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

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

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

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

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

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

Date: August 26, 2024
Time: 10:30 a.m.

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on August 26, 2024, at 10:30 am, or as soon thereafter as this
4 matter may be heard in Department 001 of the above captioned Court, located at Spring Street
5 Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiff D.D. (“Plaintiff”) will
6 move, and hereby does move, for final approval of a proposed class action settlement (the
7 “Settlement”) in this Action.

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

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

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

20 Dated: July 8, 2024

BURSOR & FISHER, P.A.

21 By: _____

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff D.D. (“Plaintiff”), a minor, now moves for final approval of the class action settlement in this case. The Settlement Agreement (hereinafter, “Settlement”) and its exhibits are attached as Exhibit 1 to the concurrently filed Declaration of Philip L. Fraietta (“Fraietta Decl.”).¹ This case concerns allegations that Defendant deceptively marketed and sold in-game items and in-game currency for its popular online video game, Pokémon Go (hereinafter, “*Pokémon GO*”). Plaintiff alleges these items and in-game currency are frequently purchased by minors who were unable to exercise their unrestricted rights under state laws to rescind contracts into which they entered with Defendant. Plaintiff represents a class of all persons in the United States who made a purchase in Pokémon Go while under the age of 18 from July 1, 2016 to and through the date of preliminary approval (March 8, 2024).

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

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

This is an outstanding result, particularly taking into account the novelty of the case and the risks to Plaintiff and putative Class Members going forward. Plaintiff’s case faces unique hurdles at

¹All other exhibits and declarations referenced in Motion are attached as exhibits to the Fraietta Declaration.

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

8 Plaintiff filed his motion for preliminary approval on March 1, 2023. On August 3, 2023,
9 the Court ordered Plaintiff to address certain issues regarding class notice of the Settlement, the
10 release period, and the form of the motion for preliminary approval. On October 12, 2023, after
11 continued negotiations between the Parties, Plaintiff's counsel submitted a declaration and updated
12 settlement agreement that attempted to address the Court's concerns. The Court initially approved
13 the updated settlement on October 26, 2023, but then rescinded approval on November 8, 2023.

14 In the Court's Order rescinding preliminary approval, the Court asked the Parties to update
15 the settlement agreement to, 1) disambiguate which Parties are releasing which claims, 2) clarify
16 that absent Class Members are not releasing monetary claims, 3) explain why Apple and Samsung
17 purchases are treated differently from Google Play Store purchases, 4) add additional notice to the
18 putative Class, 5) eliminate the Civil Code section 1542 waivers, 6) make the change in the
19 language from the terms of service permanent. Finally, the Court suggested the appointment of
20 separate counsel to review and evaluate the Settlement.

21 On December 8, 2023, after several rounds of additional intense negotiations between the
22 Parties, Plaintiff's counsel submitted a declaration explaining that the Parties were able to come to
23 an agreement on all issues the Court identified in its Order, with the exception of appointing an
24 independent counsel to review the Settlement. In a hearing on December 15, 2023, the Court
25 explained that it was generally satisfied with the new settlement, except the terms and length of the
26 injunction in the Settlement.

1 On January 17, 2024, after additional discussions between the Parties, Plaintiff’s counsel
2 submitted a declaration and a draft revised Settlement that removed all temporal limits to the
3 injunctive relief provided under the Settlement for as long as Defendant’s current refund practices
4 for Pokémon GO remain in place. This revised Settlement was fully executed on February 8, 2024.
5 The Court preliminarily approved the Settlement agreement on March 7, 2024. One day later on
6 March 8, 2024, the Court issued an amended preliminary approval order.

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

9 **II. LEGAL STANDARD**

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

15 Approval of class action settlements involves a two-step process. The Court starts with a
16 preliminary determination whether the proposed settlement appears to be fair and is “within the
17 range of possible approval.” *Alaniz v. California Processors, Inc.* (N. D. Cal. 1976) 73 F.R.D. 269,
18 273, *cert. denied sub nom. Beaver v. Alaniz* (1978) 439 U.S. 837. If so, the Court can schedule a
19 final approval hearing where a more in-depth review of the settlement terms will take place. *See*
20 *Manual for Complex Litigation, 3d Edition*, § 633 at 236-38 (hereinafter “Manual”). Here, the
21 Settlement warrants Final Approval based on a review of the applicable standards.

