

1 KRISTINA L. HILLMAN, Bar No. 208599  
 2 JANNAH V. MANANSALA, Bar No. 249376  
 3 ROBERTA D. PERKINS, Bar No. 153074  
 4 CAITLIN GRAY, Bar No. 305118  
 5 ALEXANDER S. NAZAROV, Bar No. 304922  
 6 MAXIMILLIAN D. CASILLAS, Bar No. 311669  
 7 KARA L. GORDON, Bar No. 333379  
 8 WEINBERG, ROGER & ROSENFELD  
 9 1375 55<sup>th</sup> Street  
 10 Emeryville, CA 94608  
 11 Telephone: (510) 337-1001  
 12 Facsimile: (510) 337-1023  
 13 [courtnotices@unioncounsel.net](mailto:courtnotices@unioncounsel.net)  
 14 [khillman@unioncounsel.net](mailto:khillman@unioncounsel.net)  
 15 [jmanansala@unioncounsel.net](mailto:jmanansala@unioncounsel.net)  
 16 [rperkins@unioncounsel.net](mailto:rperkins@unioncounsel.net)  
 17 [cgray@unioncounsel.net](mailto:cgray@unioncounsel.net)  
 18 [anazarov@unioncounsel.net](mailto:anazarov@unioncounsel.net)  
 19 [kgordon@unioncounsel.net](mailto:kgordon@unioncounsel.net)  
 20 [mcasillas@unioncounsel.net](mailto:mcasillas@unioncounsel.net)

21 AARON KAUFMANN, SBN 148580  
 22 DAVID POGREL, SBN 203787  
 23 AMANDA EATON,  
 24 LEONARD CARDER, LLP  
 25 1999 Harrison Street, Suite 2700  
 26 Oakland, CA 94612  
 27 Telephone: (510) 272-0169  
 28 Facsimile: (510) 272-0174  
[akaufmann@leonardcarder.com](mailto:akaufmann@leonardcarder.com)  
[dpogrel@leonardcarder.com](mailto:dpogrel@leonardcarder.com)  
[aeaton@leonardcarder.com](mailto:aeaton@leonardcarder.com)

Attorneys for the Class and Plaintiffs/Class Representatives

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCO DIMERCURIO, CHARLES GAETH, )	Case No. 3:19-cv-04029-JSC
JOHN LANGLITZ, and MALCOLM SYNIGAL )	
on behalf of themselves and others similarly )	<i>[Assigned for all purposes to the Honorable</i>
situated, )	<i>Jacqueline Scott Corley]</i>
Plaintiffs, )	
v. )	<b><del>[PROPOSED]</del> AMENDMENT TO ORDER</b>
EQUILON ENTERPRISES LLC dba SHELL )	<b>GRANTING OF PRELIMINARY</b>
OIL PRODUCTS US, and DOES 1 through and )	<b>APPROVAL SETTLEMENT (DKT NO.</b>
including 25, )	<b>181)</b>
Defendants. )	

1           Since the Court issued its Order Granting Preliminary Approval of Settlement (Dkt. No.  
2 181), the parties have discovered new information regarding the class data and estimated payouts  
3 and have entered into stipulations to amend the Class Action Settlement Agreement and address the  
4 Court’s concerns regarding the Class Action Settlement Notice.

5           First, as the parties stipulated (Dkt. No. 188), in assembling the class data for purposes of  
6 complying with item 1 of the Court’s prior order (Dkt. No. 181, p. 11), the parties learned there are  
7 five class members for whom there are no records of scheduled standby shifts during the class  
8 period. In Dkt. No. 188, the parties have jointly proposed that those five individuals be credited  
9 with one standby shift for purposes of distribution of the settlement fund. At the Court’s request,  
10 the parties have proposed language to be included in the Class Action Settlement Notice to be  
11 distributed to those five class members, which informs them they “have been credited with one  
12 standby shift for purposes of settlement fund distribution because the record expresses no standby  
13 shift for which you were assigned.” The Class Action Settlement Notice previously approved by  
14 the Court informs all class members, including the aforementioned five individuals, that they may  
15 contest the number of standby shifts attributed to them for settlement distribution purposes.

16           Second, while the original Class Action Settlement to which this Court granted preliminary  
17 approval provided that the settlement fund would be distributed to class members based upon  
18 standby shifts that were assigned but not activated (i.e., the class member was not contacted to  
19 report to the facility to work all or part of a shift), the parties have stipulated that defendant’s  
20 records only reliably show standby shifts assigned but do not reliably indicate which of the  
21 assigned shifts were activated. (Dkt. No. 183). Accordingly, the parties have stipulated to amend  
22 the Class Action Settlement such that the first sentence of the second paragraph of section III.D.1  
23 should provide, “The Settlement Administrator will calculate Individual Settlement Shares for  
24 Class Members based on the number of each Class Member’s assigned standby shifts (“Standby  
25 Shifts”), as reflected on Defendant’s internal records. If there is no record of a standby shift for a  
26 previously identified class member, that individual shall be credited with one standby shift for  
27  
28

1 purposes of calculating a settlement share.”<sup>1</sup>

2 Based upon the above, the Court confirms that the Class Action Settlement is worthy of  
3 preliminary approval and amends its prior order (Dkt. 181) to now require the following:

- 4 1. The Class Action Settlement Agreement is hereby amended such that the first sentence  
5 of the second paragraph of section III.D.1 is struck and replaced with, “The Settlement  
6 Administrator will calculate Individual Settlement Shares for Class Members based on  
7 the number of each Class Member’s assigned standby shifts (“Standby Shifts”), as  
8 reflected on Defendant’s internal records. If there is no record of a standby shift for a  
9 previously identified class member, that individual shall be credited with one standby  
10 shift for purposes of calculating a settlement share.”
- 11 2. Within five (5) business days of this Order, the Settlement Administrator will mail the  
12 approved class notice (see Dkt. No. 180) to all class members.
- 13 3. The Class Action Settlement Notice to be distributed to the individuals for whom no  
14 standby shifts were reported shall be amended at Section 5, second paragraph, first  
15 sentence to include the phrase, “however you have been credited with one standby shift  
16 for purposes of settlement fund distribution because the record expresses no standby  
17 shift for which you were assigned.”
- 18 4. The motion for final approval shall be due on March 3, 2023.
- 19 5. Should any class member file a timely opt out or objection after March 3, 2023, the  
20 parties will address such matters in a supplemental brief to be filed by March 17, 2023.
- 21 6. As previously ordered (Dkt. No. 181), the Court will hear argument on the motion for  
22 attorneys’ fees and costs (Dkt. No. 186) and the motion for final settlement approval at  
23 the Final Approval Hearing, which will take place in person on March 30, 2023 at ~~9:00~~  
24 ~~a.m.~~ 10:00 a.m.

25  
26  
27 <sup>1</sup> The Supplemental Declaration of Class Counsel Aaron Kaufmann (Dkt. No. 189) provides that  
28 the estimated payout to the Class Members should total approximately \$133.61 per assigned  
standby shift.

Date: February 13, 2023



**Approved as to form:**

/s/ Aaron Kaufmann  
 Aaron Kaufmann  
 LEONARD CARDER, LLP

/s/ Gary Lafayette  
 Gary Lafayette  
 LAFAYETTE & KUMAGAI, LLP

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