The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEAN WILSON, individually and on behalf of all other persons similarly situated,

Plaintiff,

v.

PLAYTIKA, LTD., an Israeli limited company, and CAESARS INTERACTIVE ENTERTAINMENT, LLC., a Delaware limited liability company.

Defendants.

No. 18-cv-05277-RSL

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

Noting Date: January 15, 2021

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INTRODUCTION

In 2018, on the heels of Class Counsel's appellate victory in *Kater*, Sean Wilson initiated this lawsuit alleging that Defendants' social casinos are illegal gambling under Washington law. Since that time, Plaintiff and his counsel have vigorously litigated this case before this Court, the Ninth Circuit, the Washington State Gambling Commission, and even the Washington Legislature. After substantial mediation efforts assisted by Phillips ADR, Plaintiff and Defendants reached a class settlement, that creates, among other obligations, Defendants to establish a non-reversionary $38 million common fund. The fund is sufficient to compensate every class member who has ever lost money playing Defendants' social casino games is entitled to a recovery and those with higher levels of losses are entitled to recover increasingly higher percentages of their losses.

Utilizing data from Defendants and Platform Providers—entities through which Class Members purchased chips to gamble at Defendants' social casinos—the Court-approved Notice Plan has been successfully implemented. The reaction of the class to date has been exceptional: thousands of Class Members have already submitted claims and the claims deadline is still several weeks out. By contrast, no class members have requested exclusion or objected to the settlement. Given the life-changing relief afforded, this volume of claims is not surprising and is consistent with the projections made at preliminary approval. Participating Class Members stand to recover substantial portions of their losses, with those who have lost the most standing to recover more than half of their gambling losses. By way of example, Class Members with Lifetime Spend Amounts of $10,000 stand likely to recover $2,200-$5,900 and Class Members with Lifetime Spend Amounts of $100,000 stand likely to recover more than $50,000. Equally as important, the settlement requires Playtika to provide addiction-related resources within its social casino games and to create and honor a self-exclusion policy like those at Washington brick-and-mortar casinos.

Given the novelty of Plaintiff's claim, Professor William B. Rubenstein (author of the influential treatise *Newberg on Class Actions*) describes the recovery as an "astounding

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accomplishment" and calls the relief provided "historic." And although there are no truly comparable settlements, the closest factual analogue pales in comparison to the relief afforded here. *See In re Apple In-App Purchase Litig.*, 5:11-CV-01758 EJD, 2013 WL 1856713.at *1 (N.D. Cal. May 2, 2013) (providing $5 to users of apps that "compel children playing them to purchase large quantities" of in-game currency, "amounting to as much as $100 *per purchase* or more") (emphasis added). So, too, do typical consumer privacy class settlements, which often provide *cy pres* relief with no individual payments. *See In re Google Referrer Header Privacy Litig.*, 869 F.3d 737, 740 (9th Cir. 2017), *vacated on other grounds by Frank v. Gaos*, 139 S. Ct. 1041 (2019).

For the reasons that follow, this settlement is fair, reasonable, and adequate the Court should not hesitate to grant final approval.

BACKGROUND

For the Court's convenience, the following "Background" section is included both in this motion and in the contemporaneously-filed motion for attorneys' fees, expenses, and incentive awards:

In 2014, Class Counsel began investigating the burgeoning social casino industry. *See* Declaration of Todd Logan ("Logan Decl.") ¶ 3. The results of that investigation were startling: multinational gambling corporations like Caesars Entertainment, Churchill Downs, International Game Technology, and Scientific Games had found a way to smuggle slot machines onto consumers' smart phones without complying with any federal or state gambling laws. *Id.* ¶ 4. By 2015, social casino games were capturing more than $3 billion in annual revenues.[1] Those revenues, just like those of Vegas casinos, were disproportionately derived from gambling addicts who just couldn't stop themselves from buying chips and spinning the slots. Moreover, those revenues—at least in Class Counsel's judgment—were entirely ill-gotten gains under a variety of state gambling laws. *See* Logan Decl. ¶ 4.

[1] *See* Dean Takahashi, *13 predictions for the future of the $3.4B social casino games market*, GAMESBEAT (Oct. 19, 2015, 6:00 AM), https://bit.ly/37TPao9.

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Based on that investigation, in 2015 Class Counsel initiated a nationwide, multi-forum campaign against the social casino industry. *See id.* ¶ 5. As Professor William B. Rubenstein, the sole author of *Newberg on Class Actions*, summarizes that campaign (and its results):

> Prior to entering academia, I was a lawyer at the national office of the American Civil Liberties Union (ACLU) for nearly a decade, during which time I pursued civil rights campaigns on behalf of minority groups. Based on that experience, it strikes me that what Class Counsel have pursued here is closer in form to a civil rights litigation campaign than it is to a series of discrete class action settlements. Class Counsel saw an injustice – a thinly disguised form of gambling preying on those most vulnerable to addictive gambling – and they sought to fix it. Their goal was not to win a case but to reform an entire industry, much like a civil rights campaign might aim to reform a particular type of discriminatory practice across an entire employment sector. To accomplish this end, Class Counsel went far beyond what lawyers pursuing a simple class action case would normally do. Class Counsel pursued multiple cases. Class Counsel pursued multiple defendants. Class Counsel filed actions in multiple forums. Class Counsel tested various state laws. Class Counsel built websites to help app users avoid forced arbitration clauses, lobbied legislators and regulators, and took their efforts to the media. When Class Counsel lost, they did not give up, but changed tactics or forums and kept going. And they did all of this with their own funds, risking millions of dollars of their own money to end this practice. What they have achieved so far, with these initial settlements, is an astounding accomplishment that begins to chip away at the pernicious underlying social casinos.

Declaration of Professor William B. Rubenstein ("Rubenstein Decl.") ¶ 2.

Because the extraordinary settlement here is but a part of Class Counsel's efforts carrying the banner nationwide for victims of the social casino industry, a summary of Class Counsel's efforts both before this Court and otherwise is provided below.

I. Class Counsel's 2015 Social Casino Lawsuits.

Having concluded that social casinos—including Caesars' and Playtika's "Caesars Slots" and "Slotomania"—constituted gambling, between April and October of 2015, Class Counsel filed (5) proposed class action lawsuits (including one against Caesars and Playtika), in four (4) different courts, alleging class claims under five (5) different sets of state gambling laws. *See* **(1)** *Dupee v. Playtika Santa Monica, et al.* No. 15-cv01021 (N.D. Ohio May 21, 2015) (alleging claims under Ohio and Nevada gambling laws); **(2)** *Kater v. Churchill Downs Inc.*, No. 15-cv-00612 (W.D. Wash. Apr. 17, 2015) (alleging claims under Washington gambling law); **(3)**

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Mason v. Mach. Zone, Inc., No. 15-cv-01107 (D. Md. Apr. 7, 2015) (alleging claims under California and Illinois gambling laws) **(4)** *Phillips v. Double Down Interactive LLC*, No. 15-cv-04301 (N.D. Ill.) (removed May 14, 2015) (alleging claims under Illinois gambling laws); and **(5)** *Ristic v. Mach. Zone*, *Inc.* No. 15-cv-08996 (N.D. Ill.) (Oct. 9, 2015) (alleging claims under Illinois gambling laws).

