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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ORANGE

13 RAYMOND STODDARD and
SANTIAGO MEDINA etc.,

14 Plaintiffs,

15 vs.

16 EQUILON ENTERPRISES, LLC, et
17 al.,

18 Defendants.

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

Hon. William Claster
Department CX 102

CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

**[Filed Concurrently with Notice of
Motion, Declarations of Rees and
Medina and Plaintiffs' [Proposed]
Preliminary Approval Order]**

Date: March 13, 2020
Time: 9:00 a.m.
Dept: CX 104
Complaint Filed: August 2, 2010
Trial Date: None Set

Reservation No. 73219881

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	Table of Authorities..... 4
4	I. INTRODUCTION..... 5
5	II. CLASS AND SUBCLASS DEFINITIONS..... 5
6	III. BACKGROUND AND NATURE OF THE CLAIMS BEING
7	SETTLED. 6
8	A. The Wales Action..... 6
9	B. This Action..... 7
10	C. The Parties 7
11	D. The Pleadings and Claims Asserted in this Action..... 8
12	IV. THE SETTLEMENT AND NEGOTIATIONS, INVESTIGATION
13	AND EVALUATION LEADING TO SAME 10
14	V. SETTLEMENT TERMS..... 16
15	A. Timetable 17
16	B. Allocation and Estimate of the Individual Settlement
17	Payments. 18
18	C. The Settlement Does Not Resolve All Claims in this Action. 20
19	D. Service Award to Medina 21
20	E. Attorneys’ Fees and Costs and Expenses of Litigation 21
21	F. Selection of the Settlement Administrator and
22	Estimated Costs. 22
23	VI. SUBSTANTIAL REASONS JUSTIFY A CLAIM PROCESS 22
24	VII. CLASS NOTICE, CLAIM FORM AND ADEQUACY OF NOTICE
25	PROVISIONS 23
26	VIII. CLASS COUNSEL’S EVALUATION OF THE SETTLEMENT 24
27	A. Claims Being Settled..... 25
28	B. Class Counsel’s Investigation of Claims 27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. The Settlement Agreement Is the Result of Arm-Length
Bargaining 28

D. Class Counsel’s Analysis of the Strength and Weakness of the
Claims and Fairness of the Settlement 28

IX. PRIVACY ISSUES INVOLVING CLASS INFORMATION 30

1 **TABLE OF AUTHORITIES**

2 **CASES**

Page

3 *7-Eleven Owners for Fair Franchising v. Southland Corp.*,
 4 (2000) 85 Cal.app.4th 1135 25

5 *Clark v. American Residential Services LLC.*, (2009)
 6 175 Cal.App.4th 785 25

7 *County Of Los Angeles v. Los Angeles County Employee*
 8 *Relations Commission*, (2013) 56 Cal. 4th 905 34

9 *Dunk v. Ford Motor Co.*,(1996) 48 Cal.App.4th 1794 24

10 *Hill v. National Collegiate Athletic Assn.*, (1994) 7 Cal.4th 1 34

11 *Kular v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116 25

12 *Pioneer Electronics (USA), Inc. v. Superior Court*,
 13 (2007) 40 Cal.4th 360 34

14 *Puerto v. Superior Court*, (2008) 158 Cal.App.4th 1242..... 32, 34

15 *Williams v. Superior Court*, (2017) 3 Cal. 5th 531 32, 34

16 **STATUTES AND RULES**

17 *Business and Professions Code* § 17200, 6, 10

18 *California Rules of Court* Rule 3.766 23

19

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1 **I. INTRODUCTION.**

2 By this motion, Plaintiff Santiago Medina (“Medina”) seeks preliminary
3 approval of a settlement reached with Defendant R&M Pacific Rim, Inc. (“R&M”)
4 and seeks the entry of the Preliminary Approval Order lodged herewith.¹ The
5 settlement is embodied in the written Settlement Agreement attached as Exhibit
6 A to the contemporaneously filed Declaration of Samuel T. Rees. The proposed
7 Preliminary Approval Order, lodged herewith, is substantially identical to
8 Exhibit 3 to the Settlement Agreement.

9 In preparing this motion, Medina has attempted to follow the “Guidelines
10 For Motions For Preliminary And Final Approval Of Class Settlement”
11 contained on this Court’s website.

12 R&M has been provided with a copy of this motion. R&M denies all
13 liability; disputes the claims asserted and likely would not be in agreement with
14 the recitation of many of the facts and arguments contained herein.

15 **II. CLASS AND SUBCLASS DEFINITIONS.**

16 As set forth in Paragraph 31 of the Settlement Agreement, the proposed
17 Settlement Class is defined, as follows:

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

21 The proposed Settlement Class consists for two proposed subclasses
22 defined in Paragraphs 33 and 34 of the Settlement Agreement.

23 The Settlement Misclassification Subclass is defined, as follows:

24 All Settlement Class Members during any portion of the Class
25 Period that they were declared by R&M as exempt employees and
paid a salary.

26 The Settlement Rest Break Subclass is defined, as follows:

27 All Settlement Class Members during any portion of the
28 Class Period that they were non-exempt hourly wage employees.

¹ This motion attempts to use defined terms in the Settlement Agreement. See Paragraphs 1 through 37 thereof.

1 R&M has represented in Paragraph 60 of the Settlement Agreement and
2 assuming no Settlement Class Member requests to be excluded from the
3 Settlement that there are 37 employees who would be included in the Settlement
4 Misclassification Subclass, 28 of whom are also included in the Settlement Rest
5 Break Subclass, and that there are 440 employees who would be included in the
6 Settlement Rest Break Subclass, 28 of whom are also included in the Settlement
7 Misclassification Subclass.

8 Paragraph 8 of the Settlement Agreement defines the Class Period as
9 August 2, 2006 through and including September 1, 2008.

10 **III. BACKGROUND AND NATURE OF THE CLAIMS BEING SETTLED.**

11 **A. The Wales Action.**

12 On May 20, 2005, Debbi Jo Wales commenced an action in the Los
13 Angeles Superior Court. On January 9, 2006, Allan Johnson commenced a
14 similar action in the San Francisco Superior Court. Mr. Johnson's action was
15 later transferred to the Los Angeles County Superior Court and then
16 consolidated with Ms. Wales' action. Thereafter, that consolidated action was
17 denominated *Wales and Johnson v. Shell Oil Company, et al.*, LASC Case No.
18 BC 333 740 (the "Wales Action").

19 The Wales Action asserted claims for misclassification of employees,
20 failure to pay overtime and failure to be for missed meal and rest breaks. These
21 claims were asserted both under the *Labor Code* and *Business and Professions*
22 *Code* § 17200, *et seq.*

23 Former defendant Equilon Enterprises, LLC ("Equilon") was a primary
24 defendant in the Wales Action.

25 While R&M was not a party to the Wales Action, that action included
26 R&M's service stations, all of the employees included in this Settlement Class
27 and all claims asserted in this action.

28

1 The Wales Action also included all of the service stations and station
2 employees who worked both at Equilon owned and operated California service
3 stations and all of the Equilon owned and third party operated California
4 service stations. Plaintiffs in the Wales Action alleged that Equilon was liable
5 as a “joint employer” for the wage and hour violations involving employees
6 directly employed by its third party California service station employees
7 including the Settlement Class Members.

