

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-C 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.48-VII.49.

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,

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

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

9 26. “Service Award” means the amount approved by the Court to be paid to the
10 Settlement Class Representative as described further in Paragraph VII.50.

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

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

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

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

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

25 **III. SETTLEMENT CLASS CERTIFICATION**

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

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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. To provide notice of the Settlement Agreement to Settlement Class Members
21 ("Class Notice"), within 75 days of the order granting preliminary approval, using records kept in
22 the ordinary course of business, Niantic agrees to send an email substantially in form of Exhibit C
23 to the email addresses of the users' accounts that Niantic has identified through reasonable best
24 efforts may have made a purchase in Pokémon GO while they were under 18 years of age from
25 July, 1 2016 to and through the date of preliminary approval. Niantic will send these emails to the
26 extent that it has an email address associated with the users' accounts, which may be the email
27 address of the user's parent or guardian in some cases. Niantic currently estimates that it has email
28 addresses associated with at least 95% of user accounts. Additionally, Class Notice will be

1 provided via the following information posted on Class Counsel’s website, to which Exhibit C will
2 refer: the Settlement Agreement, Plaintiff’s motion for preliminary approval, the order granting
3 preliminary approval, and Plaintiff’s motion for attorneys’ fees and incentive awards (including
4 any opposition and reply papers). Additionally, after making the revisions referenced in ¶ 40(a),
5 Niantic will give Pokémon GO users notice that it has revised its Terms of Service through its
6 standard processes for updating its Terms in the ordinary course of its business (i.e., via an in-app
7 notification).

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

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

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

23 a) So long as Niantic’s current refund policy remains in place, Niantic will
24 agree to include language in substantially the following form in its terms of service applicable to
25 U.S. players (“Terms of Service” currently available at <https://nianticlabs.com/terms/>): “You agree
26 that all sales by us to you of Virtual Money and Virtual Goods are final and that we will not permit
27 exchanges or refunds for any unused Virtual Money or Virtual Goods once the transaction has
28 been made, unless otherwise required by law.” In the event that Niantic substantively modifies its

1 refund policy applicable to U.S. players in the future, its Terms of Service discussing that policy
2 shall incorporate similar language acknowledging that such new policy applies unless otherwise
3 required by law.

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

7 i) For Apple and Samsung purchases, for which Niantic is not
8 permitted to and does not process direct refunds, in its standard response
9 redirecting users to Apple or Samsung, add language in substantially the
10 following form: “Please note that app store refund policies may vary based
11 on the location of user and the age of user, including legal minority, at the
12 time of purchase, as may be required by applicable law.” Niantic shall not
13 be required to continue to implement this relief in the future if, in
14 Niantic’s reasonable discretion, this language is no longer applicable to
15 the manner in which Apple or Samsung refund requests are handled.

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

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

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

5 ii) Add language in substantially the following form: “Please note that
6 app store refund policies may vary based on the location of user and the
7 age of user, including legal minority, at the time of purchase, as may be
8 required by applicable law.”

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

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

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

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

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

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

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

8 a) find that the requirements for provisional certification of the Settlement
9 Class have been satisfied, appointing Settlement Class Representative as the Representative of the
10 provisional Settlement Class and Class Counsel as counsel for the provisional Settlement Class;

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

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

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

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

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

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

28 a) find that the Court has personal jurisdiction over all Settlement Class

1 Members, that the Court has subject matter jurisdiction over the claims asserted in the Action, and
2 that the venue is proper;

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

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

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

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

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

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

14 h) enter a separate judgment pursuant to applicable California Code of Civil
15 Procedure; and

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

24 **VI. RELEASES**

25 43. Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within
26 60 days of the Effective Date, Releasing Settlement Class Representatives will be deemed to have,
27 and by operation of the Final Approval Order and Final Judgment will have fully, finally, and
28 forever released, relinquished, and discharged any and all past, present, and future claims, actions,

