The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADRIENNE BENSON and MARY SIMONSON, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

DOUBLEDOWN INTERACTIVE, LLC, a Washington limited liability company, INTERNATIONAL GAME TECHNOLOGY, a Nevada corporation, and IGT, a Nevada corporation,

Defendants.

Case No. 18-cv-525-RSL

UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

NOTE ON MOTION CALENDAR:

November 11, 2022

EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

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EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

TABLE OF AUTHORITIES

United States Supreme Court Cases:

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EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

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EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

INTRODUCTION

After four and a half years of hard-fought litigation—including more than five hundred (500) docket entries before this Court, a trip to the Ninth Circuit, skirmishes in state court, battles before the Washington State Gambling Commission, a years-long war before the Washington Legislature, and exhaustive mediation efforts with Judge Phillips and Niki Mendoza of Phillips ADR—the Parties have reached a settlement that, if approved, would completely resolve this case.[1] Alongside prospective relief, the settlement features a **$415 million** common fund.[2]

It is difficult to overstate what a triumph this proposed settlement is for the proposed Settlement Class. The common fund reflects approximately nineteen and a half percent (19.5%) of the gross revenues produced by the DoubleDown apps in the eight and a half years since April 2014 (*i.e.*, during the applicable statute of limitations). It also reflects more than eighty-five percent (85%) of DoubleDown's current market capitalization ($482.65 million, as of October 23). Based on DoubleDown's net income of $78.2 million in 2021, the common fund constitutes more than *five full years of profitability* for the DoubleDown apps. Perhaps most importantly, participating Settlement Class Members in the highest category of Lifetime Spending Amounts will likely recover gross payments in excess of 60% of their alleged losses from April 2014 through the present, and those in the lowest category will still likely recover gross payments exceeding 20% of the same. Particularly in the current economic climate, these recoveries will be life-changing for many class members. And in addition to the prospective relief offered here, they render approval of the proposed class action settlement more than appropriate here.

Consequently, Plaintiffs respectfully request that the Court (i) certify the proposed Settlement Class; (ii) grant preliminary approval of the Settlement; (iii) appoint Adrienne Benson and Mary Simonson as Class Representatives; (iv) appoint Jay Edelson, Rafey S. Balabanian,

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[1] *See* Declaration of Todd Logan ("Logan Decl."), Ex. 1 ("Class Action Settlement Agreement").

[2] Defendants state that that although they do not oppose this motion, they do not necessarily agree with characterizations in the motion, including, among other things, (1) discovery regarding purported "targeting" and "addicted" gamblers, (2) the notion that Defendants were engaged in gambling activity in violation of Washington law, or (3) the strength of Plaintiffs' claims and the cost of litigation.

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Tel: 312 589 6370 • Fax: 312 589 6378

Todd Logan, Alexander G. Tievsky, Brandt Silver-Korn, and Amy B. Hausmann as Class Counsel; (v) approve the proposed Notice Plan; and (vi) schedule the final approval hearing.

BACKGROUND

As the Court is aware, this proposed settlement is part of a seven-year-long (and still expanding) campaign of lawsuits against social casino companies (and now, the tech-giant Platforms who partner with them). Because the Court has previously reviewed and approved five of these social casino class action settlements, Plaintiffs need not recap that history here. *See, e.g.*, Mot. for Prelim. Approval, Dkt. #23, *Ferrando v. Zynga Inc.*, No. 22-cv-214 (W.D. Wash June 27, 2022). While that broader context is certainly relevant to the resolution of this case, this motion focuses on the extensive efforts expended specifically in this case.

I. Plaintiffs' Allegations

In April 2018, on the heels of the Ninth Circuit's opinion in *Kater v. Churchill Downs Inc.*, 886 F.3d 784 (9th Cir. 2018), Plaintiffs filed this proposed class action lawsuit against DoubleDown Interactive, LLC (a social casino game developer headquartered in Seattle, Washington) and International Game Technology (a multinational gambling company, DoubleDown's former parent company, and the world's largest slot machine manufacturer).[3] Plaintiffs alleged that Defendants' social casino games, including their flagship application "DoubleDown Casino," constitute unlawful gambling under Washington's gambling laws. *See* Dkt. #1. Specifically, Plaintiffs alleged that Defendants' social casino games entice users with an initial allotment of free virtual chips to wager on an array of Vegas-style slots, the outcomes of which are "based entirely on chance." Dkt. #249 ¶ 32 (Second Amended Complaint). They alleged that these initial free chips are "quickly los[t]" in the course of gameplay, and that—once exhausted—users purchase more chips with real money (in packages ranging from $2.99 to $99.99) if they wish to continue playing. *Id.* ¶¶ 28-29.

[3] Plaintiffs subsequently amended their complaint to add IGT (a subsidiary of International Game Technology) as an additional Defendant. *See* Dkt. #249.

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Because these virtual chips "extend gameplay," *id.* ¶ 51, Plaintiffs allege that the chips are "things of value" under Washington's gambling laws, that Defendant's online social casino games therefore violate Washington's ban on internet gambling, and that users are entitled to recoup their alleged losses under RCW § 4.24.070 (the "Recovery of Money Lost at Gambling Act" or "RMLGA"). *Id.* ¶¶ 46-59.

Plaintiffs further alleged that Defendants' ownership and operation of these games constituted violations of RCW § 19.86.010 (the "Washington Consumer Protection Act" or "CPA"), *id.* ¶¶ 60-71, and common law unjust enrichment. *See id.* ¶¶ 72-76.

II. Relevant Litigation History

Of the five social casino class action settlements proposed Class Counsel has presented to this Court, this case was the most heavily litigated by far, as evidenced by the more than five hundred (500) docket entries. Some highlights of that litigation activity are summarized below.

A. First Motion to Compel Arbitration and Related Appeal

In August 2018, Defendants moved to compel arbitration and to stay the action, arguing that Plaintiffs were on inquiry notice of the arbitration provision in DoubleDown Casino's Terms of Use. *See generally* Dkt. #44. Plaintiffs opposed the motion, *see* Dkt. #49, and the Court denied it in November 2018, *see* Dkt. #57. Specifically, the Court found that Plaintiffs did not agree to be bound by the Terms of Use. *Id.* at 13.

Defendants appealed that order to the United States Court of Appeals for the Ninth Circuit, Dkt. #61, and this Court agreed to stay the case pending resolution of that appeal, *see* Dkt. #77. After full briefing before the Ninth Circuit, including supplemental briefs requested by the court, the Ninth Circuit affirmed the denial of Defendants' motion to compel in January 2020. *See* Dkt. #84; *see also generally Benson v. Double Down Interactive, LLC*, No. 18-36015 (9th Cir.).

B. Initial Subpoenas and Discovery Requests

After the Ninth Circuit's decision, Plaintiffs served subpoenas on Apple Inc., Facebook, Inc., and Google LLC (the "Platforms") in April 2020, seeking transaction data for purchases of

virtual chips in DoubleDown's four social casino applications: DoubleDown Casino, DoubleDown Fort Knox, DoubleDown Classic, and Ellen's Road to Riches (the "Applications"). *See* Dkt. #92. Plaintiffs served a second set of subpoenas on the Platforms in June 2020. *See* Dkt. #109. DoubleDown filed a Motion for Protective Order regarding each set of subpoenas. *See* Dkts. #92, #109. Around the same time, Plaintiffs also served DoubleDown with Requests for Production, and in July 2020, Plaintiffs moved to compel DoubleDown to produce transaction data for virtual chip purchases in the four Applications. Dkt. #118.

After full briefing on both Motions for Protective Order and the Motion to Compel, the Court entered an order in August 2020 allowing Plaintiffs to seek transaction data (from both DoubleDown and the Platforms) only for Washington-based users and only for the DoubleDown Casino application, and quashing Plaintiffs' second set of subpoenas to the Platforms. *See* Dkt. #126.[4]

C. Defendants' Pleadings Motions

In June 2020, Defendants filed a Motion to Certify Questions to the Washington Supreme Court, arguing that Plaintiffs' RMLGA and CPA claims involved novel state-law questions that should be resolved by the state's highest court. Dkt. #103. After full briefing, the Court denied the motion in August 2020, finding that "[w]hile no court applying Washington law had addressed casino-gaming apps before *Kater*, Double Down has not shown that these facts present significantly 'new' or 'substantial' questions of statutory interpretation." Dkt. #127 at 3. Defendants filed a Motion for Reconsideration, Dkt. #133, the Parties submitted additional briefing, and the Court denied it in January 2021, Dkt. #156.