8 **B. This Action.**

9 On August 2, 2010, Medina and Raymond Stoddard commenced this
10 action. While this action was pending, Raymond Stoddard died and, as a result,
11 Medina is the sole remaining plaintiff herein.

12 On October 15, 2010, this Court stayed this action because of the
13 pendency of the Wales Action. This stay remained in effect until August 13,
14 2018 first because of the pendency of the Wales Action and then because of the
15 pendency of other related actions which were commenced prior to this action.

16 While this stay was in effect, substantial discovery was undertaken in the
17 Wales Action. Much of this discovery was directed to or conducted by Equilon,
18 including substantial discovery on the joint employment claims.

19 However, discovery was also conducted by Plaintiffs in the Wales Action
20 directed towards R&M and Seung Il Kim, R&M’s owner and predecessor
21 operator to R&M.

22 In addition and part of the pre-certification discovery of employees who
23 submitted declarations in support of class certification in the Wales Action, the
24 depositions of both Medina and Mr. Stoddard were also taken.

25 **C. The Parties.**

26 Medina is a resident of Orange County, California. Medina was hired in
27 October 2005 by R&M as an hourly wage, non-exempt cashier. He served in
28 that capacity until January 16, 2006, when he was promoted to station

1 manager. He remained so employed until December 26, 2008. From January
2 17, 2006, until July 16, 2006, Medina was the manager at the station located at
3 1600 Jamboree Road, Newport Beach, California. From July 17, 2006 until
4 February 18, 2008, Medina was the manager of the station located at 3720
5 Barranca Parkway, Irvine, California. From February 19, 2008 until December
6 26, 2008, Medina was the manager of the station located at 51 Technology
7 West, Irvine, California. As a manger, Medina was declared to be an exempt
8 employee and paid a salary. In September 2008, Medina was converted back to
9 an hourly wage, non-exempt employee.

10 R&M is a California corporation with its principal place of business in
11 Orange County, California. In 2005, Equilon and R&M entered into the first of
12 a series of Multi-Site Operator leases and contracts pursuant to which R&M
13 operated certain Equilon owned California service stations. Those contracts
14 extended beyond September 2008. At all times, R&M only leased and operated
15 service stations owned by Equilon or its successors. R&M does not have any
16 other businesses. During the Class Period, R&M operated 27 stations for
17 Equilon.

18 **D. The Pleadings and Claims Asserted in this Action.**

19 While this action was stayed, Plaintiffs herein moved to lift the stay for
20 the purposes of filing a First Amended Complaint. That motion was granted
21 and Plaintiffs filed their First Amended Complaint on July 5, 2012. With the
22 exception of allowing this filing, this action remained stayed.

23 On August 13, 2018, this Court lifted the stay in this action. Thereafter,
24 Equilon, C6 Resources LLC and R&M filed their answers.

25 Shortly after the stay was lifted in this action, Medina discovered that his
26 individual claims included in the original complaint had been inadvertently
27 omitted in the First Amended Complaint. As a result of a stipulated order,
28

1 Medina filed his Second Amended Complaint herein on March 25, 2019, adding
2 certain of those claims back into this action. This is the operative complaint.

3 At approximately the same time as the filing of the Second Amended
4 Complaint, former defendant C6 Resources LLC was dismissed without
5 prejudice pursuant to stipulation.

6 Equilon filed its Answer to the Second Amended Complaint on April 25,
7 2019. R&M was not required to file an answer to the Second Amended
8 Complaint because of the Settlement, which had been agreed in principal.

9 By his Second Amended Complaint, Medina has asserted five causes of
10 action.

11 Medina's First Cause of Action alleges that certain defendants' employees
12 were misclassified as exempt and not paid overtime when they worked more
13 than 8 hours in a workday and/or more than 40 hours in a work week. This
14 cause of action also sought remedies for other statutory violations. Essentially,
15 Medina claimed that station managers were improperly classified as exempt
16 because their duties and tasks, which were managerial in nature, consumed
17 much less than 50% of their time.

18 Medina's Second Cause of Action alleges that defendants' employees were
19 denied off-duty meal and rest breaks and were not paid the required
20 compensation for those missed breaks. As to meal breaks, Medina claimed that
21 station employees who worked at the same time as at least one other station
22 employee, including the station manager, and who worked over 6 hours in a
23 workday should have been provided an off-duty meal break, notwithstanding
24 any On-Duty Meal Agreement, and should have been compensated for that
25 missed break. As to rest breaks, Medina claimed that any employee who
26 worked by himself more than 3.5 continuous hours in a workday were denied
27 the mandated off-duty rest break and should have been compensated for that
28 missed rest break.

1 Medina's Third Cause of Action is for injunctive relief and restitution
2 pursuant to *Business & Professions Code* § 17200, *et seq.* As to R&M, this claim
3 was only for the period from August 2, 2006, through August 1, 2007. The basis
4 for this claim was to seek relief for the period beyond the statute of limitations
5 period for *Labor Code* violations.

6 Medina's Fourth Cause of Action is for rescission of any release given by
7 any member of the Settlement Class to R&M on the basis that any such release
8 is both void under the *Labor Code* and on the basis that any release was given
9 under duress by the threat of job termination if the release was not given. Such
10 a release was demanded of Medina twice in 2008 and ultimately given by
11 Medina in order to secure partial payment for overtime and missed meal break
12 compensation and in order to retain his then employment as an R&M station
13 manager.

14 While each of the previous Cause of Action was brought by Medina
15 individually and on behalf of other employees at Equilon owned service
16 stations, Medina's Fifth Cause of Action is brought only on his own behalf. This
17 cause of action is for wrongful termination in violation of public policy. Medina
18 claims that he was terminated because he was Hispanic and that R&M
19 terminated him in order to employ Koreans.

20 **IV. THE SETTLEMENT AND NEGOTIATIONS, INVESTIGATION**
21 **AND EVALUATION LEADING TO SAME.**

22 Following the lifting of the stay in this action and at the suggestion of this
23 Court, R&M and Medina discussed whether it would be appropriate to engage
24 in an early mediation of Medina's claims. Medina had recently served pre-
25 certification written discovery on R&M for which responses had not yet been
26 given. As a result of these discussions, R&M and Medina agreed that an early
27 mediation would have a good chance of success and avoid further expense and
28

1 even more importantly further delay of an action which had been stayed for
2 nearly eight years.

3 These parties then attempted to choose a suitable mediator who not only
4 had extensive experience in resolving wage and hour claims but also could be
5 scheduled within a reasonable period of time. After careful research and
6 consideration, the parties selected the Honorable Carl J. West (Ret). of JAMS to
7 be the mediator. Judge West is a well-respected retired Superior Court Judge
8 with extensive experience in trying, arbitrating and mediating wage and hour
9 class action disputes such as those alleged by Medina in the Class Action.
10 Mediation was scheduled for January 3, 2019 to last the entire day.

11 Bleau Fox, proposed Class Counsel, has been counsel for Medina since
12 this action was commenced. Moreover, Bleau Fox is also counsel for all of the
13 plaintiffs in all of the related actions.

