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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 9/25/2023 8:00 AM
By: Brenda Cerna, Deputy

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

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD,

Defendant.

Case No. 23CV001405

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

**JOINT SUPPLEMENTAL SUBMISSION IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On May 24, 2023, Plaintiff C.J. (“Plaintiff”), a minor, moved for preliminary approval of the
4 proposed class action settlement (the “Settlement”)¹ in this case. During the August 11, 2023
5 preliminary approval hearing, the Court declined to rule on Plaintiff’s motion, and requested
6 additional briefing. Specifically, the Court requested clarification as to (1) the scope of the claims
7 released by the Settlement; and (2) the scope of and requirements for notice to absent class
8 members. Plaintiff and Defendant Cognosphere Pte. Ltd (“Defendant”) (with Plaintiff, the
9 “Parties”) jointly respond below.

10 **II. THE SETTLEMENT WARRANTS APPROVAL**

11 **1. Release**

12 At the preliminary approval hearing, the Court requested additional details regarding the
13 scope of the release provided by the Settlement. To be clear, *the Settlement does not release any*
14 *absent class member’s claims for damages*. Instead, the settlement only releases class members’
15 claims for injunctive and/or declaratory relief. *See* Settlement ¶ 44 (“the Releasing Parties do not
16 release claims for monetary relief or damages”). That is appropriate because in return for the
17 release, the settlement provides meaningful and significant injunctive relief that requires
18 Cognosphere to follow certain procedures to ensure that the disaffirmation process for minors is
19 straightforward and effective.

20 This case concerns Defendant’s purported lack of compliance with California law regarding
21 Plaintiff and the members of the Settlement Class’ ability to disaffirm their contracts with
22 Defendant and obtain refunds. The injunctive relief provided by the settlement ensures Defendant’s
23 undebatable compliance with said California law. Effectively, Plaintiff has obtained, through the
24 settlement, a complete victory with respect to injunctive relief for the class – namely the ability for
25 any class member to disaffirm his or her contract with Defendant and obtain refunds for any
26 purchases that he or she made as a minor.

27 _____
28 ¹ Attached hereto as Exhibit A.

1 Meanwhile, *the Settlement’s release of claims for monetary relief or damages applies only*
2 *to the named Plaintiff, not to putative Class Members.* See *id.* at § VI.43, 44. Crucially, all
3 members of the class other than the named Plaintiff “do not release claims for monetary relief or
4 damages.” Settlement, § VI.44. This means that *other members of the class are free to seek*
5 *damages and other monetary relief against Defendant for any practice or claim that was alleged*
6 *in this action* in the future.

7
8 **2. The Parties have improved their notice plan and
Cognosphere’s training procedures.**

9 The Court also requested additional details as to the notice plan and more specificity with
10 respect to Cognosphere’s “training procedures”. After further negotiations, Defendant has agreed
11 to provide notice of the changes to the Genshin Impact terms of service to class members.
12 Specifically, and following additional hard-fought negotiation, the revised language in the terms of
13 service will be pushed (via an in-app notification) by Defendant to users for their information and
14 acknowledgement. In addition, and again following additional negotiation, Defendant has agreed to
15 train its CS team to ask questions reasonably understandable to a consumer to (1) determine whether
16 the minor is based in the U.S. and (2) whether the minor is disaffirming the purchases made in the
17 game as part of the customer support (“CS”) training process provided for in the Settlement. If it is
18 determined that the minor is seeking to disaffirm, Defendant’s CS team will work with Defendant’s
19 compliance team to refund the caller and shut down the minor’s account. The Parties believe that
20 these two additional concessions from Defendant should assuage the Court’s concern that there was
21 not enough specificity about the class notice and training process included in the Settlement.

22 Regardless, as stated above, this litigation was never about Defendant’s failure to properly
23 notify minors of their right to disaffirm a contract. Rather, this litigation is about Defendant’s
24 previous denial of that right. The Settlement *obligates Defendant to be in full compliance with the*
25 *relevant law* and to completely overhaul their policies by not simply updating their relevant policy
26 pages, but by also building a system that requires Defendant to (1) determine if a minor intends to
27 disaffirm his or her contract and (2) refund any minors that do so intend, honoring their obligation
28 under California law. See *V.R. v. Roblox Corp.*, 2023 WL 411347, at *2 (N.D. Cal. Jan. 25, 2023)

1 (stating that the language “[a]ll payments . . . are final and not refundable, except as required by
2 law” complied with the California Family Code).

3 Again, any minor who made purchases as a minor and wants to disaffirm their contracts can
4 still sue Defendant for damages. Under the Settlement, absent class members have thus released
5 almost nothing. And although it was vigorously debated during settlement negotiations, no court
6 has ever specifically held that a party was obligated to inform a minor about his right to disaffirm a
7 contract. In fact, California courts have held that there is “no general duty owed by one contracting
8 party to another to explain the other’s legal rights in connection with the agreement.” *Olsen v.*
9 *Breeze, Inc.* (1996) 48 Cal. App. 4th 608, 622-23. Thus, the injunctive relief provided by the
10 Settlement and Defendant’s additional, post-settlement concessions arguably require Defendant to
11 exceed its pure legal obligations.

