

1 SAMUEL T. REES (State Bar No. 58099)
2 THOMAS P. BLEAU (State Bar No. 152945)
3 MARTIN R. FOX (State Bar No. 155783)
4 BLEAU FOX
5 2801 West Empire Avenue
6 Burbank, California 91504
7 Telephone: (818) 748-3434
8 Facsimile: (818) 748-3436

9 SHANNON LISS-RIORDAN (State Bar No. 310719)
10 LICHTEN & LISS-RIORDAN, P.C.
11 729 Boylston Street, Suite 2000
12 Boston, MA 02116
13 Telephone: (617) 994-5800
14 Facsimile: (617) 994-5801
15 sliss@llrlaw.com

16 Attorneys for Plaintiff
17 and the Plaintiff Class

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ORANGE

20 RAYMOND STODDARD and
21 SANTIAGO MEDINA etc.,

22 Plaintiffs,

23 vs.

24 EQUILON ENTERPRISES, LLC, et
25 al.,

26 Defendants.

Case No. 30-2010-00395208-CU-0E-CXC

Hon. William Claster
Department CX 102

CLASS ACTION

**THIRD SUPPLEMENTAL
DECLARATION OF SAMUEL T.
REES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

**[Filed Concurrently with Second
Supplemental Memorandum Of
Points And Authorities and
Plaintiffs' Second Revised
[Proposed] Preliminary Approval
Order]**

Date: September 4, 2020

Time: 9:00 a.m.

Dept: CX 104

Complaint Filed: August 2, 2010

Trial Date: None Set

Reservation No. 73219881

1 I, SAMUEL T. REES, declare:

2 1. I remain an attorney at law duly licensed to practice in California
3 and Louisiana. I also remain “Of Counsel” to Bleau Fox, a PLC, counsel for
4 Plaintiff and Plaintiff Class herein.

5 2. I submit this Third Supplemental Declaration in response to the
6 Court’s July 31, 2020, comments regarding the settlement. However, my prior
7 declarations submitted in connection with this settlement remains true and
8 correct.

9 3. Following receipt of the Court’s comments, I successfully negotiated
10 amendments to the settlement agreement, class notice and the preliminary
11 approval order with counsel for R&M. I remain the principal draftsman of those
12 amended documents. Attached hereto as Exhibit J is a true and correct copy of
13 the Second Amended and Restated Settlement Agreement and Exhibits. Exhibit
14 1 thereto is the Amended Class Notice. Exhibit 2 thereto is the Second Revised
15 [Proposed] Preliminary Approval Order.

16 4. In response to the Court’s comments, attached hereto as Exhibit K is
17 a redlined version comparing the Second Amended and Restated Settlement
18 Agreement with the Amended Settlement Agreement attached as Exhibit C to
19 my earlier declaration. Attached hereto as Exhibit L is a redlined version
20 comparing the further amended Class Notice with the amended Class Notice
21 submitted with my earlier declaration. Attached hereto as Exhibit M is a
22 redlined version comparing the Second Revised [Proposed] Preliminary Approval
23 Order with the prior Revised [Proposed] Preliminary Approval Order submitted
24 with my earlier declaration. I performed the redlining operation myself and
25 believe they accurately show all changes made. In negotiating all changes, I
26 believe that I have covered all of the concerns raised in this Court’s comments
27 concerning those documents.

28

1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct.

3 Dated: August 26, 2020



6 SAMUEL T. REES

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EXHIBIT J

1 SAMUEL T. REES (State Bar No. 58099)
THOMAS P. BLEAU (State Bar No. 152945)
2 MARTIN R. FOX (State Bar No. 155783)
BLEAU FOX
3 A Professional Law Corporation
2801 West Empire Avenue
4 Burbank, CA 91504
Telephone: (818) 748-3434
5 Facsimile: (818) 748-3436

6 Attorneys for Plaintiff
and the Plaintiff Class
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**
10

11 RAYMOND STODDARD and SANTIAGO) Case No. 30-2010-00395208-CU-OE-CXC
MEDINA, etc.,)
12) Hon. William Claster
Plaintiffs,) Department CX 102
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **SECOND AMENDED AND RESTATED**
15) **SETTLEMENT AGREEMENT WITH**
R&Ms.) **EXHIBITS**
16)
17) Date: July 31, 2020
Time: 8:30 a.m.
18) Dept: CX104
19)
Complaint Filed: August 2, 2010
Trial Date: None Set

20
21 **SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT**

22 This Second Amended and Restated Settlement Agreement (hereinafter
23 the "Settlement Agreement") is made and entered into by and between R & M
24 PACIFIC RIM, INC., a California corporation, ("R&M"), on the one hand, and
25 SANTIAGO MEDINA ("Medina"), individually and on behalf of Settlement Class
26 Members as hereinafter defined, on the other hand, subject to preliminary and
27 final approval of the Court as hereinafter defined. This Settlement Agreement
28

1 supersedes and replaces the Settlement Agreement dated December 2019 and
2 the Amended and Restated Settlement Agreement dated July 21, 2020.

3 DEFINITIONS

4 As used herein, the following terms shall have the following meanings:

5 1. “**Administration Costs**” means all fees and costs incurred and
6 charged by the Settlement Administrator in connection with the processing and
7 administration of this Settlement Agreement, including, but not limited to:
8 (i) printing and mailing, emailing and re-mailing (if necessary) Class Notice, tax
9 forms and other necessary documents to Class Members; (ii) attempting to locate
10 Class Members whose Class Notice is returned undeliverable; (iii) computing the
11 amount of and distributing Individual Settlement Payments, Class Counsel
12 Award and Service Award; (iv) establishing and operating a toll free telephone
13 number and website address to receive and respond to Class Members’ updated
14 information and inquiries about the settlement; and (v) establishing a Qualified
15 Settlement Fund, as defined by the Internal Revenue Code, calculating and
16 remitting employer and employee payroll tax obligations and (vi) preparing and
17 submitting filings required by law in connection with Settlement Awards and
18 payments to the Representative Medina on his individual, non-class claims.

19 2. “**Class Action**” means the civil action styled *Raymond Stoddard*
20 *and Santiago Medina, etc. v. Equilon Enterprises, LLC etc. et al.*, Orange County
21 California Superior Court Case No. 30-2010-00395208-CU-OE-CXC.

22 3. “**Class Counsel**” means Bleau Fox, A Professional Law Corporation,
23 including Samuel T. Rees, Of Counsel.

24 4. “**Class Counsel Award**” means (i) the attorneys’ fees for Class
25 Counsel’s litigation and resolution of the Class Action, and all claims resolved by
26 this Settlement, as awarded by the Court, which may not exceed one third (1/3)
27 of the Total Settlement Amount and (ii) all actual expenses and costs incurred to
28 date by Class Counsel in litigation and resolution of the Class Action as

1 supported by declaration including billing records and as awarded by the Court.
2 The Court shall determine the amount of the Class Counsel Award and it shall
3 be paid from the Total Settlement Amount.

4 5. “**Class Information**” means information regarding Settlement
5 Class Members that R&M will in good faith compile from its records and provide
6 to the Settlement Administrator and Class Counsel¹. Class Information shall be
7 provided in a Microsoft Excel spreadsheet and shall include, if possible, for each
8 Settlement Class Member: full name, last known address, social security
9 number, last known email address, last known telephone number, the number of
10 work weeks during the Class Period that the Settlement Class Member was
11 employed as a claimed exempt salaried employee, the gross wages paid to a non-
12 exempt hourly Settlement Class Member for 2006, 2007 and 2008, and the dates
13 of employment as a non-exempt hourly Settlement Class Member whose
14 employment as a non-exempt hourly employee commenced after December 31,
15 2005 and/or ceased before January 1, 2009. The foregoing information shall be
16 derived using R&M’s payroll data. In addition, R&M will provide with the Class
17 information a listing of the actual rate of pay for each Settlement Class Member
18 for the entire Class Period and a pay stub showing each rate of pay for each
19 Settlement Class Member certified by R&M as accurate. Because Settlement
20 Class Members’ private information is included in the Class Information, Class
21 Counsel and the Settlement Administrator shall maintain the Class Information
22 in confidence and shall use and disclose Class Information only for purposes of
23 this Settlement and for no other purpose; access shall be limited to the
24 Settlement Administrator's and Class Counsel’s personnel with a need to use the
25 Class Information as part of the administration of the Settlement, and
26 transmission shall be through use of a secure, password-protected file.

27 ¹ Defense Counsel has raised, and continues to raise, R&M’s concerns about protecting the privacy
28 rights of its employees. R&M agrees to release such information to Class Counsel only after entry of an
appropriate Court order instructing and authorizing it to do so. This provision, and any provision related
to the Class Information, is expressly contingent upon entry of such an order.

1 6. “**Class Notice**” means the notice of class action settlement,
2 including the Information Sheet[Enclosure A], Request for Exclusion Form
3 [Enclosure B], a Dispute Form [Enclosure C] and a copy of R&M’s
4 representations of facts [Enclosure D] to be used to challenge the information
5 contained in the Information Sheet on which the Individual Settlement Payment
6 shall be calculated [Enclosure C], to be provided to Settlement Class Members,
7 without material variation from Exhibit 1. The Class Notice shall be printed
8 using Times New Roman 12 point typeface.

9 7. “**Class Period**” means August 2, 2006 through and including
10 September 1, 2008.

11 8. “**Court**” means Orange County Superior Court.

12 9. “**Defense Counsel**” means Kring & Chung, LLP.

13 10. “**Effective Date**” means seven (7) days after which both of the
14 following events have occurred: (i) the Court’s Final Approval order has been
15 entered and (ii) the Court’s Final Approval order and Judgment have become
16 Final.

17 11. “**Exclusion/Written Objection Deadline**” means the final date by
18 which a Settlement Class Member may either (i) submit a written objection to
19 any aspect of the Settlement, or (ii) request to be excluded from the Settlement.
20 The Exclusion/Written Objection Deadline shall be sixty (60) days after the
21 Notice Date, and shall be specifically identified and set forth in the Class Notice.

22 12. “**Final Approval**” means the Court’s entry of a Final Approval
23 order finally approving this Settlement.

24 13. “**Final Approval Hearing**” means the hearing at or after which the
25 Court will make a final decision as to whether the Settlement is fair, reasonable,
26 and adequate, and therefore, finally approved by the Court.

27 14. “**Individual Settlement Payment**” means the amount payable
28 from the Total Settlement Amount to each Settlement Class Member who does

1 not submit a valid request for exclusion from the Settlement. The Individual
2 Settlement Payment shall be calculated pursuant to Paragraph 79.

3 15. “**Judgment**” means the judgment to be entered in the Class Action
4 on Final Approval of this Settlement.

5 16. “**Legally Authorized Representatives**” means an
6 administrator/administratrix, personal representative, or executor/executrix of a
7 deceased Settlement Class Member’s estate; a guardian, conservator, or next
8 friend of an incapacitated Settlement Class Member; or any other legally
9 appointed person responsible for handling the business affairs of a Settlement
10 Class Member.

11 17. “**Named Plaintiff’s General Released Claims**” means, in
12 addition to Settlement Class Members’ Released Claims, any and all past,
13 present, and future claims and causes of action, whether known or unknown and
14 without limitation as to when those claims or causes of action arose but solely
15 against R&M and against its past, present parents, owners, subsidiaries,
16 predecessors and successors, and each of their respective officers, directors,
17 partners, shareholders, agents, and employees but related solely to actions taken
18 by them while acting in those capacities but excluding (i) any and all claims and
19 causes of against Equilon Enterprises, LLC, its parent and affiliates, including
20 Equistaff, LLC, and Tesoro Refining & Marketing Company LLC and its parents
21 and affiliates and (ii) excluding Medina’s wrongful termination claim and cause
22 of action against R&M as alleged in the Fifth Cause of Action of the Second
23 Amended Complaint filed in the Class Action, which claim is being settled
24 pursuant to a separate settlement agreement between R&M and Medina.

25 18. “**Notice Date**” means the date of the initial mailing of the Class
26 Notice to Settlement Class Members, as set forth in Paragraph 87.

27 19. “**Opt Out List**” means the Court-approved list of all persons who
28 timely and properly request exclusion from the Settlement Class.

1 20. “**Plan of Allocation**” means the plan for allocating the Total
2 Settlement Amount between and among Settlement Class Members as approved
3 by the Court.

4 21. “**Preliminary Approval Date**” means the date that the Court
5 enters the Preliminary Approval Order and thus: (i) preliminarily approves the
6 Settlement, including the exhibits thereto, and (ii) enters an order providing for
7 notice to the Settlement Class, an opportunity to opt out of the Settlement Class,
8 an opportunity to submit timely and proper objections to the Settlement, and
9 setting a hearing on the fairness of the terms of Settlement, including approval
10 of the Class Counsel Award and Service Award.

11 22. “**Preliminary Approval Order**” means the order that Medina and
12 R&M will seek from the Court, without material variation from Exhibit 2. Entry
13 of the Preliminary Approval Order shall constitute preliminary approval of the
14 Settlement Agreement.

15 23. “**R&M**” means R&M Pacific Rim, Inc.

16 24. “**Released Claims**” means (i) Settlement Class Members’ Released
17 Claims and (ii) Named Plaintiff’s General Released Claims.

18 25. “**Service Award**” means the amount approved by the Court in its
19 discretion to be paid to Medina, in addition to his respective Individual
20 Settlement Payment, in recognition of his efforts in coming forward as named
21 plaintiff and as consideration for a full, general, and comprehensive release of
22 the Named Plaintiff’s General Released Claims. Medina intends to seek a
23 Service Award of Five Thousand Dollars (\$5,000) and R&M shall not object to a
24 Service Award of Five Thousand Dollars (\$5,000) or less. The Service Award
25 shall be paid from the Total Settlement Amount.

26 26. “**Settlement**” means the settlement of the Class Action between and
27 among Medina and R&M, as set forth in this Settlement Agreement.
28

1 27. “**Settlement Administrator**” means Phoenix Settlement
2 Administrators.

3 28. “**Settlement Administrator Expenses**” means the amount to be
4 paid to the Settlement Administrator exclusively from the Total Settlement
5 Amount, including the total costs, expenses, and fees of the Settlement
6 Administrator. The amount is not to exceed \$15,000.

7 29. “**Settlement Class**” means all persons who were employed by R&M
8 and who worked at a Shell branded station operated by R&M and owned by
9 Equilon Enterprises, LLC at any time during the period from August 2, 2006 to
10 September 1, 2008. The Settlement Class consists of the Settlement
11 Misclassification Subclass and the Settlement Break Subclass.

12 30. “**Settlement Class Member**” means any member of the Settlement
13 Class. A Settlement Class Member may be part of the Settlement
14 Misclassification Subclass or the Settlement Break Subclass or both. However, a
15 Settlement Class Member may not be a part the Settlement Break Subclass for
16 any given work week during the Class Period that the Settlement Class Member
17 is a part of the Settlement Misclassification Subclass. Settlement Class Member
18 includes his or her Legally Authorized Representatives.

19 31. “**Settlement Misclassification Subclass**” means all Settlement
20 Class Members during any portion of the Class Period that they were declared
21 by R&M as exempt employees and paid a salary.

22 32. “**Settlement Break Subclass**” means all Settlement Class
23 Members during any portion of the Class Period that they were non-exempt
24 hourly wage employees.

25 33. “**Settlement Class Members’ Released Claims**” means any and
26 all claims alleged in the Second Amended Complaint, or that could have been
27 alleged in the Second Amended Complaint based on the facts alleged therein,
28

1 including claims for non-payment of overtime, missed meal and rest break
2 compensation, interest thereon, attorneys' fees and expenses and costs of suit.

3 34. **"Total Settlement Amount"** means Eight Hundred Forty-Five
4 Thousand Dollars (\$845,000.00) for payment of all claims, which is the
5 maximum amount that R&M is obligated to pay under this Settlement
6 Agreement under any circumstances in order to resolve and settle the Class
7 Action, subject to Court approval. The Total Settlement Amount includes all
8 costs and fees, including, but not limited to, the Class Counsel Award,
9 Settlement Administrator Expenses, escrow costs and expenses, Service Award,
10 and interest but does not include R&M's share of payroll taxes allocable to any
11 portion of the Total Settlement Amount allocated to wages.

12 35. **"Void Date"** means the date by which any checks issued to
13 Settlement Class Members shall become void, *i.e.* on the 181st day after each
14 check's mailing.

15 36. **"Work Week"** means Monday through Sunday.

16 **RECITALS**

17 37. At all relevant times, Medina was and is a resident of Orange
18 County, California. Medina was employed by R&M in approximately October
19 2005 and remained so employed until December 26, 2008.

20 38. At all relevant times, R&M was and is a California corporation with
21 its principal place of business in Orange County, California.

22 39. Defendant Equilon Enterprises, LLC ("Equilon") is a Delaware
23 limited liability company with its principal place of business in Houston, Texas.
24 At all relevant times, Equilon has operated under the fictitious business name of
25 Shell Oil Products US and is qualified to do business and doing business in
26 California and in Orange County. At all relevant times, Equilon was in the
27 business of owning service stations and selling motor fuel to the consuming
28 public.

1 40. Effective on February 1, 2005, Equilon and R&M entered into their
2 first Multi-Site Operator (“MSO”) lease and contract for a cluster of 21 stations
3 all of which were located in Orange County, California. Pursuant to these
4 agreements, R&M agreed to lease the convenience stores and car washes at
5 these stations for its own benefit and agreed to operate all other aspects of those
6 service stations for the benefit of Equilon. These agreements were extended
7 through the Class Period. R&M's sole business during the Class Period was to
8 lease convenience stores and car washes from Equilon and to operate Equilon's
9 service stations.

10 41. Pursuant to those agreements, Equilon required that all stations
11 which R&M leased and operated for Equilon be open 24/7/365 unless closure was
12 required by law. R&M complied with these requirements at all times during the
13 Class Period.

14 42. At all times during his employment, Medina worked at these
15 Equilon owned and R&M operated stations, first as a cashier and later as a
16 manager. Upon being promoted to the position of manager, Medina alleges that
17 R&M declared Medina to be an exempt employee, paid him a salary and did not
18 pay him overtime. Prior to September 1, 2008, R&M reclassified Medina as a
19 non-exempt employee and thereafter paid him an hourly wage. At all times
20 during the Class Period, Medina alleges that he was forbidden by R&M from
21 closing the station at which he worked in order to take an off-duty rest break
22 and that he received no compensation for any missed rest break during the Class
23 Period.

24 43. On May 20, 2005, Debbie Jo Wales commenced an action in the Los
25 Angeles County California Superior Court against Shell Oil Company; Equilon
26 and C6 Resources LLC, among others, as a class and representative action. The
27 action was denominated *Wales v. Shell Oil Company, et al.*, Case No. BC 333 740
28 (the "Wales Action"). Class Counsel represented plaintiffs in the Wales Action;

1 and at all times Samuel T. Rees, "Of Counsel" to Class Counsel, was the lead
2 attorney for plaintiffs in the Wales Action.

3 44. Among other claims in the Wales Action, plaintiffs therein asserted
4 that managers of Equilon-owned and third-party-operated California service
5 stations were misclassified and were improperly denied overtime pay and that
6 all such employees were denied off-duty rest breaks and compensation for
7 missed rest breaks. Plaintiffs therein also alleged that Equilon was the "joint
8 employer" of those employees and liable for their wage claims. Medina and
9 Raymond Stoddard ("Stoddard") were putative class members in the Wales
10 Action.

11 45. On August 2, 2010, Medina and Stoddard commenced the Class
12 Action.

13 46. On October 15, 2010, the Court stayed the Class Action because of
14 the pendency of the Wales Action. This stay remained in effect until August 13,
15 2018.

16 47. While the stay in the Class Action was in effect, Stoddard died and
17 is no longer a party plaintiff in the Class Action.

18 48. While the stay in the Class Action was in effect, substantial
19 discovery was undertaken in the Wales Action. This discovery included the
20 depositions of Medina, Stoddard, and Seung Il Kim as well as document
21 production and other information from R&M.

22 49. Following the lifting of the stay in the Class Action, R&M and
23 Medina decided to participate in a voluntary private mediation of the claims
24 against R&M in the Class Action. After careful research and consideration, the
25 parties selected the Honorable Carl J. West (Ret) of JAMS to be the mediator.
26 Judge West is a well-respected retired Superior Court Judge with extensive
27 experience in trying, arbitrating and mediating wage and hour class action
28 disputes such as those alleged by Medina in the Class Action. Mediation was

1 scheduled for January 3, 2019 and lasted the entire day. While Medina and
2 R&M did not reach a settlement at the mediation hearing, Judge West remained
3 involved in the mediation process; and, as a result, a settlement in principal was
4 reached between those parties on January 15, 2019. The settlement in principal
5 is the result of an informed and detailed evaluation of the total exposure and
6 potential liability, in relation to the costs and risks associated with continued
7 litigation of the Class Action. The settlement in principle is subject to and
8 expressly conditioned upon the Parties entering into this Settlement Agreement
9 and the Court in the Class Action both preliminarily and finally approving the
10 Settlement.

11 50. The settlement in principal reached as a result of the mediation does
12 not resolve all claims in the Class Action. In addition to asserting claims
13 against R&M, Medina has also asserted claims against Equilon claiming that it
14 is the joint employer of employees working at the Equilon-owned service stations
15 including those managed by R&M.

16 51. The Settlement, if finally approved and Judgment is entered, (i) will
17 resolve all claims of the Settlement Class Members, who do not timely request to
18 be excluded from the Settlement, against Equilon but only for claims during the
19 Class Period and (ii) will resolve all claims of the Settlement Class Members,
20 who do not timely request to be excluded from the Settlement, against R&M for
21 all claims alleged in the Second Amended Complaint, or that could have been
22 alleged in the Second Amended Complaint based on the facts alleged therein.

23 52. The Settlement, if finally approved and Judgment is entered, will
24 not resolve (i) claims that arose prior to or after the Class Period, (ii) claims
25 against Equilon, (iii) claims that are not alleged in the Second Amended
26 Complaint and could not have been alleged in the Second Amended Complaint
27 based on the facts alleged therein, (iv) claims that, as a matter of law cannot be
28 released, (v) claims for retaliation, discrimination, or wrongful termination, or

1 (vi) individual claims filed with the appropriate agency for the recovery of
2 workers' compensation benefits.

3 53. Equilon has been granted summary judgment as to all claims
4 asserted against it in the Class Action on the grounds that based upon the
5 undisputed facts it is not the joint employer of any employee working at its
6 California owned and third-party-operated service stations. Medina has
7 appealed this Summary Judgment which appeal is currently pending.

8 54. In addition to the class claims asserted in the Class Action, Medina
9 has also asserted a claim for wrongful termination against R&M. As a result of
10 the mediation, this claim has also been tentatively settled which settlement is
11 conditioned upon the Court entering the Judgment on Final Approval of this
12 Settlement. If approved, Medina will receive Five Thousand Dollars (\$5,000) in
13 settlement of this claim.

14 55. On March 25, 2019, Medina filed his Second Amended Complaint in
15 the Class Action. This is the operative and most recent complaint filed in the
16 Class Action. Among other changes, the Second Amended Complaint removed
17 Stoddard as a named plaintiff.

18 56. R&M has denied and continues to deny each and all of the claims
19 and allegations made in the Class Action, including those in each pleading filed
20 by Medina or Stoddard in the Class Action, and further denies that it has
21 committed any illegal, unlawful, unfair, fraudulent and/or wrongful act,
22 omission, or practice for which it owes any wages, compensation, penalties,
23 restitution, interest, fees, costs or other payments whatsoever, including those
24 alleged in the Class Action. R&M also has asserted a number of affirmative
25 defenses in the Class Action which it believes are meritorious. R&M also denies,
26 and continues to deny, *inter alia*, the allegations that the Settlement Class
27 Members have suffered damage. Without limiting the foregoing, R&M contends
28 that the Settlement Class Members were properly and timely paid all wages

1 owed, including without limitation, all straight time, overtime pay, and double
2 time pay and were provided meal and rest periods as required under California
3 law.

4 57. In reaching the settlement in principal, Medina has recognized the
5 expense and length of proceedings necessary to continue the Class Action
6 against R&M through discovery, trial and any possible appeals. Medina also
7 has taken into account the uncertainty and risk of the outcome of further
8 litigation, and the difficulties and delays inherent in such litigation. Medina
9 also is aware of the burdens of proof necessary to establish class certification,
10 liability, R&M's defenses thereto, and the difficulties in establishing damages,
11 restitution and other requested relief for himself and all Class Members. Based
12 on the foregoing, Medina and Class Counsel have determined that the
13 Settlement Agreement is a fair, adequate and reasonable settlement, and that it
14 is in the best interests of all Settlement Class Members. In that regard, the
15 Parties agree that Judge West, at his sole discretion, may execute a declaration
16 supporting the settlement and the reasonableness of it, and the Court, in its
17 discretion, may contact Judge West *ex parte* to discuss the settlement and
18 whether it is fair and reasonable.

19 58. R&M has concluded that any further defense of the Class Action
20 would be protracted and expensive. Substantial amounts of time, energy and
21 resources of R&M have been devoted and, unless this Settlement is made and
22 approved, will continue to be devoted to the defense of the claims asserted in the
23 Class Action. R&M has also taken into account the uncertainty and risks
24 inherent in litigation, particularly complex litigation such as the Class Action.
25 Based on the foregoing, R&M has concluded that it is desirable and beneficial
26 that the Class Action be fully and finally settled in the manner and upon the
27 terms and conditions set forth in this Settlement Agreement. R&M, therefore,
28 has agreed to settle in the manner and upon the terms set forth in this

1 Settlement Agreement in order to put to rest the claims as set forth in the Class
2 Action. At the same time, R&M continues to deny each of the claims,
3 allegations, and contentions asserted in the Class Action and denies that
4 certification of any class is or was appropriate (other than for purposes of this
5 Settlement only). R&M has repeatedly asserted and continues to assert
6 defenses thereto, and has expressly denied and continues to deny any
7 wrongdoing or legal liability arising out of any of the facts or conduct alleged in
8 the Class Action.

9 **NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN**
10 the undersigned, that the Class Action shall be settled, subject to preliminary
11 and final approval of the Court, upon and pursuant to the following terms and
12 conditions:

13 **REPRESENTATIONS BY R&M.**

14 59. During the course of the mediation, R&M made certain factual
15 representations to Medina to induce Medina to settle the Class Action. R&M
16 now represents to the Settlement Class Members, and to no other person, that
17 the following facts are true and that, solely for the purpose of deciding whether
18 or not to object to the Settlement or request to be excluded from the Settlement,
19 each Settlement Class Member may rely on these facts and verify that they are
20 true as to that Settlement Class Member based on his or her own knowledge.
21 R&M further represents to Medina that the listing of the actual rate of pay for
22 each Settlement Class Member for the entire Class Period and a pay stub
23 showing each rate of pay for each Settlement Class Member is true and correct
24 payroll information. The representations shall expire on the Effective Date and
25 shall not be relied upon for any purpose thereafter. The representations should
26 not be relied upon by any person, at any time, other than for the limited
27 purposes explicitly set forth in this paragraph.

28

1 A. If no Settlement Class Member requests to be excluded from
2 this Settlement, there are 37 employees who would be included in the
3 Settlement Misclassification Subclass, 28 of whom are also included in the
4 Settlement Break Subclass. Of these 37 employees, approximately 12 employees
5 were members of the Settlement Misclassification Subclass for the entire Class
6 Period.

7 B. If no Settlement Class Member requests to be excluded from
8 this Settlement, there are 440 employees who would be included in the
9 Settlement Break Subclass, 28 of whom are also included in the Settlement
10 Misclassification Subclass.

11 C. During the Class Period, each member of the Settlement
12 Break Subclass was compensated at the minimum hourly rate applicable during
13 the time that member worked or at an amount not materially greater than the
14 minimum hourly rates of \$6.75 for 2006, \$7.50 for 2007 and \$8.00 for 2008.

15 D. During the Class Period, each member of the Settlement
16 Misclassification Subclass was compensated by a salary equating to
17 approximately and not materially higher than \$12.70 per hour, calculated by
18 taking their annual salary and dividing it by 2,080 hours.

19 E. Prior to September 1, 2008, R&M reclassified each member of
20 the Settlement Misclassification Subclass as a non-exempt employee. From and
21 after September 1, 2008, R&M paid those employees an hourly wage and
22 overtime when they worked more than 40 hours in a work week or more than 8
23 hours in a workday as shown on their timecards.

24 F. Prior to September 1, 2008, R&M changed its rest break policy
25 to clarify that all employees, including employees formerly claimed to be exempt
26 employees and since reclassified as non-exempt employees, were entitled to and
27 provided with duty-free, paid rest periods at the rate of no less than ten minutes
28 net rest for every four hours worked, or major fraction thereof.

1 G. On or about July 5, 2008 and as a result of a California Labor
2 Commissioner meal break audit, R&M paid approximately 370 employees a total
3 of \$122,721.88 for missed meal break compensation. These payments were
4 believed by R&M to resolve all meal break claims for the Class Period. In June
5 2008, R&M modified its meal break policy to ensure that all non-exempt
6 employees working more than 5 hours in a workday and not working alone were
7 afforded a off-duty meal break, a form to report any missed or non-compliant
8 meal breaks for which payment would be provided and continued to allow non-
9 exempt employees working alone the option to sign an on-duty meal waiver if
10 they wished to do so.

