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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JANE DOE,

Plaintiff,

v.

ROBLOX CORPORATION

Defendant.

Case No. 21-CV-03943-WHO

**BRIEF OF AMICUS CURIAE TRUTH
IN ADVERTISING, INC. IN
OPPOSITION TO PROPOSED CLASS
ACTION SETTLEMENT**

Fairness Hearing

Date: September 27, 2023
Time: 2:00 p.m.
Location: Courtroom 2

Honorable William H. Orrick

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I. INTRODUCTION

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2 The proposed settlement in this case provides no meaningful benefit to the children wronged
3 by Roblox’s unfair and deceptive practices as alleged in the operative complaint. The so-called
4 injunctive relief is illusory – permitting Roblox to continue unfettered with the deceptive scheme that
5 forms the basis of plaintiff’s complaint. Incredibly, the parties’ agreement does not require Roblox to
6 make any substantive changes to its corporate policy – a policy previously described by plaintiff as
7 “ineffective.” Moreover, Roblox must only maintain this status quo for four years. The proposed
8 monetary relief fares no better as the vast majority of children will only be eligible to obtain Roblox
9 credits (Roblox’s virtual currency), which is worthless elsewhere, and therefore force most minors to
10 engage with Roblox (a boon for the company) if they are to receive any “benefit.” Meanwhile,
11 plaintiff’s counsel will pocket \$2.5 million for striking a deal on terms that they had previously
12 represented was unfair to kids.
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14 For these reasons, Truth in Advertising, Inc. (“TINA.org”), a national consumer advocacy
15 organization dedicated to protecting consumers from false and deceptive marketing, opposes the
16 proposed settlement, and respectfully urges this Court to safeguard the interests of the minor
17 litigants, as well as protect the interests of the absent class members and deny final approval. *See*
18 *Kim v. Allison*, 8 F.4th 1170, 1179 (9th Cir. 2021) (“Because these early, pre-certification settlements
19 are so open to abuse and so little subject to scrutiny at the time by the district court, the court is
20 required to search for ‘subtle signs’ that plaintiff’s counsel has subordinated class relief to self-
21 interest”); *Robidoux v. Rosengren*, 638 F.3d 1177, 1179 (9th Cir. 2011) (“the district court has a
22 special duty to safeguard the interests of minor plaintiffs...”); *Salmeron v. U.S.*, 724 F.2d 1357, 1363
23 (9th Cir. 1983) (“a court must independently investigate and evaluate any compromise or settlement
24 of a minor’s claims to assure itself that the minor’s interests are protected, even if the settlement has
25 been recommended or negotiated by the minor’s parents or guardian ad litem.”) (internal citations
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1 omitted); *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978) (“A court . . . may not
 2 summarily enforce a tentative settlement agreement when a minor is a party to the litigation. This is
 3 because the actual merits of the controversy remain of consequence as the court must base its
 4 approval upon the fact that the terms of the settlement are completely fair to the minor.”).

5 **II. INTEREST OF AMICUS CURIAE**

6 TINA.org is a 501(c)(3) nonpartisan, nonprofit consumer advocacy organization whose
 7 mission is to combat systemic and individual harm caused by deceptive marketing. To further its
 8 mission, TINA.org performs in-depth investigations and files complaints with federal and state
 9 government agencies, among others, urging them to take action to put an end to various companies’
 10 deceptive marketing practices.¹ As explained in its Motion for Leave to File Brief as Amicus Curiae
 11 in Opposition to Proposed Class Action Settlement, TINA.org has an important interest and a
 12 valuable perspective on the issues presented in this case.²

13 **III. ARGUMENT**

14 The essence of plaintiff’s complaint is that Roblox deceptively entices millions of children to
 15 purchase in-game content through advertising on its platform and then deletes their purchased
 16 content (misrepresenting the deletions as “moderation”) without providing any refund or credit,
 17 thereby depriving children of their purchases and creating further demand for new items. First Am.
 18 Class-Action Compl. at ¶¶ 8-11, 29, 34, 70.
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25 ¹ See Declaration of Laura Smith, Esq. (Legal Director, TINA.org) in Support of Administrative
 26 Motion For Leave To File Brief As Amicus Curiae In Opposition To Proposed Class Action
 27 Settlement at ¶ 4. Since 2015, state and federal agencies have obtained more than \$250 million from
 28 companies engaged in false and deceptive marketing based on TINA.org legal actions and evidence,
 and returned millions in ill-gotten gains to consumers. See *id.* at ¶ 8.

