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Attorneys for Plaintiff, ROBERT SCHAFFINO,
on behalf of himself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

ROBERT SCHAFFINO, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

M.O. DION & SONS, INC., a California
corporation; AMBER RESOURCES, LLC., a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV38023

[Assigned to the Hon. Richard J. Burdige in
Dept. 37]

CLASS ACTION

**JOINT STIPULATION RE: CLASS
ACTION AND REPRESENTATIVE
ACTION SETTLEMENT**

Action Filed: October 5, 2020
Trial Date: None Set

This Joint Stipulation re: Class Action and Representative Action Settlement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by, between and among plaintiff Robert Schaffino (“Plaintiff”), individually and on behalf of the Settlement Class, as defined below, on the one hand; and defendants M.O. Dion & Sons, Inc., (“Dion”), and Amber Resources, LLC dba Sawyer Petroleum (“Sawyer”, collectively “Defendants”), on the other hand, in the lawsuit entitled *Robert Schaffino v. M.O. Dion & Sons and Amber Resources, LLC, et al.*, filed in the Los Angeles County Superior Court, Case No. 20STCV38023. Plaintiff and Defendants shall be, at times, collectively referred to as the “Parties.” This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge and settle the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1 **DEFINITIONS**

2 A. “**Action**” means *Robert Schaffino v. M.O. Dion & Sons and Amber Resources,*
3 *LLC, et al.*, filed in Los Angeles County Superior Court, Case No. 20STCV38023.

4 B. “**Aggrieved Employees**” means Class Members working for Defendants during
5 the PAGA Period as non-exempt, hourly-paid employees.

6 C. “**Class Counsel**” means: David D. Bibiyan, Diego Aviles, and Sara Ehsani-Nia
7 of Bibiyan Law Group, P.C. The term “Class Counsel” shall be used synonymously with the
8 term “Plaintiff’s Counsel.”

9 D. “**Class Period**” means the period from July 30, 2019, through October 25, 2021.

10 E. “**Court**” means the Superior Court of the State of California for the County of
11 Los Angeles.

12 F. “**Defendants**” shall refer to defendants M.O. Dion & Sons, Inc., and Amber
13 Resources, LLC dba Sawyer Petroleum.

14 G. “**Effective Final Settlement Date**” means the effective date of this Settlement or
15 Final Settlement Date shall be: (1) the date of final affirmation of the Court’s signed Order and
16 Judgment granting final approval of this Settlement (“Final Approval”) from any appeal, the
17 expiration of the time for, or the denial of, a petition to review the Final Approval, or if review
18 is granted, the date of final affirmation of the Final Approval following review pursuant to that
19 grant; or (2) the date of final dismissal of any appeal from the Final Approval or the final
20 dismissal of any proceeding to review the Final Approval, provided that the Final Approval is
21 affirmed and/or not reversed in any part; or (3) if no class members intervene but objections are
22 filed, the expiration date of the time for the filing or noticing of any appeal from the Court’s Final
23 Approval of the Settlement, as determined under Rule 8.104(a)(3) of the California Rules of
24 Court or (4) if no class members intervene and there are no objections, the date the Court enters
25 the Final Approval Order and Final Judgment.

26 H. “**Employer Taxes**” means employer-funded taxes and contributions imposed on
27 the wage portions of the Individual Settlement Payments under the Federal Insurance
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Contributions Act, the Federal Unemployment Tax Act, and any similar state and federal taxes and contributions required of employers, such as for unemployment insurance.

I. “General Release” means the general release of all claims brought by Plaintiff in the Action, which is in addition to his release of claims as a Participating Class Member and Aggrieved Employee.

J. “Gross Settlement Amount” means a non-reversionary fund in the sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00),¹ which shall be paid by Defendants twenty-one (21) days after the Effective Final Settlement Date, and from which all payments for the Individual Settlement Payments to Participating Class Members, Individual PAGA Payments to Aggrieved Employees and the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses to Class Counsel, Settlement Administration Costs, a Service Award to Plaintiff, and the payment made to the Labor and Workforce Development Agency (“LWDA”) for resolution of Plaintiff’s cause of action for civil penalties under the Labor Code Private Attorneys’ General Act, codified at Labor Code Section 2698, *et seq.* (“PAGA”), interest and certain taxes shall be paid. It expressly excludes Employer Taxes, which shall be paid by Defendants separate and apart from the Gross Settlement Amount and Plaintiff’s Individual Settlement Payment from Defendants totaling Fifteen Thousand Two Hundred Seventy-Five Dollars and Zero Cents (\$15,275.00).

K. “Individual PAGA Payment” means a payment made to an Aggrieved Employee of his or her share of the PAGA Payment, which may be in addition to his or her Individual Settlement Share.

L. “Individual Settlement Payment” means a payment to a Participating Class Member of his or her net share of the Net Settlement Amount, excluding any PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

M. “Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of

¹ As the same may be increased in accordance with Paragraph 16, below.

1 Workweeks that he or she worked as a Participating Class Member during the Class Period if he
2 or she does not submit a timely and valid Request for Exclusion, excluding any PAGA Payment
3 to which he or she may be entitled if he or she is also an Aggrieved Employee.

4 **N. “LWDA Payment”** means the payment to the LWDA for its seventy-five percent
5 (75%) share of the total amount allocated toward penalties under the PAGA, which is to be paid
6 from the Gross Settlement Amount. The Parties have agreed that Twenty Thousand Dollars and
7 Zero Cents (\$20,000.00) shall be allocated toward PAGA penalties, of which Fifteen Thousand
8 Dollars and Zero Cents (\$15,000.00) will be paid to the LWDA (*i.e.*, the LWDA Payment) and
9 Five Thousand Dollars and Zero Cents (\$5,000.00) will remain a part of the Net Settlement
10 Amount for payment to Participating Class Members on a *pro rata* basis

11 **O. “Net Settlement Amount”** means the portion of the Gross Settlement Amount
12 that is available for distribution to Participating Class Members after deductions for the Court-
13 approved allocations for Settlement Administration Costs, a Service Award to Plaintiff, an award
14 of attorneys’ fees, reimbursement of litigation costs and expenses to Class Counsel, the LWDA
15 Payment, and the PAGA Payments.

