

Second Amended Class Action Settlement Agreement

This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Scott Dodich and Jayme Gotts-Dodich; The Villas of Positano Condominium Association, Inc., on behalf of its members (“Villas”); Jill M. Barbarise; Jason Sarkis; Melissa Perez; Congshan “Sam” Hao; Bruce Garton; Sally Rogers; Deborah J. Pimentel; and Loren Morgan (“Plaintiffs”); and (ii) Defendant Niantic, Inc. (“Defendant” or “Niantic,” and together with Plaintiffs, the “Parties” or singularly “Party”). This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all the claims specified below, upon and subject to the terms and conditions of this Agreement, and subject to approval of the Court.

RECITALS

A. On July 27, 2016, Jeffrey Marder¹ filed a Class Action Complaint in the Northern District of California, Case No. 4:16-cv-04300-KAW, asserting claims for nuisance and unjust enrichment against Niantic, The Pokémon Company, and Nintendo Co. Ltd., on behalf of himself and all others similarly situated.

B. On August 10, 2016, Scott Dodich and Jayme Gotts-Dodich filed a Class Action Complaint in the Northern District of California, Case No. 3:16-cv-04556-DMR, asserting claims for nuisance and unjust enrichment against Niantic, The Pokémon Company, and Nintendo Co. Ltd., on behalf of themselves and all others similarly situated.

C. On September 2, 2016, Villas filed a Class Action Complaint in the Northern District of California, Case No. 3:16-cv-05091, asserting claims for nuisance and unjust enrichment against Niantic, The Pokémon Company, and Nintendo Co. Ltd., on behalf of themselves and all others similarly situated.

D. On September 15, 2016, the Court granted a Motion for Administrative Relief to Consider Whether Cases Should be Related, and related the three aforementioned cases under Case No. 3:16-cv-04300-JD (the “Action”).

E. On November 25, 2016, Jeffrey Marder, Scott Dodich and Jayme Gotts-Dodich, and

¹ Plaintiffs’ dropped Jeffrey Marder as a Named Plaintiff on or around October 2018.

1 Villas filed a Consolidated Amended Class Action Complaint in the Northern District of California
2 against Niantic, The Pokémon Company, and Nintendo Co. Ltd., under Case No. 3:16-cv-04300-JD,
3 asserting claims for nuisance, trespass and unjust enrichment.

4 **F.** On January 27, 2017, Niantic filed a Motion to Dismiss the Consolidated Amended
5 Class Action Complaint. Plaintiffs filed an Opposition on March 2, 2017, and Niantic filed a Reply
6 on March 23, 2017.

7 **G.** On April 6, 2017, Plaintiffs voluntarily dismissed claims against Nintendo Co. Ltd.

8 **H.** On July 19, 2017, Plaintiffs voluntarily dismissed claims against The Pokémon
9 Company.

10 **I.** On July 27, 2018, the Court issued an Order dismissing the Consolidated Amended
11 Class Action Complaint without prejudice for lack of subject matter jurisdiction under the Class
12 Action Fairness Act. Plaintiffs were ordered to amend the pleadings by August 28, 2017. The Court
13 stayed all aspects of the case, including discovery, pending the Court's determination that it had
14 subject matter jurisdiction to hear the case.

15 **J.** On August 28, 2017, Plaintiffs filed a Second Consolidated Amended Complaint
16 ("SAC"), under Case No. 3:16-cv-04300-JD against Niantic. The SAC added Plaintiffs Jill M.
17 Barbarise; Jason Sarkis; Melissa Perez; Congshan "Sam" Hao; Bruce Garton; Sally Rogers; Deborah
18 J. Pimentel; and Loren Morgan. The SAC also redefined the putative class to the following:

19 All persons in the United States who own or lease property within 100 meters of any location
20 that Niantic has designated, without prior consent of such property owner or lessee, as a
Pokéstop or Pokémon Gym in the *Pokémon Go* mobile application.

21 **K.** The SAC brought claims for nuisance and trespass.

22 **L.** On November 17, 2017, Niantic filed a Motion to Dismiss the SAC. Plaintiffs filed an
23 Opposition on January 16, 2018, and Niantic filed a Reply on February 15, 2018.

24 **M.** On March 29, 2018, the Court denied Niantic's Motion to Dismiss, and lifted the stay
25 previously imposed on discovery.

26 **N.** Following the Court's decision on the Motion to Dismiss the SAC, the Parties engaged
27 in written discovery, including Niantic serving interrogatories and requests for admission on each
28 named Plaintiff. Each party also served requests for production and Niantic produced more than

1 260,000 documents in response to Plaintiffs' requests. Plaintiffs took the deposition of Niantic's VP,
2 Product Management for Pokémon GO.

