

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

TONDA FERRANDO and DEX MARZANO,  
individually and on behalf of all others similarly  
situated,

*Plaintiffs,*

v.

ZYNGA INC., a Delaware corporation,

*Defendant.*

Case No. 22-cv-214-RSL

**PLAINTIFFS' MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AGREEMENT**

Noting Date: December 1, 2022

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1 **INTRODUCTION**

2 Plaintiffs filed this lawsuit in February 2022, alleging that Zynga’s social casino apps  
 3 constitute illegal gambling and unfair business practices under Washington law. Drawing on  
 4 Class Counsel’s eight years of litigation and advocacy on behalf of consumers losing money to  
 5 social casino apps, including four prior class settlements before this Court, the Parties agreed to  
 6 an early mediation of the case and, after a full-day in-person mediation assisted by Phillips ADR,  
 7 agreed to a classwide settlement featuring a \$12 million all-cash common fund. Based on the  
 8 Settlement Administrator’s final tally, that recovery reflects approximately 21% of the  
 9 approximately \$57 million in damages alleged by the Class.

10 The Court preliminarily approved the settlement on June 28, 2022 and ordered Class  
 11 Counsel to proceed with the notice plan and claims process. The Court-approved notice plan and  
 12 claims process have now been executed, and Class counsel are pleased to report not only that the  
 13 notice plan successfully reached more than 90% of the Class with direct notice (in addition to  
 14 publication notice efforts), but also that the reaction of the Class was—as with all four of Class  
 15 Counsel’s previous social casino settlements—overwhelmingly positive. Thousands of Class  
 16 Members submitted claims associated with at least \$14.45 million in losses, reflecting an  
 17 Adjusted Claims Rate of at least 25.25%.<sup>1</sup> No Class Members objected to the settlement, and  
 18 only a single Class Member requested exclusion.

19 Given the life-changing relief afforded under the settlement, this sort of reaction—though  
 20 exceptional for consumer class actions—is unsurprising. As predicted in Class Counsel’s  
 21 preliminary approval papers, participating Class Members stand to recover substantial portions  
 22 of their losses, with those who have lost the most standing to recover the majority of their losses.  
 23 In light of the novelty of Plaintiffs’ claims, Professor William B. Rubenstein has described these  
 24

25 <sup>1</sup> See Declaration of Reed Baessler (“Baessler Decl.”) ¶¶ 7, 23. The timely submitted claims are associated  
 26 with at least \$14.45 million in Lifetime Spending Amount. See *id.* ¶ 23. The total Lifetime Spending Amount of the  
 27 Settlement Class is approximately \$57 million. See *id.* ¶ 7. The Adjusted Claims Rate is calculated by dividing the  
 former figure by the latter, equaling at least 25.25%.



1 recoveries as an “astounding accomplishment.” Dkt. #51 ¶ 2. Despite the early settlement in this  
 2 case, the relief obtained here matches the recoveries achieved in the four prior settlements in this  
 3 District, and it far exceeds any other comparator settlements. *See, e.g., In Re: Daily Fantasy*  
 4 *Sports Litig.*, No. 16-md-2677-GAO, Dkt. #459 (D. Mass. Sep. 2, 2021) (settlement returning in-  
 5 game currency and cash totaling \$720,000 to consumers who alleged companies were engaged in  
 6 illegal gambling and caused them to lose hundreds of millions of dollars).

7 For the reasons that follow, this Settlement is fair, reasonable, and adequate, and the  
 8 Court should not hesitate to grant final approval.

### 9 BACKGROUND<sup>2</sup>

10 In 2014, Class Counsel began investigating the burgeoning social casino industry. *See*  
 11 Declaration of Todd Logan (“Logan Decl.”) ¶ 3. The results of that investigation were startling:  
 12 multinational gambling corporations and social video game developers had teamed up and found  
 13 a way to smuggle slot machines onto consumers’ smart phones without complying with any  
 14 federal or state gambling laws. *See id.* ¶ 4. By 2015, social casino games were capturing more  
 15 than \$3 billion in annual revenues.<sup>3</sup> Those revenues, just like those of Vegas casinos, were  
 16 disproportionately derived from gambling addicts who just couldn’t stop themselves from buying  
 17 chips and spinning the slots. Moreover, those revenues—at least in Class Counsel’s judgment—  
 18 were entirely ill-gotten gains under a variety of state gambling laws. *See id.*

19 Based on that investigation, in 2015 Class Counsel initiated a nationwide, multi-forum  
 20 campaign against the social casino industry. *See id.* ¶ 5. As Professor William B. Rubenstein, the  
 21 author of *Newberg on Class Actions*, summarizes that campaign (and its results):

22 Prior to entering academia, I was a lawyer at the national office of the  
 23 American Civil Liberties Union (ACLU) for nearly a decade, during which  
 24 time I pursued civil rights campaigns on behalf of minority groups. Based  
 on that experience, it strikes me that what Class Counsel have pursued here

25 <sup>2</sup> The litigation background was previously detailed in Class Counsel’s Motion For Award of Attorneys’  
 Fees and Expenses and Issuance of Incentive Awards. *See* Dkt. #49. Plaintiffs repeat it here for the Court’s  
 26 convenience.

27 <sup>3</sup> *See* Dean Takahashi, *13 predictions for the future of the \$3.4B social casino games market*, GAMESBEAT  
 (Oct. 19, 2015), <https://bit.ly/2W83Yu3>.

1 is closer in form to a civil rights litigation campaign than it is to a series of  
2 discrete class action settlements. Class Counsel saw an injustice – a thinly  
3 disguised form of gambling preying on those most vulnerable to addictive  
4 gambling – and they sought to fix it. Their goal was not to win a case but  
5 to reform an entire industry, much like a civil rights campaign might aim to  
6 reform a particular type of discriminatory practice across an entire  
7 employment sector. To accomplish this end, Class Counsel went far beyond  
8 what lawyers pursuing a simple class action case would normally do. Class  
9 Counsel pursued multiple cases. Class Counsel pursued multiple  
10 defendants. Class Counsel filed actions in multiple forums. Class Counsel  
11 tested various state laws. Class Counsel built websites to help app users  
12 avoid forced arbitration clauses, lobbied legislators and regulators, and took  
13 their efforts to the media. When Class Counsel lost, they did not give up,  
14 but changed tactics or forums and kept going. And they did all of this with  
15 their own funds, risking millions of dollars of their own money to end this  
16 practice. What they have achieved so far, with a series of five settlements,  
17 is an astounding accomplishment that begins to chip away at the pernicious  
18 underlying social casinos.

19 Dkt. #51 (Rubenstein Decl.) ¶ 2.

20 Because the extraordinary Settlement here is but a part of Class Counsel’s efforts  
21 carrying the banner nationwide for victims of the social casino industry, a summary of Class  
22 Counsel’s efforts both before this Court and otherwise is provided below.

### 23 **I. Class Counsel’s 2015 Social Casino Lawsuits.**

24 Having concluded that social casinos constituted gambling, between April and October of  
25 2015, Class Counsel filed five proposed class action lawsuits, in four different courts, alleging  
26 class claims under five different sets of state gambling laws. *See (1) Dupee v. Playtika Santa*  
27 *Monica*, No. 15-cv-01021 (N.D. Ohio May 21, 2015) (alleging claims under Ohio and Nevada  
gambling laws); **(2) Kater v. Churchill Downs Inc.**, No. 15-cv-612 (W.D. Wash. Apr. 17, 2015)  
(alleging claims under Washington gambling law); **(3) Mason v. Mach. Zone, Inc.**, No. 15-cv-  
01107 (D. Md. Apr. 17, 2015) (alleging claims under California and Illinois gambling laws) **(4)**  
*Phillips v. Double Down Interactive LLC*, No. 15-cv-04301 (N.D. Ill. May 14, 2015) (alleging  
claims under Illinois gambling laws); and **(5) Ristic v. Mach. Zone, Inc.**, No. 15-cv-08996 (N.D.  
Ill. Oct. 9, 2015) (alleging claims under Illinois gambling laws).

