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JS-6

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ANDERS PAGH, individually, and on  
behalf of all others similarly situated,

Plaintiff,

v.

WYNDHAM VACATION  
OWNERSHIP, INC., and  
DOES 1 through 100, inclusive,

Defendants.

JERRY LEE FORNEY, individually,  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

WYNDHAM VACATION  
OWNERSHIP, INC.;  
WYNDHAM DESTINATIONS, INC.;  
and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 8:19-cv-00812-JWH-ADSx

**FINAL JUDGMENT APPROVING  
CLASS ACTION SETTLEMENT  
[ECF No. 49]**

1 Before the Court is the motion by Plaintiffs Anders Pagh and Jerry Lee  
2 Forney for final approval of a class action settlement.<sup>1</sup> Defendants Wyndham  
3 Vacation Ownership, Inc. and Wyndham Destinations, Inc. do not oppose the  
4 Motion.<sup>2</sup> The Court conducted a hearing on the Motion on March 19, 2020.  
5 Having considered the papers filed in support of the Motion, and in the absence  
6 of any opposition, the Court **MAKES THE FOLLOWING FINDINGS AND**  
7 **HEREBY ORDERS:**

8 1. This Order incorporates by reference the definitions in the  
9 Settlement Agreement<sup>3</sup> and all terms defined therein shall have the same  
10 meaning in this Order as set forth in the Settlement Agreement.

11 2. This Court has jurisdiction over the subject matter of this litigation  
12 and over all Parties to this litigation, including the Plaintiffs and Class  
13 Members.<sup>4</sup>

14 3. Defendants promulgated the notice required by the Class Action  
15 Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), on  
16 November 9, 2020.<sup>5</sup> CAFA provides that “[a]n order giving final approval of a  
17 proposed settlement may not be issued earlier than 90 days after” the requisite  
18 notice is provided. 28 U.S.C. § 1715(d). Here, the requisite time has passed  
19 since service of the notice for this Court to issue this Order.  
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22 <sup>1</sup> Pls.’ Mot. for Order Granting Final Approval of Class Action Settlement  
23 (the “Motion”) [ECF No. 49].

24 <sup>2</sup> Defs.’ Notice of Non-Opp’n to the Motion [ECF No. 50].

25 <sup>3</sup> See Joint Stipulation of Class Action Settlement and Release (the  
26 “Settlement Agreement” or “Settlement”) [ECF No. 33-2, Ex. 1]. Unless  
27 otherwise cited by paragraph, citations to the Settlement Agreement herein refer  
28 to the ECF page number.

<sup>4</sup> See *id.* at ¶¶ 5 & 8 (defining “Settlement Class” and “Class Member”).

<sup>5</sup> Suppl. Decl. of Tarus Dancy on Behalf of CPT Group, Inc. with Respect  
to Notification, Proof of Processing and Req. for Exclusion (the “Suppl. Dancy  
Decl.”) [ECF No. 49-5] ¶ 4.

1           4.       On September 23, 2020, pursuant to Rule 23(e) of the Federal  
2 Rules of Civil Procedure, the Court—the Honorable James v. Selna presiding—  
3 granted preliminary approval of the Settlement Agreement.<sup>6</sup> On October 12,  
4 2020, this Court adopted the First Preliminary Approval Order and granted  
5 preliminary approval of the Settlement.<sup>7</sup> Pursuant to the Preliminary Approval  
6 Order, the Court-appointed Settlement Administrator, CPT Group, Inc.,<sup>8</sup>  
7 mailed a Class Notice<sup>9</sup> and Class Information Sheet<sup>10</sup> (jointly, the “Class  
8 Notice”) to all known Class Members by First Class U.S. Mail.<sup>11</sup> The Class  
9 Notice fairly and adequately informed Class Members of the terms of the  
10 proposed Settlement Agreement and the benefits available to Class Members  
11 thereunder.<sup>12</sup> The Class Notice further informed Class Members of the  
12 pendency of the Action, of the proposed Settlement Agreement, of their right to  
13 receive their share of the Settlement, of the scope and effect of the Settlement’s  
14 Released Claims, of the preliminary Court approval of the proposed Settlement  
15 Agreement, of the exclusion and objection timing and procedures, of the date of  
16 the Final Approval Hearing, and of the right to appear in connection with the  
17 Final Approval Hearing.<sup>13</sup> Class Members had adequate time to use each of  
18 these procedures. The Court finds that this notice procedure afforded adequate  
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20 <sup>6</sup> See Order Regarding Preliminary Approval of Class Action Settlement  
(the “First Preliminary Approval Order”) [ECF No. 39].

21 <sup>7</sup> See Order Re Second Revised Order Granting Preliminary Approval of  
22 Class Action Settlement and Setting Final Hearing for Class Settlement  
Approval (the “Preliminary Approval Order”) [ECF No. 43].

23 <sup>8</sup> See *id.* at ¶ 8.

24 <sup>9</sup> See Settlement Agreement, Ex. A (the “Notice”). Unless otherwise  
indicated, citations to the Notice herein refer to the ECF page number.

