IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. PENN NATIONAL GAMING, INC., et al. Defendants.	Case No. 5:20-cv-06067-SRB

PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs respectfully submit this motion for final approval of a class action settlement pursuant to Federal Rule of Civil Procedure 23(e)(2). This motion is unopposed by Defendants.

In support of this motion, Plaintiffs submit Suggestions in Support, which includes the Declaration of Alexander T. Ricke (Class Counsel), the Stueve Siegel Hanson LLP Firm Resume (Ex. 1 to the Ricke Declaration) and the Declaration of Richard W. Simmons of Analytics Consulting LLC (Settlement Administrator). Plaintiffs have also submitted a Motion to Award Attorneys' Fees and Litigation Expenses to Class Counsel and Service Awards to Named Plaintiffs and Opt-In Plaintiff contemporaneous with the filing of this motion.

For the reasons further described in the accompanying Suggestions in Support, this Court should grant Plaintiffs' motion, approve the Settlement Agreement, award Class Counsel attorneys' fees and expenses as requested, and approve the service awards as requested. Class Counsel will submit a Proposed Order Granting Final Approval of Class Action Settlement for the

Court's consideration to the Court's Chambers via e-mail in connection with the final approval hearing.

Dated: May 8, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on May 8, 2023, the foregoing document was filed with the Court's CM/ECF system, which served a copy of the foregoing document on all counsel of record.

/s/ *Alexander T. Ricke*

CLASS COUNSEL

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
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GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. PENN NATIONAL GAMING, INC., et al. Defendants.	Case No. 5:20-cv-06067-SRB

PLAINTIFFS' SUGGESTIONS IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

The Court previously granted Plaintiffs' motion to preliminarily approve and send notice of this class action to nearly 5,000 casino workers across the country. The Court found that it would likely be able to approve the settlement as fair, reasonable, and adequate under Rule 23(e). Class members' reaction thus far confirms that the Court's preliminary approval order was well-founded. To date, no class member has objected to the settlement. And only four class members have requested to be excluded.[1] The lack of class member opposition—the people being paid and releasing claims as a part of this settlement—confirms what the objective metrics all demonstrate: this settlement is fair, reasonable, and adequate and should be granted final approval.

The settlement provides for the creation of a non-reversionary $5,500,000 common fund (representing approximately 62% of the alleged damages in this case) to resolve the claims of 4,840 employees. After deducting the cost of settlement administration, service awards, a modest reserve fund to correct any errors or omissions, and Class Counsel's attorney's fees and expenses, the average *per capita* settlement checks will be *at least*: $378 on average for members of the Nationwide ERISA Class; $3,800 on average for members of the Argosy Casino Riverside Tip Pooling Class; $3,200 on average for members of the Hollywood Casino St. Louis Tip Pooling Class; and $100 on average for members of the MMWL Gaming License Class. Further, given the overlapping nature of the certified classes, many hundreds of class members will receive settlement allocations as members of two or more classes.

Importantly, there is no claims process; instead, class members who do not opt out will

[1] As discussed herein, the objection and exclusion period runs through May 19, 2023 for those individuals who received a corrective notice (less than 20% of class members). In the event any objections or additional exclusions are received, Plaintiffs will provide them to the Court and address them through a supplemental pleading.

automatically receive a check in the mail for their share of the settlement fund. In exchange for these payments, class members agree to an appropriately narrow release of claims tailored to the facts asserted in the Complaint. By any measure, Class Counsel achieved an excellent result that should be approved as fair, reasonable, and adequate.

In support of this motion, Plaintiffs submit, along with this memorandum, the Declaration of Alexander T. Ricke ("Ricke Decl."), the Stueve Siegel Hanson LLP Firm Resume (Ex. 1 to the Ricke Declaration), and the Declaration of Richard W. Simmons of Analytics Consulting LLC of Analytics Consulting LLC ("Simmons Decl."). For the reasons further described below, this Court should grant Plaintiffs' motion and enter the Proposed Order Granting Final Approval of Class Action Settlement.[2]

THE NATURE OF THE CLAIMS

I. Plaintiffs Asserted Wage and Hour Claims Against Two Missouri Casinos.

Plaintiffs Lipari-Williams and Hammond worked as table games dealers earning a sub-minimum wage at Argosy Casino (in the Kansas City area) and Hollywood Casino (in the St. Louis area), respectively. Third Amended Complaint ("Compl."), Doc. 62 at ¶¶ 6-7, 38. Plaintiffs brought two types of wage and hour claims against the two casinos on behalf of putative classes and collectives under the MMWL and FLSA.[3]

[2] Class Counsel will submit a Microsoft Word version of the Proposed Order Granting Final Approval of Class Action Settlement to the Court's Chambers by email.

[3] Plaintiffs Lipari-Williams and Hammond initially alleged that Penn National Gaming—the parent company of Argosy Casino and Hollywood Casino—jointly employed Plaintiffs and was also liable for the wage and hour violations at the two casinos. Doc. 62 at ¶¶ 17-19. However, Plaintiffs dismissed their wage and hour claims without prejudice as against Penn National Gaming in exchange for an agreement not to oppose class and conditional collective certification of those claims against the two casinos and that Penn National Gaming would indemnify any judgment obtained against its two subsidiaries. Joint Stipulation, Doc. 93-2. Given the unity of interests among the Defendants, Plaintiffs refer to all three entities collectively as "Defendants." However,

A. Defendants' deduction of costs associated with state-issued gaming licenses caused minimum wage violations.

Plaintiffs alleged that Defendants deducted from their wages the cost of obtaining and renewing gaming licenses from the Missouri Gaming Commission. Doc. 62 at ¶¶ 20-37. These expenses ranged from $50-75 annually. *Id*. Given that Plaintiffs earned a direct cash wage from the casinos that was below the minimum wage, any deduction necessarily brought their wages below minimum wage.[4] *Id*. The only inquiry is whether the gaming license primarily benefitted the workers or the employers. Plaintiffs asserted that the gaming licenses necessarily benefitted the casinos and were therefore unlawful minimum wage violations. *Id*.; *see also Lilley v. IOC-Kansas City, Inc.*, 2019 WL 5847841 (W.D. Mo. Nov. 7, 2019) (Bough, J.) ("[p]rofessional licensing costs arise out of employment rather than the ordinary course of life. They therefore primarily benefit the employer, not the employee, and are not deductible to the extent they bring an employee's pay below the minimum wage."); *see also Lockett v. Pinnacle Entertainment, Inc.*, 408 F. Supp. 3d 1043, 1049 (W.D. Mo. 2019) (Fenner, J.) ("[t]he necessity of a gaming license arises out of employment, and therefore, it primarily benefits Defendants, as employers. Accordingly, the FLSA prohibits the deduction of any cost or fee for the gaming license.").

With respect to wage deductions, the MMWL and FLSA are interpreted consistently. *See Lockett*, 408 F. Supp. 3d at 1048-49 ("The MMWL … [is] interpreted consistent with FLSA regulations"). Given the higher minimum wage under the MMWL, the FLSA claim is subsumed within the MMWL claim.

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to be clear, Plaintiffs Lipari-Williams and Hammond asserted MMWL and FLSA claims against Defendant The Missouri Gaming Company, LLC d/b/a Argosy Riverside Casino and Defendant St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis. Plaintiffs Hammond and Layton asserted their ERISA claims against Defendant Penn National Gaming, Inc.

[4] Defendants attempted to take a tip credit against their obligation to pay Plaintiffs and similarly situated workers the minimum wage. Doc. 62 at ¶¶ 34-35.

B. Defendants' mandatory tip pooling arrangements for table games dealers violated the FLSA and MMWL.

Defendants created a mandatory tip pooling arrangement at Argosy Casino and Hollywood Casino by which Defendants required their table games dealers (including Plaintiffs Lipari-Williams and Hammond) to pool their tips with other table games dealers. However, Defendants also included dual-rate table games supervisors (or its equivalent by any other name) in the tip pool. These dual-rate table games supervisors work in two roles for the casinos: (1) floor supervisor; and (2) table games dealer. The floor supervisor position is a non-tipped, supervisory position while the table games dealer position is an hourly, tipped position. Doc. 62 at ¶¶ 38-54.

Once the dealers' tips were pooled, the casinos distributed them to the table games dealers who earned them but also to dual-rate table games supervisors for their paid time off ("PTO"). As a common policy and practice at each casino, Defendants paid dual-rate table games supervisors taking PTO at their dealer rate (with corresponding tips from the dealers' tip pool), without regard to whether such PTO accrued based on the individual hours the dual-rate table games supervisor worked as a dealer versus a floor supervisor. The result of Defendants' common policy and practice was the unlawful distribution of a portion of its dealers' pooled tips to dual-rate table games supervisors for the payout of PTO that accrued via hours worked in a non-tipped, supervisory position.[5]

These practices commonly violated the express language of the FLSA prohibiting tip pooling whereby employees "who customarily and regularly receive tips" shared tips with non-tipped employees who did not. 29 U.S.C. § 203(m)(2)(A)(ii). Likewise, these practices violated

[5] Plaintiffs provided the lengthy legal and factual basis for the tip pooling violations under the MMWL and FLSA in connection with Plaintiffs' Suggestions in Support of Motion for FLSA Conditional and Rule 23 Class Certification of Wage and Hour Claims. Doc. 93 at 21-34. For the sake of brevity, Plaintiffs do not repeat the entire analysis here.

the express language of the FLSA prohibiting the employer from keeping any portion of its employees' tips, "including allowing managers or supervisors to keep any portion of employees' tips." 29 U.S.C. § 203(m)(2)(B). In addition, these practices violated the MMWL because these table games dealers who earned the tips are not being allowed to "retain[] compensation in the form of gratuities" as provided for under the statute. RSMo. § 290.512(1).

Under both the FLSA and MMWL, the employer forfeits the tip credit if it operates an unlawful tip pooling arrangement and is liable for the misappropriated tips. 29 U.S.C. § 216(b) ("Any employer who violates section 203(m)(2)(B) of this title shall be liable to the employee or employees affected in the amount of the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer…"); *see also* RSMo. § 290.512(1). As with the gaming license deduction claims, the higher Missouri minimum wage means the FLSA claim is subsumed within the MMWL claim.

II. Plaintiffs Asserted ERISA Claims to Redress Penn National Gaming's Unlawful Tobacco Surcharge.

In addition to their wage and hour claims against the two casinos, Plaintiffs Hammond and Layton asserted that Penn National Gaming violated ERISA by collecting an unlawful tobacco surcharge. Specifically, Plaintiffs alleged that Penn National Gaming (1) failed to provide plan participants with a reasonable alternative standard to simply not being a tobacco user that offered the same reward (*i.e.*, avoiding the tobacco surcharge); and (2) failed to provide plan participants with notice of a reasonable alternative standard in plan documents.[6]

Penn National Gaming's group health plan violated ERISA's non-discrimination

[6] In Plaintiffs' Suggestions in Support of Motion for Class Certification of ERISA Claim (Doc. 89), there is a complete discussion of the legal and factual basis for Plaintiffs' ERISA claims against Penn National Gaming. Doc. 89 at 2-20. For purposes of the instant motion, Plaintiffs provide a more abbreviated summary of the claim and supporting facts.

provision, passed as part of the Health Insurance Portability and Accountability Act ("HIPAA"), by imposing a surcharge against employees who use tobacco products, without having met the safe harbor requirements to make such a surcharge lawful giving rise to a claim for equitable relief (*see* 29 U.S.C. § 1132(a)(3)(B)(i)) and a claim for breach of fiduciary duty (*see* 29 U.S.C. § 1132(a)(2)).

The relevant ERISA provision, 29 U.S.C. § 1182, provides that a group health plan may not discriminate against an individual participant on the basis of "health status":

> A group health plan, and a health insurance issuer offering health insurance coverage in connection with a group health plan, *may not require any individual (as a condition of enrollment or continued enrollment under the plan) to pay a premium or contribution which is greater* than such premium or contribution for a similarly situated individual enrolled in the plan *on the basis of any health status-related factor* in relation to the individual or to an individual enrolled under the plan as a dependent of the individual.

29 U.S.C. § 1182(b)(1) (emphasis added). The statute then carves out a safe harbor for compliant "wellness programs", stating that health plans may "establish[] premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention." 29 U.S.C. § 1182(b)(2)(B).

The implementing regulations "set forth criteria for a program of health promotion or disease prevention offered or provided by a group health plan or group health insurance issuer that *must be satisfied* in order for the plan or issuer to *qualify for an exception* to the prohibition on discrimination based on health status . . . ." *Incentives for Nondiscriminatory Wellness Programs in Group Health Plans*, 78 Fed. Reg. 33158 at 33160 (June 3, 2013) (emphasis added). In other words, the regulations "set forth criteria for an *affirmative defense* that can be used by plans and issuers in response to a claim that the plan or issuer discriminated under the HIPAA nondiscrimination provisions." *Id.* (emphasis added). Penn National Gaming would bear the burden of establishing that all requirements of the affirmative defense have been met. *See, e.g., id*.

at 33178 ("A health-contingent wellness program that is an outcome-based wellness program . . . does not violate the provisions of this section *only if all of the following requirements are satisfied*") (emphasis added).

An outcome-based health-contingent wellness program—of which Penn National Gaming's tobacco surcharge program is a paradigmatic example[7]—must satisfy five conditions to qualify for the defense. Plaintiffs alleged that Penn National Gaming failed to comply with two of these, *see* Doc. 62 at ¶ 132, rendering the tobacco surcharge ineligible for safe harbor protection and therefore unlawful.

First, a lawful outcome-based wellness program must have "[u]niform availability and reasonable alternative standards." 29 C.F.R. § 2590.702(f)(4)(iv). For an "alternative standard" to be deemed reasonable, "[t]he *full reward* under the outcome-based wellness program *must be available* to all similarly situated individuals," which is to say, it must provide for a retroactive reimbursement for a person who completes the alternative standard, such as a smoking cessation program. *Id.* (emphasis added). Agency guidance makes this point explicit:

> to satisfy the requirement to provide a reasonable alternative standard, the same, full reward must be available under a health-contingent wellness program (whether an activity-only or outcome-based wellness program) to individuals who qualify by satisfying a reasonable alternative standard as is provided to individuals who qualify by satisfying the program's otherwise applicable standard . . . (For example, if a calendar year plan offers a health-contingent wellness program with a premium discount and an individual who qualifies for a reasonable alternative standard satisfies that alternative on April 1, *the plan or issuer must provide the premium discounts for January, February, and March to that individual*.). Plans and issuers have flexibility to determine how to provide the portion of the reward corresponding to the period before an alternative was satisfied (e.g., payment for

[7] "An outcome-based wellness program is a type of health-contingent wellness program that requires an individual to attain or maintain a specific health outcome (*such as not smoking* . . .) in order to obtain a reward." 78 Fed. Reg. 33158 at 33161 (emphasis added); *see also id.* at 33159 ("Examples of health-contingent wellness programs in the proposed regulations included a *program that imposes a premium surcharge based on tobacco use*") (emphasis added).

> the retroactive period or pro rata over the remainder of the year) as long as the method is reasonable and *the individual receives the full amount of the reward*.

78 Fed. Reg. 33158 at 33163 (emphasis added). Penn National Gaming distributed uniform documents to plan participants expressly stating that there would be no retroactive reimbursement for completing a tobacco cessation program. Doc. 89 at 14-16. This violates ERISA's reasonable alternative standard requirement for outcome-based wellness programs. *See* 29 U.S.C. § 1182(b)(1); *see also* 29 C.F.R. § 2590.702(f)(4)(iv).

Second, a lawful outcome-based wellness program must provide participants "[n]otice of availability of reasonable alternative standard." 29 C.F.R. § 2590.702(f)(4)(v). Specifically, "[t]he plan or issuer must disclose in *all* plan materials describing the terms of an outcome-based wellness program, and in any disclosure that an individual did not satisfy an initial outcome-based standard, the availability of a reasonable alternative standard to qualify for the reward." 29 C.F.R. § 2590.702(f)(4)(v) (emphasis added). The guidance issued in connection with the final rule provides that "[f]or outcome based-wellness programs, this notice must also be included in any disclosure that an individual did not satisfy an initial outcome-based standard." 78 Fed. Reg. 33158 at 33166. The guidance provides specifically with respect to tobacco surcharge outcome-based wellness programs that "a plan disclosure that references a premium differential based on tobacco use … is a disclosure describing the terms of a health-contingent wellness program and, therefore, *must include this disclosure*." *Id*. (emphasis added). Penn National Gaming's plan documents—including the tobacco user affidavits that workers are most likely to see—discuss the tobacco surcharge without disclosing a reasonable alternative standard. Doc. 89 at 9-14.

PROCEDURAL HISTORY OF THE LITIGATION

I. Plaintiffs File a Petition in the Circuit Court of Platte County, Missouri

Plaintiff Lipari-Williams filed her two-count Petition in the Circuit Court of Platte County,

Missouri on May 1, 2020. *See* Petition, Doc. 1-2. Plaintiff Lipari-Williams asserted an MMWL and unjust enrichment claim premised on the gaming license deduction and sought to represent workers at Argosy Casino and Hollywood Casino. *Id*. at ¶¶ 13-21, 23-24. Defendants removed the state court action to this Court on the basis of traditional diversity jurisdiction under 28 U.S.C. § 1332(a). *See* Notice of Removal, Doc. 1. Exemplifying that nearly every aspect of this case was contested, Defendants sought to have this case administratively transferred to Judge Fenner as "related" to another proceeding, which Plaintiffs opposed and the Court denied. Docs. 8-9; Ricke Decl. at ¶ 4.

II. The Scope of Plaintiffs' Complaint Expands in Federal Court

Plaintiffs did not seek to remand the case to state court and, instead, filed a First Amended Complaint adding claims and parties. Doc. 24. Plaintiffs added Plaintiff Hammond and her employer, Hollywood Casino, as parties. Plaintiffs further added a claim under the FLSA with respect to the unlawful gaming license deductions and claims under the MMWL and FLSA for unlawful tip pooling arrangements. *Id.*; Ricke Decl. at ¶ 5.

In October 2020, Class Counsel's fact investigation yielded further claims arising out of Plaintiffs' employment with Defendants and Plaintiffs sought leave to file a Second Amended Complaint adding ERISA claims. Doc. 33. In response, Defendants filed a motion to dismiss Plaintiffs' ERISA claims for failure to state a claim and lack of standing (Docs. 47-48). Plaintiffs then sought leave to amend their complaint to address issues raised in the motion to dismiss but Plaintiffs also opposed the motion to dismiss on the merits. Docs. 57-58. The Court granted Plaintiffs leave to file a Third Amended Complaint adding in Plaintiff Layton as a party and denied the motion to dismiss as moot. Doc. 60. Defendants did not refile their motion to dismiss the ERISA claims and the Court issued a new scheduling order encompassing all of the claims in Plaintiffs' Third Amended Complaint. Doc. 64; Ricke Decl. at ¶ 6.

III. The Parties Engaged in Significant Phase I Discovery

The Court entered a bifurcated scheduling order with Phase I focused on whether class and conditional collective certification were appropriate and Phase II focused on the merits and trial. Docs. 18, 64. The parties engaged in significant discovery during Phase I of the case. Ricke Decl. at ¶ 7.

With respect to written discovery, Plaintiffs served two sets of interrogatories and two sets of requests for production of documents on each of the three Defendants during Phase I of the case targeting issues related to class and conditional certification. Ultimately, Defendants produced approximately 8,000 pages of documents. Similarly, Defendants served sets of interrogatories and requests for production of documents on the three Plaintiffs. In response to this discovery, Plaintiffs produced approximately 700 pages of documents. Ricke Decl. at ¶ 8.

