

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RAVI MOTWANI ,Individually and on behalf
of a Class of Similarly Situated Individuals,

Plaintiffs,

v.

MARINA DISTRICT DEVELOPMENT
COMPANY, LLC d/b/a BORGATA HOTEL
CASINO AND SPA,

Defendant.

**Civil Action No.
2:15-cv-02069-JLL-JAD**

SETTLEMENT AGREEMENT

This Agreement is made and entered into as of this ____ day of March, 2016 by and between Ravi Motwani, individually and in his capacity as Class Representative in the above-captioned civil action, and Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa (hereinafter collectively referred to as “The Parties”). Each of the Parties, acting by and through their respective counsel, agree that, subject to Court approval, the above-captioned civil action be and hereby is settled, compromised and dismissed, on the merits and with prejudice, in accordance with the terms and conditions set forth herein.

I.

DEFINITIONS

1. “Action” means the above-captioned civil action which is currently pending before the United States District Court for the District of New Jersey.
2. “Agreement” means this Settlement Agreement.

3. “Borgata” means Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa, the defendant in the Action.
4. “Borgata Rewards Member(s)” means any Person who is a member of the Borgata’s customer loyalty program, known as “My Borgata Rewards.”
5. “Casino” means the Borgata Casino Hotel and Spa in Atlantic City, New Jersey.
6. “Class Counsel” means the attorneys approved by the Court to represent the Settlement Class and the Settling Class Members, as provided in paragraph 29(a) below.
7. “Class Notice” means the notice of the preliminary approval of this Agreement to be given under paragraphs (32-33), below, unless otherwise modified by agreement of the parties and approved by the Court, which explains (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a Putative Class Member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the Settlement Class any Putative Class Member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on Settling Class Members under Rule 23(c)(3).
8. “Class Period” means the period from July 1, 2009 through and including December 31, 2015 .
9. “Class Representative” means Ravi Motwani, the named plaintiff in the Action.
10. “Court” means the United States District Court for the District of New Jersey.
11. “Effective Date” means the first date on which all of the following statements are true:
 - a) All parties have executed this Agreement;
 - b) No party has terminated this Agreement;

- c) The Court has preliminarily approved this Agreement as provided in paragraphs, 29-31 below;
- d) The Court has entered a Final Judgment approving this Agreement without material alteration, releasing all of the Released Persons from all of the Released Claims and dismissing the Action with prejudice and without leave to amend; and
- e) The time to file an appeal from the Final Judgment has expired without the filing of any appeal(s) or (ii) any appeal(s) from the Final Judgment has/have been dismissed or the Final Judgment has been affirmed without material alteration by all applicable appellate courts, and (iii) the passage of time and/or a decision of a superior appellate court has/have made further appellate review unavailable.

12. “Final Judgment” means the order and judgment fully and finally disposing of all claims asserted in the Action against Borgata and all claims settled under the Final Settlement as provided in paragraphs 35-36, below.

13. “Final Settlement” means the settlement approved by the Court in the Final Judgment as fair, reasonable, adequate, and in the best interests of the Settling Class Members as provided in paragraphs 35-36, below.

14. “New Parking Vouchers” means the parking vouchers to be issued to Settling Class Members as part of the Settlement Consideration, as provided in paragraph 41 below. Each New Parking Voucher shall entitle the Settling Class Member to park one time for free at the Casino and shall be valid for 12 months from the date of issuance. New Parking Vouchers are valid on any day of the year, including weekends and holidays. New Parking Vouchers are not transferable and cannot be redeemed for cash.

15. “Objector” means a Putative Class Member who timely files an objection to the Agreement and/or the certification of the class pursuant to the terms of paragraph 56, below.

16. “Original Parking Vouchers” means vouchers for free parking distributed to certain Borgata Rewards Members during the Class Period which contained language indicating “Unlimited Free Parking” and language in smaller print indicating “Offer Valid Once Per Day.”

17. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity, and includes all of the heirs, estates, successors, assigns, and legal representatives of such a “Person.”

18. “Plaintiff” means Ravi Motwani, the named plaintiff in the Action.

19. “Preliminary Approval Order” shall have the meaning given such term in paragraph 29, below.

20. “Proposed Settlement” means the terms of the Settlement as set forth in this Agreement, until the date the Proposed Settlement is approved by the Court.

21. “Putative Class Member(s)” means any Person who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating “Unlimited Free Parking,” and (b) sought to utilize such vouchers at any time. Borgata estimates that there are approximately 8,133 Putative Class Members.

22. “Released Claims” means and includes any and all claims, known or unknown, rights, demands, actions, causes of action, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses that have been alleged, or which could have been alleged, whether at law, in equity, or under any statute or regulation, in the Action by any member of the Settlement Class arising from, or in any way related to, the issuance or use of the Original Parking Vouchers

during the Class Period; provided, however, the Released Claims do not include any claim for enforcement of this Agreement and/or the Final Judgment.

23. “Released Persons” means

(a) Borgata; and

(b) all of the current and past parent entities, subsidiaries, divisions, and affiliates of Borgata; and

(c) all of the past and present officers, directors, agents, employees, and stockholders of Borgata; and

(d) all of the heirs, estates, successors, assigns, and legal representatives of any of the entities or persons listed in this paragraph.

Except as provided in subparagraphs (a) through (d) above, nothing in this Agreement is intended to release, nor shall be construed as releasing, any claims against any Person not a party to this Agreement.

24. “Settlement Approval Hearing” means the hearing to be held by the Court to consider approval of the Agreement as provided in paragraphs 35-36, below.

25. “Settlement Class” means all individuals who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating “Unlimited Free Parking,” (b) sought to utilize such vouchers at any time, and (c) do not timely and properly request exclusion from the Settlement Class as provided in paragraph 53, below. Excluded from the class are officers, directors or employees of the Borgata and their immediate family members, and any judge presiding over this action and their immediate family members.

26. “Settling Class Member(s)” means any Person who: (a) is included within the definition of the Settlement Class and (b) does not timely and properly request exclusion from the Settlement Class as provided in paragraph 53, below.

27. “Settlement Consideration” means the consideration of (a) the awards to the Settling Class Members in exchange for the release described in paragraph 37, and (b) Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00) to Ravi Motwani in recognition of his service as a class representative as provided in paragraph 48 below, and (c) up to One Hundred Seventy Five Thousand and 00/100ths Dollars (\$175,000.00) attorneys’ fees, costs, and expenses payable to Class Counsel as provided in paragraphs 45-47, below, and (d) modification of the language on parking vouchers distributed by Borgata to Borgata Rewards Members going forward to address any possible ambiguity about their terms of use, and (e) the costs of administration, including the costs of notices to class members and distribution of the benefits of the Settlement.

28. “Slot Dollars®” means Borgata vouchers in dollar amounts that can be used instead of cash to play at a slot machine in the Casino. These Slot Dollars® will be valid for a period of 12 months from the date of issuance. However, once the User activates the Slot Dollars®, the Slot Dollars® must be used within the same gaming day. A gaming day is between 6 a.m. and 5:59 a.m. the following day. Slot Dollars® are non-transferable and cannot be converted into cash.

II.

RECITALS

WHEREAS on January 12, 2015 the Plaintiff filed a civil action entitled Ravi Motwani, et al. v. Marina District Development Company, LLC d/b/a/ Borgata Hotel Casino & Spa, in the Superior Court of New Jersey, Law Division, Bergen County, under Docket No. L-276-15, naming Borgata as a defendant; and

WHEREAS on January 21, 2015, the Plaintiff filed an Amended Complaint in the action; and

WHEREAS on March 23, 2015, Borgata removed the Action to the United States District Court for the District of New Jersey, where it is now pending under Civil Action No. 2:15-cv-02069-JLL-JAD; and

WHEREAS on March 18, 2016 Plaintiff filed a Second Amended Complaint in the action, which modified the class definition and deleted claims based on allegations about vouchers other than the Original Parking Vouchers.

