

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LARRY BARRAGAN and FRANK
CALANDRINO, individually and on
behalf of all similarly situated current and
former employees,

Plaintiffs,

v.

KINDER MORGAN, INC.; KINDER
MORGAN TERMINALS, INC.; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 2:21-cv-02955-PA-MRW

CLASS ACTION

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND
RELEASE**

Assigned for All Purposes to: Honorable
Percy Anderson

JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

FP 41605033.2

FP 42408835.1

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JOINT STIPULATION OF CLASS ACTION SETTLEMENT AND RELEASE

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Plaintiffs Larry Barragan and Frank Calandrino, individually and on behalf of all similarly situated current and former employees (collectively “Plaintiffs”), and Defendants Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc. (collectively, “Kinder Morgan” or “Defendants”), (collectively, the “Parties”), subject to the terms and conditions hereof and final approval by the Court, hereby enter into this Joint Stipulation of Class Action Settlement and Release (“Settlement Agreement”). This Settlement Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the Released Claims subject to the terms and conditions set forth herein.

I. RECITALS

A. Background and Procedural History

Plaintiffs commenced the Class Action by filing a complaint against Defendants in *Larry Barragan and Frank Calandrino, v. Kinder Morgan, Inc.; Kinder Morgan Terminals, Inc.*; Case 21STCV06844 in Los Angeles Superior Court on February 22, 2021 (the “Complaint”) alleging rest break violations and other related claims on behalf of current and former employees who worked as employees at Defendant’s oil pipeline and terminal facilities located in Carson, California (the “Carson Terminal”), and Long Beach, California (the “Los Angeles Harbor Terminal”). Plaintiffs brought claims for (1) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Furnish Accurate Wage Statements (Lab. Code §§ 226 and 226.3); (3) Private Attorneys General Act (Lab. Code § 2698 et seq.); and (4) Violation of the Unfair Competition Law (Bus. & Profs. Code § 17200 et seq.). On April 5, 2021, Defendants filed a Notice of Removal of this action from the Superior Court of California, County of Los Angeles, to the United States District Court for the Central District of California. The case was assigned to District Judge Percy Anderson and Magistrate Judge Michael R. Wilner, Case No. 2:21-cv-02955-PA-MRW.

Plaintiffs allege employees at the facilities work 12-hour “continuous” rotating shifts. They claim they are required to carry radios to stay in constant communication, remain on the premises and in or near their work areas, respond to work emergencies, and are not relieved of duty at any time during their shifts. Plaintiffs alleged Kinder Morgan’s policies also impose strict limitations on how employees can use their time during shifts. To the extent employees receive breaks at all, they are not compliant with state law as the employees’ responsibilities and limitations continue during the breaks. Plaintiffs further allege that

1 any penalties paid for meal and rest period violations were made at an improper rate. Plaintiffs, therefore,
2 seek damages, penalties and other relief for denied off-duty rest breaks, inaccurate wage statements, and
3 violations of the Private Attorneys General Act of 2004 (“PAGA”) and Business and Professions Code §§
4 17200 et seq.

5 On July 26, 2021, the Parties participated in full day mediation with the Honorable Carla Woehrle.
6 Shortly after the all-day session, the Parties accepted a Mediators’ Proposal to resolve the case.

7 **B. Parties’ Statements and Recognition of the Benefits of the Settlement**

8 Class Counsel has conducted extensive investigation into the facts of the Class Action, including
9 informal disclosures and other investigation undertaken by counsel for Plaintiffs. Furthermore, the Parties
10 engaged in extensive negotiations and the exchange of data, documents, and information in this litigation.
11 Based on a thorough investigation and evaluation of this case, Class Counsel and Plaintiffs have concluded
12 that the settlement with Defendants for the consideration and on the terms set forth in this Settlement
13 Agreement is fair, reasonable, and adequate and is in the best interest of the class in light of all known
14 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and
15 numerous potential appellate issues.

16 Defendants deny each and all of the claims alleged by Plaintiffs in the Class Action. Defendants
17 expressly deny any liability or wrongdoing of any kind whatsoever associated with the claims alleged in
18 the Class Action, and further deny that, for any purpose other than settling this Class Action, this Class
19 Action is appropriate for class or representative treatment. With respect to Plaintiffs’ claims, Defendants
20 contend, among other things, that they have complied with all applicable state, federal and local laws
21 affecting Plaintiff and the Settlement Class. Nevertheless, Defendants have taken into account the
22 uncertainty and risks inherent in any litigation and have also concluded that further conduct of the instant
23 action would be protracted and expensive. Defendants, therefore, have determined that it is desirable and
24 beneficial that the Class Action be settled in the manner and upon the terms and conditions set forth in
25 this Settlement Agreement. Neither this Settlement Agreement, nor any document referred to or
26 contemplated herein, nor any action taken to carry out this Settlement Agreement, is, may be construed
27 as, or may be used as an admission, concession, or indication by or against Defendants of any fault,
28 wrongdoing or liability whatsoever.

II. DEFINITIONS

1. “Administrative Costs” shall mean the Settlement Administrator’s fees, costs, and expenses in connection with the claims administration services to be rendered pursuant to this Settlement Agreement, including providing the Notice of Settlement, various efforts to locate Class Members, and making settlement distributions to Class Members. The amount of those Administrative Costs is subject to the Court’s approval.

2. “Attorneys’ Fees and Costs” shall mean the amount of attorneys’ fees and litigation expenses and costs approved by the Court to be paid to Class Counsel.

3. “Class Action” shall mean the civil action captioned *Larry Barragan and Frank Calandrino, v. Kinder Morgan, Inc.; Kinder Morgan Terminals, Inc.*; 21STCV06844 filed in Los Angeles Superior Court on February 22, 2021 and removed by Defendants to United States District Court for the Central District on April 5, 2021, and assigned Case No. 2:21-cv-02955-PA-MRW in the USDC Northern District of California.

4. “Class Counsel” shall mean the attorneys representing Plaintiffs in the Class Action: Randy Renick and Cornelia Dai of Hadsell Stormer Renick & Dai LLP and Jay Smith and Joshua F. Young of Gilbert & Sackman, a Law Corporation.

5. “Class” or “Class Members” shall mean: All current and former hourly employees of Kinder Morgan, Inc. or Kinder Morgan Terminals, Inc. who worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals, who do not request to exclude themselves (i.e. opt out) from the settlement.

6. “Class Period” shall mean the period from February 22, 2017, through the date of Preliminary Approval.

7. “Defense Counsel” shall mean the attorneys Christopher C. Hoffman, Aaron F. Olsen, Phillip G. Simpler and Cameron Davila, Fisher & Phillips LLP.

8. The “Effective Date” of this Settlement Agreement shall mean three (3) calendar days after all of the following conditions have been satisfied:

- (a) Execution of this Settlement Agreement by all Parties, Class Counsel, and Defense Counsel;

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

(c) Preliminary Approval of the settlement by the Court;

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

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

(f) Five or fewer of the Class Members submit timely and valid requests to opt out of the Class (or if more than five Class Members opt out, and none of the Defendants exercise their right to rescind and void the Settlement Agreement);

(g) A formal fairness hearing, Final Approval of the settlement by the Court, and entry of a written final order by the Court approving this Settlement Agreement and entering final judgment with respect to the Class Action. Provided, that in the event there are written objections made prior to the formal fairness hearing, or an appeal of the Court's approval of the settlement taken, then the Effective Date shall be the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief.

The occurrence of the Effective Date is a prerequisite to any obligation to fund or make distributions from the Settlement Fund.

9. "Final Approval Hearing" means the hearing to be conducted by the Court, or any other court taking jurisdiction of this matter, to determine whether to finally approve the settlement. In the event that the Court does not issue a Final Approval Order, or any such Final Approval Order does not take effect for any reason, or is modified in any material respect, the Effective Date does not occur, or that any of the conditions set forth above do not occur, this Settlement Agreement shall be deemed null and void and shall be of no force or effect whatsoever, and shall not be referred to or utilized for any purpose

1 whatsoever.

2 10. “Final Approval Order” and “Final Approval” means an order that finally and
3 unconditionally grants final approval of this Settlement Agreement, enters final judgment with respect to
4 the Class Action, and authorizes payments to the Class Members, the Named Plaintiffs, the Settlement
5 Administrator, and Class Counsel as provided in this Settlement Agreement, substantially in the same
6 form as Exhibit C attached hereto.

7 11. “Named Plaintiffs” shall mean Larry Barragan and Frank Calandrino.

8 12. The “Net Settlement Proceeds” shall equal the Settlement Fund minus the total of:
9 Court-approved Attorneys’ Fees and Costs; Court-approved Service Awards to the Named Plaintiffs;
10 Court-approved Administrative Costs; and Payment to the LWDA for PAGA penalties.

11 13. “Notice of Settlement” refers to the official Notice of Settlement of Class Action, attached
12 hereto as Exhibit A.

13 14. “Notice Response Deadline” means 60 days from the initial date of mailing the Notice
14 Packet to Class Members, or such other date as set by the Court in the Preliminary Approval Order, to
15 postmark a timely objection, or request for exclusion.

16 15. “Preliminary Approval Order” and “Preliminary Approval” refers to the Court order or
17 statement of decision granting preliminary approval of this Settlement Agreement substantially in the
18 same form as Exhibit B attached hereto.

