

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES
LITIGATION

This Document Relates To:

ALL ACTIONS.

) No. 2:09-cv-01558-GMN-VCF

)

) CLASS ACTION

)

) STIPULATION AND [PROPOSED] ORDER

) CONTINUING DECEMBER 15, 2015

) SETTLEMENT HEARING AND

) EXTENDING CERTAIN DEADLINES IN

) CONNECTION THEREWITH

WHEREAS, on September 11, 2015, the Court entered its Order Preliminarily Approving Settlement and Providing for Notice (“Notice Order”) (ECF No. 352) which, among other things, granted preliminary approval of the settlement reached in the above-captioned litigation (“Settlement”) and approved the form and set forth the manner for disseminating notice of the Settlement to persons and entities who, between August 2, 2007 and March 5, 2009, inclusive, purchased or otherwise acquired the publicly-traded securities of MGM Mirage (now known as MGM Resorts International), and were allegedly damaged thereby (“Class Members”);

WHEREAS, as detailed in the October 22, 2015 Declaration of Carole K. Sylvester (“Sylvester Decl.”) (ECF No. 355), previously submitted to the Court on behalf of the Court-authorized claims administrator, Gilardi & Co. LLC (“Gilardi”), Gilardi mailed copies of the Court-approved Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys’ Fees and Settlement Fairness Hearing (“Notice”) and Proof of Claim and Release form (“Proof of Claim”) to potential Class Members as well as brokerages, custodial banks and other institutions (“Nominees”) in accordance with the Notice Order (*see* Sylvester Decl. ¶¶4-9);

WHEREAS, as is typical in securities cases, the majority of securities purchased during the relevant period are held by Nominees for the benefit of their customers who are the beneficial owners of the securities (i.e., in “street name”). Accordingly, Gilardi utilized its own proprietary database to reach as many potential Class Members through Nominees as possible (*see* Sylvester Decl. ¶5). The Declaration of Michael Joaquin Regarding Notice Procedures in Connection with Settlement (“Joaquin Decl.”), attached hereto as Exhibit A, describes the extensive Nominee outreach performed and steps taken by Gilardi to ensure that a successful notice program was conducted (*see generally* Joaquin Decl. ¶¶3-14);

WHEREAS, pursuant to the Notice Order and as set forth in the Notice, Nominees were requested to, within ten (10) calendar days after receiving the Notice, provide Gilardi with the names and addresses of potential Class Members or request additional copies of the Notice to forward to potential Class Members directly (*see* Notice Order ¶¶9);

WHEREAS, despite Gilardi's extensive efforts to encourage Nominees to respond to the Notice in a timely manner, many of the Nominees did not do so. In fact, 32 Nominees responded after October 24, 2015 (i.e., 30 days prior to the November 24, 2015 deadline for submitting objections or requesting exclusion from the Class set forth in the Notice Order and Notice (*see* Notice Order ¶¶16, 18)). *See* Joaquin Decl. ¶16. This delayed response from certain Nominees resulted in a large number of Notices being mailed after October 24, 2015 (*Id.* ¶17); and

WHEREAS, while the settling parties recognize both that no notice program can be designed or implemented with 100% certainty to reach every potential investor in a timely fashion, particularly given that such programs are dependent upon the timely response of non-party Nominees that may not comply with the Court's deadlines, and that holding stock in street name comes with certain inherent risks,¹ the sheer volume of the belated Nominee requests in connection with this Settlement is of such a magnitude that the settling parties believe a continuance of the Settlement Hearing, currently calendared for December 15, 2015, to January 29, 2015, or the earliest possible date thereafter at the Court's convenience, and an extension of certain deadlines established in the Notice Order, are warranted;

¹ *See In re Dataproducts Corp. S'holders Litig.*, 1991 WL 165301, at *10 n.6 (Del. Ch. Aug. 22, 1991) ("stockholders who choose to hold stock in street name must bear the risks (which accompany the advantages) associated with that decision, including the risk that they may not receive information as promptly as stockholders who choose to hold shares in their own name") (citation omitted). *See also Torrisi v. Tucson Elec. Power Co., et al.*, 8 F.3d 1370 (9th Cir. 1993); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *24 (S.D.N.Y. Dec. 23, 2009).

