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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
25 Defendants.
26
27
28

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

Assigned to Hon. Michael W. Fitzgerald

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT
AGREEMENT**

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

Honorable Michael W. Fitzgerald

[PROPOSED] ORDER

1
2 On September 18, 2018, Plaintiffs filed their complaint against Defendants in
3 *Michelle Kendig et al., v. ExxonMobil Oil Corp.; ExxonMobil Pipeline Company; PBF*
4 *Energy Limited; Torrance Refining Company, LLC* in the Los Angeles Superior Court
5 (the “Complaint” in the “Class Action”). The Complaint alleged the following causes
6 of action: (1) Failure to authorize and permit duty free rest periods; (2) failure to furnish
7 accurate wage statements; (3) the California Private Attorneys General Act; and (4)
8 unfair competition. Plaintiffs sought unpaid wages, statutory penalties, restitution,
9 attorneys’ fees and costs, interest, and injunctive and declaratory relief for the time
10 period from September 18, 2014 to the present.

11 Following an extensive investigation and arm’s-length and good-faith
12 negotiations during a mediation with T. Warren Jackson, Esq., on August 23, 2019, the
13 parties reached a tentative settlement agreement, which was subsequently reduced to
14 writing (the Joint Stipulation of Settlement, hereinafter “Stipulation” or “Settlement”)
15 and has been filed with this Court.

16 The Plaintiffs move for this Court to:

- 17 1. Preliminarily approve the class action settlement for \$4,391,585;
- 18 2. Preliminarily and conditionally certify the class for purposes of settlement;
- 19 3. Preliminarily appoint Plaintiffs Michelle Kendig and Jim Kendig as class
20 representatives for purposes of settlement;
- 21 4. Preliminarily appoint Hadsell Stormer Renick & Dai LLP and Gilbert &
22 Sackman, A Law Corporation, as class counsel for purposes of settlement;
- 23 5. Preliminarily approve the application for payment to class counsel of
24 reasonable attorneys’ fees of up to \$1,097,896 (25% of the common fund) and
25 reasonable costs up to \$30,000;
- 26 6. Preliminarily approve the payment of an “incentive award” in the amount
27 of \$7,500 to each of the two class representatives;
- 28 7. Approve as to form and content the Proposed Notice of Class Action

1 Settlement;

2 8. Direct that the Notice of Class Action Settlement be mailed to the
3 Settlement Class members; and

4 9. Schedule a fairness hearing on the question of whether the proposed
5 settlement should be finally approved as fair, reasonable, and adequate as to the
6 members of the Settlement Class.

7 That motion came on regularly for hearing before this Court on April 13, 2020, at
8 10:00 a.m., in Courtroom 5A of the Central District of California, First Street
9 Courthouse.

10 The Court, having received and fully considered Plaintiffs' notice, motion and
11 memorandum of points and authorities, the Settlement, the proposed Settlement
12 Documents, and the oral argument presented to the Court, and in recognition of the
13 Court's duty to make a preliminary determination as to the reasonableness of any
14 proposed class-action settlement, and to conduct a fairness hearing as to the good faith,
15 fairness, adequacy and reasonableness of any proposed settlement, **HEREBY ORDERS**
16 **and MAKES DETERMINATIONS** as follows:

17 1. All defined terms contained herein shall have the same meaning as set forth
18 in the Stipulation executed by the Parties and filed with this Court.

19 2. The Court finds that certification of the following class for purposes of
20 settlement is appropriate: All current and former non-exempt hourly employees holding
21 an Operator position while employed by ExxonMobil Oil Corporation, ExxonMobil
22 Pipeline Company, PBF Energy Limited, and/or Torrance Refining Company LLC, or
23 any of their affiliates, working at the Torrance refinery, distribution and pipeline
24 facilities in the state of California, County of Los Angeles, at any time during the time
25 period beginning September 18, 2014 and ending on the date of Preliminary Approval.

26 3. The Court appoints Plaintiffs Michelle Kendig and Jim Kendig as class
27 representatives for purposes of settlement;

28 4. The Court appoints Hadsell Stormer Renick & Dai, LLP and Gilbert &

1 Sackman, A Law Corporation, as class counsel for purposes of settlement;

2 5. Federal Rule of Civil Procedure 23(e) requires court approval of a class
3 action settlement. Approval is a two-step process under Rule 23(e). “[T]he Court first
4 determines whether a proposed class action settlement deserves preliminary approval
5 and then, after notice is given to class members, whether final approval is warranted.”
6 *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015)(internal citations omitted); *see*
7 *also* Manual for Complex Litigation (Fourth) § 21.632 (courts “must make a
8 preliminary determination on the fairness, reasonableness, and adequacy of the
9 settlement terms and must direct the preparation of notice of the certification, proposed
10 settlement, and date of the final fairness hearing.”).

11 Preliminary approval of a settlement is appropriate when the settlement: (1) falls
12 within the range of possible approval; (2) appears to be the product of serious, informed,
13 non-collusive negotiations; (3) does not improperly grant preferential treatment to class
14 representatives or segments of the class; and (4) has no obvious deficiencies. *In re*
15 *Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). “Closer
16 scrutiny is reserved for the final approval hearing.” *Harris v. Vector Mktg. Corp.*, No.
17 C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011).