In addition to written discovery, Plaintiffs took the corporate representative depositions of Hollywood Casino and Penn National Gaming pursuant to Rule 30(b)(6). Similarly, Class Counsel produced each of the three Plaintiffs as well as Opt-in Plaintiff (Tim Hammond) for depositions. Class Counsel was set to take the corporate representative deposition of Argosy Casino the day the parties agreed to a stipulation to class and conditional certification of the wage and hour claims, which mooted the need for that deposition during Phase I of the case. Ricke Decl. at ¶ 9.

IV. Plaintiffs Obtain Class and Conditional Certification

To streamline the case and given the information that was revealed in discovery, the parties entered into a stipulation to class and conditional certification of Plaintiffs' wage and hour claims against Argosy Casino and Hollywood Casino. Joint Stipulation, Doc. 93-2. Specifically, the parties stipulated to conditional certification of the FLSA Gaming License Collective, the Hollywood Casino St. Louis Tip Pooling Collective, and the Argosy Casino Riverside Tip Pooling Collective. *Id*. The parties further stipulated to Rule 23 class certification of the MMWL Gaming

License Class, the Hollywood Casino St. Louis Tip Pooling Class, and the Argosy Casino Riverside Tip Pooling Class. *Id*. Plaintiffs filed a comprehensive motion for class and conditional certification of the wage and hour claims (supported, in part, by the stipulation), which the Court ultimately granted. Docs. 92-93, 97; Ricke Decl. at ¶ 10.

However, the parties continued to dispute class certification of Plaintiffs' ERISA claims. As a result, Plaintiffs moved for class certification of the ERISA claims on September 15, 2021. Doc. 89. Defendants filed an opposition brief on October 20, 2021. Doc. 101. Plaintiffs filed a reply brief in support of class certification on November 10, 2021. Doc. 107. As the parties noted in their papers, Plaintiffs' tobacco surcharge claim under ERISA was an issue of first impression. The length and complexity of the parties' briefs and exhibits—totaling more than 400 pages—reflected the novelty of the arguments. Ricke Decl. at ¶ 11.

Ultimately, the Court issued a comprehensive order granting class certification of Plaintiffs' ERISA claims. Doc. 110. However, Defendants were not done. On November 30, 2021, Penn National Gaming filed a petition pursuant to Rule 23(f) seeking to have the Eighth Circuit review this Court's order certifying the ERISA classes. Plaintiffs filed an opposition to the petition on December 10, 2021. The Eighth Circuit denied the petition on December 23, 2021. Doc. 121; Ricke Decl. at ¶ 12.

V. Plaintiffs Complete a Three-Part Class and Collective Notice Process

Counsel for the parties worked together to develop a three-phase notice plan that would initially send notice to the FLSA collectives, followed by notice to the Rule 23 classes with separate notices going to the wage and hour classes and the ERISA classes. Doc. 112. However, the parties disputed whether class members should be permitted to opt out of the ERISA classes, which Plaintiffs maintained was appropriate while Defendants argued no opportunity to opt out should be given. *Id*. at ¶ 3(c). The Court agreed with Plaintiffs and gave ERISA class members

the right to opt out of the certified classes. Doc. 113; Ricke Decl. at ¶ 13.

Class Counsel worked with third-party administrator Analytics Consulting, LLC to send notice to 666 putative FLSA collective members, 860 Rule 23 wage and hour class members, and 4,162 Rule 23 ERISA class members. After completion of the FLSA collective notice process, 350 collective members filed Consents to Join the case. Doc. 125; Ricke Decl. at ¶ 14.

VI. The Parties Engaged in Arm's-Length Settlement Negotiations Resulting in a Class Action Settlement

The Court entered a Phase II Scheduling Order and set a trial date of March 20, 2023. Doc. 119. In February 2022, Plaintiffs served lengthy and detailed damages interrogatories on Defendants seeking the information necessary to establish damages at trial and to use for settlement purposes. Once Defendants produced this data, Plaintiffs made a comprehensive class-wide settlement demand on June 28, 2022. The parties agreed to mediate with respected neutral Francis X. Neuner, which took place during an all-day session on November 29, 2022. This case only settled after all parties accepted a double-blind mediator's proposal from Mr. Neuner. Over the next two months, the parties worked diligently to memorialize the term sheet executed at the mediation into the written settlement agreement now before the Court. Ricke Decl. at ¶ 15.

VII. The Court's Preliminary Approval Order

On January 27, 2023, Plaintiffs filed an unopposed motion to direct class notice and grant preliminary approval of the class action settlement with supporting materials. Docs. 138, 139. On January 30, 2023, the Court entered an Order preliminarily approving the class action settlement and directing class notice. Doc. 141; Ricke Decl. at ¶ 16. As discussed in more detail below, the Court concluded that it would likely approve the settlement as fair, reasonable, and adequate and certify the settlement classes for purposes of entering judgment on the settlement. *Id*. The Court also appointed the undersigned as Class Counsel for settlement purposes pursuant to Rule 23(g)(3)

and appointed Analytics Consulting, LLC as settlement administrator. *Id*. The Court also approved the Proposed Settlement Notice and found that it and the proposed method for its delivery by first-class mail constituted the best practicable notice to the settlement classes. *Id*. The Court thus directed the settlement administrator and the parties to carry out the class notice program consistent with the terms of the settlement agreement. *Id*.

VIII. The Class Notice Program

On February 23, 2023, the parties provided Analytics (the Court-approved third-party settlement administrator) the wage and hour data necessary to calculate estimated individual settlement payments, and Analytics mailed the Court-approved settlement notices on March 16, 2023. Ricke Decl. at ¶ 17. Prior to mailing, all addresses were updated using the National Change of Address ("NCOA") database maintained by the Untied States Postal Service ("USPS"); certified via the Coding Accuracy Support System ("CASS"); and verified through Delivery Point Validation ("DPV"). These measures ensured that all appropriate steps were taken to send notices to current and valid addresses and resulted in mailable address records for 4,840 class members. Analytics requested that USPS return (or otherwise notify Analytics) of class notices with undeliverable mailing addresses. Of the 4,840 notices mailed, 385 were returned as undeliverable. Analytics was able to locate updated addresses for and remail notices to 288 of those. This research was performed using Experian's TrueTrace and Metronet Databases, research tools that draw upon Experian's credit reporting database as well as additional third-party sources. The class notice was successfully delivered to 98% of the settlement classes. Simmons Decl. at ¶¶ 5-10.

Analytics also established, and continues to man, a toll-free telephone number for the action, where class members can speak to a live operator regarding the status of the action or obtain answers to questions about the notice, listen to answers to Frequently Asked Questions ("FAQs"), or request to have a notice mailed to them. Class members could also e-mail a dedicated e-mail

address with questions about the settlement. Analytics also established and continues to maintain a dedicated settlement website where class members have been able to obtain detailed information about the case and review key documents, such as the complaint, class notice, settlement agreement, and preliminary approval order, among others. Simmons Decl. at ¶¶ 11-18.

Shortly after the initial settlement notice mailing by Analytics, Class Counsel spoke with several members of the three wage and hour classes who questioned their settlement allocations based on the tip pooling claims. Specifically, because those settlement payments were allocated based on proportional hours worked during the class period as required by the Settlement Agreement, several class members who worked essentially full time during the class period contacted Class Counsel to understand their individual settlement payments. Ricke Decl. at ¶ 18.

Class Counsel immediately undertook an investigation and discovered that Analytics included duplicate wage information (related to other claims covered by the settlement) when calculating settlement allocations for certain members of the three wage and hour classes. This resulted in some class members being allocated more than their proportional share of the settlement fund at the expense of other class members. Class Counsel worked with Analytics to recalculate the estimated settlement payments within one day of discovering the issue. After recalculating the estimated settlement payments, Analytics determined that 612 class members' estimated settlement payments *increased* based on the recalculation. Conversely, 235 class members' estimated settlement payments *decreased* based on the recalculation. This issue did not impact settlement allocations for the Nationwide ERISA Class—*i.e.*, 4,006 class members (approximately 83% of all settlement class members). Ricke Decl. at ¶ 19.

On March 30, 2023, Plaintiffs moved the Court to authorize a corrective notice to be distributed to the 847 class members to provide them with more accurate information about their

recalculated estimated settlement payment and afford them a renewed opportunity to object or request exclusion (where permitted by the Settlement Agreement) based on that information. That same day, the Court granted the motion. Doc. 143. On April 4, 2023, Analytics sent the Court-approved corrective notice to all members of the three wage and hour classes, which included a new deadline to object or request exclusion of May 19, 2023. Simmons Decl. at ¶ 9; Ricke Decl. at ¶ 20. To date, no class member has objected to the settlement, and only four class members (out of 4,840) have requested to be excluded. Simmons Decl. at ¶¶ 19-20.

SUMMARY OF THE SETTLEMENT

I. The Classes Covered by the Settlement

The Court has previously certified the following classes (Docs. 97, 110), which Plaintiffs move the Court to maintain for purposes of settlement:

> **Nationwide ERISA Class:** All participants in Defendants' group health plan for plan years 2016, 2017, 2018, 2019, and 2020 who had a tobacco surcharge deducted from their wages in any of those years. For the avoidance of doubt, the "Nationwide ERISA Class" includes all members of the "Nationwide ERISA Sub-Class" as defined in the Court's class certification order.
>
> **MMWL Gaming License Class:** all persons employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and for whom a deduction was taken from their wages for any amount associated with initially obtaining or thereafter renewing a Gaming License.
>
> **Argosy Casino Riverside Tip Pooling Class:** All persons employed as Table Games Dealers at Argosy Riverside from March 31, 2017 through April 23, 2021, and who participated in the Table Games Dealer tip pool.
>
> **Hollywood Casino Tip Pooling Class:** All persons employed as Table Games Dealers at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and who participated in the Table Games Dealer tip pool.

Doc. 139-2, Settlement Agreement, ¶¶ L, R, QQ, RR. These classes exclude those class members who opted out in response to the original class notice. There are 4,132 members of the Nationwide ERISA Class, 681 members of the MMWL Gaming License Class, 224 members of the Argosy

Casino Riverside Tip Pooling Class, and 300 members of the Hollywood Casino Tip Pooling Class. Many of the workers covered by the settlement are members of two or more classes. Ricke Decl. at ¶¶ 24-25.[8]

II. The Settlement Provides a $5,500,000 Common Fund

The settlement creates a $5,500,000 non-reversionary common fund to pay class members, the cost of settlement administration, service awards, a modest reserve fund to correct any errors or omissions, and Class Counsel's attorneys' fees and expenses. Doc. 139-2, Settlement Agreement at ¶ V. Based on the settlement administrator's damage calculations, the $5,500,000 common fund represents approximately 62% of the actual unpaid wages alleged under the FLSA and MMWL and 62% of the tobacco surcharges Plaintiffs allege were deducted from their wages in violation of ERISA. The net fund (less the costs described above) will be allocated 46% to the Nationwide ERISA Class, 25% to the Argosy Casino Riverside Tip Pooling Class, 27% to the Hollywood Casino Tip Pooling Class, and 2% to the MMWL Gaming License Class. This allocation approximates the proportional damages attributable to wage and hour claims versus ERISA claims. Doc. 139-2, Settlement Agreement, at ¶ III.A. And, within each class and collective, those members who would have the highest damages at trial will receive the highest settlement allocation. Ricke Decl. at ¶¶ 26-27.

First, with respect to the Nationwide ERISA Class, each class member will receive his or her *pro rata* share of the class allocation based on the total amount of money each class member had deducted from his or her wages for tobacco surcharges during the class period. *Id*. at ¶ III.A.4. Second, each member of the Argosy Casino Riverside Tip Pooling Class and each member of the

[8] These numbers are lower than what was projected in connection with preliminary approval because the settlement administrator has de-duplicated records by Employee ID Number. The practical effect is that each of the estimated settlement payments increases from what Class Counsel previously projected in connection with preliminary approval.

Hollywood Casino Tip Pooling Class will receive his or her *pro rata* share of their respective class allocations based on the total number of hours that class member worked at their respective property during the class period. *Id*. at ¶ III.A.2-3. Third, each member of the MMWL Gaming License Class will receive his or her *pro rata* share of the class allocation based on the total number of wage deductions for gaming license fees that class member had deducted from his or her wages during the class period. *Id*. at ¶ III.A.1.

After accounting for the costs of settlement administration ($39,040), $37,500 in service awards for the three Named Plaintiffs and Opt-in Plaintiff Hammond (all of whom were deposed), a modest $5,000 reserve fund for errors and omissions, 35% of the fund for Class Counsel's attorney's fees and $71,577.69 in expenses, the net settlement fund available for distribution to class members is approximately $3,425,000. Net of all fees and costs, the average *per capita* settlement checks will be as follows for each class: $378 on average for members of the Nationwide ERISA Class; $3,800 on average for members of the Argosy Casino Riverside Tip Pooling Class; $3,200 on average for members of the Hollywood Casino St. Louis Tip Pooling Class; and $100 on average for members of the MMWL Gaming License Class. Based on Class Counsel's considerable experience in casino wage and hour matters, these are meaningful payments. Ricke Decl. at ¶ 28.

III. Settlement Structure and Release

To participate in the settlement, class members do not need to do anything—there is no claims process. Class members who *do not* request to be excluded from the settlement (to date, only four class members have requested to be excluded) will receive a check in the mail for their settlement allocation. Class members who negotiate their checks will release all claims (including those under the FLSA) that were or could have been asserted based on the facts alleged in the Complaint as more fully explained in the Settlement Agreement. Doc. 139-2, Settlement

Agreement at ¶ II. Class members who do not negotiate their checks will still be deemed to have released their state law claims and ERISA claims but not the FLSA claims. *Id*. at ¶ HH. Thus, class members who choose not to negotiate their settlement checks will not have released their FLSA claims. The settlement checks will be valid and negotiable for a period of 120 days from issuance. *Id*. at ¶ IV.B.4.b. Any portion of the net settlement amount remaining after the conclusion of the check cashing period will be distributed *cy pres* subject to Court approval. *Id*. at ¶ IV.C; Ricke Decl. at ¶ 30.

IV. Service Awards, Attorneys' Fees, and Expenses

The Settlement Agreement provides for a $10,000 service award each for Plaintiffs Lipari-Williams, Hammond, and Layton and a $7,500 service award for Opt-In Plaintiff Hammond, which will be paid from the settlement fund subject to the Court's approval. Doc. 139-2, Settlement Agreement at ¶ III.C. In addition, and subject to approval by the Court, the settlement fund will be used to pay Class Counsel's attorneys' fees and expenses. *Id*. at ¶ III.D. Class Counsel seeks thirty-five percent of the common fund ($1,925,000) and reasonable expenses of $71,577.69. As explained in the contemporaneously filed Motion for Attorneys' Fees and Expenses to Class Counsel and Service Awards to Named Plaintiffs and Opt-In Plaintiff, the requests are reasonable.

ARGUMENT

I. The Standard of Review for Final Approval of a Class Action Settlement

Class action settlements must be approved by the Court. Fed. R. Civ. P. 23(e). In determining whether a proposed settlement should be approved as fair, reasonable, and adequate, courts in the Eighth Circuit consider the factors set forth in the 2018 amendment to Federal Rule of Civil Procedure 23(e)(2) as well as those commonly known as the "*Van Horn* factors" from the Eighth Circuit opinion, *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *See Holt v. Community America Credit Union*, 2020 WL 12604383, at *2 (W.D. Mo. Sept. 4, 2020) (citing

Van Horn, 840 F.2d at 607; *Swinton v. SquareTrade, Inc.*, 2020 WL 1862470, at *5 (S.D. Iowa Apr. 14, 2020) (holding that it is "appropriate for the Court to consider the Rule 23(e)(2) factors along with the *Van Horn* Factors."); *In re Pre-Filled Propane Tank Antitrust Litig.*, 2019 WL 7160380, at *1 (W.D. Mo. Nov. 18, 2019)); *see also* Fed. R. Civ. P. 23(e)(2) Committee Notes to 2018 amendments ("The goal of this amendment [to Rule 23(e)(2)] is not to displace any [circuit case-law] factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.").

> The factors identified in Federal Rule of Civil Procedure 23(e)(2) are whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> > (i) the costs, risks, and delay of trial and appeal;
> >
> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> >
> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> >
> > (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The four *Van Horn* factors are: (1) the merits of the plaintiffs' case weighed against the terms of the settlement; (2) the defendants' financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement. *Van Horn*, 840 F.2d at 607. "No one factor is determinative, but the 'most important factor in

determining whether a settlement is fair, reasonable, and adequate is a balancing of the strength of the plaintiff's case against the terms of the settlement.'" *Holt*, 2020 WL 12604383, at *2 (quoting *Van Horn*, 840 F.2d at 607).

In granting preliminary approval of the settlement, the Court concluded that it would likely be able to: (i) approve the settlement as fair, reasonable, and adequate under the above factors; and (ii) certify the Settlement Class for purposes of entering judgment on the Settlement. Fed. R. Civ. P. 23(e)(1)-(2); Doc. 141. There has been no change in circumstances that would warrant the Court reaching any other conclusion now. Indeed, the reaction of the class thus far—recognizing that the period to request exclusion or object continues to run for a minority of class members—supports final approval of the settlement. For completeness, Plaintiffs analyze the relevant factors again below.

II. The Proposed Settlement is Fair, Reasonable, and Adequate Pursuant to the Factors Identified in Rule 23(e) and *Van Horn.*

As demonstrated below, the proposed settlement is fair, reasonable, and adequate under the factors identified in Rule 23(e) and by the Eighth Circuit in *Van Horn* such that the Court should finally approve the settlement.

A. The Class Representatives and Class Counsel have provided excellent representation to the classes.[9]

This factor focuses "on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23, Advisory Committee Notes (Dec. 1, 2018) (hereafter "Advisory Committee Notes"). In this case, the adequacy factor is satisfied. First, Class Counsel have devoted much of their practice over the last seven years to prosecuting wage and hour cases against casino operators having collectively prosecuted over 20 such cases. Class Counsel have obtained key rulings

[9] *See* Fed. R. Civ. P. 23(e)(2)(A).

relevant to and that have informed the settlement value of this case[10] and, as a result, possess a deep knowledge of wage and hour practices in this industry, the type of evidence that typically exists, and how to value these claims. Ricke Decl. at ¶¶ 36-39. Courts have recognized this skill, experience, and reputation in approving other casino wage and hour settlements obtained by Class Counsel. *See, e.g., Bartakovits v. Wind Creek Bethlehem, LLC,* 2022 WL 702300 (E.D. Pa. Mar. 7, 2022) ("Class Counsel is uniquely skilled and efficient in prosecuting casino wage and hour cases"); *James v. Boyd Gaming Corp*., 2022 WL 4482477, at *15 (D. Kan. Sept. 27, 2022) ("the two law firms representing the collective members have extensive experience in this area of law. This skill and experience most likely contributed to their success in securing conditional certification of the two collectives and resolving the litigation through a settlement that provides significant benefits to collective members.").

Second, this case did not settle without significant litigation. Plaintiffs completed Phase I discovery, obtained class and conditional certification, defeated a Rule 23(f) Petition, and commenced Phase II discovery before settlement discussions began. Class Counsel have all the information necessary to value each class claim. Ricke Decl. at ¶¶ 4-15.

Third and most importantly, Class Counsel have achieved an excellent recovery on behalf

[10] *See, e.g., James v. Boyd Gaming Corp.*, 522 F.Supp.3d 892, 908-14 (D. Kan. Mar. 2, 2021) (granting conditional certification of the same tip pooling claims at issue in this case (among others) for workers across 13 casino properties); *Adams v. Aztar Indiana Gaming Co., LLC*, 2022 WL 593911, at *4-6, 8-12 (S.D. Ind. Feb. 25, 2022) (granting class and conditional certification of four types of wage and hour claims at Tropicana Evansville casino, including gaming license deduction claims); *MacMann v. Tropicana Ent., Inc.,* 2021 WL 1105500, at *2 (E.D. Mo. Mar. 23, 2021) (granting class and conditional certification of four types of wage and hour claims at Lumiere casino in St. Louis, including gaming license deductions); *Lockett v. Pinnacle Ent., Inc.,* 408 F. Supp. 3d 1043, 1049 (W.D. Mo. 2019) (defeating motion to dismiss gaming license deduction claims under FLSA and MMWL in what Class Counsel believe is the first case to address the issue); *Lockett v. Pinnacle Ent., Inc.*, 2021 WL 960424 (W.D. Mo. Mar. 12, 2021) (obtaining class and conditional certification of gaming license deduction claims under the FLSA and MMWL and conditional certification of the tip pooling claims under the FLSA).

of the classes—a common fund representing approximately 62% of the unpaid wages available under the MMWL and FLSA and 62% of the value of the tobacco surcharges alleged to be unlawful under ERISA. *Id*. at ¶ 27. A better result could only have been achieved through complete victory at trial. This factor weighs in favor of settlement approval.

