

Danielle Hultenius Moore (SBN 232480)

E-Mail: dmoore@fisherphillips.com

Phillip G. Simpler (SBN 292486)

E-Mail: psimpler@fisherphillips.com

Benjamin P. Carney (SBN 317206)

E-Mail: bcarney@fisherphillips.com

FISHER & PHILLIPS LLP

4747 Executive Drive, Suite 1000

San Diego, California 92121

Telephone: (858)597-9600

Facsimile: (858)597-9601

Attorneys for Defendant Wachter, Inc.

Kane Moon (SBN 249834)

E-Mail: kane.moon@moonyanglaw.com

Allen Feghali (SBN 301080)

E-Mail: allen.feghali@moonyanglaw.com

MOON & YANG, APC

1055 West Seventh Street, Suite 1880

Los Angeles, California 90017

Telephone: (213)232-3128

Facsimile: (213)232-3125

Attorneys for Plaintiff Larry Bonine

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: 20STCV31653

[Complex - Unlimited Jurisdiction]

*Assigned for all purposes to the Honorable
Kenneth R. Freeman, Department 14*

**JOINT STIPULATION AND
SETTLEMENT AGREEMENT OF CLASS
ACTION AND PAGA REPRESENTATIVE
CLAIMS**

Complaint Filed: August 18, 2020

Trial Date: Not Set

This Stipulation is made by the Class Representative on behalf of themselves and each of the other Class Members, on the one hand, and Defendant, on the other hand, in this Action, and is subject to the approval of the Superior Court.

1. DEFINED TERMS

1.1 “Action” means the civil action being resolved by this settlement entitled *Larry Bonine v. Wachter, Inc., et al.* (Los Angeles County Superior Court Case No. 20STCV31653).

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1.2 “Agreement,” “Settlement,” or “Stipulation” means this Stipulation and Settlement Agreement of Class Action Claims.

1.3 “Claims” means any and all claims asserted in the First Amended Complaint filed on December 15, 2020 or any other claims that could have been asserted in the Action based on the facts alleged therein. This includes, but is not limited to, any and all claims concerning: meal and rest breaks; unpaid regular wages, minimum wages, overtime and double time wages; wage statement violations; record keeping violations; expense reimbursement; and separation pay violations. Specifically, and without limitation, the Claims include claims for penalties (including PAGA) for violation of the California Labor Code or any law or regulation related to wage and hour law asserted or that could have been asserted in the Action based on the facts alleged, including without limitation California Labor Code section 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, 2802.

1.4 “Class” or “Class Members” means the following class: All current and former non-exempt employees who worked for Defendant within the State of California from August 18, 2016 to the Preliminary Approval Date.

1.5 “Class Counsel” means Kane Moon and Allen Feghali of Moon & Yang, APC.

1.6 “Class Period” means the period from August 18, 2016 until the Preliminary Approval Date. “PAGA Period” means the period from August 18, 2019 until the Preliminary Approval Date.

1.7 “Class Notice” means the Court-approved Notice of Proposed Class Action Settlement, substantially in the form attached hereto as **Exhibit A** and incorporated by reference herein, which will notify Class Members of, among other things, the following: Preliminary Approval of the Settlement, the basic terms of the Settlement, the calculation of the Settlement Award, the procedures for disputing and objecting to the Settlement, and requesting exclusion from the Settlement Class, and the scheduling of the Final Approval Hearing. Following the Court’s Preliminary Approval of the Settlement, the Settlement Administrator shall mail the Class Notice to all Class Members.

1.8 “Class Representative” means plaintiff Larry Bonine.

1.9 “Complaint” means the operative First Amended Complaint filed in the Action.

1.10 “Costs Award” means the amount of litigation expenses Class Counsel has incurred in prosecuting the Action and awarded by the Court. Class Counsel’s request for costs shall not exceed \$18,000.00.

1.11 “Court” means the Superior Court for the State of California, for the County of Los Angeles, which is the Court that the Parties will be submitting this Settlement to for purposes of obtaining court approval.

1.12 “Database Report” means a confidential list of Class Members that Defendant will diligently and in good faith compile from their records and provide to the Settlement Administrator only. Plaintiff’s counsel will not receive a copy of the confidential list. The Database Report shall be in computer-readable format, and shall include each Class Member’s full name; employee ID while employed with Defendant; dates of employment during which he or she worked in a class position for Defendant in California; last known home address and last known telephone number to the extent available in the Human Resources employee information database; Social Security number to perform a skip trace in order to obtain the best possible address for Class Members prior to mailing the Class Notice to Class Members.

1.13 “Defendant” means Wachter, Inc.

1.14 “Defendant’s Counsel” means Danielle Hultenius Moore, Phillip G. Simpler, and Benjamin P. Carney, of Fisher & Phillips, LLP.

1.15 “Effective Date” means the later of: (a) if any Class Member validly submits a Notice of Objection, the date on which the time for appeals from any Order ruling on the objections or granting Final Approval of the Settlement has run; or (b) the resolution of any appeal, filed by a Class Member who validly submitted a Notice of Objection, from any Orders ruling on any objection or granting Final Approval of the Settlement; or (c) the Final Approval Date if there are no objections to the settlement.

1.16 “Fees and Costs Award” means the aggregate total of the Fees Award and the Costs Award to Class Counsel approved by the Court.

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1.17 “Fees Award” means the fee amount authorized by the Court to be paid to Class Counsel for the services they have rendered in prosecuting the Action, in an amount not to exceed one third of the Total Settlement Amount, *i.e.*, the Fees Award shall not exceed One Hundred, Eighteen Thousand Dollars and Zero Cents (\$118,000.00).

1.18 “Final Approval” and/or “Final Approval Order” means the Court’s order granting final approval of the Settlement and “Final Approval Date” means the date that the Court signs the Final Approval Order.

1.19 “Final Approval Hearing” means the hearing at which the Court considers whether to issue an order granting final approval to the Settlement.

1.20 “Net Settlement Fund” means the funds available to pay the Settlement Awards to all Participating Settlement Class Members. The Net Settlement Fund shall constitute the Total Settlement Amount minus the sum of the (1) Fees and Cost Award, (2) the Service Award, (3) the Settlement Administration Costs, and (4) the PAGA Payment made to the Labor and Workforce Development Agency (“LWDA”).

1.21 “Non-Participating Class Member” means a Class Member who submits a timely and valid Request for Exclusion.

1.22 “Objection/Exclusion Deadline” means the date, no later than sixty (60) calendar days after the date the Notice is mailed (judged by the postmark date) by the Settlement Administrator, prior to which a Class Member may validly submit a Notice of Objection or a Class Member may submit a Request for Exclusion.

1.23 For purposes of this Settlement, “PAGA Employees” means all current and former non-exempt employees who worked for Defendant within the State of California during the PAGA Period. It is stipulated by the Parties that, for purposes of this Settlement, all PAGA Employees are “aggrieved employees” as defined pursuant to PAGA.

