

REVISED 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**

ATTN: <<EmployeeName>>

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 may have already received a class action notice and a prior notice of settlement 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”). Those notices informed you that (a) you are a member of a court-certified class, and (b) there was a previous settlement. This notice replaces the earlier settlement notice because the parties reached a new settlement after the discovery of new data about standby shifts for the class. You must now decide whether to participate in the revised settlement of this action, as described below. This is not a solicitation from a lawyer.

A proposed revised 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 approval hearing will be held on May 9, 2024 at 10:00 a.m. 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 revised 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 <<estAmount>>.

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 MARCH 28, 2024)	If you believe the information in Section 5, 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 March 28, 2024. 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 MARCH 28, 2024)	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 March 28, 2024.
OBJECT (BY MARCH 28, 2024)	You may write an objection to the Court stating why you do not like the Settlement. You may also write an objection to the fees and costs requested by Class Counsel. You may also appear in Court or use an attorney to appear for you and explain why you do not like the settlement or the request for fees and costs. 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 March 28, 2024.

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 mentioned in the earlier class action notice and settlement 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?

Defendant has agreed to create a settlement fund of \$3,600,000 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 \$1,200,000, 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 (\$42,187.50) and payments to the Settlement Administrator (\$11,500) 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 calendar dates on which the Class Member was scheduled to commence a standby shift that was not activated for work during the Class Period, regardless of whether the standby shift was a single or a double shift (“Standby Day”). The number of Standby Days were adjusted to take into account the discovery of new data about standby shifts for the class.

Records show that you were assigned <<StandbyShifts>> Standby Days as an Operator during the Class Period. Based on this information your estimated settlement share is currently <<estAmount>>. This amount is subject to change, either more or less, depending on rulings to be made by the Court at the Final Approval Hearing or subsequent written order.

If you dispute the number of Standby Days used to calculate your award, you may contact the Settlement Administrator, as discussed in Section 6(ii) below. NOTE: If you submitted a dispute in response to the first settlement notice it will be disregarded with regards to the processing of this revised settlement; if you wish to dispute your amount, you must submit a new dispute.

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 Days that records show you were assigned between June 4, 2015 and January 31, 2020 and that were not activated. Standby shifts were deemed activated if records show the Class Member was paid for at least four hours that day. If you do not believe that the number of Standby Days is correct, you may dispute those numbers. Any such dispute must be mailed to the Settlement Administrator and **post-marked on or before March 28, 2024**. 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 and number (*DiMercurio v. Equilon*, Case No. 3:19-cv-04029-JSC), 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. As noted above, any dispute filed in response to the first settlement notice will be disregarded.

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) Opt 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 **March 28, 2024**.

If you wish to opt out of the Settlement, you must set forth the following in writing: (a) the case name and number (*DiMercurio v. Equilon*, Case No. 3:19-cv-04029-JSC); (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 you 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 or to Class Counsel's request for fees and costs.

(iv) Object to the Settlement and Class Counsel's Request for Fees and Costs

You can ask the Court to deny approval of the Settlement and/or deny Class Counsel's request for attorneys' fees and costs 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. As for Class Counsel's request for attorneys' fees and costs, you can ask the Court to not award the fees and costs sought by Class Counsel or to award fees and costs in lesser amounts than sought by Class Counsel. **You cannot object to the Settlement or Class Counsel's request for attorneys' fees and costs if you request exclusion from the Settlement**, as provided above.

You may object to the Settlement and/or to Class Counsel's request for fees and costs before final approval of the settlement by the Court. In order to object to the Settlement or any portion of it or to the request for fees and costs, all written objections and supporting papers must:

- (a) Clearly identify the case name and number (*DiMercurio v. Equilon*, Case No. 3:19-cv-04029-JSC);
- (b) Be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, or by filing them in person at any location of the United States District Court for the Northern District of California; and

(c) Be filed or postmarked on or before **March 28, 2024**.

Your objection must include: 1) your first and last name, address, phone number, and last four digits of social security number for verification purposes; 2) signed by you or your attorney; and 3) a statement of reasons why you believe Court should not approve the Settlement and/or Class Counsel's request for fees and costs.

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 file the objection with the Court by the **March 28, 2024** deadline.

Any Class Member who does not object to the Settlement in the manner described above shall be deemed to have waived any objections and shall be foreclosed from objecting to the fairness or adequacy of the Settlement, the payment of attorneys' fees and costs, the Service Awards to the Class Representatives, the claims process, and any and all other aspects of the Settlement. 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 or you may also object to Class Counsel's request for fees and costs. You still stay in the Class. If you object, but the Court still approves the Settlement and/or the request for fees and costs, 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 on **May 9, 2024 at 10:00 a.m.** 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.

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 consult www.cptgroupcaseinfo.com/equilonenterprisesettlement or contact Class Counsel at least three (3) days prior to the hearing for additional information regarding the Final Approval 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 file an objection, you don't need to come to the Final Approval Hearing to talk about it. As long as your objection was filed 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, and Winnie Vien
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 (\$1,200,000) and up to \$45,000 for reimbursement of the expenses they paid to bring the Action.

Class Counsel's application for an award of attorneys' fees and expense reimbursement was filed with the court on January 24, 2024. The fee application is available for viewing at www.cptgroupcaseinfo.com/equilonenterprisesettlement and may also 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 www.cptgroupcaseinfo.com/equilonenterprisesettlement. At that same webpage, you will also be able to access Class Counsel's 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**