

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION**

JONATHAN NORTON and)	
KENNETH J. FLEISCHER,)	
individually, and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	No. 2017 CH 10281
)	
v.)	
)	
NIANTIC, INC., a Delaware corporation,)	
)	
Defendant.)	

PRELIMINARY APPROVAL ORDER

The matter before the Court is the motion of Plaintiffs Kenneth J. Fleischer (“Class Representative”) and Jonathan Norton (collectively “Plaintiffs”) for preliminary approval of a proposed class action settlement with Defendant Niantic, Inc. (“Defendant”) on behalf of a Settlement Class. The proposed Settlement would resolve all of the claims asserted by Plaintiffs and members of the proposed Settlement Class in this action against Defendant (the “Action”).

This matter has been resolved by compromise after informal discovery and detailed arm’s length settlement negotiations. Plaintiffs and Defendant (collectively, the “Parties”), through their respective counsel, have executed and filed with this Court a Settlement Agreement that resolves this action and all claims alleged therein. The Court, having reviewed the Settlement Agreement, including the exhibits thereto, and considered the briefing submitted in support of the unopposed motion and the arguments of counsel thereon, finds that the terms of the proposed Settlement are fair, reasonable and adequate to Plaintiffs and the Settlement Class and that the interests of fairness, consistency, and efficiency are well served by a single class settlement. The Court therefore hereby GRANTS the preliminary approval motion and ORDERS as follows.

1. Except as otherwise stated, this Order incorporates the defined terms set forth in the Settlement Agreement.

2. For purposes of settlement, and conditioned upon the Settlement Agreement receiving final approval following the Fairness Hearing, the Court conditionally certifies the following Settlement Class, pursuant to 735 ILCS 5/2-801 of the Illinois Code of Civil Procedure:

All persons who had a valid ticket for and attended the Pokémon GO Fest in Chicago, Illinois on July 22, 2017.

The Settlement Class does not include Niantic, Inc., and its respective officers, directors, and employees, board members, affiliated, related companies, or any entity that has a controlling interest in Niantic, Inc., and all of its respective employees, agents, board members, affiliates, legal representatives, heirs, successors, or assigns, Class Counsel and their immediate family members, and the judge to whom this case is assigned and the judge's immediate family. The Settlement Class also does not include any persons who purchased a ticket to the Pokémon GO Fest but did not attend the event.

3. With respect to the Settlement Class, the Court preliminarily finds, solely for purposes of effectuating the Settlement and for no other purpose, that (i) the members of the Settlement Class are so numerous that joinder of all Settlement Class Members in this action would be impracticable, as the Settlement Class comprises thousands of members; (ii) there are questions of law and fact common to the Settlement Class that predominate over individual questions, including, but not limited to, whether Defendant's conduct in connection with the GO Fest violated applicable consumer protection laws, whether Defendant has been unjustly enriched at the expense of Plaintiffs and Settlement Class Members, and whether Plaintiffs and Settlement Class Members are entitled to, and the proper amount of, damages; (iii) the claims of the Class Representative are typical of the claims of the Settlement Class, as the Class Representative had a valid ticket for and attended the GO Fest and experienced the same delays and technical issues as other Settlement Class Members, and the Class Representative does not

have any conflicts of interest with the other members of the Settlement Class; (iv) the Class Representative and Plaintiffs' Counsel can fairly and adequately represent and protect the interests of the Settlement Class Members, as shown by their investigation and prosecution of this Action; and (v) a class action is superior to other available methods for the fair and efficient adjudication of the controversy as it relates to the proposed Settlement, considering the interests of the Settlement Class Members in individually controlling the prosecution of separate actions, the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members, the desirability or undesirability of continuing the litigation of these claims in this forum, and the difficulties likely to be encountered in the management of a class action as it relates to the proposed Settlement.

4. The Settlement, on the terms and conditions set forth in the Settlement Agreement, is preliminarily approved by this Court as being fair, reasonable, adequate, and within the range of possible final judicial approval. The Court finds that the Settlement resulted from arm's-length negotiations conducted in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with experienced legal counsel.