In August 2020, two days after the Court denied the Motion to Certify Questions, Defendants filed a Motion to Strike Nationwide Class Allegations, arguing that conflicts of law between Washington's and other states' gambling laws prohibited certification of a nationwide

[4] DoubleDown subsequently produced in discovery the transaction data for all United States users in the DoubleDown Casino application. *See* Dkt. #298 at 2 (showing FRE 1006 summary of that data). As set forth below, Plaintiffs will seek additional transaction data from DoubleDown and the Platform Providers, regarding all four at-issue Applications, in order to effect the Notice Plan.

class. Dkt. #128. After full briefing, the Court denied the motion in March 2021, finding that "neither constitutional considerations nor the applicable choice-of-law rules precludes the application of Washington law to the claims asserted in this litigation, regardless where the putative class members reside." Dkt. #209 at 12. DoubleDown moved to certify this order for interlocutory appeal, pursuant to 28 U.S.C. § 1292(b), Dkt. #257, but the Court denied the motion after full briefing, Dkt. #338.

In September 2020, Defendants filed a Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) and Motion to Abstain, arguing that a host of abstention doctrines prevented the Court from exercising jurisdiction and that it should allow the Washington state courts the opportunity to interpret its state gambling laws. Dkt. #138. After full briefing, the Court denied the motion in March 2021, finding that "abstention under *Burford*, *Pullman*, and/or *Thibodaux* is not warranted." Dkt. #210 at 3. Defendants moved to certify this order for interlocutory appeal, Dkt. #230, but later withdrew the motion, Dkt. #248.

After the Parties stipulated to an amendment of the pleadings, Plaintiffs filed a Second Amended Complaint in April 2021 that added IGT (a subsidiary of International Game Technology) as a defendant. Dkt. #249. In May 2021, IGT filed a Motion to Dismiss under Rule 12(b)(6). Dkt. #289. After full briefing, that motion remained pending when the case settled and was stayed.

In May 2021, DoubleDown filed a Renewed Motion to Compel Arbitration, arguing that Plaintiffs Benson and Simonson testified at deposition that they had actual notice of DoubleDown's terms of use. Dkt. #264. After full briefing, that motion remained pending when the case settled.

D. Plaintiffs' Motion for Class Certification and Preliminary Injunction

In February 2021, Plaintiffs filed a Motion for Class Certification and for Preliminary Injunction. Dkt. #164. Specifically, Plaintiffs sought to certify a damages class of "[a]ll persons in the United States who purchased virtual casino chips in DoubleDown Casino, DoubleDown Fort Knox, DoubleDown Classic, or Ellen's Road to Riches on or after April 9, 2014." And an

injunction class of "[a]ll persons in the United States who played [the Applications] on or after April 9, 2014." *Id.* at 6. Plaintiffs also asked the Court to enjoin DoubleDown from selling virtual casino chips in the Applications within the United States, and to enjoin International Game Technology from collecting money from DoubleDown's sales of the same. *Id.* at 19.

After motion practice regarding the briefing schedule and some related discovery disputes, Defendants each filed briefs in opposition in May 2021. Dkts. #276, #281. Plaintiffs filed a reply brief, Dkt. #298, and Defendants each filed surreply briefs, Dkts. #308, #311. The Motion remained pending when the case settled.

E. Discovery and Related Motions

Throughout 2021, the Parties exchanged significant written discovery, including approximately 325,000 pages of documents. Logan Decl. ¶ 4. In addition, between March and August 2021, Defendants took (and proposed Class Counsel defended) depositions of Adrienne Benson, Mary Simonson, and six (6) other putative class members. *Id.* ¶ 5. During that same period, Plaintiffs took (and Defendants' Counsel defended) Rule 30(b)(6) depositions of DoubleDown, International Game Technology, and IGT, as well as depositions of four (4) other DoubleDown employees and two (2) of Defendants' proposed expert witnesses. *Id.* ¶ 5.

The Parties also engaged in discovery-related motions practice during this period. In March 2021, Plaintiffs moved to compel DoubleDown to produce documents responsive to RFP No. 14, which sought documents containing "Life Event Phrases" (*i.e.*, pass* away, death, suicide, debt, trauma, life event*, lonely, depress*, machine zone, middle age*, divorc*, elder*, gambl*, and addict*), which Plaintiffs believed were related to Defendants' targeting of vulnerable class members. Dkt. #211 at 2. In April 2021, Plaintiffs moved to compel DoubleDown to produce documents responsive to RFP No. 26, which sought documents containing "Addiction Phrases" (*i.e.*, addict*, continuous gaming activity, false win*, gambl*, hook*, hook, return to player, red flag*, rtp, time on device, tod, pressur*, retain*, retention*, sticky, stickiness, and whale*), which Plaintiffs likewise believed were related to Defendants' targeting of vulnerable class members. Dkt. #244 at 2. After full briefing on both motions, the

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Court granted both in July 2021 and compelled DoubleDown to produce responsive documents within fourteen days. Dkts. #366, #367.

From June to August 2021, Plaintiffs filed the following additional discovery motions: (i) Motion for Leave to Submit an Affirmative Expert Report and a Rebuttal Expert Report, Dkt. #322; (ii) Motion to Compel the Production of Documents Responsive to Nine Requests, Dkt. #340; (iii) Motion for Leave to Take Seven Additional Depositions, Dkt. #374; (iv) Motion to Amend the ESI Agreement and Compel Production of a Post-Filing Privilege Log, Dkt. #377; and (v) Motion to Compel Production of Documents Responsive to Thirteen Requests, Dkt. #381. Each of these motions was fully briefed, and they remained pending when the case settled.

Ultimately, Plaintiffs' discovery efforts forced Defendants to produce documents and information sufficient for proposed Class Counsel to make informed settlement-related decisions regarding the strengths and weaknesses of the Class's claims and potential claims against (i) the DoubleDown companies, (ii) the IGT companies, and (iii) the Platforms who DoubleDown and IGT partnered with to offer the DoubleDown apps (and who receive a release under the settlement).

F. Plaintiffs' Motions for Spoliation Sanctions

In August 2021, Plaintiffs filed a Motion for Spoliation Sanctions and an Evidentiary Hearing, contending (i) that Defendants had spoliated all emails from before June 1, 2017, and (ii) that DoubleDown had spoliated the emails of every departing employee since 2018. Dkt. #405. Plaintiffs asked the Court to adopt adverse inferences for purposes of class certification and the requested preliminary injunction, and then to hold an evidentiary hearing after its certification decision to determine whether additional sanctions (such as adverse inferences or dispositive sanctions) were warranted for purposes of summary judgment and trial. *Id.* at 12. After full briefing, including Defendants' motions to strike portions of Plaintiffs' reply brief, the Motion for Spoliation Sanctions remained pending when the case settled.

In September 2021, after DoubleDown claimed that one of the exhibits to the briefing on Plaintiffs' Motion for Spoliation Sanctions was protected work-product, Plaintiffs filed a Rule

26(b)(5)(B) Motion to Preserve, To Compel Additional Documents, and To Compel Davis Wright Tremaine to Appear Under Oath at an Evidentiary Hearing. Dkt. #442. After full briefing, the motion remained pending when the case settled.

G. Plaintiffs' Omnibus Motion to Seal in Part and Unseal in Part

In November 2021, Plaintiffs filed a consolidated motion to seal in part and unseal in part the voluminous materials submitted to the Court under seal in connection with prior briefing. Dkt. #460. Plaintiffs asked the Court to unseal the majority of documents in the record that were produced by Defendants in discovery and designated confidential. *Id.* at 1. After full briefing, the motion remained pending when the case settled.

III. Litigation-Adjacent Efforts

Beyond the traditional litigation work necessitated by these cases, proposed Class Counsel undertook (and continue to undertake) all manner of litigation-adjacent work to ward off the various social casino company defendants' efforts to dispose of these lawsuits. These efforts include: (i) opposing a "Petition for Declaratory Order" before the Washington State Gambling Commission, which asked the gambling commission to declare that social casinos "do not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237," (ii) opposing legislation meant to defang Washington's gambling laws, including by providing in-person testimony and meeting with State Senators and Representatives and other officials, and (iii) sounding the alarm on social casinos to the general public by helping clients share their stories with media outlets across the country, such as PBS NewsHour and NBC News. *See* Logan Decl. ¶ 6.

IV. The Parties Reach a Mediated Settlement

Following intermittent settlement talks, including in September 2021 at Court-ordered settlement conferences, Dkt. #451, settlement talks renewed in earnest in June 2022. Logan Decl. ¶ 7. The Parties agreed to schedule a videoconference mediation session on July 28, 2022 with Niki Mendoza of Phillips ADR, and an in-person mediation session on August 26, 2022 with Ms. Mendoza and Judge Layn Phillips (ret.). *Id.* ¶ 8. The Parties also stipulated to a stay of the case

during these settlement discussions, which was extended through August 8, 2022. *See* Dkts. #468, #473, #475, #477.

