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15 **SUPERIOR COURT OF CALIFORNIA**
16 **FOR THE COUNTY OF LOS ANGELES**

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

19 Plaintiff,

20 v.

21 NIANTIC, INC.,

22 Defendant.

Case No. 23STCV03241

ASSIGNED FOR ALL PURPOSES TO
JUDGE STUART M. RICE, DEPT. 1

**SUPPLEMENTAL DECLARATION OF
L. TIMOTHY FISHER IN SUPPORT
OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

Date: December 15, 2023
Time: 10:30 a.m.

1 I, L. Timothy Fisher, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California. I am a partner
3 at Bursor & Fisher, P.A., counsel for Plaintiff in this action. I make this declaration in support of
4 Plaintiff's motion for preliminary approval of the class action settlement pursuant to the Court's
5 November 8, 2023 minute order. I have personal knowledge of the facts set forth in this
6 declaration, and, if called as a witness, could and would competently testify thereto under oath.

7 **I. THE PARTIES HAVE UPDATED THE SETTLEMENT**

8 2. In the Court's Order Rescinding Ruling on Motion for Preliminary Approval on
9 November 8, 2023 (the "Order"), the Court identified multiple settlement checklist items for the
10 Parties to address. Consistent with the Order and the Court's November 8, 2023 minute order, the
11 parties re-entered settlement negotiations and, following additional hard-fought negotiations,
12 reached a revised settlement agreement that they believe addresses the issues raised by the Court.
13 A true and correct copy of the revised settlement agreement is attached hereto as **Exhibit A** (the
14 "Revised Settlement Agreement").¹

15 **II. ADDRESSING THE COURT'S QUESTIONS**

16 3. In the Court's November 8, 2023 minute order, the Court requested any
17 supplemental filings be filed by December 8, 2023. I respectfully submit Plaintiff's responses to
18 each issue raised by the Order:

19 **A. The Release language has been clarified.**

20 4. The Court identified a potential ambiguity in the Settlement Agreement that could
21 be interpreted as releasing damages claims by putative class members. Order ¶ 1. That language
22 has been clarified. *See* Exhibit A ¶¶ 25, 31.

23 5. The Court asked for further clarifications in the definitions section of the Settlement
24 Agreement. Order ¶ 2. The Parties have made the changes as requested. *See* Exhibit A ¶¶ 23, 44.

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26
27 ¹ The Parties have agreed upon the language in Exhibit A and are standing by to sign the
28 Agreement within seven (7) days of preliminary approval. Plaintiff will file the signed agreement
promptly, following execution.

1 **B. The Parties have clarified why purchases on different platforms are treated**
2 **differently.**

3 6. The Court asked for an explanation as to why Apple and Samsung purchases are
4 treated differently from Google Play Store purchases. Order ¶ 3. Defendant has shared that it is
5 contractually prohibited from processing refunds for purchases made via Apple and Samsung.
6 However, this prohibition does not exist for purchases made on Google Play Store. This
7 explanation has also been inserted into the revised Settlement Agreement. *See* Exhibit A ¶ 39(a)
8 (“For Apple and Samsung purchases, for which Niantic is not permitted to and does not process
9 direct refunds.”).

10 **C. Defendant has agreed to provide email notice.**

11 7. The Court also stated that “[s]ome form of notice must be provided to the putative
12 class beyond simply including the new terms of use.” Order ¶ 4. The Court stated that the “notice
13 must include, at a minimum, an explanation of the relief sought in the lawsuit, a description and
14 explanation of the settlement, an explanation of what class members’ rights are to object to the
15 settlement, what rights if any they will be giving up if the settlement is finally approved, and when
16 and where the final approval hearing will take place.” *Id.* To accomplish this, the Court suggested
17 “e-mail notice to all of the known users of the Pokémon Go app during the class period.” *Id.* After
18 back and forth negotiations, Defendant has agreed to provide email notice. *See See* Exhibit A ¶ 37;
19 *see also* **Exhibit B** (the “Proposed Email Notice”).

20 **D. The Civil Code Section 1542 waiver has been eliminated.**

21 8. The Court also ordered Counsel to “meet and confer with an eye toward eliminating
22 the 1542 waiver from the settlement agreement.” Order ¶ 5. After negotiations, Defendant has
23 agreed to eliminate the Section 1542 waiver from the Settlement Agreement.