19 16. “Released Claims” shall include all claims under state, federal and local law that were or
20 could have been asserted based on the facts and allegations made in the Action, and any amendments
21 thereto, as to the Class Members, including without limitation, California Labor Code sections 226, 226.3,
22 and 226.7, California Industrial Commission Wage Orders, and Business and Professions Code sections
23 17200, *et seq.*, and including all claims for or related to rest/meal periods and rest/meal period premiums,
24 unpaid minimum, regular, and overtime wages, unpaid wages, unpaid split shift premiums, unpaid
25 reporting time pay, failure to issue accurate and complete wage statements, failure to reimburse necessary
26 expenses, unlawful deductions, failure to comply with the Fair Labor Standards Act, failure to timely pay
27 wages at separation, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or
28 matching benefits for payments received under the Settlement, unfair competition, unfair business

practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties, and statutory penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, during the Class Period.

17. “Released PAGA Claims” shall include all claims under PAGA, California Labor Code sections 2698, et seq., that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as to the Class Members, including without limitation, California Labor Code sections 226, 226.3, and 226.7, California Industrial Commission Wage Orders, and Business and Professions Code sections 17200, et seq., and including all claims for or related to meal/rest periods and meal/rest period premiums, unpaid minimum, regular, and overtime wages, unpaid wages, unpaid split shift premiums, unpaid reporting time pay, failure to issue accurate and complete wage statements, failure to reimburse necessary expenses, unlawful deductions, failure to comply with the Fair Labor Standards Act, failure to timely pay wages at separation, failure to pay additional 401(k) benefits and/or deferred compensation benefits and/or matching benefits for payments received under the Settlement, unfair competition, unfair business practices, unlawful business practices, fraudulent business practices, conversion, class actions, representative actions, aggrieved party claims, injunctive relief, declaratory relief, accounting, punitive damages, liquidated damages, penalties of any nature (including but not limited to civil penalties, statutory penalties, and PAGA penalties), interest, fees, costs, as well as all other claims and allegations alleged in the Action, from February 22, 2017 through preliminary approval.

18. “Released Parties” shall collectively mean: (i) Defendants Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc. (“Defendants”); (ii) the respective past, present, and future direct and indirect subsidiaries and affiliates of any of the foregoing; (iii) the past, present, and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

19. “Service Award” shall mean a court-approved sum to be paid to each Named Plaintiff in

1 accordance with Section III.B.

2 20. "Settlement Administrator" shall mean CAC Services Group, LLC of Eden Prairie
3 Minnesota. The Settlement Administrator is the entity that has been selected to provide notice of this
4 proposed class action settlement to the Class and to perform other related functions to administer the
5 settlement contemplated by this Settlement Agreement as described herein.

6 21. "Settlement Fund" refers to the gross settlement amount of Three Hundred and Eighty
7 Five Thousand Dollars (\$385,000) which is the total and maximum amount Defendants will be required
8 to pay under this Settlement Agreement, except that Defendants will pay the employer's share of any
9 payroll taxes (FICA and FUTA) for wages it pays hereunder. The Settlement Fund will include the
10 following elements: (i) payments to Class Members, as described herein; (ii) payment to the State of
11 California Labor and Workforce Development Agency ("LWDA") under PAGA, as described herein; (iii)
12 Service Awards paid to the Named Plaintiffs, as described herein; (iv) Class Counsel's Attorneys' Fees
13 and Costs, as described herein; and (v) Administrative Costs, as described herein.

14 22. "Qualifying Shifts" shall mean the number of shifts worked by a Class Member during the
15 Class Period at the Carson and Los Angeles Harbor Terminals. The Settlement Administrator will
16 calculate the number of Qualifying Shifts, excluding leaves, worked by the Class Members during the
17 Class Period.

18 **III. TERMS OF SETTLEMENT AGREEMENT**

19 **A. Side Letter Agreement**

20 23. This Agreement is contingent upon the Plaintiffs, and all their respective union, agreeing
21 to and ratifying a Collective Bargaining Agreement Letter of Agreement/Side Letter pursuant to Labor
22 Code section 226.75 in a form agreed upon by the parties, which is a material term of this Agreement.

23 **B. Distribution of The Settlement Fund**

24 24. IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for
25 themselves and the Class) and Defendant, by and through their respective attorneys, that, subject to the
26 approval of the Court, the Class Action will be finally and fully compromised, released, resolved,
27 discharged, and settled, and will be dismissed with prejudice as to Defendants, subject to the terms and
28 conditions of this Settlement Agreement, as follows:

25. In consideration for settlement of the Class Action and the release of claims of the Class, Defendants agree to pay the Settlement Fund, which is a total of Three Hundred and Eighty Five Thousand Dollars (\$385,000). Any Administrative Costs, Attorneys' Fees and Costs, payment to the LWDA under PAGA, Service Awards for the Named Plaintiffs, and payments to Class Members shall be paid from the Settlement Fund. The Settlement Fund is the maximum total amount Defendants are required to pay for any and all purposes under this Settlement Agreement, except that Defendants will pay the employer's share of any payroll taxes (FICA and FUTA) in addition to the Settlement Fund.

26. This is a non-reversionary settlement in which Defendants are required to pay the entire gross settlement amount. No portion of the Settlement Fund will revert to any Defendant.

27. The Parties have agreed to the appointment of CAC Services Group, LLC to serve as the Settlement Administrator for the purpose of administering the settlement process.

C. The Named Plaintiffs' Service Awards

28. In addition to the amounts determined to be due to the Named Plaintiffs as Class Members under this Settlement Agreement, Class Counsel and Named Plaintiffs intend to apply to the Court for Service Awards for Named Plaintiffs, in the total amount of no more than Five Thousand Dollars (\$5,000) per Named Plaintiff. Plaintiffs request an enhancement for the Named Plaintiffs' roles in prosecuting the Class Action, taking the risks of serving as the named representatives, providing factual information and documentation necessary to the prosecution of the Class Action, attending the mediation, providing a general release of all claims, maintaining contact with Class Counsel, and other participation necessary to the successful prosecution of the Class Action and implementation of this Settlement Agreement. Any Service Award approved by the Court in conjunction with the Settlement shall be paid from the Settlement Fund and shall reduce the amount of the Net Settlement Fund payable to Class Members. Defendants will not oppose a request for a Service Award of up to \$5,000 per Named Plaintiff.

29. In exchange for this Service Award, each Named Plaintiff agrees not to publicize the settlement beyond what is required or expressly approved by the Court, agrees not to respond to any media inquiry regarding the settlement and agrees to a general release as to any and all claims he might have against any Defendant or Released Party, whether such claim is known or unknown. In the event that Class Members seek to discuss the Settlement or ask questions regarding the Settlement with either of the

1 Named Plaintiffs, the Named Plaintiffs will respond only by directing the Class members to contact the
2 Settlement Administrator or Class Counsel.

3 30. In the event that the Court denies, modifies, or reduces any request for a Service Award,
4 Named Plaintiffs, Class Counsel, and the Class Members shall not: seek to modify, revoke, cancel,
5 terminate, or void this Settlement Agreement; seek, request, or demand an increase in the Settlement.

6 31. If Plaintiffs appeal the Court's ruling on the request for a Service Award for Named
7 Plaintiffs, any ruling of any appellate court in such an appeal (regardless of its substance) shall not
8 constitute a material alteration of this Settlement Agreement, and shall not give Named Plaintiffs, Class
9 Counsel, or the Class Members the right to modify, revoke, cancel, terminate, or void this Settlement
10 Agreement.

11 32. Notwithstanding the above, each Named Plaintiff shall receive payment of his or her
12 Service Award only after executing and delivering to Defendants this Settlement Agreement, and only
13 after the Effective Date has passed.

14 **D. Attorneys' Fees And Costs**

15 33. Class Counsel may request a reasonable award of Attorneys' Fees and Costs from the Court
16 up to one-third of the Settlement Fund (i.e. \$128,325) as well as the reimbursement of costs up to \$10,000
17 to compensate them for fees and costs incurred for work already performed in this Class Action, and the
18 work remaining to be performed in documenting the Settlement Agreement, securing court approval of
19 the Settlement Agreement, administering the Settlement Agreement, obtaining dismissal of the Class
20 Action with prejudice, and defending against any appeals, as well as all associated expenses. The amount
21 awarded to Class Counsel shall be left to the discretion of the Court. Defendants will not oppose a
22 reasonable request for attorneys' fees and costs.

23 34. Class Counsel will submit an application for Attorneys' Fees and Costs to the Court for
24 approval prior to the date of the Final Approval Hearing. The Parties agree that, over and above the total
25 amount of the court-approved Attorneys' Fees and Costs award in this Class Action, each of the Parties,
26 including all persons eligible to be Class Members, shall bear their own fees and costs relative to the
27 investigation, filing, prosecution or settlement of the Class Action, the negotiation, execution, or
28 implementation of this Settlement Agreement, and/or the process of obtaining, administering or

1 challenging a Preliminary Approval Order and/or Final Approval Order.

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

7 36. In the event that the Court denies, modifies, or reduces Class Counsel's request for
8 Attorneys' Fees and Costs, then Plaintiffs, Class Counsel, and the Class Members shall not: seek to
9 modify, revoke, cancel, terminate, or void this Settlement Agreement; seek, request, or demand an increase
10 in the Settlement.

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

15 38. All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs, and the
16 Class Members may possess against Defendants have been compromised and resolved in this Settlement
17 Agreement and shall not be affected by any appeal that Class Counsel may file.