IT IS ACCORDINGLY STIPULATED, pursuant to LR 7-1, by and between the undersigned counsel for the settling parties that:

(i) Gilardi will mail a postcard, substantially in the form attached hereto as Exhibit B, to all Class Members to advise them of the rescheduled Settlement Hearing and the new deadlines in connection therewith, by no later than December 9, 2015;

(ii) Gilardi will update the Settlement website to reflect the rescheduled Settlement Hearing and the new deadlines in connection therewith, by no later than December 9, 2015;

(iii) Class Members whose Notice was mailed after October 24, 2015 and who wish to request exclusion from the Class must submit their request for exclusion in accordance with the requirements set forth in the Notice so that it is received by Gilardi on or before January 8, 2016;

(iv) Class Members whose Notice was mailed after October 24, 2015 and who wish to object to any aspect of the Settlement must submit their objection in accordance with the requirements set forth in the Notice so that it is received by the Court and counsel on or before January 8, 2016;

(v) Any reply papers shall be filed and served no later than seven (7) calendar days prior to the date of the Settlement Hearing;

(vi) The Settlement Hearing, currently calendared for December 15, 2015, will be continued to January 29, 2016, ~~or the earliest possible date thereafter at the Court's convenience;~~ and at 9:30 AM in Courtroom 7D of the Lloyd D. George Federal Courthouse in Las Vegas, Nevada, and

(vii) Class Members whose Notice was mailed after October 24, 2015 and who wish to submit a Proof of Claim in order to be potentially eligible to receive a distribution from the net Settlement proceeds must submit a Proof of Claim postmarked, or online through the Settlement

website, on or before February 5, 2016, unless such time is otherwise extended by order of the Court.

DATED: December 3, 2015

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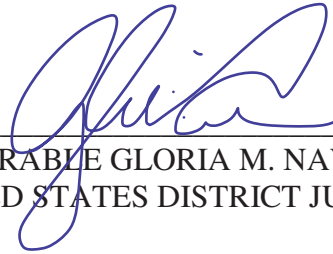
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Terrence Lanni

IT IS SO ORDERED:

A handwritten signature in blue ink, appearing to read 'G. Navarro', is written over a horizontal line.

HONORABLE GLORIA M. NAVARRO
UNITED STATES DISTRICT JUDGE

DATED: December 7, 2015

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List and to those listed below who have also filed objections.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 3, 2015.

s/ Eli R. Greenstein

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES LITIGATION)	
)	No. 2:09-cv-01558-GMN-VCF
_____)	
This Document Relates To:)	<u>CLASS ACTION</u>
)	
ALL ACTIONS.)	DECLARATION OF MICHAEL JOAQUIN
)	REGARDING NOTICE PROCEDURES IN
_____)	CONNECTION WITH SETTLEMENT

I, Michael Joaquin, declare and state as follows:

1. I am the Director of Securities of Gilardi & Co. LLC (“Gilardi”), located at 3301 Kerner Boulevard, San Rafael, California 94901. At the request of Lead Counsel, I am providing this declaration to give the Court and the parties to the above-captioned action information about the procedures and methods that were used to provide notice of the proposed settlement to the investors who comprise the class preliminarily certified by the Court for purposes of settlement (“Class”) and the current status of the administration. I make this declaration based on personal knowledge, and if called to testify I could and would do so competently.

2. Pursuant to its September 11, 2015 Order Preliminarily Approving Settlement and Providing for Notice (“Notice Order”), Gilardi was retained as the Claims Administrator to provide notice and claims administration services in connection with the settlement of the above-captioned action.

THE NOTICE CAMPAIGN

3. As required by Federal Rule of Civil Procedure 23, the notice plan in this matter used procedures that satisfy due process requirements and are designed to provide effective direct mail notification to every investor who is a member of the Class and who could be identified with reasonable effort. The Class consists of all persons or entities who purchased or otherwise acquired the publicly-traded securities of MGM Mirage (now known as MGM Resorts International) (“MGM”) during the period from August 2, 2007, through and including March 5, 2009, and were allegedly damaged thereby.¹ MGM publicly-traded securities are further defined in the Notice as MGM common stock and 11 MGM debt securities.

