IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE,** **Defendant.**	**Case No. 3:20-cv-00143-MPB-MJD**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF RENEWED UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

INTRODUCTION

The settlement provides for the creation of a $2,100,000 common fund (representing over 160% of the unpaid wages alleged in this case) to resolve the claims of 372 hourly employees at Tropicana Evansville. In fact, even net of the proposed award of attorney's fees and expenses, the proposed service award, and the cost of notice and settlement administration, the net fund represents more than make-whole relief for class members.

The net fund is allocated 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective, which tracks the approximate distribution of damages between the four types of claims. After deducting all fees and costs, the average Tip Credit Notice Class settlement payment will be more than $4,500, the average Timeclock Rounding Class settlement payment will be more than $115, the average Miscalculated Regular Rate Class settlement payment will be more than $50, and the average Gaming License Collective settlement payment will be more than $500. All told, the average settlement payment is more than $3,500—these are meaningful settlement payments. Further, there is no claims process. All class members who do not opt out (none have thus far) will receive a check in the mail for their share of the settlement. Likewise, the release in this case is tailored to claims that were or could have been asserted based on the facts alleged 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, Plaintiff submits, along with this memorandum, the Declaration of Alexander T. Ricke ("Ricke Decl."), and the Declaration of Shari Lynne Grayson of Analytics Consulting LLC ("Grayson Decl."). For the reasons further described below, this Court should

grant Plaintiff's motion and enter the Proposed Order[1] Granting Final Approval of Class Action Settlement.

SUMMARY OF THE LITIGATION

I. NATURE OF THE CLAIMS

This is a wage and hour class and collective action filed on behalf of hourly, non-exempt employees working at Tropicana, a casino located in Evansville, Indiana. Plaintiff Adams, a table games dealer at Tropicana, identified four casino-wide wage and hour policies that she alleged violated federal and Indiana state law. First, Tropicana failed to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage. Second, Tropicana implemented a timeclock rounding policy, procedure, and practice that was used in such a manner that resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations. Third, Tropicana deducted costs associated with gaming licenses from employees' pay which reduced its employees' compensation below the required minimum wage. Finally, Tropicana miscalculated its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation. *See* Doc. 20, First Amended Complaint, at ¶¶ 1-3.

Plaintiff's complaint asserted eight causes of action—all tied to the four casino-wide wage and hour policies at issue—under both the Fair Labor Standards Act ("FLSA") and Indiana Wage Payment Statute ("IWPS"). *Id.* at ¶¶ 108-166. Plaintiff asserted these claims on behalf of classes and collectives of similarly situated employees working at the casino. *Id.* at ¶¶ 71-89. For each of

[1] In advance of the final approval hearing scheduled for August 7, 2023, 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.

the FLSA collective claims (except for the gaming license claim), Plaintiff sought to certify a derivative IWPS claim as a Rule 23 class action, because each of the FLSA violations would result, if proved, in an "amount due" under federal law that was recoverable under the IWPS. *See* Indiana Code § 22-2-5-1(a). A brief summary of each claim follows:

A. Violation of the FLSA's Tip Credit Notice Requirements

The FLSA provides that every employer shall pay covered employees a minimum hourly wage of no less than $7.25 per hour. 29 U.S.C. § 206(a)(1)(C). Section 3(m) of the FLSA allows employers of tipped employees (*i.e.*, employees who customarily and regularly receive more than $30 a month in tips, *see* 29 U.S.C. § 203(t)), to pay a sub-minimum base hourly wage and claim a "tip credit" to make up the difference. 29 U.S.C. § 203(m)(2). But, the FLSA only allows the tip credit to be claimed if, among other things, "such employee has been informed by the employer of the provisions of this subsection." 29 U.S.C. § 203(m)(2)(A)(ii). The notice requirements are:

> Pursuant to section 3(m), an employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m) of the Act, *i.e.:* The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and that the tip credit shall not apply to any employee who has not been informed of these requirements in this section.

29 C.F.R. § 531.59(b); *see also* 29 C.F.R. § 516.28(a)(3) ("The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.").

It is not sufficient that employees simply and generally be aware of the FLSA's tip credit provisions. Rather, Section 3(m) affirmatively requires employers to inform employees of the

provisions contained in Section 3(m), as more fully described in 29 C.F.R. § 531.59(b). *See Acosta v. Mezcal, Inc.*, 2019 WL 2550660, at *7-8 (D. Md. June 20, 2019). The employer has the burden of proving compliance with the FLSA and MWHL's tip credit notice requirements. *See, e.g. Casco v. Ponzios RD, Inc.*, No. CV 16-2084 (RBK/JS), 2019 WL 1650084, at *5 (D.N.J. Apr. 17, 2019) ("the employer bears the burden of showing that it satisfied the notice requirement, and if the employer does not, then no tip credit can be taken and the employer is liable for the full minimum-wage."); *Driver v. AppleIllinois, LLC*, 917 F. Supp. 2d 793, 800 (N.D. Ill. 2013) ("The tip credit is an exception to an employer's minimum wage obligation, and the employer has the burden of establishing its entitlement to take it."). If an employer has failed to meet any one of the five requirements set out in Section 3(m) (and further clarified in 29 C.F.R. § 531.59(b)), its notice is deficient as a matter of law. *Wintjen v. Denny's, Inc*., 2021 WL 734230, at *4-6 (W.D. Pa. Feb. 25, 2021). Deficient notice renders an employer ineligible to claim the tip credit and liable for the difference between its tipped employees' sub-minimum base hourly wage and the minimum wage. *Id.*; *see also Garcia v. Palomino, Inc.*, 738 F. Supp. 2d 1171, 1177–78 (D. Kan. 2010).

In this case, Tropicana identified a variety of ways they claimed to provide notice of the FLSA's tip credit requirements to those employees paid a sub-minimum base wage, such as through employee handbooks, federal and state wage and hour posters, information displayed in the employee portal, offer letters, paychecks, and verbally during new-hire and department-level orientation. Plaintiff argued these means were deficient on a class-wide basis, and that, as a result, each class member is entitled to the difference between their direct cash wage and the minimum wage. In December 2020, Tropicana issued remedial written tip credit notices to each tipped employee that cut off the accrual of any further damages.

B. Unlawful Deduction of Gaming License Fees

To meet the FLSA's minimum wage, the FLSA permits an employer to be credited certain "board, lodging, or other facilities" as "wages." *See* 29 U.S.C. § 203(m)(1). This means an employer can deduct charges for "board, lodging, or other facilities" from an employee's wages without violating the FLSA's minimum wage requirements. However, these wages must be paid "free and clear" and cannot be "kickbacks" for "the employer's benefit." *See* 29 C.F.R. § 531.35. An FLSA violation occurs where an expense that primarily benefits the employer is deducted from an employee's wages and cuts into the minimum wage. *Id*.

The FLSA's interpreting regulations define "other facilities" as "something like board or lodging." *See* 29 C.F.R. § 531.32. The regulations specifically set out examples of "other facilities" that are primarily for the benefit of employees, which each have the character of being useful in the course of ordinary life outside of work. Conversely, the regulations set out examples of kickbacks that do not qualify as "other facilities" (meaning they are impermissible deductions to the extent they cut into the employee's minimum wage), which each have the character of arising out of the employee's work for the employer. The line between an expense that primarily benefits the employee versus the employer is whether the expense arises as an ordinary living expense or through the employee's work for the employer. *See, e.g., Arriaga v. Fla. Pac. Farms, L.L.C.*, 305 F.3d 1228, 1243 (11th Cir. 2002) ("By looking at items classified by the regulations as 'other facilities', it is apparent that the line is drawn based on whether the employment-related cost is a personal expense that would arise as a normal living expense.").

In this case, there is no dispute that Tropicana had at all relevant times deducted the cost of gaming licenses from its employees' wages. The issue is whether these licenses are primarily for the benefit of Tropicana (as Plaintiff asserts) or the employees (as Tropicana argues). On September 22, 2021, this Court denied Tropicana's motion to dismiss this claim holding "[t]he

licenses are thus absolutely necessary for Defendant to operate its business but useless to Plaintiff in her ordinary life outside of work. Because Defendant has not shown that the gaming licenses are not primarily for its benefit, Plaintiff has plausibly alleged that Defendant would not ordinarily be entitled to make the deductions at issue." Doc. 76 at *5; *see also Lockett v. Pinnacle Entertainment, Inc.*, 408 F. Supp. 3d 1043, 1049 (W.D. Mo. 2019) ("[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."); *Lilley v. IOC-Kansas City, Inc.*, 2019 WL 5847841, at *3 (W.D. Mo. Nov. 7, 2019) (same).

C. Miscalculated Regular Rate for Tipped Employees

Plaintiff alleges that Tropicana failed to properly calculate the regular rate of pay of sub-minimum wage earners when calculating overtime. Federal regulations provide that "a tipped employee's regular rate of pay includes the amount of tip credit taken by the employer … Any tips received by the employee in excess of the tip credit need not be included in the regular rate." 29 C.F.R. § 531.60. In calculating Plaintiff's and class and collective members' regular rate of pay, Tropicana first subtracted the tip credit from the prevailing federal or state minimum wage. This analysis was essentially undisputed by Tropicana, and the calculation of damages was mechanical.

D. Unlawful Timeclock Rounding

Plaintiff alleges that Tropicana violated the FLSA and IWPS due to an unlawful timeclock rounding policy. Tropicana's practice is to round its hourly employees' clock-in and clock-out times to the nearest quarter hour for purposes of payroll (*i.e.*, a seven-minute rounding rule). The DOL regulation on rounding permits employers to use time rounding practices under certain circumstances. *See* 29 C.F.R. § 785.48(b). This regulation permits employers to use a rounding policy for recording and compensating employee time as long as the employer's rounding policy

does not "consistently result[ ] in a failure to pay employees for time worked." *Sloan v. Renzenberger, Inc.*, 2011 WL 1457368, at *3 (D. Kan. Apr. 15, 2011).

Tropicana argues that its rounding policy is neutral. However, the time records show that its rounding practice has resulted, over a period of time, in the failure to compensate employees for all the time they have actually worked. To the extent Tropicana's rounding policy resulted in a significant net decrease in the compensable time of hourly employees over a period of time, Plaintiff argues that Tropicana is liable for that difference.

II. PROCEDURAL HISTORY OF THE LITIGATION

Plaintiff Adams commenced the litigation on June 18, 2020. Doc. 1. On July 14, 2020, Tropicana filed an Answer to Plaintiff's Complaint (Doc. 18), as well as a motion to dismiss Counts IV, V, and VI of Plaintiff's Complaint (Doc. 16). In response to the motion to dismiss, Plaintiff filed a First Amended Class and Collective Action. Doc. 20; Ricke Decl. at ¶ 4.

On August 18, 2020, Tropicana filed an Answer to Plaintiff's First Amended Complaint (Doc. 25), and a motion to dismiss Counts IV, V, VI, VII, and VIII of Plaintiff's First Amended Complaint (Doc. 26). Specifically, Tropicana claimed that Plaintiff's timeclock rounding claim under the IWPS required interpretation of a collective bargaining agreement and was therefore preempted by Section 301 of the Labor Management Relations Act ("LMRA"). Tropicana further claimed that Plaintiff's IWPS claims associated with the failure to provide a tip credit notice and the calculation of the regular rate of pay were not cognizable causes of action. Finally, Tropicana asserted that Plaintiff's gaming license fees were valid deductions and thus, those claims should be dismissed. The parties engaged in motion practice on all issues for a ruling by the Court. *See* Docs. 30, 34; Ricke Decl. at ¶ 5.

On September 3, 2020, the parties submitted a proposed Case Management Plan (Phase I) after completing their Rule 26(f) conference. Doc. 29. The parties agreed to bifurcate discovery between a first phase focused on whether conditional and/or class certification of Plaintiff's claims was appropriate, and a second phase focused on the merits, damages, and trial. On September 10, 2020, the Court presided over a Rule 16 pre-trial scheduling conference to discuss the parties' case management plan. Shortly thereafter, the Court entered an Order adopting the parties' bifurcated case management plan. Doc. 32; Ricke Decl. at ¶ 6.

