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SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

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

**PLAINTIFF'S NOTICE OF SUBMISSION
OF AMENDED AND REDLINED
SETTLEMENT AGREEMENT**

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

1 On October 23, 2023, the Court issued a tentative ruling requesting a red-lined version of the
2 settlement agreement. Plaintiff D.D. submits the amended Settlement Agreement attached hereto as
3 Exhibit 1 and a redlined version of the agreement attached hereto as Exhibit 2.

4
5 Dated: October 26, 2023

BURSOR & FISHER, P.A.

6 By: 
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20 *Attorneys for Plaintiff*

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-B hereto
3 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among
4 Plaintiff D.D., a minor, through Dominique Davis, his mother and legal guardian (“Settlement
5 Class Representative”), on behalf of himself and the Settlement Class as defined below, and
6 Defendant Niantic, Inc. (“Defendant” or “Niantic”). Settlement Class Representative, the
7 Settlement Class, and Niantic (collectively, the “Parties”) enter into this Agreement to effectuate
8 a full and final settlement and dismissal of *D.D. v. Niantic, Inc.*, pending in the Superior Court of
9 California, County of Los Angeles (the “Action”).

10 **I. RECITALS**

11 1. WHEREAS, on August 18, 2022, Plaintiff’s counsel informed Niantic of
12 Settlement Class Representative’s potential claims against Niantic, on behalf of himself and a class
13 of similarly situated minors, including for declaratory, equitable and monetary relief under the
14 Declaratory Judgment Act, California’s contract laws, Consumers Legal Remedies Act Cal. Civ.
15 Code § 1750, et seq., Breach of Good Faith and Fair Dealing, Negligent Misrepresentation,
16 Business and Professions Code Sections 17200 et seq., and for Unjust Enrichment.

17 2. WHEREAS, the Parties agreed to mediate, prior to Settlement Class Representative
18 filing his claims against Niantic.

19 3. WHEREAS, the Parties mediated their dispute with Gregory Lindstrom of Phillips
20 ADR on September 8, 2022, which was unsuccessful, and thereafter engaged in continued arm’s
21 length negotiations through Mr. Lindstrom, culminating in a term sheet executed by the Parties on
22 November 9, 2022;

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

27 5. WHEREAS, Niantic, while continuing to deny all allegations of wrongdoing and
28 disclaiming all liability with respect to all claims in the Action, considers it desirable to resolve

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

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

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

21 **II. DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. SETTLEMENT CLASS CERTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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.”

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

e) 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 regarding how to analyze and process such refund requests in accordance with applicable law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 e) incorporate the Releases set forth in this Settlement Agreement and make
2 the Releases effective as of the Effective Date;
3 f) issue the injunctive relief described in this Settlement Agreement;
4 g) authorize the Parties to implement the terms of the Settlement;
5 h) enter a separate judgment pursuant to applicable California Code of Civil
6 Procedure; and
7 i) determine that the Agreement and the Settlement provided for herein, and
8 any proceedings taken pursuant thereto, are not, and should not in any event be offered, received,
9 or construed as evidence of, a presumption, concession, or an admission by any Party of liability
10 or non-liability or of the certifiability or non-certifiability of a litigation class, or of any
11 misrepresentation or omission in any statement or written document approved or made by any
12 Party; provided, however, that reference may be made to this Agreement and the Settlement
13 provided for herein in such proceedings as may be necessary to effectuate the provisions of this
14 Agreement, as further set forth in this Agreement.

15 VI. RELEASES

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

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

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

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

any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code Section 1542, which reads as follows:

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

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

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

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

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

VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

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

1 50. Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$875,000,
2 shall be payable by Niantic, as ordered, within the later of (a) twenty-one (21) days after the
3 Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration
4 of all deadlines in which a class member or any person may challenge final approval. In no event
5 shall Niantic be required to make a payment of attorneys' fees if the Settlement Agreement is not
6 finally approved.

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

19 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
20 **NIANTIC'S RESERVATION OF RIGHTS**

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

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

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

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

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

28

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

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

1 defenses or privileges that were available to it at that time, including but not limited to challenging
2 the Court's subject matter jurisdiction over any claims asserted in the Action. Niantic's agreement
3 to this Settlement does not constitute an admission that certification is appropriate outside of the
4 context of this Settlement. The Settlement Class Representative and Class Counsel agree that
5 Niantic retains and reserves these rights, and agree not to take a position to the contrary. Class
6 Counsel shall not refer to or invoke Niantic's decision to accept the certified class for purposes of
7 settlement if the Effective Date does not occur and the Action is later litigated and certification is
8 contested by Niantic.