In the lead-up to the July 28, 2022 mediation date, the Parties were in frequent communication with each other and with the Phillips ADR team in order to start narrowing the potential frameworks for resolution. Logan Decl. ¶ 9. The Parties submitted mediation briefs regarding the core facts, legal issues, litigation risks, and potential settlement structures. *Id*. The Parties supplemented that briefing with telephonic and written correspondence with each other and the Phillips ADR team, clarifying each party's position in advance of the mediation. *Id.*

On July 28, 2022, the Parties participated in a more-than-full day mediation session via videoconference. *Id.* ¶ 10. The Parties did not reach an agreement, and following the mediation, the Parties' settlement discussions broke down, among other reasons, because of a dispute with respect to certain foreign assets. *Id.* ¶ 10. In fact, on August 9, 2022, Plaintiffs filed a Motion for a Temporary Restraining Order addressing that dispute, and subsequently withdrew all pending settlement demands. *See* Dkt. #482; Logan Decl. ¶ 10. After full briefing and a hearing on August 17, 2022, the Court denied the motion. *See* Dkt. #495.

With the benefit of the Court's order, the Parties—through the Phillips ADR team—re-engaged the settlement efforts. Specifically, over the following weeks, the Parties continued to engage in frequent communication with Phillips ADR regarding potential settlement frameworks and material terms for a potential agreement. Logan Decl. ¶ 11. On August 23, 2022, the Parties reached an agreement in principle on the material terms of a class action settlement. *Id.* ¶ 12. The Parties continued negotiating the details of the settlement until they executed a Term Sheet on August 26, 2022. *Id.* ¶ 13. The negotiations didn't end there: for the next few weeks, the Parties worked out the details of a final and binding class action settlement agreement, exchanged multiple rounds of a working settlement document and supporting exhibits, met and conferred telephonically to hammer out disputed provisions, and vetted and engaged a proposed settlement administrator. *Id.* ¶ 15. On September 19, 2022, the Parties completed execution of the

Settlement Agreement now before the Court. *Id.* ¶ 16; Ex. 1 (Class Action Settlement Agreement) (hereinafter the "Agreement").

THE TERMS OF THE SETTLEMENT AGREEMENT

For the Court's convenience, the key terms of the Agreement are summarized below.

I. Settlement Class Definition: The Settlement Class is defined as follows: "all individuals who, in the United States (as reasonably determined by IP address information, or other information furnished by Defendants and Platform Providers), played the Applications on or before Preliminary Approval of the Settlement."[5] Agreement § 1.35.

II. Monetary Benefits: Defendants have agreed to establish a non-reversionary, four-hundred-fifteen-million-dollar ($415,000,000.00) Settlement Fund from which each Settlement Class Member who files a valid claim will be entitled to recover a cash payment—calculated after deduction of costs and administrative expenses, any Fee Award to proposed Class Counsel, and any incentive payments to the Class Representatives. *See id.* § 1.37. Specifically, International Game Technology and IGT together shall contribute $269,750,000, and DoubleDown shall contribute $145,250,000 to the Settlement Fund.

No portion of the Settlement Fund will revert to the Defendants. *Id.* § 2.1(i). Any Settlement Class Member checks not cashed or electronic payments not processed within ninety (90) days of issuance will either be placed in a second distribution fund or donated to the Legal Foundation of Washington, as approved by the Court. *Id.* § 2.1(h). As described in detail in the Plan of Allocation, the amount of each Settlement Class Member's payment will vary based on the Settlement Class Member's Lifetime Spending Amount (those with higher Lifetime Spending Amounts are eligible to recover a greater percentage) and overall Settlement Class Member participation levels, *see id.* §§ 1.38, 2.1(c), except that no Class Member will recover

[5] Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families, (2) the Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, and employees, (3) persons who properly execute and file a timely request for exclusion from the Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons. Agreement § 1.35.

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more than their Lifetime Spending Amount unless all Class members do, *see* Exhibit E to the Settlement Agreement. Based on their experience with settlements in related cases, proposed Class Counsel anticipates that participating Settlement Class Members in the highest category of Lifetime Spending Amounts will likely recover gross payments in excess of 60% of their alleged losses from April 2014 through the present, and that participating Class Members in the smallest category of Lifetime Spending Amounts will likely recover gross payments in excess of 20% of their alleged losses from April 2014 through the present. *See* Logan Decl. ¶ 17. Settlement Class Members will be able to quickly and easily estimate the amount of their potential recovery on the Settlement Website. *See* Agreement § 4.2(d).

III. Prospective Relief: DoubleDown has agreed to maintain a link to resources relating to video game behavior disorders within the Applications. *Id.* § 2.2. The link will be prominently available within the games, and DoubleDown's customer service representatives will provide the link to players who contact them and reference or seek help for video game behavior disorders. *Id.* DoubleDown also will maintain a voluntary self-exclusion policy, published on its website, that will allow players to exclude themselves from further gameplay. *See id.* DoubleDown has further agreed to enforce this policy through the use of Player IDs and other device or account-related identifiers. *Id.* In addition, in response to this litigation, DoubleDown has also made other changes to game mechanics such that when players run out of virtual chips, they do not need to purchase additional chips or wait to receive free additional chips to keep playing DoubleDown's games. *Id.*

IV. Release: In exchange for the relief described above, Defendants and other entities, including the Platform Providers (Amazon, Apple, Facebook, and Google), will be released from all claims raised in cases relating to the operation of Defendants' social casino games and the sale of virtual chips in those games, including claims that the games were illegal gambling or the chips were "things of value." The full release is contained at *id.* §§ 1.30, 3.1-3.4.

V. Class Notice: The Settlement Fund will be used to pay the costs of sending the notice set forth in the Agreement and any other notice as required by the Court, as well as all

costs of administration of the Settlement. *See id.* § 1.35. JND Legal Administration ("JND"), the Settlement Administrator, will send class notices via email and/or U.S. Mail based on records produced by Defendants and obtained from third parties. *Id.* §§ 4.1, 4.2. JND will also establish a settlement website and implement a digital publication notice campaign targeting Class Members. *Id.* In line with Rule 23, the notice will include the nature of the action, a summary of the settlement terms, and instructions on how to object or opt out of the settlement, including relevant deadlines. *Id.* § 4.3.

VI. Incentive Award Requests: With no consideration having been given or received, Adrienne Benson and Mary Simonson will each seek an incentive award of no more than $7,500. *See id.* § 8.3. Defendants explicitly reserve their rights to challenge any incentive award petitions. *See id.* Any unawarded amounts will remain in the Settlement Fund to be distributed to Settlement Class Members.

VII. Attorneys' Fees and Expenses Requests: The Parties have agreed that proposed Class Counsel are entitled to an award of reasonable attorneys' fees and expenses in an amount to be determined by the Court and to be paid from the Settlement Fund. *See id.* § 8.1. Without the Parties having discussed the issue of attorneys' fees at any point in their negotiations, and with no consideration given or received, proposed Class Counsel have unilaterally agreed to limit any petition for attorneys' fees to no more than 30% of the Settlement Fund, plus reimbursement of expenses. *Id.* Any fee award requested by proposed Class Counsel will be subject to the Court's approval. *Id.* Defendants may challenge the amount requested. *Id.* Any unawarded amounts will remain in the Settlement Fund to be distributed to Settlement Class Members.

ARGUMENT

I. The Proposed Class Should Be Certified

Before granting preliminary approval, the Court must first determine that the proposed class is appropriate for certification. To do so, the proposed class must meet the requirements of Rule 23(a) and at least one subsection of Rule 23(b). *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 614, 621 (1997); *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir.

2010); MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.633 (2004).[6]

Rule 23(a) requires that a plaintiff demonstrate that (1) the proposed class is so numerous that joinder of all individual class members is impracticable (numerosity), (2) there are questions of law or fact common to the proposed class (commonality), (3) the claims of the plaintiff are typical of those of the class (typicality), and (4) the plaintiff will adequately protect the interests of the class (adequacy). Fed. R. Civ. P. 23(a)(1)–(4). In addition, where, as here, Plaintiffs seek certification under Rule 23(b)(3), Plaintiffs must also demonstrate that common questions predominate over any questions affecting only individual members (predominance), and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy (superiority). Fed. R. Civ. P. 23(b)(3). Because the proposed Class is being certified for settlement purposes, the Court "need not inquire whether the case, if tried, would present intractable management problems." *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Amchem*, 521 U.S. at 620).