Over the next six months, the parties engaged in significant discovery efforts on the issue of whether Plaintiff's claims were suitable for class and collective treatment. The parties exchanged comprehensive sets of interrogatories and requests for production of documents. On March 24, 2021, Tropicana took the deposition of Plaintiff Adams, and on March 25, 2021, Plaintiff took the deposition of two (2) corporate representatives of Tropicana under Rule 30(b)(6). On March 23, 24, and 25, 2021, Tropicana also noticed depositions of nine additional opt-in plaintiffs who had submitted a Consent to Join the litigation. During the first phase of discovery, Tropicana also produced a significant amount of wage and hour data and timekeeping information for all putative class members. Ricke Decl. at ¶ 7.

On April 26, 2021, Plaintiff filed a motion for conditional and class certification pursuant to 29 U.S.C. § 216(b) and Federal Rule of Civil Procedure 23(a) and (b)(3). Doc. 56. In her motion, Plaintiff sought conditional collective certification of four FLSA collectives and three Rule 23 classes under the IWPS. *Id.* Plaintiff's motion was accompanied by a lengthy memorandum of law, and sixteen (16) exhibits, including two declarations, and excerpts from three depositions. Doc. 59. On June 18, 2021, Tropicana submitted its opposition to Plaintiff's motion for conditional and class certification, which also included multiple deposition transcripts and witness

declarations. Doc. 70. On July 9, 2021, Plaintiff filed her reply in support of conditional and class certification. Doc. 74; Ricke Decl. at ¶ 8.

On September 22, 2021, the Court entered an Order denying in its entirety Tropicana's motion to dismiss Counts IV, V, VI, VII, and VIII of Plaintiff's First Amended Complaint. Doc. 76. Notably, the Court held that "[b]ecause the IWPS governs "not only the frequency but also the amount an employer must pay its employee . . . Plaintiff's derivative IWPS claims seeking to recover amounts due under federal law are cognizable causes of action." *See* Doc. 76, at *9. The Court also found that Plaintiff adequately alleged that her gaming license was primarily for Tropicana's benefit and that deductions to pay for the license pushed her pay below minimum wage. *Id*. at *12. Finally, the Court rejected Tropicana's argument that Plaintiff's timeclock rounding claim was preempted by Section 301 of the LMRA. *Id*. at *15. As a result, Tropicana filed an Answer to all claims pled on October 7, 2021. Doc. 77; Ricke Decl. at ¶ 9.

On February 25, 2022, the Court granted Plaintiff's motion for conditional and class certification—conditionally certifying four collectives under the FLSA and certifying three distinct classes under Rule 23. Doc. 80. The Court also ordered the parties to confer and submit a proposed notice plan within 45 days of the Order. *Id*. In response to the Court's Order, on March 11, 2022, Tropicana filed a petition for permission to appeal the Court's order granting class certification under Rule 23(f) with the Seventh Circuit Court of Appeals. Tropicana also moved the Court to stay all proceedings pending a ruling from the Seventh Circuit and any appellate proceedings that followed from a ruling on the petition. Doc. 83. Plaintiff responded in opposition to the Petition. On April 25, 2022, the Seventh Circuit denied Tropicana's petition for permission to appeal the certification order. Doc. 88; Ricke Decl. at ¶ 10.

On April 29, 2022, the Honorable Matthew P. Brookman held a status conference with the parties to discuss the status of the litigation and the proposed notice plan. Doc. 92. During the status conference, the parties expressed a willingness to engage in settlement discussions to resolve the litigation. The parties also agreed to participate in a settlement conference with the Court after the conclusion of the notice period. Following the status conference, the Court set a settlement conference for November 3, 2022, presided over by Judge Brookman. *Id*. As part of the settlement conference process, the parties were ordered to submit confidential settlement statements (including a settlement demand from Plaintiff and a response to that settlement demand by Tropicana) prior to the conference. *Id*. In anticipation of the Rule 16 settlement conference, Plaintiff also submitted a detailed request to Tropicana for specific wage and hour data for the purpose of preparing a damage model for all claims. Ricke Decl. at ¶ 11.

On May 2, 2022, the Court entered an Order approving the parties' proposed notice plan, consisting of a bifurcated notice between the Rule 23 classes and FLSA collectives. Doc. 94. The Court provided for a 60-day opt-in period for members of the FLSA collectives, followed by a 60-day opt-out period for the Rule 23 class members. *Id*. The Court also directed Tropicana to provide Class Counsel with information for each class and collective member within 14 days of the Order. *Id*. Following receipt of the information from Tropicana, Plaintiff's third-party administrator, Analytics Consulting, LLC, sent out the applicable notices to each member of the collectives and classes via U.S. mail and, to collective members, by email and text message where possible. Ricke Decl. at ¶ 12.

On May 20, 2022, after meeting and conferring, the parties submitted a joint proposed case management plan for the second phase of the litigation, focusing on the merits, damages, and trial. Doc. 98. Shortly thereafter, the Court entered an Order on Case Management Plan, setting all

remaining deadlines for Phase 2, and an anticipated trial date of November 2023. Doc. 99; Ricke Decl. at ¶ 13.

From May 2022 through October 2022, Analytics Consulting, LLC (on behalf of Plaintiff) administered the notice plan ordered by the Court. Plaintiff filed Consent to Join forms for all opt-in plaintiffs who joined the litigation. *See, e.g.*, Docs. 100-108. The notice period for all putative Rule 23 class members concluded on October 31, 2022. Ricke Decl. at ¶ 14.

On October 28, 2022, consistent with the Court's settlement conference guidelines, Plaintiff submitted a written settlement demand to Tropicana. Prior to submitting this settlement demand, Class Counsel analyzed the class-wide wage and hour data and timekeeping records produced by Tropicana and prepared a class-wide damage model for all claims asserted in the action. On October 31, 2022, Plaintiff also submitted a confidential mediation statement to Judge Brookman, which summarized the claims, analyzed the merits, and provided a detailed overview of the damages available for each claim. Ricke Decl. at ¶ 15.

On November 3, 2022, the parties participated in an in-person settlement conference presided over by Judge Brookman at the U.S. Courthouse in Evansville, Indiana. Present at the settlement conference were Class Counsel, Plaintiff Adams, Tropicana's counsel, and Tropicana's corporate representative. The settlement conference lasted several hours and involved an opening session followed by countless caucuses held between Judge Brookman and each party. At the conclusion of the mediation, the parties ultimately accepted a double-blind "mediator's proposal" proposed by Judge Brookman to resolve the litigation. As a result of the settlement, the Court entered an order denying all pending motions as moot, and vacated all previously ordered dates relating to discovery, filings, schedules, conferences, and trial. Doc. 115. The Court ordered the parties to file a motion for approval of the settlement within thirty (30) days. *Id*. The parties

worked diligently to memorialize the terms of resolution reached at the settlement conference into a formal settlement agreement which is now before the Court. Ricke Decl. at ¶ 16.

On January 19, 2023, Plaintiff filed a motion to direct class notice and grant preliminary approval of the class action settlement with supporting materials. Docs. 121, 122, 123. On February 24, 2023, the Court entered an Order granting preliminary approval of the class action settlement and directing class notice. Doc. 126. On April 4, 2023, Plaintiff filed an unopposed motion to amend the Order granting preliminary approval to maintain consistency between the parties' settlement agreement and the language of the preliminary approval Order with respect to the timeliness of objections. Doc. 131. The Court granted the requested relief and entered an amended Order granting preliminary approval of the class action settlement. Doc. 134. Ricke Decl. at ¶ 17.

Upon preliminary approval, Class Counsel worked with third-party administrator Analytics to effectuate distribution of the Court-approved settlement notices to class and collective members on April 6, 2023. Grayson Decl. at ¶ 12. On May 2, 2023, Analytics and Class Counsel identified an error in the calculation of the settlement payments, which resulted in a corrective notice being mailed on May 16, 2023 to all 372 class and collective members. *Id*. at ¶ 13. After mailing, 26 notices were returned as undeliverable and, of those 26, notices were remailed to nine class and collective members for whom more accurate address information was identified. This results in notice being delivered to approximately 96% of the class. *Id*. at ¶ 14. As of Friday, June 16, 2023 (the last business day prior to this filing) no class members had requested exclusion and only one objection had been received.[2]

[2] One person has submitted two related objections to the settlement. *See* Docs. 145-46. Class Counsel will address this and any other objections in a supplemental pleading at the conclusion of the objection and exclusion period, which runs through June 30, 2023. That said, Class Counsel

SUMMARY OF KEY SETTLEMENT TERMS

I. THE SETTLEMENT CLASSES AND COLLECTIVE

The Court preliminarily certified for settlement purposes three settlement classes and one settlement collective of employees at Tropicana, consistent with those previously certified in Judge Young's Order dated February 25, 2022 (Doc. 80):

> **Tip Credit Notice Class:** All current hourly, non-exempt employees at Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and for whom a tip credit was claimed at any time from June 18, 2018 to December 31, 2020.
>
> **Timeclock Rounding Class:** All current hourly, non-exempt Table Games Dealers at Tropicana Evansville, or former, hourly non-exempt Table Games Dealers who voluntarily separated, who clocked in and clocked out using ADP timekeeping software at any time from June 18, 2018 through June 30, 2021, and who received a Class Notice Form in the Litigation.
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> **Miscalculated Regular Rate Class:** All current hourly, non-exempt employees at Tropicana Evansville, or former, hourly non-exempt Table Games Dealers who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and worked more than 40 hours in any workweek from June 18, 2018 through April 20, 2022, and who received a Class Notice Form in the Litigation.
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> **Gaming License Collective:** All hourly, non-exempt employees at Tropicana Evansville who were paid a direct hourly wage equal to or less than $7.25 per hour

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briefly provides context for the objection here. Aside from seeking to be included in the settlement (which Class Counsel is investigating with counsel for Tropicana), this individual's objection (as Class Counsel understands it) is aimed in large part at the allocation of the net settlement fund as favoring less tenured workers, but the objection fails to appreciate that three of the four settlement allocations (Tip Credit Notice Class, Miscalculated Regular Rate Class, and Gaming License Collective) are necessarily limited to those individuals earning at or below the federal minimum wage. *See* Docs. 145-46. The objection criticizes the settlement for failing to provide more compensation to longer-tenured employees who earned a higher wage. *Id*. However, that ignores that this case is principally a minimum wage case (*i.e.*, minimum wage-related damages represented 97% of the value of the case) and the parties were bound by Judge Young's class certification order, which correctly certified these classes and collectives to include only those workers earning at or below the federal minimum wage. *See* Doc. 80. After reviewing the wage records in the case, the objector appears to have earned more than $7.25 per hour as a direct cash wage at all relevant times. It would be inequitable to allocate minimum wage damages to individuals earning more than minimum wage who do not possess those claims. *See* Fed. R. Civ. P. 23(e)(2)(D).

> and had a gaming license fee deducted from their wages at any time from June 18, 2017 through April 9, 2021, and who filed a Consent to Join form in the Litigation.

Doc. 122-1, Settlement Agreement at ¶¶ 19, 22, 41, and 42. There are 263 Tip Credit Notice Class members, 332 Timeclock Rounding Class members, 248 Miscalculated Regular Rate Class members, and 157 Gaming License Collective members. The three classes and one collective are comprised of a total of 372 unique employees.[3] Ricke Decl. at ¶¶ 23-24.

