

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHERYL KATER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

CHURCHILL DOWNS INCORPORATED.,
a Kentucky corporation,

Defendant.

No. C15-612

COMPLAINT—CLASS ACTION

JURY DEMAND

Plaintiff Cheryl Kater brings this case, individually and on behalf of all others similarly situated, against Defendant Churchill Downs Incorporated (“Churchill Downs”) to enjoin its operation of unlawful gambling devices. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and upon information and belief, including investigation conducted by her attorneys, as to all other matters.

NATURE OF THE ACTION

1. Defendant Churchill Downs owns and operates a leading video game development company in the so-called “casual games” industry—that is, computer games designed to appeal to a mass audience of casual gamers. Amongst the games Defendant owns

1 and operates is a popular virtual casino under the name “Big Fish Casino.”

2 2. In Big Fish Casino, Defendant offers a multitude of electronic versions of casino
3 games, such as slot machines, roulette, and black jack to consumers. Big Fish Casino is available
4 on Android and Apple iOS devices along with traditional computers.

5 3. Defendant provides a bundle of free “chips” to first-time visitors of its virtual
6 casino that can be used to wager on its games. After consumers inevitably lose their initial
7 allotment of chips, Churchill Downs attempts to sell them additional chips starting at \$1.99 for
8 20,000 chips.

9 4. Freshly topped off with additional chips, consumers wager to win more chips. The
10 chips won by consumers playing Defendant’s games of chance are identical to the chips that
11 Defendant sells. Thus, by wagering 20,000 chips that were purchased for \$1.99, consumers have
12 the chance to win hundreds of thousands of additional chips that they would otherwise have to
13 purchase.

14 5. Consumers that win big can also cash out by selling their chips to other casino
15 patrons. In fact, Defendant facilitates and profits from the process by which consumers cash out
16 by charging a fee, typically \$1.99 for each chip transfer. With a reliable method to exchange
17 chips for cash facilitated by Defendant, it’s no surprise that secondary markets for chip transfers
18 have sprung up online as well.

19 6. By operating its virtual casino, Defendant has violated Washington law, which
20 governs Plaintiff’s and the Class’s claims,¹ and illegally profited from tens of thousands of
21 consumers. Accordingly, Plaintiff Cheryl Kater, on behalf of herself and a Class of similarly
22 situated individuals, brings this lawsuit to recover their losses, as well as costs and attorneys’
23

24 ¹ Players visiting Defendant’s Big Fish Casino for the first time agree to Defendant’s “Big
25 Fish Terms of Use,” a true and accurate copy is attached hereto as Exhibit A. In those terms,
26 players and Defendant agree, under the heading “Applicable Law and Jurisdiction,” that “[t]hese
27 Terms of Use are governed by and shall be construed in accordance with the laws of the State of
Washington, USA, excluding its conflicts of law rules.”

1 fees.

2 **PARTIES**

3 7. Plaintiff Cheryl Kater is a natural person and a citizen of the state of Michigan.

4 8. Defendant Churchill Downs Incorporated is a corporation incorporated under the
5 laws of the state of Kentucky with a principal place of business at 333 Elliott Avenue West, Suite
6 200, Seattle, Washington 98119. Defendant conducts business throughout this District,
7 Washington state, and the United States.

8 **JURISDICTION AND VENUE**

9 9. Federal subject-matter jurisdiction exists under 28 U.S.C. § 1332(d)(2) because
10 (a) at least one member of the class is a citizen of a state different from Defendant, (b) the
11 amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (c) none of the
12 exceptions under that subsection apply to this action.

13 10. The Court has personal jurisdiction over Defendant because Defendant is licensed
14 to conduct business in this District, maintains its subsidiary’s headquarters and principal place of
15 business in this District, conducts significant business transactions in this District, and because
16 the wrongful conduct occurred in and emanated from this District.

17 11. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
18 part of the events giving rise to Plaintiff’s claims occurred in this District, Defendant’s
19 subsidiaries are licensed to conduct business in this District, and its subsidiary’s headquarters
20 and principal place of business are maintained in this District.

21 **FACTUAL ALLEGATIONS**

22 **Free-to-Play and the New Era of Online Gambling**

23 12. The proliferation of internet-connected mobile devices has led to the growth of
24 so-called “free-to-play” videogames. With free-to-play games, developers encourage consumers
25 to download and play games for free while selling many low-cost items within the game itself.
26 Developers aim to recoup their costs (and make a profit) by selling thousands of “in-game” items
27 that start at \$0.99 (purchases known as “micro-transactions”) instead of charging an up-front fee.

