

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.

**NOTICE-MOTION-ORDER**  
*(Electronically Filed)*

YELLOW SOCIAL INTERACTIVE LTD.,

DEFENDANT.

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Please take notice that on December 11, 2023, at 9:00 a.m. local time, the undersigned will make the motion and tender the order set forth below.

**JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff David Whiting (“Plaintiff”) and Defendant Yellow Social Interactive Ltd., (“YSI” or “Defendant” and together with Plaintiff the “Parties”), jointly, and pursuant to Kentucky Rule of Civil Procedure 23, move the Court for an order:

(1) finally approving the proposed settlement in this action (“Settlement”) as memorialized in the Class Action Settlement Agreement (“Settlement Agreement”)<sup>1</sup> attached hereto as **Exhibit A**;

(2) certifying the following Settlement Class for settlement purposes:

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,

<sup>1</sup> The Settlement Agreement contains all material terms of the Settlement, including the manner and form of notice to the Settlement Class and the conditions for final approval of Settlement.

2022 and www.Pulszbingo.com from July 20, 2022 to February 9, 2023.<sup>2</sup>

- (3) designating Plaintiff David Whiting as the Class Representative;
- (4) appointing Philip L. Fraietta and Alec M. Leslie of the law firm of Bursor & Fisher, P.A. as class counsel;
- (5) approving the form and dissemination of class notice as carried out by the Settlement Administrator;
- (6) Awarding a reasonable fee and expense award to Class Counsel; and
- (7) Awarding a reasonable incentive award to the Class Representative.

This motion is made upon the grounds that the parties, by and through their respective counsel, have entered into the Settlement Agreement which provides for dismissal of this action, pursuant to Rule 23, upon the terms and conditions specified therein and subject to the approval of the Court.

This motion is based upon this notice, the complete records and file in this action, and upon any other such oral or documentary evidence as may be permitted by the Court. Plaintiff will file a separate memorandum of law contemporaneously with this motion.

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<sup>2</sup> Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) YSI, YSI's subsidiaries, parent companies, successors, predecessors, and any entity in which the YSI or its parents have a controlling interest and its 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.

Respectfully submitted,

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**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

DAVID WHITING, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

YELLOW SOCIAL INTERACTIVE LTD.,

Defendant.

Case No. 2023-CI-00358

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, David Whiting (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, Yellow Social Interactive Ltd. (“Defendant” or “YSI”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and YSI are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. On September 28, 2022, Plaintiff, through his counsel, sent a demand letter to YSI alleging that its Platforms (defined below) fall within the definition of an illegal gambling game and that players can recover their losses under Kentucky law, setting forth claims for violations of Ky. Rev. Stat. § 372.020, based on Plaintiff’s use of and purchases of virtual items in YSI’s Platforms.

2. On October 11, 2022, YSI filed a demand for arbitration against Plaintiff with the

American Arbitration Association (the “AAA”) seeking declaratory relief that YSI’s Platforms do not constitute illegal gambling under Kentucky law (the “Arbitration”).

3. Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution.

4. Those discussions eventually led to an agreement between the Parties to stay the arbitration proceedings and engage in mediation, which the Parties agreed would take place before the Niki Mendoza, Esq., a neutral affiliated with Phillips ADR Enterprises (“Phillips ADR”).

5. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Phillips ADR, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution.

6. During this period and in connection with the mediation proceedings, YSI provided Class Counsel with transaction data for virtual coin purchases made by the Settlement Class; the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated by Phillips ADR, in order to clarify the Parties’ positions in advance of the mediation.

7. On April 6, 2023, the Parties participated in a mediation before Ms. Mendoza. At the conclusion of the mediation, Ms. Mendoza made a mediator’s proposal to settle the case, which all Parties accepted. The Parties then executed a binding term sheet to settle the case on a class action basis.

8. On June 16, 2023, Plaintiff filed a putative class action complaint against YSI in the Henderson County Circuit Court, Case No. 2023-CI-00358.

9. Plaintiff and Class Counsel have conducted a comprehensive examination of the law and facts regarding the claims against YSI, and the potential defenses available. Plaintiff believes that the claims asserted in the Action against YSI have merit and that Plaintiff would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that YSI has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against YSI through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

10. At all times, YSI has denied and continues to deny any wrongdoing and liability and denies all material allegations in the Action. Specifically, YSI denies that the Platforms constitute or constituted illegal gambling, and it opposes certification of a litigation class. YSI is prepared to continue its vigorous defense. Nonetheless, taking into account the uncertainty and risks inherent in a motion to dismiss, class certification, summary judgment, and trial, YSI has concluded that continuing to defend the Action would be burdensome and expensive. YSI has further concluded that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations

resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of YSI, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and YSI, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

### AGREEMENT

#### 1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Action”** means the Arbitration and the case captioned *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358, pending in the Henderson County Circuit Court.

**1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.



1.3 “**Claim Form**” means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

1.4 “**Claims Deadline**” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than fifty-six (56) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.5 “**Class Counsel**” means Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A.

1.6 “**Class Representative**” means the named Plaintiff in this Action, David Whiting.

1.7 “**Court**” means the Henderson County Circuit Court, the Honorable Karen L. Wilson presiding, or any judge who shall succeed her as the Judge in this Action.

1.8 “**Defendant**” means Yellow Social Interactive Ltd.

1.9 “**Defendant’s Counsel**” means Duane Morris LLP.

1.10 “**Effective Date**” means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

1.11 “**Escrow Account**” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by YSI into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and

certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

**1.12 “Fee Award”** means the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.13 “Final”** means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*, leaving the Final Judgment intact in all material respects.

**1.14 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representative.

**1.15 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.16 “Net Settlement Fund”** means the Settlement Fund, plus any interest or investment income earned on the Settlement Fund, less any Fee Award, incentive award of the Class Representative, taxes, and Settlement Administration Expenses.

**1.17 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits B, C, and D hereto.

**1.18 “Notice Date”** means the date by which the direct Email Notice set forth in Paragraph 4.1(a) is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

**1.19 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

**1.20 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**1.21 “Plaintiffs”** means David Whiting and the Settlement Class Members.

**1.22 “Platforms”** means all games, services and related agreements provided to the public through the URLs [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com).

**1.23 “Player ID”** means the unique identifier assigned by YSI to a person who has an account or log-in with either Platform.

**1.24 “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.25 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

**1.26 “Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Platforms in any respect including, but not limited to, all sales of virtual coins on the Platforms, all revenue derived by the Platforms, the manner and methods of operation of all games and promotions on the Platforms, claims that the Platforms are illegal gambling games, that virtual coins in the Platforms are “something of value,” that any aspects of the Platforms render the Platforms unlawful, deceptive, or unfair, that YSI has been unjustly enriched by operation of the Platforms, and all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. For the avoidance of doubt, this

release: (i) includes claims potentially subject to arbitration agreements; and (ii) does not extend to other platforms owned and/or operated by YSI and/or the Released Parties.

**1.27 “Released Parties”** means Yellow Social Interactive Ltd., as well as any and all of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, and any of its respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns, specifically including but not limited to internet service providers, advertisers and payment processors supporting or assisting the Platforms, directly or indirectly.

**1.28 “Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective past, present, and future heirs; children; spouses; beneficiaries; conservators; executors; estates; administrators; assigns; agents; consultants; independent contractors; insurers; attorneys; accountants; financial and other advisors; investment bankers; underwriters; lenders; and any other representatives of any of these persons and entities.

**1.29 “Relevant Spending Amount”** means the total amount of money a Settlement Class Member, while located in the Commonwealth of Kentucky, spent within [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020 to November 3, 2022 in amounts of \$5.00 or more within a 24-hour period or within [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022 to February 9, 2023 in amounts of \$5.00 or more within a 24-hour period..

**1.30 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, distributing funds for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection

with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), as well as all expenses related to the resolution of any disputed claims (as described below in paragraph 5.4), and all expenses, excluding the fees and expenses of Class Counsel and Defendant's Counsel, related to any work required by the Court to confirm that Notice is consistent with Due Process and Rule 23.

**1.31 “Settlement Administrator”** means Artificial Intelligence Class Solutions, or such other reputable administration company that has been selected by Plaintiff, subject to YSI's right of veto (such right not to be unreasonably exercised) and Court approval, and shall oversee the administrator's administration of the settlement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

**1.32 “Settlement Class”** means 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](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022 or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) YSI, YSI's subsidiaries, parent companies, successors, predecessors, and any entity in which the YSI 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.

**1.33 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

**1.34 “Settlement Fund”** means the non-reversionary cash fund that shall be established by YSI in the total amount of one million three hundred and twenty thousand dollars (\$1,320,000.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, taxes, and any other costs, fees, or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of YSI’s monetary obligations under this Agreement. The payment of the amount of the Settlement Fund by YSI fully discharges YSI and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Settlement Class Member, or any other Person, under this Agreement. In no event shall YSI’s total monetary obligation with respect to this Agreement exceed one million three hundred and twenty thousand dollars (\$1,320,000.00 USD).

**1.35 “Settlement Payment(s)”** means the payments from the Net Settlement Fund to be made to Settlement Class Members with Approved Claims according to the plan of allocation attached as Exhibit E (the “Plan of Allocation”).

**1.36 “Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator which shall allow for the electronic submission of Claim Forms and shall provide access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents. The Settlement Website shall also advise the Settlement Class of the total value of the Settlement Fund and give Settlement Class Members the ability to estimate their Settlement Payment. The Settlement Website shall remain accessible at least thirty (30) days after the Effective Date.

**1.37 “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement or to seek exclusion from the Settlement Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code (if applicable), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory



of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. SETTLEMENT RELIEF.**

### **2.1 Payments to Settlement Class Members.**

(a) YSI shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$1,320,000.00), specified in Section 1.34 of this Agreement, within ten (10) days after entry of the Final Judgment.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form. Each Settlement Class Member with an Approved Claim shall be entitled to a Settlement Payment from the Net Settlement Fund, calculated by the Settlement Administrator, by check or electronic payment.

(c) The Settlement Payment will be determined according to the Plan of Allocation attached as Exhibit E.

(d) If the total Approved Claims do not exhaust the Net Settlement Fund under the baseline marginal recovery percentages in the Plan of Allocation, the marginal recovery percentages will be increased pro rata so that the Settlement Payments will exhaust or leave only *de minimis* funds in the Net Settlement Fund.

(e) Within thirty (30) days after the Claims Deadline, the Settlement Administrator shall determine proration of amounts due to Settlement Class Members from the Settlement Fund.

(f) Within the later of sixty (60) days after the Claims Deadline or the date on which the Final Judgment becomes Final, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check or electronic payment, provided, however, that the default payment method will be check, unless a Settlement Class Member elects for an electronic payment.

(g) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance.

(h) In the event that an electronic deposit to a Settlement Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Settlement Class Member within thirty (30) days to correct the problem.

(i) To the extent that a check issued to a Settlement Class Member is not cashed within one hundred eighty (180) days after the date of issuance, or an electronic deposit is unable to be processed one hundred eighty (180) days after the first attempt, such funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class Members in a second distribution, if practicable. To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an additional one hundred and eighty (180) calendar days, such funds shall, subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20).

(j) No amount paid by Defendants into the Escrow Account shall revert to Defendants unless the Settlement is terminated in accordance with Section 6.

**2.2 Prospective Measures.** In connection with this Settlement and within fifty-six (56) days after the Preliminary Approval Order, YSI shall take the following steps:

(a) YSI will maintain a webpage on the Platforms that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to YSI's self-exclusion policy. YSI will maintain a policy, and will make commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information.

(b) YSI shall publish on its website a voluntary self-exclusion policy in which players may terminate their ability to purchase virtual coins on the Platforms or close their Platform accounts entirely. That policy shall provide that, when a player self-excludes by specifying the relevant Player ID, YSI shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those Player ID(s). YSI shall retain discretion as to the particular method by which players may self-exclude; for example, YSI may permit players to self-exclude by contacting YSI customer support, completing a form on YSI's website, or any other reasonably accessible means. YSI shall use commercially reasonable efforts to prevent any circumvention of the player's request, including by creation of a new account in either Platform, from any account-related identifiers that are commercially and technically feasible, using commercially reasonable efforts, to be associated with the excluded account. After a self-exclusion request is addressed in full by YSI, YSI shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested.

(c) YSI will maintain its recent changes to the game mechanics for the Platforms to ensure that players who run out of sufficient virtual coins are able to continue to play games on the Platforms without needing to purchase additional virtual coins or wait until

they would have otherwise received free additional virtual coins in the ordinary course.

Specifically, players who run out of coins will be able to continue to play at least one game within the Platform in which they have established an account.

### **3. RELEASES.**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, finally, fully, and forever released, relinquished, and discharged all Released Claims against the Released Parties and each of them.

**3.3** Upon the Effective Date, the Released Parties, and each of them, further shall by operation of the Final Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiff, the Settlement Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement, or resolution of the Action, except for claims to enforce the terms of the Settlement.

**3.4** Plaintiffs and all Settlement Class Members stipulate that, with the changes delineated in Section 2.2 above, virtual coins in the Platforms are gameplay enhancements, not “something of value” as defined by Ky. Rev. Stat. Ann. § 528.010(11). As long as those prospective measures or their equivalent remain implemented in the Platforms as described, Settlement Class Members are estopped from contending that virtual coins on the Platforms are “something of value” under current Kentucky law, or that aspects of the Platforms are unlawful, deceptive or unfair and, for the avoidance of doubt, the release will include but will not be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Platforms that are attributable to payment processing fees.

### **4. NOTICE TO THE CLASS.**

**4.1** The Notice Plan shall consist of the following:

(a) *Settlement Class List.* To effectuate the Notice Plan, YSI shall provide Class Counsel and the Settlement Administrator with a “Class List” which shall include all Settlement Class Member contact information reasonably available to YSI, including names, email addresses, and mailing addresses, as well as Relevant Spending Amount, for each Settlement Class Member.

(b) The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, mailing, and email addresses of all persons, strictly confidential. To prepare the Class List for potential Settlement Payments, the Settlement Administrator shall (1) first, attach to each unique and identifiable person all of his/her associated Platform accounts (*e.g.*, by Player ID); (2) second, use Claim Forms to supplement, amend, verify, adjust, and audit the foregoing data, as necessary; (3) third, calculate the total Relevant Spending Amount for each unique and identifiable person; and (4) fourth, categorize each unique and identifiable person according to the appropriate Relevant Spending Amount levels identified in the Plan of Allocation. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, distributing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

**4.2 Notice Plan.** The Notice Plan shall consist of the following:

(a) *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any “bounce-

backs,” the Settlement Administrator shall, where reasonable: (i) correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice, and (ii) send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail.

The Settlement Administrator shall also, where practicable, send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members with a Relevant Spending Amount greater than \$100.00, provided an associated U.S. Mail address is contained in the Class List.

**(b) *Update Addresses.*** Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings.

**(c) *Reminder Notice.*** Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

**(d) *Settlement Website.*** Within seven (7) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com), which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that

effect. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit D hereto. The Settlement Website will also advise the Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members the ability to approximate their Settlement Payments.

(e) *Digital Publication Notice.* The Settlement Administrator will supplement the direct notice program with a digital publication notice program that will deliver more than one million (1,000,000) impressions to likely Settlement Class Members. The digital publication notice campaign will be targeted, to the extent reasonably possible, to the Commonwealth of Kentucky, will run for at least one month, and will contain active hyperlinks to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of YSI, which approval shall not be unreasonably withheld.

(f) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time to time contact Settlement Class Members to provide information about the Settlement Agreement and to answer any questions Settlement Class Members may have about the Settlement Agreement.

**4.3** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing, and (b) sends copies of such papers by mail, hand, or overnight delivery

service to Class Counsel and Defendant's Counsel. A Class Member represented by counsel *must* timely file any objection through the Court's electronic filing system.

**4.4** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) any Player ID(s); (3) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with the Platforms; (4) all grounds for the objection, stated with specificity, including all citations to legal authority and evidence supporting the objection; (5) all documents or writings that the Settlement Class Member desires the Court to consider; (6) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (7) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who must file an appearance with the Court in accordance with the Local Rules). All written objections must be filed with, or otherwise received by the Court, and emailed or delivered to Class Counsel and Defendant's Counsel, no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file or submit a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement or appear at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.



**4.5** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

**4.6** A Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion, physically signed by the individual seeking exclusion, to the Settlement Administrator providing his/her name and address, any Player ID(s) and any email address(es) associated with the Platforms, the name and number of the case, “*David Whiting v. Yellow Social Interactive Ltd.*, No. 2023-CI-00358 (Cir. Ct. Henderson Cnty.)” and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

**4.7** The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.2(a) is provided.

**4.8** Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

## **5. SETTLEMENT ADMINISTRATION.**

**5.1** The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of

electronic payments unprocessed, and the amount distributed to any *cy pres* recipient. Without limiting the foregoing, the Settlement Administrator shall:

(a) Receive requests to be excluded from the Settlement Class and promptly provide Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms after the deadline for the submission of such forms, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) business days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a document-by-document basis;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received, the amount of the Settlement Payments associated with those Claim Forms, and the categorization and description of Claims Form rejected, in whole or in part, by the Settlement Administrator; and

(d) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

**5.2** The Claims Administrator shall distribute the Settlement Payments according to the provisions enumerated in Section 2.1.

**5.3** The Claims Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement

Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.4** Class Counsel and Defendant's Counsel shall both have the right to challenge the Settlement Administrator's acceptance or rejection of any particular Claim Form or the amount proposed to be paid on account of any particular Settlement Class Member's claim. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendants' Counsel as to the validity or amount of any disputed claim. Where Class Counsel and Defendants' Counsel disagree, the Settlement Administrator will finally resolve the dispute and the claim will be treated in the manner designated by the Settlement Administrator.

**5.5** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.6** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set

forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.

## 6. TERMINATION OF SETTLEMENT.

6.1 Each Party additionally shall have the right, but not the obligation, to terminate the Settlement Agreement if 5% or more of the members of the Settlement Class exclude themselves from the Settlement. Notification of intent to terminate the Settlement Agreement must be provided with ten (10) calendar days after the *earlier* of: (1) the date the Parties agree in good faith that they have received a final tabulation from the Settlement Administrator of the objections and requests for exclusion timely received by the Objection/Exclusion Deadline, or (2) the date the Parties receive sufficient evidence from the Settlement Administrator to establish beyond a reasonable doubt that the threshold for a Section 6.1 Termination Notice has been or will be met. For example, if the Settlement Administrator – after the Objection/Exclusion Deadline – notifies the Parties that there were no objections and just a single opt-out, that evidence would be sufficient to establish beyond a reasonable doubt that no threshold for a Section 6.1 Termination Notice has been or will be met. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

6.2 Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final

approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Kentucky Court of Appeals, Kentucky Supreme Court or any federal court.

**6.3** In the event of termination pursuant to Section 6, Class Counsel shall cause the prompt return of the Settlement Fund in full to YSI, including any interest accrued while in the Escrow Account, minus one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination, and Class Counsel shall be responsible for the other one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination.

**6.4 Confirmatory Discovery.** YSI has represented that in-Platform virtual coin purchases from Kentucky-based players who spent \$5.00 or more within 24 hours on www.Pulsz.com from October 2, 2020 to November 3, 2022 and on www.Pulszbingo.com from July 20, 2022 to February 9, 2023 are less than or equal to \$5,272,369.02.00. Simultaneous with the execution of this Agreement, YSI has provided a declaration, from a person with sufficient knowledge, of YSI's best estimate attesting to the amount of in-Platform virtual coin purchases from Kentucky-based players who spent \$5.00 or more within 24 hours on www.Pulsz.com from October 2, 2020 to November 3, 2022 and on www.Pulszbingo.com from July 20, 2022 to February 9, 2023. In the event that the declaration shows that amount exceeds \$5,272,369.02.00 by more than two percent (2%), the Parties further agree that they shall execute an amended settlement agreement that adjusts the amount of the Settlement Fund proportionally to the increase in amount to account for this error.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; preliminary certification of the Settlement Class for settlement purposes only; preliminary appointment of Class Counsel to represent the class; preliminary appointment of David Whiting as the Class Representative of the Settlement Class; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the form and contents of the Notice and Claim Forms for dissemination substantially in the form of Exhibits A, B, C, and D hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of YSI.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing where the Court will review comments and/or objections regarding the Settlement, consider its fairness, reasonableness and adequacy, consider the application for any Fee Award and incentive awards to the Class Representative, and consider whether the Court shall issue a Final Judgment approving this Agreement and dismissing the Action with prejudice.

7.3 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will:

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties with respect to the Released Claims;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Kentucky Rules of Civil Procedure, the Due Process Clause of the United States and Kentucky Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class 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;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions as necessary or appropriate to effectuate the terms and conditions of the Settlement Agreement.