A. The Proposed Class Meets the Requirements of Rule 23

Like the class of social casino consumers certified for litigation in *Wilson v. PTT, LLC* ("*High 5*"), and like the settlement classes in the five substantially similar social casino class action settlements approved (at least preliminarily) by this Court, the proposed Settlement Class here satisfies all elements of Rule 23. *See High 5*, No. 18-cv-5275-RSL, 2021 WL 211532, at *9 (W.D. Wash. Jan. 21, 2021) (granting motion to certify both Rule 23(b)(3) and Rule 23(b)(2) classes); *Wilson v. Huuuge, Inc.*, No. 18-cv-5276-RSL, 2021 WL 512229, at *1 (W.D. Wash. Feb. 11, 2021) (finding that a similar social casino settlement class met all the prerequisites of Rule 23); *Wilson v. Playtika Ltd.*, No. 18-cv-5277-RSL, 2021 WL 512230, at *1 (W.D. Wash. Feb. 11, 2021) (same); *Kater v. Churchill Downs Inc.*, No. 15-cv-00612-RSL, 2021 WL 511203,

[6] Courts sometimes also inquire into whether the proposed class is "ascertainable," that is, "whether the Court can reasonably identify which individuals are class members and which are not." *Geier v. m-Qube, Inc.*, No. 13-cv-354, 2016 WL 3458345, at *2 (W.D. Wash. June 24, 2016). But in this Circuit, there is no separate "administrative feasibility" or "ascertainability" requirement implicit in Rule 23. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1123 (9th Cir. 2017) ("[S]eparate administrative feasibility prerequisite to class certification is not compatible with the language of Rule 23."). Nevertheless, membership in the proposed Class here is based on objective, ascertainable criteria: whether a person has previously played an at-issue Application in the United States.

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at *1 (W.D. Wash. Feb. 11, 2021) (same); *Reed v. Scientific Games*, No. 18-cv-00565-RSL, Dkt. #166 at 1 (W.D. Wash. Jan. 19, 2022) (same); *Ferrando v. Zynga Inc.*, No. 22-cv-00214-RSL, Dkt. #26 at 1 (W.D. Wash. June 28, 2022) (granting preliminary approval).

1. The Proposed Settlement Class Is Sufficiently Numerous.

The first prerequisite to class certification under Rule 23(a)—numerosity—requires that the "class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no specific minimum number of proposed class members required to satisfy the numerosity requirement, but generally a class of forty or more members is considered sufficient. *Ali v. Menzies Aviation, Inc.*, No. 16-cv-00262-RSL, 2016 WL 4611542, at *1 (W.D. Wash. Sept. 6, 2016); *see also Jama v. GCA Servs. Grp., Inc., et al.*, No. 16-cv-0331-RSL, 2017 WL 4758722, at *3 (W.D. Wash. Oct. 20, 2017) (numerosity satisfied by class of 93 class members).

Here, the Settlement Class exceeds a million individuals. *See* Logan Decl. ¶ 18. Consequently, the proposed Class is so numerous that joinder of their claims is impracticable, and the numerosity requirement is satisfied.

2. Settlement Class Members Share Common Questions of Law and Fact.

The second requirement of Rule 23(a)—commonality—is satisfied where "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality is construed permissively and is demonstrated when the claims of all class members "depend upon a common contention," with "even a single common question" sufficing. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 359 (2011) (citation omitted); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) ("The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class."). The common contention must be of such a nature that it is capable of class-wide resolution, and that the "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. Moreover, "[where] the circumstances of each particular class member vary but retain a common core of factual legal issues with the rest of the class, commonality exists," *Parra v. Bashas', Inc.*,

536 F.3d 975, 978–79 (9th Cir. 2008), and "[i]t is not necessary that members of the proposed class share every fact in common," *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012) (internal quotations omitted). Indeed, "the theoretical possibility of individual issues is not enough to outweigh the benefits of common resolution of classwide issues." *Tavenner v. Talon Grp.*, No. 09-cv-1370 RSL, 2012 WL 1022814, at *4 (W.D. Wash. Mar. 26, 2012).

This case presents numerous common questions. For example: are the virtual chips in Defendants' Applications "things of value"? If so, are the Applications "gambling games" under Washington law? If so, are Class Members entitled to recover their losses under the RMLGA? Does the legislative declaration of purpose in RCW § 9.46.010 render Defendants' alleged violations of gambling laws unfair practices under the Washington CPA? If so, are proposed Class Members entitled to pursue an injunction? How about treble damages?

These common questions—whose answers depend solely on Defendants' common course of conduct—establish commonality. *Abdullah v. U.S. Sec. Assocs., Inc*., 731 F.3d 952, 957 (9th Cir. 2013) (noting key inquiry is "whether class treatment will generate common answers apt to drive the resolution of the litigation") (internal quotations omitted). At the heart of this case is Plaintiffs' allegation that the Applications are illegal gambling. This litigation, if tried to a verdict, would resolve all claims stemming from that allegation in a single stroke. Rule 23(a)'s commonality requirement is therefore satisfied.

3. Plaintiffs' Claims are Typical of Settlement Class Members' Claims.

Rule 23(a)'s next requirement—typicality—requires that the class representatives' claims be typical of those of the putative class they seek to represent. Fed. R. Civ. P. 23(a)(3). The purpose of this requirement is "to assure that the interest of the named representative aligns with the interests of the class." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). The test of typicality is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiff[], and whether other class members have been injured by the same course of conduct."

Id.; *see also Ali*, 2016 WL 4611542, at *2 (W.D. Wash. Sept. 6, 2016). This is a "permissive" standard, and it is met where the class representative's claims "are reasonably co-extensive with those of absent class members." *Hanlon*, 150 F.3d at 1020. At bottom, "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Ali*, 2016 WL 4611542, at *2 (quoting *Gen. Tel. Co. of the SW v. Falcon*, 457 U.S. 147, 156 (1982)) (internal quotations omitted).

Typicality is met here. While the Class Representatives each have different total damages, each possesses legal claims identical to those possessed by all members of the proposed Class: that the Applications are allegedly illegal gambling games, and consequently that their in-game alleged losses must be returned to them. In other words, each suffered the same injury as every other Class Member harmed by her/his use of the allegedly illegal Applications. Accordingly, each has the same interest as every other Class Member in obtaining all available relief for these alleged violations. The typicality requirement is satisfied.

4. The Class Representatives and Proposed Class Counsel Adequately Represent the Settlement Class.

Rule 23(a)'s final requirement—adequacy—requires that the proposed class representatives have protected and will continue to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To determine if representation is in fact adequate, the Court must ask "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class." *Hanlon*, 150 F.3d at 1020. Further, where a plaintiff's claims are found to be typical of those of the class, appointing that plaintiff as the class representative will also ensure that interest of the class remain adequately protected. *See Dukes*, 564 U.S. at 349 n.5 (discussing how the fulfillment of the typicality requirement usually also supports a finding of adequacy because an adequate representative will have claims that are typical of those of the class).

Here, Plaintiffs meet the requirements to be appointed Class Representatives. First, as

discussed above, they share the same interest in securing relief for the claims at issue as every other member of the proposed Settlement Class, and there is no evidence of any conflict of interest. Both Plaintiff Benson and Plaintiff Simonson have long demonstrated their willingness to prosecute this case, including by providing their counsel with relevant information and documents, sitting for depositions, and remaining in communication with proposed Class Counsel regarding the litigation and settlement. *See* Logan Decl. ¶ 19. Plaintiffs, as Class Representatives, will fairly and adequately protect the Settlement Class's interest.

Similarly, the appropriateness of appointing Plaintiffs' Counsel from Edelson PC as Class Counsel is apparent. The Court must only ask whether proposed Class Counsel are unencumbered by conflicts of interest and will vigorously prosecute the action. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). proposed Class Counsel meet both requirements here.

First, the record discloses no conflicts of interest and proposed Class Counsel are aware of none. *See* Logan Decl. ¶ 20. proposed Class Counsel have no financial stake in the Defendants, nor do they have any connections to Class Members that might cause them to privilege certain Class Members over others. *See id.*

Second, proposed Class Counsel's commitment to vigorously prosecuting this case and protecting the interests of the proposed Class is indisputable. Edelson PC developed the underlying legal theory of this action and other social casino cases and first raised it in the related cases more than seven years ago. *See id.* ¶ 21. Over the years, Edelson PC has represented the interests of the proposed Settlement Class not just in the specific bounds of this case docket but also in proceedings before the WSGC and before the Washington Legislature. *See id.* ¶ 22. The Court appointed Edelson PC attorneys as class counsel in the ongoing *High 5* litigation as well as the five substantially similar class action settlements that are slated to recover $236 million for class members. *See High 5*, 2021 WL 211532, at *9; *Huuuge*, 2021 WL 512229, at *1; *Playtika*, 2021 WL 512230, at *1; *Kater*, 2021 WL 511203, at *1; *Scientific Games*, Dkt. #166 at 2; *Zynga*, Dkt. #26 at 2. And proposed Class Counsel has spent more time

litigating this case than any of the prior settling cases. *See supra* (Relevant Litigation History); Logan Decl. ¶ 23.