² Neither party in this action nor their counsel played any part in the drafting of this brief or
 contributed in any other way. See *id.* at ¶ 16.

1 Such unfair and deceptive content-deleting practices will not be adequately remedied – as
 2 acknowledged by plaintiff’s prior representations³ – if the proposed settlement agreement is
 3 approved, and the vast majority of minor class members, most of whom will receive nothing of real
 4 value from the resolution of this case, will never be able to do anything about it. Meanwhile,
 5 plaintiff’s counsel will receive \$2.5 million for allowing Roblox to continue doing business as usual
 6 and forcing millions of children to play video games in order to use the Robux they will receive from
 7 the proposed settlement – a definite win-win for the company. Each defect is addressed in turn.⁴

9 **A. The Temporary Injunctive Relief Is Inadequate**

10 According to the proposed settlement, for the next four years, Roblox will agree to continue a
 11 secretive process it implemented nearly two years ago to credit user accounts for deleted items if and
 12 when it deems it appropriate if and when users (a majority of whom are minors) attest that they have
 13 done nothing wrong. *See* Class-Action Settlement Agrmt. at ¶ 3.5. After that, Roblox will be free (if
 14 the settlement is approved) to delete purchased items without crediting kids for their losses. *Id.* As
 15 plaintiff rightly pointed out, such “[a]n after-the-fact refund program does not alleviate the deceptive
 16 nature of Roblox’s conduct.” Pl.’s Opp’n to Def.’s Mot. to Dismiss, at 5, Jan 20, 2022, ECF No. 33.
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21 ³ First Am. Class-Action Compl. at ¶¶ 11, 12 (“since the filing of the initial complaint in this
 22 lawsuit, Roblox has instituted an ostensible and ‘automatic’ refund program. But this program is
 23 merely a half-measure: It fails to undo Roblox’s upfront deceptive conduct, and despite Roblox’s
 24 promises that the refund program is ‘automatic,’ in practice it has proven ineffective at compensating
 25 users for improperly revoked items anyway. ... even for those users that do receive a Robux
 26 ‘refund,’ Roblox has never offered users real money refunds for deleted items. Thus, users are – at
 best – forced to continue playing Roblox (and become subject to more unsavory business practices),
 or accept their losses and leave.”); Pl.’s Opp’n to Def.’s Mot. to Dismiss, at 5, Jan 20, 2022, ECF No.
 33 (“An after-the-fact refund program does not alleviate the deceptive nature of Roblox’s conduct.
 Moreover, Roblox has not submitted any evidence that the refund program is effective at remedying
 the injuries suffered by users like Doe, and she alleges that it is not. In fact, Doe alleges that the
 refund program established by Roblox is insufficient...”)

27 ⁴ While there may be other terms of the proposed settlement agreement that are problematic, this
 28 brief focuses exclusively on the injunctive (i.e., “prospective”) relief, monetary relief, and attorneys’
 fees.

1 **1. The proposed injunctive relief does not address the allegations of wrongdoing.**

2 The fundamental premise of plaintiff’s complaint is that Roblox deceptively encourages
3 minors to purchase in-game content, and then deletes said content from children’s accounts without
4 providing any refund or credit. First Am. Class-Action Compl. at ¶¶ 10, 93.

5 Instead of requiring that Roblox ensures that items that violate its policies are not permitted
6 to be sold on its platform in the first place, the injunctive relief in the proposed settlement retains the
7 status quo of burdening children with the risk of losing paid-for items so that Roblox may “maintain
8 the policy implemented in September 2021 to credit accounts for Robux spent on moderated items
9 by users not in violation of the Roblox Terms of Use for a period of no less than four (4) years.”⁵
10 Class-Action Settlement Agrmt. at ¶ 3.5. However, this is precisely the defect that plaintiff sought to
11 cure with this lawsuit. As the operative complaint states, “since the filing of the initial complaint in
12 this lawsuit, Roblox has instituted an ostensible and ‘automatic’ refund program. But this program is
13 merely a half-measure: It fails to undo Roblox’s upfront deceptive conduct, and despite Roblox’s
14 promises that the refund program is ‘automatic,’ in practice it has proven ineffective at compensating
15 users for improperly revoked items anyway.” First Am. Class-Action Compl. at ¶ 11. Further, in
16 Plaintiff’s Opposition to Defendant’s Motion to Dismiss, plaintiff argues:
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19 An after-the-fact refund program does not alleviate the deceptive nature
20 of Roblox’s conduct. Moreover, Roblox has not submitted any evidence
21 that the refund program is effective at remedying the injuries suffered
22 by users like Doe, and she alleges that it is not. In fact, Doe alleges that
23 the refund program established by Roblox is insufficient. For instance,
24 she has not received a refund. And the program itself remains opaque.
25 The scope and availability of this new Refund Policy proffered by
26 Roblox is currently unclear. As an illustration, this new Refund Policy
is not included in Roblox’s current Terms of Use. (In fact, the Terms
were updated as recently as January 2022, and still omit this
information.) This failure to update the Terms or make the information
easily discoverable continues Roblox’s pattern of veiling its policies