7.4 The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

**8. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; INCENTIVE AWARD.**

8.1 Pursuant to Ky. R. Civ. P. 23.08, YSI agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs out of the Settlement Fund in an amount determined by the Court as the Fee Award. Settlement Class Counsel agrees, with no consideration from YSI, to limit their request for attorneys' fees and unreimbursed costs to one-third of the Settlement Fund (i.e., \$440,000.00). Payment of any Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members.

8.2 The Fee Award shall be payable by the Settlement Administrator within fifteen (15) days after entry of the Court's Final Judgment, subject to Class Counsel executing the

Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as Exhibit F, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer pursuant to instructions provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) or otherwise does not become Final, then Class Counsel shall return such funds to YSI. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

**8.3** Class Counsel intends to file a motion for Court approval of an incentive award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, David Whiting will seek no more than \$5,000 as an incentive award. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within thirty (30) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within thirty (30) business days after the Effective Date

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Kentucky Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects;

- (d) YSI has funded the Settlement Fund; and
- (e) The Final Judgment has become Final, as defined above.

**9.2** If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, the parties agree that the settlement is null and void and Whiting shall dismiss any suit filed and the parties will proceed with arbitration, which shall be held in abeyance pending entry of Final Judgment., unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement or a modified agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that if the Court fails to approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive award set forth in Section 8 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth above, and unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination (including costs and any taxes and tax expenses paid, due or owing), shall be refunded by the Settlement Administrator to YSI, based upon written instructions provided by Defendant's Counsel. In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to YSI, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the Fee Award awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to YSI, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

## **10. CONFIDENTIALITY AND PUBLIC STATEMENTS**

**10.1** Except as otherwise agreed by Class Counsel and Defendant's Counsel in writing and/or as required by legal disclosure obligations, all terms of this Agreement will remain confidential and subject to Rule 408 of the Kentucky Rules of Evidence until presented to the Court along with Plaintiff's motion for preliminary approval.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**11.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by YSI, or each or any of them, in bad faith or without a reasonable basis.

**11.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and fully understand the Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

**11.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession, waiver, or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, the right to demand that any claim proceed to arbitration or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to

this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

(f) The Parties acknowledge and agree that any Party may request that the Court appoint a Settlement Special Master. Each Party explicitly reserves the right to oppose any such request. Any fees earned or costs incurred by any such Settlement Special Master shall be paid exclusively from the Settlement Fund.

**11.5** The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a

litigation class is appropriate, nor that the Settlement Class definition would be appropriate for a litigation class, nor would YSI be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by YSI in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**11.6.** No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences



may vary depending on the particular circumstances of each individual Settlement Class Member.

**11.7.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

**11.8** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**11.9** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**11.10** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**11.11** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**11.12** Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees incurred in any way related to the Action.

**11.13** Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that he is fully entitled to release the same.

**11.14** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**11.15** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**11.16** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**11.17** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**11.18** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**11.19** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed

substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

**11.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: For Plaintiff: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019. For Defendant: William M. Gantz, Duane Morris LLP, 100 High Street, Suite 2400, Boston, MA 02110.

**11.21** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provision of this Agreement.

**11.22** YSI shall be given an opportunity to review and provide comments to Plaintiff's preliminary approval and final approval briefs, and Plaintiff shall consider in good faith all such comments.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: Jul 3, 2023

**DAVID WHITING**

By:   
David whiting (Jul 3, 2023 13:45 CDT)

David Whiting, individually and as representative of the Class

Dated: \_\_\_\_\_

**YELLOW SOCIAL INTERACTIVE LTD.**

By: \_\_\_\_\_

Name:

Title:

**IT IS SO STIPULATED BY COUNSEL:**

Dated: July 3, 2023

**BURSOR & FISHER, P.A.**

By: 

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com

BURSOR & FISHER, P.A.  
1330 Avenue of the Americas, 32nd Floor  
New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representative and the Settlement Class*

Dated: \_\_\_\_\_

**DUANE MORRIS LLP**

By: \_\_\_\_\_

William M. Gantz  
bgantz@duanemorris.com  
DUANE MORRIS LLP  
100 High Street, Suite 2400  
Boston, MA 02110  
Tel: (857) 488-4234

*Attorneys for Defendant Yellow Social Interactive Ltd.*

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EXH : 000041 of 000066

**IT IS SO AGREED TO BY THE PARTIES:**

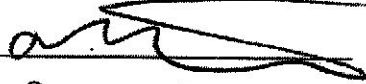
Dated: \_\_\_\_\_

**DAVID WHITING**

By: \_\_\_\_\_  
David Whiting, individually and as representative  
of the Class

Dated: June 30, 2023

**YELLOW SOCIAL INTERACTIVE LTD.**

By:   
Name: **PAUL FOSTER**  
Title: **DIRECTOR**

**IT IS SO STIPULATED BY COUNSEL:**

Dated: \_\_\_\_\_


**BURSOR & FISHER, P.A.**

By: \_\_\_\_\_  
Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
1330 Avenue of the Americas, 32nd Floor  
New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representative and the  
Settlement Class*

Dated: July 3, 2023

**DUANE MORRIS LLP**

By:   
William M. Gantz  
bgantz@duanemorris.com  
DUANE MORRIS LLP  
100 High Street, Suite 2400  
Boston, MA 02110  
Tel: (857) 488-4234

*Attorneys for Defendant Yellow Social Interactive  
Ltd.*

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**EXHIBIT A**

**YSI PLATFORMS SETTLEMENT CLAIM FORM**

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [**CLAIMS DEADLINE**]. THE CLAIM FORM MUST BE SIGNED AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive a share of the Settlement Fund. This process takes time, please be patient. If you have any questions, or would like to estimate your share of the Settlement Fund, visit: [claims website](#).

**Instructions:** Fill out each section of this form and sign where indicated.

<u>First Name</u>		<u>Last Name</u>	
<u>Street Address</u>			
<u>City</u>	<u>State</u>	<u>ZIP Code</u>	
<u>Email Address</u>		<u>Phone Number</u>	
<u>www.Pulsz.com and/or www.Pulszbingo.com Player ID(s) (if known)</u>			
<u>All email addresses associated with www.Pulsz.com and/or www.Pulszbingo.com accounts.</u>			

**Settlement Class Member Affirmation:** By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the Player ID(s) and the email address(es) listed above are yours.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Select Payment Method:** Select **ONE** box for how you would like to receive payment and provide the requested information.

Check	Venmo®	PayPal®
<b>Mailing Address:</b>	<b>Email Address:</b>	<b>Email Address:</b>

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**EXHIBIT B**



From: [Notice@classactionadmin.com](mailto:Notice@classactionadmin.com)  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358  
**(Commonwealth of Kentucky, Henderson County Circuit Court)**

**If you played games on [www.Pulsz.com](http://www.Pulsz.com) or [www.Pulszbingo.com](http://www.Pulszbingo.com) you may be part of a class action settlement**

*A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

This notice is to inform you of the settlement of a class action lawsuit against Yellow Social Interactive Ltd. (“YSI”), alleging claims based on the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”), while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [[website](#)].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than [[claims deadline](#)]**. You can submit the claim form online at [www.URL](#), or by clicking [[here](#)]. You may also request a paper claim form and mail it to [[address](#)].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [[objection/exclusion deadline](#)]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [[objection/exclusion deadline](#)]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [[website](#)]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition,

your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [redacted] .m. on [date] in [TBD]. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [website], contact the settlement administrator at 1- [redacted] - [redacted] or YSI Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

**EXHIBIT C**

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

YSI Platforms Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000

**If you played on  
www.Pulsz.com, and/or  
www.Pulszbingo.com,  
you may be part of a class  
action settlement.**



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

A settlement has been reached in a class action lawsuit against Yellow Social Interactive Ltd., (“YSI”), alleging claims under Kentucky state law based on the sale of virtual coins on www.Pulsz.com and www.Pulszbingo.com. YSI denies all claims and that it violated the law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on www.Pulsz.com from October 2, 2020, to November 3, 2022, and/or on www.Pulszbingo.com from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”) , while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [website].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked no later than [claims deadline]. You can submit the claim form online at [www.URL], or by clicking [here.] You may also request a paper claim form and mail it to [address].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [website]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [date] .m. on [date] in [TBD]. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [website], contact the settlement administrator at [phone number] or YSI Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YSI Platforms Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

XXX

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**EXHIBIT D**

**HENDERSON COUNTY CIRCUIT COURT**

*Whiting v. Yellow Social Interactive, Ltd., Case No. 2023-CI-00358*

**If you played games on [www.Pulsz.com](http://www.Pulsz.com) or [www.Pulszbingo.com](http://www.Pulszbingo.com) you may be part of a class action settlement.**

***A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against Yellow Social Interactive Ltd. (“YSI”), alleging claims based on the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are a Settlement Class Member if you spent \$5.00 or more within a 24-hour period on [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”), while located in the Commonwealth of Kentucky.
- Those who file timely and properly completed claims will be eligible to receive a share of the Settlement Fund. Your share will be depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	You will receive no benefits, but you will retain any rights you currently have to sue YSI about the claims in this case.
<b>OBJECT</b>	Write to the Court explaining why you don’t like the Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.
<b>DO NOTHING</b>	You won’t get a share of the Settlement benefits and will give up your rights to sue YSI about the claims in this case.

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

**BASIC INFORMATION**

**1. Why was this Notice issued?**

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Karen L. Wilson of the Henderson County Circuit Court, Commonwealth of Kentucky, is overseeing this case. The case is called *Whiting v. Yellow Social Interactive, Ltd.*, Case No. 2023-CI-00358. The person who sued is called the Plaintiff. The Defendant is Yellow Social Interactive Ltd.

## **2. What is a class action?**

In a class action, one or more people called class representatives (in this case, David Whiting) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

## **3. What is this lawsuit about?**

The lawsuit claims that Defendant violated Kentucky’s gambling laws through the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law.

## **4. Why is there a Settlement?**

The Court has not decided whether the Plaintiff or YSI should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

More information about the Settlement and the lawsuit are available in the “Important Documents” section of the settlement website or by visiting the office of the Henderson County Circuit Court Clerk, 5 N. Main Street, Henderson, KY 42420, between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

## **WHO’S INCLUDED IN THE SETTLEMENT?**

### **5. How do I know if I am in the Settlement Class?**

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

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](http://www.Pulsz.com) from October 2, 2020, to

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**



November 3, 2022, and/or on www.Pulszbingo.com from July 20, 2022, to February 9, 2023.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

**Monetary Relief:** If approved by the Court, YSI will establish a Settlement Fund totaling \$1,320,000. Settlement Class Member payments, as well as the cost to administer the Settlement, the cost to inform people about the Settlement, any attorneys' fees and costs awarded by the Court, and any incentive award to the Class Representative approved by the Court will also come out of this fund (*see* Question 13).

**Prospective Relief:** YSI has also agreed to take or maintain measures designed to address video game behavior disorders, including providing self-service resources to players, providing for voluntary self-exclusion, and implementing in-game mechanics to ensure that players who run out of sufficient virtual coins will be able to continue to play the games without waiting an unreasonable amount of time.

A detailed description of the settlement benefits can be found in the Settlement Agreement. [\[insert hyperlink\]](#)

### 7. How much will my payment be?

If you are member of the Settlement Class you may submit a Claim Form to receive a portion of the Settlement Fund. The exact amount of your payment can't be determined at this time, but you can get an estimate by visiting the settlement website. The amount of your payment will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. If you would like more information about how Settlement Payments are determined, visit [\[website\]](#).

### 8. When will I get my payment?

You should receive a check or electronic payment from the Settlement Administrator within 90 days after the Settlement has been finally approved and/or any appeals process is complete. The hearing to consider the final approval of the Settlement is scheduled for [\[Fairness Hearing Date\]](#). If you elect to receive your payment via check, please keep in mind that checks will expire and become void 180 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks, or electronic payments that cannot be processed, may be used for a second distribution to Settlement Class Members and/or may be donated to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [\[WEBSITE\]](#)

## HOW TO GET BENEFITS

### 9. How do I get a payment?

If you are a Class Member and you want to get a payment, you must complete and submit a Claim Form by **[Claims Deadline]**. Claim Forms can be found and submitted online or you may have received a Claim Form in the mail (and which you can then submit by mail). To submit a Claim Form on-line or to request a paper copy, go to **[WEBSITE]** or call toll free, **1-800-000-0000**.

We encourage you to submit your claim electronically. Not only is it easy and secure, but it is completely free and takes only minutes.

## REMAINING IN THE SETTLEMENT

### 10. What am I giving up if I stay in the Class?

If the Settlement becomes final, you will give up your right to sue YSI and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against YSI are described in the Settlement Agreement. You will be “releasing” YSI and certain of its affiliates, employees and representatives as described in Section 1.27 of the Settlement Agreement. Unless you exclude yourself (*see* Question 14), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 12 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### 11. What happens if I do nothing at all?

If you do nothing, you won’t get any benefits from this Settlement. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against YSI for the claims being resolved by this Settlement.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in the case?

The Court has appointed two lawyers at the firm Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. Those lawyers – Philip L. Fraietta and Alec M. Leslie – are called “Class Counsel.” They are experienced in handling similar

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

class action cases. More information about these lawyers, their law firm, and their experience is available at [www.bursor.com](http://www.bursor.com). They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### 13. How will the lawyers be paid?

Class Counsel attorneys' fees, costs, and expenses will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. The fee petition will seek no more than one-third of the Settlement Fund in attorneys' fees, costs, and expenses. The Court may award less than this amount.

Subject to approval by the Court, the Class Representative may be paid an Incentive Award from the Settlement Fund for helping to bring and settle the case. The Class Representative will ask for \$5,000 as an incentive award.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from the “*Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358 settlement.” Your letter or request for exclusion must also include your name, all Player ID(s), your address, and any email address(es) associated with your [www.Pulsz.com](http://www.Pulsz.com) and/or [www.Pulszbingo.com](http://www.Pulszbingo.com) account, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **[objection/exclusion deadline]** to:

YSI Games Settlement  
0000 Street  
City, ST 00000

### 15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue YSI for the claims being resolved by this Settlement.

### 16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you should not submit a Claim Form to ask for benefits because you won't receive any.

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

## OBJECTING TO THE SETTLEMENT

### 17. How do I object to the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, all Player ID(s), your address, the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with your [www.Pulsz.com](http://www.Pulsz.com) and/or [www.Pulszbingo.com](http://www.Pulszbingo.com) account, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees, costs, and expenses by **[two weeks prior to objection deadline]**.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 21), you must say so in your letter or brief. File the objection with the Court and mail a copy to these two different places postmarked no later than **[objection deadline]**.

Court	Class Counsel	Defendant's Counsel
The Honorable Karen L. Wilson Commonwealth of Kentucky Henderson Circuit Court 5 N Main Street Henderson, KY 42420	Philip L. Fraietta Alec M. Leslie Bursor & Fisher PA 1330 Avenue of the Americas, 32nd Floor New York, NY 10019	William M. Gantz Duane Morris LLP 100 High Street, Suite 2400 Boston, MA 02110

### 18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [time] on **Month 00, 2023** in [TBD]. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [website] or call **1-800-000-0000**. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

### 20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

### 21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [objection deadline], and be sent to the addresses listed in Question 17.

## GETTING MORE INFORMATION

### 22. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

get a copy of the Settlement Agreement at [website]. You may also write with questions to YSI Platforms Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at 1-800-000-0000 or Class Counsel at 1-646-837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

**EXHIBIT E**

**PLAN OF ALLOCATION**

Each Settlement Payment will be comprised of (1) a Base Payment Amount, (2) *plus* a Supplemental Payment Amount, (3) *minus* the Settlement Class Member’s share of any Fee Award, incentive awards to the Class Representative, and Settlement Administration Expenses.

**1. Base Payment Amounts.**

Base Payment Amounts will be calculated by applying an escalating marginal recovery formula to the Settlement Class Member’s Relevant Spending Amount. No Settlement Class Member will receive more than his or her Relevant Spending Amount.

Settlement Class Members who submit a valid claim will be subject to an escalating marginal recovery formula based on the percentages described in Figure 1 below.

**Figure 1**

Spend (\$)	Marginal Rate (%)
5.00-1,000	10
1,000.01-10,000	17.5
10,000.01-100,000	30
100,000.01+	60

By way of example, an individual with a Relevant Spending Amount of \$40,000 will be entitled to a Base Payment Amount of \$8,273.12, calculated as: ((10% of their first \$1,000 in spending [\$100]) + (17.5% of their next \$9,000 in spending ([\$1,575])) + (30% of their next \$30,000 in spending [\$9,000])) \* (1 – (75% \* 30%)). Settlement Class Members will have the ability to opt to receive an electronic payment via Venmo or PayPal, provided, however, that the default payment method will be check.

**2. Proration.**

In the event the sum of all Base Payment Amounts for Settlement Class members who submit a valid claim exceed the total amounts available for distribution in the Settlement Fund,

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EXH : 000061 of 000066



each individual's Base Payment Amount will be reduced proportionately. Proration of amounts due to Settlement Class Members from the Settlement Fund will be determined 30 days after the deadline for Settlement Class Members to file claims. *Pro rata* payments to Settlement Class Members shall be made within 60 days of the deadline for Settlement Class Members to file claims.

**3. Supplemental Payment Amounts.**

In the event there are available amounts remaining in the Settlement Fund after calculation of all Base Payment Amounts for Settlement Class members who have submitted a valid claim, Supplemental Payment Amounts will be calculated on a *pro rata* basis. Upon the close of the claims period, the sum of all unallocated amounts in the Settlement Fund (minus any amounts necessary to cover costs and fees) will be considered the Supplemental Payment Fund. The Supplemental Payment Fund will be apportioned *pro rata* to each Settlement Class Member who submitted a valid claim, based on the participating Settlement Class Member's Base Payment Amount. All payment amounts are subject to the deductions described in Section (3).

Regardless of Settlement Class Member participation rates, the sum of Base Payment Amounts and Supplemental Payment Amounts will equal the amounts available for distribution from the Settlement Fund.

**3. Fee Award, Incentive Awards, and Settlement Administration Expenses.**

Settlement Payment Amounts will be a Settlement Class Member's Base Payment Amount plus any Supplemental Payment Amount, minus that Settlement Class Member's share of any Fee Award, Incentive Awards and Settlement Administration Expenses, anticipated not to exceed one-third (cumulatively) of the Settlement Fund.

# EXHIBIT F

**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

DAVID WHITING, individually and on behalf of all  
others similarly situated,

Plaintiff,

Case No. 2023-CI-00358

v.

YELLOW SOCIAL INTERACTIVE LTD.,

Defendant.

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS**

Plaintiff David Whiting and Defendant Yellow Social Interactive Ltd. (“Defendant”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel’s law firm Bursor & Fisher P.A. (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of their award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned, as agent for the Firm, hereby submits the Firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Henderson County Circuit Court, Commonwealth of Kentucky, for the enforcement of and any and all disputes

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relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to the Firm and/or Representative Plaintiff from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event the Firm fails to repay to Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulates, warrants, and represents that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: July 3, 2023

BURSOR & FISHER, P.A.



By: Philip L. Fraietta on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff David Whiting

DATED: Jul 5, 2023

DUANE MORRIS LLP

William Gantz

William Gantz (Jul 5, 2023 15:44 CDT)

By: William M. Gantz  
Attorneys for Defendant Yellow Social Interactive Ltd.

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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.

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION  
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

In support of the joint motion of the Parties for an order granting final approval of the proposed settlement of this class action, Plaintiff states as follows:

**I. INTRODUCTION**

Plaintiff David Whiting ("Plaintiff") submits this Memorandum of Law in support of Plaintiff's and Defendant's Yellow Social Interactive LTD., ("Defendant" or "YSI") (collectively with Plaintiff, the "Parties") joint motion for an order granting final approval of the proposed settlement of this class action.

On August 15, 2023, this Court entered a Preliminary Order Approving Class Action Settlement, Certifying the Class for Settlement Purposes, Appointing Class Representatives, and Appointing Class Counsel. On October 2, 2023, the Court entered an Order Extending Deadlines. Since that time, the Parties have worked diligently, along with the appointed settlement administrator, to send notices, receive claim forms, and handle the other administrative tasks related to the settlement. The settlement administrator has implemented the Court-approved notice plan and direct notice has reached approximately 96.2% of the Settlement Class. *See* Affidavit of

Mark Schey ¶ 11 (“Schey Affidavit” attached hereto as Exhibit 1.). Of the 4,363 unique settlement class members, zero have objected or asked to be excluded from the settlement. *See id.* ¶¶ 19–22. The Parties respectfully submit that the proposed settlement and the procedures followed by the claims administrator are well within the range of being fair, reasonable, and adequate. The proposed settlement is the product of several months of arm’s-length negotiations—including a full-day mediation session facilitated by Niki Mendoza, Esq. of Phillips ADR (“Phillips ADR”). The claims process has proven to be fair and adequate.

