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and all other aggrieved employees*

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Superior Court of California,
County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Drew, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

EFREN PALOMINO, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No. 23STCV04401

CLASS AND REPRESENTATIVE ACTION

**DECLARATION OF JOHN J. DARIN IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 5, 2024
Time: 9:00 am
Dept: 17
Judge: Hon. Laura A. Seigle

Complaint Filed: February 28, 2023
FAC Filed: March 21, 2023
Trial Date: Not Set

1 I, John J. Darin, declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and an
3 associate attorney at Hunter Pyle Law in Oakland, California. I submit this declaration in support
4 of Plaintiff's Motion for Preliminary Approval of Class and Representative Action Settlement
5 agreed to by Plaintiff Efren Palomino ("Plaintiff") and Defendants Winall Oil Co., Allen Gimenez,
6 and Gary Gimenez ("Defendants"). Plaintiff and Defendants are collectively referred to here as the
7 "Parties."

8 2. Hunter Pyle Law is counsel for Plaintiff and the putative class. I have personal
9 knowledge of the facts set forth in this declaration and could and would testify competently to
10 them.

11 3. Attached as **Exhibit 1** is the proposed Stipulation of Settlement (the "Settlement" or
12 "Settlement Agreement")¹ agreed to by the Parties. The Class Notice is **Exhibit A** to the
13 Settlement.

14 4. Attached as **Exhibit 2** is the Memorandum of Understanding executed by the
15 Parties.

16 **BACKGROUND AND EXPERIENCE**

17 5. I have worked in employment law since 2016. Throughout law school, I clerked at
18 Quintana Hanafi, LLP, a San Francisco firm representing employees in the labor and employment
19 context. As a law student, I participated in Legal Aid at Work's Workers' Rights Clinic, providing
20 legal advice to low-income workers. In 2018, I graduated *cum laude* from UC College of the Law,
21 San Francisco (formerly, Hastings College of the Law). I received the top grade in the school's
22 doctrinal law course.

23 6. I have been barred in the State of California since December of 2018. From January
24 of 2019 through August of 2020, I clerked for the U.S. District Court in the District of Alaska.

25 7. Since September of 2020, I have worked as an associate at Hunter Pyle Law, in
26 Oakland. Our firm's practice focuses on the representation of low-income workers and includes
27

28 ¹ All capitalized terms here have the same meanings as those in the Settlement Agreement.

1 class actions and individual civil-rights actions.

2 8. Hunter Pyle Law has been approved as class counsel in the following cases (among
3 others), which resolved favorably for the class members: *Jackson v. ACE* (Alameda County
4 Superior Court case no. RG05241698; settled for \$1.1 million); *Beasley, et al. v. Allied Cash*
5 *Advance* (Alameda County Superior Court case no. 07359698; settled for \$400,000); *Schakow v.*
6 *Lerner New York, Inc., et al.* (Contra Costa County case no. MSC08-01145; settled for \$850,000);
7 *Brown, et al. v. George S. May International Company* (Alameda County Superior Court case no.
8 08413991; settled for \$750,000); *Miriam Aquino Ruelas, et al. v. Neilmed Products, Inc.* (Sonoma
9 County case no. SCV245231; settled for approximately \$600,000); *Randolph et al. v. AT&T*
10 *Wireless Services, Inc., et al.* (Alameda County Superior Court case no. RG05193855; settled for
11 approximately \$70 million); *Booker II, et al. v. Auto Guardian, et al.* (Alameda Superior Court
12 case no. RG11562117; settled for \$775,000); *Alonzo, et al. v. First Transit, Inc.* (Los Angeles
13 Superior Court case no. BC433932; settled for \$2 million); *Lopez, et al. v. City of Montebello* (Los
14 Angeles Superior Court case no. BC553076; settled for \$1 million); *Sadiq v. Greatwide Dedicated*
15 *Transport II, LLC* (Alameda County Superior Court case no. RG15789114; settled for \$762,500);
16 *Kostyuk v. Golden State Overnight Delivery Service, Inc.* (Alameda County Superior Court case
17 no. RG14727191; settled for \$1.25 million); *Newcomb, et al. v. J.B. Hunt Transport, Inc.* (Alameda
18 County Superior Court case no. RG16815734; settled for \$750,000); *Hooper v. URS Midwest, Inc.,*
19 (San Bernardino Superior Court case no. CIV DS1607489; settled for approximately \$3 million);
20 *Brooks, et al. v. Chariot Transit, Inc.* (San Francisco Superior Court case no. CGC-16-554398;
21 settled for \$750,000); *Austin, et al. v. Foodliner, Inc.* (United States District Court, Northern
22 District of California case no. 4:16-cv-07185-HSG; settled for \$1.2 million); *Castro, et al. v. ABM*
23 *Industries, Inc., et al.* (United States District Court, Northern District of California case no. 4:17-
24 cv-03026-YGR; settled for \$5,400,000); *Botros v. Walgreen Co.* (United States District Court,
25 Northern District of California case no. 3:18-cv-05328; settled for \$2,142,000); *Winston v.*
26 *Comcast Spectator Holding, et al.* (Alameda County Superior Court case no. R-2145147; settled
27 for \$105,000.00); and *Olivera v. C & B Delivery Service, et al.* (Alameda County Superior Court
28 case no. RG20062287; settled for \$1,068,500.00).

1 9. Each of these cases, except for the *Randolph* case, was a wage and hour class action.
2 (*Randolph* was a consumer class action.)

3 10. The firm's extensive experience in litigating employment wage and hour matters
4 was integral in evaluating the strengths and weaknesses of the case against Defendants and
5 negotiating a fair and reasonable settlement.

6 **FACTUAL AND PROCEDURAL BACKGROUND**

7 11. Plaintiff and Class Members worked as non-exempt, non-unionized employees of
8 Defendants in California.

9 12. Defendants Winall Oil Co., Allen Gimenez, and Gary Gimenez own and operate at
10 least seven gas stations in Southern California, including in Los Angeles County. Throughout the
11 Class Period, they owned and operated more than a dozen. Allen Gimenez is Winall Oil's Chief
12 Executive Officer and Director, while Gary Gimenez is the company's Chief Financial Officer
13 and Secretary. Defendants employ Plaintiff Efren Palomino and many others as gas station
14 attendants.

15 13. Plaintiff alleges that Defendants often failed to adequately staff their gas stations,
16 resulting in only one Class Member working at a time. Because Defendant's policies and
17 practices prohibited Plaintiff and other Class Members from closing the stations during shifts,
18 Plaintiff and other Class Members working alone were unable to take off-duty meal and rest
19 periods. Defendants did not pay period-premiums to Plaintiff and other Class Members for the
20 meal- and rest-periods they could not take when working alone. As a result, the wage statements
21 Defendant issued to Plaintiff and other Class Members omitted premiums earned, in violation of
22 Labor Code section 226.

23 14. On October 28, 2022, Plaintiff notified Defendants and the LWDA of Defendants'
24 alleged Labor Code violations under the Private Attorneys General Act ("PAGA"), Labor Code
25 section 2698 *et seq.* Plaintiff specifically alleged that Defendants violated Labor Code section 558
26 by failing to pay for missed meal and rest periods, section 226 by failing to provide adequate
27 itemized wage statements, sections 201 through 203 by failing to pay all wages owed at
28 termination, and sections 204 and 210 by failing to pay all wages due on regular pay days.

1 15. Plaintiff then commenced this Action on February 28, 2023, by filing a class and
2 representative action asserting claims for: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure
3 to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4)
4 Unlawful Business Practices; and (5) Violations of the Labor Code Private Attorneys General Act.
5 Plaintiff filed the operative First Amended Complaint on March 21, 2023, to correct the names of
6 Defendants Allen Gimenez and Gary Gimenez.

7 16. On March 2, 2023, four months after Plaintiff submitted his PAGA Notice to the
8 LWDA and two days after he filed this Action, the law firm Shioda Langley & Chang, LLP,
9 submitted a PAGA notice to the LWDA on behalf of Gerardo Enrique Rodriguez Peralta and Jose
10 Vargas. Shioda Langley & Chang, LLP, then filed a class action complaint against Winall Oil Co.
11 in Orange County Superior Court (No. 30-2023-01319871) on behalf of Mr. Rodriguez Peralta and
12 Mr. Vargas on April 14, 2023. Mr. Rodriguez Peralta and Mr. Vargas are putative class members
13 in Plaintiff's action.

14 17. *Rodriguez Peralta, et al. v. Winall Oil Co.* pleads substantially the same causes of
15 action and alleges substantially the same facts as Plaintiff's action. However, *Rodriguez Peralta*
16 alleges three additional Labor Code claims: (a) Failure to Maintain Employee Records; (b) Failure
17 to Provide One Day Rest in Seven Days; and (c) Failure to Post Compensation Insurance Carrier
18 Information. Winall Oil has not appeared in *Rodriguez Peralta*, and the court entered default
19 against it in October 2023.

20 18. On November 6, 2023, Plaintiff filed an amended PAGA notice with the LWDA,
21 alleging the additional claims at issue in *Rodriguez Peralta*. These additions claims include
22 violations of Labor Code sections 3550 and 3551 for failure to post a notice of Defendants' current
23 compensation insurance and violations of sections 551 and 552 for failure to provide one's days
24 rest for every seven days worked. Plaintiff also alleged Labor Code violations of sections 558 and
25 1197.1 for failure to pay minimum wages for all hours worked and all wages due at termination
26 and sections 558, 510, and 1194 for failure to pay overtime wages.

1 19. Plaintiff's First Amended Complaint seeks to recover unpaid meal- and rest-period
2 premiums and wage-statement statutory penalties on behalf of himself and the Class, and PAGA
3 civil penalties on behalf of the State of California and all Aggrieved Employees.

4 **INVESTIGATION AND SETTLEMENT**

5 20. Plaintiff's counsel engaged in extensive discovery, exchanging information,
6 documents, and hiring contractors and experts to help review and analyze the approximately
7 13,000 pages of handwritten Class Member timesheets made available by Defendants, which
8 enabled the Parties to thoroughly evaluate Plaintiff's claims, the PAGA claim, the claims of the
9 putative Class, Defendants' defenses, and the likely outcomes, risks, and expense of pursuing
10 litigation.

11 21. On July 18, 2023, Plaintiff propounded formal written discovery on Defendant
12 Winall Oil Co.: Form Interrogatories – Employment, Requests for Admission; Requests for
13 Production of Documents; and Special Interrogatories.

14 22. On October 5, 2023, after requesting and receiving multiple extensions, Defendant
15 Winall Oil Co. served verified responses.

16 23. On October 6, 2023, Defendant formally produced documents. The following
17 documents were critical to evaluating the merits of Plaintiff's claims:

- 18 • An Agreement for Paid On Duty Meal Period, signed by Mr. Palomino on June
19 6, 2007, a true and correct copy of which is attached hereto as **Exhibit 3**;
- 20 • Defendant Winall Oil Co.'s Employment Manual, dated June 1, 2018,
21 containing its relevant meal and rest period policies ("Winall Employment
22 Manual"), a true and correct copy of which is attached hereto as **Exhibit 4**;
- 23 • Wage statements summaries for all Class Members, for the entirety of the Class
24 Period ("Complete Payroll Register"); and
- 25 • Handwritten timecards for all Class Members for the entirety of the Class
26 Period.

27 24. These documents allowed Plaintiff to determine under what circumstances a
28 potential violation of law could be identified.

1 25. The Agreement for Paid On Duty Meal Period suggests a defense to a significant
2 portion of Plaintiff's meal-period claims. If all Class Members signed similar Agreements, there
3 were likely few first-meal-period violations. However, it is unclear whether the Agreement applies
4 to shifts where Class Members were entitled to a second meal period.

5 26. The Winall Employment Manual confirmed that Defendant Winall Oil Co.
6 prohibited Plaintiff and other Class Members from closing its stations during their shifts,
7 suggesting potential liability for rest-period violations.

8 27. The Complete Payroll Register contained wage statement summaries for all Class
9 Members for every pay period during the Class Period. These summaries allowed Plaintiff's
10 Counsel to confirm each Class Member's rate of pay and whether Defendants provided meal- and
11 rest-period premium wages on occasions that Class Members were unable to take off-duty periods.

12 28. The Complete Payroll Register also confirms that Defendants took remedial action
13 to change the policies at issue in Plaintiff's complaint.

14 29. Plaintiff produced to Counsel the written schedules posted by Defendants before
15 and after he had initiated this lawsuit. After March 18, 2023, Defendants revised these schedules to
16 provide for much greater overlap between shifts, permitting Plaintiff and other Class Members to
17 take periods.

18 30. Even when unforeseen contingencies forced Plaintiff and other Class Members to
19 work alone after March 18, 2023, Defendants took further remedial action to address the violations
20 alleged in Plaintiff's complaint. During the pay period ending March 18, 2023, Defendants began
21 paying premium wages to Plaintiff and other Class Members whenever they missed breaks due to
22 working alone. This policy change remedied a key aspect of Plaintiff's meal- and rest-period
23 claims: Defendants' failure to pay meal- and rest-period premium-wages for missed breaks. Taken
24 together, these remedial efforts essentially cut off damages after March 18, 2023.

