

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.

NOTICE-MOTION-ORDER
(Electronically Filed)

VGW MALTA LTD, and
VGW LUCKYLAND INC.,

DEFENDANTS.

Please take notice that on January 9, 2023, at 1:00 p.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 Amy Jo Armstead ("Plaintiff") and Defendants VGW Malta Ltd. and VGW Luckyland Ltd., (collectively "VGW" or "Defendants" 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")¹ 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 VGW), spent \$5.00 or more within a 24-hour period on Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022.²

¹ 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.

² Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) VGW, VGW's subsidiaries, parent companies, successors, predecessors, and any entity in which the VGW or its parents have a controlling interest and their current or former officers, directors, agents, attorneys,

- (3) designating Plaintiff Amy Jo Armstead 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.

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,

By: /s/ Joseph H. Langerak

Joseph H. Langerak IV, Bar ID # 91227
Stoll Keenon Ogden, PLLC
One Main Street, Suite 201
Evansville, IN 47708
Ph.: (812) 425-1591
Joe.langerak@skofirm.com

Christopher E. Schaefer, Bar ID # 93255
Kirby A. Black, Bar ID # 98996
Stoll Keenon Ogden, PLLC
500 West Jefferson Street, Suite 2000
Louisville, KY 40202
Ph: (502) 333-6000
christopher.schaefer@skofirm.com
kirby.black@skofirm.com

Philip L. Fraietta, PHV ID # PH29214658
Alec M. Leslie PHV ID # PH29340454
Bursor & Fisher, P.A.
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
pfraietta@bursor.com
aleslie@bursor.com

Counsel for Plaintiff and the Putative Class

/s/ Timothy J. Weatherholt, with permission

Timothy J. Weatherholt, Bar ID # 90349
Fisher & Phillips LLP
220 West Main Street, Suite 1700
Louisville, KY 40202
tweatherholt@fisherphillips.com
O: (502) 561-3982
C: (859) 322-9191

Behnam Dayanim, Esq., PHV ID # PH29296594
Orrick, Herrington & Sutcliffe LLP
Columbia Center
1152 15th Street, N.W.
Washington, DC 20005-1706
Phone: (202) 339-8613
bdayanim@orrick.com

Counsel for Defendants

**COMMONWEALTH OF KENTUCKY
HENDERSON COUNTY CIRCUIT COURT**

AMY JO ARMSTEAD, individually and on behalf of
all others similarly situated,

Plaintiff,

Case No. 2022-CI-00553

v.

VGW MALTA LTD. and VGW LUCKYLAND,
INC.,

Defendant.

CLASS ACTION SETTLEMENT AGREEMENT

This Agreement (“Agreement” or “Settlement Agreement”) is entered into by and among (i) Plaintiff, Amy Jo Armstead (“Plaintiff”); (ii) the Settlement Class (as defined herein); and (iii) Defendants, VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, “VGW”). The Settlement Class and Plaintiff are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiff and VGW 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 May 16, 2022, Plaintiff, through her counsel, sent a demand letter to VGW alleging that its Games (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 VGW’s Games.

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

C. Those discussions eventually led to an agreement between the Parties to engage in mediation, which the Parties agreed would take place before the Honorable Layn Phillips (Ret.), a neutral affiliated with Phillips ADR Enterprises (“Phillips ADR”).

D. 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.

E. During this period and in connection with the mediation proceedings, VGW 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.

F. On August 31, 2022, the Parties participated in a full-day, in-person mediation before Judge Phillips at the New York City offices of Paul Hastings LLP. At the conclusion of the mediation, Judge Phillips 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.

G. On September 7, 2022, Plaintiff filed a putative class action complaint against VGW in the Henderson County Circuit Court, Case No. 2022-CI-00553.

H. Plaintiff and Class Counsel have conducted a comprehensive examination of the law and facts regarding the claims against VGW, and the potential defenses available. Plaintiff

believes that the claims asserted in the Action against VGW have merit and that Plaintiff would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiff and Class Counsel recognize that VGW 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 VGW 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.

I. At all times, VGW has denied and continues to deny any wrongdoing and liability and denies all material allegations in the Action. Specifically, VGW denies that the Games constitute or constituted illegal gambling, and it opposes certification of a litigation class. VGW 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, VGW has concluded that continuing to defend the Action would be burdensome and expensive. VGW 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 VGW, 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 VGW, 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 case captioned *Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc.*, Case No. 2022-CI-00553, 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, Amy Jo Armstead.

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 “Defendants” means VGW Malta Ltd. and VGW Luckyland, Inc.

1.9 “Defendants’ Counsel” means Paul Hastings 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 VGW 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 “Games” means Chumba Casino and Luckyland Slots.

1.17 “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.

1.18 “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.

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

1.20 “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.

1.21 “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.

1.22 “Plaintiffs” means Amy Jo Armstead and the Settlement Class Members.

1.23 “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.

1.24 “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.

1.25 “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 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 VGW 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 VGW and/or the Released Parties.

1.26 "Released Parties" means VGW Malta Ltd. and VGW Luckyland, Inc., as well as any and all of each of their parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, and any of their respective present and former officers, directors, owners, shareholders, insurers, agents, affiliates, representatives, employees, and assigns.

1.27 "Releasing Parties" means Plaintiffs, those Settlement Class Members who do not timely opt out of the Settlement Class, and all of their and 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.

1.28 “Relevant Spending Amount” means the total amount of money a Settlement Class Member spent within the Games from March 17, 2017, through the date of Preliminary Approval, in amounts of \$5.00 or more within a 24-hour period, while located in the Commonwealth of Kentucky.

1.29 “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 Defendants’ Counsel, related to any work required by the Court to confirm that Notice is consistent with Due Process and Rule 23.

1.30 “Settlement Administrator” means JND Legal Administration, or such other reputable administration company that has been selected jointly by the Parties and approved by the Court to perform the duties set forth in this Agreement, 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.

1.31 “Settlement Class” means 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. Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) VGW, VGW’s subsidiaries, parent companies, successors, predecessors, and any entity in which the VGW 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.

1.32 “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.

1.33 “Settlement Fund” means the non-reversionary cash fund that shall be established by VGW in the total amount of eleven million seven hundred and fifty thousand dollars (\$11,750,000.00 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 VGW's monetary obligations under this Agreement. The payment of the amount of the Settlement Fund by VGW fully discharges VGW 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 VGW's total monetary obligation with respect to this Agreement exceed eleven million seven hundred and fifty thousand dollars (\$11,750,000.00 USD).

1.34 “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”).

1.35 “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.

1.36 “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.

1.37 “User ID” means the unique identifier assigned by VGW to a person who has an account or log-in with either Game.

2. SETTLEMENT RELIEF.

2.1 Payments to Settlement Class Members.

(a) VGW shall pay or cause to be paid into the Escrow Account the amount of the Settlement Fund (\$11,750,000.00), specified in Section 1.33 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, VGW shall take the following steps:

(a) VGW 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 VGW's self-exclusion policy. VGW 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) VGW shall publish on its website a voluntary self-exclusion policy in which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. That policy shall provide that, when a player self-excludes by specifying the relevant User ID, VGW shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those User ID(s). VGW shall

retain discretion as to the particular method by which players may self-exclude; for example, VGW may permit players to self-exclude by contacting VGW customer support, completing a form on VGW's website, or any other reasonably accessible means. VGW 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. After a self-exclusion request is addressed in full by VGW, VGW shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested.

(c) VGW will maintain its recent changes to the 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 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 Game suites.

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 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.

4. NOTICE TO THE CLASS.

4.1 The Notice Plan shall consist of the following:

(a) *Settlement Class List.* To effectuate the Notice Plan, VGW shall provide Class Counsel and the Settlement Administrator with a “Class List” which shall include all Settlement Class Member contact information reasonably available to VGW, 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 Games accounts (*e.g.*, by User 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.vgwgamessettlement.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 ten million (10,000,000) 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 VGW, 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 Defendants' 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 User 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 Games; (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 Defendants’ 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 User ID(s) and any email address(es) associated with the Games, the name and number of the case, “*Amy Jo Armstead v. VGW Malta Ltd., et al.*, No. 2022-CI-00553 (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 Defendants' 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 Defendants' Counsel;

(b) Provide Class Counsel and Defendants' 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 Defendants' Counsel agree to waive this requirement in writing on a document-by-document basis;

(c) Provide weekly reports to Class Counsel and Defendants' 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 Defendants' Counsel the Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

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

5.3 The Settlement 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 Defendants' 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 3.5% 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, Defendants 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 VGW, 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.