As the Court found in ruling on the motion for preliminary approval of the class action settlement (“Motion for Preliminary Approval”), the proposed settlement embodies all of the features of a settlement that is fair, reasonable, adequate, and in the best interests of the members of the settlement class, as it: (i) is the product of arms-length negotiations, with the direct involvement and assistance of a neutral mediator; (ii) was negotiated by experienced class action attorneys; (iii) is subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the class’s claims; and (iv) reflects a reasoned compromise based directly on the relative strength and value of the class’s claims, as well as the risks, expense, complexity, and likely duration of further litigation. The settlement affords class members the opportunity to receive substantial monetary relief for their claims. As evidenced by the lack of objections or opt-outs, the Class Members agree that this is a good settlement.

Accordingly, the Parties respectfully request that this Court enter an order granting final approval of the proposed settlement, and an order granting approval of Class Counsel’s Application for Attorneys’ Fees and Costs Related to the Class Action Settlement Agreement and Request for Fee Award to Class Representative (“Class Counsel Application”).<sup>1</sup> A proposed order

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<sup>1</sup> Filed on November 3, 2023.

is attached hereto.

## II. PROCEDURAL BACKGROUND AND SUMMARY OF SETTLEMENT NEGOTIATIONS

The complaint in this case was filed on June 16, 2023. But the case actually began months earlier, when, in September 2022, Plaintiff initiated dispute resolution proceedings pursuant to the YSI Terms & Conditions. Then on October 11, 2022, Defendant filed a demand for arbitration against Plaintiff with the American Arbitration Association (the “AAA”) seeking, inter alia, declaratory relief that YSI’s Platform does not constitute illegal gambling under Kentucky Law.

Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution. Plaintiff’s counsel asserted that this case was similar to *Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc.*, Case No. 22-CI-00553 (Henderson Cir. Ct.) (the “VGW settlement”),<sup>2</sup> a case alleging that similar games constituted illegal gambling under Kentucky law, which settled for \$11.75 million, or approximately 23% of actual damages, in this Court. Plaintiff’s counsel also asserted that the Kentucky law at issue mirrored in important ways, in their view, the law in similar cases brought under Washington law, which ultimately resulted in finally approved class action settlements. *See, e.g., Kater v. Churchill Downs*, Case No. 15-cv-00612, (W.D. Wash.); *Wilson v. Huuuge, Inc.*, Case No. 18-cv-05276 (W.D. Wash.); *Wilson v. Playtika, Ltd.*, Case No. 18-cv-05277, (W.D. Wash.); *Reed v. Light & Wonder, Inc.*, Case No. 18-cv-000565-RSL (W.D. Wash.); *Croft v. SpinX Games Ltd.*, Case No. 20-cv-01310 (W.D. Wash.) (collectively, the “Washington Cases”). Given the VGW and Washington settlements, the Parties discussed the possibility of an early mediation through which the Parties could share their

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<sup>2</sup> Attached hereto as Exhibit 3.



respective views. The Parties agreed that the mediation would take place before Niki Mendoza, Esq.

In the weeks leading up to the mediation, the Parties were in regular communication with each other and with the Phillips ADR team, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow down potential frameworks for resolution. *See* Affidavit of Alec M. Leslie, ¶ 6 (“Leslie Affidavit” attached hereto as Exhibit 2). During this period, Defendant provided Class Counsel with transactional data for virtual coin purchases made by the Settlement Class; the Parties exchanged multiple rounds of voluminous briefing on the core facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated and shuttled by the Phillips ADR team, clarifying each other’s positions in advance of the mediation. *Id.*

On April 6, 2023, following a full-day mediation session, Ms. Mendoza made a mediator’s proposal to settle the case in principle, which both Parties accepted. *Id.* ¶ 7. Working within the guideposts of the VGW settlement and the Washington settlements, the Parties were able to negotiate and execute a term sheet memorializing their agreement at the conclusion of the mediation. *Id.* ¶ 8. A full settlement agreement consistent with that term sheet was executed by Plaintiff and Defendant on July 5, 2023. *Id.* ¶ 12. The Settlement Agreement is the product of those efforts and contains what the Parties believe to be fair, adequate, and reasonable terms of settlement. *See* Settlement Agreement, Ex. A to the Parties’ Joint Motion for Final Approval (“Settlement Agreement”).

### **III. THE PROPOSED SETTLEMENT**

The key terms of the Settlement Agreement are summarized below for the Court’s convenience.

**A. Settlement Class Definition**

The Settlement Class is defined as:

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](http://www.Pulsz.com) from October 2, 2020 to November 3, 2022 and [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022 to February 9, 2023.

(Settlement Agreement, at § 1.32.) Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) YSI, YSI's subsidiaries, parent companies, successors, predecessors, and any entity in which YSI or its parents have a controlling interest and its 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. *Id.*

**B. Monetary Relief**

Subject to the Court's final approval of the Settlement Agreement, Defendant has agreed to establish a non-reversionary Settlement Fund in the total amount of one million, three hundred and twenty thousand dollars (\$1,320,000.00 USD) from which Class members who file a valid claim will be entitled to recover a cash payment, after deducting costs and administrative expenses, any fee award to proposed Class Counsel, and any incentive payment to the Class Representative. *See id.* § 1.34. No portion of the Settlement Fund will revert to Defendant. *Id.* § 2.1(j). In the event of any Settlement Class member checks are not cashed within 180 days of issuance, those funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class members in a second distribution, if practicable. *Id.* § 2.1(i). To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an additional one hundred and eighty (180) calendar days, such funds shall,

subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20). *Id.* Recovery will differ according to the Settlement Class member's relevant spending amount, *i.e.*, individuals with higher expenditures will recover a greater percentage back, and overall Settlement Class member participation levels. *Id.* § 2.1 (c)–(i); *see also* Ex. E to the Settlement Agreement (“Plan of Allocation”). A precise breakdown of how Settlement Payments will be calculated and allocated can be found in the Plan of Allocation attached as Exhibit E to the Settlement Agreement. *Id.* Generally, Settlement Class Members who submit a valid claim will benefit from an escalating marginal recovery formula ranging from 10% (at the low end of relevant spending amounts) to 60% (at the high end). *Id.*

### **C. Prospective Relief**

Pursuant to the Settlement Agreement's terms, Defendant will be required to maintain resources relating to video game behavior disorders that are accessible within the Games. Specifically, YSI will maintain a webpage on the Games sites that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to YSI's self-exclusion policy. Settlement Agreement § 2.2(a). YSI will maintain a policy, and will make commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information. *Id.*

In addition, Defendant shall publish on its websites a voluntary self-exclusion policy by which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. *Id.* § 2.2(b). That policy shall provide that, when a player self-excludes

by specifying the relevant User ID, Defendant shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those User ID(s). *Id.* Defendant shall retain discretion as to the particular method by which players may self-exclude; for example, YSI may permit players to self-exclude by contacting Defendant's customer support, completing a form on Defendant's website, or any other reasonably accessible means. *Id.* Defendant shall use commercially reasonable efforts to prevent any circumvention of the player's request, including by creation of a new account in either Game, from any account-related identifiers that are commercially and technically feasible, using commercially reasonable efforts, to be associated with the excluded account. *Id.* After a self-exclusion request is addressed in full by Defendant, Defendant shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested. *Id.*

Defendant shall maintain its recent changes (implemented after receipt of Plaintiff's initiation of dispute resolution proceedings) to game mechanics for the Games to ensure that players who run out of sufficient virtual coins are able to continue to play games within the Game suites without needing to purchase additional virtual coins or to wait until they would have otherwise received free additional virtual coins in the ordinary course. *Id.* § 2.2(c). Specifically, players who run out of coins will be able to continue to play at least one game within the Game suites. *Id.*

#### **D. Release**

In exchange for the relief described herein, all Settlement Class members will release Defendant, and any of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, and any of its respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns from any and all actual,

potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys' fees and or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Games and/or the sale of virtual coins in the Games, such as claims that the Games are illegal gambling games, that virtual coins in the Games are "something of value," that aspects of the Games are deceptive or unfair, or that YSI has been unjustly enriched by the operation of the Games, including but not limited to all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. For the avoidance of doubt, this release: (i) includes claims potentially subject to arbitration agreements; and (ii) does not extend to other games owned and/or operated by YSI and/or the Released Parties. *Id.* §§ 1.26, 1.27, 1.28, 3.1–3.4.

Further, all Settlement Class members will stipulate that, with the changes delineated in § 2.2, virtual coins in the Games are gameplay enhancements, not "something of value" as defined by Ky. Rev. Stat. Ann. § 528.010(11). As long as those prospective measures remain implemented in the Games as described, Settlement Class Members are estopped from contending that virtual coins in the Games are "something of value" under current Kentucky law, or that aspects of the Games are deceptive or unfair and, for the avoidance of doubt, the release will include but will not

be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Games that are attributable to payment processing fees. *Id.* § 3.4.

**E. Class Notice**

Upon final approval, the Settlement Fund will be used to pay the costs of sending the notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administration of the Settlement. *Id.* §§ 1.30, 1.34.

Artificial Intelligence Class Solutions (“AICS”) has served as Settlement Administrator. AICS is a highly qualified settlement administrator that has administrated dozens of settlements. AICS sent class notices via email and/or U.S. Mail based on records produced by Defendant. *See* Affidavit of Mark Schey (“Schey Affidavit”) ¶¶ 4-11. AICS has also established a settlement website and implemented a digital publication notice campaign targeting class members. *Id.* ¶¶ 12-16. In line with KY CR 23.03(b), the notice included the nature of the action, the definition of the class certified, the class claims, issues or defenses, a summary of the settlement terms, that a class member may enter an appearance through an attorney if the member so desires, that the Court will exclude from the class any member who requests exclusion by a specified date, the binding effect of a class judgment, whether favorable or not, on members under CR 23.03, and instructions on how to object or opt out of the settlement, including relevant deadlines. *See id.* Exs. A-B; *see also* Settlement Agreement Exs. B-D.

**F. Incentive Award and Attorneys’ Fees and Expenses**

The Settlement provides that Plaintiff may seek an incentive award and that Class Counsel may seek an award of attorneys’ fees and expenses in amounts to be determined by the Court and paid from the Settlement Fund. Settlement Agreement §§ 8.1–8.3. With no consideration having been given or received, Plaintiff David Whiting will seek no more than \$5,000.00 as an incentive

award, and Class Counsel agreed to limit its petition for attorneys' fees to no more than one-third of the Settlement Fund, inclusive of costs and expenses (\$440,000.00). *Id.* §§ 8.1, 8.3. On November 3, 2023, Plaintiff and Class Counsel moved for these awards separately. That motion is unopposed and there were no objections to it.

**IV. THE SETTLEMENT OF THIS ACTION IS IN THE BEST INTEREST OF THE CLASS AND SHOULD BE APPROVED**

**A. The Standard for Final Approval**

Kentucky Rule of Civil Procedure 23.05 requires court approval for any compromise of a class action. Generally, court approval occurs in three separate steps: “(1) the court must preliminarily approve the proposed settlement, *i.e.*, the court should determine whether the compromise embodied in the decree is legal or tainted with collusion; (2) members of the class must be given notice of the proposed settlement; and (3) a hearing must be held to determine whether the decree is fair to those affected, adequate and reasonable.” *Tennessee Assoc. of Health Maintenance Orgs., Inc. v. Grier*, 262 F.3d 559, 565–66 (6th Cir. 2001).<sup>3</sup> The Sixth Circuit has identified seven factors to guide courts in determining whether a settlement is “fair, reasonable and adequate” under Rule 23:

(1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

*Int'l Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Gen. Motors Corp.*,

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<sup>3</sup> Kentucky courts often look to Federal Rule of Civil Procedure 23 and the federal case law interpreting it as guidance for interpreting Kentucky's counterpart, Kentucky Rule of Civil Procedure 23. *See* 6 Kurt A. Phillips, Jr., David V. Kramer and David W. Burleigh, *Kentucky Practice – Rules of Civil Procedure Annotated*, CR 23.02 (6th ed. 2005) (“Kentucky courts customarily rely on federal case law when interpreting a Kentucky rule of procedure that is similar to its federal counterpart. Such is the case with CR 23.01 and FRCP 23(a).”); *see also Bellarmine College v. Hornung*, 662 S.W.2d 847 (Ky. Ct. App. 1983) (relying on federal case law on FRCP 23 to interpret Kentucky Rule of Civil Procedure 23); *Lamar v. Office of Sheriff*, 669 S.W.2d 27 (Ky. Ct. App. 1984) (same).

497 F.3d 615, 631 (6th Cir. 2007) (“*International Union*”). Importantly, “[n]o one of these factors is dispositive. Rather, all are to be weighed and considered in light of the particular demands of the case.” *In re Skechers Toning Shoe Prod. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2013 WL 2010702, at \*3 (W.D. Ky. May 13, 2013).

## **B. The Proposed Settlement Satisfies the Standard for Final Approval**

An analysis of the *International Union* factors as applied to this case demonstrates that the proposed settlement is fair, reasonable, and adequate.

### **1. The Settlement Agreement is the product of arms-length, non-collusive negotiations**

In general, “[c]ourts presume the absence of fraud or collusion in class action settlements unless there is evidence to the contrary.” *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 531 (E.D. Ky. 2010) (quotation marks omitted). Here, there is no allegation—let alone evidence—of fraud or collusion. As noted in the Parties’ Motion for Preliminary Approval, the Settlement Agreement was reached after extensive evaluation (over a period of nearly six months) of the facts asserted herein and of Plaintiff’s likelihood of success on the merits. *See* Leslie Affidavit ¶¶ 4–7. This lengthy negotiation provided the Parties with sufficient information to evaluate the claims of the class. *Id.* ¶ 11. The Parties only reached settlement after engaging in those six months of evaluation, briefing, and negotiation and a full day mediation conducted by Ms. Mendoza on April 6, 2023, which culminated in an accepted mediator’s proposal. *Id.* ¶¶ 4–9.



Every step leading up to and throughout the mediation session was hard-fought and adversarial, demonstrating the absence of collusion. *Id.* ¶ 9.

## 2. The complexity, expense, and likely duration of the litigation

Courts generally “weigh the risks, expense and delay the plaintiffs would face if they continued to prosecute the litigation through trial and appeal.” *Thacker*, 695 F. Supp. 2d at 531. Here, the anticipated complexity, expense, and duration of additional litigation are all significant.

This action involved complex, novel, and difficult legal issues related to various underlying causes of action and class certification. Throughout the case, Defendant maintained that Plaintiff’s substantive and class allegations were wholly without merit. In short, the facts of the case, the legal issues involved and Defendant’s aggressive posture in asserting its defenses presented a risk that Plaintiff would fail to establish liability and/or legal damages.

While there is a large body of Washington and Ninth Circuit caselaw on point (*see generally*, Washington Cases), to Class Counsel’s knowledge there is no analogous caselaw regarding the legality of virtual casino games such as the Games in Kentucky. *See* Leslie Affidavit ¶ 14. Further, courts interpreting the gambling laws of Maryland, Illinois, Michigan, and California have held that such games *are* legal and do not constitute gambling. *See, e.g., Mason v. Machine Zone, Inc.*, 140 F. Supp. 3d 457 (D. Md. 2015), *aff’d* 851 F.3d 315 (4th Cir. 2017) (interpreting California and Maryland law); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731 (N.D. Ill. 2016) (interpreting Illinois law); *Soto v. Sky Union, LLC*, 159 F. Supp. 3d 871 (N.D. Ill. 2016) (interpreting California, Illinois and Michigan law); *Ristic v. Machine Zone, Inc.*, No. 15-cv-8996, 2016 WL 4987943 (N.D. Ill. Sept. 19, 2016) (interpreting Illinois law). While Class Counsel is confident in the claims alleged and believe that Kentucky law much more closely tracks Washington law than Maryland, Illinois, and California, it is entirely possible that a Kentucky court could have sided with Defendant and the majority of courts to consider this issue,

leaving Plaintiff, Class Members and Class Counsel empty-handed. Leslie Affidavit ¶ 14.

Even if Plaintiff had prevailed on the gambling issue, Defendant had numerous additional defenses available, any one of which could have been fatal to Plaintiff's claims. *See* Leslie Affidavit ¶ 15. Specifically, Defendant's Terms and Conditions for the Games contained an agreement to resolve any Disputes through final and binding arbitration, a limitation of liability clause, a waiver of Plaintiff's right to participate in a class and/or representative action, and a forum selection clause requiring application of New York, rather than Kentucky, law. *Id.* Had a Court found any one of these terms applicable to Plaintiff, it would have barred recovery for the class entirely. *Id.* It has been the experience of Class Counsel that plaintiffs in complex class actions have to prevail on essentially all substantive and procedural issues in order to succeed. *Id.* ¶ 16. A defendant, on the other hand, only has to prevail on any one, be it stopping class certification, reversing class certification, or undermining substantive claims on legal or factual grounds. *Id.*

Under the circumstances, there were substantial risks that Plaintiff would be unable to certify the Class, unable to establish liability, and would recover nothing. And even if Plaintiff and Class Counsel had been able to prevail at trial, they still faced the daunting prospect of affirming any verdict on post-trial motions in this Court and later on appeal. *Id.* ¶ 17. That process would potentially have taken years and involved tremendous risk that a hard-fought victory could be lost. *Id.*

Simply put, continued litigation would be time consuming and expensive. The Settlement Agreement will provide the class with a recovery much sooner than would otherwise be possible, which weighs in favor of final approval of the Settlement Agreement. *See, e.g., Thacker*, 695 F. Supp. 2d at 531 ("Undoubtedly, this relief [under a settlement agreement] is preferable to the

possibility of a smaller recovery, or none at all, after an expensive and protracted trial and appeal are completed.”).

### 3. The amount of discovery engaged in by the parties

Under the third factor, “[while] the amount of discovery completed is a factor to be considered in the settlement approval process, there is no minimum or definitive amount of discovery that must be undertaken to satisfy this factor.” *See, e.g., Bowers v. Windstream Kentucky East, LLC*, NO. 3:09-CV-440-H, 2013 WL 5934019, at \*2 (W.D. Ky. Nov. 1, 2013).

Here, the Parties conducted substantial informal discovery over the course of many months. Leslie Affidavit ¶ 4. Defendant provided Class Counsel with fulsome transactional data for virtual coin purchases made by the Settlement Class. *Id.* ¶ 6. This data and analysis were relied upon heavily by the Parties during their full-day mediation, which enabled both sides to make informed judgments about the strength of their respective positions. *See* Leslie Affidavit ¶¶ 4, 10.

### 4. The likelihood of success on the merits

In *International Union*, the Sixth Circuit explained that although the fairness inquiry does not require the Court to “decide the merits of the case or resolve unsettled legal questions,” in order to evaluate the fairness of the proposed settlement, the Court must “weigh the plaintiff’s likelihood of success on the merits against the amount and form of the relief offered in settlement.” *International Union*, 497 F.3d at 631 (quoting *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981)).

Defendant has vigorously disputed liability on its part and any alleged damages incurred by Plaintiff. And the case was not without substantial risk, as discussed *supra* Sec. IV.B.2. and in the Class Counsel Application. In short, Plaintiff faced substantial hurdles in litigating this case to a successful outcome.

By contrast, the proposed settlement provides the Settlement Class certain and substantial

relief without the risks and delays of continued litigation, trial, and appeal. The Settlement Agreement establishes a \$1.32 million non-reversionary, common fund settlement, a significant value irrespective of additional meaningful injunctive relief. *See* Preliminary Approval Memo. at 5. The settlement payment checks Class Members will receive are significant, impactful, and immediate. Indeed, under the Settlement allocation structure, Class Members stand to recover substantial portions of the amounts spent on Defendant's Games, ranging from approximately 10% (at the low end) to 60% (at the high end). Furthermore, the Settlement requires Defendant to implement meaningful prospective relief, including providing addiction-related resources within its social casino games and creating and honoring a comprehensive self-exclusion policy.

The Claim Form itself is simple and straightforward. In sum, the proposed settlement is fair when viewed in the light of Plaintiff's ultimate likelihood of success on the merits.

#### **5. The opinion of class counsel and class representatives**

In evaluating whether a proposed settlement warrants final approval, "the informed and reasoned judgment of plaintiffs' counsel and their weighing of the relative risks and benefits of protracted litigation are entitled to great deference." *Skechers*, 2013 WL 2010702, at \*6 (quoting *Thacker*, 695 F. Supp. 2d at 532). Here, Class Counsel believe the settlement is fair and reasonable. In addition, the class representative has not objected to the settlement, and even if he had objected, such an objection would not be fatal to final approval of the settlement. *See, e.g., Moulton v. United States Steel Corp.*, 581 F.3d 344, 351 (6th Cir. 2009) (approving class-action settlement over the active opposition of class representatives); *Laskey v. Int'l Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW)*, 638 F.2d 954, 957 (6th Cir. 1981) (affirming final approval of class settlement despite objections from three of four class

representatives). Accordingly, where *no* class representative opposes the settlement, as is the case here, this factor weighs in favor of final approval.

