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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

**UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT  
AGREEMENT**

NOTE ON MOTION CALENDAR:

June 27, 2022

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1 **INTRODUCTION**

2 This is the fifth settlement reached in a seven-year-old cluster of litigation in this District  
3 alleging that social casino apps constitute illegal gambling. It is the product of a full-day, in-  
4 person mediation before the Honorable Layn R. Phillips (Ret.) of Phillips ADR. The settlement  
5 provides for a non-reversionary, common-fund cash recovery of twelve million dollars  
6 (\$12,000,000.00), equaling approximately twenty-five percent (25%) of the Class’s alleged  
7 damages. That puts the settlement on par not only with *Reed v. Scientific Games* (No. 18-cv-565,  
8 preliminary approval granted January 19, 2022), but also with *Wilson v. Playtika* (No. 18-cv-  
9 5277, final approval granted February 11, 2021), in which Defendant Zynga’s lead counsel here  
10 also served as a Playtika’s lead counsel. In other words, while the Parties here were able to reach  
11 the proposed settlement without the need for motion practice, that is a direct result of seven years  
12 of litigation history before this Court and years of litigation with Defendant’s counsel. Moreover,  
13 the excellent results delivered here equal those of the settlements reached in aggressively  
14 litigated cases.

15 If this settlement is approved, participating Class Members—just as in the *Reed v.*  
16 *Scientific Games* and *Wilson v. Playtika* settlements—stand to recover substantial portions of  
17 their alleged damages: between 20% (on the low end) to more than 60% (at the high end), based  
18 on Class Counsel’s experience in those prior settlements. Particularly in the current economic  
19 climate, these recoveries will be life-changing for many Class Members. And the settlement  
20 further requires Zynga to implement meaningful prospective relief, including by maintaining and  
21 enforcing a self-exclusion policy. Because this settlement is fair, reasonable, and adequate, the  
22 Court should not hesitate to approve it.

23 Consequently, Plaintiffs respectfully request that the Court (i) certify the proposed  
24 Settlement Class; (ii) grant preliminary approval of the Settlement; (iii) appoint Tonda Ferrando  
25 and Dex Marzano as Class Representatives; (iv) appoint Jay Edelson, Rafey S. Balabanian, Todd  
26 Logan, Alexander G. Tievsky, Brandt Silver-Korn, and Amy B. Hausmann as Class Counsel; (v)  
27 approve the proposed Notice Plan; and (vi) schedule the final approval hearing.

1 **BACKGROUND**

2 **A. Relevant Social Casino Litigation History (2015-Present)**

3 This case is part of a long-running series of lawsuits against social casino companies that  
4 began in 2015. Because the proposed settlement before the Court is ultimately the result of this  
5 now seven-year-long (and ongoing) effort, a brief history of the relevant social casino litigation  
6 landscape follows.

7 1. Proposed Class Counsel’s 2015 Social Casino Lawsuits

8 Between April and October of 2015, the undersigned counsel (“Proposed Class Counsel”)  
9 filed five class action lawsuits against social casino companies, in four different courts across the  
10 country, alleging violations of state gambling laws. *See Kater v. Churchill Downs Inc.*, No. 15-  
11 cv-612 (W.D. Wash Apr. 17, 2015); *Dupee v. Playtika Santa Monica, et al.*, No. 15-cv-01021  
12 (N.D. Ohio May 21, 2015); *Mason v. Mach. Zone, Inc.*, No. 15-cv-01107 (D. Md. Apr. 17,  
13 2015); *Phillips v. Double Down Interactive LLC*, No. 15-cv-04301 (N.D. Ill. Apr. 14, 2015);  
14 *Ristic v. Mach. Zone, Inc.*, No. 15-cv-08996 (N.D. Ill. Oct. 9, 2015). The theory of liability in  
15 each case was similar: social casinos constitute illegal gambling and the companies purveying  
16 these games must return their ill-gotten gains to users. Each federal district court initially  
17 presented with this theory rejected it. *See, e.g., Kater v. Churchill Downs Inc.*, No. 15-cv-612,  
18 2015 WL 9839755, at \*4 (W.D. Wash. Nov. 19, 2015), *rev’d*, 886 F.3d 784 (9th Cir. 2018)  
19 (District Court concluded that “Big Fish Casino does not award something of value satisfying the  
20 requisite prize element, and therefore the game is not ‘illegal gambling’ under Washington  
21 law.”).

22 2. The Ninth Circuit Reverses the Kater Dismissal in 2018

23 In January 2016, Proposed Class Counsel appealed the dismissal order in *Kater*. *See*  
24 *Kater*, Dkt. #43. Two years later, after merits briefing and oral argument, the Ninth Circuit  
25 reversed:

26 In this appeal, we consider whether the virtual game platform “Big  
27 Fish Casino” constitutes illegal gambling under Washington law.  
Defendant–Appellee Churchill Downs, the game’s owner and

1 operator, has made millions of dollars off of Big Fish Casino.  
2 However, despite collecting millions in revenue, Churchill Downs,  
3 like Captain Renault in *Casablanca*, purports to be shocked—  
4 shocked!—to find that Big Fish Casino could constitute illegal  
5 gambling. We are not. We therefore reverse the district court and  
6 hold that because Big Fish Casino’s virtual chips are a “thing of  
7 value,” Big Fish Casino constitutes illegal gambling under  
8 Washington law.

9 *Kater*, 886 F.3d at 785. In that opinion, the Ninth Circuit rejected a variety of arguments that had  
10 been lodged by defendants claiming that social casinos are not gambling in Washington. For  
11 example, the Court rejected arguments that social casinos “do not extend gameplay, but only  
12 enhance it,” *id.* at 787, and that the Washington State Gambling Commission had concluded that  
13 social casinos are not gambling, *id.* at 788.

### 14 3. Litigation Efforts in the Related Cases

15 Soon after remand in *Kater*, in the spring of 2018, Proposed Class Counsel filed five  
16 additional class action lawsuits—*Fife v. Scientific Games*, *Wilson v. Playtika*, *Benson v.*  
17 *DoubleDown*, *Wilson v. High 5*, and *Wilson v. Huuuge*. Each alleged that a major social casino  
18 company’s online slot machines constitute unlawful gambling under Washington’s gambling  
19 laws. *See generally Scientific Games*, No. 18-cv-00565, Dkt. #1 (Apr. 17, 2018); *Playtika*, No.  
20 18-cv-05277, Dkt. #1 (Apr. 6, 2018); *DoubleDown*, No. 18-cv-00525, Dkt. #1 (Apr. 9, 2018);  
21 *High 5*, No. 18-cv-05275, Dkt. #1 (Apr. 6, 2018); *Huuuge*, No. 18-cv-05276, Dkt. #1 (Apr. 6,  
22 2018).

23 Over the next two years, Class Counsel fended off a barrage of motions and other  
24 litigation gambits aimed at dismissing or otherwise gutting the pending lawsuits. These included  
25 motions to dismiss for lack of personal jurisdiction (*Playtika*, Dkt. #40; *Kater*, Dkt. #202),  
26 motions to dismiss for lack of subject matter jurisdiction (*Scientific Games*, Dkt. #59;  
27 *DoubleDown*, Dkt. #138), motions to dismiss for failure to state a claim (*Playtika*, Dkt. #40;  
*Scientific Games*, Dkt. #28; *High 5*, Dkt. #34; *DoubleDown*, Dkt. #289), motions to certify  
questions to the Washington Supreme Court (*Playtika*, Dkt. #99; *High 5*, Dkt. #99; *DoubleDown*,

1 Dkt. #103), motions to compel arbitration (*Kater*, Dkt. #60; *Kater*, Dkt. #100; *Kater*, Dkt. #205;  
2 *Scientific Games*, Dkt. #82; *DoubleDown*, Dkt. #38; *Huuuge*, Dkt. #31), a motion to strike class  
3 claims (*DoubleDown*, Dkt. #128), interlocutory appeals of denials of motions to compel  
4 (*Scientific Games*, Dkt. #136; *DoubleDown*, Dkts. #82-83; *Huuuge*, Dkt. #47), and repeated  
5 efforts to have users click post-litigation pop-up arbitration clauses waiving their rights in these  
6 cases (*Kater*; *Scientific Games*; *DoubleDown*). Each of these gambits failed.

