

**BURSOR & FISHER, P.A.**

L. Timothy Fisher (State Bar No. 191626)  
1990 North California Blvd., Suite 940  
Walnut Creek, CA 94596  
Telephone: (925) 300-4455  
Facsimile: (925) 407-2700  
E-mail: ltfisher@bursor.com

**BURSOR & FISHER, P.A.**

Philip L. Fraietta (*pro hac vice* forthcoming)  
Alec M. Leslie (*pro hac vice* forthcoming)  
888 Seventh Avenue  
New York, NY 10019  
Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
E-Mail: pfraietta@bursor.com  
aleslie@bursor.com

*Attorneys for Plaintiff*

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD,

Defendant.

Case No. 23CV001405

**CASE DEEMED COMPLEX  
ASSIGNED FOR ALL PURPOSES TO JUDGE  
THOMAS W. WILLS**

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

Action Filed: May 3, 2023  
Trial Date: None assigned

Date: August 11, 2023  
Time: 8:30 a.m.  
Dept.: 15



Telephone: (646) 837-7150  
Facsimile: (212) 989-9163  
E-Mail: pfraietta@bursor.com  
aleslic@bursor.com

*Attorneys for Plaintiff*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**PAGE(S)**

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I.	INTRODUCTION.....	9
II.	<i>DUNK/KULLAR</i> ANALYSIS .....	10
	A. Summary Of The Case .....	10
	B. Summary Of The Pre-suit Investigation.....	11
	C. Summary Of Settlement Negotiations.....	11
	D. Summary Of The Risks Of Achieving And Maintaining Class Action Status .....	12
III.	LEGAL STANDARD .....	13
IV.	THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED.....	15
	A. The Class Is Numerous.....	16
	B. An Ascertainable Class Exists.....	16
	C. There Is A Well-Defined Community Of Interest In The Questions Of Law And Fact Involved.....	16
	1. Predominant Questions Of Law And Fact Exist .....	17
	2. The Class Representative’s Claims Are Typical Of The Claims Of The Other Class Members.....	17
	D. Adequacy.....	18
	E. Superiority Of The Class Action Device.....	18
	F. A Class Representative Enhancement Award is Reasonable.....	19
V.	THE SETTLEMENT AGREEMENT.....	19
	A. The Basics .....	19
	B. Release of Claims .....	20
	1. The Release Is Fairly Tailored To The Claims .....	20
	C. Value of The Settlement.....	20
	D. Notice Is Not Required.....	22
	E. Response to The Settlement .....	23
VI.	CONCLUSION .....	23

**TABLE OF AUTHORITIES**

**PAGE(S)**

**CASES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*7-Eleven Owners for Fair Franchising v. Southland Corp.*  
(2000) 85 Cal. App. 4th 1135 ..... 14

*Alaniz v. California Processors, Inc.*  
(N. D. Cal. 1976) 73 F.R.D. 269 ..... 13, 20

*Amchem Prod., Inc. v. Windsor*  
(1997) 521 U.S. 591 ..... 18

*Beaver v. Alaniz*  
(1978) 439 U.S. 837 ..... 13

*Boyd v. Bechtel Corp.*  
(N.D. Cal. 1979) 485 F. Supp. 610 ..... 15

*Cellphone Termination Fee Cases*  
(Ct. App. 2010) 186 Cal. App. 4th 1380 ..... 19

*City of Detroit v. Grinnell Corp.*  
(2d Cir. 1974) 495 F.2d 448 ..... 14

*Classen v. Weller*  
(1983) 145 Cal.App.3d 27 ..... 17

*Clothesrigger v. GTE Corp.*  
(1987) 191 Cal.App.3d 605 ..... 18

*Collins v. Rocha*  
(1972) 7 Cal. 3d 232, 497 P.2d 225 ..... 17

*Consumer Privacy Cases*  
(2009) 175 Cal. App. 4th 545 ..... 22

*Cotton v. Hinton*  
(5th Cir. 1977) 559 F.2d 1326 ..... 14

*Daniels v. Centennial Group, Inc.*  
(1993) 16 Cal.App.4th 467 ..... 18

*Delarosa v. Boiron, Inc.*  
275 F.R.D. 582 (C.D. Cal. 2011) ..... 16

*Dunk v. Ford Motor Company*  
(1996) 48 Cal.App.4th 1794 ..... 13

1 *Dyer v. Wells Fargo Bank, N.A.*  
(N.D. Cal. 2014) 303 F.R.D. 326 ..... 19

2 *Faigman v. AT & T Mobility LLC,*  
3 (N.D. Cal. Feb. 16, 2011) 2011 WL 672648..... 19