Each federal district court initially presented with Class Counsel's theory of these cases—*i.e.*, that social casinos are illegal gambling and consequently must return to consumers their ill-gotten gains—squarely rejected it. *See Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 316 (4th Cir. 2017); *Kater v. Churchill Downs Inc.*, No. C15-612 MJP, 2015 WL 9839755, at *3 (W.D. Wash. Nov. 19, 2015), *rev'd*, 886 F.3d 784 (9th Cir. 2018); *Dupee v. Playtika Santa Monica*, No. 15-cv-01021, 2016 WL 795857, at *1 (N.D. Ohio Mar. 1, 2016); *Phillips v. Double Down Interactive LLC*, 173 F. Supp. 3d 731, 739 (N.D. Ill. 2016); *Ristic v. Mach. Zone, Inc.*, No. 15-CV-8996, 2016 WL 4987943, at *4 (N.D. Ill. Sept. 19, 2016). In representative fashion, Judge Pechman's dismissal order in *Kater* concluded that "Big Fish Casino does not award something of value satisfying the requisite prize element, and therefore the game is not 'illegal gambling' under Washington law." *Kater*, 2015 WL 9839755, at *3.

II. Class Counsel Appeals The *Kater* Dismissal And The Ninth Circuit Reverses.

Following Judge Pechman's dismissal order in *Kater*, Class Counsel appealed. Merits briefing before the Ninth Circuit concluded in September 2016, and oral argument was held in February 2018. In March 2018, the Ninth Circuit reversed:

> In this appeal, we consider whether the virtual game platform "Big Fish Casino" constitutes illegal gambling under Washington law. Defendant–Appellee Churchill Downs, the game's owner and operator, has made millions of dollars off of Big Fish Casino. However, despite collecting millions in revenue, Churchill Downs, like Captain Renault in *Casablanca*, purports to be shocked—shocked!—to find that Big Fish Casino could constitute illegal gambling. We are not. We therefore reverse the district court and hold that because Big Fish Casino's virtual chips are a "thing of value," Big Fish Casino constitutes illegal gambling under Washington law.

Kater, 886 F.3d 784, 785 (9th Cir. 2018). In that opinion, the Ninth Circuit dispensed with a variety of the arguments that had persuaded district courts nationwide to initially dismiss the

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social casino cases. For example, the Court rejected the argument that social casino chips "do not extend gameplay, but only enhance it." *Id.* at 787. The Circuit also rejected Big Fish's argument that the Washington State Gambling Commission had determined that social casino games aren't gambling, concluding that "these documents do not indicate that the Commission adopted a formal position on social gaming platforms." *Id.* at 788. And the Ninth Circuit explicitly rejected the "the reasoning of other federal courts that have held that certain 'free to play' games are not illegal gambling." *Id.*

III. Class Counsel's Litigation Conduct Before This Court.

Soon after remand in *Kater*, Class Counsel filed this proposed class action lawsuit on behalf of Plaintiff Sean Wilson alleging that, like Big Fish Casino, Defendants' social casino games—including "Slotomania," "House of Fun," "Caesars Slots," and "Vegas Downtown Slots" (together, the "Applications")—constitute unlawful gambling under Washington's gambling laws. *See* Dkt. 1.

In July 2018, Playtika moved to dismiss, arguing variously that the Court lacks personal jurisdiction over it, that a forum selection clause required the Court to dismiss the case with prejudice in favor of the dispute being litigated in Tel Aviv-Jaffa, Israel (and under Israeli law), and that Wilson's claim failed because virtual coins in Playtika's Applications are not "things of value." *See generally* Dkt. 40. To properly address Playtika's jurisdictional arguments, the Parties stipulated to, and the Court granted, Plaintiff leave to conduct jurisdictional discovery. *See* Dkts. 44, 45. With that discovery concluded, Plaintiff filed separate briefs: (1) opposing Playtika's *forum non conveniens* motion, *see* Dkt. 48; (2) opposing Playtika's 12(b)(6) motion, *see* Dkt. 52; and (3) opposing Playtika's personal jurisdiction motion, *see* Dkt. 57.

In November 2018, in a twenty-five page published opinion, the Court agreed with Plaintiff, finding that Playtika is in fact subject to the Court's personal jurisdiction because Playtika "used its apps to sell many coins to many users located in Washington," that Playtika's forum selection clause arguments failed in part because the State of Washington has a strong interest in "ensuring that its residents are protected against the dangers of" social casino apps,

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and that Wilson adequately stated a claim because virtual chips in the Applications are a "thing of value" and no relevant exceptions apply. *Wilson v. Playtika, Ltd.*, 349 F. Supp. 3d 1028 (W.D. Wash. 2018) (Dkt. 68). Playtika answered shortly thereafter. *See* Dkt. 74.

By prior agreement of the Parties, Caesars had reserved its pleadings motions pending the Court's resolution of Playtika's pleadings motions. *See* Dkt. 37. And by additional agreement of the Parties, Wilson and Playtika agreed to an elongated briefing schedule for Caesars's pleadings motions, intended to allow Wilson adequate time to conduct appropriate jurisdictional discovery. *See* Dkt. 71. In line with those agreements, shortly after the Court's denial of Playtika's motions Caesars filed its own motion challenging the Court's jurisdiction and arguing that Wilson failed to state a claim. *See* Dkt. 75. Over the coming months, the Parties engaged in substantial jurisdictional discovery efforts, including Caesars's production of thousands of pages of documents. *See* Dkt. 121 ¶ 3.

In March 2019, Playtika filed a motion pursuant to 28 U.S.C. § 1292(b) asking the Court to certify for interlocutory appeal the order denying Playtika's motion to dismiss, arguing that Plaintiffs' repeated use of Defendants' social casino games meant he had consented to Defendants' forum selection provision. *See* Dkt. 79. Over Plaintiff's opposition, *see* Dkt. 84, that motion was granted. *See* Dkt. 85. The Ninth Circuit initially stayed Playtika's petition for permission to appeal pending resolution of appeals in the *Huuuge* and *DoubleDown* cases, where the defendants similarly contended that plaintiffs were bound by arbitration provisions in part because they repeatedly used the defendants' social casino apps. In March 2020, after plaintiffs in those related cases prevailed in both appeals, the Ninth Circuit denied Playtika's petition. *See* Dkt. 101.

Around the same time, Playtika filed a motion asking the Court to certify a trio of questions to the Washington Supreme Court, essentially asking the Court to circumvent *Kater* by giving the Washington Supreme Court an opportunity to determine that social casino chips are not, in fact, "things of value." *See* Dkt. 99. Plaintiff opposed that motion, arguing both that it was procedurally improper and Playtika was not entitled to a "second chance at victory" on an issue it

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already lost. *See* Dkt. 102 at 2 (quoting *All. for Prop. Rights & Fiscal Responsibility v. City of Idaho Falls*, 742 F.3d 1100, 1108 (9th Cir. 2013)). The Court agreed with Plaintiff, denying Playtika's certification motion in May 2020. *See* Dkt. 113. In May 2020, the Parties agreed to attempt to resolve this case through mediation.

