

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

Abraham Escalara; Rolando Perez v. Snow Well, Inc.
Kern County Superior Court
Case Number BVC-20-102580

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 with respect to all claims brought in a representative capacity pursuant to the Private Attorneys General Act ("PAGA") (Labor Code § 2698 *et seq.*) shall be effectuated upon 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 PAGA Settlement Agreement ("Agreement").

This Agreement is made by and between Defendant Snow Well Service, Inc. ("Defendant"), Plaintiffs, Abraham Escalara; Rolando Perez ("Plaintiffs"), on behalf of himself, Aggrieved Employees (defined below), on behalf of the State of California, and the law firms defined below as "Plaintiff's Counsel" and "Defense Counsel." (Defendant, Plaintiff and Aggrieved Employees, as defined herein, are sometimes collectively referred to as the "Parties.") This Agreement shall be effective upon the last date upon which it is signed by the Parties.

The Parties agree that all representative claims brought pursuant to PAGA in Kern County Superior Court case number **BVC-20-102580** (the "Litigation" or "Action") if this agreement is approved by this court shall be, and hereby are, ended, settled, resolved, and concluded by agreement of Defendant to pay the sum of Fifty Thousand Dollars and Zero Cents (\$50,000.00) (hereinafter referred to as the "Gross Settlement Amount") for settlement of the PAGA claims and penalties sought in the Litigation, which shall be inclusive of Plaintiffs' Counsel attorneys' fees and costs in connection with this Agreement. The Parties further agree that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability.

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) "Aggrieved Employees" means all current and former non-exempt employees employed by Snow Well, Inc. from November 4, 2019 to February 16, 2023 who worked as nonexempt California drivers and technicians who serviced oil pumps and wells. Defendant represents there are no more than 52 Aggrieved Employees during the Settlement Period and a maximum of 2,614 paystubs.

- (b) "Complaint" means the Complaint filed by Plaintiff on or about November 2, 2020 and the First Amended Complaint filed on or about January 18, 2021.
- (c) "Court" means the Superior Court for the State of California, County of Kern.
- (d) "Defense Counsel" or "Counsel for Defendant" is:
- Daniel K. Klingenberg, Esq.
Matthew Brady, Esq.
LEBEAU THELEN, LLP
5001 East Commerce Center Drive Suite 300
Bakersfield, California 93309
- (e) "Effective Date" means the date the Court approves the settlement of the PAGA penalties as described in this Agreement..
- (f) "Plaintiff's Counsel" is:
- Karl Gerber, Esq.
EMPLOYMENT LAWYERS GROUP
13418 Ventura Blvd.,
Sherman Oaks, California 91423
- (g) "Settlement Period" means the time period from November 4, 2019 through February 16, 2023.

Article II.

Background.

Section 2.01 Background.

- (a) Plaintiffs Escalera & Perez's First Amended Complaint states a Twelfth Cause of action for Private Attorneys General Act of 2004 (Cal. Labor Code § 2698 *et seq.*) penalties based on alleged violations of California Labor Code §§ 201, 203, 226, 510, 516, 558, 1194, 1194.2, 1197.1, upon which they alleged PAGA penalties under California Labor Code Sections 226.3, 226.4, 226.6 for paystub violations, 204, 210, 215, and 216 violations due to the nonpayment of wages all of which they contend entitled them and the aggrieved employees to PAGA penalties.
- (b) The Parties have exchanged formal and informal written and oral discovery. Plaintiffs noticed depositions and sent a questionnaire to the PAGA group. The Parties reached this Agreement only after such discovery and investigation was performed, following a mediation with Hon. David Lampe, Ret. on February 16, 2023.
- (c) This Agreement contemplates the entry of an order by the Court approving the payment allocated for settlement of the PAGA claims and dismissing the PAGA Action with prejudice upon completion of the PAGA settlement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining, through a stipulation and order, or an unopposed motion, if required, an Order from the Court approving the payment of the Gross Settlement Amount as described in this Agreement at the earliest possible date. Concurrently with the submission of this Agreement to the Court, Plaintiff shall submit it to the LWDA as required by PAGA. The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, 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 the Gross Settlement Amount as described in this Agreement.

The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order, which shall be transmitted to the LWDA promptly upon entry, as required by PAGA. Should the Court not grant approval of the payment of the Gross Settlement Amount as described in this Agreement the parties shall endeavor in good faith to re-negotiate this agreement in a manner in which the court will approve this settlement.

Section 3.02 Settlement Payment Procedures.

(a) Payment of Gross Settlement Amount and Notice to Aggrieved Employees.

