

**NOTICE OF CLASS ACTION SETTLEMENT**

CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA

*Hymes, et al. v. Earl Enterprises Holdings, Inc.*, Case No. 2021-CA-007617-O

**If you used a credit or debit card at certain Earl Enterprises restaurants between May 2018 and March 2019, you may be eligible to receive benefits from a class action settlement.**

*A Florida State Court has authorized this Notice. This is not a solicitation from a lawyer. Please read this Notice carefully and completely.*

- A Settlement has been proposed in a class action lawsuit against Earl Enterprises, Inc. (“Earl Enterprises”), arising out of a data security incident that occurred between May 23, 2018 and March 18, 2019, and reported by Earl Enterprises on March 29, 2019.
- From on or about May 23, 2018 to March 18, 2019, certain Earl Enterprises restaurants were the target of third-party criminal attacks involving malware that targeted customers’ payment card information (the “Data Incident”). Affected restaurants include certain locations of Buca di Beppo, Planet Hollywood, Earl of Sandwich, Chicken Guy, Tequila Taqueria, and Mixology 101. The Data Incident potentially resulted in unauthorized access to customer payment card data, such as credit and debit card numbers, expiration dates, and, in some cases, cardholder names (“Personal Information”).
- The Settlement includes all persons residing in the United States who made a credit or debit card purchase at any affected Earl Enterprises restaurant during the period of the Data Incident.
- Not all Earl Enterprises restaurant locations were affected by the Data Incident; only certain restaurants were affected. For a list of affected Earl Enterprises restaurants, go to [www.EarlSettlement.com](http://www.EarlSettlement.com).
- The Settlement provides compensation to Class Members who submit valid claims as follows: (i) reimbursement of up to \$5,000 for certain documented out-of-pocket expenses and lost time (up to 4 hours at \$20.00 per hour) that were incurred as a result of the Data Incident prior to September 4, 2020; or (ii) compensation in the form of two (2) restaurant promotional cards valued at \$10.00 each that may be redeemed at any Buca di Beppo or Planet Hollywood restaurant, for non-documented losses and material time spent prior to September 4, 2020 taking action to deal with the repercussions of the Data Incident.

**This Settlement affects your legal rights even if you do nothing.**  
**Questions? Go to [www.EarlSettlement.com](http://www.EarlSettlement.com) or call 1-844-976-1987 (Toll-Free).**

**Your legal rights are affected even if you do nothing. Read this Notice carefully.**

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Submit a Claim Form</b> <b>Deadline:</b> <b>January 5, 2024</b>	This is the only way to receive a payment for losses suffered as a result of the Data Incident. For detailed information on how to submit a Claim Form, see Questions 10 through 12 below.
<b>Ask to be Excluded from the Settlement</b> <b>Deadline:</b> <b>January 5, 2024</b>	You will not receive a payment, but you will retain any rights you currently have with respect to Earl Enterprises and the issues in this case. This is the only option that allows you to bring your own lawsuit against Earl Enterprises related to the Data Incident. For detailed information on how to exclude yourself from the Settlement, see Questions 14 through 16 below.
<b>Object to the Settlement</b> <b>Deadline:</b> <b>January 5, 2024</b>	Write to the Court about why you do not like the Settlement. You may also write to the Court to provide reasons why you support the Settlement. For detailed information on how to object to or comment on the Settlement, see Questions 17 and 18 below.
<b>Go to the Final Approval Hearing</b> <b>February 12, 2024</b>	Ask to speak in Court about the fairness of the Settlement. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection or comment.
<b>Do Nothing</b>	Get no payment. Give up rights to submit a claim or bring a different lawsuit against Earl Enterprises related to the Data Incident.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

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**Questions? Go to [www.EarlSettlement.com](http://www.EarlSettlement.com) or call 1-844-976-1987 (Toll-Free).**

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## BASIC INFORMATION

### 1. Why was this Notice issued and why should I read it?

The Court authorized this notice because you may be included in the settlement class and have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the Settlement.

Judge A. James Craner of the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida is overseeing this case known as *Hymes, et al. v. Earl Enterprises Holdings, Inc.*, Case No. 2021-CA-007617-O. The people who sued are called the Plaintiffs. Earl Enterprises is called the Defendant.