On June 10, 2020, the Parties reached an agreement in principle as to an appropriate settlement amount. *See* Dkt. 121 ¶ 9. Negotiations on remaining term sheet issues continued until a final term sheet was executed on June 12, 2020. *See id.* ¶ 10. But the negotiations didn't end there: for the next several weeks, the Parties worked out the details of a final and binding class action settlement agreement, exchanged several rounds of a working settlement document and supporting exhibits, met and conferred telephonically to flesh out the remaining disputed provisions, and began the process of meeting and conferring with the Platform Providers to design a robust notice and administration plan. *See id.* ¶ 11. On August 5, 2020, the Parties completed execution of the Settlement Agreement now before the Court. *See id.* ¶ 12. Wilson filed an unopposed motion for preliminary approval of that Agreement on August 23, 2020, *see* Dkt. 120, and the Court granted preliminary approval on August 31, 2020, *see* Dkt. 124.

IV. Class Counsel's Litigation-Adjacent Efforts On Behalf Of The Class.

As a necessary extension of the traditional litigation work necessitated by these cases, Class Counsel has for years undertaken all manner of litigation-adjacent work for the benefit of the Class. These efforts are organized into three categories and summarized below.

First, Class Counsel went great lengths to protect this litigation from collateral administrative attacks. Just two weeks after the Ninth Circuit's mandate issued in *Kater*, Defendants' industry peers dispatched their litigation attorneys to the Washington State Gambling Commission's ("WSGC") session in Tacoma to present a "Petition for a Declaratory Order" asking the Commission to declare that other social casino games "do[] not constitute gambling within the meaning of the Washington Gambling Act, RCW 9.46.0237." *Kater*, No. 15-cv-00612, Dkt. 79-5 at 1. At each of the three public hearings that followed—in July 2018 (in Tacoma), August 2018 (in Pasco), and October 2018 (in Olympia)—Class Counsel appeared

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before the Commission, and Class Counsel presented live argument at both the Tacoma and Pasco hearings. *See* Logan Decl. ¶ 10. Class Counsel supplemented these appearances with a formal letter to the Commission (ahead of the Tacoma hearing) and, on the Commission's request, with an eighteen-page comment for the Commission's consideration (between the Tacoma and Pasco hearings). *Id.* The WSGC ultimately declined to enter a Declaratory Order. *See Kater*, No. 15-cv-00612, Dkt. 74-1. And even after the initial declaratory order proceedings, Class Counsel continued to represent the interests of the consumers in additional flare-ups before the WSGC, including in similar declaratory order proceedings initiated by The Stars Group. *See* Logan Decl. ¶ 11.

Second, Class Counsel has been the frontline opposition to the social casino industry's attempt to change Washington's gambling laws. Starting in early 2019, the International Social Gaming Association ("ISGA"), a trade organization co-founded by Playtika, provided legislators draft legislation that would amend Washington's gambling statutes with the effect (and specific intent) of gutting these lawsuits. *See* Logan Decl. ¶ 12. Over time, these efforts gained steam, with Senators Mark Mullet and John Braun, as well as Representatives Zack Hudgins, Brandon Vick, Bill Jenkin and Brian Blake, collectively sponsoring four (4) bills threatening to kill these cases by "clarifying" that players who lose money playing social casinos cannot recover under the Recover of Money Lost at Gambling Act ("RMLGA"). H.B. 2720, 66th Leg., Reg. Sess. (Wash. 2020); S.B. 6568, 66th Leg., Reg. Sess. (Wash. 2020); H.B. 2041, 66th Leg., Reg Sess. (Wash. 2019); S.B. 5886, 66th Leg., Reg. Sess. (Wash. 2019). Local and national media covered these efforts and left no doubt as to what the ISGA hoped to accomplish. *See, e.g.*, Phillip Conneller, *Washington State Social Gaming Legislation Could Rescue Big Fish Casino From Legal Trouble*, CASINO.ORG (Jan. 29, 2020), https://bit.ly/39dKtWM.

In response, Class Counsel engaged the lobbying firm Peggen & Mara Political Consulting LLP—experts in Washington tribal and gambling laws—to help Class Counsel (i) stay on top of all administrative and legislative developments in the Washington gaming industry; (ii) understand the intricacies of Washington's specific legislative process, including

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the nuances of—and procedures for—bill drafting; (iii) understand who the relevant lawmakers and stakeholders in Washington's gaming industry were, what those lawmakers and stakeholders cared about, and how Class Counsel could educate those lawmakers and stakeholders about social casinos; and (iv) work with legislative groups, task forces, and other interested parties in in Washington's gaming industry, including the Washington Indian Gaming Association ("WIGA"). *See* Logan Decl. ¶ 13.

Class Counsel then used this information and expertise to amplify the Class's interests and concerns. Class Counsel drafted memos and prepared handouts for a variety of stakeholders, including State Senators and Representatives, the WIGA, the Washington Trial Attorneys' Association, the Public Interest Research Group, and other organizations dedicated to remedying problem gambling. *See id.* ¶ 14.

Class Counsel also personally met with lawmakers in the Washington Senate and House, met with officials in the Executive branch, and provided in-person testimony to the Washington Legislature. *See id.* ¶ 15. For example, in January 2019—after Class Counsel got wind that the ISGA was planning to gut Washington's gambling statutes (in what would become the failed H.B. 2041 and S.B. 5886)—Class Counsel met in-person with Representative Shelley Kloba, then-Representative (and now Senator) Derek Stanford, Lieutenant Governor Cyrus Habib, and several other government officials. *See id.* ¶ 16. On January 28, 2020, Class Counsel met with Senator Stanford at the State Capital—following Class Counsel's written and in-person testimony before the House Civil Rights & Judiciary Committee in (successful) opposition to H.B. 2720. *See id.* ¶ 17.

Class Counsel's efforts went beyond in-person testimony and meetings with legislative and executive officials. On March 21, 2019, Class Counsel sent formal correspondence to Senator Mark Mullet ahead of a planned work session before the Senate and Financial Institutions, Economic and Trade Committee about social casinos—in which Defendants' industry peers had been invited, but Class Counsel had not. *See id.* ¶ 18. In August 2019, Class Counsel traveled to Anacortes—on Swinomish Tribe land—to speak at a monthly WIGA

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meeting, in opposition to the ISGA-backed bills. *See id.* ¶ 19. And in early 2020, Class Counsel coordinated the submission of more than 200 letters to Washington State Representatives from Big Fish Casino players across the country and spoke with local press about the ISGA's renewed efforts to gut these lawsuits. *See id.* ¶ 20; *see also* Melissa Santos, *'Free' casino apps prey on addiction, users say, and WA lawmakers are considering a crackdown*, CROSSCUT (Feb. 7, 2020), https://bit.ly/3hfFxDl. These efforts held the line. Each bill introduced over the past two years has stalled.