1 13. The free-to-play model has become particularly attractive to developers of games
2 of chance (*e.g.*, poker, blackjack, and slot machine mobile videogames, amongst others), because
3 it allows them to generate huge profits. In 2012, free-to-play games of chance generated over
4 \$1.6 billion in worldwide revenue, and they are expected to grow to more than \$2.4 billion by the
5 end of 2015.² Even “large land-based casino operators are looking at this new space” for “a
6 healthy growth potential.”³

7 14. With free-to-play games of chance, developers have begun exploiting the same
8 psychological triggers as casino operators. As one respected videogame publication put it:

9 “If you hand someone a closed box full of promised goodies, many will happily
10 pay you for the crowbar to crack it open. The tremendous power of small random
11 packs of goodies has long been known to the creators of physical collectible card
12 games and companies that made football stickers a decade ago. For some ... the
13 allure of a closed box full of goodies is too powerful to resist. Whatever the worth
14 of the randomised [sic] prizes inside, the offer of a free chest and the option to
15 buy a key will make a small fortune out of these personalities. For those that like
16 to gamble, these crates often offer a small chance of an ultra-rare item.”⁴

15 15. Another stated:

16 “Games may influence ‘feelings of pleasure and reward,’ but this is an addiction
17 to the games themselves; micro-transactions play to a different kind of addiction
18 that has existed long before video games existed, more specifically, an addiction

19 ² VentureBeat, *Report confirms that social casino games have hit the jackpot with \$1.6B in*
20 *revenue | GamesBeat | Games | by Dean Takahashi*, [http://venturebeat.com/2012/09/11/report-](http://venturebeat.com/2012/09/11/report-confirms-that-social-casino-games-have-hit-the-jackpot-with-1-6b-in-revenue/)
21 [confirms-that-social-casino-games-have-hit-the-jackpot-with-1-6b-in-revenue/](http://venturebeat.com/2012/09/11/report-confirms-that-social-casino-games-have-hit-the-jackpot-with-1-6b-in-revenue/) (last visited Apr.
22 9, 2015).

22 ³ *Id.* Indeed, as explained more below, Defendant—the owner of five horse racing tracks,
23 six casinos, myriad off-track betting facilities, and other gaming related businesses—purchased
24 Big Fish Games and the Big Fish Casino in November 2014 for approximately \$885 million.
25 *Churchill Downs Incorporated To Acquire Big Fish Games | Churchill Downs Incorporated*,
26 <http://www.churchilldownsincorporated.com/bigfishannouncement> (last visited Apr. 9, 2015).

25 ⁴ PC Gamer, *Microtransactions: the good, the bad and the ugly*,
26 <http://www.pcgamer.com/microtransactions-the-good-the-bad-and-the-ugly/> (last visited Apr. 9,
27 2015).

1 similar to that which you could develop in casinos and betting shops.”⁵

2 16. The comparison to casinos doesn’t end there. Just as with casino operators, free-
3 to-play developers rely on a small portion of their players to provide the majority of their profits.
4 These “whales,” as they’re known in casino parlance, account for just “0.15% of players” but
5 provide “over 50% of mobile game revenue.”⁶

6 17. Game Informer, another respected videogame magazine, reported on the rise (and
7 danger of) of micro-transactions in free-to-play games and concluded:

8 “[M]any new mobile and social titles target small, susceptible populations for
9 large percentages of their revenue. If ninety-five people all play a [free-to-play]
10 game without spending money, but five people each pour \$100 or more in to
11 obtain virtual currency, the designer can break even. These five individuals are
12 what the industry calls whales, and we tend not to be too concerned with how
13 they’re being used in the equation. While the scale and potential financial ruin is
14 of a different magnitude, a similar profitability model governs casino gambling.”⁷

15 18. Academics have also studied the socioeconomic effect free-to-play games have on
16 consumers. In one study, the authors compiled several sources analyzing free-to-play games of
17 chance (called “casino” games below) and stated that:

18 “[Researchers] found that [free-to-play] casino gamers share many similar
19 sociodemographic characteristics (e.g., employment, education, income) with
20 online gamblers. Given these similarities, it is perhaps not surprising that a strong
21 predictor of online gambling is engagement in [free-to-play] casino games.
22 Putting a dark line under these findings, over half (58.3%) of disordered gamblers
23 who were seeking treatment stated that social casino games were their first
24 experiences with gambling.”

25 ⁵ The Badger, *Are micro-transactions ruining video games?* / *The Badger*,
26 <http://www.badgeronline.co.uk/micro-transactions-ruining-video-games/> (last visited Apr. 9,
27 2015).

⁶ *Id.* (emphasis added).

⁷ Game Informer, *How Microtransactions Are Bad For Gaming - Features -*
25 *www.GameInformer.com*, [http://www.gameinformer.com/b/features/archive/2012/09/12/how-](http://www.gameinformer.com/b/features/archive/2012/09/12/how-microtransactions-are-bad-for-gaming.aspx?CommentPosted=true&PageIndex=3)
26 [microtransactions-are-bad-for-gaming.aspx?CommentPosted=true&PageIndex=3](http://www.gameinformer.com/b/features/archive/2012/09/12/how-microtransactions-are-bad-for-gaming.aspx?CommentPosted=true&PageIndex=3) (last visited
27 Apr. 9, 2015).

1 ...

2 “According to [another study], the purchase of virtual credits or virtual items

3 makes the activity of [free-to-play] casino gaming more similar to gambling.

