

**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 July 1, 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, unless (a) you have been excluded from the Borgata, either at your own request or by the New Jersey Division of Gaming Enforcement, or (b) you have been permanently evicted from the Borgata.
  - \$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
  - 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.
- If you do not exclude yourself from/opt out of the Proposed Settlement, and you do fall into the group of persons who have been excluded or permanently evicted from the Borgata, you will instead receive:

- a \$20 voucher that can be exchanged for one of a variety of items on a special Borgata website. These vouchers must be used within 12 months of the date of issue.
- 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 November 29, 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](http://www.nagelrice.com).



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**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 57 of the Amended 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 one of the following two sets of benefits, depending upon whether you are in Subclass A or Subclass B:

Subclass A. If you (a) have not been excluded from the Borgata, either at your own request or by the New Jersey Division of Gaming Enforcement, and (b) have not been permanently evicted from the Borgata, then you are in Subclass A and will receive:

- 1) \$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
- 2) 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.

Subclass B. If (a) you have been excluded from the Borgata, either at your own request or by the New Jersey Division of Gaming Enforcement, or (b) you have been permanently evicted from the Borgata, then you are in Subclass B and will receive:

- 1) a \$20 voucher that can be exchanged for one of a variety of items (hats, t-shirts, golf balls, phone cases, keychains, mugs, shot glasses, drink cozies) on a special website maintained by the Borgata.

## **9. How and when can I use the Slot Dollars®, Parking Vouchers or Website Vouchers?**

### Subclass A

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 members of Subclass A 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 twelve (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.



Subclass B

Within forty-five (45) days of the final approval of the Proposed Settlement by the Court, the Borgata shall issue the \$20 website voucher to all members of Subclass B who do not exclude themselves from the settlement. The website voucher will be mailed to you directly at the address where you received this Notice. The website voucher must be used within twelve (12) months of the date of issue. It is non-transferable.

**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 parking vouchers, and you will be bound by the release included in the Amended 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 Amended 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](http://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  
Ranee 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 November 8, 2016 or it will 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 November 8, 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 the case name and number as indicated in the previous sentence; 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 November 8, 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, unless an objection results in a modification of the settlement. In which case you will receive the benefits of the modified settlement and will still 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 10:00 a.m. on November 29, 2016 in the Courtroom of the Hon. John Michael Vazquez, U.S.D.J., which is located in the Frank R. Lautenberg U.S. Post Office and Courthouse, 2 Federal Square, Courtroom 3, 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. In the event of an adjournment, you will NOT be contacted by class counsel. Therefore, if you elect to attend the Fairness Hearing, you should contact class counsel in advance of the scheduled hearing date to confirm that it has not been adjourned.

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 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, the ground(s) for your objection, provide any exhibits that you intend to rely upon, and a list of witnesses you intend to call, if any, with the address of each witness and a summary of his or her testimony. 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, postmarked no later than November 8, 2016 and must be received by Class Counsel and Counsel for the Borgata at the addresses listed in response to Question 13 above, postmarked no later than November 8, 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](http://www.nagelrice.com).

The Amended 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](http://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 Amended 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: July 28, 2016

**KEY DATES**

<b>Deadline to send letter clearing stating you wish to be excluded from the Class</b>	<b>Must be postmarked by November 8, 2016</b>
<b>Deadline for stating that you object to the proposed Settlement</b>	<b>Must be postmarked by November 8, 2016</b>
<b>Court Fairness Hearing</b>	<b>November 29, 2016</b>