11 H. Pursuant to Equilon's contractual requirement, all Settlement
12 Class Members were fluent in English.

13 60. Medina shall have ten (10) days from the date R&M provides the
14 payroll information with the Class Information to determine whether the
15 compensation representations provided above are materially inaccurate and, if
16 so, terminate this Settlement upon notification to R&M and the Court.
17 Otherwise, Medina has determined that the compensation representations are
18 true as to himself and as to the non-exempt employees working at the stations
19 that Medina managed, that he was reclassified as a non-exempt employee in or
20 about September 2008, that he and non-exempt employees working at the
21 stations that he managed received certain missed meal break compensation in
22 2008 and that R&M changed its rest break and meal break policies in or around
23 September 2008 to allow all employees to either receive off-duty meal and rest
24 breaks or compensation for missed breaks. With these exceptions, neither
25 Medina nor Class Counsel has verified the truth of the foregoing representations
26 but recognize that each Settlement Class Member will be able to determine
27 whether any represented fact is materially untrue as to himself or herself in
28 making a decision as to whether to request to be excluded from the Settlement.

1 **SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT**
2 **FOR PRELIMINARY AND FINAL APPROVAL**

3 61. Upon execution of this Settlement Agreement, Medina shall submit
4 to the Court a motion for preliminary approval of the Settlement. The motion
5 for preliminary approval shall include a proposed plan for sending of the Class
6 Notice to Settlement Class Members within sixty (60) days after the Preliminary
7 Approval Date with the Notice Date being the date of mailing of the Class
8 Notice, and establishing a period of sixty (60) days from the Notice Date within
9 which any Settlement Class Member may (i) request exclusion from the
10 Settlement Class, (ii) object to the proposed Settlement, or (iii) object to Class
11 Counsel’s request for the Class Counsel Award and for the Service Award to the
12 Medina (the Exclusion/Written Objection Deadline).

13 62. The Parties stipulate to conditional certification under *Code of Civil*
14 *Procedure* Section 382, for settlement purposes only, of the Settlement
15 Misclassification Subclass and the Settlement Rest Break Subclass.

16 63. The Parties agree that this stipulation, the Settlement, and any oral
17 or written statements made in connection therewith, shall not be admissible in,
18 and may not be used by any person for any purpose whatsoever in any legal
19 proceeding, including but not limited to any arbitrations and/or any civil and/or
20 administrative proceedings, other than a proceeding to enforce the terms of the
21 Agreement, as further set forth in this Agreement, regardless of whether the
22 Settlement is finally approved and/or consummated.

23 64. The Parties stipulate to the form of and agree to submit to the Court
24 for its consideration this Settlement Agreement and the following Exhibits to
25 this Settlement Agreement: Class Notice (Exhibit 1) and [Proposed] Preliminary
26 Approval Order (Exhibit 2).

27 65. Solely for purposes of implementing this Settlement Agreement and
28 effectuating the proposed Settlement, the Parties agree and stipulate that the

1 Court may enter the Preliminary Approval Order, without material variation
2 from Exhibit 2, preliminarily approving the Settlement and this Settlement
3 Agreement. Among other things, the Preliminary Approval Order shall grant
4 leave to preliminarily certify the Settlement Misclassification Subclass and the
5 Settlement Break Subclass for settlement purposes only; approve Medina as
6 class representative, appoint Class Counsel to represent the Settlement Class,
7 and appoint the Settlement Administrator; approve the Class Notice and the
8 Class Notice plan embodied in the Settlement Agreement, and approve them as
9 consistent with *California Rules of Court* Rules 3.766(d) and 3.769(f) and due
10 process; set out the requirements for disputing the information upon which
11 Settlement Class Members' Individual Settlement Payment will be calculated;
12 objecting to the Settlement; excluding Settlement Class Members who timely
13 and properly request to be excluded from the Settlement Class, all as provided in
14 this Settlement Agreement; and provide that certification and all actions
15 associated with certification are undertaken on the condition that the
16 certification and other actions shall be automatically vacated and be of no force
17 or evidentiary effect if this Settlement Agreement is terminated or disapproved,
18 as provided in this Settlement Agreement.

19 66. At the Final Approval Hearing, Medina shall request entry of a
20 Final Approval order and a Judgment, to be agreed upon by the Parties, the
21 entry of which is a material condition of this Settlement and that, among other
22 things:

23 A. Finally approves the Settlement as fair, reasonable, and
24 adequate and directs its consummation pursuant to the terms of the Settlement
25 Agreement;

26 B. Finds that Class Counsel and Medina adequately represented
27 the Settlement Class for the purpose of entering into and implementing the
28 Settlement Agreement;

1 C. Re-confirms the appointment of the Settlement Administrator
2 and finds that the Settlement Administrator has fulfilled its duties under the
3 Settlement to date;

4 D. Finds that the Class Notice: (i) constituted the best practicable
5 notice; (ii) constituted notice that was reasonably calculated, under the
6 circumstances, to apprise Settlement Class Members of the pendency of the Class
7 Action, and their right to exclude themselves from or object to the proposed
8 settlement and to appear at the Final Approval Hearing; (iii) was reasonable and
9 constituted due, adequate, and sufficient notice to all persons entitled to receive
10 notice; and (iv) met all applicable requirements of *California Rules of Court* Rules
11 3.766(d) and 3.769(f), due process, and any other applicable rules or law;

12 E. Approves the Opt-Out List and determines that the Opt-Out
13 List is a complete list of all Settlement Class Members who have timely and
14 properly requested exclusion from the Settlement Class and, accordingly, shall
15 neither share in nor be bound by the Final Approval order and Judgment;

16 F. Directs that the Final Approval order and Judgment of
17 dismissal shall be final and entered forthwith;

18 G. Without affecting the finality of the Final Approval order and
19 Judgment, directs that the Court retains continuing jurisdiction over Medina, the
20 Settlement Class, and R&M as to all matters concerning the administration,
21 consummation, and enforcement of this Settlement Agreement;

22 H. Adjudges that, as of the Final Approval Date, Medina, and all
23 Settlement Class Members who have not been excluded from the Settlement
24 Class as provided in the Opt-Out List approved by the Court, and their Legally
25 Authorized Representatives, heirs, estates, trustees, executors, administrators,
26 principals, beneficiaries, representatives, agents, assigns, and successors, and/or
27 anyone claiming through them or acting or purporting to act for them or on their
28 behalf, regardless of whether they have received actual notice of the proposed

1 Settlement, have conclusively compromised, settled, discharged, and released the
2 Named Plaintiff's General Released Claims (in the case of Medina) and
3 Settlement Class Members' Released Claims (in the case of the Settlement Class
4 Members, including Medina) against R&M and others identified therein and are
5 bound by the provisions of this Settlement Agreement;

6 I. Declares this Agreement and the Final Approval order and
7 Judgment to be binding on, and have *res judicata* and preclusive effect as to all
8 pending and future lawsuits or other proceedings: (i) that encompass the Named
9 Plaintiff's General Released Claims and that are maintained by or on behalf of
10 Medina and/or his Legally Authorized Representatives, heirs, estates, trustees,
11 executors, administrators, principals, beneficiaries, representatives, agents,
12 assigns, and successors, and/or anyone claiming through them or acting or
13 purporting to act for them or on their behalf, and (ii) that encompass the
14 Settlement Class Members' Released Claims and that are maintained by or on
15 behalf of any Settlement Class Member who has not been excluded from the
16 Settlement Class as provided in the Opt-Out List approved by the Court and/or
17 his or her Legally Authorized Representatives, heirs, estates, trustees, executors,
18 administrators, principals, beneficiaries, representatives, agents, assigns, and
19 successors, and/or anyone claiming through them or acting or purporting to act
20 for them or on their behalf, regardless of whether the Settlement Class Member
21 previously initiated or subsequently initiates individual litigation or other
22 proceedings encompassed by the Settlement Class Members' Released Claims,
23 and even if such Settlement Class Member never received actual notice of the
24 Class Action or this proposed Settlement;

25 J. Determines that the Settlement Agreement and the
26 Settlement provided for herein, and any proceedings taken pursuant thereto, are
27 not, and should not in any event be offered, received, or construed as evidence of,
28 a presumption, concession, or an admission by any party of liability or non-

1 liability or of the certifiability or non-certifiability of a litigation class, or of any
2 misrepresentation or omission in any statement or written document approved or
3 made by any Party; provided, however, that reference may be made to this
4 Settlement Agreement and the Settlement provided for herein in such
5 proceedings as may be necessary to effectuate the provisions of this Settlement
6 Agreement, as further set forth in this Settlement Agreement;

7 K. Orders that the preliminary approval of the Settlement,
8 certification of the Settlement Misclassification Subclass and the Settlement
9 Break Subclass and final approval of the proposed Settlement, and all actions
10 associated with them, are undertaken on the condition that they shall be vacated
11 if the Settlement Agreement is terminated or disapproved in whole or in part by
12 the Court, or any appellate court and/or other court of review, in which event the
13 Settlement Agreement and the fact that it was entered into shall not be offered,
14 received, or construed as an admission or as evidence for any purpose, including
15 but not limited to an admission by any Party of liability or non-liability or of any
16 misrepresentation or omission in any statement or written document approved or
17 made by any Party, or of the certifiability of a litigation class, as further provided
18 in this Settlement Agreement;

19 L. Authorizes the Parties, without further approval from the
20 Court, to agree to and adopt such amendments, modifications, and expansions of
21 this Settlement Agreement, including all Exhibits hereto, as (i) shall be
22 consistent in all material respects with the Final Approval order and (ii) do not
23 limit the rights of Settlement Class Members; and

24 M. Contains such other and further provisions consistent with the
25 terms of this Settlement Agreement to which the Parties expressly consent in
26 writing.

27 67. At the Final Approval Hearing and as a part of the final approval of
28 this Settlement, Class Counsel will also request approval of the Plan of

1 Allocation set forth below. Any modification to the Plan of Allocation by the
2 Court shall not (i) affect the enforceability of the Settlement Agreement; (ii)
3 provide any of the Parties with the right to terminate the Settlement
4 Agreement; or (iii) impose any obligation on R&M to increase the consideration
5 paid in connection with the Settlement.

6 68. At the Final Approval Hearing, Class Counsel may also request
7 entry of an Order approving the Class Counsel Award and the Service Award to
8 Medina, which shall be paid exclusively from the Total Settlement Amount and
9 in accordance with the distribution plan described below. In no event shall
10 R&M otherwise be obligated to pay for any attorneys' fees and expenses or
11 Service Award(s). The disposition of Class Counsel's application for a Class
12 Counsel Award, and for the Service Award, is within the sound discretion of the
13 Court and is not a material term of this Settlement Agreement, and it is not a
14 condition of this Settlement Agreement that such application be granted. Any
15 disapproval or modification of such application by the Court shall not (i) affect
16 the enforceability of the Settlement Agreement, (ii) provide any of the Parties
17 with the right to terminate the Settlement Agreement, or (iii) increase the
18 consideration R&M pays in connection with the Settlement. R&M shall have no
19 liability to Class Counsel arising from any claim regarding the division of the
20 Class Counsel Award between and among Class Counsel and any other counsel
21 representing any of the Settlement Class Members.

22 69. In no event shall R&M be obligated to pay Settlement
23 Administration Expenses beyond those provided for in this Settlement
24 Agreement.

25 **SETTLEMENT CONSIDERATION**

26 70. The total consideration for the Settlement from R&M is the Total
27 Settlement Amount (\$845,000). This is an "all in" number that includes, without
28 limitation, all monetary benefits and payments to the Settlement Class, Service

1 Award, Class Counsel Award, and Settlement Administrator Expenses and all
2 claims for penalties, interest, fees, and costs. The total consideration, however,
3 does not include R&M's share of payroll taxes allocable to any portion of the
4 Total Settlement Amount allocated to wages, which amount remains the
5 responsibility of R&M. In no event shall R&M be liable for making any
6 payments under this Settlement, or for providing any relief to Settlement Class
7 Members, before the Effective Date, except as provided herein.

8 71. Medina and all Settlement Class Members who receive a payment of
9 any kind from the Total Settlement Amount (excluding, in the case of Medina,
10 the Service Award) expressly acknowledge that such payments shall be
11 considered to be comprised of thirty-three percent (33%) wages for which an IRS
12 Form W-2 will be issued and sixty-seven percent (67%) non-wages for which an
13 IRS Form 1099 will be issued, if required. Medina and all Settlement Class
14 Members who receive a payment of any kind from the Total Settlement Amount
15 agree to timely pay in full all of the federal, state, and municipal income taxes
16 owed on such payments.

17 72. The terms of this Settlement Agreement relating to the Service
18 Award and Class Counsel Award were not negotiated by the Parties before full
19 agreement was reached as to all other material terms of the proposed
20 Settlement, including, but not limited to, any terms relating to the relief to the
21 Settlement Class. R&M agrees not to oppose a request for the Service Award for
22 Medina of Five Thousand Dollars (\$5,000) or less, which will be left to the
23 discretion of this Court.

24 73. Class Counsel agrees not to seek an award of attorneys' fees from
25 the Court in excess of one third (1/3) of the Total Settlement Amount. R&M
26 agrees not to oppose a request for attorneys' fees up to and including one third
27 (1/3) of the Total Settlement Amount. Class Counsel shall also seek all actual
28 expenses and costs incurred to date by Class Counsel in litigation and resolution

1 of the Class Action. R&M and Settlement Class Members shall have no
2 obligation regarding or liability for allocation or payment of the Class Counsel
3 Award. Class Counsel shall file any request for attorneys' fees, costs and
4 expenses and any request for a Service Award no later than fourteen (14) days
5 before the Exclusion/Written Objection Deadline. Class Counsel's request for
6 attorneys' fees, costs and expenses shall be supported by billing records.

7 74. The Settlement Administrator shall pay the Class Counsel Award by
8 wire transfer to Bleau Fox, a PLC pursuant to wiring instructions from Class
9 Counsel. Class Counsel shall provide the Settlement Administrator notice of
10 receipt of the Class Counsel Award. R&M shall have no liability to Class
11 Counsel or any other counsel for Medina or any Settlement Class Member
12 arising from any claim regarding the division of the Class Counsel Award.

13 **FUNDING AND ALLOCATION OF SETTLEMENT**

14 75. Within fourteen (14) calendar days of the Effective Date, R&M shall
15 provide the Total Settlement Amount (\$845,000) to the Settlement
16 Administrator. The Settlement Administrator shall thereafter distribute the
17 funds in the manner and at the times set forth in this Agreement.

18 76. Within twenty-one (21) days of the Effective Date, the payment of
19 the Class Counsel Award, the Service Award approved by the Court and the
20 Settlement Administrator Expenses (up to \$15,000) as approved by the Court,
21 shall be made by the Settlement Administrator from the Total Settlement
22 Amount. The Settlement Administrator shall use reasonable efforts to disburse
23 Individual Settlement Payments within sixty (60) days after the Effective Date,
24 but in no event before twenty-one (21) days after the Effective Date.

25 77. To receive a payment from the Settlement, a Settlement Class
26 Member must not have submitted a request for exclusion from the Settlement.
27 Settlement Class Members are not eligible to receive any compensation from the
28 Settlement other than their Individual Settlement Payment.

1 78. After deduction from Total Settlement Amount of the Class Counsel
2 Award, the Service Award and the Settlement Administrator Expenses, the
3 remaining amount shall be allocated Seventy-Four percent (74%) to the
4 Settlement Misclassification Subclass and Twenty-Six percent (26%) to the
5 Settlement Break Subclass. Each such allocation shall be further allocated
6 Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties
7 and interest.

8 79. The amount of each Settlement Class Member's Individual
9 Settlement Payment will be distributed from the Total Settlement Amount and
10 calculated by the Settlement Administrator, as follows:

11 A. Payment from the amount allocated to the Settlement
12 Misclassification Subclass shall be prorated among the members of that subclass
13 by taking the number of work weeks or portions thereof that such member was
14 declared an exempt, salaried employee and paid a salary during the Class Period
15 and multiplying. If a member of this subclass is also a member of the
16 Settlement Break Subclass during any work week, then that member shall be
17 deemed to be a member of the Settlement Misclassification Subclass for that
18 entire work week and not a member of the Settlement Rest Break Subclass for
19 any portion of that week, with the products adjusted accordingly. The product of
20 that calculation shall serve as the numerator for proration purposes and the
21 sum of all such products shall serve as the denominator for proration purposes.

22 B. Payment from the amount allocated to the Settlement Break
23 Subclass shall be prorated among the members of that subclass by taking the
24 gross wages paid during the Class Period that such member was declared a non-
25 exempt hourly wage employee and when that member was not also a member of
26 the Settlement Misclassification Subclass. This amount shall serve as the
27 numerator for proration purposes and the sum of all such products shall serve as
28 the denominator for proration purposes. For non-exempt hourly wage employee

1 who commenced in that position after December 31, 2005 and/or who ceased to
2 be in that position before January 1, 2009, the employee's gross wages will be
3 further prorated on a 365/365 daily basis so that the numerator shall only
4 include his gross wages earned during the Class Period.

5 C. If under the Plan of Allocation a Settlement Class Member
6 will be distributed \$10 or more, then he or she will receive the entitled amount.
7 If, however, the Settlement Class Member is due less than \$10, then his or her
8 Individual Settlement Payment will be for \$10.

9 80. Class Counsel will be permitted to review and approve the
10 calculation of settlement funds to be distributed.

11 81. As described below, each Settlement Class Member will have the
12 opportunity, should he or she disagree with the employment information used to
13 calculate that employee's Individual Settlement Payment provided to him or her
14 with his Class Notice, to provide documentation to establish the appropriate
15 information. There will be a presumption that R&M's records are correct,
16 absent evidence produced by a Settlement Class Member to the contrary.

17 82. The Settlement Administrator shall issue the Individual Settlement
18 Payments from the Total Settlement Amount to each Settlement Class Member
19 who does not properly opt out. The portion of the Individual Settlement
20 Payments allocated to penalties and interest shall be reported by the Settlement
21 Administrator to the applicable governmental authorities on IRS Form 1099s.
22 The portion of the Individual Settlement Payments allocated to wages shall be
23 reported by the Settlement Administrator to the applicable government
24 authorities on IRS Form W-2s. The Service Award and Class Counsel Award
25 shall likewise be reported on IRS Form 1099s by the Settlement Administrator.
26 The Settlement Administrator shall be responsible for issuing copies of IRS
27 Form 1099s to Medina and Settlement Class Members.

28

1 **CLASS NOTICE**

2 83. No more than thirty (30) calendar days after entry of the
3 Preliminary Approval Order, R&M shall provide the Settlement Administrator
4 and Class Counsel with the Class Information.

5 84. The Class Notice shall contain, for each Settlement Class Member,
6 to the extent provided by R&M, his or her full name, last known address, social
7 security number, any last known email address, any last known telephone
8 number, and information used to calculate each Class Member's Individual
9 Settlement Payment proration amount numerator. The Class Notice shall
10 inform Settlement Class Members of their right to request exclusion from the
11 Settlement, of their right to object to the Settlement, of their right to dispute the
12 information upon which their share of the Settlement will be calculated, of their
13 right to correct or supplement any other personal information provided, and a
14 description of the claims to be released unless they exercise their right to
15 request exclusion from the Settlement.

16 85. As set forth in the Class Notice, Settlement Class Members will be
17 provided thirty-five (35) days after the initial mailing of the Class Notice to
18 dispute the information contained on their Information Sheet upon which their
19 share of the Settlement will be calculated and provide documentation to support
20 this dispute. A Dispute Form will be included with the Class Notice as
21 Enclosure C for this purpose.

22 86. The Settlement Administrator shall review any documentation
23 submitted by a Settlement Class Member and consult with the Parties to
24 determine whether an adjustment is warranted. The Settlement
25 Administrator's determination shall be binding upon the Settlement Class
26 Member and the Parties, and the Settlement Class Members Individual
27 Settlement Payment will be calculated according to the Settlement
28 Administrator's determination. There will be a presumption that R&M's records

1 are correct, absent evidence produced by a Settlement Class Member to the
2 contrary.

3 87. No more than sixty (60) days after entry of the Preliminary Approval
4 Order, provided Defendant timely complied with its obligation in Paragraph 84,
5 the Settlement Administrator shall send a copy of the Class Notice by first class
6 mail and, if provided in the Class Information, electronic mail to each
7 Settlement Class Member.

8 88. If any Class Notice sent via first class mail to any Settlement Class
9 Member is returned as undeliverable, the Settlement Administrator shall then
10 make a good-faith attempt to obtain the most-current names and postal mail
11 addresses for those Settlement Class Members, including cross-checking the
12 names and/or postal mail addresses it received from R&M, as well as any other
13 sources, with appropriate databases (e.g., the National Change of Address
14 Database) and performing further reasonable searches (e.g., through
15 Lexis/Nexis) for more-current names and/or postal mail addresses for those
16 Settlement Class Members and resend the Class Notice. All Settlement Class
17 Members' names and postal mail addresses obtained through these sources shall
18 be protected as confidential and not used for purposes other than the notice and
19 administration of this Settlement. The addresses determined by the Settlement
20 Administrator as the current mailing address shall be presumed to be the best
21 mailing address for each Settlement Class Member.

22 89. As set forth in the Class Notice, Settlement Class Members will be
23 asked to update any personal information within sixty (60) days of the Notice
24 Date. Updated personal information may be submitted on the Settlement
25 Administrator's website established for this settlement or by fax to the number
26 provided or by mail.

27 90. The Parties agree that the procedures set forth in this Section
28 constitute reasonable and the best practicable notice under the circumstances

1 and an appropriate and sufficient effort to locate current addresses for
2 Settlement Class Members such that no additional efforts to do so shall be
3 required.

4 91. The Settlement Administrator will provide Class Notice without
5 material variation from the form attached Exhibit 1. The Class Notice shall
6 comply with California Rules of Court 3.766(d), 3.769(f) and due process.

7 92. At least twenty-one (21) days before the Final Approval Hearing, the
8 Settlement Administrator shall prepare and provide to Class Counsel and
9 Defense Counsel (i) a declaration of due diligence and proof of dissemination
10 with regard to the mailing of the Class Notice, (ii) a listing of the names of all
11 Settlement Class Members who have timely requested to be excluded from the
12 Settlement (iii) a listing of the names of all Settlement Class Members who
13 appear to not have received the Class Notice because they were returned
14 undeliverable, (iv) billing records for administrative costs incurred to date and
15 anticipated administrative costs for the completion of its duties and (v) a listing
16 of the amount of the high and low Individual Settlement Payments and the
17 amount of Medina's Individual Settlement Payment (the "Due Diligence
18 Declaration"). Class Counsel shall be responsible for filing the Due Diligence
19 Declaration with the Court.

20 93. If any individual whose name does not appear in the Class
21 Information that R&M provides the Settlement Administrator (and who has not
22 previously opted out of the Settlement Class), believes that he or she is a
23 Settlement Class Member, he or she may dispute his or her exclusion from the
24 Settlement Class. If an individual believes he or she is a Settlement Class
25 Member, he or she must notify the Settlement Administrator within a
26 reasonable amount of time after the Notice Date and at least ten (10) days prior
27 to the Final Approval Hearing. The Parties will meet and confer regarding any
28 such individuals in an attempt to reach an agreement as to whether any such

1 individual should be regarded as a Settlement Class Member. If the Parties so
2 agree that any such individual should be regarded as a Settlement Class
3 Member, the Settlement Administrator will mail and, if possible email, a Class
4 Notice to the individual, and treat the individual as a Settlement Class Member
5 for all other purposes. Such an individual will have all of the same rights as any
6 other Settlement Class Member under this Agreement.

7 94. R&M understands its legal obligation not to retaliate in any manner
8 against any Settlement Class Member for their participation and/or election to
9 participate in the benefits to be afforded any of them by the Settlement and/or
10 the Class Action.

11 **PROCEDURES FOR REQUESTS FOR EXCLUSION**

12 95. Settlement Class Members (with the exception of Medina) may opt
13 out of the Settlement. Those who wish to exclude themselves (or “opt out”) from
14 the Settlement Class must submit timely, written requests for exclusion to the
15 Settlement Administrator. To be effective, such a request must include the
16 Settlement Class Member’s name, address, and telephone number; a clear and
17 unequivocal statement that the Settlement Class Member wishes to be excluded
18 from the Settlement Class and the signature of the Settlement Class Member or
19 the Legally Authorized Representative of the Settlement Class Member.
20 Completion, execution and timely submission of the Request for Exclusion Form,
21 Attachment A to the Class Notice, shall be deemed to comply with this
22 Paragraph. The request must be mailed or faxed to the Settlement
23 Administrator at the address provided in the Class Notice and, if mailed, must
24 be postmarked no later than the Exclusion/Written Objection Deadline. Absent
25 actual receipt of such request by the Settlement Administrator prior to the
26 Exclusion/Written Objection Deadline, the date of the postmark shall be the
27 exclusive means used to determine whether a mailed request for exclusion has
28 been timely submitted. Requests for exclusion must be exercised individually by

1 the Settlement Class Member. Attempted collective group, class, or subclass
2 requests for exclusions shall be ineffective and disregarded by the Settlement
3 Administrator.

4 96. Individual exclusion requests may be submitted by a Settlement
5 Class Member's Legally Authorized Representative.

6 97. The Settlement Administrator shall promptly log each request for
7 exclusion that it receives and promptly provide copies of the log and all such
8 requests for exclusion to Class Counsel and Defense Counsel.

9 98. The Settlement Administrator shall prepare a list of all persons who
10 timely and properly requested exclusion from the Settlement Class (the Opt-Out
11 List) and shall, before the Final Approval Hearing, submit a declaration to the
12 Court attesting to the accuracy of the list which declaration may be part of the
13 Due Diligence Declaration.

14 99. All Settlement Class Members who are not included in the Opt-Out
15 List approved by the Court shall be bound by this Settlement, and their
16 Settlement Class Members' Released Claims shall be dismissed with prejudice
17 and released as provided for herein, even if they never received actual notice of
18 the Class Action or this proposed Settlement.

19 100. The Settlement Administrator, in its sole discretion, shall determine
20 whether a request for exclusion was timely and properly submitted. The
21 Settlement Administrator's decision shall be final, binding, and nonappealable
22 absent a contrary order from the Court.

23 101. Medina agrees not to request exclusion from the Settlement Class.

24 102. Settlement Class Members may object to or opt out of the
25 Settlement, but may not do both. Any Settlement Class Member who submits a
26 timely and proper request for exclusion may not file an objection to the
27 Settlement or receive a Settlement Payment, and shall be deemed to have
28 waived any rights or benefits under the Settlement Agreement. If a Settlement

1 Class Member files both an objection and a valid and timely request for
2 exclusion, the request for exclusion will override the objection, and the objection
3 shall therefore be ignored.

4 103. No later than ten (10) business days after the Exclusion/Written
5 Objection Deadline, the Settlement Administrator shall provide to Class Counsel
6 and Defense Counsel the final Opt-Out List together with copies of the opt-out
7 requests.

8 104. R&M understands its legal obligation not to retaliate in any manner
9 against any Settlement Class Member for his or her exclusion of himself or
10 herself from the Settlement.

11 105. If, after the Exclusion/Written Objection Deadline and before the
12 Final Approval Hearing, Settlement Class Members whose combined
13 “estimated” Individual Settlement Payments equal or exceed ten percent (10%)
14 of the Total Settlement Amount submit timely and valid requests for exclusion
15 from the Settlement, R&M shall have, in its sole and absolute discretion, the
16 option to terminate this Settlement. The “estimated” Individual Settlement
17 Payments shall be determined by assuming that the combined total amount for
18 the Class Counsel Award, Service Award and Administrative Expenses paid to
19 the Settlement Administrator is Three Hundred Sixteen Thousand Six Hundred
20 and Sixty-Seven dollars (\$316,667). R&M shall exercise its option to terminate,
21 if at all, prior to the Final Approval Hearing, provided the Settlement
22 Administrator has provided R&M the Opt-Out List no later than ten (10)
23 business days prior to the Final Approval Hearing and the combined amount of
24 Individual Settlement Payments of those Settlement Class Members requesting
25 to be excluded from the Settlement. If R&M decides to void the Settlement, then
26 the Settlement and conditional class certification shall be considered void, and
27 the Settlement, conditional class certification, and any related negotiations or
28 proceedings shall be of no force and effect, and the Parties shall stand in the

1 same respective positions, without prejudice, as if this Settlement had been
2 neither entered into nor filed with the Court. Should R&M void the Settlement
3 under this paragraph, R&M shall be responsible for all Administration Costs
4 incurred by the Settlement Administrator through the date R&M notifies the
5 Settlement Administrator that it is exercising its option to terminate the
6 Settlement.

7 **PROCEDURES FOR OBJECTIONS**

8 106. Any Settlement Class Member that wishes to object to the fairness,
9 reasonableness, or adequacy of this Settlement Agreement or the proposed
10 Settlement, the Plan of Allocation, the Class Counsel Award and/or the Service
11 Award must provide to the Settlement Administrator (who shall forward it to
12 Class Counsel and Defense Counsel), a timely statement of the objection, as set
13 forth below, or appear in person at the Final Approval Hearing to make an
14 objection. Objections may be submitted by one or more Settlement Class
15 Members.

16 107. To be timely, a written objection must be mailed to the Settlement
17 Administrator, and postmarked no later than the Exclusion/Written Objection
18 Deadline. Absent actual receipt of a written objection prior to the
19 Exclusion/Written Objection Deadline, the date of the postmark on the return-
20 mailing envelope shall be the exclusive means used to determine whether
21 objection has been timely submitted.

22 108. A written objection must contain at least the following: (i) the
23 objector's full name, address, telephone number, and signature; (ii) a clear
24 reference to the Class Action; (iii) a statement of the specific legal and factual
25 basis for each objection argument; and (iv) a statement whether the objecting
26 person or entity intends to appear at the Final Approval Hearing, either in
27 person or through counsel and, if through counsel, a statement identifying that
28 counsel by name, bar number, address, and telephone number. All objections

1 shall be signed by the objecting Settlement Class Member (or his Legally
2 Authorized Representative), even if the Settlement Class Member is represented
3 by counsel.

4 109. Any Settlement Class Member who does not file a timely written
5 objection or appear personally or through his or her counsel at the Final
6 Approval Hearing shall waive the right to object and shall be forever barred
7 from making any objection to the proposed Settlement, the Plan of Allocation,
8 the Class Counsel Award and the Service Award. Settlement Class Members
9 who object to the proposed Settlement shall remain Settlement Class Members,
10 and shall be deemed to have voluntarily waived their right to pursue an
11 independent remedy against R&M.

