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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SAM A. ANTAR,

Plaintiff,

vs.

THE BORGATA HOTEL CASINO  
AND SPA, LLC, B ONLINE CASINO,  
BetMGM, LLC, MGM RESORTS  
INTERNATIONAL INC., ENTAIN  
PLC, JOHN DOES 1-10, MARY DOES  
1-10, and/or XYZ CORPORATIONS 1-  
10,

Defendants.

Docket No.: 2:22-cv-05785

Civil Action

**NOTICE OF MOTION TO  
COMPEL ARBITRATION, OR  
ALTERNATIVELY, TO  
DISMISS PURSUANT TO FED.  
R. CIV. P. 12(B)(6)**

**TO:** Matthew R. Litt, Esq.  
Litt Law, LLC  
789 Farnsworth Ave.  
Bordentown, NJ 08505  
*Attorney for Plaintiff*

**PLEASE TAKE NOTICE** that on August 7, 2023 or as soon thereafter as  
counsel may be heard, the undersigned attorneys for Defendant BetMGM, LLC

(“BetMGM”) shall move before the United States District Court for the District of New Jersey, at the United States Courthouse, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, for an Order in the form attached hereto, dismissing the Amended Complaint filed by Plaintiff Sam A. Antar (“Plaintiff”) and compelling Plaintiff to submit his claims to arbitration or, alternatively, dismissing Plaintiff’s Amended Complaint for failure to state a claim, pursuant to Rule 12(b)(6) (the “Motion”).

**PLEASE TAKE FURTHER NOTICE** that in support of the Motion, BetMGM shall rely upon the Declaration of Sarah Brennan (attached to the Motion as Exhibit 1), as well as the accompanying Memorandum of Law and Exhibits. A proposed form of Order is enclosed; and

**PLEASE TAKE FURTHER NOTICE** that oral argument is requested.

Respectfully submitted,

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Dated: June 9, 2023

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10,

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**MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
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R. CIV. P. 12(B)(6)**

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## **I. INTRODUCTION**

Plaintiff Sam A. Antar (“Antar”) is a convicted felon and repeat fraudster who has pled guilty to defrauding numerous individuals out of hundreds of thousands of dollars in false stock investment schemes. Rather than accept accountability for his own actions, Antar blames BetMGM for his crimes, falsely claiming that BetMGM preyed upon his alleged gambling addiction. Antar’s latest scheme is found in this Amended Complaint, where he asserts damages against BetMGM in a transparent effort to recoup the restitution that he has been ordered to pay to the victims of his state and federal fraud crimes in a rolling Ponzi scheme.

Antar’s claims fail as a matter of law. As a threshold matter, Antar’s attempt to make BetMGM pay for his own crimes must be dismissed because he is bound by a mandatory arbitration provision that formed the basis of his relationship with BetMGM. Specifically, under the Terms of Service that Antar agreed to when he created an online betting account with BetMGM, “any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements . . . shall be determined by arbitration . . . .” The Agreements, which included the Terms of Service and “any other additional rules and terms” published on BetMGM’s gaming platform, created a binding contract and governed all of Antar’s online gaming with the websites through which he conducted online betting, gaming and wagering services.

No exceptions to this arbitration clause apply here, and Antar’s claims arise from and relate to the Agreements. Thus, Antar’s claims should be dismissed for arbitration.

In the alternative, even if Antar’s claims did not require arbitration (and to be clear, they do), every one of Antar’s claims must be dismissed for failure to state a claim. First, Antar’s Consumer Fraud Act (“CFA”) claim fails because it is both insufficiently pled and legally flawed: (i) the claim does not differentiate among the “Defendants” as required, (ii) the alleged conduct does not constitute “unconscionable commercial practices” under New Jersey law, and (iii) the alleged conduct is governed by detailed gaming regulations, not the CFA. Second, Antar’s negligence claim fails because it is based upon purported duties that New Jersey law simply does not recognize. Finally, Antar cannot state an unjust enrichment claim because he received the benefit of his bargain—he wagered his money with BetMGM—and because he has not alleged the absence of a remedy at law. For all of these reasons, detailed below, BetMGM respectfully requests that Antar’s Amended Complaint be DISMISSED under Rule 12(b)(6).

## II. STATEMENT OF FACTS

### THE PARTIES

#### *Sam Antar*

Sam Antar is a convicted felon with a history of fraud crimes stretching over several decades. On May 15, 2000, this Court ordered Antar to pay \$728,805 to a Receiver as a result of insider trading in connection with his uncle's company—Crazy Eddie, Inc. *See* Order, attached as Ex. A. On August 7, 2013, Antar was sentenced to twenty-one months of imprisonment for federal wire fraud.<sup>1</sup> *See* Judgment, attached as Ex. B; Plea Agreement, attached as Ex. C.

Nine years later, during the pendency of this action, Antar was again convicted and incarcerated—this time for the New Jersey state crime of Second Degree Theft by Deception, with thefts totaling \$348,500. *See* Sentencing Memorandum, Ex. D. Antar asserted in the Sentencing Memorandum that his damages claims against casinos—presumably in this case—will help pay the restitution that he owes to the victims of his crimes. *Id.*

Then on April 5, 2023, Antar admitted to committing federal securities fraud with damages of \$567,000. *See* SEC Proposed and Final Judgments, attached as Ex.

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<sup>1</sup> This Court can take judicial notice of the publicly available criminal filings related to Antar. *See In re: Lamictal Indirect Purchaser & Antitrust Consumer Litig.*, 172 F. Supp. 3d 724, 738 (D.N.J. 2016) (“A court may also consider and take judicial notice of matters of public record . . . [which] may include prior judicial proceedings, . . . filings with the SEC . . .”) (internal citations omitted).

E. Antar admitted to victimizing investors, many of whom were his friends or acquaintances. *See SEC Complaint*, attached as Ex. F, at ¶ 1. Antar falsely told investors he would use their funds to buy shares in companies whose stock had not yet begun trading publicly. *Id.* at ¶ 2. But he never used the investors’ money to buy those “pre-IPO shares” and instead misappropriated their funds, which he used for gambling. *Id.* at ¶¶ 1, 4.

### *BetMGM*

BetMGM is a highly regulated gaming company. In the State of New Jersey, the Casino Control Act and detailed regulations promulgated by the New Jersey Division of Gaming Enforcement (“DGE”) govern BetMGM’s conduct. The DGE, which consists of attorneys, investigators, and accountants, enforces the Casino Control Act and the regulations. *See* N.J.S.A. 5:12-76. The DGE investigates the qualifications and suitability of applicants for online casino licenses, reviews all the terms and conditions of the online offerings, as well as the applicant’s internal controls, to carefully test all internet gaming systems prior to use by consumers, including the gaming operator’s system security, operations, accounting, and its programs for monitoring and reporting concerns of potential problem gamblers. *See id.*; N.J.A.C. 13:69O-1.5, 13:69O-1.2.

BetMGM is currently a Casino Service Industry Enterprise (“CSIE”) license holder. CSIE license holders in New Jersey offering online gaming are required to

display prominent responsible gaming logos as approved by the DGE, including clear messages, direct links, and information for patrons about how to self-exclude. *See id.* at 13:69O-1.2(z). These messages are evident when a patron logs on and off the internet or mobile gaming system. *See id.* at 13:69O-1.2(b). A CSIE licensee must also provide patrons with options for responsible gaming limits, such as funding or timing on the system, the right to self-exclude, and pop-up notifications “at least every half-hour, to be prominently displayed on the client terminal advising the patron of the current time and the time elapsed since” logging on. *See id.* at 13:69O-1.2(h)(2) and (l)(9).

Further, a CSIE licensee is required to employ an internet gaming manager responsible for the operation and integrity of internet gaming to review reports of suspicious behavior. *See* N.J.A.C. 13:69O-1.2(i). In addition to a gaming manager, all employees with direct patron contact are required to undergo training at the start of their employment, and at regular intervals thereafter, to address problem gambling behavior and responding to patrons or third parties who disclose that an individual may have a gambling problem. *See id.* at 13:69O-1.2(x).

THE MANDATORY ARBITRATION PROVISION

The crux of Antar’s claims is that he was allegedly enticed to gamble on BetMGM’s online gaming platform (including both the BetMGM site and Borgata Online, a platform that BetMGM operates) through financial incentives that

BetMGM offered him, despite showing signs of having a gambling addiction. *See* Amended Compl. at ¶¶ 7-8. As Antar admits, “at all times relevant to this Complaint, Plaintiff engaged in gambling activity by using his BetMGM (Sama00) and Borgata (Sama000) usernames within State of New Jersey borders.” *See* Amended Compl. at ¶ 13.

Because Antar engaged in online gaming activity and signed up for these two websites, he accepted the published Terms of Service. The Terms of Service, along with other additional rules and terms published on BetMGM’s gaming platform, constituted Antar’s “Agreements” with BetMGM and created a binding contractual relationship:

[t]hese Terms of Service together with . . . any other additional rules and terms published on the Platform or otherwise notified to You that specifically relate to and govern any particular event, game, software, promotion or tournament constitute a legally binding agreement between You and Us (‘Agreements’). You should read all of these documents carefully as each one forms part of the legally binding agreement between You and Us. By clicking on ‘Submit’ or ‘I Agree’ and accepting these Terms of Service, or by using the Services, You are also acknowledging and accepting these Agreements. Access to and use of the Services is governed by these Agreements.

*See* Declaration of Sarah Brennan, attached as Ex. 1, with Terms of Service

appended as Exs. A and B (hereinafter Exhibits “1-A” and “1-B”).<sup>2</sup>

The Borgata Online Terms of Service apply to Antar and BetMGM as the agent of Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa (“Borgata”), and because the Terms expressly apply to BetMGM’s websites, and BetMGM operates Borgata Online. *See* Ex. 1. Antar himself alleges that BetMGM is Borgata’s agent: “BetMGM, LLC (“BetMGM”) is a market leading online gaming and sports betting company that maintains exclusive access to all of MGM’s online gaming via market leading brands, including the Borgata.” Amended Compl. at ¶ 16.

The Terms of Service require arbitration of this dispute, as follows:

Excluding those disputes identified in Section 28 above and internet gaming disputes which are subject to the New Jersey Division of Gaming Enforcement’s dispute process under N.J.A.C. 13:69O-1.2r ... **any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements and Our use of electronic services providers, shall be determined by arbitration** in Atlantic County, New Jersey before a single neutral arbitrator. The arbitration shall be administered by JAMS pursuant to its **Comprehensive Arbitration Rules and Procedures**.

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<sup>2</sup> This Court can refer to and rely upon the Terms of Service attached hereto as Exhibits 1-A and 1-B in dismissing Antar’s Amended Complaint because his claims are based upon his relationship with BetMGM which is governed by the Agreements. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir.1997) (finding that court may consider documents on which claims are based in considering motion to dismiss).

*See* Exs. 1-A and 1-B at § 30 (emphasis added). The Agreements, including the Terms of Service, govern Antar’s use of BetMGM’s online betting, gaming and wagering services. *See* Exs. 1-A and 1-B at ¶¶ 1-2.

The opening sentence of the mandatory arbitration provision references “excluded disputes” under Section 28. Section 28, in turn, refers to written complaints submitted to BetMGM, and in some instances to the DGE, for resolution. Specifically, under Section 28, Antar has a permissive right (he “*may*”) to raise issues to the DGE, after submitting a written complaint to BetMGM, if he so chooses:

If You have any complaints, claims or disputes with regard to any alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event, or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted regarding the Services, You must submit Your complaint to Us in writing as soon as is reasonably practicable following the date of the original transaction to which the claim or dispute refers . . . To the extent that You are not satisfied with Our response You *may* contact the New Jersey Division of Gaming Enforcement [DGE]. . .

*See* Exs. 1-A and 1-B at § 28 (emphasis added). In this case, there is no Section 28 “excluded dispute.” All claims against BetMGM relate to BetMGM’s alleged exploitation of Antar’s alleged problem gambling disorder (as opposed to claims that he raised in writing with BetMGM or claims pending with DGE), and they must be

arbitrated. Antar's complaint is quite clearly a "claim[] or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements," which must proceed to JAMS arbitration under Section 30.

The opening sentence of the mandatory arbitration provision also references "excluded disputes" under N.J.A.C. 13:69O-1.2(r). According to that provision, BetMGM:

shall investigate each patron complaint related to Internet gaming and provide a response to the patron within five calendar days. For complaints that cannot be resolved to the satisfaction of the patron, related to patron accounts, game outcomes, and/or illegal activity, a copy of the complaint and licensees response including all relevant documentation shall be provided to the Division. All other complaints and responses related to Internet gaming (for example, password problems, online chat disputes and technical matters) shall be provided biweekly or with such frequency approved by the Division.

N.J.A.C. 13:69O-1.2(r). N.J.A.C. 13:69O-1.2(r) does not govern the problem gambling allegations that Antar raised in his Amended Complaint. Thus, based on Antar's allegations and the Terms of Service, the Amended Complaint clearly falls into the mandatory arbitration provision under Section 30.

#### PROCEDURAL HISTORY

Despite this mandatory arbitration provision, Antar filed a Complaint in the New Jersey Superior Court Law Division of Middlesex County on September 28,

2022. *See* ECF No. 1 at Ex. A. Antar filed his Complaint while awaiting sentencing after being convicted of the New Jersey state crime of Second Degree Theft by Deception. The Complaint brought ten causes of action against BetMGM for its alleged engagement in a RICO conspiracy to somehow disconnect players with winning hands and even take money that players had rightfully won from their accounts. *See* generally ECF No. 1 at Ex. A. The Complaint further alleged that BetMGM tried to keep Antar quiet when he uncovered this supposed conspiracy by giving him bonus bets. *See* generally *id.*

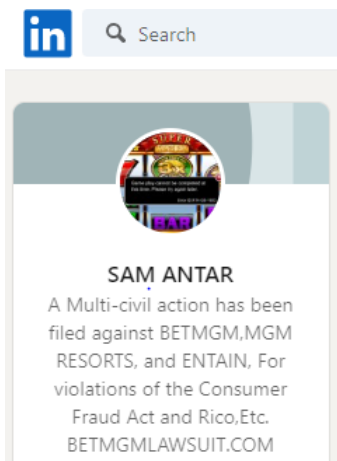
Undaunted by his pending criminal sentence, Antar went on a public relations offensive against BetMGM, publicly broadcasting his outlandish allegations against Defendants in an effort to tarnish their reputations. Among other things, Plaintiff went on a campaign to solicit other individuals that BetMGM allegedly harmed and even solicited BetMGM's own employees for information. For example, he was active on Twitter using the handle “@betmgmlawsuit,” where he repeatedly posted versions of the below message.<sup>3</sup>

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<sup>3</sup> Courts may take judicial notice of publicly available information to establish what information was in the public realm at the time. *Benak v. Alliance Cap. Mgmt. L.P.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006).



Plaintiff posted similar content on LinkedIn:



## About

### BETMGM EMPLOYEES & CUSTOMERS

A Multi-civil action has been filed against BETMGM, MGM RESORTS, and ENTAIN, For violations of the Consumer Fraud Act and Rico, Etc. If any employee has knowledge of the alleged allegations please contact us. If you are a customer and have experienced any disconnections or game errors with BETMGM please contact us. All information will be kept confidential.

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BetMGM removed the case to this Court on September 29, 2022, and Defendants timely moved to dismiss Antar's Complaint. *See* ECF No. 1. On November 14, 2022, one of Antar's attorneys, Christopher Gramiccioni of Kingston Coventry LLC, withdrew his appearance, advising the Court that his co-counsel Margo Zemel would continue to represent Antar. *See* ECF No. 19.

Antar was subsequently incarcerated on December 9, 2022. On December 27, 2022, the Court granted Antar's request for an extension of time to respond to the Defendants' Motions to Dismiss because he was "currently incarcerated" which made it "difficult" for him to communicate with counsel. *See* ECF No. 26. In February 2023, before the extension expired, Antar sought to use his incarceration to his advantage by requesting that the Court enter an Administrative Termination Order ("ATO") supposedly due to difficulties communicating with his attorney from prison. *See* ECF No. 33. Defendants objected given the purely legal issues raised in the pending dispositive motions, Antar's bad faith conduct to date, and the resulting prejudice to Defendants. *See* ECF Nos. 34-35. Although the Court denied "the incarcerated plaintiffs" request for an ATO after "finding defendants'

arguments persuasive,” the Court recognized that Antar’s incarceration would impact scheduling in this litigation and granted him another extension of his deadline to respond to the dispositive motions—this time until April 20, 2023. *See* ECF No. 36.

Approximately a month later, on March 14, 2023, Plaintiff’s counsel notified the Court of her intent to withdraw her appearance because Antar “will be representing himself *pro se*,” and asked the Court for guidance about how to proceed given that “Mr. Antar is in jail.” *See* ECF No. 37. On March 23, 2023, Plaintiff’s counsel filed a Motion to Withdraw due in part to Plaintiff’s supposed “keen desire to represent himself going forward.” *See* ECF No. 39. On April 3, 2023, Defendants advised the Court that they did not object to the withdrawal but requested that Plaintiff’s counsel provide contact information for Antar in prison. *See* ECF No. 40.

Unbeknownst to Defendants, however, Antar was no longer incarcerated, despite repeatedly representing that he was in prison. Five days after Plaintiff’s counsel filed her Motion to Withdraw, Antar was released from incarceration<sup>4</sup>—without any notice from Plaintiff’s counsel to the Court or Defendants.

On April 14, 2023, the Court entered an Order granting the Motion to Withdraw in part due to “Plaintiff’s intention to proceed in this action *pro se*,”

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<sup>4</sup> *See* State of New Jersey Department of Corrections website information for Antar, attached hereto as Ex. G.

requiring Plaintiff's counsel to provide Antar's mailing address, and granting yet another extension to respond to the pending motions. *See* ECF No. 41. Just two days later, Antar's new attorney (his third attorney in this matter) wrote to the Court—never advising Defendants or the Court that Antar had been released from custody—and sought to file an amended complaint. *See* ECF Nos. 41-43. In an effort to relieve the Court of motion practice, Defendants consented to the amendment, and Antar filed an Amended Complaint completely re-framing his alleged issues with BetMGM, no longer claiming that BetMGM had somehow been involved in a conspiracy to disconnect players before they could win. *See* ECF No. 47. Now, BetMGM again moves to dismiss Antar's amended claims based upon the enforceable arbitration clause—because no matter how many times Antar tries to re-frame his allegations, the mandatory arbitration clause applies.

### **III. ARGUMENT**

#### **A. Legal Standard**

Courts review a motion to compel arbitration under the Rule 12(b)(6) standard (as opposed to a Rule 56 standard) when the complaint and documents relied upon in the complaint provide that certain claims are subject to an enforceable arbitration clause. *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764, 776 (3d Cir. 2013) (citation omitted). Here, Antar's claims are expressly based upon his gaming activity on BetMGM's websites (*see* Amended Compl. at ¶ 13). Any

gaming activity on BetMGM's websites is governed by the Agreements, including the Terms of Service. Because the Terms of Service contain an enforceable arbitration clause mandating that his claims must proceed in JAMS, the Court should review the Amended Complaint under the 12(b)(6) standard and dismiss Antar's claims without prejudice while he files an arbitration demand.

A complaint should be dismissed under Rule 12(b)(6) if the alleged facts, taken as true,<sup>5</sup> fail to state a claim. *See In re Warfarin Sodium Antitrust Litig.*, 214 F.3d 395, 397-98 (3d Cir. 2000). A complaint with mere "labels and conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a court should accept well-pleaded allegations as true, it should not accept bald assertions, unsupported conclusions, unwarranted inferences, or sweeping conclusions cast in the form of factual allegations. *See Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

As set forth below, Antar's Amended Complaint is subject to an arbitration provision mandating that his claims must proceed in JAMS arbitration, so this Court should dismiss Antar's claims without prejudice while he files an arbitration demand. In the alternative, Antar's Amended Complaint fails to allege facts setting

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<sup>5</sup> Although the Court must accept Antar's factual allegations as true at this stage, BetMGM vehemently denies the allegations.

forth a plausible claim for relief on each of his three counts, and for that independent reason this Court should dismiss all of Antar's claims with prejudice.

**B. The Court Should Dismiss this Case and Compel Antar to Arbitrate His Claims.**

Antar should be compelled to arbitrate his claims for several reasons. *First*, arbitration provisions are broadly and routinely enforceable. The Federal Arbitration Act ("FAA") "presumptively favors the enforcement of arbitration agreements." *Harris v. Green Tree Fin. Corp.*, 183 F.3d 173, 178 (3d Cir. 1999). In fact, the FAA "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original). The presumption in favor of arbitration means courts should grant a motion to compel arbitration absent certainty that the claims do not fall within the scope of an arbitration clause. *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650 (1986). *See also Jansen v. Salomon Smith Barney, Inc.*, 776 A.2d 816, 819 (N.J. Super. Ct. App. Div. 2001) ("Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.") (internal citations omitted).

The FAA provides any party with the right to move for an order dismissing or staying a lawsuit. *See* 9 U.S.C. §§ 3, 6; *Sagal v. First USA Bank, N.A.*, 69 F. Supp. 2d 627, 632 (D. Del. 1999), *aff'd*, 254 F.3d 1078 (3d Cir. 2001) (dismissing action

because “all issues related to this litigation must be arbitrated, and no issues remain before the court”). If all of a plaintiff’s claims are arbitrable and will be finally resolved by arbitration, the Court should dismiss the entire action. *In re Zhejiang Topoint Photovoltaic Co., Lt.*, 2017 WL 6513433 at \*4 (Bankr. D.N.J. Dec. 19, 2017) (dismissing all claims and ordering arbitration because arbitration clause was broad enough to bar all claims) (internal citations omitted).

Because the law strongly favors arbitration, federal and New Jersey state courts routinely enforce arbitration agreements. *See, e.g., Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 89 (2000).<sup>6</sup> Further, arbitration is favored in consumer disputes: “Indeed, arbitration’s advantages often would seem helpful to individuals, say, complaining about a product, who need a less expensive alternative to litigation.” *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 280 (1995) (internal citations omitted); *see also Randolph*, 531 U.S. at 91-92 (enforcing arbitration clause between consumer and lender). This is true even if one party alleges a disparity in the parties’ bargaining power, including in the internet gaming context. *See Ackies v. Scopely, Inc.*, No. 19-cv-19247, 2022 WL 214541 (D.N.J. Jan. 25, 2022) (enforcing arbitration agreement

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<sup>6</sup> This applies when the plaintiff and at least one, but not all, defendants are bound by the arbitration clause. *See Angrisani v. Financial Technology Ventures, L.P.*, 952 A.2d 1140 (N.J. Super. Ct. App. Div. 2008).

between user and operator of online videogame, despite argument that agreement was unenforceable because plaintiff never assented to agreement, and terms were ambiguous, fraudulently induced, and unconscionable).<sup>7</sup>

*Second*, the specific terms of the arbitration provision require arbitration here. A non-signatory to a contract can compel arbitration with a signatory to the contract on the basis of agency principles. *See, e.g., Alfano v. BDO Seidman, LLP*, 925 A.2d 22 (N.J. Super. Ct. App. Div. 2007). Because BetMGM was Borgata’s agent, BetMGM can enforce the arbitration provision. *See* Amended Compl. at ¶ 16; Brennan Dec., Ex. 1 at ¶¶ 9-10. Antar agreed that “any claims or controversy *arising out of or relating to* the Agreements, including the determination of the scope or applicability of the Agreements and [BetMGM’s] use of electronic services providers, *shall be determined by arbitration* in Atlantic County, New Jersey before a single neutral arbitrator.” Exs. 1-A and 1-B at § 30 (emphasis added). The Agreements govern Antar’s use of BetMGM’s online gaming platforms. Exs. 1-A and 1-B at ¶¶ 1-2.

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<sup>7</sup> *See also Harris v. Green Tree Fin. Corp.*, 183 F.3d 173 (3d Cir. 1999) (enforcing arbitration provision between borrower and finance company because “inequality in bargaining power, alone, is not a valid basis upon which to invalidate an arbitration agreement”); *Gay v. CreditInform*, 511 F.3d 369, 369 (3d Cir. 2007) (enforcing arbitration clause in dispute between consumer and credit repair organization).

Federal and state courts agree that when “phrases such as ‘arising under’ and ‘arising out of’ appear in arbitration provisions, they are normally given broad construction.”<sup>8</sup> *Battaglia v. McKendry*, 233 F.3d 720, 725 (3d Cir. 2000); *Curtis v. Cellco Partnership*, 992 A.2d 795, 802 (N.J. Super. Ct. App. Div. 2010). Similarly, the contractual phrase “relating to” is broad and includes disputes that have some logical connection to the contract. *O’Shaughnessy v. Palazzo*, 496 F. Supp. 3d 872, 878 (E.D. Pa. 2020) (citing *John Wyeth & Bro. Ltd. v. CIGNA Int’l Corp.*, 119 F.3d 1070, 1074 (3d Cir. 1997)); *Curtis*, 992 A.2d at 802 (finding claims are “related to” an agreement if they “relat[e] in any way” to it). In fact, a provision covering claims “relating to” a contract is broader than one which covers claims “arising out of a contract.” *Yale Materials Handling Corp. v. White Storage & Retrieval Sys., Inc.*, 573 A.2d 484, 486 (N.J. Super. Ct. App. Div. 1990). *See also Angrisani v. Fin. Tech. Ventures, LP*, 952 A.2d 1140, 1146 (N.J. Super. Ct. App. Div. 2008).

