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COMMONWEALTH OF KENTUCKY
HENDERSON CIRCUIT COURT
CIVIL ACTION NO. 2023-CI-00358

DAVID WHITING,
on behalf of himself and all others similarly situated, PLAINTIFF,

v.

YELLOW SOCIAL INTERACTIVE LTD., DEFENDANT.

**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT,
APPROVING FEES AND EXPENSES AND DIRECTING ENTRY OF
FINAL JUDGMENT AND DISMISSAL WITH PREJUDICE**

Plaintiff David Whiting ("Plaintiff") and Defendant Yellow Social Interactive Ltd. ("Defendant" or "YSI") jointly moved the court for final approval of the proposed Class Action Settlement Agreement. Additionally, Class Counsel has petitioned for an award of fees and expenses, and for an incentive award for Plaintiff.

On August 15, 2023, this Court entered the Preliminary Approval Order in the Action, preliminarily approving the terms of the class action settlement as set forth in the Settlement Agreement. On October 2, 2023, the Court entered an Order Extending Deadlines. On December 11, 2023, this Court conducted a Fairness Hearing to: (a) determine whether this Action should be finally certified as a class action for settlement purposes pursuant to Rule 23.02(c) of the Kentucky Rules of Civil Procedure; (b) determine whether the proposed settlement and the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate and should be finally approved by the Court; (c) determine whether final judgment should be entered in the action pursuant to the Settlement Agreement; (d) entertain any objections of the members of the Settlement Class and any other affected person(s) as to the certification of the Settlement Class, the proposed settlement, or any other matter related thereto; (e) consider Class Counsel's petition

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for an award of attorneys' fees and reimbursement of expenses; and (f) rule on any other matter pertaining to the proposed settlement.

The Court determines that the notices provided to the Settlement Class fully complied with all requirements of due process, Rule 23 of the Kentucky Rules of Civil Procedure, and the notice provisions approved by this Court in the Preliminary Approval Order, and are sufficient to confer upon this Court personal jurisdiction over the Settlement Class. Members of the Settlement Class were notified of the hearing to address the fairness of the proposed settlement to the Settlement Class and were given an opportunity to appear and to voice objections to the class certification for settlement purposes and/or the settlement. The Court also received and considered arguments and evidence from the attorneys for the respective parties in connection with the proposed compromise and settlement of the Action and the award of Class Counsel's attorneys' fees and expenses and Class Representative's incentive award, and gave all persons requesting to be heard an opportunity to be heard in accordance with the procedure set forth in the Preliminary Approval Order. Based on the oral and written argument and evidence presented in connection with the motions, the Court makes the following findings of fact:

A. The Settlement Class preliminarily certified by order of this Court for settlement purposes only is appropriate for certification in the context of the Settlement Agreement and is hereby finally certified under Rule 23.02(c) of the Kentucky Rules of Civil Procedure. The Court makes no findings regarding whether the Settlement Class would be appropriate for class certification in the absence of the proposed settlement.

1. The Settlement Class is so numerous that joinder of all members is impracticable.

2. There are questions of law and fact common to the Settlement Class. The Settlement Class asserts claims against Defendant in connection with their purchase and use of virtual currency in Defendant's virtual casino games (the "Games").

3. The claims of the Class Representative are typical of the claims of the Settlement Class. The Class Representative, like all members of the Settlement Class, alleges monetary damages in connection with his purchase and use of virtual currency in the Games, which he contends constitute illegal gambling under Kentucky state law.

4. The Class Representative has fairly and adequately represented and protected the interests of the Settlement Class. The Class Representative asserts typical claims and has common interests with the unnamed members of the Settlement Class in seeking redress for alleged monetary damages arising from his purchase and use of virtual currency in the Games, which he contends constitute illegal gambling under Kentucky state law. In addition, the Class Representative has vigorously prosecuted the interests of the Settlement Class through well-qualified counsel experienced in similar class action litigation, including during negotiations of the Settlement Agreement and its presentation to the Court.

