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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

CHRISTINE HELLYER, ANGELICA
PONCE, CHARLES WARREN,
DESTINEE RICHARD, and TAMMIE
EDWARDS, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SMILE BRANDS INC., SMILE
BRANDS GROUP INC., and SMILE
BRANDS FINANCE, INC.,

Defendants.

Case No. 8:21-cv-01886-DOC-ADS

Hon. David O. Carter;
Courtroom 10A

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AND APPROVING FORM AND
CONTENT OF CLASS NOTICE**

Date: August 1, 2023
Time: 7:30 a.m.
Dept.: 10A

1 **WHEREAS**, Plaintiffs Christine Hellyer, Angelica Ponce, Charles Warren,
2 Destinee Richard, and Tamie Edwards (“Plaintiffs”) and Defendants Smile Brands
3 Inc., Smile Brands Group Inc. and Smile Brands Finance, Inc. (“Defendants” and
4 together with Plaintiffs, the “Parties”) in the above-described class action (“Action”)
5 have moved for an order, pursuant to Rule 23(e) of the Federal Rules of Civil
6 Procedure, regarding certain matters in connection with a proposed settlement of the
7 Action, in accordance with a Class Action Settlement Agreement and Release
8 (“Settlement Agreement”) entered into by the Parties on June 23, 2023, which,
9 together with the exhibits thereto, sets forth the terms and conditions for a proposed
10 resolution of this litigation and for its dismissal with prejudice;

11 **WHEREAS**, this Court has reviewed the Settlement Agreement entered into
12 by the Parties, all exhibits thereto, the record in this case, and the Parties’ arguments.

13 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED AS**
14 **FOLLOWS:**

15 1. The Court finds that the Parties have shown the Court it will likely be
16 able to approve the proposed Settlement, as embodied in the Settlement Agreement,
17 as being fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of Civil
18 Procedure, subject to further consideration at the Final Approval Hearing to be
19 conducted, as described in Paragraphs 20-22 below.

20 2. All terms and definitions used herein have the same meanings as set
21 forth in the Settlement Agreement.

22 3. The Court has reviewed the terms of the proposed Settlement
23 Agreement, the exhibits thereto, Plaintiffs’ motion papers and briefs, and the
24 declaration of counsel. Based on its review of these papers, the Court finds that the
25 Settlement Agreement resulted from serious, informed, and non-collusive
26 negotiations conducted with the assistance of JAMS mediator Daniel Garrie, Esq.

27 4. The terms of the Settlement Agreement do not improperly grant
28 preferential treatment to any individual or segment of the Settlement Class and fall

1 within the range of possible approval as fair, reasonable, and adequate.

2 5. The Court therefore GRANTS the preliminary approval of the
3 Settlement Agreement and all of the terms and conditions contained therein.

4 **Certification for Settlement Purposes Only**

5 6. The Settlement Agreement defines the Settlement Class as follows: the
6 approximately 1.5 million persons whose PII or PHI may have been acquired as a
7 result of the alleged Data Breach and who are identified on the Settlement Class List
8 as having been sent individualized, written notice of the alleged Data Breach.
9 Excluded from the Settlement Class are: (1) the judges presiding over the Action, and
10 members of their families; (2) the Defendants, their subsidiaries, parent companies,
11 successors, predecessors, and any entity in which the Defendants or their parents have
12 a controlling interest and their current or former officers, and directors, and (3)
13 Settlement Class Members who properly execute and submit a procedurally proper
14 Request for Exclusion prior to the expiration of the Opt-Out Period.

