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

17 D.D., individually and on behalf of all others
18 similarly situated,

19 Plaintiff,

20 v.

21 NIANTIC, INC.,

22 Defendant.

Case No. 23STCV03241

ASSIGNED FOR ALL PURPOSES TO
JUDGE STUART M. RICE, DEPT. 1

**SUPPLEMENTAL DECLARATION OF
L. TIMOTHY FISHER IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

Date: October 26, 2023
Time: 10:30 a.m.

1 I, L. Timothy Fisher, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California. I am a partner
3 at Bursor & Fisher, P.A., counsel for Plaintiff in this action. I make this declaration in support of
4 Plaintiff's motion for preliminary approval of the class action settlement pursuant to the Court's
5 August 4, 2023 minute order. I have personal knowledge of the facts set forth in this declaration,
6 and, if called as a witness, could and would competently testify thereto under oath.

7 **I. THE PARTIES HAVE UPDATED THE SETTLEMENT**

8 2. In the Court's tentative ruling on August 3, 2023 ("Tentative Ruling"), the Court
9 identified multiple settlement checklist items for the Parties to address. Consistent with the
10 Tentative Ruling and the Court's August 4, 2023 minute order, the parties re-entered settlement
11 negotiations and, following additional hard-fought negotiations, reached a revised settlement
12 agreement that they believe addresses the questions raised by the Court. A true and correct copy of
13 the revised settlement agreement is attached hereto as **Exhibit A** (the "Revised Settlement
14 Agreement").

15 **II. A SUBSTANTIALY SIMILAR SETTLEMENT HAS BEEN APPROVED**

16 3. On October 3, 2023, a substantially similar class action settlement agreement
17 regarding near-identical claims and a release identical to the prior version of the release proposed
18 in this action was preliminarily approved by Judge Thomas W. Wills of the Monterey County
19 Superior Court in the case captioned *C.J. v. Cognosphere Pte. Ltd.*, Case No. 23CV001405
20 ("*Cognosphere*"). A true and correct copy of the Court's order approving the *Cognosphere*
21 settlement is attached hereto as **Exhibit B**. A true and correct copy of the *Cognosphere* plaintiff's
22 motion for preliminary approval and accompanying exhibits (including the settlement agreement at
23 issue) are attached hereto as **Exhibit C**. A true and correct copy of a joint supplemental
24 submission by the *Cognosphere* parties in support of preliminary approval is attached hereto as
25 **Exhibit D**.

26 **III. ADDRESSING THE COURT'S QUESTIONS**

27 4. In the Court's August 4, 2023 minute order, the Court requested "a declaration
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1 which addresses each of the deficiencies identified in the posted checklist in chronological order
2 with a reference to any attached exhibits in support.” I respectfully submit Plaintiff’s responses to
3 each flagged checklist item below:

4 A. **The consideration being received for the release of class members’ claims is**
5 **reasonable in light of the strengths and weaknesses of the claims and the risks**
6 **of the particular litigation.**

7 5. To be clear, the Settlement does not release any absent class member’s claims for
8 damages. Instead, the settlement only releases class members’ claims for injunctive and/or
9 declaratory relief. See Ex. A ¶ 44 (“the Releasing Parties do not release claims for monetary relief
10 or damages”). That is appropriate because, in return for the release, the settlement provides
11 meaningful and significant injunctive relief that requires Defendant to follow certain procedures to
12 ensure that the disaffirmation process for minors is straightforward and effective.

13 6. This case concerns Defendant’s purported lack of compliance with California law
14 regarding its public statements about Plaintiff and class members’ ability to disaffirm their
15 contracts with Defendant and obtain refunds. The injunctive relief provided by the settlement
16 ensures Defendant’s indisputable compliance with California law. Effectively, Plaintiff has
17 obtained, through the settlement, a complete victory with respect to injunctive relief for the class—
18 namely, changes to Niantic’s processes for handling refund requests, changes to Niantic’s Terms of
19 Service that govern its relationships with its users, and changes to Niantic’s public-facing online
20 help center and in-app statements about refunds to help ensure that California disaffirmation law is
21 followed.

22 7. Meanwhile, *the Settlement’s release of claims for monetary relief or damages*
23 *applies only to the named Plaintiff, not to putative Class Members.* See Ex. A ¶¶ 43, 44.
24 Crucially, all members of the class other than the named Plaintiff “do not release claims for
25 monetary relief or damages.” *Id.* ¶ 44. This means that other members of the class are, in addition
26 to receiving improved rights to seek refunds, *free to seek damages and other monetary relief*
27 *against Defendant for any practice or claim that was alleged in this action* in the future.

28 8. It is my belief that the value of the Settlement is outstanding in light of the risks and

1 complexity of the case, the expense and likely duration of continued litigation, and the stage of
2 proceedings. Plaintiff's complaint is still subject to pleading challenges and unique issues with
3 regards to class certification and summary judgment (*i.e.*, issues regarding arbitration, whether
4 Plaintiff and class members were actually injured, and whether there exists a ripe dispute between
5 the Parties). For example, a federal court in the Northern District of California recently dismissed
6 similar claims on these grounds, leaving the class members in that case with no recovery
7 whatsoever. *See V.R. v. Roblox Corp.* (N.D. Cal. Jan. 25, 2023) 2023 WL 411347.

8 9. Even if Plaintiff prevailed at every step of the way on the merits, Defendant would
9 challenge the amount of damages and would seek to offset any recovery by each class member
10 against the value that each class member already received before they disaffirmed their contracts.
11 Additionally, there are multiple risks associated with achieving and maintaining class action status.
12 For example, Defendant would argue that this case is not maintainable as a class action for
13 damages because not every class member would want to disaffirm their contracts with Defendant.
14 No matter what the outcome, absent settlement, this case would likely consume trial and appellate
15 court resources for years.

16 10. In light of the strengths and weaknesses of these claims, it is my belief that the
17 Court has been provided with sufficient information to make an independent determination that the
18 consideration being received for the release of class members' claims for injunctive and declaratory
19 relief is reasonable. The maximum recovery that each class member could receive as part of the
20 Settlement for the claims in the operative complaint would depend on the amount that he or she
21 spent on in-game currency and virtual items. Prior to initiating this suit, Plaintiff's counsel
22 thoroughly investigated Defendant's publicly available financial information and player
23 demographics and estimate that the value of the injunctive relief provided for under the Settlement
24 is up to tens of millions of dollars based upon the money spent by minors in the United States
25 during the class period. *See* March 1, 2023 Declaration of Philip L. Fraietta in Support of
26 Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Fraietta Decl.") ¶ 5.

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

8 **B. This Court has jurisdiction over a nationwide class.**

9 12. This Court has personal jurisdiction over the parties because Plaintiff submits to the
10 jurisdiction of the Court and because Defendant, at all times relevant hereto, has systematically and
11 continually conducted, and continues to conduct, business in this State. This Court also has
12 personal jurisdiction over Defendant because a substantial part of the events, omissions, and acts
13 giving rise to the claims herein occurred in this County. *See Complaint* ¶ 7. Additionally, both
14 Plaintiff and Defendant reside in California. Plaintiff resides in Los Angeles, California and
15 Defendant’s principal place of business is in San Francisco, California. *Id.* ¶¶ 10-11; *Daimler AG*
16 *v. Bauman* (2014) 571 U.S. 117, 118 (“The paradigm all-purpose forums for general jurisdiction
17 are a corporation’s place of incorporation and principal place of business.”) (*citing Goodyear*
18 *Dunlop Tires Operations, S.A. v. Brown* (2011) 564 U.S. 915, 924).

19 13. Defendant’s Terms of Service¹ also contain a California choice of law provision that
20 is enforceable against Defendant. *See Exhibit E* (Niantic Terms of Service) at 19 (“These Terms
21 and your use of the Services are governed by the laws of the State of California.”). California law
22 supports upholding this choice of law provision even though Plaintiff has disaffirmed his contract
23 and/or that said contract is void. *See, e.g., I.B. by & through Bohannon v. Facebook, Inc.* (N.D.
24 Cal. 2015) 82 F. Supp. 3d 1115, 1122 (“It was Facebook that selected California law to apply to
25 interactions between itself and its users, and thus it should come as no surprise that Facebook’s
26 own conduct would also be considered through the lens of California law. In this case, a valid
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28 ¹ A true and correct copy of Defendant’s Terms of Service is attached hereto as **Exhibit E**.

1 choice of law provision exists in the SRR, which means that minors can invoke Sections 6701(c)
2 and 6710 regardless of their own state of residence.”).

3 14. Further, California courts often certify nationwide settlement classes for the purpose
4 of approving a settlement, and, in doing so, apply California law on a nationwide basis. *See*
5 *Wershba v. Apple Computer* (2001) 91 Cal. App.4th 224, 243 (“[A] California court may properly
6 apply the same California statutes at issue here to non-California members of a nationwide class
7 where the defendant is a California corporation and some or all of the challenged conduct emanates
8 from California.”); *Clothesrigger v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612-13 (“To apply its
9 law constitutionally to the claims of nonresident class members, the forum state must have a
10 ‘significant contact or aggregation of contacts’ to the claims asserted by each member of the
11 plaintiff class, contacts ‘creating state interests’ in order to ensure that the choice of [forum] law is
12 not arbitrary or unfair.”) (cleaned up); *see also Rutledge v. Hewlett-Packard Co.*, (2015) 238 Cal.
13 App. 4th 1164, 1186, (A nationwide class is proper under constitutional law when a state has
14 ‘significant contact or significant aggregation of contacts’ to the claims asserted by each member
15 of the plaintiff class, contacts ‘creating state interests,’ in order to ensure that the choice of [forum]
16 is not arbitrary or unfair... The record shows that California had sufficient contacts with the claims
17 such that California has an interest in applying its laws to non-resident plaintiffs satisfying
18 constitutional principles.) (cleaned up). Indeed, the *Cognosphere* court did just that. *See Exhibit*
19 **B ¶ 4** (The Court has subject matter jurisdiction over the Action, and personal jurisdiction over the
20 Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code § 395.”); *id.* ¶ 5-6
21 (Preliminary certifying nationwide class for settlement purposes).

22 **C. The class period has now been clarified.**

23 15. A revised settlement has been submitted herewith which amends the class definition
24 to “All persons in the United States who made a purchase in Pokémon Go while under the age of
25 18 from July 1, 2016 to and through the date of preliminary approval.” Ex. A ¶ 34. Thus, the class
26 and release period no longer can be interpreted to extend beyond the date of preliminary approval,
27 which it was never intended to be.
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11 **D. The release is not overbroad.**

16. The revised settlement has removed the offending phrases. *See* Ex. A ¶¶ 22, 43, 44. The Settlement now clarifies that unnamed class members are only releasing claims that “were or could have been alleged resulting from, arising out of, or based on the facts and practices alleged in the Action.” *Id.*; *Amaro v. Anaheim Arena Mgmt.* (2021) 69 Cal. App. 5th 521, 537 (“[A] court may release not only those claims alleged in the complaint and before the court, but also claims which could have been alleged by reason of or in connection with any matter or fact set forth or referred to in the complaint.”) (citations omitted). Although the previously-used release language tracks that used in the recently approved *Cognosphere* settlement, the parties agreed to modify the release here, per the Court’s guidance.

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22 **E. The Civil Code Section 1542 waiver has been clarified and is appropriate here.**

17. The 1542 waiver only applies to claims “which were or could have been alleged in the Action resulting from, arising out of, or based on the facts and practices alleged in the Action.” Ex. A ¶ 45. Additionally, this waiver does not “release claims for monetary relief or damages.” *Id.* ¶ 44. In a class action, a 1542 waiver for absent class members is permissible when, as here, the waiver applies “only to the claims pled in, raised in, or based on the facts alleged in this action.” *Espinoza v. Domino’s Pizza, LLC* (C.D. Cal. Oct. 19, 2011) 2011 WL 13182977, at *1; *see also In re California Pizza Kitchen Data Breach Litig.* (C.D. Cal. Feb. 22, 2023) 2023 WL 2721018, at *3 (granting final approval for class action settlement that includes a waiver of California Civil Code § 1542); *Corona v. PNC Fin. Servs. Grp., Inc.* (C.D. Cal. Feb. 18, 2022) 2:20-cv-06521-MCS, Dkt. No. 76) (same).

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28 **F. The Release Effective Date has been modified.**

18. The Revised Settlement Agreement specifies that Defendant will enact the injunctive relief provided for under the Settlement Agreement within 60 days of Final Judgment and that the release will not take effect until the injunctive relief occurs. Ex. A ¶ 39, 43.

1 **G. The notice plan has been improved and is appropriate under the**
2 **circumstances.**

3 19. The Court also requested additional details regarding notice to the class. After
4 further negotiations, Defendant has agreed to provide direct notice of the changes to the Niantic
5 Terms of Service. Specifically, and following additional hard-fought negotiations, when the
6 revised language is added to Defendant’s Terms of Service, Defendant will push notice of the new
7 terms to Pokémon GO users via an in-app notification. Ex. A ¶ 37. The Parties believe this
8 additional concession from Defendant should assuage the Court’s concerns regarding notice to the
9 class.

10 20. Regardless, the Settlement obligates Defendant to be in full compliance with the
11 relevant law, and to overhaul its policies and practices with respect to refunds requested by minors.
12 See Ex. A ¶ 39; see also *V.R. v. Roblox Corp.* (N.D. Cal. Jan. 25, 2023) 2023 WL 411347, at *2
13 (stating that the language “[a]ll payments . . . are final and not refundable, except as required by
14 law” complied with the California Family Code).

15 21. To reiterate, any minor purchaser who wants to disaffirm their contracts can still sue
16 Defendant for damages, should the new processes for receiving a refund not resolve their claims.
17 Under the Settlement, absent class members have released almost nothing. And although it was
18 vigorously debated during settlement negotiations, no court has ever specifically held that a party
19 was obligated to inform a minor about his right to disaffirm a contract. In fact, California courts
20 have held that there is “no general duty owed by one contracting party to another to explain the
21 other’s legal rights in connection with the agreement.” *Olsen v. Breeze, Inc.* (1996) 48 Cal. App.
22 4th 608, 622-23. Thus, the injunctive relief provided by the Settlement and Defendant’s additional,
23 post-settlement concessions arguably require Defendant to exceed its legal obligations.

24 22. Notice of the settlement is also not required here – it is discretionary. That is
25 because the Settlement only releases claims for injunctive and/or declaratory relief and does not
26 release the monetary or damages claims of the Class, and thus the Settlement expressly preserves
27 the individual rights of Class Members to pursue monetary claims against the defendant. See, e.g.,
28 *Lilly v. Jamba Juice Co.* (N.D. Cal. Mar. 18, 2015) 2015 WL 1248027, at *8-9 (“Because, even if

1 notified of the settlement, the settlement class would not have the right to opt out from the
2 injunctive settlement and the settlement does not release the monetary claims of class members, the
3 Court concludes that class notice is not necessary.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28,
4 2012) 2012 WL 5948951, at *4, 17 (“The court exercises its discretion and does not direct notice
5 here because the settlement does not alter the unnamed class members’ legal rights.”); *Lowry v.*
6 *Obledo* (1980) 111 Cal. App. 3d 14, 23 (“In this case the trial court appropriately followed federal
7 procedure of allowing a decision on the merits without prior notice in certain class actions.”);
8 *Frazier v. City of Richmond* (1986) 184 Cal. App. 3d 1491, 1502 (“[N]otice serves no purpose
9 where ... there are no factual disputes and the plaintiff class is adequately represented.”) (*citing*
10 *Lowry*, 111 Cal. App. 3d 14, 23); *see also* Cal. Rule of Court 3.766(b)(1) (stating that in evaluating
11 class notice the Court can determine “[w]hether notice is necessary”) (emphasis added); *see also*
12 **Exhibit B ¶ 11** (“Direct notice of the settlement is not required here because the Settlement
13 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
14 monetary or damages claims of the Class, and thus the settlement expressly preserves the
15 individual rights of class members to pursue monetary claims against the Defendant.”).

16 **H. The Revised Settlement Agreement complies with California Rules of Court,**
17 **Rule 3.769(h).**

18 23. The Revised Settlement Agreement clarifies that the “Court shall retain jurisdiction
19 over the parties to enforce the terms of the judgment.” Settlement, ¶ 84. Additionally, the revised
20 settlement agreement has removed any phrase suggesting that the end result of court approval will
21 be dismissal of the Action with prejudice or entry of an Order dismissing with prejudice all claims.
22 *See* Ex. A ¶¶ 7, 16, 18, 39, 41.d-e, 42.h, 47, the heading for Section VI, the Proposed Order at ¶¶ 8,
23 15, and the Proposed Final Order at ¶ 23.

24 I declare under penalty of perjury under the laws of the United States and the States of
25 California that the foregoing is true and correct. Executed on October 12, 2023 in Walnut Creek,
26 California.

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28 L. Timothy Fisher

EXHIBIT A

1 the Action on the terms stated herein solely to avoid further expense, inconvenience, and burden,
2 and therefore has determined that this settlement on the terms set forth herein is in Defendant's
3 best interests. Neither the Settlement Agreement nor any actions taken to carry out the settlement
4 are intended to be, nor may they be deemed or construed to be, an admission or concession of
5 liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any
6 party. Defendant denies all allegations of the complaint in the Action. Neither the Settlement
7 Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations,
8 nor any related document, shall be used as an admission of any fault or omission by Defendant, or
9 be offered or received in evidence as an admission, concession, presumption, or inference of any
10 wrongdoing by Defendant in any proceeding;

11 6. WHEREAS, Settlement Class Representative, Niantic, and the Settlement Class
12 intend for this Settlement Agreement fully and finally to compromise, resolve, discharge, and settle
13 the Released Claims, as defined and on the terms set forth below, and to the full extent reflected
14 herein, subject to the approval of the Court; and

15 7. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
16 AGREED, by the Settlement Class Representative, for himself and on behalf of the Settlement
17 Class, and by Niantic that, subject to the approval of the Court, the Action shall be settled,
18 compromised, and adjudged, on the merits, and the Released Claims shall be finally and fully
19 compromised, settled, and adjudged as to the Released Parties, in the manner and upon the terms
20 and conditions hereafter set forth in this Agreement.

21 **II. DEFINITIONS**

22 8. In addition to the terms defined elsewhere in this Agreement, the following terms,
23 used in this Settlement Agreement, shall have the meanings specified below:

24 9. "Attorneys' Fees and Costs Award" means such funds as may be awarded by the
25 Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection
26 with the Action and the Settlement, as described in Paragraphs VII.49-VII.50.

27 10. "Business Days" means Monday, Tuesday, Wednesday, Thursday, and Friday,
28 excluding holidays observed by the federal government.

1 11. “Class Counsel” means L. Timothy Fisher, Philip L. Fraietta, and Alec M. Leslie
2 of Bursor & Fisher, P.A..

3 12. “Court” means the Superior Court of California, County of Los Angeles.

4 13. “Defense Counsel” means the law firm of Cooley LLP and all of Niantic’s
5 attorneys of record in the Action.

6 14. “Effective Date” means seven (7) days after which both of the following events
7 have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the
8 Final Approval Order and Final Judgment have become Final.

9 15. “Niantic” means (i) Niantic, Inc. 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 Niantic, and (ii) the past, present,
12 and future shareholders, officers, directors, members, agents, employees, independent contractors,
13 consultants, representative, fiduciaries, insurers, attorneys, legal representative, predecessors,
14 successors, and assigns of the entities in Part (i) of this definition.

15 16. “Fairness Hearing” means the hearing that is to take place after the entry of the
16 Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final
17 Judgment and adjudicating the Action; (ii) determining whether the Settlement should be approved
18 as fair, reasonable, and adequate pursuant to applicable California Code of Civil Procedure; (iii)
19 ruling upon an application for Service Awards by the Settlement Class Representative; (iv) ruling
20 upon an application by Class Counsel for an Attorneys’ Fees and Costs Award; and (v) entering
21 any final order awarding Attorneys’ Fees and Costs and Service Awards.

22 17. “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal,
23 motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been
24 filed, the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion
25 for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed,
26 the judicial ruling or order has been affirmed with no further right of review, or such appeal,
27 motion, and/or petition has been denied or dismissed with no further right of review. Any
28 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any

1 application for attorneys' fees or expenses will not in any way delay or preclude the Judgment
2 from becoming Final.

3 18. "Final Approval Order and Final Judgment" means the order finally approving the
4 terms of this Settlement Agreement and a separate judgment to be entered by the Court after the
5 Fairness Hearing, adjudicating the Action, without material variation from the Parties' agreed-
6 upon final approval order and judgment attached hereto as Exhibit A.

7 19. "Legally Authorized Representative" means an administrator/administratrix,
8 personal representative, or executor/executrix of a deceased Settlement Class Member's estate;
9 guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other
10 legally appointed Person responsible for handling the business affairs of a Settlement Class
11 Member.

12 20. "Person" means any individual, corporation, partnership, association, affiliate, joint
13 stock company, estate, trust, unincorporated association, entity, government and any political
14 subdivision thereof, or any other type of business or legal entity.

15 21. "Preliminary Approval Order" means the order that preliminarily approves the
16 Settlement and sets a date for the Final Approval Hearing, without material variation from the
17 Parties' agreed-upon proposed preliminary approval order attached hereto as Exhibit B. Entry of
18 the Preliminary Approval Order shall constitute preliminary approval of the Settlement
19 Agreement.

20 22. "Releases" mean the releases and waivers set forth in this Settlement Agreement
21 and in the Final Approval Order and Final Judgment. The Releases are a material part of the
22 Settlement for Niantic. The Releases shall be construed as broadly as possible to effect complete
23 finality over this Action, including claims that were or could have been alleged resulting from,
24 arising out of, or based on the facts and practices alleged in the Action.

25 23. "Released Claims" include Settlement Class Representative' Released Claims and
26 Settlement Class Members' Released Claims.

27 24. "Released Parties" means (i) Niantic and its past, present, and future parents,
28 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,

1 whether foreign or domestic, that are owned or controlled by Niantic; and (ii) the past, present,
2 and future shareholders, officers, directors, members, agents, employees, independent contractors,
3 consultants, administrators, representative, fiduciaries, insurers, attorneys, legal representative,
4 advisors, creditors, predecessors, successors, and assigns of the entities in Part (i) of this Paragraph.

5 25. “Releasing Parties” means Settlement Class Members, and each of their heirs,
6 estates, trustees, principals, beneficiaries, guardians, executors, administrators, representative,
7 agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone
8 claiming through them or acting or purporting to act for them or on their behalf.

9 26. “Service Award” means the amount approved by the Court to be paid to the
10 Settlement Class Representative as described further in Paragraph VII.51.

11 27. “Settlement” means the settlement of the Action between and among the Settlement
12 Class Representative, the Settlement Class Members, and Niantic, as set forth in this Settlement
13 Agreement, including all attached Exhibits (which are an integral part of this Settlement
14 Agreement and are incorporated in their entirety by reference).

15 28. “Settlement Class” has the meaning set forth in Paragraph III.34.

16 29. “Settlement Class Member(s)” means any and all persons who fall within the
17 definition of the Settlement Class.

18 30. “Settlement Class Representative” means D.D., through his mother and legal
19 guardian, Dominique Davis.

20 31. “Settlement Class Representative’s Releasing Parties” means each Settlement
21 Class Representative, and each of his heirs, estates, trustees, principals, beneficiaries, guardians,
22 executors, administrators, Representative, agents, attorneys, insurers, subrogees, partners,
23 successors, predecessors-in-interest, and assigns and/or anyone other than Class Members
24 claiming through them or acting or purporting to act for them or on their behalf.

25 **III. SETTLEMENT CLASS CERTIFICATION**

26 32. For purposes of settlement only, the Parties agree to seek provisional certification
27 of the Settlement Class, pursuant to Code of Civil Procedure § 382 and Civil Code § 1781.

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1 33. The Parties further agree that the Court should make preliminary findings and enter
2 the Preliminary Approval Order granting provisional certification of the Settlement Class subject
3 to the final findings and approval in the Final Approval Order and Final Judgment, and appointing
4 Settlement Class Representative as the Representative of the Settlement Class and Class Counsel
5 as counsel for the Settlement Class.

6 34. For purposes of the provisional certification, the Settlement Class shall be defined
7 as follows:

8 All persons in the United States who made a purchase in Pokémon Go while under
9 the age of 18 from July, 1 2016 to and through the date of preliminary approval.

10 35. Excluded from the Settlement Class are (i) all Persons who are directors, officers,
11 and agents of Niantic or its subsidiaries and affiliated companies or are designated by Niantic as
12 employees of Niantic or its subsidiaries and affiliated companies; and (ii) the Court, the Court's
13 immediate family, and Court staff, as well as any appellate court to which this matter is ever
14 assigned, and its immediate family and staff.

15 36. Niantic does not consent to certification of the Settlement Class (or to the propriety
16 of class treatment) for any purpose other than to effectuate the settlement of this Action. Niantic's
17 agreement to provisional certification does not constitute an admission of wrongdoing, fault,
18 liability, or damage of any kind to Settlement Class Representative or any of the provisional
19 Settlement Class Members.

20 37. Class Notice will be provided via the following information posted on Class
21 Counsel's website: the Settlement Agreement, Plaintiff's motion for preliminary approval, and
22 Plaintiff's motion for attorneys' fees and incentive awards (including any opposition and reply
23 papers). Additionally, after making the revisions referenced in ¶ 39(a), Niantic will give Pokémon
24 GO users notice that it has revised its Terms of Service through its standard processes for updating
25 its Terms in the ordinary course of its business (i.e., via an in-app notification).

26 38. If this Settlement Agreement is terminated pursuant to its terms, disapproved by
27 any court (including any appellate court), and/or not consummated for any reason, or the Effective
28 Date for any reason does not occur, the order certifying the Settlement Class for purposes of

1 effectuating the Settlement, and all preliminary and/or final findings regarding that class
2 certification order, shall be automatically vacated upon notice of the same to the Court, the Action
3 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement
4 Agreement and such findings had never been made, and the Action shall return to the procedural
5 posture as it existed on November 10, 2022, in accordance with this Paragraph. No Party nor
6 counsel shall refer to or invoke the vacated findings and/or order relating to class settlement if this
7 Settlement Agreement is not consummated and the Action is later litigated and contested by
8 Niantic.

9 **IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF**

10 39. In consideration for the releases provided in this Settlement Agreement, and as a
11 result of the Action and Settlement, Niantic agrees that within 60 days of the Effective Date, it
12 shall implement the following for three years following the Effective Date:

13 a) Niantic will agree to include language in substantially the following form
14 in its Terms of Service applicable to U.S. players (currently at <https://nianticlabs.com/terms/>):

15 i) “You agree that all sales by us to you of Virtual Money and
16 Virtual Goods are final and that we will not permit exchanges or refunds
17 for any unused Virtual Money or Virtual Goods once the transaction has
18 been made, unless otherwise required by law.”

19 b) Niantic will, in processing any direct requests for refunds of PokéCoins:

20 i) For Apple and Samsung purchases, in its standard response
21 redirecting users to Apple or Samsung, add language in substantially the
22 following form: “Please note that app store refund policies may vary based
23 on the location of user and the age of user, including legal minority, at the
24 time of purchase, as may be required by applicable law.”

25 ii) For Google Play Store purchases for which Niantic is permitted
26 and does process limited numbers of direct refunds, in its standard
27 response for U.S. users seeking additional information about the purchase,
28 add language to prompt users to indicate whether the purchase of

1 PokéCoins was made when the user was a minor without parental consent,
2 except as prohibited by local law.

3 c) Niantic will, in its public-facing Pokémon GO Help Center, for help pages
4 currently referencing assistance with refunds for PokéCoin purchases:

5 i) Add specific links to Apple, Google, and Samsung In-App
6 Purchase refund policies for reference;

7 ii) Add language in substantially the following form: “Please note that
8 app store refund policies may vary based on the location of user and the
9 age of user, including legal minority, at the time of purchase, as may be
10 required by applicable law.”

11 d) Niantic will also add these Pokémon GO Help Center changes into the in-
12 app Help sections on the same topics.

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

18 f) Niantic will agree that its refund policies and practices with respect to U.S.
19 minors will comply with the California Family Code.

20 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
21 **REVIEW AND APPROVAL**

22 40. Solely for purposes of implementing this Agreement and effectuating the proposed
23 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion
24 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval
25 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

26 41. Among other things, the Preliminary Approval Order shall:

27 a) find that the requirements for provisional certification of the Settlement
28 Class have been satisfied, appointing Settlement Class Representative as the Representative of the

1 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;

2 b) preliminarily enjoin all Settlement Class Members and their Legally
3 Authorized Representative(s) from filing or otherwise participating in any other suit based on the
4 Released Claims;

5 c) establish dates by which the Parties shall file and serve all papers in support
6 of the application for final approval of the Settlement;

7 d) schedule the Fairness Hearing on a date ordered by the Court, provided in
8 the Preliminary Approval Order, and in compliance with applicable law, to determine whether the
9 Settlement should be approved as fair, reasonable, adequate, and to determine whether a Final
10 Approval Order and Final Judgment should be entered;

11 e) provide that all Settlement Class Members will be bound by the Final
12 Approval Order and Final Judgment; and

13 f) pending the Fairness Hearing, stay all proceedings in the Action, other than
14 the proceedings necessary to carry out or enforce the terms and conditions of this Settlement
15 Agreement and Preliminary Approval Order.

16 42. In advance of the Fairness Hearing, Class Counsel shall request entry of a Final
17 Approval Order and Final Judgment, without material variation from Exhibit A, the entry of which
18 is a material condition of this Settlement Agreement, and that shall, among other things:

19 a) find that the Court has personal jurisdiction over all Settlement Class
20 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and
21 that the venue is proper;

22 b) finally approve this Settlement Agreement and the Settlement pursuant to
23 California Code of Civil Procedure;

24 c) certify the Settlement Class under applicable California Code of Civil
25 Procedure for purposes of settlement only;

26 d) find that direct notice to the class is not necessary, and that notice on Class
27 Counsel's public website, as provided in this Settlement Agreement, is sufficiently within the
28 range of reasonableness;

1 e) incorporate the Releases set forth in this Settlement Agreement and make
2 the Releases effective as of the Effective Date;

3 f) issue the injunctive relief described in this Settlement Agreement;

4 g) authorize the Parties to implement the terms of the Settlement;

5 h) enter a separate judgment pursuant to applicable California Code of Civil
6 Procedure; and

7 i) determine that the Agreement and the Settlement provided for herein, and
8 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
9 or construed as evidence of, a presumption, concession, or an admission by any Party of liability
10 or non-liability or of the certifiability or non-certifiability of a litigation class, or of any
11 misrepresentation or omission in any statement or written document approved or made by any
12 Party; provided, however, that reference may be made to this Agreement and the Settlement
13 provided for herein in such proceedings as may be necessary to effectuate the provisions of this
14 Agreement, as further set forth in this Agreement.

15 **VI. RELEASES**

16 43. Upon the implementation of the injunctive relief in ¶ 39, which shall be within 60
17 days of the Effective Date, Settlement Class Representative's Releasing Parties will be deemed to
18 have, and by operation of the Final Approval Order and Final Judgment will have fully, finally,
19 and forever released, relinquished, and discharged any and all past, present, and future claims,
20 actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any
21 nature and description whatsoever, that were alleged or could have been alleged in the Action,
22 known or unknown, recognized now or hereafter, existing or preexisting, expected or unexpected,
23 pursuant to any theory of recovery (including, but not limited to, those based in contract or tort,
24 common law or equity, federal, state, or local law, statute, ordinance, or regulation), against the
25 Released Parties, up until and including the Effective Date, that result from, arise out of, or are
26 based on the facts and practices that were alleged in the Action, for any type of relief that can be
27 released as a matter of law, including, without limitation, claims for monetary relief, damages
28 (whether compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs,

1 penalties, interest, attorneys' fees, litigation costs, restitution, or equitable relief under Cal. Family
2 Code §§ 6701 and 6710 ("Settlement Class Representative' Released Claims"). Settlement Class
3 Representative's Releasing Parties are forever enjoined from taking any action seeking any relief
4 against the Released Parties based on any of Settlement Class Representative' Released Claims.

5 44. Upon the Effective Date, the Releasing Parties will be deemed to have, and by
6 operation of the Final Approval Order and Final Judgment will have fully, finally, and forever
7 released, relinquished, and discharged any and all past, present, and future claims, actions,
8 demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or
9 declaratory relief, of any nature and description whatsoever, that were alleged or could have been
10 alleged in the Action, known or unknown, existing or preexisting, recognized now or hereafter,
11 expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those
12 based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or
13 regulation) against the Released Parties, up until and including the Effective Date, that result from,
14 arise out of, or are based on the facts and practices that were alleged in the Action ("Settlement
15 Class Members' Released Claims"), except that, notwithstanding the foregoing, the Releasing
16 Parties do not release claims for monetary relief or damages. The Releasing Parties are forever
17 enjoined from taking any action seeking injunctive and/or declaratory relief against the Released
18 Parties based on any Settlement Class Members' Released Claims.

19 45. After entering into this Settlement Agreement, the Parties may discover facts other
20 than, different from, or in addition to, those that they know or believe to be true with respect to the
21 claims released by this Settlement Agreement, but they intend to release fully, finally and forever
22 the Released Claims, and in furtherance of such intention, the Releases will remain in effect
23 notwithstanding the discovery or existence of any such additional or different facts. With respect
24 to the Released Claims, Settlement Class Representative (on behalf of themselves and the
25 Settlement Class Members), through their counsel, expressly, knowingly, and voluntarily waive
26 any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and
27 any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code
28 Section 1542, which reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
6 DEBTOR OR RELEASED PARTY.

7 For the avoidance of doubt, this Section 1542 waiver applies only to claims which were
8 or could have been alleged in the Action resulting from, arising out of, or based on the facts and
9 practices alleged in the Action.

10 46. The Parties acknowledge, and by operation of law shall be deemed to have
11 acknowledged, that the waiver of the provisions of Section 1542 of the California Civil Code (and
12 any similar State laws) with respect to the claims released by this Settlement Agreement was
13 separately bargained for and was a key element of the Settlement.

