

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Maritza Guevara v. Overland, Pacific & Cutler, LLC

Los Angeles Superior Court
Case Number 20STCV27309

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between OVERLAND, PACIFIC & CUTLER, LLC (“Defendant”) and Plaintiff MARITZA GUEVARA (“Plaintiff”) (Defendant and Plaintiff are collectively referred to as the “Parties”). Plaintiff settles this matter on behalf of herself and other “aggrieved employees”, as defined below. Subject to the Court’s subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the maximum sum of Four-Hundred Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00) (hereinafter referred to as the "Gross Settlement Amount) for settlement of the Plaintiff’s Private Attorneys General Act (“PAGA”) claim, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs, costs of administration, and Plaintiff’s enhancement payment.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Action" shall refer to the lawsuit entitled: *Maritza Guevara v. Overland, Pacific & Cutler, LLC*, Los Angeles Superior Court, Case Number 20STCV27309;
- (b) "Aggrieved Employees" is defined as: all non-exempt persons, as well as persons that worked under the title of 'agents', within the State of California who are or were employed by Defendant during the Release Period.
- (c) "Court" means the Los Angeles Superior Court.
- (d) "Counsel for Defendant" is:
SAGE KNAUFT, ESQ.
Email: sknauft@wfbm.com
REYNA MACIAS, ESQ.
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19900 MacArthur Blvd., Suite 1150
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Telephone: (714) 634-2522
Facsimile: (714) 634-0686
- (e) "Effective Date" means the date the Court enters the order approving the Settlement as described in this Agreement.
- (f) "Gross Settlement Amount" refers to the Four-Hundred and Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00), which shall be paid by Defendant to fund the Settlement, and from which all settlement payments for the Net Settlement Amount and Court approved attorneys' fees and costs, Plaintiff's enhancement payment, and costs of administration, shall be paid.
- (g) "Net Settlement Amount" means the total sum available for payment of PAGA penalties to the Aggrieved Employees and the LWDA after deducting Plaintiff's Counsel's fees and costs, Plaintiff's enhancement payment, and costs of administration, collectively

referenced in Section 3.01(i), (ii) and (iii) from the \$435,000.00 Gross Settlement Amount.

(h) "Plaintiff's Counsel" is:

KYLE TODD, ESQ.
Email: kyle@kyletodd.com
ALFREDO NAVA, ESQ.
Email: anava@kyletodd.com
KYLE TODD, P.C.
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- (i) "Release Period" means July 11, 2019 to the date this resolution is approved by the Court.
- (j) "Released Claims" mean any and all claims asserted in the Action and contained in Plaintiff's July 3, 2020, and April 20, 2021, letters to the California Labor & Workforce Development Agency ("PAGA Letters"), including but not limited to any and all claims for PAGA penalties for violations of the California Labor Code (LC) governing: meal and rest break violations (LC 226.7); non-compliant wage statements and failure to maintain accurate payroll records (LC 226(a), 1174(d), 1174.5, and 1198), failure to timely pay wages (LC 204 and 210), civil penalties under LC 558, and "waiting time penalties" under LC 201 and LC 203, and the Industrial Welfare Commission Wage Orders.
- (k) "Released Parties" means Defendant and their present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendant.
- (l) "Settlement" or "Agreement" refers to the settlement of the PAGA claim reached by the Parties to the Action.

Article II.

Background.

Section 2.01 Background.