22 First, there is the strong judicial policy of encouraging compromises, particularly in class
23 actions. *See Manual*, §23.11 at 166 (“Beginning with the first [pretrial] conference, and from time
24 to time throughout the litigation, the court should encourage the settlement process.”); *Cotton v.*

25
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 *Hinton* (5th Cir. 1977) 559 F.2d 1326, 1331 (“Particularly in class action suits, there is an overriding
2 public interest in favor of settlements”).

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

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

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

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

8 **III. NOTICE TO THE CLASS**

9 In accordance with the Court's March 8, 2024 Amended Order Granting Preliminary
10 Approval of Class Settlement Agreement, Defendant e-mailed notice of the Settlement to all Class
11 Members over a three-day period from May 13, 2024 to May 15, 2024. *See* June 24, 2024
12 Declaration of L. Timothy Fisher ¶ 2; Fraietta Decl. ¶ 12.

13 As of July 8, 2024, Class Counsel has responded to approximately 210 inquiries from class
14 members in response to the e-mail notice. Fraietta Decl. ¶ 13.

15 Additionally, Class Counsel uploaded all relevant case documents to its firm's website,
16 www.bursor.com. The documents related to the operative Preliminary Approval of the Settlement
17 were posted to bursor.com on March 12, 2024. *Id.* ¶ 14. The documents related the Motion for
18 Attorneys' Fees, Costs and Service Award were posted to bursor.com on June 7, 2024. *Id.*

19 As of July 8, 2024, there have been no objections or requests for exclusion from the
20 Settlement. *Id.* ¶ 15.

21 The Court-approved notice provided to the Class was more than sufficient. In fact, notice
22 was not legally required here at all because the Settlement only releases claims for injunctive and/or
23 declaratory relief and does not release the monetary or damages claims of the Class, and thus the
24 Settlement expressly preserves the individual rights of Class Members to pursue monetary claims
25 against the defendant. *See, e.g., Lilly v. Jamba Juice Co.* (N.D. Cal. Mar. 18, 2015) 2015 WL
26 1248027, at *8-9 ("Because, even if notified of the settlement, the settlement class would not have
27 the right to opt out from the injunctive settlement and the settlement does not release the monetary
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1 claims of class members, the Court concludes that class notice is not necessary.”); *Stathakos v.*
2 *Columbia Sportswear Co., et al.* (N.D. Cal. Jan. 25, 2018) 2018 WL 582564, at *3-4 (“In injunctive
3 relief only class actions certified under Rule 23(b)(2), federal courts across the country have
4 uniformly held that notice is not required.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28, 2012)
5 2012 WL 5948951, at *4, 17 (“The court exercises its discretion and does not direct notice here
6 because the settlement does not alter the unnamed class members’ legal rights.”); *Lowry v. Obledo*
7 (Ct. App. 1980) 111 Cal. App. 3d 14, 23 (“In this case the trial court appropriately followed federal
8 procedure of allowing a decision on the merits without prior notice in certain class actions.”).

9 Additionally, class members did not need to participate in a claims process to take advantage
10 of the benefits of the Settlement. Thus, there are no claims administration costs in this matter. For
11 the same reason, no claims or claim forms have been submitted.

12 If the Court grants final approval of the settlement, Class Counsel will promptly provide
13 notice of the same to class members by posting the Court’s final judgment on Class Counsel’s
14 website.

15 **IV. EVALUATION OF THE SETTLEMENT**

16 **A. Summary Of The Case**

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

23 Under California law, and equivalent law in states nationwide, minors have the right to
24 disaffirm contracts such as those at issue here. *See* Cal. Fam. Code § 6710. By no later than the
25 filing date of his lawsuit, Plaintiff disaffirmed all of his in-app purchases made through *Pokémon*
26 *GO* to-date and requested a refund. Plaintiff alleges Defendant’s representations that the purchases
27 are non-refundable violated Plaintiff’s and other Class Members’ right to disaffirm their contracts
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1 with Defendant and obtain a refund. Plaintiff also alleges that Defendant’s business practices
2 violated Cal. Fam. Code § 6701 which states that a “minor cannot ... [m]ake a contract relating to
3 any personal property not in the immediate possession or control of the minor” because both in-
4 game items and in-game currency sold to Plaintiff and Class Members are personal property, and
5 according to Defendant’s Terms of Use, Defendant explicitly maintains possession and/or control
6 over the in-game items and in-game currency and virtual items sold to Plaintiff and the Class
7 Members. Therefore, Plaintiff’s lawsuit (1) sought declaratory judgment that he and other class
8 members are entitled to a refund of their purchases pursuant to Cal. Fam. Code § 6701 and § 6710;
9 and (2) asserted claims that Defendant’s conduct is unlawful and unfair under Bus. & Prof. Code §
10 17200 et seq. (“UCL”). Defendant denied Plaintiff’s allegations, including that Plaintiff or the
11 putative class are entitled to relief under the California Family Code or that any of its business
12 practices were unfair in any way.

13 **B. Summary of the Settlement Agreement**

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

18 Under the terms of the Settlement, within 60 days of the Settlement’s effective date and for
19 so long as Niantic’s current refund policy remains in place, Niantic will agree to include language in
20 substantially the following form in its terms of service applicable to U.S. players (“Terms of
21 Service”): “You agree that all sales by us to you of Virtual Money and Virtual Goods are final and
22 that we will not permit exchanges or refunds for any unused Virtual Money or Virtual Goods once
23 the transaction has been made, unless otherwise required by law.” Settlement, § IV.39.a. In the
24 event that Niantic substantively modifies its refund policy applicable to U.S. players in the future,
25 its Terms of Service discussing that policy shall incorporate similar language acknowledging that
26 such new policy applies unless otherwise required by law. *Id.*

27 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
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1 game currency for Pokémon GO, in processing any direct requests for refunds, Niantic will: i) For
2 Apple and Samsung purchases, for which Niantic is not permitted to and does not process direct
3 refunds, in its standard response redirecting users to Apple or Samsung, add language in
4 substantially the following form: “Please note that app store refund policies may vary based on the
5 location of user and the age of user, including legal minority, at the time of purchase, as may be
6 required by applicable law.” *Id.*, § IV.39.b.i. Niantic shall not be required to continue to implement
7 this relief in the future if, in Niantic’s reasonable discretion, this language is no longer applicable to
8 the manner in which Apple or Samsung refund requests are handled. *Id.*

9 For Google Play Store purchases, for which Niantic is permitted to and does process limited
10 numbers of direct refunds, in its standard response for U.S. users seeking additional information
11 about the purchase, Niantic will add language to prompt users to indicate whether the purchase of
12 PokéCoins or another equivalent in-game currency for Pokémon GO was made when the user was a
13 minor without parental consent, except as prohibited by local law. *Id.*, § IV.39.b.ii. Niantic shall not
14 be required to continue to implement this relief in the future if, in Niantic’s reasonable discretion,
15 this provision is no longer applicable to the manner in which Google Play Store refund requests are
16 handled. *Id.*

17 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
18 game currency for Pokémon GO, in its public-facing Pokémon GO Help Center, for help pages
19 currently referencing assistance with refunds for such purchases, Niantic will: i) Add specific links
20 to Apple, Google, and Samsung In-App Purchase refund policies for reference; ii) Add language in
21 substantially the following form: “Please note that app store refund policies may vary based on the
22 location of user and the age of user, including legal minority, at the time of purchase, as may be
23 required by applicable law”; iii) Niantic will also add these Pokémon GO Help Center changes into
24 the in-app Help sections on the same topics. *Id.*, § IV.39.c. Niantic shall not be required to
25 continue to implement this relief in the future if, in Niantic’s reasonable discretion, these changes
26 are no longer applicable to the manner in which direct requests for refunds are handled. *Id.*

27 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
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1 game currency for Pokémon GO, for all refund requests processed by Niantic, which currently
2 includes purchases from the Google Play Store, Niantic will implement a dedicated process to
3 address refund requests, subject to confirmation of minority. *Id.*, § IV.39.d. The personnel staffing
4 this dedicated process will receive further training, on an as-needed basis, regarding how to analyze
5 and process such refund requests in accordance with applicable law. *Id.* Niantic shall not be
6 required to continue to implement this relief in the future if, in Niantic’s reasonable discretion, this
7 dedicated process is no longer applicable to the manner in which direct requests for refunds are
8 handled. *Id.*

9 Last, Niantic will agree that its refund policies and practices with respect to U.S. minors will
10 comply with the California Family Code. *Id.*, § IV.39.e.

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

16 The Settlement provides the Class with certainty that their contractual rights will be
17 honored—certainty that, absent the settlement, would not otherwise exist. And again, any minor
18 who made purchases as a minor and wants to disaffirm their contracts can still sue Defendant for
19 damages. Under the Settlement, absent Class Members have thus released almost nothing.

20 Plaintiff’s counsel estimates the value of the injunctive relief provided by the Settlement to
21 be up to tens of millions of dollars. *See Fraietta Decl.* ¶¶ 4-5.

22 The estimate for the number of class members has not changed from the date of preliminary
23 approval. *Id.*

24 Finally, when calculating the total value provided by a settlement agreement, California
25 courts include the requested attorney’s fees and costs because “those fees are still best viewed as an
26 aspect of the class’s recovery.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 33.
27 Thus, “the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit
28

1 of the class....” *Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 554 (citation omitted).
2 Here, subject to the Court’s approval, Defendant will pay Class Counsel fees and costs up to
3 \$875,000. Settlement, § VII. 49. The requested attorney’s fees were negotiated after all material
4 terms of the Settlement were agreed to and represent a mere fraction of the value of the injunctive
5 relief that the Settlement has made available to Class Members. Fraietta Decl. ¶ 10; *see also*
6 *Managing Class Action Litigation: A Pocket Guide for Judges Third Edition*, 2010 WL 5056218
7 (“In some class actions involving injunctive relief, the injunctive relief can be assigned a monetary
8 value on the basis of objective criteria. For example, ... an injunction against a fraudulent sales
9 practice might be valued by examining the amount of past sales attributable to the practice and
10 projecting that value for a reasonable period of time, perhaps the life of the practice before the
11 injunction.”).

12 **C. Summary Of The Pre-suit Investigation**

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

20 **D. Summary Of Settlement Negotiations**

21 The Parties agreed to mediate prior to Plaintiff filing his claims against Niantic. This full-
22 day mediation occurred with Gregory Lindstrom of Phillips ADR on September 8, 2022. It was
23 unsuccessful. Thereafter, however, the parties continued to engage in arm’s length negotiations
24 facilitated through Mr. Lindstrom. These efforts culminated in a term sheet executed by the Parties
25 on November 9, 2022. Fraietta Decl. ¶ 3. Over the next few months, the parties exchanged edits to
26 the draft long form settlement agreement, which was executed on January 6, 2023. *Id.* Following
27 hearings with the Court, the Parties returned to the negotiating table. This culminated in the drafting
28

1 of a revised settlement agreement, which was executed on February 8, 2024. *Id.* As part of this
2 confidential mediation process, Defendant provided Plaintiff's Counsel with information about the
3 putative class. *Id.* ¶ 4.

4 **E. Summary Of The Risks Of Achieving And Maintaining Class**
5 **Action Status**

6 The value of the Settlement that the Parties negotiated is outstanding in light of the risks and
7 complexity of the case, the expense and likely duration of continued litigation, and the stage of
8 proceedings. Plaintiff's complaint is still subject to pleading challenges and unique issues with
9 regards to class certification and summary judgment (i.e., issues regarding arbitration, whether
10 Plaintiff and Class Members were actually injured, and whether there exists a ripe dispute between
11 the Parties). For example, the Ninth Circuit Court of Appeals recently upheld the dismissal of
12 similar claims on these grounds, leaving the class members in that case with no recovery
13 whatsoever. *See V.R. v. Roblox Corp.* (9th Cir. Dec. 21, 2023) 2023 WL 8821300. Even if
14 Plaintiff prevailed at every step of the way on the merits, Defendant would challenge the amount of
15 damages and would seek to offset any recovery by each Class Member against the value that each
16 Class Member already received before they disaffirmed their contracts. Additionally, there are
17 multiple risks associated with achieving and maintaining class action status. For example,
18 Defendant would argue that this case is not maintainable as a class action for damages because not
19 every Class Member would want to disaffirm their contracts with Defendant. And no matter the
20 outcome, absent settlement, this case would likely consume trial and appellate court resources for
21 years.