14 Samuel T. Rees, Of-Counsel to Bleau Fox, was at all times the lead
15 plaintiffs' counsel in the Wales Action and personally conducted nearly all of the
16 discovery in that action. Bleau Fox became counsel and later Class Counsel in
17 the Wales Action when Mr. Rees joined that firm. Since joining Bleau Fox, Mr.
18 Rees continued to be lead counsel in the Wales Action and is also lead counsel
19 in this action and all of the related actions, of which there were five.

20 Prior to commencing mediation, Bleau Fox had already developed
21 substantial knowledge of the claims asserted in this action, which claims are
22 either very similar to or virtually identical to those asserted in the Wales Action
23 and all of the related actions. Mr. Rees has been the lawyer primarily involved
24 in all significant motions in all of these actions. Mr. Rees has also been the
25 primary appellate counsel in two appeals decided in the related actions.

26 Mr. Rees has conducted extensive interviews of numerous managers of
27 Equilon's California stations who have similar or identical claims to those
28 asserted in this action. Bleau Fox is a nationally recognized firm representing

1 service station dealers, particularly in connection with claims against or by
2 Equilon and other service station franchisors such as BP, Chevron, Circle-K,
3 ExxonMobil, and Tesoro.

4 As such, Bleau Fox has gained substantial knowledge of the operations of
5 service stations in California.

6 In advance of the mediation, Medina requested and R&M provided
7 certain detailed information to allow Medina to prepare for mediation. This
8 information concerned, among other matters, class size, salary and hourly wage
9 amounts and other items which would allow Medina and Bleau Fox to make
10 reasonable estimates of the damages being sought, a fair division of any
11 settlement payment between the two subclasses and among the members of a
12 subclass.

13 Adding to this knowledge and prior to the mediation, Bleau Fox and
14 primarily Mr. Rees had successfully negotiated a settlement of the claims of
15 Equilon employed California station managers in the Wales Action. That
16 settlement was approved by the Court in the Wales Action.

17 During the course of the mediation on January 3, 2019, additional
18 information was learned by Medina and Bleau Fox. While mediation
19 discussions remain confidential, R&M agreed to provide many of the facts
20 learned at mediation by way of specific representations of fact contained in the
21 Settlement Agreement at Paragraph 60 A through G.

22 Going into the mediation, the class period was believed to extend from
23 August 1, 2006 until perhaps the present. Moreover, it was believed that the
24 claims for relief included not only unpaid overtime for misclassified employees
25 but also unpaid meal and rest break compensation.

26 As set forth in Paragraph 60 of the Settlement Agreement, R&M
27 reclassified all of its salaried exempt employees to hourly employees. This
28 occurred prior to September 1, 2008. After all employees were reclassified, they

1 received overtime pay based upon the recorded time on their time cards. This
2 change meant that Medina's claims for unpaid overtime for the Settlement
3 Class stopped prior to September 1, 2008.

4 Also as set forth in Paragraph 60 of the Settlement Agreement, R&M
5 changed its rest break policy and provided all of its station employees with
6 duty-free, paid rest periods at the rate of no less than ten minutes net rest for
7 every four hours worked, or major fraction thereof. This change meant that
8 Medina's claims for unpaid compensation for missed rest breaks for the
9 Settlement Class stopped prior to September 1, 2008.

10 Finally and as set forth in Paragraph 60 of the Settlement Agreement,
11 R&M on or about July 5, 2008 and as a result of a California Labor
12 Commissioner meal break audit, paid approximately 370 employees a total of
13 \$122,721.88 for missed meal break compensation. This payment is believed to
14 have resolved Medina's claims for missed meal break compensation and is the
15 reason why no payment is being made for missed meal break compensation by
16 this Settlement.

17 Medina was employed by R&M until December 26, 2008. As a result,
18 Medina was employed by R&M at the time the foregoing changes were made.
19 Medina has confirmed that he personally observed the changes in the meal
20 break and rest break policies outlined above and the fact that he was
21 reclassified as a non-exempt hourly employee during this time period.

22 In advance of the mediation, Medina and Mr. Rees prepared detailed
23 calculations of potential damages for the claims asserted in this action.

24 To attempt to calculate damages for the misclassification claims, Medina
25 and Bleau Fox assumed that each of R&M's stations which were not merely a
26 kiosk had a salaried, exempt manager assigned to work at the station full time.
27 Medina then assumed that each manager was paid a salary of approximately
28 the same amount as was paid to Medina and Stoddard during the portion of the

1 Class Period each was so employed. This equated to an hourly wage by dividing
2 the annual salary by 2,080. Next, a determination was made as to the number
3 of overtime hours each manager would normally work during a year. This
4 determination was based upon the actual experience of Medina and Stoddard,
5 the actual experience reported by other managers interviewed and by the
6 amount of overtime hours used for settlement purposes in the Wales Action.
7 Overtime hours were calculated for both 1.5 rates and double-time rates based
8 upon the same factors and then adjusted to create a combined number of 1.5
9 rate overtime hours. This assumption provided the approximate range of
10 damages for the Class Period. To this sum, interest was also calculated at 10%
11 per annum assuming a bi-monthly payroll date.

12 To attempt to calculate damages for the missed rest and meal break
13 claims, Medina and Bleau Fox created two different calculations, one for meal
14 breaks and one for rest breaks. Insofar as relevant to this Settlement, the rest
15 break claims assumed that all stations were staffed on a 24/7/365 day basis by a
16 single non-exempt hourly employee. While experience showed that some
17 stations might have two cashiers on duty during a few peak days, those times
18 would otherwise have been excluded from the calculation because the station
19 manager would have also been on-site. An assumption was also made that
20 cashiers would only be paid minimum wage which was adjusted as those rates
21 changed during the Class Period. Finally, it was assumed that each of the
22 stations was operated on a three shift basis – 6 to 2, 2 to 10, and 10 to 6. A
23 calculation was then made on the basis that each weekday and Saturday would
24 have 2 missed rest breaks and that Sunday would have three missed rest
25 breaks because of the times station managers would normally also be on-site.
26 As with the misclassification claims, interest at 10% was added to the damage
27 calculations derived from these calculations and assumptions.

28

1 In addition to the foregoing calculations, an attempt was made to factor in
2 attorneys' fees and costs. Medina's misclassification claims allowed for the
3 recovery of attorneys' fees but the missed break claims do not.

4 Based upon the representations contained in Paragraph 60 of the
5 Settlement Agreement, which facts Medina and Bleau Fox learned at the
6 mediation, adjustments had to be made to the settlement calculations. The
7 original calculations attempted to determine damages based upon claims
8 extending beyond September 2008. Based upon the representations, damages
9 would stop in September 2008, although interest would continue to accrue until
10 paid. This adjustment substantially reduced the amount of possible damages.

11 Two other factors played a significant role in the calculation of damages.
12 One factor was the actual number of overtime hours worked by members of the
13 Settlement Misclassification Subclass. While Medina and Bleau Fox used what
14 the determined to be appropriate numbers for overtime hours, the actual
15 overtime hours could be materially less.

16 The second factor was the continued viability of R&M. R&M's stations
17 were sold by Equilon to Tesoro who in turn was acquired by Marathon
18 Petroleum. While Tesoro continued the MSO model for operating its stations,
19 Marathon has recently embarked on returning those stations to company
20 operated stations. Should they remove stations from R&M, its long term
21 viability is in question. As a result, delay in resolving these claims may result
22 in uncollectable judgments.