14 47. By operation of the Final Approval Order and Final Judgment, the Action will be
15 finally adjudicated.

16 48. Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive
17 remedy for any and all Released Claims of Class Representative and Settlement Class Members;
18 and (b) Class Representative and Settlement Class Members stipulate to be and shall be
19 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against
20 Released Parties in any federal or state court or tribunal any and all Released Claims.

21 **VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

22 49. Class Counsel may apply to the Court for an award of reasonable attorneys' fees
23 and costs not to exceed \$875,000. Class Counsel approximates that it will seek \$25,000 in costs
24 and \$850,000 in fees, but may apply in different amounts not to exceed \$875,000. Niantic will
25 take no position on Class Counsel's application and agrees to pay the amount of fees and costs
26 determined by the Court, up to \$875,000. These terms regarding fees and costs were negotiated
27 and agreed to by the Parties only after full agreement was reached as to all other material terms.

28 50. Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$875,000,
shall be payable by Niantic, as ordered, within the later of (a) twenty-one (21) days after the
Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration

1 of all deadlines in which a class member or any person may challenge final approval. In no event
2 shall Niantic be required to make a payment of attorneys' fees if the Settlement Agreement is not
3 finally approved.

4 51. The Parties agree that the Class Representative may apply to the Court for a Service
5 Award, which shall not exceed \$1,500, for his services as Class Representative. The Parties agree
6 that the decision whether or not to award any such payment, and the amount of that payment, rests
7 in the exclusive discretion of the Court. Niantic agrees to pay the amount determined by the Court,
8 up to \$1,500. Class Representative understands and acknowledges that he may receive no
9 monetary payment, and his agreement to the Settlement is not conditioned on the possibility of
10 receiving monetary payment. Any Service Award, as awarded by the Court, shall be payable by
11 Niantic as ordered, within the later of (a) twenty-one (21) days after the Court's order awarding
12 fees and expenses, or (b) final approval of the settlement and the expiration of all deadlines in
13 which a class member or any person may challenge final approval. In no event shall Niantic be
14 required to make a payment of an incentive award if the Settlement Agreement is not finally
15 approved.

16 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
17 **NIANTIC'S RESERVATION OF RIGHTS**

18 52. This Settlement Agreement may be amended or modified only by a written
19 instrument signed by or on behalf of all Parties or their respective successors-in-interest and
20 approval of the Court; provided, however that, after entry of the Final Approval Order and Final
21 Judgment, the Parties may by written agreement effect such amendments, modifications, or
22 expansions of this Settlement Agreement and its implementing documents (including all
23 Exhibits hereto) without further approval by the Court if such changes are consistent with the
24 Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the
25 rights of Settlement Class Members under this Settlement Agreement.

26 53. This Settlement Agreement and any Exhibits attached hereto constitute the entire
27 agreement among the Parties, and no representations, warranties, or inducements have been made
28

1 to any Party concerning this Settlement Agreement or its Exhibits other than the representations,
2 warranties, and covenants covered and memorialized in such documents.

3 54. In the event the terms or conditions of this Settlement Agreement are materially
4 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after
5 such modification may declare this Settlement Agreement null and void. For purposes of this
6 Paragraph, material modifications include any modifications to the definitions of the Settlement
7 Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the
8 terms of the Settlement consideration described in Paragraph IV.39 and/or any requirement of
9 notice to the Settlement Class. In the event of any material modification by any court, and before
10 exercising their unilateral option to withdraw from this Settlement Agreement pursuant to this
11 Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to
12 reach an agreement as to how best to effectuate the court-ordered modification.

13 55. In the event that a Party exercises his/her/its option to withdraw from and terminate
14 this Settlement Agreement pursuant to Paragraph 54, then the Settlement proposed herein shall
15 become null and void and shall have no force or effect, the Parties shall not be bound by this
16 Settlement Agreement, and the Parties will be returned to their respective positions existing on
17 November 10, 2022.

18 56. If this Settlement Agreement is not approved by the Court or the Settlement
19 Agreement is terminated or fails to become effective in accordance with the terms of this
20 Settlement Agreement, the Parties will be restored to their respective positions in the Action
21 existing on November 10, 2022. In such event, the terms and provisions of this Settlement
22 Agreement and the memorandum of understanding will have no further force and effect with
23 respect to the Parties and will not be used in this Action or in any other proceeding for any purpose,
24 and any Judgment or order entered by the Court in accordance with the terms of this Settlement
25 Agreement will be treated as vacated.

26 57. The procedure for and the allowance or disallowance by the Court of any
27 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,
28 and the procedure for any payment to Class Representative, are not part of the settlement of the

1 Released Claims as set forth in this Settlement Agreement, and are to be considered by the Court
2 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the
3 settlement of the Released Claims as set forth in this Settlement Agreement. Any such separate
4 order, finding, ruling, holding, or proceeding relating to any such applications for Attorneys' Fees
5 and Costs and/or payment to Class Representative, or any separate appeal from any separate order,
6 finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall
7 not operate to terminate or cancel this Settlement Agreement or otherwise affect or delay the
8 finality of the Final Approval Order and Final Judgment approving the Settlement.
9 Notwithstanding the foregoing, Niantic may terminate the Settlement Agreement in the event the
10 Court awards more than \$875,000 in combined costs and fees. The terms of this Agreement
11 relating to the Attorneys' Fees and Costs Award and Service Awards were negotiated and agreed
12 to by the Parties only after full agreement was reached as to all other material terms of the proposed
13 Settlement, including, but not limited to, any terms relating to the relief to the Settlement Class.

14 58. Niantic denies the material factual allegations and legal claims asserted in the
15 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
16 statements, acts or omissions alleged in the Action. Similarly, this Settlement Agreement provides
17 for no admission of wrongdoing or liability by any of the Released Parties. This Settlement is
18 entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.
19 For the avoidance of doubt, Niantic does not acknowledge the propriety of certifying the
20 Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this
21 Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does
22 not occur, Niantic does not waive, but rather expressly retains and reserves, all rights it had prior
23 to the execution of this Settlement Agreement to challenge all claims and allegations in the Action
24 upon all procedural and factual grounds, including, without limitation, the right to challenge the
25 certifiability of any class claims certified in the Action, and to assert any and all other potential
26 defenses or privileges that were available to it at that time, including but not limited to challenging
27 the Court's subject matter jurisdiction over any claims asserted in the Action. Niantic's agreement
28 to this Settlement does not constitute an admission that certification is appropriate outside of the

1 context of this Settlement. The Settlement Class Representative and Class Counsel agree that
2 Niantic retains and reserves these rights, and agree not to take a position to the contrary. Class
3 Counsel shall not refer to or invoke Niantic's decision to accept the certified class for purposes of
4 settlement if the Effective Date does not occur and the Action is later litigated and certification is
5 contested by Niantic.

6 **IX. MISCELLANEOUS PROVISIONS**

7 59. The Parties intend the Settlement Agreement to be a final and complete resolution
8 of all disputes between them with respect to the Action. The Settlement Agreement compromises
9 claims that are contested and will not be deemed an admission by Niantic or Class Representative
10 as to the merits of any claim or defense.

11 60. Unless otherwise specifically provided herein, all notices, demands, or other
12 communications given hereunder shall be sent by email and First Class mail to the following:

13 To Class Representative and the Settlement Class:

14 L. Timothy Fisher
15 ltfisher@bursor.com
16 Bursor & Fisher, P.A.
17 1990 N. California Blvd.
Walnut Creek, CA 94596

18 Philip L. Fraietta
19 pfraietta@bursor.com
20 Alec M. Leslie
aleslie@bursor.com
21 888 7th Ave.
New York, NY 10019

22 To Counsel for Niantic:

23 Jeffrey M. Gutkin
jgutkin@cooley.com
24 Cooley LLP
3 Embarcadero Center, 20th Floor
25 San Francisco, California 94111

26 Kristine A. Forderer
kforderer@cooley.com
27 Cooley LLP
3 Embarcadero Center, 20th Floor
28 San Francisco, California 94111

1 61. All of the Exhibits to this Agreement are an integral part of the Settlement and are
2 incorporated by reference as though fully set forth herein.

3 62. The Parties agree that the recitals are contractual in nature and form a material part
4 of this Settlement Agreement.

5 63. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
6 contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the
7 circumstances under which this Settlement Agreement was made or executed. This Settlement
8 Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the
9 terms and conditions of this Settlement Agreement will control over any other written or oral
10 agreements.

11 64. Unless otherwise noted, all references to “days” in this Agreement shall be to
12 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or
13 federal legal holiday, such date or deadline shall be on the first Business Day thereafter.

14 65. The Settlement Agreement, the Settlement, all documents, orders, and other
15 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release
16 or other statement or report by the Parties or by others concerning the Settlement Agreement, the
17 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
18 documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the
19 Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute
20 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of
21 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the
22 Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense
23 asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of
24 certifying a litigation class or any decision by any court regarding the certification of a class, and/or
25 (v) whether the consideration to be given in this Settlement Agreement represents the relief that
26 could or would have been obtained through trial in the Action, in any trial, civil, criminal,
27 administrative, or other proceeding of the Action or any other action or proceeding in any court,
28 administrative agency, or other tribunal.

1 66. The Parties to this Action or any other Released Parties shall have the right to file
2 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
3 may be brought against them in order to support a defense or counterclaim based on principles of
4 res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any
5 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

6 67. The Parties agree that the consideration provided to the Settlement Class and the
7 other terms of the Settlement Agreement were negotiated at arm's length, in good faith by the
8 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent
9 legal counsel, and with the assistance of an independent, neutral mediator.

10 68. The Class Representative and Class Counsel have concluded that the Settlement set
11 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class
12 Representative asserted against Niantic, including the claims on behalf of the Settlement Class,
13 and that it promotes the best interests of the Settlement Class.

14 69. To the extent permitted by law, all agreements made and orders entered during the
15 course of the Action relating to the confidentiality of information shall survive this Settlement
16 Agreement.

17 70. The waiver by one Party of any breach of this Settlement Agreement by any other
18 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
19 Agreement.

20 71. This Settlement Agreement may be executed in counterparts, each of which shall
21 be deemed an original and all of which, when taken together, shall constitute one and the same
22 instrument. Signatures submitted by email or facsimile shall also be considered originals. The
23 date of execution shall be the latest date on which any Party signs this Settlement Agreement.

24 72. The Parties hereto and their respective counsel agree that they will use their best
25 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,
26 including to obtain a Final Approval Order and Final Judgment approving the Settlement.

27 73. This Settlement Agreement shall be binding upon and shall inure to the benefit of
28 the successors and assigns of the Parties hereto, including any and all Released Parties and any

1 corporation, partnership, or other entity into or with which any Party hereto may merge,
2 consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

3 74. This Settlement Agreement was jointly drafted by the Parties. Class
4 Representative, Settlement Class Members, and/or Niantic shall not be deemed to be the drafters
5 of this Settlement Agreement or of any particular provision, nor shall they argue that any particular
6 provision should be construed against its drafter or otherwise resort to the *contra proferentem*
7 canon of construction. Accordingly, this Settlement Agreement should not be construed in favor
8 of or against one Party as to the drafter, and the Parties agree that the provisions of California Civil
9 Code § 1654 and common law principles of construing ambiguities against the drafter shall have
10 no application.

11 75. Any and all Exhibits to this Settlement Agreement, which are identified in the
12 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully
13 incorporated herein by this reference.

14 76. This Settlement Agreement shall be governed by and construed in accordance with
15 the laws of the State of California, without regard to choice of law principles. Any action to
16 enforce the terms of this Settlement Agreement shall be filed in the Superior Court of the State of
17 California.

18 77. The headings used in this Settlement Agreement are inserted merely for the
19 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement
20 Agreement.

21 78. In construing this Settlement Agreement, the use of the singular includes the plural
22 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

23 79. Class Representative and Class Counsel will not issue any press release or
24 communicate with the media regarding the Settlement or the Action without prior approval of
25 Niantic. However, if Class Representative or Class Counsel receive an inquiry from any third
26 party (excluding Settlement Class Members who identify themselves as such), they may only make
27 affirmative statements relating to the Settlement as follows: “The parties have reached a mutually
28 agreeable resolution to a disputed set of class claims that is fair, adequate, and reasonable.” Class

1 Counsel reserves all rights to communicate with individual members of the Settlement Class to
2 assist them in understanding the Settlement and nothing herein shall be construed as restricting
3 those rights and responsibilities. Similarly, nothing in this Agreement will affect Niantic's right
4 to communicate with individual members of the Settlement Class relating to matters other than the
5 Action or the proposed Settlement.

6 80. The provision of the confidentiality agreement entered into with respect to the
7 mediation process concerning this matter is waived for the limited purpose of permitting the Parties
8 to confirm the details of the mediation process that are included in this Agreement.

9 81. The Class Representative further acknowledges, agrees, and understands that: (i)
10 he has read and understands the terms of this Agreement; (ii) he has been advised in writing to
11 consult with an attorney before executing this Agreement; and (iii) he has obtained and considered
12 such legal counsel as he deems necessary. The Class Representative enters into this Settlement
13 Agreement with the full ratification and authorization of his guardian, Dominique Davis.

14 82. All of the Parties warrant and represent that they are agreeing to the terms of this
15 Settlement Agreement based upon the legal advice of their respective attorneys, that they have
16 been afforded the opportunity to discuss the contents of this Settlement Agreement with their
17 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
18 accepted.

19 83. Each Party to this Settlement Agreement warrants that he or it is acting upon his or
20 its independent judgment and upon the advice of his or its counsel, and not in reliance upon any
21 warranty or representation, express or implied, of any nature or any kind by any other Party, other
22 than the warranties and representations expressly made in this Settlement Agreement.

23 84. The Court shall retain jurisdiction over the parties to enforce the terms of the Final
24 Judgment.

25 85. Each Counsel or other person executing this Settlement Agreement or any of its
26 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.
27 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class
28 Representative to take all appropriate action required or permitted to be taken by the Settlement

1 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to
2 enter into any modifications or amendments to this Settlement Agreement on behalf of the
3 Settlement Class that Class Counsel and Class Representative deem appropriate.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
duly executed this Settlement Agreement as of the date set forth below.

Dated: _____, 2023

COOLEY LLP

By: _____

Dated: 10/11/2023, 2023

NIANTIC, INC.

By:  _____
005CBFF74B2241D...

Dated: _____, 2023

PLAINTIFF D.D.

By: _____

Dated: _____, 2023

BURSOR & FISHER, P.A.

By: _____

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
duly executed this Settlement Agreement as of the date set forth below.

Dated Oct. 12, 2023

COOLEY LLP

By:



Dated: _____, 2023

NIANTIC, INC.

By: _____

Dated: Oct 10, 2023, 2023

PLAINTIFF D.D.

By:


DDM101112.DAVIS (Oct-10, 2023 16:29 EDT)

On Behalf of Plaintiff D.D.

Dated: Oct 10, 2023, 2023

BURSOR & FISHER, P.A.

By:

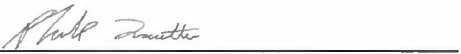


EXHIBIT A

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

D.D., a minor, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

1 The Court has considered the Class Action Settlement Agreement and Release between
2 Plaintiff D.D. (“Plaintiff”) and Defendant Niantic, Inc., (“Defendant” or “Niantic”), dated _____,
3 2023 (“Settlement Agreement”), the motion for an order finally approving the Settlement
4 Agreement, the record in this Action, the arguments and recommendations made by counsel, and
5 the requirements of the law. The Court finds and orders as follows:

6 **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

7 1. The Settlement Agreement is approved under California Rules of Court Rule 3.769
8 and Code of Civil Procedure § 382. The Court finds that the Settlement Agreement and the
9 Settlement it incorporates appear fair, reasonable, and adequate, and its terms are within the range
10 of reasonableness. The Settlement Agreement was entered into at arm’s-length by experienced
11 counsel after extensive negotiations spanning months, including with the assistance of a third-
12 party mediator. The Court finds that the Settlement Agreement is not the result of collusion.

13 **II. DEFINED TERMS**

14 2. For the purposes of this Final Approval Order and Final Judgment (“Order”), the
15 Court adopts all defined terms as set forth in the Settlement Agreement.

16 **III. NO ADMISSIONS AND NO EVIDENCE**

17 3. This Order, the Settlement Agreement, the Settlement provided for therein, and
18 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
19 or construed as evidence of, a presumption, concession, or an admission by any Party or any of
20 the Released Parties of wrongdoing, to establish a violation of any law or duty, an admission that
21 any of the practices at issue violate any laws or require any disclosures, any liability or non-
22 liability, the certifiability or non-certifiability of a litigation class in this case, or any
23 misrepresentation or omission in any statement or written document approved or made by any
24 Party.

1 **IV. JURISDICTION**

2 4. For the purposes of the Settlement of the Action, the Court finds it has subject
3 matter and personal jurisdiction over the Parties, including all Settlement Class Members, and
4 venue is proper.

5 **V. CLASS CERTIFICATION OF RULE 23(B)(2) CLASS FOR SETTLEMENT**
6 **PURPOSES ONLY**

7 5. The Court finds and concludes that, for the purposes of approving this Settlement
8 Agreement only, the proposed Settlement Class meets the requirements for certification under
9 California Code of Civil Procedure § 382: (a) the Settlement Class is so numerous that joinder of
10 all members is impracticable; (b) there are questions of law or fact common to the Settlement
11 Class; (c) the claims or defenses of the Settlement Class Representative are typical of the claims
12 or defenses of the Settlement Class; (d) Settlement Class Representative and Class Counsel will
13 fairly and adequately protect the interests of the Settlement Class because Settlement Class
14 Representative have no interests antagonistic to the Settlement Class, and have retained counsel
15 who are experienced and competent to prosecute this matter on behalf of the Settlement Class;
16 and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so that
17 final injunctive relief is appropriate respecting the Settlement Class as a whole.

18 6. The Settlement Agreement was the result of negotiations conducted by the Parties,
19 over the course of multiple months, including with the assistance of a neutral mediator.
20 Settlement Class Representative and Class Counsel maintain that the Action and the claims
21 asserted therein are meritorious and that Settlement Class Representative and the Class would
22 have prevailed at trial. Defendant denies the material factual allegations and legal claims asserted
23 by Settlement Class Representative in this Action, maintains that, other than for settlement
24 purposes, a class would not be certifiable under any Rule, and that the Settlement Class
25 Representative and Class Members would not prevail at trial. Notwithstanding the foregoing, the
26 Parties have agreed to settle the Action pursuant to the provisions of the Settlement Agreement,
27 after considering, among other things: (a) the benefits to the Settlement Class Representative and
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1 the Settlement Class under the terms of the Settlement Agreement; (b) the uncertainty of being
2 able to prevail at trial; (c) the uncertainty relating to Defendant’s defenses and the expense of
3 additional motion practice in connection therewith; (d) obstacles to establishing entitlement to
4 class-wide relief; (e) the attendant risks of litigation, especially in complex actions such as this, as
5 well as the difficulties and delays inherent in such litigation and appeals; and (f) the desirability
6 of consummating the Settlement promptly in order to provide effective relief to the Settlement
7 Class Representative and the Settlement Class.

8 7. The Court accordingly certifies, for settlement purposes only, a class consisting of
9 all persons in the United States who made a purchase in Pokémon Go while under the age of 18.
10 Excluded from the Settlement Class are (i) all Persons who are directors, officers, and agents of
11 Niantic or its subsidiaries and affiliated companies or are designated by Niantic as employees of
12 Niantic or its subsidiaries and affiliated companies; and (ii) the Court, the Court’s immediate
13 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
14 immediate family and staff.

15 **VI. NOTICE**

16 8. Direct notice of the settlement is not required here because the Settlement
17 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
18 monetary or damages claims of the Class, and thus the settlement expressly preserves the
19 individual rights of class members to pursue monetary claims against the defendant. Nonetheless,
20 pursuant to the Settlement Agreement, documents pertaining to the Settlement, preliminary
21 approval, and final approval (including Plaintiffs’ motion for attorneys’ fees and incentive awards
22 and any opposition or reply papers thereto), were posted on Class Counsel’s public website.

23 **VII. CLAIMS COVERED AND RELEASES**

24 9. This Order constitutes a full, final and binding resolution between the Class
25 Representative’s Releasing Parties, on behalf of themselves and the Settlement Class Members,
26 and the Released Parties. This Release shall be applied to the maximum extent permitted by law.
27
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1 10. Upon the Effective Date and by operation of this Order, the Settlement Class
2 Representative’s Releasing Parties will fully, finally, and forever release, relinquish, and
3 discharge any and all Settlement Class Representative’s Released Claims, including claims for
4 monetary relief and damages, known and unknown, as well as provide a waiver under California
5 Civil Code Section 1542. Settlement Class Representative’s Releasing Parties are forever
6 enjoined from taking any action seeking any relief against the Released Parties based on any
7 Settlement Class Representative’s Released Claims.

8 11. Upon the Effective Date and by operation of this Order, the Releasing Parties will
9 fully, finally, and forever release, relinquish, and discharge the Settlement Class Members’
10 Released Claims,as well as provide a waiver under California Civil Code Section 1542) including
11 any and all claims for injunctive and/or declaratory relief of any kind or character, at law or
12 equity, known or unknown, preliminary or final, under any other federal or state law or rule of
13 procedure, up until and including the Effective Date, that result from, arise out of, are based on,
14 or relate in any way to the practices and claims that were alleged in the Action, except that,
15 notwithstanding the foregoing, the Releasing Parties do not release claims for monetary relief or
16 damages. The Releasing Parties are forever enjoined from taking any action seeking injunctive
17 and/or declaratory relief against the Released Parties based on any Settlement Class Members’
18 Released Claims.

19 12. The Settlement Agreement and this Order shall be the exclusive remedy for any
20 and all Released Claims of the Settlement Class Representatives, Settlement Class Members, and
21 Niantic.

22 **VIII. INJUNCTIVE RELIEF**

23 13. Niantic will agree to include language in substantially the following form in its
24 Terms of Service applicable to U.S. players (currently at <https://nianticlabs.com/terms/>)for three
25 (3) years following the Effective Date:

- 26 (a) “You agree that all sales by us to you of Virtual Money and Virtual Goods
27 are final and that we will not permit exchanges or refunds for any unused
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1 Virtual Money or Virtual Goods once the transaction has been made,
2 unless otherwise required by law.”

3 14. Niantic will, in processing any direct requests for refunds of PokéCoins:

4 (b) For Apple and Samsung purchases, in its standard response redirecting
5 users to Apple or Samsung, add language in substantially the following
6 form: “Please note that app store refund policies may vary based on the
7 location of user and the age of user, including legal minority, at the time of
8 purchase, as may be required by applicable law.”

9 (c) For Google Play Store purchases for which Niantic is permitted and does
10 process limited numbers of direct refunds, in its standard response for U.S.
11 users seeking additional information about the purchase, add language to
12 prompt users to indicate whether the purchase of PokéCoins was made
13 when the user was a minor without parental consent, except as prohibited
14 by local law.

15 15. Niantic will, in its public-facing Pokémon GO Help Center, for help pages
16 currently referencing assistance with refunds for PokéCoin purchases:

17 (d) Add specific links to Apple, Google, and Samsung In-App Purchase refund
18 policies for reference;

19 (e) Add language in substantially the following form: “Please note that app
20 store refund policies may vary based on the location of user and the age of
21 user, including legal minority, at the time of purchase, as may be required
22 by applicable law.”

23 16. Niantic will also add these Pokémon GO Help Center changes into the in-app Help
24 sections on the same topics.

25 17. For all refund requests processed by Niantic, which currently includes purchases
26 from the Google Play Store, Niantic will implement a dedicated process to address refund
27 requests, subject to confirmation of minority. The personnel staffing this dedicated process will
28

1 receive further training regarding how to analyze and process such refund requests in accordance
2 with applicable law.

3 18. Niantic will agree that its refund policies and practices with respect to U.S. minors
4 will comply with the California Family Code.

5 **IX. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS**

6 19. The Court has also considered Plaintiff's Motion for Attorneys' Fees, Costs,
7 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the
8 payment of attorneys' fees, costs, and expenses in the amount of \$875,000 is reasonable under
9 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*
10 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,
11 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class
12 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the
13 manner provided by the terms of the Settlement Agreement.

14 20. The Court has also considered Plaintiff's Motion and supporting declarations for
15 an incentive award to the Class Representative, D.D. The Court adjudges that the payment of an
16 incentive award in the amount of \$1,500 to D.D. to compensate him for his efforts and
17 commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the
18 circumstances of this case. Such payment shall be made pursuant to and in the manner provided
19 by the terms of the Settlement Agreement.

20 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**
21 **MODIFICATIONS OF AGREEMENT**

22 21. By this Order, the Parties are hereby authorized to implement the terms of the
23 Settlement Agreement. After the date of entry of this Order, the Parties may by written
24 agreement effect such amendments, modifications, or expansions of the Settlement Agreement
25 and its implementing documents (including all exhibits thereto) without further approval by the
26 Court if such changes are consistent with terms of this Order and do not materially alter, reduce,
27 or limit the rights of Settlement Class Members under the Settlement Agreement.
28

1 **XI. TERMINATION**

2 22. In the event that the Settlement Agreement is terminated pursuant to the terms of
3 the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall
4 have no further force or effect, and shall not be used in any action or other proceedings for any
5 purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
6 survive termination; (b) this matter will revert to the status that existed before execution of the
7 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
8 Parties' settlement discussions, negotiations, or documentation (including any briefs filed in
9 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence
10 for any purpose in any action or other proceeding other than as may be necessary to enforce the
11 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or
12 concession by any Party regarding the validity of any Released Claim or the propriety of
13 certifying any class against Niantic, or (iii) be deemed an admission or concession by any Party
14 regarding the truth or falsity of any facts alleged in the Action or the availability or lack of
15 availability of any defense to the Released Claims.

16 **XII. RETENTION OF JURISDICTION**

17 23. The Court shall retain jurisdiction over any claim relating to the Settlement
18 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
19 arising out of a breach of the Settlement Agreement) as well as any future claims by any
20 Settlement Class Member relating in any way to the Released Claims.

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25 DATED: _____

EXHIBIT B

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

D.D., a minor, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No.

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT**

1 WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an
2 order preliminarily approving the Settlement of this Action pursuant to the settlement
3 agreement fully executed on or about _____ (the “Agreement”), which, together with its
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as
7 follows:

8 1. The motion is GRANTED.

9 2. Capitalized terms not otherwise defined herein have the meanings set forth in
10 the Settlement Agreement.

11 3. All proceedings in the Action, other than proceedings necessary to carry out or
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13 4. The Court has subject matter jurisdiction over the Action, and personal
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code
15 § 395.

16 5. The Action is preliminarily certified as a class action, for settlement purposes
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are
20 questions of law and fact that are common to the Class, and those questions of law and fact
21 common to the Class predominate over any questions affecting any individual Class Member;
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action
26 may not be certified as a class action, other than for settlement purposes. The Court also
27 concludes that, because the Action is being settled rather than litigated, the Court “need not
28

1 inquire whether the case, if tried, would present intractable management problems.” *See*
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 6. The Settlement Class shall consist of “All persons in the United States who
4 made a purchase in Pokémon Go while under the age of 18.”

5 7. Upon preliminary review, the Court finds that the Agreement, and the
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is
8 sufficient to warrant sending notice to the Class.

9 8. Certification of the Settlement Class shall be solely for settlement purposes,
10 without prejudice to the Parties, and with no other effect upon the Action. In the event the
11 Settlement Agreement is not finally approved by this Court, is terminated, or otherwise does
12 not take effect, the Parties preserve all rights and defenses regarding class certification.

13 9. The Court hereby appoints Plaintiff D.D. as Class Representative to represent
14 the Settlement Class.

15 10. The Court hereby appoints Philip L. Fraietta and Alec M. Leslie of Bursor &
16 Fisher, P.A. as Class Counsel for the Settlement Class.

17 11. Direct notice of the settlement is not required here because the Settlement
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the
20 individual rights of class members to pursue monetary claims against the Defendant.
21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s
24 public website (<http://www.https://www.bursor.com/>).

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*D.D. v. Niantic, Inc.*, Case No. _____); (2) the Settlement Class Member’s full
2 legal name and mailing address; (3) the personal signature of the Settlement Class member; (4)
3 the grounds for any objection; (5) the name and contact information of any and all attorneys
4 representing, advising, or assisting with the comment or objection, or who may profit from
5 pursuing any objection; and (6) a statement indicating whether the Settlement Class Member
6 intends to appear at the Final Approval Hearing, either personally or through counsel. Written
7 objections must be served on the Settlement Administrator as follows:

8 D.D. v. Niantic, Inc.
9 c/o [Settlement Administrator]
[Insert Settlement Administrator address]

10 The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each
11 other copies of any and all objections that might come into their possession.
12

13 Class Members may also appear at the final approval hearing to state their objections,
14 whether or not they have made a written objection or given a notice to appear.

15 13. To be considered, written comments or objections must be submitted within 60
16 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
17 Approval Hearing, whether individually or through counsel, unless written notice of the Class
18 Member’s intention to appear at the Final Approval Hearing is timely filed, or postmarked for
19 mail to the Court within 60 days after date of entry of this Order.

20 14. The date of the postmark on the envelope containing the written objection shall
21 be the exclusive means used to determine whether an objection has been timely submitted.
22 Class Members who fail to mail timely written objections in the manner specified above shall
23 be deemed to have waived any objections and shall be forever barred from objecting to the
24 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
25 appeal, collateral attack, or otherwise.

26 15. The Court will hold a final approval hearing on _____, 2023 at _____
27 a.m./p.m, in the Superior Court of California, County of Los Angeles, located at 1945 S Hill St,
28 Los Angeles, CA 90007, in Courtroom _____. The purposes of the final approval hearing will

1 be to: (i) determine whether the proposed Settlement Agreement should be finally approved by
2 the Court as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii)
3 determine whether judgment should be entered pursuant to the Settlement Agreement, and
4 releasing the Released Persons of all claims as stated in the Settlement Agreement; (iii)
5 determine whether the Settlement Class should be finally certified; (iv) rule on Class Counsel's
6 motion for attorneys' fees, costs and service awards; (v) consider any properly filed objections;
7 and (vi) consider any other matters necessary in connection with the final approval of the
8 Settlement Agreement.

9 16. Class Counsel's application for attorneys' fees, costs and expenses shall be filed
10 and served no later than thirty (30) days after the Court's order of preliminary approval. Any
11 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court's
12 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days
13 after the Court's order of preliminary approval.

14 17. The motion in support of final approval of the settlement shall be filed and
15 served no later than thirty (30) days after the Court's order of preliminary approval. Any
16 opposition or objection shall be filed no later than sixty (60) days after the Court's order of
17 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the
18 Court's order of preliminary approval.

19 18. The Court may, in its discretion, modify the date and/or time of the final
20 approval hearing, and may order that this hearing be held remotely or telephonically. In the
21 event the Court changes the date, time, and/or the format of the final approval hearing, the
22 Parties shall ensure that the updated information is posted on the Class Counsel's public
23 website.

24 19. If the Settlement Agreement, including any amendment made in accordance
25 therewith, is not approved by the Court or shall not become effective for any reason
26 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection
27 therewith (including this Preliminary Approval Order and any judgment entered herein), shall
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1 be terminated and shall become null and void and of no further force and effect except for
2 (i) any obligations to pay for any expense incurred in connection with Notice and Other
3 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or
4 provisions that are expressly designated in the Settlement Agreement to survive the termination
5 of the Settlement Agreement.

6 20. Pending final determination of whether the Settlement Agreement should be
7 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from
8 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as
9 such action asserts claims stated in Section VI of the Settlement Agreement, directly or
10 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is
11 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval
12 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this
13 Court's jurisdiction.

14 21. This Preliminary Approval Order, the Settlement Agreement, the fact that a
15 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings
16 relating to the Settlement, and any matters arising in connection with settlement negotiations,
17 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered
18 or received against Niantic as evidence or an admission or concession of: (a) the truth of any
19 fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of
20 Niantic or breach of any duty on the part of Niantic; or (c) that this Action or any other action
21 may be properly certified as a class action for litigation, non-settlement purposes. This order is
22 not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the
23 Action.

24 22. The Court shall retain jurisdiction over any claim relating to the Settlement
25 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
26 arising out of a breach of the Settlement Agreement) as well as any future claims by any
27 Settlement Class Member relating in any way to the Released Claims.
28

1 23. The Court may, for good cause, extend any of the deadlines set forth in this
2 Preliminary Approval Order without further notice to Settlement Class Members. Without
3 further order of the Court, the Parties may agree to make non-material modifications in
4 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.
5

6 IT IS SO ORDERED.

7 Date: _____

8 _____

EXHIBIT B

1 **BURSOR & FISHER, P.A.**
2 L. Timothy Fisher (State Bar No. 191626)
3 1990 North California Blvd., Suite 940
4 Walnut Creek, CA 94596
5 Telephone: (925) 300-4455
6 Facsimile: (925) 407-2700
7 E-mail: ltfisher@bursor.com

8 *Attorney for Plaintiff*

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 10/05/2023
By Deputy: Meraz, Jackie

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MONTEREY**

13 C.J., a minor, individually and on behalf of all
14 others similarly situated,

15 Plaintiff,

16 v.

17 COGNOSPHERE PTE. LTD.,

18 Defendant.

Case No. 23CV001405

CASE DEEMED COMPLEX

ASSIGNED FOR ALL PURPOSES TO
JUDGE THOMAS W. WILLS

**~~[PROPOSED]~~ ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

19 Date: September 29, 2023
20 Time: 8:30 a.m.
21 Dept.: 15

1 WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an
2 order preliminarily approving the Settlement of this Action pursuant to the settlement
3 agreement fully executed on or about May 1, 2023 (the “Agreement”), which, together with its
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as
7 follows:

8 1. The motion is GRANTED.

9 2. Capitalized terms not otherwise defined herein have the meanings set forth in
10 the Settlement Agreement.

11 3. All proceedings in the Action, other than proceedings necessary to carry out or
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13 4. The Court has subject matter jurisdiction over the Action, and personal
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code
15 § 395.