6.4 Confirmatory Discovery. VGW has represented that in-Game Gold Coin Purchases from Kentucky-based players who spent \$5.00 or more within 24 hours from March 17, 2017, through March 17, 2022, are less than or equal to \$51,112,161.00. Simultaneous with

the execution of this Agreement, VGW has provided a declaration, from a person with sufficient knowledge, of VGW's best estimate attesting to the amount of in-Game Gold Coin Purchases from Kentucky-based players who spent \$5.00 or more within 24 hours from March 17, 2017, through March 17, 2022. In the event that the declaration shows that amount exceeds \$51,112,161.00 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 Amy Jo Armstead 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 VGW.

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, VGW 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. With no consideration given or received, Class Counsel will limit its petition for attorneys' fees, costs, and expenses to no more than thirty percent (30%) of the Settlement Fund (i.e., \$3,525,000.00). 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 VGW. 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, Amy Jo Armstead will seek no more than \$7,000 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) VGW 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, then this Settlement Agreement shall be canceled and terminated subject to Section 6 unless Class Counsel and Defendants' Counsel mutually agree in writing to proceed with this 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 the Court's failure 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 Defendants' 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 VGW, based upon written instructions provided by Defendants' 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 VGW, based upon written instructions provided by Defendants' 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 VGW, based upon written instructions provided by Defendants' 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 Defendants' 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 Defendants' 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 VGW, 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 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, 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 VGW 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 VGW 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 she has not assigned any claim or right or interest therein as against the Released Parties to any other Person or Party and that she 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., 888 Seventh Avenue, New York, NY 10019. For Defendant: Behnam Dayanim, Paul Hastings LLP, 2050 M Street NW, Washington, DC 20036.

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 VGW 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: Sep 12, 2022**AMY JO ARMSTEAD**

By: *Amy Jo Short Armstead*
Amy Jo Short Armstead (Sep 12, 2022 11:20 CDT)
Amy Jo Armstead, individually and as
representative of the Class

Dated: Sep 10, 2022**VGW MALTA LTD.**

By: *Laurence Escalante*
Laurence Escalante (Sep 10, 2022 11:29 GMT+8)

Name: Laurence Escalante
Title: Director

Dated: Sep 10, 2022**VGW LUCKYLAND INC.**

By: *Laurence Escalante*
Laurence Escalante (Sep 10, 2022 11:29 GMT+8)

Name: Laurence Escalante
Title: Director

IT IS SO STIPULATED BY COUNSEL:Dated: Sep 12, 2022**BURSOR & FISHER, P.A.**

By: *Philip L. Fraietta*
Philip L. Fraietta
pfraietta@bursor.com
Alec M. Leslie
aleslie@bursor.com
BURSOR & FISHER, P.A.
888 Seventh Avenue
New York, New York 10019
Tel: (646) 837-7150
Fax: (212) 989-9163

*Attorneys for Class Representative and the
Settlement Class*

Dated: Sep 11, 2022**PAUL HASTINGS LLP**

By: *Behnam Dayanim*
Behnam Dayanim (Sep 11, 2022 11:48 EDT)
Behnam Dayanim

bdayanim@paulhastings.com
PAUL HASTINGS LLP
250 M Street NW
Washington, DC 20036
Tel: (202) 551-1700
Fax: (202) 551-0468

*Attorneys for Defendants VGW Malta Ltd. and
VGW Luckyland, Inc.*

VGW GAMES 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>Chumba Casino and/or Luckyland Slots User ID(s) (if known)</u>			
<u>All email addresses associated with Chumba Casino and/or Luckyland Slots 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 User 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®
Mailing Address:	Email Address:	Email Address:

EXHIBIT B

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

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc., Case No. 2022-CI-00553
(Commonwealth of Kentucky, Henderson County Circuit Court)

If you played Chumba Casino or Luckyland Slots 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 VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, "VGW"), alleging claims based on the sale of virtual coins in Chumba Casino and Luckyland Slots. VGW 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 Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022, while located in the Commonwealth of Kentucky.

What Can I Get? If approved by the Court, VGW will establish a Settlement Fund of \$11,750,000 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 Chumba Casino and/or Luckyland Slots, 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 VGW 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 VGW 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 Amy Jo Armstead is a Settlement Class Member and the Court appointed her 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 \$7,000 from the Settlement Fund for her 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 30% 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 VGW Settlement Administrator, [address], or call Class Counsel at 1-646-837-7150.

COURT AUTHORIZED NOTICE OF CLASS
ACTION AND PROPOSED SETTLEMENT

VGW Games Settlement
Settlement Administrator
P.O. Box 0000
City, ST 00000-0000

**If you played Chumba
Casino, and/or
Luckyland Slots, 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 VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, "VGW"), alleging claims under Kentucky state law based on the sale of virtual coins in Chumba Casino and Luckyland Slots. VGW 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 Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022, while located in the Commonwealth of Kentucky.

What Can I Get? If approved by the Court, VGW will establish a Settlement Fund of \$11,750,000 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 Chumba Casino and/or Luckyland Slots, 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 VGW 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 VGW 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 Amy Jo Armstead is a Settlement Class Member and the Court appointed her as "Class Representative."

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at [\[time\]](#) [\[date\]](#) 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 \$7,000 from the Settlement Fund for her 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 30% 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- - - or VGW Settlement Administrator, [\[address\]](#), or call Class Counsel at 1-646-837-7150.

VGW Games Settlement Administrator
c/o [Settlement Administrator]
PO Box 0000
City, ST 00000-0000

XXX

EXHIBIT D

HENDERSON COUNTY CIRCUIT COURT*Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc.*, Case No. 2022-CI-00553**If you played Chumba Casino and/or Luckyland Slots 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 VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, “VGW”), alleging claims based on the sale of virtual coins in Chumba Casino and Luckyland Slots. VGW 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 Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022, 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 Chumba Casino and/or Luckyland Slots, 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.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM	This is the only way to receive a payment.
EXCLUDE YOURSELF	You will receive no benefits, but you will retain any rights you currently have to sue VGW about the claims in this case.
OBJECT	Write to the Court explaining why you don’t like the Settlement.
GO TO THE HEARING	Ask to speak in Court about your opinion of the Settlement.
DO NOTHING	You won’t get a share of the Settlement benefits and will give up your rights to sue VGW 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 [REDACTED], of the Henderson County Circuit Court, Commonwealth of Kentucky, is overseeing this case. The case is called *Armstead v. VGW Malta Ltd.*, Case No. XXXXXXXXX. The person who sued is called the Plaintiff. The Defendants are VGW Malta Ltd and VGW Luckyland, Inc.

2. What is a class action?

In a class action, one or more people called class representatives (in this case, Amy Jo Armstead) 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 in Chumba Casino and Luckyland Slots. VGW denies all claims and that it violated any law.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or VGW 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 “Court Documents” section of the settlement website, or by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.wawd.uscourts.gov>, 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 VGW), spent

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

\$5.00 or more within a 24-hour period on Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Monetary Relief: If approved by the Court, VGW will establish a Settlement Fund totaling \$11,750,000. 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: VGW 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 Chumba Casino and/or Luckyland Slots, 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 VGW and other Released Parties for the claims being resolved by this Settlement. The specific claims you are giving up against VGW are described in the Settlement Agreement. You will be “releasing” VGW and certain of its affiliates, employees and representatives as described in Section 1.28 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 VGW 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. 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 30% 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 \$7,000 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 "*Armstead v. VGW Malta Ltd.*, Case No. XXXXXX settlement." Your letter or request for exclusion must also include your name, all User ID(s), your address, and any email address(es) associated with your Chumba Casino or Luckyland Slots 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:

VGW 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 VGW 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 *Armstead v. VGW Malta Ltd.*, Case No. XXXXXXXXX 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 User 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 Chumba Casino or Luckyland Slots 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
INSERT	Philip L. Fraietta Alec M. Leslie Bursor & Fisher PA 888 Seventh Avenue New York, NY 10019	Behnam Dayanim Paul Hastings LLP 250 M Street NW Washington, DC 20036

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 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.