B. The settlement is the result of arm's-length negotiations overseen by a mediator.[11]

The extent and scope of litigation confirms that the settlement was the product of arm's-length negotiations. Further, the settlement is the product of significant negotiation by experienced counsel on both sides with the assistance of an experienced, well-respected neutral mediator culminating in the execution of the Settlement Agreement previously filed. *See* Doc. 139-2; Ricke Decl. at ¶ 15. The arm's-length nature of the negotiations amongst experienced counsel supports a finding that the settlement is fair, reasonable, and adequate. *See* Advisory Committee Notes ("[T]he involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests."); *Vill. Bank v. Caribou Coffee Co., Inc*., 2020 WL 13558808, at *2 (D. Minn. July 24, 2020) (finding that "[t]he assistance of a retired United States Magistrate Judge as a mediator in the settlement process supports the conclusion that the Settlement was non-collusive and fairly negotiated at arm's length"); *Kelly v. Phiten USA, Inc*., 277 F.R.D. 564, 570 (S.D. Iowa 2011) (finding the proposed settlement's fairness was supported by the fact that it was reached "after significant investigation and extensive arm's-length negotiations"). Accordingly, this factor supports the Court's final approval of the settlement.

C. The relief provided by the settlement is meaningful.[12]

[11] *See* Fed. R. Civ. P. 23(e)(2)(B).
[12] *See* Fed. R. Civ. P. 23(e)(2)(C).

Rule 23(e) charges the Court to consider whether "the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). *See* Fed. R. Civ. P. 23(e)(2)(c)(i-iv).

In this case, there is no doubt these factors point towards settlement approval. All of the factors identified by Rule 23(e)(2)(C) should be viewed in light of the meaningful monetary benefit this settlement confers on class members and the fact that class members will be mailed a check without the need to participate in a claims process. Using Defendants' class-wide wage and hour data, Class Counsel calculated class-wide ERISA damages (value of tobacco surcharges) of $4,118,685.86, class-wide tip pooling damages (tip credit forfeiture and best-day misappropriated tips) of $4,690,280.84, and class-wide gaming license deduction damages (value of the gaming license deductions) of $105,446.11. The $5,500,000 common fund thus represents approximately 62% of the value of the ERISA claims' actual damages and approximately 62% of the unpaid wages alleged under the MMWL and FLSA claims. Net of all fees and costs, the average *per capita* settlement checks will be at least as follows: $378 on average for members of the Nationwide ERISA Class; $3,800 on average for members of the Argosy Casino Riverside Tip Pooling Class; $3,200 on average for members of the Hollywood Casino St. Louis Tip Pooling Class; and $100 on average for members of the MMWL Gaming License Class. Ricke Decl. at ¶¶ 24-28.[13] This is a significant recovery in any wage case (and class actions generally). *Singleton*

[13] Due to de-duplication of the class lists by Employee ID Number, lower than projected expenses for Class Counsel, and lower than projected costs by the settlement administrator, these average

v. First Student Mgmt. LLC, 2014 WL 3865853, at *7 (D.N.J. Aug. 6, 2014) (approving wage and hour settlement where "the proposed settlement amount is about 40% of the Plaintiffs' estimate.").

Though every case has its own strengths and weaknesses, looking to settlements of similar claims approved as fair, reasonable, and adequate can provide benchmarks for reasonableness. For example, in *Bartakovits* (a similar casino wage and hour matter prosecuted by Class Counsel), the class recovered 57% of tip credit damages resulting in average settlement payments of $2,100. 2022 WL 702300 at ¶ 12. This settlement compares favorably to similar wage and hour matters and should be approved as fair, reasonable, and adequate.[14]

1. The duration, costs, risks, and delay of trial and appeal support approval of the settlement of these ground-breaking claims.[15]

As noted above, the settlement provides class members with a considerable portion of their damages (62%) and provides meaningful settlement payments and does so now avoiding all of the risks of taking these class claims through motions for summary judgment and class decertification,

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payments have actually increased since Class Counsel projected payments in connection with preliminary approval the settlement. Ricke Decl. at ¶¶ 24-28.

[14] *See, e.g.*, *Day v. PPE Casino Resort Maryland LLC*, No. 1:20-cv-00120, ECF No. 43-1 at p. 11 ($3,050,000 common fund representing 20% of tip credit damages and average settlement payments of $940); *id*. at ECF No. 45 (granting final approval); *Cope v. Let's Eat Out, Inc.*, No. 6:16-cv-03050-SRB, ECF No. 316 at *12 (W.D. Mo. April 17, 2019) (motion for preliminary approval of class action settlement creating $650,000 common fund to resolve tip credit notice (and other unpaid wages claims) and noting "the settlement provides Opt-in Plaintiffs with 25% of their owed minimum wages."); *see id*. at ECF No. 325 (W.D. Mo. Sept. 6, 2019) (granting final approval of settlement); *see also Black v. P.F. Chang's China Bistro, Inc.*, No. 16-CV-3958, ECF No. 92 at *7 n. (N.D. Ill. May 15, 2017) (motion for final approval of class action settlement creating a $2,650,000 common fund to resolve tip credit notice claim (and other unpaid wage claims impacting the tip credit) representing 35.5% of the value of the case and providing an average payment of $608.45 to class members and $715 to opt-in plaintiffs); *see id*. at ECF No. 103 at ¶ 4 (granting final approval of settlement).

[15] *See* Fed. R. Civ. P. 23(e)(2)(C)(i). Plaintiffs also address herein *Van Horn* factors 1 and 3: "the merits of the plaintiffs' case weighed against the terms of the settlement," and "the complexity and expense of further litigation." *Van Horn*, 840 F.2d at 607.

trial, and appeal. Although Plaintiffs are confident in the merits of each class claim, Defendants are not without arguments and those must be factored into the risk analysis—particularly given the untested nature of Plaintiffs' claims.

First, with respect to the Nationwide ERISA Class, there is no dispute that Plaintiffs' tobacco surcharge theory is an issue of first impression. Given that novelty, there is inherent risk. The Court addressed several of Defendants' arguments in granting class certification, but many of those arguments were more geared toward the merits and would have presented risks had this case proceeded to trial and inevitable appeal. For example, Defendants argued that Plaintiffs and class members lacked standing due to no injury and that the regulations on which Plaintiffs relied were "inconsistent" with ERISA. *Lipari-Williams v. Missouri Gaming Co., LLC*, 339 F.R.D. 515, 523-24 (W.D. Mo. 2021). Either argument, if accepted by this Court or the Eighth Circuit, could have dramatically limited the scope of the class and its claims. Ricke Decl. at ¶ 32.

Second, with respect to both tip pooling classes, Plaintiffs' claims faced risks. For starters, this is an issue of first impression under both the MMWL and the FLSA. Although several district courts have granted class or conditional certification of these claims in cases prosecuted by Class Counsel (*see* Doc. 97; *Lockett*, *supra*; *Boyd Gaming*, *supra*), no court has addressed the merits. Defendants also advanced a variety of arguments that could have impacted the scope or viability of the tip pooling claims. For example, Defendants argued that dual-rate table games supervisors are not "managers or supervisors" within the meaning of the FLSA and MMWL such that they should be permitted to participate in the tip pool. Although Plaintiffs believe the tip pooling claims would have prevailed at trial and on appeal if needed, there is no doubt that they faced risk absent settlement. Ricke Decl. at ¶ 33.

Third, the MMWL Gaming License Class also faced comparable risks to the tip pooling

classes. Foremost among them is simply the fact that no district court or circuit court has found as a matter of law that the gaming licenses primarily benefitted the employer. Although Plaintiffs believe the case law weighs in favor of the employees on this issue, risk remained. Ricke Decl. at ¶ 34.

As the Eighth Circuit has recognized, "[t]he single most important factor" in evaluating the settlement—"the merits of the plaintiffs' case weighed against the terms of the settlement," *Van Horn*, 840 F.2d at 607, as well as the "the complexity and expense of further litigation," *id.*, and "the duration, costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), support approval of the settlement. Therefore, "[w]eighing the uncertainty of relief against the immediate benefit provided in the settlement" supports approval here. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 933 (8th Cir. 2005). This factor supports final settlement approval.

2. The proposed method of distributing relief to class members—direct mailing of checks with no claims process—supports approval of the settlement.[16]

Under this factor, the Court "scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims" and "should be alert to whether the claims process is unduly demanding." Advisory Committee Notes. In this case, class members are not required to file claim forms to receive a settlement payment. Instead, unless class members request to be excluded (only four have thus far), they will be sent a check for their settlement amount. *See* Doc. 139-2, Settlement Agreement, ¶ IV.B.4. Moreover, every individual covered by the settlement was sent an individualized notice form that explains the settlement and specifies his or her anticipated settlement payment and the allocation plan. The notice successfully reached 98% of class

[16] Fed. R. Civ. P. 23(e)(2)(C)(ii).

members. Simmons Decl. at ¶ 10.

That each class member is receiving an equitable portion of the settlement fund according to the amount of alleged loss suffered without needing to submit a claim supports approval of the settlement. *See, e.g.*, *In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1351 (S.D. Fla. 2011) ("The absence of a claims-made process further supports the conclusion that the Settlement is reasonable."); 4 Newberg and Rubenstein on Class Actions § 13:53 (6th ed.) (stating a class settlement distribution method should be "in as simple and expedient a manner as possible"). Given the simplified process for paying each class member and the fact that no funds will revert to Defendants, this factor weighs in favor of final approval.

3. The terms of the award of attorneys' fees support approval of the settlement.[17]

This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." Advisory Committee Notes. The Settlement Agreement provides that Class Counsel may seek an award of attorneys' fees representing 35% of the common fund plus expenses of up to $100,000 from the common fund. Doc. 139-2, Settlement Agreement at ¶ III.D. Class Counsel have briefed the fairness and reasonableness of the requested attorneys' fees under the Eighth Circuit's factors in a motion filed contemporaneously with this submission. Class Counsel have sought their fee in the amount of thirty-five percent of the common fund and reasonable expenses in the amount of $71,577.69 (less than the amount considered for purposes of preliminary approval). Because the fee request is reasonable, and in any event the settlement is not conditioned upon the Court's approval of the fee award, the Court should approve the settlement.

[17] Fed. R. Civ. P. 23(e)(2)(C)(iii).

4. There is no agreement required to be identified under Rule 23(e)(3).[18]

Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, there is no agreement between the parties here, except those set forth or explicitly referenced in the Settlement Agreement. Accordingly, this factor supports final approval of the settlement.

D. The settlement treats class members equitably to one another.[19]

This factor seeks to prevent the "inequitable treatment of some class members *vis-a-vis* others." Advisory Committee Notes. In this case, Class Counsel worked diligently to create an allocation formula that recognizes the differences between the classes regardless of the significant overlap in class membership. Specifically, as part of the settlement conference process, Class Counsel calculated the class-wide damages for each claim. The Settlement Agreement allocates the net settlement fund in proportion to those damages: 46% to the Nationwide ERISA Class; 27% to the Hollywood Casino Tip Pooling Class; 25% to the Argosy Casino Riverside Tip Pooling Class; and 2% to the MMWL Gaming License Class. Doc. 139-2, Settlement Agreement at ¶ III.A. And, within each class, members will receive their *pro rata* portion of the allocation based on a *pro rata* formula measuring the value of tobacco surcharges paid, the number of tip pooling hours worked at each casino, and the value of gaming license deductions paid. *Id*. at ¶ III.A.1-4. In other words, class members who would have the highest damages at trial will receive the highest settlement allocation. This factor supports final approval of the settlement.

[18] Fed. R. Civ. P. 23(e)(2)(C)(iv).

[19] Fed. R. Civ. P. 23(e)(2)(D).

E. Penn National Gaming's financial condition is neutral.[20]

Penn National Gaming has shown both its willingness and financial ability to litigate this case to the greatest extent possible and use every procedural and legal challenge available to it, and, as a result, Class Counsel has no doubt it is able to comply with its financial obligations under the settlement.[21] Plaintiffs thus submit that this factor is neutral. *See Marshall v. Nat'l Football League,* 787 F.3d 502, 512 (8th Cir. 2015) (finding this factor neutral where defendant was "in good financial standing, which would permit it to adequately pay for its settlement obligations or continue with a spirited defense in the litigation").

F. The "amount of opposition to the settlement" factor supports the settlement.[22]

As explained above, Plaintiffs and Class Counsel believe the settlement is an excellent result for the class members, especially given the risks and delay of continued litigation, as detailed above. Ricke Decl. at ¶¶ 36-39; *see Claxton v. Kum & Go, L.C.*, 2015 WL 3648776, at *6 (W.D. Mo. June 11, 2015) (recognizing that when evaluating a settlement, the court should accord "deference to the attorneys in assessing their clients' claims/defenses"); *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1178 (8th Cir. 1995) (stating class counsel's "experience in this type of litigation" supports providing deference to their views as to the fairness of the settlement). Here, Class Counsel's experience litigating casino wage and hour cases has provided them a thorough understanding of the risks and potential ranges of recovery in this case, which has allowed Class Counsel to fairly consider the merits of the claims here and the value of the settlement to class

[20] *Van Horn*, 840 F.2d at 607 (factor 2).

[21] Plaintiffs note that, as of the filing of this brief, the company has a market capitalization $4 billion. Ricke Decl. at ¶ 42.

[22] *Van Horn*, 840 F.2d at 607 (factor 4).

members. In addition, Plaintiffs also support and approve the settlement as evidenced by their signatures on the Settlement Agreement.

Further, the very small number of opt-outs and the complete absence of substantive objections to the settlement to date[23] reflects the fact that settlement class members—like Class Counsel and Plaintiffs—support the settlement. This favorable reception by the classes constitutes strong evidence of the fairness of the settlement and supports its final approval. *Keil v. Lopez*, 862 F.3d 685, 698 (8th Cir. 2017) (affirming approval of settlement where the objections were "small in number, which speaks well of class reaction to the Settlement"); *DeBoer*, 64 F.3d at 1178 (holding that "[t]he fact that only a handful of class members objected to the settlement similarly weighs in its favor" where five class members objected out of a class of 300,000); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1152 (8th Cir. 1999) (approving settlement where objectors represented fewer than 4% of class); *Carlson v. C.H. Robinson Worldwide, Inc.,* 2006 WL 2671105, at *4 (D. Minn. Sept. 18, 2006) (concluding "[t]he lack of objections" and "the relatively small number of opt-outs . . . show strong support for the settlement from class members"); *Bell Atl. Corp. v. Bolger*, 2 F.3d 1304, 1313-14 & n.15 (3d. Cir. 1993) (recognizing class silence can be considered consent to settlement); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974) (noting silence of majority of class may be attributed to agreement to proposed settlement).

Here, the fact that no class members have thus far raised any concerns about the settlement in such a large settlement class strongly bolsters the conclusion that the settlement is fair, reasonable, and adequate. To the extent any objections are received by class members who received a corrective notice, Class Counsel will promptly provide them to the Court.

[23] As noted above, a minority of class members who received a corrective notice are eligible to object or request exclusion from the settlement until May 19, 2023.

* * *

Accordingly, the Rule 23(e) and Eighth Circuit *Van Horn* factors support finding that the settlement is fair, reasonable, and adequate, and therefore, it should be finally approved.

III. The Court Can Approve the Release of FLSA Claims as a Fair and Reasonable Resolution of a *Bona Fide* Dispute.

For the same reasons that the settlement is fair, reasonable, and adequate under Rule 23(e)(1), the settlement likewise is a fair and reasonable resolution of a *bona fide* dispute such that the Court can approve the FLSA release for class members who negotiate their settlement checks.

"When a district court reviews a proposed FLSA settlement, it may approve the settlement agreement after it determines that the litigation involves a *bona fide* dispute, and that the proposed settlement is fair and equitable to all parties." *Stainbrook v. Minnesota Department of Public Safety*, 239 F. Supp. 3d 1123, 1126 (D. Minn. 2017) (citing *Fry v. Accent Mktg. Servs., L.L.C.*, 2014 WL 294421, at *1 (E.D. Mo. Jan. 27, 2014)). The requirement that the litigation involves a *bona fide* dispute is satisfied when the settlement "reflects a reasonable compromise over issues that are actually in dispute." *Id*. When evaluating a settlement's fairness, courts consider the totality of the circumstances, including factors such as "the stage of the litigation, the amount of discovery exchanged, the experience of counsel, and the reasonableness of the settlement amount based on the probability of plaintiffs' success with respect to any potential recovery." *Berry v. Best Transportation, Inc.*, 2020 WL 512393, at *1 (E.D. Mo. Jan. 31, 2020) (citation omitted).

This settlement provides 62% of the actual unpaid wages alleged under the MMWL and FLSA. As described at length above, weighing the risk, duration, and cost of further proceedings against the significant value provided by this settlement immediately and risk-free, there can be no doubt this settlement represents a fair and equitable resolution of a *bona fide* dispute under the FLSA. *Stainbrook,* 239 F. Supp. 3d at 1126.

IV. Certification of a Settlement Class Remains Appropriate.

In its preliminary approval Order, the Court concluded the settlement classes satisfied the requirements for class certification under Rule 23(a) and (b)(3). Doc. 141. Nothing has changed since the Court's ruling to call the Court's conclusions regarding class certification into question. Accordingly, for the reasons set forth in their preliminary approval motion, Plaintiffs ask that the Court certify the settlement classes for purposes of entry of judgment on the settlement.

V. The Court Should Confirm Its Earlier Appointment of Stueve Siegel Hanson LLP and McClelland Law Firm as Class Counsel

George A. Hanson and Alexander T. Ricke of Stueve Siegel Hanson LLP and Ryan L. McClelland of McClelland Law Firm, P.C., should be confirmed as Class Counsel for purposes of this class action settlement consistent with this Court's earlier orders doing so (Docs. 97, 110).

Rule 23(g), which governs the standards and framework for appointing class counsel for a certified class, sets forth four criteria the district court must consider in evaluating the adequacy of proposed counsel: (1) "the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(1)(B). Class Counsel meet all of these criteria and were previously found to be adequate representatives of the class in the Court's Orders granting class certification. *See* Docs. 97, 110; *see also Bartakovits*, 2022 WL 702300, at *3 (finding that Stueve Siegel Hanson and McClelland Law Firm are "uniquely skilled and efficient in prosecuting casino wage and hour cases"); *see also* Stueve Siegel Hanson LLP Firm Resume (attached to the Ricke Declaration as Exhibit 1).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court finally approve the settlement, grant Class Counsel's motion for attorneys' fees, expenses, and service awards, and enter judgment thereon.

Dated: May 8, 2023

Respectfully submitted,

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CLASS COUNSEL

CERTIFICATE OF SERVICE

The undersigned certifies that on May 8, 2023, the foregoing document was filed with the Court's CM/ECF system, which served a copy of the foregoing document on all counsel of record.