1.24 “PAGA Payment” shall constitute Forty Thousand Dollars and Zero Cents (\$40,000.00) which, pursuant to Labor Code section 2699(i), will be distributed as follows: 25% to PAGA Employees and 75% to the California Labor and Workforce Development Agency. The 25% portion of the PAGA Payment that shall be paid to the PAGA Employees shall remain

1 within the Net Settlement Fund so that it is available to be included within the calculation of the
2 PAGA Employees' Settlement Awards. If it should later be determined by the Court that an
3 additional amount is needed to effectuate a full and complete release of all California Labor Code
4 Private Attorneys General Act claims, Labor Code section 2698 et seq., that amount shall be
5 deducted from the Total Settlement Amount.

6 1.25. "PAGA Release" means all claims for penalties and any other available relief
7 pursuant to PAGA, to the extent asserted in Plaintiff's administrative exhaustion letter submitted
8 to the LWDA in this Action, arising during the PAGA Period.

9 1.26 "Participating Settlement Class Member" means any Class Members who did not
10 submit a timely and valid Request for Exclusion.

11 1.27 "Parties" means Defendant and the Class Representative.

12 1.28 "Preliminary Approval Order" means the Order issued by the Court preliminarily
13 approving the terms of the Settlement set forth in this Stipulation, in a form to be agreed upon by
14 the Parties prior to the hearing on the Motion for Preliminary Approval and "Preliminary
15 Approval Date" means the date that the Court signs the Preliminary Approval Order.

16 1.29 "Qualifying Workweek" means a workweek where a Participating Settlement
17 Class Member worked at least one day during that work week and was not on a leave of absence
18 or vacation. The Qualifying Workweek will be calculated by using Defendant's payroll data
19 during the Class Period. Workweeks of Non-Participating Class Members will be excluded from
20 the total number of Workweeks that are reported to the Settlement Administrator.

21 1.30 "Qualified Settlement Fund" or "QSF" means the account set up by the Settlement
22 Administrator and from which the individual Settlement Awards to Participating Settlement
23 Class Members shall be made. The QSF shall be an interest-bearing account within the meaning
24 of Section 468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulations
25 section 1.468B-1, et seq., at a federally-insured bank that is mutually acceptable to the Parties
26 and the Settlement Administrator. The Settlement Administrator shall serve as a Trustee of the
27 QSF and shall act as a fiduciary with handling of all tax-related issues, reporting, and payments.
28 The Settlement Administrator shall act in a manner necessary to qualify and maintain the QSF

1 as a Qualified Settlement Fund and the Parties shall cooperate to ensure such treatment and shall
2 not take a position in any filing or before any tax authority inconsistent with such treatment. The
3 Parties agree that the QSF shall be a non-reversionary fund and that under no circumstance will
4 there be any reversion to Defendant of any of the funds from the QSF or the Total Settlement
5 Amount.

6 1.31 “Released Claims” means all claims asserted under any applicable laws and/or
7 regulations relating to any and all facts and claims asserted in the Complaint or any other claims
8 that could have been asserted in the Complaint based on the facts alleged, including, without
9 limitation, claims related to meal and rest breaks; unpaid regular wages, minimum wages,
10 overtime and double time wages; wage statement violations; record keeping violations; expense
11 reimbursement; separation pay violations; and any related claims under the California Labor
12 Code; any other laws or regulations concerning wage and hour laws, and for penalties under the
13 California Private Attorneys General Act (“PAGA”); arising during the Class Period and/or
14 PAGA Period. The Released Claims do not cover or include (1) claims for Workers’
15 Compensation, (2) claims for unemployment or disability payments, (3) tort claims, or any other
16 claims that cannot be released as a matter of law. The Released Claims shall run during the entire
17 Class Period. As of the Effective Date of Settlement, each Class Member who has not filed a
18 valid Request for Exclusion shall be deemed to have fully, finally, and forever released,
19 relinquished, and discharged all Released Claims. This waiver and release of claims shall be
20 binding on the Class Representative and all members of the Class who have not timely submitted
21 a valid Request for Exclusion, including each of their respective attorneys, agents, spouses,
22 executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to
23 the benefit of the Released Parties.

24 1.32 “Request for Exclusion” means a letter or written request to be excluded from the
25 Settlement Class submitted by a Class Member to the Settlement Administrator and postmarked
26 by the Objection/Request for Exclusion Deadline. In order to be valid, the Request for Exclusion
27 must include the Class Member’s name, address, telephone number, last four digits of the Social
28 Security number, location, and years of his or her employment, and signature, and contain a

1 statement to the effect of: "I wish to be excluded from the Settlement Class." PAGA Employees
2 will not be able to request exclusion from the PAGA Release.

3 1.33 "Released Parties" means Defendant, and each of its former or present parents,
4 subsidiaries, affiliates, investors, partners, owners, related organizations, predecessors, or
5 successors, and all agents, employees, officers, directors, members, managers, holding
6 companies, insurers, and attorneys thereof.

7 1.34 "Settlement Administrator" means ILYM Group, Inc.

8 1.35 "Settlement Administration Costs" means the amount that will be paid to the
9 Settlement Administrator for actual and direct fees and expenses reasonably incurred by the
10 Settlement Administrator in administering the Settlement. Settlement Administration Costs will
11 include, but are not limited to, fees and costs payable to the Settlement Administrator for printing,
12 distributing (including with appropriate postage), and tracking documents for this Settlement,
13 any searches to locate any Class Members, calculating estimated amounts per Class Member, tax
14 reporting, distributing the individual Settlement Awards, the Class Representative's Service
15 Awards, Class Counsel Fees and Costs, payment to the LWDA, and providing necessary
16 certification of completion of notice, reports and declarations, establishing and administering a
17 QSF account, required tax reporting and withholding on the individual Settlement Awards, the
18 issuing of 1099 and W-2 IRS forms, as well as determining the validity of any disputes (and
19 communicating the determination of those disputes to the disputing Class Member, Class
20 Counsel and Defendant's Counsel) and opt-outs, calculating all amounts to be paid from the Total
21 Settlement Amount, and such other responsibilities and duties as reasonably and customarily
22 performed by third-party settlement administrators or as requested by the Parties. Settlement
23 Administration Costs shall not exceed \$15,000.00.

24 1.36 "Service Award" means the amount that the Court authorizes to be paid to the
25 Class Representative in the Action over and above his Settlement Award, in recognition of his
26 efforts in assisting with the prosecution of the Action on behalf of the Class Members. This
27 amount is not to exceed Seven Thousand Dollars (\$7,000.00).

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1.37 “Settlement Award” means the total portion of the Net Settlement Award payable to each member of the Settlement Class after deduction of the employee’s portion of all state and federal employment withholding taxes, FICA and FUTA contributions and any other applicable payroll deductions required by law.

1.38 “Settlement Class” means the Class Members who have not submitted a timely and valid Request for Exclusion and are therefore entitled to receive his or her individual portion of the Settlement Award.

