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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.,) **THIRD 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 **THIRD AMENDED AND RESTATED SETTLEMENT AGREEMENT**

22 This Third Amended and Restated Settlement Agreement (hereinafter the
23 "Settlement Agreement") is made and entered into effective August 25, 2020 by
24 and between R & M PACIFIC RIM, INC., a California corporation, ("R&M"), on
25 the one hand, and SANTIAGO MEDINA ("Medina"), individually and on behalf
26 of Settlement Class Members as hereinafter defined, on the other hand, subject
27 to preliminary and final approval of the Court as hereinafter defined. This
28 Settlement Agreement supersedes and replaces the Settlement Agreement dated

1 December 2019, the Amended and Restated Settlement Agreement dated July
2 21, 2020 and the Second Amended and Restated Settlement Agreement dated
3 August 25, 2020.

4 DEFINITIONS

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

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

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

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

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

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

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

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 grants the motion for the Second Amended Preliminary Approval Order and
6 thus: (i) preliminarily approves the Settlement, including the exhibits thereto,
7 and (ii) enters an order providing for notice to the Settlement Class, an
8 opportunity to opt out of the Settlement Class, an opportunity to submit timely
9 and proper objections to the Settlement, and setting a hearing on the fairness of
10 the terms of Settlement, including approval of the Class Counsel Award and
11 Service Award.

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

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

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

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

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

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. Settlement
15 Class Member includes his or her Legally Authorized Representatives.

16 31. **“Settlement Misclassification Subclass”** means all Settlement
17 Class Members during any portion of the Class Period that they were declared
18 by R&M as exempt employees and paid a salary but does not include any
19 Settlement Class Member during any portion of the Class Period such
20 Settlement Class Member was an Area Manager.

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

24 33. **“Settlement Class Members’ Released Claims”** means any and
25 all claims alleged in the Second Amended Complaint, or that could have been
26 alleged in the Second Amended Complaint based on the facts alleged therein,
27 including claims for non-payment of overtime, missed meal and rest break
28 compensation, interest thereon, attorneys’ fees and expenses and costs of suit.

1 all of which were located in Orange County, California. Pursuant to these
2 agreements, R&M agreed to lease the convenience stores and car washes at
3 these stations for its own benefit and agreed to operate all other aspects of those
4 service stations for the benefit of Equilon. These agreements were extended
5 through the Class Period. R&M's sole business during the Class Period was to
6 lease convenience stores and car washes from Equilon and to operate Equilon's
7 service stations.

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

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

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

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

9 45. On August 2, 2010, Medina and Stoddard commenced the Class
10 Action.

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

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

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

20 49. Following the lifting of the stay in the Class Action, R&M and
21 Medina decided to participate in a voluntary private mediation of the claims
22 against R&M in the Class Action. After careful research and consideration, the
23 parties selected the Honorable Carl J. West (Ret) of JAMS to be the mediator.
24 Judge West is a well-respected retired Superior Court Judge with extensive
25 experience in trying, arbitrating and mediating wage and hour class action
26 disputes such as those alleged by Medina in the Class Action. Mediation was
27 scheduled for January 3, 2019 and lasted the entire day. While Medina and
28 R&M did not reach a settlement at the mediation hearing, Judge West remained

1 involved in the mediation process; and, as a result, a settlement in principal was
2 reached between those parties on January 15, 2019. The settlement in principal
3 is the result of an informed and detailed evaluation of the total exposure and
4 potential liability, in relation to the costs and risks associated with continued
5 litigation of the Class Action. The settlement in principle is subject to and
6 expressly conditioned upon the Parties entering into this Settlement Agreement
7 and the Court in the Class Action both preliminarily and finally approving the
8 Settlement.