/s/ *Alexander T. Ricke*

CLASS COUNSEL

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. PENN NATIONAL GAMING, INC., et al. Defendants.	Case No. 5:20-cv-06067-SRB

DECLARATION OF ALEXANDER T. RICKE

I, Alexander T. Ricke, declare and state as follows:

1. I am a partner with the Kansas City-based law firm Stueve Siegel Hanson LLP. I am co-lead counsel for Plaintiffs and serve as Class Counsel in the above-captioned matter. I submit this Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Plaintiffs' Unopposed Motion for Attorneys' Fees and Expenses to Class Counsel and Service Awards to Named Plaintiffs and Opt-In Plaintiff. The Stueve Siegel Hanson LLP Firm Resume is attached and incorporated as **Exhibit 1**. I have personal knowledge of the facts declared herein and would competently testify to them if called to do so.

Overview of the Claims and Litigation

2. Plaintiffs Lipari-Williams, Hammond, and Layton worked at Argosy Casino in the Kansas City area (Lipari-Williams) or Hollywood Casino in the St. Louis area (Hammond and Layton). Plaintiffs Lipari-Williams and Hammond asserted two types of wage and hour claims under the Missouri Minimum Wage Law and Fair Labor Standards Act against Defendant The Missouri Gaming Company, LLC d/b/a Argosy Riverside Casino ("Argosy Casino") and

Defendant St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis ("Hollywood Casino"). First, Plaintiffs Lipari-Williams and Hammond asserted that Defendants' practice of deducting the fees associated with obtaining and renewing gaming licenses from the wages of Plaintiffs and similarly situated workers earning at or below the minimum wage violated the MMWL and FLSA's minimum wage provisions. Second, Plaintiffs Lipari-Williams and Hammond asserted that Defendants operated a mandatory tip pool for table games dealers at each casino that distributed a portion of dealers' pooled tips to dual-job employees who Plaintiffs alleged were non-tipped, supervisory employees, which they alleged violated the MMWL and FLSA. Plaintiffs sought minimum wage damages, forfeiture of the tip credit, and return of the misallocated tips.

3. In addition, Plaintiffs Hammond and Layton asserted that Defendant Penn National Gaming (the parent company of Argosy Casino and Hollywood Casino) violated the Employee Retirement Income Security Act by collecting an unlawful tobacco surcharge. Specifically, these Plaintiffs alleged that Penn National Gaming (1) failed to provide plan participants with a reasonable alternative standard to simply not being a tobacco user that offered the same reward (*i.e.*, avoiding the tobacco surcharge); and (2) failed to provide plan participants with notice of a reasonable alternative standard in plan documents. Plaintiffs sought damages equivalent to the value of the allegedly unlawful tobacco surcharges.

4. Plaintiff Lipari-Williams commenced this litigation when she filed her two-count Petition in the Circuit Court of Platte County, Missouri on May 1, 2020. *See* Petition, Doc. 1-2. Plaintiff Lipari-Williams asserted MMWL and unjust enrichment claims premised on the gaming license deduction and sought to represent workers at Argosy Casino and Hollywood Casino. *Id*. at ¶¶ 13-21, 23-24. Defendants removed the state court action to this Court based on traditional

diversity jurisdiction under 28 U.S.C. § 1332(a). *See* Notice of Removal, Doc. 1. Exemplifying that nearly every aspect of this case was contested, Defendants sought to have this case administratively transferred to Judge Fenner as "related" to another proceeding, which Plaintiffs opposed and the Court denied. Docs. 8-9.

5. Plaintiffs did not seek to remand the case to state court and, instead, filed a First Amended Complaint adding claims and parties. Doc. 24. Plaintiffs added Plaintiff Hammond and her employer, Hollywood Casino, as parties. Plaintiffs further added a claim under the FLSA with respect to the unlawful gaming license deductions and claims under the MMWL and FLSA for unlawful tip pooling arrangements. *Id*.

6. In October 2020, Class Counsel's fact investigation yielded further claims arising out of Plaintiffs' employment with Defendants, and, as a result, Plaintiffs sought leave to file a Second Amended Complaint adding ERISA claims due to a tobacco surcharge policy that Plaintiffs alleged was unlawful. Doc. 33. Defendants then filed a motion to dismiss Plaintiffs' ERISA claims for failure to state a claim and lack of standing (Docs. 47-48). In response, Plaintiffs again sought leave to amend their complaint to address issues raised in the motion to dismiss but Plaintiffs also opposed the motion to dismiss on the merits. Docs. 57-58. The Court granted Plaintiffs leave to file a Third Amended Complaint adding in Plaintiff Layton as a party and denied the motion to dismiss as moot. Doc. 60. Defendants did not refile their motion to dismiss the ERISA claims and the Court issued a new scheduling order encompassing all the claims in Plaintiffs' Third Amended Complaint. Doc. 64.

7. The Court entered a bifurcated scheduling order with Phase I focused on whether class and conditional collective certification were appropriate and Phase II focused on the merits and trial. Docs. 18, 64. The parties engaged in significant discovery during Phase I of the case.

8. With respect to written discovery, Plaintiffs served two sets of interrogatories and two sets of requests for production of documents on each of the three Defendants during Phase I of the case targeting issues related to class and conditional certification. Defendants produced approximately 8,000 pages of documents in response to these requests. Similarly, Defendants served interrogatories and requests for production of documents on the three Plaintiffs. In response to this discovery, Plaintiffs produced approximately 700 pages of documents.

9. In addition to written discovery, Plaintiffs took the corporate representative depositions of Hollywood Casino and Penn National Gaming pursuant to Rule 30(b)(6). Similarly, Class Counsel produced each of the three Plaintiffs as well as an opt-in Plaintiff (Tim Hammond) for depositions. Class Counsel was set to take the corporate representative deposition of Argosy Casino the day the parties agreed to a stipulation to class and conditional certification of the wage and hour claims, which mooted the need for that deposition during Phase I of the case.

10. In an effort to streamline the case and given the information that was revealed in discovery, the parties entered into a stipulation to class and conditional certification of Plaintiffs' wage and hour claims against Argosy Casino and Hollywood Casino. Joint Stipulation, Doc. 93-2. Specifically, the parties stipulated to conditional certification of the FLSA Gaming License Collective, the Hollywood Casino St. Louis Tip Pooling Collective, and the Argosy Casino Riverside Tip Pooling Collective. *Id*. The parties further stipulated to Rule 23 class certification of the MMWL Gaming License Class, the Hollywood Casino St. Louis Tip Pooling Class, and the Argosy Casino Riverside Tip Pooling Class. *Id*. Plaintiffs filed a comprehensive motion for class and conditional certification of the wage and hour claims (supported, in part, by the stipulation), which the Court ultimately granted. Docs. 92-93, 97.

11. However, the parties continued to dispute class certification of Plaintiffs' ERISA claims. As a result, Plaintiffs moved for class certification of the ERISA claims on September 15, 2021. Doc. 89. Defendants filed an opposition brief on October 20, 2021. Doc. 101. Plaintiffs filed a reply brief in support of class certification on November 10, 2021. Doc. 107. As the parties noted in their papers, Plaintiffs' tobacco surcharge claim under ERISA was an issue of first impression. The length and complexity of the parties' briefs and exhibits—totaling more than 400 pages—reflected the novelty of the arguments.

12. Ultimately, the Court issued a comprehensive order granting class certification of Plaintiffs' ERISA claims. Doc. 110. However, Defendants were not done. On November 30, 2021, Penn National Gaming filed a petition pursuant to Rule 23(f) seeking to have the Eighth Circuit review this Court's order certifying the ERISA classes. Plaintiffs filed an opposition to the petition on December 10, 2021. The Eighth Circuit denied the petition on December 23, 2021. Doc. 121.

13. Counsel for the parties worked together to develop a three-part notice plan that would initially send notice to the FLSA collectives, followed by notice to the Rule 23 classes with separate notices going to the wage and hour classes and the ERISA classes. Doc. 112. However, the parties disputed whether class members should be permitted to opt out of the ERISA classes, which Plaintiffs maintained was appropriate while Defendants argued no opportunity to opt out should be given. *Id*. at ¶ 3(c). The Court agreed with Plaintiffs and gave ERISA class members the right to opt out of the certified classes. Doc. 113.

14. Class Counsel worked with third-party administrator Analytics Consulting LLC to send notice to 666 putative FLSA collective members, 860 Rule 23 wage and hour class members,

and 4,162 Rule 23 ERISA class members. After completion of the FLSA collective notice process, 350 collective members filed Consents to Join the case. Doc. 125.

15. The Court entered a Phase II Scheduling Order and set a trial date of March 20, 2023. Doc. 119. In February 2022, Plaintiffs served lengthy and detailed damages interrogatories on Defendants seeking the information necessary to establish damages at trial and to use for settlement purposes. Once Defendants produced this data, Plaintiffs made a comprehensive class-wide settlement demand on June 28, 2022. The parties agreed to mediate with respected neutral Francis X. Neuner, which took place during an all-day session on November 29, 2022. This case only settled after all parties accepted a double-blind mediator's proposal from Mr. Neuner. Over the next two months, the parties worked diligently to memorialize the term sheet executed at the mediation into the written settlement agreement now before the Court.

16. On January 27, 2023, Plaintiffs filed an unopposed motion to direct class notice and grant preliminary approval of the class action settlement with supporting materials. Docs. 138, 139. On January 30, 2023, the Court entered an Order preliminarily approving the class action settlement and directing class notice. Doc. 141.

17. On February 23, 2023, the parties provided Analytics (the Court-approved third-party settlement administrator) the wage and hour data necessary to calculate estimated individual settlement payments, and Analytics mailed the Court-approved settlement notices on March 16, 2023.

18. Shortly after the initial settlement notice mailing by Analytics, Class Counsel spoke with several members of the three wage and hour classes who questioned their settlement allocations based on the tip pooling claims. Specifically, because those settlement payments were allocated based on proportional hours worked during the class period as required by the Settlement

Agreement, several class members who worked essentially full time during the class period contacted Class Counsel to understand their individual settlement payments.

19. Class Counsel immediately undertook an investigation and discovered that Analytics included duplicate wage information (related to other claims covered by the settlement) when calculating settlement allocations for certain members of the three wage and hour classes. This resulted in some class members being allocated more than their proportional share of the settlement fund at the expense of other class members. Class Counsel worked with Analytics to recalculate the estimated settlement payments within one day of discovering the issue. After recalculating the estimated settlement payments, Analytics determined that 612 class members' estimated settlement payments *increased* based on the recalculation. Conversely, 235 class members' estimated settlement payments *decreased* based on the recalculation. This issue did not impact settlement allocations for class members who were only members of the Nationwide ERISA Class—*i.e.*, 4,006 class members (approximately 83% of all settlement class members).

20. On March 30, 2023, Plaintiffs moved the Court to authorize a corrective notice to be distributed to the 847 class members to provide them with more accurate information about their recalculated estimated settlement payment and afford them a renewed opportunity to object or request exclusion (where permitted by the Settlement Agreement) based on that information. That same day, the Court granted the motion. Doc. 143. On April 4, 2023, Analytics sent the Court-approved corrective notice to all members of the three wage and hour classes, which included a new deadline to object or request exclusion of May 19, 2023.

The Settlement is Fair, Reasonable, and Adequate

21. This Declaration summarizes key aspects of the Settlement Agreement, which was previously filed in this case. *See* Settlement Agreement, Doc. 139-2.

22. There is no agreement between the parties beyond the Settlement Agreement.

23. The proposed settlement is structured as a class action settlement, which contemplates issuance of a Court-approved notice to class members informing them of their legal rights and options under the settlement, including their ability to object or opt out. Class members who do not opt out of the settlement will automatically be sent a check without any requirement to complete a claim form. However, opt-ins who have submitted a Consent to Join the case and thereby indicated their desire to participate, will not be afforded an opportunity to opt out. The notice process is now complete. Based on my discussions with Analytics, there have been no objections to the settlement and only four requests for exclusion.

24. The scope of the settlement is consistent with the classes previously certified by the Court. Given the overlapping nature of the MMWL and FLSA, each FLSA collective is subsumed within the corresponding class under the MMWL. The Court has previously certified the following classes (Doc. 97, 110), which Plaintiffs move the Court to maintain for purposes of settlement:

> **Nationwide ERISA Class:** All participants in Defendants' group health plan for plan years 2016, 2017, 2018, 2019, and 2020 who had a tobacco surcharge deducted from their wages in any of those years. For the avoidance of doubt, the "Nationwide ERISA Class" includes all members of the "Nationwide ERISA Sub-Class" as defined in the Court's class certification order.
>
> **MMWL Gaming License Class:** all persons employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and for whom a deduction was taken from their wages for any amount associated with initially obtaining or thereafter renewing a Gaming License.
>
> **Argosy Casino Riverside Tip Pooling Class:** All persons employed as Table Games Dealers at Argosy Riverside from March 31, 2017 through April 23, 2021, and who participated in the Table Games Dealer tip pool.
>
> **Hollywood Casino Tip Pooling Class:** All persons employed as Table Games Dealers at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and who participated in the Table Games Dealer tip pool.

25. There are 4,132 members of the Nationwide ERISA Class, 681 members of the MMWL Gaming License Class, 224 members of the Argosy Casino Riverside Tip Pooling Class, and 300 members of the Hollywood Casino Tip Pooling Class. Many of the workers covered by the settlement are members of two or more classes. There are 4,840 workers covered by the Settlement Agreement. These numbers are lower than what was projected in connection with preliminary approval because the settlement administrator has de-duplicated records by Employee ID Number. The practical effect is that each of the estimated settlement payments increases from what Class Counsel previously projected in connection with preliminary approval.

26. The settlement creates a $5,500,000 non-reversionary common fund to pay class members, the cost of settlement administration, service awards, a modest reserve fund to correct any omissions, and Class Counsel's attorneys' fees and expenses. Settlement Agreement at ¶ V.

27. Using Defendants' class-wide wage and hour data, Class Counsel calculated class-wide ERISA damages (value of tobacco surcharges) of $4,118,685.86, class-wide tip pooling damages (tip credit forfeiture and best-day misappropriated tips) of $4,690,280.84, and class-wide gaming license deduction damages (value of the gaming license deductions) of $105,446.11. The $5,500,000 common fund thus represents approximately 62% of the value of the ERISA claims' actual damages and approximately 62% of the unpaid wages alleged under the MMWL and FLSA claims.

28. After accounting for the costs of settlement administration ($39,040), $37,500 in service awards for the three Named Plaintiffs and Opt-in Plaintiff Hammond (all of whom were deposed), a modest $5,000 reserve fund for errors and omissions, 35% of the fund for Class Counsel's attorney's fees and $71,577.69 in expenses, the net settlement fund available for distribution to class members is approximately $3,425,000. Net of all fees and costs, the average

per capita settlement checks will be at least as follows for each class: $378 on average for members of the Nationwide ERISA Class; $3,800 on average for members of the Argosy Casino Riverside Tip Pooling Class; $3,200 on average for members of the Hollywood Casino St. Louis Tip Pooling Class; and $100 on average for members of the MMWL Gaming License Class. In my opinion, which is based on considerable experience prosecuting the same or similar claims around the country, these are meaningful payments.

29. Importantly, each class member was able to decide for himself or herself whether to participate with complete information because their estimated settlement payment was listed on his or her individualized settlement notice. That said, opt-ins who previously filed a Consent to Join in the case were not afforded an opportunity to opt out of the settlement because they have previously indicated their desire to participate in the case and any settlement that might be achieved.

30. To participate in the settlement, class members do not need to do anything—there is no claims process. Class members who do not request to be excluded from the settlement will receive a check in the mail for their settlement allocation. Class members who negotiate their checks will release all claims (including those under the FLSA) that were or could have been asserted based on the facts alleged in the Complaint as more fully explained in the Settlement Agreement. Settlement Agreement at ¶ II. Class members who do not negotiate their checks will still be deemed to have released their state law claims and ERISA claims but not the FLSA claims. *Id*. at ¶ HH. Thus, class members who choose not to negotiate their settlement checks will not have released their FLSA claims. The settlement checks will be valid and negotiable for a period of 120 days from issuance. *Id*. at ¶ IV.B.4.b. Any portion of the net settlement amount remaining

after the conclusion of the check cashing period will be distributed *cy pres* subject to Court approval. *Id*. at ¶ IV.C.

31. Given the risks associated with proceeding with litigation absent a settlement, I believe that the compromised monetary amounts under the settlement here are reasonable and proportionate. Based on my extensive experience in class and collective wage and hour litigation and other complex litigation, by any measure, this settlement represents a substantial recovery weighed against the risk of the case not proceeding as a certified class or collective action and the possibility of losing on the merits at the summary judgment, trial, or appeal stages.

32. First, with respect to the Nationwide ERISA Class, there is no dispute that Plaintiffs' tobacco surcharge theory is an issue of first impression. Other than enforcement actions prosecuted by the Department of Labor, Class Counsel is not aware of any private enforcement of comparable claims under ERISA by any lawyers other than Class Counsel. Given that novelty, there is inherent risk. The Court addressed several of Defendants' arguments in granting class certification, but many of those arguments were more geared toward the merits and would have presented risks had this case proceeded to summary judgment, trial, or appeal. For example, Defendants argued that Plaintiffs and class members lacked standing due to no injury and that the regulations on which Plaintiffs relied were "inconsistent" with ERISA. *Lipari-Williams v. Missouri Gaming Co., LLC*, 339 F.R.D. 515, 523-24 (W.D. Mo. 2021). Either argument, if accepted by this Court or the Eighth Circuit, could have dramatically limited the scope of the class and its claims.

33. Second, with respect to both tip pooling classes, Plaintiffs' claims faced risks. For starters, this is an issue of first impression under both the MMWL and the FLSA. Although several district courts have granted class or conditional certification of these claims in cases prosecuted by

Class Counsel (*see* Doc. 97; *Lockett*, *supra*; *Boyd Gaming*, *supra*), no court has addressed the merits. Defendants also advanced a variety of arguments that could have impacted the scope or viability of the tip pooling claims. For example, Defendants argued that dual-rate table games supervisors are not "managers or supervisors" within the meaning of the FLSA and MMWL such that they should be permitted to participate in the tip pool. Although Plaintiffs believe the tip pooling claims would have prevailed at trial and on appeal if needed, there is no doubt that they faced risk absent settlement.

34. Third, the MMWL Gaming License Class also faced comparable risks to the tip pooling classes. Foremost among them is that no district court or circuit court has found as a matter of law that the gaming licenses primarily benefitted the employer. Although Plaintiffs believe the case law weighs in favor of the employees on this issue, risk remained.

35. Moreover, to obtain benefits in excess of those provided by the proposed settlement, Plaintiffs would be required to defeat motions for class and collective decertification, defeat motions for summary judgment, prevail at trial, and prevail on appeal. This process would be both long and costly. Further, if Plaintiffs lost any of the above issues (or any issue Defendants had raised) at any stage, the classes would recover far less or possibly nothing. Considering this settlement provides class members with a common fund representing a meaningful portion of their damages, I believe the settlement is fair, reasonable, and adequate, particularly when weighed against the risks, costs, and delays of proceeding outside settlement.

36. In this context, the opinion of Class Counsel that this settlement represents an excellent recovery for class members should also carry particular weight. Together with George Hanson and Ryan McClelland, Class Counsel have litigated more than 20 casino wage and hour

class and collective actions since 2016. These cases laid the groundwork for how this case was litigated and helped establish a range of reasonableness for how it was settled.

37. Across these cases, Class Counsel have successfully resolved wage and hour claims on behalf of tens of thousands of casino workers recovering tens of millions of dollars for them. Through this work, Class Counsel gained a unique knowledge of the industry while learning how to: (1) identify wage and hour claims; (2) value wage and hour cases; (3) conduct discovery efficiently with an eye toward class and conditional certification; and (4) maximize recoveries for class and collective members. That is what Class Counsel did in this case.

38. Despite Class Counsel's success resolving these cases, many (like this case) have required the significant expenditure of attorney time and advanced expenses. But that litigation experience informs Class Counsel's view that this case represents an exceptional recovery.

