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July 21, 2016

Hon. John Michael Vazquez, U.S.D.J.  
Martin Luther King Building  
& U.S. Courthouse  
50 Walnut Street Room 4015  
Newark, NJ 07101

Re: Motwani v. Marina District Development Corporation, LLC  
Civil Action No. 2:15-cv-02069-JMV-MF

Dear Judge Vazquez:

This firm, together with Cooper Levenson P.A., represents the defendant in the above matter, Marina District Development Corporation, LLC d/b/a Borgata Hotel Casino and Spa (the "Borgata").

As the Court will recall, this putative class action involves parking vouchers issued by the Borgata to certain favored customers (known as "Rewards Members") as part of a customer loyalty program. The plaintiff claimed that these vouchers were misleading; the Borgata disagreed.

After mediation proceedings with former Magistrate Joel B. Rosen, the parties agreed to settle the litigation. Subsequently they entered into a settlement agreement contingent on court approval. The plaintiff then submitted a motion seeking preliminary approval of the Proposed Settlement pursuant to Rule 23(e). That motion was granted by Order dated May 16, 2016.

The Proposed Settlement provided that, in exchange for the release of their claims, the Borgata would issue Settling Class Members with:

- (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), which must be used within 12 months of the date of issue, and

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(b) six (6) parking vouchers, each of which entitles the holder to park one time for free at the Borgata, which must be used within 12 months of the date of issue.

As the Court is aware, after the Preliminary Approval Order was entered, but before class notice was issued, the defendants discovered that a small number of class members would not be able to use either the Slot Dollars® or the parking vouchers because they are not permitted to enter on casino property. Of the 8,133 class members, sixty-seven (67) (less than one per cent) fall into this category. Of this number, eleven (11) are excluded from the casino either at their own request or by the State of New Jersey Division of Gaming Enforcement.<sup>1</sup> The remaining fifty-six (56) are individuals who have been permanently evicted from the casino for a variety of different reasons, mostly related to their behavior during previous visits (visits that occurred after their use of the parking vouchers involved in the settlement).<sup>2</sup>

After this problem came to light, the Court stayed the issuance of class notice on June 10, 2016 and the parties then engaged in arms-length discussions to come up with an alternative settlement benefit for these sixty-seven class members – a benefit

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<sup>1</sup> The Casino Control Act, specifically N.J.S.A. 5:12-71.2, provides for the establishment of a list of persons self-excluded from gaming activities at all licensed casinos and simulcasting facilities. Any person may request placement on the list of self-excluded persons by acknowledging that they are a problem gambler and by agreeing that, during any period of voluntary exclusion, they may not collect any winnings or recover any losses resulting from any gaming activity at such casinos and facilities. *Id.*; see also New Jersey Division of Gaming Enforcement, Self-Exclusion List (available

N.J.S.A. 5:12-71 also provides for the establishment of a list of persons who are to be excluded or ejected from any licensed casino in New Jersey for other reasons. This list includes cheats, criminal offenders and any anyone else “[w]hose presence in a licensed casino hotel would, in the opinion of the director [of the Division of Gaming Enforcement], be inimical to the interest of the State of New Jersey or of licensed gaming therein.” *Id.*; see also New Jersey Division of Gaming Enforcement, Exclusion List (available at [http://www.state.nj.us/oag/ge/exclude\\_home.htm](http://www.state.nj.us/oag/ge/exclude_home.htm)).

<sup>2</sup> N.J.S.A. 5:12-71.1 provides that “[a] casino licensee may exclude or eject from its casino hotel any person who is known to it to have been convicted of a crime, disorderly persons offense, or petty disorderly persons offense committed in or on the premises of any casino hotel.” The statute also preserves a casino licensee’s common law right to “exclude or eject permanently from its casino hotel any person who disrupts the operations of its premises, threatens the security of its premises or its occupants, or is disorderly or intoxicated.” *Id.*

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that does not require them to visit the casino. The parties have now reached such an agreement.

Under the revised proposal, the definition of the Settlement Class will remain the same:

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 57 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.

However, for purposes of administering the Settlement, we now propose to subdivide the Settlement Class further into Subclass A and Subclass B.

Subclass A Definition: All members of the Class who (a) have not been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) have not been permanently evicted from the Borgata.

Subclass B Definition: (a) All members of the Class who have been excluded from the Borgata, either at their own request or by the New Jersey Division of Gaming Enforcement, and (b) all members of the Class who have been permanently evicted from the Borgata.

The settlement benefit awarded to the vast majority of Settling Class Members (i.e., those falling into Subclass A) remains the same. However, instead of receiving the Slot Dollars® and parking vouchers, the members of Subclass B will receive a \$20 voucher which they can exchange for one of a variety of items (hats, t-shirts, golf balls, phone cases, keychains, mugs, shot glasses, drink cozies) on a special webpage

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maintained for this purpose by the Borgata. These vouchers must be used within six (6) months of the date of issue.

The Borgata submits that this proposal represents a fair and reasonable alternative for Settling Class Members who cannot benefit from the original settlement because they are not permitted to enter the casino. It also addresses the situation of a problem gambler who cannot engage in gaming activities. The Proposed Settlement does not favor one Subclass over the other. The members of both subclasses are receiving benefits with a value far in excess of the original \$5 parking fee that gave rise to this litigation, and no member of either Subclass has to spend additional money to realize those benefits. In such circumstances, the Borgata respectfully submits that this slightly-revised version of the Proposed Settlement meets the requirements for preliminary approval under Rule 23(e).

If the Court has any questions, or if I can be of any further assistance, please do not hesitate to contact me directly at (609) 423-2143.

Respectfully submitted,



Christopher J. Michie

CJM:bd

cc: All counsel of record