

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

THOMAS LUCA, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	2:16-cv-00746
	)	
WYNDHAM WORLDWIDE	)	
CORPORATION ET AL,	)	
	)	
Defendants.	)	

**ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiff Thomas Luca, Jr. has filed a Motion for Preliminary Approval of Class Action Settlement (“Motion”), requesting preliminary approval of a proposed Class Action Settlement Agreement (“the Agreement”) between Plaintiff Luca and Defendants Wyndham Hotels & Resorts, LLC and Wyndham Hotel Group, LLC (“Wyndham Hotels” or “Defendants”). Having reviewed the Motion and supporting materials, the Court determines and orders as follows:

A. Counsel have advised the Court that the Parties have agreed, subject to final approval by this Court following notice to the proposed Settlement Class and a hearing, to settle this Action on the terms and conditions set forth in the proposed Agreement (as set out at ECF No. 202).

B. The Court has reviewed the Agreement, as well as the files, records, and proceedings to date in this matter. The terms of the Agreement are hereby incorporated as though fully set forth in this Order. Capitalized terms shall have the meanings attributed to them in the Agreement.

C. Based upon preliminary examination, it appears to the Court that the Agreement is sufficiently fair, reasonable, and adequate to warrant notice to the proposed Settlement Class;

that the Settlement Class is likely to be certified for settlement purposes; and that the Court should hold a hearing after notice to the Settlement Class to determine whether to certify the Settlement Class and enter a Settlement Order and Final Judgment in this action, based upon that Agreement.

Based upon the foregoing, the Court finds and concludes as follows:

1. ***Preliminary Approval of Proposed Settlement.*** The Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate. The Court finds that (a) the Agreement resulted from extensive arm's-length negotiations, with initial participation of an experienced mediator, and (b) the Agreement is sufficient to warrant notice thereof to members of the proposed Settlement Class and the Fairness Hearing described below.

2. ***The Court is Likely to Grant Class Certification for Settlement Purposes Only.***

(a) Pursuant to Fed. R. Civ. P. 23(b)(3) and (e)(1)(B), the Court finds that it is likely to certify, 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<sup>1</sup> 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.

The Settlement Class excludes (a) Wyndham Hotels; (b) any person or entity who has previously released Wyndham Hotels from liability concerning or encompassing any or all Settled Claims (as defined in the Agreement); (c) any person or entity who received a waiver, refund, or credit

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<sup>1</sup> The Parties' Agreement defines "Resort Fee" as "any resort fee, service charge, hotel service fee, resort service fee, or facility fee, assessed to consumers in addition to the Room Rate at a Wyndham-affiliated Hotel. For avoidance of doubt, 'Resort Fee' does not include amounts collected and passed on to any governmental entity, such as taxes or excise payments, or optional fees for additional benefits or services, including but not limited to parking fees."

of all Resort Fees charged in connection with all reservations made using the Wyndham Hotel Websites; and (d) any person who serves as a judge in this civil action and his/her spouse.

The Settlement Class also will not include any persons who validly request exclusion from the Settlement Class following the procedure described in the Agreement and in this Order.

(b) The Court makes the following preliminary findings:

(1) The proposed Settlement Class likely satisfies Fed. R. Civ. P. 23(a)(1) because the Settlement Class appears to be so numerous that joinder of all members is impracticable;

(2) The proposed Settlement Class likely satisfies Fed. R. Civ. P. 23(a)(2) because there appear to be questions of law or fact common to the Settlement Class;

(3) The proposed Settlement Class likely satisfies Fed. R. Civ. P. 23(a)(3) because the claims of the Representative Plaintiff named in the caption appears to be typical of the claims being resolved through the proposed settlement;

(4) The proposed Settlement Class likely satisfies Fed. R. Civ. P. 23(a)(4) because the Representative Plaintiff appears to be capable of fairly and adequately protecting the interests of the above-described Settlement Class in connection with the proposed settlement and because counsel representing the Settlement Class are qualified, competent, and capable of prosecuting this action on behalf of the Settlement Class.

(5) The proposed Settlement Class likely satisfies the requirements of Fed. R. Civ. P. 23(b)(3) because, for purposes of settlement approval and administration, common questions of law and fact appear to predominate over questions affecting only individual Settlement Class Members and because settlement with the above-described Settlement Class appears to be superior to other available methods for the fair and efficient

resolution of the claims of the Settlement Class. The Settlement Class appears to be sufficiently cohesive to warrant settlement by representation.