24 **E. Defendant has agreed to permanent changes as a result of the Settlement**
25 **Agreement.**

26 9. The Court also stated that “the negotiated new language in its terms of service
27 should not terminate in three years, but rather should be permanent.” Order ¶ 6. The Parties have
28 substantively agreed to this change as described in the Revised Settlement Agreement. *See* Exhibit

1 A pgs. 12-13.

2 **F. Independent review of the Settlement.**

3
4 10. The Court also found that “[b]ecause the entire class, not just Plaintiff, are minors,
5 independent review of the settlement by an attorney for the minors is appropriate” and “separate
6 counsel must be appointed to review and evaluate the settlement on behalf of the absent minor
7 class members.” Order ¶ 7. Plaintiff’s counsel respectfully requests that Court reconsider.

8 11. First, the minor class members already have attorneys to represent their interest –
9 Proposed Class Counsel. “[C]lass counsel ultimately owe their fiduciary responsibility to the class
10 as a whole.” *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 960; *Hernandez v. Restoration*
11 *Hardware, Inc.*, (2018) 4 Cal. 5th 260, 273 (“Our case law imposes strict fiduciary responsibilities
12 on class representatives and class counsel to ensure the litigation proceeds in the best interests of
13 all unnamed class members.”). Class Counsel have zealously fulfilled their fiduciary duties and
14 represented class members throughout every stage of this litigation and have no interests adverse to
15 the unnamed class members.


16 12. The Parties’ counsel are by far the best informed to know the strengths and
17 weaknesses of the case as whole. Including an additional counsel to potentially second-guess
18 Proposed Class Counsel’s judgement would lead to unnecessary delay and be highly inconsistent
19 with well-settled precedent. *See, e.g., Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948,
20 967 (“[P]arties represented by competent counsel are better positioned than courts to produce a
21 settlement that fairly reflects each party's expected outcome in litigation.”) (citation omitted); *Lane*
22 *v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 821-23 (“[T]he district court properly declined to
23 undermine [the parties’] negotiations by second-guessing the parties' decision as part of its fairness
24 review over the settlement agreement.”); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010)
25 266 F.R.D. 482, 490 (“[T]he trial judge, absent fraud, collusion, or the like, should be hesitant to
26 substitute its own judgment for that of counsel.”) (*quoting Cotton v. Hinton* (5th Cir. 1977) 559
27 F.2d 1326, 1330); *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 59 (“Although we assume
28 the parties could have developed an on-line system for opting out in this case, we decline for these

1 reasons to second-guess their choice not to do so.”).

2 13. Additionally, classes that are composed of minors either in part or in whole, are
3 regularly certified without the appointment of independent counsel.² *See, e.g., I.B. by & through*
4 *Bohannon v. Facebook, Inc.* (N.D. Cal. 2015) 82 F. Supp. 3d 1115, 1133; *In re TikTok, Inc.,*
5 *Consumer Priv. Litig.* (N.D. Ill. 2022) 617 F. Supp. 3d 904, 923; *Doe v. Mindgeek USA Inc.* (C.D.
6 Cal. Nov. 17, 2023) 2023 WL 8126845; *see also Wilder v. Bernstein* (S.D.N.Y. 1980) 499 F. Supp.
7 980, 993 (“Inasmuch as this is a Rule 23(b)(2) class action where there is no provision for absent
8 class members to ‘opt-out’, no guardians ad litem need be appointed to protect the interests of the
9 absent minor class members”) (citing 7A C. Wright & A. Miller, *Federal Practice and Procedure,*
10 *Civil* § 1786, at 144 (1972)).

11 14. For the foregoing reasons, Plaintiff hopes that the court will reconsider its request
12 for the appointment of independent counsel.

13 I declare under penalty of perjury under the laws of the United States and the States of
14 California that the foregoing is true and correct. Executed on December 8, 2023 in Walnut Creek,
15 California.

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17 L. Timothy Fisher

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26 ² The Court found that “the entire class, not just Plaintiff, are minors.” However, the class is
27 defined as “[a]ll persons in the United States who made a purchase in Pokémon Go while under the
28 age of 18 from July, 1 2016 to and through the date of preliminary approval.” Ex. A ¶ 34. The
Class thus includes class members that are now approximately up to the age of 25 years old (class
members who made purchases during the class period while minors but who are no longer minors).

EXHIBIT A

1 **CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

2 This Class Action Settlement Agreement and Release, including Exhibits A-~~B~~-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.48VII.48VII.49-~~
27 ~~VII.49VII.49VII.50.~~

1 10. “Business Days” means Monday, Tuesday, Wednesday, Thursday, and Friday,
2 excluding holidays observed by the federal government.