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

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 *Armstead v. VGW Malta Ltd.*, Case No. XXXXXXXX." 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 get a copy of the Settlement Agreement at [website]. You may also write with questions to VGW Games 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? CALL 1-800-000-0000 TOLL FREE, OR VISIT [WEBSITE]

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 Representatives, 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: $((10\% \text{ of their first } \$1,000 \text{ in spending } [\$100]) + (17.5\% \text{ of their next } \$9,000 \text{ in spending } [\$1,575]) + (30\% \text{ of their next } \$30,000 \text{ in spending } [\$9,000])) * (1 - (75\% * 30\%))$. 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,

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 30% (cumulatively) of the Settlement Fund.

EXHIBIT F

**COMMONWEALTH OF KENTUCKY
HENDERSON COUNTY CIRCUIT COURT**

AMY JO ARMSTEAD, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

VGW MALTA LTD. and VGW LUCKYLAND,
INC.,

Defendant.

Case No. 2022-CI-00553

STIPULATION REGARDING UNDERTAKING RE: ATTORNEYS' FEES AND COSTS

Plaintiff Amy Jo Armstead and Defendants VGW Malta Ltd. and VGW Luckyland, Inc. ("Defendants") (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

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 Defendants any of attorneys' fees and costs that are owed to it pursuant to this Undertaking, the Court shall, upon application of Defendants, 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: Sep 12, 2022

BURSOR & FISHER, P.A.



By: Philip L. Fraietta on behalf of Bursor & Fisher, P.A.
Attorneys for Plaintiff Amy Jo Armstead

DATED: Sep 11, 2022

PAUL HASTINGS LLP



Behnam Dayanim (Sep 11, 2022 11:48 EDT)

By: Behnam Dayanim
Attorneys for Defendants VGW Malta Ltd. and VGW
Luckyland, Inc.

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.

**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 Amy Jo Armstead ("Plaintiff") submits this Memorandum of Law in support of Plaintiff's and Defendants' VGW Malta Ltd. and VGW Luckyland Ltd., ("Defendants") (collectively with Plaintiff, the "Parties") joint motion for an order granting final approval of the proposed settlement of this class action.

On October 3, 2022, this Court entered a Preliminary Order Approving Class Action Settlement, Certifying the Class for Settlement Purposes, Appointing Class Representatives, and Appointing Class Counsel. 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 96.7% of the Settlement

Class. *See* Affidavit of Ryan Bahry ¶ 10 (“Bahry Affidavit” attached hereto as Exhibit 1.). Of the 9,821 unique settlement class members, zero have objected or asked to be excluded from the settlement. *See id.* ¶¶ 18-21. 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, in-person mediation session facilitated by the Honorable Layn R. Phillips (Ret.) of Phillips ADR (“Phillips ADR”) and his staff. 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 jurist; (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”).¹ A proposed order is attached hereto.

II. PROCEDURAL BACKGROUND AND SUMMARY OF SETTLEMENT NEGOTIATIONS

The complaint in this case was filed on September 7, 2022. But the case actually began months earlier, when, in March 2022, Plaintiff initiated dispute resolution proceedings pursuant to the Chumba Casino Terms & Conditions.

Plaintiff’s counsel was contacted by defense counsel soon thereafter. Plaintiff’s counsel 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 Washington settlements, the Parties discussed the possibility of an early mediation through which the Parties could share their respective views. The Parties agreed that the mediation would take place before Judge Phillips.

Judge Phillips, as previously noted, is a retired U.S. District Court Judge for the Western District of Oklahoma. Prior to his tenure on the bench, Judge Phillips served as United States Attorney in Oklahoma. Judge Phillips is a nationally known and widely respected mediator, and, of particular import here, he served as mediator in each of the above-mentioned Washington

¹ Filed on December 1, 2022.

settlements, ensuring that he and his team were well aware of the issues presented in these sorts of cases.

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 Philip L. Fraietta, ¶ 6 (“Fraietta Affidavit” attached hereto as Exhibit 2). During this period, Defendants 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 August 31, 2022, following a full-day mediation session, Judge Phillips made a mediator’s proposal to settle the case in principle, which both Parties accepted. *Id.* ¶ 6. Working within the guideposts of prior analogous settlements under Washington law, the Parties were able to negotiate and execute a term sheet memorializing their agreement (hereinafter, the “Settlement”) at the conclusion of the mediation. *Id.* ¶ 7. A full settlement agreement (hereinafter, the “Settlement Agreement”) consistent with that term sheet was executed by Plaintiff and Defendants on September 12, 2022. *Id.* ¶ 9. 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 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.

(Settlement Agreement at § 1.31.) Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) VGW, VGW's subsidiaries, parent companies, successors, predecessors, and any entity in which VGW 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. *Id.*

B. Monetary Relief

Subject to the Court's final approval of the Settlement Agreement, Defendants have agreed to establish a non-reversionary Settlement Fund in the total amount of eleven million seven hundred and fifty thousand dollars (\$11,750,000.00 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.* § 1.33. No portion of the Settlement Fund will revert to Defendants. *Id.*; *see also id.* § 2.1(j). In the event of any Settlement Class member checks 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, Defendants will be required to maintain resources relating to video game behavior disorders that are accessible within the Games. Specifically, VGW 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 VGW's self-exclusion policy. Settlement Agreement § 2.2 (a). VGW 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, Defendants shall publish on their websites a voluntary self-exclusion policy pursuant to which players may terminate their ability to purchase virtual coins in the Games or close their Game accounts entirely. When a player self-excludes by specifying the relevant User ID, Defendants shall use commercially reasonable efforts to implement the player's request with respect to all account(s) associated with those User ID(s). Defendants shall retain discretion as to the particular method by which players may self-exclude; for example, VGW may permit players to self-exclude by contacting Defendants' customer support, completing a form on Defendants' website, or any other reasonably accessible means. Defendants 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. After a self-exclusion request is addressed in full by Defendants, Defendants shall not remove these restrictions for the period identified in the self-exclusion policy at the time the self-exclusion is requested. *Id.* § 2.2(b).

Defendants shall maintain their 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. Specifically, players who

run out of coins will be able to continue to play at least one game within the Game suites. *Id.* § 2.2(c).

D. Release

In exchange for the relief described herein, all Settlement Class members will release Defendants, and any of their parents, subsidiaries, divisions, corporate affiliates, predecessors, successors, and any of their 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 VGW 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 VGW and/or the Released Parties. *Id.* §§ 1.26, 1.27, 3.1–3.3.

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.* § 1.33.

JND Legal Administration has served as Settlement Administrator. JND is a highly qualified settlement administrator that has administrated hundreds of settlements, including for several of the Washington Cases. Additionally, JND has served as settlement administrator for multiple settlements in Kentucky, in both state and federal court. *See, e.g., Purcell v. United Propane Gas, Inc.*, Case No. 14-CI-00729 (Ky. 2nd Jud. Cir., Div. II, McCracken Co.); *EEOC v. Walmart, Inc.*, Case No. 6:20-cv-00163-KKC (E.D. Ky.); *Commonwealth of Kentucky AG v. Daymar Learning, Inc.*, Case No 11-ci-1016 (Ky. Daviess Cir., Div. I); *Hicks v. State Farm Fire and Cas. Co.*, Case No. 14-cv-00053-HRW-MAS (E.D. Ky.); *Davis v. State Farm Ins.*, Case No. 19-cv-466 (W.D. Ky.). JND has sent class notices via email and/or U.S. Mail based on records

produced by Defendants. *See* Bahry Affidavit ¶¶ 4-10. JND has also established a settlement website and implemented a digital publication notice campaign targeting class members. *Id.* ¶¶ 11-15. 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. *Id.* Exs. A-B; 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 agreed to seek no more than \$7,000.00 as an incentive award, and Class Counsel agreed to limit its petition for attorneys' fees to no more than 30% of the Settlement Fund, inclusive of costs and expenses. *Id.* §§ 8.1, 8.3. On December 1, 2022, 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).² 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., 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.

² 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 *Bellarmino 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).

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* Fraietta Affidavit ¶¶ 4–6. This lengthy negotiation provided the Parties with sufficient information to evaluate the claims of the class. *Id.* ¶ 10. The Parties only reached settlement after engaging in those six months of evaluation, briefing, and negotiation and a full day mediation conducted by Judge Phillips at the end of August, which culminated in an accepted mediator’s proposal. *Id.* ¶¶ 4–8. 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, Defendants maintained that Plaintiff’s substantive and class allegations were wholly without merit. In short, the facts of the case, the legal issues involved and Defendants’ 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 this is the first case *ever* to challenge the legality of virtual casino games such as the Games in Kentucky. *See* Fraietta 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 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 Defendants and the majority of courts to consider this issue, leaving Plaintiff, Class Members and Class Counsel empty-handed. Fraietta Affidavit ¶ 14.