9 **IX. MISCELLANEOUS PROVISIONS**

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

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

16 To Class Representative and the Settlement Class:

17 L. Timothy Fisher
18 ltfisher@bursor.com
19 Bursor & Fisher, P.A.
20 1990 N. California Blvd.
Walnut Creek, CA 94596

21 Philip L. Fraietta
22 pfraietta@bursor.com
23 Alec M. Leslie
aleslie@bursor.com
24 888 7th Ave.
New York, NY 10019

25 To Counsel for Niantic:

26 Jeffrey M. Gutkin
jgutkin@cooley.com
27 Cooley LLP
3 Embarcadero Center, 20th Floor
28 San Francisco, California 94111

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

61. 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.

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

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

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

65. The Settlement Agreement, the Settlement, all documents, orders, and other evidence relating to the Settlement, the fact of their existence, any of their terms, any press release or other statement or report by the Parties or by others concerning the Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of certifying a litigation class or any decision by any court regarding the certification of a class, and/or

(v) whether the consideration to be given in this Settlement Agreement represents the relief that could or would have been obtained through trial in the Action, in any trial, civil, criminal, administrative, or other proceeding of the Action or any other action or proceeding in any court, administrative agency, or other tribunal.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 79. Class Representative and Class Counsel will not issue any press release or
2 communicate with the media regarding the Settlement or the Action without prior approval of
3 Niantic. However, if Class Representative or Class Counsel receive an inquiry from any third
4 party (excluding Settlement Class Members who identify themselves as such), they may only make
5 affirmative statements relating to the Settlement as follows: “The parties have reached a mutually
6 agreeable resolution to a disputed set of class claims that is fair, adequate, and reasonable.” Class
7 Counsel reserves all rights to communicate with individual members of the Settlement Class to
8 assist them in understanding the Settlement and nothing herein shall be construed as restricting
9 those rights and responsibilities. Similarly, nothing in this Agreement will affect Niantic’s right
10 to communicate with individual members of the Settlement Class relating to matters other than the
11 Action or the proposed Settlement.

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

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

20 82. All of the Parties warrant and represent that they are agreeing to the terms of this
21 Settlement Agreement based upon the legal advice of their respective attorneys, that they have
22 been afforded the opportunity to discuss the contents of this Settlement Agreement with their
23 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
24 accepted.

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

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

3 85. Each Counsel or other person executing this Settlement Agreement or any of its
4 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.
5 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class
6 Representative to take all appropriate action required or permitted to be taken by the Settlement
7 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to
8 enter into any modifications or amendments to this Settlement Agreement on behalf of the
9 Settlement Class that Class Counsel and Class Representative deem appropriate.

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

3 Dated: 10/25, 2023

COOLEY LLP

4 By: 
5

6 Dated: _____, 2023

NIANTIC, INC.

7 By: _____
8

9 Dated: Oct 24, 2023, 2023

PLAINTIFF D.D.

10 By: DOMINIQUE CELESTE DAVIS
11 DOMINIQUE CELESTE DAVIS (OCT 24, 2023 13:38 PDT)

12 Dated: Oct 24, 2023, 2023

BURSOR & FISHER, P.A.

13 By: 
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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

Plaintiff,

v.
NIANTIC, INC.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

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

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

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

13 **II. DEFINED TERMS**

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

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

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

1 **IV. JURISDICTION**

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

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

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

18 6. The Settlement Agreement was the result of negotiations conducted by the Parties,
19 over the course of multiple months, including with the assistance of a neutral
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 who made a purchase in Pokémon Go while under the age of 18.
13 Excluded from the Settlement Class are (i) all Persons who are directors, officers, and agents of
14 Niantic or its subsidiaries and affiliated companies or are designated by Niantic as employees of
15 Niantic or its subsidiaries and affiliated companies; and (ii) the Court, the Court's immediate
16 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
17 immediate family and staff.

18 **VI. NOTICE**

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

26 **VII. CLAIMS COVERED AND RELEASES**

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

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

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

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

24 **VIII. INJUNCTIVE RELIEF**

25 13. Niantic will agree to include language in substantially the following form in its
26 Terms of Service applicable to U.S. players (currently at <https://nianticlabs.com/terms/>) for three
27 (3) years following the Effective Date:
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1 (a) “You agree that all sales by us to you of Virtual Money and Virtual Goods
2 are final and that we will not permit exchanges or refunds for any unused
3 Virtual Money or Virtual Goods once the transaction has been made,
4 unless otherwise required by law.”

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

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

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

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

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

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

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

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

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

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

9 19. The Court has also considered Plaintiff's Motion for Attorneys' Fees, Costs,
10 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the
11 payment of attorneys' fees, costs, and expenses in the amount of \$875,000 is reasonable under
12 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*
13 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,
14 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class
15 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the
16 manner provided by the terms of the Settlement Agreement.

