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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE WAGeworks, INC.,
SECURITIES LITIGATION

CASE NO. 4:18-CV-01523-JSW

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
PROPOSED CLASS ACTION
SETTLEMENT AND DIRECTING
NOTICE TO THE SETTLEMENT
CLASS**

1 **WHEREAS**, on April 1, 2021, (a) The Public Employees' Retirement System of
2 Mississippi ("MPERS"), The Public Employees Retirement Association of New Mexico
3 ("PERA"), and The Government Employees' Retirement System of the Virgin Islands
4 ("VIGERS") (collectively "Lead Plaintiffs"), on behalf of themselves and the proposed Settlement
5 Class; (b) defendants WageWorks, Inc. ("WageWorks" or the "Company"), Joseph L. Jackson
6 and Colm M. Callan (collectively the "Executive Defendants"), Robert L. Metzger, Mariann
7 Byerwalter, Thomas A. Bevilacqua, Bruce G. Bodaken, Jerome D. Gramaglia and John W. Larson
8 (the "Outside Director Defendants" and, collectively with the Executive Defendants, the
9 "Individual Defendants" and, together with WageWorks, collectively the "Defendants"), by and
10 through their respective duly authorized counsel, entered into a Stipulation and Agreement of
11 Settlement (the "Settlement Agreement") in the above-captioned litigation (the "Action"), which
12 is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together
13 with the exhibits thereto, sets forth the terms and conditions of the proposed settlement of the
14 claims alleged in the Lead Plaintiffs' Consolidated Class Action Complaint filed in this Action
15 on May 16, 2019 ("Complaint") against the Defendants on the merits and with prejudice (the
16 "Settlement");

17 **WHEREAS**, all capitalized terms used in this Order that are not otherwise defined herein
18 have the meanings defined in the Settlement Agreement;

19 **WHEREAS**, the Court has read and considered the Settlement Agreement to determine,
20 among other things, whether the Settlement is sufficiently fair, reasonable, and adequate to
21 warrant the issuance of notice of the proposed Settlement to the members of the Settlement Class;
22 and

23 **WHEREAS**, the Settling Parties to the Settlement Agreement have consented to the entry
24 of this Order;

25 **NOW, THEREFORE**, the Court declares that it is hereby **ORDERED, ADJUDGED**
26 **AND DECREED** as follows:

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1 (e) the questions of law and fact common to the Settlement Class Members
2 predominate over any individual questions; and

3 (f) a class action is superior to other available methods for the fair and efficient
4 adjudication of the controversy, considering that the claims of Settlement Class Members in the
5 Action are substantially similar and would, if tried, involve substantially identical proofs and may
6 therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts
7 of the claims of many of the Settlement Class Members are too small to justify the expense of
8 individual actions; and it does not appear that there is any intent among Settlement Class Members
9 in individually controlling the litigation of their claims.

10 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes
11 of the Settlement only, the Public Employees Retirement Association of New Mexico is
12 preliminarily certified as Class Representative for the 1933 Act Class.

13 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes
14 of the Settlement only, The Public Employees' Retirement System of Mississippi and The
15 Government Employees' Retirement System of the Virgin Islands are preliminarily certified as
16 Class Representatives for the 1934 Act Class.

17 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes
18 of the Settlement only, the law firm of Barrack, Rodos & Bacine is preliminarily appointed Lead
19 Counsel for the Settlement Class.

20 7. Any Settlement Class Member may enter an appearance in this Action, at his, her,
21 or its own expense, individually or through counsel of his, her, or its own choice. If any
22 Settlement Class Member does not enter an appearance, he, she or it will be represented by Lead
23 Counsel.

24 8. Preliminary Findings Concerning Proposed Settlement. The Court preliminarily
25 finds that the proposed Settlement should be approved as: (i) the result of serious, extensive arm's-
26 length and non-collusive negotiations; (ii) falling within a range of reasonableness warranting
27 final approval; (iii) having no obvious deficiencies; (iv) not improperly granting preferential
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1 treatment to the Lead Plaintiffs or segments of the Settlement Class; and (v) warranting notice of
2 the proposed Settlement to Settlement Class Members and further consideration of the Settlement
3 at the fairness hearing described below.