39. For example, Class Counsel have obtained significant litigation victories in casino wage and hour cases that are directly relevant to the claims at issue in this case. These victories include winning conditional and class certification of gaming license wage deduction claims and tip pooling claims like those asserted by Plaintiffs Lipari-Williams and Hammond.[1]

[1] *See, e.g., James v. Boyd Gaming Corp.*, 2021 WL 794899 (D. Kan. Mar. 2, 2021) (conditionally certifying tip credit notice and tip pooling claims across 13 casinos and 9 casinos, respectively); *Lockett v. Pinnacle Ent., Inc.*, 2021 WL 960424 (W.D. Mo. Mar. 12, 2021) (conditionally certifying tip pooling and gaming license wage deduction claims across 10 casinos and 8 casinos, respectively, while also certifying Missouri and Iowa state law claims under Rule 23); *MacMann v. Tropicana St. Louis, LLC*, 2021 WL 1105500 (E.D. Mo. Mar. 23, 2021) (conditionally certifying four FLSA claims at Lumiere casino, including tip credit notice and gaming license wage deductions, while also certifying Missouri state law claims under Rule 23); *Larson v. Isle of Capri Casinos, Inc.*, 2018 WL 6495074, at *1 (W.D. Mo. Dec. 10, 2018) (conditionally certifying tip credit notice and timeclock rounding claims at Isle of Capri casino); *Adams v. Aztar Indiana Gaming Co., LLC,* 587 F. Supp. 3d 753 (S.D. Ind. 2022) (granting class and conditional certification of tip credit notice, timeclock rounding, and overtime miscalculation claims); *Pasquale v. Tropicana Atl. City Corp.*, 2022 WL 2816897, at *5-6 (D.N.J. July 19, 2022) (granting conditional certification of tip credit notice and miscalculated regular rate claims at Tropicana Atlantic City); *Adams v. Aztar Indiana Gaming Company, LLC d/b/a Tropicana Evansville*, 2021

40. And to the extent these cases need to be tried, Stueve Siegel Hanson is one of a relatively modest number of plaintiff's firms to have tried and won multiple class and collective action jury trials. As relevant to this case, George Hanson and other Stueve Siegel Hanson lawyers tried a class and collective action on behalf of meat packers at a Tyson plant for unpaid time spent "donning and doffing" required clothing and equipment. After winning a mid-six figure jury verdict in favor of the workers, Judge Marten of the District of Kansas observed of the wage and hour lawyers at Stueve Siegel Hanson that "it appears that plaintiffs' counsel's experience in wage hour class actions has unmatched depth." *Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014). And in recent years, Stueve Siegel Hanson lawyers have tried three other class actions resulting in 8 and 9-figure verdicts for class members. In June 2017, Stueve Siegel Hanson, along with other MDL co-lead counsel, tried a class action in *In re: Syngenta AG MIR162 Corn litigation*, Case No. 14-MD-2591-JWL (D. Kan.) and secured a verdict of $217,700,000 on behalf of Kansas corn farmers, which was ultimately resolved as part of a nationwide settlement. In 2018, the firm tried and secured a $34,000,000 class action verdict on behalf of approximately 24,000 State Farm life insurance policy holders in *Vogt v. State Farm Life Insurance Co*., Case No. 16:4170-CV-C-NKL (W.D. Mo.), which was affirmed on appeal by the Eighth Circuit. *Vogt v. State Farm Life Ins. Co.*, 963 F.3d 753 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2551 (2021). Most recently, in December 2022, Stueve Siegel

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WL 4316906 (S.D. Ind. Sept. 22, 2021) (denying motion to dismiss FLSA and state law claims based on tip credit notice, gaming license deductions, timeclock rounding, and miscalculated regular rate); *Lockett v. Pinnacle Ent., Inc.*, 2019 WL 4296492, at *2 (W.D. Mo. Sept. 10, 2019) (finding out-of-state casinos subject to personal jurisdiction following transfer request on an issue of first impression in the Eighth Circuit); *Lockett v. Pinnacle Ent., Inc.*, 408 F. Supp. 3d 1043, 1045 (W.D. Mo. 2019) (holding that gaming licenses primarily benefit casino employers such that deducting costs associated with gaming licenses from employees' wages results in a minimum wage violation); *Lilley v. IOC-Kansas City, Inc.*, 2019 WL 5847841, at *1 (W.D. Mo. Nov. 7, 2019) (same).

Hanson lawyers secured a $28,360,000 verdict on behalf of a Missouri class of Kansas City Life Insurance policy holders in *Karr v. Kansas City Life Insurance Company*, Case No. 1916-CV-26645, in the Circuit Court of Jackson County, Missouri.

41. Class Counsel's experience litigating and trying these class and collective actions informs how we value these cases and also poses a credible threat to defendants that, absent settlement, the workers' lawyers have the resources and ability to obtain, defend, and collect significant verdicts and judgments. This experience is also demonstrated by the Stueve Siegel Hanson LLP Firm Resume, attached to this Declaration as Exhibit 1.

42. As of the filing of this brief and supporting declaration, Penn Entertainment Inc. f/k/a Penn National Gaming, Inc. has a market capitalization of $4 billion. Given Defendants' vigorous and expensive defense of this case and the publicly available data regarding their financial condition, Class Counsel have no concern that they will be able to fulfill their obligations under the Settlement Agreement.

Class Counsel's Fees and Expenses

43. Pursuant to the Settlement Agreement, Defendants do not oppose Class Counsel's request for fees and expenses. Settlement Agreement at ¶¶ III.D.

44. Class Counsel and Plaintiffs executed individual fee agreements providing that Class Counsel would be entitled to the greater of thirty-five percent (35%) of any recovery or their lodestar plus reimbursement of advanced expenses. Class Counsel took this case on a contingency fee basis. To date, Class Counsel has incurred significant time and expenses, none of which has been compensated. Specifically, Class Counsel's attorneys and professional staff have expended well in excess of 2,500 hours in furtherance of this litigation.

45. There is no question this commitment of time and resources precluded other employment. Class Counsel's commitment of resources was likewise necessary given that there was no government investigation or widespread, public condemnation of Defendants' practices on which Class Counsel could piggyback. Just the opposite, as described above, these claims have been identified and pioneered by Class Counsel. To the extent there is now favorable case law on these issues, that was largely the result of Class Counsel's efforts in this case and around the country. More to the point, other than cases brought by Class Counsel, Class Counsel is unaware of any other successful resolution of ERISA, FLSA, or MMWL claims by private litigants asserting the same theories of liability.

46. To the extent the Court requests Class Counsel's lodestar or Class Counsel's time records, Class Counsel will submit them *in camera*. That said, Class Counsel expect their anticipated thirty-five percent fee to approximate their lodestar by the time settlement administration concludes. In fact, it is likely that this case will result in a modest *negative* multiplier on Class Counsel's lodestar after the conclusion of final approval and settlement administration.

47. The table below summarizes the expenses that Stueve Siegel Hanson reasonably and necessarily incurred to prosecute this litigation. These are the type of expenses my firm typically bills to clients in both contingency and hourly cases:

Stueve Siegel Hanson's Expenses	
Category	**Amount**
Print and Copy	$380.60
Meals	$18.55
Court Fees	$263.10
Deposition Transcripts	$5,270.92
Mediator Fees	$3,747.00
FedEx/UPS	$58.59
Online Research (PACER)	$77.20
Online Research (Westlaw)	$39,090.66
Hosting Data Storage	$487.29
Total	**$49,393.91**

48. Based on my discussions with my co-counsel, Ryan McClelland, I understand his firm has incurred $4,971.19 in expenses in furtherance of this litigation. The table below summarizes the expenses that McClelland Law Firm incurred to prosecute this litigation:

McClelland Law Firm's Expenses	
Category	**Amount**
Print and Copy	$159.40
Mediator Fees	$975
Ground Transportation, Parking, Lodging, Meals	$1,203.61
Process Servers	$195.90
Airfare	$1,228.11
Postage/Fed Ex/UPS	$861.27
Online Research (PACER/SOS)	$347.90
Total	**$4,971.19**

49. Further, Class Counsel has been issued an invoice from Analytics Consulting, LLC for the company's fees and expenses in connection with distributing class and collective notice and facilitating the Consent to Join process in the amount of $17,212.59. Analytics agreed to carry these fees and expenses through the end of the litigation; however, with this settlement Class Counsel will pay this invoice and thus requests reimbursement of this amount as a necessary

expense that is due and owing. This sum is separate and distinct from the $39,040 Analytics will be paid from the common fund for administering the settlement.

50. As a result, Class Counsel requests a total reimbursement of $71,577.69 in advanced expenses from the common fund.

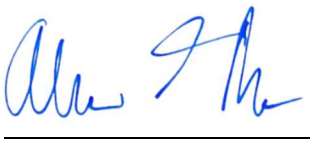
The Requested Service Awards are Reasonable

51. Pursuant to the Settlement Agreement, Defendants do not oppose the requested service awards. Settlement Agreement at ¶¶ III.C.

52. The Named Plaintiffs and Opt-In Plaintiff Hammond participated in the fact investigation of these claims, discovery, the notice process, and, ultimately, settlement discussions. Each of the Named Plaintiffs and Opt-In Plaintiff Hammond were deposed in connection with this lawsuit. Each Named Plaintiff propounded and responded to written discovery. Each of the Named Plaintiffs and Opt-In Plaintiff Hammond fielded inquiries from their coworkers about the case after the notices of class and conditional certification and settlement notices were distributed. Just as importantly, the Named Plaintiffs and Opt-In Plaintiff Hammond put their names forward in connection with litigation against a current or former employer. Without that act of standing up for what they believed to be right, this Settlement Agreement providing millions of dollars of relief to thousands of class members would not be possible. In my opinion, the requested service awards are reasonable and warranted based on my experience working with wage and hour plaintiffs in many cases around the country.

53. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed May 8, 2023, in Kansas City, Missouri.



Alexander T. Ricke

EXHIBIT 1

STUEVE SIEGEL HANSON

AWARDS AND RECOGNITION

We are proud to have been recognized by local, regional and national publications for our work and results.

Representative Rankings:

- Titans of the Plaintiffs Bar
- Food & Beverage: Practice Group of the Year | MVP of the Year
- Cybersecurity & Privacy: Practice Group of the Year | MVP of the Year | Rising Stars

- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Department
- Ranked Band 2 in Missouri: Labor & Employment - Mainly Plaintiffs | Department
- Ranked Band 1 in Missouri: Litigation - Mainly Plaintiffs | Norman Siegel and Patrick Stueve

- Elite Trial Lawyers Finalist: Business Torts | Financial Products | Privacy/Data Breach
- Top 100 Jury Verdicts of 2017, No. 10 Verdict in the U.S.

- 2022 Lawyer of the Year:
  - George Hanson | Employment
  - Steve Six | Appellate
  - Patrick Stueve | Antitrust Litigation
- 2020 Lawyer of the Year:
  - Norman Siegel | Mass Tort & Class Actions

Regional Rankings: Kansas City-Mo.

- Tier 1 in Antitrust | Appellate | Bet-the-Company Litigation | Commercial Litigation | Employment Law- Individuals | Mass Tort & Class Actions-Plaintiffs
- Tier 2 in Litigation-Labor & Employment | Litigation-Securities | Personal Injury Litigation-Plaintiffs

National Ranking:

- Tier 3 in Mass Tort Litigation / Class Actions-Plaintiffs

CLASS AND COLLECTIVE ACTIONS

Since opening its doors in 2001, Stueve Siegel Hanson has obtained substantial results in a wide range of complex commercial, class, and collective actions while serving as lead or co-lead counsel.

Over the past decade, verdicts and settlements include:

Antitrust

- Obtaining $53 million in settlements between a class of direct purchasers of automotive lighting products and several manufacturers accused of participating in a price fixing scheme.
- Obtaining a $25 million settlement in a nationwide antitrust class action regarding price fixing of aftermarket automotive sheet metal parts.
- Obtaining a $7.25 billion settlement in a massive price-fixing case brought by a class of U.S. merchants against Visa, Mastercard and their member banks.
- Obtaining $33 million in nationwide class action alleging price fixing for certain polyurethanes in Urethanes antitrust case.
- Obtaining a $25 million settlement in a class action lawsuit that alleged Blue Rhino and certain competitors conspired to reduce the amount of propane gas in cylinders sold to customers. The firm obtained a $10 million settlement in a related suit against AmeriGas.

Data Privacy

- Obtaining a historic $1.5 billion settlement in a nationwide class action stemming from credit reporting firm Equifax's massive 2017 data breach.
- Obtaining $500 million, plus additional benefits, for victims of the T-Mobile data breach.
- Obtaining a $115 million settlement (at the time, the largest data breach settlement in U.S. history) resulting from a 2015 data breach affecting Anthem, Inc., one of the nation's largest for-profit managed health care companies.
- Obtaining a $10 million settlement in a class action resulting from a data breach at Target Corp.
- Obtaining a $3.25 million settlement in a class action stemming from a data breach at the National Board of Examiners in Optometry.
- Obtaining a $2.3 million settlement in a class action stemming from a data breach at global technology company Citrix's internal network.
- Obtaining a $3.25 million settlement in data privacy litigation on behalf of more than 61,000 optometrists whose personal information was compromised by the national optometry board.

Catastrophic Injury

- Obtaining $39.5 million in settlements from three refiners on behalf of adjacent homeowners who were living above a large plume of gasoline leaked from the refineries and connecting pipelines.

Commercial Litigation

- Obtaining a $1.51 billion settlement – the largest agribusiness settlement in U.S. history – for U.S. corn growers, grain handling facilities and ethanol production plants that purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $218 million jury verdict for a class of Kansas corn producers who purchased corn seeds prematurely sold by Syngenta.
- Obtaining a $55 million settlement for U.S. dairy farmers who purchased the Classic model of the voluntary milking system (VMS) manufactured and sold by DeLaval Inc.
- Obtaining a $49.75 million settlement in the United States with Lely on behalf of dairy farmers who purchased its robotic milking system, the Lely Astronaut A4 ("A4").
- Obtaining a $56 million settlement on behalf of a class of government entities against Trinity Industries and its manufacturing arm, Trinity Highway Products, to remove and replace the companies' 4-inch ET Plus guardrail end terminals on Missouri roads.
- Obtaining more than $44 million in restitution and $7.9 million in cash for dentists against Align Technology, Inc. in a nationwide deceptive trade practices case.

Consumer Class Action

- Obtaining two settlements totaling $29 million to resolve consumer class action claims against Experian, one of the "big three" credit reporting agencies, arising out of the company's reporting of delinquent loan accounts.
- Obtaining up to $220 million in damages for all Missouri residents who purchased the prescription pain reliever Vioxx before it was removed from the market.
- Obtaining more than $75 million in relief for purchasers of Hyundai vehicles for Hyundai's overstatement of horsepower in vehicles.
- Obtaining $29.5 million in settlements for overdraft fees charged to customers from UMB Bank, Bank of Oklahoma and Intrust Bank.
- Obtaining $19.4 million for purchasers of H&R Block's Express IRA product related to allegedly false representations made during the sales presentation.

Cost of Insurance

- Obtaining a $2.25 billion settlement in a class action lawsuit against The Lincoln National Life Insurance Company over alleged life insurance policy overcharges.
- Obtaining a $59.75 million settlement in a nationwide class action lawsuit against John Hancock Life Insurance Company (U.S.A.) over alleged life insurance policy overcharges.
- Obtaining a $34 million jury verdict in a class action trial against State Farm Insurance regarding alleged life insurance policy overcharges.
- Obtaining a $28.4 million jury verdict against Kansas City Life on behalf of more than 8,000 current and former Missouri policy owners for overcharges to the cash values of their universal life insurance policies.

Fair Labor Standards Act

- Obtaining a $73 million settlement on behalf of current and former Bank of America retail banking and call center employees who alleged violations of the Fair Labor Standards Act.

Wage and Hour

- Obtaining a $73 million settlement on behalf of current and former Bank of America retail banking and call center employees who alleged violations of the Fair Labor Standards Act.
- Obtaining a $27.5 million settlement for a class of loan originators who were misclassified as exempt and denied overtime.
- Obtaining a $25 million settlement for a class of mortgage consultants for unpaid overtime as lead counsel in multidistrict litigation.
- Obtaining a $24 million settlement to resolve a collective arbitration and more than 50 federal mass actions involving misclassified satellite technicians denied overtime and minimum wages.
- Obtaining a $14.5 million settlement for a class of inventory associates for unpaid overtime.
- Obtaining a $12.5 million settlement for multiple classes and collective of pizza delivery drivers alleging vehicle expenses reduced their wages below the minimum wage.
- Obtaining a $12.5 million settlement for classes of workers at two MGM casinos for tip credit violations.
- Obtaining a $10.5 million settlement for a class of bank employees for misclassification as being exempt from overtime.
- Obtaining a $9.8 million settlement for collectives of workers at three Rush Street Gaming casinos for tip credit and wage deduction violations.
- Obtaining an $8.5 million settlement for a collective of employees in the hospitality industry for unpaid minimum wages.
- Obtaining a $7.7 million settlement for a class of loan account servicers misclassified as exempt and denied overtime.
- Obtaining a $7.5 million settlement for class of loan processors in multidistrict litigation.
- Obtaining $6 million settlement for a class of workers at Wind Creek Casino for tip credit and wage deduction violations.
- Obtaining a $5.5 million settlement for a class of workers at Rivers Casino Schenectady for tip credit and overtime violations.
- Obtaining numerous settlements for $5 million or less for classes and collective seeking unpaid overtime and minimum wages.

JUDICIAL PRAISE

"I've always been impressed with the professionalism and the quality of work that has been done in this case by both the plaintiffs and the defendants. On more than one occasion, it has made it difficult for the Court because the work has been so good."

Hon. Nanette Laughrey
U.S. District Court for the Western District of Missouri
Nobles, et al., v. State Farm Mutual Automobile Insurance Co.

"The complex and difficult nature of this litigation, which spanned across multiple jurisdictions and which involved multiple types of plaintiffs and claims, required a great deal of skill from plaintiffs' counsel, including because they were opposed by excellent attorneys retained by Syngenta. That high standard was met in this case, as the Court finds that the most prominent and productive plaintiffs' counsel in this litigation were very experienced had very good reputations, were excellent attorneys, and performed excellent work. In appointing lead counsel, the various courts made sure that plaintiffs would have the very best representation…

In this Court's view, the work performed by plaintiffs' counsel was consistently excellent, as evidenced at least in part by plaintiffs' significant victories with respect to dispositive motion practice, class certification, and trial."

Hon. John Lungstrum
U.S. District Court for the District of Kansas
In Re: Syngenta AG MIR 162 Corn Litigation

"The most compelling evidence of the qualifications and dedication of proposed class counsel is their work in this case. Considering how far this action has come despite a grant of summary judgment in Defendant's favor and a reversal on appeal, proposed class counsel have made a strong showing of their commitment to helping the class vigorously prosecute this case."

Hon. Andrew J. Guilford
U.S. District Court for the Central District of California
Reyes v. Experian

"I believe this was an extremely difficult case. I also believe that it was an extremely hard fought case, but I don't mean hard fought in any negative sense. I think that counsel for both sides of the case did an excellent job…

I congratulate the plaintiffs and I also congratulate the defense lawyers on the very, very fine job that both sides did in a case that did indeed pose novel and difficult issues."

Hon. Audrey G. Fleissig
U.S. District Court for the Eastern District of Missouri
William Perrin, et al., v. Papa John's International, Inc.

"The experience, reputation and ability of class counsel is outstanding."

Hon. Michael Manners
Circuit Court of Jackson County, Missouri
Berry v. Volkswagen Grp. of Am., Inc.

MDL EXPERIENCE

This list includes both active and resolved matters; the most recent are listed first.