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

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

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

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

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

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

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

1 motion, and/or petition has been denied or dismissed with no further right of review. Any
2 proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any
3 application for attorneys' fees or expenses will not in any way delay or preclude the Judgment
4 from becoming Final.

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

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

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

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

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

27 23. "Released Claims" include Settlement Class Representative' Released Claims and
28 Settlement Class Members' Released Claims.

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

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

11 26. “Service Award” means the amount approved by the Court to be paid to the
12 Settlement Class Representative as described further in Paragraph ~~VII.50~~~~VII.50~~~~VII.51~~.

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

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

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

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

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

27 **III. SETTLEMENT CLASS CERTIFICATION**

28

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

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

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

10 All persons in the United States who made a purchase in Pokémon GO while
11 under the age of 18 from July, 1 2016 to and through the date of preliminary
12 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. To provide notice of the Settlement Agreement to Settlement Class Members
24 ("Class Notice"), within 75 days of the order granting preliminary approval, using records kept in
25 the ordinary course of business, Niantic agrees to send an email substantially in form of Exhibit C
26 to the email addresses of the users' accounts that Niantic has identified through reasonable best
27 efforts may have made a purchase in Pokémon GO while they were under 18 years of age from
28 July, 1 2016 to and through the date of preliminary approval. Niantic will send these emails to the

1 extent that it has an email address associated with the users' accounts, which may be the email
2 address of the user's parent or guardian in some cases. Niantic currently estimates that it has email
3 addresses associated with at least 95% of user accounts. Additionally, Class Notice will be
4 provided via the following information posted on Class Counsel's website, to which Exhibit C will
5 refer: the Settlement Agreement, Plaintiff's motion for preliminary approval, the order granting
6 preliminary approval, and Plaintiff's motion for attorneys' fees and incentive awards (including
7 any opposition and reply papers). Additionally, after making the revisions referenced in ¶
8 ~~3940~~(a), Niantic will give Pokémon GO users notice that it has revised its Terms of Service
9 through its standard processes for updating its Terms in the ordinary course of its business (i.e.,
10 via an in-app notification).

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

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

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

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

28 i) ~~“You agree that all sales by us to you of Virtual Money and~~

1 ~~Virtual Goods are final and that we will not permit exchanges or refunds~~
2 ~~for any unused Virtual Money or Virtual Goods once the transaction has~~
3 ~~been made, unless otherwise required by law.”~~

4 ~~b~~)a) Niantic will, in processing any direct requests for refunds of PokéCoins:

5 i) For Apple and Samsung purchases, for which Niantic is not
6 permitted to and does not process direct refunds, in its standard response
7 redirecting users to Apple or Samsung, add language in substantially the
8 following form: “Please note that app store refund policies may vary based
9 on the location of user and the age of user, including legal minority, at the
10 time of purchase, as may be required by applicable law.”

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

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

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

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

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

27 d) For all refund requests processed by Niantic, which currently includes
28 purchases from the Google Play Store, Niantic will implement a dedicated process to address

1 refund requests, subject to confirmation of minority. The personnel staffing this dedicated process
2 will receive further training regarding how to analyze and process such refund requests in
3 accordance with applicable law.

4 40. In further consideration for the releases provided in this Settlement Agreement, and
5 as a result of the Action and Settlement, Niantic agrees that within 60 days of the Effective Date,
6 it shall implement the following:

7 a) So long as Niantic’s current refund policy remains in place, Niantic will
8 agree to include language in substantially the following form in its terms of service applicable to
9 U.S. players (“Terms of Service” currently available at <https://nianticlabs.com/terms/>):

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

14 i)

15 b) In the event that Niantic substantively modifies its refund policy applicable
16 to U.S. players in the future, its Terms of Service discussing that policy shall incorporate similar
17 language acknowledging that such new policy applies unless otherwise required by law.

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

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

22 40.41. Solely for purposes of implementing this Agreement and effectuating the proposed
23 Settlement, the Parties agree and stipulate that Class Counsel shall submit to the Court a motion
24 for preliminary approval of the settlement together with the [Proposed] Preliminary Approval
25 Order (Exhibit B) and [Proposed] Final Approval Order and Final Judgment (Exhibit A).