18 **E. Administrative Costs**

19 39. The court-approved Administrative Costs associated with administering the settlement and
20 claims process shall be subject to all Parties' approval, and shall be deducted from the Settlement Fund.
21 The Administrative Costs are estimated to be no more than Five Thousand Dollars (\$5,000). No fewer
22 than twenty-one (21) calendar days prior to the Final Approval Hearing, the Settlement Administrator
23 shall provide all counsel for the Parties with a statement detailing the Administrative Costs incurred to
24 date as well as any prospective costs. The Parties agree to cooperate in the settlement administration
25 process and to make all efforts to control and minimize the costs and expenses incurred in the
26 administration of this Settlement Agreement.

27 **F. PAGA Payment.**

28 40. The total amount of the Settlement Fund allocated to PAGA penalties shall be Four

1 Thousand Dollars (\$4,000), with seventy-five percent (75%) of the PAGA penalties, Three Thousand
2 Dollars (\$3,000), being paid to the California Labor and Workforce Development Agency (“LWDA”) and
3 twenty-five percent (25%) of the PAGA penalties, One Thousand (\$1,000), being paid to the aggrieved
4 employees (the “Class Members”).

5 41. The amount of the Settlement Fund being paid to aggrieved employees for PAGA penalties
6 will be allocated in the manner of and as part of the Net Settlement Proceeds, as set forth in Section III.H
7 and paid to all Class Members, including those who have opted-out.

8 42. Pursuant to California Labor Code § 2699(l)(2), settlement of a PAGA action must be
9 approved by the Court and a copy of the proposed settlement will be provided to the LWDA at the same
10 time that it is submitted to the Court.

11 **G. No Effect On Benefits For Class Members**

12 43. Plaintiffs agree, on behalf of all Class Members, that this Settlement Agreement and any
13 payments under this Settlement Agreement shall not have any effect on the eligibility or calculation of
14 employee benefits with respect to the Class Members. This Settlement Agreement does not represent any
15 modification of any previously credited hours of service, income, or other eligibility criteria under any
16 employee pension benefit plan, employee welfare benefit plan, or other program or policy.

17 44. Likewise, Plaintiffs agree, on behalf of all Class Members, that no payment provided under
18 this Settlement Agreement shall be considered “compensation” or “annual earnings for benefits” in any
19 year for purposes of determining eligibility for, or benefit accrual within, any employee pension benefit
20 plan, employee welfare benefit plan, or other program or policy. For purposes of this Settlement
21 Agreement, the term “employee benefit plan” means every “employee benefit plan” as defined in the
22 Employee Retirement and Income Security Act of 1974, 29 U.S.C. § 1002(3). The term also includes any
23 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing,
24 retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation,
25 or any other similar benefit plan, practice, program, or policy, regardless of whether any such plan is
26 considered an employee benefit plan.

27 **H. Allocation**

28 45. The Net Settlement Proceeds shall be allocated as follows for each Class Member:

- 1 (a) “Qualifying Shifts” shall mean the number of shifts worked by a Class Member
2 during the Class Period at the Carson and Los Angeles Harbor Terminals. The
3 Settlement Administrator will calculate the number of Qualifying Shifts,
4 excluding leaves, worked by the Class Members during the Class Period.
- 5 (b) The Settlement Administrator will calculate the number of Qualifying Shifts
6 worked by the Class Members during the Class Period, however, if a Class
7 Member worked less than 25 Qualifying Shifts, such Class Member will be
8 credited with having worked 25 Qualifying Shifts for purposes of the Settlement.
- 9 (c) The amount to be paid per Qualifying Shift to Class Members will be calculated
10 by dividing the Net Settlement Proceeds by the total number of Qualifying Shifts
11 for all Class Members; any person who opts out of the Settlement is not a Class
12 Member.
- 13 (d) Any disputes regarding the number of Qualifying Shifts allocated to a Class
14 Member will be resolved and decided by the Settlement Administrator at least
15 five days prior to the Objection and Opt-Out Deadline. The decision will be final
16 and non-appealable.

17 46. The Settlement Administrator will pay out to all Class Members on a confidential basis
18 and issue IRS tax forms as provided below.

19 47. Each Class Member’s Individual Settlement Award will be allocated as follows: 20% to
20 unpaid wages, 40% to interest; and 40% to penalties. The wage component of each Individual Settlement
21 Award will be reported on Form W-2 and the portion of each Individual Settlement Award allocated to
22 interest and/or penalties reported on IRS Form 1099, as required by law.

23 48. Defendants, each Plaintiff, and each Class Member will be responsible for his, her, or its
24 own tax obligations. Nothing in this Settlement Agreement is advice by Defense Counsel regarding taxes
25 or taxability, and no Party is relying on Defense Counsel for such advice. The payment by Defendants
26 pursuant to this Agreement is for alleged failure to pay compensation due, interest on the compensation
27 sum, penalties regarding the compensation sum, and all other claims as set forth in the Complaint. In
28 accordance with both state and federal tax laws, the Settlement Administrator shall withhold such sums

1 from each Class Member's Individual Settlement Award as are required in order to comply with the same.
2 In addition to the Withholding and Tax, deductions shall be made from each check for union dues to the
3 United Steelworkers Union pursuant to the United Steelworkers International Constitution, Section XIV,
4 Section 17, for "lump sum" payments. Portions of any Individual Settlement Award not subject to
5 withholding will be issued with a 1099 Form. After appropriate tax withholding from Individual
6 Settlement Awards, the net payment to be received by each Class Member, reported as required by law
7 via a W-2 Form, the Settlement Administrator shall immediately pay over all such withheld funds to the
8 appropriate state and federal taxing authorities. The Settlement Administrator shall provide each Class
9 Member with appropriate documentation setting forth the amount of any tax, union dues, or other payment
10 withheld, and employer contribution made, in accordance with state and federal tax requirements.

11 49. The Settlement Administrator will notify Defendants of the amount of the employer share
12 of FICA and FUTA due and owing as to each Class Member. Defendants will pay their share of FICA
13 and FUTA separately and in addition to the Settlement Fund. The Settlement Administrator will also give
14 Defendants an estimate of the employer's share of taxes within five (5) calendar days of sending out the
15 Notice of Settlement, as described in Paragraph 63.

16 **I. Released Claims**

17 50. Releases by the Class and the Class Members. In exchange for the payments by Defendants
18 as described herein, upon the Court's Final Approval of this Settlement Agreement, and except as to such
19 rights or claims as may be created by this Settlement Agreement, the Class and each Class Member,
20 including each Named Plaintiff (who shall not opt out of the Class), jointly, severally, shall, and hereby
21 do fully release and discharge Defendants and Released Parties from the Released Claims.

22 51. In exchange for the payments by Defendants as described herein, upon the Court's Final
23 Approval of this Settlement Agreement, and except as to such rights or claims as may be created by this
24 Settlement Agreement, each PAGA Member (each Class Member who was employed by Defendants
25 from February 22, 2017, through preliminary approval), including each Named Plaintiff jointly,
26 severally, shall, and hereby do fully release and discharge Defendants and Released Parties from the
27 Released PAGA Claims.

28 52. The Parties intend that this Settlement Agreement shall be binding on all Class Members,

1 whether or not they actually receive a payment pursuant to this Settlement Agreement. This Settlement
2 Agreement shall constitute, and may be pleaded as, a complete and total defense to any Released Claims
3 if raised in the future.

4 53. A Named Plaintiff or Class Member may hereafter discover facts in addition to or
5 different from those they may now know or believe to be true with respect to the subject matter of the
6 Released Claims, but, upon the Effective Date, they, and each of them, shall be deemed to have, and by
7 operation of the Final Approval Order shall have, fully, finally, and forever settled and released any and
8 all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-
9 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing
10 or coming into existence in the future, including, but not limited to, conduct that is intentional,
11 negligent, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent
12 discovery or existence of such different or additional facts.

13 54. Additional General Releases by Named Plaintiffs. In exchange for the consideration,
14 undertakings, and covenants undertaken by Defendants in this Settlement Agreement each Named
15 Plaintiff, for himself and on behalf of his spouse, heirs, assigns, and estates, further hereby generally
16 releases, discharges, and covenants not to sue Defendants and the Released Parties with respect to any and
17 all claims, charges, demands, liens, agreements, contracts, covenants, actions, suits, causes of action,
18 disputed wages, obligations, debts, expenses, attorneys' fees, damages, penalties, interest, judgments,
19 orders, and liabilities of whatever kind or nature in law, equity, or otherwise, whether now known or
20 unknown, suspected or unsuspected, and whether or not concealed or hidden, which the Named Plaintiff
21 now owns or holds or has at any time heretofore owned or held, arising out of or in any way connected
22 with the Named Plaintiff's employment, separation of employment, or any other relationship with, any
23 Defendant or Released Party, or any other transactions, occurrences, acts or omissions or any loss, damage
24 or injury whatever, known or unknown, suspected or unsuspected, resulting from any act or omission by
25 or on the part of said Defendant or Released Party, committed or omitted prior to the Effective Date
26 (collectively, the "Additional General Releases" of "Named Plaintiffs' Claims"). The Parties intend the
27 Named Plaintiffs' Additional General Releases to be general and comprehensive in nature, and to release
28 all Named Plaintiffs' Claims and potential Named Plaintiffs' Claims against Defendants and the Released

1 Parties to the maximum extent permitted at law.

2 55. Waiver of California Civil Code Section 1542. Each Named Plaintiff intends and/or is
3 deemed to intend that this Settlement Agreement will be effective as a bar to any and all of the Named
4 Plaintiffs' Claims, as defined above. In furtherance of this intention, each Named Plaintiff expressly
5 waives any and all rights or benefits conferred on him by the provisions of Section 1542 of the California
6 Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
8 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
9 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

10 56. Each Named Plaintiff has consulted with or had the opportunity to consult with counsel of
11 Plaintiff's choosing about this Settlement Agreement and specifically about the waiver of section 1542,
12 and that Each Named Plaintiff understands this Settlement Agreement and the section 1542 waiver, and
13 so Each Named Plaintiff freely and knowingly assumes all risks of his Additional General Release with
14 respect to any Named Plaintiff's Claims that have already arisen or may in the future arise, whether known
15 or unknown, suspected or unsuspected, and specifically waives all rights he may have under California
16 Civil Code § 1542. Each Named Plaintiff understands that, if any of the facts relating in any manner to
17 the Class Action, or to the release and dismissal of claims as provided in this Settlement Agreement, are
18 hereafter found to be other than or different from the facts now believed to be true, he has expressly
19 accepted and assumed that risk and agrees that this Settlement Agreement and the release of claims
20 contained herein shall nevertheless remain effective. Each Named Plaintiff desires and intends, or is
21 deemed to desire and intend, that this Settlement Agreement shall be given full force and effect according
22 to each and all of its express terms and provisions, including those relating to unknown and unsuspected
23 claims, if any, as well as those relating to the claims referred to above.