ACTIVE

In Re: United Specialty Insurance Company Ski Pass Litigation (2020 to present)

- **Case No. and Court:** Case No.: 4:20-md-02975-YGR, Northern District of California
- **Judge:** Yvonne Gonzales Rogers
- **Subject Matter and Status:** Class action seeking reimbursement for consumers who purchased ski passes for the 2020 season but were unable to use them due to COVID-19.
- **Role:** Co-Lead Counsel: Rachel Schwartz

In Re: 3M Combat Arms Earplug Products Liability Litigation (2019 to present)

- **Case No. and Court:** 3:19-md-02885-MCR-GRJ, Northern District of Florida
- **Judge:** M. Casey Rodgers
- **Subject Matter and Status:** Product liability class action alleging certain 3M earplugs caused military service members and veterans to suffer hearing loss, tinnitus and other health issues. The first bellwether trial is scheduled for Spring 2021.
- **Role:** Early Vetting Leadership Committee: Abby McClellan

In Re: American Medical Collection Agency, Inc., Customer Data Security Breach Litigation (2019 to present)

- **Case No. and Court:** 2:19-md-02904-MCA-MAH, District of New Jersey
- **Judge:** Madeline Cox Arleo
- **Subject Matter and Status:** Consumer class action stemming from a data breach suffered by the American Medical Collection Agency (AMCA) that exposed millions of Quest patients' personal data. The matter is in discovery.
- **Role:** Co-Lead Counsel, Quest Track: Norman Siegel

In Re: Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation (2019 to present)

- **Case No. and Court:** 19-md-2887-JAR-TJJ, District of Kansas
- **Judge:** Julie A. Robinson
- **Subject Matter and Status:** Consumer class action alleging that multiple varieties of dog food products contained dangerously high levels of Vitamin D. The Court appointed leadership roles on July 31, 2019.
- **Role:** Co-lead and Liaison Counsel: Rachel Schwartz

In Re: Capital One Consumer Data Security Breach Litigation (2019 to present)

- **Case No. and Court:** 1:19-md-02915, Eastern District of Virginia
- **Judge:** Anthony J. Trenga
- **Subject Matter and Status:** Consumer class action stemming from a data breach that affected the personal information of approximately 100 million people in the U.S. and 6 million in Canada. The case is pending.
- **Role:** Co-lead Counsel: Norman Siegel

In Re: Intuit Free File Litigation (2019 to present)

- **Case No. and Court:** 5:19-cv-02546, Northern District of California
- **Judge:** Charles R. Breyer
- **Subject Matter and Status:** Consumer class action alleging that Intuit, the maker of TurboTax, deliberately impeded access to a free online tax-filing program required by the IRS. The case is pending.
- **Role:** Co-lead Counsel: Norman Siegel

In Re: Dominion Dental Services USA, Inc. Data Breach Litigation (2019 to present)

- **Case No. and Court:** 1:19-cv-01050, Eastern District of Virginia
- **Judge:** Leonie M. Brinkema
- **Subject Matter and Status:** Consumer class action stemming from a major data breach at Dominion National Insurance Company. The case is pending.
- **Role:** Co-lead and Interim Class Counsel: Barrett Vahle

In Re: Marriott International, Inc., Customer Data Security Breach Litigation (2019 to present)

- **Case No. and Court:** 8:19-md-02879, District of Maryland
- **Judge:** Paul W. Grimm
- **Subject Matter and Status:** Consumer class action involving a data breach affecting more than 380 million people. The MDL Court appointed Lead Counsel, Liaison Counsel and Plaintiff Steering Committee on April 29, 2019.
- **Role:** Plaintiff Steering Committee: Norman Siegel

In Re: Packaged Seafood Product Litigation (2015 to present)

- **Case No. and Court:** 3:15-md-02670-JLS-MDD, Southern District of California
- **Judge:** Janis L. Sammartino
- **Subject Matter and Status:** The case alleges an antitrust price-fixing conspiracy among the country's largest packaged seafood and canned tuna producers, including Starkist, Chicken of the Sea and Bumble Bee. Stueve Siegel Hanson successfully resolved its claims against one of the major companies and continues to pursue claims against the others.
- **Role:** Stueve Siegel Hanson represents the country's largest cooperative food wholesaler to independently owned supermarkets and grocery stores.

In Re: Proton-Pump Inhibitor Products Liability Litigation (No. II) (2017 to present)

- **Case No. and Court:** 2:17-md-2789, District of New Jersey
- **Judge:** Clair C. Cecchi
- **Subject Matter and Status:** Product liability action involving individuals who took Proton-Pump Inhibitors and suffered kidney injuries. This MDL is currently in the discovery phase.
- **Role:** Plaintiff Steering Committee: Norman Siegel

In Re: Taxotere (Docetaxel) Products Liability Litigation (2016 to present)

- **Case No. and Court:** 2:16-md-02470, Eastern District of Louisiana
- **Judge:** Jane Triche Milazzo; previously Hon. Kurt D. Engelhardt
- **Subject Matter and Status:** Product liability action involving women that were treated with the breast cancer drug Taxotere (Docetaxel) and experienced permanent hair loss. The first bellwether trial in September 2018 was a defense win. Several more bellwether trials are scheduled.
- **Role:** Plaintiff Steering Committee: Abby McClellan; Common Benefit Subcommittee: Todd Hilton; ESI Subcommittee: Stephanie Walters

In Re: U.S. Office of Personnel Management Data Security Breach Litigation (2015 to present)

- **Case No. and Court:** 1:15-mc-01394, District of Columbia
- **Judge:** Amy Berman Jackson
- **Subject Matter and Status:** Consumer class action involving a data breach. After the district court initially dismissed the lawsuit on Article III standing grounds, Norman Siegel served on the appellate team that won a full reversal before the D.C. Circuit in June 2019. The cases have been remanded for further proceedings in the district court.
- **Role:** Stueve Siegel Hanson performed significant legal briefing and managed class representatives at the direction of lead counsel.

In Re: Cook Medical, Inc., IVC Filters Marketing, Sales Practices and Products Liability Litigation (2014 to present)

- **Case No. and Court:** 1:14-ml-02570, Southern District of Indiana
- **Judge:** Richard L. Young
- **Subject Matter and Status:** Product liability action involving inferior vena cava filters and injuries experienced as a result of implantation. This MDL is currently in the bellwether trial stage.
- **Role:** Stueve Siegel Hanson represents multiple clients in this MDL and is actively participating in discovery.

In Re: Testosterone Replacement Therapy Products Liability Litigation (2014 to present)

- **Case No. and Court:** 1:14-cv-01748, Northern District of Illinois
- **Judge:** Matthew F. Kennelly
- **Subject Matter and Status:** Product liability action involving men who used testosterone replacement therapy (TRT) and suffered cardiovascular injuries. All defendants have entered into global settlement agreements.
- **Role:** Stueve Siegel Hanson participated in third-party discovery and prepared a bellwether plaintiff for trial prior to a global settlement.

RESOLVED

In Re: Equifax, Inc., Customer Data Security Breach Litigation (2017 to 2020)

- **Case No. and Court:** 1:17-md-02800, Northern District of Georgia
- **Judge:** Thomas W. Thrash
- **Subject Matter and Status:** Consumer class action involving a data breach affecting more than 148 million Americans. This MDL was resolved with a $1.5 billion settlement in January 2020.
- **Role:** Co-lead Counsel and Chair of Settlement Committee: Norman Siegel

In Re: Anthem, Inc. Data Breach Litigation (2015 to 2018)

- **Case No. and Court:** 5:15-md-02617, Northern District of California
- **Judge:** Lucy H. Koh
- **Subject Matter and Status:** Consumer class action involving a data breach. This MDL settled in 2018.
- **Role:** Stueve Siegel Hanson represented the most named plaintiffs. Norman Siegel worked with lead counsel to secure a $115 million settlement.

In Re: Bard IVC Filters Products Liability Litigation (2015 to present)

- **Case No. and Court:** 2:15-md-02641, District of Arizona
- **Judge:** David G. Campbell
- **Subject Matter and Status:** Product liability action involving inferior vena cava filters and injuries experienced as a result of implantation. This MDL is in the process of closing, and cases that are not resolved are being remanded or transferred. The action has resolved for Stueve Siegel Hanson cases.
- **Role:** Stueve Siegel Hanson represented multiple clients in this MDL and is actively participating in discovery.

In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation (2015 to 2016)

- **Case No. and Court:** 3:15-md-02672, Northern District of California
- **Judge:** Charles R. Breyer

- **Subject Matter and Status:** Product liability litigation concerning Volkswagen "clean diesel" vehicles that did not meet emissions standards. The parties reached a settlement agreement in 2016.
- **Role:** Stueve Siegel Hanson represented Missouri class representatives in the nationwide settlement and participated in discovery.

In Re: The Home Depot, Inc., Customer Data Security Breach Litigation (2014 to 2017)

- **Case No. and Court:** 1:14-md-02583, Northern District of Georgia
- **Judge:** Thomas W. Thrash, Jr.
- **Subject Matter and Status:** Consumer class action involving a data breach. This MDL resolved with a $29 million class settlement in 2017.
- **Role:** Lead Counsel: Norman Siegel and Barrett Vahle

In Re: Pre-Filled Propane Tank Antitrust Litigation (2014 to 2020)

- **Case No. and Court:** 4:14-md-02567, Western District of Missouri
- **Judge:** Gary A. Fenner
- **Subject Matter and Status:** Antitrust litigation alleging that AmeriGas and Ferrellgas conspired to reduce the propane sold in replacement cylinders. This MDL was resolved with a settlement with AmeriGas for $10 million and Ferrellgas for $25 million.
- **Role:** Co-lead and Liaison Counsel: Norman Siegel

In Re: Syngenta AG MIR162 Corn Litigation (2014 to 2020)

- **Case No. and Court:** 2:14-md-02591, District of Kansas
- **Judge:** John W. Lungstrum
- **Subject Matter and Status:** Class action on behalf of corn farmers against biotech giant Syngenta related to the sale of genetically modified corn seed. Stueve Siegel Hanson served as lead trial counsel securing a $217.7 million jury verdict in the first bellwether trial. The Court approved a nationwide settlement of $1.51 billion in 2018.
- **Role:** Co-lead Counsel, Liaison Counsel and Trial Counsel: Patrick Stueve

In Re: Target Corporation Customer Data Security Breach Litigation (2014 to 2018)

- **Case No. and Court:** 0:14-md-02522, District of Minnesota
- **Judge:** Paul A. Magnuson
- **Subject Matter and Status:** Consumer class action involving a data breach. The Eighth Circuit in 2018 affirmed the class settlement valued at $23.2 million.
- **Role:** Plaintiff Executive Committee: Norman Siegel

Stueve Siegel Hanson represented plaintiffs and drafted large portions of the brief that resulted in the denial of Target's motion to dismiss, and negotiated settlement.

In Re: General Motors LLC Ignition Switch Litigation (2014 to 2020)

- **Case No. and Court:** 1:14-md-02543, Southern District of New York
- **Judge:** Jesse M. Furman
- **Subject Matter and Status:** Product liability action involving defective ignition switches on GM vehicles. A $120 million settlement was reached in March 2020.
- **Role:** Stueve Siegel Hanson represented a Missouri class representative and participated in discovery.

In Re: Simply Orange Juice Marketing and Sales Practices Litigation (2012 to 2018)

- **Case No. and Court:** 4:12-md-02361, Western District of Missouri
- **Judge:** Fernando J. Gaitan, Jr.
- **Subject Matter and Status:** Consumer case involving a false advertisement claim related to the labeling of Simply Orange Juice.
- **Role:** Liaison Counsel: Norman Siegel

Stueve Siegel Hanson worked with Lead Counsel on all substantive aspects of the case and negotiated settlement.

In Re: American Medical Systems, Inc., Pelvic Repair System Products (2012 to present)

- **Case No. and Court:** 2:12-md-2325, Southern District of West Virginia
- **Judge:** Joseph R. Goodwin
- **Subject Matter and Status:** Product liability action involving women that had vaginal mesh implanted and experienced side effects.
- **Role:** Stueve Siegel Hanson represented a plaintiff in this MDL, participated in discovery, and negotiated a favorable settlement on the client's behalf in 2017.

In Re: Actos (pioglitazone) Products Liability Litigation (2011 to 2018)

- **Case No. and Court:** 6:11-md-02299, Western District of Louisiana
- **Judge:** Rebecca F. Doherty
- **Subject Matter and Status:** Product liability action involving individuals who were prescribed Actos and were diagnosed with bladder cancer. This MDL resolved after a $2.5 billion settlement was reached.
- **Role:** Stueve Siegel Hanson represented a plaintiff in this MDL, participated in discovery, and facilitated a favorable settlement on the client's behalf in 2015.

In Re: Bank of America Wage and Hour Employment Practices Litigation (2010 to 2014)

- **Case No. and Court:** 2:10-md-02138, District of Kansas
- **Judge:** John W. Lungstrum

- **Subject Matter and Status:** Nationwide FLSA collective action on behalf of Bank of America tellers and personal bankers. This MDL resolved with a $73 million settlement.
- **Role:** Co-lead and Liaison Counsel: George Hanson

In Re: Zimmer Durom Hip Cup Personal Injury Litigation (2009 to 2016)

- **Case No. and Court:** 2:09-cv-04414, District of New Jersey
- **Judge:** Susan D. Wigenton
- **Subject Matter and Status:** Product liability action involving defective Zimmer Durom Hip Cups. A settlement was reached in this MDL in 2016.
- **Role:** Stueve Siegel Hanson represented a plaintiff in this MDL, participated in discovery, and facilitated a favorable settlement on the client's behalf in 2016.

In Re: Wells Fargo Home Loan Processor Overtime Pay Litigation (2007 to 2011)

- **Case No. and Court:** 3:07-md01841, Northern District of California
- **Judge:** Edward M. Chen
- **Subject Matter and Status:** Nationwide FLSA collective action on behalf of home mortgage loan processors. This MDL resolved with a $7.2 million settlement.
- **Role:** Co-lead Counsel: George Hanson

In Re: Wells Fargo Home Mortgage Overtime Pay Litigation (2006 to 2010)

- **Case No. and Court:** C:06-cv-01770, Northern District of California
- **Judge:** Edward M. Chen
- **Subject Matter and Status:** Nationwide FLSA collective action on behalf of home mortgage loan officers. This MDL resolved with a $25 million settlement.
- **Role:** Co-lead Counsel: George Hanson

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George Hanson prosecutes high-stakes cases against some of the nation's largest corporations and consistently delivers excellent results for his clients. He has vast experience and a proven track record representing plaintiffs in traditional business litigation, including breach of contract, breach of fiduciary duty, intellectual property, tortious interference and more.

George has significant experience negotiating and litigating on behalf of senior executives when they are terminated, depart their current positions, or act as whistleblowers revealing unlawful conduct. He protects executive compensation, bonuses and. incentives, future earned commissions, and the ability to start new employment. And he navigates disputes involving contracts, unfair competition, trade secrets, noncompete and non-solicitation agreements, severance agreements, retaliation and more.

George also has earned a national reputation for prosecuting wage and hour cases on behalf of disenfranchised workers, protecting their right to "a fair day's pay for a fair day's work." After a landmark trial where he delivered a victory for a class of meat-packing workers, a distinguished federal judge described George's wage and hour experience as having "unmatched depth."

George has been named lead or co-lead attorney in more than 100 wage and hour actions filed in state and federal courts across the country and been appointed lead counsel in three Multidistrict Litigations (MDLs). He has appeared in 34 states, litigating matters involving overtime, minimum wage, work without pay, unreimbursed business expenses, donning and doffing, and independent contractor misclassification. George is passionate about leveling the playing field for workers and closing the gender wage gap. As a result of George's work, employees have recovered more than $300 million in settlements and judgments in wage and hour cases.

George has served clients in a number of industries, including financial services, hospitality and food service, cable and satellite television, pizza delivery, pharmaceutical companies and retail. George recently led a nationwide Fair Labor Standards Act litigation against DIRECTV over claims of minimum wage, overtime and independent misclassification violations.

The litigation ultimately involved more than 3,000 plaintiffs in three collective actions and many hundreds of individual cases; it resulted in a series of favorable settlements for the workers involved.

George has been named among the *Kansas City Business Journal*'s "Best of the Bar," is a Missouri/Kansas Super Lawyer and is listed in *Best Lawyers in America* in three categories: commercial litigation, employment law, and mass torts/class actions. He has been honored by the *National Law Journal* as a Plaintiffs' Lawyer "Trailblazer," named a *Best Lawyers in America* "Lawyer of the Year" for mass tort/class action litigation and both a "Local Litigation Star" and a "Labor and Employment Star" by *Benchmark Plaintiffs*.

George frequently presents on wage-and-hour law at seminars and continuing legal education programs across the country. George also has been a guest lecturer at the University of Missouri – Kansas City School of Law, the University of Kansas School of Law, and the Washington University School of Law. He is an author of multiple publications in wage-and-hour law and has served as a Senior Editor for the American Bar Association's "Fair Labor Standards Act," the leading treatise in the field.

George spends his free time at his "home on the range" in rural Greenwood County, Kansas, where he runs cattle and grows corn, soybeans, milo, sunflowers and wheat, and helps his son wrangle their two pet snakes.

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Alex Ricke advocates for individuals and companies when their livelihoods are on the line. Named one of Law360's 2022 "Rising Stars" for Employment, which honors the top legal talent under the age of 40, Alex has a track record of success representing workers, small businesses and individuals against some of the largest companies in the country.

Alex focuses his practice on three primary areas:

Wage and Hour and Employment. Alex has been co-lead counsel in scores of wage and hour cases around the country. Alex has built a reputation for his work representing tipped and minimum wage workers at casinos. He has successfully secured settlements worth more than $60 million for these workers, including serving as:

- Co-lead counsel in a $12.5 million settlement of tip credit notice claims for minimum wage workers at two MGM casinos.
- Co-lead counsel in a $9.8 million settlement of tip credit notice claims for minimum wage workers at three Rush Street Gaming casinos (representing 104% of unpaid minimum wages).
- Co-lead counsel in a $6 million settlement of wage and hour claims for workers at Wind Creek casino.
- Co-lead counsel in $5.5 million settlement of wage and hour claims for tipped workers at Rivers Casino Schenectady.
- Co-lead counsel in a $3.05 million settlement of wage and hour claims for workers at Live! Casino.

Alex is currently advocating on behalf of traveling nurses against staffing companies for "bait-and-switch" pay reduction tactics; healthcare workers who are not paid for all hours worked at Envision Healthcare; and female and minority financial advisors against Edward Jones for wage and opportunity discrimination.

Class Actions. Alex has prosecuted class actions for victims of data breaches, anticompetitive practices, and dangerous and defective products. Most recently, Alex worked as the lead associate and case manager in securing a settlement worth more than $56 million for Jackson County and a certified class of Missouri counties seeking the cost of removing and replacing Trinity Industries' 4-inch ET Plus guardrail end terminal from Missouri roads.

These devices had been removed from the Missouri Department of Transportation's approved product list and were linked to serious injuries and death at the time Jackson County filed its lawsuit in 2015. Missouri Lawyers Media recognized this result as a top three settlement in the State of Missouri in 2022.

Commercial Litigation. Alex represents plaintiffs—often entrepreneurs or small businesses—in all kinds of commercial disputes. Alex recently represented an executive at a startup for unpaid sales commissions for ongoing business in connection with his departure from the company and severance. Alex successfully settled the case and preserved the client's shares of the company, which were worth several hundred thousand dollars when the company was acquired several months later.

Alex has been named a Super Lawyers "Rising Star" each year since 2016. Prior to joining Stueve Siegel Hanson, he practiced at a boutique complex litigation firm, where he prosecuted business and class action cases nationwide. A transplant from St. Louis, he enjoys spending time with his wife, two sons, and two Labrador Retrievers, traveling, and supporting the Missouri Tigers, St. Louis Cardinals, St. Louis Blues, and Kansas City Chiefs.

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Caleb Wagner represents individuals and businesses in complex litigation. Applying his wide range of litigation experience, he develops creative strategies backed by persuasive arguments.

Caleb began his legal career at a boutique litigation firm, where he helped plaintiffs secure recovery in product liability, consumer fraud, insurance coverage and other serious injury claim lawsuits.

