

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (“Agreement”) is made by and between Plaintiffs MARCO DIMERCURIO, CHARLES GAETH, JOHN LANGLITZ and MALCOLM SYNIGAL (“Plaintiffs” or “Class Representatives”), individually and on behalf of the certified class, the State of California pursuant to the California Private Attorneys General Act, and Defendant EQUILON ENTERPRISES LLC dba SHELL OIL PRODUCTS US (“Defendant” or “Equilon”) (collectively the “Parties”), by and through their respective counsel of record. The Parties hereby agree to the following settlement which, if approved by the Court, resolves the pending case *MARCO DIMERCURIO, CHARLES GAETH, JOHN LANGLITZ, and MALCOLM SYNIGAL on behalf of themselves and others similarly situated v. EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS US, and DOES 1 THROUGH AND INCLUDING 25* filed in the United States District Court for the Northern District of California, Case No. 3:19-cv-04029-JSC (the “Lawsuit”).

I. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

A. “Class” or “Classes” means the class certified by the Court in the Order Re: Class Certification and Supplemental Order Re: Class Certification, which was defined as “All Operators working at the refinery of Equilon Enterprises LLC dba Shell Oil Products US in Martinez, California, who were scheduled for standby at any time from June 4, 2015, four years prior to the filing of this complaint, up to and continuing through January 31, 2020,” and that includes the following subclasses:

2016 to 2019 Waiting Time Penalties Sub-Class: All Class Members who have been employed and separated from employment (either by involuntary termination or resignation) at the refinery of Equilon Enterprises LLC dba Shell Oil Products US in Martinez, California, at any time from June 4, 2016 through June 3, 2019, and who, upon separation from employment, did not timely receive all wages owed as a result of reporting obligations.

2019 to 2020 Waiting Time Penalties Sub-Class: All Class Members who have been employed and separated from employment (either by involuntary termination or resignation) at the refinery of Equilon Enterprises LLC dba Shell Oil Products US in Martinez, California, at any time from June 4, 2019 through January 31, 2020, and who, upon separation from employment, did not timely receive all wages owed as a result of reporting obligations.

B. “Class Counsel” means Weinberg, Roger and Rosenfeld A.P.C., and Leonard Carder LLP.

C. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts awarded to Class Counsel by the Court to compensate them for, respectively, their attorneys’ fees and litigation expenses incurred in connection with the Lawsuit, including

their pre-filing investigation, their filing of the Lawsuit and all related litigation activities, this Settlement, and all post-Settlement compliance and approval procedures.

D. “Class Member” is a member of the Class who did not file any valid and timely request to exclude himself, herself, or them self from the Class after the Class Member was mailed notice of the class certification.

E. “Class Notice” means the Notice of Proposed Settlement of Class Action Lawsuit that is attached hereto as Exhibit A and described in Section III.E.2.a.

F. “Class Representative Payment” means the special payment made to each Plaintiff in their capacity as Class Representatives to compensate them for initiating the Lawsuit, performing work in support of the Lawsuit, and undertaking the risk of retaliation and potential liability for attorneys’ fees and expenses in the event they were unsuccessful in the prosecution of this Lawsuit.

G. “Individual Settlement Share” means the amount allocated to each Class Member pursuant to this Settlement Agreement.

H. “Court” means the United States District Court for the Northern District of California.

I. “Defense Counsel” means Gary Lafayette, Brian Chun and Saisruthi Paspulati of Lafayette & Kumagai, LLP.

J. “Effective Date” of this Settlement Agreement shall mean after *all* of the following conditions have been satisfied:

Execution of this Settlement Agreement by all Parties, Class Counsel and Defense Counsel;

Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court;

Preliminary approval of the settlement by the Court;

Mailing of the Notice of Settlement to the Class Members in accordance with the Preliminary Approval Order;

Expiration of the opt-out period as defined in the Notice of Settlement;

A formal fairness hearing, the date of entry of a written final order by the Court approving this Settlement Agreement and entering final judgment with respect to the Class Action. Provided, that in the event there are written objections made prior to the formal fairness hearing, or an appeal of the Court’s approval of the settlement taken, then the Effective Date shall be the later of the following events: when the period for filing any appeal, writ or other appellate proceeding opposing the settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or any appeal, writ or other appellate proceeding

opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief.

K. "Final Approval Hearing" means the hearing to be conducted by the Court to determine whether to implement and approve finally the terms of this Agreement.

L. "Final Approval Order" and "Order of Final Approval" mean an Order that finally and unconditionally grants final approval of this Agreement, enters judgment with respect to the Lawsuit, and authorizes payments to the Settlement Administrator, the Class Members, and Class Counsel as provided in this Agreement.

M. "Gross Settlement Amount" means the amount of Three Million Two Hundred Thousand Dollars (\$3,200,000), which is the total and maximum amount Defendant will be required to pay under this Settlement Agreement, plus any interest that has accrued pursuant to Section III.B.2. Nothing in this provision alters the obligations of Defendant to pay employer payroll taxes as noted below in Section III.B.1. This amount is non-reversionary and must be paid in full pursuant to the terms of this Agreement if approved by the Court.

N. "Judgment" means the Order of Final Judgment entered by the Court. The Parties will draft and submit a proposed Judgment to the Court along with the Motion for Final Approval.

O. "MOU" means the Memorandum of Understanding of the terms of the Settlement entered into by the Parties on July 19, 2022.

P. "Net Settlement Amount" means the Gross Settlement Amount less (i) the Class Representative Payments, as described herein and approved by the Court; (ii) the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, as described herein and approved by the Court; (iii) the PAGA Allocation, as described herein and approved by the Court; and (iv) the Settlement Administrator's reasonable fees and expenses, as described herein and approved by the Court.

Q. "PAGA Allocation" means the amount allocated to settle all claims under the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698, et seq. ("PAGA") in this Lawsuit.

R. "Preliminary Approval of the Settlement" means the Court's preliminary approval of the Settlement.

S. "Released Parties" means Defendant, including each of their past and present successors, subsidiaries, parents, holding companies, affiliated companies and divisions and other related entities, as well as the successors, predecessors, shareholders, subsidiaries, investors, parent, sister and affiliated companies, officers, directors, partners, assigns, agents, employees, principals, heirs, administrators, attorneys, vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee benefit plans, and representatives of each of them, both individually and in their official capacities, past or present, as well as all persons

acting by, through, under or in concert with any of these persons or entities, and persons acting by, through, under or in concert with any of these persons or entities.

T. “Settlement” means the disposition of the Lawsuit and all related claims effectuated by this Agreement.

U. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to provide notice of this proposed class action settlement to the Class and to perform other related functions to administer the Settlement as described herein. CPT Group, Inc. (“CPT”) administered the notice at class certification of this matter and is selected by the Parties as the Settlement Administrator, unless CPT rejects that appointment or the Parties later agree on a different Settlement Administrator.

V. “Settlement Class Period” means the period of time from June 4, 2015 through January 31, 2020.

W. “Settlement Share” means each Class Member’s share of the Net Settlement Amount as provided by this Agreement.

II. RECITALS

A. Plaintiffs filed a class action complaint, *MARCO DIMERCURIO, CHARLES GAETH, JOHN LANGLITZ, and MALCOLM SYNIGAL on behalf of themselves and others similarly v. EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS US, and DOES 1 THROUGH AND INCLUDING 25* in the Superior Court for the County of Contra Costa on June 4, 2019. The complaint was removed to the United States District Court for the Northern District of California, Case No. 3:19-cv-04029-JSC on July 12, 2019.

