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**FILED**  
ALAMEDA COUNTY

APR 15 2019

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 UNLIMITED JURISDICTION

19 MARTIN FLETSCHER, On Behalf of Himself  
20 and All Others Similarly Situated,

21 Plaintiff,

22 v.

23 OVERLAND SOLUTIONS, INC.,

24 Defendant.

Case No. RG17852058

**CLASS ACTION**

**54**  
**[PROPOSED] ORDER OF FINAL**  
**APPROVAL AND JUDGMENT**

ASSIGNED FOR ALL PURPOSES TO JUDGE  
STEPHEN KAUS, DEPT. 19

Hearing Date: April 15, 2019  
Time: 3:00 p.m.  
Reservation Number: R-2021210  
Date Action Filed: March 8, 2017  
Trial Date: Not set

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**FINDINGS AND CONCLUSIONS ON FINAL APPROVAL**

**THE COURT NOW FINDS AND ORDERS AS FOLLOWS:**

1. Plaintiff's Motion for Final Approval of Class Settlement, Attorneys' Fees and Costs, Service Award, and Settlement Administration Costs is hereby GRANTED in its entirety. The Settlement is ORDERED APPROVED in its entirety. The terms of the Settlement Agreement are incorporated, and made part of this Order, as if copied herein, and shall be effective, implemented, and enforced as provided in the Settlement Agreement. The Parties to the Settlement are directed to effectuate its terms.

2. All capitalized terms contained and not otherwise defined within this Order shall be governed by the definitions set forth in the Settlement Agreement.

**Final Certification of the Class**

3. For settlement purposes only, the Court makes the following findings:

- a. The Class Members are ascertainable and are so numerous as to make joinder impracticable;
- b. There are questions of law and fact common to the Class, and such questions predominate over any questions affecting only individual Class Members;
- c. Plaintiff suffered from the same alleged course of conduct as the Class Members, and their claims are typical of the Class;
- d. Plaintiff and Class Counsel can protect and have fairly and adequately protected the interests of Class Members; and
- e. A class action is superior to all other available methods for fairly and efficiently resolving the class claims.

1           4. Pursuant to California Code of Civil Procedure Section 382, California Rule of Court  
2 3.769, and/or other applicable laws, the Court GRANTS final certification of the following Class for  
3 settlement purposes:

4           All individuals classified by OSI as independent contractors who performed  
5 insurance inspections or surveys as part of OSI's Survey Division in the  
6 state of California at any point from March 8, 2013 to July 25, 2018.

7                           **Distribution of Class Notice**

8           5. The Court also finds that due and adequate notice of the Settlement has been provided  
9 to the Class. The Notice of Class Action Settlement ("Class Notice") approved by the Court was  
10 distributed to Class Members. The Class Notice provided an accurate, objective, and clear explanation  
11 of the nature of the case and the terms of the Settlement, including the anticipated requests for  
12 attorneys' fees, expenses, and service award. The Class Notice also clearly and accurately explained  
13 the process by which a Class Member could seek exclusion from the Settlement, detailed the method  
14 for submitting written objections, and explained that Class Members could appear at the Final  
15 Approval Hearing to raise or explain any objections.

16           6. The appointed Settlement Administrator, RG/2 Claims Administration LLC,  
17 distributed the Class Notice pursuant to the process approved by the Court in its Preliminary Approval  
18 Order. The Settlement Administrator was provided Class Members' last known addresses, which it  
19 updated as necessary based upon the United States Postal Service's National Change of Address  
20 database. As provided in the Settlement and approved by the Court in its Preliminary Approval Order,  
21 follow-up efforts were made to send the Notice to those individuals whose original Notices were  
22 returned as undeliverable. The Court finds that the method by which Class Members were provided  
23 the Class Notice was valid, due, and sufficient.

24           7. No Class Members objected to any aspect of the Settlement. Only one Class Member  
25 requested to be excluded from the Settlement. By his timely opt-out request, Mark Predovic is  
26 excluded from the Class and is thus not a Class Member and not bound by the terms of the Settlement.  
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**Final Approval of the Class and PAGA Settlement**

8. Having reviewed the Settlement Agreement and Plaintiff's submissions in support of Final Approval of Class Settlement, and based upon all proceedings herein, the Court concludes that the Settlement is fair, adequate, and reasonable in all respects and GRANTS final approval of the Settlement.

9. Specifically, the Court finds that:

- a. The Settlement was the result of extensive, arm's-length negotiations among the Parties after Class Counsel investigated the class claims and became intimately familiar with the strengths and weaknesses of the class claims;
- b. The Class Members strongly support the Settlement Agreement; indeed, no Class Member objected to the Settlement and only one individual out of the 271-person Class opted out;
- c. Class Counsel have significant experience in wage and hour class actions, and they strongly endorse the Settlement as an outstanding result for the Class; and
- d. The Settlement Agreement provides substantial compensation for Class Members, especially in light of the significant litigation risks had the case not been resolved through settlement.

