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11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 NIANTIC, INC.,

18 Defendant.

Case No. 23STCV03241

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

PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR ATTORNEYS' FEES,
COSTS, AND SERVICE AWARD

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

Date: August 26, 2024
Time: 10:30 a.m.
Dept.: 1

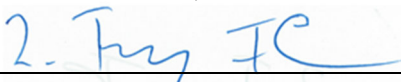
1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on August 26, 2024, at 10:30 a.m., or as soon thereafter as
4 this matter may be heard in Department 001 of the above captioned Court, located at Spring Street
5 Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Plaintiff D.D. (“Plaintiff”) will
6 move, and hereby does move, for an Order granting attorneys’ fees and costs and a service award
7 for the Class Representative against Defendant Niantic, Inc (“Defendant”) (collectively with
8 Plaintiff, the “Parties”). This Motion is based on this Notice of Motion and Motion, the supporting
9 memorandum of law, the Declaration of L. Timothy Fisher and exhibits thereto, the pleadings and
10 papers on file herein, and upon such matters as may be presented to the Court at the time of the
11 hearing.

12
13 Dated: June 6, 2024

BURSOR & FISHER, P.A.

14 By: 
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MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff and Class Counsel have achieved a significant result in this case. The declarative and injunctive relief secured through this Class Action Settlement obtains the precise redress Plaintiff sought in the complaint: an improved process for any Class Member to request to disaffirm his or her contract with Defendant and obtain refunds for any purchases that he or she made as a minor. Importantly, Class Members are not releasing their claims for monetary damages.

Class Counsel now requests that the Court approve an award of attorneys' fees and litigation costs in the amount of \$875,000. Cross-checking this amount against Class Counsel's lodestar validates the reasonableness of Class Counsel's fee request. As of June 6, 2024, Class Counsel had worked 820.1 hours on this case for a total fee, at current billing rates, of \$486,122.50. Timothy Fisher ("Fisher Decl."), Ex. 2 (detailed billing records and expenses for this case). Class Counsel's blended hourly rate of \$592.76 is well within the bounds of reasonable hourly rates. *Id.* ¶¶ 4, 9, 11-13. A fee and expense award of \$875,000 would result in a lodestar multiplier of 1.74, which further demonstrates its reasonableness.¹

Finally, Plaintiff requests that the Court award a service payment of \$1,500 to account for the significant time and effort that Plaintiff invested in this case on behalf of the Class.

II. PROCEDURAL AND FACTUAL BACKGROUND

The complaint in this case was filed on February 14, 2023. But the case actually began almost three years earlier, when, in June 2021, Plaintiff's counsel began investigating Defendant's refund policy with respect to minors. Fisher Decl. ¶¶ 14-15. Prior to engaging with Defendant, Plaintiff's counsel conducted an extensive pre-suit investigation into the factual underpinnings of the practices challenged in this action, as well as the applicable law. *Id.* Plaintiff's counsel reviewed Defendant's terms of service, purchase histories of Class Members, and the refund policies of the platforms where Class Members made purchases of in-game currency and virtual

¹ Calculated as \$875,000.00 minus \$28,358.54 in expenses, divided by lodestar of \$486,122.50.

1 items. *Id.* Further, Plaintiff’s counsel thoroughly investigated Defendant’s publicly available
2 financial information and player demographics. *Id.*

3 These efforts culminated on July 30, 2021 with the filing of a case in the Northern District
4 of California on behalf of a minor plaintiff domiciled in Texas. *See Reeves v. Niantic, Inc.*, No. 21-
5 CV-05883-VC (N.D. Cal.). Defendant twice moved to dismiss the *Reeves* case, which Plaintiff’s
6 counsel opposed. *Id.* ¶¶ 17. Eventually the *Reeves* Court largely denied Defendant’s motion. *See*
7 *Reeves* (N.D. Cal. May 31, 2022) 2022 WL 1769119. In the months that followed, the Parties
8 participated in the discovery process. *Id.* ¶ 19. Eventually, the Parties mutually agreed to extend
9 the deadlines in the *Reeves* case, and to participate in mediation. *Id.*

10 During the period leading up to the mediation, the Parties exchanged multiple rounds of
11 voluminous briefing on the core facts, legal issues, litigation risks, and potential settlement
12 structures; and the Parties supplemented that briefing with extensive telephonic correspondence,
13 mediated and shuttled by the Phillips ADR team, clarifying each Parties’ positions in advance of
14 the mediation. *Id.*

15 During this process, Plaintiff’s counsel made Defendant aware that they had also been
16 retained by Plaintiff D.D. who wished to file claims that were largely identical to the claims
17 already at issue in *Reeves*. *Id.* ¶ 20.