B. Plaintiffs provided notice to the Labor and Workforce Development Agency (“LWDA”) of certain claims against Defendant on June 14, 2019.

C. The Class was certified on August 30, 2021, and the Waiting Time Penalty Subclasses were certified on January 27, 2022.

D. The Class was sent notice of class certification on June 8, 2022, which provided an opportunity for Class Members to exclude themselves at that time.

E. The Parties participated in mediations and settlement conferences as follows: The Parties participated in settlement conferences with Judge Joseph Spero, Northern District of California on May 26, 2021, November 10, 2021, and June 14, 2022.

F. Class Counsel has conducted a thorough investigation into the facts of the Lawsuit. Based on the discovery conducted and their own independent investigation, analysis and evaluation, Class Counsel and the Class Representatives are of the opinion that the Settlement is fair, adequate and reasonable and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential additional appellate issues. In particular, Plaintiffs believe that this Settlement is the best possible solution for the Class.

G. In connection with the Lawsuit, Defendant provided information and produced documents, including scheduling and standby shift records for Class Members during the Class Period. Class Counsel engaged in extensive review and analysis of the responses and records. The Parties took depositions of at least eight individuals, including Plaintiffs, refinery supervisors, and individuals designated as Persons Most Knowledgeable on specified issues.

H. It is the mutual desire of the Parties to fully, finally, and forever settle, compromise, release, resolve, and discharge all disputes and claims raised in or related in any way to the Lawsuit. In order to achieve a full and complete release of the released persons, the Class, including Plaintiffs and each Class Member, acknowledge that this Settlement is intended to include and resolve all claims arising from, related to, or could have been brought based on the allegations in the Lawsuit as more fully set forth in Section III.F of this Agreement.

I. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that the claims in the Lawsuit have merit or that Defendant bears any liability to Plaintiffs or the Class on those claims or any other claims. Nothing herein shall constitute an admission by Defendant that the Class Action was properly brought as a class or representative action other than for settlement purposes. Defendant denies each and all of the claims alleged by Plaintiffs in the Lawsuit. To the contrary, Defendant denies and continue to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in the Class Action. Nevertheless, Defendant has taken into account the uncertainty and risks inherent in any litigation and have also concluded that further defense of the Lawsuit would be protracted and expensive. Defendant, therefore, has determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement.

J. Nothing in this Agreement is intended or will be construed as an admission by Plaintiffs that the Defendant's defenses or allegations have merit or that Defendant is not liable to Plaintiffs or the Class as alleged by Plaintiffs. Plaintiffs deny each and all of the claims and defenses alleged by Defendant in its answer or otherwise in this Lawsuit. Nevertheless, Plaintiffs have taken into account the uncertainty and risks inherent in any litigation and have also concluded that further litigation of the Lawsuit would be protracted and expensive. Plaintiffs, therefore, have determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Agreement.

Based on these recitals, the Parties agree as follows:

III. SETTLEMENT TERMS AND CONDITIONS

A. **Gross Settlement Amount.** Subject to the terms and conditions herein, and in consideration for settlement of the Lawsuit and the release of claims of the Class, Defendant agrees to pay the Gross Settlement Amount as defined in Section I.M. above. Any Class Representative Payment, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, PAGA Allocation (including PAGA Payments), Settlement Shares, and the Settlement Administrator's reasonable fees and expenses in administering the Settlement shall be deducted from the Gross Settlement Amount. The entire Gross Settlement Amount will be disbursed pursuant to this Agreement, and none of it will revert to Defendant. The Gross Settlement

Amount shall be paid into an appropriate interest maximizing, Qualified Settlement Fund (“QSF”) created by the Settlement Administrator in accordance with the timing set forth in Section III.B.2 herein. The Settlement Administrator shall handle such monies pursuant to the terms of this Agreement.

B. Payments from the Gross Settlement Amount. The Settlement Administrator will make the following payments out of the Gross Settlement Amount as follows:

1. **Maximum Amount Paid.** The Gross Settlement Amount is the total amount that Defendant is are obligated to pay for any and all purposes under this Agreement, except that Defendant will be required to pay the employer’s share of any payroll taxes incurred as a result of this Settlement, in addition to the Gross Settlement Amount.

2. **Timing of Payments.** Defendant shall pay the Gross Settlement Amount into the QSF within thirty (30) calendar days of the Effective Date of the Settlement if Defendant has not already paid the Gross Settlement Amount into the QSF in accordance with Section III.B.2.a. If the Gross Settlement Amount is not timely paid, under either III.B.2 or III.B.2.a, whichever is applicable, into the QSF created by the Settlement Administrator, the Gross Settlement Amount will begin to incur interest at the statutory rate for a judgment for wages under California law.

a. **Funding of Settlement in the Event of Appeal.** In the event of any appeal, Defendant shall pay the Gross Settlement Amount into the QSF within thirty (30) calendar days of the filing of a notice of appeal from the Final Approval Order. Any accrued interest from the QSF during the pendency of the appeal will be distributed as follows: (a) in an amount equal to the original PAGA Allocation divided by \$3.2 million and then multiplied by the accrued interest with the result then added to the PAGA Allocation, and distributed in accordance with Section III.C.3, (b) in an amount equal to the original, Court-approved Class Counsel Fees Payment divided by \$3.2 million and then multiplied by the accrued interest with the result then added to the Class Counsel Fees Payment, (c) in an amount equal to the original, Court-approved Class Counsel Litigation Expenses Payment divided by \$3.2 million and then multiplied by the accrued interest with the result then added to the Class Counsel Litigation Expenses Payment, (d) in an amount equal to the original, Court-approved Class Representative Payment divided by \$3.2 million and then multiplied by the accrued interest with the result then added to each Class Representative Payment, and (e) all remaining accrued interest added to the Net Settlement Amount and distributed in accordance with Section III.D. No payments or distributions shall be made from the QSF during the pendency of any appeal. In the event any appeal results in dissolution, cancellation or voiding of this Settlement, Defendant shall be entitled to the return of all funds in the QSF (including all accrued interest). Once Defendant pays the Gross Settlement Amount into the QSF, Defendant will have fulfilled its monetary obligations under the terms of this Settlement, other than the employer’s share of any payroll taxes. Nothing in this Section is intended to contradict or overrule Section III.B.1, which the Parties expressly intend to be bound by even in the event of an appeal.

C. Payments from the Gross Settlement Amount. The Settlement Administrator will make the following payments out of the Gross Settlement Amount subject to timing as directed by counsel for the Parties and/or the Court:

1. **To Class Representatives:** In addition to the amounts determined to be due to Plaintiffs as Class Members under this Settlement Agreement, the Class Representatives/Plaintiffs will apply to the Court for Class Representative Payments, to be paid out of the Gross Settlement Amount. Plaintiffs intend to request to Seven Thousand Five Hundred Dollars (\$7,500) per Class Representative as the Class Representative Payment. The Settlement Administrator will pay the Class Representative Payment approved by the Court out of the Gross Settlement Amount. If the Court approves a Class Representative Payment of less than Seven Thousand Five Hundred Dollars (\$7,500) for each Plaintiff, the remainder of the unapproved amount will be part of the Net Settlement Amount in accordance with the calculation explained in Section III.D. Payroll tax withholding and deductions will not be taken from the Class Representative Payment and instead an IRS Form 1099 will be issued to each Plaintiff by the Settlement Administrator reflecting the Class Representative Payment.