WHEREAS the Action alleges, *inter alia*, that (a) the Original Parking Vouchers issued to Putative Class Members that contained language indicating “Unlimited Free Parking” were misleading because, contrary to the language, the vouchers could not be used more than once on the same day, and (b) the language on the Original Parking Vouchers indicating “Offer Valid Once Per Day” was too small to be read by Class Members, and (c) as a result, certain Class Members were improperly required to pay a \$5 fee to exit the Borgata parking lot.

WHEREAS, the most recent Complaint in the Action asserts five separate causes of action on behalf of the Class Members: (1) the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“NJCFA”), (2) the Truth in Consumer Contract Warranty and Notice Act, N.J.S.A. 56:12-15 et seq. (“TCCWNA”), (3) common law fraud, (4) negligent misrepresentation, and (5) promissory estoppel; and

WHEREAS the Action asserts claims for damages, penalties and declaratory and injunctive relief; and

WHEREAS Borgata neither admits nor concedes any of the factual allegations, causes of action or claims for relief set forth or alleged in connection with the Action including, but not

limited to, any allegations contained in any of the pleadings, motions or other papers filed in the Action, and in fact, Borgata specifically denies the same; and

WHEREAS, The Parties agreed to mediate the Action before the Honorable (Ret.) Joel B. Rosen, such mediation taking place on November 19, 2015 and resulting in this Proposed Settlement.

WHEREAS the Plaintiff, in consultation with Class Counsel, while believing that the claims asserted in the Action have substantial merit, but having considered the risks associated with the continued prosecution and possible appeal of this complex and time-consuming litigation, as well as the likelihood of success on the merits of the Action, believes that, in consideration of all the circumstances, the Settlement Agreement confers substantial benefits upon Class Members and is fair, reasonable, adequate and in the best interests of the Class Members; and

WHEREAS Borgata, while denying wrongdoing of any kind whatsoever and without admitting liability, nevertheless has agreed to enter into this Settlement Agreement to avoid further burden and expense of protracted litigation and to be completely free of any further controversy with respect to the claims which have been asserted or could have been asserted in the Action.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Class Representative, on behalf of himself and all Settling Class Members, by and through Class Counsel, and by Borgata, all intending to be legally bound hereby, that, subject to the approval of the Court, this Action and the Released Claims, shall be finally and fully resolved, compromised, discharged and settled under the following terms and conditions:

III.

PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS

29. Upon execution of this Agreement, Plaintiffs shall submit this Agreement to the Court and request an order substantially in the form set forth in Exhibit 1 (“Preliminary Approval Order”) that will, among other things:

- a) Preliminarily certify the Settlement Class, as defined herein, for settlement purposes and designate the Plaintiff as Class Representative and the following attorneys as counsel for the Settlement Class (“Class Counsel”):

NAGEL RICE, LLP
103 Eisenhower Parkway
Roseland, NJ 07068

- b) Provide that preliminary certification and all actions associated with preliminary certification are undertaken on the condition that the certification and designations shall be automatically vacated if this Agreement is terminated or is disapproved in whole or in part by the Court, any appellate court and/or any other court of review, or if any of The Parties invoke their right to revoke their agreement to settle, in which event this Agreement and the fact that it was executed into shall not be offered, received or construed as an admission or as evidence for any purpose, including the “certifiability” of any class;
- c) Preliminarily approve this Agreement as sufficiently fair and reasonable to warrant sending notice to the Settlement Class preliminarily certified for settlement purposes.
- d) Direct that Borgata cause the Class Notice to be distributed by first class mail, postage prepaid, bearing the return address of Borgata, and e-mail, within thirty

(30) days after preliminary approval of the Agreement to all reasonably identifiable Putative Class Members as set forth in paragraph 20, above, which distribution shall be conducted by and at the expense of Borgata;

- e) Determine that distribution of the Class Notice and the implementation of the notice plan as described herein, is reasonable and the best practicable notice under the circumstances; is reasonably calculated to apprise Putative Class Members of the pendency of the Action and of their right to object or opt-out of the Action and the Settlement Class; constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice; and meets the requirements of the Federal Rules of Civil Procedure, and requirements of due process under the New Jersey and United States Constitutions;
- f) Require each Putative Class Member who wishes to be excluded from the Settlement Class to submit to Class Counsel and Borgata a written request for exclusion postmarked not later than twenty-one (21) days prior to the Settlement Approval Hearing;
- g) Rule that any Putative Class Member who does not submit a timely, written request for exclusion will be bound by all proceedings, orders and judgments in the Action; and
- h) Stay consideration of all motions and deadlines pending in this Action.

30. Preliminary certification of the Settlement Class and appointment of the Class Representatives and Class Counsel by the Court shall be binding only with respect to the Proposed Settlement. In the event that the Proposed Settlement is not consummated for any reason, whether due to a termination of this Agreement in accordance with its terms, a failure or

refusal of the Court to approve the Proposed Settlement, or a reversal or modification of the Court's approval of the Proposed Settlement on appeal, or any other reason, then:

- a) the Court shall vacate the certification of the Settlement Class;
- b) The Parties shall litigate the Action as though the Agreement had never been entered and the Settlement Class had never been certified;
- c) Plaintiffs shall have the right to file a contested Motion for Class Certification;
- d) Borgata shall have the right to contest any such Motion for Class Certification;
- e) nothing herein shall preclude the Court from considering the merits of any such motion: and
- f) nothing in this Agreement may be used as an admission or offered into evidence in any proceeding involving Borgata whatsoever, except as to prove eligibility as a Class Member.

31. Upon the preliminary approval of this Agreement as provided in this Section III, all proceedings in the Action shall be stayed until further order of the Court; provided, however, that the parties may conduct such limited proceedings as may be necessary to implement the Proposed Settlement or to effectuate the terms of this Agreement.

IV.

NOTICE PLAN

32. As soon as practicable after the preliminary approval of the Proposed Settlement as provided in this Section III, Borgata shall make a reasonable search of its records to ascertain the name and last known address of each Putative Class Member. Thereafter, Borgata shall send a copy of the Class Notice by regular first class mail and email to each Putative Class Member for whom Borgata ascertains a name and an address through that search. Borgata shall use its best

efforts to complete the mailing of the Notice to Putative Class Members within thirty (30) days after the preliminary approval of the Proposed Settlement as provided in this Section III. Plaintiffs will request that the Class Notice be approved as to form and content by the Court substantially in the form attached hereto as Exhibit 2, unless otherwise modified by agreement of the parties and approved by the Court.

33. If any Class Notice mailed to any Putative Class Member in accordance with paragraph 32 is returned as undeliverable, Borgata shall perform a reasonable search for a more current name and/or address for the Putative Class Member, using the National Change of Address Database or the LEXIS "Allfind" database. If a more current name and/or address can be found through such a search, then Borgata will re-send the returned Class Notice to the Putative Class Member by first-class mail to the more current address. In the event that a more current name and/or address cannot be found or any Class Notice mailed to a Putative Class Member is returned as undeliverable a second time, then no further mailing shall be required. Borgata will promptly log each Class Notice that is returned as undeliverable and provide copies of the log to Class Counsel as requested. Borgata shall provide Class Counsel with copies of all communications received from Putative Class Members and shall provide such reasonable access to the notice process as they may need to monitor compliance with the terms of this Agreement.