4 *Green v. Obledo*  
5 (1981) 29 Cal.3d 126 ..... 13

6 *I.B. by & through Bohannon v. Facebook, Inc.*  
(N.D. Cal. 2015) 82 F. Supp. 3d 1115..... 15, 16, 17

7 *In re Bluetooth Headset Prods. Liab. Litig.*  
8 (9th Cir. 2011) 654 F.3d 935 ..... 13

9 *In re LinkedIn User Privacy Litig.*  
(N.D. Cal. 2015) 309 F.R.D. 573 ..... 19

10 *In re M.L. Stern Overtime Litig.*  
11 (S.D. Cal. Apr. 13, 2009) 2009 WL 995864 ..... 15

12 *In re Yahoo Mail Litig.*  
13 (N.D. Cal. 2015) 308 F.R.D. 577 ..... 15

14 *Kim v. Space Pencil, Inc.*  
(N.D. Cal. Nov. 28, 2012) 2012 WL 5948951 ..... 23

15 *Kullar v. Foot Locker Retail, Inc.*  
16 (2008) 168 Cal. App. 4th 116..... 13

17 *Lealao v. Beneficial California, Inc.*  
18 (2000) 82 Cal. App. 4th 19 ..... 22

19 *Lilly v. Jamba Juice Co.*  
(N.D. Cal. Mar. 18, 2015) 2015 WL 1248027 ..... 23

20 *Lowry v. Obledo*  
21 (Ct. App. 1980) 111 Cal. App. 3d 1 ..... 23

22 *McGhee v. Bank of America*  
23 (1976) 60 Cal.App.3d 442 ..... 18

24 *Newman v. Stein*  
(2d Cir. 1972) 464 F.2d 689 ..... 14

25 *Noel v. Thrifty Payless, Inc.*  
26 (2019) 7 Cal. 5th 955..... 16

27 *Officers for Justice v. Civil Service Comm'n*  
28 (9th Cir. 1982) 688 F.2d 615 ..... 15

1	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117 .....	13
2	<i>Reyes v. San Diego Cnty. Bd. of Supervisors</i>	
3	(Ct. App. 1987) 196 Cal. App. 3d 1263 .....	18
4	<i>Richmond v. Dart Indus., Inc.</i>	
5	(1981) 29 Cal. 3d 462 .....	16, 17
6	<i>Rodriguez v. W. Publ'g Corp.</i>	
	(9th Cir. 2009) 563 F.3d 948 .....	13, 19
7	<i>V.R. v. Roblox Corp.</i>	
8	(N.D. Cal. Jan. 25, 2023) 2023 WL 411347 .....	12
9	<i>Vasquez v. Superior Ct.</i>	
10	(1971) 4 Cal. 3d 800, 484 P.2d 964 .....	15, 17
11	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal. App.4th 224 .....	15
12	<i>Williams v. MGM-Pathe Commc'ns Co.</i>	
13	(9th Cir. 1997) 129 F.3d 1026 .....	22
14	<i>Young v. Polo Retail, LLC</i>	
15	(N.D. Cal. Mar. 28, 2007) 2007 WL 951821 .....	22
16	<b>STATUTES</b>	
17	Bus. & Prof. Code § 17200 .....	11
18	Cal. Civ. Code § 1781 .....	16
19	Cal. Civ. Code § 1781(b)(1) .....	16
20	Cal. Civ. Pro. Code § 382 .....	15, 16
21	Cal. Fam. Code § 6701 .....	passim
22	Cal. Fam. Code § 6710 .....	passim
23	<b>RULES</b>	
24	Fed. R. Civ. P. 23 .....	13, 16
25	Fed. R. Civ. P. 23(a) .....	18
26	Fed. R. Civ. P. 23(b)(2) .....	15, 23
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Fed. R. Civ. P. 23(c)(2)(A).....23

Fed. R. Civ. P. 23(e)..... 13



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff C.J. (“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.”).<sup>1</sup>  
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, Genshin Impact (hereinafter, “GI”). Plaintiff  
8 alleges that these items and in-game currency are frequently purchased by minors who were unable  
9 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 GI.

