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14 and the Plaintiff Class

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF ORANGE

17 RAYMOND STODDARD and
18 SANTIAGO MEDINA etc.,

19 Plaintiffs,

20 vs.

21 EQUILON ENTERPRISES, LLC, et
22 al.,

23 Defendants.

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

Hon. William Claster
Department CX 102

CLASS ACTION

**PLAINTIFF'S DECLARATION IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

**[Filed Concurrently with Notice of
Motion, Memorandum Of Points
And Authorities, Declaration of
Rees 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, Santiago Medina, declare:

2 1. At all times this action has been pending, I was and am a resident of
3 Orange County, California. I know the contents of this declaration of my own
4 personal knowledge and could testify competently thereto.

5 2. From October 31, 2005 until December 26, 2008, I was employed at
6 four Equilon Enterprises, LLC ("Equilon") owned service stations. From the
7 hiring date until January 16, 2006, I was a cashier at the station located at 3090
8 Main Street, Irvine, California. From January 17, 2006, until July 16, 2006, I
9 was the manager at the station located at 1600 Jamboree Road, Newport Beach,
10 California. From July 17, 2006 until February 18, 2008, I was the manager of
11 the station located at 3720 Barranca Parkway, Irvine, California. From
12 February 19, 2008 until December 26, 2008, I was the manager of the station
13 located at 51 Technology West, Irvine, California. During the entire time of my
14 employment, all of these four stations were operated by R&M Pacific Rim, Inc.
15 ("R&M"), who hired me. From the beginning of my employment until February
16 18, 2008 I worked at stations that R&M operated for Equilon. On that date I was
17 transferred to the one located on 51 Technology West, Irvine California, which at
18 the time was already being operated for Tesoro Refining and Marketing
19 Company ("Tesoro") since June 2007.

20 3. From January 16, 2006 until September 20, 2008, I was salaried,
21 receiving initially \$1,800 a month, then \$2,200 a month and finally \$2,800 a
22 month from R&M. In September 2008, I was converted to an hourly employee
23 and was paid \$13 per hour until my employment ceased. While I was salaried, I
24 was not paid overtime when I worked more than 8 hours in a workday or when I
25 worked more than 40 hours in a work week.

26 4. I customarily worked more than 8 hours on any workday and more
27 than 40 hours in a work week. In addition, I would periodically work more than
28 12 hours in a day or more than 8 hours on a seventh consecutive day, usually

1 when I had to cover a shift because I had no cashier to work the station. Part of
2 my job duties was to cover any shift which I could not find an employee to cover,
3 within the financial limitations imposed by R&M. I was not allowed to close a
4 station when I had no employee to work.

5 5. Prior to July, 2008, I generally was not paid overtime, although
6 there may have been a few times when I received \$8.00 per hour for covering an
7 extra shift. Instead, I was paid just my monthly salary. My work hours were
8 typical of managers working for R&M at its stations.

9 6. My normal workday hours were from 7:00 a.m. until 5:00 p.m.,
10 Monday through Friday, and from 7:00 a.m. until Noon on Saturday. These
11 working hours did not actually change during the time I worked for R&M, but
12 they were formalized in writing couple of times, especially when managers,
13 including myself, were given a raise in April 2008 because our salaries were less
14 than 2 times the minimum wage. I did work more than 12 hours a day about 10
15 or 15 times a year, pretty much every time I had to cover for a cashier that did
16 not show up, or whenever some special maintenance job was being performed. I
17 also worked at another location or home, including nights and weekends
18 repairing or reinstalling computers and related software. Sometimes I had to
19 work on a seventh day, also when I had to cover for a missing cashier. I don't
20 have a precise recollection of it, but think that happened about two times a year,
21 during the three years I was a manager.

22 7. As discussed below, throughout my employment I would perform
23 what I considered to be both managerial and non-managerial duties. However,
24 approximately 60% of my time spent during an average work week was on non-
25 managerial duties, primarily stocking and maintenance activities and
26 secondarily cashiering to cover breaks. My duties remained essentially the same
27 at all three stations.
28

1 8. We were not allowed to close the stations to take meal or rest
2 breaks. I was required to be “on-call” 24/7. If one of my employees either failed
3 to show up for work, called in sick, had to leave for an emergency or illness or for
4 any other reason could not work and that employee was scheduled to be the only
5 employee on duty, I would have to work that shift unless I could find another
6 employee to work. This happened on numerous occasions during my
7 employment.

