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Attorneys for Plaintiff Larry Bonine

FILED
Superior Court of California
County of Los Angeles

07/21/2023

David W. Slayton, Executive Officer / Clerk of Court

By: I. Arellanes Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LARRY BONINE, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

WACHTER, INC., a Kansas corporation; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 20STCV31653

CLASS AND REPRESENTATIVE ACTION

[Hon. Kenneth R. Freeman, Dept. 14]

**~~PROPOSED~~ FINAL ORDER
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

FINAL APPROVAL HEARING

Date: June 20, 2023

Time: 10:00 a.m.

Dept. 14

Electronically Received 07/05/2023 01:25 PM

**~~PROPOSED~~ FINAL ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

1 On January 1, 2023, this Court issued an Order Granting Plaintiff's Motion for
2 Preliminary Approval of Class Action Settlement reached between Plaintiff Larry Bonine
3 ("Plaintiff") and Defendant Wachter, Inc. ("Defendant") (together, the "Parties") in resolution
4 of the above-caption litigation (the "Litigation"). The Court now has before it Plaintiff's
5 Proposed Order and Judgment for final approval of the Joint Stipulation re: Class Action
6 Settlement (the "Settlement Agreement"), attached to the Declaration of Kane Moon in Support
7 of Plaintiff's Motion for Final Approval of Class Action Settlement as Exhibit 1.

8 Due and adequate notice having been given to the Class Members, and the Court having
9 reviewed and considered Plaintiff's Motion for Final Approval of Class Action Settlement, the
10 supporting declarations and exhibits thereto, all other papers filed and proceedings had hereto,
11 and the record in this Litigation, and good cause appearing, **IT IS HEREBY ORDERED,**
12 **ADJUDGED, AND DECREED AS FOLLOWS:**

13 1. The Court, for purposes of this Final Order, refers to all defined terms as set forth
14 in the Settlement Agreement.

15 2. A final approval hearing was held on the question of whether the proposed
16 Settlement Agreement, attorneys' fees and costs to Class Counsel, the Class Representative's
17 enhancement award, payment for settlement administration costs, and the PAGA Payment to
18 the California Labor and Workforce Development Agency (the "LWDA") should be finally
19 approved as fair, reasonable, and adequate as to Class Members.

20 3. The Court finds that the Settlement Agreement appears to have been made and
21 entered into in good faith, the terms of which are fair, reasonable, and adequate, and therefore,
22 meets the requirements for final approval. The Court approves the Settlement Agreement, as set
23 forth below.

24 4. By operation of this Final Order and Defendant's payment of all sums due under
25 the Settlement Agreement, including the employer-side payroll taxes on the wage portion of the
26 Participating Settlement Class Members' Settlement Awards, the Class Representative, the
27 Class and each Class Member who did not submit a valid and timely request for exclusion as to
28 claims other than the PAGA claim, and each PAGA Employee, regardless of whether they have

1 requested exclusion from the Settlement of Class claims, shall have, except as to such rights or
2 claims as may be created by the Settlement Agreement, fully, finally, and forever settled and
3 released the Released Parties from claims as follows:

- 4 a. **Identity of Released Parties.** Defendant, and each of its former or present parents,
5 subsidiaries, affiliates, investors, partners, owners, related organizations,
6 predecessors, or successors, and all agents, employees, officers, directors, members,
7 managers, holding companies, insurers, and attorneys thereof (collectively the
8 “Releasees”).
- 9 b. **Date Release Becomes Effective.** The Released Claims and Released PAGA
10 Claims will be released upon the later of (a) if any Class Member validly submits a
11 Notice of Objection, the date on which the time for appeals from any Order ruling
12 on the objections or granting Final Approval of the Settlement has run; or (b) the
13 resolution of any appeal, filed by a Class Member who validly submitted a Notice
14 of Objection, from any Orders ruling on any objection or granting Final Approval
15 of the Settlement; or (c) the Final Approval Date if there are no objections to the
16 settlement.
- 17 c. **Released Claims by Settlement Class Members.** “Released Claims” does not
18 include “Released PAGA Claims” and means all claims asserted under any
19 applicable laws and/or regulations relating to any and all facts and claims asserted
20 in the Complaint or any other claims that could have been asserted in the Complaint
21 based on the facts alleged, including, without limitation, claims related to meal and
22 rest breaks; unpaid regular wages, minimum wages, overtime and double time
23 wages; wage statement violations; record keeping violations; expense
24 reimbursement; separation pay violations; and any related claims under the
25 California Labor Code; any other laws or regulations concerning wage and hour
26 laws, and for penalties under the California Private Attorneys General Act
27 (“PAGA”); arising during the Class Period and/or PAGA Period. The Released
28 Claims do not cover or include (1) claims for Workers’ Compensation, (2) claims