12 110. To the extent any Settlement Class Member objects to the proposed
13 Settlement, and such objection is overruled in whole or in part, such Settlement
14 Class Member will be forever bound by the Final Approval order and Judgment.

15 111. It shall be Class Counsel's sole responsibility to submit and respond
16 to any objections made with respect to any application for the Class Counsel
17 Award and Service Award.

18 112. R&M understands its legal obligation not to retaliate in any manner
19 against any Settlement Class Member for his or her objection to the Settlement.

20 **RELEASES**

21 113. The Named Plaintiff's General Released Claims and the Settlement
22 Class Members' Released Claims shall be released and dismissed with prejudice
23 and on the merits (without an award of costs to any party other than as provided
24 in this Settlement Agreement) upon entry of the Final Approval order and
25 Judgment.

26 114. As of the Final Approval Date, Medina and all Settlement Class
27 Members, who have not been excluded from the Settlement Class, individually
28 and on behalf of their Legally Authorized Representatives, heirs, estates,

1 trustees, executors, administrators, representatives, agents, successors, and
2 assigns, and anyone claiming through them or acting or purporting to act on
3 their behalf, agree to forever release, discharge, hold harmless, and covenant not
4 to sue on the Named Plaintiff's General Released Claims (in the case of Medina)
5 and on the Settlement Class Members' Released Claims (in the case of the
6 Settlement Class Members who have not been excluded from the Settlement
7 Class), and by operation of the Final Judgment shall have fully and finally
8 released, relinquished, and discharged all such claims; and they further agree
9 that they shall not now or hereafter initiate, maintain, or assert any Named
10 Plaintiff's General Released Claims (in the case of Medina) and any Settlement
11 Class Members' Released Claims (in the case of the Settlement Class Members
12 who have not been excluded from the Settlement Class), in any other court
13 action or before any administrative body, tribunal, arbitration panel, or other
14 adjudicating body. Without in any way limiting the scope of the releases
15 described herein, the releases covers, without limitation, any and all claims for
16 attorneys' fees, costs or disbursements incurred by Class Counsel or any other
17 counsel representing Medina and/or Settlement Class Members, or by Medina
18 and/or Settlement Class Members, or any of them, in connection with or related
19 in any manner to the Class Action, the Settlement of the Class Action, the
20 administration of such Settlement, and/or the Released Claims, except to the
21 extent otherwise specified in the Settlement Agreement.

22 115. As of the Final Approval Date, Medina, and all Settlement Class
23 Members, who have not been excluded from the Settlement Class, shall be
24 permanently barred and enjoined from initiating, asserting, or prosecuting in
25 any federal or state court or tribunal any and all Named Plaintiff's General
26 Released Claims (in the case of Medina) and the Settlement Class Members'
27 Released Claims (in the case of the Settlement Class Members who have not
28 been excluded from the Settlement Class).

1 116. With respect only to the Named Plaintiff's General Released Claims,
2 Medina, but not the Settlement Class Members, expressly acknowledges that he
3 is familiar with principles of law such as Section 1542 of the California *Civil*
4 *Code*, which provides:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
6 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
7 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
8 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
9 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
10 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

11 With respect to the Named Plaintiff's General Released Claims, Medina
12 shall be deemed to have expressly, knowingly, and voluntarily waived and
13 relinquished, to the fullest extent permitted by law, the provisions, rights, and
14 benefits he may otherwise have had pursuant to Section 1542 of the California
15 *Civil Code* and all similar federal or state laws, rights, rules, or legal principles
16 of any other jurisdiction that may be applicable herein. In connection with the
17 release, Medina acknowledges that he is aware that he may hereafter discover
18 claims presently unknown and unsuspected or facts in addition to or different
19 from those which he now knows or believes to be true with respect to matters
20 released herein. Nevertheless, Medina acknowledges that a portion of the
21 consideration received herein is for a release with respect to unknown damages
22 and complaints, whether resulting from known injuries and consequences or
23 from unknown injuries or unknown consequences of known or unknown injuries,
24 and states that it is the intention of Medina in agreeing to this release to fully,
25 finally, and forever to settle and release all matters and all claims that exist,
26 hereafter may exist, or might have existed (whether or not previously or
27 currently asserted in any action), constituting Named Plaintiff's General
28 Released Claims.

1 117. Medina further acknowledges, agrees and understands that: (i) he
2 has read and understands the terms of this Settlement Agreement; (ii) he has
3 been advised in writing to consult with an attorney other than Class Counsel
4 before executing this Settlement Agreement; and (iii) he has obtained and
5 considered such legal counsel as he deems necessary.

6 118. Subject to Court approval, Medina, and all Settlement Class
7 Members to the extent they have not been excluded from the Settlement Class,
8 shall be bound by this Settlement Agreement even if they never received actual
9 notice of the Class Action and/or this Settlement.

10 **ADMINISTRATION OF THE SETTLEMENT FUND**

11 119. The Settlement Administrator or its authorized agents in
12 consultation with the Parties and subject to the supervision, direction, and
13 approval of the Court, shall calculate the allocation of and oversee the
14 distribution of the Total Settlement Amount.

15 120. The Total Settlement Amount shall be applied, as follows:

16 A. To pay the total costs, expenses, and fees of the Settlement
17 Administrator incurred in connection with providing Class Notice to potential
18 Settlement Class Members, and the management and distribution of the Total
19 Settlement Amount to Settlement Class Members, not to exceed \$15,000.00;

20 B. Subject to the approval and further order(s) of the Court, to
21 pay Medina's Service Award as the Court determines appropriate;

22 C. Subject to the approval and further order(s) of the Court, to
23 pay the Class Counsel Award as ordered by the Court; and

24 D. After the Effective Date and subject to the approval and
25 further order(s) of the Court, to distribute the Individual Settlement Payments
26 from the Total Settlement Amount for the benefit of the Settlement Class as
27 provided above or as otherwise ordered by the Court.
28

1 121. If any Settlement Class Member fails to negotiate his Individual
2 Settlement Payment by the Void Date (*i.e.* checks are not cashed or checks are
3 returned as undeliverable), then after the Void Date, the Settlement
4 Administrator shall void the check and shall pay such unclaimed funds to the
5 State of California for deposit into the California State Controller Unclaimed
6 Property fund, with the identity of the Participating Class Member to whom the
7 funds belong, to be held for that Settlement Class Member in accordance with
8 the California Unclaimed Property Law. The money paid to the California State
9 Controller Unclaimed Property will remain the Settlement Class Member's
10 property. This will allow Settlement Class Members who did not cash their
11 checks to collect their Individual Settlement Amounts at any time in the future.
12 Therefore, there will be no unpaid residue or unclaimed or abandoned
13 Settlement Class Member funds and California *Code of Civil Procedure* section
14 384 shall not apply. The funds will be held by the State until claimed by the
15 employee and those funds never cease to be the Settlement Class Member's
16 property.

17 122. Settlement Class Members who are not on the Opt-Out List
18 approved by the Court shall be subject to and bound by the provisions of the
19 Settlement Agreement, the releases contained herein, and the Judgment with
20 respect to all Settlement Class Members' Released Claims.

21 123. Payment from the Total Settlement Amount made pursuant to and
22 in the manner set forth herein shall be deemed conclusive of compliance with
23 this Settlement Agreement as to all Settlement Class Members.

24 124. No Settlement Class Member shall have any claim against Medina,
25 Class Counsel, or the Settlement Administrator based on distributions made
26 substantially in accordance with this Settlement Agreement and/or orders of the
27 Court. No Settlement Class Member shall have any claim against any released
28 party or its counsel relating to distributions made under this Settlement.

1 **EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
2 **SETTLEMENT AGREEMENT**

3 125. If the Court does not approve the Settlement as set forth in this
4 Settlement Agreement, or does not enter the Final Approval order and
5 Judgment on the terms described herein, or if the Court enters the Judgment
6 and appellate review is sought, and on such review, the entry of Judgment is
7 vacated, modified in any material way, or reversed, or if the Final Approval
8 order does not otherwise become Final, then this Settlement Agreement shall be
9 cancelled and terminated, unless all Parties, in their sole discretion no later
10 than thirty (30) days from the date such ruling becomes Final, provide written
11 notice to all other Parties hereto of their intent to proceed with the Settlement
12 under the terms of the Judgment as it may be modified by the Court or any
13 appellate court.

14 126. In the event that: (i) the Settlement is not approved, is overturned,
15 or is modified by the Court or on appeal, (ii) the Judgment does not become
16 Final, or (iii) this Settlement Agreement is terminated, cancelled, or fails to
17 become effective for any reason, then: (a) the Parties stipulate and agree the
18 Settlement, this Settlement Agreement, the Class Information, the Opt-Out
19 List, and all documents and oral or written communications exchanged and/or
20 filed in connection with the Settlement shall be treated as privileged mediation
21 communications under California *Evidence Code* Sections 1115 *et seq.*; (b) the
22 Settlement shall be without force and effect upon the rights of the Parties
23 hereto, and none of its terms shall be effective or enforceable, with the exception
24 of this paragraph, which shall remain effective and enforceable; (c) the Parties
25 shall be deemed to have reverted *nunc pro tunc* to their respective status
26 immediately prior to execution of this Settlement Agreement; (d) all Orders
27 entered in connection with the Settlement, including the conditional certification
28 of the Settlement Class, the Settlement Misclassification Subclass, and/or the

1 Settlement Rest Break Subclass, shall be vacated without prejudice to any
2 Party's position on the issue of class certification, the issue of amending the
3 complaint, or any other issue, in the Class Action or any other action, and the
4 Parties shall be restored to their litigation positions existing on the date of
5 execution of this Settlement Agreement; and (e) the Parties shall proceed in all
6 respects as if the Settlement Agreement and related documentation and orders
7 had not been executed, and without prejudice in any way from the negotiation or
8 fact of the Settlement or the terms of the Settlement Agreement. The
9 Settlement Agreement, the Settlement, all communications, documents, orders,
10 and evidence relating to the Settlement, the fact of their existence, any of their
11 terms, any press release or other statement or report by the Parties or by others
12 concerning the Settlement Agreement, the Settlement, their existence, or their
13 terms, any negotiations, proceedings, acts performed, or documents executed
14 pursuant to or in furtherance of the Settlement Agreement or the Settlement
15 shall not be admissible in any proceeding, and shall not be offered, received, or
16 construed as evidence of a presumption, concession, or an admission of liability,
17 of unenforceability of any arbitration agreement, of the certifiability of a
18 litigation class, or of any misrepresentation or omission in any statement or
19 written document approved or made, or otherwise used by any person for any
20 purpose whatsoever, in any trial of the Class Action or any other action or
21 proceedings. Medina, Class Counsel and the Settlement Administrator shall
22 return to Defense Counsel all copies of Class Information and Opt-Out Lists and
23 shall not use or disclose the Class Information or Opt-Out List for any purpose
24 or in any proceeding.

25 127. R&M does not agree or consent to certification of the Settlement
26 Class, Settlement Misclassification Subclass, and/or Settlement Rest Break
27 Subclass for any purpose other than to effectuate the Settlement of the Class
28 Action. If this Settlement Agreement is terminated pursuant to its terms, or the

1 Effective Date for any reason does not occur, all Orders certifying the Settlement
2 Class, Settlement Misclassification Subclass, and/or Settlement Rest Break
3 Subclass and all preliminary and/or final findings regarding the Settlement
4 Class certification order, shall be automatically vacated upon notice to the
5 Court, the Class Action shall proceed as though the Settlement Class and, if
6 applicable, the Settlement Misclassification Subclass and Settlement Rest Break
7 Subclass, had never been certified pursuant to this Settlement Agreement and
8 such findings had never been made, and the Class Action shall revert *nunc pro*
9 *tunc* to the procedural *status quo* as of the date and time immediately before the
10 execution of the Settlement Agreement, in accordance with this Settlement
11 Agreement.

12 ADDITIONAL PROVISIONS

13 128. All of the Exhibits to this Settlement Agreement are an integral part
14 of the Settlement and are incorporated by reference as though fully set forth
15 herein.

16 129. Medina and Class Counsel acknowledge that an adequate factual
17 record has been established that supports the Settlement and hereby waive any
18 right to conduct further discovery to assess or confirm the Settlement.

19 130. Unless otherwise noted, all references to “days” in this Settlement
20 Agreement shall be to calendar days. In the event any date or deadline set forth
21 in this Settlement Agreement falls on a weekend or federal legal holiday, such
22 date or deadline shall be on the first business day thereafter.

23 131. This Settlement Agreement constitutes the full and complete
24 agreement of the Parties hereto, and supersedes all prior negotiations and
25 agreements, whether oral, written or otherwise, and may be amended or
26 modified only by a written instrument signed by counsel for all Parties or the
27 Parties’ successors-in-interest.
28

1 132. The Parties reserve the right, subject to the Court’s approval, to
2 make any reasonable extensions of time that might be necessary to carry out
3 any of the provisions of this Settlement Agreement. Such extensions must be in
4 writing to be enforceable.

5 133. The Settlement Agreement, the Settlement, the fact of the
6 Settlement’s existence, any of terms of the Settlement Agreement, any press
7 release or other statement or report by the Parties or by others concerning the
8 Settlement Agreement or the Settlement, and any negotiations, proceedings,
9 acts performed, or documents executed pursuant to or in furtherance of the
10 Settlement Agreement or the Settlement: (i) may not be deemed to be, may not
11 be used as, and do not constitute an admission or evidence of the validity of any
12 released claims or of any wrongdoing or liability of R&M; (ii) may not be deemed
13 to be, may not be used as, and do not constitute an admission or evidence of any
14 fault, wrongdoing, or omission by R&M in any trial, civil, arbitration, criminal,
15 or administrative proceeding of the Class Action or any other action or
16 proceedings in any court, administrative agency, arbitration or other tribunal;
17 and (iii) may not be used as evidence in any class certification proceeding.

18 134. The persons and entities released by this Settlement shall have the
19 right to file the Settlement Agreement, the Final Approval order and Judgment,
20 and any other documents or evidence relating to the Settlement in any action
21 that may be brought against them in order to support a defense or counterclaim
22 based on principles of *res judicata*, collateral estoppel, release, good-faith
23 settlement, judgment bar, reduction, or any other theory of claim preclusion or
24 issue preclusion or similar defense or counterclaim.

25 135. The Parties to the Settlement Agreement agree that the Total
26 Settlement Amount and the other terms of the Settlement were negotiated at
27 arm’s length and in good faith by the Parties, resulted from an arm’s-length
28 mediation session facilitated by Hon. Carl J. West (Ret.), and reflect a

1 settlement that was reached voluntarily based upon adequate information and
2 sufficient discovery and after consultation with experienced legal counsel.

3 136. Medina and Class Counsel have concluded that the Settlement set
4 forth herein constitutes a fair, reasonable, and adequate resolution of the claims
5 that Medina asserted against R&M, including the claims on behalf of the
6 Settlement Class, and that it promotes the best interests of the Settlement
7 Class.

8 137. To the extent permitted by law, all agreements made and orders
9 entered during the course of the Class Action relating to the confidentiality of
10 information shall survive this Settlement Agreement.

11 138. The Parties agree that Medina and Class Counsel are not required
12 to return any documents produced by R&M until the final resolution of the Class
13 Action.

14 139. The waiver by one Party of any breach of this Settlement Agreement
15 by any other Party shall not be deemed a waiver of any other prior or
16 subsequent breach of this Settlement Agreement.

17 140. This Settlement Agreement, including its Exhibits, constitutes the
18 entire agreement among the Parties, and no representations, warranties, or
19 inducements have been made to any Party concerning this Settlement
20 Agreement or its Exhibits, other than the representations, warranties, and
21 covenants contained and memorialized in this Settlement Agreement and its
22 Exhibits.

23 141. This Settlement Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them shall be deemed to be
25 one and the same instrument provided that counsel for the Parties to this
26 Settlement Agreement shall exchange among themselves original signed
27 counterparts. Faxed or emailed signatures shall be deemed original signatures.
28

1 142. The Parties hereto and their respective counsel agree that they will
2 use their best efforts to obtain all necessary approvals of the Court required by
3 this Settlement Agreement.

4 143. This Settlement Agreement shall be binding upon and shall inure to
5 the benefit of the successors and assigns of the Parties hereto, including any and
6 all released parties and any corporation, partnership, or other entity into or with
7 which any released party hereto may merge, consolidate, or reorganize.

8 144. This Settlement Agreement shall not be construed more strictly
9 against one Party than another merely because of the fact that it, or any
10 respective provision of it, may have been prepared by counsel for one of the
11 Parties, it being recognized that because of the arm's-length negotiations
12 resulting in the Settlement Agreement, all Parties hereto have contributed
13 substantially and materially to the preparation of the Settlement Agreement.

14 145. Except where this Settlement Agreement itself provides otherwise,
15 all terms, conditions, and Exhibits are material and necessary to this Settlement
16 Agreement and have been relied upon by the Parties in entering into this
17 Settlement Agreement.

18 146. This Settlement Agreement shall be governed by the internal law,
19 other than choice of law, of the State of California. Any action based on this
20 Settlement Agreement, or to enforce any of its terms, shall be venued in Orange
21 County Superior Court, which shall retain jurisdiction over all such disputes.
22 All Parties to this Settlement Agreement shall be subject to the jurisdiction of
23 Orange County Superior Court for all purposes related to this Settlement
24 Agreement.

25 147. The Court shall retain continuing and exclusive jurisdiction over the
26 Parties to this Settlement Agreement for the purpose of the administration and
27 enforcement of this Settlement Agreement.
28

1 148. The headings used in this Settlement Agreement are for the
2 convenience of the reader only, and shall not affect the meaning or
3 interpretation of this Settlement Agreement.

4 149. In construing this Settlement Agreement, the use of the singular
5 includes the plural (and vice-versa) and the use of the masculine includes the
6 feminine (and vice-versa).

7 150. Each Party to this Settlement Agreement warrants that he or it is
8 acting upon his or its independent judgment and upon the advice of his or its
9 counsel, and not in reliance upon any warranty or representation, express or
10 implied, of any nature of any kind by any other Party, other than the warranties
11 and representations expressly made in this Settlement Agreement.

12 IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on
13 the day and year set forth below.

14 DATED: August 25, 2020

DATED: August 25, 2020

15 R&M PACIFIC RIM, INC.

16

17

18 By: _____



SANTIAGO MEDINA

19

APPROVED AS TO FORM AND CONTENT.

20

Dated: August 25, 2020

BLEAU FOX
A Professional Law Corporation

21

22

By:  _____

23

SAMUEL T. REES

24

Attorneys for Plaintiff and the Plaintiff Class

25

Dated: August 25, 2020

KRING & CHUNG LLP

26

27

By: _____

ALLYSON K. THOMPSON

28

Attorneys for R&M PACIFIC RIM, INC.

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2 convenience of the reader only, and shall not affect the meaning or
3 interpretation of this Settlement Agreement.

4 149. In construing this Settlement Agreement, the use of the singular
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6 feminine (and vice-versa).

7 150. Each Party to this Settlement Agreement warrants that he or it is
8 acting upon his or its independent judgment and upon the advice of his or its
9 counsel, and not in reliance upon any warranty or representation, express or
10 implied, of any nature of any kind by any other Party, other than the warranties
11 and representations expressly made in this Settlement Agreement.

12 IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on
13 the day and year set forth below.

14 DATED: August 25, 2020

DATED: August 25, 2020

15 R&M PACIFIC RIM, INC.

16
17 By: 

18 _____
SANTIAGO MEDINA

19 APPROVED AS TO FORM AND CONTENT.

20 Dated: August 25, 2020

BLEAU FOX
A Professional Law Corporation

21
22 By: _____
23 SAMUEL T. REES

Attorneys for Plaintiff and the Plaintiff Class

24
25 Dated: August 25, 2020

KRING & CHUNG LLP

26
27 By: 
28 ALLYSON K. THOMPSON

Attorneys for R&M PACIFIC RIM, INC.

EXHIBIT 1

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING

Stoddard and Medina, etc. v. Equilon Enterprises, LLC, et al.
 Orange County California Superior Court Case No. 30-2010-00395208-CU-OE-CXC

THE COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.

Pursuant to the Order of the Superior Court for the State of California for the County of Orange, you are hereby notified that a proposed settlement has been reached in the above-referenced case brought on behalf of the following individuals:

All persons who were employed by R&M Pacific Rim, Inc. and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008.

You have been identified as a member of the above Settlement Class. This notice provides you with a brief description of the Class Action, the terms of the Settlement, and a description of your rights in connection with the Settlement. **Please read this entire notice carefully.** It may affect your legal rights, including your right to money you may be owed.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Participate in the Settlement	If the Court grants final approval of the Settlement, you do not need to do anything if you wish to receive your Individual Settlement Payment. However, it is highly recommended that you review the information on the attached Information Sheet [Enclosure A] and make any necessary corrections, including updating your contact information. Corrections must be submitted to the Settlement Administrator either electronically or by fax or mail as explained in Paragraph 9 below.
Exclude Yourself from the Settlement (Opt-Out)	If you do not want to participate in the Settlement and be bound by the releases therein, you must timely submit a signed written Request for Exclusion to the Settlement Administrator no later than [Insert Exclusion Deadline Date] or else you will be bound by the Settlement. Your Request for Exclusion must be submitted by mail or fax. In the case of mail Requests for Exclusion, the postmark shall determine whether that request was timely. Please refer to Paragraph 10 below for instructions on excluding yourself.
Object to the Settlement	If you wish to object to the Settlement, you must mail an appropriate written objection to the Settlement Administrator postmarked no later than [Insert Exclusion Deadline Date] and/or object in person or through an attorney at the Final Approval Hearing on [Insert Final Approval Hearing Date]. Please refer to Paragraph 11 below for instructions on objecting.

Which option(s) you choose is entirely up to you.

THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE.

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GENERAL INFORMATION REGARDING THIS NOTICE

WHAT IS THIS NOTICE ABOUT?

This Notice pertains to the settlement (“Class Action Settlement” or “Settlement”) of claims against R&M Pacific Rim, Inc. (“R&M”) in a class action lawsuit entitled *Stoddard and Medina, etc. v. Equilon Enterprises, LLC; R&M Pacific Rim, Inc. et. al.*, Orange County Superior Court Case No. 30-2010-00395208-CU-OE-CXC (the “Class Action”).

This Class Action Settlement applies to all persons who were employed by R&M and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008 (the "Settlement Class"). The Settlement Class is divided into two subclasses: (1) the Settlement Misclassification Subclass and (2) the Settlement Break Subclass. The Settlement Misclassification Subclass consists of all employees during this period who were declared by R&M as exempt employees and paid a salary. The Settlement Break Subclass consists of all employees during this period who were paid an hourly wage. You may be part of both subclasses.

The Orange County Superior Court (the “Court”) has preliminarily approved the Settlement and has directed the parties to notify the Settlement Class Members of the Settlement. If the proposed Class Action Settlement is finally approved by the Court, your legal rights may be affected. This Notice of Proposed Class Action Settlement summarizes the Class Action and the settlement, and what you need to do (i) if you want to be excluded or “opt-out” of the Settlement Class, (ii) if you want to object to the settlement, (iii) if you want to dispute the information on which your Individual Settlement Payment will be calculated and/or (iv) if you want to correct or supplement information contained in the accompanying Information Sheet [Enclosure A].

This Notice summarizes, but does not fully describe, the Class Action. You may inspect the court files at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701 from 8:30 a.m. to 4:30 p.m. Monday through Friday, holidays excepted. You may also review papers filed in the Class Action at the following web address, by accepting terms, inputting under the Case Tab the following case number (30-2010-00395208) and indicating 2010 as the year filed:

<https://ocapps.occourts.org/civilwebShoppingNS/Login.do>. The Register of Actions lists all papers which have been filed, most of which you can purchase on-line for a fee. You may also visit [\[settlement website\]](#) for more information, to review the Settlement Agreement, or to review certain Court filings relating to the Settlement.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THE LAWSUIT.

WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

For a complete understanding of the claims asserted on your behalf in the Class Action, please review the Second Amended Complaint filed in the Class Action on March 25, 2019. This section is merely a summary of certain important allegations thereof. Also and while the Class Action was pending, Raymond Stoddard, one of the original named plaintiffs, died; and the Class Action is now being prosecuted only by Santiago Medina ("Medina").

The Class Action generally involves claims under California's wage and hour laws. Insofar as claims are asserted against R&M in the Class Action, Medina primarily alleges that from and after August 2, 2006, R&M misclassified certain of its employees as "exempt" employees and improperly failed to pay them overtime wages and premium pay for missed off-duty meal and rest breaks. Medina further alleges that R&M also improperly failed to pay its hourly employees premium pay for their missed meal and rest breaks. These claims are asserted pursuant to the California *Labor Code*, California Unfair Competition Law and the applicable California Industrial Welfare Commission wage order. Other bases for relief also are asserted. These claims against R&M only relate to employees working at R&M operated stations.

Insofar as claims also are asserted against Equilon Enterprises, LLC, Medina primarily alleges that from and after May 2001, Equilon was a joint employer with its third party operators, including R&M, misclassified certain of its employees as "exempt" employees and improperly failed to pay them overtime wages and premium pay for missed off-duty meal and rest breaks and also improperly failed to pay its hourly employees premium pay for their missed meal and rest breaks. These claims also are asserted pursuant to the California *Labor Code*, California Unfair Competition Law and the applicable California Industrial Welfare Commission wage order. Other bases for relief are also asserted. These claims relate to all Equilon owned stations in California and operated by third parties, including R&M. As such, these claims are broader than the claims asserted against R&M but include all of those claims also. Summary Judgment in favor of Equilon on these claims was recently granted by the Court which Summary Judgment is on appeal.

On January 15, 2019, after good-faith negotiations with an experienced, neutral mediator, in which both Medina and R&M recognized the substantial risk of an uncertain outcome, Medina and R&M agreed to settle their dispute pursuant to the terms and conditions of a negotiated Settlement. The parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Class.

R&M denies that it has done anything wrong or that it violated the law in any way. R&M further denies that it owes the Settlement Class any wages, restitution, penalties, or other damages and contends that Settlement Class members were properly compensated and properly provided meal and rest periods. Accordingly, the Settlement represents a compromise and settlement of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by R&M that Medina's claims have merit or that R&M has any liability to Medina or the putative class on the claims alleged in the Class Action. **The Court has not ruled on the merits of Medina's claims against R&M.**

SUMMARY OF THE SETTLEMENT

WHO IS INCLUDED IN THE SETTLEMENT?

You have received this notice and are included in the Settlement because R&M's records show that you fall within the following definition:

All persons who were employed by R&M and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008.

HOW TO PARTICIPATE IN THE SETTLEMENT

If you are included in the above class definition, you are automatically considered a member of the Settlement Class. However, you have the right to request exclusion from the Settlement, the right to object to the Settlement, the right to dispute the information upon which your Individual Settlement Payment will be calculated, and the right to correct or supplement any other personal information provided.

IF YOU WISH TO BE EXCLUDED FROM THIS SETTLEMENT AND NOT BE BOUND BY IT, YOU WILL NEED TO TIMELY SUBMIT A WRITTEN REQUEST FOR EXCLUSION CONTAINING THE NECESSARY INFORMATION BY [INSERT EXCLUSION DEADLINE DATE]. YOU MAY DO SO BY TIMELY COMPLETING, SIGNING AND SUBMITTING THE FORM INCLUDED WITH THIS NOTICE [ENCLOSURE B] BY MAIL OR BY FAX TO THE SETTLEMENT ADMINISTRATOR.

(Settlement Exclusion Information is Provided in Paragraph 10 Below.)

IF YOU WISH TO OBJECT TO ANY ASPECT OF THIS SETTLEMENT, YOU WILL NEED TO TIMELY SUBMIT A WRITTEN STATEMENT OF OBJECTION CONTAINING THE NECESSARY INFORMATION BY [INSERT EXCLUSION DEADLINE DATE] AND/OR APPEAR AT THE FINAL APPROVAL HEARING IN PERSON OR THROUGH AN ATTORNEY AND MAKE YOUR OBJECTION AT THAT TIME.

(Objection Information is Provided in Paragraph 11 Below.)

IF YOU WISH TO DISPUTE ANY OF THE ACCOMPANYING INFORMATION ON WHICH YOUR INDIVIDUAL SETTLEMENT PAYMENT WILL BE CALCULATED, YOU WILL NEED TO STATE THE BASIS FOR YOUR DISPUTE AND PROVIDE SUPPORTING DOCUMENTATION BY [INSERT DATE]. YOU MUST DO SO BY TIMELY COMPLETING, SIGNING AND SUBMITTING WITH APPROPRIATE DOCUMENTATION THE DISPUTE FORM INCLUDED WITH THIS NOTICE [ENCLOSURE C] BY MAIL OR BY FAX TO THE SETTLEMENT ADMINISTRATOR.

(Dispute Information is provided in Paragraph 2.d. Below.)

UNLESS YOU TIMELY SUBMIT A WRITTEN REQUEST TO BE EXCLUDED FROM THIS SETTLEMENT, YOU WILL BE BOUND BY ITS TERMS AND THE RELEASES DESCRIBED BELOW.

Your Individual Settlement Payment will be based on the employment records of R&M which are presumed to be correct and which, as to your information, is set forth in the attached Information Sheet [Enclosure A].

Your interests as a member of the Settlement Class will be represented by Class Counsel. If you choose, you may enter an appearance individually or through your own counsel at your own expense. You have the right to consult and/or retain an attorney of your own choice, at your own expense, to advise you regarding the Settlement and your rights in connection with the Settlement. **If you have questions about this Settlement, you may contact Class Counsel by email at STReesEsq@earthlink.net or at (818) 748-3434, although email is preferable.**

WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?