26 41.42. Among other things, the Preliminary Approval Order shall:

27 a) find that the requirements for provisional certification of the Settlement
28 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 ~~42.43.~~ 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 ~~43-44.~~ Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within
17 60 days of the Effective Date, Releasing Settlement Class Representative's ~~Releasing Parties~~ will
18 be deemed to have, and by operation of the Final Approval Order and Final Judgment will have
19 fully, finally, and forever released, relinquished, and discharged any and all past, present, and
20 future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or
21 liabilities, of any nature and description whatsoever, that were alleged or could have been alleged
22 in the Action, known or unknown, recognized now or hereafter, existing or preexisting, expected
23 or unexpected, pursuant to any theory of recovery (including, but not limited to, those based in
24 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or
25 regulation), against the Released Parties, up until and including the Effective Date, that result from,
26 arise out of, or are based on the facts and practices that were alleged in the Action, for any type of
27 relief that can be released as a matter of law, including, without limitation, claims for monetary
28 relief, damages (whether compensatory, consequential, punitive, exemplary, liquidated, and/or

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

6 44.45. Upon the implementation of the injunctive relief in ¶¶ 39-40, which shall be within
7 60 days of the Effective Date, the Releasing Parties will be deemed to have, and by operation of
8 the Final Approval Order and Final Judgment will have, for injunctive and/or declaratory relief
9 only, fully, finally, and forever released, relinquished, and discharged any and all past, present,
10 and future claims, actions, demands, causes of action, suits, debts, obligations, and rights or
11 liabilities for injunctive and/or declaratory relief, of any nature and description whatsoever, that
12 were alleged or could have been alleged in the Action, known or unknown, existing or preexisting,
13 recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery for
14 injunctive and/or declaratory relief (including, but not limited to, those based in contract or tort,
15 common law or equity, federal, state, or local law, statute, ordinance, or regulation) against the
16 Released Parties, up until and including the Effective Date, that result from, arise out of, or are
17 based on the facts and practices that were alleged in the Action ("Settlement Class Members'
18 Released Claims"). For clarity, except that, and notwithstanding the foregoing or any language in
19 the Agreement, the Releasing Parties do not release claims for monetary relief or damages. The
20 Releasing Parties are forever enjoined from taking any action seeking injunctive and/or declaratory
21 relief against the Released Parties based on any Settlement Class Members' Released Claims.

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

1 ~~any and all provisions, rights, and benefits conferred by California Civil Code Section 1542 and~~
2 ~~any statute, rule, and legal doctrine similar, comparable, or equivalent to California Civil Code~~
3 ~~Section 1542, which reads as follows:~~

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

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

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

17 ~~47.46.~~ By operation of the Final Approval Order and Final Judgment, the Action will be
18 finally adjudicated.

19 ~~48.47.~~ Upon the Effective Date: (a) this Settlement Agreement shall be the exclusive
20 remedy for any and all Released Claims of Class Representative and Settlement Class Members;
21 and (b) Class Representative and Settlement Class Members stipulate to be and shall be
22 permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against
23 Released Parties in any federal or state court or tribunal any and all Released Claims.

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

25 ~~49.48.~~ Class Counsel may apply to the Court for an award of reasonable attorneys' fees
26 and costs not to exceed \$875,000. Class Counsel approximates that it will seek \$25,000 in costs
27 and \$850,000 in fees, but may apply in different amounts not to exceed \$875,000. Niantic will
28 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 ~~50.49.~~ 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 ~~51.50.~~ 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 ~~52.51.~~ 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 ~~53.52.~~ 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 ~~54.53.~~ 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 Paragraphs ~~IV.39~~ and 40 and/or any
11 requirement of notice to the Settlement Class. In the event of any material modification by any
12 court, and before exercising their unilateral option to withdraw from this Settlement Agreement
13 pursuant to this Paragraph, the Parties shall meet and confer within seven (7) days of such ruling
14 to attempt to reach an agreement as to how best to effectuate the court-ordered modification.

15 ~~55.54.~~ In the event that a Party exercises his/her/its option to withdraw from and terminate
16 this Settlement Agreement pursuant to Paragraph ~~535354~~, then the Settlement proposed herein
17 shall 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 ~~56.55.~~ 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 ~~57.56.~~ 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 ~~58.57.~~ 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 ~~59.58.~~ 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 ~~60.59.~~ 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
27 jgutkin@cooley.com
28 Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, California 94111

1 Kristine A. Forderer
2 kforderer@cooley.com
3 Cooley LLP
4 3 Embarcadero Center, 20th Floor
5 San Francisco, California 94111

6 ~~61.60.~~ All of the Exhibits to this Agreement are an integral part of the Settlement and are
7 incorporated by reference as though fully set forth herein.