25 31. Defendant Winall Oil Co. produced the handwritten timecards for every Class
26 Member for every workweek during the Class Period: from March 2, 2019, through September 16,
27 2023. These timecards include the clock-in and clock-out times for every shift worked by every
28 Class Member during the Class Period.

1 32. Class Members had weekly pay periods. The timecards shows:

2 **In 2019:** 2,540 pay periods worked, starting from February 28, 2019, the beginning
3 of the Class Period.

4 **In 2020:** 3,010 pay periods worked.

5 **In 2021:** 2,792 pay periods worked, including 425 pay periods after October 28,
6 2021, the start of the PAGA Period.

7 **In 2022:** 2,154 pay periods worked.

8 **In 2023:** 1,594 pay periods worked, including 404 pay periods through March 17,
9 2023, after which date Winall Oil took remedial action through policy changes.

10 **From beginning of Class Period (February 28, 2019) through date of**
11 **remediation (March 17, 2023):** 10,900 pay periods worked.

12 **From beginning of PAGA Period (October 28, 2021) through date of**
13 **remediation (March 17, 2023):** 2,983 pay periods worked.

14 33. The timecards show whether Class Members clocked out for meal periods during
15 each shift. They also show whether Class Members' shifts overlapped with one another, so as to
16 permit one Class Member to take meal and rest periods while the other worked the station. Finally,
17 the timecards show how often Class Members had inadequate rest days in violation of Labor Code
18 sections 551 and 552, as alleged in the *Rodriguez Peralta* Action.

19 34. The timecards, along with other documents in Defendant's production, contain all of
20 the information needed to calculate class damages.

21 35. Defendant Winall Oil Co. produced the Class Member timecards in 239 pdfs, one
22 for each pay period during the Class Period. Each pdf contains anywhere from 38 to 61 timecards.
23 In total, Defendant Winall Oil Co. produced 12,090 pages of handwritten timecards.

24 36. Extracting the data from these handwritten timecards proved time-consuming and
25 costly. In order to determine an adequate sampling of this data, Plaintiff's Counsel consulted with
26 EconOne, an economics firm with expertise in the calculation of class-damages. Plaintiff's Counsel
27 utilized a sample-size calculator to determine that reviewing 148 pdfs would represent an ideal
28

sample size, with a confidence level of 95%. Finally, Plaintiff's Counsel entered each of the pay periods into an excel spreadsheet and generated a random sampling of 148 pay periods.

37. Plaintiff's Counsel then retained a document-review specialist, Legal Outsourcing 2.0, to input the timecard data into a manipulable spreadsheet form. Plaintiff's Counsel provided Legal Outsourcing 2.0 with the approximately 7,034 handwritten timecards from its random sampling of 148 pay periods. Plaintiff's Counsel helped manage this project, reviewing and providing responses to a daily "Decision Log" issued by the review team.

38. Legal Outsourcing 2.0's team spent a total of 782 hours inputting the timecard data into spreadsheets. The work performed by Legal Outsourcing 2.0 resulted in 51,973 lines of data, and Plaintiff incurred \$19,550 in litigation costs on behalf of the Class.

39. After extracting Class Members' pay rates from the Complete Payroll Register, Plaintiff's Counsel provided the timecard data to EconOne.

40. EconOne performed an extensive analysis of the data and generated a model to calculate the violations rate and Defendants' exposure. EconOne then extrapolated the analyzed data, from the random sampling of 148 pay periods to the full 239 pay periods during the Class Period. EconOne's analysis showed the following:

Total Pay Periods Worked	Analysis of Random Sampling of Timecards	Extrapolated Analysis for Full Timecards
From beginning of Class Period (February 28, 2019) through date of remediation (March 17, 2023):	6,360	10,215
From beginning of PAGA Period (October 28, 2021) through date of remediation (March 17, 2023):	1,966	3,158

41. EconOne spent over 56 hours performing its analysis, and Plaintiff incurred \$10,820.51 in litigation costs on behalf of the Class.

1 **ARMS-LENGTH MEDIATION AND SETTLEMENT**

2 42. The foregoing investigation permitted Plaintiff to thoroughly evaluate Plaintiff's
3 claims, the claims of the Class, and the PAGA claims on behalf of the State of California.

4 43. On February 15, 2024, the Parties attended a private mediation with mediator David
5 Sarnoff, Esq. Plaintiff provided Mr. Sarnoff with his detailed analysis of Defendants' liability and
6 damages. In turn, Defendants represented a that all Class Members had signed Agreements for Paid
7 On Duty Meal Period, like the one signed by Plaintiff. Defendants also made a show of proof,
8 providing a sampling of 30 of these Agreements. These Agreements constituted a nearly complete
9 defense to Plaintiff's meal-period claim. The Parties engaged in arms-length negotiations
10 throughout the mediation and ultimately resolved the matter with the assistance of Mr. Sarnoff.

11 44. The principal terms of the Parties' agreement were set forth in a Stipulation of
12 Settlement eventually executed by the Parties on May 23, 2024.

13 **REASONS FOR THE PARTIES' SETTLEMENT**

14 45. In reaching the Settlement, counsel relied on their substantial litigation experience
15 in similar employment class actions. Information gathered from investigation and discovery
16 informed Plaintiff's counsel's assessment of the strengths and weaknesses of the case and the
17 benefits of the Settlement, as further detailed below. The arms-length settlement of this matter thus
18 avoids significant litigation and financial risk and provides for a monetary distribution to all
19 Settlement Class Members.

20 46. Plaintiff recognizes the expense and length of protracted proceedings necessary to
21 continue the Action against Defendants through trial and through any possible appeals.

22 47. Plaintiff has also taken into account the uncertainty and risks of further litigation,
23 including the risk of significant delay, the risk that the Court may not certify the Class or may later
24 decertify it, and potential appellate issues. Plaintiff is also aware of the burdens of proof necessary
25 to establish liability for the claims asserted in the Action, Defendants' defenses to those claims, and
26 the difficulties in establishing damages.

THE PROPOSED SETTLEMENT

48. The Class is defined as: all current and former gas-station attendants who were employed by Defendants throughout California at any time from February 28, 2019, through the date of preliminary approval of the parties' settlement agreement by the Court (the "Class Period"). (Settlement, ¶ 1.) Defendants represent that there are approximately 105 Class Members.

49. The Settlement provides that any and all claims for PAGA penalties alleged in the Action have been settled for \$100,000. Seventy-five percent (\$75,000) shall be paid to the LWDA, and twenty-five percent (\$25,000) shall be distributed to PAGA Employees.

50. The Settlement Administrator Expenses shall not exceed \$6,000 and will be deducted from the Total Settlement Amount upon approval by the Court.

51. At the final approval stage, Plaintiff's counsel will apply to the Court for a Service Award of \$20,000 for Plaintiff Efren Palomino in recognition of his service to the Class.

52. Plaintiff's counsel will apply to the Court for an award of attorneys' fees not to exceed one-third of the Total Settlement Amount, or \$461,601.42, plus actual litigation costs, which are estimated to be no more than \$50,000.

53. The Net Distribution Fund is the Total Settlement Amount minus the Service Award, the Class Counsel Award, the Settlement Administrator Expenses, and the PAGA Payment. (Darin Decl., Exh. 1 [Settlement] at ¶ 2.18; Darin Decl., ¶ 42.) The Net Distribution Fund is currently estimated to be \$747,202.83, and the PAGA Settlement allocated to PAGA Employees is projected to be an additional \$25,000, as follows:

Total Settlement Amount	\$ 1,384,804.25
Less PAGA Payment	-\$ 100,000
Less Settlement Administrator Expenses	-\$ 6,000
Less Service Award	-\$ 20,000
Less Attorneys' Fees	-\$ 461,601.42
Less Litigation Costs	-\$ 50,000
NET DISTRIBUTION FUND	\$ 747,202.83
 PAGA Payment:	 \$ 100,000
Less Payment to LWDA	-\$ 75,500
PAYMENT TO PAGA EMPLOYEES	\$ 25,000

1
2 54. This is not a claims-made settlement. Settlement Class Members will receive a
3 portion of the Net Settlement Amount as long as they do not opt out of the Settlement. All PAGA
4 Employees will receive their portion of the PAGA Payment.

5 55. The Settlement is also non-reversionary. Under no circumstances will the Total
6 Settlement Amount or any portion of it revert back to Defendants.

7 **NOTICE PROCEDURE**

8 56. The Parties have agreed that Simpluris will serve as the Settlement Administrator.
9 Plaintiff's counsel considered three bids before choosing Simpluris.

10 57. The Settlement Administrator will mail a Class Notice, including a computation of
11 the amount of each Class Member's share of the Net Settlement Amount and PAGA Payment, to
12 all Class Members, whose names and addresses Defendants will provide to the Settlement
13 Administrator.

14 58. The Class Notice informs Class Members of their right to object or opt out of the
15 Settlement without soliciting extraneous information. The Class Notice provides clear instructions
16 for Class Members to object to the Settlement, opt out of the Settlement, or dispute the
17 computation of the Class Member's share of the Net Settlement Amount and PAGA Payment.

18 59. Class Members will have sixty days to postmark objections, disputes, and requests
19 for exclusion. The Settlement Administrator will evaluate and resolve disputes from Class
20 Members regarding the number of workweeks attributed to them. Individuals who do not submit
21 valid and timely requests for exclusion will be deemed Settlement Class Members.

22 60. Class Members who submit valid and timely requests for exclusion will not be
23 Settlement Class Members and will not be bound by the terms of the Settlement. However, Class
24 Members who are PAGA Employees and worked during the PAGA Period from between October
25 28, 2021, through the date of preliminary approval of the Settlement cannot opt out of the PAGA
26 Payment.

1 **CALCULATION OF PAYMENTS AND DISTRIBUTION TO CLASS MEMBERS**

2 61. Each Settlement Class Member will receive a pro-rata share of the Net Settlement
3 Amount based on the number of Workweeks the Class Member worked for Defendants during the
4 Class Period (the “Individual Settlement Payment”). Each Class Member’s number of Workweeks
5 will be derived by Defendants based on the payroll and time records kept by Defendants in the
6 ordinary course of business during the Class Period. Individual Settlement Payments shall be
7 characterized as 20 percent wages, 60 percent penalties, and 20 percent interest. Wage payments
8 shall be subject to all required withholdings. Defendants shall be responsible for the employer’s
9 share of any applicable payroll taxes. Each Class Member’s Individual Settlement Award will be
10 reported on a W-2 or 1099 Form.

11 62. PAGA Employees will receive an Individual PAGA Payment that consists of a pro
12 rata share of 25% of the PAGA Payment based on total pay periods worked during the PAGA
13 Period. Specifically, 25% of the PAGA Payment shall be divided by the total of all Workweeks
14 worked by PAGA Employees during the PAGA Period in order to establish the value of each
15 Workweek. The Individual PAGA Payment to be made to each PAGA Employee shall be
16 calculated by multiplying the value of a Workweek by the number of Workweeks worked by the
17 PAGA Employee during the PAGA Period. Individual PAGA Payments will be allocated as one
18 hundred percent penalties to be reported on IRS Form 1099. The remaining seventy-five percent of
19 the PAGA Payment (\$75,000) will be distributed to the LWDA.

20 63. Within thirty calendar days of receipt of the Total Settlement Amount, the
21 Settlement Administrator will make all disbursements under the Settlement. The checks will
22 remain negotiable for 180 days from the date of mailing.

23 **A CY PRES BENEFICIARY IS APPROPRIATE**

24 64. Any funds that remain from uncashed or unclaimed Settlement checks will be
25 distributed to the Wage Justice Center, the *cy pres* recipient agreed upon by the Parties.
26 Redistributing any uncashed checks to Class Members would result in additional Settlement
27 Administrative Expenses. Under Code of Civil Procedure section 384(b), *cy pres* awards may be
28 made to “nonprofit organizations or foundations to support projects that will benefit the class or

1 similarly situated persons, or that promote the law consistent with the objectives and purposes of
2 the underlying cause of action . . . or to nonprofit organizations providing civil legal services to the
3 indigent.”

4 65. The Parties propose that the Court designate the Wage Justice Center of Los
5 Angeles as the *cy pres* beneficiary. In support of their motion for final approval, Plaintiff will
6 submit declarations establishing that the Wage Justice Center is a qualified *cy pres* designee under
7 section 384 because it is a “nonprofit organization[] providing civil legal services to the indigent.”
8 Plaintiff’s counsel have no involvement in the governance of the Wage Justice Center.

9 **THE REASONABLE VALUATION OF THE CLAIMS AT ISSUE**

10 66. The Settlement is within the range of reasonableness. Settlement Class Members
11 will receive an award based on their total number of Workweeks during the Class Period. PAGA
12 Employees will also receive an award based on their total number of Workweeks during the PAGA
13 Period. The Settlement therefore provides meaningful relief for the disputed Labor Code violations
14 and will result in a substantial benefit to all Settlement Class Members.

15 67. The Total Settlement Amount of \$1,384,804.25 is consistent with the aggregate
16 reasonable settlement value of the Class Members’ claims.