16 5. The Action is preliminarily certified as a class action, for settlement purposes
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are
20 questions of law and fact that are common to the Class, and those questions of law and fact
21 common to the Class predominate over any questions affecting any individual Class Member;
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action
26 may not be certified as a class action, other than for settlement purposes. The Court also
27 concludes that, because the Action is being settled rather than litigated, the Court “need not
28

1 inquire whether the case, if tried, would present intractable management problems.” *See*
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 6. The Settlement Class shall consist of “All persons in the United States of
4 America who made a purchase in Genshin Impact while under the age of 18.”

5 7. Upon preliminary review, the Court finds that the Agreement, and the
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is
8 sufficient to warrant sending notice to the Class.

9 8. Certification of the Settlement Class shall be solely for settlement purposes,
10 without prejudice to the Parties, and with no other effect upon the Action. In the event the
11 Settlement Agreement is not finally approved by this Court, is terminated, or otherwise does
12 not take effect, the Parties preserve all rights and defenses regarding class certification.

13 9. The Court hereby appoints Plaintiff C.J. as Class Representative to represent the
14 Settlement Class.

15 10. The Court hereby appoints L. Timothy Fisher of Bursor & Fisher, P.A. as Class
16 Counsel for the Settlement Class.

17 11. Direct notice of the settlement is not required here because the Settlement
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the
20 individual rights of class members to pursue monetary claims against the Defendant.

21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s
24 public website (<https://www.bursor.com/>).

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*C.J. v. Cognosphere Pte. Ltd.*, Case No. 23CV001405); (2) the Settlement Class
2 Member's full legal name and mailing address; (3) the personal signature of the Settlement
3 Class member; (4) the grounds for any objection; (5) the name and contact information of any
4 and all attorneys representing, advising, or assisting with the comment or objection, or who
5 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement
6 Class Member intends to appear at the Final Approval Hearing, either personally or through
7 counsel. Written objections must be served on each of both Defense Counsel and Class
8 Counsel as follows:

9 C.J. v. Cognosphere Pte. Ltd.
10 c/o Bursor & Fisher, P.A.
11 1990 North California Blvd.
12 Suite 940
13 Walnut Creek, CA 94596

14 C.J. v. Cognosphere Pte. Ltd.
15 c/o Keeker, Van Nest & Peters LLP
16 633 Battery Street
17 San Francisco, CA 94111-1809

18 Defense Counsel and Class Counsel shall promptly furnish each other copies of any and all
19 objections that might come into their possession.

20 13. Class Members may also appear at the final approval hearing to state their
21 objections, whether or not they have made a written objection or given a notice to appear.

22 14. To be considered, written comments or objections must be submitted within 60
23 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
24 Approval Hearing, whether individually or through counsel, unless written notice of the Class
25 Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for
26 mail to the Court within 60 days after date of entry of this Order.

27 15. The date of the postmark on the envelope containing the written objection shall
28 be the exclusive means used to determine whether an objection has been timely submitted.
Class Members who fail to mail timely written objections in the manner specified above shall
be deemed to have waived any objections and shall be forever barred from objecting to the

1 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
2 appeal, collateral attack, or otherwise.

3 16. The Court will hold a final approval hearing on January 26, 2024 at 8:30 a.m., in
4 the Superior Court of California, County of Monterey, located at 1200 Aguajito Rd, Monterey,
5 CA 93940, in Department 15. The purposes of the final approval hearing will be to: (i)
6 determine whether the proposed Settlement Agreement should be finally approved by the Court
7 as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii) determine
8 whether judgment should be entered pursuant to the Settlement Agreement, dismissing the
9 Action with prejudice and releasing the Released Persons of all claims as stated in the
10 Settlement Agreement; (iii) determine whether the Settlement Class should be finally certified;
11 (iv) rule on Class Counsel's motion for attorneys' fees, costs and service awards; (v) consider
12 any properly filed objections; and (vi) consider any other matters necessary in connection with
13 the final approval of the Settlement Agreement.

14 17. Class Counsel's application for attorneys' fees, costs and expenses shall be filed
15 and served no later than thirty (30) days after the Court's order of preliminary approval. Any
16 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court's
17 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days
18 after the Court's order of preliminary approval.

19 18. The motion in support of final approval of the settlement shall be filed and
20 served no later than thirty (30) days after the Court's order of preliminary approval. Any
21 opposition or objection shall be filed no later than sixty (60) days after the Court's order of
22 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the
23 Court's order of preliminary approval.

24 19. The Court may, in its discretion, modify the date and/or time of the final
25 approval hearing, and may order that this hearing be held remotely or telephonically. In the
26 event the Court changes the date, time, and/or the format of the final approval hearing, the
27 Parties shall ensure that the updated information is posted on the Class Counsel's public
28

1 website.

2 20. If the Settlement Agreement, including any amendment made in accordance
3 therewith, is not approved by the Court or shall not become effective for any reason
4 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection
5 therewith (including this Preliminary Approval Order and any judgment entered herein), shall
6 be terminated and shall become null and void and of no further force and effect except for
7 (i) any obligations to pay for any expense incurred in connection with any notice and/or Other
8 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or
9 provisions that are expressly designated in the Settlement Agreement to survive the termination
10 of the Settlement Agreement.

11 21. Pending final determination of whether the Settlement Agreement should be
12 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from
13 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as
14 such action asserts claims stated in Section VI of the Settlement Agreement, directly or
15 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is
16 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval
17 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this
18 Court's jurisdiction.

19 22. This Preliminary Approval Order, the Settlement Agreement, the fact that a
20 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings
21 relating to the Settlement, and any matters arising in connection with settlement negotiations,
22 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered
23 or received against Cognosphere as evidence or an admission or concession of: (a) the truth of
24 any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of
25 Cognosphere or breach of any duty on the part of Cognosphere; or (c) that this Action or any
26 other action may be properly certified as a class action for litigation, non-settlement purposes.
27 This order is not a finding of the validity or invalidity of any of the claims asserted or defenses
28

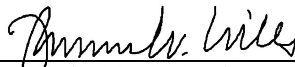
1 raised in the Action.

2 23. The Court shall retain jurisdiction over any claim relating to the Settlement
3 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
4 arising out of a breach of the Settlement Agreement) as well as any future claims by any
5 Settlement Class Member relating in any way to the Released Claims.

6 24. The Court may, for good cause, extend any of the deadlines set forth in this
7 Preliminary Approval Order without further notice to Settlement Class Members. Without
8 further order of the Court, the Parties may agree to make non-material modifications in
9 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.

10 IT IS SO ORDERED. IN 23CV001405

11
12 Dated: October 3, 2023



THOMAS W. WILLS
Judge of the Superior Court

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is Bursor & Fisher, P.A., 1990 North California Blvd,
4 Suite 940, Walnut Creek, California 94596. On October 3, 2023, I served the document(s):

5 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
6 SETTLEMENT**

7 by e-mail transmission on that date. These documents were transmitted via e-mail to
8 the following e-mail addresses as set forth below.

9 Ajay S Krishnan
10 Christopher S Sun
11 Michelle S Ybarra
12 Daniel Twomey
13 **Keker Van Nest and Peters LLP**
14 633 Battery Street
15 San Francisco, CA 94111
16 415-391-5400
17 Fax: 415-397-7188
18 Email: akrishnan@keker.com
19 csun@keker.com
20 mybarra@kvn.com
21 dtwomey@keker.com

22 *Attorneys for Defendant*

23 I declare under penalty of perjury under the laws of the State of California that the above is
24 true and correct, executed on October 3, 2023, at Walnut Creek, California.

25 

26 _____
27 Judy Fontanilla
28

EXHIBIT C

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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

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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.”).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, 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 ¹All 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).² 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 ⁴ 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.
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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.”).³

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 ³ 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.

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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).

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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.

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V. THE SETTLEMENT AGREEMENT

A. The Basics

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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-Pathé 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. 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

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

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No. 23CV001405

CASE DEEMED COMPLEX

ASSIGNED FOR ALL PURPOSES TO
JUDGE THOMAS W. WILLS

**DECLARATION OF PHILIP L.
FRAIETTA IN SUPPORT OF
PLAINTIFF'S 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

1 **DECLARATION OF PHILIP L. FRAIETTA**

2 I, Philip L. Fraietta, declare as follows:

3 1. I am an attorney at law licensed to practice in the State of New York. I am a
4 partner at Bursor & Fisher, P.A., counsel for Plaintiff in this action. I am a member of the bar of
5 this Court. I make this declaration in support of Plaintiffs’ motion for preliminary approval of the
6 class action settlement. I have personal knowledge of the facts set forth in this declaration, and, if
7 called as a witness, could and would competently testify thereto under oath.

8 2. Pursuant to the terms of the Settlement, Cognosphere Pte. Ltd. (“Cognosphere” or
9 “Defendant”) has agreed to substantial changes that achieve the precise relief Plaintiff sought to
10 accomplish with this litigation: the ability to seek a refund for purchases made as a minor pursuant
11 to Cal. Fam. Code § 6701 and § 6710 and to make this ability reasonably apparent to the minors
12 who made and continue to make these purchases. Pursuant to the Settlement, absent Settlement
13 Class Members would release claims for declaratory, injunctive, and non-monetary equitable relief
14 only—claims for monetary damages are specifically excluded from the proposed Settlement Class
15 Members’ Released Claims. Service awards and attorneys’ fees and costs that may be awarded
16 will be paid by Cognosphere.

17 3. Over the last seven months, my firm has engaged in significant, arm’s-length
18 negotiations with counsel for Defendant, including with the assistance of a certified mediator,
19 Gregory Lindstrom of Phillips ADR. These negotiations included a full-day mediation with
20 Gregory Lindstrom of Phillips ADR on March 16, 2023, which culminated in a mediator’s
21 proposal and near-final term sheet. The term sheet was executed by the Parties on March 29, 2023.
22 Over the next month, the parties exchanged edits to the draft long form settlement agreement,
23 which was executed on May 1, 2023.

24 4. Thus, the Settlement was reached after said informed, extensive arm’s-length
25 negotiations. First, the Settlement was reached after a thorough investigation into and discovery of
26 the legal and factual issues in this action. In particular, my firm conducted an extensive pre-suit
27 investigation into the factual underpinnings of the practices challenged in this action, as well as the
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1 applicable law. My firm reviewed, inter alia, Defendant's terms of service, Plaintiff's purchase
2 history documents, and the refund policies of the platforms where Plaintiff made his purchases of
3 in-game currency and virtual items, and the parties engaged in informal discovery.

4 5. Based upon the information that Defendant produced to my firm, we estimate that
5 the value of the change in practices provided for under the Settlement is in the millions of dollars
6 based upon the money spent by minors in the United States during the class period. Additionally,
7 under the Settlement, Class Members do not give up their right to pursue damages claims in the
8 future.

9 6. The parties' March 16, 2023 mediation was held only after the exchange of
10 confidential mediation statements, which discussed the strengths and weaknesses of both Plaintiff's
11 allegations and Defendant's potential defenses and relevant documents related thereto. Throughout
12 the mediation session, counsel vigorously advocated for their respective clients' positions.

13 7. In sum, the Settlement was reached only after my firm conducted an extensive
14 factual investigation and discovery into the Defendant's alleged misconduct, and thoroughly
15 researched the law pertinent to Plaintiff's and Class Members' claims and Defendant's defenses
16 thereto. Consequently, my firm had a wealth of information at its disposal before entering into
17 settlement negotiations, which allowed my firm to adequately assess the strengths and weaknesses
18 of the case and to balance the benefits of settlement against the risks of further litigation.

19 8. The maximum recovery that each class member could receive as part of the
20 Settlement for the claims in the operative complaint would depend on the amount that he or she
21 spent on in-game currency and virtual items. The total amount made available to Class Members
22 under the Settlement is in the millions of dollars, and, in any event, represents 100% of the amount
23 that minors in the United States spent on Defendant's in-game currency and virtual items. None of
24 this value will revert to Defendant under any circumstances.

25 9. Nothing in the course of the negotiations or in the substance of the proposed
26 Settlement presents any reason to doubt the Settlement's fairness. Thus, in my professional
27 opinion, this Settlement is fair, reasonable, and adequate.
28

1 10. All terms regarding fees and costs were negotiated and agreed to by the parties only
2 after full agreement was reached as to all other material terms.

3 11. Other than the Settlement Agreement itself, there are no additional agreements to be
4 identified.

5 12. My firm has vigorously and competently pursued the Class Members' claims. The
6 arm's-length settlement negotiations that took place with the assistance of a certified mediator and
7 the investigation they undertook demonstrate that my firm adequately represent the Class.
8 Moreover, the named Plaintiff and my firm have no conflicts of interests with the Class. Rather,
9 the named Plaintiff, like each absent Class Member, has a strong interest in proving Defendant's
10 common course of conduct, and obtaining redress. In pursuing this litigation, my firm, as well as
11 the named Plaintiff, have advanced and will continue to advance and fully protect the common
12 interests of all members of the Class. My firm has extensive experience and expertise in
13 prosecuting complex class actions. My firm is comprised of active practitioners who are highly
14 experienced in consumer class action litigation.

15 13. Attached hereto as **Exhibit 1** is a true and correct copy of the Stipulation of Class
16 Action Settlement and exhibits thereto.

17 14. Attached hereto as **Exhibit 2** is a true and correct copy of the firm resume of Bursor
18 & Fisher, P.A.

19 I declare under penalty of perjury under the laws of the United States and the State of
20 California that the foregoing is true and correct. Executed on May 24, 2023 in New York, New
21 York.

22 
23 Philip L. Fraietta

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-B hereto
3 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among
4 Plaintiff C.J., a minor, through Juanita James, her mother and legal guardian (“Settlement Class
5 Representative”), on behalf of herself and the Settlement Class as defined below, and Defendant
6 Cognosphere, Pte. Ltd. (“Defendant” or “Cognosphere”). Settlement Class Representative, the
7 Settlement Class, and Cognosphere (collectively, the “Parties”) enter into this Agreement to
8 effectuate a full and final settlement and dismissal of *C.J. v. Cognosphere, Pte. Ltd.*, to be filed in
9 the Superior Court of California, County of Monterey (the “Action”).

10 **I. RECITALS**

11 1. WHEREAS, on February 20, 2023, Plaintiff’s counsel informed Cognosphere of
12 Settlement Class Representative’s potential claims against Cognosphere, on behalf of herself and
13 a class of similarly situated minors, including for declaratory, equitable and monetary relief under
14 the Declaratory Judgment Act, California’s contract laws, Consumers Legal Remedies Act Cal.
15 Civ. Code § 1750, et seq., , Business and Professions Code Sections 17200 *et seq.*

16 2. WHEREAS, the Parties agreed to mediate, prior to Settlement Class Representative
17 filing her claims against Cognosphere.

18 3. WHEREAS, the Parties mediated their dispute with Gregory Lindstrom of Phillips
19 ADR on March 16, 2023, culminating in a mediator’s proposal that was accepted in principle by
20 the parties that day. The Parties executed a on March 29, 2023;

21 4. WHEREAS, Settlement Class Representative believes that her claims are
22 meritorious and that she would be successful at trial, but nevertheless agreed to resolve the Action
23 on the terms set forth in this Settlement Agreement solely to eliminate the uncertainties and delay
24 of further protracted litigation;

25 5. WHEREAS, Cognosphere, while continuing to deny all allegations of wrongdoing
26 and disclaiming all liability with respect to all claims in the Action, considers it desirable to resolve
27 the Action on the terms stated herein solely to avoid further expense, inconvenience, and burden,
28 and therefore has determined that this settlement on the terms set forth herein is in Defendant’s

1 best interests. Neither the Settlement Agreement nor any actions taken to carry out the settlement
2 are intended to be, nor may they be deemed or construed to be, an admission or concession of
3 liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any
4 party. Defendant denies all allegations of the complaint in the Action. Neither the Settlement
5 Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations,
6 nor any related document, shall be used as an admission of any fault or omission by Defendant, or
7 be offered or received in evidence as an admission, concession, presumption, or inference of any
8 wrongdoing by Defendant in any proceeding;

9 6. WHEREAS, Settlement Class Representative, Cognosphere, and the Settlement
10 Class intend for this Settlement Agreement fully and finally to compromise, resolve, discharge,
11 and settle the Released Claims, as defined and on the terms set forth below, and to the full extent
12 reflected herein, subject to the approval of the Court; and

13 7. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
14 AGREED, by the Settlement Class Representative, for herself and on behalf of the Settlement
15 Class, and by Cognosphere that, subject to the approval of the Court, the Action shall be settled,
16 compromised, and dismissed, on the merits and with prejudice, and the Released Claims shall be
17 finally and fully compromised, settled, and dismissed as to the Released Parties, in the manner and
18 upon the terms and conditions hereafter set forth in this Agreement.

19 **II. DEFINITIONS**

20 8. In addition to the terms defined elsewhere in this Agreement, the following terms,
21 used in this Settlement Agreement, shall have the meanings specified below:

22 9. “Attorneys’ Fees and Costs Award” means such funds as may be awarded by the
23 Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection
24 with the Action and the Settlement, as described in Paragraphs VII.49-VII.50.

25 10. “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday,
26 excluding holidays observed by California and/or the federal government.

27 11. “Class Counsel” means L. Timothy Fisher, Philip L. Fraietta, and Alec M. Leslie
28 of Bursor & Fisher, P.A.

1 12. “Court” means the Superior Court of California, County of Monterey.

2 13. “Defense Counsel” means the law firm of Kecker, Van Nest & Peters LLP and all
3 of Cognosphere’s attorneys of record in the Action.

4 14. “Effective Date” means seven (7) days after which both of the following events
5 have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the
6 Final Approval Order and Final Judgment have become Final.

7 15. “Cognosphere” means (i) Cognosphere, Pte. Ltd. and its past, present, and future
8 parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal
9 entities, whether foreign or domestic, that are owned or controlled by Cognosphere, and (ii) the
10 past, present, and future shareholders, officers, directors, members, agents, employees,
11 independent contractors, consultants, representative, fiduciaries, insurers, attorneys, legal
12 representative, predecessors, successors, and assigns of the entities in Part (i) of this definition.

13 16. “Fairness Hearing” means the hearing that is to take place after the entry of the
14 Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final
15 Judgment and dismissing the Action with prejudice; (ii) determining whether the Settlement
16 should be approved as fair, reasonable, and adequate pursuant to applicable California Code of
17 Civil Procedure; (iii) ruling upon an application for Service Awards by the Settlement Class
18 Representative; (iv) ruling upon an application by Class Counsel for an Attorneys’ Fees and Costs
19 Award; and (v) entering any final order awarding Attorneys’ Fees and Costs and Service Awards.

20 17. “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal,
21 motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been
22 filed, the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion
23 for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed,
24 the judicial ruling or order has been affirmed with no further right of review, or such appeal,
25 motion, and/or petition has been denied or dismissed with no further right of review. Any
26 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any
27 application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment
28 from becoming Final.

1 18. “Final Approval Order and Final Judgment” means the order finally approving the
2 terms of this Settlement Agreement and a separate judgment to be entered by the Court after the
3 Fairness Hearing, dismissing the Action against Cognosphere with prejudice, without material
4 variation from the Parties’ agreed-upon final approval order and judgment attached hereto as
5 Exhibit A.

6 19. “Legally Authorized Representative” means an administrator/administratrix,
7 personal representative, or executor/executrix of a deceased Settlement Class Member’s estate;
8 guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other
9 legally appointed Person responsible for handling the business affairs of a Settlement Class
10 Member.

11 20. “Person” means any individual, corporation, partnership, association, affiliate, joint
12 stock company, estate, trust, unincorporated association, entity, government and any political
13 subdivision thereof, or any other type of business or legal entity.

14 21. “Preliminary Approval Order” means the order that preliminarily approves the
15 Settlement and sets a date for the Final Approval Hearing, without material variation from the
16 Parties’ agreed-upon proposed preliminary approval order attached hereto as Exhibit B. Entry of
17 the Preliminary Approval Order shall constitute preliminary approval of the Settlement
18 Agreement.

19 22. “Releases” mean the releases and waivers set forth in this Settlement Agreement
20 and in the Final Approval Order and Final Judgment. The Releases are a material part of the
21 Settlement for Cognosphere. The Releases shall be construed as broadly as possible to effect
22 complete finality over this Action involving claims that result from, arise out of, are based on, or
23 relate in any way to the practices and claims that were alleged in the Action.

24 23. “Released Claims” include Settlement Class Representative’ Released Claims and
25 Settlement Class Members’ Released Claims.

26 24. “Released Parties” means (i) Cognosphere and its past, present, and future parents,
27 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,
28 whether foreign or domestic, that are owned or controlled by Cognosphere; and (ii) the past,

1 present, and future shareholders, officers, directors, members, agents, employees, independent
2 contractors, consultants, administrators, representative, fiduciaries, insurers, attorneys, legal
3 representative, advisors, creditors, predecessors, successors, and assigns of the entities in Part (i)
4 of this Paragraph.

5 25. “Releasing Parties” means Settlement Class Members, and each of their heirs,
6 estates, trustees, principals, beneficiaries, guardians, executors, administrators, representative,
7 agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone
8 claiming through them or acting or purporting to act for them or on their behalf.

9 26. “Service Award” means the amount approved by the Court to be paid to the
10 Settlement Class Representative as described further in Paragraph VII.51.

11 27. “Settlement” means the settlement of the Action between and among the Settlement
12 Class Representative, the Settlement Class Members, and Cognosphere, as set forth in this
13 Settlement Agreement, including all attached Exhibits (which are an integral part of this
14 Settlement Agreement and are incorporated in their entirety by reference).

15 28. “Settlement Class” has the meaning set forth in Paragraph III.34.

16 29. “Settlement Class Member(s)” means any and all persons who fall within the
17 definition of the Settlement Class.

18 30. “Settlement Class Representative” means C.J., through her mother and legal
19 guardian, Juanita James.

20 31. “Settlement Class Representative’s Releasing Parties” means each Settlement
21 Class Representative, and each of her heirs, estates, trustees, principals, beneficiaries, guardians,
22 executors, administrators, Representative, agents, attorneys, insurers, subrogees, partners,
23 successors, predecessors-in-interest, and assigns and/or anyone other than Class Members
24 claiming through them or acting or purporting to act for them or on their behalf.

25 **III. SETTLEMENT CLASS CERTIFICATION**

26 32. For purposes of settlement only, the Parties agree to seek provisional certification
27 of the Settlement Class, pursuant to Code of Civil Procedure § 382 and Civil Code § 1781.

28

1 33. The Parties further agree that the Court should make preliminary findings and enter
2 the Preliminary Approval Order granting provisional certification of the Settlement Class subject
3 to the final findings and approval in the Final Approval Order and Final Judgment, and appointing
4 Settlement Class Representative as the Representative of the Settlement Class and Class Counsel
5 as counsel for the Settlement Class.

6 34. For purposes of the provisional certification, the Settlement Class shall be defined
7 as follows:

8 All persons in the United States of America who made a purchase in Genshin
9 Impact while under the age of 18.

10 35. Excluded from the Settlement Class are (i) all Persons who are directors, officers,
11 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by
12 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any
13 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate
14 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
15 immediate family and staff.

16 36. Cognosphere does not consent to certification of the Settlement Class (or to the
17 propriety of class treatment) for any purpose other than to effectuate the settlement of this Action.
18 Cognosphere's agreement to provisional certification does not constitute an admission of
19 wrongdoing, fault, liability, or damage of any kind to Settlement Class Representative or any of
20 the provisional Settlement Class Members.

21 37. Class Notice will be provided via the following information posted on Class
22 Counsel's website: the Settlement Agreement, Plaintiff's motion for preliminary approval, and
23 plaintiff's motion for attorneys' fees and incentive awards (including any opposition and reply
24 papers).

25 38. If this Settlement Agreement is terminated pursuant to its terms, disapproved by
26 any court (including any appellate court), and/or not consummated for any reason, or the Effective
27 Date for any reason does not occur, the order certifying the Settlement Class for purposes of
28 effectuating the Settlement, and all preliminary and/or final findings regarding that class

1 certification order, shall be automatically vacated upon notice of the same to the Court, the Action
2 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement
3 Agreement and such findings had never been made, and the Action shall return to the procedural
4 posture as it existed on March 30, 2023, in accordance with this Paragraph. No Party nor counsel
5 shall refer to or invoke the vacated findings and/or order relating to class settlement if this
6 Settlement Agreement is not consummated and the Action is later litigated and contested by
7 Cognosphere.

8 **IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF**

9 39. In consideration for the dismissal of the Action with prejudice and the releases
10 provided in this Settlement Agreement, and as a result of the Action and Settlement, Cognosphere
11 agrees to the following for U.S. residents for three years following the effective date:

12 a) Cognosphere will agree to include language in substantially the following
13 form in its Terms of Service applicable to U.S. players (currently at
14 <https://genshin.hoyoverse.com/en/company/terms>):

15 i) “You acknowledge and agree that you are not entitled to a refund
16 for any Virtual Currency, except as otherwise required by applicable
17 law.”

18 b) Cognosphere will, in processing any direct requests for refunds of in-game
19 purchases:

20 i) For platforms that process refund requests independently from
21 Cognosphere (e.g., Apple App Store, Google Play Store,
22 PlayStation Store), in its standard response redirecting users to those
23 platforms, add language in substantially the following form: “Please
24 note that store refund policies may vary based on the location of user
25 and the age of user, including legal minority, at the time of purchase,
26 as may be required by applicable law,” provided, however, that
27 Cognosphere may include other language as well while redirecting
28 users to those platforms.

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ii) For all other platforms , and refund requests for which Cognosphere elects to process itself, in its standard response for U.S. users seeking a refund who indicate that a minor was involved in the situation that led to the refund request, Cognosphere will implement policies to determine whether the in-game purchase was made when the user was a minor without parental consent, except as prohibited by local law.

c) Cognosphere will create a public-facing “help page” (or add to existing pages to the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases:

i) Add specific links to platforms that process refund requests independently from Cognosphere In-App/In-Game Purchase refund policies for reference;

ii) Add language in substantially the following form: “Please note that store refund policies may vary based on the location of user and the age of user, including legal minority, at the time of purchase, as may be required by applicable law,” provided, however, that Cognosphere may include other language as well while redirecting users to those platforms so long as the additional language does not conflict with the quoted required language in this Paragraph 39(c)(ii).

d) Cognosphere will link to these “help pages” on the website within its FAQ section or on any section on its website that is easily accessible to general public.

e) For all refund requests processed by Cognosphere referenced in ¶ 39(b)(ii), Cognosphere will implement a dedicated process to address refund requests to determine whether a refund is appropriate, which may include, but are not limited to, the following considerations:

- 1 i) reasonable confirmation that the purchaser is a minor;
- 2 ii) The minor’s legal guardian agrees that Cognosphere may terminate
- 3 the minor’s account and will prohibit future gameplay by the minor
- 4 and agrees to be financially responsible for any future purchases by
- 5 the minor;
- 6 iii) Cognosphere may require identification of the minor and the
- 7 minor’s legal guardian to prevent the minor’s access to further
- 8 gameplay.
- 9 iv) Cognosphere is not required to provide refunds for purchases made
- 10 on an adult’s account. The personnel staffing this dedicated process
- 11 will receive further training regarding how to analyze and process
- 12 such refund requests in accordance with applicable law.
- 13 f) The parties acknowledge that Cognosphere’s refund policies and practices
- 14 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

15 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
16 **REVIEW AND APPROVAL**

17 40. Solely for purposes of implementing this Agreement and effectuating the proposed
18 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion
19 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval
20 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

- 21 41. Among other things, the Preliminary Approval Order shall:
- 22 a) find that the requirements for provisional certification of the Settlement
 - 23 Class have been satisfied, appointing Settlement Class Representative as the Representative of the
 - 24 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;
 - 25 b) preliminarily enjoin all Settlement Class Members and their Legally
 - 26 Authorized Representative(s) from filing or otherwise participating in any other suit based on the
 - 27 Released Claims;

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1 c) establish dates by which the Parties shall file and serve all papers in support
2 of the application for final approval of the Settlement;

3 d) schedule the Fairness Hearing on a date ordered by the Court, provided in
4 the Preliminary Approval Order, and in compliance with applicable law, to determine whether the
5 Settlement should be approved as fair, reasonable, adequate, and to determine whether a Final
6 Approval Order and Final Judgment should be entered dismissing the Action with prejudice;

7 e) provide that all Settlement Class Members will be bound by the Final
8 Approval Order and Final Judgment dismissing the Action with prejudice; and

9 f) pending the Fairness Hearing, stay all proceedings in the Action, other than
10 the proceedings necessary to carry out or enforce the terms and conditions of this Settlement
11 Agreement and Preliminary Approval Order.

12 42. In advance of the Fairness Hearing, Class Counsel shall request entry of a Final
13 Approval Order and Final Judgment, without material variation from Exhibit A, the entry of which
14 is a material condition of this Settlement Agreement, and that shall, among other things:

15 a) find that the Court has personal jurisdiction over all Settlement Class
16 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and
17 that the venue is proper;

18 b) finally approve this Settlement Agreement and the Settlement pursuant to
19 California Code of Civil Procedure;

20 c) certify the Settlement Class under applicable California Code of Civil
21 Procedure for purposes of settlement only;

22 d) find that direct notice to the class is not necessary, and that notice on Class
23 Counsel's public website, as provided in this Settlement Agreement, is sufficiently within the
24 range of reasonableness;

25 e) incorporate the Releases set forth in this Settlement Agreement and make
26 the Releases effective as of the Effective Date;

27 f) issue the injunctive relief described in this Settlement Agreement;

28 g) authorize the Parties to implement the terms of the Settlement;

1 h) dismiss the Action with prejudice and enter a separate judgment pursuant to
2 applicable California Code of Civil Procedure; and

3 i) determine that the Agreement and the Settlement provided for herein, and
4 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
5 or construed as evidence of, a presumption, concession, or an admission by any Party of liability
6 or non-liability or of the certifiability or non-certifiability of a litigation class, or of any
7 misrepresentation or omission in any statement or written document approved or made by any
8 Party; provided, however, that reference may be made to this Agreement and the Settlement
9 provided for herein in such proceedings as may be necessary to effectuate the provisions of this
10 Agreement, as further set forth in this Agreement.

11 **VI. RELEASES AND DISMISSAL OF ACTION**

12 43. Upon the Effective Date, Settlement Class Representative's Releasing Parties will
13 be deemed to have, and by operation of the Final Approval Order and Final Judgment will have
14 fully, finally, and forever released, relinquished, and discharged any and all past, present, and
15 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or
16 liabilities, of any nature and description whatsoever, known or unknown, recognized now or
17 hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery
18 (including, but not limited to, those based in contract or tort, common law or equity, federal, state,
19 or local law, statute, ordinance, or regulation), against the Released Parties, up until and including
20 the Effective Date, that result from, arise out of, are based on, or relate in any way to the practices
21 and claims that were alleged in the Action, for any type of relief that can be released as a matter
22 of law, including, without limitation, claims for monetary relief, damages (whether compensatory,
23 consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest,
24 attorneys' fees, litigation costs, restitution, or equitable relief under Cal. Family Code §§ 6701 and
25 6710 ("Settlement Class Representative' Released Claims"). Settlement Class Representative's
26 Releasing Parties are forever enjoined from taking any action seeking any relief against the
27 Released Parties based on any of Settlement Class Representative' Released Claims.

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1 44. Upon the Effective Date, the Releasing Parties will be deemed to have, and by
2 operation of the Final Approval Order and Final Judgment will have fully, finally, and forever
3 released, relinquished, and discharged any and all past, present, and future claims, actions,
4 demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or
5 declaratory relief, of any nature and description whatsoever, known or unknown, existing or
6 preexisting, recognized now or hereafter, expected or unexpected, pursuant to any theory of
7 recovery (including, but not limited to, those based in contract or tort, common law or equity,
8 federal, state, or local law, statute, ordinance, or regulation) against the Released Parties, up until
9 and including the Effective Date, that result from, arise out of, are based on, or relate in any way
10 to the practices and claims that were alleged in the Action (“Settlement Class Members’ Released
11 Claims”), except that, notwithstanding the foregoing, the Releasing Parties do not release claims
12 for monetary relief or damages. The Releasing Parties are forever enjoined from taking any action
13 seeking injunctive and/or declaratory relief against the Released Parties based on any Settlement
14 Class Members’ Released Claims.

15 45. After entering into this Settlement Agreement, the Parties may discover facts other
16 than, different from, or in addition to, those that they know or believe to be true with respect to the
17 claims released by this Settlement Agreement, but they intend to release fully, finally and forever
18 the Released Claims, and in furtherance of such intention, the Releases will remain in effect
19 notwithstanding the discovery or existence of any such additional or different facts. With respect
20 to the Released Claims, Settlement Class Representative (on behalf of themselves and the
21 Settlement Class Members), through their counsel, expressly, knowingly, and voluntarily waive
22 any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and
23 any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code
24 Section 1542, which reads as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

1 46. The Parties acknowledge, and by operation of law shall be deemed to have
2 acknowledged, that the waiver of the provisions of Section 1542 of the California Civil Code (and
3 any similar State laws) with respect to the claims released by this Settlement Agreement was
4 separately bargained for and was a key element of the Settlement.

5 47. By operation of the Final Approval Order and Final Judgment, the Action will be
6 dismissed with prejudice.

7 48. Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive
8 remedy for any and all Released Claims of Class Representative and Settlement Class Members;
9 and (b) Class Representative and Settlement Class Members stipulate to be and shall be
10 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against
11 Released Parties in any federal or state court or tribunal any and all Released Claims.

12 **VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

13 49. Class Counsel may apply to the Court for an award of reasonable attorneys' fees
14 and costs not to exceed \$400,000. Class Counsel approximates that it will seek \$25,000 in costs
15 and \$375,000 in fees, but may apply in different amounts not to exceed \$400,000. Cognosphere
16 will take no position on Class Counsel's application and agrees to pay the amount of fees and costs
17 determined by the Court, up to \$400,000. These terms regarding fees and costs were negotiated
18 and agreed to by the Parties only after full agreement was reached as to all other material terms.

