

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

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

Plaintiffs,

vs.

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 FLSA COLLECTIVE ACTION
SETTLEMENT**

The United States District Court for the Eastern District of California (“the Court”) authorized this Notice of FLSA Collective 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 performed over 40 hours of work in a single workweek on an oil platform off any coast of the United States and, during such workweek, were furnished any meals and/or lodging in addition to other wages during the time period June 14, 2015 until May 26, 2021, you should read this Notice carefully because it will affect your rights.

COLLECTIVE ACTION SETTLEMENT OVERVIEW

Recently, Plaintiff Marlin McClure and Waveland (together, the “Parties”) reached an agreement on the terms of a collective action settlement between Waveland Services, Inc. (“Waveland”) and all current and former hourly employees of Waveland who worked for the Company on an oil platform off any coast of the United States between June 14, 2015 and May 26, 2021. In short, the lawsuit alleges that Waveland violated certain laws with respect to its hourly employees who worked for the Company on oil platforms, in terms of pay, including overtime. 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 FLSA Class or “FLSA Collective”. 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 California Class, you will receive a separate notice describing your rights and options for participating in that part of the settlement.

<u>“FLSA CLASS” SETTLEMENT: YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</u>	
OPTION S	LEGAL RIGHTS RESULTING FROM OPTION
<u>OPTION 1:</u> RETURN THE ENCLOSED OPT-IN FORM. PARTICIPATE IN THE SETTLEMENT AND RECEIVE A PAYMENT.	By fully completing and signing the enclosed opt-in form and submitting the form postmarked no later than August 23, 2021, you will be choosing to participate in the FLSA Class settlement, which means that you will receive a payment and that you will release certain claims against Waveland under federal law.
<u>OPTION 2:</u> DO NOT RETURN THE ENCLOSED OPT-IN FORM. DO NOT PARTICIPATE IN THE SETTLEMENT AND DO NOT RECEIVE A PAYMENT.	If you do NOT return the enclosed opt-in form postmarked no later than August 23, 2021, you will be choosing to NOT participate in the FLSA Class settlement, which means that you will NOT receive a payment and that you will NOT release any claims against Waveland under federal law.
<u>OPTION 3:</u> RETURN THE ENCLOSED OPT-IN FORM AND 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 for the Company over 40 hours in a single workweek on an oil platform off any coast of the United States and, during such workweek, were furnished any meals and/or lodging in addition to other wages at a time between June 14, 2015 and May 26, 2021. This Notice explains that the Court has granted preliminary approval of a proposed settlement of a collective 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 COLLECTIVE ACTION AND WHO IS INVOLVED?

In a collective 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 for Waveland off one or more coasts of the United States during the applicable time period, and for that reason, you are a potential member of the FLSA Class. As noted above, if you are also part of the California Class, you will receive a separate notice detailing your rights and options for participating in that part of the Settlement.

In an FLSA collective action, one court resolves the issues for everyone in the FLSA class or collective who submits a timely opt-in form. The FLSA Class Members who submit an opt-in form postmarked no later than August 23, 2021 as explained below in the section entitled “I want to receive my share of the settlement. What do I do?” 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 FLSA Class Members are given a chance to a chance to join, object to, or decline to join the proposed settlement.

3. IS THERE ANY MONEY AVAILABLE NOW?

No money or benefits are available right now. If you timely submit the opt-in form attached to this Notice postmarked no later than August 23, 2021 in the manner described in this Notice, and if the Court gives final approval to the Settlement, then you will automatically be sent your portion of the FLSA Class portion of the Settlement once the Court’s order becomes final.

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

To receive your share of the FLSA Class portion of the Settlement, you must complete and submit the attached opt-in form and it must be postmarked no later than 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 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. 60% of the Net Settlement Value shall be allocated to the FLSA Class, which is \$97,620.00 (the “FLSA Settlement Allocation”). If you timely submit the enclosed opt-in form for the FLSA Class postmarked no later than August 23, 2021 you will receive a check for your individual share of the Net Settlement Amount allocated to the FLSA Class (“FLSA 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 7-8. You may also view certain settlement documents on the class website at www.phoenixclassaction.com/.

2. HOW ARE THE INDIVIDUAL SETTLEMENT PAYMENTS CALCULATED?

Your FLSA Percentage Share is calculated on the basis of the number of weeks of employment as a FLSA 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 FLSA Class will be calculated by multiplying 60% of the Net Settlement Value by each FLSA Class Member’s FLSA Percentage Share. “FLSA Percentage Share” means each FLSA Class Member’s Individual Work Weeks divided by the FLSA 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 FLSA 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 member's settlement. The Individual Settlement Payments for the FLSA Class will be allocated as follows: 50% to settlement of wage claims, which will be subject to required payroll tax withholdings; and 50% to settlement of claims for liquidated damages, interest and/or statutory penalties, 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 liquidated damages, interest and statutory penalties 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 FLSA 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, 2015 and May 26, 2021. It also means that you will be bound by the following Release:

"FLSA 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 violations of the Fair Labor Standards Act, 29 U.S.C. section 201 *et seq.* and the corresponding Department of Labor Regulations, 29 C.F.R. section 785 *et seq.* and 778 *et seq.*, including, but not limited to, any claims for unpaid wages, economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, other monies, or other relief arising out of, relating to, or in connection with any facts and/or claims pled in the Lawsuit, which are or could be the basis of claims that Defendant failed to provide all wages and overtime wages due, failed to pay the minimum wage and/or engaged in recordkeeping violations, at any time during the FLSA Class Period.

Upon the Payment Obligation and Class Release Date, the FLSA Class Members who submit a timely and valid FLSA Opt in Form will fully release the FLSA Class Released Claims and agree not to sue or otherwise make a claim against any of the Released Parties for the FLSA Class Released Claims. The Individual Settlement Payments shall be paid to FLSA Class Claimants specifically in exchange for the release of the Released Parties from the FLSA Class Released Claims and the covenant not to sue concerning the FLSA Class Released Claims.

FLSA Class Released Claims include any unknown claims that FLSA Class Members do not know or suspect to exist in his or her favor, which if known by him or her, might have affected this Settlement Agreement with Defendant and release of Released Parties.

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 RECEIVE A PAYMENT

In order to receive a payment as a member of the FLSA Class, you must complete and mail the attached opt-in form postmarked no later than August 23, 2021. If this Notice was forwarded 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 or by telephone stating your name and past and current addresses. An FLSA Collective 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

If you do nothing at all (*i.e.*, you do NOT submit the attached opt-in form postmarked no later than August 23, 2021) then you will have chosen to NOT participate in the portion of the Settlement allocated to the FLSA Class and you will NOT receive a check for your Individual Settlement Payment for the FLSA Class portion of the Settlement. Also, you will not be bound by any judgment entered in this Lawsuit to the extent it applies to claims under federal law and you will not have released your claims under federal law against Waveland. If there are unclaimed funds due to FLSA Class Members not timely submitting opt-in forms, those unclaimed funds shall be distributed on an equal basis to the FLSA Class Members who did submit timely opt in forms at the time of the settlement is distributed. For further information, or if you have any questions or concerns about this process, you can speak with Class Counsel in this case identified in the section immediately below.

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 FLSA 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).

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

Plaintiff and the FLSA 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)

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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 an FLSA Class Member and wish to object and tell the Court why you do not like the FLSA 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 August 23, 2021. 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.

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 an FLSA 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
Telephone: (800) 523-5773

Alternatively, you can contact the attorneys representing the FLSA 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 www.phoenixclassaction.com/.

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