15 7. If the Settlement Agreement is not finally approved by this Court, or if
16 such final approval is reversed or materially modified on appeal by any court, (a) to
17 the extent applicable, the Preliminary Approval Order, the Final Approval Order, and
18 the Judgment, and all of its or their provisions will be vacated by its or their own
19 terms, including, but not limited to, vacating any and all rulings regarding class
20 certification for settlement purposes, including conditional certification of the
21 Settlement Class under Rule 23(b)(3), conditional appointment of Plaintiffs as Class
22 Representatives, and conditional appointment of Plaintiffs' Counsel as Class
23 Counsel; (b) the Settlement Agreement will be deemed null and void (with the
24 exception of Paragraphs IV.D.68.), and the Action will revert to the status that existed
25 before the Settlement Agreement's execution date; and (c) (i) no term or draft of the
26 Settlement Agreement, (ii) nor any part of the Parties' settlement discussions,
27 negotiations, or documentation (including any declaration or brief filed in support of
28 the motion for preliminary approval or motion for final approval), (iii) nor any rulings

1 regarding class certification for settlement purposes (including the Preliminary
2 Approval Order and, if applicable, the Final Approval Order and the Judgment), will
3 have any effect or be admissible into evidence for any purpose in the Action or any
4 other proceeding. If the Court does not approve the Settlement or enter the Final
5 Approval Order and the Judgment for any reason, or if the Effective Date of the
6 Settlement cannot occur for any reason, Defendants shall retain all their rights, for
7 example, to object to the maintenance of the Action as a class action, to move for
8 summary judgment, and to assert defenses at trial, and nothing in this Settlement
9 Agreement or other papers or proceedings related to the Settlement shall be used as
10 evidence or argument by any Party concerning whether the Action may properly be
11 maintained as a class action, or for any other purpose.

12 8. Solely for purposes of effectuating the proposed Settlement, the Court
13 finds, pursuant to Rule 23(e)(1), that the requirements for class certification under
14 Federal Rule of Civil Procedure 23(a) are likely to be found satisfied as: the
15 Settlement Class is comprised of more than one million individuals; there are
16 questions of law or fact common to the Settlement Class; the Class Representatives'
17 claims are typical of those of Settlement Class Members; and the Settlement Class
18 Representatives will fairly and adequately protect the interests of the Settlement
19 Class.

20 9. Solely for purposes of effectuating the proposed Settlement, the Court
21 finds, pursuant to Rule 23(e)(1), that the requirements for class certification under
22 Federal Rule of Civil Procedure 23(b)(3) are likely to be found satisfied as: the
23 questions of law or fact common to the Settlement Class predominate over individual
24 questions and class action litigation is superior to other available methods for the fair
25 and efficient adjudication of this controversy.

26 10. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and solely
27 for purposes of effectuating the Settlement, the Court hereby appoints as Class
28 Representatives: Christine Hellyer, Angelica Ponce, Charles Warren, Destinee

1 Richard, and Tammie Edwards.

2 11. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and solely
3 for purposes of effectuating the Settlement, the Court hereby appoints as Class
4 Counsel to represent the proposed Settlement Class: John Yanchunis of Morgan &
5 Morgan, William Federman of Federman & Sherwood, Abbas Kazerounian of
6 Kazerouni Law Group APC, Daniel S. Robinson of Robinson Calcagnie, Inc., and
7 Patrick Keegan of Keegan & Baker LLP. Solely for the purposes of effectuating the
8 Settlement, Class Counsel are authorized to act on behalf of the Class
9 Representatives, and all other Settlement Class Members with respect to all acts or
10 consents required by or that may be given pursuant to the Settlement Agreement,
11 including all acts that are reasonably necessary to consummate the Settlement,
12 subject to final approval by the Court of the Settlement.

13 **Administration and Notice to the Settlement Class**

14 12. The Court appoints Simpluris Inc., to serve as the Settlement
15 Administrator. Simpluris Inc. shall supervise and administer the notice procedures,
16 establish and operate the Settlement Website, administer the claims processes,
17 distribute cash payments according to the processes and criteria set forth in the
18 Settlement Agreement, and perform any other duties that are reasonably necessary or
19 provided for in the Settlement Agreement.

20 13. All reasonable costs of notice and costs of administering the Settlement
21 shall be paid from the Settlement Fund as contemplated by Paragraph IV.D.70 of the
22 Settlement Agreement.