Each federal district court initially presented with Class Counsel’s theory of these  
cases—*i.e.*, that social casinos are illegal gambling and consequently must return to consumers  
their ill-gotten gains—squarely rejected it. *See Mason v. Mach Zone, Inc.*, 140 F. Supp. 3d 457,  
470 (D. Md. 2015), *aff’d*, 851 F.3d 315 (4th Cir. 2017); *Kater v. Churchill Downs Inc.*, No. 15-

1 cv-612 MJP, 2015 WL 9839755, at \*3 (W.D. Wash. Nov. 19, 2015), *rev'd*, 886 F.3d 784 (9th  
2 Cir. 2018); *Dupee v. Playtika Santa Monica*, No. 15-cv-1201, 2016 WL 795857, at \*1 (N.D.  
3 Ohio Mar. 1, 2016); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731, 739 (N.D.  
4 Ill. 2016); *Ristic v. Mach. Zone, Inc.*, No. 15-cv-8996, 2016 WL 4987943, at \*4 (N.D. Ill. Sept.  
5 19, 2016). In representative fashion, Judge Pechman’s dismissal order in *Kater* concluded that  
6 “Big Fish Casino does not award something of value satisfying the requisite prize element, and  
7 therefore the game is not ‘illegal gambling’ under Washington law.” *Kater*, 2015 WL 9839755,  
8 at \*4.

## 9 **II. Class Counsel Appeals the *Kater* Dismissal, and the Ninth Circuit Reverses.**

10 Following Judge Pechman’s dismissal order in *Kater*, Class Counsel appealed. Merits  
11 briefing before the Ninth Circuit concluded in September 2016, and oral argument was held in  
12 February 2018. In March 2018, the Ninth Circuit reversed:

13 In this appeal, we consider whether the virtual game platform “Big Fish  
14 Casino” constitutes illegal gambling under Washington law. Defendant–  
15 Appellee Churchill Downs, the game’s owner and operator, has made  
16 millions of dollars off of Big Fish Casino. However, despite collecting  
17 millions in revenue, Churchill Downs, like Captain Renault in *Casablanca*,  
purports to be shocked—shocked!—to find that Big Fish Casino could  
constitute illegal gambling. We are not. We therefore reverse the district  
court and hold that because Big Fish Casino’s virtual chips are a “thing of  
value,” Big Fish Casino constitutes illegal gambling under Washington law.

18 *Kater*, 886 F.3d at 785. In that opinion, the Ninth Circuit dispensed with a variety of the  
19 arguments that had persuaded district courts nationwide to initially dismiss the social casino  
20 cases. For example, the Court rejected the argument that social casino chips “do not extend  
21 gameplay, but only enhance it.” *Id.* at 787. The Circuit also rejected Big Fish’s argument that the  
22 Washington State Gambling Commission (“WSGC” or “Commission”) had determined that  
23 social casino games aren’t gambling, concluding that “these documents do not indicate that the  
24 Commission adopted a formal position on social gaming platforms.” *Id.* at 788. And the Ninth  
25 Circuit explicitly rejected “the reasoning of other federal courts that have held that certain ‘free  
26 to play’ games are not illegal gambling.” *Id.*

1 **III. Class Counsel’s Litigation of This and Similar Cases Before This Court.**

2 Soon after remand in *Kater*, Class Counsel filed five additional proposed class action  
3 lawsuits in this District: (1) *Wilson v. Playtika, Ltd.*, No. 18-cv-5277; (2) *Wilson v. Huuuge, Inc.*,  
4 No. 18-cv-5276; (3) *Reed v. Light & Wonder, Inc. (f/k/a Scientific Games Corp.)*, No. 18-cv-565  
5 (“*Scientific Games*”), (4) *Benson v. DoubleDown Interactive, LLC*, No. 18-cv-525; and (5)  
6 *Wilson v. PTT, LLC*, No. 18-cv-5275 (“*High 5*”). Each alleged that a major social casino  
7 company’s online slot machines constitute unlawful gambling under Washington’s gambling  
8 laws. *See* Dkt. #23 at 3.

9 Over the next four years, Class Counsel fended off a barrage of motions in each of these  
10 actions, including: motions to dismiss for lack of personal jurisdiction (*Playtika*, Dkt. #40; *Kater*,  
11 Dkt. #202), motions to dismiss for lack of subject matter jurisdiction (*Scientific Games*, Dkt.  
12 #59; *DoubleDown*, Dkt. #138), motions to dismiss for failure to state a claim (*Playtika*, Dkt. #40;  
13 *Scientific Games*, Dkt. #28; *High 5*, Dkt. #34; *DoubleDown*, Dkt. #289), motions to certify  
14 questions to the Washington Supreme Court (*Playtika*, Dkt. #99; *High 5*, Dkt. #99; *DoubleDown*,  
15 Dkt. #103), motions to compel arbitration (*Kater*, Dkt. #60; *Kater*, Dkt. #100; *Kater*, Dkt. #205;  
16 *Scientific Games*, Dkt. #82; *DoubleDown*, Dkt. #38; *Huuuge*, Dkt. #31), a motion to strike class  
17 claims (*DoubleDown*, Dkt. #128), interlocutory appeals of denials of motions to compel  
18 arbitration (*Scientific Games*, Dkt. #136; *DoubleDown*, Dkts. #82-83; *Huuuge*, Dkt. #47), and  
19 repeated efforts to have users click post-litigation pop-up arbitration clauses waiving their rights  
20 in these cases (*Kater*; *Scientific Games*; *DoubleDown*). Class Counsel also pursued offensive  
21 motion practice and discovery, ultimately prevailing in a slate of discovery disputes (*see, e.g.*,  
22 *Kater*, Dkt. #191; *DoubleDown*, Dkts. #366-367), obtaining data from defendants and third-party  
23 platforms Apple, Google, Facebook, and Amazon (*see, e.g.*, *Kater*, Dkt. #250; *DoubleDown*,  
24 Dkts. #366-367; *High 5*, Dkt. #129), and certifying a class (*see High 5*, Dkt. #170).

25 Between 2020 and 2021, Class Counsel achieved landmark settlements in four of these  
26 cases. *See Kater*, Dkt. #289 (granting final approval to \$155 million settlement); *Playtika*, Dkt.  
27 #164 (granting final approval to \$38 million settlement); *Scientific Games*, Dkt. #197 (granting

1 final approval to \$24.5 million settlement); *Huuuge*, Dkt. #140 (granting final approval to \$6.5  
2 million settlement).

3 Building on this history, Class Counsel filed the instant action against Zynga in February  
4 2022, alleging that Defendant’s social casinos, including “Hit It Rich!,” “Black Diamond  
5 Casino,” “Wizard of Oz Slots,” “Game of Thrones Slots,” and “Willy Wonka Slots” (together,  
6 the “Applications”), constitute unlawful gambling under Washington’s gambling laws. *See* Dkt.  
7 #1. Around the same time, and with a clear view of the litigation landscape outline above, the  
8 Parties agreed to mediate in May 2022 before the Honorable Layn R. Phillips (Ret.) and Niki  
9 Mendoza of Phillips ADR. *See* Dkt. #23 at 6. Notably, Zynga was represented in this action and  
10 at the mediation by the same lead counsel that represented Playtika in *Wilson v. Playtika*. *Id.*  
11 After a full-day, in-person mediation session with Judge Phillips and Ms. Mendoza, the Parties  
12 reached an agreement in principle as to an appropriate settlement amount and executed a term  
13 sheet. *Id.* For the next few weeks, the Parties continued negotiating the details of a final and  
14 binding class action settlement, exchanged drafts of a settlement agreement and supporting  
15 exhibits, met and conferred telephonically to iron out disputes, vetted and engaged a proposed  
16 settlement administrator, and began the process of meeting and conferring with the Platform  
17 Providers to design a robust notice and administration plan. *Id.* On June 27, 2022, the Parties  
18 completed execution of the Settlement Agreement now before the Court. *Id.*; Dkt. #23-1.  
19 Plaintiffs filed an unopposed motion for preliminary approval of that Agreement on the same  
20 day, Dkt. #23, and the Court granted preliminary approval on June 28, 2022. Dkt. #26.