18 Through the mediator, Defendant made arguments that, if true, would affect the viability of
19 the *Reeves* action at class certification and at summary judgment. *Id.* ¶ 21. Based on a review of
20 recent caselaw, Plaintiff’s counsel anticipated renewed arguments that in part related to whether the
21 Plaintiff and the Class had Article III standing to continue to pursue their claims in federal court.
22 *Id.* Additionally, Plaintiff’s counsel anticipated that Defendant would eventually argue that the
23 plaintiff in *Reeves* would not be able to represent any likely class that could be certified because
24 unlike other class members, he was over the age of majority and was a Texas domiciliary. *Id.*
25 Plaintiff’s counsel ultimately decided that Defendant’s arguments and anticipated arguments were
26 concerning, and that if the case were to continue, it would be safer to proceed in California state
27 court with Plaintiff D.D. who unlike the *Reeves* plaintiff, was and is under the age of majority and
28

1 is a California domiciliary. *Id.* This decision was ultimately vindicated. *See V.R. v. Roblox Corp.*
2 (9th Cir. Dec. 21, 2023) 2023 WL 8821300.

3 On September 8, 2022, the Parties participated in a full-day mediation session with Gregory
4 P. Lindstrom of Phillips ADR, followed by months of follow-up settlement discussions. *Id.* ¶ 22.
5 These efforts culminated in the execution of a term sheet on November 10, 2022. *Id.* Over the
6 next months, the Parties exchanged edits to the draft long form settlement agreement, which was
7 executed on January 9, 2023. *Id.* As part of this confidential mediation process, Defendant
8 provided Plaintiff's Counsel with information about the putative class. *Id.*

9 Plaintiff filed his motion for preliminary approval on March 1, 2023. On August 3, 2024,
10 the Court ordered Plaintiff to address certain issues regarding class notice of the Settlement, the
11 release period, and the form of the motion for preliminary approval. On October 12, 2023, after
12 continued negotiations between the Parties, Plaintiff's counsel submitted a declaration and updated
13 settlement agreement that attempted to address the Court's concerns. The Court initially approved
14 this updated settlement on October 26, 2023, before ultimately rescinding approval on November
15 8, 2023.

16 In the Court's Order rescinding preliminary approval, the Court asked the Parties to update
17 the settlement agreement to, 1) disambiguate which Parties are releasing which claims, 2) clarify
18 that absent Class Members are not releasing monetary claims, 3) explain why Apple and Samsung
19 purchases are treated differently from Google Play Store purchases, 4) add additional notice to the
20 putative Class, 5) eliminate the Civil Code section 1542 waivers, 6) make the change in the
21 language from the terms of service permanent. Finally, the Court suggested the appointment of a
22 separate counsel to review and evaluate the Settlement.

23 On December 8, 2023, after several rounds of additional intense negotiations between the
24 Parties, Plaintiff's counsel submitted a declaration explaining that the Parties were able to come to
25 an agreement on each and every point that the Court addressed with the exception of appointing an
26 independent counsel to review the Settlement. In a hearing on December 15, 2023, the Court
27
28

1 explained that it was generally satisfied with the new deal with the exception of the terms and
2 length of the injunction in the Settlement.

3 On January 17, 2024, after additional discussions between the Parties, Plaintiff’s counsel
4 submitted a declaration and a draft revised Settlement agreement that removed all temporal limits
5 to the injunctive relief provided under the Settlement for as long as Defendant’s current refund
6 practices for Pokémon GO remain in place. This revised Settlement agreement was fully executed
7 on February 8, 2024. The Court preliminarily approved the revised Settlement agreement on
8 March 7, 2024. One day later on March 8, 2024, the Court issued an amended preliminary
9 approval order after correcting dates in the previous order.