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

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

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

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

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

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

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

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

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

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

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

12 **REPRESENTATIONS BY R&M.**

13 59. During the course of the mediation and thereafter, R&M made
14 certain factual representations to Medina to induce Medina to settle the Class
15 Action. R&M now represents to the Settlement Class Members, and to no other
16 person, that the following facts are true as of the date of the execution of this
17 Settlement Agreement and that, solely for the purpose of deciding whether or
18 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 29 employees who would be included in the
3 Settlement Misclassification Subclass, 12 of whom are also included in the
4 Settlement Break Subclass. Of these 29 employees, approximately 5 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 351 employees who would be included in the
9 Settlement Break Subclass, 12 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, including managers who were non-exempt hourly employees,
13 was compensated at an hourly rate ranging from \$6.75 to \$9.00 for 2006,
14 ranging from \$7.50 to \$8.75 for 2007 and ranging from \$8.00 to \$11.00 for 2008.

15 D. During the Class Period, each member of the Settlement
16 Misclassification Subclass was compensated by a salary ranging between \$10.38
17 per hour and \$16.15 per hour, calculated by taking their annual salary and
18 dividing it by 2,080 hours.

19 E. Prior to October 1, 2008, R&M reclassified each member of the
20 Settlement Misclassification Subclass as a non-exempt employee. From and
21 after being reclassified, R&M paid those employees an hourly wage and overtime
22 when they worked more than 40 hours in a work week or more than 8 hours in a
23 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. On October 5 and 6, R&M provided Class Counsel and the
14 Settlement Administrator with the Class Information. R&M supplemented this
15 Class Information on October 9 and December 21, 2020. Class Counsel has
16 reviewed the Class Information as supplemented and found no material
17 inaccuracies with the representations made above. Medina has determined that
18 the compensation representations are true as to himself and as to the non-
19 exempt employees working at the stations that Medina managed, that he was
20 reclassified as a non-exempt employee in September 2008, that he and non-
21 exempt employees working at the stations that he managed received certain
22 missed meal break compensation in 2008 and that R&M changed its rest break
23 and meal break policies in or around September 2008 to allow all employees to
24 either receive off-duty meal and rest breaks or compensation for missed breaks.
25 With these exceptions, neither Medina nor Class Counsel has verified the truth
26 of the foregoing representations but recognize that each Settlement Class
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1 Member will be able to determine whether any represented fact is materially
2 untrue as to himself or herself in making a decision as to whether to request to
3 be excluded from the Settlement.

4 **SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT**
5 **FOR PRELIMINARY AND FINAL APPROVAL**

6 61. Upon execution of this Settlement Agreement, Medina shall seek
7 preliminary approval of the Settlement, as amended herein, and a further
8 amendment to the Amended Preliminary Approval Order filed in the Action on
9 September 24, 2020.

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

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

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

24 65. Solely for purposes of implementing this Settlement Agreement and
25 effectuating the proposed Settlement, the Parties agree and stipulate that the
26 Court may enter the Second Amended Preliminary Approval Order, without
27 material variation from Exhibit 2, preliminarily approving the Settlement and
28 this Settlement Agreement. Among other things, the Second Amended

1 Preliminary Approval Order shall grant leave to preliminarily certify the
2 Settlement Misclassification Subclass and the Settlement Break Subclass for
3 settlement purposes only; re-approve Medina as class representative, re-appoint
4 Class Counsel to represent the Settlement Class, and re-appoint the Settlement
5 Administrator; approve the Class Notice and the Class Notice plan embodied in
6 this Settlement Agreement, and approve them as consistent with *California*
7 *Rules of Court* Rules 3.766(d) and 3.769(f) and due process; set out the
8 requirements for disputing the information upon which Settlement Class
9 Members' Individual Settlement Payment will be calculated; objecting to the
10 Settlement; excluding Settlement Class Members who timely and properly
11 request to be excluded from the Settlement Class, all as provided in this
12 Settlement Agreement; and provide that certification and all actions associated
13 with certification are undertaken on the condition that the certification and
14 other actions shall be automatically vacated and be of no force or evidentiary
15 effect if this Settlement Agreement is terminated or disapproved, as provided in
16 this Settlement Agreement.