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

23 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**
24 **MODIFICATIONS OF AGREEMENT**

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

4 **XI. TERMINATION**

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

19 **XII. RETENTION OF JURISDICTION**

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

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

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

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

**[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 who
4 made a purchase in Pokémon Go while under the age of 18.”

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

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

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

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

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

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*D.D. v. Niantic, Inc.*, Case No. 23STCV03241); (2) the Settlement Class Member's
2 full legal name and mailing address; (3) the personal signature of the Settlement Class member;
3 (4) the grounds for any objection; (5) the name and contact information of any and all attorneys
4 representing, advising, or assisting with the comment or objection, or who may profit from
5 pursuing any objection; and (6) a statement indicating whether the Settlement Class Member
6 intends to appear at the Final Approval Hearing, either personally or through counsel. Written
7 objections must be served on Class Counsel and Defense Counsel as follows:

8
9 D.D. v. Niantic, Inc.
c/o Philip L. Fraietta – Bursor & Fisher, P.A.
10 1330 Avenue of the Americas, 32nd Floor
New York, NY 10019

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

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

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

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

23 14. The date of the postmark on the envelope containing the written objection shall
24 be the exclusive means used to determine whether an objection has been timely submitted.
25 Class Members who fail to mail timely written objections in the manner specified above shall
26 be deemed to have waived any objections and shall be forever barred from objecting to the
27 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
28

1 appeal, collateral attack, or otherwise.

2 15. The Court will hold a final approval hearing on April 4, 2023 at _____ a.m./p.m.,
3 in the Superior Court of California, County of Los Angeles, located at Spring Street
4 Courthouse, 312 North Spring Street, Los Angeles, CA 90012, in Department 001. The
5 purposes of the final approval hearing will be to: (i) determine whether the proposed Settlement
6 Agreement should be finally approved by the Court as fair, reasonable, adequate, and in the
7 best interests of the Settlement Class; (ii) determine whether judgment should be entered
8 pursuant to the Settlement Agreement, and releasing the Released Persons of all claims as
9 stated in the Settlement Agreement; (iii) determine whether the Settlement Class should be
10 finally certified; (iv) rule on Class Counsel's motion for attorneys' fees, costs and service
11 awards; (v) consider any properly filed objections; and (vi) consider any other matters
12 necessary in connection with the final approval of the Settlement Agreement.

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

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

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

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

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

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

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

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

9
10 IT IS SO ORDERED.

11 Date: _____

12 _____

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-B hereto
3 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among
4 Plaintiff D.D., a minor, through Dominique Davis, his mother and legal guardian (“Settlement
5 Class Representative”), on behalf of himself and the Settlement Class as defined below, and
6 Defendant Niantic, Inc. (“Defendant” or “Niantic”). Settlement Class Representative, the
7 Settlement Class, and Niantic (collectively, the “Parties”) enter into this Agreement to effectuate
8 a full and final settlement and dismissal of *D.D. v. Niantic, Inc.*, pending in the Superior Court of
9 California, County of Los Angeles (the “Action”).

10 **I. RECITALS**

11 1. WHEREAS, on August 18, 2022, Plaintiff’s counsel informed Niantic of
12 Settlement Class Representative’s potential claims against Niantic, on behalf of himself and a class
13 of similarly situated minors, including for declaratory, equitable and monetary relief under the
14 Declaratory Judgment Act, California’s contract laws, Consumers Legal Remedies Act Cal. Civ.
15 Code § 1750, et seq., Breach of Good Faith and Fair Dealing, Negligent Misrepresentation,
16 Business and Professions Code Sections 17200 et seq., and for Unjust Enrichment.

17 2. WHEREAS, the Parties agreed to mediate, prior to Settlement Class Representative
18 filing his claims against Niantic.

19 3. WHEREAS, the Parties mediated their dispute with Gregory Lindstrom of Phillips
20 ADR on September 8, 2022, which was unsuccessful, and thereafter engaged in continued arm’s
21 length negotiations through Mr. Lindstrom, culminating in a term sheet executed by the Parties on
22 November 9, 2022;

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

27 5. WHEREAS, Niantic, while continuing to deny all allegations of wrongdoing and
28 disclaiming all liability with respect to all claims in the Action, considers it desirable to resolve

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

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

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

21 II. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any application for attorneys' fees or expenses will not in any way delay or preclude the Judgment from becoming Final.

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

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

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

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

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

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

24. “Released Parties” means (i) Niantic and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, that are owned or controlled by Niantic; and (ii) the past, present, and future shareholders, officers, directors, members, agents, employees, independent contractors, consultants, administrators, representative, fiduciaries, insurers, attorneys, legal representative, advisors, creditors, predecessors, successors, and assigns of the entities in Part (i) of this Paragraph.

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

26. “Service Award” means the amount approved by the Court to be paid to the Settlement Class Representative as described further in Paragraph [VII.51](#).

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

28. “Settlement Class” has the meaning set forth in Paragraph [III.34](#).