24 57. The Named Plaintiffs' Additional General Releases are not intended to expand the nature
25 of the claims released by the Class Members beyond the Released Claims set out in Paragraphs 16 and 48
26 through 50.

27 **J. Schedule For Finalizing Settlement**
28

1 58. The Parties stipulate and agree to the following schedule and procedures for obtaining the
2 Court's approval of the settlement, including seeking certification of the Class for settlement purposes
3 only, notice to the Class, and processing all benefits provided under this Settlement Agreement.

4 59. Upon the execution of this Settlement Agreement, Named Plaintiffs will file a Motion for
5 Preliminary Approval with the Court seeking:

6 (a) Certification of the Class as a settlement class under Federal Rule of Civil
7 Procedure Rule 23;

8 (b) Preliminary approval of the terms of this Settlement Agreement;

9 (c) Approval of the Notice of Settlement, settlement notice procedure, and
10 appointment of the Settlement Administrator; and

11 (d) The scheduling of a settlement fairness hearing on the question of whether the
12 terms of this Settlement Agreement should be finally approved as fair, reasonable, and adequate
13 as to the Named Plaintiffs and the Class.

14 60. As a part of this motion, Named Plaintiffs will submit (and attach a copy of) this Settlement
15 Agreement. Class Counsel shall provide Defendants with a reasonable opportunity to review, and provide
16 comments on the Motion for Preliminary Approval, before filing the motion and supporting papers with
17 the Court.

18 61. Solely for settlement purposes, Plaintiffs agree to seek, and each Defendant consents to,
19 certification by the Court of the Class as a Rule 23 settlement class.

20 62. The certification of the Class and appointment of Class Counsel by the Court shall be
21 binding only with respect to the settlement of this Class Action. In the event that this Settlement
22 Agreement is cancelled pursuant to its terms, the certification of the Class shall be vacated, the Class
23 Action shall proceed as though the Class had never been certified, and this Settlement Agreement shall be
24 of no force or effect.

25 63. Defendants shall not oppose the Motion for Preliminary Approval filed by Class Counsel
26 pursuant to this Settlement Agreement, so long as the motion and supporting papers are consistent with
27 the terms of this Settlement Agreement.

28 64. Within ten (10) calendar days after the filing of the Motion for Preliminary Approval,

Defendants shall comply with the “Notification of Settlement” requirements of the Class Action Fairness Act (28 U.S.C. § 1715). Defendants shall provide Class Counsel with a copy of the notice provided to the appropriate state officials, as defined under 28 U.S.C. § 1715. Prior to the date set for the preliminary approval hearing, Defendants shall file a proof of service with the Court indicating compliance with 28 U.S.C. § 1715.

K. Providing Class Data To Settlement Administrator

65. Within ten (10) calendar days after the Preliminary Approval Order, Defendants agree to provide to the Settlement Administrator and Class Counsel a “class list” containing the following information for each Class Member for the Class Period: (1) name; (2) last known address; (3) last-known telephone number; (4) employment start date; (5) employment end date; (6) dates of leave, if any; and (7) social security numbers. At the same time, Class Counsel shall be provided for each Class Member for the Class Period: (1) first initial; (2) complete last name; (3) employment start date; (4) employment end date; and (5) dates of leave, if any.

66. The Settlement Administrator will calculate the number of Qualifying Shifts, excluding leaves, worked by the Class Members during the Class Period, and the amount to be paid to Class Members based on information to be provided by Defendants. The Qualifying Shifts will be calculated by the Settlement Administrator for each Class Member. Partial Qualifying Shifts will not be counted; however, if a Class Member worked less than 25 Qualifying Shifts, such Class Member will be credited with having worked 25 Shifts for purposes of the Settlement. The Settlement Administrator shall provide the Parties first and last name of Class Members, job titles, and the associated dates of hire, termination, leaves, and number of Qualifying Shifts. Class Counsel will then have an opportunity to review the data provided to verify the accuracy of the information and to calculate the number of Qualifying Shifts and projected individual payment as needed. If numerous and/or substantial inconsistencies or inaccuracies are discovered at any point, the Parties agree to jointly apply to the Court for an extension of the schedule provided herein to allow the Parties to resolve the inconsistencies or inaccuracies. The above-described information will be provided to the Settlement Administrator and Class Counsel on a confidential basis, and the Settlement Administrator and Class Counsel shall take reasonable steps to protect the confidential and private information of the Class Members. Class Counsel shall destroy all such information (including

1 copies and data or information derived therefrom) within sixty (60) days of the date the Court finally
 2 approves the Settlement, shall not retain copies of such information, and shall not maintain or use such
 3 information for any purpose.

4 **L. Notice Of Settlement**

5 67. If the Court grants Preliminary Approval of the settlement terms described in this
 6 Settlement Agreement, a Notice of Settlement shall be provided to the Class as follows:

7 (a) Within fifteen ¹⁵~~(10)~~ calendar days after Defendants provide to the Settlement
 8 Administrator the class list referenced in Paragraph 65 the Settlement Administrator
 9 shall send a Notice of Settlement to all Class Members by regular U.S. Mail, postage
 10 prepaid. In order to provide the best notice practicable, any Notice of Settlement
 11 returned as undelivered shall be sent to the forwarding address affixed thereto, if any.
 12 The Settlement Administrator will perform an NCOA check and will skip-trace return
 13 mail and re-mail the notices within three (3) business days of receipt. If the
 14 procedures herein are followed, Defendants, Class Counsel, and the Settlement
 15 Administrator shall be deemed to have satisfied their obligation to provide the Notice
 16 of Settlement to the Class. A copy of the proposed Notice of Settlement is attached
 17 hereto as Exhibit A.

18 (b) The Notice of Settlement shall, at a minimum, include the following: the number of
 19 Qualifying Shifts worked by the Class Member during the Class Period, a preliminary
 20 calculation of the amount the Class Member can expect to receive based on the
 21 number of Qualifying Shifts she or he worked, the contact information for Class
 22 Counsel and Defense Counsel, information informing Class Members of their right to
 23 opt out, a statement that the Settlement Agreement may have preclusive effect and
 24 participation in the Settlement shall result in a release of Released Claims,
 25 notification that Class Members are solely responsible for determining the tax
 26 consequences of payments made pursuant to this Settlement Agreement; and
 27 notification that any payments under this Settlement Agreement shall not have any
 28 effect on the eligibility or calculation of employee benefits, nor will it be considered

1 compensation for determining eligibility in any employee pension benefit plan, as
2 discussed ante in Section III.F.

3 68. Class Member Request for Exclusion. The Notice of Settlement shall inform Class
4 Members of their right to opt out of the Class and be excluded from receiving any benefits under the
5 Settlement Agreement, except for the Class Member's share of the PAGA payment, by completing and
6 mailing a written request for exclusion to the Settlement Administrator on or before the Notice Response
7 Date. Any Class Member who submits a timely and valid request for exclusion will receive no settlement
8 payment except for the Class Member's share of the PAGA payment, will not be entitled to object to the
9 reasonableness of the Settlement, will not be entitled to appear at the Final Approval hearing, and will not
10 be bound by the terms of the Settlement Agreement, nor have any right to contest, appeal, or comment
11 thereon. Late-submitted opt-out requests will not be accepted by the Settlement Administrator and shall
12 not be effective. The Settlement Administrator will certify jointly to Class Counsel and Defense Counsel
13 the number of requests for exclusion that were valid and timely submitted.

14 If the number of Class Members who have submitted timely Requests for Exclusion from the
15 Settlement Class equates to or exceeds five (5) or more of the Class Members under this Settlement, then
16 Defendants shall have, in their sole discretion, the option to terminate this Settlement within five (5)
17 calendar days prior to the Final Approval Hearing, provided that the Settlement Administrator has
18 provided Defendants the number of valid and timely Requests for Exclusion at that time. In the event
19 Defendants withdrawals from the Agreement pursuant to this provision, the Agreement will become null
20 and void, and no party may use the fact that the Parties agrees to a resolution for any reason.

21 69. Class Member Dispute. If a Class Member disagrees with the number of Qualifying Shifts
22 on the Notice of Settlement, she or he must complete and send a notice of dispute to the Settlement
23 Administrator, together with any supporting written documentation. Such documentation may consist of
24 official records, pay stubs, weekly schedules, or personal logs. To be considered, the notice of dispute
25 and supporting written documentation must be received by the Settlement Administrator no later than
26 thirty (30) calendar days after the postmark date of the Notice of Settlement.