More broadly, proposed Class Counsel are well-qualified and experienced members of the plaintiffs' bar, have the resources necessary to conduct litigation of this nature, and are frequently appointed lead class counsel in major litigation across courts nationwide. *See* Logan Decl. ¶ 24. For example, in the Northern District of California, the Hon. Edward John Davila recently appointed Rafey S. Balabanian as Interim Lead Counsel and Todd Logan as Law and Briefing Counsel in three MDLs alleging that Apple, Google, and Facebook violate state and federal gambling laws by, *inter alia*, promoting and profiting off of social casinos. *See In re Apple Inc. App Store Simulated Casino Style Games Litig.*, No. 21-md-2985-EJD, Dkt. #68 (N.D. Cal. Sept. 23, 2021); *In re Google Play Store Simulated Casino-Style Games Litig.*, No. 21-md-3001-EJD, Dkt. #51 (N.D. Cal. Sept. 23, 2021); *In re Facebook Simulated Casino-Style Games Litig.*, No. 21-cv-2777-EJD, Dkt. #27 (N.D. Cal. Sept. 23, 2021). In other words, proposed Class Counsel's adequacy is beyond cavil.

Consequently, Rule 23(a)'s adequacy requirement is met. *See Jama*, 2017 WL 4758722, at *6 (finding adequacy requirement met when "both the named plaintiffs and plaintiffs' counsel have demonstrated a commitment to vigorously prosecuting [the] action on behalf of the class").

B. The Proposed Settlement Class Satisfies the Requirements of Rule 23(b)(3)

In addition to meeting all four of Rule 23(a)'s prerequisites for certification, a proposed class must also satisfy Rule 23(b)(3)'s additional requirements—predominance and superiority. *See* Fed. R. Civ. P. 23(b)(3). Certification is encouraged where, as here, "the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022. As detailed below, both the predominance and superiority requirements of Rule 23(b)(3) are satisfied.

1. Common Questions of Law and Fact Predominate.

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Common questions predominate here. The Supreme Court has made clear that predominance is a qualitative inquiry: "[t]he predominance inquiry 'asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.'" *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 NEWBERG ON CLASS ACTIONS § 4:49 (5th ed.)). When considering whether common issues predominate, the court should begin with "the elements of the underlying cause of action." *Reichert v. Keefe Commissary Network, LLC*, 331 F.R.D. 541, 553 (W.D. Wash. 2019) (quoting *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2014)). "More important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class." *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016). As these cases and the text of the rule make clear, individual questions need not be absent but merely must occupy less importance to the litigation than common questions.

The inquiry is straightforward in this case. The showings needed for Plaintiffs to prevail on the elements of their claims under the RMLGA and the CPA depend on evidence or legal argument that is common to the Settlement Class—principally the operation of Defendants' Applications. A factfinder's resolution of questions related to the operation of the Applications—for example, whether the chips sold in the Applications are "things of value"—will resolve questions central to the claims of every Class Member in one fell swoop, driving the litigation forward. *See Reichert*, 331 F.R.D. at 554-55 (predominance satisfied when all or nearly all elements of the class's prima facie case presented common questions); *Taylor v. Universal Auto Grp. I, Inc.*, No. 13-cv-5245-KLS, 2014 WL 6654270, at *16 (W.D. Wash. Nov. 24, 2014) (predominance satisfied when "predominant" issue contested by the parties was common to the class). An assessment of each Class Member's Lifetime Spending Amount will be accomplished by a common and straightforward method: utilizing data provided to the court-appointed Settlement Administrator by Defendants and the Platform Providers, to the extent reasonably available, to calculate the sum of each Class Member's spending on virtual chips. *See Bess v.*

Ocwen Loan Servicing LLC, 334 F.R.D. 432, 436 (W.D. Wash. 2020) ("[T]he need for individualized findings as to the amount of damages does not defeat class certification."). These common questions predominate over any individualized question affecting particular Class Members regarding their ability to make a prima facie showing of Defendants' liability or their potential affirmative defenses. And, in any event, the Supreme Court has made clear that the existence of "affirmative defenses peculiar to some individual class members" does not defeat predominance, even if those defenses must be tried separately. *Tyson Foods*, 577 U.S. at 453. Predominance is therefore satisfied.

2. A Class Action Is the Superior Method of Resolving the Controversy.

The superiority criterion includes four considerations: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3). The first and second factors plainly point in favor of certification. "There is no indication that any [Class Members has] an interest in pursuing their own claims—in fact, it would likely be uneconomical for them to do so. There is also no evidence that certain [class members] have already initiated their own individual actions." *Reichert*, 331 F.R.D. at 556. While some Class Members have substantial alleged damages, it is difficult to imagine that a rational contingency-fee lawyer would take on any individual claim given the time, effort, and resources that Defendants have demonstrated they are willing to commit to defending claims against its Applications. *See Wolin*, 617 F.3d at 1175 ("Where recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in favor of class certification."). Moreover, the huge number of individuals in the Settlement Class would overwhelm the judicial system if Class Members were forced to litigate individually. *See Taylor*, 2014 WL 6654270, at *19.

Next, this forum is the clear choice in which to concentrate the litigation. The claims arise under Washington law, DoubleDown is headquartered in Seattle, and a choice-of-law analysis favors applying Washington law to the nationwide class. Dkt. #209; *see Shasta Linen Supply, Inc. v. Applied Underwriters, Inc.*, No. 16-cv-1211-WBS-AC, 2019 WL 358517, at *6 (E.D. Cal. Jan. 29, 2019) ("The fact that all remaining claims are brought under California law weighs in favor of a California federal court adjudicating the dispute."). Moreover, the Court is intimately familiar with the facts and law underlying this action. It would make little sense to force the Parties to start over elsewhere. *See Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 560 (W.D. Wash. 2008) (finding the forum superior because "the Court is already familiar with [p]laintiffs' claims"). Finally, the Court is uniquely familiar with the broader social casino litigation landscape to which this lawsuit belongs, given that the Court has approved substantially similar class action settlements and is overseeing ongoing litigation in the *High 5* action.

Accordingly, a class action is the superior method for adjudicating the controversy between the Parties, and as all requirements of class certification under Rule 23 are met, the proposed Settlement Class should be certified.

II. The Proposed Settlement Merits Preliminary Approval

After determining that the proposed Class should be certified, the Court must determine whether the Settlement warrants approval. This is a two-step process: "(1) preliminary approval of the settlement; and (2) following a notice period to the class, final approval of the settlement at a fairness hearing." *Relente v. Viator, Inc.*, No. 12-cv-05868-JD, 2015 WL 2089178, at *2 (N.D. Cal. May 4, 2015); *see also* Fed. R. Civ. P. 23(e)(1)-(2); 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.).

At the preliminary approval stage, the Court determines whether the "proposed settlement [is] within the range of final approval" such that notice should be disseminated to the class. *Rinky Dink, Inc. v. World Bus. Lenders, LLC*, No. 14-cv-0268-JCC, 2016 WL 4052588, at *4 (W.D. Wash. Feb. 3, 2016); *see also* 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.). While the

Ninth Circuit has a "strong judicial policy" favoring settlement of class actions, *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), before the Court preliminarily approves a class action settlement, it "has a responsibility to review a proposed class action settlement to determine whether the settlement is 'fundamentally fair, adequate, and reasonable,'" *Wilson v. Maxim Healthcare Servs., Inc.*, No. 14-cv-789-RSL, 2017 WL 2988289, at *1 (W.D. Wash. June 20, 2017) (quoting *Staton v. Boeing Co*., 327 F.3d 938, 959 (9th Cir. 2003)); Fed. R. Civ. P. 23(e)(2).