1.39 “Total Settlement Amount” means the total amount that Defendant will be required by this Stipulation to pay to: Participating Settlement Class Members (which includes the employee payroll taxes withheld from the Wage Component of each Participating Settlement Class Member’s Settlement Award); the Class Representative; Class Counsel; the Settlement Administrator; and the Labor and Workforce Development Agency (*i.e.*, the PAGA Payment). The Total Settlement Amount is Three Hundred, Fifty Four Thousand Dollars and Zero Cents (\$354,000.00). The Total Settlement Amount is non-reversionary, meaning that, if the settlement is approved and becomes effective, no part of this amount shall be returned to Defendant.

2. BACKGROUND AND PRELIMINARY REPRESENTATIONS

2.1 Certification. This Court has not yet Certified the Class. The Parties intend for the Class to be certified through the preliminary approval process for settlement purposes only. If the Court should for any reason fail to approve the Settlement, this Agreement shall be considered null and void, the Class will not be certified, Plaintiff’s class allegations shall remain stricken, Plaintiff shall pursue his individual claims in individual arbitration, and Defendant shall have the right to seek to compel individual arbitration of Plaintiff’s PAGA claims. The Parties agree that Defendant has not waived the right to compel arbitration of Plaintiff’s or any other Class Members’ claims by entering into this Agreement or by their delay in seeking to enforce any such rights with respect to the Action.

2.2 Investigation. The Parties have conducted significant investigation of the facts and law. Such discovery and investigation included interviews with the Class Representative and other percipient witnesses, as well as the review of documents and data necessary to calculate

1 potential damages. Counsel for the Parties investigated the law as applied to the facts discovered
2 regarding the alleged claims of the Class Members and potential defenses thereto, and the
3 damages claimed by the Class Members.

4 2.3 Defendant's Reasons for Settlement. Defendant concluded that any further
5 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts
6 of time, energy, and resources of Defendant have been and, unless this Settlement is made, will
7 continue to be devoted to the defense of the claims asserted by the Class Representative.
8 Defendant has also taken into account the risks of further litigation in reaching their decision to
9 enter into this Settlement. Defendant has, therefore, agreed to settle in the manner and upon the
10 terms set forth in this Agreement to put to rest the Claims as set forth in the Action.

11 2.4 Defendant's Denials of Wrongdoing. Defendant has denied and continues to deny
12 each of the claims and contentions alleged by Class Members in the Action. Defendant has
13 repeatedly asserted, and continues to assert, defenses thereto, and has expressly denied and
14 continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct
15 alleged in the Action. Defendant also has denied and continues to deny, inter alia, the allegations
16 that the Class Members have suffered damage; that Defendant violated any laws; that Defendant
17 engaged in any wrongful conduct as alleged in the Action; or that Class Members were harmed
18 by the conduct alleged in the Action. Neither this Agreement, nor any document referred to or
19 contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as,
20 or may be used as an admission, concession or indication by or against Defendant of any fault,
21 wrongdoing or liability whatsoever.

22 2.5 Plaintiff's Claims. The Class Representative has claimed and continues to claim
23 that the Released Claims have merit and give rise to liability on the part of Defendant. This
24 Agreement is a compromise of disputed claims, and Plaintiff's Agreement takes into account
25 Defendant's defenses to liability. Nothing contained in this Agreement and no documents
26 referred to herein and no action taken to carry out this Agreement may be construed or used as
27 an admission by or against the Class Representative or Class Counsel as to the merits or lack
28 thereof of the claims asserted.

2.6 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims against the Released Parties arising from or related to this Action, and that this Settlement Agreement shall constitute a full and complete settlement and release of all the Released Parties from all of the claims asserted in this Action.

3. CLASS AND PAGA SETTLEMENT AGREEMENT

3.1 Settlement Components. The Settlement shall have six components: (1) the Participating Settlement Class Members' Settlement Awards; (2) the Class Representative's Service Award; (3) Class Counsel's Fees and Cost Award; (4) the Settlement Administration Costs; and (5) the PAGA Payment. All of these components are included in the Total Settlement Amount.

3.2 Creation of the Settlement Fund. Within thirty (30) calendar days after the Effective Date, Defendant shall deliver the Total Settlement Amount to the Settlement Administrator to create the Settlement Fund, including the employer-side payroll taxes on the wage portion of the Settlement Awards. All payments that Defendant is required to make pursuant to the Settlement Agreement shall be made from the Fund by the Settlement Administrator. Defendant will retain exclusive authority over, and responsibility for, those funds until required to deliver them to the Settlement Administrator in accordance with this paragraph.

3.3 Calculation of Participating Settlement Class Members' Settlement Awards. The Settlement Administrator shall have the authority and obligation to calculate the amounts of individual Settlement Awards in accordance with the methodology set forth in this Stipulation of Settlement and any Orders of the Court. The Parties agree that the formula for the individual Settlement Awards to Participating Settlement Class Members provided herein is reasonable and that the payments provided herein are designed to provide a fair settlement to such persons, in light of the uncertainties of the damages and penalties alleged to be owed to the Class and the calculation of such amounts.

3.3.1 The Parties agree that Class Members will not have to submit a claim form in order to participate in the Settlement. Each Class Member who does not submit a Request for Exclusion will be mailed a check representing their individual Settlement Award. Therefore, the

1 individual Settlement Awards will be paid from the Net Settlement Fund to all Class Members
2 unless the Class Member submits a valid and timely written Request for Exclusion from the
3 Settlement Class. Note, any Class Member who worked during the PAGA Period will receive a
4 check representing their portion of the PAGA Payment regardless of whether they request
5 exclusion from the Class.

6 3.3.2 After deducting (i) the Court-approved Class Representative's Service Award,
7 (ii) the Court-approved Fees and Costs Award, (iii) the Settlement Administration Costs, and
8 (iv) the PAGA Payment to the LWDA, then the remainder of the Total Settlement Amount, or
9 the Net Settlement Fund, will be distributed to the Participating Settlement Class Members.
10 Relying on the Database Report, the Settlement Administrator will calculate the number of
11 Qualifying Workweeks for each Participating Settlement Class Member of the Class. Each
12 Participating Settlement Class Member shall be entitled to receive a pro-rata portion based upon
13 their respective number of Qualifying Workweeks in the Class and PAGA Periods. Thus, each
14 Class Member that does not request exclusion from the Settlement shall be entitled to a pro-rata
15 share of the Net Settlement Fund based on the ratio of the number of Qualifying Workweeks that
16 he or she worked to the total number of Qualifying Workweeks that all Participating Settlement
17 Class Members worked during the Class Period.

18 3.3.3 Class Members will have the opportunity, should they disagree with Defendant's
19 records regarding the number of Qualifying Workweeks as presented on the Notice, to provide
20 documentation and/or an explanation to show contrary employment dates. Class Members must
21 notify the Settlement Administrator of the dispute and submit documentation to support their
22 dispute (such as, without limitation, offer letters, payroll or time keeping records, paycheck stubs)
23 prior to the Objection/Exclusion Deadline. Moreover, an individual can only dispute his/her
24 number of Qualifying Workweeks if he/she does not exclude himself/herself from the Settlement
25 Class. Absent evidence rebutting Defendant's records, Defendant's records will be presumed
26 determinative. However, if there are no corresponding records, or the Class Member produces
27 evidence contrary to Defendant's records, the Settlement Administrator will evaluate the

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1 evidence and will make the final decision as to the number of eligible Qualifying Workweeks
2 that should be applied.