23 Medina and R&M engaged in a day-long mediation with Judge West.
24 While Medina and R&M did not reach a settlement at the mediation hearing,
25 Judge West remained involved in the mediation process and, as a result, a
26 settlement in principal was reached between those parties on January 15, 2019.
27 The settlement in principal was the result of an informed and detailed
28 evaluation of the total exposure and potential liability, in relation to the costs

1 and risks associated with continued litigation of the Class Action. The
2 settlement in principle was subject to and expressly conditioned upon the
3 Parties entering into this Settlement Agreement and the Court in the Class
4 Action both preliminarily and finally approving the Settlement.

5 The Settlement Agreement at Paragraph 58 provides that “Judge West at
6 his sole discretion, may execute a declaration supporting the settlement and the
7 reasonableness of it, and the Court, in its discretion, may contact Bates *ex parte*
8 to discuss the settlement and whether it is fair and reasonable.” Medina
9 encourages this communication to the extent that this Court has any doubt that
10 this Settlement was negotiated at arms lengthy and in good faith by Medina
11 and Class Counsel.

12 **V. SETTLEMENT TERMS.**

13 The Settlement Agreement provides that R&M will pay \$845,000.00 in full
14 and final settlement of all individual and class claims in this action except
15 Medina’s Fifth Cause of Action for wrongful discharge.² This Settlement is
16 commonly referred to as an “all-in” settlement.

17 The Settlement Agreement is divided into several sections.

18 Paragraphs 1 through 37 provide definitions. Paragraphs 38 through 59
19 contain certain factual recitals upon which the Settlement is based. Paragraphs
20 60 and 61 contains certain factual representations by R&M upon which
21 Settlement Class Members may rely in making their decisions which
22 representations neither Medina nor Bleau Fox have verified as true.
23 Paragraphs 62 through 70 address the submission of this Settlement to this
24 Court for Preliminary and Final Approval. Paragraphs 71 through 75 discuss
25 the Settlement consideration. Paragraphs 76 through 84 address the funding
26 and allocation of the Settlement consideration. Paragraphs 85 through 97

27 ² Medina has entered into a separate settlement agreement for his wrongful termination claim.
28 Medina is precluded from disclosing the terms and conditions of his settlement agreement for this claim
but is willing to do so if ordered by this Court

1 discuss the Class Notice and claim procedures. Settlement Class Members are
2 required to timely submit a claim to receive any payment although they are
3 bound by the Settlement unless they timely and properly seek to be excluded.
4 Paragraphs 98 through 108 discuss the exclusion process and R&M's right to
5 terminate this Settlement if 5 or more members of the Settlement
6 Misclassification Subclass submit a valid and timely request to be excluded.
7 Paragraphs 109 through 116 discuss the objection procedure. Paragraphs 117
8 through 124 discuss the releases given as part of the Settlement. Paragraphs
9 125 through 130 discuss the administration of the Settlement. Paragraphs 131
10 through 133 discuss the effect of disapproval, cancellation or termination of the
11 Settlement. Finally, Paragraphs 134 through 156 contain additional provisions
12 not otherwise covered.

13 Each of these areas will be summarized briefly below.

14 **A. Timetable.**

15 The timetable for this Settlement is keyed to the entry of the Preliminary
16 Approval Order, which is Exhibit 3 to the Settlement Agreement.

17 Once the Preliminary Approval Order is entered, certain steps are
18 required to be taken. This entry is defined as the Preliminary Approval Date in
19 Paragraph 22.

20 First, R&M has 30 days from the Preliminary Approval Date to submit the
21 Class Information to Class Counsel and the Settlement Administrator. [¶ 85]

22 Second, the Settlement Administrator has 60 days from the Preliminary
23 Approval Date to mail the Class Notice and Claim Form to the Settlement Class.
24 [¶ 62] The date of the initial mailing is defined as the Notice Date in Paragraph
25 19.

26 The Settlement Class Members have 35 days from the Notice Date to
27 contest their information contained in the Claim Form on which the calculation
28 of their settlement payment is based. [¶¶ 83, 87]

1 46 days after the Notice Date, Class Counsel must file any motion for fees
2 and costs and for any service award to Medina. [¶ 74]

3 Several events must occur within 60 days from the Notice Date.
4 Settlement Class Members must submit a claim by mail, fax or on-line to receive
5 any payment. During this period, Settlement Class Members who have not
6 requested that they be excluded from the Settlement may submit appropriate
7 written objections to the Settlement. [¶¶ 12, 105, and 109-116] Also during this
8 period, Settlement Class Members may request that they be excluded from the
9 Settlement, a procedure commonly known as opting out. [¶¶ 12, 98] Finally,
10 during this period, any Settlement Class Member who wishes to receive his or
11 her Individual Settlement Payment must submit a claim to the Settlement
12 Administrator. [¶¶ 78, 91]

13 Paragraph 95 requires the Settlement Administrator to submit to Class
14 Counsel who will then file with the Court a due diligence declaration containing
15 the information provided in that paragraph. That declaration is required to be
16 provided to Class Counsel at least 21 days prior to the Final Approval Hearing.

17 Paragraph 108 allows R&M to terminate this Settlement if five or more
18 members of the Settlement Misclassification Subclass properly request to be
19 excluded.

20 Payments both into and out of the Settlement Fund are keyed to the
21 Effective Date defined in Paragraph 11 to be 7 days after this Court has entered
22 both its Final Approval Order and Judgment thereon and that Order and
23 Judgment having become final. Within 14 days of the Effective Date, R&M is
24 required to pay the Total Settlement Amount to the Settlement Administrator.
25 [¶ 76] One week later or 21 days after the Effective Date, the Settlement
26 Administrator disburses the Individual Settlement Payments, the Class Counsel
27 Award, the Service Award and the Settlement Administrator Expenses. [¶ 76]

28

1 There are provisions for the redistribution of any Individual Settlement
2 Payments not cashed within 181 days after mailing. [¶¶ 37, 82, 127]

3 **B. Allocation and Estimate of the Individual Settlement**
4 **Payments.**

5 As noted above, Medina and Class Counsel prepared detailed damage
6 calculations prior to the mediation. After the Class Period was determined to
7 end on September 1, 2008 and not include damages for missed meal breaks,
8 Medina and Class Counsel revised their damage calculations. As a result, it was
9 determined that the total damages to the two subclasses were approximately
10 74% for the Settlement Misclassification Subclass and 26% for the Settlement
11 Rest Break Subclass. This allocation is set forth in Paragraph 79.

12 During the mediation as a result of bargaining and with the assistance of
13 Judge West it was determined that each Individual Settlement Payment should
14 be further allocated 33% to wages and 67% to penalties and interest. This
15 allocation is set forth in Paragraphs 72 and 79.

16 The allocation formula for the Settlement Misclassification Subclass is set
17 forth in Paragraph 80.A. This subparagraph prorates the subclass' settlement
18 amount based upon weeks worked in that subclass. If a subclass member was
19 also a member of the Settlement Rest Break subclass during the Class Period,
20 that member would be considered a member of the Settlement Misclassification
21 Subclass for the entire week.