10 **III. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE FAIR, REASONABLE,**
11 **AND APPROPRIATE UNDER THE CIRCUMSTANCES**

12 **A. Class Counsel Obtained an Excellent Result**

13 The Settlement before the Court provides significant relief for the Class that is specifically
14 tailored to the harm alleged. This litigation is about Defendant’s denial of minors’ rights to
15 disaffirm contracts with Defendant and seek refunds. The Settlement *obligates Defendant to be in*
16 *full compliance with the relevant law* and to completely overhaul its refund policies by not simply
17 updating their relevant policy pages, but also by building a system that, requires Defendant to
18 implement a dedicated process to address refund requests, subject to confirmation of minority. *See*
19 *V.R. v. Roblox Corp.* (N.D. Cal. Jan. 25, 2023) 2023 WL 411347, at *2 (stating that the language
20 “[a]ll payments . . . are final and not refundable, except as required by law” complied with the
21 California Family Code).

22 Any Class Member who made purchases as a minor and wants to disaffirm their contracts
23 can still sue Defendant for damages. Under the Settlement, absent Class Members have thus
24 released almost nothing. This is a particularly good result given that California courts have held
25 that there is “no general duty owed by one contracting party to another to explain the other’s legal
26 rights in connection with the agreement.” *Olsen v. Breeze, Inc.* (1996) 48 Cal. App. 4th 608, 622-
27 23. Thus, the injunctive relief provided by the Settlement and Defendant’s additional, post-
28 settlement concessions arguably require Defendant to exceed its pure legal obligations.

1 In sum, the Settlement achieves significant business practice changes, and benefits the
2 Settlement Class now, without the inherent risks of continued litigation and without requiring
3 Settlement Class Members to release any claims they may have for monetary relief.

4 **B. The Practice Changes Agreed to in the Settlement Were the**
5 **Result of Counsel’s Efforts in this Litigation**

6 **1. The Prospective Relief**

7 The relief obtained by Plaintiff’s counsel is substantial, and Plaintiff and Class Members
8 release almost nothing in return.

9 Under the terms of the Settlement, within 60 days of the Settlement’s effective date and for
10 so long as Niantic’s current refund policy remains in place, Niantic will agree to include language
11 in substantially the following form in its terms of service applicable to U.S. players (“Terms of
12 Service”): “You agree that all sales by us to you of Virtual Money and Virtual Goods are final and
13 that we will not permit exchanges or refunds for any unused Virtual Money or Virtual Goods once
14 the transaction has been made, unless otherwise required by law.” Settlement, § IV.39.a. In the
15 event that Niantic substantively modifies its refund policy applicable to U.S. players in the future,
16 its Terms of Service discussing that policy shall incorporate similar language acknowledging that
17 such new policy applies unless otherwise required by law. *Id.*

18 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
19 game currency for Pokémon GO, in processing any direct requests for 6 refunds, Niantic will: i)
20 For Apple and Samsung purchases, for which Niantic is not permitted to and does not process
21 direct refunds, in its standard response redirecting users to Apple or Samsung, add language in
22 substantially the following form: “Please note that app store refund policies may vary based on the
23 location of user and the age of user, including legal minority, at the time of purchase, as may be
24 required by applicable law.” *Id.*, § IV.39.b.i. Niantic shall not be required to continue to
25 implement this relief in the future if, in Niantic’s reasonable discretion, this language is no longer
26 applicable to the manner in which Apple or Samsung refund requests are handled. *Id.*

27 For Google Play Store purchases, for which Niantic is permitted to and does process limited
28 numbers of direct refunds, in its standard response for U.S. users seeking additional information

1 about the purchase, add language to prompt users to indicate whether the purchase of PokéCoins or
2 another equivalent in-game currency for Pokémon GO was made when the user was a minor
3 without parental consent, except as prohibited by local law. *Id.*, § IV.39.b.ii. Niantic shall not be
4 required to continue to implement this relief in the future if, in Niantic's reasonable discretion, this
5 provision is no longer applicable to the manner in which Google Play Store refund requests are
6 handled. *Id.*