Even if Plaintiff had prevailed on the gambling issue, Defendants had numerous additional defenses available, any one of which could have been fatal to Plaintiff's claims. *See* Fraietta Affidavit ¶ 15. Specifically, Defendants' 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. *See* Fraietta Affidavit ¶ 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. *See Fraietta Affidavit* ¶ 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 six months. Defendants provided Class Counsel with fulsome transactional data for virtual coin purchases made by the Settlement Class. 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 Fraietta 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)).

Defendants have 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 an \$11.75 million non-reversionary, common fund settlement, a 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 Defendants’ Games, ranging from approximately 10% (at the low end) to 60% (at the high end). Furthermore, the Settlement requires Defendants to implement meaningful prospective relief, including providing addiction-related resources within their 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 she 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 Bahry Affidavit* ¶ 21. 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 Bahry Affidavit* ¶ 19; *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 Bahry Affidavit ¶ 24.

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

Defendants' 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.

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 JND Legal Administration, a well-respected class action settlement administrator.

Defendants provided the Settlement Administrator and proposed Class Counsel all Settlement Class Member contact information reasonably available to Defendants, including, among other information, the User ID, Relevant Spending Amount, mailing address, and e-mail address (where applicable) for a total of 11,183 rows of potential Settlement Class Members. *See* Bahry Affidavit ¶ 4. JND analyzed the data provided by Defendants to consolidate duplicate records within the spreadsheets and determined a total of 9,821 unique Settlement Class Members. *Id.* ¶ 5. Prior to noticing, JND 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 31, 2022, JND sent the customized, Court-approved e-mail notice (“E-mail Notice”) from an established case inbox (info@VGWGamesSettlement.com) to the 8,657 unique Settlement Class Members with a valid e-mail address (1,164 Settlement Class Members were excluded from the e-mail campaign as they did not have a valid e-mail address). Bahry Affidavit ¶ 6. A representative sample of the E-mail Notice is attached to the Bahry Affidavit as Exhibit A. JND next mailed the Court-approved postcard notice (“Postcard Notice”) via USPS first-class mail to 4,104 unique Settlement Class Members with a Lifetime Spending Amount greater than \$100.00 or for whom no e-mail address was available. *Id.* ¶ 8. On November 9, 2022, JND mailed an additional 104 Postcard Notices to Class Members with returned E-Mail Notices, where mailing addresses were available. *Id.* A representative sample of the Postcard Notice is attached to the Bahry Affidavit as Exhibit B.

As of the date of the Bahry Affidavit, JND tracked 549 Postcard Notices that were returned to JND as undeliverable. *Id.* ¶ 9. Of these 549 undeliverable Postcard Notices, 17 were re-mailed

to forwarding addresses provided by the USPS and JND conducted additional advanced address research through TransUnion and received updated address information for an additional 213 Class Members. *Id.* JND promptly re-mailed Postcard Notices to these 213 Class Members. *Id.* Overall, as of the date of the Bahry Affidavit, 9,497 Class Members were e-mailed a Notice or mailed a Postcard Notice that was not returned as undeliverable, representing 96.7% of the total Settlement Class. *Id.* ¶ 10.

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 Bahry 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 16-17 ("Prelim Approval Memo.").

Publication, Media, and Internet Notice: Notice was also provided via a media and Internet notice program, including banner ads on Internet sites targeted to the Settlement Class Members. JND caused a digital effort to launch with the leading digital network (Google Display Network "GDN"), and three popular social media platforms (Facebook, Instagram, and Twitter). Bahry Affidavit ¶ 11. The digital effort concluded on November 30, 2022, delivering 18,745,067 impressions to adults 18 years of age or older (Adults 18+) throughout Kentucky. *Id.* Focused targeting was also included. *Id.* A portion of the GDN effort was allocated towards users who have used apps similar to Luckyland Slots-family games, Luckyland Money Slots Party, Cash Luckyland Slots, Cash Hoard Luckyland Slots, and Chumba Lite-Fun Casino Slots; as well as

users who have an affinity for class actions. *Id.* Likewise, a portion of the Facebook and Instagram activity was allocated towards users with an interest in Chumba Casino (video game), Casino (gambling), Mobile gambling, Slot Machine, Online Gambling, Casino games, and Gambling; as well as users who have visited Facebook gaming. *Id.* A portion of the Twitter effort was allocated towards keywords such as casino games, Luckyland slots, Chumba casino, slots, online slots, online gaming, online gambling, and Facebook gaming; as well as towards users interests in gambling and follower look-a-likes to accounts including @luckylandslots, @chumbacasino, @goldfishslots, @casinoslotstips, @TWDCasinoslots, @GotSlotsCasino, @doubleucasino, and @popslotscasino. *Id.*

The digital activity was served across all devices (desktop, laptop, tablet, and mobile), with a heavy emphasis on mobile devices. *Id.* ¶ 12. 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.* Screenshots of the Digital Notices as they appeared on GDN, Facebook, Instagram, and Twitter are attached to the Bahry Affidavit as Exhibit C. *Id.*

Settlement Website: On October 7, 2022, JND established a Settlement Website (www.VGWGamesSettlement.com), which hosts copies of important case documents, including the Class Action Settlement Agreement, Long Form Class Notice, answers to frequently asked questions, and contact information for the Administrator. Bahry Affidavit ¶ 13. 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 December 1, 2022, 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 JND made promptly available on the Settlement Website that same day Bahry Affidavit ¶ 14.

As of the date of the Bahry Affidavit, the Settlement Website has tracked 37,247 unique users with over 180,542 page views. Bahry Affidavit ¶ 15. JND will continue to update and maintain the Settlement Website 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 Defendants 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 her attorneys as Class Counsel, approving the incentive awards for the Class Representatives,

approving reasonable fees and costs for Class Counsel, and dismissing the claims of Plaintiff and the members of the Settlement Class against Defendants with prejudice and without costs, other than what has been specifically provided for in the Settlement Agreement.

Respectfully submitted,

By: /s/ Joseph H. Langerak

STOLL KEENON OGDEN, PLLC

Joseph H. Langerak IV, Bar ID # 91227
One Main Street, Suite 201
Evansville, IN 47708
Ph.: (812) 425-1591
Joe.langerak@skofirm.com

and

Christopher E. Schaefer, Bar ID # 93255
Kirby A. Black, Bar ID # 98996
500 West Jefferson Street, Suite 2000
Louisville, KY 40202
Ph: (502) 333-6000
christopher.schaefer@skofirm.com
kirby.black@skofirm.com

BURSOR & FISHER, P.A.

Philip L. Fraietta, PHV ID # PH29214658
Alec M. Leslie PHV ID # PH29340454
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: pfraietta@bursor.com
aleslie@bursor.com

*Counsel for Plaintiff and the Settlement
Class*

EXHIBIT 1

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.

AFFIDAVIT OF RYAN BAHRY
REGARDING SETTLEMENT ADMINISTRATION

Affiant, RYAN BAHRY, being first duly sworn, hereby declare and state as follows:

1. I am an Assistant Director at JND Legal Administration (“JND”). JND is a legal administration services provider with its headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class actions.

2. JND is serving as the Settlement Administrator¹ in the above-captioned litigation (“Action”), as ordered by the Court in its Preliminary Order Approving Class Action Settlement, Certifying the Class for Settlement Purposes, Approving Notice Plan, Appointing Class Representative, and Appointing Class Counsel, dated October 3, 2022 (the “Order”).

3. This Declaration is based on my personal knowledge and information provided to me by experienced JND employees and, if called on to do so, I could and would testify competently thereto.

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

CLASS MEMBER DATA

4. On October 4, 2022, JND received a spreadsheet from Defendants with one (1) tab for each game application containing, among other information, the User ID, purchase amounts, mailing address, and e-mail address (where applicable) for a total of 11,183 rows of potential Settlement Class Members.

5. Prior to mailing notices, JND analyzed the raw data to consolidate duplicate records within the spreadsheets and determined a total of 9,821 unique Settlement Class Members. Prior to noticing, JND updated the Settlement Class Member contact information (where available) using data from the National Change of Address ("NCOA") database.² The Settlement Class Member data was promptly loaded into a secure database established for this Action.