II. THE SETTLEMENT BENEFITS

The settlement provides for creation of a $2,100,000 common fund to pay class members, the cost of notice and settlement administration ($24,256), a $10,000 service award to Plaintiff Adams, a modest $5,000 reserve fund to correct any errors or omissions, and Class Counsel's reasonable attorney's fees (one-third of the fund) and litigation expenses of $24,141.94. Settlemet Agreement at ¶ 21; Ricke Decl. at ¶ 26. Based on Class Counsel's damage calculations, the $2,100,000 common fund represents over 160% of the actual unpaid wages alleged in this case. The net fund (less the costs described above) will be allocated 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective. This allocation approximates the proportional damages attributable

[3] The number of unique employees comprising each class and collective have been updated from those projected by Class Counsel at the preliminary approval stage and prior to the distribution of the corrective notice in light of the calculation error made by third-party administrator Analytics. As is clear, there is significant overlap in the membership of each class and collective. After preliminary approval, Analytics reconciled and deduplicated the class lists, the opt-in lists, and source payroll records. That analysis revealed two points impacting the number of class and collective members projected at the time of preliminary approval: (1) that certain individuals identified on the class and collective lists had a $0 settlement allocation based on the source payroll data (*i.e.*, these class members did not have qualifying hours, shifts, gaming license deductions, or overtime hours) but had been included by Tropicana on the original class or collective list in error; and (2) that Class Counsel inadvertently did not restrict the gaming license collective to only those individuals who returned a Consent to Join form when estimating the total number of workers covered by the Settlement Agreement, which resulted in an overstated number of estimated unique workers covered by the Settlement Agreement. Ricke Decl. at ¶ 25.

to each group and each claim. Settlement Agreement at ¶ 43. And, within each class and collective, those members who would have the highest damages at trial will receive the highest settlement allocation:

With respect to the Tip Credit Notice Class, each class member will receive their *pro rata* share of the Tip Credit Notice Class allocation based on the number of hours that the Tip Credit Notice Class member worked during the class period while earning a base hourly wage (not including tips) that was less than $7.25 per hour, compared to the total number of such hours. *Id*. at ¶ 43.

With respect to the Timeclock Rounding Class, each class member will receive their *pro rata* share of the Timeclock Rounding Class allocation based on the number of shifts that the Timeclock Rounding Class member worked during the class period, compared to the total number of such shifts. *Id*.

With respect to the Miscalculated Regular Rate Class, each class member will receive their *pro rata* share of the Miscalculated Regular Rate Class allocation based on the number of overtime hours that the Miscalculated Regular Rate Class member worked during the class period, compared to the total number of such overtime hours. *Id*.

With respect to the Gaming License Collective, each collective member will receive their *pro rata* share of the Gaming License Collective allocation based on the amount of money that the Gaming License Collective member had deducted from his or her pay for a gaming license fee during the collective period, compared to the total amount of money that all Gaming License Collective members had deducted from their pay during such time period. *Id*.; Ricke Decl. at ¶ 26.

Based on the calculations performed by the settlement administrator, after accounting for the cost of notice and settlement administration, the service award for Plaintiff Adams, the modest reserve fund for errors and omission, and Class Counsel's attorney's fees and expenses, the average Tip Credit Notice Class settlement payment will be $4,536, the average Timeclock Rounding Class settlement payment will be $119, the average Miscalculated Regular Rate Class settlement payment will be $53, and the average Gaming License Collective settlement payment will be $506. Given that most of the workers covered by the settlement are members of multiple of these groups, the average settlement check will be more than $3,500. Ricke Decl. ¶ 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, no class member has requested to be excluded) will receive a check in the mail for their settlement allocation. Class members who negotiate their checks will release all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint. *See* Settlement Agreement at ¶¶ 50-52. Class members who do not negotiate their checks will still be deemed to have released their state law claims *but not* the federal claims. *Id*. Thus, class members who choose not to negotiate their settlement checks will not have released their FLSA claims. That said, class members who previously opted into the case will release their FLSA claims regardless of whether they negotiate their settlement checks. The settlement checks will be valid and negotiable for a period of 120 days from issuance. *Id*. at ¶ 67. Any portion of the net settlement amount that is not claimed by class members or collective members because those individuals did not timely negotiate their settlement checks will be transferred to the State of Indiana's unclaimed property fund to be held by the State of Indiana for the benefit of the Class Member or Collective

Member. *Id*. at ¶ 69. The Settlement Agreement does not provide a second opportunity for opt-ins to request exclusion from the settlement. *Id*. at ¶ 44.

IV. SERVICE AWARDS, ATTORNEYS' FEES AND COSTS

The Settlement Agreement provides for a $10,000 service award for Plaintiff Adams to be paid from the settlement fund subject to the Court's approval. *Id*. at ¶ 47. In addition, and also subject to approval by the Court, the settlement fund will be used to pay Class Counsel's attorneys' fees and expenses. *Id*. at ¶ 49. Class Counsel seeks one-third (33.33%) of the common fund ($700,000) and reasonable expenses of $24,141.94. As explained in the contemporaneously filed Renewed Unopposed Motion for Attorney's Fees and Expenses to Class Counsel and a Service Award to Named Plaintiff, the requests are reasonable.

ARGUMENT

I. THE STANDARD OF REVIEW FOR FINAL APPROVAL OF A CLASS ACTION SETTLEMENT

Rule 23(e) of the Federal Rules of Civil Procedure governs settlements of class action lawsuits. It provides that "[t]he claims, issues, or defenses of a certified class . . . may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). This Court has already preliminarily approved the settlement and notice of the proposed settlement has been provided to class members; what remains to be accomplished is a final hearing and judicial approval. Fed. R. Civ. P. 23(e).

The Seventh Circuit favors settlements of class action litigation. *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). "Settlement of the complex disputes often involved in class actions minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." *In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig.*, No. 06 C 7023, 2016 WL 772785, at *6 (N.D. Ill. Feb. 29, 2016) (quoting *Armstrong*

v. Bd. of Sch. Dirs. Milwaukee, 616 F.2d 305, 313 (7th Cir. 1980)). As a result, "[c]ourts do not easily disturb settlement agreements[.]" *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Adcock*, 176 F.R.D. 539, 544 (N.D. Ill. 1997).

"This Court may approve a settlement binding class members only if it determines, after proper notice and a public hearing, that the proposed settlement is 'fair, reasonable, and adequate.'" *Charvat v. Valente*, 2019 WL 5576932, at *5 (N.D. Ill. Oct. 28, 2019) (citing Fed. R. Civ. P. 23(e)(1)-(2)). In making this determination, Rule 23(e)(2) requires the Court to consider whether (1) the class representatives and class counsel have adequately represented the class, (2) the proposal was negotiated at arm's length, (3) the proposal treats class members equitably relative to each other, and (4) the relief provided by the settlement is adequate. *Id.*; Fed. R. Civ. P. 23(e).

In addition, courts in the Seventh Circuit consider the following five factors: (1) the strength of the plaintiffs' case compared against the amount of the defendant's settlement offer; (2) the complexity, length, and expense of continued litigation; (3) the amount of opposition to the settlement; (4) the opinion of experienced counsel; and (5) the stage of the proceedings and the amount of discovery completed. *Id.* at *18-19 (citing *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006)). In making their decisions, courts should "consider the facts in the light most favorable to settlement." *Isby*, 75 F.3d at 1199 (internal quotation marks omitted). Class Counsel addresses these in the related framework of Rule 23(e)'s requirements. Applying these standards, the Court should grant final approval of this settlement.

II. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

Plaintiff addresses each factor under Rule 23(e)(2) in turn.

A. Plaintiff and Class Counsel Have Adequately Represented the Class.

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 six years to prosecuting wage and hour claims against casino operators having collectively prosecuted over 20 such cases. Class Counsel have obtained key rulings relevant to and that have informed the settlement value in this case.[4] Simply put, Class Counsel 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 ¶¶ 37-42. Second, through discovery and data produced for the settlement conference, Class Counsel have the information necessary to evaluate the merits of Plaintiff's claims, including: Tropicana's arguments and legal authority as to how they claimed to provide notice of the tip credit to class members, Tropicana's wage statements, and Tropicana's casino-wide wage and hour data to calculate class-wide damages (which entailed reviewing thousands of wage records for hundreds of class members). Ricke Decl. at ¶ 15. Third and most importantly, Class Counsel achieved an excellent recovery on behalf of the classes and collective—a common fund representing *more* than make-whole relief of the unpaid wages at issue in this case. *Id*. at ¶ 27. A better result could only have been achieved through complete victory at trial. This factor weighs in favor of final approval.

[4] *See, e.g., James v. Boyd Gaming Corp.*, 522 F.Supp.3d 892, 908-14 (D. Kan. Mar. 2, 2021) (granting conditional certification of tip credit notice claim (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 tip credit notice claims (among others) at Tropicana Evansville casino); *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 claims (among others) for workers at Tropicana Atlantic City); *MacMann v. Tropicana Ent., Inc.,* 2021 WL 1105500, at *2 (E.D. Mo. Mar. 23, 2021) (granting conditional certification of trip credit notice claim for dealers at Lumiere casino in St. Louis); *Larson v. Isle of Capri Casinos, Inc.*, 2018 WL 6495074, at *17 (W.D. Mo. Dec. 10, 2018) (granting conditional and class certification of casino-wide tip credit notice claim at Isle of Capri casino in Kansas City).

B. The Settlement Was Negotiated at Arm's Length

This factor focuses on whether the settlement negotiations "were conducted in a manner that would protect and further the class interests." *See* Fed. R. Civ. P. 23(e), Advisory Committee Notes. Here, this factor is satisfied because the settlement was the product of years of litigation and was achieved only after hours of arm's-length negotiations during a settlement conference presided over by the Court. Ricke Decl. at ¶ 16; *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) (noting that "participation of an independent mediator … virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties") (internal quotations omitted). This factor weighs in favor of final approval.

C. The Relief Provided to the Class is Adequate

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)(c)(2) 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 Tropicana's casino-wide wage and hour data, Class Counsel calculated class-wide tip credit damages of approximately $1,157,711.24, class-wide timeclock rounding damages of approximately $41,237.44, class-wide miscalculated regular rate damages of approximately $5,000, and collective-wide gaming license deduction damages of approximately $78,951.89, totaling approximately $1,282,900.57 of actual damages

for all claims during the relevant class period. The $2,100,000 common fund represents over 160% of the actual unpaid wages alleged in this case. Ricke Decl. at ¶ 31. This is a significant recovery in any wage case (and class actions generally). *Singleton 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.").[5] In fact, only total victory at trial where the Court awarded full liquidated damages and a separate payment of attorneys' fees would be a better result for class members than this settlement.

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 v. Wind Creek Bethlehem, LLC,* 2022 WL 702300 (E.D. Pa. Mar. 7, 2022) (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 casino wage and hour matters (and wage and hour class actions generally) and should be granted final approval.[6]

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[5] *See, e.g., Kauffman v. U-Haul Int'l, Inc.*, 2019 WL 1785453, at *3 (E.D. Pa. Apr. 24, 2019) (approving wage and hour settlement where "Plaintiff will receive payment of a meaningful portion (approximately 28%) of his alleged unpaid overtime wages..."); *Mehling v. N.Y. Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2006) (approving settlement that represented 20% of best possible recovery and noting courts that have approved settlements with even lower ratios); *Dillworth v. Case Farms Processing, Inc.*, 2010 WL 776933, at *8 (N.D. Ohio Mar. 8, 2010); (approving a class action settlement that recovered "approximately one-third of claimed unpaid wages" and finding "there can be no doubt that the results achieved for the class members are exceptional."); *Southwood v. Milestone Mgmt. PA-Feasterville, LLC*, 2020 WL 5554396, at *4 (E.D. Pa. Sept. 15, 2020) (approving FLSA and PMWA settlement for "54% of the amount Plaintiff claims to be owed" and finding this to be a "positive result.").

[6] *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%

1. The relief provided to the class is adequate considering the costs, risks, and delay of trial and appeal.

Considering the costs, risks, and delay of trial and appeal, the proposed settlement satisfies Rule 23(e)(2)(C)(i). As noted above, the settlement confers a significant monetary payment on class members as the $2,100,000 common fund represents over 160% of their alleged unpaid wages. This would be an excellent recovery in any wage and hour case, but it is particularly so when weighed against the procedural and substantive risks in the case. Ricke Decl. at ¶ 33.