(c) At or after the Fairness Hearing, the Court will make a final determination under Rule 23(e)(2) as to whether to exercise its discretion to certify a settlement class, and whether to formally appoint the proposed Class Representative and proposed Class Counsel.

3. **Representative Plaintiffs.** For settlement purposes only, the Court is likely to appoint Plaintiff Thomas Luca, Jr. as Representative Plaintiff pursuant to Rule 23 of the Federal Rules of Civil Procedure, and will likely find that, for settlement purposes only, the Representative Plaintiff has and will fairly and adequately protect the interests of the Settlement Class.

4. **Class Counsel.** For settlement purposes only, the Court is likely to appoint Carlson Lynch, LLP, and Scott+Scott Attorneys at Law LLP as counsel for the Settlement Class (“Class Counsel”). For purposes of these settlement approval proceedings, the Court will likely find that Class Counsel are competent and capable of exercising their responsibilities as Class Counsel.

5. **Settlement Administrator.** The Court appoints KCC Class Action Services, LLC as the Settlement Administrator, which shall fulfill the Settlement Administration functions, duties, and responsibilities of the Settlement Administrator as set forth in the Agreement and this Order.

6. **Fairness Hearing.** A final approval hearing (the “Fairness Hearing”) shall be held before this Court on February 21, 2020 at 1:30 p.m., to determine whether the Agreement is fair, reasonable, and adequate and should be given final approval, and whether the Settlement Class should be certified. Papers in support of final approval of the Agreement and proposed Class Counsel’s application for an award of attorneys’ fees and expenses (the “Fee

Application”), and for Service Payments to the proposed Representative Plaintiffs (the “Service Payment Application”) shall be filed with the Court according to the schedule set forth in Paragraphs 14 and 15, below. The Court may postpone, adjourn, or continue the Fairness Hearing without further notice to the Settlement Class. After the Fairness Hearing, the Court may enter a Class Certification Order, Settlement Order and Final Judgment in accordance with the Agreement (the “Final Judgment”), which will adjudicate the rights of the Settlement Class Members with respect to the claims being settled.

7. ***Class Notice.*** The Court approves the form and content of the notices substantially in the forms attached as Exhibit 2 to the Agreement. Defendants shall comply with the notice requirements of Paragraph 4 of the Agreement. In compliance with that Section, beginning no later than thirty (30) days after entry of this Order, Defendants shall cause notice to be delivered in the manner set forth in the Agreement to all proposed Settlement Class Members who can be identified with reasonable effort. Class Notices sent by U.S. Mail and email shall be substantially in the “short forms” attached as Exhibits 2.2 and 2.3 to the Agreement, respectively, and a notice substantially in the “long form” attached to the Agreement as Exhibit 2.1 shall be posted at a website, the Internet address for which shall be disclosed in the notices transmitted by U.S. Mail and email. The “publication notice” substantially in the form attached as Exhibit 2.4 to the Agreement shall be published in accordance with the Notice Program described in Exhibit 1 to the Agreement.

8. ***Filing of CAFA Notice.*** Before the Fairness Hearing, Defendants shall cause to be filed with the Court proof of compliance with the notice provisions of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

9. ***Findings Concerning Class Notice.*** The Court finds that the Class Notice and the manner of its dissemination described in Paragraph 7 above and Paragraph 4 of the

Agreement constitutes the best practicable notice under the circumstances and is reasonably calculated, under all the circumstances, to apprise proposed Settlement Class Members of the pendency of this action, the terms of the Agreement, and their right to object to or exclude themselves from the proposed Settlement Class. The Court finds that the notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive notice, and that it meets the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and any other applicable laws.

10. ***Exclusion from Settlement Class.*** Each proposed Settlement Class Member who wishes to exclude himself or herself from the Settlement Class and follows the procedures set forth in this Paragraph shall be excluded. Any potential member of the Settlement Class may, sign and mail a notice of intention to opt out of the Settlement to the Settlement Administrator (in no particular format, but which contains the potential Settlement Class Member's name, address, and telephone number and the words "opt out," "exclusion," or words to that effect clearly indicating an intent not to participate in the Settlement), at the address set forth in the Class Notice. All such written requests must be postmarked by seventy-five (75) days after the entry of this Order, or forty-five (45) days after the date of mailing and publication of the Notice, whichever is later. All persons who properly request exclusion from the Settlement Class shall not be Settlement Class Members and shall have no rights with respect to, nor be bound by, the Agreement, should it be finally approved. The names of all such excluded individuals shall be attached as an exhibit to any Final Judgment.