E-MAIL NOTICE

6. Pursuant to the terms of the Settlement Agreement, on October 31, 2022, JND sent the customized, Court-approved e-mail notice ("E-mail Notice") from an established case inbox (info@VGWGamesSettlement.com) to the 8,657 unique Settlement Class Members with a valid e-mail address (1,164 Settlement Class Members were excluded from the e-mail campaign as they did not have a valid e-mail address). A representative sample of the E-mail Notice is attached hereto as **Exhibit A**.

7. As of the date of this Declaration, JND tracked 417 E-mail Notices that were returned to JND as undeliverable.

² 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

8. Pursuant to the terms of the Settlement Agreement, on October 31, 2022, JND mailed the Court-approved postcard notice ("Postcard Notice") via USPS first-class mail to 4,104 unique Settlement Class Members with a Lifetime Spending Amount greater than \$100.00 or for whom no e-mail address was available. On November 9, 2022, JND mailed an additional 104 Postcard Notices to Class Members with returned E-Mail Notices, where mailing addresses were available. A representative sample of the Postcard Notice is attached hereto as **Exhibit B**.

9. As of the date of this Declaration, JND tracked 549 Postcard Notices that were returned to JND as undeliverable. Of these 549 undeliverable Postcard Notices, 17 were re-mailed to forwarding addresses provided by the USPS and JND conducted additional advanced address research through TransUnion and received updated address information for an additional 213 Class Members. JND promptly re-mailed Postcard Notices to these 213 Class Members (of which four (4) returned as undeliverable).

10. As of the date of this Declaration, 9,497 Class Members were e-mailed a Notice or mailed a Postcard Notice that was not returned as undeliverable, representing 96.7% of the total Settlement Class.

DIGITAL AD CAMPAIGN

11. To supplement the direct notice effort, on October 31, 2022, JND caused a digital effort to launch with the leading digital network (Google Display Network "GDN"), and three popular social media platforms (Facebook, Instagram, and Twitter). The digital effort concluded on November 30, 2022, delivering 18,745,067 impressions to adults 18 years of age or older

(Adults 18+) throughout Kentucky.³ Focused targeting was also included. A portion of the GDN effort was allocated towards users who have used apps similar to Luckyland Slots - family games, Luckyland Money Slots Party, Cash Luckyland Slots, Cash Hoard Luckyland Slots, and Chumba Lite-Fun Casino Slots; as well as users who have an affinity for class actions. Likewise, a portion of the Facebook and Instagram activity was allocated towards users with an interest in Chumba Casino (video game), Casino (gambling), Mobile gambling, Slot Machine, Online Gambling, Casino games, and Gambling; as well as users who have visited Facebook gaming. A portion of the Twitter effort was allocated towards keywords such as casino games, Luckyland slots, Chumba casino, slots, online slots, online gaming, online gambling, and Facebook gaming; as well as towards users interests in gambling and follower look-a-likes to accounts including @luckylandslots, @chumbacasino, @goldfishslots, @casinoslotstips, @TWDCasinoslots, @GotSlotsCasino, @doubleucasino, and @popslotscasino.

12. The digital activity was served across all devices (desktop, laptop, tablet and mobile), with a heavy emphasis on mobile devices. 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. Screenshots of the Digital Notices as they appeared on GDN, Facebook, Instagram, and Twitter are attached as **Exhibit C**.

SETTLEMENT WEBSITE

13. On October 7, 2022, JND established a Settlement Website (www.VGWGamesSettlement.com), which hosts copies of important case documents, including the Class Action Settlement Agreement, Class Notice, answers to frequently asked questions, and

³ 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.

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.

14. On December 1, 2022, 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 JND made promptly available on the Settlement Website that same day.

15. As of the date of this Declaration, the Settlement Website has tracked 37,347 unique users with over 180,542 page views. JND will continue to update and maintain the Settlement Website throughout the administration process.

TOLL-FREE INFORMATION LINE

16. On October 7, 2022, JND established a case-specific toll-free Interactive Voice Response ("IVR") number, 1-844-633-0695, 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, seven (7) days a week.

17. As of the date of this Declaration, the toll-free number has received 221 incoming calls. JND will continue to maintain the toll-free number throughout the settlement administration process.

REQUESTS FOR EXCLUSION

18. The E-mail Notice and Postcard Notice informed recipients that any Class Member who wished to exclude themselves from the proposed Settlement ("opt-out") must do so by mailing an exclusion letter to the Settlement Administrator, postmarked on or before December 15, 2022.

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

OBJECTIONS

20. The E-mail Notice and Postcard Notice informed recipients that any Class Member who wished to object to the proposed Settlement could do so by filing a written objection with the Court, postmarked on or before December 15, 2022.

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

CLAIM FORMS RECEIVED

22. The E-mail Notice and Postcard Notice informed recipients that Settlement Class Members must file a Claim Form 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 JND, postmarked or submitted on or before March 6, 2023. A representative sample of the Claim Form is attached hereto as **Exhibit D**.

23. Pursuant to the Settlement, both thirty days prior to the Claims Deadline and seven (7) days prior to the Claims Deadline, JND will send 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.

24. As of the date of this Declaration, JND has received 825 Online Claims with Unique ID or Emails matched to the data produced by Defendants, and an additional 50 mailed claims. JND is in the process of receiving, reviewing, and validating additional submitted Claim Forms, and will continue to do so on an ongoing basis.

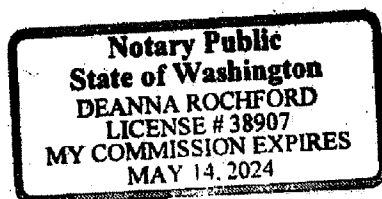
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Further, Affiant sayeth naught.

Ryan Bahry
Ryan Bahry

Subscribed and sworn before me by Ryan Bahry on this 16th day of December, 2022.

My Commission expires: May 14, 2024



Deanna Rochford
Notary Public, State of Washington

EXHIBIT A

ECCEB641-A479-4F80-8531-EF5D72CE2FD1 : 000103 of 000145

EXH : 000009 of 000029

From: Jennifer@VGWGamesSettlement.com
To: JonQClassMember@domain.com
Re: Legal Notice of Class Action Settlement

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc., Case No. 2022-CI-00553
(Commonwealth of Kentucky, Henderson County Circuit Court)

If you played Chumba Casino or Luckyland Slots 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 VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, "VGW"), alleging claims based on the sale of virtual coins in Chumba Casino and Luckyland Slots. VGW 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 Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022, while located in the Commonwealth of Kentucky.

What Can I Get? If approved by the Court, VGW will establish a Settlement Fund of \$11,750,000 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 Chumba Casino and/or Luckyland Slots, 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.VGWGamesSettlement.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 March 6, 2023**. You can submit the claim form online at www.VGWGamesSettlement.com. You may also request a paper claim form and mail it to VGW Games Settlement, c/o JND Legal Administration, P.O. Box 91350, Seattle, WA 98111.

What are My Other Options? You may exclude yourself from the Class by sending a letter to the settlement administrator no later than **December 15, 2022**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue VGW 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 **December 15, 2022**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available

at www.VGWGamesSettlement.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 VGW 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 Amy Jo Armstead is a Settlement Class Member and the Court appointed her as "Class Representative."

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at **1:00 p.m. CST on January 9, 2023** in Courtroom 300. 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 \$7,000 from the Settlement Fund for her 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 30% 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.VGWGamesSettlement.com, contact the settlement administrator at 1-844-633-0695 or VGW Games Settlement, c/o JND Legal Administration, P.O. Box 91350, Seattle, WA 98111, or call Class Counsel at 1-646-837-7150.

EXHIBIT B

ECCEB641-A479-4F80-8531-EF5D72CE2FD1 : 000106 of 000145

EXH : 000012 of 000029

COURT AUTHORIZED NOTICE OF CLASS
ACTION AND PROPOSED SETTLEMENT

**If you played Chumba
Casino, and/or Luckyland
Slots, you may be part of
a class action settlement.**

By Order of the Court Dated:
October 3, 2022

A settlement has been reached in a class action lawsuit against VGW Malta Ltd. and VGW Luckyland, Inc. (collectively, "VGW"), alleging claims under Kentucky state law based on the sale of virtual coins in Chumba Casino and Luckyland Slots. VGW 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.