18 6. The Court has reviewed the Settlement and the proposed Settlement
19 Documents, which were separately lodged and are incorporated herein by reference.
20 The Court finds on a preliminary basis that the Agreement appears to be within the
21 range of reasonableness of a settlement which could ultimately be given final approval
22 by this Court. It appears to the Court on a preliminary basis that the settlement amount
23 is fair and reasonable to all potential class members when balanced against the probable
24 outcome of further litigation relating to liability and damages issues. Plaintiffs have
25 asserted violations of California labor and unfair competition laws. Defendant agrees to
26 a class settlement in the interest of compromising and resolving the Action. The parties
27 recognize the risk involved in prosecuting and defending the Action including
28 significant delay, defenses asserted by Defendant, and further potential appellate issues.

1 7. It further appears that the proposed Settlement has been reached as the
2 result of intensive, serious and non-collusive arm’s-length negotiations. It further
3 appears that extensive investigation and research has been conducted such that counsel
4 for the Parties at this time are able to reasonably evaluate their respective positions.
5 Class Counsel have significant experience in wage and hour class actions. The
6 proposed Settlement was reached through extensive negotiations and with the
7 involvement of an experienced mediator, T. Warren Jackson, Esq., of Signature
8 Resolution.

9 8. It further appears that the proposed Settlement does not improperly grant
10 preferential treatment to class representatives and has no obvious deficiencies.

11 9. In connection with its preliminary approval of the Settlement, the Court
12 preliminarily approves the application for payment to class counsel of reasonable
13 attorneys’ fees of up to \$1,097,896 (25% of the common fund) and reasonable costs up
14 to \$30,000.

15 10. In connection with its preliminary approval of the Settlement, the Court
16 preliminarily approves the payment of an “incentive award” in the amount of \$7,500 to
17 each of the two class representatives.

18 11. In connection with its preliminary approval of the Settlement, the Court
19 appoints CAC Services Group, LLC, of Eden Prairie, Minnesota, to act as the Claims
20 Administrator who will administer the Settlement according to the terms of the
21 Stipulation, as approved by this Court.

22 **APPROVAL OF DISTRIBUTION OF THE NOTICE OF SETTLEMENT**

23 12. Rule 23(e) provides that a court “must direct notice in a reasonable manner
24 to all class members who would be bound by” a proposed class action settlement. Fed.
25 R. Civ. Pro. 23(e)(1). This Court finds the proposed Notice of Settlement, which is
26 attached hereto as Exhibit 1, fairly and adequately advises the potential class members
27 of the terms of the proposed Settlement and the claims process for the class members to
28 obtain the benefits available thereunder, as well as the right of class members to opt out

1 of the class, to challenge the number of shifts reported by Defendant from its records, to
2 file documentation in objection to the proposed Settlement, and to appear at the Final
3 Approval Hearing to be conducted at the date set forth below. The Court further finds
4 that Notice of Settlement and proposed distribution of such notice by first-class mail to
5 each identified class member at his or her last known address comports with all
6 constitutional requirements, including those of due process.

7 13. Accordingly, good cause appearing, the Court hereby approves the
8 proposed Notice of Settlement and orders the Class Administrator to distribute the
9 Settlement Documents, in the manner and pursuant to the procedures described in the
10 Settlement.

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

17 **FINAL APPROVAL HEARING AND SCHEDULE**

18 15. The Court hereby grants the Plaintiffs' motion to set a settlement hearing
19 for final approval of the Settlement and orders the following schedule of dates for
20 further proceedings:

- 21 a. Mailing of Settlement Documents to the class shall be completed on or
22 before May 11, 2020 (10 business days plus 14 calendar days after the
23 April 13, 2020, Motion for Preliminary Approval Hearing);
- 24 b. Posting of Plaintiffs' Motion for Attorney's Fees and Costs on the Claims
25 Administrator's website by May 27, 2020 (29 days prior to the
26 Objection/Opt-Out deadline); and
- 27 c. The deadline for class members to file and serve objections and requests
28 for exclusion shall be June 25, 2020 (45 calendar days from the mailing of

1 the Settlement Documents).

2 16. The Final Approval Hearing will be held on July 13, 2020, at 10:00 a.m. in
3 the Courtroom of United States District Court Judge Michael W. Fitzgerald. Members
4 of the class who object to the proposed Settlement may appear and present such
5 objections at the Fairness Hearing in person or by counsel. All written objections and
6 supporting papers must be filed or postmarked no later than the deadline set forth above.

7 17. Plaintiffs shall file a memorandum of points and authorities in support of
8 final approval of the Settlement two weeks prior to the hearing.

9 18. IT IS FURTHER ORDERED that, if for any reason the Court does not
10 grant final approval of the Settlement, or the Settlement otherwise does not become
11 effective in accordance with the terms of the Stipulation, this Order shall be rendered
12 null and void and shall be vacated, and the Parties shall revert to their respective
13 positions as of before entering into the Stipulation all evidence and proceedings held in
14 connection with the Settlement shall be without prejudice to the status quo ante rights of
15 the Parties to the Action as more specifically set forth in the Settlement.

16 **IT IS SO ORDERED.**

17
18
19 DATED: _____

HON. MICHAEL W. FITZGERALD
United States District Judge