3 **O.** On November 1, 2018, the parties conducted a formal, in-person mediation with Greg
4 Lindstrom of Phillips ADR in San Francisco, California. Each party submitted an opening mediation
5 statement and a reply mediation statement to Mr. Lindstrom and the other parties. Based on a
6 framework developed at the mediation, the Parties engaged in further negotiations in the subsequent
7 weeks. As part of the settlement communications, Niantic provided additional discovery in response
8 to specific questions from Plaintiffs. On November 28, 2018, the Parties reached a mutually agreeable
9 resolution, reflected herein.

10 **P.** The Parties have investigated the facts and analyzed the relevant legal issues in regard
11 to the claims and defenses asserted in the Action.

12 **Q.** At all times, Niantic has denied and continues to deny that it committed, or threatened,
13 or attempted to commit any wrongful act or violation of law or duty alleged in the Action. Niantic
14 also denies: (1) all charges of wrongdoing or liability against Niantic or its agents arising out of any
15 conduct, statements, acts or omissions alleged in the Action; and (2) that Plaintiffs or the Class are
16 entitled to any form of relief based on the conduct alleged in the Action.

17 **R.** In addition, Niantic maintains that it has meritorious defenses to the claims alleged in
18 the Action and is prepared to vigorously defend all aspects of the Action. Nonetheless, taking into
19 account the uncertainty and risks inherent in any litigation, Niantic has concluded that further defense
20 of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial
21 that the Action be fully and finally settled and terminated in the manner and upon the terms and
22 conditions set forth in this Agreement.

23 **S.** Plaintiffs believe that the claims asserted in the Action against Niantic have merit and
24 that they would ultimately be successful in prevailing on the merits at summary judgment or trial.
25 Nonetheless Plaintiffs and Plaintiffs' Counsel recognize and acknowledge that Niantic has raised
26 factual and legal defenses in the Action that present a risk that Plaintiffs may not prevail. Plaintiffs
27 and Plaintiffs' Counsel also have taken into account the uncertain outcome and risks of any litigation,
28 especially in complex actions, as well as the difficulties and delays inherent in such litigation.

1 Therefore, Plaintiffs and Plaintiffs' Counsel believe that it is desirable that the Action be fully and
 2 finally compromised, settled, and resolved with prejudice, and barred pursuant to the terms set forth
 3 herein. Based on their evaluation, Plaintiffs' Counsel have concluded that the terms and conditions of
 4 this Agreement are fair, reasonable, and adequate to the Class, and that it is in the best interests of the
 5 Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

6 **T.** Given all the above, and considering all other risks and uncertainties of continued
 7 litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and
 8 conditions of this Settlement Agreement are fair, reasonable, adequate, and in their respective best
 9 interests.

10 **AGREEMENT**

11 **1. DEFINITIONS.**

12 While certain terms have been defined above, they are included in this Definitions section
 13 again for convenience. To the extent that there is a difference between the terms as defined, the
 14 following Definitions shall prevail.

15 **1.1 "Action"** means the action entitled *In re Pokémon Go Nuisance Litigation*, Case No.
 16 3:16-cv-04300-JD pending in the United States District Court for the Northern District of California.

17 **1.2 "Approval Order"** means the Order Approving Class Action Settlement and Entry of
 18 Final Judgment attached hereto as Exhibit B. The Approval Order shall be in form and substance the
 19 same as attached hereto as Exhibit B.

20 **1.3 "Class"** means "All persons in the United States who own or lease property within 100
 21 meters of any location that Niantic has designated, without prior consent of such property owner or
 22 lessee, as a Pokéstop or Pokémon Gym in the Pokémon Go mobile application."

23 **1.4 "Court"** means the United States District Court, Northern District of California, the
 24 Honorable James Donato presiding, or any judge of this court who shall succeed him as the judge
 25 assigned to this Action.

26 **1.5 "Commercially Reasonable Efforts" or "CRE"** shall be construed as it has been
 27 construed in relevant case law and other relevant authorities, such as Black's Law Dictionary.

28 **1.6 "Defendant" or "Niantic"** means Niantic, Inc.

1 **1.7 “Final Settlement Date”** means one business day after the Final Judgment becomes
2 “Final.” For purposes of this Section, “Final” means that the following has occurred: either (i) the
3 time expires for filing or noticing any appeal of the Approval Order and Final Judgment and no appeal
4 has been filed; or (ii) if there is an appeal or appeals, completion, in a manner that finally affirms and
5 leaves in place the Approval Order and Final Judgment without any material modification, of all
6 proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all
7 deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or *certiorari*,
8 all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals
9 following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any
10 proceeding on *certiorari*.

11 **1.8 “Final Judgment”** means the final judgment to be entered by the Court approving
12 class settlement in accordance with this Agreement.

13 **1.9 “Niantic’s Counsel”** means Cooley LLP.

14 **1.10 “Parties”** (singular “Party”) means Plaintiffs and Defendant.