1 demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature
2 and description whatsoever, that were alleged or could have been alleged in the Action, known or
3 unknown, recognized now or hereafter, existing or preexisting, expected or unexpected, pursuant
4 to any theory of recovery (including, but not limited to, those based in contract or tort, common
5 law or equity, federal, state, or local law, statute, ordinance, or regulation), against the Released
6 Parties, up until and including the Effective Date, that result from, arise out of, or are based on the
7 facts and practices that were alleged in the Action, for any type of relief that can be released as a
8 matter of law, including, without limitation, claims for monetary relief, damages (whether
9 compensatory, consequential, punitive, exemplary, liquidated, and/or statutory), costs, penalties,
10 interest, attorneys' fees, litigation costs, restitution, or equitable relief under Cal. Family Code §§
11 6701 and 6710 ("Settlement Class Representative' Released Claims"). Releasing Settlement Class
12 Representatives are forever enjoined from taking any action seeking any relief against the Released
13 Parties based on any of Settlement Class Representative' Released Claims.

14 44. Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within
15 60 days of the Effective Date, the Releasing Parties will be deemed to have, and by operation of
16 the Final Approval Order and Final Judgment will have, for injunctive and/or declaratory relief
17 only, fully, finally, and forever released, relinquished, and discharged any and all past, present,
18 and future claims, actions, demands, causes of action, suits, debts, obligations, and rights or
19 liabilities for injunctive and/or declaratory relief, of any nature and description whatsoever, that
20 were alleged or could have been alleged in the Action, known or unknown, existing or preexisting,
21 recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery for
22 injunctive and/or declaratory relief (including, but not limited to, those based in contract or tort,
23 common law or equity, federal, state, or local law, statute, ordinance, or regulation) against the
24 Released Parties, up until and including the Effective Date, that result from, arise out of, or are
25 based on the facts and practices that were alleged in the Action ("Settlement Class Members'
26 Released Claims"). For clarity and notwithstanding the foregoing or any language in the
27 Agreement, the Releasing Parties do not release claims for monetary relief or damages. The
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1 Releasing Parties are forever enjoined from taking any action seeking injunctive and/or declaratory
2 relief against the Released Parties based on any Settlement Class Members' Released Claims.

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

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

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

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

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

23 49. The Parties agree that the Class Representative may apply to the Court for a Service
24 Award, which shall not exceed \$1,500, for his services as Class Representative. The Parties agree
25 that the decision whether or not to award any such payment, and the amount of that payment, rests
26 in the exclusive discretion of the Court. Niantic agrees to pay the amount determined by the Court,
27 up to \$1,500. Class Representative understands and acknowledges that he may receive no
28 monetary payment, and his agreement to the Settlement is not conditioned on the possibility of

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

7 **VIII. MODIFICATION OR TERMINATION OF SETTLEMENT AGREEMENT AND**
8 **NIANTIC'S RESERVATION OF RIGHTS**

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

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

21 52. In the event the terms or conditions of this Settlement Agreement are materially
22 modified by any court, any Party in its sole discretion to be exercised within thirty (30) days after
23 such modification may declare this Settlement Agreement null and void. For purposes of this
24 Paragraph, material modifications include any modifications to the definitions of the Settlement
25 Class, Settlement Class Members, Released Parties, or Released Claims, any modifications to the
26 terms of the Settlement consideration described in Paragraphs IV.39 and 40 and/or any
27 requirement of notice to the Settlement Class. In the event of any material modification by any
28 court, and before exercising their unilateral option to withdraw from this Settlement Agreement

1 pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling
2 to attempt to reach an agreement as to how best to effectuate the court-ordered modification.

3 53. In the event that a Party exercises his/her/its option to withdraw from and terminate
4 this Settlement Agreement pursuant to Paragraph 53, then the Settlement proposed herein shall
5 become null and void and shall have no force or effect, the Parties shall not be bound by this
6 Settlement Agreement, and the Parties will be returned to their respective positions existing on
7 November 10, 2022.