Plaintiff is confident in the merits of the claims; however, Tropicana is not without defenses. For example, with respect to the tip credit notice claim, Tropicana would likely argue sufficient notice was provided to employees earning a sub-minimum base wage through various methods outlined in opposition to class and collective certification (DOL posters, pay statements, verbal discussions, *etc*.). And, Tropicana issued remedial tip credit notices at the end of 2020 that cut off the accrual of damages. With respect to the gaming license claim, there is a risk that the Court at summary judgment or a jury could determine that the gaming licenses primarily benefitted the employees as opposed to Tropicana, which is a so-called "silver bullet" defense. Though Judge Young and two district courts in the Eighth Circuit have found otherwise at the motion to dismiss stage (*see Lockett* and *Lilley*, *supra*), those decisions are not binding on the Seventh Circuit on any appeal. Finally, Tropicana would likely argue at summary judgment their timeclock rounding system was neutrally applied and valid under both federal and state law. Ricke Decl. at ¶ 34.

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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).

Moreover, to obtain benefits in excess of those provided by the proposed settlement, Plaintiff 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 Plaintiff lost any issue at any stage, the class would recover far less and, potentially, nothing. Considering this settlement provides class members with a common fund representing more than make-whole relief and does so immediately, this factor weighs in favor of final approval. Ricke Decl. at ¶ 35.

2. The relief provided to the class is adequate considering the effectiveness of distributing relief to the class.

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, they will be sent a check for their settlement amount. Settlement Agreement at ¶ 66. Moreover, every individual covered by the settlement received an individualized notice form that explains the settlement and specifies his or her anticipated settlement payment and the allocation plan. *Id*. This factor weighs in favor of final approval.

3. The relief provided to the class is adequate considering the terms of the proposed award of attorneys' fees.

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. In this case, Class Counsel have petitioned the Court for an award of attorneys' fees of one-third (33.33%) of the common fund ($700,000) plus reasonable expenses of $24,141.94. As explained in the Renewed Unopposed Motion for Award of Attorneys' Fees and Expenses to Class Counsel and Service Award to Named Plaintiff, the requested one-third fee is fully in line with that awarded by

courts in the Southern District of Indiana and around the Seventh Circuit.[7] Although one individual has submitted two related objections to the settlement (*see* Docs. 145-46), no class member has specifically objected to the requested award of attorneys' fees or expenses as of Friday, June 16, 2023 (the last business day prior to this submission). This factor weighs in favor of final approval.

4. The relief provided to the class is adequate considering there are no agreements required to be identified under Rule 23(e).

The only agreement between the parties is the Settlement Agreement. Ricke Decl. at ¶ 21. This factor weighs in favor of final approval.

D. The Settlement Treats Class Members Equitably to One Another

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 and collective regardless of the significant overlap in class membership. Specifically, as part of the settlement conference

[7] *See, e.g., Hale v. State Farm Mut. Auto. Ins. Co.,* 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018) ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.33% or higher to counsel in class action litigation."); *Gaskill v. Gordon*, 160 F.3d 361, 362-63 (7th Cir. 1998) (noting that typical contingency fees are between 33% and 40%) (citation omitted); *Harzewski v. Guidant Corp.*, No. 05-cv-01009, Doc. 194 (S.D. Ind. Sept. 10, 2010) (awarding 38% of the common fund); *Spano v. Boeing Co.*, 2016 WL 3791123, at *2 ("A one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law."); *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 908-09 (S.D. Ill. 2012) (awarding one-third of $105 million settlement plus roughly $8.5 million in costs and holding that "[w]here the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered."); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560 (N.D. Ill. 2011) (awarding one third of common fund); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *4 (S.D. Ill. Nov. 22, 2010) (same); *Martin v. Caterpillar Inc.,* 2010 WL 11614985, at *2 (C.D. Ill. Sept. 10, 2010) ("[C]ourts in the Seventh Circuit award attorney fees 'equal to approximately one-third or more of the recovery.' The Seventh Circuit itself has specifically noted that 'the typical contingent fee is between 33 and 40 percent.'").

process, Class Counsel calculated the class-wide damages for each claim. The Settlement Agreement allocates the $2,100,000 common fund to the Tip Credit Notice Class (90%), Timeclock Rounding Class (3%), Miscalculated Regular Rate Class (1%), and Gaming License Collective (6%) in proportion with the class and collective-wide damages attributable to each claim. Ricke Decl. at ¶ 27. And, within each class and collective, members will receive their *pro rata* portion of the allocation based on their individual damage figure compared to the total damage amount. This factor weights in favor of final approval.

E. Other Factors Also Support Final Approval.

"The most important settlement-approval factor is "the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *Synfuel Techs.*, 463 F.3d at 653 (quoting *In re Gen. Motors Corp. Engine Interchange Litig.*, 594 F.2d 1106, 1132 (7th Cir. 1979)). Here, as discussed above, continued litigation with Tropicana presented significant risks and costs—the most obvious risk is that Plaintiff will not be successful on her claims. Furthermore, "[e]ven if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'" *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) (quoting *Reynolds*, 288 F.3d at 284). As discussed above, the likely complexity, length, and expense of trial weighs heavily in favor of the fairness, reasonableness, and adequacy of the settlement. Continuing to litigate this case will require vast expense and a great deal of time, on top of the two and a half years already expended. Furthermore, in Class Counsel's opinion, this is an excellent result for class and collective members. Ricke Decl. at ¶¶ 37-42. The total consideration to be paid by Tropicana of $2,100,000 represents over 160% of the actual unpaid wages alleged in this case, and a better result could only have been achieved through victory at

trial. Finally, the stage of the proceedings and the amount of discovery completed warrant settlement approval. This case was settled only after the briefing of a motion to dismiss, completion of Phase 1 discovery (which included comprehensive sets of discovery, wage and hour data and payroll information for hundreds of employees, and multiple depositions), briefing on conditional and class certification, briefing on a petition for permission to appeal to the Seventh Circuit Court of Appeals, and a Rule 16 settlement conference presided over by Judge Brookman. These additional factors weigh heavily in favor of final approval.[8]

III. THE RELEASE OF FLSA CLAIMS SHOULD BE APPROVED 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), 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 or claim their settlement payments from the State of Indiana's unclaimed property funds.

"Normally, a settlement is approved where it is the result of 'contentious arm's length negotiations, which are undertaken in good faith by counsel … and serious questions of law and fact exist such that the value of an immediate recovery outweighs the mere possibility of further relief after protracted and expensive litigation.'" *Schneider v. Union Hosp., Inc.,* No. 2:15-cv-00204-JMS-DKL, Doc. No. 126 at *2 (S.D. Ind. May 9, 2017) (quoting *Burkholder v. City of Fort Wayne*, 750 F. Supp.2d 990, 995 (N.D. Ind. 2010). To determine the fairness of an FLSA

[8] The final factor to consider is "the amount of opposition to settlement among affected parties." *Synfuel Techs., Inc. v. DHL Express (USA), Inc*., 463 F.3d 646, 653 (7th Cir. 2006). As noted above, the time for class members to request exclusion and object to the settlement runs through June 30, 2023. As of Friday, June 16, 2023 (the last business day prior to this submission), no requests for exclusion had been received and one individual had submitted two related objections. After the conclusion of the notice period but prior to the August 7, 2023 final approval hearing, Class Counsel will address any and all objections to the settlement in a supplemental pleading.

settlement, "[t]he Court must consider 'whether the agreement reflects a reasonable compromise of disputed issues rather than a mere waiver of statutory rights brought about by an employer's overreaching.'" *Id*. at *2-3.

In this case, the parties vigorously disputed the FLSA claims at issue in this case, *i.e.*, whether Tropicana provided adequate notice of the FLSA's tip credit requirements, whether the timeclock rounding system was neutral, and whether the gaming license costs deducted from employees' wages primarily benefitted the casino or the workers. *See* Tropicana's Answer, Doc. 77. Further, the settlement was the result of contentious arm's length negotiations undertaken in good faith by counsel with the assistance of Judge Brookman during a settlement conference. Thus, the Court can easily conclude this litigation involved a *bona fide* dispute of FLSA liability. *See Yong Li v. Fam. Garden II, Inc.,* 2019 WL 1296258, at *2 (E.D. Pa. Mar. 20, 2019) (noting a *bona fide* dispute existed where defendants denied they violated the FLSA). Further, the recovery of over 160% of alleged unpaid wages for both the classes and collective represents a fair and reasonable compromise of disputed liability under the FLSA. The release of FLSA claims under these circumstances is a fair and reasonable resolution of a *bona fide* dispute.

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

Having determined that the settlement is fair, reasonable, and adequate under Rule 23(e)(2), the Court can turn to the second half of the final approval inquiry: whether the Court can grant final "[certification of] the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B)(ii). Class certification is appropriate where the plaintiff shows that the four Rule 23(a) factors—numerosity, typicality, commonality, and adequacy—and the two Rule 23(b) factors—predominance and superiority—are satisfied. In this case, the proposed settlement classes satisfy Rule 23 and should be granted final certification for purposes of judgment.

Judge Young previously certified each of the proposed settlement classes (the Tip Credit Notice Class, Timeclock Rounding Class, and Miscalculated Regular Rate Class) under Rule 23(a) and 23(b) in his Order dated February 25, 2022. *See* Doc. 80. This Court then modified those class definitions consistent with the parties' request to provide an "end date" for class membership where Judge Young had certified the classes "to the present." *Adams v. Aztar Indiana Gaming Co*., *LLC*, 2023 WL 2197075, at *2 (S.D. Ind. Feb. 24, 2023). As the Court noted, "[t]his change does not alter the reasoning underlying the Court's prior Order granting class certification." *Id*. The Court can readily conclude that class certification is appropriate for purposes of entering judgment under Rule 23(e).

V. THE COURT SHOULD CONFIRM ITS EARLIER APPOINTMENT OF CLASS COUNSEL TO ACT AS CLASS COUNSEL FOR SETTLEMENT PURPOSES

The Court should confirm its appointment of George A. Hanson and Alexander T. Ricke of Stueve Siegel Hanson LLP and Ryan L. McClelland of McClelland Law Firm, P.C., as Class Counsel for purposes of this class action settlement.

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 Order granting class certification. *See* Doc. 80, at *21 ("[Adams'] counsel also appears experienced,

qualified, and generally able to conduct the litigation – especially since her counsel is experienced in wage and hour class actions against casinos."); *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"). Further, Class Counsel have been appointed class counsel in wage and hour class actions many times before. Ricke Decl. at ¶¶ 37-42.

CONCLUSION

For the foregoing reasons, Plaintiff Adams respectfully requests the Court grant the motion for final approval of the class action settlement and instruct the parties to carry out the settlement's terms.

Dated: June 19, 2023

Respectfully submitted,

STUEVE SIEGEL HANSON LLP

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that, on June 19, 2023, a true and correct copy of the foregoing document was filed electronically through the Court's CM/ECF system, and therefore, will be transmitted to all counsel of record by operation of the Court's CM/ECF system.

/s/ Alexander T. Ricke
CLASS COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated, **Plaintiff,** **v.** **AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE,** **Defendant.**	**Case No. 3:20-cv-00143-MPB-MJD**

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 Plaintiff and serve as Class Counsel in the above-captioned matter. I submit this Declaration in support of Plaintiff's Renewed Unopposed Motion for Final Approval of Class Action Settlement and Plaintiff's Renewed Unopposed Motion for Attorneys' Fees and Expenses to Class Counsel and Service Award to Named Plaintiff. 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. Plaintiff Adams is a table games dealer at Tropicana in Evansville, Indiana. Doc. 20, First Amended Complaint, at ¶ 9. As a table games dealer, Plaintiff Adams earned tips from casino patrons and was paid a direct cash wage by Tropicana that was less than the federal minimum wage. *Id*. at ¶ 42. In other words, Tropicana sought to pay Plaintiff Adams and all putative class members pursuant to the tip credit minimum wage exception. *Id*. Although paying employees a tip credit wage has obvious benefits for the employer (*e.g.*, subsidizing employee

wages through tips from patrons), the tip credit also affords special protections to low wage workers. Tropicana ran afoul of those protections provided by federal law.

3. As explained in the accompanying Memorandum, Plaintiff asserted claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA"), and Indiana Wage Payment Statute, I.C. § 22-2-5-1 *et seq.* ("IWPS"). Plaintiff alleges Tropicana violated federal and state laws by (1) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (2) implementing a timeclock rounding policy, procedure, and practice that was used in such a manner that resulted, over a period of time, in the failure to compensate employees properly for all time worked, resulting in minimum wage and overtime violations; (3) deducting costs associated with gaming licenses from employees' pay which reduced its employees' compensation below the required minimum wage; and (4) miscalculating its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation.

