

11/14/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: D. Wortham Deputy

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN THE COUNTY OF LOS ANGELES**

15
16 KYNDAL CHRISTOFFERSON, NATALIE
GERACE, AND ERIN RATELLE,
17 individually and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20
21 CREATION ENTERTAINMENT, INC.,

22 Defendant.

Case No. 19STCV11000

~~PROPOSED~~ **SECOND AMENDED
FINAL APPROVAL ORDER AND
JUDGMENT**

(COMPLEX LITIGATION
PROGRAM-CLASS ACTIONS)

Case Assigned for All purposes to
Judge Elihu M. Berle

DEPT.: 6

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1 On March 8, 2021, the Court entered an order granting preliminary approval (the
2 “Preliminary Approval Order”) to the January 15, 2021 First Amended Settlement Agreement and
3 Release (“Settlement Agreement”) between Plaintiffs Kyndal Christofferson, Natalie Gerace and
4 Erin Ratelle, individually and on behalf of the Settlement Class (as defined below) and Defendant
5 Creation Entertainment, Inc. (“Creation”).¹

6 Commencing on March 24, 2021, pursuant to the notice requirements in the Settlement
7 Agreement and the Preliminary Approval Order, CPT Group (the “Claims Administrator”) provided
8 Notice to Settlement Class Members in compliance with Section IV of the Settlement Agreement
9 and the Notice Program, due process, and California Rules of Court, rule 3.769. The notice:

10 (a) fully and accurately informed Settlement Class Members about the Litigation and the
11 existence and terms of the Settlement Agreement;

12 (b) advised Settlement Class Members of their right to request exclusion from the Settlement
13 and provided sufficient information so that Settlement Class Members were able to decide
14 whether to accept the benefits offered, opt out and pursue their own remedies, or object to
the proposed Settlement;

15 (c) provided procedures for Settlement Class Members to file written objections to the
16 proposed settlement, to appear at the Final Approval Hearing, and to state objections to the
proposed Settlement; and

17 (d) provided the time, date, and place of the Final Approval Hearing.

18 On June 24, 2021, the Court held a Final Approval Hearing to determine whether the
19 proposed Settlement is fair, reasonable and adequate and whether judgment should be entered. The
20 Court reviewed (a) the Motion for Final Approval (the “Motion”) and all supporting materials,
21 including but not limited to the Settlement Agreement; (b) any objections filed with or presented to
22 the Court; and (c) the Parties’ responses to any objections. The Court also considered the oral
23 argument of counsel and any objectors who appeared. Based on this review and the findings below,
24 the Court finds good cause to grant the Motion.

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26 _____
27 ¹ Capitalized terms used in this Final Approval Order shall have the same meaning as defined
in the Settlement Agreement unless otherwise expressly stated.

1 **IT IS HEREBY ORDERED:**

2 1. The Court has jurisdiction over the subject matter of this Litigation, all claims raised
3 therein, and all Parties thereto, including the Settlement Class.

4 2. The Settlement Agreement is fair, reasonable, adequate and in the best interests of
5 Settlement Class Members. The Settlement Agreement was negotiated at arm's-length, in good faith
6 and without collusion, by capable and experienced counsel, with full knowledge of the facts, the
7 law, and the risks inherent in litigating the Litigation, and with the active involvement of the Parties.
8 Moreover, the Settlement Agreement confers substantial benefits on the Settlement Class Members,
9 is not contrary to the public interest, and will provide the Parties with repose from litigation. The
10 Parties faced significant risks, expense, and uncertainty from continued litigation of this matter,
11 which further supports the Court's conclusion that the Settlement is fair, reasonable, adequate and
12 in the best interests of the Settlement Class Members.

13 3. The Court grants final approval of the Settlement Agreement in full, including but
14 not limited to the releases therein and the procedures for distribution of the Settlement Fund. All
15 Settlement Class Members who have not excluded themselves from the Settlement Class are bound
16 by this Final Approval Order and Judgment ("Final Approval Order").

17 4. The Parties shall carry out their respective obligations under the Settlement
18 Agreement in accordance with its terms. The relief provided for in the Settlement Agreement shall
19 be made available to the various Settlement Class Members submitting valid Claim forms, pursuant
20 to the terms and conditions in the Settlement Agreement. The Settlement Agreement is incorporated
21 herein in its entirety as if fully set forth herein and shall have the same force and effect of an order
22 of this Court.

23 **OBJECTIONS AND REQUESTS FOR EXCLUSION**

24 5. No Settlement Class Members have objected to any aspect of the Settlement. The
25 Court has considered all objections and finds that they do not warrant or support rejection or non-
26 approval of the Settlement. All objections are hereby overruled in all respects. All persons who did
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1 not object to the Settlement in the manner set forth in the Settlement Agreement are deemed to have
2 waived any objections, including but not limited to by appeal, collateral attack, or otherwise.