Rule 23(e)(2), as amended in 2018, sets forth specific factors for courts to consider in determining whether a class settlement is "fair, reasonable, and adequate":

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Id.[7] Because "some of the aforementioned factors cannot be properly examined until after the fairness hearing," at the preliminary approval stage, this Court can "seek[] merely to identify any 'glaring deficiencies' prior to sending notice to class members." *Rinky Dink*, 2016 WL 4052588, at *4. Ultimately, before granting final approval of the settlement, the Court will need to conduct an "exacting review" to assure that this pre-certification settlement meets a "higher standard of fairness." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048-49 (9th Cir. 2019); *In re Apple*

[7] Notably, the factors for the Court to consider under the amended Rule 23(e)(2) overlap with the factors the Ninth Circuit previously articulated as hallmarks of a fair, reasonable, and adequate class action settlement. Indeed, when assessing proposed class settlements, courts in this Circuit continue to look to the "*Churchill* factors," which are: "(1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement." *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021); *In re Bluetooth Headset Prods. Liab.*, 654 F.3d 935, 946 (9th Cir. 2011); *Churchill Vill. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004).

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Inc. Device Performance Litig., No. 21-15758, 2022 WL 4492078, at *8 (9th Cir. Sept. 28, 2022).

Here, the proposed Settlement—which creates a $415,000,000 non-reversionary fund for Class Members—satisfies the Rule 23(e)(2) factors, shows no deficiencies suggesting collusion or conflicts of interest, and is well within the range of satisfying a probing fairness inquiry at final approval.

A. The Class Representatives and Proposed Class Counsel Have Adequately Represented the Settlement Class

As discussed above, the Class Representatives and their counsel are adequate. Plaintiffs Benson and Simonson share the same interests as the Settlement Class, there is no evidence of any conflicts of interest, and by stepping forward in this litigation they have demonstrated their willingness to prosecute this case. Likewise, proposed Class Counsel have extensive experience litigating complex class actions—including substantially similar class actions against social casino companies—and negotiated this Settlement with the best interests of the Settlement Class in mind. Based on their unparallel experience litigating social casino cases, proposed Class Counsel are confident that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. *See* Logan Decl. ¶ 25.

B. The Settlement Was Reached as a Result of Arm's-Length Negotiations Between the Parties

The Settlement also satisfies the second requirement under Rule 23(e)(2), since it is the product of years of adversarial litigation and informed by arm's-length negotiations facilitated by Phillips ADR, a nationally renowned mediation firm. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2019) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."); *Helde v. Knight Transportation, Inc.*, No. 12-cv-00904-RSL, Dkt. #191 at 2 (W.D. Wash. May 24, 2017) (granting preliminary approval where "Settlement Agreement resulted from extensive arm's-length negotiations, with participation of

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an experienced mediator"); *Gragg v. Orange CAB Co., Inc.*, No. 12-cv-0576-RSL, 2017 WL 785170, at *1 (W.D. Wash. Mar. 1, 2017) (same).

Furthermore, this Settlement presents none of the red flags the Ninth Circuit has flagged as indicative of potential collusion—(1) "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded," (2) "when the parties negotiate a 'clear sailing' arrangement," and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth*, 654 F.3d at 947.

First, proposed Class Counsel are not receiving a disproportionate distribution of the Settlement Fund or being amply rewarded while the Class receives no monetary distribution. To the contrary, proposed Class Counsel have unilaterally limited themselves to a fee petition within the "usual range" for fees in this Circuit—30% of the Settlement Fund. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). And far from receiving coupons or *cy pres*-only relief, Class Members will receive substantial individual cash recoveries.[8] *Second*, there is no "clear sailing" provision in the Settlement. *See In re Bluetooth*, 654 F.3d at 947 (defining clear sailing provisions). Defendants are free to object to proposed Class Counsel's fee request. *See* Agreement § 8.1. *Third*, there is no possibility that any funds revert to the Defendants. *See id.* §§ 1.35, 2.1(i).

In addition, the proposed Settlement Class comprises the same people as the classes Plaintiffs sought to certify in the litigation. *Compare* Agreement § 1.35 (defining the Settlement Class as persons in the United States who played the Applications) *with* Dkt. #164 (motion to certify both a "Damages Class" of persons in the United States who purchased chips in the Applications and an "Injunction Class" of persons in the United States who played the

[8] Aside from the Class Representatives' right to petition the Court for reasonable incentive awards, no Class Member will be given preferential treatment at the expense of another. *See Scott v. United Servs. Auto. Ass'n*, No. 11-cv-1422-JCC, 2013 WL 12251170, at *1 (W.D. Wash. Jan. 7, 2013) (noting preliminary approval generally granted absent "obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class") (internal citations omitted).

Applications). Therefore, nothing about the scope of the proposed Settlement Class raises any concerns of collusion or unfairness. *Cf.* United States District Court for the Northern District of California, *Procedural Guidance for Class Action Settlements* ¶ 1(a) (Aug. 4, 2022), http://bit.ly/3A5xiG0; *Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1122 (9th Cir. 2020) (noting need for Court inquiry into the "appropriate definition of the class" in early settlements).

Ultimately, there are no signs of collusion here because there was no collusion. This Settlement is the product of serious, informed, non-collusive negotiations—and that fact militates in favor of preliminary approval.

C. The Settlement Treats Class Members Equitably

Fed. R. Civ. P. 23(e)(2)(D) requires courts to consider whether a proposed class settlement "treats class members equitably relative to each other." Here, the Defendants have agreed to create a $415,000,000 non-reversionary Settlement Fund, from which each Class Member who submits a valid Claim Form will receive payment. The Plan of Allocation sets forth a uniform, equitable system for determining the amount of each Settlement Class Member's payment, based on a person's Lifetime Spending Amount and overall participation levels. *See* Agreement §§ 1.38, 2.1(c); Exhibit E to the Agreement. Under the Plan of Allocation, those with higher Lifetime Spending Amounts are eligible to recover a greater percentage of their spending, which reflects the fact that those Class Members—had this case gone to trial—would have been most likely to obtain a treble damages award under the CPA. *See* Exhibit E to the Agreement. In the event that a Settlement Payment when initially calculated would exceed a Class Member's Lifetime Spending Amount, any amount in excess of the Class Member's Lifetime Spending Amount will be distributed *pro rata* to all Class Members whose Settlement Payment does not exceed their Lifetime Spending Amount. *Id.* If all Class Members' Settlement Payments would exceed their Lifetime Spending Amounts, then the remaining Settlement Fund shall be distributed *pro rata*. For the avoidance of doubt, no Class Member will recover more than their Lifetime Spending Amount unless *all* Class members do. *Id.*

The Settlement also provides for prospective relief that is identical for all Settlement

Class Members, and each Class Member will release the same claims against the Defendants. Furthermore, the provision of incentive awards to Plaintiffs Benson and Simonson is consistent with the equitable treatment of Class Members. *In re Apple Inc. Device Performance Litig.*, 2022 WL 4492078, at *13 (confirming that reasonable incentive awards may be awarded). The requested awards are extremely modest relative to the $415,000,000 Settlement Fund that the Class Representatives helped secure for the Settlement Class, and the awards reflect the work the Representatives have done for the Settlement Class.

Because the Settlement treats each member of the Settlement Class equitably, this factor is well satisfied.

D. The Relief Secured for the Settlement Class Is Adequate

The final requirement of Rule 23(e)(2) is the adequacy of the relief, taking into account (i) the costs, risks, and delay of not settling, (ii) the efficacy of distributing relief and processing claims, (iii) the proposed attorney's fee award, and (iv) any agreements made in connection with the proposed settlement.

First, the "amount offered in settlement" here undeniably favors approval.[9] *Churchill*, 361 F.3d at 575; Fed. R. Civ. P. 23(e)(2)(C). The $415 million common fund reflects approximately 19.5% of the Settlement Class's alleged losses from April 1, 2014 (*i.e.*, within a four-year statute of limitations period) through June 30, 2022. *See* Agreement § 7.3.[10] This result surpasses even the historic settlement achieved in *Kater v. Churchill Downs*—the only other nationwide class settlement in the social casino landscape—in which the $155 million settlement fund represented approximately 14.35% of that settlement class's spending within the statutory period until the date of the execution of the settlement agreement. *See Kater*, Dkt. #280; *id.*, Dkt. #218-1 § 1.18. The fact that this settlement recovers a substantially higher portion of the Class's damages, even though damages here were nearly twice as large as in *Kater*, speaks to the

[9] Defendants state that although they agree that the settlement amount is adequate, they do not necessarily agree with any suggestion that speaks to the strength of Plaintiffs' case.

[10] Proposed Class Counsel estimates that the $415 million fund reflects approximately 16% of the Class's all-time alleged losses (*i.e.*, since DoubleDown Casino was launched in 2010 through present). *See* Logan Decl. ¶ 26.

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strength of this result for the Class.