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

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

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

1 **III. SETTLEMENT CLASS CERTIFICATION**

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

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

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

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

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

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

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

1 38. If this Settlement Agreement is terminated pursuant to its terms, disapproved by
2 any court (including any appellate court), and/or not consummated for any reason, or the Effective
3 Date for any reason does not occur, the order certifying the Settlement Class for purposes of
4 effectuating the Settlement, and all preliminary and/or final findings regarding that class
5 certification order, shall be automatically vacated upon notice of the same to the Court, the Action
6 shall proceed as though the Settlement Class had never been certified pursuant to this Settlement
7 Agreement and such findings had never been made, and the Action shall return to the procedural
8 posture as it existed on November 10, 2022, in accordance with this Paragraph. No Party nor
9 counsel shall refer to or invoke the vacated findings and/or order relating to class settlement if this
10 Settlement Agreement is not consummated and the Action is later litigated and contested by
11 Niantic.

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

13 39. In consideration for the ~~dismissal of the Action with prejudice and the~~ releases
14 provided in this Settlement Agreement, and as a result of the Action and Settlement, Niantic agrees
15 to that within 60 days of the Effective Date, it shall implement the following for three years
16 following the Effective Date:

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

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

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

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

- 1 ii) For Google Play Store purchases for which Niantic is permitted
2 and does process limited numbers of direct refunds, in its standard
3 response for U.S. users seeking additional information about the purchase,
4 add language to prompt users to indicate whether the purchase of
5 PokéCoins was made when the user was a minor without parental consent,
6 except as prohibited by local law.
- 7 c) Niantic will, in its public-facing Pokémon GO Help Center, for help pages
8 currently referencing assistance with refunds for PokéCoin purchases:
- 9 i) Add specific links to Apple, Google, and Samsung In-App
10 Purchase refund policies for reference;
- 11 ii) Add language in substantially the following form: “Please note that
12 app store refund policies may vary based on the location of user and the
13 age of user, including legal minority, at the time of purchase, as may be
14 required by applicable law.”
- 15 d) Niantic will also add these Pokémon GO Help Center changes into the in-
16 app Help sections on the same topics.
- 17 e) For all refund requests processed by Niantic, which currently includes
18 purchases from the Google Play Store, Niantic will implement a dedicated process to address
19 refund requests, subject to confirmation of minority. The personnel staffing this dedicated process
20 will receive further training regarding how to analyze and process such refund requests in
21 accordance with applicable law.
- 22 f) Niantic will agree that its refund policies and practices with respect to U.S.
23 minors will comply with the California Family Code.

24 **V. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR**
25 **REVIEW AND APPROVAL**

26 40. Solely for purposes of implementing this Agreement and effectuating the proposed
27 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion
28

1 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval
2 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

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

4 a) find that the requirements for provisional certification of the Settlement
5 Class have been satisfied, appointing Settlement Class Representative as the Representative of the
6 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **VI. RELEASES ~~AND DISMISSAL OF ACTION~~**

21 43. ~~Upon~~Upon the implementation of the injunctive relief in ¶ 39, which shall be
22 within 60 days of the Effective Date, Settlement Class Representative's Releasing Parties will be
23 deemed to have, and by operation of the Final Approval Order and Final Judgment will have fully,
24 finally, and forever released, relinquished, and discharged any and all past, present, and future
25 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities,
26 of any nature and description whatsoever, that were alleged or could have been alleged in the
27 Action, known or unknown, recognized now or hereafter, existing or preexisting, expected or
28 unexpected, pursuant to any theory of recovery (including, but not limited to, those based in

1 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or
2 regulation), against the Released Parties, up until and including the Effective Date, that result from,
3 arise out of, or are based on, ~~or relate in any way to~~ the facts and practices ~~and claims~~ that were
4 alleged in the Action, for any type of relief that can be released as a matter of law, including,
5 without limitation, claims for monetary relief, damages (whether compensatory, consequential,
6 punitive, exemplary, liquidated, and/or statutory), costs, penalties, interest, attorneys' fees,
7 litigation costs, restitution, or equitable relief under Cal. Family Code §§ 6701 and 6710
8 ("Settlement Class Representative' Released Claims"). Settlement Class Representative's
9 Releasing Parties are forever enjoined from taking any action seeking any relief against the
10 Released Parties based on any of Settlement Class Representative' Released Claims.