5. The Court provisionally finds that the named Plaintiff Kenneth J. Fleischer is able to fairly and adequately represent the Settlement Class and appoints Plaintiff Fleischer as the Class Representative for the Settlement Class. Plaintiff Fleischer had a valid ticket for and attended the GO Fest, and has diligently prosecuted this matter.

6. The Court appoints the following as "Class Counsel": Thomas A. Zimmerman, Jr., Sharon A. Harris, Matthew C. De Re, Nickolas J. Hagman, and Maebetty Kirby of the Zimmerman Law Offices, P.C., with the Court finding that these attorneys are able to fairly and

adequately represent the Settlement Class, and have competently represented the Plaintiffs and Settlement Class in this matter.

7. The Court preliminarily approves the Plan of Allocation set forth in the Settlement Agreement.

8. The Court orders Defendant to pay five hundred thousand dollars (\$500,000) of the agreed Settlement Amount to the Settlement Administrator within fourteen (14) days after entry of this Order, pursuant to the terms set forth in the Settlement Agreement and in accordance with instructions to be provided by the Settlement Administrator. The Settlement Administrator shall pay from this initial payment the costs of Settlement Notice, the Settlement Website, and settlement administration.

9. The Court approves the Settlement Class Notice plan set forth in the Settlement Agreement, as well as the notices attached as Exhibit 4 (Detailed Notice), Exhibit 5 (Electronic-Mail Notice), and Exhibit 6 (Push Notification). The Court finds that the Settlement Class Notice provides a sufficiently clear and concise description of the action, the Settlement terms, and the rights and responsibilities of the Settlement Class Members, and that the dissemination of the Settlement Class Notice through Electronic Mail, Push Notification, and posting on the Settlement Website as set forth in the Settlement Agreement is the best means practicable, and is reasonably calculated to apprise the Settlement Class Members of the litigation and their right to participate in, object to, or exclude themselves from the Settlement. Accordingly, the Parties and their counsel are directed to work with the Settlement Administrator to ensure that the Settlement Class Notice is disseminated pursuant to the terms of the Settlement Agreement.

10. The Court approves the Claim Form attached to the Settlement Agreement as Exhibit 3.

11. The Court approves and appoints Kurtzman Carson Consultants (“KCC”) as the Settlement Administrator, and directs them to perform the duties set forth in the Settlement Agreement. As set forth in the Settlement Agreement, all costs and expenses incurred by the Settlement Administrator in connection with disseminating the notice and administering the Settlement shall be paid from the Settlement Amount.

12. The Court will conduct a Fairness Hearing, at which time it will consider any objections to the Settlement Agreement and determine whether the Settlement Agreement should be finally approved, at 1:00 p.m. on September 6, 2018.

13. Class Counsel shall file their motion(s) for Final Approval of the Settlement, an Award of Attorney’s Fees and Expenses, and Service Awards to the Plaintiffs no later than fourteen (14) days prior to the Fairness Hearing. The Court will rule upon the motion(s) at the Fairness Hearing. As set forth in the Settlement Agreement, the awards for Attorney’s Fees and Expenses and Plaintiffs’ Service Awards shall be paid only from the Settlement Amount.

14. Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Settlement, the proposed Attorney’s Fee and Expense Award, and/or the proposed Service Awards, must deliver to Michael Rhodes, Cooley LLP. as counsel for Defendant, and to Thomas A. Zimmerman, Jr., Zimmerman Law Offices, P.C. for Class Counsel, and file with the Court, a written statement of the objections, as well as the specific reasons for each objection, including any legal support the Settlement Class Member wishes to bring to the Court’s attention and any evidence or other information the Settlement Class Member believes supports the objections. Any Settlement Class Member who objects must set forth: (a) their name and address; (b) their arguments, citations, reasons, and evidence supporting the Objection (including copies of any documents relied on); (c) a statement that they are a

Settlement Class Member; (d) the email address associated with their Pokémon Go account; (e) their physical signature; and (f) a statement indicating whether they intend to appear at the Fairness Hearing with or without counsel. All objections must be delivered to Counsel for Defendant and Class Counsel not later than July 9, 2018. Objections must be filed with the Court and delivered to Class Counsel and Defendant's Counsel at the addresses listed below:

The Court:

Clerk of the Court
Circuit Court of Cook County, Illinois
Richard J. Daley Center, Room 1001
50 West Washington Street
Chicago, Illinois 60602

Class Counsel:

Thomas A. Zimmerman, Jr.
Zimmerman Law Office, P.C.
77 W. Washington St., Suite 1220
Chicago, IL 60602

Defendants' Counsel:

Michael Rhodes
Cooley LLP
101 California Street, 5th Floor
San Francisco, CA 94111

No person will be entitled to be heard at the Fairness Hearing, and no written objections will be received or considered by this Court at the Fairness Hearing, unless all pertinent terms and conditions set forth above and in the Settlement Class Notice have been fully met. If an objection is overruled, the objecting Settlement Class Member will be bound by the terms of the Settlement and may not exclude him/herself later. Any person who elects to opt out of the Settlement Class shall not be bound by any orders, including, but not limited to, any final order approving the Settlement, entered in this Action, not be entitled to relief under the Settlement Agreement, not gain any rights by virtue of the Settlement Agreement, and not be entitled to

object to any aspect of the Settlement Agreement. No person may opt out of the Settlement Class through a so-called “mass” or “class” opt-out.

15. Any Settlement Class Member who wishes to be excluded from the Settlement must fully comply with all pertinent terms and conditions set forth in the Settlement Class Notice. All Requests for Exclusion must be postmarked no later than July 9, 2018. Settlement Class Members who submit a timely and valid Request for Exclusion will have no rights under the Settlement Agreement, will not share in the distribution of the Net Settlement Amount, and will not be bound by the Settlement Agreement. Any Settlement Class Member who does not submit a timely and valid Request for Exclusion shall be bound by all terms of the Settlement Agreement and any final order approving the Settlement.

16. In the event this Court does not finally approve the Settlement Agreement, any and all rights of the Parties existing prior to the execution of the Settlement Agreement, including but not limited to Plaintiffs’ right to seek and Defendant’s right to oppose class certification in the Action, shall be preserved, and the Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered. In such event, none of the terms of the Settlement Agreement, as defined in the Settlement Agreement, shall be admissible in any trial or otherwise used against any Party, except to enforce the terms thereof that relate to the Parties’ obligations in the event of termination. The portion of the Settlement Amount transferred to the Settlement Administrator shall be returned to Defendant, less notice and administrative expenses actually incurred by the Settlement Administrator (as to which Defendant shall have no right of reimbursement from any person, including the Settlement Administrator, Plaintiffs, or Class Counsel). If the portion of the Settlement Amount transferred to the Settlement Administrator is not sufficient to pay all of the notice and administrative

expenses incurred by the Settlement Administrator, Defendant shall separately pay to the Settlement Administrator any additional amounts owing at the time of termination.

17. For the benefit of the Settlement Class Members and as provided in the Settlement Agreement, this Court retains continuing jurisdiction over the implementation, interpretation, and enforcement of the Settlement Agreement.

18. The Parties are directed to carry out their obligations under the Settlement Agreement.

Summary of Applicable Dates

1.	Preliminary Approval Order (PA) entered	March 30, 2018
2.	Defendant to pay \$500,000 of the Settlement Amount to the Settlement Administrator	April 13, 2018 (PA +14)
3.	Email Notice to be sent and Settlement Website to be activated (ND)	May 25, 2018 (PA +56)
4.	Deadline to Opt Out or Object (OD)	July 9, 2018 (ND +45)
5.	Deadline to submit a Claim Form (CD)	July 24, 2018 (ND +60)
6.	Deadline for Plaintiffs to file motion(s) for Final Approval, Attorneys' Fees, Costs and Expenses, and Service Awards	August 23, 2018 (FH -14)
7.	Fairness Hearing (FH)	September 6, 2018

SO ORDERED.

Dated: _____

Judge Anna Helen
Demacopoulos
MAR 30 2018

Hon. Anna H. Demacopoulos