27 ⁵ It is unclear from this wording whether this Roblox credit policy only addresses virtual content that
28 was deleted for no apparent reason or also includes credits for virtual content deleted for purportedly
violating Roblox’s Terms of Use.

1 from users and underscores how the Refund Policy does not address
2 Plaintiffs' claims for injunctive relief.

3 Pl.'s Opp'n to Def.'s Mot. to Dismiss, at 5-6, Jan. 20, 2022, ECF No. 33 (internal citations omitted).

4 More than a year-and-half later, plaintiff's argument still rings true, and the proposed
5 settlement provides no further clarity. Roblox's Terms of Use make no mention of any purported
6 refund or credit policy. Quite to the contrary, the current Terms allow Roblox to remove content
7 without any advance notice and without refunding users:

8 Roblox has the right, in its discretion, to suspend the availability of, or
9 remove from the Services, any content (including Experiences, Virtual
10 Items and any other UGC) without advance notice. Roblox is not liable
11 for any losses User takes as a result of such suspension or removal, and
12 Roblox is not required to refund any Robux or other funds that User has
13 spent on any removed or suspended content.

14 Section 4(d) of Roblox Terms of Use, [https://en.help.roblox.com/hc/en-us/articles/115004647846-
15 Roblox-Terms-of-Use](https://en.help.roblox.com/hc/en-us/articles/115004647846-Roblox-Terms-of-Use). This provision, which binds all Roblox users, runs contrary to the settlement
16 representations made by the parties in this case. Moreover, the only documentation that TINA.org
17 could find regarding the "Moderated Item Robux Policy" is a release threatening termination of a
18 Roblox account, among other things, which appears completely independent from the company's
19 Terms of Use.⁶

20 ⁶ On a separate webpage, not connected to or linked in its Terms of Use, Roblox posts an
21 "Moderated Item Robux Policy," which states:

22 By clicking the "I agree" button below, you promise that you are not
23 seeking a return of Robux for items created by you or for items that you
24 knew at the time you acquired them were in violation of the Roblox
25 Terms of Use or Roblox Community Guidelines. A breach of this
26 promise may be grounds for termination of your Roblox account. You
27 will not receive any adjustment of Robux if you were not previously
28 notified by Roblox that you are eligible for an adjustment."

29 Roblox Moderated Item Robux Policy, [https://www.roblox.com/modcreditagreement/974158ba-
30 99f0-4915-8fde-5b07b3cbbe09](https://www.roblox.com/modcreditagreement/974158ba-99f0-4915-8fde-5b07b3cbbe09).

31 Among other things, the release, which has been published on the Roblox website since at least
32 September 15, 2021, (Roblox Moderated Item Robux Policy (Sept. 15, 2021),
33 [https://web.archive.org/web/20210915003038/https://www.roblox.com/modcreditagreement/974158
34 ba-99f0-4915-8fde-5b07b3cbbe09](https://web.archive.org/web/20210915003038/https://www.roblox.com/modcreditagreement/974158ba-99f0-4915-8fde-5b07b3cbbe09)), does not explain the eligibility criteria a Roblox user must meet