1 for unemployment or disability payments, (3) tort claims, or any other claims that
2 cannot be released as a matter of law. The Released Claims shall run during the
3 entire Class Period. As of the Effective Date of Settlement, each Class Member who
4 has not filed a valid Request for Exclusion shall be deemed to have fully, finally,
5 and forever released, relinquished, and discharged all Released Claims. This waiver
6 and release of claims shall be binding on the Class Representative and all members
7 of the Class who have not timely submitted a valid Request for Exclusion, including
8 each of their respective attorneys, agents, spouses, executors, representatives,
9 guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of
10 the Released Parties.

11 d. **Released PAGA Claims by PAGA Employees.** “Released PAGA Claims” means
12 all claims for penalties and any other available relief pursuant to PAGA, to the
13 extent asserted in Plaintiff’s administrative exhaustion letter submitted to the
14 LWDA in this Action, arising during the PAGA Period.

15 5. The Parties shall bear their own respective attorneys’ fees and costs, except as
16 otherwise provided for in the Settlement Agreement and approved by the Court.

17 6. The Court affirms the certification of, for settlement purposes only, the following
18 class (the “Settlement Class”): “All current and former non-exempt employees who worked for
19 Defendant within the State of California from August 18, 2016 to the Preliminary Approval
20 Date (i.e., to January 11, 2023).” Excluded from the Settlement Class are all persons who
21 properly and timely elected to opt out.

22 7. The only requests for exclusion that were properly and timely received were for
23 the following individuals: Darryl Franklin Decosta and Dennis Hardnett. Accordingly, the
24 foregoing two individuals are excluded from the Settlement Class.

25 8. All other Class Members who did not request exclusion from the Settlement Class
26 had an opportunity to object to the Settlement Agreement. No written objection was received.

27 9. The Notice of Proposed Class Action and Private Attorneys General Act
28 Settlement (the “Notice”), which was attached to the Settlement Agreement as Exhibit A and

1 provided to the Class pursuant to the plan for distribution described under the Settlement
2 Agreement, conforms with the requirements of California Rules of Court 3.766 and 3.769, and
3 constitutes the best notice practicable under the circumstances, by providing individual and
4 adequate notice of the proceedings and of the matters set forth therein to Class Members. The
5 Notice fully satisfied the requirements of due process and provided sufficient notice to all
6 persons entitled thereto.

7 10. The Court finds that the Total Settlement Amount, the Net Settlement Fund, and
8 the methodology used to calculate and pay each Participating Settlement Class Member's
9 Settlement Awards are fair and reasonable and authorizes the Settlement Administrator to pay
10 settlement allocations in accordance with the terms of the Settlement Agreement. Defendant
11 shall pay into a common fund the total of \$354,000.00 (the "Total Settlement Amount") to
12 resolve this Litigation. Defendant shall fund the Total Settlement Amount, plus an amount to
13 cover the employer-side payroll taxes on the wage portion of the Settlement Awards as
14 calculated by the Settlement Administrator, within 30 calendar days of the Effective Date, as
15 that term is defined in the Settlement Agreement. Thereafter, all settlement allocations,
16 including to Participating Settlement Class Members, shall be distributed within 15 calendar
17 days after the funding and in accordance with the terms of the Settlement Agreement.

18 11. From the Total Settlement Amount, \$40,000.00 shall be allocated to penalties
19 under the Private Attorneys General Act of 2004 ("PAGA"), and distributed as follows: 25%
20 (i.e., \$10,000.00) to the PAGA Employees and 75% (i.e., \$30,000.00) to the LWDA.