15 **1.11 “Plaintiffs”** means Scott Dodich and Jayme Gotts-Dodich; The Villas of Positano
16 Condominium Association, Inc., on behalf of its members; Jill M. Barbarise; Jason Sarkis; Melissa
17 Perez; Congshan “Sam” Hao; Bruce Garton; Sally Rogers; Deborah J. Pimentel; and Loren Morgan.

18 **1.12 “Plaintiffs’ Counsel”** means Pomerantz LLP.

19 **1.13 “Person(s)”** mean, without limitation, any individual, corporation, partnership,
20 limited partnership, limited liability partnership, limited liability company, association, joint stock
21 company, estate, legal representative, trust, unincorporated association, and any business or legal
22 entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

23 **1.14 “POI”** means a PokéStop and/or Gym in the mobile game Pokémon GO.

24 **1.15 “Preliminary Approval Order”** means the Order Granting Preliminary Approval of
25 Settlement and Directing Notice to Settlement Class attached hereto as Exhibit A.

26 **1.16 “Released Parties”** means Niantic and any and all of its past or present predecessors,
27 successors, assigns, parents, subsidiaries, associates, affiliated and related entities, employers,
28 employees, agents, representatives, consultants, independent contractors, directors, managing

1 directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors,
2 investment bankers, insurers, underwriters, shareholders, lenders, auditors, investment advisors, and
3 any and all present and former companies, firms, trusts, corporations, officers, directors, other
4 individuals or entities in which Niantic has a controlling interest or which is affiliated with any of
5 them, or any other representatives of any of these Persons and entities.

6 **2. SETTLEMENT RELIEF**

7 **2.1 Injunctive Relief for the Benefit of Plaintiffs and the Class:** In consideration for the
8 settlement of this Action and the dismissal contemplated herein, Niantic agrees to the following
9 injunctive relief. With respect to Pokémon GO in the United States:

10 (a) For complaints properly received through Niantic's website related to nuisance,
11 trespass, or a request to remove a POI, Niantic will use CRE to resolve the
12 complaints and communicate a resolution within no more than 15 (fifteen) days
13 of wait time for the requestor, for 95% of cases each year.

14 (b) In cases where the complaining party in Section 2.1(a) is the owner of a single-
15 family residential property and the party reviewing the complaint determines
16 that the complained of POI is on or within 40 meters of that property, Niantic
17 will instruct that reviewer to remove the POI from the property. In cases where
18 the resolution specified in 2.1(a) or 2.1(b) requires removal of a POI, Niantic
19 will use CRE to perform that removal within five business days of the
20 communication from Niantic agreeing to such action.

21 (c) Niantic will use CRE to maintain a database of complaints related to nuisance
22 or trespass and requests to remove a POI, for a minimum of 1 (one) year from
23 the date of the complaint. Niantic will also continue to use CRE to avoid the
24 placement of new POI on single-family residential property.

25 (d) Niantic will maintain a form on its website whereby an owner of single-family
26 residential property can request that any POI on or within 40 meters of their
27 property be removed. In cases where Niantic has previously removed a POI
28 from the property of a single-family residential home, and in cases where

1 Niantic does so in the future during the settlement period, Niantic agrees to use
2 CRE to avoid re-placing that POI on that same single-family residential
3 property.

4 (e) For Raids which Niantic's systems indicate will involve more than 10
5 participants, Niantic will use CRE to cause a warning message to appear on
6 participants' screens before the raid begins reminding players to be courteous
7 to others and respectful of their real-world surroundings. Precise final language
8 will be determined by Niantic, in its sole discretion.

9 (f) Niantic will add specific instructions to the current review form that Niantic's
10 user-reviewers use to evaluate new POI submissions that direct user-reviewers
11 to increase scrutiny regarding any proposed POI that may be located on or
12 within 40 meters of a private single-family residential property, and POI that
13 appear to be located in neighborhood parks. At a minimum, such instructions
14 will include directions for the user-reviewer to examine the proposed POI using
15 a variety of sources, including but not limited to mapping services maintained
16 by private companies such as Google Maps. After such review, Niantic will
17 use CRE to avoid placing the POI on any property that appears to the reviewer
18 to be a single-family residential property.

19 (g) Niantic agrees that it shall manually review a statistically significant percentage
20 of new POI submissions via a Niantic employee or contractor for the principal
21 purpose of trying to avoid POI that are more likely to lead to issues with
22 nuisance or trespass.

23 (h) Niantic agrees to maintain a mechanism for parks whereby it provides parks the
24 opportunity to request that a specific park's Hours of Operation be applied to
25 POI that are located within that park. Niantic also agrees to comply with
26 requests related to existing POI located in parks from governmental parks
27 authorities to apply Hours of Operation to POI located in parks within their
28 jurisdiction. In addition to any notice of the settlement that Plaintiffs determine

1 is required per Section 2.4 below, at least once in each of the three years of the
2 settlement period, Niantic will make a public post on its website that includes a
3 notification that Niantic will limit the hours of operation of POI within public
4 parks upon request from the proper park administrator.