7 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
8 game currency for Pokémon GO, in its public-facing Pokémon GO Help Center, for help pages
9 currently referencing assistance with refunds for such purchases, Niantic will: i) Add specific links
10 to Apple, Google, and Samsung In-App Purchase refund policies for reference; ii) Add language in
11 substantially the following form: "Please note that app store refund policies may vary based on the
12 location of user and the age of user, including legal minority, at the time of purchase, as may be
13 required by applicable law"; iii) Niantic will also add these Pokémon GO Help Center changes into
14 the in-app Help sections on the same topics. *Id.*, § IV.39.c. Niantic shall not be required to
15 continue to implement this relief in the future if, in Niantic's reasonable discretion, these changes
16 are no longer applicable to the manner in which direct requests for refunds are handled. *Id.*

17 So long as Niantic continues to charge users money for PokéCoins or another equivalent in-
18 game currency for Pokémon GO, for all refund requests processed by Niantic, which currently
19 includes purchases from the Google Play Store, Niantic will implement a dedicated process to
20 address refund requests, subject to confirmation of minority. *Id.*, § IV.39.d. The personnel staffing
21 this dedicated process will receive further training, on an as-needed basis, regarding how to analyze
22 and process such refund requests in accordance with applicable law. *Id.* Niantic shall not be
23 required to continue to implement this relief in the future if, in Niantic's reasonable discretion, this
24 dedicated process is no longer applicable to the manner in which direct requests for refunds are
25 handled. *Id.*

26 Last, Niantic will agree that its refund policies and practices with respect to U.S. minors
27 will comply with the California Family Code. *Id.*, § IV.39.e.

1 This settlement thus provides the Class with certainty that their contractual rights the law
2 will be honored – certainty that, absent the settlement, would not otherwise exist. And again, any
3 minor who made purchases as a minor and wants to disaffirm their contracts can still sue
4 Defendant for damages. Under the Settlement, absent Class Members have thus released almost
5 nothing.

6 **C. The Fee Amount Was Negotiated at Arms’ Length by Skilled,
7 Experienced Counsel**

8 “Ideally, litigants will settle the amount of a fee.” *Hensley v. Eckerhart* (1983) 461 U.S.
9 424, 437. Thus, a court “should refrain from substituting its own value for a properly bargained-
10 for agreement.” *In re Apple Computer, Inc. Derivative Litig.* (N.D. Cal. Nov. 5, 2008) 2008 WL
11 4820784, at *4 (awarding attorneys’ fees based on “the terms of the settlement”). Courts therefore
12 apply lessened scrutiny to fee agreements “negotiated at arm’s length with sophisticated defendants
13 by the attorneys . . . intimately familiar with the case.” *In re First Capital Holdings Corp. Fin.*
14 *Prods. Sec. Litig.* (C.D. Cal. June 10, 1992) 1992 WL 226321, at *4.

15 These circumstances characterize the situation here. The Parties here did not reach an
16 agreement on the full terms of the settlement until after (i) extensive investigation had been
17 conducted by Plaintiff’s Counsel, (ii) Defendant lost a motion to dismiss, and (iii) the Parties
18 participated in a full-day mediation facilitated by a respected mediator. Furthermore, it was only
19 after reaching an agreement on the Settlement’s substantive terms that the parties turned to
20 negotiating the fee. Fisher Decl. ¶ 25.

21 **D. Application of the Lodestar Method Demonstrates the
22 Reasonableness of the Requested Fee**

23 The Ninth Circuit has reconfirmed that “[t]here is a strong presumption that the
24 lodestar figure represents a reasonable fee.” *Rodriguez v. West Publ. Corp.*, 602 Fed. Appx. at
25 387. “Only in rare or exceptional cases will an attorney’s reasonable expenditure of time on a
26 case not be commensurate with the fees to which he is entitled.” *Cunningham v. County of Los*
27 *Angeles* (9th Cir. 1988) 879 F.2d 481, 488 (emphasis omitted). Lodestar is calculated by
28 multiplying the number of hours reasonably expended on the litigation by a reasonable hourly

1 rate. *Hensley*, 461 U.S. at 433; *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989) 886 F.2d
2 268, 272. As this figure approximates the market value of the legal services, it “presumptively
3 provides an accurate measure of reasonable attorney’s fees.” *In re Toys R Us FACTA Litig.* (C.D.
4 Cal. 2014) 295 F.R.D. 438, 460, (quoting *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 18);
5 *Guam Soc’y of Obstetricians & Gynecologists v. Ada* (9th Cir. 1996) 100 F.3d 691, 696.