7 In the meantime, Proposed Class Counsel pursued offensive motion practice and  
8 discovery, ultimately prevailing in a slate of discovery disputes, *see, e.g.*, *Kater*, Dkt. #191;  
9 *DoubleDown*, Dkts. #366-367, obtaining data from defendants and third-party platforms Apple,  
10 Google, Facebook, and Amazon, *see, e.g.*, *Kater*, Dkt. #250; *DoubleDown*, Dkts. #366-367;  
11 *High 5*, Dkt. #129, and certifying a class, *see High 5*, Dkt. #170.

#### 12 4. Litigation-Adjacent Efforts in the Related Cases

13 Beyond the traditional litigation work necessitated by these cases, Proposed Class  
14 Counsel undertook (and continue to undertake) all manner of litigation-adjacent work to ward off  
15 various social casino company defendants' efforts to dispose of these lawsuits. These efforts  
16 include (i) opposing a "Petition for Declaratory Order" before the Washington State Gambling  
17 Commission, which asked the gambling commission to declare that social casinos "do not  
18 constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237," (ii)  
19 opposing legislation meant to defang Washington's gambling laws, including by providing in-  
20 person testimony and meeting with State Senators and Representatives and other officials, and  
21 (iii) sounding the alarm on social casinos to the general public by helping clients share their  
22 stories with media outlets across the country, such as PBS NewsHour and NBC News. *See*  
23 Declaration of Todd Logan ("Logan Decl.") ¶¶ 3-7.

#### 24 5. Settlements in the Related Cases

25 As a result of these efforts, between 2020 and 2021, Proposed Class Counsel achieved  
26 landmark settlements in four of the pending cases: *Kater v. Big Fish* (\$155 million), *Wilson v.*  
27 *Playtika* (\$37 million), *Reed v. Scientific Games* (\$24.5 million), and *Wilson v. Huuuge* (\$6.5

1 million). *See Kater*, Dkt. #289 (granting final approval); *Playtika*, Dkt. #164 (granting final  
2 approval); *Scientific Games*, Dkt. #166 (granting preliminary approval); *Huuuge*, Dkt. #140  
3 (granting final approval). These are the first ever class action settlements resolving claims that  
4 social casinos constitute unlawful gambling, and undoubtedly served as catalysts for a  
5 nationwide wave of dozens of cases related to social casinos, culminating in the creation of  
6 multi-district litigation in the Northern District of California, in which Proposed Class Counsel  
7 here have been appointed by Judge Davila as Interim Lead Counsel (Rafey S. Balabanian) and  
8 Law and Briefing Counsel (Todd Logan). *See, e.g., In re: Apple Inc. App Store Simulated*  
9 *Casino-Style Games Litig.*, No. 5:21-md-2985-EJD, Dkt. #68 (N.D. Cal. Sept. 23, 2021).

10 **B. Plaintiffs’ Allegations and the Subsequent Arms-Length Mediation**

11 On February 24, 2022, Plaintiffs filed this case alleging that Defendant’s social casinos,  
12 including “Hit It Rich!,” “Black Diamond Casino,” “Wizard of Oz Slots,” “Game of Thrones  
13 Slots,” and “Willy Wonka Slots” (individually, “Application,” and together, the “Applications”),  
14 constitute unlawful gambling under Washington’s gambling laws. *See* Dkt. #1. Plaintiffs claimed  
15 that the “social casino” business model, which drives players to pay real money for virtual casino  
16 chips, is illegal under Washington law because its products are online gambling games of  
17 chance. *See id.* ¶¶ 30, 45. More specifically, Plaintiffs alleged that the Applications entice users  
18 with an initial allotment of free coins and/or chips to wager on an array of Vegas-style slots, *see*  
19 *id.* ¶ 9, the outcomes of which are “dependent entirely upon chance,” *id.* ¶ 37. They alleged that  
20 these initial free chips are “quickly los[t]” in the course of gameplay, *id.* ¶ 10, and that—once  
21 exhausted—users purchase more chips with real money (in packages ranging from \$2.99 to  
22 \$99.99 each) if they wish to extend gameplay, *id.* ¶ 11.

23 Because these virtual chips “extend gameplay,” *id.* ¶ 30, Plaintiffs alleged that these  
24 virtual chips are “things of value” under Washington’s gambling laws, and that under RCW  
25 § 4.24.070 (the “Recovery of Money Lost at Gambling Act” or “RMLGA”), users are entitled to  
26 recoup their losses, *see id.* ¶¶ 25-38. Plaintiffs further alleged that these actions constituted  
27



1 address information, or other information furnished by Platform Providers), played the  
2 Applications on or before Preliminary Approval of the Settlement.”<sup>1</sup> Agreement § 1.33.

3 **B. Monetary Benefits:** Defendant has agreed to establish a non-reversionary twelve-  
4 million dollars (\$12,000,000.00) Settlement Fund from which Settlement Class Members who  
5 file a valid claim will be entitled to recover a cash payment, after deduction of costs and  
6 administrative expenses, any fee award to Proposed Class Counsel, and any incentive payments  
7 to the Class Representatives. *See id.* § 1.35. No portion of the Settlement Fund will revert to the  
8 Defendant. *Id.* § 2.1(i). Any Settlement Class Member checks not cashed within ninety (90) days  
9 of issuance will either be placed in a second distribution fund or donated to the Legal Foundation  
10 of Washington, as approved by the Court. *Id.* § 2.1(h). As described in detail in the Plan of  
11 Allocation, the amount of each Settlement Class Member’s payment will vary based on the  
12 Settlement Class Member’s Lifetime Spending Amount (those with higher Lifetime Spending  
13 Amounts are eligible to recover a greater percentage) and overall Settlement Class Member  
14 participation levels, *see id.* §§ 1.36, 2.1(c), except that no Class Member will recover more than  
15 their Lifetime Spending Amount unless all Class members do, *see* Exhibit E to the Settlement  
16 Agreement. Based on their experience with settlements in related cases, Plaintiffs’ Counsel  
17 anticipate that participating Settlement Class Members in the highest category of Lifetime  
18 Spending Amounts will likely recover gross payments in excess of 60% of their Lifetime  
19 Spending Amounts, and that participating Class Members in the smallest category of Lifetime  
20 Spending Amounts will likely recover gross payments in excess of 20% of their Lifetime  
21 Spending Amounts. *See* Logan Decl. ¶ 13. Settlement Class Members will be able to quickly and  
22 easily estimate the amount of their potential recovery on the Settlement Website. *See* Agreement  
23 § 4.2(d).

24 \_\_\_\_\_  
25 <sup>1</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and  
26 members of their families, (2) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors,  
27 and any entity in which the Defendant or its parent has a controlling interest and their current or former officers,  
directors, and employees, (3) persons who properly execute and file a timely request for exclusion from the  
Settlement Class, and (4) the legal representatives, successors or assigns of any such excluded persons. Agreement  
§ 1.33.

1           **C. Prospective Relief:** Defendant has agreed to maintain a voluntary self-exclusion  
2 policy and a webpage, accessible from within the Applications that encourages responsible  
3 gameplay. *See id.* § 2.2. Specifically, Defendant has agreed to publish on its website a method  
4 for players to restrict or prohibit their ability to purchase virtual coins, suspend their accounts, or  
5 close their accounts entirely. *Id.* Defendant has further agreed to enforce this policy through the  
6 use of Player IDs and other device or account-related identifiers.