8 ~~62.61.~~ The Parties agree that the recitals are contractual in nature and form a material part
9 of this Settlement Agreement.

10 ~~63.62.~~ No extrinsic evidence or parol evidence shall be used to interpret, explain, construe,
11 contradict, or clarify this Agreement, its terms, the intent of the Parties or their counsel, or the
12 circumstances under which this Settlement Agreement was made or executed. This Settlement
13 Agreement supersedes all prior negotiations and agreements. The Parties expressly agree that the
14 terms and conditions of this Settlement Agreement will control over any other written or oral
15 agreements.

16 ~~64.63.~~ Unless otherwise noted, all references to “days” in this Agreement shall be to
17 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or
18 federal legal holiday, such date or deadline shall be on the first Business Day thereafter.

19 ~~65.64.~~ The Settlement Agreement, the Settlement, all documents, orders, and other
20 evidence relating to the Settlement, the fact of their existence, any of their terms, any press release
21 or other statement or report by the Parties or by others concerning the Settlement Agreement, the
22 Settlement, their existence, or their terms, any negotiations, proceedings, acts performed, or
23 documents drafted or executed pursuant to or in furtherance of the Settlement Agreement or the
24 Settlement shall not be offered, received, deemed to be, used as, construed as, and do not constitute
25 a presumption, concession, admission, or evidence of (i) the validity of any Released Claims or of
26 any liability, culpability, negligence, or wrongdoing on the part of the Released Parties; (ii) the
27 Court’s subject matter jurisdiction over any Released Claims; (iii) any fact alleged, defense
28 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

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

5 ~~66.65.~~ The Parties to this Action or any other Released Parties shall have the right to file
6 the Settlement Agreement and/or the Final Approval Order and Final Judgment in any action that
7 may be brought against them in order to support a defense or counterclaim based on principles of
8 res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction, or any
9 other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10 ~~67.66.~~ The Parties agree that the consideration provided to the Settlement Class and the
11 other terms of the Settlement Agreement were negotiated at arm's length, in good faith by the
12 Parties, and reflect a settlement that was reached voluntarily, after consultation with competent
13 legal counsel, and with the assistance of an independent, neutral mediator.

14 ~~68.67.~~ The Class Representative and Class Counsel have concluded that the Settlement set
15 forth herein constitutes a fair, reasonable, and adequate resolution of the claims that the Class
16 Representative asserted against Niantic, including the claims on behalf of the Settlement Class,
17 and that it promotes the best interests of the Settlement Class.

18 ~~69.68.~~ To the extent permitted by law, all agreements made and orders entered during the
19 course of the Action relating to the confidentiality of information shall survive this Settlement
20 Agreement.

21 ~~70.69.~~ The waiver by one Party of any breach of this Settlement Agreement by any other
22 Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
23 Agreement.

24 ~~71.70.~~ This Settlement Agreement may be executed in counterparts, each of which shall
25 be deemed an original and all of which, when taken together, shall constitute one and the same
26 instrument. Signatures submitted by email or facsimile shall also be considered originals. The
27 date of execution shall be the latest date on which any Party signs this Settlement Agreement.

28

1 ~~72.71.~~ The Parties hereto and their respective counsel agree that they will use their best
2 efforts to obtain all necessary approvals of the Court required by this Settlement Agreement,
3 including to obtain a Final Approval Order and Final Judgment approving the Settlement.

4 ~~73.72.~~ This Settlement Agreement shall be binding upon and shall inure to the benefit of
5 the successors and assigns of the Parties hereto, including any and all Released Parties and any
6 corporation, partnership, or other entity into or with which any Party hereto may merge,
7 consolidate, or reorganize, each of which is entitled to enforce this Settlement Agreement.

8 ~~74.73.~~ This Settlement Agreement was jointly drafted by the Parties. Class
9 Representative, Settlement Class Members, and/or Niantic shall not be deemed to be the drafters
10 of this Settlement Agreement or of any particular provision, nor shall they argue that any particular
11 provision should be construed against its drafter or otherwise resort to the *contra proferentem*
12 canon of construction. Accordingly, this Settlement Agreement should not be construed in favor
13 of or against one Party as to the drafter, and the Parties agree that the provisions of California Civil
14 Code § 1654 and common law principles of construing ambiguities against the drafter shall have
15 no application.

