

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS LUCA, JR., individually and on)
behalf of all others similarly situated,)

Plaintiff,)

v.)

WYNDHAM HOTEL GROUP, LLC and)
WYNDHAM HOTELS & RESORTS, LLC,)

Defendants.)

Case No. 16-cv-746-MRH

FINAL APPROVAL ORDER AND JUDGMENT

On October 18, 2019, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) (ECF No. 204) of the Class Action Settlement (“Settlement”) between Plaintiff Thomas Luca, Jr., on his own behalf and on behalf of the Settlement Class, and Defendants Wyndham Hotels & Resorts, LLC and Wyndham Hotel Group, LLC (“Wyndham Hotels” or “Defendants”), as memorialized in the Class Action Settlement Agreement (ECF No. 202-1) (the “Settlement Agreement”).¹

On or before November 18, 2019, pursuant to the notice requirements set forth in the Settlement and in the Preliminary Approval Order, the Settlement Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, object, and/or appear at the final approval hearing;

On February 7, 2020, Plaintiff filed his Motion for Final Approval of the Class Action Settlement (“Final Approval Motion”) and accompanying Memorandum of Law and supporting

¹ The capitalized terms used in this Final Approval Order and Judgment shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.

exhibits, and on January 7, 2020, Class Counsel filed their Application for Attorneys' Fees, Expenses and Service Award and accompanying Memorandum of Law and supporting exhibits ("Fee Application");

On February 21, 2020, the Court held a final approval hearing to determine, inter alia: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be entered dismissing all claims in the Complaint with prejudice. Prior to the final approval hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice Program was completed in accordance with the Parties' instructions and the Preliminary Approval Order. Therefore, 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, the award of attorneys' fees, costs, and expenses, and the payment of Service Awards.

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 Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees, costs, and expenses, and the application for Service Awards, and having reviewed the materials in support thereof, and good cause appearing in the record and Plaintiff's Final Approval Motion is **GRANTED**, and Class Counsel's Fee Application is **GRANTED**, and:

IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Settlement Class. The Court also has personal jurisdiction over the Parties and the Settlement Class Members.

2. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Settlement Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the Settlement.

4. This Court grants final approval of the Settlement, including but not limited to the releases in the Agreement and the plans for distribution of the settlement relief. The Court finds that the Settlement is in all respects fair, reasonable, and in the best interest of the Settlement Class. Therefore, all Settlement Class Members who have not opted out are bound by the Settlement Agreement and this Final Approval Order and Judgment.

5. The Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

6. The Parties shall effectuate the Settlement Agreement in accordance with its terms.

OBJECTIONS AND OPT-OUTS

7. No objections were filed by Settlement Class Members.

8. All persons and entities who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including but not limited to by appeal, collateral attack, or otherwise.

9. A list of those putative Settlement Class Members who have timely and validly elected to opt out of the Settlement and the Settlement Class in accordance with the requirements

in the Settlement (the “Opt-Out Members”) has been submitted to the Court in the Declaration of Lana Lucchesi of KCC, filed in advance of the final approval hearing. That list is attached as Exhibit A to this Order. The persons and/or entities listed in Exhibit A are not bound by the Settlement, this Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement. Opt-Out Members listed in Exhibit A shall be deemed not to be Settlement Class Members.

CLASS CERTIFICATION

10. For purposes of the Settlement and this Final Approval Order and Judgment, the Court hereby finally certifies for settlement purposes only the following Settlement Class:

All individuals and entities, including their predecessors- and successors-in-interest, who reside in the United States and were charged a Resort Fee by a Wyndham-affiliated Hotel after reserving a room using the Wyndham Hotel Websites from June 6, 2010 until the date the Court enters the Preliminary Approval Order. For avoidance of doubt, the Settlement Class does not include those individuals or entities who paid a Resort Fee only as part of a reservation made by telephone, in person, through a third-party website, group bookings, or through any channel other than the Wyndham Hotel Websites.²

11. The Court determines that for settlement purposes the Settlement Class meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representative are typical of absent class members; that the class representative will fairly and adequately protect the interests of the class as he has no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy

² This class definition is to be interpreted with reference to the same defined terms and exclusions as in the Settlement Agreement and the Preliminary Approval Order.

12. The Court grants final approval to the appointment of Plaintiff Thomas Luca, Jr. as the Settlement Class Representative. The Court concludes that the Settlement Class Representative has fairly and adequately represented the Settlement Class and will continue to do so.

13. The Court grants final approval to the appointment, pursuant to Rule 23(g), of Gary F. Lynch and Jamisen A. Etzel of Carlson Lynch, LLP, and Joseph P. Gugliermo and Carey Alexander of Scott+Scott Attorneys at Law, LLP and as Class Counsel. The Court concludes that Class Counsel have adequately represented the Settlement Class and will continue to do so.

NOTICE TO THE SETTLEMENT CLASS

14. The Court finds that the Notice Program, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied Rule 23(c)(2), was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Settlement Class of the pendency of the Litigation, certification of the Settlement Class for settlement purposes only, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the Final Approval Hearing, and satisfied the other requirements of the Federal Rules of Civil Procedure, the United States Constitution, and all other applicable laws.