1. The Total Settlement Amount is \$845,000, inclusive of all damages, fees, costs, penalties, attorneys' fees and expenses and administration of the Settlement.
 - a. Class Counsel intends to seek by motion an award of attorneys' fees of \$281,667, plus costs and expenses, subject to Court approval. Class Counsel has estimated that its expenses will not exceed \$15,000. The motion will be available on [insert settlement website] upon filing and is subject to Court review and approval. You have the right to object to this award to Class Counsel. The amount approved by the Court will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - b. In addition, Medina intends to seek by motion a Service Award of \$5,000 for serving as the named plaintiff and Class Representative. You have the right to object to this Service Award which is also subject to review and approval by the Court. The amount approved by the Court will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - c. The Settlement Administrator will be paid a fee and costs for administrating this Settlement. The total amount of those fees and costs will not exceed \$15,000. The fees and costs will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - d. The remaining amount after these deductions (the "Remaining Settlement Amount") shall be split between the two subclasses per the formula summarized in Paragraph 2 below.
2. **Payment to Class Members.** The Remaining Settlement Amount will be distributed to the Settlement Class Members, as follows:
 - a. **Misclassification Subclass:** Seventy-four percent (74%) of the Remaining Settlement Amount shall be allocated to the Settlement Misclassification Subclass. This amount shall be prorated among the members of the Settlement Misclassification Subclass based upon the total number of Work Weeks (Monday through Sunday) or portions thereof each such member worked during the Class Period as an exempt employee divided by the total number of weeks and portions thereof worked by all members of this subclass. An employee whose classification was changed during a Work Week shall be deemed an exempt employee for the entire Work Week during the Class Period and not an hourly employee for that week. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.
 - b. **Break Subclass:** Twenty-Six percent (26%) of the Remaining Settlement Amount shall be allocated to the Settlement Break Subclass. This amount shall be prorated among the members of the Break Subclass based upon each employee's gross wages paid during the Class Period divided by the gross wages paid during the Class

Period to all members of this subclass. An employee whose classification was changed from exempt to hourly during a Work Week shall not be deemed an hourly employee for the Work Week during the Class Period he or she was also an exempt employee. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.

c. If a Settlement Class Member will be distributed \$10 or more, then he or she will receive the entitled amount. If, however, the Settlement Class Member is due less than \$10, then his or her Individual Settlement Payment will be for \$10, which may have a small effect on the payments to other members of that subclass.

d. **Settlement Class Members will be provided thirty-five (35) days after the initial mailing of the Class Notice to dispute the information upon which their share of the Settlement will be calculated but they must provide documentation to support this dispute.** You may do so by timely completing, signing and submitting with appropriate documentation the Dispute Form included with this notice [Enclosure C] by mail or by fax to the Settlement Administrator. The Settlement Administrator will resolve all such disputes and its decision will be final. R&M's employment records on which the accompanying Information Sheet is based are presumed correct.

e. Settlement Class Members who receive a payment of any kind from the Total Settlement Amount expressly acknowledge that such payments shall be considered to be comprised of thirty-three percent (33%) wages for which an IRS Form W-2 will be issued and sixty-seven percent (67%) non-wages for which an IRS Form 1099 will be issued. All Settlement Class Members who receive a payment of any kind from the Total Settlement Amount agree to timely pay in full all of the federal, state, and municipal income taxes owed on such payments.

f. **Unclaimed funds:** Individual Settlement Payment checks which are not cashed within 180 days of issuance will be deemed void. The funds represented by voided checks will then be paid to the State of California for deposit into the Unclaimed Property Fund for the benefit of the Settlement Class Member who did not timely cash his Individual Settlement Payment check.

3. This Settlement was made based upon certain representations of fact made by R&M and contained in the Settlement Agreement. These factual representations are set forth in Enclosure D to this Notice. **You should review these representations as they may affect your decisions regarding this settlement.**

Of primary importance are the representations that prior to September 1, 2008, (i) R&M reclassified all exempt employees as hourly employees and thereafter paid overtime to those employees, (ii) changed its rest break policies to allow all employees to take 10 minute off-duty rest breaks every 4 hours worked, or major fraction thereof, and (iii) changed its meal break policies to allow all employees who worked more than 5 hours in a workday to take a 30 minute off-duty meal break and were provided a form to report any missed or non-compliant meal breaks for which payment would be provided, and (iv) paid missed meal break compensation to 370 employees in settlement as a result of a California Labor Commissioner meal break audit.

4. You will be bound by this Settlement and the releases contained therein, if it is given final approval by the Court, unless you timely submit a valid written Request for Exclusion to the Settlement Administrator by the deadline of [Insert Exclusion Deadline Date]. You may do so by timely completing, signing and submitting the form included with this notice [Enclosure B] by mail or by fax to the Settlement Administrator. If you do submit a valid Request for Exclusion by the deadline in accordance with the instructions for submitting a Request for Exclusion, you will be excluded from the Settlement and will not receive any Individual Settlement Payment, but you will retain the rights you may have, if any, to pursue your claims against Defendants and will not be bound by the releases contained in the Settlement Agreement.
5. If the Court does not grant final approval of the Settlement, or does not enter the Final Approval Order or if the Court's Final Approval Order is reversed in whole or in part on appeal, the parties have no obligations under the Settlement and Settlement Class Members will **not** receive any payments thereunder.
6. The Court has approved Phoenix Settlement Administrators as Settlement Administrator to administer the Settlement.
7. The Settlement, if given final approval by the Court, includes a very broad release to R&M and its affiliates. This release is, as follows:

Any and all claims alleged in the Second Amended Complaint, or that could have been alleged in the Second Amended Complaint based on the facts alleged therein, including claims for non-payment of overtime, missed meal and rest break compensation, interest thereon, attorneys' fees and expenses and costs of suit.

This release of fees and expenses includes, but is not limited to, those incurred by Class Counsel or any other counsel representing Medina or any Settlement Class Members, other than those expressly awarded by the Court as authorized by this Agreement.

8. Medina, as Class Representative, and Class Counsel, support the Settlement. Their reasons include the risk of being unable to pursue this case as a class action on behalf of all Class Members, the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and the possibility that the Class is not entitled to any recovery from Defendants. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case would be uncertain and, upon careful consideration of all facts and circumstances of this case, as well as the potential damages that could be recovered, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

9. **Participate in the Settlement.** You have the right to participate in the Settlement; and, if the Settlement is finally approved by the Court, you have the right to your Individual Settlement Payment. You do not have to do anything to exercise this right. However, if you decide to participate in the Settlement, you should review the attached Information Sheet [Enclosure A]. You should also check to make sure your address and contact information are correct so that you will receive your Individual Settlement Payment if and when it is mailed. You may make corrections to your contact information in the Information Sheet either electronically at [insert

settlement website], by fax to (249) 209-2503 or by mail addressed to the Settlement Administrator at Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863.

If you need additional information, please contact the Settlement Administrator at (800) 523-5773 or at Info@phoenixclassaction.com.

10. **Excluding Yourself from the Settlement (Opt-Out):** You have the right to exclude yourself from the Settlement and retain the right to pursue any individual claims you may have against R&M. If you do **not** wish to participate in the Settlement, you must mail or fax a written Request for Exclusion to the Settlement Administrator. The Request for Exclusion must include: (1) your name, address, and telephone number; (2) a clear and unequivocal statement that you wish to be excluded from the Settlement Class; and (3) your signature or the signature of your Legally Authorized Representative. The attached Request for Exclusion Form [Enclosure B] may be completed, signed and submitted to the Settlement Administrator should you wish to use it. The Request for Exclusion must be completed, signed, and mailed to the Settlement Administrator at Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863, postmarked no later than [Exclusion/Written Objection Deadline] or faxed to the Settlement Administrator at (249) 209-2503 by that date. If you fail to submit a Request for Exclusion in the manner and by the deadline specified above, you will be bound by all terms and conditions of the Settlement and Judgment.

Any person who files a complete and timely Request for Exclusion will, upon receipt by the Settlement Administrator, no longer be a member of the Settlement Class and will not be eligible to receive a payment if the Settlement is finally approved. Any such person will retain the right, if any, to pursue the claims released by this Settlement at his or her own expense. A Request for Exclusion that does not fulfill the requirements above will be deemed invalid. Requests for exclusion must be exercised individually by the Settlement Class Member. Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.

If a Settlement Class Member submits both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

There will be no retaliation or adverse employment action taken by R&M against any Settlement Class Member who participates in the Settlement, elects not to participate in the Settlement, or objects to the Settlement because of such participation, election, or objection.

11. **Objecting to the Settlement:** You have the right to object to any of the terms of the Settlement, the Class Counsel Award and/or the Service Award. Any Settlement Class Member that wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the proposed Settlement, the Plan of Allocation, the Class Counsel Award and/or the Service Award must provide to the Settlement Administrator (who shall forward it to Class Counsel and Defense Counsel), a timely signed statement of the objection or appear at the final hearing and make the objections or both. To be timely, a written objection must be mailed to the Settlement Administrator, and postmarked no later than [60 days after notice date]. A written objection must contain at least the following: (i) the objector's full name, address, telephone number, and signature; (ii) a clear reference to the Class Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person or

entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. Objections may be submitted by one or more Settlement Class Members, but must identify each Settlement Class Member on whose behalf it is made.

If you submit both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

If the Court does not give final approval to the Settlement, no Individual Settlement Payments will be sent out and the lawsuit will continue.

If the Court gives final approval to the Settlement, you will be bound by the terms of the Settlement and receive your Individual Settlement Payment.

12. **Termination of the Settlement:** If after [Exclusion/Written Objection Deadline] and before the Final Approval Hearing, Settlement Class Members, whose estimated Individual Settlement Payments equal or exceed ten percent (10%) of the Total Settlement Amount, submit timely and valid Requests for Exclusion from the Settlement, R&M shall have, in its sole and absolute discretion, the option to terminate this Settlement. The estimated Individual Settlement Payments shall be calculated assuming that the combined total of the approved Class Counsel Award, approved Service Award and approved expenses for the Settlement Administrator are \$316,667. R&M shall exercise its option to terminate, if at all, prior to the Final Approval Hearing, provided the Settlement Administrator has provided R&M the Opt-Out List no later than ten (10) business days prior to the Final Approval Hearing. If R&M decides to void the Settlement, then the Settlement and conditional class certification shall be considered void; the Settlement, conditional class certification, and any related negotiations or proceedings shall be of no force and effect; and the Parties shall stand in the same respective positions, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Should R&M void the Settlement under this paragraph, R&M shall be responsible for all Settlement Administration Costs incurred through the date R&M notifies the Settlement Administrator that it is exercising its option to terminate the Settlement.
13. **Release of Employment Records:** The Court has authorized R&M to release to the Settlement Administrator and to Class Counsel, for purposes of this Settlement only and without prior notice to you, certain information concerning you and contained in R&M's employment records. This information includes your name, last known residence address, last known telephone number(s), last known email address, social security number, dates of employment and gross wages for 2006 through 2008.
14. **Keep Your Information Up to Date:** It is your obligation to make sure that the Settlement Administrator is able to verify your social security number and to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Payment is received, should final approval of the Settlement be granted. Failing to provide the Settlement Administrator with any change of your mailing address may prevent you from receiving your Individual Settlement Payment in a timely manner. The absence of a verified social security number will result in backup withholding applied to your Individual Settlement Payment.
15. **Information Available on Website:** The Settlement Administrator has created a website for purposes of this Settlement. The website address is [INSERT WEB ADDRESS]. Among other

actions you may take through this website and information contained therein, you will be able to view the following documents: Second Amended Complaint; Settlement Agreement and exhibits; Class Notice; Motion for Preliminary Approval of this Settlement; Preliminary Approval Order; and Motion for Class Counsel Award and Service Award, when filed. You also will be able to correct certain information contained on the attached Information Sheet [Enclosure A].

16. **The Settlement Administrator's Address:** You may send a Request for Exclusion or Objection to the Settlement Administrator at the following address:

Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863
Ph: 800-523-5773
Email: Info@phoenixclassaction.com
Fax: 949-209-2503

CLASS COUNSEL

Contact information for Class Counsel is provided below:

SAMUEL T. REES
BLEAU FOX
A Professional Law Corporation
2801 West Empire Avenue
Burbank, CA 91504
Telephone: (818) 748-3434
Facsimile: (818) 748-3436
Email: STReesEsq@earthlink.net

FINAL SETTLEMENT APPROVAL HEARING

The Court has scheduled the Settlement Fairness Hearing for __ on __, 20xx, in Department CX-104 of the Orange County Superior Court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. At this time, the Court will be asked to rule on the adequacy, reasonableness, and fairness of the Settlement and on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Service Award to Medina. If there are any objections, the Court will consider them. After the Settlement Fairness Hearing, the Court will decide whether to approve the Settlement.

The Settlement Fairness Hearing may be postponed without further notice to Settlement Class members.

You are not required to attend the Settlement Fairness Hearing, although any Settlement Class member is welcome to attend the hearing.

GETTING MORE INFORMATION

This notice summarizes the Class Action and the proposed Settlement. For more precise terms and conditions of the Settlement, please contact Class Counsel (contact information above), or visit the office of the Court Clerk located at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701, during business hours.

PLEASE DO NOT TELEPHONE THE COURT, FOR INFORMATION ABOUT THE SETTLEMENT! YOU MAY CALL CLASS COUNSEL LISTED ABOVE.

ENCLOSURE A
INFORMATION SHEET

CLAIMANT ID: [INSERT]

VERIFICATION NUMBER: [INSERT]

The information provided below was provided by R&M Pacific Rim, Inc. ("R&M") from its employment records and was ordered by the Court to be provided to Phoenix Settlement Administrators and Class Counsel for settlement purposes only and without prior notice to you. PLEASE VERIFY THAT THE INFORMATION IS CORRECT AND MAKE CHANGES WHERE NECESSARY. Your Individual Settlement Payment will be partially based on this information.

1. Your Contact Information

Please review and, if necessary, correct on the line to the right your contact information:

Name: <<Name>> _____
Address: <<Address>> _____
City, State, Zip: <<City>>, <<State>> <<Zip Code>> _____
Social Security Number: [INSERT] _____
Telephone Number: [INSERT] _____
Email Address: [INSERT] _____

2. Information for Misclassification Subclass, if applicable.

The personnel and payroll records of R&M show that during the Class Period (August 2, 2006 through September 1, 2008), you were employed by R&M as an exempt, salaried employee, as follows:

Dates of Employment as Exempt: <<Start Date>> - <<End Date>>
<<Start Date>> - <<End Date>>

Number of Full Work Weeks, Rounded Up [INSERT NUMBER]

You will receive both IRS W-2 and 1099 forms with your payment.

3. Information for Break Subclass, if applicable.

The personnel and payroll records of R&M show that during the Class Period (August 2, 2006 through September 1, 2008), you were employed by R&M as an hourly employee, as follows:

Dates of Employment as Hourly: <<Start Date>> - <<End Date>>
<<Start Date>> - <<End Date>>

2006 Reported Gross Wages: [INSERT NUMBER]
2007 Reported Gross Wages: [INSERT NUMBER]
2008 Reported Gross Wages: [INSERT NUMBER]

You will receive both IRS W-2 and 1099 forms with your payment.

ENCLOSURE B
REQUEST FOR EXCLUSION FORM

**THIS COMPLETED AND SIGNED REQUEST FOR EXCLUSION
FORM MUST EITHER BE POSTMARKED ON OR BEFORE OR
FAXED TO THE SETTLEMENT ADMINISTRATOR ON OR
BEFORE **[Insert Exclusion Date]****

Stoddard and Medina, etc. v. Equilon Enterprises, LLC, et al.
Orange County California Superior Court Case No. 30-2010-00395208-CU-OE-CXC

I, _____, hereby request that I be excluded from the Class
[Print Full Name]

Action Settlement of the above lawsuit and excluded from the Settlement Class. I understand by timely submitting this completed form to Phoenix Settlement Administration, I will not receive any payment from this Settlement, will not be bound by the releases in the Settlement Agreement and may pursue my own remedies against R&M Pacific Rim, Inc. at my own expense.

My address and telephone number are, as follows:

[Print Street Address]

[Print City, State and Zip Code]

[Print Area Code and Telephone Number]

[Sign Full Name]

MAIL OR FAX COMPLETED REQUEST FOR EXCLUSION FORM TO

**Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863**

Fax Number: (249) 209-2503

ENCLOSURE C
CLASS INFORMATION DISPUTE FORM

I, _____, hereby dispute the following information
[Print Full Name]
contained in my Information Sheet and upon which my Individual Settlement Payment will be
calculated. I enclose documentation to support my dispute.

COMPLETE EACH APPROPRIATE SECTION.

Employment Dates.

(Do not insert a date prior to August 2, 2006 or after September 1, 2008)

I actually commenced my employment as a salaried, exempt employee or was converted to a salaried
exempt employee on _____.

I actually ceased my employment as a salaried, exempt employee or was converted to a non-exempt,
hourly employee on _____.

I actually commenced my employment as a non-exempt, hourly employee on
_____.

I actually ceased my employment as a non-exempt, hourly employee on _____.

Hourly Employee Gross Wages.

(Do not include wages paid when you were a salaried, exempt employee)

My actual Gross Wages from R&M for 2006 as a non-exempt Hourly Employee were \$ _____.

My actual Gross Wages from R&M for 2007 as a non-exempt Hourly Employee were \$ _____.

My actual Gross Wages from R&M for 2008 as a non-exempt Hourly Employee were \$ _____.

Dated: _____, 2020

[Sign Full Name]

MAIL OR FAX COMPLETED REQUEST FOR EXCLUSION FORM TO

**Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863**

Fax Number: (249) 209-2503

ENCLOSURE D
REPRESENTATIONS OF FACT BY R&M

(See Paragraph 59 of the Amended and Restated Settlement Agreement)

A. If no Settlement Class Member requests to be excluded from this Settlement, there are 37 employees who would be included in the Settlement Misclassification Subclass, 28 of whom are also included in the Settlement Break Subclass. Of these 37 employees, approximately 12 were members of the Settlement Misclassification Subclass for the entire Class Period.

B. If no Settlement Class Member requests to be excluded from this Settlement, there are 440 employees who would be included in the Settlement Break Subclass, 28 of whom are also included in the Settlement Misclassification Subclass.

C. During the Class Period, each member of the Settlement Break Subclass was compensated at the minimum hourly rate applicable during the time that member worked or at an amount not materially greater than the minimum hourly rates of \$6.75 for 2006, \$7.50 for 2007 and \$8.00 for 2008.

D. During the Class Period, each member of the Settlement Misclassification Subclass was compensated by a salary equating to approximately and not materially higher than \$12.70 per hour, calculated by taking their annual salary and dividing it by 2,080 hours.

E. Prior to September 1, 2008, R&M reclassified each member of the Settlement Misclassification Subclass as a non-exempt employee. From and after September 1, 2008, R&M paid those employees an hourly wage and overtime when they worked more than 40 hours in a work week or more than 8 hours in a workday as shown on their timecards.

F. Prior to September 1, 2008, R&M changed its rest break policy to clarify that all employees, including employees formerly claimed to be exempt employees and since reclassified as non-exempt employees, were entitled to and authorized and permitted to take duty-free, paid rest periods at the rate of no less than ten minutes net rest for every four hours worked, or major fraction thereof.

G. On or about July 5, 2008, and as a result of a California Labor Commissioner meal break audit, R&M paid approximately 370 employees for missed meal break compensation. These payments were believed by R&M to resolve all meal break claims for the Class Period. In June 2008, R&M modified its meal break policy to ensure that all non-exempt employees working more than 5 hours in a workday and not working alone were afforded an off-duty meal break, a form to report any missed or non-compliant meal breaks for which payment would be provided and continued to allow non-exempt employees working alone the option to sign an on-duty meal waiver if they wished to do so.

H. Pursuant to Equilon's contractual requirement, all Settlement Class Members were fluent in English.

EXHIBIT 2

1 SAMUEL T. REES (State Bar No. 58099)
THOMAS P. BLEAU (State Bar No. 152945)
2 MARTIN R. FOX (State Bar No. 155783)
BLEAU FOX
3 A Professional Law Corporation
2801 West Empire Avenue
4 Burbank, CA 91504
Telephone: (818) 748-3434
5 Facsimile: (818) 748-3436
6 Attorneys for Plaintiff
and the Plaintiff Class
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10
11 RAYMOND STODDARD and SANTIAGO) Case No. 30-2010-00395208-CU-OE-CXC
MEDINA, etc.,)
12) Hon. William Claster
Plaintiffs,) Department CX 102
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **SECOND REVISED [PROPOSED]**
15) **PRELIMINARY APPROVAL ORDER**
R&Ms.)
16) Date: July 31, 2020
17) Time: 9:00 a.m.
18) Dept: CX 104
19) Complaint Filed: August 2, 2010
Trial Date: None Set
20) **Reservation No. 73219881**

21
22 WHEREAS, this action is pending before this Court as a Class Action; and
23 WHEREAS, Plaintiff Santiago Medina ("Medina") has filed an unopposed
24 motion with this Court for an Order preliminarily approving the settlement of
25 the Class Action entered into by and between R & M Pacific Rim, Inc., a
26 California corporation, ("R&M") and Medina, individually and on behalf of
27 Settlement Class Members as defined therein, in accordance with their
28 Amended and Restated Settlement Agreement, which, together with the

1 Exhibits attached to the Amended and Restated Settlement Agreement, sets
2 forth the terms and conditions for a proposed partial settlement of the Class
3 Action; and the Court having read and considered the Amended and Restated
4 Settlement Agreement and the Exhibits attached thereto;

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. This Preliminary Order incorporates by reference the definitions in
7 the Settlement Agreement, as filed with the Court with Medina's motion, and all
8 terms defined therein shall have the same meaning as set forth in the Amended
9 and Restated Settlement Agreement.

10 2. The Court hereby grants Medina's Motion for Preliminary Approval
11 of Class Action Settlement and finds the terms of the Amended and Restated
12 Settlement Agreement to be within the range of reasonableness of a settlement
13 that ultimately could be granted approval by the Court at a Final Approval
14 Hearing.

15 3. The Court preliminarily approves the terms of the Amended and
16 Restated Settlement Agreement and finds that they fall within the range of
17 approval as fair, adequate, and reasonable. The Court hereby preliminarily finds
18 that the Settlement Agreement is the product of informal, non-collusive
19 negotiations conducted at arms' length by the parties. The Court has considered
20 the estimate of the Class Members' total recovery, R&M's potential liability, the
21 allocation of settlement proceeds among Class Members, including the two
22 subclasses, and the fact that a settlement represents a compromise of the
23 parties' respective positions rather than the result of a finding of liability at
24 trial. The assistance of an experienced mediator in the settlement process
25 supports the Court's conclusion that the Settlement is non-collusive and
26 reasonable. The Settlement is presumptively valid.

27 4. For purposes of the Settlement only, the Court finds that the
28 proposed Settlement Class is ascertainable and that there is a sufficiently well-

1 defined community of interest among the members of the Settlement Class in
2 questions of law and fact. Therefore, the Court preliminarily certifies as the
3 Settlement Class, for settlement purposes only, all persons who were employed
4 by R&M and who worked at a Shell branded station operated by R&M and
5 owned by Equilon Enterprises, LLC at any time during the period from August
6 2, 2006 to September 1, 2008. The Settlement Class consists of the Settlement
7 Misclassification Subclass, consisting of all Settlement Class Members during
8 any portion of the Class Period that they were declared by R&M as exempt
9 employees and paid a salary. and the Settlement Break Subclass, consisting of
10 all Settlement Class Members during any portion of the Class Period that they
11 were non-exempt hourly wage employees.

12 5. For purposes of the Settlement only, Medina is approved as the
13 Class Representative.

14 6. For purposes of the Settlement only, Bleau Fox, a Professional Law
15 Corporation, is appointed and approved as Class Counsel.

16 7. The Court hereby appoints and approves Phoenix Settlement
17 Administrators as the Settlement Administrator.

18 8. After balancing the privacy interests of the Settlement Class as
19 asserted by R&M, the Court finds that in order for the Class Notice to be mailed
20 to the Settlement Class at their last known address based upon R&M's
21 employment records, that the Settlement Administrator and Class Counsel have
22 sufficient information to locate Settlement Class members and that the
23 Settlement Administrator and Class Counsel have sufficient information to
24 prorate Individual Settlement payments for each subclass, it is necessary and
25 appropriate, without prior notice to the Settlement Class, that R&M be
26 authorized and directed to provide to the Settlement Administrator and Class
27 Counsel the Class Information to be used solely for the purposes of settlement of
28 this Class Action. Having so determined, the Court hereby orders R&M to so

1 provide to the Settlement Administrator and Class Counsel the Class
2 Information to be so used.

3 9. A hearing ("Final Approval Hearing") shall be conducted before this
4 Court on _____, 2020, at ____ a.m., in Department CX104, to
5 determine whether the proposed settlement of the Class Action on the terms and
6 conditions provided for in the Settlement Agreement is fair, reasonable and
7 adequate, whether said settlement should be finally approved by the Court, and
8 whether a Final Approval Order and Judgment should be entered herein.

9 10. The Court hereby approves, as to form and content, the Class Notice,
10 Information Sheet and Request for Exclusion Form attached as Exhibit 1 to the
11 Amended and Restated Settlement Agreement.

12 11. The Court approves the requirements for disputing the information
13 upon which Settlement Class Members' share of the Settlement will be
14 calculated, objecting to the Settlement, and excluding Settlement Class
15 Members who timely and properly request to be excluded from the Settlement
16 Class, all as provided in the Amended and Restated Settlement Agreement. The
17 Court finds that the procedures and requirements for submitting objections in
18 connection with the Final Approval Hearing are intended to ensure the efficient
19 administration of justice and the orderly presentation of any Settlement Class
20 Member's objection to the Settlement, in accordance with the due process rights
21 of all Settlement Class Members.

22 12. The Court finds that the mailing of the Class Notice substantially in
23 the manner and form as set forth in the Amended and Restated Settlement
24 Agreement and this Preliminary Approval Order meets the requirements of
25 *California Rules of Court* Rules 3.766(d) and 3.769(f), California Code of Civil
26 Procedure section 382, California Civil Code section 1781, other applicable law,
27 and due process, and is the best notice practicable under the circumstances, and
28 shall constitute valid, due and sufficient notice to all Settlement Class Members.

1 13. The Court hereby authorizes the Settlement Administrator to mail
2 or cause to be mailed to Settlement Class Members the Class Notice, completed
3 Information Sheet and the Request for Exclusion Form. Such documents shall
4 be sent by First Class U.S. mail, postage prepaid. Mailing of the Class Notice
5 shall occur within Sixty (60) days after the entry of this Preliminary Approval
6 Order. The Class Notice, completed Information Sheet and the Request for
7 Exclusion Form shall be mailed using the information provided by R&M in the
8 Class Information, as updated, to the extent that Class Notices are returned
9 undeliverable, by the Settlement Administrator as provided in the Amended and
10 Restated Settlement Agreement. Class Counsel may provide additional updated
11 mailing and/or emailing addresses to the Settlement Administrator. If these
12 procedures are followed, notice to Class Members shall be deemed to have been
13 satisfied, and if the intended recipient of the Class Notice does not receive the
14 Class Notice, the intended recipient shall nevertheless remain a Settlement
15 Class Member and shall be bound by all terms of the Settlement Agreement and
16 this Preliminary Approval Order. The Settlement Administrator shall provide
17 periodic reports to Class Counsel and Defense Counsel.

18 14. Prior to forty-six days following the entry of this Preliminary
19 Approval Order, Class Counsel shall serve and file its application for a Class
20 Counsel Award and litigation costs and expenses as well as any application for a
21 Service Award.

22 15. Five days prior to the Final Approval Hearing, Class Counsel shall
23 serve and file the declaration of the Settlement Administrator containing the
24 information required by the Amended and Restated Settlement Agreement.

25 16. The Court reserves the right to adjourn or continue the date of the
26 Final Approval Hearing without further notice to Class Members, and retains
27 jurisdiction to consider all further applications or motions arising out of or
28 connected with the proposed settlement.

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IT IS SO ORDERED.

Dated: _____, 2020 _____

William D. Cluster
Judge of the Superior Court

APPROVED AS TO FORM AND CONTENT.

Dated: August 25, 2020

BLEAU FOX
A Professional Law Corporation

By: /s/ Samuel T. Rees
SAMUEL T. REES

Attorneys for Plaintiff and the Plaintiff Class

Dated: August 25, 2020

KRING & CHUNG LLP

By: /s/ Allyson K. Thompson
ALLYSON K. THOMPSON

Attorneys for R&M PACIFIC RIM, INC.

EXHIBIT K

1 SAMUEL T. REES (State Bar No. 58099)
THOMAS P. BLEAU (State Bar No. 152945)
2 MARTIN R. FOX (State Bar No. 155783)
BLEAU FOX
3 A Professional Law Corporation
2801 West Empire Avenue
4 Burbank, CA 91504
Telephone: (818) 748-3434
5 Facsimile: (818) 748-3436

6 Attorneys for Plaintiff
and the Plaintiff Class
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**
10

11 RAYMOND STODDARD and SANTIAGO) Case No. 30-2010-00395208-CU-OE-CXC
MEDINA, etc.,)
12) Hon. William Claster
Plaintiffs,) Department CX 102
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **SECOND AMENDED AND RESTATED**
15) **SETTLEMENT AGREEMENT WITH**
R&Ms.) **EXHIBITS**
16)
Date: July 31, 2020
17) Time: 8:30 a.m.
Dept: CX104
18)
Complaint Filed: August 2, 2010
19) Trial Date: None Set

20
21 **SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT**

22 This Second Amended and Restated Settlement Agreement (hereinafter
23 the "Settlement Agreement") is made and entered into by and between R & M
24 PACIFIC RIM, INC., a California corporation, ("R&M"), on the one hand, and
25 SANTIAGO MEDINA ("Medina"), individually and on behalf of Settlement Class
26 Members as hereinafter defined, on the other hand, subject to preliminary and
27 final approval of the Court as hereinafter defined. This Settlement Agreement
28 supersedes and replaces the Settlement Agreement dated December 2019 and

1 [the Amended and Restated Settlement Agreement dated July 21, 2020.](#)

2 **DEFINITIONS**

3 As used herein, the following terms shall have the following meanings:

4 1. **“Administration Costs”** means all fees and costs incurred and
5 charged by the Settlement Administrator in connection with the processing and
6 administration of this Settlement Agreement, including, but not limited to:
7 (i) printing and mailing, emailing and re-mailing (if necessary) Class Notice, tax
8 forms and other necessary documents to Class Members; (ii) attempting to locate
9 Class Members whose Class Notice is returned undeliverable; (iii) computing the
10 amount of and distributing Individual Settlement Payments, Class Counsel
11 Award and Service Award; (iv) establishing and operating a toll free telephone
12 number and website address to receive and respond to Class Members’ updated
13 information and inquiries about the settlement; and (v) establishing a Qualified
14 Settlement Fund, as defined by the Internal Revenue Code, calculating and
15 remitting employer and employee payroll tax obligations and (vi) preparing and
16 submitting filings required by law in connection with Settlement Awards and
17 payments to the Representative Medina on his individual, non-class claims.