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

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

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

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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 Settlement Agreement and the Final Approval
7 order and Judgment to be binding on, and have *res judicata* and preclusive effect
8 as to all pending and future lawsuits or other proceedings: (i) that encompass the
9 Named Plaintiff's General Released Claims and that are maintained by or on
10 behalf of Medina and/or his Legally Authorized Representatives, heirs, estates,
11 trustees, executors, administrators, principals, beneficiaries, representatives,
12 agents, assigns, and successors, and/or anyone claiming through them or acting
13 or 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 this 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 Settlement 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 days that such member was declared an exempt,
14 salaried employee and paid a salary during the Class Period. The product of
15 that calculation shall serve as the numerator for proration purposes and the
16 sum of all such products shall serve as the denominator for proration purposes.

17 B. Payment from the amount allocated to the Settlement Break
18 Subclass shall be prorated among the members of that subclass by taking the
19 gross wages paid during the Class Period that such member was declared a non-
20 exempt hourly wage employee. This amount shall serve as the numerator for
21 proration purposes and the sum of all such products shall serve as the
22 denominator for proration purposes. For non-exempt hourly wage employee
23 who commenced in that position after December 31, 2005 and/or who ceased to
24 be in that position before January 1, 2009, the employee's gross wages will be
25 further prorated on a 365/365 daily basis so that the numerator shall only
26 include his gross wages earned during the Class Period.

27 C. If under the Plan of Allocation a Settlement Class Member
28 will be distributed \$10 or more, then he or she will receive the entitled amount.

1 If, however, the Settlement Class Member is due less than \$10, then his or her
2 Individual Settlement Payment will be for \$10 and the other Settlement Class
3 Members Individual Settlement Payment shall be adjusted accordingly.

4 80. Class Counsel will be permitted to review and approve the
5 calculation of Individual Settlement Payments to be distributed.

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

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

23 CLASS NOTICE

24 83. No more than thirty (30) calendar days after entry of the Second
25 Amended Preliminary Approval Order or as otherwise ordered by the Court,
26 R&M shall provide the Settlement Administrator and Class Counsel with any
27 requested supplementation to the Class Information.
28

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

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

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

27 87. No more than sixty (60) days after entry of the Second Amended
28 Preliminary Approval Order or as otherwise ordered by the Court, provided

1 Defendant timely complied with its obligation in Paragraph 83, the Settlement
2 Administrator shall send a copy of the Class Notice by first class mail and, if
3 provided in the Class Information, electronic mail to each Settlement Class
4 Member.

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

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

24 90. The Parties agree that the procedures set forth in this Section
25 constitute reasonable and the best practicable notice under the circumstances
26 and an appropriate and sufficient effort to locate current addresses for
27 Settlement Class Members such that no additional efforts to do so shall be
28 required.

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

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

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

1 for all other purposes. Such an individual will have all of the same rights as any
2 other Settlement Class Member under this Settlement Agreement.

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

7 **PROCEDURES FOR REQUESTS FOR EXCLUSION**

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

28

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

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

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

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

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

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

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

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

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

8 105. If, after the Exclusion/Written Objection Deadline and before the
9 Final Approval Hearing, Settlement Class Members whose combined
10 “estimated” Individual Settlement Payments equal or exceed ten percent (10%)
11 of the Total Settlement Amount submit timely and valid requests for exclusion
12 from the Settlement, R&M shall have, in its sole and absolute discretion, the
13 option to terminate this Settlement. The “estimated” Individual Settlement
14 Payments shall be determined by assuming that the combined total amount for
15 the Class Counsel Award, Service Award and Administrative Expenses paid to
16 the Settlement Administrator is Three Hundred Sixteen Thousand Six Hundred
17 and Sixty-Seven dollars (\$316,667). R&M shall exercise its option to terminate,
18 if at all, prior to the Final Approval Hearing, provided the Settlement
19 Administrator has provided R&M the Opt-Out List no later than ten (10)
20 business days prior to the Final Approval Hearing and the combined amount of
21 Individual Settlement Payments of those Settlement Class Members requesting
22 to be excluded from the Settlement. If R&M decides to void the Settlement, then
23 the Settlement and conditional class certification shall be considered void, and
24 the Settlement, conditional class certification, and any related negotiations or
25 proceedings shall be of no force and effect, and the Parties shall stand in the
26 same respective positions, without prejudice, as if this Settlement had been
27 neither entered into nor filed with the Court. Should R&M void the Settlement
28 under this paragraph, R&M shall be responsible for all Administration Costs