27 70. The Settlement Administrator shall immediately notify both Class Counsel and Defense
28 Counsel of any disputes submitted by Class Members. The Settlement Administrator shall share with

both Class Counsel and Defense Counsel the notice of dispute and any documentation submitted by a Class Member in support of his or her dispute. In the event there is a dispute regarding the number of Qualifying Shifts allocated to a Class Member, Defendants will reasonably and promptly cooperate with the Settlement Administrator's requests for information to resolve any such disputes. The Settlement Administrator shall make the final determination regarding the dispute based on the written documentation submitted by the Class Member and any materials submitted by Defense Counsel. The Settlement Administrator shall inform each Class Member of the final determination in writing at least five days prior to the Objection and Opt-Out Deadline.

71. At least twenty-one (21) calendar days before the Final Approval Hearing, the Settlement Administrator shall prepare a declaration of due diligence and proof of mailing with regard to the mailing of the Notice of Settlement, and any attempts by the Settlement Administrator to locate the Class Members ("Due Diligence Declaration"), and provide it to Class Counsel and Defense Counsel for presentation to the Court. Class Counsel shall be responsible for filing the Due Diligence Declaration with the Court.

72. If at any point the Settlement Administrator determines that it needs additional time, the Settlement Administrator shall inform the Parties regarding the situation, and the Parties will seek from the Court a modification of the schedules contained in this Settlement Agreement or any court order, to be consistent with the recommendations and requests of the Settlement Administrator.

M. Objections To Settlement Agreement After Preliminary Approval

73. Any Class Member who intends to object to the settlement or this Settlement Agreement may submit a written objection, along with any supporting documents, to the Court, on or before the Notice Response Date by mailing it to or filing it in person with the Court and send copies to the Settlement Administrator. Written objection should set forth, in clear and concise terms, the legal and factual arguments supporting the objection. As set forth below, Class Members may also object by appearing at the Final Approval Hearing.

74. Class Members who fail to make objections in the manner specified in Paragraph 73 shall be deemed to have waived any and all objections and shall be foreclosed from making any objection, whether by appeal or otherwise, to the settlement or this Settlement Agreement.

75. Class Members have the option to appear at the Final Approval Hearing, either in person

1 or through their own counsel.

2 76. The filing of an objection allows Class Counsel or Defense Counsel, upon reasonable
3 notice, to take the deposition of the objecting Class Member, and to seek any documentary evidence or
4 other tangible things that are relevant to the objection. Failure by the Class Member to make himself or
5 herself available for a deposition or comply with expedited discovery requests may result in the Court
6 striking the Class Member's objection and otherwise denying him or her the opportunity to make an
7 objection or be further heard.

8 **N. Duties Of The Parties In Connection With Final Court Approval**

9 77. In connection with the Court's final approval of this Settlement Agreement, Class Counsel
10 and Defense Counsel will submit a proposed Judgment and a proposed Final Approval Order: approving
11 the settlement, adjudicating the terms thereof to be fair, reasonable, and adequate, and directing
12 consummation of all terms and provisions as provided in this Settlement Agreement.

13 **O. Timing And Manner Of Payments**

14 78. Within fourteen (14) days of the Effective Date, the Settlement Administrator will provide
15 Defendants' distribution calculations and funding instructions. Within seven (7) days after Defendants'
16 receipt of distribution calculations and funding instructions from the Settlement Administrator,
17 Defendants will fund the Settlement Fund. The Settlement Fund shall be placed in a Qualified Settlement
18 Fund (QSF) under the exclusive control of the Settlement Administrator, and shall be used solely for the
19 purpose of fulfilling the terms of this Settlement Agreement.

20 79. All interest with respect to the gross settlement amount shall accrue to the benefit of the
21 Class. The monetary relief to the Class, all fees and expenses of the Settlement Administrator, and any
22 and all taxes arising out of any interest or other income derived from the Settlement Fund shall be paid
23 from the gross settlement amount. Within fourteen (14) days of the Effective Date, the Settlement
24 Administrator shall advise Defendants of the exact amount of the employer's share of payroll taxes due.

25 80. Within five (5) calendar days after receipt of the Settlement Fund, the Settlement
26 Administrator shall pay to Class Counsel any Court-approved attorneys' fees and litigation costs, pay to
27 the Class Representatives any Court-approved Service Awards, and pay the LWDA seventy-five percent
28 (75%) of the Court-approved amount allocated for PAGA penalties. The Settlement Administrator will

1 be responsible for making appropriate deductions, calculating and reporting the employer payroll taxes on
2 the Individual Settlement Awards, and meeting tax reporting obligations.

3 81. The Settlement Administrator shall take all reasonable efforts to make payments to Class
4 Members from the Settlement Fund within five (5) calendar days after receipt of the Settlement Fund. The
5 Settlement Administrator will send an individual check to each Class Member by regular U.S. Mail to the
6 address used by the Settlement Administrator for mailing of the Notice of Settlement. Each Class Member
7 who is entitled to a payment under this Settlement Agreement will receive a single check for the total of
8 his or her Individual Settlement Award (less applicable payroll deductions required by federal and state
9 law for the wage portion of the payment, as described below).

10 82. Checks sent to Class Members under this Settlement Agreement shall remain valid and
11 negotiable for one hundred eighty (180) calendar days from the date of their mailing, and thereafter may
12 be automatically canceled if not cashed by the payee within that time. If a check is returned as non-
13 deliverable, the Settlement Administrator will perform an NCOA check and will skip-trace return mail
14 and re-mail the notices within three (3) business days of receipt.. Uncashed settlement check(s) will be
15 awarded *cy pres* to the University of California Hastings Workers Rights Clinic. In the event the amount
16 of uncashed checks is greater than \$10,000, the money shall be distributed pro rata to Class Members who
17 have not opted out. Defendants will not be responsible for the employer's share of taxes for any share
18 awarded *cy pres* and shall be returned the proportional amount of the employer's share of taxes on those
19 amounts. No person shall have any claim against Defendants, Released Parties, Defense Counsel, the
20 Named Plaintiffs, any Class Member, Class Counsel, or the Settlement Administrator based on
21 distributions and payments made in accordance with this Settlement Agreement.

22 83. Within fourteen (14) calendar days after the distribution of the settlement funds and
23 payment of attorneys' fees, the Settlement Administrator will prepare and provide to the parties a Post-
24 Distribution Accounting, with an easy-to-read chart which sets forth the total settlement fund, the total
25 number of class members, the total number of class members to whom notice was sent and not returned
26 as undeliverable, the number and percentage of claim forms submitted, the number and percentage of opt-
27 outs, the number and percentage of objections, the average and median recovery per claimant, the largest
28 and smallest amounts paid to class members, the method(s) of notice and the method(s) of payment to

1 class members, the number and value of checks not cashed, the amounts distributed to each cy pres
2 recipient, the administrative costs, the attorneys' fees and costs, the attorneys' fees in terms of percentage
3 of the settlement fund, and the multiplier, if any. Within twenty-one (21) calendar days after the
4 distribution of the settlement funds and payment of attorneys' fees, Class Counsel shall be responsible for
5 filing the Post-Distribution Accounting with the Court and the Settlement Administrator shall be
6 responsible for posting the Post-Distribution Accounting on the settlement website.

7 **P. Payroll Deductions And Taxes**

8 84. For each Class Member who receives an Individual Settlement Award under this
9 Settlement Agreement, the Settlement Administrator will issue: A W-2 Form on which the wage portion
10 of the Individual Settlement Award shall be reported, and which will reflect all payroll deductions required
11 by state and federal law; and A 1099 Form on which the penalties and interest of portion of the Individual
12 Settlement Award shall be reported.

13 85. The Parties agree and understand that Defendants have not made any representations
14 regarding the tax obligations or consequences, if any, related to this Settlement Agreement. The Parties
15 agree that Defendants and each Class Member are solely responsible for determining the tax consequences
16 of payments made pursuant to this Settlement Agreement and for paying taxes, if any, which are
17 determined to be owed by each of them on such payments (including penalties and interest related thereto)
18 by any taxing authority, whether state, local, or federal.

19 **Q. Other Provisions**

20 86. Voiding the Settlement Agreement. A failure of the Court to approve any material
21 condition of this Settlement Agreement which effects a fundamental change of the terms of the settlement
22 shall render the entire Settlement Agreement voidable and unenforceable as to Plaintiffs and Defendants,
23 at the option of any Party; however, the Parties understand and agree that this provision does not apply to
24 the Court's final decision following an appeal, if any, for Administrative Costs to the Settlement
25 Administrator, Service Awards to the Named Plaintiffs, or Attorneys' Fees and Costs to Class Counsel.
26 Any Party may exercise its option to void this Settlement Agreement as provided above by giving notice,
27 in writing, to all other Parties and to the Court at any time prior to Final Approval.

28 87. At the sole discretion of Defendants, if more than five percent (5%) of the Class submits

timely and valid requests for exclusion pursuant to the terms and procedures of the Notice of Settlement, this entire Settlement Agreement shall become voidable and unenforceable as to Plaintiffs and Defendants, if Defendants provide notice under this provision. The Settlement Administrator shall report the number and percentage of Class Members who submit timely and valid requests for exclusion within seven (7) calendar days following the opt-out deadline. Defendants may exercise such option to void the Settlement Agreement by giving notice, in writing, to Class Counsel not more than twenty-one (21) calendar days following the opt-out deadline. In the event Defendants choose to exercise this option, they are required to pay all settlement administration costs incurred through such date.

88. This Settlement Agreement is contingent on approval of class certification under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes only. Defendants expressly reserve their rights to challenge the propriety of class certification or representative treatment for any other purpose should the Court not approve the Settlement.