Given the broad language in the arbitration provision, there can be no question that Antar’s Amended Complaint is a “claim[] or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements,” which must proceed to JAMS arbitration. *See* Exs. 1-A and 1-B § 30; *see also In re Zhejiang Topoint Photovoltaic Co., Lt.*, 2017 WL 6513433 at

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<sup>8</sup> *See AT&T Techs.*, 475 U.S. at 650 (the “presumption [in favor of arbitrability] is particularly applicable where the [arbitration] clause is...broad”).

\*4 (Bankr. D.N.J. Dec. 19, 2017) (dismissing all claims and ordering arbitration because arbitration clause was broad enough to bar all claims, including unjust enrichment and breach of contract); *Goffe v. Foulke Management Corp.*, 238 N.J. 191 (2019) (applying arbitration clause to Consumer Fraud Act dispute alleging statutory violations despite plaintiff's claim that contract as a whole was induced by fraud).

*Third*, the only exception to the arbitration provision does not apply to Antar's claims. The arbitration provision "[e]xclud[es] those disputes identified in Section 28 above and internet gaming disputes which are subject to the New Jersey Division of Gaming Enforcement's dispute process under N.J.A.C. 13:69O-1.2r . . . ." Under Section 28, Antar is required to raise written complaints to BetMGM and then merely has a *permissive* right to raise issues to the DGE. Antar does not allege he complained to BetMGM that it was enticing him to gamble despite his now alleged gambling addiction, and Antar chose not to contact the DGE. Instead, while facing charges of fraud and theft, Antar filed a lawsuit against BetMGM regarding his allegations. Further, the problem gambling allegations that Antar raised in his Amended Complaint are not subject to N.J.A.C. 13:69O-1.2(r). Accordingly, this dispute does not fall under Section 28 or N.J.A.C. 13:69O-1.2(r), and instead falls under Section 30, requiring arbitration.

*Finally*, the Terms of Service require that the scope of the arbitration provision shall be determined by an arbitrator: “any claims or controversy arising out of or relating to the Agreements, *including the determination of the scope or applicability of the Agreements . . . shall be determined by arbitration.*” See Exs. 1-A and 1-B at § 30 (emphasis added). See also *Ackies*, 2022 WL 214541 (finding that parties agreed to delegate questions regarding arbitrability to the arbitrator); JAMS Comprehensive Rule 11(b), which Antar agreed to in Section 30 of the Terms of Service<sup>9</sup> (“arbitrability disputes, including disputes over the . . . interpretation or scope of the agreement under which Arbitration is sought . . . shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.”).

There can be no question that Antar’s claims “arise out of” and “relate to” the Agreements, which governed his relationship with BetMGM. All of Antar’s claims are arbitrable, and the Court should dismiss his case accordingly.

**C. In the Alternative, the Court Should Dismiss Antar’s Amended Complaint for Failure to State a Claim.**

Antar’s claims must also be dismissed for failure to state a claim, for the reasons stated below.

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<sup>9</sup> “The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures.” See Exs. 1-A and 1-B at § 30.

**1. The Court Should Dismiss Antar’s CFA Claim (Count I) as Factually and Legally Insufficient.**

**a. Antar’s CFA Claim Impermissibly Lumps Together All Defendants.**

Antar alleges in Count I that “Defendants” violated the Consumer Fraud Act by providing him with enticements to gamble despite supposedly knowing that he was a compulsive gambler. Amended Compl. at ¶¶ 234-235. Antar’s CFA claim is factually deficient. A plaintiff must plead CFA claims with specificity. *See Frederico v. Home Depot*, 507 F.3d 188, 200-03 (3d Cir. 2007) (CFA claims must be pled with specificity); Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”).

A specific CFA claim requires a plaintiff to allege the “who, what, when, where and how” of the alleged fraud. *See, e.g., In re Rockefeller Center Properties, Inc. Securities Litigation*, 311 F.3d 198, 217 (3d Cir. 2002) (finding that heightened pleading standard for fraud claims requires plaintiff to allege “who, what, when, where and how” of alleged fraud). To meet these strict standards, a plaintiff cannot lump multiple defendants together in CFA allegations. Instead, a plaintiff must inform each defendant as to the specific unlawful acts that each is alleged to have committed. *Poling v. K. Hovnanian Enterprises*, 99 F. Supp. 2d 502, 508 (D.N.J. 2000) (explaining “allegations that generally allege fraud as against multiple defendants, without informing each defendant as to the specific fraudulent acts he or

she is alleged to have committed do not satisfy” heightened pleading requirements of fraud claims). Antar does not do that here.

Antar fails to specify which Defendants took which supposedly unlawful actions. Instead, Antar’s CFA claim impermissibly lumps all Defendants together. *See generally* Amended Compl. In fact, Antar claims in more than 100 paragraphs (Paragraphs 98 through 162 and Paragraphs 164 through 238) that “Defendants” supposedly committed improper conduct but never specify which “Defendants” took which actions. For example, Antar repeatedly alleges that “Defendants sent Plaintiff a text message . . . for the purpose of enticing him to gamble” without specifying which Defendant sent the text. *See, e.g.*, Amended Compl. at ¶¶ 98-116. Without any specific allegations of what each Defendant did and why such conduct would violate the CFA, Count I fails as a matter of law.

**b. Antar’s Allegations Do Not Constitute  
Unconscionable Commercial Practices Under New  
Jersey Law.**

Antar further alleges in Count I that BetMGM violated the CFA when it engaged in an “unconscionable commercial practice” by enticing him to gamble despite supposedly knowing that he was a problem gambler. *See* Amended Compl. at ¶¶ 234-235. The CFA does not define “unconscionable commercial practice.” *Turf Lawnmower Repair, Inc. v. Bergen Record Corp.*, 655 A.2d 417, 429 (N.J. 1995). However, the New Jersey Supreme Court has explained that a party may

have engaged in an unconscionable commercial practice if it fails to act with “good faith, honesty in fact and observance of fair dealing.” *Id.* (internal citations omitted).

Critically, the “capacity to mislead” is required in order to state a claim for unconscionable commercial practices. *Id.* New Jersey courts routinely dismiss allegations of unconscionable commercial practices when the plaintiff fails to allege that the practices at issue have the capacity to mislead. *See, e.g., Van Holt v. Liberty Mut. Fire Ins. Co.*, 163 F.3d 161, 168 (3rd Cir. 1998) (dismissing plaintiff’s CFA claim for unconscionable commercial practices because defendant did not commit fraud, make misrepresentations, or mislead plaintiff); *Enrunda Trading Co. v. MTM Trading LLC*, 2018 WL 11241079, at \*3 (D.N.J. Mar. 29, 2018) (Arleo, J.) (finding that plaintiff’s CFA claim “fails because the Complaint lacks factual allegations specifying how or why Defendants’ conduct was false or deceptive”); *Slinko-Shevchuk v. Ocwen Financial Corp.*, No. 13–5633, 2015 WL 1271963, at \* (D.N.J. March 18, 2015) (dismissing plaintiff’s CFA claim for unconscionable commercial practices because “[t]hough Plaintiff need not specifically allege that [defendant] made an affirmative fraudulent statement or omission, Plaintiff’s claims are devoid of any indication that [defendant’s] conduct was misleading, or that she was misled at all. Plaintiff’s claim . . . lacked any indication of deception or other aggravating circumstances that would place the business practice ‘outside the norm of reasonable business practice in that it will victimize the average consumer’”); *Yingst v. Novartis*

*AG*, 63 F. Supp. 3d 412, 417 (D.N.J. 2014) (dismissing plaintiff's CFA claim for unconscionable commercial practices when plaintiff alleged that defendant charged higher price for Excedrin Migraine than for Excedrin Extra Strength, despite being pharmacologically identical products, because plaintiff did not allege any dishonesty by defendant and the price differential did not constitute a lack of fair dealing).

In this case, Antar has not alleged any *facts* that BetMGM was dishonest or attempted to mislead him. *See generally* Amended Compl. Instead, Antar merely alleges that Defendants enticed him to gamble despite purportedly knowing that he was a problem gambler. *Id.* This type of conduct cannot constitute an unconscionable commercial practice under New Jersey law. *See, e.g., Van Holt*, 163 F.3d 161, 168.

**c. New Jersey State Gaming Regulations, Not the CFA, Govern Antar's Allegations.**

The Court should separately dismiss Antar's CFA claim because the DGE exclusively addresses complaints regarding problem gambling. *See In re Borgata Winter Poker Open*, A-4409-13T3, A-0231-14T3, 2016 WL 4072219, at \*8 (N.J. Super. Ct. App. Div. Aug. 1, 2016). The *Borgata* court dismissed a plaintiff's CFA claim because it was based on alleged violations of the Casino Control Act that were "the subject of a detailed regulation governing the conduct of a casino licensee, that only the Division has the power to enforce." *Id.*

This holding applies equally here because Antar, like the plaintiff in *Borgata*, has brought claims dealing with rules governing online gaming operators. Antar’s CFA claim is based on supposed failures by BetMGM to recognize his symptoms of problem gambling and to refrain from providing him with gaming promotions. *See, e.g.*, Amended Compl. at ¶ 234 (“Defendants engaged in an unconscionable commercial practice by providing ongoing enticements to gamble between June 2019 and January 2020 while Defendants knew that the Plaintiff was a compulsive gambler and/or that he demonstrated symptoms of being a compulsive gambler.”). As even Antar recognizes, compulsive gambling is the subject of comprehensive State regulation. *See id.* at ¶ 30 (“At all times relevant to this Complaint, Defendants were obligated by N.J.A.C. 13:69O- 1.2(x) to implement training for employees who have direct contact with patrons via phone, email, electronic chat, or other means on the recognition of the nature and symptoms of problem gambling behavior, and how to assist players in obtaining information regarding help for a gambling problem.”).

Critically, under New Jersey gaming regulations, even if Antar had self-excluded from internet gaming in New Jersey,<sup>10</sup> BetMGM could not be liable for allowing him to gamble:

A request for self-exclusion . . . shall . . . include: . . . A waiver and release, which shall release and forever discharge the State of New Jersey, the Division, and its

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<sup>10</sup> Notably, Antar does not allege—because he cannot truthfully do so—that he placed himself on the online self-exclusion list.

employees and agents, and all casino licensees and their employees and agents from any liability to the person requesting self-exclusion or Internet self-exclusion, as applicable, and his or her heirs, administrators, executors, and assigns for any harm, monetary or otherwise, which may arise out of or by reason of any act or omission relating to the request for self-exclusion or Internet self-exclusion, as applicable, or request for removal from the self-exclusion list or Internet self-exclusion list, including:

...

- ii. The failure of a casino licensee to withhold gaming privileges from, or restore gaming privileges to, a self-excluded person;
- iii. Permitting a self-excluded person to engage in gaming activity in a licensed casino or simulcasting facility while on the list of self-excluded persons;
- iv. Permitting an Internet self-excluded person to engage in Internet gaming activity while on the list of Internet gaming self-excluded persons . . . .

N.J.A.C. 13:69G-2.2(d). Because, like the plaintiff in *Borgata*, Antar seeks to hold BetMGM liable for conduct that is the subject of detailed regulations governing the conduct of a gaming licensee, his claims fail. *Borgata Winter Poker Open*, 2016 WL 4072219, at \*8. *See also Doug Grant, Inc. v. Greate Bay Casino Corp.*, 232 F.3d 173, 188-89 (3d Cir. 2000) (prohibiting plaintiff from amending complaint to state CFA claim because it would interfere with Casino Control Act's regulatory scheme).

Further, allowing Antar to state a CFA claim due to BetMGM's alleged conduct would provide Antar with a private right of action for violations of gaming regulations, and there is no such right under New Jersey law. *See id.* at \*8 (citing

*Miller v. Zoby*, 595 A.2d 1104 (N.J. Super. Ct. App. Div. 1991)). Regardless, BetMGM has not violated any gaming regulations, and Antar does not even allege otherwise. For all of these reasons, this Court should dismiss Antar’s CFA claim.

**2. Antar’s Negligence Claim (Count II) Fails Because He Does Not Allege the Breach of a Cognizable Duty.**

Antar’s negligence claim (Count II) is equally meritless. Antar alleges that Defendants were negligent because they enticed him to gamble despite supposedly knowing that he had a gambling problem. Amended Compl. at ¶¶ 241-42. As an initial matter, the Terms of Service contain an exculpatory clause that limits BetMGM’s liability in connection with Antar’s use of its online gaming platform. According to the Terms of Services, BetMGM, as Borgata’s agent: “WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE WHATSOEVER ARISING FROM OR IN ANY WAY CONNECTED WITH YOUR USE OR ANY THIRD PARTY’S USE OF THE SOFTWARE OR THE SERVICES.” See Exs. 1-A and 1-B at § 23.3 (emphasis in original). New Jersey courts routinely enforce similar exculpatory clauses. See, e.g., *Stelluti v. Casapenn Enterprises, LLC*, 1 A.3d 678, 690 (N.J. 2010); *Bartlett v. Push To Walk*, No. 2:15-cv-7167, 2018 WL 1726262, at \*6 (D.N.J. Apr. 10, 2018); *Polechek v. Schina*, No. A-5875-08T3, 2010 WL 5419072, at \*3 (N.J. App. Div. Mar. 30, 2010).

Setting aside the enforceable exculpatory clause, for a complaint alleging negligence to survive a motion to dismiss, a court must find as a matter of law that the defendant owed a duty to the plaintiff. *See Taveras v. Resorts Intern. Hotel, Inc.*, No. 07–4555 (RMB), 2008 WL 4372791, at \*4 (D.N.J. Sept. 19, 2008) (internal citations omitted). Antar, however, bases his negligence claim on BetMGM’s purported breach of a duty *that New Jersey courts do not recognize. Id.* This is an impermissible attempt to make a negligence claim open-ended and amorphous. *See Franco v. Fairleigh Dickinson Univ.*, 248 A.3d 1254, 1263 (N.J. Super. Ct. App. Div. 2021) (noting that plaintiffs must prove existence of alleged duty and “[a]ny common law duty imposed by [a c]ourt must ‘satisf[y] an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy’”) (internal citations omitted).

According to Antar, BetMGM violated some unspecified duty of care by enticing him to gamble when it supposedly should have known that he was a compulsive gambler, as follows:

Defendants breached their duty of care to Plaintiff by making ongoing inducements to gamble between June 2019 and January 2020 while Defendants knew or should have known that the Plaintiff was a compulsive gambler. Defendants breached their duty of care to the Plaintiff by initiating a long series of enticements to gamble which Defendants knew or should have known would have the effect of creating, nurturing, expediting, and/or exacerbating problem gambling in a significant number of its customers.

Amended Compl. at ¶¶ 241-42. But, there is no such negligence common law duty in New Jersey.

BetMGM was not creating or exacerbating problem gambling in Antar or any other customer. To be sure, BetMGM takes problem gambling seriously, and has numerous options for persons to self-exclude or limit their play, as well as resources for assistance. However, New Jersey law does not include a common law duty to protect problem gamblers from their actions. Despite a heightened sensitivity to problem gaming, New Jersey courts have repeatedly held that casinos have no common law duty to prevent alleged “compulsive gamblers” from gambling. *See Taveras*, 2008 WL 4372791, at \*4 (explaining that “great weight of authority supports Defendants’ position that common-law tort principles do not require casinos to rescue compulsive gamblers from themselves”) (citing *Hakimoglu v. Trump Taj Mahal Assoc.*, 70 F.3d 291, 293–94 (3d Cir. 1995)).

In *Hakimoglu*, the Third Circuit Court of Appeals held that New Jersey common law does not provide relief for a plaintiff who claims that a casino enticed him to gamble, served him alcoholic beverages until he was intoxicated, and invited him to gamble while intoxicated. *Hakimoglu*, 70 F.3d at 294. Specifically, the *Hakimoglu* plaintiff alleged that:

defendants had ‘intentionally and maliciously enticed him’ to gamble at the casinos on numerous occasions by providing him with free alcoholic beverages and other

amenities; that while he gambled he was served free alcoholic beverages until he became intoxicated; that after he became ‘visibly and obviously intoxicated’ the defendants ‘invited and permitted him to continue to gamble in that condition’ for lengthy periods.

*Id.* at 292. The Third Circuit found that there is no room for a common law cause of action when “[t]he State has regulated the minutiae of gaming rules.” *Id.*

In *Taveras*, this Court rejected the plaintiff’s request for this Court “to go even further, imposing upon casinos a duty to stop sober casino patrons who are gambling too much.” *See Taveras*, 2008 WL 4372791, at \*4. The *Taveras* plaintiff alleged that the defendant casinos offered her “numerous ‘enticements’ . . . , including casino event promotions, gambling tournament invitations, promotions for free televisions, as well as free limousine rides, hotel rooms, food, entertainment, and gift coupons.” *See id.* at \*2. She also alleged that “certain casino employees ‘refused to permit [her] family members from taking her home,’ (Amd.Comp. § 114.), and continued to allow her to gamble in spite of clear indications that she was a compulsive gambler, confirmed by information about her condition provided to casino employees by her brother.” *Id.* at \*1.

This Court concluded that casinos had *no* “duty to identify and exclude compulsive gamblers from their casinos” because such a duty would “depart[] radically from the New Jersey courts’ formulation of the common-law duty of care.” *Id.* at \*4. Ms. Taveras’ claims failed for a number of reasons, each of which applies

here. First, the Court found that there was no legal support for her claim that the casino owed problem gamblers a duty: “common-law tort principles do not require casinos to rescue compulsive gamblers from themselves.” *Id.* Second, the Court found that there is a body of regulatory law—not a common law duty—regarding problem gambling because gaming is a highly regulated industry. *Id.* Third, the *Taveras* Court took a common-sense approach to the plaintiff’s claim in finding that there would be no bounds to claims that plaintiffs could bring under this theory of liability:

Plaintiff’s theory would, in effect, have no limit. For example, if adopted by this Court, her ***theory would impose a duty on shopping malls and credit-card companies to identify and exclude compulsive shoppers. This Court will not sacrifice common sense and stretch the common-law duty of care as Plaintiff urges.***

*Id.* (emphasis added). *See also Rahmani v. Resorts International Hotel, Inc.*, 20 F. Supp. 2d 932, 935 (E.D. Va. 1998), *aff’d*, 182 F.3d 909 (4th Cir. 1999) (applying New Jersey law and rejecting plaintiff’s claim that casinos “had a legal duty to stop [compulsive gamblers] from gambling”); *Stevens v. MTR Gaming Grp., Inc.*, 788 S.E.2d 59, 63 (W. Va. 2016) (reviewing caselaw and finding that “no other jurisdiction has found a duty of care to” protect compulsive gamblers from gambling).

The allegations in Antar’s Amended Complaint are strikingly similar to those in *Tavaras*: he complains that the Defendants enticed him to gamble despite that

they should have known he was a problem gambler. Even if those claims were true—and to be clear, they are not—New Jersey law does not recognize any duty for casinos to refrain from the very conduct that Antar alleges. *See Hakimoglu*, 70 F.3d at 293–94; *Taveras*, 2008 WL 4372791, at \*4. In fact, even if Antar had self-excluded from internet gaming in New Jersey, New Jersey State gaming regulations expressly provide that BetMGM would *not* be liable for allowing him to gamble. N.J.A.C. 13:69G-2.2(d). The Court should dismiss Count II accordingly.

### **3. Antar Cannot State a Claim for Unjust Enrichment (Count III).**

In Count III of the Amended Complaint, Antar asserts a claim for unjust enrichment. To support this claim, Antar baldly alleges that he “conferred a benefit on Defendants in the form of monies gambled and lost to the Defendants. As a result of the enticements and circumstances set forth herein, Defendants have been unjustly enriched at the expense of the Plaintiff, and retention of these monies would be unjust.” Amended Compl. at ¶¶ 245-46. The claim fails as a matter of law.

A plaintiff must set forth the following three elements to state a claim for unjust enrichment: “(1) at plaintiff's expense (2) defendant received benefit (3) under circumstances that would make it unjust for defendant to retain benefit without paying for it.” *Yingst*, 63 F. Supp. 3d at 417 (internal citations omitted). There must be allegations that the plaintiff expected remuneration from the defendant at the time the plaintiff conferred a benefit on the defendant, and that the defendant's failure to

provide remuneration enriched the defendant beyond its contractual rights. *Id.* (granting defendant’s motion to dismiss plaintiff’s unjust enrichment claim because plaintiff failed to allege that defendant unjustly retained benefit without payment therefore: plaintiff purchased defendant’s headache medication, received medication, and did not allege that medication was ineffective—she merely alleged that defendant charged too much money).

This Court should dismiss Antar’s claim for unjust enrichment because it has previously found that an alleged problem gambler cannot bring an unjust enrichment claim against a casino even if the gambler alleges that the casino enticed him to gamble despite signs that he was a problem gambler. *Taveras*, 2008 WL 4372791, at \*4. As explained *supra*, the *Taveras* plaintiff alleged that the defendant casinos offered her “numerous ‘enticements’” to gamble “in spite of clear indications that she was a compulsive gambler.” *Taveras*, 2008 WL 4372791, at \*1. The *Taveras* plaintiff did “not state a legally cognizable claim” for unjust enrichment. *Id.* at \*6.

In finding that the plaintiff did not state a claim for unjust enrichment, this Court reasoned:

[p]laintiff clearly received the benefit of her relationship with Defendant casinos: she spent money on the bona fide chance that she might win more money. In short, she gambled. The mere fact that Defendants profited from her misfortune, while lamentable, does not establish a cognizable claim in the law. . . . Although Plaintiff may feel wronged by Defendant-casinos, unjust enrichment

and a lack of good faith are not available to her as avenues for relief.

*Id.*

As in *Taveras*, Antar received the benefit of his relationship with BetMGM because he spent money on the bona fide chance that he might win more money, and he does not allege otherwise. *See generally* Amended Compl.; *Taveras*, 2008 WL 4372791, at \*6. Thus, as in *Taveras*, although Antar may allege that BetMGM allegedly enticed him to gamble despite indications that he was a problem gambler, unjust enrichment is not available to him as an avenue for relief, and the Court should dismiss Count III. *Id.*

Further, this Court should dismiss Antar's unjust enrichment claim because unjust enrichment is an equitable doctrine, and Antar has adequate remedies at law. *See Cohen v. Subaru of Am., Inc.*, Case No. 1:20-cv-08442, 2022 WL 721307, at \*34 (D.N.J. Mar. 10, 2022) (dismissing unjust enrichment claim because plaintiff failed to identify equitable remedy that was unavailable through his legal claims). Like the *Cohen* plaintiff, Antar fails to claim that he has an inadequate remedy at law, and he does "not identify an equitable remedy that [he] seek[s] that is unavailable through one of [his] legal claims." *Id.*; *see generally* Amended Compl. It does not matter that Antar's request for remedies at law fails for the reasons set forth *supra*, because it is the "availability of a remedy at law, not the viability of that

remedy,” that bars a claim for unjust enrichment. *See Cohen*, 2022 WL 721307, at \*34 (quoting *Shaulis v. Nordstrom, Inc.*, 865 F.3d 1, 16 (1st Cir. 2017)).

Because unjust enrichment is an equitable doctrine, and Antar fails to allege that he has inadequate remedies at law—let alone identify an equitable remedy that is unavailable through his legal claims—the Court should dismiss Count III. *See id.*

#### IV. CONCLUSION

For the foregoing reasons, the Court should dismiss Antar’s Amended Complaint without prejudice and compel him to submit his claims to arbitration, or in the alternative, hold that he fails to state a claim for relief and dismiss the Amended Complaint accordingly.

Respectfully submitted,

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*Attorneys for Defendant BetMGM, LLC*

Dated: June 9, 2023

**CERTIFICATE OF SERVICE**

I, Lauren O'Donnell, Esquire, hereby certify that, on June 9, 2023, a true and correct copy of the foregoing Motion to Dismiss was served via ECF upon the following represented parties:

Matthew R. Litt, Esq.  
Litt Law, LLC  
789 Farnsworth Ave.  
Bordentown, NJ 08505  
[mlitt@littlaw.net](mailto:mlitt@littlaw.net)  
*Attorney for Plaintiff*

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Gibson Dunn  
200 Park Avenue  
New York, NY 10166-1093  
*Attorneys for Defendants MGM Resorts International, Inc.  
and The Borgata Hotel Casino and Spa, LLC*

*/s/ Lauren O'Donnell*

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Lauren O'Donnell

Dated: June 9, 2023

# **Exhibit 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

SAM A. ANTAR,

Plaintiff,

VS.

THE BORGATA HOTEL CASINO  
AND SPA, LLC, B ONLINE  
CASINO, BetMGM, LLC, MGM  
RESORTS INTERNATIONAL INC.,  
ENTAIN PLC, JOHN DOES 1-10,  
MARY DOES 1-10, and/or XYZ  
CORPORATIONS 1-10,

Defendants.