#### **6. The reaction of absent class members**

The proposed settlement has met with widespread approval among absent class members. Indeed, not a single absent class member has objected. *See* Schey Affidavit ¶ 22. This weighs powerfully in favor of approval. *See Skechers*, 2013 WL 2010702, at \*7 (based on the dearth of objections, “the Court concludes that the overwhelming majority of the potential class members have no objection to the proposed settlement, and this weighs in favor of settlement”); *Thacker*, 695 F. Supp. 2d at 533 (same). Similarly, not a single absent class member has opted out, which also weighs in favor of final approval. *See* Schey Affidavit ¶ 20; *Skechers*, 2013 WL 2010702, at \*7 (“[T]he fact that so few [opt-outs] have been filed weighs in favor of approval.”). Finally, the high rate of class member participation is further evidence that the settlement is fair and reasonable. *See* Schey Affidavit ¶ 25.

#### **7. The public interest**

As a matter of public policy, courts generally favor the settlement of complex class actions. *See, e.g., Thacker*, 695 F. Supp. 2d at 533 (“[T]here is a federal policy favoring settlement of class actions.”); *Skechers*, 2013 WL 2010702, at \*7 (“[T]here is a strong public interest in encouraging settlement of complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources.”) (quoting *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 530 (E.D. Mich. 2003)). The settlement in this case serves the public interest because it will conserve judicial resources while providing fair compensation to class members without the delay or the risks of litigation. *See Skechers*, 2013 WL 2010702, at \*7 (“The Court finds that the proposed settlement serves the public interest by resolving potentially complex legal proceedings and preserving significant judicial resources that would be expended should this

action proceed to additional discovery and trial.”). As noted previously, if this case proceeds to trial, litigation costs will be substantial and countless hours of judicial resources will be spent. Accordingly, the public interest will be served by approving the settlement in this case.

**C. The Claim Form Used Here Satisfies the Standard for Final Approval**

**1. The claims-made type of settlement is routinely approved by courts**

The Settlement Agreement contemplates a “claims-made” form of settlement. This type of settlement has been routinely approved by courts across the country and does not make the settlement inherently unfair, unreasonable, or inadequate. *See, e.g., Shames v. Hertz Corp.*, 2012 WL 5392159, at \*9 (S.D. Cal. Nov. 5, 2012) (“However, there is nothing inherently objectionable with a claims-submission process, as class action settlements often include this process, and courts routinely approve claims-made settlements.”) (collecting cases). Here, each Class Member’s settlement value must be independently calculated based on their underlying expenditures on Defendant’s Games. There is no uniform amount to be paid to each Class Member, nor is this the type of settlement where each member will receive some nominal benefits, such as a discount on future purchases. Accordingly, the claims-made method of settlement contemplated by the Parties’ Settlement Agreement accords with similar class action settlements around the country and accounts for the individualized nature of each Class Member’s settlement value. Again, the lack of objections, lack of opt-outs, and high rate of claims made indicate the process was fair, reasonable, and adequate.

**2. The Claim Form is simple, straightforward, and non-burdensome**

Nothing in the Claim Form itself makes the settlement in this case unfair, unreasonable, or inadequate. *See Newberg on Class Actions*, §12:21 (recommending that courts review claim forms (in claims-made settlements) carefully because “the ease or difficulty of that process speaks to whether the settlement is fair, adequate, and reasonable under Rule 23.”) (citing *Manual for*

*Complex Litigation*, Fourth, § 21.61 (issuing a similar recommendation to courts). In other words, the “claiming process should be as simple, straightforward, and nonburdensome as possible.” *Id.* Courts have found that claim forms pass muster when they are not “unduly burdensome, long, or complex.” *See, e.g., Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560 (N.D. Ill. 2011) (“[T]he Court has reviewed the claim form and concludes that it is not unduly burdensome, long, or complex. All information called for on the form is required of the claims administrator in order for it to process claims. The parties’ use of a settlement website and toll-free number suggests that the claims process was designed to encourage—not discourage—the filing of claims.”); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 2004 WL 3671053 (W.D. Mo. Apr. 20, 2004) (rejecting an objection to the claiming process where the “one-page form merely requires a claimant to provide enough information to enable Defendants to search their records to confirm that the claimant falls within the definition of the relevant []class. This requirement is reasonable.”).

Here, the Claim Form is simple, straightforward, and non-burdensome, and was approved by the Court. It could be completed entirely online or submitted by mail, and did not require the Class Members to attach any supporting documentation in order to make a claim for benefits. Instead, it simply requested that the Class Member complete a simple form regarding contact information and account-associated email addresses, select a payment method, and sign an affirmation as to truthfulness. As a result, the Claim Form is easy to understand, easy to complete, and contributes to the Settlement Agreement’s overall fairness, adequacy, and reasonableness. A representative sample of the Claim Form is attached to the Schey Affidavit as Exhibit C. Schey Affidavit ¶ 23.

V. **THE PROPOSED METHOD AND FORM OF NOTICE IS THE BEST NOTICE PRACTICABLE AND SHOULD BE APPROVED**

Under Kentucky Rule of Civil Procedure 23.05(1), the court “must direct notice [of a

proposed settlement] in a reasonable manner to all class members who would be bound by the proposal.” The sufficiency of the notice provided to class members is analyzed along two fronts: the method of the notice and the contents of the notice. The notice provided to the class members in this case was reasonable as to both.

**A. The method of disseminating the Class Action Notice satisfies Due Process.**

As for the method of notice, courts have held that in order to satisfy due process concerns, the notice must be “reasonably calculated” to reach the intended party. *See, e.g., Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008) (“To comport with the requirements of due process, notice must be reasonably calculated to reach interested parties.”). That said, “[d]ue process does not, however, require *actual notice* to each party intended to be bound by the adjudication of a representative action.” *Id.* (emphasis added).

Here, the method of notice was reasonably calculated to reach the potential members of the Settlement Class. The Parties have executed their agreed-upon multi-part notice plan, which was carried out by Artificial Intelligence Class Solutions (“AICS”), a well-respected class action settlement administrator. Defendant provided the Settlement Administrator and proposed Class Counsel all Settlement Class Member contact information reasonably available to Defendant, including, among other information, the User ID, Relevant Spending Amount, mailing address, and e-mail address (where applicable). *See* Schey Affidavit ¶ 5. AICS analyzed the data provided by Defendant to consolidate duplicate records within the spreadsheets and determined a total of 4,363 unique Settlement Class Members. *Id.* ¶ 6. Prior to noticing, AICS updated the Settlement Class Member contact information (where available) using data from the National Change of Address (“NCOA”) database. *Id.* Subsequently, the following procedures were carried out (or in the case of future commitments, will be carried out):

**Direct Email and U.S. Mail Notice** Pursuant to the terms of the Settlement Agreement,



on October 3, 2023, AICS sent the customized, Court-approved e-mail notice (“E-mail Notice”) from an established case inbox ([www.pulzplatformssettlement.com](http://www.pulzplatformssettlement.com)) to the 4,160 unique Settlement Class Members with a valid e-mail address (203 Settlement Class Members were excluded from the e-mail campaign as they did not have a valid e-mail address and 197 E-Mail Notices were returned to AICS as undeliverable). Schey Affidavit ¶ 7. A representative sample of the E-mail Notice is attached to the Schey Affidavit as Exhibit A. On October 24, 2023, AICS mailed the Court-approved postcard notice (“Postcard Notice”) via USPS first-class mail to 1,213 unique Settlement Class Members with a Lifetime Spending Amount greater than \$100.00, for whom no e-mail address was available, or for whom the notice e-mail bounced. *Id.* ¶ 9. A representative sample of the Postcard Notice is attached to the Schey Affidavit as Exhibit B.

As of the date of the Schey Affidavit, AICS tracked 117 Postcard Notices that were returned to AICS as undeliverable. *Id.* ¶ 10. Of these 117 undeliverable Postcard Notices, 11 were re-mailed to forwarding addresses provided by the USPS and AICS conducted additional advanced address research through TransUnion and received updated address information for an additional 43 Class Members. *Id.* AICS promptly re-mailed Postcard Notices to these 43 Class Members. *Id.* Overall, as of the date of the Schey Affidavit, 4,201 Class Members were e-mailed a Notice or mailed a Postcard Notice that was not returned as undeliverable, representing 96.2% of the total Settlement Class. *Id.* ¶ 11.

The above efforts alone would constitute sufficient notice. But that is not the end of direct notice to Class Members. Both 30 days prior to the Claims Deadline and 7 days prior to the Claims Deadline, the Settlement Administrator will again send Notice via email in the form attached as Exhibit A to the Schey Affidavit, along with an electronic link to the Claim Form, as a reminder for Settlement Class Members to file timely claims. *See* Plaintiff’s Memorandum of Law in

Support of Joint Motion for Preliminary Approval of Class Action Settlement, Class Certification for Settlement Purposes, Appointment of Class Representative, and Appointment of Class Counsel at 18 (“Prelim Approval Memo.”).

**Publication, Media, and Internet Notice:** Notice was also provided via a Digital Ad Campaign notice program, including banner ads on Internet sites targeted to the Settlement Class Members. On October 3, 2023, AICS caused a digital campaign to launch with the leading digital networks (Google & Microsoft Bing), and top social media platform (Facebook) delivering 1,109,724 impressions to adults 18 years of age or older (Adults 18+) throughout Kentucky. Schey Affidavit ¶ 12. Focused social targeting was included as AICS was able to utilize the class member list to reach the known members of the Settlement within Facebook by using their unique email(s). *Id.*

The digital effort was served across all device types (desktop, laptop, tablet, and mobile). *Id.* ¶ 13. The digital ads linked directly to the Settlement Website, where Settlement Class Members were able to access more information about the Settlement, as well as file a claim electronically. *Id.*

**Settlement Website:** On August 22, 2023, AICS established a Settlement Website (www.pulszplatformssettlement.com), which hosts copies of important case documents, including the Class Action Settlement Agreement, The Long Form and Short Form Notices, answers to frequently asked questions, and contact information for the Administrator. Schey Affidavit ¶ 14. Additionally, the Settlement Website allows Class Members to File a Claim Form electronically or estimate their payment amount through the Settlement Payment Estimate Calculator. *Id.*

On November 3, 2023, Class Counsel filed its Application for Attorneys’ Fees and Costs Related to the Class Action Settlement Agreement and Request for Fee Award to Class

Representative, which AICS made promptly available on the Settlement Website the next business day, November 6, 2023. Schey Affidavit ¶ 15.

As of the date of the Schey Affidavit, the Settlement Website has tracked 729 unique users. Schey Affidavit ¶ 16. AICS will continue to update and maintain the Settlement Website throughout the administration process. *Id.*

**Toll-Free Phone Line:** On August 22, 2023, AICS established a case-specific Interactive Voice Response (“IVR”) number, 1-888-297-6865, for Settlement Class Members to call for additional information and assistance including an option to speak with a live operator. Schey Affidavit ¶ 17. The IVR is accessible 24 hours a day, 7 days a week. *Id.* As of the date of the Schey Affidavit, the toll-free number has received 4 incoming calls. *Id.* ¶ 18. AICS will continue to maintain the toll-free number throughout the administration process. *Id.*

These forms of notice make it easier for Class Members to learn of this action and the settlement. *See Wilson v. Anthem Health Plans of Kentucky, Inc.*, No. 3:14-CV-743-TBR, 2017 WL 1089193, at \*3 (W.D. Ky. Mar. 21, 2017) (“[T]he Court agrees with Anthem that providing additional information on a website dedicated to the instant suit may be a particularly cost-effective means to provide current information. . . .”).

These proposed methods of giving notice were and are appropriate because they provide a fair opportunity for Class Members to obtain full disclosure of the conditions of the Settlement and to make an informed decision regarding the proposed Settlement. Thus, the notices and notice procedures amply satisfy the requirements of due process.

**B. The contents of the Class Action Notice satisfy due process.**

As for the contents of the notice, within the Sixth Circuit, “[a]ll that notice must do is ‘fairly apprise . . . prospective members of the class of the terms of the proposed settlement’ so that class members may come to their own conclusions about whether the settlement serves their interests.”

*Gooch v. Life Inv. Ins. Co. of Am.*, 672 F.3d 402, 423 (6th Cir. 2012) (quoting *Int'l Union, UAW v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007)). That is, “[d]ue process does not require the notice to set forth every ground on which class members might object to the settlement.” *Gooch*, 672 F.3d at 423. Instead, the contents of the notice will be sufficient if “they inform the class members of the nature of the pending action, the general terms of the settlement, that complete and detailed information is available from the court files, . . . that any class member may appear and be heard at the hearing . . . [and] information [about] the class members’ right to exclude themselves and the results of failure to do so.” *Id.* (quoting *Newberg on Class Actions*, §§ 8:32, 8:33). Ultimately, courts have considerable discretion in approving an appropriate notice plan. *See Manual for Complex Litigation*, Fourth, § 21.311 (“Determination of whether a given notification is reasonable under the circumstances of the case is discretionary.”).

Here, the Class Action Notice met all of the requirements of Rule 23.05 and the Sixth Circuit’s requirements for notice. It identified the Plaintiff and the Defendant and described the lawsuit and the settlement class in a straightforward manner. It was clearly organized, succinctly described (in question-and-answer format) the essential terms of the proposed settlement, and identified all parties against whom claims are being released. *See, e.g., Dick v. Sprint Communs. Co. L.P.*, 297 F.R.D. 283, 293 (W.D. Ky. Jan. 29, 2014) (finding that a class action notice was adequate, in part, because “information was presented in a well-organized fashion . . . addressing in question-and-answer format . . . typical queries”). The Class Action Notices further provided information on how to submit a claim form, how to opt out of the Settlement Class, and how to object to the Settlement Agreement (including an explanation of the right to retain separate counsel and the right to attend the final approval hearing), and provided all applicable deadlines for such action. Finally, the notice informed the Settlement Class that if they do not exclude themselves,

and the settlement is approved, they will be bound by the resulting judgment. In short, the proposed notice provides the necessary information for the Settlement Class to make an informed decision regarding the Settlement Agreement.

For these reasons, the Parties submit that the proposed form and means of effecting notice are adequate and reasonably calculated to provide notice of the settlement to the Settlement Class. Accordingly, the Court should approve the proposed forms and dissemination of notice.

**VI. CERTIFICATION OF THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE UNDER RULE 23**

To be certified under Kentucky Civil Rule 23, a putative class must satisfy each of the four requirements of Rule 23.01: numerosity, commonality, typicality, and adequacy. In addition, a putative class must satisfy the requirements of one of the three provisions of Rule 23.02. Here, the Parties seek certification of the Settlement Class for settlement purposes only under Rule 23.02(c), which requires that “questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

At preliminary approval, the Court already determined that the Settlement Class meets the criteria of Kentucky Civil Rule 23, and no relevant facts have changed since the Court made that determination. Thus, for all of the reasons discussed at length in the Parties’ Motion for Preliminary Approval, and in Plaintiff’s Memorandum in support thereof, both Rule 23.01 and Rule 23.02 are satisfied. That is, under Rule 23.01 all four requirements have been established (numerosity, commonality, typicality, and adequacy), and under Rule 23.02, it is clear that common issues to the class predominate over individual issues and a class action is the superior method for adjudicating the Settlement Class’s claims. Accordingly, class certification for settlement purposes only is warranted.

**VII. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the accompanying proposed Order Granting Final Approval of Class Action Settlement, finding that the proposed settlement is fair, reasonable, and adequate under Rule 23, certifying the Settlement Class for purposes of settlement only, appointing Plaintiff as the Class Representative and his attorneys as Class Counsel, approving the incentive awards for the Class Representative, approving reasonable fees and costs for Class Counsel, and dismissing the claims of Plaintiff and the members of the Settlement Class against Defendant with prejudice and without costs, other than what has been specifically provided for in the Settlement Agreement.

Respectfully submitted,

By: /s/ Joseph H. Langerak

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*Counsel for Plaintiff and the Settlement Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2023, the above and foregoing document was filed electronically with the Court's electronic filing system. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system. Parties may access the filing through the Court's system.

/s/ Joseph H. Langerak

Joseph H. Langerak

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MEM : 000026 of 000026





COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT  
CASE NO. 2023-CI-00358

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

v.  
YELLOW SOCIAL INTERACTIVE., DEFENDANT.

**AFFIDAVIT OF MARK SCHEY**  
**REGARDING SETTLEMENT ADMINISTRATION**

1. I am a founding partner of AI Class Solutions, LLC (“AICS”), a company that provides class action notice and claims administration. The following statements are based on my personal knowledge and information provided by other AICS principals and employees working under my supervision, and if called upon to do so, I could and would testify competently about these issues.

2. The key purpose of this Declaration is to provide the Court with information regarding (a) AICS’s implementation of the Court-approved Notice Plan set forth in the Settlement Agreement<sup>1</sup>, and (b) the reaction of the Settlement Class Members to the Settlement as of the date this Declaration is executed.

3. As the administrator for this settlement, AICS has, and continues to, perform the following duties: (1) arranging for the distribution of the Class Notice and Claim Forms to Settlement Class Members; (2) arranging and managing the direct notice to known Class Members; (3) answering inquiries from Settlement Class Members and/or forwarding such inquiries to Class Counsel or their designee; (4) receiving and maintaining on behalf of the Court and the Parties all Settlement Class Member correspondence regarding claims; (5) establishing the Settlement Website that posts notices, Claim Forms, and other related documents, as well as ensuring its

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<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Class Action Settlement Agreement.

functionality; (6) establishing a toll-free telephone number for informational inquiries; (7) receiving and processing claims to vet and eliminate potential fraudulent claims; (8) submitting an Declaration attesting to the dissemination of the notice pursuant to the Court's Preliminary Approval Order and the Settlement Agreement, as well as the Settlement Class's reaction, including the number and amount of claims, objections, and exclusion requests received; and (9) providing reports to all counsel throughout the notice and claims process to allow for thorough oversight.

4. AICS has, and continues to, execute its duties in compliance with the Court-approved Notice Plan set forth in the Settlement Agreement.

#### **CLASS MEMBER DATA**

5. On August 23, 2023, AICS received a spreadsheet from the Defendant containing, among other information, User IDs, purchase amounts, email addresses, and mailing addresses for a total of 4,739 records.

6. Prior to noticing, AICS analyzed the raw data to remove duplicate records within the spreadsheet and determined a total of 4,363 unique Settlement Class members. Where applicable, AICS updated the Settlement Class Member contact information using data from the National Change of Address ("NCOA") database<sup>2</sup>.

#### **EMAIL NOTICE**

7. Pursuant to the terms of the Settlement Agreement, on October 3, 2023, AICS sent a customized, Court-approved email notice ("E-mail Notice") from an established case inbox (www.pulszplatformsettlement.com) to the 4,160 Settlement Class Members with a valid e-mail address. A representative sample of the E-mail Notice is attached hereto as **Exhibit A**.

8. AICS tracked 197 E-mail Notices that were returned to AICS as undeliverable, otherwise known as "bounced" emails.

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<sup>2</sup> The NCOA database is the official United States Postal Service ("USPS") technology product which makes changes of address information available to mailers to help reduce undeliverable mail pieces before mail enters the mail stream. This product is an effective tool to update address changes when a person has completed a change of address form with the USPS. The address information is maintained on the database for 48 months.

**POSTCARD NOTICE**

9. Pursuant to the terms of the Settlement Agreement, on October 24, 2023, AICS mailed the Court-approved (“Postcard Notice”) via USPS first-class mail to 1,213 unique Settlement Class Members with a Lifetime Spending Amount greater than \$100.00, for whom no e-mail address was available, or for whom the notice e-mail bounced. A representative sample of the Postcard Notice is attached hereto as **Exhibit B**.

10. As of the date of this Declaration, AICS tracked 117 Postcard Notices that were returned to AICS as undeliverable. Of these 117 undeliverable Postcard Notices, 11 were re-mailed to forwarding addresses provided by the USPS and AICS conducted additional advanced address research through TransUnion and received updated address information for an additional 43 Class Members. AICS promptly re-mailed Postcard Notices to these 43 Class Members.

11. As of the date of this Declaration, 4,201 Class Members were e-mailed a Notice or mailed a Postcard Notice that was not returned as undeliverable, representing 96.2% of the total Settlement Class.

**DIGITAL AD CAMPAIGN**

12. To supplement the direct notice effort, on October 3, 2023, AICS caused a digital campaign to launch with the leading digital networks (Google & Microsoft Bing), and top social media platform (Facebook) delivering 1,109,724 impressions to adults 18 years of age or older (Adults 18+) throughout Kentucky<sup>3</sup>. Focused social targeting was included as AICS was able to utilize the class member list to reach the known members of the Settlement within Facebook by using their unique email(s).

13. The digital effort was served across the varying device types (desktop, laptop, mobile and tablet). The ads linked directly to the Settlement Website, where Class Members were able to access more information about the Settlement, as well as file a claim electronically.

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<sup>3</sup> Impressions or Exposures are the total number of opportunities to be exposed to a media vehicle or combination of media vehicles containing a notice. Impressions are a gross or cumulative number that may include the same person more than once. As a result, impressions can and often do exceed the population size.

