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12 [*Additional Counsel on next page*]

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 MICHELLE KENDIG and JIM
17 KENDIG, individually and on behalf
of all similarly situated current and
18 former employees,

19 Plaintiffs,

20 v.

21 EXXONMOBIL OIL CORP.;
EXXONMOBIL PIPELINE
22 COMPANY; PBF ENERGY
LIMITED; TORRANCE REFINING
23 COMPANY, LLC; and DOES 1
through 10, inclusive,

24 Defendants.
25
26
27
28

Case No.: 2:18-cv-9224 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

**DECLARATION OF RANDY RENICK IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT;
DECLARATIONS OF COUNSEL; AND
EXHIBITS**

DATE: April 13, 2020
TIME: 10:00 a.m.
PLACE: Courtroom 5A

Honorable Michael W. Fitzgerald

DECLARATION OF RANDY RENICK

I, Randy Renick, hereby declare and say:

1. I am a partner at the law firm of Hadsell Stormer Renick & Dai. I am an attorney licensed to practice law in California, and counsel of record for Plaintiffs in this action.

2. I have reviewed the documents identified herein and am fully familiar with the facts set forth therein. Based on my own personal knowledge and on my familiarity with the documents, pleadings and files in this action, I can state that the following information is true and accurate.

3. On September 18, 2018, Plaintiffs commenced the Action by filing their complaint against Defendants ExxonMobil Oil Corp., ExxonMobil Pipeline Company, PBF Energy Limited, and Torrance Refining Company LLC (“Defendants”) in the Superior Court of California, County of Los Angeles, captioned as *Michelle Kendig, et al., v. ExxonMobil Oil Corp. et al.*, Case No. BC722119 (“the Lawsuit”). The Lawsuit alleges the following causes of action on behalf of employees at Defendants’ refinery, distribution, and pipeline facilities in or around Torrance, California (the “Torrance Refinery”): (1) Failure to authorize and permit duty free rest periods; (2) failure to furnish accurate wage statements; (3) the California Private Attorneys General Act; and (4) unfair competition. Plaintiffs seek unpaid wages, statutory penalties, restitution, attorneys’ fees and costs, interest, and injunctive and declaratory relief for the time period from September 18, 2014 to the present.

4. Plaintiffs alleged that Defendants violated California’s wage and hour laws by not providing them with rest breaks, by failing to pay them premium wages for missed rest breaks, and by failing to provide accurate wage statements. Plaintiffs’ PAGA and unfair competition claims are based on the same alleged violations.

5. On August 23, 2019, the Parties, including the two Named Plaintiffs, participated in mediation with T. Warren Jackson in San Francisco, California. At the mediation, the Parties reached a partial settlement, which was subsequently finalized

1 over the next several months. A true and correct copy of the executed Joint Stipulation
2 of Class Action Settlement and Release (the “Agreement”) is attached hereto as Exhibit
3 1.

4 6. Prior to Settlement, Plaintiffs conducted an extensive investigation of
5 Defendant’s wage and hour practices at the Torrance Refinery, particularly in regard to
6 the provision of rest breaks. Plaintiffs interviewed operators at each of the refineries,
7 and reviewed thousands of pages of relevant written materials, including employee
8 handbooks, training materials and emergency protocol materials. In addition, Defendant
9 provided, and Plaintiffs reviewed Defendants’ payroll and timecard data containing all
10 of the shifts worked by class members during the class period and the specific pay rate
11 which applied to each of those shifts. Based on this extensive investigation and review
12 of discovered materials, Plaintiffs were able to thoroughly evaluate liability and
13 determine damages. Plaintiffs’ due diligence provided a sufficient basis upon which to
14 obtain an outstanding settlement within nine months of the filing of the Complaint. As
15 part of the investigation, we discovered several documents that evidenced a policy
16 requiring employees to work throughout their shifts. The “Torrance Refinery Working
17 Rules” issued in April 2011 identified “[s]leeping, attempting to sleep, or loafing on
18 Company time” as “neglect of duty” and grounds for discharge or other discipline. *See*
19 Exhibit 2. As recently as September 2018, a Head Operator was disciplined for
20 “sleeping on duty” with a two-day suspension without pay when he was attempting to
21 take a rest break. *See* Exhibit 3; *see* also Exhibit 4, PBF Employment Handbook, PBF
22 1971. The reason given was: “you were observed sleeping by your Supervisor while in
23 your Head Operator Office.” Exhibit 3, p. 1.