22 The allocation formula for the Settlement Rest Break Subclass is set forth
23 in Paragraph 80.B.

24 Paragraph 80.C. rounds up *de minimis* payments to \$10.00.

25 No part of the Total Settlement Amount will revert back to R&M.

26 It is highly unlikely because of the subsequent payment of voided
27 Individual Settlement Payment checks that any money will be paid to the *cy pres*
28 beneficiary of the Settlement, Wage Justice Center, subject to the requirements

1 of California Code of Civil Procedure Section 384 and as provided as a last
2 alternative in Paragraph 127 of the Settlement Agreement.

3 Medina and Class Counsel have attempted to estimate Individual
4 Settlement Payments. An accurate determination cannot be made without the
5 Class Information to be supplied by R&M. Nevertheless, Medina and Class
6 Counsel estimate that a member of the Settlement Misclassification Subclass
7 who worked for an entire year should receive approximately \$7,087 for that year
8 and a member of the Settlement Rest Break Subclass who worked 40 hours per
9 week for an entire year should receive approximately \$468 for that year.

10 **C. The Settlement Does Not Resolve All Claims in this Action.**

11 This action includes not only claims against R&M but also claims against
12 Equilon. While this Court has entered judgment in favor of Equilon, that
13 judgment is on appeal.

14 This Settlement fully resolves all claims against R&M by the Settlement
15 Class Members who do not request to be excluded. The releases provided by the
16 Settlement Class Members and Medina are set forth in Paragraphs 18, 35, 53
17 and 117 through 124.

18 The release by the Settlement Class Members, including Medina, is a full
19 release of R&M, however, this release specifically excludes claims against
20 Equilon and certain other named entities which arose before or after the Class
21 Period. The release also excludes claims which cannot be released by law.
22 Medina's release further excludes Medina's claim for wrongful termination
23 against R&M which is being settled pursuant to a separate agreement.

24 The claims asserted against Equilon are alleged to cover the period
25 commencing in May 2001. Thus, insofar as Settlement Class Members have a
26 claim against Equilon for the period prior to August 6, 2006, those claims are not
27 being released.

28

1 **D. Service Award to Medina.**

2 Paragraphs 27 and 126.B of the Settlement Agreement provide for the
3 payment of a Service Award to Medina. Any such Award is specifically made
4 discretionary by this Court.

5 Medina expects to seek a Service Award. Medina has been required to
6 expend extraordinary amounts of time over the last 9 plus years in prosecuting
7 these claims. He has also been required to supervise the activities of Class
8 Counsel provide guidance to Class Counsel on R&M's and Equilon's policies,
9 procedures and practices and the operation of Equilon stations. Because of the
10 pending appeal, Medina's work is not completed.

11 In addition, Medina has endured substantial risks. While Class Counsel
12 was retained on a contingency fee basis and has funded all costs of prosecution,
13 Medina was at risk for the payment of recoverable costs in the event of an
14 adverse decision.

15 Any Service Award is considered to be comprised of 33% wages and 67%
16 non-wages. [¶ 72]

17 **E. Attorneys' Fees and Costs and Expenses of Litigation.**

18 Paragraph 74 of the Settlement Agreement provides that Class Counsel
19 shall not seek an award of attorneys' fees, costs and expenses exceeding 1/3rd of
20 the Total Settlement Amount and R&M has agreed not to oppose any such
21 complying request for such an award.

22 Class Counsel expects to seek an award of attorneys' fees, costs and
23 expenses of 1/3rd of the Total Settlement Amount which is \$281,667. Class
24 Counsel's retainer agreement with Medina provides for a contingency fee of 40%
25 of recoveries after deduction and payment of all client chargeable costs advanced
26 by Class Counsel. In addition, Class Counsel has spent considerable time both
27 in representing plaintiffs in this action and in prosecuting related actions from
28 which substantial evidence has been marshaled. Class Counsel expects its

1 motion for fees, costs and expenses to detail the services performed for the
2 benefit of the Settlement Class.

3 **F. Selection of the Settlement Administrator and Estimated**
4 **Costs.**

5 Following the mediation, Class Counsel investigated appropriate
6 administrators for this settlement. R&M's counsel provided suggestions. As a
7 result, a decision was made to retain Phoenix Settlement Administrators at a
8 cost not to exceed \$15,000.00. This amount provides a cushion from the estimate
9 provided by Phoenix.

10 All parties are in agreement with this selection and the decision was based
11 in large part on the substantial experience of Phoenix in providing these types of
12 services.

13 **VI. SUBSTANTIAL REASONS JUSTIFY A CLAIM PROCESS.**

14 The Settlement Agreement requires Settlement Class Members to timely
15 submit a claim in order to receive their Individual Settlement Payment.

16 As noted above, the entire Settlement Class consists of 449 members of
17 which 412 members were solely minimum wage non-exempt employees.

18 The Settlement Administrator is required to mail the Individual
19 Settlement Payments to the Settlement Class, with the exception of Settlement
20 Class Members who request to be excluded or who fail to timely submit a claim.
21 To do so, the Settlement Administrator need to both verify that the payments
22 are being sent to the appropriate address. While the Settlement Administrator
23 will receive the last known address for each from R&M based on its personnel
24 records, the Class Period is from 2006 to 2008 and those address may well be
25 stale. Requiring claim submission allows the Settlement Administrator to send
26 payments where they will likely be received.

27 In addition, the Settlement Administrator is required to make certain
28 payroll deductions from the Individual Settlement Payments and provide

1 appropriate information to the taxing authorities. Based upon experience, it
2 may well be that the information in R&M's payroll records may not accurately
3 reflect the true social security numbers for all Settlement Class Members.
4 Requiring a claim process helps insure that accurate social security numbers are
5 received by the Settlement Administrator.

6 **VII. CLASS NOTICE, CLAIM FORM AND ADEQUACY OF NOTICE**
7 **PROVISIONS.**

8 Exhibit 1 to the Settlement Agreement provides the form of notice to be
9 given to the Class Members and Exhibit 2 contains the Claim Form. Certain
10 information is omitted from both forms. Certain dates will be input once this
11 motion is heard and decided. Certain individual information will be inserted
12 once R&M provides the Settlement Administrator and Class Counsel with the
13 required Class Information provided in Paragraph 6. Certain contact
14 information will be secured and input by the Settlement Administrator, such as
15 web address and dedicated telephone lines, once this motion is heard and
16 decided.

17 Insofar as the entire Settlement Class is concerned, Settlement Class
18 Members will have approximately 35 days from the date the Class Notice and
19 Claim Forms are first mailed to contest their Class Information, approximately
20 60 days to request to be excluded from the Settlement or object to the Settlement
21 and to submit their Claim Form if they do not request to be excluded.

22 Medina and Class Counsel submit the following additional information as
23 required by Rule 3.766 *California Rules of Court*:

24 No more than 60 days following the entry of the Preliminary Approval
25 Order, the Settlement Administrator is required to not only mail to each
26 Settlement Class Member the Class Notice and individual Claim Form but also
27 to send both by email if an email address has been provided to the Settlement
28 Administrator.

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

15 Medina and Class Counsel believe that following the above procedures are
16 the most practical method for insuring the all Settlement Class Members receive
17 the Class Notice and that other methods of notice such as Newspaper, magazine,
18 broadcasting or through any interest group are not warranted particularly in
19 light of the overall size of the Settlement Class of 449 members and the Total
20 Settlement Payment.