12 Defendant vigorously denies Plaintiff’s allegations, and continued litigation poses risks to  
13 Plaintiff and the putative class she seeks to represent. Absent settlement, Defendant would  
14 challenge the pleadings, oppose class certification, move for summary judgment, litigate the case at  
15 trial, and appeal any victory for Class Members. Victory for the Defendant at any one of those steps  
16 would 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, which culminated in a mediator’s  
19 proposal and near-final term sheet. Further settlement efforts eventually resulted in a Settlement  
20 Agreement that provides substantial benefits to the proposed Class. Specifically, the Settlement will  
21 require Cognosphere to change its practices with respect to minors in the United States to ensure  
22 that its refund policies are put in full compliance with California Family Code §§ 6701 and 6710,  
23 which Plaintiff’s counsel estimates has a value of up to tens of millions of dollars to the Settlement  
24 Class.

25 The Settlement is an outstanding result, particularly taking into account the novelty of the  
26 case and the risks to Plaintiff and putative Class Members going forward. Plaintiff’s case faces

27 <sup>1</sup>All other exhibits and declarations referenced in this brief are also attached as exhibits to the  
28 Fraietta Declaration.

1 unique hurdles at the class certification stage, as there are unsettled issues regarding whether the  
2 class may be subject to arbitration agreements, whether Plaintiff and Class Members were actually  
3 injured, and whether there exists a ripe dispute between the Parties. Despite this fact, the Settlement  
4 Agreement provides significant, meaningful injunctive relief, which by Plaintiff's counsel's  
5 estimation, is valued up to millions of dollars without Class Members giving up their right to pursue  
6 damages claims in the future. *See* Fraietta Decl. ¶ 5. In sum, the Settlement represents a resounding  
7 victory for Plaintiff and the Class.

8 Accordingly, Plaintiff asks this Court to enter the [Proposed] Order Preliminarily  
9 Approving Class Action Settlement, which is attached to the Settlement as Exhibit 1, and submitted  
10 again with this motion. That Order will:

- 11 (1) Grant preliminary approval of the Settlement;
- 12 (2) Certify the Settlement Class for settlement purposes;
- 13 (3) Establish procedures for giving notice to members of the Settlement Class;
- 14 (4) Approve forms of notice to Class Members;
- 15 (5) Mandate procedures and deadlines for exclusion requests and objections; and
- 16 (6) Set a date, time, and place for a final approval hearing.

## 17 **II. DUNK/KULLAR ANALYSIS**

### 18 **A. Summary Of The Case**

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

25 Under California law, and equivalent law in states nationwide, minors have the right to  
26 disaffirm contracts such as those at issue here. *See* Cal. Fam. Code § 6710. By no later than the  
27 filing date of her lawsuit, Plaintiff disaffirmed all of her in-app purchases made through GI to-date  
28

1 and requested a refund. Plaintiff alleges Defendant’s representations that the purchases are non-  
2 refundable violates Plaintiff’s and other Class Members’ right to disaffirm their contracts with  
3 Defendant and obtain a refund. Plaintiff also alleges that Defendant’s business practices violate Cal.  
4 Fam. Code § 6701 which states that a “minor cannot ... [m]ake a contract relating to any personal  
5 property not in the immediate possession or control of the minor” because both in-game items and  
6 in-game currency sold to Plaintiff and Class Members are personal property, and according to  
7 Defendant’s Terms of Use, Defendant explicitly maintains possession and/or control over the in-  
8 game items and in-game currency and virtual items sold to Plaintiff and the Class Members.  
9 Therefore, Plaintiff’s lawsuit seeks (1) declaratory judgment that she and other class members are  
10 entitled to a refund of their purchases pursuant to Cal. Fam. Code §§ 6701 and 6710; and (2) that  
11 Defendant’s conduct is unlawful and unfair under Bus. & Prof. Code § 17200 *et seq.* (“UCL”).  
12 Defendant denies Plaintiff’s allegations, including that Plaintiff or the putative class are entitled to  
13 relief under the California Family Code or that any of its business practices were unfair in any way.

