

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID HANSON, individually and on behalf
of the settlement class,

Case No. 2:16-cv-01661 RAJ

Plaintiff,

FINAL JUDGMENT ORDER

v.

MGM RESORTS INTERNATIONAL, a
Delaware corporation, and COSTCO
WHOLESALE CORPORATION, a Delaware
corporation,

Defendants.

This matter having come before the Court on Plaintiff’s Motion and Memorandum of Law in Support of Motion for Reasonable Attorneys’ Fees, Expenses, and Incentive Award and Plaintiff’s Motion and Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement (“Settlement”) of the above-captioned matter (the “Litigation”) between Plaintiff David Hanson (“Plaintiff” or “Hanson”) and Defendants MGM Resorts International and Costco Wholesale Corporation (“Defendants”) (collectively the “Parties”), as set forth in the Stipulation of Class Action Settlement between Plaintiff and Defendants (the “Settlement Agreement”), and the Court having duly considered the papers and arguments of counsel, the Court hereby finds and orders as follows:

1 1. All terms and phrases in this Final Judgment Order not otherwise defined herein
2 shall have the same meaning as ascribed to them in the Parties' Stipulation of Class Action
3 Settlement (Dkt. #34-1) (the "Settlement Agreement").

4 2. This Court has personal jurisdiction over the Parties and all Settlement Class
5 Members and subject matter jurisdiction to approve the Settlement Agreement, including all
6 exhibits thereto.

7 3. The Court confirms certification, for purposes of settlement only, of the
8 Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3), defined as "All
9 individuals in the United States who, from October 24, 2010 to the date of Preliminary Approval
10 of the settlement, purchased an MGM Gift Card and were assessed an inactivity fee that was
11 deducted from the balance of funds remaining on the Gift Card." (*See* Dkt. #37.)

12 4. The Court finds that the Notice provided to the Settlement Class pursuant to the
13 Settlement Agreement and the Preliminary Approval Order (Dkt. #37) and consisting of direct
14 notice via email and first-class U.S. mail, an interactive settlement website, targeted Facebook
15 advertisements designed to reach members of the Settlement Class, and a toll-free phone
16 number, has been successful and was (1) the best notice practicable under the circumstances, (2)
17 constituted notice that was reasonably calculated, under the circumstances, to apprise the
18 Settlement Class of the pendency of the Litigation and their rights to object to and/or exclude
19 themselves from the Settlement Agreement and to appear at the Final Approval Hearing; (3) was
20 reasonable and constituted due, adequate, and sufficient notice to all individuals entitled to
21 receive notice; and (4) fulfilled all applicable requirements of the Federal Rules of Civil
22 Procedure, the Due Process Clause, and the rules of the Court.

23 5. No members of the Settlement Class have requested to be excluded from the
24 Settlement, and no Settlement Class Members have objected to any of the terms of the
25 Settlement Agreement.

26 6. The Court finds that the Settlement Administrator notified the appropriate
27 government officials of the Settlement Agreement pursuant to the Class Action Fairness Act of

1 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of the CAFA notice
2 and finds that it complied with all applicable requirements of CAFA. Further, more than ninety
3 (90) days have elapsed between the date the Settlement Administrator provided notice pursuant
4 to CAFA and the Final Approval Hearing.

5 7. Pursuant to Federal Rule of Civil Procedure 23(c)(3), all Settlement Class
6 Members are bound by this Final Judgment and by the terms of the Settlement Agreement.

7 8. This Court gives final approval to the Settlement and finds that the Settlement
8 Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class
9 Members. The consideration provided under the Settlement Agreement constitutes fair value
10 given in exchange for the release of the Released Claims against the Released Parties. The Court
11 finds that the consideration to be paid to the Settlement Class Members is reasonable, and in
12 their best interests, considering the total value of their claims compared to the disputed factual
13 and legal circumstances of the Litigation, and the potential risks and likelihood of success of
14 pursuing litigation on the merits. The complex legal and factual posture of this case and the fact
15 that the Settlement is the result of arms’ length negotiations between the Parties support this
16 finding. The Court finds that these facts, combined with the lack of other indicators of collusion
17 and the Court’s observations throughout the litigation, demonstrate that there was no collusion
18 present in the reaching of the Settlement Agreement, implicit or otherwise. *See In re Bluetooth*
19 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). This finding is also supported by,
20 among other things, the fact that the Settlement provides monetary benefits to Settlement Class
21 Members in addition to any refunds of the money paid to Defendants and such benefits are not
22 disproportionate to the attorneys’ fees and expenses awarded to Class Counsel or the Class
23 Representative; and the benefits provided to Settlement Class Members are appropriate under the
24 circumstances of this case.

25 9. The Court has specifically considered the factors relevant to class settlement
26 approval including, *inter alia*, the strength of the Plaintiff’s case; the risk, expense, complexity,
27 and likely duration of further litigation; the risk of not maintaining class action status throughout

1 trial; the relief provided for in the settlement; the extent of discovery completed and stage of the
2 proceedings; the experience and views of counsel; and the reaction of members of the Settlement
3 Class to the proposed Settlement (including the claims submitted and lack of any opt-outs or
4 objections)—and upon consideration of such factors finds that the Settlement is fair, reasonable,
5 and adequate as to, and in the best interests of, the Settlement Class Members.