4 9. Settlement Hearing. A hearing (the “Settlement Hearing”) will be held on August
5 20, 2021 at 9:00 a.m. before the Honorable Jeffrey S. White in Courtroom 5 of the United States
6 Courthouse, 1301 Clay Street, Oakland, CA 94612, to determine, among other things:

7 (a) whether the proposed Settlement of the Action on the terms and conditions
8 provided in the Settlement Agreement is fair, reasonable, and adequate and should be approved
9 by the Court;

10 (b) whether a Final Judgment and Order of Dismissal with Prejudice
11 substantially in the form of Exhibit B to the Settlement Agreement should be entered, dismissing
12 the Action in its entirety and with prejudice; whether the covenants by the Settlement Class and
13 the release by the Settlement Class of the Released Claims, as set forth in the Settlement
14 Agreement, should be provided to the Released Defendant Parties; and whether the Settlement
15 Class should be forever barred and enjoined from commencing, instituting, prosecuting or
16 maintaining any of the Released Claims against the Released Defendant Parties;

17 (c) whether the proposed Plan of Allocation of the Net Settlement Fund is fair
18 and reasonable and should be approved by the Court;

19 (d) whether the Settlement Class should be finally certified for the purposes of
20 the Settlement only; whether Lead Plaintiffs should be finally certified as Class Representatives
21 for the Settlement Class; and whether the law firm of Barrack, Rodos & Bacine should be finally
22 appointed Lead Counsel for the Settlement Class;

23 (e) whether Lead Counsel’s application for a Fee and Expense Award should
24 be granted; and

25 (f) such other matters as may properly be before the Court in connection with
26 the Settlement.

1 10. The Court reserves the right to approve the Settlement with or without
2 modification and with or without further notice to the Settlement Class of any kind. The Court
3 further reserves the right to enter the Judgment approving the Settlement regardless of whether it
4 has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may
5 also adjourn the Settlement Hearing or modify any of the dates herein without further notice to
6 members of the Settlement Class.

7 11. Notice. The Court approves the form, substance, and requirements of the Postcard
8 Notice, Notice, and Summary Notice (together, the "Notices") and the Proof of Claim form
9 annexed hereto as Exhibits A1-A4 and finds that the procedures established for publication,
10 mailing, and distribution of the Notices and Proof of Claim form substantially in the manner and
11 form set forth in paragraph 12 of this Order: (a) constitute the best notice to Settlement Class
12 Members practicable under the circumstances; (b) are reasonably calculated, under the
13 circumstances, to describe the terms and effect of the Settlement Agreement and of the Settlement
14 and to apprise Settlement Class Members of their right to object to the proposed Settlement or to
15 exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate,
16 and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable
17 requirements of the Federal Rules of Civil Procedure (including Rules 23(c) and (d)), the United
18 States Constitution (including the Due Process Clause), Section 21D(a)(7) of the Securities
19 Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation
20 Reform Act of 1995 ("PSLRA"), the Rules of this Court, and any other applicable law.

21 12. Retention of Claims Administrator and Manner of Notice. The Court approves the
22 retention of Heffler Claims Group as the Claims Administrator to supervise and administer the
23 notice procedure and the processing of claims under the supervision of Lead Counsel as more
24 fully set forth below:

25 a. Not later than ten (10) business days after entry of this Order by this Court
26 (the "Notice Date"), the Claims Administrator shall cause the Postcard Notice, substantially in
27 the form attached hereto as Exhibit A-1, to be sent to each Settlement Class Member who can be
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1 identified by reasonable effort. Such notice shall be sent by first-class mail, postage prepaid, to
2 the Settlement Class Members' last known address. Not later than five (5) business days after
3 entry of this Order, WageWorks shall provide to Lead Counsel, or the Claims Administrator, at
4 no cost, a list in electronic searchable form of the names and addresses of the Persons who
5 purchased WageWorks common stock during the Class Period, as identified in the records
6 maintained by WageWorks's transfer agent.