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

15 Prior to engaging with Defendant, Plaintiff’s counsel conducted an extensive pre-suit  
16 investigation into the factual underpinnings of the practices challenged in this action, as well as the  
17 applicable law. Fraietta Decl. ¶¶ 4-5. Plaintiff’s counsel reviewed Defendant’s terms of service,  
18 Plaintiff’s purchase history, and the refund policies of the platforms where Plaintiff made her  
19 purchases of in-game currency and virtual items. *Id.* Further, Plaintiff’s counsel thoroughly  
20 investigated Defendant’s publicly available financial information and player demographics.

21 **C. Summary Of Settlement Negotiations**

22 The Parties agreed to mediate prior to Plaintiff filing her claims against Defendant. This full-  
23 day mediation occurred with Gregory Lindstrom of Phillips ADR on March 16, 2023, and  
24 culminated in a mediator’s proposal and near-final term sheet. The term sheet was executed by the  
25 Parties on March 29, 2023. Fraietta Decl. ¶ 3. Over the next month, the parties exchanged edits to  
26 the draft long form settlement agreement, which was executed on May 1, 2023. *Id.* As part of this  
27  
28

1 confidential mediation process, Defendant provided Plaintiff's Counsel with information about the  
2 putative class. *Id.* ¶¶ 4-5.

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

5 The value of the Settlement that the Parties negotiated is outstanding in light of the risks and  
6 complexity of the case, the expense and likely duration of continued litigation, and the stage of  
7 proceedings. Plaintiff's complaint is still subject to pleading challenges and unique issues with  
8 regards to jurisdiction, class certification, and summary judgment (i.e., issues regarding Defendant's  
9 domicile, arbitration, whether Plaintiff and Class Members were actually injured, and whether there  
10 exists a ripe dispute between the Parties). For example, a federal court in the Northern District of  
11 California recently dismissed similar claims on these grounds, leaving the class members in that  
12 case with no recovery whatsoever. *See V.R. v. Roblox Corp.* (N.D. Cal. Jan. 25, 2023) 2023 WL  
13 411347. Even if Plaintiff prevailed at every step of the way on the merits, Defendant would  
14 challenge the amount of damages and would seek to offset any recovery by each Class Member  
15 against the value that each Class Member already received before they disaffirmed their contracts.  
16 Additionally, there are multiple risks associated with achieving and maintaining class action status.  
17 For example, Defendant would argue that this case is not maintainable as a class action for damages  
18 because not every Class Member would want to disaffirm their contracts with Defendant. No matter  
19 what the outcome, absent settlement, this case would likely consume trial and appellate court  
20 resources for years.

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

27 The process of settlement negotiations further supports approval of the Settlement. For  
28 example, the "presence of a neutral mediator [is] a factor weighing in favor of a finding of non-

1 collusiveness.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 946; *see*  
2 *also Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 965 (“We put a good deal of stock  
3 in the product of an arms-length, non-collusive, negotiated resolution”). Here, the negotiations were  
4 conducted by experienced class action counsel, with significant assistance from an experienced  
5 mediator, Gregory Lindstrom of Phillips ADR. *See Fraietta Decl.* ¶ 3. Thus, counsel’s assessment  
6 and judgment are entitled to a presumption of reasonableness.

### 7 **III. LEGAL STANDARD**

8 A class action settlement requires court approval. Fed. R. Civ. P. 23(e).<sup>2</sup> The trial court has  
9 broad discretion to determine whether a class settlement is fair. *Rebney v. Wells Fargo Bank* (1990)  
10 220 Cal.App.3d 1117, 1138. The trial court’s decision whether to approve a class settlement is  
11 reviewed on appeal under a deferential abuse of discretion standard. *See Kullar v. Foot Locker*  
12 *Retail, Inc.* (2008) 168 Cal. App 4th 116, 128.

13 Approval of class action settlements involves a two-step process. The Court starts with a  
14 preliminary determination whether the proposed settlement appears to be fair and is “within the  
15 range of possible approval.” *Alaniz v. California Processors, Inc.* (N. D. Cal. 1976) 73 F.R.D. 269,  
16 273, *cert. denied sub nom. Beaver v. Alaniz* (1978) 439 U.S. 837. If so, the Court can schedule a  
17 final approval hearing where a more in-depth review of the settlement terms will take place. *See*  
18 *Manual for Complex Litigation, 3d Edition*, § 633 at 236-38 (hereinafter “Manual”). Preliminary  
19 approval of a proposed settlement does not require an answer to the ultimate question of whether the  
20 proposed settlement is fair and adequate. *See Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th  
21 1794, 1801.