V.

COSTS OF CLASS NOTICE

34. Borgata will pay all of the reasonable costs of the initial mailing of the Class Notice and any re-mailing if necessary to all Putative Class Members for whom Borgata is able to ascertain a name and address through the efforts described in paragraph 33 above, as well as the costs of

printing and reproducing the Class Notice, the cost of mailing the Class Notice to each Putative Class Member, and the costs of distributing the Settlement Consideration.

VI.

FINAL APPROVAL OF THE PROPOSED SETTLEMENT

35. On the date set by the Court for the Settlement Approval Hearing, the Court may review any petitions to intervene or objections to the Proposed Settlement that have been timely filed and conduct such other proceedings (including the taking of testimony, receipt of legal memoranda, and hearing of arguments from the parties or others properly present at the Settlement Approval Hearing) as the Court may deem appropriate under the circumstances.

36. After the completion of the mailing described in paragraph 32, the expiration of the deadline for seeking exclusion from the Settlement Class as provided in paragraph 53, and the expiration of the deadline for filing an objection to the Proposed Settlement as provided in paragraphs 55-57, Class Counsel will file, and Borgata will not oppose, a motion seeking the Court's final approval of the Proposed Settlement at a Settlement Approval Hearing to be held at a time, date, and location that will be stated in the Notice, and in the Preliminary Approval Order. Plaintiff will request that the Court enter a Final Judgment:

- a) Approving the Proposed Settlement without material alteration, and directing the parties and counsel to comply with and consummate the terms of this Agreement;
- b) Certifying the Settlement Class for settlement purposes;
- c) Finding that Class Counsel and the Plaintiff have adequately represented the Settlement Class;

- d) Finding that the Court has personal jurisdiction over Borgata and all Settling Class Members and that the Court has subject matter jurisdiction to approve the Agreement and all exhibits thereto.
- e) Finding that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class;
- f) Providing that each Settling Class Member who has not excluded himself or herself therefrom in accordance with the Court's prior orders shall be bound by all of the provisions of this Agreement, without exception;
- g) Finding that the mailing of the Class Notice and the notice methodology implemented pursuant to this Agreement and approved by the Court were reasonable and best practicable notice and satisfy the requirements of the Federal Rules of Civil Procedure and the requirements of due process under the New Jersey and United States Constitutions;
- h) Dismissing all claims in the Action as to Borgata on the merits and with prejudice, and entering final judgment thereon with a finding that there is no just reason to delay enforcement or appeal;
- i) Approving the payment of the attorneys' fees to Class Counsel;
- j) Awarding a premium payment to the Class Representative in an amount to be determined by the Court; and
- k) Providing that Settling Class Members shall not institute, maintain, or assert any Released Claims against the Released Persons.

VII.

DISMISSAL OF ACTION AND RELEASE OF CLAIMS

37. Upon the Effective Date, Plaintiff, all Settling Class Members, and their heirs, trustees, executors, administrators, principals, beneficiaries, assigns and successors in interest will be bound by the Final Judgment and conclusively deemed to have fully released, acquitted and forever discharged, to the fullest extent permitted by law, all of the Released Persons from the Released Claims. The provisions of any state, federal, municipal, local or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries, and/or damages that are unknown or unsuspected to exist at the time a settlement agreement is executed and/or approved by a court are hereby expressly, knowingly, and voluntarily waived by and on behalf of Plaintiff and all members of the Settlement Class.

38. Nothing contained in this Agreement shall preclude the enforcement of the terms of this Agreement or the Final Judgment.

39. Upon entry of the Final Judgment, the Action will be dismissed with prejudice as to Borgata.

VIII

BENEFITS TO SETTLING CLASS MEMBERS

40. Borgata shall provide Class Counsel with the names and last known addresses of all known Settling Class Members who are notified of the material terms of this Settlement pursuant to the terms of this Agreement.

41. Within forty-five (45) days of the final approval by the Court, Borgata shall issue to each Settling Class Member: (a) \$20 in Slot Dollars® which must be used within 12 months of the date of issue, and (b) six (6) New Parking Vouchers which must be used within 12 months of the date of issue. No claim form or other action is required of the Settling Class Members to receive these benefits.

IX.

INJUNCTIVE RELIEF

42. Borgata agrees that it will modify the language of vouchers offering free parking at the Casino to remove any perceived ambiguity as to their terms of use.

X.

COMMUNICATIONS WITH MEMBERS OF THE SETTLEMENT CLASS

43. The Class Notice shall contain the name, address and telephone number of the Class Counsel. Communications with Putative Class Members regarding the Proposed Settlement, other than the Class Notice, shall be handled through Class Counsel if required.

XI.

COSTS OF SETTLEMENT ADMINISTRATION

44. Borgata will pay all costs associated with the Settlement including, printing, reproducing, and mailing the notices, compiling the list of opt outs which shall be shared with Class Counsel in a timely way, and distributing the benefits to Settling Class Members.

XII.

ATTORNEYS' FEES, COSTS AND CLASS REPRESENTATIVE PREMIUM

45. Class Counsel's entitlement, if any, to an award of attorneys' fees, costs, and/or expenses will be determined by the Court. Borgata and Class Counsel did not negotiate the amount of any such fees, costs, or expenses until they resolved all other material elements of the proposed settlement. The payment of service awards and attorneys' fees and costs is separate from the payment to Settlement Class Members.

46. At the Final Approval Hearing, Class Counsel will request that the Court award attorneys' fees, costs, and expenses payable to Class Counsel in a total amount not to exceed One Hundred Seventy Five Thousand and 00/100ths Dollars (\$175,000.00). Borgata shall not oppose such an application.

47. All approved attorneys' fees and accrued interest shall be paid to Nagel Rice within twenty (20) days after the entry of the District Court Order granting final approval to the Proposed Settlement. In the event that that Order is reversed or modified on appeal, in whole or in part, or the attorneys' fees and costs awarded by the Court are vacated or modified on appeal, Class Counsel shall, within fourteen (14) days after the Order reversing the District Court Order becomes final, repay to Borgata the full amount of attorneys' fees and costs paid by Borgata to Class Counsel, or the amount that is vacated or modified on appeal. Class Counsel shall also pay Borgata interest, to be calculated at the rate set forth in New Jersey Court Rule 4:42-11(a)(iii).

48. At the Final Approval Hearing, Plaintiff Ravi Motwani will move the court for an award of Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00) in recognition of his time, inconvenience and efforts as Class Representative. Borgata shall not oppose such application.

XIII.

DISAPPROVAL OR TERMINATION OF THE PROPOSED SETTLEMENT

49. Within fourteen (14) business days after notice of the occurrence of any of the following events, Borgata shall have the right, exercisable at its own discretion, to terminate this Agreement by delivering written notification of such election to Class Counsel:

- a) If the Court, or any appellate court(s), rejects, denies approval, disapproves, modifies or attempts to modify any material portion of the Agreement, including,

but not limited to, the terms of the Settlement Class relief, the provisions relating to notice, the definition of the Settlement Class, and the Released Claims;

- b) The Court, or any appellate court(s), does not enter or completely and unconditionally affirm any material portion of the Agreement, Preliminary Approval Order Or Final Judgment;
- c) If the number of Class Members who exclude themselves from the Settlement Class equals or exceeds ten percent (10%) of the Putative Class Members;
- d) If any financial obligation is imposed upon Borgata in addition to and/or greater than those specifically accepted by Borgata in this Agreement.