18 2. **“Class Action”** means the civil action styled *Raymond Stoddard*
19 *and Santiago Medina, etc. v. Equilon Enterprises, LLC etc. et al.*, Orange County
20 California Superior Court Case No. 30-2010-00395208-CU-OE-CXC.

21 3. **“Class Counsel”** means Bleau Fox, A Professional Law Corporation,
22 including Samuel T. Rees, Of Counsel.

23 4. **“Class Counsel Award”** means (i) the attorneys’ fees for Class
24 Counsel’s litigation and resolution of the Class Action, and all claims resolved by
25 this Settlement, as awarded by the Court, which may not exceed one third (1/3)
26 of the Total Settlement Amount and (ii) all actual expenses and costs incurred to
27 date by Class Counsel in litigation and resolution of the Class Action as
28 supported by declaration including billing records and as awarded by the Court.

1 The Court shall determine the amount of the Class Counsel Award and it shall
2 be paid from the Total Settlement Amount.

3 5. “**Class Information**” means information regarding Settlement
4 Class Members that R&M will in good faith compile from its records and provide
5 to the Settlement Administrator and Class Counsel¹. Class Information shall be
6 provided in a Microsoft Excel spreadsheet and shall include, if possible, for each
7 Settlement Class Member: full name, last known address, social security
8 number, last known email address, last known telephone number, the number of
9 work weeks during the Class Period that the Settlement Class Member was
10 employed as a claimed exempt salaried employee, the gross wages paid to a non-
11 exempt hourly Settlement Class Member for 2006, 2007 and 2008, and the dates
12 of employment as a non-exempt hourly Settlement Class Member whose
13 employment as a non-exempt hourly employee commenced after December 31,
14 2005 and/or ceased before January 1, 2009. The foregoing information shall be
15 derived using R&M’s payroll data. In addition, R&M will provide with the Class
16 information a listing of the actual rate of pay for each Settlement Class Member
17 for the entire Class Period and a pay stub showing each rate of pay for each
18 Settlement Class Member certified by R&M as accurate. Because Settlement
19 Class Members’ private information is included in the Class Information, Class
20 Counsel and the Settlement Administrator shall maintain the Class Information
21 in confidence and shall use and disclose Class Information only for purposes of
22 this Settlement and for no other purpose; access shall be limited to the
23 Settlement Administrator’s and Class Counsel’s personnel with a need to use the
24 Class Information as part of the administration of the Settlement, and
25 transmission shall be through use of a secure, password-protected file.

26
27 _____
28 ¹ Defense Counsel has raised, and continues to raise, R&M’s concerns about protecting the privacy rights of its employees. R&M agrees to release such information to Class Counsel only after entry of an appropriate Court order instructing and authorizing it to do so. This provision, and any provision related to the Class Information, is expressly contingent upon entry of such an order.

1 6. “**Class Notice**” means the notice of class action settlement,
2 including the Information Sheet[Enclosure A], Request for Exclusion Form
3 [Enclosure B], a Dispute Form [Enclosure C] and a copy of R&M’s
4 representations of facts [Enclosure D] to be used to challenge the information
5 contained in the Information Sheet on which the Individual Settlement Payment
6 shall be calculated [Enclosure C], to be provided to Settlement Class Members,
7 without material variation from Exhibit 1. The Class Notice shall be printed
8 using Times New Roman 12 point typeface.

9 7. “**Class Period**” means August 2, 2006 through and including
10 September 1, 2008.

11 8. “**Court**” means Orange County Superior Court.

12 9. “**Defense Counsel**” means Kring & Chung, LLP.

13 10. “**Effective Date**” means seven (7) days after which both of the
14 following events have occurred: (i) the Court’s Final Approval order has been
15 entered and (ii) the Court’s Final Approval order and Judgment have become
16 Final.

17 11. “**Exclusion/Written Objection Deadline**” means the final date by
18 which a Settlement Class Member may either (i) submit a written objection to
19 any aspect of the Settlement, or (ii) request to be excluded from the Settlement.
20 The Exclusion/Written Objection Deadline shall be sixty (60) days after the
21 Notice Date, and shall be specifically identified and set forth in the Class Notice.

22 12. “**Final Approval**” means the Court’s entry of a Final Approval
23 order finally approving this Settlement.

24 13. “**Final Approval Hearing**” means the hearing at or after which the
25 Court will make a final decision as to whether the Settlement is fair, reasonable,
26 and adequate, and therefore, finally approved by the Court.

27 14. “**Individual Settlement Payment**” means the amount payable
28 from the Total Settlement Amount to each Settlement Class Member who does

1 not submit a valid request for exclusion from the Settlement. The Individual
2 Settlement Payment shall be calculated pursuant to Paragraph 79.

3 15. “**Judgment**” means the judgment to be entered in the Class Action
4 on Final Approval of this Settlement.

5 16. “**Legally Authorized Representatives**” means an
6 administrator/administratrix, personal representative, or executor/executrix of a
7 deceased Settlement Class Member’s estate; a guardian, conservator, or next
8 friend of an incapacitated Settlement Class Member; or any other legally
9 appointed person responsible for handling the business affairs of a Settlement
10 Class Member.

11 17. “**Named Plaintiff’s General Released Claims**” means, in
12 addition to Settlement Class Members’ Released Claims, any and all past,
13 present, and future claims and causes of action, whether known or unknown and
14 without limitation as to when those claims or causes of action arose but solely
15 against R&M and against its past, present parents, owners, subsidiaries,
16 predecessors and successors, and each of their respective officers, directors,
17 partners, shareholders, agents, and employees but related solely to actions taken
18 by them while acting in those capacities but excluding (i) any and all claims and
19 causes of against Equilon Enterprises, LLC, its parent and affiliates, including
20 Equistaff, LLC, and Tesoro Refining & Marketing Company LLC and its parents
21 and affiliates and (ii) excluding Medina’s wrongful termination claim and cause
22 of action against R&M as alleged in the Fifth Cause of Action of the Second
23 Amended Complaint filed in the Class Action, which claim is being settled
24 pursuant to a separate settlement agreement between R&M and Medina.

25 18. “**Notice Date**” means the date of the initial mailing of the Class
26 Notice to Settlement Class Members, as set forth in Paragraph 8887.

27 19. “**Opt Out List**” means the Court-approved list of all persons who
28 timely and properly request exclusion from the Settlement Class.

1 20. “**Plan of Allocation**” means the plan for allocating the Total
2 Settlement Amount between and among Settlement Class Members as approved
3 by the Court.

4 21. “**Preliminary Approval Date**” means the date that the Court
5 enters the Preliminary Approval Order and thus: (i) preliminarily approves the
6 Settlement, including the exhibits thereto, and (ii) enters an order providing for
7 notice to the Settlement Class, an opportunity to opt out of the Settlement Class,
8 an opportunity to submit timely and proper objections to the Settlement, and
9 setting a hearing on the fairness of the terms of Settlement, including approval
10 of the Class Counsel Award and Service Award.

11 22. “**Preliminary Approval Order**” means the order that Medina and
12 R&M will seek from the Court, without material variation from Exhibit 2. Entry
13 of the Preliminary Approval Order shall constitute preliminary approval of the
14 Settlement Agreement.

15 23. “**R&M**” means R&M Pacific Rim, Inc.

16 24. “**Released Claims**” means (i) Settlement Class Members’ Released
17 Claims and (ii) Named Plaintiff’s General Released Claims.

18 25. “**Service Award**” means the amount approved by the Court in its
19 discretion to be paid to Medina, in addition to his respective Individual
20 Settlement Payment, in recognition of his efforts in coming forward as named
21 plaintiff and as consideration for a full, general, and comprehensive release of
22 the Named Plaintiff’s General Released Claims. Medina intends to seek a
23 Service Award of Five Thousand Dollars (\$5,000) and R&M shall not object to a
24 Service Award of Five Thousand Dollars (\$5,000) or less. The Service Award
25 shall be paid from the Total Settlement Amount.

26 26. “**Settlement**” means the settlement of the Class Action between and
27 among Medina and R&M, as set forth in this Settlement Agreement.

28

1 27. **“Settlement Administrator”** means Phoenix Settlement
2 Administrators.

3 28. **“Settlement Administrator Expenses”** means the amount to be
4 paid to the Settlement Administrator exclusively from the Total Settlement
5 Amount, including the total costs, expenses, and fees of the Settlement
6 Administrator. The amount is not to exceed \$15,000.

7 29. **“Settlement Class”** means all persons who were employed by R&M
8 and who worked at a Shell branded station operated by R&M and owned by
9 Equilon Enterprises, LLC at any time during the period from August 2, 2006 to
10 September 1, 2008. The Settlement Class consists of the Settlement
11 Misclassification Subclass and the Settlement Break Subclass.

12 30. **“Settlement Class Member”** means any member of the Settlement
13 Class. A Settlement Class Member may be part of the Settlement
14 Misclassification Subclass or the Settlement Break Subclass or both. However, a
15 Settlement Class Member may not be a part the Settlement Break Subclass for
16 any given work week during the Class Period that the Settlement Class Member
17 is a part of the Settlement Misclassification Subclass. Settlement Class Member
18 includes his or her Legally Authorized Representatives.

19 31. **“Settlement Misclassification Subclass”** means all Settlement
20 Class Members during any portion of the Class Period that they were declared
21 by R&M as exempt employees and paid a salary.

22 32. **“Settlement Break Subclass”** means all Settlement Class
23 Members during any portion of the Class Period that they were non-exempt
24 hourly wage employees.

25 33. **“Settlement Class Members’ Released Claims”** means any and
26 all claims alleged in the Second Amended Complaint, or that could have been
27 alleged in the Second Amended Complaint based on the facts alleged therein,
28

1 including claims for non-payment of overtime, missed meal and rest break
2 compensation, interest thereon, attorneys' fees and expenses and costs of suit.

3 34. **"Total Settlement Amount"** means Eight Hundred Forty-Five
4 Thousand Dollars (\$845,000.00) for payment of all claims, which is the
5 maximum amount that R&M is obligated to pay under this Settlement
6 Agreement under any circumstances in order to resolve and settle the Class
7 Action, subject to Court approval. The Total Settlement Amount includes all
8 costs and fees, including, but not limited to, the Class Counsel Award,
9 Settlement Administrator Expenses, escrow costs and expenses, Service Award,
10 and interest but does not include R&M's share of payroll taxes allocable to any
11 portion of the Total Settlement Amount allocated to wages.

12 35. **"Void Date"** means the date by which any checks issued to
13 Settlement Class Members shall become void, *i.e.* on the 181st day after each
14 check's mailing.

15 36. **"Work Week"** means Monday through Sunday.

16 **RECITALS**

17 37. At all relevant times, Medina was and is a resident of Orange
18 County, California. Medina was employed by R&M in approximately October
19 2005 and remained so employed until December 26, 2008.

20 38. At all relevant times, R&M was and is a California corporation with
21 its principal place of business in Orange County, California.

22 39. Defendant Equilon Enterprises, LLC ("Equilon") is a Delaware
23 limited liability company with its principal place of business in Houston, Texas.
24 At all relevant times, Equilon has operated under the fictitious business name of
25 Shell Oil Products US and is qualified to do business and doing business in
26 California and in Orange County. At all relevant times, Equilon was in the
27 business of owning service stations and selling motor fuel to the consuming
28 public.

1 40. Effective on February 1, 2005, Equilon and R&M entered into their
2 first Multi-Site Operator (“MSO”) lease and contract for a cluster of 21 stations
3 all of which were located in Orange County, California. Pursuant to these
4 agreements, R&M agreed to lease the convenience stores and car washes at
5 these stations for its own benefit and agreed to operate all other aspects of those
6 service stations for the benefit of Equilon. These agreements were extended
7 through the Class Period. R&M's sole business during the Class Period was to
8 lease convenience stores and car washes from Equilon and to operate Equilon's
9 service stations.

10 41. Pursuant to those agreements, Equilon required that all stations
11 which R&M leased and operated for Equilon be open 24/7/365 unless closure was
12 required by law. R&M complied with these requirements at all times during the
13 Class Period.

14 42. At all times during his employment, Medina worked at these
15 Equilon owned and R&M operated stations, first as a cashier and later as a
16 manager. Upon being promoted to the position of manager, Medina alleges that
17 R&M declared Medina to be an exempt employee, paid him a salary and did not
18 pay him overtime. Prior to September 1, 2008, R&M reclassified Medina as a
19 non-exempt employee and thereafter paid him an hourly wage. At all times
20 during the Class Period, Medina alleges that he was forbidden by R&M from
21 closing the station at which he worked in order to take an off-duty rest break
22 and that he received no compensation for any missed rest break during the Class
23 Period.

24 43. On May 20, 2005, Debbie Jo Wales commenced an action in the Los
25 Angeles County California Superior Court against Shell Oil Company; Equilon
26 and C6 Resources LLC, among others, as a class and representative action. The
27 action was denominated *Wales v. Shell Oil Company, et al.*, Case No. BC 333 740
28 (the "Wales Action"). Class Counsel represented plaintiffs in the Wales Action;

1 and at all times Samuel T. Rees, "Of Counsel" to Class Counsel, was the lead
2 attorney for plaintiffs in the Wales Action.

3 44. Among other claims in the Wales Action, plaintiffs therein asserted
4 that managers of Equilon-owned and third-party-operated California service
5 stations were misclassified and were improperly denied overtime pay and that
6 all such employees were denied off-duty rest breaks and compensation for
7 missed rest breaks. Plaintiffs therein also alleged that Equilon was the "joint
8 employer" of those employees and liable for their wage claims. Medina and
9 Raymond Stoddard ("Stoddard") were putative class members in the Wales
10 Action.

11 45. On August 2, 2010, Medina and Stoddard commenced the Class
12 Action.

13 46. On October 15, 2010, the Court stayed the Class Action because of
14 the pendency of the Wales Action. This stay remained in effect until August 13,
15 2018.

16 47. While the stay in the Class Action was in effect, Stoddard died and
17 is no longer a party plaintiff in the Class Action.

18 48. While the stay in the Class Action was in effect, substantial
19 discovery was undertaken in the Wales Action. This discovery included the
20 depositions of Medina, Stoddard, and Seung Il Kim as well as document
21 production and other information from R&M.

22 49. Following the lifting of the stay in the Class Action, R&M and
23 Medina decided to participate in a voluntary private mediation of the claims
24 against R&M in the Class Action. After careful research and consideration, the
25 parties selected the Honorable Carl J. West (Ret) of JAMS to be the mediator.
26 Judge West is a well-respected retired Superior Court Judge with extensive
27 experience in trying, arbitrating and mediating wage and hour class action
28 disputes such as those alleged by Medina in the Class Action. Mediation was

1 scheduled for January 3, 2019 and lasted the entire day. While Medina and
2 R&M did not reach a settlement at the mediation hearing, Judge West remained
3 involved in the mediation process; and, as a result, a settlement in principal was
4 reached between those parties on January 15, 2019. The settlement in principal
5 is the result of an informed and detailed evaluation of the total exposure and
6 potential liability, in relation to the costs and risks associated with continued
7 litigation of the Class Action. The settlement in principle is subject to and
8 expressly conditioned upon the Parties entering into this Settlement Agreement
9 and the Court in the Class Action both preliminarily and finally approving the
10 Settlement.

11 50. The settlement in principal reached as a result of the mediation does
12 not resolve all claims in the Class Action. In addition to asserting claims
13 against R&M, Medina has also asserted claims against Equilon claiming that it
14 is the joint employer of employees working at the Equilon-owned service stations
15 including those managed by R&M.

16 51. The Settlement, if finally approved and Judgment is entered, (i) will
17 resolve all claims of the Settlement Class Members, who do not timely request to
18 be excluded from the Settlement, against Equilon but only for claims during the
19 Class Period and (ii) will resolve all claims of the Settlement Class Members,
20 who do not timely request to be excluded from the Settlement, against R&M for
21 all claims alleged in the Second Amended Complaint, or that could have been
22 alleged in the Second Amended Complaint based on the facts alleged therein.

23 52. The Settlement, if finally approved and Judgment is entered, will
24 not resolve (i) claims that arose prior to or after the Class Period, (ii) claims
25 against Equilon, (iii) claims that are not alleged in the Second Amended
26 Complaint and could not have been alleged in the Second Amended Complaint
27 based on the facts alleged therein, (iv) claims that, as a matter of law cannot be
28 released, (v) claims for retaliation, discrimination, or wrongful termination, or

1 (vi) individual claims filed with the appropriate agency for the recovery of
2 workers' compensation benefits.

3 53. Equilon has been granted summary judgment as to all claims
4 asserted against it in the Class Action on the grounds that based upon the
5 undisputed facts it is not the joint employer of any employee working at its
6 California owned and third-party-operated service stations. Medina has
7 appealed this Summary Judgment which appeal is currently pending.

8 54. In addition to the class claims asserted in the Class Action, Medina
9 has also asserted a claim for wrongful termination against R&M. As a result of
10 the mediation, this claim has also been tentatively settled which settlement is
11 conditioned upon the Court entering the Judgment on Final Approval of this
12 Settlement. If approved, Medina will receive Five Thousand Dollars (\$5,000) in
13 settlement of this claim.

14 55. On March 25, 2019, Medina filed his Second Amended Complaint in
15 the Class Action. This is the operative and most recent complaint filed in the
16 Class Action. Among other changes, the Second Amended Complaint removed
17 Stoddard as a named plaintiff.

18 56. R&M has denied and continues to deny each and all of the claims
19 and allegations made in the Class Action, including those in each pleading filed
20 by Medina or Stoddard in the Class Action, and further denies that it has
21 committed any illegal, unlawful, unfair, fraudulent and/or wrongful act,
22 omission, or practice for which it owes any wages, compensation, penalties,
23 restitution, interest, fees, costs or other payments whatsoever, including those
24 alleged in the Class Action. R&M also has asserted a number of affirmative
25 defenses in the Class Action which it believes are meritorious. R&M also denies,
26 and continues to deny, *inter alia*, the allegations that the Settlement Class
27 Members have suffered damage. Without limiting the foregoing, R&M contends
28 that the Settlement Class Members were properly and timely paid all wages

1 owed, including without limitation, all straight time, overtime pay, and double
2 time pay and were provided meal and rest periods as required under California
3 law.

4 57. In reaching the settlement in principal, Medina has recognized the
5 expense and length of proceedings necessary to continue the Class Action
6 against R&M through discovery, trial and any possible appeals. Medina also
7 has taken into account the uncertainty and risk of the outcome of further
8 litigation, and the difficulties and delays inherent in such litigation. Medina
9 also is aware of the burdens of proof necessary to establish class certification,
10 liability, R&M's defenses thereto, and the difficulties in establishing damages,
11 restitution and other requested relief for himself and all Class Members. Based
12 on the foregoing, Medina and Class Counsel have determined that the
13 Settlement Agreement is a fair, adequate and reasonable settlement, and that it
14 is in the best interests of all Settlement Class Members. In that regard, the
15 Parties agree that Judge West, at his sole discretion, may execute a declaration
16 supporting the settlement and the reasonableness of it, and the Court, in its
17 discretion, may contact Judge West *ex parte* to discuss the settlement and
18 whether it is fair and reasonable.

19 58. R&M has concluded that any further defense of the Class Action
20 would be protracted and expensive. Substantial amounts of time, energy and
21 resources of R&M have been devoted and, unless this Settlement is made and
22 approved, will continue to be devoted to the defense of the claims asserted in the
23 Class Action. R&M has also taken into account the uncertainty and risks
24 inherent in litigation, particularly complex litigation such as the Class Action.
25 Based on the foregoing, R&M has concluded that it is desirable and beneficial
26 that the Class Action be fully and finally settled in the manner and upon the
27 terms and conditions set forth in this Settlement Agreement. R&M, therefore,
28 has agreed to settle in the manner and upon the terms set forth in this

1 Settlement Agreement in order to put to rest the claims as set forth in the Class
2 Action. At the same time, R&M continues to deny each of the claims,
3 allegations, and contentions asserted in the Class Action and denies that
4 certification of any class is or was appropriate (other than for purposes of this
5 Settlement only). R&M has repeatedly asserted and continues to assert
6 defenses thereto, and has expressly denied and continues to deny any
7 wrongdoing or legal liability arising out of any of the facts or conduct alleged in
8 the Class Action.

9 **NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN**
10 the undersigned, that the Class Action shall be settled, subject to preliminary
11 and final approval of the Court, upon and pursuant to the following terms and
12 conditions:

13 **REPRESENTATIONS BY R&M.**

14 59. During the course of the mediation, R&M made certain factual
15 representations to Medina to induce Medina to settle the Class Action. R&M
16 now represents to the Settlement Class Members, and to no other person, that
17 the following facts are true and that, solely for the purpose of deciding whether
18 or not to object to the Settlement or request to be excluded from the Settlement,
19 each Settlement Class Member may rely on these facts and verify that they are
20 true as to that Settlement Class Member based on his or her own knowledge.
21 R&M further represents to Medina that the listing of the actual rate of pay for
22 each Settlement Class Member for the entire Class Period and a pay stub
23 showing each rate of pay for each Settlement Class Member is true and correct
24 payroll information. The representations shall expire on the Effective Date and
25 shall not be relied upon for any purpose thereafter. The representations should
26 not be relied upon by any person, at any time, other than for the limited
27 purposes explicitly set forth in this paragraph.
28

1 A. If no Settlement Class Member requests to be excluded from
2 this Settlement, there are 37 employees who would be included in the
3 Settlement Misclassification Subclass, 28 of whom are also included in the
4 Settlement Break Subclass. Of these 37 employees, approximately 12 employees
5 were members of the Settlement Misclassification Subclass for the entire Class
6 Period.

7 B. If no Settlement Class Member requests to be excluded from
8 this Settlement, there are 440 employees who would be included in the
9 Settlement Break Subclass, 28 of whom are also included in the Settlement
10 Misclassification Subclass.

11 C. During the Class Period, each member of the Settlement
12 Break Subclass was compensated at the minimum hourly rate applicable during
13 the time that member worked or at an amount not materially greater than the
14 minimum hourly rates of \$6.75 for 2006, \$7.50 for 2007 and \$8.00 for 2008.

15 D. During the Class Period, each member of the Settlement
16 Misclassification Subclass was compensated by a salary equating to
17 approximately and not materially higher than \$12.70 per hour, calculated by
18 taking their annual salary and dividing it by 2,080 hours.

19 E. Prior to September 1, 2008, R&M reclassified each member of
20 the Settlement Misclassification Subclass as a non-exempt employee. From and
21 after September 1, 2008, R&M paid those employees an hourly wage and
22 overtime when they worked more than 40 hours in a work week or more than 8
23 hours in a workday as shown on their timecards.

24 F. Prior to September 1, 2008, R&M changed its rest break policy
25 to clarify that all employees, including employees formerly claimed to be exempt
26 employees and since reclassified as non-exempt employees, were entitled to and
27 provided with duty-free, paid rest periods at the rate of no less than ten minutes
28 net rest for every four hours worked, or major fraction thereof.

1 G. On or about July 5, 2008 and as a result of a California Labor
2 Commissioner meal break audit, R&M paid approximately 370 employees a total
3 of \$122,721.88 for missed meal break compensation. These payments were
4 believed by R&M to resolve all meal break claims for the Class Period. In June
5 2008, R&M modified its meal break policy to ensure that all non-exempt
6 employees working more than 5 hours in a workday and not working alone were
7 afforded a off-duty meal break, a form to report any missed or non-compliant
8 meal breaks for which payment would be provided and continued to allow non-
9 exempt employees working alone the option to sign an on-duty meal waiver if
10 they wished to do so.

11 H. Pursuant to Equilon's contractual requirement, all Settlement
12 Class Members were fluent in English.

13 60. Medina shall have ten (10) days from the date R&M provides the
14 payroll information with the Class Information to determine whether the
15 compensation representations provided above are materially inaccurate and, if
16 so, terminate this Settlement upon notification to R&M and the Court.

17 Otherwise, Medina has determined that the compensation representations are
18 true as to himself and as to the non-exempt employees working at the stations
19 that Medina managed, that he was reclassified as a non-exempt employee in or
20 about September 2008, that he and non-exempt employees working at the
21 stations that he managed received certain missed meal break compensation in
22 2008 and that R&M changed its rest break and meal break policies in or around
23 September 2008 to allow all employees to either receive off-duty meal and rest
24 breaks or compensation for missed breaks. With these exceptions, neither
25 Medina nor Class Counsel has verified the truth of the foregoing representations
26 but recognize that each Settlement Class Member will be able to determine
27 whether any represented fact is materially untrue as to himself or herself in
28 making a decision as to whether to request to be excluded from the Settlement.

1 **SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT**
2 **FOR PRELIMINARY AND FINAL APPROVAL**

3 61. Upon execution of this Settlement Agreement, Medina shall submit
4 to the Court a motion for preliminary approval of the Settlement. The motion
5 for preliminary approval shall include a proposed plan for sending of the Class
6 Notice to Settlement Class Members within sixty (60) days after the Preliminary
7 Approval Date with the Notice Date being the date of mailing of the Class
8 Notice, and establishing a period of sixty (60) days from the Notice Date within
9 which any Settlement Class Member may (i) request exclusion from the
10 Settlement Class, (ii) object to the proposed Settlement, or (iii) object to Class
11 Counsel's request for the Class Counsel Award and for the Service Award to the
12 Medina (the Exclusion/Written Objection Deadline).

13 62. The Parties stipulate to conditional certification under *Code of Civil*
14 *Procedure* Section 382, for settlement purposes only, of the Settlement
15 Misclassification Subclass and the Settlement Rest Break Subclass.

16 63. The Parties agree that this stipulation, the Settlement, and any oral
17 or written statements made in connection therewith, shall not be admissible in,
18 and may not be used by any person for any purpose whatsoever in any legal
19 proceeding, including but not limited to any arbitrations and/or any civil and/or
20 administrative proceedings, other than a proceeding to enforce the terms of the
21 Agreement, as further set forth in this Agreement, regardless of whether the
22 Settlement is finally approved and/or consummated.

23 64. The Parties stipulate to the form of and agree to submit to the Court
24 for its consideration this Settlement Agreement and the following Exhibits to
25 this Settlement Agreement: Class Notice (Exhibit 1) and [Proposed] Preliminary
26 Approval Order (Exhibit 2).

27 65. Solely for purposes of implementing this Settlement Agreement and
28 effectuating the proposed Settlement, the Parties agree and stipulate that the

1 Court may enter the Preliminary Approval Order, without material variation
2 from Exhibit 2, preliminarily approving the Settlement and this Settlement
3 Agreement. Among other things, the Preliminary Approval Order shall grant
4 leave to preliminarily certify the Settlement Misclassification Subclass and the
5 Settlement Break Subclass for settlement purposes only; approve Medina as
6 class representative, appoint Class Counsel to represent the Settlement Class,
7 and appoint the Settlement Administrator; approve the Class Notice and the
8 Class Notice plan embodied in the Settlement Agreement, and approve them as
9 consistent with *California Rules of Court* Rules 3.766(d) and 3.769(f) and due
10 process; set out the requirements for disputing the information upon which
11 Settlement Class Members' Individual Settlement Payment will be calculated;
12 objecting to the Settlement; excluding Settlement Class Members who timely
13 and properly request to be excluded from the Settlement Class, all as provided in
14 this Settlement Agreement; and provide that certification and all actions
15 associated with certification are undertaken on the condition that the
16 certification and other actions shall be automatically vacated and be of no force
17 or evidentiary effect if this Settlement Agreement is terminated or disapproved,
18 as provided in this Settlement Agreement.

