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 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
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MARIA ZA

9 Attorneys for Plaintiff
and the Plaintiff Class

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

12 RAYMOND STODDARD and
 13 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

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

[Filed Concurrently with Notice of Motion, Memorandum Of Points And Authorities, Declaration of Plaintiff 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

1 I, SAMUEL T. REES, declare:

2 1. I am an attorney at law duly licensed to practice in California and
3 Louisiana. I am “Of Counsel” to Bleau Fox, a PLC, counsel for Plaintiff and
4 Plaintiff Class herein. My resume is attached hereto as Exhibit B. The
5 qualifications of Bleau Fox are set forth below. Bleau Fox was appointed and
6 served as Class Counsel in the Wales Action.

7 2. I have represented Santiago Medina (“Medina”) from the inception of
8 this Action and have represented him as a putative class member in the Wales
9 Action before that.

10 3. I have over 46 years of experience as a civil litigator. I have litigated
11 many labor and employment law matters. For many years, I served as a judicial
12 arbitrator for the Los Angeles Superior Court and more recently have served as
13 a *pro tem* Judge for the First and Second City Courts in New Orleans, Louisiana.
14 For 2 years, I was general counsel for a NYSE multi-national manufacturer and
15 responsible for all litigation involving that corporation and its subsidiaries. I
16 have extensive experience in evaluating litigation.

17 4. At all times, I have been the lead trial attorney for this Action,
18 involved in all aspects of this matter.

19 5. Attached hereto as Exhibit A is a true and correct copy of the
20 Settlement Agreement and Exhibits thereto. Except as defined herein, initial
21 capitalized terms used herein have the definitions as set forth in that Settlement
22 Agreement. I was the lead negotiator for Medina at the mediation and was the
23 primary attorney involved in negotiation and drafting the Settlement Agreement
24 and its exhibits on behalf of Medina.

25 6. Prior to filing this declaration, I emailed a copy of the motion,
26 supporting memorandum and Medina’s declaration to counsel for defendant
27 R&M Pacific Rim, Inc. (“R&M”).

28

1 7. Paragraphs 38 through 58 of the Settlement Agreement contain
2 certain factual recitals. Rather than repeat those recitals in this declaration, I
3 declare that those representations are true based upon my communications with
4 Medina, my own investigation, discovery in the Wales Action and statements
5 made to me by counsel for R&M. Certain of those factual recitals are also
6 verified by Medina's declaration filed herewith.

7 8. Paragraph 50 of the Settlement Agreement and its subparts contain
8 certain representations made by R&M. Those representations were and are
9 material to my decision to recommend that this Settlement be approved by this
10 Court. I have been able, in part, to verify the truth of certain of these
11 representations. I have no knowledge that any of these representations are false
12 in an material respect.

13 9. I drafted the Memorandum of Points and Authorities filed herewith.
14 Section III of that Memorandum also contains certain factual statements. I
15 declare that those statements are true based upon my communications with
16 Medina, my own investigation, discovery in the Wales Action and statements
17 made to me by counsel for R&M. In addition, the evaluation of the Settlement
18 contained in Sections IV and VIII of that Memorandum are my evaluations and
19 form the basis for my recommending approval of this Settlement.

20 10. In addition to this action and the Wales Action, certain putative
21 class members in this action, who were not employed by R&M, filed four new
22 putative class actions in 2010 in various Courts around the state containing
23 similar claims to this action. I am counsel to plaintiffs in all of those actions.
24 Those actions are, as follows:

25 1. *Henderson v. Equilon Enterprises, etc., et al.*, Contra Costa
26 Superior Court Case No. C10-02259 commenced July 27, 2010;

27 2. *Ozur and Ferrell v. Equilon Enterprises, etc, et al.*, Sacramento
28 Superior Court Case No. 34-2010-00083819 commenced July 29, 2010;

1 3. *Curry v. Equilon Enterprises, etc. et al.* Riverside Superior
2 Court Case No. RIC10014774 commenced July 30, 2010; and

3 4. *Martinez, Grayson and Machado v. Equilon Enterprises, etc, et*
4 *al.*, Los Angeles Superior Court Case No. BC 443 163 (recently reassigned to this
5 Court).

6 Judgment was entered against Ms. Curry in her action which judgment is
7 now final. Judgment was entered against Mr. Henderson in his action, which
8 judgment was affirmed on appeal. A Petition for Review by the California
9 Supreme Court is currently pending before it.

10 The Martinez and Ozur actions are currently stayed based on the doctrine
11 of exclusive concurrent jurisdiction, which was the basis on which this Court had
12 stayed this action.

13 None of these other suits is being resolved as a result of the settlement of
14 this Action.

15 11. In advance of the January 2019 mediation, R&M's counsel provided
16 me for purposes of the mediation only with certain information, including
17 information I believed I needed to make damage calculations. As a result and
18 over several days, I prepared detailed damage calculation spreadsheets. I have
19 listed in the accompanying Memorandum of Points and Authorities the
20 assumptions which I made in making these calculations. Information provided
21 to me at the mediation caused me to modify my calculations downward. This
22 information is contained in the representations made in Paragraph 60 of the
23 Settlement Agreement. My damage calculations included not only projections of
24 unpaid wages and rest break compensation and interest thereon at 10% from the
25 estimated dates those wages were due.

26 12. On January 3, 2019, I participated in a full-day of mediation in Los
27 Angeles, California before Judge Carl West. During the mediation, I
28 communicated telephonically with Medina. I had previously investigated Judge

1 West's qualifications and recommended and approved his selection as the
2 mediator. The manner in which he conducted the mediation fully justified my
3 decision to use his services.

4 13. Following a full day of negotiations, the parties did not reach
5 agreement but were fairly close. Judge West remained involved in the mediation
6 process following January 3 and communicated frequently with me and counsel
7 for R&M. As a result of Judge West's valuable assistance, a settlement in
8 principal was reached between those parties on January 15, 2019.

9 14. This Settlement is the result of an informed and detailed evaluation
10 of the total exposure and potential liability, in relation to the costs and risks
11 associated with continued litigation of the Class Action.

12 15. I and R&M's counsel continued to negotiate the remaining
13 substantive terms of the settlement not resolved through the mediation. The
14 Settlement Agreement attached hereto as Exhibit A was the result of these
15 extended negotiations.

16 16. All bargaining has been at arms length and there has been
17 absolutely no collusion. Several drafts of the Settlement Agreement and each of
18 the Exhibits thereto were exchanged, along with emails and telephone
19 conversations.

20 17. I believe that the terms of the Settlement are fully and accurately
21 summarized in the Settlement Agreement and that the Class Notice and Claim
22 Form should fully advise the Settling Class Members of their rights, obligations
23 and options concerning this Settlement.

24 18. I participated in the selection of Phoenix Settlement Administrators
25 as the Settlement Administrator and interviewed Phoenix personnel in advance
26 of the selection. I believe that the estimate of expenses provided to me by
27 Phoenix is reasonable but I provided a cushion in the Settlement Agreement
28 should those expenses be higher than originally estimated.

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19. As noted above, the analysis and evaluation of the Settlement contained in the accompanying Memorandum is mine and accurately express both my review and conclusions reached.

20. I recommend that the Settlement be approved as fair and reasonable and in the best interests of the Settlement Class Members and Medina.

21. Medina has been actively involved in the prosecution of this action since its inception and despite the delays caused by the stay. His claims for unpaid overtime are the same as the entire Settlement Misclassification Subclass and he fully understands the positions of the Settlement Rest Break Subclass having worked as a cashier before the Class Period and having hired and supervised those non-exempt members working at the stations he managed. He has been an excellent representative plaintiff and I recommend his continuing as the Class Representative.

22. I have been "Of Counsel" to Bleau Fox since October 2009. I have known and worked with that firm's two principals for well over 20 years. As a result, I have extensive knowledge of Bleau Fox's qualifications to serve as Class Counsel.

23. I personally have litigated against Shell Oil and its affiliated companies including Equilon for nearly 15 years. Bleau Fox's experience in litigating adverse to those entities extends for an even longer period.

24. Thomas Bleau attended Framingham State College in Massachusetts where he graduated with honors and received a Bachelor of Arts degree in Economics in 1987. He received his Juris Doctor degree from the University of La Verne in 1990. He is A.V. rated by Martindale-Hubbell.

25. Martin Fox also received his Juris Doctor from the University of La Verne in 1990. While attending law school, Mr. Fox owned and ran a commercial glazing business with over 40 employees. This experience give him

1 unique insight to employee wage issues within a service industry including
2 prevailing wage contracts for government installations. Mr. Fox founded what is
3 now known as Bleau Fox in 1991 and because of his small business background,
4 focuses his primary emphasis on business litigation, wage and hour cases (both
5 plaintiff and defense), contracts (formation and litigation) and gas station
6 transactions and litigation.

7 26. Bleau Fox has been involved in gas station litigation, both in State
8 and Federal Courts, in dozens of cases against Shell since 1998 through the
9 present. The firm's involvement includes representing plaintiffs as well as
10 defendants adverse to Shell Oil. This firm has also been involved with class
11 actions regarding anti-trust matters involving Equilon and Shell.

12 27. Mr. Bleau, Mr. Fox and I also have handled and tried over 100 bench
13 and jury trials during our careers. Our cases have included substantial complex
14 litigation, multi-district litigation in Federal Court and significant appellate
15 proceedings. I have listed some of my reported decisions in my resume.

16 28. Additionally, Bleau Fox represents both plaintiffs and defendants in
17 wage and hour cases, many of which are focused solely within the gas station
18 community.

19 29. Over the years, Bleau Fox has been involved with many matters
20 involving gas stations in several states in association with local counsel and we
21 are routinely engaged to provide consultation, expertise and guidance regarding
22 gas station litigation by other attorneys throughout the country. We are also
23 frequently asked to speak to large groups of those involved in the gas station
24 industry with regard to current issues and concerns within same.

25 30. Thomas Bleau, Martin Fox and I are all actively involved in
26 representing Medina and plaintiff class in this action and will continue to be
27 actively involved. Other attorneys and paralegals in the firm, who also have
28 wage and hour experience, are involved with this action.