19 50. Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$400,000,
20 shall be payable by Cognosphere, as ordered, within the later of (a) twenty-one (21) days after the
21 Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration
22 of all deadlines in which a class member or any person may challenge final approval. In no event
23 shall Cognosphere be required to make a payment of attorneys' fees if the Settlement Agreement
24 is not finally approved.

25 51. The Parties agree that the Class Representative may apply to the Court for a Service
26 Award, which shall not exceed \$1,000, for her services as Class Representative. The Parties agree
27 that the decision whether or not to award any such payment, and the amount of that payment, rests
28 in the exclusive discretion of the Court. Cognosphere agrees to pay the amount determined by the

1 Court, up to \$1,000. Class Representative understands and acknowledges that she may receive no
2 monetary payment, and her agreement to the Settlement is not conditioned on the possibility of
3 receiving monetary payment. Any Service Award, as awarded by the Court, shall be payable by
4 Cognosphere as ordered, within the later of (a) twenty-one (21) days after the Court's order
5 awarding fees and expenses, or (b) final approval of the settlement and the expiration of all
6 deadlines in which a class member or any person may challenge final approval. In no event shall
7 Cognosphere be required to make a payment of an incentive award if the Settlement Agreement is
8 not finally approved.

9 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
10 **COGNOSPHERE'S RESERVATION OF RIGHTS**

11 52. This Settlement Agreement may be amended or modified only by a written
12 instrument signed by or on behalf of all Parties or their respective successors-in-interest and
13 approval of the Court; provided, however that, after entry of the Final Approval Order and Final
14 Judgment, the Parties may by written agreement effect such amendments, modifications, or
15 expansions of this Settlement Agreement and its implementing documents (including all
16 Exhibits hereto) without further approval by the Court if such changes are consistent with the
17 Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the
18 rights of Settlement Class Members under this Settlement Agreement.

19 53. This Settlement Agreement and any Exhibits attached hereto constitute the entire
20 agreement among the Parties, and no representations, warranties, or inducements have been made
21 to any Party concerning this Settlement Agreement or its Exhibits other than the representations,
22 warranties, and covenants covered and memorialized in such documents.

23 54. In the event the terms or conditions of this Settlement Agreement are materially
24 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after
25 such modification may declare this Settlement Agreement null and void. For purposes of this
26 Paragraph, material modifications include any modifications to the definitions of the Settlement
27 Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the
28 terms of the Settlement consideration described in Paragraph IV.39 and/or any requirement of

1 notice to the Settlement Class. In the event of any material modification by any court, and before
2 exercising their unilateral option to withdraw from this Settlement Agreement pursuant to this
3 Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to
4 reach an agreement as to how best to effectuate the court-ordered modification.

5 55. In the event that a Party exercises his/her/its option to withdraw from and terminate
6 this Settlement Agreement pursuant to Paragraph 54, then the Settlement proposed herein shall
7 become null and void and shall have no force or effect, the Parties shall not be bound by this
8 Settlement Agreement, and the Parties will be returned to their respective positions existing on
9 March 30, 2023.

10 56. If this Settlement Agreement is not approved by the Court or the Settlement
11 Agreement is terminated or fails to become effective in accordance with the terms of this
12 Settlement Agreement, the Parties will be restored to their respective positions in the Action
13 existing on March 30, 2023. In such event, the terms and provisions of this Settlement Agreement
14 and the memorandum of understanding will have no further force and effect with respect to the
15 Parties and will not be used in this Action or in any other proceeding for any purpose, and any
16 Judgment or order entered by the Court in accordance with the terms of this Settlement Agreement
17 will be treated as vacated.

18 57. The procedure for and the allowance or disallowance by the Court of any
19 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,
20 and the procedure for any payment to the class representative, are not part of the settlement of the
21 Released Claims as set forth in the Settlement Agreement, and are to be considered by the Court
22 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the
23 settlement of the Released Claims as set forth in the Settlement Agreement. Any such separate
24 order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees
25 and costs and/or payment to the class representative, or any separate appeal from any separate
26 order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them,
27 shall not operate to terminate or cancel the Settlement Agreement or otherwise affect or delay the
28 finality of the final approval order and final judgment approving the Settlement.

1 58. The terms of this Agreement relating to the Attorneys' Fees and Costs Award and
2 Service Awards were negotiated and agreed to by the Parties only after full agreement was reached
3 as to all other material terms of the proposed Settlement, including, but not limited to, any terms
4 relating to the relief to the Settlement Class.

5 59. Cognosphere denies the material factual allegations and legal claims asserted in the
6 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
7 statements, acts or omissions alleged in the Action. Similarly, this Settlement Agreement provides
8 for no admission of wrongdoing or liability by any of the Released Parties. This Settlement is
9 entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.
10 For the avoidance of doubt, Cognosphere does not acknowledge the propriety of certifying the
11 Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this
12 Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does
13 not occur, Cognosphere does not waive, but rather expressly retains and reserves, all rights it had
14 prior to the execution of this Settlement Agreement to challenge all claims and allegations in the
15 Action upon all procedural and factual grounds, including, without limitation, the right to
16 challenge the certifiability of any class claims certified in the Action, and to assert any and all
17 other potential defenses or privileges that were available to it at that time, including but not limited
18 to challenging the Court's subject matter jurisdiction over any claims asserted in the Action.
19 Cognosphere's agreement to this Settlement does not constitute an admission that certification is
20 appropriate outside of the context of this Settlement. The Settlement Class Representative and
21 Class Counsel agree that Cognosphere retains and reserves these rights, and agree not to take a
22 position to the contrary. Class Counsel shall not refer to or invoke Cognosphere's decision to
23 accept the certified class for purposes of settlement if the Effective Date does not occur and the
24 Action is later litigated and certification is contested by Cognosphere.

25 **IX. MISCELLANEOUS PROVISIONS**

26 60. The Parties intend the Settlement Agreement to be a final and complete resolution
27 of all disputes between them with respect to the Action. The Settlement Agreement compromises
28

1 claims that are contested and will not be deemed an admission by Cognosphere or Class
2 Representative as to the merits of any claim or defense.

3 61. Unless otherwise specifically provided herein, all notices, demands, or other
4 communications given hereunder shall be sent by email and First Class mail to the following:

5 To Class Representative and the Settlement Class:

6 L. Timothy Fisher
7 ltfisher@bursor.com
8 Bursor & Fisher, P.A.
9 1990 N. California Blvd.
10 Walnut Creek, CA 94596

11 Philip L. Fraietta
12 pfraietta@bursor.com
13 Alec M. Leslie
14 aleslie@bursor.com
15 888 7th Ave.
16 New York, NY 10019

17 To Counsel for Cognosphere:

18 Ajay S. Krishnan
19 Keker, Van Nest & Peters LLP
20 633 Battery Street
21 San Francisco, CA 94111-1809
22 akrishnan@keker.com

23 Michelle Ybarra
24 Keker, Van Nest & Peters LLP
25 633 Battery Street
26 San Francisco, CA 94111-1809
27 mybarra@keker.com

28 62. All of the Exhibits to this Agreement are an integral part of the Settlement and are
incorporated by reference as though fully set forth herein.

63. The Parties agree that the recitals are contractual in nature and form a material part
of this Settlement Agreement.

64. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the
circumstances under which this Settlement Agreement was made or executed. This Settlement
Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the

1 terms and conditions of this Settlement Agreement will control over any other written or oral
2 agreements.

3 65. Unless otherwise noted, all references to “days” in this Agreement shall be to
4 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or
5 federal legal holiday, such date or deadline shall be on the first Business Day thereafter.

6 66. The Settlement Agreement, the Settlement, all documents, orders, and other
7 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release
8 or other statement or report by the Parties or by others concerning the Settlement Agreement, the
9 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
10 documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the
11 Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute
12 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of
13 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the
14 Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense
15 asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of
16 certifying a litigation class or any decision by any court regarding the certification of a class, and/or
17 (v) whether the consideration to be given in this Settlement Agreement represents the relief that
18 could or would have been obtained through trial in the Action, in any trial, civil, criminal,
19 administrative, or other proceeding of the Action or any other action or proceeding in any court,
20 administrative agency, or other tribunal.

21 67. The Parties to this Action or any other Released Parties shall have the right to file
22 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
23 may be brought against them in order to support a defense or counterclaim based on principles of
24 res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any
25 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26 68. The Parties agree that the consideration provided to the Settlement Class and the
27 other terms of the Settlement Agreement were negotiated at arm’s length, in good faith by the
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1 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent
2 legal counsel, and with the assistance of an independent, neutral mediator.

3 69. The Class Representative and Class Counsel have concluded that the Settlement set
4 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class
5 Representative asserted against Cognosphere, including the claims on behalf of the Settlement
6 Class, and that it promotes the best interests of the Settlement Class.

7 70. To the extent permitted by law, all agreements made and orders entered during the
8 course of the Action relating to the confidentiality of information shall survive this Settlement
9 Agreement.

10 71. The waiver by one Party of any breach of this Settlement Agreement by any other
11 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
12 Agreement.

13 72. This Settlement Agreement may be executed in counterparts, each of which shall
14 be deemed an original and all of which, when taken together, shall constitute one and the same
15 instrument. Signatures submitted by email or facsimile shall also be considered originals. The
16 date of execution shall be the latest date on which any Party signs this Settlement Agreement.

17 73. The Parties hereto and their respective counsel agree that they will use their best
18 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,
19 including to obtain a Final Approval Order and Final Judgment approving the Settlement.

20 74. This Settlement Agreement shall be binding upon and shall inure to the benefit of
21 the successors and assigns of the Parties hereto, including any and all Released Parties and any
22 corporation, partnership, or other entity into or with which any Party hereto may merge,
23 consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

24 75. This Settlement Agreement was jointly drafted by the Parties. Class
25 Representative, Settlement Class Members, and/or Cognosphere shall not be deemed to be the
26 drafters of this Settlement Agreement or of any particular provision, nor shall they argue that any
27 particular provision should be construed against its drafter or otherwise resort to the *contra*
28 *proferentem* canon of construction. Accordingly, this Settlement Agreement should not be

1 construed in favor of or against one Party as to the drafter, and the Parties agree that the provisions
2 of California Civil Code § 1654 and common law principles of construing ambiguities against the
3 drafter shall have no application.

4 76. Any and all Exhibits to this Settlement Agreement, which are identified in the
5 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully
6 incorporated herein by this reference.

7 77. This Settlement Agreement shall be governed by and construed in accordance with
8 the laws of the State of California, without regard to choice of law principles. Any action to
9 enforce the terms of this Settlement Agreement shall be filed in the Superior Court of the State of
10 California.

11 78. The headings used in this Settlement Agreement are inserted merely for the
12 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement
13 Agreement.

14 79. In construing this Settlement Agreement, the use of the singular includes the plural
15 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

16 80. Class Representative and Class Counsel will not issue any press release or
17 communicate with the media regarding the Settlement or the Action without prior approval of
18 Cognosphere. However, if Class Representative or Class Counsel receive an inquiry from any
19 third party (excluding Settlement Class Members who identify themselves as such), they may only
20 make affirmative statements relating to the Settlement as follows: "The parties have reached a
21 mutually agreeable resolution to a disputed set of class claims that is fair, adequate, and
22 reasonable." Class Counsel reserves all rights to communicate with individual members of the
23 Settlement Class to assist them in understanding the Settlement and nothing herein shall be
24 construed as restricting those rights and responsibilities. Similarly, nothing in this Agreement will
25 affect Cognosphere's right to communicate with individual members of the Settlement Class
26 relating to matters other than the Action or the proposed Settlement.

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1 81. The provision of the confidentiality agreement entered into with respect to the
2 mediation process concerning this matter is waived for the limited purpose of permitting the Parties
3 to confirm the details of the mediation process that are included in this Agreement.

4 82. The Class Representative further acknowledges, agrees, and understands that: (i)
5 she has read and understands the terms of this Agreement; (ii) she has been advised in writing to
6 consult with an attorney before executing this Agreement; and (iii) she has obtained and considered
7 such legal counsel as she deems necessary. The Class Representative enters into this Settlement
8 Agreement with the full ratification and authorization of her guardian, Juanita James.

9 83. All of the Parties warrant and represent that they are agreeing to the terms of this
10 Settlement Agreement based upon the legal advice of their respective attorneys, that they have
11 been afforded the opportunity to discuss the contents of this Settlement Agreement with their
12 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
13 accepted.

14 84. Each Party to this Settlement Agreement warrants that he or it is acting upon her or
15 its independent judgment and upon the advice of her or its counsel, and not in reliance upon any
16 warranty or representation, express or implied, of any nature or any kind by any other Party, other
17 than the warranties and representations expressly made in this Settlement Agreement.

18 85. Each Counsel or other person executing this Settlement Agreement or any of its
19 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.
20 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class
21 Representative to take all appropriate action required or permitted to be taken by the Settlement
22 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to
23 enter into any modifications or amendments to this Settlement Agreement on behalf of the
24 Settlement Class that Class Counsel and Class Representative deem appropriate.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
duly executed this Settlement Agreement as of the date set forth below.

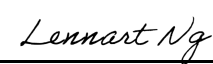
Dated: May 1, 2023

KEKER, VAN NEST & PETERS LLP

By: 


Dated: April 28, 2023

COGNOSPHERE, PTE. LTD.

By: 

Dated: Apr 28, 2023, 2023

PLAINTIFF C.J.

By: 
Juanita M. James (Apr 28, 2023 07:35 PDT)

Dated: Apr 28, 2023, 2023

BURSOR & FISHER, P.A.

By: 

EXHIBIT A

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

C.J., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

1 The Court has considered the Class Action Settlement Agreement and Release between
2 Plaintiff C.J. (“Plaintiff”) and Defendant Cognosphere, Pte. Ltd., (“Defendant” or
3 “Cognosphere”), dated ____, 2023 (“Settlement Agreement”), the motion for an order finally
4 approving the Settlement Agreement, the record in this Action, the arguments and
5 recommendations made by counsel, and the requirements of the law. The Court finds and orders
6 as follows:

7 **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

8 1. The Settlement Agreement is approved under California Rules of Court Rule 3.769
9 and Code of Civil Procedure § 382. The Court finds that the Settlement Agreement and the
10 Settlement it incorporates appear fair, reasonable, and adequate, and its terms are within the range
11 of reasonableness. The Settlement Agreement was entered into at arm’s-length by experienced
12 counsel after extensive negotiations spanning months, including with the assistance of a third-
13 party mediator. The Court finds that the Settlement Agreement is not the result of collusion.

14 **II. DEFINED TERMS**

15 2. For the purposes of this Final Approval Order and Final Judgment (“Order”), the
16 Court adopts all defined terms as set forth in the Settlement Agreement.

17 **III. NO ADMISSIONS AND NO EVIDENCE**

18 3. This Order, the Settlement Agreement, the Settlement provided for therein, and
19 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
20 or construed as evidence of, a presumption, concession, or an admission by any Party or any of
21 the Released Parties of wrongdoing, to establish a violation of any law or duty, an admission that
22 any of the practices at issue violate any laws or require any disclosures, any liability or non-
23 liability, the certifiability or non-certifiability of a litigation class in this case, or any
24 misrepresentation or omission in any statement or written document approved or made by any
25 Party.

1 **IV. JURISDICTION**

2 4. For the purposes of the Settlement of the Action, the Court finds it has subject
3 matter and personal jurisdiction over the Parties, including all Settlement Class Members, and
4 venue is proper.

5 **V. CLASS CERTIFICATION OF RULE 23(B)(2) CLASS FOR SETTLEMENT**
6 **PURPOSES ONLY**

7 5. The Court finds and concludes that, for the purposes of approving this Settlement
8 Agreement only, the proposed Settlement Class meets the requirements for certification under
9 California Code of Civil Procedure § 382: (a) the Settlement Class is so numerous that joinder of
10 all members is impracticable; (b) there are questions of law or fact common to the Settlement
11 Class; (c) the claims or defenses of the Settlement Class Representative are typical of the claims
12 or defenses of the Settlement Class; (d) Settlement Class Representative and Class Counsel will
13 fairly and adequately protect the interests of the Settlement Class because Settlement Class
14 Representative have no interests antagonistic to the Settlement Class, and have retained counsel
15 who are experienced and competent to prosecute this matter on behalf of the Settlement Class;
16 and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so that
17 final injunctive relief is appropriate respecting the Settlement Class as a whole.

18 6. The Settlement Agreement was the result of negotiations conducted by the Parties,
19 over the course of multiple months, including with the assistance of a neutral
20 mediator. Settlement Class Representative and Class Counsel maintain that the
21 Action and the claims asserted therein are meritorious and that Settlement Class
22 Representative and the Class would have prevailed at trial. Defendant denies the
23 material factual allegations and legal claims asserted by Settlement Class
24 Representative in this Action, maintains that, other than for settlement purposes, a
25 class would not be certifiable under any Rule, and that the Settlement Class
26 Representative and Class Members would not prevail at trial. Notwithstanding the
27 foregoing, the Parties have agreed to settle the Action pursuant to the provisions of
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1 the Settlement Agreement, after considering, among other things: (a) the benefits
2 to the Settlement Class Representative and the Settlement Class under the terms of
3 the Settlement Agreement; (b) the uncertainty of being able to prevail at trial; (c)
4 the uncertainty relating to Defendant's defenses and the expense of additional
5 motion practice in connection therewith; (d) obstacles to establishing entitlement
6 to class-wide relief; (e) the attendant risks of litigation, especially in complex
7 actions such as this, as well as the difficulties and delays inherent in such litigation
8 and appeals; and (f) the desirability of consummating the Settlement promptly in
9 order to provide effective relief to the Settlement Class Representative and the
10 Settlement Class.

11 7. The Court accordingly certifies, for settlement purposes only, a class consisting of
12 all persons in the United States of America who made a purchase in Genshin Impact while under
13 the age of 18. Excluded from the Settlement Class are (i) all Persons who are directors, officers,
14 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by
15 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any
16 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate
17 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
18 immediate family and staff..

19 **VI. NOTICE**

20 8. Direct notice of the settlement is not required here because the Settlement
21 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
22 monetary or damages claims of the Class, and thus the settlement expressly preserves the
23 individual rights of class members to pursue monetary claims against the defendant. Nonetheless,
24 pursuant to the Settlement Agreement, documents pertaining to the Settlement, preliminary
25 approval, and final approval (including Plaintiffs' motion for attorneys' fees and incentive awards
26 and any opposition or reply papers thereto), were posted on Class Counsel's public website.
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1 **VII. CLAIMS COVERED AND RELEASES**

2 9. This Order constitutes a full, final and binding resolution between the Class
3 Representative’s Releasing Parties, on behalf of themselves and the Settlement Class Members,
4 and the Released Parties. This Release shall be applied to the maximum extent permitted by law.

5 10. Upon the Effective Date and by operation of this Order, the Settlement Class
6 Representative’s Releasing Parties will fully, finally, and forever release, relinquish, and
7 discharge any and all Settlement Class Representative’s Released Claims, including claims for
8 monetary relief and damages, known and unknown, as well as provide a waiver under California
9 Civil Code Section 1542. Settlement Class Representative’s Releasing Parties are forever
10 enjoined from taking any action seeking any relief against the Released Parties based on any
11 Settlement Class Representative’s Released Claims.

12 11. Upon the Effective Date and by operation of this Order, the Releasing Parties will
13 fully, finally, and forever release, relinquish, and discharge the Settlement Class Members’
14 Released Claims,as well as provide a waiver under California Civil Code Section 1542) including
15 any and all claims for injunctive and/or declaratory relief of any kind or character, at law or
16 equity, known or unknown, preliminary or final, under any other federal or state law or rule of
17 procedure, up until and including the Effective Date, that result from, arise out of, are based on,
18 or relate in any way to the practices and claims that were alleged in the Action, except that,
19 notwithstanding the foregoing, the Releasing Parties do not release claims for monetary relief or
20 damages. The Releasing Parties are forever enjoined from taking any action seeking injunctive
21 and/or declaratory relief against the Released Parties based on any Settlement Class Members’
22 Released Claims.

23 12. The Settlement Agreement and this Order shall be the exclusive remedy for any
24 and all Released Claims of the Settlement Class Representatives, Settlement Class Members, and
25 Cognosphere.

26 **VIII. INJUNCTIVE RELIEF**

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2 13. Cognosphere will agree to include language in substantially the following form in
3 its Terms of Service applicable to U.S. players (currently at
4 <https://genshin.hoyoverse.com/en/company/terms>):

- 5 a. “You acknowledge and agree that you are not entitled to a refund for any Virtual
6 Currency, except as otherwise required by applicable law.”

7 14. Cognosphere will, in processing any direct requests for refunds of in-game
8 purchases:

- 9 a. For platforms that process refund requests independently from Cognosphere (e.g.,
10 Apple App Store, Google Play Store, PlayStation Store), in its standard response
11 redirecting users to those platforms, add language in substantially the following
12 form: “Please note that store refund policies may vary based on the location of
13 user and the age of user, including legal minority, at the time of purchase, as may
14 be required by applicable law,” provided, however, that Cognosphere may include
15 other language as well while redirecting users to those platforms.
- 16 b. For all other platforms , and refund requests for which Cognosphere elects to
17 process itself, in its standard response for U.S. users seeking a refund who indicate
18 that a minor was involved in the situation that led to the refund request,
19 Cognosphere will implement policies to determine whether the in-game purchase
20 was made when the user was a minor without parental consent, except as
21 prohibited by local law.

22 15. Cognosphere will create a public-facing “help page” (or add to existing pages to
23 the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods
24 purchases:

- 25 a. Add specific links to platforms that process refund requests independently from
26 Cognosphere In-App/In-Game Purchase refund policies for reference;
- 27 b. Add language in substantially the following form: “Please note that store refund
28 policies may vary based on the location of user and the age of user, including legal

1 minority, at the time of purchase, as may be required by applicable law,” provided,
2 however, that Cognosphere may include other language as well while redirecting
3 users to those platforms so long as the additional language does not conflict with
4 the quoted required language in this Paragraph.

5 16. Cognosphere will link to these “help pages” on the website within its FAQ section.

6 17. For all refund requests processed by Cognosphere referenced in ¶ 5(b)(ii),
7 Cognosphere will implement a dedicated process to address refund requests to determine whether
8 a refund is appropriate, which may include, but are not limited to, the following considerations:

- 9 a. reasonable confirmation that the purchaser is a minor;
10 b. The minor’s legal guardian agrees that Cognosphere may terminate the minor’s
11 account and will prohibit future gameplay by the minor and agrees to be
12 financially responsible for any future purchases by the minor;
13 c. Cognosphere may require identification of the minor and the minor’s legal
14 guardian to prevent the minor’s access to further gameplay.
15 d. Cognosphere is not required to provide refunds for purchases made on an adult’s
16 account. The personnel staffing this dedicated process will receive further training
17 regarding how to analyze and process such refund requests in accordance with
18 applicable law.

19 18. The parties will acknowledge that Cognosphere’s refund policies and practices
20 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

21 **IX. ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARDS**

22 19. The Court has also considered Plaintiff’s Motion for Attorneys’ Fees, Costs,
23 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the
24 payment of attorneys’ fees, costs, and expenses in the amount of \$400,000 is reasonable under
25 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*
26 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,
27 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class
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1 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the
2 manner provided by the terms of the Settlement Agreement.

3 20. The Court has also considered Plaintiff's Motion and supporting declarations for
4 an incentive award to the Class Representative, C.J. The Court adjudges that the payment of an
5 incentive award in the amount of \$1,000 to C.J. to compensate her for her efforts and
6 commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the
7 circumstances of this case. Such payment shall be made pursuant to and in the manner provided
8 by the terms of the Settlement Agreement.

9 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**
10 **MODIFICATIONS OF AGREEMENT**

11 21. By this Order, the Parties are hereby authorized to implement the terms of the
12 Settlement Agreement. After the date of entry of this Order, the Parties may by written
13 agreement effect such amendments, modifications, or expansions of the Settlement Agreement
14 and its implementing documents (including all exhibits thereto) without further approval by the
15 Court if such changes are consistent with terms of this Order and do not materially alter, reduce,
16 or limit the rights of Settlement Class Members under the Settlement Agreement.

17 **XI. TERMINATION**

18 22. In the event that the Settlement Agreement is terminated pursuant to the terms of
19 the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall
20 have no further force or effect, and shall not be used in any action or other proceedings for any
21 purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
22 survive termination; (b) this matter will revert to the status that existed before execution of the
23 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
24 Parties' settlement discussions, negotiations, or documentation (including any briefs filed in
25 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence
26 for any purpose in any action or other proceeding other than as may be necessary to enforce the
27 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or
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concession by any Party regarding the validity of any Released Claim or the propriety of certifying any class against Cognosphere, or (iii) be deemed an admission or concession by any Party regarding the truth or falsity of any facts alleged in the Action or the availability or lack of availability of any defense to the Released Claims.

XII. RETENTION OF JURISDICTION

23. The Court shall retain jurisdiction over any claim relating to the Settlement Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims arising out of a breach of the Settlement Agreement) as well as any future claims by any Settlement Class Member relating in any way to the Released Claims.

XIII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

24. By operation of this Order, this Action is hereby dismissed with prejudice.

DATED: _____

EXHIBIT B

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

C.J., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT**

1 WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an
2 order preliminarily approving the Settlement of this Action pursuant to the settlement
3 agreement fully executed on or about _____ (the “Agreement”), which, together with its
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as
7 follows:

8 1. The motion is GRANTED.

9 2. Capitalized terms not otherwise defined herein have the meanings set forth in
10 the Settlement Agreement.

11 3. All proceedings in the Action, other than proceedings necessary to carry out or
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13 4. The Court has subject matter jurisdiction over the Action, and personal
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code
15 § 395.

16 5. The Action is preliminarily certified as a class action, for settlement purposes
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are
20 questions of law and fact that are common to the Class, and those questions of law and fact
21 common to the Class predominate over any questions affecting any individual Class Member;
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action
26 may not be certified as a class action, other than for settlement purposes. The Court also
27 concludes that, because the Action is being settled rather than litigated, the Court “need not
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1 inquire whether the case, if tried, would present intractable management problems.” *See*
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 6. The Settlement Class shall consist of “All persons in the United States of
4 America who made a purchase in Genshin Impact while under the age of 18.”

5 7. Upon preliminary review, the Court finds that the Agreement, and the
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is
8 sufficient to warrant sending notice to the Class.

9 8. Certification of the Settlement Class shall be solely for settlement purposes,
10 without prejudice to the Parties, and with no other effect upon the Action. In the event the
11 Settlement Agreement is not finally approved by this Court, is terminated, or otherwise does
12 not take effect, the Parties preserve all rights and defenses regarding class certification.

13 9. The Court hereby appoints Plaintiff C.J. as Class Representative to represent the
14 Settlement Class.

15 10. The Court hereby appoints Philip L. Fraietta and Alec M. Leslie of Bursor &
16 Fisher, P.A. as Class Counsel for the Settlement Class.

17 11. Direct notice of the settlement is not required here because the Settlement
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the
20 individual rights of class members to pursue monetary claims against the Defendant.
21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s
24 public website (<http://www.https://www.bursor.com/>).

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*C.J. v. Cognosphere Pte. Ltd.*, Case No. _____); (2) the Settlement Class
2 Member's full legal name and mailing address; (3) the personal signature of the Settlement
3 Class member; (4) the grounds for any objection; (5) the name and contact information of any
4 and all attorneys representing, advising, or assisting with the comment or objection, or who
5 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement
6 Class Member intends to appear at the Final Approval Hearing, either personally or through
7 counsel. Written objections must be served on the Settlement Administrator as follows:

8 C.J. v. Cognosphere Pte. Ltd.
9 c/o [Settlement Administrator]
[Insert Settlement Administrator address]

10 The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each
11 other copies of any and all objections that might come into their possession.

12
13 Class Members may also appear at the final approval hearing to state their objections,
14 whether or not they have made a written objection or given a notice to appear.

15 13. To be considered, written comments or objections must be submitted within 60
16 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
17 Approval Hearing, whether individually or through counsel, unless written notice of the Class
18 Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for
19 mail to the Court within 60 days after date of entry of this Order.

20 14. The date of the postmark on the envelope containing the written objection shall
21 be the exclusive means used to determine whether an objection has been timely submitted.
22 Class Members who fail to mail timely written objections in the manner specified above shall
23 be deemed to have waived any objections and shall be forever barred from objecting to the
24 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
25 appeal, collateral attack, or otherwise.

26 15. The Court will hold a final approval hearing on _____, 2023 at _____
27 a.m./p.m, in the Superior Court of California, County of Monterey, located at ADDRESS, in
28 Courtroom _____. The purposes of the final approval hearing will be to: (i) determine whether

1 the proposed Settlement Agreement should be finally approved by the Court as fair, reasonable,
2 adequate, and in the best interests of the Settlement Class; (ii) determine whether judgment
3 should be entered pursuant to the Settlement Agreement, dismissing the Action with prejudice
4 and releasing the Released Persons of all claims as stated in the Settlement Agreement; (iii)
5 determine whether the Settlement Class should be finally certified; (iv) rule on Class Counsel's
6 motion for attorneys' fees, costs and service awards; (v) consider any properly filed objections;
7 and (vi) consider any other matters necessary in connection with the final approval of the
8 Settlement Agreement.

9 16. Class Counsel's application for attorneys' fees, costs and expenses shall be filed
10 and served no later than thirty (30) days after the Court's order of preliminary approval. Any
11 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court's
12 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days
13 after the Court's order of preliminary approval.

14 17. The motion in support of final approval of the settlement shall be filed and
15 served no later than thirty (30) days after the Court's order of preliminary approval. Any
16 opposition or objection shall be filed no later than sixty (60) days after the Court's order of
17 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the
18 Court's order of preliminary approval.

19 18. The Court may, in its discretion, modify the date and/or time of the final
20 approval hearing, and may order that this hearing be held remotely or telephonically. In the
21 event the Court changes the date, time, and/or the format of the final approval hearing, the
22 Parties shall ensure that the updated information is posted on the Class Counsel's public
23 website.

24 19. If the Settlement Agreement, including any amendment made in accordance
25 therewith, is not approved by the Court or shall not become effective for any reason
26 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection
27 therewith (including this Preliminary Approval Order and any judgment entered herein), shall
28

1 be terminated and shall become null and void and of no further force and effect except for
2 (i) any obligations to pay for any expense incurred in connection with Notice and Other
3 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or
4 provisions that are expressly designated in the Settlement Agreement to survive the termination
5 of the Settlement Agreement.

6 20. Pending final determination of whether the Settlement Agreement should be
7 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from
8 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as
9 such action asserts claims stated in Section VI of the Settlement Agreement, directly or
10 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is
11 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval
12 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this
13 Court's jurisdiction.

14 21. This Preliminary Approval Order, the Settlement Agreement, the fact that a
15 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings
16 relating to the Settlement, and any matters arising in connection with settlement negotiations,
17 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered
18 or received against Cognosphere as evidence or an admission or concession of: (a) the truth of
19 any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of
20 Cognosphere or breach of any duty on the part of Cognosphere; or (c) that this Action or any
21 other action may be properly certified as a class action for litigation, non-settlement purposes.
22 This order is not a finding of the validity or invalidity of any of the claims asserted or defenses
23 raised in the Action.

24 22. The Court shall retain jurisdiction over any claim relating to the Settlement
25 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
26 arising out of a breach of the Settlement Agreement) as well as any future claims by any
27 Settlement Class Member relating in any way to the Released Claims.
28

1 23. The Court may, for good cause, extend any of the deadlines set forth in this
2 Preliminary Approval Order without further notice to Settlement Class Members. Without
3 further order of the Court, the Parties may agree to make non-material modifications in
4 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.
5

6 IT IS SO ORDERED.

7 Date: _____

8 _____



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FIRM RESUME

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million-dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act. During the pendency of the defendant's appeal, the case settled for \$75.6 million, the largest settlement in the history of the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,

5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,
6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.,* (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,

23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,
24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,

40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines due to the novel coronavirus, COVID-19, and whose tickets were not refunded,
41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of waste collection customers that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19,
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws,
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer,
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach,
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act,
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products,
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19,

54. *Sahlin v. Hospital Housekeeping Systems, LLC* (Cir. Ct. Williamson Cnty. May 21, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
55. *Landreth v. Verano Holdings LLC, et al.* (Cir. Ct. Cook Cnty. June 2, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
56. *Rocchio v. Rutgers, The State University of New Jersey*, (Sup. Ct., Middlesex Cnty. October 27, 201), to represent a certified nationwide class of students for fee refunds after their classes were moved online by Rutgers due to the novel coronavirus, COVID-19,
57. *Malone v. Western Digital Corp.*, (N.D. Cal. Dec. 22, 2021), to represent a class of consumers who purchased hard drives that were allegedly deceptively advertised,
58. *Jenkins v. Charles Industries, LLC*, (Cir. Ct. DuPage Cnty. Dec. 21, 2021) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
59. *Frederick v. Examsoft Worldwide, Inc.*, (Cir. Ct. DuPage Cnty. Jan. 6, 2022) to represent a certified class of exam takers who used virtual exam proctoring software, in alleged violation of the Illinois Biometric Information Privacy Act,
60. *Isaacson v. Liqui-Box Flexibles, LLC, et al.*, (Cir. Ct. Will Cnty. Jan. 18, 2022) to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
61. *Goldstein et al. v. Henkel Corp.*, (D. Conn. Mar. 3, 2022) to represent a proposed class of purchasers of Right Guard-brand antiperspirants that were allegedly contaminated with benzene,
62. *McCall v. Hercules Corp.*, (N.Y. Sup. Ct., Westchester Cnty. Mar. 14, 2022) to represent a certified class of who laundry card purchasers who were allegedly subjected to deceptive practices by being denied cash refunds,
63. *Lewis v. Trident Manufacturing, Inc.*, (Cir. Ct. Kane Cnty. Mar. 16, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act,
64. *Croft v. Spinx Games Limited, et al.*, (W.D. Wash. Mar. 31, 2022) to represent a certified class of Washington residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Washington law,
65. *Fischer v. Instant Checkmate LLC*, (N.D. Ill. Mar. 31, 2022) to represent a certified class of Illinois residents whose identities were allegedly used without their consent in alleged violation of the Illinois Right of Publicity Act,
66. *Rivera v. Google LLC*, (Cir. Ct. Cook Cnty. Apr. 25, 2022) to represent a certified class of Illinois residents who appeared in a photograph in Google Photos, in alleged violation of the Illinois Biometric Information Privacy Act,
67. *Loftus v. Outside Integrated Media, LLC*, (E.D. Mich. May 5, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,

68. *D'Amario v. The University of Tampa*, (S.D.N.Y. June 3, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by The University of Tampa due to the novel coronavirus, COVID-19,
69. *Fittipaldi v. Monmouth University*, (D.N.J. Sept. 22, 2022) to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Monmouth University due to the novel coronavirus, COVID-19,
70. *Armstead v. VGW Malta Ltd. et al.* (Cir. Ct. Henderson Cnty. Oct. 3, 2022) to present a certified class of Kentucky residents who lost money playing mobile applications games that allegedly constituted illegal gambling under Kentucky law,
71. *Cruz v. The Connor Group, A Real Estate Investment Firm, LLC*, (N.D. Ill. Oct. 26, 2022) to represent a certified class of workers who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act;
72. *Delcid et al. v. TCP HOT Acquisitions LLC et al.* (S.D.N.Y. Oct. 28, 2022) to represent a certified nationwide class of purchasers of Sure and Brut-brand antiperspirants that were allegedly contaminated with benzene,
73. *Kain v. The Economist Newspaper NA, Inc.* (E.D. Mich. Dec. 15, 2022) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
74. *Strano v. Kiplinger Washington Editors, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
75. *Moeller v. The Week Publications, Inc.* (E.D. Mich. Jan. 6, 2023) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act.