11 44. ~~Upon~~ Upon the implementation of the injunctive relief in ¶ 39, which shall be
12 within 60 days of the Effective Date, the Releasing Parties will be deemed to have, and by
13 operation of the Final Approval Order and Final Judgment will have fully, finally, and forever
14 released, relinquished, and discharged any and all past, present, and future claims, actions,
15 demands, causes of action, suits, debts, obligations, and rights or liabilities for injunctive and/or
16 declaratory relief, of any nature and description whatsoever, that were alleged or could have been
17 alleged in the Action, known or unknown, existing or preexisting, recognized now or hereafter,
18 expected or unexpected, pursuant to any theory of recovery (including, but not limited to, those
19 based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or
20 regulation) against the Released Parties, up until and including the Effective Date, that result from,
21 arise out of, or are based on, ~~or relate in any way to~~ the facts and practices ~~and claims~~ that were
22 alleged in the Action ("Settlement Class Members' Released Claims"), except that,
23 notwithstanding the foregoing, the Releasing Parties do not release claims for monetary relief or
24 damages. The Releasing Parties are forever enjoined from taking any action seeking injunctive
25 and/or declaratory relief against the Released Parties based on any Settlement Class Members'
26 Released Claims.

27 45. After entering into this Settlement Agreement, the Parties may discover facts other
28 than, different from, or in addition to, those that they know or believe to be true with respect to the

1 claims released by this Settlement Agreement, but they intend to release fully, finally and forever
2 the Released Claims, and in furtherance of such intention, the Releases will remain in effect
3 notwithstanding the discovery or existence of any such additional or different facts. With respect
4 to the Released Claims, Settlement Class Representative (on behalf of themselves and the
5 Settlement Class Members), through their counsel, expressly, knowingly, and voluntarily waive
6 any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and
7 any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code
8 Section 1542, which reads as follows:

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

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

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

22 47. By operation of the Final Approval Order and Final Judgment, the Action will be
23 ~~dismissed with prejudice~~ finally adjudicated.

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

VII. ATTORNEYS' FEES, COSTS, AND SERVICE AWARD

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

7 50. Any Attorneys' Fees and Costs Award, as awarded by the Court up to \$875,000,
8 shall be payable by Niantic, as ordered, within the later of (a) twenty-one (21) days after the
9 Court's order awarding fees and expenses, or (b) final approval of the settlement and the expiration
10 of all deadlines in which a class member or any person may challenge final approval. In no event
11 shall Niantic be required to make a payment of attorneys' fees if the Settlement Agreement is not
12 finally approved.

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

25 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
26 **NIANTIC'S RESERVATION OF RIGHTS**

27 52. This Settlement Agreement may be amended or modified only by a written
28 instrument signed by or on behalf of all Parties or their respective successors-in-interest and

1 approval of the Court; provided, however that, after entry of the Final Approval Order and Final
2 Judgment, the Parties may by written agreement effect such amendments, modifications, or
3 expansions of this Settlement Agreement and its implementing documents (including all
4 Exhibits hereto) without further approval by the Court if such changes are consistent with the
5 Court's Final Approval Order and Final Judgment and do not materially alter, reduce, or limit the
6 rights of Settlement Class Members under this Settlement Agreement.

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

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

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

26 56. If this Settlement Agreement is not approved by the Court or the Settlement
27 Agreement is terminated or fails to become effective in accordance with the terms of this
28 Settlement Agreement, the Parties will be restored to their respective positions in the Action

1 existing on November 10, 2022. In such event, the terms and provisions of this Settlement
2 Agreement and the memorandum of understanding will have no further force and effect with
3 respect to the Parties and will not be used in this Action or in any other proceeding for any purpose,
4 and any Judgment or order entered by the Court in accordance with the terms of this Settlement
5 Agreement will be treated as vacated.

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

22 58. Niantic denies the material factual allegations and legal claims asserted in the
23 Action, including any and all charges of wrongdoing or liability arising out of any of the conduct,
24 statements, acts or omissions alleged in the Action. Similarly, this Settlement Agreement provides
25 for no admission of wrongdoing or liability by any of the Released Parties. This Settlement is
26 entered into solely to eliminate the uncertainties, burdens, and expenses of protracted litigation.
27 For the avoidance of doubt, Niantic does not acknowledge the propriety of certifying the
28 Settlement Class for any purpose other than to effectuate the Settlement of the Action. If this

1 Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does
2 not occur, Niantic does not waive, but rather expressly retains and reserves, all rights it had prior
3 to the execution of this Settlement Agreement to challenge all claims and allegations in the Action
4 upon all procedural and factual grounds, including, without limitation, the right to challenge the
5 certifiability of any class claims certified in the Action, and to assert any and all other potential
6 defenses or privileges that were available to it at that time, including but not limited to challenging
7 the Court's subject matter jurisdiction over any claims asserted in the Action. Niantic's agreement
8 to this Settlement does not constitute an admission that certification is appropriate outside of the
9 context of this Settlement. The Settlement Class Representative and Class Counsel agree that
10 Niantic retains and reserves these rights, and agree not to take a position to the contrary. Class
11 Counsel shall not refer to or invoke Niantic's decision to accept the certified class for purposes of
12 settlement if the Effective Date does not occur and the Action is later litigated and certification is
13 contested by Niantic.