50. If an option to withdraw from and terminate this Agreement arises under paragraph 49, Borgata is not required for any reason or under any circumstance to exercise that option. The option to withdraw from and terminate this Agreement must be exercised no later than fourteen (14) business days after notice of the event prompting the right to terminate.

51. If the Proposed Settlement shall fail for any reason other than a breach of this Agreement by one of the parties, or if this Agreement is terminated by Borgata pursuant to the terms of this Agreement:

- a) This Agreement and the Proposed Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Agreement and the Proposed Settlement shall be without prejudice to the rights and contentions of the parties hereto and any of the Putative Class Members;
- b) This Agreement, all of its provisions (including, without limitation, any provisions regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the

parties, each of whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Agreement;

- c) This Agreement, any provision of this Agreement (including without limitation the provisions regarding class certification), and the fact of this Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever;
- d) Any judgment or order relating to Borgata entered after the date of this Agreement, including, without limitation, any order certifying the Settlement Class, will be vacated and will be without any force or effect. The Parties hereby agree that they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Agreement;
- e) The Parties hereby agree that they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that the Agreement and related pleadings and filings, any provision of this Agreement (including without limitation the provisions regarding class certification), the fact of this Agreement having been made, and any settlement negotiations preclude Borgata from opposing certification or the claims in the Action or any other proceeding.

XIV.

NOTIFICATION PURSUANT TO CAFA

52. In compliance with the Attorney General notification provision of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715, within ten (10) days after the motion for Preliminary Approval is filed, Borgata shall provide notice of this proposed Settlement to the

Attorney General of each State in which Putative Class Members reside. Borgata shall file with the Court a certification stating the date on which the CAFA notices were sent. Borgata will provide Class Counsel with a copy of any substantive response to the CAFA notices.

XV.

REQUESTS FOR EXCLUSION AND OBJECTIONS TO THE SETTLEMENT

53. Putative Class Members who wish to exclude themselves from the Settlement Class must submit written requests for exclusion. To be effective, such a request must include the Putative Class Member's name and address, a clear and unequivocal statement that the Putative Class Member wishes to be excluded from the Settlement Class, and the signature of the Putative Class Member. The request must be mailed to the Borgata and Class Counsel at the address provided in the Class Notice and must be postmarked no later than twenty-one (21) days before the date set for the Settlement Approval Hearing.

54. The Class Counsel and Borgata shall promptly log each request for exclusion that it receives and exchange copies of the log and all such requests for exclusion.

55. Putative Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Putative Class Members who choose to object to the Proposed Settlement must file a written objection. Any Putative Class Member may appear at the Settlement Approval Hearing, in person or by counsel, and be heard to the extent allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the Proposed Settlement, and on the application for an award of attorneys' fees and costs if they file a written notice of intent to appear. The right to object to the Proposed Settlement must be exercised individually by an individual Putative Class Member, not as a member of a group or subclass and, except in

the case of a minor, deceased or incapacitated Putative Class Member, not by the act of another Person acting or purporting to act in a representative capacity, except his or her attorney.

56. To be effective, an objection to the Proposed Settlement must:

- a) Contain a heading which includes the name of the case and case number;
- b) Provide the name, address, telephone number and signature of the Objector filing the objection;
- c) Indicate the specific reasons why the Objector objects to the Proposed Settlement;
- d) Be filed with the Clerk of the Court not later than twenty-one (21) days before the date set in the Class Notice for the Settlement Approval Hearing;
- e) Be sent to the Class Counsel and Borgata by first-class mail, postmarked no later than twenty-one (21) days before the date set in the Class Notice for the Settlement Approval Hearing;
- f) Contain the name, address, bar number and telephone number of the objecting Putative Class Member's counsel, if represented by an attorney. If the Putative Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the United States District Court;

57. In addition to the information required by paragraph 56, if the objector intends to appear at the Settlement Approval Hearing, either in person or through counsel, the Objector must provide a Notice of Intent to Appear which must contain the following information:

- a) A list of any and all witnesses whom the Objector may call at the Settlement Approval Hearing, with the address of each witness and a summary of his or her proposed testimony;
- b) A detailed description of any and all evidence the Objector may offer at the Settlement Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Settlement Approval Hearing.

58. Any Putative Class Member who does not file a timely objection in accordance with paragraphs 55-57 shall waive the right to object or to be heard at the Settlement Approval Hearing and shall be forever barred from making any objection to the Proposed Settlement. Putative Class Members who do not opt out but object to the Proposed Settlement shall become Settling Class Members in the event that the Proposed Settlement is approved, and shall have voluntarily waived their right to pursue an independent remedy against Borgata. Putative Class Members can avoid being bound by any judgment of the Court by complying with the opt out exclusion provisions in paragraph 53, above.

59. At least ten (10) days before the Settlement Approval Hearing, Class Counsel and Borgata shall exchange each notice of intent to object.

60. Class Counsel and Borgata shall have the right to respond to any objection no later than seven (7) days prior to the Settlement Approval Hearing. The Settling Party so responding shall file a copy of the response with the Court, and shall serve a copy, by regular mail, hand or overnight delivery, to the objector (or counsel for the objector) and to counsel for Plaintiffs and Defendant.

XVI.

DENIAL OF LIABILITY

61. Borgata has vigorously contested each and every claim in the Action. Borgata maintains that it has at all times consistently acted in accordance with the law. Borgata denies each and every material allegation in the Action. Borgata nonetheless has concluded that it is in its best interest that the Action be settled on the terms and conditions set forth in this Agreement after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through trial and through any appeals that might be taken.

62. As a result of the foregoing, Borgata enters into this Agreement without in any way admitting, conceding or acknowledging any fault, liability, or wrongdoing of any kind. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission, inference or concession by Borgata of the truth of any of the claims or allegations in the Action, or of any liability, fault, or wrongdoing of any kind on the part of Borgata. This Agreement shall not be offered or received in evidence in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, as an admission or concession of liability or wrongdoing of any nature on the part of Borgata. In the event the Proposed Settlement is not finally approved for any reason, Borgata shall retain the right to object to the maintenance of the Action and/or any other case as a class action and to contest the Action and/or any other case on any ground.

XVII.

RETENTION OF RECORDS

63. Borgata shall retain all returned Class Notices and correspondence relating thereto, for a period of up to four (4) years after the Effective Date. After this time, Borgata may destroy such documentary records that they have in their possession. Nothing in this Agreement shall be

construed to require Borgata or the Administrator to retain records beyond their respective, discretionary, record retention policies.

XVIII.

MISCELLANEOUS PROVISIONS

64. The Parties and their undersigned counsel agree to undertake their best efforts and to cooperate with each other to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts intended by this Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

65. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Agreement on behalf of their respective clients.

66. Except as otherwise provided, this Agreement contains the entire agreement of the parties hereto, and supersedes any prior agreements or understandings between them, concerning the terms of settlement of this Action. All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all parties hereto. The terms of this Agreement are and shall be binding upon each of the parties hereto, upon each of their agents, attorneys, employees, successors and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Putative Class Member.

67. This Agreement may be amended or modified only by a written instrument signed by counsel for all parties. Amendments and modifications may be made without additional notice to the Putative Class Members unless such notice is required by the Court.

68. This Agreement shall be subject to, governed by, construed in light of, and enforced pursuant to the laws of the State of New Jersey, except as specifically provided herein.

69. The exhibits to this Agreement are integral parts of the settlement and are hereby incorporated and made parts of this Agreement.

70. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

71. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned parties and/or counsel.