21 12. The Court confirms the appointment of Larry Bonine as Class Representative. In
22 addition to any recovery that Plaintiff is eligible to receive under the Settlement Agreement as
23 a Settlement Class Member, the Court approves and orders an enhancement award in the amount
24 of \$7,000.00 from the Total Settlement Amount to Plaintiff for his role and service as Class
25 Representative, and for the risks and work attendant to that role.

26 13. The Court confirms the appointment of Moon & Yang, APC as Class Counsel, as
27 they are experienced in wage-and-hour class action litigation, have no conflicts of interest with
28 Plaintiff or Class Members, and have adequately represented Class interests. The Court

1 approves and orders the payment to Class Counsel from the Total Settlement Amount for
2 reasonable attorneys' fees not to exceed one third (33 1/3%) of the Total Settlement Amount
3 (i.e., \$118,000.00), as well as \$15,200.53 for costs actually incurred in litigation expenses. The
4 Court finds that the fees amount is reasonable in light of the benefit provided to the Class.

5 14. The Court confirms the appointment of ILYM Group, Inc. as the Settlement
6 Administrator. The Court approves and orders the payment from the Total Settlement Amount
7 to ILYM Group, Inc. for the costs of settlement administration of \$9,550.00 for the costs of
8 settlement administration.

9 15. In accordance with California Rule of Court 3.771(b), notice of this Final Order will
10 be given to the Class per the instructions in Section 21 of the Class Notice: accessible at the
11 Courthouse, the Court's website, or by calling the Settlement Administrator.

12 16. This Final Order and concurrently file Judgment are intended to be a final
13 disposition of the Litigation in its entirety and is intended to be immediately appealable.

14 17. The Court shall retain continuing jurisdiction over all claims asserted in the
15 Litigation, Plaintiff, the Settlement Class Members, and Defendant solely for purposes of
16 addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement
17 administration matters, and (iii) such other matters as may be appropriate under court rules or
18 as set forth in the Settlement Agreement.

19 18. The Court hereby GRANTS Plaintiff's Motion for Final Approval of Class Action
20 Settlement, and ORDERS final judgment to be entered in accordance with the terms herein.

21 19. The Settlement Agreement is finally approved but is not an admission by Defendant
22 of the validity of any claims in this Litigation, or of any wrongdoing by Defendant or of any
23 violation of law. Neither the Settlement Agreement nor any related document shall be offered or
24 received in evidence in any civil, criminal, or administrative action or proceeding other than such
25 proceedings as may be necessary to consummate or enforce the Settlement Agreement. The
26 obligations set forth in the Settlement Agreement are deemed part of this Order, and the Parties
27 are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

28 20. The Court sets a Non-Appearance Hearing (Case Review) re: Distribution on

1 March 22, 2024 at 4:00 p.m. in Department 14. Class Counsel is ordered to file a final
2 report and declaration by the Settlement Administrator regarding settlement distribution no later
3 than March 20, 2024
4 than ~~June 28, 2023~~. No appearance is required at the Case Review if the Settlement
5 Administrator's declaration filed prior to the hearing reports that all the distributions under the
6 Settlement Agreement are complete.

7 **IT IS SO ORDERED.**

8 DATED: 07/21/2023



9 
10 Hon. Kenneth R. Freeman
11 Judge of the Los Angeles County Superior Court
12 Kenneth R. Freeman / Judge

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On July 5, 2023, I served the foregoing document
8 described as:

9 **PROPOSED] FINAL ORDER GRANTING PLAINTIFF'S MOTION**
10 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

11 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
12 addressed as follows:

13 Benjamin Carney, Esq. (bcarney@fisherphillips.com)
14 Danielle Moore, Esq. (dmoore@fisherphillips.com)
15 Phillip Simpler, Esq. (psimpler@fisherphillips.com)
16 **Fisher & Phillips LLP**
17 4747 Executive Drive, Suite 1000
18 San Diego, CA 92121
19 Phone: (858) 597-9600
20 Fax: (858) 597-9601

21 *Attorney for Defendant Wachter, Inc.*

22 [✓] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
23 accept electronic service, I caused the documents to be sent to the persons at the
24 electronic service addresses listed above via third-party cloud service
25 **CASEANYWHERE.**

26 X (State) I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct.

28 Executed on July 5, 2023, at Los Angeles, California.

29 Janelle Jickain
30 Name

31 /s/ Janelle Jickain
32 Signature