19 66. At the Final Approval Hearing, Medina shall request entry of a
20 Final Approval order and a Judgment, to be agreed upon by the Parties, the
21 entry of which is a material condition of this Settlement and that, among other
22 things:

23 A. Finally approves the Settlement as fair, reasonable, and
24 adequate and directs its consummation pursuant to the terms of the Settlement
25 Agreement;

26 B. Finds that Class Counsel and Medina adequately represented
27 the Settlement Class for the purpose of entering into and implementing the
28 Settlement Agreement;

1 C. Re-confirms the appointment of the Settlement Administrator
2 and finds that the Settlement Administrator has fulfilled its duties under the
3 Settlement to date;

4 D. Finds that the Class Notice: (i) constituted the best practicable
5 notice; (ii) constituted notice that was reasonably calculated, under the
6 circumstances, to apprise Settlement Class Members of the pendency of the Class
7 Action, and their right to exclude themselves from or object to the proposed
8 settlement and to appear at the Final Approval Hearing; (iii) was reasonable and
9 constituted due, adequate, and sufficient notice to all persons entitled to receive
10 notice; and (iv) met all applicable requirements of *California Rules of Court* Rules
11 3.766(d) and 3.769(f), due process, and any other applicable rules or law;

12 E. Approves the Opt-Out List and determines that the Opt-Out
13 List is a complete list of all Settlement Class Members who have timely and
14 properly requested exclusion from the Settlement Class and, accordingly, shall
15 neither share in nor be bound by the Final Approval order and Judgment;

16 F. Directs that the Final Approval order and Judgment of
17 dismissal shall be final and entered forthwith;

18 G. Without affecting the finality of the Final Approval order and
19 Judgment, directs that the Court retains continuing jurisdiction over Medina, the
20 Settlement Class, and R&M as to all matters concerning the administration,
21 consummation, and enforcement of this Settlement Agreement;

22 H. Adjudges that, as of the Final Approval Date, Medina, and all
23 Settlement Class Members who have not been excluded from the Settlement
24 Class as provided in the Opt-Out List approved by the Court, and their Legally
25 Authorized Representatives, heirs, estates, trustees, executors, administrators,
26 principals, beneficiaries, representatives, agents, assigns, and successors, and/or
27 anyone claiming through them or acting or purporting to act for them or on their
28 behalf, regardless of whether they have received actual notice of the proposed

1 Settlement, have conclusively compromised, settled, discharged, and released the
2 Named Plaintiff's General Released Claims (in the case of Medina) and
3 Settlement Class Members' Released Claims (in the case of the Settlement Class
4 Members, including Medina) against R&M and others identified therein and are
5 bound by the provisions of this Settlement Agreement;

6 I. Declares this Agreement and the Final Approval order and
7 Judgment to be binding on, and have *res judicata* and preclusive effect as to all
8 pending and future lawsuits or other proceedings: (i) that encompass the Named
9 Plaintiff's General Released Claims and that are maintained by or on behalf of
10 Medina and/or his Legally Authorized Representatives, heirs, estates, trustees,
11 executors, administrators, principals, beneficiaries, representatives, agents,
12 assigns, and successors, and/or anyone claiming through them or acting or
13 purporting to act for them or on their behalf, and (ii) that encompass the
14 Settlement Class Members' Released Claims and that are maintained by or on
15 behalf of any Settlement Class Member who has not been excluded from the
16 Settlement Class as provided in the Opt-Out List approved by the Court and/or
17 his or her Legally Authorized Representatives, heirs, estates, trustees, executors,
18 administrators, principals, beneficiaries, representatives, agents, assigns, and
19 successors, and/or anyone claiming through them or acting or purporting to act
20 for them or on their behalf, regardless of whether the Settlement Class Member
21 previously initiated or subsequently initiates individual litigation or other
22 proceedings encompassed by the Settlement Class Members' Released Claims,
23 and even if such Settlement Class Member never received actual notice of the
24 Class Action or this proposed Settlement;

25 J. Determines that the Settlement Agreement and the
26 Settlement provided for herein, and any proceedings taken pursuant thereto, are
27 not, and should not in any event be offered, received, or construed as evidence of,
28 a presumption, concession, or an admission by any party of liability or non-

1 liability or of the certifiability or non-certifiability of a litigation class, or of any
2 misrepresentation or omission in any statement or written document approved or
3 made by any Party; provided, however, that reference may be made to this
4 Settlement Agreement and the Settlement provided for herein in such
5 proceedings as may be necessary to effectuate the provisions of this Settlement
6 Agreement, as further set forth in this Settlement Agreement;

7 K. Orders that the preliminary approval of the Settlement,
8 certification of the Settlement Misclassification Subclass and the Settlement
9 Break Subclass and final approval of the proposed Settlement, and all actions
10 associated with them, are undertaken on the condition that they shall be vacated
11 if the Settlement Agreement is terminated or disapproved in whole or in part by
12 the Court, or any appellate court and/or other court of review, in which event the
13 Settlement Agreement and the fact that it was entered into shall not be offered,
14 received, or construed as an admission or as evidence for any purpose, including
15 but not limited to an admission by any Party of liability or non-liability or of any
16 misrepresentation or omission in any statement or written document approved or
17 made by any Party, or of the certifiability of a litigation class, as further provided
18 in this Settlement Agreement;

19 L. Authorizes the Parties, without further approval from the
20 Court, to agree to and adopt such amendments, modifications, and expansions of
21 this Settlement Agreement, including all Exhibits hereto, as (i) shall be
22 consistent in all material respects with the Final Approval order and (ii) do not
23 limit the rights of Settlement Class Members; and

24 M. Contains such other and further provisions consistent with the
25 terms of this Settlement Agreement to which the Parties expressly consent in
26 writing.

27 67. At the Final Approval Hearing and as a part of the final approval of
28 this Settlement, Class Counsel will also request approval of the Plan of

1 Allocation set forth below. Any modification to the Plan of Allocation by the
2 Court shall not (i) affect the enforceability of the Settlement Agreement; (ii)
3 provide any of the Parties with the right to terminate the Settlement
4 Agreement; or (iii) impose any obligation on R&M to increase the consideration
5 paid in connection with the Settlement.

6 68. At the Final Approval Hearing, Class Counsel may also request
7 entry of an Order approving the Class Counsel Award and the Service Award to
8 Medina, which shall be paid exclusively from the Total Settlement Amount and
9 in accordance with the distribution plan described below. In no event shall
10 R&M otherwise be obligated to pay for any attorneys' fees and expenses or
11 Service Award(s). The disposition of Class Counsel's application for a Class
12 Counsel Award, and for the Service Award, is within the sound discretion of the
13 Court and is not a material term of this Settlement Agreement, and it is not a
14 condition of this Settlement Agreement that such application be granted. Any
15 disapproval or modification of such application by the Court shall not (i) affect
16 the enforceability of the Settlement Agreement, (ii) provide any of the Parties
17 with the right to terminate the Settlement Agreement, or (iii) increase the
18 consideration R&M pays in connection with the Settlement. R&M shall have no
19 liability to Class Counsel arising from any claim regarding the division of the
20 Class Counsel Award between and among Class Counsel and any other counsel
21 representing any of the Settlement Class Members.

22 69. In no event shall R&M be obligated to pay Settlement
23 Administration Expenses beyond those provided for in this Settlement
24 Agreement.

25 **SETTLEMENT CONSIDERATION**

26 70. The total consideration for the Settlement from R&M is the Total
27 Settlement Amount (\$845,000). This is an "all in" number that includes, without
28 limitation, all monetary benefits and payments to the Settlement Class, Service

1 Award, Class Counsel Award, and Settlement Administrator Expenses and all
2 claims for penalties, interest, fees, and costs. The total consideration, however,
3 does not include R&M's share of payroll taxes allocable to any portion of the
4 Total Settlement Amount allocated to wages, which amount remains the
5 responsibility of R&M. In no event shall R&M be liable for making any
6 payments under this Settlement, or for providing any relief to Settlement Class
7 Members, before the Effective Date, except as provided herein.

8 71. Medina and all Settlement Class Members who receive a payment of
9 any kind from the Total Settlement Amount (excluding, in the case of Medina,
10 the Service Award) expressly acknowledge that such payments shall be
11 considered to be comprised of thirty-three percent (33%) wages for which an IRS
12 Form W-2 will be issued and sixty-seven percent (67%) non-wages for which an
13 IRS Form 1099 will be issued, if required. Medina and all Settlement Class
14 Members who receive a payment of any kind from the Total Settlement Amount
15 agree to timely pay in full all of the federal, state, and municipal income taxes
16 owed on such payments.

17 72. The terms of this Settlement Agreement relating to the Service
18 Award and Class Counsel Award were not negotiated by the Parties before full
19 agreement was reached as to all other material terms of the proposed
20 Settlement, including, but not limited to, any terms relating to the relief to the
21 Settlement Class. R&M agrees not to oppose a request for the Service Award for
22 Medina of Five Thousand Dollars (\$5,000) or less, which will be left to the
23 discretion of this Court.

24 73. Class Counsel agrees not to seek an award of attorneys' fees from
25 the Court in excess of one third (1/3) of the Total Settlement Amount. R&M
26 agrees not to oppose a request for attorneys' fees up to and including one third
27 (1/3) of the Total Settlement Amount. Class Counsel shall also seek all actual
28 expenses and costs incurred to date by Class Counsel in litigation and resolution

1 of the Class Action. R&M and Settlement Class Members shall have no
2 obligation regarding or liability for allocation or payment of the Class Counsel
3 Award. Class Counsel shall file any request for attorneys' fees, costs and
4 expenses and any request for a Service Award no later than fourteen (14) days
5 before the Exclusion/Written Objection Deadline. Class Counsel's request for
6 attorneys' fees, costs and expenses shall be supported by billing records.

7 74. The Settlement Administrator shall pay the Class Counsel Award by
8 wire transfer to Bleau Fox, a PLC pursuant to wiring instructions from Class
9 Counsel. Class Counsel shall provide the Settlement Administrator notice of
10 receipt of the Class Counsel Award. R&M shall have no liability to Class
11 Counsel or any other counsel for Medina or any Settlement Class Member
12 arising from any claim regarding the division of the Class Counsel Award.

13 **FUNDING AND ALLOCATION OF SETTLEMENT**

14 75. Within fourteen (14) calendar days of the Effective Date, R&M shall
15 provide the Total Settlement Amount (\$845,000) to the Settlement
16 Administrator. The Settlement Administrator shall thereafter distribute the
17 funds in the manner and at the times set forth in this Agreement.

18 76. Within twenty-one (21) days of the Effective Date, the payment of
19 the Class Counsel Award, the Service Award approved by the Court and the
20 Settlement Administrator Expenses (up to \$15,000) as approved by the Court,
21 shall be made by the Settlement Administrator from the Total Settlement
22 Amount. The Settlement Administrator shall use reasonable efforts to disburse
23 Individual Settlement Payments within sixty (60) days after the Effective Date,
24 but in no event before twenty-one (21) days after the Effective Date.

25 77. To receive a payment from the Settlement, a Settlement Class
26 Member must not have submitted a request for exclusion from the Settlement.
27 Settlement Class Members are not eligible to receive any compensation from the
28 Settlement other than their Individual Settlement Payment.

1 78. After deduction from Total Settlement Amount of the Class Counsel
2 Award, the Service Award and the Settlement Administrator Expenses, the
3 remaining amount shall be allocated Seventy-Four percent (74%) to the
4 Settlement Misclassification Subclass and Twenty-Six percent (26%) to the
5 Settlement Break Subclass. Each such allocation shall be further allocated
6 Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties
7 and interest.

8 79. The amount of each Settlement Class Member's Individual
9 Settlement Payment will be distributed from the Total Settlement Amount and
10 calculated by the Settlement Administrator, as follows:

11 A. Payment from the amount allocated to the Settlement
12 Misclassification Subclass shall be prorated among the members of that subclass
13 by taking the number of work weeks or portions thereof that such member was
14 declared an exempt, salaried employee and paid a salary during the Class Period
15 and multiplying. If a member of this subclass is also a member of the
16 Settlement Break Subclass during any work week, then that member shall be
17 deemed to be a member of the Settlement Misclassification Subclass for that
18 entire work week and not a member of the Settlement Rest Break Subclass for
19 any portion of that week, with the products adjusted accordingly. The product of
20 that calculation shall serve as the numerator for proration purposes and the
21 sum of all such products shall serve as the denominator for proration purposes.

22 B. Payment from the amount allocated to the Settlement Break
23 Subclass shall be prorated among the members of that subclass by taking the
24 gross wages paid during the Class Period that such member was declared a non-
25 exempt hourly wage employee and when that member was not also a member of
26 the Settlement Misclassification Subclass. This amount shall serve as the
27 numerator for proration purposes and the sum of all such products shall serve as
28 the denominator for proration purposes. For non-exempt hourly wage employee

1 who commenced in that position after December 31, 2005 and/or who ceased to
2 be in that position before January 1, 2009, the employee's gross wages will be
3 further prorated on a 365/365 daily basis so that the numerator shall only
4 include his gross wages earned during the Class Period.

5 C. If under the Plan of Allocation a Settlement Class Member
6 will be distributed \$10 or more, then he or she will receive the entitled amount.
7 If, however, the Settlement Class Member is due less than \$10, then his or her
8 Individual Settlement Payment will be for \$10.

9 80. Class Counsel will be permitted to review and approve the
10 calculation of settlement funds to be distributed.

11 81. As described below, each Settlement Class Member will have the
12 opportunity, should he or she disagree with the employment information used to
13 calculate that employee's Individual Settlement Payment provided to him or her
14 with his Class Notice, to provide documentation to establish the appropriate
15 information. There will be a presumption that R&M's records are correct,
16 absent evidence produced by a Settlement Class Member to the contrary.

17 82. The Settlement Administrator shall issue the Individual Settlement
18 Payments from the Total Settlement Amount to each Settlement Class Member
19 who does not properly opt out. The portion of the Individual Settlement
20 Payments allocated to penalties and interest shall be reported by the Settlement
21 Administrator to the applicable governmental authorities on IRS Form 1099s.
22 The portion of the Individual Settlement Payments allocated to wages shall be
23 reported by the Settlement Administrator to the applicable government
24 authorities on IRS Form W-2s. The Service Award and Class Counsel Award
25 shall likewise be reported on IRS Form 1099s by the Settlement Administrator.
26 The Settlement Administrator shall be responsible for issuing copies of IRS
27 Form 1099s to Medina and Settlement Class Members.

28 **CLASS NOTICE**

1 83. No more than thirty (30) calendar days after entry of the
2 Preliminary Approval Order, R&M shall provide the Settlement Administrator
3 and Class Counsel with the Class Information.

4 84. The Class Notice shall contain, for each Settlement Class Member,
5 to the extent provided by R&M, his or her full name, last known address,
6 **verified** social security number, any last known email address, any last known
7 telephone number, and information used to calculate each Class Member's
8 Individual Settlement Payment proration amount numerator. The Class Notice
9 shall inform Settlement Class Members of their right to request exclusion from
10 the Settlement, of their right to object to the Settlement, of their right to dispute
11 the information upon which their share of the Settlement will be calculated, of
12 their right to correct or supplement any other personal information provided,
13 and a description of the claims to be released unless they exercise their right to
14 request exclusion from the Settlement.

15 85. As set forth in the Class Notice, Settlement Class Members will be
16 provided thirty-five (35) days after the initial mailing of the Class Notice to
17 dispute the information contained on their Information Sheet upon which their
18 share of the Settlement will be calculated and provide documentation to support
19 this dispute. A Dispute Form will be included with the Class Notice as
20 Enclosure C for this purpose.

21 86. The Settlement Administrator shall review any documentation
22 submitted by a Settlement Class Member and consult with the Parties to
23 determine whether an adjustment is warranted. The Settlement
24 Administrator's determination shall be binding upon the Settlement Class
25 Member and the Parties, and the Settlement Class Members Individual
26 Settlement Payment will be calculated according to the Settlement
27 Administrator's determination. There will be a presumption that R&M's records
28

1 are correct, absent evidence produced by a Settlement Class Member to the
2 contrary.

3 ~~87.—Before Class Notices are mailed, the Settlement Administrator shall~~
4 ~~compile a list of all Settlement Class Members’ social security numbers provided~~
5 ~~by R&M in the Class Information and send those names and social security~~
6 ~~numbers to the Social Security Administration for verification. Upon receipt of a~~
7 ~~report from the Social Security Administration with any Class Member names~~
8 ~~that do not match the social security number provided by R&M, commonly called~~
9 ~~“TIN matching,” the Settlement Administrator shall not include the unverified~~
10 ~~social security number in the Information Sheet, Enclosure A to the Class~~
11 ~~Notice, and then either obtain a substitute IRS Form W-9 from that Settlement~~
12 ~~Class Member or, if a properly completed IRS Form W-9 is not obtained and~~
13 ~~verified, utilize backup withholding on their Individual Settlement Payments.~~

14 ~~88.87.~~ _____ No more than sixty (60) days after entry of the Preliminary
15 Approval Order, provided Defendant timely complied with its obligation in
16 Paragraph 84, the Settlement Administrator shall send a copy of the Class
17 Notice by first class mail and, if provided in the Class Information, electronic
18 mail to each Settlement Class Member.

19 ~~89.88.~~ _____ If any Class Notice sent via first class mail to any Settlement
20 Class Member is returned as undeliverable, the Settlement Administrator shall
21 then make a good-faith attempt to obtain the most-current names and postal
22 mail addresses for those Settlement Class Members, including cross-checking
23 the names and/or postal mail addresses it received from R&M, as well as any
24 other sources, with appropriate databases (e.g., the National Change of Address
25 Database) and performing further reasonable searches (e.g., through
26 Lexis/Nexis) for more-current names and/or postal mail addresses for those
27 Settlement Class Members and resend the Class Notice. All Settlement Class
28 Members’ names and postal mail addresses obtained through these sources shall

1 be protected as confidential and not used for purposes other than the notice and
2 administration of this Settlement. The addresses determined by the Settlement
3 Administrator as the current mailing address shall be presumed to be the best
4 mailing address for each Settlement Class Member.

5 ~~90.89.~~ As set forth in the Class Notice, Settlement Class Members
6 will be asked to update any personal information within sixty (60) days of the
7 Notice Date. Updated personal information may be submitted on the Settlement
8 Administrator's website established for this settlement or by fax to the number
9 provided or by mail.

10 ~~91.90.~~ The Parties agree that the procedures set forth in this Section
11 constitute reasonable and the best practicable notice under the circumstances
12 and an appropriate and sufficient effort to locate current addresses for
13 Settlement Class Members such that no additional efforts to do so shall be
14 required.

15 ~~92.91.~~ The Settlement Administrator will provide Class Notice
16 without material variation from the form attached Exhibit 1. The Class Notice
17 shall comply with California Rules of Court 3.766(d), 3.769(f) and due process.

18 ~~93.92.~~ At least twenty-one (21) days before the Final Approval
19 Hearing, the Settlement Administrator shall prepare and provide to Class
20 Counsel and Defense Counsel (i) a declaration of due diligence and proof of
21 dissemination with regard to the mailing of the Class Notice, (ii) a listing of the
22 names of all Settlement Class Members who have timely requested to be
23 excluded from the Settlement (iii) a listing of the names of all Settlement Class
24 Members who appear to not have received the Class Notice because they were
25 returned undeliverable, (iv) billing records for administrative costs incurred to
26 date and anticipated administrative costs for the completion of its duties and (v)
27 a listing of the amount of the high and low Individual Settlement Payments and
28 the amount of Medina's Individual Settlement Payment (the "Due Diligence

1 Declaration”). Class Counsel shall be responsible for filing the Due Diligence
2 Declaration with the Court.

3 94.93. If any individual whose name does not appear in the Class
4 Information that R&M provides the Settlement Administrator (and who has not
5 previously opted out of the Settlement Class), believes that he or she is a
6 Settlement Class Member, he or she may dispute his or her exclusion from the
7 Settlement Class. If an individual believes he or she is a Settlement Class
8 Member, he or she must notify the Settlement Administrator within a
9 reasonable amount of time after the Notice Date and at least ten (10) days prior
10 to the Final Approval Hearing. The Parties will meet and confer regarding any
11 such individuals in an attempt to reach an agreement as to whether any such
12 individual should be regarded as a Settlement Class Member. If the Parties so
13 agree that any such individual should be regarded as a Settlement Class
14 Member, the Settlement Administrator will mail and, if possible email, a Class
15 Notice to the individual, and treat the individual as a Settlement Class Member
16 for all other purposes. Such an individual will have all of the same rights as any
17 other Settlement Class Member under this Agreement.

18 95.94. R&M understands its legal obligation not to retaliate in any
19 manner against any Settlement Class Member for their participation and/or
20 election to participate in the benefits to be afforded any of them by the
21 Settlement and/or the Class Action.

22
23 **PROCEDURES FOR REQUESTS FOR EXCLUSION**

24 96.95. Settlement Class Members (with the exception of Medina) may
25 opt out of the Settlement. Those who wish to exclude themselves (or “opt out”)
26 from the Settlement Class must submit timely, written requests for exclusion to
27 the Settlement Administrator. To be effective, such a request must include the
28 Settlement Class Member’s name, address, and telephone number; a clear and

1 unequivocal statement that the Settlement Class Member wishes to be excluded
2 from the Settlement Class and the signature of the Settlement Class Member or
3 the Legally Authorized Representative of the Settlement Class Member.
4 Completion, execution and timely submission of the Request for Exclusion Form,
5 Attachment A to the Class Notice, shall be deemed to comply with this
6 Paragraph. The request must be mailed or faxed to the Settlement
7 Administrator at the address provided in the Class Notice and, if mailed, must
8 be postmarked no later than the Exclusion/Written Objection Deadline. Absent
9 actual receipt of such request by the Settlement Administrator prior to the
10 Exclusion/Written Objection Deadline, the date of the postmark shall be the
11 exclusive means used to determine whether a mailed request for exclusion has
12 been timely submitted. Requests for exclusion must be exercised individually by
13 the Settlement Class Member. Attempted collective group, class, or subclass
14 requests for exclusions shall be ineffective and disregarded by the Settlement
15 Administrator.

16 ~~97.96.~~ 97.96. Individual exclusion requests may be submitted by a
17 Settlement Class Member's Legally Authorized Representative.

18 ~~98.97.~~ 98.97. The Settlement Administrator shall promptly log each request
19 for exclusion that it receives and promptly provide copies of the log and all such
20 requests for exclusion to Class Counsel and Defense Counsel.

21 ~~99.98.~~ 99.98. The Settlement Administrator shall prepare a list of all
22 persons who timely and properly requested exclusion from the Settlement Class
23 (the Opt-Out List) and shall, before the Final Approval Hearing, submit a
24 declaration to the Court attesting to the accuracy of the list which declaration
25 may be part of the Due Diligence Declaration.

26 ~~100.99.~~ 100.99. All Settlement Class Members who are not included in the
27 Opt-Out List approved by the Court shall be bound by this Settlement, and their
28 Settlement Class Members' Released Claims shall be dismissed with prejudice

1 and released as provided for herein, even if they never received actual notice of
2 the Class Action or this proposed Settlement.

3 ~~101.100.~~ The Settlement Administrator, in its sole discretion, shall
4 determine whether a request for exclusion was timely and properly submitted.
5 The Settlement Administrator's decision shall be final, binding, and
6 nonappealable absent a contrary order from the Court.

7 ~~102.101.~~ Medina agrees not to request exclusion from the Settlement
8 Class.

9 ~~103.102.~~ Settlement Class Members may object to or opt out of the
10 Settlement, but may not do both. Any Settlement Class Member who submits a
11 timely and proper request for exclusion may not file an objection to the
12 Settlement or receive a Settlement Payment, and shall be deemed to have
13 waived any rights or benefits under the Settlement Agreement. If a Settlement
14 Class Member files both an objection and a valid and timely request for
15 exclusion, the request for exclusion will override the objection, and the objection
16 shall therefore be ignored.

17 ~~104.103.~~ No later than ten (10) business days after the
18 Exclusion/Written Objection Deadline, the Settlement Administrator shall
19 provide to Class Counsel and Defense Counsel the final Opt-Out List together
20 with copies of the opt-out requests.

21 ~~105.104.~~ R&M understands its legal obligation not to retaliate in any
22 manner against any Settlement Class Member for his or her exclusion of himself
23 or herself from the Settlement.

24 ~~106.105.~~ If, after the Exclusion/Written Objection Deadline and before
25 the Final Approval Hearing, Settlement Class Members whose combined
26 "estimated" Individual Settlement Payments equal or exceed ten percent (10%)
27 of the Total Settlement Amount submit timely and valid requests for exclusion
28 from the Settlement, R&M shall have, in its sole and absolute discretion, the

1 option to terminate this Settlement. The “estimated” Individual Settlement
2 Payments shall be determined by assuming that the combined total amount for
3 the Class Counsel Award, Service Award and Administrative Expenses paid to
4 the Settlement Administrator is Three Hundred Sixteen Thousand Six Hundred
5 and Sixty-Seven dollars (\$316,667). R&M shall exercise its option to terminate,
6 if at all, prior to the Final Approval Hearing, provided the Settlement
7 Administrator has provided R&M the Opt-Out List no later than ten (10)
8 business days prior to the Final Approval Hearing and the combined amount of
9 Individual Settlement Payments of those Settlement Class Members requesting
10 to be excluded from the Settlement. If R&M decides to void the Settlement, then
11 the Settlement and conditional class certification shall be considered void, and
12 the Settlement, conditional class certification, and any related negotiations or
13 proceedings shall be of no force and effect, and the Parties shall stand in the
14 same respective positions, without prejudice, as if this Settlement had been
15 neither entered into nor filed with the Court. Should R&M void the Settlement
16 under this paragraph, R&M shall be responsible for all Administration Costs
17 incurred by the Settlement Administrator through the date R&M notifies the
18 Settlement Administrator that it is exercising its option to terminate the
19 Settlement.

20 **PROCEDURES FOR OBJECTIONS**

21 ~~107.106.~~ Any Settlement Class Member that wishes to object to the
22 fairness, reasonableness, or adequacy of this Settlement Agreement or the
23 proposed Settlement, the Plan of Allocation, the Class Counsel Award and/or the
24 Service Award must provide to the Settlement Administrator (who shall forward
25 it to Class Counsel and Defense Counsel), a timely statement of the objection, as
26 set forth below, or appear in person at the Final Approval Hearing to make an
27 objection. Objections may be submitted by one or more Settlement Class
28 Members.

1 ~~108.~~107. To be timely, a written objection must be mailed to the
2 Settlement Administrator, and postmarked no later than the Exclusion/Written
3 Objection Deadline. Absent actual receipt of a written objection prior to the
4 Exclusion/Written Objection Deadline, the date of the postmark on the return-
5 mailing envelope shall be the exclusive means used to determine whether
6 objection has been timely submitted.

7 ~~109.~~108. A written objection must contain at least the following: (i) the
8 objector's full name, address, telephone number, and signature; (ii) a clear
9 reference to the Class Action; (iii) a statement of the specific legal and factual
10 basis for each objection argument; and (iv) a statement whether the objecting
11 person or entity intends to appear at the Final Approval Hearing, either in
12 person or through counsel and, if through counsel, a statement identifying that
13 counsel by name, bar number, address, and telephone number. All objections
14 shall be signed by the objecting Settlement Class Member (or his Legally
15 Authorized Representative), even if the Settlement Class Member is represented
16 by counsel.

17 ~~110.~~109. Any Settlement Class Member who does not file a timely
18 written objection or appear personally or through his or her counsel at the Final
19 Approval Hearing shall waive the right to object and shall be forever barred
20 from making any objection to the proposed Settlement, the Plan of Allocation,
21 the Class Counsel Award and the Service Award. Settlement Class Members
22 who object to the proposed Settlement shall remain Settlement Class Members,
23 and shall be deemed to have voluntarily waived their right to pursue an
24 independent remedy against R&M.

25 ~~111.~~110. To the extent any Settlement Class Member objects to the
26 proposed Settlement, and such objection is overruled in whole or in part, such
27 Settlement Class Member will be forever bound by the Final Approval order and
28 Judgment.

1 ~~112.111.~~ ___ It shall be Class Counsel’s sole responsibility to submit and
2 respond to any objections made with respect to any application for the Class
3 Counsel Award and Service Award.

4 ~~113.112.~~ ___ R&M understands its legal obligation not to retaliate in any
5 manner against any Settlement Class Member for his or her objection to the
6 Settlement.

7 **RELEASES**

8 ~~114.113.~~ ___ The Named Plaintiff’s General Released Claims and the
9 Settlement Class Members’ Released Claims shall be released and dismissed
10 with prejudice and on the merits (without an award of costs to any party other
11 than as provided in this Settlement Agreement) upon entry of the Final
12 Approval order and Judgment.

13 ~~115.114.~~ ___ As of the Final Approval Date, Medina and all Settlement
14 Class Members, who have not been excluded from the Settlement Class,
15 individually and on behalf of their Legally Authorized Representatives, heirs,
16 estates, trustees, executors, administrators, representatives, agents, successors,
17 and assigns, and anyone claiming through them or acting or purporting to act on
18 their behalf, agree to forever release, discharge, hold harmless, and covenant not
19 to sue on the Named Plaintiff’s General Released Claims (in the case of Medina)
20 and on the Settlement Class Members’ Released Claims (in the case of the
21 Settlement Class Members who have not been excluded from the Settlement
22 Class), and by operation of the Final Judgment shall have fully and finally
23 released, relinquished, and discharged all such claims; and they further agree
24 that they shall not now or hereafter initiate, maintain, or assert any Named
25 Plaintiff’s General Released Claims (in the case of Medina) and any Settlement
26 Class Members’ Released Claims (in the case of the Settlement Class Members
27 who have not been excluded from the Settlement Class), in any other court
28 action or before any administrative body, tribunal, arbitration panel, or other

1 adjudicating body. Without in any way limiting the scope of the releases
2 described herein, the releases covers, without limitation, any and all claims for
3 attorneys' fees, costs or disbursements incurred by Class Counsel or any other
4 counsel representing Medina and/or Settlement Class Members, or by Medina
5 and/or Settlement Class Members, or any of them, in connection with or related
6 in any manner to the Class Action, the Settlement of the Class Action, the
7 administration of such Settlement, and/or the Released Claims, except to the
8 extent otherwise specified in the Settlement Agreement.

9 ~~116.115.~~ As of the Final Approval Date, Medina, and all Settlement
10 Class Members, who have not been excluded from the Settlement Class, shall be
11 permanently barred and enjoined from initiating, asserting, or prosecuting in
12 any federal or state court or tribunal any and all Named Plaintiff's General
13 Released Claims (in the case of Medina) and the Settlement Class Members'
14 Released Claims (in the case of the Settlement Class Members who have not
15 been excluded from the Settlement Class).