72. This Agreement may be executed in counterparts, each of which shall constitute an original.

73. No party to this Agreement shall make any statements to the media about this Proposed Settlement, except to refer media inquiries to the public record of the Action, or through a press release mutually agreed upon by the parties.

74. As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

75. In the event any date or deadline set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

76. All notices to the Parties required under this Agreement shall be sent by Certified Mail, return receipt requested, or by hand delivery to the recipients designated below (or to later designated recipients). All notices shall be measured by the date of mailing.

Class Counsel:

Bruce H. Nagel, Esq.
NAGEL RICE, LLP
103 Eisenhower Parkway
Roseland, NJ 07068
(973)618-0400

Borgata Counsel:

Christopher J. Michie, Esq.
CLARK MICHIE LLP

220 Alexander Street
Princeton, NJ 08540

Russell L. Lichtenstein, Esq.
Cooper Levenson, P.A.
1125 Atlantic Avenue
Atlantic City, NJ 08401

NAGEL RICE, LLP

By: 

BRUCE H. NAGEL, ESQ.
Class Counsel

RAVI MOTWANI

By: 

Class Representative

CLARK MICHIE, LLP

By: _____

CHRISTOPHER J. MICHIE, ESQ.
Attorney for Defendant

COOPER LEVENSON, P.A.

By: _____

RUSSELL L. LICHTENSTEIN, ESQ.
Attorney for Defendant

220 Alexander Street
Princeton, NJ 08540

Russell L. Lichtenstein, Esq.
Cooper Levenson, P.A.
1125 Atlantic Avenue
Atlantic City, NJ 08401

NAGEL RICE, LLP

By: _____
BRUCE H. NAGEL, ESQ.
Class Counsel

RAVI MOTWANI

By: _____
Class Representative

CLARK MICHIE, LLP

By: Christopher J. Michie
CHRISTOPHER J. MICHIE, ESQ.
Attorney for Defendant

COOPER LEVENSON, P.A.

By: Russell L. Lichtenstein/csm
RUSSELL L. LICHTENSTEIN, ESQ.
Attorney for Defendant

**MARINA-DISTRICT DEVEDOPMENT
COMPANY, LLC d/b/a BORGATA HOTEL
CASINO AND SPA**

By: _____

JOSEPH CORBO, ESQ.
General Counsel

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RAVI MOTWANI, Individually and
on behalf of a Class of
Similarly Situated Individuals,

Plaintiff,

v.

MARINA DISTRICT DEVELOPMENT
COMPANY, LLC d/b/a BORGATA
HOTEL CASINO AND SPA,

Defendant.

Civil Action No.
2:15-cv-02069

ORDER GRANTING PRELIMINARY
APPROVAL TO PROPOSED CLASS
ACTION SETTLEMENT, CERTIFYING A
CLASS FOR SETTLEMENT PURPOSES,
APPROVING PROPOSED CLASS NOTICE
PLAN, AND SCHEDULING FINAL
FAIRNESS HEARING

WHEREAS, the plaintiff Ravi Motwani, individually and in his capacity as a Class Representative ("Plaintiff"), and defendant Marina District Development Corporation LLC d/b/a the Borgata Hotel Casino and Spa ("the Borgata") (collectively, "the Parties") have reached a proposed settlement of the above-captioned Action ("the Proposed Settlement"), the terms of which are set forth in the Settlement Agreement filed with the Court ("the Settlement Agreement), and

WHEREAS, the Plaintiff has filed a motion pursuant to Fed. R. Civ. P. 23(e) seeking preliminary approval of the Proposed Settlement ("the Motion"), and

WHEREAS, the Parties consent to the granting of the Motion and the form and entry of this Order,

NOW THEREFORE, upon review and consideration of the Motion, the Settlement Agreement, and the supporting materials filed with the Court, and good cause appearing,

IT IS this _____ day of _____, 2016

ORDERED and ADJUDGED as follows:

1. The Court has subject matter jurisdiction over this Action under 28 U.S.C. § 1332, and venue is proper in this District.
2. The Court has personal jurisdiction over the Class Representative, Potential Class Members and the Borgata.
3. The Settlement Agreement, including all exhibits thereto, are hereby incorporated into this Order. Unless otherwise provided herein, the terms defined in the Settlement Agreement shall have the same meanings herein.
4. Subject to further consideration by the Court at the time of the Final Approval Hearing provided for below, the Court determines that the Proposed Settlement meets the requirements for preliminary approval.
5. First, the Court finds that the Proposed Settlement is the result of the Parties' good faith negotiations, conducted at arms-length, as well as formal mediation proceedings conducted before former United States Magistrate Judge Joel B. Rosen.
6. Second, the Court finds that there are no obvious deficiencies in the Proposed Settlement. The Plaintiff - represented by counsel experienced in the prosecution of complex

consumer class actions - has investigated the factual basis for the allegations set forth in the Second Amended Complaint. Class Counsel have also researched and filed submissions with the Court addressing the applicable law. As a result of the work performed to date, Class Counsel has a comprehensive understanding of the strengths and weaknesses of the Action, and the risks associated with its continued litigation through trial, and/or appeal.

7. Third, the Court finds that the Proposed Settlement falls within the range of reason. It confers benefits upon the Settlement Class that are reasonable and adequate in light of the relief that the Plaintiff and Class Counsel believe are likely to be recovered at trial, without the costs, uncertainty, delays, and other risks associated with continued litigation, trial, and/or appeal.

8. The Plaintiff also asks the Court to certify the Proposed Settlement Class - as defined below - for settlement purposes only. The Parties agree that if this case were to proceed to trial, the Borgata would contest the issue of class certification.

9. The Court finds that, for settlement purposes only, the requirements of Fed R. Civ. P. 23(a) and (b)(3) are satisfied, and hereby certifies the following settlement class:

All individuals who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating "Unlimited Free Parking," (b) sought to utilize such vouchers at any time, and (c) do not timely and properly request exclusion from the Settlement Class (as provided in paragraph 52 of the Settlement Agreement).

Excluded from the Settlement Class are officers, directors or employees of the Borgata and their immediate family members, and any judge presiding over this action and their immediate family members.

10. The Court makes the following findings with respect to class certification, again for settlement purposes only.

11. Ascertainability. The Parties agree that each member of the Proposed Settlement Class can be identified through the Borgata's business records. Thus the Court finds that the ascertainability requirement is satisfied.

12. Rule 23(a):

i. Numerosity: The Parties estimate that size of the Proposed Settlement Class exceeds 8,000 individuals. The Class is therefore sufficiently numerous that joinder of all Class Members into one suit would be impracticable.

ii. Commonality: The commonality requirement is satisfied is the named plaintiff shares at least one question of fact or law with the grievances of the prospective class. Here questions concerning the defendant's conduct (for example, what actions the Borgata took with respect to the design, wording, issuance and redemption of the vouchers) present common issues.

.
iii. Typicality: Plaintiff's claims are typical of the claims of members of the proposed Settlement Class he seeks to represent. They arise from the same practice that gives rise to the claims of other class members and are based on the same legal theories.

iv. Adequate Representation: There is no conflict between the Plaintiff's interests and those of other class members. His interests are aligned with theirs. Additionally, the Court finds that Class Counsel: (1) possess adequate experience; (2) have vigorously prosecuted the action; and (3) have acted at arm's length from the defendant. The adequacy requirement is therefore satisfied.

b. Rule 23(b) (3):

i. Predominance of Common Issues: The Court finds that, in the context of the Proposed Settlement, the common issues raised by the Borgata's conduct predominate over any individual questions in the context of the settlement of this litigation, favoring class treatment at this juncture.

ii. Superiority of the Class Action Mechanism: The Court also finds that, in the context of the Proposed Settlement, a class action is superior to all other available methods for the fair and efficient adjudication of the controversy.