17 ***i. Failure to Provide Meal Periods***

18 68. Plaintiff’s expert analyzed the timecard data and determined from the extrapolated
19 data that there were a total of 45,029 shifts of more than six hours in which a Class Member’s first
20 meal period was missed, late, or short. Additionally, the extrapolated data showed there were a
21 total of 3,333 shifts of over ten hours. Assuming violations for each of these shifts, Plaintiff’s
22 expert calculated the unpaid meal-period premium-wages to total \$777,655, plus prejudgment
23 interest of \$158,910.

24 69. In response, during mediation Defendants represented that all Class Members had
25 signed Agreements for Paid On Duty Meal Period like the one Plaintiff had signed. Defendants
26 then made a show of proof in support of this representation, producing a sampling of 15 such
27 agreements for currently employed Class Members and 16 such agreements for formerly employed
28 Class Members. These Agreements spanned decades, from as early as May 7, 2003, to as late as

1 April 28, 2023. Plaintiffs Counsel reviewed these Agreements and confirmed that they were
2 identical to the Agreement signed by Plaintiff.

3 70. In light of these Agreements, Defendants will likely argue there is no violation for
4 the 45,029 shifts with a deficient first meal period. Those shifts represent approximately 93% of
5 the total shifts with potential meal-period violations during the Class Period. However, Plaintiff
6 will argue that the nature of Defendants' business do not prevent Plaintiff and other Class Members
7 from being relieved of all duties, because Plaintiff and Class Members could easily close down
8 their stations for a 30 minute meal period. Additionally, it is unclear whether the Agreements for
9 Paid On Duty Meal Periods apply to second-meal periods, suggesting violations for the remaining
10 3,333 or 7% of shifts.

11 71. Defendants will likely argue that it operated a dozen different stations, each with
12 their own peculiar scheduling needs and managed by different supervisors

13 72. It is therefore reasonable to discount Plaintiff's meal period claim by 20 percent
14 (multiplying by 0.8) to account for the risks involved in certifying a class and maintaining
15 certification through trial and by an additional 40 percent (multiplying by 0.6) or more to account
16 for the risks that Defendants will prevail on its defenses.

17 73. Accordingly, the reasonable settlement value of the meal period claim including
18 interest is **\$449,551.20**.

19 ***ii. Failure to Authorize and Permit Rest Periods***

20 74. Plaintiff's investigation shows insufficient overlapping coverage in approximately
21 56% of all shifts. Analyzing the timecard data and specifically the days and times that each Class
22 Member clocked-in and -out, Plaintiff's expert was able to determine how much overlapping
23 coverage occurred at the beginning and end of each shift. For instance, Plaintiff's expert was able
24 to determine that only 9% of shifts during the Class Period had fewer than 10 minutes of
25 overlapping coverage at the beginning and end of each shift. If employers could satisfy California
26 rest-period law by require employees to take their off-duty rest periods either 10 minutes into the
27 beginning or 10 minutes from the end of a four-hour period, then Defendants would be liable for
28 rest-period violations in only 9% of the total shifts worked during the Class Period.

1 75. Based on the requirement that employers must allow employees to take rest periods
2 as near the middle of each four-hours worked as possible, Plaintiff's expert assumed 120 minutes
3 (2 hours) as the minimum amount of overlapping coverage needed to allow Class Members to take
4 timely off-duty rest-periods. Plaintiff's expert then calculated that from February 28, 2019, through
5 March 17, 2023, approximately 37,762 shifts, or 56% of all shifts worked, had insufficient
6 coverage to allow Class Members to take off-duty rest periods. Assuming violations for each of
7 these shifts, Plaintiff's expert calculated the unpaid rest-period payments to total \$629,920, plus
8 prejudgment interest of \$133,120.

9 76. Meaningful risks abound, however. First and foremost, Defendants will likely argue
10 that 120 minutes of overlapping coverage is not necessary in order to comply with California law.
11 Defendants will likely emphasize the requirement's language that rest periods be offered as near
12 "as possible" to the middle of each four-hour period. They will argue that the nature of Defendant's
13 business prevents it from offering rest-periods to Class Members at the same time during every
14 shift. Indeed, it is the busy and unpredictable nature of Defendant's business that underlies the
15 Agreements for Paid Off-Duty Meal Periods signed by all Class Members. This in itself highlights
16 the meaningful challenges Plaintiff will face in certifying and maintaining a class until trial. In light
17 of this, Defendant will likely argue that a significantly lower amount of overlapping coverage is
18 sufficient to satisfy California law.

19 77. It is therefore reasonable to discount Plaintiff's rest-period claim by 25 percent
20 (multiplying by 0.75) or more to account for the risks involved in certifying a class and
21 maintaining certification through trial and by another 25 percent (multiplying by 0.75) to account
22 for the risk that Defendants will prevail on its defenses.

23 78. Accordingly, the reasonable settlement value of the rest-period claim including
24 interest is **\$429,210**.

25 *iii. Failure to Provide Accurate Wage Statements*

26 79. When an employer knowingly and intentionally violates its duty to provide accurate
27 wage statements, an injured employee may recover actual damages or a statutory penalty. (Lab.
28 Code § 226(e)(1).) However, an employer's "objectively reasonable, good faith belief that it has

1 provided employees with adequate wage statements precludes an award of penalties under section
2 226.” (*Naranjo v. Spectrum Security Services, Inc.* (2024) 320 Cal.Rptr.3d 646, 667.) The penalties
3 are fifty dollars for the initial violation and one hundred dollars for each subsequent violation per
4 employee per pay period, up to four thousand dollars per employee. (Lab. Code § 226(e)(1).) Wage
5 statement penalties are only available to Class Members who were employed within one year of the
6 filing of the original complaint.

7 80. Plaintiff alleges that Defendants failed to provide Class Members with wage
8 statements that accurately reflect wage-premiums earned for meal- and rest-period violations, in
9 violation of Labor Code section 226 and the applicable IWC wage orders. Plaintiff’s expert
10 identified 2,126 pay periods within the one-year statutory period in which a meal- or rest-period
11 violation occurred. At \$100 per pay period, up to \$4,000 per employee, these violations amount to
12 \$208,948 in statutory penalties.

13 81. As discussed above, however, a large number of these violations assume first-meal-
14 period violations. However, Agreements for Paid On Duty Meal Periods apply to approximately
15 93% of these assumed meal-period violations. Therefore, the number of derivative 226 violations is
16 likely to drop significantly.

17 82. Additionally, Section 226 provides penalties only if Plaintiff prove that Defendants’
18 violations were knowing and intentional. A knowing and intentional failure “does not include an
19 isolated and unintentional payroll error due to a clerical or inadvertent mistake.” (*Furry v. East Bay*
20 *Publishing, LLC* (2018) 30 Cal.App.5th 1072, 1085.)

21 83. Accordingly, Defendants will likely argue that Class Members’ wage statements
22 comply with the law but that, to the extent that Defendants failed to provide adequate wage
23 statements, the failure was not a “knowing and intentional failure” within the meaning of section
24 226. Rather, any errors in the wage statements were inadvertent, whether through human or
25 computer error. Recovering penalties under section 226 also requires showing that the employee
26 was injured. (Lab. Code 226(e).) Defendants will likely argue that Plaintiffs cannot show that any
27 Class Members were injured by any deficiencies in their wage statements.

1 84. Should Defendants prevail on these arguments, Class Members would not be able to
2 recover any penalties under section 226(e). It is therefore reasonable to discount Plaintiff's wage
3 statement claim by twenty percent (multiplying by .8) to account for the risks involved in certifying
4 a class and maintaining certification through trial and to account for the risks that Defendants will
5 prevail on their defenses.

6 85. Accordingly, the reasonable settlement value of the wage statement claim is
7 \$167,158.

8 ***iv. Unfair Competition***

9 86. Plaintiff's claim for violation of the Unfair Competition Law, Business and
10 Professions Code section 17200 (the "UCL"), is based on the same Labor Code violations as his
11 other claims. If the Court were to rule against Plaintiff on the predicate claims, the UCL claim
12 would also fall. In addition, the damages for Plaintiff's UCL claim are co-extensive with the
13 damages for his other claims. This claim therefore does not add to the case's settlement value.

14 ***v. The Rodriguez Peralta Claims***

15 ***a. Failure to Maintain and Furnish Employee Records***

16 87. The *Rodriguez Peralta* complaint does not clearly allege which records it believes
17 Defendants failed to maintain. It does not allege that the *Rodriguez Peralta* plaintiffs requested
18 their records or that their records were destroyed. In other words, it fails to state a claim.

19 88. It is possible that this cause of action is based on "Plaintiff Peralta [not] receiving
20 itemized wage statements showing vacation or sick time accrued." Neither Labor Code sections
21 226 or 1174 require an employer to include this information on wage statements. As discussed
22 above, Labor Code section 226 enumerates nine different items that must appear on wage
23 statements. Accrued vacation time and sick time are not among them. Labor Code section 1174
24 requires employers to furnish records "to the [Industrial Welfare] Commission," not to individual
25 employees; and to maintain these records for inspection by "any member of the commission or the
26 employees of the Division of Labor Standards Enforcement." Section 1174 does not contemplate
27 furnishment of such records to civilians. For this reason also, the complaint fails to state a claim
28 under Labor Code sections 226 and 1174.

1 89. California’s Paid Sick Leave Law, Labor Code sections 245 through 249 do require
2 wage statements or another written record to reflect accrued sick leave. (See Labor Code § 246(i).)
3 However, unlike the statutory penalties under Labor Code section 226, the administrative penalties
4 available under the Paid Sick Leave Law are available only to the Labor Commissioner. (See
5 Labor Code § 248.5.)

6 90. For these reasons, the reasonable class settlement value of this claim is \$0.

7 *b. Failure to Post Compensation Insurance Carrier and Safety*
8 *Information*

9 91. The Rodriguez Peralta complaint alleges that “Defendant failed to post
10 compensation insurance carrier information in a conspicuous place at the worksite,” and pleads a
11 cause of action for “Violation of California Labor Code Sections 3550, 6430 and 6431 / Failure to
12 Post Safety and Compensation Carrier Information.”

13 92. Labor Code section 3550 is part of Division 4 of the Labor Code, Workers
14 Compensation and Insurance, sections 3200 through 6002. The *Rodriguez Peralta* plaintiffs cannot
15 bring a civil action for a workers’ compensation violation; they must bring a workers’
16 compensation action. And PAGA does not apply to violations of Division 4. (See Labor Code §
17 2699(m) [“This section shall not apply to the recovery of administrative and civil penalties in
18 connection with the workers’ compensation law as contained in . . . Division 4 (commencing with
19 Section 3200).”].) Therefore, this portion of the claim fails as a matter of law.

20 93. Labor Code sections 6430 and 6431 are part of Division 5, Safety in Employment
21 (“Cal-OSHA”). The *Rodriguez Peralta* complaint alleges that these Sections require “an employer
22 to provide information related to protections and obligations by posting the information.” These
23 sections provide for civil penalties collectible by the state; they do not provide for private rights of
24 action or damages. Even if they did, the *Rodriguez Peralta* plaintiffs cannot bring a civil action for
25 a workers’ compensation violation; they must bring a workers’ compensation action. Additionally,
26 no PAGA action can be brought for violation of any posting requirement. (See Labor Code
27 § 2699(g)(2).) For these reasons, this claim fails as a matter of law.

28 94. The reasonable settlement value of this claim is therefore \$0.

c. *Failure to Provide One Day Rest in Seven Days*

95. Labor Code sections 551 provides that “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Section 552 adds, “No employer of labor shall cause his employees to work more than six days in seven.”

96. The California Supreme Court has described Sections 551 and 552 as “manifestly ambiguous.” (*Mendoza v. Nordstrom Inc.* (2017) 2 Cal. 5th 1074, 1080.) A total of 12 published decisions make reference to these sections, and only the Mendoza cases provide meaningful guidance. The California Supreme Court concluded that these sections generally require employers to provide employees “at least one day of rest during each week, rather than one day in every seven on a rolling basis.” (*Mendoza*, 2 Cal. 5th. at p. 1086.) In other words, Sections 551 and 552 do not prohibit employees from working seven days in a row over multiple workweeks. Rather, they generally require only the provision of one day rest within each work week.

97. Labor Code section 554 creates an exception to this requirement. It provides that “[n]othing in this chapter shall be construed to prevent an accumulation of days of rest when the nature of the employment reasonably requires that the employee work seven or more consecutive days, if in each calendar month the employee receives days of rest equivalent to one day’s rest in seven.” Therefore, Section 554 provides an exception where the nature of an employer’s business requires seven or more consecutive days of work and the employee’s schedule averages out to one day’s rest in seven over the course of the month.

98. Labor Code section 556 creates a further exception “when the total hours of employment do not exceed 30 hours in any week or six hours in any one day thereof.” The Supreme Court has confirmed that “the ‘six hours or less’ daily exception is satisfied only if every daily shift that week has entailed six hours or less of work.” (*Mendoza*, 2 Cal. 5th at p. 1090.)