2. **To Class Counsel:** Class Counsel will apply to the Court for an award of not more than thirty three and one third percent (33-1/3%) of the Gross Settlement Amount as their Class Counsel Fees Payment, or One Million Sixty Six Thousand Six Hundred and Sixty Six Dollars and Sixty Seven Cents (\$1,066,666.67) in addition to litigation expenses up to \$45,000, including expert fees, litigation costs, travel expenses, copy costs, electronic discovery services, consultants, space and technology rentals, and other normal expenses incurred, as their Class Counsel Litigation Expenses Payment. The ultimate amount of any award for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment is to be determined by the Court, and Class Counsel will submit an application for fees, costs, and expenses to the Court for approval prior to the date of the Final Approval Hearing. The Settlement Administrator will pay the amount approved by the Court out of the Gross Settlement Amount. Class Counsel will inform the Settlement Administrator how to distribute the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment between Class Counsel's offices. If the Court approves a Class Counsel Fees Payment of less than 33-1/3%, or a Class Counsel Litigation Expenses Payment less than requested, the remainder of the unapproved amount will be part of the Net Settlement Amount in accordance with the calculation explained in Section III.D. Payroll tax withholding and deductions will not be taken from the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and instead one or more IRS Form 1099 will be issued by the Settlement Administrator to Class Counsel with respect to those payments.

a. The Parties agree that, over and above the total amount of the Court-approved award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment, each of the Parties, including all persons eligible to be Class Members, shall each bear their own fees and costs incurred by them relative to the investigation, filing, prosecution or settlement of the Class Action, the negotiation, execution, or implementation of this Settlement Agreement, and/or the process of obtaining, administering or challenging a Preliminary Approval Order and/or Final Approval Order.

b. The Parties agree that Class Counsel shall be solely responsible for the division and distribution of any and all Court-approved Attorneys' Fees and Costs awarded in the Class Action to Class Counsel. Class Counsel agree to release Defendant and the Released Parties from any responsibility for or liability arising out of or related to the division and distribution of any court-approved Attorneys' Fees and Costs to Class Counsel.

c. Any order, finding, ruling, holding, or proceeding relating to any such applications for an award for the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment shall not operate to terminate or cancel this Agreement or otherwise affect or delay the finality of the final order and judgment or this Settlement.

d. If Class Counsel appeal the Court's ruling on their request for Attorneys' Fees and Costs, any ruling of any appellate court in such an appeal (regardless of its substance) shall not constitute a material alteration of this Settlement Agreement, and shall not give Plaintiffs, Class Counsel, or the Participating Class Members the right to modify, revoke, cancel, terminate, or void this Settlement Agreement.

e. All claims for attorneys' fees and costs that Class Counsel and Plaintiffs may possess against Defendant, or Defendant against Plaintiffs or Class Counsel, arising from this litigation have been compromised and resolved by this Agreement and shall not be affected by any appeal that Class Counsel may file.

3. **PAGA Allocation.** The Parties will request approval from the Court of an allocation of Fifty Thousand Dollars (\$50,000) in settlement of the PAGA Released Claims as the PAGA Allocation.

a. To the Labor and Workforce Development Agency. Seventy-five percent (75%) of the PAGA Allocation will be paid to the LWDA. Twenty-five percent (25%) of the PAGA Allocation will be paid to the Class Members as a portion of the Net Settlement Fund and in the same manner as the Individual Settlement Shares described in Section III.D.

4. **To the Settlement Administrator.** The Parties agree to pay the Settlement Administrator chosen by Class Counsel and approved by Defendant for its reasonable fees and expenses related to administering this Settlement, including, but not limited to, printing, distributing, and tracking forms for this Settlement, calculating estimated amounts per Class Member, tax reporting, distributing all payments from the Gross Settlement Amount (as adjusted), and providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this Settlement, as requested by the Parties. The amount paid to the Settlement Administrator for its reasonable fees and expenses will be paid out of the Gross Settlement Amount. Every effort will be undertaken to minimize this cost and the Settlement Administrator will ensure proper notice and administration of the fund. In the event that the Court does not grant final approval of the settlement, or if the settlement is voided for any other reason, the Parties shall share the costs of any administration costs incurred, with each side paying fifty percent (50%) of any administration fees incurred to date.

D. **Settlement Share.** The Settlement Administrator will pay, within thirty-five (35) calendar days of the Effective Date, a Settlement Share from the Net Settlement Amount to each Class Member.

1. **Calculation.** After deducting the Class Representative Payment, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, payments to the LWDA, and the Settlement Administrator's fees and expenses from the Gross Settlement Amount, each Class Member shall receive a share of the Net Settlement Amount, calculated as follows:

The Settlement Administrator will calculate Individual Settlement Shares for Class Members based on the number of each Class Member's standby shifts that were not activated for work ("Standby Shifts"), as reflected on Defendant's internal records. The Settlement Administrator shall calculate each Class Member's potential share of the Net Settlement Fund (i.e., the Class Member's Individual Settlement Amount) by calculating the Standby Shifts worked by the Class Member during the Class Period. The Individual Settlement Share allocation for each Class Member shall then be determined by dividing the total number of Standby Shifts (for all Settlement Class Members, aggregated) into the amount of the Net Settlement Fund to arrive at a Per-Shift Settlement Amount. The Individual Settlement Share for each Eligible Settlement Class Member shall be calculated by multiplying the Class Member's Standby Shifts by the Per-Shift Settlement Share. The value of an Individual Settlement Share attributable to any Settlement Class Member who opts out shall be allocated and distributed to all Eligible Settlement Class Members (who did not opt out), on a pro rata basis.

Each Notice mailed to a Class Member will identify the number of compensable Standby Shifts that Defendant's records indicate the individual worked as a Class Member during the Class Period and estimate each Class Member's pro rata share of the Net Settlement Fund. The Notice shall also include instruction for any Class Member who may want to dispute the information used to calculate his or her settlement share.

2. **Settlement Payment Allocation.** All Settlement Shares will be allocated as follows: 50% to settlement of wage claims, 25% to settlement of claims for interest and 25% statutory penalties. The portion allocated to settlement of wage shall be subject to all applicable withholdings and reported on an IRS Form W-2 by the Settlement Administrator and the portion allocated to interest and penalties shall be reported on an IRS Form 1099 by the Settlement Administrator. After appropriate tax withholding from each Class Member's Settlement Share, the net payment to be received by each Class Member as required by law via an IRS Form W-2, the Settlement Administrator will pay all such withheld funds to the appropriate state and federal taxing authorities. The Settlement Administrator shall provide each Class Member with appropriate documentation setting forth the amount of any tax or other deductions in accordance with state and federal tax requirements. The Parties agree that this allocation of Settlement Shares to wages, interest, and statutory penalties is consistent with the substance of the Lawsuit.