He then served as an Assistant Attorney General at the Missouri Attorney General's Office, working on matters including constitutional cases, insurance coverage disputes, employment discrimination, personal injury, and wrongful death. During this time, Caleb honed his legal writing skills – winning an Attorney General's Award for Best Brief in 2019.

He also gained valuable insight to the defense perspective in cases. He applies this understanding to preemptively identify and address challenges in his current practice.

Caleb takes particular pride in litigating novel and challenging legal issues on behalf of employees and consumers. He brings valuable experience identifying and adapting relevant arguments in the context of the litigation, including having previously presented issues of first impression.

Caleb is a member of the American Association of Justice, the Missouri Association of Trial Attorneys, and the Kansas City Metropolitan Bar Association. Outside of his practice he enjoys spending time with his wife and two young children.

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. PENN NATIONAL GAMING, INC., et al. Defendants.	)	Case No. 5:20-cv-06067-SRB

DECLARATION OF RICHARD W. SIMMONS
REGARDING IMPLEMENTATION OF SETTLEMENT NOTICE PLAN

I, Richard W. Simmons, pursuant to 28 U.S.C. § 1746, state as follows:

1. My name is Richard W. Simmons. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the President of Analytics Consulting LLC ("Analytics")[1]. My company is one of the leading providers of class and collective action notice and claims management programs in the nation. Analytics' class action consulting practice, including the design and implementation of legal notice campaigns, is one of the oldest in the country. Through my work, I have personally overseen court-ordered class and collective notice programs in more than 2,500 matters.

3. In its Order Granting Preliminary Approval of Class Action Settlement on January 30, 2023 (the "January 30, 2023 Order"), the Court approved the Class Notice Plan (the "Notice

[1] In October 2013, Analytics Consulting LLC acquired Analytics, Incorporated. I am the former President of Analytics, Incorporated (also d/b/a "BMC Group Class Action Services"). References to "Analytics" herein include the prior legal entity.

Plan" or "Plan") proposed in the Settlement Agreement in *Lipari-Williams, et al. v. Penn National Gaming, Inc., et al*., Case No. 5:20-cv-06067-SRB (W.D. Mo.). Subsequently, Class Counsel retained Analytics to implement Notice Plan, including the mailing of the Class Notice to all known Class Members and the maintenance of a toll-free hotline, settlement website, and dedicated email address to assist Class Members with questions regarding the Settlement.

4. My firm performed the services described herein under my supervision and I submit this Declaration to provide the Court with proof of the dissemination of the Court-approved Notices.

Mailing of the Notice

5. Pursuant to the January 30, 2023 Order, Analytics received from the Defendant four spreadsheets containing 5,390 records identifying Class Members. In some instances, a Class Member appeared in multiple files.

6. All addresses were updated using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS");[2] certified via the Coding Accuracy Support System ("CASS");[3] and verified through Delivery Point Validation ("DPV").[4] The address list was then reviewed to: 1) identify and consolidate duplicate entries; and, 2) identify individuals who had previously requested to be excluded from the Class.

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[2] The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

[3] The CASS is a certification system used by the USPS to ensure the quality of ZIP +4 coding systems.

[4] Records that are ZIP +4 coded are then sent through Delivery Point Validation ("DPV") to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses and reports exactly what is wrong with incorrect addresses.

7. These measures ensured that all appropriate steps have been taken to send Notices to current and valid addresses and resulted in mailable address records for 4,840 Class Members.

8. Analytics formatted the Class Notice and caused them to be printed, personalized with the name, address, and estimated pre-tax payment amount of each Class Member, posted for First-Class Mail, postage pre-paid, and delivered on March 15, 2023 to the USPS for mailing. A copy of the Class Notice is attached as **Exhibit A.**

9. On March 28, 2023, Analytics identified an error in the calculation of settlement allocations for 847 class members. In conducting my review, I determined that 612 settlement allocations should be increased, and that, conversely, 235 settlement allocations should be decreased. There are 4,006 class members whose settlement allocations are unchanged. Consistent with this Court's March 30, 2023 Order, Analytics mailed a Corrective Notice to 847 Class Members on April 4, 2023. A copy of the Corrective Notice is attached as **Exhibit B.**

10. Analytics requested that the USPS return (or otherwise notify Analytics) of Class Notices with undeliverable mailing addresses. Of the notices mailed to 4,840 class members (accounting for overlap between the initial and corrective notice), 385 were returned undeliverable. Analytics was able to locate updated addresses for and remail notices to 288 class members. This research was performed using Experian's TrueTrace and Metronet Databases, research tools that draw upon Experian's credit reporting database as well as additional third-party sources[5]. The Class Notice was successfully delivered to 98.0% of the Settlement Class.

[5] TrueTrace draws on Experian's consumer credit database of more than 200 million consumers and 140 million households, and through third party sources (Clarity's alternative payday information and Experian RentBureau property management database) provides access to 100 million thin-file and underbanked consumers. Experian's Metronet database provides data regarding 215 million consumers in 110 million living units across United States.

11. To support the mailing of the Class Notice, Analytics established and continues to maintain a toll-free telephone number for the Action, 1-877-374-2994. This toll-free telephone line connects callers with an Interactive Voice Recording ("IVR"). By calling this number, Class Members are able to listen to pre-recorded answers to Frequently Asked Questions ("FAQs") or request to have a Notice mailed to them. The toll-free telephone line and IVR have been available 24 hours a day, 7 days a week.

12. In addition, Monday through Friday from 8:30 a.m. to 5:00 p.m. Central Time (excluding official holidays), callers to the toll-free telephone line are able to speak to a live operator regarding the status of the Action and/or obtain answers to questions they may have about the Notice. During other hours, callers may request a call back which is automatically queued the next business day.

13. Automated messages are available to Class Members 24 hours a day, 7 days a week, with live call center agents also available during standard business hours. Analytics' IVR system allows Class Members to request a return call if they call outside of business hours.

14. Class Members could also email a dedicated email address - info@MissouriGamingLicenseLawsuit.com with questions regarding the Settlement. This email was included in the Class Notice.

15. Analytics' staff spent necessary time to answer each Class Member's questions regarding the Settlement and settlement allocations. I am aware of no questions from Class Members that were unanswered or otherwise remain outstanding.

Settlement Website

16. To support the mailing of the Class Notice, Analytics established and continues to maintain a Website dedicated to this Action (www. MissouriGamingLicenseLawsuit.com.com.) to assist Class Members. The Website address was set forth in the Notice.

17. Recognizing the increasingly mobile nature of communications, the Website is mobile optimized, meaning it can be clearly read and used by Class Members visiting the Website via smart phone or tablet.

18. By visiting the Website, Class Members are able to read and download key information about the litigation, including, without limitation:

a. important dates and deadlines;

b. answers to frequently asked questions; and

c. case documents, including the Class Notice and other relevant case documents such as the Settlement Agreement.

Requests for Exclusion and Objections

19. Class Members could opt out of the settlement by mailing a written statement requesting exclusion from the Settlement Class to Analytics by April 30, 2023 (May 19, 2023 if the Class Member received a Corrective Notice). As of the date of this Declaration, Analytics has received four (4) requests for exclusion, representing 0.08% of the Settlement Class.

20. Class Members could object to the proposed settlement by mailing a written statement objecting to the settlement to Analytics by April 30, 2023 (May 19, 2023 if the Class Member received a Corrective Notice). As of the date of this Declaration, Analytics has received no objections from Settlement Class Members.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 8th day of May 2023.

Richard W. Simmons

Exhibit A

Missouri Gaming License Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

PENN NATIONAL GAMING, INC., et al.

Defendants.

Case No. 5:20-cv-06067-SRB

OFFICIAL COURT NOTICE REGARDING
PROPOSED SETTLEMENT OF CLASS ACTION

If you were an employee of The Missouri Gaming Company, LLC d/b/a Argosy Casino Riverside ("Argosy Riverside") or St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis ("Hollywood St. Louis") between March 31, 2017 and September 24, 2021, and/or participated in a Penn National Gaming, Inc. group health plan from 2016 through 2020, you may be entitled to a payment from a class action lawsuit settlement.

Read this Notice carefully, as the proposed settlement will affect your rights. To receive proceeds from the settlement, you do not have to do anything in response to this Notice, as explained in further detail below.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- This Notice is directed to:
  (1) All persons employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and for whom a deduction was taken from their wages for any amount associated with initially obtaining or thereafter renewing a Gaming License;
  (2) All persons employed as Table Games Dealers at Argosy Riverside from March 31, 2017 through April 23, 2021, and who participated in the Table Games Dealer Tip Pool;
  (3) All persons employed as Table Games Dealers at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and who participated in the Table Games Dealer tip pool; and/or
  (4) All participants in Penn National Gaming, Inc.'s group health plan for plan years 2016, 2017, 2018, 2019, and 2020 who had a tobacco surcharge deducted from their wages.
- The Named Plaintiffs identified in the caption (the "Named Plaintiffs") sued Defendants PENN Entertainment, Inc. f/k/a Penn National Gaming, Inc. ("PNG"), The Missouri Gaming Company, LLC d/b/a Argosy Riverside Casino ("Argosy Riverside"), and St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis ("Hollywood St. Louis") (collectively, "Defendants"), by filing a Complaint (the "Complaint") on March 31, 2020, alleging that they violated the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*., ("FLSA"), the Missouri Minimum Wage Law, R.S.Mo. § 290.500, *et seq*., ("MMWL"), by (1) illegally deducting costs to obtain, maintain, and renew state-issued Missouri Gaming Licenses (defined below) from employees' wages, which resulted in violations of both the FLSA and Missouri state law; and (2) creating a mandatory tip pool policy which required table games dealers to pool their tips and then used those tips to pay the Paid Time Off ("PTO") of certain non-tipped, manager and supervisor employees;
- The Named Plaintiffs also alleged that PNG breached its fiduciary duties under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq*., ("ERISA"), through a wellness program that discriminated against employees based on an impermissible health factor when it failed to provide a reasonable alternative standard with respect to its tobacco surcharge policy.
- The Named Plaintiffs filed the Complaint as a class and collective action under the FLSA, MMWL, and ERISA.
- Though PNG, Argosy Riverside, and Hollywood St. Louis (collectively, the "Settling Entities") deny the allegations in the Complaint, the Parties have agreed to settle this dispute for the purpose of avoiding further disputes and litigation with its attendant risk, expense, and inconvenience. The Court has not made any ruling on the merits of the claims, and no Party has prevailed in the lawsuit. However, the Court has reviewed and preliminarily approved this settlement and this Notice.
- The settlement monies are being used to pay certain current and former employees of Defendants, to pay attorneys' fees, litigation costs, service payments, and the costs of administering the settlement. The Settling Entities will not take an adverse action against any employee covered by the settlement whether or not he or she accepts a settlement payment.
- Under the allocation formula created by the settlement, you are being offered a settlement payment of $_____, which you will receive in the mail if the Court grants final approval of the settlement and you do not submit a written request to opt out of the settlement (described in Section 8 below). This amount is based on (i) the amount of money that you had deducted from your pay associated with initially obtaining or thereafter renewing a Gaming License between March 31, 2017 and September 24, 2021; (2) the number of hours that you worked at Argosy Riverside (from March 31, 2017 through April 23, 2021) and/or Hollywood St. Louis (from March 31, 2017 through October 31, 2019) during which you participated in a tip pool; and (3) the amount of any tobacco surcharges that you had deducted from your pay during plan years 2016 through 2020.
- Your decisions have legal consequences for you. You have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN RESPONSE TO THIS NOTICE:	
IF YOU DO NOTHING	By **NOT** submitting a written request to opt out of the settlement, you will be bound by the release of the Released Claims (defined in Section 7 of this Notice) and you will receive in the mail a settlement check in the amount of $_____ representing your share of the settlement fund. If you choose to cash or deposit that check, you will further be bound by the release of the Released FLSA Claims (defined in Section 7 of this Notice).
IF YOU SUBMIT A REQUEST TO OPT OUT	If you timely submit a written request to opt out of settlement, you will receive nothing under the settlement, but you will not be bound by the release of any of the claims described in this Notice. Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

- These rights and options are explained more fully below.

BASIC INFORMATION

1. Why did I receive this Notice?

The Setting Entities' records state that you: (1) were employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and a deduction was taken from your wages for an amount associated with initially obtaining or thereafter renewing a Gaming License; (2) were employed as a Table Games Dealer at Argosy Riverside from March 31, 2017 through April 23, 2021, or at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and participated in the Table Games Dealer tip pool; and/or (3) participated in Penn National Gaming, Inc.'s group health plan for plan years 2016, 2017, 2018, 2019, and/or 2020 and had a tobacco surcharge deducted from your wages. Because you fall into one or more of these categories of employees, you are a member of the proposed "Settlement Class."

You are receiving this Notice because, as a proposed Settlement Class Member, you have a right to know about the settlement of a class action lawsuit that affects your rights. This Notice explains the lawsuit, the settlement, and your rights and options.

The Court supervising this case is the U.S. District Court for the Western District of Missouri. The lawsuit is known as *Lipari-Williams, et al. v. Penn National Gaming, Inc., et al*., Case No. 5:20-cv-06067-SRB.

2. What is this lawsuit about?

The Complaint alleges that the Setting Entities violated the FLSA, MMWL, and/or ERISA, by (1) illegally deducting costs to obtain, maintain, and renew state-issued Missouri Gaming Licenses (defined below) from employees' wages, which resulted in violations of both the FLSA and Missouri state law; (2) creating a mandatory tip pool policy which required table games dealers to pool their tips and then used those tips to pay the Paid Time Off ("PTO") of certain non-tipped, manager and supervisor employees; and (3) breaching their fiduciary duties under ERISA through a wellness program that discriminated against employees based on an impermissible health factor when it failed to provide a reasonable alternative standard with respect to its tobacco surcharge policy.

The Settling Entities deny all the claims asserted in the Complaint and maintain that all of their respective employees were paid, and have always been paid, correctly and in accordance with the law, and that the wellness program at issue complied with all applicable law.

3. Why is there a proposed settlement?

The Court did not decide in favor of the Named Plaintiffs or the Settling Entities, and no Party prevailed. The Parties agreed to a settlement to avoid further disputes and the risk, expense, and inconvenience of litigation.

On January 30, 2023, the Court granted preliminary approval of the proposed settlement. The Court will decide whether to give final approval to the proposed settlement in a hearing scheduled for May 25, 2023 ("Final Approval Hearing"). See Section 12 below for details.

The Named Plaintiffs and their attorneys believe that this settlement is a good outcome for all individuals covered by the proposed settlement. But if you believe the settlement is not in your interests, you may be eligible to opt out of the settlement. *See* Section 8 below for details.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. What does the settlement provide?

The Settlement Amount, $5,500,000 in total, fully resolves and satisfies the attorneys' fees and costs approved by the Court, all amounts to be paid to individuals covered by the Settlement, Court-approved service payments, interest, and the Settlement Administrator's fees and costs. The Settlement funds are being divided among the individuals covered by the Settlement according to an allocation formula.

5. How much is my payment and how was it calculated?

Based on the allocation formula that has been approved by the Court, you will be receiving a settlement check for $_____. The allocation formula takes into account (i) the total amount of money that you had deducted from your pay associated with initially obtaining or thereafter renewing a gaming license between March 31, 2017 and September 24, 2021; (ii) if you were employed as a Table Games Dealer and participated in the Table Games Dealer tip pool, the number of hours that you worked at Argosy Riverside (from March 31, 2017 through April 23, 2021) or Hollywood St. Louis (from March 31, 2017 through October 31, 2019); and/or (iii) the total amount of any tobacco surcharges that you had deducted from your pay during Plan years 2016 through 2020. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement by following the instructions in Section 13 below.

Half of each Settlement Check for damages associated with the wage and hour claims (gaming license and tip-pooling claims) will be treated as back wages for which you will receive an IRS Form W-2, and the other 50% will be treated as interest, any applicable penalties, liquidated damages, and other non-wage relief, and reported on an IRS Form 1099. In addition, 100% of each Settlement Check for damages associated with the ERISA claim (tobacco surcharge) shall be treated as back wages for which you will receive an IRS Form W-2.

Neither Class Counsel nor the Setting Entities make any representations concerning the tax consequences of your settlement payment. You are advised to obtain personal tax advice prior to acting in response to this Notice.

HOW YOU GET A PAYMENT

6. How do I get my payment?

To receive proceeds from the Settlement, **you do not have to do anything in response to this Notice**.

If the Court grants final approval of the Settlement and you do **not** submit an written request to opt out of the settlement (described in Section 8 below), you will be bound by the release of certain federal, state, and local law claims described in Section 7 below, and you will receive in the mail a Settlement check in the amount of [$_____] representing your share of the Settlement fund.

If you choose to cash or deposit that check, you will further be bound by the release of federal FLSA claims described in Section 7 below.

7. What am I giving up if I receive proceeds from the settlement?

If you do not request exclusion from the Settlement in accordance with Section 8 below, you will be deemed to have waived, released, and forever discharged any and all state and local wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, any and all claims predicated on gaming license deductions, alleged tip-pooling violations (including any claims seeking tip credit-related or tip-pool-related damages that were or could have been asserted based on the allegations in the Complaint), whether known or unknown; and (2) any and all federal, state, and local claims, including any claims under ERISA, related to the tobacco surcharge that were or could have been asserted based on the facts alleged in the Complaint, whether known or unknown ("Released Claims") against the Settling Entities and their present and former affiliates, divisions, members, joint venture partners, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, attorneys, shareholders and/or successors, insurers or reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them (the "Released Parties").

In addition, if you also cash or deposit your forthcoming settlement check, you will be deemed to have further waived, released, and forever discharged any and all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, any and all claims predicated on gaming license deductions, alleged tip-pooling violations (including any claims seeking tip credit-related or tip-pool-related damages that were or could have been asserted based on the allegations in the Complaint), whether known or unknown, ("Released FLSA Claims") against the Released Parties.

The Released Claims and the Released FLSA Claims include liquidated or punitive damages based on said claims, and are intended to include all claims described or identified herein through January 30, 2023. However, the Released Claims and the Released FLSA Claims do **not** include any rights or claims (i) that may arise after January 30, 2023; or (ii) which may not be infringed, limited, waived, released or extinguished as a matter of law.

HOW YOU REQUEST EXCLUSION FROM OR OBJECT TO THE SETTLEMENT

8. What if I do not want to participate in the settlement?

If you do not want to participate in the Settlement and wish to retain your right to pursue your own independent action, you must send a letter stating your desire to be excluded from the settlement, include the name of the Litigation, your name, your address, and your signature. Requests for exclusion should be sent in an envelope addressed to the Settlement Administrator as set forth in Section 13 below.

In order to be valid, your written request to opt out of the settlement must be received by the Settlement Administrator and be postmarked no later than **April 30, 2023**. If you timely submit a written request to opt out of the settlement, you will not be eligible to receive any of the benefits under the Settlement. You will, however, retain whatever legal rights you may have against the Setting Entities with regard to all of the released claims described above in Section 7. If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

9. What if I want to object to the settlement?

If you do not request exclusion from the Settlement but believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement by filing a written objection with the Court and mailing a copy of your written objection to the Settlement Administrator.

All objections must be signed and include your address, telephone number, and the name of the Litigation. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or

someone on your behalf intends to appear at the Final Approval Hearing. All objections must be filed with the Court, received by the Settlement Administrator, and postmarked by no later than **April 30, 2023**. If you submit a timely objection, you may appear, at your own expense, at the Final Approval Hearing, discussed below.