Third, beyond Class Counsel's work on legislative and administrative fronts, Class Counsel also helped its clients sound the alarm on social casinos to the public at large by helping clients share their stories with local and national media, including in the following pieces:

- *Harpooned by Facebook*, REVEAL-CENTER FOR INVESTIGATIVE REPORTING (Aug. 3, 2019), https://bit.ly/39NIdri (featuring radio interview with Class Counsel's client)
- *How social casinos leverage Facebook user data to target vulnerable gamblers*, PBS NEWSHOUR (Aug. 13, 2019), https://to.pbs.org/3lPRd1m (featuring television interview with Class Counsel's client)
- Melissa Santos, *'Free' casino apps prey on addiction, users say, and WA lawmakers are considering a crackdown*, CROSSCUT (Feb. 7, 2020), https://bit.ly/3hfFxDl (featuring Class Counsel's clients and Class Counsel Alexander Tievsky)
- *Addicted to losing: How casino-like apps have drained people of millions*, NBC NEWS (Sept. 14, 2020), https://nbcnews.to/39Lo1X1

V. The Settlement Now Before The Court.

Following all of these efforts, and with the assistance of Phillips ADR, Class Counsel reached a settlement with Defendants that provides a non-reversionary cash recovery of $38 million from which every Class Member who has ever lost money playing Defendants' social casino games is entitled to recover a substantial portion of their losses back. *See* Dkt. 121-1 § 1.32. Class members with higher levels of losses are entitled to recover increasingly higher

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percentages of their losses, and the upper echelons of "VIP" players stand to recover more than half of their losses. *See id.* §§ 1.36, 2.1(c). The settlement also requires Defendants to implement meaningful prospective relief, including by providing addiction-related resources within their social casino games and by creating and honoring a self-exclusion policy akin to what one might expect to soon see at the Emerald Queen or the Muckleshoot casinos. *See id.* § 2.2.

THE TERMS OF THE SETTLEMENT AGREEMENT

For the Court's convenience, the key terms of the Agreement are summarized below.

A. Settlement Class Definition: The Settlement Class is defined as follows: "all persons who played the Applications on or before preliminary approval of the settlement while located in the state of Washington."[2] *See id.* § 1.33.

B. Monetary Benefits: Defendants have agreed to establish a $38,000,000.00 Settlement Fund from which Settlement Class Members who file a valid claim will be entitled to recover a cash payment, after deducting costs and administrative expenses, any fee award to Class Counsel, and any incentive payments to the Class Representatives. *See id.* § 1.32. No portion of the Settlement Fund will revert to Defendants. *Id.* § 2.1(i). Any Settlement Class Member checks not cashed within 90 days of issuance will be either be placed in a second distribution fund or donated to a Court-approved *cy pres* recipient. *Id.* § 2.1(h). As described in detail in the Plan of Allocation, the amount of each Settlement Class Member's payment will vary based on the Settlement Class Member's total losses (those with higher loss amounts are eligible to recover a greater percentage of their losses) and overall Settlement Class Member participation levels. *See id.* §§ 1.36, 2.1(c), Exhibit E. Based on its experience, Heffler Claims Group (the "Settlement Administrator") anticipates that participating Settlement Class Members in the highest category of Lifetime Spending Amounts will recover the majority of their losses,

[2] Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) the Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, and employees, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors or assigns of any such excluded persons. *See* Agreement § 1.33.

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and that participating Class Members in the smallest category of Lifetime Spending Amounts will recover more than 10% of their losses. *See* Dkt. 122 ¶ 15. Settlement Class Members will be able to quickly and easily estimate the amount of their potential payment on the Settlement Website. *See* Agreement § 4.2(c).

C. Prospective Relief: Defendants have agreed to establish a voluntary self-exclusion policy that will allow players to exclude themselves from further gameplay. *See id.* § 2.2. Defendants must also make a link to that policy prominently available within the games, and their customer service representatives will provide the link to players who contact them and reference or seek help for video game behavior disorders. *See id.* Defendants have also agreed to other prospective relief measures, including changes to game mechanics such that when players run out of virtual chips, they won't need to purchase additional chips or wait to receive free additional chips to keep playing Defendants' games. *See id.*

D. Release: In exchange for the monetary relief described above, Defendants and other entities, including the Platform Providers Facebook, Apple, Google, Amazon, Microsoft, and Samsung, will be released from all claims raised in these cases relating to the operation of Defendants' social casino games and the sale of virtual chips in those games, including claims that the games were illegal gambling or the chips were "things of value." The full release is contained at *id.* § 1.27.

E. Attorneys' Fees, Expenses Requests & Incentive Award Requests: Contemporaneously with the filing of this motion, Class Counsel are filing a motion for attorneys' fees, expenses, and incentive awards.

ARGUMENT

I. The Court Need Not Revisit Class Certification.

A threshold inquiry at final approval is whether the Class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b). *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-1022 (9th Cir. 1998). Because no relevant facts have changed since the Court certified the

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Settlement Class, Dkt. 221, the Court need not revisit class certification here. *See, e.g.*, *Aikens v. Panatte, LLC*, No. 2:17-cv-01519, Dkt. 54 (W.D. Wash. Feb 5, 2019) (Lasnik, J.).

II. Notice Was Successful And Satisfied Due Process.

Prior to granting final approval to this Settlement, the Court must consider whether the Class members received "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *accord Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). "The rule does not insist on actual notice to all class members in all cases." *Mullins v Direct Digital LLC*, 795 F.3d 654, 665 (7th Cir. 2015); *see also Juris v. Inamed Corp.*, 685 F.3d 1294, 1321 (11th Cir. 2012) (noting that "even in Rule 23(b)(3) class actions, due process does not require that class members actually receive notice" and collecting cases). Although what constitutes the "best notice practicable" is case-specific, the Federal Judicial Center has noted that a notice campaign that reaches 70% of a class is often reasonable. Federal Judicial Center, *Judges' Class Action Notice & Claims Process Checklist & Plain Language Guide*, at 3 (2010), *available at* https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf.

The Court already provisionally approved the Notice Plan proposed by the Class Representatives and Class Counsel. Dkt. 124 at 5-6. That plan utilized both direct and publication notice to the Settlement Class. *Id.* To provide direct notice to all who were eligible to submit a claim for payment from the Settlement, Class Counsel worked with Counsel for Defendants and also subpoenaed a variety of third parties to obtain contact information for everyone with a Lifetime Spending Amount of greater than zero (*i.e.*, those who are entitled to make a claim against the Settlement Fund). *See generally* Declaration of Brian Smitheman ("Smitheman Decl."). As the Court is well aware, this was not an easy process. Class Counsel engaged in extensive negotiations with Platform Providers. Apple, Google, Facebook, and Microsoft ultimately provided Class Counsel with sufficient data to effectuate the Notice Plan. Class Counsel was forced to move to compel the necessary data from Amazon. *See Kater*, No. 15-cv-00612, Dkt. 224. Ultimately, after two orders from this Court (*see Kater*, No. 15-cv-

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00612, Dkts. 250, 256)—and then even further negotiations—Amazon provided the necessary information. *Cf.* Smitheman Decl. ¶ 5.