Docket No.:  
Civil Action

## DECLARATION OF SARAH BRENNAN

I, Sarah Brennan, being of full age, hereby declare as follows:

1. I am Senior Director of Compliance at BetMGM, LLC (“BetMGM”).
2. In my position as Senior Director of Compliance, I am responsible for, among other things, maintaining the agreements, including the Terms of Service, that govern access to and use of BetMGM’s online gaming platform.
3. I make this Declaration based on firsthand knowledge as Senior Director of Compliance, and where I lack any personal knowledge, I make this Declaration on information and belief.
4. I have reviewed the Amended Complaint filed by Sam Antar in this matter, including specifically paragraphs 9, 13, 14, 16, and 29, where Mr. Antar

states that he gambled on the BetMGM and Borgata websites from May 2019 to January 2020.

5. During that May 2019-January 2020 timeframe, the BetMGM Terms of Service were those attached hereto as Exhibit A. Mr. Antar could not have accessed the BetMGM website, as he alleges he did in paragraph 13 of the Amended Complaint (“using his BetMGM (Sama00)... usernames”), without agreeing to accept those Terms of Service.

6. BetMGM was the operator of the Borgata Online gaming platform during nearly the entire May 2019-January 2020 time period at issue.

7. During that May 2019-January 2020 timeframe, the Terms of Service on Borgata Online were those attached as Exhibit B. Mr. Antar could not have accessed the Borgata Online website, as he alleges he did in paragraph 13 of the Amended Complaint (“using his ... Borgata (Sama000) usernames”), without agreeing to accept those Terms of Service.

8. The BetMGM Terms of Service (Exhibit A) and the Borgata Online Terms of Service (Exhibit B) are identical with respect to the material issues in this case, including the arbitration provisions.

9. BetMGM was the agent of Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa (“Borgata”) during nearly the entire May 2019-January 2020 time period at issue, when BetMGM operated both the

BetMGM and Borgata Online gaming platforms subject to the BetMGM Terms of Service (Exhibit A) and Borgata Online Terms of Service (Exhibit B), respectively.

10. As Borgata's agent, BetMGM was operating the gaming platform subject to the Borgata Online and BetMGM Terms of Service (which specifically reference the BetMGM website), including without limitation the arbitration provision.

11. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 8, 2023

/s/ [Signature]

## **Exhibit 1-A**

## Terms of Service

IMPORTANT - PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCEPTING THE AGREEMENTS (AS DEFINED BELOW), THEN PRINT THESE TERMS OF SERVICE AND STORE THEM ALONG WITH ALL CONFIRMATION EMAILS, ADDITIONAL TERMS, TRANSACTION DATA, GAME RULES AND PAYMENT METHODS RELEVANT TO YOUR USE OF THE PLATFORMS AND/OR SERVICES (AS EACH SUCH TERM IS DEFINED BELOW). WE WILL NOT RETAIN OUR CONTRACT WITH YOU SO PLEASE PRINT IT OUT FOR YOUR RECORDS. THESE TERMS OF SERVICE ARE SUBJECT TO CHANGE AT ANY TIME (AS SET OUT BELOW). BY ACCEPTING THESE TERMS OF SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND ACCEPT THE AGREEMENTS WITHOUT MODIFICATION. IF YOU DO NOT ACCEPT THE AGREEMENTS WITHOUT MODIFICATION, DO NOT ACCEPT THESE TERMS OF SERVICE AND DO NOT ACCESS OR USE THE SERVICES (AS DEFINED BELOW). IF YOU HAVE ANY QUESTIONS ABOUT THE AGREEMENTS, PLEASE SEEK INDEPENDENT LEGAL COUNSEL BEFORE AGREEING TO THESE TERMS OF SERVICE OR ACCESSING OR USING THE SERVICES.

You accept to be bound by this contract by clicking on 'Submit' or 'I Agree' and/or by using the Services (as that term is hereinafter defined). After You (as that term is hereinafter defined) click on 'Submit' or 'I Agree' or when You use the Services, a legally binding agreement on these terms and conditions is entered into between, (a) You, the end user ('You' or 'Your' as applicable) and (b) Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa, located at 1 Borgata Way, Atlantic City, NJ 08401 ('Borgata', 'We', 'Us' or 'Our' as appropriate).

These Agreements (as that term is hereinafter defined) govern the use of the Services in New Jersey. These Agreements are separate and distinct from the policies that govern the online gaming services offered by MGM Resorts International in other jurisdictions, including the State of Nevada.

The Services currently operate under and pursuant to the Internet Gaming Permit issued to Marina District Development Company, LLC by the New Jersey Division of Gaming Enforcement pursuant to and in accordance with the Casino Control Act (the 'Act'), N.J.S.A. 5:12-95.21. Borgata is authorized to conduct Internet Gaming in the State of New Jersey pursuant to the Act under a license issued to Marina District Development Company, LLC (NJIP 15-001). The Services are provided by Borgata on behalf of MGM Resorts International ("MGM") (where Borgata is an indirect wholly owned subsidiary of MGM) and are marketed under the MGM brand. These Agreements are at all times subject to the authority of the New Jersey Division of Gaming Enforcement.

These Agreements apply to the following MGM (1) New Jersey online gaming websites: [nj.BetMGM.com](http://nj.BetMGM.com), [poker.BetMGM.com](http://poker.BetMGM.com) and [casino.BetMGM.com](http://casino.BetMGM.com) and <https://www.nj.BetMGM.com/en/account/sports> ; and (2) the New Jersey online mobile gaming apps: [poker.BetMGM.com](http://poker.BetMGM.com) and [casino.BetMGM.com](http://casino.BetMGM.com) and [BetMGMSports.com](http://BetMGMSports.com), and (3)

any other online or mobile platform provided by Us (each individual site being a 'Platform' and together the 'Platforms') on which You access Our betting, gaming and wagering services ('Services').

In the event that You have any complaints, claims or disputes with regard to any outcome regarding the Services or any other activity performed by Us, You should in the first instance contact Us in accordance with Section 28 below.

These Terms of Service together with the Privacy Policy, the Landing Page and Promotions section (Poker, Casino, Sports) the Tournaments section (Poker), the How to Play/Getting Started sections (Casino, Poker, Sports) and Game Rules sections (Casino), the Frequently Asked Questions (Casino, Poker, Sports), all additional game rules, the Poker Etiquette section, the Disconnection and Cancellation Policy (Casino, Poker, Sports), Standard Promotional Terms and Conditions (Casino, Poker, Sports), Fees and Commission (Poker), the Third-Party Content Policy, the Reward Plan Terms and Conditions ("Reward Plan") and any other additional rules and terms published on the Platform or otherwise notified to You that specifically relate to and govern any particular event, game, software, promotion or tournament constitute a legally binding agreement between You and Us ('Agreements'). You should read all of these documents carefully as each one forms part of the legally binding agreement between You and Us. By clicking on 'Submit' or 'I Agree' and accepting these Terms of Service, or by using the Services, You are also acknowledging and accepting these Agreements. Access to and use of the Services is governed by these Agreements.

Please note that these Terms of Service shall prevail in the event of any conflict between these Terms of Service and any of the game rules or other documents referred to in these Terms of Service.

Your attention is drawn to Our Privacy Policy which describes how We deal with and protect Your personal information. By accepting these Terms of Service, You are also acknowledging and accepting the Privacy Policy. In the event of any conflict between the Agreements and the Privacy Policy, the Privacy Policy shall control.

## 1. APPLICABILITY OF AGREEMENTS

By using the Services and/or by acknowledging that You have read these Agreements when You register to join and/or by clicking on the 'Submit' or 'I Agree' button when You install any of the software relating to the Services provided via the Platforms or when You register for Your Account, You agree to comply with these Agreements, and You acknowledge that Your failure to comply with these Agreements may result in disqualification, the closure of Your Account (hereafter as defined in Section 19 and Section 20 below), forfeiture of funds and/or legal action against You, as appropriate and as further specified in these Agreements. You acknowledge that if You accept these Agreements, We will start providing You with the benefit of the Services immediately. As a consequence of this, if You accept these Agreements when registering for the Services, You will not be able to cancel Your registration later, although You can terminate these Agreements and close Your Account in accordance with Section 20 below.

## 2. LEGALITY OF USE OF THE FACILITIES

### 2.1

You may only use the Services if You are 21 years of age or over, a United States resident, and it is legal for You to do so according to the laws of New Jersey. You confirm that You are not accessing the Services from a state or foreign jurisdiction outside of New Jersey at the time of placing a bet or participating in a game. You understand and accept that We are unable to provide You with any legal advice or assurances and that it is Your sole responsibility to ensure that at all times You comply with the laws that govern You and that You have the complete legal right to use the Services. You acknowledge that underage gambling is illegal, and that it is a criminal offense to allow a person who is under the age of 21 to participate in Internet or mobile wagering. Any use of the Services is at Your sole option, discretion and risk. By using the Services, You acknowledge that You do not find the Services to be offensive, objectionable, unfair, or indecent in any way.

### 2.2

Federal Law prohibits and restricts wagering on the Internet (including, but not limited to, such prohibitions and restrictions set out in 18 U.S.C. §§ 1084 et seq. ('The Wire Act') and 31 U.S.C. §§ 3163 through 3167 ('UIEGA')). It is a Federal offense for persons physically located outside of New Jersey to engage in Internet wagering through a New Jersey casino.

## 3. ACCOUNT/REGISTRATION

### 3.1

To use the Services, You will first need to register for an account with Us. You may access any of the Services from Your Account (as defined below). You are prohibited from allowing any other person to access or use Your Account.

### 3.2

You can open an account with Us by choosing a unique account name and password and entering other information that We ask for on Our registration form such as (but not limited to) Your first and last name, social security number, physical address, email, gender, birth date and telephone number (an 'Account').

### 3.3

You shall ensure that the details provided at registration are accurate and kept up to date. You can change the details You provide at registration at any time by editing Your Account preferences. Please see Our Privacy Policy for further details regarding what information we collect, and how that information is used, shared and stored. Alternatively, You can contact Us for further information.

### 3.4

There are no set-up charges for opening Your Account. We are not a bank and funds are not insured by any government agency. All payments to and from Your Account must be paid in U.S. dollars and shall not bear interest and You shall ensure that all payments into Your Account are from a payment source for which You are the named account holder.

### 3.5

Use of certain Services may require You to be a member of M life Rewards Program or other rewards club established by Borgata or MGM Resorts International and such membership may impact Your ability to access, claim and/or use certain benefits associated with the Services. You may enroll in the M life Rewards Program either in-person at the Borgata Hotel Casino & Spa, 1 Borgata Way, Atlantic City, New Jersey 08401 or at designated locations at other participating MGM resorts, online through the M life Rewards website, or as otherwise authorized by MGM. M life Rewards enrollment and membership can only be activated by presentation of a valid, government-issued photo identification at an M life Rewards Program desk or another designated M life Rewards location at participating M life Rewards resorts, or as otherwise authorized by MGM. Your participation in the M life Rewards Program is subject to the program's terms and conditions available at [mlife.com](http://mlife.com) (M life Rewards Program Rules) and to the terms of the MGM privacy policy available at [mlife.com](http://mlife.com) or other locations where it is posted.

### 3.6

To play Real Money Games or place a bet, You will be required to pay 'real money' funds into Your Account by any of the following methods : (i) a deposit account; (ii) a credit or debit card, which has been registered and verified pursuant to the requirements of the issuer; (iii); a reloadable prepaid card, which has been verified as being issued to You and is non-transferable; (iv) cash complimentaries, promotional credits, or bonus credits; (v) winnings during a gaming session; (vi) adjustments made by the licensee with documented notification to You; (vii) any other means approved by the New Jersey Division of Gaming Enforcement.

Such funds will be deposited into Your Account upon actual receipt of funds by Us and/or Our agents. Minimum and maximum limits may be applied to the payments into Your Account, depending upon Your history with Us, the method of deposit, and other factors as determined solely by Us. For further details of current deposit and cash out options and fees, please see Cashier.

Deposits and withdrawals can be subject to review. In the case of suspected or fraudulent activity, we may suspend or terminate your account and may refund or refuse to refund any monies contained in your account in our sole and absolute discretion.

### 3.7

You can request withdrawals from Your Account at any time provided all payments made have been received. We reserve the right to pay any requested withdrawal partly or in total via the same method of payment and in the same currency with which deposits were made. When using credit/debit card to make a deposit, We may elect not to accept any withdrawal request within fourteen (14) days after the deposit.

### 3.8

To use certain Services, You may first need to download and install software as provided on the relevant Platform.

### 3.9

Account statements are available to You, which detail Your account activity.

## 4. TRUE IDENTITY AND ONE ACCOUNT

The name on Your Account must match Your true and legal name and identity and the name on Your Account registration must match the name on the credit card(s) or other payment accounts used to deposit or receive monies into Your Account. To verify Your identity, We reserve the right to request satisfactory proof of identity (including but not limited to copies of a valid passport/identity card and/or any payment cards used) and satisfactory proof of address (including but not limited to a recent utility bill or bank statement) at any time. You consent to have Your age and identity verified by Us, and You acknowledge verifications associated with Internet or mobile gaming may result in a negative impact on Your credit report. Failure to supply such documentation may result in suspension of the Account. You may not hold more than one (1) Account in connection with Your use of any Platform. We reserve the right to close Your Account(s) if You open multiple Accounts. Should We have reasonable grounds to believe that multiple Accounts have been opened with the intention to defraud Us, We reserve the right to cancel any transaction related to said fraud attempt. If You have lost Your Account name or password, please contact Us for a replacement.

## 5. PERSONS PROHIBITED FROM ESTABLISHING AN ACCOUNT

The following persons (each an 'Unauthorized Person') are not permitted to establish an Internet or mobile gaming account, or to use directly or indirectly any of the Services other than as required in the course of their employment: (i) any person prohibited from gaming pursuant to N.J.S.A. 5:12-100n, including but not limited to those casino key employees and casino employees prohibited from wagering in any casino or simulcasting facility in the State, (ii) an employee of a supplier or vendor of MGM, Borgata or GVC/bwin.party (MGM, Borgata and GVC/bwin.party collectively referred to as the 'Group'), (iv) any individuals who have been banned from gaming activities at any MGM Resorts International subsidiary or affiliate, or who have been prohibited from gaming pursuant to any applicable Laws, including individuals who have been "self-limited" or listed on any self-exclusion, disassociated persons, or similar list in New Jersey or any state, (v) "prohibited persons" that are government officials or residents of certain embargoed countries and/or whose names are included on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or successor or similar lists, (vi) persons who are under the age of 21, and (vii) persons who are not a legal resident of the United States. You may not attempt to create an Account if you are an Unauthorized Person or assist other Unauthorized Persons to use the Services.

## 6. YOUR USE OF THE SERVICES

## **6.1**

In the interests of ensuring fairness, We may take any measures as we deem appropriate in order to create a fair and balanced game play environment.

## **6.2**

We reserve the right to suspend, modify, remove and/or add to any of the Services (collectively, a “Change”) in Our sole discretion with immediate effect and without notice, so long as such Change does not affect pending play on the Services. We will not be liable for any such action.

## **6.3**

We forbid the use of all unfair practices when using the Services. We do this to protect Our customers and the integrity of the Services. Please read Our Unfair Advantage Policy which is incorporated in these Agreements for further details and Our Anti-Cheating Policy at section 34.4. If any customer is found to be participating in any form of collusion or other activities that We consider to constitute cheating his or her account may be permanently closed and any balance may be at risk of forfeiture or withholding as per Section 19 of these Terms of Service.

## **6.4**

We forbid the posting of any prohibited Third Party Content (as that term is hereinafter defined) on Our Platforms. Please read Our Third Party Content Policy which is incorporated in these Agreements for further details.

## **6.5**

We reserve the right to suspend Your use of certain of the Services, Platforms or any games on our Platforms from time to time for any reason or no reason.

## **6.6**

No communications or information published on the Services is intended to constitute legal or tax advice and we accept no liability for any reliance on such content.

## **6.7**

For the purpose of any reference to time in connection with Your use of the Services, We use the Eastern Time Zone unless otherwise specified.

## **6.8**

Your use of the Services (including, for the avoidance of doubt, any intellectual property and/ or services We may license from third parties from time to time which forms part of the Services) is for Your personal, entertainment use on a single computer only. You may not use the Services or any intellectual property contained therein for any commercial purpose.

## **6.9**

By accessing our Platforms, or using, or attempting to use, our Software or the Services, You represent and warrant to Us that: (i) you are 21 years of age or older; (ii) you are a legal resident of the United States, (iii) you are physically located in the state of New Jersey while wagering; (iv) all details provided by You to Us to setup Your Account or otherwise participate in the Services are true, current, correct and complete; and (v) You consent to the monitoring and recording by Us and/or the Division of Gaming Enforcement of any wagering communications and geographic location information.

#### **6.10**

In order to use the New Jersey wagering feature of the Services, you must be physically located in the State of New Jersey at the time of use. We may, at any time before or after you begin using the Services, require you to verify your identity, age, or physical location in person at the Borgata Hotel Casino & Spa or through other means, and we may terminate your access to the Services if you fail to do so.

#### **6.11**

The following persons are not permitted to place a sports pool wager using the Services: (i) Any Borgata employee, and (ii) any family members of a Borgata employee who live in the same household of that employee. A prohibited sports pool participant, including an owner, athlete, coach, referee, manager, handler, or athletic or horse trainer, or any other person identified in N.J.A.C. 13:69N-1.1, shall not be permitted to wager on any event governed by the league or sports governing body with which they are affiliated. Any other employee of a sports governing body, or one of its member teams, who is not a prohibited sports pool participant, shall register with the DGE by completing the required [Registration Form](#) prior to placing a sports pool wager.

### **7. COPYRIGHT AND TRADEMARKS**

The terms Borgata, MGM Resorts International, MGM, M life Rewards, and any other marks used by Us are the trademarks, service marks and/or trade names of the Group, one of its subsidiaries or associated companies, and/or its licensors. Further, all other material used by Us, including but not limited to the software, images, pictures, graphics, photographs, animations, videos, music, audio, text (and any intellectual property rights in and to any of the same) is owned by the Group, one of its subsidiaries or associated group companies, and/or licensors and is protected by copyright and/or other intellectual property rights. You obtain no rights in such copyright material or trade or service marks and must not use them without the Group's written permission.

### **8. ELECTRONIC SERVICES PROVIDER**

In order to use the Services, You will be required to send money to and may be required to receive money from Us. We may use third-party electronic payment processors and/or financial institutions ('ESPs') to process such financial transactions. You irrevocably authorize Us, as necessary, to instruct such ESPs to handle Account deposits and withdrawals from Your Account and You irrevocably agree that We may give such instructions on Your behalf in accordance with Your requests as submitted using the relevant feature on Our Platforms. You agree to be

bound by the terms and conditions of use of each applicable ESP. In the event of conflict between these Agreements and the ESP's terms and conditions then these Agreements shall prevail.

In the event We use such ESPs and/or financial institutions to process payments made by and to You, or otherwise accept Your use of any particular payment method, in connection with Your use of the Services, We shall have no responsibility for the acts or omissions of the third party providing such payment processing or payment method prior to Our receipt of funds or after We initiate a transfer of funds (as applicable). You agree that You shall look exclusively to the ESP or financial institution in the event of any payment processing or other payment method related disputes and not to Us.

## **9. BONUSES**

We may from time to time offer You complimentary or bonus amounts to be credited by Us into Your Account ('Bonus(es)'). Such Bonuses may only be used in relation to such Services as may be specified when the Bonus is offered to You. Acceptance of any Bonus shall be in accordance with additional terms and conditions We may make available to You in respect of each such Bonus offering and, if none, then in accordance with the Standard Promotional Terms and Conditions and bonus release restrictions contained in the relevant offer. Offers may be used only ONCE unless otherwise specified. You are not entitled to withdraw any Bonus amounts and You may not remove any cash obtained via a Bonus from Your Account without first complying with the applicable terms including, without limitation, in respect of any qualifiers or restrictions.

## **10. CASH OUTS**

### **10.1**

Your account balance is the amount of real money held in Your Account (if any), plus any winnings and/or minus any losses accrued from using the Services, less any rakes or entry or other fees, if applicable, and less any amounts previously withdrawn by You or amounts forfeited or reclaimed by Us due to any known or suspected fraud or due to deposits or other transactions rejected or cancelled by Your bank or any relevant third-party bank (whether as a result of insufficient funds, charge-backs or otherwise), or any sums which are otherwise deductible or forfeited under these Agreements ('Account Balance').

### **10.2**

Acceptance of a cash out request is subject to any deposit method restrictions, bonus restrictions and/or Security Reviews (see Section 18 below) and any other terms of these Agreements. All amounts You withdraw are subject to the transaction limits and any processing fees for deposits and withdrawal methods that We notify You of before cashing out. For further details of current deposit and cash out options and fees please see Cashier.

### **10.3**

We may report and withhold any amount from Your winnings in order to comply with any applicable law. All taxes due in connection with any winnings awarded to You are Your sole

liability. Account balances cannot be transferred, substituted or redeemed for any other prize. Payment of funds which You withdraw shall be made by check, wire, credit card and/or any other manner which We select in Our sole discretion, although We will try to accommodate Your preferences as indicated by You when You register.

#### **10.4**

Payments will be made as soon as reasonably possible (subject to up to five business days internal processing time), although there may be delays due to any Security Review (see Section 18 below) undertaken by Us and save where We hold any such payments in accordance with these Agreements. Under penalties of perjury, You declare that, to the best of Your knowledge and belief, the name, address, and Social Security Number that You have furnished correctly identify You as the recipient of any jackpot payments and any payments from identical wagers, and that no other person is entitled to any part of these payments. You acknowledge the Form W2G may be issued by Us by January 31 following the year of the payment. By accepting these Agreements, You acknowledge that any casino winnings/jackpots of one thousand two hundred US dollars (\$1200) or more, or poker tournament winnings of more than \$5,000, that You win by using the Services are subject to the IRS regulations and You permit Your acceptance of these Agreements to serve as an electronic signature and to suffice any acceptance and signature on any tax documents incurred during the internet gaming activity.

#### **10.5**

Your acceptance of these Agreements serves as acknowledgement that the Form 1099-Misc may be issued by Us by January 31 following the year of the receipt of a prize consisting of cash or merchandise for which a 12 month accumulated value of six hundred US dollars (\$600) or more won by using the Services are subject to the IRS regulations.

### **11. INACTIVE AND DORMANT ACCOUNTS**

#### **11.1**

If You do not access Your Account by 'logging on' to Your Account using Your Account name and password and either (i) place a cash wager or bet via the Services, or (ii) enter a tournament with a cash entry fee via the Services, or (iii) play a raked hand via the Services, or (iv) make a deposit as applicable, for any consecutive period of 180 days, then after those 180 days (the 'Grace Period') Your Account (and any related account with any ESP) will be deemed 'Inactive'.

#### **11.2**

If Your Account is Inactive for a period of one year, Your Account is considered a Dormant Account by the New Jersey Division of Gaming Enforcement and any funds remaining in your account are subject to forfeiture by the State of New Jersey. Logging into your account and entering a tournament or playing a raked hand or making a real money wager or making a deposit or withdrawal are considered transactions and will make Your Account Active.

### **12. THIRD-PARTY CONTENT**

### 12.1

Abusive or offensive language will not be tolerated on Our chat boards, or otherwise by You on the Platforms, Services, or with Group staff. In addition, You are not entitled to make untrue and/or malicious and/or damaging comments with regard to the Group's operation in any media or forum.

### 12.2

In accordance with the terms of Our Third Party Content policy, We may reject or delete any text, files, images, photos, video, sounds, or any other materials ('Third Party Content') posted by You on the Platforms which in Our sole opinion breaches the terms of these Agreements.

### 12.3

Any violation of this policy may result in removal of the Third Party Content, a suspension of Your use of the Services and/or such other action as may be reasonably required by Us to ensure compliance.

## 13. DISCLOSURE OF ACCOUNT NAME AND PASSWORD

The Account name and password selected when You register for an Account should not be disclosed to any third party. You are solely responsible for the security of Your Account name and password, and all activities that occur under Your Account name and password.

You agree to keep Your Account name and password secret and confidential and not to allow anyone else to use it. As an authorized player, You are prohibited from allowing any other person access to or use of Your interactive gaming account. Every person who identifies themselves by entering a correct username and password is assumed by Us to be the rightful Account holder and all transactions where the username and password have been entered correctly will be regarded as valid. In no event will We be liable for any loss You suffer as a result of any unauthorized use or misuse of Your login details. We shall not be required to maintain Account names or passwords. If You have lost Your Account name, username or password, please contact Us for a replacement. If You misplace, forget, or lose Your Account name, username or password as a result of anything other than Our error, We shall not be liable.

## 14. FRAUDULENT ACTIVITIES, PROHIBITED TRANSACTIONS AND FAILED DEPOSITS

We have a zero tolerance policy towards inappropriate play and fraudulent activity. If, in Our sole determination, You are found to have cheated or attempted to defraud Us and/or the Group or any other user of any of the Services in any way, including but not limited to game manipulation or payment fraud, manipulation of the multi-currency facilities, betting on all possible outcomes of a game or event or if We suspect You of fraudulent payment, including use of stolen credit cards, or any other fraudulent activity (including but not limited to any chargeback or other reversal of a payment) or prohibited transaction (including but not limited to money laundering) or if Your deposits failed to be honored by Your bank for any reason, We reserve the right to suspend and/or close Your Account and recover bad debts using whichever

method may lawfully be available to Us including, but not limited to, (i) debiting the amount owed by You from Your Account; and (ii) instructing third party collections agencies to collect the debt. This may have a detrimental impact on Your credit rating and will require Us to share Your personal information (including Your identity) with appropriate agencies and to report any criminal or suspicious activities to the appropriate authorities.

