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**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 FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT**

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

Date: January 26, 2024  
Time: 8:30 a.m.  
Dept.: 15

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

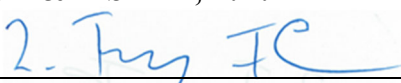
PLEASE TAKE NOTICE that on January 26, 2024, at 8:30 am, or as soon thereafter as this matter may be heard in Department 15 of the above captioned Court, located at 1200 Aguajito Road, CA 93940, Plaintiff C.J. (“Plaintiff”) will move, and hereby does move, for final approval of a proposed class action settlement (the “Settlement”) in this Action. Defendant Cognosphere Pte. Ltd. (“Cognosphere” or “Defendant”) does not oppose this motion.

This Motion is made on the grounds that all parties in this action have executed a class Settlement Agreement, the terms of which are fair, reasonable, and fall within the range of possible approval. Plaintiff asks the Court to enter the accompanying Proposed Order Finally Approving Class Action Settlement (the “[Proposed] Final Approval Order”), which grants final approval of the Settlement, grants Plaintiff’s motion for attorneys’ fees and incentive award, and enters final judgment in the case.

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

Dated: November 2, 2023

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

12 Defendant vigorously denies Plaintiff’s allegations, and thus continued litigation poses risk  
13 to 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  
15 through trial, and appeal any victory for Class Members. Victory for Defendant at any one of those  
16 junctures 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 P. Lindstrom of Phillips ADR, which culminated in a  
19 mediator’s proposal and near-final term sheet. Further negotiation efforts eventually resulted in a  
20 Settlement Agreement that provides substantial benefits to the Class. Specifically, the Settlement  
21 will require that Cognosphere change its practices with respect to minors in the United States to  
22 ensure that its refund policies are put in full compliance with California Family Code §§ 6701 and  
23 6710, which Plaintiff’s counsel estimates has a value of up to tens of millions of dollars to the  
24 Settlement Class.

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

27 <sup>1</sup>All exhibits and declarations referenced in this brief are also attached as exhibits to the Fisher  
28 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 and how Plaintiff and Class Members were  
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 in the millions of dollars—without Class Members giving up their right to  
6 pursue damages claims in the future. *See* Fisher Decl. ¶ 5. In sum, the Settlement represents a  
7 resounding victory for Plaintiff and the Class.

8 The Court first held a hearing on Plaintiff's motion for preliminary approval on August 11,  
9 2023. During this hearing, the Court requested additional briefing to clarify (1) the scope of the  
10 claims released by the Settlement; and (2) the scope of and requirements for notice to absent class  
11 members. On September 25, 2023, the Parties submitted supplemental briefing in response thereto.  
12 Additionally, after further arm's length negotiations, Defendant agreed to improve its internal  
13 training procedures to properly administer refunds to qualifying minors, and improve the notice plan  
14 as part of the Settlement.

15 On September 29, 2023, the Court expressed satisfaction with these clarifications and the  
16 changes made to the Settlement. The Court then granted preliminary approval of the Settlement on  
17 October 3, 2023. Since then, the response from Class Members has been positive. There have been  
18 no objections to the Settlement.

19 Accordingly, Plaintiff asks this Court to enter the [Proposed] Order for Final Approval of  
20 the Class Action Settlement, which is submitted with this motion.

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

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

23 This is a putative class action concerning allegations that Defendant deceptively marketed  
24 and sold in-game items and in-game currency for its popular online video game, GI. Plaintiff  
25 alleges that these items and in-game currency are frequently purchased by minors who were unable  
26 to exercise their unrestricted rights under state laws to rescind contracts into which they entered  
27 with Defendant. Plaintiff seeks to represent a class of all persons in the United States who, while  
28



1 under the age of 18, made a purchase within GI.

2 Under California law, and equivalent law in states nationwide, minors have the right to  
3 disaffirm contracts such as those at issue here. *See* Cal. Fam. Code § 6710. By no later than the  
4 filing date of her lawsuit, Plaintiff disaffirmed all of her in-app purchases made through GI to date  
5 and requested a refund. Plaintiff alleges Defendant’s representations that the purchases are non-  
6 refundable violates Plaintiff’s and other Class Members’ right to disaffirm their contracts with  
7 Defendant and obtain a refund. Plaintiff also alleges that Defendant’s business practices violate Cal.  
8 Fam. Code § 6701 which states that a “minor cannot ... [m]ake a contract relating to any personal  
9 property not in the immediate possession or control of the minor” because both in-game items and  
10 in-game currency sold to Plaintiff and Class Members are personal property—and, according to  
11 Defendant’s Terms of Use, Defendant explicitly maintains possession and/or control over the in-  
12 game items and in-game currency and virtual items sold to Plaintiff and the Class Members.