4 Thus, micro-transactions may be a crucial predictor in the migration to online

5 gambling, as these players have now crossed a line by paying to engage in these

6 activities. Although, [sic] only 1–5% of [free-to-play] casino gamers make micro-

7 transactions, those who purchase virtual credits spend an average of \$78. Despite

8 the limited numbers of social casino gamers purchasing virtual credits, revenues

9 from micro-transactions account for 60 % of all [free-to-play] casino gaming

10 revenue. Thus, a significant amount of revenue is based on players’ desire to

11 purchase virtual credits above and beyond what is provided to the player in seed

12 credits.”⁸

13 19. The same authors looked at the link between playing free-to-play games of chance

14 and gambling in casinos. They stated that “prior research indicated that winning large sums of

15 virtual credits on social casino gaming sites was a key reason for [consumers’] migration to

16 online gambling,” yet the largest predictor that a consumer will transition to online gambling was

17 “micro-transaction engagement.” In fact, “the odds of migration to online gambling were

18 approximately *eight times greater* among people who made micro-transactions on [free-to-play]

19 casino games compared to [free-to-play] casino gamers who did not make micro-transactions.”⁹

20 20. The similarity between free-to-play games of chance and games of chance found

21 in casinos has caused governments across the world to intervene to limit their availability.¹⁰

22 ⁸ Hyoun S. Kim, Michael J. A. Wohl, *et al.*, *Do Social Casino Gamers Migrate to Online*

23 *Gambling? An Assessment of Migration Rate and Potential Predictors*, Journal of gambling

24 studies / co-sponsored by the National Council on Problem Gambling and Institute for the Study

25 of Gambling and Commercial Gaming (Nov. 14, 2014), *available at*

26 <http://link.springer.com/content/pdf/10.1007%2Fs10899-014-9511-0.pdf> (citations omitted).

27 ⁹ *Id.* (emphasis added).

¹⁰ In late August 2014, South Korea began regulating “social gambling” games, including

games similar to Big Fish Casino, by “ban[ning] all financial transactions directed” to the games.

PokerNews.com, *Korea Shuts Down All Facebook Games In Attempt To Regulate Social*

Gambling / *PokerNews*, <http://www.pokernews.com/news/2014/09/korea-shuts-down-facebook-games-19204.htm> (last visited Apr. 9, 2015). Similarly, “the Maltese Lotteries and Gambling

1 Unfortunately, such games have eluded regulation in the United States. As a result, and as
 2 described below, Defendant’s Big Fish Casino has thrived and thousands of consumers have
 3 spent millions of dollars unwittingly playing Defendant’s unlawful games of chance.

4 **A Brief Introduction to Defendant and its Big Fish Casino**

5 21. Churchill Downs began in 1875 when it opened the famous horseracing track of
 6 the same name. Since then, Churchill Downs has amassed additional racetracks and begun
 7 expanding into casino gaming. In 2007, Churchill Downs created TwinSpires.com, a pari-mutuel
 8 betting website with revenues exceeding \$180 million per year.

9 22. And in an effort to extend its online gaming presence, Churchill Downs acquired
 10 Big Fish Games, “the world’s largest producer of casual games,” in 2014 for \$885 million.¹¹ For
 11 the last twelve months, Defendant’s Big Fish subsidiary posted over \$312 million in “annual
 12 bookings,” with much of the “bookings” coming from “Big Fish Casino,” the “top revenue
 13 producing social casino app on [Apple’s iOS devices] last year.”¹²

14 23. In addition to Apple iOS devices, Big Fish Casino is available for consumers to
 15 play through Facebook, web browsers, and on phones or tablets running the Android mobile
 16 operating system. The casino is very popular—millions of people play at the casino every month.

17 24. Churchill Downs stated in its recent SEC filings that “the Company acquired Big
 18 Fish Games to leverage its casino and casual game experience.” Defendant describes the Big
 19 Fish Casino games as being “free to download through PC and mobile devices. Game options
 20 include casino-style games such as blackjack, poker, slots, craps, and roulette. There is
 21 monetization through purchase of in-game virtual goods to enhance the game-playing
 22

23 Authority (LGA) invited the national Parliament to regulate all digital games with prizes by the
 24 end of 2014.” *Id.*

25 ¹¹ *Big Fish Games to be acquired for \$885 million by racetrack operator Churchill Downs*
 26 – *GeekWire*, <http://www.geekwire.com/2014/churchill-downs-acquires-big-fish/> (last visited
 Apr. 9, 2015).

27 ¹² *Id.*

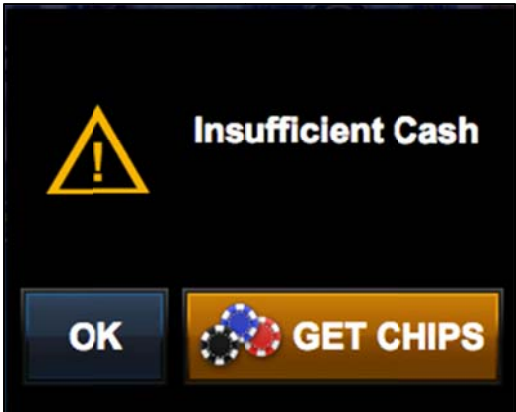
1 experience.”