R. Notices

89. Except for Class Member notices, which are required herein to be made to or by the Settlement Administrator, all notices, requests, demands and other communications related to or in connection with this Settlement Agreement shall be in writing, and shall be provided by appropriate method depending on the urgency (e.g., personal delivery, facsimile, overnight delivery, or first-class U.S. mail) to:

TO PLAINTIFFS AND THE CLASS:

Jay Smith
Joshua F. Young
GILBERT & SACKMAN
A Law Corporation
3699 Wilshire Boulevard, Suite 1200
Los Angeles, California 90010
Telephone: (323) 938-3000
Fax: (323) 937-9139

Randy Renick
Cornelia Dai
HADSELL STORMER RENICK & DAI, LLP
128 N. Fair Oaks Avenue
Pasadena, California 91103
Tel: (626) 585-9600
Fax: (626) 577-7079

TO DEFENDANTS:

Christopher C. Hoffman
Aaron F. Olsen
Phillip G. Simpler
FISHER & PHILLIPS LLP
4747 Executive Drive, Suite 1000
San Diego, California 92121
Telephone: (858) 597-9600
Facsimile: (858) 597-9601

S. Mutual And Full Cooperation

90. Named Plaintiffs, Defendants, Class Counsel, and Defense Counsel agree to fully cooperate with each other to accomplish the approval by the Court of the terms of this Settlement Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms herein. The Parties agree to use their best efforts, including all efforts contemplated by this Settlement Agreement, and any other efforts that may become necessary by Order of the Court, or otherwise, to effectuate this Settlement Agreement.

91. The Parties agree that they will not attempt to encourage any Class Members to object to the proposed settlement or to opt out. Plaintiffs and Class Counsel will make every reasonable effort to accurately explain the benefits of this Settlement Agreement in response to any questions from any Class Member.

T. No Admission Of Liability

92. Nothing herein shall constitute any admission by any of the Defendants of wrongdoing or liability or of the truth of any factual allegations in the Class Action. Nothing herein shall constitute an admission by any of the Defendants that the Class Action was properly brought as a class or representative action other than for settlement purposes. To the contrary, Defendants, and each of them, have denied and continue to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in the Class Action. To this end, the settlement of the Class Action, the negotiation and execution of this Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement Agreement or the settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants, or any of them, or of the truth of any of the factual allegations in the operative complaints, and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Defendants, or any of them, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

U. Binding Nature Of Settlement Agreement

93. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Released Parties. The Named Plaintiffs and the Class Members represent,

1 covenant, and warrant that they have not, directly or indirectly, assigned, transferred, or encumbered any
2 claim, demand, action, cause of action, or rights released in this Settlement Agreement. This Settlement
3 Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding that
4 may be instituted, prosecuted, or attempted in breach of or contrary to this Settlement Agreement.

5 94. This Settlement Agreement may be amended or modified only by a written instrument
6 specifically referencing this Settlement Agreement signed by Class Counsel and the Named Plaintiffs, as
7 well as Defense Counsel and Defendants. No rights under this Settlement Agreement may be waived
8 except in writing.

9 95. This Settlement Agreement and any attached exhibits constitute the entire Settlement
10 Agreement between the Named Plaintiffs, Class Members, and Defendants relating to the terms contained
11 herein. All prior or contemporaneous Settlement Agreements, understandings, and statements, whether
12 oral or written, whether express or implied, and whether by a Party or its counsel, are merged herein. No
13 oral or written representations, warranties, or inducements have been made to any Party concerning this
14 Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained
15 and memorialized in such documents.

16 96. Paragraph titles or captions contained herein are inserted as a matter of convenience and
17 for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or
18 any of its provisions. Each term of this Settlement Agreement is intended to be contractual and not merely
19 a recital.

20 **V. Invalid Provisions**

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

25 **W. Dispute Resolution**

26 98. Except as authorized herein, all disputes concerning the interpretation, implementation,
27 calculation, or payment of the Settlement Amount or other disputes regarding compliance with this
28 Settlement Agreement will be resolved by the Court.

X. Governing Law And Joint Drafting Of Settlement Documents

99. All terms of this Settlement Agreement and related documents shall be governed by and interpreted according to the laws of the State of California, without respect to choice of law provisions of any state.

100. Class Counsel and Defense Counsel have arrived at this Settlement Agreement as a result of a series of arm's-length negotiations, taking into account all relevant factors, present and potential.

101. This Settlement Agreement has been drafted jointly by Class Counsel and Defense Counsel and, therefore, in any construction or interpretation of this Settlement Agreement, the same shall not be construed against any of the Parties.

102. The Named Plaintiffs, Class Members, and Class Counsel agree that none of the documents marked confidential and provided to them by Defendants shall be used for any purpose other than the prosecution and settlement of the Class Action. Specifically, none of the documents marked confidential shall be used to pursue any subsequent claims or litigation against Defendants or the Released Parties. Class Counsel will destroy all confidential information and documents provided by Defendant or the Settlement Administrator within sixty (60) days after the Effective Date.

Y. Counterparts

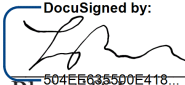
103. This Agreement may be executed in one or more counterparts and by scanned copies or facsimile. All executed counterparts, and each of them, shall be deemed to be one and the same instrument. Once available, a complete set of executed counterparts shall be filed with the Court. All executed copies of this Settlement Agreement and photocopies thereof (including facsimile and/or emailed copies of the signature pages) shall have the same force and effect and shall be as legally binding and enforceable as the original.

Z. Parties' Authority

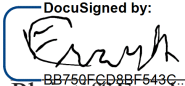
104. The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and are fully authorized to bind the Named Plaintiffs, Class Members, and Defendants to all terms stated herein.

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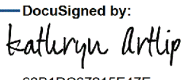
Dated: 12/17/2021

DocuSigned by:

 Plaintiff Larry Barragan

Dated: 12/17/2021

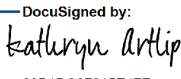
DocuSigned by:

 Plaintiff Frank Calandrino

Dated: 12/17/2021

By 
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Title: Assistant General Counsel
 Authorized Signatory for Kinder Morgan, Inc.

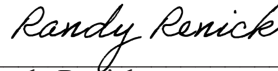
Dated: 12/17/2021

By 
 63B1DC67215E47E...

Title: Assistant General Counsel
 Authorized Signatory for Kinder Morgan Terminals, Inc.

Hadsell Stormer Renick & Dai LLP

Dated: 12/17/2021


 Randy Renick
 Counsel for Plaintiffs

Dated: 12/17/2021

Gilbert & Sackman, A Law Corporation

 Joshua F. Young
 Counsel for Plaintiffs

Dated: 12/17/2021

Fisher & Phillips, LLP.
 DocuSigned by:

 Christopher C. Hoffman
 Aaron F. Olsen
 Phillip G. Simpler
 Counsel for Defendants Kinder Morgan, Inc.
 and Kinder Morgan Terminals, Inc.

EXHIBIT A

Notice of Proposed Class Action and Private Attorneys General Act Settlement

*Larry Barragan and Frank Calandrino v. Kinder Morgan, Inc. and Kinder Morgan Terminals,
Inc.*

United States District Court, Central District of California
Case No.: 2:21-cv-02955-PA-MRW

THIS IS A COURT-AUTHORIZED NOTICE.

PLEASE READ THIS NOTICE CAREFULLY.
YOU MAY BE ENTITLED TO RECEIVE MONEY FROM THIS PROPOSED
SETTLEMENT.
YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR NOT.
*This is not a lawsuit against you and you are **not** being sued.
This is not a solicitation from a lawyer.*

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because Kinder Morgan, Inc.'s and Kinder Morgan Terminals, Inc.'s ("Defendants") records indicate you were employed by one of the Defendants in California at some point between February 22, 2017 through the present as a non-exempt employee who worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals and, therefore, are a Class Member in this class action lawsuit. As a Class Member, the Court has ordered that this notice be sent to you to: (1) inform you of the settlement of this class action lawsuit; (2) inform you of your legal rights under the Settlement; and (3) advise you of how you can participate, exclude yourself, or object to the Settlement.

2. What is this lawsuit about?

The lawsuit alleges the following claims against Defendants: (1) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Furnish Accurate Wage Statements (Lab. Code §§ 226 and 226.3); (3) Private Attorneys General Act ("PAGA") (Lab. Code § 2698 *et seq.*); and (4) Violation of the Unfair Competition Law (Bus. & Profs. Code §17200 *et seq.*) (the "Action")

Defendants deny they did anything wrong and contend that they timely and properly paid all wages owed; provided all required meal and rest periods; properly issued accurate, itemized wage statements, as required by law, and did not engage in any unfair competition or violations of PAGA. Defendants contend that none of the claims alleged by Plaintiffs will succeed in Court.

3. What is a class action?

In a class action lawsuit, a person called a Class Representative sues on behalf of people who have similar claims. The people with similar claims are called Class Members and together they make up the Class. In a class action, the Court resolves the issues for all Class Members,

except for those who exclude themselves from the Class. A Class Member is bound by the determination or judgment entered in the case, whether the Class wins or loses, and may not file their own lawsuit on the same claims that were decided in the class action, unless the class member excludes themselves from the Class. Here, the Court preliminarily approved the Settlement and appointed Plaintiffs Larry Barragan and Frank Calandrino as the Class Representatives.