99. Finally, the Supreme Court has clarified that an employer “is not liable simply because an employee chooses to work a seventh day.” (*Id.* at p. 1091.) “Rather, an employer’s obligation is to apprise employees of their entitlement to a day of rest and thereafter to maintain absolute neutrality as to the exercise of that right. An employer may not encourage its employees to forgo rest or conceal the entitlement to rest” (*Ibid.*)

1 100. Accordingly, pursuant to Labor Code sections 551, 552, and 556, Plaintiff's expert
2 calculated a violation of Sections 551 and 552 for every pay period in which:

- 3 • Class Members did not have a single day of rest during the workweek; and
- 4 • Class Members worked more than 30 hours or Class Members worked fewer than 30
5 hours but more than six hours in at least one day during the workweek.

6 Plaintiff's expert determined on an extrapolated basis that approximately 732 pay periods
7 met these criteria

8 101. Additionally, to account for Section 554's contingency that a factfinder may
9 determine that the nature of Defendants' business required Class Members to work seven or more
10 consecutive days, Plaintiff's expert calculated a violation of Labor Code sections 551 and 552 for
11 all pay periods in which:

- 12 • Class Members did not have a single day of rest during the workweek; and
- 13 • Class Members did not receive days of rest equivalent to one day's rest in seven over
14 the course of the month.

15 Plaintiff's expert determined on an extrapolated basis that approximately 582 pay periods
16 met these criteria. However, all 582 pay periods also met the first set of criteria. Therefore, only
17 732 pay periods contain a potential violation of Labor Code sections 551 and 552.

18 102. However, Labor Code sections 551 and 552 do not provide for any damages.
19 Accordingly, no class damages result from any of these violations, and the reasonable class
20 settlement value of these claims is \$0.

21 **vi. PAGA Penalties**

22 103. Trial courts evaluating PAGA settlements, including those made in conjunction with
23 a class settlement, must determine whether they are "fair, reasonable, and adequate in view of
24 PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize
25 enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77.)
26 Courts should "evaluate the adequacy of compensation to the class as well as the adequacy of the
27 settlement in view of the purposes and policies of PAGA." (*O'Connor v. Uber Technologies, Inc.*
28 (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134, emphasis in original.) In doing so, the court may

1 apply a sliding scale. For example, if the settlement for the class is robust, the purposes of PAGA
2 may be concurrently fulfilled. (*Ibid.*) “By providing fair compensation to the class members as
3 employees and substantial monetary relief, a settlement not only vindicates the rights of the class
4 members as employees, but may have a deterrent effect upon the defendant employer and other
5 employers, an objective of PAGA.” (*Ibid.*)

6 104. The Parties have agreed to allocate \$100,000 for PAGA penalties in light of
7 Defendants’ possible defenses and the Court’s authority to reduce any award that is “unjust,
8 arbitrary and oppressing, or confusing.”

9 105. That amount is fair, reasonable, and adequate. Plaintiff calculates the maximum
10 amount of the potential PAGA penalties available to be approximately \$1,913,981. However, to
11 recover that amount, Plaintiff would have to prevail on his underlying claims.

12 106. As described above, Defendants have multiple formidable defenses to Plaintiff’s
13 claims. At least one of these defenses has the potential to reduce the value of Plaintiff’s meal-
14 period claim by 93%. It is reasonable to discount the maximum amount of the potential PAGA
15 penalties 40% percent (multiplying by .6) or more to account for the risks that Defendants will
16 prevail on their defenses at trial.

17 107. Furthermore, Courts have broad discretion to reduce penalty amounts under PAGA.
18 (See Lab. Code § 2699(e)(2).) Courts typically reduce PAGA penalties where there is unsettled law
19 during the pendency of the litigation, where the case presents a matter of first impression that the
20 court has to rule upon, or where an employer demonstrates a serious attempt to comply with the
21 law. (See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112; *Cotter v.*
22 *Lyft, Inc.* (N.D. Cal 2016) 176 F.Supp.3d 930, 941.) Here, Plaintiff’s investigation shows that
23 Defendants took action to remedy all of the alleged violations within weeks of Plaintiff filing his
24 lawsuit. Moreover, \$745,842 (approximately 39%) of those \$1,913,981 in maximum civil penalties
25 are for alleged violations of Labor Code sections 204 and 210, and another \$212,642
26 (approximately 11%) are for alleged violations of Labor Code section 226. These alleged violations
27 are all derivative of Plaintiff’s other underlying claims. It is unclear whether employees can “stack”
28 PAGA penalties, meaning receive more than one PAGA penalty for a particular pay period. It is

1 thus reasonable to further discount by 50 percent (multiplying by .5) to account for the
2 discretionary nature of PAGA penalties.

3 108. Finally, courts have approved hybrid class action and PAGA settlements where only
4 a fraction of the settlement was allocated to PAGA. (E.g., *Nordstrom Comm'n Cases* (2010) 186
5 Cal.App.4th 576, 589 [settlement approved where \$0 out of nearly \$9 million settlement allocated
6 to PAGA penalties]; *Cotter, supra*, 193 F.Supp.3d at 1037 [approving allocation of \$1 million to
7 PAGA claims out of \$27 million settlement].) In such cases, it is prudent to permit a higher
8 compromise of the PAGA penalties to allow class members to receive the maximum amount of
9 reimbursement for unpaid wages. (See, e.g., *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196–
10 97 [PAGA promotes the Labor Code's broad remedial purpose of protecting workers by increasing
11 civil penalties while preserving and enhancing workers' rights to recover for lost wages];
12 *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134 [courts may
13 apply a "sliding scale" when reviewing PAGA penalties].)

14 109. For these reasons, the PAGA Payment of \$100,000 is more than reasonable. (Darin
15 Decl., ¶ 81.) Furthermore, Plaintiff has notified the LWDA of the PAGA-related provisions of the
16 Settlement. He will notify the Court if he receives any response from the LWDA regarding the
17 Settlement. (Ibid.)

18 ***The Settlement Is the Product of Non-Collusive, Arm's-Length and Informed Negotiations***

19 110. California courts recognize that "a presumption of fairness exists where . . . [a]
20 settlement is reached through arm's-length bargaining." (*Wershba, supra*, 91 Cal.App.4th at 245.)
21 In this case, the Settlement was reached after arm's-length negotiations between the Parties. As
22 discussed, prior to engaging in settlement discussions, Plaintiff's Counsel conducted an extensive
23 investigation into Defendants' policies and practices, and Class Members' timecards and wage
24 statements. These documents provided Plaintiff with nearly all of the information needed to prove
25 damages in his claim. In spite of this, Defendants were able to present a nearly complete defense to
26 Plaintiff's meal-period claim, in light of the Agreements for Paid On Duty Meal Period signed by
27 every Class Member After a full-day mediation where the Parties engaged in good faith, arm's-
28 length settlement negotiations, they reached a resolution of the Action.

1 111. In reaching the Settlement, counsel on both sides relied on their substantial litigation
2 experience in similar employment class actions. Information gathered from investigation and
3 informal discovery informed Plaintiff’s counsel’s assessment of the strengths and weaknesses of
4 the case and the benefits of the Settlement. Thus, the Settlement is the product of informed and
5 non-collusive arm’s-length bargaining and is entitled to a presumption of fairness.

6 ***The Experience and Views of Plaintiff’s Counsel Favor Approval***

7 112. “The recommendations of plaintiffs’ counsel should be given a presumption of
8 reasonableness.” (*In Re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043
9 [quotation marks and citation omitted].) “The court undoubtedly should give considerable weight
10 to the competency and integrity of counsel . . . in assuring itself that a settlement agreement
11 represents an arm’s-length transaction entered without self-dealing or other potential misconduct.”
12 (*Kullar, supra*, 168 Cal.App.4th at 129.)

13 113. Plaintiff and Plaintiff’s counsel have vigorously prosecuted this case and will
14 continue to do so. Information gathered from Plaintiff’s counsel’s investigation and discovery
15 informed counsel’s assessment of the merits and risks of the case and the benefits of the
16 Settlement. Plaintiff’s counsel conducted a thorough investigation into the facts of the Action.
17 Based on an independent investigation and evaluation, Plaintiff’s counsel believe that the
18 Settlement is fair, reasonable, and adequate, and it is in the best interest of the Class Members in
19 light of all known facts and circumstances, including the risk of significant delay, the risk that
20 Defendants will prevail on their defenses, and potential appellate issues.

21 114. In addition to being thoroughly familiar with this case, Plaintiff’s counsel has
22 extensive expertise in litigating wage and hour class actions like this and is therefore well-qualified
23 to represent Plaintiff and the Class Members. Class Counsel’s experience is detailed in the
24 declaration of counsel filed herewith. The recommendation of Plaintiff’s counsel thus also weighs
25 in favor of Settlement approval.

26 ***The Proposed Class Notice Satisfies the Rules of Court***

27 115. The form and content of class notice and the method used to notify the class are
28 within the trial court’s discretion. (*Wershba, supra*, 91 Cal.App.4th at 251.) The Class Notice

1 informs Class Members about the Action, the terms of the Settlement, the scope of the release, the
2 right to receive a payment, the right to opt out of the Settlement, the right to object to the
3 Settlement, how Individual Settlement Payments and Individual PAGA Payments are calculated,
4 how to challenge the data used to calculate the Individual Settlement Payments and Individual
5 PAGA Payments, and the date, time, and location of the final approval hearing. It also provides the
6 contact information of Class Counsel to answer questions, a URL to a website maintained by the
7 Settlement Administrator that has links to the Notice and the most important documents in the case,
8 the URL for the Court's electronic filing and service website, and the Court's address. The Class
9 Notice is therefore crafted to ensure that Class Members are alerted to the terms of the Settlement.

10 116. The means of giving notice is reasonably calculated to reach a substantial
11 percentage of Class Members and meets the requirements of Rule of Court 3.766(e). (See *Wershba*,
12 *supra*, 91 Cal.App.4th at 251 ["[The] standard is whether the notice has a 'reasonable chance of
13 reaching a substantial percentage of the class members.'"]). The Settlement Administrator will
14 send the Notice to Class Members via first-class U.S. Mail. For each Class Notice returned as
15 undeliverable without a forwarding address, the Settlement Administrator will perform a single
16 computer or "skiptrace" search to obtain an updated address. The proposed Notice is thus
17 reasonable and should be approved by the Court.

18 **THE PROPOSED CLASS IS ASCERTAINABLE AND NUMEROUS**

19 117. A class is "ascertainable" where members "may be readily identified without
20 unreasonable expense or time by reference to official [or business] records." (*Sevidal v. Target*
21 *Corp.* (2010) 189 Cal.App.4th 905, 919 [alterations in original].) Here, the proposed Class is
22 defined as: all current and former gas-station attendants who were employed by Defendants
23 throughout California at any time from February 28, 2019, through the date of preliminary
24 approval of the parties' Settlement by the Court.

25 118. Class Members can easily be identified from Defendants' personnel and
26 employment records. Defendants represent that there are approximately 105 Class Members,
27 rendering it impracticable to bring all Class Members before the Court.

28 119. COMMON ISSUES OF LAW AND FACT PREDOMINATE

120. The focus on certification is on what types of questions, “common or individual,” are likely to arise in the action. (*Sav-On Drug Store, Inc. v. Sup. Ct.* (2004) 34 Cal.4th 319, 327.) Plaintiff’s claims are predicated on allegedly unlawful policies including Defendants’ meal and rest period and compensation schemes. Courts commonly hold these claims to be proper for class certification. (E.g., *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926 [reversing trial court and holding plaintiffs’ meal period, rest period, and wage statement claims were suitable for class treatment]; *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388 [reversing trial court’s denial of class certification and holding meal and rest period claims could be determined class-wide]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701 [reversing trial court’s denial of class certification for meal and rest period claims].)

THE PROPOSED CLASS REPRESENTATIVE’S CLAIMS ARE TYPICAL

121. Typicality is satisfied where a class representative has claims that are typical of those of the class. (*B.W.I. Custom Kitchen v. Owens-Illinois* (1987) 191 Cal.App.3d 1341, 1347.) Plaintiff here seeks preliminary appointment as Class Representative. Plaintiff's claims are typical of those held by Class Members. Plaintiff was employed by Defendants during the Class Period and was subject to Defendants' scheduling and compensation plans and other relevant wage and hour policies and was injured by the same challenged policies that injured the Class.

**THE PROPOSED CLASS REPRESENTATIVE AND COUNSEL WILL ADEQUATELY
REPRESENT THE CLASS**

122. The adequacy requirement examines conflicts of interest between the named parties and the class they seek to represent. (*Capital People First v. State Dept. of Developmental Svcs.* (2007) 155 Cal.App.4th 676, 697.) Plaintiff and his counsel will adequately represent the Class as there are no conflicts between Plaintiff and the Class Members he seeks to represent, and Plaintiff possesses claims that are in line with those of the Class. Plaintiff's counsel also have extensive experience in wage and hour class action litigation.

123. Plaintiff has provided a declaration that demonstrates his participation in the Action thus far and shows he has diligently represented the Class. In his declaration, Plaintiff describes the great personal and professional risks he faced in bringing this lawsuit.

1
2
3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct and that this declaration was executed on September 26, 2024, in
5 Oakland, California.