5. Having taken into consideration the matters listed in Rule 23.02(c)(i)–(iv), the Court finds that in the context of the proposed class settlement, common issues related to alleged damages incurred by the Class Representative and the Settlement Class from Defendant's practice of owning and operating the Games predominate over questions affecting individual members of the Settlement Class. Accordingly, in the context of the Settlement Agreement, questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members. Furthermore, in

the context of the settlement, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

B. The consideration to be given to members of the Settlement Class under the terms of the Settlement Agreement is reasonable considering the strengths and weaknesses of the claims of the Settlement Class.

C. The Settlement Agreement is fair, adequate, and reasonable and in the best interests of the Settlement Class.

D. The Settlement Class has at all times, including during the negotiation of the Settlement Agreement and its presentation to the Court, been represented by competent counsel. Class Counsel has recommended to the Court that the Settlement Agreement be approved. Class Counsel has exercised skill and experience in representing the Settlement Class, and their work has resulted in a substantial benefit to the Settlement Class. The Settlement Agreement provides for the payment of up to \$440,000.00 to Class Counsel for attorneys' fees and costs, and Class Counsel has applied for an award of fees and costs of \$440,000.00. The Court has considered Class Counsel's application for attorneys' fees and costs and hereby enters supplemental findings of fact and conclusions of law pertaining to Class Counsel's application. Class Counsel's fees and expenses shall be paid from the Settlement Fund pursuant to the Settlement Agreement.

E. Notice of the Settlement Agreement has been emailed, mailed, and published in accordance with this Court's Preliminary Order Approving Class Action Settlement and the notice plan contained therein. The notice given in the manner specified in that Order provided the best notice practicable under the circumstances and was reasonably calculated to communicate actual notice of the litigation and the proposed settlement to members of the Settlement Class, including to apprise Settlement Class Members of the pendency of this Action, their right to object to the

Settlement or exclude themselves from the Settlement Class, and to appear at the Final Approval Hearing. The Court finds that the notice that has been given is consistent with and satisfies the due process rights of the entire Settlement Class and any other applicable law.

F. The Court finds that the Settlement Agreement was the result of arm's length negotiation, was entered into in good faith by the Parties, and was not the product of fraud or collusion.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Settlement Terms.** The capitalized terms used in this Final Approval Order have the same meaning as those defined in the Settlement Agreement, unless otherwise stated.

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

3. **Class Certification.** The Court reaffirms its prior certification of the Settlement Class in its Preliminary Approval Order, and this action is hereby finally certified as a class action for settlement purposes only on behalf of a class consisting of:

All individuals who, in Kentucky (as reasonably determined by billing address information, IP address information, or other information furnished by YSI), spent \$5.00 or more within a 24-hour period on www.Pulsz.com from October 2, 2020 to November 3, 2022 and www.Pulszbingo.com from July 20, 2022 to February 9, 2023.¹

4. **Class Representative.** David Whiting is appointed Class Representative of the class finally certified herein.

¹ Excluded from the Settlement Class (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded persons.

5. **Class Notice.** The Settlement Administrator completed delivery of Class Notice according to the terms of the Agreement, as preliminarily approved by the Court. The Class Notice given by the Settlement Administrator to the Class was the best practicable notice under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to the Settlement or exclude themselves from the Settlement Class, and to appear at the Final Approval Hearing. The Class Notice and the means of disseminating the same, as prescribed by the Agreement, was appropriate and reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice. The Class Notice and the means of disseminating the same satisfied all applicable requirements of the Federal Rules of Civil Procedure, constitutional due process, and any other applicable law.

6. **Settlement Approval.** After considering the factors governing the propriety of judicial approval of the proposed class settlement under Rule 23.05 and other applicable law, the Settlement Agreement and the terms of which are incorporated herein by reference, the Court hereby grants final approval to the Settlement and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of the Settlement Class. The Court finds that the Settlement is within the authority of the Parties and the result of extensive, arm's-length negotiations. The Parties are directed to proceed with the Settlement procedures specified under the terms of the Settlement Agreement and the Court's order regarding final claims determinations, including payment and prospective relief.