16 **P. “Operative Complaint” or “Complaint”** means collectively the Complaint filed
17 with the Los Angeles Superior Court on October 5, 2020, the First Amended Complaint to be
18 filed with the Court pursuant to this Agreement only, which adds individual and class allegations
19 to the Action for the duration of the PAGA Period, and Plaintiff Robert Schaffino’s written notice
20 to the Labor and Workforce Development Agency, dated July 30, 2019. Defendants’ agreement
21 in relation to Plaintiff filing a First Amended Complaint is contingent upon the Preliminary and
22 Final approval and certification of the Settlement Class only for purposes of settlement. If the
23 Settlement does not become final, for whatever reason, the fact that Defendants were willing to
24 stipulate to Plaintiff filing a First Amended Complaint shall have no bearing on and shall not be
25 admissible or used in any way in connection with, whether Plaintiff has standing to file a class
26 action in light of arbitration agreements signed by Settlement Class Members, including Plaintiff.
27 Defendants expressly reserve the right to file a demurrer, a motion to compel arbitration and/or
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any other applicable motion in response to the First Amended Complaint should there be no Effective Final Settlement.

Q. “PAGA Payment” is the \$5,000 payment available to Aggrieved Employees which would be in addition to their Individual Settlement Share.

R. “PAGA Period” means the period from July 30, 2019 through October 25, 2021.

S. “Participating Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion.

T. “Participating Class Member’s Individual Settlement Share” means the gross amount of the Net Settlement Amount that a Participating Class Member is eligible to receive based on the number of Workweeks that he or she worked as a Participating Class Member during the Class Period once all opt-outs have been factored in, excluding any Individual PAGA Payment to which he or she may be entitled if he or she is also an Aggrieved Employee.

U. “Parties” shall refer to Plaintiff and Defendants collectively.

V. “Plaintiff” shall refer to Plaintiff Robert Schaffino and shall be used synonymously with the term Named Plaintiff and/or Class Representative.

W. “Plaintiff’s Individual Settlement Payment” means the payment by Defendants to Plaintiff in accordance with a separate individual settlement agreement entered into between the Parties unrelated to any Service Award approved by the Court herein. Defendants shall pay Plaintiff’s Individual Settlement Payment within five (5) days after both the Effective Final Settlement Date and Plaintiff’s resignation from employment with Sawyer, whichever date is later.

X. “Preliminary Approval Date” means the date on which the Court enters an Order granting preliminary approval of the Settlement.

Y. “Released Parties” shall mean Defendants, and each of their past, present, and future respective subsidiaries, dba’s, affiliates, PEOs, staffing agencies, parents, predecessors, successors, divisions, joint ventures, investors and assigns, and their respective current and former employees, managing agents, partners, servants, consultants, agents, directors, officers,

shareholders, members, principals, independent contractors, representatives, insurers, co-insurers, reinsurers, attorneys, and personal or legal representatives.

Z. “Response Deadline” means the deadline for Settlement Class Members to mail any Requests for Exclusion, Objections, or Workweek Disputes to the Settlement Administrator, which is forty-five (45) calendar days from the date that the Class Notice is first mailed in English and Spanish by the Settlement Administrator unless a Class Member’s notice is re-mailed. In such an instance, the Class Member shall have fifteen (15) days from the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the postmark shall be the exclusive means for determining whether a Request for Exclusion, Objection, or Workweek Dispute was submitted by the Response Deadline.

AA. “Request for Exclusion” means a written request to be excluded from the Settlement Class pursuant to Section 9.C below.

BB. “Service Award” means monetary amount to be paid to Plaintiff of up to Seven Thousand, Five Hundred Dollars and Zero Cents (\$7,500) which, subject to Court approval, will be paid out of the Gross Settlement Amount.

CC. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administration of the Settlement, including, but not limited to, translating the Class Notice to Spanish, the distribution of the Class Notice to the Settlement Class in English and Spanish, calculating Participating Class Member’s Individual Settlement Shares and Individual Settlement Payments and associated taxes and withholdings, providing declarations, generating Participating Class Member’s Individual Settlement Payment checks and related tax reporting forms, doing administrative work related to unclaimed checks, transmitting payment to Class Counsel for the Court-approved amounts for attorneys’ fees and reimbursement of litigation costs and expenses, to Plaintiff for his Service Award, to the LWDA from the LWDA Payment, to Aggrieved Employees for their Individual PAGA Payments, providing weekly reports of opt-outs, objections and related information, and any other actions of the Settlement Administrator as set forth in this Agreement, all pursuant to the terms of this Agreement. The

Settlement Administration Costs are estimated not to exceed \$10,000. If the actual amount of the Settlement Administration Costs is less than \$10,000, the difference between \$10,000 and the actual Settlement Administration Costs shall be a part of the Net Settlement Amount. If the Settlement Administration Costs exceed \$10,000 then such excess will be paid solely from the Gross Settlement Amount and Defendants will not be responsible for paying any additional funds in order to pay these additional costs.

DD. “Settlement Administrator” means the Third-Party Administrator mutually chosen by Plaintiff and Defendants that will be responsible for the administration of the Settlement including, without limitation, translating the Class Notice in Spanish, the distribution of the Individual Settlement Payments to be made by Defendants from the Gross Settlement Amount and related matters under this Agreement.

EE. “Settlement Class”, “Settlement Class Members” or “Class Members” means all persons currently or formerly employed by Defendants M.O. Dion & Sons Inc. and/or Amber Resources, LLC dba Sawyer Petroleum, either directly or through any subsidiary, staffing agency, or professional employer organization, as a non-exempt, hourly-paid employee in the state of California during the Class Period.

FF. “Workweek” means the number of workweeks that a Participating Class Member was employed by Defendants in a non-exempt, hourly position in California during the Class Period based on hire dates, re-hire dates, and termination dates.

2. BACKGROUND

A. On or about July 30, 2020, Plaintiff filed with the LWDA and served on Defendants a notice under Labor Code section 2699.3 (the “PAGA Notice”) stating Plaintiff intended to serve as a proxy of the LWDA to recover civil penalties for Aggrieved Employees.

B. On or about October 5, 2020, when 65 days passed without any communication from the LWDA, Plaintiff filed an action against Defendants in the Superior Court of California for the County of Los Angeles, Case Number 20STCV38023. Plaintiff, as a proxy of the LWDA, sought PAGA civil penalties from Defendants under Labor Code sections 210, 226.3, 558,

1 1197.1 and 2699 for the Labor Code violations set out in the PAGA Notice for himself and other
2 Aggrieved Employees.