21 In August 2022, Class Counsel reached a settlement in *DoubleDown* as well, for \$415  
22 million. *See DoubleDown*, Dkt. #500. The Court granted preliminary approval on November 15,  
23 2022. *DoubleDown*, Dkt. #511. If both this settlement and the *DoubleDown* settlement are  
24 granted final approval, Class Counsel will have recovered a total of \$651 million in cases before  
25 this Court on behalf of consumers losing money to social casino apps.

1 **IV. Class Counsel’s Leadership of Multi-District Litigation Regarding Social Casinos.**

2 The seven class action cases against social casinos described above undoubtedly served  
3 as catalysts for a nationwide wave of dozens of cases related to social casinos, culminating in the  
4 creation of multi-district litigation in the Northern District of California against Apple, Google,  
5 and Meta. *See In re: Apple Inc. App Store Simulated Casino-Style Games Litig.*, No. 5:21-md-  
6 2985-EJD (N.D. Cal.); *In re: Google Play Store Simulated Casino-Style Games Litig.*, No. 5:21-  
7 md-3001-EJD (N.D. Cal.); *In re: Facebook Simulated Casino-Style Games Litig.*, No. 5:21-cv-  
8 2777-EJD (N.D. Cal.). Class Counsel here have been appointed by Judge Davila as Interim Lead  
9 Counsel (Rafey S. Balabanian) and Law and Briefing Counsel (Todd Logan) in each track. *See,*  
10 *e.g., In re Apple*, Dkt. #68 (N.D. Cal. Sept. 23, 2021); Logan Decl. ¶ 6. Class Counsel also led  
11 the MDL plaintiffs’ defeat of initial motions to dismiss from each of the three platforms;  
12 specifically, Judge Davila held that the MDL plaintiffs had alleged a theory of liability—based  
13 on the “Platforms[’] processing of *unlawful* transactions for *unlawful* gambling”—that was not  
14 barred by Section 230 of the Communications Decency Act. *See, e.g., In re Apple*, Dkt. #106 at  
15 33, 35 (emphasis in original). Apple, Google, and Meta are now pursuing an interlocutory appeal  
16 of Judge Davila’s decision. *See, e.g., In re Apple Simulated Casino-Style Games Litig.*, No. 22-  
17 80099 (9th Cir.).

18 **V. Class Counsel’s Litigation-Adjacent Efforts on Behalf of the Class.**

19 As a necessary extension of the traditional litigation work necessitated by this and the  
20 similar cases, Class Counsel has for years undertaken all manner of litigation-adjacent work for  
21 the benefit of the Class. These efforts are organized into three categories and summarized below.

22 *First*, Class Counsel went to great lengths to protect this and the similar litigation from  
23 collateral administrative attacks. Just two weeks after the Ninth Circuit’s mandate issued in  
24 *Kater*, Defendant’s industry peers dispatched their litigation attorneys to the WSGC’s session in  
25 Tacoma to present a “Petition for a Declaratory Order” asking the Commission to declare that  
26 other social casino games “do not constitute gambling within the meaning of the Washington  
27 Gambling Act, RCW 9.46.0237.” *Kater*, No. 15-cv-612, Dkt. #79-5 at 10. At each of the three

1 public hearings that followed—in July 2018 (in Tacoma), August 2018 (in Pasco), and October  
2 2018 (in Olympia)—Class Counsel appeared before the Commission, and Class Counsel  
3 presented live argument at both the Tacoma and Pasco hearings. *See* Logan Decl. ¶ 10. Class  
4 Counsel supplemented these appearances with a formal letter to the Commission (ahead of the  
5 Tacoma hearing) and, on the Commission’s request, with an eighteen-page comment for the  
6 Commission’s consideration (between the Tacoma and Pasco hearings). *Id.* The WGSC  
7 ultimately declined to enter a Declaratory Order. *See Kater*, No. 15-cv-612, Dkt. #74-1. And  
8 even after the initial declaratory order proceedings, Class Counsel continued to represent the  
9 interests of the consumers in additional flare-ups before the WSGC, including in similar  
10 declaratory order proceedings initiated by The Stars Group. *See* Logan Decl. ¶ 11.

11 *Second*, Class Counsel has been the frontline opposition to the social casino industry’s  
12 attempt to change Washington’s gambling laws. Starting in early 2019, the International Social  
13 Gaming Association (“ISGA”) provided legislators draft legislation that would amend  
14 Washington’s gambling statutes with the effect (and specific intent) of gutting these lawsuits. *See*  
15 *id.* ¶ 12. Over time, these efforts gained steam, with Senators Mark Mullet and John Braun, as  
16 well as Representatives Zack Hudgins, Brandon Vick, Bill Jenkin and Brian Blake, collectively  
17 sponsoring four bills threatening to kill these cases by “clarifying” that players who lose money  
18 playing social casino games cannot recover under the RMLGA. H.B. 2720, 66th Leg., Reg. Sess.  
19 (Wash. 2020); S.B. 6568, 66th Leg., Reg. Sess. (Wash. 2020); H.B. 2041, 66th Leg., Reg Sess.  
20 (Wash. 2019); S.B. 5886, 66th Leg., Reg. Sess. (Wash. 2019). Local and national media covered  
21 these efforts and left no doubt as to what the ISGA hoped to accomplish. *See, e.g.*, Phillip  
22 Conneller, *Washington State Social Gaming Legislation Could Rescue Big Fish Casino From*  
23 *Legal Trouble*, CASINO.ORG (Jan. 29, 2020), <https://bit.ly/39dKtWM>.

24 In response, Class Counsel engaged the lobbying firm Peggen & Mara Political  
25 Consulting LLP—experts in Washington tribal and gambling laws—to help Class Counsel (i)  
26 stay on top of all administrative and legislative developments in the Washington gaming  
27 industry; (ii) understand the intricacies of Washington’s specific legislative process, including

1 the nuances of—and procedures for—bill drafting; (iii) understand who the relevant lawmakers  
2 and stakeholders in Washington’s gaming industry were, what those lawmakers and stakeholders  
3 cared about, and how Class Counsel could educate those lawmakers and stakeholders about  
4 social casinos; and (iv) work with legislative groups, task forces, and other interested parties in  
5 Washington’s gaming industry, including the Washington Indian Gaming Association  
6 (“WIGA”). *See* Logan Decl. ¶ 13.

7 Class Counsel then used this information and expertise to amplify the Class’s interests  
8 and concerns. Class Counsel drafted memos and prepared handouts for a variety of stakeholders,  
9 including State Senators and Representatives, the WIGA, the Washington Trial Attorneys’  
10 Association, the Public Interest Research Group, and other organizations dedicated to remedying  
11 problem gambling. *See id.* ¶ 14.

12 Class Counsel also personally met with lawmakers in the Washington Senate and House,  
13 met with officials in the Executive branch, and provided in-person testimony to the Washington  
14 Legislature. *See id.* ¶ 15. For example, in January 2019—after Class Counsel got wind that the  
15 ISGA was planning to gut Washington’s gambling statutes (in what would become the failed  
16 H.B. 2041 and S.B. 5886)—Class Counsel met in-person with Representative Shelley Kloba,  
17 then-Representative (and now Senator) Derek Stanford, then-Lieutenant Governor Cyrus Habib,  
18 and several other government officials. *See id.* ¶ 16. On January 28, 2020, Class Counsel met  
19 with Senator Stanford at the State Capital—following Class Counsel’s written and in-person  
20 testimony before the House Civil Rights & Judiciary Committee in (successful) opposition to  
21 H.B. 2720. *See id.* ¶ 17.