7. **Objections or Exclusions from the Settlement Class.** Class Members were given a fair and reasonable opportunity to object to the settlement. No members of the Class have requested to be excluded from the Class and the Settlement. No objections have been brought to the Court's attention. This Order is thus binding on all Class Members and has res judicata and

preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Class Members with respect to the Released Claims as defined in the Settlement Agreement.

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

9. **Dismissal with Prejudice.** Pursuant to the terms of the Settlement, the action (including all individual claims and class claims) is hereby dismissed with prejudice on the merits, without costs or attorney's fees to any Party except as provided under the terms of the Settlement Agreement, and this Final Order and Judgment.

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

11. **Attorneys' Fees and Expenses.** The Court has considered Class Counsel's Application for Attorneys' Fees and Costs Related to the Class Action Settlement Agreement And Request for Fee Award to Class Representative, as well as the supporting declarations, and adjudges that the payment of attorneys' fees, costs, and expenses in the amount of \$440,000.00 is reasonable in light of the multi-factor test used to evaluate fee awards in the Sixth Circuit. *See Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Gen. Motors Corp.*,

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497 F.3d 615, 631 (6th Cir. 2007) (“*Int’l Union*”). This award includes Class Counsel’s unreimbursed litigation expenses. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.

12. **Incentive Award.** The Court has considered Class Counsel’s Application for Attorneys’ Fees and Costs Related to the Class Action Settlement Agreement And Request for Fee Award to Class Representative, as well as the supporting declarations, and adjudges that the payment of a service award in the amount of \$5,000.00 to Mr. Whiting to compensate him for his efforts and commitment on behalf of the Settlement Class, is fair, reasonable, and justified under the circumstances of this case. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement

13. **Continuing Jurisdiction.** Without affecting the finality of the Final Judgment for purposes of appeal, the Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the Settlement and this Order. Similarly, any dispute concerning the aggregate amount or allocation of Class Counsel’s fee and expense award shall be subject to the exclusive jurisdiction of this Court and shall be a separate and severable matter from all other matters in this final judgment and the finality and fairness of the Settlement Agreement with the Settlement Class.

14. **Finality.** Any appeal of the Class Counsel attorney’s fees and expense award shall be severed from this final judgment and shall not affect the finality of this judgment as to the Settlement Agreement and release of the Settlement Class’s claims against the Released Parties.

15. **Final Judgment.** Final judgment is hereby entered dismissing with prejudice the claims of Plaintiff and the members of the Settlement Class against Defendant. Because there is

no just reason for delay, the Court hereby directs the entry of a final judgment on the dismissed claims pursuant to Rule 54 of the Kentucky Rules of Civil Procedure. All members of the Settlement Class certified in this Order are bound by the Release in Paragraph 3 of the Settlement Agreement, and are hereby permanently enjoined and restrained from filing or prosecuting any Released Claim against any of the Released Parties as defined in the Settlement Agreement. This Order is a final judgment and is in all respects a final and appealable order, there being no just case for delay. Plaintiff, Defendant, and the Claims Administrator are directed to provide the benefits of the Settlement Agreement to the Settlement Class as provided for in the Settlement Agreement, and in accordance with the notice plan published and mailed to the Settlement Class.

16. To the extent that the claims process as provided for in the Settlement Agreement is exhausted and residual funds remain beyond those specifically directed to be returned to Defendant pursuant to the Settlement Agreement, the residual funds shall be disbursed to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20). Such funds are to be allocated to the Kentucky Civil Legal Aid Organizations based upon the current poverty formula established by the Legal Services Corporation to support activities and programs that promote access to the civil justice system for low-income residents of Kentucky.

17. The Settlement Fund shall be a Qualified Settlement Fund as described in Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1 established by order of this Court, and shall remain subject to the jurisdiction of this Court. Where applicable and in the best interests of the Class Members, the Settlement Fund is authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code.

18. Except as expressly stated otherwise in this Final Order, the Preliminary Approval Order, or the Settlement Agreement, all costs shall be borne by the party incurring them.

SO ORDERED this 11th day of December, 2023



HON. KAREN L. WILSON
Henderson County Chief Circuit Judge

Prepared by:

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ENTERED 12-11-2023
C. GREGORY SUTTON, CLERK
BY [Signature] D.C.

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