15. The Court finds that Defendants have fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

AWARD OF ATTORNEYS' FEES AND SERVICE AWARDS

16. The Court has considered Class Counsel's Motion for attorneys' fees, costs, and expenses, and for Service Awards.

17. Pursuant to Rule 23(h) and relevant Third Circuit authority, the Court awards Class Counsel \$1,600,000, as an award of reasonable attorneys' fees and \$200,000 as an award of costs

and expenses to be paid in accordance with the Settlement, and the Court finds this amount of fees, costs, and expenses to be fair and reasonable. This award of attorneys' fees, costs, and expenses, shall be paid by Defendants in accordance with the terms of the Agreement. These awards are the sole amounts Class Counsel shall recover under the Agreement, and Class Counsel shall not be entitled to interest on these amounts, except in the event Defendants breach their obligations to pay under Agreement. This award of attorneys' fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. Class Counsel is authorized to determine the allocation of fees and expenses amongst themselves; however, this Court retains ultimate authority and jurisdiction to resolve any allocation disputes between Class Counsel or any other attorneys claiming entitlement to a fee or expense reimbursement as a result of work performed in this action.

18. The Court grants Class Counsel's request for a Service Award and awards \$5,000 to Plaintiff Thomas Luca, Jr. The Court finds that this payment is justified by his service to the Settlement Class. The Service Awards shall be paid by Defendants in accordance with the terms of the Agreement.

OTHER PROVISIONS

19. The Parties to the Settlement shall carry out their respective obligations thereunder.

20. Within the time period set forth in the Settlement, the Cash Awards and Points Awards provided for in the Settlement shall be made available to the Settlement Class Members, pursuant to the terms and conditions of the Settlement.

21. As of the Effective Date, Plaintiff, Class Counsel, and the Settlement Class Members, and each of them, for themselves and their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, predecessors, successors and assigns, are deemed to have fully and forever released and discharged

the Released Parties from any and all of the Settled Claims,³ except for the rights and obligations created by the Settlement Agreement.

22. As of the Effective Date, Wyndham Hotels & Resorts, Inc., Wyndham Hotel Group, LLC, Wyndham Hotels and Resorts, LLC, and Wyndham Hotel Management, Inc., as well as their current and former subsidiaries and affiliates, predecessors in interest, and successors in interest hereby are deemed to have fully and forever released and discharged Plaintiff and Class Counsel, and shall not commence, participate in, prosecute, or cause to be commenced or prosecuted against Plaintiff or Class Counsel, any action or other proceeding based upon any claim, whether known or unknown, arising out of the institution, prosecution, assertion, settlement, or resolution of this Action or the Settled Claims.

23. Nothing herein shall prevent any Party from enforcing the provisions of the Settlement Agreement.

24. On the Effective Date, Plaintiff and the Settlement Class Members shall be deemed to have, with respect to the subject matter of the Settled Claims, expressly waived the benefits of any statutory provisions or common law rules that provide, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with any other party. In particular, but without limitation, the Parties have waived the provisions of California Civil Code § 1542 (or any like or similar statute or common law doctrine),

³ Under the terms of the Agreement, “Settled Claims” is defined as: “(i) any and all claims and causes of action that were asserted in or could have been asserted in the *Luca* Action and (ii) any and all claims and causes of action arising out of or in any way relating to the calculation, collection, disclosure, or non-disclosure of Resort Fees by Wyndham Hotels or at a Wyndham-affiliated Hotel, including, but not limited to claims for breach of contract, fraud, conspiracy, breach of implied duties and covenants, unjust enrichment, accounting, declaratory or injunctive relief, and/or unfair or deceptive trade practices under federal or state law.”

and have represented in the Agreement that they understand the significance of this waiver.

California Civil Code § 1542 provides:

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

25. The Settlement Class Representative and Settlement Class Members are enjoined from prosecuting any Settled Claims in any proceeding against any of the Released Parties or prosecuting any claim based on any actions taken by any of the Released Parties that are authorized or required by this Settlement or by the Final Approval Order and Judgment.

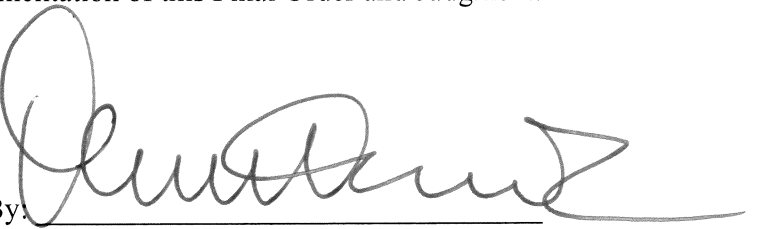
26. The Court hereby dismisses the Litigation and Complaint and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in the Agreement and this Final Approval Order and Judgment.

27. Consistent with the Settlement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their respective positions in the Litigation as if the Settlement Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue).

28. Pursuant to the All Writs Act, 28 U.S.C. § 1651, this Court shall retain the authority to issue any order necessary to protect its jurisdiction from any action, whether in state or federal court.

29. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement for all purposes, including enforcement of its terms at the request of any party and resolution of any disputes that may arise relating in any way to, arising from, the implementation of the Settlement or the implementation of this Final Order and Judgment.

ENTERED:

By: 

Mark R. Hornak
Chief United States District Judge

Dated: February 21, 2020
cc: All Counsel of Record via ECF

Exhibit A

List of Individuals Excluded from the Settlement Class

<u>Claim ID</u>	<u>First Name</u>	<u>Last Name</u>	<u>State</u>
10039166701	Carolyn	Champion	MA
10204076001	Victor	Rouse	TN
10261106301	Greg	Youell	NE
10205559201	Steven	Russi	FL
10189282201	Karam	Pratt	TX
900007001	Estella	Gonzales	TX