3. **Tax Obligations.**

a. **Employers' Responsibility for Taxes.** As to the portion of Class Members' settlement proceeds that constitute wages, Defendant will be separately responsible for its share of any employer payroll or other taxes, including the employer FICA, FUTA, and SDI contributions, which shall not be paid from the Gross Settlement Amount. There shall be no reversion of the Gross Settlement Amount to pay for Defendant's tax liabilities.

b. **Parties' and Class Members' Responsibility for Taxes.** Each Party and Class Member will be solely responsible for their own tax obligations. The Parties agree and understand that neither Party has made any representations regarding the tax obligations or consequences, if any, related to this Settlement. The Parties agree that Defendant, each Plaintiff, and each Class Member are solely responsible for determining the tax consequences of payments made pursuant to this Agreement and for paying taxes, if any, which are determined to be owed

by each of them or on such payments (including withholdings, penalties and interest related thereto) by any taxing authority, whether state, local, federal, or foreign taxing authority. Defendant will not be responsible for any Class Member's taxes or treatment of the tax consequences (including withholdings, penalties and interest related thereto).

c. **Employer's Share of Payroll Taxes.** The Settlement Administrator will give Defendant an estimate of the employer's share of payroll taxes within five (5) calendar days of sending out the Class Notice. Upon calculation of each Class Member's Individual Settlement Share, and within three (3) calendar days after the Final Approval Order (if not sooner), the Settlement Administrator shall advise Defendant of the amount of the employer's share of payroll taxes. Defendant will provide the estimated amount of the employer's share of payroll taxes to the Settlement Administrator at the same time that Defendant provides the Gross Settlement Amount. To the extent there are any excess funds from the Settlement Administrator's estimate of the employer's share of taxes that ultimately are not needed to pay such taxes, those funds shall be returned to Defendant. Such return shall not be made until after complete distribution of the Gross Settlement Amount and all final tax reporting thereon.

4. **No Reversion.** Participating Class Members are entitled to 100% of the Net Settlement Amount. Defendant maintains no reversionary right to any portion of the Net Settlement Amount.

E. **Procedure for Approving Settlement.** The Parties agree to the following schedule and procedures for obtaining the Court's approval of the Settlement, notifying the Class, providing a copy of the Agreement to the LWDA and processing all benefits provided under this Settlement Agreement:

1. **Motion for Preliminary Approval of Settlement by the Court.** Plaintiffs will move the Court for (collectively, "Motion for Preliminary Approval"):

- a. Preliminary approval of the terms of this Agreement.
- b. Approval of the Class Notice, settlement procedure, and appointment of the Settlement Administrator.
- c. Scheduling of a Final Approval Hearing on the question of whether the terms of this Agreement should be finally approved as fair, adequate and reasonable as to Plaintiffs and the Class Members.

2. **Notice to Class Members.** If the Court enters an Order granting Preliminary Approval of the Settlement, every Class Member, who Defendant maintained an address for, will be provided with the Class Notice in the form attached here as Exhibit A, or as ordered modified by the Court's Order granting Preliminary Approval (if any).

a. **Settlement Administrator.** The Parties agree that the Settlement Administrator shall have the authority to establish and maintain a QSF; confirm Class Member addresses; mail the Class Notice; respond to Class Member inquiries; send reminder notices to Class Members; process objections; process opt out requests; process challenges to Individual Settlement Shares; calculate the employee and employer's share of taxes; take appropriate withholding from

Individual Settlement Shares and remitting all required payments to the proper authorities; issue copies of any applicable tax documents; report payment of the Gross Settlement Amount to all required taxing and other authorities; and disburse sums from the QSF subject to Court Order.

b. **Objections.** To object to the Settlement, a Class Member must provide a written objection (along with any supporting documents) to the Settlement Administrator, not later than forty-five (45) calendar days after the Class Notice is mailed. The date of the postmark or email to the Settlement Administrator shall be the exclusive means for determining that an objection was timely submitted. The written objection must set forth the name and address of the individual objecting, and in clear and concise terms, state the arguments supporting the objection. Defendant shall not be responsible for the fees, costs or expenses incurred by Class Counsel or Class Members arising from or related to any objections by Class Members or otherwise purport to object to this Agreement or related to any appeals thereof. Defendant will not take any steps to discourage any current or former employees from participating or encourage any current or former employee to appeal or object to the Settlement.

d. **Opt Out.** Each Class Member will have the opportunity to opt out of the Settlement pursuant to Federal Rule of Civil Procedure, Rule 26(e)(4). To opt out of the Settlement, a Class Member must provide a written request to be excluded to the Settlement Administrator not later than forty-five (45) calendar days after the Class Notice is mailed. The date of the postmark or email to the Settlement Administrator shall be the exclusive means for determining that an opt out request was timely submitted. The opt out request must contain: (1) the full name, address, and telephone number of the person opting out; (2) the phrase “Request for Exclusion” or “Opt-Out” at, or near, the top of the document; and (3) a statement that makes clear the Class Member wants to opt-out and understanding s/he will not receive any benefit under the Settlement.

The opt-out request must be personally signed by the Class Member who seeks to opt-out. No Class Member may opt out by having a request to opt-out submitted by an actual or purported agent or attorney acting on behalf of the Class Member. Each Class Member who does not submit a request for exclusion substantially in compliance with this section and as provided for in the Class Notice within the deadline set by the Court shall be deemed to participate in the Settlement, be bound by all releases provided in this Settlement Agreement, and shall be issued their portion of the Settlement Share.

If the number of Class Members who opt-out of the settlement exceeds five percent (5%) (for example at least 15 of the estimated 290 Class Members), Defendant at its sole discretion may void the settlement.

e. **Provision of Class Member Names and Data to Settlement Administrator.** Within ten (10) business days of Preliminary Approval of the Settlement, Defendant shall provide the Settlement Administrator with the, Social Security Number for each Class Member, in addition to and the number of each Class Member’s Standby Shifts during the Class Period, in a readable Microsoft Office Excel spreadsheet. The Settlement Administrator will use this information to the names and contact information it utilized for the notice process following class certification, as previously provided under section II.D, and as updated by any address changes or updates obtain in that process. This information is collectively referred to as “Class

List and Data.” Further, for the Class Members, both the Defendant’s HR database and the information gathered during class notice, as previously provided under section II.D, shall be used to determine the most accurate contact information. The Settlement Administrator will then have an opportunity to review the data provided and to calculate each Class Member’s estimated Settlement Share. Class Counsel shall have the opportunity to review the calculation of each Class Member’s estimated Settlement Share prior to mailing. For the Class Members, the Class List and Data shall also be provided to Class Counsel except Class Counsel will not be provided the Social Security Numbers for any Class Member. The Class List and Data will remain confidential and will not be disclosed to any outside party, except as required to applicable tax authorities, or with the express written consent of Defendant, or by order of the Court.

f. **Mailing of Notice.** Within fifteen (15) calendar days after receipt of the Class List and Data, the Settlement Administrator shall mail the Class Notice to Class Members via first-class regular U.S. Mail.

g. **Class List and Data Confirmation Checks.** If a new address is obtained by a way of a returned Class Notice, then the Settlement Administrator shall promptly forward the original Class Notice to the updated address via first-class regular U.S. Mail indicating on the original Class Notice the date of such remailing. Where a Class Notice is returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a computer/SSN and “skip trace” search to obtain an updated address, and shall then perform a re-mailing, if another mailing address is identified by the Settlement Administrator. If no current address is located, the Class Notice for that individual will be deemed undeliverable. The Parties agree to take reasonable steps to cooperate with the Settlement Administrator to locate a more recent address for Class Members, where necessary. If the procedures herein are followed, Defendant, Class Counsel and the Settlement Administrator shall be deemed to have satisfied their obligation to provide the Class Notice to the Class.

h. **Expiration of Settlement Checks.** Any checks issued by the Settlement Administrator to Class Members shall be negotiable for one hundred and twenty (120) calendar days from issuance. In the event a settlement check payable to a Class Member expires, that individual shall have the right to submit a request to the Settlement Administrator for reissuance of the check if funds remain available.

i. **Declaration of Due Diligence.** Seven (7) calendar days before Plaintiffs’ moving papers are due for the Final Approval Hearing, the Settlement Administrator shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate the members of the Class (“Due Diligence Declaration”), to Class Counsel and Defense Counsel for presentation to the Court. The Settlement Administrator will attach to the Due Diligence Declaration a report showing the name of each individual. Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

3. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Plaintiffs, Class Members, and Defendant, and its respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a

motion to vacate judgment, a motion for new trial, a motion for relief and any extraordinary writ, and the Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. This paragraph does not preclude Plaintiffs or Class Counsel from appealing from a refusal by the Court to award the full Class Representative Payment, the Class Counsel Fees Payment, or the Class Counsel Litigation Expenses Payment sought by them.