These are indisputably "excellent" results in comparison to other cases of this magnitude. *See In re Wells Fargo & Co. S'holder Derivative Litig.*, 445 F. Supp. 3d 508, 521 (N.D. Cal. 2020). And four hundred fifteen million dollars is, no matter how sliced or diced, a significant recovery. It is a significant enough sum that Class Members with the largest Lifetime Spending Amounts stand likely to recover more than 60% of their alleged losses from April 2014 through the present, and no participating Class Member is likely to recover less than 20% of the same. *See* Logan Decl. ¶ 17; *compare with Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) ("It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair"). Particularly in the current economic climate, these recoveries will be life-changing for many Class Members. *See* Logan Decl. ¶ 27.

The Settlement's prospective relief buttresses the fairness of the Settlement. *See Bennett v. SimplexGrinnell LP*, No. 11-cv-01854-JST, 2015 WL 1849543, at *7 (N.D. Cal. Apr. 22, 2015) (noting "the significant value of the prospective relief also obtained in the settlement agreement" warranted preliminary approval). The Settlement requires DoubleDown to place resources relating to video game behavior disorders within the Applications, to maintain and make publicly available a voluntary self-exclusion policy that will allow players to exclude themselves from making further purchases, and to provide a link to that policy and the resources within the games and on DoubleDown's website. *See* Agreement § 2.2. These changes, intended to generally mirror the sorts of voluntary self-exclusion programs that states often require casinos to implement, reflect a pioneering—and, in proposed Class Counsel's view, long-overdue—advancement in social casino self-regulation. And as relevant here, these changes to DoubleDown's conduct—in conjunction with the cash fund—militate in favor of approval. *See Officers for Justice*, 688 F.2d at 628 ("It is the complete package taken as a whole, rather than the individual component parts, that must be examined for overall fairness.").

The sub-factors enumerated in Rule 23(e)(2)(C) also support the adequacy of this

monetary and injunctive relief.

1. The Cost, Risk, and Delay of Further Litigation, Compared to the Settlement's Benefits, Favor Approval.

The relief offered by this Settlement is particularly strong in light of the costs, risks, and delays inherent in further litigation of this case. While Plaintiffs are confident in the strength of their claims and believe they would prevail at class certification and trial, litigating this case to verdict would impose upon Class Members substantial risks that are unacceptable in light of the immediate and certain cash recovery this Settlement makes available. *See Betorina v. Randstad US, L.P.*, No. 15-cv-03646-EMC, 2017 WL 1278758, at *7-8 (N.D. Cal. Apr. 6, 2017) (analyzing the *Churchill* factors of the strength of plaintiff's case, the risk of further litigation, and the risk of maintaining class action status).

The most significant of these risks, in Plaintiffs' Counsel's professional judgment, is that the ISGA's lobbying efforts, ongoing since 2018 as described above, may eventually lead to a retroactive change in the law. *See* Logan Decl. ¶ 28. Proposed Class Counsel have thus far fended off the ISGA's lobbying efforts, but the ISGA and its members—many of them billion-dollar gambling corporations—are formidable opponents. If this case does not settle now, during each legislative cycle the Class will be at risk of having its claims eviscerated in the name of "remov[ing] . . . economic uncertainty" by "clarifying" that proposed Class Members cannot recover under the RMLGA. *See, e.g.*, H.B. 2720, 66th Leg., Reg. Sess. (Wash. 2020). And in addition to lobbying-related risks, it is also of course possible—as with any litigation—that the Defendants could prevail on any number of future motions at subsequent litigation stages, including, for example, renewed motions to compel arbitration based on revised Terms of Service.

Even assuming Plaintiffs' Counsel could fend off the ISGA and Defendants' litigation efforts long enough for Plaintiffs to try this case to verdict, Defendants' inevitable appeals would take years, further delaying the relief to the Class. *See* Logan Decl. ¶ 29; *Rodriguez*, 563 F.3d at 966 ("Inevitable appeals would likely prolong the litigation, and any recovery by class members,

for years. This factor, too, favors the settlement."); *Ikuseghan v. Multicare Health Sys.* No. 14-cv-05539-BHS, 2016 WL 3976569, at *4 (W.D. Wash. July 25, 2016) ("[T]he outcome of trial and any appeals are inherently uncertain and involve significant delay. The [s]ettlement avoids these challenges."). The substantial expense and burden associated with litigating this case not only through trials but also through inevitable appeals further militate in favor of granting preliminary approval now. *See* Logan Decl. ¶ 29; *Rinky Dink*, 2016 WL 4052588, at *5 (finding preliminary approval appropriate when considering the expense of the "additional depositions, expert work, and motion work [that] would have to be completed before trial").

Moreover, through years of litigation in parallel lawsuits as well as a painstaking negotiation and mediation process here, the Parties and their counsel "had enough information to make an informed decision about the strength of their cases and the wisdom of settlement." *Rinky Dink*, 2016 WL 4052588, at *5. To begin, formal discovery efforts resulted in a rich discovery record in this case. As discussed above, the record includes documents and information sufficient for proposed Class Counsel to make informed settlement-related decisions regarding the strengths and weaknesses of the Class's alleged and potential claims.

In addition to a rich record of formal oral and written discovery, the Parties also exchanged written opening and response mediation briefs and spoke frequently by telephone to clarify the relevant facts and hone the Parties' negotiation positions. *See* Logan Decl. ¶ 9. And then, of course, the Parties engaged in a full-day mediation facilitated by the skilled Phillips ADR team, in which all information necessary to make an informed settlement decision was fleshed out at length. *Id.* ¶ 10. Consequently, the Parties negotiated the Settlement with a clear understanding of the strengths and weaknesses of their respective claims and defenses. *See id.*; *Ikuseghan*, 2016 WL 3976569, at *3 (approving settlement reached "between experienced attorneys who are familiar . . . with the legal and factual issues of this case in particular").

In sum, the relief offered by the Settlement, with the risks and expenses of continued litigation taken into consideration, weighs strongly in favor of preliminary approval. Fed. R. Civ. P. 23(e)(2)(C)(i); *Rinky Dink*, 2016 WL 4052588, at *5 (finding first three *Churchill* factors

supported preliminary approval when plaintiffs were confident in their case but continuing to litigate risked losing class certification and was "inherently expensive"); *Ikuseghan*, 2016 WL 3976569, at *4 ("Absent the proposed [s]ettlement, [c]lass [m]embers would likely not obtain relief, if any, for a period of years.").

2. The Method of Processing Claims and Distributing Relief to the Settlement Class Members Is Effective and Supports Preliminary Approval.

The next sub-factor evaluates whether the Settlement's proposed method of distributing relief to the class is effective. Fed. R. Civ. P. 23(e)(2)(C)(ii). An effective distribution method "get[s] as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible" while also ensuring that only "legitimate claims" are paid. 4 NEWBERG ON CLASS ACTIONS § 13:53 (5th ed.).

The proposed Settlement here satisfies this factor by relying on well-established, effective methods for processing Class Members' Claim Forms and distributing the proceeds of the Settlement. The Settlement proposes appointing JND Legal Administration, a well-respected class action settlement administrator, to oversee an effective claims process and distribution of relief. *See* Agreement §§ 1.32, 5; *see also Zynga*, Dkt. #26 (appointing JND Legal Administration as settlement administrator); *Scientific Games*, Dkt. #166 (same); *Linehan v. AllianceOne Receivables Mgmt., Inc.*, No. 15-cv-1012-JCC, 2017 WL 3724819, at *2 (W.D. Wash. June 1, 2017) (same). As described above, each Settlement Class Member will be able to file a claim to recover a cash payment from the Settlement Fund. *See* Agreement § 1.35. Each person in the Settlement Class will be sent a Claim Form via email and/or U.S. Mail and will have the option to file a claim through the Settlement Website or by mail. *Id.* § 4.2(a). The Claim Form allows Class Members to select to receive their Settlement Payment by check, Zelle, PayPal, or ACH Direct Deposit. *See id.*, Exhibit A. The Settlement Administrator will provide Class Members with resources (including a website, a mailing address, and a toll-free phone number) to contact the Settlement Administrator or Class Counsel directly. *See id.*, Exhibit D.

The Settlement Administrator will also calculate payments according to the Plan of Allocation and then disburse to Class Members their share of the Settlement Fund upon approval of the Court. *Id.* § 2.1.

In sum, JND Legal Administration is well-equipped to process Class Member claims and distribute relief in an effective manner, ensuring that the relief described in the Settlement Agreement will reach Class Members.