11. ***Right to Terminate Agreement.*** In the event more than 1,000 Settlement Class Members to whom Defendants transmit notice timely exclude themselves from the Settlement Class, or the Court declines to finally approve the Agreement, Defendants shall have the right to terminate the Agreement by written notice of termination to Class Counsel in accordance with

the procedures set forth in the Agreement. If Defendants exercise the right to terminate the Agreement, then the Parties will be restored to their respective positions as of the date of their Agreement. In that event, the terms of the Agreement and the settlement underlying it shall have no further force and effect, shall be void *ab initio*, and shall not be used in this action or in any other proceeding for any purpose.

12. ***Claims Procedures.*** The Court approves the claims procedures set forth in the Agreement. The Court approves the form and content of the Claim Form substantially in the form attached as Exhibit 3 to the Agreement. A properly executed Claim Form must be submitted as required in the Class Notice over the Internet or postmarked no later than one hundred and fifty (150) days after the entry of this Order, or hundred and twenty (120) days from the date of mailing and publication of the Notice, whichever is later. Such deadline may be further extended by Court Order. Each Claim Form shall be deemed to have been submitted when submitted over the Internet or postmarked (if properly addressed and mailed by first-class mail, postage prepaid), provided such Claim Form is actually received no later than one hundred and sixty-five (165) days after the entry of this Order, or thirty-five (135) from the date of mailing and publication of the Notice, whichever is later. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated on the Claim Form.

13. ***Costs of Class Notice and Claims Processing.*** Defendants shall bear all costs of notice to the Settlement Class of the pendency and settlement of the Action and of processing claims.

14. ***Objections and Appearances.***

(a) ***Written Objections.*** Any proposed Settlement Class Member who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a likely

Settlement Class Member at the time of the Fairness Hearing, may object to the fairness, reasonableness, or adequacy of the Agreement, the Fee Application and Service Payment Application. Any Settlement Class Member who wishes to object to the Settlement, must file his or her objection with the Court (together with any briefs, papers, statements, or other materials that the Settlement Class Member wishes the Court to consider) and serve the objection on proposed Class Counsel and Defendants' Counsel at the addresses specified in the Class Notice, postmarked no later than thirty (30) days before the Fairness Hearing. The objection must be personally signed by the objector, and must include: (1) a caption or title identifying that it is an objection in this case; 2) the objector's contact information, including name, address, telephone number, and email address, as well as the contact information of any attorneys who participated, in any way, in the preparation of the objection ("Objecting Attorneys"); 3) information that establishes the objector's membership in the Settlement Class, such as the ClaimID included on the Notice received by the objector, or other evidence indicating that the objector paid a Resort Fee at a particular Wyndham-affiliated Hotel on a date within the Class Period; 4) a clear and concise statement of the objection, including the legal or factual grounds for it, and a statement indicating whether the objection applies only to the objector, to a subset of the Settlement Class, or to the entire Settlement Class; 5) a statement identifying any other settlements within the previous five years to which the objector or his or her Objecting Attorneys also objected, including case captions and copies of any orders by trial or appellate courts related to or ruling upon the objector's objections in those previous cases; 6) identification of any and all agreements related to the objection between the objector and an Objecting Attorney, including any agreements regarding compensation for the Objecting Attorney; and 7) a statement indicating whether the objector intends to appear at the Fairness Hearing either personally or

through an attorney, and if so, the identities of any persons who the objector intends to call to testify regarding the objection.

If a Settlement Class Member or any of the Objecting Attorneys has objected or threatened object to any class action settlement where the objector or the Objecting Attorneys asked for or received any payment in exchange for foregoing or dismissing the objection, or any related appeal, without any modification to the settlement, then the objection must include a statement identifying each such case by full case caption. Any objection not timely made in this manner shall be waived and forever barred.

(b) ***Appearance at Fairness Hearing.*** Any objecting Settlement Class Member who intends to object and appear at the Fairness Hearing must file a Notice of Intention to Appear with the Court no later than fifteen (15) calendar days before the Fairness Hearing. Any Settlement Class Member who does not timely deliver a written objection and notice of intention to appear by the Opt-Out and Objection Deadline, in accordance with the requirements of this Order, shall not be permitted to object or appear at the Fairness Hearing, except for good cause shown, and shall be bound by all proceedings, orders and judgments of the Court.

