CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GERALDINE DONAHUE; SADIKI LAWRENCE; ONEEB REHMAN; MAT JESSOP; AARON HUFFMAN; RYAN ARTMAN; and SHANNON ALATALO, individually and on behalf of a class of other similarly situated individuals,

Plaintiffs,

v.

EVERI PAYMENTS, INC.; and EVERI HOLDINGS, INC.,

Defendants.

Case No. 18-CH-15419

Hon. David B. Atkins

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT & INCORPORATED MEMORANDUM OF LAW

Dated: November 20, 2020

KEITH J. KEOGH
keith@keoghlaw.com
KEOGH LAW, LTD.
55 W. Monroe St., Ste. 3390
Chicago, Illinois 60603
Tel: (312) 726-1092
Fax: (312) 726-1093

Local Counsel for Plaintiffs

FRANK S. HEDIN (*pro hac vice*)
fhedin@hedinhall.com
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: (305) 357-2107
Fax: (305) 200-8801

SCOTT D. OWENS (*pro hac vice*)
scott@scottdowens.com
SCOTT D. OWENS, P.A.
2750 N. 29th Ave., Suite 209A
Hollywood, Florida 33020
Tel: (954) 589-0588
Fax: (954) 337-0666

Class Counsel

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Representative Plaintiffs Geraldine Donahue, Sadiki Lawrence, Oneeb Rehman, Mat Jessop, Aaron Huffman, Ryan Artman, and Shannon Alatalo (collectively, "Plaintiffs" or "Class Representatives") respectfully move on an unopposed basis for final approval of the class-wide Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as **Exhibit A** to the Declaration of Frank S. Hedin ("Hedin Decl.") filed concurrently herewith.[1]

INTRODUCTION

The Settlement achieved by the Representative Plaintiffs and Class Counsel in this matter has been met with overwhelming approval by the Settlement Class. To date, over 150,000 Settlement Class Members have submitted claims, and only one Class Member has objected to the Settlement.

The positive reaction from the Settlement Class is not surprising given the substantial relief provided by the Settlement. The Settlement establishes a non-reversionary $14,000,000.00 Settlement Fund to compensate Settlement Class Members, cover administration expenses, and pay Service Awards to the Representative Plaintiffs and a Fee Award to Class Counsel for their efforts prosecuting the litigation and negotiating the Settlement. Although the claims-filing period has not yet closed, Class Counsel and the Settlement Administrator project that each claiming Settlement Class member will receive a check for between $40 and $60 – at a time when many of them surely could use this money the most. In addition to the $14 million common fund, the Settlement provides wide-ranging injunctive relief for the benefit of all Settlement Class Members.

Achieved after over two years of vigorous litigation, the Settlement is particularly strong given the significant risks of non-recovery that continued litigation would have posed. Defendants Everi Payments, Inc. ("Everi Payments") and Everi Holdings, Inc. ("Everi Holdings") (collectively, "Defendants" or "Everi") raised several potentially meritorious defenses to the claims asserted by the Representative Plaintiffs, including whether Defendants' receipt-printing

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Section 2 ("Definitions") of the Settlement Agreement.

practices violated FACTA at all, whether the Representative Plaintiffs had standing to proceed with their claims, whether any violations committed by Defendants were willful (such that the Settlement Class could recover statutory damages), whether the Settlement Class could be certified on a contested basis, whether any class-wide judgment for the Settlement Class would have violated due process and, even if not, whether it would have been collectable. Even if the Settlement Class overcame each of these risks, Defendants would surely have appealed and the appellate process would have presented further risk and prolonged delay. Accordingly, winning class certification, prevailing on the merits, defending any judgment on appeal, and then collecting on the judgment on behalf of the Settlement Class were all far from certain. Simply put: Settlement Class Members faced substantial risks of total non-recovery absent the Settlement.

The Settlement reached in this matter is fair, adequate, and reasonable, has received a resounding stamp of approval from the Settlement Class, and will result in significant cash payments to over 150,000 Settlement Class members. Accordingly, the Court should not hesitate to grant final approval of the Settlement and approve the requested Fee Award to Class Counsel (inclusive of out-of-pocket litigation expenses incurred) and Service Awards to the Representative Plaintiffs.

BACKGROUND

I. Nature of the Action[2]

Everi provides, among other things, debit and credit card cash advance transaction services to gamblers at thousands of gaming and wagering establishments across the country. Everi is the principal merchant in the cash-access transactions performed by patrons of the various establishments where Everi's services are provided, and Everi's clients (the owners and operators of these underlying establishments) act as Everi's agent in providing these cash-access services to their patrons.

[2] This section includes allegations from Plaintiffs' Second Amended Complaint.

In this litigation, the Representative Plaintiffs allege that Everi uniformly printed receipts for consumers who utilized these cash-access transactions in violation of FACTA because the receipts contained too many digits of the credit and debit card numbers used to perform the transactions. Plaintiffs further allege that these violations were committed knowingly, or at the very least recklessly, given Defendants' knowledge of FACTA and the obligations it imposes to protect consumers' sensitive financial information.

Throughout the litigation, Everi has steadfastly maintained that its receipt-printing practices complied with FACTA – and that, even if they did not, any violations of FACTA that occurred were not willful and thus do not entitle the Plaintiffs or class members to recover statutory damages under FACTA (which range from $100 to $1,000 per violation). Everi further contended that the Representative Plaintiffs lacked standing to proceed with their FACTA claims in any court, on the grounds that they did not suffer a concrete injury, and that any potential future risk of harm caused by Everi's receipt printing practices was too speculative. Finally, Everi vigorously opposed class certification in each of the Related Actions on various grounds, including that the proposed classes were not ascertainable and that individualized issues among class members predominated over issues affecting the class as a whole. Through its counsel, Everi further advised Class Counsel that it intended to exhaust all of its appellate rights with respect to any adverse judgment or decision on class certification entered against the company in any of the Related Actions.

Thus, absent the Settlement, the outcome of this litigation would turn on whether Everi's receipt-printing practices violated FACTA, whether any such violations were willful, whether the Representative Plaintiffs could prevail at class certification on a contested basis, and whether any certified class could successfully defend any class-wide judgment obtained on appeal.

II. Pre-Filing Investigation

Beginning in early 2018, Plaintiffs' counsel conducted a comprehensive pre-filing investigation concerning every aspect of the factual and legal issues underlying the claims alleged in this matter. (Hedin Decl. ¶¶ 12-13; Owens Decl. ¶¶ 14-15.) These extensive pre-filing efforts included, among other things:

A. Researching the nature of Defendants' businesses and any relationship between them, including any subsidiaries or related entities;

B. Interviewing multiple consumers that utilized the quasi-cash or cash disbursement systems operated by Defendants; inspecting and analyzing copies of receipts provided to consumers incident to their utilization of the quasi-cash or cash disbursement systems; and meticulously reviewing records provided by the Representative Plaintiffs;

C. Researching changes in Defendants' business practices over the statutory period and potential class period, including reviewing comments and public statements from Defendants' executives, employees and customers concerning the company's consumer privacy and security practices (and changes in those practices over the course of this period), as well as historical postings from consumers on social media and online complaint websites concerning their experiences at locations which utilize point-of-sale systems provided by Defendants;

D. Researching the nature of Everi's business, including its transaction and receipt-printing practices that it conducts at its casino clients' gaming establishments;

E. Visiting numerous of the gaming establishments operated by Everi's clients to investigate the facts underlying these claims;

F. Researching Everi's transaction-processing and receipt-generation systems, and the purposes for which the field labeled "BIN" would be included by Everi on its printed consumer transaction receipts;

G. Performing an in-depth analysis of each of the many versions of the Defendants' privacy policies, and other publicly accessible documents available on Defendants' websites at various points in time throughout the statutory period;

H. Researching the relevant law, assessing the likely outcome of certain appeals pertaining to FACTA pending in state and federal courts throughout the country, and examining the pertinent facts to assess the merits of a potential FACTA claim against Defendants and the defenses Defendants could be expected to assert thereto, including standing to bring a claim under FACTA and whether Defendants' conduct was willful;

I. Reviewing numerous pending cases and opinions/rulings, in order to gauge the likelihood of such proceedings impacting any FACTA claims brought against Defendants;

J. Surveying federal court dockets to locate and review any prior actions filed against Defendants or their affiliates under FACTA, and carefully analyzing court filings in any similar cases to identify Defendants' expected defenses to any FACTA action brought by Class Counsel and to gauge Defendants' likelihood of success on each anticipated defense;

K. Investigating Defendants' financial conditions and assessing their ability to satisfy a judgment for class-wide statutory damages at trial; and

L. Exchanging extensive correspondence with the Representative Plaintiffs, meticulously reviewing various documents, communications, and ESI provided to Class Counsel by the Representative Plaintiffs concerning their potential claims against

> Defendants for violation of FATCA as well as their fitness and adequacy to serve as a class representatives, assessing the individual and class-wide viability of the Representative Plaintiffs' claims, and ultimately executing engagement agreements with the Representative Plaintiffs concerning the prosecution of FACTA claims against Defendants on their behalf and on behalf of a putative class.

(Hedin Decl. ¶ 12-13; Owens Decl. ¶¶ 14-15.)

As a result of this thorough pre-filing investigation, Representative Plaintiffs' counsel was able to develop a viable theory of liability for FACTA claims against Defendants, analyze the legal issues relevant to the merits of Plaintiffs' claims under that theory, assess the likelihood of Defendants prevailing on potential defenses in various jurisdictions, and ultimately prepare complaints against Defendants aimed at maximizing the likelihood of certifying a class and recovering meaningful class-wide relief. (Hedin Decl. ¶¶ 12-13; Owens Decl. ¶ 15.)

III. Litigation in State and Federal District Courts

On December 12, 2018, Plaintiff Geraldine Donahue filed a Class Action Complaint in this Court to initiate the putative class action lawsuit entitled *Donahue v. MGM Resorts International, Inc.*, which was subsequently amended to substitute in Everi as the defendants and thereafter became entitled *Donahue v. Everi Holdings, Inc., et al.*, Case No. 18-CH-15419 (the "Action"). The Action alleges claims against Defendants for printing customer transaction receipts bearing more than the last five (the maximum allowed) digits of credit and debit card numbers in violation of FACTA, on behalf of a nationwide class of individuals who engaged in cash access transactions processed by Everi Payments at a casino where Everi Payments's cash-access services are provided.

In response to Plaintiff's complaint commencing the Action, the defendant removed the case to the Northern District of Illinois. However, shortly after removal, Plaintiff Donahue moved to remand the case pursuant to Seventh Circuit authority holding that a plaintiff lacks Article III standing under the U.S. Constitution to pursue claims for violation of FACTA's truncation provision in federal court. The federal district court granted Plaintiff's motion to remand and remanded the Action back to this Court.