14 **IX. MISCELLANEOUS PROVISIONS**

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

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

21 To Class Representative and the Settlement Class:

22 L. Timothy Fisher
23 ltfisher@bursor.com
24 Bursor & Fisher, P.A.
25 1990 N. California Blvd.
Walnut Creek, CA 94596

26 Philip L. Fraietta
27 pfraietta@bursor.com
28 Alec M. Leslie
aleslie@bursor.com
888 7th Ave.

1 New York, NY 10019

2 To Counsel for Niantic:

3 Jeffrey M. Gutkin
4 jgutkin@cooley.com
5 Cooley LLP
6 3 Embarcadero Center, 20th Floor
7 San Francisco, California 94111

8 Kristine A. Forderer
9 kforderer@cooley.com
10 Cooley LLP
11 3 Embarcadero Center, 20th Floor
12 San Francisco, California 94111

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

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

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

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

26 65. The Settlement Agreement, the Settlement, all documents, orders, and other
27 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release
28 or other statement or report by the Parties or by others concerning the Settlement Agreement, the
Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the
Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute

1 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of
2 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the
3 Court's subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense
4 asserted, or any fault, misrepresentation, or omission by the Released Parties; (iv) the propriety of
5 certifying a litigation class or any decision by any court regarding the certification of a class, and/or
6 (v) whether the consideration to be given in this Settlement Agreement represents the relief that
7 could or would have been obtained through trial in the Action, in any trial, civil, criminal,
8 administrative, or other proceeding of the Action or any other action or proceeding in any court,
9 administrative agency, or other tribunal.

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

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

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

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

26 70. The waiver by one Party of any breach of this Settlement Agreement by any other
27 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
28 Agreement.

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

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

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

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

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

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

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

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

6 79. Class Representative and Class Counsel will not issue any press release or
7 communicate with the media regarding the Settlement or the Action without prior approval of
8 Niantic. However, if Class Representative or Class Counsel receive an inquiry from any third
9 party (excluding Settlement Class Members who identify themselves as such), they may only make
10 affirmative statements relating to the Settlement as follows: “The parties have reached a mutually
11 agreeable resolution to a disputed set of class claims that is fair, adequate, and reasonable.” Class
12 Counsel reserves all rights to communicate with individual members of the Settlement Class to
13 assist them in understanding the Settlement and nothing herein shall be construed as restricting
14 those rights and responsibilities. Similarly, nothing in this Agreement will affect Niantic’s right
15 to communicate with individual members of the Settlement Class relating to matters other than the
16 Action or the proposed Settlement.

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

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

25 82. All of the Parties warrant and represent that they are agreeing to the terms of this
26 Settlement Agreement based upon the legal advice of their respective attorneys, that they have
27 been afforded the opportunity to discuss the contents of this Settlement Agreement with their
28

1 attorneys, and that the terms and conditions of this document are fully understood and voluntarily
2 accepted.

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

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

9 84.85. Each Counsel or other person executing this Settlement Agreement or any of its
10 Exhibits on behalf of any Party hereby warrants that such person has the full authority to do so.
11 Class Counsel, on behalf of the Settlement Class, is expressly authorized by the Class
12 Representative to take all appropriate action required or permitted to be taken by the Settlement
13 Class pursuant to this Settlement Agreement to effectuate its terms, and is expressly authorized to
14 enter into any modifications or amendments to this Settlement Agreement on behalf of the
15 Settlement Class that Class Counsel and Class Representative deem appropriate.

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

3 Dated: _____, 2023

COOLEY LLP

4
5 By: _____

6 Dated: _____, 2023

NIANTIC, INC.

7
8 By: _____

9
10 Dated: _____, 2023

PLAINTIFF D.D.

11 By: _____

12
13 Dated: _____, 2023

BURSOR & FISHER, P.A.

14 By: _____

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16 279805734

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

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

Plaintiff,

v.
NIANTIC, INC.,

Defendant.

Case No.

**[PROPOSED] FINAL ORDER
AND JUDGMENT**

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

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

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

13 **II. DEFINED TERMS**

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

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

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

1 **IV. JURISDICTION**

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

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

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

18 6. The Settlement Agreement was the result of negotiations conducted by the Parties,
19 over the course of multiple months, including with the assistance of a neutral
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
28

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 who made a purchase in Pokémon Go while under the age of 18.
13 Excluded from the Settlement Class are (i) all Persons who are directors, officers, and agents of
14 Niantic or its subsidiaries and affiliated companies or are designated by Niantic as employees of
15 Niantic or its subsidiaries and affiliated companies; and (ii) the Court, the Court's immediate
16 family, and Court staff, as well as any appellate court to which this matter is ever assigned, and its
17 immediate family and staff.

