

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WARREN

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EVELYN O'BRIEN, JAMIE LYNN
PATCHETT, CHRIS FORTNER, MICHAEL
PETTA, JESSICA TAYLOR-MACKRODT,
and HEATHER MARTIN on behalf of
themselves and others similarly situated,

Index No. 65232/2018

~~PROPOSED~~ ORDER

Plaintiffs,

v.

SAGBOLT, LLC, OCEAN PROPERTIES,
LTD., PORTSMOUTH CORPORATE
FINANCIAL SERVICES, INC., PATRICK
WALSH, and THOMAS GUAY

Defendants.

-----X

~~PROPOSED~~ ORDER GRANTING PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT

The above-entitled matter came before the Court on Plaintiff's Motion for Final Approval of Class Action Settlement (the "Motion").

WHEREAS:

1. On August 30, 2022, Plaintiffs applied to the Court for an order preliminarily approving the settlement of this Class Action litigation in accordance with the Settlement Agreement. NYSCEF Dkt. No. 102.
2. On August 30, 2022, the Court: (1) granted preliminary approval of the settlement; (2) directed that a Settlement Notice be sent to class members; and (3) scheduled a fairness hearing for January 20, 2023 to enter final judgment on Plaintiffs' claims and consider Plaintiffs' application for attorney fees and expenses, Named Plaintiffs' Incentive Award, and claims administrator fees.

3. Lead Counsel has submitted an affirmation from Barry J. Peek, the Chief Executive Officer of the Claims Administrator, appointed by the Preliminary Approval Order, attesting that the Settlement Notice was disseminated in accordance with the Preliminary Approval Order.

4. The Claims Administrator's Affirmation identifies only two Class Members who timely requested exclusion from the Settlement.

NOW, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

5. Based upon the Court's review of the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and the Affirmation of Keith M. Fleischman (the "Fleischman Aff."), and the Affirmations and the exhibits attached thereto, the Court grants final approval of the settlement memorialized in the Settlement Agreement and Release of Claims (the "Settlement Agreement").

6. The Court hereby determines that the Notice and Summary Notice complied with the requirements of CPLR § 904, Rules 907 and 908, and due process, and were the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class Members who could be located through reasonable effort. The Notice provided due and adequate notice of these proceedings, the Settlement, the application of Lead Counsel for the payment of the Claims Administrator's fees and costs, an award of attorneys' fees and expenses, and an award of incentive fees to Named Plaintiffs, and the other matters set forth therein, to all persons entitled to such notice.

7. Due and adequate notice of the proceedings having been given to the Class Members, and a full opportunity having been offered to the Class Members to object to the proposed Settlement, to participate in the Settlement Hearing thereon, or to request exclusion from the Class, it is hereby determined that all Class Members who have not requested exclusion are

bound by this Order and Final Judgment (whether or not any Class Member has objected to the Settlement) and are barred from contesting the Settlement or this Order and Final Judgment.

8. As a result of their timely request to be excluded from this Class Action, Neville Williams and Firat Dumlu shall be excluded from the Class and any benefits under the Settlement and shall not be bound by the Settlement Agreement.

9. Pursuant to CPLR Rules 907 and 908, the Court finds that the Settlement as set forth in the Settlement Agreement is in all respects fair, reasonable, and adequate to each of the Class Members, including Named Plaintiffs, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages, and the value of settlement now in comparison to the likely probable duration, complexity, and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Settlement Agreement and Release of Claims.

10. In determining that the Settlement is in all respects fair, reasonable, and adequate to each member of the Class, and in approving the Settlement, the Court has considered that no objections have been raised by Class Members to the Settlement.

11. Subject to the terms of the Settlement Agreement, the Complaint against Defendants in this Action is dismissed on the merits with prejudice, with each party to bear his, her, or its own costs, except for the payment of the fees and costs of the Claims Administrator previously agreed to by the Parties and hereby approved by the Court, and the payment of the attorneys' fees and reimbursement of expenses and the Incentive Award to Named Plaintiffs as

otherwise provided for herein. Settlement Class Members, as defined in the Settlement Agreement, are permanently enjoined from pursuing, or seeking to reopen, the Released Claims against the Released Parties.

12. Pursuant to the conditions specified in the Settlement Agreement, Defendants shall make a total financial obligation in the maximum amount of \$1,200,000.00 (i.e., the “Gross Settlement Sum” or “GSS”). The GSS includes payments to be made to Settlement Class Members in the form of Settlement Payments, Class Counsel’s Fees and Costs, the Service Payment to the Named Plaintiffs, and the Settlement Expenses.

13. Named Plaintiffs and All Settlement Class Members shall be deemed to have forever and fully released the Released Claims as defined in the Settlement Agreement.

FEES APPROVED

14. The application by Lead Counsel for the award of attorneys’ fees and reimbursement of expenses is granted, and said counsel are awarded legal fees of \$399,999.00, equaling 1/3 (one-third) of the GSS, and expenses of \$20,854.48. Said fees and expenses shall be deducted from the GSS in the manner prescribed in the Settlement Agreement.

15. The application of Lead Counsel to award Class Representatives \$10,000.00 Incentive Award each, totaling \$60,000.00, is granted and to be paid from the GSS in accordance with the Settlement Agreement.

16. The application by Lead Counsel for an award of the Claims Administrator’s fees and costs for the continuing administration of the Settlement is granted to a total amount of \$12,000.00 and is and to be paid from the GSS in accordance with the Settlement Agreement.

17. Pursuant to the Terms of the Settlement Agreement, the Court shall retain jurisdiction to enforce the terms of the Agreement

Dated: JANUARY 20, 2023

SO ORDERED:

01/20/2023



Hon. Martin D. Auffredou

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Samela J. Vogel