13. The Court preliminarily appoints Ravi Motwani as a Class Representative for purposes of certification of the Settlement Class and the proposed Settlement.

14. The Court preliminarily finds that counsel for Mr. Motwani fairly and adequately represent the interests of the Proposed Settlement Class, and hereby appoints Bruce H. Nagel and Randee M. Matloff of Nagel Rice, LLP, 103 Eisenhower Parkway, Roseland, New Jersey 07068 as Class Counsel pursuant to Fed. R. Civ. P. 23(g).

15. The Fairness (or "Final Approval") Hearing shall be held before this Court on _____ at _____ a.m./p.m., to determine whether the Settlement is fair, reasonable, and adequate and should receive final approval. The Court will rule on Class Counsel's application for an award of attorneys' fees and costs and service awards for the Class Representative at that time. The Court's determination of whether to approve the Settlement is separate from its award of attorneys' fees and service awards. The Final Approval Hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Settlement Class. After the Final Approval Hearing, the Court may enter a Final Order and Judgment in accordance with the Settlement that will adjudicate the rights of the Settling Class Members with respect to the claims being settled.

16. Settling Class members who wish to object to or opt out of the Class must do so no later than twenty-one (21) days prior to the Final Approval Hearing. The process for objecting, and opting out of the Settlement Class is as follows:

17. Class Members who wish to opt-out of (i.e., exclude themselves from) the Settlement Class must submit written requests for exclusion. To be effective, such a request must include the Class Member's name and address, a clear and unequivocal statement that the Class Member wishes to be excluded from the Settlement Class, and the signature of the Class Member. The request must be mailed to counsel for the Borgata and Class Counsel at the address below (also provided in the Class Notice) and must be postmarked by [date]_____.

Counsel for Borgata:

Christopher J. Michie
CLARK MICHIE LLP
103 Carnegie Center
Suite 300
Princeton, NJ 08540

Class Counsel:

Bruce H. Nagel
Randee M. Matloff
NAGEL RICE LLP
103 Eisenhower Parkway
Suite 103
Roseland, NJ 07068

18. Any Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, order and judgments in this Action.

19. Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Class Members who choose to object to the Proposed Settlement must file a written objection.

20. To be effective, an objection to the Proposed Settlement must:

- a) Contain a heading which includes the name of the case and case number;
- b) Provide the name, address, telephone number and signature of the Objector filing the objection;
- c) Indicate the specific reasons why the Objector objects to the Proposed Settlement;
- d) Contain a detailed statement of the specific legal and factual basis for each and every objection;
- e) Provide documentary proof of membership in the Class
- f) Be filed with the Clerk of the Court not later than twenty-one (21) days before the date set in the Class Notice for the Settlement Approval Hearing;
- g) Be sent to the Class Counsel and counsel for the Borgata at the addresses below by first-class mail, postmarked no later than twenty-one (21) days before the date set

in the Class Notice for the Settlement Approval Hearing,
which is ____[date].

Counsel for Borgata:

Christopher J. Michie
CLARK MICHIE LLP
103 Carnegie Center
Suite 300
Princeton, NJ 08540

Class Counsel:
Bruce H. Nagel
Randee M. Matloff
NAGEL RICE LLP
103 Eisenhower Parkway
Suite 103
Roseland, NJ 07068

- h) Contain the name, address, bar number and telephone number of the objecting Class Member's counsel, if represented by an attorney. If the Class Member is represented by an attorney, he/she or it must comply with all applicable laws and rules for filing pleadings and documents in the United States District Court; and

21. Members of the Settlement Class of their attorneys intending to appear at the Fairness Hearing must, by __[date]__ serve on Class Counsel and Counsel for Borgata, and file with the Court, a notice of Intent to Appear, which includes in addition to the information in Paragraph 20 above:

- a) A list of any and all witnesses whom the Objector may call at the Settlement Approval Hearing, with the

address of each witness and a summary of his or her proposed testimony;

- b) A detailed description of any and all evidence the Objector may offer at the Settlement Approval Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Settlement Approval Hearing.

22. Any Class Member who does not file a timely objection in accordance with paragraphs 19-21 shall waive the right to object or to be heard at the Settlement Approval Hearing and shall be barred from making any objection to the Proposed Settlement.

23. Any Class Member may appear at the Settlement Approval Hearing, in person or by counsel, if a written notice of intent to appear is filed as set forth above, and be heard to the extent allowed by the Court, in opposition to the fairness, reasonableness and adequacy of the Proposed Settlement, and on the application for an award of attorneys' fees and costs. The right to object to the Proposed Settlement must be exercised individually by an individual Class Member, not as a member of a group or subclass and, except in the case of a minor, deceased or incapacitated Class Member, not by the act of another Person acting or purporting to act in a representative capacity, except his or her attorney.

24. Class Members who do not opt out but object to the Proposed Settlement shall become Settling Class Members in the event that the Proposed Settlement is approved, and shall have waived their right to pursue an independent remedy against Borgata. Class Members can avoid being bound by any judgment of the Court by complying with the opt out exclusion provisions in paragraph 16, above.

25. Pending the Final Approval Hearing, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement, this matter is stayed.

26. The Court approves, as to form and content, the Class Notice attached to the Settlement Agreement as Exhibit 2. Not later than thirty (30) days after the entry of this Order, the Borgata will make its best efforts to mail via regular first class mail and e-mail the Class Notice to each Putative Class member as directed in the Settlement.

27. The Court has reviewed the proposed Class Notice and the plan for dissemination via direct mail to every individual member of the Class. The Court finds that Notice and the proposed method of dissemination, carried out with reasonable diligence, (a) will provide the best practicable notice under the circumstances, affording due, adequate and sufficient notice to all members of the Settlement Class, and (b) will apprise the members of the Settlement Class of the pendency of this action,

the terms of the Settlement, and the right to object to the Settlement or opt out. The Court therefore finds that the Notice and Plan for dissemination satisfy the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

28. The following are the deadlines for the following events:

EVENT	DATE
Deadline for Mailing and E-mailing Notice	
Filing of papers in support of Class Counsel's Application for Attorneys' Fees and Expenses and the Class Representative service award	
Filing of papers in support of Final Approval	
Deadline for submitting exclusion requests or objections	
Filing of response to objections	
Final Approval Hearing	

29. The dates of performance contained herein may be extended by Order of the Court, for good cause shown, without further notice to the Settlement Class.

30. If the Settlement does not receive Final Approval, then the Settlement shall become null and void. The Settlement Class members and the Parties shall be restored to their respective positions before the entry of this Preliminary Approval Order

and no findings herein with respect to the appropriateness of class treatment shall have any effect.

31. Class Counsel and Counsel for the Borgata are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Settlement, including making, without further approval of the Court, non-material changes to the form or content of the Class Notice and other exhibits that they jointly agree are reasonable and/or are necessary.

32. Neither this Order, nor any aspect of the Settlement Agreement, is to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of the Borgata. The Borgata specifically denies any liability. Each of the Parties to the Settlement entered into the Settlement Agreement with the intention to avoid further disputes and litigations with the attendant inconvenience and expenses.

John Michael Vazquez, U.S.D.J.

EXHIBIT 2

**NOTICE OF PENDENCY OF
CLASS ACTION AND PROPOSED SETTLEMENT**

RAVI MOTWANI, Individually and on
behalf of a Class of Similarly Situated
Individuals,

Civil Action No. 2:15-cv-02069

Plaintiffs,

v.