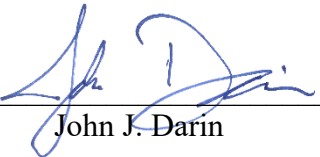
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EXHIBIT 1

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ALLEN GIMENEZ, and GARY GIMENEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EFREN PALOMINO, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No.. 23STCV04401

**CLASS AND REPRESENTATIVE
ACTION**

STIPULATION OF SETTLEMENT

Trial Date: Not Set
Action Filed: February 28, 2023

1 This Stipulation of Settlement, including the Class Notice attached as Exhibit A (the
2 “Settlement,” “Settlement Agreement,” or “Agreement”) and the Second Amended Complaint
3 attached as Exhibit B, is made and entered into by, between, and among Plaintiff EFREN
4 PALOMINO (“Plaintiff”) on behalf of himself and the Settlement Class Members, on the one
5 hand, and Defendants WINALL OIL CO., ALLEN GIMENEZ, and GARY GIMENEZ
6 (“Defendants”) on the other hand. Plaintiff and Defendants (the “Parties”) enter into this
7 Agreement to effect a full and final settlement and preclusive judgment resolving all claims
8 brought or that could have been brought against Defendants based on the factual allegations
9 alleged in the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary Gimenez, and*
10 *DOES 1 through 20* (Superior Court of the State of California, County of Los Angeles, No.
11 23STCV04401) (the “Action”). This Agreement is intended to fully and finally compromise,
12 resolve, discharge, and settle the Released Claims, as defined and on the terms set forth below,
13 and to the full extent reflected here, subject to the Court’s approval.

14 **1. RECITALS**

15 This Agreement is made in consideration of the following facts:

16 1.1 WHEREAS, on October 28, 2022, Plaintiff notified Defendants and the Labor
17 and Workforce Development Agency (“LWDA”) of Defendant’s alleged violations of the
18 California Labor Code;

19 1.2 WHEREAS, more than 65-days later, on February 28, 2023, Plaintiff
20 commenced the Action by filing a class and representative action complaint asserting causes
21 of action for: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and
22 Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business
23 Practices; and (5) Violations of the Labor Code Private Attorneys General Act of 2004
24 (“PAGA”);

25 1.3 WHEREAS, on March 21, 2023, Plaintiff filed a First Amended Complaint,
26 correcting misspellings of the names of Defendants ALLEN GIMENEZ and GARY
27 GIMENEZ but otherwise leaving unchanged the substance of Plaintiff’s initial complaint;
28

1 1.4 WHEREAS, the Parties engaged in extensive discovery, exchanging
2 information, documents, and hiring contractors and experts to help review and analyze the
3 approximately 12,000 pages of handwritten Class Member timesheets made available by
4 Defendants, which enabled the Parties to thoroughly evaluate Plaintiff's claims, the PAGA
5 claim, the claims of the putative Class, Defendants' defenses, and the likely outcomes, risks,
6 and expense of pursuing litigation;

7 1.5 WHEREAS, on November 6, 2023, Plaintiff submitted an amended PAGA
8 notice to the LWDA, alleging additional claims for violations of the Labor Code;

9 1.6 WHEREAS, on February 15, 2024, the Parties attended a private mediation with
10 mediator David Sarnoff, Esq., and reached the terms of this arm's-length Settlement;

11 1.7 WHEREAS, on September 26, 2024, Plaintiff submitted a second amended
12 PAGA notice to the LWDA, clarifying which violations of the Labor Code he alleges;

13 1.8 WHEREAS a bona fide dispute exists as to whether any wages or penalties are
14 due from Defendants to any putative Class Member, to the LWDA, or to any allegedly
15 aggrieved employees;

16 1.9 WHEREAS the Parties desire to compromise and settle all issues and claims that
17 have been or could have been brought against Defendants based on the factual allegations of
18 the Action, including all claims brought on a putative class and representative basis in the
19 Action;

20 1.10 WHEREAS the Parties further agree that this Agreement, the fact of this
21 Settlement, any terms of this Agreement, and any documents filed in connection with the
22 Settlement shall not constitute, or be offered, received, claimed, construed, or deemed as an
23 admission, finding, or evidence of: (i) any wrongdoing by any Released Parties; (ii) any
24 violation of any statute or law by Released Parties; (iii) any liability on the claims or
25 allegations in the Action on the part of any Released Parties; or (iv) the propriety of certifying
26 a class or pursuing representative relief under PAGA in the Action or any other civil or
27 administrative proceeding; and this Agreement shall not be used by any person for any
28

1 purpose whatsoever in any administrative or legal proceeding, other than a proceeding to
2 enforce the terms of this Agreement;

3 1.11 NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND
4 AGREED by Plaintiff, for themselves and on behalf of the Settlement Class Members, defined
5 below, and PAGA Employees, defined below, and by Defendants that, subject to the approval
6 of the Court, the Action shall be settled and compromised, and the Released Claims shall be
7 finally and fully compromised and settled as to the Released Parties in the manner and upon
8 the terms and conditions set forth in this Agreement.

9 **2. DEFINITIONS**

10 Unless otherwise defined herein, capitalized terms used in this Agreement have these
11 meanings:

12 2.1 “Action” means the case *Efren Palomino v. Winall Oil Co., Allen Gimenez, Gary*
13 *Gimenez, and DOES 1 through 20* (Superior Court of the State of California, County of Los
14 Angeles, No. 23STCV04401).

15 2.2 “Class Members” means all current and former gas-station attendants who were
16 employed by Defendants throughout California at any time from February 28, 2019, through
17 the date of preliminary approval of the parties’ settlement agreement by the Court.

18 2.3 “Class Period” means February 28, 2019, through the date of preliminary
19 approval of the parties’ settlement agreement by the Court.

20 2.4 “Class Counsel” means Hunter Pyle and John J. Darin of Hunter Pyle Law.

21 2.5 “Class Counsel Award” means the attorneys’ fees and reimbursement of
22 litigation costs and expenses awarded by the Court to Class Counsel to fully satisfy all claims
23 for attorneys’ fees and costs incurred by Plaintiff to litigate and settle this Action.

24 2.6 “Class Information” means information regarding Class Members that
25 Defendants will in good faith compile from its records and provide to the Settlement
26 Administrator. Class Information shall be provided to the Settlement Administrator in a
27 Microsoft Excel spreadsheet and shall include each Class Member’s full name, Social Security
28 Number, last known mailing address, total Workweeks, defined below, employed during the

1 Class Period, total pay periods worked during the PAGA Period, and dates of employment as a
2 non-exempt employee during the Class Period. Because Class Members' private information is
3 included in the Class Information, the Settlement Administrator shall maintain the Class
4 Information in confidence, shall limit access to the information only to those employees of the
5 Settlement Administrator with a need to use the Class Information as part of the administration
6 of the Settlement, and shall use and disclose the Class Information only for purposes of this
7 Settlement.

8 2.7 "Class Notice" means the Notice of Class Action Settlement to be provided to
9 Class Members, substantially in the form attached as "Exhibit A."

10 2.8 "Complete and General Release" means a release of the Released Parties from
11 all claims, demands, rights, liabilities, and causes of action of every nature and description
12 whatsoever, known or unknown, asserted or that might have been asserted, whether in tort,
13 contract, or for violation of any state or federal statute, rule or regulation arising out of,
14 relating to, or in connection with any act or omission by or on the part of any of the Released
15 Parties committed or omitted prior to the execution hereof. The Complete and General Release
16 also means that Plaintiff Efren Palomino stipulates and agrees that he is not due or owed any
17 additional monies and expressly waives and relinquishes, to the fullest extent permitted by
18 law, the provisions, rights, and benefits of section 1542 of the California Civil Code, or any
19 other provision under federal or state law, which provides:

20 A general release does not extend to claims that the creditor or releasing party does
21 not know or suspect to exist in his or her favor at the time of executing the release
22 and that, if known by him or her, would have materially affected his or her
23 settlement with the debtor or released party.

24 2.9 "Court" means the Los Angeles County Superior Court.

25 2.10 "Effective Date" means the first business day upon which the latest of the
26 following dates: (i) if no Class Member files an objection or, if they have filed objections, such
27 objections have been withdrawn, then the date the Court enters an order granting final approval
28 of the Agreement; (ii) if a Class Member files an objection to the Agreement that has not been
withdrawn, and if an appeal, review or writ is not sought from the order granting final approval
of the Agreement, then sixty-one calendar days after service of notice of entry of the order; or

(iii) if an appeal, review or writ is sought from the order, then the business day after the court of last resort to which any appeal is taken has affirmed the order or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further appeal or judicial review.

2.10 “Final Approval Date” means the date of the Court’s order finally approving this Settlement.

2.11 “Final Approval Order” means the Court’s order finally approving this Settlement.

2.12 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore is finally approved by the Court.

2.13 “Individual Settlement Payment” means the gross payment of each Settlement Class Member’s Individual Settlement Share and Individual PAGA Payment if applicable.

2.14 “Individual Settlement Share” means the pro rata payment of the Net Distribution Fund to each Settlement Class Member.

2.15 “Individual PAGA Payment” means PAGA Employees’ pro rata share of 25% of the PAGA Payment.

2.16 “Judgment” means the judgment to be entered in the Action upon final approval of the Settlement.

2.17 “Mailed Notice Date” means the date of the initial mailing of the Class Notice to Class Members.

2.18 “Net Distribution Fund” means the Total Settlement Amount less the payment of: (1) the Class Counsel Award; (2) Plaintiff’s Service Award, if any; (3) the PAGA Payment; and (4) the Settlement Administrator Expenses.

2.19 “PAGA Employees” is defined as all current and former gas-station attendants who were employed by Defendants throughout California during the period running from October 28, 2021 through the date of preliminary approval of the parties’ settlement agreement by the Court.

1 2.20 “PAGA Payment” means a total payment of up to \$130,000 as consideration for
2 the PAGA Release. The PAGA Payment will be allocated exclusively as penalties under Labor
3 Code section 2699, of which 75% (up to \$97,500) will be paid to the LWDA and the
4 remainder of which will be distributed to the PAGA Employees. The PAGA Payment shall be
5 payable from the Total Settlement Amount.

6 2.21 “PAGA Period” means October 28, 2021, through the date of preliminary
7 approval of the Parties’ Settlement Agreement by the Court.

8 2.22 “PAGA Release” refers to the release provided by Plaintiff acting in his capacity
9 as private attorneys general on behalf of the State of California pursuant to the California
10 Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on
11 behalf of the Labor and Workforce Development Agency and the PAGA Employees. The
12 PAGA Release shall operate to release and discharge the Released Parties from any claim for
13 civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004,
14 Labor Code section 2698 *et seq.* that arise from or could have been asserted based on any of
15 the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements,
16 omissions or failures to act alleged in Plaintiff’s Second Amended PAGA Notice submitted to
17 the Labor Workforce and Development Agency, including but not limited to claims for
18 violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552,
19 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the applicable IWC Wage Orders.

20 2.23 “Plaintiff” means Efren Palomino.

21 2.24 “Preliminary Approval” means entry of the Preliminary Approval Order.

22 2.25 “Preliminary Approval Order” means the order granting preliminary approval of
23 this Settlement Agreement.

24 2.26 “Released Class Claims” means any and all claims, charges, complaints, liens,
25 demands, causes of action, obligations, damages and liabilities, during the Class Period,
26 known or unknown, suspected or unsuspected, that each participating class member had, now
27 has, or may hereafter claim to have during the Class Period against Defendants and that were
28 asserted in the Action, or that arise from or could have been asserted based on any of the facts,

1 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
2 failures to act alleged in Plaintiff's Second Amended Complaint, regardless of whether such
3 claims arise under federal, state and/or local law, statute, ordinance, regulation, common law,
4 or other source of law. The Released Class Claims specifically include, but are not limited to
5 Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430,
6 and 6431, and the related IWC Wage Order No. 7-2001 and Business & Professions Code
7 §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage
8 Orders, regulations, and/or other provisions of law, that could have been pleaded based on the
9 facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2)
10 Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage
11 Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6)
12 Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide
13 One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these
14 specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims
15 that were asserted in the Action or could have been asserted in the Action based on the facts
16 and circumstances alleged in any Complaint on file in the Action.

17 2.27 "Released Parties" means Defendant Winall Oil Co.; Defendant Allen Gimenez;
18 and Defendant Gary Gimenez.

19 2.28 "Response Deadline" means the date by which a Class Member may: (i) request
20 to be excluded from the Settlement; (ii) object to the Settlement; or (iii) dispute the number of
21 Workweeks credited to him or her. The Response Deadline shall be sixty (60) calendar days
22 after the Mailed Notice Date and shall be specifically identified and set forth in the
23 Preliminary Approval Order and Class Notice. The Response Deadline may be extended in the
24 event the Class Notice is re-mailed to any Class Members as set forth in section 6. In the event
25 the Class Notice is re-mailed, the Settlement Administrator shall advise the Class Member that
26 they have an additional ten (10) calendar days from the original Response Deadline to submit
27 a response (the "Extended Response Deadline").
28

1 2.29 “Service Award” means the amounts approved by the Court to be paid to
2 Plaintiff, in addition to Plaintiff’s respective Individual Settlement Payment. The Service
3 Award payable to Efren Palomino shall not exceed \$20,000.00 each and shall be payable from
4 the Total Settlement Amount.