Once that data was collected, it was transmitted to Heffler Claims Group LLC, the Settlement Administrator, to compile a complete Class List. The Defendants and Platform Providers ultimately provided Heffler with contact information for approximately 280,000 accounts, and Heffler created a notice list of 294,142 emails. *See id.* ¶ 11. Heffler then sent out two rounds of email notice. In the first round, which did not contain accounts associated with Amazon because Amazon had not yet produced that data, 220,606 emails were successfully delivered. *See id.* ¶ 12. In the subsequent round, which did include Amazon data, Heffler emailed 211,657 reminder notices to Class Members who had not yet filed a claim. *See id.* ¶ 15. Of the reminder emails sent, 209,653 (or 99%) were successfully delivered. *See id.*

Additionally, using the information provided by Defendants and the Platforms, Heffler sent postcard notice via U.S. First Class mail to 53,446 accounts identified as having Lifetime Spending Amount of $100 or more. *See id*. ¶ 10. Heffler further sent postcard notice to Class Members whose email notice bounced. *See id*. As of December 10, 2020, Heffler received 21 Notices returned by USPS with a forwarding address, and then re-mailed those Postcard Notices to the updated address. *See id*. ¶ 13. As of December 10, 2020, 421 Postcard Notices were returned as undeliverable by the USPS without a forwarding address. *See id.* ¶ 14.

Direct notice was to be supplemented by online publication notice in the form of digital advertisements targeted to be seen by individuals most likely to be part of the Settlement Class. Given the extent to which social casino players are active on social media, Heffler purchased sponsored ads on Facebook, Instagram, YouTube, and Twitter. *See id.* ¶ 6. These social media ads, coupled with traditional internet banner advertisements, generated more than 23 million impressions. *See id.* ¶ 8. In addition, keyword search targeting was used to show advertisements to users in Google search results and their Gmail inboxes, and streaming radio ads were purchased on Pandora. *See id.* ¶¶ 10, 14.

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Overall, the Notice Program, including direct email and postcard notice as well as best in-class tools and technology, reached at least 82% of Settlement Class Members in Washington. *See* Declaration of Jeanne Finegan ("Finegan Decl.") ¶ 3.

Finally, all forms of notice accurately described the Settlement and directed the recipient to the Settlement Website, where Class Members can review the Plan of Allocation, use a slider tool to estimate in real time how much of their losses they are projected to recover through the Settlement, and file a claim. *See* Agreement § 4.2(c); Dkt. 120 at 6-7.

This all confirms what the Court already provisionally found: the Notice Plan here, which reached at least 82% of Settlement Class Members in Washington, *see* Finegan Decl. ¶ 3, constituted the "best practicable notice" under the circumstances, and was reasonably calculated to apprise interested Settlement Class Members of their rights under the Settlement. As far as Class Counsel is aware, there have been no issues noticing the Settlement Class, and most recent figures confirm the estimates provided to the Court at preliminary approval. The Court should therefore find that the Notice Plan ultimately complied with Due Process.

III. The Court Should Finally Approve The Settlement.

To approve the settlement of a class action as fair, reasonable, and adequate, Rule 23(e) requires Court to consider "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." These factors largely encompass those identified by the Ninth Circuit for evaluating a class settlement. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

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The Committee Notes to the recent revision of Rule 23 make clear that the newly enumerated factors were not intended to replace approval factors already used in courts around the country, 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." Thus, courts examine the new Rule 23 factors alongside the traditional *Churchill* factors relevant to the particular case, mindful that there is considerable overlap between the two. *See, e.g.*, *Walters v. Target Corp.*, No. 3:16-cv-1678-L-MDD, 2020 WL 6277436, at *5 (S.D. Cal. Oct. 26, 2020).[3]

A. Class Counsel and the Class Representatives have adequately represented the Class and support the Settlement.

Class Counsel's representation of the Class' interests here was not just adequate; it was extraordinary. Class Counsel filed this case, in 2018, after obtaining a landmark Ninth Circuit ruling in the related *Kater* matter. From the start, Class Counsel had to defend Washington's gambling laws from repeated attacks both in the WSGC and in the Washington State Legislature. All the while, Class Counsel dealt with motion after motion after motion from both Defendants—including a *forum non conveniens* motion, a 12(b)(6) motion, a personal jurisdiction motion, and a motion to certify key issues to the Washington Supreme Court. *See* Dkts. 48, 52, 57, 84. Time and time again, Class Counsel held the line and marched the case closer to class certification and trial, ultimately leading to the Settlement now before the Court. All of these efforts demonstrate that Class Counsel provided more than adequate service to the Class in this case.

Class Representatives Wilson, Burdick, Taylor, and Thibert likewise adequately represented the Class. Each communicated with Class Counsel, responded to requests for information, closely reviewed the terms of the Settlement, discussed the Settlement with Class Counsel, and signed the Settlement because they believe it is fair and in the best interests of the Class. *See* Declaration of Sean Wilson ("Wilson Decl.") ¶ 5; Declaration of Cathy Burdick

[3] There is no governmental participant here, so that factor is neutral. Further, to date, there are no agreements that must be identified under Rule 23(e)(3), nor do counsel anticipate reaching any such agreements.

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("Burdick Decl.") ¶ 3; Declaration of David Taylor ("Taylor Decl.") ¶ 3; and Declaration of Jesse Thibert ("Thibert Decl.") ¶ 3. Their services were more than adequate.

The Court may also consider Class Counsel's support of the Settlement, which also favors approval. *In re Bluetooth*, 654 F.3d at 946. It is well-established that "[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1043 (N.D. Cal. 2008) (quotations omitted). Class Counsel here are the only lawyers with experience prosecuting these types of claims, and it is their considered judgment that this Settlement represents an outstanding result for the Settlement Class.

B. The Settlement was negotiated at arm's length.

There can be no serious question that the Settlement here was negotiated at arm's length and was the product of non-collusive negotiations—as the Court has already preliminarily found. *See* Dkt. 124 at 4. That the Settlement was reached only after weeks of arms-length negotiation, during which time the Parties exchanged substantive briefing on the core legal issues and were in near-daily communication with an ADR team lead by Judge Phillips (ret.), supports a finding that there was no collusion here. *See Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution."); *Helde v. Knight Transp., Inc.*, No. 2:12-cv-00904 RSL, Dkt. 191 at 2 (W.D. Wash. May 24, 2017) (granting preliminary approval where "Settlement Agreement resulted from extensive arm's-length negotiations, with participation of an experienced mediator"); *Gragg v. Orange CAB Co., Inc.*, No. 12-cv-0576 RSL, 2017 WL 785170, at *1 (W.D. Wash. Mar. 1, 2017) (same). The Parties reached this Settlement only after years of intense litigation marked by round after round of contested issues. Indeed, it is safe to say that Class Counsel and defense counsel agreed on almost nothing of substance over the course of this litigation.