12 As a final note, notice of the settlement is not required here – it is discretionary. That is
13 because the Settlement only releases claims for injunctive and/or declaratory relief and does not
14 release the monetary or damages claims of the Class, and thus the Settlement expressly preserves
15 the individual rights of Class Members to pursue monetary claims against the defendant. *See, e.g.,*
16 *Lilly v. Jamba Juice Co.* (N.D. Cal. Mar. 18, 2015) 2015 WL 1248027, at *8-9 (“Because, even if
17 notified of the settlement, the settlement class would not have the right to opt out from the
18 injunctive settlement and the settlement does not release the monetary claims of class members, the
19 Court concludes that class notice is not necessary.”); *Kim v. Space Pencil, Inc.* (N.D. Cal. Nov. 28,
20 2012) 2012 WL 5948951, at *4, 17 (“The court exercises its discretion and does not direct notice
21 here because the settlement does not alter the unnamed class members’ legal rights.”); *Lowry v.*
22 *Obledo* (1980) 111 Cal. App. 3d 14, 23 (“In this case the trial court appropriately followed federal
23 procedure of allowing a decision on the merits without prior notice in certain class actions.”); *see*
24 *also* Cal. Rule of Court 3.766(b)(1) (stating that in evaluating class notice the Court can determine
25 “[w]hether notice is necessary”) (emphasis added).

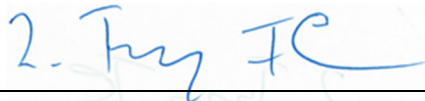
26 **III. CONCLUSION**

27 For the reasons stated above and in Plaintiff’s Motion for Preliminary Approval, the Parties
28

1 request that the Court grant preliminary approval to the Settlement and enter the Preliminary
2 Approval Order in the form submitted with Plaintiff's Motion.
3

4
5 Dated: September 22, 2023

BURSOR & FISHER, P.A.

6 By:  _____

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Attorneys for Plaintiff

13
14 Dated: September 22, 2023

KEKER, VAN NEST & PETERS LLP

15 By:  _____

16 AJAY S. KRISHNAN
17 MICHELLE YBARRA
18 DANIEL B. TWOMEY

19 *Attorneys for Defendant*
20 **COGNOSPHERE PTE. LTD.**

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

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

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

19 **II. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **III. SETTLEMENT CLASS CERTIFICATION**

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**

16 **REVIEW AND APPROVAL**

17 40. Solely for purposes of implementing this Agreement and effectuating the proposed

18 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion

19 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval

20 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **IX. MISCELLANEOUS PROVISIONS**

26 60. The Parties intend the Settlement Agreement to be a final and complete resolution
27 of all disputes between them with respect to the Action. The Settlement Agreement compromises
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1 claims that are contested and will not be deemed an admission by Cognosphere or Class
2 Representative as to the merits of any claim or defense.

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

5 To Class Representative and the Settlement Class:

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

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

17 To Counsel for Cognosphere:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

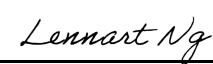
Dated: May 1, 2023

KEKER, VAN NEST & PETERS LLP

By: 


Dated: April 28, 2023

COGNOSPHERE, PTE. LTD.

By: 

Dated: Apr 28, 2023, 2023

PLAINTIFF C.J.

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

Dated: Apr 28, 2023, 2023

BURSOR & FISHER, P.A.

By: 

EXHIBIT A

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

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

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

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

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

14 **II. DEFINED TERMS**

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

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

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

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

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

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

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

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

19 **VI. NOTICE**

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

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

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

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

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

26 **VIII. INJUNCTIVE RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **XI. TERMINATION**

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

XII. RETENTION OF JURISDICTION

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

XIII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE

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

DATED: _____

EXHIBIT B

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

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

Plaintiff,

v.

COGNOSPHERE PTE. LTD.,

Defendant.

Case No.

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

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

8 1. The motion is GRANTED.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 22. The Court shall retain jurisdiction over any claim relating to the Settlement
25 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
26 arising out of a breach of the Settlement Agreement) as well as any future claims by any
27 Settlement Class Member relating in any way to the Released Claims.
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1 23. The Court may, for good cause, extend any of the deadlines set forth in this
2 Preliminary Approval Order without further notice to Settlement Class Members. Without
3 further order of the Court, the Parties may agree to make non-material modifications in
4 implementing the Settlement that are not inconsistent with this Preliminary Approval Order.
5

6 IT IS SO ORDERED.

7 Date: _____

8 _____