4. Why is there a settlement?

The Court did not hold a trial to decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement that they believe is fair, reasonable, and adequate under the circumstances. Plaintiffs think their claims have merit and that they would have been successful at trial. On the other hand, Defendants deny all liability and believe that Plaintiffs would not have won anything at trial. In agreeing to settle this lawsuit, both sides avoided the significant costs of a trial and Class Members will receive compensation without any determination of wrongdoing by Defendants.

WHO IS INCLUDED IN THE SETTLEMENT?

To receive a portion of the Settlement, you must be a Class Member.

5. How do I know if I am a Class Member?

You are a Class Member if you were employed by any Defendants in California at some point between February 22, 2017 through the present as a non-exempt employee who worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals.

THE LAWYERS REPRESENTING YOU

6. Do I have a lawyer in this case?

The Court appointed Gilbert & Sackman and Hadsell Stormer Renick & Dai LLP to serve as Class Counsel and represent you and other Class Members. Class Counsel may be reached at:

Jay Smith, Esq.
Joshua Young, Esq.
3699 Wilshire Boulevard, Suite 1200
Los Angeles, CA 90010
jyoung@gslaw.org

Randy Renick, Esq.
Cornelia Dai, Esq.
128 North Fair Oaks Avenue, Suite 204
Pasadena, California 91103-3645
cdai@hadsellstormer.com

You will not be charged for their services. Instead, Class Counsel will request to be compensated directly from the Settlement, as discussed below. If you want to be represented by

your own lawyer, you may hire one at your own expense.

7. How will Class Counsel be paid?

Class Counsel undertook this case on a contingency basis, that is, without receiving any payment up front. Now, having successfully resolved this action on behalf of the Class, Class Counsel will ask the Court to approve payment by Defendants of \$96,250 (25% of the total amount) in attorneys' fees and up to \$10,000 in litigation costs. If these amounts are approved by the Court, the fees will pay Class Counsel for litigating the case and negotiating the Settlement. Defendants have agreed not to oppose Class Counsel's request for these fees and costs.

WHAT ARE THE TERMS OF THE SETTLEMENT?

8. What does the Settlement provide?

Defendants have agreed to pay the total amount of \$385,000, in addition to any employer-side payroll taxes due, (the "Total Settlement Amount") to settle this lawsuit. Before any payments will be made to Class Members, however, the following deductions will be made from the Total Settlement Amount:

- Settlement Administration Costs: For its work administering the Settlement, CAC Services Group, LLC will charge an amount not to exceed \$5,000.
- Class Representative's Service Awards: For their effort prosecuting this action and for acting as the representatives on behalf of the Class, Larry Barragan and Frank Calandrino will each request a Class Representative Service Award in an amount not to exceed \$5,000 each.
- Attorneys' Fees and Expenses: Class Counsel will request a payment from Defendants of \$96,250 in attorneys' fees and reimbursement of actual litigation costs, not to exceed \$10,000.00. Class Members are not personally responsible for paying Class Counsel's attorneys' fees or costs.
- PAGA Payment: \$3,000 will be paid to the Labor and Workforce Development Agency ("LWDA") for civil penalties under PAGA.

9. How will my payment be calculated?

After deducting the items listed in Section 8 from the Total Settlement Amount, the amount remaining is the "Net Settlement Fund," the full amount of which will be allocated to Class Members who do not request exclusion. Your share of the Net Settlement Fund will depend on the number of shifts that you worked for Defendants in California as a Class Member from February 22, 2017 through the <<DATE OF PRELIMINARY APPROVAL>> (the "Class Period"). Here's how it works:

Each member of the Class will receive a pro-rata portion based on the ratio of the number of Qualifying Shifts that each Participating Settlement Class Member worked during the Class Period compared to the total number of Qualifying Shifts that all Participating Settlement Class

Members worked during the Class Period. Qualifying Shifts include any shift, excluding leaves, during which employees were classified as non-exempt and worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals.

10. How much will I receive?

Defendants' records show that you worked a total of [est. amount] Qualifying Shifts as a Class Member in California during the Class Period, which means you will receive an amount currently estimated to be: \$[est. amount], less applicable taxes and payroll deductions. (You may have worked for a Defendants prior to the Class Period, but that time is not included for purposes of this settlement.)

If you believe in good faith that the number of Qualifying Shifts listed above is incorrect, you must contact the Settlement Administrator and provide documentation that you believe demonstrates that those calculations are incorrect and authorize the Settlement Administrator to review your records and related documents. The number of Qualifying Shifts stated herein is presumed to be correct unless the documents you submit (such as wage statements and paystubs) substantiate that the calculations provided are incorrect. Any such dispute must be mailed to the Settlement Administrator, postmarked by [insert] at the designated address for the Settlement Administrator.

If you do not provide any documents or other evidence to support your challenge, the Settlement Administrator may reject your challenge.

11. How do I receive my payment?

To receive your payment, ***you do not have to do anything***. Once the Settlement receives final approval by the Court, the Settlement Administrator will automatically send you your Settlement Award checks to the mailing address in this letter as long as you do not request to be excluded from the Settlement. Please make sure that the Settlement Administrator has your correct mailing address.

12. When do I get my payment?

The Court will hold a hearing on <<[DATE OF FINAL APPROVAL HEARING]>> to decide whether to approve the Settlement. To check on the progress of the Settlement, you may call the Settlement Administrator at <<[Settlement Administrator Number]>>. If the Court approves the Settlement, you will receive your payment following the hearing.

Once the Settlement Administrator mails you your Settlement Award check, you must cash your check within 180 days from the date the check is mailed. If you do not cash your check within 180 days, you will forfeit the amount of that check.

13. Are there tax consequences if I receive my payment?

The payments you receive based on the number of Qualifying Shifts you worked will be allocated: 20% to wages and 80% to interest and penalties. The portion of your payments representing wages will be subject to regular tax withholding and will be reported on an IRS Form W-2. The Settlement Administrator will send all related employment tax withholdings to the proper state and federal taxing authorities. The portion of your payment representing interest

and penalties will be reported on a Form 1099, with the required copies of the Form 1099 provided to the proper taxing authorities. You are ***strongly encouraged*** to consult with your tax advisor concerning the tax consequences of the payments that you receive under the Settlement.

14. What am I giving Defendants to get a payment or stay in the Class?

Unless you exclude yourself from the Class, you will remain a Class Member, which means you will not be able to sue or be part of any other lawsuit against Defendants about the legal issues in *this* case. It also means that you will agree to the “Release” set forth below:

RELEASE

Upon the date Defendants fund the Settlement, I fully and finally release and discharge Defendants Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc. and their former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, attorneys, and legal representatives (collectively, the “Released Parties”), from any and all claims, rights, demands, liabilities and causes of action of any nature or description, including any such claims, whether known or unknown, that were litigated in the Action against Defendants or could have been litigated based on the facts and circumstances alleged in the entire Action against Defendants, arising under the Complaint filed in the Los Angeles Superior Court and United States District Court including, but not limited to, all claims under the California Labor Code, Wage Orders and related orders of the California Industrial Welfare Commission and Business and Professions Code section 17200, *et seq* (the “Released Claims”) alleged in the Action or which could have been alleged based on the facts alleged in the Action. The claims released under this paragraph shall include, but not necessarily be limited to, claims for: meal period violations and failure to pay compensation in lieu thereof; rest break violations and failure to pay compensation in lieu thereof; failure to pay minimum wages, regular wages, overtime and double time wages; all theories related to unpaid wages (including but not limited to off-the-clock work, time shaving, time rounding, on-call time, working through meal periods, regular rate claims, on-duty meal period violations, or any other claims giving rise to minimum and/or overtime violations); unpaid meal period penalties; unpaid rest period penalties; wage statement violations; failure to pay wages upon separation from employment; waiting time penalties; any penalties or wages owed, derivative violations of the Unfair Competition Law, derivative California Private Attorneys General Act, the Labor Code, Labor Code section 2699, *et seq.*, as well as any damages, restitution, disgorgement, civil penalties, statutory penalties, taxes, interest or attorneys’ fees or costs resulting therefrom.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail to the Settlement Administrator with a sentence stating: “I wish to be excluded from the case entitled: *Larry Barragan and Frank Calandrino v. Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc.*, United States District Court, Central District of California, Case No.: 2:21-cv-02955-PA-MRW.” You must also include your full name (and former names, if any), address, telephone number,

last four digits of your social security number, your signature. You must mail your exclusion request no later than <<60 days from mailing>> to the Settlement Administrator at the following address:

Barragan and Frank Calandrino v. Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc.
Settlement Administrator

c/o <<TPA>>
 <<address>>

If you ask to be excluded, you will not receive any money from the Settlement and you cannot object to the Settlement. Class Counsel will not represent your interests in this lawsuit if you request to be excluded.

16. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, **you will not receive any money from this Settlement**. If you exclude yourself from the Settlement, you keep the right to sue Defendants on your own and at your own expense.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court that I don't like the Settlement?

If you are a Class Member and you wish to object to the Settlement, you may send a written objection to the Settlement Administrator no later than <<60 days from mailing>> and/or object at the time of the Final Approval Hearing. Your objection cannot ask the Court to order a larger Settlement; the Court can only approve or deny the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement. If you choose to object to the Settlement, you may enter an appearance at the Final Approval Hearing *in propria persona* (meaning you choose to represent yourself), or through an attorney that you hire and pay for yourself.