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

3 Dated: February 7, 2020



6 SAMUEL T. REES

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EXHIBIT A

1 SAMUEL T. REES (State Bar No. 58099)
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BLEAU FOX
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4 Burbank, CA 91504
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6 Attorneys for Plaintiff
and the Plaintiff Class
7

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

10
11 RAYMOND STODDARD and SANTIAGO) Case No. 30-2010-00395208-CU-OE-CXC
MEDINA, etc.,)
12) Hon. William Claster
Plaintiffs,) Department CX 102
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **SETTLEMENT AGREEMENT WITH**
15) **EXHIBITS**
R&Ms.)
16) Date:
17) Time: 8:30 a.m.
Dept: CX104
18)
Complaint Filed: August 2, 2010
19) Trial Date: None Set

20
21 **SETTLEMENT AGREEMENT**

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

27 **DEFINITIONS**

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

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

15 2. **“Claim Form”** means the Proof of Claim substantially in the form of
16 Exhibit 2 hereto.

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

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

22 5. **“Class Counsel Award”** means (i) the attorneys’ fees for Class
23 Counsel’s litigation and resolution of the Class Action, and all claims resolved by
24 this Settlement, as awarded by the Court, which may not exceed one third (1/3)
25 of the Total Settlement Amount and (ii) all actual expenses and costs incurred to
26 date by Class Counsel in litigation and resolution of the Class Action, and all
27 claims resolved by this Settlement, as supported by declaration and awarded by
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1 the Court. The Court shall determine the amount of the Class Counsel Award
2 and it shall be paid from the Total Settlement Amount.

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

22 7. “**Class Notice**” means the notice of class action settlement to be
23 provided to Settlement Class Members, without material variation from Exhibit
24 1.

25 8. “**Class Period**” means August 2, 2006 through and including
26 September 1, 2008.

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

1 9. **“Court”** means Orange County Superior Court.

2 10. **“Defense Counsel”** means Kring & Chung, LLP.

3 11. **“Effective Date”** means seven (7) days after which both of the
4 following events have occurred: (i) the Court’s Final Approval order has been
5 entered and (ii) the Court’s Final Approval order and Judgment have become
6 Final.

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

13 13. **“Final Approval”** means the Court’s entry of a Final Approval
14 order finally approving this Settlement.

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

18 15. **“Individual Settlement Payment”** means the amount payable
19 from the Total Settlement Amount to each Responding Settlement Class
20 Member who does not submit a valid request for exclusion from the Settlement.
21 The Individual Settlement Payment shall be calculated pursuant to Paragraph
22 80.

23 16. **“Judgment”** means the judgment to be entered in the Class Action
24 on Final Approval of this Settlement.

25 17. **“Legally Authorized Representatives”** means an
26 administrator/administratrix, personal representative, or executor/executrix of a
27 deceased Settlement Class Member’s estate; a guardian, conservator, or next
28 friend of an incapacitated Settlement Class Member; or any other legally

1 appointed person responsible for handling the business affairs of a Settlement
2 Class Member.

3 18. “**Named Plaintiff’s General Released Claims**” means, in
4 addition to Settlement Class Members’ Released Claims, the following two
5 categories of claims and causes of action:

6 (i) Any and all past, present, and future claims and causes of
7 action, whether known or unknown and without limitation as to when
8 those claims or causes of action arose but solely against R&M and against
9 its past, present parents, owners, subsidiaries, predecessors and
10 successors, and each of their respective officers, directors, partners,
11 shareholders, agents, and employees but related solely to actions taken by
12 them while acting in those capacities but excluding any and all claims and
13 causes of against Equilon Enterprises, LLC, its parent and affiliates,
14 including Equistaff, LLC, and Tesoro Refining & Marketing Company LLC
15 and its parents and affiliates and excluding Medina’s wrongful
16 termination claim and cause of action against R&M as alleged in the Fifth
17 Cause of Action of the Second Amended Complaint filed in the Class
18 Action, which claim is being settled pursuant to a separate settlement
19 agreement between R&M and Medina; and

20 (ii) Any and all past, present, and future claims and causes of
21 action, whether known or unknown, but arising during the Class Period
22 and against any person or entity.

23 19. “**Notice Date**” means the date of the initial mailing of the Class
24 Notice to Settlement Class Members, as set forth in Paragraph 89.

25 20. “**Opt Out List**” means the Court-approved list of all persons who
26 timely and properly request exclusion from the Settlement Class.
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1 21. “**Plan of Allocation**” means the plan for allocating the Total
2 Settlement Amount between and among Responding Settlement Class Members
3 as approved by the Court.

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

11 23. “**Preliminary Approval Order**” means the order that Medina and
12 R&M will seek from the Court, without material variation from Exhibit 3. Entry
13 of the Preliminary Approval Order shall constitute preliminary approval of the
14 Settlement Agreement.

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

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

18 26. “**Responding Settlement Class Member**” means any Settlement
19 Class Member who timely returns a Claim Form to the Settlement
20 Administrator, pursuant to Paragraph 91.

21 27. “**Service Award**” means the amount approved by the Court in its
22 discretion to be paid to Medina, in addition to his respective Individual
23 Settlement Payment, in recognition of his efforts in coming forward as named
24 plaintiff and as consideration for a full, general, and comprehensive release of
25 the Named Plaintiff’s General Released Claims. The Service Award shall be
26 paid from the Total Settlement Amount.

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

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

3 30. **“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 31. **“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 Rest Break Subclass.

12 32. **“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 Rest Break Subclass or both.
15 However, a Settlement Class Member may not be a part the Settlement Rest
16 Break Subclass for any given work week during the Class Period that the
17 Settlement Class Member is a part of the Settlement Misclassification Subclass.
18 Settlement Class Member includes the Legally Authorized Representatives.

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

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

25 35. **“Settlement Class Members’ Released Claims”** means any and
26 all past and present claims, actions, demands, causes of action, suits, debts,
27 obligations, damages, rights or liabilities, of any nature and description
28 whatsoever, known or unknown, but arising during the Class Period and for

1 claims arising during the Class Period for compensatory, consequential, punitive
2 or exemplary damages, statutory damages, declaratory relief, injunctive relief,
3 equitable relief, penalties, interest, attorneys' fees, costs and/or disbursements,
4 including, but not limited to, those incurred by Class Counsel or any other
5 counsel representing Medina or any Settlement Class Members (other than
6 those expressly awarded by the Court in the Class Counsel Award authorized by
7 this Agreement), that arose during the Class Period and from or are reasonably
8 based on or related to R&M's alleged failure to classify Settlement Class
9 Members as non-exempt employees and compensate those employees overtime
10 and/or R&M's alleged failure to provide the Settlement Class Members with off-
11 duty rest breaks or compensate them for missed off-duty rest breaks, and
12 specifically includes the following claims arising solely during the Class Period
13 and from, based on or reasonably relating to, claims asserted or alleged in the
14 Class Action: claims for unpaid wages (including without limitation claims for
15 overtime and meal period and rest period premiums), liquidated damages,
16 expense reimbursements, interest, penalties (including waiting time penalties
17 pursuant to *Labor Code* Section 203, wage statement penalties pursuant to
18 *Labor Code* Section 226, restitution, and civil and statutory penalties), claims
19 under *Business and Professions Code* Section 17200, *et seq.*, claims under the
20 federal Fair Labor Standards Act, claims for attorneys' fees and costs, and
21 claims for unfair business practices. "Settlement Class Members' Released
22 Claims" do not include claims that, as a matter of law, cannot be released and do
23 not include claims for retaliation, discrimination, wrongful termination, or
24 individual claims filed with the appropriate agency for the recovery of workers'
25 compensation benefits. "Settlement Class Members' Released Claims" do not
26 include claims, actions, demands, causes of action, suits, debts, obligations,
27 damages, rights or liabilities, of any nature and description whatsoever, known
28 or unknown, existing or potential, recognized now or hereafter, expected or

1 unexpected, pursuant to any theory of recovery and arising before or after the
2 Class Period including those against Equilon Enterprises, LLC, its parent and
3 affiliates, including Equistaff, LLC, and Tesoro Refining & Marketing Company
4 LLC and its parents and affiliates.

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

14 37. **“Void Date”** means the date by which any checks issued to
15 Responding Settlement Class Members shall become void, *i.e.* on the 181st day
16 after each check's mailing.

17 RECITALS

18 38. At all relevant times, Medina was and is a resident of Orange
19 County, California. Medina was employed by R&M in approximately October
20 2005 and remained so employed until December 26, 2008.

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

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

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

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

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

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

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

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

12 46. On August 2, 2010, Medina and Stoddard commenced the Class
13 Action.

14 47. On October 15, 2010, the Court stayed the Class Action because of
15 the pendency of the Wales Action. This stay remained in effect until August 13,
16 2018.

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

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

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

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

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

17 52. The Settlement, if finally approved and Judgment is entered, (i) will
18 resolve all claims of the Settlement Class Members, who do not timely request to
19 be excluded from the Settlement, against Equilon for claims arising during the
20 Class Period and regardless of whether the Settlement Class Member is also a
21 Responding Settlement Class Member and (ii) will resolve all claims of the
22 Settlement Class Members, who do not timely request to be excluded from the
23 Settlement, against R&M for claims related to their employment by R&M
24 regardless of whether the Settlement Class Member is also a Responding
25 Settlement Class Member.

26 53. The Settlement, if finally approved and Judgment is entered, will
27 not resolve claims that arose prior to the Class Period, including claims against
28 Equilon, or claims that are not related to the Settlement Class Member's

1 employment by R&M or that, as a matter of law cannot be released or claims for
2 retaliation, discrimination, wrongful termination, or individual claims filed with
3 the appropriate agency for the recovery of workers' compensation benefits.

4 54. Equilon has been granted summary judgment as to all claims
5 asserted against it in the Class Action on the grounds that based upon the
6 undisputed facts it is not the joint employer of any employee working at its
7 California owned and third-party-operated service stations. Medina intends to
8 appeal this Summary Judgment which will be commenced prior to the mailing of
9 the Class Notice.