13 Therefore, Plaintiff’s lawsuit seeks (1) declaratory judgment that she and class members are  
14 entitled to a refund of their purchases pursuant to Cal. Fam. Code §§ 6701 and 6710; and (2) that  
15 Defendant’s conduct is unlawful and unfair under Bus. & Prof. Code § 17200 *et seq.* (“UCL”).  
16 Defendant denies Plaintiff’s allegations, including that Plaintiff or the putative class are entitled to  
17 relief under the California Family Code or that any of its business practices were unfair in any way.

18 **B. Summary Of The Pre-Suit Investigation**

19 The complaint in this matter was filed on May 3, 2023. But the case actually began almost  
20 two years earlier, when, in July 2021, Plaintiff’s counsel began investigating Defendant’s refund  
21 policy with respect to minors. Fisher Decl. ¶ 13.

22 Prior to engaging with Defendant, Plaintiff’s counsel conducted an extensive pre-suit  
23 investigation into the factual underpinnings of the practices challenged in this action, as well as the  
24 applicable law. Fisher Decl. ¶¶ 4-5. Plaintiff’s counsel reviewed Defendant’s terms of service and  
25 user interface within GI, as well as Plaintiff’s purchase history, and the refund policies of the  
26 platforms where Plaintiff made her purchases of in-game currency and virtual items. *Id.* Further,  
27 Plaintiff’s counsel thoroughly investigated Defendant’s publicly available corporate information,  
28

1 financial information, and player demographics. *Id.* Plaintiff’s counsel also researched complex  
2 legal and factual issues that were specific to bringing suit against an entity based in Singapore for  
3 violations of California law. *Id.*

4 These efforts culminated on March 16, 2022 with the filing of a case in the Central District  
5 of California on behalf of a minor plaintiff domiciled in Virginia. *See A.T. v. Cognosphere, LLC,*  
6 *2:22-cv-01761 (C.D. Cal.) (“A.T”).*

### 7 **C. Summary Of Settlement Negotiations**

8 In *A.T.*, Defendant’s motion to dismiss briefing raised difficult procedural issues that were  
9 specific to the plaintiff in that case. Fisher Decl. ¶ 15. However, as the Parties discussed the  
10 potential for settlement as part of their obligations under Fed. R. Civ. P. 26, the Parties agreed to  
11 participate in a mediation to further explore potential resolution. A full-day mediation took place  
12 with Gregory P. Lindstrom of Phillips ADR on March 16, 2023. The mediation culminated in a  
13 mediator’s proposal and near-final term sheet. The term sheet was executed by the Parties on  
14 March 29, 2023. Fisher Decl. ¶ 3. Over the next month, the parties exchanged edits to the draft  
15 long form settlement agreement, which was executed on May 1, 2023. *Id.* As part of this  
16 confidential mediation process, Defendant provided Plaintiff’s Counsel with information about the  
17 putative class, enabling Plaintiff’s Counsel to properly evaluate the strength of the Settlement and  
18 the value of the relief sought. *Id.* ¶¶ 4-5.

19 Additionally, after the Court’s August 11, 2023 hearing, the Parties engaged in further,  
20 intensive negotiations which led to Defendant agreeing to improve its internal training procedures to  
21 properly administer refunds to qualifying minors, and improve the notice plan as part of the  
22 Settlement. *Id.* ¶ 16.

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

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

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

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

18 The process of settlement negotiations further supports approval of the Settlement. For  
19 example, the “presence of a neutral mediator [is] a factor weighing in favor of a finding of non-  
20 collusiveness.” *In re Bluetooth Headset Prods. Liab. Litig.* (9th Cir. 2011) 654 F.3d 935, 946.  
21 Here, the negotiations were conducted by experienced class action counsel, with significant  
22 assistance from a highly regarded mediator, Gregory P. Lindstrom of Phillips ADR. *See* Fisher  
23 Decl. ¶ 3. Thus, counsel are entitled to a presumption of reasonableness.

### 24 **III. LEGAL STANDARD**

25 A class action settlement requires court approval. Fed. R. Civ. P. 23(e).<sup>2</sup> The trial court has

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

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

5 Approval of class action settlements involves a two-step process. The Court starts with a  
6 preliminary determination whether the proposed settlement appears to be fair and is “within the  
7 range of possible approval.” *Alaniz v. California Processors, Inc.* (N. D. Cal. 1976) 73 F.R.D. 269,  
8 273, *cert. denied sub nom. Beaver v. Alaniz* (1978) 439 U.S. 837. If so, the Court can schedule a  
9 final approval hearing where a more in-depth review of the settlement terms will take place. *See*  
10 *Manual for Complex Litigation, 3d Edition*, § 633 at 236-38 (hereinafter “Manual”). Here, the  
11 Settlement warrants Final Approval based on a review of the applicable standards.

12 First, there is the strong judicial policy of encouraging compromises, particularly in class  
13 actions. *See Manual*, §23.11 at 166 (“Beginning with the first [pretrial] conference, and from time  
14 to time throughout the litigation, the court should encourage the settlement process.”); *Cotton v.*  
15 *Hinton* (5th Cir. 1977) 559 F.2d 1326, 1331 (“Particularly in class action suites, there is an  
16 overriding public interest in favor of settlements”).

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

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

13 Factors to be considered by the court in evaluating a proposed settlement may include,  
14 among others, some or all of the following: The experience and views of counsel; the risks,  
15 complexity, expense and likely duration of continued litigation; the strengths of plaintiff’s case; the  
16 amount offered in settlement; and the stage of proceedings. *Officers for Justice v. Civil Service*  
17 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, *cert. denied*, 459 U.S. 1217 (1983).

18 In evaluating the adequacy of a proposed settlement, particular attention should be paid to  
19 the process of settlement negotiations. Where negotiations were conducted by experienced class  
20 action counsel, assisted by a respected mediator, counsel’s assessment and judgment are entitled to a  
21 presumption of reasonableness, and the court is entitled to rely heavily upon their opinion. *Boyd v.*  
22 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 622-23.

#### 23 **IV. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE**

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

26 California courts often certify a settlement class for the purpose of approving a settlement.  
27 *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224. C.C.P. § 382 establishes a two-

1 step analysis for determining whether class certification is appropriate: The class must be  
2 ascertainable and there must be a well-defined community of interest in the questions of law and  
3 fact at issue. *Vasquez v. Superior Ct.* (1971) 4 Cal. 3d 800, 809. The Settlement Class satisfies this  
4 standard. Where, as here, a plaintiff seeks “uniform relief,” class certification is appropriate. *I.B.*  
5 *by & through Bohannon v. Facebook, Inc.* (N.D. Cal. 2015) 82 F. Supp. 3d 1115, 1131 (“Plaintiffs’  
6 injunctive and declaratory relief claims readily meet the requirements of Rule 23(b)(2)[,] Plaintiffs  
7 contend that Facebook has acted on grounds that apply generally to the class—refusing to refund  
8 purchases that are void or voidable under California law.”).

9 **A. The Class Is Numerous**

10 Numerosity is met if a class is so large that joinder of all members would be impracticable.  
11 Civ. Proc. Code § 382; Cal. Civ. Code § 1781(b)(1). Here, the class includes millions of Class  
12 Members. Hence, the numerosity requirement is satisfied. *Delarosa v. Boiron, Inc.* (C.D. Cal.  
13 2011) 275 F.R.D. 582, 587 (“classes of forty or more are considered sufficiently numerous.”).<sup>3</sup>

14 **B. An Ascertainable Class Exists**

15 Ascertainability is satisfied when the class definition is “sufficient to allow a member of [the  
16 class] to identify himself or herself as having a right to recover based on the [class] description.”  
17 *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal. 5th 955, 980. Here, the manner in which the class is  
18 defined enables an objective determination of whether a person is or is not a member. Here, it is  
19 easily determinable which users who made in-game purchases were minors. This is sufficient. *I.B.*  
20 *by & through Bohannon*, 82 F. Supp. 3d at 1126 (“Here, both the class and subclass, as defined, are  
21 readily ascertainable by the Court: the first includes all minors who used Facebook during a certain  
22 time period, according to Facebook’s own records; the second includes all minors during that same  
23 time period who purchased Facebook Credits through their accounts, again utilizing Facebook’s  
24 records.”).

25  
26  
27 <sup>3</sup> The California Supreme Court instructs that Cal. Civ. Code § 1781 and Fed. R. Civ. P. 23 may be  
28 used as procedural guidelines to ensure fairness in class action suits. *Richmond v. Dart Indus., Inc.*  
(1981) 29 Cal. 3d 462, n.7.

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

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

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

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

13                  Here, the common, overriding “issue” in this litigation is whether Defendant’s refund  
14                  policies have interfered with Class Members’ rights to seek refunds under Cal. Fam. Code §§ 6701  
15                  and 6710. Thus, no significant individualized issues are before the Court. *I.B. by & through*  
16                  *Bohannon*, 82 F. Supp. 3d at 1128 (“Plaintiffs raise common questions which lend themselves to  
17                  resolution through common answers, and the injunctive and declaratory relief sought by Plaintiffs  
18                  could benefit the class as a whole, including those who have reached the age of majority but  
19                  transacted with Facebook whilst minors.”).

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

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

3 **D. Adequacy**

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

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

14 Class adjudication provides substantial benefits to the litigants and the Court and is the  
15 superior way to resolve the controversy. *Reyes v. San Diego Cnty. Bd. of Supervisors* (Ct. App.  
16 1987) 196 Cal. App. 3d 1263, 1271. Class actions are favored in consumer cases such as this one.  
17 *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 610. The class device permits all  
18 claims to be resolved only once, with binding effect. The alternative is for each class member to file  
19 a separate case. But such small claims would not be economically feasible. Thus, absent  
20 certification, most class members could never seek redress. That would be unjust. Certification of a  
21 Settlement Class here is the best way to “achieve economies of time, effort and expense, and  
22 promote uniformity of decision as to persons similarly situated, without sacrificing procedural  
23 fairness ....” *Amchem Prod., Inc. v. Windsor* (1997) 521 U.S. 591, 615.

24 **F. A Class Representative Enhancement Award Is Reasonable**

25 Here, Class Counsel seeks, and Defendant does not oppose, a service award in the amount  
26 \$1,000 for the Class Representative. *See* Settlement, § VII.51. This request is addressed in  
27 Plaintiff’s concurrently filed Motion for Attorneys’ Fees, Costs, and Service Award.  
28



1       **V.       THE SETTLEMENT AGREEMENT**

2               **A.       The Basics**

3               The Settlement Class consists of “[a]ll persons in the United States who made a purchase in  
4       Pokémon Go while under the age of 18.” Settlement, § III.34. The Settlement instructs that seven  
5       days after (i) the Final Approval Order and Final Judgment have been entered, and (ii) the Final  
6       Approval Order and Final Judgment have become Final, the class members will release their claims  
7       for injunctive and declaratory relief. Settlement, §§ II.14; VI.44.

8               **B.       Release of Claims**

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

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

23              At the August 11, 2023 hearing, the Court requested additional details regarding the scope of  
24      the release provided by the Settlement. The Parties clarified that the settlement only releases class  
25      members’ claims for injunctive and/or declaratory relief. *See* Settlement ¶ 44 (“the Releasing  
26      Parties do not release claims for monetary relief or damages.”). That is appropriate because in  
27      return for the release, the settlement provides meaningful and significant injunctive relief that  
28

1 requires Cognosphere to follow certain procedures to ensure that the disaffirmation process for  
2 minors is straightforward and effective. Crucially, all members of the class other than the named  
3 Plaintiff “do not release claims for monetary relief or damages.” Settlement, § VI.44. This means  
4 that *other members of the class are free to seek damages and other monetary relief against*  
5 *Defendant for any practice or claim that was alleged in this action* in the future.

6 **C. Value of The Settlement**

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

11 Cognosphere will, in processing any direct requests for refunds of in-game purchases: For  
12 platforms that process refund requests independently from Cognosphere (e.g., Apple App Store,  
13 Google Play Store, PlayStation Store), in its standard response redirecting users to those platforms,  
14 add language in substantially the following form: “Please note that store refund policies may vary  
15 based on the location of user and the age of user, including legal minority, at the time of purchase,  
16 as may be required by applicable law,” provided, however, that Cognosphere may include other  
17 language as well while redirecting users to those platforms. Settlement § IV.39.b.i. For all other  
18 platforms, and refund requests for which Cognosphere elects to process itself, in its standard  
19 response for U.S. users seeking a refund who indicate that a minor was involved in the situation that  
20 led to the refund request, Cognosphere will implement policies to determine whether the in-game  
21 purchase was made when the user was a minor without parental consent, except as prohibited by  
22 local law. *Id.* § IV.39.b.ii.

23 Cognosphere will create a public-facing “help page” (or add to existing pages to the extent  
24 relevant) referencing assistance with refunds for virtual money and/or virtual goods purchases, add  
25 specific links to platforms that process refund requests independently from Cognosphere In-App/In-  
26 Game Purchase refund policies for reference, and add language in substantially the following form:  
27 “Please note that store refund policies may vary based on the location of user and the age of user,  
28

1 including legal minority, at the time of purchase, as may be required by applicable law.” *Id.* §  
2 IV.39.c.i-ii.

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

5 For all refund requests processed by Cognosphere (*see id.* § IV.39.b.ii.), Cognosphere will  
6 implement a dedicated process to address refund requests to determine whether a refund is  
7 appropriate, as outlined in the Settlement Agreement at § IV.39.e.i-iv. The personnel staffing this  
8 dedicated process will receive further training regarding how to analyze and process such refund  
9 requests in accordance with applicable law. *Id.* Following additional negotiations, the Parties  
10 supplemental briefing submitted on September 25, 2023, explained that, as part of the Settlement,  
11 Defendant agreed to train its customer support (“CS”) team to ask questions reasonably  
12 understandable to a consumer to (1) determine whether the minor is based in the U.S. and (2)  
13 whether the minor is disaffirming the purchases made in the game as part of the CS training process  
14 provided for in the Settlement. *See* Fisher Decl. ¶ 17. If it is determined that the minor is seeking to  
15 disaffirm, Defendant’s CS team will work with Defendant’s compliance team to refund the caller  
16 and shut down the minor’s account. *Id.* ¶ 18. Further, Cognosphere will agree to include language  
17 in substantially the following form in its Terms of Service applicable to U.S. players<sup>4</sup>: “You  
18 acknowledge and agree that you are not entitled to a refund for any Virtual Currency, except as  
19 otherwise required by applicable law.” Settlement, § IV.39.a.i.

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

22 In evaluating the settlement, the Court should consider the value made available to the Class.  
23 *See Young v. Polo Retail, LLC* (N.D. Cal. Mar. 28, 2007) 2007 WL 951821, at \*8 (citing *Williams v.*  
24 *MGM-Pathé Commc'ns Co.* (9th Cir. 1997) 129 F.3d 1026 (holding lower court abused discretion in  
25 basing value of settlement on actual distribution to class instead of amount made available).

26 When calculating the total value provided by a settlement agreement, California courts

27 \_\_\_\_\_  
28 <sup>4</sup> Currently available at <https://genshin.hoyoverse.com/en/company/terms>).

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

14 This case concerns Defendant’s purported lack of compliance with California law regarding  
15 Plaintiff and Class Members’ ability to disaffirm their contracts with Defendant and obtain refunds.  
16 The injunctive relief provided by the settlement ensures Defendant’s undebatable compliance with  
17 said California law. Effectively, Plaintiff has obtained, through the settlement, a complete victory  
18 with respect to injunctive relief for the class—namely, the ability for any minor Class Member to  
19 disaffirm his or her contract with Defendant and obtain refunds for any purchases.

20 **D. Notice Is Not Required**

21 Notice of the settlement is not required here because the Settlement Agreement only releases  
22 claims for injunctive and/or declaratory relief and does not release the monetary or damages claims  
23 of the Class, and thus the settlement expressly preserves the individual rights of Class Members to  
24 pursue monetary claims against the defendant. *See, e.g., Lilly v. Jamba Juice Co.* (N.D. Cal. Mar.  
25 18, 2015) 2015 WL 1248027, at \*8-9 (“Because, even if notified of the settlement, the settlement  
26 class would not have the right to opt out from the injunctive settlement and the settlement does not  
27 release the monetary claims of class members, the Court concludes that class notice is not  
28

1 necessary.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012) 2012 WL 5948951, at \*4, 17  
2 (“The court exercises its discretion and does not direct notice here because the settlement does not  
3 alter the unnamed class members’ legal rights.”); *Lowry v. Obledo* (Ct. App. 1980) 111 Cal. App. 3d  
4 14, 23 (“In this case the trial court appropriately followed federal procedure of allowing a decision  
5 on the merits without prior notice in certain class actions.”); *Stathakos v. Columbia Sportswear Co.,*  
6 *et al.* (N.D. Cal. Jan. 25, 2018) 2018 WL 582564, at \*3-4; *see also* Fed. R. Civ. P. 23(c)(2)(A)  
7 (stating that under Rule 23(b)(2) the court “may direct appropriate notice to the class”).

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

12           Additionally, in the Parties September 25, 2023 supplemental briefing, the Parties explained  
13 that after further negotiations, Defendant agreed to provide notice of the changes to the Genshin  
14 Impact terms of service to Class Members. Fisher Decl. ¶ 19. Specifically, and following  
15 additional hard-fought negotiation, notice that Genshin Impact has new terms of service will be  
16 pushed to users (via an in-app notification) for their information and acknowledgment. *Id.*

#### 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. So far, there have been no objections.

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

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

1 Dated: November 2, 2023

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