We reserve the right to void and withhold any or all winnings made by any person or group of persons and to void and withhold any Standard Player Points gained by any person or group of persons where We have reasonable grounds to believe that said person or group of persons is acting or has acted in liaison in an attempt to defraud or damage Us and/or the Group and/or the Services and/or the Platforms in any way.

In the interests of data protection, security and avoidance of fraud We do not permit use of any communication channels included within the Services and/or the Platforms (including but not limited to dealer table chat boards) to offer or promote any offers, products and services (whether Yours or a third party's). You are expressly prohibited from posting information or contacting Our customers to offer or promote any offers, products or services.

## 15. LIMITED LICENSE

We hereby grant You the limited, non-exclusive, non-transferable, non-sublicensable right to install and use the software We make available from the Platforms used to provide the Services (the 'Software') and all content derived from the Software, including, but not limited to, the copyright and all other intellectual property rights therein, in connection with the Services in accordance with this Agreement. You may install and use the Software on a hard disk or other storage device and make backup copies of the Software, provided that such use and backup copying is only for Your own personal use in using the Services in accordance with these Agreements, and further, that such installation and use is made through a computer or other device of which You are the primary user. The Software is the valuable intellectual property of the Group and/or its associated companies and/or its licensors. You obtain no rights to the Software except to use it in accordance with these Agreements. You must not: (a) copy, redistribute, publish, reverse engineer, decompile, disassemble, modify, translate or make any attempt to access the source code to create derivative works of the source code, or otherwise; (b) sell, assign, sublicense, transfer, distribute, lease or grant a security interest in the Software; (c) make the Software available to any third party through a computer network or otherwise; d) export the Software to any country (whether by physical or electronic means); or (e) use the Software in a manner prohibited by applicable laws, regulations and/or this Agreement (together the 'Prohibited Activities').

You will be solely liable for any damages, costs or expenses arising out of or in connection with the commission of any Prohibited Activities. You shall notify Us immediately upon becoming aware of the commission by any person of any of the Prohibited Activities and shall provide Us with reasonable assistance with any investigations it may conduct in light of the information provided by You in this respect.

## 16. LOCATION SERVICES

**16.1**

Real-money gaming on the Platforms is restricted by the New Jersey Division of Gaming Enforcement to users who are physically located within the state of New Jersey. To confirm Your desktop/laptop location, we use a third-party method using IP address and WiFi signal. If one of the two is not confirmed, You will not be allowed to use the Services. To confirm Your mobile device location, we use a third-party method using carrier cell tower and WiFi signal. If your mobile device location is not confirmed, You will not be allowed to use the Services. We cannot guarantee that your device will be able to successfully use the Location Services. If we or our third party providers are unable to precisely track your location for any reason, you may be prevented from accessing or using the Services. We are not liable for your inability to access or use the Services.

**16.2**

By registering to use the Services, you consent to the monitoring and recording by us (or our service providers) and/or by the New Jersey Division of Gaming Enforcement of any wagering communications and geographic location information for the purpose of determining compliance with the Act.

**16.3**

We will handle all information collected through the Location Services in accordance with our Privacy Policy. If You have any questions or concerns regarding the Location Services, You may contact Us at [support.nj@betmgm.com](mailto:support.nj@betmgm.com) or at 1-609-248-9531.

**17. ERRORS**

You must inform Us as soon as You become aware of any errors with respect to Your Account or any calculations with respect to any bet or wager You have placed. In the event of such error or any system failure or game error (a divergence from the normal functioning of the game logic for whatever reason) that results in an error in any odds calculation, charges, fees, rake, bonuses or payout, or any currency conversion as applicable, ('Error') We will seek to place all parties directly affected by such Error in the position they were in before the Error occurred. We reserve the right to declare null and void any wagers or bets that were the subject of such Error and to take any money from Your Account relating to the relevant bets or wagers, if there are insufficient funds in Your Account, We may demand that You pay Us the relevant outstanding amount relating to these bets or wagers. In all circumstances whereby We (in Our sole discretion) determine an Error has been used to gain an unfair advantage, We reserve the right to consider this activity to be subject to Section 19 (Forfeiture & Account Closure) of these Terms of Service.

**18. SECURITY REVIEW**

To maintain a high level of security and integrity in the system, We reserve the right to conduct a security review at any time to validate Your identity, age, the registration data provided by You, to verify Your use of the Services, including but not limited to Your compliance with these

Agreements and the policies of the Group and Your financial transactions carried out via the Services for potential breach of these Agreements and of applicable law (a 'Security Review'). As such, You authorize Us and Our agents to make any inquiries of You and for Us to use and disclose to any third party We consider necessary to validate the information You provide to Us or should provide to Us in accordance with these Agreements, including but not limited to, ordering a credit report and/or otherwise verifying the information against third party databases. In addition, to facilitate these Security Reviews, You agree to provide such information or documentation as We, in Our unfettered discretion, may request.

## **19. FORFEITURE & ACCOUNT CLOSURE**

### **19.1**

WE RESERVE THE RIGHT, IN OUR UNFETTERED DISCRETION AND IN RELATION TO YOUR ACCOUNT, ANY RELATED ESP (as that term is defined at clause 8) ACCOUNT, ANY ACCOUNTS YOU MAY HAVE WITH OTHER SITES AND/OR CASINOS AND/OR SERVICES OWNED OR OPERATED BY OR ON BEHALF OF THE GROUP AND, IN THE CASE OF YOUR USE OF THE SERVICES, ANY SERVICES THAT SHARE THE SHARED GAME/TABLE PLATFORM, TO TERMINATE THESE AGREEMENTS, WITHHOLD YOUR ACCOUNT BALANCE, SUSPEND YOUR ACCOUNT, AND RECOVER FROM SUCH ACCOUNT THE AMOUNT OF ANY AFFECTED PAY-OUTS, BONUSES AND WINNINGS IF:

#### **19.1.1**

You are in material breach of any of these Agreements;

#### **19.1.2**

We become aware that You have used or attempted to use the Services for the purposes of fraud, collusion (including in relation to charge-backs) or unlawful or improper activity (including without limitation, any manipulation of the multi-currency facilities);

#### **19.1.3**

We become aware that You have played at any other online gaming site or services and are suspected of fraud, collusion (including in relation to charge-backs) or unlawful or improper activity;

#### **19.1.4**

You have 'charged back' or denied any of the purchases or deposits that You made to Your Account;

#### **19.1.5**

You become bankrupt or analogous proceedings occur anywhere in the world; or

#### **19.1.6**

Upon instruction of the appropriate law enforcement agency or regulatory body.

## 20. TERMINATION

### 20.1

You are entitled to close Your Account and terminate these Agreements for any reason or no reason on seven (7) days' notice to Us by withdrawing the entire balance from Your Account and sending a letter or email or telephoning Us using the details at 'contact Us'. We will respond within a reasonable time provided that You continue to assume responsibility for all activity on Your Account until such closure has been affected by Us.

### 20.2

We take Responsible Gaming seriously. If You would like to close Your Account for responsible gaming reasons please visit the New Jersey Division of Gaming Enforcement's self-exclusion [website](#).

### 20.3

Without limitation to section 19, We are entitled to terminate these Agreements on seven (7) days' notice (or attempted notice) to You at the email address You have provided to Us. In the event of termination by Us, We shall give notice of the termination to You via email and, other than where termination is pursuant to section 19, as soon as reasonably practicable refund the balance of Your Account. Where We have terminated pursuant to section 19, any payouts, bonuses and winnings in Your Account are non-refundable and deemed forfeited.

### 20.4

Termination of these Agreements will not affect any outstanding wagers or bets, PROVIDED that any outstanding wagers or bets are valid and are not in breach of these Agreements in any way.

### 20.4

The following Sections of these Terms of Service shall survive any termination of these Agreements by either party: 2, 7, 8, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, and 32, along with any other Sections which are required for the purposes of interpretation.

## 21. COMPENSATION

YOU AGREE THAT YOU WILL ONLY USE THE SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET OUT IN THE AGREEMENTS. YOU WILL COMPENSATE US IN FULL FOR ANY LOSSES OR COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH WE (OR ANY MEMBER OF OUR GROUP) INCUR ARISING FROM ANY BREACH BY YOU OF THESE AGREEMENTS.

## 22. SELF-EXCLUSION

### 22.1

You may suspend Your Account for a period of time as chosen by You, provided the suspended Account does not remain inactive for a period of one year which would result in Your Account being a Dormant Account and any funds remaining in your Account are subject to forfeiture by the State of New Jersey.

## **22.2**

You may set daily limits or have Your name placed on the Internet self-exclusion list by submitting a request for self-exclusion. The minimum time-out period is 72 hours.

## **22.3**

If You request placement on the self-exclusion list, You shall deliver, in person, a completed request for self-exclusion to either the Identification Unit of the Division located at the Arcade Building, Tennessee Avenue and the Boardwalk, in Atlantic City, or to the Trenton office of the Division of Gaming Enforcement located at 140 East Front Street.

## **22.4**

If You have elected to use any of the self-exclusion tools in connection with any of the Platforms provided by any Group company from time to time, You acknowledge and agree that You are not permitted to open or use an Account with any other Group company ('Additional Group Account') during the self-exclusion period You have selected.

## **23. LIMITATIONS AND EXCLUSIONS**

### **23.1**

WE PROVIDE THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICES AND THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE SITE WILL BE WITHOUT ERROR OR INVULNERABLE TO VIRUSES, WORMS, OR OTHER HARMFUL SOFTWARE OR HARDWARE. YOU HEREBY ACKNOWLEDGE THAT THE SITE MAY NOT BE AVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING, WITHOUT LIMITATION, PERIODIC SYSTEM MAINTENANCE, SCHEDULED OR UNSCHEDULED, ACTS OF GOD, UNAUTHORIZED ACCESS, VIRUSES, DENIAL OF SERVICE OR OTHER ATTACKS, TECHNICAL FAILURE OF THE SITE, TELECOMMUNICATIONS INFRASTRUCTURE, OR DISRUPTION, AND THEREFORE WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY REGARDING SITE USE AND/OR AVAILABILITY, ACCESSIBILITY, SECURITY OR PERFORMANCE CAUSED BY SUCH FACTORS.

### **23.2**

YOUR ACCESS TO THE PLATFORMS, DOWNLOAD OF ANY SOFTWARE RELATING TO THE SERVICES FROM THE PLATFORMS AND USE OF THE SERVICES OR ANY

INFORMATION WE MAY PROVIDE IN CONNECTION WITH YOUR USE OF THE SERVICES IS AT YOUR SOLE OPTION, DISCRETION AND RISK. WE SHALL NOT BE LIABLE FOR ANY MALFUNCTIONS OF THE COMPUTER PROGRAMS RELATING TO THE SERVICES WE MAKE AVAILABLE FROM THE PLATFORMS, ERRORS AS DESCRIBED IN SECTION 17, BUGS OR VIRUSES RESULTING IN LOST DATA OR ANY OTHER DAMAGE TO YOUR COMPUTER EQUIPMENT, MOBILE PHONE OR MOBILE DEVICE, OR SOFTWARE. FURTHERMORE, WE SHALL NOT BE LIABLE FOR ANY ATTEMPTS BY YOU TO USE THE SERVICES BY METHODS, MEANS OR WAYS NOT INTENDED BY US. WE ARE NOT REQUIRED TO PROVIDE REDUNDANT OR BACKUP NETWORKS AND/OR SYSTEMS. MALFUNCTION VOIDS ALL PAYS.

### **23.3**

THE GROUP (INCLUDING ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES) WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE WHATSOEVER ARISING FROM OR IN ANY WAY CONNECTED WITH YOUR USE OR ANY THIRD PARTY'S USE OF THE SOFTWARE OR THE SERVICES, WHETHER DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE DAMAGES, ARISING OUT OF OR RELATING TO USE OF OR INABILITY TO USE THE SOFTWARE OR THE SERVICES, DAMAGE FOR, BUSINESS LOSSES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, PROFITS (INCLUDING LOSS OF OR FAILURE TO RECEIVE ANTICIPATED WINNINGS), REVENUE, BUSINESS, OPPORTUNITY, GOODWILL, REPUTATION OR BUSINESS INTERRUPTION OR ANY OTHER PECUNIARY OR CONSEQUENTIAL LOSS (EVEN WHERE WE HAVE BEEN NOTIFIED BY YOU OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE) ARISING OUT OF THESE AGREEMENTS OR YOUR USE OF THE SERVICES.

### **23.4**

THE GROUP SHALL NOT BE LIABLE FOR ANY ACTS OR OMISSIONS MADE BY YOUR INTERNET SERVICE PROVIDER, ESP, PAYMENT PROCESSOR, FINANCIAL INSTITUTION OR OTHER THIRD PARTY WITH WHOM YOU HAVE CONTRACTED TO GAIN ACCESS TO THE SERVER THAT HOSTS THE SITE, TO RECEIVE FUNDS FROM THE US OR YOUR ONLINE GAMING ACCOUNT, OR PROVIDE PAYMENT PROCESSING OR OTHER SERVICES.

### **23.5**

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THE GROUP OR THROUGH OR FROM THE WEBSITE OR THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

### **23.6**

NEITHER WE NOR OUR GROUP SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY MODIFICATION TO, SUSPENSION OF OR DISCONTINUANCE OF THE SOFTWARE OR THE SERVICES.

**23.7**

NEITHER WE NOR OUR GROUP SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY ERRORS OR OMISSIONS RELATING TO PAYMENT PROCESSING BY A THIRD PARTY ESP OR FINANCIAL INSTITUTION.

**23.8**

NOTHING IN THESE AGREEMENTS WILL OPERATE SO AS TO EXCLUDE ANY LIABILITY WE MAY HAVE IN RESPECT OF EITHER FRAUD, OR DEATH, OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE.

**24. INDEMNIFICATION**

You agree to indemnify, defend and hold Us, Our Group, and our and their respective directors, officers, employees, agents, and other partners harmless from and against any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Software or the Services, your connection to the Platforms or the Services, your violation of the Agreements, or your infringement of any intellectual property or other right of any other person or entity.

**25. NO ARRANGEMENTS FOR PROHIBITED PERSONS/EXCLUDED PERSONS**

You acknowledge that We are a United States company and operate a licensed New Jersey gaming establishment. As such, We are: (i) prohibited from providing services to certain "prohibited persons" that are government officials or residents of certain embargoed countries, or terrorists or drug traffickers whose names are published on lists maintained by the United States Department of Treasury and (ii) must exclude or eject any "excluded persons" that are listed on the "exclusion list." You agree to use all reasonable efforts not to arrange for any of these prohibited persons or excluded persons to use the Services or the Software.

**26. NO REPRODUCTION OR RESALE**

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Platforms, the Software or the Services, use of the Platforms, the Software or the Services, or access to the Platforms, the Software or the Services.

**27. THIRD PARTY WEBSITES**

Although We hope that you will find the material on the Platforms informative, the material and links to third-party websites and resources that may be included on the Platforms are provided for informational purposes only. Providing links to these sites by Us should not be interpreted as endorsement or approval by Us of the organizations sponsoring these sites or their products or services. We make no representations or warranties, express or implied, with respect to the information provided on this Platforms or any third-party website which may be accessed by a

link from the Platforms, including any representations or warranties as to accuracy or completeness. Because We have no control over third-party websites and resources, You acknowledge and agree that We are not responsible for the information and contents of such third-party websites and do not endorse and are not responsible or liable for any content, statements, representations, advertising, products, services or other materials on or available from such sites or resources. You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused in connection with Your use or reliance on any such content, information, goods, or services available on or through any such site or resource.

## 28. NOTICES/COMPLAINTS

If You have any complaints, claims or disputes with regard to any alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event, or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted regarding the Services, You must submit Your complaint to Us in writing as soon as is reasonably practicable following the date of the original transaction to which the claim or dispute refers. Complaints may be submitted by email to [formalcomplaint.nj@betmgm.com](mailto:formalcomplaint.nj@betmgm.com). You may also submit notices to Us in writing to: Customer Services Manager, Borgata Poker/Casino, 820 Bear Tavern Road, Trenton, New Jersey, NJ 08628, USA. Any notice We give to You (save as otherwise set out herein) will be sent to the email address that You provide when You register Your Account. It is Your responsibility to give Us notice of any changes to this address through the 'Change Email' facility in Our software and to regularly check Your email account for emails from Us.

To the extent that You are not satisfied with Our response You may contact the New Jersey Division of Gaming Enforcement at <http://www.nj.gov/oag/ge/index.html>.

## 29. GOVERNING LAW

These Agreements shall be governed by and construed in accordance with the laws of New Jersey. You irrevocably agree to submit to the exclusive jurisdiction of the courts of New Jersey for settlement of any disputes or matters arising out of or concerning these Agreements or their enforceability. If any part of these Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms.

## 30. ARBITRATION

Excluding those disputes identified in Section 28 above and internet gaming disputes which are subject to the New Jersey Division of Gaming Enforcement's dispute process under N.J.A.C. 13:69O-1.2r, (i.e., any dispute, claim or controversy relating to an individual's alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event, or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is

conducted), any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements and Our use of electronic services providers, shall be determined by arbitration in Atlantic County, New Jersey before a single neutral arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Any appeal shall be heard and decided by a panel of three neutral arbitrators. All arbitrators shall be retired judges or justices of any New Jersey state or federal court, and shall in their substantive rulings (as opposed to procedural or discovery-related rulings that are otherwise governed by the JAMS Comprehensive Arbitration Rules and Procedures), apply the Laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rules that would cause the application of the Laws of any jurisdiction other than the State of New Jersey. The award of the arbitrator(s) shall be binding and final on all parties. Judgment on the award rendered may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees and expenses. The arbitrators may not award any incidental, indirect, special, or consequential damages, including, but not limited to, damages for lost profits. If any part of the Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms. No waiver of any breach or default of the Agreements shall be deemed to be a waiver of any preceding or subsequent breach or default.

### 31. ASSIGNMENT

We reserve the right to transfer, assign, sublicense or pledge these Agreements, in whole or in part, to any person (but without Your consent) without notice, provided that any such assignment will be on the same terms or terms that are no less advantageous to You. You may not assign, sublicense or otherwise transfer in any manner whatsoever any of Your rights or obligations under these Agreements.

### 32. THIRD PARTY RIGHTS

#### 32.1

Except insofar as these Agreements expressly provide that a third party may in their own right enforce a term of these Agreements, a person who is not a party to these Agreements has no right under local law or statute to rely upon or enforce any term of these Agreements but this does not affect any right or remedy of a third party which exists or is available other than under local law or statute.

#### 32.2

For the avoidance of doubt, each member of the Group is an intended third party beneficiary of these Agreements.

### 33. ENTIRE AGREEMENT, MODIFICATION AND AMENDMENTS

You fully understand and agree to be bound by these Agreements and as modified and/or amended by Us from time to time. We may amend these Agreements at any time either by

emailing or sending You notification of the new terms and/or by publishing the modified Agreement(s) on the relevant page of the Platforms or any place through which You access the Services. Any such modification will take effect within thirty (30) days of publication. If any modification is unacceptable to You, Your only recourse is to terminate these Agreements. Your continued use of the Services following notification or such thirty (30) day period following publication, as the case may be, will be deemed binding acceptance of the modification. For material changes to the Agreements, You will be required to acknowledge acceptance of such changes. For changes deemed non-material and approved by the New Jersey Division of Gaming Enforcement, an acknowledgment is not required, and your continued access or use of the services following any amendments to the agreements constitutes your acceptance of the agreements as amended. It is your sole responsibility to review the Agreements and any revisions thereto each time You use the Services.

### **34. ADDITIONAL TERMS FOR USE OF SERVICES**

#### **34.1**

The following additional terms apply to Your use of the Services. Please note that in the event of any conflict between this Section 34 and the remaining Sections of these Terms of Service, the remaining Sections of these Terms of Service shall prevail.

#### **34.2 Play Money and Real Money Games**

By registering for the Services You will be able to access (through the Software (as defined below)) both 'play money' games and tournaments ('Play Money Games' or 'Play for Free Games' respectively) and 'real money' games and tournaments ('Real Money Games' or 'Play for Real Money Games' respectively), via the Services. No purchase is necessary or required to play the Play Money Games, save in respect to any cost You may incur to access the Services, charged by Your Internet service provider or telecommunications provider, and You may play the Play Money Games without betting money. We reserve the right to suspend, modify, remove and/or add any Gaming Service in its sole discretion with immediate effect and without notice and We will not be liable for any such action.

#### **34.3 Rules and Procedures of the Services**

You must use the Services in accordance with the generally accepted games rules set out in the Game Rules section, and the procedures relevant to the Gaming Service. You are using those specifically set out in the nj.BetMGM.com, casino.BetMGM.com and poker.BetMGM.com online sites, including but not limited to the Promotions section, the How to Play section, and any other page that specifically relates to and governs any particular event, game or tournament ('Rules').

#### **34.4 Anti-Cheating Policy**

We are committed to preventing the use of unfair practices in the Services, including but not limited to player collusion. We are also committed to detecting and preventing the use of software programs which are designed to enable artificial intelligence to play on Our Platforms

including, but not limited to, opponent-profiling, cheating software, automated computerized software or other equivalent mechanism, or anything else that We deem enables You to have an unfair advantage over other players not using such programs or systems ('AI Software'). You acknowledge that We will take measures to detect and prevent the use of such programs and AI Software using methods (including but not limited to reading the list of currently running programs on a player's computer) and You agree not to use any AI Software and/or any such programs. Go to Our Unfair Advantage Policy.

### **34.5 Shared Games, Table and Database Platform**

We reserve the right, but are not obliged, to run and utilize a shared table, server and database platform or system ('Shared Game/Table Platform') which enables Gaming Service users to play with players coming into the games, tables and tournaments from other websites and brands operating on the same Shared Game/Table Platform. If a Shared Game/Table Platform is used, You agree that You may be pooled into these common game/tables, at Our sole discretion, and that to the extent that You breach the terms and conditions of one site or brand that operates on the Shared Game/Table Platform, We may have You blocked, in part or full, from the entire system so that You may not play through any site or brand using or on the Shared Game/Table Platform. Without limitation to the restriction on having multiple Accounts with Us (please see Section 4), We may require that You only have one Account on the Shared Game/Table Platform if the same is used.

### **34.6 Play Money and Real Money Account Funding**

'Play money' funds have no value and are kept separate from 'real money' funds. They are not transferable to a 'real money' account nor are they redeemable for any currency. We do not promise to accurately record the number of play money chips held by You and Your play money chips may be lost at any time. Further, We reserve the right to set a maximum chip limit for play money Accounts.

### **34.7 Settlement of In-Game Disputes**

You fully accept and agree that random number generator ('RNG') software will determine the shuffling and dealing of cards and other randomly generated events required in the Services. If there is a discrepancy between the result showing on the Software (as installed and operated on Your hardware) and Our server, the result showing on Our server shall govern the result. Moreover, You understand and agree that (without prejudice to Your other rights and remedies) Our records shall be the final authority in determining the terms of Your use of the Services, the activity resulting therefrom and the circumstances in which such activity occurred.

### **34.8 Progressive Jackpot Information**

Each progressive jackpot is reset to its individual base value after any player hits that particular jackpot. The reset value of the jackpots are:

- TheBigOne Blitz Cash Jackpot: \$40
- TheBigOne Quick Cash Jackpot: \$200

- TheBigOne Super Cash Jackpot: \$750
- TheBigOne Mega Cash Jackpot: \$10,000
- TheBigOne Colossal Cash Jackpot: \$125,000
- Ca\$hFla\$h Jackpot: \$1,000

### 30. MEMBERSHIP OF OUR VIP PROGRAM

We may offer, withdraw, revoke and/ or amend the terms of any membership of Our VIP program at any time. For the avoidance of doubt, membership of Our VIP program is at Our sole discretion and Your status as a member of Our VIP program may be altered by Us at any time.

PLEASE PRINT THESE TERMS OF SERVICE AND STORE FOR YOUR FUTURE REFERENCE. IN ADDITION, WE SUGGEST THAT YOU PRINT AND STORE ALL TRANSACTION RECEIPTS AND GAME RULES AS APPLICABLE TO YOUR ACTIVITIES.

If You have any questions, please contact Our 24/7 [Customer Service team](#).