22 Class Counsel’s efforts went beyond in-person testimony and meetings with legislative  
23 and executive officials. On March 21, 2019, Class Counsel sent formal correspondence to  
24 Senator Mark Mullet ahead of a planned work session before the Senate and Financial  
25 Institutions, Economic and Trade Committee about social casinos—in which Defendant’s  
26 industry peers had been invited, but Class Counsel had not. *See id.* ¶ 18. In August 2019, Class  
27 Counsel travelled to Anacortes—on Swinomish Tribe land—to speak at a monthly WIGA



1 meeting, in opposition to the ISGA-backed bills. *See id.* ¶ 19. And in early 2020, Class Counsel  
2 coordinated the submission of more than 200 letters to Washington State Representatives from  
3 social casino players across the country and spoke with local press about the ISGA’s renewed  
4 efforts to gut these lawsuits. *See id.* ¶ 20; *see also* Melissa Santos, ‘Free’ casino apps prey on  
5 addiction, users say, and WA lawmakers are considering a crackdown, CROSSCUT (Feb. 7,  
6 2020), <https://bit.ly/3hfFXDl>. These efforts held the line—each bill introduced since the onset of  
7 this litigation has stalled.

8 To be clear, Class Counsel’s efforts to protect Washington’s gambling laws continue to  
9 this day. Because of active litigation before this Court and in the Northern District of California,  
10 Class Counsel will refrain here from publicizing the specifics of their ongoing lobbying and  
11 other advocacy strategies outside of the confines of traditional litigation. But Class Counsel can  
12 confirm that their ongoing advocacy includes meetings with regulatory officials as well as  
13 officials from the legislative and executive branches. Logan Decl. ¶ 21.

14 *Third*, beyond Class Counsel’s work on legislative, executive, and administrative fronts,  
15 Class Counsel also helped its clients sound the alarm on social casinos to the public at large by  
16 helping clients share their stories with local and national media, including in the following  
17 pieces:

- 18 • *Harpooned by Facebook*, REVEAL (Aug. 3, 2019), <https://bit.ly/39NIIdri> (featuring  
19 radio interview with Class Counsel’s client)
- 20 • Nate Halverson, *How social casinos leverage Facebook user data to target*  
21 *vulnerable gamblers*, PBS NEWSHOUR (Aug. 13, 2019),  
22 <https://to.pbs.org/3IPRd1m> (featuring television interview with Class Counsel’s  
23 client)
- 24 • Melissa Santos, ‘Free’ casino apps prey on addiction, users say, and WA  
25 *lawmakers are considering a crackdown*, CROSSCUT (Feb. 7, 2020),  
26 <https://bit.ly/3qBBd6M> (featuring Class Counsel’s clients and Class Counsel  
27 Alexander Tievsky)
- Cyrus Farivar, *Addicted to losing: How casino-like apps have drained people of*  
*millions*, NBC NEWS (Sept. 14, 2020), <https://nbcnews.to/39Lo1X1>

- Connections: A Healthy Gambling and Gaming Podcast, *What's the Deal with Social Casinos?*, EVERGREEN COUNCIL ON PROBLEM GAMBLING (Oct. 28, 2021), <https://bit.ly/3ysA9c1> (featuring Class Counsel Todd Logan)

## VI. The Settlement Now Before the Court.

Following all of these efforts, and with the assistance of Phillips ADR, Class Counsel reached a settlement with Defendant that provides a non-reversionary cash recovery of \$12 million from which every Class Member who has ever lost money playing Defendant's social casino games is entitled to recover a substantial portion of their losses back. *See* Dkt. #24-1 §§ 1.33, 1.35 (the "Agreement"). Class members with higher levels of losses are entitled to recover increasingly higher percentages of their losses, and the upper echelons of "VIP" players stand to recover more than half of their losses. *See id.* §§ 1.36, 2.1(c). The Settlement also requires Defendant to implement meaningful prospective relief, including by maintaining and honoring a self-exclusion policy akin to what one might expect to see at the Emerald Queen or the Muckleshoot casinos. *See id.* § 2.2.

### THE TERMS OF THE SETTLEMENT AGREEMENT

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

**A. Settlement Class Definition:** The Settlement Class is defined as follows: "all individuals who, in Washington (as reasonably determined by billing address information, IP address information, or other information furnished by Platform Providers), played the Applications on or before Preliminary Approval of the Settlement."<sup>4</sup> *See id.* § 1.33.

**B. Monetary Benefits:** Defendant has agreed to establish a \$12,000,000.00 Settlement Fund from which Settlement Class Members who file a valid claim will be entitled to recover a cash payment—calculated after deduction of costs and administrative expenses, any fee award to Class Counsel, and any incentive payments to the Class Representatives. *See id.*

<sup>4</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families, (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its 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 class, and (4) the legal representatives, successors or assigns of any such excluded persons. *See id.* § 1.33.

1 § 1.35. No portion of the Settlement Fund will revert to Defendant. *Id.* § 2.1(i). Any Settlement  
2 Class Member's checks not cashed within ninety (90) days of issuance will be returned to the  
3 fund and apportioned pro rata to participating Settlement Class Members in a second distribution  
4 or donated to the Legal Foundation of Washington, as approved by the Court. *Id.* § 2.1(h). As  
5 described in detail in the Plan of Allocation, the amount of each Settlement Class Member's  
6 payment will vary based on the Settlement Class Member's Lifetime Spending Amount (those  
7 with higher Lifetime Spending Amounts are eligible to recover a greater percentage) and overall  
8 Settlement Class Member participation levels. *See id.* §§ 1.36, 2.1(c); Exhibit E to the  
9 Agreement. Based on their experience with settlements in related cases, Class Counsel anticipate  
10 that participating Settlement Class Members in the highest category of Lifetime Spending  
11 Amounts will likely recover gross payments in excess of 60% of their Lifetime Spending  
12 Amounts, and that participating Class Members in the lowest category of Lifetime Spending  
13 Amounts will likely recover gross payments in excess of 20% of their Lifetime Spending  
14 Amounts. *See Logan Decl.* ¶ 22. Settlement Class Members will also be able to quickly and  
15 easily estimate the amount of their potential payment on the Settlement Website. *See Agreement*  
16 § 4.2(d).

17 **C. Prospective Relief:** Defendant has agreed to maintain a voluntary self-exclusion  
18 policy that will allow players to exclude themselves from further gameplay. *See id.* § 2.2(a).  
19 Defendant will also maintain a section on its website that is reasonably available from within the  
20 Applications that encourages responsible gameplay. *Id.* In addition, in response to related  
21 litigation pursued by Class Counsel, Defendant already has implemented a change to the game  
22 mechanics for the Applications such that players who run out of sufficient virtual coins to  
23 continue playing slot games in the Application they are playing are able to continue to play at  
24 least one slot game within the Application they are playing without needing to purchase  
25 additional virtual coins or wait until they would have otherwise received free additional virtual  
26 coins in the ordinary course. *Id.* § 2.2(b).



1 that reaches 70% of a class is often reasonable. Federal Judicial Center, *Judges' Class Action*  
2 *Notice & Claims Process Checklist & Plain Language Guide*, at 3 (2010), available at  
3 <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>.

4 The Court already provisionally approved the comprehensive Notice Plan proposed by  
5 the Class Representatives and Class Counsel. Dkt. #26 ¶¶ 5-6. That plan utilized both direct and  
6 publication notice to the Settlement Class. *Id.* To provide direct notice to all who were eligible to  
7 submit a claim for payment from the Settlement, Class Counsel worked with Defendant and also  
8 subpoenaed a variety of third parties to obtain contact information for everyone with a Lifetime  
9 Spending Amount of greater than zero (*i.e.*, those who are entitled to make a claim against the  
10 Settlement Fund). *See generally* Baessler Decl. This was not an easy process, requiring  
11 negotiations with and issuance of subpoenas to Platform Providers. Logan Decl. ¶ 23. Apple,  
12 Google, Amazon, and Meta ultimately provided Class Counsel with sufficient data to effectuate  
13 the Notice Plan. *Id.* Once that data was collected, it was transmitted to JND Legal Administration  
14 (“JND”), the Settlement Administrator, to compile a complete Class List. JND then sent out  
15 three rounds of email notice, with the initial round reaching 92.1% of email recipients, the  
16 second round reaching 90% of recipients, and the third reaching 91.6%. Baessler Decl. ¶¶ 9-12.

