims and
15 there is no reason to believe that Plaintiff has interests that are antagonistic to the Class Members’
16 interests. Plaintiff has agreed to act as a Class Representative and he understands his responsibilities.
17 D.D. Decl. ¶ 10. Plaintiff’s counsel also are highly experienced class action attorneys. *See Fraietta*
18 *Decl., Ex. 2* (Bursor & Fisher P.A. firm resume).

19 **E. Superiority Of The Class Action Device**

20 Class adjudication provides substantial benefits to the litigants and the Court and is the
21 superior way to resolve the controversy. *Reyes v. San Diego Cnty. Bd. of Supervisors* (Ct. App. 1987)
22 196 Cal. App. 3d 1263, 1271. Class actions are favored in consumer cases such as this one.
23 *Clothesrigger v. GTE Corp.* (1987) 191 Cal.App.3d 605, 610. The class device permits all claims to
24 be resolved only once, with binding effect. The alternative is for each class member to file a separate
25 case. But such small claims would not be economically feasible. Thus, absent certification, most
26 class members could never seek redress. That would be unjust. Certification of a Settlement Class
27 here is the best way to “achieve economies of time, effort and expense, and promote uniformity of
28 decision as to persons similarly situated, without sacrificing procedural fairness” *Amchem Prod.,*
Inc. v. Windsor (1997) 521 U.S. 591, 615.

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F. Miscellaneous

Affirmative obligations to be undertaken by the Class Member or Class Counsel. Pursuant to the settlement, Class Counsel is required to post all documents pertaining to the Settlement, preliminary approval, and final approval on Class Counsel’s public website, www.bursor.com. Settlement, § V.42.d.

Fee Splitting Agreements. There is no fee splitting arrangement that is implicated in this case. Fraietta Decl. ¶ 11.

G. A Class Representative Enhancement Award Is Reasonable

Class action incentive awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Cellphone Termination Fee Cases* (Ct. App. 2010) 186 Cal. App. 4th 1380, 1393–94 (citing *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d. 948, 958; *see also id.* (noting service awards “are fairly typical in class action cases”). Service awards in the amount of \$5,000 per class representative have been found to be “presumptively reasonable,” rendering the service award sought here eminently reasonable. *E.g., In re LinkedIn User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 592; *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 335.

Here, Class Counsel seeks, and Defendant does not oppose, a service award in the amount \$1,500 for the Plaintiff serving as Class Representative. *See* Settlement, § VII.51. The requested service award is well justified under the circumstances. The Class Representative assisted with the preparation of and reviewed the complaint before filing, provided documents (including receipts of the purchases he made in Defendant’s video game), invested substantial time over the past year in collaborating and communicating with class counsel, and monitoring the litigation and reviewing case filings and other pertinent documents. *See* D.D. Decl. Thus, the requested service award of \$1,500 to the Class Representative is reasonable and justified.

V. THE SETTLEMENT AGREEMENT

A. The Basics

The Settlement Class consists of “[a]ll persons in the United States who made a purchase in Pokémon Go while under the age of 18.” Settlement, § III.34. The Settlement instructs that seven

1 days after (i) the Final Approval Order and Final Judgment have been entered, and (ii) the Final
2 Approval Order and Final Judgment have become Final, the class members will release their claims
3 for injunctive and declaratory relief. Settlement, §§ II.14; VI.44. It is appropriate that this period
4 extends past final approval because absent class members do not release any claims for monetary
5 relief or damages. *Id.*

6 **B. Release Of Claims**

7 **1. The Release Is Fairly Tailored To The Claims**

8 The release contained in the Settlement Agreement is fairly tailored to the claims that were or
9 could be asserted in the lawsuit based upon the facts alleged in the operative complaint. Under the
10 Settlement Agreement, “Releases” means all claims “that result from, arise out of, are based on, or
11 relate in any way to the practices and claims that were alleged in the Action.” Settlement, § II.22.
12 The released parties are “(i) Niantic and its past, present, and future parents, subsidiaries, affiliates,
13 divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or
14 domestic, that are owned or controlled by Niantic; and (ii) the past, present, and future shareholders,
15 officers, directors, members, agents, employees, independent contractors, consultants, administrators,
16 representative, fiduciaries, insurers, attorneys, legal representative, advisors, creditors, predecessors,
17 successors, and assigns of the entities.” *Id.* at § II.24. The Settlement Agreement includes a waiver
18 of Cal. Family Code §§ 6701 and 6710, but a release of claims for monetary relief or damages applies
19 only to the named Plaintiff, not to putative Class Members. *See id.* at § VI.43, 44.