23 14. The Court approves, as to form and content, of the proposed Claim
24 Form, Long Form Notice, and the Summary Notice, which are attached to the
25 Settlement Agreement as Exhibits A, D and F, respectively, and finds that their
26 dissemination substantially in the manner and form set forth in the Settlement
27 Agreement meets the requirements of Federal Rule of Civil Procedure 23 and due
28 process, constitutes the best notice practicable under the circumstances, and is

1 reasonably calculated, under the circumstances, to apprise members of the Settlement
2 Class of the pendency of the Action, the effect of the proposed Settlement (including
3 the releases contained therein), the anticipated Motion for Attorneys' Fees and
4 Expenses and for Service Awards, and their rights to participate in, opt out of, or
5 object to any aspect of the proposed Settlement.

6 15. Within two business days of the Court entering the Preliminary
7 Approval Order, Defendants shall, for the purpose of facilitating the distribution of
8 the Summary Notices, provide the Settlement Administrator, who shall maintain such
9 list confidentially and shall not disclose to any other party or third person, with the
10 Settlement Class List.

11 16. Pursuant to Section IV.G. of the Settlement Agreement, the Settlement
12 Administrator shall complete dissemination of the Notice on or before the Notice
13 Date, defined in the Settlement Agreement as 14 days from the date the Settlement
14 Administrator receives the Settlement Class List from Defendants. Within 14 days
15 after entry of this Preliminary Approval Order, the Settlement Administrator shall
16 establish the Settlement Website which shall contain relevant documents relating to
17 the settlement such as the Notices, information about the submission of Claim Forms,
18 and other relevant documents (such as the operative complaint filed in the Action,
19 the Settlement Agreement, the Preliminary Approval Order, Claim Form, any
20 application for the Fee and Expense Award and Service Award, any brief filed by the
21 Parties in support of the Settlement, and the Final Approval Order).

22 **Participation in the Settlement, Requests for Exclusion and Objections**

23 17. Settlement Class Members who wish to make a Claim must do so by
24 submitting a Claim Form by the Claim Deadline, which is hereby set as 90 days
25 following the Notice Date, in accordance with the instructions contained therein. The
26 Settlement Administrator shall determine the eligibility of Claims submitted and
27 allocate the Settlement Funds in accordance with the Settlement Agreement.

28 18. Settlement Class Members who wish to object to the Settlement must

1 mail to the Court, or file through the Court’s ECF system, a written objection with
2 the caption *Hellyer v. Smile Brands Inc.* Case No. 8:21-cv-01886-DOC-ADS (C.D.
3 Cal.), that includes: (i) the Settlement Class Member’s full name, current mailing
4 address, and telephone number; (ii) a signed statement that he or she believes himself
5 or herself to be a member of the Settlement Class and the basis of such belief; (iii)
6 the specific grounds for the objection; (iv) all documents or writings that the
7 Settlement Class Member desires the Court to consider; and (v) a statement regarding
8 whether they (or counsel of their choosing) intend to appear at the Final Fairness
9 Hearing. All written objections must be post-marked no later than the Objection
10 Deadline. Any member of the Settlement Class who does not file a valid and timely
11 written objection in accordance with these procedures and the procedures detailed in
12 Paragraph IV.I.100 of the Settlement Agreement, shall be deemed to have waived his
13 or her objections and forever be barred from making any such objections in the
14 Action or in any other action or proceeding.

15 19. Any putative member of the Settlement Class who seeks to be excluded
16 from the Settlement Class must submit a Request for Exclusion, which must be (i)
17 submitted electronically on the Settlement Website, or (ii) postmarked or received by
18 the Settlement Administrator on or before the end of the Opt-Out Period. If a Request
19 for Exclusion to the Settlement Administrator is made via US Mail, the request must
20 be in writing and must identify the case name *Hellyer v. Smile Brands Inc.*, Case No.
21 8:21-cv-01886-DOC-ADS (C.D. Cal.); state the name, address and telephone number
22 of the Settlement Class Members seeking exclusion; be physically signed by the
23 Person(s) seeking exclusion; and contain a statement to the effect that “I/We hereby
24 request to be excluded from the proposed Settlement Class in *Hellyer v. Smile Brands*
25 *Inc.*, Case No. 8:21-cv-01886 (C.D. Cal.)” Any Person who elects to request
26 exclusion from the Settlement Class shall not (i) be bound by any orders or Judgment
27 entered in the Action, (ii) be entitled to relief under this Agreement, (iii) gain any
28 rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this