24 7. Since September 18, 2014, Defendants have operated an oil refinery in
25 Torrance, California.

26 8. The refinery operates continuously, 24 hours a day, seven days a week.
27 The oil refining process is a dangerous operation that involves hazardous substances and
28 has the potential for catastrophic consequences.

1 9. Employees at the refineries who work a “rotating shift schedule,” meaning
2 they are paid for all hours worked on their shift, are referred to as “shift workers” or
3 “shift employees.” Operators who work 12-hour shifts are “shift employees.” There are
4 generally two types of Operators: Console (also known as “Board” or “Inside”)
5 Operators and Field (or “Outside”) Operators. Console Operators sit at control boards,
6 called “consoles,” inside a control facility and monitor and make adjustments to the
7 levels, pressures, temperatures, and other indicators on equipment, products, and
8 processes in their units to ensure that the units are operating properly. Outside
9 Operators work outside in the units and in satellite operating shelters and they are
10 responsible for maintaining, monitoring, inspecting, and making adjustments to
11 equipment at the direction of Console Operators and supervisors.

12 10. To keep the refineries operating continuously, each unit has four crews of
13 Operators who rotate between day and night shifts. Every crew on every shift must
14 have certain minimum “crew positions” filled by an Operator at all times. Operators on
15 a 12-hour shift remain responsible for their units throughout their shifts. Throughout
16 their shifts, Phillips 66 requires Plaintiffs and the other operators to monitor the refining
17 process, respond to upsets and critical events, and maintain the safe and stable operation
18 of their units. In order to do so, Plaintiffs and the other operators are required to remain
19 attentive, carry radios, and be reachable at all times during their shifts. Plaintiffs are
20 also required to remain in contact with supervisors and other employees working in their
21 unit throughout their shifts. As a result, since September 18, 2014, Plaintiffs and the
22 other operators have worked 12-hour shifts without receiving off-duty rest periods
23 because they are constantly and continuously responsible for their units.

24 11. Plaintiffs Michelle and Jim Kendig, the two Class Representatives, are both
25 currently employed by Defendant Torrance Refining Company, LLC as operators at the
26 Torrance Refinery. Both have worked for Defendants throughout the class period.

27 12. **Class Certification** - The settlement class stipulated to by the parties
28 consists of the following: All current and former non-exempt hourly employees holding

1 an Operator position while employed by ExxonMobil Oil Corporation, ExxonMobil
2 Pipeline Company, PBF Energy Limited, and/or Torrance Refining Company LLC, or
3 any of their affiliates, working at the Torrance refinery, distribution and pipeline
4 facilities in the state of California, County of Los Angeles, at any time during the time
5 period beginning September 18, 2014 and ending on the date of Preliminary Approval.
6 This is the same class proposed in the First Amended Complaint. The Settlement Class
7 includes approximately 275 members.

8 13. Plaintiffs are proper representatives of the proposed class because they will
9 fairly and adequately represent and protect the interests of all putative class members.
10 Neither the Named Plaintiffs nor their counsel have any apparent conflicts of interest
11 with the absent members of the Settlement Class and the Named Plaintiffs' claims arise
12 out of the same set of facts as those of the Settlement Class. The Named Plaintiffs have
13 been committed to the vigorous prosecution of this case and have reached a resolution
14 they believe is in the best interests of the Settlement Class.

15 14. My firm Hadsell Stormer Renick & Dai, LLP and Gilbert & Sackman, A
16 Law Corporation, are highly experienced class counsel, having handled dozens of
17 similar wage and hour class actions, as well as other types of class and complex
18 litigation. My firm's qualifications are discussed in detail below and the qualifications
19 of Gilbert & Sackman, A Law Corporation are set forth separately in the Declaration of
20 Joshua Young.

21 15. **Settlement Terms** – The total settlement amount is Four Million, Three
22 Hundred and Ninety-One Thousand, Five Hundred and Eighty-Five Dollars
23 (\$4,391,585). Defendant is also obligated to pay its share of payroll taxes, including
24 FICA and FUDA. The settlement is non-reversionary. Uncashed settlement check(s)
25 will be awarded *cy pres* to Loyola Law School Workers' Rights Clinic. Loyola Law
26 School Workers' Rights Clinic are a proper *cy pres* awardee because the nexus between
27 the Clinic and the California Labor laws at issue in this case is sufficiently direct.