4. **Distributions.** The occurrence of the Effective Date is a prerequisite to any distributions from the Gross Settlement Amount. If all conditions necessary for the Effective Date have been satisfied, the Settlement Administrator will release the total amount of payments due to Plaintiffs, the LWDA, Class Counsel, and Class Members within forty-five (45) calendar days of the Effective Date.

5. **Uncashed or Returned Settlement Checks.** The Settlement Administrator will provide notice to Class Counsel and Defense Counsel of any settlement checks returned as undeliverable and any settlement checks remaining uncashed for more than one hundred and twenty (120) calendar days after issuance (the “Initial Cash Check Deadline”). Sixty (60) calendar days prior to Initial Cash Check Deadline, the Settlement Administrator will send a notice reminding Class Members who have settlement checks remaining uncashed to cash the checks. The Settlement Administrator will provide notice to Class Counsel and Defense Counsel of any settlement checks returned as undeliverable and any settlement checks remaining uncashed after the Initial Cash Check Deadline. After the reminder notice has been mailed to Class Members with uncashed checks, and in the event any funds represented by uncashed checks (“uncashed check fund”) amount to more than \$25,000 after the Initial Cash Check Deadline, the uncashed funds will be redistributed. The cost of redistribution shall be deducted from the uncashed check fund and will not result in additional costs. Any remaining uncashed funds shall be redistributed equally among the Class Members who negotiated the initial settlement checks. If any funds are to be redistributed, Class Members will have one hundred and twenty (120) calendar days to cash the checks, after which the Settlement Administrator will provide notice to Class Counsel and Defense Counsel of any settlement checks remaining uncashed. Any funds represented by these uncashed settlement check(s) will be distributed to *cy pres* beneficiary East Bay Community Law Center (Berkeley, CA). In the event the uncashed check fund is less than \$25,000, the *cy pres* beneficiary shall receive all of the uncashed check fund and there will not be a redistribution to Class Members.

6. **Notice of Settlement to the LWDA.** Class Counsel will submit this Agreement, which sets forth the terms of this Settlement, to the LWDA pursuant to California Labor Code section 2699(1)(2).

7. **Final Report by Settlement Administrator to Court.** Within ten (10) calendar days after final disbursement of all funds from the Gross Settlement Amount, the Settlement Administrator will serve on the Parties and Class Counsel shall forthwith file with the Court a declaration proving a final report on the disbursements of all funds from the Gross Settlement Amount.

F. **Release of Claims**

1. **Plaintiffs General Release.** In consideration of their awarded Class Representative Payments, their respective pieces of the Settlement Shares, and the other terms and conditions of the Settlement, each Plaintiff (who shall not opt out), jointly, severally, shall, and hereby fully and generally releases, discharges, and covenants not to sue the Released with respect to any and all claims, judgments, liens, losses, debts, liabilities, demands, contracts, disputed wages, obligations, guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action, and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, occurring up to the execution of this Settlement, which the Plaintiffs now owns or holds or has at any time heretofore owned or held, arising out of or in any way connected with the Plaintiffs' employment, separation of employment, or any other relationship with, any Defendant or Released Party, or any other transactions, occurrences, acts or omissions or any loss, damage or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by or on the part of said Defendant or Released Party, committed or omitted prior to the date of the Preliminary Approval Order. The Parties intend the Plaintiffs' General Releases to be general and comprehensive in nature, and to release all Plaintiffs' Claims and potential Plaintiffs' Claims against Defendant and the Released Parties to the maximum extent permitted at law. Each Plaintiffs' General Releases include specifically, by way of description, but not by way of limitation, any and all claims arising out of or in any way related to: (i) any interactions between the Plaintiff and any Defendant or Released Party; (ii) Plaintiff's employment, separation of employment, contractual, and/or quasi-contractual relationship with the Defendant and the Released Parties, or any of them; (iii) any allegations as to disputed wages, remuneration, and/or other compensation, due by operation of statute, ordinance, contract, or quasi-contract; (iv) any federal, state, or local law prohibiting discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability, sex, national origin, or citizenship or any other protected category, including, without limitation, claims under Title VII, the California Fair Employment and Housing Act, the California Labor Code, FLSA, the California IWC Orders, the Employee Retirement Income Security Act, and the Americans With Disabilities Act or any other similar statutes whatever the city, county, state, or country of enactment; (v) any claims under the Family and Medical Leave Act of 1993 and/or the California Family Rights Act; and (vi) any transactions, occurrences, acts, statements, disclosures, or omissions, occurring prior to the date of the Preliminary Approval Order.

a. **Release Under California Civil Code Section 1542.** Plaintiffs hereby agree that, notwithstanding section 1542 of the California Civil Code, all claims that Plaintiffs may have, known or unknown, suspected or unsuspected are hereby released. Section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs expressly waive the provisions of section 1542 of the California Civil Code with full knowledge and with the specific intent to release all known or unknown, suspected or unsuspected claims. Each Plaintiff understands that, if any of the facts relating in any manner to the Class Action, or to the release and dismissal of claims as provided in this Settlement Agreement, are hereafter found to be other than or different from the facts now believed to be

true, he has expressly accepted and assumed that risk and agrees that this Settlement Agreement and the release of claims contained herein shall nevertheless remain effective. Each Named Plaintiff desires and intends, or is deemed to desire and intend, that this Settlement Agreement shall be given full force and effect according to each and all of its express terms and provisions, including those relating to unknown and unsuspected claims, if any, as well as those relating to the claims referred to above.

b. Nothing herein precludes the Plaintiffs from pursuing the claims asserted in *DiMercurio, et al. v. Martinez Refining Co., LLC*, Contra Costa Superior Court, Case No. MSC20-01257, for events taking place after January 31, 2020.

2. **Released Class Claims.** In consideration of their Settlement Share and other terms and conditions of this Agreement, each Class Member shall, upon the Effective Date, be deemed to have released, on behalf of their respective heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors in interest and assigns, any and all claims against the Released Parties that were alleged in the complaint brought in this Lawsuit and all claims that could have been brought based on the allegations in the operative Complaint, related to payment of wages, penalties, interest, fees, costs, and all other claims and allegations made in the operative Complaint, from June 4, 2015 through January 31, 2020 (the “**Released Class Claims**”). This release shall not be limited in any way by the possibility that Plaintiffs or Class Members may discover new legal theories or legal arguments not alleged in the operative pleadings in the Lawsuit but which might serve as an alternative basis for pursuing the Released Class Claims. The Released Class Claims are those that accrued during the Settlement Class Period.

a. **Release Binding on Class Members.** The Parties intend that this Agreement, including the Released Class Claims as set forth in this Section III.F.2, shall be binding on all Class Members, whether or not they actually receive a payment pursuant to this Agreement. This Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Class Claims if raised in the future.

b. The Parties agree that, for any claim that is not alleged in the Complaint, the First Amended Complaint, the Second Amended Complaint, and the Third Amended Complaint, the statute of limitations has and will continue to run on those claims, and no such claims will relate back to the filing of any of the pleadings in this Class Action.