3 **C.** Shortly after the filing of this Action, the Parties agreed to exchange informal
4 discovery and attend an early mediation. Prior to mediation, Class Counsel was provided with,
5 among other things: (1) time and payroll records for 25% of the estimated 428 Aggrieved
6 Employees working for Defendants through mediation; (2) data points that would allow Plaintiff
7 to determine the number of workweeks worked during the Class Period, the number of pay
8 periods worked during the PAGA Period, and the number of Class Members that worked during
9 the relevant statutory periods for waiting time penalties and wage statement violations; (3)
10 relevant policy documents and employee handbooks; and (4) the entirety of Plaintiff's personnel
11 file, as well as his time and payroll records.

12 **D.** On September 13, 2021, the Parties participated in a mediation before Marc Feder,
13 Esq., a well-regarded mediator experienced in mediating complex labor and employment civil
14 disputes. With the aid of the mediator's evaluation, the Parties reached the Settlement to resolve
15 the Action on a class and representative basis.

16 **E.** As solely part of the Settlement, the Parties agreed that they would stipulate to
17 Plaintiff filing a First Amended Complaint in the Action to incorporate class claims for the Class
18 Period. As part and parcel thereto, Plaintiff will allege that during the Class Period, with respect
19 to himself and the Settlement Class Members, Defendants, *inter alia*, failed to pay the Class
20 Members' minimum and overtime wages for all hours worked and/or recorded; failed to provide
21 compliant meal and rest periods or compensation and associated premium payments in lieu
22 thereof; failed to issue compliant and accurate itemized wage statements; failed to timely pay all
23 wages due at the time of termination or resignation; failed to reimburse employees for necessary
24 work-related expenses; failure to furnish employees with documents signed to obtain or hold
25 employment; and engaged in unfair competition due to the alleged Labor Code Violations.

26 **F.** Class Counsel has conducted significant investigation of the law and facts relating
27 to the claims asserted or that will be formally asserted in the Action and have concluded that that
28 the Settlement set forth herein is fair, reasonable, adequate, and in the best interests of the

1 Settlement Class taking into account the sharply contested issues involved, the expense and time
2 necessary to litigate the Action through trial and any appeals, the risks and costs of further
3 litigation of the Action, the risk of an adverse outcome, the uncertainties of complex litigation,
4 the purported arbitration agreements signed by putative class members, including the Named
5 Plaintiff, the information learned through informal discovery regarding Plaintiff's allegations,
6 and the substantial benefits to be received by the Settlement Class Members.

7 **G.** Defendants have concluded that, because of the substantial expense of defending
8 against the Action, the length of time necessary to resolve the issues presented herein, the
9 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
10 interests to accept the terms of this Agreement. Defendants deny each of the allegations and
11 claims asserted against them in the Action. However, Defendants nevertheless desire to settle the
12 Action for the purpose of avoiding the burden, expense, and uncertainty of continuing litigation
13 and for the purpose of putting to rest the controversies engendered by the Action. Defendants'
14 entering into this Agreement, does not constitute an admission of liability as to any allegation
15 asserted against Defendants in the Action.

16 **H.** This Agreement is intended to and does effectuate the full, final, and complete
17 resolution of all Released Claims of Plaintiff, Aggrieved Employees, and Settlement Class
18 Members, other than those Settlement Class Members who submit a timely and valid Request
19 for Exclusion.

20 **3. JURISDICTION**

21 The Court has jurisdiction over the Parties and the subject matter of the Action. The
22 Action includes claims that, if proven, would authorize the Court to grant relief pursuant to the
23 applicable statutes. After the Effective Final Settlement Date, the Court shall retain jurisdiction
24 over the Parties to enforce the terms of the judgment pursuant to California Rule of Court, rule
25 3.769, subdivision (h).

26 **4. STIPULATION OF CLASS CERTIFICATION**

27 The Parties stipulate to the certification of the Settlement Class under this Agreement for
28 purposes of settlement only. This Stipulation is contingent upon the Preliminary and Final

1 approval and certification of the Settlement Class only for purposes of settlement. If the
2 Settlement does not become final, for whatever reason, the fact that the Parties were willing to
3 stipulate provisionally to certification as part of the Settlement shall have no bearing on and shall
4 not be admissible or used in any way in connection with, the question of whether the Court should
5 certify any claims in a non-settlement context in the Action or in any other lawsuit. Defendant
6 expressly reserves the right to oppose class certification and/or to proactively move to deny class
7 certification should there be no Effective Final Settlement.

8 **5. MOTION FOR PRELIMINARY APPROVAL**

9 With the contingencies stated above under Definition P. “Operative Complaint,” the
10 Parties will stipulate to the filing of a First Amended Complaint in the Action. Plaintiff will
11 thereafter move for an order granting preliminary approval of the Settlement, approving and
12 directing the mailing of the proposed Notice of Class Action Settlement (“Class Notice”) attached
13 hereto as Exhibit “A”, conditionally certifying the Settlement Class for settlement purposes only,
14 and approving the deadlines proposed by the Parties for the submission of Requests for
15 Exclusion, Workweek Disputes, and Objections, the papers in support of Final Approval of the
16 Settlement, and any responses to Objections or opposition papers to the Motion for Final
17 Approval.

18 **6. STATEMENT OF NO ADMISSION**

19 Defendants deny any wrongdoing of any sort and further deny any liability to Plaintiff
20 and the Settlement Class with respect to any claims or allegations asserted in the Action. This
21 Agreement shall not be deemed an admission by Defendants of any claims or allegations asserted
22 in the Action. Except as set forth elsewhere herein, in the event that this Agreement is not
23 approved by the Court, or any appellate court, is terminated, or otherwise fails to be enforceable,
24 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
25 remedies, or defenses in the Action, and Defendants will not be deemed to have waived, limited,
26 or affected in any way any of its objections or defenses in the Action. The Parties shall be restored
27 to their respective positions in the Action prior to the entry of this Settlement.

