

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

**CASE NO.: 2021-CA-007617-O**

SAUL HYMES, ILANA HARWAYNE-  
GIDANSKY, EDGAR FIERRO, and JOAN  
LEWIS, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

EARL ENTERPRISES HOLDINGS, INC.

Defendant.

**FINAL APPROVAL ORDER AND JUDGMENT**

This matter came before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and entry of final judgment ("Motion").

On September 7, 2023, the Court entered an Order preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement and directing that notice be given to the Settlement Class (the "Preliminary Approval Order").

Beginning on October 6, 2023, pursuant to the notice requirements set forth in the Settlement Agreement and the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing.

On February 12, 2024, the Court held a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and

adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing this action with prejudice. The Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Representative Plaintiffs.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses, and the application for Service Awards to the Representative Plaintiffs,<sup>1</sup> and having reviewed the materials in support thereof, and good cause appearing:

**THIS COURT FINDS AND ORDERS AS FOLLOWS:**

1. **Definitions.** The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.
2. **Jurisdiction.** The Court concludes that it has personal jurisdiction over all members of the Settlement Class and has subject matter jurisdiction, including jurisdiction to finally approve the proposed settlement and finally certify the class for settlement purposes.
3. **Class Certification for Settlement Purposes Only.** For purposes of the Settlement and pursuant to this Final Approval Order and Florida Rules of Civil Procedure 1.220, the Court certifies a class in this matter defined as follows:

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<sup>1</sup> The matters of attorneys' fees and service awards will be addressed by separate order.

All residents of the United States whose Personal Information was exposed or potentially exposed as a result of the Data Breach Incident.

The Settlement Class specifically excludes: (i) Earl Enterprises and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge or Magistrate Judge to whom the action is assigned and, any member of those Judges' staffs or immediate family members; and (iv) and any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity or occurrence of the Data Breach Incident or who pleads *nolo contendere* to any such charge.

The Court finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Representative Plaintiffs and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Representative Plaintiffs have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

4. **Representative Plaintiffs and Settlement Class Counsel.** Plaintiffs Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis are hereby designated and appointed as the Representative Plaintiffs. The Court finds that the Representative Plaintiffs are similarly situated to absent Class Members and therefore typical of the Class and will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby designated as Settlement Class Counsel: 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 S. Reich and Courtney Maccarone of Levi & Korsinsky, LLP, and Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP.

5. **Settlement Approval.** The Court concludes that the proposed Settlement is fair, reasonable, and adequate and accordingly it is finally approved. Specifically, the Court in reaching this conclusion, has considered the factors set forth in Fla. R. Civ. P. 1.220, in determining that the Settlement Agreement is “fair, reasonable, and adequate,” by considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified; and
- (D) the proposal treats class members equitably relative to each other.

6. **Effectiveness of the Agreement.** The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

7. **Objections.** The Court received no objections in this case, and accepts the sworn statement of the Settlement Administrator and representations of counsel as officers of the Court

that no objections were received in this case. All persons who have not made objections to the Settlement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. **Exclusions.** The Settlement Class, which is bound by this Final Approval Order and Judgment, includes all members of the Settlement Class who did not submit timely and valid requests to be excluded from the Settlement Class. The Court received no requests for exclusion, and accepts the sworn statement of the Settlement Administrator and representations of counsel as officers of the Court that no requests for exclusion were received. All Settlement Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, this Final Approval Order and the Judgment to be entered hereon.

9. **Release of Claims by Settlement Class Members.** Upon the Effective Date, members of the Settlement Class who did not validly and timely exclude themselves from the Settlement Class shall, by operation of this Final Approval Order, have, completely, fully, finally, irrevocably, and forever released, relinquished, and discharged 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 Earl Enterprises Holdings, Inc., Planet Hollywood International Inc., Earl of Sandwich (USA), LLC, Buca, LLC, Chicken Guy, LLC, OCS Restaurant Holdings, LLC, together with their current and former parents, subsidiaries, affiliated companies, and divisions, whether indirect or direct; the predecessors and successors of any of the above; and the past, present, and future directors, officers, employees, principals, agents, attorneys, shareholders, advisors, insurers, reinsurers, assigns, representatives, and administrators of any of the above, based on, relating to, concerning, or arising out of the Data Breach 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. All such Settlement Class Members shall be bound by the terms of the Settlement Agreement upon entry of this Order.

10. **Plaintiffs' Release.** Upon the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued, matured or not matured, all from the beginning of the world until today.

11. **Unknown Claims.** With respect to all released claims in ¶¶ 9 and 10, Plaintiffs and each of the other Settlement Class Members have released, waived, and relinquished to the

fullest extent permitted by law (a) the provisions, rights and benefits conferred by Section 1542 of the California Civil Code, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members and Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of this order shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of this order to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

12. **Claim and Issue Preclusion.** The terms of the Settlement Agreement, this Final Approval Order, and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could

have been asserted in the Litigation or are in any way related to the Data Breach Incident at issue in the Litigation.

13. **Appeal.** Notwithstanding the certification of the foregoing Settlement Class and appointment of the Representative Plaintiffs for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Representative Plaintiffs shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

14. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Article VII of the Settlement Agreement (including the exhibits thereto): (a) was the best practicable notice to the Settlement Class; (b) was reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) was reasonable and constituted due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) met all applicable requirements of law, including the Florida Rules of Civil Procedure, and met the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice was written in plain language, used simple terminology, and was designed to be readily understandable by Class Members.

15. **Timing of Relief.** Within the time period set forth in Article III of the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the



various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

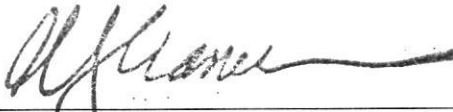
16. **Finality of Litigation.** Plaintiffs and Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement and this Order, or seeking any award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Litigation and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiffs and each Settlement Class Member are hereby enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

17. **Use of Order.** The Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects, and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any fault, wrongdoing, or liability on the part of Defendant or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation. The Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects, and all acts, statements, documents or proceedings relating to the Settlement shall not be offered or received in evidence in any action of proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however,* that the Settlement, this Order, and the

Judgment to be entered hereon may be filed in any action by Defendant or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

18. **Dismissal of Litigation.** The above-captioned Litigation is hereby dismissed in its entirety with prejudice. This Final Approval Order shall constitute a final judgment. Without affecting the finality of this Final Approval Order in any way, the Court reserves jurisdiction over all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

**IT IS SO ORDERED** this 20 day of February, 2024.

  
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Honorable A. James Craner  
Circuit Court Judge