10. The Court finds that the Settlement reasonably settles the penalties under the California Private Attorneys General Act of 2004 ("PAGA") for \$50,000.00 and ORDERS that three-quarters of this amount (\$37,500.00) be paid to the California Labor and Workforce Development Agency.

11. The Court finds that the Class Settlement payment process provided in the Settlement is fair and reasonable, and the Court ORDERS the Parties and the Settlement Administrator to consummate the Settlement and distribute Class Settlement Payments pursuant to the terms of the Settlement.

**Attorneys' Fees and Expenses and Settlement Administration Costs**

12. The Court also finds that the requested attorneys' fees award of one-third the total Settlement fund (*i.e.*, \$800,000.00) is fair and reasonable.

1  
2 13. Specifically, the Court finds that:

- 3 a. The percentage method is an appropriate means of calculating attorneys' fees in  
4 this case, where Plaintiff has secured a common fund;  
5 b. Class Counsel's requested fee award of one-third the total Settlement fund is within  
6 the ordinary range of percentages approved by courts;  
7 c. Class Counsel obtained an outstanding result, achieving an early and substantial  
8 recovery for the Class, especially considering the short tenure of the average Class  
9 Member and the substantial risks associated with continued litigation;  
10 d. Class Counsel are highly skilled and experienced in wage and hour class actions,  
11 and the requested fee award of one-third of the Settlement fund falls well within  
12 the norm for attorneys with Class Counsel's skills and depth of experience;  
13 e. Class Counsel have dedicated considerable time and effort to prosecuting this case;  
14 f. Class Counsel incurred significant risks in prosecuting this class action entirely on  
15 a contingency basis, as they risked that they would never be compensated for their  
16 time or reimbursed for their expenses; and  
17 g. The Court further finds that the requested fee award is reasonable under the lodestar  
18 cross-check. Class Counsel have invested \$741,776.92 worth of time in obtaining  
19 a fair and reasonable settlement for the Class. The requested attorneys' fees  
20 amounts to one hundred and eight percent (108%) of Class Counsel's lodestar,  
21 reflecting a modest multiplier which is warranted under the circumstances. The  
22 Court finds that such a multiplier is well within the range of multipliers approved  
23 by courts using the lodestar cross-check and that this modest multiplier is justified  
24 in light of the substantial relief afforded to the Class Members, Class Counsel's  
25 skills and deep experience, and the risks in prosecuting this case on a contingency  
26 basis and thereby forgoing other opportunities.  
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1           14. The Court further finds that Class Counsel's litigation costs of \$21,485.23 were  
2 reasonable and necessary to the prosecution of the case, and the Court awards Class Counsel full  
3 reimbursement of these costs.

4           15. The Court further finds that the requested payment of \$10,000 for the fees and costs of  
5 RG/2 Claims Administration LLC, the appointed Settlement Administrator, is reasonable and  
6 necessary to administering the Settlement. The Court therefore awards this requested payment in full.

7           16. Accordingly, IT IS HEREBY ORDERED that Class Counsel are awarded a total of  
8 \$800,000.00 for fees and \$21,485.23 for litigation costs. The Settlement Administrator will pay ninety  
9 percent (90%) of the Court-approved attorneys' fees, and the entirety of the Court-approved expenses  
10 to Class Counsel within ten (10) calendar days of the Effective Date. The remaining ten percent (10%)  
11 of attorneys' fees shall remain in the Qualified Settlement Fund (QSF), until the completion of the  
12 settlement distribution process and Court approval of a final accounting. The Administrator shall not  
13 release these funds to class counsel until the Court determines that these conditions have been met.

14           17. By no later than two hundred twenty (220) calendar days after the Effective Date of the  
15 Settlement, Class Counsel and the Settlement Administrator shall report to the Court how the  
16 Settlement funds have been distributed to Class Members, the total Net Settlement Amount remaining  
17 in the settlement fund (if any), and the status of any unresolved issues (the "Final Report").

18           18. A class settlement compliance hearing is hereby set to occur on January 8, 2020, at  
19 3:00 in Department 19 Administration Building (Third Floor), 1221 Oak Street, Oakland, at which  
20 time the Court will consider evidence that the distribution process is complete and that a final  
21 accounting may be approved.

22                           **Settlement Administrator's Fees and Costs**

23           19. The Court finds that the requested payment of \$10,000 for the fees and costs of RG/2  
24 Claims Administration LLC, the appointed Settlement Administrator, is reasonable and necessary to  
25 administering the Settlement.

26           20. Accordingly, IT IS HEREBY ORDERED that the Settlement Administrator is awarded  
27 a total of \$10,000.00 for its fees and costs.  
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**Service Award**

21. The Court finds that the requested service award of \$18,000 for Plaintiff Fletscher is reasonable and well-justified in light of the substantial time and effort that he, the sole Class Representative, has expended on behalf of the Class; the outstanding recovery achieved for the Class as a result of the Class Representative's indispensable service; the significant risks that the Class Representative faced by bringing this Lawsuit; the modest size of the service award relative to the overall settlement value, as well as the average and highest individual Class Member recoveries; the general release that he is agreeing to provide Defendant, for no additional consideration, in service of the Class; and Class Members' overwhelming support for the terms of the Settlement, including its provision for a service award of \$18,000 to Class Representative Fletscher.