At the time this Action commenced, however, the issues in this Action had already been

litigated for nearly a year in other actions pending in other jurisdictions. Beginning in 2018, Plaintiffs Sadiki Lawrence, Oneeb Rehman, Mat Jessop, Aaron Huffman aka Aaron Huff, Ryan Artman, and Shannon Alatalo also filed the following putative FACTA class actions against Everi and certain of Everi Payments' customers, in state and federal courts throughout the country (the "Related Actions"), including:

a. *Sadiki Lawrence v. South Florida Racing Association, LLC*, No. 2018-010657-CA-01, 11th Judicial Circuit, Miami-Dade County;

b. *Sadiki Lawrence v. South Florida Racing Association, LLC d/b/a "Hialeah Park"*, a Florida limited liability company, No. 1:18-cv-24264-RS, U.S.D.C. Southern District, Miami Division;

c. *Oneeb Rehman v. Dania Entertainment Center, LLC d/b/a "The Casino at Dania Beach"*, No. CACE-18-003760, 17th Judicial Circuit, Broward County;

d. *Oneeb Rehman v. Everi Holdings Inc., et al.*, No. 18-cv-62481-DPG, U.S.D.C. Southern District, Fort Lauderdale Division;

e. *Mat Jessop v. Penn National Gaming, Inc.*, No. 2018-CA-001520-16-K, 18th Judicial Circuit, Seminole County;

f. *Mat Jessop v. Penn National Gaming, Inc., et al.*, No. 6:18-CV-01741-RBD-DCI, U.S.D.C. Middle District, Orlando Division;

g. *Aaron Huff, et al. v. Marnell Gaming, LLC, et al.*, No. A-18-784363-B, 8th Judicial District Court, Clark County, Nevada;

h. *Aaron Huff, et al. v. Affinity Gaming, Inc., et al.*, No. A-18-784366-B, 8th Judicial District Court, Clark County, Nevada;

i. *Shannon Alatalo v. MGM Resorts International, et al.*, No. A-19-793066-C, 8th Judicial District Court, Clark County, Nevada;

j. *Ryan Artman, et al. v. Eldorado Resorts, Inc., et al.*, No. CV18-02155, 2nd Judicial District Court, Washoe County, Nevada;

k. *Ryan Artman, et al. v. Monarch Casino & Resort, Inc., et al.*, No. CV18-02134, 2nd

Judicial District Court, Washoe County, Nevada;

l. *Aaron Huff, et al. v. Truckee Gaming, LLC, et al.*, No. CV18-02257, 2nd Judicial District Court, Washoe County, Nevada; and

m. *Aaron Huff, et al. v. Sierra Development Company, Inc., et al.*, No. CV18-02258, 2nd Judicial District Court, Washoe County, Nevada.[3]

(Hedin Decl. ¶¶ 14-15; Owens Decl. ¶¶ 16-17.)

Thus, for over two years, both before and after the instant Action was commenced, Class Counsel devoted substantial time and other resources vigorously litigating these claims on behalf of the Representative Plaintiffs and the Settlement Class, against both Everi and its clients. Class Counsel performed, *inter alia*, the following work during the litigation:

A. Prepared, filed, and served comprehensive Class Action Complaints in multiple jurisdictions for violations of FACTA against Defendants on behalf of Representative Plaintiffs and a putative class of others similarly situated;

B. Performed extensive post-filing investigative research and analysis regarding numerous issues affecting the claims asserted against the Defendants, and the defenses thereto;

C. Protected the interests of the Settlement Class by ensuring any claims were preserved and did not lapse as a result of any applicable statutes of limitation;

D. Prepared and filed joint case management statements after conducting lengthy meetings and conferrals with Defendants' counsel concerning the topics set forth in Rule 26(f) (and similar state rules of procedure), and prepared and served Representative Plaintiffs' initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1) in multiple cases;

E. Prepared and served multiple rounds of third-party discovery;

F. Prepared and served Representative Plaintiffs' responses and objections and gathered documents from the Representative Plaintiffs to be produced in response to multiple sets of comprehensive discovery requests served on the Representative Plaintiffs by Defendants;

G. Participated in meet-and-confer conferences over the course of several months with Defendants' counsel concerning the sufficiency of Defendants' responses and objections to Representative Plaintiffs' discovery requests, which ultimately facilitated an exchange of detailed and comprehensive responsive documents, electronically-stored

[3] The Related Actions in which Everi was not named as a defendant involved subsets of the nationwide class in this Action.

information, and information bearing on the merits of the claims and on issues of class certification;

H. Negotiated mutually agreeable terms to govern the Parties' exchange of certain confidential materials in discovery in the litigation, and thereafter prepared and submitted detailed stipulated protective orders for entry by numerous courts;

I. Meticulously reviewed and analyzed the documents and other responsive information and materials produced by Everi in response to Representative Plaintiffs' discovery requests, and prepared follow-up discovery requests to Everi concerning every aspect of the merits of the Representative Plaintiffs' claims and class certification-related issues;

J. Researched, vetted and retained multiple experts, and extensively conferred with said experts regarding their opinions and findings on numerous issues bearing on the merits of asserted claims, defenses, and on issues of class certification;

K. Prepared for and attended dozens of hearings throughout the country including on case dispositive motions;

L. Prepared for and attended multiple mediations;

M. Researched, conferred with and retained local counsel to assist in many jurisdictions where cases brought by Representative Plaintiffs were pending;

N. Researched and briefed numerous motions including motions to dismiss, for summary judgment, for class certification, and for various other pretrial relief; and

O. Took and defended numerous depositions including depositions of the Plaintiffs, Everi, Everi's representatives, and many of Everi's clients and their respective representatives.

(Hedin Decl. ¶¶ 16, 24; Owens Decl. ¶¶ 14-18.)

Thus, as described above, this litigation presented several complex technical and procedural issues from the outset not typically present in FACTA actions, which required significant investigative efforts to adequately address. Moreover, during the litigation, Everi and its capable counsel presented novel and fact-intensive defenses to the merits that are likewise not typically seen in other FACTA suits, including arguments that they did not violate FACTA based on the manner in which the excess digits appeared on receipts and challenges to Plaintiffs' principal-agent theory of liability. (*Id*.)

IV. Settlement Negotiations

In early 2019, Plaintiff Lawrence and one of Everi's clients agreed to attend mediation on April 26, 2019 before Jeffrey L. Grubman, a well-respected JAMS mediator. (Hedin Decl. ¶ 17; Owens Decl. ¶ 19.) On March 31, 2019, as the Parties were preparing for mediation before Mr. Grubman, the U.S. Supreme Court issued its decision in *Frank v. Gaos*, 139 S. Ct. 1041 (2019), which vacated a federal district court's approval of a class action settlement and remanded for the district court to consider the plaintiffs' standing under Article III of the U.S. Constitution and thus its own subject-matter jurisdiction.[4] Class Counsel carefully studied the decision in *Frank* and assessed its potential impact on Plaintiffs' claims, many of which were pending in federal courts at the time. (Hedin Decl. ¶ 18; Owens Decl. ¶ 20.)

Mediation before Mr. Grubman was conducted over the course of a full day on April 26, 2019 in Boca Raton, Florida. (Hedin Decl. ¶ 19; Owens Decl. ¶ 21.) Although this initial mediation was unsuccessful, it nonetheless proved valuable as it enabled the respective sides to candidly exchange their respective settlement positions, to discuss potential settlement structures worth exploring in greater depth at future mediations, and for Class Counsel to request from Everi's counsel certain class-size information in order to facilitate continued settlement discussions going forward. (Hedin Decl. ¶ 19; Owens Decl. ¶ 21.) Thus, shortly thereafter, on July 17, 2019, a second full day of mediation was held, this time before Terrence M. White of Upchurch Watson White & Max in Maitland, Florida. (Hedin Decl. ¶ 20; Owens Decl. ¶ 22.)

Although this mediation was also unsuccessful, substantial progress was made in the negotiations, including in terms of potential settlement structures and the scope of potential settlement classes. (Hedin Decl. ¶ 20; Owens Decl. ¶ 22.) Notably, none of the Related Actions were stayed pending the completion of the first two mediations, and these cases were accordingly extensively litigated while the mediations occurred. This included taking and defending numerous

[4] *See Frank*, 139 S. Ct. at 1046 ("We have an obligation to assure ourselves of litigants' standing under Article III. That obligation extends to court approval of proposed class action settlements. A court is powerless to approve a proposed class settlement if it lacks jurisdiction over the dispute, and federal courts lack jurisdiction if no named plaintiff has standing.").

depositions, briefing substantive motions and motions for class certification, attending oral arguments in courts throughout the country, and performing numerous other litigation-related tasks. (Hedin Decl. ¶ 21; Owens Decl. ¶ 23.)

Following the second mediation, the Parties engaged in another several months of hard-fought litigation across the 14 separate Related Actions, including by briefing class certification and summary judgment motions in the Florida actions, and motions to dismiss and for summary judgment in the Nevada actions (which led to several motions for reconsideration and the initiation of multiple appeals). (Hedin Decl. ¶ 22; Owens Decl. ¶ 24.) The Parties agreed to attend a third mediation on January 16, 2020 before Randall Wulff of Wulff Quinby Sochynsky, in an attempt to reach a global class-wide resolution of this Action between Plaintiffs and Everi that also would include the subset purported classes in the Related Actions; to focus their full attention on reaching a proposed settlement, the Parties stipulated to stays of the entire Litigation pending the outcome of the mediation before Mr. Wulff. (Hedin Decl. ¶ 23; Owens Decl. ¶ 25.)

For several weeks leading up to the mediation, the Parties exchanged additional discovery pertaining to, *inter alia*, the contours and scope of potential settlement classes, electronically stored information pertaining to Defendants' records, and all potentially applicable policies of insurance providing coverage to Defendants for liability for the claims alleged. (Hedin Decl. ¶ 24; Owens Decl. ¶ 26.) Additionally, leading up to mediation, the Parties exchanged comprehensive mediation statements outlining their respective settlement positions. Armed with these materials and the documents and information produced by Everi during discovery and at the prior mediations, as well as through the comprehensive pre- and post-filing investigations performed by Class Counsel, counsel was able to intelligently assess the strengths and weaknesses of the Settlement Class's claims and Everi's defenses, the likelihood of prevailing at class certification, the size of the Settlement Class, the extent of potentially recoverable class-wide damages, and Everi's ability to satisfy a judgment. (Hedin Decl. ¶ 24; Owens Decl. ¶ 26.)

On January 16, 2020, Class Counsel Frank S. Hedin and David W. Hall of Hedin Hall LLP and Scott D. Owens of Scott D. Owens, P.A., together with co-counsel Keith Keogh of Keogh

Law, Ltd., attended a full-day mediation session in California with Everi and its counsel under the supervision of Mr. Wulff. (Hedin Decl. ¶ 25; Owens Decl. ¶ 27.) After approximately ten (10) hours of contentious, arms'-length negotiations, the Parties were unable to reach a settlement but had made substantial progress in the negotiations. (Hedin Decl. ¶ 25; Owens Decl. ¶ 27.) Through the continued assistance of Mr. Wulff in the days following the mediation, the Parties ultimately reached an agreement on the principal terms of a proposed class-wide settlement in response to a mediator's proposal; the parties executed a binding term sheet setting forth the material terms of a proposed Settlement Agreement, the execution of which was conditioned upon Plaintiffs taking confirmatory discovery regarding, *inter alia*, the size and composition of the Settlement Class and the selection of the Settlement Administrator. (Hedin Decl. ¶ 26; Owens Decl. ¶ 28.)

