

FILED
Superior Court of California
County of Los Angeles
03/07/2024
David W. Slayton, Executive Officer / Clerk of Court
By: A. He Deputy

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

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

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS SETTLEMENT
AGREEMENT**

WHEREAS, pursuant to California Rules of Court 3.769, the parties seek entry of an order preliminarily approving the Settlement of this Action pursuant to the Revised Settlement Agreement fully executed on or about February 8, 2024 (the “Agreement”), which, together with its attached exhibits, sets forth the terms and conditions for a proposed Settlement of the Action; and WHEREAS, the Court has read and considered the Settlement Agreement and its exhibits, and Plaintiff’s Unopposed Motion for Preliminary Approval; IT IS HEREBY **ORDERED** as follows:

- 1) The motion is GRANTED.
- 2) Capitalized terms not otherwise defined herein have the meanings set forth in the Settlement Agreement.
- 3) All proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Agreement and this Order, are hereby stayed.
- 4) The Court has subject matter jurisdiction over the Action, and personal jurisdiction over the Parties before it. Additionally, venue is proper pursuant to Cal. Civ. Code § 395.
- 5) The Action is preliminarily certified as a class action, for settlement purposes only, pursuant to California Rules of Court Rule 3.769 and Code of Civil Procedure § 382. The Court preliminarily finds for settlement purposes that: (a) the Class certified herein is sufficiently numerous that joinder of all such persons would be impracticable; (b) there are questions of law and fact that are common to the Class, and those questions of law and fact common to the Class predominate over any questions affecting any individual Class Member; (c) the claims of the Plaintiff are typical of the claims of the Class they seek to represent for purposes of settlement; (d) a class action on behalf of the Class is superior to other available

means of adjudicating this dispute; and (e) as set forth below, Plaintiff and Plaintiff's Counsel are adequate representatives of the Class. Defendant retains all rights to assert that the Action may not be certified as a class action, other than for settlement purposes. The Court also concludes that, because the Action is being settled rather than litigated, the Court "need not inquire whether the case, if tried, would present intractable management problems." *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

6) The Settlement Class shall consist 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."

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

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

9) The Court hereby appoints, for settlement purposes only, Plaintiff D.D. as Class Representative to represent the Settlement Class.

10) The Court hereby appoints, for settlement purposes only, L. Timothy Fisher, Philip L. Fraietta, and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel for the Settlement Class.

11) To provide notice of the Settlement Agreement to Settlement Class Members (“Class Notice”), within 75 days of the order granting preliminary approval, using records kept in the ordinary course of business, Niantic agrees to send an email, substantially in the form of Exhibit C to the Settlement Agreement, attached to the email addresses of the users’ accounts that Niantic has identified through reasonable best efforts may have made a purchase in Pokémon GO while they were under 18 years of age from July, 1 2016 to and through the date of preliminary approval. Niantic will send these emails to the extent that it has an email address associated with the users’ accounts, which may be the email address of the user’s parent or guardian in some cases. Niantic currently estimates that it has email addresses associated with at least 95% of user accounts. Additionally, Class Notice (Exhibit C to Settlement Agreement) will be provided via the following information posted on Class Counsel’s website, the Settlement Agreement, Plaintiff’s motion for preliminary approval, the order granting preliminary approval, and Plaintiff’s motion for attorneys’ fees and incentive awards (including any opposition and reply papers). Additionally, Niantic will give Pokémon GO users notice that it has revised its Terms of Service through its standard processes for updating its Terms in the ordinary course of its business (i.e., via an in-app notification).

12) Each Settlement Class Member shall be given a full opportunity to comment on or object to the Settlement Agreement, and to participate at a Final Approval Hearing. Comments or objections made in writing must include (1) the name and case number of the Action (*D.D. v. Niantic, Inc.*, Case No. 23STCV03241); (2) the Settlement Class Member’s full legal name and mailing address; (3) the personal signature of the Settlement Class member; (4) the grounds for any objection; (5) the name and contact information of any and

all attorneys representing, advising, or assisting with the comment or objection, or who may profit from pursuing any objection; and (6) a statement indicating whether the Settlement Class Member intends to appear at the Final Approval Hearing, either personally or through counsel. Written objections must be served on Class Counsel and Defense Counsel as follows:

D.D. v. Niantic, Inc.
c/o Philip L. Fraietta – Bursor & Fisher, P.A.
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019

D.D. v. Niantic, Inc.
c/o Jeffrey M. Gutkin – Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, California 94111-4004

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

13) In the alternative, Settlement Class Members may appear at the final approval hearing and may make an oral objection or express the Member's views regarding the Settlement. A written objection is not a requirement to be heard at the Final Approval Hearing.

14) Written objections shall be filed no later than one hundred and five (105) days after the Court's order of preliminary approval or may be made orally at the Final Approval Hearing.

15) For settlement purposes only, the Notice to be sent to Class Members, as to form and content, is adequate. Further, on a preliminary basis, the plan for distribution of the Notice to Class Members objection procedures are in accord with the due process rights of the Settlement Class Members.

16) This settlement is for injunctive relief only and does not provide for any monetary relief. Therefore, class members are not releasing claims for any monetary relief or damages.

17) The Court approves injunctive relief as follows: In consideration for the releases provided in this Settlement Agreement, and as a result of the Action and Settlement, Niantic agrees that within 60 days of the Effective Date, it shall implement the following, pursuant to ¶39 of the Revised Settlement Agreement:

a) So long as Niantic’s current refund policy remains in place, Niantic will agree to include language in substantially the following form in its terms of service applicable to U.S. players (“Terms of Service” currently available at <https://nianticlabs.com/terms/>): “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, unless otherwise required by law.” In the event that Niantic substantively modifies its refund policy applicable to U.S. players in the future, its Terms of Service discussing that policy shall incorporate similar language acknowledging that such new policy applies unless otherwise required by law.

b) So long as Niantic continues to charge users money for PokéCoins or another equivalent in-game currency for Pokémon GO, in processing any direct requests for refunds, Niantic will:

i) For Apple and Samsung purchases, for which Niantic is not permitted to and does not process direct refunds, in its standard response redirecting users to Apple or Samsung, add language in substantially the following form: “Please note that app 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.”