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1 **7. RELEASE OF CLAIMS**

2 **A. Release by All Participating Class Members.**

3 Upon the Effective Final Settlement Date and payment by Defendants to the Settlement
4 Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate
5 the Settlement, Plaintiff and all Participating Class Members waive, release, and discharge the
6 Released Parties, of all claims against the Released Parties asserted in the Action , or any and all
7 claims that could be asserted against the Released Parties based on the factual allegations in the
8 Action, as follows: For the duration of the Class Period, the release includes: (a) all claims for
9 failure to pay overtime wages; (b) all claims for failure to pay minimum wages; (c) all claims for
10 failure to provide compliant meal and rest periods and associated compensation and/or premium
11 pay; (d) all claims for the failure to timely pay wages; (e) all claims for the failure to timely pay
12 all wages due upon termination or resignation; (f) all claims for non-compliant wage statements;
13 (g) all claims for failure to furnish employees with legally compliant documents to obtain or hold
14 employment; (h) all claims for failure to provide reimbursements for necessary work-related
15 expenses pursuant to Labor Code Section 2802; (i) all claims for failure to maintain and produce
16 accurate payroll and employment records; (k) all claims asserted through California Business &
17 Professions Code § 17200 *et seq.* arising out of the Labor Code violations referenced in the
18 Action; (j) all claims for failure to timely pay wages before separation of employment; and
19 violation of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197,
20 1198.5 and 2802 (the "Class Released Claims"). For Aggrieved Employees, the release includes,
21 for the duration of the PAGA Period, all claims for civil penalties for the Class Released Claims,
22 as well as all claims for civil penalties under PAGA arising out of Labor Code Sections 210,
23 226.3, 558, 1197.1, and 2699 based on the factual allegations and Labor Code sections alleged
24 or that could have been alleged based on the factual allegations to have been violated in the
25 Action, including, without limitation, Labor Code sections 200, 201, 202, 203, 204, 226, 226.7,
26 246, 404, 432, 510, 512, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, 1198.5, 2802 and 2810.5
27 ("PAGA Released Claims"). This release also includes a release from the State of California (to
28 the extent the Plaintiff is permitted to provide such a release for the State of California for the

1 PAGA period) of all PAGA claims alleged in the Operative Complaint which occurred during
2 the PAGA Period. This release expressly excludes all other claims, including claims for vested
3 benefits, wrongful termination, unemployment insurance, disability, social security, workers'
4 compensation, and class claims outside of the Class Period and PAGA claims outside of the
5 PAGA period.

6 **B. General Release.**

7 Plaintiff has agreed to enter into an individual settlement agreement with Defendants for
8 a sum certain, which shall provide for a broad release including a waiver under California Civil
9 Code section 1542 in exchange for Plaintiff's Individual Settlement Payment. This release,
10 waiver and discharge of all claims shall include, but will not be limited to, any and all claims
11 arising out of the Action and the Operative Complaint, as well as additional claims described in
12 the individual settlement agreement. Defendants shall pay Plaintiff's Individual Settlement
13 Payment within five (5) days after both the Effective Final Settlement Date and Plaintiff's
14 resignation from employment with Sawyer, whichever date is later.

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16 **8. SETTLEMENT ADMINISTRATOR**

17 Plaintiff and Defendants, through their respective counsel, have selected Phoenix
18 Settlement Administrators to administer the Settlement, which includes but is not limited to
19 translating the Class Notice to Spanish, distributing and responding to inquiries about the Class
20 Notice and calculating all amounts to be paid from the Gross Settlement Amount. Charges and
21 expenses of the Settlement Administrator, currently estimated to be \$10,000 will be paid from
22 the Gross Settlement Amount. If the actual Settlement Administrator fees are less than \$10,000
23 the difference will remain a part of the Net Settlement Amount. If the Settlement Administration
24 Costs exceed \$10,000, then such excess will be paid solely from the Gross Settlement Amount
25 and Defendants will not be responsible for paying any additional funds in order to pay these
26 additional costs.

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1 **9. NOTICE, WORKWEEK DISPUTE, OBJECTION, AND EXCLUSION PROCESS**

2 **A. Notice to the Settlement Class Members.**

3 (1) Within ten (10) calendar days after the Preliminary Approval Date,
4 Defendants' Counsel shall provide the Settlement Administrator with information with respect
5 to each Settlement Class Member, including his or her: (1) name, last known address(es) and last
6 known telephone number(s) currently in Defendant's possession, custody, or control; (2) Social
7 Security Number in Defendants' possession, custody, or control; and (3) the hire dates and
8 termination, separation, or resignation dates (if applicable) for each Settlement Class Member
9 ("Class List"). The Settlement Administrator shall perform an address search using the United
10 States Postal Service National Change of Address ("NCOA") database and update the addresses
11 contained on the Class List with the newly found addresses, if any. Within seven (7) calendar
12 days of receiving the Class List from Defendants, the Settlement Administrator shall mail the
13 Class Notice in English and Spanish to the Settlement Class Members via first-class regular U.S.
14 Mail using the most current mailing address information available. The Settlement Administrator
15 shall maintain a list with names and all addresses to which notice was given, and digital copies
16 of all the Settlement Administrator's records evidencing the giving of notice to any Settlement
17 Class Member, for at least four (4) years from the Effective Final Settlement Date. Such
18 information shall be available to Class Counsel and Defendant's Counsel upon request.

19 (2) The Class Notice will set forth:

- 20 (a) the Settlement Class Member's estimated payment and the basis
21 for it;
- 22 (b) the information required by California Rule of Court, rule 3.766,
23 subdivision (d);
- 24 (c) the material terms of the Settlement;
- 25 (d) the proposed Settlement Administration Costs;
- 26 (e) the definition of the Settlement Class;
- 27 (f) a statement that the Court has preliminarily approved the
28 Settlement;

- 1 (g) how the Settlement Class Member can obtain additional
2 information, including contact information for Class Counsel;
3 (h) information regarding opt-out and objection procedures;
4 (i) the date and location of the Final Approval Hearing; and
5 (j) that the Settlement Class Member must notify the Settlement
6 Administrator no later than the Response Deadline if the
7 Settlement Class Member disputes the accuracy of the number of
8 Workweek as set forth on his or her Class Notice (“Workweek
9 Dispute”). If a Settlement Class Member fails to timely dispute
10 the number of Workweeks attributed to him or her in conformity
11 with the instructions in the Class Notice, then he or she shall be
12 deemed to have waived any objection to its accuracy and any claim
13 to any additional settlement payment based on different data.

14 (3) If a Class Notice from the initial notice mailing is returned as
15 undeliverable, the Settlement Administrator will attempt to obtain a current address for the
16 Settlement Class Member to whom the returned Class Notice had been mailed, within five (5)
17 calendar days of receipt of the returned Class Notice, by: (1) contacting the Settlement Class
18 Member by phone, if possible, and (2) undertaking skip tracing. If the Settlement Administrator
19 is successful in obtaining a new address, it will promptly re-mail the Class Notice to the
20 Settlement Class Member. Further, any Class Notices that are returned to the Settlement
21 Administrator with a forwarding address before the Response Deadline shall be promptly re-
22 mailed to the forwarding address affixed thereto.