22 Nevertheless, a review of the standards applied in determining whether a settlement should  
23 be given *final* approval is helpful during the preliminary approval phase. First, there is the strong  
24 judicial policy of encouraging compromises, particularly in class actions. *See Manual*, §23.11 at  
25 166 (“Beginning with the first [pretrial] conference, and from time to time throughout the litigation,

---

26  
27 <sup>4</sup> In resolving issues relating to class actions, the California courts frequently look to Rule 23 of the  
28 Federal Rules of Civil Procedure, and to federal cases decided thereunder, for guidance. *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46.#

1 the court should encourage the settlement process.”); *Cotton v. Hinton* (5th Cir. 1977) 559 F.2d  
2 1326, 1331 (“Particularly in class action suites, there is an overriding public interest in favor of  
3 settlements”).

4 Second, one consideration in evaluating the fairness of a proposed settlement is the  
5 likelihood of recovery balanced against the benefits of settlement. Such a comparison, however,  
6 must be tempered by recognition that compromise involves concessions by all parties. “The trial  
7 court should not make a proponent of a proposed settlement justify each term of settlement against a  
8 hypothetical or speculative measure of what concessions might have been gained; inherent in  
9 compromise is a yielding of absolutes and an abandoning of highest hopes.” *Cotton v. Hinton*,  
10 *supra*, 559 F.2d at 1330. Indeed, “the trial judge, absent fraud, collusion, or the like, should be  
11 hesitant to substitute its own judgment for that of counsel.” *Id.* Thus, “the role of a court in passing  
12 upon the propriety of the settlement of a derivative or other class action is a delicate one,” taking  
13 into consideration “the uncertainties of law and fact in any particular case and the concomitant risks  
14 and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d Cir.  
15 1972) 464 F.2d 689, 691-93, *cert. denied*, 409 U.S. 1039.

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

26 Factors to be considered by the court in evaluating a proposed settlement may include,  
27 among others, some or all of the following: The experience and views of counsel; the risks,  
28

1 complexity, expense and likely duration of continued litigation; the strengths of plaintiff's case; the  
2 amount offered in settlement; and the stage of proceedings. *Officers for Justice v. Civil Service*  
3 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied*, 459 U.S. 1217 (1983).

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

#### 12 **IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED**

13 The Settlement Class consists of "[a]ll persons in the United States who made a purchase in  
14 GI while under the age of 18." Settlement, § III.34.

15 California courts often certify a settlement class for the purpose of approving a settlement.  
16 *See Wershba v. Apple Computer* (2001) 91 Cal. App 4th 224. C.C.P. § 382 establishes a two-step  
17 analysis for determining whether class certification is appropriate: The class must be ascertainable  
18 and there must be a well-defined community of interest in the questions of law and fact at issue.  
19 *Vasquez v. Superior Ct.* (1971) 4 Cal. 3d 800, 809. The Settlement Class satisfies this standard.  
20 Where, as here, a plaintiff seeks "uniform relief," class certification is appropriate. *I.B. by &*  
21 *through Bohannon v. Facebook, Inc.* (N.D. Cal. 2015) 82 F. Supp. 3d 1115, 1131 ("Plaintiffs'  
22 injunctive and declaratory relief claims readily meet the requirements of Rule 23(b)(2)[,] Plaintiffs  
23 contend that Facebook has acted on grounds that apply generally to the class—refusing to refund  
24 purchases that are void or voidable under California law."); *In re Yahoo Mail Litig.* (N.D. Cal.  
25 2015) 308 F.R.D. 577, 600 (holding that the requirements of Rule 23(b)(2) were satisfied where "all  
26 emails sent from and to [an electronic communication service provider's] subscribers are subject to  
27 the same interception and scanning processes"); *see also Campbell v. Facebook, Inc.* (N.D. Cal.  
28

1 Apr. 26, 2017), Case No. 4:13-cv-05996-PJH, ECF No. 235 (granting preliminary approval of  
2 settlement based on alleged conduct of uniformly intercepting content of private Facebook messages  
3 without user consent).