4. Plaintiff Adams commenced the litigation on June 18, 2020. Doc. 1. On July 14, 2020, Tropicana filed an Answer to Plaintiff's Complaint (Doc. 18), as well as a motion to dismiss Counts IV, V, and VI of Plaintiff's Complaint (Doc. 16). In response to the motion to dismiss, Plaintiff filed a First Amended Class and Collective Action. Doc. 20.

5. On August 18, 2020, Tropicana filed an Answer to Plaintiff's First Amended Complaint (Doc. 25), and a motion to dismiss Counts IV, V, VI, VII, and VIII of Plaintiff's First Amended Complaint (Doc. 26). Specifically, Tropicana claimed that Plaintiff's timeclock rounding claim under the IWPS required interpretation of a collective bargaining agreement and was therefore preempted by Section 301 of the Labor Management Relations Act ("LMRA").

Tropicana further claimed that Plaintiff's IWPS claims associated with the failure to provide a tip credit notice and the calculation of the regular rate of pay were not cognizable causes of action. Finally, Tropicana asserted that Plaintiff's gaming license fees were valid deductions and thus, those claims should be dismissed. The parties engaged in motion practice on all issues for a ruling by the Court. *See* Docs. 30, 34.

6. On September 3, 2020, the parties submitted a proposed Case Management Plan (Phase I) after completing their Rule 26(f) conference. Doc. 29. The parties agreed to bifurcate discovery between a first phase focused on whether conditional and/or class certification of Plaintiff's claims was appropriate, and a second phase focused on the merits, damages, and trial. On September 10, 2020, the Court presided over a Rule 16 pre-trial scheduling conference to discuss the parties' case management plan. Shortly thereafter, the Court entered an Order adopting the parties' bifurcated case management plan. Doc. 32.

7. Over the next six months, the parties engaged in significant discovery efforts on the issue of whether Plaintiff's claims were suitable for class and collective treatment. The parties exchanged comprehensive sets of interrogatories and requests for production of documents. On March 24, 2021, Tropicana took the deposition of Plaintiff Adams, and on March 25, 2021, Plaintiff took the deposition of two (2) corporate representatives of Tropicana under Rule 30(b)(6). On March 23, 24, and 25, 2021, Tropicana also noticed depositions of nine additional (9) opt-in plaintiffs who had submitted a Consent to Join the litigation. During the first phase of discovery, Tropicana also produced a significant amount of wage and hour data and timekeeping information for all putative class members.

8. On April 26, 2021, Plaintiff filed a motion for conditional and class certification pursuant to 29 U.S.C. § 216(b) and Federal Rule of Civil Procedure 23(a) and (b)(3). Doc. 56. In

her motion, Plaintiff sought conditional collective certification of four FLSA collectives and three Rule 23 classes under the IWPS. *Id.* Plaintiff's motion was accompanied by a lengthy memorandum of law, and sixteen (16) exhibits, including two declarations, and excerpts from three depositions. Doc. 59. On June 18, 2021, Tropicana submitted its opposition to Plaintiff's motion for conditional and class certification, which also included multiple deposition transcripts and witness declarations. Doc. 70. On July 9, 2021, Plaintiff filed her reply in support of conditional and class certification. Doc. 74.

9. On September 22, 2021, the Court entered an Order denying in its entirety Tropicana's motion to dismiss Counts IV, V, VI, VII, and VIII of Plaintiff's First Amended Complaint. Doc. 76. Notably, the Court held that "[b]ecause the IWPS governs "not only the frequency but also the amount an employer must pay its employee . . . Plaintiff's derivative IWPS claims seeking to recover amounts due under federal law are cognizable causes of action." *See* Doc. 76, at *9. The Court also found that Plaintiff adequately alleged that her gaming license was primarily for Tropicana's benefit and that deductions to pay for the license pushed her pay below minimum wage. *Id*. at *12. Finally, the Court rejected Tropicana's argument that Plaintiff's timeclock rounding claim was preempted by Section 301 of the LMRA. *Id*. at *15. As a result, Tropicana filed an Answer to all claims pled on October 7, 2021. Doc. 77.

10. On February 25, 2022, the Court granted Plaintiff's motion for conditional and class certification—conditionally certifying four collectives under the FLSA and certifying three distinct classes under Rule 23. Doc. 80. The Court also ordered the parties to confer and submit a proposed notice plan within 45 days of the Order. *Id*. In response to the Court's Order, on March 11, 2022, Tropicana filed a petition for permission to appeal the Court's order granting class certification under Rule 23(f) with the Seventh Circuit Court of Appeals. Tropicana also moved

the Court to stay all proceedings pending a ruling from the Seventh Circuit and any appellate proceedings that followed from a ruling on the petition. Doc. 83. Plaintiff responded in opposition to the Petition. On April 25, 2022, the Seventh Circuit denied Tropicana's petition for permission to appeal the certification order. Doc. 88.

11. On April 29, 2022, the Honorable Matthew P. Brookman held a status conference with the parties to discuss the status of the litigation and the proposed notice plan. Doc. 92. During the status conference, the parties expressed a willingness to engage in settlement discussions to resolve the litigation. The parties also agreed to participate in a Rule 16 settlement conference with the Court after the conclusion of the notice period. Following the status conference, the Court set a settlement conference for November 3, 2022, presided over by Judge Brookman. *Id*. As part of the settlement conference process, the parties were ordered to submit confidential settlement statements (including a settlement demand from Plaintiff and a response to that settlement demand by Tropicana) prior to the conference. *Id*. In anticipation of the Rule 16 settlement conference, Plaintiff also submitted a detailed request to Tropicana for specific wage and hour data for the purpose of preparing a damage model for all claims.

12. On May 2, 2022, the Court entered an Order approving the parties' proposed notice plan, consisting of a bifurcated notice between the Rule 23 classes and FLSA collectives. Doc. 94. The Court provided for a 60-day opt-in period for members of the FLSA collectives, followed by a 60-day opt-out period for the Rule 23 class members. *Id*. The Court also directed Tropicana to provide Class Counsel with information for each class and collective member within 14 days of the Order. *Id*. Following receipt of the information from Tropicana, Plaintiff's third-party administrator, Analytics, sent out the applicable notices to each member of the collectives and classes by U.S. mail, and, for collective members, by email and text message where possible.

13. On May 20, 2022, after meeting and conferring, the parties submitted a joint proposed case management plan for the second phase of the litigation, focusing on the merits, damages, and trial. Doc. 98. Shortly thereafter, the Court entered an Order on Case Management Plan, setting all remaining deadlines for Phase 2, and an anticipated trial date of November 2023. Doc. 99.

14. From May 2022 through October 2022, Analytics (on behalf of Plaintiff) administered the notice plan ordered by the Court. Plaintiff filed Consent to Join forms for all opt-in plaintiffs who joined the litigation. *See, e.g.*, Docs. 100-108. The notice period for all putative Rule 23 class members concluded on October 31, 2022.

15. On October 28, 2022, consistent with the Court's settlement conference guidelines, Plaintiff submitted a written settlement demand to Tropicana. Prior to submitting this settlement demand, Class Counsel analyzed the class-wide wage and hour data and timekeeping records produced by Tropicana and prepared a class-wide damage model for all claims asserted in the action (which entailed thousands of wage records for hundreds of class members). On October 31, 2022, Plaintiff also submitted a confidential mediation statement to Judge Brookman, which summarized the claims, analyzed the merits, and provided a detailed overview of the damages available for each claim.

16. On November 3, 2022, the parties participated in an in-person Rule 16 settlement conference presided over by Judge Brookman at the U.S. Courthouse in Evansville, Indiana. Present at the settlement conference were Class Counsel, Plaintiff Adams, Tropicana's counsel, and Tropicana's corporate representative. The settlement conference lasted several hours and involved an opening session followed by numerous caucuses held between Judge Brookman and each party. At the conclusion of the mediation, the parties ultimately accepted a double-blind

"mediator's proposal" proposed by Judge Brookman to resolve the litigation. As a result of the settlement, the Court entered an order denying all pending motions as moot, and vacated all previously ordered dates relating to discovery, filings, schedules, conferences, and trial. Doc. 115. The Court ordered the parties to file a motion for approval of the settlement within thirty (30) days. *Id*. The parties worked diligently to memorialize the terms of resolution reached at the settlement conference into a formal settlement agreement which is now before the Court.

17. On January 19, 2023, Plaintiff filed a motion to direct class notice and grant preliminary approval of the class action settlement with supporting materials. Docs. 121, 122, 123. On February 24, 2023, the Court entered an Order granting preliminary approval of the class action settlement and directing class notice. Doc. 126. On April 4, 2023, Plaintiff filed an unopposed motion to amend the Order granting preliminary approval to maintain consistency between the parties' Settlement Agreement and the language of the preliminary approval Order with respect to the timeliness of objections. Doc. 131. The Court granted the requested relief and entered an amended Order granting preliminary approval of the class action settlement. Doc. 134.

18. Upon preliminary approval, Class Counsel worked with third-party administrator Analytics to effectuate distribution of the Court-approved settlement notices to class and collective members on April 6, 2023.

19. In early May 2023, Class Counsel had discussions with several class and collective members whose Rule 23 allocations appeared lower than they should have been. Upon review and in discussions with Analytics, Class Counsel determined that Analytics did not include opt-ins who had been terminated in the Rule 23 settlement allocations as provided for by the Settlement Agreement. As a result, Class Counsel conferred with counsel for Defendant and filed a motion for a corrective notice to all class and collective members. Doc. 143. Corrective notices were

mailed on May 16, 2023. The deadline to request exclusion and object to the settlement is June 30, 2023. As of Friday, June 16, 2023 (the last business day prior to this submission), no requests for exclusion had been submitted. Likewise, Class Counsel is only aware of one individual who has submitted two separate (but related) objections, each of which was filed with the Court. Docs. 145-46.

The Settlement is Fair, Reasonable, and Adequate

20. This declaration summarizes key aspects of the Settlement Agreement, which was previously filed in this case. *See* Settlement Agreement, Doc. 122-1.

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

22. The proposed settlement is structured as a class and collective action settlement, which contemplates issuance of a Court-approved notice to eligible class and collective 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. Given that collective members have already evidenced their desire to participate in and be bound by any judgment in this case, the Settlement Agreement does not provide a second opportunity to request exclusion to collective members who previously opted into the case and did not request exclusion from the Rule 23 claims.

23. The parties ask the Court to grant final certification for settlement purposes to three settlement classes and one settlement collective of employees at Tropicana, consistent with those previously certified in Judge Young's Order dated February 25, 2022 (Doc. 80):

a. **Tip Credit Notice Class:** All current hourly, non-exempt employees at Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and for whom a tip credit was claimed at any time from June 18, 2018 to December 31, 2020;

b. **Timeclock Rounding Class:** All current hourly, non-exempt Table Games Dealers at Tropicana Evansville, or former, hourly non-exempt Table Games Dealers who voluntarily separated, who clocked in and clocked out using ADP timekeeping software at any time from June 18, 2018 through June 30, 2021, and who received a Class Notice Form in the Litigation.

c. **Miscalculated Regular Rate Class:** All current hourly, non-exempt employees at Tropicana Evansville, or former, hourly non-exempt Table Games Dealers who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and worked more than 40 hours in any workweek from June 18, 2018 through April 20, 2022, and who received a Class Notice Form in the Litigation.

d. **Gaming License Collective:** All hourly, non-exempt employees at Tropicana Evansville who were paid a direct hourly wage equal to or less than $7.25 per hour and had a gaming license fee deducted from their wages at any time from June 18, 2017 through April 9, 2021, and who filed a Consent to Join form in the Litigation.

24. There are 263 Tip Credit Notice Class members, 332 Timeclock Rounding Class members, 248 Miscalculated Regular Rate Class members, and 157 Gaming License Collective members. The three classes and one collective are comprised of a total of 372 unique employees.