2 25. Selling “in-game virtual goods” (*i.e.*, virtual casino chips) has been immensely
3 profitable for Defendant. In 2014, Defendant recognized revenues of more than \$260 *million*
4 from its Big Fish Games videogames, likely generating more than 50% of total revenue just by
5 selling chips in its Big Fish Casino.¹³ As explained further below, however, the revenue
6 Defendant receives from its Big Fish Casino games are the result of operating unlawful games of
7 chance camouflaged as innocuous videogames.

8 **III. Defendant’s Virtual Casino Contains Unlawful Games of Chance**

9 26. Consumers visiting Defendant’s virtual casino for the first time are awarded
10 100,000 free chips. Ostensibly, Defendant gives away 100,000 chips to each consumer to ensure
11 that they “buy in” to Defendant’s casino over alternatives.

12 27. After they begin playing, consumers quickly lose their initial allotment chips.
13 Immediately thereafter, Defendant informs them via a “pop up” screen that they have
14 “Insufficient Cash” to place a wager, which prevents them from additional play. *See Figure 1.*

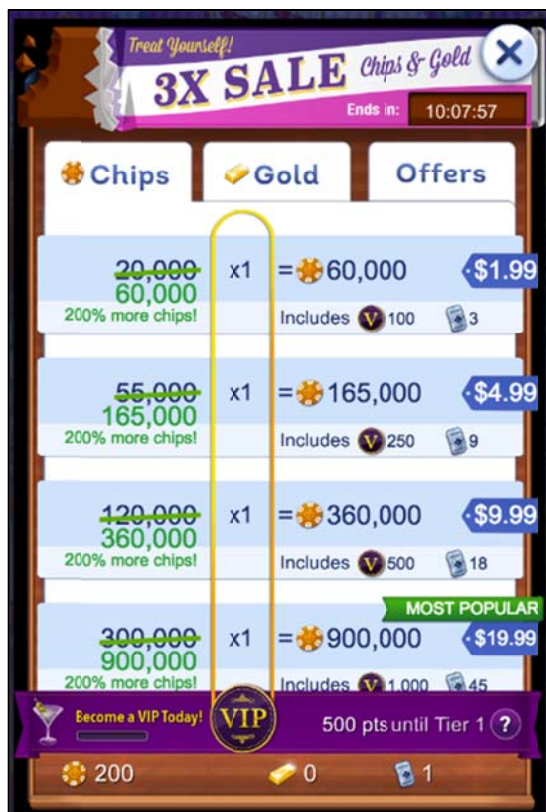


15
16
17
18
19
20
21
22 (Figure 1.)

23 28. Concurrently with that warning, Defendant Churchill Downs provides a link to
24

25 ¹³ *Nearly 50% of Big Fish's revenue came from mobile in 2013 – GeekWire,*
26 <http://www.geekwire.com/2014/half-big-fishes-revenue-came-mobile-2013-50-one-year-prior/>
27 (last visited Apr. 9, 2015).

1 consumers, telling them to “GET CHIPS” at its electronic store where the price for chips ranges
 2 from prices of \$1.99 for 20,000 chips to \$249.00 for 10,000,000 chips. See Figure 2.



3
4
5
6
7
8
9
10
11
12
13
14
15
16 (Figure 2, showing Defendant’s chip prices during a “3X Sale.”)

17 29. The decision to sell chips by the thousands isn’t an accident. Rather, Defendant
 18 attempts to lower the perceived cost of the chips (costing just a fraction of a penny per chip)
 19 while simultaneously maximizing the value of the award (awarding millions of chips in
 20 jackpots), further inducing consumers to bet on its games.

21 30. To begin wagering, players select the “BET/LINE” (*i.e.*, bet per played line) that
 22 will be used for a spin, as illustrated in Figure 3, which shows one of Defendant’s games.
 23 Defendant allows players to multiply their bet by changing the number of “lines” (*i.e.*,
 24 combinations) on which the consumer can win, shown in Figure 3 as the “LINE” button.



(Figure 3.)

31. The bet amount multiplied by the number of lines comprises the “Total Bet” shown in the bottom left of Figure 3. Thus, in the example shown in Figure 3, the player is attempting to bet “10,000” chips, or approximately \$1.00, for one spin of the slot machine.

32. Once a consumer spins the slot machine by pressing a button (the brown lever labeled “SPIN” circled on the right of Figure 3), none of Defendant’s games allow (or call for) any additional user action. Instead, the consumer’s computer or mobile device communicates with and sends information (such as the “Total Bet” amount) to Defendant’s servers. Defendant’s servers then execute the game’s algorithms that determine the spin’s outcome. Notably, none of Defendant’s games depend on any amount of skill to determine their outcomes—all outcomes are based entirely on chance.

