

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 Amended Settlement Agreement filed with the Court ("the Amended 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 28th day of July, 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. On May 16, 2016, this Court entered an Order (ECF No. 38) granting the Plaintiff's motion for preliminary approval of an earlier class action settlement between the Parties ("the Initial Settlement"), certifying a class for settlement purposes and directing the issuance of notice to members of the class.
4. Subsequent to the entry of that Order, but before class notice was issued, the Parties discovered that a small subset of the class members (less than one per cent) would not benefit from the Initial Settlement because they were not permitted to enter upon the premises of the Borgata, either because they were "excluded" (voluntarily or by Order of the Division of Gaming Enforcement) or because they had been permanently evicted from the Borgata in the past. See generally N.J.S.A. 5:12-71 (discussing exclusion and eviction under New Jersey's Casino Control Act).

5. Upon this discovery, the Parties contacted the Court and advised the Court of the relevant facts.

6. On June 10, 2016, the Court entered an Order staying the issuance of class notice.

7. The Parties then began negotiations in an effort to reach agreement on an alternative benefit to be offered to those class members who would not benefit from the Initial Settlement.

8. The Parties reached such an agreement, which is reflected in the Amended Settlement Agreement.

9. The Court hereby vacates in its entirety its May 16, 2016 Order granting preliminary approval to the Initial Settlement, certifying a settlement class and directing the issuance of class notice. (ECF No. 38).

10. The Amended Settlement Agreement, including all exhibits thereto, are hereby incorporated into this Order. Unless otherwise provided herein, the terms defined in the Amended Settlement Agreement shall have the same meanings herein.

11. 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.

12. 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.

13. 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.

14. 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.

15. The Court further finds that the allocation of settlement benefits between the members of Subclass A and Subclass B is reasonable and adequate.

16. The Plaintiff 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.

17. 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 57 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.

18. For purposes of settlement distribution, the Court further certifies the following two subclasses pursuant to Fed. R. Civ. P. 23(c) (5):

Subclass A:

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:

(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.

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

20. 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.

21. 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 that form the basis of the Complaint) 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. With respect to the two subclasses, the Court finds that they both have the same interests as members of the overall Settlement Class. With respect to the fact that different types of benefits are available to each Subclass as part of the Proposed Settlement, the Court finds that the reasons underlying that distinction are well-grounded - the members of Subclass B cannot take advantage of the benefits available to members of Subclass A.

v. The Court does not find that there was any conflict precluding the Plaintiff or Class Counsel from negotiating the alternative benefits on behalf of Subclass B. The Plaintiff and Class Counsel had already negotiated the benefits to be awarded Subclass A before they began negotiating on behalf of Subclass B. See In re Nat'l Football League Players Concussion Injury Litig., 821 F.3d 410, 429 (3d Cir. 2016), as amended (May 2, 2016) (rejecting adequacy challenge based on fact that subclass counsel came from the team of lawyers already negotiating with the defendant). At no time were the Plaintiff or Class Counsel in the position of advocating one group's interests over the other. In addition, neither the named plaintiff nor Class Counsel had any financial incentive to favor one subclass over the other since both the requested class

representative service award and the requested amount of attorneys' fees remain exactly the same. 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.

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

23. 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).

24. The Fairness (or "Final Approval") Hearing shall be held before this Court on November 29, 2016 at 10:00 a.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.

25. 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:

26. 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 November 8, 2016.

Counsel for Borgata:

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

Class Counsel:

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

27. 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.

28. 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.

29. 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 November 29, 2016.

Counsel for Borgata:

Christopher J. Michie
CLARK MICHIE LLP
220 Alexander Street
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

30. Members of the Settlement Class of their attorneys intending to appear at the Fairness Hearing must, by November 8, 2016 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 29 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.

31. Any Class Member who does not file a timely objection in accordance with paragraphs 28-30 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.

32. 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.

33. 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 paragraphs 25-26, above.

34. 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.

35. 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.

36. 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.

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

| EVENT | DATE |
|--|-------------------|
| Deadline for Mailing and E-mailing Notice | August 28, 2016 |
| Filing of papers in support of Class Counsel's Application for Attorneys' Fees and Expenses and the Class Representative service award | November 22, 2016 |
| Filing of papers in support of Final Approval | November 22, 2016 |
| Deadline for submitting exclusion requests or objections | November 8, 2016 |
| Filing of response to objections | November 22, 2016 |
| Final Approval Hearing | November 29, 2016 |
| | |

38. 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.

39. 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.

40. 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.

41. 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.