3 3.3.4 Each Participating Settlement Class Member will have one hundred, eighty (180)
4 calendar days from the date of the mailing of the individual Settlement Award check to cash the
5 check sent to the Participating Settlement Class Member. Failure to cash the check within one
6 hundred, eighty (180) calendar days will result in the Participating Settlement Class Member
7 forgoing all eligibility to receive any payment from the Settlement, but the Participating
8 Settlement Class Member shall remain bound by the Settlement and the Released Claims.

9 3.3.5 The checks will state they are void if not cashed within one hundred, eighty (180)
10 calendar days of mailing. The settlement checks to each Participating Settlement Class Member
11 will also contain the following short release and waiver on the back:

12 By depositing this check, I acknowledge that I have released and discharged the
13 ‘Released Claims,’ which will include a release of claims against the ‘Released
14 Parties,’ as described in detail in the Notice of Proposed Class Action Settlement
15 that I received and reviewed.

16 3.3.6 The Parties recognize that the individual Settlement Awards to be paid to
17 Participating Settlement Class Members reflect in part a settlement of a dispute over claimed
18 wages, interest, and penalties. The individual Settlement Awards to Participating Settlement
19 Class Members shall be allocated as follows: Ten percent (10%) of each Participating Settlement
20 Class Member’s Settlement Award shall be considered wages (“Wage Component”) and ninety
21 percent (90%) shall be considered penalties and interest (the “Non-Wage Component”). The
22 Wage Component shall be reported on a W-2 Form and will be provided to each Participating
23 Settlement Class Member. From each Class Member’s Wage Component, the employee’s
24 portion of employment taxes shall be made, including payroll deductions for state and federal
25 withholding taxes, and any other applicable payroll deductions, owed by the Participating
26 Settlement Class Member as a result of the payment, resulting in a “Net Wage Component.” No
27 withholding shall be made on the Non-Wage Component of the settlement. The Non-Wage
28 Component shall be reported on a 1099 Form and will be provided to each Participating

1 Settlement Class Member. The Net Wage Component shall be added to the Non-Wage
2 Component resulting in each Participating Settlement Class Member's Settlement Award.

3 3.4 Class Representative's Service Award. Subject to Court approval and the
4 execution of the general release by the Class Representative, the Parties agree to a payment from
5 the Total Settlement Amount to the Class Representative for the Class Representative's Service
6 Award in an amount not to exceed seven thousand dollars (\$7,000.00). The Parties agree that a
7 decision by the Court to award the Class Representative an amount less than seven thousand
8 dollars (\$7,000.00) each shall not be a basis for the Class Representative or Class Counsel to void
9 this Stipulation. Defendant agrees not to oppose the Class Representative's Service Award
10 request if consistent with this Agreement. Defendant, via the Administrator, shall issue the Class
11 Representative a Form 1099 for their Service Award. The Class Representative shall be solely
12 and legally responsible to pay his applicable taxes on this payment and shall hold harmless
13 Defendant from any claim or liability for taxes, penalties, or interest owed by the Class
14 Representative as a result of this payment. The Service Awards shall be in addition to the Class
15 Representative's individual Settlement Awards. If the Court approves Service Awards to the
16 Class Representative that is less than the amount sought, the remainder will be retained in the
17 Net Settlement Fund for distribution to Participating Settlement Class Members.

18 3.4.1 Class Representative's Service Award is for the Class Representative's services
19 and assistance to the Class and additionally, in recognition for his willingness to provide a full
20 and separate general release individually of any and all claims against Defendant regardless of
21 whether such claims have been alleged against Defendant, including, without limitation, known
22 or unknown claims, whether for economic damages, non-economic damages, punitive damages,
23 restitution, tort, contract, penalties, injunctive or declaratory relief, attorney's fees, costs, or other
24 monies or remedies. This release by the Class Representative includes all federal and state
25 statutory claims, and federal and state common law claims (including, but not limited to, those
26 for contract, tort, and equity), including, without limitation, the Americans with Disabilities Act;
27 Age Discrimination in Employment Act; Title VII of the Civil Rights Act of 1964 (as amended);
28 42 U.S.C. section 1981; 42 U.S.C. section 1983; the Fair Labor Standards Act; the Employee

1 Retirement Security Income Act of 1974; the California Constitution; the California Fair
2 Employment and Housing Act; the California Unfair Competition Act (California Business and
3 Professions Code section 17200 et seq.); the California Labor Code; and claims for additional
4 compensation relating to stock options.

5 3.4.2 General Release by Class Representative Only. In addition to the releases made
6 by the Participating Settlement Class Members set forth in 4.1 below and in consideration for the
7 Service Awards, the Class Representative, as of the Effective Date, in his individual capacity for
8 himself, his heirs, executors, administrators, successors, and assigns and with respect to his
9 individual claims only, agrees to release the Released Parties from all claims, demands, rights,
10 liabilities, and causes of action of every nature and description whatsoever, known or unknown,
11 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
12 or federal statute, rule or regulation arising out of, relating to, or in connection with their
13 employment by and termination from Released Parties and any act or omission by or on the part
14 of any of the Released Parties committed or omitted prior to the Effective Date of this Agreement
15 (the "General Release"). This total release includes, but is not limited to, all claims arising
16 directly or indirectly from Class Representative's employment with Released Parties and the
17 termination of that employment; claims or demands related to wages, bonuses, vacation pay,
18 benefits, and expense reimbursements pursuant to any federal, state, or local law or cause of
19 action, including, but not limited to, breach of contract, breach of the implied covenant of good
20 faith and fair dealing, infliction of emotional harm, wrongful discharge, violation of public
21 policy, defamation, and impairment of economic opportunity; violation of the California Fair
22 Employment and Housing Act, the California Labor Code, the California Constitution; and any
23 claims for violation of the Civil Rights Act of 1866, Title VII of the Civil Rights Act of 1964,
24 the Americans With Disabilities Act of 1990, and any private attorney general action under the
25 California Business & Professions Code section 17200.

26 3.4.3 The General Release includes any unknown claims that the Class Representative
27 does not know or suspect to exist in his favor at the time of the General Release, which, if known
28 by him, might have affected his settlement with, and release of, the Released Parties or might

1 have affected his decision not to object to this Settlement or the General Release. With respect
2 to the General Release, the Class Representative stipulates and agrees that, upon the Effective
3 Date, he shall be deemed to have, and by operation of the Court's Final Approval Order, shall
4 have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions,
5 rights and benefits of Section 1542 of the California Civil Code, or any other similar provision
6 under federal or state law, which provides:

7 **A general release does not extend to claims that the creditor or releasing party does**
8 **not know or suspect to exist in his or her favor at the time of executing the release and that,**
9 **if known by him or her, would have materially affected his or her settlement with the debtor**
10 **or released party.**

11 3.4.4 The Class Representative may hereafter discover facts in addition to or different
12 from those they now know or believe to be true with respect to the subject matter of the General
13 Release, but upon the Effective Date, shall be deemed to have, and by operation of the Court's
14 Final Approval Order, shall have, fully, finally, and forever settled and released any and all of
15 the claims released pursuant to the General Release whether known or unknown, suspected or
16 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any
17 theory of law or equity now existing or coming into existence in the future, including, but not
18 limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty,
19 law or rule, without regard to the subsequent discovery or existence of such different or additional
20 facts.