Moreover, this Settlement contains none of the red flags the Ninth Circuit has identified as indicative of possible collusion: (1) "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply

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rewarded," (2) "when the parties negotiate a 'clear sailing' arrangement," and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *In re Bluetooth* 654 F.3d at 947 (quotations omitted). Class Counsel's fee will be determined separately, but as explained in Class Counsel's fee petition, they seek a percentage recovery that is consistent with Washington law and Ninth Circuit precedent, reflects their work here, and is proportionate. Moreover, the Settlement does not contain a "clear sailing" agreement; Defendants are free to object to Class Counsel's fee petition if they so desire. *See* Agreement § 8.1. And there is no reverter here. All Settlement funds will go to Class Members, less Class Counsel's fees and any administrative costs. *See id.* § 1.35. This consideration clearly supports final approval.

C. The amount offered in Settlement is adequate, taking into account the strength of Plaintiff's case, and the risks inherent in further litigation.

Even before the revised Rule 23 highlighted that the Court should consider the amount offered in settlement, courts recognized that the size of any settlement, compared to the likelihood of full recovery, "is generally considered the most important" factor in evaluating a settlement. *See Bayat v. Bank of the West*, No. C-13-2376 EMC, 2015 WL 1744342, at *4 (N.D. Cal. Apr. 15, 2015). Here, an evaluation of the risks present in this litigation, combined with an assessment of the scope of relief, shows that the Settlement easily qualifies as fair, reasonable, and adequate.

i. The Settlement Class would have faced significant delay before it could have recovered anything on the merits.

Ultimately, Class Counsel believes in the strength of these cases on the merits. The key legal questions, particularly under the RMLGA, are straightforward, and in Class Counsel's view have been conclusively answered by the Ninth Circuit's decision in the appeal in the *Kater* matter. Nevertheless, the case presented some legal risks. For instance, Defendants here raised

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the contention that the regular provision of free chips within their gambling games meant that the chips themselves were not "things of value." *See, e.g.*, Dkt. 99 (seeking to certify issue to the Washington Supreme Court); *accord Benson v. DoubleDown Interactive*, No. 18-cv-525, Dkt. 103 (W.D. Wash. June 17, 2020) (same). Plaintiff, of course, disagrees, and this Court has dismissed that contention at every turn, relying on the Ninth Circuit's decision in *Kater*. But it is also true that the opinion in *Kater* specifically notes that the court did not consider the defendants' specific arguments about the regular provision of free chips. *See* 886 F.3d at 787.

Moreover, as Plaintiff explained at preliminary approval, the principal risk here was legislative—*i.e.*, the chance that Defendants' efforts at changing the law, either through the Washington Legislature or the WSGC, would succeed before this matter reached judgment and leave Settlement Class Members with nothing. Class Counsel have thus far fended off the ISGA's phalanx of well-heeled lobbyists, but Defendants and their ISGA comrades are formidable opponents. If these cases do not settle now, each legislative cycle the class will be at risk of having their claims eviscerated in the name of "remov[ing] . . . economic uncertainty" by "clarifying" that proposed class members cannot recover under the RMLGA. H.B. 2720, 66th Leg., Reg. Sess. (Wash. 2020).

This legislative risk is particularly acute here because it is practically inevitable that this case would take years to reach judgment. Merits discovery was only in its nascent stages, and—based on the flurry of briefing on the pleadings alone—there is every reason to believe that the Parties would have fought tooth and nail on every issue had the case not settled. Such discovery fights would inevitably prolong the discovery period here, after which the Parties would heavily contest class certification and, perhaps, summary judgment, and then trial. The history of the case so far also suggests that any trial verdict was bound to be appealed, further lengthening the proceedings.

Courts have regularly recognized that the prospect of significant delay while a case works its way to judgment is reason to favor immediate settlement. After all, one dollar today is worth significantly more than one dollar three years from now. *Rodriguez*, 563 F.3d at 966 ("Inevitable

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appeals would likely prolong the litigation, and any recovery by class members, for years. This factor, too, favors the settlement."); *Ikuseghan v. Multicare Health Sys.*, No. 3:14-cv-05539 BHS, 2016 WL 3976569, at *4 (W.D. Wash. July 25, 2016) ("[T]he outcome of trial and any appeals are inherently uncertain and involve significant delay. The Settlement avoids these challenges."). But delay is especially problematic here. The longer the case survives, the more opportunities Defendants and their allies would have to effect retroactive change to the law.

ii. Given the risks involved with further litigation, the amount offered in Settlement is outstanding.

The most significant aspect of the secured by this Settlement is the $38 million non-reversionary common fund, which will be used to help Settlement Class Members recoup their losses. That is an "astounding" recovery. Rubenstein Decl. ¶ 2. It is a significant enough sum that Class Members with the largest Lifetime Spending Amounts stand to recover more than 50% of their losses, and that no participating class member is likely to recover less than 10% of their losses. *See* Dkt. 122 ¶¶ 13-16. By way of example, Class Members whose losses are approximately $10,000, $30,000, and $100,000, respectively, are projected to recover $1,500-$2,500 ($10,000), $7,500-$13,500 ($30,000), and $50,000+ ($100,000). It is difficult to compare this recovery to the recovery provided for under other comparable settlements, given that this case has no true peers to be reasonably measured against. On the facts, the closest comparator is almost certainly *In re Apple In-App Purchase Litigation*, in which the class alleged that certain apps offered within Apple's App Store were "highly addictive, designed deliberately so, and tend to compel children playing them to purchase large quantities" of in-game currency, "amounting to as much as $100 *per purchase* or more." 2013 WL 1856713, at *1 (emphasis added). But there, the settlement established no common fund at all, the default recovery for participating class members was five dollars (yes, $5), and with adequate proof some claiming class members could claim refunds for a single 45-day period of purchases. *Id.* at *5. Similarly, in *Kim v. Tinder, Inc.*, the class alleged unfair pricing with regard to in-app purchases in a popular dating app. No. CV 18-3093-JFW(ASX), 2019 WL 2576367, at *2 (C.D. Cal. June 19, 2019). The

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settlement established no common fund at all, and participating class members received 50 free "Super Likes" (*i.e.*, coupons) in addition to an option to select a $25 cash payment (as an alternative to other coupon offers). *Id.* Without meaning to punch down, there is just no comparison between the settlements that have ever previously been reached in factually-similar cases to the settlement currently before the Court.