6 The accompanying Declaration of L. Timothy Fisher sets forth the hours worked and the
7 billing rates used to calculate Class Counsel’s lodestar in this Action, including a summary of the
8 work performed, *see* Fisher Decl., Ex. 2, and an attorney-by-attorney breakdown of hours spent
9 related to the Action. *Id.* The Ninth Circuit has held that “[t]estimony of an attorney as
10 to the number of hours worked on a particular case is sufficient evidence to support an award of
11 attorney fees, even in the absence of detailed time records.” *Winterrowd v. Am. Gen. Annuity Ins.*
12 *Co.* (9th Cir. 2009) 556 F.3d 815, 827. Here, nonetheless, detailed individualized billing entries
13 have also been provided. *See* Fisher Decl., Ex. 2. In sum, Class Counsel and their staff spent
14 820.1 hours working on this case for a lodestar of \$486,122.50. Fisher Decl., Ex. 2.

15 **1. Class Counsel’s Hourly Rates are Reasonable**

16 Class Counsel worked efficiently. Class Counsel have submitted their detailed daily billing
17 records showing what work was done and by whom as exhibits to the Fisher Declaration. Those
18 records confirm Class Counsel’s efficient billing – over 66 percent of the hours billed on this case
19 were billed by associates and other staff. Fisher Decl. ¶ 5.

20 The blended hourly rate for Class Counsel’s work of \$592.76 is quite reasonable. *Id.* ¶¶ 4,
21 9, 11-13. And the hourly rates for each of the lawyers who staffed the case, which are set forth in
22 Exhibit 2 to the Fisher Declaration, are also reasonable and amply supported by the evidentiary
23 material submitted with the Fisher Declaration. *See id.* Rates are “reasonable where they [are]
24 similar to those charged in the community and approved by other courts.” *Hartless v. Clorox Co.*,
25 (S.D. Cal. Jan. 20, 2011) 273 F.R.D. 630, 644. California courts have repeatedly held rates
26 commensurate with Class Counsel’s rates to be fair and reasonable. *See, e.g., In re Anthem, Inc.*
27 *Data Breach Litig.* (N.D. Cal. Aug. 17, 2018) 2018 WL 3960068, at *17 (approving billing rates
28

1 for partners between \$400 and \$970, and associates between \$185 to \$850); *Nitsch v. DreamWorks*
2 *Animation SKG Inc.* (N.D. Cal. June 5, 2017) 2017 WL 2423161, at *9 (finding rates for senior
3 attorneys of between \$870 to \$1200 per hour to be reasonable); *Parkinson v. Hyundai Motor*
4 *America* (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1172 (approving hourly rates between \$445 and
5 \$675 for class counsel in a consumer class action); *In re High-Tech Employee Antitrust Litig.* (N.D.
6 Cal. Sept. 2, 2015) 2015 WL 5158730, at *9 (approving billing rates of \$490 to \$975 for partners,
7 \$310 to \$800 for non-partner attorneys, and \$190 to \$430 for paralegals, law clerks, and litigation
8 support staff); *POM Wonderful, LLC v. Purely Juice, Inc.* (CD. Cal. Sept. 22, 2008) 2008 WL
9 4351842, at *4 (finding rates of \$475 to \$750 for partners and \$275 to \$425 for associates
10 reasonable in a consumer class action); *Aguilar v. Wawona Frozen Foods* (E.D. Cal. May 19,
11 2017) 2017 WL 2214936, at *6 (“This court has previously accepted as reasonable for lodestar
12 purposes hourly rates of between \$370 and \$495 for associates, and \$545 and \$695 for senior
13 counsel and partners.”); *Taylor v. FedEx Freight, Inc.* (E.D. Cal. Oct. 13, 2016) 2016 WL
14 6038949, at *7 (finding class counsel rates of \$525/hour for senior associates and \$700/hour for the
15 senior partner in this district reasonable).

16 Class Counsel here are experienced, highly regarded members of the bar. They have
17 brought to this case extensive experience in consumer class actions and complex litigation. *See*
18 *Fisher Decl.* ¶ 12; *see also id.* Ex. 4 (Firm Resume of Bursor & Fisher, P.A.). For this reason,
19 courts within California have previously found the rates of Class Counsel fair and reasonable. *See*
20 *Perez v. Rash Curtis & Associates* (N.D. Cal. Apr. 17, 2020) 2020 WL 1904533, at *20 (finding
21 Bursor & Fisher’s blended hourly rate of \$634.48 to be reasonable). Thus, in performing its cross-
22 check analysis, the Court should find Class Counsel’s hours and rates reasonable.