17 Additionally, using the information provided by Defendant and the Platform Providers,  
18 JND sent postcard notice via U.S. First Class mail to all accounts identified as having a Lifetime  
19 Spending Amount of \$100 or more. *See id.* ¶ 13. As of November 17, 2022, at least 90.4% of  
20 these postcard notices were either successfully delivered to the original mailing address on  
21 record, forwarded by USPS to a forwarding address already in USPS’s system, or re-mailed by  
22 JND to a new address obtained through JND’s own advanced address searches. *See id.* ¶ 14.

23 Direct notice was supplemented by online publication notice in the form of digital  
24 advertisements targeted towards individuals most likely to be part of the Settlement Class. Given  
25 the extent to which social casino players are active on social media, JND purchased sponsored  
26 ads on Facebook, Instagram, and the Google Display Network. *See id.* ¶ 16. These social media  
27

1 ads, coupled with traditional Internet banner advertisements, generated more than 10 million  
2 impressions. *See id.*

3 Overall, the Notice Program, including direct email and postcard notice as well as best in-  
4 class tools and technology, reached at least 90% of Settlement Class Members in Washington.  
5 *See id.* ¶ 15. That figure far exceeds the constitutional due process requirement in this Circuit.  
6 *See, e.g., Askar v. Health Providers Choice, Inc.*, No. 19-CV-06125-BLF, 2021 WL 4846955, at  
7 \*3 (N.D. Cal. Oct. 18, 2021) (“[N]otice plans estimated to reach a minimum of 70 percent are  
8 constitutional and comply with Rule 23.”) (citation omitted).

9 Finally, all forms of notice accurately described the Settlement and directed the recipient  
10 to the Settlement Website, where Class Members could review the Plan of Allocation, use a  
11 calculation tool to estimate how much they are projected to recover through the Settlement, and  
12 file a claim. *See* Agreement § 4.2(d); Dkt. #23 at 7-8.

13 This all confirms what the Court already provisionally found: the Notice Plan here, which  
14 reached at least 90% of Settlement Class Members in Washington, *see* Baessler Decl. ¶ 15, was  
15 reasonably calculated to apprise interested Settlement Class Members of their rights under the  
16 Settlement and constituted the best practicable notice under the circumstances. The Court should  
17 therefore find that the Notice Plan complied with Due Process.

### 18 **III. The Court Should Finally Approve the Settlement.**

19 To approve the settlement of a class action as fair, reasonable, and adequate, Rule 23(e)  
20 requires courts to consider “whether: (A) the class representatives and class counsel have  
21 adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief  
22 provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and  
23 appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including  
24 the method of processing class-member claims; (iii) the terms of any proposed award of  
25 attorney’s fees, including timing of payment; and (iv) any agreement required to be identified  
26 under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.”

27 These factors largely encompass those identified by the Ninth Circuit for evaluating a class

1 settlement. *See In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)  
 2 (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).<sup>5</sup>

3 The Committee Notes to the recent revision of Rule 23 make clear that the newly  
 4 enumerated factors were not intended to replace approval factors already used in courts around  
 5 the country, but “rather to focus the court and the lawyers on the core concerns of procedure and  
 6 substance that should guide the decision whether to approve the proposal.” Thus, courts examine  
 7 the new Rule 23 factors alongside the traditional *Churchill* factors relevant to the particular case,  
 8 mindful that there is considerable overlap between the two. *See, e.g., Walters v. Target Corp.*,  
 9 No. 3:16-cv-1678-L-MDD, 2020 WL 6277436, at \*5 (S.D. Cal. Oct. 26, 2020).

10 When a settlement precedes class certification, as here, approval “requires a higher  
 11 standard of fairness” and “a more probing inquiry than may normally be required under Rule  
 12 23(e).” *Roes, I-2*, 944 F.3d at 1048; *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769,  
 13 782 (9th Cir. 2022). In particular, “such settlement agreements must withstand an even higher  
 14 level of scrutiny for evidence of collusion or other conflicts of interest.” *Roes, I-2*, 944 F.3d at  
 15 1049.

16 This settlement stands up to that probing inquiry, since the Rule 23(e) and *Churchill*  
 17 factors decisively support final approval,<sup>6</sup> and there are no signs of collusion or conflicts.

18 **A. Class Counsel and the Class Representatives have adequately represented**  
 19 **the Class and support the Settlement.**

20 Class Counsel’s representation of the Class’s interests here was beyond adequate; it was  
 21 extraordinary and began years before this case was filed. Class Counsel began advocating for  
 22 consumers harmed by social casinos eight years ago, and has filed seven proposed class actions

23 \_\_\_\_\_  
 24 <sup>5</sup> The *Churchill* factors are: “(1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely  
 25 duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount  
 26 offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and  
 27 views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members of the  
 proposed settlement.” *Roes, I-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019).

<sup>6</sup> There is no governmental participant here, so that *Churchill* factor is neutral. Further, to date, there are no  
 agreements that must be identified under Rule 23(e)(3), nor do counsel anticipate reaching any such agreements.

1 in this District against social casino companies. After achieving the landmark Ninth Circuit  
2 ruling in *Kater*, Class Counsel has had to defend Washington’s gambling laws from repeated  
3 attacks both in the WSGC and the Washington State Legislature. All the while, Class Counsel  
4 successfully defended against various social casino defendants’ efforts to knock the cases out of  
5 federal court or otherwise dismiss the cases. *See* Background, *supra*. Time and time again, Class  
6 Counsel held the line, moved the cases closer to class certification and trial, and achieved the  
7 four social casino class settlements previously approved by this Court. These efforts all served  
8 the interests of the Class in this case, leading to an early settlement that matches the relief  
9 secured in the other, more extensively litigated cases. All of these efforts demonstrate that Class  
10 Counsel provided more than adequate service to the Class.

11 Class Representatives Ferrando and Marzano likewise adequately represented the Class.  
12 Both made substantial contributions to the Class, including stepping forward to serve as class  
13 representatives and named Plaintiffs, staying in regular communication with Class Counsel,  
14 timely responding to requests for information, and closely reviewing the Settlement Agreement  
15 before approving it. *See* Dkt. #52 (Declaration of Tonda Ferrando) ¶¶ 4-5; Dkt. #53 (Declaration  
16 of Dex Marzano) ¶¶ 4-5. Their services were more than adequate.

17 In addition, while the Court should not apply any presumption of fairness based on  
18 counsel’s views, the “experience and views of counsel” remain factors that the Court may  
19 consider. *Roes*, 1-2, 944 F.3d 1035, 1048; *see also Evans v. Zions Bancorporation, N.A.*, No.  
20 2:17-CV-01123 WBS DB, 2022 WL 16815301, at \*3 (E.D. Cal. Nov. 8, 2022). Class Counsel  
21 here are the only lawyers with significant experience prosecuting these types of social casino  
22 claims, and it is their considered judgment that this Settlement represents an outstanding result  
23 for the Settlement Class. *See Evans*, 2022 WL 16815301, at \*3-4 (applying “heightened  
24 scrutiny” and finding that “the sophistication and experience of plaintiff’s counsel” weighed in  
25 favor of final approval).



1           **B.       The Settlement was negotiated at arm’s length and shows no signs of**  
2           **collusion.**

3           The Settlement here was negotiated at arm’s length and was the product of non-collusive  
4 negotiations—as the Court found at preliminary approval. *See* Dkt. #26 at 1. The Settlement was  
5 reached after weeks of arm’s-length negotiations, during which time the Parties exchanged  
6 substantial briefing on the core legal issues and were in regular communication with the Phillips  
7 ADR team, and after a full-day, in-person mediation session with both Judge Layn Phillips (ret.)  
8 and Ms. Niki Mendoza. *See Jackson v. King Cnty.*, No. 21-CV-00995-LK-BAT, 2022 WL  
9 168524, at \*2-3 (W.D. Wash. Jan. 18, 2022) (applying “heightened scrutiny” to pre-certification  
10 settlement and finding that mediation before “an experienced third-party neutral . . . who had  
11 mediated negotiations during the precursor [] litigation” supported a finding of arm’s-length  
12 negotiations).