4 **A. The Class Is Numerous**

5 Numerosity is met if a proposed class is so large that joinder of all members would be  
6 impracticable. Civ. Proc. Code § 382; Cal. Civ. Code § 1781(b)(1). Here, the class includes  
7 millions of Class Members. Hence, the numerosity requirement is satisfied. *Delarosa v. Boiron,*  
8 *Inc.* (C.D. Cal. 2011) 275 F.R.D. 582, 587 (“classes of forty or more are considered sufficiently  
9 numerous.”).<sup>3</sup>

10 **B. An Ascertainable Class Exists**

11 Ascertainability is satisfied when the class definition is “sufficient to allow a member of [the  
12 class] to identify himself or herself as having a right to recover based on the [class] description.”  
13 *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980. Here, the manner in which the class is  
14 defined enables an objective determination of whether a person is or is not a member. Here, it is  
15 easily determinable which users who made in-game purchases were minors. This is sufficient. *I.B.*  
16 *by & through Bohannon*, 82 F. Supp. 3d at 1126 (“Here, both the class and subclass, as defined, are  
17 readily ascertainable by the Court: the first includes all minors who used Facebook during a certain  
18 time period, according to Facebook’s own records; the second includes all minors during that same  
19 time period who purchased Facebook Credits through their accounts, again utilizing Facebook’s  
20 records.”); *see also Noel*, 7 Cal. 5th at 987 (reversing trial court who found that a class defined as  
21 “[a]ll persons who purchased the Ready Set Pool at a Rite Aid store located in California within the  
22 four years preceding the date of the filing of this action” was not ascertainable.).

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

25 The community of interest requirement consists of (1) predominant questions of law or fact,  
26 (2) class representatives whose claims and defenses are typical of the class, and a (3) plaintiff who

27 <sup>3</sup> The California Supreme Court instructs that Cal. Civ. Code § 1781 and Fed. R. Civ. P. 23 may be  
28 used as procedural guidelines to ensure fairness in class action suits. *Richmond v. Dart Indus., Inc.*  
(1981) 29 Cal. 3d 462, n.7.



1 can adequately represent the class. *Richmond v. Dart Industries* (1981) 29 Cal.3d 462, 470. The  
2 proposed Settlement Class satisfies each of these requirements.

### 3 **1. Predominant Questions Of Law And Fact Exist**

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

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

### 19 **2. The Class Representative’s Claims Are Typical Of The** 20 **Claims Of The Other Class Members**

21 A plaintiff’s claims are “typical” of the class members’ claims where they stem from the  
22 same practice and are based on the same legal theories. *Classen v. Weller* (1983) 145 Cal.App.3d  
23 27, 46. “[T]he typicality requirement may be satisfied even if there are factual distinctions between  
24 the claims of the named plaintiff[] and those of the class members [or] differences in the amount of  
25 damages claimed ....” *Id.* The typicality requirement is met here because Plaintiff asserts the same  
26 legal claims as the Class Members, arising from the same facts – while she was a minor, she  
27 purchased in-game items and in-game currency from Defendant that were represented as non-  
28 refundable. *I.B. by & through Bohannon*, 82 F. Supp. 3d at 1129 (“The Court finds that I.B. and

1 J.W.'s claims are reasonably co-extensive with the claims of the non-named class members, and that  
2 they have satisfied Rule 23(a)'s typicality requirement."); *Daniels v. Centennial Group, Inc.* (1993)  
3 16 Cal.App.4th 467, 473 ("There is a sufficient community of interest to define the class, and thus  
4 there is no strict requirement to have a named plaintiff with an interest in each individual  
5 partnership.").

6 **D. Adequacy**

7 The "adequacy" requirement is satisfied where Plaintiff's counsel are experienced, qualified,  
8 and capable, and the Plaintiff's interests are not antagonistic to the interests of the class members.  
9 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Adequacy is presumed where a fair  
10 settlement was negotiated at arm's length. 2 *Newberg on Class Actions, supra*, §11.28, at 11-59.  
11 Counsel and Plaintiff here have vigorously and competently pursued the Class Members' claims and  
12 there is no reason to believe that Plaintiff has interests that are antagonistic to the Class Members'  
13 interests. Plaintiff has agreed to act as a Class Representative and she understands her  
14 responsibilities. C.J. Decl. ¶ 10. Plaintiff's counsel also are highly experienced class action  
15 attorneys. A copy of Bursor & Fisher's resume is attached as Exhibit 2 to the Fraietta Declaration.