23 (4) No later than seven (7) calendar days from the Response Deadline, the
24 Settlement Administrator shall provide counsel for the Parties with a declaration attesting to the
25 completion of the notice process, including the number of attempts to obtain valid mailing
26 addresses for and re-sending of any returned Class Notices, as well as the identities, number of,
27 and copies of all Requests for Exclusion (opt-outs) and objections/comments received by the
28 Settlement Administrator.

1 **B. Objections.**

2 Only Settlement Class Members who do not opt out of the Settlement (*i.e.*, Participating
3 Class Members) may object to the Settlement. In order for any Settlement Class Member to
4 object to this Settlement in writing, or any term of it, he or she must do so by mailing a written
5 objection to the Settlement Administrator at the address or phone number provided on the Class
6 Notice no later than the Response Deadline. The Settlement Administrator shall email a copy of
7 the Objection forthwith to Class Counsel and Defendant's counsel and attach copies of all
8 Objections to the Declaration it provides Class Counsel, which Class Counsel shall file in support
9 of Plaintiff's Motion for Final Approval. The Objection should set forth in writing: (1) the
10 objector's name; (2) the Objector's address; (3) the last four digits of the Objector's Social
11 Security Number; (4) the Objector's signature; (5) a statement of whether the Objector plans to
12 appear at the Final Approval Hearing; and (6) the reason(s) for the Objection, along with
13 whatever legal authority, if any, the objector asserts in support of the Objection. If a Settlement
14 Class Member objects to the Settlement, the Settlement Class Member will remain a member of
15 the Settlement Class and if the Court approves this Agreement, the Settlement Class Member
16 will be bound by the terms of the Settlement in the same way and to the same extent as a
17 Settlement Class Member who does not object. The date of mailing of the Class Notice to the
18 objecting Settlement Class Member shall be conclusively determined according to the records of
19 the Settlement Administrator. Settlement Class Members need not object in writing to be heard
20 at the Final Approval Hearing; they may object or comment in person at the hearing at their own
21 expense. Class Counsel and Defendant's Counsel may respond to any objection lodged with the
22 Court up to five (5) court days before the Final Approval Hearing.

23 **C. Requesting Exclusion.**

24 Any Settlement Class Member may request exclusion from (*i.e.*, "opt out" of) the
25 Settlement by mailing a written request to be excluded from the Settlement ("Request for
26 Exclusion") to the Settlement Administrator, postmarked on or before the Response Deadline.
27 To be valid, a Request for Exclusion must include: (1) the Class Member's name; (2) the Class
28 Member's Social Security Number; (3) the Class Member's signature; and (4) the following

1 statement: “Please exclude me from the Settlement Class in the *Robert Schaffino v. M.O. Dion*
2 *& Sons and Amber Resources, LLC., et al.* matter” or a statement of similar meaning. The
3 Settlement Administrator shall immediately provide copies of all Requests for Exclusion to Class
4 Counsel and Defendants’ Counsel and shall report the Requests for Exclusions that it receives,
5 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any
6 Settlement Class Member who requests exclusion using this procedure will not be entitled to
7 receive any payment from the Settlement and will not be bound by the Settlement Agreement or
8 have any right to object to, appeal, or comment on the Settlement. Any Settlement Class Member
9 who does not opt out of the Settlement by submitting a timely and valid Request for Exclusion
10 will be bound by all terms of the Settlement, including those pertaining to the Released Claims,
11 as well as any Judgment that may be entered by the Court if Final Approval of the Settlement is
12 granted. A Settlement Class Member cannot submit both a Request for Exclusion and an
13 objection. If a Settlement Class Member submits an objection and a Request for Exclusion, the
14 Request for Exclusion will control and the Objection will be overruled. Settlement Class
15 Members who worked during the PAGA Period that submit a valid Request for Exclusion will
16 still be deemed Aggrieved Employees, will still receive their *pro rata* share of the PAGA
17 Payment, and will be bound by the release of the PAGA Released Claims.

18 **D. Disputes Regarding Settlement Class Members’ Workweek Data.**

19 Each Settlement Class Member will have an opportunity to dispute the number of
20 Workweeks attributed to him or her on his or her Class Notice (“Workweek Dispute”).
21 Settlement Class Members may produce evidence to the Settlement Administrator showing that
22 such information is inaccurate. Any such disputes must be mailed to the Settlement
23 Administrator by the Settlement Class Member, postmarked on or before the Response Deadline.
24 Absent evidence rebutting Defendants’ records, Defendants’ records will be presumed
25 determinative. However, if a Class Member produces evidence to the contrary, the Settlement
26 Administrator shall immediately provide copies of all disputes to Class Counsel and counsel for
27 Defendants and shall immediately attempt to resolve all such disputes directly with relevant
28

1 Settlement Class Member(s) with the assistance of Defendants and Class Counsel. If the dispute
2 cannot be resolved in this manner, the Court shall adjudicate the dispute..

3 **E. Extension of Response Deadline for Remailing**

4 Class Members who are re-mailed a Class Notice shall have fifteen (15) days from the
5 re-mailing, or forty-five (45) calendar days from the date of the initial mailing, whichever is later,
6 in which to postmark a Request for Exclusion, Workweek Dispute or Objection. The date of the
7 postmark shall be the exclusive means for determining whether a Request for Exclusion,
8 objection, or Workweek Dispute was submitted by the Response Deadline.

9 **10. NULLIFICATION OF THE SETTLEMENT AGREEMENT**

10 **A. Defendants' Option to Nullify the Settlement Agreement.** If Settlement Class
11 Members representing more than an aggregate total of ten percent (10%) of the verified workweeks opt
12 out of the Settlement, Defendants, in their sole discretion, shall have the option of nullifying the Settlement
13 Agreement. Defendants shall give written notice to Class Counsel within seven (7) calendar days after
14 the Settlement Administrator informs the Parties that the opt out rate exceeds the aggregate total of ten
15 percent (10%) of the verified workweeks. In such a case, the Parties and any funds to be awarded under
16 this Settlement Agreement shall be returned to their respective statuses as of the date and time
17 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if
18 this Settlement Agreement had not been executed, except that any fees already incurred by the Settlement
19 Administrator shall be paid by Defendants.