25. The number of unique employees comprising each class and collective have been updated from those projected by Class Counsel at the preliminary approval stage and from what Class Counsel submitted prior to the corrective notice. As is clear, there is significant overlap in the membership of each class and collective. After preliminary approval, the parties' third-party administrator Analytics reconciled and deduplicated the class lists, the opt-in lists, and source payroll records. That analysis revealed two points impacting the number of class and collective members projected at the time of preliminary approval: (1) that certain individuals identified on the class and collective lists had a $0 settlement allocation based on the source payroll data (*i.e.*, these class members did not have qualifying hours, shifts, gaming license deductions, or overtime hours) but had been included by Tropicana on the original class or collective list in error; and (2) that Class Counsel did not restrict the gaming license collective to only those individuals who

returned a Consent to Join form when estimating the total number of workers covered by the Settlement Agreement, which resulted in an overstated number of estimated unique workers covered by the Settlement Agreement.

26. The settlement provides for creation of a $2,100,000 common fund to pay class members, the cost of notice and settlement administration ($24,256), a $10,000 service award to Plaintiff Adams, a modest $5,000 reserve fund to correct any errors or omissions, and Class Counsel's reasonable attorney's fees (one-third of the fund) and litigation expenses of $24,141.94.

27. Based on Class Counsel's damage calculations, the $2,100,000 common fund represents over 160% of the actual unpaid wages alleged in this case. The net fund (less the costs described above) will be allocated 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective. This allocation approximates the proportional damages attributable to each group and each claim. Settlement Agreement at ¶ 43. And, within each class and collective, those members who would have the highest damages at trial will receive the highest settlement allocation:

a. With respect to the Tip Credit Notice Class, each class member will receive their *pro rata* share of the Tip Credit Notice Class allocation based on the number of hours that the Tip Credit Notice Class member worked from June 18, 2018 through December 31, 2020 while earning a base hourly wage (not including tips) that was less than $7.25 per hour, compared to the total number of such hours. *Id*. at ¶ 43(a).

b. With respect to the Timeclock Rounding Class, each class member will receive their *pro rata* share of the Timeclock Rounding Class allocation based on the number of shifts that the Timeclock Rounding Class member

worked from June 18, 2018 through June 30, 2021, compared to the total number of such shifts. *Id*. at ¶ 43(b).

c. With respect to the Miscalculated Regular Rate Class, each class member will receive their *pro rata* share of the Miscalculated Regular Rate Class allocation based on the number of overtime hours that the Miscalculated Regular Rate Class member worked from June 18, 2018 through April 20, 2022, compared to the total number of such overtime hours. *Id*. at ¶ 43(c).

d. With respect to the Gaming License Collective, each collective member will receive their *pro rata* share of the Gaming License Collective allocation based on the amount of money that the Gaming License Collective member had deducted from his or her pay for a gaming license fee from June 18, 2017 through April 9, 2021, compared to the total amount of money that all Gaming License Collective members had deducted from their pay during such time period. *Id*. at ¶ 43(d).

28. Based on the calculations performed by the settlement administrator, after accounting for the cost of notice and settlement administration, the service award for Plaintiff Adams, the modest reserve fund for errors and omission, and Class Counsel's attorney's fees and expenses, the average Tip Credit Notice Class settlement payment will be $4,536, the average Timeclock Rounding Class settlement payment will be $119, the average Miscalculated Regular Rate Class settlement payment will be $53, and the average Gaming License Collective settlement payment will be $506. Given that most of the workers covered by the settlement are members of multiple classes or collectives, the average settlement check will be more than $3,500.

29. The largest settlement check is more than $14,000. In fact, more than 10% of the class will receive settlement payments in excess of $10,000.

30. Importantly, each class member is able to decide for himself or herself whether to participate with complete information because their estimated settlement payment was listed on each class member's individualized Notice of Settlement. That said, collective members who previously opted into the settlement (and declined to opt out of the Rule 23 classes) are not being provided a further opportunity to request exclusion. As noted above, no class members have requested exclusion thus far.

31. The $2,100,000 fund represents more than make-whole relief for the alleged unpaid wages. Using Tropicana's casino-wide wage and hour data, Class Counsel calculated class-wide tip credit damages of approximately $1,157,711.24, class-wide timeclock rounding damages of approximately $41,237.44, class-wide miscalculated regular rate damages of approximately $5,000, and collective-wide gaming license deduction damages of approximately $78,951.89, totaling approximately $1,282,900.57 of actual unpaid wages for all claims. Thus, the settlement payment provides more than make-whole relief for unpaid wages. In fact, net of attorneys' fees, expenses, and administration costs, the settlement provides more than make-whole relief to class members.

32. To participate in the settlement, class members do not need to do anything—there is no claims process. *Id*. at ¶¶ 66-69. Class members who *do not* request to be excluded from the settlement (none have thus far) will receive a check in the mail for their settlement allocation. *Id*. Class members who negotiate their checks will release all federal wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint. *Id*. at ¶¶ 51-52. Class members who do not negotiate their checks will still be deemed to have released their state law

claims *but not* the federal claims. *Id*. Thus, class members who choose not to negotiate their settlement checks will not have released their FLSA claims with the exception that opt-ins who previously returned a Consent to Join will be bound by the release of FLSA claims regardless. The settlement checks will be valid and negotiable for a period of 120 days from issuance. Any portion of the net settlement amount that is not claimed by class members or collective members because those individuals did not timely negotiate their settlement checks will be sent to the State of Indiana's unclaimed property fund to be held by the State of Indiana for the benefit of the class member. *Id*. at ¶ 69.

33. 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 significant experience in class and collective wage and hour 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.

34. For example, with respect to the tip credit notice claim, Tropicana would argue sufficient notice was provided to employees earning a sub-minimum base wage through various methods (posters, verbal conversations, etc.). And Tropicana issued remedial tip credit notices at the end of 2020 that cut off the accrual of damages. With respect to the gaming license claim, there is a risk that the Court at summary judgment or a jury could determine that the gaming licenses primarily benefitted the employees as opposed to Tropicana, which is a so-called "silver bullet" defense. Though Judge Young and two district courts in the Eighth Circuit have found otherwise at the motion to dismiss stage (*see Lockett* and *Lilley*, *supra*), those decisions are not binding on the Seventh Circuit on any appeal. Finally, Tropicana would likely argue at summary

judgment their timeclock rounding system was neutrally applied and valid under both federal and state law.

35. Moreover, to obtain benefits in excess of those provided by the proposed settlement, Plaintiff 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 Plaintiff lost any issue at any stage, the class would likely recover less than what is being offered here in settlement—or nothing at all.

36. As explained in the accompanying Memorandum, Plaintiff Adams had a meritorious response to each argument, but these arguments must be considered in the risk analysis of settlement. In this case where class members are being made whole by settlement, avoiding all risk, and being paid immediately upon settlement approval, the benefits of the settlement far outweigh the *potential* of recovering more penalties and a separate award of attorney's fees through trial.

37. 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 have laid the groundwork for how this case was litigated and helped establish a range of reasonableness for how it was settled.

38. 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.

39. Despite Class Counsel's success resolving these cases, many 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.

40. For example, Class Counsel have obtained significant litigation victories in casino wage and hour cases that are directly relevant to the tip credit, timeclock rounding, wage deduction, and miscalculated regular rate issues in this case. These victories include winning conditional and class certification of tip credit notice claims, wage deduction claims, overtime miscalculation claims, timeclock rounding claims, and tip pooling claims.[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); *Lipari-Williams v. Penn Nat'l Gaming, Inc.*, 2021 WL 4398023, at *1 (W.D. Mo. Sept. 24, 2021) (granting class and conditional certification of gaming license deduction and tip pooling claims at two casinos under the FLSA and Missouri state law); *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*, -- F.Supp.3d--, 2022 WL 593911 (S.D. Ind. Feb. 25, 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 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

41. 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 class action verdict of $217,700,000 on behalf of Kansas corn farmers, which was ultimately resolved as part of a nationwide settlement. Likewise, 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 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.

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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).

42. 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.

Class Counsel's Fees and Expenses

43. Pursuant to the Settlement Agreement, Tropicana does not oppose Class Counsel's request for fees and expenses. Settlement Agreement at ¶ 49.

44. Prior to initiation of this litigation, Class Counsel and Plaintiff Adams executed a fee agreement providing that Class Counsel's fees would be 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. To the extent the Court requests Class Counsel's time records, Class Counsel will submit them *in camera*.

45. The table below summarizes the expenses that Stueve Siegel Hanson reasonably and necessarily incurred and will incur through the final approval hearing to prosecute this litigation. These expenses have increased modestly from what was filed with the Court in April 2023 to reflect further data hosting charges. 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	$117.10
Meals	$70.68
Court Fees (filing, *pro hac*, admission)	$1,162.00
Deposition Transcripts	$2,880.17
Process Servers	$119.00
Airfare	$2,826.14
Ground Transportation	$147.29
Lodging	$342.99
Online Research (PACER)	$20.00
Online Research (Westlaw)	$4,077.29
Hosting Data Storage	$1,849.16
Total	**$13,611.82**

46. Based on my discussions with my colleague, Ryan McClelland, I understand his firm has incurred $10,530.12 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	$55.20
Ground Transportation, Parking, Lodging, Meals	$3,161.07
Deposition Transcripts	$2,900.30
Airfare	$3,750.66
Postage/Fed Ex/UPS	$204.64
Online Research (PACER/SOS)	$458.25
Total	**$10,530.12**

47. Class Counsel thus seeks a total of $24,141.94, which is less than the $35,000 in expenses projected in the notice to class and collective members.

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

Executed June 19, 2023, in Kansas City, Missouri.

/s/ Alexander T. Ricke
Alexander T. Ricke

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated, Plaintiff, v. AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE, Defendant.	Case No. 3:20-cv-00143-RLY-MPB

DECLARATION OF SHARI LYNNE GRAYSON
REGARDING IMPLEMENTATION OF SETTLEMENT NOTICE PLAN

I, Shari Lynne Grayson, pursuant to 28 U.S.C. § 1746, state as follows:

1. My name is Shari Lynne Grayson. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a Project Manager for Analytics Consulting, LLC (hereinafter "Analytics"), located at 18675 Lake Drive East, Chanhassen, Minnesota, 55317. Analytics provides consulting services to the design and administration of class action and mass tort litigation settlements and notice programs. The settlements Analytics has managed over the past twenty-five years range in size from fewer than 100 class members to more than 40 million, including some of the largest and most complex notice and claims administration programs in history.

3. Analytics' clients include corporations, law firms (both plaintiff and defense), the Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission, which since 1998 has retained Analytics to administer and provide expert advice regarding notice and claims processing in their settlements/distribution of funds.

4. In my capacity as Project Manager, I count among my duties responsibility for matters relating to the settlement administration for the above-captioned litigation.

5. Analytics has been engaged in this matter to provide settlement administration services.

6. In its Order Granting Preliminary Approval of Class Action Settlement and Directing Class Notice on February 24, 2023 (Dkt. No. 125) (the "February 24, 2023 Order"), the Court approved the Class Notice Plan (the "Notice Plan" or "Plan") proposed in the Settlement Agreement in *Adams v Aztar, LLC, et al.*, Case No. 3:20-cv-00143-RLY-MPB. Subsequently, Class Counsel retained Analytics to implement Notice Plan, including the mailing of the Class Notice to all known Class Members and the establishment of a toll-free hotline, settlement website, and dedicated email address to assist Class Members with questions regarding the Settlement.

7. Analytics performed the services described herein, and I submit this Declaration to provide the Court with proof of the dissemination of the Court-approved Notices.

Mailing of the Notice

8. Analytics received from the Defendant four data files identifying 415 unique potential Class Members. This was supplemented with data files containing 636,417 unique payroll records associated with the potential Class Members.

9. Analytics analyzed the 636,417 payroll records, and calculated individual allocation amounts pursuant to the Settlement Agreement for each potential Class Member.

10. All addresses were updated using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS")[1]; certified via the Coding Accuracy Support System ("CASS")[2]; and verified through Delivery Point Validation ("DPV").[3]

11. 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 potential 415 Class Members.