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

17 Class adjudication provides substantial benefits to the litigants and the Court and is the  
18 superior way to resolve the controversy. *Reyes v. San Diego Cnty. Bd. of Supervisors* (Ct. App.  
19 1987) 196 Cal. App. 3d 1263, 1271. Class actions are favored in consumer cases such as this one.  
20 *Clothesrigger v. GTE Corp.* (1987) 191 Cal.App.3d 605, 610. The class device permits all claims to  
21 be resolved only once, with binding effect. The alternative is for each class member to file a  
22 separate case. But such small claims would not be economically feasible. Thus, absent  
23 certification, most class members could never seek redress. That would be unjust. Certification of a  
24 Settlement Class here is the best way to "achieve economies of time, effort and expense, and  
25 promote uniformity of decision as to persons similarly situated, without sacrificing procedural  
26 fairness ...." *Amchem Prod., Inc. v. Windsor* (1997) 521 U.S. 591, 615.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**F. 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 that 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 awards 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; *Faigman v. AT & T Mobility LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672648, at \*5. In fact, Service awards of \$10,000 have been approved in class action cases in California. *See Cellphone Termination Fee Cases* (Ct. App. 2010) 186 Cal. App. 4th 1380, 1393 (approving \$10,000 incentive award).

15  
16  
17  
18  
19  
20  
21  
22

Here, Class Counsel seeks, and Defendant does not oppose, a service award in the amount \$1,000 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 she 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 C.J. Decl.* Thus, the requested service award of \$1,000 to the Class Representative is reasonable and justified.

23  
24

**V. THE SETTLEMENT AGREEMENT**

**A. The Basics**

25  
26  
27  
28

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 days after (i) the Final Approval Order and Final Judgment have been entered, and (ii) the Final

1 Approval Order and Final Judgment have become Final, the class members will release their claims  
2 for injunctive and declaratory relief. Settlement, §§ II.14; VI.44.

3 **B. Release of Claims**

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

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

21 **C. Value of The Settlement**

22 The Settlement clearly falls “within the range of possible approval.” *Alaniz*, 73 F.R.D. at  
23 273. As detailed throughout, the Settlement provides meaningful, significant and immediate  
24 injunctive relief that Plaintiff’s counsel estimates to be worth up to millions of dollars. *See Fraietta*  
25 Decl. ¶ 5.

26 Cognosphere will, in processing any direct requests for refunds of in-game purchases: For  
27 platforms that process refund requests independently from Cognosphere (e.g., Apple App Store,  
28

1 Google Play Store, PlayStation Store), in its standard response redirecting users to those platforms,  
2 add language in substantially the following form: “Please note that store refund policies may vary  
3 based on the location of user and the age of user, including legal minority, at the time of purchase,  
4 as may be required by applicable law,” provided, however, that Cognosphere may include other  
5 language as well while redirecting users to those platforms. *Id.* § IV.39.b.i. For all other platforms,  
6 and refund requests for which Cognosphere elects to process itself, in its standard response for U.S.  
7 users seeking a refund who indicate that a minor was involved in the situation that led to the refund  
8 request, Cognosphere will implement policies to determine whether the in-game purchase was made  
9 when the user was a minor without parental consent, except as prohibited by local law. *Id.* §  
10 IV.39.b.ii.

11 Cognosphere will create a public-facing “help page” (or add to existing pages to the extent  
12 relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases, add  
13 specific links to platforms that process refund requests independently from Cognosphere In-App/In-  
14 Game Purchase refund policies for reference, and add language in substantially the following form:  
15 “Please note that store refund policies may vary based on the location of user and the age of user,  
16 including legal minority, at the time of purchase, as may be required by applicable law.” *Id.* §  
17 IV.39.c.i-ii.

18 Cognosphere will link to these “help pages” on the website within its FAQ section or on any  
19 section on its website that is easily accessible to general public. *Id.* § IV.39.d.

20 For all refund requests processed by Cognosphere (*see id.* § IV.39.b.ii.), Cognosphere will  
21 implement a dedicated process to address refund requests to determine whether a refund is  
22 appropriate, as outlined in the Settlement Agreement at § IV.39.e.i-iv. The personnel staffing this  
23 dedicated process will receive further training regarding how to analyze and process such refund  
24 requests in accordance with applicable law. *Id.*

25 Cognosphere will agree to include language in substantially the following form in its Terms  
26 of Service applicable to U.S. players (currently at  
27 <https://genshin.hoyoverse.com/en/company/terms>): “You acknowledge and agree that you are not  
28

1 entitled to a refund for any Virtual Currency, except as otherwise required by applicable law.”