28 16. **Payments to Class Members** - The primary mechanism for Settlement

1 involves cash payment to members of the settlement class according to the number of
2 12-hour shifts worked by each class member during the class period. The net settlement
3 will be fairly distributed amongst the class on a pro rata basis and does not offer
4 preferential treatment to the class representatives or other members of the class. A
5 Credit will be given to each Qualifying Shift (continuous, rotating 12-hour shift) worked
6 by a member of the Settlement Class for the time period of September 18, 2014 to the
7 date of Preliminary Approval, inclusive. Any Settlement Class Member who has no
8 Qualifying Shifts or a partial Qualifying Shift shall be rounded up to receive at least
9 twenty-five (25) Credits. The value of each Credit (“Credit Value”) will equal the Net
10 Settlement Proceeds divided by the total number of Credits for all Class Members.
11 Each Settlement Class Member’s “Individual Settlement Award” shall equal that
12 individual’s total number of Credits multiplied by the Credit Value. All Class Members
13 who do not file a timely Request for Exclusion will participate in the allocation of the
14 Settlement and will be sent a check for their allocation of the Settlement. I estimate the
15 average recovery per class member to be roughly \$11,500.

16 17. **Service Award** - The Settlement Agreement provides for additional
17 compensation in an amount not to exceed \$7,500 for each of the three Named Plaintiffs
18 in recognition of the risks and burdens they undertook in the litigation, mediation and
19 settlement of this case. The Service Award is in addition to whatever portion of the
20 settlement proceeds each such individual is otherwise entitled to receive. The
21 enhancements are intended to compensate these individuals fairly in relationship to the
22 rest of the class in light of the additional burdens and risks they have undertaken by
23 assisting in the prosecution of the lawsuit, including their participation in mediation
24 sessions with T. Warren Jackson in San Francisco, and their active assistance with the
25 litigation. The named Plaintiffs have also agreed to a general release of all claims they
26 might have against Defendant.

27 18. **Payment of PAGA Claims** - \$50,000 of the Settlement Fund has been
28 allocated to PAGA penalties with seventy-five percent (75%) of the PAGA penalties

1 (\$37,500), being paid to the California Labor and Workforce Development Agency
2 (“LWDA”) and twenty-five percent (25%) of the PAGA penalties (\$12,500), being paid
3 to Settlement Class Members who do not opt out. Notice of the Settlement Agreement
4 has been provided to the LWDA. The Joint Stipulation of Class Action Settlement and
5 Release was served on the LWDA on March 16, 2020. The Certificate of Service is
6 attached hereto as Exhibit 5.

7 19. **Attorney’s Fees and Costs** - The Settlement Agreement does not include a
8 “fair sailing Provision.” Defendants have only agreed not to oppose a Reasonable
9 Attorney’s Fee Request. Plaintiffs will seek an award of attorney’s fees of 25% of the
10 settlement, \$1,097,896. I estimate that the lodestar for Hadsell Stormer & Renick, LLP,
11 and Gilbert & Sackman will be approximately \$500,000 at the time of the Motion for
12 Final Approval. I estimate costs to be approximately \$30,000. Plaintiff’s counsel will
13 provide a full detailing of the time spent on this case in Plaintiff’s Motion for an Award
14 of Attorney’s Fees and Costs, which will also be posted by the Claims Administrator on
15 its website to allow class members at least 14 days to review the Motion before the
16 deadline in which to opt-out or object to the Settlement.

17 20. **Administration of Claims** - The parties have agreed to retain CAC,
18 (“CAC” or “Administrator”), of Eden Prairie, Minnesota, to act as the impartial claims
19 administrator. CAC will be retained to calculate each class members share, determine
20 the amount of payroll taxes owed by Defendant, send out notice to the class members,
21 maintain a website containing the key documents in the case, including the settlement
22 agreement, class notice and motion for attorney’s fees, to resolve any challenges any
23 party lodges to all or part of a particular claim, and to mail the settlement checks to the
24 authorized claimants. CAC has provided a bid for \$19,000. Given my experience that
25 tasks which are not contemplated at the time of preliminary approval are often asked of
26 the administrator thereby increasing the actual amount to be paid to the Administrator,
27 the Class Notice states that the Costs of Administration will be less than \$30,000. These
28 costs are to be paid out of the settlement fund, are reasonable and amount to less than

1 one percent of the settlement.