- (a) On July 3, 2020, Plaintiff sent a letter to the California Labor and Workforce Development Agency alleging Labor Code violations by Defendant. On July 21, 2020, Plaintiff filed the Action in the Los Angeles Superior Court. The Action was a purported class action brought by Plaintiff, but did not include any PAGA claims.
- (b) In the course of litigation, Defendant advised Plaintiff that she and other aggrieved employees signed what appeared to be enforceable arbitration agreements with class action waivers, obviating the ability of Plaintiff to seek class relief for her claims.
- (c) On September 14, 2020, Plaintiff on behalf of herself and as a representative action on behalf of the State of California and other aggrieved employees, added a PAGA claim in the same lawsuit, based on the alleged violations of the California Labor Code cited in her PAGA letter.
- (d) On December 21, 2020, Plaintiff filed a request for dismissal of her non-PAGA claims, given the arbitration agreements with class action waivers Plaintiff and other aggrieved employees had appeared to have signed. Plaintiff was then left with only her PAGA claim in this matter.
- (e) On April 20, 2021, Plaintiff sent another letter to the California Labor and Workforce Development Agency alleging Labor Code violations by Defendant.
- (f) Subsequently, the Parties engaged in an extensive investigation along with both formal and informal discovery. The parties also attended a full day mediation with Christopher Barnes, Esq., a reputable employment law mediator, whereat they reached the Settlement through arms-length negotiation.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

i) Plaintiff's Counsel's Fees.

Plaintiff's Counsel may request and be paid up to 40% of the Gross Settlement Amount or One-Hundred and Seventy-Four Thousand Dollars and Zero Cents (\$174,000) for attorneys' fees. If Plaintiff's counsel's request for 40% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the State of California and to the Aggrieved Employees;

ii) Plaintiff's Counsel's Costs.

Plaintiff's Counsel will request Eight-Thousand One-Hundred and Eleventh Dollars and Four Cents (\$8,111.04) ("Litigation Costs") of the Gross Settlement Amount as reimbursement for expenses incurred in the Action. If Plaintiff's counsel's request for reimbursement of litigation costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the State of California and to the Aggrieved Employees.

iii) Enhancement Payment.

Plaintiff will request an enhancement payment of \$10,000 to go to Plaintiff, individually, as an incentive and to reward and encourage work done on behalf the other aggrieved employees. If the enhancement payment

request is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the State of California and to the Aggrieved Employees.

iv) Administration Costs

The Parties estimate that costs of hiring a neutral administrator of the PAGA penalties in this matter are estimated to be not more than \$5,000. Further, any amounts under the \$5,000 estimate that are not used will be paid to the State of California and to the Aggrieved Employees.

v) Net Settlement Amount.

The Net Settlement Amount shall be determined by deducting Plaintiff's Counsel's Fees and Plaintiff's Counsel's Costs, the enhancement fee, and administration costs as set forth in section 3.01(i), (ii), (iii), and (iv) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

The Parties agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement and the payment of penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiff's Counsel or as directed by the Court. Plaintiff's Counsel will lodge this Agreement with the Court for its approval. Pursuant to Labor Code section 2699(l)(2),

Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Settlement Payment Procedures.

(a) Deposit of Gross Settlement Amount with Settlement Administrator.

As consideration for the settlement described herein and the release contained in this Agreement, Defendant agrees to pay a total settlement amount of Four-Hundred and Thirty-Five Thousand Dollars and Zero Cents (\$435,000.00). No later than fourteen (14) days after the Effective Date, Defendant shall deposit with the settlement administrator the Gross Settlement Amount. The settlement administrator will:

- 1) Issue the Court-approved attorneys fees and costs to Counsel for Plaintiff, in a check written out to "Kyle Todd, P.C.";
- 2) Issue to Plaintiff, through her counsel, any Court-approved Enhancement Payment;
- 3) Deduct the administration fees and costs from the Gross Settlement Amount; and
- 4) Issue the remaining Net Settlement Amount to the Aggrieved Employees and to the LWDA.

(b) PAGA Payments.

The total sum available for payment of PAGA penalties (the "Net Settlement Amount") shall be calculated by deducting Plaintiff's Counsel's fees and costs, the enhancement payment, and administration costs referenced in Section 3.01(i), (ii), (iii) and (iv) from the \$435,000.00 Gross Settlement Amount. The Net Settlement Amount is estimated at \$237,888.96 and shall be characterized as 100% civil penalties.