Make sure that your objection includes your full name (and former names, if any), address, telephone number, the last four digits of your social security number, the case name and number, your signature, the factual basis for the objection with any supporting legal arguments, documents or evidence to the extent intended to be submitted to the Court, and, if you are represented by counsel, the name, phone number, mailing address, and email address of such counsel. You must mail any written objection to the Settlement Administrator no later than <<60 days from mailing>>. The Settlement Administrator's address is: [address]

Barragan and Frank Calandrino v. Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc.
Settlement Administrator

c/o <<TPA>>
 <<address>>

THE COURT'S FAIRNESS HEARING

18. When will the court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at <<time>> a.m. on <<date>>, at United States

District Court Central District of California, 350 W. 1st Street, 9th Floor, Los Angeles, CA 90012, in Courtroom 9A. You can also find the Zoom Link to Courtroom 9A here: <https://www.cacd.uscourts.gov/honorable-percy-anderson>. At this hearing, the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate. If you or other Class Members object to the Settlement, the Court will consider the objections. The Judge will listen to people who have asked to speak at the hearing. At or after the hearing, the Court will decide whether to grant final approval of the Settlement.

19. Do I have to come to the hearing?

No, you do not have to attend the hearing, but you are welcome to come at your own expense. If you file an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you are a member of the Class and you do nothing, you will receive payment for your portion of the settlement and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants involving the legal issues in this case for the time period covered by this case, ever again.

GETTING MORE INFORMATION

21. How can I get more details about the Settlement?

For more information about the Settlement, you may contact the Settlement Administrator, Class Counsel listed in Section 6 (Page 2, above), or you may go to the Court Clerk's office, located at 350 W. 1st Street, 9th Floor, Los Angeles, CA 90012, during regular business hours and view the Court file: *Larry Barragan and Frank Calandrino v. Kinder Morgan, Inc. and Kinder Morgan Terminals, Inc.*, United States District Court, Central District of California, Case No.: 2:21-cv-02955-PA-MRW, or access the case file on-line through the Court's website at: <https://www.cacd.uscourts.gov/e-filing/electronic-filing-and-case-access-people-without-lawyers>

PLEASE DO NOT TELEPHONE OR CONTACT THE COURT, THE JUDGE, OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

EXHIBIT B

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*Attorneys for Plaintiffs Larry Barragan and
Frank Calandrino*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LARRY BARRAGAN and FRANK
CALANDRINO, individually and on
behalf of all similarly situated current and
former employees,

Plaintiffs,

v.

KINDER MORGAN, INC.; KINDER
MORGAN TERMINALS, INC.; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 2:21-cv-02955-PA-MRW

CLASS ACTION

[PROPOSED]

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, AND SETTING OF
FINAL APPROVAL HEARING**

Date: January 24, 2022
Time: 1:30 p.m.
Courtroom: 9A (9th Floor)
Judge: Hon. Percy Anderson

On February 22, 2021, Plaintiffs filed this class-action lawsuit against Defendants in *Larry Barragan and Frank Calandrino, v. Kinder Morgan, Inc.; Kinder Morgan Terminals, Inc.*; Case 21STCV06844 in the Superior Court of Los Angeles County, (the “Complaint”), alleging rest break violations and other related claims on behalf of current and former employees who worked as employees at Defendant’s oil pipeline and terminal facilities located in Carson, California (the “Carson Terminal”), and Long Beach, California (the “Los Angeles Harbor Terminal”). The Complaint alleges the following causes of action: (1) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Furnish Accurate Wage Statements (Lab. Code §§ 226 and 226.3); (3) Private Attorneys General Act (Lab. Code § 2698 et seq.); and (4) Violation of the Unfair Competition Law (Bus. & Profs. Code §17200 et seq.). Plaintiffs sought unpaid wages, statutory and civil penalties, restitution, attorneys’ fees and costs, interest, and injunctive and declaratory relief for the time period from February 22, 2017 to the present. Dkt. 1. On April 5, 2021, Defendants filed a Notice of Removal of this action from the Superior Court of California, County of Los Angeles, to the United States District Court for the Central District of California.

Following an extensive investigation and arm’s-length and good-faith negotiations including mediation with the Honorable Carla Woehrle on July 26, 2021, Plaintiffs and Defendants (collectively, “the Parties”) reached a tentative settlement agreement, which was subsequently reduced to writing and has been filed with this Court.

Plaintiffs have moved this Court for an order: (1) preliminarily and conditionally certifying the class for purposes of settlement; (2) preliminarily approving the class action settlement; (3) preliminarily appointing Plaintiffs Larry Barragan and Frank Calandrino as the Class Representatives for purposes of settlement; (4) preliminarily appointing Gilbert & Sackman, a Law Corporation and Hadsell Stormer Renick & Dai LLP, as class counsel for purposes of settlement; (5) preliminarily approving the application for payment to class counsel of reasonable attorneys’ fees and costs; (6) preliminarily approving the payment of an “enhancement award” to each of the two class

representatives; (7) preliminarily approving settlement administration services to be provided by CAC Services Group, LLC; (8) approving the form and content the proposed class notice; (9) directing that the notice of settlement be mailed by first class mail to the Settlement Class members; and (10) scheduling a final fairness approval hearing.

No opposition has been filed to plaintiff's motion, which came for hearing before the Court on January 24, 2022, at 1:30 p.m. Counsel for all parties were present at the hearing.

This Court, having considered Plaintiffs' notice of motion, supporting memorandum of points and authorities and the declarations of counsel, the Settlement Agreement, the proposed Class Notice, and the oral argument presented to the Court, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and to conduct a fairness hearing as to good faith, fairness, adequacy, and reasonableness of any proposed settlement, **HEREBY ORDERS and MAKES DETERMINATIONS** as follows:

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

2. The Court finds that certification of the following class for purposes of settlement is appropriate: All current and former hourly employees of Kinder Morgan, Inc. or Kinder Morgan Terminals, Inc. who worked as a Gauger or Ops Coordinator at the Carson or Los Angeles Harbor Terminals, who do not request to exclude themselves (i.e. opt out) from the settlement, at any time during the period from February 22, 2017 through the date of Preliminary Approval.

3. The Court appoints Plaintiffs Larry Barragan and Frank Calandrino as class representatives for purposes of settlement;

4. The Court appoints Gilbert & Sackman, A Law Corporation, and Hadsell Stormer Renick & Dai, LLP as class counsel for purposes of settlement;

5. Federal Rule of Civil Procedure 23(e) requires court approval of a class action settlement. Approval is a two-step process under Rule 23(e). "[T]he Court first

determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted.” *Noll v. eBay, Inc.*, 309 F.R.D. 593, 602 (N.D. Cal. 2015)(internal citations omitted); *see also* Manual for Complex Litigation (Fourth) § 21.632 (courts “must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.”). Preliminary approval of a settlement is appropriate when the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, non-collusive negotiations; (3) does not improperly grant preferential treatment to class representatives or segments of the class; and (4) has no obvious deficiencies. *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). “Closer scrutiny is reserved for the final approval hearing.” *Harris v. Vector Mktg. Corp.*, No. C-08-5198 EMC, 2011 U.S. Dist. LEXIS 48878, at *24 (N.D. Cal. Apr. 29, 2011).

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

7. It further appears that the proposed Settlement has been reached as the result of intensive, serious and non-collusive arm’s-length negotiations. It further appears that extensive investigation and research has been conducted such that counsel for the Parties

1 at this time are able to reasonably evaluate their respective positions. Class Counsel have
2 significant experience in wage and hour class actions. The proposed Settlement was
3 reached through extensive negotiations and with the involvement of an experienced
4 mediator, Hon. Carla Woehrle (Ret.) of ADR Services, Inc.

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

7 9. In connection with its preliminary approval of the Settlement, the Court
8 preliminarily approves the application for payment to class counsel of reasonable
9 attorneys' fees of up to \$96,250 (25% of the common fund) and reasonable costs up to
10 \$10,000.

11 10. In connection with its preliminary approval of the Settlement, the Court
12 preliminarily approves the payment of an "incentive award" in the amount of \$5,000 to
13 each of the two class representatives.

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

18 **APPROVAL OF DISTRIBUTION OF THE NOTICE OF SETTLEMENT**

19 12. Rule 23(e) provides that a court "must direct notice in a reasonable manner
20 to all class members who would be bound by" a proposed class action settlement. Fed.
21 R. Civ. Pro. 23(e)(1). This Court finds the proposed Notice of Settlement, which is
22 attached hereto as Exhibit 1, fairly and adequately advises the potential class members of
23 the terms of the proposed Settlement and the claims process for the class members to
24 obtain the benefits available thereunder, as well as the right of class members to opt out
25 of the class, to challenge the number of shifts reported by Defendant from its records, to
26 file documentation in objection to the proposed Settlement, and to appear at the Final
27 Approval Hearing to be conducted at the date set forth below. The Court further finds
28 that Notice of Settlement and proposed distribution of such notice by first-class mail to

each identified class member at his or her last known address comports with all constitutional requirements, including those of due process.

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

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

FINAL APPROVAL HEARING AND SCHEDULE

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

- a. Mailing of Settlement Documents to the class shall be completed on or before February 18, 2022 (10 calendar days plus 15 calendar days after the January 24, 2022, Motion for Preliminary Approval Hearing);
- b. The deadline for class members to file and serve objections and requests for exclusion shall be April 19, 2022 (60 calendar days from the mailing of the Settlement Documents).

16. The Final Approval Hearing will be held on _____, at 1:30 p.m. in the Courtroom of United States District Court Judge Percy Anderson. Members of the class who object to the proposed Settlement may appear and present such objections at the Fairness Hearing in person or by counsel. All written objections and supporting papers must be filed or postmarked no later than the deadline set forth above.

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

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

8 **IT IS SO ORDERED.**

9
10 Dated: _____, 2022

The Honorable Percy Anderson
United States District Court Judge

EXHIBIT C

Final Approval Order TBD