5 (i) Niantic will agree to confirm compliance with its obligations under Section
6 2.1(a) above by way of an audit, at Niantic's expense, conducted by an
7 independent firm that Niantic will select, at the time of Plaintiffs' choosing
8 during the 3 (three) year period, with at least 30 days' notice to Niantic before
9 the commencement of the audit. Should the audit conclude that Niantic was
10 materially non-compliant with the settlement terms in Section 2.1(a) during the
11 audited period, a second audit will be conducted, at Niantic's expense, during
12 the settlement period, with at least 30 days' notice to Niantic before
13 commencement of the second audit.

14 (j) Niantic will add a new warning to the rotating warnings that appear at the
15 launch of the game (which currently include "do not trespass while playing
16 Pokémon GO" and "do not play Pokémon GO while driving") that states: "Be
17 courteous to members of real-world communities as you play Pokémon GO" or
18 something similar, with final specific language subject to Niantic's sole
19 discretion.

20 **2.2** The injunctive relief specified in Section 2.1(a) through (j) shall be in effect for at least
21 three (3) years from the Final Settlement Date.

22 **2.3** For a period of two (2) years following the entry of the Approval Order, Plaintiffs'
23 Counsel will be available to receive complaints from Class members who have already gone through
24 Niantic's customer service process regarding the injunctive relief specified in Section 2.1.
25 Specifically, the Long-Form Notice will provide that Class members who have already gone through
26 Niantic's customer service process may contact Plaintiffs' Counsel with complaints related to the
27 location of Pokéstops or Gyms in Pokémon GO, including at a dedicated email address that Plaintiffs'
28 Counsel will create, such as pokemongosettlement@pomlaw.com. Within fifteen (15) business days

1 of receiving each complaint, Plaintiffs' Counsel will undertake a review of each complaint, including
2 soliciting additional information from the Class member where appropriate. In cases where Plaintiffs'
3 Counsel believes Niantic should take further action to address the Class member's concerns, Plaintiffs'
4 Counsel will assemble the relevant information bearing on the complaint, including information
5 sufficient to allow Niantic to locate the prior investigation of the complaint in Niantic's systems, and
6 Plaintiffs' Counsel's recommendation for remediation. Plaintiffs' Counsel shall transmit such
7 information to Niantic, for all claims they have chosen to raise for further review, on the first Monday
8 of each month (or the next business day thereafter, in the event of a holiday). Within fifteen (15)
9 business days of receipt, Niantic will provide a written response to Plaintiffs' Counsel, including
10 whether Niantic will offer further remediation and, if not, the basis for Niantic's position regarding
11 the particular complaint. Niantic and Plaintiffs' Counsel will make a good faith and reasonable attempt
12 to cooperatively resolve Class member claims that Niantic has not adhered to the terms of the
13 Settlement. Twice during this two-year period, Plaintiffs' Counsel shall file a status report with the
14 Court, providing the Court with the number of instances where Plaintiffs' Counsel contacted for
15 further review Niantic and a high-level summary of the nature of the complaints and resolutions.

16 **2.4 Fee Payment to Plaintiffs' Counsel.** Plaintiffs and Plaintiffs' counsel will petition
17 the Court to approve an amount of attorneys' fees and expenses, which amount shall be wholly
18 inclusive of all fees, expenses, cost disbursements, and expert and consulting fees in the Action.
19 Niantic (or its successor(s)-in-interest) agrees to pay the attorneys' fees, costs and expenses that the
20 Court awards (the "Fee and Expense Award"). Niantic will make best efforts to pay the Fee and
21 Expense Award to Plaintiffs' counsel within twenty-one (21) business days after the later of 1) the
22 Court's order awarding such Fee and Expense Award and (2) the Approval Order, notwithstanding
23 any appeals that may be taken by any Class Member, subject to the obligation of Plaintiffs' Counsel
24 to make the requisite refund or repayment, with interest at a fixed rate per annum equal to the lesser
25 of (i) LIBOR plus 2% or (ii) 6%, to Niantic if the Fee and Expense Award is lowered or the Settlement
26 is disapproved by a final order not subject to further review. In no event shall Niantic be required to
27 make a payment of attorneys' fees to class counsel in the event the settlement is not finally approved.
28 The Settlement is not conditioned upon any award of attorneys' fees and costs, and any objection to

1 or appeal from such an award shall not affect the finality of the Settlement or the judgment of
2 dismissal.

3 (a) If the Final Settlement Date does not occur or if this Stipulation is terminated,
4 then Plaintiffs' Counsel shall within ten (10) business days from the event
5 which precludes the Final Settlement Date from occurring or the termination of
6 this Stipulation, refund to Niantic any Fee and Expense Award or any portion
7 thereof that has already been paid to Plaintiffs' Counsel, plus interest at a fixed
8 rate per annum equal to the lesser of (i) LIBOR plus 2% or (ii) 6%.