7 b. Not later than ten (10) business days after entry of this Order by this Court
8 (the "Notice Date"), the Claims Administrator shall cause the Notice and Claim Form,
9 substantially in the forms attached hereto as Exhibits A-2 and A-3 to be published in
10 downloadable form on www.wageworkssettlement.com.

11 c. Not later than fourteen (14) calendar days after the Notice Date, the Claims
12 Administrator shall cause the Summary Notice, substantially in the form attached hereto as
13 Exhibit A-4, to be published in the *Investor's Business Daily* and disseminated over *PR Newswire*,
14 a national business-oriented wire service. The Summary Notice need not be published in each of
15 these media on the same day.

16 d. Not later than thirty-five (35) calendar days before the Settlement Hearing,
17 Lead Counsel shall file with the Court one or more affidavits or declarations showing timely
18 compliance with the foregoing mailing and publication requirements.

19 13. Nominee Purchasers. Banks, brokerage firms, institutions, and other Persons who
20 are nominees that purchased WageWorks common stock for the beneficial interest of other
21 Persons during the Class Period ("Nominee Purchasers") shall, within seven (7) calendar days of
22 receiving the Notice: (a) provide to the Claims Administrator the name and last-known address
23 of each such beneficial owner; or (b) request additional copies of the Notice and Proof of Claim
24 form and, within seven (7) calendar days of receipt, mail the Notice and Proof of Claim form
25 directly to such beneficial owners. Nominee Purchasers following procedure (b) shall promptly
26 send a statement to the Claims Administrator confirming that the mailing was made as directed,
27 and maintain mailing records for future use in the Action. The Claims Administrator shall, if
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1 requested, and upon receipt of appropriate supporting documentation, reimburse Nominee
2 Purchasers out of the Settlement Fund solely for Nominee Purchasers' reasonable out-of pocket
3 expenses incurred in sending the Notice and Proof of Claim form to the beneficial owners who
4 are potential Settlement Class Members, which expenses would not have been incurred except
5 for the sending of such notice, subject to further Order of this Court with respect to any dispute
6 concerning such reimbursement.

7 14. Submission of Proof of Claim Forms. In order to be eligible to receive a
8 distribution from the Net Settlement Fund, in the event the Settlement is effected in accordance
9 with the terms and conditions set forth in the Settlement Agreement, each Settlement Class
10 Member shall take the following actions and be subject to the following conditions:

11 a. Any Settlement Class Member who wishes to participate in the
12 distributions of the Net Settlement Fund must sign and return a completed Proof of Claim form
13 in accordance with the instructions contained therein and in the Notice. All Proofs of Claim must
14 be submitted by first-class mail, postmarked no later than 120 calendar days after the Notice Date.
15 Such deadline may be further extended by Court Order or by Lead Counsel in their discretion. If
16 a Settlement Class Member chooses to return his, her, or its Proof of Claim in a manner other
17 than by first-class mail (including electronic submission), then the Proof of Claim must be
18 actually received by the Claims Administrator no later than 120 calendar days after the Notice
19 Date, or such other date as may be set by the Court or allowed by Lead Counsel. Unless otherwise
20 ordered by the Court, any Settlement Class Member who does not sign and return a valid Proof
21 of Claim within the time provided shall be barred from sharing in the distribution of the Net
22 Settlement Fund, but shall nonetheless be bound by the Settlement Agreement, the Judgment and
23 the releases therein.

24 b. The Proof of Claim submitted by each Settlement Class Member must
25 satisfy the following conditions, unless otherwise ordered by the Court: (i) it must be properly
26 completed, signed and submitted in a timely manner in accordance with the provisions of the
27 preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for
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1 the transactions reported therein, in the form of broker-confirmation slips, broker-account
2 statements, an authorized statement from the broker containing the transactional information
3 found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead
4 Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a
5 certification of his or her current authority to act on behalf of the Settlement Class Member must
6 be included in the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no
7 material deletions or modifications of any of the printed matter contained therein and must be
8 signed under penalty of perjury.

