The Honorable Robert S. Lasnik

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

ADRIENNE BENSON and MARY SIMONSON, individually and on behalf of all others similarly situated,

*Plaintiffs*,

*v.*

DOUBLEDOWN INTERACTIVE, LLC, a Washington limited liability company, INTERNATIONAL GAME TECHNOLOGY, a Nevada corporation, and IGT, a Nevada corporation,

*Defendants*.

Case No. 18-cv-00525-RSL

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

**ORAL ARGUMENT REQUESTED**

**NOTING DATE:** August 9, 2022

## INTRODUCTION AND FACTUAL BACKGROUND

For years, DoubleDown has made incremental moves toward making itself judgment-proof in this Court. Starting in 2018, it began terminating the bulk of its Seattle-based employees (and permanently deleting their emails, to boot), and through the present day DoubleDown continues to shift its workforce and its leadership abroad. More recently, DoubleDown began liquidating on-hand cash: between the end of 2021 and the second quarter of 2022, for example, DoubleDown's balance sheet reflects a $67 million reduction of cash and equivalents.

Now, on the brink of class certification and a potential preliminary injunction, DoubleDown upped the ante on its judgment-proofing efforts. Specifically, on July 21, under the cover of a litigation stay demanded and obtained under the guise of an interest in mediating, DoubleDown announced an "extraordinary meeting" of its shareholders, scheduled for August 25—the *day before* the Parties' August 26 follow-up mediation session.[1] During the extraordinary meeting, DoubleDown intends to hold a vote on removing more than $50 million of cash from its "capital reserve," apparently to pay overseas investors a first-ever (and "unanticipated") dividend.[2] In other words, while DoubleDown's lawyers have represented that DoubleDown "has mediated in good faith and intends to continue to do so," Dkt. #480, and while they ask the Court to refrain from making any rulings on pending motions, *id.*, DoubleDown's management appears to be stalling the litigation so that it can abscond with money that is owed to the Class.

DoubleDown's lawyers never disclosed the capital reduction plan to Plaintiffs. In fact, DoubleDown's lawyers stated in writing that—notwithstanding the August 26 mediation date—DoubleDown's management kept the lawyers completely in the dark about the August 25 capital reduction vote.[3] Yet when Plaintiffs' counsel discovered it and offered DoubleDown's lawyers a

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[1] *See* Declaration of Todd Logan ("Logan Decl.") ¶¶ 2-3; Ex. 1 (July 21 Form 6-K) at ECF-3. (As of the date of this filing, 70,000,000,000 KRW is worth approximately $53,759,755.00 USD.)

[2] Logan Decl. ¶ 3; Ex. 1 at ECF-3; *see also* Logan Decl. ¶ 6, Ex. 4 (2021 Annual Report) at ECF-80 (showing that two Korean entities own 87% of common shares); *id.* at ECF-30 (stating on April 4, 2022: "We currently do not intend to pay any dividends to holders of our common shares for the foreseeable future.").

[3] *See* Logan Decl. ¶ 4; Ex. 2 (Emails Between Counsel) at ECF-4, ECF-7.

chance to explain, they quickly adopted the company line: the capital reduction has "nothing to do" with this lawsuit.[4]

That isn't true. The Class's out-of-pocket damages exceed $2 billion.[5] DoubleDown's market capitalization currently hovers around $500 million, including about $175 million in cash and equivalents, down from more than $242 million just three months before.[6] Whether this case resolves through a judgment, a class action settlement, or through bankruptcy, *all* of that $175 million in cash (and more of DoubleDown's liquid assets, which DoubleDown has zealously been spending its cash on) must be returned to the Class. And DoubleDown knows this: in its most recent annual report, it disclosed a loss contingency for this case exceeding $200 million.[7] Consequently, an eleventh-hour handout of more than $50 million in cash from DoubleDown's (limited) treasury—likely to its investors—absolutely has *something* to do with this lawsuit; it is an outright robbery of the Class's likely recovery.

When Plaintiffs' counsel explained this, DoubleDown's lawyers retreated to the position that the capital reduction vote has "nothing to do" with this case because the vote is being conducted by DoubleDown Interactive Co. Ltd. ("DDI-Korea"), a different entity than the DoubleDown Interactive, LLC ("DDI-US") that is the named defendant in this lawsuit.[8] That is outrageous. DDI-Korea is DoubleDown's parent company, and its only business is owning and operating DoubleDown's apps (ultimately, through DDI-US).[9] All financial activity associated with the DoubleDown social casino apps is routed up through DDI-Korea's books, and DDI-Korea holds the DoubleDown assets that must be used to fund a settlement or judgment in this

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[4] *Id.* at ECF-7 ("We inquired on this and have been told that the securities filing has nothing to do with our case. We were not aware of it, which is not surprising given that fact.").

[5] *See, e.g.*, Logan Decl. ¶ 6; Ex. 4 (2021 Annual Report) at ECF-54, ECF-60.

[6] *See* Logan Decl. ¶ 5; Ex. 3 (May 11 Form 6-K) at ECF-7.

[7] *See* Logan Decl. ¶ 6; Ex. 4 (2021 Annual Report) at ECF-13.