Seventy-five percent (75%) of the Net Settlement Amount shall be paid by the settlement administrator to the Labor and Workforce Development Agency (LWDA) (which is estimated at \$178,416.72), within ten (10) calendar days from receipt of the Gross Settlement Amount. The remaining twenty-five percent (25%) of the Net Settlement Amount (which is estimated at \$59,472.24) (the "Employee Net Settlement Amount") shall be paid by the settlement

administrator to Aggrieved Employees, within ten (10) calendar days from receipt of the Gross Settlement Amount, based on the following formula:

The Employee Net Settlement Amount shall be divided by the total pay periods worked by all Aggrieved Employees during the Release Period to yield the "California Employee Settlement Share Value." Each Aggrieved Employee shall be paid their individual total pay periods worked in California during the Release Period multiplied by the California Employee Settlement Share Value.

Within fourteen (14) days after the Effective Date, Defendant shall provide the settlement administrator a listing of all Aggrieved Employees ("Aggrieved Employee List"), including the full name, last known mailing address, social security number on file, and the applicable number of pay periods worked by each Aggrieved Employee during the Release Period. The Parties acknowledge that some information on the Aggrieved Employee List may have changed since it was provided to Defendant, or may prove ultimately inaccurate. Defendant is only obligated to provide the Aggrieved Employee List based upon the best information presently available to Defendant.

Concurrently with sending or providing their share of the California Employee Settlement Share Value, the settlement administrator will notify each Aggrieved Employee of the binding nature of the release and that the Agreement shall have the same force and effect as if this Agreement were executed by each Aggrieved Employee. The form of the notification shall be agreed to by the Parties.

All Aggrieved Employees who cash their settlement check will receive an IRS Form 1099 for their portion of the settlement from the settlement administrator.

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Thereafter, all unclaimed funds shall escheat to the State of California Unclaimed Wage Fund in the name of the Aggrieved Employee.

(c) Attorneys' Fees and Costs and Enhancement Payment.

Within ten (10) calendar days from receipt of the Gross Settlement Amount, the settlement administrator shall pay the court approved attorney's fees and costs to Plaintiff's counsel, and issue the enhancement payment to Plaintiff, and such shall be mailed by the settlement administrator to Plaintiff's counsel's office. .

Any attorneys' fees or costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without limitation, all time and expenses expended by Plaintiff's Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the Aggrieved Employees or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation Costs and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever.

The settlement administrator will issue any applicable IRS 1099 Forms in connection with the payment of Attorney's Fees and Costs and the Enhancement Payment.

Section 3.04 Order Approving Settlement and Judgment.

Plaintiff and Defendant will jointly submit, with the documents asking the Court to approve the settlement, an order and judgment based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement.

Section 3.05 Dismissal of Claims

Plaintiff, through her counsel, agrees to dismiss the entire action with prejudice, no later than fourteen (14) days after the settlement administrator administers all funds from the court-approved Gross Settlement Amount.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendant denies liability for any claims alleged by Plaintiff on her own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Action.

Section 4.02 Nullification.

- (a) If the Court should for any reason refuse to approve the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) If the Court does not approve the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the assistance of mediator Christopher Barnes to resolve any disputes.

- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Limited Release and Waiver of Claims.

Section 5.01 Limited Release of All PAGA Claims Relating to the Action.

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall, for the Release Period, fully release and forever discharge Released Parties from the Released Claims that arose during the Release Period. It is expressly understood and agreed that this limited release does not release Defendant from liability, if any, to the Aggrieved Employees, excluding Plaintiff, for any claims that they may assert against Defendant, other than a PAGA claim for penalties sought in this matter.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendant who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned, faxed, or electronically-signed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorney's fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's counsel and Defendant's counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof,

will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles.

Section 6.10 Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defendant's Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

Section 6.11 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.12 Waiver of Appeals.

The Parties waive all appeals from the Court's approval of the PAGA penalties, unless the Court materially modifies the settlement and/or the PAGA penalties.

Section 6.13 Continuing Jurisdiction.

The Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Private Attorneys General Act Settlement Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: 11 / 15 / 2021

PLAINTIFF, MARITZA GUEVARA

By: Maritza Guevara
Maritza Guevara

Dated: 11/17/2021

DEFENDANT, OVERLAND, PACIFIC &
CUTLER, LLC

By: [Signature]
Printed Name: Brian Everett
Title: President + CEO