

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARLIN MCCLURE, an individual, for himself
and those similarly situated,

Plaintiffs,

v.

WAVELAND SERVICES, INC.,
a Louisiana corporation doing business in
California; and DOES 1 through 100,
INCLUSIVE,

Defendants.

CASE NO. 2:18-cv-01726-KJM-AC

**NOTICE OF CALIFORNIA CLASS ACTION
SETTLEMENT**

The United States District Court for the Eastern District of California (“the Court”) authorized this Notice of California Class Action Settlement (“Notice”). This is not a solicitation from a lawyer. The Court has preliminarily approved a settlement of this lawsuit. If you were employed by Waveland Services, Inc. (“Waveland”) and worked for Waveland on oil platforms off the California coast for shifts of 12 hours or more during the time period June 14, 2014 until May 26, 2021, you should read this Notice carefully because it will affect your rights.

CLASS SETTLEMENT OVERVIEW

Recently, Plaintiff Marlin McClure and Waveland (together, the “Parties”) reached an agreement on the terms of a class action settlement between Waveland Services, Inc. (“Waveland”) and all current and former hourly employees of Waveland, who worked for the Company on oil platforms off the California coast at any time between June 14, 2014 and May 26, 2021. In short, the lawsuit alleges that Waveland violated certain federal and California laws with respect to its hourly employees who worked for the Company on oil platforms, in terms of pay, including overtime, and breaks. Waveland denies these allegations in full.

The currently proposed settlement seeks to resolve alleged violations under both: 1) United States federal law; and 2) California state law. As a result, the settlement is split into two separate groups—a federal settlement group called the “FLSA Class” and a California settlement group called the “California Class.” The payments for each group, however, will be handled separately. You are receiving this Notice because you are a member of the California Class. For that reason, please carefully review this Notice, which describes your legal rights and options in this settlement. If you are also a member of the FLSA Class, you will receive a separate notice describing your rights and options for participating in that part of the settlement.

“CALIFORNIA CLASS” SETTLEMENT: YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

OPTIONS	LEGAL RIGHTS RESULTING FROM OPTION
<u>OPTION 1:</u> DO NOTHING. PARTICIPATE IN THE SETTLEMENT AND RECEIVE A PAYMENT.	If you want to participate in the settlement and receive your settlement payment, you do not need to do anything. If the court grants final approval of the settlement, you will automatically receive a payment and you will release certain claims against Waveland under California law.
<u>OPTION 2:</u> EXCLUDE YOURSELF FROM THE CLASS. DO NOT PARTICIPATE IN THE SETTLEMENT AND DO NOT RECEIVE A PAYMENT.	If you do NOT want to participate in the California Class settlement and receive a payment, you must submit a written Exclusion Letter postmarked no later than August 23, 2021 as explained below. If you timely submit a valid Exclusion Letter, you will NOT release your claims against Waveland under California law. A copy of a sample, written Exclusion Letter is included with this Notice.
<u>OPTION 3:</u> OBJECT.	If you disagree with the proposed settlement, you may submit a written objection or explain your objection at the Court’s Final Approval Hearing. If the Court agrees with your objection, the Parties can choose to withdraw the settlement or change its terms. If the Court rejects your objection, you will still be entitled to participate in the settlement unless you have excluded yourself by opting out of the settlement as explained below.

These rights and options—and the deadlines to exercise them—are explained in this Notice.

BASIC INFORMATION

1. WHY DID I RECEIVE THIS NOTICE AND WHAT IS THE CASE ABOUT?

You received this Notice because Waveland’s records show that you were employed by the Company as an hourly employee, who worked on oil platforms off the California coast at a time between June 14, 2014 and May 26, 2021. This Notice explains that the Court has granted preliminary approval of a proposed settlement of a class action lawsuit that may affect you. You have legal rights and options that you may exercise before the Court decides whether to grant final approval of the proposed settlement.

Plaintiff Marlin McClure filed this case against Waveland on behalf of himself and other similarly situated employees (“Lawsuit”). The Lawsuit alleges that Waveland: (1) failed to pay all wages due, including minimum, regular, and overtime wages under California and federal law; (b) failed to provide meal periods; (c) failed to provide rest periods; (d) failed to provide complete and accurate wage statements; (e) failed to pay all wages due in a timely manner upon termination of employment; (f) engaged in unlawful business practices; and (g) is subject to civil penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). The Lawsuit seeks damages for lost wages, interest, penalties, injunctive relief, attorneys’ fees and expenses.