12. 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 April 6, 2023 to the USPS for mailing. A copy of the Class Notice is attached as **Exhibit A.**

13. On May 2, 2023, Analytics identified an error in the calculation of settlement allocations for 372 class members. Consistent with this Court's May 15, 2023 Order, Analytics mailed a Corrective Notice to 372 Class Members on May 16, 2023. A copy of the Corrective Notice is attached as Exhibit B.

14. Analytics requested that the USPS return (or otherwise notify Analytics) of Class Notices with undeliverable mailing addresses. Of the notices mailed to Class Members, 26 were

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[1] 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.

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

[3] 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.

returned undeliverable. Analytics was able to locate updated addresses for and remail notices to 9 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.[4] The Class Notice was successfully delivered to 96% of the Settlement Class.

15. Analytics previously established, and continues to maintain, a toll-free telephone number for the Action, 1-844-412-2527. 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.

16. 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 can 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.

17. 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.

[4] 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.

18. Class Members could also email a dedicated email address - www.TropicanaEvansvilleCase.com with questions regarding the Settlement. This email was included in the Class Notice.

19. Analytics' staff spent necessary time to answer each Class Member's questions regarding the Settlement. I am aware of no questions from Class Members that were unanswered or otherwise remain outstanding. I am also aware of no questions from Class Members regarding the allocation amounts printed on their Notice.

Settlement Website

20. Analytics previously established, and continues to maintain, a Website dedicated to this Action (www.TropicanaEvansvilleCase.com) to assist Class Members. The Website address was set forth in the Notice.

21. 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.

22. 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

23. Class Members could opt out of the settlement by mailing a written statement requesting exclusion from the Settlement Class to Analytics by June 30, 2023. As of the date of this Declaration, Analytics has received no requests for exclusion.

24. Class Members could object to the proposed settlement by mailing a written statement objecting to the settlement to Analytics by June 30, 2023. As of the date of this Declaration, Analytics has received no objections. I am aware of one objection sent directly to Class Counsel.

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

Executed this 16th day of June 2023.

Shari Lynne Grayson

Exhibit A

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

ABC1234567890

Claim Number: 1111111

ABC1234567890

TO:
JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE,

Defendant.

Case No. 3:20-cv-00143-RLY-MPB

NOTICE OF PROPOSED SETTLEMENT OF CLASS AND COLLECTIVE ACTION

If you worked as an hourly employee of Tropicana Evansville between June 2017 and the present, you may be entitled to a payment from a class and collective 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 members of the Settlement Class (composed of both a Tip Credit Notice Class, Timeclock Rounding Class, and Miscalculated Regular Rate Class) and the Settlement Collective (composed of the Gaming License Collective), as defined below:
    - **Settlement Class**
        - **Tip Credit Notice Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and for whom a tip credit was claimed at any time from June 18, 2018 to December 31, 2020.
        - **Timeclock Rounding Class:** All current hourly, non-exempt Table Games Dealers of Tropicana Evansville, or former hourly, non-exempt Table Games Dealers who voluntarily separated, who clocked in and clocked out using ADP timekeeping software at any time from June 18, 2018 through June 30, 2021, and who received a Class Notice Form in the Litigation.
        - **Miscalculated Regular Rate Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and worked more than 40 hours in any workweek from June 18, 2018 through April 20, 2022, and who received a Class Notice Form in the Litigation.
    - **Settlement Collective**
        - **Gaming License Collective:** All hourly, non-exempt employees of Tropicana Evansville who were paid a direct hourly wage equal to or less than $7.25 per hour and had a gaming license fee deducted from their wages at any time from June 18, 2017 through April 9, 2021, and who filed a Consent to Join form in the Litigation.
- The Named Plaintiff Anita F. Adams filed a class and collective action lawsuit on behalf of herself and other similarly situated employees against Tropicana Evansville alleging the company violated the Fair Labor Standards Act ("FLSA") and the Indiana Wage Payment Statute ("IWPS") by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee's pay which reduced its employees' compensation below the required minimum wage; and (4) miscalculating its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation (hereinafter "Complaint").
- Tropicana Evansville denies the allegations in the Complaint. However, 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 groups of current and former employees of Tropicana Evansville, attorneys' fees, litigation costs, a service payment to the Named Plaintiff, and the costs of administering the settlement. Tropicana Evansville 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 will be entitled to the following settlement payments:
    - **Rule 23 Settlement Check:** **$_____**
    - **FLSA Settlement Check:** **$_____**

- If you are eligible to receive an FLSA Settlement Check, you will receive the FLSA Settlement Check in the mail if the Court grants final approval of the settlement. You will receive the Rule 23 Settlement Check in the mail if the Court grants final approval of the settlement, and you do not request exclusion from the settlement (described in Section 8 below).
- 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 request for exclusion, you will be bound by the release of the Released State Claims described in this Notice and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund.
IF YOU SUBMIT AN OPT OUT REQUEST	If you timely request exclusion from the settlement, you will not receive a Rule 23 Settlement Check, and you will not be bound by the release of any of the Released State Claims as described in this Notice. However, you will still receive in the mail a FLSA Settlement Check representing your share of the settlement fund, if applicable. 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?

Tropicana Evansville's records show that you are a member of the proposed Settlement Class and/or Settlement Collective as defined above. As a member of the proposed Settlement Class and/or Settlement Collective, you have a right to know about the settlement of a class and collective 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 Southern District of Indiana. The lawsuit is known as *Adams v. Aztar Indiana Gaming Company, LLC d/b/a Tropicana Evansville*, No. 3:20-cv-00143-RLY-MPB (the "Litigation").

2. What is this lawsuit about?

In her Complaint, Named Plaintiff alleges Tropicana Evansville violated the Fair Labor Standards Act ("FLSA") and the Indiana Wage Payment Statute ("IWPS") by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee's pay which reduced its employees' compensation below the required minimum wage; and (4) miscalculating its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation. Tropicana Evansville denies all the claims asserted in the Complaint and maintains that all of their respective employees were paid, and have always been paid, correctly and in accordance with the law.

3. Why is there a proposed settlement?

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

On February 24, 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 June 23, 2023 ("Final Approval Hearing"). See Section 12 below for details.

The Named Plaintiff and her attorneys believe that this settlement is a good outcome for all individuals covered by the proposed settlement. But if you believe the settlement on behalf of Class Members is not in your interests, you may opt out of the Class settlement. See Section 8 below for details.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. What does the settlement provide?

The Maximum Settlement Fund, $2,100,000 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, the Court-approved service payment to the Named Plaintiff, 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 Rule 23 Settlement Check and/or FLSA Settlement Check, half of which is subject to deductions for applicable taxes and withholding like any other paycheck, and for which you will receive a W-2, and half of which will not be taxed at this time and will be reported on IRS Form 1099.

The Net Settlement Amount available for distribution shall be allocated as follows: 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective. This allocation approximates the proportional damages attributable to each group and each claim. You can be a member of one or more Class and Collective. Each Class Member and Collective Member's estimated share of the Net Settlement Amount will be calculated by the Settlement Administrator as follows:

a. Each **Tip Credit Notice Class** member's estimated share of the Tip Credit Notice Class payment shall be calculated *pro rata* by comparing the number of hours that the Tip Credit Notice Class member worked from June 18, 2018 through December 31, 2020 while earning a base hourly wage (not including tips) that was less than $7.25 per hour against the total amount of such hours that all Tip Credit Notice Class members worked from June 18, 2018 through December 31, 2020.

b. Each **Timeclock Rounding Class** member's estimated share of the Timeclock Rounding Class payment shall be calculated *pro rata* by comparing the number of shifts that the Timeclock Rounding Class member worked from June 18, 2018 through June 30, 2021 against the total amount of such shifts that all Timeclock Rounding Class members worked from June 18, 2018 through June 30, 2021.

c. Each **Miscalculated Regular Rate Class** member's estimated share of the Miscalculated Regular Rate Class payment shall be calculated *pro rata* by comparing the number of overtime hours that the Miscalculated Regular Rate Class member worked from June 18, 2018 through April 20, 2022 against the total amount of overtime hours that all Miscalculated Regular Rate Class members worked from June 18, 2018 through April 20, 2022.

d. Each **Gaming License Collective** member's estimated share of the Gaming License Collective payment shall be calculated *pro rata* by comparing the amount of money that the Gaming License Collective member had deducted from his or her pay for a gaming license fee from June 18, 2017 through April 9, 2021 against the total amount of money that all Gaming License Collective members had deducted from their pay for gaming license fees from June 18, 2017 through April 9, 2021.

e. To the extent any Opt-In Plaintiff is not included within the class definitions due to being involuntarily separated, but would otherwise meet the class definition, the Opt-In Plaintiff will be eligible to participate in the class allocation based on their *pro rata* share.

Neither Class Counsel nor Defendant makes 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** request exclusion from the settlement (described in Section 8 below), you will be bound by the release of the Released State Claims described in Section 7 below, and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund. Class Members who choose to cash or deposit their FLSA Settlement Check will further be bound by the release of the Released Federal 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 wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, those brought under the IWPS ("Released State Claims"). 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.

In addition, Class Members who cash or deposit your forthcoming FLSA 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, those brought under the FLSA ("Released Federal Claims"). Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you will be deemed to have 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, the Released Federal Claims, regardless of whether you negotiate your forthcoming FLSA Settlement Check.

The Released Federal Claims and the Released State Claims include interest and liquidated or punitive damages based on said claims, and are intended to include all claims described or identified herein through February 24, 2023. However, the Released Federal Claims and the Released State Claims do not include any rights or claims (i) that may arise after February 24, 2023; or (ii) which may not be infringed, limited, waived, released or extinguished by private agreement and/or as a result of any law, statute, or ordinance.

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 Class Settlement and receive a Rule 23 Settlement Check, and do not wish to release any state wage and hour claims included within the Released State Claims, 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. The letter must be sent to the Settlement Administrator at:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

Requests for exclusion sent to the Settlement Administrator should be sent in an envelope addressed to the Settlement Administrator as set forth in Section 13 below. 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.

In order to be valid, your completed request for exclusion must be received by the Settlement Administrator and be postmarked no later than **May 22, 2023**. If you timely submit a request for exclusion, you will not be eligible to receive any of the benefits under the Class Settlement or receive a Rule 23 Settlement Check. You will, however, retain whatever legal rights you may have with respect to the Released State Claims described above in Section 7.

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 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 or received by the Settlement Administrator and postmarked by no later than **May 22, 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 service payment to the Named Plaintiff, 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 State 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. Class Counsel are:

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

Ryan L. McClelland
Michael J. Rahmberg
McCLELLAND LAW FIRM, P.C.
200 Westwoods Drive
Liberty, MO 64068

11. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed one third (33.3%) of the Maximum Settlement Fund plus reimbursement of $35,000 in expenses, which will be paid from the Maximum Settlement Fund. In addition, Class Counsel will ask the Court to authorize payment from the Maximum Settlement Fund of a service payment of not more than $10,000 to the Named Plaintiff to recognize the risks she took and her 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 Rule 23 Settlement Check and/or FLSA Settlement Check 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 June 23, 2023 at 10:00 a.m. Evansville time (CDT) in Courtroom #301 of the U.S. District Court for the Southern District of Indiana, located at the Winfield K. Denton Federal Building & U.S. Courthouse, 101 Northwest Martin Luther King Boulevard, Evansville, Indiana 47708. 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, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement by sending a request, in writing, to:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

14. How do I get more information?

If you have other questions about the settlement or require additional information, you can contact Class Counsel through the Settlement Administrator at 1-844-412-2527 or info@TropicanaEvansvilleCase.com. You can also find more information about the lawsuit at www.TropicanaEvansvilleCase.com.

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 6, 2023

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

Exhibit B

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

ABC1234567890

Claim Number: 1111111

TO: JOHN Q CLASSMEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE,

Defendant.