### **SETTLEMENT WEBSITE**

14. On August 22, 2023, AICS established a Settlement Website ([www.pulszplatformsettlement.com](http://www.pulszplatformsettlement.com)), which contains copies of important case documents, including the Class Action Settlement Agreement, The Long Form and Short Form Notices, answers to frequently asked questions, and contact information for the Administrator. Additionally, the Settlement Website allows Class Members to File a Claim Form electronically or estimate their payment amount through the Settlement Payment Estimate Calculator.

15. On November 3, 2023, Class Counsel filed its Petition for Attorneys' Fees and Costs related to the Class Action Settlement Agreement and Request for Fee Award to Class Representative, which AICS made promptly available on the Settlement Website on the next business day, November 6, 2023.

16. As of the date of the Declaration, AICS has tracked 729 unique users. AICS will continue to update and maintain the Settlement Website throughout the administration process.

### **TOLL-FREE PHONE LINE**

17. On August 22, 2023, AICS established a case-specific Interactive Voice Response ("IVR") number, 1-888-297-6865, for Settlement Class Members to call for additional information and assistance including an option to speak with a live operator. The IVR is accessible 24 hours a day, 7 days a week.

18. As of the date of this Declaration, the toll-free number has received 4 incoming calls. AICS will continue to maintain the toll-free number throughout the administration process.

### **REQUESTS FOR EXCLUSION**

19. The notices informed Class Members who wished to opt-out of the Settlement, that they must do so by mailing a letter to the administrator, postmarked on or before, November 17, 2023.

20. As of the date of this Declaration, AICS has not received, and is not aware of, any requests for exclusion.

### **OBJECTIONS**

21. The notices informed Class Members that if they wished to object to the proposed Settlement, they could do so by filing a written objection with the Court, postmarked on or before November 17, 2023.

22. As of the date of this Declaration, AICS has not received, and is not aware of, any objections.

### **CLAIM FORMS RECEIVED**

23. The notices informed Class Members that they must file a claim if they wish to receive a payment from the Settlement, and that those wishing to do so, could file a Claim Form on the Settlement Website, or by mailing a copy of the Claim Form to AICS, postmarked or submitted on or before January 29, 2024. A representative sample of the Claim Form is attached hereto as **Exhibit C**.

24. Pursuant to the Settlement Agreement, both 30 days prior to the deadline and 7 days prior to the Claims Deadline, AICS will send a Reminder Notice (substantially in the form of Exhibit A hereto) to all Class Members for whom a valid e-mail address is available, with an electronic link to the Claim Form.

25. As of the date of this Declaration, AICS has received 323 claims with a Unique ID or E-mail matched to the data produced by Defendants. AICS is in the process of receiving, reviewing, and validating additional submitted Claim Forms, and will continue to do so throughout the duration of the Settlement.

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

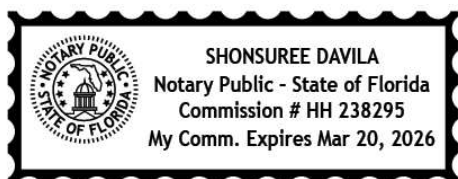
This notarial act was an online notarization

  
\_\_\_\_\_

Mark Schey

Subscribed and sworn before me by Mark Schey on this 20<sup>th</sup> day of November 2023.

My commission expires: March 20, 2026



*Shonsuree Davila*  
\_\_\_\_\_  
Shonsuree Davila  
Notary Public, State of FLORIDA

Signer Mark Schey produced a New Jersey Drivers License, as identification along with multi-factor KBA authentication and audio/video recording to be notarized online.

# EXHIBIT A

62F99147-06BD-49F5-9BF5-5764E6CE6506 : 000103 of 000211

EXH : 000008 of 000015

From: info@pulszplatformssettlement.com  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358  
**(Commonwealth of Kentucky, Henderson County Circuit Court)**

**If you made purchases on [www.Pulsz.com](http://www.Pulsz.com) or [www.Pulszbingo.com](http://www.Pulszbingo.com) you may be part of a class action settlement**

*A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

This notice is to inform you of the settlement of a class action lawsuit against Yellow Social Interactive Ltd. (“YSI”), alleging claims based on the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”), while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com).

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than January 29, 2024**. You can submit the claim form online at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com). You may also request a paper claim form and mail it to YSI Platforms Settlement Administrator, PO Box 231, Valparaiso, IN 46384.

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than **November 17, 2023**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than **November 17, 2023**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com). If you file a claim or do nothing, and the Court approves



the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called "Class Counsel." You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as "Class Representative."

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at 9:00 am on December 11, 2023 in the Henderson County Judicial Center. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel's request for attorneys' fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys' fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com), contact the settlement administrator at [info@pulszplatformssettlement.com](mailto:info@pulszplatformssettlement.com) or YSI Platforms Settlement Administrator, PO Box 231, Valparaiso, IN 46384, or call Class Counsel at 1-646-837-7150.

# EXHIBIT B

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EXH : 000011 of 000015

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

YSI Platforms Settlement Administrator  
PO Box 231  
Valparaiso, IN 46384

**If you played on  
www.Pulsz.com, and/or  
www.Pulszbingo.com,  
you may be part of a class  
action settlement.**



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

62F99147-06BD-49F5-9BF5-5764E6CE6506 : 000107 of 000211

EXH : 000012 of 000015

A settlement has been reached in a class action lawsuit against Yellow Social Interactive Ltd., (“YSI”), alleging claims under Kentucky state law based on the sale of virtual coins on www.Pulsz.com and www.Pulszbingo.com. YSI denies all claims and that it violated the law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on www.Pulsz.com from October 2, 2020, to November 3, 2022, and/or on www.Pulszbingo.com from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”) , while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com).

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than January 29, 2024**. You can submit the claim form online at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com). You may also request a paper claim form and mail it to YSI Platforms Settlement Administrator, PO Box 231, Valparaiso, IN 46384.

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than **November 17, 2023**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than **November 17, 2023**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com). If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at 9:00 am on **December 11, 2023** in the Henderson County Judicial Center. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com), contact the settlement administrator at [info@pulszplatformssettlement.com](mailto:info@pulszplatformssettlement.com) or YSI Platforms Settlement Administrator, YSI Platforms Settlement Administrator, PO Box 231, Valparaiso, IN 46384, or call Class Counsel at 1-646-837-7150.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YSI Platforms Settlement Administrator  
PO Box 231  
Valparaiso, IN 46384

XXX

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EXH : 000013 of 000015

# EXHIBIT C

62F99147-06BD-49F5-9BF5-5764E6CE6506 : 000109 of 000211

EXH : 000014 of 000015

**YSI PLATFORMS SETTLEMENT CLAIM FORM**

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY JANUARY 29, 2024. THE CLAIM FORM MUST BE SIGNED AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive a share of the Settlement Fund. This process takes time, please be patient. If you have any questions, or would like to estimate your share of the Settlement Fund, visit: [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com).

**Instructions:** Fill out each section of this form and sign where indicated.

<u>First Name</u>		<u>Last Name</u>	
<u>Street Address</u>			
<u>City</u>	<u>State</u>	<u>ZIP Code</u>	
<u>Email Address</u>			<u>Phone Number</u>
<u>www.Pulsz.com and/or www.Pulszbingo.com Player ID(s) (if known)</u>			
<u>All email addresses associated with www.Pulsz.com and/or www.Pulszbingo.com accounts.</u>			

**Settlement Class Member Affirmation:** By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the Player ID(s) and the email address(es) listed above are yours.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Select Payment Method:** Select **ONE** box for how you would like to receive payment and provide the requested information.

Check	Venmo®	PayPal®
<b>Mailing Address:</b>	<b>Email Address:</b>	<b>Email Address:</b>

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EXH : 000015 of 000015



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.

**AFFIDAVIT OF ALEC M. LESLIE IN SUPPORT OF MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

Affiant, Alec M. Leslie, being first duly sworn, hereby declares as follows:

1. I am an attorney at law licensed to practice in the State of New York, and I have been admitted to practice *pro hac vice* in this action. I am a Partner with Bursor & Fisher, P.A., counsel for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would competently testify thereto under oath.

2. Attached to the Parties' Joint Motion for Final Approval as **Exhibit A** is a true and accurate copy of the Class Action Settlement Agreement.

3. On August 15, 2023, the Court granted preliminary approval of the settlement, and issued the order attached as **Exhibit B**.

4. Plaintiff, through undersigned counsel, has conducted extensive research, discovery, and investigation during the prosecution of the action, including, without limitation: (i) the review of in-game purchase documents produced by Defendant; (ii) the review of publicly available reports, articles, and other publications concerning Defendant's Games; (iii) the review of publicly available information regarding Defendant and its business practices, and (iv) drafting and exchanging mediation briefing on the core facts, legal issues, litigation risks, and potential settlement structures, supplemented with extensive telephonic correspondence. These efforts led



to the production of critical documents concerning the case, which Class Counsel reviewed and used to ascertain the strengths and weaknesses of the case.

5. In September 2022, the Parties' settlement talks began in earnest. The Parties agreed to participate in a mediation with Niki Mendoza, Esq. of Phillips ADR Enterprises ("Phillips ADR"), which was ultimately scheduled for April 6, 2023.

6. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with the Phillips ADR team, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow down potential frameworks for resolution. During this period, Defendant provided Class Counsel with fulsome transactional data for virtual chip purchases made by the Settlement Class; the Parties exchanged multiple rounds of voluminous briefing on the core facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated and shuttled by the Phillips ADR team, clarifying each other's positions in advance of the mediation.

7. On April 6, 2023, following A full-day mediation session, Ms. Mendoza made a mediator's proposal to settle the case in principle, which both Parties accepted.

8. Working within the guideposts of prior analogous settlements under Washington and Kentucky law, the Parties were able to negotiate and execute a term sheet memorializing their agreement at the conclusion of the mediation.

9. Every step leading up to and throughout the mediation session was hard-fought and adversarial.

10. In my professional judgment, when the Parties agreed to this settlement, the Parties were fully informed on all pertinent issues and capable of assessing the benefits of the settlement.

11. Over the next several weeks, the Parties exchanged several rounds of a working settlement document and supporting exhibits, met and conferred telephonically to discuss the

remaining disputed provisions, and negotiated the form and substance of a notice and administration plan. This lengthy negotiation provided the Parties with sufficient information to evaluate the claims of the class.

12. On July 5, 2023, the Parties completed execution of the Settlement Agreement now before the Court. In accordance with KY CR 23.05 (3), there have been no agreements made in connection with the Settlement other than the Settlement Agreement itself.

13. Although Plaintiff and Class Counsel had confidence in their claims, a favorable outcome was not assured. Plaintiff and Class Counsel also recognize that they would face risks at the motion to dismiss stage, class certification, summary judgment, and trial. Thus, in my professional judgment, the proposed Settlement provides the Class with an outstanding opportunity to obtain significant relief at this stage in the litigation., while also abrogating the risk of Plaintiff and the Class obtaining no relief at all.

14. While there is a large body of Washington and Ninth Circuit caselaw on point, to Class Counsel's knowledge there is no analogous caselaw regarding the legality of virtual casino games such as the Games in Kentucky. While Class Counsel was confident in the claims alleged and believe that Kentucky law much more closely tracks Washington law than Maryland, Illinois, and California, it is entirely possible that a Kentucky court could have sided with Defendant and the majority of courts to consider this issue, leaving Plaintiff, Class Members and Class Counsel empty-handed.

15. Even if Plaintiff had prevailed on his challenge of the legality of virtual casino games, Defendant had numerous additional defenses available, any one of which could have been fatal to Plaintiff's claims. Specifically, Defendant's Terms and Conditions for the Games contained an agreement to resolve any Disputes through final and binding arbitration, a limitation of liability clause, a waiver of Plaintiff's right to participate in a class and/or representative action, and a forum selection clause requiring application of New York, rather than Kentucky, law. Had a Court found any one of these terms applicable to Plaintiff, it would have barred recovery for the class entirely.

16. It has been my experience that plaintiffs in complex class actions have to prevail on essentially all substantive and procedural issues in order to succeed. A defendant, on the other hand, only has to prevail on any one, be it stopping class certification, reversing class certification, or undermining substantive claims on legal or factual grounds.

17. Even if Plaintiff and Class Counsel had been able to prevail at trial, they still faced the daunting prospect of affirming any verdict on post-trial motions in this Court and later on appeal. That process would potentially have taken years and involved tremendous risk that a hard-fought victory could be lost.

18. Based on documents I have reviewed in this case, thousands of individuals have spent money on Defendant's Games within the Commonwealth of Kentucky over the relevant Class Period.

19. Plaintiff David Whiting demonstrated his willingness to vigorously prosecute this case, including by providing his counsel with relevant documents, testimony, and consumer insight into the intricacies of Defendant's Games. Plaintiff remained in constant communication with his counsel, and he was heavily involved in nearly every aspect of this case, from its inception through mediation and settlement. In sum, Plaintiff remained committed to proving Defendant's common course of conduct, and obtaining redress on behalf of himself and the Class.

20. In my professional judgment, if Plaintiff tried this case to verdict, there would be subsequent appeals that would likely take years to resolve. In my professional judgment, the expense and burden associated with litigating this through both trial and appeals militate in favor of granting final approval.

21. Since the Court granted preliminary approval, my firm has worked closely with the Settlement Administrator Artificial Intelligence Class Solutions ("AICS"), to carry out the Court-ordered notice plan.

22. In my professional judgment, the proposed settlement is fair, reasonable, and adequate, and in the best interests of the class.

I declare under penalty of perjury under the laws of the United States, the State of New York and the Commonwealth of Kentucky that the foregoing is true and correct. Executed on November 27, 2023 at New York, New York.

Further, Affiant sayeth naught.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE TO FOLLOW]

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EXH : 000006 of 000078

*Alec M. Leslie*  
\_\_\_\_\_

Alec M. Leslie

State of New York }  
  }  
County of Bronx }

Subscribed and sworn before me by Alec M. Leslie on this 27 day of November, 2023.

My Commission expires: 3-27-2027

ALICIA M WINFIELD  
Notary Public - State of New York  
No. 01WM0003921  
Qualified in Bronx County  
My Commission Expires 03/27/2027

*Alicia Winfield*

Notary Public, State of New York

62F99147-06BD-49F5-9BF5-5764E6CE6506 : 000117 of 000211

EXH : 000007 of 000078



**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

DAVID WHITING, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

YELLOW SOCIAL INTERACTIVE LTD.,

Defendant.

Case No. 2023-CI-00358

**CLASS ACTION SETTLEMENT AGREEMENT**

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, David Whiting (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendant, Yellow Social Interactive Ltd. (“Defendant” or “YSI”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and YSI are collectively referred to herein as the “Parties.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the final approval of the Court.

**RECITALS**

A. On September 28, 2022, Plaintiff, through his counsel, sent a demand letter to YSI alleging that its Platforms (defined below) fall within the definition of an illegal gambling game and that players can recover their losses under Kentucky law, setting forth claims for violations of Ky. Rev. Stat. § 372.020, based on Plaintiff’s use of and purchases of virtual items in YSI’s Platforms.

2. On October 11, 2022, YSI filed a demand for arbitration against Plaintiff with the

American Arbitration Association (the “AAA”) seeking declaratory relief that YSI’s Platforms do not constitute illegal gambling under Kentucky law (the “Arbitration”).

3. Over the next several months, counsel for the Parties had numerous telephone calls and discussed the prospect of resolution.

4. Those discussions eventually led to an agreement between the Parties to stay the arbitration proceedings and engage in mediation, which the Parties agreed would take place before the Niki Mendoza, Esq., a neutral affiliated with Phillips ADR Enterprises (“Phillips ADR”).

5. In the weeks leading up to the mediation, the Parties were in regular communication with each other and with Phillips ADR, as the Parties sought to crystallize the disputed issues, produce focal information and data, and narrow potential frameworks for resolution.

6. During this period and in connection with the mediation proceedings, YSI provided Class Counsel with transaction data for virtual coin purchases made by the Settlement Class; the Parties exchanged briefing on the key facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive telephonic correspondence, mediated by Phillips ADR, in order to clarify the Parties’ positions in advance of the mediation.

7. On April 6, 2023, the Parties participated in a mediation before Ms. Mendoza. At the conclusion of the mediation, Ms. Mendoza made a mediator’s proposal to settle the case, which all Parties accepted. The Parties then executed a binding term sheet to settle the case on a class action basis.

8. On June 16, 2023, Plaintiff filed a putative class action complaint against YSI in the Henderson County Circuit Court, Case No. 2023-CI-00358.



9. Plaintiff and Class Counsel have conducted a comprehensive examination of the law and facts regarding the claims against YSI, and the potential defenses available. Plaintiff believes that the claims asserted in the Action against YSI have merit and that Plaintiff would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that YSI has raised factual and legal defenses that present a risk that Plaintiff may not prevail. Plaintiff and Class Counsel also recognize the expense and delay associated with continued prosecution of the Action against YSI through class certification, summary judgment, trial, and any subsequent appeals. Plaintiff and Class Counsel also have taken into account the uncertain outcome and risks of litigation, especially in complex class actions, as well as the difficulties inherent in such litigation. Therefore, Plaintiff believes it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice. Based on its evaluation, Class Counsel has concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class, and that it is in the best interests of the Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of this Agreement.

10. At all times, YSI has denied and continues to deny any wrongdoing and liability and denies all material allegations in the Action. Specifically, YSI denies that the Platforms constitute or constituted illegal gambling, and it opposes certification of a litigation class. YSI is prepared to continue its vigorous defense. Nonetheless, taking into account the uncertainty and risks inherent in a motion to dismiss, class certification, summary judgment, and trial, YSI has concluded that continuing to defend the Action would be burdensome and expensive. YSI has further concluded that it is desirable and beneficial that the Action be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise, and the Agreement, any related documents, and any negotiations

resulting in it shall not be construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing on the part of YSI, or any of the Released Parties (defined below), with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or with respect to the certifiability of a litigation class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and each of them, and YSI, by and through its undersigned counsel that, subject to final approval of the Court after a hearing or hearings as provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties from the Agreement set forth herein, that the Action and the Released Claims shall be finally and fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions of this Agreement.

### AGREEMENT

#### 1. DEFINITIONS.

As used in this Settlement Agreement, the following terms have the meanings specified below:

**1.1 “Action”** means the Arbitration and the case captioned *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358, pending in the Henderson County Circuit Court.

**1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member that: (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement Class Member with all of the information requested in the Claim Form; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is approved by the Settlement Administrator pursuant to the provisions of this Agreement.

**1.3 “Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a Claim for a payment, shall be available in electronic and paper format in the manner described below.

**1.4 “Claims Deadline”** means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than fifty-six (56) days after the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

**1.5 “Class Counsel”** means Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A.

**1.6 “Class Representative”** means the named Plaintiff in this Action, David Whiting.

**1.7 “Court”** means the Henderson County Circuit Court, the Honorable Karen L. Wilson presiding, or any judge who shall succeed her as the Judge in this Action.

**1.8 “Defendant”** means Yellow Social Interactive Ltd.

**1.9 “Defendant’s Counsel”** means Duane Morris LLP.

**1.10 “Effective Date”** means the date ten (10) days after which all of the events and conditions specified in Paragraph 9.1 have been met and have occurred.

**1.11 “Escrow Account”** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to all Parties at a depository institution insured by the Federal Deposit Insurance Corporation. The Settlement Fund shall be deposited by YSI into the Escrow Account in accordance with the terms of this Agreement and the money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and

certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

**1.12 “Fee Award”** means the amount of attorneys’ fees, costs, and expenses awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.13 “Final”** means one business day following the latest of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*, leaving the Final Judgment intact in all material respects.

**1.14 “Final Approval Hearing”** means the hearing before the Court where the Parties will request the Final Judgment to be entered by the Court approving the Settlement Agreement, the Fee Award, and the incentive award to the Class Representative.

**1.15 “Final Judgment”** means the Final Judgment and Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

**1.16 “Net Settlement Fund”** means the Settlement Fund, plus any interest or investment income earned on the Settlement Fund, less any Fee Award, incentive award of the Class Representative, taxes, and Settlement Administration Expenses.

**1.17 “Notice”** means the notice of this proposed Class Action Settlement Agreement and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the manner set forth in this Agreement, is consistent with the requirements of Due Process, Rule 23, and is substantially in the form of Exhibits B, C, and D hereto.

**1.18 “Notice Date”** means the date by which the direct Email Notice set forth in Paragraph 4.1(a) is complete, which shall be no later than twenty-eight (28) days after Preliminary Approval.

**1.19 “Objection/Exclusion Deadline”** means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement Class must be made, which shall be designated as a date no later than forty-five (45) days after the Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date as ordered by the Court.

**1.20 “Person”** shall mean, without limitation, any individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**1.21 “Plaintiffs”** means David Whiting and the Settlement Class Members.

**1.22 “Platforms”** means all games, services and related agreements provided to the public through the URLs [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com).

**1.23 “Player ID”** means the unique identifier assigned by YSI to a person who has an account or log-in with either Platform.