21 It should be noted that pursuant to the terms of the Settlement
22 Agreement, all Settlement Class Members will be bound by the releases
23 contained therein and this Court's Final Approval Order and Judgment unless
24 they timely request to be excluded.

25 **VIII. CLASS COUNSEL'S EVALUATION OF THE SETTLEMENT.**

26 Perhaps the leading case on the criteria which this Court should utilize for
27 determining the fairness of a class action settlement is *Dunk v. Ford Motor*
28 *Co.*, (1996) 48 Cal.App.4th 1794. The *Dunk* factors were summarized in *7-Eleven*

1 *Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal.app.4th 1135,
2 1146, as follows:

3 The trial court possesses a broad discretion to determine the
4 fairness of the settlement, a discretion exercised through the
5 application of a handful of identified criteria. Both the federal
6 circuit courts and our Court of Appeal have adopted a mix of
7 relevant considerations, including "[1] the strength of plaintiffs'
8 case, [2] the risk, expense, complexity and likely duration of
9 further litigation, [3] the risk of maintaining class action status
10 through trial, [4] the amount offered in settlement, [5] the extent of
11 discovery completed and the stage of the proceedings, [6] the
12 experience and views of counsel, . . . and [7] the reaction of the
13 class members to the proposed settlement." (Dunk, supra, 48 Cal.
14 App. 4th at p. 1801.) The list of factors is not exhaustive and
15 "should be tailored to each case." (Id. at p. 1801.) According to the
16 Dunk court, "a presumption of fairness exists where: (1) the
17 settlement is reached through arm's-length bargaining; (2)
18 investigation and discovery are sufficient to allow counsel and the
19 court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small." (Id. at p.
21 1802; see also Newberg & Conte, *Newberg on Class Actions* (3d ed.
22 1992) § 11.41, p. 11-91.)

23 Finally, "[i]t cannot be overemphasized that neither the trial
24 court in approving the settlement nor this Court in re-viewing that
25 approval have the right or the duty to reach any ultimate
26 conclusions on the issues of fact and law which underlie the merits
27 of the dispute. It is well settled that in the judicial consideration of
28 proposed settlements, 'the [trial] judge does not try out or attempt
to decide the merits of the controversy,' [citation] and the appellate
court 'need not and should not reach any dispositive conclusions on
the admittedly unsettled legal issue.' " (*City of Detroit v. Grinnell
Corporation*, supra, 495 F.2d at p. 456.)

19 See also *Clark v. American Residential Services LLC.*, (2009) 175 Cal.App.4th
20 785, 799-800 and *Kular v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116,
21 128.

22 Class Counsel will discuss the foregoing factors.

23 **A. Claims Being Settled.**

24 This settlement only involves service stations which were operated by
25 R&M. During the Class Period, there were 27 such stations employing 449
26 Settlement Class Members. Of this number, 9 were solely employed as exempt
27 employees during the Class Period, 412 were solely employed as non-exempt
28

1 hourly employees during the Class Period and 28 were employed in both
2 categories.

3 While there are both claims under the *Labor Code* and the Unfair
4 Competition Law, the practical effect of these two statutes is to extend the
5 statute of limitations to 4 years. It is because of the Unfair Competition Law
6 that a settlement was reached for the August 2, 2006 through August 1, 2007
7 time period.

8 Medina alleges that the exempt Settlement Class Members were
9 misclassified and primarily denied overtime pay. Class Counsel believes that
10 this is an extremely strong claim because R&M reclassified all exempt station
11 employees as non-exempt hourly employees in 2008 impliedly admitting that
12 those employees were previously misclassified. Because these employees were
13 station managers, they were paid substantially more than cashiers. They
14 normally worked 6 days a week and usually more than 8 hours during the
15 weekdays. They were also required to cover of cashiers who either quit and had
16 not been replaced or were no-shows for their assignment. When this occurred
17 either during the graveyard shift or the weekend, station managers would work
18 more than 40 hours for the week and likely some hours at double-time rates.
19 This claim also allowed for attorneys fees.

20 Medina rest break claims were weaker. Medina limited those claims to
21 employees who worked more than 3.5 hours by himself, which was normally the
22 case for second and graveyard shift employees Monday through Saturday and all
23 cashiers on Sunday. This limitation was made to provide class wide
24 applicability because R&M was contractually prohibited by Equilon from closing
25 the station to allow for rest breaks.

26 While Medina's meal break claim was just the opposite of the rest break
27 claim in terms of affected Settlement Class Members, it was based upon the fact
28 that R&M required all employees to sign an On-Duty Meal Agreement as a

1 condition to employment. However, the applicable Wage Order provided that
2 such an agreement could only be used when necessary because of the nature of
3 the work. Medina alleged that when two employees were on duty at the same
4 time, each should have been allowed to take an off-duty meal break. This meant
5 that the cashiers working during the first and second shifts during the week day
6 and working the first shift on Saturday should have been allowed this break.
7 However, it appears that these claims were resolved and paid as a result of the
8 Department of Labor's audit of R&M in 2008.

9 **B. Class Counsel's Investigation of Claims.**

10 As noted above, this action was commenced in August 2010. However,
11 related cases were first commenced in May 2005 with the Wales Action.
12 Substantial discovery was undertaken in the Wales Action. Two class
13 certification motions were submitted in that action. To support these motions,
14 Class Counsel interviewed and secured declarations from numerous station
15 managers working for Equilon's third party operators including Messrs.
16 Stoddard and Medina. Those declarants were all deposed by Equilon in the
17 Wales Action. In addition, R&M was deposed in the Wales Action and certain
18 documents relating to R&M's operations were produced both by R&M and by
19 Equilon.

20 As a result, there is a substantial showing that Class Counsel has
21 diligently investigated the claims and the conclusions reached below are
22 informed conclusions.

23 Class Counsel's experience is shown by the accompanying Rees declaration
24 regarding background and experience submitted by Class Counsel. Class
25 Counsel was also approved as class counsel in the Wales Action. Additionally,
26 Class Counsel's experience and expertise is established by the pleadings,
27 motions and oppositions filed by same in this action.

28

1 **C. The Settlement Agreement Is the Result of Arm-Length**
2 **Bargaining.**

3 The monetary terms and certain of the non-monetary terms of the
4 settlement were reached after an entire day of mediation with a highly
5 experienced mediator, Judge Carl West. Judge West had an opportunity to
6 observe the negotiations and will undoubtedly attest to the adversarial nature of
7 same.

8 Following the mediation, it took an extensive period of time to negotiate
9 and execute the Settlement Agreement and exhibits thereto. Incorporating the
10 other major non-monetary terms of the settlement was subject to negotiation by
11 Class Counsel and R&M's counsel.

12 There is simply nothing collusive about this settlement and the
13 presumption of fairness should apply.

14 **D. Class Counsel's Analysis of the Strength and Weakness of the**
15 **Claims and Fairness of the Settlement.**

16 Class Counsel and Medina recommend approval of this settlement as fair,
17 adequate and reasonable and the granting of this motion. This recommendation
18 is based upon the strengths and weakness of the claims and defenses, the
19 expense and length of proceedings necessary to continue the Class Action
20 against R&M, the delay which has already occurred and the risk that any
21 judgment may prove to be uncollectable.