20 Critically, other members of the class “do not release claims for monetary relief or damages.”
21 Settlement, § VI.44. This means that other members of the class are free to seek damages and other
22 monetary relief against Defendant for any practice or claim that was alleged in this action in the future.

23 **2. Civil Section 1542 Waiver**

24 The Settlement Class Representative (on behalf of himself and the Settlement Class
25 Members), through his counsel, expressly, knowingly, and voluntarily waives any and all provisions,
26 rights, and benefits conferred by California Civil Code Section 1542. Settlement, § VI.45. However,
27 this waiver is only related to claims that “that result from, arise out of, are based on, or relate in any
28 way to the practices and claims that were alleged in the Action.” Settlement, Ex. A ¶ 11. Additionally,
as mentioned before, this waiver does not “release claims for monetary relief or damages.” *Id.* In a

1 class action, a 1542 waiver for absent class members is permissible when, as here, the waiver applies
2 “only to the claims pled in, raised in, or based on the facts alleged in this action.” *Espinoza v.*
3 *Domino’s Pizza, LLC* (C.D. Cal. Oct. 19, 2011) 2011 WL 13182977, at *1.

4 **3. Release Effective Date**

5 The Effective date of the Settlement Release is seven days after both (i) the Final Approval
6 Order and Final Judgment have been entered, and (ii) the Final Approval Order and Final Judgment
7 have become Final. Settlement, §§ II.14; VI.44.

8 **C. Value Of The Settlement**

9 The Settlement clearly falls “within the range of possible approval.” *Alaniz v. California*
10 *Processors, Inc.*, 73 F.R.D. at 273. As detailed throughout, the Settlement provides meaningful,
11 significant and immediate injunctive relief that Plaintiff’s counsel estimates to be worth up to tens of
12 millions of dollars. *See Fraietta Decl.* ¶ 5.

13 For all refund requests processed by Niantic, which currently include purchases from the
14 Google Play Store, Niantic will implement a dedicated process to address refund requests, subject to
15 confirmation of minority. The personnel staffing this dedicated process will receive further training
16 regarding how to analyze and process such refund requests in accordance with applicable law.
17 Settlement, § IV.39.e.

18 Niantic will, in processing any direct requests for refunds of PokéCoins (in-game currency)
19 purchased on Apple or Samsung, in its standard response redirecting users to Apple or Samsung, add
20 language in substantially the following form: “Please note that app store refund policies may vary
21 based on the location of user and the age of user, including legal minority, at the time of purchase, as
22 may be required by applicable law.” Settlement, § IV.39.b.i.

23 For Google Play Store purchases for which Niantic is permitted to process direct refunds, in
24 its standard response for U.S. users seeking additional information about the purchase, Niantic will
25 add language to prompt users to indicate whether the purchase of in-game items and in-game currency
26 was made when the user was a minor without parental consent, except as prohibited by local law.
27 Settlement, § IV.39.b.ii.

28 Niantic will, in its public-facing Pokémon GO Help Center, for help pages currently
referencing assistance with refunds for PokéCoin purchases: i) Add specific links to Apple, Google,

1 and Samsung In-App Purchase refund policies for reference; ii) Add language in substantially the
2 following form: “Please note that app store refund policies may vary based on the location of user
3 and the age of user, including legal minority, at the time of purchase, as may be required by applicable
4 law.”; and iii) Niantic will also add these Pokémon GO Help Center changes into the in-app Help
5 sections on the same topics. Settlement, § IV.39.c.