5 2.30 “Settlement Administrator” means Simpluris.

6 2.31 “Settlement Administrator Expenses” means the maximum amount to be paid to
7 the Settlement Administrator, which shall not exceed \$6,000. All Settlement Administrator
8 Expenses are to be paid exclusively from the Total Settlement Amount.

9 2.32 “Settlement Class Members” means all Class Members who do not opt out of
10 this Settlement.

11 2.33 “Total Settlement Amount” means One-Million-Three-Hundred-Eighty-Four-
12 Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25), which is the
13 maximum amount that Defendants are obligated to pay under this Settlement Agreement,
14 except for the employer’s share of payroll taxes with respect to the wage portion of Individual
15 Settlement Shares, in order to resolve and settle this Action, subject to Court approval. The
16 \$1,384,804.25 plus the employer’s share of payroll taxes is the maximum amount Defendants
17 are obligated to pay under this Agreement. The Total Settlement Amount includes the Class
18 Counsel Award, any Service Award, the Settlement Administrator Expenses, the PAGA
19 Payment (which includes Individual PAGA Payments to PAGA Employees and payment to
20 the LWDA), the Individual Settlement Shares, all related interest, and all employee-side
21 payroll and employment taxes on the wage portion of Individual Settlement Shares. The Total
22 Settlement Amount does not include the employer-side payroll and employment taxes on the
23 wage portion of Individual Settlement Shares, which Defendants agrees to pay separately.

24 2.34 “Void Date” means the date by which any checks issued to Settlement Class
25 Members shall become void, i.e., on the 181st day after mailing.

26 2.35 “Workweeks” means the number of weeks during which a Class Member
27 worked for Defendants in the State of California during the Class Period.
28

1 **3. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY**

2 3.1 Certification of Class: Solely for the purposes of this Settlement, the Parties
3 stipulate and agree that the Court may certify the Class.

4 3.2 Appointment of Class Representatives: Solely for the purposes of this
5 Settlement, the Parties stipulate and agree that Plaintiff Efren Palomino shall be appointed
6 representative of the Class.

7 3.3 Appointment of Class Counsel: Solely for the purposes of this Settlement, the
8 Parties stipulate and agree that Class Counsel shall be approved as counsel for Settlement
9 Class Members.

10 3.4 Appointment of Settlement Administrator: Solely for the purposes of this
11 Settlement, the Parties stipulate and agree that Simpluris shall be appointed to serve as
12 Settlement Administrator. The Settlement Administrator shall be responsible for establishing a
13 toll-free telephone number by which Class Members can inquire about the Settlement and a
14 Post Office Box for receipt of Class Members' communications; preparing, printing and
15 mailing the Class Notice; receiving and reviewing requests for exclusion, objections, or
16 disputes submitted by Class Members; calculating Individual Settlement Shares and Individual
17 PAGA Payments; calculating and paying any and all payroll tax or other required
18 withholdings from the wage portion of the Individual Settlement Shares as required under this
19 Agreement and applicable law; providing weekly status reports to Defendants' counsel and
20 Class Counsel; providing a due diligence declaration for the Court prior to the Final Approval
21 Hearing; mailing Individual Settlement Payments, any Service Award, the Class Counsel
22 Award, and 75% of the PAGA Payment to the LWDA; printing and providing Plaintiff, Class
23 Counsel, and Settlement Class Members with IRS Forms W-2 or 1099 as required under this
24 Agreement and applicable law; providing a due diligence declaration for submission to the
25 Court upon the completion of the Settlement; and for other tasks as the Parties mutually agree.
26 The Parties agree to cooperate in the settlement administration process and to make all
27 reasonable efforts to control and minimize Settlement Administrator Expenses.
28

1 3.5 Conditional Nature of Stipulation for Certification: Solely for the purposes of
2 this Settlement, the Parties stipulate and agree to the certification of the Class. Should for
3 whatever reason the Settlement not become effective, the fact that the Parties were willing to
4 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
5 admissible in connection with, the issue of whether the Class should be certified in a non-
6 Settlement context in this Action or in any other lawsuit. Defendants expressly reserves their
7 right to oppose any claim or class certification in this or any other action should this
8 Settlement not become effective.

9 3.6 The Parties agree to stay all proceedings in the Action, except those proceedings
10 necessary to implement and complete the Settlement, from the date that this Settlement
11 Agreement is executed by Plaintiff until such time as the Parties shall agree in writing that the
12 stay is lifted, which stay shall extend the time within which this action must be brought to trial
13 pursuant to California Code of Civil Procedure section 583.310, et seq.

14 **4. NON-REVERSIONARY SETTLEMENT CONSIDERATION**

15 4.1 Defendants' total monetary obligation under this Settlement is the Total
16 Settlement Amount (\$1,384,804.25) and is non-reversionary. This is an "all in" number that
17 includes, without limitation, all monetary benefits and payments for Settlement Class
18 Members, Service Awards, the Class Counsel Award, Settlement Administrator Expenses, the
19 PAGA Payment, and all other claims for interest, fees, and costs. Under no circumstances shall
20 Defendants be required to pay anything more than the Total Settlement Amount, except that
21 Defendants will separately pay the employer payroll and employment taxes due for the wages
22 portion of Individual Settlement Shares made under this Agreement. In no event shall
23 Defendants be liable for making any payments under this Settlement, or for providing any
24 relief to the Settlement Class Members, before the Effective Date of this Agreement. Within
25 thirty (30) calendar days of the Effective Date, Defendants will transfer the total settlement
26 amount to the Settlement Administrator. Such funding is conditioned on the Settlement
27 Administrator providing valid transmission instructions, which shall include the amount of
28 additional employer-side payroll taxes.

1 4.2 Defendants agrees not to oppose Plaintiff Efren Palomino's application for a
2 Service Award in an amount up to \$20,000.00. Any Service Award awarded by the Court shall
3 be paid from the Total Settlement Amount. If the Court awards less than the full Service
4 Award, the unawarded funds shall become part of the Net Distribution Fund.

5 4.3 Plaintiff shall seek a Class Counsel Award from the Court, consisting of
6 attorneys' fees in an amount of up to \$461,601.42, or one-third of the Gross Settlement
7 Amount, and all litigation costs and expenses incurred subject to proof in an amount not to
8 exceed \$50,000. Defendants agrees not to oppose a request for these amounts. Any Class
9 Counsel Award awarded by the Court shall be paid from the Total Settlement Amount. Any
10 portion of the Class Counsel Award that is not approved by the Court and awarded to Class
11 Counsel shall become part of the Net Distribution Fund.

12 4.4 The Parties agree to allocate up to one-hundred-thirty-thousand dollars
13 (\$130,000) for the PAGA Payment, of which 75% or \$97,500 shall be paid to the LWDA, and
14 the remaining 25% or \$75,000 shall be paid to PAGA Employees on a pro rata basis based on
15 Workweeks in the PAGA Period, if any, and irrespective of whether or not they request
16 exclusion from the Settlement. The PAGA Payment shall be paid from the Total Settlement
17 Amount. Any portion of the PAGA Payment that is not approved by the Court shall become
18 part of the Net Distribution Fund.

19 4.5 The Settlement Administrator Expenses are estimated not to exceed Six
20 Thousand Dollars (\$6,000.00). The Settlement Administrator Expenses shall be paid from the
21 Total Settlement Amount. Any portion of the Settlement Administrator Expenses not actually
22 incurred by the Settlement Administrator shall become part of the Net Distribution Fund.

23 4.6 The Settlement Administrator shall calculate the Individual Settlement Shares
24 based on the Class Information provided to the Settlement Administrator by Defendants.
25 Payment of Individual Settlement Shares to Settlement Class Members will be made from the
26 Net Distribution Fund as follows:

- 27 (a) The allocation of the Net Distribution Fund shall be made pursuant to a formula by
28 which each Class Member receives a pro rata portion of the Net Distribution Fund

1 based upon the number of Workweeks the Class Member worked for Defendants
2 during the Class Period.

3 (b) Each Class Member's number of Workweeks will be derived by Defendants based
4 on the payroll and time records kept by Defendants in the ordinary course of
5 business during the Class Period. Individual Settlement Shares shall be characterized
6 as 20 percent wages, 60 percent penalties, and 20 percent interest. Wage payments
7 shall be subject to all required withholdings. Defendants shall be responsible for the
8 employer's share of any applicable payroll taxes. Each Class Member's Individual
9 Settlement Award will be reported on a W-2 or 1099 Form.

10 4.7 PAGA Employees will receive an Individual PAGA Payment that consists of a
11 pro rata share of 25% of the PAGA Payment based on total pay periods worked during the
12 PAGA Period. Specifically, 25% of the PAGA Payment shall be divided by the total of all
13 Workweeks worked by PAGA Employees during the PAGA Period in order to establish the
14 value of each Workweek. The Individual PAGA Payment to be made to each PAGA
15 Employee shall be calculated by multiplying the value of a Workweek by the number of
16 Workweeks worked by the PAGA Employee during the PAGA Period.

17 4.8 Settlement Class Members may dispute the number of Workweeks with which
18 they have been credited, as reflected in their respective Class Notices. In order to dispute
19 Workweeks, Settlement Class Members must submit a written letter returned to the Settlement
20 Administrator by mail at the specified address, postmarked on or before the Response
21 Deadline. The written letter must: (a) contain the case name and number of the Action; (b) be
22 signed by the Settlement Class Member; (c) contain the full name, address, telephone number,
23 and the last four digits of the Social Security Number of the disputing Settlement Class
24 Member; (d) clearly state that the Settlement Class Member disputes the number of
25 Workweeks credited to him or her and what he or she contends is the correct number to be
26 credited to him or her; and (e) include information or attached documentation demonstrating
27 that the amount of Workweeks that he or she contends should be credited to him or her are
28 correct. The date of the postmark on the submission will be the exclusive means to determine

1 whether a dispute has been timely submitted. Absent evidence rebutting the accuracy of
2 Defendants' records and data as they pertain to the number of Workweeks to be credited to a
3 disputing Settlement Class Member, Defendants' records will be presumed correct and
4 determinative of the dispute. However, if a Class Member produces information or documents
5 to the contrary, the Settlement Administrator will evaluate the materials submitted by the Class
6 Member and the Settlement Administrator will resolve and determine the number of eligible
7 Workweeks that the disputing Settlement Class Member should be credited with under the
8 Settlement. The Settlement Administrator's decision on such disputes will be final and non-
9 appealable.

10 4.9 Defendants have represented that Class Members have worked a total of no
11 greater than 15,320 total Workweeks through February 15, 2024. Should the actual number of
12 workweeks worked by Class Members during this period exceed 15,320 by more than 10%
13 greater than this figure (i.e., if there are 16,852 or more total workweeks), then the Settlement
14 Amount will increase by the proportion of the increase in the total workweeks (e.g., if the
15 number of workweeks increases by 12% the Settlement Amount shall also increase by 12%).

16 4.10 Individual PAGA Payments will be allocated as one hundred percent (100%)
17 penalties to be reported on IRS Form 1099.

18 4.11 Settlement Class Members (except Plaintiff with respect to their Service
19 Awards) are not eligible to receive any compensation other than the Individual Settlement
20 Payments discussed above.

21 4.12 The Settlement Administrator shall never be empowered to make payments to
22 Class Members exceeding the total Net Distribution Fund or deviate from the payment
23 formula agreed upon by the Parties.

24 4.13 Amounts paid to Plaintiff and Settlement Class Members pursuant to this
25 Settlement Agreement shall be deemed to be paid to such Settlement Class Members and
26 PAGA Employees solely in the year in which such payments actually are received by the
27 Settlement Class Members and PAGA Employees. It is expressly understood and agreed that
28 such Individual Settlement Payments and Individual PAGA Payments will not be utilized to

1 calculate any additional compensation or any additional benefits under any compensation or
2 benefit plans to which any Settlement Class Member or PAGA Employee may be eligible,
3 including, but not limited to: bonus, contest or commissions plans; profit-sharing plans, bonus
4 plans, 403(b) and 457 plans, deferred compensation plans; vacation plans, sick leave plans,
5 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
6 Agreement will not affect any rights, contributions, or amounts to which any Settlement Class
7 Members or PAGA Employees may be entitled under any compensation or benefit plans.

8 4.14 In consideration of his Service Awards, Plaintiff Efren Palomino, individually
9 and on behalf of his heirs, estates, trustees, executors, administrators, representatives, agents,
10 successors, and assigns, and anyone claiming through him or acting or purporting to act on his
11 behalf, agrees to provide a Complete and General Release.

12 4.15 In exchange for the consideration provided by Defendants, Plaintiff Efren
13 Palomino, acting in the capacity of a representative of the State of California and on behalf of
14 the group of PAGA Employees, agrees to release any and all claims during the PAGA Period
15 that that arise from or could have been asserted by the State of California and on behalf of the
16 Labor and Workforce Development Agency against Defendants based on any of the facts,
17 circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or
18 failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor
19 Workforce and Development Agency, including but not limited to claims for violations of
20 Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 551, 552, 558, 3550, 3551,
21 6430, and 6431, and the applicable IWC Wage Orders.