22 The primary claim is that the R&M station managers were misclassified.
23 This is an affirmative defense and R&M bears the burden of proof. R&M is
24 believed to have made this classification decision on a blanket basis and
25 conducted no studies to establish that this classification decision is warranted.
26 R&M required that each of its managers perform essentially the same duties
27 and gave them virtually no discretion to make significant business decisions.
28 Managers did not set fuel prices; managers did not set prices for C-Store

1 products or car washes; managers did not chose vendors or products sold;
2 managers could not offer promotions. Managers were permitted to hire, fire and
3 discipline their station employees or had significant involvement in these
4 decisions and managers set the work schedules for their employees. However,
5 this consumed very little time, whether viewed daily, weekly or yearly. In sum,
6 Class Counsel has determined that there is no substantial evidence which R&M
7 may offer to establish that managers even spent 40% of their workday, much
8 less the required 51%.

9 In preparation for the mediation, Class Counsel prepared a variety of
10 damage calculations based upon the actual experience and testimony of both
11 Stoddard and Medina. Those calculations are set forth above.
12 Using the experience of Stoddard and Medina, Class Counsel determined that
13 overtime wages plus interest thereon might approximate \$2 million to \$3
14 million. This amount was lower than originally estimated based on the fact that
15 R&M reclassified all employees in 2008.

16 Class Counsel in recommending that Medina accept the negotiated Total
17 Settlement Payment also relied extensively on confidential discussions had with
18 Judge West. While Class Counsel has extensive experience, it pales in
19 comparison to the experience of Judge West. Class Counsel highly recommends
20 that this Court avail itself of the opportunity to discuss this Settlement with
21 Judge West who Class Counsel is confident will recommend its approval by this
22 Court.

23 Class Counsel's evaluation of the meal and rest break claims is discussed
24 above.

25 In arriving at the settlement, Class Counsel also had to take into account
26 the time and expense of proceeding to trial and likely appeals.

27
28

1 Class Counsel has concluded that absent a settlement, this action may
2 take another 3 to 5 years to reach a final conclusion and that attorneys' fees
3 would likely exceed another \$2 million in this process.

4 Class Counsel also weighed the fact that Class Members are not highly
5 compensated individuals.

6 Class Counsel submits that the recovery by the class is reasonable in light
7 of the foregoing risks.

8 This Court is also charged with analyzing whether this settlement is fair
9 to each Class Member as compared to other Class Members and whether this
10 settlement is fair comparing Class Members to Medina.

11 Class Counsel has gone to great lengths to insure the fairness in both
12 respects. First, each subclass member is treated the same and each receives an
13 Individual Settlement Payment based upon the amount of time each was
14 employed in each subclass. Medina is treated no differently except for (i) any
15 Service Award and (ii) the settlement he will receive for his personal wrongful
16 termination claim.

17 If this motion is granted, Class Counsel expects to encourage all Class
18 Members to timely file claims. Class Counsel will seek to have the Settlement
19 Administrator send the Claim Notice and Claim Forms promptly and take
20 appropriate actions to insure that all Settlement Class Member receive the Class
21 Notice and their individual Claim Form.

22 Class Counsel submits that the settlement fairly treats the class and the
23 motion should be granted as prayed.

24 **IX. PRIVACY ISSUES INVOLVING CLASS INFORMATION.**

25 Paragraph 6 of the Settlement Agreement defines Class Information which
26 R&M is to compile from its payroll records, if possible, the following information
27 with regard to each Settlement Class Member: "Full name, last known address,
28 social security number, email address, last known telephone number, the

1 number of work weeks during the Class Period that the Class Member was
2 employed as a claimed exempt salaried employee, the gross wages paid to a non-
3 exempt hourly Class Member for 2006, 2007 and 2008, and the dates of
4 employment as a non-exempt hourly Class Member whose employment as a non-
5 exempt hourly employee commenced after December 31, 2005 and/or ceased
6 before January 1, 2009.”

7 This Class Information is clearly essential for the successful
8 administration of this Settlement. Full names and employment dates and
9 positions as exempt or non-exempt is essential to identify each subclass member.
10 The last known address, email address and telephone number is essential to
11 locate the member and provide each with the Class Notice and Claim Form. The
12 gross wages for non-exempt employees as well as dates of employment and
13 positions for all class members is essential for a proper allocation of the Total
14 Settlement Amount. The social security number is essential for tax reporting
15 but may also prove very helpful in locating class members.

16 However, because this information is derived from payroll records, R&M is
17 properly concerned that providing this information to Class Counsel may violate
18 the privacy rights of the class members and potentially expose R&M to liability
19 unless R&M is authorized and instructed by this Court to do so.

20 Class Counsel also has a duty to insure that this Settlement is properly
21 administered. Class Counsel also has a duty to assist in locating class members.

22 Paragraph 81 of the Settlement Agreement requires Class Counsel to
23 review and approve the calculation of the Individual Settlement Payments.
24 Class Counsel cannot do so without much of the Class Information.

25 Paragraph 85 of the Settlement Agreement impliedly requires Class
26 Counsel to assist the Settlement Administrator in locating Settlement Class
27 Members. This cannot be accomplished without the Class information.

28

1 Paragraph 115 of the Settlement Agreement requires Class Counsel to
2 respond to any objections. Depending on the objection, this may also require
3 Class Counsel to have access to the Class Information.

4 Privacy rights are not absolute. The issue is one of balancing.

5 The issue of privacy has frequently arisen in wage and hour litigation,
6 primarily involving a class plaintiff to secure names and contact information
7 regarding putative class members.

8 One of the primary decisions discussing this issue is *Puerto v. Superior*
9 *Court*, (2008) 158 Cal.App.4th 1242. A second and more recent decision which
10 relies on *Puerto* is *Williams v. Superior Court*, (2017) 3 Cal. 5th 531.

11 Both *Williams* and *Puerto* involved discovery requests seeking the identity
12 of persons and their contact information and both determined that those issues
13 compelled permitting discovery despite privacy objections.

14 As stated in *Puerto, supra* at 1249-1250:

15 The "expansive scope of discovery" (*Emerson Electric Co. v.*
16 *Superior Court* (1997) 16 Cal.4th 1101, 1108 [68 Cal. Rptr. 2d 883,
17 946 P.2d 841] (*Emerson*)) is a deliberate attempt to "take the 'game'
18 element out of trial preparation" and to "do away 'with the sporting
19 theory of litigation--namely, surprise at the trial.'" (*Greyhound Corp.*
20 *v. Superior Court* (1961) 56 Cal.2d 355, 376 [15 Cal. Rptr. 90, 364
21 P.2d 266] (*Greyhound*); see also *Garamendi v. Golden Eagle Ins. Co.*
22 (2004) 116 Cal.App.4th 694, 712, fn. 8 [10 Cal. Rptr. 3d 724]
23 [discovery process is "designed to eliminate the element of
24 surprise".]) One key legislative purpose of the discovery statutes is
25 "to educate the parties concerning their claims and defenses so as to
26 encourage settlements and to expedite and facilitate trial."
27 (*Emerson, at p. 1107.*) The discovery procedures are also "designed
28 to minimize the opportunities for fabrication and forgetfulness."
(*Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th
1113, 1119 [62 Cal. Rptr. 2d 195].) Consistent with these purposes,
our Supreme Court has often stated that discovery statutes are to be
construed broadly in favor of disclosure, so as to uphold the right to
discovery when-ever possible. (*Greyhound, at pp. 377-378; Emerson,*
at pp. 1107-1108.) "Matters sought are properly discoverable if they
will aid in a party's preparation for trial." (*Forthmann v. Boyer*
(2002) 97 Cal.App.4th 977, 987 [118 Cal. Rptr. 2d 715].)