1 Not only have the parties to this lawsuit failed to provide any evidence that the proffered
2 refund program is effective at remedying the injuries suffered by the class, *see*
3 Pl.’s Opp’n to Def.’s Mot. to Dismiss, at 5, Jan 20, 2022, ECF No. 33, but they have failed to
4 articulate the scope and availability of this program, or how it will align with Roblox’s Terms of
5 Use. In short, it is clear the proposed injunctive relief gives nothing but the illusion that Roblox’s
6 unfair and deceptive business practices will be remedied by the proposed settlement agreement.
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8 Courts have rejected similar agreements that provide meaningless injunctive relief. *See, e.g.,*
9 *Pearson v. NBTY, Inc.*, 772 F.3d 778, 785 (7th Cir. 2014) (reversing approval of settlement
10 agreement, stating “[t]he injunction actually gives [defendant] protection by allowing it, with a
11 judicial imprimatur (because it’s part of a settlement approved by the district court), to preserve the
12 substance of the claims by making...purely cosmetic changes in wording.”); *In re Dry Max Pampers*
13 *Litig.*, 724 F.3d 713, 715 (6th Cir. 2013) (reversing approval of settlement agreement, stating “[t]he
14 parties and their counsel negotiated a settlement that...provides . . . nearly worthless injunctive
15 relief.”); *Vassalle v. Midland Funding LLC*, 708 F.3d 747, 756 (6th Cir. 2013) (reversing approval of
16 settlement agreement, stating “the relief actually provided to the unnamed class is perfunctory at
17 best” because, among other things, “it does not actually prohibit [defendant] from creating false
18 affidavits; rather, it only requires [defendant] to change its policies and provides oversight of this
19 process.”)
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28 in order to receive a return of Robux or whether Roblox is returning all or part of the Robux spent on
“moderated” items.

1 **2. The proposed injunctive relief is of no value since it simply maintains the status**
2 **quo.**

3 No corrective or remedial action is required by the proposed settlement agreement. Rather, it
4 merely requires Roblox to continue doing the same thing it has been doing since September 2021.⁷
5 The parties' reliance on past modifications to form part of the basis for class members giving up their
6 litigation rights is unacceptable because the injunctive relief is of no value to the plaintiff class. As
7 the Ninth Circuit explained in *Koby v. ARS Nat. Servs., Inc.*, an injunction that "does not obligate
8 [the defendant] to do anything it was not already doing" is "of no real value." *Koby v. ARS Nat'l*
9 *Servs.*, 846 F.3d 1071, 1080 (9th Cir. 2017) (reversing district court's approval of settlement
10 agreement). In *Koby*, as in this case, the injunction merely required the defendant to continue the
11 same policy it voluntarily adopted two years after the complaint was filed "for its own business
12 reasons (presumably to avoid further litigation risk)..." *Id.* Similarly, in *Briseño v. Henderson*, the
13 Ninth Circuit stated that an injunction that does not obligate a defendant to do anything it was not
14 already doing is "illusory" and "virtually worthless." *Briseño v. Henderson*, 998 F.3d 1014, 1028
15 (9th Cir. 2021) (reversing district court's approval of settlement agreement).

16
17 Moreover, in another refund case, the Sixth Circuit opined that a refund policy that most class
18 members already had access to before a settlement agreement was reached and which class members
19 "already had an opportunity to obtain...without the assistance of class counsel and without assigning
20 away important rights as captive members of a settlement class" is "dubious on its face" and
21 "negligible." *In re Dry Max Pampers Litig.*, 724 F.3d 713, 719 (6th Cir. 2013) (reversing district
22 court's approval of a settlement). *See also Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003)
23 (reversing approval of consent decree that, among other things, provided injunctive relief that largely
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27 ⁷ Class-Action Settlement Agrmt. at ¶ 3.5 ("**Prospective Relief.** Defendant will maintain the
28 policy implemented in September 2021 to credit accounts for Robux spent on moderated items by
users not in violation of the Roblox Terms of Use for a period of no less than four (4) years.")

1 incorporated already-existing company programs rather than creating new ones, stating it is a
2 “questionable factor[.]” that “suggest[s] the possibility that class counsel and [class representatives]
3 *could* have agreed to relatively weak prospective relief because of other inducements offered to them
4 in the course of the negotiations.”) (emphasis in original).

5
6 It is clear that the proposed injunctive relief in this case, which merely requires Roblox to
7 maintain the status quo for four years, provides no benefit to the class, and this is reason, in and of
8 itself, to reject the proffered settlement agreement.

9 **3. The proposed injunctive relief is temporary when it should be permanent (and**
10 **meaningful).**

11 Even if the proposed injunctive relief was valuable, which it is not, it is temporary – expiring
12 in four years. *See* Class-Action Settlement Agrmt. at ¶ 3.5 (“Defendant will maintain the policy
13 implemented in September 2021 to credit accounts for Robux spent on moderated items by users not
14 in violation of the Roblox Terms of Use for a period of no less than four (4) years.”).

15 It is hard to imagine an arm’s length negotiation in which approximately 8 million
16 consumers⁸ would be willing to forfeit all known and unknown claims in exchange for a company’s
17 promise to be bound by a weak and ineffective four-year contract.⁹ *See Koby*, 846 F.3d at 1079 (“[a]
18 district court abuses its discretion when it approves a settlement despite ‘no evidence that the relief
19 afforded by [a] settlement has any value to the class members, yet to obtain it they had to relinquish
20 their right to seek damages in any other class action.”).

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25 ⁸ Decl. of Yaman Salahi in Support of Pl.’s Mot for Prelimin. Approval of a Class Action
26 Settlement, Mar. 28, 2023, ECF No. 54, at ¶ 12 (“Roblox has represented, and informal discovery
has confirmed, that the Settlement Class includes 8 million members...”).

27 ⁹ In addition, class members are also waiving clear statutory rights they have under state laws,
28 such as Section 1542 of the California Civil Code, which prohibits general releases such as this one
from being extended to claims unknown at the time of executing the release, even if they would have
materially affected the settlement. *See* Class-Action Settlement Agreement ¶ 1.34.

1 Further, the vast majority of consumers in this class are children,¹⁰ and as this Court has
2 noted, “[t]he law has long recognized that children have less capacity than adults to assent to
3 contractual terms. Indeed, California law (like the common law) permits minors to disaffirm most
4 contracts, rendering them void. California ‘law shields minors from their lack of judgment and
5 experience.’ It is important for contract law to ‘protect a minor against himself and his indiscretions
6 and immaturity as well as against the machinations of other people.’” Order on Mot. to Dismiss and
7 Strike, at 10, May 9, 2022, ECF No. 48 (internal citations omitted). *See also Robidoux*, 638 F.3d at
8 1181; *Salmeron*, 724 F.2d at 1363; *Dacanay*, 573 F.2d at 1078.

10 At a minimum, there should be parity in any release between Roblox and the class in this case
11 but at present the proposed injunctive relief clearly favors Roblox in substance and scope, and, as
12 such, the settlement should not be approved. *See Pearson*, 772 F.3d at 784-5 (reversing approval of
13 settlement agreement, criticizing 30-month injunction); *Vassalle*, 708 F.3d at 756 (reversing approval
14 of settlement agreement, stating the injunction is “of little value” because, among other things, it
15 “only lasts one year, after which [the defendant] is free to resume its predatory practices should it
16 choose to do so.”). *See also* Amend. to Settlement Agreement and Gen. Release, *Quinn v. Walgreen*,
17 *Co.*, No. 12-cv-8187 (S.D.N.Y. Jan. 30, 2015), ECF No. 141-1 (parties renegotiated settlement
18 agreement and revised the injunctive relief to include broader language and a permanent injunction
19 after TINA.org filed an amicus curiae brief opposing, among other things, the temporary nature of
20 the injunctive relief).

23 **B. The Proposed Monetary Relief is Inadequate and Unfair to Class Members**

24 According to plaintiff, approximately 8 million class members, predominately children, lost
25 more than \$26 million by purchasing inappropriate virtual items on Roblox that the company
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28 ¹⁰ First Am. Class-Action Compl. at ¶ 92 (“members of the Class ... are predominantly or exclusively children”).

1 subsequently deleted, or as Roblox would say, “moderated.” Suppl. Decl. of Yaman Salahi in Supp.
2 of Pl.’s Mot. for Prelimin. Approval of a Class Action Settlement, at ¶ 5, May 10, 2023, ECF No.
3 66.¹¹ Yet the proposed monetary award to be dispersed among eligible class members is less than
4 \$7.5 million, about 28 percent of what class members had taken from them by Roblox. Class-Action
5 Settlement Agrmt. at ¶¶ 1.31, 1.32, 9.2.
6

7 Making matters worse, the parties have constructed an arbitrary monetary minimum in order
8 for class members to receive compensation. And as a result, the vast majority of children will not
9 receive any money and instead will receive Robux credits, which are worthless unless class members
10 return to and/or engage with the gaming platform that deceived them. Nothing could be better for
11 Roblox than forcing millions of minors to interact with its gaming platform in order to obtain the
12 benefit of the bargain.
13