7           **D. Release:** In exchange for the relief described above, Defendant and other entities,  
8 including the Platform Providers Amazon, Apple, Facebook, Microsoft, Samsung, and Google,  
9 will be released from all claims raised in cases relating to the operation of Defendant’s social  
10 casino games and the sale of virtual chips in those games, including claims that the games were  
11 illegal gambling or the chips were “things of value.” The full release is contained at *id.* §§ 1.28,  
12 3.1-3.4.

13           **E. Class Notice:** The Settlement Fund will be used to pay the costs of sending the  
14 notice set forth in the Agreement and any other notice as required by the Court, as well as all  
15 costs of administration of the Settlement. *See id.* § 1.35. JND Legal Administration (“JND”), the  
16 Settlement Administrator, will send class notices via email and/or U.S. Mail based on records  
17 produced by Defendant and obtained from third parties. *Id.* §§ 4.1, 4.2. JND will also establish a  
18 settlement website and implement a digital publication notice campaign targeting Class  
19 Members. *Id.* In line with Rule 23, the notice will include the nature of the action, a summary of  
20 the settlement terms, and instructions on how to object or opt out of the settlement, including  
21 relevant deadlines. *Id.* § 4.3.

22           **F. Incentive Award Requests:** With no consideration having been given or  
23 received, Tonda Ferrando and Dex Marzano will each seek an incentive award of no more than  
24 \$5,000. *See id.* § 8.3. Defendant explicitly reserves its right to challenge any incentive award  
25 petitions. *See id.*

26           **G. Attorneys’ Fees and Expenses Requests:** The Parties have agreed that Proposed  
27 Class Counsel are entitled to an award of reasonable attorneys’ fees and expenses in an amount



1 to be determined by the Court and to be paid from the Settlement Fund. *See id.* § 8.1. Without  
2 the Parties having discussed the issue of attorneys’ fees at any point in their negotiations, and  
3 with no consideration given or received, Proposed Class Counsel have unilaterally agreed to  
4 limit any petition for attorneys’ fees to no more than 30% of the Settlement Fund, plus  
5 reimbursement of expenses. *Id.* Any fee award requested by Proposed Class Counsel will be  
6 subject to the Court’s approval. *Id.* Defendant may challenge the amount requested. *Id.*

## 7 ARGUMENT

### 8 I. The Proposed Class Should Be Certified.

9 Before granting preliminary approval, the Court must first determine that the proposed  
10 class is appropriate for certification. To do so, the proposed class must meet the requirements of  
11 Rule 23(a) and at least one subsection of Rule 23(b). *See Amchem Products, Inc. v. Windsor*, 521  
12 U.S. 591, 614, 621 (1997); *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 712 (9th Cir.  
13 2010); MANUAL FOR COMPLEX LITIGATION (Fourth) § 21.633 (2004).<sup>2</sup>

14 Rule 23(a) requires that a plaintiff demonstrate that (1) the proposed class is so numerous  
15 that joinder of all individual class members is impracticable (numerosity), (2) there are questions  
16 of law or fact common to the proposed class (commonality), (3) the claims of the plaintiff are  
17 typical of those of the class (typicality), and (4) the plaintiff will adequately protect the interests  
18 of the class (adequacy). Fed. R. Civ. P. 23(a)(1)–(4). In addition, where, as here, Plaintiffs seek  
19 certification under Rule 23(b)(3), Plaintiffs must also demonstrate that common questions  
20 predominate over any questions affecting only individual members (predominance), and that a  
21 class action is superior to other available methods for fairly and efficiently adjudicating the  
22 controversy (superiority). Fed. R. Civ. P. 23(b)(3). Because the proposed Class is being certified  
23

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24 <sup>2</sup> Courts sometimes also inquire into whether the proposed class is “ascertainable,” that is, “whether the  
25 Court can reasonably identify which individuals are class members and which are not.” *Geier v. m-Qube, Inc.*, No.  
26 13-cv-354, 2016 WL 3458345, at \*2 (W.D. Wash. June 24, 2016). But in this Circuit there is no separate  
27 “administrative feasibility” or “ascertainability” requirement implicit in Rule 23. *Briseno v. ConAgra Foods, Inc.*,  
844 F.3d 1121, 1123 (9th Cir. 2017) (“[S]eparate administrative feasibility prerequisite to class certification is not  
compatible with the language of Rule 23.”). Nevertheless, membership in the proposed Class here is based on  
objective, ascertainable criteria: whether a person has previously played an at-issue Application in Washington.

1 for settlement purposes, the Court “need not inquire whether the case, if tried, would present  
2 intractable management problems.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557  
3 (9th Cir. 2019) (quoting *Amchem*, 521 U.S. at 620).

4 **A. The Proposed Class Meets the Requirements of Rule 23.**

5 Like the four substantially similar social casino class action settlements approved by this  
6 Court, the proposed Settlement here satisfies all elements of Rule 23. *See Wilson v. Hunuige, Inc.*,  
7 No. 18-cv-5276-RSL, 2021 WL 512229, at \*1 (W.D. Wash. Feb. 11, 2021) (finding that a  
8 similar social casino class action met all the prerequisites of Rule 23); *Wilson v. Playtika Ltd.*,  
9 No. 18-cv-5277-RSL, 2021 WL 512230, at \*1 (W.D. Wash. Feb. 11, 2021) (same); *Kater v.*  
10 *Churchill Downs Inc.*, No. 15-cv-00612-RSL, 2021 WL 511203, at \*1 (W.D. Wash. Feb. 11,  
11 2021) (same); *Reed v. Scientific Games Corp.*, No. 18-cv-00565, Dkt. #166 at 1 (W.D. Wash.  
12 Jan. 19, 2022) (same).

13 1. The Proposed Settlement Class Is Sufficiently Numerous.

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

21 Here, the Settlement Class undoubtedly exceeds one thousand individuals. *See Logan*  
22 *Decl.* ¶ 14. Consequently, the proposed Class is so numerous that joinder of their claims is  
23 impracticable, and the numerosity requirement is satisfied.

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

25 The second requirement of Rule 23(a)—commonality—is satisfied where “there are  
26 questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is  
27 construed permissively and is demonstrated when the claims of all class members “depend upon

1 a common contention,” with “even a single common question” sufficing. *Wal-Mart Stores, Inc.*  
2 *v. Dukes*, 564 U.S. 338, 350, 359 (2011) (citation omitted); *see also Hanlon v. Chrysler Corp.*,  
3 150 F.3d 1011, 1019 (9th Cir. 1998) (“The existence of shared legal issues with divergent factual  
4 predicates is sufficient, as is a common core of salient facts coupled with disparate legal  
5 remedies within the class.”). The common contention must be of such a nature that it is capable  
6 of class-wide resolution, and that the “determination of its truth or falsity will resolve an issue  
7 that is central to the validity of each one of the claims in one stroke.” *Dukes*, 564 U.S. at 350.  
8 Moreover, “[where] the circumstances of each particular class member vary but retain a common  
9 core of factual legal issues with the rest of the class, commonality exists,” *Parra v. Bashas’, Inc.*,  
10 536 F.3d 975, 978–79 (9th Cir. 2008), and “[i]t is not necessary that members of the proposed  
11 class share every fact in common,” *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1030  
12 (9th Cir. 2012) (internal quotations omitted). Indeed, “the theoretical possibility of individual  
13 issues is not enough to outweigh the benefits of common resolution of classwide issues.”  
14 *Tavener v. Talon Grp.*, No. 09-cv-1370 RSL, 2012 WL 1022814, at \*4 (W.D. Wash. Mar. 26,  
15 2012).

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

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

1 commonality requirement is therefore satisfied.