6 In evaluating the settlement, the Court should consider the value made available to the Class.
7 *See e.g., Williams v. MGM-Pathé Commc’ns Co.* (9th Cir. 1997) 129 F.3d 1026 (ruling that a district
8 court abused its discretion in basing value of settlement on actual distribution to class instead of
9 amount being made available). Plaintiff’s counsel estimates the value of the injunctive relief provided
10 by the Settlement to be up to tens of millions of dollars. *See Fraietta Decl.* ¶ 5.

11 Finally, when calculating the total value provided by a settlement agreement, California courts
12 include the requested attorney’s fees and costs because “those fees are still best viewed as an aspect
13 of the class’ recovery.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 33. Thus,
14 “the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the
15 class....” *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 554 (citation omitted). Here,
16 subject to the Court’s approval, Defendant will pay fees and costs up to \$875,000. Settlement, § VII.
17 49. Additionally, the attorney’s fees were negotiated after all material terms of the Settlement were
18 agreed to and represent a mere fraction of the value of the injunctive relief that the Settlement has
19 made available to Class Members. *Fraietta Decl.* ¶ 10; *see also* *Managing Class Action Litigation: A*
20 *Pocket Guide for Judges Third Edition*, 2010 WL 5056218 (“In some class actions involving
21 injunctive relief, the injunctive relief can be assigned a monetary value on the basis of objective
22 criteria. For example, ... an injunction against a fraudulent sales practice might be valued by
23 examining the amount of past sales attributable to the practice and projecting that value for a
24 reasonable period of time[.]”).

25 **D. Notice Is Not Required**

26 Notice of the settlement is not required here because the Settlement Agreement only releases
27 claims for injunctive and/or declaratory relief and does not release the monetary or damages claims
28 of the Class, and thus the settlement expressly preserves the individual rights of Class Members to

1 pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba Juice Co.* (N.D. Cal. Mar. 18,
2 2015) 2015 WL 1248027, at *8-9 (“Because, even if notified of the settlement, the settlement class
3 would not have the right to opt out from the injunctive settlement and the settlement does not release
4 the monetary claims of class members, the Court concludes that class notice is not necessary.”);
5 *Stathakos v. Columbia Sportswear Co., et al.* (N.D. Cal. Jan. 25, 2018) 2018 WL 582564, at *3-4 (“In
6 injunctive relief only class actions certified under Rule 23(b)(2), federal courts across the country
7 have uniformly held that notice is not required.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012)
8 2012 WL 5948951, at *4, 17 (“The court exercises its discretion and does not direct notice here
9 because the settlement does not alter the unnamed class members’ legal rights.”); *Lowry v. Obledo*
10 (Ct. App. 1980) 111 Cal. App. 3d 14, 23 (“In this case the trial court appropriately followed federal
11 procedure of allowing a decision on the merits without prior notice in certain class actions.”).

12 Notwithstanding, all documents pertaining to the Court’s current social distancing procedures,
13 Settlement, preliminary approval, and final approval will be posted on Class Counsel’s public website,
14 www.bursor.com. Settlement, § V.42.d.

15 **E. Response To The Settlement**

16 Each Settlement Class Member shall be given a full opportunity to comment on or object to
17 the Settlement Agreement, and to participate at a Final Approval Hearing. Settlement, Ex. B ¶ 12.
18 Class members have until 60 days after the order of preliminary approval to submit written comments
19 or objections. *Id.* ¶ 13. Class members who submit written notice of an intention to appear at the
20 Final Approval hearing within 60 days of the date of the preliminary approval order, may appear at
21 the final approval hearing. *Id.* This procedure is necessary so Parties can respond to any objection.

22 **F. Retention Of Jurisdiction**

23 The Parties agree that the Court shall retain jurisdiction over any claim relating to the
24 Settlement Agreement (including all claims for enforcement of the Settlement Agreement and/or all
25 claims arising out of a breach of the Settlement Agreement) as well as any future claims by any
26 Settlement Class Member relating in any way to the Released Claims. Settlement, Ex. B ¶ 22.

27 **VI. CONCLUSION**

28 For the foregoing reasons, Plaintiff requests that the Court grant preliminary approval to the
Settlement and enter the Preliminary Approval Order in the form submitted.

1 Dated: March 1, 2023

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