

Honorable Sue Parisien
Hearing Date: December 19, 2018
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HYON KIL and MICHAEL POLLOCK,

Plaintiffs,

v.

THR WASHINGTON II, LP and THR
PROPERTY MANAGEMENT, LP,

Defendants.

No. 18-2-10587-1 SEA

ORDER CERTIFYING
SETTLEMENT CLASS, GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
AUTHORIZING NOTICE, AND
SETTING FINAL FAIRNESS
HEARING

[CLERK'S ACTION REQUIRED]

This matter came before the Court on Plaintiffs' Unopposed Motion for Conditional Settlement Class Certification and Preliminary Approval of Class Action Settlement ("Plaintiff's Motion"). In conjunction with Plaintiffs' Motion, Plaintiffs have filed a copy of the Parties' signed Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement"), attached as Exhibit 1 to the Declaration of Adam J. Berger in support of Plaintiffs' Motion.

WHEREAS, the Court has considered Plaintiffs' Motion, the Parties' signed Settlement Agreement, and all of the other pleadings, papers, and filings herein;

WHEREAS, as used herein, all terms defined in the Parties' Settlement Agreement

1 shall have the same meaning here; and

2 WHEREAS, good cause appearing that the Parties' Settlement Agreement is within
3 the range of reasonableness and is presumptively valid,

4 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

5
6 1. Pursuant to Washington Superior Court Civil Rule 23(a) and (b)(3), and in
7 conjunction with the Settlement Agreement, the Court hereby certifies this case as a class
8 action, solely for purposes of implementing the Parties' Settlement Agreement, on behalf of
9 the following Settlement Class:

10 All current and former employees of THR WASHINGTON II, LP and THR
11 PROPERTY MANAGEMENT, LP d/b/a Invitation Homes ("Invitation
12 Homes") who were employed in the position of Maintenance Technician in
13 Washington State at any time from April 25, 2015 to the date of this Order,
excluding those employees who have previously released their claims against
Invitation Homes.

14 The Settlement Class also shall exclude any persons who opt out of the Settlement Class in
15 accordance with the terms of the Settlement Agreement and Paragraph 12 of this Order.

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17 2. The Court finds that the prerequisites of CR 23(a) and (b)(3) have been
18 satisfied for the Settlement Class. Specifically, the Court finds as follows:

19 a. The Settlement Class, which consists of approximately 28 persons, is
20 so numerous that joinder of all members is impracticable. In reaching this conclusion,
21 the Court has considered not just the number of class members, but the interests of
22 judicial efficiency, the relatively small value of many Settlement Class Member
23 claims, the fact that several Settlement Class Members now reside outside this
24 jurisdiction, and other factors relevant to the interest and ability of employees to
25 individually join or bring claims against a current or former employer.
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1 b. There are questions of law and fact common to the Settlement Class,
2 including, but not limited to: whether Technicians' end-of-day drive time is
3 compensable work time; whether Technicians' time spent unloading garbage and
4 debris at the end of the day is compensable work time; whether Invitation Homes
5 failed to provide lawful rest and meal breaks; and whether Invitation Homes was
6 aware that Technicians were not receiving lawful rest and meal breaks.
7

8 c. The claims of the Named Plaintiffs are typical of the claims of the
9 Settlement Class, and the Named Plaintiffs and Class Counsel will fairly and
10 adequately protect the interests of the Settlement Class.

11 d. Certification of a Settlement Class under CR 23(b)(3) is appropriate
12 because questions of law and fact common to all Settlement Class Members
13 predominate over any questions affecting only individual members, and a class action
14 is superior to other available means for the fair and efficient resolution of this
15 controversy. Such common questions of law and fact include, but are not limited to
16 those identified in subparagraph (b) above.
17

18 3. Pursuant to CR 23, Plaintiffs Hyon Kil and Michael Pollock are hereby
19 appointed and designated, for all purposes, as the Class Representatives of the Settlement
20 Class, and Adam J. Berger and Lindsay L. Halm of Schroeter Goldmark & Bender and James
21 Pizl of Entente Law, PLLC are hereby appointed and designated as Class Counsel for the
22 Settlement Class.
23

24 4. Class Counsel is authorized to act on behalf of the Settlement Class with
25 respect to all acts or consents required by or which may be required pursuant to the
26 Settlement Agreement.

1 5. The Court approves the proposed form and content of the Notice of Settlement
2 Class Certification and Proposed Class Action Settlement (“Class Notice”) that is attached as
3 Exhibit 2 to the Declaration of Adam J. Berger.

4 6. Consistent with the terms of the Settlement Agreement, Class Counsel is
5 hereby directed to mail, or cause to be mailed, by first-class mail, a copy of the Class Notice
6 to each Settlement Class Member no later than thirty (30) calendar days following the date of
7 this Order.

8 7. Pursuant to CR 23, the Court hereby finds and concludes that the form and
9 manner of giving notice by mailing a Class Notice to each individual Settlement Class
10 Member, as required by the Settlement Agreement and by this Order, is the best notice
11 practicable under the circumstances. Said notice procedures fully satisfy the requirements of
12 CR 23(c)(2) and CR 23(e) and the requirements of due process.

13 8. The Court conditionally approves Class Counsel’s request for an attorneys’
14 fee and cost award of 25% of the gross Settlement Fund, or \$100,000. This approval is
15 preliminary and is subject to modification at the time of final settlement approval upon a
16 showing of appropriate cause.