25 <sup>10</sup> See Settlement Agreement, Ex. B (the “Class Information”). Unless  
26 otherwise indicated, citations to the Class Information herein refer to the ECF  
page number.

27 <sup>11</sup> Suppl. Dancy Decl. ¶ 4.

28 <sup>12</sup> See generally Notice 71–82.

<sup>13</sup> See generally *id.*

1 protections to Class Members and provides the basis for the Court to make an  
2 informed decision regarding approval of the Settlement Agreement based upon  
3 the responses of Class Members. The Court finds that the Class Notice  
4 provided in this Action was the best notice practicable and that the Class Notice  
5 satisfied the requirements of law and due process.

6 5. In response to the Class Notice, no Class Members objected to the  
7 Settlement, and only four Class Members requested exclusion from the  
8 Settlement.<sup>14</sup> The Class Members that requested exclusion from the Settlement  
9 are John Bradley Austin, Cathy Lavera Jones, Abby Lynn Corpodan, and Novell  
10 Marie Riley.<sup>15</sup> These Class Members who requested exclusion from the  
11 Settlement shall not be bound by the terms of the Settlement, and they are not  
12 bound by the release contained therein.<sup>16</sup>

13 6. The Court finds that the Settlement offers significant monetary  
14 recovery to all Class Members<sup>17</sup> and finds that such recovery is fair, adequate,  
15 and reasonable when balanced against further litigation related to liability and  
16 damages issues.<sup>18</sup> The Court further finds that extensive and costly  
17 investigation, formal and informal discovery, research, and litigation have been  
18 conducted such that Class Counsel and Defense Counsel are able reasonably to  
19 evaluate their respective positions at this time.<sup>19</sup> The Court finds that the  
20 proposed Settlement, at this time, will avoid substantial additional costs by all  
21 Parties, as well as avoid the risks and delay inherent to further prosecution of the  
22 Action.<sup>20</sup> The Court further finds that the Settlement has been reached as the

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23 <sup>14</sup> See Suppl. Dancy Decl. ¶¶ 8 & 9.

24 <sup>15</sup> *Id.* at ¶ 8.

25 <sup>16</sup> See Settlement Agreement 54:16–55:24.

26 <sup>17</sup> See Motion 2:26–3:20.

27 <sup>18</sup> See *id.* at 12:23–15:2.

28 <sup>19</sup> See *id.* at 15:3–17.

<sup>20</sup> See *id.* at 12:23–15:2.

1 result of intensive, serious, and non-collusive arms-length negotiations.<sup>21</sup> Thus,  
2 the Court approves the Settlement set forth in the Settlement Agreement; finds  
3 that the Settlement is, in all respects, fair, adequate, and reasonable; and directs  
4 the Parties to effectuate the Settlement according to its terms.

5 7. The Court **HEREBY ORDERS** the Settlement Administrator to  
6 distribute the Individual Settlement Amounts to Class Members in accordance  
7 with the provisions of the Settlement.

8 8. For the purposes of this Order and this Settlement only, the Court  
9 hereby confirms the appointment of Plaintiffs Anders Pagh and Jerry Lee Forney  
10 (“Plaintiffs”) as the class representatives for the Class. Plaintiffs request a  
11 service award of \$10,000 each. In support of the requested service award,  
12 Plaintiffs submit evidence showing their substantial participation in this case.<sup>22</sup>  
13 The requested service award of \$10,000 to each class representative entails  
14 0.67% of the gross settlement amount, which is within the range of  
15 reasonableness approved by the Ninth Circuit. *See In re Online DVD-Rental*  
16 *Antitrust Litg.*, 779 F.3d 934, 942–43 (9th Cir. 2015). Furthermore, the  
17 requested service award falls within the range of incentive payments typically  
18 awarded to class representatives in similar wage and hour class actions. *See, e.g.*,  
19 *Howell v. Advantage RN, LLC*, 2020 WL 5847565, at \*5 (S.D. Cal. Oct. 1, 2020)  
20 (approving \$10,000 service award in wage and hour class action); *Bond v.*  
21 *Ferguson Enterprises, Inc.*, 2011 WL 2648879, at \*2 (E.D. Cal. June 30, 2011)  
22 (approving \$11,250 service award to each of the two class representatives);  
23 *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at \*17 n.8  
24 (N.D. Cal. Apr. 22, 2010) (observing that “[n]umerous courts in the Ninth  
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26 <sup>21</sup> *See id.* at 15:18–16:25.

27 <sup>22</sup> *See generally* Decl. of Class Representative Anders Pagh in Supp. of the  
28 Motion [ECF No. 49-3]; Decl. of Class Representative Jerry Lee Forney in  
Supp. of the Motion [ECF No. 49-4].

1 Circuit and elsewhere have approved incentive awards of \$20,000 or more,”  
2 and collecting those cases). Based upon the foregoing, the Court approves a  
3 Service Award to Plaintiffs in the amounts of \$10,000 each. The Court  
4 **HEREBY ORDERS** the Settlement Administrator to distribute the Service  
5 Awards to Plaintiffs in accordance with the provisions of the Settlement.