Any Settlement Class Member who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the Court-approved service payments, the claims process, and any and all other aspects of the Settlement. Likewise, regardless of whether you attempt to file an objection, you will be deemed to have released all of the Released Claims as set forth above in Section 7 unless you request exclusion from the Settlement in accordance with Section 8 above.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has determined that the lawyers at the law firms of Stueve Siegel Hanson LLP and McClelland Law Firm, P.C., are qualified to represent you and all individuals covered by this settlement. These lawyers are called "Class Counsel." You will not be charged for these attorneys. You do not need to retain your own attorney to participate as a member of this class action. However, you may consult with any attorney you choose at your own expense before deciding whether to opt out of this settlement.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed 35% of the Settlement Amount plus reimbursement of $100,000 in expenses, which will be paid from the Settlement Amount. In addition, Class Counsel will ask the Court to authorize payment from the Settlement Amount of a service payment of not more than $10,000 to Named Plaintiffs Gina Lipari-Williams, Marissa T. Hammond, and Lucinda Layton, and a service payment of not more than $7,500 to Opt-In Plaintiff Tim Hammond, to recognize the risks they took and services to the beneficiaries of this settlement.

FINAL APPROVAL OF THE SETTLEMENT

12. When will the settlement be final and when will I receive my settlement payment?

If the Court grants Final Approval of the settlement, and you did not request exclusion from the settlement, you will receive your settlement payment in the mail a few weeks after Final Approval.

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, and the service payment to the Named Plaintiff on **May 25, 2023 at 10:30 a.m.** in Courtroom 7B of the U.S. District Court, Western District of Missouri, located at Charles Evans Whittaker U.S. Courthouse, 400 E. 9th Street, Kansas City, MO 64106. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to appear at the hearing to participate in or to opt-out of the Settlement.

FOR MORE INFORMATION

13. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You are encouraged to read it. To the extent there is any inconsistency between this Notice and the Settlement Agreement, including between the description of the releases as provided in Section 7 above and the description of the releases as provided in the Settlement Agreement, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement at www.MissouriGamingLicenseLawsuit.com or by sending a request, in writing, to:

Missouri Gaming License Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006
info@MissouriGamingLicenseLawsuit.com
1-877-374-2994

14. How do I get more information?

If you have other questions about the settlement, you can contact the Settlement Administrator, or Class Counsel at the addresses and/or telephone numbers below.

Email: pngmissouricase@stuevesiegel.com
Telephone: (888) 816-1761

These are the lawyers acting as Class Counsel, one of whom will respond to your questions at the above email and telephone numbers:

George A. Hanson
Alexander T. Ricke
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112

Ryan L. McClelland
McCLELLAND LAW FIRM, P.C.
The Flagship Building
200 Westwoods Drive
Liberty, Missouri 64068

15. What if my name or address changes before I receive my settlement payment?

If, for future reference and mailings from the Court or Settlement Administrator, you wish to change the name or address listed on the envelope in which the Class Notice was first mailed to you, then you must fully complete, execute, and mail the Change of Name and/or Address Information Form (enclosed with this Notice as Form A).

DATED: March 16, 2023

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

GINA R. LIPARI-WILLIAMS, MARISSA T. HAMMOND, and LUCINDA M. LAYTON, on behalf of themselves and all others similarly situated, Plaintiffs, v. PENN NATIONAL GAMING, INC., et al. Defendants.	Case No. 5:20-cv-06067-SRB

CORRECTED NOTICE REGARDING
PROPOSED SETTLEMENT OF CLASS ACTION

You are receiving this Corrected Notice because your estimated settlement share has changed based on a clerical error. You previously received a copy of this Notice informing you of your estimated settlement share. That number was not calculated correctly and has been corrected in this Corrected Notice.

Because your settlement share has changed, you and other members of the MMWL Gaming License Class, Argosy Casino Riverside Tip Pooling Class, and Hollywood Casino Tip Pooling Class are being given additional time to consider your options in response to this Corrected Notice, which are explained within. In all other respects, this Corrected Notice is substantively the same as the earlier Notice you received advising you of this settlement.

If you were an employee of The Missouri Gaming Company, LLC d/b/a Argosy Casino Riverside ("Argosy Riverside") or St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis ("Hollywood St. Louis") between March 31, 2017 and September 24, 2021, and/or participated in a Penn National Gaming, Inc. group health plan from 2016 through 2020, you may be entitled to a payment from a class action lawsuit settlement.

Read this Notice carefully, as the proposed settlement will affect your rights. To receive proceeds from the settlement, you do not have to do anything in response to this Notice, as explained in further detail below.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

- This Notice is directed to:

  (1) All persons employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and for whom a deduction was taken from their wages for any amount associated with initially obtaining or thereafter renewing a Gaming License;

  (2) All persons employed as Table Games Dealers at Argosy Riverside from March 31, 2017 through April 23, 2021, and who participated in the Table Games Dealer Tip Pool;

  (3) All persons employed as Table Games Dealers at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and who participated in the Table Games Dealer tip pool; and/or

  (4) All participants in Penn National Gaming, Inc.'s group health plan for plan years 2016, 2017, 2018, 2019, and 2020 who had a tobacco surcharge deducted from their wages.

- The Named Plaintiffs identified in the caption (the "Named Plaintiffs") sued Defendants PENN Entertainment, Inc. f/k/a Penn National Gaming, Inc. ("PNG"), The Missouri Gaming Company, LLC d/b/a Argosy Riverside Casino ("Argosy Riverside"), and St. Louis Gaming Ventures, LLC d/b/a Hollywood Casino St. Louis ("Hollywood St. Louis") (collectively, "Defendants"), by filing a Complaint (the "Complaint") on March 31, 2020, alleging that they violated the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq*., ("FLSA"), the Missouri Minimum Wage Law, R.S.Mo. § 290.500, *et seq*., ("MMWL"), by (1) illegally deducting costs to obtain, maintain, and renew state-issued Missouri Gaming Licenses (defined below) from employees' wages, which resulted in violations of both the FLSA and Missouri state law; and (2) creating a mandatory tip pool policy which required table games dealers to pool their tips and then used those tips to pay the Paid Time Off ("PTO") of certain non-tipped, manager and supervisor employees;
- The Named Plaintiffs also alleged that PNG breached its fiduciary duties under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq*., ("ERISA"), through a wellness program that discriminated against employees based on an impermissible health factor when it failed to provide a reasonable alternative standard with respect to its tobacco surcharge policy.
- The Named Plaintiffs filed the Complaint as a class and collective action under the FLSA, MMWL, and ERISA.
- Though PNG, Argosy Riverside, and Hollywood St. Louis (collectively, the "Settling Entities") deny the allegations in the Complaint, the Parties have agreed to settle this dispute for the purpose of avoiding further disputes and litigation with its attendant risk, expense, and inconvenience. The Court has not made any ruling on the merits of the claims, and no Party has prevailed in the lawsuit. However, the Court has reviewed and preliminarily approved this settlement and this Notice.
- The settlement monies are being used to pay certain current and former employees of Defendants, to pay attorneys' fees, litigation costs, service payments, and the costs of administering the settlement. The Settling Entities will not take an adverse action against any employee covered by the settlement whether or not he or she accepts a settlement payment.
- Under the allocation formula created by the settlement, you are being offered an estimated settlement payment of $_____, which you will receive in the mail if the Court grants final approval of the settlement and you do not submit a written request to opt out of the settlement (described in Section 8 below). This amount is based on (i) the amount of money that you had deducted from your pay associated with initially obtaining or thereafter renewing a Gaming License between March 31, 2017 and September 24, 2021; (2) the number of

hours that you worked at Argosy Riverside (from March 31, 2017 through April 23, 2021) and/or Hollywood St. Louis (from March 31, 2017 through October 31, 2019) during which you participated in a tip pool; and (3) the amount of any tobacco surcharges that you had deducted from your pay during plan years 2016 through 2020.

- Your decisions have legal consequences for you. You have a choice to make:

YOUR LEGAL RIGHTS AND OPTIONS IN RESPONSE TO THIS NOTICE:	
IF YOU DO NOTHING	By **NOT** submitting a written request to opt out of the settlement, you will be bound by the release of the Released Claims (defined in Section 7 of this Notice) and you will receive in the mail a settlement check in the amount of $_____ representing your share of the settlement fund. If you choose to cash or deposit that check, you will further be bound by the release of the Released FLSA Claims (defined in Section 7 of this Notice).
IF YOU SUBMIT A REQUEST TO OPT OUT	If you timely submit a written request to opt out of settlement, you will receive nothing under the settlement, but you will not be bound by the release of any of the claims described in this Notice. Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

- These rights and options are explained more fully below.

BASIC INFORMATION

1. Why did I receive this Notice?

The Setting Entities' records state that you: (1) were employed and paid a direct cash wage of the applicable Missouri minimum wage or less per hour from March 31, 2017 to September 24, 2021 at Argosy Riverside or Hollywood St. Louis, and a deduction was taken from your wages for an amount associated with initially obtaining or thereafter renewing a Gaming License; (2) were employed as a Table Games Dealer at Argosy Riverside from March 31, 2017 through April 23, 2021, or at Hollywood St. Louis from March 31, 2017 through October 31, 2019, and participated in the Table Games Dealer tip pool; and/or (3) participated in Penn National Gaming, Inc.'s group health plan for plan years 2016, 2017, 2018, 2019, and/or 2020 and had a tobacco surcharge deducted from your wages. Because you fall into one or more of these categories of employees, you are a member of the proposed "Settlement Class."

You are receiving this Notice because, as a proposed Settlement Class Member, you have a right to know about the settlement of a class action lawsuit that affects your rights. This Notice explains the lawsuit, the settlement, and your rights and options.

The Court supervising this case is the U.S. District Court for the Western District of Missouri. The lawsuit is known as *Lipari-Williams, et al. v. Penn National Gaming, Inc., et al*., Case No. 5:20-cv-06067-SRB.

2. What is this lawsuit about?

The Complaint alleges that the Setting Entities violated the FLSA, MMWL, and/or ERISA, by (1) illegally deducting costs to obtain, maintain, and renew state-issued Missouri Gaming Licenses (defined below) from employees' wages, which resulted in violations of both the FLSA and Missouri state law; (2) creating a mandatory tip pool policy which required table games dealers to pool their tips and then used those tips to pay the Paid Time Off ("PTO") of certain non-tipped, manager and supervisor employees; and (3) breaching their fiduciary duties

under ERISA through a wellness program that discriminated against employees based on an impermissible health factor when it failed to provide a reasonable alternative standard with respect to its tobacco surcharge policy.

The Settling Entities deny all the claims asserted in the Complaint and maintain that all of their respective employees were paid, and have always been paid, correctly and in accordance with the law, and that the wellness program at issue complied with all applicable law.

3. Why is there a proposed settlement?

The Court did not decide in favor of the Named Plaintiffs or the Settling Entities, and no Party prevailed. The Parties agreed to a settlement to avoid further disputes and the risk, expense, and inconvenience of litigation.

On January 30, 2023, the Court granted preliminary approval of the proposed settlement. The Court will decide whether to give final approval to the proposed settlement in a hearing scheduled for May 25, 2023 ("Final Approval Hearing"). See Section 12 below for details.

The Named Plaintiffs and their attorneys believe that this settlement is a good outcome for all individuals covered by the proposed settlement. But if you believe the settlement is not in your interests, you may be eligible to opt out of the settlement. *See* Section 8 below for details.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. What does the settlement provide?

The Settlement Amount, $5,500,000 in total, fully resolves and satisfies the attorneys' fees and costs approved by the Court, all amounts to be paid to individuals covered by the Settlement, Court-approved service payments, interest, and the Settlement Administrator's fees and costs. The Settlement funds are being divided among the individuals covered by the Settlement according to an allocation formula.

5. How much is my payment and how was it calculated?

Based on the allocation formula that has been approved by the Court, you will be receiving an estimated settlement check for $_____. The allocation formula takes into account (i) the total amount of money that you had deducted from your pay associated with initially obtaining or thereafter renewing a gaming license between March 31, 2017 and September 24, 2021; (ii) if you were employed as a Table Games Dealer and participated in the Table Games Dealer tip pool, the number of hours that you worked at Argosy Riverside (from March 31, 2017 through April 23, 2021) or Hollywood St. Louis (from March 31, 2017 through October 31, 2019); and/or (iii) the total amount of any tobacco surcharges that you had deducted from your pay during Plan years 2016 through 2020. The Settlement Agreement contains the exact allocation formula. You may obtain a copy of the Settlement Agreement by following the instructions in Section 13 below.

Half of each Settlement Check for damages associated with the wage and hour claims (gaming license and tip-pooling claims) will be treated as back wages for which you will receive an IRS Form W-2, and the other 50% will be treated as interest, any applicable penalties, liquidated damages, and other non-wage relief, and reported on an IRS Form 1099. In addition, 100% of each Settlement Check for damages associated with the ERISA claim (tobacco surcharge) shall be treated as back wages for which you will receive an IRS Form W-2.

Neither Class Counsel nor the Setting Entities make any representations concerning the tax consequences of your settlement payment. You are advised to obtain personal tax advice prior to acting in response to this Notice.

HOW YOU GET A PAYMENT

6. How do I get my payment?

To receive proceeds from the Settlement, **you do not have to do anything in response to this Notice**.

If the Court grants final approval of the Settlement and you do **not** submit an written request to opt out of the settlement (described in Section 8 below), you will be bound by the release of certain federal, state, and local law claims described in Section 7 below, and you will receive in the mail a Settlement check estimated to be [$_____] representing your share of the Settlement fund.

If you choose to cash or deposit that check, you will further be bound by the release of federal FLSA claims described in Section 7 below.

7. What am I giving up if I receive proceeds from the settlement?

If you do not request exclusion from the Settlement in accordance with Section 8 below, you will be deemed to have waived, released, and forever discharged any and all state and local wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, any and all claims predicated on gaming license deductions, alleged tip-pooling violations (including any claims seeking tip credit-related or tip-pool-related damages that were or could have been asserted based on the allegations in the Complaint), whether known or unknown; and (2) any and all federal, state, and local claims, including any claims under ERISA, related to the tobacco surcharge that were or could have been asserted based on the facts alleged in the Complaint, whether known or unknown ("Released Claims") against the Settling Entities and their present and former affiliates, divisions, members, joint venture partners, subsidiaries, parents, predecessors, any merged entity or merged entities and/or its or their present and former officers, partners, directors, employees, agents, attorneys, shareholders and/or successors, insurers or reinsurers, employee benefit plans (and the trustees, administrators, fiduciaries, agents, representatives, insurers and reinsurers of such plans), assigns, trustees, heirs, administrators, executors, representatives and/or principals thereof, and all persons or entities acting by, through, under or in concert with any of them, and any individual or entity that could be jointly liable with any of them (the "Released Parties").

In addition, if you also cash or deposit your forthcoming settlement check, you will be deemed to have further waived, released, and forever discharged any and all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, any and all claims predicated on gaming license deductions, alleged tip-pooling violations (including any claims seeking tip credit-related or tip-pool-related damages that were or could have been asserted based on the allegations in the Complaint), whether known or unknown, ("Released FLSA Claims") against the Released Parties.

The Released Claims and the Released FLSA Claims include liquidated or punitive damages based on said claims, and are intended to include all claims described or identified herein through January 30, 2023. However, the Released Claims and the Released FLSA Claims do **not** include any rights or claims (i) that may arise after January 30, 2023; or (ii) which may not be infringed, limited, waived, released or extinguished as a matter of law.

HOW YOU REQUEST EXCLUSION FROM OR OBJECT TO THE SETTLEMENT

8. What if I do not want to participate in the settlement?

If you do not want to participate in the Settlement and wish to retain your right to pursue your own independent action, you must send a letter stating your desire to be excluded from the settlement, include the name of the Litigation, your name, your address, and your signature. Requests for exclusion should be sent in an envelope addressed to the Settlement Administrator as set forth in Section 13 below.

In order to be valid, your written request to opt out of the settlement must be received by the Settlement Administrator and be postmarked no later than **May 19, 2023**. If you timely submit a written request to opt out of the settlement, you will not be eligible to receive any of the benefits under the Settlement. You will, however, retain whatever legal rights you may have against the Setting Entities with regard to all of the released claims described above in Section 7. If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you are not eligible to opt-out of the settlement.

9. What if I want to object to the settlement?

If you do not request exclusion from the Settlement but believe the proposed Settlement is unfair or inadequate in any respect, you may object to the Settlement by filing a written objection with the Court and mailing a copy of your written objection to the Settlement Administrator.

All objections must be signed and include your address, telephone number, and the name of the Litigation. Your objection should clearly explain why you object to the proposed Settlement and must state whether you or someone on your behalf intends to appear at the Final Approval Hearing. All objections must be filed with the Court, received by the Settlement Administrator, and postmarked by no later than **May 19, 2023**. If you submit a timely objection, you may appear, at your own expense, at the Final Approval Hearing, discussed below.

Any Settlement Class Member who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the Court-approved service payments, the claims process, and any and all other aspects of the Settlement. Likewise, regardless of whether you attempt to file an objection, you will be deemed to have released all of the Released Claims as set forth above in Section 7 unless you request exclusion from the Settlement in accordance with Section 8 above.

THE LAWYERS REPRESENTING YOU

10. Do I have a lawyer in this case?

The Court has determined that the lawyers at the law firms of Stueve Siegel Hanson LLP and McClelland Law Firm, P.C., are qualified to represent you and all individuals covered by this settlement. These lawyers are called "Class Counsel." You will not be charged for these attorneys. You do not need to retain your own attorney to participate as a member of this class action. However, you may consult with any attorney you choose at your own expense before deciding whether to opt out of this settlement.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed 35% of the Settlement Amount plus reimbursement of $100,000 in expenses, which will be paid from the Settlement Amount. In addition, Class Counsel will ask the Court to authorize payment from the Settlement Amount of a service payment of not more than $10,000 to Named Plaintiffs Gina Lipari-Williams, Marissa T. Hammond, and Lucinda Layton, and a service payment of not more than $7,500 to Opt-In Plaintiff Tim Hammond, to recognize the risks they took and services to the beneficiaries of this settlement.

FINAL APPROVAL OF THE SETTLEMENT

12. When will the settlement be final and when will I receive my settlement payment?

If the Court grants Final Approval of the settlement, and you did not request exclusion from the settlement, you will receive your settlement payment in the mail a few weeks after Final Approval.

The Court will hold a Final Approval Hearing on the fairness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's request for attorneys' fees and costs, and the service payment to the Named Plaintiff on **May 25, 2023 at 10:30 a.m.** in Courtroom 7B of the U.S. District Court, Western District of Missouri, located at Charles Evans Whittaker U.S. Courthouse, 400 E. 9th Street, Kansas City, MO 64106. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to appear at the hearing to participate in or to opt-out of the Settlement.

FOR MORE INFORMATION

13. Are there more details about the settlement?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You are encouraged to read it. To the extent there is any inconsistency between this Notice and the Settlement Agreement, including between the description of the releases as provided in Section 7 above and the description of the releases as provided in the Settlement Agreement, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement online at www.MissouriGamingLicenseLawsuit.com or by sending a request, in writing, to:

Missouri Gaming License Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006
info@MissouriGamingLicenseLawsuit.com
1-877-374-2994

14. How do I get more information?

If you have other questions about the settlement, you can contact the Settlement Administrator, or Class Counsel at the addresses and/or telephone numbers below.

Email: pngmissouricase@stuevesiegel.com
Telephone: (888) 816-1761

These are the lawyers acting as Class Counsel, one of whom will respond to your questions at the above email and telephone numbers:

George A. Hanson
Alexander T. Ricke
STUEVE SIEGEL HANSON LLP
460 Nichols Road, Suite 200
Kansas City, Missouri 64112

Ryan L. McClelland
McCLELLAND LAW FIRM, P.C.
The Flagship Building
200 Westwoods Drive
Liberty, Missouri 64068

15. What if my name or address changes before I receive my settlement payment?

If, for future reference and mailings from the Court or Settlement Administrator, you wish to change the name or address listed on the envelope in which the Class Notice was first mailed to you, then you must fully complete, execute, and mail the Change of Name and/or Address Information Form (enclosed with this Notice as Form A).

DATED: April 4, 2023

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.