21 3.4.5 Notwithstanding the above, the scope of the General Release provided to the
22 Released Parties by the Class Representative does not include any claims for state disability
23 benefits, workers compensation benefits, or unemployment benefits, or any claims that cannot
24 be released as a matter of law.

25 3.5 Class Counsel's Fees and Costs Award. Defendant agrees not to oppose or
26 impede any application or motion by Class Counsel for attorneys' fees not to exceed one-third
27 of the Total Settlement Amount (*i.e.*, \$118,000.00) and actual litigation costs not to exceed
28 Eighteen Thousand Dollars (\$18,000.00). The Parties agree that a decision by the Court to award

1 Class Counsel an amount less than \$118,000.00 shall not be a basis for the Class Representative
2 or Class Counsel to void this Agreement. The aggregate attorneys' fees and costs awarded by
3 the Court shall be the "Fees and Costs Award." Class Counsel shall be solely and legally
4 responsible to pay their applicable taxes on the payment made pursuant to this Paragraph. Class
5 Counsel further agrees that Class Counsel shall be solely responsible for any allocation of the
6 Fees and Costs Award as between or among attorneys who have claims for such fees. Forms
7 1099 shall be provided to Class Counsel for the payments made pursuant to this Paragraph. If
8 the amount awarded to Class Counsel for attorneys' fees is less than the amount sought, the
9 remainder will be retained in the Net Settlement Fund for distribution to Participating Settlement
10 Class Members.

11 3.6 Settlement Administration Costs. The Settlement Administrator shall be paid for
12 the costs of administration of the settlement from the Settlement Fund. The costs of
13 administration for the disbursement of the Total Settlement Amount shall not exceed the amount
14 quoted (and ultimately billed), approximately \$15,000.00, by claims administrator ILYM Group,
15 Inc. The Settlement Administration Costs include all tasks required of the Settlement
16 Administrator by this Agreement including performing a skip trace, as well as basic searches on
17 the National Change of Address Database in order to obtain the best possible address for Class
18 Members prior to mailing the Class Notice to Class Members, the issuance of the Notice, the
19 required tax reporting on the settlement amounts, the issuance of checks, including the issuing of
20 W-2 and 1099 forms (if any), the handling of Class Member questions and disputes, as well as
21 calculation of employee withholding taxes and the employer payroll taxes for Defendant to be
22 remitted to the tax authorities. At least fourteen (14) calendar days prior to the Final Approval
23 Hearing, the Settlement Administrator shall provide the Court and all counsel for the Parties with
24 a statement detailing the due diligence the Settlement Administrator has undertaken with regard
25 to the mailing of the Class Notice, including any attempts to obtain valid mailing addresses for
26 and re-mailing of any returned Class Notices, the final costs of administration, and reporting on
27 the number of objections and exclusions submitted by Non-Participating Class Members, as well
28 as any disputes (and explain the status of the disputes).

1 3.7 Payment to the Labor and Workforce Development Agency. Subject to Court
2 approval, Forty Thousand Dollars (\$40,000.00) will be allocated to cover any and all claims for
3 civil penalties associated with the Released Claims that were, or could have been, brought in the
4 Action under PAGA; 75% of which is Thirty Thousand Dollars (\$30,000.00) that will be paid
5 directly to the LWDA, and the remaining 25% of which is Ten Thousand Dollars (\$10,000.00),
6 which will be retained in the Net Settlement Fund for distribution to Participating Settlement
7 Class Members as penalties.

8 3.8 Tax Liability. Defendant makes no representations as to the tax treatment or legal
9 effect of the payments called for hereunder, and the Class Representative is not relying on any
10 statement or representation by Defendant in this regard. The Class Representative understands
11 and agrees that Participating Settlement Class Members will be solely responsible for the
12 payment of employee taxes and penalties predicated on the payments described herein. The Class
13 Representative shall hold harmless Released Parties from and against any claims resulting from
14 treatment of such payments as non-taxable damages, including the treatment of such payment as
15 not subject to withholding or deduction for payroll and employment taxes.

16 3.9 Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY
18 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER
19 PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
20 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
21 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
22 WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR
23 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX
24 ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT
25 CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY
26 (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL
27 AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION
28 WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED

1 UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR
2 ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
3 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
4 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
5 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
6 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
7 OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF
8 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
9 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
10 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
11 AGREEMENT.

12 **4. RELEASE BY THE CLASS MEMBERS**

13 4.1 Release as To All Participating Settlement Class Members. As of the Effective
14 Date and upon payment by Defendant of all funds due under this Settlement, all Participating
15 Settlement Class Members, including the Class Representative, release the Released Parties from
16 the Released Claims. The Participating Settlement Class Members agree not to make, participate,
17 encourage or support any action asserting or alleging any of the Released Claims against any of
18 the Released Parties.

19 **5. PRELIMINARY APPROVAL**

20 5.1 As part of this Settlement, the Parties agree to the following procedures for
21 obtaining preliminary Superior Court approval of the Settlement, notifying Class Members,
22 obtaining final Superior Court approval of the Settlement, and processing the Settlement Awards:

23 5.1.1 Preliminary Settlement Hearing. The Class Representative shall seek preliminary
24 approval of the Settlement before the Superior Court and to request the entry of the Preliminary
25 Approval Order. In conjunction with this hearing, the Class Representative will submit this
26 Agreement, which sets forth the terms of this Settlement, and will include the proposed Class
27 Notice.

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1 5.1.2 Order Granting Preliminary Approval of Proposed Settlement. Simultaneous with
2 the filing of the Stipulation of Settlement and solely for purposes of this Settlement, the Class
3 Representative will request that the Court enter an order preliminarily approving the proposed
4 Settlement and setting a date for a Final Approval Hearing. The Order shall be in a form to be
5 agreed upon by the Parties prior to the hearing on the Motion for Preliminary Approval and
6 provide for Notice of the Settlement to be sent to Class Members as specified herein.

7 5.1.3 Statement of Non-Opposition: The Defendant may file a statement of
8 non-opposition to the motion for preliminary approval.

9 **6. NOTICE PROCESS**

10 6.1 Notice Process. Notice of the Settlement shall be provided to Class Members,
11 and Class Members shall submit objections to the Settlement and/or requests for exclusion from
12 the Settlement Class, using the following procedures:

13 6.1.1 The Defendant shall provide the Settlement Administrator and Class Counsel with
14 the Database Report within twenty-one (21) calendar days after the Preliminary Approval Order.

15 6.1.2 Within fourteen (14) calendar days of receiving the Database Report, the
16 Settlement Administrator shall mail a copy of the Notice to each Class Member via First Class
17 regular U.S. Mail.