Updated: November 29, 2018

## **Exhibit 1-B**

## **Terms of Service - Borgata Hotel Casino & Spa - Online Gaming Services**

IMPORTANT - PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE ACCEPTING THE AGREEMENTS (AS DEFINED BELOW), THEN PRINT THESE TERMS OF SERVICE AND STORE THEM ALONG WITH ALL CONFIRMATION EMAILS, ADDITIONAL TERMS, TRANSACTION DATA, GAME RULES AND PAYMENT METHODS RELEVANT TO YOUR USE OF THE PLATFORMS AND/OR SERVICES (AS EACH SUCH TERM IS DEFINED BELOW). WE WILL NOT RETAIN OUR CONTRACT WITH YOU SO PLEASE PRINT IT OUT FOR YOUR RECORDS. THESE TERMS OF SERVICE ARE SUBJECT TO CHANGE AT ANY TIME (AS SET OUT BELOW). BY ACCEPTING THESE TERMS OF SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND ACCEPT THE AGREEMENTS WITHOUT MODIFICATION. IF YOU DO NOT ACCEPT THE AGREEMENTS WITHOUT MODIFICATION, DO NOT ACCEPT THESE TERMS OF SERVICE AND DO NOT ACCESS OR USE THE SERVICES (AS DEFINED BELOW). IF YOU HAVE ANY QUESTIONS ABOUT THE AGREEMENTS, PLEASE SEEK INDEPENDENT LEGAL COUNSEL BEFORE AGREEING TO THESE TERMS OF SERVICE OR ACCESSING OR USING THE SERVICES.

You accept to be bound by this contract by clicking on 'Submit' or 'I Agree' and/or by using the Services (as that term is hereinafter defined). After You (as that term is hereinafter defined) click on 'Submit' or 'I Agree' or when You use the Services, a legally binding agreement on these terms and conditions is entered into between, (a) You, the end user ('You' or 'Your' as applicable) and (b) Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa, located at 1 Borgata Way, Atlantic City, NJ 08401 ('Borgata', 'We', 'Us' or 'Our' as appropriate).

These Agreements govern the use of the Services in New Jersey. These Agreements are separate and distinct from the policies that govern the online gaming services offered by MGM Resorts International in other jurisdictions, including the State of Nevada.

The Services currently operate under and pursuant to the Internet Gaming Permit issued to Marina District Development Company, LLC by the New Jersey Division of Gaming Enforcement pursuant to and in accordance with the Casino Control Act (the 'Act'), N.J.S.A. 5:12-95.21. Borgata is authorized to conduct Internet Gaming in the State of New Jersey pursuant to the Act under a license issued to Marina District Development Company, LLC (NJIP 15-001). These Agreements are at all times subject to the authority of the New Jersey Division of Gaming Enforcement.

These Agreements apply to Borgata's (1) New Jersey online gaming websites: BorgataPoker.com and BorgataCasino.com and Borgata Sports Online; and (2) the New Jersey online mobile gaming apps: BorgataPoker.com and BorgataCasino.com and BorgataSports.com, and (3) any other online or mobile platform provided by Us (each individual site being a 'Platform' and together the 'Platforms') on which You access Our betting, gaming and wagering services ('Services').

In the event that You have any complaints, claims or disputes with regard to any outcome regarding the Services or any other activity performed by Us, You should in the first instance contact Us in accordance with Section 28 below.

These Terms of Service together with the Privacy Policy, the Landing Page and Promotions section (Poker, Casino, Sports), the Tournaments section (Poker), the How to Play/Getting Started sections (Casino, Poker, Sports) and Game Rules sections (Casino), the Frequently Asked Questions, all additional game rules, the Poker Etiquette section, the Disconnection and Cancellation Policy (Casino, Poker, Sports), Standard Promotional Terms and Conditions, Fees and Commission (Poker), the Third-Party Content Policy, the Reward Plan Terms and Conditions ("Reward Plan") and any other additional rules and terms published on the Platform or otherwise notified to You that specifically relate to and govern any particular event, game, software, promotion or tournament constitute a legally binding agreement between You and Us ('Agreements'). You should read all of these documents carefully as each one forms part of the legally binding agreement between You and Us. By clicking on 'Submit' or 'I Agree' and accepting these Terms of Service, or by using the Services, You are also acknowledging and accepting these Agreements. Access to and use of the Services is governed by these Agreements.

Please note that these Terms of Service shall prevail in the event of any conflict between these Terms of Service and any of the game rules or other documents referred to in these Terms of Service.

Your attention is drawn to Our Privacy Policy which describes how We deal with and protect Your personal information. By accepting these Terms of Service, You are also acknowledging and accepting the Privacy Policy. In the event of any conflict between the Agreements and the Privacy Policy, the Privacy Policy shall control.

## **1. APPLICABILITY OF AGREEMENTS**

By using the Services and/or by acknowledging that You have read these Agreements when You register to join and/or by clicking on the 'Submit' or 'I Agree' button when You install any of the software relating to the Services provided via the Platforms or when You register for Your Account, You agree to comply with these Agreements, and You acknowledge that Your failure to comply with these Agreements may result in disqualification, the closure of Your Account (hereafter as defined in Section 19 and Section 20 below), forfeiture of funds and/or legal action against You, as appropriate and as further specified in these Agreements. You acknowledge that if You accept these Agreements, We will start providing You with the benefit of the Services immediately. As a consequence of this, if You accept these Agreements when registering for the Services, You will not be able to cancel Your registration later, although You can terminate these Agreements and close Your Account in accordance with Section 20 below.

## **2. LEGALITY OF USE OF THE FACILITIES**

### **2.1**

You may only use the Services if You are 21 years of age or over, a United States resident, and it is legal for You to do so according to the laws of New Jersey. You confirm that You are not

accessing the Services from a state or foreign jurisdiction outside of New Jersey at the time of placing a bet or participating in a game. You understand and accept that We are unable to provide You with any legal advice or assurances and that it is Your sole responsibility to ensure that at all times You comply with the laws that govern You and that You have the complete legal right to use the Services. You acknowledge that underage gambling is illegal, and that it is a criminal offense to allow a person who is under the age of 21 to participate in Internet or mobile wagering. Any use of the Services is at Your sole option, discretion and risk. By using the Services, You acknowledge that You do not find the Services to be offensive, objectionable, unfair, or indecent in any way.

## **2.2**

Federal Law prohibits and restricts wagering on the Internet (including, but not limited to, such prohibitions and restrictions set out in 18 U.S.C. §§ 1084 et seq. ('The Wire Act') and 31 U.S.C. §§ 3163 through 3167 ('UIEGA')). It is a Federal offense for persons physically located outside of New Jersey to engage in Internet wagering through a New Jersey casino.

## **3. ACCOUNT/REGISTRATION**

### **3.1**

To use the Services, You will first need to register for an account with Us. You may access any of the Services from Your Account (as defined below). You are prohibited from allowing any other person to access or use Your Account.

### **3.2**

You can open an account with Us by choosing a unique account name and password and entering other information that We ask for on Our registration form such as (but not limited to) Your first and last name, social security number, physical address, email, gender, birth date and telephone number (an 'Account').

### **3.3**

You shall ensure that the details provided at registration are accurate and kept up to date. You can change the details You provide at registration at any time by editing Your Account preferences. Please see Our Privacy Policy for further details regarding what information we collect, and how that information is used, shared and stored. Alternatively, You can contact Us for further information.

### **3.4**

There are no set-up charges for opening Your Account. We are not a bank and funds are not insured by any government agency. All payments to and from Your Account must be paid in U.S. dollars and shall not bear interest and You shall ensure that all payments into Your Account are from a payment source for which You are the named account holder.

### **3.5**

Use of certain Services may require You to be a member of M life Rewards Program or other rewards club established by Borgata or MGM Resorts International and such membership may impact Your ability to access, claim and/or use certain benefits associated with the Services. You may enroll in the M life Rewards Program either in-person at the Borgata Hotel Casino & Spa, 1 Borgata Way, Atlantic City, New Jersey 08401 or at designated locations at other participating MGM resorts, online through the M life Rewards website, or as otherwise authorized by MGM. M life Rewards enrollment and membership can only be activated by presentation of a valid, government-issued photo identification at an M life Rewards Program desk or another designated M life Rewards location at participating M life Rewards resorts, or as otherwise authorized by MGM. Your participation in the M life Rewards Program is subject to the program's terms and conditions available at [mlife.com](http://mlife.com) (M life Rewards Program Rules) and to the terms of the MGM privacy policy available at [mlife.com](http://mlife.com) or other locations where it is posted.

### 3.6

To play Real Money Games or place a bet, You will be required to pay 'real money' funds into Your Account by any of the following methods : (i) a deposit account; (ii) a credit or debit card, which has been registered and verified pursuant to the requirements of the issuer; (iii); a reloadable prepaid card, which has been verified as being issued to You and is non-transferable; (iv) cash compliments, promotional credits, or bonus credits; (v) winnings during a gaming session; (vi) adjustments made by the licensee with documented notification to You; (vii) any other means approved by the New Jersey Division of Gaming Enforcement.

Such funds will be deposited into Your Account upon actual receipt of funds by Us and/or Our agents. Minimum and maximum limits may be applied to the payments into Your Account, depending upon Your history with Us, the method of deposit, and other factors as determined solely by Us. For further details of current deposit and cash out options and fees, please see Cashier.

Deposits and withdrawals can be subject to review. In the case of suspected or fraudulent activity, we may suspend or terminate your account and may refund or refuse to refund any monies contained in your account in our sole and absolute discretion.

### 3.7

You can request withdrawals from Your Account at any time provided all payments made have been received. We reserve the right to pay any requested withdrawal partly or in total via the same method of payment and in the same currency with which deposits were made. When using credit/debit card to make a deposit, We may elect not to accept any withdrawal request within fourteen (14) days after the deposit.

### 3.8

To use certain Services, You may first need to download and install software as provided on the relevant Platform.

### 3.9

Account statements are available to You, which detail Your account activity.

#### **4. TRUE IDENTITY AND ONE ACCOUNT**

The name on Your Account must match Your true and legal name and identity and the name on Your Account registration must match the name on the credit card(s) or other payment accounts used to deposit or receive monies into Your Account. To verify Your identity, We reserve the right to request satisfactory proof of identity (including but not limited to copies of a valid passport/identity card and/or any payment cards used) and satisfactory proof of address (including but not limited to a recent utility bill or bank statement) at any time. You consent to have Your age and identity verified by Us, and You acknowledge verifications associated with Internet or mobile gaming may result in a negative impact on Your credit report. Failure to supply such documentation may result in suspension of the Account. You may not hold more than one (1) Account in connection with Your use of any Platform. We reserve the right to close Your Account(s) if You open multiple Accounts. Should We have reasonable grounds to believe that multiple Accounts have been opened with the intention to defraud Us, We reserve the right to cancel any transaction related to said fraud attempt. If You have lost Your Account name or password, please contact Us for a replacement.

#### **5. PERSONS PROHIBITED FROM ESTABLISHING AN ACCOUNT**

The following persons (each an 'Unauthorized Person') are not permitted to establish an Internet or mobile gaming account, or to use directly or indirectly any of the Services other than as required in the course of their employment: (i) any person prohibited from gaming pursuant to N.J.S.A. 5:12-100n, including but not limited to those casino key employees and casino employees prohibited from wagering in any casino or simulcasting facility in the State, (ii) an employee of a supplier or vendor of MGM, Borgata or GVC/bwin.party (MGM, Borgata and GVC/bwin.party collectively referred to as the 'Group'), (iv) any individuals who have been banned from gaming activities at any MGM Resorts International subsidiary or affiliate, or who have been prohibited from gaming pursuant to any applicable Laws, including individuals who have been "self-limited" or listed on any self-exclusion, disassociated persons, or similar list in New Jersey or any state, (v) "prohibited persons" that are government officials or residents of certain embargoed countries and/or whose names are included on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List or successor or similar lists, (vi) persons who are under the age of 21, and (vii) persons who are not a legal resident of the United States. You may not attempt to create an Account if you are an Unauthorized Person or assist other Unauthorized Persons to use the Services.

#### **6. YOUR USE OF THE SERVICES**

##### **6.1**

In the interests of ensuring fairness, We may take any measures as we deem appropriate in order to create a fair and balanced game play environment.

##### **6.2**

We reserve the right to suspend, modify, remove and/or add to any of the Services (collectively, a “Change”) in Our sole discretion with immediate effect and without notice, so long as such Change does not affect pending play on the Services. We will not be liable for any such action.

### **6.3**

We forbid the use of all unfair practices when using the Services. We do this to protect Our customers and the integrity of the Services. Please read Our Unfair Advantage Policy which is incorporated in these Agreements for further details and Our Anti-Cheating Policy at section 34.4. If any customer is found to be participating in any form of collusion or other activities that We consider to constitute cheating his or her account may be permanently closed and any balance may be at risk of forfeiture or withholding as per Section 19 of these Terms of Service.

### **6.4**

We forbid the posting of any prohibited Third Party Content (as that term is hereinafter defined) on Our Platforms. Please read Our Third Party Content Policy which is incorporated in these Agreements for further details.

### **6.5**

We reserve the right to suspend Your use of certain of the Services, Platforms or any games on our Platforms from time to time for any reason or no reason.

### **6.6**

No communications or information published on the Services is intended to constitute legal or tax advice and we accept no liability for any reliance on such content.

### **6.7**

For the purpose of any reference to time in connection with Your use of the Services, We use the Eastern Time Zone unless otherwise specified.

### **6.8**

Your use of the Services (including, for the avoidance of doubt, any intellectual property and/ or services We may license from third parties from time to time which forms part of the Services) is for Your personal, entertainment use on a single computer only. You may not use the Services or any intellectual property contained therein for any commercial purpose.

### **6.9**

By accessing our Platforms, or using, or attempting to use, our Software or the Services, You represent and warrant to Us that: (i) you are 21 years of age or older; (ii) you are a legal resident of the United States, (iii) you are physically located in the state of New Jersey while wagering; (iv) all details provided by You to Us to setup Your Account or otherwise participate in the Services are true, current, correct and complete; and (v) You consent to the monitoring and recording by Us and/or the Division of Gaming Enforcement of any wagering communications and geographic location information.

**6.10**

In order to use the New Jersey wagering feature of the Services, you must be physically located in the State of New Jersey at the time of use. We may, at any time before or after you begin using the Services, require you to verify your identity, age, or physical location in person at the Borgata Hotel Casino & Spa or through other means, and we may terminate your access to the Services if you fail to do so.

**6.11**

The following persons are not permitted to place a sports pool wager using the Services: (i) Any Borgata employee, and (ii) any family members of a Borgata employee who live in the same household of that employee. A prohibited sports pool participant, including an owner, athlete, coach, referee, manager, handler, or athletic or horse trainer, or any other person identified in N.J.A.C. 13:69N-1.1, shall not be permitted to wager on any event governed by the league or sports governing body with which they are affiliated. Any other employee of a sports governing body, or one of its member teams, who is not a prohibited sports pool participant, shall register with the DGE by completing the required [Registration Form](#) prior to placing a sports pool wager.

**7. COPYRIGHT AND TRADEMARKS**

The terms Borgata, MGM Resorts International, MGM, M life Rewards, and any other marks used by Us are the trademarks, service marks and/or trade names of the Group, one of its subsidiaries or associated companies, and/or its licensors. Further, all other material used by Us, including but not limited to the software, images, pictures, graphics, photographs, animations, videos, music, audio, text (and any intellectual property rights in and to any of the same) is owned by the Group, one of its subsidiaries or associated group companies, and/or licensors and is protected by copyright and/or other intellectual property rights. You obtain no rights in such copyright material or trade or service marks and must not use them without the Group's written permission.

**8. ELECTRONIC SERVICES PROVIDER**

In order to use the Services, You will be required to send money to and may be required to receive money from Us. We may use third-party electronic payment processors and/or financial institutions ('ESPs') to process such financial transactions. You irrevocably authorize Us, as necessary, to instruct such ESPs to handle Account deposits and withdrawals from Your Account and You irrevocably agree that We may give such instructions on Your behalf in accordance with Your requests as submitted using the relevant feature on Our Platforms. You agree to be bound by the terms and conditions of use of each applicable ESP. In the event of conflict between these Agreements and the ESP's terms and conditions then these Agreements shall prevail.

In the event We use such ESPs and/or financial institutions to process payments made by and to You, or otherwise accept Your use of any particular payment method, in connection with Your use of the Services, We shall have no responsibility for the acts or omissions of the third party providing such payment processing or payment method prior to Our receipt of funds or after We

initiate a transfer of funds (as applicable). You agree that You shall look exclusively to the ESP or financial institution in the event of any payment processing or other payment method related disputes and not to Us.

## **9. BONUSES**

We may from time to time offer You complimentary or bonus amounts to be credited by Us into Your Account ('Bonus(es)'). Such Bonuses may only be used in relation to such Services as may be specified when the Bonus is offered to You. Acceptance of any Bonus shall be in accordance with additional terms and conditions We may make available to You in respect of each such Bonus offering and, if none, then in accordance with the Standard Promotional Terms and Conditions and bonus release restrictions contained in the relevant offer. Offers may be used only ONCE unless otherwise specified. You are not entitled to withdraw any Bonus amounts and You may not remove any cash obtained via a Bonus from Your Account without first complying with the applicable terms including, without limitation, in respect of any qualifiers or restrictions.

## **10. CASH OUTS**

### **10.1**

Your account balance is the amount of real money held in Your Account (if any), plus any winnings and/or minus any losses accrued from using the Services, less any rakes or entry or other fees, if applicable, and less any amounts previously withdrawn by You or amounts forfeited or reclaimed by Us due to any known or suspected fraud or due to deposits or other transactions rejected or cancelled by Your bank or any relevant third-party bank (whether as a result of insufficient funds, charge-backs or otherwise), or any sums which are otherwise deductible or forfeited under these Agreements ('Account Balance').

### **10.2**

Acceptance of a cash out request is subject to any deposit method restrictions, bonus restrictions and/or Security Reviews (see Section 18 below) and any other terms of these Agreements. All amounts You withdraw are subject to the transaction limits and any processing fees for deposits and withdrawal methods that We notify You of before cashing out. For further details of current deposit and cash out options and fees please see Cashier.

### **10.3**

We may report and withhold any amount from Your winnings in order to comply with any applicable law. All taxes due in connection with any winnings awarded to You are Your sole liability. Account balances cannot be transferred, substituted or redeemed for any other prize. Payment of funds which You withdraw shall be made by check, wire, credit card and/or any other manner which We select in Our sole discretion, although We will try to accommodate Your preferences as indicated by You when You register.

### **10.4**

Payments will be made as soon as reasonably possible (subject to up to five business days internal processing time), although there may be delays due to any Security Review (see Section 18 below) undertaken by Us and save where We hold any such payments in accordance with these Agreements. Under penalties of perjury, You declare that, to the best of Your knowledge and belief, the name, address, and Social Security Number that You have furnished correctly identify You as the recipient of any jackpot payments and any payments from identical wagers, and that no other person is entitled to any part of these payments. You acknowledge the Form W2G may be issued by Us by January 31 following the year of the payment. By accepting these Agreements, You acknowledge that any casino winnings/jackpots of one thousand two hundred US dollars (\$1200) or more, or poker tournament winnings of more than \$5,000, that You win by using the Services are subject to the IRS regulations and You permit Your acceptance of these Agreements to serve as an electronic signature and to suffice any acceptance and signature on any tax documents incurred during the internet gaming activity.

## **10.5**

Your acceptance of these Agreements serves as acknowledgement that the Form 1099-Misc may be issued by Us by January 31 following the year of the receipt of a prize consisting of cash or merchandise for which a 12 month accumulated value of six hundred US dollars (\$600) or more won by using the Services are subject to the IRS regulations.

## **11. INACTIVE AND DORMANT ACCOUNTS**

### **11.1**

If You do not access Your Account by 'logging on' to Your Account using Your Account name and password and either (i) place a cash wager or bet via the Services, or (ii) enter a tournament with a cash entry fee via the Services, or (iii) play a raked hand via the Services, or (iv) make a deposit as applicable, for any consecutive period of 180 days, then after those 180 days (the 'Grace Period') Your Account (and any related account with any ESP) will be deemed 'Inactive'.

### **11.2**

If Your Account is Inactive for a period of one year, Your Account is considered a Dormant Account by the New Jersey Division of Gaming Enforcement and any funds remaining in your account are subject to forfeiture by the State of New Jersey. Logging into your account and entering a tournament or playing a raked hand or making a real money wager or making a deposit or withdrawal are considered transactions and will make Your Account Active.

## **12. THIRD-PARTY CONTENT**

### **12.1**

Abusive or offensive language will not be tolerated on Our chat boards, or otherwise by You on the Platforms, Services, or with Group staff. In addition, You are not entitled to make untrue and/or malicious and/or damaging comments with regard to the Group's operation in any media or forum.

## **12.2**

In accordance with the terms of Our Third Party Content policy, We may reject or delete any text, files, images, photos, video, sounds, or any other materials ('Third Party Content') posted by You on the Platforms which in Our sole opinion breaches the terms of these Agreements.

## **12.3**

Any violation of this policy may result in removal of the Third Party Content, a suspension of Your use of the Services and/or such other action as may be reasonably required by Us to ensure compliance.

## **13. DISCLOSURE OF ACCOUNT NAME AND PASSWORD**

The Account name and password selected when You register for an Account should not be disclosed to any third party. You are solely responsible for the security of Your Account name and password, and all activities that occur under Your Account name and password.

You agree to keep Your Account name and password secret and confidential and not to allow anyone else to use it. As an authorized player, You are prohibited from allowing any other person access to or use of Your interactive gaming account. Every person who identifies themselves by entering a correct username and password is assumed by Us to be the rightful Account holder and all transactions where the username and password have been entered correctly will be regarded as valid. In no event will We be liable for any loss You suffer as a result of any unauthorized use or misuse of Your login details. We shall not be required to maintain Account names or passwords. If You have lost Your Account name, username or password, please contact Us for a replacement. If You misplace, forget, or lose Your Account name, username or password as a result of anything other than Our error, We shall not be liable.

## **14. FRAUDULENT ACTIVITIES, PROHIBITED TRANSACTIONS AND FAILED DEPOSITS**

We have a zero tolerance policy towards inappropriate play and fraudulent activity. If, in Our sole determination, You are found to have cheated or attempted to defraud Us and/or the Group or any other user of any of the Services in any way, including but not limited to game manipulation or payment fraud, manipulation of the multi-currency facilities, betting on all possible outcomes of a game or event or if We suspect You of fraudulent payment, including use of stolen credit cards, or any other fraudulent activity (including but not limited to any chargeback or other reversal of a payment) or prohibited transaction (including but not limited to money laundering) or if Your deposits failed to be honored by Your bank for any reason, We reserve the right to suspend and/or close Your Account and recover bad debts using whichever method may lawfully be available to Us including, but not limited to, (i) debiting the amount owed by You from Your Account; and (ii) instructing third party collections agencies to collect the debt. This may have a detrimental impact on Your credit rating and will require Us to share Your personal information (including Your identity) with appropriate agencies and to report any criminal or suspicious activities to the appropriate authorities.

We reserve the right to void and withhold any or all winnings made by any person or group of persons and to void and withhold any Standard Player Points gained by any person or group of persons where We have reasonable grounds to believe that said person or group of persons is acting or has acted in liaison in an attempt to defraud or damage Us and/or the Group and/or the Services and/or the Platforms in any way.

In the interests of data protection, security and avoidance of fraud We do not permit use of any communication channels included within the Services and/or the Platforms (including but not limited to dealer table chat boards) to offer or promote any offers, products and services (whether Yours or a third party's). You are expressly prohibited from posting information or contacting Our customers to offer or promote any offers, products or services.

## **15. LIMITED LICENSE**

We hereby grant You the limited, non-exclusive, non-transferable, non-sublicensable right to install and use the software We make available from the Platforms used to provide the Services (the 'Software') and all content derived from the Software, including, but not limited to, the copyright and all other intellectual property rights therein, in connection with the Services in accordance with this Agreement. You may install and use the Software on a hard disk or other storage device and make backup copies of the Software, provided that such use and backup copying is only for Your own personal use in using the Services in accordance with these Agreements, and further, that such installation and use is made through a computer or other device of which You are the primary user. The Software is the valuable intellectual property of the Group and/or its associated companies and/or its licensors. You obtain no rights to the Software except to use it in accordance with these Agreements. You must not: (a) copy, redistribute, publish, reverse engineer, decompile, disassemble, modify, translate or make any attempt to access the source code to create derivative works of the source code, or otherwise; (b) sell, assign, sublicense, transfer, distribute, lease or grant a security interest in the Software; (c) make the Software available to any third party through a computer network or otherwise; d) export the Software to any country (whether by physical or electronic means); or (e) use the Software in a manner prohibited by applicable laws, regulations and/or this Agreement (together the 'Prohibited Activities').

You will be solely liable for any damages, costs or expenses arising out of or in connection with the commission of any Prohibited Activities. You shall notify Us immediately upon becoming aware of the commission by any person of any of the Prohibited Activities and shall provide Us with reasonable assistance with any investigations it may conduct in light of the information provided by You in this respect.

## **16. LOCATION SERVICES**

### **16.1**

Real-money gaming on the Platforms is restricted by the New Jersey Division of Gaming Enforcement to users who are physically located within the state of New Jersey. To confirm Your desktop/laptop location, we use a third-party method using IP address and WiFi signal. If

one of the two is not confirmed, You will not be allowed to use the Services. To confirm Your mobile device location, we use a third-party method using carrier cell tower and WiFi signal. If your mobile device location is not confirmed, You will not be allowed to use the Services. We cannot guarantee that your device will be able to successfully use the Location Services. If we or our third party providers are unable to precisely track your location for any reason, you may be prevented from accessing or using the Services. We are not liable for your inability to access or use the Services.