33. Figure 4 shows the outcome of a 10,000-chip bet where the player won 100,000 chips. Absent the win, the 100,000 chips would have cost the player approximately \$9.95 to buy. Now, however, the newly won chips provide the player with ten additional free plays at the

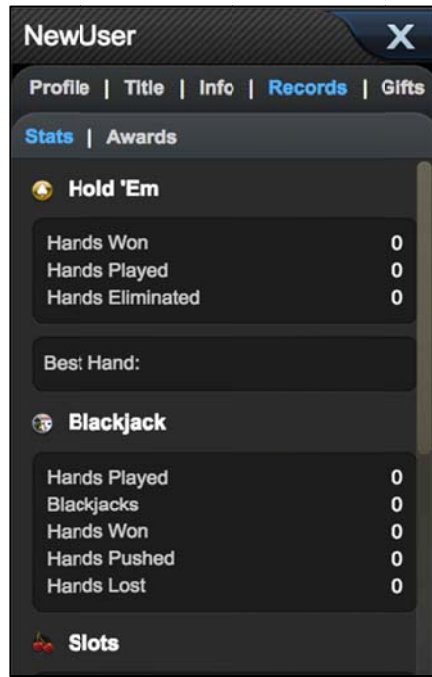
1 10,000-chip bet level.



12 (Figure 4.)

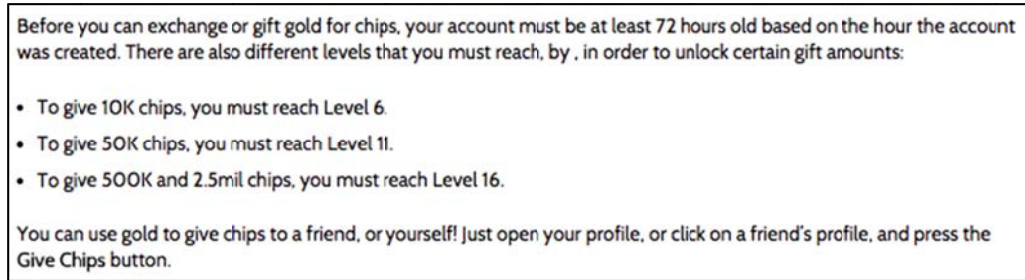
14 34. Consumers can continue playing with the chips that they won, or they can exit the
 15 game and return at a later time to play because Defendant maintains win and loss records and
 16 account balances for each consumer. Indeed, once Defendant’s algorithms determine the
 17 outcome of a spin and Defendant displays the outcome to the consumer, Defendant adjusts the
 18 consumer’s account balance. Defendant keeps records of each wager, outcome, win, and loss for
 19 every Big Fish Casino player and allows the players to view their total winnings or losses from
 20 Defendant’s casino. See Figure 5.

21
22
23
24
25
26
27



(Figure 5.)

35. Consumers that win can also cash out by selling chips on the secondary market. For example, a Big Fish Casino player listed millions of chips for sale on an online “black market.”¹⁴ Once players sell chips using the online black market, they follow Defendant’s instructions on how to transfer chips from one player to another, as shown in Figure 6. In fact, Defendant itself charges (and profits from) a transaction fee priced in “gold” (which is available for purchase starting at prices of \$1.99 for eight “bars of gold”).



(Figure 6.)¹⁵

¹⁴ [WTS] Big Fish Casino Chips (Fast Delivery, Legit). - Sythe, <http://www.sythe.org/other-games/1734327-wts-big-fish-casino-chips-fast-delivery-legit.html> (last visited Apr. 9, 2015).

¹⁵ Earning and Using Gold | Big Fish Blog, <http://www.bigfishgames.com/blog/earning-and-using-gold/> (last visited Apr. 9, 2015).

1 36. As such, Defendant undoubtedly is aware that its players regularly cash out their
 2 winnings—it facilitates the process itself. Unfortunately, if Defendant’s reported revenues are
 3 any indication, the number of losers vastly outnumbers the number of winners at Defendant’s
 4 unlawful Big Fish Casino. As such, Plaintiff Kater, on behalf of herself and a putative Class,
 5 seeks to recover Defendant’s ill-gotten losses.

6 **Plaintiff Kater’s Experience**

7 37. In or around January 2013, Plaintiff Kater began playing Big Fish Casino through
 8 her Android device. After Plaintiff lost the balance of her initial allocation of free chips, Plaintiff
 9 Kater began purchasing chips from Defendant for use in the Big Fish Casino.

10 38. Thereafter, Plaintiff Kater continued playing various slot machines and other
 11 games of chance within Defendant’s casino where she would wager chips for the chance of
 12 winning additional chips. From January 2013 to March 2015, Plaintiff Kater wagered and lost
 13 (and Defendant Churchill Downs therefore won) over \$1,000 at Defendant’s games of chance.