9 c. As part of the Proof of Claim, each Settlement Class Member shall submit
10 to the jurisdiction of the Court with respect to the claim submitted.

11 15. Exclusions from the Settlement Class. Any Settlement Class Member who does
12 not timely submit a valid written request for exclusion from the Settlement Class in accordance
13 with the instructions in the Notice and herein shall be bound by all of the terms and conditions of
14 the Settlement Agreement, and by all proceedings, rulings, orders, and judgments in this Action
15 regardless of whether such Settlement Class Member submits a Proof of Claim form. Requests
16 for exclusion shall be made in writing and shall clearly state the name, mailing address, daytime
17 telephone number, and e-mail address of the Person seeking exclusion; shall state the number of
18 shares of WageWorks publicly traded common stock owned as of the beginning of trading on
19 May 6, 2016 (the first day of the Class Period); shall list the date(s), price(s), and number(s) of
20 shares of all purchases, acquisitions and sales of WageWorks publicly traded common stock
21 during the Class Period; provide documentation of such trading; and state clearly that the Person
22 “wishes to be excluded from the Settlement Class in *In re WageWorks, Inc., Securities Litigation*,
23 Case No.: 4:18-CV-01523-JSW (N.D. Cal.)” Requests for exclusion must be submitted by first-
24 class mail or delivered so that they are received no later than twenty-one (21) days before the
25 Settlement Hearing. A request for exclusion shall not be effective unless it provides the required
26 information set forth herein and in the Notice and is made within the time stated herein, or the
27 request for exclusion is otherwise accepted by the Court. Any Settlement Class Member who is
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1 excluded from the Settlement Class shall not be entitled to participate in any distributions from
2 the Net Settlement Fund.

3 16. Objections to Settlement. Any member of the Settlement Class may object to the
4 proposed Settlement in writing. Written objections must include the Settlement Class Member's
5 name, address, telephone number, e-mail address, and signature; identify the date(s), price(s), and
6 number(s) of shares of all purchases, acquisitions, and sales of WageWorks publicly traded
7 common stock during the Class Period; identify the number of shares of WageWorks publicly
8 traded common stock owned as of the beginning of trading on May 6, 2016; and state the reasons
9 for the objection. Objections must include documentation, such as brokerage statements, showing
10 reported trading in WageWorks publicly traded common stock. All written objections and
11 supporting papers must (a) clearly identify the case name and number (*In re WageWorks, Inc.,*
12 *Securities Litigation*, Case No.: 4:18-CV-01523-JSW (N.D. Cal.), (b) be submitted to the Court
13 either by mailing them to the Class Action Clerk, United States District Court for the Northern
14 District of California, Oakland Division, United States Courthouse, 1301 Clay Street, Suite 400
15 S, Oakland, CA 94612, or by filing them in person at any location of the United States District
16 Court for the Northern District of California, and (c) be filed or received no later than twenty-one
17 (21) days before the Settlement Hearing. Any Settlement Class Member who does not object in
18 the manner described herein will be deemed to have waived any objection and shall be forever
19 foreclosed from making any objection to the proposed Settlement and the Fee and Expense
20 Application. Any untimely objection shall be barred. Any submissions by the Settling Parties in
21 opposition or response to objections shall be filed with the Court no later than seven (7) days
22 before the Settlement Hearing.

23 17. Appearance at Settlement Hearing. Any objector who files and serves a timely,
24 written objection in accordance with the instructions above and in the Notice, may also appear at
25 the Settlement Hearing either in person or through counsel retained at the objector's expense.
26 Objectors or their attorneys intending to appear at the Settlement Hearing must file a notice of
27 intention to appear with the Court no later than twenty-one (21) days before the Settlement
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1 Hearing. Any objector who does not timely file a notice of intention to appear in accordance with
2 this paragraph and the Notice shall not be permitted to appear at the Settlement Hearing, except
3 for good cause shown.