18 **VI. NOTICE**

19 ~~8.~~ Direct notice of the settlement is not required here because the Settlement
20 Agreement only releases claims for injunctive and/or declaratory relief and does not release the
21 monetary or damages claims of the Class, and thus the settlement expressly preserves the
22 individual

23 ~~9.8.~~ rights of class members to pursue monetary claims against the defendant.
24 Nonetheless, pursuant to the Settlement Agreement, documents pertaining to the Settlement,
25 preliminary approval, and final approval (including Plaintiffs' motion for attorneys' fees and
26 incentive awards and any opposition or reply papers thereto), were posted on Class Counsel's
27 public website.
28

1 **VII. CLAIMS COVERED AND RELEASES**

2 ~~10.9.~~ 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 ~~11.10.~~ 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 ~~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)
15 including any and all claims for injunctive and/or declaratory relief of any kind or character, at
16 law or equity, known or unknown, preliminary or final, under any other federal or state law or
17 rule of procedure, up until and including the Effective Date, that result from, arise out of, are
18 based on, or relate in any way to the practices and claims that were alleged in the Action, except
19 that, notwithstanding the foregoing, the Releasing Parties do not release claims for monetary
20 relief or damages. The Releasing Parties are forever enjoined from taking any action seeking
21 injunctive and/or declaratory relief against the Released Parties based on any Settlement Class
22 Members' Released Claims.

23 ~~13.12.~~ 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 Niantic.

26 **VIII. INJUNCTIVE RELIEF**

1 ~~14.13.~~ Niantic will agree to include language in substantially the following form in its
2 Terms of Service applicable to U.S. players (currently at <https://nianticlabs.com/terms/>) for three
3 (3) years following the Effective Date:

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

8 ~~15.14.~~ Niantic will, in processing any direct requests for refunds of PokéCoins:

- 9 (b) For Apple and Samsung purchases, in its standard response redirecting
10 users to Apple or Samsung, add language in substantially the following
11 form: “Please note that app store refund policies may vary based on the
12 location of user and the age of user, including legal minority, at the time of
13 purchase, as may be required by applicable law.”
- 14 (c) For Google Play Store purchases for which Niantic is permitted and does
15 process limited numbers of direct refunds, in its standard response for U.S.
16 users seeking additional information about the purchase, add language to
17 prompt users to indicate whether the purchase of PokéCoins was made
18 when the user was a minor without parental consent, except as prohibited
19 by local law.

20 ~~16.15.~~ Niantic will, in its public-facing Pokémon GO Help Center, for help pages
21 currently referencing assistance with refunds for PokéCoin purchases:

- 22 (d) Add specific links to Apple, Google, and Samsung In-App Purchase refund
23 policies for reference;
- 24 (e) Add language in substantially the following form: “Please note that app
25 store refund policies may vary based on the location of user and the age of
26 user, including legal minority, at the time of purchase, as may be required
27 by applicable law.”
- 28

1 ~~17.16.~~ Niantic will also add these Pokémon GO Help Center changes into the in-app Help
2 sections on the same topics.

3 ~~18.17.~~ For all refund requests processed by Niantic, which currently includes purchases
4 from the Google Play Store, Niantic will implement a dedicated process to address refund
5 requests, subject to confirmation of minority. The personnel staffing this dedicated process will
6 receive further training regarding how to analyze and process such refund requests in accordance
7 with applicable law.

8 ~~19.18.~~ Niantic will agree that its refund policies and practices with respect to U.S. minors
9 will comply with the California Family Code.

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

11 ~~20.19.~~ The Court has also considered Plaintiff's Motion for Attorneys' Fees, Costs,
12 Expenses, and Incentive Award, as well as the supporting declarations, and adjudges that the
13 payment of attorneys' fees, costs, and expenses in the amount of \$875,000 is reasonable under
14 California law. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 551 (2009); *Wershba v.*
15 *Apple Computer*, 91 Cal.App.4th 224, 254-255 (2001); *Lealao v. Benefit Cal.*, 82 Cal.App.4th 19,
16 26-34 (2000); *Serrano v. Priest*, 20 Cal.3d 25, 34-48 (1977). This award includes Class
17 Counsel's unreimbursed litigation expenses. Such payment shall be made pursuant to and in the
18 manner provided by the terms of the Settlement Agreement.

19 ~~21.20.~~ The Court has also considered Plaintiff's Motion and supporting declarations for
20 an incentive award to the Class Representative, D.D. The Court adjudges that the payment of an
21 incentive award in the amount of \$1,500 to D.D. to compensate him for his efforts and
22 commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the
23 circumstances of this case. Such payment shall be made pursuant to and in the manner provided
24 by the terms of the Settlement Agreement.