2 21. **Notice to the Class** - The Settlement Agreement contemplates, among
3 other things, that this Court will certify a settlement class and grant preliminary
4 approval of the settlement. After preliminary approval and class certification, the
5 Settlement Agreement requires that the Notice Packet will be sent via first class mail to
6 class members within 35 business days of preliminary approval. The Notice will inform
7 potential class members of the terms of the Settlement Agreement, their right to dispute
8 the estimated settlement payment amount, their right to opt out of the class, their right to
9 object to the settlement, and their right to be heard at the final hearing on the fairness of
10 the settlement. A true and correct copy of the Notice of Class Action Settlement is
11 attached hereto as Exhibit A to the executed Agreement, Exhibit 1.

12 22. For each member of the Class, they will be provided an individualized
13 Notice form that will include the number of shifts worked during the class period and
14 the number of credits which form the basis for determining each individual claimant's
15 share of the settlement proceeds. In addition, each Notice will also include each class
16 member's expected share of the settlement.

17 23. The Notice advises each class member that they have three (3) options.
18 Those options are: (1) do nothing and receive payment; (2) request exclusion in order to
19 be excluded from the settlement; or (3) object to the proposed settlement by filing a
20 written objection and appearing at the Motion for Final Approval hearing. The Notice
21 also explains how to file a dispute regarding the estimated settlement payment amount,
22 the number of Qualifying Shifts, or the applicable credits.

23 24. The parties are confident that this notice by mailing to the last known
24 address and to more recent addresses obtained through reasonable investigation is the
25 best means available to reach class members.

26 25. The Settlement Notice and dispute form will be mailed by First Class Mail,
27 with postage prepaid, to each Settlement Class Member at his or her last-known address
28 maintained in Defendants' employment records. Any Settlement Notice returned as

1 undelivered shall be sent to the forwarding address affixed thereto, if any. If no
2 forwarding address is provided for a Settlement Notice that is returned as undelivered,
3 CAC will use a computer search method to locate a current address. If no current
4 address is located, a notice will be sent via electronic mail if an email address is
5 available for the class member. If no email address is available, the Settlement Notice
6 for that individual will be deemed undeliverable. Any amounts owed to members of the
7 class who cannot be located will be awarded *cy pres* to Loyola Law School's Workers'
8 Rights Clinic.

9 26. The Settlement Agreement provides the following method for Notice to be
10 provided to the Settlement Class Members: Within 10 business days following receipt
11 of the order from this Court granting preliminary approval, Defendants will provide the
12 Claims Administrator, CAC, with information regarding class members. Within 14
13 calendar days after receiving the above information from Defendants, the Claims
14 Administrator will mail, by first-class U.S. mail, the Notice to all class members.
15 Before the mailing, the Administrator will run the addresses through the U.S. Postal
16 Service's Change of Address Database. All Class Members who do not file a timely
17 Request for Exclusion will participate in the allocation of the Settlement and will be
18 sent a check for their allocation of the Settlement.

19 27. **The Agreement Was Reached After Extensive Arms-Length**
20 **Negotiations** –Settlement negotiations in this case were conducted over several months
21 and, at all times, were adversarial, non-collusive, in good faith, and at arms' length.
22 Both during and after the mediations, the Parties continued to exchange written
23 proposals and discuss settlement terms through their counsel. Class Counsel sought and
24 obtained input from the Named Plaintiffs in this case regarding the terms of a proposed
25 settlement

26 28. The settlement provides for the payment of \$4,391,585. Based on my
27 assessment of damages, including review of timecard and payroll data encompassing all
28 shifts during the class period, the settlement represents 56% of the damages incurred

1 during the class period. This settlement falls within the range of reasonable approval.

2 29. **Experience of Counsel** - Class Counsel, who have many years of
3 experience in class action and wage and hour law, recommend the proposed settlement
4 and believe that it is in the best interests of the Settlement Class. The qualifications of
5 Gilbert & Sackman, A Law Corporation are set forth separately in the Declaration of
6 Joshua Young.