4 18. Service of Papers. Counsel for the Defendants and Lead Counsel shall promptly
5 furnish all Settling Parties with copies of any and all objections and notices of intention to appear
6 that come into their possession. All papers in support of the Settlement, Plan of Allocation, and
7 Lead Counsel's request for an award of attorneys' fees and expenses shall be filed with the Court
8 and served on or before thirty-five (35) calendar days prior to the date set herein for the Settlement
9 Hearing. If reply papers are necessary, they are to be filed with the Court and served no later than
10 seven (7) calendar days prior to the Settlement Hearing.

11 19. Notice and Administration Expenses and Escrow Matters. As provided in the
12 Settlement Agreement, prior to the Effective Date, Lead Counsel may pay the Claims
13 Administrator a portion of the reasonable fees and costs associated with giving notice to the
14 Settlement Class and the review of claims and administration of the Settlement out of the
15 Settlement Fund without further approval from the Defendants and without further order of the
16 Court.

17 20. Passage of Title and Ownership of Settlement Fund. The passage of title and
18 ownership of the Settlement Fund to the Escrow Agent in accordance with the terms and
19 obligations of the Settlement Agreement is approved. No person who is not a Settlement Class
20 Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net
21 Settlement Fund unless otherwise ordered by the Court or otherwise provided in the Settlement
22 Agreement. All funds held in escrow shall be deemed and considered to be *in custodia legis* of
23 the Court and shall remain subject to the jurisdiction of the Court until such time as such funds
24 shall be disbursed pursuant to the Settlement Agreement and/or further order of the Court.

25 21. Bar on Litigating Released Claims. Pending final determination of whether the
26 Settlement should be approved, Lead Plaintiffs and all other Settlement Class Members, and
27 anyone who acts or purports to act on their behalf, shall not institute, prosecute, participate in, or
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1 assist in the institution, prosecution, or assertion of any Released Claim against any of the
2 Released Defendant Parties.

3 22. Termination of Settlement. If the Settlement fails to become effective as defined
4 in the Settlement Agreement or is terminated pursuant to the Settlement Agreement, then, in any
5 such event, the Settlement Agreement, including any amendment(s) thereof, except as expressly
6 provided in the Settlement Agreement and this Preliminary Approval Order, shall be null and
7 void, of no further force or effect, and without prejudice to any Settling Party, and may not be
8 introduced as evidence or used in any actions or proceedings by any person or entity against the
9 Settling Parties, and the Settling Parties shall be deemed to have reverted to their respective
10 litigation positions in the Action immediately prior to their acceptance of the mediator's final
11 settlement recommendation.

12 23. CAFA Notice. WageWorks shall, no later than ten (10) calendar days following
13 the entry of this Preliminary Approval Order by the Court, serve upon the appropriate state official
14 of each state in which a Settlement Class Member resides and the Attorney General of the United
15 States a notice of the proposed Settlement in compliance with the requirements of the Class
16 Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715. Lead Plaintiffs are solely responsible
17 for the costs of the CAFA notice and administering the CAFA notice. At least fourteen (14)
18 calendar days before the Settlement Hearing, counsel for WageWorks shall file with the Court
19 proof, by affidavit or declaration, regarding compliance with CAFA § 1715(b).

20 24. Use of Order. This Order shall not be construed or used as an admission,
21 concession, or presumption by or against any of the Released Defendant Parties of any fault,
22 wrongdoing, breach, or liability or as a waiver by any Settling Party of any arguments, defenses,
23 or claims he, she, or it may have in the event that the Settlement Agreement is terminated, nor
24 shall it be used in any manner prohibited by paragraph 8.6 of the Settlement Agreement, *provided*
25 *however* that any of the Released Defendant Parties may refer to it to effectuate the protections
26 granted hereunder, and if the Settlement is finally approved, to enforce the terms of the Settlement
27 Agreement.

