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Attorneys for Plaintiff

**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 L. Timothy Fisher, Philip L. Fraietta, and Alec M.
16 Leslie of Bursor & 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 (<https://www.bursor.com/>). Additionally, Defendant Niantic, Inc. (“Niantic”)
25 will provide notice in accordance with Settlement Agreement paragraph 37.

26 12. Each Settlement Class Member shall be given a full opportunity to comment on
27 or object to the Settlement Agreement, and to participate at a Final Approval Hearing.

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

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

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

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

17 13. To be considered, written comments or objections must be submitted within 135
18 days after the entry of this Order. No Class Member shall be entitled to be heard at the Final
19 Approval Hearing, whether individually or through counsel, unless written notice of the Class
20 Member’s intention to appear at the Final Approval Hearing is timely filed, or postmarked for
21 mail to the Court within 135 days after date of entry of this Order.

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

28 15. The Court will hold a final approval hearing on _____, 2024 at _____ a.m./p.m.,

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

11 16. Class Counsel's application for attorneys' fees, costs and expenses shall be filed
12 and served no later than one hundred and twenty (120) days after the Court's order of
13 preliminary approval. Any opposition, comment, or objection shall be filed no later than one
14 hundred and thirty-five (135) days after the Court's order of preliminary approval. Any reply
15 shall be filed no later than one hundred and fifty (150) days after the Court's order of
16 preliminary approval.

17 17. The motion in support of final approval of the settlement shall be filed and
18 served no later than one hundred and twenty (120) days after the Court's order of preliminary
19 approval. Any opposition or objection shall be filed no later than one hundred and thirty-five
20 (135) days after the Court's order of preliminary approval. Any reply shall be filed no later
21 than one hundred and fifty (150) days after the Court's order of preliminary approval.

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

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

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

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

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

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

9 IT IS SO ORDERED.

10 Dated: _____

11 _____
12 Honorable Stuart M. Rice
13 Judge of the Los Angeles Superior Court
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