During the Parties' settlement discussions overseen by Mr. Wulff, the Parties and their respective counsel agreed that the most prudent course forward would be to seek approval of the Settlement in the instant state-court forum, which is unconstrained by the jurisdictional limitations of Article III of the U.S. Constitution and where the Parties could ensure that the court reviewing the Settlement would have jurisdiction to approve it and authorize the prompt disbursement of its substantial benefits to the members of the Settlement Class.[5] (Hedin Decl. ¶ 27; Owens Decl. ¶ 29.)

In the weeks leading up to each of the Parties' mediations, Class Counsel devoted nearly all of their time and resources preparing for the mediation, including by performing the following work:

> A. Thoroughly reviewed and analyzed Everi's production of key documents, electronically-stored information, and insurance coverage-related information that Class Counsel had required be produced by Everi in advance of the mediation, as well as continued to review the other sets of documents and information produced by Everi during discovery and obtained by Class Counsel in connection with their pre-filing and post-filing investigations;

[5] The Representative Plaintiffs' counsel learned during their investigation that Everi printed and provided the allegedly FACTA-violative receipts to thousands of Illinois residents, including residents of Cook County, and including specifically Plaintiff Donahue.

B. Performed extensive legal research and analysis concerning the merits of Everi's defenses, the likelihood of prevailing on a contested motion for class certification, the size and scope of the Settlement Class, the damages potentially recoverable at trial, and Everi's ability to satisfy a class-wide judgment for those damages at trial;

C. Closely followed various appeals pending before the U.S. Courts of Appeals and the U.S. Supreme Court pertaining to FACTA and other legal issues capable of affecting this litigation or the Representative Plaintiffs' ability to recover damages from Everi on behalf of the Settlement Class; and

D. Communicated at length with the Representative Plaintiffs concerning the multiple mediations, their positions on settlement, and strategies to employ at the mediation.

(Hedin Decl. ¶¶ 12, 18, 19, 24, 37, 40; Owens Decl. ¶¶ 14, 20, 21, 26, 42, 53.)

Everi's counsel indicated to Class Counsel that given the financial resources at the company's disposal, any final decisions favorable to the Representative Plaintiffs or the Settlement Class would have been appealed by Everi. (Hedin Decl. ¶ 41; Owens Decl. ¶ 44.)

V. Confirmatory Discovery, Selecting a Settlement Administrator, and Preparing the Settlement Materials

After the mediations and in advance of formally executing the Settlement Agreement, Class Counsel continued negotiations with Everi's counsel over the remaining Settlement terms and performed other important Settlement-related tasks. Specifically, between the mediations and the execution of the formal Settlement Agreement, Class Counsel performed the following work:

A. Engaged in comprehensive confirmatory discovery process by carefully reviewing the materials produced by Everi before and after the principal terms of the Settlement had been agreed upon in order to confirm the pertinent merits, class (including class size), and insurance-related details relevant to the proposed Settlement;

B. Carefully studied the March 31, 2019 decision of the U.S. Supreme Court in *Frank v. Gaos*, 139 S. Ct. 1041 (2019) (vacating a federal district court's approval of a class action settlement and remanding for the district court to consider the plaintiffs' standing under Article III and thus the court's own subject-matter jurisdiction), and assessed the potential impact of the *Frank* decision on this litigation, including through lengthy discussions concerning the impact of *Frank*, by performing extensive research and analysis into the nature of the claims alleged in this litigation;

C. Negotiated a tolling agreement in connection with the dismissal and refiling of Plaintiffs' claims that protects the Settlement Class Members' claims from any statute of limitations-based defenses that could potentially arise in the unlikely event the Settlement does not obtain final approval in the instant action pending in the Circuit Court of Cook County, Illinois;

D. Prepared, executed, and filed stipulations of dismissal without prejudice in multiple actions pending throughout the country, subject to the refiling of those claims in a consolidated complaint filed in a proper state court jurisdiction, pursuant to the term sheet executed between the Parties;

E. Coordinated a competitive bidding process to select a Settlement Administrator, in which four (4) nationally recognized and experienced class-action settlement administration companies submitted bids to administer the various components of the Settlement's Notice Plan, including the preparation of the Class Notices, Claim Form, and Settlement Website, overseeing the Settlement Fund, processing submitted claims, and disbursement of the Settlement Fund to the Settlement Class;

F. Reviewed and analyzed each of the estimates provided by potential Settlement Administrators, including by analyzing the costs and other differences between the detailed notice and disbursement plans devised by each potential administrator, and ultimately engaged Angeion Group to administer the Settlement;

G. Negotiated the remaining terms of the Settlement Agreement with Everi, including the non-monetary injunctive relief component of the Settlement, the duration of the claims-filing period, and the timing and procedure for Everi to deposit the Settlement Fund and for the Settlement Administrator to disburse the Settlement Fund to claiming Settlement Class Members upon final approval;

H. Separately negotiated each detail of the exhibits to the Settlement Agreement, and meticulously drafted and refined, through multiple rounds of revisions, the Class Notices, the Claim Form, the form and the specifications for the functionality of the interactive web-based claim submission page, the form of the Settlement Website, including the content of its various pages, and the script for the interactive IVR toll-free Settlement telephone number to ensure that each of these materials is easily understood by Settlement Class Members and fully comply with due process and all requirements of Section 2-801;

I. Drafted and executed the formal Settlement Agreement after several rounds of back-and-forth revisions by the Parties; and

J. Prepared and filed the operative consolidated Class Action Complaint on behalf of Representative Plaintiffs Geraldine Donahue, Sadiki Lawrence, Oneeb Rehman, Mat Jessop, Aaron Huffman, Ryan Artman, and Shannon Alatalo in the Circuit Court of Cook County, Illinois, County Department of the Chancery Division, and prepared and executed a waiver of service form for Everi to file in the Action pursuant to Illinois Code of Civil Procedure Section 2-213 in order to afford the Parties time to complete the confirmatory discovery process, select a Settlement Administrator, and prepare the formal Settlement Agreement.

(Hedin Decl. ¶¶ 14, 18, 24, 28, 31-41; Owens Decl. ¶¶ 14, 15-16, 20, 30, 33-35.)

VI. Obtaining Settlement Approval and Implementing the Notice and Settlement Administration Plan

Over the months following the Parties' execution of the Settlement Agreement and the Representative Plaintiffs' commencement of this action in Cook County, Illinois Circuit Court,

Class Counsel has continued to devote a substantial amount of time and other resources towards securing approval of the Settlement, overseeing the administration of the Settlement together with the Settlement Administrator, and fielding Settlement Class Member inquiries concerning the Settlement and the claims-filing procedure. (Hedin Decl. ¶¶ 45-48; Owens Decl. ¶¶ 43, 51.) The work performed by Class Counsel in connection with the Settlement-approval process has included:

A. Preparing and filing the Motion for Preliminary Approval of the Settlement, together with the supporting exhibits and declarations of Class Counsel and the proposed order granting the Motion, and attending the hearing on the Motion for Preliminary Approval;

B. Reviewing and making important modifications to the proposed content and functionality of the online claims-filing portal built by the Settlement Administrator on the Settlement Website to ensure that the portal is consistent with the specifications agreed upon by the Parties and approved by the Court;

C. Meticulously testing and reporting all bugs that were identified with the functionality of the claims-filing portal on the Settlement Website built by the Settlement Administrator, including by submitting numerous test claims with each possible combination of selections that Settlement Class Members could choose once the Settlement Website became live and the claims period commenced;

D. Coordinating the production of the relevant database files to the Settlement Administrator, and assisting the Settlement Administrator with converting these database files into a more workable form to allow the Settlement Administrator to extract the e-mail and postal addresses reflected in the database and to disseminate the Class Notice to such addresses upon the Court's entry of the Preliminary Approval Order;

E. Reviewing and approving the proposed e-mail notices including subject lines to be sent to Settlement Class Members, which was carefully drafted to reduce the number of e-mails sent to the "spam" folders in the inboxes of Settlement Class Members, and reviewing and approving the proposed content of reminder e-mail notices sent to Settlement Class Members, consistent with the language used in the original e-mail notice sent to all Settlement Class Members; and

F. Fielding hundreds of Settlement Class Member inquiries concerning the Settlement by e-mail, telephone and postal mail. In response to these inquiries, pursuant to the terms of the Settlement and this Court's order preliminarily approving the Settlement, Class Counsel has answered Settlement Class Members' questions concerning the Settlement, advised Settlement Class Members of their right to file a claim, objection, and a request for exclusion under the Settlement, directed Settlement Class Members to the Settlement Website for additional information concerning the Settlement, walked Settlement Class Members through the process of filing claims online, advised Settlement Class Members of the projected per-claimant recovery under the Settlement, and e-mailed and mailed copies of the Settlement Agreement and Class Notice to Settlement Class Members. Numerous Class Member inquires continue to be received, and Class Counsel continues to respond to each of them on a daily basis, and Class Counsel expects this will

continue until the conclusion of the Settlement approval process.

(Hedin Decl. ¶¶ 32-33, 36-38, 45-48; Owens Decl. ¶¶ 33-40, 43, 47, 51.)

Even after final approval of the Settlement, Class Counsel will continue to expend a substantial amount of time and resources overseeing and assisting with the Settlement distribution process. (Hedin Decl. ¶ 54; Owens Decl. ¶ 50.) This additional work will including responding to additional Settlement Class Member inquiries, reviewing any claims rejected as invalid or incomplete by the Settlement Administrator, advocating on behalf of any Settlement Class Members who submit claims that Class Counsel believe have been wrongfully rejected, confirming that all settlement checks are promptly paid to all claiming Settlement Class Members, and ensuring that Defendants implement all changes in business practices and oversight procedures as required by the injunctive relief component of the Settlement. (Hedin Decl. ¶ 54; Owens Decl. ¶ 51.)

TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as **Exhibit A** to the Hedin Decl. (filed concurrently herewith), the key terms of which are summarized as follows:

I. Settlement Class Definition

The Settlement Class that the Court provisionally certified at preliminary approval is defined as follows:

> All persons in the United States who, at any time between February 16, 2016 and December 31, 2019, (i) engaged in at least one quasi-cash or manual cash disbursement transaction using a debit card or credit card at a point-of-sale in the United States or tribal lands, (ii) where such transaction was processed using Everi's CashClub® technology; and (iii) for which Everi Payments' system was programmed to generate a printed customer receipt that displayed four digits in a field on said receipt labeled "BIN".[6]

Settlement Agreement § 2.1.51; Preliminary Approval Order at ¶ 2.[7]

[6] The phrase "in the United States or tribal lands" encompasses any casino or gaming establishment with a physical location that exists within the 50 states, its territories, and includes any tribal lands within the United States.