23 **2. The Time Class Counsel Devoted to this Case Was**
24 **Appropriate**

25 Class Counsel’s efforts were necessary to achieving the Settlement. As detailed in the
26 Declaration of L. Timothy Fisher and *supra*, Class Counsel expended 820.1 hours performing the
27 following tasks, among others: (1) engaging in extensive pre-suit investigation, (2) preparing and
28 filing multiple complaints, (3) drafting an opposition to Defendant’s motion to dismiss, (5)

1 undertaking pre-mediation discovery, (4) preparing for and participating in a mediation, (5)
2 negotiating the terms of the Settlement and the documents related thereto, (6) successfully moving
3 for preliminary approval of the Settlement, and (7) participating in Court hearings. *See* Fisher
4 Decl. ¶ 5.

5 Moreover, in taking this matter on a contingent basis, Class Counsel assumed considerable
6 risk. This case presented unique issues with regards to jurisdiction, class certification, and
7 summary judgment (i.e., issues regarding arbitration, whether Plaintiff and Class Members were
8 actually injured, and whether there exists a ripe dispute between the Parties). Fisher Decl. ¶ 7. For
9 example, a federal court in the Northern District of California recently dismissed similar claims on
10 these grounds, leaving the class members in that case with no recovery whatsoever. *See V.R.*, 2023
11 WL 411347. This decision was then upheld by the 9th Circuit. *V.R.*, 2023 WL 8821300. These
12 novel legal issues were disputed heavily by Defendant. Fisher Decl. ¶ 7. Despite facing such
13 risks, Class Counsel effectively prosecuted this case, foregoing other work in the process. Thus,
14 the time devoted by Class Counsel to this Action on a purely contingent basis supports the
15 requested fee.

16 **E. The Requested Fee Represents a Reasonable Multiplier**

17 For the purpose of awarding class counsel a reasonable fee, the lodestar may be adjusted
18 in light of the (1) results obtained, (2) novelty and complexity of the questions presented, (3) skill
19 exhibited by counsel, (4) preclusion of other legal work because of counsel’s acceptance and
20 prosecution of the case, and (5) risk of nonpayment. *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150
21 F.3d 1011, 1029; *Kerr v. Screen Extras Guild, Inc.* (9th Cir. 1975) 526 F.2d 67, 70; *Ketchum v.*
22 *Moses* (Cal. 2001), 17 P.3d 735, 741. The Ninth Circuit has held that a district court “must apply a
23 risk multiplier to the lodestar ‘when (1) attorneys take a case with the expectation they will receive
24 a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is
25 evidence the case was risky.’” *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734,
26 741 (quoting *Fischel v. Equitable Life Assur. Soc’y of U.S.* (9th Cir. 2002) 307 F.3d 997, 1008).
27 Each of these three factors is present here – Class Counsel anticipated a risk multiplier upon
28

1 commencement of this action; the hourly rates utilized in the lodestar calculation include no risk
2 multiplier; and this case posed heightened risks due to the application of novel legal issues. Fisher
3 Decl. ¶¶ 4, 7-8.

4 Notably, courts in California and elsewhere regularly approve risk multipliers, even in the
5 context of settlements that only provide for injunctive relief. *See, e.g., Berry v. Schulman* (4th Cir.
6 2015) 807 F.3d 600, 617 (affirming fee “award of \$5,333,188.21” which included “a multiplier of
7 1.99” in a pure injunctive relief settlement); *Gaston v. LexisNexis Risk Sols. Inc.* (W.D.N.C. May
8 24, 2021) 2021 WL 2077812, at *7 (finding, for an injunction-only settlement, that “a multiplier of
9 approximately 1.85 is applicable and reasonable, and an award of \$5,098,094.31 is appropriate.”);
10 *Krumme v. Mercury Ins. Co.* (Cal. Ct. App. 2004) 20 Cal. Rptr. 3d 485, 503 (Affirming fee award
11 with lodestar multiplier of 1.5 in injunction-only settlement because “the litigation initiated by
12 plaintiff ‘enforced an important right affecting the public interest’ and ‘conferred a significant
13 benefit upon ... a large class of persons.’”). Here, a multiplier of 1.74 applied to the presumptively
14 reasonable lodestar confirms the fairness of the requested fee award.