13           Moreover, this Settlement contains none of the red flags the Ninth Circuit has identified  
14 as indicative of possible collusion: (1) “when counsel receive a disproportionate distribution of  
15 the settlement, or when the class receives no monetary distribution but class counsel are amply  
16 rewarded,” (2) “when the parties negotiate a ‘clear sailing’ arrangement,” and (3) “when the  
17 parties arrange for fees not awarded to revert to defendants rather than be added to the class  
18 fund.” *In re Bluetooth*, 654 F.3d at 947 (quotations omitted). Class Counsel’s fees will be  
19 determined separately, but as explained in the motion for attorneys’ fees and expenses, they seek  
20 a percentage recovery that is consistent with Washington law and Ninth Circuit precedents,  
21 reflects their work here, and is proportionate. *See generally* Dkt. #49. Further, the Settlement  
22 does not contain a “clear sailing” agreement; Defendant is free to object to Class Counsel’s fee  
23 petition if it so desires. *See* Agreement § 8.1. And there is no reversion here. All Settlement  
24 funds will go to Class Members, less Class Counsel’s fees and any administrative costs. *See id.*  
25 §§ 1.35, 2.1(i).

26           While the Parties reached a settlement early in this particular action, that is a direct result  
27 of Class Counsel’s years of adversarial social casino litigation before this Court, including

1 adversarial social casino litigation with Defendant’s counsel. *See* Dkt. #23 at 1 (noting that  
2 Zynga’s lead counsel here also served as Playtika’s lead counsel in *Wilson v. Playtika*, No. 18-  
3 cv-5277). Indeed, the results achieved in this settlement equal those achieved in the prior, more-  
4 heavily-litigated social casino settlements such as *Playtika* and *Scientific Games*. *See id.* Even  
5 under heightened scrutiny, therefore, this settlement raises no concerns of collusion, which  
6 supports final approval. *See* Dkt. #51 (Rubenstein Decl.) ¶ 26 (“This settlement, although  
7 achieved efficiently, raises no concerns that it might be collusive.”).

8 **C. The amount offered in the Settlement is adequate, given the strength of**  
9 **Plaintiffs’ case and the risks inherent in further litigation.**

10 Even before the revised Rule 23 highlighted that the Court should consider the amount  
11 offered in settlement, courts recognized that the size of any settlement, compared to the  
12 likelihood of full recovery, “is generally considered the most important” factor in evaluating a  
13 settlement. *See Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at \*4 (N.D.  
14 Cal. Apr. 15, 2015). Here, an evaluation of the risks present in this litigation, combined with an  
15 assessment of the scope of relief, shows that the Settlement easily qualifies as fair, reasonable,  
16 and adequate.

17 **i. The Settlement Class would have faced significant delay before it**  
18 **could have recovered anything on the merits.**

19 To be frank, Class Counsel is confident in the merits of this case. The key legal  
20 questions, particularly under the RMLGA, are straightforward, and in Class Counsel’s view have  
21 been conclusively answered by the Ninth Circuit’s decision in the appeal in the *Kater* matter.  
22 Nevertheless, the case presented some legal risks. For instance, Defendant could have filed a  
23 motion contending that California law (and not Washington law) governs the Class’s claims due  
24 to a choice-of-law provision in Defendant’s Terms of Service. Defendant also could have raised  
25 various arguments similar to those raised by other social casino defendants, such as the  
26 contention that the regular provision of free virtual coins within their gambling games meant that  
27 the coins themselves were not “things of value.” *See, e.g., Scientific Games*, Dkt. #28 (W.D.

1 Wash. July 2, 2018) (motion to dismiss RMLGA claim); *DoubleDown*, Dkt. #103 (W.D. Wash.  
2 June 17, 2020) (seeking to certify issue to the Washington Supreme Court). Plaintiffs, of course,  
3 disagree with this argument, and this Court has denied other defendants' attempts to dismiss  
4 RMGLA claims. *See, e.g., Scientific Games*, Dkt. #38 (denying motion to dismiss);  
5 *DoubleDown*, Dkts. #127, #156 (denying motion to certify questions and motion for  
6 reconsideration). But it is also true that the opinion in *Kater* specifically notes that the court there  
7 did not reach a conclusion on the defendants' specific arguments about the regular provision of  
8 free chips. *See* 886 F.3d at 787.

9       Moreover, as Plaintiffs explained at preliminary approval, the principal risk here was  
10 legislative, *i.e.*, the chance that the ISGA's lobbying efforts may eventually lead to a retroactive  
11 change in Washington gambling law. *See* Logan Decl. ¶ 24. Class Counsel have thus far fended  
12 off the ISGA's lobbying efforts, but the ISGA and its members—many of them billion-dollar  
13 gambling corporations—are formidable opponents. If this case does not settle now, then during  
14 each legislative cycle, the Class will be at risk of having its claims eviscerated in the name of  
15 “remov[ing] . . . economic uncertainty” by “clarifying” that proposed Class Members cannot  
16 recover under the RMLGA. *See, e.g., H.B. 2720*, 66th Leg., Reg. Sess. (Wash. 2020).

17       The legislative risk is particularly acute here because it is practically inevitable that this  
18 case would take years to reach judgment. If the other social casino cases in this District are any  
19 guide, then the Parties here would likely have engaged in significant motion practice on the  
20 pleadings, on discovery issues, on class certification, and, perhaps, summary judgment and trial  
21 if the case had not settled. Appeals of arbitration, class certification, or trial verdicts also could  
22 have significantly lengthened the proceedings. Courts have regularly recognized that the prospect  
23 of significant delay while a case works its way to judgment is reason to favor immediate  
24 settlement. After all, one dollar today is worth significantly more than one dollar three years  
25 from now. *See Rodriguez*, 563 F.3d at 966 (“Inevitable appeals would likely prolong the  
26 litigation, and any recovery by class members, for years. This factor, too, favors the  
27 settlement.”); *Ikuseghan v. Multicare Health Sys.*, No. 3:14-cv-05539 BHS, 2016 WL 3976569,

1 at \*4 (W.D. Wash. July 25, 2016) (“[T]he outcome of trial and any appeals are inherently  
2 uncertain and involve significant delay. The Settlement avoids these challenges[.]”). But delay  
3 would be especially problematic here. The longer the case survives, the more opportunities  
4 Defendant and its industry allies would have to effect retroactive change to the law.

5  
6 **ii. Given the risks involved with further litigation, the amount offered in  
Settlement is outstanding.**

7 The most significant aspect of the agreement secured by this Settlement is the \$12 million  
8 non-reversionary common fund, which will be used to help Settlement Class Members recoup  
9 their losses. That is an “astounding” recovery. Dkt. #51 (Rubenstein Decl.) ¶ 2. Based on the  
10 Settlement Administrator’s final tally, the Settlement Fund equals approximately 21% of the  
11 Settlement Class’s approximately \$57 million in total spending. Baessler Decl. ¶ 7. That puts this  
12 settlement right in line with the relief secured (and finally approved) in *Scientific Games* and  
13 *Playtika*. It is also a significant enough sum that Class Members with the largest Lifetime  
14 Spending Amounts stand to recover more than 60% of their losses, and that no participating  
15 Class Members is likely to recover less than 20% of their losses. *See* Logan Decl. ¶ 23; *cf.*  
16 *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628  
17 (9th Cir. 1982) (“It is well-settled law that a cash settlement amounting to only a fraction of the  
18 potential recovery will not per se render the settlement inadequate or unfair”).