[7] The following are excluded from the Settlement Class: (1) any trial judge and other judicial officers who may preside over this case; (2) the Mediator; (3) Everi, as well as any parent,

II. Monetary Relief

The Settlement Agreement provides that Everi shall pay fourteen million dollars ($14,000,000.00) to establish the non-revisionary Settlement Fund.

A Settlement Class Member who submits a timely claim form (i.e., a "Claimant") will receive a *pro rata* share (i.e., a "Settlement Share") of the net Settlement Fund, after first deducting from the Settlement Fund the Court-approved Settlement Administration Costs to the Settlement Administrator, any Fee Award to Class Counsel (inclusive of any Expenses incurred by Class Counsel), and any Service Awards to the Class Representatives (collectively, the "Aggregate Fees, Costs, and Expenses"). The amount of each Settlement Share shall be the amount of the net Settlement Fund divided by the number of Settlement Class Members who submit Approved Claims. Regardless of the number of Approved Claims submitted, no portion of the Settlement Fund will revert back to Everi. Settlement Agreement § 4.2.7. Based on the number of claims submitted (which have not yet been fully verified for validity), Class Counsel and the Settlement Administrator project that each of the over 150,000 claiming Settlement Class members will receive a check for between at least $40 and $60. Hedin Decl. ¶ 51; Owens Decl. ¶ 55; Declaration of Jenny Shawver of Angeion ("Shawver Decl.").

III. Non-Monetary Relief

Finally, Everi has agreed to implement and maintain changes to its practices going forward, to ensure compliance with FACTA. Settlement Agreement § 13. Specifically, as a continuing and future benefit to all Settlement Class Members, Everi has agreed that it will not program its equipment to generate printed customer receipts displaying more than the last 5 digits of the credit or debit card number (in any location or locations on such receipt) used in connection with any transaction involving its CashClub® technology in the future, absent a change in the law or other

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subsidiary, affiliate or control person of Everi, and the officers, directors, agents, servants or employees of Everi; (4) any of the Released Parties; (5) any Settlement Class Member who has timely submitted a Request for Exclusion by the Opt-Out Deadline; (6) any person or entity who has previously given a valid release of the claims asserted in the Action; and (7) Plaintiffs' Counsel. Settlement Agreement § 2.1.51.

regulations that requires the printing of more than the last 5 digits of the credit or debit card number, including any requirement that the first four digits of the BIN be separately printed on a customer copy receipt. *Id.*

IV. Notice Plan and Claims Process

Everi has paid (and will continue to pay) all Settlement Administration Costs from the Settlement Fund. *See* Settlement Agreement § 2.1.53. As directed by the Preliminary Approval Order, on September 4, 2020, Angeion completed sending notice by U.S. postal mail to all Settlement Class Members (as well as by e-mail where available). Settlement Agreement §6.7.4; Preliminary Approval Order at ¶ 25. Angeion has also established the website, www.everifactasettlement.com, which has to-date received over 192,323 unique visits, Shawver Decl. ¶ 9, and the Settlement telephone hotline, which has to-date received over 27,937 calls, *id.* ¶ 10. The Settlement Website contains straightforward, easy-to-understand web-based forms for Settlement Class Members to submit claims electronically and to update their address in the event it changes prior to the mailing of their settlement check. The Settlement Website also provides information about the Settlement and makes case-related documents available for download, such as the Settlement Agreement, Long-Form Notice, Claim Form, Preliminary Approval Order, and the Fee and Cost Application and Application for Service Awards. Attesting to the quality of the notice program negotiated and developed by Class Counsel, to date 150,419 Settlement Class Members have submitted claims (and although the process of verifying these claims for validity not yet completed, we expect that most claims will be found to be valid).[8] (Hedin Decl. ¶ 38; Owens Decl. ¶ 41.) Critically, of the approximately 3 million to 3.9 million Settlement Class Members, only one Settlement Class Member objected to the Settlement and only 134 have requested exclusion from the Settlement. (Hedin Decl. ¶ 39; Owens Decl. ¶ 41.)

[8] Additionally, Class Counsel have to date personally fielded hundreds of calls and e-mails from Settlement Class Members concerning the Settlement. (Hedin Decl. at ¶ 46.)

V. Service Awards, Fee Award and Expenses

Everi has agreed to pay from the Settlement Fund any Court-approved Service Awards to the Representative Plaintiffs and Fee Award to Class Counsel. *Id.* §§ 5.1-5.5.[9] The amounts of any Service and Fee Awards or expenses were not part of the Parties' negotiation of the terms of the Settlement or Settlement Agreement. *Id.* § 5.6. The Class Notices informed all Settlement Class Members of the maximum Service Award amount ($2,000) and Fee Award (40% of the Settlement Fund) that the Representative Plaintiffs and Class Counsel intend to request.

VI. Release

Upon the Court's entry of the Final Approval Order and Judgment, the Representative Plaintiffs and all Settlement Class Members who have not excluded themselves will have fully, finally, and forever released, relinquished, and discharged Defendants and the other Released Parties from the Released Claims, i.e., all claims arising from or relating to the printing of customer-copy transaction receipts that displayed a four-digit number in a field labeled "BIN" in connection with Everi Payments' quasi-cash or manual cash disbursement services. *See* Settlement Agreement § 8.

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996); *see also* 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11.41 (4th ed. 2002) (collecting cases) (hereinafter *Newberg*).

Courts review proposed class action settlements using a well-established two-step process. *Newberg* § 11.25, at 38-39; *see e.g.*, *Kaufman v. Am. Express Travel Related Servs. Co.*, 264 F.R.D.

[9] The Fee Award sought by Class Counsel is inclusive of all out-of-pocket litigation expenses incurred in prosecuting this litigation..

438, 447 (N.D. Ill. 2009); *GMAC Mortgage Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre-notification hearing to determine whether the proposed settlement is "within the range of possible approval." *Newberg*, § 11.25, at 38–39; *Armstrong v. Board of Sch. Dirs. of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), *overruled on other grounds*; *see e.g.*, *Lebanon*, 2016 IL App (5th) 150111-U, ¶ 11. Once the Court finds the settlement proposal is "within the range of possible approval," the notice is disseminated to the class and the case proceeds to the second step in the review process: the final approval hearing. *Newberg*, § 11.25, at 38–39.

The Representative Plaintiffs are presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide each of the approximately 150,000 claiming Settlement Class Members with $40-$60 in cash as well as important injunctive relief. The robust Notice Program devised by the Parties and implemented by Angeion notified all Settlement Class Members of their rights under the Settlement, and only one Settlement Class member filed an objection. Because the Settlement reached by the Parties provides meaningful relief to the Settlement Class, and because the Notice Program effectively notified Settlement Class members of their rights under the Settlement Agreement, the Court should find the Settlement fair, reasonable, and adequate and grant it final approval.

I. The Notice Program Successfully Informed Settlement Class Members of the Settlement and About Their Rights Under the Settlement

"After determining that a lawsuit may proceed on a class-wide basis, through settlement or otherwise, a court may order such notice as it deems necessary to protect the interests of the class." 735 ILCS 5/2-803.

As directed by the Court in its Preliminary Approval Order, Notice was provided to the Settlement class on or before September 4, 2020. Postcard notices were sent directly to all Settlement Class Members' addresses, and e-mail notices were also sent to all e-mail addresses available for Settlement Class Members in Defendants' database and located by Angeion through

skip-tracing and mail-forwarding systems. Additionally, the Settlement Website provided all Settlement-related information, including key dates and deadlines (*i.e.*, claims deadline, objection deadline, final approval hearing date and time, etc.), all relevant court documents (*i.e.*, the Motion for Preliminary Approval, Preliminary Approval Order, and Motion for Service Awards and Fee Award), contact information for Class Counsel, detailed instructions for filing requests for exclusion and objections, and most importantly, easily accessible online forms for Settlement Class Members to submit claims and submit updated addresses.

The Notice Program implemented by the Parties has resulted in the submission of 150,419 claim forms to date. Accordingly, given the large number of claims submitted and the significant number of individuals who visited the Settlement Website (192,323 unique visitors) and called the Settlement telephone hotline (27,937 calls), there is little doubt that the Notice Plan implemented by the Parties was more than sufficient to notify the Settlement Class Members of the Settlement and their rights and options thereunder.

II. The Settlement Should Be Finally Approved

The Settlement is fair, reasonable, and adequate, and the Court should not hesitate in granting it final approval.

There is a strong judicial and public policy favoring the settlement of class action litigation, and such a settlement should be approved by the Court after inquiry into whether the settlement is "fair, reasonable, and adequate." *Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *Lebanon Chiropractic Clinic, P.C. v. Liberty Mut. Ins. Co.*, 2016 IL App (5th) 150111-U, ¶ 41; *Isby v. Bayh*, 75 F.3d 1191, 1198 (7th Cir. 1996). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City*

of Chicago v. Korshak, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also Armstrong*, 616 F.2d at 314. Of these considerations, the first is most important. *Steinberg* v. *Sys. Software Assocs., Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006).[10]

In this case, as the Court has already found in granting preliminary approval of the Settlement, all eight factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Meaningful Relief to the Settlement Class

The first and most important factor in evaluating the fairness of a proposed class action settlement is the strength of the plaintiff's case on the merits balanced against the relief obtained in the settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Steinberg v. Sys. Software Associates, Inc.*, 306 Ill. App. 3d 157, 170 (1st Dist. 1999); *Am. Int'l Grp., Inc. et al., v. ACE INA Holdings, et al.*, Nos. 07-cv-2898, 09-cv-2026, 2012 U.S. Dist. LEXIS 25265, at *17 (N.D. Ill. Feb. 28, 2012); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). In analyzing this factor, courts recognize that settlement is "an amalgam of delicate balancing, gross approximations and rough justice," *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982), such that "the question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court." *Lane,* 696 F.3d at 819.

In this case, the amount offered by the Settlement – a guaranteed $14 million in cash to the Settlement Class – is substantial. The Settlement also provides robust injunctive relief for the benefit of all Settlement Class Members, even those who do not submit claims.