1 **X. AUTHORIZATION TO PARTIES TO IMPLEMENT AGREEMENT AND**
2 **MODIFICATIONS OF AGREEMENT**

3 ~~22.21.~~ By this Order, the Parties are hereby authorized to implement the terms of the
4 Settlement Agreement. After the date of entry of this Order, the Parties may by written
5 agreement effect such amendments, modifications, or expansions of the Settlement Agreement
6 and its implementing documents (including all exhibits thereto) without further approval by the
7 Court if such changes are consistent with terms of this Order and do not materially alter, reduce,
8 or limit the rights of Settlement Class Members under the Settlement Agreement.

9 **XI. TERMINATION**

10 ~~23.22.~~ In the event that the Settlement Agreement is terminated pursuant to the terms of
11 the Settlement Agreement, (a) the Settlement Agreement and this Order shall become void, shall
12 have no further force or effect, and shall not be used in any action or other proceedings for any
13 purpose other than as may be necessary to enforce the terms of the Settlement Agreement that
14 survive termination; (b) this matter will revert to the status that existed before execution of the
15 Settlement Agreement; and (c) no term or draft of the Settlement Agreement or any part of the
16 Parties' settlement discussions, negotiations, or documentation (including any briefs filed in
17 support of preliminary or final approval of the Settlement) shall (i) be admissible into evidence
18 for any purpose in any action or other proceeding other than as may be necessary to enforce the
19 terms of the Settlement Agreement that survive termination, (ii) be deemed an admission or
20 concession by any Party regarding the validity of any Released Claim or the propriety of
21 certifying any class against Niantic, or (iii) be deemed an admission or concession by any Party
22 regarding the truth or falsity of any facts alleged in the Action or the availability or lack of
23 availability of any defense to the Released Claims.

24 **XII. RETENTION OF JURISDICTION**

25 ~~24.23.~~ The Court shall retain jurisdiction over any claim relating to the Settlement
26 Agreement (including all claims for enforcement of the Settlement Agreement and/or all claims
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1 arising out of a breach of the Settlement Agreement) as well as any future claims by any
2 Settlement Class Member relating in any way to the Released Claims.

3 **XIII. FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

4 ~~25. By operation of this Order, this Action is hereby dismissed with prejudice.~~

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9 DATED: _____

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

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

Plaintiff,

v.

NIANTIC, INC.,

Defendant.

Case No. 23STCV03241

**[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 who
4 made a purchase in Pokémon Go while under the age of 18.”

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

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

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

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

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

25 12. Each Settlement Class Member shall be given a full opportunity to comment on
26 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.
27 Comments or objections must be in writing, and must include (1) the name and case number of
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1 the Action (*D.D. v. Niantic, Inc.*, Case No. _____); 23STCV03241); (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~~ Class Counsel and
8 Defense Counsel as follows:

9
10 D.D. v. Niantic, Inc.
11 c/o ~~[Settlement Administrator]~~
12 ~~[Insert Settlement Administrator address]~~ Philip L. Fraietta
13 - Bursor & Fisher, P.A.
14 ~~The Settlement Administrator, 1330 Avenue of the~~
15 Americas, 32nd Floor
16 New York, NY 10019

17 D.D. v. Niantic, Inc.
18 c/o Jeffrey M. Gutkin – Cooley LLP
19 3 Embarcadero Center, 20th Floor
20 San Francisco, California 94111-4004

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

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

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

14. The date of the postmark on the envelope containing the written objection shall
be the exclusive means used to determine whether an objection has been timely submitted.
Class Members who fail to mail timely written objections in the manner specified above shall

1 be deemed to have waived any objections and shall be forever barred from objecting to the
2 Settlement Agreement and the proposed settlement by appearing at the Final Approval Hearing,
3 appeal, collateral attack, or otherwise.

4 15. The Court will hold a final approval hearing on , April 4, 2023 at
5 a.m./p.m, in the Superior Court of California, County of Los Angeles, located at ~~1945 S~~
6 ~~Hill St~~Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA ~~90007~~90012, in
7 ~~Courtroom~~ . Department 001. The purposes of the final approval hearing will be to: (i)
8 determine whether the proposed Settlement Agreement should be finally approved by the Court
9 as fair, reasonable, adequate, and in the best interests of the Settlement Class; (ii) determine
10 whether judgment should be entered pursuant to the Settlement Agreement, ~~dismissing the~~
11 ~~Action with prejudice~~ and releasing the Released Persons of all claims as stated in the
12 Settlement Agreement; (iii) determine whether the Settlement Class should be finally certified;
13 (iv) rule on Class Counsel's motion for attorneys' fees, costs and service awards; (v) consider
14 any properly filed objections; and (vi) consider any other matters necessary in connection with
15 the final approval of the Settlement Agreement.

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

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

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

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

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

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

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

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

14 Date: _____

15 _____

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