8 9. Approximately sixty percent (60%) or more of my time was
9 consumed by performing non-management duties, mostly stocking, counting
10 inventory, maintenance, and cashiering during breaks. At least 3 ½ hours a day
11 was merely bookkeeping work, such as filling out reports, counting money,
12 counting inventory, etc. I would normally spend 1 to 1 ½ hours a day stocking
13 and replenishing the coolers and shelves. I also had to deliver bank deposits on
14 a daily basis until June 2008.

15 10. During an average week, I would spend about 1 ½ hours a week on
16 training and disciplining employees and about 2 hours a week resolving
17 accounting issues. The time I spent on interviewing and hiring new station
18 employees was sporadic and minimal.

19 11. I would normally only spend about 45 to 60 minutes a week on
20 creating work schedules.

21 12. I am familiar with an “On-Duty Meal Agreement” which I
22 understand is an agreement to waive “off-duty” meal breaks in exchange for
23 eating meals on the job and while being paid. R&M required that all employees
24 and new hires sign this agreement as a condition to being employed.

25 13. According to written R&M policy, managers, including myself, were
26 permitted to take off-duty meal breaks but in practice we were not able to take
27 off duty meal breaks because of business requirements. I recall that I took an
28 off-duty meal break only on two occasions during my employment at R&M.

1 Frequently, my meal break was interrupted by calls from and visits by my
2 superiors at R&M. Managers, according to R&M policy, did not clock in and out
3 for meal breaks until June 2008.

4 14. R&M had a strict policy of avoiding overtime for cashiers. R&M
5 required me to work as a cashier to avoid overtime payments to other cashiers.

6 15. R&M had a policy that its stations had to remain open 24/7/365 and
7 not close for breaks. This policy was later changed in part as discussed below.

8 16. My stations only employed cashiers other than me. To avoid
9 overtime, I normally had 6 cashiers to assign to the three shifts my station and
10 the other R&M stations operated under. Cashiers were paid essentially
11 minimum wage. As a result, we lost a number of good cashiers when they
12 secured higher paying employment.

13 17. Initially, non-exempt station employees were not entitled to take an
14 off duty meal break according to R&M policy and received no additional
15 compensation for those missed breaks. During my employment, R&M changed
16 its policy with regard to morning shift cashiers working Monday through
17 Saturday and permitted them to take off-duty meal breaks. However, afternoon
18 and night cashiers, along with Sunday cashiers were not permitted to take off
19 duty meal breaks and received no additional compensation for those missed
20 breaks.

21 18. At approximately the same time as this change was made to the
22 R&M meal break policy, I and other employees received checks from R&M in
23 envelopes from the California Department of Labor. I understood that this was
24 the result of an audit by that Department. These checks were compensation for
25 missed meal breaks.

26 19. In 2008, R&M's rest break policy changed. As a result, R&M
27 permitted all employees to take two 10 minute rest breaks during an 8 hour
28

1 shift. If only one employee was on duty, that employee was permitted to put a
2 sign at the door saying that he was taking a rest break.

3 20. I met Mr. Rees during the prosecution of the Wales Action. I was
4 interviewed by Mr. Rees at that time and provided him with my declaration to
5 use to seek class certification in the Wales Action. After that declaration was
6 filed, Equilon took my deposition. Mr. Rees represented me at that deposition.

7 21. In July 2010, I retained Bleau Fox and Mr. Rees to represent me and
8 Raymond Stoddard in a class action to be filed against Equilon and R&M, among
9 others. That retention resulted in the commencement of this action. I have been
10 continuously involved in prosecuting this action on behalf of myself and all other
11 similarly situated Equilon employees, including those employed directly by
12 R&M. Mr. Rees has provided me consistently with periodic status reports not
13 only on this action, which was almost immediately stayed, but on the other five
14 related actions including the Wales Action.

15 22. In August 2018, the stay in this action was lifted. At the suggestion
16 of this Court, Mr. Rees and I discussed whether we had sufficient information to
17 participate in an early mediation with R&M and the risks and benefits of doing
18 so. I determined that with a certain amount of additional information from
19 R&M provided informally, we did have enough information based to do so and
20 that the benefits of an early mediation outweighed the risks. One factor which
21 played a large role in our decision was the delay which had already occurred and
22 the further delay and cost of conducting pre-certification discovery, seeking class
23 certification, retaining experts and marshalling evidence to be presented at trial.