Central to the discovery process is the identification of
potential witnesses. "The disclosure of the names and addresses of
potential witnesses is a routine and essential part of pretrial
discovery." (*People v. Dixon* (2007) 148 Cal.App.4th 414, 443 [56 Cal.

1 *Rptr. 3d 33*] [applying Civil Discovery Act (§ 2016.010 et seq.) in
2 context of sexually violent predator proceeding[.]) Indeed, our
3 discovery system is founded on the understanding that parties use
4 discovery to obtain names and contact information for possible
5 witnesses as the starting point for further investigations: "The Civil
6 Discovery Act also provides that a party may obtain information by
7 the use of various methods, including oral and written depositions.
8 (*Code Civ. Proc.*, § 2020.010, subd. (a).) The party's ability to
9 subpoena witnesses presumes that he has the witnesses' contact
10 information." (*Dixon*, at p. 443.) One glance at the form
11 interrogatories approved by the Judicial Council, particularly the
12 interrogatories in the 12.0 series, demonstrates how fundamentally
13 routine the discovery of witness contact information is. These
14 standard form interrogatories request the names, addresses, and
15 telephone numbers of witnesses to the relevant incident, persons
16 possessing tangible objects relevant to the investigation, and
17 persons who have been interviewed or given statements about the
18 incident, or made a report or investigation of the incident. (Judicial
19 Council of Cal. Form Interrogatory Nos. 12.1-12.7.)

11 While it is very broad, the right to discovery is not absolute,
12 particularly where issues of privacy are involved. The right of
13 privacy in the California Constitution (art. I, § 1), "protects the
14 individual's reasonable expectation of privacy against a serious
15 invasion." (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007)
16 *40 Cal.4th 360, 370* [53 Cal. Rptr. 3d 513, 150 P.3d 198] (*Pioneer*).)
17 While there are many different phrasings of the analysis that is
18 performed when a discovery request seeks arguably private
19 information, the constant theme among the decisions is that in
20 deciding whether to permit discovery that touches upon privacy,
21 "California courts balance the public need against the weight of the
22 right." (*Denari v. Superior Court* (1989) *215 Cal. App. 3d 1488, 1501*
23 [*264 Cal. Rptr. 261*].) Drawing this ultimate balance requires a
24 careful evaluation of the privacy right asserted, the magnitude of
25 the imposition on that right, and the interests militating for and
26 against any intrusion on privacy. (*Pioneer*, *supra*, *40 Cal.4th 360*.)

19 *Puerto* was a wage and hour action but not a class action. Plaintiffs
20 sought the names and contact information of persons having knowledge of those
21 claims who might also become parties to the action. Wild Oats provided
22 plaintiffs with the names and job titles of 2,600 fellow employees but refused to
23 provide their contact information. The trial court ordered plaintiff to provide
24 these persons with an "opt-in" notice so that these persons would have to take
25 specific action before their contact information was released.

26 The Court of Appeal granted plaintiffs' writ petition and ordered that this
27 information be released, holding that any "opt-in" process "unduly hampered"
28 plaintiffs. The Court found that the contact information was not very sensitive

1 and was outweighed by the plaintiffs' right to discovery without any notice after
2 applying the balancing test required by *Pioneer Electronics (USA), Inc. v.*
3 *Superior Court*, (2007) 40 Cal.4th 360. If any protection was required, it could
4 be done by a protective order limiting plaintiffs' disclosure of this information.

5 *Puerto* was cited with approval in the May 30, 2013, California Supreme
6 Court decision in *County Of Los Angeles v. Los Angeles County Employee*
7 *Relations Commission*, (2013) 56 Cal. 4th 905, which required the County to
8 provide the names and contact information of county employees to their labor
9 union without any notice and even though those employees had not joined the
10 union.

11 *Puerto* was also relied upon and discussed in *Williams* at 543-544.

12 *Williams* involved a PAGA action in which the plaintiff asserted wage and
13 hour violations by Marshals. Plaintiff by interrogatory sought the names and
14 contact information about his fellow employees. Marshals responded that there
15 were approximately 16,500 individuals whose identity was being sought and
16 objected on the grounds of over breadth and burden but not on privacy grounds.
17 The trial court limited the interrogatory to only the store at which the Plaintiff
18 worked. Plaintiff sought a writ. The Court of Appeal denied the writ also citing
19 privacy grounds. The Supreme Court granted review.

20 The *Williams* Court discussed the privacy issue. In doing so, it reinforced
21 the test which it announced in *Hill v. National Collegiate Athletic Assn.*, (1994) 7
22 Cal.4th 1, 35. Before one gets to any balancing of interests, the objecting party
23 must establish the *Hill* factors. The first issue is whether the information
24 sought is considered private.

25 The second factor is whether the Customer has a "reasonable expectation
26 of privacy in the particular circumstances. The third factor is whether the
27 invasion of privacy is "a serious invasion." The *Williams* Court found that these
28 second two factors did not exist in that case.

1 As with a discovery request, the name and contact information does not
2 involve a "serious invasion." Most courts looking at the same issue agree.

3 In this case, it is submitted that the Settlement Class Members would all
4 desire to be located and given an opportunity to participate in this Settlement
5 and receive their Individual Settlement Payment or to be able to make the
6 decision to request exclusion and pursue their own claims against R&M.
7 Moreover, those members would clearly desire that their Individual Settlement
8 Payment be properly calculated. While they might have a desire to avoid having
9 the taxing authority learn of their Individual Settlement Payment, that is a
10 requirement to the payment thereof.

11 It should be noted that the Class Information is only to be provided to
12 Class Counsel and not to Medina and is only to be used for purposes of this
13 settlement. If the settlement fails, then Class Counsel must return this
14 information to R&M and cannot use it for further prosecution of this action.

15 The Preliminary Approval Order provides for the Class Information to be
16 given to Class Counsel and R&M is thereby protected by this order.

17 For the foregoing reasons, it is respectfully requested that this Court grant
18 this motion as prayed and set the Settlement Fairness Hearing for December 15,
19 2011.

20 Dated: February 7, 2020

BLEAU FOX
A Professional Law Corporation

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

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PROOF OF SERVICE

I am employed in the Parish of Orleans, State of Louisiana. I am over the age of 18 and not a party to the within action; my business address is 26 Muirfield Place, New Orleans, Louisiana 70131.

On February 7, 2020, I served the foregoing document(s) described as **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties to this action who are listed on the attached Service List by electronically serving those persons at the electronic addresses noted therein.

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

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

Executed on February 7, 2020, at Burbank, California.

/s/ Samuel T. Rees
Samuel T. Rees

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SERVICE LIST

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