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

3 Rule 23(a)'s next requirement—typicality—requires that the class representatives' claims  
4 be typical of those of the putative class they seek to represent. Fed. R. Civ. P. 23(a)(3). The  
5 purpose of this requirement is “to assure that the interest of the named representative aligns with  
6 the interests of the class.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th  
7 Cir. 2010) (citation omitted). The test of typicality is “whether other members have the same or  
8 similar injury, whether the action is based on conduct which is not unique to the named  
9 plaintiff[], and whether other class members have been injured by the same course of conduct.”  
10 *Id.*; *see also Ali*, 2016 WL 4611542, at \*2 (W.D. Wash. Sept. 6, 2016). This is a “permissive”  
11 standard and it is met where the class representative's claims “are reasonably co-extensive with  
12 those of absent class members.” *Hanlon*, 150 F.3d at 1020. At bottom, “a class representative  
13 must be part of the class and possess the same interest and suffer the same injury as the class  
14 members.” *Ali*, 2016 WL 4611542, at \*2 (quoting *Gen. Tel. Co. of the SW v. Falcon*, 457 U.S.  
15 147, 156 (1982)) (internal quotations omitted).

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

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

25 Rule 23(a)'s final requirement—adequacy—requires that the proposed class  
26 representatives have protected and will continue to “fairly and adequately protect the interests of  
27 the class.” Fed. R. Civ. P. 23(a)(4). To determine if representation is in fact adequate, the Court

1 must ask “(1) do the named plaintiffs and their counsel have any conflicts of interest with other  
2 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously  
3 on behalf of the class.” *Hanlon*, 150 F.3d at 1020. Further, where a plaintiff’s claims are found to  
4 be typical of those of the class, appointing that plaintiff as the class representative will also  
5 ensure that interest of the class remain adequately protected. *See Dukes*, 564 U.S. at 349 n.5  
6 (discussing how the fulfillment of the typicality requirement usually also supports a finding of  
7 adequacy because an adequate representative will have claims that are typical of those of the  
8 class).

9 Here, Plaintiffs meet the requirements to be appointed Class Representatives. First, as  
10 discussed above, they share the same interest in securing relief for the claims at issue as every  
11 other member of the proposed Settlement Class, and there is no evidence of any conflict of  
12 interest. Both Plaintiff Ferrando and Plaintiff Marzano have demonstrated their willingness to  
13 prosecute this case, including by providing their counsel with relevant information and  
14 documents, reviewing case documents, and remaining in communication with Proposed Class  
15 Counsel regarding the litigation and settlement. *See Logan Decl.* ¶ 15. Plaintiffs, as Class  
16 Representatives, will fairly and adequately protect the Settlement Class’s interest.

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

22 First, the record discloses no conflicts of interest and Counsel are aware of none. *See*  
23 *Logan Decl.* ¶ 16. Proposed Class Counsel have no financial stake in the Defendant, nor do they  
24 have any connections to Class Members that might cause them to privilege certain Class  
25 Members over others. *See id.*

26 Second, Proposed Class Counsel’s commitment to vigorously prosecuting this case and  
27 protecting the interests of the proposed Class is indisputable. The underlying legal theory of this

1 action and other social casino cases was developed by Edelson PC and first raised in related  
2 cases more than seven years ago also by Edelson PC. *See id.* ¶ 17. Over the years, Edelson PC  
3 has represented the interests of the proposed Class not just in the specific bounds of this case  
4 docket but also in proceedings before the WSGC and before the Washington Legislature. *See id.*  
5 ¶¶ 3-6, 18. The Court appointed Edelson PC as Class Counsel in four substantially similar class  
6 action settlements, leading to approximately \$225 million in gross settlements returned to class  
7 members. *See Huuuge*, 2021 WL 512229, at \*1; *Playtika*, 2021 WL 512230, at \*1; *Kater*, 2021  
8 WL 511203, at \*1; *Scientific Games*, Dkt. #166 at 2.

9 More broadly, Proposed Class Counsel are well-qualified and experienced members of  
10 the plaintiffs' bar, have the resources necessary to conduct litigation of this nature, and are  
11 frequently appointed lead class counsel in major litigation across courts nationwide. *See Logan*  
12 Decl. ¶ 19. For example, in the Northern District of California, the Hon. Edward John Davila  
13 recently appointed Rafey Balabanian as Interim Lead Counsel and Todd Logan as Law and  
14 Briefing Counsel in three MDLs<sup>3</sup> alleging that Apple, Google, and Facebook violate state and  
15 federal gambling laws by, *inter alia*, promoting and profiting off of social casinos. *See In re*  
16 *Apple Inc. App Store Simulated Casino Style Games Litig.*, No. 21-md-2985-EJD, Dkt. #68  
17 (N.D. Cal. Sept. 23, 2021); *In re Google Play Store Simulated Casino-Style Games Litig.*, No.  
18 21-md-3001-EJD, Dkt. #51 (N.D. Cal. Sept. 23, 2021); *In re Facebook Simulated Casino-Style*  
19 *Games Litig.*, No. 21-cv-2777-EJD, Dkt. #27 (N.D. Cal. Sept. 23, 2021). In other words,  
20 Plaintiffs' Counsel's adequacy is beyond cavil.

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

24  
25  
26 <sup>3</sup> To be more precise, two of the matters (*In re Apple* and *In re Google*) were formally consolidated as MDLs  
27 by the JPML; the third (*In re Facebook*) is a set of actions related and consolidated within the Northern District of  
California.

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

2           In addition to meeting all four of Rule 23(a)'s prerequisites for certification, a proposed  
3 class must also satisfy Rule 23(b)(3)'s additional requirements—predominance and superiority.  
4 *See* Fed. R. Civ. P. 23(b)(3). Certification is encouraged where, as here, “the actual interests of  
5 the parties can be served best by settling their differences in a single action.” *Hanlon*, 150 F.3d at  
6 1022. As detailed below, both the predominance and superiority requirements of Rule 23(b)(3)  
7 are satisfied.

8                   1.       Common Questions of Law and Fact Predominate.

9           Common questions predominate here. The Supreme Court has made clear that  
10 predominance is a qualitative inquiry: “[t]he predominance inquiry ‘asks whether the common,  
11 aggregation-enabling, issues in the case are more prevalent or important than the non-common,  
12 aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453  
13 (2016) (quoting 2 NEWBERG ON CLASS ACTIONS § 4:49 (5th ed.)). When considering whether  
14 common issues predominate, the court should begin with “the elements of the underlying cause  
15 of action.” *Reichert v. Keefe Commissary Network, LLC*, 331 F.R.D. 541, 553 (W.D. Wash.  
16 2019) (quoting *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2014)). “More  
17 important questions apt to drive the resolution of the litigation are given more weight in the  
18 predominance analysis over individualized questions which are of considerably less significance  
19 to the claims of the class.” *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016).  
20 As these cases and the text of the rule make clear, individual questions need not be absent but  
21 merely must occupy less importance to the litigation than common questions.

22           The inquiry is straightforward in this case. The showings needed for Plaintiffs to prevail  
23 on the elements of their claims under the RMLGA and the CPA depend on evidence or legal  
24 argument that is common to the Class—principally the operation of Defendant's Applications. A  
25 factfinder's resolution of questions related to the operation of the Applications—for example,  
26 whether the chips sold in the Applications are “things of value”—will resolve questions central  
27 to the claims of every Class Member in one fell swoop, driving the litigation forward. *See*

1 *Reichert*, 331 F.R.D. at 554-55 (predominance satisfied when all or nearly all elements of the  
2 class’s prima facie case presented common questions); *Taylor v. Universal Auto Grp. I, Inc.*, No.  
3 13-cv-5245-KLS, 2014 WL 6654270, at \*16 (W.D. Wash. Nov. 24, 2014) (predominance  
4 satisfied when “predominant” issue contested by the parties was common to the class). An  
5 assessment of each Class Member’s Lifetime Spending Amount will be accomplished by a  
6 common and straightforward method: utilizing data provided to the court-appointed Settlement  
7 Administrator by Defendant and the Platform Providers, to the extent reasonably available, to  
8 calculate the sum of each Class Member’s spending. *See Bess v. Ocwen Loan Servicing LLC*,  
9 334 F.R.D. 432, 436 (W.D. Wash. 2020) (“[T]he need for individualized findings as to the  
10 amount of damages does not defeat class certification.”). These common questions predominate  
11 any individualized question affecting particular Class Members regarding their ability to make a  
12 prima facie showing of Defendant’s liability or its potential affirmative defenses. And, in any  
13 event, the Supreme Court has made clear that the existence of “affirmative defenses peculiar to  
14 some individual class members” does not defeat predominance, even if those defenses must be  
15 tried separately. *Tyson Foods*, 577 U.S. at 453. Predominance is therefore satisfied.