(c) ***Fee Application and Service Payment Application.*** Proposed Class Counsel shall file their Fee Application and Service Payment Application, together with all supporting documentation, at least forty-five (45) days prior to the Fairness Hearing, such that any Settlement Class Member will have sufficient information to decide whether to object and, if applicable, to make an informed objection.

(d) ***Motion for Final Approval and Responses to Objections.*** Proposed Representative Plaintiff shall file with the Court his motion for final approval of the Settlement by February 7, 2020, 14 days before the Fairness Hearing. Proposed Representative Plaintiff shall file with the Court any responses to objections to the Agreement or the Fee Application

and/or Service Payment Application, together with all supporting documentation, no later than five (5) days before the Fairness Hearing.

15. ***Dates of Performance.*** In summary, the dates of performance are as follows:

- (a) Defendants shall send the Class Notice to potential Settlement Class Members on or before November 18, 2019;
- (b) Proposed Class Counsel's Fee Application and Service Payment Application, and all supporting materials, shall be filed no later than January 7, 2020;
- (c) Settlement Class Members who desire to be excluded shall mail requests for exclusion postmarked by January 6, 2020;
- (d) All objections to the Agreement, the Fee Application and Service Payment Application shall be mailed and postmarked by January 22, 2020;
- (e) Representative Plaintiff's final approval motion shall be filed by February 7, 2020;
- (f) Responses to objections shall be filed no later than February 16, 2020
- (g) The Fairness Hearing shall be held on February 21, 2020 at 1:30 p.m.; and
- (h) Settlement Class Members who desire to submit Claim Forms shall do so by March 15, 2020.

16. ***Effect of Failure to Approve the Agreement.*** In the event the Court does not finally approve the Agreement or certify the Settlement Class, or for any reason the Parties fail to obtain a Final Judgment as contemplated in the Agreement, or the Agreement is terminated pursuant to its terms for any reason, then the following shall apply:

- (a) All orders and findings entered in connection with the Agreement shall become null and void and have no further force and effect, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other proceeding;

(b) Findings related to the likely certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the case shall return to its status as it existed before entry of this Order;

(c) Nothing contained in this Order is, or may be construed as, any admission or concession by or against Defendants or Representative Plaintiff on any point of fact or law, including, but not limited to, factual or legal matters relating to any effort to certify this case as a class action for purposes of considering settlement approval; and

(d) Nothing in this Order or pertaining to the Agreement shall be used as evidence in any further proceeding in this case, including, but not limited to, motions or proceedings pertaining to treatment of this case as a class action.

17. ***Discretion of Counsel.*** Counsel are hereby authorized to take all reasonable steps in connection with approval and administration of the Settlement not materially inconsistent with this Order or the Agreement, including, without further approval of the Court, making minor changes to the content of the Class Notice that they jointly deem reasonable or necessary.

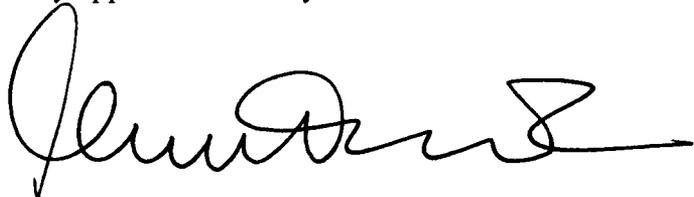
18. ***Stay of Proceedings Pending Approval of the Settlement.*** All proceedings before the Court are stayed pending final approval of the settlement, except as may be necessary to implement the settlement or comply with the terms of the Agreement.

19. ***Injunction Against Asserting Settled Claims Pending Settlement Approval.*** Pending final determination of whether the settlement should be approved, Representative Plaintiff, all Settlement Class Members, and any person or entity allegedly acting on behalf of Settlement Class Members, either directly, representatively or in any other capacity, are preliminarily enjoined from commencing or prosecuting against the Released Parties any action or proceeding in any court or tribunal asserting any of the Settled Claims, provided, however, that this injunction shall not apply to individual claims of any Settlement Class Members who

timely exclude themselves in a manner that complies with this Order. This injunction is necessary to protect and effectuate the settlement, this Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. § 1651(a).

20. ***Reservation of Rights and Retention of Jurisdiction.*** The Court reserves the right to adjourn or continue the date of the Fairness Hearing without further notice to Settlement Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve or modify the settlement without further notice to Settlement Class Members.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Mark R. Hornak', written over a horizontal line.

Mark R. Hornak  
Chief United States District Judge

Dated: October 18, 2019