7 30. My firm, Hadsell Stormer Renick & Dai, LLP has substantial litigation
8 experience in wage and hour class actions, and are fully familiar with the legal and
9 factual issues in this case, having handled dozens of wage and hour class actions as well
10 as other types of class action and complex litigation. I specialize in complex cases and
11 class action litigation, including wage and hour, antitrust, employment, civil rights and
12 public interest litigation. I am a graduate of Southwestern School of Law and have been
13 specializing in complex litigation since 1995, first with Hadsell & Stormer, Inc., and
14 from January 1, 2000 until December 31, 2007 with the Law Offices of Randy Renick.
15 Since January 1, 2008, I have been a partner with Hadsell Stormer Keeny Richardson &
16 Renick, LLP, and its successors Hadsell Stormer Richardson & Renick, LLP and
17 Hadsell Stormer & Renick, LLP. I was selected as a “Rising Star” by the Los Angeles
18 Magazine and Law & Politics Magazine for 2004 and have also been selected as a
19 “Super Lawyer” by Los Angeles Magazine and Law & Politics Magazine for the last
20 eight years. I have been one of only a few plaintiff-side employment lawyers selected
21 for inclusion on the “Best Lawyers in America” list each year since 2007. My C.V. is
22 attached hereto as Exhibit 6.

23 31. I am regularly asked to give lectures regarding public interest and class
24 action litigation to lawyers, law students and public interest organizations, including by
25 the following organizations: The University of California at Los Angeles School of
26 Law; the State Bar of California Labor and Employment Section; the Los Angeles
27 County Bar Labor and Employment Section; The Coalition Against Slavery and
28 Trafficking; and the Western Trial Lawyers Association.

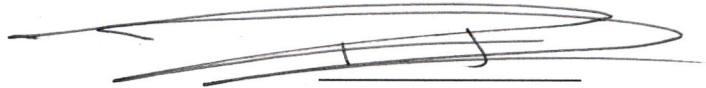
1 32. Cornelia Dai is a partner with Hadsell Stormer & Renick, LLP, and was
2 formerly an associate with Hadsell & Stormer, Inc. Ms. Dai’s practice specializes in
3 wage and hour class actions, individual employment cases, and other civil rights and
4 international human rights cases. In 2008, she and her co-counsel obtained a judgment
5 of more than \$5.1 million in a class action involving violations of overtime and meal
6 and rest break laws in Wang v. Chinese Daily News. Ms. Dai was also one of the
7 plaintiffs' counsel in South Central Farmers Feeding Families v. City of Los Angeles, a
8 case brought on behalf of over 300 low-income families in a struggle to preserve land
9 for a much-needed urban community garden in South Los Angeles. In addition, she was
10 one of the Doe plaintiffs’ counsel in the state litigation of the international human rights
11 case Doe v. Unocal, which involved human rights abuses by a large oil company against
12 Burmese villagers.

13 33. Ms. Dai has been listed in Southern California Super Lawyers® – Rising
14 Stars edition, published by Los Angeles Magazine and Law & Politics Magazine, each
15 year since 2005. She was featured in the July 2007 issue of Southern California Super
16 Lawyers® - Rising Stars edition, in an article entitled “For Abusive Employers, The Dai
17 Has Been Cast.” Ms. Dai was selected for inclusion in the Los Angeles Daily Journal’s
18 Top Labor & Employment Lawyers list in 2011. She was also selected for inclusion in
19 the 2012, 2013 and 2014 editions of The Best Lawyers in America for the practice area
20 of Employment Law. Ms. Dai currently sits on the Executive Committee of the Labor
21 and Employment Law section of the Los Angeles County Bar Association and the
22 Executive Advisory Council of Asian Americans Advancing Justice, Los Angeles
23 (formerly APALC). She is a 1995 graduate of U.C. Berkeley, with a Bachelor of Arts
24 degree in Sociology. She earned her Juris Doctorate at U.S.C. Law School in 1999.

25 34. Elizabeth Song is an associate with Hadsell Stormer Renick & Dai LLP.
26 Previously, Ms. Song served as a public interest fellow at Public Counsel’s Opportunity
27 Under Law project. Ms. Song is a 2014 graduate of the Yale Law School, and a former
28 law clerk to the Honorable Dean D. Pregerson of the U.S. District Court for the Central

1 District of California and the Honorable Milan D. Smith of the U.S. Court of Appeals
2 for the Ninth Circuit.

3 I declare under penalty of perjury pursuant to the laws of the United States and
4 the State of California that the foregoing is true and correct and that this declaration was
5 executed on March 16, 2020, at Los Angeles, California.

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8 Randy Renick
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