The estimated per-claimant relief provided by the Settlement – between $40 and $60, *see* Hedin Decl. ¶ 51; Owens Decl. ¶ 55; Shawver Decl. ¶ 18 – compares more than favorably with

[10] Because Section 2-801 is modeled after Federal Rule of Civil Procedure 23, "federal decisions interpreting Rule 23 are persuasive authority with regard to questions of class certification in Illinois." *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 125 (2005).

per-claimant recoveries in prior settlements in similar FACTA cases. *See*, *e.g.*, *Katz v. ABP Corp.*, 2014 U.S. Dist. LEXIS 141223 at *2 (E.D.N.Y. Oct. 3, 2014) (FACTA class settlement that gives class members a choice to make a claim for $9.60 in cash or a coupon for $15 off of future purchases from defendant); *Hanlon v. Palace Entm't Holdings*, LLC, 2012 U.S. Dist. LEXIS 364 at *14-*15 (W.D. Pa. Jan. 3, 2012) (FACTA class settlement that provides the class with admission tickets to defendant's amusement park); *Todd v. Retail Concepts Inc.*, 2008 U.S. Dist. LEXIS 117126 at *16 (M.D. Tenn. Aug. 22, 2008) (FACTA class settlement providing a $15 credit on class members' next purchase of $125 or more); *Palamara v. Kings Family Restaurants*, 2008 U.S. Dist. LEXIS 33087 at *9-*10 (W.D. Pa. Apr. 22, 2008) (FACTA class settlement providing vouchers worth an average of $4.38 each to get appetizers, soup, desserts and other small menu items when visiting the defendant's restaurants in future); *Long v. Joseph-Beth Grp., Inc.,* No. 07-cv-00443 (W.D. Pa. May 5, 2007) (FACTA class settlement providing $5 voucher to each claiming class member).

The reasonableness of the relief provided by the Settlement is further underscored by the many substantial risks of total non-recovery that continued litigation would have posed absent the Settlement. *See Smith v. CRST Van Expedited, Inc.*, No. 10-cv-1116, 2013 WL 163293, at *3 (S.D. Cal. Jan. 14, 2013) (where "the settlement avoids the risks of extreme results on either end, *i.e.,* complete or no recovery . . . it is plainly reasonable for the parties at this stage to find that the actual recovery realized and risks avoided here outweigh the opportunity to pursue potentially more favorable results through full adjudication," such that "[t]hese factors support approval").

First, at the time Class Counsel commenced the first of the Related Actions in 2018, numerous courts throughout the country had interpreted the United States Supreme Court's decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) as depriving FACTA plaintiffs of Article III standing to pursue bare violations of the statute in federal court (i.e., the provision of a receipt with too many card digits), absent additional allegations of actual damage (e.g., identity theft). *See*, *e.g.*, *Meyers v. Nicolet Restaurant of De Pere, LLC*, 843 F.3d 724, 727 (7th Cir. 2016); *Bassett v. ABM Parking Services, Inc.*, 883, F.3d 776 (9th Cir. 2018). Additionally, in the midst of the

litigation, one of the few federal appellate decisions in which Article III standing had been found to exist for such claims was reheard en banc and vacated, and replaced by a decision finding no Article III standing. *See Muransky v. Godiva Chocolatier, Inc.*, No. 16-16486, 16-16783, 2020 WL 6305084, at *1 (11th Cir. Oct. 28, 2020). Thus, as this litigation progressed, it became increasingly clear that the federal courts presiding over many of the Related Cases lacked subject-matter jurisdiction to hear this dispute based on the reasoning of the Seventh, Ninth, and Eleventh Circuit Courts of Appeals. (Hedin Decl. ¶¶ 18, 27, 45; Owens Decl. ¶ 44.)

Second, Defendants argued throughout the litigation, in several of the Related Actions, that any violations of FACTA committed by Defendants were not committed willfully and that statutory damages were thus unavailable to Plaintiffs and Settlement Class members. While Representative Plaintiffs and Class Counsel believe there exists sufficient evidence to support a possible finding of willfulness, they recognize that any of the courts presiding over these actions could easily have disagreed. Any determination that Defendants did not willfully violate FACTA would have barred Settlement Class Members from recovery any statutory damages.

Third, the Parties disagree whether the Settlement Class could be certified on a contested motion for class certification. In the Related Actions, Defendants opposed class certification wherever it was sought, including by, inter alia, arguing that Settlement Class Members cannot be reliably identified in its records, and that various defenses present certain individualized issues among Settlement Class Members. (Hedin Decl. ¶ 41; Owens Decl. ¶ 44.) In fact, in one of the Related Cases against one of Everi's casino clients, the presiding federal district court denied plaintiff's motion for class certification on ascertainability grounds. *See Lawrence v. S. Fla. Racing Ass'n, LLC*, No. 18-CV-24264-UU, 2019 WL 3890314, at *6 (S.D. Fla. June 28, 2019) ("[T]he Court concludes that the proposed class is not ascertainable and, therefore, should not be certified."). Moreover, Defendants steadfastly maintained that they would seek to decertify any classes in the Related Cases that were certified. (Hedin Decl. ¶ 44; Owens Decl. ¶ 46.) While Representative Plaintiffs believe the Settlement Class is well-suited for certification, including on a contested basis, the various state and federal courts presiding over the Related Cases and the

instant Action could have disagreed and denied class certification on any number of grounds on a contested basis.

Fourth, even if Representative Plaintiffs were to win class certification, there would remain a risk of losing a jury trial. And even assuming they prevailed at trial, any judgment or order granting class certification could be reversed on appeal and, even if they were not, any class-wide award "would most surely bankrupt the prospective judgment debtor," *see In re Capital One Tel. Consumer Prot. Act Litig.,* 80 F. Supp. 3d 781, 790 (N.D. Ill. 2015). A pyrrhic victory for the Settlement Class at trial would be in no one's interest.

Finally, even assuming Defendants *could* satisfy a class-wide judgment in this case – which, given the estimated size of the Settlement Class, would amount to an enormous sum if statutory damages of anywhere between $100 and $1,000 were awarded per violation – any such judgment would run a substantial risk of being reduced on due process grounds. In *Golan v. Veritas Entm't, LLC*, No. 14-cv-00069, 2017 WL 3923162 (E.D. Mo. Sept. 7, 2017), for example, a class of TCPA plaintiffs won a judgment at trial for $1.6 billion ($500.00 for each of approximately 3.2 million violations), only to have the trial court remit the award to $32 million – or approximately $10.00 per violation – on the grounds that the $1.6 billion awarded by the jury was so annihilative as to violate the Due Process clause of the U.S. Constitution. *See Golan*, 2017 WL 3923162, at *2-3. The trial court's decision in *Golan* was recently affirmed, in its entirety, by the U.S. Court of Appeals for the Eight Circuit. *Golan v. FreeEats.com, Inc*., No. 17-cv-3156, 2019 WL 3118582 (8th Cir. July 16, 2019). In this case, each claiming Settlement Class Member is currently projected to receive approximately $40-60 from the Settlement – which is greater than the $10.00 ultimately recovered for each violation in *Golan*, after years of uncertain litigation and a total victory for the class at trial. The possibility of the same outcome here, even if the Settlement Class were to prevail at trial years from now, further underscores the reasonableness of the immediate, certain, and meaningful relief provided by the Settlement.

Thus, from the outset of the litigation in each of the Related Cases and continuing up until the Parties reached the Settlement, there was always a significant risk that Everi would prevail on

one or more of the defenses described above, leaving the Settlement Class without a cause of action and entitled to no relief. Accordingly, the first and most important factor weighs heavily in favor of granting final approval of the Settlement. *See In re Tableware Antitrust Litig*., 484 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007) (approval warranted where a settlement is free of "obvious deficiencies" and within range of approval).

B. A Class-Wide Judgment Would be Annihilative, Whereas the Settlement Provides Substantial Relief to the Settlement Class

The second factor considers Defendants' ability to satisfy a judgment at trial. *See City of Chicago*, 206 Ill. App. 3d at 972. Although Defendants operate a profitable business, very few businesses could satisfy a judgment for the amount potentially at stake on a class wide-basis at trial in this case, particularly in view of the ongoing COVID-19 pandemic and the economic toll it has inflicted on the economy.

Accordingly, the second factor weighs in favor of granting final approval.

C. Continued Litigation Would Be Complex, Costly, and Lengthy

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Nat'l Rural Telecommc'ns Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("The Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation").

This would be lengthy and very expensive litigation if it were to continue, involving extensive motion practice, including, inter alia, multiple motions for class certification (and likely motions for decertification), motions for summary judgment, and various pretrial motions, as well as the retention of additional experts, preparation of expert reports, and conducting expert depositions. *See Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("[C]lass action suits have a well-deserved reputation as being most complex"). The case would probably not go to trial for over a year. And even if Settlement Class Members recovered a judgment at trial in excess of the

$14 million in cash provided by the Settlement, post-trial motions and the appellate process would deprive them of any recovery for years, and possibly forever in the event of a reversal.

Rather than embarking on years of protracted and uncertain litigation, Representative Plaintiffs and their counsel negotiated a Settlement that provides immediate, certain, and *meaningful* relief to all Settlement Class Members. *See DIRECTV, Inc*., 221 F.R.D. at 526. Accordingly, the third factor weighs in favor of granting final approval to the Settlement. *See City of Chicago*, 206 Ill. App. 3d at 972; *see also Borcea v. Carnival Corp*., 238 F.R.D. 664, 674 (S.D. Fla. 2006) (noting "[i]t has been held proper to take the bird in the hand instead of a prospective flock in the bush").

D. There is No Significant Opposition to the Settlement

Looking at the fourth and sixth *Korshak* factors – as they are "closely related," *Korshak*, 206 Ill. App. 3d at 973 – it is clear that final approval of the Settlement is not only in the best interest of the Parties, but that it is also overwhelmingly supported by the Settlement Class Members themselves. The Class Notice was sent directly to all Settlement Class Members and resulted in hundreds of thousands of visits to the Settlement Website and thousands of calls to the Settlement telephone hotline – and yet there was only a single objection to the Settlement and very few requests for exclusion. (Hedin Decl. ¶ 38; Owens Decl. ¶ 41.) And notably, over 150,000 claim forms have been submitted to obtain *pro rata* shares of the meaningful relief offered by the Settlement.

The fact that there is only a single objection to the Settlement is particularly noteworthy and strongly supports a finding that the Settlement is "fair and reasonable," *Am. Civil Liberties Union v. United States Gen. Servs. Admin*., 235 F. Supp. 2d 816, 819 (N.D. Ill. 2002); *see also In re Mexico Money Transfer Litig.*, 164 F.Supp.2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlements and finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements . . . is strong circumstantial evidence in favor of the settlements") – particularly in light of the frequency with which "professional objectors" seek out such settlements and file generic objections even where there is no legitimate basis. *See In re*

Initial Pub. Offering Sec. Litig., 728 F. Supp. 2d 289, 295 n.37 (S.D.N.Y. 2010) (collecting authorities and noting that "[r]epeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements" and that "courts are increasingly weary of professional objectors: some of [which are] obviously canned objections filed by professional objectors") (internal citations omitted).