1 Agreement. No Person may request to be excluded from the Settlement Class
2 through “mass” or “class” opt-outs. Any member of the Settlement Class who does
3 not file a valid and timely Request for Exclusion shall be bound by the terms of the
4 Settlement Agreement upon entry of the Final Approval Order.

5 **Final Approval Hearing**

6 20. The Final Approval Hearing shall be held by the Court on January 15,
7 2024, beginning at 8:30 a.m., in Courtroom 10A of the United States District Court
8 for the Central District of California, Ronald Reagan Federal Building and United
9 States Courthouse, 411 West Fourth Street, Santa Ana, California 92701.

10 21. At the Final Approval Hearing, the Court will determine whether: (1)
11 the requirements for certification of the Settlement Class under Federal Rule of Civil
12 Procedure 23(b)(3) have been met; (2) the proposed settlement of the Action on the
13 terms set forth in the Settlement should be approved as fair, reasonable, adequate,
14 and in the best interests of the Settlement Class Members; (3) Class Counsel’s motion
15 for a Fee and Expense Award and Service Awards should be approved; and (4) the
16 Final Approval Order and the Judgment approving the Settlement and dismissing the
17 Action on the merits with prejudice against the Plaintiffs and all other Settlement
18 Class Members should be entered.

19 22. The Final Approval Hearing may, without further notice to the
20 Settlement Class Members (except those who have filed timely and valid objections
21 and requested to speak at the Final Hearing), be continued or adjourned by order of
22 the Court.

23 23. Objections by any Settlement Class Member to (a) the certification of
24 the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the
25 Settlement; and/or (c) the entry of the Final Approval Order and Final Judgment,
26 shall be considered by the Court at the Final Approval Hearing only if such
27 Settlement Class Member files with the Court a notice of his or her objections,
28 submits documentary proof that he or she is a Settlement Class Member, and states

1 the basis for such objections.

2 24. On or before December 18, 2023, Class Counsel shall file all papers in
3 support of the application for the Final Approval Order and Final Judgment. On or
4 before September 26, 2023, Class Counsel shall file all papers in support of any
5 motion for a Fee and Expense Award and Service Award.

6 25. Objections by any Settlement Class Member to Class Counsel's motion
7 for a Fee and Expense Award and Service Awards shall be considered by the Court
8 at the Final Approval Hearing only if such Settlement Class Member files with the
9 Court a notice of his or her objections, submits documentary proof that he or she is a
10 Settlement Class Member, and states the basis for such objections, by October 17,
11 2023.

12 26. Class Counsel's Motion for a Fee and Expense Award and Service
13 Award will be considered separately from the fairness, reasonableness, and adequacy
14 of the Settlement. Any appeal from any order relating solely to Class Counsel's
15 Motion for a Fee and Expense Award and Service Award, or any reversal or
16 modification of any such order, shall not operate to terminate, vacate, or cancel the
17 Settlement.

18 27. All proceedings and deadlines in this matter, except those necessary to
19 implement this Order and the Settlement, are hereby stayed and suspended until
20 further order by the Court.

21 28. All Persons in the Settlement Class who do not validly and timely opt
22 out and exclude themselves are hereby enjoined from pursuing or prosecuting any of
23 the Released Claims as set forth in the Settlement Agreement until further order of
24 the Court.

25 29. The Parties' Counsel are hereby authorized to utilize all reasonable
26 procedures in connection with the administration of the Settlement which are not
27 materially inconsistent with either this Order or the Settlement Agreement.

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IT IS SO ORDERED.

Dated: August 4, 2023



HON. DAVID O. CARTER
UNITED STATES DISTRICT JUDGE