SCOTT A. BURSOR

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million

to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

Representative Cases

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory

and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

L. TIMOTHY FISHER

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind. In 2019, Mr. Fisher served as trial counsel with Mr. Bursor and his partner Yeremey Krivoshey in *Perez. v. Rash Curtis & Associates*, where the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit, the United States District Courts for the Northern, Central, Southern and Eastern Districts of California, the Northern District of Illinois, the Eastern District of Michigan, and the Eastern District of Missouri. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's *California Civil Jury Instruction Companion Handbook* (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

Representative Cases

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

In re Cellphone Termination Fee Cases - Handset Locking Actions (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

In re Cellphone Termination Fee Cases - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination

fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

Selected Published Decisions

Melgar v. Zicam LLC, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

Dei Rossi v. Whirlpool Corp., 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

Bayol v. Zipcar, Inc., 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

Forcellati v. Hyland's, Inc., 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

Forcellati v. Hyland's Inc., 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

Hendricks v. StarKist Co., 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

Dei Rossi v. Whirlpool Corp., 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

Forcellati v. Hyland's Inc., 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

Clerkin v. MyLife.com, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants' motion to dismiss in case alleging false and misleading advertising by a social networking company).

In re Cellphone Termination Fee Cases, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

Gatton v. T-Mobile USA, Inc., 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

Selected Class Settlements

Melgar v. Zicam (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

Gastelum v. Frontier California Inc. (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late

fees.

West v. California Service Bureau, Inc. (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

Gregorio v. Premier Nutrition Corp. (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

Morris v. SolarCity Corp. (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

Retta v. Millennium Products, Inc. (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

Forcellati v. Hyland's (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

Dei Rossi v. Whirlpool (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

In Re NVIDIA GTX 970 Graphics Chip Litigation (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co. (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

In re Zakskorn v. American Honda Motor Co. Honda (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

Correa v. Sensa Products, LLC (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

In re Pacific Bell Late Fee Litigation (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

In re Haier Freezer Consumer Litigation (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

Thomas v. Global Vision Products, Inc. (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

Guyette v. Viacom, Inc. (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

JOSEPH I. MARCHESE

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

Selected Published Decisions:

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Boelter v. Hearst Communications, Inc., 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

In re Michaels Stores Pin Pad Litigation, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer's motion to dismiss its customers' state law consumer protection and privacy claims in data breach putative class action.

Selected Class Settlements:

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In re Scotts EZ Seed Litigation, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

Rodriguez v. Citimortgage, Inc., Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

O'Brien v. LG Electronics USA, Inc., et al., Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances' Energy Star qualification.

SARAH N. WESTCOT

Sarah N. Westcot is the Managing Partner of Bursor & Fisher's Miami office. She focuses her practice on consumer class actions, complex business litigation, and mass torts.

She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience. Sarah served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Sarah also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida). She also serves on the Plaintiffs' Executive Committee in *In re Apple Inc. App Store Simulated Casino-Style Games Litigation*, MDL No. 2985 (N.D. Cal.) and *In Re: Google Play Store Simulated Casino-Style Games Litigation*, MDL No. 3001 (N.D. Cal.).

Sarah is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of

California, the United States District Courts for the Southern and Middle Districts of Florida, and the bars of the United States Courts of Appeals for the Second, Eighth, and Ninth Circuits.

Sarah received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, she was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA, gaining early trial experience in both roles. She graduated with honors from the University of Florida in 2005.

Sarah is a member of The National Trial Lawyers Top 100 Civil Plaintiff Lawyers, and was selected to The National Trial Lawyers Top 40 Under 40 Civil Plaintiff Lawyers for 2022.

JOSHUA D. ARISOHN

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh's practice continues to focus on terrorism-related matters as well as class actions.

Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the District Court for the District of Columbia, and the United States Courts of Appeals for the Second and Ninth Circuits.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015, 2016 and 2017 Super Lawyer Rising Star.

Selected Published Decisions:

Fields v. Syrian Arab Republic, Civil Case No. 18-1437 (RJL), entering a judgment of approximately \$850 million in favor of the family members of victims of terrorist attacks carried out by ISIS with the material support of Syria.

Farwell v. Google LLC, 2022 WL 1568361 (C.D. Ill. Mar. 31, 2022), denying social media defendant's motion to dismiss BIPA claims brought on behalf of Illinois school students using Google's Workspace for Education platform on laptop computers.

Weiman v. Miami University, Case No. 2020-00614JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Smith v. The Ohio State University, Case No. 2020-00321JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Waite v. Kent State University, Case No. 2020-00392JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Duke v. Ohio University, Case No. 2021-00036JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Keba v. Bowling Green State University, Case No. 2020-00639JD (Oh. Ct. Claims), certifying a class of students alleging a breach of contract based on their school's failure to provide a full semester of in-person classes.

Kirkbride v. The Kroger Co., Case No. 2:21-cv-00022-ALM-EPD, denying motion to dismiss claims based on the allegation that defendant overstated its usual and customary prices and thereby overcharged customers for generic drugs.

Selected Class Settlements:

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

Marquez v. Google LLC, Case No. 2021-CH-1460 (Cir. Ct. Cook Cnty. 2022) – final approval granted for \$100 million class settlement to resolve alleged BIPA violations of Illinois residents appearing in photos on the Google Photos platform.

JOEL D. SMITH

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel is a trial attorney who has practiced in lower court and appeals courts across the country, as well as the U.S. Supreme Court.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately held businesses, and public entities in a wide variety of commercial, environmental, and class action matters. Among other matters, Joel served as defense counsel for AT&T, Enterprise-Rent-A-Car, Flowers Foods, and other major U.S. businesses in consumer class actions, including a class action seeking to hold U.S. energy companies accountable for global warming. Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California, which settled on the eve of a trial that was expected to last several months and involve several dozen witnesses. Joel also was part of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station's water drinking contest.

More recently, Joel's practice focuses on consumer class actions involving automotive and other product defects, financial misconduct, false advertising, and privacy violations.

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; all California district courts; the Eastern District of Michigan; and the Northern District of Illinois.

Selected Published Decisions:

Javier v. Assurance IQ, LLC, --- Fed App'x --- 2022 WL 1744107 (9th Cir. May 31, 2022), reversing dismissal in a class action alleging surreptitious monitoring of internet communications.

Revitch v. DIRECTV, LLC, 977 F.3d 713 (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

Kaupelis v. Harbor Freight Tools USA, Inc., 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

Selected Class Settlements:

Recinos et al. v. The Regents of the University of California, Superior Court for the State of California, County of Alameda, Case No. RG19038659 – final approval granted for a settlement providing debt relief and refunds to University of California students who were charged late fees.

Crandell et al. v. Volkswagen Group of America, Case No. 2:18-cv-13377-JSA (D.N.J.) – final approval granted for a settlement providing relief for Volkswagen Touareg owners to resolve allegations that defects in Touareg vehicles caused the engines to ingest water when driving in the rain.

Isley et al. v. BMW of N. America, LLC, Case No. 2:19-cv-12680-ESK (D.N.J.) – final approval granted for settlement providing BMW owners with reimbursements and credit vouchers to resolve allegations that defects in the BMW N63TU engine caused excessive oil consumption.

Kaupelis v. Harbor Freight Tools USA, Inc., 8:19-cv-01203-JVS-DFM (C.D. Cal.) – final approval granted for a settlement valued up to \$40 million to resolve allegations that Harbor Freight sold chainsaws with a defective power switch that could prevent the chainsaws from turning off.

Morris v. SolarCity Corp., Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

NEAL J. DECKANT

Neal J. Deckant is a Partner with Bursor & Fisher, P.A., where he serves as the firm's Head of Information & e-Discovery. Neal focuses his practice on complex business litigation and consumer class actions. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

Selected Published Decisions:

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

Dzielak v. Whirlpool Corp., 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

Duran v. Obesity Research Institute, LLC, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

In Re NVIDIA GTX 970 Graphics Chip Litigation, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

Hendricks v. StarKist Co., 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

Selected Publications:

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at *1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

YITZCHAK KOPEL

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

Selected Published Decisions:

Bassaw v. United Industries Corp., --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

Poppiti v. United Industries Corp., 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

Bakov v. Consolidated World Travel, Inc., 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

Krumm v. Kittrich Corp., 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

Crespo v. S.C. Johnson & Son, Inc., 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

Bakov v. Consolidated World Travel, Inc., 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

Bourbia v. S.C. Johnson & Son, Inc., 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

Hart v. BHH, LLC, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

Hart v. BHH, LLC, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

Penrose v. Buffalo Trace Distillery, Inc., 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

West v. California Service Bureau, Inc., 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of “wrong-number” robocall recipients.

Hart v. BHH, LLC, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

Browning v. Unilever United States, Inc., 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

Brenner v. Procter & Gamble Co., 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

Hewlett v. Consolidated World Travel, Inc., 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer’s motion to dismiss TCPA claims in putative class action.

Bailey v. KIND, LLC, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

Hart v. BHH, LLC, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients’ motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Brady v. Basic Research, L.L.C., 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers’ motion to dismiss its purchasers’ allegations for breach of express warranty in putative class action.

Ward v. TheLadders.com, Inc., 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board’s motion to dismiss its subscribers’ allegations of consumer protection law violations in putative class action.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor’s motion for summary judgment against nationwide class of purchasers of purported “100% Pure Olive Oil” product.

Selected Class Settlements:

Hart v. BHH, LLC, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellers.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

West v. California Service Bureau, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

FREDERICK J. KLORCZYK III

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

Selected Published Decisions:

Revitch v. New Moosejaw, LLC, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

In re Welspun Litigation, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

Martinelli v. Johnson & Johnson, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

Porter v. NBTY, Inc., 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

Weisblum v. Prophase Labs, Inc., 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

In re Scotts EZ Seed Litigation, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

Marchuk v. Faruqi & Faruqi, LLP, et al., 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

Ebin v. Kangadis Food Inc., Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

Ebin v. Kangadis Food Inc., 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

Ebin v. Kangadis Food Inc., 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

In Re: Blue Buffalo Marketing And Sales Practices Litigation, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) –final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

In re: Kangadis Food Inc., Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

YEREMEY O. KRIVOSHEY

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey has particular expertise in COVID-19 related consumer litigation, unlawful fees and liquidated damages in consumer contracts, TCPA cases, product recall cases, and fraud and false advertising litigation. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for \$267 million in statutory damages under the Telephone Consumer Protection Act. Since 2017, Mr. Krivoshey has secured over \$200 million for class members in consumer class settlements. Mr. Krivoshey has been honored multiple times as a Super Lawyers Rising Star.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

Representative Cases:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant’s motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act (“TCPA”) 534,712 times. Under the TCPA, class members are entitled to \$500 per each call made in violation of the TCPA – in this case, \$267 million for 534,712 unlawful calls.

Selected Published Decisions:

Goodrich, et al. v. Alterra Mountain Co., et al., 2021 WL 2633326 (D. Col. June 25, 2021), denying ski pass company's motion to dismiss its customers' allegations concerning refunds owed due to cancellation of ski season due to COVID-19.

Bayol v. Zipcar, Inc., 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

Bayol v. Zipcar, Inc., 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company's motion to dismiss its subscriber's allegations of unlawful late fees.

Brown v. Comcast Corp., 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider's motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

Chaisson, et al. v. University of Southern California (Cal. Sup. Ct. Mar. 25, 2021), denying university's demurrer as to its students' allegations of unfair and unlawful late fees.

Choi v. Kimberly-Clark Worldwide, Inc., 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

Horanzy v. Vemma Nutrition Co., Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

McMillion, et al. v. Rash Curtis & Associates, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

McMillion, et al. v. Rash Curtis & Associates, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

Perez v. Indian Harbor Ins. Co., 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

Perez v. Rash Curtis & Associates, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

Salazar v. Honest Tea, Inc., 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

Sholopa v. Turk Hava Yollari A.O., Inc. (d/b/a Turkish Airlines), 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying airline's motion to dismiss its customers claims for failure to refund flights cancelled due to COVID-19.

Selected Class Settlements:

Perez v. Rash Curtis & Associates, Case No. 16-cv-03396-YGR (N.D. Cal. Oct. 1, 2021) granting final approval to a \$75.6 million non-reversionary cash common fund settlement, the largest ever consumer class action settlement stemming from a violation of the Telephone Consumer Protection Act.

Strassburger v. Six Flags Theme Parks Inc., et al. (Ill. Cir. Ct. 2022) granting final approval to \$83.6 million settlement to resolve claims of theme park members for alleged wrongful charging of fees during the COVID-19 pandemic.

Juarez-Segura, et al. v. Western Dental Services, Inc. (Cal. Sup. Ct. Aug. 9, 2021) granting final approval to \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

Moore v. Kimberly-Clark Worldwide, Inc. (Ill. Cir. Ct. July 22, 2020) granting final approval to \$11.2 million settlement to resolve claims of tampon purchasers for alleged defective products.

Retta v. Millennium Prods., Inc., 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval to \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

Cortes v. National Credit Adjusters, L.L.C. (E.D. Cal. Dec. 7, 2020) granting final approval to \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

Bayol et al. v. Health-Ade LLC, et al. (N.D. Cal. Oct. 11, 2019) – granting final approval to \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

PHILIP L. FRAIETTA

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers[®] every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act, the Illinois Biometric Information Privacy Act, and Right of Publicity statutes. Since 2016, Phil has recovered over \$100 million for class members in privacy class action settlements. In addition to privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York, New Jersey, Illinois, and Michigan, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the

Northern District of Illinois, the Central District of Illinois, and the United States Court of Appeals for the Second, Third, and Ninth Circuits. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

Selected Published Decisions:

Fischer v. Instant Checkmate LLC, 2022 WL 971479 (N.D. Ill. Mar. 31, 2022), certifying class of Illinois residents for alleged violations of Illinois' Right of Publicity Act by background reporting website.

Kolebuck-Utz v. Whitepages Inc., 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant's motion to dismiss for alleged violations of Ohio's Right to Publicity Law.

Bergeron v. Rochester Institute of Technology, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university's motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Porter v. NBTY, Inc., 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer's motion for summary judgment on consumers' allegations of false advertising relating to whey protein content.

Boelter v. Hearst Communications, Inc., 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

Selected Class Settlements:

Edwards v. Hearst Communications, Inc., Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Ruppel v. Consumers Union of United States, Inc., Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Benbow v. SmileDirectClub, LLC, Case No. 2020-CH-07269 (Cir. Ct. Cook Cnty. 2021) – final approval granted for \$11.5 million class settlement to resolve claims for alleged TCPA violations.

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Taylor v. Trusted Media Brands, Inc., Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Moeller v. American Media, Inc., Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

Rocchio v. Rutgers, The State University of New Jersey, Case No. MID-L-003039-20 (Sup. Ct. Middlesex Cnty. 2022) – final approval granted for \$5 million class settlement to resolve claims for failure to refund mandatory fees for the Spring 2020 semester in light of the COVID-19 pandemic.

Heigl v. Waste Management of New York, LLC, Case No. 19-cv-05487-WFK-ST (E.D.N.Y. 2021) – final approval granted for \$2.7 million class settlement to resolve claims for charging allegedly unlawful fees pertaining to paper billing.

Frederick v. Examsoft Worldwide, Inc., Case No. 2021L001116 (Cir. Ct. DuPage Cnty. 2022) – final approval granted for \$2.25 million class settlement to resolve claims for alleged BIPA violations.

ALEC M. LESLIE

Alec Leslie is a Partner with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

Selected Class Settlements:

Gregorio v. Premier Nutrition Corp., Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for class settlement to resolve claims of protein shake purchasers for alleged false advertising.

Wright v. Southern New Hampshire Univ., Case No. 1:20-cv-00609-LM (D.N.H. 2021) – final approval granted for class settlement to resolve claims over COVID-19 tuition and fee refunds to students.

Mendoza et al. v. United Industries Corp., Case No. 21PH-CV00670 (Phelps Cnty. Mo. 2021) – final approval granted for class settlement to resolve false advertising claims on insect repellent products.

Kaupelis v. Harbor Freight Tools USA, Inc., Case No. 8:19-cv-01203-JVS-DFM (C.D. Cal. 2021) – final approval granted for class settlement involving allegedly defective and dangerous chainsaws.

Rocchio v. Rutgers Univ., Case No. MID-L-003039-20 (Middlesex Cnty. N.J. 2021) – final approval granted for class settlement to resolve claims over COVID-19 fee refunds to students.

Malone v. Western Digital Corporation, Case No. 5:20-cv-03584-NC (N.D. Cal.) – final approval granted for class settlement to resolve false advertising claims on hard drive products.

Frederick et al. v. ExamSoft Worldwide, Inc., Case No. 2021L001116 (DuPage Cnty. Ill. 2021) – final approval granted for class settlement to resolve claims over alleged BIPA violations with respect to exam proctoring software.

STEPHEN BECK

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

BRITTANY SCOTT

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on data privacy, complex civil litigation, and consumer class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

Brittany has substantial experience litigating consumer class actions, including those involving data privacy claims under statutes such as the Illinois Biometric Information Privacy Act, the Fair Credit Reporting Act, and the Michigan Preservation of Personal Privacy Act. In

addition to data privacy claims, Brittany has significant experience in litigating class action claims involving false and misleading advertising.

Brittany is admitted the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, and the Northern District of Illinois.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating cum laude. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled “Waiving Goodbye to First Amendment Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

Selected Class Settlements:

Morrissey v. Tula Life, Inc., Case No. 2021L0000646 (18th Judicial Circuit Court DuPage County 2021) – final approval granted for \$4 million class settlement to resolve claims of cosmetics purchasers for alleged false advertising.

MAX S. ROBERTS

Max Roberts is an Associate in Bursor & Fisher’s New York office. Max focuses his practice on class actions concerning data privacy and consumer protection. Max was a Summer Associate with Bursor & Fisher prior to joining the firm and is now Co-Chair of the firm’s Appellate Practice Group.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham’s Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled [*Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*](#). In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

Selected Published Decisions:

Jackson v. Amazon.com, Inc., --- F.4th ---, 2023 WL 2997031 (9th Cir. Apr. 19, 2023), affirming district court’s denial of motion to compel arbitration. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Javier v. Assurance IQ, LLC, 2022 WL 1744107 (9th Cir. May 31, 2022), reversing district court and holding that Section 631 of the California Invasion of Privacy Act requires prior consent to

wiretapping. Max personally argued the appeal before the Ninth Circuit, which can be viewed [here](#).

Mora v. J&M Plating, Inc., --- N.E.3d ---, 2022 WL 17335861 (Ill. App. Ct. 2d Dist. Nov. 30, 2022), reversing circuit court and holding that Section 15(a) of Illinois' Biometric Information Privacy Act requires an entity to establish a retention and deletion schedule for biometric data at the first moment of possession. Max personally argued the appeal before the Second District, which can be listened to [here](#).

Cristostomo v. New Balance Athletics, Inc., 2022 WL 17904394 (D. Mass. Dec. 23, 2022), denying motion to dismiss and motion to strike class allegations in case involving sneakers marketed as "Made in the USA."

Carroll v. Myriad Genetics, Inc., 2022 WL 16860013 (N.D. Cal. Nov. 9, 2022), denying in part motion to dismiss in case involving non-invasive prenatal testing product.

Louth v. NFL Enterprises LLC, 2022 WL 4130866 (D.R.I. Sept. 12, 2022), denying motion to dismiss alleged violations of the Video Privacy Protection Act.

Sholopa v. Turk Hava Yollari A.O., Inc. d/b/a Turkish Airlines, 2022 WL 976825 (S.D.N.Y. Mar. 31, 2022), denying motion to dismiss passenger's allegations that airline committed a breach of contract by failing to refund passengers for cancelled flights during the COVID-19 pandemic.

Saleh v. Nike, Inc., 562 F. Supp. 3d 503 (C.D. Cal. 2021), denying in part motion to dismiss alleged violations of California Invasion of Privacy Act.

Soo v. Lorex Corp., 2020 WL 5408117 (N.D. Cal. Sept. 9, 2020), denying defendants' motion to compel arbitration and denying in part motion dismiss consumer protection claims in putative class action concerning security cameras.

Selected Class Settlements:

Miranda v. Golden Entertainment (NV), Inc., Case No. 2:20-cv-534-AT (D. Nev. 2021) – final approval granted for class settlement valued at over \$4.5 million to resolve claims of customers and employees of casino company stemming from data breach.

Malone v. Western Digital Corp., Case No. 5:20-cv-3584-NC (N.D. Cal. 2021) – final approval granted for class settlement valued at \$5.7 million to resolve claims of hard drive purchasers for alleged false advertised.

Frederick v. ExamSoft Worldwide, Inc., Case No. 2021-L-001116 (18th Judicial Circuit Court DuPage County, Illinois 2021) – final approval granted for \$2.25 million class settlement to resolve claims of Illinois students for alleged violations of the Illinois Biometric Information Privacy Act.

Bar Admissions

- New York State
- Southern District of New York
- Eastern District of New York
- Northern District of New York
- Northern District of Illinois
- Central District of Illinois
- Eastern District of Michigan
- District of Colorado
- Ninth Circuit Court of Appeals
- Seventh Circuit Court of Appeals

CHRISTOPHER R. REILLY

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney's Office, the ACLU Prison Project, and the Pennsylvania General Counsel's Office. Chris served as Senior Editor of Georgetown's Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

JULIA K. VENDITTI

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Eastern, Central, and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco

Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

JULIAN DIAMOND

Julian Diamond is an Associate with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

MATTHEW GIRARDI

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions, and has focused specifically on consumer class actions involving product defects, financial misconduct, false advertising, and privacy violations. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt is admitted to the State Bar of New York, and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and represented fledgling businesses for Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

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Attorneys for Plaintiff and the Proposed Settlement Class

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

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD,

Defendant.

Case No. 23CV001405

**DECLARATION OF C.J. IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Compl. Filed: May 3, 2023

1 I, C.J., declare as follows:

2 1. I am a citizen of the State of California. I have personal knowledge of the facts set
3 forth in this declaration and could testify competently to them if called upon to do so. I hereby
4 file this Declaration in Support of Plaintiff's Motion for Preliminary Approval of the Class Action
5 Settlement and Conditional Certification of Settlement Class for Settlement Purposes Only.

6 2. I am a minor and a resident of Marina, California. Under my own name and using
7 my own money, I made multiple in-game *Genshin Impact* purchases that were labeled non-
8 refundable. My most recent purchases occurred in approximately February 2023. I no longer
9 play the *Genshin Impact* video game and will not play the *Genshin Impact* video game in the
10 future.

11 3. I was an avid player of Defendant's *Genshin Impact* video game prior to February
12 2023. Throughout my time playing Defendant's video game, I relied on Defendant's
13 representations regarding the value of any in-game items that I received and was otherwise
14 unaware of what any particular in-game item costs in real-world currency.

15 4. Despite spending more than \$100 in real-world currency on Defendant's in-game
16 items and in-game currency while under the age of 18, I did not receive any items that had real
17 value.

18 5. Had Defendant permitted me to disaffirm my contracted purchases prior to filing
19 this lawsuit, I would have done so.

20 6. Before hiring counsel in this action, neither I nor my parents were aware of a
21 minor's right to disaffirm and get refunds on any and all in-app purchases without any restrictions.

22 7. I relied on Defendant's misrepresentations regarding the non-refundability for
23 purchases.

24 8. With my mother, I sought out representation and spoke with attorneys at Bursor &
25 Fisher, P.A. ("Bursor & Fisher") to determine if I would retain them to handle my case.

1 9. During the course of my and my mother’s initial conversation with Bursor & Fisher,
2 Bursor & Fisher Counsel explained to me and my mother what it meant to be a class
3 representative. My mother and I were also informed that, if I were to become a class
4 representative, I would be required to put the interests of the class ahead of my own personal
5 interests. I was also informed that I would have an obligation to ensure that Bursor & Fisher
6 Counsel were acting in the best interests of the class at all times.

7 10. Armed with this information, I agreed to be a class representative in this case and
8 to undertake these responsibilities. I have, to the best of my ability, performed these duties in this
9 case.

10 11. To the best of my knowledge, I have no interests which are antagonistic to the
11 interests of the Class in this case.

12 12. Leading up to and subsequent to the mediation with Gregory Lindstrom of Phillips
13 ADR, I regularly conferred with my attorneys regarding the prospects of settlement, and I
14 provided them with information to assist in securing the class settlement. My attorneys kept me
15 apprised throughout the course of negotiations.

16 13. On May 3, 2023, I filed, by and through my attorneys, on my behalf and on behalf
17 of similarly situated individuals, the instant Class Action Complaint. My mother and I provided
18 information to my attorneys to be included in the Class Action Complaint and reviewed the
19 Complaint for accuracy.

20 14. During the pendency of this case, counsel has kept me and my mother informed
21 about the progress of the case. I estimate that I have spent many hours of my time on this litigation
22 to date. Among other things, I have spent time: researching my rights and those of the Class;
23 speaking with and otherwise communicating with Bursor & Fisher Counsel; producing
24 information about the purchases I made in Defendant’s video game; reviewing pleadings filed in
25
26

1 the action; and, communicating with my attorneys about the settlement and the Settlement
2 Agreement and the effort to have the Court approve the settlement.

3 15. My mother and I believe that the Settlement is an excellent result for Class
4 Members. According to the terms of the settlement: (1) For platforms that process refund
5 requests independently from Cognosphere (e.g., Apple App Store, Google Play Store, PlayStation
6 Store), in its standard response redirecting users to those platforms, Cognosphere will add
7 language in substantially the following form: “Please note that store refund policies may vary
8 based on the location of user and the age of user, including legal minority, at the time of purchase,
9 as may be required by applicable law,” provided, however, that Cognosphere may include other
10 language as well while redirecting users to those platforms; (2) for all other platforms, and refund
11 requests for which Cognosphere elects to process itself, in its standard response for U.S. users
12 seeking a refund who indicate that a minor was involved in the situation that led to the refund
13 request, Cognosphere will implement policies to determine whether the in-game purchase was
14 made when the user was a minor without parental consent, except as prohibited by local law; (3)
15 Cognosphere will create a public-facing “help page” (or add to existing pages to the extent
16 relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases,
17 add specific links to platforms that process refund requests independently from Cognosphere In-
18 App/In-Game Purchase refund policies for reference, and add language in substantially the
19 following form: “Please note that store refund policies may vary based on the location of user
20 and the age of user, including legal minority, at the time of purchase, as may be required by
21 applicable law”; (4) for all refund requests processed by Cognosphere, Cognosphere will
22 implement a dedicated process to address refund requests to determine whether a refund is
23 appropriate, and the personnel staffing this dedicated process will receive further training
24 regarding how to analyze and process such refund requests in accordance with applicable law;
25 (5) Cognosphere will agree to include language in substantially the following form in its Terms
26

1 of Service applicable to U.S. players: “You acknowledge and agree that you are not entitled to a
2 refund for any Virtual Currency, except as otherwise required by applicable law”; and (6) lastly,
3 Cognosphere agrees that its refund policies and practices with respect to U.S. minors will comply
4 with the California Family Code Sections 6701(c) and 6710.

5 16. I have fairly represented the absent Class Members and herein request that the Court
6 preliminarily approve this settlement. I have maintained the best interests of the Class while
7 performing my class representative duties.

8 17. By serving as the Class Representative in this action, I bore a certain amount of risk
9 that other Class Members did not bear. In addition to the time I spent participating in this case, I
10 took a risk by coming forward and filing this class action. As a result of my efforts, Class
11 Members will receive significant benefits from the Settlement.

12 I declare under penalty of perjury under the laws of the United States that the foregoing
13 is true and correct. Executed in Marina, California on May 24, 2023.

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19 By: 
20 Juanita M. James (May 24, 2023 11:13 PDT)
21 Proposed Guardian Ad Litem
22 On behalf of Plaintiff C.J.
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26

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 191626 NAME: L. Timothy Fisher FIRM NAME: Bursor & Fisher, P.A. STREET ADDRESS: 1990 N. California Blvd., Suite 940 CITY: Walnut Creek STATE: CA ZIP CODE: 94596 TELEPHONE NO.: 925-300-4455 FAX NO.: 925-407-2700 E-MAIL ADDRESS: ltfisher@bursor.com ATTORNEY FOR (name): Plaintiff C.J.	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p>ELECTRONICALLY FILED BY Superior Court of California, County of Monterey On 5/24/2023 5:55 PM By: Brenda Cerna, Deputy</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Monterey STREET ADDRESS: 1200 Aguajito Road MAILING ADDRESS: CITY AND ZIP CODE: Monterey 93940 BRANCH NAME:	
PLAINTIFF/PETITIONER: C.J. DEFENDANT/RESPONDENT: Cognosphere PTE. LTD OTHER:	CASE NUMBER: 23CV001405
PROPOSED ORDER (COVER SHEET)	JUDICIAL OFFICER: Thomas W. Wills
	DEPT: 15

NOTE: This cover sheet is to be used to electronically file and submit to the court a proposed order. The proposed order sent electronically to the court must be in PDF format and must be attached to this cover sheet. In addition, a version of the proposed order in an editable word-processing format must be sent to the court at the same time as this cover sheet and the attached proposed order in PDF format are filed.

1. Name of the party submitting the proposed order:
Plaintiff C.J.

2. Title of the proposed order:
[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

3. The proceeding to which the proposed order relates is:
 - a. Description of proceeding: Motion for Preliminary Approval of Class Action Settlement
 - b. Date and time: August 11, 2023, 8:30 a.m.
 - c. Place: Dept. 15

4. The proposed order was served on the other parties in the case.

L. Timothy Fisher _____
 (TYPE OR PRINT NAME)

 _____
 (SIGNATURE OF PARTY OR ATTORNEY)

CASE NAME:	CASE NUMBER: 23CV001405
------------	----------------------------

**PROOF OF ELECTRONIC SERVICE
PROPOSED ORDER**

1. I am at least 18 years old and **not a party to this action.**

a. My residence or business address is (*specify*):

My business address is Bursor & Fisher, P.A., 1990 North California Blvd, Suite 940, Walnut Creek, California 94596

b. My electronic service address is (*specify*): dschroeder@bursor.com

2. I electronically served the *Proposed Order (Cover Sheet)* with a proposed order in PDF format attached, and a proposed order in an editable word-processing format as follows:

a. On (*name of person served*) (*If the person served is an attorney, the party or parties represented should also be stated.*):

b. To (*electronic service address of person served*):

c. On (*date*): May 24, 2023

Electronic service of the *Proposed Order (Cover Sheet)* with the attached proposed order in PDF format and service of the proposed order in an editable word-processing format on additional persons are described in an attachment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 4, 2023

Debbie Schroeder

(TYPE OR PRINT NAME OF DECLARANT)

▶ *Debbie Schroeder*

(SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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

C.J., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No. 23CV001405

CASE DEEMED COMPLEX

ASSIGNED FOR ALL PURPOSES TO
JUDGE THOMAS W. WILLS

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

1 WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an
2 order preliminarily approving the Settlement of this Action pursuant to the settlement
3 agreement fully executed on or about May 1, 2023 (the “Agreement”), which, together with its
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as
7 follows:

8 1. The motion is GRANTED.

9 2. Capitalized terms not otherwise defined herein have the meanings set forth in
10 the Settlement Agreement.

11 3. All proceedings in the Action, other than proceedings necessary to carry out or
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13 4. The Court has subject matter jurisdiction over the Action, and personal
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code
15 § 395.

16 5. The Action is preliminarily certified as a class action, for settlement purposes
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are
20 questions of law and fact that are common to the Class, and those questions of law and fact
21 common to the Class predominate over any questions affecting any individual Class Member;
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action
26 may not be certified as a class action, other than for settlement purposes. The Court also
27 concludes that, because the Action is being settled rather than litigated, the Court “need not
28

1 inquire whether the case, if tried, would present intractable management problems.” *See*
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 6. The Settlement Class shall consist of “All persons in the United States of
4 America who made a purchase in Genshin Impact while under the age of 18.”

5 7. Upon preliminary review, the Court finds that the Agreement, and the
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is
8 sufficient to warrant sending notice to the Class.

9 8. Certification of the Settlement Class shall be solely for settlement purposes,
10 without prejudice to the Parties, and with no other effect upon the Action. In the event the
11 Settlement Agreement is not finally approved by this Court, is terminated, or otherwise does
12 not take effect, the Parties preserve all rights and defenses regarding class certification.

13 9. The Court hereby appoints Plaintiff C.J. as Class Representative to represent the
14 Settlement Class.