9 (b) If the Fee and Expense Award is reduced or reversed on appeal, Plaintiffs'
10 Counsel shall within ten (10) business days from the date of a final order by the
11 Court of Appeals or the Supreme Court directing such reduction or reversal,
12 make such refunds as are required by such final order, plus interest at a fixed
13 rate per annum equal to the lesser of (i) LIBOR plus 2% or (ii) 6%.

14 **2.5 Notice of Settlement. Public notice of the Settlement and notice to the Class shall**
15 **be effectuated solely in the following manner and no other:** (1) Niantic shall cause the Long-Form
16 Notice, substantially in the form attached hereto as Exhibit A-1, to be posted on the Pokémon GO
17 support website within ten (10) business days following the Court granting preliminary approval of
18 the Settlement and will remain until the Objection Deadline set forth in the Court's order granting
19 preliminary approval of the Settlement has passed. (2) The Short-Form Notice, substantially in the
20 form attached hereto as Exhibit A-2, shall be published in several nationally prominent news
21 publications and in two prominent publications targeted towards public parks and/or public park
22 systems within thirty (30) business days following the Court granting preliminary approval of the
23 Settlement. (3) The Long-Form Notice and Short-Form Notice shall be posted on a case-specific
24 website established by Class Counsel (the "Class Settlement Website") within ten (10) business days
25 following the Court granting preliminary approval of the Settlement, along with the Stipulation and
26 all relevant Court orders in this Action. Niantic shall bear all reasonable and necessary costs of the
27 Class Notice program.

28 **2.6 Agreement to Mediate Named Plaintiffs' Individual, Unreleased Claims.**

1 (a) The Parties agree to conduct a good faith, confidential mediation of the Named
2 Plaintiffs' individual, unreleased claims.

3 (b) This term (2.5(a)) is expressly severable from the remainder of the settlement
4 agreement, in the event that the Court will not approve the inclusion of this term
5 (2.5(a)) in the class settlement.

6 **3. RELEASES**

7 **3.1 Plaintiffs' Limited Release of Injunctive Claims Only.** Upon the Final Settlement
8 Date, Plaintiffs and their present, former, and future heirs, executors, administrators, representatives,
9 agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully, finally
10 and forever release, relinquish, and discharge the Released Parties from all claims for equitable,
11 injunctive or declaratory relief based on the facts that were or could have been alleged in the SAC,
12 including but not limited to injunctive claims arising out of or relating to any of the facts, transactions,
13 events, occurrences, acts, disclosures, statements, misrepresentations, omissions, failures to act, or
14 other conduct that was or could have been alleged, including, but not limited to, claims regarding
15 Niantic's conduct, practices, disclosures, terms, and policies relating to the placement of POI,
16 spawning of Pokémon, and/or design of the Pokémon GO game through the date on which the Court
17 enters the Approval Order.

18 The foregoing release includes all claims for equitable, injunctive or declaratory relief that
19 Plaintiffs do not know or suspect to exist, which, if known by them might affect their agreement to
20 release the Released Parties for the claims specified in this Section 3 or might affect their decision to
21 agree to the Settlement Agreement. Upon the Final Settlement Date, Plaintiffs shall be deemed to
22 have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the
23 provisions, rights, and benefits of Section 1542 of the California Civil Code, and any law or legal
24 principle of similar effect in any jurisdiction, whether federal or state. Section 1542 of the California
25 Civil Code provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
WHICH IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY

1 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
2 PARTY.

3 Plaintiffs individually and on behalf of each of their present, former, and future heirs,
4 executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest,
5 successors, assigns, and legatees, fully understand that the facts upon which this Agreement is
6 executed may hereafter be other than or different from the facts now believed by Plaintiffs, and/or
7 Plaintiffs' Counsel to be true and expressly accept and assume the risk of such possible difference in
8 facts and agree that this Agreement shall remain effective notwithstanding any such difference in facts.
9 Plaintiffs acknowledge and agree that this waiver is an essential and material term of this release and
10 the settlement that underlies it and that without such waiver the settlement would not have been
11 accepted.

12 The release set forth in this section does not include any claim for monetary relief.

13 **3.2** Plaintiffs represent and warrant that they have not assigned, granted, or transferred any
14 claim or right or interest therein as against the Released Parties to any other Person and that they are
15 fully entitled to release the same.