3. The Terms of the Requested Attorneys' Fees are Reasonable.

The third sub-factor considers the adequacy of relief, taking into account "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). If the Settlement is preliminarily approved, proposed Class Counsel plan to petition the Court for an award of reasonable attorneys' fees and costs after the Settlement Class has received notice of the Settlement. The Settlement's contemplated method of calculating attorneys' fees (*i.e.*, the percentage-of-the-fund method) and its limit on attorneys' fees (*i.e.*, no more than 30% of the non-reversionary Settlement Fund) are reasonable and predicated on the outstanding relief provided to the Settlement Class. *See* Agreement § 8.1. The percentage-of-the-fund method has been used to determine reasonable fee awards in similar social casino class settlements approved by this Court, and an award of up to 30% would be fair and reasonable for this case. *See, e.g.*, *Kater*, 2021 WL 511203, at *1 (noting that "[c]ontingency arrangements in high-stakes, high-value mass litigation typically fall in the range of 30-40%" and approving a 25% fee award); *Huuuge*, 2021 WL 512229, at *1 (same); *Playtika*, 2021 WL 512230, at *1 (same); *see also* 5 NEWBERG ON CLASS ACTIONS § 15:83 (5th ed.) (noting that, generally, "50% of the fund is the upper limit on a reasonable fee award from any common fund"). Accordingly, that the Settlement permits proposed Class Counsel to seek an award of up to 30% of the fund in attorneys' fees and costs is abundantly appropriate.[11] Finally, if approved, the Settlement provides that attorneys' fees will be payable from the Settlement Fund within fourteen (14)

[11] To be clear, Defendants may oppose the amount of attorneys' fees requested by proposed Class Counsel as there is no "clear-sailing" provision in the Agreement. *See* Agreement § 8.1.

business days after final judgment. Agreement § 8.2. These terms are reasonable and should be preliminarily approved.

4. The Parties' Stipulation Regarding the Timing of Establishing the Settlement Fund Is Fair and Reasonable.

The final sub-factor requires the Court to consider any agreements between the Parties made in connection with the proposed settlement. Fed. R. Civ. P. 23(e)(2)(C)(iv); Fed. R. Civ. P. 23(e)(3). The Parties' contemporaneously filed Stipulated Motion Re: Settlement Fund sets forth their agreement regarding the timing of the establishment of the Settlement Fund. *Cf.* Agreement Recital HH (reserving for the Court's resolution a dispute as to the timing of the establishment of the Settlement Fund). Specifically, and as set forth in more detail in the Stipulated Motion, the Parties agreed that each of (i) DoubleDown and (ii) the IGT Defendants will make an initial payment of fifty million dollars ($50,000,000) into the Settlement Fund within fourteen (14) days after the Court's entry of preliminary approval, such that the Settlement Fund will then have one hundred million dollars ($100,000,000) in it. The Defendants will make their remaining contributions to the Settlement Fund within fourteen (14) days of the Court's entry of final approval. As set forth in the Stipulated Motion, because the initial payment of $100 million will be put into an interest-bearing account, whatever interest is earned will be accounted for in the final payments made by Defendants following entry of final approval. This agreement on timing bolsters the adequacy of the Settlement since it secures earlier payment of a sizeable portion of the Settlement Fund and ensures that the Settlement Administrator will have sufficient funds to effect the robust Notice Plan described below.

The stipulation regarding timing, which has been contemporaneously submitted for the Court's approval, and the written Settlement Agreement constitute the entirety of the Parties' proposed settlement. Logan Decl. ¶ 30. Because the terms of both the Agreement and the additional stipulation are fair and reasonable, this sub-factor supports preliminary approval.

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Because the proposed Settlement Agreement is "fair, reasonable, and adequate" based on all the factors in Rule 23(e)(2) and is well within the range of possible approval, the Court should grant preliminary approval.

III. The Court Should Approve the Proposed Notice Plan

Upon certification, Due Process and Rule 23 require the Court to "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

Here, the Parties have agreed upon a multi-part Notice Plan to be carried out by JND Legal Administration, a well-respected class action settlement administrator. *See, e.g.*, *Zynga*, Dkt. #26 (granting preliminary approval and appointing JND Legal Administration as settlement administrator); *Scientific Games*, Dkt. #166 (same); *Linehan*, 2017 WL 3724819, at *2 (same). DoubleDown has agreed to provide the Settlement Administrator and proposed Class Counsel with all Settlement Class Members' contact information reasonably available to DoubleDown, including names, phone numbers, email addresses, and mailing addresses. *See* Agreement § 4.1(a). For each Player ID with a Lifetime Spending Amount greater than zero, DoubleDown will also provide the Player ID's Lifetime Spending Amount, if known and to the extent it is reasonably available. *Id.* Defendants have also agreed not to oppose proposed Class Counsel's efforts to obtain all contact information in the Platform Providers' possession—including names, usernames/Platform IDs, phone numbers, email addresses, and mailing addresses—for all persons in the Settlement Class with a Lifetime Spending Amount greater than zero, and the Lifetime Spending Amounts for each of those usernames. *Id.* § 4.1(b)-(c).

The Settlement Administrator will use all of this information to create the Class List. *Id.* § 4.1(e). Within thirty-five (35) days of the entry of preliminary approval, the Settlement Administrator will use the Class List to send notice via email substantially in the form attached to the Agreement as Exhibit B, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available on the Class List. *See id.* § 4.2(a). In the event transmission of the email notice results in any "bounce-backs," the Settlement

EDELSON PC
350 N LaSalle Street, 14th Floor, Chicago, IL 60654
Tel: 312 589 6370 • Fax: 312 589 6378

Administrator will, where reasonable, correct any issues that may have caused the "bounce-back" to occur and make a second attempt to re-send the email notice, and will, where possible, send notice substantially in the form attached to the Agreement as Exhibit C via First Class U.S. Mail. *See id.* The Settlement Administrator will also, where possible, send notice substantially in the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members with a Lifetime Spending Amount greater than $100.00. *See id.* Proposed Class Counsel anticipate that more than one million Player IDs associated with Class Members will receive direct notice. *See* Logan Decl. ¶ 31.

Within seven (7) days of the entry of preliminary approval, the Settlement Administrator will also establish a Settlement Website at www.doubledownsettlement.com, which will activate the ability to file Claim Forms online. *See* Agreement § 4.2(d). The notice provided on the Settlement Website will be substantially in the form of Exhibit D to the Agreement, and the website will advise the Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members with the ability to approximate their Settlement Payment. *Id.*

Finally, the Settlement Administrator will supplement the direct notice program with a digital publication notice program that is estimated to deliver more than fifty million (50,000,000) impressions. *Id.* § 4.2(e). The digital publication notice campaign will be targeted, to the extent reasonably possible, to the United States, will run for at least one month, and will contain active hyperlinks to the Settlement Website. *See id.*

In addition to reaching the Settlement Class, notice is adequate when it provides class members with the information necessary to make a decision in language that can be readily understood by the average class member. Herbert Newberg & Alba Conte, NEWBERG ON CLASS ACTIONS § 11:53 (4th ed. 2002). That is the case here, where the format and language of each form of notice have been carefully drafted in straightforward, easy-to-read language, and all information required under Rule 23 is present. *See* Exhibits B–D to the Agreement.

Because the proposed methods for providing notice to the Class comport with both Rule 23 and Due Process, the Court should approve the Notice Plan.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (i) certify the proposed Settlement Class; (ii) grant preliminary approval of the Settlement; (iii) appoint Adrienne Benson and Mary Simonson as Class Representatives; (iv) appoint Jay Edelson, Rafey S. Balabanian, Todd Logan, Alexander G. Tievsky, Brandt Silver-Korn, and Amy B. Hausmann as Class Counsel; (v) approve the proposed Notice Plan; and (vi) schedule the final approval hearing.

DATED this 11th day of November, 2022.

Respectfully Submitted,

ADRIENNE BENSON and **MARY SIMONSON**, individually and on behalf of all others similarly situated,

By: /s/ Todd Logan
Rafey S. Balabanian*
rbalabanian@edelson.com
Todd Logan*
tlogan@edelson.com
Brandt Silver-Korn*
bsilverkorn@edelson.com
EDELSON PC
150 California Street, 18th Floor
San Francisco, California 94111
Tel: 415.212.9300/Fax: 415.373.9435

By: /s/ Alexander G. Tievsky
Jay Edelson*
jedelson@edelson.com
Alexander G. Tievsky, WSBA #57125
atievsky@edelson.com
Amy B. Hausmann*
abhausmann@edelson.com
EDELSON PC
350 N LaSalle Street, 14th Floor
Chicago, Illinois 60654
Tel: 312.589.6370/ Fax: 312.589.6378

By: /s/ Cecily C. Jordan

Cecily C. Jordan, WSBA #50061
cjordan@tousley.com
TOUSLEY BRAIN STEPHENS PLLC
1200 Fifth Avenue, Suite 1700
Seattle, Washington 98101
Tel: 206.682.5600

Plaintiffs' Attorneys and proposed Class Counsel

*Admitted *pro hac vice*