15 10. The Court hereby appoints Philip L. Fraietta and Alec M. Leslie of Bursor &
16 Fisher, P.A. as Class Counsel for the Settlement Class.

17 11. Direct notice of the settlement is not required here because the Settlement
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the
20 individual rights of class members to pursue monetary claims against the Defendant.

21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s
24 public website (<https://www.bursor.com/>).

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
28

1 the Action (*C.J. v. Cognosphere Pte. Ltd.*, Case No. 23CV001405); (2) the Settlement Class
2 Member's full legal name and mailing address; (3) the personal signature of the Settlement
3 Class member; (4) the grounds for any objection; (5) the name and contact information of any
4 and all attorneys representing, advising, or assisting with the comment or objection, or who
5 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement
6 Class Member intends to appear at the Final Approval Hearing, either personally or through
7 counsel. Written objections must be served on each of both Defense Counsel and Class
8 Counsel as follows:

9 C.J. v. Cognosphere Pte. Ltd.
10 c/o Bursor & Fisher, P.A.
11 1990 North California Blvd.
Suite 940
Walnut Creek, CA 94596

12 C.J. v. Cognosphere Pte. Ltd.
13 c/o Kecker, Van Nest & Peters LLP
14 633 Battery Street
San Francisco, CA 94111-1809

15 Defense Counsel and Class Counsel shall promptly furnish each other copies of any and all
16 objections that might come into their possession.

17 13. Class Members may also appear at the final approval hearing to state their
18 objections, whether or not they have made a written objection or given a notice to appear.

19 14. To be considered, written comments or objections must be submitted within 60
20 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
21 Approval Hearing, whether individually or through counsel, unless written notice of the Class
22 Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for
23 mail to the Court within 60 days after date of entry of this Order.

24 15. The date of the postmark on the envelope containing the written objection shall
25 be the exclusive means used to determine whether an objection has been timely submitted.
26 Class Members who fail to mail timely written objections in the manner specified above shall
27 be deemed to have waived any objections and shall be forever barred from objecting to the
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1 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
2 appeal, collateral attack, or otherwise.

3 16. The Court will hold a final approval hearing on _____, 2023 at _____
4 a.m./p.m, in the Superior Court of California, County of Monterey, located at 1200 Aguajito
5 Rd, Monterey, CA 93940, in Department 15. The purposes of the final approval hearing will
6 be to: (i) determine whether the proposed Settlement Agreement should be finally approved by
7 the Court as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii)
8 determine whether judgment should be entered pursuant to the Settlement Agreement,
9 dismissing the Action with prejudice and releasing the Released Persons of all claims as stated
10 in the Settlement Agreement; (iii) determine whether the Settlement Class should be finally
11 certified; (iv) rule on Class Counsel’s motion for attorneys’ fees, costs and service awards; (v)
12 consider any properly filed objections; and (vi) consider any other matters necessary in
13 connection with the final approval of the Settlement Agreement.

14 17. Class Counsel’s application for attorneys’ fees, costs and expenses shall be filed
15 and served no later than thirty (30) days after the Court’s order of preliminary approval. Any
16 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court’s
17 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days
18 after the Court’s order of preliminary approval.

19 18. The motion in support of final approval of the settlement shall be filed and
20 served no later than thirty (30) days after the Court’s order of preliminary approval. Any
21 opposition or objection shall be filed no later than sixty (60) days after the Court’s order of
22 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the
23 Court’s order of preliminary approval.

24 19. The Court may, in its discretion, modify the date and/or time of the final
25 approval hearing, and may order that this hearing be held remotely or telephonically. In the
26 event the Court changes the date, time, and/or the format of the final approval hearing, the
27 Parties shall ensure that the updated information is posted on the Class Counsel’s public
28

1 website.

2 20. If the Settlement Agreement, including any amendment made in accordance
3 therewith, is not approved by the Court or shall not become effective for any reason
4 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection
5 therewith (including this Preliminary Approval Order and any judgment entered herein), shall
6 be terminated and shall become null and void and of no further force and effect except for
7 (i) any obligations to pay for any expense incurred in connection with any notice and/or Other
8 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or
9 provisions that are expressly designated in the Settlement Agreement to survive the termination
10 of the Settlement Agreement.

11 21. Pending final determination of whether the Settlement Agreement should be
12 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from
13 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as
14 such action asserts claims stated in Section VI of the Settlement Agreement, directly or
15 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is
16 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval
17 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this
18 Court's jurisdiction.

19 22. This Preliminary Approval Order, the Settlement Agreement, the fact that a
20 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings
21 relating to the Settlement, and any matters arising in connection with settlement negotiations,
22 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered
23 or received against Cognosphere as evidence or an admission or concession of: (a) the truth of
24 any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of
25 Cognosphere or breach of any duty on the part of Cognosphere; or (c) that this Action or any
26 other action may be properly certified as a class action for litigation, non-settlement purposes.
27 This order is not a finding of the validity or invalidity of any of the claims asserted or defenses
28

1 raised in the Action.

2 23. The Court shall retain jurisdiction over any claim relating to the Settlement
3 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
4 arising out of a breach of the Settlement Agreement) as well as any future claims by any
5 Settlement Class Member relating in any way to the Released Claims.

6 24. The Court may, for good cause, extend any of the deadlines set forth in this
7 Preliminary Approval Order without further notice to Settlement Class Members. Without
8 further order of the Court, the Parties may agree to make non-material modifications in
9 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.

10 IT IS SO ORDERED.

11
12 Dated: _____

13 THOMAS W. WILLS
14 Judge of the Superior Court
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1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is Bursor & Fisher, P.A., 1990 North California Blvd,
4 Suite 940, Walnut Creek, California 94596. On May 24, 2023, I served the document(s):

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

7 **DECLARATION OF PHILIP L. FRAIETTA IN SUPPORT OF PLAINTIFF’S MOTION
8 FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

9 **DECLARATION OF C.J. IN SUPPORT OF PLAINTIFF’S MOTION FOR
10 PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

11 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
12 SETTLEMENT**

13 by e-mail transmission on that date. These documents were transmitted via e-mail to
14 the following e-mail addresses as set forth below.

15 Ajay S Krishnan
16 Christopher S Sun
17 Michelle S Ybarra
18 Daniel Twomey
19 **Keker Van Nest and Peters LLP**
20 633 Battery Street
21 San Francisco, CA 94111
22 415-391-5400
23 Fax: 415-397-7188
24 Email: akrishnan@keker.com
25 csun@keker.com
26 mybarra@kvn.com
27 dtwomey@keker.com

28 *Attorneys for Defendant*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on May 24, 2023, at Walnut Creek, California.



Debbie Schroeder

EXHIBIT D

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

Attorneys for Plaintiff

KEKER, VAN NEST & PETERS LLP

AJAY S. KRISHNAN - # 222476
akrishnan@keker.com
MICHELLE YBARRA - # 260697
mybarra@keker.com
DANIEL B. TWOMEY - # 341488
dtwomey@keker.com

633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Defendant
COGNOSPHERE PTE. LTD.

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 9/25/2023 8:00 AM
By: Brenda Cerna, Deputy

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

**JOINT SUPPLEMENTAL SUBMISSION IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Date: September 29, 2023
Time: 8:30 a.m.
Dept.: 15

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 24, 2023, Plaintiff C.J. (“Plaintiff”), a minor, moved for preliminary approval of the
4 proposed class action settlement (the “Settlement”)¹ in this case. During the August 11, 2023
5 preliminary approval hearing, the Court declined to rule on Plaintiff’s motion, and requested
6 additional briefing. Specifically, the Court requested clarification as to (1) the scope of the claims
7 released by the Settlement; and (2) the scope of and requirements for notice to absent class
8 members. Plaintiff and Defendant Cognosphere Pte. Ltd (“Defendant”) (with Plaintiff, the
9 “Parties”) jointly respond below.

10 **II. THE SETTLEMENT WARRANTS APPROVAL**

11 **1. Release**

12 At the preliminary approval hearing, the Court requested additional details regarding the
13 scope of the release provided by the Settlement. To be clear, *the Settlement does not release any*
14 *absent class member’s claims for damages*. Instead, the settlement only releases class members’
15 claims for injunctive and/or declaratory relief. *See* Settlement ¶ 44 (“the Releasing Parties do not
16 release claims for monetary relief or damages”). That is appropriate because in return for the
17 release, the settlement provides meaningful and significant injunctive relief that requires
18 Cognosphere to follow certain procedures to ensure that the disaffirmation process for minors is
19 straightforward and effective.

20 This case concerns Defendant’s purported lack of compliance with California law regarding
21 Plaintiff and the members of the Settlement Class’ ability to disaffirm their contracts with
22 Defendant and obtain refunds. The injunctive relief provided by the settlement ensures Defendant’s
23 undebatable compliance with said California law. Effectively, Plaintiff has obtained, through the
24 settlement, a complete victory with respect to injunctive relief for the class – namely the ability for
25 any class member to disaffirm his or her contract with Defendant and obtain refunds for any
26 purchases that he or she made as a minor.

27 _____
28 ¹ Attached hereto as Exhibit A.

1 Meanwhile, *the Settlement’s release of claims for monetary relief or damages applies only*
2 *to the named Plaintiff, not to putative Class Members.* See *id.* at § VI.43, 44. Crucially, all
3 members of the class other than the named Plaintiff “do not release claims for monetary relief or
4 damages.” Settlement, § VI.44. This means that *other members of the class are free to seek*
5 *damages and other monetary relief against Defendant for any practice or claim that was alleged*
6 *in this action* in the future.

7 **2. The Parties have improved their notice plan and**
8 **Cognosphere’s training procedures.**

9 The Court also requested additional details as to the notice plan and more specificity with
10 respect to Cognosphere’s “training procedures”. After further negotiations, Defendant has agreed
11 to provide notice of the changes to the Genshin Impact terms of service to class members.
12 Specifically, and following additional hard-fought negotiation, the revised language in the terms of
13 service will be pushed (via an in-app notification) by Defendant to users for their information and
14 acknowledgement. In addition, and again following additional negotiation, Defendant has agreed to
15 train its CS team to ask questions reasonably understandable to a consumer to (1) determine whether
16 the minor is based in the U.S. and (2) whether the minor is disaffirming the purchases made in the
17 game as part of the customer support (“CS”) training process provided for in the Settlement. If it is
18 determined that the minor is seeking to disaffirm, Defendant’s CS team will work with Defendant’s
19 compliance team to refund the caller and shut down the minor’s account. The Parties believe that
20 these two additional concessions from Defendant should assuage the Court’s concern that there was
21 not enough specificity about the class notice and training process included in the Settlement.

22 Regardless, as stated above, this litigation was never about Defendant’s failure to properly
23 notify minors of their right to disaffirm a contract. Rather, this litigation is about Defendant’s
24 previous denial of that right. The Settlement *obligates Defendant to be in full compliance with the*
25 *relevant law* and to completely overhaul their policies by not simply updating their relevant policy
26 pages, but by also building a system that requires Defendant to (1) determine if a minor intends to
27 disaffirm his or her contract and (2) refund any minors that do so intend, honoring their obligation
28 under California law. See *V.R. v. Roblox Corp.*, 2023 WL 411347, at *2 (N.D. Cal. Jan. 25, 2023)

1 (stating that the language “[a]ll payments . . . are final and not refundable, except as required by
2 law” complied with the California Family Code).

3 Again, any minor who made purchases as a minor and wants to disaffirm their contracts can
4 still sue Defendant for damages. Under the Settlement, absent class members have thus released
5 almost nothing. And although it was vigorously debated during settlement negotiations, no court
6 has ever specifically held that a party was obligated to inform a minor about his right to disaffirm a
7 contract. In fact, California courts have held that there is “no general duty owed by one contracting
8 party to another to explain the other’s legal rights in connection with the agreement.” *Olsen v.*
9 *Breeze, Inc.* (1996) 48 Cal. App. 4th 608, 622-23. Thus, the injunctive relief provided by the
10 Settlement and Defendant’s additional, post-settlement concessions arguably require Defendant to
11 exceed its pure legal obligations.

12 As a final note, notice of the settlement is not required here – it is discretionary. That is
13 because the Settlement only releases claims for injunctive and/or declaratory relief and does not
14 release the monetary or damages claims of the Class, and thus the Settlement expressly preserves
15 the individual rights of Class Members to pursue monetary claims against the defendant. *See, e.g.,*
16 *Lilly v. Jamba Juice Co.* (N.D. Cal. Mar. 18, 2015) 2015 WL 1248027, at *8-9 (“Because, even if
17 notified of the settlement, the settlement class would not have the right to opt out from the
18 injunctive settlement and the settlement does not release the monetary claims of class members, the
19 Court concludes that class notice is not necessary.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28,
20 2012) 2012 WL 5948951, at *4, 17 (“The court exercises its discretion and does not direct notice
21 here because the settlement does not alter the unnamed class members’ legal rights.”); *Lowry v.*
22 *Obledo* (1980) 111 Cal. App. 3d 14, 23 (“In this case the trial court appropriately followed federal
23 procedure of allowing a decision on the merits without prior notice in certain class actions.”); *see*
24 *also* Cal. Rule of Court 3.766(b)(1) (stating that in evaluating class notice the Court can determine
25 “[w]hether notice is necessary”) (emphasis added).

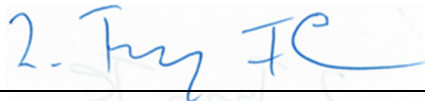
26 **III. CONCLUSION**

27 For the reasons stated above and in Plaintiff’s Motion for Preliminary Approval, the Parties
28

1 request that the Court grant preliminary approval to the Settlement and enter the Preliminary
2 Approval Order in the form submitted with Plaintiff's Motion.
3

4
5 Dated: September 22, 2023

BURSOR & FISHER, P.A.

6 By:  _____

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

Attorneys for Plaintiff

13
14 Dated: September 22, 2023

KEKER, VAN NEST & PETERS LLP

15 By:  _____

16 AJAY S. KRISHNAN
17 MICHELLE YBARRA
18 DANIEL B. TWOMEY

19 *Attorneys for Defendant*
20 COGNOSPHERE PTE. LTD.
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1 best interests. Neither the Settlement Agreement nor any actions taken to carry out the settlement
2 are intended to be, nor may they be deemed or construed to be, an admission or concession of
3 liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any
4 party. Defendant denies all allegations of the complaint in the Action. Neither the Settlement
5 Agreement, nor the fact of settlement, nor settlement proceedings, nor the settlement negotiations,
6 nor any related document, shall be used as an admission of any fault or omission by Defendant, or
7 be offered or received in evidence as an admission, concession, presumption, or inference of any
8 wrongdoing by Defendant in any proceeding;

9 6. WHEREAS, Settlement Class Representative, Cognosphere, and the Settlement
10 Class intend for this Settlement Agreement fully and finally to compromise, resolve, discharge,
11 and settle the Released Claims, as defined and on the terms set forth below, and to the full extent
12 reflected herein, subject to the approval of the Court; and

13 7. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
14 AGREED, by the Settlement Class Representative, for herself and on behalf of the Settlement
15 Class, and by Cognosphere that, subject to the approval of the Court, the Action shall be settled,
16 compromised, and dismissed, on the merits and with prejudice, and the Released Claims shall be
17 finally and fully compromised, settled, and dismissed as to the Released Parties, in the manner and
18 upon the terms and conditions hereafter set forth in this Agreement.

19 **II. DEFINITIONS**

20 8. In addition to the terms defined elsewhere in this Agreement, the following terms,
21 used in this Settlement Agreement, shall have the meanings specified below:

22 9. “Attorneys’ Fees and Costs Award” means such funds as may be awarded by the
23 Court to Class Counsel to compensate Class Counsel for its fees, costs, and expenses in connection
24 with the Action and the Settlement, as described in Paragraphs VII.49-VII.50.

25 10. “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday,
26 excluding holidays observed by California and/or the federal government.

27 11. “Class Counsel” means L. Timothy Fisher, Philip L. Fraietta, and Alec M. Leslie
28 of Bursor & Fisher, P.A.

1 12. “Court” means the Superior Court of California, County of Monterey.

2 13. “Defense Counsel” means the law firm of Kecker, Van Nest & Peters LLP and all
3 of Cognosphere’s attorneys of record in the Action.

4 14. “Effective Date” means seven (7) days after which both of the following events
5 have occurred: (i) the Final Approval Order and Final Judgment have been entered and (ii) the
6 Final Approval Order and Final Judgment have become Final.

7 15. “Cognosphere” means (i) Cognosphere, Pte. Ltd. and its past, present, and future
8 parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal
9 entities, whether foreign or domestic, that are owned or controlled by Cognosphere, and (ii) the
10 past, present, and future shareholders, officers, directors, members, agents, employees,
11 independent contractors, consultants, representative, fiduciaries, insurers, attorneys, legal
12 representative, predecessors, successors, and assigns of the entities in Part (i) of this definition.

13 16. “Fairness Hearing” means the hearing that is to take place after the entry of the
14 Preliminary Approval Order for purposes of: (i) entering the Final Approval Order and Final
15 Judgment and dismissing the Action with prejudice; (ii) determining whether the Settlement
16 should be approved as fair, reasonable, and adequate pursuant to applicable California Code of
17 Civil Procedure; (iii) ruling upon an application for Service Awards by the Settlement Class
18 Representative; (iv) ruling upon an application by Class Counsel for an Attorneys’ Fees and Costs
19 Award; and (v) entering any final order awarding Attorneys’ Fees and Costs and Service Awards.

20 17. “Final” means, with respect to any judicial ruling or order, that: (1) if no appeal,
21 motion for reconsideration, reargument and/or rehearing, or petition for writ of certiorari has been
22 filed, the time has expired to file such an appeal, motion, and/or petition; or (2) if an appeal, motion
23 for reconsideration, reargument and/or rehearing, or petition for a writ of certiorari has been filed,
24 the judicial ruling or order has been affirmed with no further right of review, or such appeal,
25 motion, and/or petition has been denied or dismissed with no further right of review. Any
26 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any
27 application for attorneys’ fees or expenses will not in any way delay or preclude the Judgment
28 from becoming Final.

1 18. “Final Approval Order and Final Judgment” means the order finally approving the
2 terms of this Settlement Agreement and a separate judgment to be entered by the Court after the
3 Fairness Hearing, dismissing the Action against Cognosphere with prejudice, without material
4 variation from the Parties’ agreed-upon final approval order and judgment attached hereto as
5 Exhibit A.

6 19. “Legally Authorized Representative” means an administrator/administratrix,
7 personal representative, or executor/executrix of a deceased Settlement Class Member’s estate;
8 guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other
9 legally appointed Person responsible for handling the business affairs of a Settlement Class
10 Member.

11 20. “Person” means any individual, corporation, partnership, association, affiliate, joint
12 stock company, estate, trust, unincorporated association, entity, government and any political
13 subdivision thereof, or any other type of business or legal entity.

14 21. “Preliminary Approval Order” means the order that preliminarily approves the
15 Settlement and sets a date for the Final Approval Hearing, without material variation from the
16 Parties’ agreed-upon proposed preliminary approval order attached hereto as Exhibit B. Entry of
17 the Preliminary Approval Order shall constitute preliminary approval of the Settlement
18 Agreement.

19 22. “Releases” mean the releases and waivers set forth in this Settlement Agreement
20 and in the Final Approval Order and Final Judgment. The Releases are a material part of the
21 Settlement for Cognosphere. The Releases shall be construed as broadly as possible to effect
22 complete finality over this Action involving claims that result from, arise out of, are based on, or
23 relate in any way to the practices and claims that were alleged in the Action.

24 23. “Released Claims” include Settlement Class Representative’ Released Claims and
25 Settlement Class Members’ Released Claims.

26 24. “Released Parties” means (i) Cognosphere and its past, present, and future parents,
27 subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities,
28 whether foreign or domestic, that are owned or controlled by Cognosphere; and (ii) the past,

1 present, and future shareholders, officers, directors, members, agents, employees, independent
2 contractors, consultants, administrators, representative, fiduciaries, insurers, attorneys, legal
3 representative, advisors, creditors, predecessors, successors, and assigns of the entities in Part (i)
4 of this Paragraph.

5 25. “Releasing Parties” means Settlement Class Members, and each of their heirs,
6 estates, trustees, principals, beneficiaries, guardians, executors, administrators, representative,
7 agents, attorneys, partners, successors, predecessors-in-interest, and assigns and/or anyone
8 claiming through them or acting or purporting to act for them or on their behalf.

9 26. “Service Award” means the amount approved by the Court to be paid to the
10 Settlement Class Representative as described further in Paragraph VII.51.

11 27. “Settlement” means the settlement of the Action between and among the Settlement
12 Class Representative, the Settlement Class Members, and Cognosphere, as set forth in this
13 Settlement Agreement, including all attached Exhibits (which are an integral part of this
14 Settlement Agreement and are incorporated in their entirety by reference).

15 28. “Settlement Class” has the meaning set forth in Paragraph III.34.

16 29. “Settlement Class Member(s)” means any and all persons who fall within the
17 definition of the Settlement Class.

18 30. “Settlement Class Representative” means C.J., through her mother and legal
19 guardian, Juanita James.

20 31. “Settlement Class Representative’s Releasing Parties” means each Settlement
21 Class Representative, and each of her heirs, estates, trustees, principals, beneficiaries, guardians,
22 executors, administrators, Representative, agents, attorneys, insurers, subrogees, partners,
23 successors, predecessors-in-interest, and assigns and/or anyone other than Class Members
24 claiming through them or acting or purporting to act for them or on their behalf.

25 **III. SETTLEMENT CLASS CERTIFICATION**

26 32. For purposes of settlement only, the Parties agree to seek provisional certification
27 of the Settlement Class, pursuant to Code of Civil Procedure § 382 and Civil Code § 1781.

28

1 33. The Parties further agree that the Court should make preliminary findings and enter
2 the Preliminary Approval Order granting provisional certification of the Settlement Class subject
3 to the final findings and approval in the Final Approval Order and Final Judgment, and appointing
4 Settlement Class Representative as the Representative of the Settlement Class and Class Counsel
5 as counsel for the Settlement Class.

6 34. For purposes of the provisional certification, the Settlement Class shall be defined
7 as follows:

8 All persons in the United States of America who made a purchase in Genshin
9 Impact while under the age of 18.

10 35. Excluded from the Settlement Class are (i) all Persons who are directors, officers,
11 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by
12 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any
13 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate
14 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
15 immediate family and staff.

16 36. Cognosphere does not consent to certification of the Settlement Class (or to the
17 propriety of class treatment) for any purpose other than to effectuate the settlement of this Action.
18 Cognosphere's agreement to provisional certification does not constitute an admission of
19 wrongdoing, fault, liability, or damage of any kind to Settlement Class Representative or any of
20 the provisional Settlement Class Members.

21 37. Class Notice will be provided via the following information posted on Class
22 Counsel's website: the Settlement Agreement, Plaintiff's motion for preliminary approval, and
23 plaintiff's motion for attorneys' fees and incentive awards (including any opposition and reply
24 papers).

25 38. If this Settlement Agreement is terminated pursuant to its terms, disapproved by
26 any court (including any appellate court), and/or not consummated for any reason, or the Effective
27 Date for any reason does not occur, the order certifying the Settlement Class for purposes of
28 effectuating the Settlement, and all preliminary and/or final findings regarding that class

1 certification order, shall be automatically vacated upon notice of the same to the Court, the Action
2 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement
3 Agreement and such findings had never been made, and the Action shall return to the procedural
4 posture as it existed on March 30, 2023, in accordance with this Paragraph. No Party nor counsel
5 shall refer to or invoke the vacated findings and/or order relating to class settlement if this
6 Settlement Agreement is not consummated and the Action is later litigated and contested by
7 Cognosphere.

8 **IV. SETTLEMENT CONSIDERATION AND INJUNCTIVE RELIEF**

9 39. In consideration for the dismissal of the Action with prejudice and the releases
10 provided in this Settlement Agreement, and as a result of the Action and Settlement, Cognosphere
11 agrees to the following for U.S. residents for three years following the effective date:

12 a) Cognosphere will agree to include language in substantially the following
13 form in its Terms of Service applicable to U.S. players (currently at
14 <https://genshin.hoyoverse.com/en/company/terms>):

15 i) “You acknowledge and agree that you are not entitled to a refund
16 for any Virtual Currency, except as otherwise required by applicable
17 law.”

18 b) Cognosphere will, in processing any direct requests for refunds of in-game
19 purchases:

20 i) For platforms that process refund requests independently from
21 Cognosphere (e.g., Apple App Store, Google Play Store,
22 PlayStation Store), in its standard response redirecting users to those
23 platforms, add language in substantially the following form: “Please
24 note that store refund policies may vary based on the location of user
25 and the age of user, including legal minority, at the time of purchase,
26 as may be required by applicable law,” provided, however, that
27 Cognosphere may include other language as well while redirecting
28 users to those platforms.

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ii) For all other platforms , and refund requests for which Cognosphere elects to process itself, in its standard response for U.S. users seeking a refund who indicate that a minor was involved in the situation that led to the refund request, Cognosphere will implement policies to determine whether the in-game purchase was made when the user was a minor without parental consent, except as prohibited by local law.

c) Cognosphere will create a public-facing “help page” (or add to existing pages to the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases:

i) Add specific links to platforms that process refund requests independently from Cognosphere In-App/In-Game Purchase refund policies for reference;

ii) Add language in substantially the following form: “Please note that store refund policies may vary based on the location of user and the age of user, including legal minority, at the time of purchase, as may be required by applicable law,” provided, however, that Cognosphere may include other language as well while redirecting users to those platforms so long as the additional language does not conflict with the quoted required language in this Paragraph 39(c)(ii).

d) Cognosphere will link to these “help pages” on the website within its FAQ section or on any section on its website that is easily accessible to general public.

e) For all refund requests processed by Cognosphere referenced in ¶ 39(b)(ii), Cognosphere will implement a dedicated process to address refund requests to determine whether a refund is appropriate, which may include, but are not limited to, the following considerations:

- 1 i) reasonable confirmation that the purchaser is a minor;
- 2 ii) The minor’s legal guardian agrees that Cognosphere may terminate
- 3 the minor’s account and will prohibit future gameplay by the minor
- 4 and agrees to be financially responsible for any future purchases by
- 5 the minor;
- 6 iii) Cognosphere may require identification of the minor and the
- 7 minor’s legal guardian to prevent the minor’s access to further
- 8 gameplay.
- 9 iv) Cognosphere is not required to provide refunds for purchases made
- 10 on an adult’s account. The personnel staffing this dedicated process
- 11 will receive further training regarding how to analyze and process
- 12 such refund requests in accordance with applicable law.
- 13 f) The parties acknowledge that Cognosphere’s refund policies and practices
- 14 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

15 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
16 **REVIEW AND APPROVAL**

17 40. Solely for purposes of implementing this Agreement and effectuating the proposed
18 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion
19 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval
20 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

- 21 41. Among other things, the Preliminary Approval Order shall:
- 22 a) find that the requirements for provisional certification of the Settlement
 - 23 Class have been satisfied, appointing Settlement Class Representative as the Representative of the
 - 24 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;
 - 25 b) preliminarily enjoin all Settlement Class Members and their Legally
 - 26 Authorized Representative(s) from filing or otherwise participating in any other suit based on the
 - 27 Released Claims;

28

1 c) establish dates by which the Parties shall file and serve all papers in support
2 of the application for final approval of the Settlement;

3 d) schedule the Fairness Hearing on a date ordered by the Court, provided in
4 the Preliminary Approval Order, and in compliance with applicable law, to determine whether the
5 Settlement should be approved as fair, reasonable, adequate, and to determine whether a Final
6 Approval Order and Final Judgment should be entered dismissing the Action with prejudice;

7 e) provide that all Settlement Class Members will be bound by the Final
8 Approval Order and Final Judgment dismissing the Action with prejudice; and

9 f) pending the Fairness Hearing, stay all proceedings in the Action, other than
10 the proceedings necessary to carry out or enforce the terms and conditions of this Settlement
11 Agreement and Preliminary Approval Order.

12 42. In advance of the Fairness Hearing, Class Counsel shall request entry of a Final
13 Approval Order and Final Judgment, without material variation from Exhibit A, the entry of which
14 is a material condition of this Settlement Agreement, and that shall, among other things:

15 a) find that the Court has personal jurisdiction over all Settlement Class
16 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and
17 that the venue is proper;

18 b) finally approve this Settlement Agreement and the Settlement pursuant to
19 California Code of Civil Procedure;

20 c) certify the Settlement Class under applicable California Code of Civil
21 Procedure for purposes of settlement only;

22 d) find that direct notice to the class is not necessary, and that notice on Class
23 Counsel's public website, as provided in this Settlement Agreement, is sufficiently within the
24 range of reasonableness;

25 e) incorporate the Releases set forth in this Settlement Agreement and make
26 the Releases effective as of the Effective Date;

27 f) issue the injunctive relief described in this Settlement Agreement;

28 g) authorize the Parties to implement the terms of the Settlement;

1 h) dismiss the Action with prejudice and enter a separate judgment pursuant to
2 applicable California Code of Civil Procedure; and

3 i) determine that the Agreement and the Settlement provided for herein, and
4 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
5 or construed as evidence of, a presumption, concession, or an admission by any Party of liability
6 or non-liability or of the certifiability or non-certifiability of a litigation class, or of any
7 misrepresentation or omission in any statement or written document approved or made by any
8 Party; provided, however, that reference may be made to this Agreement and the Settlement
9 provided for herein in such proceedings as may be necessary to effectuate the provisions of this
10 Agreement, as further set forth in this Agreement.

11 **VI. RELEASES AND DISMISSAL OF ACTION**

12 43. Upon the Effective Date, Settlement Class Representative's Releasing Parties will
13 be deemed to have, and by operation of the Final Approval Order and Final Judgment will have
14 fully, finally, and forever released, relinquished, and discharged any and all past, present, and
15 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or
16 liabilities, of any nature and description whatsoever, known or unknown, recognized now or
17 hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery
18 (including, but not limited to, those based in contract or tort, common law or equity, federal, state,
19 or local law, statute, ordinance, or regulation), against the Released Parties, up until and including
20 the Effective Date, that result from, arise out of, are based on, or relate in any way to the practices
21 and claims that were alleged in the Action, for any type of relief that can be released as a matter
22 of law, including, without limitation, claims for monetary relief, damages (whether compensatory,
23 consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest,
24 attorneys' fees, litigation costs, restitution, or equitable relief under Cal. Family Code §§ 6701 and
25 6710 ("Settlement Class Representative' Released Claims"). Settlement Class Representative's
26 Releasing Parties are forever enjoined from taking any action seeking any relief against the
27 Released Parties based on any of Settlement Class Representative' Released Claims.

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1 44. Upon the Effective Date, the Releasing Parties will be deemed to have, and by
2 operation of the Final Approval Order and Final Judgment will have fully, finally, and forever
3 released, relinquished, and discharged any and all past, present, and future claims, actions,
4 demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or
5 declaratory relief, of any nature and description whatsoever, known or unknown, existing or
6 preexisting, recognized now or hereafter, expected or unexpected, pursuant to any theory of
7 recovery (including, but not limited to, those based in contract or tort, common law or equity,
8 federal, state, or local law, statute, ordinance, or regulation) against the Released Parties, up until
9 and including the Effective Date, that result from, arise out of, are based on, or relate in any way
10 to the practices and claims that were alleged in the Action (“Settlement Class Members’ Released
11 Claims”), except that, notwithstanding the foregoing, the Releasing Parties do not release claims
12 for monetary relief or damages. The Releasing Parties are forever enjoined from taking any action
13 seeking injunctive and/or declaratory relief against the Released Parties based on any Settlement
14 Class Members’ Released Claims.

15 45. After entering into this Settlement Agreement, the Parties may discover facts other
16 than, different from, or in addition to, those that they know or believe to be true with respect to the
17 claims released by this Settlement Agreement, but they intend to release fully, finally and forever
18 the Released Claims, and in furtherance of such intention, the Releases will remain in effect
19 notwithstanding the discovery or existence of any such additional or different facts. With respect
20 to the Released Claims, Settlement Class Representative (on behalf of themselves and the
21 Settlement Class Members), through their counsel, expressly, knowingly, and voluntarily waive
22 any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and
23 any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code
24 Section 1542, which reads as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
 DEBTOR OR RELEASED PARTY.

1 46. The Parties acknowledge, and by operation of law shall be deemed to have
2 acknowledged, that the waiver of the provisions of Section 1542 of the California Civil Code (and
3 any similar State laws) with respect to the claims released by this Settlement Agreement was
4 separately bargained for and was a key element of the Settlement.

5 47. By operation of the Final Approval Order and Final Judgment, the Action will be
6 dismissed with prejudice.

7 48. Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive
8 remedy for any and all Released Claims of Class Representative and Settlement Class Members;
9 and (b) Class Representative and Settlement Class Members stipulate to be and shall be
10 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against
11 Released Parties in any federal or state court or tribunal any and all Released Claims.

12 **VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD**

13 49. Class Counsel may apply to the Court for an award of reasonable attorneys' fees
14 and costs not to exceed \$400,000. Class Counsel approximates that it will seek \$25,000 in costs
15 and \$375,000 in fees, but may apply in different amounts not to exceed \$400,000. Cognosphere
16 will take no position on Class Counsel's application and agrees to pay the amount of fees and costs
17 determined by the Court, up to \$400,000. These terms regarding fees and costs were negotiated
18 and agreed to by the Parties only after full agreement was reached as to all other material terms.

19 50. Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$400,000,
20 shall be payable by Cognosphere, as ordered, within the later of (a) twenty-one (21) days after the
21 Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration
22 of all deadlines in which a class member or any person may challenge final approval. In no event
23 shall Cognosphere be required to make a payment of attorneys' fees if the Settlement Agreement
24 is not finally approved.