**1.24 “Preliminary Approval”** means the Court’s certification of the Settlement Class for settlement purposes, preliminary approval of this Settlement Agreement, and approval of the form and manner of the Notice.

**1.25 “Preliminary Approval Order”** means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing notice thereof to the Settlement Class, which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

**1.26 “Released Claims”** means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Kentucky or other state, federal, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States against the Released Parties, or any of them, arising out of any facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions, or failures to act relating to the operation of the Platforms in any respect including, but not limited to, all sales of virtual coins on the Platforms, all revenue derived by the Platforms, the manner and methods of operation of all games and promotions on the Platforms, claims that the Platforms are illegal gambling games, that virtual coins in the Platforms are “something of value,” that any aspects of the Platforms render the Platforms unlawful, deceptive, or unfair, that YSI has been unjustly enriched by operation of the Platforms, and all claims that were brought or could have been brought in the Action relating to any and all Releasing Parties. For the avoidance of doubt, this

release: (i) includes claims potentially subject to arbitration agreements; and (ii) does not extend to other platforms owned and/or operated by YSI and/or the Released Parties.

**1.27 “Released Parties”** means Yellow Social Interactive Ltd., as well as any and all of its parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, and any of its respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns, specifically including but not limited to internet service providers, advertisers and payment processors supporting or assisting the Platforms, directly or indirectly.

**1.28 “Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their respective past, present, and future heirs; children; spouses; beneficiaries; conservators; executors; estates; administrators; assigns; agents; consultants; independent contractors; insurers; attorneys; accountants; financial and other advisors; investment bankers; underwriters; lenders; and any other representatives of any of these persons and entities.

**1.29 “Relevant Spending Amount”** means the total amount of money a Settlement Class Member, while located in the Commonwealth of Kentucky, spent within [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020 to November 3, 2022 in amounts of \$5.00 or more within a 24-hour period or within [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022 to February 9, 2023 in amounts of \$5.00 or more within a 24-hour period..

**1.30 “Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, responding to inquiries from members of the Settlement Class, distributing funds for Approved Claims, and related services, paying taxes and tax expenses related to the Settlement Fund (including all federal, state or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection

with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants), as well as all expenses related to the resolution of any disputed claims (as described below in paragraph 5.4), and all expenses, excluding the fees and expenses of Class Counsel and Defendant's Counsel, related to any work required by the Court to confirm that Notice is consistent with Due Process and Rule 23.

**1.31 “Settlement Administrator”** means Artificial Intelligence Class Solutions, or such other reputable administration company that has been selected by Plaintiff, subject to YSI's right of veto (such right not to be unreasonably exercised) and Court approval, and shall oversee the administrator's administration of the settlement, including but not limited to serving as Escrow Agent for the Settlement Fund, overseeing the distribution of Notice, as well as the processing and payment of Approved Claims to the Settlement Class as set forth in this Agreement, handing all approved payments out of the Settlement Fund, and handling the determination, payment and filing of forms related to all federal, state and/or local taxes of any kind (including any interest or penalties thereon) that may be owed on any income earned by the Settlement Fund.

**1.32 “Settlement Class”** means 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](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022 or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) YSI, YSI's subsidiaries, parent companies, successors, predecessors, and any entity in which the YSI 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.

**1.33 “Settlement Class Member”** means a Person who falls within the definition of the Settlement Class as set forth above and who has not submitted a valid request for exclusion.

**1.34 “Settlement Fund”** means the non-reversionary cash fund that shall be established by YSI in the total amount of one million three hundred and twenty thousand dollars (\$1,320,000.00 USD) to be deposited into the Escrow Account, according to the schedule set forth herein, plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay all Approved Claims made by Settlement Class Members, Settlement Administration Expenses, any incentive award to the Class Representative, any Fee Award to Class Counsel, taxes, and any other costs, fees, or expenses approved by the Court. The Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement Administrator to access said funds until such time as the listed payments are made. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings. The Settlement Fund represents the total extent of YSI’s monetary obligations under this Agreement. The payment of the amount of the Settlement Fund by YSI fully discharges YSI and the other Released Parties’ financial obligations (if any) in connection with the Settlement, meaning that no Released Party shall have any other obligation to make any payment into the Escrow Account or to any Settlement Class Member, or any other Person, under this Agreement. In no event shall YSI’s total monetary obligation with respect to this Agreement exceed one million three hundred and twenty thousand dollars (\$1,320,000.00 USD).

**1.35 “Settlement Payment(s)”** means the payments from the Net Settlement Fund to be made to Settlement Class Members with Approved Claims according to the plan of allocation attached as Exhibit E (the “Plan of Allocation”).

**1.36 “Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator which shall allow for the electronic submission of Claim Forms and shall provide access to relevant case documents including the Notice, information about the submission of Claim Forms, and other relevant documents. The Settlement Website shall also advise the Settlement Class of the total value of the Settlement Fund and give Settlement Class Members the ability to estimate their Settlement Payment. The Settlement Website shall remain accessible at least thirty (30) days after the Effective Date.

**1.37 “Unknown Claims”** means claims that could have been raised in the Action and that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or her, might affect his or her agreement to release the Released Parties or the Released Claims or might affect his or her decision to agree, object or not to object to the Settlement or to seek exclusion from the Settlement Class. Upon the Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of § 1542 of the California Civil Code (if applicable), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory

of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph.

## **2. SETTLEMENT RELIEF.**

### **2.1 Payments to Settlement Class Members.**

(a) YSI shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$1,320,000.00), specified in Section 1.34 of this Agreement, within ten (10) days after entry of the Final Judgment.

(b) Settlement Class Members shall have until the Claims Deadline to submit a Claim Form. Each Settlement Class Member with an Approved Claim shall be entitled to a Settlement Payment from the Net Settlement Fund, calculated by the Settlement Administrator, by check or electronic payment.

(c) The Settlement Payment will be determined according to the Plan of Allocation attached as Exhibit E.

(d) If the total Approved Claims do not exhaust the Net Settlement Fund under the baseline marginal recovery percentages in the Plan of Allocation, the marginal recovery percentages will be increased pro rata so that the Settlement Payments will exhaust or leave only *de minimis* funds in the Net Settlement Fund.

(e) Within thirty (30) days after the Claims Deadline, the Settlement Administrator shall determine proration of amounts due to Settlement Class Members from the Settlement Fund.

(f) Within the later of sixty (60) days after the Claims Deadline or the date on which the Final Judgment becomes Final, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check or electronic payment, provided, however, that the default payment method will be check, unless a Settlement Class Member elects for an electronic payment.

(g) All cash payments issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within one hundred eighty (180) days after the date of issuance.

(h) In the event that an electronic deposit to a Settlement Class Member is unable to be processed, the Settlement Administrator shall attempt to contact the Settlement Class Member within thirty (30) days to correct the problem.

(i) To the extent that a check issued to a Settlement Class Member is not cashed within one hundred eighty (180) days after the date of issuance, or an electronic deposit is unable to be processed one hundred eighty (180) days after the first attempt, such funds shall remain in the Net Settlement Fund and shall be apportioned *pro rata* to participating Settlement Class Members in a second distribution, if practicable. To the extent that any second distribution is impracticable, or that any second-distribution funds remain in the Net Settlement Fund after an additional one hundred and eighty (180) calendar days, such funds shall, subject to Court approval, revert to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees pursuant to Supreme Court Rule 3.830(20).

(j) No amount paid by Defendants into the Escrow Account shall revert to Defendants unless the Settlement is terminated in accordance with Section 6.

**2.2 Prospective Measures.** In connection with this Settlement and within fifty-six (56) days after the Preliminary Approval Order, YSI shall take the following steps:

(a) YSI will maintain a webpage on the Platforms that (1) encourages responsible gameplay; (2) describes what video game behavior disorders are; (3) provides or links to resources relating to video game behavior disorders; and (4) includes a link to YSI's self-exclusion policy. YSI will maintain a policy, and will make commercially reasonable efforts to enforce that policy, such that customer service representatives will provide the same information to any player who contacts them and references or exhibits video game behavior disorders, and will face no adverse employment consequences for providing players with this information.

(b) YSI shall publish on its website a voluntary self-exclusion policy in which players may terminate their ability to purchase virtual coins on the Platforms or close their Platform accounts entirely. That policy shall provide that, when a player self-excludes by specifying the relevant Player ID, YSI shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those Player ID(s). YSI shall retain discretion as to the particular method by which players may self-exclude; for example, YSI may permit players to self-exclude by contacting YSI customer support, completing a form on YSI's website, or any other reasonably accessible means. YSI shall use commercially reasonable efforts to prevent any circumvention of the player's request, including by creation of a new account in either Platform, from any account-related identifiers that are commercially and technically feasible, using commercially reasonable efforts, to be associated with the excluded account. After a self-exclusion request is addressed in full by YSI, YSI shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested.

(c) YSI will maintain its recent changes to the game mechanics for the Platforms to ensure that players who run out of sufficient virtual coins are able to continue to play games on the Platforms without needing to purchase additional virtual coins or wait until

they would have otherwise received free additional virtual coins in the ordinary course.

Specifically, players who run out of coins will be able to continue to play at least one game within the Platform in which they have established an account.

### **3. RELEASES.**

**3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and final disposition of the Action and any and all Released Claims, as against all Released Parties.

**3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, finally, fully, and forever released, relinquished, and discharged all Released Claims against the Released Parties and each of them.

**3.3** Upon the Effective Date, the Released Parties, and each of them, further shall by operation of the Final Judgment have, fully, finally, and forever released, relinquished, and discharged all claims against Plaintiff, the Settlement Class, and Class Counsel that arise out of or relate in any way to the commencement, prosecution, settlement, or resolution of the Action, except for claims to enforce the terms of the Settlement.

**3.4** Plaintiffs and all Settlement Class Members stipulate that, with the changes delineated in Section 2.2 above, virtual coins in the Platforms are gameplay enhancements, not “something of value” as defined by Ky. Rev. Stat. Ann. § 528.010(11). As long as those prospective measures or their equivalent remain implemented in the Platforms as described, Settlement Class Members are estopped from contending that virtual coins on the Platforms are “something of value” under current Kentucky law, or that aspects of the Platforms are unlawful, deceptive or unfair and, for the avoidance of doubt, the release will include but will not be limited to (1) claims potentially subject to arbitration agreements; and (2) claims for amounts spent on in-game purchases within the Platforms that are attributable to payment processing fees.

### **4. NOTICE TO THE CLASS.**

**4.1** The Notice Plan shall consist of the following:

(a) *Settlement Class List.* To effectuate the Notice Plan, YSI shall provide Class Counsel and the Settlement Administrator with a “Class List” which shall include all Settlement Class Member contact information reasonably available to YSI, including names, email addresses, and mailing addresses, as well as Relevant Spending Amount, for each Settlement Class Member.

(b) The Settlement Administrator shall keep the Class List and all personal information obtained therefrom, including the identity, mailing, and email addresses of all persons, strictly confidential. To prepare the Class List for potential Settlement Payments, the Settlement Administrator shall (1) first, attach to each unique and identifiable person all of his/her associated Platform accounts (*e.g.*, by Player ID); (2) second, use Claim Forms to supplement, amend, verify, adjust, and audit the foregoing data, as necessary; (3) third, calculate the total Relevant Spending Amount for each unique and identifiable person; and (4) fourth, categorize each unique and identifiable person according to the appropriate Relevant Spending Amount levels identified in the Plan of Allocation. The Class List may not be used by the Settlement Administrator for any purpose other than advising specific individual Settlement Class Members of their rights, distributing Settlement Payments, and otherwise effectuating the terms of the Settlement Agreement or the duties arising thereunder, including the provision of Notice of the Settlement.

**4.2 Notice Plan.** The Notice Plan shall consist of the following:

(a) *Direct Notice.* No later than the Notice Date, the Settlement Administrator shall send Notice via email substantially in the form attached as Exhibit B, along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List. In the event transmission of email notice results in any “bounce-

backs,” the Settlement Administrator shall, where reasonable: (i) correct any issues that may have caused the “bounce-back” to occur and make a second attempt to re-send the email notice, and (ii) send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail.

The Settlement Administrator shall also, where practicable, send Notice substantially in the form attached as Exhibit C via First Class U.S. Mail to all Settlement Class Members with a Relevant Spending Amount greater than \$100.00, provided an associated U.S. Mail address is contained in the Class List.

**(b) *Update Addresses.*** Prior to mailing any Notice, the Settlement Administrator will update the U.S. mail addresses of persons on the Class List using the National Change of Address database and other available resources deemed suitable by the Settlement Administrator. The Settlement Administrator shall take all reasonable steps to obtain the correct address of any Settlement Class members for whom Notice is returned by the U.S. Postal Service as undeliverable and shall attempt re-mailings.

**(c) *Reminder Notice.*** Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via email substantially in the form attached as Exhibit B (with minor, non-material modifications to indicate that it is a reminder email rather than an initial notice), along with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid email address is available in the Class List.

**(d) *Settlement Website.*** Within seven (7) days from entry of the Preliminary Approval Order, Notice shall be provided on a website at [www.pulszplatformssettlement.com](http://www.pulszplatformssettlement.com), which shall be obtained, administered and maintained by the Settlement Administrator and shall include the ability to file Claim Forms on-line, provided that such Claim Forms, if signed electronically, will be binding for purposes of applicable law and contain a statement to that



effect. The Notice provided on the Settlement Website shall be substantially in the form of Exhibit D hereto. The Settlement Website will also advise the Settlement Class of the total value of the Settlement Fund and provide Settlement Class Members the ability to approximate their Settlement Payments.

(e) *Digital Publication Notice.* The Settlement Administrator will supplement the direct notice program with a digital publication notice program that will deliver more than one million (1,000,000) impressions to likely Settlement Class Members. The digital publication notice campaign will be targeted, to the extent reasonably possible, to the Commonwealth of Kentucky, will run for at least one month, and will contain active hyperlinks to the Settlement Website. The final digital notice advertisements, and the overall digital publication notice program to be used, shall be subject to the final approval of YSI, which approval shall not be unreasonably withheld.

(f) *Contact from Class Counsel.* Class Counsel, in their capacity as counsel to Settlement Class Members, may from time to time contact Settlement Class Members to provide information about the Settlement Agreement and to answer any questions Settlement Class Members may have about the Settlement Agreement.

**4.3** The Notice shall advise the Settlement Class of their rights, including the right to be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms. The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted in support of said objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice, the Person making the objection files notice of an intention to do so and at the same time (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing, and (b) sends copies of such papers by mail, hand, or overnight delivery

service to Class Counsel and Defendant's Counsel. A Class Member represented by counsel *must* timely file any objection through the Court's electronic filing system.

**4.4** Any Settlement Class Member who intends to object to this Agreement must present on a timely basis the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name and address; (2) any Player ID(s); (3) an explanation of the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with the Platforms; (4) all grounds for the objection, stated with specificity, including all citations to legal authority and evidence supporting the objection; (5) all documents or writings that the Settlement Class Member desires the Court to consider; (6) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (7) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who must file an appearance with the Court in accordance with the Local Rules). All written objections must be filed with, or otherwise received by the Court, and emailed or delivered to Class Counsel and Defendant's Counsel, no later than the Objection/Exclusion Deadline. Any Settlement Class Member who fails to timely file or submit a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement or appear at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Settlement by appeal or other means and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

**4.5** If a Settlement Class Member or any of the Objecting Attorneys has objected to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for dismissal of the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption and amount of payment received.

**4.6** A Class Member may request to be excluded from the Settlement Class by sending a timely written request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the Settlement Class must timely send a written request for exclusion, physically signed by the individual seeking exclusion, to the Settlement Administrator providing his/her name and address, any Player ID(s) and any email address(es) associated with the Platforms, the name and number of the case, “*David Whiting v. Yellow Social Interactive Ltd.*, No. 2023-CI-00358 (Cir. Ct. Henderson Cnty.)” and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this Settlement. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by each Person requesting exclusion. So-called “mass” or “class” opt-outs shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the date specified in the Notice.

4.7 The Final Approval Hearing shall be no earlier than ninety (90) days after the Notice described in Paragraph 4.2(a) is provided.

4.8 Any Settlement Class Member who does not, in accordance with the terms and conditions of this Agreement, seek exclusion from the Settlement Class or timely file a valid Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement, but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning the Released Claims.

## 5. SETTLEMENT ADMINISTRATION.

5.1 The Settlement Administrator shall, under the supervision of the Court, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall maintain all such records as are required by applicable law in accordance with its normal business practices and such records will be made available to Class Counsel and Defendants' Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendants' Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a post-distribution accounting of all amounts from the Settlement Fund paid to Settlement Class Members, the number and value of checks not cashed, the number and value of

electronic payments unprocessed, and the amount distributed to any *cy pres* recipient. Without limiting the foregoing, the Settlement Administrator shall:

(a) Receive requests to be excluded from the Settlement Class and promptly provide Class Counsel and Defendant's Counsel copies thereof. If the Settlement Administrator receives any exclusion forms after the deadline for the submission of such forms, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(b) Provide Class Counsel and Defendant's Counsel with drafts of all administration related documents, including but not limited to follow-up class notices or communications with Settlement Class Members, telephone scripts, website postings or language or other communications with the Settlement Class, at least five (5) business days before the Settlement Administrator is required to or intends to publish or use such communications, unless Class Counsel and Defendant's Counsel agree to waive this requirement in writing on a document-by-document basis;

(c) Provide weekly reports to Class Counsel and Defendant's Counsel regarding the number of Claim Forms received, the amount of the Settlement Payments associated with those Claim Forms, and the categorization and description of Claims Form rejected, in whole or in part, by the Settlement Administrator; and

(d) Make available for inspection by Class Counsel or Defendant's Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

**5.2** The Claims Administrator shall distribute the Settlement Payments according to the provisions enumerated in Section 2.1.

**5.3** The Claims Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud, including by cross-referencing Approved Claims with the Class List. The Settlement

Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on the Claim Form or the terms of this Agreement, or (b) provide full and complete information as requested on the Claim Form. In the event a person submits a timely Claim Form by the Claims Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall give such person reasonable opportunity to provide any requested missing information, which information must be received by the Settlement Administrator no later than twenty-eight (28) calendar days after the Claims Deadline. In the event the Settlement Administrator receives such information more than twenty-eight (28) calendar days after the Claims Deadline, then any such claim shall be denied. The Settlement Administrator may contact any person who has submitted a Claim Form to obtain additional information necessary to verify the Claim Form.

**5.4** Class Counsel and Defendant's Counsel shall both have the right to challenge the Settlement Administrator's acceptance or rejection of any particular Claim Form or the amount proposed to be paid on account of any particular Settlement Class Member's claim. The Settlement Administrator shall follow any joint decisions of Class Counsel and Defendants' Counsel as to the validity or amount of any disputed claim. Where Class Counsel and Defendants' Counsel disagree, the Settlement Administrator will finally resolve the dispute and the claim will be treated in the manner designated by the Settlement Administrator.

**5.5** In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

**5.6** All taxes and tax expenses shall be paid out of the Settlement Fund, and shall be timely paid by the Settlement Administrator pursuant to this Agreement and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set

forth therein) shall be consistent with this Agreement and in all events shall reflect that all taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Released Parties shall have no responsibility or liability for the acts or omissions of the Settlement Administrator or its agents with respect to the payment of taxes or tax expenses.

## **6. TERMINATION OF SETTLEMENT.**

**6.1** Each Party additionally shall have the right, but not the obligation, to terminate the Settlement Agreement if 5% or more of the members of the Settlement Class exclude themselves from the Settlement. Notification of intent to terminate the Settlement Agreement must be provided with ten (10) calendar days after the *earlier* of: (1) the date the Parties agree in good faith that they have received a final tabulation from the Settlement Administrator of the objections and requests for exclusion timely received by the Objection/Exclusion Deadline, or (2) the date the Parties receive sufficient evidence from the Settlement Administrator to establish beyond a reasonable doubt that the threshold for a Section 6.1 Termination Notice has been or will be met. For example, if the Settlement Administrator – after the Objection/Exclusion Deadline – notifies the Parties that there were no objections and just a single opt-out, that evidence would be sufficient to establish beyond a reasonable doubt that no threshold for a Section 6.1 Termination Notice has been or will be met. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*.

**6.2** Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representative on behalf of the Settlement Class, shall have the right to terminate this Agreement by providing written notice of the election to do so (“Termination Notice”) to all other Parties hereto within twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final

approval of this Agreement in any material respect; (iii) the Court's refusal to enter the Final Judgment in this Action in any material respect; (iv) the date upon which the Final Judgment is modified or reversed in any material respect by the Kentucky Court of Appeals, Kentucky Supreme Court or any federal court.

**6.3** In the event of termination pursuant to Section 6, Class Counsel shall cause the prompt return of the Settlement Fund in full to YSI, including any interest accrued while in the Escrow Account, minus one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination, and Class Counsel shall be responsible for the other one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination.