18 6.1.3 Prior to mailing, the Settlement Administrator shall check all addresses on the
19 Database Report against the National Change of Address (NCOA) database. Additionally, the
20 Settlement Administrator shall undertake reasonable address verification using Accurint, or a
21 substantially similar skip tracing to ascertain the accuracy of the last known addresses and to
22 obtain the best possible address for the Class Members before mailing the notices. To the extent
23 these processes yield an updated or better address, that updated address shall replace the last
24 known address and be treated as the new last known address for purposes of this Settlement
25 Agreement.

26 6.1.4 Procedure for Undeliverable Notices. Any Notices returned to the Settlement
27 Administrator as non-delivered shall be promptly re-sent to the forwarding address affixed
28 thereto. If no forwarding address is provided, then the Settlement Administrator shall promptly

1 attempt to determine a correct address using a single skip-trace, computer or other search using
2 the name, address, and/or Social Security number of the individual involved and shall then
3 perform a single re-mailing. The deadline for Class Members who receive a re-mailed Notice to
4 object to the Class Action Settlement or request an Exclusion from the Settlement Class is
5 ten (10) calendar days from the date of re-mailing if that date is beyond the original deadline.
6 When re-mailing any Notices, the Settlement Administrator should include a brief letter stating
7 that the recipient of the Class Notice has until the original deadline set forth on the Notice or
8 ten (10) calendar days after the date of re-mailing of the Class Notice (whichever is later) to
9 object or submit a Request for Exclusion. In the event the procedures in this Paragraph are
10 followed and the intended recipient of a Notice still does not receive the Notice, the intended
11 recipient shall be a Participating Settlement Class Member and will be bound by all terms of the
12 Settlement and any Final Approval Order entered by the Superior Court if the Settlement is
13 approved by the Superior Court. If any Class Notice is returned from any mailing and/or
14 re-mailed, the Settlement Administrator will note for its own records and notify the Parties'
15 Counsel of the date of such re-mailings as part of a weekly status report provided to the Parties.

16 6.1.5 The Notice shall provide that Class Members who wish to exclude themselves
17 from the Settlement Class must submit a Request for Exclusion postmarked by the
18 Objection/Exclusion Deadline. The Objection/Exclusion Deadline is sixty (60) calendar days
19 following the initial mailing of the Notice. Any Class Member who properly requests exclusion
20 using this procedure will not receive any payment from the Settlement, except to the extent such
21 Class Members are also PAGA Employees entitled to receive payment in exchange for their
22 PAGA Release, and will not be bound by the Stipulation of Settlement or have any right to object,
23 appeal or comment thereon. Class Members who do not submit a valid and timely Request for
24 Exclusion shall be bound by all terms of the Stipulation of Settlement and any judgment entered
25 in the Action once the Settlement is approved by the Court.

26 6.1.6 Procedure for Objecting. The Notice shall provide that Class Members who wish
27 to object to the settlement must mail a written statement of objection ("Notice of Objection") to
28 the Settlement Administrator no later than the Objection/Exclusion Deadline Date. Only Class

Members (*i.e.*, not Non-Participating Class Members) may submit objections and have the objections heard. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection is timely. The Notice of Objection must state the basis for the objection. Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement and/or from appealing any order by the Court approving the Settlement. No later than fourteen (14) calendar days before the Final Approval Hearing, the Settlement Administrator shall provide counsel for the Parties with complete copies of all objections received, including the postmark dates for each objection. Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the settlement or to appeal from any order of the Court approving the settlement. Class Counsel shall not represent any Class Member with respect to any such objection.

6.1.7 Procedure for Requesting Exclusion. The Notice shall provide that Class Members who wish to exclude themselves from the Settlement Class and, in so doing, become a Non-Participating Class Member, must submit a written request to be excluded from the Settlement Class on or before the Objection/Exclusion Deadline Date. Such request for exclusion: (1) must contain the name, address, telephone number, the last four digits of the Social Security number of the person requesting exclusion, the location and years of his or her employment by Defendant, signature, and contain a statement to the effect of: "I wish to be excluded from the Settlement Class."; (2) must be returned by mail to the Settlement Administrator at the specified address; and (3) must be postmarked on or before the Objection/Exclusion Deadline Date. The date of the postmark shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who requests an exclusion from the Settlement Class will not be entitled to submit objections to the Settlement, will not be entitled to any recovery under the Settlement, except to the extent such

1 Class Members are also PAGA Employees entitled to receive payment in exchange for their
2 PAGA Release, and will not be bound by the Settlement or have any right to object, appeal or
3 comment thereon. Class Members who fail to submit a valid and timely request for exclusion on
4 or before the Objection/Exclusion Deadline Date shall be Participating Settlement Class
5 Members and shall be bound by all terms of the Settlement, if the Settlement is approved by the
6 Court. No later than fourteen (14) calendar days before the Final Approval Hearing, the
7 Settlement Administrator shall provide counsel for the Parties with a complete list of all
8 Non-Participating Class Members who have timely requested exclusion from the Settlement. At
9 no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class
10 Members to submit requests for exclusion from the Settlement Class.

11 6.1.8 Claims Deemed Waived. Any Class Member who does not request exclusion as
12 set forth above is deemed to have released all Released Claims against Released Parties as set
13 forth herein.

14 **7. SETTLEMENT ADMINISTRATION**

15 7.1 The Parties agree to cooperate in the settlement administration process and to
16 make all reasonable efforts to control and minimize the costs and expenses incurred in
17 administration of the Settlement.

18 7.2 The Settlement Administrator shall be responsible for: printing and mailing the
19 Notices to the Class Members as directed by the Superior Court; receiving and reporting the
20 requests for exclusion submitted by Non-Participating Class Members; issuing and mailing
21 Settlement Awards to Class Members; remitting all amounts due to the appropriate federal, state,
22 and local tax authorities, and other tasks as the Parties mutually agree or the Superior Court orders
23 the Settlement Administrator to perform. The Settlement Administrator shall keep Defendant's
24 Counsel and Class Counsel timely apprised of the performance of all Settlement Administrator
25 responsibilities. The Settlement Administrator shall provide the Parties' Counsel with a weekly
26 report showing: (1) the number of Class Notices mailed to Class Members; (2) the number of
27 Class Notices returned as undeliverable; (3) the number of re-mailed Class Notices; (4) the
28 number of Non-Participating Class Members who have submitted Requests for Exclusion; (5) the

1 number of Class Members who have submitted objections; and (6) the number of Class Members
2 who have disputed the number of Qualifying Workweeks being credited to that Class Member.
3 Additionally, the Settlement Administrator shall provide to the Parties' Counsel any updated
4 reports regarding the administration of the Settlement as needed or requested.

5 7.3 The Settlement Administrator, on Defendant's and Class Counsel's collective
6 behalf, shall have the authority and obligation to calculate the amounts of the Settlement Awards,
7 make payments, credits, and disbursements, including payments and credits in the manner set
8 forth herein, to Class Members calculated in accordance with the methodology set out in this
9 Agreement and orders of the Court.

10 7.4 No person shall have any claim against Defendant, Defendant's Counsel, the
11 Class Representative of the Class, Class Counsel, or the Settlement Administrator based on any
12 errors or omissions in the distributions and payments that are required to be made in accordance
13 with the terms of this Agreement.

14 7.5 Any tax return filing required by this Agreement shall be made by the Settlement
15 Administrator. Any expenses incurred in connection with such filing shall be a cost of
16 administration of the Settlement.

17 **8. PROCEDURE FOR FUNDING OF SETTLEMENT**

18 8.1 Defendant shall fund the Settlement via one lump sum payment equaling the Total
19 Settlement Amount (*i.e.*, the payment shall be \$354,000.00) plus an amount to cover the
20 employer-side payroll taxes on the wage portion of the Settlement Awards as calculated by the
21 Settlement Administrator.

22 8.2 The TSA was calculated with, and is premised on, the understanding that there
23 are approximately 17,645 workweeks during the Class Period through the preliminary approval
24 date. If the final accounting of the number of weeks worked during the Class Period increases
25 by more than ten percent (10%) due to a reason other than the passage of time beyond
26 December 6, 2021, Defendant will increase the TSA by a proportional amount or, if the
27 Defendant chooses, the Class Period shall be deemed to end on the date that the total number of
28 workweeks in the Class Period exceeds 17,645 weeks by ten percent (10%) due to a reason other

1 than the passage of time. For example, if the total number of workweeks in the Class Period
2 increases by eleven percent (11%) at the time of preliminary approval for a reason other than due
3 to the passage of time, then Defendant agrees to increase the TSA by eleven percent (11%),
4 unless Defendant exercises the right to end the Class Period on the date that the total workweeks
5 increased by eleven percent (11%) more than 17,645 other than due to passage of time.

6 8.3 Within thirty (30) calendar days of the Effective Date, Defendant shall provide
7 the Settlement Administrator with the Total Settlement Amount plus employer-side payroll taxes.

8 **9. PROCEDURE FOR PAYMENT OF SETTLEMENT AWARDS**

9 9.1 Distributions of funds and Settlement Payments to Participating Settlement Class
10 Members shall occur no later than fifteen (15) calendar days after the funding, as follows: 100%
11 of the Fees and Costs Award; 100% of the Service Awards; 100% of the Settlement
12 Administration Costs; 100% of the portion of the PAGA Payment to be paid to the LWDA; and
13 the remainder of the funds to be distributed pro rata in the amount of 100% to the Settlement
14 Payments to Participating Settlement Class Members.

15 9.2 To ensure that they receive their Settlement Payment checks for each distribution,
16 Class Members must notify the Settlement Administrator if they change their mailing address.

17 9.3 Participating Settlement Class Members shall have one hundred, eighty (180)
18 calendar days from the date each Settlement Payment check is mailed by the Settlement
19 Administrator to cash the Settlement Payment check. Class Members who fail to cash a
20 Settlement Payment check within one hundred, eighty (180) calendar days will not receive the
21 amount of the uncashed check and the Settlement Payments that they would otherwise have been
22 entitled to receive in any subsequent distributions shall be reallocated, on a pro-rata basis, to
23 Participating Settlement Class Members who cashed their Settlement Payment check from the
24 prior distribution. Participating Settlement Class Members who do not cash any or all of their
25 Settlement Payment checks, and who have not excluded themselves from the Settlement Class,
26 will nevertheless be bound by the terms of the release by Class Members, as detailed herein. For
27 good cause, the Parties are permitted to allow the late negotiation of the uncashed Settlement

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1 Payment check of any Participating Settlement Class Member, subject to approval by the Court
2 in case of any disagreement between the Parties.

3 9.4 Any amounts remaining from uncashed Settlement Payment checks shall be paid
4 consistent with Code of Civil Procedure section 384 to Laura's House
5 (<https://www.laurashouse.org/>).

6 9.5 Except for Non-Participating Class Members, all Class Members will become
7 eligible to receive Settlement Payments from Defendant, distributed through the Settlement
8 Administrator.

9 9.6 Should any question arise regarding the determination of eligibility for, or the
10 amounts of, any Settlement Payments under the terms of this Agreement, Class Counsel and
11 Defendant's Counsel shall meet and confer in an attempt to reach agreement. Absent evidence
12 rebutting Defendant's records, Defendant's records will be presumed determinative. However,
13 if there are no corresponding records, or the Class Member produces evidence contrary to
14 Defendant's records, the Settlement Administrator will evaluate the evidence and will make the
15 final decision as to the eligibility for, or the amounts of, any Settlement Payments under the terms
16 of this Agreement.

17 9.7 Certification by Settlement Administrator. Upon completion of administration of
18 the distributions, the Settlement Administrator shall provide written certification of such
19 completion to the Court and counsel for all Parties.

20 **10. FINAL SETTLEMENT APPROVAL HEARING**

21 10.1 Upon expiration of the Objection/Exclusion Deadline Date, with the Court's
22 permission, a Final Approval Hearing shall be conducted to determine final approval of the
23 Settlement along with the amount properly payable for (i) reasonable attorneys' fees and costs,
24 (ii) the Class Representative's Service Awards, (iii) the PAGA Payment to the State of California
25 Labor and Workforce Development Agency; and (iv) cost of administration. The Final Approval
26 Hearing shall not be held earlier than thirty (30) calendar days after the Objection/Exclusion
27 Deadline Date. After entry of an order finally approving the settlement, the Court shall have
28 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement

1 of the terms of the settlement, (ii) settlement administration matters, and (iii) such other matters
2 as may be appropriate under court rules or as set forth in this Agreement.

3 **11. VOIDING THE SETTLEMENT**

4 11.1 Defendant's Option to Terminate Settlement. If the number of Class Members
5 who have submitted timely requests for exclusion from the Settlement Class exceeds ten
6 percent (10%) of the Class Members or more of the Class under this Settlement, then Defendant
7 shall have, in their sole discretion, the option to terminate this Settlement within five (5) calendar
8 days prior to Final Approval, provided the Settlement Administrator has provided Defendant the
9 number and percentage of valid and timely Requests for Exclusion. In the event that Defendant
10 terminates the agreement pursuant to this provision, then Defendant shall be solely responsible
11 for payment of all costs incurred by the Settlement Administrator through the date that Defendant
12 notifies the Settlement Administrator in writing (with a copy to Class Counsel) that they are
13 exercising this Option.

14 11.2 Nullification of Settlement Agreement. In the event: (i) the Court does not enter
15 the Order specified herein; (ii) the Court does not issue an order finally approving the Settlement,
16 as provided herein, or said order does not become final as a result of the occurrence of the
17 Effective Date; (iii) Defendant or the Class Representative elect to terminate the Settlement as
18 set forth herein; or (iv) the Settlement does not become final for any other reason, this Settlement
19 Agreement shall be null and void and any order entered by the Court in furtherance of this
20 Settlement shall be treated as void from the beginning. In such a case, the Parties shall be
21 returned to their respective statuses as of the date and time immediately prior to the execution of
22 this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had
23 not been executed, except that in the event Defendant elects to terminate the Settlement, any fees
24 already incurred by the Settlement Administrator shall be paid by Defendant and shall not be
25 repaid to Defendant. In the event appellate review is sought prior to the Effective Date,
26 administration of the Settlement shall be stayed pending final resolution of the appeal.