### 2. What is this lawsuit about?

The lawsuit claims that Earl Enterprises was responsible for the Data Incident and asserts claims such as: breach of implied contract, negligence, negligence per se, unjust enrichment, breach of confidence, declaratory judgment, breach of confidence, and violations of the Florida Deceptive and Unfair Trade Practices Act, and California Unfair Competition Law.

Earl Enterprises denies these claims. No court has made any judgment or other determination of any wrongdoing or violation of the law.

### 3. Why is this lawsuit a class action?

In a class action, one or more people called “Class Representatives” or “Representative Plaintiffs” sue on behalf of all people who have similar claims. Together, all of these people are called a “Class” or “Class Members.” In this case, the Representative Plaintiffs are Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

### 4. Why is there a Settlement?

The Court did not issue a ruling in favor of the Representative Plaintiffs or Earl Enterprises. Rather, both sides, with the assistance of a mediator, agreed to a settlement. The Settlement is not an admission that Earl Enterprises did something wrong, but rather is a compromise to end the lawsuit. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation. The Representative Plaintiffs and their attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class.

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## WHO IS IN THE SETTLEMENT?

### 5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you reside in the United States and made a credit or debit card purchase at any affected Earl Enterprises restaurant during the period of the Data Incident. Affected restaurants include certain locations of Buca di Beppo, Planet Hollywood, Earl of Sandwich, Chicken Guy, Tequila Taqueria, and Mixology 101. For a list of the specific affected Earl Enterprises restaurants and the exposure window of the Data Incident for each affected location, go to [www.EarlSettlement.com](http://www.EarlSettlement.com).

Specifically excluded from the Settlement Class are:

(i) Earl Enterprises and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; and (iii) the Judge or Magistrate Judge to whom the Action is assigned and, any member of those Judges' staffs or immediate family members.

### 6. What if I am not sure whether I am included in the Settlement?

The Settlement website at [www.EarlSettlement.com](http://www.EarlSettlement.com) provides a list of affected Earl Enterprises restaurant locations affected by the Data Incident. If you are not sure whether you are included in the Settlement, you may call 1-844-976-1987 with questions. You may also write with questions to the Earl Enterprises Settlement Administrator, PO Box 2867, Baton Rouge, LA 70821.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### 7. What does the Settlement provide?

The Settlement will provide cash payments and/or promotional cards that may be used at either Buca di Beppo or Planet Hollywood restaurants to people who submit valid claims.

There are two types of monetary relief that are available: (1) Documented Expense Reimbursement (Question 8) and (2) Attested Expense Reimbursement (Question 9).

You may submit a claim for either type of relief. In order to receive cash payment or promotional cards, you must submit a Claim Form **on or before the Claims Deadline of January 5, 2024**.

### 8. What payments are available for Documented Expense Reimbursement?

Settlement Class Members who have proof of having used a credit or debit card at an affected restaurant within the exposure period are eligible to receive reimbursement of up to \$5,000 (in total) for documented out-of-pocket expenses you incurred as a result of the Data Incident prior to September 4, 2020, such as:

- costs and expenses spent addressing identity theft or fraud;
- losses caused by restricted access to funds (*i.e.*, costs of taking out a loan, ATM withdrawal fees, etc.);

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- preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review;
- late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, and/or card cancellation or replacement fees;
- unauthorized charges on credit or debit cards that you sought to have reimbursed by the card issuer but were not reimbursed;
- other documented losses that were not reimbursed; and
- up to four (4) hours of documented time spent remedying issues relating to the Data Incident (calculated at the rate of \$20.00 per hour).

Failure to provide the required documentation for the Documented Expense Reimbursement Claim will cause the claim to be treated as an Attested Expense Reimbursement Claim as detailed in Question 9 below.

Earl Enterprises is establishing a Settlement Fund of \$650,000. If the total amount of valid claims for Documented Expense Reimbursements are in excess of the amount of the Settlement Fund remaining after payment of settlement administration and notice costs, attorneys' fees, costs, and expenses, and service awards for the class representatives, the valid claims will be reduced pro rata for payment.