**6.4 Confirmatory Discovery.** YSI has represented that in-Platform virtual coin purchases from Kentucky-based players who spent \$5.00 or more within 24 hours on www.Pulsz.com from October 2, 2020 to November 3, 2022 and on www.Pulszbingo.com from July 20, 2022 to February 9, 2023 are less than or equal to \$5,272,369.02.00. Simultaneous with the execution of this Agreement, YSI has provided a declaration, from a person with sufficient knowledge, of YSI's best estimate attesting to the amount of in-Platform virtual coin purchases from Kentucky-based players who spent \$5.00 or more within 24 hours on www.Pulsz.com from October 2, 2020 to November 3, 2022 and on www.Pulszbingo.com from July 20, 2022 to February 9, 2023. In the event that the declaration shows that amount exceeds \$5,272,369.02.00 by more than two percent (2%), the Parties further agree that they shall execute an amended settlement agreement that adjusts the amount of the Settlement Fund proportionally to the increase in amount to account for this error.

## **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**



7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for Preliminary Approval of the settlement set forth in this Agreement; preliminary certification of the Settlement Class for settlement purposes only; preliminary appointment of Class Counsel to represent the class; preliminary appointment of David Whiting as the Class Representative of the Settlement Class; and entry of a Preliminary Approval Order, which order shall set a Final Approval Hearing date and approve the form and contents of the Notice and Claim Forms for dissemination substantially in the form of Exhibits A, B, C, and D hereto. The Preliminary Approval Order shall also authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) so long as they are consistent in all material respects with the terms of the Settlement Agreement and do not limit or impair the rights of the Settlement Class or materially expand the obligations of YSI.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing where the Court will review comments and/or objections regarding the Settlement, consider its fairness, reasonableness and adequacy, consider the application for any Fee Award and incentive awards to the Class Representative, and consider whether the Court shall issue a Final Judgment approving this Agreement and dismissing the Action with prejudice.

7.3 After Notice is given, the Parties shall request and seek to obtain from the Court a Final Judgment, which will:

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all exhibits thereto;

(b) approve the Settlement Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and Releasing Parties with respect to the Released Claims;

(c) find that the Notice implemented pursuant to the Agreement (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object to or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meets all applicable requirements of the Kentucky Rules of Civil Procedure, the Due Process Clause of the United States and Kentucky Constitutions, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represent the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and Settlement Class Claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the Release set forth above, make the Release effective as of the date of the Effective Date, and forever discharge the Released Parties as set forth herein;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class 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;

(h) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose; and

(i) incorporate any other provisions as necessary or appropriate to effectuate the terms and conditions of the Settlement Agreement.

7.4 The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

**8. CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; INCENTIVE AWARD.**

8.1 Pursuant to Ky. R. Civ. P. 23.08, YSI agrees that Class Counsel shall be entitled to an award of reasonable attorneys' fees and costs out of the Settlement Fund in an amount determined by the Court as the Fee Award. Settlement Class Counsel agrees, with no consideration from YSI, to limit their request for attorneys' fees and unreimbursed costs to one-third of the Settlement Fund (i.e., \$440,000.00). Payment of any Fee Award shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members.

8.2 The Fee Award shall be payable by the Settlement Administrator within fifteen (15) days after entry of the Court's Final Judgment, subject to Class Counsel executing the

Undertaking Regarding Attorneys' Fees and Costs (the "Undertaking") attached hereto as Exhibit F, and providing all payment routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be made from the Settlement Fund by wire transfer pursuant to instructions provided by Bursor & Fisher, P.A., and completion of necessary forms, including but not limited to W-9 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered void as a result of an appeal(s) or otherwise does not become Final, then Class Counsel shall return such funds to YSI. Additionally, should any parties to the Undertaking dissolve, merge, declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Class Members, those parties shall execute a new undertaking guaranteeing repayment of funds within fourteen (14) days of such an occurrence.

**8.3** Class Counsel intends to file a motion for Court approval of an incentive award to the Class Representative, to be paid from the Settlement Fund, in addition to any funds the Class Representative stands to otherwise receive from the Settlement. With no consideration having been given or received for this limitation, David Whiting will seek no more than \$5,000 as an incentive award. Should the Court award less than this amount, the difference in the amount sought and the amount ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund for distribution to eligible Settlement Class Members. Such award shall be paid from the Settlement Fund (in the form of a check to the Class Representative that is sent care of Class Counsel), within thirty (30) business days after entry of the Final Judgment if there have been no objections to the Settlement Agreement, and, if there have been such objections, within thirty (30) business days after the Effective Date

**9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION.**

**9.1** The Effective Date of this Settlement Agreement shall not occur unless and until each of the following events occurs and shall be the date upon which the last (in time) of the following events occurs:

- (a) The Parties and their counsel have executed this Agreement;
- (b) The Court has entered the Preliminary Approval Order;
- (c) The Court has entered an order finally approving the Agreement,

following Notice to the Settlement Class and a Final Approval Hearing, as provided in the Kentucky Rules of Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this Agreement in all material respects;

- (d) YSI has funded the Settlement Fund; and
- (e) The Final Judgment has become Final, as defined above.

**9.2** If some or all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, the parties agree that the settlement is null and void and Whiting shall dismiss any suit filed and the parties will proceed with arbitration, which shall be held in abeyance pending entry of Final Judgment., unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement or a modified agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to all of the Settling Parties. Notwithstanding anything herein, the Parties agree that if the Court fails to approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive award set forth in Section 8 above shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

**9.3** If this Agreement is terminated or fails to become effective for the reasons set forth above, and unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement, the Parties shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Agreement had never been entered into. Within five (5) business days after written notification of termination as provided in this Agreement is sent to the other Parties, the Settlement Fund (including accrued interest thereon), less one-half (50%) of any amounts reasonably incurred by the Settlement Administrator until the date of termination (including costs and any taxes and tax expenses paid, due or owing), shall be refunded by the Settlement Administrator to YSI, based upon written instructions provided by Defendant's Counsel. In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, Class Counsel shall, within thirty (30) days repay to YSI, based upon written instructions provided by Defendant's Counsel, the full amount of the Fee Award paid to Class Counsel from the Settlement Fund, including any accrued interest. In the event the Fee Award awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, Class Counsel shall within thirty (30) days repay to YSI, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to Class Counsel and/or Class Representative from the Settlement Fund, in the amount vacated or modified, including any accrued interest.

## **10. CONFIDENTIALITY AND PUBLIC STATEMENTS**

**10.1** Except as otherwise agreed by Class Counsel and Defendant's Counsel in writing and/or as required by legal disclosure obligations, all terms of this Agreement will remain confidential and subject to Rule 408 of the Kentucky Rules of Evidence until presented to the Court along with Plaintiff's motion for preliminary approval.

## **11. MISCELLANEOUS PROVISIONS.**

**11.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement, to secure final approval, and to defend the Final Judgment through any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Settlement Agreement, entry of the Preliminary Approval Order, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

**11.2** The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff, the Settlement Class and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by YSI, or each or any of them, in bad faith or without a reasonable basis.

**11.3** The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and fully understand the Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

**11.4** Whether or not the Effective Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained herein or any term, provision or definition therein, nor any act or communication performed or document executed in the course of negotiating, implementing or seeking approval pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received in any civil, criminal or administrative proceeding in any court, administrative agency, arbitral proceeding or other tribunal against the Released Parties, or each or any of them, as an admission, concession, waiver, or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the definition or scope of any term or provision, the reasonableness of the settlement amount or the Fee Award, the right to demand that any claim proceed to arbitration or of any alleged wrongdoing, liability, negligence, or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered or received against any Released Party, as an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing or statutory meaning as against any Released Parties, or supporting the certification of a litigation class, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to



this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is approved by the Court, any Party or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff, the Settlement Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff, the Settlement Class, the Releasing Parties, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

(f) The Parties acknowledge and agree that any Party may request that the Court appoint a Settlement Special Master. Each Party explicitly reserves the right to oppose any such request. Any fees earned or costs incurred by any such Settlement Special Master shall be paid exclusively from the Settlement Fund.

**11.5** The Parties acknowledge that (a) any certification of the Settlement Class as set forth in this Agreement, including certification of the Settlement Class for settlement purposes in the context of Preliminary Approval, shall not be deemed a concession that certification of a

litigation class is appropriate, nor that the Settlement Class definition would be appropriate for a litigation class, nor would YSI be precluded from challenging class certification in further proceedings in the Action or in any other action if the Settlement Agreement is not finalized or finally approved; (b) if the Settlement Agreement is not finally approved by the Court for any reason whatsoever, then any certification of the Settlement Class will be void, the Parties and the Action shall be restored to the status quo ante, and no doctrine of waiver, estoppel or preclusion will be asserted in any litigated certification proceedings in the Action or in any other action; and (c) no agreements made by or entered into by YSI in connection with the Settlement may be used by Plaintiff, any person in the Settlement Class, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in the Action or any other judicial proceeding.

**11.6.** No person or entity shall have any claim against the Class Representative, Class Counsel, the Settlement Administrator or any other agent designated by Class Counsel, or the Released Parties and/or their counsel, arising from distributions made substantially in accordance with this Agreement. The Parties and their respective counsel, and all other Released Parties shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the determination, administration, calculation, or payment of any claim or nonperformance of the Settlement Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith. The Parties acknowledge and agree that no opinion concerning the tax consequences of the proposed Settlement to Settlement Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences

may vary depending on the particular circumstances of each individual Settlement Class Member.

**11.7.** All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

**11.8** The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

**11.9** The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

**11.10** All of the Exhibits to this Agreement are material and integral parts thereof and are fully incorporated herein by this reference.

**11.11** This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

**11.12** Except as otherwise provided herein, each Party shall bear its own costs and attorneys' fees incurred in any way related to the Action.

**11.13** Plaintiff represents and warrants that he has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that he is fully entitled to release the same.

**11.14** Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**11.15** This Agreement may be executed in one or more counterparts. Signature by digital means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

**11.16** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and the Released Parties.

**11.17** The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

**11.18** This Settlement Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**11.19** This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arm's-length negotiations among the Parties. Because all Parties have contributed

substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

**11.20** Where this Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: For Plaintiff: Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor, New York, NY 10019. For Defendant: William M. Gantz, Duane Morris LLP, 100 High Street, Suite 2400, Boston, MA 02110.

**11.21** All time periods and dates described in this Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provision of this Agreement.

**11.22** YSI shall be given an opportunity to review and provide comments to Plaintiff's preliminary approval and final approval briefs, and Plaintiff shall consider in good faith all such comments.

**[SIGNATURES BEGIN ON FOLLOWING PAGE]**

**IT IS SO AGREED TO BY THE PARTIES:**

Dated: Jul 3, 2023

**DAVID WHITING**

By:   
David whiting (Jul 3, 2023 13:45 CDT)

David Whiting, individually and as representative of the Class

Dated: \_\_\_\_\_

**YELLOW SOCIAL INTERACTIVE LTD.**

By: \_\_\_\_\_

Name:

Title:

**IT IS SO STIPULATED BY COUNSEL:**

Dated: July 3, 2023

**BURSOR & FISHER, P.A.**

By: 

Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com

BURSOR & FISHER, P.A.  
1330 Avenue of the Americas, 32nd Floor  
New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representative and the Settlement Class*

Dated: \_\_\_\_\_

**DUANE MORRIS LLP**

By: \_\_\_\_\_

William M. Gantz  
bgantz@duanemorris.com  
DUANE MORRIS LLP  
100 High Street, Suite 2400  
Boston, MA 02110  
Tel: (857) 488-4234

*Attorneys for Defendant Yellow Social Interactive Ltd.*

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EXH : 000048 of 000078

**IT IS SO AGREED TO BY THE PARTIES:**

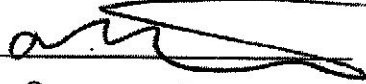
Dated: \_\_\_\_\_

**DAVID WHITING**

By: \_\_\_\_\_  
David Whiting, individually and as representative  
of the Class

Dated: June 30, 2023

**YELLOW SOCIAL INTERACTIVE LTD.**

By:   
Name: **PAUL FOSTER**  
Title: **DIRECTOR**

**IT IS SO STIPULATED BY COUNSEL:**

Dated: \_\_\_\_\_

**BURSOR & FISHER, P.A.**

By: \_\_\_\_\_  
Philip L. Fraietta  
pfraietta@bursor.com  
Alec M. Leslie  
aleslie@bursor.com  
BURSOR & FISHER, P.A.  
1330 Avenue of the Americas, 32nd Floor  
New York, New York 10019  
Tel: (646) 837-7150  
Fax: (212) 989-9163

*Attorneys for Class Representative and the  
Settlement Class*

Dated: July 3, 2023

**DUANE MORRIS LLP**

By:   
William M. Gantz  
bgantz@duanemorris.com  
DUANE MORRIS LLP  
100 High Street, Suite 2400  
Boston, MA 02110  
Tel: (857) 488-4234

*Attorneys for Defendant Yellow Social Interactive  
Ltd.*

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EXH : 000049 of 000078

**EXHIBIT A**



**YSI PLATFORMS SETTLEMENT CLAIM FORM**

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY [**CLAIMS DEADLINE**]. THE CLAIM FORM MUST BE SIGNED AND MEET ALL CONDITIONS OF THE SETTLEMENT AGREEMENT.

The Settlement Administrator will review your Claim Form. If accepted, you will receive a share of the Settlement Fund. This process takes time, please be patient. If you have any questions, or would like to estimate your share of the Settlement Fund, visit: [claims website](#).

**Instructions:** Fill out each section of this form and sign where indicated.

<u>First Name</u>		<u>Last Name</u>	
<u>Street Address</u>			
<u>City</u>	<u>State</u>	<u>ZIP Code</u>	
<u>Email Address</u>			<u>Phone Number</u>
<u>www.Pulsz.com and/or www.Pulszbingo.com Player ID(s) (if known)</u>			
<u>All email addresses associated with www.Pulsz.com and/or www.Pulszbingo.com accounts.</u>			

**Settlement Class Member Affirmation:** By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the Player ID(s) and the email address(es) listed above are yours.

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**Select Payment Method:** Select **ONE** box for how you would like to receive payment and provide the requested information.

Check	Venmo®	PayPal®
<b>Mailing Address:</b>	<b>Email Address:</b>	<b>Email Address:</b>

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EXH : 000051 of 000078

**EXHIBIT B**

From: [Notice@classactionadmin.com](mailto:Notice@classactionadmin.com)  
To: JonQClassMember@domain.com  
Re: Legal Notice of Class Action Settlement

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**  
*Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358  
**(Commonwealth of Kentucky, Henderson County Circuit Court)**

**If you played games on [www.Pulsz.com](http://www.Pulsz.com) or [www.Pulszbingo.com](http://www.Pulszbingo.com) you may be part of a class action settlement**

*A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.*

This notice is to inform you of the settlement of a class action lawsuit against Yellow Social Interactive Ltd. (“YSI”), alleging claims based on the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”), while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [[website](#)].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked **no later than [[claims deadline](#)]**. You can submit the claim form online at [www.URL](#), or by clicking [[here](#)]. You may also request a paper claim form and mail it to [[address](#)].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [[objection/exclusion deadline](#)]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [[objection/exclusion deadline](#)]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [[website](#)]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition,

your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [redacted] .m. on [date] in [TBD]. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [website], contact the settlement administrator at 1- [redacted] - [redacted] or YSI Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

**EXHIBIT C**

COURT AUTHORIZED NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT

YSI Platforms Settlement  
Settlement Administrator  
P.O. Box 0000  
City, ST 00000-0000

**If you played on  
www.Pulsz.com, and/or  
www.Pulszbingo.com,  
you may be part of a class  
action settlement.**



Postal Service: Please do not mark barcode

XXX—«ClaimID» «MailRec»

«First1» «Last1»

«C/O»

«Addr1» «Addr2»

«City», «St» «Zip» «Country»

By Order of the Court Dated: [date]

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A settlement has been reached in a class action lawsuit against Yellow Social Interactive Ltd., (“YSI”), alleging claims under Kentucky state law based on the sale of virtual coins on www.Pulsz.com and www.Pulszbingo.com. YSI denies all claims and that it violated the law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.

**Am I a Class Member?** Our records indicate you may be a Settlement Class Member. Settlement Class Members are persons who spent \$5.00 or more within a 24-hour period on www.Pulsz.com from October 2, 2020, to November 3, 2022, and/or on www.Pulszbingo.com from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”) , while located in the Commonwealth of Kentucky.

**What Can I Get?** If approved by the Court, YSI will establish a Settlement Fund of \$1,320,000 to pay all valid claims submitted by the Settlement Class, together with notice and administration expenses as well as any attorneys’ fees, costs, and incentive award to the Class Representative awarded by the Court. If you are entitled to relief, you may submit a claim to receive a share of the Settlement Fund. Your share will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. You can find more information, and estimate your share of the Settlement Fund, at [website].

**How Do I Get a Payment?** To receive a payment, you must submit a timely and complete Claim Form by mail or online, submitted or postmarked no later than [claims deadline]. You can submit the claim form online at [www.URL], or by clicking [here.] You may also request a paper claim form and mail it to [address].

**What are My Other Options?** You may exclude yourself from the Class by sending a letter to the settlement administrator no later than [objection/exclusion deadline]. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the YSI over the legal issues in the lawsuit. You and/or your lawyer have the right to appear before the Court and/or object to the proposed settlement. Your written objection must be filed no later than [objection/exclusion deadline]. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at [website]. If you file a claim or do nothing, and the Court approves the Settlement, you will be bound by all of the Court’s orders and judgments. In addition, your claims relating to the allegations in this case against YSI and any other Released Parties will be released.

**Who Represents Me?** The Court has appointed Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. to represent the class. These attorneys are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense. Plaintiff David Whiting is a Settlement Class Member and the Court appointed him as “Class Representative.”

**When Will the Court Consider the Proposed Settlement?** The Court will hold the Final Approval Hearing at [date] .m. on [date] in [TBD]. At that hearing, the Court will: hear any objections concerning the fairness of the settlement; determine the fairness of the settlement; decide whether to approve Class Counsel’s request for attorneys’ fees and costs; and decide whether to award the Class Representative \$5,000 from the Settlement Fund for his services in helping to bring and settle this case. Class Counsel will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. Class Counsel will seek no more than one-third of the Settlement Fund in attorneys’ fees, costs, and expenses, but the Court may award less than this amount.

**How Do I Get More Information?** For more information, including a more detailed Notice, Claim Form, a copy of the Settlement Agreement and other documents, go to [website], contact the settlement administrator at [phone number] or YSI Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

YSI Platforms Settlement Administrator  
c/o [Settlement Administrator]  
PO Box 0000  
City, ST 00000-0000

XXX

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**EXHIBIT D**



**HENDERSON COUNTY CIRCUIT COURT**

*Whiting v. Yellow Social Interactive, Ltd., Case No. 2023-CI-00358*

**If you played games on [www.Pulsz.com](http://www.Pulsz.com) or [www.Pulszbingo.com](http://www.Pulszbingo.com) you may be part of a class action settlement.**

***A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.***

- A Settlement has been reached in a class action lawsuit against Yellow Social Interactive Ltd. (“YSI”), alleging claims based on the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law, but has agreed to the settlement to avoid the uncertainties and expenses associated with continuing the case.
- You are a Settlement Class Member if you spent \$5.00 or more within a 24-hour period on [www.Pulsz.com](http://www.Pulsz.com) from October 2, 2020, to November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023 (collectively, the “Platforms”), while located in the Commonwealth of Kentucky.
- Those who file timely and properly completed claims will be eligible to receive a share of the Settlement Fund. Your share will be depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing on the Platforms, with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims.
- Read this notice carefully. Your legal rights are affected whether you act, or don’t act.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM</b>	This is the only way to receive a payment.
<b>EXCLUDE YOURSELF</b>	You will receive no benefits, but you will retain any rights you currently have to sue YSI about the claims in this case.
<b>OBJECT</b>	Write to the Court explaining why you don’t like the Settlement.
<b>GO TO THE HEARING</b>	Ask to speak in Court about your opinion of the Settlement.
<b>DO NOTHING</b>	You won’t get a share of the Settlement benefits and will give up your rights to sue YSI about the claims in this case.

These rights and options—**and the deadlines to exercise them**—are explained in this Notice.

**BASIC INFORMATION**

**1. Why was this Notice issued?**

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all of your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Karen L. Wilson of the Henderson County Circuit Court, Commonwealth of Kentucky, is overseeing this case. The case is called *Whiting v. Yellow Social Interactive, Ltd.*, Case No. 2023-CI-00358. The person who sued is called the Plaintiff. The Defendant is Yellow Social Interactive Ltd.

## **2. What is a class action?**

In a class action, one or more people called class representatives (in this case, David Whiting) sue on behalf of a group or a “class” of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the Class.

## **3. What is this lawsuit about?**

The lawsuit claims that Defendant violated Kentucky’s gambling laws through the sale of virtual coins on [www.Pulsz.com](http://www.Pulsz.com) and [www.Pulszbingo.com](http://www.Pulszbingo.com). YSI denies all claims and that it violated any law.