19 Other than the other social casino settlements in this District, it is difficult to find any  
20 other true peers to reasonably measure against. The closest factual comparator is probably *In Re:*  
21 *Daily Fantasy Sports Litigation*, where consumers alleged that betting companies DraftKings  
22 and FanDuel purveyed online contests that constituted “illegal gambling” under a variety of state  
23 and federal laws, unfairly causing “millions of users” to lose “hundreds of millions of dollars.”  
24 No. 16-md-2677-GAO, Dkt. #227 (Consolidated Complaint) ¶¶ 491, 793 (D. Mass. June 30,  
25 2016). The settlements there were paltry: DraftKings users, for example, were primarily  
26 compensated in “DK Dollars” (i.e., in-game currency that cannot be withdrawn for cash) and the  
27

1 cash component of the settlement totaled \$720,000. *See In Re: Daily Fantasy Sports Litig.*, Dkt.  
2 #459 at 6.

3 Perhaps a better comparator is *Zanca v. Epic Games*, where the class alleged that so-  
4 called “loot boxes” in games like *Fortnite* “capitalize on and encourage addictive behavior, akin  
5 to gambling” and unfairly coaxed children to spend “significant amounts of money”—some  
6 “thousands of dollars”—on in-game currency. No. 21-CVS-534, Complaint ¶¶ 25, 36, 131  
7 (Wake Cnty. Sup. Ct. Jan. 12, 2021), <https://bit.ly/3PzpMsN>. There, the settlement appears to  
8 have established no common fund at all, instead giving class members 1,000 “credits” to spend  
9 on loot boxes in addition to either “up to \$50” in cash or another 13,000 “credits.” *See Epic*  
10 *Games Settlement FAQs*, EPIQ SYSTEMS, INC. (May 11, 2022), <https://bit.ly/3MC2LUB>.  
11 Similarly, in *In re Apple In-App Purchase Litigation*, the class alleged that certain apps offered  
12 within Apple’s App Store were “highly addictive, designed deliberately so, and tend to compel  
13 children playing them to purchase large quantities” of in-game currency, “amounting to as much  
14 as \$100 *per purchase* or more.” No. 5:11-cv-01758-EJD, 2013 WL 1856713, at \*1 (N.D. Cal.  
15 May 2, 2013) (emphasis added). But there, the settlement likewise established no common fund,  
16 the default recovery for participating class members was five dollars (yes, \$5), and with adequate  
17 proof some claiming class members could claim refunds for a single 45-day period of purchases.  
18 *Id.* at \*5. Ultimately, there is just no comparison between these other settlements and the series  
19 of social casino settlements before the Court, including this one.

20 Beyond the cash recovery, the Settlement provides for substantial non-monetary benefits.  
21 As part of the Settlement, Defendant agreed to meaningful prospective relief, including  
22 maintaining and honoring a voluntary self-exclusion policy, and maintaining a section on its  
23 website that is reasonably available from within the Applications and encourages responsible  
24 gameplay. Agreement § 2.2(a). Defendant also implemented a change to the game mechanics for  
25 the Applications after and as a result of the prior social casino litigation pursued by Class  
26 Counsel; specifically, the change ensures that players who run out of virtual coins are able to  
27 continue to play at least one slot game within the Application they are playing. *Id.* § 2.2(b).

1 These in-game changes are a monumental achievement for the Settlement Class. They represent  
2 the first steps towards much-needed self-regulation within the social casino industry, and given  
3 Defendant’s prominence in the social casino industry, other industry players have followed and  
4 will continue to follow suit.

5 In sum, the amount offered in the Settlement, when compared with the risks and expense  
6 of further litigation, strongly supports final approval.

7 **D. The Settlement treats Settlement Class Members equitably.**

8 Revised Rule 23 further asks courts to assess whether the proposed settlement “treats  
9 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). The Rule’s revised  
10 text makes clear that *equal* treatment is not required, but fair treatment is instead the goal. The  
11 Settlement here achieves that goal.

12 As Class Counsel explained at preliminary approval, and as hashed out in detail in the  
13 Plan of Allocation, a given Settlement Class Member’s total recovery will depend on the extent  
14 of their losses (*i.e.*, those with greater losses will recover a higher proportion of their losses). *See*  
15 Agreement § 1.36, 2.1(c), (d). The Plan of Allocation therefore distributes settlement funds  
16 according to those who have suffered the greatest harm.

17 Allocating settlement funds in this way achieves an equitable result. Settlement Class  
18 Members with tens or hundreds of thousands of dollars in losses have frequently suffered serious  
19 collateral harms, such as alienation from family or friends or the accrual of huge interest-bearing  
20 debts, that were not suffered by those who may have purchased \$10 or \$20 worth of coins. And  
21 even though all Settlement Class Members have equally strong RMLGA claims, Settlement  
22 Class Members with particularly significant losses may have stronger Consumer Protection Act  
23 claims—including stronger potential claims for treble damages—to release here. So while the  
24 Class stands largely on equal footing, a clear-eyed assessment of the risks that lay ahead  
25 demonstrates that certain claims may be stronger than others, something appropriately reflected  
26 in the Plan of Allocation. *See In re Equity Funding Corp. of Am. Securities Litig.*, 603 F.2d 1353,  
27 1365 (9th Cir. 1979) (concluding that the district court’s approval of certain offsets “in [a] Plan

1 of Allocation was a component of its duty to insure the equitable distribution of the settlement  
2 proceeds”); 2 McLaughlin on Class Actions § 6.23 (17th ed. 2020) (“Allocation formulas,  
3 including certain discounts for certain types of claims within a class, may properly take into  
4 consideration the comparative strengths and values of different categories of the settled and  
5 released claims.”).

6 Likewise, the provision of incentive awards for the Class Representatives is consistent  
7 with the equitable treatment of Class Members. Tonda Ferrando and Dex Marzano seek modest  
8 awards of \$5,000 each, which reflect their service to the Class. As stated above, both made  
9 substantial contributions to the Class, including stepping forward to serve as class representatives  
10 and named Plaintiffs, staying in regular communication with Class Counsel, timely responding to  
11 requests for information, and closely reviewing the Settlement Agreement before approving it.  
12 *See* Dkt. #52 (Declaration of Tonda Ferrando) ¶¶ 4-5; Dkt. #53 (Declaration of Dex Marzano)  
13 ¶¶ 4-5. In addition, both made substantial personal sacrifices for the benefit of the Class,  
14 including the fact that anyone who Googles their names now sees pages of websites talking  
15 about their involvement in these lawsuits. *See* Dkt. #52 ¶ 3; Dkt. #53 ¶ 3. The risk of reputational  
16 injury was higher here than in many other class action suits, given the subject matter of the  
17 lawsuit. As set forth in the previously filed motion for incentive awards, awards of this size are  
18 in line with other awards given to class representatives and fairly reflect Ferrando’s and  
19 Marzano’s service to the Class. Given that their efforts were key to ensuring that the Class  
20 recovered anything, the modest proposed incentive awards are fully consistent with equity.

21 In sum, the Settlement treats all Class Members equitably relative to each other, which  
22 supports final approval.

23 **E. Class Counsel was able to reach an informed judgment about the benefits of**  
24 **settling and the quality of the Settlement.**

25 Next, the Parties “had enough information to make an informed decision about the  
26 strength of their cases and the wisdom of settlement.” *Rinky Dink Inc. v. World Bus. Lenders,*  
27 *LLC*, No. C14-0268-JCC, 2016 WL 4052588, at \*5 (W.D. Wash. Feb. 3, 2016).

1 While the Parties reached a settlement early in this particular action, that is a direct result  
2 of Class Counsel's years of social casino litigation before this Court and years of litigation with  
3 Defendant's counsel. *See* Dkt. #23 at 1 (noting that Zynga's lead counsel here also served as  
4 Playtika's lead counsel in *Wilson v. Playtika*, No. 18-cv-5277). Consequently, both Parties began  
5 this case with an in-depth understanding of the strengths and weaknesses of the Parties' claims  
6 and defenses as well as the social casino litigation landscape. *See* Logan Decl. ¶ 25.