6 10. The Court finds that the Class Representative and Class Counsel adequately
7 represented the Settlement Class for the purposes of litigating this matter and entering into and
8 implementing the Settlement Agreement.

9 11. Accordingly, the Settlement is hereby finally approved in all respects, and the
10 Parties and their counsel are hereby directed to implement and consummate the Settlement
11 Agreement according to its terms and provisions. The Settlement Agreement is hereby
12 incorporated into this Final Judgment in full and shall have the full force of an Order of this
13 Court.

14 12. This Court hereby dismisses the Litigation, as identified in the Settlement
15 Agreement, on the merits and with prejudice.

16 13. Upon the Effective Date of this Final Judgment, Plaintiff, the Settlement Class
17 Members, and each of their respective present or past heirs, executors, estates, administrators,
18 predecessors, successors, assigns, parents, subsidiaries, associates, affiliates, employers,
19 employees, agents, consultants, independent contractors, vendors, insurers, directors, managing
20 directors, officers, partners, principals, members, attorneys, accountants, financial and other
21 advisors, investment bankers, underwriters, lenders, and any other representatives of any of these
22 Persons and entities shall be deemed to have released, and by operation of this Final Judgment
23 shall have, fully, finally, and forever, released, relinquished and discharged Defendants, as well
24 as all of their present or past heirs, executors, estates, administrators, predecessors, successors,
25 assigns, parents, subsidiaries, associates, affiliated and related entities, employers, employees,
26 agents, representatives, consultants, independent contractors, directors, managing directors,
27 officers, partners, principals, members, attorneys, accountants, financial and other advisors,

1 investment bankers, insurers, underwriters, shareholders, lenders, auditors, investment advisors,
2 firms, trusts, corporations, officers, and any other representatives of any of these Persons and
3 entities from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed
4 or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action,
5 contracts or agreements, extracontractual claims, damages, actual, statutory, punitive, exemplary
6 or multiplied damages, expenses, costs, attorneys' fees and/or obligations (including "Unknown
7 Claims" as defined in the Settlement Agreement), whether in law or in equity, accrued or
8 unaccrued, direct, individual or representative, of every nature and description whatsoever,
9 whether based on federal, state, local, statutory or common law or any other law, rule or
10 regulation, including the law of any jurisdiction outside the United States, against the Released
11 Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts,
12 disclosures, statements, representations, omissions or failures to act regarding the alleged
13 collection of inactivity fees from Settlement Class Members' MGM Gift Cards including all
14 claims that were brought or could have been brought in the Litigation relating to the MGM Gift
15 Cards belonging to any and all Releasing Parties.

16 14. Upon the Effective Date of this Final Judgment, the above releases of claims and
17 the Settlement Agreement will be binding on, and will have *res judicata* and preclusive effect in,
18 all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and
19 all other Settlement Class Members and Releasing Parties.

20 15. The Court adjudges that the payment of \$37,500.00 in attorneys' fees and
21 expenses in the amount of \$1,666.53 (the "Fee Award") is fair and reasonable for the following
22 reasons and those stated in Court. In assessing the requested attorneys' fees, the Court has
23 considered the relief achieved for the Settlement Class Members, the time and effort devoted by
24 Class Counsel as demonstrated by their sworn declaration, and the complexity of the legal and
25 factual issues involved. The Court finds that the Fee Award to Class Counsel identified above is
26 fair and reasonable under both a common fund approach and a lodestar approach. *See Vizcaino*
27 *v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002) (finding in this Circuit, a 25% fee is

1 the accepted “benchmark” in common fund cases); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d
2 67 (9th Cir. 1975) (lodestar approach).

3 16. The Court further adjudges that the payment of an incentive award in the amount
4 of \$5,000.00 (the “Incentive Award”) to Mr. Hanson to compensate him for his efforts and
5 commitment on behalf of the Settlement Class is fair, reasonable, and justified under the
6 circumstances of this case. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157 (9th
7 Cir. 2013). Such payment shall be made pursuant to and in the manner provided by the terms of
8 the Settlement Agreement.

9 17. Except as otherwise set forth in this Order, the Parties shall bear their own costs
10 and attorneys’ fees.

11 18. The Parties, without further approval from the Court, are hereby permitted to
12 agree to and to adopt such amendments, modifications, and expansions of the Settlement
13 Agreement and its implementing documents (including all exhibits to the Settlement Agreement)
14 so long as they are consistent in all material respects with this Final Judgment and do not limit
15 the rights of Settlement Class Members.

16 19. Without affecting the finality of this Final Judgment for purposes of appeal, this
17 Court shall retain jurisdiction over the Settlement Administrator, Plaintiff, Defendants, the
18 Settlement Class Members, and the Releasing Parties as to all matters relating to administration,
19 consummation, enforcement and interpretation of the Settlement Agreement and this Final
20 Judgment, and for any other necessary purpose.

21 **IT IS SO ORDERED.**

22 Dated this 4th day of December, 2018.

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26 The Honorable Richard A. Jones
27 United States District Judge