14 **CLASS ALLEGATIONS**

15 39. **Class Definition:** Plaintiff Kater brings this action pursuant to Fed. R. Civ. P.
 16 23(b)(2) and (b)(3) on behalf of herself and a Class of similarly situated individuals, defined as
 17 follows:

18 All persons in the United States who created Big Fish Casino accounts on
 19 or before March 23, 2015 and lost purchased chips by wagering at
 20 Defendant’s Big Fish Casino.

21 The following people are excluded from the Class: (1) any Judge or Magistrate presiding over
 22 this action and members of their families; (2) Defendant, Defendant’s subsidiaries, parents,
 23 successors, predecessors, and any entity in which the Defendant or its parents have a controlling
 24 interest and its current or former employees, officers and directors; (3) persons who properly
 25 execute and file a timely request for exclusion from the Class; (4) persons whose claims in this
 26 matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel
 27

1 and Defendant’s counsel; and (6) the legal representatives, successors, and assigns of any such
2 excluded persons.

3 40. **Numerosity:** On information and belief, tens of thousands of consumers fall into
4 the definition of the Class. Members of the Class can be identified through Defendant’s records,
5 discovery, and other third-party sources.

6 41. **Commonality and Predominance:** There are many questions of law and fact
7 common to Plaintiff’s and the Class’s claims, and those questions predominate over any
8 questions that may affect individual members of the Class. Common questions for the Class
9 include, but are not necessarily limited to the following:

- 10 a. Whether Defendant’s virtual casino games are “gambling devices” as
11 defined by RCW § 9.46.0241;
- 12 b. Whether Plaintiff and each member of the Class lost money to Defendant
13 by gambling as defined by RCW § 9.46.0237;
- 14 c. Whether Defendant violated the Washington Consumer Protection Act,
15 RCW 19.86.010 *et seq.*; and
- 16 d. Whether Defendant has been unjustly enriched as a result of its conduct.

17 42. **Typicality:** Plaintiff’s claims are typical of the claims of other members of the
18 Class in that Plaintiff’s and the members of the Class sustained damages arising out of
19 Defendant’s wrongful conduct.

20 43. **Adequate Representation:** Plaintiff will fairly and adequately represent and
21 protect the interests of the Class and has retained counsel competent and experienced in complex
22 litigation and class actions. Plaintiff’s claims are representative of the claims of the other
23 members of the Class, as Plaintiff and each member of the Class lost money playing Defendant’s
24 games of chance. Plaintiff also has no interests antagonistic to those of the Class, and Defendant
25 has no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously
26 prosecuting this action on behalf of the Class and have the financial resources to do so. Neither
27 Plaintiff nor her counsel have any interest adverse to the Class.

1 44. **Policies Generally Applicable to the Class:** This class action is appropriate for
2 certification because Defendant has acted or refused to act on grounds generally applicable to the
3 Class as a whole, thereby requiring the Court’s imposition of uniform relief to ensure compatible
4 standards of conduct toward the members of the Class and making final injunctive relief
5 appropriate with respect to the Class as a whole. Defendant’s policies that Plaintiff challenges
6 apply and affect members of the Class uniformly, and Plaintiff’s challenge of these policies
7 hinges on Defendant’s conduct with respect to the Class as a whole, not on facts or law
8 applicable only to Plaintiff. The factual and legal bases of Defendant’s liability to Plaintiff and to
9 the other members of the Class are the same.

10 45. **Superiority:** This case is also appropriate for certification because class
11 proceedings are superior to all other available methods for the fair and efficient adjudication of
12 this controversy. The harm suffered by the individual members of the Class is likely to have been
13 relatively small compared to the burden and expense of prosecuting individual actions to redress
14 Defendant’s wrongful conduct. Absent a class action, it would be difficult if not impossible for
15 the individual members of the Class to obtain effective relief from Defendant. Even if members
16 of the Class themselves could sustain such individual litigation, it would not be preferable to a
17 class action because individual litigation would increase the delay and expense to all parties and
18 the Court and require duplicative consideration of the legal and factual issues presented. By
19 contrast, a class action presents far fewer management difficulties and provides the benefits of
20 single adjudication, economy of scale, and comprehensive supervision by a single Court.
21 Economies of time, effort, and expense will be fostered and uniformity of decisions will be
22 ensured.

23 46. Plaintiff reserves the right to revise the foregoing “Class Allegations” and “Class
24 Definition” based on facts learned through additional investigation and in discovery.

25
26
27

FIRST CAUSE OF ACTION

Violations of RCW § 4.24.070

(on behalf of Plaintiff and the Class)

47. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

48. Plaintiff, members of the Class, and Defendant are all “persons” as defined by RCW 9.46.0289.

49. The state of Washington’s “Recovery of money lost at gambling” statute, RCW 4.24.070, provides that “all persons losing money or anything of value at or on any illegal gambling games shall have a cause of action to recover from the dealer or player winning, or from the proprietor for whose benefit such game was played or dealt, or such money or things of value won, the amount of the money or the value of the thing so lost.”