## **16.2**

By registering to use the Services, you consent to the monitoring and recording by us (or our service providers) and/or by the New Jersey Division of Gaming Enforcement of any wagering communications and geographic location information for the purpose of determining compliance with the Act.

## **16.3**

We will handle all information collected through the Location Services in accordance with our Privacy Policy. If You have any questions or concerns regarding the Location Services, You may contact Us at [support@borgatacasino.com](mailto:support@borgatacasino.com) or at 1-877-448-5833.

## **17. ERRORS**

You must inform Us as soon as You become aware of any errors with respect to Your Account or any calculations with respect to any bet or wager You have placed. In the event of such error or any system failure or game error (a divergence from the normal functioning of the game logic for whatever reason) that results in an error in any odds calculation, charges, fees, rake, bonuses or payout, or any currency conversion as applicable, ('Error') We will seek to place all parties directly affected by such Error in the position they were in before the Error occurred. We reserve the right to declare null and void any wagers or bets that were the subject of such Error and to take any money from Your Account relating to the relevant bets or wagers, if there are insufficient funds in Your Account, We may demand that You pay Us the relevant outstanding amount relating to these bets or wagers. In all circumstances whereby We (in Our sole discretion) determine an Error has been used to gain an unfair advantage, We reserve the right to consider this activity to be subject to Section 19 (Forfeiture & Account Closure) of these Terms of Service.

## **18. SECURITY REVIEW**

To maintain a high level of security and integrity in the system, We reserve the right to conduct a security review at any time to validate Your identity, age, the registration data provided by You, to verify Your use of the Services, including but not limited to Your compliance with these Agreements and the policies of the Group and Your financial transactions carried out via the Services for potential breach of these Agreements and of applicable law (a 'Security Review'). As such, You authorize Us and Our agents to make any inquiries of You and for Us to use and disclose to any third party We consider necessary to validate the information You provide to Us or should provide to Us in accordance with these Agreements, including but not limited to,

ordering a credit report and/or otherwise verifying the information against third party databases. In addition, to facilitate these Security Reviews, You agree to provide such information or documentation as We, in Our unfettered discretion, may request.

## **19. FORFEITURE & ACCOUNT CLOSURE**

### **19.1**

WE RESERVE THE RIGHT, IN OUR UNFETTERED DISCRETION AND IN RELATION TO YOUR ACCOUNT, ANY RELATED ESP (as that term is defined at clause 8) ACCOUNT, ANY ACCOUNTS YOU MAY HAVE WITH OTHER SITES AND/OR CASINOS AND/OR SERVICES OWNED OR OPERATED BY OR ON BEHALF OF THE GROUP AND, IN THE CASE OF YOUR USE OF THE SERVICES, ANY SERVICES THAT SHARE THE SHARED GAME/TABLE PLATFORM, TO TERMINATE THESE AGREEMENTS, WITHHOLD YOUR ACCOUNT BALANCE, SUSPEND YOUR ACCOUNT, AND RECOVER FROM SUCH ACCOUNT THE AMOUNT OF ANY AFFECTED PAY-OUTS, BONUSES AND WINNINGS IF:

#### **19.1.1**

You are in material breach of any of these Agreements;

#### **19.1.2**

We become aware that You have used or attempted to use the Services for the purposes of fraud, collusion (including in relation to charge-backs) or unlawful or improper activity (including without limitation, any manipulation of the multi-currency facilities);

#### **19.1.3**

We become aware that You have played at any other online gaming site or services and are suspected of fraud, collusion (including in relation to charge-backs) or unlawful or improper activity;

#### **19.1.4**

You have 'charged back' or denied any of the purchases or deposits that You made to Your Account;

#### **19.1.5**

You become bankrupt or analogous proceedings occur anywhere in the world; or

#### **19.1.6**

Upon instruction of the appropriate law enforcement agency or regulatory body.

## **20. TERMINATION**

### **20.1**

You are entitled to close Your Account and terminate these Agreements for any reason or no reason on seven (7) days' notice to Us by withdrawing the entire balance from Your Account and sending a letter or email or telephoning Us using the details at 'contact Us'. We will respond within a reasonable time provided that You continue to assume responsibility for all activity on Your Account until such closure has been affected by Us.

## **20.2**

We take Responsible Gaming seriously. If You would like to close Your Account for responsible gaming reasons please visit the New Jersey Division of Gaming Enforcement's self-exclusion [website](#).

## **20.3**

Without limitation to section 19, We are entitled to terminate these Agreements on seven (7) days' notice (or attempted notice) to You at the email address You have provided to Us. In the event of termination by Us, We shall give notice of the termination to You via email and, other than where termination is pursuant to section 19, as soon as reasonably practicable refund the balance of Your Account. Where We have terminated pursuant to section 19, any payouts, bonuses and winnings in Your Account are non-refundable and deemed forfeited.

## **20.4**

Termination of these Agreements will not affect any outstanding wagers or bets, PROVIDED that any outstanding wagers or bets are valid and are not in breach of these Agreements in any way.

## **20.5**

The following Sections of these Terms of Service shall survive any termination of these Agreements by either party: 2, 7, 8, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, and 32, along with any other Sections which are required for the purposes of interpretation.

## **21. COMPENSATION**

YOU AGREE THAT YOU WILL ONLY USE THE SERVICES IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET OUT IN THE AGREEMENTS. YOU WILL COMPENSATE US IN FULL FOR ANY LOSSES OR COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH WE (OR ANY MEMBER OF OUR GROUP) INCUR ARISING FROM ANY BREACH BY YOU OF THESE AGREEMENTS.

## **22. SELF-EXCLUSION**

### **22.1**

You may suspend Your Account for a period of time as chosen by You, provided the suspended Account does not remain inactive for a period of one year which would result in Your Account being a Dormant Account and any funds remaining in your Account are subject to forfeiture by the State of New Jersey.

## **22.2**

You may set daily limits or have Your name placed on the Internet self-exclusion list by submitting a request for self-exclusion. The minimum time-out period is 72 hours.

## **22.3**

If You request placement on the self-exclusion list, You shall deliver, in person, a completed request for self-exclusion to either the Identification Unit of the Division located at the Arcade Building, Tennessee Avenue and the Boardwalk, in Atlantic City, or to the Trenton office of the Division of Gaming Enforcement located at 140 East Front Street.

## **22.4**

If You have elected to use any of the self-exclusion tools in connection with any of the Platforms provided by any Group company from time to time, You acknowledge and agree that You are not permitted to open or use an Account with any other Group company ('Additional Group Account') during the self-exclusion period You have selected.

# **23. LIMITATIONS AND EXCLUSIONS**

## **23.1**

WE PROVIDE THE SERVICES ON AN "AS IS" AND "AS AVAILABLE" BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICES AND THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE SITE WILL BE WITHOUT ERROR OR INVULNERABLE TO VIRUSES, WORMS, OR OTHER HARMFUL SOFTWARE OR HARDWARE. YOU HEREBY ACKNOWLEDGE THAT THE SITE MAY NOT BE AVAILABLE DUE TO ANY NUMBER OF FACTORS INCLUDING, WITHOUT LIMITATION, PERIODIC SYSTEM MAINTENANCE, SCHEDULED OR UNSCHEDULED, ACTS OF GOD, UNAUTHORIZED ACCESS, VIRUSES, DENIAL OF SERVICE OR OTHER ATTACKS, TECHNICAL FAILURE OF THE SITE, TELECOMMUNICATIONS INFRASTRUCTURE, OR DISRUPTION, AND THEREFORE WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY REGARDING SITE USE AND/OR AVAILABILITY, ACCESSIBILITY, SECURITY OR PERFORMANCE CAUSED BY SUCH FACTORS.

## **23.2**

YOUR ACCESS TO THE PLATFORMS, DOWNLOAD OF ANY SOFTWARE RELATING TO THE SERVICES FROM THE PLATFORMS AND USE OF THE SERVICES OR ANY INFORMATION WE MAY PROVIDE IN CONNECTION WITH YOUR USE OF THE SERVICES IS AT YOUR SOLE OPTION, DISCRETION AND RISK. WE SHALL NOT BE LIABLE FOR ANY MALFUNCTIONS OF THE COMPUTER PROGRAMS RELATING TO THE SERVICES WE MAKE AVAILABLE FROM THE PLATFORMS, ERRORS AS DESCRIBED IN SECTION 17, BUGS OR VIRUSES RESULTING IN LOST DATA OR ANY

OTHER DAMAGE TO YOUR COMPUTER EQUIPMENT, MOBILE PHONE OR MOBILE DEVICE, OR SOFTWARE. FURTHERMORE, WE SHALL NOT BE LIABLE FOR ANY ATTEMPTS BY YOU TO USE THE SERVICES BY METHODS, MEANS OR WAYS NOT INTENDED BY US. WE ARE NOT REQUIRED TO PROVIDE REDUNDANT OR BACKUP NETWORKS AND/OR SYSTEMS. MALFUNCTION VOIDS ALL PAYS.

### **23.3**

THE GROUP (INCLUDING ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES) WILL NOT BE LIABLE TO YOU OR ANY THIRD PARTY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE WHATSOEVER ARISING FROM OR IN ANY WAY CONNECTED WITH YOUR USE OR ANY THIRD PARTY'S USE OF THE SOFTWARE OR THE SERVICES, WHETHER DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF USE DAMAGES, ARISING OUT OF OR RELATING TO USE OF OR INABILITY TO USE THE SOFTWARE OR THE SERVICES, DAMAGE FOR, BUSINESS LOSSES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, PROFITS (INCLUDING LOSS OF OR FAILURE TO RECEIVE ANTICIPATED WINNINGS), REVENUE, BUSINESS, OPPORTUNITY, GOODWILL, REPUTATION OR BUSINESS INTERRUPTION OR ANY OTHER PECUNIARY OR CONSEQUENTIAL LOSS (EVEN WHERE WE HAVE BEEN NOTIFIED BY YOU OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE) ARISING OUT OF THESE AGREEMENTS OR YOUR USE OF THE SERVICES.

### **23.4**

THE GROUP SHALL NOT BE LIABLE FOR ANY ACTS OR OMISSIONS MADE BY YOUR INTERNET SERVICE PROVIDER, ESP, PAYMENT PROCESSOR, FINANCIAL INSTITUTION OR OTHER THIRD PARTY WITH WHOM YOU HAVE CONTRACTED TO GAIN ACCESS TO THE SERVER THAT HOSTS THE SITE, TO RECEIVE FUNDS FROM THE US OR YOUR ONLINE GAMING ACCOUNT, OR PROVIDE PAYMENT PROCESSING OR OTHER SERVICES.

### **23.5**

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THE GROUP OR THROUGH OR FROM THE WEBSITE OR THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

### **23.6**

NEITHER WE NOR OUR GROUP SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY MODIFICATION TO, SUSPENSION OF OR DISCONTINUANCE OF THE SOFTWARE OR THE SERVICES.

### **23.7**

NEITHER WE NOR OUR GROUP SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY ERRORS OR OMISSIONS RELATING TO PAYMENT PROCESSING BY A THIRD PARTY ESP OR FINANCIAL INSTITUTION.

### **23.8**

NOTHING IN THESE AGREEMENTS WILL OPERATE SO AS TO EXCLUDE ANY LIABILITY WE MAY HAVE IN RESPECT OF EITHER FRAUD, OR DEATH, OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE.

### **24. INDEMNIFICATION**

You agree to indemnify, defend and hold Us, Our Group, and our and their respective directors, officers, employees, agents, and other partners harmless from and against any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Software or the Services, your connection to the Platforms or the Services, your violation of the Agreements, or your infringement of any intellectual property or other right of any other person or entity.

### **25. NO ARRANGEMENTS FOR PROHIBITED PERSONS/EXCLUDED PERSONS**

You acknowledge that We are a United States company and operate a licensed New Jersey gaming establishment. As such, We are: (i) prohibited from providing services to certain "prohibited persons" that are government officials or residents of certain embargoed countries, or terrorists or drug traffickers whose names are published on lists maintained by the United States Department of Treasury and (ii) must exclude or eject any "excluded persons" that are listed on the "exclusion list." You agree to use all reasonable efforts not to arrange for any of these prohibited persons or excluded persons to use the Services or the Software.

### **26. NO REPRODUCTION OR RESALE**

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Platforms, the Software or the Services, use of the Platforms, the Software or the Services, or access to the Platforms, the Software or the Services.

### **27. THIRD PARTY WEBSITES**

Although We hope that you will find the material on the Platforms informative, the material and links to third-party websites and resources that may be included on the Platforms are provided for informational purposes only. Providing links to these sites by Us should not be interpreted as endorsement or approval by Us of the organizations sponsoring these sites or their products or services. We make no representations or warranties, express or implied, with respect to the information provided on this Platforms or any third-party website which may be accessed by a link from the Platforms, including any representations or warranties as to accuracy or completeness. Because We have no control over third-party websites and resources, You acknowledge and agree that We are not responsible for the information and contents of such third-party websites and do not endorse and are not responsible or liable for any content, statements, representations, advertising, products, services or other materials on or available

from such sites or resources. You further acknowledge and agree that We shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused in connection with Your use or reliance on any such content, information, goods, or services available on or through any such site or resource.

## **28. NOTICES/COMPLAINTS**

If You have any complaints, claims or disputes with regard to any alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event, or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted regarding the Services, You must submit Your complaint to Us in writing as soon as is reasonably practicable following the date of the original transaction to which the claim or dispute refers. Complaints may be submitted by email to [formalcomplaint@borgatacasino.com](mailto:formalcomplaint@borgatacasino.com). You may also submit notices to Us in writing to: Customer Services Manager, Borgata Poker/Casino, 820 Bear Tavern Road, Trenton, New Jersey, NJ 08628, USA. Any notice We give to You (save as otherwise set out herein) will be sent to the email address that You provide when You register Your Account. It is Your responsibility to give Us notice of any changes to this address through the 'Change Email' facility in Our software and to regularly check Your email account for emails from Us.

To the extent that You are not satisfied with Our response You may contact the New Jersey Division of Gaming Enforcement at <http://www.nj.gov/oag/ge/index.html>.

## **29. GOVERNING LAW**

These Agreements shall be governed by and construed in accordance with the laws of New Jersey. You irrevocably agree to submit to the exclusive jurisdiction of the courts of New Jersey for settlement of any disputes or matters arising out of or concerning these Agreements or their enforceability. If any part of these Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms.

## **30. ARBITRATION**

Excluding those disputes identified in Section 28 above and internet gaming disputes which are subject to the New Jersey Division of Gaming Enforcement's dispute process under N.J.A.C. 13:69O-1.2r, (i.e., any dispute, claim or controversy relating to an individual's alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event, or the manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted), any claims or controversy arising out of or relating to the Agreements, including the determination of the scope or applicability of the Agreements and Our use of electronic services providers, shall be determined by arbitration in Atlantic County, New Jersey before a single neutral arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Any appeal shall be heard and decided by a panel of three

neutral arbitrators. All arbitrators shall be retired judges or justices of any New Jersey state or federal court, and shall in their substantive rulings (as opposed to procedural or discovery-related rulings that are otherwise governed by the JAMS Comprehensive Arbitration Rules and Procedures), apply the Laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rules that would cause the application of the Laws of any jurisdiction other than the State of New Jersey. The award of the arbitrator(s) shall be binding and final on all parties. Judgment on the award rendered may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees and expenses. The arbitrators may not award any incidental, indirect, special, or consequential damages, including, but not limited to, damages for lost profits. If any part of the Agreements is found to be invalid, illegal or unenforceable in any respect, it will not affect the validity of the remainder of the Agreements, which shall remain valid and enforceable according to their terms. No waiver of any breach or default of the Agreements shall be deemed to be a waiver of any preceding or subsequent breach or default.

### **31. ASSIGNMENT**

We reserve the right to transfer, assign, sublicense or pledge these Agreements, in whole or in part, to any person (but without Your consent) without notice, provided that any such assignment will be on the same terms or terms that are no less advantageous to You. You may not assign, sublicense or otherwise transfer in any manner whatsoever any of Your rights or obligations under these Agreements.

### **32. THIRD PARTY RIGHTS**

#### **32.1**

Except insofar as these Agreements expressly provide that a third party may in their own right enforce a term of these Agreements, a person who is not a party to these Agreements has no right under local law or statute to rely upon or enforce any term of these Agreements but this does not affect any right or remedy of a third party which exists or is available other than under local law or statute.

#### **32.2**

For the avoidance of doubt, each member of the Group is an intended third party beneficiary of these Agreements.

### **33. ENTIRE AGREEMENT, MODIFICATION AND AMENDMENTS**

You fully understand and agree to be bound by these Agreements and as modified and/or amended by Us from time to time. We may amend these Agreements at any time either by emailing or sending You notification of the new terms and/or by publishing the modified Agreement(s) on the relevant page of the Platforms or any place through which You access the Services. Any such modification will take effect within thirty (30) days of publication. If any modification is unacceptable to You, Your only recourse is to terminate these Agreements. Your continued use of the Services following notification or such thirty (30) day period following

publication, as the case may be, will be deemed binding acceptance of the modification. For material changes to the Agreements, You will be required to acknowledge acceptance of such changes. For changes deemed non-material and approved by the New Jersey Division of Gaming Enforcement, an acknowledgment is not required, and your continued access or use of the services following any amendments to the agreements constitutes your acceptance of the agreements as amended. It is your sole responsibility to review the Agreements and any revisions thereto each time You use the Services.

### **34. ADDITIONAL TERMS FOR USE OF SERVICES**

#### **34.1**

The following additional terms apply to Your use of the Services. Please note that in the event of any conflict between this Section 34 and the remaining Sections of these Terms of Service, the remaining Sections of these Terms of Service shall prevail.

#### **34.2 Play Money and Real Money Games**

By registering for the Services You will be able to access (through the Software (as defined below)) both 'play money' games and tournaments ('Play Money Games' or 'Play for Free Games' respectively) and 'real money' games and tournaments ('Real Money Games' or 'Play for Real Money Games' respectively), via the Services. No purchase is necessary or required to play the Play Money Games, save in respect to any cost You may incur to access the Services, charged by Your Internet service provider or telecommunications provider, and You may play the Play Money Games without betting money. We reserve the right to suspend, modify, remove and/or add any Gaming Service in its sole discretion with immediate effect and without notice and We will not be liable for any such action.

#### **34.3 Rules and Procedures of the Services**

You must use the Services in accordance with the generally accepted games rules set out in the Game Rules section, and the procedures relevant to the Gaming Service. You are using those specifically set out in the BorgataCasino.com and BorgataPoker.com online sites, including but not limited to the Promotions section, the How to Play section, and any other page that specifically relates to and governs any particular event, game or tournament ('Rules').

#### **34.4 Anti-Cheating Policy**

We are committed to preventing the use of unfair practices in the Services, including but not limited to player collusion. We are also committed to detecting and preventing the use of software programs which are designed to enable artificial intelligence to play on Our Platforms including, but not limited to, opponent-profiling, cheating software, automated computerized software or other equivalent mechanism, or anything else that We deem enables You to have an unfair advantage over other players not using such programs or systems ('AI Software'). You acknowledge that We will take measures to detect and prevent the use of such programs and AI Software using methods (including but not limited to reading the list of currently running

programs on a player's computer) and You agree not to use any AI Software and/or any such programs. Go to Our Unfair Advantage Policy.

### **34.5 Shared Games, Table and Database Platform**

We reserve the right, but are not obliged, to run and utilize a shared table, server and database platform or system ('Shared Game/Table Platform') which enables Gaming Service users to play with players coming into the games, tables and tournaments from other websites and brands operating on the same Shared Game/Table Platform. If a Shared Game/Table Platform is used, You agree that You may be pooled into these common game/tables, at Our sole discretion, and that to the extent that You breach the terms and conditions of one site or brand that operates on the Shared Game/Table Platform, We may have You blocked, in part or full, from the entire system so that You may not play through any site or brand using or on the Shared Game/Table Platform. Without limitation to the restriction on having multiple Accounts with Us (please see Section 4), We may require that You only have one Account on the Shared Game/Table Platform if the same is used.

### **34.6 Play Money and Real Money Account Funding**

'Play money' funds have no value and are kept separate from 'real money' funds. They are not transferable to a 'real money' account nor are they redeemable for any currency. We do not promise to accurately record the number of play money chips held by You and Your play money chips may be lost at any time. Further, We reserve the right to set a maximum chip limit for play money Accounts.

### **34.7 Settlement of In-Game Disputes**

You fully accept and agree that random number generator ('RNG') software will determine the shuffling and dealing of cards and other randomly generated events required in the Services. If there is a discrepancy between the result showing on the Software (as installed and operated on Your hardware) and Our server, the result showing on Our server shall govern the result. Moreover, You understand and agree that (without prejudice to Your other rights and remedies) Our records shall be the final authority in determining the terms of Your use of the Services, the activity resulting therefrom and the circumstances in which such activity occurred.

### **34.8 Progressive Jackpot Information**

Each progressive jackpot is reset to its individual base value after any player hits that particular jackpot. The reset value of the jackpots are:

- TheBigOne Blitz Cash Jackpot: \$40
- TheBigOne Quick Cash Jackpot: \$200
- TheBigOne Super Cash Jackpot: \$750
- TheBigOne Mega Cash Jackpot: \$10,000
- TheBigOne Colossal Cash Jackpot: \$125,000

- Ca\$hFla\$h Jackpot: \$1,000

### **30. MEMBERSHIP OF OUR VIP PROGRAM**

We may offer, withdraw, revoke and/ or amend the terms of any membership of Our VIP program at any time. For the avoidance of doubt, membership of Our VIP program is at Our sole discretion and Your status as a member of Our VIP program may be altered by Us at any time.

PLEASE PRINT THESE TERMS OF SERVICE AND STORE FOR YOUR FUTURE REFERENCE. IN ADDITION, WE SUGGEST THAT YOU PRINT AND STORE ALL TRANSACTION RECEIPTS AND GAME RULES AS APPLICABLE TO YOUR ACTIVITIES.

If You have any questions, please contact Our 24/7 [Customer Service team](#).

Updated: April 9, 2019

## **Exhibit A**

249

5/19/00  
3:30 PM

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SAM M. ANTAR, ALLEN ANTAR, and  
BENJAMIN KUSZER,

Defendants,

- and -

RORI ANTAR, SAM A. ANTAR, MICHELLE ANTAR,  
ADAM KUSZER, SAM KUSZER, SIMON KUSZER,  
ROSE ANTAR, and SAM M. ANTAR,

Relief Defendants.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROSE ANTAR, ELLEN ANTAR KUSZER,  
JILL ANTAR, R.A.S. PARTNERSHIP, L.P.,  
and S.T. PARTNERSHIP, L.P.,

Relief Defendants.

FILED

MAY 15 2000

AT 3:30 PM  
WILLIAM T. WALSH  
CLERK

Civ. No. 93-3988  
(HAA)

ENTERED

ON  
THE DOCKET

MAY 16 2000

WILLIAM T. WALSH, CLERK  
By W. Rodriguez  
(Deputy Clerk)

**FINAL JUDGMENT AGAINST RELIEF DEFENDANTS**  
**RORI, SAM A. AND MICHELLE ANTAR**

Based on the findings of fact and conclusions of law set forth in the Court's opinion dated July 15, 1998 and in the Court's opinion dated April 27, 2000, and on the entire record of the case,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

the losses he illegally avoided from Eddie Antar's sale of Crazy Eddie stock on his behalf while in possession of material, nonpublic information), plus (2) prejudgment interest in the amount of \$303,805 (which amount represents application of a rate of interest equal to that charged by the Internal Revenue Service pursuant to 26 U.S.C. § 6621(a)(2) and running from the date the complaint was filed naming Sam A. Antar as a relief defendant). Sam A. Antar shall pay these amounts to the Receiver appointed by the Court to receive and maintain custody of the funds. Payment shall be in the form of a United States postal order, certified check, bank cashier's check or bank money order made payable to the Receiver. The Receiver shall file a satisfaction-of-judgment with the Court within seven days of receiving payment. The Receiver shall distribute the money paid by Sam A. Antar pursuant to a plan of distribution to be proposed by the Commission and approved by the Court.

### III.

On or before thirty days following the date of this Final Judgment, relief defendant Michelle Antar shall pay (1) disgorgement in the amount of \$425,000 (which amount represents the losses she illegally avoided from Eddie Antar's sale of Crazy Eddie stock on her behalf while in possession of material, nonpublic information), plus (2) prejudgment interest in the amount of \$303,805 (which amount represents application of a rate of interest equal to that charged by the Internal Revenue Service

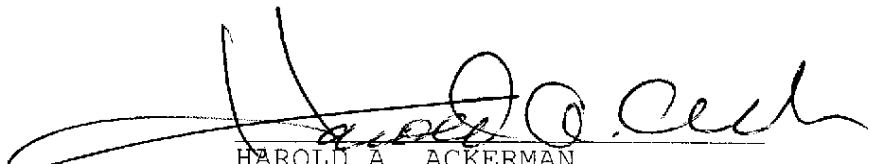
pursuant to 26 U.S.C. § 6621(a)(2) running from the date the complaint was filed naming Michelle Antar as a relief defendant). Michelle Antar shall pay these amounts to the Receiver appointed by the Court to receive and maintain custody of the funds. Payment shall be in the form of a United States postal order, certified check, bank cashier's check or bank money order made payable to the Receiver. The Receiver shall file a satisfaction-of-judgment with the Court within seven days of receiving payment. The Receiver shall distribute the money paid by Michelle Antar pursuant to a plan of distribution to be proposed by the Commission and approved by the Court.