15 **F. The Attorneys Fees and Costs Requested are Part of the Total**
16 **Value of the Settlement**

17 When calculating the total value provided by a settlement agreement, California courts
18 include the requested attorney’s fees and costs because “those fees are still best viewed as an aspect
19 of the class’ recovery.” *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 33. Thus,
20 “the sum of the two amounts ordinarily should be treated as a settlement fund for the benefit of the
21 class....” *Consumer Priv. Cases* (2009) 175 Cal. App. 4th 545, 554 (citation omitted). Here,
22 subject to the Court’s approval, Defendant will pay Class Counsel fees and costs up to \$875,000.
23 Settlement, § VII. 48. Any reduction in that amount, at this stage, would only serve to enrich
24 Defendant.

25 **G. Class Counsel’s Litigation Expenses Were Reasonably Incurred**
26 **in Furtherance of the Prosecution of the Claims, and Should be**
27 **Awarded**

28 The Settlement terms and well-settled precedent support Class Counsel’s entitlement to
recovery of out-of-pocket costs reasonably incurred in investigating, prosecuting, and settling

1 these claims. *See, e.g., In re Media Vision Tech. Sec. Litig.* (N.D. Cal. 1996) 913 F. Supp. 1362,
2 1366. Class Counsel incurred \$28,358.54 in unreimbursed out-of-pocket costs during this
3 litigation. Fisher Decl. ¶ 10, *id.*, Ex. 3. The most significant costs include mediation fees and other
4 customary litigation expenses. *Id.* Moreover, as detailed in the Fisher Declaration, these costs
5 were reasonably incurred in furtherance of the investigation, prosecution, and Settlement of the
6 action and should be reimbursed. *Id.*; *see also In re Toys R Us FACTA Litig.*, 295 F.R.D. at 469.
7 The \$875,000 requested by Class Counsel is inclusive of these expenses.

8 **H. The Requested Service Award is Reasonable and Should be**
9 **Approved**

10 Class action incentive awards “are intended to compensate class representatives for work
11 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
12 action, and, sometimes, to recognize their willingness to act as a private attorney general.”
13 *Cellphone Termination Fee Cases* (Ct. App. 2010) 186 Cal. App. 4th 1380, 1393–94 (citing
14 *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d. 948, 958; *see also id.* (noting that
15 service awards “are fairly typical in class action cases”). Service awards in the amount of \$5,000
16 per class representative have been found to be “presumptively reasonable,” rendering the service
17 awards sought here eminently reasonable. *E.g., In re LinkedIn User Privacy Litig.* (N.D. Cal.
18 2015) 309 F.R.D. 573, 592; *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014) 303 F.R.D. 326, 335;
19 *Faigman v. AT & T Mobility LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672648, at *5. In fact,
20 Service awards of \$10,000 have been approved in class action cases in California. *See Cellphone*
21 *Termination Fee Cases*, 186 Cal. App. 4th at 1393 (approving \$10,000 incentive award).

22 Here, Class Counsel seeks, and Defendant does not oppose, a service award in the amount
23 \$1,500 for the Plaintiff serving as Class Representative. *See Settlement*, § VII.49. The requested
24 service award is well justified under the circumstances. The Class Representative assisted with the
25 preparation of and reviewed the complaint before filing, provided documents (including receipts of
26 the purchases he made in Defendant’s video game), and invested substantial time over the past year
27 in collaborating and communicating with class counsel, and monitoring the litigation and
28 reviewing case filings and other pertinent documents. *See Fisher Decl.* ¶ 26, *see also Declaration*

1 of D.D. in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement.
2 Thus, the requested service award of \$1,500 to the Class Representative is reasonable and justified.

3 **IV. CONCLUSION**

4 For the foregoing reasons, Plaintiff respectfully requests that the Court: (a) award Class
5 Counsel's attorneys' fees and costs in the amount of \$875,000, with such amount to be paid by
6 Niantic as set forth in the Settlement; and (b) grant a service award in the amount of \$1,500 for the
7 Class Representative.

8
9 Dated: June 6, 2024

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10 By: 
11 _____

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