7 Indeed, in the weeks before the mediation, Defendant provided Plaintiffs with data  
8 regarding virtual coin purchases; the Parties exchanged substantial briefing on the core facts, legal  
9 issues, and litigation risks; and the Parties supplemented that briefing with extensive written and  
10 telephonic correspondence, mediated and shuttled by the Phillips ADR team, clarifying each  
11 other's positions. It was only after these weeks-long efforts, and with the skilled assistance of the  
12 Phillips ADR team, that the Parties were able to hash out a settlement. *See* Logan Decl. ¶ 26. By  
13 then, and in light of all counsel's experience in prior social casino litigation, the Parties were fully  
14 informed on all pertinent issues and capable of assessing the benefits of the settlement now before  
15 the Court. *See id.*; *Ikuseghan*, 2016 WL 3976569, at \*3 (approving settlement reached "between  
16 experienced attorneys who are familiar . . . with the legal and factual issues of this case in  
17 particular"). This factor, too, thus supports final approval.

18 **F. The reaction of the Settlement Class has been favorable.**

19 Finally, current claim data indicates that the Class has responded favorably to the  
20 Settlement, warranting final approval. Thus far, the Settlement Administrator has received more  
21 than 7,686 claims that total at least \$14.45 million, reflecting an Adjusted Claims Rate of at least  
22 25.25%. Baessler Decl. ¶ 23. By contrast, zero Class Members objected to the settlement, and  
23 only one asked to be excluded from the settlement. *Id.* ¶¶ 25, 27. These numbers speak volumes  
24 regarding the fairness and adequacy of the Settlement. "When few class members object, a court  
25 may appropriately infer that a class action settlement is fair, adequate, and reasonable."  
26 *Schneider v. Wilcox Farms, Inc.*, No. 07-CV-01160-JLR, 2009 WL 10726662, at \*3 (W.D.  
27 Wash. Jan. 12, 2009); *accord Pelletz v. Weyerhouser Corp.*, 255 F.R.D. 537, 543-44 (W.D.



1 Wash. 2009) (lauding “positive response” of Settlement Class of 110,000 to 140,000 members  
2 where 19 excluded themselves from the settlement, and 3 objected); *see also Churchill Vill.*, 361  
3 F.3d at 577 (affirming approval of class action settlement where 45 of 90,000 class members  
4 objected). Given the participation rates here, and absence at present of any objections to the  
5 Settlement, the Court should find that the reaction of the Settlement Class favors final approval.

6 **CONCLUSION**

7 The Court should grant final approval and enter the attached [Proposed] Order.

8  
9 Respectfully submitted,

10  
11 Dated: November 18, 2022

**TONDA FERRANDO and DEX MARZANO**,  
individually and on behalf of all others similarly  
situated,

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*Plaintiffs' Attorneys and Class Counsel*

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The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

TONDA FERRANDO and DEX MARZANO,  
individually and on behalf of all others  
similarly situated,

*Plaintiffs,*

v.

ZYNGA INC., a Delaware corporation,

*Defendant.*

Case No. 22-cv-214-RSL

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 THIS MATTER came before the Court on Plaintiffs' Motion for Final Approval of Class  
2 Action Settlement. The Court has considered all papers and materials submitted by the Parties in  
3 support of the proposed Settlement Agreement, including Plaintiffs' motions for preliminary and  
4 final approval of the Settlement Agreement and the declarations of Class Representatives, Class  
5 Counsel, and the Settlement Administrator. The Court held a Final Approval Hearing on  
6 December 1, 2022, at which the Court heard argument from counsel and allowed others to  
7 appear to voice their support for, or objection to, the Settlement. Based on all these materials and  
8 the statements at the Final Approval Hearing, the Court issues the following Order and Final  
9 Judgment:

10 **1. Settlement Terms.** All terms and definitions used herein have the same meanings  
11 as set forth in the Settlement Agreement.

12 **2. Jurisdiction.** The Court has jurisdiction over the Parties, the subject matter of the  
13 dispute, and all Settlement Class Members.

14 **3. Class Certification.** The Court confirms its certification for settlement purposes  
15 of the following Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

16 All individuals who, in Washington (as reasonably determined by billing address  
17 information, IP address information, or other information furnished by Platform  
18 Providers), played the Applications on or before Preliminary Approval of the Settlement.<sup>1</sup>

19 **4. Class Notice.** The Class Notice given by the Settlement Administrator to the  
20 Class was the best practicable notice under the circumstances and was reasonably calculated,  
21 under the circumstances, to apprise Settlement Class Members of the pendency of the Action,  
22 their right to object to the Settlement or exclude themselves from the Settlement Class, and to  
23 appear at the Final Approval Hearing. The Class Notice and the means of disseminating the  
24

25 <sup>1</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this  
26 Action and members of their families, (2) the Defendant, Defendant's subsidiaries, parent  
27 companies, successors, predecessors, and any entity in which the Defendant or its parent 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.

1 same, as prescribed by the Agreement, was appropriate and reasonable and constituted due,  
2 adequate and sufficient notice to all persons entitled to notice. The Class Notice and the means of  
3 disseminating the same satisfied all applicable requirements of the Federal Rules of Civil  
4 Procedure, constitutional due process, and any other applicable law.

5 **5. Settlement Approval.** The Court hereby grants final approval to the Settlement  
6 and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best  
7 interests of the Settlement Class. The Court finds that the Settlement is within the authority of  
8 the Parties and the result of extensive, arm's-length negotiations. The Parties are directed to  
9 proceed with the Settlement procedures specified under the terms of the Settlement Agreement,  
10 including payment and prospective relief.

11 **6. Objections or Exclusions from Settlement Class.** Class Members were given a  
12 fair and reasonable opportunity to object to the Settlement. One class member requested to be  
13 excluded pursuant to the terms of the Settlement. No objections have been brought to the Court's  
14 attention. Aside from the one Class Member who has been excluded from the Class, this Order is  
15 binding on all Class Members and has res judicata and preclusive effect in all pending and future  
16 lawsuits or other proceedings maintained by or on behalf of Class Members with respect to the  
17 Released Claims.

18 **7. No Admission.** Neither this Final Judgment nor the fact or substance of the  
19 Settlement Agreement shall be considered a concession or admission by or against Defendant or  
20 any other related party, nor shall they be used against Defendant or any other released party as an  
21 admission, waiver, or indication with respect to any claim, defense, or assertion or denial of  
22 wrongdoing or legal liability.

23 **8. Dismissal with Prejudice.** Pursuant to the terms of the Settlement, the action  
24 (including all individual claims and class claims) is hereby dismissed with prejudice on the  
25 merits, without costs or attorney's fees to any Party except as provided under the terms of the  
26 Settlement Agreement, this Final Judgment, and the Court's Order Granting Class Counsel's  
27 Motion for Award of Attorney's Fees and Expenses and Issuance of Incentive Awards.

1           **9. Releases.** This Order incorporates the Releases set forth in the Settlement  
2 Agreement and makes them effective as of the Effective Date. All Settlement Class Members  
3 who have not properly sought exclusion from the Settlement Class are hereby permanently  
4 barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as  
5 class members or otherwise) in any lawsuit or other action in any jurisdiction based on the  
6 Released Claims, as set forth in the Settlement Agreement.

7           **10. Attorneys' Fees and Expenses.** Pursuant to the Court's Order Granting Class  
8 Counsel's Motion for Award of Attorneys' Fees and Expenses and Issuance of Incentive  
9 Awards, the Court awards \$3,000,000 in attorneys' fees and \$22,500.00 in costs and expenses to  
10 Class Counsel.

11           **11. Incentive Awards.** Pursuant to the Court's Order Granting Class Counsel's  
12 Motion for Award of Attorneys' Fees and Expenses and Issuance of Incentive Awards, the Court  
13 awards \$5,000 to Tonda Ferrando and \$5,000 to Dex Marzano for their services as Class  
14 Representatives.

15           **12. Continuing Jurisdiction.** Without affecting the finality of the Final Judgment for  
16 purposes of appeal, the Court retains continuing and exclusive jurisdiction over the Parties and  
17 all matters relating to the Settlement Agreement, including the administration, interpretation,  
18 construction, effectuation, enforcement, and consummation of the Settlement and this Order.

19  
20           **IT IS SO ORDERED.**

21  
22           Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

23  
24 \_\_\_\_\_  
25           Robert S. Lasnik  
26           United States District Judge  
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Presented by:

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