3. **Released PAGA Claims.** Upon the Effective Date, any and all PAGA claims arising out of the dispute which is the subject of the Class Action or which could have been asserted in the Class Action based on the facts alleged, whether in violation of any state or federal statute, rule or regulation, arising out of, concerning or in connection with any act or omission alleged in the Class Action by or on the part of Released Parties will be finally and fully released, resolved, discharged, and settled with prejudice as to Defendant, subject to the terms and conditions of this Settlement Agreement (collectively “**PAGA Released Claims**”).

G. **No Effect on Other Benefits.** The Settlement Shares will not result in any additional benefit payments (such as 401(k) or bonus) beyond those provided by this Agreement to Plaintiffs, Class Members, and Plaintiffs, Class Members will be deemed to have waived all

such claims, whether known or unknown by them, as part of their release of claims under this Agreement. In addition, Plaintiffs, Class Members may not contribute any portion of their Settlement Shares to Defendant's 401(k) or other benefit plans if they exist.

1. **No Admission of Liability.** Defendant denies each and all of the claims alleged by Plaintiffs, Class Members in the Lawsuit. In addition, Defendant contends that it has complied with its obligations under federal law and California state law. Neither this Settlement, nor any document referred to or contemplated therein, nor any action taken to carry out this Settlement, is, may be construed as, or may be used as an admission, concession, or indication by or against Defendant of any fault, wrongdoing or liability whatsoever. This Settlement and the fact that Plaintiffs and Defendant were willing to settle the Lawsuit will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with the Settlement). To this end, the settlement of the Class Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual allegations in the operative complaints, and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

2. **Communications.** The terms of this Agreement and Settlement shall remain confidential until they are presented to the Court in connection with the Motion for Preliminary Approval except that Defendant shall be permitted to make public statements about this Agreement or Settlement as necessary to comply with any state or federal law (including the federal securities laws) or rules and regulations of any securities exchange upon which Defendant's stock is listed or through a press release in connection with any such disclosure. Class Counsel and Plaintiffs agree that they will not issue any press release or press statement, or initiate media coverage, regarding this Settlement Agreement.

3. **Documents Provided in Discovery.** Plaintiffs and Class Counsel acknowledge that they are bound by the Stipulated Protective Order entered by the Court on February 10, 2020, and that Plaintiffs and Class Counsel shall abide by its terms.

4. **Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement will constitute the entire agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, covenants, and inducements expressly stated in this Agreement. All prior or contemporaneous agreements, understandings, and statements, whether oral or written, whether express or implied, and whether by a Party or a Party's counsel, are merged herein.

5. **Attorney Authorization.** Class Counsel and Defense Counsel warrant and represent that they are authorized by Plaintiffs and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of

this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

6. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest. The Court's refusal to approve any term of this Agreement (other than the Gross Settlement Amount) shall not constitute grounds for voiding this Agreement. The Parties agree that they shall work in good faith to modify any term of this Agreement (other than the Gross Settlement Amount) if necessary to obtain approval of this Agreement from the Court.

7. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties (including Released Parties) hereto, and their spouses, heirs, administrators, representatives, executors, successors and assigns each of which is entitled to enforce this Agreement, whether or not they actually receive a payment pursuant to this Settlement Agreement. The Plaintiffs represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, or encumbered any claim, demand, action, cause of action, or rights released in this Settlement Agreement. This Settlement Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

9. **Signatures Necessary.** The Parties agrees that the signature of one Plaintiff is sufficient to constitute acceptance of this Agreement on behalf of the Class Members. Any Plaintiff who does not execute this Agreement prior to final approval is not eligible for a Class Representative Payment and shall be treated solely as a Class Member.

10. **Counterparts and Signatures.** This Settlement Agreement may be executed in counterparts with signatures transmitted by facsimile or electronic signature. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

11. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, adequate and reasonable settlement of the Lawsuit and have arrived at this Settlement and this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential and will so represent to the Court.

12. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13. **Dispute Resolution.** Except as authorized herein, all disputes concerning the interpretation, implementation, calculation, or payment of the Gross Settlement Amount or other disputes regarding implementation, calculation, or payment of the Gross Settlement Amount or

other disputes regarding compliance with this Agreement will be resolved by the Court. The Parties agree that they shall work in good faith to resolve any disputes that may arise before seeking the Court's intervention.

14. **Invalid Provisions.** If any provision of this Agreement is determined to be invalid or unenforceable, all of the other provisions shall remain valid and enforceable notwithstanding, unless the provision found to be unenforceable is of such material effect that the Agreement cannot be performed in accordance with the intent of the Parties in the absence thereof.

15. **Voiding the Settlement Agreement.** A failure of the Court to approve any material condition of this Settlement Agreement which effects a fundamental change of the terms of the settlement shall render the entire Settlement Agreement voidable and unenforceable as to Plaintiffs and Defendant, at the option of any Party. Any Party may exercise its or his option to void this Settlement Agreement as provided above by giving notice, in writing, to all other Parties and to the Court at any time prior to Final Approval.

a. If more than five percent (5%) of the Class submits timely and valid requests for exclusion pursuant to the terms and procedures of the Notice of Settlement, this entire Settlement Agreement shall become voidable and unenforceable as to Plaintiffs and Defendant, at Defendant's sole discretion. Defendant may exercise such option by giving notice, in writing, to Class Counsel and to the Court at any time prior to Final Approval.

16. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiffs and the Class:

Kristina L. Hillman
Jannah V. Manansala
Roberta D. Perkins
Caitlin E. Gray, Esq.
Alexander Nazarov
Maximillian Casillas
Kara Gordon
WEINBERG ROGER & ROSENFELD
1375 55th Street
Emeryville, CA 94608
Telephone: (510) 337-1001
Facsimile: (510) 337-1023

Aaron Kaufmann
David Pogrel
Amanda Eaton
LEONARD CARDER LLP
1999 Harrison Street, Suite 2700

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

By:
Title:
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date: 08/26/2022



Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

By:
Title:
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date:

Date: 08/29/2022

Plaintiff



Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

By:
Title:
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date:

Plaintiff

Date:

Plaintiff

Date: 08/26/2022



Plaintiff

Date:

Plaintiff

Date:

By:
Title:
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date: 08/26/2022



Plaintiff

Date:

By:
Title:
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Oakland, CA 94612
Telephone: (510) 272-1069
Facsimile: (510) 272-0174

To Defendant:

Gary T. Lafayette
Brian H. Chun
Saisruthi Paspulati
LAFAYETTE & KUMAGAI
1300 Clay Street, Suite 810
Oakland, CA 94612
Telephone: (415) 357-4600
Facsimile: (510) 375-4605

IN WITNESS WHEREOF, the undersigned Parties and their duly-authorized representatives of accept and agree to the terms of this Agreement and hereby execute it voluntarily and with a full understanding of its consequences.