8 54. If this Settlement Agreement is not approved by the Court or the Settlement
9 Agreement is terminated or fails to become effective in accordance with the terms of this
10 Settlement Agreement, the Parties will be restored to their respective positions in the Action
11 existing on November 10, 2022. In such event, the terms and provisions of this Settlement
12 Agreement and the memorandum of understanding will have no further force and effect with
13 respect to the Parties and will not be used in this Action or in any other proceeding for any purpose,
14 and any Judgment or order entered by the Court in accordance with the terms of this Settlement
15 Agreement will be treated as vacated.

16 55. The procedure for and the allowance or disallowance by the Court of any
17 application for attorneys' fees, costs, expenses, and/or reimbursement to be paid to Class Counsel,
18 and the procedure for any payment to Class Representative, are not part of the settlement of the
19 Released Claims as set forth in this Settlement Agreement, and are to be considered by the Court
20 separately from the Court's consideration of the fairness, reasonableness, and adequacy of the
21 settlement of the Released Claims as set forth in this Settlement Agreement. Any such separate
22 order, finding, ruling, holding, or proceeding relating to any such applications for Attorneys' Fees
23 and Costs and/or payment to Class Representative, or any separate appeal from any separate order,
24 finding, ruling, holding, or proceeding relating to them or reversal or modification of them, shall
25 not operate to terminate or cancel this Settlement Agreement or otherwise affect or delay the
26 finality of the Final Approval Order and Final Judgment approving the Settlement.
27 Notwithstanding the foregoing, Niantic may terminate the Settlement Agreement in the event the
28 Court awards more than \$875,000 in combined costs and fees. The terms of this Agreement

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

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

24 **IX. MISCELLANEOUS PROVISIONS**

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

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

3 To Class Representative and the Settlement Class:

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

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

15 To Counsel for Niantic:

16 Jeffrey M. Gutkin
17 jgutkin@cooley.com
18 Cooley LLP
19 3 Embarcadero Center, 20th Floor
20 San Francisco, California 94111

21 Kristine A. Forderer
22 kforderer@cooley.com
23 Cooley LLP
24 3 Embarcadero Center, 20th Floor
25 San Francisco, California 94111

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

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

61. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 78. The provision of the confidentiality agreement entered into with respect to the
27 mediation process concerning this matter is waived for the limited purpose of permitting the Parties
28 to confirm the details of the mediation process that are included in this Agreement.

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

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

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

15 82. The Court shall retain jurisdiction over the parties to enforce the terms of the Final
16 Judgment.

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

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

Dated: _____, 2024 COOLEY LLP
By: _____

Dated: _____, 2024 NIAN TIC, INC.
By: _____

Dated: 02/07/2024, 2024 PLAINTIFF D.D.
By:  _____
DocId: 58666615 (Feb 7, 2024 18:08 PST)

Dated: 02/07/2024, 2024 BURS OR & FISHER, P.A.
By:  _____
L. Timothy Fisher (Feb 7, 2024 18:13 PST)

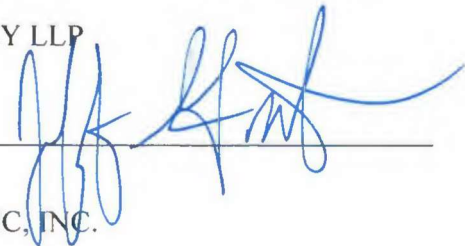
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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have
duly executed this Settlement Agreement as of the date set forth below.

Dated: Feb. 8, 2024

COOLEY LLP

By: _____



Dated: _____, 2024

NIANTIC, INC.

By: _____

Dated: _____, 2024

PLAINTIFF D.D.

By: _____

Dated: _____, 2024

BURSOR & FISHER, P.A.

By: _____

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

Dated: _____, 2024

COOLEY LLP

By: _____

Dated: _____, 2024

NIANTIC, INC.

By:  2/6/2024
DocuSigned by:
005CBFF74B2241D...

Dated: _____, 2024

PLAINTIFF D.D.

By: _____

Dated: _____, 2024

BURSOR & FISHER, P.A.

By: _____