VGW Games Settlement
c/o JND Legal Administration
P.O. Box 91350
Seattle, WA 98111



Unique ID: XXXXXXXX

Postal Service: Please do not mark barcode

NAME
ADDRESS
CITY, STATE, ZIP

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 Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022, while located in the Commonwealth of Kentucky.

What Can I Get? If approved by the Court, VGW will establish a Settlement Fund of \$11,750,000 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 Chumba Casino and/or Luckyland Slots, 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.VGWGamesSettlement.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 March 6, 2023**. You can submit the claim form online at www.VGWGamesSettlement.com. You may also request a paper claim form and mail it to VGW Games Settlement, c/o JND Legal Administration, P.O. Box 91350, Seattle, WA 98111.

What are My Other Options? You may exclude yourself from the Class by sending a letter to the settlement administrator no later than **December 15, 2022**. If you exclude yourself, you cannot get a settlement payment, but you keep any rights you may have to sue the VGW 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 **December 15, 2022**. Specific instructions about how to object to, or exclude yourself from, the Settlement are available at www.VGWGamesSettlement.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 VGW 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 Amy Jo Armstead is a Settlement Class Member and the Court appointed her as "Class Representative."

When Will the Court Consider the Proposed Settlement? The Court will hold the Final Approval Hearing at **1:00 p.m. CST on January 9, 2023** in Courtroom 300. 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 \$7,000 from the Settlement Fund for her 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 30% 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.VGWGamesSettlement.com, contact the settlement administrator at 1-844-633-0695 or VGW Games Settlement, c/o JND Legal Administration, P.O. Box 91350, Seattle, WA 98111, or call Class Counsel at 1-646-837-7150.

EXHIBIT C

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EXH : 000015 of 000029

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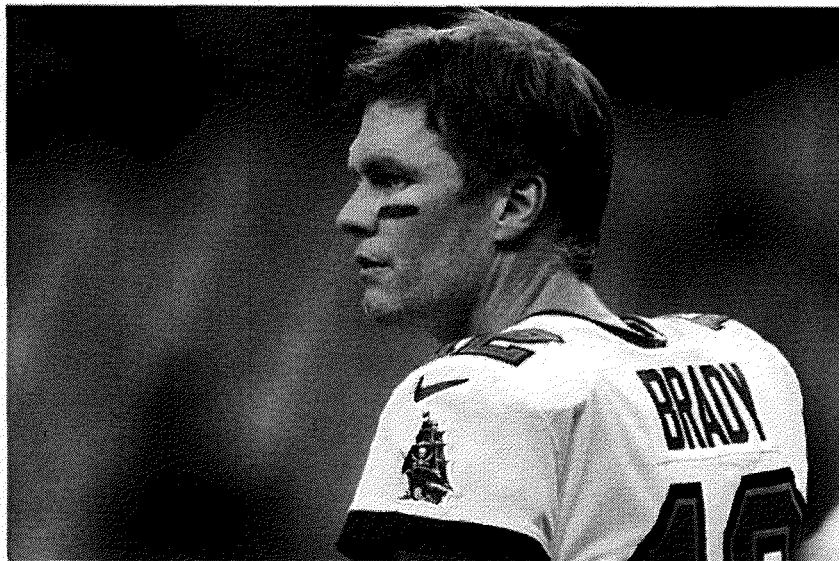


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LEGAL NOTICE

A Settlement has been reached in the case
Armistead v. VGW Malta Ltd. and VGW Luckyland, Inc.,
No. 2022-CI-00553

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You could get money from a Settlement

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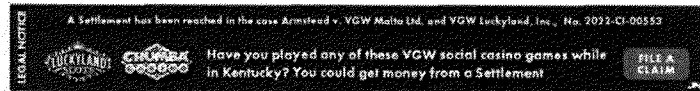
Have you
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VGW social
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while in
Kentucky?



You could get money
from a Settlement

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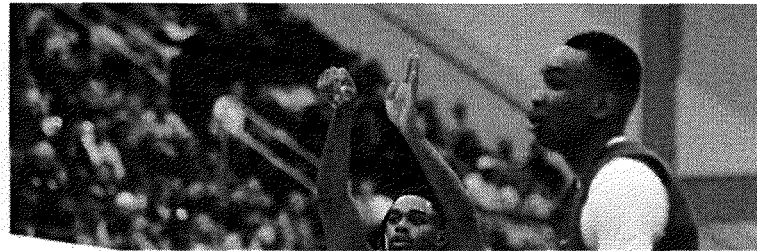
Antonio Reeves, Ugonna Onyenso shake off first-game jitters in Rupp Arena debut

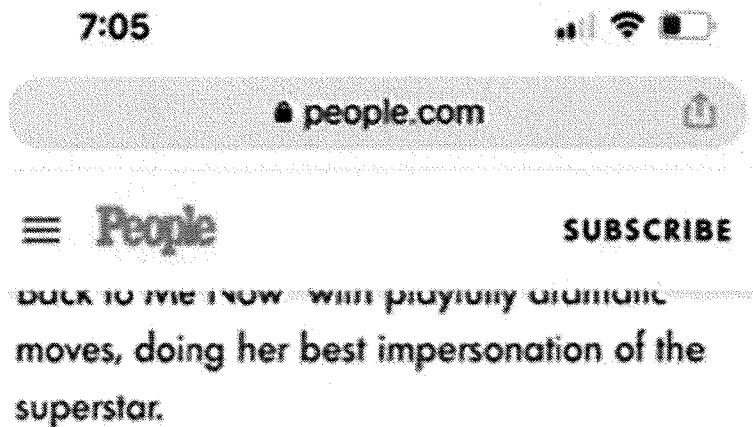
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LEGAL NOTICE

A Settlement has been reached in the case
Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc.,
No. 2022-CI-00553