22. Accordingly, IT IS HEREBY ORDERED that Plaintiff Martin Fletscher will receive a service award of \$18,000.00.

**Cy Pres Beneficiary Award**

23. The Court finds that the distribution of residual monies to Bay Area Legal Aid, an eligible non-profit organization providing civil legal services to the indigent, is an appropriate *cy pres* remedy under California Code of Civil Procedure § 384. Therefore, the Court approves of the *cy pres* distribution provided for in the Settlement and finds that it is fair and reasonable.

24. In the Final Report, Class Counsel shall report to the Court the total amount that was actually paid to the Class Members. Pursuant to California Code of Civil Procedure § 384, the Court shall amend the judgment to direct that all unclaimed or abandoned class member funds, plus any interest that has accrued thereon, be distributed to Bay Area Legal Aid.

**JUDGMENT**

25. IT IS HEREBY ORDERED that if there is no appeal of this Order, the Effective Date of this Settlement will be sixty-five (65) calendar days after the entry of the Order. If there is an appeal of this Order, the Effective Date of this Settlement will be ten (10) business days after the appeal is finally withdrawn, dismissed, or denied with prejudice.



1           26.     IT IS HEREBY ORDERED that upon the Effective Date of this Settlement, each Class  
2 Member will fully release and discharge the Released Parties<sup>1</sup> from any and all claims arising at any  
3 point from March 8, 2013 through July 25, 2018 (the "Settlement Period"), that were asserted in this  
4 lawsuit, or that are based on any of the facts, circumstances, transactions, events, occurrences, acts,  
5 disclosures, statements, omissions or failures to act alleged in the Second Amended Complaint (the  
6 "Released Claims"). The Released Claims specifically include: (1) failure to pay minimum wages for  
7 all hours worked; (2) failure to furnish accurate wage statements; (3) failure to reimburse business  
8 expenses; (4) failure to timely pay all final wages to Class Members upon termination of Services for  
9 OSI; (5) incorporated or related claims asserted through California Business and Professions Code §  
10 17200; (6) incorporated or related claims asserted through PAGA; and (7) any and all penalties, interest  
11 and attorneys' fees and costs based on the alleged.

12           27.     Unnamed Class Members are not releasing any claims that are unrelated to services  
13 they performed as Class Members during the Settlement Period; nor are they releasing any claims other  
14 than the defined Released Claims.

15           28.     IT IS HEREBY ORDERED that upon the Effective Date of the Settlement, and in  
16 accordance with Plaintiff's release set forth in the Settlement, Plaintiff Fletscher will also (i) release all  
17 claims against the Released Parties that were or could have been asserted by Plaintiff which arise out  
18 of or relate in any way to his performance of services for OSI as a Class Member and (ii) generally  
19 release all claims against OSI arising prior to the last day of the Settlement Period.

20           29.     IT IS HEREBY ORDERED that the Court enters final judgment on the class action  
21 claims and PAGA claims asserted in the Second Amended Complaint in accordance with the terms of  
22 the Settlement and this Order. By virtue of this Order, all Class Members, including Plaintiff, are bound  
23 by the Settlement Agreement and permanently barred from prosecuting any of the Released Claims  
24 against any of the Released Parties.

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26           <sup>1</sup> Per the Settlement Agreement, the "Released Parties" are Defendant, its subsidiaries, officers, directors,  
27 members, partners, owners, shareholders, employees, former employees, agents, servants, attorneys, assigns,  
28 affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations,  
insurers, and any and all other persons, firms and corporations in which Defendant may have an interest.  
(Settlement § I, ¶ 12.)

1           30. Pursuant to California Rule of Court 3.769(h), the Court shall retain jurisdiction over  
2 the interpretation and implementation of the Settlement Agreement as well as any and all matters arising  
3 out of, or related to, the interpretation, implementation, or enforcement of the Settlement Agreement  
4 and this Order.

5           31. IT IS HEREBY ORDERED that in compliance with California Rule of Court 3.771(b),  
6 a copy of this Order shall be posted by Class Counsel on a public webpage concerning this lawsuit on  
7 Sanford Heisler Sharp, LLP's website.

8           32. IT IS FURTHER HEREBY ORDERED that pursuant to California Code of Civil  
9 Procedure § 384.5, Class Counsel is directed to transmit a copy of this Order of Final Approval and  
10 Judgment to the Judicial Council.

11  
12 **IT IS SO ORDERED.**

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15 DATED: 4-15-2019

  
\_\_\_\_\_  
Honorable Stephen Kaus  
Judge of the Superior Court