Perhaps the better measuring stick for this settlement are class action settlements in the consumer privacy space, given that those settlements often resolve large (statutory) damages claims and are premised on novel interpretations of law as applied to allegations of internet-based misconduct. Consumer privacy settlements, too, are notorious for failing to provide consumers with real-world relief for the damages they have suffered. For example, *In re Google Referrer Header Privacy Litigation*, 869 F.3d at 740, approved the settlement where all of the money was to go to *cy pres*, with no cash relief for the class at all. *Gaos*, 139 S. Ct. at 1045. And even in consumer privacy settlements that do provide monetary relief and have been adjudged to be fair and reasonable by district courts, the relief is often primarily in-kind. *See, e.g.*, *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. 299, 324 (N.D. Cal. 2018) (explaining that less than 10% of the "fund" was available for cash payments, with the rest being reserved to purchase credit monitoring services); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK, 2020 WL 4212811, at *22 (N.D. Cal. July 22, 2020) (cash relief made available only to class members with existing credit monitoring, out-of-pocket losses, and who paid Yahoo! for premium services).

And beyond the cash recovery, the Settlement provides for substantial non-monetary benefits. The Settlement requires Playtika to implement meaningful prospective relief, including by providing addiction-related resources within its social casino games and by creating and honoring a meaningful self-exclusion policy. *See* Agreement § 2.2. Given the fervor with which Defendants have long insisted that their games are not gambling, these in-game changes are a monumental achievement for the Settlement Class. They represent the first steps toward much-needed self-regulation within the social casino industry, and given Playtika's prominence in the

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social casino industry, other industry players have and will continue to follow suit.

These measures also highlight that resolving this case now is itself a benefit. Recall that Plaintiff alleges that many members of the Settlement Class are problem gamblers, whose addictions cause real-world problems like devastating credit card bills. Had the case not settled, Settlement Class Members would have continued to suffer these and other similar harms, perhaps with devastating and irreversible consequences in some cases. Bringing this litigation to a beneficial conclusion now will forestall these harms from occurring, a potentially incalculable benefit to some Settlement Class Members.

In sum, the amount offered in the Settlement, when compared with the risks and expense of further litigation, strongly supports final approval.

D. The Settlement treats Settlement Class Members equitably.

The revised Rule 23 further asks courts to assess whether the proposed settlement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The Rule's revised text makes clear that *equal* treatment is not required, but fair treatment is instead the goal. The Settlement here achieves that goal.

As the Court explained at preliminary approval, and as hashed out in detail in the Plan of Allocation, a Settlement Class Member's total recovery will depend on the extent of their losses (*i.e.*, those with greater losses will recover a higher proportion of their losses). *See* Dkt. 124 at 3. The Plan of Allocation therefore distributes Settlement funds according to those who have suffered the greatest harm.

Allocating settlement funds in this way achieves an equitable result. Settlement Class Members with tens or hundreds of thousands of dollars in losses have frequently suffered serious collateral harms, such as alienation from family or friends, or the accrual of huge debts, that were not suffered by those who may have purchased $10 or $20 worth of chips. And even though all Settlement Class Members have equally strong RMLGA claims, Settlement Class Members with huge losses who accessed Defendants' VIP tiers and interacted with a VIP host may have a stronger CPA claim to release here. As explained above, in Class Counsel's view, the Class

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stands largely on equal footing. But a clear-eyed assessment of the risks that lay ahead demonstrates that certain claims are stronger than others, something appropriately reflected in the Plan of Allocation. *See In re Equity Funding Corp. of Am. Securities Litig.*, 603 F.2d 1353, 1365 (9th Cir. 1979) (concluding that the district court's approval of certain offsets "in [a] Plan of Allocation was a component of its duty to insure the equitable distribution of the settlement proceeds"); 2 McLaughlin on Class Actions § 6.23 (17th ed. 2020) ("Allocation formulas, including certain discounts for certain types of claims within a class, may properly take into consideration the comparative strengths and values of different categories of the settled and released claims.").

Likewise, the provision of service awards for the Named Plaintiff and other class representatives are consistent with the equitable treatment of class members. Sean Wilson seeks an award of $5,000. This modest award reflects his service to the Class. Mr. Wilson put his name to a lawsuit that advanced a novel theory and that ultimately allowed injured individuals to recoup thousands of dollars in losses. While that is typical of class plaintiffs, the risk of reputational injury here is higher, given the subject matter of the lawsuit. Mr. Wilson also reviewed pleadings and participated in the settlement process. As explained in the separate motion for incentive awards, an award of this size is in line with other awards given to class representatives, and fairly reflects his service to the Settlement Class. Given that his efforts were key to ensuring that the Settlement Class recovered anything, the modest proposed incentive award for Wilson is fully consistent with equity.

David Taylor, Cathy Burdick, and Jesse Thibert each seek an award of $1,000. This modest award, too, is equitable, given their respective contributions to the Settlement Class. Each reviewed the terms of the settlement and ultimately stepped forward to share their approval of the settlement with the public—helping demonstrate the settlement's success. The proposed $1,000 incentive award for these services is also fully consistent with equity.

In sum, the Settlement treats all Class Members equitably relative to each other, supporting final approval.

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E. Class Counsel had completed sufficient discovery to reach an informed judgment about the benefits of settling, and the quality of the Settlement.

Next, the Parties "had enough information to make an informed decision about the strength of their cases and the wisdom of settlement." *Rinky Dink Inc. v. World Bus. Lenders, LLC*, No. C14-0268-JCC, 2016 WL 4052588, at *5(W.D. Wash. Feb. 3, 2016). The Parties only agreed to mediate after more than two years of contentious of litigation, and consequently negotiated with a crystal-clear understanding of the strengths and weaknesses of the Parties' claims and defenses. *See* Dkt. 121 ¶ 9. This included substantial jurisdictional discovery efforts, including Caesars's production of thousands of pages of documents. *Id.* ¶ 3.

Moreover, in the weeks before the mediation, Defendants provided Plaintiff with several sets of detailed transactional data for virtual chip purchases; the Parties exchanged substantive briefing on the core facts, legal issues, litigation risks, and potential settlement structures; and the Parties supplemented that briefing with extensive written and telephonic correspondence, mediated and shuttled by the Phillips ADR team, clarifying each other's positions in advance of the mediation. *See id.* ¶ 8. On June 10, 2020, the Parties were able to reach agreement on an appropriate settlement amount, and negotiations continued over the following days until a final term sheet was executed. *See id.* ¶¶ 9-10. By then, the Parties were fully informed on all pertinent issues and capable of assessing the benefits of the settlement now before the Court. *See id.* ¶ 9; *Ikuseghan*, 2016 WL 3976569, at *3 (approving settlement reached "between experienced attorneys who are familiar . . . with the legal and factual issues of this case in particular"). This factor, too, thus supports final approval.