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

17 The superiority criterion includes four considerations: “(A) the class members’ interests  
18 in individually controlling the prosecution or defense of separate actions; (B) the extent and  
19 nature of any litigation concerning the controversy already begun by or against class members;  
20 (C) the desirability or undesirability of concentrating the litigation of the claims in the particular  
21 forum; and (D) the likely difficulties in managing a class action.” Fed. R. Civ. P. 23(b)(3). The  
22 first and second factors plainly point in favor of certification. “There is no indication that any  
23 [Class Members has] an interest in pursuing their own claims—in fact, it would likely be  
24 uneconomical for them to do so. There is also no evidence that certain [class members] have  
25 already initiated their own individual actions.” *Reichert*, 331 F.R.D. at 556. While some Class  
26 Members have substantial alleged damages, it is difficult to imagine that a rational contingency-  
27 fee lawyer would take on any individual claim given the time, effort, and resources that



1 Defendant has demonstrated it is willing to commit to defending claims against its Applications.  
2 *See Wolin*, 617 F.3d at 1175 (“Where recovery on an individual basis would be dwarfed by the  
3 cost of litigating on an individual basis, this factor weighs in favor of class certification.”).  
4 Moreover, the huge number of individuals in the Class would overwhelm the judicial system if  
5 Class Members were forced to litigate individually. *See Taylor*, 2014 WL 6654270, at \*19.

6 Next, this forum is the clear choice in which to concentrate the litigation. The claims  
7 arise under Washington law and the Class is composed of individuals who played the  
8 Applications while in Washington. *See Shasta Linen Supply, Inc. v. Applied Underwriters, Inc.*,  
9 No. 16-cv-1211-WBS-AC, 2019 WL 358517, at \*6 (E.D. Cal. Jan. 29, 2019) (“The fact that all  
10 remaining claims are brought under California law weighs in favor of a California federal court  
11 adjudicating the dispute.”). Moreover, the Court is intimately familiar with the facts and law  
12 underlying this action. It would make little sense to force the Parties to start over elsewhere. *See*  
13 *Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 560 (W.D. Wash. 2008) (finding the forum superior  
14 because “the Court is already familiar with [p]laintiffs’ claims”). Finally, the Court is  
15 distinctively familiar with the broader social casino litigation landscape to which this lawsuit  
16 belongs, given that the Court has approved substantially similar class action settlements and is  
17 overseeing ongoing litigation in two other related actions. *See generally* Dkt. #11.

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

## 21 **II. The Proposed Settlement Merits Preliminary Approval.**

22 After determining that the proposed Class should be certified, the Court must determine  
23 whether the Settlement warrants approval. This is a two-step process: “(1) preliminary approval  
24 of the settlement; and (2) following a notice period to the class, final approval of the settlement  
25 at a fairness hearing.” *Relente v. Viator, Inc.*, No. 12-cv-05868-JD, 2015 WL 2089178, at \*2  
26 (N.D. Cal. May 4, 2015); *see also* Fed. R. Civ. P. 23(e)(1)-(2); 4 NEWBERG ON CLASS ACTIONS §  
27 13:10 (5th ed.).

1 At the preliminary approval stage, the Court determines merely whether the “proposed  
2 settlement [is] within the range of final approval” such that notice should be disseminated to the  
3 class. *Rinky Dink, Inc. v. World Bus. Lenders, LLC*, No. 14-cv-0268-JCC, 2016 WL 4052588, at  
4 \*4 (W.D. Wash. Feb. 3, 2016); *see also* 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed.). While  
5 the Ninth Circuit has a “strong judicial policy” favoring settlement of class actions, *Class*  
6 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992), before the Court preliminarily  
7 approves a class action settlement, it “has a responsibility to review a proposed class action  
8 settlement to determine whether the settlement is ‘fundamentally fair, adequate, and  
9 reasonable,’” *Wilson v. Maxim Healthcare Servs., Inc.*, No. 14-cv-789-RSL, 2017 WL 2988289,  
10 at \*1 (W.D. Wash. June 20, 2017) (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir.  
11 2003)); Fed. R. Civ. P. 23(e)(2).

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

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

24 *Id.*<sup>4</sup> At the preliminary approval stage, this Court can conduct a “less searching” inquiry than at  
25 final approval, and “seek[] merely to identify any ‘glaring deficiencies’ prior to sending notice to  
26 class members.” *Rinky Dink*, 2016 WL 4052588, at \*4. Here, the proposed Settlement—which  
27

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28 <sup>4</sup> Notably, the factors to be considered under the amended Rule 23(e)(2) overlap with the factors previously  
29 articulated by the Ninth Circuit as hallmarks of a fair, reasonable, and adequate class action settlement. Indeed,  
30 when assessing proposed class settlements, courts in this Circuit continue to look to the “*Churchill* factors,” which  
31 are: “(1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further  
32 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5)  
33 the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the  
34 presence of a governmental participant; and (8) the reaction of the class members of the proposed settlement.” *Kim*  
35 *v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021); *In re Bluetooth Headset Prods. Liab.*, 654 F.3d 935, 946 (9th Cir.  
36 2011); *Churchill Vill. v. Gen. Elec.*, 361 F.3d 566 (9th Cir. 2004).

1 creates a \$12,000,000 non-reversionary fund for Class Members, and which is comparable to  
2 similar approved social casino settlements—satisfies the Rule 23(e)(2) factors.

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

5 As discussed above, the Class Representatives and their Counsel are adequate. Plaintiffs  
6 Ferrando and Marzano share the same interests as the Settlement Class, there is no evidence of  
7 any conflicts of interest, and by stepping forward in this litigation they have demonstrated their  
8 willingness to prosecute this case. Likewise, Proposed Class Counsel have extensive experience  
9 litigating complex class actions—including substantially similar class actions against social  
10 casino companies—and negotiated this Settlement with the best interests of the Class in mind.  
11 Based on their unparalleled experience litigating social casino cases, Proposed Class Counsel are  
12 confident that the proposed Settlement is fair, reasonable, and adequate, and in the best interests  
13 of the Class. *See* Logan Decl. ¶ 20. The “experience and views of counsel” thus support  
14 approving the Settlement. *Churchill*, 361 F.3d at 576-77; *Rodriguez v. W. Publ’g Corp.*, 563 F.3d  
15 948, 965 (9th Cir. 2009) (“[P]arties represented by competent counsel are better positioned than  
16 courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.”)  
17 (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)); *Ikuseghan v. Multicare*  
18 *Health Sys.*, No. 14-cv-05539-BHS, 2016 WL 3976569, at \*4 (W.D. Wash. July 25, 2016)  
19 (considering that class counsel, “who are experienced and skilled in class action litigation,  
20 support the [s]ettlement as fair, reasonable, and adequate, and in the best interests of the [c]lass  
21 as a whole,” and approving settlement).