¹ Excluded from the Class are Defendants, officers and directors of MGM, members of each Defendant’s immediate family, any entity in which any Defendant has or had a controlling interest, Defendants’ legal representatives, and the heirs, successors or assigns of any such

4. In accordance with the Court's Notice Order, on October 8, 2015, Gilardi mailed a copy of the Notice and Proof of Claim and Release form ("Proof of Claim" and, together with the Notice, the "Claim Package"), by First-Class Mail to the 4,268 persons and entities identified as potential Class Members by MGM's stock transfer agent.²

5. The identities of the vast majority of Class Members are not known by MGM's stock transfer agent. This is because securities are often held in "street name," that is, in the name of banks and other institutions who hold the securities for the benefit of individuals and entities. Thus, as part of Gilardi's normal mailing procedures, in order to obtain the contact information for investors that hold their securities in street name, which represent the vast majority of Class Members in these types of cases, Gilardi mailed a Claim Package and cover letter to 252 banks and other institutions that hold securities for the benefit of their clients ("Nominee Holders") on October 8, 2015. The Nominee Holders include a group of firms/institutions who have requested notification on every case involving publicly-traded securities and are contained in a database created, maintained and regularly updated by Gilardi. In Gilardi's experience, the institutions included in this database represent a significant majority of the beneficial holders of the securities in most settlements involving publicly-traded companies. Gilardi also sent a Claim Package and appropriate cover letter on October 8, 2015 to each of the 4,194 financial institutions registered with the U.S. Securities and Exchange

excluded party, and those Persons who timely and validly exclude themselves therefrom by submitting a request for exclusion in accordance with the requirements set forth in the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing ("Notice").

² See also Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Posting on Settlement Website, and (D) Requests for Exclusion Received to Date dated October 22, 2015 (ECF No. 355) ("Mailing Declaration"), at ¶4.

Commission at the time of the initial mailing. The cover letter accompanying the Claim Packages notified the Nominee Holders and other financial institutions of the pendency of this action as a class action and proposed settlement and informed them of their obligation to, within ten days of receiving the Notice, either provide the names and addresses of their clients who may be Class Members or request additional copies of the Claim Package to provide directly to their clients. A sample copy of the cover letter is attached hereto as Exhibit A.

6. The Claim Package was also provided electronically to 456 institutions that monitor securities class actions for their investor clients and regularly act on their behalf in these matters. These institutions generally obtain the information required and submit claims directly on behalf of their clients. These institutions include brokerages that regularly file claims on behalf of both large and small investors in securities class action settlements administered by Gilardi and other claims administrators.

7. Pursuant to the Notice Order, Gilardi supplemented the direct mailing program described above by publishing the Summary Notice in the *Investor's Business Daily* ("IBD") national edition on October 13, 2015. The IBD is a business-focused national newspaper with an audience made up primarily of securities investors and investment professionals. The IBD provides a cost-effective mechanism to complement the extremely robust direct mail notification conducted. The Summary Notice was also posted on October 13, 2015 with *PR Newswire*, an online newswire service, where it was available for a month. News outlets often use posted notices as the basis for their own stories about litigation settlements involving publicly-traded companies, thereby creating added awareness of the proposed settlement among investors.

8. Gilardi also established on October 8, 2015 and maintains a settlement-specific website (www.mgmmiragesecuritieslitigation.com) where key documents are posted, including the Stipulation and Agreement of Settlement, the Notice and Proof of Claim, the executed Notice

Order, and other relevant documents. The website also provides summary information regarding the case and settlement and highlights important dates. All posted documents are available for download from the website.

9. Since the execution of the Mailing Declaration on October 22, 2015, Gilardi has continued to receive requests from potential Class Members, Nominee Holders and other institutions for copies of the Claim Package in response to the notice campaign. As a result, as of November 30, 2015, Gilardi has mailed an aggregate of 190,924 Claim Packages to potential Class Members, Nominee Holders and other institutions by First-Class mail, bulk mail, or electronically.

GILARDI'S NOMINEE OUTREACH EFFORTS

10. Gilardi has long-standing relationships with all of the primary Nominee Holders, and they are accustomed to providing Gilardi with information regarding their clients from their records and obtaining reimbursement for doing so. As set forth above, Gilardi began its outreach to Nominee Holders and other institutions on October 8, 2015 by mailing these entities a copy of the Claim Package in accordance with the Court's Notice Order. As an additional measure, Gilardi caused a copy of the Claim Package to be published by the Depository Trust Company ("DTC") on the DTC Legal Notice System ("LENS"). LENS enables participating bank and broker nominees to review the Claim Package and contact Gilardi for copies of the Claim Package for their clients.