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"I love Celine," Bush Hager shared to
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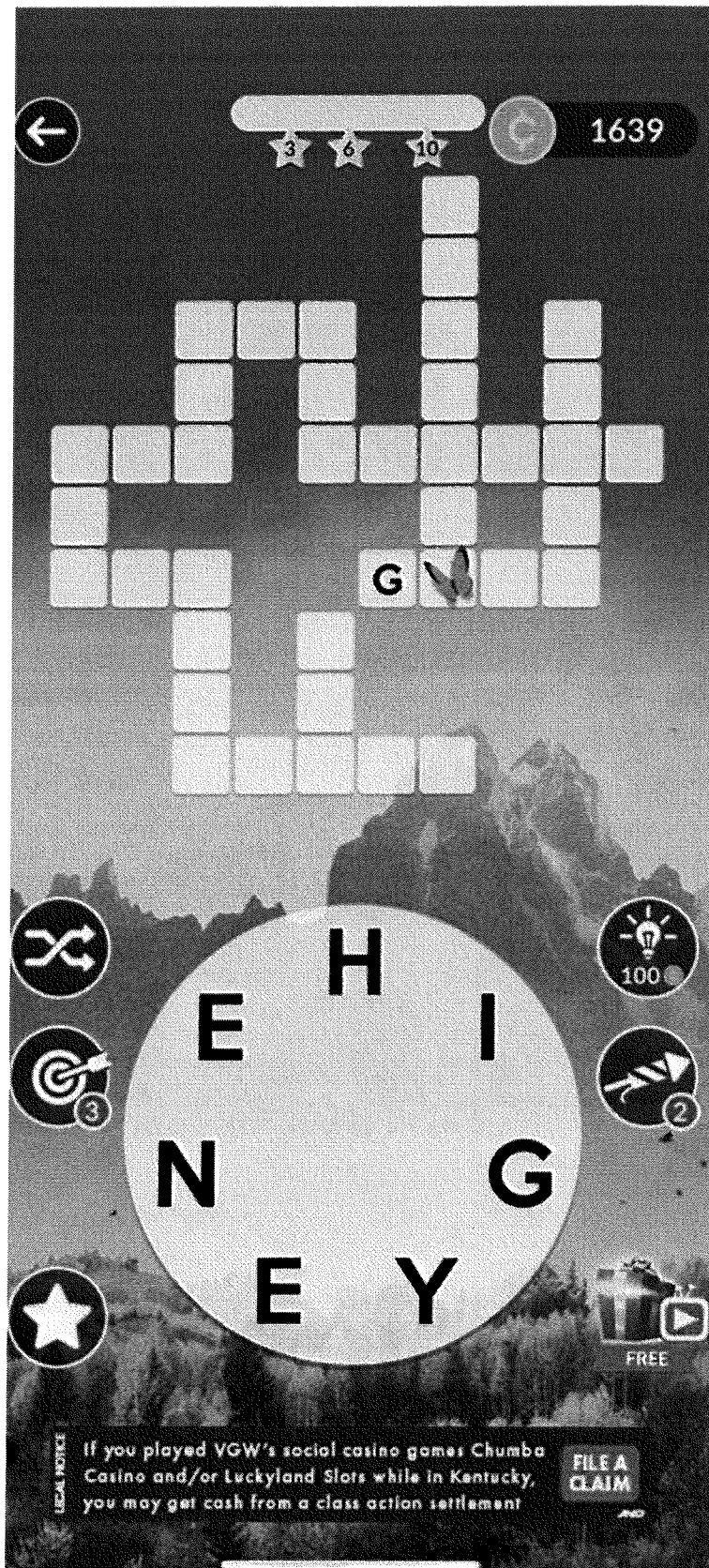
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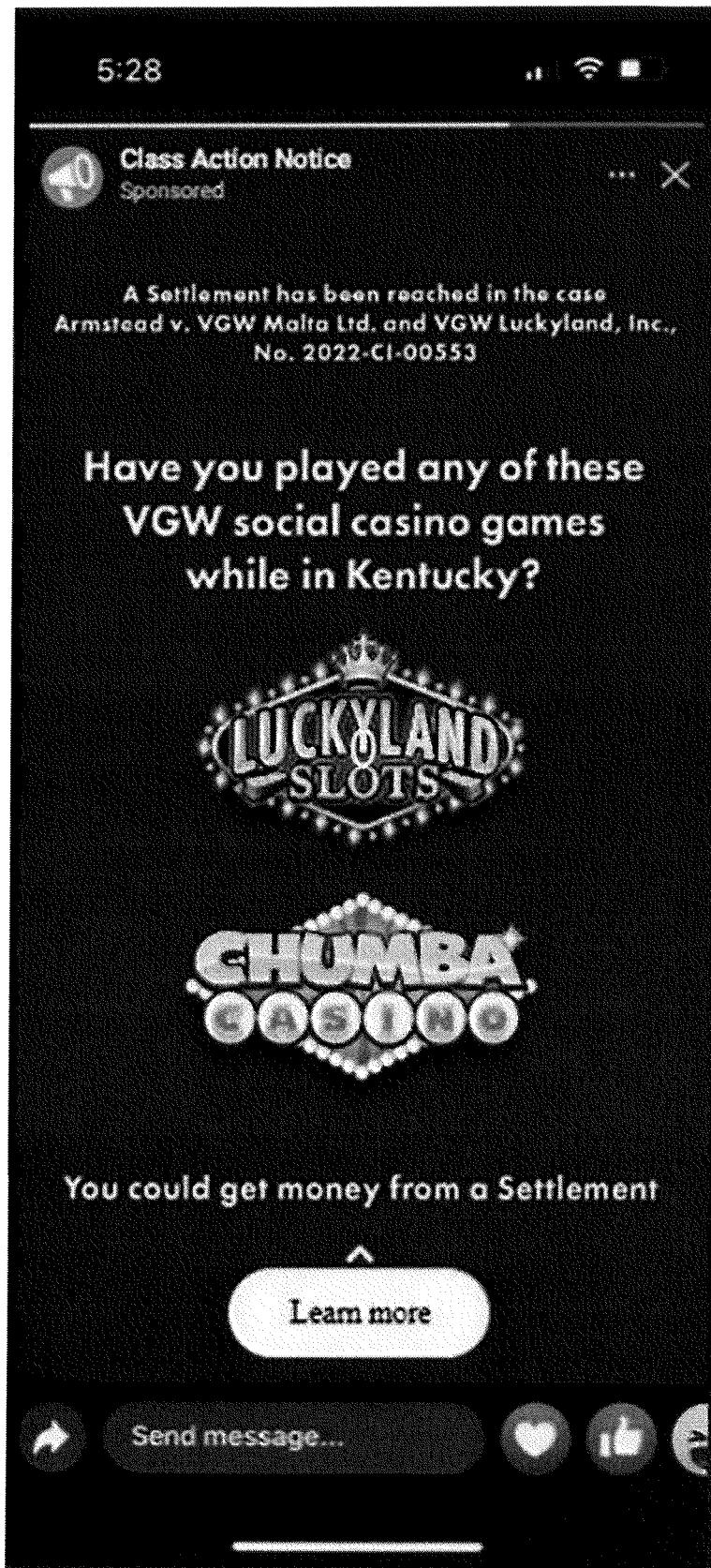
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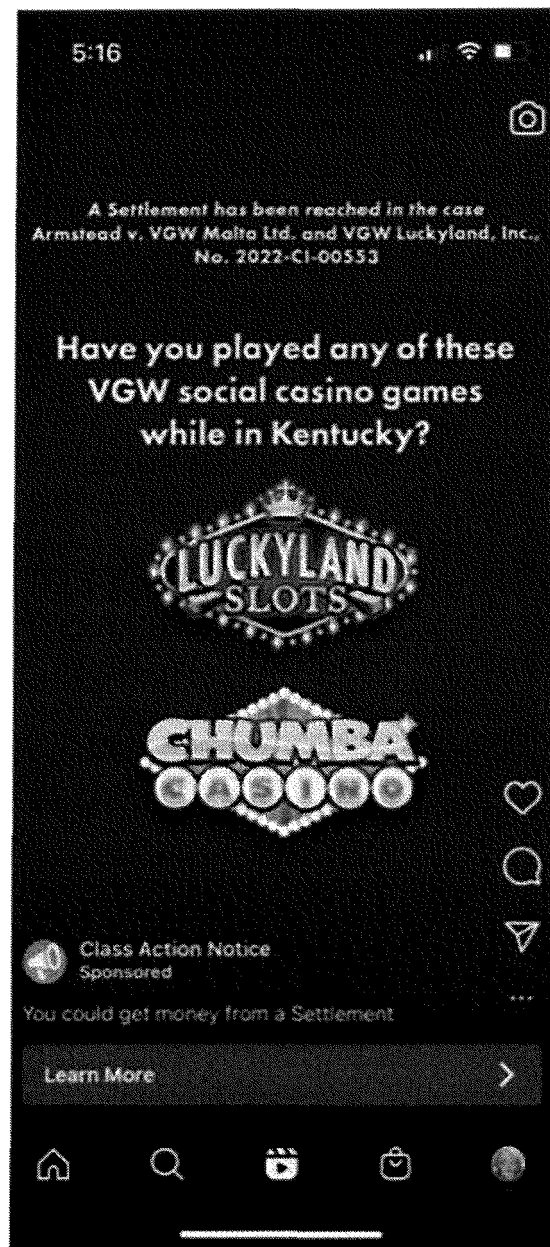


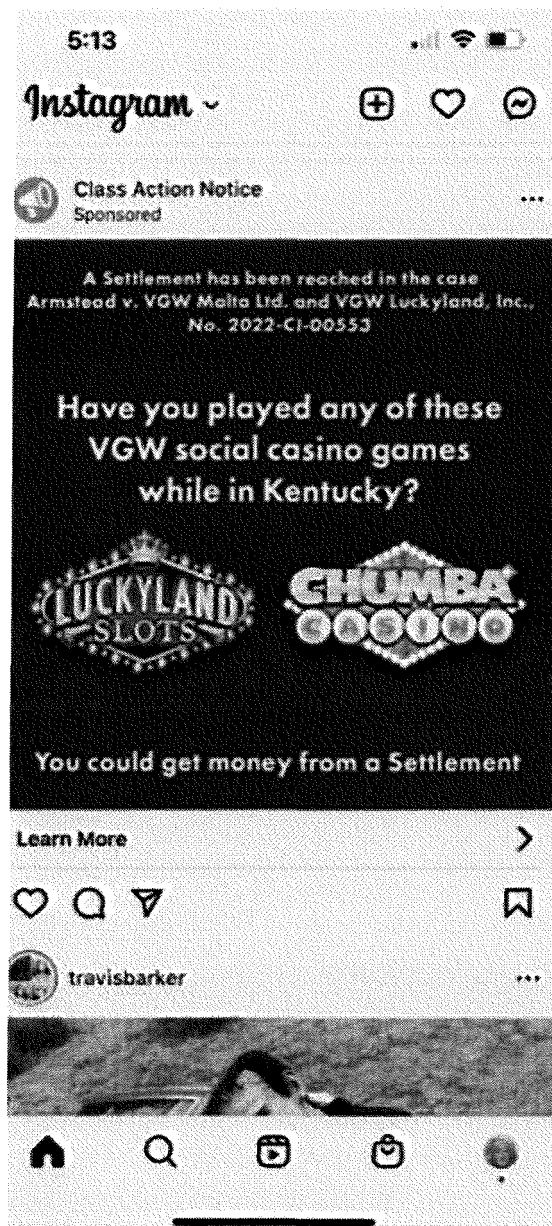














5:25



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JND @JND_LA

A Settlement has been reached in the case Armstead v. VGW Malta Ltd. and VGW Luckyland, Inc., No. 2022-CI-00553. If you played Luckyland Slots or Chumba Casino while in Kentucky, you could get money.

Have you played any of these
VGW social casino games
while in Kentucky?



vgwgamessettlement.com
Social Games Class Action



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Under His Eye and MeidasTouch follow



Jon Cooper @joncoopertweets · 5h

Ok, please settle this family argument.



EXHIBIT D

ECCEB641-A479-4F80-8531-EF5D72CE2FD1 : 000122 of 000145

EXH : 000028 of 000029

VGW Games Settlement Claim Form

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY **MARCH 6, 2023**. 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.VGWGamesSettlement.com.

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

First Name	Last Name	
Street Address		
City	State	ZIP Code
Email Address	Phone Number	
Chumba Casino and/or Luckyland Slots User ID(s) (if known)		
All email addresses associated with Chumba Casino and/or Luckyland Slots accounts.		

Settlement Class Member Affirmation: By submitting this Claim Form you affirm under penalty of perjury that, to the best of your knowledge, the User 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®
Mailing Address:	Phone Number:	Email Address:

Questions? Call 1-844-633-0695 toll free, or visit www.VGWGamesSettlement.com
To view JND's privacy policy, please visit <https://www.jndla.com/privacy-policy>

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.

**AFFIDAVIT OF PHILIP L. FRAIETTA IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Affiant, Philip L. Fraietta, 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 October 3, 2022, 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 Defendants; (ii) the review of publicly available reports, articles, and other publications concerning Defendants' Games; (iii) the review of publicly available information regarding Defendants and their 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 May of 2022, the Parties' settlement talks began in earnest. The Parties agreed to participate in a mediation with the Honorable Layn Phillips (ret.) of Phillips ADR Enterprises ("Phillips ADR"), which was ultimately scheduled for August 31, 2022 at the New York City offices of Paul Hastings LLP.

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, Defendants 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 August 31, 2022, following a full-day mediation session, Judge Phillips 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 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.

12. On September 12, 2022, 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 this is the first case *ever* to challenge 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 Defendants 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 her challenge of the legality of virtual casino games, Defendants had numerous additional defenses available, any one of which could have been fatal to Plaintiff's claims. Specifically, Defendants' 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 Defendants' Games within the Commonwealth of Kentucky over the relevant Class Period.

19. Plaintiff Amy Jo Armstead demonstrated her willingness to vigorously prosecute this case, including by providing her counsel with relevant documents, testimony, and consumer insight into the intricacies of Defendants' Games. Plaintiff remained in constant communication with her 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 Defendants' common course of conduct, and obtaining redress on behalf of herself and the Class.

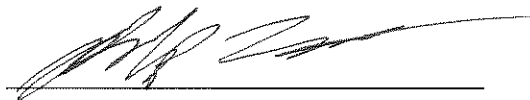
20. In my professional judgment, if Plaintiff tried this case to verdict, there would be subsequent appeals that would likely take years to resolve. In my professional judgment, the expense and burden associated with litigating this through both trial and appeals militate in favor of granting final approval.

21. Since the Court granted preliminary approval, my firm has worked closely with the Settlement Administrator JND Legal Administration ("JND"), 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 December 20, 2022 at New York, New York.

Further, Affiant sayeth naught.

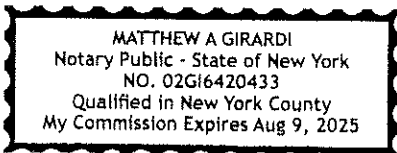


Philip L. Fraietta

State of New York }
County of New York }

Subscribed and sworn before me by Philip L. Fraietta on this 20th day of December, 2022.

My Commission expires: Aug 9, 2025




Notary Public, State of New York

EXHIBIT B

9-28-2022

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

**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 \$11,750,000 should the Court ultimately grant final approval;
 - b. An Incentive Award, which shall not exceed \$7,000 for Plaintiff Amy Jo Armstead;
 - c. Attorneys' fees, costs, and expenses to Class Counsel, which shall not exceed 30% of the Settlement Fund; and

Tendered

22-CI-00553

09/28/2022

Clyde Gregory Sutton, Henderson Circuit Clerk

Filed

22-CI-00553

12/22/2022

Clyde Gregory Sutton, Henderson Circuit Clerk

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 VGW), spent \$5.00 or more within a 24-hour period on Chumba Casino or Luckyland Slots, from March 17, 2017, through March 17, 2022.¹

4. The Court preliminarily appoints Philip L. Fraietta and Alec M. Leslie of Bursor & Fisher, P.A. as Class Counsel, and Plaintiff Amy Jo Armstead 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.

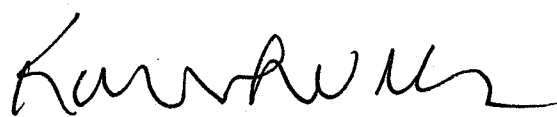
¹ Excluded from the Settlement Class (1) any Judge or Magistrate presiding over this Action and members of their families; (2) Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their 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 JND Legal Administration 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 March 6, 2023, 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 December 15, 2022 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 December 15, 2022 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 December 1, 2022 (*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 December 26, 2022, 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 January 9, 2023 at 1:00 p.m. local time.

SO ORDERED this 3rd day of October, 2022


HON. KAREN L. WILSON
Henderson County Chief Circuit Judge

ENTERED 10-4-2022
C. GREGORY SUTTON, CLERK
BY [Signature] D.C.

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

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 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, 2022.¹

4. **Class Representative.** Amy Jo Armstead is appointed Class Representative of the class finally certified herein.

¹ Excluded from the Settlement Class (1) any Judge or Magistrate presiding over this Action and members of their families; (2) 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

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.

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 _____, 2022

HON. KAREN L. WILSON

Henderson County Chief Circuit Judge

Prepared by:

/s/ Joseph H. Langerak

Joseph H. Langerak IV, Bar ID # 91227

Stoll Keenon Ogden, PLLC

One Main Street, Suite 201

Evansville, IN 47708

Ph.: (812) 425-1591

Joe.langerak@skofirm.com

Christopher E. Schaefer, Bar ID # 93255

Kirby A. Black, Bar ID # 98996

Stoll Keenon Ogden, PLLC

500 West Jefferson Street, Suite 2000 Louisville,

KY 40202

Ph: (502) 333-6000

christopher.schaefer@skofirm.com

kirby.black@skofirm.com

Philip L. Fraietta, PHV ID # PH29214658

Alec M. Leslie PHV ID # PH29340454

Bursor & Fisher, P.A.

888 Seventh Avenue

New York, NY 10019

Telephone: (646) 837-7150

Facsimile: (212) 989-9163

pfraietta@bursor.com

aleslie@bursor.com

Counsel for Plaintiff and the Putative Class

Have seen:

/s/ Timothy J. Weatherholt, with permission

Timothy J. Weatherholt, Bar ID # 90349

Fisher & Phillips LLP

220 West Main Street, Suite 1700

Louisville, KY 40202

tweatherholt@fisherphillips.com

O: (502) 561-3982

C: (859) 322-9191

Behnam Dayanim, Esq., PHV ID # PH29296594

Orrick, Herrington & Sutcliffe LLP

Columbia Center

1152 15th Street, N.W.

Washington, DC 20005-1706

Phone: (202) 339-8613

bdayanim@orrick.com

Counsel for Defendants

ECCEB641-A479-4F80-8531-EF5D72CE2FD1 : 000145 of 000145

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