3 6. Attached hereto as **Exhibit A** is a list of persons who made valid and timely requests
4 to be excluded from the Settlement and the Settlement Class (the “Opt-Out Members”). The Opt-
5 Out Members are not bound by the Settlement Agreement and this Final Approval Order and shall
6 not be entitled to any of the benefits afforded to Settlement Class Members under the Settlement
7 Agreement.

8 **CERTIFICATION OF THE SETTLEMENT CLASS**

9 7. Solely for purposes of the Settlement Agreement and this Final Approval Order, the
10 Court hereby certifies the following Settlement Class:

11 all individuals residing in the United States who used a payment card to make a
12 purchase from Creation and whose Personal Information was accessed and/or
13 compromised by unauthorized individuals as part of the Security Incident.

14 8. The Court incorporates its preliminary conclusions in the Preliminary Approval
15 Order regarding the satisfaction of California Rules of Court, Rule 3.769. Because the Settlement
16 Class is certified solely for purposes of settlement, the Court need not address any issues of
17 manageability for litigation purposes.

18 9. The Court grants final approval to the appointment of Representative Plaintiffs
19 Kyndal Christofferson, Natalie Gerace and Erin Ratelle as the Class Representatives, and concludes
20 that they have fairly and adequately represented the Settlement Class and shall continue to do so.

21 10. The Court grants final approval to the appointment of the law firms of Wolf
22 Haldenstein Adler Freeman & Herz LLP, Chemicles Schwartz Kriner & Donaldson-Smith LLP and
23 Ahdoot & Wolfson, PC as Class Counsel. Class Counsel have fairly and adequately represented the
24 Settlement Class and shall continue to do so.

25 **NOTICE TO THE CLASS**

26 11. The Court finds that the Notice Program, set forth in the Settlement Agreement and
27 effectuated pursuant to the Preliminary Approval Order: (i) was the best notice practicable under
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1 the circumstances; (ii) was reasonably calculated to provide, and did provide, due and sufficient
2 notice to the Settlement Class regarding the existence and nature of the Litigation, certification of
3 the Settlement Class for settlement purposes only, the existence and terms of the Settlement
4 Agreement, and the rights of Settlement Class members to exclude themselves from the Settlement
5 Agreement, to object and appear at the Final Approval Hearing, and to receive benefits under the
6 Settlement Agreement; and (iii) satisfied the requirements of the California Code of Civil Procedure,
7 California Rules of Court, United States Constitution, and all other applicable law.

8 **ATTORNEYS' FEES AND COSTS, SERVICE AWARDS**

9 12. The Court awards Class Counsel \$313,500 in fees and reimbursement of \$20,000 in
10 costs. The Court finds these amounts to be fair and reasonable. Payment shall be made from the
11 Settlement Fund pursuant to the procedures in paragraph 9.3 of the Settlement Agreement.

12 13. The Court awards Representative Plaintiffs Kyndal Christofferson, Natalie Gerace
13 and Erin Ratelle \$2,500.00 each as a service award. The Court finds this amount is justified by
14 their service to the Settlement Class. Payment shall be made from the Settlement Fund pursuant to
15 the procedures in paragraph 9.3 of the Settlement Agreement.

16 **RELEASE**

17 14. Each Settlement Class Member, including Representative Plaintiffs, are: (1) deemed
18 to have completely and unconditionally released, forever discharged and acquitted Creation and
19 the Released Persons from all claims arising out of or asserted in the Litigation and all Released
20 Claims released under the Settlement Agreement; and (2) barred and permanently enjoined from
21 asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of
22 the release described in this paragraph are set forth in Paragraphs 1.23-1.24 and 8.1 of the
23 Settlement Agreement and are specifically approved and incorporated herein by this reference (the
24 "Release"). In addition, Representative Plaintiffs are deemed to have waived (i) the provisions of
25 California Civil Code § 1542, which provides that a general release does not extend to claims that
26 the creditor does not know or suspect to exist in his or her favor at the time of executing the release,
27 which if known by him or her must have materially affected his or her settlement with the debtor,
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1 and (ii) any law of any state or territory of the United States that is similar, comparable, or
2 equivalent to California Civil Code § 1542.

3 15. The Settlement Agreement and this Final Approval Order apply to all claims or
4 causes of action settled under the Settlement Agreement, and binds Representative Plaintiffs and
5 all Settlement Class Members who did not properly request exclusion. The Settlement Agreement
6 and this Final Approval Order shall have maximum *res judicata*, collateral estoppel, and all other
7 preclusive effect in any and all causes of action, claims for relief, suits, demands, petitions, or any
8 other challenges or allegations that arise out of or relate to the subject matter of the Litigation and/or
9 the Complaint.