50. “Gambling,” defined by RCW 9.46.0237, “means staking or risking something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence.”

51. “Gambling Devices” are defined by RCW 9.46.0241 as being “(1) Any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance, including, but not limited to slot machines, video pull-tabs, video poker, and other electronic games of chance . . . In the application of this definition, a pinball machine or similar mechanical amusement device which confers only an immediate and unrecorded right of replay on players thereof, which does not contain any mechanism which varies the chance of winning free games or the number of free games which may be won or a mechanism or a chute for dispensing coins or a facsimile thereof, and which prohibits multiple winnings depending upon the number of coins inserted and requires the playing of five balls individually upon the insertion of a nickel or dime, as the case may be, to complete any one operation thereof, shall not be deemed a gambling device.”

1 52. Defendant’s Big Fish Casino games are “Gambling Devices,” because they are
2 devices where players provide consideration (*e.g.*, purchase chips and wager the chips) and by an
3 element of chance (*e.g.*, by spinning a virtual slot machine or virtual roulette table) create a right
4 to credits and/or other things of value (*e.g.*, additional chips that would otherwise be purchased
5 for cash, that can be sold for cash, and that award additional replays).

6 53. As such, Plaintiff and the Class gambled when they purchased chips to wager at
7 Defendant’s gambling devices. Plaintiff and each member of the Class staked money, in the form
8 of chips purchased with money, at Defendant’s games of chance (*e.g.*, Defendant’s slot machines
9 within Big Fish Casino) for the chance of winning additional things of value (*e.g.*, chips that
10 grant additional free plays and that can be sold on the secondary market for cash).

11 54. In addition, Defendant’s Big Fish Casino games are not “pinball machine[s] or
12 similar mechanical amusement device[s]” as contemplated by the statute because:

- 13 a. the games are electronic rather than mechanical;
- 14 b. the games confer replays but they are recorded and can be redeemed on
15 separate occasions (*i.e.*, they are not “immediate and unrecorded”); and
- 16 c. the games contain electronic mechanisms that vary the chance of winning
17 free games or the number of free games which may be won (*e.g.*, the games allow
18 for different wager amounts and some allow for the player to win on multiple
19 “lines”).

20 55. RCW 9.46.0285 states that a “‘Thing of value,’ as used in this chapter, means any
21 money or property, any token, object or article exchangeable for money or property, or any form
22 of credit or promise, directly or indirectly, contemplating transfer of money or property or of any
23 interest therein, or involving extension of a service, entertainment or a privilege of playing at a
24 game or scheme without charge.”

25 56. The “chips” Plaintiff and the Class had the chance of winning in Defendant’s Big
26 Fish Casino games are “things of value” under Washington law because they are credits that
27 involve the extension of entertainment and a privilege of playing a game without charge.

1 Moreover, the chips can be sold on the secondary market for cash and can be transferred to other
2 Big Fish Casino players in exchange for cash.

3 57. Defendant’s Big Fish Casino games are “Contest[s] of chance,” as defined by
4 RCW 9.46.0225, because they are “contest[s], game[s], gaming scheme[s], or gaming device[s]
5 in which the outcome[s] depend[] in a material degree upon an element of chance,
6 notwithstanding that skill of the contestants may also be a factor therein.” Defendant’s games
7 within the Big Fish Casino are programmed to have outcomes that are determined entirely upon
8 chance and a contestant’s skill does not affect the outcomes.

9 58. RCW 9.46.0201 defines “Amusement games” as games where “The outcome
10 depends in a material degree upon the skill of the contestant,” amongst other requirements.
11 Defendant’s Big Fish Casino games are not “Amusement games” because their outcomes are
12 dependent entirely upon chance and not upon the skill of the player and because the games are
13 contests of chance, as defined by RCW 9.46.0225.

14 59. As a direct and proximate result of Defendant’s operation of its gambling devices,
15 Plaintiff Kater and each member of the Class have lost money wagering at Defendant’s games of
16 chance. Plaintiff Kater, on behalf of herself and the Class, seeks an order (1) requiring Defendant
17 to cease the operation of its gambling devices; and/or (2) awarding the recovery of all lost
18 monies, interest, and reasonable attorneys’ fees, expenses, and costs to the extent allowable.

19 **SECOND CAUSE OF ACTION**

20 **Violations of the Washington Consumer Protection Act, RCW 19.86.010 et seq.**

21 **(on behalf of Plaintiff and the Class)**

22 60. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

23 61. Washington’s Consumer Protection Act, RCW § 19.86.010 et seq. (“CPA”),
24 protects both consumers and competitors by promoting fair competition in commercial markets
25 for goods and services.
26
27

1 62. To achieve that goal, the CPA prohibits any person from using “unfair methods of
2 competition or unfair or deceptive acts or practices in the conduct of any trade or commerce . . .”
3 RCW § 19.86.020.

4 63. The CPA states that “a claimant may establish that the act or practice is injurious
5 to the public interest because it . . . violates a statute that contains a specific legislative
6 declaration of public interest impact.”