16 ~~117.116.~~ With respect only to the Named Plaintiff's General Released
17 Claims, Medina, but not the Settlement Class Members, expressly acknowledges
18 that he is familiar with principles of law such as Section 1542 of the California
19 *Civil Code*, which provides:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
21 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
22 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
23 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
24 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
25 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

26 With respect to the Named Plaintiff's General Released Claims, Medina
27 shall be deemed to have expressly, knowingly, and voluntarily waived and
28 relinquished, to the fullest extent permitted by law, the provisions, rights, and

1 benefits he may otherwise have had pursuant to Section 1542 of the California
2 *Civil Code* and all similar federal or state laws, rights, rules, or legal principles
3 of any other jurisdiction that may be applicable herein. In connection with the
4 release, Medina acknowledges that he is aware that he may hereafter discover
5 claims presently unknown and unsuspected or facts in addition to or different
6 from those which he now knows or believes to be true with respect to matters
7 released herein. Nevertheless, Medina acknowledges that a portion of the
8 consideration received herein is for a release with respect to unknown damages
9 and complaints, whether resulting from known injuries and consequences or
10 from unknown injuries or unknown consequences of known or unknown injuries,
11 and states that it is the intention of Medina in agreeing to this release to fully,
12 finally, and forever to settle and release all matters and all claims that exist,
13 hereafter may exist, or might have existed (whether or not previously or
14 currently asserted in any action), constituting Named Plaintiff's General
15 Released Claims.

16 ~~118.117.~~ Medina further acknowledges, agrees and understands that:
17 (i) he has read and understands the terms of this Settlement Agreement; (ii) he
18 has been advised in writing to consult with an attorney other than Class
19 Counsel before executing this Settlement Agreement; and (iii) he has obtained
20 and considered such legal counsel as he deems necessary.

21 ~~119.118.~~ Subject to Court approval, Medina, and all Settlement Class
22 Members to the extent they have not been excluded from the Settlement Class,
23 shall be bound by this Settlement Agreement even if they never received actual
24 notice of the Class Action and/or this Settlement.

25 ADMINISTRATION OF THE SETTLEMENT FUND

26 ~~120.119.~~ The Settlement Administrator or its authorized agents in
27 consultation with the Parties and subject to the supervision, direction, and
28

1 approval of the Court, shall calculate the allocation of and oversee the
2 distribution of the Total Settlement Amount.

3 ~~121.120.~~ The Total Settlement Amount shall be applied, as follows:

4 A. To pay the total costs, expenses, and fees of the Settlement
5 Administrator incurred in connection with providing Class Notice to potential
6 Settlement Class Members, and the management and distribution of the Total
7 Settlement Amount to Settlement Class Members, not to exceed \$15,000.00;

8 B. Subject to the approval and further order(s) of the Court, to
9 pay Medina's Service Award as the Court determines appropriate;

10 C. Subject to the approval and further order(s) of the Court, to
11 pay the Class Counsel Award as ordered by the Court; and

12 D. After the Effective Date and subject to the approval and
13 further order(s) of the Court, to distribute the Individual Settlement Payments
14 from the Total Settlement Amount for the benefit of the Settlement Class as
15 provided above or as otherwise ordered by the Court.

16 ~~122.121.~~ If any Settlement Class Member fails to negotiate his
17 Individual Settlement Payment by the Void Date (*i.e.* checks are not cashed or
18 checks are returned as undeliverable), then after the Void Date, the Settlement
19 Administrator shall void the check and shall pay such unclaimed funds to the
20 State of California for deposit into the California State Controller Unclaimed
21 Property fund, with the identity of the Participating Class Member to whom the
22 funds belong, to be held for that Settlement Class Member in accordance with
23 the California Unclaimed Property Law. The money paid to the California State
24 Controller Unclaimed Property will remain the Settlement Class Member's
25 property. This will allow Settlement Class Members who did not cash their
26 checks to collect their Individual Settlement Amounts at any time in the future.
27 Therefore, there will be no unpaid residue or unclaimed or abandoned
28 Settlement Class Member funds and California *Code of Civil Procedure* section

1 384 shall not apply. The funds will be held by the State until claimed by the
2 employee and those funds never cease to be the Settlement Class Member's
3 property.

4 ~~123.~~122. Settlement Class Members who are not on the Opt-Out List
5 approved by the Court shall be subject to and bound by the provisions of the
6 Settlement Agreement, the releases contained herein, and the Judgment with
7 respect to all Settlement Class Members' Released Claims.

8 ~~124.~~123. Payment from the Total Settlement Amount made pursuant to
9 and in the manner set forth herein shall be deemed conclusive of compliance
10 with this Settlement Agreement as to all Settlement Class Members.

11 ~~125.~~124. No Settlement Class Member shall have any claim against
12 Medina, Class Counsel, or the Settlement Administrator based on distributions
13 made substantially in accordance with this Settlement Agreement and/or orders
14 of the Court. No Settlement Class Member shall have any claim against any
15 released party or its counsel relating to distributions made under this
16 Settlement.

17 **EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
18 **SETTLEMENT AGREEMENT**

19 ~~126.~~125. If the Court does not approve the Settlement as set forth in
20 this Settlement Agreement, or does not enter the Final Approval order and
21 Judgment on the terms described herein, or if the Court enters the Judgment
22 and appellate review is sought, and on such review, the entry of Judgment is
23 vacated, modified in any material way, or reversed, or if the Final Approval
24 order does not otherwise become Final, then this Settlement Agreement shall be
25 cancelled and terminated, unless all Parties, in their sole discretion no later
26 than thirty (30) days from the date such ruling becomes Final, provide written
27 notice to all other Parties hereto of their intent to proceed with the Settlement
28

1 under the terms of the Judgment as it may be modified by the Court or any
2 appellate court.

3 ~~127.126.~~ In the event that: (i) the Settlement is not approved, is
4 overturned, or is modified by the Court or on appeal, (ii) the Judgment does not
5 become Final, or (iii) this Settlement Agreement is terminated, cancelled, or fails
6 to become effective for any reason, then: (a) the Parties stipulate and agree the
7 Settlement, this Settlement Agreement, the Class Information, the Opt-Out
8 List, and all documents and oral or written communications exchanged and/or
9 filed in connection with the Settlement shall be treated as privileged mediation
10 communications under California *Evidence Code* Sections 1115 *et seq.*; (b) the
11 Settlement shall be without force and effect upon the rights of the Parties
12 hereto, and none of its terms shall be effective or enforceable, with the exception
13 of this paragraph, which shall remain effective and enforceable; (c) the Parties
14 shall be deemed to have reverted *nunc pro tunc* to their respective status
15 immediately prior to execution of this Settlement Agreement; (d) all Orders
16 entered in connection with the Settlement, including the conditional certification
17 of the Settlement Class, the Settlement Misclassification Subclass, and/or the
18 Settlement Rest Break Subclass, shall be vacated without prejudice to any
19 Party's position on the issue of class certification, the issue of amending the
20 complaint, or any other issue, in the Class Action or any other action, and the
21 Parties shall be restored to their litigation positions existing on the date of
22 execution of this Settlement Agreement; and (e) the Parties shall proceed in all
23 respects as if the Settlement Agreement and related documentation and orders
24 had not been executed, and without prejudice in any way from the negotiation or
25 fact of the Settlement or the terms of the Settlement Agreement. The
26 Settlement Agreement, the Settlement, all communications, documents, orders,
27 and evidence relating to the Settlement, the fact of their existence, any of their
28 terms, any press release or other statement or report by the Parties or by others

1 concerning the Settlement Agreement, the Settlement, their existence, or their
2 terms, any negotiations, proceedings, acts performed, or documents executed
3 pursuant to or in furtherance of the Settlement Agreement or the Settlement
4 shall not be admissible in any proceeding, and shall not be offered, received, or
5 construed as evidence of a presumption, concession, or an admission of liability,
6 of unenforceability of any arbitration agreement, of the certifiability of a
7 litigation class, or of any misrepresentation or omission in any statement or
8 written document approved or made, or otherwise used by any person for any
9 purpose whatsoever, in any trial of the Class Action or any other action or
10 proceedings. Medina, Class Counsel and the Settlement Administrator shall
11 return to Defense Counsel all copies of Class Information and Opt-Out Lists and
12 shall not use or disclose the Class Information or Opt-Out List for any purpose
13 or in any proceeding.

14 ~~128.127.~~ R&M does not agree or consent to certification of the
15 Settlement Class, Settlement Misclassification Subclass, and/or Settlement Rest
16 Break Subclass for any purpose other than to effectuate the Settlement of the
17 Class Action. If this Settlement Agreement is terminated pursuant to its terms,
18 or the Effective Date for any reason does not occur, all Orders certifying the
19 Settlement Class, Settlement Misclassification Subclass, and/or Settlement Rest
20 Break Subclass and all preliminary and/or final findings regarding the
21 Settlement Class certification order, shall be automatically vacated upon notice
22 to the Court, the Class Action shall proceed as though the Settlement Class and,
23 if applicable, the Settlement Misclassification Subclass and Settlement Rest
24 Break Subclass, had never been certified pursuant to this Settlement Agreement
25 and such findings had never been made, and the Class Action shall revert *nunc*
26 *pro tunc* to the procedural *status quo* as of the date and time immediately before
27 the execution of the Settlement Agreement, in accordance with this Settlement
28 Agreement.

1 **ADDITIONAL PROVISIONS**

2 ~~129.~~128. All of the Exhibits to this Settlement Agreement are an
3 integral part of the Settlement and are incorporated by reference as though fully
4 set forth herein.

5 ~~130.~~129. Medina and Class Counsel acknowledge that an adequate
6 factual record has been established that supports the Settlement and hereby
7 waive any right to conduct further discovery to assess or confirm the Settlement.

8 ~~131.~~130. Unless otherwise noted, all references to “days” in this
9 Settlement Agreement shall be to calendar days. In the event any date or
10 deadline set forth in this Settlement Agreement falls on a weekend or federal
11 legal holiday, such date or deadline shall be on the first business day thereafter.

12 ~~132.~~131. This Settlement Agreement constitutes the full and complete
13 agreement of the Parties hereto, and supersedes all prior negotiations and
14 agreements, whether oral, written or otherwise, and may be amended or
15 modified only by a written instrument signed by counsel for all Parties or the
16 Parties’ successors-in-interest.

17 ~~133.~~132. The Parties reserve the right, subject to the Court’s approval,
18 to make any reasonable extensions of time that might be necessary to carry out
19 any of the provisions of this Settlement Agreement. Such extensions must be in
20 writing to be enforceable.

21 ~~134.~~133. The Settlement Agreement, the Settlement, the fact of the
22 Settlement’s existence, any of terms of the Settlement Agreement, any press
23 release or other statement or report by the Parties or by others concerning the
24 Settlement Agreement or the Settlement, and any negotiations, proceedings,
25 acts performed, or documents executed pursuant to or in furtherance of the
26 Settlement Agreement or the Settlement: (i) may not be deemed to be, may not
27 be used as, and do not constitute an admission or evidence of the validity of any
28 released claims or of any wrongdoing or liability of R&M; (ii) may not be deemed

1 to be, may not be used as, and do not constitute an admission or evidence of any
2 fault, wrongdoing, or omission by R&M in any trial, civil, arbitration, criminal,
3 or administrative proceeding of the Class Action or any other action or
4 proceedings in any court, administrative agency, arbitration or other tribunal;
5 and (iii) may not be used as evidence in any class certification proceeding.

6 ~~135.~~134. The persons and entities released by this Settlement shall
7 have the right to file the Settlement Agreement, the Final Approval order and
8 Judgment, and any other documents or evidence relating to the Settlement in
9 any action that may be brought against them in order to support a defense or
10 counterclaim based on principles of *res judicata*, collateral estoppel, release,
11 good-faith settlement, judgment bar, reduction, or any other theory of claim
12 preclusion or issue preclusion or similar defense or counterclaim.

13 ~~136.~~135. The Parties to the Settlement Agreement agree that the Total
14 Settlement Amount and the other terms of the Settlement were negotiated at
15 arm's length and in good faith by the Parties, resulted from an arm's-length
16 mediation session facilitated by Hon. Carl J. West (Ret.), and reflect a
17 settlement that was reached voluntarily based upon adequate information and
18 sufficient discovery and after consultation with experienced legal counsel.

19 ~~137.~~136. Medina and Class Counsel have concluded that the Settlement
20 set forth herein constitutes a fair, reasonable, and adequate resolution of the
21 claims that Medina asserted against R&M, including the claims on behalf of the
22 Settlement Class, and that it promotes the best interests of the Settlement
23 Class.

24 ~~138.~~137. To the extent permitted by law, all agreements made and
25 orders entered during the course of the Class Action relating to the
26 confidentiality of information shall survive this Settlement Agreement.
27
28

1 ~~139.~~138. The Parties agree that Medina and Class Counsel are not
2 required to return any documents produced by R&M until the final resolution of
3 the Class Action.

4 ~~140.~~139. The waiver by one Party of any breach of this Settlement
5 Agreement by any other Party shall not be deemed a waiver of any other prior or
6 subsequent breach of this Settlement Agreement.

7 ~~141.~~140. This Settlement Agreement, including its Exhibits, constitutes
8 the entire agreement among the Parties, and no representations, warranties, or
9 inducements have been made to any Party concerning this Settlement
10 Agreement or its Exhibits, other than the representations, warranties, and
11 covenants contained and memorialized in this Settlement Agreement and its
12 Exhibits.

13 ~~142.~~141. This Settlement Agreement may be executed in one or more
14 counterparts. All executed counterparts and each of them shall be deemed to be
15 one and the same instrument provided that counsel for the Parties to this
16 Settlement Agreement shall exchange among themselves original signed
17 counterparts. Faxed or emailed signatures shall be deemed original signatures.

18 ~~143.~~142. The Parties hereto and their respective counsel agree that
19 they will use their best efforts to obtain all necessary approvals of the Court
20 required by this Settlement Agreement.

21 ~~144.~~143. This Settlement Agreement shall be binding upon and shall
22 inure to the benefit of the successors and assigns of the Parties hereto, including
23 any and all released parties and any corporation, partnership, or other entity
24 into or with which any released party hereto may merge, consolidate, or
25 reorganize.

26 ~~145.~~144. This Settlement Agreement shall not be construed more
27 strictly against one Party than another merely because of the fact that it, or any
28 respective provision of it, may have been prepared by counsel for one of the

1 Parties, it being recognized that because of the arm's-length negotiations
2 resulting in the Settlement Agreement, all Parties hereto have contributed
3 substantially and materially to the preparation of the Settlement Agreement.

4 ~~146.145.~~ Except where this Settlement Agreement itself provides
5 otherwise, all terms, conditions, and Exhibits are material and necessary to this
6 Settlement Agreement and have been relied upon by the Parties in entering into
7 this Settlement Agreement.

8 ~~147.146.~~ This Settlement Agreement shall be governed by the internal
9 law, other than choice of law, of the State of California. Any action based on this
10 Settlement Agreement, or to enforce any of its terms, shall be venued in Orange
11 County Superior Court, which shall retain jurisdiction over all such disputes.
12 All Parties to this Settlement Agreement shall be subject to the jurisdiction of
13 Orange County Superior Court for all purposes related to this Settlement
14 Agreement.

15 ~~148.147.~~ The Court shall retain continuing and exclusive jurisdiction
16 over the Parties to this Settlement Agreement for the purpose of the
17 administration and enforcement of this Settlement Agreement.

18 ~~149.148.~~ The headings used in this Settlement Agreement are for the
19 convenience of the reader only, and shall not affect the meaning or
20 interpretation of this Settlement Agreement.

21 ~~150.149.~~ In construing this Settlement Agreement, the use of the
22 singular includes the plural (and vice-versa) and the use of the masculine
23 includes the feminine (and vice-versa).

24 ~~151.150.~~ Each Party to this Settlement Agreement warrants that he or
25 it is acting upon his or its independent judgment and upon the advice of his or
26 its counsel, and not in reliance upon any warranty or representation, express or
27 implied, of any nature of any kind by any other Party, other than the warranties
28 and representations expressly made in this Settlement Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on
2 the day and year set forth below.

3 DATED: ~~July 21~~August 24, 2020

DATED: ~~July 21~~August 24, 2020

4 R&M PACIFIC RIM, INC.

5

6

By: _____

SANTIAGO MEDINA

7

8 APPROVED AS TO FORM AND CONTENT.

9

Dated: ~~July 21~~August 24, 2020

BLEAU FOX
A Professional Law Corporation

10

11

By: _____

SAMUEL T. REES

12

13

Attorneys for Plaintiff and the Plaintiff Class

14

Dated: ~~July 21~~August 24, 2020

KRING & CHUNG LLP

15

16

By: _____

ALLYSON K. THOMPSON

17

Attorneys for R&M PACIFIC RIM, INC.

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EXHIBIT L

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FINAL APPROVAL HEARING

Stoddard and Medina, etc. v. Equilon Enterprises, LLC, et al.
 Orange County California Superior Court Case No. 30-2010-00395208-CU-OE-CXC

THE COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION FROM A LAWYER.

Pursuant to the Order of the Superior Court for the State of California for the County of Orange, you are hereby notified that a proposed settlement has been reached in the above-referenced case brought on behalf of the following individuals:

All persons who were employed by R&M Pacific Rim, Inc. and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008.

You have been identified as a member of the above Settlement Class. This notice provides you with a brief description of the Class Action, the terms of the Settlement, and a description of your rights in connection with the Settlement. **Please read this entire notice carefully.** It may affect your legal rights, including your right to money you may be owed.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Participate in the Settlement	If the Court grants final approval of the Settlement, you do not need to do anything if you wish to receive your Individual Settlement Payment. However, it is highly recommended that you review the information on the attached Information Sheet [Enclosure A] and make any necessary corrections, including updating your contact information. Corrections must be submitted to the Settlement Administrator either electronically or by fax or mail as explained in Paragraph 9 below.
Exclude Yourself from the Settlement (Opt-Out)	If you do not want to participate in the Settlement and be bound by the releases therein, you must timely submit a signed written Request for Exclusion to the Settlement Administrator no later than [Insert Exclusion Deadline Date] or else you will be bound by the Settlement. Your Request for Exclusion must be submitted by mail or fax. In the case of mail Requests for Exclusion, the postmark shall determine whether that request was timely. Please refer to Paragraph 10 below for instructions on excluding yourself.
Object to the Settlement	If you wish to object to the Settlement, you must mail an appropriate written objection to the Settlement Administrator postmarked no later than [Insert Exclusion Deadline Date] and/or object in person or through an attorney at the Final Approval Hearing on [Insert Final Approval Hearing Date]. Please refer to Paragraph 11 below for instructions on objecting.

Which option(s) you choose is entirely up to you.

THESE RIGHTS AND OPTIONS, INCLUDING THE DEADLINES BY WHICH TO EXERCISE THEM, ARE EXPLAINED IN THIS NOTICE.

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GENERAL INFORMATION REGARDING THIS NOTICE

WHAT IS THIS NOTICE ABOUT?

This Notice pertains to the settlement (“Class Action Settlement” or “Settlement”) of claims against R&M Pacific Rim, Inc. (“R&M”) in a class action lawsuit entitled *Stoddard and Medina, etc. v. Equilon Enterprises, LLC; R&M Pacific Rim, Inc. et. al.*, Orange County Superior Court Case No. 30-2010-00395208-CU-OE-CXC (the “Class Action”).

This Class Action Settlement applies to all persons who were employed by R&M and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008 (the "Settlement Class"). The Settlement Class is divided into two subclasses: (1) the Settlement Misclassification Subclass and (2) the Settlement Break Subclass. The Settlement Misclassification Subclass consists of all employees during this period who were declared by R&M as exempt employees and paid a salary. The Settlement Break Subclass consists of all employees during this period who were paid an hourly wage. You may be part of both subclasses.

The Orange County Superior Court (the “Court”) has preliminarily approved the Settlement and has directed the parties to notify the Settlement Class Members of the Settlement. If the proposed Class Action Settlement is finally approved by the Court, your legal rights may be affected. This Notice of Proposed Class Action Settlement summarizes the Class Action and the settlement, and what you need to do (i) if you want to be excluded or “opt-out” of the Settlement Class, (ii) if you want to object to the settlement, (iii) if you want to dispute the information on which your Individual Settlement Payment will be calculated and/or (iv) if you want to correct or supplement information contained in the accompanying Information Sheet [Enclosure A].

This Notice summarizes, but does not fully describe, the Class Action. You may inspect the court files at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701 from 8:30 a.m. to 4:30 p.m. Monday through Friday, holidays excepted. You may also review papers filed in the Class Action at the following web address, by accepting terms, inputting under the Case Tab the following case number (30-2010-00395208) and indicating 2010 as the year filed:

<https://ocapps.occourts.org/civilwebShoppingNS/Login.do?sessionId=3A1FC4852C74CBFCD6B17016C5C25AC5>. The Register of Actions lists all papers which have been filed, most of which you can purchase on-line for a fee. You may also visit [\[settlement website\]](#) for more information, to review the Settlement Agreement, or to review certain Court filings relating to the Settlement.

PLEASE DO NOT CONTACT THE COURT OR THE COURT CLERK REGARDING THE LAWSUIT.

WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?

For a complete understanding of the claims asserted on your behalf in the Class Action, please review the Second Amended Complaint filed in the Class Action on March 25, 2019. This section is merely a summary of certain important allegations thereof. Also and while the Class Action was pending, Raymond Stoddard, one of the original named plaintiffs, died; and the Class Action is now being prosecuted only by Santiago Medina ("Medina").

The Class Action generally involves claims under California's wage and hour laws. Insofar as claims are asserted against R&M in the Class Action, Medina primarily alleges that from and after August 2, 2006, R&M misclassified certain of its employees as "exempt" employees and improperly failed to pay them overtime wages and premium pay for missed off-duty meal and rest breaks. Medina further alleges that R&M also improperly failed to pay its hourly employees premium pay for their missed meal and rest breaks. These claims are asserted pursuant to the California *Labor Code*, California Unfair Competition Law and the applicable California Industrial Welfare Commission wage order. Other bases for relief also are asserted. These claims against R&M only relate to employees working at R&M operated stations.

Insofar as claims also are asserted against Equilon Enterprises, LLC, Medina primarily alleges that from and after May 2001, Equilon was a joint employer with its third party operators, including R&M, misclassified certain of its employees as "exempt" employees and improperly failed to pay them overtime wages and premium pay for missed off-duty meal and rest breaks and also improperly failed to pay its hourly employees premium pay for their missed meal and rest breaks. These claims also are asserted pursuant to the California *Labor Code*, California Unfair Competition Law and the applicable California Industrial Welfare Commission wage order. Other bases for relief are also asserted. These claims relate to all Equilon owned stations in California and operated by third parties, including R&M. As such, these claims are broader than the claims asserted against R&M but include all of those claims also. Summary Judgment in favor of Equilon on these claims was recently granted by the Court which Summary Judgment is on appeal.

On January 15, 2019, after good-faith negotiations with an experienced, neutral mediator, in which both Medina and R&M recognized the substantial risk of an uncertain outcome, Medina and R&M agreed to settle their dispute pursuant to the terms and conditions of a negotiated Settlement. The parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties of continued litigation. The parties and their counsel have determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Class.

R&M denies that it has done anything wrong or that it violated the law in any way. R&M further denies that it owes the Settlement Class any wages, restitution, penalties, or other damages and contends that Settlement Class members were properly compensated and properly provided meal and rest periods. Accordingly, the Settlement represents a compromise and settlement of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by R&M that Medina's claims have merit or that R&M has any liability to Medina or the putative class on the claims alleged in the Class Action. **The Court has not ruled on the merits of Medina's claims against R&M.**

SUMMARY OF THE SETTLEMENT

WHO IS INCLUDED IN THE SETTLEMENT?

You have received this notice and are included in the Settlement because R&M's records show that you fall within the following definition:

All persons who were employed by R&M and who worked at a Shell branded station operated by R&M and owned by Equilon Enterprises, LLC at any time during the period from August 2, 2006 to September 1, 2008.

HOW TO PARTICIPATE IN THE SETTLEMENT

If you are included in the above class definition, you are automatically considered a member of the Settlement Class. However, you have the right to request exclusion from the Settlement, the right to object to the Settlement, the right to dispute the information upon which your Individual Settlement Payment will be calculated, and the right to correct or supplement any other personal information provided.

IF YOU WISH TO BE EXCLUDED FROM THIS SETTLEMENT AND NOT BE BOUND BY IT, YOU WILL NEED TO TIMELY SUBMIT A WRITTEN REQUEST FOR EXCLUSION CONTAINING THE NECESSARY INFORMATION BY [INSERT EXCLUSION DEADLINE DATE]. YOU MAY DO SO BY TIMELY COMPLETING, SIGNING AND SUBMITTING THE FORM INCLUDED WITH THIS NOTICE [ENCLOSURE B] BY MAIL OR BY FAX TO THE SETTLEMENT ADMINISTRATOR.

(Settlement Exclusion Information is Provided in Paragraph 10 Below.)

IF YOU WISH TO OBJECT TO ANY ASPECT OF THIS SETTLEMENT, YOU WILL NEED TO TIMELY SUBMIT A WRITTEN STATEMENT OF OBJECTION CONTAINING THE NECESSARY INFORMATION BY [INSERT EXCLUSION DEADLINE DATE] AND/OR APPEAR AT THE FINAL APPROVAL HEARING IN PERSON OR THROUGH AN ATTORNEY AND MAKE YOUR OBJECTION AT THAT TIME.

(Objection Information is Provided in Paragraph 11 Below.)

IF YOU WISH TO DISPUTE ANY OF THE ACCOMPANYING INFORMATION ON WHICH YOUR INDIVIDUAL SETTLEMENT PAYMENT WILL BE CALCULATED, YOU WILL NEED TO STATE THE BASIS FOR YOUR DISPUTE AND PROVIDE SUPPORTING DOCUMENTATION BY [INSERT DATE]. YOU MUST DO SO BY TIMELY COMPLETING, SIGNING AND SUBMITTING WITH APPROPRIATE DOCUMENTATION THE DISPUTE FORM INCLUDED WITH THIS NOTICE [ENCLOSURE C] BY MAIL OR BY FAX TO THE SETTLEMENT ADMINISTRATOR.

(Dispute Information is provided in Paragraph 2.d. Below.)

UNLESS YOU TIMELY SUBMIT A WRITTEN REQUEST TO BE EXCLUDED FROM THIS SETTLEMENT, YOU WILL BE BOUND BY ITS TERMS AND THE RELEASES DESCRIBED BELOW.

Your Individual Settlement Payment will be based on the employment records of R&M which are presumed to be correct and which, as to your information, is set forth in the attached Information Sheet [Enclosure A].

Your interests as a member of the Settlement Class will be represented by Class Counsel. If you choose, you may enter an appearance individually or through your own counsel at your own expense. You have

the right to consult and/or retain an attorney of your own choice, at your own expense, to advise you regarding the Settlement and your rights in connection with the Settlement. **If you have questions about this Settlement, you may contact Class Counsel by email at STReesEsq@earthlink.net or at (818) 748-3434, although email is preferable.**

WHAT ARE THE IMPORTANT TERMS OF THE SETTLEMENT?

1. The Total Settlement Amount is \$845,000, inclusive of all damages, fees, costs, penalties, attorneys' fees and expenses and administration of the Settlement.
 - a. Class Counsel intends to seek by motion an award of attorneys' fees of \$281,667, plus costs and expenses, subject to Court approval. Class Counsel has estimated that its expenses will not exceed \$15,000. The motion will be available on [insert settlement website] upon filing and is subject to Court review and approval. You have the right to object to this award to Class Counsel. The amount approved by the Court will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - b. In addition, Medina intends to seek by motion a Service Award of \$5,000 for serving as the named plaintiff and Class Representative. You have the right to object to this Service Award which is also subject to review and approval by the Court. The amount approved by the Court will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - c. The Settlement Administrator will be paid a fee and costs for administrating this Settlement. The total amount of those fees and costs will not exceed \$15,000. The fees and costs will be deducted from the Total Settlement Amount before Individual Settlement Payments are calculated.
 - d. The remaining amount after these deductions (the "Remaining Settlement Amount") shall be split between the two subclasses per the formula summarized in Paragraph 2 below.
2. **Payment to Class Members.** The Remaining Settlement Amount will be distributed to the Settlement Class Members, as follows:
 - a. **Misclassification Subclass:** Seventy-four percent (74%) of the Remaining Settlement Amount shall be allocated to the Settlement Misclassification Subclass. This amount shall be prorated among the members of the Settlement Misclassification Subclass based upon the total number of Work Weeks (Monday through Sunday) or portions thereof each such member worked during the Class Period as an exempt employee divided by the total number of weeks and portions thereof worked by all members of this subclass. An employee whose classification was changed during a Work Week shall be deemed an exempt employee for the entire Work Week during the Class Period and not an hourly employee for that week. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.

b. **Break Subclass:** Twenty-Six percent (26%) of the Remaining Settlement Amount shall be allocated to the Settlement Break Subclass. This amount shall be prorated among the members of the Break Subclass based upon each employee's gross wages paid during the Class Period divided by the gross wages paid during the Class Period to all members of this subclass. An employee whose classification was changed from exempt to hourly during a Work Week shall not be deemed an hourly employee for the Work Week during the Class Period he or she was also an exempt employee. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.

c. If a Settlement Class Member will be distributed \$10 or more, then he or she will receive the entitled amount. If, however, the Settlement Class Member is due less than \$10, then his or her Individual Settlement Payment will be for \$10, which may have a small effect on the payments to other members of that subclass.

d. **Settlement Class Members will be provided thirty-five (35) days after the initial mailing of the Class Notice to dispute the information upon which their share of the Settlement will be calculated but they must provide documentation to support this dispute.** You may do so by timely completing, signing and submitting with appropriate documentation the Dispute Form included with this notice [Enclosure C] by mail or by fax to the Settlement Administrator. The Settlement Administrator will resolve all such disputes and its decision will be final. R&M's employment records on which the accompanying Information Sheet is based are presumed correct.

e. Settlement Class Members who receive a payment of any kind from the Total Settlement Amount expressly acknowledge that such payments shall be considered to be comprised of thirty-three percent (33%) wages for which an IRS Form W-2 will be issued and sixty-seven percent (67%) non-wages for which an IRS Form 1099 will be issued. All Settlement Class Members who receive a payment of any kind from the Total Settlement Amount agree to timely pay in full all of the federal, state, and municipal income taxes owed on such payments.

f. **Unclaimed funds:** Individual Settlement Payment checks which are not cashed within 180 days of issuance will be deemed void. The funds represented by voided checks will then be paid to the State of California for deposit into the Unclaimed Property Fund for the benefit of the Settlement Class Member who did not timely cash his Individual Settlement Payment check.