10 **OTHER PROVISIONS**

11 16. The Settlement Fund, consisting of nine hundred fifty thousand dollars and no cents
12 (\$950,000.00) shall be used to pay all Awards and payments to Settlement Class Members, costs of
13 Claims Administration, the Attorneys' Fees and Expenses Award to Class Counsel, and the
14 Representative Plaintiffs' Award.

15 17. \$47,642.40 remains in the Settlement Fund after the payment of all Settlement
16 Payments to Settlement Class Members, costs of Claims Administration, the Attorneys' Fees and
17 Expenses Award to Class Counsel, and the Representative Plaintiffs' Award.² The Court directs
18 the Parties and the Claims Administrator to distribute all such remaining funds to the *cy pres*
19 recipient named in Paragraph 7.6 of the Settlement Agreement. The Court finds that Public Justice,
20 as the *cy pres* recipient, will use the funds in a way that provides an indirect benefit to the Settlement
21 Class Members consistent with the Settlement Class Members' claims asserted in the Litigation.

22 18. The Settlement Agreement and this Final Approval Order, and all documents,
23 supporting materials, representations, statements and proceedings relating to the Settlement, are not,
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25 ² This is the amount known to date. The Court approved the re-issuance of six checks on
26 August 23, 2022. The stale date for those checks is October 22, 2022. Plaintiffs shall file a
27 supplement with the Court prior to the next OSC hearing date on October 24, 2022 if the final
28 amount remaining in the Settlement Fund differs.

1 and shall not be construed as, used as, or deemed evidence of, any admission by or against Creation
2 of liability, fault, wrongdoing, or violation of any law, or of the validity or certifiability for litigation
3 purposes of the Settlement Class or any claims that were or could have been asserted in the
4 Litigation.

5 19. The Settlement Agreement and this Final Approval Order, and all documents,
6 supporting materials, representations, statements and proceedings relating to the Settlement shall
7 not be offered or received into evidence, and are not admissible into evidence, in any action or
8 proceeding, except that the Settlement Agreement and this Final Approval Order may be filed in
9 any action by Creation or the Settlement Class Members seeking to enforce the Settlement
10 Agreement or the Final Approval Order.

11 20. Consistent with Paragraph 10.2 of the Settlement Agreement, if the Effective Date
12 does not occur for any reason, the following will occur: (a) the Final Approval Order and Judgment
13 and all of their provisions, will be vacated, including, but not limited to the Attorneys' Fees and
14 Expenses Award and the Representative Plaintiffs' Award, and the Final Approval Order will not
15 waive, release or otherwise impact the Parties' rights or arguments in any respect; and
16 (b) the Litigation will revert to the status that existed before the Settlement Agreement's execution
17 date, and the Parties shall be restored to their respective positions in the Litigation as if the
18 Settlement Agreement had never been entered into. No term or draft of this Settlement Agreement
19 or any part of the Parties' settlement discussions, negotiations, or documentation will have any effect
20 or be admissible in evidence for any purpose in the Litigation.

21 21. Without affecting the finality of this Final Approval Order, the Court will retain
22 jurisdiction over this Litigation and the Parties with respect to the interpretation, implementation
23 and enforcement of the Settlement Agreement for all purposes.

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NOW, THEREFORE, the Court hereby enters judgment in this matter pursuant to California Rules of Court, rule 3.769(h).

IT IS SO ORDERED:

Dated: 11/14/2022



Elihu M. Berle

Elihu M. Berle / Judge
THE HONORABLE ELIHU M. BERLE
JUDGE OF THE SUPERIOR COURT

1 **CERTIFICATE OF SERVICE**

2 I, Darya Yacoubian, the undersigned declare:

3 1. That declarant is and was, at all times herein mentioned, a citizen of the United
4 States and a resident of the County of San Diego, over the age of 18 years, and not a party to or
5 interested in the within action; that declarant’s business address is 750 B Street, Suite 1820, San
6 Diego, California 92101.

7 2. That on October 28, 2022, declarant served the following document(s):

8 **[PROPOSED] SECOND AMENDED FINAL APPROVAL ORDER AND**
9 **JUDGEMENT**

10 in the manner identified below on all interested parties:

11 **(XX) VIA ELECTRONIC SERVICE** – I electronically transmitted a copy of the
12 within documents in a pdf or word processing format via CASE ANYWHERE to
13 those persons indicated on the attached service list at their respective electronic
14 service addresses pursuant to California Rules of Court, rule 2.251(g) on the date
15 set forth.

16 I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th
17 day of October 2022, at San Diego, California.

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19 DARYA YACOUBIAN
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CHRISTOFFERSON V. CREATION ENTERTAINMENT, INC.

Service List – February 18, 2022

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