11. As part of Gilardi's standard procedure, since the initial notice mailing on October 8, 2015, Gilardi has also provided three supplemental notification letters to Nominee Holders who did not respond to the initial notice mailing requesting them to provide the names and addresses of potential Class Members. Those supplemental notifications were mailed to

these Nominee Holders on October 23, November 6, and November 23, 2015. A fourth supplemental notification is scheduled to be mailed on December 7, 2015.

12. The vast majority of names and addresses of potential Class Members are received from Nominee Holders in response to this solicitation. Responses from Nominee Holders are provided in several different ways, and may consist of data files containing the name and address information of potential Class Members to be processed and mailed by Gilardi, pre-printed labels containing the name and address information of potential Class Members to be affixed to Claim Packages for mailing by Gilardi, or bulk requests for blank Claim Packages to be forwarded by Nominee Holders directly to their customers and clients who may be Class Members. Of the responses received from Nominee Holders to date, more than 90% were computer files containing the name and address information of potential Class Members. Nominee Holders typically provide to Gilardi the most current address information they have available for the potential Class Members.

13. Gilardi has promptly mailed Claim Packages to all potential Class Members identified by Nominee Holders. Gilardi has also promptly mailed copies of the Claim Package directly to Nominee Holders who indicated that they would directly forward the documents to their customers and clients who may be Class Members. Gilardi has also promptly mailed copies of the Claim Package directly to any potential Class Members who requested copies of the Claim Package by phone, mail, or e-mail.

14. All name and address data obtained by Gilardi was checked against the United States Postal Service's National Change of Address database to identify any address changes before mailing the Claim Package. Claim Packages that were returned as undeliverable mail were also reviewed to determine if an alternative or updated address was available from the Postal Service, and were then re-mailed to the updated or alternative address. In cases where no

address was available from the Postal Service, Gilardi attempted to obtain updated or alternative address information from private databases and/or address locator services, and re-mailed the Claim Package if such information was available.

15. As is quite common, a number of computer files and requests for Claim Packages submitted by Nominee Holders and other institutions were received by Gilardi after the deadline for response set forth in the Notice Order and the Notice. Pursuant to the Notice Order and as set forth in the Notice, Nominee Holders and other institutions were requested to, within ten (10) days after receiving the Notice, provide Gilardi with the names and addresses of potential Class Members or request additional copies of the Notice to forward to potential Class Members directly.

16. As of November 30, 2015, a total of 79 Nominee Holders and other institutions have responded to the Notice, including 10 Nominee Holders or institutions which indicated in their response that they had no records of potential Class Members to provide. Despite the nominee outreach efforts described above, many of these Nominee Holders and financial institutions did not respond in a timely manner, and 32 responses which included computer files or requests for the Claim Package were received after October 24, 2015 (i.e., 30 days prior to the deadline for submitting objections or requesting exclusion from the Class). In fact, Gilardi has continued to receive computer files and requests for Claim Packages from Nominee Holders, other institutions and potential Class Members. In addition, Claim Packages have been returned to Gilardi as undeliverable mail and have been re-mailed if a new address can be identified. While Gilardi has promptly mailed Claim Packages in response to all such requests, as a result of these delayed responses from Nominee Holders and others, many Claim Packages were mailed after October 24, 2015.

17. Of the 190,924 Claim Packages mailed by Gilardi as of November 30, 2015, 142,842 were mailed after October 24, 2015, including 1,228 Claim Packages which were returned as undeliverable mail and re-mailed to a new address.

18. As of December 2, 2015, an additional 3,174 Claim Packages are in the process of being mailed. These mailings relate to Claim Packages which were returned as undeliverable mail and for which a new address has been identified, computer files which were received on November 30, 2015 from RBC Dominion Securities Inc. and FirstSouthwest, and requests for the Claim Package received on or after December 1, 2015 from potential Class Members. Gilardi anticipates that Claim Packages will be mailed to these names and addresses on or before December 9, 2015.

POSTCARD MAILING

19. As set forth in the accompanying Stipulation and [Proposed] Order Continuing December 15, 2015 Settlement Hearing and Extending Certain Deadlines in Connection Therewith ("Stipulation"), Gilardi is prepared to mail a postcard, substantially in the form attached as Exhibit B to the Stipulation, to all Class Members to advise them of the new dates and deadlines in connection with the settlement as approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 2nd day of December, 2015, at San Rafael, California.