MARINA DISTRICT DEVELOPMENT
COMPANY, LLC d/b/a BORGATA
HOTEL CASINO AND SPA,

Defendant.

THIS NOTICE ADVISES YOU OF A PROPOSED CLASS ACTION
SETTLEMENT WITH MARINA DISTRICT DEVELOPMENT COMPANY,
LLC d/b/a BORGATA HOTEL CASINO AND SPA

**THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS.
PLEASE READ IT CAREFULLY.**

THE COURT HAS AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.

SUMMARY

- The records of the Borgata Hotel Casino and Spa (the “Borgata”) indicate that you are a class member in a civil lawsuit because you received and used certain parking vouchers offering “Unlimited Free Parking” at the Borgata Casino in Atlantic City between September 16, 2009 and December 31, 2015 (the “Class Period”).

- The plaintiff in the lawsuit alleges that these parking vouchers were misleading because they could not be used more than once on the same day. While this condition was stated on the face of the vouchers, the plaintiff alleges that the language was in print too small to be read by the average consumer.
- The plaintiff, on behalf of himself and the class members, has reached an agreement with the Borgata to settle all claims arising from the issuance and use of these parking vouchers (the “Proposed Settlement”).
- The Borgata denies the plaintiff’s allegations in their entirety, but has agreed to enter into the Proposed Settlement solely to avoid the burden and expense of litigation.
- If you do not wish to participate in the Proposed Settlement, you can exclude yourself from (or “opt out” of) the Proposed Settlement by following the procedures outlined below.
- If you do not exclude yourself from/opt out of the Proposed Settlement, you will automatically receive the following benefits:
 - \$20 in Slot Dollars® (Borgata vouchers in dollar amounts that can be used instead of cash to play at a slot machine in the Casino), and
 - six (6) parking vouchers, each of which entitles the holder to park one time for free at the Borgata.
- In exchange for these benefits, you will be giving up any claim you may have relating to the vouchers.
- The Court has granted preliminary approval to the Proposed Settlement. It has scheduled a Final Approval (or “Fairness”) Hearing on _____, 2016 to decide whether the Proposed Settlement is fair, reasonable and adequate.
- As part of this hearing, the Court will also consider the issue of attorneys’ fees and costs for class counsel. Counsel has agreed not to seek more than \$175,000 in attorneys’ fees and costs. These fees and costs will be paid separately by the Borgata

and will not affect the benefits that settling class members will receive under the terms of the Proposed Settlement.

- The Court will also consider the issue of an award to the plaintiff to compensate him for the services he has provided on behalf of the class. This award will not exceed \$2,500. This award will also be paid separately by the Borgata and will not affect the benefits that settling class members will receive under the terms of the Proposed Settlement.
- If you do not exclude yourself from/opt out of the Proposed Settlement, but nonetheless wish to object to its terms, then you may object by following the procedures outlined below.
- If you have any questions, or require further information about the Proposed Settlement and your rights, please contact Class Counsel, Nagel Rice LLP, 103 Eisenhower Parkway, Roseland, NJ 07068, Tel. (973) 618-0400, www.nagelrice.com.

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DETAILED NOTICE

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Age Group	Percentage
18-24	~1%
25-34	~25%
35-44	~20%
45-54	~15%
55-64	~10%
65-74	~5%
75-84	~2%
85+	~1%

BASIC INFORMATION

1. Why is this Notice being issued?

This Notice is being issued because class members have a right to know about the proposed settlement of a class action lawsuit that the Court has preliminarily approved. Class members are entitled to know what benefits they will receive if they choose to participate in the Proposed Settlement, what rights they are giving up, and what options they have in terms of either opting out or objecting to the Proposed Settlement.

2. What is this lawsuit about?

Filed in January of 2015, the lawsuit is entitled Ravi Motwani v. Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa, Civil Action No. 2:15-cv-02069, and is currently pending in the United States District Court for the District of New Jersey in Newark, New Jersey. Judge John Michael Vazquez is in charge of this case.

The person who filed the lawsuit, Mr. Motwani, is the plaintiff. The Borgata is the defendant.

The lawsuit involves vouchers issued by the Borgata to certain favored customers ("Rewards Members") offering "Unlimited Free Parking" at the casino. The plaintiff alleges that these vouchers were misleading because they could not be used more than once on the same day. While this condition was stated on the face of the vouchers, the plaintiff alleges that the print was too small to be read by the average consumer. Mr. Motwani claims he was improperly required to pay a \$5 parking fee when his attempt to use his voucher a second time in the same 24 hour period was rejected.

The plaintiff has asserted claims under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*, the Truth in Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-15 *et seq.*, and common law claims for fraud, negligent misrepresentation and promissory estoppel. He seeks actual, punitive and treble damages, civil penalties and attorneys' fees and costs.

The Borgata denies the plaintiff's allegations in their entirety, but has agreed to enter into a settlement to avoid the burden and expense of litigation.

3. Why is this a class action and what does that mean?

This case was brought as a class action. In a class action, the plaintiff(s) (also called “class representatives”) sue not only for themselves but also for other people with similar claims. All of these people together are called a “class,” and individually, are called “class members.” In this case, the class is composed of the following individuals:

All individuals who (a) received parking vouchers from the Borgata between July 1, 2009 and December 31, 2015 that contained language indicating “Unlimited Free Parking,” (b) sought to utilize such vouchers at any time, and (c) do not timely and properly request exclusion from the Settlement Class (as provided in paragraph 52 of the Settlement Agreement).

Excluded from the class are officers, directors or employees of the Borgata and their immediate family members, and any judge presiding over [the lawsuit] and their immediate family members.

The Court has certified this class for settlement purposes and has appointed the plaintiff Mr. Motwani to act as the class representative for purposes of the Proposed Settlement.

4. Why is there a settlement?

The Court did not decide the lawsuit in favor of either the plaintiff or the Borgata. Instead, both sides have agreed to the Proposed Settlement. That way, they avoid the uncertainty and cost of a trial and those class members who participate in the Proposed Settlement will receive certain benefits. The class representatives and the attorneys appointed by the Court to represent the class (“Class Counsel”) believe that the settlement is in the best interests of all class members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

If you are receiving this Notice, then you are a class member.

You are part of the settlement and entitled to settlement benefits if:

- (a) you are a class member, and
- (b) you do not request exclusion from/opt out of the Settlement (as explained below).

6. What Borgata parking vouchers are included?

The only Borgata parking vouchers that are included in the settlement are those received between July 1, 2009 and December 31, 2015 that contained language indicating “Unlimited Free Parking.”

7. Are there exceptions to being included in the settlement?

The Borgata’s officers, directors, and employees, and their immediate family members are not included in the class. The judges who have presided/are presiding over the lawsuit and their immediate family members are also excluded.

THE SETTLEMENT BENEFITS: WHAT YOU GET AND HOW YOU GET IT

8. What does the settlement provide?

If you do not exclude yourself from the settlement, you will automatically receive the following benefits:

- (a) \$20 in Slot Dollars® (Borgata vouchers in dollar amounts that can be used instead of cash to play at a slot machine in the Casino), and
- (b) six (6) parking vouchers, each of which entitles the holder to park one time for free at the Borgata. These parking vouchers are valid on any day of the year, including weekends and holidays.