20 **B. Nullification of the Settlement Agreement.** In the event: (i) the Court does not enter the
21 Preliminary Approval Order and approve the Released Claims specified herein without requiring material
22 changes to the basic Settlement terms (basic Settlement terms include monetary sums to be paid in the
23 Settlement; the parameters of the Released Claims and the covered Class Period; revisions to the Increase
24 In Workweeks provision contained herein; and revisions to Defendants' Option To Nullify The
25 Settlement Agreement provision contained herein); (ii) the Court does not finally approve the Settlement
26 as provided herein (basic Settlement terms include monetary sums to be paid in the Settlement; the
27 parameters of the Release and the covered Class Period; revisions to the Increase In Workweeks provision
28 contained herein; and revisions to Defendants' Option To Nullify The Settlement Agreement provision

1 contained herein); (iii) Defendants exercises its option to nullify the Settlement Agreement based on an
2 excessive number of opt-outs, as described in the above Section; or (iv) the Settlement does not become
3 final for any other reason (*e.g.*, an objection by the LWDA), this Settlement Agreement shall be null and
4 void. Any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be
5 treated as void from the beginning, and the Stipulations and Recitals contained herein shall be of no force
6 or effect and shall not be treated as an admission by the Parties or their counsel. In such a case, the Parties
7 shall be returned to their respective statuses as of the date and time immediately prior to the execution of
8 this Settlement Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement
9 had not been executed.

10 **11. INDIVIDUAL SETTLEMENT PAYMENTS TO PARTICIPATING CLASS**

11 **MEMBERS**

12 Individual Settlement Payments will be calculated and distributed to Participating Class
13 Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class
14 Members' respective number of Workweeks during the Class Period. Individual PAGA
15 Payments to Aggrieved Employees will be calculated and distributed to Aggrieved Employees
16 from the PAGA Payment on a *pro rata* basis based on Aggrieved Employees' respective
17 number of Workweeks during the PAGA Period. Specific calculations of the Participating
18 Class Members' Individual Settlement Shares and Individual PAGA Payments to Aggrieved
19 Employees will be made as follows:

20 A. The Settlement Administrator will determine the total number of Workweeks
21 worked by each Participating Class Member during the Class Period ("Class Member's
22 Workweeks"), as well as the aggregate number of Workweeks worked by all Participating
23 Class Members during the Class Period ("Class Workweeks"). Additionally, the Settlement
24 Administrator will determine the total number of Workweeks worked by each Aggrieved
25 Employee during the PAGA Period ("Aggrieved Employee's Workweeks"), as well as the
26 aggregate number of Workweeks worked by all Aggrieved Employees during the PAGA Period
27 ("PAGA Workweeks").

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1 **B.** To determine each Participating Class Member's Individual Settlement Share,
2 the Settlement Administrator will use the following formula: Individual Settlement Share =
3 (Participating Class Member's Workweeks ÷ Class Workweeks) × Net Settlement Amount.

4 **C.** To determine each Aggrieved Employee's Individual PAGA Payment, the
5 Settlement Administrator will use the following formula: Aggrieved Employee's Individual
6 PAGA Payment = (Aggrieved Employee's Workweeks ÷ PAGA Workweeks) x \$5,000.00.

7 **D.** Individual Settlement Payments and Individual PAGA Payments shall be paid
8 to Participating Class Members and/or Aggrieved Employees by way of check. When a
9 Participating Class Member is also an Aggrieved Employee, one check may be issued that
10 aggregates both the Individual Settlement Payment and the Individual PAGA Payment.

11 **12. DISTRIBUTION OF PAYMENTS**

12 **A. Distribution of Individual Settlement Payments and Individual PAGA**
13 **Payments**

14 Participating Class Members will receive an Individual Settlement Payment and
15 Aggrieved Employees will receive an Individual PAGA Payment. Individual Settlement
16 Payment and Individual PAGA Payment checks shall remain valid and negotiable for one
17 hundred and eighty (180) calendar days after the date of their issuance. Within seven (7)
18 calendar days after expiration of the 180-day period, checks for such payments shall be
19 canceled and funds associated with such checks shall be considered unpaid, unclaimed or
20 abandoned cash residue pursuant to Code of Civil Procedure section 384 ("Unpaid
21 Residue"). The Unpaid Residue plus accrued interest, if any, as provided in Code of Civil
22 Procedure section 384, shall be transmitted to the California Controller's Unclaimed Property
23 Fund. The Settlement Administrator shall prepare a report regarding the distribution plan
24 pursuant to Code of Civil Procedure section 384 and the report shall be presented to the Court
25 by Class Counsel along with a proposed amended judgment that is consistent with the
26 provisions of Code of Civil Procedure section 384.

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1 **B. Funding of Settlement.**

2 Defendants shall within twenty-one (21) calendar days after the Effective Final
3 Settlement Date pay the Gross Settlement Amount of Three Hundred Thousand Dollars and Zero
4 Cents (\$300,000.00), unless the same is escalated pursuant to Paragraph 17 below (and in such
5 event, the escalated amount) to the Settlement Administrator in addition to Employer's Taxes.
6 All amounts must be paid to the Settlement Administrator pursuant to Internal Revenue Code
7 section 1.468B-1 for deposit in an interest-bearing qualified settlement account ("QSA") with an
8 FDIC insured banking institution, for distribution in accordance with this Agreement and the
9 Court's Orders and subject to the conditions described herein. Individual Settlement Payments
10 for Class Members and Individual PAGA Payments to Aggrieved Employees shall be paid
11 exclusively from the QSA, pursuant to the settlement formula set forth herein.

12 Payments from the QSA shall be made for (1) the Service Award to Plaintiff as specified
13 in this Agreement and approved by the Court; (2) the Attorneys' Fees and Cost Award to be paid
14 to Class Counsel, as specified in this Agreement and approved by the Court; (3) the Settlement
15 Administrator Costs, as specified in this Agreement and approved the Court; (4) the LWDA
16 Payment, as specified in this Agreement and approved by the Court; and (5) Individual PAGA
17 Payments to Aggrieved Employees on a *pro rata* basis based on their Workweeks worked during
18 the PAGA Period. The balance any and any accrued interest thereon remaining shall constitute
19 the Net Settlement Amount from which Individual Settlement Payments shall be made to
20 Participating Class Members, less applicable taxes and withholdings. All interest accrued shall
21 be for the benefit of the Class Members and Aggrieved Employees and distributed on a *pro rata*
22 basis.