The sole objection to the Settlement[11] – submitted by an individual named Tho Truong, who "do[es] not have any recollection" of making any transactions with Everi during the relevant time period – does not call into question the fairness of the Settlement and in fact only further underscores the strength of the Settlement. *See* Hedin Decl., Ex. C (objection mailed to class counsel by Mr. Truong). Specifically, Mr. Truong's objection states, just as Defendants have argued throughout this litigation, that he "do[es] not believe that the Fair and Accurate Credit Transactions Act (FACTA) has been violated in any way." *Id.* at 1. That Mr. Truong believes that this lawsuit has no merit only further illustrates the risks of non-recovery that continued litigation would have posed and the exceptional result that Class Counsel obtained for the Settlement Class. Indeed, if Mr. Truong is correct that this litigation has no merit, then the Settlement and the relief it provides to Settlement Class Members are nothing short of exceptional. Further, Mr. Truong's objection reinforces the important privacy interests that this litigation seeks to advance by correctly pointing out that many of the cash-access transactions at issue in this case were monitored via video camera, potentially resulting in further dissemination of the sensitive information printed on the receipts at issue and thus magnifying the risks of identity theft and other financial fraud faced by Settlement Class Members. Finally, Mr. Truong raises no objection to the Fee Award sought by Class Counsel or the Service Awards sought by the Representative Plaintiffs. Simply put: the sole objection to the Settlement does not contest the fairness or reasonableness of the Settlement,

[11] One other Settlement Class Member named Krestal Johnson inadvertently filed an "objection" to the Settlement when he had intended to request exclusion from the Settlement. *See* Hedin Decl. ¶¶ 41-42. After speaking and exchanging correspondence with Mr. Johnson's attorney, Class Counsel reached out to the Settlement Administrator at Mr. Johnson's counsel's request and successfully had his submission re-classified as a request for exclusion instead of an objection so that he is not bound by the judgment entered in this case. *See id.*

but rather does a good job of demonstrating why it is an excellent result for the Settlement Class. Thus, the sole objection to the Settlement should be overruled. *See Am. Int'l Grp., Inc.*, 2012 WL 651727, at *11 (objections that do not "cast doubt upon the settlement's fairness, reasonableness, on adequacy" must be overruled.).

Accordingly, the fourth and sixth factors weigh in favor of granting final approval of the Settlement.

E. The Settlement Was Negotiated Free of any Collusion

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972.

Where a proposed class settlement is the result of contentious, arm's-length negotiations before an experienced mediator, the settlement may be presumed fair and reasonable and entered into without any form collusion. *See Newberg*, § 11.42; *see also Coy v. CCN Managed Care, Inc.*, 2011 IL App (5th) 100068-U, ¶ 31 (no collusion where settlement agreement was reached as a result of "an arms-length negotiation entered into after years of litigation and discovery, resulting in a settlement with the aid of an experienced mediator"); *Shaun Fauley, Sabon, Inc. v. Metro. Life Ins. Co.*, 2016 IL App (2d) 150236, ¶ 21 (approval warranted where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'").

Such is the case here. The Settlement was achieved after two years of contentious litigation, robust pre-filing and post-filing investigations, a comprehensive exchange of discovery, and arm's-length negotiations overseen by Mr. Wulff and two prior mediators. (Hedin Decl. ¶¶ 23-27; Owens Decl. ¶ 25-29.) Even after reaching an agreement in principle, the Parties engaged in further back-and-forth negotiations for several more months regarding confirmatory discovery, unresolved terms of the Settlement, the form of the Class Notice and attendant documents, and the appearance and functionality of the web-based form for submitting Claim Forms on the Settlement Website. (Hedin Decl. ¶¶ 31-35; Owens Decl. ¶ 33-37)

Because the Settlement is thus the product of contentious, lengthy, and collusion-free negotiations between the Parties, the fifth factor weighs in favor of granting final approval to the Settlement.

F. Competent Counsel Strongly Endorse the Settlement

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Courts rely on affidavits in assessing proposed class counsel's qualifications under this factor. *Id.*

Class Counsel at Hedin Hall LLP and Scott D. Owens, P.A. have extensive experience in complex class action litigation, including serving as class counsel in similar FACTA class actions and other consumer class actions. (Hedin Decl. ¶¶ 7-10; Owens Decl. ¶¶ 12-13.)

And in light of the substantial benefits provided by the Settlement – including immediate payments from the $14 million all-cash common fund to each Settlement Class Member who submits a simple Claim Form, without having to wait for the litigation and subsequent appeals to run their course – Class Counsel believe that the Settlement is an excellent outcome for the Settlement Class, particularly in view of the numerous significant risks of total non-recovery that continued litigation would have posed (Hedin Decl. ¶¶ 41, 43, 52-53; Owens Decl. ¶¶ 44, 46, 53).

Accordingly, the seventh factor weighs in favor of granting final approval of the Settlement. *See GMAC*, 236 Ill. App. 3d at 497 (experienced and competent counsel's support for a proposed class settlement weighs in favor of approving the settlement); *Bellinghausen v. Tractor Supply Co*., 306 F.R.D. 245, 257 (N.D. Cal. 2015) ("The trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties"); *see also, e.g., Smith*, 2013 WL 163293, at *3 (finding "class counsel's endorsement weighs in favor of final approval" given counsel's "experience and understanding of the strengths and weaknesses of cases such as this").

G. The Settlement is the Product of Extensive Litigation and Discovery

The eighth and final factor considers the stage of the proceedings and the amount of discovery that has been completed at the time the settlement is reached. *City of Chicago*, 206 Ill. App. 3d at 972; *Lane,* 696 F.3d at 819.

Prior to commencing this litigation, Representative Plaintiffs' counsel conducted a wide-ranging investigation into every aspect of the case. (Hedin Decl. ¶ 12; Owens Decl. ¶ 14.) Plaintiffs and their counsel then litigated 14 separate actions in six different state and federal courts throughout the country (against both Everi and many of its casino clients), took and defended numerous depositions, exchanged and reviewed voluminous written and electronic discovery, retained and conferred with consulting and testifying experts, participated in numerous court hearings, and briefed dozens of complex motions at every stage of litigation (including motions for summary judgment and class certification and various pretrial motions). (*See generally* Hedin Decl. ¶¶ 15-16; Owens Decl. ¶¶ 14-15.) The Parties engaged in multiple rounds of formal discovery (including third-party discovery) over the course of several months prior to entering into the proposed Settlement Agreement. (Hedin Decl. ¶¶ 16, 24, 26, 29-30; Owens Decl. ¶¶ 18, 26, 28, 36.) Armed with this information, Representative Plaintiffs and Class Counsel had "a clear view of the strengths and weaknesses" of the case, *see In re Warner Commc'ns Sec. Litig*., 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd* 798 F.2d 35 (2d Cir. 1986), and were in a strong position to negotiate a fair, reasonable, and adequate settlement on behalf of the Settlement Class. (*See* Hedin Decl. ¶¶ 39-40; Owens Decl. ¶¶ 26, 31.)

Settlement negotiations were also hard fought. The Parties engaged in three separate mediations, including a full-day mediation under the supervision of Randall Wulff of Wulff Quinby Sochynsky. After approximately ten (10) hours of contentious, arms'-length negotiations, the Parties were unable to reach a settlement but had made substantial progress in the negotiations. Through the continued assistance of Mr. Wulff in the days following the mediation, the Parties ultimately reached an agreement on the principal terms of a proposed class-wide settlement in response to a mediator's proposal. The Parties executed a binding term sheet setting forth the material terms of the proposed Settlement Agreement, the execution of which was conditioned upon Plaintiffs taking confirmatory discovery regarding, *inter alia*, the size and composition of the Settlement Class. (Hedin Decl. ¶ 26; Owens Decl. ¶ 28.)

Where, as here, a proposed settlement is the product of arm's-length negotiations between experienced counsel after significant discovery has occurred, the Court may presume the settlement to be fair, adequate, and reasonable. *See Rodriguez v. W. Publishing*, 563 F.3d 948, 965 (9th Cir. 2009) ("We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution"); *Newberg* § 11.41 (proposed class settlement may be presumed fair if it "is the product of arm's length negotiations, sufficient discovery has been taken to allow the parties and the court to act intelligently, and counsel involved are competent and experienced").

Accordingly, the eighth and final factor also weighs in favor of granting final approval of the Settlement.

III. The Motion for Service Awards and Fee Award Should be Approved

The Court should also approve the requested Service Awards to the Representative Plaintiffs and the Fee Award to Class Counsel (inclusive of all out-of-pocket litigation expenses incurred).

The Class Notice was sent to all Settlement Class Members at least 45 days prior to the October 19, 2020 deadline to object or opt-out, and the Motion for Service Awards and Fee Award was filed 21 days prior to the deadline to object or opt-out. The Class Notice fully informed Settlement Class Members of the maximum Service Awards and Fee Award that Class Counsel and the Representative Plaintiffs would seek, and the Motion for Attorneys' Fees and Service Awards was immediately posted on the Settlement Website upon its filing. Thus, Settlement Class Members had ample opportunity to review and consider the Motion for Service Awards and Fee Award and to object to those requested awards if they so desired. And yet no Settlement Class Member objected to either of the requested awards.

The sole objection to the Settlement takes no issue with the requested Fee Award or Service Awards, and Class Counsel has not received any even informal expressions of dissatisfaction with the requested Service Awards or Fee Award while responding to Settlement Class members' inquiries concerning the Settlement. (*See* Hedin Decl. ¶ 38; Owens Decl. ¶ 41.) The lack of any opposition to the requested Fee Award and Service Awards is not surprising in this case because,

as discussed above, the Settlement was reached after years of contested litigation and thousands of hours of time invested by Class Counsel and the Representative Plaintiffs and provides meaningful monetary and non-monetary relief to Settlement Class members.

It is worth noting that since the filing of the Motion for Attorney Fees and Service Awards, Class Counsel has expended an extra 305.5 hours of attorney time (equating to a lodestar value of $216,907.50) in connection with the Settlement administration process, fielding class member inquiries, coordinating with the Settlement Administrator, preparing the instant Motion for final approval of the Settlement and related materials, and performing other necessary Settlement-related tasks. *See* Hedin Decl. ¶ 53; Owens Decl. ¶ 57. Thus, to date Class Counsel have expended a total of 6,025.7 hours of time (equating to a total lodestar of $3,882,772.50), as well as $83,982.07 in out-of-pocket costs, investigating, prosecuting, and resolving this litigation on behalf of the Settlement Class. The requested Fee Award equates to approximately 1.4 times Class Counsel's current lodestar –an extremely reasonable multiplier given the risks presented in this case and the excellent result obtained for the Settlement Class.[12]

Additionally, Class Counsel anticipate expending a substantial amount of additional time (at least $200,000 to $300,000 in additional lodestar in their best estimation) and other resources on behalf of the Settlement Class between now and the conclusion of the settlement distribution process in this case. *See* Hedin Decl. ¶ 53; Owens Decl. ¶ 57. This work will include attending the final approval hearing set November 30, 2020, responding to future Settlement Class Member inquiries that continue to be received on a daily basis, reviewing any claims rejected as invalid or incomplete by the Settlement Administrator, advocating on behalf of any Settlement Class Members who submit claims that Class Counsel believe have been wrongfully rejected, confirming

[12] Indeed, given the enormous amount of time, effort, and other resources Class Counsel devoted to this litigation over the course of nearly three years (which constituted a significant portion of their practices), the substantial and *meaningful* relief ultimately obtained for the Settlement Class in the face of several major risks of non-recovery, and the lack of a single objection to the Motion for Attorneys' Fees, Class Counsel respectfully submit that the requested Fee Award will both reasonably compensate and fairly reward Class Counsel for the work they performed on behalf of the Settlement Class.

that all settlement checks are promptly paid to all claiming Settlement Class Members after the Settlement becomes final, and ensuring that Defendants implement all changes in business practices and oversight procedures to fully effectuate the injunctive relief component of the Settlement and that the company otherwise complies with all terms of the Settlement Agreement upon its final approval. *See* Hedin Decl. ¶ 54; Owens Decl. ¶ 58.