24 23. I also participated in discussions with Mr. Rees on the selection of a
25 qualified mediator and determined that Judge West would be an excellent
26 choice.

27 24. I participated with Mr. Rees in preparing for mediation and
28 reviewed with Mr. Rees the results of his detailed damage calculations.

1 25. I did not personally attend the mediation but I was in telephonic
2 contact with Mr. Rees throughout the mediation. Certain facts were learned
3 during the course of the mediation and I was able to verify certain of those facts
4 based upon my own employment experiences with R&M.

5 26. While settlement was not reached on January 3, the parties seemed
6 relatively close. Mr. Rees and I continued to have communications on
7 settlement and the parties were able to reach an agreement in principal in
8 January 2019. The principal area of negotiation was the Total Settlement
9 Amount. I was aware that it appeared that the damages for non-payment of
10 overtime and break compensation likely ended by September 2008 and that
11 R&M's employees received substantial compensation for missed meal breaks in
12 2008. As a result of the risks and benefits of proceeding to trial, I determined
13 that the Total Settlement Amount of \$845,000, while not as much as I had
14 hoped, was a fair and just settlement. I approved that amount.

15 27. I was aware that R&M had demanded additional time to gather the
16 Total Settlement Amount and I discussed with Mr. Rees how best to
17 accommodate this demand.

18 28. In addition to the class claims, I had an individual claim for
19 wrongful termination. R&M wanted to insure that any settlement would fully
20 resolve its involvement in this Action. As a result, I agreed to a settlement of
21 this claim. Because of confidentiality provision of the separate settlement
22 agreement for this claim which was demanded by R&M, I am unable to provide
23 the Court with the terms and conditions of that settlement but I am certainly
24 willing to do so if ordered by the Court in a manner which would not cause me to
25 breach my settlement obligations.

26 29. I have carefully reviewed with Mr. Rees the Settlement Agreement
27 and its exhibits including the Class Notice. I believe them to be fair and
28 reasonable to the Settlement Class and recommend its approval.

1 30. I believe that I am an adequate class representative. I served as a
2 salaried, exempt station manager for nearly the entire Class Period. Prior to
3 that time, I served as an hourly wage cashier. I fully understand both positions.
4 I recognized that the damage claims of the members of the Settlement
5 Misclassification Subclass far exceed the damages for missed rest breaks. I
6 understand that members of the Settlement Misclassification Subclass may have
7 missed rest break claims but also recognize that managers had the ability to
8 take rest breaks if they so chose. As a result, I agreed that the Settlement
9 Misclassification Subclass should not share in the portion of the Total
10 Settlement Amount which was allocated to the Settlement Rest Break
11 Subclasses.

12 31. I recognize that any Service Award to me will be at the sole
13 discretion of this Court. I expect to seek such an award.

14 32. I approved the allocation of the Total Settlement Amount between
15 the two subclasses and the allocation formula for the amount for each subclass
16 among its members and believe that it is a fair and just allocation.

17 33. My retainer agreement with Bleau Fox provides for a 40%
18 contingency fee in the event of a settlement more than 90 days prior to the first
19 trial date set in this action. It also provides that client costs are paid to Bleau
20 Fox before the calculation of the contingency fee. I know that Mr. Rees is “Of
21 Counsel” to Bleau Fox and have approved in my retainer agreement a division of
22 fees by Bleau Fox with Mr. Rees by a proration formula based on the hours
23 expended in this representation.

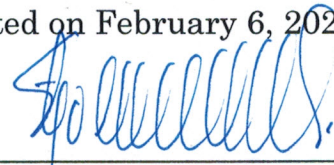
24 34. I discussed with Mr. Rees and agreed that Phoenix is well qualified
25 to serve as the Settlement Administrator and believe that its estimated expenses
26 for doing so are reasonable.

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1 35. I did not at all communicate with R&M or its attorneys directly in
2 connection with this settlement. I understand that Mr. Rees conducted all direct
3 negotiations with R&M's counsel.

4 36. I am appealing the summary judgment for Equilon and expect to
5 continue prosecuting that appeal through its conclusion.

6 I declare under penalty of perjury under the laws of the State of California
7 that the foregoing is true and correct. Executed on February 6, 2020.



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SANTIAGO MEDINA, Declarant

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PROOF OF SERVICE

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

On February 7, 2020, I served the foregoing document(s) described as **PLAINTIFF'S DECLARATION 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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