[8] *See* Logan Decl. ¶ 4; Ex. 2 (Emails Between Counsel) at ECF-11 ("Our statement below was based on the fact that Double Down Interactive Co., Ltd. (which I take to be the 'DDI' you are referencing) is a Korean entity and is not a defendant in this pending litigation. **What that DDI chooses to do is not germane to this litigation**.") (emphasis added).

[9] *See* Logan Decl. ¶ 7; Ex. 5 (Registration Statement) at ECF-86 (Technically, DDI-Korea is the 100% owner of a Delaware LLC named "DoubleUDiamond LLC," which is in turn the 100% owner of DDI-US.).

case.[10] Indeed it is DDI-Korea that has repeatedly disclosed to its shareholders that "*[w]e* have incurred and expect to continue to incur significant expense defending the *Benson* lawsuit" and that "[t]he resolution of the *Benson* lawsuit . . . could have a material adverse effect on *our* operating results and financial condition."[11] That renders absurd DoubleDown's lawyers' argument that the capital reduction has "nothing to do" with this lawsuit because the shareholder vote is being conducted by DDI-Korea. And while Plaintiffs do not (yet) ask the Court to exercise jurisdiction over or enjoin DDI-Korea, there is no serious question that the Court could: DDI-Korea acts through its director Joe Sigrist, here in this District, at its office on Fifth Avenue. As just one example, Mr. Sigrist signed DDI-Korea's recent Form 6-K announcing the capital reduction plan, listing the Seattle office as his contact address, and attaching a DDI-Korea press release emanating from "Seattle, Washington."[12] DDI-Korea also undoubtedly acts in "active concert" with DDI-US (its wholly owned subsidiary), with the officers shared between the two entities (including Sigrist), and with the attorneys shared between the two entities. *See* Fed. R. Civ. P. 65(d)(2)(C) (authorizing injunctive relief against non-parties)

Fortunately, Washington law provides a remedy for DoubleDown's chicanery. RCW 7.40.020 provides that the Court may enter appropriate injunctive relief when either of the following conditions is present: (i) "when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual," or (ii) "where it appears . . . by affidavit, that the defendant threatens, or is about to remove or dispose of his or her property with intent to defraud his or her creditors, a temporary injunction may be granted to restrain the removal or disposition of his or her property." More plainly, when there is reason to believe a defendant is trying to make itself judgment proof, Washington law provides the Court injunctive powers to preserve the status quo.

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[10] *See generally id.*

[11] Logan Decl. ¶ 6; Ex. 4 (2021 Annual Report) at ECF-12 (emphasis added)

[12] Logan Decl. ¶ 2; Ex. 1 at ECF-2-3.

The Court should exercise those powers here. First, the Court should compel Joe Sigrist, who resides in this District and is both the General Manager of DDI-US and the CFO of DDI-Korea,[13] to attend the hearing on this Motion for Temporary Restraining Order. Second, at that hearing, the Court should order Mr. Sigrist to exercise all available powers to ensure that the August 25 capital reduction vote does not move forward, and more broadly to ensure that no DoubleDown entity makes any extraordinary expenditures of cash pending further order of the Court.[14] Finally, the Court should enjoin DDI-US from making any transfers to or from its bank accounts, including the bank accounts Leslie Keddie testified to,[15] other than for the purpose of funding routine day-to-day operations of the DoubleDown apps.[16] All of this relief can be revisited again upon Plaintiffs' forthcoming motion for a preliminary injunction, at which time Plaintiffs intend to request that the Court enter a preliminary injunction preventing any dissipation of DoubleDown's assets through the final resolution of this litigation.

**LEGAL STANARD**

This Court, sitting in diversity, may issue temporary injunctive relief to preserve the status quo when it appears that a defendant is taking steps to make itself judgment proof. *See* RCW 7.40.020; *see also Sims Snowboards, Inc. v. Kelly*, 863 F.2d 643, 646 (9th Cir. 1988) (state law controls whether injunctive relief is appropriate); Fed. R. Civ. P. 64 (state law remedies "to secure satisfaction of the potential judgment" are available in federal court absent a statute to the contrary).

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[13] *See* Logan Decl. ¶ 7; Ex. 5 (Registration Statement) at ECF-106.

[14] *See, e.g., Erkan v. New England Compounding Pharmacy Inc.*, No. 12-cv-12052, 2012 WL 5896530, at *3 (D. Mass. Nov. 21, 2012) (finding it appropriate to impose a "limited restraint of assets . . . to prevent any extraordinary transfer of cash out of the company to avoid future judgments" and enjoining defendant "from issuing any dividends to its stockholders, paying any officer or employee bonuses not awarded in the ordinary course of business prior to the date of this order, or making any extraordinary transfer of cash or assets, other than in the ordinary course of business, pending further order of the Court.").

[15] *See* Dkt. #298-2 (Ex. 4, Deposition of Leslie Keddie) at ECF 63-66.

[16] *See, e.g., IRIS Mgmt. Grp., LLC v. Malan*, 329 F. App'x 112, 113-14 (9th Cir. 2009) (upholding, in contract action concerning cosmetic surgery practice, injunction requiring defendant to place income beyond $25,000/month into escrow pending resolution of plaintiff's claims).

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