1 incurred by the Settlement Administrator through the date R&M notifies the
2 Settlement Administrator that it is exercising its option to terminate the
3 Settlement.

4 **PROCEDURES FOR OBJECTIONS**

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

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

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

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

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

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

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

17 **RELEASES**

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

23 114. As of the Final Approval Date, Medina and all Settlement Class
24 Members, who have not been excluded from the Settlement Class, individually
25 and on behalf of their Legally Authorized Representatives, heirs, estates,
26 trustees, executors, administrators, representatives, agents, successors, and
27 assigns, and anyone claiming through them or acting or purporting to act on
28 their behalf, agree to forever release, discharge, hold harmless, and covenant not

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

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

26 116. With respect only to the Named Plaintiff's General Released Claims,
27 Medina, but not the Settlement Class Members, expressly acknowledges that he
28

1 is familiar with principles of law such as Section 1542 of the California *Civil*
2 *Code*, which provides:

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

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

27 117. Medina further acknowledges, agrees and understands that: (i) he
28 has read and understands the terms of this Settlement Agreement; (ii) he has

1 been advised in writing to consult with an attorney other than Class Counsel
2 before executing this Settlement Agreement; and (iii) he has obtained and
3 considered such legal counsel as he deems necessary.

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

8 **ADMINISTRATION OF THE SETTLEMENT FUND**

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

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

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

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

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

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

26 121. If any Settlement Class Member fails to negotiate his Individual
27 Settlement Payment by the Void Date (*i.e.* checks are not cashed or checks are
28 returned as undeliverable), then after the Void Date, the Settlement

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

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

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

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

26
27
28

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 this 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 this Settlement Agreement. This
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 this 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 this 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 this Settlement Agreement, any press
7 release or other statement or report by the Parties or by others concerning this
8 Settlement Agreement or the Settlement, and any negotiations, proceedings,
9 acts performed, or documents executed pursuant to or in furtherance of this
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 this 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 this 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 this Settlement Agreement, all Parties hereto have contributed
13 substantially and materially to the preparation of this 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
13 Settlement Agreement effective August 25, 2020.

14 DATED: March 9, 2021

DATED: March 9, 2021

15 R&M PACIFIC RIM, INC.

16
17 By: 


SANTIAGO MEDINA

19 APPROVED AS TO FORM AND CONTENT.

20 Dated: March 9, 2021

BLEAU FOX
A Professional Law Corporation

21
22 By: 

SAMUEL T. REES

Attorneys for Plaintiff and the Plaintiff Class

24
25 Dated: March 9, 2021

KRING & CHUNG LLP

26
27 By: 