9. How and when can I use the Slot Dollars® and parking vouchers?

Within forty-five (45) days of the final approval of the Proposed Settlement by the Court, the Borgata shall issue the Slot Dollars® and parking vouchers to all class members who do not exclude themselves from the settlement. The Slot Dollars® and parking vouchers will be mailed to you directly at the address where you received this Notice. The Slot Dollars® and parking vouchers must be used within 12 months of the date of issue. They are non-transferable. Once the Slot Dollars® are activated, they must be used within the same gaming day. A gaming day is between 6 a.m. on one day and 5:59 a.m. the following day. Slot Dollars® cannot be converted into cash.

10. What potential claims against the Borgata am I releasing/giving up?

If you are a class member and participate in the settlement, you are releasing the Borgata from all claims relating to the vouchers, and you will be bound by the release included in the Settlement Agreement, which states:

“Released Claims” means and includes any and all claims, known or unknown, rights, demands, actions, causes of action, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses that have been alleged, or which could have been alleged, whether at law, in equity, or under any statute or regulation, in the Action by any member of the Settlement Class arising from, or in any way related to, the issuance or use of the Original Parking Vouchers during the Class Period; provided, however, the Released Claims do not include any claim for enforcement of this Agreement and/or the Final Judgment.

Copies of the Settlement Agreement containing the release can be obtained from Class Counsel, Nagel Rice LLP, 103 Eisenhower Parkway, Roseland, NJ 07068, Tel. (973) 618-0400, www.nagelrice.com, and is available for viewing via a link on their website.

THE LAWYERS REPRESENTING PLAINTIFFS

11. Do I have a lawyer in this case?

Yes. The law firm of Nagel Rice LLP has been appointed as Class Counsel by the Court to represent you and the other settling class members. You do not have to pay anything to Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers be paid?

Class Counsel will ask the Court for an award of attorneys’ fees and costs in an amount not to exceed \$175,000. These fees and costs will be paid separately by the Borgata and will not affect the benefits that settling class members will receive under the terms of the Proposed Settlement.

The Court will also consider the issue of an award to the plaintiff to compensate him for the services he has provided on behalf of the class. This award will not exceed \$2,500. This award will also be paid separately by the Borgata and will not affect the benefits that settling class members will receive under the terms of the Proposed Settlement.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. What do I do if I do not want to be included in the settlement?

You have a right to exclude yourself or “opt out” of the Proposed Settlement. To opt out, you must personally sign and mail a letter requesting exclusion to Class Counsel and the Counsel for the Borgata at the following addresses:

COUNSEL FOR THE CLASS:

Bruce H. Nagel
Randee M. Matloff
Nagel Rice LLP
103 Eisenhower Parkway
Roseland, NJ 07068

COUNSEL FOR THE BORGATA:

Christopher J. Michie
Clark Michie LLP
220 Alexander Street
Princeton, NJ 08540

You must personally sign the exclusion request and clearly express your desire to be excluded from the Settlement Class. Your request must also include your name, address, and telephone number.

Your exclusion request must be mailed to Class Counsel and Counsel for the Borgata and must be postmarked no later than _____, 2016 or it may not be accepted.

If you do not specifically request to be excluded by following these directions, you will automatically be a member of the Settlement Class.

Class members who opt out of the class will not be eligible for benefits under the Proposed Settlement.

14. What happens if I don't opt out of the Settlement before _____, 2016?

If the Proposed Settlement receives final court approval and you are a class member who has not properly and timely excluded yourself from/opted out of the class, all claims that you have against the Borgata related to the vouchers will be **WAIVED AND RELEASED**, and you will be prohibited from bringing any such claims in the future.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court if I don't like the settlement?

If you are a class member and do not exclude yourself from/opt out of the Proposed Settlement, you can express your objection to the terms of the Proposed Settlement.. The Court will consider your views. To object, you must send a letter to the Court saying that you object to the terms of the settlement in Motwani v Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa, Civil Action No. 2:15-cv-02069 and give the reasons why you think the Court should not approve it. You must include your name, address, and telephone number, your signature, the reasons you object to the settlement; and if you are represented by your own separate counsel, you must also provide that attorney's name, address and telephone number. The objection also must clearly state in detail the legal and factual ground(s) for your objection.

In order to object, you must file the objection with the Clerk of the Court at the following address:

Clerk of the Court
United States District Court for the District of New Jersey
Martin Luther King Federal Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, New Jersey 07101

The objection must be postmarked no later than _____, 2016. Copies of your objection must also be mailed on the same date to Class Counsel and Counsel for the Borgata at the addresses listed in response to Question 13 above.

If you file an objection, you are still a member of the class and will receive the benefits of the settlement and will be subject to the release.

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at _____ on _____, 2016 in the Courtroom of the Hon. John Michael Vazquez, U.S.D.J., which is located in the Martin Luther King Federal Building and U.S. Courthouse, 50 Walnut Street, Room 2037,

Newark, New Jersey. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will also decide the amount of legal fees that should be paid to Class Counsel and the amount of the award to the plaintiff for services performed on behalf of the Class.

After the hearing, the Court will decide whether to grant final approval of the settlement. There is no set timetable for a decision on whether or not to grant final approval to the Proposed Settlement.

17. Do I have to come to the hearing?

No. Class counsel will answer any questions that Judge Vazquez may have. However, you are welcome to attend the hearing at your own expense. You also may pay your own lawyer to attend the hearing on your behalf. If you send an objection, you don't have to come to Court to discuss it. As long as your written objection is received before the deadline, and you have followed the directions contained in the answer to question 15 above, the Court will consider your everything that you have to say.

18. May I speak at the hearing?

That will be up to Judge Vazquez. You may ask the Judge for permission to speak at the hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in Motwani v Marina District Development Company, LLC d/b/a Borgata Hotel Casino and Spa, Civil Action No. 2:15-cv-02069." You must include your name, address, and telephone number, as well as the name, address and telephone number of any attorney who will appear at the hearing on your behalf. You must also include your signature and the specific reasons why you wish to speak at the hearing, as well as any ground(s) for your objection. Your Notice of Intention to Appear must be filed with the Clerk of the Court at the address listed in the answer to question 15 above no later than _____, 2016 and must be received by Class Counsel and Counsel for the Borgata at the addresses listed in response to Question 13 above no later than _____, 2016.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing and the Proposed Settlement receives final approval, you will automatically receive the settlement benefits described in response to Question 9, and any and all claims you have against the Borgata relating to the vouchers will be released.

20. How do I get more information?

If you have any questions or if you would like more information about the lawsuit or the terms of the Proposed Settlement, please contact Class Counsel at Nagel Rice LLP, 103 Eisenhower Parkway Roseland, NJ 07068, Tel. (973) 618-0400, www.nagelrice.com.

The Settlement Agreement, Motion for Preliminary Approval, Motion for Final Approval and Motion for Attorneys' Fees and Class Representative Service Award will be available for review via a link at www.nagelrice.com after each document is submitted to the Court.

In addition, if you wish to review the pleadings, records and other papers on file in the lawsuit, including the Court's Order regarding the Preliminary Approval of Class Settlement and the Settlement Agreement, those items may also be inspected on weekdays, during normal business hours, at the Clerk's Office, at the Martin Luther King Federal Building and U.S. Courthouse, 50 Walnut Street, Room 2037, Newark, New Jersey

PLEASE DO NOT CONTACT THE COURT DIRECTLY WITH QUESTIONS ABOUT THE SETTLEMENT.

Dated: _____, 2016

KEY DATES

Deadline to send letter clearing stating you wish to be excluded from the Class	Must be postmarked by __ (21 days prior to hearing date)
Deadline for stating that you object to the proposed Settlement	Must be postmarked by __ (21 days prior to hearing date)
Court Fairness Hearing	Insert date