22 4.16 In exchange for the consideration provided by Defendants, Settlement Class
23 Members, individually and on behalf of their heirs, estates, trustees, executors, administrators,
24 representatives, agents, successors, and assigns, and anyone claiming through them or acting
25 or purporting to act on their behalf, will agree to forever release, discharge, and hold harmless
26 each and all of the Released Parties for the Released Claims during the Class Period.

27 4.17 All releases identified herein shall be null and void if Defendants fail to fully
28 fund the Total Settlement Amount. The releases identified herein shall become effective on the

1 date on which Defendants fully funds the Total Settlement Amount.

2 4.18 Any uncashed settlement compensation left after distributing the Net
3 Distribution Fund and after the 180-day period for negotiating checks will constitute a *cy pres*
4 fund to be the Wage Justice Center, subject to Court approval.

5 4.19 Defendants will not receive reversion of any part of the Total Settlement
6 Amount, unless the Settlement is not finally approved by the Court with the terms materially
7 identical to the terms articulated in this Agreement. In the event the Settlement is void per this
8 term, or is not given final approval by the Court, Defendants will bear only one half of the
9 already-accrued costs of the Settlement Administrator.

10 **5. PROCEDURE FOR REQUESTING PRELIMINARY APPROVAL OF THE**
11 **SETTLEMENT**

12 5.1 After execution of this Settlement Agreement, Plaintiff shall promptly submit a
13 motion for preliminary approval of the Settlement to the Court, along with the Settlement
14 Agreement. Plaintiff's motion for preliminary approval shall request that the Court enter a
15 preliminary approval order.

16 5.2 The Preliminary Approval Order shall:

- 17 • Conditionally certify the Settlement Class for settlement purposes;
- 18 • Preliminarily appoint Plaintiff as representative of the proposed Settlement
19 Class;
- 20 • Grant Plaintiff leave to file his Second Amended Complaint, which is attached
21 hereto as "Exhibit B";
- 22 • Preliminarily approve Class Counsel to represent the Settlement Class;
- 23 • Appoint Simpluris as the Settlement Administrator and order the Settlement
24 Administrator to provide notice of the Settlement as outlined in this Agreement;
- 25 • Stay all litigation of the Action pending the Final Approval Hearing, except as
26 necessary to implement and effectuate the Settlement; and
- 27 • Order that the preliminary approval of the Settlement, conditional certification
28 of the Settlement Class, and all actions associated with them, are undertaken on

1 the condition that they shall be vacated if the Settlement Agreement is
2 disapproved in whole or in part by the Court, or any appellate court or other
3 court of review, in which event the Settlement Agreement and the fact that it
4 was entered into shall not be offered, received, or construed as an admission or
5 as evidence for any purpose, including but not limited to an admission by any
6 Party of liability or non-liability or of the certifiability of a litigation class or the
7 appropriateness of maintaining a representative action.

8 5.3 The motion for preliminary approval shall request: the Final Approval Hearing;
9 that any determination on the request for a Class Counsel Award and Service Award be set no
10 earlier than forty-five (45) calendar days after the Response Deadline; and that Plaintiff be
11 permitted to file Plaintiff's motion for final approval of the Settlement no later than sixteen
12 (16) court days before the Final Approval Hearing.

13 5.4 At the same time that Plaintiff file the motion for preliminary approval, Class
14 Counsel will submit the Settlement Agreement to the LWDA.

15 **6. PROCEDURE FOR PROVIDING NOTICE OF SETTLEMENT**

16 6.1 No more than thirty (30) calendar days after Preliminary Approval, Defendants
17 shall provide the Settlement Administrator with the Class Information for purposes of sending
18 the Class Notice to Class Members.

19 6.2 No more than forty-five (45) calendar days after Preliminary Approval, the
20 Settlement Administrator shall mail the Class Notice to Class Members via first-class regular
21 U.S. mail. Prior to mailing, the Settlement Administrator will perform a search based on the
22 National Change of Address Database to update and correct for any known or identifiable
23 address changes. For each Class Notice returned as undeliverable without a forwarding
24 address, the Settlement Administrator will perform a single computer or "skiptrace" search to
25 obtain an updated address. All Class Members' names and postal mail addresses obtained
26 through these sources shall be protected as confidential and not used for purposes other than
27 the notice and administration of this Settlement. The address determined by the Settlement
28 Administrator as the current mailing address shall be presumed to be the best mailing address

1 for each Class Members. The Settlement Administrator shall promptly re-mail the Class
2 Notice to any Class Member whose original notice was returned because of a wrong address
3 within three (3) business days of obtaining an updated address and advise the Class Member of
4 the Extended Response Deadline.

5 6.3 If any Class Notice to a Class Member is returned to the Settlement
6 Administrator with a forwarding address, the Settlement Administrator shall forward the postal
7 mailing to that address within three (3) business days. Class Members whose Class Notices are
8 re-mailed shall have an additional ten (10) calendar days from the original Response Deadline
9 to submit a response (the Extended Response Deadline). The Settlement Administrator will
10 advise Class Members of the Extended Response Deadline where applicable.

11 6.4 The Settlement Administrator shall continue to obtain updated mailing addresses
12 for any undeliverable Class Notices until the Response Deadlines. The Settlement
13 Administrator shall maintain a log detailing the instances Class Notices are returned as
14 undeliverable, re-mailed, and when applicable, returned again.

15 6.5 The Class Notice shall include a statement as to the number of Workweeks
16 credited to the Class Member, where applicable, as well as an explanation of how the
17 Workweeks will be used to calculate the Individual Settlement Shares and Individual PAGA
18 Payments if applicable.

19 6.6 The Class Notice will inform Class Members that, unless they submit a request
20 to be excluded from the Settlement, they will become Settlement Class Members and will
21 receive Individual Settlement Payments under the Agreement.

22 6.7 The Class Notice will inform Class Members of their right to request exclusion
23 from the Settlement or to object to the Settlement, dispute the amount of Workweeks credited
24 to them, and of the procedure for doing so. The Class Notice will also inform Class Members
25 that if they request exclusion from the Class, they may not also object to the Settlement or
26 dispute the number of Workweeks credited to them. The Class Notice will inform PAGA
27 Employees that all claims to PAGA penalties are settled by operation of law and that they are
28

1 not able to exclude themselves from the PAGA Release and will receive an Individual PAGA
2 Payment whether or not they request exclusion from the Action and the Settlement.

3 6.8 Class Members will have sixty (60) days from the mailing of the Class Notice to
4 submit a request for exclusion or objections (which periods shall run concurrently).

5 6.9 The Parties agree that the procedures set forth in this Section comply with all
6 due process requirements, constitute reasonable and best practicable notice under the
7 circumstances, and constitute an appropriate and sufficient effort to locate current addresses
8 for Class Members such that no additional efforts to do so shall be required.

9 6.10 No more than ten (10) calendar days after the Response Deadline or Extended
10 Response Deadline in the event the Class Notice is re-mailed, the Settlement Administrator
11 shall provide a declaration of due diligence confirming: its dissemination of the Class Notice
12 in accordance with the notice procedures of this Agreement; all attempts by the Settlement
13 Administrator to locate Class Members; the number of delivered and undeliverable Class
14 Notices; the number of objections received and copies of same; the number of requests for
15 exclusion received and copies of same; and the number of Workweek payment disputes
16 received. Class Counsel shall be responsible for filing the due diligence declaration with the
17 Court.

18 **7. PROCEDURE FOR REQUESTING EXCLUSION**

19 7.1 All requests for exclusion will be submitted to the Settlement Administrator,
20 who will timely certify jointly to Plaintiff's counsel and Defendants' counsel the forms that
21 were timely and correctly submitted.

22 7.2 Class Members who wish to exclude themselves from (or "opt out" of) the
23 Settlement must submit timely, signed written requests for exclusion from the Settlement to
24 the Settlement Administrator that includes the Class Member's name, a clear and unequivocal
25 statement that the individual wishes to be excluded from the Settlement, and the Class
26 Member's signature.

27 7.3 The request for exclusion must be mailed to the Settlement Administrator at the
28 address provided in the Class Notice and must be postmarked no later than the Response

1 Deadline. The date of the postmark on the envelope containing the request for exclusion shall
2 be the exclusive means used to determine whether a request for exclusion has been timely
3 submitted.

4 7.4 The Settlement Administrator shall immediately notify Class Counsel and
5 counsel for Defendants by email and phone if the number of timely-submitted requests for
6 exclusion reaches ten percent (10%) of all Class Members. If Class Members representing
7 more than 10% of the total Workweeks in the Class Period submit exclusion forms of any
8 kind, Defendants may exercise the option to rescind and revoke the entire Settlement
9 Agreement by sending written notice to Class Counsel that it revokes the Settlement within ten
10 (10) calendar days after the Response Deadline or Extended Response Deadline if applicable.
11 However, if Defendants exercises this option, it will be responsible for paying all settlement
12 administration costs incurred to date.

13 7.5 All Class Members who do not opt out of the Settlement shall be bound by the
14 Final Approval Order and Judgment even if they never received the Class Notice or other
15 actual notice of this Settlement. However, if a Class Member's information was not part of the
16 Class Information that Defendants provided to the Settlement Administrator, Defendants shall
17 provide additional funding sufficient to fully fund the share the Class Member would have
18 otherwise been entitled to receive under the terms of this Agreement.

19 7.6 Plaintiff agrees not to request exclusion from the Settlement.

20 7.7 The Parties agree there is no statutory or other right for any PAGA Employee to
21 opt out or otherwise exclude themselves from the settlement and release of the PAGA Claims.

22 **8. PROCEDURE FOR WRITTEN OBJECTION**

23 8.1 Any Class Member who has not opted out of the Settlement and who wishes to
24 submit a written objection to the fairness, reasonableness, or adequacy of this Agreement must
25 provide the written objection to the Settlement Administrator, who shall immediately forward
26 it to Class Counsel and counsel for Defendants by the Response Deadline or Extended
27 Response Deadline.

1 8.2 All written objections and supporting papers must be postmarked no later than
2 the Response Deadline or Extended Response Deadline if applicable. The date of the postmark
3 on the envelope containing the objection shall be the exclusive means used to determine
4 whether the written objection has been timely submitted. The Parties shall file all objections
5 with the Court prior to the Final Approval Hearing.

6 8.3 The objection should contain at least the following: (i) the objector's full name,
7 address, telephone number, last four digits of his or her Social Security number, and signature;
8 (ii) the name and case number of the Action; (iii) a statement of the specific legal and factual
9 basis for each objection argument; and (iv) a statement whether the objector intends to appear
10 at the Final Approval Hearing, either remotely, in person, or through counsel, and, if through
11 counsel, a statement identifying that counsel by name, bar number, address, and telephone
12 number.

13 8.4 All written objections, supporting papers, or notices of intent to appear at the
14 Final Approval Hearing must: (a) clearly identify the case name and number (*Efren Palomino*
15 *v. Winall Oil Co., Allen Gimenez, Gary Gimenez, and DOES 1 through 20* (Superior Court of
16 the State of California, County of Los Angeles, No. 23STCV04401)); (b) be submitted to the
17 Court either by mailing the objection to Clerk of the Court, Superior Court of California,
18 County of Los Angeles, Spring Street Courthouse, 312 North Spring Street, Los Angeles, CA
19 90012, or by filing in person at the same location; (c) also be mailed to the Settlement
20 Administrator; and (d) be filed or postmarked on or before the Response Deadline or Extended
21 Response Deadline if applicable.

22 8.5 Class Members who object to the Settlement shall remain Settlement Class
23 Members and shall be deemed to have voluntarily waived their right to pursue an independent
24 remedy against Defendants and the Released Parties for the Released Claims if the Court
25 grants final approval of the Settlement. To the extent any Settlement Class Member objects to
26 the Settlement, and such objection is overruled in whole or in part, those Settlement Class
27 Members will be forever bound by the Final Approval Order and Judgment if the Court grants
28 final approval of the Settlement.

1 8.6 The Parties agree there is no statutory or other right for any PAGA Employee to
2 object to the PAGA Release portion of the Settlement.

3 **9. PROCEDURE FOR REQUESTING FINAL APPROVAL OF THE**
4 **SETTLEMENT**

5 9.1 Promptly after receipt of the declaration of due diligence from the Settlement
6 Administrator, Plaintiff shall file a motion requesting final approval of the Settlement, along
7 with a proposed Final Approval Order.