10 55. In addition to the class claims asserted in the Class Action, Plaintiff
11 has also asserted a claim for wrongful termination against R&M. As a result of
12 the mediation, this claim has also been tentatively settled which settlement is
13 conditioned upon the Court entering the Judgment on Final Approval of this
14 Settlement.

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

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

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

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

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

1 in order to put to rest the claims as set forth in the Class Action. At the same
2 time, R&M continues to deny each of the claims, allegations, and contentions
3 asserted in the Class Action and denies that certification of any class is or was
4 appropriate (other than for purposes of this Settlement only). R&M has
5 repeatedly asserted and continues to assert defenses thereto, and has expressly
6 denied and continues to deny any wrongdoing or legal liability arising out of any
7 of the facts or conduct alleged in 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 60. R&M represents to the Settlement Class Members, and to no other
14 person, that the following facts are true and that, solely for the purpose of
15 deciding whether or not to object to the Settlement or request to be excluded
16 from the Settlement, each Settlement Class Member may rely on these facts.
17 The representations shall expire on the Effective Date and shall not be relied
18 upon for any purpose thereafter. The representations should not be relied upon
19 by any person, at any time, other than for the limited purposes explicitly set
20 forth in this paragraph.

21 A. If no Settlement Class Member requests to be excluded from
22 this Settlement, there are 37 employees who would be included in the
23 Settlement Misclassification Subclass, 28 of whom are also included in the
24 Settlement Rest Break Subclass.

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

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

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

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

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

19 G. On or about July 5, 2008 and as a result of a California Labor
20 Commissioner meal break audit, R&M paid approximately 370 employees a total
21 of \$122,721.88 for missed meal break compensation.

22 61. Neither Medina nor Class Counsel has verified the truth of the
23 foregoing representations; and, as a result, neither makes any representation as
24 to the truth of the foregoing representations.

25 **SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT**
26 **FOR PRELIMINARY AND FINAL APPROVAL**

27 62. Upon execution of this Settlement Agreement, Medina shall submit
28 to the Court a motion for preliminary approval of the Settlement. The motion

1 for preliminary approval shall include a proposed plan for sending of the Class
2 Notice to Settlement Class Members within sixty (60) days after the Preliminary
3 Approval Date (the Notice Date), and establishing a period of sixty (60) days
4 from the Notice Date within which any Settlement Class Member may (i)
5 request exclusion from the Settlement Class, (ii) object to the proposed
6 Settlement, or (iii) object to Class Counsel's request for the Class Counsel Award
7 and for the Service Award to the Plaintiff (the Exclusion/Written Objection
8 Deadline).

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

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

19 65. The Parties stipulate to the form of and agree to submit to the Court
20 for its consideration this Settlement Agreement and the following Exhibits to
21 this Settlement Agreement: [Proposed] Preliminary Approval Order (Exhibit 3);
22 Class Notice (Exhibit 1); and Claim Form (Exhibit 2).

23 66. Solely for purposes of implementing this Settlement Agreement and
24 effectuating the proposed Settlement, the Parties agree and stipulate that the
25 Court may enter the Preliminary Approval Order, without material variation
26 from Exhibit 3, preliminarily approving the Settlement and this Settlement
27 Agreement. Among other things, the Preliminary Approval Order shall grant
28 leave to preliminarily certify the Settlement Misclassification Subclass and the

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

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

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

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

25 C. Re-confirms the appointment of the Settlement Administrator
26 and finds that the Settlement Administrator has fulfilled its duties under the
27 Settlement to date;

28

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

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

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

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

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

1 Members, including Medina) against R&M and others identified therein and are
2 bound by the provisions of this Settlement Agreement;

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

22 J. Determines that the Settlement Agreement and the
23 Settlement provided for herein, and any proceedings taken pursuant thereto, are
24 not, and should not in any event be offered, received, or construed as evidence of,
25 a presumption, concession, or an admission by any party of liability or non-
26 liability or of the certifiability or non-certifiability of a litigation class, or of any
27 misrepresentation or omission in any statement or written document approved or
28 made by any Party; provided, however, that reference may be made to this

1 Settlement Agreement and the Settlement provided for herein in such
2 proceedings as may be necessary to effectuate the provisions of this Settlement
3 Agreement, as further set forth in this Settlement Agreement;

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

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

21 M. Contains such other and further provisions consistent with the
22 terms of this Settlement Agreement to which the Parties expressly consent in
23 writing.

24 68. At the Final Approval Hearing and as a part of the final approval of
25 this Settlement, Class Counsel will also request approval of the Plan of
26 Allocation set forth below. Any modification to the Plan of Allocation by the
27 Court shall not (i) affect the enforceability of the Settlement Agreement; (ii)
28 provide any of the Parties with the right to terminate the Settlement

1 Agreement; or (iii) impose any obligation on R&M to increase the consideration
2 paid in connection with the Settlement.

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

19 70. In no event shall R&M be obligated to pay Settlement
20 Administration Expenses beyond those provided for in this Settlement
21 Agreement.

22 **SETTLEMENT CONSIDERATION**

23 71. The total consideration for the Settlement from R&M is the Total
24 Settlement Amount (\$845,000). This is an "all in" number that includes, without
25 limitation, all monetary benefits and payments to the Settlement Class, Service
26 Award, Class Counsel Award, and Settlement Administrator Expenses and all
27 claims for penalties, interest, fees, and costs. The total consideration, however,
28 does not include R&M's share of payroll taxes allocable to any portion of the

1 Total Settlement Amount allocated to wages, which amount remains the
2 responsibility of R&M. In no event shall R&M be liable for making any
3 payments under this Settlement, or for providing any relief to Settlement Class
4 Members, before the Effective Date, except as provided herein.

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

14 73. The terms of this Settlement Agreement relating to the Service
15 Award and Class Counsel Award were not negotiated by the Parties before full
16 agreement was reached as to all other material terms of the proposed
17 Settlement, including, but not limited to, any terms relating to the relief to the
18 Settlement Class. R&M agrees not to oppose a request for the Service Award for
19 Plaintiff which will be left to the discretion of this Court.

20 74. Class Counsel agrees not to seek an award of attorneys' fees, costs
21 and expenses from the Court in excess of one third (1/3) of the Total Settlement
22 Amount. R&M agrees not to oppose a request for attorneys' fees, costs and
23 expenses up to and including one third (1/3) of the Total Settlement Amount.
24 R&M and Settlement Class Members shall have no obligation regarding or
25 liability for allocation or payment of the Class Counsel Award. Class Counsel
26 shall file any request for attorneys' fees, costs and expenses and any request for
27 a Service Award no later than fourteen (14) days before the Exclusion/Written
28 Objection Deadline.

1 75. The Settlement Administrator shall pay the Class Counsel Award by
2 wire transfer to Bleau Fox, a PLC pursuant to wiring instructions from Class
3 Counsel. Class Counsel shall provide the Settlement Administrator notice of
4 receipt of the Class Counsel Award. R&M shall have no liability to Class
5 Counsel or any other counsel for Medina or any Settlement Class Member
6 arising from any claim regarding the division of the Class Counsel Award.

7 **FUNDING AND ALLOCATION OF SETTLEMENT**

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

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

19 78. To receive a payment from the Settlement, a Settlement Class
20 Member must (1) have submitted a Claim Form, making him or her a
21 Responding Settlement Class Member, and (2) not have submitted a request for
22 exclusion from the Settlement. Settlement Class Members are not eligible to
23 receive any compensation from the Settlement other than the Individual
24 Settlement Payment.

25 79. After deduction from Total Settlement Amount of the Class Counsel
26 Award, the Service Award and the Settlement Administrator Expenses, the
27 remaining amount shall be allocated Seventy-Four percent (74%) to the
28 Settlement Misclassification Subclass and Twenty-Six percent (26%) to the

1 Settlement Rest Break Subclass. Each such allocation shall be further allocated
2 Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties
3 and interest.

4 80. The amount of each Responding Settlement Class Member's
5 Individual Settlement Payment will be distributed from the Total Settlement
6 Amount and calculated by the Settlement Administrator, as follows:

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

18 B. Payment from the amount allocated to the Settlement Rest
19 Break Subclass shall be prorated among the members of that subclass by taking
20 the gross wages paid during the Class Period that such member was declared a
21 non-exempt hourly wage employee and when that member was not also a
22 member of the Settlement Misclassification Subclass. This amount shall serve as
23 the numerator for proration purposes and the sum of all such products shall
24 serve as the denominator for proration purposes. For non-exempt hourly wage
25 employee who commenced in that position after December 31, 2005 and/or who
26 ceased to be in that position before January 1, 2009, the employee's gross wages
27 will be further prorated on a 365/365 daily basis so that the numerator shall
28 only include his gross wages earned during the Class Period.

1 C. If under the Plan of Allocation a responding Settlement Class
2 Member will be distributed \$10 or more, then he or she will receive the entitled
3 amount. If, however, the Responding Settlement Class Member is due less than
4 \$10, then his or her Individual Settlement Payment will be for \$10.

5 81. Class Counsel will be permitted to review and approve the
6 calculation of settlement funds to be distributed.

7 82. Following distribution of the Individual Settlement Payments to
8 Responding Settlement Class Members, all funds not claimed prior to the Void
9 Date (*i.e.* all funds from uncashed checks) shall be redistributed to those
10 members of the Settlement Misclassification Subclass who received and cashed
11 their Individual Settlement Payments. These unclaimed funds shall be
12 redistributed pro rata pursuant to the same formulas described in Paragraph 80
13 A after excluding any Settlement Misclassification Subclass members whose
14 Individual Settlement Payment was not claimed by the Void Date.

15 83. As described below, each Settlement Class Member will have the
16 opportunity, should he or she disagree with the employment information used to
17 calculate that employee's Individual Settlement Payment provided to him or her
18 in his Claim Form, to provide documentation to establish the appropriate
19 information. There will be a presumption that R&M's records are correct,
20 absent evidence produced by a Settlement Class Member to the contrary.

21 84. The Settlement Administrator shall issue the Individual Settlement
22 Payments from the Total Settlement Amount to each Responding Settlement
23 Class Member who does not opt out. The portion of the Individual Settlement
24 Payments allocated to penalties and interest shall be reported by the Settlement
25 Administrator to the applicable governmental authorities on IRS Form 1099s.
26 The portion of the Individual Settlement Payments allocated to wages shall be
27 reported by the Settlement Administrator to the applicable government
28 authorities on IRS Form W-2s. The Service Award and Class Counsel Award

1 shall likewise be reported on IRS Form 1099s by the Settlement Administrator.
2 The Settlement Administrator shall be responsible for issuing copies of IRS
3 Form 1099s to Medina and Responding Settlement Class Members.

4 **CLASS NOTICE & CLAIM PROCEDURES**

5 85. No more than thirty (30) calendar days after entry of the
6 Preliminary Approval Order, R&M shall provide the Settlement Administrator
7 and Class Counsel with the Class Information for purposes of locating members
8 of the Settlement Class and sending the Class Notice and Claim Form to
9 Settlement Class Members.

10 86. The Class Notice shall include a Claim Form to each Settlement
11 Class Member containing, to the extent provided by R&M, his or her full name,
12 last known address, social security number, email address, last known telephone
13 number, and information used to calculate each Class Member's Individual
14 Settlement Payment proration amount numerator. The Class Notice shall
15 inform Settlement Class Members of their right to request exclusion from the
16 Settlement, of their right to object to the Settlement, of their right to dispute the
17 information upon which their share of the Settlement will be calculated, of their
18 right to correct or supplement any other personal information provided, of their
19 obligation to return a Claim Form to receive their Individual Settlement
20 Payment, and a description of the claims to be released regardless of whether or
21 not they submit a Claim Form unless they exercise their right to request
22 exclusion from the Settlement.

23 87. As set forth in the Class Notice, Settlement Class Members will be
24 provided thirty-five (35) days after the initial mailing of the Class Notice and
25 accompanying Claim Form to dispute the information upon which their share of
26 the Settlement will be calculated and provide documentation to support this
27 dispute.
28

1 88. The Settlement Administrator shall review any documentation
2 submitted by a Settlement Class Member and consult with the Parties to
3 determine whether an adjustment is warranted. The Settlement
4 Administrator's determination shall be binding upon the Settlement Class
5 Member and the Parties, and the Settlement Class Members Individual
6 Settlement Payment will be calculated according to the Settlement
7 Administrator's determination. There will be a presumption that R&M's records
8 are correct, absent evidence produced by a Settlement Class Member to the
9 contrary.

10 89. No more than sixty (60) days after entry of the Preliminary Approval
11 Order, provided Defendant timely complied with its obligation in Paragraph 86,
12 the Settlement Administrator shall send a copy of the Class Notice and Claim
13 Form by first class mail and, if provided in the Class Information, electronic
14 mail to each Settlement Class Member. The Administrator will send a follow-up
15 reminder by first class mail to each Settlement Class Member who has not
16 returned a Claim Form approximately 30 days into the notice period.

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

1 Administrator as the current mailing address shall be presumed to be the best
2 mailing address for each Settlement Class Member.

3 91. As set forth in the Class Notice, Settlement Class Members will be
4 asked to submit a Claim Form to the Settlement Administrator within sixty (60)
5 days of the Notice Date. Any Settlement Class Member who does not submit a
6 Claim Form, or who does not submit a Claim Form in a timely manner, will not
7 receive any distribution from the Total Settlement Amount. Claim Forms may
8 be submitted on the Settlement Administrator's website established for this
9 settlement and shall be deemed received on the date transmitted by the
10 Settlement Class Member; or by fax to the number provided and shall be deemed
11 received on the date received by the Settlement Administrator; or by mail and
12 shall be deemed received on the postmark date contained thereon. However,
13 any Settlement Class Members who do not submit a Claim Form and do not
14 timely request to be excluded from the Settlement will nevertheless be bound by
15 the release of the Settlement Members' Released Claims and precluded from
16 bringing any such claims released thereby.

17 92. The number and manner of any reminder to be sent to the
18 Settlement Class Members, beyond that described in Paragraph 90, following
19 the initial Class Notice mailing is to be determined by Class Counsel and the
20 Settlement Administrator.

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

26 94. The Settlement Administrator will provide Class Notice without
27 material variation from the form attached Exhibit 1 and will complete and
28 provide with the Class Notice a Claim Form for each member of the Settlement

1 Class. The Class Notice shall comply with California Rules of Court 3.766(d),
2 3.769(f) and due process.

3 95. At least twenty-one (21) days before the Final Approval Hearing, the
4 Settlement Administrator shall prepare a declaration of due diligence and proof
5 of dissemination with regard to the mailing of the Class Notice, a listing of the
6 names of all Settlement Class Members who have timely requested to be
7 excluded from the Settlement, a listing of the names of all Settlement Class
8 Members who have timely submitted completed Claim Forms, a listing of the
9 names of all Settlement Class Members who have not timely submitted Claim
10 Forms and a listing of the names of all Settlement Class Members who appear to
11 not have received the Class Notice because they were returned undeliverable
12 (the "Due Diligence Declaration"), to Class Counsel and Defense Counsel along
13 with a copy of all completed Claim Forms. Class Counsel shall be responsible for
14 filing the Due Diligence Declaration but not the Claim Forms with the Court.

15 96. 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 Agreement.

3 97. 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
8 **PROCEDURES FOR REQUESTS FOR EXCLUSION**

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

26 99. Individual exclusion requests may be submitted by a Settlement
27 Class Member’s Legally Authorized Representative.

28

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

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

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

14 103. The Settlement Administrator, in its sole discretion, shall determine
15 whether a request for exclusion was timely and properly submitted. The
16 Settlement Administrator's decision shall be final, binding, and nonappealable.

17 104. Medina agrees not to request exclusion from the Settlement Class.

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

26 106. No later than ten (10) business days after the Exclusion/Written
27 Objection Deadline, the Settlement Administrator shall provide to Class Counsel
28

1 and Defense Counsel the Opt-Out List together with copies of the opt-out
2 requests.

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

6 108. If, after the Exclusion/Written Objection Deadline and before the
7 Final Approval Hearing, five or more of the number of Settlement
8 Misclassification Subclass Members submit timely and valid request for
9 exclusion from the Settlement, R&M shall have, in its sole and absolute
10 discretion, the option to terminate this Settlement. R&M shall exercise its
11 option to terminate, if at all, prior to the Final Approval Hearing, provided the
12 Settlement Administrator has provided R&M the Opt-Out List no later than ten
13 (10) business days prior to the Final Approval Hearing. If R&M decides to void
14 the Settlement, then the Settlement and conditional class certification shall be
15 considered void, and the Settlement, conditional class certification, and any
16 related negotiations or proceedings shall be of no force and effect, and the
17 Parties shall stand in the same respective positions, without prejudice, as if this
18 Settlement had been neither entered into nor filed with the Court. Should R&M
19 void the Settlement under this paragraph, R&M shall be responsible for all
20 Settlement Administrator Costs incurred through the date R&M notifies the
21 Settlement Administrator that it is exercising its option to terminate the
22 Settlement.

23 **PROCEDURES FOR OBJECTIONS**

24 109. Any Settlement Class Member that wishes to object to the fairness,
25 reasonableness, or adequacy of this Settlement Agreement or the proposed
26 Settlement, the Plan of Allocation, the Class Counsel Award and/or the Service
27 Award must provide to the Settlement Administrator (who shall forward it to
28 Class Counsel and Defense Counsel), a timely statement of the objection, as set

1 forth below, or appear in person at the Final Approval Hearing to make an
2 objection.

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

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

19 112. The right to object must be exercised individually by a Settlement
20 Class Member or his or her Legally Authorized Representative. Attempted
21 collective, group, class, or subclass objections shall be ineffective and
22 disregarded.

23 113. Any Settlement Class Member who does not file a timely written
24 objection or appear personally or through his or her counsel at the Final
25 Approval Hearing shall waive the right to object and shall be forever barred
26 from making any objection to the proposed Settlement, the Plan of Allocation,
27 the Class Counsel Award and the Service Award. Settlement Class Members
28 who object to the proposed Settlement shall remain Settlement Class Members,

1 and shall be deemed to have voluntarily waived their right to pursue an
2 independent remedy against R&M.

3 114. To the extent any Settlement Class Member objects to the proposed
4 Settlement, and such objection is overruled in whole or in part, such Settlement
5 Class Member will be forever bound by the Final Approval order and Judgment.

6 115. It shall be Class Counsel's sole responsibility to respond to any
7 objections made with respect to any application for the Class Counsel Award and
8 Service Award.

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

11 RELEASES

12 117. The Named Plaintiff's General Released Claims and the Settlement
13 Class Members' Released Claims shall be released and dismissed with prejudice
14 and on the merits (without an award of costs to any party other than as provided
15 in this Settlement Agreement) upon entry of the Final Approval order and
16 Judgment.

17 118. As of the Final Approval Date, Medina, and all Settlement Class
18 Members who have not been excluded from the Settlement Class as provided in
19 the Opt-Out List, regardless of whether the Settlement Class Members returned
20 a Claim Form or not, individually and on behalf of their Legally Authorized
21 Representatives, heirs, estates, trustees, executors, administrators,
22 representatives, agents, successors, and assigns, and anyone claiming through
23 them or acting or purporting to act on their behalf, agree to forever release,
24 discharge, hold harmless, and covenant not to sue on the Named Plaintiff's
25 General Released Claims (in the case of Medina) and on the Settlement Class
26 Members' Released Claims (in the case of the Settlement Class Members who
27 have not been excluded from the Settlement Class as provided in the Opt-Out
28 List), and by operation of the Final Judgment shall have fully and finally

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

15 119. As of the Final Approval Date, Medina, and all Settlement Class
16 Members who have not been excluded from the Settlement Class as provided in
17 the Opt-Out List, shall be permanently barred and enjoined from initiating,
18 asserting, or prosecuting in any federal or state court or tribunal any and all
19 Named Plaintiff's General Released Claims (in the case of Medina) and any
20 Settlement Class Members' Released Claims (in the case of the Settlement Class
21 Members who have not been excluded from the Settlement Class as provided in
22 the Opt-Out List).

23 120. Medina and the Settlement Class Members expressly acknowledge
24 that they are familiar with principles of law such as Section 1542 of the
25 California *Civil Code*, which provides:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
27 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
28 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**

1 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
2 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
3 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

4 121. With respect to the Settlement Class Members' Released Claims,
5 each Settlement Class Member who has not been excluded from the Settlement
6 Class as provided in the Opt-Out List shall be deemed to have expressly,
7 knowingly, and voluntarily waived and relinquished, to the fullest extent
8 permitted by law, the provisions, rights, and benefits he or she may otherwise
9 have had pursuant to Section 1542 of the California *Civil Code* and all similar
10 federal or state laws, rights, rules, or legal principles of any other jurisdiction
11 that may be applicable herein. In connection with the release, the Settlement
12 Class Members acknowledge that they are aware that they may hereafter
13 discover claims presently unknown and unsuspected or facts in addition to or
14 different from those which they now know or believe to be true with respect to
15 matters released herein.

16 122. With respect to the Named Plaintiff's General Released Claims,
17 Medina shall be deemed to have expressly, knowingly, and voluntarily waived
18 and relinquished, to the fullest extent permitted by law, the provisions, rights,
19 and benefits he may otherwise have had pursuant to Section 1542 of the
20 California *Civil Code* and all similar federal or state laws, rights, rules, or legal
21 principles of any other jurisdiction that may be applicable herein. In connection
22 with the release, Medina acknowledges that he is aware that he may hereafter
23 discover claims presently unknown and unsuspected or facts in addition to or
24 different from those which he now knows or believes to be true with respect to
25 matters released herein. Nevertheless, Medina acknowledges that a portion of
26 the consideration received herein is for a release with respect to unknown
27 damages and complaints, whether resulting from known injuries and
28 consequences or from unknown injuries or unknown consequences of known or

1 unknown injuries, and states that it is the intention of Medina in agreeing to
2 this release to fully, finally, and forever to settle and release all matters and all
3 claims that exist, hereafter may exist, or might have existed (whether or not
4 previously or currently asserted in any action), constituting Named Plaintiff's
5 General Released Claims.

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

11 124. Subject to Court approval, Medina, and all Settlement Class
12 Members to the extent they have not been excluded from the Settlement Class
13 as provided in the Opt-Out List, shall be bound by this Settlement Agreement
14 even if they never received actual notice of the Class Action and/or this
15 Settlement.

16 **ADMINISTRATION OF THE SETTLEMENT FUND**

17 125. The Settlement Administrator or its authorized agents in
18 consultation with the Parties and subject to the supervision, direction, and
19 approval of the Court, shall calculate the allocation of and oversee the
20 distribution of the Total Settlement Amount.

21 126. The Total Settlement Amount shall be applied as follows:

22 A. To pay the total costs, expenses, and fees of the Settlement
23 Administrator incurred in connection with providing Class Notice to potential
24 Settlement Class Members, and the management and distribution of the Total
25 Settlement Amount to Responding Settlement Class Members, not to exceed
26 \$15,000.00;

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

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

3 D. After the Effective Date and subject to the approval and
4 further order(s) of the Court, to distribute the Individual Settlement Payments
5 from the Total Settlement Amount for the benefit of the Responding Settlement
6 Class as provided above or as otherwise ordered by the Court.

7 127. If any portion of the Total Settlement Amount is not successfully
8 redistributed to Settlement Misclassification Subclass after the Void Date (*i.e.*
9 checks are not cashed or checks are returned as undeliverable after the second
10 distribution), then after the Void Date for redistributed checks, the Settlement
11 Administrator shall void the check and shall pay such unclaimed funds to the
12 Settlement Misclassification Subclass members who (1) received and cashed
13 their second Individual Settlement Payments, and (2) received a second
14 Individual Settlement Payment in an amount greater than or equal to \$100.00
15 or, if none exist, then to the *cy pres* beneficiary of the Settlement, Wage Justice
16 Center, subject to the requirements of California *Code of Civil Procedure* Section
17 384.

18 128. Settlement Class Members who are not on the Opt-Out List
19 approved by the Court shall be subject to and bound by the provisions of the
20 Settlement Agreement, the releases contained herein, and the Judgment with
21 respect to all Settlement Class Members' Released Claims, regardless of whether
22 they submitted a Claim Form or obtain any distribution from the Total
23 Settlement Amount.

24 129. Payment from the Total Settlement Amount made pursuant to and
25 in the manner set forth herein shall be deemed conclusive of compliance with
26 this Settlement Agreement as to all Settlement Class Members.

27 130. No Settlement Class Member shall have any claim against Medina,
28 Class Counsel, or the Settlement Administrator based on distributions made

1 substantially in accordance with this Settlement Agreement and/or orders of the
2 Court. No Settlement Class Member shall have any claim against any released
3 party or its counsel relating to distributions made under this Settlement.

4 **EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
5 **SETTLEMENT AGREEMENT**

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

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

1 immediately prior to execution of this Settlement Agreement; (d) all Orders
2 entered in connection with the Settlement, including the conditional certification
3 of the Settlement Class, the Settlement Misclassification Subclass, and/or the
4 Settlement Rest Break Subclass, shall be vacated without prejudice to any
5 Party's position on the issue of class certification, the issue of amending the
6 complaint, or any other issue, in the Class Action or any other action, and the
7 Parties shall be restored to their litigation positions existing on the date of
8 execution of this Settlement Agreement; and (e) the Parties shall proceed in all
9 respects as if the Settlement Agreement and related documentation and orders
10 had not been executed, and without prejudice in any way from the negotiation or
11 fact of the Settlement or the terms of the Settlement Agreement. The
12 Settlement Agreement, the Settlement, all communications, documents, orders,
13 and evidence relating to the Settlement, the fact of their existence, any of their
14 terms, any press release or other statement or report by the Parties or by others
15 concerning the Settlement Agreement, the Settlement, their existence, or their
16 terms, any negotiations, proceedings, acts performed, or documents executed
17 pursuant to or in furtherance of the Settlement Agreement or the Settlement
18 shall not be admissible in any proceeding, and shall not be offered, received, or
19 construed as evidence of a presumption, concession, or an admission of liability,
20 of unenforceability of any arbitration agreement, of the certifiability of a
21 litigation class, or of any misrepresentation or omission in any statement or
22 written document approved or made, or otherwise used by any person for any
23 purpose whatsoever, in any trial of the Class Action or any other action or
24 proceedings. Medina, Class Counsel and the Settlement Administrator shall
25 return to Defense Counsel all copies of Class Information and Opt-Out Lists and
26 shall not use or disclose the Class Information or Opt-Out List for any purpose
27 or in any proceeding.
28

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

16 **ADDITIONAL PROVISIONS**

17 134. All of the Exhibits to this Settlement Agreement are an integral part
18 of the Settlement and are incorporated by reference as though fully set forth
19 herein.

20 135. Medina and Class Counsel acknowledge that an adequate factual
21 record has been established that supports the Settlement and hereby waive any
22 right to conduct further discovery to assess or confirm the Settlement.

23 136. Unless otherwise noted, all references to “days” in this Settlement
24 Agreement shall be to calendar days. In the event any date or deadline set forth
25 in this Settlement Agreement falls on a weekend or federal legal holiday, such
26 date or deadline shall be on the first business day thereafter.

27 137. This Settlement Agreement constitutes the full and complete
28 agreement of the Parties hereto, and supersedes all prior negotiations and

1 agreements, whether oral, written or otherwise, and may be amended or
2 modified only by a written instrument signed by counsel for all Parties or the
3 Parties' successors-in-interest.

4 138. The Parties reserve the right, subject to the Court's approval, to
5 make any reasonable extensions of time that might be necessary to carry out
6 any of the provisions of this Settlement Agreement. Such extensions must be in
7 writing to be enforceable.

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

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

28

1 141. The Parties to the Settlement Agreement agree that the Total
2 Settlement Amount and the other terms of the Settlement were negotiated at
3 arm's length and in good faith by the Parties, resulted from an arm's-length
4 mediation session facilitated by Hon. Carl J. West (Ret.), and reflect a
5 settlement that was reached voluntarily based upon adequate information and
6 sufficient discovery and after consultation with experienced legal counsel.

7 142. Medina and Class Counsel have concluded that the Settlement set
8 forth herein constitutes a fair, reasonable, and adequate resolution of the claims
9 that Medina asserted against R&M, including the claims on behalf of the
10 Settlement Class, and that it promotes the best interests of the Settlement
11 Class.

12 143. To the extent permitted by law, all agreements made and orders
13 entered during the course of the Class Action relating to the confidentiality of
14 information shall survive this Settlement Agreement.

15 144. The Parties agree that Medina and Class Counsel are not required
16 to return any documents produced by R&M until the final resolution of the Class
17 Action.

18 145. The waiver by one Party of any breach of this Settlement Agreement
19 by any other Party shall not be deemed a waiver of any other prior or
20 subsequent breach of this Settlement Agreement.

21 146. This Settlement Agreement, including its Exhibits, constitutes the
22 entire agreement among the Parties, and no representations, warranties, or
23 inducements have been made to any Party concerning this Settlement
24 Agreement or its Exhibits, other than the representations, warranties, and
25 covenants contained and memorialized in this Settlement Agreement and its
26 Exhibits.

27 147. This Settlement Agreement may be executed in one or more
28 counterparts. All executed counterparts and each of them shall be deemed to be

1 one and the same instrument provided that counsel for the Parties to this
2 Settlement Agreement shall exchange among themselves original signed
3 counterparts. Faxed or emailed signatures shall be deemed original signatures.

4 148. The Parties hereto and their respective counsel agree that they will
5 use their best efforts to obtain all necessary approvals of the Court required by
6 this Settlement Agreement.

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

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

17 151. Except where this Settlement Agreement itself provides otherwise,
18 all terms, conditions, and Exhibits are material and necessary to this Settlement
19 Agreement and have been relied upon by the Parties in entering into this
20 Settlement Agreement.

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

28

1 153. The Court shall retain continuing and exclusive jurisdiction over the
2 Parties to this Settlement Agreement for the purpose of the administration and
3 enforcement of this Settlement Agreement.

4 154. The headings used in this Settlement Agreement are for the
5 convenience of the reader only, and shall not affect the meaning or
6 interpretation of this Settlement Agreement.

7 155. In construing this Settlement Agreement, the use of the singular
8 includes the plural (and vice-versa) and the use of the masculine includes the
9 feminine (and vice-versa).

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

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

17 DATED: December 18, 2019
18 R&M PACIFIC RIM, INC.

DATED: December __, 2019

19
20 By: 
21

SANTIAGO MEDINA

22
23 APPROVED AS TO FORM AND CONTENT.

24 Dated: December __, 2019

BLEAU FOX
A Professional Law Corporation

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By: _____
SAMUEL T. REES
Attorneys for Plaintiff and the Plaintiff Class

1 Dated: December 18, 2019

KRING & CHUNG LLP

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3 By: 

4 ALLYSON K. THOMPSON

5 Attorneys for R&M PACIFIC RIM, INC.
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1 153. The Court shall retain continuing and exclusive jurisdiction over the
2 Parties to this Settlement Agreement for the purpose of the administration and
3 enforcement of this Settlement Agreement.

4 154. The headings used in this Settlement Agreement are for the
5 convenience of the reader only, and shall not affect the meaning or
6 interpretation of this Settlement Agreement.

7 155. In construing this Settlement Agreement, the use of the singular
8 includes the plural (and vice-versa) and the use of the masculine includes the
9 feminine (and vice-versa).

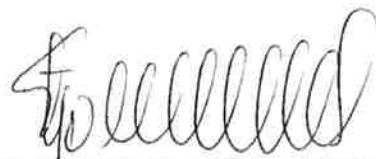
10 156. Each Party to this Settlement Agreement warrants that he or it is
11 acting upon his or its independent judgment and upon the advice of his or its
12 counsel, and not in reliance upon any warranty or representation, express or
13 implied, of any nature of any kind by any other Party, other than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

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

17 DATED: December __, 2019
18 R&M PACIFIC RIM, INC.

DATED: December 9, 2019

19
20 By: _____
21




SANTIAGO MEDINA

22 APPROVED AS TO FORM AND CONTENT.

23 Dated: December 9, 2019

BLEAU FOX
A Professional Law Corporation

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By: 

SAMUEL T. REES

Attorneys for Plaintiff and the Plaintiff Class

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 potential 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 to money you may be owed.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Participate in the Settlement	If you wish to receive a share of the Settlement proceeds, you must submit a Claim, which you can do electronically at [A hyperlink to XXXXXXXX will be included here] or by fax or by mail, as explained below in Paragraph 9. <i>In order to receive your share of the Settlement if the Court grants final approval of the Settlement, you must submit a Claim form no later than [60 days after Notice Date].</i>
Exclude Yourself from the Settlement (Opt-Out)	If you do not want to participate in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator postmarked no later than [60 days after Notice Date], or else you will be bound by the Settlement. Please refer to Paragraph 11 below for instructions on excluding yourself.
Object to the Settlement	If you wish to object to the Settlement, you must mail a written objection to the Settlement Administrator postmarked no later than [60 days after notice date]. Please refer to Paragraph 12 below for instructions on objecting.
Participate in the Fairness Hearing	If you submit an objection to the Settlement, you may also indicate in the objection whether you wish to appear and be heard at the time of the Fairness Hearing.
Do Nothing	If you do nothing with respect to the Notice, and the Court grants final approval of the Settlement, you will be automatically considered a member of the Class but you will receive no payment. .

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.

TABLE OF CONTENTS

GENERAL INFORMATION REGARDING THIS NOTICE..... 3
 What is This Notice About..... 3
 What is This Lawsuit About 3

SUMMARY OF SETTLEMENT..... 4
 Who Is Included in the Settlement? 4
 How to Participate in the Settlement 4
 What Are the Important Terms of the Settlement..... 5
 What Are My Rights as a Settlement Class Member..... 8
 Class Counsel 11
 Final Settlement Approval Hearing..... 11
 Getting More Information..... 11

GENERAL INFORMATION REGARDING THIS NOTICE

WHAT IS THIS NOTICE ABOUT?

This Notice pertains to the partial settlement (“Class Action Settlement” or “Settlement”) of 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 Pacific Rim, Inc. ("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 Rest Break Subclass. The Settlement Misclassification Subclass consists of all employees during this period who were declared by R&M as exempt employees and paid a salary. The Settlement Rest Break Subclass consists of all employees during this period who were paid an hourly wage. You may be part of both subclasses.

The Orange County Superior Court (the “Court”) has preliminarily approved the Settlement and has directed the parties to notify the Settlement Class 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 if you want to file a claim, opt out of the class, object to the settlement or correct or supplement information contained in the accompanying claim form.

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 visit [\[settlement website\]](#) for more information, to review the Settlement, 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 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 and 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* and the applicable wage order. Other bases for relief also are asserted. These claims only relate to employees working at R&M operated stations.

Insofar as claims 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, and 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* and the applicable 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 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.**

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. Moreover:

YOU WILL NEED TO TIMELY SUBMIT A CLAIM FORM BY [INSERT DATE] IN ORDER TO RECEIVE YOUR INDIVIDUAL SETTLEMENT PAYMENT.

(Claims Submission Information is Provided in Paragraph 9 Below.)

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 DATE].

(Settlement Exclusion Information is Provided in Paragraph 11 Below.)

IF YOU WISH TO OBJECT TO THIS SETTLEMENT, YOU WILL NEED TO TIMELY SUBMIT A WRITTEN STATEMENT OF OBJECTION CONTAINING THE NECESSARY INFORMATION BY [INSERT DATE].

(Objection Information is Provided in Paragraph 12 Below.)

IF YOU WISH TO DISPUTE ANY OF THE ACCOMPANYING INFORMATION ON WHICH YOUR INDIVIDUAL SETTLEMENT PAYMENT WILL BE CALCULATED, YOU WILL NEED TO STATE THE BASIS FOR YOUR DISPUTE AND PROVIDE SUPPORTING DOCUMENTATION BY [INSERT DATE].

(Dispute Information is Provided in Paragraph 2. (c). 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 claim form.

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. Class Counsel can seek an award of up to 1/3 of the Total Settlement Amount plus costs and expenses per motion to the Court and as the Court approves. In addition, a Service Award to Medina and Administrator costs as approved by the Court will be deducted from the Total Settlement Amount before payment to the two subclasses. 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. The remaining Total Settlement Amount will fund payments to Class Members who timely submit a valid Class Member Claim. **If you want to participate in the Settlement and receive your payment, be sure to file your claim!**
2. **Payment to Class Members.** The Remaining Settlement Amount will be distributed only to those Settlement Class Members who timely submit a valid Claim.
 - 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 weeks or portions thereof each such member worked during the Class Period as an exempt employee divided by the total number of weeks and portions thereof worked by all members of this subclass. An employee whose classification was changed during a work week shall be deemed an exempt employee for the entire week during the Class Period and not an hourly employee for that week. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.
 - b. **Rest Break Subclass:** Twenty-Six percent (26%) of the Remaining Settlement Amount shall be allocated to the Settlement Rest Break Subclass. This amount shall be prorated among the members of the Rest Break Subclass based upon each employee's gross wages paid during the Class Period divided by the gross wages paid during the Class Period to all members of this subclass. An employee whose classification was changed during a work week shall not be deemed an hourly employee for the entire week during the Class Period he or she was also an

exempt employee. Each such allocation shall be further allocated Thirty-Three percent (33%) to wages and Sixty-Seven percent (67%) to penalties and interest.

- c. If a Responding Settlement Class Member will be distributed \$10 or more, then he or she will receive the entitled amount. If, however, the Responding 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. Settlement Class Members will be provided thirty-five (35) days after the initial mailing of the Class Notice and accompanying claim form to dispute the information upon which their share of the Settlement will be calculated and to provide documentation to support this dispute. The Settlement Administrator will resolve all such disputes and its decision will be final. R&M's employment records on which the accompanying claim form is based are presumed correct.
 - d. 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.
 - e. **Unclaimed funds** will be redistributed to those members of the Settlement Misclassification Subclass who received and cashed their individual payments pursuant to the same formula described in section 2(b) above.
3. This Settlement was made based upon certain representations of fact made by R&M and contained in the Settlement Agreement at Paragraph 60. You should review these representations as they may affect your decisions regarding this settlement. A copy of the Settlement Agreement and Exhibits may be downloaded at [INSERT WEBSITE]. Of primary importance is the representations that prior to September 1, 2008, (i) R&M reclassified all exempt employees as hourly employees, (ii) changed its rest break policies to allow all employees to take 10 minute off-duty rest breaks every 4 hours or major fraction thereof, and (iii) provided compensation for prior missed meal breaks.
 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, postmarked by the deadline of [60 days after notice date]. If you do mail 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 right you may have, if any, to pursue your claims against Defendants.

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:

“[A]ny and all past and present claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, but arising during the Class Period and for claims arising during the Class Period for compensatory, consequential, punitive or exemplary damages, statutory damages, declaratory relief, injunctive relief, equitable relief, penalties, interest, attorneys’ fees, costs and/or disbursements, including, but 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 in the Class Counsel Award authorized by this Agreement), that arose during the Class Period and from or are reasonably based on or related to R&M's alleged failure to classify Settlement Class Members as non-exempt employees and compensate those employees overtime and/or R&M's alleged failure to provide the Settlement Class Members with off-duty rest breaks or compensate them for missed off-duty rest breaks, and specifically includes the following claims arising solely during the Class Period and from, based on or reasonably relating to, claims asserted or alleged in the Class Action: claims for unpaid wages (including without limitation claims for overtime and meal period and rest period premiums), liquidated damages, expense reimbursements, interest, penalties (including waiting time penalties pursuant to *Labor Code* Section 203, wage statement penalties pursuant to *Labor Code* Section 226, restitution, and civil and statutory penalties), claims under *Business and Professions Code* Section 17200, *et seq.*, claims under the federal Fair Labor Standards Act, claims for attorneys’ fees and costs, and claims for unfair business practices. “Settlement Class Members’ Released Claims” do not include claims that, as a matter of law, cannot be released and do not include claims for retaliation, discrimination, wrongful termination, or individual claims filed with the appropriate agency for the recovery of workers’ compensation benefits. “Settlement Class Members’ Released Claims” do not include claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery and arising before or after the Class Period including those against Equilon Enterprises, LLC, its parent and affiliates, including Equistaff, LLC, and Tesoro Refining & Marketing Company LLC and its parents and affiliates.

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. To submit a claim electronically, **[click on this link]**, or go to **www.XXXX.com** and enter your **Claimant ID and Verification Number**, provided in the accompanying claim form. **[Website name will be linked to website where claims can be submitted; Claimant ID and Verification Number will be automatically entered for Class members who enter the website through this link.]**

To submit a claim by fax, please complete and fax it to the Settlement Administrator at (249) 209-2503 and retain confirmation that the fax was successfully transmitted.

To submit a claim by paper, please complete and return the enclosed claim form to the Settlement Administrator at the address listed below. If you need an additional claim form, please contact the Settlement Administrator at (800) 523-5773 or at Info@phoenixclassaction.com.

In order to receive a monetary payment from this Settlement, you must submit your claim no later than **[60 days after notice date].**

10. **Receiving a Settlement Payment:** If you wish to receive payment from this Settlement, you must submit a valid and timely Claim no later than **[60 days after preliminary approval]**. If the settlement is finally approved, you will receive your payment by paper check at the address where this notice was mailed (unless you timely provide an updated address to the Settlement Administrator).
11. **Excluding Yourself from the Settlement (Opt-Out):** If you do **not** wish to participate in the Settlement, you must mail in 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 Request for Exclusion must be completed, signed, and mailed to the Settlement Administrator at the address identified below, postmarked no later than **[Exclusion/Written Objection Deadline]**. If you fail to return 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. If a Settlement Class Member submits both a Claim and a Request for Exclusion from the Settlement, the Settlement Class Member may be given an opportunity to clarify his or her response. If not modified by the Settlement Class Member, the Request for Exclusion will apply and the Claim 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 the Settlement Class member's decisions about whether and how to participate in the Settlement.

12. **Objecting to the Settlement:** 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 statement of the objection. To be timely, a written objection must be mailed to the Settlement Administrator, and postmarked no later than **[60 days after notice date]**. A written objection must contain at least the following: (i) the objector's full name, address, telephone number, and signature; (ii) a clear reference to the Class Action; (iii) a statement of the specific legal and factual basis for each objection argument; and (iv) a statement whether the objecting person or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number. All objections shall be signed by the objecting Settlement Class Member (or his/her Legally Authorized Representative), even if the Settlement Class Member is represented by counsel.

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 overrules your objection and gives final approval to the Settlement, you will be bound by the terms of the Settlement and only receive a Settlement Payment if you submitted a Claim.

Remember, you must timely submit a claim form even if you object to the Settlement if you want to receive your Individual Settlement Payment.

13. **Termination of the Settlement:** If after [Exclusion/Written Objection Deadline] and before the Final Approval Hearing, five or more of the Settlement Misclassification Subclass Members submit timely and valid request for exclusion from the Settlement, R&M shall have, in its sole and absolute discretion, the option to terminate this Settlement. 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, and 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 Administrator Costs incurred through the date R&M notifies the Settlement Administrator that it is exercising its option to terminate the Settlement.
14. **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.
15. **Keep Your Information Up to Date:** If you submit a Claim, it is your obligation 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 and perhaps losing your Individual Settlement Payment.
16. **Information Available on Website:** The Settlement Administrator has created a website for purposes of this Settlement. The website address is [INSERT ADDRESS]. Among other actions you may take through this website and information contained therein, you will be able to download the following documents: Second Amended Complaint; Settlement Agreement and exhibits; Class Notice; Claim Forms; Motion for

Preliminary Approval of this Settlement; and Preliminary Approval Order. If you need a duplicate of your information contained in the accompanying claim form, please contact the Settlement Administrator.

17. **The Settlement Administrator's Address:** You may send a paper Claim, Request for Exclusion, or Objection to the Settlement Administrator to the following address:

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

CLASS COUNSEL

Contact information for Class Counsel is provided below:

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

FINAL SETTLEMENT APPROVAL HEARING

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

The Settlement Fairness Hearing may be postponed without further notice to Settlement Class members. **You are not required to attend the Settlement Fairness Hearing, although any Settlement Class member is welcome to attend the hearing.**

GETTING MORE INFORMATION

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

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

EXHIBIT 2

CLAIM FORM FOR PROCEEDS OF SETTLEMENT

DEADLINE: To receive any money from this settlement, you must properly complete, sign and submit the following Claim Form to Phoenix Settlement Administrators by [INSERT DATE]. You have three different ways to submit your claim form. You may submit your claim electronically over the internet; you may submit your claim by fax at [INSERT DATE] or you may mail your claim form by First-Class Mail postmarked by [INSERT DATE] to Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863. To complete your Claim Form and submit it over the internet, go to [INSERT WEBSITE] and enter your Claimant ID and Verification Number provided below. Submission of a claim over the internet constitutes your electronic signature on the claim form dated as of the time of transmission.

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 Pacific 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 Exempt, Salaried Employees, if applicable.

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

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

Number of Full Weeks, Rounded Up [INSERT NUMBER]

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

3. **Information for Hourly Employees, 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.

4. **Signature and Confirmation**

I declare under penalty of perjury under the laws of the State of California that:

1. I have read the Notice of Proposed Settlement of Class Action etc, (“Class Notice”) and I understand that, in signing this form, I (i) understand that I am releasing claims as set forth in the Class Notice and (ii) authorize Class Counsel to act on my behalf in all matters relating to this Class Action, including the settlement of my claims.
2. I wish to receive my share of the proposed settlement.

_____, 2020.

Signature

5. **Claim Deadline**

Your Claim Form must be received or postmarked on or before [INSERT HIGHLIGHTED DATE]. A mailed Claim Form postmarked later than this deadline will not be accepted. A self-addressed, postage pre-paid envelope has been enclosed for your convenience. This Claim Form must be mailed, faxed or delivered to the Settlement Administrator at:

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

6. **Questions?**

If you have questions regarding this Claim Form, please contact the Settlement Administrator at the address or number or email above. Additional information and responses to frequently asked questions are contained on-line at [INSERT WEBSITE]. You may also contact Class Counsel whose contact information is set forth in the Class Notice. **Do not contact either the Court or counsel for R&M.**

EXHIBIT 3

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**

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RAYMOND STODDARD and SANTIAGO)
MEDINA, etc.,)
)
) Plaintiffs,)
)
) vs.)
)
EQUILON ENTERPRISES, LLC, et al.,)
)
) R&Ms.)

Case No. 30-2010-00395208-CU-OE-CXC
Hon. William Claster
Department CX 102
CLASS ACTION
PRELIMINARY APPROVAL ORDER
Date: April 10, 2019
Time: 8:30 a.m.
Dept: CX104
Complaint Filed: August 2, 2010
Trial Date: None Set

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WHEREAS, this action is pending before this Court as a Class Action; and
WHEREAS, Plaintiff Santiago Medina ("Medina") has filed an unopposed
motion with this Court for an Order preliminarily approving the settlement of
the Class Action entered into by and between R & M Pacific Rim, Inc., a
California corporation, ("R&M") and Medina, individually and on behalf of Class
Members as defined therein, in accordance with their Settlement Agreement,
which, together with the Exhibits attached to the Settlement Agreement, sets
forth the terms and conditions for a proposed partial settlement of the Class

1 Action; and the Court having read and considered the Settlement Agreement
2 and the Exhibits attached thereto;

3 NOW, THEREFORE, IT IS HEREBY ORDERED:

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

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

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

24 4. For purposes of the Settlement only, the court finds that the
25 proposed Settlement Class is ascertainable and that there is a sufficiently well-
26 defined community of interest among the members of the Settlement Class in
27 questions of law and fact. Therefore, the Court preliminarily certifies as the
28 Settlement Class for settlement purposes only all persons who were employed by

1 R&M and who worked at a Shell branded station operated by R&M and owned
2 by Equilon Enterprises, LLC at any time during the period from August 2, 2006
3 to September 1, 2008. The Settlement Class consists of the Settlement
4 Misclassification Subclass, consisting of all Settlement Class Members during
5 any portion of the Class Period that they were declared by R&M as exempt
6 employees and paid a salary. and the Settlement Rest Break Subclass,
7 consisting of all Settlement Class Members during any portion of the Class
8 Period that they were non-exempt hourly wage employees.

9 5. For purposes of the Settlement only, Medina is approved as the
10 Class Representative.

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

13 7. The Court hereby appoints and approves Phoenix Settlement
14 Administrators as the Settlement Administrator.

15 8. After balancing the privacy interests of the Settlement Class as
16 asserted by R&M, the Court finds that in order for the Class Notice to be mailed
17 to the Settlement Class at their last known address based upon R&M's
18 employment records, that the Settlement Administrator and Class Counsel have
19 sufficient information to locate Settlement Class members and that the
20 Settlement Administrator and Class Counsel have sufficient information to
21 prorate Individual Settlement payments for each subclass, it is necessary and
22 appropriate, without prior notice to the Settlement Class, that R&M be
23 authorized and directed to provide to the Settlement Administrator and Class
24 Counsel the Class Information to be used solely for the purposes of settlement of
25 this Class Action. Having so determined, the Court hereby orders R&M to so
26 provide to the Settlement Administrator and Class Counsel the Class
27 Information to be so used.
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1 9. A hearing ("Final Approval Hearing") shall be conducted before this
2 Court on _____, 2020, at ____ a.m., in Department CX104, to
3 determine whether the proposed settlement of the Class Action on the terms and
4 conditions provided for in the Settlement Agreement is fair, reasonable and
5 adequate, whether said settlement should be finally approved by the Court, and
6 whether a Final Approval Order and Judgment should be entered herein.

7 10. The Court hereby approves, as to form and content, the Class Notice
8 and Claim Form attached as Exhibits 1 and 2 to the Settlement Agreement.

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

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

26 13. The Court hereby authorizes the Settlement Administrator to mail
27 or cause to be mailed to Settlement Class Members the Class Notice and Claim
28 Form. Such documents shall be sent by First Class U.S. mail, postage prepaid.

1 Mailing of the Class Notice shall occur within Sixty (60) days after the entry of
2 this Preliminary Approval Order. The Class Notice and Claim Form shall be
3 mailed using the information provided by R&M in the Class Information, as
4 updated, to the extent that Class Notices are returned undeliverable, by the
5 Settlement Administrator as provided in the Settlement Agreement. Class
6 Counsel may provide additional updated mailing and/or emailing addresses to
7 the Settlement Administrator. If these procedures are followed, notice to Class
8 Members shall be deemed to have been satisfied, and if the intended recipient of
9 the Class Notice does not receive the Class Notice, the intended recipient shall
10 nevertheless remain a Settlement Class Member and shall be bound by all terms
11 of the Settlement Agreement and this Preliminary Approval Order. The
12 Settlement Administrator shall provide periodic reports to Class Counsel and
13 Defense Counsel.

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

25 15. The Court hereby finds that Settlement Class Members who wish to
26 receive their Individual Settlement Payment must complete, sign and return by
27 facsimile, by First Class U.S. mail, postage prepaid or online through a website
28 which the Settlement Administrator is authorized to establish for the

1 settlement, or otherwise deliver, the Claim Form (attached as Exhibit 2 to the
2 Settlement Agreement) to the Settlement Administrator in accordance with the
3 instructions and deadline specified in the Class Notice.

4 16. Prior to forty-six days following the entry of this Preliminary
5 Approval Order, Class Counsel shall serve and file its application for a Class
6 Counsel Award and litigation costs and expenses as well as any application for a
7 Service Award.

8 17. Five days prior to the Final Approval Hearing, Class Counsel shall
9 serve and file the declaration of the Settlement Administrator containing the
10 information required by the Settlement Agreement.

11 18. The Court reserves the right to adjourn or continue the date of the
12 Final Approval Hearing without further notice to Class Members, and retains
13 jurisdiction to consider all further applications or motions arising out of or
14 connected with the proposed settlement.

15 IT IS SO ORDERED.

16 Dated: _____, 2019 _____

17 William D. Cluster
18 Judge of the Superior Court

19 APPROVED AS TO FORM AND CONTENT.

20 Dated: November __, 2019

21 BLEAU FOX
22 A Professional Law Corporation

23 By: _____
24 SAMUEL T. REES

25 Attorneys for Plaintiff and the Plaintiff Class

26 Dated: November __, 2019

27 KRING & CHUNG LLP

28 By: _____
ALLYSON K. THOMPSON

Attorneys for R&M PACIFIC RIM, INC.

EXHIBIT B

Samuel T. Rees

26 Muirfield Place
New Orleans, Louisiana 70131
E-mail: STReesEsq@Earthlink.net

Office: (504) 391-7435
Fax: (504) 391-7435
Cell: (213) 220-9988

PROFESSIONAL EXPERIENCE

Bleau Fox, Los Angeles, CA

2009 – Present

Of Counsel

Joined firm in October 2009. Primary areas of emphasis remain employee rights, products liability, antitrust, wrongful termination, and general civil litigation and transactional matters involving insurance, banking, and manufacturing companies.

Daar & Newman, Los Angeles, CA

1992 – 2009

Of Counsel

For this litigation and international transactional firm, specialized in products liability, antitrust, wrongful termination, and general civil litigation and transactional matters involving insurance, banking, and manufacturing companies.

Former National Litigation Counsel to Amcast Industrial Corporation. Joined Amcast as General Counsel while remaining “of counsel” at Daar & Newman. Returned to Daar & Newman when Amcast’s reduced size no longer justified a employed counsel.

- Appeared before the United States Supreme Court representing former thrift executive seeking recovery from Federal government after being precluded from all employment in the financial institution industry.
- Successfully represented a major insurance broker in a suit against a subsidiary of GE Capital for sales of sub-standard modular housing units for schools in Mexico.
- Secured several seven figure settlements and judgments for clients.
- Secured substantial settlements for irrigation equipment distributors in antitrust litigation.

Amcast Industrial Corporation, Dayton, OH

2001 – 2003

Formerly \$700 million international manufacturer of metal products to automotive, construction industries. (OTC – AICO.OB, Formerly NYSE - AIZ)

Vice President, General Counsel, Secretary

Report to the Chairman/CEO. Principal advisor to the Board. Corporate Secretary to all subsidiaries. Chief Legal Officer, Environmental Compliance Officer and Risk Manager. Advise corporation on all corporate, governance, litigation, risk management, contracts, and employment issues. Focus on product liability, environmental compliance, and antitrust. Manage small in-house legal team and all outside legal resources globally with annual budget of \$3 million.

- Reviewed all legal matters and created strategic litigation plans. Established pragmatic approaches and managed staff, calendar and budget resources to reach objectives.
- Reduced overall litigation expenses by \$1.4 million.
- Risk Manager responsible for purchasing all corporate insurance and managing all claims. Managed self-insured and insured workers’ compensation programs for 4,600 employees including all outside services.
- Negotiated and consummated sale of Italian wheel manufacturer.
- Reduced pending litigation by half.

- Negotiated and documented sale of a \$200 million international piece of the business.
- Restructured corporate governance and reporting caused by Sarbanes Oxley.

Knapp, Petersen & Clarke, Glendale, CA
1990 – 1992**Senior Principal**

Established a new business litigation department for predominantly insurance defense firm. Began relationship with Amcast Industries, successfully trying or resolving all matters assigned.

Leff, Katz, Rees & Mocciano, Los Angeles, CA
1986 – 1990**Leff & Jensen, Beverly Hills, CA****1982 – 1986**

Spin-off firms from Hahn, Crazier & Leff.

Senior Litigation Partner

Ran litigation departments in these two firms, managing 4-15 litigation lawyers. Focus on financial institutions, product liability, and general business litigation.

- Represented two corporations in mass tort and insurance litigation regarding the MGM Grand Las Vegas fire. Counter-sued manufacturers and secured settlements such that clients were kept whole.
- Successfully represented senior executive in FDIC litigation involving collapse of Beverly Hills Savings.
- Represented numerous savings and loan associations, banks and insurance companies for litigation and regulatory issues.

Hahn, Cazier & Leff, Los Angeles, CA
1973 – 1982**Litigation and Assistant Managing Partner**

Initially specialized in real estate and corporate securities. Migrated to litigation and financial institutions, forming numerous thrifts. Gained substantial business litigation trial and appellate experience.

EDUCATION

University of Southern California, Los Angeles, California

- A.B., Political Science, 1970
- J.D., 1973, Co-Chair - Hale Moot Court

LEGAL CREDENTIALS

Admitted to Practice in:

- All California and Louisiana state courts
- The United States Supreme Court
- The United States Court of Appeals for the Ninth Circuit
- Certain California and Louisiana District Courts
- *Pro Hac Vice* in Arizona, Texas, Indiana and Utah

PROFESSIONAL MEMBERSHIPS & ACTIVITIES

- California State Bar Association
- Louisiana Bar Association
- Los Angeles County Bar Association
- Former Judicial Arbitrator – Los Angeles Superior Court
- Former President – Los Angeles County Bar Association Credit Union
- Former Directorships – Pacific Coast Bank and Bank of San Marino

REPORTED DECISIONS

- *Pelletier v. Behrens*, 516 U.S. 299 (1996)
- *Pelletier v. Federal Home Loan*, 968 F.2d 865 (9th Cir. 1992)
- *Pelletier v. Federal Home Loan*, 130 F.3d 429 (9th Cir. 1997)
- *Pelletier v. Federal Home Loan Bank of San Francisco*, 145 F.3d 1094 (9th Cir. 1998)
- *Hydro-Air Equip., Inc v. Hyatt Corp.* 852 F.2d 403 (9th Cir. 1988)
- *In re Beverly Hills Bancorp*, 649 F.2d 1329 (9th Cir. 1981)
- *In re MGM Grand Hotel Fire Litigation*, 570 F.Supp 913 (Nev. 1983)
- *Ribbens Int'l, S.A. de C.V. v. Transport Int'l Pool, Inc.*, 40 F.Supp.2d 1141 (CD Cal. 1999)
- *Ribbens Int'l, S.A. de C.V. v. Transport Int'l Pool, Inc.*, 45 F.Supp.2d 982 (CD Cal. 1999)
- *Ribbens Int'l, S.A. de C.V. v. Transport Int'l Pool, Inc.*, 47 F.Supp.2d 1117 (CD Cal. 1999)
- *Transbay Auto Service, Inc. v. Chevron USA, Inc.*, 807 F.3d 1113 (9th Cir. 2015)
- *Curry v. Equilon Enterprises, LLC*, (2018) 23 Cal. App. 5th 289

PERSONAL INFORMATION

- Married, one daughter.
- Hobbies – Golf, Skiing, Tennis and Flying (Single Engine Instrument)

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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 **DECLARATION OF SAMUEL T. REES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties to this action who are listed on the attached Service List by electronically serving those persons at the electronic addresses noted therein.

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

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

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

/s/ Samuel T. Rees

Samuel T. Rees

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SERVICE LIST

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