16 **3.3 Class Members' Limited Release of Injunctive Claims Only.** Upon the Final
17 Settlement Date, the members of the Class and their present, former, and future heirs, executors,
18 administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors,
19 assigns, and legatees, fully, finally and forever release, relinquish, and discharge the Released Parties
20 from all claims for equitable, injunctive or declaratory relief based on the facts that were or could have
21 been alleged in the SAC, including but not limited to injunctive claims arising out of or relating to any
22 of the facts, transactions, events, occurrences, acts, disclosures, statements, misrepresentations,
23 omissions, failures to act, or other conduct that was or could have been alleged, including, but not
24 limited to, claims regarding Niantic's conduct, practices, disclosures, terms, and policies relating to
25 the placement of POI spawning of Pokémon, and design of the Pokémon GO game through the date
26 on which the Court enters the Approval Order.

27 The foregoing release includes all claims for equitable, injunctive or declaratory relief that
28 Class Members do not know or suspect to exist, which, if known by them might affect their decision

1 not to object to the release of the Released Parties for the claims specified in this Section 3 or might
 2 affect their decision not to object to the Settlement Agreement. Upon the Final Settlement Date, Class
 3 Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest
 4 extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil
 5 Code, and any law or legal principle of similar effect in any jurisdiction, whether federal or state.
 6 Section 1542 of the California Civil Code provides as follows:

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

13 Class Members individually and on behalf of each of their present, former, and future heirs,
 14 executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest,
 15 successors, assigns, and legatees, fully understand that the facts upon which this Agreement is
 16 executed may hereafter be other than or different from the facts now believed by Class Members,
 17 and/or Plaintiffs' Counsel or other counsel for Class Members to be true and expressly accept and
 18 assume the risk of such possible difference in facts and agree that this Agreement shall remain effective
 19 notwithstanding any such difference in facts. Class Members acknowledge and agree that this waiver
 20 is an essential and material term of this release and the settlement that underlies it and that without
 21 such waiver the settlement would not have been accepted.

22 The release set forth in this section does not include any claim for monetary relief.

23 **3.4 Released Claims.** The releases set forth in Sections 3.1 and 3.3 shall, collectively,
 24 constitute the "Released Claims."

25 **4. NIANTIC'S DENIAL OF WRONGDOING**

26 **4.1** Niantic denies that it committed, threatened, or attempted to commit any wrongful act
 27 or violation of law or duty alleged in the Action. Niantic also denies: (1) all charges of wrongdoing
 28 or liability against Niantic or its agents arising out of any conduct, statements, acts or omissions alleged
 in the Action and (2) that Plaintiffs or the Class is entitled to any form of relief based on the conduct
 alleged in the Action. In addition, Niantic maintains that it has meritorious defenses to the claims

1 alleged in the Action and is prepared to vigorously defend all aspects of the Action.

2 **4.2** This Agreement reflects the Parties' compromise and settlement of the disputed claims
3 and this Action. This Agreement's provisions, and all related drafts, communications and discussions,
4 cannot be construed as or deemed to be evidence of an admission or concession by Niantic of any
5 wrongdoing, by any Person or entity and cannot be offered or received into evidence or requested in
6 discovery in this Action or any other action or proceeding as evidence of an admission, concession, or
7 presumption regarding such matters.

8 **5. APPROVAL ORDER AND FINAL JUDGMENT**

9 **5.1** Promptly after the execution of this Settlement Agreement, Plaintiffs' Counsel shall
10 submit this Agreement together with Exhibit A to the Court and shall move the Court for entry of the
11 Approval Order approving the settlement set forth in this Agreement (attached hereto as Exhibit A).

12 **5.2** Plaintiffs' Counsel on behalf of the Plaintiffs shall request from the Court a Final
13 Judgment. The Final Judgment will (among other things):

- 14 (a) find that the Court has personal jurisdiction over the Class and that the Court
15 has subject matter jurisdiction to approve the Agreement;
- 16 (b) certify the Class under Federal Rule of Civil Procedure 23(b)(2) for settlement
17 purposes only;
- 18 (c) appoint Plaintiffs as class representatives for settlement purposes only;
- 19 (d) appoint Plaintiffs' Counsel as Class Counsel for settlement purposes only;
- 20 (e) approve the Agreement and the proposed settlement as fair, reasonable, and
21 adequate as to, and in the best interests of, the Class; direct the Parties and their
22 counsel to implement and consummate the Agreement according to its terms
23 and provisions; and declare the Agreement to be binding on, and have *res*
24 *judicata* and preclusive effect in, all pending and future lawsuits or other
25 proceedings maintained by or on behalf of Plaintiffs and the Class;
- 26 (f) find that Plaintiffs' Counsel adequately represented the Class for purposes of
27 entering into and implementing the Agreement;
- 28 (g) dismiss the Action (including all individual claims and class action claims

1 presented thereby) on the merits and with prejudice, without fees or costs to any
2 Party except as provided in this Settlement Agreement;

3 (h) incorporate the releases set forth in Section 3, make the releases effective as of
4 the Final Settlement Date, and forever discharge the Released Parties as set
5 forth in this Agreement;

6 (i) enjoin Niantic in the manner provided in Sections 2.1 and 2.2;

7 (j) authorize the Parties, without further approval from the Court, to agree to and
8 adopt such amendments, modifications and expansions of the Settlement
9 Agreement and its implementing documents as shall be consistent in all material
10 respects with the Final Judgment; and

11 (k) without affecting the finality of the Final Judgment for purposes of appeal,
12 retain jurisdiction as to all matters relating to administration, consummation,
13 enforcement, and interpretation of the Settlement Agreement and the Final
14 Judgment, and for any other necessary purpose.