22 **B. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**  
23 **Between the Parties.**

24 The Settlement also satisfies the second requirement under Rule 23(e)(2), since it is the  
25 product of arm’s-length negotiations facilitated by Phillips ADR, a nationally renowned  
26 mediation firm. *See Rodriguez*, 563 F.3d at 965 (“We put a good deal of stock in the product of  
27

1 an arms-length, non-collusive, negotiated resolution.”); *Helde v. Knight Transportation, Inc.*, No.  
2 12-cv-00904-RSL, Dkt. #191 at 2 (W.D. Wash. May 24, 2017) (granting preliminary approval  
3 where “Settlement Agreement resulted from extensive arm’s-length negotiations, with  
4 participation of an experienced mediator”); *Gragg v. Orange CAB Co., Inc.*, No. 12-cv-0576-  
5 RSL, 2017 WL 785170, at \*1 (W.D. Wash. Mar. 1, 2017) (same).

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

12 *First*, Proposed Class Counsel are not receiving a disproportionate distribution of the  
13 Settlement Fund or being amply rewarded while the Class receives no monetary distribution. To  
14 the contrary, Proposed Class Counsel have unilaterally limited themselves to a fee petition within  
15 the “usual range” for fees in this Circuit—30% of the Settlement Fund. *See Vizcaino v. Microsoft*  
16 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). And far from receiving coupons or *cy pres*-only  
17 relief, Class Members will receive substantial individual cash recoveries.<sup>5</sup> *Second*, there is no  
18 “clear sailing” provision in the Settlement. *See In re Bluetooth*, 654 F.3d at 947 (defining clear  
19 sailing provisions). Defendant is free to object to Proposed Class Counsel’s fee request should  
20 Defendant determine the request is unreasonable. *See Agreement* § 8.1. *Third*, there is no  
21 possibility that any funds revert to the Defendant. *See id.* §§ 1.35, 2.1(i).

22 Ultimately, there are no signs of collusion here because there was no collusion. This  
23 Settlement is the product of serious, informed, non-collusive negotiations—and that fact  
24

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25 <sup>5</sup> Aside from the Class Representatives’ right to petition the Court for reasonable incentive awards, no Class  
26 Member will be given preferential treatment at the expense of another. *See Scott v. United Servs. Auto. Ass’n*, No.  
27 11-cv-1422-JCC, 2013 WL 12251170, at \*1 (W.D. Wash. Jan. 7, 2013) (noting preliminary approval generally  
granted absent “obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of  
the class”) (internal citations omitted).

1 militates in favor of preliminary approval.

2 **C. The Settlement Treats Class Members Equitably.**

3 Fed. R. Civ. P. 23(e)(2)(D) requires courts to consider whether a proposed class  
4 settlement “treats class members equitably relative to each other.” Here, the Defendant has  
5 agreed to create a \$12,000,000 non-reversionary Settlement Fund, from which each Class  
6 Member who submits a valid Claim Form will receive payment. The Plan of Allocation sets forth  
7 a uniform, equitable system for determining the amount of each Settlement Class Member’s  
8 payment, based on a person’s Lifetime Spending Amount and overall participation levels. *See*  
9 Agreement §§ 1.36, 2.1(c); Exhibit E to the Agreement. Under the Plan of Allocation, those with  
10 higher Lifetime Spending Amounts are eligible to recover a greater percentage of their spending,  
11 which reflects the fact that those Class Members—had this case gone to trial—would have been  
12 most likely to obtain a treble damages award under the CPA. *See* Exhibit E to the Agreement. In  
13 the event that a Settlement Payment when initially calculated would exceed a Class Member’s  
14 Lifetime Spending Amount, any amount in excess of the Class Member’s Lifetime Spending  
15 Amount will be distributed *pro rata* to all Class Members whose Settlement Payment does not  
16 exceed their Lifetime Spending Amount. *Id.* If all Class Members’ Settlement Payments would  
17 exceed their Lifetime Spending Amounts, then the remaining Settlement Fund shall be  
18 distributed *pro rata*. For the avoidance of doubt, no Class Member will recover more than their  
19 Lifetime Spending Amount unless *all* Class members do. *Id.*

20 The Settlement also provides for prospective relief that is identical for all Settlement  
21 Class Members, and each Class Member will release the same claims against the Defendant.  
22 Furthermore, the provision of incentive awards to Plaintiffs Ferrando and Marzano is consistent  
23 with the equitable treatment of Class Members. The requested awards are modest relative to the  
24 \$12,000,000 Settlement Fund that the Class Representatives helped secure for the Settlement  
25 Class, and the awards reflect the work the Representatives have done for the Settlement Class.

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

1           **D.     The Relief Secured for the Settlement Class Is Adequate.**

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

6           First, the “amount offered in settlement” here favors approval. *Churchill*, 361 F.3d at  
7 575; Fed. R. Civ. P. 23(e)(2)(C). At approximately 25% of the Class’ alleged damages, the  
8 recovery achieved here is on par with the settlements reached in *Wilson v. Playtika*  
9 (approximately 25%) and *Reed v. Scientific Games* (approximately 27%). *See* Logan Decl. ¶ 26.  
10 These are indisputably “excellent” results in comparison to other cases of this magnitude. *See In*  
11 *re Wells Fargo & Co. S’holder Derivative Litig.*, 445 F. Supp. 3d 508, 521 (N.D. Cal. 2020).  
12 And twelve million dollars is, no matter how sliced or diced, a significant recovery for this  
13 Washington-only class. It is a significant enough sum that Class Members with the largest  
14 Lifetime Spending Amounts stand likely to recover more than 60% of their Lifetime Spending  
15 Amounts, and no participating Class Member is likely to recover less than 20%. *See* Logan Decl.  
16 ¶ 13; *compare with Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*,  
17 688 F.2d 615, 628 (9th Cir. 1982) (“It is well-settled law that a cash settlement amounting to  
18 only a fraction of the potential recovery will not per se render the settlement inadequate or  
19 unfair”). Particularly in the current economic climate, these recoveries will be life-changing for  
20 many Class Members. *See* Logan Decl. ¶ 21.

21           The prospective relief offered by the Settlement buttresses the fairness of the Settlement.  
22 *See Bennett v. SimplexGrinnell LP*, No. 11-cv-01854-JST, 2015 WL 1849543, at \*7 (N.D. Cal.  
23 Apr. 22, 2015) (noting “the significant value of the prospective relief also obtained in the  
24 settlement agreement” warranted preliminary approval). The Settlement requires the Defendant  
25 to establish and make publicly available a voluntary self-exclusion policy that will allow players  
26 to exclude themselves from making further purchases, to link to that policy within the games and  
27 the Defendant’s website, and to maintain a webpage, accessible from within the Applications

1 that encourages responsible gameplay. *See* Agreement § 2.2. These changes, intended to  
2 generally mirror the sorts of voluntary self-exclusion programs that states often require casinos  
3 to implement, reflect a pioneering—and, in Plaintiffs’ Counsel’s view, long-overdue—  
4 advancement in social casino self-regulation. And as relevant here, these changes to the  
5 Defendant’s conduct—in conjunction with the twelve-million-dollar cash fund—militate in favor  
6 of approval. *See Officers for Justice*, 688 F.2d at 628 (“It is the complete package taken as a  
7 whole, rather than the individual component parts, that must be examined for overall fairness.”).