CONCLUSION

The Settlement provides meaningful monetary and non-monetary relief to Settlement Class Members in a timely and efficient manner, and is thus an eminently fair, reasonable, and adequate resolution to this litigation. Accordingly, the Representative Plaintiffs respectfully request that the Court enter the proposed Final Order and Judgment (attached hereto as **Exhibit 1**) granting final approval of the Settlement and approving the requested Service Awards and Fee Award.

Dated: November 20, 2020

Respectfully submitted,

By: /s/ Frank S. Hedin
Frank S. Hedin

FRANK S. HEDIN (*pro hac vice*)
fhedin@hedinhall.com
HEDIN HALL LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131
Tel: (305) 357-2107

SCOTT D. OWENS (*pro hac vice*)
scott@scottdowens.com
SCOTT D. OWENS, P.A.
2750 N. 29th Ave., Suite 209A
Hollywood, Florida 33020
Tel: (954) 589-0588
Fax: (954) 337-0666

Class Counsel

KEITH J. KEOGH
keith@keoghlaw.com
KEOGH LAW, LTD.
55 W. Monroe St., Ste. 3390
Chicago, Illinois 60603
Tel: (312) 726-1092
Fax: (312) 726-1093

Local Counsel for Plaintiffs

EXHIBIT 1

CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GERALDINE DONAHUE; SADIKI LAWRENCE; ONEEB REHMAN; MAT JESSOP; AARON HUFFMAN; RYAN ARTMAN; and SHANNON ALATALO, individually and on behalf of a class of other similarly situated individuals,

Plaintiffs,

v.

EVERI HOLDINGS, INC.; and EVERI PAYMENTS, INC.,

Defendants.

Case No. 2018-CH-15419

Hon. David B. Atkins

[PROPOSED] FINAL ORDER AND JUDGMENT

Pending before the Court is the Unopposed Motion for Judgment and Order Granting Final Approval of the Class Action (the "Motion") of the plaintiff Geraldine Donahue ("Plaintiff," and collectively, with the named plaintiffs in the other related actions identified in Paragraph 1.2 of the Settlement Agreement (defined below), "Representative Plaintiffs").

WHEREAS, on August 6, 2020, the Plaintiff and Defendants Everi Holdings Inc. ("Everi Holdings") and Everi Payments Inc. ("Everi Payments") (collectively, "Defendants" or "Everi") filed a Stipulation and Agreement of Settlement (the "Settlement" or "Settlement Agreement"), which, together with the exhibits thereto, sets forth the terms and conditions for the Settlement;

WHEREAS, to the extent not otherwise defined herein, all capitalized terms in this Order shall have the meanings attributed to them in the Settlement Agreement;

WHEREAS, the Settlement Agreement was entered into after extensive arm's-length negotiation by experienced counsel and in mediation under the guidance of mediator Randall Wulff of Wulff Quinby Sochynsky;

WHEREAS, on August 20, 2020, the Court issued the Preliminary Approval Order, in which the Court found that the Settlement appeared fair, reasonable, and adequate in all respects,

granted preliminary approval to the Settlement, directed the Settlement Administrator to effectuate the Notice Plan by disseminating the Class Notice to Settlement Class Members and making available copies of the Long Form Notice, the Settlement Agreement, and other Settlement-related documents on the Settlement Website, appointed the Representative Plaintiffs on behalf of the Settlement Class, the Representative Plaintiffs' counsel as Class Counsel, and Angeion Group, LLC as the Settlement Administrator; and scheduled a Final Approval Hearing to determine whether the proposed Settlement is fair, reasonable and adequate;

WHEREAS, On November 20, 2020, 2020, the Court held a hearing to determine whether the proposed Settlement Agreement executed by the Parties should be approved as Final by this Court, and Class Counsel and counsel for Defendants appeared at the hearing;

WHEREAS, the Court having considered the Settlement Agreement and all of the files, records, and proceedings herein, and having reviewed the pleadings and evidence filed in support of the request for final approval of the Settlement and conducted the hearing, the Court finds, and

IT IS ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. THE CLASS, REPRESENTATIVE PLAINTIFF, AND CLASS COUNSEL

1. This Final Approval Order and Judgment incorporates the Settlement Agreement and all Exhibits thereto.

2. The Court finds that it has jurisdiction over the subject matter of this action and personal jurisdiction over the parties and the members of the Settlement Class described below.

3. Based upon the record before the Court, including all submissions in support of the Settlement Agreement, objections and responses thereto, as well as the Settlement Agreement, and pursuant to 735 ILCS 5/2-801, the Settlement Class is certified, consisting of the following:

> "Settlement Class" means All persons in the United States who, at any time between February 16, 2016 and December 31, 2019, (i) engaged in at least one quasi-cash or manual cash disbursement transaction using a debit card or credit card at a gaming establishment in the United States or on tribal lands, (ii) where such transaction was processed using Everi Payments' CashClub® technology; and (iii) for which Everi Payments' system was programmed to generate a printed customer receipt that displayed four digits in a field on said receipt labeled "BIN". The following are excluded from the Settlement Class: (1) any trial judge and other

judicial officers that may preside over the Action; (2) the Mediator; (3) Everi, as well as any parent, subsidiary, affiliate or control person of Everi, and the officers, directors, agents, servants or employees of Everi; (4) any of the Released Parties; (5) any Settlement Class Member who has timely submitted a Request for Exclusion by the Opt-Out Deadline; (6) any person or entity who has previously given a valid release of the claims asserted in the Action; and (7) Plaintiff's Counsel.

4. Pursuant to 735 ILCS 5/2-801, plaintiffs Geraldine Donahue, Sadiki Lawrence, Oneeb Rehman, Mat Jessop, Aaron Huffman, Shannon Alatalo, and Ryan Artman are hereby appointed Representative Plaintiffs ("Plaintiffs" or "Representative Plaintiffs") and the following counsel are hereby appointed Class Counsel:

Frank S. Hedin
David W. Hall
Hedin Hall LLP
1395 Brickell Avenue, Suite 1140
Miami, Florida 33131

Keith J. Keogh
Keogh Law, Ltd.
55 W. Monroe St., Ste. 3390
Chicago, Illinois 60603

Scott D. Owens
Scott D. Owens, P.A.
2750 N. 29th Ave., Ste. 209A
Hollywood, Florida 33020

5. The Court finds that the proposed Settlement Class meets all the applicable requirements of 735 ILCS 5/2-801, and hereby certifies the Settlement Class. The Court hereby finds, in the specific context of the Settlement, that:

(a) Numerosity: The Settlement Class satisfies the numerosity requirement of 735 ILCS 5/2-801(1). Joinder of these widely dispersed, numerous Settlement Class Members into one suit would be impracticable.

(b) Commonality: The Settlement Class satisfies the commonality and predominance requirement of 735 ILCS 5/2-801(2). The claims in this case present questions of law and fact common to the Settlement Class that predominate over any questions affecting only individual

members.

(c) Adequacy: The Representative Plaintiffs and Class Counsel satisfy the adequacy of representation requirement of 735 ILCS 5/2-801(3). The Representative Plaintiffs' interests do not conflict with, and are co-extensive with, those of absent Settlement Class Members. The Representative Plaintiffs will fairly and adequately represent the interests of the Settlement Class and Class Counsel is qualified, experienced, and well-equipped to conduct this litigation, such that Settlement Class Members will receive proper, efficient, and appropriate protection of their interests in the presentation of the claim with such representation.

(d) The Controversy is Fairly and Efficiently Adjudicated as a Class Action: Finally, a class action is the most appropriate method for the fair and efficient adjudication of the controversy presented in this action, satisfying the requirement of 735 ILCS 5/2-801(4). Class certification promotes efficiency, the interests of judicial economy, and uniformity of judgment because, among other reasons, the many members of the Settlement Class will not be forced to separately pursue the relatively small claims alleged in this action and seek relief in various courts around the country. Thus, the class action mechanism is the most fair and efficient method to resolve this dispute.

6. The Representative Plaintiffs are Geraldine Donahue, Sadiki Lawrence, Oneeb Rehman, Mat Jessop, Aaron Huffman, Shannon Alatalo, and Ryan Artman. Based upon the Court's familiarity with the claims and parties, the Court's finding that the Representative Plaintiffs are members of the Settlement Class and will fairly and adequately represent the interests of the Settlement Class, and that Class Counsel is qualified, experienced, and well-equipped to conduct this litigation, the Court finds that the Representative Plaintiffs and Class Counsel are appropriate representatives on behalf of the Settlement Class.

7. The Settlement Agreement was reached after extensive arm's-length negotiation by experienced counsel and in mediation under the guidance of mediator Randall Wulff of Wulff Quinby Sochynsky, consistent with and in compliance with all applicable requirements of Illinois State law, the United States Constitution (including the Due Process Clause), the Illinois State

Constitution, and any other applicable law, and in the best interests of Plaintiffs, Defendants and the Settlement Class Members.

8. The Settlement is fair, reasonable, adequate and satisfies the requirements under Illinois State law, the United States Constitution (including the Due Process Clause), the Illinois State Constitution, and any other applicable law. Therefore, each Settlement Class Member will be bound by the Settlement Agreement, including the Release and the covenant not to sue set forth in Sections 8 and 9 of the Settlement Agreement.

9. The Class Notice and the notice methodology implemented pursuant to the Settlement Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was concise, clear and in plain, easily understood language and was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, the claims, issues and defenses of the Settlement Class, the definition of the Settlement Class certified, their right to be excluded from the Settlement Class, their right to object to the proposed Settlement, their right to appear at the Final Approval Hearing, through counsel if desired, and the binding effect of a judgment on Settlement Class Members; (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of Illinois law, the United States Constitution (including the Due Process Clause), the Illinois State Constitution, and any other applicable law.

10. The Court finds that those individuals identified in Exhibit A have excluded themselves from the Settlement, are not bound by the Settlement Agreement, and are therefore excluded from the Settlement Class.

11. The terms of the Settlement Agreement and this Final Approval Order and Judgment are binding on the Representative Plaintiffs and all other Settlement Class Members, as well as their heirs, executors and administrators, successors and assigns.

12. The terms of the Settlement Agreement and this Final Approval Order and Judgment shall have *res judicata*, collateral estoppel and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of

liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interests, or expenses which are based on or in any way related to any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses which were asserted in the Action.

13. The Representative Plaintiffs, Defendants, and their respective counsel are ordered to implement and to consummate the Settlement Agreement according to its terms and provisions.