The Lawsuit includes claims under the California Labor Code, related Wage Orders of the Industrial Welfare Commission, PAGA, California Business and Professions Code section 17200 *et seq.*, and the Federal Fair Labor Standards Act.

The Parties reached an agreement to settle all claims in the Lawsuit (“Settlement”), which was preliminarily approved by the Court on May 26, 2021. The Court has ordered that this Notice be sent to you to inform you of the Settlement and your legal rights under the Settlement.

2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action, one or more persons, in this case Marlin McClure, files a lawsuit on behalf of people who allegedly have similar claims. These people together are called the “Class Members.” The company sued is called the Defendant, in this case, Waveland Services, Inc. The Class Members and Waveland are sometimes referred to in this Notice as the “Parties.”

In this case, there are two separate settlement groups: 1) those who worked for Waveland on oil platforms off the coast of California and allege claims under California law (the “California Class” or “California Class Members”); and 2) those who worked for Waveland on an oil platform off any coast of the United States and allege claims under federal law (the “FLSA Class” or “FLSA Class Members”) (together, “Class Members”). Waveland’s records show that you worked on an oil platform off the coast of California during the applicable time period, and for that reason, you are a potential member of the California Class. As noted above, if you are also part of the FLSA Class, you will receive a separate notice detailing your rights and options for participating in that part of the Settlement.

In a class action, one court resolves the issues for everyone in the class, except for those people who decide to exclude themselves from the class. The California Class Members who do not send a request for exclusion (i.e., an “Exclusion Letter”) postmarked no later than August 23, 2021 as explained below in the section entitled “Excluding Yourself From The Settlement” are called “Claimants.”

In this case, the Parties have decided to settle the Lawsuit. Counsel for the Plaintiff (“Class Counsel”) has extensively investigated and researched the facts and law for the issues in the Lawsuit, and believe Plaintiff has asserted valid claims. Taking all factors into account, Class Counsel believes the proposed Settlement is fair, adequate, and reasonable and in the best interests of all of the Class Members.

Waveland denies any and all charges of wrongdoing or liability arising out of any of the acts, omissions, facts, matters, transactions, or occurrences alleged, or that could have been alleged, in the Lawsuit. Further, Waveland believes that, in compliance with applicable local, state and federal laws, current and former hourly employees of Waveland have been paid all wages due, including minimum, regular, and overtime wages under California and federal law; have been provided compliant meal and rest periods; have been provided complete and accurate wage statements; and have been paid all wages due in a timely manner upon termination of employment. Nothing about the Settlement may be used against Waveland as an admission or indication of any fault or liability.

The Parties both recognize that continuing to litigate the Lawsuit takes time and money and any outcome is uncertain. Therefore, the Parties have agreed to settle this Lawsuit on the terms set forth in the Settlement.

The Court has made no ruling on the merits of the claims or defenses in the Lawsuit and has determined only that certification of the California Class and FLSA Class for settlement purposes is appropriate under the law. However, the Court has made a preliminary determination that the Settlement appears fair, adequate, and reasonable. The Court will decide whether to finally approve the Settlement after the California Class Members are given a chance to exclude themselves from or object to the Settlement.

3. IS THERE ANY MONEY AVAILABLE NOW?

No money or benefits are available right now. If the Court gives final approval to the Settlement, then you will automatically be sent your portion of the California Class portion of the Settlement once the Court’s order becomes final unless you exclude yourself.

4. I WANT TO RECEIVE MY SHARE OF THE SETTLEMENT. WHAT DO I DO?

To receive your share of the Settlement, you do not need to do anything. You will automatically receive your share of the California Class portion of the Settlement as long as you do not affirmatively request to be excluded from the California Class portion of the Settlement before August 23, 2021.

THE SETTLEMENT BENEFITS—WHAT YOU RECEIVE

1. WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides that Waveland will pay \$290,000.00 (the “Gross Settlement Value”) to fully resolve the claims in the Lawsuit. Certain deductions will be made from the Gross Settlement Value:

- (1) The Court has tentatively approved a payment of up to \$12,500.00 to the Settlement Administrator, Phoenix Settlement Administrators, for the costs incurred in notifying the Class Members and processing their claims.
- (2) Class Counsel will, through a motion for attorneys’ fees and costs, ask the Court at the Final Approval Hearing to approve a Fee and Expense Award of not to exceed 33 percent of the Gross Settlement Value, or \$95,700.00, plus reimbursement of the reasonable litigation expenses Class Counsel has incurred not to exceed \$7,500.00. Class Counsel has litigated the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The Fee and Expense Award will fully compensate Class Counsel for all legal fees and expenses incurred in the Lawsuit, including any work they do in the future. Class Members are not personally responsible for any fees or expenses.
- (3) Class Counsel will also, through a motion for attorneys’ fees and costs, ask the Court at the Final Approval Hearing to approve a Service Award in the amount of \$5,800.00 for the Named Plaintiff, Marlin McClure (who will be subject to a general release of known and unknown claims), for acting as the representative on behalf of the Class Members and spending time assisting with the Lawsuit, which was not required of other Class Members.
- (4) \$5,800.00 shall be paid for all applicable penalties under the California Labor Code’s Private Attorneys General Act (PAGA). 75% of this sum (i.e., \$4,350.00) shall be paid to the to the Labor and Workforce Development Agency to pay the government portion of penalties allocated under PAGA, and 25% of this sum (i.e., \$1,450.00) shall be paid to the California Class Members who worked between June 12, 2017 and May 26, 2021.

The balance of the Gross Settlement Value after the deductions described above is the “Net Settlement Value.” The Net Settlement Value is estimated to be \$162,700.00. 40% of the Net Settlement Value shall be allocated to the California Class, which is \$65,080.00 (the “California Settlement Allocation”). If you do not timely exclude yourself from the California Class, you will receive a check for your individual share of the California Settlement Allocation (“California Percentage Share”).

This Notice only summarizes the proposed Settlement. For the precise terms and conditions of the settlement, please access the Court docket in this case through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.caed.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Eastern District of California, which is located in Room 4-200 on the 4th Floor of the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Court holidays. In addition, on the Court’s docket, you may view the motion for attorneys’ fees and costs and incentive award and you may object to that motion at the Final Approval Hearing, which is described on pages 8-9. You may also view certain settlement documents on the class website at <http://www.phoenixclassaction.com/mcclure-v-waveland/>.

2. HOW ARE THE INDIVIDUAL SETTLEMENT PAYMENTS CALCULATED?

Your California Percentage Share is calculated on the basis of the number of weeks of employment as a California Class Member as reflected by Waveland’s corporate and business records, not including leaves of absence. The Individual Settlement Payments for the Claimants in the California Class will be calculated by multiplying 40% of the Net Settlement Value by each California Class Member’s Class Percentage Share. “California Percentage Share” means each California Class Member’s Individual Work Weeks divided by the California Class Total Work Weeks.

3. WILL TAXES BE WITHHELD FROM MY SETTLEMENT PAYMENTS?

Your Individual Settlement Payment will include a wage portion (representing unpaid wages), and a non-wage portion (representing penalties and interest). Using each California Class Member's last-reported withholding status, Waveland will deduct the state and federal withholding taxes and other applicable payroll deductions owed as a result of the settlement payment from the wage portion of each Class Member's settlement. Individual Settlement Payments for the California Class will be allocated as follows: 20% to settlement of wage claims, which will be subject to required payroll tax withholdings; and 80% to settlement of claims for penalties and interest, which will be paid without withholding any amount. The portion allocated to wages shall be reported on an IRS Form W-2, and the portion allocated to penalties and interest shall be reported on an IRS Form 1099. You are not responsible for the employer's portion of FICA, FUTA, and all other state and federal payroll taxes, which shall be paid by Waveland separate and apart from the Gross Settlement Value. Other than the withholding and reporting requirements specifically set forth above, California Class Members are solely responsible for all taxes due on payments made pursuant to the settlement. The Settlement Administrator will handle the distributions of these tax-related forms to the California Class Members.

You should consult with your tax advisors concerning the tax consequences of the payments you receive under the Settlement.

4. WHAT AM I GIVING UP IF I STAY IN THE CLASS?

If you choose to participate in the California Class, you will be bound by any judgment entered in this Lawsuit and will not be allowed to sue Waveland for any claims that were alleged or that reasonably could have been alleged based on the facts alleged in the Lawsuit, occurring between June 14, 2014 and May 26, 2021. It also means that you will be bound by the following Release:

“California Class Released Claims” means all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, contingent or accrued, that were alleged or that reasonably could have been alleged based on the facts alleged in the Lawsuit, as amended, against the Released Parties or any of them, for violation of the California Labor Code, the California Business & Professions Code, the Labor Code Private Attorneys General Act of 2004, the applicable Industrial Welfare Commission Wage Orders or any similar state or local law, including, but not limited to, any claims for unpaid overtime, claims for missed meal or rest breaks, claims for meal or rest break premiums, claims for unreimbursed employee business expenses, claims for liquidated damages, claims for unlawful deductions from wages, claims for conversion of wages, claims for record-keeping violations, wage-statement penalties, “waiting time” penalties, claims for unpaid wages, claims for failure to pay minimum wage, and any claims under California Labor Code sections 201, 202, 203, 204, 210, 218, 218.5, 218.6, 219, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2802(c), 2810.5 and Labor Code section 2698 et seq. based on alleged violations of these Labor Code provisions, as well as claims under California Code of Civil Procedure section 1021.5, and California Civil Code sections 3288 and 3291, at any time during the California Class Period.

Upon the Payment Obligation and Class Release Date, the California Class Members (other than those who submit an Exclusion Letter) will be deemed to have, and by operation of the Final Approval Order and Judgment, will have, expressly waived and released the Released Parties of the California Class Released Claims to the fullest extent permitted by the law. The Individual Settlement Payments shall be paid to California Class Claimants specifically in exchange for the release of the Released Parties from the California Class Released Claims and the covenant not to sue concerning the California Class Released Claims.

California Class Members who do not opt out of the Settlement will be bound by a release of claims under California Civil Code Section 1542, which provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.” The Section 1542 waiver provided for herein releases solely claims against the Released Parties within the definition of California Class Released Claims. To be clear, the scope of the Section 1542 waiver is limited to the California Class Released Claims only.

The term “Released Parties” means Defendant Waveland Services, Inc., its past or present successors, including Waveland, A BrandSafway Company, and predecessors in interest, subsidiaries, affiliates, parents, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.

HOW YOU STAY IN THE CLASS AND RECEIVE A PAYMENT

If this Notice was sent to you at your current address, you do not need to do anything further to receive payment. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, or if you have changed your address, then you should immediately notify the Settlement Administrator in writing stating your name and past and current addresses. A California Class Form has been included with this packet for you to notify the Settlement Administrator of your current address and contact information.

The Settlement Administrator’s address is:

Marlin McClure v. Waveland Services, Inc.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

Otherwise, you do not need to do anything to receive your Individual Settlement Payment so long as you do not exclude yourself from the California Class by sending a request to opt-out of the California Class settlement. You will be bound by the terms of the Settlement as they relate to the California Class and you will have released your claims under California law against Waveland. For further information, or if you have any questions or concerns about this process, you can speak with Class Counsel in this case identified on page 8.

Any settlement checks that remain uncashed after 90 days will be voided and, if the total amount of such unclaimed funds exceeds \$20,000.00, their amounts will be allocated in a second allocation to participating California Class members who cashed their initial checks. Any second allocation checks not cashed after 90 days will be voided – or any initially unclaimed funds, if the amount is \$20,000.00 or less – will be allocated to the Legal Aid Foundation of Los Angeles (www.lafla.org).

EXCLUDING YOURSELF FROM THE CLASS AND SETTLEMENT

If you want to retain the right to pursue claims related to this Lawsuit against Waveland and/or you do not want a payment from this Settlement, then you must exclude yourself. Excluding yourself is also referred to as “opting out.” If you exclude yourself, you will not receive money from this Settlement.

1. HOW DO I REQUEST TO BE EXCLUDED FROM THE SETTLEMENT?

If you are a California Class Member and you wish to be excluded from the California Class portion of Settlement, you must submit an Exclusion Letter, which must be **postmarked no later than August 23, 2021** to the Settlement Administrator at the following address: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863. California Class Members who wish to opt-out must timely and fully complete and send the Exclusion Letter provided with this Notice to the Settlement Administrator. Please be advised that any part of your Social Security number on any document will be redacted before it is filed with the Court or becomes part of the public docket in this case. Your Social Security number will remain private. Exclusion Letters that do not include all required information, or that are not submitted timely, will be disregarded. If you submit an Exclusion Letter, you will not be bound by the Settlement and you will not receive any cash payment.

2. IF I DO NOT EXCLUDE MYSELF, CAN I SUE WAVELAND FOR THE SAME CLAIMS LATER?

No. If you decide to participate in the California Class, you will be bound by all terms of the Settlement and any final judgment entered in the Lawsuit if the Settlement is approved by the Court. The Settlement and final judgment will include a full release of claims in this Action, which will prevent you from suing Waveland or any related persons or entities for the claims released by the Settlement. You may review the full release of claims in the section “What am I giving up if I stay in the class?” on pages 5-6.

3. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, you are asking not to be included in the Settlement or receive money from it.

WHO ARE THE ATTORNEYS REPRESENTING THE PLAINTIFF AND CALIFORNIA CLASS MEMBERS?

Plaintiff and the California Class Members are represented in this Lawsuit by attorneys at the law firm of STRAUSS & STRAUSS, APC, whose contact information appears below.

Michael A. Strauss (State Bar No. 246718)
mike@strausslawyers.com
Aris E. Karakalos (State Bar No. 240802)
aris@strausslawyers.com
Andrew C. Ellison (State Bar No. 283884)
andrew@strausslawyers.com
STRAUSS & STRAUSS, APC
121 N. Fir St., Suite F
Ventura, California 93001
Telephone: (805) 641.6600 / Facsimile: (805) 641.6607

OBJECTING TO THE SETTLEMENT

1. HOW DO I OBJECT?

If you are a California Class Member and wish to object and tell the Court why you do not like the California Class portion of the Settlement, you may submit a written objection or appear at the Final Approval Hearing to raise your objection. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you submit a written objection, it should identify your name; this case name and number, *Marlin McClure v. Waveland Services, Inc.*, U.S. District Court for the Eastern District of California, Case No. 2:18-cv-01726-KJM-AC; be submitted to the Court either by mailing to the Office of the Clerk, Room 4-200, Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814, or by filing it with the Court; state with particularity the legal and factual basis for the objection; and be signed by you. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. Written objections must be filed no later than August 23, 2021. If the Court denies approval, no settlement payments will be sent out, and the Lawsuit will continue. If you want, you may appear at the Final Approval Hearing scheduled for 10:00 a.m. on October 8, 2021 in Courtroom 3, 15th floor of the United States District Court, Eastern District of California, located at 501 I Street, Suite 4-200 Sacramento, CA 95814, to have your objection heard by the Court. The Court will consider all objections in deciding whether to approve the Settlement. Any Class Member who does not object at or before the Final Approval Hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.

2. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the California Class. Excluding yourself is telling the Court that you do not want to be part of the California Class. If you exclude yourself, you cannot object.

THE COURT'S FINAL APPROVAL HEARING

1. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 10:00 a.m. on October 8, 2021 in Courtroom 3, 15th Floor of the United States District Court, Eastern District of California, located at 501 I Street, Suite 4-200, Sacramento, CA 95814. The Court will consider any objections to the Settlement at this hearing. A written objection is not required for a California Class Member to appear at the hearing. If the Court approves the Settlement, it will enter an order granting final approval of the Settlement. The hearing date may be changed without further notice; however, you can check the Court's PACER site at <https://ecf.caed.uscourts.gov/> to find out if the hearing date has changed.

You are not required to attend the Final Approval Hearing, but you or your lawyer may attend if you so choose. If you are a Claimant and you wish to speak or have your lawyer speak for you, you may do so. Please visit <http://www.caed.uscourts.gov/caednew/> and select the court calendar for Judge Mueller to see whether the Final Approval Hearing will be held on October 8, 2021 or has been rescheduled to a new hearing date.

ADDITIONAL INFORMATION

1. CAN WAVELAND RETALIATE AGAINST ME AS A RESULT OF WHAT I DO IN RESPONSE TO THIS NOTICE?

No. If you are a current employee of Waveland, your decision as to whether or not to participate in this Settlement will in no way affect your employment with Waveland. It is illegal for Waveland to take any adverse employment action against you as a result of your decision whether or not to participate in this Settlement.

2. HOW CAN I GET MORE INFORMATION ABOUT THE SETTLEMENT?

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address and telephone number listed below, toll free.

Marlin McClure v. Waveland Services, Inc.
c/o Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863

Alternatively, you can contact the attorneys representing the California Class Members at:

Michael A. Strauss (State Bar No. 246718)
mike@strausslawyers.com
Aris E. Karakalos (State Bar No. 240802)
aris@strausslawyers.com
Andrew C. Ellison (State Bar No. 283884)
andrew@strausslawyers.com
STRAUSS & STRAUSS, APC
121 N. Fir St., Suite F
Ventura, California 93001
Telephone: (805) 641.6600 / Facsimile: (805) 641.6607

This Notice only summarizes the Lawsuit, the Settlement and related matters. For more information, you may inspect the Court files at the Office of the Clerk, in Room 4-200 on the 4th Floor of the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Court holidays. You may also view certain settlement documents on the class website at <http://www.phoenixclassaction.com/mcclure-v-waveland/>.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.