F. The reaction of the Settlement Class has been favorable.

Finally, current claim data indicates that the Class has responded favorably to the Settlement, warranting final approval. Thus far, the Settlement Administrator has received more than 6,700 claims. Smitheman Decl. ¶ 18. Somewhat astoundingly, for a settlement of this size, and given the breadth of publication notice about the Settlement, nobody has opted-out and nobody has filed an objection. *Id.* ¶¶ 16-17. The absence of any opposition to the Settlement

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speaks volumes regarding the fairness and adequacy of the Settlement. "When few class members object, a court may appropriately infer that a class action settlement is fair, adequate, and reasonable." *Schneider v. Wilcox Farms, Inc.*, No. 07-CV-01160-JLR, 2009 WL 10726662, at *3 (W.D. Wash. Jan. 12, 2009). Courts in this district have found that class reaction supported final approval even with significantly higher exclusion and objections rates. *See Pelletz v. Weyerhouser Corp.*, 255 F.R.D. 537, 543-44 (W.D. Wash. 2009) (lauding "positive response" of Settlement Class of 110,000 to 140,000 members where 19 excluded themselves from the settlement, and 3 objected); *Clemans v. New Werner Co.*, No. 3:12-cv-5186, 2013 WL 12108739, at *5 (W.D. Wash. Nov. 22, 2013) (in settlement involving class of 300, one objection and four exclusions were filed, court found that "the overwhelming non-opposition to and participation in the Settlement [are] strong indications of Class Members' support for the Settlement as fair, adequate, and reasonable."); *see also Rodriguez*, 563 F.3d at 967 (concluding that the district court "had discretion to find a favorable reaction" when 54 of 376,301 class members objected to settlement); *Churchill Vill.*, 361 F.3d at 577 (affirming approval of class action settlement where 45 of 90,000 class members objected). Given the high participation rates here, and total absence of any opposition to the Settlement, the Court should find that the reaction of the Settlement Class favors final approval.[4]

CONCLUSION

The Court should finally certify the Settlement Class and grant final approval to the instant Settlement.

Respectfully submitted,

Dated: December 14, 2020

By: /s/Alexander G. Tievsky

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[4] Consistent with the Court's order at Dkt. 124, Class Counsel intend to file a supplemental brief with final claims numbers and projected recoveries after the claims deadline and prior to the final fairness hearing.

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Plaintiff's Attorneys and Class Counsel
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The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SEAN WILSON, individually and on behalf of all others similarly situated,

Plaintiff,

v.

PLAYTIKA LTD, an Israeli limited company, and CAESARS INTERACTIVE ENTERTAINMENT, LLC, a Delaware limited liability company,

Defendants.

No. 18-cv-5277-RSL

[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Noting Date: January 15, 2021

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THIS MATTER came before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement. The Court has considered all papers and materials submitted by the parties in support of the proposed Settlement Agreement, including Plaintiff's motions for preliminary and final approval of the Settlement Agreement and the declarations of Class Representatives, Class Counsel, and the Settlement Administrator. The Court held a Final Approval Hearing on February 7, 2021, at which the Court heard argument from counsel and allowed others to appear to voice their support for, or objection to, the Settlement. Based on all these materials and the statements at the Final Approval Hearing, the Court issues the following Order and Final Judgment:

1. Settlement Terms. All terms and definitions used herein have the same meanings as set forth in the Settlement Agreement.

2. Jurisdiction. The Court has jurisdiction over the Parties, the subject matter of the dispute, and all Settlement Class Members.

3. Class Certification. The Court confirms its certification for settlement purposes of the following Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

> All persons who played Slotomania, House of Fun, Caesars Casino/Caesars Slots, and Vegas Downtown Slots & Words on or before Preliminary Approval of the Settlement while located in the State of Washington.[1]

See Agreement, Dkt. 121-1 § 1.33. The Court also finds that this action meets all prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including numerosity, commonality, typicality, predominance, and superiority; that the Class Representatives are adequate representatives of the Settlement Class; and that Class Counsel are adequate to represent the Settlement Class.

4. Class Notice. The Settlement Administrator completed delivery of Class Notice according to the terms of the Agreement, as preliminarily approved by the Court. The Class

[1] Excluded from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members of their families, (2) the Defendants, Defendants' subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former officers, directors, and employees, (3) persons who properly execute and file a timely request for exclusion from the class, and (4) the legal representatives, successors or assigns of any such excluded persons.

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Notice given by the Settlement Administrator to the Class was the best practicable notice under the circumstances and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, their right to object to the Settlement or exclude themselves from the Settlement Class, and to appear at the Final Approval Hearing. The Class Notice and the means of disseminating the same, as prescribed by the Agreement, was appropriate and reasonable and constituted due, adequate and sufficient notice to all persons entitled to notice. The Class Notice and the means of disseminating the same satisfied all applicable requirements of the Federal Rules of Civil Procedure, constitutional due process, and any other applicable law.

5. Settlement Approval. The Court hereby grants final approval to the Settlement and finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of the Settlement Class. The Court finds that the Settlement is within the authority of the Parties and the result of extensive, arm's-length negotiations. The Parties are directed to proceed with the Settlement procedures specified under the terms of the Settlement Agreement, including payment and prospective relief.

6. Objections or Exclusions from Settlement Class. Class Members were given a fair and reasonable opportunity to object to the settlement. No members of the Class have timely and validly requested to be excluded from the Class and the Settlement. No objections have been brought to the Court's attention. This Order is thus binding on all Class Members and has res judicata and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Class Members with respect to the Released Claims.

7. No Admission. Neither this Final Judgment nor the fact or substance of the Settlement Agreement shall be considered a concession or admission by or against Defendants or any other related party, nor shall they be used against Defendants or any other released party as an admission, waiver, or indication with respect to any claim, defense, or assertion or denial of wrongdoing or legal liability.

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8. Dismissal with Prejudice. Pursuant to the terms of the Settlement, the action (including all individual claims and class claims) is hereby dismissed with prejudice on the merits, without costs or attorney's fees to any Party except as provided under the terms of the Settlement Agreement, this Final Judgment, and the Court's Order Granting Class Counsel's Motion for Award of Attorney's Fees and Expenses and Issuance of Incentive Awards.

9. Releases. This Order incorporates the Releases set forth in the Settlement Agreement and makes them effective as of the Effective Date. All Settlement Class Members who have not properly sought exclusion from the Settlement Class are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims, as set forth in the Settlement Agreement.

10. Attorneys' Fees and Expenses. Pursuant to the Court's Order Granting Class Counsel's Motion for Award of Attorneys' Fees and Expenses and Issuance of Incentive Awards, the Court awards $9,500,000 million in attorneys' fees and $56,835.50 in costs and expenses to Class Counsel.

11. Incentive Awards. Pursuant to the Court's Order Granting Class Counsel's Motion for Award of Attorneys' Fees and Expenses and Issuance of Incentive Awards, the Court awards $5,000 to Sean Wilson for his services as a Class Representative and awards $1,000 each to David Taylor, Cathy Burdick, and Jesse Thibert for their services as Class Representatives.

12. Continuing Jurisdiction. Without affecting the finality of the Final Judgment for purposes of appeal, the Court retains continuing and exclusive jurisdiction over the Parties and all matters relating to the Settlement Agreement, including the administration, interpretation, construction, effectuation, enforcement, and consummation of the Settlement and this Order.

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IT IS SO ORDERED.

DATED this _____ day of _____, 2021.

_____
ROBERT S. LASNIK
UNITED STATES DISTRICT JUDGE

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