14 **1. The vast majority of class members will not receive monetary relief.**

15 The parties have erected a major obstacle to prevent minors from being compensated by
16 requiring that a child’s loss must equal or exceed \$10. Class-Action Settlement Agrmt. at ¶ 3.3. This
17 arbitrary line drawing no doubt is convenient for Roblox but bears no relationship to the facts of this
18 case. (In fact, there is evidence in the record that suggests only 0.5 percent of the class would meet
19 this threshold. *See* Decl. of Yaman Salahi in Supp. of Pl.’s Mot. for Prelimin. Approval of a Class
20 Action Settlement, Ex. 2, Mar. 28, 2023, ECF No. 54.) With total losses of at least \$26.5 million and
21 a class of approximately 8 million consumers, the average loss would be a little more than \$3, which
22 would make it a logical minimum for monetary compensation for each and every class member.¹² In
23 fact, plaintiff’s counsel has attested to the fact that “the vast majority” of class members lost “only a
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26 ¹¹ As plaintiff has stated, class members have not just lost Robux; they have lost real money. Pl.’s
Opp’n to Def.’s Mot. to Dismiss, at 2, Jan. 20, 2022, ECF No. 33 (citing (FAC ¶ 25).)

27 ¹² There is also evidence in the record that the “average loss” in the case is \$1.81 (Decl. of
28 Yaman Salahi in Supp. of Pl.’s Mot. for Prelimin. Approval of a Class Action Settlement, Ex. 2,
Mar. 28, 2023, ECF No. 54), far below the \$10 threshold for cash payments.

1 handful of dollars due to Roblox’s content-deletion scheme.” *See id.* at ¶12; *Pearson*, 772 F.3d at
2 784 (“[K]nowing that 4.72 million people had bought at least one bottle of its pills, [defendant] could
3 have mailed \$3 checks to all 4.72 million postcard recipients.”). Further, on the Roblox platform
4 Robux can be purchased in \$4.99 bundles,¹³ which also supports a lowering of the financial level at
5 which cash should be allocated to class members. Moreover, for a class primarily comprised of
6 minors, lowering the level at which monetary awards are allocated makes sense.
7

8 With their proposed settlement, the parties have set an arbitrarily high threshold for monetary
9 compensation that does not align with the facts of the case. And in so doing, they are effectively
10 turning the settlement into a voucher settlement, providing the vast majority of kids with worthless
11 Robux credits. Class-Action Settlement Agrmt. at ¶ 3.4. All class members should be entitled to
12 monetary compensation, or alternatively, all class members who do not receive monetary
13 compensation should be excluded from the definition of the class.
14

15 **2. A Robux virtual currency settlement is not fair, reasonable, or adequate.**

16 As the operative complaint states, providing Robux credits instead of cash as compensation
17 means that “users are—at best—forced to continue playing Roblox (and become subject to more
18 unsavory business practices), or accept their losses and leave.” First Am. Class Action Compl. at ¶
19 12. That is precisely right – while a Robux credit settlement provides no meaningful benefit to class
20 members, it does benefit Roblox as the company is not required to disgorge any of its ill-gotten
21 gains, will reap the rewards of requiring class members to give it more business and will collect a
22 significant portion of every Robux that class members spend on the platform.¹⁴
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26 ¹³ Roblox, Buy Robux, <https://web.roblox.com/upgrades/robux?ctx-nav>.

27 ¹⁴ First Am. Class-Action Compl. at ¶ 10 (“Roblox charges a seller a fee for the new sale and
28 takes a commission from the new purchase.”) and ¶ 42 (“...Roblox...profits from any transactions in
the game and users’ decisions to purchase more Robux with real money.”); *see also* Earning on
Roblox, <https://create.roblox.com/docs/production/earning-on-roblox>.