KERRI N. POLIZZI

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 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 DATE] and/or object in person or through an attorney at the Final Approval Hearing on [INSERT FINAL APPROVAL HEARING DATE] in Department CX104. 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 but does not include any Settlement Class Member during any portion of the Class Period such Settlement Class Member was an Area Manager. The Settlement Break Subclass consists of all employees during this Class 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 www.phoenixclassaction.com/medina-v-equilon 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 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 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 DISPUTE 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 www.phoenixclassaction.com/medina-v-equilon 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 days each such member worked during the Class Period as an exempt employee divided by the total number of days worked by all members of this subclass. 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 non-exempt gross wages paid during the Class Period divided by the non-exempt gross wages paid during the Class Period to all members of this subclass. 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 October 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 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 www.phoenixclassaction.com/medina-v-equilon, 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 **[INSERT EXCLUSION DATE]** 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 **[INSERT EXCLUSION 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 **INSERT EXCLUSION DATE** 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 www.phoenixclassaction.com/medina-v-equilon. 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 **[INSERT FINAL APPROVAL HEARING DATE]**, in Department C-16 of the Orange County Superior Court located at 700 Civic Center Drive West, 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 Days as Exempt: [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 JANUARY 2, 2021**

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: _____, 2021

[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 29 employees who would be included in the Settlement Misclassification Subclass, 12 of whom are also included in the Settlement Break Subclass. Of these 29 employees, approximately 5 employees 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 351 employees who would be included in the Settlement Break Subclass, 12 of whom are also included in the Settlement Misclassification Subclass.

C. During the Class Period, each member of the Settlement Break Subclass, including managers who were non-exempt hourly employees, was compensated at an hourly rate ranging from \$6.75 to \$9.00 for 2006, ranging from \$7.50 to \$8.75 for 2007 and ranging from \$8.00 to \$11.00 for 2008.

D. During the Class Period, each member of the Settlement Misclassification Subclass was compensated by a salary ranging between \$10.38 per hour and \$16.15 per hour, calculated by taking their annual salary and dividing it by 2,080 hours.

E. Prior to October 1, 2008, R&M reclassified each member of the Settlement Misclassification Subclass as a non-exempt employee. From and after being reclassified, 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 provided with 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 a total of \$122,721.88 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.

I. R&M has set aside the Total Settlement Amount for payment in accordance with the terms of this Settlement.

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. James J. Di Cesare
Plaintiffs,) Department C 16
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **[PROPOSED] SECOND AMENDED**
15) **PRELIMINARY APPROVAL ORDER**
R&Ms.)
16) Date: March 19, 2021
17) Time: 9:30 a.m.
18) Dept: C-16
19) Complaint Filed: August 2, 2010
20) Trial Date: None Set
21)

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

1 settlement, in accordance with the parties' Second Amended and Restated
2 Settlement Agreement;

3 WHEREAS, the parties now seek to have this Court reconsider it prior
4 preliminary approval order in light of the parties' the Third Amended and
5 Restated Settlement Agreement, which now sets forth the terms and conditions
6 for a proposed partial settlement of the Class Action; and

7 WHEREAS, the Court having read and considered the Third Amended
8 and Restated Settlement Agreement and the Exhibits attached thereto;

9 NOW, THEREFORE, IT IS HEREBY ORDERED:

10 1. This Preliminary Order incorporates by reference the definitions in
11 the Third Amended and Restated Settlement Agreement, as filed with the
12 Court, and all terms defined therein shall have the same meaning as set forth in
13 the Third Amended and Restated Settlement Agreement.

14 2. The Court hereby reconsiders its prior preliminary approval order
15 and finds the terms of the Third Amended and Restated Settlement Agreement
16 to be within the range of reasonableness of a settlement that ultimately could be
17 granted approval by the Court at a Final Approval Hearing.

18 3. The Court preliminarily approves the terms of the Third Amended
19 and Restated Settlement Agreement and finds that they fall within the range of
20 approval as fair, adequate, and reasonable. The Court hereby preliminarily finds
21 that the Third Amended and Restated Settlement Agreement is the product of
22 informal, non-collusive negotiations conducted at arms' length by the parties.
23 The Court has considered the estimate of the Class Members' total recovery,
24 R&M's potential liability, the allocation of settlement proceeds among Class
25 Members, including the two subclasses, and the fact that a settlement
26 represents a compromise of the parties' respective positions rather than the
27 result of a finding of liability at trial. The assistance of an experienced mediator
28

1 in the settlement process supports the Court's conclusion that the Settlement is
2 non-collusive and reasonable. The Settlement is presumptively valid.