7 64. Defendant violated RCW § 9.46.010, *et seq.*, which declares that:
8
9 “The public policy of the state of Washington on gambling is to keep the criminal
10 element out of gambling and to promote the social welfare of the people by
11 limiting the nature and scope of gambling activities and by strict regulation and
12 control.

13 It is hereby declared to be the policy of the legislature, recognizing the close
14 relationship between professional gambling and organized crime, to restrain all
15 persons from seeking profit from professional gambling activities in this state; to
16 restrain all persons from patronizing such professional gambling activities; to
17 safeguard the public against the evils induced by common gamblers and common
18 gambling houses engaged in professional gambling; and at the same time, both to
19 preserve the freedom of the press and to avoid restricting participation by
20 individuals in activities and social pastimes, which activities and social pastimes
21 are more for amusement rather than for profit, do not maliciously affect the
22 public, and do not breach the peace.”

23 65. Defendant has violated RCW § 9.46.010 *et seq.* because its Big Fish Casino
24 games are unlawful “gambling devices” defined by RCW 9.46.0241. Defendant’s Big Fish
25 Casino games are gambling devices because they are devices where players provide
26 consideration (*e.g.*, by purchasing chips and wagering the chips) and by an element of chance
27 (*e.g.*, by spinning a virtual slot machine or virtual roulette table) create a right to credits and/or
other things of value (*e.g.*, additional chips that would otherwise be purchased for cash, that can
be sold for cash, and that award additional replays).

1 66. Defendant’s acts and practices constitute unfair methods of competition or are
2 unfair or deceptive because (a) they offend public policy as it has been established by law; (b)
3 are unethical, oppressive, or unscrupulous; and (c) cause substantial injury to consumers; and
4 also (d) have the capacity to deceive a substantial portion of the public to whom they are directed
5 and to whom Defendant holds itself out as operating legally and in accordance with applicable
6 law.

7 67. Defendant’s wrongful conduct occurred in the conduct of trade or commerce—
8 *i.e.*, while Defendant was engaged in the operation of making computer games available to the
9 public.

10 68. Defendant’s acts and practices were and are injurious to the public interest
11 because Defendant, in the course of its business, continuously advertised to and solicited the
12 general public in Washington state and throughout the United States to play its unlawful Big Fish
13 Casino games of chance. This was part of a pattern or generalized course of conduct on the part
14 of Defendant, and many consumers have been adversely affected by Defendant’s conduct and the
15 public is at risk.

16 69. Defendant has profited immensely from its operation of unlawful games of
17 chance, amassing hundreds of millions of dollars from the losers of its games of chance.

18 70. Further, Defendant’s Big Fish Games subsidiary is headquartered in Washington;
19 Defendant’s strategies, decision-making, and commercial transactions for Big Fish Casino
20 originate in Washington; many of its key employees reside, work, and make company decisions
21 (including the decision to engage in the challenged conduct) in Washington; Defendant and
22 many of its employees are domiciled in Washington; and Plaintiff and each member of the Class
23 agreed to Defendant’s Terms of Use that specified that the “Applicable Law” is that “of the State
24 of Washington, USA.” The conduct that Plaintiff challenges directly or indirectly affects the
25 people of the State of Washington.

26
27

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully Submitted,

Dated: April 17, 2015

s/ Cliff Cantor
By: Cliff Cantor, WSBA # 17893
LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
627 208th Ave. SE
Sammamish, WA 98074
Tel: 425.868.7813
Fax: 425.732.3752
Email: cliff.cantor@outlook.com

EDELSON PC
Rafey S. Balabanian*
Benjamin H. Richman*
Amir C. Missaghi*
Courtney C. Booth*
350 North LaSalle Street, Suite 1300
Chicago, IL 60654
Tel: 312.589.6370
Fax: 312.589.6378
Email: rbalabanian@edelson.com
brichman@edelson.com
amissaghi@edelson.com
cbooth@edelson.com

**Pro hac vice* admission to be sought.

Counsel for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

CHERYL KATER, individually and on behalf of all others similarly situated

Plaintiff(s)

v.

CHURCHILL DOWNS INCORPORATED., a Kentucky corporation

Defendant(s)

Civil Action No. C15-

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Churchill Downs Incorporated
c/o CT Corporation System, its registered agent
306 W. Main Street, Suite 512
Frankfort, KY 40601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Cliff Cantor
LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
627 208th Avenue SE
Sammamish, Washington 98074

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. C15-

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CHERYL KATER, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff Ottawa Cty, Michigan
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Cliff Cantor, LAW OFFICES OF CLIFFORD A. CANTOR, P.C.
627 208th Avenue SE
Sammamish, Washington 98074, Tel: 425.868.7813

DEFENDANTS

CHURCHILL DOWNS INCORPORATED., a Kentucky corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(d)(2)
Brief description of cause:
Violation of RCW 4.24.070, RCW 19.86.010 et seq., unjust enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 04/17/2015 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____