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:

Plaintiff

Date:
Sep 8, 2022

DocuSigned by:
Karen Benetti
6D7439C002674CC...

By: Karen Benetti
Title: Attorney-in-Fact
Defendant EQUILON ENTERPRISES LLC DBA
SHELL OIL PRODUCTS US

Exhibit A

**NOTICE OF CLASS ACTION AND PRIVATE ATTORNEY GENERAL ACT (“PAGA”)
SETTLEMENT**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No. 3:19-cv-04029-JSC

Marco DiMercurio, et al.

Plaintiffs,

v.

Equilon Enterprises LLC dba Shell Oil Products US, et al

Defendant.

**READ THIS NOTICE CAREFULLY
REGARDING
YOUR
ENTITLEMENT TO COMPENSATION
FROM THIS SETTLEMENT AND
RELATED LEGAL RIGHTS**

TO: OPERATORS WHO WORKED FOR EQUILON ENTERPRISES LLC. (“Equilon,” “Shell” OR “Defendant”) AT THE OIL REFINERY IN MARTINEZ, CALIFORNIA ANY TIME BETWEEN JUNE 4, 2015 AND JANUARY 31, 2020.

You should have already received a class action notice authorized by the United States District Court for the Northern District of California (“Court”) in *Marco DiMercurio, et al., v. Equilon Enterprises LLC dba Shell Oil Products US, et al.*, Case No. 3:19-cv-04029-JSC (the “Lawsuit”) informing you the Court had certified a class action and that you are a member of that certified class. This notice regarding a proposed settlement of that class action has also been authorized by the Court. This is not a solicitation from a lawyer.

A proposed settlement (the “Settlement”) has been reached in the Lawsuit, brought by four former Equilon operators (“Plaintiffs”). The Settlement has been granted preliminary approval by the Court. A final settlement hearing will be held on _____, 2022 at _____ in the Courtroom of Judge Jacqueline Scott Corley, located at 450 Golden Gate Avenue, San Francisco, CA 94102 (“Final Approval Hearing”).

The purpose of this Notice is to: (1) describe the Lawsuit, (2) inform you of the terms of the Settlement and an estimate of how much you will receive, and (3) inform you of your rights and options in connection with the Settlement.

You are estimated to receive payment from this Settlement of \$ XXXXXXXXXX.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you do nothing in response to this notice, you will remain in the Class, receive a settlement payment and release all claims covered by this Settlement.
CHALLENGE YOUR PAYMENT (BY XXX DATE)	If you believe the information in Section XX, below, is incorrect and wish to dispute it, you must submit your challenge and describe the information you disagree with. Your dispute must be submitted by XX. Class Counsel and Defense Counsel will make a final and binding determination regarding any disputes. You will receive a settlement payment and release all claims covered by this Settlement after the dispute is resolved.
EXCLUDE YOURSELF OR “OPT OUT” (BY XXX DATE)	If you “opt out” of the Class Action Settlement, you will not receive any payment from the Net Settlement Amount. In addition, the Release of Claims in the Settlement Agreement will not apply to you. You must notify the Settlement Administrator of your intent to opt out by XX
OBJECT (BY XXX DATE)	You may write an objection to the Court stating why you do not like the Settlement. You may also appear in Court or use an attorney to appear for you and explain why you do not like the settlement. If you object, this does not mean you opt out of the class (in fact, if you opt out of the class, you will not be permitted to object to the settlement terms). You must submit your objection to the Court by XX.

1. WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit claims, generally, that Shell violated provisions of the California Labor Code and Wage Order by: (1) failing to pay reporting time pay when operators were scheduled for standby shifts; (2) willfully failing to pay required reporting time pay upon termination; and (3) failing to provide accurate itemized wage statements. The Lawsuit also claims these violations amounted to unfair business practices under the California Business and Professions Code, and make Shell liable for civil penalties under the Private Attorneys General Act (PAGA). Shell disputes the claims and denies allegations that they violated California law. The Parties are confident each side has strong legal and factual positions to support their claims and defenses, but both sides recognize the risks and expenses associated with continued litigation.

The parties in the case have agreed to settle the Lawsuit and have entered into a written settlement (the “Settlement Agreement”), which the Court has preliminarily approved.

This Settlement is the result of good faith, arm’s length negotiations between the Class Representatives and Shell, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, the Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

The Court has not yet ruled on the merits of the Class Representatives’ claims or Defendants’ defenses. The Settlement is a compromise and is not an admission of liability on the part of Defendants.

2. WHAT IS A CLASS ACTION AND WHO IS INVOLVED?

In a class action lawsuit, one or more people, called “Class Representatives,” sue on behalf of themselves and others who have similar claims. All these people together are a “Class” or “Class Members.” One court resolves the issues for everyone in the Class—except for those people who choose to exclude

themselves through a process called “opting out.” If the Court approves the settlement, people who remain in the Class may not file their own lawsuit on the issues that were resolved in the class action.

Here, the Class Representatives are former employees at Shell’s Martinez Refinery named Marco DiMercurio, John Langlitz, Charles Gaeth, and Malcolm Synigal.

3. WHO IS IN THE CLASS?

As mention in the earlier class action notice, the Class is defined as: All Operators working at the Shell refinery in Martinez, California, who were scheduled for standby shifts at any time from June 4, 2015 through January 31, 2020 (the “Class Period”).

4. WHAT DOES THE SETTLEMENT PROVIDE?

Defendants have agreed to create a settlement fund of \$3,200,000 to settle this case (the “Gross Settlement Amount”). The Gross Settlement Amount will be divided among all Class Members, after deducting all sums approved by the Court for Plaintiffs’ lawyers’ fees \$1,066,666.67,) and expenses (\$45,000), payments to the Plaintiffs for their service to the Class (\$30,000 total), payment to the State of California required by the Private Attorneys General Act (\$37,500) and payments to the Settlement Administrator (\$10,000) to finalize the settlement.

5. HOW MUCH CAN I GET FROM THE SETTLEMENT?

The Net Settlement Fund will be distributed to Class Members who do not exclude themselves from the Class. After deducting the amounts described above (Section 4), Each Class Member who does not opt out shall receive a proportionate share of the settlement, calculated based on the number of Standby Shifts between June 4, 2015 and January 31, 2020 (the “Class Period”).

Shell’s records show that you were assigned ##### Standby Shifts as an Operator during the Class Period. Based on this information your estimated settlement share is currently \$_____,
_This amount is subject to change, either more or less, depending rulings to be made by the Court at final approval.

If you dispute the number of Standby Shifts use to calculate your award, you may contact the Settlement Administrator, as discussed in Section 6(ii) below.

Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member. None of the Parties or Parties’ attorneys make any representations concerning the tax consequences of the Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Members are solely responsible for determining the tax consequences of payments made pursuant to the Settlement and for paying taxes, if any, which are determined to be owed by each of them on such payments (including penalties and interest related thereto) by any taxing authority, whether state, local, or federal.

6. WHAT ARE MY OPTIONS?

You have the following options with respect to the settlement:

- (i) **Stay in the Class**

If you stay in the Class and the Court grants final approval of the Settlement, you will receive your Settlement Payment. In exchange, you give up the right to sue Defendant for the claims resolved through this settlement.

To ensure you receive your Settlement Payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the Settlement, the Settlement Administrator will mail your check to the address on file for you.