17 9. The Court preliminarily approves award of incentive payments of \$5,000 each
18 to the Named Plaintiffs in recognition of their role in this case and service to the Settlement
19 Class. This approval is preliminary and is subject to modification at the time of final
20 settlement approval.

21 10. On April 15th, 2019, at 9:00 A.m., or as soon thereafter as may be
22 scheduled by the Court, a Final Settlement Approval Hearing shall be held before the
23 Honorable John Mentale at the King County Superior Court in Seattle, Washington, to

1 determine whether the Court should approve the fairness, adequacy and reasonableness of the
2 terms and conditions of the Settlement Agreement and whether the Court should enter the
3 Parties' proposed Final Order and Judgment.

4 11. Plaintiffs shall file any final memoranda or other papers they may wish to
5 submit in support of the proposed Settlement Agreement no later than six (6) court days
6 before the Final Settlement Approval Hearing. These papers shall confirm that the mailing of
7 the Class Notice was completed in accordance with the requirements of this Order, and
8 provide information concerning any opt-outs or objections received as a result of such
9 mailing. A draft copy of these pleadings shall be provided to Defendants before filing.

10 12. Any person who is eligible to exclude him or herself from the Settlement
11 Class under the terms of the Settlement Agreement must do so by following the instructions
12 for requesting exclusion from the Settlement Class as set forth in the Class Notice. All
13 requests for exclusion from the Settlement Class must be postmarked, hand-delivered, or
14 emailed to Class Counsel no later than 30 days after the date of the Class Notice (which shall
15 be three (3) days after the Notice is mailed), in accordance with the instructions in the Class
16 Notice and the terms and requirements of the Settlement Agreement, or they shall be deemed
17 void and ineffective.

18 13. Any Settlement Class Member may enter an appearance through counsel of
19 such Settlement Class Member's own choosing and at such Settlement Class Member's own
20 expense. Any Settlement Class Member who does not personally appear or otherwise enter
21 an appearance at the Final Settlement Approval Hearing shall be deemed to be represented by
22 Class Counsel in this litigation as provided above.
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1 14. Any Settlement Class Member who has not validly requested exclusion may
2 submit written objections to the Settlement Agreement by mailing to Class Counsel and
3 Defendants' counsel, at the addresses provided in the Settlement Notice, a written statement
4 containing the Settlement Class Member's name, current address, and the substance of his or
5 her objection (including any briefs and supporting papers) no later than 30 days after the date
6 of mailing of the Class Notice. Any Settlement Class Member who presents written
7 objections in the manner prescribed above may also appear personally or through counsel at
8 the Final Settlement Approval Hearing to express the Settlement Class Member's views
9 regarding the Settlement Agreement. Only Settlement Class Members who object to the
10 Settlement Agreement in writing, in person, or by appearance through counsel, in accordance
11 with the procedures set forth in this Order, shall be permitted to appeal or otherwise seek
12 review of this Court's decision approving or rejecting the Settlement Agreement. Failure to
13 follow the procedures for objecting set forth herein shall constitute a waiver of a Settlement
14 Class Member's right to object to the Settlement Agreement.
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17 15. Pending this Court's ruling on final approval of the Settlement Agreement, the
18 Named Plaintiffs and all Settlement Class Members are enjoined from filing or prosecuting
19 any claims, suits or administrative proceedings regarding claims released in the Settlement
20 Agreement, unless and until such Settlement Class Members have submitted timely and valid
21 Request for Exclusion forms.
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23 16. The Final Settlement Approval Hearing, and all dates provided for herein,
24 may, without further notice to the Settlement Class, be continued or adjourned by order of
25 this Court.
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1 17. Consistent with the Settlement Agreement, neither this Order, nor the fact or
2 substance of the Settlement Agreement, shall be considered a concession or admission, nor
3 shall they be used as evidence in any proceeding for the purpose of establishing Defendants'
4 liability or wrongdoing.
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6 18. In the event the Settlement Agreement does not become effective in
7 accordance with the terms of the Settlement Agreement, or the Settlement Agreement is not
8 finally approved, or the Settlement Agreement is terminated, canceled, or fails to become
9 effective for any reason, this Order shall be vacated and rendered null and void, the
10 Settlement Class shall be decertified, and all claims and defenses previously asserted by the
11 Parties shall be reinstated and the Court shall enter further appropriate orders governing the
12 proceedings and establishing a revised case schedule in this matter.
13

14 IT IS SO ORDERED this 24th day of December, 2018.

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17 _____
18 Honorable Sue Parisien
19 Judge, King County Superior Court

20 PRESENTED BY:

21 SCHROETER GOLDMARK & BENDER

22 
23 _____
24 Adam J. Berger, WSBA #20714
25 Lindsay L. Halm, WSBA #37141

26 ENTENTE LAW PLLC

s/ James B. Pizl

James B. Pizl, WSBA #28969

Attorneys for Plaintiffs

1 APPROVED AS TO FORM AND FOR ENTRY;
2 NOTICE OF PRESENTATION WAIVED:

3 O9GLETREE, DEAKINS, NASH,
4 SMOAK & STEWART

5 s/ James M. Barrett

6 James M. Barrett, WSBA #41137
7 Adam T. Pankratz, WSBA #50951

8 *Attorneys for Defendants*