3. This Settlement was made based upon certain representations of fact made by R&M and contained in the Settlement Agreement. These factual representations are set forth in Enclosure D to this Notice. **You should review these representations as they may affect your decisions regarding this settlement.**

Of primary importance are the representations that prior to September 1, 2008, (i) R&M reclassified all exempt employees as hourly employees and thereafter paid overtime to those employees, (ii) changed its rest break policies to allow all employees to take 10 minute off-duty rest breaks every 4 hours worked, or major fraction thereof, and (iii) changed its meal break

policies to allow all employees who worked more than 5 hours in a workday to take a 30 minute off-duty meal break and were provided a form to report any missed or non-compliant meal breaks for which payment would be provided, and (iv) paid missed meal break compensation to 370 employees in settlement as a result of a California Labor Commissioner meal break audit.

4. You will be bound by this Settlement and the releases contained therein, if it is given final approval by the Court, unless you timely submit a valid written Request for Exclusion to the Settlement Administrator by the deadline of **[Insert Exclusion Deadline Date]**. You may do so by timely completing, signing and submitting the form included with this notice [Enclosure B] by mail or by fax to the Settlement Administrator. If you do submit a valid Request for Exclusion by the deadline in accordance with the instructions for submitting a Request for Exclusion, you will be excluded from the Settlement and will not receive any Individual Settlement Payment, but you will retain the rights you may have, if any, to pursue your claims against Defendants and will not be bound by the releases contained in the Settlement Agreement.
5. If the Court does not grant final approval of the Settlement, or does not enter the Final Approval Order or if the Court's Final Approval Order is reversed in whole or in part on appeal, the parties have no obligations under the Settlement and Settlement Class Members will **not** receive any payments thereunder.
6. The Court has approved Phoenix Settlement Administrators as Settlement Administrator to administer the Settlement.
7. The Settlement, if given final approval by the Court, includes a very broad release to R&M and its affiliates. This release is, as follows:

Any and all claims alleged in the Second Amended Complaint, or that could have been alleged in the Second Amended Complaint based on the facts alleged therein, including claims for non-payment of overtime, missed meal and rest break compensation, interest thereon, attorneys' fees and expenses and costs of suit.

This release of fees and expenses includes, but is not limited to, those incurred by Class Counsel or any other counsel representing Medina or any Settlement Class Members, other than those expressly awarded by the Court as authorized by this Agreement.

8. Medina, as Class Representative, and Class Counsel, support the Settlement. Their reasons include the risk of being unable to pursue this case as a class action on behalf of all Class Members, the risk of a trial on the merits, the inherent delays and uncertainties associated with litigation, and the possibility that the Class is not entitled to any recovery from Defendants. Based on their experience litigating similar cases, Class Counsel believes that further proceedings in this case would be uncertain and, upon careful consideration of all facts and circumstances of this case, as well as the potential damages that could be recovered, Class Counsel believes that the Settlement is fair, reasonable, and adequate.

WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

9. **Participate in the Settlement.** You have the right to participate in the Settlement; and, if the Settlement is finally approved by the Court, you have the right to your Individual Settlement

Payment. You do not have to do anything to exercise this right. However, if you decide to participate in the Settlement, you should review the attached Information Sheet [Enclosure A]. ~~If there is no social security number on your Information Sheet, it is because the Settlement Administrator has not been able to verify that number with the Social Security Administration. If this applies to you, you will need to submit a Form W-9 to the Settlement Administrator which can be verified or your Individual Settlement Payment will be subject to backup withholding.~~ You should also check to make sure your address and contact information are correct so that you will receive your Individual Settlement Payment if and when it is mailed. You may make corrections to your contact information in the Information Sheet either electronically at www.XXXX.com, [insert settlement website], by fax to (249) 209-2503 or by mail addressed to the Settlement Administrator at Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863. ~~A W-9 Form should be submitted by fax or mail to the Settlement Administrator.~~

If you need additional information, please contact the Settlement Administrator at (800) 523-5773 or at Info@phoenixclassaction.com.

10. **Excluding Yourself from the Settlement (Opt-Out):** You have the right to exclude yourself from the Settlement and retain the right to pursue any individual claims you may have against R&M. If you do **not** wish to participate in the Settlement, you must mail or fax a written Request for Exclusion to the Settlement Administrator. The Request for Exclusion must include: (1) your name, address, and telephone number; (2) a clear and unequivocal statement that you wish to be excluded from the Settlement Class; and (3) your signature or the signature of your Legally Authorized Representative. The attached Request for Exclusion Form [Enclosure B] may be completed, signed and submitted to the Settlement Administrator should you wish to use it. The Request for Exclusion must be completed, signed, and mailed to the Settlement Administrator at Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863, postmarked no later than [Exclusion/Written Objection Deadline] or faxed to the Settlement Administrator at (249) 209-2503 by that date. If you fail to submit a Request for Exclusion in the manner and by the deadline specified above, you will be bound by all terms and conditions of the Settlement and Judgment.

Any person who files a complete and timely Request for Exclusion will, upon receipt by the Settlement Administrator, no longer be a member of the Settlement Class and will not be eligible to receive a payment if the Settlement is finally approved. Any such person will retain the right, if any, to pursue the claims released by this Settlement at his or her own expense. A Request for Exclusion that does not fulfill the requirements above will be deemed invalid. Requests for exclusion must be exercised individually by the Settlement Class Member. Attempted collective group, class, or subclass requests for exclusions shall be ineffective and disregarded by the Settlement Administrator.

If a Settlement Class Member submits both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

There will be no retaliation or adverse employment action taken by R&M against any Settlement Class Member who participates in the Settlement, elects not to participate in the Settlement, or objects to the Settlement because of such participation, election, or objection.

11. **Objecting to the Settlement:** You have the right to object to any of the terms of the Settlement, the Class Counsel Award and/or the Service Award. Any Settlement Class Member that wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the proposed Settlement, the Plan of Allocation, the Class Counsel Award and/or the Service Award must provide to the Settlement Administrator (who shall forward it to Class Counsel and Defense Counsel), a timely signed statement of the objection or appear at the final hearing and make the objections or both. To be timely, a written objection must be mailed to the Settlement Administrator, and postmarked no later than **[60 days after notice date]**. A written objection must contain at least the following: (i) the objector's full name, address, telephone number, and signature; (ii) a clear reference to the Class Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. Objections may be submitted by one or more Settlement Class Members, but must identify each Settlement Class Member on whose behalf it is made.

If you submit both an objection and a valid and timely Request for Exclusion, the Request for Exclusion will be accepted and the objection will be rejected.

If the Court does not give final approval to the Settlement, no Individual Settlement Payments will be sent out and the lawsuit will continue.

If the Court gives final approval to the Settlement, you will be bound by the terms of the Settlement and receive your Individual Settlement Payment.

12. **Termination of the Settlement:** If after **[Exclusion/Written Objection Deadline]** and before the Final Approval Hearing, Settlement Class Members, whose estimated Individual Settlement Payments equal or exceed ten percent (10%) of the Total Settlement Amount, submit timely and valid Requests for Exclusion from the Settlement, R&M shall have, in its sole and absolute discretion, the option to terminate this Settlement. The estimated Individual Settlement Payments shall be calculated assuming that the combined total of the approved Class Counsel Award, approved Service Award and approved expenses for the Settlement Administrator are \$316,667. R&M shall exercise its option to terminate, if at all, prior to the Final Approval Hearing, provided the Settlement Administrator has provided R&M the Opt-Out List no later than ten (10) business days prior to the Final Approval Hearing. If R&M decides to void the Settlement, then the Settlement and conditional class certification shall be considered void; the Settlement, conditional class certification, and any related negotiations or proceedings shall be of no force and effect; and the Parties shall stand in the same respective positions, without prejudice, as if this Settlement had been neither entered into nor filed with the Court. Should R&M void the Settlement under this paragraph, R&M shall be responsible for all Settlement Administration Costs incurred through the date R&M notifies the Settlement Administrator that it is exercising its option to terminate the Settlement.
13. **Release of Employment Records:** The Court has authorized R&M to release to the Settlement Administrator and to Class Counsel, for purposes of this Settlement only and without prior notice to you, certain information concerning you and contained in R&M's employment records. This information includes your name, last known residence address, last known telephone

number(s), last known email address, social security number, dates of employment and gross wages for 2006 through 2008.

14. **Keep Your Information Up to Date:** It is your obligation to make sure that the Settlement Administrator is able to verify your social security number and to keep the Settlement Administrator informed of any changes in your mailing address until your Settlement Payment is received, should final approval of the Settlement be granted. Failing to provide the Settlement Administrator with any change of your mailing address may prevent you from receiving your Individual Settlement Payment in a timely manner. The absence of a verified social security number will result in backup withholding applied to your Individual Settlement Payment.
15. **Information Available on Website:** The Settlement Administrator has created a website for purposes of this Settlement. The website address is [INSERT WEB ADDRESS]. Among other actions you may take through this website and information contained therein, you will be able to view the following documents: Second Amended Complaint; Settlement Agreement and exhibits; Class Notice; Motion for Preliminary Approval of this Settlement; Preliminary Approval Order; and Motion for Class Counsel Award and Service Award, when filed. You also will be able to correct certain information contained on the attached Information Sheet [Enclosure A].
16. **The Settlement Administrator's Address:** You may send a Request for Exclusion or Objection to the Settlement Administrator at the following address:

Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863
Ph: 800-523-5773
Email: Info@phoenixclassaction.com
Fax: 949-209-2503

CLASS COUNSEL

Contact information for Class Counsel is provided below:

SAMUEL T. REES
BLEAU FOX
A Professional Law Corporation
2801 West Empire Avenue
Burbank, CA 91504
Telephone: (818) 748-3434
Facsimile: (818) 748-3436
Email: STReesEsq@earthlink.net

FINAL SETTLEMENT APPROVAL HEARING

The Court has scheduled the Settlement Fairness Hearing for __ on __, 20xx, in Department CX-104 of the Orange County Superior Court located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. At this time, the Court will be asked to rule on the adequacy, reasonableness, and fairness of the Settlement and on Class Counsel's request for attorneys' fees and reimbursement of documented costs and

expenses and the Service Award to Medina. If there are any objections, the Court will consider them. After the Settlement Fairness Hearing, the Court will decide whether to approve the Settlement.

The Settlement Fairness Hearing may be postponed without further notice to Settlement Class members.

You are not required to attend the Settlement Fairness Hearing, although any Settlement Class member is welcome to attend the hearing.

GETTING MORE INFORMATION

This notice summarizes the Class Action and the proposed Settlement. For more precise terms and conditions of the Settlement, please contact Class Counsel (contact information above), or visit the office of the Court Clerk located at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701, during business hours.

PLEASE DO NOT TELEPHONE THE COURT, FOR INFORMATION ABOUT THE SETTLEMENT! YOU MAY CALL CLASS COUNSEL LISTED ABOVE.

ENCLOSURE A
INFORMATION SHEET

CLAIMANT ID: [INSERT]

VERIFICATION NUMBER: [INSERT]

The information provided below was provided by R&M Pacific Rim, Inc. ("R&M") from its employment records and was ordered by the Court to be provided to Phoenix Settlement Administrators and Class Counsel for settlement purposes only and without prior notice to you. PLEASE VERIFY THAT THE INFORMATION IS CORRECT AND MAKE CHANGES WHERE NECESSARY. Your Individual Settlement Payment will be partially based on this information.

1. Your Contact Information

Please review and, if necessary, correct on the line to the right your contact information:

Name: <<Name>> _____

Address: <<Address>> _____

City, State, Zip: <<City>>, <<State>> <<Zip Code>> _____

Social Security Number: [INSERT ONLY IF VERIFIED] _____

Telephone Number: [INSERT] _____

Email Address: [INSERT] _____

If there is no Social Security Number shown above, it is because the number provided by R&M could not be verified with the Social Security Administration. In such case, you will need to provide the Settlement Administrator with a substitute IRS Form W-9 which can be verified or your Individual Settlement Payment will be subject to backup withholding.

2. Information for Misclassification Subclass, if applicable.

The personnel and payroll records of R&M show that during the Class Period (August 2, 2006 through September 1, 2008), you were employed by R&M as an exempt, salaried employee, as follows:

Dates of Employment as Exempt: <<Start Date>> - <<End Date>>
<<Start Date>> - <<End Date>>

Number of Full Work Weeks, Rounded Up [INSERT NUMBER]

You will receive both IRS W-2 and 1099 forms with your payment.

3. Information for Break Subclass, if applicable.

The personnel and payroll records of R&M show that during the Class Period (August 2, 2006 through September 1, 2008), you were employed by R&M as an hourly employee, as follows:

Dates of Employment as Hourly: <<Start Date>> - <<End Date>>
<<Start Date>> - <<End Date>>

2006 Reported Gross Wages:	[INSERT NUMBER]
2007 Reported Gross Wages:	[INSERT NUMBER]
2008 Reported Gross Wages:	[INSERT NUMBER]

You will receive both IRS W-2 and 1099 forms with your payment.

ENCLOSURE B
REQUEST FOR EXCLUSION FORM

THIS COMPLETED AND SIGNED REQUEST FOR EXCLUSION FORM MUST EITHER BE POSTMARKED ON OR BEFORE OR FAXED TO THE SETTLEMENT ADMINISTRATOR ON OR BEFORE [Insert Exclusion Date]

Stoddard and Medina, etc. v. Equilon Enterprises, LLC, et al.
Orange County California Superior Court Case No. 30-2010-00395208-CU-OE-CXC

I, _____, hereby request that I be excluded from the Class
[Print Full Name]

Action Settlement of the above lawsuit and excluded from the Settlement Class. I understand by timely submitting this completed form to Phoenix Settlement Administration, I will not receive any payment from this Settlement, will not be bound by the releases in the Settlement Agreement and may pursue my own remedies against R&M Pacific Rim, Inc. at my own expense.

My address and telephone number are, as follows:

[Print Street Address]

[Print City, State and Zip Code]

[Print Area Code and Telephone Number]

[Sign Full Name]

MAIL OR FAX COMPLETED REQUEST FOR EXCLUSION FORM TO

**Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863**

Fax Number: (249) 209-2503

ENCLOSURE C
CLASS INFORMATION DISPUTE FORM

I, _____, hereby dispute the following information
[Print Full Name]
contained in my Information Sheet and upon which my Individual Settlement Payment will be
calculated. I enclose documentation to support my dispute.

COMPLETE EACH APPROPRIATE SECTION.

Employment Dates.

(Do not insert a date prior to August 2, 2006 or after September 1, 2008)

I actually commenced my employment as a salaried, exempt employee or was converted to a salaried
exempt employee on _____.

I actually ceased my employment as a salaried, exempt employee or was converted to a non-exempt,
hourly employee on _____.

I actually commenced my employment as a non-exempt, hourly employee on
_____.

I actually ceased my employment as a non-exempt, hourly employee on _____.

Hourly Employee Gross Wages.

(Do not include wages paid when you were a salaried, exempt employee)

My actual Gross Wages from R&M for 2006 as a non-exempt Hourly Employee were \$ _____.

My actual Gross Wages from R&M for 2007 as a non-exempt Hourly Employee were \$ _____.

My actual Gross Wages from R&M for 2008 as a non-exempt Hourly Employee were \$ _____.

Dated: _____, 2020

[Sign Full Name]

MAIL OR FAX COMPLETED REQUEST FOR EXCLUSION FORM TO

**Phoenix Settlement Administrators
PO Box 7208, Orange, CA 92863**

Fax Number: (249) 209-2503

ENCLOSURE D
REPRESENTATIONS OF FACT BY R&M

(See Paragraph 59 of the Amended and Restated Settlement Agreement)

A. If no Settlement Class Member requests to be excluded from this Settlement, there are 37 employees who would be included in the Settlement Misclassification Subclass, 28 of whom are also included in the Settlement Break Subclass. Of these 37 employees, approximately 12 were members of the Settlement Misclassification Subclass for the entire Class Period.

B. If no Settlement Class Member requests to be excluded from this Settlement, there are 440 employees who would be included in the Settlement Break Subclass, 28 of whom are also included in the Settlement Misclassification Subclass.

C. During the Class Period, each member of the Settlement Break Subclass was compensated at the minimum hourly rate applicable during the time that member worked or at an amount not materially greater than the minimum hourly rates of \$6.75 for 2006, \$7.50 for 2007 and \$8.00 for 2008.

D. During the Class Period, each member of the Settlement Misclassification Subclass was compensated by a salary equating to approximately and not materially higher than \$12.70 per hour, calculated by taking their annual salary and dividing it by 2,080 hours.

E. Prior to September 1, 2008, R&M reclassified each member of the Settlement Misclassification Subclass as a non-exempt employee. From and after September 1, 2008, R&M paid those employees an hourly wage and overtime when they worked more than 40 hours in a work week or more than 8 hours in a workday as shown on their timecards.

F. Prior to September 1, 2008, R&M changed its rest break policy to clarify that all employees, including employees formerly claimed to be exempt employees and since reclassified as non-exempt employees, were entitled to and authorized and permitted to take duty-free, paid rest periods at the rate of no less than ten minutes net rest for every four hours worked, or major fraction thereof.

G. On or about July 5, 2008, and as a result of a California Labor Commissioner meal break audit, R&M paid approximately 370 employees for missed meal break compensation. These payments were believed by R&M to resolve all meal break claims for the Class Period. In June 2008, R&M modified its meal break policy to ensure that all non-exempt employees working more than 5 hours in a workday and not working alone were afforded an off-duty meal break, a form to report any missed or non-compliant meal breaks for which payment would be provided and continued to allow non-exempt employees working alone the option to sign an on-duty meal waiver if they wished to do so.

H. Pursuant to Equilon's contractual requirement, all Settlement Class Members were fluent in English.

EXHIBIT M

1 SAMUEL T. REES (State Bar No. 58099)
 THOMAS P. BLEAU (State Bar No. 152945)
 2 MARTIN R. FOX (State Bar No. 155783)
 BLEAU FOX
 3 A Professional Law Corporation
 2801 West Empire Avenue
 4 Burbank, CA 91504
 Telephone: (818) 748-3434
 5 Facsimile: (818) 748-3436
 6 Attorneys for Plaintiff
 and the Plaintiff Class
 7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **FOR THE COUNTY OF ORANGE**

11	RAYMOND STODDARD and SANTIAGO)	Case No. 30-2010-00395208-CU-OE-CXC
	MEDINA, etc.,)	
12	Plaintiffs,)	Hon. William Claster
)	Department CX 102
13	vs.)	CLASS ACTION
14	EQUILON ENTERPRISES, LLC, et al.,)	SECOND REVISED [PROPOSED]
15	R&Ms.)	PRELIMINARY APPROVAL ORDER
16)	Date: July 31, 2020
17)	Time: 9:00 a.m.
18)	Dept: CX 104
19)	Complaint Filed: August 2, 2010
)	Trial Date: None Set
)	Reservation No. 73219881

21

22 WHEREAS, this action is pending before this Court as a Class Action; and

23 WHEREAS, Plaintiff Santiago Medina ("Medina") has filed an unopposed

24 motion with this Court for an Order preliminarily approving the settlement of

25 the Class Action entered into by and between R & M Pacific Rim, Inc., a

26 California corporation, ("R&M") and Medina, individually and on behalf of

27 Settlement Class Members as defined therein, in accordance with their

28 Amended and Restated Settlement Agreement, which, together with the

1 Exhibits attached to the Amended and Restated Settlement Agreement, sets
2 forth the terms and conditions for a proposed partial settlement of the Class
3 Action; and the Court having read and considered the Amended and Restated
4 Settlement Agreement and the Exhibits attached thereto;

5 NOW, THEREFORE, IT IS HEREBY ORDERED:

6 1. This Preliminary Order incorporates by reference the definitions in
7 the Settlement Agreement, as filed with the Court with Medina's motion, and all
8 terms defined therein shall have the same meaning as set forth in the Amended
9 and Restated Settlement Agreement.

10 2. The Court hereby grants Medina's Motion for Preliminary Approval
11 of Class Action Settlement and finds the terms of the Amended and Restated
12 Settlement Agreement to be within the range of reasonableness of a settlement
13 that ultimately could be granted approval by the Court at a Final Approval
14 Hearing.

15 3. The Court preliminarily approves the terms of the Amended and
16 Restated Settlement Agreement and finds that they fall within the range of
17 approval as fair, adequate, and reasonable. The Court hereby preliminarily finds
18 that the Settlement Agreement is the product of informal, non-collusive
19 negotiations conducted at arms' length by the parties. The Court has considered
20 the estimate of the Class Members' total recovery, R&M's potential liability, the
21 allocation of settlement proceeds among Class Members, including the two
22 subclasses, and the fact that a settlement represents a compromise of the
23 parties' respective positions rather than the result of a finding of liability at
24 trial. The assistance of an experienced mediator in the settlement process
25 supports the Court's conclusion that the Settlement is non-collusive and
26 reasonable. The Settlement is presumptively valid.

27 4. For purposes of the Settlement only, the Court finds that the
28 proposed Settlement Class is ascertainable and that there is a sufficiently well-

1 defined community of interest among the members of the Settlement Class in
2 questions of law and fact. Therefore, the Court preliminarily certifies as the
3 Settlement Class, for settlement purposes only, all persons who were employed
4 by R&M and who worked at a Shell branded station operated by R&M and
5 owned by Equilon Enterprises, LLC at any time during the period from August
6 2, 2006 to September 1, 2008. The Settlement Class consists of the Settlement
7 Misclassification Subclass, consisting of all Settlement Class Members during
8 any portion of the Class Period that they were declared by R&M as exempt
9 employees and paid a salary. and the Settlement Break Subclass, consisting of
10 all Settlement Class Members during any portion of the Class Period that they
11 were non-exempt hourly wage employees.

12 5. For purposes of the Settlement only, Medina is approved as the
13 Class Representative.

14 6. For purposes of the Settlement only, Bleau Fox, a Professional Law
15 Corporation, is appointed and approved as Class Counsel.

16 7. The Court hereby appoints and approves Phoenix Settlement
17 Administrators as the Settlement Administrator.

18 8. After balancing the privacy interests of the Settlement Class as
19 asserted by R&M, the Court finds that in order for the Class Notice to be mailed
20 to the Settlement Class at their last known address based upon R&M's
21 employment records, that the Settlement Administrator and Class Counsel have
22 sufficient information to locate Settlement Class members and that the
23 Settlement Administrator and Class Counsel have sufficient information to
24 prorate Individual Settlement payments for each subclass, it is necessary and
25 appropriate, without prior notice to the Settlement Class, that R&M be
26 authorized and directed to provide to the Settlement Administrator and Class
27 Counsel the Class Information to be used solely for the purposes of settlement of
28 this Class Action. Having so determined, the Court hereby orders R&M to so

1 provide to the Settlement Administrator and Class Counsel the Class
2 Information to be so used.

3 9. A hearing ("Final Approval Hearing") shall be conducted before this
4 Court on _____, 2020, at ____ a.m., in Department CX104, to
5 determine whether the proposed settlement of the Class Action on the terms and
6 conditions provided for in the Settlement Agreement is fair, reasonable and
7 adequate, whether said settlement should be finally approved by the Court, and
8 whether a Final Approval Order and Judgment should be entered herein.

9 10. The Court hereby approves, as to form and content, the Class Notice,
10 Information Sheet and Request for Exclusion Form attached as Exhibit 1 to the
11 Amended and Restated Settlement Agreement.

12 11. The Court approves the requirements for disputing the information
13 upon which Settlement Class Members' share of the Settlement will be
14 calculated, objecting to the Settlement, and excluding Settlement Class
15 Members who timely and properly request to be excluded from the Settlement
16 Class, all as provided in the Amended and Restated Settlement Agreement. The
17 Court finds that the procedures and requirements for submitting objections in
18 connection with the Final Approval Hearing are intended to ensure the efficient
19 administration of justice and the orderly presentation of any Settlement Class
20 Member's objection to the Settlement, in accordance with the due process rights
21 of all Settlement Class Members.

22 12. The Court finds that the mailing of the Class Notice substantially in
23 the manner and form as set forth in the Amended and Restated Settlement
24 Agreement and this Preliminary Approval Order meets the requirements of
25 *California Rules of Court* Rules 3.766(d) and 3.769(f), California Code of Civil
26 Procedure section 382, California Civil Code section 1781, other applicable law,
27 and due process, and is the best notice practicable under the circumstances, and
28 shall constitute valid, due and sufficient notice to all Settlement Class Members.

1 13. The Court hereby authorizes the Settlement Administrator to mail
2 or cause to be mailed to Settlement Class Members the Class Notice, completed
3 Information Sheet and the Request for Exclusion Form. Such documents shall
4 be sent by First Class U.S. mail, postage prepaid. Mailing of the Class Notice
5 shall occur within Sixty (60) days after the entry of this Preliminary Approval
6 Order. The Class Notice, completed Information Sheet and the Request for
7 Exclusion Form shall be mailed using the information provided by R&M in the
8 Class Information, as updated, to the extent that Class Notices are returned
9 undeliverable, by the Settlement Administrator as provided in the Amended and
10 Restated Settlement Agreement. Class Counsel may provide additional updated
11 mailing and/or emailing addresses to the Settlement Administrator. If these
12 procedures are followed, notice to Class Members shall be deemed to have been
13 satisfied, and if the intended recipient of the Class Notice does not receive the
14 Class Notice, the intended recipient shall nevertheless remain a Settlement
15 Class Member and shall be bound by all terms of the Settlement Agreement and
16 this Preliminary Approval Order. The Settlement Administrator shall provide
17 periodic reports to Class Counsel and Defense Counsel.

18 ~~14.—Before Class Notices are mailed, the Settlement Administrator shall~~
19 ~~compile a list of all Settlement Class Members’ social security numbers provided~~
20 ~~by R&M in the Class Information and send those names and social security~~
21 ~~numbers to the Social Security Administration for verification. Upon receipt of a~~
22 ~~report from the Social Security Administration with any Class Member names~~
23 ~~that do not match the social security number provided by R&M, commonly called~~
24 ~~“TIN matching,” the Settlement Administrator shall then either obtain a~~
25 ~~substitute IRS Form W-9 from that Settlement Class Member or, if a properly~~
26 ~~completed IRS Form W-9 is not obtained, utilize backup withholding on their~~
27 ~~Individual Settlement Payments.~~

28

1 ~~15~~14. Prior to forty-six days following the entry of this Preliminary
2 Approval Order, Class Counsel shall serve and file its application for a Class
3 Counsel Award and litigation costs and expenses as well as any application for a
4 Service Award.

5 ~~16~~15. Five days prior to the Final Approval Hearing, Class Counsel shall
6 serve and file the declaration of the Settlement Administrator containing the
7 information required by the Amended and Restated Settlement Agreement.

8 ~~17~~16. The Court reserves the right to adjourn or continue the date of the
9 Final Approval Hearing without further notice to Class Members, and retains
10 jurisdiction to consider all further applications or motions arising out of or
11 connected with the proposed settlement.

12 IT IS SO ORDERED.

13 Dated: _____, 2020

William D. Cluster
Judge of the Superior Court

14 APPROVED AS TO FORM AND CONTENT.

15
16 Dated: ~~July 21~~ August 24, 2020

BLEAU FOX
A Professional Law Corporation

17
18
19 By: /s/ Samuel T. Rees
SAMUEL T. REES

20 Attorneys for Plaintiff and the Plaintiff Class

21 Dated: ~~July 21~~ August 24, 2020

KRING & CHUNG LLP

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23 By: /s/ Allyson K. Thompson
ALLYSON K. THOMPSON

24 Attorneys for R&M PACIFIC RIM, INC.

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 580 West Empire Avenue, Burbank, California 91504.

On August 25, 2020, I served the foregoing document(s) described as **SECOND REVISED** **[PROPOSED] PRELIMINARY APPROVAL ORDER** on the interested parties to this action who are listed on the attached Service List by electronically serving those persons at the electronic addresses noted therein.

STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct of my own personal knowledge, and that I am employed in the office of a member of the Bar of this Court at whose discretion this service was made.

Executed on August 25, 2020, at Burbank, California.

/s/ Nathan Childress

Nathan Childress

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SERVICE LIST

Raymond A. Cardozo, Esq.
Reed Smith, LLP
355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071-3048
RCardozo@reedsmith.com

Allyson K. Thompson
Attorney at Law
Kring & Chung, LLP
38 Corporate Park
Irvine, CA 92606
athompson@kringandchung.com

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 580 West Empire Avenue, Burbank, California 91504.

On August 26, 2020, I served the foregoing document(s) described as **THIRD SUPPLEMENTAL DECLARATION OF SAMUEL T. REES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties to this action who are listed on the attached Service List by electronically serving those persons at the electronic addresses noted therein.

STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

FEDERAL: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct of my own personal knowledge, and that I am employed in the office of a member of the Bar of this Court at whose discretion this service was made.

Executed on August 26, 2020, at Burbank, California.

_____/s/ Nathan Childress

Nathan Childress

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SERVICE LIST

Raymond A. Cardozo, Esq.
Reed Smith, LLP
355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071-3048
RCardozo@reedsmith.com

Allyson K. Thompson
Attorney at Law
Kring & Chung, LLP
38 Corporate Park
Irvine, CA 92606
athompson@kringandchung.com