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1 **12. NO EFFECT ON EMPLOYEE BENEFITS**

2 12.1 The Settlement Awards paid to the Class Representative or other Participating
3 Settlement Class Members shall not have any effect on the eligibility for, or calculation of, any
4 of the employee benefits (*e.g.*, vacations, holiday pay, retirement plans, etc.) of the Class
5 Representative or Participating Settlement Class Members. The Parties agree that any Settlement
6 Awards to Participating Settlement Class Members under the terms of this Agreement do not
7 represent any modification of Participating Settlement Class Members' previously credited hours
8 of service or other eligibility criteria under any employee pension benefit plan or employee
9 welfare benefit plan sponsored by Defendant. Further, any Settlement Awards or Service Award
10 hereunder shall not be considered "compensation" in any year for purposes of determining
11 eligibility for, or benefit accrual within, an employee pension benefit plan, employee welfare
12 benefit plan, or incentive compensation plan sponsored by Defendant.

13 **13. PUBLICITY**

14 13.1 The Class Representative and Class Counsel agree that they have not and will not
15 publish the resolution of this case except as necessary to effectuate Court approval of the
16 Settlement. Nothing in this clause shall serve to bar Class Counsel from communicating with
17 Class Members regarding this Settlement. In response to any inquiries, Class Representative and
18 Class Counsel will state that "the case was resolved and any court documents can be accessed
19 through the Court's website." Class Counsel shall not report the resolution of this case in any
20 medium or in any publication, shall not post or report anything regarding the claims of Class
21 Representative or the Class Members or the resolution of this case on their website, and shall not
22 contact any reporters or media regarding the resolution of this case. However, Class Counsel are
23 authorized to make a limited disclosure to the Court for the purposes of obtaining the approval
24 of the settlement and may discuss the settlement with the Class Members. This disclosure is
25 limited to court filings and neither Class Representative nor their counsel or representatives are
26 permitted to disseminate, publish, or distribute the information provided to the Court in those
27 filings outside the filings themselves and any hearing held on those filings, unless ordered
28 otherwise by the Court. In the event the Class Representative violates this confidentiality

provision, Defendant may, in its sole discretion, elect to request that the Court deny the Class Representative his Service Award set forth herein.

14. EXHIBIT(S) AND HEADINGS

14.1 The terms of this Agreement include the terms set forth in any attached Exhibit(s), which are incorporated by this reference as though fully set forth herein. Any Exhibit(s) to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

15. INTERIM STAY OF PROCEEDINGS

15.1 The Parties agree to hold all proceedings and deadlines in the Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Preliminary and Final Approval Hearings to be conducted by the Superior Court. Said stay shall terminate if and when (1) the Court permanently denies approval (preliminary or final) of the Settlement or, (2) the Court issues an Order terminating the stay.

16. AMENDMENT OR MODIFICATION

16.1 This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

17. ENTIRE AGREEMENT

17.1 This Agreement and any attached Exhibit(s) constitute the entire agreement among these Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibit(s) other than the representations, warranties, and covenants contained and memorialized in such documents. Defendant shall not be required as part of the Settlement to modify or eliminate any of their personnel, compensation, or payroll practices, or adopt any new personnel, compensation, or payroll practices.

18. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT

18.1 Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its

1 terms, and to execute any other documents required to effectuate the terms of this Agreement.
2 The Parties and their counsel will cooperate with each other and use their best efforts to effect
3 the implementation of the Settlement. In the event the Parties are unable to reach agreement on
4 the form or content of any document needed to implement the Settlement, or on any supplemental
5 provisions that may become necessary to effectuate the terms of this Settlement, the Parties may
6 seek the assistance of the Superior Court to resolve such disagreement. The persons signing this
7 Agreement on behalf of Defendant represent and warrant that they are authorized to sign this
8 Agreement on behalf of Defendant.

9 **19. BINDING ON SUCCESSORS AND ASSIGNS**

10 19.1 This Agreement shall be binding upon, and inure to the benefit of, the successors
11 or assigns of the Parties hereto, as previously defined.

12 **20. CALIFORNIA LAW GOVERNS**

13 20.1 All terms of this Agreement and the Exhibit(s) hereto shall be governed by and
14 interpreted according to the laws of the State of California.

15 **21. COUNTERPARTS**

16 21.1 This Agreement may be executed in one or more counterparts. All executed
17 counterparts and each of them shall be deemed to be one and the same instrument provided that
18 counsel for the Parties to this Agreement shall exchange among themselves original signed
19 counterparts.

20 **22. THIS SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

21 22.1 The Parties believe this Settlement is a fair, adequate, and reasonable settlement
22 of this Action and have arrived at this Settlement after extensive arms-length negotiations, taking
23 into account all relevant factors, present and potential.

24 **23. JURISDICTION OF THE COURT**

25 23.1 The Court shall retain jurisdiction with respect to the interpretation,
26 implementation and enforcement of the terms of this Agreement and all orders entered in
27 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the

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1 Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this
2 Agreement and all orders entered in connection therewith.

3 **24. COOPERATION AND DRAFTING**

4 24.1 Each of the Parties has cooperated in the drafting and preparation of this
5 Agreement. Hence, in any construction made to this Agreement, the same shall not be construed
6 against any of the Parties. The Parties agree to take all necessary measures to effectuate this
7 Agreement according to its terms and scope.

8 **25. INVALIDITY OF ANY PROVISION**

9 25.1 Before declaring any provision of this Agreement invalid, the Court shall first
10 attempt to construe the provisions valid to the fullest extent possibly consistent with applicable
11 precedents so as to define all provisions of this Agreement valid and enforceable.

12 **26. CLASS REPRESENTATIVE'S WAIVER OF RIGHT TO BE EXCLUDED AND**
13 **OBJECT**

14 26.1 The Class Representative agrees to sign this Agreement and by signing this
15 Agreement is bound by the terms herein stated and further agrees not to request to be excluded
16 from the Settlement Class and agrees not to object to any of the terms of this Agreement.
17 Non-compliance by the Class Representative with this Paragraph shall be void and of no force
18 or effect. Any such requests for exclusion or objections shall therefore be void and of no force
19 or effect.

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27. **FAX/ELECTRONIC SIGNATURES**

27.1 A fax or electronic signature, such as DocuSign, on this Agreement shall be as valid as an original signature.

DATE: 2/24/2022

DocuSigned by:

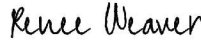


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Plaintiff
Larry Bonine

DATE: 2/22/2022

DocuSigned by:



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Defendant
Wachter, Inc.

By: Renee Weaver

Its: Sr. Director - Human Resources

APPROVED AS TO FORM:

DATE: February 24, 2022

FISHER & PHILLIPS LLP

By:



Danielle Hultenius Moore
Phillip G. Simpler
Benjamin P. Carney
Attorneys for Wachter, Inc.

DATE: February 24, 2022

MOON & YANG APC

By:



Kane Moon
Allen Feghali
Attorneys for Plaintiff Larry Bonine