MICHAEL JOAQUIN

Exhibit A

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October 8, 2015

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Re: MGM Securities Litigation

Dear «GENDER» «LastName»:

Please find enclosed the Settlement Notice and Proof of Claim and Release for the above referenced litigation. Please note both the class period and the designated eligible securities described on page one of the Notice, specifically the inclusion of “all persons or entities who purchased or otherwise acquired the publicly-traded securities of MGM Mirage (now known as MGM Resorts International) (“MGM”) during the period from August 2, 2007 through and including March 5, 2009, and were allegedly damaged thereby.” MGM publicly-traded securities include common stock and the following debt securities (“MGM Bonds”): (i) 5.875% MGM Bonds, due 2/27/14; (ii) 6.0% MGM Bonds, due 10/1/09; (iii) 6.625% MGM Bonds, due 7/15/15; (iv) 6.75% MGM Bonds, due 9/1/12; (v) 6.75% MGM Bonds, due 4/1/13; (vi) 6.875% MGM Bonds, due 4/1/16; (vii) 7.5% MGM Bonds, due 6/1/16; (viii) 7.625% MGM Bonds, due 1/15/17; (ix) 8.375% MGM Bonds, due 2/1/11; (x) 8.5% MGM Bonds, due 9/15/10; and (xi) 13% MGM Bonds, due 11/15/13. In addition, **the Notice provides that the Exclusion Deadline is November 24, 2015, and that the Claim Filing Deadline is January 6, 2016.**

Please pay particular attention to the "Special Notice to Securities Brokers and Other Nominees" on page twelve of the Notice. Please do not make your own copies of the Proof of Claim Form, as copies may not be accepted for processing. Additional copies of the appropriate documents may be requested by contacting us at the above address and/or phone number.

If we conduct the necessary mailing on your behalf, please submit names and addresses either via email to Notifications@Gilardi.com, via CD Rom to the above address or contact (415) 458-3015 to obtain secure FTP transmission instructions. Mailing labels will be accepted, but you may be requested to provide an additional copy of the address information you send. Do not include any confidential information that should not appear on a mailing label.

The data provided must be in one of the following formats:

- ASCII Fixed Length file
- ASCII Tab Delimited file
- Microsoft Excel spreadsheet

Your request must also specify the case name and Control Total(s) (for example, the total number of name and address records provided) for each file submission.

If you have any questions, please call (415) 458-3015.

Sincerely,
Gilardi & Co. LLC

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MGM Mirage Securities Litigation. A copy of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing (the "Notice") and Proof of Claim and Release form ("Proof of Claim Form") for this settlement was mailed to the name and address printed on the front of this postcard.

Unfortunately, and at no fault of the Claims Administrator or Counsel, some brokers and nominees did not provide the names and addresses of their clients who are potential Class Members to the Claims Administrator within ten days of their receipt of the Notice, as required by the Notice and Court. To accommodate Class Members who did not receive timely Notice, the Court has ordered that the deadline to request exclusion from the Class or submit an objection to the proposed Settlement, the proposed Plan of Allocation, Lead Counsel's fee, cost, and expense application, and/or Lead Plaintiffs' request for costs and expenses has been extended from November 24, 2015 to **Month DD, 2016**.

Requests for exclusion and objections must be submitted in accordance with the requirements outlined in sections 13 and 18 of the Notice, respectively.

The Court also has ordered that the deadline to submit a Proof of Claim Form in order to be potentially eligible to receive a distribution from the net settlement proceeds has been extended from January 6, 2016 to **Month DD, 2016**.

In addition, the date and time of the Settlement Fairness Hearing has been continued from December 15, 2015 at 9:00 a.m. to **Month DD, 2016 at 00:00a.p.m.**

If you have any questions or require further information please contact the Claims Administrator at (844) 899-6217 or by email at classact@gilardi.com. If you wish to review the Notice or other case related documents, please go to: www.mgmiragesecuritieslitigation.com

Claims Administrator
c/o Gilardi & Co. LLC
P.O. Box 8040
San Rafael, CA 94912-8040

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This is an official court notice
from the United States District
Court for the District of Nevada

*In re MGM Mirage Securities
Litigation,*
No. 2:09-cv-01558-GMN-VCF

CASECODE- <<Claim7>>- <<CkDig>>

<<FName>> <<LName>>
<<Addr1>> <<Addr2>>
<<City>>, <<State>> <<Zip>>

MGM MRAGE