Case No. 3:20-cv-00143-RLY-MPB

CORRECTED NOTICE OF PROPOSED SETTLEMENT OF CLASS AND COLLECTIVE 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 Tip Credit Notice Class, Timeclock Rounding Class, Miscalculated Regular Rate Class, and Gaming License Collective 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 worked as an hourly employee of Tropicana Evansville between June 2017 and the present, you may be entitled to a payment from a class and collective 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 members of the Settlement Class (composed of both a Tip Credit Notice Class, Timeclock Rounding Class, and Miscalculated Regular Rate Class) and the Settlement Collective (composed of the Gaming License Collective), as defined below:
    - **Settlement Class**
        - **Tip Credit Notice Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and for whom a tip credit was claimed at any time from June 18, 2018 to December 31, 2020.
        - **Timeclock Rounding Class:** All current hourly, non-exempt Table Games Dealers of Tropicana Evansville, or former hourly, non-exempt Table Games Dealers who voluntarily separated, who clocked in and clocked out using ADP timekeeping software at any time from June 18, 2018 through June 30, 2021, and who received a Class Notice Form in the Litigation.
        - **Miscalculated Regular Rate Class:** All current hourly, non-exempt employees of Tropicana Evansville, or former hourly, non-exempt employees who voluntarily separated, who were paid a direct hourly wage that was less than $7.25 per hour and worked more than 40 hours in any workweek from June 18, 2018 through April 20, 2022, and who received a Class Notice Form in the Litigation.
    - **Settlement Collective**
        - **Gaming License Collective:** All hourly, non-exempt employees of Tropicana Evansville who were paid a direct hourly wage equal to or less than $7.25 per hour and had a gaming license fee deducted from their wages at any time from June 18, 2017 through April 9, 2021, and who filed a Consent to Join form in the Litigation.
- The Named Plaintiff Anita F. Adams filed a class and collective action lawsuit on behalf of herself and other similarly situated employees against Tropicana Evansville alleging the company violated the Fair Labor Standards Act ("FLSA") and the Indiana Wage Payment Statute ("IWPS") by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee's pay which reduced its employees' compensation below the required minimum wage; and (4) miscalculating its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation (hereinafter "Complaint").
- Tropicana Evansville denies the allegations in the Complaint. However, 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 groups of current and former employees of Tropicana Evansville, attorneys' fees, litigation costs, a service payment to the Named Plaintiff, and the costs of administering the settlement. Tropicana Evansville 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 will be entitled to the following settlement payments:
    - **Rule 23 Settlement Check:** **$_____**
    - **FLSA Settlement Check:** **$_____**

- If you are eligible to receive an FLSA Settlement Check, you will receive the FLSA Settlement Check in the mail if the Court grants final approval of the settlement. You will receive the Rule 23 Settlement Check in the mail if the Court grants final approval of the settlement, and you do not request exclusion from the settlement (described in Section 8 below).
- 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 request for exclusion, you will be bound by the release of the Released State Claims described in this Notice and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund.
IF YOU SUBMIT AN OPT OUT REQUEST	If you timely request exclusion from the settlement, you will not receive a Rule 23 Settlement Check, and you will not be bound by the release of any of the Released State Claims as described in this Notice. However, you will still receive in the mail a FLSA Settlement Check representing your share of the settlement fund, if applicable. 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?

Tropicana Evansville's records show that you are a member of the proposed Settlement Class and/or Settlement Collective as defined above. As a member of the proposed Settlement Class and/or Settlement Collective, you have a right to know about the settlement of a class and collective 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 Southern District of Indiana. The lawsuit is known as *Adams v. Aztar Indiana Gaming Company, LLC d/b/a Tropicana Evansville*, No. 3:20-cv-00143-RLY-MPB (the "Litigation").

2. What is this lawsuit about?

In her Complaint, Named Plaintiff alleges Tropicana Evansville violated the Fair Labor Standards Act ("FLSA") and the Indiana Wage Payment Statute ("IWPS") by: (1) implementing a time-clock rounding policy, procedure, and practice that was used in such a manner that it resulted, over a period of time, in the failure to compensate its employees properly for all time worked, resulting in minimum wage and overtime violations; (2) failing to properly inform its tipped employees of the required tip credit provisions prior to paying them a sub-minimum direct cash wage; (3) deducting costs associated with gaming licenses from employee's pay which reduced its employees' compensation below the required minimum wage; and (4) miscalculating its tipped employees' regular rate of pay for overtime purposes by paying 1.5 times the sub-minimum direct cash wage (as opposed to the full minimum wage), which resulted in unpaid overtime compensation. Tropicana Evansville denies all the claims asserted in the Complaint and maintains that all of their respective employees were paid, and have always been paid, correctly and in accordance with the law.

3. Why is there a proposed settlement?

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

On February 24, 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 August 7, 2023 ("Final Approval Hearing"). See Section 12 below for details.

The Named Plaintiff and her attorneys believe that this settlement is a good outcome for all individuals covered by the proposed settlement. But if you believe the settlement on behalf of Class Members is not in your interests, you may opt out of the Class settlement. See Section 8 below for details.

THE SETTLEMENT BENEFITS – WHAT YOU GET

4. What does the settlement provide?

The Maximum Settlement Fund, $2,100,000 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, the Court-approved service payment to the Named Plaintiff, 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 Rule 23 Settlement Check and/or FLSA Settlement Check, half of which is subject to deductions for applicable taxes and withholding like any other paycheck, and for which you will receive a W-2, and half of which will not be taxed at this time and will be reported on IRS Form 1099.

The Net Settlement Amount available for distribution shall be allocated as follows: 90% to the Tip Credit Notice Class, 3% to the Timeclock Rounding Class, 1% to the Miscalculated Regular Rate Class, and 6% to the Gaming License Collective. This allocation approximates the proportional damages attributable to each group and each claim. You can be a member of one or more Class and Collective. Each Class Member and Collective Member's estimated share of the Net Settlement Amount will be calculated by the Settlement Administrator as follows:

a. Each **Tip Credit Notice Class** member's estimated share of the Tip Credit Notice Class payment shall be calculated *pro rata* by comparing the number of hours that the Tip Credit Notice Class member worked from June 18, 2018 through December 31, 2020 while earning a base hourly wage (not including tips) that was less than $7.25 per hour against the total amount of such hours that all Tip Credit Notice Class members worked from June 18, 2018 through December 31, 2020.

b. Each **Timeclock Rounding Class** member's estimated share of the Timeclock Rounding Class payment shall be calculated *pro rata* by comparing the number of shifts that the Timeclock Rounding Class member worked from June 18, 2018 through June 30, 2021 against the total amount of such shifts that all Timeclock Rounding Class members worked from June 18, 2018 through June 30, 2021.

c. Each **Miscalculated Regular Rate Class** member's estimated share of the Miscalculated Regular Rate Class payment shall be calculated *pro rata* by comparing the number of overtime hours that the Miscalculated Regular Rate Class member worked from June 18, 2018 through April 20, 2022 against the total amount of overtime hours that all Miscalculated Regular Rate Class members worked from June 18, 2018 through April 20, 2022.

d. Each **Gaming License Collective** member's estimated share of the Gaming License Collective payment shall be calculated *pro rata* by comparing the amount of money that the Gaming License Collective member had deducted from his or her pay for a gaming license fee from June 18, 2017 through April 9, 2021 against the total amount of money that all Gaming License Collective members had deducted from their pay for gaming license fees from June 18, 2017 through April 9, 2021.

e. To the extent any Opt-In Plaintiff is not included within the class definitions due to being involuntarily separated, but would otherwise meet the class definition, the Opt-In Plaintiff will be eligible to participate in the class allocation based on their *pro rata* share.

Neither Class Counsel nor Defendant makes 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** request exclusion from the settlement (described in Section 8 below), you will be bound by the release of the Released State Claims described in Section 7 below, and you will receive in the mail a Rule 23 Settlement Check and/or an FLSA Settlement Check, representing your share of the settlement fund. Class Members who choose to cash or deposit their FLSA Settlement Check will further be bound by the release of the Released Federal 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 wage and hour claims that were or could have been asserted based on the facts alleged in the Complaint, including, but not limited to, those brought under the IWPS ("Released State Claims"). 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.

In addition, Class Members who cash or deposit your forthcoming FLSA 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, those brought under the FLSA ("Released Federal Claims"). Note: If you are an Opt-In Plaintiff (meaning you previously filed a Consent to Join the Litigation), you will be deemed to have 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, the Released Federal Claims, regardless of whether you negotiate your forthcoming FLSA Settlement Check.

The Released Federal Claims and the Released State Claims include interest and liquidated or punitive damages based on said claims, and are intended to include all claims described or identified herein through February 24, 2023. However, the Released Federal Claims and the Released State Claims do not include any rights or claims (i) that may arise after February 24, 2023; or (ii) which may not be infringed, limited, waived, released or extinguished by private agreement and/or as a result of any law, statute, or ordinance.

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 Class Settlement and receive a Rule 23 Settlement Check, and do not wish to release any state wage and hour claims included within the Released State Claims, 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. The letter must be sent to the Settlement Administrator at:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

Requests for exclusion sent to the Settlement Administrator should be sent in an envelope addressed to the Settlement Administrator as set forth in Section 13 below. 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.

In order to be valid, your completed request for exclusion must be received by the Settlement Administrator and be postmarked no later than **June 30, 2023**. If you timely submit a request for exclusion, you will not be eligible to receive any of the benefits under the Class Settlement or receive a Rule 23 Settlement Check. You will, however, retain whatever legal rights you may have with respect to the Released State Claims described above in Section 7.

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 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 or received by the Settlement Administrator and postmarked by no later than **June 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 service payment to the Named Plaintiff, 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 State 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. Class Counsel are:

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

Ryan L. McClelland
Michael J. Rahmberg
McCLELLAND LAW FIRM, P.C.
200 Westwoods Drive
Liberty, MO 64068

11. How will the lawyers be paid?

Class Counsel will ask the Court to award attorneys' fees in an amount not to exceed one third (33.3%) of the Maximum Settlement Fund plus reimbursement of $35,000 in expenses, which will be paid from the Maximum Settlement Fund. In addition, Class Counsel will ask the Court to authorize payment from the Maximum Settlement Fund of a service payment of not more than $10,000 to the Named Plaintiff to recognize the risks she took and her 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 Rule 23 Settlement Check and/or FLSA Settlement Check 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 August 7, 2023 at 10:00 a.m. Evansville time (CDT) in Courtroom #301 of the U.S. District Court for the Southern District of Indiana, located at the Winfield K. Denton Federal Building & U.S. Courthouse, 101 Northwest Martin Luther King Boulevard, Evansville, Indiana 47708 before the Honorable Matthew P. Brookman, Judge. 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, the provisions in the Settlement Agreement control. You may obtain a copy of the Settlement Agreement by sending a request, in writing, to:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006

14. How do I get more information?

If you have other questions about the settlement or require additional information, you can contact Class Counsel through the Settlement Administrator at 1-844-412-2527 or info@TropicanaEvansvilleCase.com. You can also find more information about the lawsuit at www.TropicanaEvansvilleCase.com.

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: May 16, 2023

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

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

ANITA F. ADAMS, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

AZTAR INDIANA GAMING COMPANY, LLC d/b/a TROPICANA EVANSVILLE

Defendant.

Case No. 3:20-cv-00143-RLY-MPB

FORM A - CHANGE OF NAME AND/OR ADDRESS INFORMATION FORM

Instructions: Please complete this Change of Name and/or Address Information Form **only** if you wish to change your name and/or mailing address information.

Former Name and Mailing Address:

Name (first, middle, and last): _____

Home Street Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone Number: (_____) _____

New Name and Mailing Address:

Name (first, middle, and last): _____

Home Street Address: _____

City: _____ State: _____ Zip Code: _____

Home Telephone Number: (_____) _____

I understand that all future correspondence in this Litigation, including, but not limited to, important notices or payments to which I am entitled (if any), will be sent to the new address listed above and not to the address previously used. I hereby request and consent to use the address listed above for these purposes.

Dated: _____ Signature: _____

Print Name: _____

PLEASE RETURN THIS FORM VIA UNITED STATES MAIL TO:

Tropicana Evansville FLSA Lawsuit
P.O. Box 2006
Chanhassen, MN 55317-2006