8 The sub-factors enumerated in Rule 23(e)(2)(C) also support the adequacy of this  
9 monetary and injunctive relief.

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

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

20 The most significant of these risks, in Plaintiffs’ Counsel’s professional judgment, is that  
21 the ISGA’s lobbying efforts, ongoing since 2018 as described above, may eventually lead to a  
22 retroactive change in the law. *See* Logan Decl. ¶ 22. Plaintiffs’ Counsel have thus far fended off  
23 the ISGA’s lobbying efforts, but the ISGA and its members—many of them billion-dollar  
24 gambling corporations—are formidable opponents. If this case does not settle now, during each  
25 legislative cycle the Class will be at risk of having its claims eviscerated in the name of  
26 “remov[ing] . . . economic uncertainty” by “clarifying” that proposed Class Members cannot  
27 recover under the RMLGA. *See, e.g.*, H.B. 2720, 66th Leg., Reg. Sess. (Wash. 2020). And in

1 addition to lobbying-related risks, it is also of course possible—as with any litigation—that the  
2 Defendant could prevail on any number of future motions at subsequent litigation stages,  
3 including, for example, a motion contending that California law (and not Washington law)  
4 governs the Class’ claims due to a choice of law provision in Defendant’s Terms of Service.

5 Even assuming Plaintiffs’ Counsel could fend off the ISGA and Defendant’s litigation  
6 efforts long enough for Plaintiffs to try this case to verdict, the Defendant’s inevitable appeals  
7 would take years, further delaying the relief to the Class. *See Logan Decl.* ¶ 23; *Rodriguez*, 563  
8 F.3d at 966 (“Inevitable appeals would likely prolong the litigation, and any recovery by class  
9 members, for years. This factor, too, favors the settlement.”); *Ikuseghan*, 2016 WL 3976569, at  
10 \*4 (“[T]he outcome of trial and any appeals are inherently uncertain and involve  
11 significant delay. The [s]ettlement avoids these challenges.”). The substantial expense and  
12 burden associated with litigating this case not only through trials but also through inevitable  
13 appeals further militate in favor of granting preliminary approval now. *See Logan Decl.* ¶ 23;  
14 *Rinky Dink*, 2016 WL 4052588, at \*5 (finding preliminary approval appropriate when  
15 considering the expense of the “additional depositions, expert work, and motion work [that]  
16 would have to be completed before trial”).

17 Moreover, through years of litigation in parallel lawsuits as well as a painstaking  
18 negotiation and mediation process here, the Parties and their counsel “had enough information to  
19 make an informed decision about the strength of their cases and the wisdom of settlement.” *Id.* at  
20 \*5. For example, leading up to the mediation, Defendant produced a large volume of documents  
21 through an informal discovery process leading into the mediation (including information  
22 necessary to determine the Class’ alleged damages), the Parties exchanged written opening and  
23 response briefs, and spoke frequently by telephone to clarify the relevant facts and hone the  
24 parties’ negotiation positions. *See Logan Decl.* ¶ 9. And then, of course, the Parties engaged in a  
25 full-day mediation facilitated by the skilled Phillips ADR team, in which all information  
26 necessary to make an informed settlement decision was fleshed out at length. *Id.* ¶ 10.  
27 Consequently, the Parties negotiated the Settlement with a clear understanding of the strengths



1 and weaknesses of their respective claims and defenses. *See id.*; *Ikuseghan*, 2016 WL 3976569,  
2 at \*3 (approving settlement reached “between experienced attorneys who are familiar . . . with  
3 the legal and factual issues of this case in particular”).

4 In sum, the relief offered by the Settlement, with the risks and expenses of continued  
5 litigation taken into consideration, weighs strongly in favor of preliminary approval. Fed. R. Civ.  
6 P. 23(e)(2)(C)(i); *Rinky Dink*, 2016 WL 4052588, at \*5 (finding first three *Churchill* factors  
7 supported preliminary approval when plaintiffs were confident in their case but continuing to  
8 litigate risked losing class certification and was “inherently expensive”); *Ikuseghan*, 2016 WL  
9 3976569, at \*4 (“Absent the proposed [s]ettlement, [c]lass [m]embers would likely not obtain  
10 relief, if any, for a period of years.”).

11  
12 2. The Method of Processing Claims and Distributing Relief to the  
13 Settlement Class Members is Effective and Supports Preliminary  
14 Approval.

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

20 The proposed Settlement here satisfies this factor by relying on well-established,  
21 effective methods for processing Class Members’ Claim Forms and distributing the proceeds of  
22 the Settlement. The Settlement proposes appointing JND Legal Administration, a well-respected  
23 class action settlement administrator, to oversee an effective claims process and distribution of  
24 relief. *See* Agreement §§ 1.32, 5; *see also Linehan v. AllianceOne Receivables Mgmt., Inc.*, No.  
25 15-cv-1012-JCC, 2017 WL 3724819, at \*2 (W.D. Wash. June 1, 2017) (appointing JND Legal  
26 Administration). As described above, Settlement Class Members will be able to file claims to  
27 recover a cash payment from the Settlement Fund. *See* Agreement § 1.35. Each person in the

1 Settlement Class will be sent a Claim Form via email and/or U.S. Mail and will have the option  
2 to file a claim through the Settlement Website or by mail. *Id.* § 4.2(a). The Claim Form allows  
3 Class Members to select to receive their Settlement Payment by check, Zelle, PayPal, or ACH  
4 Direct Deposit. *See id.*, Exhibit A. The Settlement Administrator will provide Class Members  
5 with resources (including a website, a mailing address, and a toll-free phone number) to contact  
6 the Settlement Administrator or Class Counsel directly. *See id.*, Exhibit D. The Settlement  
7 Administrator will also calculate payments according to the Plan of Allocation and then disburse  
8 to Class Members their share of the Settlement Fund upon approval of the Court. *Id.* § 2.1.

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

12 3. The Terms of the Requested Attorneys’ Fees are Reasonable.

13 The third and final<sup>6</sup> relevant sub-factor considers the adequacy of relief, taking into  
14 account “the terms of any proposed award of attorney’s fees, including timing of payment.” Fed.  
15 R. Civ. P. 23(e)(2)(C)(iii). If the Settlement is preliminarily approved, Proposed Class Counsel  
16 plan to petition the Court for an award of reasonable attorneys’ fees and costs after the  
17 Settlement Class has received notice of the Settlement. The Settlement’s contemplated method of  
18 calculating attorneys’ fees (*i.e.*, the percentage-of-the-fund method) and its limit on attorneys’  
19 fees (*i.e.*, no more than 30% of the non-reversionary Settlement Fund) are reasonable and  
20 predicated on the outstanding relief provided to the Settlement Class. *See* Agreement § 8.1. The  
21 percentage-of-the-fund method has been used to determine reasonable fee awards in similar  
22 social casino class settlements approved by this Court, and an award of up to 30% would be fair  
23 and reasonable for this case. *See, e.g., Kater*, 2021 WL 511203, at \*1 (noting that “[c]ontingency  
24 arrangements in high-stakes, high-value mass litigation typically fall in the range of 30-40%”

25 \_\_\_\_\_  
26 <sup>6</sup> The fourth sub-factor, which requires the parties to identify any side agreements made in connection with  
27 the settlement, Fed. R. Civ. P. 23(e)(2)(C)(iv), is inapplicable here since the written Settlement Agreement provided  
to the Court represents the entirety of the Parties’ proposed Settlement. Logan Decl. ¶ 24. Since there are no side  
agreements to be identified, this sub-factor weighs in favor of preliminary approval.

1 and approving a 25% fee award); *Huuuge*, 2021 WL 512229, at \*1 (same); *Playtika*, 2021 WL  
2 512230, at \*1 (same); *see also* 5 NEWBERG ON CLASS ACTIONS § 15:83 (5th ed.) (noting that,  
3 generally, “50% of the fund is the upper limit on a reasonable fee award from any common  
4 fund”). Accordingly, that the Settlement permits Proposed Class Counsel to seek an award of up  
5 to 30% of the fund in attorneys’ fees and costs is abundantly appropriate.<sup>7</sup> Finally, if approved,  
6 the Settlement provides that attorneys’ fees will be paid within fourteen (14) business days after  
7 final judgment. Agreement § 8.2. These terms are reasonable and should be preliminarily  
8 approved.