15 **6. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION,**
16 **OR TERMINATION**

17 **6.1** This Settlement Agreement is being entered into for settlement purposes only. Unless
18 Plaintiffs' Counsel and Niantic's Counsel agree otherwise in writing, if the Court conditions its
19 approval of either the Approval Order or the Final Judgment on any modifications of this Settlement
20 Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or
21 enter the Final Judgment, or if the Final Settlement Date does not occur for any reason, then:

22 (a) This Settlement Agreement will be deemed null and void *ab initio*;

23 (b) The Approval Order, the Final Judgment, any order on the Fee Petition, or any
24 other order entered by the Court pursuant to the terms of this Settlement
25 Agreement (except any orders sealing confidential information from the public
26 record), together with all of their provisions shall be treated as vacated, *nunc*
27 *pro tunc*;

28 (c) The Action will revert to the *status quo ante* that existed before the Settlement

1 Agreement's execution date and the Parties shall be restored to their respective
2 positions in the Action as of the date before the Settlement Agreement's
3 execution date;

4 (d) All motions pending in the Action prior to the Final Settlement Date will be
5 deemed reinstated;

6 (e) The Parties will endeavor to agree to a new case schedule to present for Court
7 approval;

8 (f) No term or draft of this Settlement Agreement, nor any part of the Parties'
9 settlement discussions, negotiations, or documentation, or briefing (including
10 but not limited to any declaration or brief filed in support of the motion for
11 approval or any declaration or brief filed in support of or in opposition to the
12 petition for fee award, and including any proceedings on appeal), will have any
13 effect or be admissible into evidence for any purpose in the Action or any other
14 proceeding; and

15 (g) Niantic shall retain all its rights, for example, to object to the certification of the
16 Action as a class action, to move for summary judgment, and to assert defenses
17 at trial, and nothing in this Settlement Agreement or other papers or proceedings
18 related to the settlement shall be used as evidence or argument by any Party
19 concerning whether the Action may properly be maintained as a class action, or
20 for any other purpose.

21 **7. MISCELLANEOUS PROVISIONS**

22 **7.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement
23 Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the
24 extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement
25 and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this
26 Agreement. The Parties, Plaintiffs' Counsel, and Niantic's Counsel agree to cooperate with one
27 another in seeking Court approval of the Approval Order, the Settlement Agreement, and the Final
28 Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably

1 required to obtain final approval of the Agreement.

2 **7.2** All time periods and dates described in this Settlement Agreement are subject to the
3 Court's approval. These time periods and dates may be changed by the Court and the Parties reserve
4 the right, subject to the Court's approval, to make any reasonable extensions of time that might be
5 necessary to carry out any provisions of this Agreement.

6 **7.3** The Parties intend this Settlement Agreement to be a final and complete resolution of
7 all disputes between them with respect to the Released Claims by Plaintiffs and the Class specified in
8 Section 3, on the one hand, against the Released Parties, and each or any of them, on the other hand.

9 **7.4** The Parties executed this Settlement Agreement voluntarily and without duress or
10 undue influence.

11 **7.5** The Parties have relied upon the advice and representation of counsel, selected by them,
12 concerning their respective legal liability for the claims hereby released. The Parties have read and
13 understand fully this Agreement and have been fully advised as to the legal effect thereof by counsel
14 of their own selection and intend to be legally bound by the same.

15 **7.6** Whether or not the Final Settlement Date occurs or the Settlement Agreement is
16 terminated, neither this Agreement nor the settlement contained in this Agreement, nor any act
17 performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

18 (a) is, may be deemed, or shall be used, offered or received against the Released
19 Parties, or each or any of them, as an admission, concession, or evidence of, the
20 validity of any Released Claims, the truth of any fact alleged by the Plaintiffs,
21 the deficiency of any defense that has been or could have been asserted in the
22 Action, the violation of any law or statute, the reasonableness of the injunctive
23 relief or the fee award, or of any alleged wrongdoing, liability, negligence or
24 fault of the Released Parties, or any of them;

25 (b) is, may be deemed, or shall be used, offered, or received against the Released
26 Parties, or each or any of them, as an admission or concession with respect to
27 any liability, negligence, fault or wrongdoing as against any Released Parties,
28 in any civil, criminal, or administrative proceeding in any court, administrative