(ii) Dispute the Information Used to Calculate Your Settlement Payment

The amount of your estimated settlement payment is based on the number of Standby Shifts that Shell's records show you were assigned between June 4, 2015 and January 31, 2020. If you do not believe that the number of shifts is correct, you may dispute those numbers. Any such dispute must be mailed to the Settlement Administrator and **post-marked on or before [DATE]**. Disputes must state what you believe to be the correct values for these items and must be accompanied by any documentation you have to support your dispute. In addition, your dispute **must** include the case name (*DiMercurio, et al., v. Equilon*), your first and last name, signature, address, phone number, and last four digits of social security number for verification purposes. Sending a dispute will not risk your right to a settlement payment.

Class Counsel and Defense Counsel will make a final and binding determination regarding any disputes. The Settlement Administrator will inform you of the final determination. If the Settlement receives the Court's final approval, your Settlement Payment check will be sent to you at the address on this Notice.

(iii) Opting Out of Class and Settlement Agreement

You can elect to not be part of the Class and not be bound by this Settlement Agreement, provided that you mail a signed written request to be excluded to the Settlement Administrator so that it is received no later than **XX/XX/2022**.

If you wish to opt out of the Settlement, you must set forth the following in writing: (a) the case caption; (b) your full name, address, and telephone number; (c) the term "Request for Exclusion" or "Opt-Out" at or near the top of the document; and (d) a statement that you want to opt-out and understand s/he will not receive any benefit under the Settlement.

You must personally sign the opt-out request. You may not opt out by having a request to opt-out submitted by an actual or purported agent or attorney acting on your behalf. If you do not submit a request to opt out that is substantially in compliance with this section within the deadline set by the Court, you shall be deemed to participate in the Settlement, be bound by all releases provided in this Settlement Agreement, and you shall be issued your portion of the Settlement amount.

If you timely submit an executed Opt Out Request, you will have no further role in the Class Action, and for all purposes, you will be regarded as if you never were either a party to the Action or a Class Member, and thus you will not be entitled to any benefit as a result of the Class Action and will not be entitled to or permitted to assert an objection to the Settlement.

(iv) Object to the Settlement

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement or pay you a larger settlement payment; the Court can only approve or reject the Settlement described in this notice. If the Court denies approval, no settlement payments will be sent out

and the lawsuit will continue. If that is what you want to happen, you must object. **You cannot object to the Settlement if you request exclusion from the Settlement if you opt-out**, as provided above.

You may object to the Settlement before final approval of the settlement by the Court. In order to object to the Settlement or any portion of it, you should send any such written objection to the Settlement Administrator on or before **[DATE]**. Objections **must** state all of the reasons for your objection. In addition, any objection **must** include the case name (*DiMercurio, et al., v. Equilon*), your first and last name, address, phone number, and last four digits of social security number for verification purposes and must be signed by you or your attorney. While the Court may permit objections to be filed up until the date of the Final Approval Hearing, you will only be assured that your objection will be considered if you submit it to the Settlement Administrator by the **[DATE]** deadline.

Even if you file an objection, you will be bound by the terms of the Settlement, including applicable releases as set forth above, unless the Court does not finally approve the Settlement.

7. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND OPTING OUT OF THE SETTLEMENT?

If you object, you are telling the Court that you disagree with something in the Settlement and you are asking the Court to reject the Settlement. You still stay in the Class. If you object, but the Court still approves the Settlement, you will be bound by the Settlement you will receive your portion of the Settlement Amount.

If you request to opt out/be excluded from the Class, you are telling the Court that you don't want to be part of the Class. You will not receive any payment and will not be bound by any of the terms of the Settlement. You would then have no basis to object, because the Settlement would no longer affect you.

8. WHAT AM I GIVING UP BY GETTING A SETTLEMENT PAYMENT?

Accepting a Settlement Payment means that you can't sue, continue to sue, or be part of any other lawsuit against Defendants about the legal issues resolved by this settlement. It also means that all of the Court's orders will apply to you and legally bind you.

9. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Court has preliminarily approved the Settlement and will hold a hearing, called a Final Approval Hearing, to decide whether to give final approval to the settlement. The Final Approval Hearing will be held at **XXX a.m. on XX, 2022** in Courtroom 8 of the United States District Court, Northern District of California, San Francisco Division located at 450 Golden Gate Ave, San Francisco, California 94102 before the Honorable Jacqueline Corley. At the hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Corley will listen to Class Members who have asked to speak at the hearing. The Court will also consider how much money to award Class Counsel and the amount of the enhancement payments to the named Plaintiffs/Class Representatives. After the Final Approval hearing, the Court will decide whether to approve the settlement and will rule on Class Counsel's Motion for Attorneys' Fees and/or Expenses, the enhancement award for the named Plaintiffs/Class Representatives, and the settlement administrator's expenses.

In light of the continuing COVID-19 public health emergency, the Final Approval hearing may be conducted either by teleconference or videoconference. The Court will provide information on how the hearing will be conducted prior to the date of the hearing until further notice. The date of the hearing may change without further notice. You should contact Class Counsel at least three (3) days prior to the hearing for additional information regarding the Fairness Hearing. Class members may also check the Court's PACER site at <https://ecf.cand.uscourts.gov> to confirm that the date has not been changed.

10. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer any questions the Court may have. However, you have the right to attend the Final Approval Hearing and be represented by your own lawyer at your own expense. If you send an objection, you don't need to come to the Final Approval Hearing to talk about it. As long as your objection was received on time the Court will consider it.

11. DO I HAVE A LAWYER IN THIS CASE?

You do not need to hire your own lawyer. The Court has decided that the interests of the Class, including you, are represented by:

WEINBERG ROGER & ROSENFELD

Kristina L. Hillman, Jannah V. Manansala, Roberta D. Perkins, Caitlin Gray, Alexander Nazarov, Maximillian D. Casillas, and Kara L. Gordon
1375 55th Street
Emeryville, CA 94608
Tel: (510) 337-1001

LEONARD CARDER LLP

Aaron Kaufmann, David Pogrel and Amanda Eaton
1999 Harrison Street, Suite 2700
Oakland, CA 94612
Telephone: (510) 272-0169

These lawyers will be paid from the settlement amount, so you will not be charged personally for their fees and costs on this case and in negotiating this settlement. The lawyers are requesting one-third (1/3) of the Settlement Amount as their fees (\$1,066,666,67,) and up to \$45,000 for reimbursement of the expenses they paid to bring the Action.

Class Counsel's application for an award of attorney's fees and costs will be filed with the court by **XXXXXXXXXXXXXXXXXX**, 2022 and may be viewed in the court file at the United States District Court for the Northern District of California, located at 450 Golden Gate Ave, 16th Floor, San Francisco, California 94102 or on line at <https://ecf.cand.uscourts.gov>. You have a right to express your opinion about this request and the final decision on payment to the lawyers will be made by the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. HOW DO I GET MORE INFORMATION?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at **XXX**. At that same webpage, you will also be able to access Class Counsels' application for attorneys' fees and expense reimbursement. You may also contact Class Counsel listed under Question 11 above; access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; or

visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Ave, 16th Floor, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

13. WHAT HAPPENS IF MY ADDRESS HAS CHANGED OR CHANGES?

Your payment will be sent to the address on this Notice. Therefore, if your address changes or is different from the one this Notice was sent to, you must correct it by notifying the Claims Administrator in writing, by First-Class U.S. Mail.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS**