

UNITED STATES OF AMERICA

STATE OF ILLINOIS

COUNTY OF DU PAGE

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT

DANIEL O MALLEY ET AL.

Plaintiff

-VS-

FLOSPORTS INC

Defendant

2023LA000516
CASE NUMBER

FILED

24 Feb 28 PM 03: 29



**CLERK OF THE
18TH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

**AMENDED
ORDER**

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

WHEREAS, a class action is pending before the Court entitled *O'Malley, et al. v. FloSports, Inc.*, 2023LA000516; and

WHEREAS, Plaintiffs Daniel O'Malley, Lucas Young, and Charles Buckingham (collectively "Plaintiffs") and Defendant FloSports, Inc. have entered into a Class Action Settlement Agreement, which, together with the exhibits attached thereto, sets forth the terms and conditions for a proposed settlement and dismissal of the Action with prejudice as to Defendant upon the terms and conditions set forth therein (the "Settlement Agreement"), and

WHEREAS, on September 29, 2023, the Court granted Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, conditionally certifying a Class pursuant to 735 ILCS 5/2-801 of "All FloSports subscribers who, from August 29, 2018 through September 28, 2023, enrolled in an automatically renewing FloSports subscription using a California, New York, North Carolina, Oregon, Florida, Illinois, Washington D.C., North Dakota, Virginia, Hawaii, or Vermont billing addresses and paid fee(s) in connection with such subscription"; and

WHEREAS, the Court has considered the Parties' Class Action Settlement Agreement, as well as Plaintiffs' Unopposed Motion for Final Approval of the Settlement Agreement, Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, Expenses, And Service Awards, together with all exhibits thereto, the arguments and authorities presented by the Parties and their counsel at the Final Approval Hearing held on February 28, 2024, and the record in the Action, and good cause appearing;

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS:

1. Terms and phrases in this Final Judgment shall have the same meaning as ascribed to them in the Parties' Class Action Settlement Agreement.
2. This Court has jurisdiction over the subject matter of the Action and over all Parties to the Action, including all Settlement Class members, as it pertains to the claims in this case.
3. The notice provided to the Settlement Class pursuant to the Settlement Agreement and order granting Preliminary Approval – including (i) direct notice to Settlement Class Members via email and U.S. mail, based on the comprehensive data provided by Defendant, and (ii) the creation of the Settlement Website – fully complied with the requirements of 735 ILCS 5/2-803 and due process, and was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, their right to object to or to exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing.
4. This Court now gives final approval to the Settlement Agreement, and finds that the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The settlement consideration provided under the Settlement Agreement constitutes fair value given in exchange for the release of the Released Claims against the Released Parties. The Court finds that the consideration to be paid to members of the Settlement Class is reasonable, and in the best interests of the Settlement Class Members, considering the total value of their claims compared to (i) the disputed factual and legal circumstances of the Action, (ii) affirmative defenses asserted in the Action, and (iii) the potential risks and likelihood of success of pursuing litigation on the merits. The complex legal and factual posture of this case, the amount of discovery completed, and the fact that the Settlement is the result of arms'-length negotiations between the Parties support this finding. The Court finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement Agreement, implicit or otherwise.
5. The Court has specifically considered the factors relevant to class action settlement approval, including:

(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed.

City of Chicago v. Korshak, 206 Ill. App. 3d 968, 972 (1st Dist. 1990).

6. The Court finds that the Class Representatives and Class Counsel adequately represented the Settlement Class for the purposes of litigating this matter and entering into and implementing the Settlement Agreement.
7. Accordingly, the Settlement is hereby finally approved in all respects.
8. The Parties are hereby directed to implement the Settlement Agreement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final Judgment in full and shall have the full force of an Order of this Court.
9. This Court hereby dismisses the Action, as identified in the Settlement Agreement, on the merits and with prejudice.
10. Upon the Effective Date of this Final Judgment, Plaintiffs and each and every Settlement Class Member who did not timely opt out (except for Dave Jessen, Myrna Welte, and Ronald Alvarado who opted out) of the Settlement Class (whether or not such members submit claims), including such individuals' respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, lenders, auditors, as class members or otherwise, shall be deemed to have released and will be forever barred from filing, commencing, prosecuting, intervening in, asserting, instituting, or maintaining against Defendant, as well as any and all of its respective present or past heirs, executors, estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries, divisions, related corporate entities, licensors, licensees, associates, affiliates, employers, agents, consultants, independent contractors, insurers, shareholders, investors, owners, and customers, including without limitation employees of the foregoing, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, underwriters, shareholders, owners, investors, trustees, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns and companies, firms, trusts, and corporation to the extent allowable under the law from, any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, penalties, attorney fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all facts, practices, or allegations in the Action, and claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way allegedly related to any FloSports' subscription offerings, including all claims that were brought or could have been brought in the Action (the "Unknown Claims," as defined in the Settlement Agreement).
11. Upon the Effective Date of this Final Judgment, the above release of claims and the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect on, all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and all other Settlement Class Members and Releasing Parties in any jurisdiction or forum. All Settlement Class Members 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 or arising out of any of the Released Claims. Any pending lawsuits by or on behalf of a Settlement Class Member shall be dismissed forthwith.
12. The Court has also considered Plaintiffs' Unopposed Motion For Attorneys' Fees, Costs, Expenses, And Service Awards, as well as the supporting memorandum and declarations, and adjudges that the payment of attorneys' fees in the amount of \$511,500 inclusive of all costs and expenses is reasonable in light of the multi-factor test used to evaluate fee awards in Illinois. *See McNiff v. Mazda Motor of Am., Inc.*, 384 Ill. App. 3d 401, 407 (4th Dist. 2008). Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement Agreement.
13. The Court has also considered Plaintiffs' Motion, memorandum of law, and supporting declarations for service awards to the Class Representatives, Daniel O'Malley, Lucas Young, and Charles Buckingham. The Court adjudges that the payment of service awards in the following amounts: (i) \$5,000 to Mr. O'Malley; (ii) \$5,000 to Mr. Young; and (iii) \$5,000 to Mr. Buckingham; to compensate them for their 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.
14. All payments made to Settlement Class Members pursuant to the Settlement Agreement that are not cashed within one hundred eighty (180) days of issuance, and all remaining funds not otherwise disbursed, shall be donated as *cy pres* to the Legal Aid Society Inc.; a non-sectarian, not-for-profit pro bono legal organization.
15. Except as otherwise set forth in this Order, the Parties shall bear their own costs and attorneys' fees.
16. The Parties, without further approval from the Court, are hereby permitted to agree and adopt such amendments, modifications, and expansions of the Settlement Agreement and its implementing documents (including all exhibits to the Settlement Agreement) so long as they are consistent in all material respects with this Final Judgment and do not limit the rights of Settlement Class Members.
17. Without affecting the finality of this Final Judgment for purposes of appeal, until the Effective Date the Court shall retain jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement.
18. The Court finds that there is no just reason to delay, and therefore directs the Clerk of Court to enter this Final Approval Order and Judgment as the judgment of the Court forthwith.

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Entered:  File Date: 02/28/2024

JUDGE ANGELO J KAPPAS

Validation ID : DP-02282024-0329-35443

Date: 02/28/2024