- (1) Defendant agrees to pay a total amount of Fifty Thousand Dollars (\$50,000.00) to settle this matter. This amount, *i.e.*, the Gross Settlement Amount, shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiffs, the Aggrieved Employees, the State of California, and Plaintiffs' Counsel, including all amounts allocated to attorneys' fees and costs, in settlement of all PAGA claims asserted by Plaintiffs, on behalf of himself and the Aggrieved Employees. The Parties agree that there are no circumstances that would require Defendant to pay any amount greater than the Gross Settlement Amount in connection with this Agreement. In the event that this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall have no obligation to pay any of the Gross Settlement Amount, any amounts paid by Defendant pursuant to this Agreement shall be refunded to Defendant in full, and the Parties' respective positions shall be restored to their positions prior to mediation. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.
- (2) The "Net Settlement Amount" shall be calculated by deducting from the Gross Settlement Amount up to 40% of the Gross Settlement Amount (projected to be \$20,000) for the

payment of Plaintiffs Counsel's fees, up to \$7,000 for the payment of Plaintiffs' Counsel's costs, \$3,000 to pay the Claims Administrator, Phoenix Settlement Administrators in exchange for this general release. The Net Settlement Amount will be comprised of no less than \$20,000. Seventy-five percent (75%) of the Net Settlement Amount (\$15,000) shall be distributed to the State of California Labor and Workforce Development Agency ("LWDA"), and the remaining twenty-five percent (25%) of the Net Settlement Amount, or \$5,000 shall be distributed to the Aggrieved Employees.

- (3) The twenty-five percent (25%) of the Net Settlement Amount to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all of them in California during the Settlement Period to yield the Pay Period Value. Each Aggrieved Employee will be paid an amount equal to their individual number of pay periods worked in California during the Settlement Period multiplied by the Pay Period Value.
- (4) Defendant shall pay the Gross Settlement Amount via wire, bank transfer or certified funds to the Settlement Administrator within thirty (30) days after Court approval of the settlement of the PAGA claims, or one-hundred twenty (120) days after Plaintiffs' and Plaintiffs' attorney have signed this Agreement, whichever is later.
- (5) No later than fifteen (15) calendar days after the Gross Settlement Amount has been paid, the Settlement Administrator shall transmit settlement checks containing the aggrieved employees' individual settlement amounts, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices. The last known address of each employee shall be confirmed by the settlement administrator using databases and skip tracing methods known to the administrator to avoid a single mailing to a last known address provided by Defendant.
- (6) For each settlement check and Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. The value of checks uncashed more than 90 days after issuance shall be paid to the Office of the California State Controller – Unclaimed Property Fund, to be held in the name of the respective Aggrieved Employees.
- (7) 100% of the Gross Settlement Amount is considered penalties and will not be subject to local, state or federal tax withholdings. All recipients of payments under this Agreement will have their payments reported on an IRS Form 1099. The Settlement Administrator shall issue IRS Form 1099s or other appropriate tax forms (if required) to the Aggrieved Employees.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as an admission by Defendant of any violations of Plaintiff's or Aggrieved Employees' rights, violation of any order, law, statute, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff or any other allegedly aggrieved employee for any alleged violation of his/her rights, or for any alleged violation of any order, law, statute, duty or contract. Defendant further denies that, for any purpose other than settling these matters, that this action is appropriate for representative treatment.

Section 4.02 Non-Evidentiary Use.

This Agreement is admissible for purposes of obtaining court approval of the settlement and is intended to be binding on the parties. It is also admissible in the event that either Party is required to file a motion to enforce any of the terms of the Agreement. Neither this Agreement, nor any of its terms, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or anything else associated with it, shall be offered or used as evidence by any of the Parties or their respective counsel in the Litigation or in any other action or proceeding, including to establish any liability or admission on the part of Defendant or any Released Parties or to establish the existence of any condition constituting a violation of, or noncompliance with, federal, state, local or other applicable law; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement. This Agreement also may be used by Defendant to establish in any subsequent matter that PAGA penalties have already been settled with, paid to and fully released by Plaintiffs or any Aggrieved Employee, except that neither Plaintiffs nor any Aggrieved Employees may use this Agreement or the terms contained herein to contend that the amounts paid or terms of this Agreement establish a right to damages in any amount in any non-settled claim. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it or proceedings relating to this Agreement, payouts or other events associated with it, shall be construed as an admission or concession by Defendant or any Released Parties or establishment of any such violation(s) or failure(s) to comply with any applicable law. Defendant specifically retains the right to defend, on the merits, against any non-settled claims brought by any Aggrieved Employees.

Section 4.03 Nullification.

Invalidation of any material provision 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.

Release and Waiver of Claims.

Section 5.01 Limited Release By Aggrieved Employees.

Upon the Effective Date and subject to Defendant's full payment of the Gross Settlement Amount, the PAGA group, on behalf of himself, his heirs, executors, and assigns, the Aggrieved Employees, Plaintiffs, and the State of California, fully releases and discharges Defendant, and each of its present and former affiliates, parent companies, subsidiaries, divisions, successors, predecessors, and assigns, and each of its respective past and present shareholders, officers, partners, directors, current and former employees, agents, attorneys, insurers, successors, assigns, representatives, accountants, and all persons acting under, by, through, or in concert with any of them (collectively, "Released Parties") from any and all claims, rights, demands, liabilities, and causes of action of every nature and description, under PAGA, which were asserted for PAGA liability for PAGA penalties under California Labor Code Sections 204, 210, 215, 216, 226.3, 226.4, and 226.6.