1 It is for reasons like these that coupon/voucher settlements are disfavored. *See McKinney-*
2 *Drobnis v. Oreshack*, 16 F.4th 594 (9th Cir. 2021) (vacating the district court’s approval of a
3 proposed settlement agreement that compensated aggrieved class members with vouchers); *In re*
4 *Easysaver Reward Litig.*, 906 F.3d 747, 755 (9th Cir. 2018) (noting that class members may have
5 little interest in using coupons “either because they might not want to conduct more business with
6 defendants, or because the coupons are too small to make it worth their while.”); *In re Southwest*
7 *Airlines Voucher Litig.*, 799 F.3d 701 (7th Cir. 2015) (noting that the “potential for abuse is greatest
8 when the coupons have value only if a class member is willing to do business again with the
9 defendant who has injured her in some way...”); *Synfuel Tech., Inc. v. DHL Express (USA), Inc.*, 463
10 F.3d 646, 653 (7th Cir. 2006), citing Christopher R. Leslie, “The Need to Study Coupon Settlements
11 in Class Action Litigation,” 18 *Geo. J. Legal Ethics* 1395, 1396-97 (2005) (Coupon settlements “do
12 not provide meaningful compensation to class members; they often fail to disgorge ill-gotten gains
13 from the defendant; and they often require class members to do future business with the defendant in
14 order to receive compensation.”); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab.*
15 *Litig.*, 55 F.3d 768, 806-7 (3d Cir. 1995) (holding that the district court erred in approving a coupon
16 settlement because it “ignored the fact that the coupons provided no cash value and made no
17 provision for repairing the [alleged wrongdoing],” and therefore the settlement was not within the
18 range of reasonableness); *Retta v. Millennium*, No. 15-cv-1801, 2106 US Dist. LEXIS 152671, at
19 *13-15 (C.D. Cal. 2016) (in denying preliminary approval of a proposed settlement that included
20 vouchers, the Court stated “the voucher is effective only if a Class Member wants to consume
21 [defendant]’s product again... the Court is concerned this aims to benefit [defendant] more than any
22 Class Member and bears no relation to redressing the harm. ... In sum, the Court is not persuaded
23 that the terms of the settlement are ‘fair, reasonable, and adequate.’”); *Sobel et al. v. Hertz Corp. et*
24 *al.*, No. 06-cv-545, 2011 U.S. Dist. LEXIS 68984, at *41 (D. Nev. 2011) (denying motion for
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1 approval of coupon settlement, stating that “there is no basis upon which the court might find that
2 this settlement produces ‘real value’ for the class”); *True et al. v. Am. Honda Motor Co.*, 749 F.
3 Supp. 2d 1052, 1069 (C.D. Cal. Feb. 26, 2010) (denying motion for settlement approval and noting
4 that coupon settlements are “generally disfavored”); *Kearns v. Ford Motor Co.*, No. 05-cv-5644,
5 2005 U.S. Dist. LEXIS 41614, at *3, fn. 1 (C.D. Cal. Nov. 18, 2005) (“[C]oupon settlements’ ...
6 produce hardly any tangible benefits for the members of the plaintiff class...”); *Schlesinger et al. v.*
7 *Ticketmaster*, No. BC304565, at 19 (Super. Ct. of Cal., County of Los Angeles, Sept. 26, 2012)
8 (denying motion for approval of coupon settlement, stating that the Court was “not convinced that
9 the settlement imposes a significant benefit on the class” noting that “[i]f the classmember does not
10 use Ticketmaster again, he or she will get no benefit from the instant settlement”).
11

12 If the proposed settlement is approved, the true beneficiary will be Roblox. Among other
13 things, the settlement allows the company to keep the profits it made from its content-deletion
14 scheme and pushes minors to engage with its platform due to the allocation of otherwise worthless
15 virtual currency. Providing credits to class members does not have the same effect on Roblox as a
16 cash payout – far from it, as Roblox takes a percentage of each Robux transaction on its platform.
17 *See, e.g., Sobel*, 2011 U.S. Dist. LEXIS 68984, at *37 (“[T]he coupons are also less costly than cash
18 to the Defendants.”); *Wilson v. DirectBuy, Inc., et al.*, No. 09-cv-590, 2011 U.S. Dist. LEXIS 51874,
19 at *24 (D. Conn. 2011) (“As with most in-kind benefits, the dollar amount ascribed to the benefit
20 does not represent its actual cost to [the defendant]”). *See also* First Am. Class-Action Compl. at ¶ 10
21 (“Roblox charges a seller a fee for the new sale and takes a commission from the new purchase.”)
22 and ¶ 42 (“...Roblox...profits from any transactions in the game and users’ decisions to purchase
23 more Robux with real money.”); *Earning on Roblox*,
24 <https://create.roblox.com/docs/production/earning-on-roblox>.
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1 **3. Attorneys’ fees are grossly disproportionate to the class recovery.**