#### 9. What payments are available for Attested Expense Reimbursement?

Settlement Class Members who attest that they used a credit or debit card at an affected Earl Enterprises restaurant location during the Data Incident and that they spent material time taking action to remedy issues related to the Data Incident but do not have documentation to support their claim, are eligible to submit a Claim Form to receive two (2) restaurant promotional cards valued at \$10.00 each that may be used at either Buca di Beppo or Planet Hollywood restaurants.

### HOW DO YOU SUBMIT A CLAIM?

#### 10. How do I get a payment?

To receive a payment, you must complete and submit a Claim Form. Claim Forms may be submitted online, along with documentation (for Documented Expense Reimbursement claims) at [www.EarlSettlement.com](http://www.EarlSettlement.com). Claim Forms may also be downloaded and printed from [www.EarlSettlement.com](http://www.EarlSettlement.com) or requested by mail by calling 1-844-976-1987. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and mail it postmarked no later than **January 5, 2024** to:

Earl Enterprises Settlement Administrator  
PO Box 2867  
Baton Rouge, LA 70821

#### 11. How will claims be decided?

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The Settlement Administrator will initially decide whether the information provided on each Claim Form is complete and valid. The Settlement Administrator may require additional information. If you do not provide the required documentation for the Documented Expense Reimbursement Claim, your claim will be treated as an Attested Expense Reimbursement Claim. If you do not provide the required information for an Attested Expense Reimbursement Claim, the claim will be considered invalid and you will not be provided with promotional cards. Class Counsel and Earl Enterprises also will have an opportunity to challenge any claims determined to be valid by the Settlement Administrator.

Approved Claims are those submitted in a timely manner and found to be valid, and in an amount approved, by the Settlement Administrator.

## 12. When will I get my payment?

The Court will hold a hearing on **February 12, 2024** to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

## REMAINING IN THE SETTLEMENT

## 13. What am I giving up as part of the Settlement?

If the Settlement becomes final and you do not exclude yourself from the Settlement, you will remain a Settlement Class Member and you will give up your right to sue Earl Enterprises and all related people or entities described in Section 2.15 of the Settlement Agreement for the claims being resolved by this Settlement. The specific claims you are giving up against Earl Enterprises are described in Article X of the Settlement Agreement. You will be “releasing” Earl Enterprises and all related people or entities described in Section 2.15 of the Settlement Agreement for claims related to the Data Incident. The Settlement Agreement is available at [www.EarlSettlement.com](http://www.EarlSettlement.com).

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. Specifically, as defined in Section 2.16 of the Settlement Agreement, “Released Claims” mean “any and all claims, rights, rights of set-off and recoupment, demands, actions, obligations, and causes of action of any and every kind, nature, and character, known and unknown (and specifically including without limitation all Unknown Claims), including without limitation, negligence, negligence per se, breach of contract, breach of implied contract, breach of fiduciary duty, breach of confidence, invasion of privacy, misrepresentation (whether fraudulent, negligent, or innocent), unjust enrichment, bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute or common law duty, any federal, state, or local statutory or regulatory claims, including, but not limited to, pursuant to consumer protection laws, unfair and deceptive trade practice laws, and further including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees, costs, and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that any Settlement Class Member has, has asserted, could have asserted, or could assert against any of the Released Persons based on,

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relating to, concerning, or arising out of the Data Incident (including but not limited to the theft or compromise of Personal Information) or the allegations, facts, or circumstances described in the Litigation and/or Complaints,” with capitalized terms defined further in the Settlement Agreement.

If you have any questions you can talk to the law firms listed in Question 19 for free or you can, of course, talk to your own lawyer.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of this Settlement, but you want to keep the right to sue Earl Enterprises about the issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

### 14. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits from the Settlement, but you will not be bound by any judgment in this case.

### 15. If I do not exclude myself, can I sue Earl Enterprises for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Earl Enterprises (and the released persons and entities) for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this class action, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitations or repose.