9 \*\*\*

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

13 **III. The Court Should Approve the Proposed Notice Plan.**

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

17 Here, the Parties have agreed upon a multi-part Notice Plan to be carried out by JND  
18 Legal Administration, a well-respected class action settlement administrator. *See, e.g., Scientific*  
19 *Games*, Dkt. #166 (granting preliminary approval and appointing JND Legal Administration as  
20 settlement administrator); *Linehan*, 2017 WL 3724819, at \*2 (same). The Defendant has agreed  
21 to provide the Settlement Administrator and Proposed Class Counsel with all Settlement Class  
22 Members’ contact information reasonably available to the Defendant, including names, phone  
23 numbers, email addresses, and mailing addresses. *See* Agreement § 4.1(a). For each Player ID  
24 with a Lifetime Spending Amount greater than zero, the Defendant will also provide the Player  
25 ID’s Lifetime Spending Amount, if known and to the extent it is reasonably available. *Id.*

26 \_\_\_\_\_  
27 <sup>7</sup> To be clear, the Defendant may oppose the amount of attorneys’ fees requested by Proposed Class Counsel  
as there is no “clear-sailing” provision in the Agreement. *See* Agreement § 8.1.

1 Proposed Class Counsel and Defendant’s Counsel have agreed to cooperate, and are in the  
2 process of cooperating to work with the Platform Providers to obtain and furnish to the  
3 Settlement Administrator the Lifetime Spending Amounts of all contact information in the  
4 Platform Providers’ possession—including names, usernames/Platform IDs, phone numbers,  
5 email addresses, and mailing addresses—for all persons in the Settlement Class with a Lifetime  
6 Spending Amount greater than zero. *Id.* § 4.1(c)-(d).

7 All of this information will be used by the Settlement Administrator to create the Class  
8 List. *Id.* § 4.1(f). Within thirty-five (35) days of the entry of preliminary approval, the Settlement  
9 Administrator will use the Class List to send notice via email substantially in the form attached  
10 to the Agreement as Exhibit B, along with an electronic link to the Claim Form, to all Settlement  
11 Class Members for whom a valid email address is available on the Class List. *See id.* § 4.2(a). In  
12 the event transmission of the email notice results in any “bounce-backs,” the Settlement  
13 Administrator will, where reasonable, correct any issues that may have caused the “bounce-  
14 back” to occur and make a second attempt to re-send the email notice, and will, where possible,  
15 send notice substantially in the form attached to the Agreement as Exhibit C via First Class U.S.  
16 Mail. *See id.* The Settlement Administrator will also, where possible, send notice substantially in  
17 the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members with a  
18 Lifetime Spending Amount greater than \$100.00. *See id.* Class Counsel anticipate that thousands  
19 of Player IDs associated with Class Members will receive direct notice. *See Logan Decl.* ¶ 25.

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

26 Finally, the Settlement Administrator will supplement the direct notice program with a  
27 digital publication notice program that is estimated to deliver more than ten million (10,000,000)

1 impressions. *Id.* § 4.2(e). The digital publication notice campaign will be targeted, to the extent  
2 reasonably possible, to the state of Washington, will run for at least one month, and will contain  
3 active hyperlinks to the Settlement Website. *See id.*

4 In addition to reaching the Settlement Class, notice is adequate when it provides the  
5 information necessary to make a decision in language that can be readily understood by the  
6 average class member. Herbert Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 11:53  
7 (4th ed. 2002). That is the case here, where the format and language of each form of notice have  
8 been carefully drafted in straightforward, easy-to-read language, and all information required  
9 under Rule 23 is present. *See Exhibits B–D to the Agreement.*

10 Because the proposed methods for providing notice to the Class comport with both Rule  
11 23 and Due Process, the Notice Plan should be approved by the Court.

## 12 CONCLUSION

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

19  
20 DATED this 27th day of June, 2022.

21 Respectfully Submitted,

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

25 By: /s/ Todd Logan  
26 Rafey S. Balabanian\*  
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Todd Logan\*  
tlogan@edelson.com

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*Plaintiffs' Attorneys and Proposed Class Counsel*

*\*Admitted pro hac vice*

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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.*

No. 22-cv-214-RSL

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

1 The above-captioned matter came before this Court upon Plaintiffs' Unopposed Motion  
2 for Preliminary Approval of Class Action Settlement. Based upon the memoranda, exhibits, and  
3 all the files and proceedings herein, the Court finds as follows:

4 1. The Court grants preliminary approval of the Settlement based upon the terms set  
5 forth in the Settlement Agreement.

6 2. The settlement terms set forth in the Settlement Agreement appear to be fair,  
7 adequate and reasonable to the Settlement Class, and the Court preliminarily approves the terms  
8 of the Settlement Agreement, including:

9 a. A Settlement Fund of \$12,000,000;

10 b. Incentive Awards, which shall not exceed \$5,000 each for Plaintiffs Tonda  
11 Ferrando and Dex Marzano;

12 c. Attorneys' fees to Settlement Class Counsel, which shall be no more than  
13 thirty percent (30%) of the Settlement Fund, plus reimbursement of  
14 expenses, and;

15 d. Settlement Administration Expenses, which together with any anticipated  
16 Fee Award and Incentive Awards, shall be no more than thirty percent  
17 (30%) of the Settlement Fund.

18 3. The Court grants the Parties' request for certification of the following Rule 23  
19 Settlement Class for the sole and limited purpose of implementing the terms of the Settlement  
20 Agreement, subject to this Court's final approval:

21 all individuals who, in Washington (as reasonably determined by  
22 billing address information, IP address information, or other  
23 information furnished by Platform Providers), played the Applications  
24 on or before Preliminary Approval of the Settlement.<sup>1</sup>

25 <sup>1</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and  
26 members of their families, (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors,  
27 and any entity in which the Defendant or its parent has 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           4.       The Court preliminarily appoints Jay Edelson, Rafey S. Balabanian, Todd Logan,  
2 Alexander G. Tievsky, Brandt Silver-Korn, and Amy B. Hausmann of Edelson PC as Class  
3 Counsel, and Plaintiffs Tonda Ferrando and Dex Marzano as Class Representatives.

4           5.       This Court approves, as to form and content, the notice of proposed class action  
5 settlement (the “Notice”) in substantially the form attached to the Settlement Agreement as  
6 Exhibits B, C and D. The Court approves the procedure for Settlement Class Members to opt out  
7 of, or object to, the Settlement as set forth in the Settlement Agreement Notice.

8           6.       The Court directs the mailing of the Settlement Class Notice by email and/or  
9 First-Class U.S. mail to the Settlement Class Members in accordance with the schedule set forth  
10 below. The Court finds the dates selected for the mailing and distribution of the Notice, as set  
11 forth below, meet the requirements of due process and provide the best notice practicable under  
12 the circumstances and shall constitute due and sufficient notice to all persons entitled thereto.

<b>Deadline</b>	<b>Event</b>
No later than thirty (30) calendar days after the Execution of the Settlement Agreement	Deadline for Defendant to provide Settlement Class Member contact information to Class Counsel and the Settlement Administrator
No later than seven (7) days after entry of Preliminary Approval	Deadline for Settlement Administrator to provide Notice on the settlement website, <a href="http://www.zyngasettlement.com">www.zyngasettlement.com</a>
No later than thirty-five (35) days after entry of Preliminary Approval	Deadline for Settlement Administrator to mail Notice via Email and/or First-Class U.S. Mail (the “Notice Date”)
No later than thirty (30) days prior to the Claims Deadline, and again seven (7) days prior to the Claims Deadline	Deadlines for the Settlement Administrator to send Reminder Notice via email
No later than fifty-six (56) days following the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award	Deadline to have postmarked and/or filed a written objection to this Settlement Agreement or a request for exclusion



1 Presented by:

2 By: /s/ Todd Logan

3 Rafey S. Balabanian\*

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Todd Logan\*

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