## **4. Why is there a Settlement?**

The Court has not decided whether the Plaintiff or YSI should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation sooner rather than, if at all, after the completion of a trial.

More information about the Settlement and the lawsuit are available in the “Important Documents” section of the settlement website or by visiting the office of the Henderson County Circuit Court Clerk, 5 N. Main Street, Henderson, KY 42420, between 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

## **WHO’S INCLUDED IN THE SETTLEMENT?**

### **5. How do I know if I am in the Settlement Class?**

The Court decided that everyone who fits the following description is a member of the **Settlement Class**:

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](http://www.Pulsz.com) from October 2, 2020, to

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

November 3, 2022, and/or on [www.Pulszbingo.com](http://www.Pulszbingo.com) from July 20, 2022, to February 9, 2023.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

**Monetary Relief:** If approved by the Court, YSI will establish a Settlement Fund totaling \$1,320,000. Settlement Class Member payments, as well as the cost to administer the Settlement, the cost to inform people about the Settlement, any attorneys' fees and costs awarded by the Court, and any incentive award to the Class Representative approved by the Court will also come out of this fund (*see* Question 13).

**Prospective Relief:** YSI has also agreed to take or maintain measures designed to address video game behavior disorders, including providing self-service resources to players, providing for voluntary self-exclusion, and implementing in-game mechanics to ensure that players who run out of sufficient virtual coins will be able to continue to play the games without waiting an unreasonable amount of time.

A detailed description of the settlement benefits can be found in the [Settlement Agreement](#). [\[insert hyperlink\]](#)

### 7. How much will my payment be?

If you are member of the Settlement Class you may submit a Claim Form to receive a portion of the Settlement Fund. The exact amount of your payment can't be determined at this time, but you can get an estimate by visiting the settlement website. The amount of your payment will depend on, among other things, (1) the total dollar amount of in-game purchases you made while playing [on the Platforms](#), with those who spent more money receiving a higher percentage back, and (2) how many Settlement Class Members submit claims. If you would like more information about how Settlement Payments are determined, visit [\[website\]](#).

### 8. When will I get my payment?

You should receive a check or electronic payment from the Settlement Administrator within 90 days after the Settlement has been finally approved and/or any appeals process is complete. The hearing to consider the final approval of the Settlement is scheduled for [\[Fairness Hearing Date\]](#). If you elect to receive your payment via check, please keep in mind that checks will expire and become void 180 days after they are issued. If appropriate, funds remaining from the initial round of uncashed checks, or electronic payments that cannot be processed, may be used for a second distribution to Settlement Class Members and/or may be donated to the Civil Rule 23 Account maintained by the Kentucky IOLTA Fund Board of Trustees.

[QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT \[WEBSITE\]](#)

## HOW TO GET BENEFITS

### 9. How do I get a payment?

If you are a Class Member and you want to get a payment, you must complete and submit a Claim Form by **[Claims Deadline]**. Claim Forms can be found and submitted online or you may have received a Claim Form in the mail (and which you can then submit by mail). To submit a Claim Form on-line or to request a paper copy, go to **[WEBSITE]** or call toll free, **1-800-000-0000**.

We encourage you to submit your claim electronically. Not only is it easy and secure, but it is completely free and takes only minutes.

## REMAINING IN THE SETTLEMENT

### 10. What am I giving up if I stay in the Class?

If the Settlement becomes final, you will give up your right to sue YSI and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against YSI are described in the Settlement Agreement. You will be “releasing” YSI and certain of its affiliates, employees and representatives as described in Section 1.27 of the Settlement Agreement. Unless you exclude yourself (*see* Question 14), you are “releasing” the claims, regardless of whether you submit a claim or not. The Settlement Agreement is available through the “court documents” link on the website.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the lawyers listed in Question 12 for free or you can, of course, talk to your own lawyer if you have questions about what this means.

### 11. What happens if I do nothing at all?

If you do nothing, you won’t get any benefits from this Settlement. But, unless you exclude yourself, you won’t be able to start a lawsuit or be part of any other lawsuit against YSI for the claims being resolved by this Settlement.

## THE LAWYERS REPRESENTING YOU

### 12. Do I have a lawyer in the case?

The Court has appointed two lawyers at the firm Bursor & Fisher, P.A. to be the attorneys representing the Settlement Class. Those lawyers – Philip L. Fraietta and Alec M. Leslie – are called “Class Counsel.” They are experienced in handling similar

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

class action cases. More information about these lawyers, their law firm, and their experience is available at [www.bursor.com](http://www.bursor.com). They believe, after conducting an extensive investigation, that the Settlement Agreement is fair, reasonable, and in the best interests of the Settlement Class. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

### 13. How will the lawyers be paid?

Class Counsel attorneys' fees, costs, and expenses will be paid from the Settlement Fund in an amount to be determined and awarded by the Court. The fee petition will seek no more than one-third of the Settlement Fund in attorneys' fees, costs, and expenses. The Court may award less than this amount.

Subject to approval by the Court, the Class Representative may be paid an Incentive Award from the Settlement Fund for helping to bring and settle the case. The Class Representative will ask for \$5,000 as an incentive award.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### 14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must mail or otherwise deliver a letter (or request for exclusion) stating that you want to be excluded from the “*Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358 settlement.” Your letter or request for exclusion must also include your name, all Player ID(s), your address, and any email address(es) associated with your [www.Pulsz.com](http://www.Pulsz.com) and/or [www.Pulszbingo.com](http://www.Pulszbingo.com) account, your signature, the name and number of this case, and a statement that you wish to be excluded. You must mail or deliver your exclusion request no later than **[objection/exclusion deadline]** to:

YSI Games Settlement  
0000 Street  
City, ST 00000

### 15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue YSI for the claims being resolved by this Settlement.

### 16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you should not submit a Claim Form to ask for benefits because you won't receive any.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

## OBJECTING TO THE SETTLEMENT

### 17. How do I object to the Settlement?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must file with the Court a letter or brief stating that you object to the Settlement in *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358 and identify all your reasons for your objections (including citations and supporting evidence) and attach any materials you rely on for your objections. Your letter or brief must also include your name, all Player ID(s), your address, the basis upon which the objector claims to be a Settlement Class Member, including any email address(es) associated with your [www.Pulsz.com](http://www.Pulsz.com) and/or [www.Pulszbingo.com](http://www.Pulszbingo.com) account, the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with your objection, and your signature. If you, or an attorney assisting you with your objection, have ever objected to any class action settlement where you or the objecting attorney has asked for or received payment in exchange for dismissal of the objection (or any related appeal) without modification to the settlement, you must include a statement in your objection identifying each such case by full case caption. You must also mail or deliver a copy of your letter or brief to Class Counsel and Defendant's Counsel listed below.

Class Counsel will file with the Court and post on this website its request for attorneys' fees, costs, and expenses by **[two weeks prior to objection deadline]**.

If you want to appear and speak at the Final Approval Hearing to object to the Settlement, with or without a lawyer (explained below in answer to Question Number 21), you must say so in your letter or brief. File the objection with the Court and mail a copy to these two different places postmarked no later than **[objection deadline]**.

Court	Class Counsel	Defendant's Counsel
The Honorable Karen L. Wilson Commonwealth of Kentucky Henderson Circuit Court 5 N Main Street Henderson, KY 42420	Philip L. Fraietta Alec M. Leslie Bursor & Fisher PA 1330 Avenue of the Americas, 32nd Floor New York, NY 10019	William M. Gantz Duane Morris LLP 100 High Street, Suite 2400 Boston, MA 02110

### 18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

Class is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FINAL APPROVAL HEARING

### 19. When and where will the Court decide whether to approve the Settlement?

The Court will hold the Final Approval Hearing at [time] on **Month 00, 2023** in [TBD]. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for an incentive award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check [website] or call **1-800-000-0000**. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

### 20. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or comment, you don't have to come to Court to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also pay another lawyer to attend, but it's not required.

### 21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include in your letter or brief objecting to the settlement a statement saying that it is your "Notice of Intent to Appear in *Whiting v. Yellow Social Interactive Ltd.*, Case No. 2023-CI-00358." It must include your name, address, telephone number and signature as well as the name and address of your lawyer, if one is appearing for you. Your objection and notice of intent to appear must be filed with the Court and postmarked no later than [objection deadline], and be sent to the addresses listed in Question 17.

## GETTING MORE INFORMATION

### 22. Where do I get more information?

This Notice summarizes the Settlement. More details are in the Settlement Agreement. You can

**QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]**

get a copy of the Settlement Agreement at [website]. You may also write with questions to YSI Platforms Settlement, P.O. Box 0000, City, ST 00000. You can call the Settlement Administrator at 1-800-000-0000 or Class Counsel at 1-646-837-7150, if you have any questions. Before doing so, however, please read this full Notice carefully. You may also find additional information elsewhere on the case website.

QUESTIONS? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]



**EXHIBIT E**

**PLAN OF ALLOCATION**

Each Settlement Payment will be comprised of (1) a Base Payment Amount, (2) *plus* a Supplemental Payment Amount, (3) *minus* the Settlement Class Member’s share of any Fee Award, incentive awards to the Class Representative, and Settlement Administration Expenses.

**1. Base Payment Amounts.**

Base Payment Amounts will be calculated by applying an escalating marginal recovery formula to the Settlement Class Member’s Relevant Spending Amount. No Settlement Class Member will receive more than his or her Relevant Spending Amount.

Settlement Class Members who submit a valid claim will be subject to an escalating marginal recovery formula based on the percentages described in Figure 1 below.

**Figure 1**

Spend (\$)	Marginal Rate (%)
5.00-1,000	10
1,000.01-10,000	17.5
10,000.01-100,000	30
100,000.01+	60

By way of example, an individual with a Relevant Spending Amount of \$40,000 will be entitled to a Base Payment Amount of \$8,273.12, calculated as: ((10% of their first \$1,000 in spending [\$100]) + (17.5% of their next \$9,000 in spending ([\$1,575])) + (30% of their next \$30,000 in spending [\$9,000])) \* (1 – (75% \* 30%)). Settlement Class Members will have the ability to opt to receive an electronic payment via Venmo or PayPal, provided, however, that the default payment method will be check.

**2. Proration.**

In the event the sum of all Base Payment Amounts for Settlement Class members who submit a valid claim exceed the total amounts available for distribution in the Settlement Fund,

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each individual's Base Payment Amount will be reduced proportionately. Proration of amounts due to Settlement Class Members from the Settlement Fund will be determined 30 days after the deadline for Settlement Class Members to file claims. *Pro rata* payments to Settlement Class Members shall be made within 60 days of the deadline for Settlement Class Members to file claims.

**3. Supplemental Payment Amounts.**

In the event there are available amounts remaining in the Settlement Fund after calculation of all Base Payment Amounts for Settlement Class members who have submitted a valid claim, Supplemental Payment Amounts will be calculated on a *pro rata* basis. Upon the close of the claims period, the sum of all unallocated amounts in the Settlement Fund (minus any amounts necessary to cover costs and fees) will be considered the Supplemental Payment Fund. The Supplemental Payment Fund will be apportioned *pro rata* to each Settlement Class Member who submitted a valid claim, based on the participating Settlement Class Member's Base Payment Amount. All payment amounts are subject to the deductions described in Section (3).

Regardless of Settlement Class Member participation rates, the sum of Base Payment Amounts and Supplemental Payment Amounts will equal the amounts available for distribution from the Settlement Fund.

**3. Fee Award, Incentive Awards, and Settlement Administration Expenses.**

Settlement Payment Amounts will be a Settlement Class Member's Base Payment Amount plus any Supplemental Payment Amount, minus that Settlement Class Member's share of any Fee Award, Incentive Awards and Settlement Administration Expenses, anticipated not to exceed one-third (cumulatively) of the Settlement Fund.

# EXHIBIT F

**COMMONWEALTH OF KENTUCKY  
HENDERSON COUNTY CIRCUIT COURT**

DAVID WHITING, individually and on behalf of all  
others similarly situated,

Plaintiff,

Case No. 2023-CI-00358

v.

YELLOW SOCIAL INTERACTIVE LTD.,

Defendant.

**STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS**

Plaintiff David Whiting and Defendant Yellow Social Interactive Ltd. (“Defendant”) (collectively, “the Parties”), by and through and including their undersigned counsel, stipulate and agree as follows:

WHEREAS, Class Counsel’s law firm Bursor & Fisher P.A. (the “Firm”) desires to give an undertaking (the “Undertaking”) for repayment of their award of attorney fees and costs, approved by the Court, and

WHEREAS, the Parties agree that this Undertaking is in the interests of all Parties and in service of judicial economy and efficiency.

NOW, THEREFORE, the undersigned, as agent for the Firm, hereby submits the Firm to the jurisdiction of the Court for the purpose of enforcing the provisions of this Undertaking.

Capitalized terms used herein without definition have the meanings given to them in the Settlement Agreement.

By receiving any payments pursuant to the Settlement Agreement, the Firm and its shareholders, members, and/or partners submit to the jurisdiction of the Henderson County Circuit Court, Commonwealth of Kentucky, for the enforcement of and any and all disputes

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relating to or arising out of the reimbursement obligation set forth herein and the Settlement Agreement.

In the event that the Final Judgment or any part of it is vacated, overturned, reversed, or rendered void as a result of an appeal, or the Settlement Agreement is voided, rescinded, or otherwise terminated for any other reason, the Firm shall, within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the full amount of the attorneys' fees and costs paid to the Firm from the Settlement Fund, including any accrued interest.

In the event the attorney fees and costs awarded by the Court or any part of them are vacated, modified, reversed, or rendered void as a result of an appeal, the Firm shall within thirty (30) days repay to Defendant, based upon written instructions provided by Defendant's Counsel, the attorneys' fees and costs paid to the Firm and/or Representative Plaintiff from the Settlement Fund in the amount vacated or modified, including any accrued interest.

This Undertaking and all obligations set forth herein shall expire upon finality of all direct appeals of the Final Settlement Order and Judgment.

In the event the Firm fails to repay to Defendant any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendant, and notice to the Firm, summarily issue orders, including but not limited to judgments and attachment orders against the Firm, and may make appropriate findings for sanctions for contempt of court.

The undersigned stipulates, warrants, and represents that he has both actual and apparent authority to enter into this stipulation, agreement, and undertaking on behalf of the Firm.

This Undertaking may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.


Signatures by facsimile shall be as effective as original signatures.

The undersigned declare under penalty of perjury under the laws of the United States that they have read and understand the foregoing and that it is true and correct.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD:

DATED: July 3, 2023

BURSOR & FISHER, P.A.



By: Philip L. Fraietta on behalf of Bursor & Fisher, P.A.  
Attorneys for Plaintiff David Whiting

DATED: Jul 5, 2023

DUANE MORRIS LLP

William Gantz

William Gantz (Jul 5, 2023 15:44 CDT)

By: William M. Gantz  
Attorneys for Defendant Yellow Social Interactive Ltd.

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**EXHIBIT B**



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.

**PRELIMINARY ORDER APPROVING CLASS ACTION SETTLEMENT,  
CERTIFYING THE CLASS FOR SETTLEMENT PURPOSES, APPROVING NOTICE  
PLAN, APPOINTING CLASS REPRESENTATIVE, AND APPOINTING CLASS  
COUNSEL**

WHEREAS, the above-captioned matter came before this Court upon the Parties' Joint Motion for Preliminary Approval of Class Action Settlement. Based upon the memoranda, exhibits, and all the files and proceedings herein, the Court finds as follows:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Settlement Agreement.
2. The settlement terms set forth in the Settlement Agreement appear to be fair, adequate and reasonable to the Settlement Class, and the Court preliminarily approves the terms of the Settlement Agreement, including:
  - a. The creation of a Settlement Fund of \$1,320,000.00 should the Court ultimately grant final approval;
  - b. An Incentive Award, which shall not exceed \$5,000 for Plaintiff David Whiting;
  - c. Attorneys' fees, costs, and expenses to Class Counsel, which shall not exceed one-third of the Settlement Fund; and

d. Reasonable settlement administration expenses to be drawn from the Settlement Fund.

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

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.<sup>1</sup>

4. The Court preliminarily appoints Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel, and Plaintiff David Whiting as Settlement Class Representative.

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

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

<sup>1</sup> Excluded from the Settlement Class (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their 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.

Event	Proposed Deadline
Settlement Administrator to disseminate class notice pursuant to Settlement Agreement § 4.2 (a)	No later than twenty-eight (28) days after entry of Preliminary Approval Order
Settlement Administrator to send Reminder Notice via email	Both thirty (30) days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline
Settlement Administrator to provide Notice on the settlement website	No later than seven (7) days after entry of Preliminary Approval

7. The Court appoints Artificial Intelligence Class Solutions as the Settlement Administrator.

8. The Court adopts the following additional dates and deadlines:

- a. The deadline for Settlement Class Members to submit claims shall be January 8, 2024, which is no fewer than fifty-six (56) days following the Final Approval Hearing.
- b. Any Settlement Class Member wishing to be excluded from the Settlement Class shall have until October 26, 2023 to do so, which is no more than 45 days after the dissemination of the class notice and claims forms but no sooner than 14 days after Class Counsel submits papers supporting a Fee Award.
- c. Any Settlement Class Member wishing to object to the terms of the Settlement Agreement shall have until October 26, 2023 to do so, which is no more than 45 days after the dissemination of the class notice and claims forms but no sooner than 14 days after Class Counsel submits papers supporting a Fee Award.

- d. Class Counsel shall file a memorandum of points and authorities in support of their motion for approval of attorneys' fees, costs, and expenses no later than October 12, 2023 (*suggested date 14 days prior to the Objection/Exclusion Deadline*).
- e. Settlement Class Counsel shall file a memorandum of points and authorities in support of the final approval of the Settlement Agreement no later than October 30, 2023, fourteen (14) prior to the Final Approval Hearing.
- f. A final settlement approval fairness hearing on the question of whether the proposed Settlement Agreement, attorneys' fees to Class Counsel, and the Settlement Class Representative's Incentive Award should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class is scheduled for November 13, 2023 at 1:00 p.m. local time.

SO ORDERED this 14th day of August, 2023.

**HON. KAREN L. WILSON**  
Henderson County Chief Circuit Judge

ENTERED 8-15-2023  
C. GREGORY SUTTON, CLERK  
BY Wm Baker D.C.

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TD : 000004 of 000004  
EXH : 000078 of 000078



12-22-2022

COMMONWEALTH OF KENTUCKY  
HENDERSON CIRCUIT COURT  
CIVIL ACTION NO. 22-CI-00553

AMY JO ARMSTEAD,  
on behalf of herself and all others similarly situated,

PLAINTIFF,

v.

VGW MALTA LTD, and  
VGW LUCKYLAND INC.,

DEFENDANTS

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

Plaintiff Amy Jo Armstead ("Plaintiff") and Defendants VGW Malta LTD and VTW Luckyland Inc. ("Defendants") 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 October 3, 2022, 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 January 9, 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

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petition 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.

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2. There are questions of law and fact common to the Settlement Class. The Settlement Class asserts claims against Defendants in connection with their purchase and use of virtual currency in Defendant's Chumba Casino and Luckyland Slots 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 her purchase and use of virtual currency in the Games, which she 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 her purchase and use of virtual currency in the Games, which she 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 \$3,525,000.00 to Class Counsel for attorneys' fees and costs, and Class Counsel has applied for an award of fees and costs of \$3,525,000.00. 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 VGW), spent \$5.00 or more within a 24-hour period on Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022.<sup>1</sup>

4. **Class Representative.** Amy Jo Armstead is appointed Class Representative of the class finally certified herein.

<sup>1</sup> Excluded from the Settlement Class (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their 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 Defendants or any other related party, nor shall they be used against Defendants 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 \$3,525,000 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.*,

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 \$7,000.00 to Ms. Armstead to compensate her for her 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 Defendants. Because there is

Tendered

22-CI-00553 12/22/2022

Clyde Gregory Sutton, Henderson Circuit Clerk

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, Defendants, 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.

Tendered

22-CI-00553 12/22/2022

<sup>9</sup>Clyde Gregory Sutton, Henderson Circuit Clerk

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 9<sup>th</sup> day of January, 2023



**HON. KAREN L. WILSON**  
Henderson County Chief Circuit Judge

Prepared by:

/s/ Joseph H. Langerak

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*Counsel for Plaintiff and the Putative Class*

ENTERED 1-10-2023  
C. GREGORY SUTTON, CLERK  
BY [Signature] D.C.

Have seen:

/s/ Timothy J. Weatherholt, with permission

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*Counsel for Defendants*

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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

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.<sup>1</sup>

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

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<sup>1</sup> 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.*,

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 \_\_\_\_\_ day of \_\_\_\_\_, 2023

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**HON. KAREN L. WILSON**  
Henderson County Chief Circuit Judge

Prepared by:

By: /s/ Joseph H. Langerak

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Have seen:

/s/ Timothy J. Weatherholt, with permission

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