### 16. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must complete and sign a request for exclusion electronically on the Settlement website, or by mailing your request to the Settlement Administrator at the address below. To exclude yourself by mail, send a letter that says you want to be excluded from the Settlement in *Hymes, et al. v. Earl Enterprises Holdings, Inc.*, Case No. 2021-CA-007617-O. Include your name, address, and signature. You must mail your exclusion request postmarked by **January 5, 2024**, to:

Earl Enterprises Settlement Administrator  
PO Box 2867  
Baton Rouge, LA 70821

## OBJECTING TO THE SETTLEMENT

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**Questions? Go to [www.EarlSettlement.com](http://www.EarlSettlement.com) or call 1-844-976-1987 (Toll-Free).**



## 17. How do I tell the Court if I do not like the Settlement?

You can tell the Court that you do not agree with all or any part of the Settlement, Class Counsel's request for attorney's fees, costs, and expenses, and/or the request for service awards for the Representative Plaintiffs. The Court will consider your views in its decision to approve the Settlement. If the Court denies approval, no settlement payments will be sent out, and the litigation will continue. To object, you must file a written objection in this case, *Hymes, et al. v. Earl Enterprises Holdings, Inc.*, Case No. 2021-CA-007617-O, with the Clerk of the Court.

Your objection must state: (1) your full name, address, telephone number, and e-mail address (if any); (2) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class; (3) a written statement of all grounds for the objection, accompanied by any legal support for the objection that you believe is applicable; (4) the identity of all counsel representing you, if any; and (5) a statement confirming whether you intend to personally appear and/or testify at the final fairness hearing; (6) your signature and, if applicable, the signature of your duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

To be considered, your objection must be **postmarked** to the Clerk of the Court for the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida no later than **January 5, 2024**.

Clerk of the Court  
Circuit Court of the Ninth Judicial Circuit  
In and for Orange County, Florida  
425 North Orange Avenue  
Orlando, Florida 32801

## 18. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a member of the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a member of the Settlement Class and the case no longer affects you.

## THE LAWYERS REPRESENTING YOU

### 19. Do I have a lawyer in this case?

Yes. The Court appointed John A. Yanchunis and Ryan J. McGee of Morgan & Morgan Complex Litigation Group, Matthew M. Guiney and Carl Malmstrom of Wolf Haldenstein Adler Freeman & Herz, LLP, Mark Reich and Courtney Maccarone of Levi & Korsinsky, LLP, and Gayle M.

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Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP as Class Counsel to represent the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **20. How will the lawyers be paid?**

Class Counsel will ask the Court for an award for attorneys' fees, costs and expenses of up to \$195,000, to compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

Class Counsel will also ask the Court for service awards of up to \$2,500 each for the Representative Plaintiffs Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis.

Any award for attorneys' fees, costs and expenses for Class Counsel, and service awards to the Representative Plaintiffs must be approved by the Court. The Court may award less than the amounts requested. Class Counsel's papers in support of final approval of the Settlement and their application for attorneys' fees, costs and expenses, and service awards will be filed no later than **November 10, 2023** and will be posted on the Settlement website.

### **THE COURT'S FAIRNESS HEARING**

#### **21. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval hearing at **9:30 a.m.** on **February 12, 2024**, at the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, 425 North Orange Avenue, Orlando, Florida 32801. The Court may hold this hearing via videoconference. If so, we will provide that information at the settlement website [www.EarlSettlement.com](http://www.EarlSettlement.com). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.EarlSettlement.com](http://www.EarlSettlement.com) or call 1-844-976-1987.

#### **22. Do I have to attend the hearing?**

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your own expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and submitted it according to the instructions provided in Question 17, the Court will consider it.

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### 23. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file an objection according to the instructions in Question 17, including all the information required. Your objection must be **postmarked** to the Clerk of the Court for the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, 425 North Orange Avenue, Orlando, Florida 32801 no later than **January 5, 2024**.

## IF YOU DO NOTHING

### 24. What happens if I do nothing?

If you do nothing, you will not get any compensation from this Settlement, and after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Earl Enterprises (and other related persons and entities, as specified in the Settlement Agreement) about the Data Incident, ever again.

## GETTING MORE INFORMATION

### 25. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. A copy of the Settlement Agreement is available at [www.EarlSettlement.com](http://www.EarlSettlement.com). You may also call the Settlement Administrator with questions or to request a Claim Form be mailed to you by calling 1-844-976-1987.

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