3 4. For purposes of the Settlement only, the Court finds that the
4 proposed Settlement Class is ascertainable and that there is a sufficiently well-
5 defined community of interest among the members of the Settlement Class in
6 questions of law and fact. Therefore, the Court preliminarily certifies as the
7 Settlement Class, for settlement purposes only, all persons who were employed
8 by R&M and who worked at a Shell branded station operated by R&M and
9 owned by Equilon Enterprises, LLC at any time during the period from August
10 2, 2006 to September 1, 2008. The Settlement Class consists of the Settlement
11 Misclassification Subclass, consisting of all Settlement Class Members during
12 any portion of the Class Period that they were declared by R&M as exempt
13 employees and paid a salary. and the Settlement Break Subclass, consisting of
14 all Settlement Class Members during any portion of the Class Period that they
15 were non-exempt hourly wage employees. The Settlement Misclassification
16 Subclass does not include any Settlement Class Member during any portion of
17 the Class Period such Settlement Class Member was an Area Manager.

18 5. For purposes of the Settlement only, Medina is re-approved as the
19 Class Representative.

20 6. For purposes of the Settlement only, Bleau Fox, a Professional Law
21 Corporation, is re-appointed and approved as Class Counsel.

22 7. The Court hereby re-appoints and approves Phoenix Settlement
23 Administrators as the Settlement Administrator.

24 8. After previously balancing the privacy interests of the Settlement
25 Class as asserted by R&M, the Court continues to find that in order for the Class
26 Notice to be mailed to the Settlement Class at their last known address based
27 upon R&M's employment records, that the Settlement Administrator and Class
28 Counsel have sufficient information to locate Settlement Class members and

1 that the Settlement Administrator and Class Counsel have sufficient
2 information to prorate Individual Settlement payments for each subclass, it
3 remains necessary and appropriate, without prior notice to the Settlement
4 Class, that R&M be authorized and directed to provide to the Settlement
5 Administrator and Class Counsel the Class Information to be used solely for the
6 purposes of settlement of this Class Action.

7 9. A hearing ("Final Approval Hearing") shall be conducted before this
8 Court on _____, 2021, at 9:30 a.m., in Department C-16, to
9 determine whether the proposed settlement of the Class Action on the terms and
10 conditions provided for in the Settlement Agreement is fair, reasonable and
11 adequate, whether said settlement should be finally approved by the Court, and
12 whether a Final Approval Order and Judgment should be entered herein.

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

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

27 12. The Court finds that the mailing of the Class Notice substantially in
28 the manner and form as set forth in the Third Amended and Restated

1 Settlement Agreement and this Preliminary Approval Order meets the
2 requirements of *California Rules of Court* Rules 3.766(d) and 3.769(f), California
3 Code of Civil Procedure section 382, California Civil Code section 1781, other
4 applicable law, and due process, and is the best notice practicable under the
5 circumstances, and shall constitute valid, due and sufficient notice to all
6 Settlement Class Members.

7 13. The Court hereby authorizes and directs the Settlement
8 Administrator to mail or cause to be mailed to Settlement Class Members the
9 Class Notice, completed Information Sheet and the Request for Exclusion Form.
10 Such documents shall be sent by First Class U.S. mail, postage prepaid. Mailing
11 of the Class Notice shall occur on _____, 2021.

12 14. Thirty Five days prior to the Final Approval Hearing, Class Counsel
13 shall serve and file its application for a Class Counsel Award and litigation costs
14 and expenses as well as any application for a Service Award.

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

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

23 IT IS SO ORDERED.

24 Dated: March __, 2021

James J. Di Cesare
Judge of the Superior Court

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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 March 9, 2021, I served the foregoing document(s) described as **[PROPOSED] SECOND AMENDED 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 March 9, 2021, at Burbank, California.

/s/ Nathan Childress

Nathan Childress

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SERVICE LIST

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