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, Plaintiff's Counsel, Defendant and Defense Counsel 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 he 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 any PAGA allegations and settlement in this Litigation.

Section 6.06 Waiver of Compliance.

Any failure of any Party, Defense Counsel, and/or Plaintiffs' 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. 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.

With respect to this Agreement, neither Plaintiffs' Counsel nor any other attorneys acting for, or purporting to act for the Aggrieved Employees, or Plaintiffs may recover or seek to recover any amounts for fees, costs, or disbursements from the Released Parties or the Gross Settlement Amount except as expressly provided herein. Defendant shall bear its own attorney's fees and costs, and neither Plaintiffs' Counsel, Aggrieved Employees or the Plaintiff shall be responsible for Defendant's attorney's fees and costs. If any party moves the Court to enforce this Agreement, the prevailing party shall be entitled to recover from the other party all attorneys' fees and costs incurred to enforce this Agreement.

Section 6.09 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 6.10 Court's Retention of Jurisdiction.

The Court shall retain jurisdiction, pursuant to Code of Civil Procedure section 664.6 and otherwise as permitted by law, to enforce this Settlement.

Section 6.11 Authority.

Each Party to this Agreement expressly represents and warrants to have the authority necessary to execute this Agreement. Each person signing this Agreement on behalf of a corporation represents that he or she has the authority to agree to the terms hereof and execute this Agreement on behalf of said entity in accordance with the bylaws of such entity and that his or her signature will bind the entity to the terms of this Agreement.

Section 6.12 Limitation on Public Statements About Settlement.

Defendant and Plaintiffs agree to limit public comment on this Settlement, the Action, and the claims to stating that the matter has been resolved to the satisfaction of both Plaintiffs and Defendant, except as necessary to give notice to the Aggrieved Employees, seek approval from the Court, or is legally required to comply with ethical obligations.

Section 6.13 No Solicitation.

The Parties and their respective counsel represent that neither the Parties nor their respective counsel have or will solicit or otherwise encourage directly or indirectly any Aggrieved Employees to object to or appeal the Court's order approving the Settlement and dismissing the Action with prejudice.

Section 6.14 No Tax Advice.

The Parties understand that nothing contained in this Settlement or this Agreement shall constitute legal or tax advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

Section 6.15 Fair Settlement.

The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

Section 6.16 Stay of Litigation.

The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that they shall cooperate in any effort necessary to ensure that the litigation is stayed. The Parties further agree that, upon the signing of this Agreement, pursuant to CCP section 583.330, the date to bring the case to trial under CCP section 583.310 is extended for the entire period of this settlement process, commencing on the date of the mediation February 16, 2023 until the earlier of the Effective Date or the date this Agreement is no longer of any force or effect.

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

APPROVED AND ACCEPTED.

Dated: February 16, 2023

SNOW WELL, INC,

By: Candi K Snow
Candi K Snow (Feb 16, 2023 19:24 PST)

Its: _____

Dated: February 16, 2023

By _____
ABRAHAM ESCALARA

Dated: February 16, 2023

By _____
ROLANDO PEREZ

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: February ____, 2023

EMPLOYMENT LAWYERS GROUP

By _____
Karl Gerber, Esq.
Attorney for Plaintiff

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

APPROVED AND ACCEPTED.

Dated: February 16, 2023

SNOW WELL, INC,

By: _____

Its: _____

Dated: February 16, 2023

By  _____
Abraham Escalera (Feb 16, 2023 19:09 PST)
ABRAHAM ESCALARA

Dated: February 16, 2023

By _____
ROLANDO PEREZ

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: February __, 2023

EMPLOYMENT LAWYERS GROUP

By _____
Karl Gerber, Esq.
Attorney for Plaintiff

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

APPROVED AND ACCEPTED.

Dated: February 16, 2023

SNOW WELL, INC,

By: _____

Its: _____

Dated: February 16, 2023

By _____
ABRAHAM ESCALARA

Dated: February 16, 2023

By  _____
Rolando Perez (Feb 16, 2023 19:27 PST)
ROLANDO PEREZ

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: February ___, 2023

EMPLOYMENT LAWYERS GROUP

By _____
Karl Gerber, Esq.
Attorney for Plaintiff

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

APPROVED AND ACCEPTED.

Dated: February 16, 2023

SNOW WELL, INC,

By: _____

Its: _____

Dated: February 16, 2023

By _____
ABRAHAM ESCALARA

Dated: February 16, 2023

By _____
ROLANDO PEREZ

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: February ^{Feb 16, 20.}____, 2023

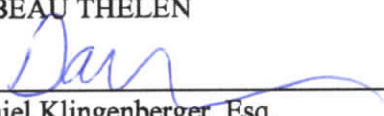
EMPLOYMENT LAWYERS GROUP

By Karl Gerber
Karl Gerber (Feb 16, 2023 19:09 PST)
Karl Gerber, Esq.
Attorney for Plaintiff

Dated: February 16, 2023

LEBEAU THELEN

By



Daniel Klingenberg, Esq.

Attorneys for Defendant