23 **C. Time for Distribution.**

24 No more than seven (7) calendar days after payment of the full Gross Settlement Amount
25 (as the same may be escalated by Paragraph 17 below) by Defendants, as well as Employer Taxes,
26 the Settlement Administrator shall distribute all payments due under the Settlement, including
27 the Individual Settlement Payments to Participating Class Members and Individual PAGA
28 Payments to Aggrieved Employees, as well as the Court-approved payments for the Service

Award to Plaintiff, attorneys' fees and litigation costs and expenses to Class Counsel, administration costs to the Settlement Administrator, and the LWDA Payment.

13. ATTORNEYS' FEES AND LITIGATION COSTS

Class Counsel shall apply for, and Defendants shall not oppose, an award of attorneys' fees of up to thirty-five percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to Paragraph 18 below, shall amount to One Hundred and Five Thousand Dollars, and Zero Cents (\$105,000.00). Class Counsel shall further apply for, and Defendants shall not oppose, an application or motion by Class Counsel for reimbursement of actual costs associated with Class Counsel's prosecution of this matter as set forth by declaration testimony in an amount up to Twenty Thousand Dollars and Zero Cents (\$20,000.00). Awards of attorneys' fees and costs shall be paid out of the Gross Settlement Amount, for all past and future attorneys' fees and costs necessary to prosecute, settle, and obtain an Effective Final Settlement in the Action. The "future" aspect of the amounts stated herein includes, without limitation, all time and expenses expended by Class Counsel (including any appeals therein). There will be no additional charge of any kind to either the Participating Class Members or request for additional consideration from Defendants for such work unless Defendants materially breach the funding requirement of this Settlement and Plaintiff is required to move the Court for enforcement of this Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

14. SERVICE AWARD TO PLAINTIFF

Plaintiff shall seek, and Defendants shall not oppose, a Service Award in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for participation in and assistance with the Action. Any Service Award awarded to Plaintiff shall be paid from the Gross Settlement Amount and shall be reported on an IRS Form 1099. If the Court approves Service Awards to Plaintiff in less than the amounts sought herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

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1 **15. TAXATION AND ALLOCATION**

2 **A.** Each Individual Settlement Share shall be allocated as follows: 20% as wages (to
3 be reported on an IRS Form W2); and 80% as interest and penalties (to be reported on an IRS
4 Form 1099). Each Individual PAGA Payment shall be allocated entirely as penalties. The Parties
5 agree that the employee's share of taxes and withholdings with respect to the wage-portion of the
6 Participating Class Member's Individual Settlement Share will be withheld from the Individual
7 Settlement Share in order to yield the Individual Settlement Payment. The amount of federal
8 income tax withholding will be based upon a flat withholding rate for supplemental wage
9 payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented.
10 Income tax withholding will also be made pursuant to applicable state and/or local withholding
11 codes or regulations.

12 **B.** Forms W-2 and/or Forms 1099 will be distributed by the Settlement
13 Administrator at times and in the manner required by the Internal Revenue Code of 1986 (the
14 "Code") and consistent with this Agreement. If the Code, the regulations promulgated
15 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
16 set forth in this Section may be modified in a manner to bring Defendants into compliance with
17 any such changes.

18 **C.** All Employer Taxes shall be paid by Defendants separate, apart and above from
19 the Gross Settlement Amount. Defendants shall remain liable to pay the employer's share of
20 payroll taxes as described above.

21 **D.** Neither Counsel for Plaintiff nor Defendants intend anything contained in this
22 Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Agreement
23 be relied upon as such within the meaning of United States Treasury Department Circular 230
24 (31 C.F.R. Part 10, as amended) or otherwise.

25 **16. PRIVATE ATTORNEYS' GENERAL ACT ALLOCATION**

26 The Parties agree to allocate Twenty Thousand Dollars and Zero Cents (\$20,000.00) of
27 the Gross Settlement Amount toward PAGA penalties. Pursuant to the PAGA, seventy-five
28 percent (75%) of the amount allocated toward PAGA (\$15,000.00) will be paid to the LWDA

(i.e., the LWDA Payment), and twenty-five percent (25%) will remain a part of the Net Settlement Amount (\$5,000.00), to be distributed to Aggrieved Employees on a *pro rata* basis, based upon their respective Workweeks in the PAGA Period (i.e., the PAGA Payments).

17. COURT APPROVAL

This Agreement is contingent upon obtaining an Effective Final Settlement. In the event it becomes impossible to obtain an Effective Final Settlement, the Parties shall be restored to their respective positions in the Action prior to entry of this Settlement. If this Settlement Agreement is voided and/or there is no Effective Final Settlement, this Settlement Agreement shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Settlement Agreement specifically stated to survive the Settlement Agreement being voided or not approved, and which control in such an event.

18. INCREASE IN WORKWEEKS

Defendants represent that there are no more than 24,769 Workweeks worked during the Class Period. In the event the number of Workweeks worked increases by more than 10%, or 2,477 Workweeks worked, then the GFV shall be increased proportionally by the Workweeks in excess of 27,246 multiplied by the Workweek value. The Workweek value shall be calculated by dividing the GFV by 24,769. The Parties agree that the Workweek value amounts to and the settlement amounts to \$12.11 per Workweek (\$300,000.00 / 24,769 Workweeks). Thus, for example, should there be 28,000 Workweeks in the Class Period, then the GFV shall be increased by \$9,130.94 (28,000 Workweeks – 27,246 Workweeks x \$12.11 per Workweek.)

19. NOTICE OF JUDGMENT

In addition to any duties set out herein, the Settlement Administrator shall provide notice of the Final Judgment entered in the Action by posting the same on its website.

20. MISCELLANEOUS PROVISIONS

A. Interpretation of the Agreement.

This Agreement constitutes the entire agreement between Plaintiff and Defendants with respect to its subject matter. Except as expressly provided herein, this Agreement has not been

1 executed in reliance upon any other written or oral representations or terms, and no such extrinsic
2 oral or written representations or terms shall modify, vary or contradict its terms. In entering
3 into this Agreement, the Parties agree that this Agreement is to be construed according to its
4 terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be
5 interpreted and enforced under the laws of the State of California, both in its procedural and
6 substantive aspects, without regard to its conflict of law provisions. Any claim arising out of or
7 relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively
8 in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and
9 Defendants hereby consent to the personal jurisdiction of the Court in the Action over it solely
10 in connection therewith. Plaintiff, on Plaintiff's own behalf and on behalf of the Settlement
11 Class, and Defendants participated in the negotiation and drafting of this Agreement and had
12 available to them the advice and assistance of independent counsel. As such, neither Plaintiff
13 nor Defendants may claim that any ambiguity in this Agreement should be construed against the
14 other. The Agreement may be modified only by a writing signed by counsel for the Parties and
15 approved by the Court.

16 **B. Further Cooperation.**

17 Plaintiff, Defendants, and their respective attorneys shall proceed diligently to prepare
18 and execute all documents, to seek the necessary approvals from the Court, and to do all things
19 reasonably necessary to consummate the Settlement as expeditiously as possible.

20 **C. Counterparts.**

21 The Agreement may be executed in one or more actual or non-original counterparts, all
22 of which will be considered one and the same instrument and all of which will be considered
23 duplicate originals.

24 **D. Authority.**

25 Each individual signing below warrants that he or she has the authority to execute this
26 Agreement on behalf of the party for whom or which that individual signs.

27 ///

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1 **E. Force Majure.**

2 The failure of any party to perform any of its obligations hereunder shall not subject such
3 party to any liability or remedy for damages, or otherwise, where such failure is occasioned in
4 whole or in part by acts of God, fires, accidents, earthquakes, other natural disasters, explosions,
5 floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages,
6 shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage,
7 terrorist acts, acts or failures to act of any third parties, or any other similar or different
8 circumstances or causes beyond the reasonable control of such party.

9 **F. No Third-Party Beneficiaries.**

10 Plaintiff, Participating Class Members, Class Counsel, and Defendants are direct
11 beneficiaries of this Agreement, but there are no third-party beneficiaries.

12 **G. Deadlines Falling on Weekends or Holidays.**

13 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
14 or legal holiday, that deadline shall be continued until the following business day.

15 **H. Severability.**

16 In the event that one or more of the provisions contained in this Agreement shall for any
17 reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
18 unenforceability shall in no way effect any other provision if Defendants' Counsel and Class
19 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed
20 as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

21 **I. Non-Admission of Liability; No Waiver of Arbitration Agreements.**

22 The Parties enter into this Settlement Agreement to resolve the dispute that has arisen between
23 them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement
24 Agreement, Defendants do not admit, and specifically deny, having any federal, state, or local law;
25 violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws,
26 regulations or legal requirements; breached any contract; violated or breached any duty; engaged in any
27 misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees.
28 Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations

connected with it, shall be construed as an admission or concession by Defendants of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law. Nor shall anything in this Settlement Agreement be construed or deemed an admission that the Action was properly brought as a class action pursuant to California Code of Civil Procedure section 382, a representative action under California Business and Professions Code section 17200 and/or a private attorney general action under PAGA. Nor shall anything in this Settlement Agreement or in the Preliminary Approval or Order Granting Final Approval be deemed a waiver of Defendants' right to enforce the arbitration agreements, if any, of Class Members in the future as to Plaintiff, members of the Class or otherwise.

J. Publicity.

Plaintiffs and Class Counsel represent that they will not issue any press, publications, or other media releases about the Settlement (including, but not necessarily limited to advertising or marketing materials or on social media that identifies Defendants) or have any communication with the press or media regarding the Settlement. Nothing in this paragraph shall be construed to prohibit Class Counsel from communicating with Class Members for the sole purpose of administering this settlement or to correct any inaccurate information after receiving approval from Defendants and/or their counsel of record.

IT IS SO AGREED:

Dated: _____, 2021

ROBERT SCHAFFINO
Plaintiff and Class Representative

Dated: _____, 2021

M.O. DION & SONS
Defendant
By:
Its:

1 connected with it, shall be construed as an admission or concession by Defendants of any such violations
2 or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms
3 of this Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered
4 or received as evidence in any action or proceeding to establish any liability or admission on the part of
5 Defendants or to establish the existence of any condition constituting a violation of, or a non-compliance
6 with, federal, state, local or other applicable law. Nor shall anything in this Settlement Agreement be
7 construed or deemed an admission that the Action was properly brought as a class action pursuant to
8 California Code of Civil Procedure section 382, a representative action under California Business and
9 Professions Code section 17200 and/or a private attorney general action under PAGA. Nor shall anything
10 in this Settlement Agreement or in the Preliminary Approval or Order Granting Final Approval be
11 deemed a waiver of Defendants' right to enforce the arbitration agreements, if any, of Class Members in
12 the future as to Plaintiff, members of the Class or otherwise.

13 **J. Publicity.**

14 Plaintiffs and Class Counsel represent that they will not issue any press, publications, or other
15 media releases about the Settlement (including, but not necessarily limited to advertising or marketing
16 materials or on social media that identifies Defendants) or have any communication with the press or
17 media regarding the Settlement. Nothing in this paragraph shall be construed to prohibit Class Counsel
18 from communicating with Class Members for the sole purpose of administering this settlement or to
19 correct any inaccurate information after receiving approval from Defendants and/or their counsel of
20 record.

21 **IT IS SO AGREED:**

22
23 Dated: Feb 25, 2022, 2021

24 
Robert Schaffino (Feb 25, 2022 12:10 PST)

ROBERT SCHAFFINO
Plaintiff and Class Representative

25
26 Dated: 3/4/22, 2021

27 
M.O. DION & SONS
Defendant

28 By: 
Its: 

1
2
3
4 Dated: 3/4/22, 2021

Bill Fran
AMBER RESOURCES, LLC dba Sawyer
Petroleum
Defendant
By: Bill Fran
Its: VP

5
6
7
8
9 **AGREED AS TO FORM:**

10
11
12 Dated: March 4, 2022, 2021

Vedang J. Patel
DAVID D. BIBIYAN
DIEGO AVILES
VEDANG PATEL
Bibiyon Law Group, P.C.
Counsel for Plaintiff Robert Schaffino

13
14
15
16
17 Dated: March 4, 2022, 2021

Baran
CHRISTINE BARAN
ANDREW C. CRANE
Fisher Phillips, LLP **Counsel for Defendants**
M.O. Dion & Sons and Amber Resources,
LLC dba Sawyer Petroleum