22 In light of the strengths and weaknesses of these claims, the Court is provided with sufficient
23 information to make an independent determination that the consideration being received for the
24 release of class members' claims is reasonable. As aforementioned, the Settlement does not release
25 any claims for damages. Instead, the settlement only releases class members' claims for injunctive
26 and/or declaratory relief. *See* Settlement ¶ 44. In exchange for that release, the settlement provides
27 meaningful and significant injunctive relief.
28

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

9 **V. ATTORNEY FEES**

10 On June 6, 2024, Class Counsel submitted their Motion For Attorneys’ Fees, Costs, And
11 Service Award and supporting declaration of L. Timothy Fisher (“Fee Motion”). As required by
12 this Court, Class Counsel provided a lodestar analysis, a justification for the 1.74 multiplier that
13 Class Counsel is seeking, provided detailed billing records for the Court’s review, and provided
14 support demonstrating that Class Counsel’s hourly rate is reasonable as compared to the community
15 for similar work.

16 As originally explained in Plaintiff’s motion for preliminary approval of the settlement, there
17 is no fee splitting arrangement that is implicated in this case. *Fraietta Decl.* ¶ 16. Additionally,
18 Plaintiff D.D. has given written approval for Class Counsel’s fees. *D.D. Decl.* ¶ 12. Finally, no
19 class members have objected to Class Counsel’s fee request. *Fraietta Decl.* ¶ 15.

20 **VI. COSTS**

21 Similarly, in the Fee Motion, Class Counsel explained that it incurred \$28,358.54 in
22 unreimbursed out-of-pocket costs during this litigation. *See Fee Motion* at 17-18. The most
23 significant costs include mediation fees and other customary litigation expenses. These costs were
24 reasonably incurred in furtherance of the investigation, prosecution, and Settlement of the action
25 and should be reimbursed. The \$875,000 fee requested by Class Counsel is inclusive of these
26 expenses.

27 These expenses were not higher than previously estimated. *Fraietta Decl.* ¶ 17.
28

1 **VII. INCENTIVE PAYMENTS**

2 As explained in the Fee Motion, Class Counsel seeks, and Defendant does not oppose, a
3 service award in the amount \$1,500 for the Plaintiff serving as Class Representative. Fee Motion at
4 18-19. The Fee Motion includes evidentiary support for the requested service award and explains
5 why it is reasonable. *Id.*

6 The Class Representative assisted with the preparation of and reviewed the complaint before
7 filing, provided documents (including receipts of the purchases he made in Defendant’s video
8 game), and invested substantial time over the past year in collaborating and communicating with
9 class counsel, and monitoring the litigation and reviewing case filings and other pertinent
10 documents. *See* D.D. Decl. ¶¶ 3-8.

11 **VIII. CY PRES**

12 There is no *cy pres* distribution in this matter.

13 **IX. FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

14 This Court’s March 8, 2024 amended preliminary approval order conditionally certified a
15 class, for settlement purposes, of: “All persons in the United States who made a purchase in
16 Pokemon Go while under the age of 18 from July 1, 2016 to and through the date of preliminary
17 approval.” This Court’s preliminary approval order also appointed L. Timothy Fisher, Philip L.
18 Fraietta, and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel for the Settlement Class and
19 Plaintiff D.D. as Class Representative, both for settlement purposes only.

20 This Court’s preliminary approval order certified the Settlement Class and appointed Class
21 Counsel and Plaintiffs as Class Representatives, setting forth an extensive analysis of the propriety
22 of certification following the argument in Plaintiff’s Unopposed Motion for Preliminary Approval
23 of Class Action Settlement. This Court was correct in conditionally certifying the Class for
24 settlement purposes and nothing has changed to alter the propriety of this Court’s certification. This
25 Court should now grant final certification of the Settlement Class.

1 **X. CONCLUSION**

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

4
5 Dated: July 8, 2024

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7
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