Niantic shall not be required to continue to implement this relief in the future if, in Niantic’s reasonable discretion, this language is no longer applicable to the manner in which Apple or Samsung refund requests are handled.

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

c) So long as Niantic continues to charge users money for PokéCoins or another equivalent in-game currency for Pokémon GO, in its public-facing Pokémon GO Help Center, for help pages currently referencing assistance with refunds for PokéCoin such purchases, Niantic will:

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

ii) Add language in substantially the following form: “Please note that app 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.”

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

iv) Niantic shall not be required to continue to implement this relief in the future if, in Niantic's reasonable discretion, these changes are no longer applicable to the manner in which direct requests for refunds are handled.

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

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

18) Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within 60 days of the Effective Date, Releasing Settlement Class Representatives will be deemed to have, and by operation of the Final Approval Order and Final Judgment will have fully, finally, and forever released, relinquished, and discharged any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, rights or liabilities, of any nature and description whatsoever, that were alleged or could have been alleged in the Action, known or unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or

regulation), against the Released Parties, up until and including the Effective Date, that result from, arise out of, or are based on the facts and practices that were alleged in the Action, for any type of relief released by this Settlement. As this settlement is for injunctive relief only, no claims for monetary relief, damages (whether compensatory, consequential, punitive, exemplary, liquidated, and/or statutory) are released by this Agreement. Releasing Settlement Class Representatives are forever enjoined from taking any action seeking any relief against the Released Parties based on any of Settlement Class Representative' Released Claims. (Settlement Agreement, ¶43.)

19) Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within 60 days of the Effective Date, the Releasing Parties will be deemed to have, and by operation of the Final Approval Order and Final Judgment will have, for injunctive and/or declaratory relief only, fully, finally, and forever released, relinquished, and discharged any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or declaratory relief, of any nature and description whatsoever, that were alleged or could have been alleged in the Action, known or unknown, existing or preexisting, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery for injunctive and/or declaratory relief (including, but not limited to, those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation) against the Released Parties, up until and including the Effective Date, that result from, arise out of, or are based on the facts and practices that were alleged in the Action (“Settlement Class Members’ Released Claims”). For clarity and notwithstanding the foregoing or any language in the Agreement, the Releasing Parties do not release claims for monetary relief or damages. The Releasing Parties are forever enjoined

from taking any action seeking injunctive and/or declaratory relief against the Released Parties based on any Settlement Class Members' Released Claims. (Settlement Agreement, ¶44.)

20) The Court will hold a final approval hearing **on August 26, 2024, at 10:30 a.m.** in the Superior Court of California, County of Los Angeles, located at Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA 90012, in Department 001. The purposes of the final approval hearing will be to: (i) determine whether the proposed Settlement Agreement should be finally approved by the Court as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii) determine whether judgment should be entered pursuant to the Settlement Agreement, and releasing the Released Persons of all claims as stated in the Settlement Agreement; (iii) determine whether the Settlement Class should be finally certified; (iv) rule on Class Counsel's motion for attorneys' fees, costs and service awards; (v) consider any properly filed objections; and (vi) consider any other matters necessary in connection with the final approval of the Settlement Agreement.

21) The Agreement specifies for an attorneys' fees award not to exceed \$875,000; up to \$25,000 for litigation costs; and a proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed \$1,500. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence supporting these requests, including lodestar, prior to final approval. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought. Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

22) Class Counsel's application for attorneys' fees, costs and expenses shall be

filed and served no later than ninety (90) days after the Court's order of preliminary approval. Any opposition, comment, or objection shall be filed no later than one hundred and five (105) days after the Court's order of preliminary approval or may be made orally at the Final Approval Hearing. Any reply shall be filed no later than one hundred and twenty (120) days after the Court's order of preliminary approval.

23) The motion in support of final approval of the settlement shall be filed and served no later than one hundred and twenty (120) days after the Court's order of preliminary approval. Any opposition or objection shall be filed no later than one hundred and five (105) days after the Court's order of preliminary approval or may be made orally at the Final Approval Hearing. Any reply shall be filed no later than one hundred and twenty (120) days after the Court's order of preliminary approval.

24) Not later than fourteen (14) days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, Counsel will provide a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its e-mailing of Class Notice, posting of the Notice to a public website, and the number of written objections.

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

26) This Preliminary Approval Order, the Settlement Agreement, the fact that a settlement was reached and filed, and all negotiations, statements, agreements, and proceedings relating to the Settlement, and any matters arising in connection with settlement

negotiations, proceedings, or agreements shall not constitute, be described as, construed as, used as, offered or received against Niantic as evidence or an admission or concession of: (a) the truth of any fact alleged by Plaintiff in the Action; (b) any liability, negligence, fault, or wrongdoing of Niantic or breach of any duty on the part of Niantic; or (c) that this Action or any other action may be properly certified as a class action for litigation, non-settlement purposes. This order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action.

27) 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.

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

29) The obligations set forth in the Settlement are deemed part of this Order. The Parties are to carry out the Settlement in accordance with its terms.

IT IS SO ORDERED.

Dated: Tas&A LLC



A handwritten signature in black ink that reads "Stuart M. Rice".

Stuart M. Rice / Judge

Honorable Stuart M. Rice

Judge of the Los Angeles Superior Court