25 51. The Parties agree that the Class Representative may apply to the Court for a Service
26 Award, which shall not exceed \$1,000, for her services as Class Representative. The Parties agree
27 that the decision whether or not to award any such payment, and the amount of that payment, rests
28 in the exclusive discretion of the Court. Cognosphere agrees to pay the amount determined by the

1 Court, up to \$1,000. Class Representative understands and acknowledges that she may receive no
2 monetary payment, and her agreement to the Settlement is not conditioned on the possibility of
3 receiving monetary payment. Any Service Award, as awarded by the Court, shall be payable by
4 Cognosphere as ordered, within the later of (a) twenty-one (21) days after the Court's order
5 awarding fees and expenses, or (b) final approval of the settlement and the expiration of all
6 deadlines in which a class member or any person may challenge final approval. In no event shall
7 Cognosphere be required to make a payment of an incentive award if the Settlement Agreement is
8 not finally approved.

9 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
10 **COGNOSPHERE'S RESERVATION OF RIGHTS**

11 52. This Settlement Agreement may be amended or modified only by a written
12 instrument signed by or on behalf of all Parties or their respective successors-in-interest and
13 approval of the Court; provided, however that, after entry of the Final Approval Order and Final
14 Judgment, the Parties may by written agreement effect such amendments, modifications, or
15 expansions of this Settlement Agreement and its implementing documents (including all
16 Exhibits hereto) without further approval by the Court if such changes are consistent with the
17 Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the
18 rights of Settlement Class Members under this Settlement Agreement.

19 53. This Settlement Agreement and any Exhibits attached hereto constitute the entire
20 agreement among the Parties, and no representations, warranties, or inducements have been made
21 to any Party concerning this Settlement Agreement or its Exhibits other than the representations,
22 warranties, and covenants covered and memorialized in such documents.

23 54. In the event the terms or conditions of this Settlement Agreement are materially
24 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after
25 such modification may declare this Settlement Agreement null and void. For purposes of this
26 Paragraph, material modifications include any modifications to the definitions of the Settlement
27 Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the
28 terms of the Settlement consideration described in Paragraph IV.39 and/or any requirement of

1 notice to the Settlement Class. In the event of any material modification by any court, and before
2 exercising their unilateral option to withdraw from this Settlement Agreement pursuant to this
3 Paragraph, the Parties shall meet and confer within seven (7) days of such ruling to attempt to
4 reach an agreement as to how best to effectuate the court-ordered modification.

5 55. In the event that a Party exercises his/her/its option to withdraw from and terminate
6 this Settlement Agreement pursuant to Paragraph 54, then the Settlement proposed herein shall
7 become null and void and shall have no force or effect, the Parties shall not be bound by this
8 Settlement Agreement, and the Parties will be returned to their respective positions existing on
9 March 30, 2023.

10 56. If this Settlement Agreement is not approved by the Court or the Settlement
11 Agreement is terminated or fails to become effective in accordance with the terms of this
12 Settlement Agreement, the Parties will be restored to their respective positions in the Action
13 existing on March 30, 2023. In such event, the terms and provisions of this Settlement Agreement
14 and the memorandum of understanding will have no further force and effect with respect to the
15 Parties and will not be used in this Action or in any other proceeding for any purpose, and any
16 Judgment or order entered by the Court in accordance with the terms of this Settlement Agreement
17 will be treated as vacated.

18 57. The procedure for and the allowance or disallowance by the Court of any
19 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,
20 and the procedure for any payment to the class representative, are not part of the settlement of the
21 Released Claims as set forth in the Settlement Agreement, and are to be considered by the Court
22 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the
23 settlement of the Released Claims as set forth in the Settlement Agreement. Any such separate
24 order, finding, ruling, holding, or proceeding relating to any such applications for attorneys' fees
25 and costs and/or payment to the class representative, or any separate appeal from any separate
26 order, finding, ruling, holding, or proceeding relating to them or reversal or modification of them,
27 shall not operate to terminate or cancel the Settlement Agreement or otherwise affect or delay the
28 finality of the final approval order and final judgment approving the Settlement.

1 58. The terms of this Agreement relating to the Attorneys' Fees and Costs Award and
2 Service Awards were negotiated and agreed to by the Parties only after full agreement was reached
3 as to all other material terms of the proposed Settlement, including, but not limited to, any terms
4 relating to the relief to the Settlement Class.

5 59. Cognosphere denies the material factual allegations and legal claims asserted in the
6 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
7 statements, acts or omissions alleged in the Action. Similarly, this Settlement Agreement provides
8 for no admission of wrongdoing or liability by any of the Released Parties. This Settlement is
9 entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.
10 For the avoidance of doubt, Cognosphere does not acknowledge the propriety of certifying the
11 Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this
12 Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does
13 not occur, Cognosphere does not waive, but rather expressly retains and reserves, all rights it had
14 prior to the execution of this Settlement Agreement to challenge all claims and allegations in the
15 Action upon all procedural and factual grounds, including, without limitation, the right to
16 challenge the certifiability of any class claims certified in the Action, and to assert any and all
17 other potential defenses or privileges that were available to it at that time, including but not limited
18 to challenging the Court's subject matter jurisdiction over any claims asserted in the Action.
19 Cognosphere's agreement to this Settlement does not constitute an admission that certification is
20 appropriate outside of the context of this Settlement. The Settlement Class Representative and
21 Class Counsel agree that Cognosphere retains and reserves these rights, and agree not to take a
22 position to the contrary. Class Counsel shall not refer to or invoke Cognosphere's decision to
23 accept the certified class for purposes of settlement if the Effective Date does not occur and the
24 Action is later litigated and certification is contested by Cognosphere.

25 **IX. MISCELLANEOUS PROVISIONS**

26 60. The Parties intend the Settlement Agreement to be a final and complete resolution
27 of all disputes between them with respect to the Action. The Settlement Agreement compromises
28

1 claims that are contested and will not be deemed an admission by Cognosphere or Class
2 Representative as to the merits of any claim or defense.

3 61. Unless otherwise specifically provided herein, all notices, demands, or other
4 communications given hereunder shall be sent by email and First Class mail to the following:

5 To Class Representative and the Settlement Class:

6 L. Timothy Fisher
7 ltfisher@bursor.com
8 Bursor & Fisher, P.A.
9 1990 N. California Blvd.
10 Walnut Creek, CA 94596

11 Philip L. Fraietta
12 pfraietta@bursor.com
13 Alec M. Leslie
14 aleslie@bursor.com
15 888 7th Ave.
16 New York, NY 10019

17 To Counsel for Cognosphere:

18 Ajay S. Krishnan
19 Kecker, Van Nest & Peters LLP
20 633 Battery Street
21 San Francisco, CA 94111-1809
22 akrishnan@kecker.com

23 Michelle Ybarra
24 Kecker, Van Nest & Peters LLP
25 633 Battery Street
26 San Francisco, CA 94111-1809
27 mybarra@kecker.com

28 62. All of the Exhibits to this Agreement are an integral part of the Settlement and are
incorporated by reference as though fully set forth herein.

63. The Parties agree that the recitals are contractual in nature and form a material part
of this Settlement Agreement.

64. No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the
circumstances under which this Settlement Agreement was made or executed. This Settlement
Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the

1 terms and conditions of this Settlement Agreement will control over any other written or oral
2 agreements.

3 65. Unless otherwise noted, all references to “days” in this Agreement shall be to
4 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or
5 federal legal holiday, such date or deadline shall be on the first Business Day thereafter.

6 66. The Settlement Agreement, the Settlement, all documents, orders, and other
7 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release
8 or other statement or report by the Parties or by others concerning the Settlement Agreement, the
9 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
10 documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the
11 Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute
12 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of
13 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the
14 Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense
15 asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of
16 certifying a litigation class or any decision by any court regarding the certification of a class, and/or
17 (v) whether the consideration to be given in this Settlement Agreement represents the relief that
18 could or would have been obtained through trial in the Action, in any trial, civil, criminal,
19 administrative, or other proceeding of the Action or any other action or proceeding in any court,
20 administrative agency, or other tribunal.

21 67. The Parties to this Action or any other Released Parties shall have the right to file
22 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
23 may be brought against them in order to support a defense or counterclaim based on principles of
24 res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any
25 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26 68. The Parties agree that the consideration provided to the Settlement Class and the
27 other terms of the Settlement Agreement were negotiated at arm’s length, in good faith by the
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1 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent
2 legal counsel, and with the assistance of an independent, neutral mediator.

3 69. The Class Representative and Class Counsel have concluded that the Settlement set
4 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class
5 Representative asserted against Cognosphere, including the claims on behalf of the Settlement
6 Class, and that it promotes the best interests of the Settlement Class.

7 70. To the extent permitted by law, all agreements made and orders entered during the
8 course of the Action relating to the confidentiality of information shall survive this Settlement
9 Agreement.

10 71. The waiver by one Party of any breach of this Settlement Agreement by any other
11 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
12 Agreement.

13 72. This Settlement Agreement may be executed in counterparts, each of which shall
14 be deemed an original and all of which, when taken together, shall constitute one and the same
15 instrument. Signatures submitted by email or facsimile shall also be considered originals. The
16 date of execution shall be the latest date on which any Party signs this Settlement Agreement.

17 73. The Parties hereto and their respective counsel agree that they will use their best
18 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,
19 including to obtain a Final Approval Order and Final Judgment approving the Settlement.

20 74. This Settlement Agreement shall be binding upon and shall inure to the benefit of
21 the successors and assigns of the Parties hereto, including any and all Released Parties and any
22 corporation, partnership, or other entity into or with which any Party hereto may merge,
23 consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

24 75. This Settlement Agreement was jointly drafted by the Parties. Class
25 Representative, Settlement Class Members, and/or Cognosphere shall not be deemed to be the
26 drafters of this Settlement Agreement or of any particular provision, nor shall they argue that any
27 particular provision should be construed against its drafter or otherwise resort to the *contra*
28 *proferentem* canon of construction. Accordingly, this Settlement Agreement should not be

1 construed in favor of or against one Party as to the drafter, and the Parties agree that the provisions
2 of California Civil Code § 1654 and common law principles of construing ambiguities against the
3 drafter shall have no application.

4 76. Any and all Exhibits to this Settlement Agreement, which are identified in the
5 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully
6 incorporated herein by this reference.

7 77. This Settlement Agreement shall be governed by and construed in accordance with
8 the laws of the State of California, without regard to choice of law principles. Any action to
9 enforce the terms of this Settlement Agreement shall be filed in the Superior Court of the State of
10 California.

11 78. The headings used in this Settlement Agreement are inserted merely for the
12 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement
13 Agreement.

14 79. In construing this Settlement Agreement, the use of the singular includes the plural
15 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

16 80. Class Representative and Class Counsel will not issue any press release or
17 communicate with the media regarding the Settlement or the Action without prior approval of
18 Cognosphere. However, if Class Representative or Class Counsel receive an inquiry from any
19 third party (excluding Settlement Class Members who identify themselves as such), they may only
20 make affirmative statements relating to the Settlement as follows: "The parties have reached a
21 mutually agreeable resolution to a disputed set of class claims that is fair, adequate, and
22 reasonable." Class Counsel reserves all rights to communicate with individual members of the
23 Settlement Class to assist them in understanding the Settlement and nothing herein shall be
24 construed as restricting those rights and responsibilities. Similarly, nothing in this Agreement will
25 affect Cognosphere's right to communicate with individual members of the Settlement Class
26 relating to matters other than the Action or the proposed Settlement.

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1 81. The provision of the confidentiality agreement entered into with respect to the
2 mediation process concerning this matter is waived for the limited purpose of permitting the Parties
3 to confirm the details of the mediation process that are included in this Agreement.

4 82. The Class Representative further acknowledges, agrees, and understands that: (i)
5 she has read and understands the terms of this Agreement; (ii) she has been advised in writing to
6 consult with an attorney before executing this Agreement; and (iii) she has obtained and considered
7 such legal counsel as she deems necessary. The Class Representative enters into this Settlement
8 Agreement with the full ratification and authorization of her guardian, Juanita James.

9 83. All of the Parties warrant and represent that they are agreeing to the terms of this
10 Settlement Agreement based upon the legal advice of their respective attorneys, that they have
11 been afforded the opportunity to discuss the contents of this Settlement Agreement with their
12 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
13 accepted.

14 84. Each Party to this Settlement Agreement warrants that he or it is acting upon her or
15 its independent judgment and upon the advice of her or its counsel, and not in reliance upon any
16 warranty or representation, express or implied, of any nature or any kind by any other Party, other
17 than the warranties and representations expressly made in this Settlement Agreement.

18 85. Each Counsel or other person executing this Settlement Agreement or any of its
19 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.
20 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class
21 Representative to take all appropriate action required or permitted to be taken by the Settlement
22 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to
23 enter into any modifications or amendments to this Settlement Agreement on behalf of the
24 Settlement Class that Class Counsel and Class Representative deem appropriate.

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
duly executed this Settlement Agreement as of the date set forth below.

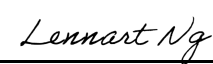
Dated: May 1, 2023

KEKER, VAN NEST & PETERS LLP

By: 


Dated: April 28, 2023

COGNOSPHERE, PTE. LTD.

By: 

Dated: Apr 28, 2023, 2023

PLAINTIFF C.J.

By: 
Juanita M. James (Apr 28, 2023 07:35 PDT)

Dated: Apr 28, 2023, 2023

BURSOR & FISHER, P.A.

By: 

EXHIBIT A

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

C.J., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

1 The Court has considered the Class Action Settlement Agreement and Release between
2 Plaintiff C.J. (“Plaintiff”) and Defendant Cognosphere, Pte. Ltd., (“Defendant” or
3 “Cognosphere”), dated ____, 2023 (“Settlement Agreement”), the motion for an order finally
4 approving the Settlement Agreement, the record in this Action, the arguments and
5 recommendations made by counsel, and the requirements of the law. The Court finds and orders
6 as follows:

7 **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

8 1. The Settlement Agreement is approved under California Rules of Court Rule 3.769
9 and Code of Civil Procedure § 382. The Court finds that the Settlement Agreement and the
10 Settlement it incorporates appear fair, reasonable, and adequate, and its terms are within the range
11 of reasonableness. The Settlement Agreement was entered into at arm’s-length by experienced
12 counsel after extensive negotiations spanning months, including with the assistance of a third-
13 party mediator. The Court finds that the Settlement Agreement is not the result of collusion.

14 **II. DEFINED TERMS**

15 2. For the purposes of this Final Approval Order and Final Judgment (“Order”), the
16 Court adopts all defined terms as set forth in the Settlement Agreement.

17 **III. NO ADMISSIONS AND NO EVIDENCE**

18 3. This Order, the Settlement Agreement, the Settlement provided for therein, and
19 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
20 or construed as evidence of, a presumption, concession, or an admission by any Party or any of
21 the Released Parties of wrongdoing, to establish a violation of any law or duty, an admission that
22 any of the practices at issue violate any laws or require any disclosures, any liability or non-
23 liability, the certifiability or non-certifiability of a litigation class in this case, or any
24 misrepresentation or omission in any statement or written document approved or made by any
25 Party.
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1 **IV. JURISDICTION**

2 4. For the purposes of the Settlement of the Action, the Court finds it has subject
3 matter and personal jurisdiction over the Parties, including all Settlement Class Members, and
4 venue is proper.

5 **V. CLASS CERTIFICATION OF RULE 23(B)(2) CLASS FOR SETTLEMENT**
6 **PURPOSES ONLY**

7 5. The Court finds and concludes that, for the purposes of approving this Settlement
8 Agreement only, the proposed Settlement Class meets the requirements for certification under
9 California Code of Civil Procedure § 382: (a) the Settlement Class is so numerous that joinder of
10 all members is impracticable; (b) there are questions of law or fact common to the Settlement
11 Class; (c) the claims or defenses of the Settlement Class Representative are typical of the claims
12 or defenses of the Settlement Class; (d) Settlement Class Representative and Class Counsel will
13 fairly and adequately protect the interests of the Settlement Class because Settlement Class
14 Representative have no interests antagonistic to the Settlement Class, and have retained counsel
15 who are experienced and competent to prosecute this matter on behalf of the Settlement Class;
16 and (e) the Defendant has acted on grounds that apply generally to the Settlement Class, so that
17 final injunctive relief is appropriate respecting the Settlement Class as a whole.

18 6. The Settlement Agreement was the result of negotiations conducted by the Parties,
19 over the course of multiple months, including with the assistance of a neutral
20 mediator. Settlement Class Representative and Class Counsel maintain that the
21 Action and the claims asserted therein are meritorious and that Settlement Class
22 Representative and the Class would have prevailed at trial. Defendant denies the
23 material factual allegations and legal claims asserted by Settlement Class
24 Representative in this Action, maintains that, other than for settlement purposes, a
25 class would not be certifiable under any Rule, and that the Settlement Class
26 Representative and Class Members would not prevail at trial. Notwithstanding the
27 foregoing, the Parties have agreed to settle the Action pursuant to the provisions of
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1 the Settlement Agreement, after considering, among other things: (a) the benefits
2 to the Settlement Class Representative and the Settlement Class under the terms of
3 the Settlement Agreement; (b) the uncertainty of being able to prevail at trial; (c)
4 the uncertainty relating to Defendant's defenses and the expense of additional
5 motion practice in connection therewith; (d) obstacles to establishing entitlement
6 to class-wide relief; (e) the attendant risks of litigation, especially in complex
7 actions such as this, as well as the difficulties and delays inherent in such litigation
8 and appeals; and (f) the desirability of consummating the Settlement promptly in
9 order to provide effective relief to the Settlement Class Representative and the
10 Settlement Class.

11 7. The Court accordingly certifies, for settlement purposes only, a class consisting of
12 all persons in the United States of America who made a purchase in Genshin Impact while under
13 the age of 18. Excluded from the Settlement Class are (i) all Persons who are directors, officers,
14 and agents of Cognosphere or its subsidiaries and affiliated companies or are designated by
15 Cognosphere as employees of Cognosphere or its subsidiaries and affiliated companies; (ii) any
16 entity in which Cognosphere has a controlling interest; and (iii) the Court, the Court's immediate
17 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
18 immediate family and staff..

19 **VI. NOTICE**

20 8. Direct notice of the settlement is not required here because the Settlement
21 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
22 monetary or damages claims of the Class, and thus the settlement expressly preserves the
23 individual rights of class members to pursue monetary claims against the defendant. Nonetheless,
24 pursuant to the Settlement Agreement, documents pertaining to the Settlement, preliminary
25 approval, and final approval (including Plaintiffs' motion for attorneys' fees and incentive awards
26 and any opposition or reply papers thereto), were posted on Class Counsel's public website.
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1 **VII. CLAIMS COVERED AND RELEASES**

2 9. This Order constitutes a full, final and binding resolution between the Class
3 Representative's Releasing Parties, on behalf of themselves and the Settlement Class Members,
4 and the Released Parties. This Release shall be applied to the maximum extent permitted by law.

5 10. Upon the Effective Date and by operation of this Order, the Settlement Class
6 Representative's Releasing Parties will fully, finally, and forever release, relinquish, and
7 discharge any and all Settlement Class Representative's Released Claims, including claims for
8 monetary relief and damages, known and unknown, as well as provide a waiver under California
9 Civil Code Section 1542. Settlement Class Representative's Releasing Parties are forever
10 enjoined from taking any action seeking any relief against the Released Parties based on any
11 Settlement Class Representative's Released Claims.

12 11. Upon the Effective Date and by operation of this Order, the Releasing Parties will
13 fully, finally, and forever release, relinquish, and discharge the Settlement Class Members'
14 Released Claims,as well as provide a waiver under California Civil Code Section 1542) including
15 any and all claims for injunctive and/or declaratory relief of any kind or character, at law or
16 equity, known or unknown, preliminary or final, under any other federal or state law or rule of
17 procedure, up until and including the Effective Date, that result from, arise out of, are based on,
18 or relate in any way to the practices and claims that were alleged in the Action, except that,
19 notwithstanding the foregoing, the Releasing Parties do not release claims for monetary relief or
20 damages. The Releasing Parties are forever enjoined from taking any action seeking injunctive
21 and/or declaratory relief against the Released Parties based on any Settlement Class Members'
22 Released Claims.

23 12. The Settlement Agreement and this Order shall be the exclusive remedy for any
24 and all Released Claims of the Settlement Class Representatives, Settlement Class Members, and
25 Cognosphere.

26 **VIII. INJUNCTIVE RELIEF**

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2 13. Cognosphere will agree to include language in substantially the following form in
3 its Terms of Service applicable to U.S. players (currently at
4 <https://genshin.hoyoverse.com/en/company/terms>):

- 5 a. “You acknowledge and agree that you are not entitled to a refund for any Virtual
6 Currency, except as otherwise required by applicable law.”

7 14. Cognosphere will, in processing any direct requests for refunds of in-game
8 purchases:

- 9 a. For platforms that process refund requests independently from Cognosphere (e.g.,
10 Apple App Store, Google Play Store, PlayStation Store), in its standard response
11 redirecting users to those platforms, add language in substantially the following
12 form: “Please note that store refund policies may vary based on the location of
13 user and the age of user, including legal minority, at the time of purchase, as may
14 be required by applicable law,” provided, however, that Cognosphere may include
15 other language as well while redirecting users to those platforms.
- 16 b. For all other platforms , and refund requests for which Cognosphere elects to
17 process itself, in its standard response for U.S. users seeking a refund who indicate
18 that a minor was involved in the situation that led to the refund request,
19 Cognosphere will implement policies to determine whether the in-game purchase
20 was made when the user was a minor without parental consent, except as
21 prohibited by local law.

22 15. Cognosphere will create a public-facing “help page” (or add to existing pages to
23 the extent relevant) referencing assistance with refunds for virtual money and/or virtual goods
24 purchases:

- 25 a. Add specific links to platforms that process refund requests independently from
26 Cognosphere In-App/In-Game Purchase refund policies for reference;
- 27 b. Add language in substantially the following form: “Please note that store refund
28 policies may vary based on the location of user and the age of user, including legal

1 minority, at the time of purchase, as may be required by applicable law,” provided,
2 however, that Cognosphere may include other language as well while redirecting
3 users to those platforms so long as the additional language does not conflict with
4 the quoted required language in this Paragraph.

5 16. Cognosphere will link to these “help pages” on the website within its FAQ section.

6 17. For all refund requests processed by Cognosphere referenced in ¶ 5(b)(ii),
7 Cognosphere will implement a dedicated process to address refund requests to determine whether
8 a refund is appropriate, which may include, but are not limited to, the following considerations:

- 9 a. reasonable confirmation that the purchaser is a minor;
10 b. The minor’s legal guardian agrees that Cognosphere may terminate the minor’s
11 account and will prohibit future gameplay by the minor and agrees to be
12 financially responsible for any future purchases by the minor;
13 c. Cognosphere may require identification of the minor and the minor’s legal
14 guardian to prevent the minor’s access to further gameplay.
15 d. Cognosphere is not required to provide refunds for purchases made on an adult’s
16 account. The personnel staffing this dedicated process will receive further training
17 regarding how to analyze and process such refund requests in accordance with
18 applicable law.

19 18. The parties will acknowledge that Cognosphere’s refund policies and practices
20 with respect to U.S. minors comply with the California Family Code Sections 6701(c) and 6710.

21 **IX. ATTORNEYS’ FEES AND EXPENSES AND INCENTIVE AWARDS**

22 19. The Court has also considered Plaintiff’s Motion for Attorneys’ Fees, Costs,
23 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the
24 payment of attorneys’ fees, costs, and expenses in the amount of \$400,000 is reasonable under
25 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*
26 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,
27 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class
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1 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the
2 manner provided by the terms of the Settlement Agreement.

3 20. The Court has also considered Plaintiff's Motion and supporting declarations for
4 an incentive award to the Class Representative, C.J. The Court adjudges that the payment of an
5 incentive award in the amount of \$1,000 to C.J. to compensate her for her efforts and
6 commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the
7 circumstances of this case. Such payment shall be made pursuant to and in the manner provided
8 by the terms of the Settlement Agreement.

9 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**
10 **MODIFICATIONS OF AGREEMENT**

11 21. By this Order, the Parties are hereby authorized to implement the terms of the
12 Settlement Agreement. After the date of entry of this Order, the Parties may by written
13 agreement effect such amendments, modifications, or expansions of the Settlement Agreement
14 and its implementing documents (including all exhibits thereto) without further approval by the
15 Court if such changes are consistent with terms of this Order and do not materially alter, reduce,
16 or limit the rights of Settlement Class Members under the Settlement Agreement.

17 **XI. TERMINATION**

18 22. In the event that the Settlement Agreement is terminated pursuant to the terms of
19 the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall
20 have no further force or effect, and shall not be used in any action or other proceedings for any
21 purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
22 survive termination; (b) this matter will revert to the status that existed before execution of the
23 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
24 Parties' settlement discussions, negotiations, or documentation (including any briefs filed in
25 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence
26 for any purpose in any action or other proceeding other than as may be necessary to enforce the
27 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or
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concession by any Party regarding the validity of any Released Claim or the propriety of certifying any class against Cognosphere, or (iii) be deemed an admission or concession by any Party regarding the truth or falsity of any facts alleged in the Action or the availability or lack of availability of any defense to the Released Claims.

XII. RETENTION OF JURISDICTION

23. The Court shall retain jurisdiction over any claim relating to the Settlement Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims arising out of a breach of the Settlement Agreement) as well as any future claims by any Settlement Class Member relating in any way to the Released Claims.

XIII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

24. By operation of this Order, this Action is hereby dismissed with prejudice.

DATED: _____

EXHIBIT B

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

C.J., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT AGREEMENT**

1 WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an
2 order preliminarily approving the Settlement of this Action pursuant to the settlement
3 agreement fully executed on or about _____ (the “Agreement”), which, together with its
4 attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action;
5 and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits,
6 and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as
7 follows:

8 1. The motion is GRANTED.

9 2. Capitalized terms not otherwise defined herein have the meanings set forth in
10 the Settlement Agreement.

11 3. All proceedings in the Action, other than proceedings necessary to carry out or
12 enforce the terms and conditions of the Agreement and this Order, are hereby stayed.

13 4. The Court has subject matter jurisdiction over the Action, and personal
14 jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code
15 § 395.

16 5. The Action is preliminarily certified as a class action, for settlement purposes
17 only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The
18 Court preliminarily finds for settlement purposes that: (a) the Class certified herein is
19 sufficiently numerous that joinder of all such persons would be impracticable; (b) there are
20 questions of law and fact that are common to the Class, and those questions of law and fact
21 common to the Class predominate over any questions affecting any individual Class Member;
22 (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for
23 purposes of settlement; (d) a class action on behalf of the Class is superior to other available
24 means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff’s Counsel
25 are adequate representatives of the Class. Defendant retains all rights to assert that the Action
26 may not be certified as a class action, other than for settlement purposes. The Court also
27 concludes that, because the Action is being settled rather than litigated, the Court “need not
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1 inquire whether the case, if tried, would present intractable management problems.” *See*
2 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

3 6. The Settlement Class shall consist of “All persons in the United States of
4 America who made a purchase in Genshin Impact while under the age of 18.”

5 7. Upon preliminary review, the Court finds that the Agreement, and the
6 Settlement it incorporates is fair, reasonable, and adequate. *See Manual for Complex Litigation*
7 (Fourth) § 21.632 (2004). Accordingly, the Agreement is preliminarily approved and is
8 sufficient to warrant sending notice to the Class.

9 8. Certification of the Settlement Class shall be solely for settlement purposes,
10 without prejudice to the Parties, and with no other effect upon the Action. In the event the
11 Settlement Agreement is not finally approved by this Court, is terminated, or otherwise does
12 not take effect, the Parties preserve all rights and defenses regarding class certification.

13 9. The Court hereby appoints Plaintiff C.J. as Class Representative to represent the
14 Settlement Class.

15 10. The Court hereby appoints Philip L. Fraietta and Alec M. Leslie of Bursor &
16 Fisher, P.A. as Class Counsel for the Settlement Class.

17 11. Direct notice of the settlement is not required here because the Settlement
18 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
19 monetary or damages claims of the Class, and thus the settlement expressly preserves the
20 individual rights of class members to pursue monetary claims against the Defendant.
21 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
22 preliminary approval, and final approval (including Plaintiff’s motion for attorneys’ fees and
23 incentive award and any opposition or reply papers thereto), shall be posted on Class Counsel’s
24 public website (<http://www.https://www.bursor.com/>).

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*C.J. v. Cognosphere Pte. Ltd.*, Case No. _____); (2) the Settlement Class
2 Member's full legal name and mailing address; (3) the personal signature of the Settlement
3 Class member; (4) the grounds for any objection; (5) the name and contact information of any
4 and all attorneys representing, advising, or assisting with the comment or objection, or who
5 may profit from pursuing any objection; and (6) a statement indicating whether the Settlement
6 Class Member intends to appear at the Final Approval Hearing, either personally or through
7 counsel. Written objections must be served on the Settlement Administrator as follows:

8 C.J. v. Cognosphere Pte. Ltd.
9 c/o [Settlement Administrator]
[Insert Settlement Administrator address]

10 The Settlement Administrator, Defense Counsel, and Class Counsel shall promptly furnish each
11 other copies of any and all objections that might come into their possession.

12
13 Class Members may also appear at the final approval hearing to state their objections,
14 whether or not they have made a written objection or given a notice to appear.

15 13. To be considered, written comments or objections must be submitted within 60
16 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
17 Approval Hearing, whether individually or through counsel, unless written notice of the Class
18 Member's intention to appear at the Final Approval Hearing is timely filed, or postmarked for
19 mail to the Court within 60 days after date of entry of this Order.

20 14. The date of the postmark on the envelope containing the written objection shall
21 be the exclusive means used to determine whether an objection has been timely submitted.
22 Class Members who fail to mail timely written objections in the manner specified above shall
23 be deemed to have waived any objections and shall be forever barred from objecting to the
24 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
25 appeal, collateral attack, or otherwise.

26 15. The Court will hold a final approval hearing on _____, 2023 at _____
27 a.m./p.m, in the Superior Court of California, County of Monterey, located at ADDRESS, in
28 Courtroom _____. The purposes of the final approval hearing will be to: (i) determine whether

1 the proposed Settlement Agreement should be finally approved by the Court as fair, reasonable,
2 adequate, and in the best interests of the Settlement Class; (ii) determine whether judgment
3 should be entered pursuant to the Settlement Agreement, dismissing the Action with prejudice
4 and releasing the Released Persons of all claims as stated in the Settlement Agreement; (iii)
5 determine whether the Settlement Class should be finally certified; (iv) rule on Class Counsel's
6 motion for attorneys' fees, costs and service awards; (v) consider any properly filed objections;
7 and (vi) consider any other matters necessary in connection with the final approval of the
8 Settlement Agreement.

9 16. Class Counsel's application for attorneys' fees, costs and expenses shall be filed
10 and served no later than thirty (30) days after the Court's order of preliminary approval. Any
11 opposition, comment, or objection shall be filed no later than sixty (60) days after the Court's
12 order of preliminary approval. Any reply shall be filed no later than seventy-four (74) days
13 after the Court's order of preliminary approval.

14 17. The motion in support of final approval of the settlement shall be filed and
15 served no later than thirty (30) days after the Court's order of preliminary approval. Any
16 opposition or objection shall be filed no later than sixty (60) days after the Court's order of
17 preliminary approval. Any reply shall be filed no later than seventy-four (74) days after the
18 Court's order of preliminary approval.

19 18. The Court may, in its discretion, modify the date and/or time of the final
20 approval hearing, and may order that this hearing be held remotely or telephonically. In the
21 event the Court changes the date, time, and/or the format of the final approval hearing, the
22 Parties shall ensure that the updated information is posted on the Class Counsel's public
23 website.

24 19. If the Settlement Agreement, including any amendment made in accordance
25 therewith, is not approved by the Court or shall not become effective for any reason
26 whatsoever, the Settlement Agreement and any actions taken or to be taken in connection
27 therewith (including this Preliminary Approval Order and any judgment entered herein), shall
28

1 be terminated and shall become null and void and of no further force and effect except for
2 (i) any obligations to pay for any expense incurred in connection with Notice and Other
3 Administration Costs as set forth in the Settlement Agreement, and (ii) any other obligations or
4 provisions that are expressly designated in the Settlement Agreement to survive the termination
5 of the Settlement Agreement.

6 20. Pending final determination of whether the Settlement Agreement should be
7 finally approved, Plaintiff and all Settlement Class Members are barred and enjoined from
8 filing, commencing, prosecuting, or enforcing any action against the Released Parties insofar as
9 such action asserts claims stated in Section VI of the Settlement Agreement, directly or
10 indirectly, in any judicial, administrative, arbitral, or other forum. This bar and injunction is
11 necessary to protect and effectuate the Settlement Agreement and this Preliminary Approval
12 Order, and this Court's authority to effectuate the Settlement, and is ordered in aid of this
13 Court's jurisdiction.

14 21. This Preliminary Approval Order, the Settlement Agreement, the fact that a
15 settlement was reached and filed, and all negotiations, statements, agreements, and proceedings
16 relating to the Settlement, and any matters arising in connection with settlement negotiations,
17 proceedings, or agreements shall not constitute, be described as, construed as, used as, offered
18 or received against Cognosphere as evidence or an admission or concession of: (a) the truth of
19 any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of
20 Cognosphere or breach of any duty on the part of Cognosphere; or (c) that this Action or any
21 other action may be properly certified as a class action for litigation, non-settlement purposes.
22 This order is not a finding of the validity or invalidity of any of the claims asserted or defenses
23 raised in the Action.

24 22. The Court shall retain jurisdiction over any claim relating to the Settlement
25 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
26 arising out of a breach of the Settlement Agreement) as well as any future claims by any
27 Settlement Class Member relating in any way to the Released Claims.
28

1 23. The Court may, for good cause, extend any of the deadlines set forth in this
2 Preliminary Approval Order without further notice to Settlement Class Members. Without
3 further order of the Court, the Parties may agree to make non-material modifications in
4 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.
5

6 IT IS SO ORDERED.

7 Date: _____

8 _____

EXHIBIT E

ENGLISH ▼

Niantic Terms of Service

Please also review Niantic's updated [Privacy Policy](#) that takes effect on June 21, 2021.

Last Modified: May 15, 2019

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1 Terms

Welcome to Niantic. We publish real-world augmented reality mobile experiences, including mobile game applications ("**Apps**"), and operate a real-world augmented reality

websites we own or operate (“**Sites**”), purchase of any Niantic merchandise, participation in Niantic live events or promotions (“**Events**”), and more generally your use of any Niantic products or services (together with Apps and Platform, the “**Services**”).