1 agency, or other tribunal. However, the settlement, this Agreement, and any
2 acts performed and/or documents executed in furtherance of or pursuant to this
3 Agreement and/or Settlement may be used in any proceedings as may be
4 necessary to effectuate the provisions of this Agreement. However, if this
5 Settlement Agreement is approved by the Court and the Final Settlement Date
6 occurs, any of the Parties or any of the Released Parties may file this Agreement
7 and/or the Final Judgment in any action that may be brought against such Party
8 or Parties in order to support a defense or counterclaim based on principles of
9 *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or
10 reduction, or any other theory of claim preclusion or issue preclusion or similar
11 defense or counterclaim;

12 (c) is, may be deemed, or shall be construed against Plaintiffs, the Class, or each
13 or any of them, or against the Released Parties, or each or any of them, as an
14 admission or concession that the consideration to be given hereunder is equal
15 to, less than, or greater than that amount that could have or would have been
16 recovered after trial; and

17 (d) is, may be deemed, or shall be construed as or received in evidence as an
18 admission or concession against Plaintiffs, the Class, or each and any of them,
19 or against the Released Parties, or each or any of them, that any of Plaintiffs'
20 claims or allegations are with or without merit.

21 **7.7** The headings used in this Agreement are used for the purpose of convenience only and
22 are not meant to have legal effect.

23 **7.8** The Recitals are incorporated by this reference and are part of the Settlement
24 Agreement.

25 **7.9** The waiver by one Party of any breach of this Agreement by any other Party shall not
26 be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

27 **7.10** This Agreement sets forth the entire agreement and understanding of the Parties with
28 respect to the matter set forth herein, and supersedes all prior negotiations, agreements, arrangements,

1 and undertakings with respect to the matters set forth herein. No representations, warranties, or
2 inducements have been made to any Party concerning this Settlement Agreement other than the
3 representations, warranties, and covenants contained and memorialized in such documents. This
4 Agreement may be amended or modified only by a written instrument signed by or on behalf of all
5 Parties or their respective successors-in-interest.

6 **7.11** Except as otherwise provided in this Agreement, each Party shall bear its own fees and
7 costs.

8 **7.12** Nothing in this Agreement, the negotiations, and the mediation relating thereto is
9 intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity,
10 including without limitation the attorney-client privilege or work product immunity, by any Party.

11 **7.13** Each counsel or other Person executing this Settlement Agreement or any related
12 settlement documents on behalf of any party to this Agreement warrants and represents that such
13 Person has the full authority to do so and has the authority to take appropriate action required or
14 permitted to be taken pursuant to the Agreement to effectuate its terms.

15 **7.14** This Agreement may be executed in one or more counterparts. Signature by digital,
16 facsimile, or in PDF format will constitute sufficient execution of the Agreement. All executed
17 counterparts and each of them shall be deemed to be one and the same instrument. A complete set of
18 original executed counterparts shall be filed with the Court if the Court so requests.

19 **7.15** This Settlement Agreement shall be binding on, and inure to the benefit of, the
20 successors and assigns of the Parties to this Agreement and the Released Parties.

21 **7.16** The Court shall retain jurisdiction with respect to implementation and enforcement of
22 the terms of this Agreement, and all Parties to this Agreement submit to the jurisdiction of the Court
23 for purposes of implementing and enforcing the settlement embodied in this Agreement.

24 **7.17** This Settlement Agreement and any claim, cause of action, or dispute among the Parties
25 arising out of or relating to this Settlement Agreement shall be governed by, interpreted under, and
26 enforced in accordance with the laws of the State of California without regard to any conflict-of-law
27 principles that may otherwise provide for the application of the law of another jurisdiction.

28 **7.18** This Agreement is deemed to have been prepared by counsel for all Parties, as a result


1 of arm’s-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties
2 have contributed substantially and materially to the preparation of this Agreement, it shall not be
3 construed more strictly against one party than another.

4 **7.19** Where this Settlement Agreement requires notice to the Parties, such notice shall be
5 sent electronically to Plaintiffs’ Counsel and Niantic's Counsel listed below.

6 **[SIGNATURES ON FOLLOWING PAGE]**
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1 Dated: April 24, 2019


COOLEY LLP
MICHAEL G. RHODES (116127)
JEFFREY M. GUTKIN (216083)
BENJAMIN KLEINE (257225)
KRISTINE A. FORDERER (278745)

2
3
4
5 /s/ 

6 Jeffrey Gutkin (216083)
7 Attorneys for Defendant
NIANTIC, INC.

8 Dated: April 25, 2019

POMERANTZ LLP

9
10 /s/ 

11 Jeremy A. Lieberman (*pro hac vice*)
12 Murielle J. Steven Walsh (*pro hac vice*)
13 Aatif Iqbal (*pro hac vice*)
14 Attorneys for Plaintiffs

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