16 ~~75.74.~~ Any and all Exhibits to this Settlement Agreement, which are identified in the
17 Settlement Agreement and attached hereto, are material and integral parts hereof and are fully
18 incorporated herein by this reference.

19 ~~76.75.~~ This Settlement Agreement shall be governed by and construed in accordance with
20 the laws of the State of California, without regard to choice of law principles. Any action to
21 enforce the terms of this Settlement Agreement shall be filed in the Superior Court of the State of
22 California.

23 ~~77.76.~~ The headings used in this Settlement Agreement are inserted merely for the
24 convenience of the reader, and shall not affect the meaning or interpretation of this Settlement
25 Agreement.

26 ~~78.77.~~ In construing this Settlement Agreement, the use of the singular includes the plural
27 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).
28

1 ~~79.78.~~ 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 ~~80.79.~~ 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 ~~81.80.~~ 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 ~~82.81.~~ 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 ~~83.82.~~ 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 ~~84.83.~~ The Court shall retain jurisdiction over the parties to enforce the terms of the Final
2 Judgment.

3 ~~85.84.~~ 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.

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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: _____, 2023 COOLEY LLP

By: _____

Dated: _____, 2023 NIANTIC, INC.

By: _____

Dated: _____, 2023 PLAINTIFF D.D.

By: _____

Dated: _____, 2023 BURSOR & FISHER, P.A.

By: _____

294702745-v3
DRAFT

EXHIBIT B

Notice of Class Action Settlement – *D.D. v. Niantic, Inc.*

This is a notice of a proposed settlement of a class action lawsuit—*D.D. v. Niantic*, 23STCV03241 (the “Action”)—and advises you about the settlement, how it may affect you, and your rights to object to the settlement.

Why am I Receiving this Notice?

You are receiving this notice because Niantic’s records indicate that your or your child’s rights may be affected by the settlement of the Action. You or your child may be a class member in the Action if you or they are a person in the United States who ***made a purchase in the Pokémon GO application while you were under the age of 18*** between July 1, 2016 and [PRELIMINARY APPROVAL DATE].

What Relief Was Sought in the Action?

The plaintiff D.D. (“Plaintiff”), who is a minor, brought claims on behalf of himself and all persons in the United States who made a purchase in Pokémon GO while under the age of 18. Plaintiff sought a declaration from the Los Angeles Superior Court that Defendant Niantic’s refund policies violated the California Family Code section 6710 and section 6701(c), which provide that contracts made by minors may be disaffirmed and/or are void under certain conditions. Plaintiff also sought to prevent Niantic from maintaining its existing refund policies under the California Unfair Competition Law. Niantic denied Plaintiff’s allegations and that Plaintiff or others were entitled to any relief. The court did not rule for or against Plaintiff as to the merits of his claims in the Action, and it has not awarded any relief.

What are the Terms of the Settlement?

As detailed in the settlement agreement, Niantic has agreed to: add additional language to the portion of its Terms of Service that discuss Niantic’s refund policies for purchases in Pokémon GO; add additional language regarding its refund policies to its online and in-app support pages and to its email communications with customers regarding refund requests; and provide special training to employees or consultants processing refund requests for purchases made by users under the age of 18. You may review a full version of the settlement agreement, the complaint filed in the Action, and other documents related to the settlement of the Action at <https://www.bursor.com/result/d-d-v-niantic-important-settlement-information/>.

What Rights Do Class Members Give Up in the Settlement?

If approved, the settlement would release only class members’ rights to seek injunctive relief or declaratory relief based on the allegations in Plaintiff’s complaint, as set forth in the settlement agreement. The settlement does not release any claims for money damages and does not affect any class member’s existing ability to seek a refund for purchases in Pokémon GO.

How Can Class Members Object to the Settlement?

Within 60 days of receiving this email, each class member has the right to comment on or object to the settlement. If you submit a timely comment or objection, you also may appear at and participate in the Final Approval Hearing, currently scheduled for [TO COME], if you wish to do so and follow the required procedures.

As described in detail in paragraph [TO COME] of the order preliminarily approving the settlement, available at <https://www.bursor.com/result/d-d-v-niantic-important-settlement-information/>, comments or objections must be made in a signed writing, and must include certain specified information. Your comments or objections must be sent to:

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

And to:

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

What If I Have a Question?

You may direct any questions you have about this notice or the settlement to info@bursor.com.