6 9. For the purposes of this Order and this Settlement only, the Court  
7 hereby confirms the appointment of Craig J. Ackermann of Ackermann &  
8 Tilajef, P.C.; Jonathan Melmed of Melmed Law Group P.C.; Mehrdad Bokhour  
9 of Bokhour Law Group, P.C.; Gregory P. Wong of Barkhordarian Law Firm,  
10 PLC; and Sandeep J. Shah of Shah Sheth LLP as Class Counsel. For the reasons  
11 set forth in detail in the Court’s concurrent Order Granting Plaintiffs’ Motion  
12 for Award of Attorneys’ Fees and Costs,<sup>23</sup> the Court finally approves a Class  
13 Counsel Fees Award of 30% of the Gross Settlement Amount or \$450,000, as  
14 fair and reasonable. The Court also finally approves a Class Counsel Costs  
15 Award, as fair and reasonable, not to exceed \$15,603.83. The Class Attorneys’  
16 Fees and Expenses shall be for all claims for Class Counsel’s attorneys’ fees and  
17 litigation costs past, present, and future incurred in the prosecution and  
18 resolution of the Claims, and neither Class Counsel, nor any other counsel, shall  
19 be permitted to petition the Court, or to accept any payments, for fees and costs  
20 relating to the prosecution and resolution of the Claims other than the Class  
21 Attorneys’ Fees and Expenses awarded herein. The Court **HEREBY**  
22 **ORDERS** the Settlement Administrator to distribute the Class Attorneys’ Fees  
23 and Expenses to Class Counsel in accordance with the provisions of the  
24 Settlement.

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<sup>23</sup> The Court will concurrently enter a separate order granting Plaintiffs’  
Motion for Order Granting Award of Attorneys’ Fees and Costs [ECF No. 46].

1           10. For the purposes of this Order and this Settlement only, the Court  
2 hereby finally approves Settlement Administration Costs of \$15,603.83 as fair  
3 and reasonable.

4           11. As of the Effective Date, every Class Member shall have  
5 conclusively released the Released Claims against the Released Parties,  
6 including for any injunctive or declaratory relief.

7           12. Pursuant to the Settlement Agreement, Plaintiffs agree to a  
8 complete and general release, and a waiver under Cal. Civ. Code § 1542, to the  
9 Released Parties, as defined and set forth fully in the Settlement Agreement.

10           13. After Settlement administration has been completed in accordance  
11 with the Settlement Agreement, and in no event later than 180 days after the  
12 Effective Date, the Court **HEREBY DIRECTS** Defendants to file a report with  
13 this Court certifying compliance with the terms of the Settlement.

14           14. Neither this Order, the Settlement Agreement, nor any document  
15 referred to herein, nor any action taken to carry out the Settlement Agreement  
16 is, may be construed as, or may be used as an admission by or against  
17 Defendants or any of the other Released Parties of any fault, wrongdoing, or  
18 liability whatsoever. Nor is this Order a finding of the validity of any claims in  
19 the Action or of any wrongdoing by Defendants or any of the other Released  
20 Parties. The entering into or carrying out of the Settlement Agreement, and any  
21 negotiations or proceedings related thereto, shall not in any event be construed  
22 as, or deemed to be evidence of, an admission or concession with regard to the  
23 denials or defenses by Defendants or any of the other Released Parties and shall  
24 not be offered in evidence against Defendants or any of the Released Parties in  
25 any action or proceeding in any court, administrative agency, or other tribunal  
26 for any purpose whatsoever other than to enforce the provisions of this Order,  
27 the Settlement Agreement, or any related agreement or release.  
28 Notwithstanding these restrictions, any of the Released Parties may file in the

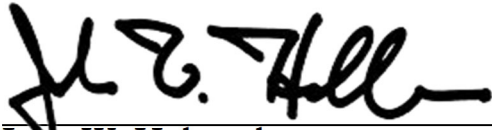
1 Action or in any other proceeding this Order, the Settlement Agreement, or any  
2 other papers and records on file in the Action as evidence of the Settlement and  
3 to support a defense of *res judicata*, collateral estoppel, release, waiver or other  
4 theory of claim preclusion, issue preclusion, or similar defense with respect to  
5 the Released Claims.

6 15. If the Settlement does not become final and effective in accordance  
7 with the terms of the Settlement Agreement, resulting in the return and/or  
8 retention of the Settlement funds to Defendants consistent with the terms of the  
9 Settlement, then this Order and all orders entered in connection herewith,  
10 including any order certifying the Class, appointing a class representative, or  
11 appointing Class Counsel, shall be rendered null and void and shall be vacated.

12 16. Final Judgment is **HEREBY ENTERED** based upon the parties'  
13 class action Settlement Agreement. Without affecting the finality of this Final  
14 Approval Order and Final Judgment in any way, this Court retains continuing  
15 jurisdiction over the interpretation, implementation, and enforcement of the  
16 Settlement and all orders and judgments entered in connection therewith.

17 **IT IS SO ORDERED.**

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19 Dated: March 23, 2021

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22 John W. Holcomb  
23 UNITED STATES DISTRICT JUDGE  
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