IV.

The Court retains jurisdiction of this case for all purposes, including implementation and enforcement of this Final Judgment.

Dated:

May 15, 2000

  
HAROLD A. ACKERMAN  
UNITED STATES DISTRICT JUDGE

## **Exhibit**

UNITED STATES DISTRICT COURT  
District of New Jersey

UNITED STATES OF AMERICA

v.

SAM ANTAR

Defendant.

Case Number 3:13CR48(JAP)-01

RECEIVED  
AUG 07 2013  
AT 8:30  
WILLIAM T. WALSH  
CLERK

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, SAM ANTAR, was represented by Margo R. Zemel, Esquire (Retained).

The defendant pled guilty to count(s) 1 of the Information on 01-23-2013. Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number(s)</u>
18 U.S.C. SECTION 1343	WIRE FRAUD	FROM IN OR ABOUT 10-2010 THROUGH ON OR ABOUT 04-11-2011	ONE

As pronounced on 08-07-2013, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count(s) 1, which shall be due immediately. Said special assessment shall be made payable to the Clerk, U.S. District Court.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 7<sup>th</sup> day of August, 2013.

  
\_\_\_\_\_  
JOEL A. PISANO  
United States District Judge

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 21 Months.

The Court makes the following recommendations to the Bureau of Prisons: Defendant designated to a facility geographically near his immediate family members

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons at 9:00 a.m. on September 11, 2013.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ To \_\_\_\_\_  
At \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 3 years.

Within 72 hours of release from custody of the Bureau of Prisons, the defendant shall report in person to the Probation Office in the district to which the defendant is released.

While on supervised release, the defendant shall comply with the standard conditions that have been adopted by this court as set forth below.

The defendant shall submit to one drug test within 15 days of commencement of supervised release and at least two tests thereafter as determined by the probation officer.

If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remains unpaid at the commencement of the term of supervised release and shall comply with the following special conditions:

#### **ALCOHOL/DRUG TESTING AND TREATMENT**

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Officer shall supervise your compliance with this condition.

#### **NEW DEBT RESTRICTIONS**

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

### STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not illegally possess a controlled substance.
- 3) If convicted of a felony offense, the defendant shall not possess a firearm or destructive device.
- 4) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 5) The defendant shall report to the probation officer in a manner and frequency directed by the Court or probation officer.
- 6) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 7) The defendant shall support his or her dependents and meet other family responsibilities.
- 8) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 9) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 10) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 11) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 12) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 13) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 14) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 15) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 16) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- (17) You shall cooperate in the collection of DNA as directed by the Probation Officer.

*(This standard condition would apply when the current offense or a prior federal offense is either a felony, any offense under Chapter 109A of Title 18 (i.e., §§ 2241-2248, any crime of violence [as defined in 18 U.S.C. § 16], any attempt or conspiracy to commit the above, an offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year may be imposed, or any other offense under the Uniform Code that is comparable to a qualifying federal offense);*

- (18) Upon request, you shall provide the U.S. Probation Office with full disclosure of your financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, you are prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

and approval of the U.S. Probation Office. You shall cooperate with the Probation Officer in the investigation of your financial dealings and shall provide truthful monthly statements of your income. You shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Office access to your financial information and records;

- (19) As directed by the U.S. Probation Office, you shall participate in and complete any educational, vocational, cognitive or any other enrichment program offered by the U.S. Probation Office or any outside agency or establishment while under supervision;
- (20) You shall not operate any motor vehicle without a valid driver's license issued by the State of New Jersey, or in the state in which you are supervised. You shall comply with all motor vehicle laws and ordinances and must report all motor vehicle infractions (including any court appearances) within 72 hours to the U.S. Probation Office;

*For Official Use Only - - U.S. Probation Office*

Upon a finding of a violation of probation or supervised release, I understand that the Court may (1) revoke supervision or (2) extend the term of supervision and/or modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions, and have been provided a copy of them.

You shall carry out all rules, in addition to the above, as prescribed by the Chief U.S. Probation Officer, or any of his associate Probation Officers.

(Signed) \_\_\_\_\_  
Defendant Date

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness Date

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

**RESTITUTION AND FORFEITURE****RESTITUTION**

The defendant shall make restitution in the total amount of \$445,429.63. The Court will waive the interest requirement in this case. Payments should be made payable to the **U.S. Treasury** and mailed to Clerk, U.S.D.C., 402 East State Street, Rm 2020, Trenton, New Jersey 08608, for proportionate distribution to the following victims in the following amounts:

<b><u>Name of Payee (Victim)</u></b>	<b><u>Amount of Restitution</u></b>
M.Z. SEALED	\$225,000.00
I.C. SEALED	\$194,800.00
A.A. SEALED	\$8,000.00
TD Auto Finance 27777 Inkster Road, Farmingdale Hill, Michigan 48334-5236	\$17,629.63

The restitution is due immediately. It is recommended that the defendant participate in the Bureau of Prisons Inmate Financial Responsibility Program (IFRP). If the defendant participates in the IFRP, the restitution shall be paid from those funds at a rate equivalent to \$25 every 3 months. In the event the entire restitution is not paid prior to the commencement of supervision, the defendant shall satisfy the amount due in monthly installments of no less than \$200.00, to commence 30 days after release from confinement.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: SAM ANTAR  
Case Number: 3:13CR48(JAP)-01

**RESTITUTION AND FORFEITURE**

**FORFEITURE**

The defendant is ordered to forfeit the following property to the United States:

The defendant shall forfeit the defendant's interest in the following property to the United States money judgment in the amount of \$457,430.00 in United States currency.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

## **Exhibit**



United States Attorney  
District of New Jersey

970 Broad Street, Suite 700  
Newark, NJ 07102

973/645-2700

CAR/PL AGR  
2011R00824

July 26, 2012

RECEIVED

JAN 23 2013

AT 8:30  
WILLIAM T. WALSH  
CLERK

Margo R. Zemel, Esq.  
50 Park Place  
Newark, NJ 07102

Re: Plea Agreement with Sam Antar

Dear Ms. Zemel:

13-48 (mp) - 01

This letter sets forth the plea agreement between your client, Sam Antar, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Sam Antar to a one-count information, which charges him with wire fraud, in violation of 18 U.S.C. § 1343. If Mr. Antar enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against him for committing fraud in connection with purported investments in electronic equipment or auto loans from January 2009 through June 8, 2011. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, defendant agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date that Mr. Antar signs this agreement may be commenced against him, notwithstanding the expiration of the limitations period after he signs the agreement.

Sentencing

The violation of 18 U.S.C. § 1343 to which Mr. Antar agrees to plead guilty carries a statutory maximum prison sentence of 20 years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or

(3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Mr. Antar is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. § 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Mr. Antar ultimately will receive.

Further, in addition to imposing any other penalty on Mr. Antar, the sentencing judge: (1) will order him to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order him to pay restitution pursuant to 18 U.S.C. § 3663 *et seq.*; (3) may order him, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583 may require him to serve a term of supervised release of not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should Mr. Antar be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, he may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, Mr. Antar agrees to make full restitution for all losses resulting from the offense of conviction or from the scheme, conspiracy, or pattern of criminal activity underlying that offense, to Annette S. Adair, Isaac Chehabar, Matthew Zimmerman, and TD Auto Finance in the amounts to be determined at or before sentencing.

#### Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Mr. Antar by the

sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Mr. Antar's activities and relevant conduct with respect to this case.

### Stipulations

This Office and Mr. Antar agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Mr. Antar from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

### Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Mr. Antar waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

### Forfeiture

Mr. Antar agrees that as part of his acceptance of responsibility and pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 he will consent to the entry of a forfeiture money judgment in the amount of \$457,430 in United States currency (the "Forfeiture Money Judgment"). Defendant acknowledges that the \$457,430 is subject to forfeiture as substitute assets for property subject to forfeiture, as described in 21 U.S.C. § 853(p).

Payment of the Forfeiture Money Judgment shall be made by certified or bank check, with the criminal docket number noted on the face of the check, payable to the United States Marshals Service. On or before the date he enters his plea of guilty pursuant to this agreement, Mr. Antar shall cause said check to be hand-delivered to the Asset Forfeiture and Money Laundering Unit, United States Attorney's Office, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102.

If the Forfeiture Money Judgment is not paid on or before the date Mr. Antar enters his plea of guilty pursuant to this agreement, interest shall accrue on any unpaid portion thereof at the judgment rate of interest from that date. Furthermore, if Mr. Antar fails to pay any portion of the Forfeiture Money Judgment on or before the date of his guilty plea, he consents to the forfeiture of any other property alleged to be subject to forfeiture in the Information, including substitute assets, in full or partial satisfaction of the money judgment, and remains responsible for the payment of any deficiency until the Forfeiture Money Judgment is paid in full.

Mr. Antar further agrees to waive all interest in the Forfeitable Property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Mr. Antar agrees to consent to the entry of orders of forfeiture for the Forfeiture Money Judgment and waives the requirements of Rules 32.2 and 43(a) of the Federal Rules of Criminal Procedure regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Mr. Antar understands that the Forfeiture Money Judgment is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this pursuant to Rule 11(b)(1)(J) of the Federal Rules of Criminal Procedure at the guilty plea proceeding.

Mr. Antar hereby waives any and all claims that this forfeiture constitutes an excessive fine and agrees that this forfeiture does not violate the Eighth Amendment.

Mr. Antar represents that he has disclosed all of his assets to the United States on the Financial Disclosure Statement dated \_\_\_\_\_, 2012. Mr. Antar agrees that if this Office determines that he has intentionally failed to disclose assets on that Financial Disclosure Statement, that failure constitutes a material breach of this agreement. In addition, Mr. Antar consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that the defendant owns or in which he has an interest be discovered, Mr. Antar knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets. Mr. Antar further agrees to execute any documents necessary to effectuate the forfeiture of said assets.

#### Immigration Consequences

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense(s) will likely result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. The defendant understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense(s) regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

#### Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office

will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Mr. Antar. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service), or any third party from initiating or prosecuting any civil or administrative proceeding against Mr. Antar.

No Other Promises

This agreement constitutes the plea agreement between Sam Antar and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

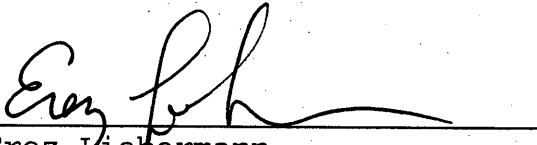
Very truly yours,

PAUL J. FISHMAN  
United States Attorney



By: Charlton A. Rugg  
Assistant U.S. Attorney

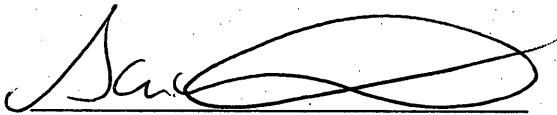
APPROVED:



Erez Liebermann  
Deputy Chief, Economic Crimes Unit

I have received this letter from my attorney, Margo R. Zemel, Esq. I have read it. My attorney and I have discussed it and all of its provisions, including those addressing the charge(s), sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

AGREED AND ACCEPTED:

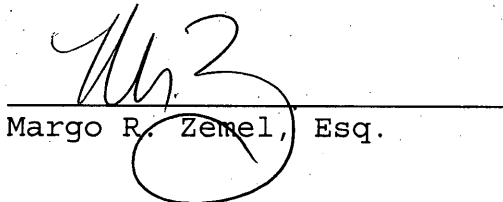


Sam Antar

Date:

9-11-12

I have discussed with my client this plea agreement and all of its provisions, including those addressing the charge(s), sentencing, stipulations, waiver, forfeiture, and immigration consequences. My client understands this plea agreement fully and wants to plead guilty pursuant to it.



Margo R. Zemel, Esq.

Date:

9-11-12

Plea Agreement With Sam Antar

Schedule A

1. This Office and Sam Antar agree to stipulate to the following facts:

a. The offense involved losses totaling more than \$200,000 but less than \$400,000.

2. If the sentencing court accepts a factual stipulation set forth above, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. Otherwise, both parties reserve the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving post-sentencing motions or writs.

## **Exhibit**



PHILIP D. MURPHY  
Governor

SHEILA Y. OLIVER  
Lieutenant Governor

*State of New Jersey*  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE  
FIVE EXECUTIVE CAMPUS – SUITE 205  
CHERRY HILL, NJ 08002  
TELEPHONE: (856) 486-3900

MATTHEW J. PLATKIN  
Attorney General

Pearl Minato  
Director

October 21, 2022

**Via E-Courts**

Hon. Joseph W. Oxley, J.S.C.  
Monmouth County Superior Court  
71 Monument St  
Freehold, New Jersey 07728

**Re: Sentencing Memorandum**  
**State v. Sam A. Antar**  
**Indictment No. 21-8-119-S**

Your Honor:

On April 25, 2022, Sam A. Antar pled guilty to the sole Count of Indictment No. 21-8-119-S, 2<sup>nd</sup> Degree Theft by Deception. During his plea colloquy, Defendant admitted that his theft involved at least \$348,500, taken from six different victims. This letter is submitted in support of the State's request to have Defendant sentenced to three years in State Prison, and to be ordered to pay restitution, both in accordance with the negotiated plea. Defendant has one prior conviction for a crime of dishonesty. On August 7, 2013, Defendant was sentenced to 21 months in Federal Prison for one count of Wire Fraud, in violation of 18 U.S.C. 1343.

I. **The Presumption of Incarceration applies in this case and the nature of the crime and the character of the Defendant do support the extraordinary findings necessary to overcome this presumption.**

The Defendant's sophistication, the ongoing nature of the crimes, and his criminal history show that his conduct was both purposeful and that he knew of its wrongfulness. There is a statutory and well-established presumption of incarceration for defendants convicted of second degree offenses. See N.J.S.A. 2C:43-6(a)(2); State v. O'Connor, 105 N.J. 399,426 (1987). The New Jersey Supreme Court has emphasized that this presumption is not overcome "merely because the defendant is a first time offender or because the mitigating factors preponderate over the aggravating factors." State v. Jabbour, 118 N.J. 1,9 (1990). Incarceration should be imposed even when "The mitigating factors so outweigh the aggravating factors as to justify the downgrading of the offense." Id. at 10.



The “dominant purpose” of a sentence for a white collar criminal “must be deterrence.” State v. Rosenberger, 207 N.J. Super. 350, 358 (Law Div. 1985). The “only realistic method” of achieving this deterrence “is incarceration.” Id. A defendant’s “status as a first-time offender, ‘family man,’ ‘breadwinner,’ and esteemed member of the community, however commendable and worth of consideration in deciding the length of his term of incarceration, is not so extraordinary as to alter the conclusion that his imprisonment would not constitute a serious injustice overriding the need for deterrence.” State v. Evers, 175 N.J. 355, 400 (2001). Indeed, most white collar defendants have such mitigating evidence in their favor. Rosenberger, supra, 207 N.J. Super. At 351 (observing that those defendants are usually viewed as “decent, non-violent person[s]).”

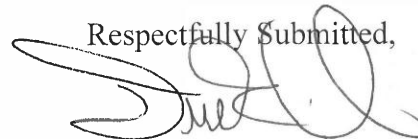
Non-incarceration is reserved for exceptional cases where a defendant “could not sufficiently comprehend the wrongfulness” of their conduct, or where incarceration would involve “unusual suffering and privation.” State v. Evers, 175 N.J. 355, 390 (2001) (citing State v. Jarbath, 114 N.J. 394, 405-06 (1989)). Antar should be sentenced to State Prison because he was aware of the wrongfulness of his ongoing conduct, and because he does not suffer from any mental or physical condition which would cause his unusual suffering.

This offense involved over three-hundred thousand dollars in total stolen from six different victims. The State submits that the following aggravating factors apply: (1) the nature of the offense, (2) the seriousness of the harm inflicted on the victim, (3) the risk that the defendant will commit another offense, (6) the seriousness of the defendant’s prior criminal record, (9) the need for deterrence, and (11) imposing a fine without also imposing a term of incarceration would be perceived by the defendant or others as merely the cost of doing business.

II. **The Court should order Defendant to pay restitution in accordance with the negotiated plea.**

Defendant should be ordered to satisfy restitution in this matter. Defendant acknowledged thefts totaling \$348,500 during his plea allocution. At the time of the plea, the parties agreed that the Court should determine whether \$175,000 obtained by Antar from B.P. constituted a Theft by Deception under N.J.S.A. 2C:20-4, or a loan that Antar simply failed to repay. After reviewing the relevant loan documents and the statement of B.P., the State will not seek restitution as to B.P. The State has advised B.P. as to the date of sentencing and that he has a right to be heard as to restitution. The State requests that the Court enter the Consent Order for Restitution on the date of sentencing.

Respectfully Submitted,



Derek A. Miller,  
Deputy Attorney General



MATTHEW J. PLATKIN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
BY: DEREK A. MILLER  
DEPUTY ATTORNEY GENERAL  
ATTORNEY ID 03120-2010  
DIVISION OF CRIMINAL JUSTICE  
5 EXECUTIVE CAMPUS, SUITE 205  
CHERRY HILL, NEW JERSEY 08002  
856-486-6057

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CRIMINAL  
COUNTY OF MONMOUTH

STATE OF NEW JERSEY	)	Indictment No. 21-8-119-S
	)	
vs.	)	
	)	<b>CONSENT ORDER</b>
SAM A. ANTAR	)	<b>FOR RESTITUION</b>

1). **WHEREAS** Sam A. Antar pled guilty to Count 1 of Indictment Number 21-8-119-S, on April 25, 2022; and

2). **WHEREAS** the parties have stipulated that the financial losses caused by Sam A. Antar are as follows:

- (a). B.S. \$35,000
- (b). S.P. \$150,000
- (c). E.D. \$50,000
- (d). I.F. \$100,000
- (e). J.B. \$7,500
- (f). Z.B. \$6,000

3). **WHEREAS** the Court has determined that B.P. did/did not suffer a loss of \$175,000 due to theft by deception in the instant matter;

4). **WHEREAS** at the time of sentencing the Court determined that Sam A. Antar shall pay restitution in the amount of \_\_\_\_\_, at a rate of \_\_\_\_\_ per month; and

5). **WHEREAS** Sam A. Antar may have a cognizable claim for damages against various casinos within the United States arising between December 14, 2018, and the date of the entry of this Order; and

6). **WHEREAS** Sam A. Antar desires to satisfy any restitution ordered by this Court;

7). **IT IS NOW THEREFORE AGREED**, by and between the State of New Jersey, Matthew J. Platkin, Attorney General (Derek A. Miller, Deputy Attorney General, appearing) and Defendant Sam A. Antar, by and through his counsel, Kingston Coventry (Christopher J. Gramiccioni, Esq., appearing) that immediately upon receipt, Sam A. Antar shall remit seventy percent of any funds received (after the payment of counsel fees) to the Monmouth County Probation Department for payment of restitution in this matter.

8). **THE PARTIES STIPULATE AND AGREE** that all funds received by the Monmouth County Probation Department shall be apportioned to the individuals to which restitution is due and owing on a pro-rata basis.

9). **THE PARTIES FURTHER STIPULATE AND AGREE** that should the Court order restitution at sentencing in an amount lower than Sam A. Antar's ultimate obligation under Paragraph 7 of this CONSENT ORDER (based upon the ability of Sam A. Antar to satisfy restitution at the time sentencing pursuant to N.J.S.A. 2C:44-2b(2)), the State of New Jersey shall have the right to file a motion with this Court seeking an upward modification of Sam A. Antar's

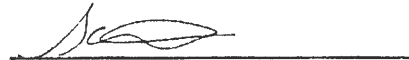
restitution based upon the availability of additional funds. In no case shall Sam A. Antar be obligated to pay in excess of the \$523,500 set forth in Paragraphs 2-3 above.

For the State of New Jersey:  
Matthew J. Platkin  
Acting Attorney General

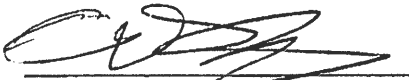
By:



Derek A. Miller  
Deputy Attorney General



Sam A. Antar



Christopher J. Gramiccioni, Esq.  
Attorney for Sam A. Antar

## **Exhibit E**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	
SECURITIES AND EXCHANGE COMMISSION,	: 19 Civ. 11527 (PAC)
	:
Plaintiff,	:
	: ECF Case
- against -	:
	:
SAM A. ANTAR,	:
	:
Defendant.	:
-----X	

**~~PROPOSED~~ FINAL JUDGMENT AS TO DEFENDANT SAM A. ANTAR**

The Securities and Exchange Commission having filed a Complaint and Defendant Sam A. Antar having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

### III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$567,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$88,754.00, for a total of \$655,754.00. Defendant's \$655,754.00 payment obligation shall be offset by an amount equal to payment(s) Antar makes pursuant to the Order of Restitution entered against Antar in the criminal case *State of New Jersey v. Antar*, Docket No. 21-8-119-S (Middleton Township Municipal Court, Monmouth County) (the "Criminal Action"). Antar shall transmit evidence of proof of any payment(s) made pursuant to the Order of Restitution in the Criminal Action to the Commission's counsel in this action in order to receive such offset.

Defendant shall satisfy this obligation by paying \$655,754.00 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Antar's name as defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission shall hold the funds (collectively, the "Fund") until further order of this Court. The SEC may propose a plan to distribute the Fund subject to the Court's approval, and the Court shall retain jurisdiction over the administration of any distribution of the Fund. .

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: May 17, 2023



UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	<b>19 Civ. 11527 (PAC)</b>
	:	
<b>Plaintiff,</b>	:	
	:	<b>ECF Case</b>
<b>- against -</b>	:	
	:	
<b>SAM A. ANTAR,</b>	:	
	:	
<b>Defendant.</b>	:	

**CONSENT OF DEFENDANT SAM A. ANTAR**

1. Defendant Sam A. Antar ("Defendant" or "Antar") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.
2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *State of New Jersey v. Antar*, Docket No. 21-8-119-S (Middleton Township Municipal Court, Monmouth County) (the "Criminal Action"), Antar plead guilty to theft by deception in violation of N.J.S.A 2C:20-4. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Action.
3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:
  - (a) permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(b) orders Defendant to pay disgorgement in the amount of \$567,000.00, plus prejudgment interest thereon in the amount of \$88,754.00. Defendant's \$655,754.00 payment obligation shall be offset by an amount equal to payment(s) Antar makes pursuant to the Order of Restitution entered against Antar in the Criminal Action. Antar shall transmit evidence of proof of any payment(s) made pursuant to the Order of Restitution in the Criminal Action to the Commission's counsel in this action in order to receive such offset.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant

of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to

comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

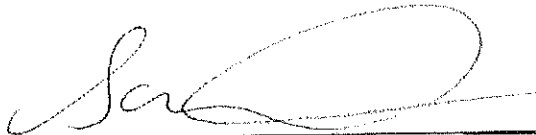
12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

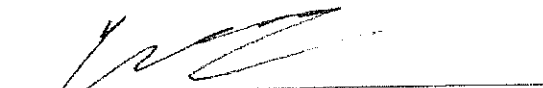
13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 4/5/23

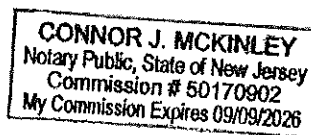
  
Sam A. Antar

On April 5<sup>th</sup>, 2023, Sam A. Antar, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
Notary Public  
Commission expires: 09-09-26

Approved as to form:

Erica T. Yitzhak, Esq.  
The Yitzhak Law Group  
1 Linden Place, Suite 406  
Great Neck, New York 11021





DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
100 PEARL STREET, SUITE 20-100  
NEW YORK, NY 10004-2616

May 4, 2023

Honorable Paul A. Crotty  
United States District Judge  
United States District Court for the  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

Re: *SEC v. Antar, 1:19-civ.-11527 (PAC)*

Dear Judge Crotty:

Plaintiff Securities and Exchange Commission (“Commission” or “SEC”) and defendant Sam A. Antar (“Antar”) jointly submit a Proposed Final Judgment on consent, together with the Consent of Antar, for the Court’s review and approval.

The proposed Final Judgment is fair and reasonable and will not disserve the public interest. *See SEC v. Citigroup Global Markets, Inc.* 752 F.3d 285 (2d Cir. 2014).

The Commission’s Complaint. The Commission filed this action on December 17, 2019 to charge defendant Antar for his conducting in defrauding investors by representing to them that he would invest their funds in pre-IPO shares of non-public companies. On the same day, the State of New Jersey filed criminal charges against Antar in the parallel matter *State of New Jersey v. Antar*, Docket No. 21-8-119-S (Middletown Township Municipal Court, Monmouth County) (“the Criminal Case”). On December 9, 2022, Antar was sentenced in the Criminal Case to three years of imprisonment and was ordered to pay \$15,000 in restitution.