2 Settlement, § IV.39.a.i.

3 Last, Cognosphere agrees that its refund policies and practices with respect to U.S. minors  
4 will comply with the California Family Code Sections 6701(c) and 6710. *Id.* § IV.39.f.

5 In evaluating the settlement, the Court should consider the value made available to the Class.  
6 *See Young v. Polo Retail, LLC* (N.D. Cal. Mar. 28, 2007) 2007 WL 951821, at \*8 (citing *Williams v.*  
7 *MGM-Pathe Commc'ns Co.* (9th Cir. 1997) 129 F.3d 1026 (ruling that a district court abused its  
8 discretion in basing value of settlement on actual distribution to class instead of amount being made  
9 available).

10 Finally, when calculating the total value provided by a settlement agreement, California  
11 courts include the requested attorney’s fees and costs because “those fees are still best viewed as an  
12 aspect of the class’ recovery.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 33.  
13 Thus, “the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit  
14 of the class....” *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 554 (citation omitted).  
15 Here, subject to the Court’s approval, Defendant will pay Class Counsel fees and costs up to  
16 \$400,000. Settlement, § VII. 49. Additionally, the attorney’s fees were negotiated after all material  
17 terms of the Settlement were agreed to and represent a mere fraction of the value of the injunctive  
18 relief that the Settlement has made available to Class Members. *Fraietta Decl.* ¶ 10; *see also*  
19 *Managing Class Action Litigation: A Pocket Guide for Judges Third Edition*, FJC-MISC-2010-17  
20 (“In some class actions involving injunctive relief, the injunctive relief can be assigned a monetary  
21 value on the basis of objective criteria. For example, ... an injunction against a fraudulent sales  
22 practice might be valued by examining the amount of past sales attributable to the practice and  
23 projecting that value for a reasonable period of time, perhaps the life of the practice before the  
24 injunction.”).

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

1 of the Class, and thus the settlement expressly preserves the individual rights of Class Members to  
2 pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba Juice Co.* (N.D. Cal. Mar.  
3 18, 2015) 2015 WL 1248027, at \*8-9 (“Because, even if notified of the settlement, the settlement  
4 class would not have the right to opt out from the injunctive settlement and the settlement does not  
5 release the monetary claims of class members, the Court concludes that class notice is not  
6 necessary.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012) 2012 WL 5948951, at \*4, 17  
7 (“The court exercises its discretion and does not direct notice here because the settlement does not  
8 alter the unnamed class members’ legal rights.”); *Lowry v. Obledo* (Ct. App. 1980) 111 Cal. App. 3d  
9 14, 23 (“In this case the trial court appropriately followed federal procedure of allowing a decision  
10 on the merits without prior notice in certain class actions.”); *see also* Fed. R. Civ. P. 23(c)(2)(A)  
11 (stating that under Rule 23(b)(2) the court “may direct appropriate notice to the class”) (emphasis  
12 added).

13 Notwithstanding, in accordance with the Settlement Agreement, all documents pertaining to  
14 the Court’s current social distancing procedures, Settlement, preliminary approval, and final  
15 approval have been and will continue to be posted on Class Counsel’s public website,  
16 [www.bursor.com](http://www.bursor.com). Settlement, § V.42.d.

#### 17 **E. Response to The Settlement**

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

#### 25 **VI. CONCLUSION**

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

1 Dated: May 24, 2023

**BURSOR & FISHER, P.A.**

2 By: 2. Tim Fisher

3 L. Timothy Fisher (State Bar No. 191626)  
4 1990 North California Blvd., Suite 940  
5 Walnut Creek, CA 94596  
6 Telephone: (925) 300-4455  
7 Facsimile: (925) 407-2700  
8 E-mail: ltfisher@bursor.com  
9 ykrivoshey@bursor.com

**BURSOR & FISHER, P.A.**

10 Philip L. Fraietta (*pro hac vice* forthcoming)  
11 Alec M. Leslie (*pro hac vice* forthcoming)  
12 888 Seventh Avenue  
13 New York, NY 10019  
14 Telephone: (646) 837-7150  
15 Facsimile: (212) 989-9163  
16 E-Mail: pfraietta@bursor.com  
17 aleslie@bursor.com

*Attorneys for Plaintiff*