Some exceptions to the Terms may apply based on your country of residence - please see the country-specific sections below.

If you live in the United States, these Terms are entered into between you and Niantic, Inc., 1 Ferry Building Suite 200, San Francisco, CA 94111. If you live in any other country, these Terms are entered into between you and Niantic International Limited, a company registered to do business under the laws of the United Kingdom. Niantic, Inc. and Niantic International Limited are collectively referred to as "Niantic" or “we” in these Terms.

By using the Services, you are agreeing to these Terms. If you don’t agree to these Terms, you may not use the Services. Niantic may modify these Terms at any time, and if we do, we will notify you by posting the modified Terms on the Site or in the App. It’s important that you review any modified Terms before you continue using the Services. If you continue to use the Services, you are bound by the modified Terms. If you don’t agree to be bound by the modified Terms, then you may not use the Services.

SECTION 13 "DISPUTE RESOLUTION" CONTAINS A BINDING ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT AFFECT YOUR LEGAL RIGHTS. If you are a user in the European Economic Area (“**EEA**”), or any other country that does not allow such arbitration agreement, Section 13 does not apply to you.

If you breach these Terms we may take action against you, including but not limited to terminating your account. You acknowledge that Niantic has no obligation to, and will not, reimburse or refund you for Services lost due to involuntary suspension or termination of your account.

2 Privacy

Our Services are designed to enable you to interact in shared game worlds blended with information from the real world. To provide the Services, we need information about you, and we only use your information where we have a legal basis to do so. Please refer to our [Privacy Policy](#) to help you understand what information we collect, how we use it and what choices you have when you use our Services.

3 Use of the Services

Niantic prohibits cheating, and we constantly take steps to improve our anti-cheat measures. Cheating includes any action that attempts to or actually alters or interferes with the normal behavior or rules of a Service. Cheating includes, but is not limited to, any of the following behavior, on your own behalf or on behalf of others:

- Accessing Services in an unauthorized manner (including using modified or unofficial third party software);
- Playing with multiple accounts for the same Service;
- Sharing accounts;
- Using any techniques to alter or falsify a device's location (for example through GPS spoofing); and/or
- Selling or trading accounts.

Apps may not work on devices that Niantic detects or reasonably suspects to be cheating, and Niantic will not provide support to players who attempt to cheat. You agree that Niantic may employ any lawful mechanisms to detect and respond to cheating, fraud, and other behavior prohibited under these Terms, including checking your device for the existence of exploits or hacking and/or unauthorized software. Please see the [Guidelines](#) and our [Privacy Policy](#) for more information.

3.2 Safe and Appropriate Use

While you are using our Services, please be aware of your surroundings, and play and communicate safely. You agree that your use of the Services is at your own risk, and that you will not use the Services to violate any applicable law, regulation, Event policies, or instructions as outlined in these Terms and you will not encourage or enable any other individual to do so.

Further, you agree that in conjunction with your use of the Services you will not make available any unlawful, inappropriate, or commercial Content (defined below). You agree that you will not submit inaccurate, misleading, or inappropriate Content, including data submissions, edits, or removal requests.

Niantic does not intend Apps to be medical or health devices, or provide medical or health advice.

3.3 Your Interactions with Other People

You agree that in conjunction with your use of the Services, you will maintain safe and appropriate contact with other players and other people in the real world. You will not

have a right or permission to be, and will not otherwise engage in any activity that may result in injury, death, property damage, nuisance, or liability of any kind. If you have a dispute with any third party relating to your use of Services, you release Niantic (and our officers, directors, agents, subsidiaries, joint ventures, and employees) from all claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

3.4 Eligibility and Account Registration

If you want to use certain Services, you will have to create an account with us (an "**Account**"), and you will also need access to a supported mobile phone and an Internet connection. The help centers at [Niantic Game Resources](#) contain a list of supported devices. We do not support rooted or jailbroken devices.

You can create an Account using (a) your pre-existing Google account; (b) your pre-existing Facebook account, (c) a [Niantic Kids](#) account, or (d) such other third-party accounts that we support, as selected by you on the App account creation screen.

You agree that you won't disclose your Account password to anyone and you will notify us immediately of any unauthorized use of your Account. Niantic takes its account security obligations seriously; however, you are responsible for all activities that occur under your Account, whether or not you know about them.

3.5 Account Suspension or Termination

We may suspend or terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you, including if (a) you fail to comply with these Terms; (b) we suspect fraud, cheating, or misuse by you of Content or Services; or (c) we suspect any other unlawful activity associated with your Account. If your Account is inactive (i.e., not used or logged-into) for a period of time, we will notify you via the Services or in the App prior to termination of your Account.

You may terminate your Account at any time by visiting the App [help centers](#). Upon termination of any Services or your Account, the following provisions of these Terms will survive: Content Ownership, Rights Granted by You, Disclaimer of Warranties, Indemnity, Limitation of Liability, Dispute Resolution, General Terms and this sentence on Termination.

3.6 Who May Use Our Services

the processing of personal data in their country of residence (for residents of the EEA); or (c) under 14 years old (for residents of the Republic of Korea). [Niantic Game Resources](#) contains information on the age requirement for each of our Apps.

For Services that permit Child participation, parents or legal guardians ("**Parents**") must provide verified consent. Parents can provide and verify their consent through the [Niantic Kids Parent Portal](#), or through another authorized third-party provider made available through the Service. Where Parental consent is required, Niantic recommends that Parents monitor the Child's online activity and use of the Service.

The verification and consent process for Children is performed by one of several third-party providers ("**Verification Provider**"). The Parent must register with the Verification Provider before a Child may use the Services. The Verification Provider will ask the Parent to verify their identity and to consent to the creation of an Account for the Child. Upon receipt of Parent verification and consent, the Verification Provider will enable the Parent to create an Account for the Child. Parental consent applies exclusively to the Service for which it has been granted.

A Parent who wishes to rescind their previously-provided consent to a Child's access to and use of the Services should follow the instructions for Account deletion, which can be found in the respective help centers [here](#).

Purchases made through the Services are limited to Account holders who either (a) are the age needed to consent to a contract in their country of residence; or (b) if younger, have the consent of a Parent to use the Service. Parents can consult their device settings for the App to restrict in-App purchases by a Child, and should also monitor activity in their Child's Account, including the purchase of Virtual Money or Virtual Goods.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NIANTIC DECLINES ANY RESPONSIBILITY REGARDING ANY ACTIVITIES CONDUCTED BY A CHILD WITH OR WITHOUT THE PERMISSION OF A PARENT. IF YOU ARE A PARENT AND YOU GIVE YOUR PERMISSION FOR YOUR CHILD TO REGISTER FOR ONE OF THE SERVICES, YOU THEREBY AGREE TO THE TERMS RELATING TO USE OF THE SERVICES BY YOUR CHILD.

4 Limited License to Use

Subject to your compliance with these Terms, Niantic grants you a limited, nonexclusive, nontransferable, non-sublicenseable license to download and install a copy of the Apps on a mobile device and to run such copy of the Apps solely for your own personal non-commercial purposes. Except as expressly permitted in these Terms or under applicable

available to multiple users through any means. Niantic reserves all rights in and to the Apps not expressly granted to you under these Terms.

5 Content and Content Rights

Subject to your compliance with these Terms, Niantic grants you a personal, noncommercial, nonexclusive, nontransferable, nonsublicensable, revocable, limited license to download, view, display, and use the Content solely for your permitted use within the Services. "**Content**" means the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, communications, interactive features, works of authorship of any kind, and information or other materials that are generated, provided, or otherwise made available through the Services, including User Content. "**User Content**" means any Content a user of a Service provides to be made available through Services.

5.1 Content Ownership

Niantic does not claim ownership rights in User Content and nothing in these Terms restricts any rights that you may have to use and exploit your User Content. Subject to the foregoing, Niantic and its licensors exclusively own all right, title, and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter, or obscure any copyright, trademark, service mark, or other proprietary rights notices incorporated in or accompanying the Services or Content.

5.2 Rights Granted by You

By making any User Content available through the Services you grant to Niantic a nonexclusive, transferable, sublicenseable, worldwide, royalty-free, perpetual license (or, if not permitted under applicable law, a license for the whole duration, including for any extension thereof, of all relevant rights under any applicable law), to use, copy, modify, create derivative works based upon, publicly display, publicly perform, market, promote and distribute your User Content in connection with operating and providing the Services and Content to you and to others. By accepting these terms, you allow Niantic to benefit freely from the above rights, including but not limited to:

1. The right to reproduce User Content by any means and in any form.
2. The right to publicly or privately broadcast or make available the User Content (or

particular via Internet, pay per view, pay per play, theatrical or television broadcasting, DVD, and print.

3. The right to use the User Content for demonstration, promotion and advertising for all Niantic Services.
4. The right to produce or order the production of any new product or service from the User Content or from any product incorporating or exploiting the User Content, either reproduced as it stands or modified by Niantic or by any outside party of its choice.

You are solely responsible for all your User Content. You represent and warrant that you own all your User Content or you have all rights that are necessary to grant us the license rights in your User Content under these Terms. You also represent and warrant that neither your User Content, nor your use and provision of your User Content to be made available through the Services, nor any use of your User Content by Niantic on or through the Services will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation. To the extent permitted by applicable law, you also agree that you will not exercise your moral rights (or equivalent rights under applicable laws), such as your right to be identified as the author of any of the User Contents, against Niantic or any third party designated by Niantic.

5.3 Trading

Certain Apps permit Account holders to capture and trade virtual items, including but not limited characters or other items ("**Trading Items**"), during gameplay. Unlike Virtual Money and Virtual Goods, Trading Items are obtained at no additional charge during gameplay. Trading Items are a category of Content, and you acknowledge that you do not acquire any ownership rights in or to Trading Items and that Trading Items do not have monetary value. Trading Items may be traded with other Account holders for other Trading Items, but Trading Items can never be sold, transferred, or exchanged for Virtual Money, Virtual Goods, "real" goods, "real" money, or "real" services, or any other consideration from us or anyone else.

You agree that you will only obtain Trading Items from other Account holders and through means provided by Niantic, and not through any third-party platform, broker, or other mechanism, unless expressly authorized. Any such sale, transfer, or exchange (or attempt to do so) is prohibited and may result in the termination of your Account or cancellation of such Trading Items. All Trading Items and other Content are provided "as is," without any warranty, except where prohibited under applicable law.

Certain Apps permit the purchase of virtual currency ("**Virtual Money**"), specific to each App, and use of that Virtual Money to purchase virtual items or services expressly available for use in the respective Apps ("**Virtual Goods**"). Virtual Money is a category of Content. You may access and purchase Virtual Goods for your personal, non-commercial use of the Services. You acknowledge that you do not acquire any ownership rights in or to the Virtual Money or Virtual Goods. Any balance of Virtual Goods or Virtual Money does not reflect any stored value and you agree that Virtual Money and Virtual Goods have no monetary value and do not constitute currency or property of any type. Virtual Money may be redeemed only for Virtual Goods and can never be sold, transferred, or exchanged for "real" money, "real" goods, or "real" services from us or anyone else. You agree that you will only obtain Virtual Money and/or Virtual Goods from us and through means provided by us, and not from any third party unless expressly authorized. Once you acquire a license to Virtual Money or Virtual Goods, you may not transfer them to another individual or account. Any such sale, transfer, or exchange (or attempt to do so) is prohibited, is a violation of these Terms and may result in cancellation of such Virtual Money or Virtual Goods or the termination of your Account.

During the term of your license to your Virtual Money, you may redeem your Virtual Money for selected Virtual Goods. As set forth below, all Virtual Money, Virtual Goods, and other Content is provided "as is," without any warranty. You agree that all sales by us to you of Virtual Money and Virtual Goods are final and that we will not permit exchanges or refunds for any unused Virtual Money or Virtual Goods once the transaction has been made.

Generally, we have the right to offer, modify, eliminate, and/or terminate Virtual Money, Virtual Goods, the Content, and/or the Services, or any portion thereof, at any time, without notice or liability to you. If we discontinue the use of Virtual Money or Virtual Goods, we will provide at least 60 days advance notice to you by posting a notice through the Services or through other communications.

5.5 Feedback

You can submit feedback, comments, and suggestions for improvements to the Services ("**Feedback**") by reaching out to us on social media or support channels. Feedback is a form of User Content.

5.6 DMCA/Copyright Policy

Niantic respects copyright law and expects its users to do the same. It is Niantic's policy to terminate in appropriate circumstances Account holders who infringe or are believed

6 Conduct, General Prohibitions, and Niantic's Enforcement Rights

You agree that you are responsible for your own conduct and User Content while using the Services, and for any consequences thereof. In addition, you agree not to do any of the following, unless applicable law mandates that you be given the right to do so:

- collect, store or share any personally identifiable information of other users from the Services without their express permission;
- extract, scrape, or index the Services or Content (including information about users or gameplay);
- use the Services or Content, or any portion thereof, for any commercial purpose or in a manner not permitted by these Terms, including but not limited to (a) gathering in-App items or resources for sale outside the Apps, (b) performing services in the Apps in exchange for payment outside the Apps, or (c) selling, reselling, or renting the Apps or your Account;
- attempt to access or search the Services or Content or download Content from the Services through the use of any technology or means other than those provided by Niantic or other generally available third party web browsers (including without limitation automation software, bots, spiders, crawlers, data mining tools, or hacks, tools, agents, engines, or devices of any kind);
- attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Services or Content;
- bypass, remove, deactivate, descramble, or otherwise circumvent any technological measure implemented by Niantic or any of Niantic's providers or any other third party (including another user) to protect the Services or Content;
- use, display, mirror, or frame the Services or any individual element within the Services, Niantic's name, any Niantic trademark, logo, or other proprietary information, or the layout and design of any page or App without Niantic's express written consent;
- post, publish, submit or transmit any Content that infringes, misappropriates, or violates a third party's patent, copyright, trademark, trade secret, moral rights, or other intellectual property rights, or rights of publicity or privacy;
- access, tamper with, or use nonpublic areas of the Services, Niantic's computer systems, or the technical delivery systems of Niantic's providers;
- attempt to probe, scan, or test the vulnerability of any Niantic system or network or Service, or breach any security or authentication measures;
- use any meta tags or other hidden text or metadata utilizing a Niantic trademark,

deceptive, or false source identifying information;

- interfere with, or attempt to interfere with, the access of any user, host, or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mailbombing the Services;
- delete, obscure, or in any manner alter any attribution, warning, or link that appears in the Services or the Content;
- violate any applicable law or regulation; or
- encourage or enable any other individual to do any of the foregoing.

Although Niantic is not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We reserve the right to remove or disable access to any Content, at any time and without notice. Niantic may remove any Content we consider to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users and others who violate the law.

ANY ATTEMPT BY YOU TO DISRUPT OR INTERFERE WITH THE SERVICES, INCLUDING WITHOUT LIMITATION UNDERMINING OR MANIPULATING THE LEGITIMATE OPERATION OF ANY SITE OR APP, IS A BREACH OF NIANTIC'S TERMS AND MAY BE A BREACH OR VIOLATION OF CRIMINAL AND CIVIL LAWS.

7 Participation in Events

7.1 Event Registration and Tickets

The term "**Event(s)**" means any in-person event, gathering, activity or the like which is directly organized, hosted, or managed by Niantic, and any Promotion (as defined below). By registering or, where required, purchasing tickets for an Event, you represent and warrant that the information you provide is true and accurate. If you are registering or purchasing tickets on behalf of others, you represent and warrant you have all necessary rights and consents to register and provide this information for others.

Subject to applicable law and the exceptions set forth in these Terms, no refunds or exchanges of Event tickets are permitted and tickets are non-transferable. Reasonably acceptable proof of identity, for example a driver's license or passport, showing the same first and last name as those provided at time of prior registration, may be required to

destroyed. Commercial use of tickets is prohibited without written approval from Niantic. Tickets are not redeemable for cash or credit. You agree to abide by any published ticket limits or restrictions, and orders exceeding or violating these restrictions are subject to cancellation without notice or refund. Events may have limited space and/or availability and Niantic does not guarantee your ability to purchase a ticket or attend an Event.

Unless otherwise prohibited under applicable law, by attending an Event you acknowledge that Niantic will use your data collected pursuant to the [Privacy Policy](#) for providing Event features (both in person and online), **including contacting you and giving you updates about the Event, mailing you required materials (e.g., a QR wristband), providing emergency or severe weather notifications, or public Event leaderboards and gameplay competitions.**

7.2 Event Conduct and Policies

You shall at all times comply with all applicable laws and any rules and policies provided by Niantic or any other authorized party involved in creating or delivering the Event, including all health and safety policies and procedures and all reasonable instructions of the venue staff and Niantic representatives at the Event. As a condition of participation, you agree to comply with all policies on the Sites, including, without limitation, any applicable Event website.

Illicit drugs, controlled substances, contraband, weapons and illegal items are prohibited at Events. You agree and consent to reasonable security precautions and search on entry. To the fullest extent permitted by applicable law, you waive and release Niantic and any other party involved in creating or delivering the Event from any and all claims, demands, causes of action, damages, losses, expenses or liability which may arise out of, result from, or relate in any way to such security precautions and/or searches. If you elect not to consent to such security precautions and searches, you may be denied entry, or removed from, an Event without refund or other compensation.

Niantic and its authorized third parties reserve the right to refuse admission to, or to remove from an Event without refund or compensation of any kind, any person that (a) does not comply with these Terms, (b) engages in disorderly conduct or willful misconduct, or (c) Niantic or its authorized third parties believe will cause a negative effect on the Event, participants, spectators, and/or personnel.

Any minor attending an Event must be accompanied by a Parent.

7.3 Assumption of Risks

Unless prohibited by applicable law, you agree that by purchasing tickets to participating

loss, or theft of property. You acknowledge that Events, and certain activities at Events, have inherent and unforeseen risks, including but not limited to (a) contact or collision with persons or objects, (b) obstacles (e.g., natural and man-made water, road and surface hazards), (c) equipment related hazards (e.g., broken, defective or inadequate equipment, unexpected equipment failure), (d) weather related hazards, (e) inadequate first aid and/or emergency measures, (f) judgment and/or behavior related problems (e.g., erratic or inappropriate participant, co-participant, or spectator behavior or errors in judgment by personnel at the Event), and (g) natural hazards (e.g., uneven or difficult terrain, wildlife and insects, contact with plants). You agree to take reasonable precautions before attending or participating in an Event and its activities, for example consulting with a personal physician and ensuring you are in good physical health, wearing appropriate attire, and bringing necessary or recommended supplies. You further understand and acknowledge it is your responsibility to inspect the Event grounds, facilities, equipment and areas to be used, and that by participating in the Event, you acknowledge the Event grounds, facilities, equipment, and areas to be used are safe, adequate, and acceptable for participation. If you believe or become aware of any unsafe conditions or unreasonable risks, you agree to immediately notify appropriate personnel and cease participation in the Event.

To the extent permitted under applicable law, you hereby waive and release Niantic and any other party involved in creating or delivering the Event from any and all claims, demands, causes of action, damages, losses, expenses or liability which may arise out of, result from, or relate in any way to your attendance or participation in an Event, including for negligence, inherent and unforeseen risks, injury or damage to persons or property and the actions of third parties or Event participants and spectators.

7.4 Event Features and Cancellation

Subject to applicable law, all schedules and any live or in-game experiences, activities, goods, services, perks, items, rewards and/or Content (collectively "**Event Features**") advertised in connection with an Event are not guaranteed and are subject to change and/or cancellation at any time prior to or during an Event without notice or compensation of any kind. Admittance to an Event does not guarantee any specific Event Features while at the Event.

Event date, time and/or location are subject to change at any time, and Niantic will make a commercially reasonable effort to notify you in advance of any material changes. If an Event is canceled, suspended, or rescheduled and you are not able to attend, you will not be entitled to any compensation other than a refund of the ticket price at its face value with no further liability or compensation from Niantic or any other party. Any travel or accommodation costs incurred are entirely your responsibility.

You consent to and approve of Niantic's recording of your image, likeness, name, dialogue, biographic information, personal characteristics, and voice at Events and the royalty free use of this information subject to the same "Rights Granted by You" above. Niantic may publish the results of any competitions (including rankings and any winners), gameplay statistics, and pictures of participants in promotional and marketing materials and on social media in accordance with these Terms.

8 Sweepstakes, Contests, Raffles, Surveys And Similar Promotions

Periodically, Niantic and/or its partners may organize sweepstakes, contests, raffles, surveys, games, and similar promotions on the Services (each a "**Promotion**"). In addition to these Terms, Promotions will be subject to particular terms which we shall communicate to you at the time of these Promotions ("**Promotional Terms**"). By participating in any Promotion, you will become subject to those Promotional Terms. All Promotional Terms are incorporated into, may vary from, and shall supercede these Terms. Niantic urges you to read the Promotional Terms. Our Privacy Policy, in addition to these Terms and any Promotional Terms, governs any information you submit in connection with such Promotions.

9 Beta Programs

Niantic may offer you early access to certain pre-release mobile application software ("**Beta Software**") in order to allow you to test and provide feedback on Beta Software as part of Niantic's beta testing program ("**Beta Program**"). **This Section only applies to closed Beta Programs, where Niantic offers private access to selected testers. This Section does not apply to open betas that Niantic makes publicly available on an app store.**

You acknowledge that any product features or content, game documentation, promotional materials and/or any other information that Niantic may provide to you in connection with the Beta Program ("**Test Materials**"), the Beta Software, as well as everything related to the Beta Program is the exclusive property of Niantic, is confidential, and should be treated as confidential until such time as Niantic releases it.

If Niantic offers you access to the Beta Software, then, subject to your compliance with these Terms, Niantic grants you a personal, non-exclusive, non-transferable, revocable, limited license to use the Beta Software solely for the purposes of testing and providing feedback on the Beta Software as part of the Beta Program.

- copy, modify, or create derivative works based on the Beta Software;
- give or sell the Beta Software to anyone;
- reverse engineer, decompile, disassemble, decrypt or otherwise attempt to derive the source code of the Beta Software;
- install the Beta Software on systems you don't directly control or that you share with others;
- discuss the Beta Software with or demonstrate it to anyone outside of Niantic;
- blog, tweet, or otherwise publicly post information about the Beta Software;
- take screenshots, photos, videos, or audio recordings of the Beta Software unless Niantic has allowed you to do so in writing; or
- make Beta Feedback (as defined below) available to any third party, unless approved by Niantic in writing and in advance.

Be careful when using the Beta Software in public. Do not allow anyone to see, hear, film, or photograph the Beta Software. Please notify Niantic promptly of any unauthorized access or of any suspected breach of your account's security.

Niantic may collect your comments, suggestions, and feedback on the Software, and may also track your use of the Software through analytic tools, in accordance with Niantic's [Privacy Policy](#). All such comments, suggestions, feedback, and analytic data (collectively, the "**Beta Feedback**") is the exclusive property of Niantic.

You understand and agree that participation in the Beta Program is voluntary and does not create a legal partnership, agency, or employment relationship between you and Niantic, and you will not be compensated for your participation or any Beta Feedback.

Unless prohibited by applicable law, all Test Materials are provided to you "as is" without any explicit or implicit warranty of any kind. You understand that the Beta Software is in development and may contain errors, bugs, and other problems that could cause loss of data and/or system failure. You should install the Beta Software on non-production devices that are not business critical and have been backed up. To the extent permitted under applicable law, Niantic is not liable in any way for any damages you might incur as a result of your participation in the Beta Program.

You agree that any breach of your confidentiality obligation will result in irreparable harm to Niantic, the extent of which would be difficult to ascertain, and that monetary damages will not be an adequate remedy. Accordingly, you agree that in the event you breach your confidentiality obligation, Niantic will be entitled to injunctive or other equitable relief as the court deems appropriate, in addition to any other remedies which it

10 Third Party Websites or Resources

Services may contain links to third party websites or resources. Niantic provides these links only as a convenience and is not responsible for the content, products, or services on or available from those websites or resources, or links displayed on such websites. To the extent permitted under applicable law, you acknowledge sole responsibility for and assume all risk arising from, your use of any third party websites or resources.

Niantic is not responsible for the availability or quality of third party services, including cell phone networks, hotspots, wireless internet and other services. Such third party services may affect your ability to utilize the Services or participate in an Event and you hereby waive and release Niantic and any other party involved in creating or delivering the Services from all claims, demands, causes of action, damages, losses, expenses or liability which may arise out of, result from, or relate in any way to such third party services.

11 Disclaimer of Warranties

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THE SERVICES AND CONTENT ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WE MAKE NO WARRANTY THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE ON AN UNINTERRUPTED, SECURE, OR ERROR-FREE BASIS. WE MAKE NO WARRANTY REGARDING THE QUALITY, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS OR RELIABILITY OF ANY CONTENT.

YOU ASSUME ALL RISKS RELATING TO YOUR ONLINE OR OFFLINE COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES. YOU UNDERSTAND THAT NIANTIC DOES NOT SCREEN OR INQUIRE INTO THE BACKGROUND OF ANY USERS OF THE SERVICES. NIANTIC MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER NIANTIC NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SERVICES OR CONTENT WILL BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS, OR MEETINGS WITH OTHER USERS OF THE SERVICES OR PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT NIANTIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NIANTIC'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, AN EVENT, OR FROM THE USE OF OR INABILITY TO USE THE SERVICES OR CONTENT EXCEED ONE THOUSAND DOLLARS (\$1000), OR, IF CONTRACTING WITH NIANTIC INTERNATIONAL LIMITED, ONE THOUSAND POUNDS (£1000). THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN NIANTIC AND YOU.

13 Dispute Resolution

YOU AGREE THAT DISPUTES BETWEEN YOU AND NIANTIC WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION, AND YOU ARE WAIVING YOUR RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING.

THIS NOTICE DOES NOT APPLY: (1) IF YOU ARE A RESIDENT OF THE EEA, OR ANY JURISDICTION WHICH DOES NOT ALLOW THIS ARBITRATION AGREEMENT, (2) IF YOU OPT OUT OF ARBITRATION AS DESCRIBED IN THE "ARBITRATION" SECTION BELOW, OR (3) TO CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 13.1, "ARBITRATION," BELOW.

13.1 Arbitration

each party retains the right: (a) to bring an individual action in small claims court and (b) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation, or violation of a party's copyrights, trademarks, trade secrets, patents, or other intellectual property rights (the action described in this clause (b), an "**IP Protection Action**"). Notwithstanding this arbitration agreement, Niantic reserves the right to bring an action in any court of competent jurisdiction against you to stop and/or seek compensation for the intentional or willful misuse or abuse (e.g. hacking or falsifying location) of its IP, products, and Services.

Without limiting the preceding paragraph, you will also have the right to litigate any other dispute if you provide Niantic with written notice of your desire to do so by email to termsofservice@nianticlabs.com within thirty (30) days following the date you first accept these Terms (such notice, an "**Arbitration Opt-out Notice**"). If you don't provide Niantic with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any dispute except as expressly set forth in clauses (a) and (b) above. Further, unless both you and Niantic otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this class action waiver is held unenforceable, then the parties' agreement to arbitrate will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms. If the terms of this Section 13.1 "Arbitration" are found unenforceable as to any claim for relief, that claim must be severed from the arbitration and brought pursuant to Section 13.6, "Governing Law and Exclusive Venue." All other claims will be arbitrated. The arbitrator, and not any court or agency, shall have exclusive authority to (a) determine the scope and enforceability of this arbitration agreement and (b) resolve any dispute related to its interpretation, applicability, enforceability, or formation including any claim that all or any part of it is void or voidable.

13.2 Arbitration Rules

The arbitration will be administered by the American Arbitration Association ("**AAA**") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer-Related Disputes (the "**AAA Rules**") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at <https://www.adr.org/Rules> or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

13.3 Arbitration Process

Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration) The single arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within fourteen (14) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

13.4 Arbitration Location and Procedure

Unless you and Niantic otherwise agree, the arbitration will be conducted in a confidential manner, in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of the documents that you and Niantic submit to the arbitrator, and there will be no other discovery conducted (such as depositions), unless the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration. Notwithstanding the arbitrator's discretion, absent a showing of good cause, in no event shall the parties be allowed more than three (3) depositions per side, and there will be no corporate deposition of the type contemplated by Federal Rule of Civil Procedure 30(b)(6) and California Code of Civil Procedure 2025.230.

13.5 Arbitrator's Decision

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will be treated as confidential, and will include the essential findings and conclusions upon which the arbitrator based the award. Confirmation and enforcement of the arbitration award may be done in any court of competent jurisdiction. The arbitrator's award of damages must be consistent with the terms of Section 12 "Limitation of Liability" as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses to the extent provided under applicable law. Niantic will not seek, and hereby waives, all rights it may have under applicable law to recover attorneys' fees and expenses if it prevails in arbitration.

13.6 Governing Law and Exclusive Venue

To the extent that these Terms allow you or Niantic to initiate litigation in a court, other

such courts. These Terms and your use of the Services are governed by the laws of the State of California, excluding its conflicts-of-law rules. If you are resident in a member state of the EEA or a country in which this clause is prohibited by local law, this section does not apply to you, and does not deprive you of the protection of the mandatory provisions of the consumer protection laws in your country.

13.7 Fees

Our responsibility to pay any AAA filing, administrative, and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Niantic will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rules of Civil Procedure 11(b)).

13.8 Changes to Dispute Resolution

Notwithstanding the provisions of the "Changes to Terms or Services" section above, if Niantic changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (by email to termsofservice@nianticlabs.com) within thirty (30) days of the date such change became effective, as indicated in the "Last Updated" date above or in the date of Niantic's email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Niantic in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

14 General

14.1 Entire Agreement

These Terms constitute the entire and exclusive understanding and agreement between Niantic and you regarding the Services and Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Niantic and you regarding the Services and Content.

14.2 Severability

If any provision of these Terms is held invalid or unenforceable, that provision will be

or law or otherwise, without Niantic's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null. Niantic may freely assign or transfer these Terms without restriction, and the transferor or assignor shall not remain jointly and severally liable. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

14.3 Force Majeure

Neither Niantic, any user, nor any other party involved in creating, producing, or delivering the Services or Content shall be liable with respect to any damages, injuries, nonperformance or delay in performance by reason of any act of God, weather, fire, flood, acts of terror or foreign enemy, satellite or network failure, governmental order or regulation, trade dispute, or any other cause beyond its respective control.

14.4 Notice

Any notices or other communications provided by Niantic under these Terms, including those regarding modifications to these Terms, will be given: (a) via email; or (b) by posting to the Services. For notices made by email, the date of receipt will be deemed the date on which such notice is transmitted to any email address You provided.

14.5 Waiver

Niantic's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Niantic. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

14.6 Contact Information

If you have any questions about these Terms or the Services, please contact Niantic at termsofservice@nianticlabs.com or 1 Ferry Building Suite 200, San Francisco, CA 94111.

15 Terms Specific to Residents of the Republic of Korea

15.1 Purchases by End Users in the Republic of Korea

If you live in the Republic of Korea, the E-Commerce Act provides you with certain rights

available. We reserve the right to control, regulate, change, or remove any Virtual Money or Virtual Goods as permitted under applicable law without any liability to you.

16 Terms Specific to Residents of the EEA

16.1 Purchases and Refunds Services

If you live in the **EEA**, you have certain rights to withdraw from online purchases. However, please note that once you download Virtual Money from us, your right of withdrawal ends. You agree that (a) purchase of Virtual Money involves immediate download of such Content; and (b) you lose your right of withdrawal once your purchase is complete. If you live in the EEA, we will provide you with a VAT invoice when we are required to do so by law. You agree that these invoices may be electronic in format. We reserve the right to control, regulate, change, or remove any Virtual Money or Virtual Goods without any liability to you.

17 Terms Specific to Residents of Germany

17.1 Limitation of Liability

In the event of intentional or gross negligence, including by its representatives and vicarious agents (*Erfüllungsgehilfen*), either Party shall be liable according to statutory provisions. The same shall apply in the event of culpably caused damages resulting from an injury to life, body or health, in the event of damages resulting from a violation of a guarantee as to quality (*Beschaffenheitsgarantie*), as well as in the event of defaults concealed fraudulently (*arglistig verschwiegene Mängel*).

In the event of damages to property and financial damages (*Sach- und Vermögensschäden*) caused by slight negligence of either Party, its representatives or vicarious agents, such Party shall be liable only in the event of a violation of a contractual core duty (*wesentliche Vertragspflicht*), however limited to the amount of the damage which was foreseeable at the time of conclusion of the contract and typical taking into account the nature of the contract (*vorhersehbarer und vertragstypischer Schaden*). Contractual core duties are such duties whose accomplishment enables proper fulfilment of an agreement and whose observance the contracting parties may and do regularly rely on.

Insofar as statutory limitations of liability acc. to Sec. 521, 599 German Civil Code apply to the provisions of this Terms of Service, the provisions of the German Civil Code shall apply.

Liability based on the German Product Liability Act shall remain unaffected.

Any further liability of either Party other than set out above shall be excluded.

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Language: ▼

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years, and not a party to
3 the within action. My business address is Bursor & Fisher, P.A., 1990 North California Blvd,
4 Suite 940, Walnut Creek, California 94596. On October 12, 2023, I served the within
document(s):

5 **SUPPLEMENTAL DECLARATION OF L. TIMOTHY FISHER IN SUPPORT OF**
6 **PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
7 **SETTLEMENT**

8 by e-mail transmission on that date. These documents were transmitted via e-mail to the
following as set forth below.

9 COOLEY LLP
10 MICHAEL G. RHODES (116127)
(rhodesmg@cooley.com)
11 JEFFREY M. GUTKIN (216083)
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16 San Francisco, California 94111-4004
17 Telephone: +1 415 693 2000
18 Facsimile: +1 415 693 2222

19 *Attorneys for Defendant*
NIANTIC, INC.

20 I declare under penalty of perjury under the laws of the State of California that the above is
21 true and correct, executed on October 12, 2023, at Walnut Creek, California.

22 

23 _____
Judy Fontanilla