2 Eight million consumers, the majority children, lost more than \$26 million when Roblox
3 summarily deleted items that the minors had purchased on its gaming platform. *See* Decl. of Yaman
4 Salahi in Support of Pl.’s Mot for Prelimin. Approval of a Class Action Settlement, at ¶ 12, Mar. 28,
5 2023, ECF No. 54; Suppl. Decl. of Yaman Salahi, May 10, 2023, ECF No. 66 at ¶5; First Am. Class-
6 Action Compl. at ¶¶ 10, 92. To compensate the class for these harms, plaintiff’s counsel has agreed
7 that Roblox will only be required to pay a nominal amount to a minority of class members that can
8 meet a minimum monetary threshold, make absolutely no material changes to its business practices,
9 and force the vast majority of the class to engage with Roblox on its platform in order to use the
10 company’s virtual currency, which is worthless elsewhere. And in exchange for these terms and a
11 release that will waive the rights of the minor class against Roblox, thereby providing Roblox with a
12 clear path to continue its unfair and deceptive practices, plaintiff’s attorney seeks 25 percent of the
13 total \$10 million Settlement Fund, or \$2.5 million. Class-Action Settlement Agrmt. at ¶ 9.1.

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16 Given the exceedingly insufficient monetary award and the meaningless – and temporary –
17 injunctive relief, such high fees are simply not justified in this case. *See e.g., Lowery v. Rhapsody*
18 *Int’l, Inc.*, 69 F.4th 994, 1001 (9th Cir. 2023) (reversing attorneys’ fee award as unreasonable,
19 holding that “courts must consider the actual or realistically anticipated benefit to the class – not the
20 maximum or hypothetical amount – in assessing the value of a class action settlement”); *Briseño*,
21 998 F.3d at 1026 (reversing the district court’s approval of a settlement in which “[t]he lion’s share
22 of the money ... will end up in the pockets of attorneys, while the class receives relative scraps”);
23 *Kim*, 8 F.4th at 1179 (“the district court grossly overstated the value of the claims that [defendant]
24 would actually pay as being \$6 million. This was based on the extremely doubtful assumption that all
25 members of the class would not only file a claim but also elect the ... cash alternative.”); *Roes v.*
26 *SFBSC Mgmt., LLC*, 944 F.3d 1035, 1053 (9th Cir. 2019) (“In particular, as with coupon settlements,
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1 it was possible here that the parties overstated the value of the [voucher pool], thereby inflating
2 attorneys' fees and as a result reducing the amount of cash available to class members who were not
3 interested in the ... payment vouchers."); *Dennis v. Kellogg Co.*, 697 F.3d 858, 861 (9th Cir. 2012)
4 (reversing district court's approval of a settlement that provided for, among other things, \$2 million
5 in attorneys' fees and a maximum of \$15 to each class member, stating "[i]n a class action ... any
6 settlement must be approved by the court to ensure that class counsel and the named plaintiffs do not
7 place their own interests above those of the absent class members."); *Staton*, 327 F.3d at 974
8 (reversing district court's approval of proposed consent decree that awarded \$3.85 million to class
9 counsel while awarding approximately \$1,000 to each unnamed class member, and injunctive relief
10 that largely incorporated already-existing company programs rather than creating new ones, stating
11 "[p]recisely because the value of injunctive relief is difficult to quantify, its value is also easily
12 manipulable by overreaching lawyers seeking to increase the value assigned to a common fund," and
13 increase their fees); *In re Dry Max Pampers Litig.*, 724 F.3d at 721 (reversing district court's
14 approval of a settlement that awarded \$2.73 million to class counsel while unnamed class members
15 received relief of only negligible value, determining that the agreement benefited class counsel
16 "vastly more than it [did] the consumers who comprise the class," and therefore was unfair).

19 IV. CONCLUSION

20 In sum, the proposed settlement agreement is patently unfair to the vast majority of minors
21 that comprise the class because, while they will be effectively banned from ever suing Roblox again,
22 Roblox is simply bound to a four-year term of maintaining a status quo that will not require it to
23 change its unfair and deceptive practices. In addition, while most of the kids will receive no
24 monetary compensation for their losses, plaintiff's counsel will receive \$2.5 million. For these
25 reasons, TINA.org respectfully urges this Court to deny approval of the proposed settlement.
26

27 ///

1 DATED: August 9, 2023

Respectfully submitted,

2
3 LAW OFFICE OF PETER FREDMAN PC

4 By /s/ Peter Fredman

Peter Fredman

5 *Attorney for* TRUTH IN ADVERTISING INC.
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each party through the Court’s electronic filing service on August 9, 2023, which will send notification of such filing to the e-mail addresses registered.

/s/ Peter Fredman
Peter Fredman

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