14. All claims against Defendants asserted in this Action, are hereby dismissed on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement and set forth herein and any other order issued by the Court awarding a Fee Award and Service Awards.

15. The releases set forth in Section 8 of the Settlement Agreement are incorporated by reference and provides, inter alia, that for and in consideration of the Settlement Shares, the Released Claims, and the mutual promises contained in the Settlement Agreement, Representative Plaintiffs and the Settlement Class Members, on behalf of themselves and their respective assigns, heirs, executors, administrators, successors, and agents, and representatives, fully and finally release, as of the date the Final Approval Order and Judgment becomes Final, Defendant, its counsel, and the other Released Parties from any and all claims, liabilities, demands, causes of action, or lawsuits of the Releasing Parties, whether known or unknown, whether legal, statutory, equitable, or of any other type or form, whether under federal, state, or local law, and whether brought in an individual, representative, or any other capacity, of every nature and description whatsoever that were or could have been brought in the Action or Related Actions relating in any way to violations of 15 U.S.C. § 1692(c)(g) (or any comparable state law) or the printing of customer-copy transaction receipts that displayed a four-digit number in a field labeled "BIN" in connection with Everi Payments' quasi-cash or manual cash disbursement services.

16. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the certification of the Settlement Class shall be void, and Plaintiffs and Defendants

shall be deemed to have reserved all of their rights as set forth in the Settlement Agreement, including but not limited to the issues related to all claims, defenses, and issues under 735 ILCS 5/2-801.

II. THE SETTLEMENT FUND

17. The Court approves the establishment of the Settlement Fund as set forth in the Settlement Agreement.

18. Defendants shall deposit the Settlement Fund of fourteen million and 00/100 dollars ($14,000,000.00) per the timelines and terms of the Settlement Agreement. The Settlement Fund will be maintained by the Settlement Administrator for the benefit of the Settlement Class, Class Counsel, and Class Representatives and will be disbursed to the Settlement Class, Class Counsel, and Class Representatives by the Settlement Administrator pursuant to the terms of the Settlement Agreement and as set forth herein. All of the monies deposited by Defendants into the Settlement Fund shall be placed in an interest-bearing escrow account established and maintained by the Settlement Administrator pursuant to the terms of the Settlement Agreement. The interest generated, if any, will accrue to the benefit of the Settlement Class and is to be added into the Settlement Fund. Defendants shall make deposits into the Settlement Fund in accordance with the following schedule and pursuant to the terms of the Settlement Agreement:

a. To the extent that additional Settlement Administration Costs are incurred after in excess of the initial payment of $250,000 previously disbursed by Defendants to the Settlement Administrator prior to the Effective Date, the Settlement Administrator will bill, and Defendants shall pay, such additional costs. For any additional costs of Settlement Administration that are paid by Defendants, Defendants shall receive a credit against the amounts required to be paid into the Settlement Fund.

b. All Settlement Administration Costs will be drawn from the Settlement Fund by the Settlement Administrator, subject to the written approval of Defendants (via their counsel) and Class Counsel, and pursuant to the terms of the Settlement Agreement.

19. The Settlement Fund constitutes Defendants' exclusive payment obligation under

the Settlement Agreement and will be used to pay: (a) Settlement Shares paid to Settlement Class Members, as prescribed by the Settlement Agreement and pursuant to the timetable set forth in the Settlement Agreement; (b) the Fee Award to Class Counsel, as set forth herein and pursuant to the timetable set forth in the Settlement Agreement; and (c) Service Awards to the Class Representatives, as set forth herein and pursuant to the timetable set forth in the Settlement Agreement; (d) Settlement Administration Costs, including costs of notice, pursuant to the timetable set forth in the Settlement Agreement. No portion of the Settlement Fund will be returned to Defendants, except as provided in Section 12 ("Termination of the Agreement") of the Settlement Agreement.

20. Any distribution of the Settlement Fund to the Settlement Class or any other person, shall be made by the Settlement Administrator and shall commence only after the Effective Date, pursuant to the terms of the Settlement Agreement. The Settlement Administrator shall pay the Aggregate Fees, Costs, and Expenses from the Settlement Fund prior to any distribution of Settlement Shares to the Settlement Class, as set forth herein and pursuant to the terms of the Settlement Agreement. The remainder of the Settlement Fund shall be used to pay Settlement Shares in accordance with the provisions of the Settlement Agreement and as set forth herein.

21. Within the time period and manner set forth in the Settlement Agreement, and after the Fee Award to Class Counsel, all Service Awards paid to the Representative Plaintiffs, and all Settlement Administration Expenses have been paid out of the Settlement Fund, the Settlement Administrator shall calculate the pro rata Settlement Share Amount of the remaining Settlement Funds that each of the Class Members who submitted a valid Claim Form is entitled to receive, and the Settlement Administrator will disburse payments to such Class Members in the manner and pursuant to the timetable set forth in the Settlement Agreement.

22. The Court hereby approves the Representative Plaintiffs' application for Service Awards. The Court finds that the Representative Plaintiffs have devoted substantial time, effort, and risk in undertaking their responsibilities as representatives of the Settlement Class. The Settlement Administrator shall pay each of the Representative Plaintiffs the amount of $2,000 as

a reasonable Service Award, in the manner specified in the Settlement Agreement. The Service Awards to the Representative Plaintiffs shall be paid out of the Settlement Fund within the time period and manner set forth in the Settlement Agreement.

23. The Court hereby approves Class Counsel's Fee and Cost Application. The Court finds that Class Counsel devoted substantial time and advanced significant expenses in prosecuting this litigation on behalf of the Settlement Class. The Court has concluded that: (a) Class Counsel achieved a favorable result for the Settlement Class by obtaining the Defendant's agreement to make significant funds available to Settlement Class Members; (b) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, litigation, and settlement negotiations; (c) Class Counsel prosecuted the Settlement Class's claims on a purely contingent basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses; (d) Class Counsel employed their knowledge of and experience with class action litigation to achieve a valuable settlement for the Settlement Class, in spite of the Defendants' potentially meritorious legal defenses and its highly experienced and capable counsel; (e) the Class Notice informed Settlement Class Members of the amount and nature of Class Counsel's fee and cost request under the Settlement Agreement, and Class Counsel filed with the Court and posted on the Settlement Website their Fee and Cost Application in time for Settlement Class Members to make a meaningful decision whether to object to the Class Counsel's fee request. The Settlement Administrator shall pay Class Counsel the amount of $5,600,000 as a reasonable Fee Award, inclusive of the award of reasonable costs incurred in litigating this Action, in the manner specified in the Settlement Agreement. The Fee Award to Class Counsel shall be paid out of the Settlement Fund within the time period and manner set forth in the Settlement Agreement.

24. If the Effective Date does not occur, no payments or distributions of any kind shall be made, other than payments to the Settlement Administrator for services rendered and costs incurred.

25. The Court finds that the Settlement Fund is a "qualified settlement fund" as defined

in Section l.468B-1 of the Treasury Regulations in that it satisfies each of the following requirements:

(a) The escrow account for the Settlement Fund is established pursuant to this Order and is subject to the continuing jurisdiction of this Court;

(b) The escrow account for the Settlement Fund is established to resolve or satisfy one or more Approved Claims that have resulted or may result from an event that has occurred and that has given rise to at least one Approved Claim asserting liability arising out of an alleged violation of law; and

(c) The assets of the escrow account for the Settlement Fund shall be the only assets in the escrow account of the Defendants, the transferors of the payment to the Settlement Fund.

26. Under the "relation back" rule provided under Section 1.468B-1(j)(2)(i) of the Treasury Regulations, the Court finds that:

(a) The escrow account for the Settlement Fund meets the requirements of paragraphs 25(b) and 25(c) of this Order prior to the date of this Order approving the establishment of the Settlement Fund subject to the continued jurisdiction of this Court; and

(b) Defendants and the Settlement Administrator may jointly elect to treat the escrow account for the Settlement Fund as coming into existence as a "qualified settlement fund" on the later of the date the escrow account for the Settlement Fund met the requirements of paragraph 25 of this Order or January 1 of the calendar year in which all of the requirements of paragraph 25 of this Order are met. If such a relation-back election is made, the assets held by the Settlement Fund on such date shall be treated as having been transferred to the escrow account on that date.

III. RESPONSIBILITIES OF SETTLEMENT ADMINISTRATOR

27. The Court appoints Angeion Group, LLC as the Settlement Administrator. The responsibilities of the Settlement Administrator in effectuating the remainder of the Settlement shall include the following: (a) obtaining complete address information for Settlement Class Members (where possible) and new addresses for returned e-mails and mail; (b) establishing and maintaining a Settlement Website, from which Settlement Class Members can access copies of the

Complaint, the Settlement Agreement, the Short Form Notice, the Long Form Notice, Class Counsel's Fee and Cost Application and an application for Services Awards, the Preliminary Approval Order, this Final Approval Order and other important documents and information about the Settlement; (c) establishing and maintaining a toll-free telephone number and fielding telephone inquiries about the Settlement; (d) reviewing, processing and approving Claims; (e) acting as a liaison between Settlement Class Members and the Parties; (f) directing the mailing of Benefit Checks to Settlement Class Members; (g) disbursing the Fee Award to Class Counsel and the Service Awards to Class Representatives; and (h) performing any other tasks reasonably required to effectuate the Settlement.

V. OTHER PROVISIONS

28. Any information received by the Settlement Administrator in connection with the Settlement Class that pertains to a particular Settlement Class Member, or information submitted in conjunction with a Request for Exclusion (other than the identity of the entity requesting exclusion), shall not be disclosed to any other person or entity other than Class Counsel, Defendants' Counsel, and the Court, or as otherwise provided in the Settlement Agreement.

29. If the Settlement does not become effective, the order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated, voided and treated as if never filed, and the parties will retain and reserve all positions with respect to the litigation, and the litigation shall proceed as if no settlement had been reached.

30. The Court finds that Defendants have made no admissions of liability or wrongdoing of any kind associated with the alleged claims in the operative Complaint. Defendants have made no admission of liability or wrongdoing regarding each and every material factual allegation and all claims asserted against it in the Action. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Action. Nothing herein will constitute an admission by Defendants that the Action is properly brought on a class or representative basis, or that class(es) may be certified, other than for settlement purposes. The

Court further finds that the Settlement of the Action, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any allegations in the Action or Related Actions; (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

31. Without affecting the finality of the Final Approval Order and Judgment, the Court shall retain continuing jurisdiction over the Action, the Parties, and the administration and enforcement of the Settlement Agreement. Any disputes or controversies arising with respect to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement shall be presented by motion to the Court, provided, however, that nothing in this paragraph shall restrict the ability of the Parties to exercise their rights, as set forth above and in the Settlement Agreement.

32. The Court finds that there is no just reason to delay, and therefore directs the Clerk of Court to enter this Final Approval Order and Judgment as the judgment of the Court forthwith.

DATED: _____

_____
Hon. David B. Atkins
Circuit Court Judge