The Proposed Settlement. The Second Circuit “recognizes a ‘strong federal policy favoring the approval and enforcement of consent decrees.’” *Citigroup*, 752 F.3d at 293. (quoting *SEC v. Wang*, 944 F.2d 80, 85 (2d Cir. 1991)). “[T]he proper standard for reviewing a proposed consent judgment involving an enforcement agency requires that the district court determine whether the proposed consent decree is fair and reasonable, with the additional requirement that the public interest would not be disserved, . . . in the event that the consent decree includes injunctive relief.” *Citigroup*, 752 F.3d at 294 (internal quotation marks and citations omitted). Defendant Antar has consented to the entry of a final judgment that would permanently enjoin him from future violations of Sections 17(a)(1) and (3) of the Securities Act of 1933 (“Securities Act”), and Section

Hon. Paul A. Cronk  
May 4, 2023

Page 2

10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. He has also consented to pay \$567,000.00 in disgorgement, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$88,754.00, for a total of \$655,754.00. Defendant’s \$655,754.00 payment obligation shall be offset by an amount equal to any payments Antar makes pursuant to the Order of Restitution entered against Antar in the Criminal Action.

The Proposed Settlement is Fair and Reasonable. The terms of the proposed Final Judgment, including the enforcement mechanisms, are clear and unambiguous. The preamble to the proposed Final Judgment describes Defendant’s consent to this Court’s jurisdiction over him and over the subject matter of this action, as well as his consent to entry of the Final Judgment, and waiver of findings of fact and conclusions of law, and any right to appeal. The body of the proposed Final Judgment contains numbered sections, which detail: (i) the injunctive relief to be imposed for Defendant’s alleged violations of the securities laws, as well as those bound by the injunctions under Fed. R. Civ. P. 65(d)(2); (ii) the disgorgement and prejudgment interest to be imposed against Defendant; and (iii) the provision for an offset against his disgorgement obligations to the extent he pays restitution in the Criminal Action.

The proposed Final Judgment would impose most of the relief sought in the Complaint, and is fair, reasonable, and in the public interest. “The job of determining whether the proposed SEC consent decree best serves the public interest . . . rests squarely with the SEC, and its decision merits significant deference.” *Citigroup*, 752 F.3d at 291. The SEC has made that determination here, and has included an appropriate injunction, along with disgorgement and prejudgment interest.<sup>1</sup> “[The] Second Circuit has long held that district courts may exercise their discretion to impose disgorgement of proceeds received in connection with violations of the securities laws.” *SEC v. Illarramendi*, 260 F. Supp. 3d 166, 181 (D. Conn. 2017) (citing *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1104 (2d Cir. 1972)). Requiring Defendant Antar to pay prejudgment interest is also fair and reasonable. “Requiring payment of [prejudgment] interest prevents a defendant from obtaining the benefit of what amounts to an interest free loan procured as a result of illegal activity.” *SEC v. Moran*, 944 F. Supp. 286, 295 (S.D.N.Y. 1996). Here that amount has been calculated using the accepted method of applying the Internal Revenue Service’s interest rate for tax underpayment to the disgorgement amount. *See SEC v. First Jersey Secs., Inc.* 101 F.3d 1450, 1476 (2d Cir. 1996) (finding the IRS underpayment rate appropriate to calculate prejudgment interest).

For the foregoing reasons, the Commission and Defendant Antar respectfully request that the Court approve the proposed Final Judgment. If the proposed Final Judgment is acceptable to the Court, the parties respectfully request that the Court docket the Final Judgment together with the Defendant’s Consent.

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<sup>1</sup> In light of the three year prison sentence imposed against Antar in the Criminal Case, the Commission does not seek civil penalties in this matter.

Hon. Paul A. Crotty  
May 4, 2023

Page 3

/s/

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Christopher J. Dunnigan  
Senior Trial Counsel

cc (by ECF): Erica Yitzhak, Esq.  
*Counsel for Sam A. Antar*

Attachments: Consent of Sam A. Antar  
Proposed Final Judgment

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<hr/>		<b>X</b>
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	<b>19 Civ. 11527 (PAC)</b>
	:	
<b>Plaintiff,</b>	:	
	:	<b>ECF Case</b>
<b>- against -</b>	:	
	:	
<b>SAM A. ANTAR,</b>	:	
	:	
<b>Defendant.</b>	:	
<hr/>		<b>X</b>

**CONSENT OF DEFENDANT SAM A. ANTAR**

1. Defendant Sam A. Antar (“Defendant” or “Antar”) acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over Defendant and over the subject matter of this action.
  
2. Defendant has pleaded guilty to criminal conduct relating to certain matters alleged in the complaint in this action. Specifically, in *State of New Jersey v. Antar*, Docket No. 21-8-119-S (Middleton Township Municipal Court, Monmouth County) (the “Criminal Action”), Antar plead guilty to theft by deception in violation of N.J.S.A 2C:20-4. This Consent shall remain in full force and effect regardless of the existence or outcome of any further proceedings in the Criminal Action.
  
3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:
  - (a) permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 [15 U.S.C. § 77q(a)]; and Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

(b) orders Defendant to pay disgorgement in the amount of \$567,000.00, plus prejudgment interest thereon in the amount of \$88,754.00. Defendant's \$655,754.00 payment obligation shall be offset by an amount equal to payment(s) Antar makes pursuant to the Order of Restitution entered against Antar in the Criminal Action. Antar shall transmit evidence of proof of any payment(s) made pursuant to the Order of Restitution in the Criminal Action to the Commission's counsel in this action in order to receive such offset.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant

of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to

comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.


14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 4/5/23



Sam A. Antar

On April 5<sup>th</sup>, 2023, Sam A. Antar, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public  
Commission expires: 09-09-26

Approved as to form:

Erica T. Yitzhak, Esq.  
The Yitzhak Law Group  
1 Linden Place, Suite 406  
Great Neck, New York 11021



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	<b>19 Civ. 11527 (PAC)</b>
	:	
<b>Plaintiff,</b>	:	
	:	<b>ECF Case</b>
<b>- against -</b>	:	
	:	
<b>SAM A. ANTAR,</b>	:	
	:	
<b>Defendant.</b>	:	
-----X		

**[PROPOSED] FINAL JUDGMENT AS TO DEFENDANT SAM A. ANTAR**

The Securities and Exchange Commission having filed a Complaint and Defendant Sam A. Antar having entered a general appearance; consented to the Court’s jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

**I.**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

### III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$567,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$88,754.00, for a total of \$655,754.00. Defendant's \$655,754.00 payment obligation shall be offset by an amount equal to payment(s) Antar makes pursuant to the Order of Restitution entered against Antar in the criminal case *State of New Jersey v. Antar*, Docket No. 21-8-119-S (Middleton Township Municipal Court, Monmouth County) (the "Criminal Action"). Antar shall transmit evidence of proof of any payment(s) made pursuant to the Order of Restitution in the Criminal Action to the Commission's counsel in this action in order to receive such offset.

Defendant shall satisfy this obligation by paying \$655,754.00 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center  
Accounts Receivable Branch  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Antar's name as defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant.

The Commission shall hold the funds (collectively, the "Fund") until further order of this Court. The SEC may propose a plan to distribute the Fund subject to the Court's approval, and the Court shall retain jurisdiction over the administration of any distribution of the Fund. .

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by using all collection procedures authorized by law, including, but not limited to, moving for civil contempt at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any amounts due after 30 days of the entry of this Final Judgment pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: \_\_\_\_\_, 2023

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UNITED STATES DISTRICT JUDGE

# **Exhibit**

Marc P. Berger  
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**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE COMMISSION,	: 19 Civ.
	:
Plaintiff,	:
	: ECF Case
- against -	:
	: <u>COMPLAINT AND JURY</u>
SAM A. ANTAR,	: <u>DEMAND</u>
	:
Defendant.	:
-----X	

Plaintiff Securities and Exchange Commission (the “Commission”), for its Complaint against Defendant Sam A. Antar (“Antar” or “Defendant”), alleges as follows:

**SUMMARY**

1. Between January and June 2019, Antar knowingly or recklessly engaged in a fraudulent scheme that victimized numerous investors, many of whom were friends and acquaintances from the Syrian Jewish community in Monmouth County, New Jersey where he grew up. Antar stole at least \$550,000 from investors and used the money for gambling, making gifts to his family members, paying for his daughter’s lavish wedding, and making partial repayments to some of the early investors.

2. Antar made material misrepresentations to his investors, telling them he would use their funds to buy blocks of shares in emerging companies whose stock had not yet begun trading publicly (“pre-IPO shares”). Antar falsely told investors that he had identified holders of the pre-IPO shares who wanted to sell them, and buyers who would pay a premium for them. Antar falsely told investors he would use their funds to purchase the pre-IPO shares and then quickly sell the shares so that the investors would get their money back plus profits within a few weeks.

3. In some cases, Antar executed contracts with investors in which investors agreed to loan him funds to purchase pre-IPO shares and he agreed to purchase and then sell the shares and return the investment with a profit. In other cases, Antar executed agreements to make the investor a partner in his limited liability company, which, he told investors, owned the shares. In still other cases, Antar executed promissory notes by which investors loaned him money so that he could buy blocks of shares.

4. Contrary to his written and verbal representations, Antar never used investor money to buy blocks of pre-IPO shares, or make any other investment. Investors at first received the returns Antar promised and after some investors made additional investments with Antar, at least one of which was based on a falsified document, Antar misappropriated their funds and stopped returning investors’ calls and text messages.

### **VIOLATIONS**

5. By engaging in the conduct set forth in this Complaint, Antar engaged in securities fraud in violation of Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **NATURE OF THE PROCEEDING AND RELIEF SOUGHT**

6. The Commission brings this action pursuant to the authority conferred upon it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. § 77t(b) and (d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

7. Through this action, the Commission seeks a final judgment: (a) permanently enjoining Antar from engaging in the acts, practices and courses of business alleged herein; (b) ordering Antar to disgorge ill-gotten gains he obtained as a result of the violations alleged in the Complaint, and ordering him to pay prejudgment interest thereon; and (c) imposing a civil money penalty on Antar pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

9. Antar, directly or indirectly, has made use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

10. Venue is proper in this District pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Among other reasons, Antar lives in this District, and while located in the District, he communicated with investors and prospective investors, some of whom also reside in this District.

## **DEFENDANT**

11. **Antar**, age 43, was, until December 2018, a marketing representative for an affiliate of a Middletown, New Jersey-based broker-dealer, investment adviser and family of mutual funds (the “Middletown firm”). Antar resides in New York, New York.

12. Antar pled guilty in 2013 to an Information charging him with federal wire fraud in connection with a “joint venture to purchase and profit from the resale of electronic equipment and then divert those funds for his personal use.” He was sentenced to twenty-one months in prison. Upon his release from prison, he spent three years on supervised release, which ended on or about June 2018.

## **FACTS**

### **I. Antar Begins to Solicit Investments in Pre-IPO Shares**

13. Antar began marketing the products and services of the Middletown firm in late 2017. In December 2018, Antar was furloughed from the Middletown firm.

14. Starting around the time he was furloughed, Antar began promoting his investment scheme involving pre-IPO shares to friends, friends-of-friends and acquaintances, including some he had knowns for decades.

15. Specifically, Antar told his investors that he had identified individuals who held pre-IPO shares and wanted to sell them, and others who wanted to buy the pre-IPO shares. If the investor provided money for Antar to purchase a block of shares, Antar falsely claimed he would purchase and then quickly resell them, and share the profits with the investors within a few weeks.

16. The investment agreements between Antar and the investors were securities.

Investors were promised returns based on Antar's efforts and their investment funds were pooled in Antar's personal bank account. The securities took several forms, including:

- a. By a contract: Antar executed a contract by which the investor loaned Antar funds to buy the pre-IPO shares, and by which Antar agreed to sell the shares and repay the investment plus a profit.
- b. By a joint partnership agreement: Antar and the investor signed a joint partnership agreement, giving each a partnership interest proportionate to the investment in Antar's limited liability company, Jar Ventures LLC ("Jar Ventures"), which purportedly held the pre-IPO shares.
- c. By a promissory note: Antar executed a promissory note and told the investor he would use the money to buy a block of pre-IPO shares that he would immediately sell and return the investor's money plus a portion of the profits.
- d. By a roll-over addendum to an existing agreement: Antar executed an addendum to an existing agreement or contract with investors who rolled their initial investment and profits into a second (or third) transaction in more or different pre-IPO shares, promising a greater return upon sale of the new shares.

17. Induced by Antar's representations, investors in this District and elsewhere gave Antar checks or transferred money into his personal bank account, where investor money was pooled for the purported purpose of buying pre-IPO shares.

18. Based upon Antar's representations, investors in this District and elsewhere had a reasonable expectation of profits based upon Antar's efforts to buy and resell the pre-IPO shares.

## **II. Antar Misappropriates Investor Funds**

19. Antar never bought pre-IPO shares or any other securities with the funds. Instead, except for some Ponzi-like payments to early investors to induce them to invest more money with him, Antar redirected the investment funds for his own use, which Antar did not mention to investors. For example:

- a. In February 2019, investors sent \$246,000 to Antar's bank account, from which he paid out \$64,000 to other investors, \$63,000 to an entity that collects casino debts, \$30,000 to a catering company, and \$11,000 to a family member.
- b. In March 2019, investors sent \$106,000 to Antar's bank account, of which he used \$70,000 to pay down casino debts.
- c. In April 2019, investors sent \$110,500 to Antar's bank account of which he used \$15,000 to pay an investor and \$60,000 to pay down casino debts.

20. Most of the investors' money was used for Antar's gambling activities. Between January and mid-April 2019, on thirty-one days, Antar visited at least one casino in Atlantic City, New Jersey, spending hundreds of hours at gaming tables and slot machines. In addition, during the same fourteen-week period, Antar placed at least 41,712 on-line bets.

## **III. Antar Defrauded Numerous Investors**

21. Antar knowingly or recklessly engaged in the above-mentioned fraudulent conduct and misappropriated at least \$550,000 from his individual investor victims, including, but not limited to, the following:

*Investor A*

22. Investor A, who had known Antar since childhood, wired \$100,000 to Antar's personal bank account in April 2019 based on Antar's material representation that he would buy pre-IPO shares of Slack Technologies, Inc. ("Slack") and return her investment plus twenty percent profit. Investor A sent her \$100,000 investment to Antar over a two-day period; on those same days, Antar sent an earlier investor (Investor E) \$15,000, and paid \$60,000 to an entity that collects casino debts.

23. When the time came to receive her returns in mid-April, Investor A, a single mother who was saving up for a down payment for her first home, instead rolled the investment forward and added \$50,000, based on Antar's assurance that her \$150,000 total investment would balloon to \$313,400. Within a week of receiving the additional money, Antar took a trip to an Atlantic City casino, where he gambled away Investor A's funds.

24. By May 2019, Investor A had not received her investment money back from Antar as he had promised. Investor A repeatedly called and texted Antar in May, June and July 2019 asking him to return her investment money. Antar did not reply until July 2019, when he responded by text: "I'm sorry for all that's been going [on.] But I'll make everything right soon." Investor A was never repaid.

*Investor B*

25. Investor B was referred to Antar by a community member. In early 2019, Investor B invested \$75,000, based upon Antar's material representation that he would use the money to purchase pre-IPO shares of Lyft, Inc. ("Lyft"). A few weeks later, Investor B received back \$100,000, purportedly in return of investment and profits, as Antar had promised.

26. In March 2019, Investor B gave Antar another \$100,000 to invest in pre-IPO shares of Slack, which Antar told him would earn a profit of \$25,000 to \$30,000 upon resale. In late March 2019, when the time came to return the investment funds and profits from the Slack transaction, Antar offered Investor B the opportunity to roll the investment forward into pre-IPO shares of Uber Technologies, Inc. (“Uber”), with a promise of additional profits. Investor B agreed, and added \$105,000 to the investment. Thereafter, Antar stopped responding to Investor B’s calls and texts.

27. Antar cashed Investor B’s \$100,000 check from early March 2019, which he told Investor B would be used to purchase pre-IPO shares of Slack. In the following week, Antar gambled at an Atlantic City casino.

*Investor C*

28. Investor C met Antar through a neighbor. Investor C invested \$100,000 with Antar in February 2019, based upon Antar’s material representation that he would buy pre-IPO shares of Uber. Antar told Investor C that he would return the \$100,000 plus \$15,000 in profits from the sale of the Uber shares within the week. On the same day Antar received Investor C’s funds, he paid another investor (Investor D) \$48,000 and paid \$18,000 to the entity that collects casino debts.

29. In early March 2019, Antar gave Investor C a check for \$115,000, as promised. Investor D tried to cash the check three times, but each time it was returned for insufficient funds.

*Investor D*

30. Investor D met Antar when they were both in prison. In January 2019, Antar falsely told Investor D that if he invested in Jar Ventures, Antar would buy pre-IPO shares of

Lyft and Slack, resell them to buyers he had identified, and return Investor D's money plus a portion of the profits.

31. Based upon Antar's material representation, Investor D bought a \$12,500 interest in Jar Ventures and Antar purportedly contributed \$50,000. They agreed that after Jar Ventures bought pre-IPO shares of Lyft, Antar would sell them within two weeks, return Investor D's funds, and share the profits in proportion to their contribution to the joint venture: twenty percent for Investor D, and 80 percent for Antar.

32. The day after receiving Investor D's funds, Antar gambled at a casino. He did not return Investor D's funds within the two weeks specified in the agreement, but he did offer him \$5,000. Investor D accepted the money, added another \$12,500, and gave Antar the entire \$17,500 to invest in more pre-IPO shares in February 2019. Shortly thereafter, Investor D added an additional \$10,000 to his investment to buy pre-IPO shares. Within a week of receiving Investor D's new investment money, Antar gambled away the money.

33. Antar offered Investor D \$48,000 as return of his investment and profits in February 2019, or, alternatively, the opportunity to roll that amount investment forward into another investment in pre-IPO shares of Lyft. Investor D agreed to roll the \$48,000 forward, and he added an additional \$2,000 of new investment. Antar promised a \$70,000 return by the first week of March 2019. On the same day Investor D agreed to the rollover and the additional \$2,000 investment, Antar paid \$38,000 to the entity that collects casino debts.

34. Instead of returning the promised \$70,000 to Investor D, Antar convinced Investor D to roll the investment forward again and promised Investor D a return of \$98,000 no later than the third week of March 2019. On the same day that Investor D agreed to roll the investment forward, Antar gambled online and at a casino. Antar reneged on the promised

payment to Investor D, providing a host of excuses including that Antar had car trouble, or was ill, or was otherwise unable to make the payment as promised.

35. In May 2019, Antar sent Investor D a check as partial repayment of his investments of \$37,000. Antar's check was returned for insufficient funds.

*Investor E*

36. Investor E had known Antar for decades. In November 2018, Antar falsely told Investor E that he had been paid by the Middletown firm with \$100,000 worth of pre-IPO shares of Uber. Antar further told Investor E that he needed cash immediately and the shares were restricted from trading until Uber's initial public offering in May 2019. Antar offered Investor E a fifty percent interest in Jar Ventures, which Antar said held the Uber shares, in exchange for \$50,040. Based upon Antar's material representation, Investor E made the investment.

37. Antar showed Investor E paperwork Antar had falsified indicating that Jar Ventures held pre-IPO shares of Uber. Within a week of signing the agreement giving Investor E a fifty percent interest in Jar Ventures, Antar gambled at an Atlantic City casino. Investor E never recovered his \$50,040, nor did he receive any shares of Uber.

38. Between November 2018 and April 2019, Investor E invested several more times with Antar in what he believed were pre-IPO shares of Slack, Juul Labs, Inc. and Casper Sleep Inc. For the Slack investment, Investor E sent Antar \$12,000 based on Antar's promise of \$25,000 returns. Investor E did not receive the promised returns, but he did get back his \$12,000 investment. In another transaction, Investor E invested \$5,000 with Antar to buy pre-IPO shares and received back the \$8,000 Antar promised.

39. In March 2019, after Investor D had contacted Investor E and other investors to warn them that Antar was engaged in fraud, Investor E confronted Antar.

40. In April 2019, Antar sent Investor E a check for \$25,000 in partial repayment of his investment in Jar Ventures. Antar's check was returned for insufficient funds.

*Investors F and G*

41. Investor F is an accountant, and Investor G is Investor F's son. In January 2019, Antar told Investor F he needed money, and to raise cash Antar offered to sell him an interest in Jar Ventures, which he claimed owned pre-IPO shares of Uber.

42. Based upon Antar's material representation, Investor F paid \$4,500 for a three percent interest in Jar Ventures. Investor G bought a six percent interest in Jar Ventures for \$6,000. The investors did not expect to get any return on their investment until Uber's initial public offering in May 2019, when they understood Jar Ventures would sell the shares and pay out their interests in cash. However, neither investor received any return or refund of their investment money even after Uber started trading publicly.

43. Also in January 2019, Antar sought \$3,500 from Investor F, telling Investor F that he could buy pre-IPO shares of Juul Labs, Inc., resell them quickly to a buyer he already had identified, and return Investor F's investment funds plus \$1,500. Investor F invested \$3,500 with Antar, and within a month received back \$5,200, which was \$200 more than Antar had promised.

44. In March 2019, Investor F again invested with Antar, this time giving him \$7,500 based on Antar's promise of buying, then selling, pre-IPO shares and returning \$8,900 within a few weeks. On the same day he received Investor F's funds, Antar gambled at an Atlantic City casino. Investor F has been unable to contact Antar since then.

**FIRST CLAIM FOR RELIEF**  
**Violations of Section 10(b) of the Exchange Act  
and Rule 10b-5**

45. The Commission realleges and incorporates by reference paragraphs 1 through 44 of this Complaint.

46. By virtue of the foregoing, Antar, directly or indirectly, by the use of the means and instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly, employed devices, schemes, or artifices to defraud, made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, and courses of business which operate or would operate as a fraud or deceit.

47. By virtue of the foregoing, Antar violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], promulgated thereunder.

**SECOND CLAIM FOR RELIEF**  
**Violations of Section 17(a) of the Securities Act**

48. The Commission realleges and incorporates by reference paragraphs 1 through 44 of this Complaint.

49. By virtue of the foregoing, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, Antar knowingly, recklessly or negligently: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c)

engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

50. By reason of the conduct described above, Antar, directly or indirectly violated and, unless enjoined will again violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that the Court grant the following relief:

#### **I.**

Permanently restraining and enjoining Antar from any future direct or indirect violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] issued thereunder;

#### **II.**

Ordering Antar to pay a civil money penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

#### **III.**

Ordering Antar to disgorge ill-gotten gains he obtained as a result of the violations alleged in the Complaint, and ordering him to pay prejudgment interest thereon;

#### **IV.**

Granting such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

The Commission demands a trial by jury.

Dated: New York, New York  
December 17, 2019

Respectfully submitted,

By:



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Thomas P. Smith Jr.  
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## **Exhibit G**



# State of New Jersey Department of Corrections

"Protecting Public Safety by Changing Offender Behavior."

Acting Commissioner

Victoria Kuhn, Esq.



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## Offender Details:

[Printer Friendly Version](#)

**SBI Number:** 000614159H  
**Sentenced as:** Antar, Sam A  
**Race:** White  
**Ethnicity:** Unknown  
**Sex:** Male  
**Hair Color:** Brown  
**Eye Color:** Brown  
**Height:** 5'9"  
**Weight:** 180 lbs.  
**Birth Date:** December 9, 1975  
**Admission Date:** December 9, 2022  
**Current Facility:** Released by Court - SWSP  
**Current Max Release Date:** March 22, 2025  
**Current Parole Eligibility Date:** N/A



### CURRENT PRISON SENTENCE

Offense	Offense Date	Sentence Date	County of Commitment	Commitment Order	Mandatory Minimum Term	Maximum Term
1 count of : 2C:20-4*2 Theft by Deception /2	May 31, 2019	December 9, 2022	Monmouth	MON210800119S	None	3 Years

### INCARCERATION HISTORY

Date In Custody	Date Out of Custody
December 9, 2022	March 28, 2023

No aliases available

### ALIASES

[previous](#) [back to list](#) [next](#)  
[modify search](#) [new search](#)

### Criteria Chosen:

First Name = SAM; Last Name = ANTAR;

### Disclaimer:

The purpose of the Offender Search Web Page is to promote public safety and welfare while providing community access to selected offender information, consistent with the spirit and intent of the New Jersey Open Public Records Act (OPRA).

The New Jersey Department of Corrections updates this information on a biweekly basis to ensure that it is complete and accurate as possible. This information, however, may change quickly. In addition, it is noted that offenders on [Work Release](#), [Furlough](#), or in a [Residential Community Program](#) are visible to the public and these types of releases are not necessarily reflected in their profile. Therefore, the information on this site may not reflect the true current location, status, release date or other information regarding an offender.

It should also be noted that the records of offenders who have been paroled or released are not updated after they leave the custody of the correctional facility, therefore, no presumption should be made that any offender listed as paroled from a correctional facility remains under active parole supervision.

Furthermore certain offenders, at the discretion of the New Jersey Department of Corrections and other law enforcement agencies, may be excluded from the web site.

The New Jersey Department of Corrections Database was last updated on May 5, 2023 . Visit restrictions change daily.

For questions concerning any offender information available on this WebPage, please contact:

Central Reception & Assignment Facility  
 PO BOX 7450  
 Trenton, NJ 08625  
 email: [Central Reception & Assignment Facility](#)

If additional information is required, please direct written inquiries to the mailing address listed above.



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