8 9.2 The Final Approval Order shall adjudge, among other things, that:

- 9 • The Settlement Administrator has fulfilled its initial notice and reporting duties
10 under the Settlement and that the Class Notice: (i) constituted the best
11 practicable notice; (ii) constituted notice that was reasonably calculated under
12 the circumstances to apprise Class Members of the pendency of the Action and
13 their right to exclude themselves from or object to the proposed Settlement and
14 to appear at the Final Approval Hearing; (iii) was reasonable and constituted
15 due, adequate, and sufficient notice to all persons entitled to receive notice; and
16 (iv) met all applicable requirements of due process and any other applicable
17 rules or law;
- 18 • The Settlement is fair, reasonable, and adequate;
- 19 • Plaintiff and Class Counsel may adequately represent the Settlement Class for
20 the purpose of entering into and implementing the Agreement;
- 21 • The Settlement Administrator is to execute the distribution of proceeds pursuant
22 to the terms of this Agreement;
- 23 • Wage Justice Center is approved as the *cy pres* beneficiary;
- 24 • The Final Approval Order and Judgment shall be final and entered forthwith;
- 25 • Without affecting the finality of the Final Approval Order and Judgment, the
26 Court retains continuing jurisdiction over Plaintiff, Defendants, and Settlement
27 Class Members, as to all matters concerning the administration, consummation,
28 and enforcement of this Settlement Agreement;

- 1 • As of the Effective Date of the Release, Plaintiff and Settlement Class Members
2 compromised, settled, discharged, and provided the release of the Released Class
3 Claims during the applicable time period against Defendants and the Released
4 Parties and are bound by the provisions of this Settlement Agreement;
- 5 • Notwithstanding the submission of a timely request for exclusion, PAGA
6 Employees are still bound by the PAGA Release portion of the Settlement and
7 the State's claims for civil penalties pursuant to PAGA are also extinguished;
- 8 • This Settlement Agreement and the Final Approval Order and Judgment are
9 binding on, and have *res judicata* and preclusive effect in, all pending and future
10 lawsuits or other proceedings that encompass Plaintiff's and Settlement Class
11 Members' claims released herein, and that are maintained by or on behalf of
12 Plaintiff and Settlement Class Members; and
- 13 • The Settlement provided for herein, and any proceedings undertaken pursuant
14 thereto, are not, and should not in any event be offered, received, or construed as
15 evidence of, a presumption, concession, or an admission by any Party of liability
16 or non-liability or of the certifiability or non-certifiability of a litigation class or
17 collective, or that PAGA representative claims may validly be pursued.

18 9.3 In a separate motion to be heard at the same time as the Final Approval Hearing,
19 Class Counsel shall request entry of an Order approving the Class Counsel Award and the
20 Service Award to Plaintiff. Any Class Counsel Award or Service Award shall be paid
21 exclusively from the Total Settlement Amount.

22 9.4 The Parties expressly agree that the Court's approval or denial of any request for
23 a Service Award is not a material condition to this Agreement and is to be considered by the
24 Court separately from the fairness, reasonableness, adequacy, and good faith of the Settlement.
25 Any order or proceeding relating to the application by Class Counsel of a Service Award shall
26 not operate to terminate or cancel this Agreement. To the extent the Court awards less than the
27 amount of the requested Service Award, the consideration referenced above in section 4 shall
28 not be affected, and the requirement for or validity of an executed Complete and General

1 Release by Plaintiff Efren Palomino shall remain in force and effect. To the extent the Court
2 awards less than the amount of the requested Service Award, any remaining amount will be
3 redistributed amongst participating Class Members on a pro rata basis.

4 **10. PROCEDURE FOR EXECUTING THE SETTLEMENT IF/WHEN IT**
5 **BECOMES EFFECTIVE**

6 10.1 Defendants shall provide payment to the Settlement Administrator as provided in
7 section 4.1.

8 10.2 Within thirty (30) calendar days of receipt of the Total Settlement Amount, the
9 Settlement Administrator shall distribute the following payments: (a) full payment to Plaintiff
10 of Plaintiff' Court-approved Service Awards; (b) full payment to the LWDA for its 75%
11 portion of the PAGA Payment; (c) full payment of the Court-approved Settlement
12 Administrator Expenses; (d) full payment of the Court-approved litigation costs and expenses;
13 (e) full payment of the Individual Settlement Payments to Settlement Class Members; (f) full
14 payment to PAGA Employees of their 25% portion of the PAGA Payment; and (g) the Court-
15 approved Class Counsel Award to Class Counsel.

16 10.3 The Settlement Administrator shall prepare all tax forms related to any and all
17 employer taxes incurred by Defendants as a result of this Settlement, shall inform Defendants
18 and its Counsel of the amounts owed, shall collect the necessary funds from Defendants and
19 remit them to the requisite taxing authorities.

20 10.4 If any Individual Settlement Payments are not cashed, deposited, or negotiated
21 on or before the Void Date, then within thirty (30) calendar days of the Void Date, the
22 Settlement Administrator shall void the uncashed checks and shall transmit the funds to the
23 Wage Justice Center.

24 10.5 Upon completion of administration of the Settlement, the Settlement
25 Administrator will provide a written declaration under oath to certify completion to the Court
26 and counsel for all Parties. Class Counsel shall file the declaration with the Court to confirm
27 full satisfaction of the Settlement.

1 10.6 The Individual Settlement Payments cashed shall be reported by the Settlement
2 Administrator to the applicable governmental authorities on IRS Forms W-2 or 1099s if
3 required. The portions allocated to Service Awards shall likewise be reported on IRS Form
4 1099s by the Settlement Administrator. The Settlement Administrator shall be responsible for
5 issuing copies of all IRS Forms for Plaintiff and Settlement Class Members.

6 10.7 The Parties make no representation as to the tax treatment or legal effect of the
7 payments called for here, and Plaintiff and the Settlement Class Members are not relying on
8 any statement, representation, or calculation by any of the Parties, their counsel, or the
9 Settlement Administrator in this regard. Plaintiff and Settlement Class Members understand
10 and agree that they will be solely responsible for payment of any taxes and penalties assessed
11 on the payments described herein and will hold Plaintiff, Class Counsel, Defendants,
12 Defendants' counsel, and the Released Parties free and harmless from and against any claims
13 resulting from the tax treatment of payments under this Agreement, with the sole exception of
14 the employer's portion of the payroll withholdings described in section 10.3. Plaintiff and the
15 Settlement Class Members acknowledge and agree that no provision of this Settlement, and no
16 written communication or disclosure between or among the Parties or their attorneys and other
17 advisers, is or was intended to be, nor will any such communication or disclosure constitute or
18 be construed or be relied upon as, tax advice within the meaning of United States Treasury
19 Department Circular 230 (31 C.F.R. Part 10, as amended).

20 10.8 Payments and tax reporting by the Settlement Administrator in the manner
21 described above shall be deemed conclusive of compliance with this Settlement Agreement as
22 to all Settlement Class Members. No Settlement Class Members shall have any claim against
23 the Plaintiff, Class Counsel, Defendants, Defendants' counsel, or the Settlement Administrator
24 for distributions made substantially in accordance with this Settlement Agreement or orders of
25 the Court.

1 **11. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
2 **SETTLEMENT AGREEMENT**

3 11.1 If the Court does not approve the Settlement as set forth in this Settlement
4 Agreement, or if the Court enters the Judgment and appellate review is sought, and on such
5 review, the entry of Judgment is vacated, modified in any way, or reversed, or if the Final
6 Approval Order does not otherwise become Final, then this Settlement Agreement shall be
7 cancelled and terminated, unless the Parties, in their sole discretion within thirty (30) days
8 from the date such ruling becomes final, provide written notice to each other of their intent to
9 proceed with the Settlement under the terms of the Judgment as it may be modified by the
10 Court or any appellate court.

11 11.2 In the event that: (i) the Settlement is not approved, is overturned, or is
12 materially modified by the Court or on appeal; (ii) the Judgment does not become Final; or
13 (iii) this Settlement Agreement is terminated, cancelled, or fails to become effective pursuant
14 to this Agreement, then: (a) the Parties stipulate and agree that the Settlement, the Class
15 Information, and all documents exchanged and filed in connection with the Settlement shall be
16 treated as inadmissible mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b)
17 the Settlement shall be without force and effect upon the rights of the Parties, and none of its
18 terms shall be effective or enforceable, with the exception of this paragraph, which shall
19 remain effective and enforceable; (c) the Parties shall be deemed to have reverted to their
20 respective status prior to execution of this Agreement; (d) all Orders entered in connection
21 with the Settlement, including the certification of the Class, shall be vacated without prejudice
22 to any Party's position on the issue of class certification, the issue of amending the complaint,
23 or any other issue, in this Action or any other action, and the Parties shall be restored to their
24 litigation positions existing on the date of execution of this Agreement; and (e) the Parties
25 shall proceed in all respects as if the Settlement Agreement and related documentation and
26 orders had not been executed, and without prejudice in any way from the negotiation or fact of
27 the Settlement or the terms of the Settlement Agreement. The Settlement, all documents,
28 orders, and evidence relating to the Settlement, the fact of their existence, any of their terms,

1 any statement or report concerning the Settlement Agreement, its existence, or their terms, any
2 negotiations, proceedings, acts performed, or documents executed pursuant to or in furtherance
3 of the Settlement Agreement shall not be admissible in any proceeding, and shall not be
4 offered, received, or construed as evidence of a presumption, concession, or an admission of
5 liability, of unenforceability of any arbitration agreement, of the certifiability of a litigation
6 class, or otherwise used by any person for any purpose whatsoever, in any trial of this Action
7 or any other action or proceedings.

8 **12. ADDITIONAL PROVISIONS**

9 12.1 Exhibit A to this Agreement, the Class Notice, is an integral part of the
10 Settlement and is incorporated by reference as though fully set forth herein.

11 12.2 Unless otherwise noted, all references to “days” in this Agreement are to be
12 calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend
13 or federal legal holiday, such date or deadline shall be on the first business day thereafter.

14 12.3 The Parties to the Settlement agree that the terms of the Settlement were
15 negotiated at arm’s length and in good faith by the Parties, resulted from an arm’s-length
16 mediation session, and reflect a settlement that was reached voluntarily based upon adequate
17 information and sufficient discovery and after consultation with experienced legal counsel.

18 12.4 Plaintiff, Class Counsel, Defendants, and counsel for Defendants have concluded
19 that the Settlement constitutes a fair, reasonable, and adequate resolution of the claims that
20 Plaintiff asserted against Defendants, including the claims on behalf of the Class Members,
21 and that it promotes the best interests of the Class Members.

22 12.5 To the extent permitted by law and unless otherwise necessary to seek Court
23 approval of this Settlement Agreement, all agreements made and orders entered during the
24 course of the Action relating to the confidentiality of information shall survive this Settlement
25 Agreement.

26 12.6 The waiver by one Party of any breach of this Settlement Agreement by any
27 other Party shall not be deemed a waiver of any other prior or subsequent breach of this
28 Settlement Agreement.

1 12.7 The Parties may not amend or modify any provision of this Settlement
2 Agreement except by written agreement signed by counsel for the Parties and subject to any
3 necessary Court approval.

4 12.8 All notices, demands, and other communications to be provided concerning this
5 Settlement Agreement shall be in writing and delivered by receipted delivery and by email at
6 the addresses set forth below, or such other addresses as either Party may designate in writing
7 from time to time:

8 if to Defendants:

9 **MURCHISON & CUMMING, LLP**

10 Kenneth H. Moreno, Esq.

11 Laurie E. Yoon, Esq.

12 2175 N. California Blvd., Suite 900

13 Walnut Creek, California 94596

14 Telephone: (415) 524-4303

15 Facsimile: (415) 391-2058

16 kmoreno@murchisonlaw.com

17 lyoon@murchisonlaw.com

18 if to Plaintiff:

19 **HUNTER PYLE LAW**

20 Hunter Pyle, Esq.

21 John J. Darin, Esq.

22 505 14th Street, Suite 600

23 Oakland, California 94612

24 Telephone: (510) 444-4400

25 Facsimile: (510) 444-4410

26 hunter@hunterpylelaw.com

27 jdarin@hunterpylelaw.com

28 12.9 This Settlement Agreement, including its Exhibits, constitutes the entire
agreement among the Parties, and no representations, warranties, or inducements have been
made to any Party concerning this Settlement Agreement or its Exhibits, other than the
representations, warranties, and covenants contained and memorialized in this Settlement
Agreement and its Exhibits.

1 12.10 This Settlement Agreement may be executed in one or more counterparts. All
2 executed counterparts and each of them, including facsimile, electronic, and scanned copies of
3 the signature page, shall be deemed to be one and the same instrument.

4 12.11 The Parties and their respective counsel agree that they will use their best efforts
5 to obtain all necessary approvals of the Court required by this Agreement. The Parties agree
6 that Plaintiff will submit to the Court a Motion for Preliminary Approval of this Settlement
7 containing all of the terms and conditions contained herein notwithstanding any new legal
8 developments regarding the Released Claims or PAGA Release.

9 12.12 This Settlement Agreement shall be binding upon and shall inure to the benefit
10 of the successors and assigns of the Parties, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Party hereto may merge,
12 consolidate, or reorganize.

13 12.13 In the event of any dispute arising out of the performance or breach of any
14 provision of this Settlement Agreement, the prevailing party in such disputes shall be entitled
15 to recover his, her, or its reasonable attorneys' fees and costs incurred arising from the dispute,
16 provide that the prevailing party gives 30 days written notice before commencing legal action
17 regarding any failure to perform or breach of any provision of this Settlement Agreement.

18 12.14 This Settlement Agreement shall not be construed more strictly against one Party
19 than another merely because of the fact that it may have been prepared by counsel for one of
20 the Parties. It is recognized that because of the arm's-length negotiations resulting in the
21 Settlement Agreement, all Parties have contributed substantially and materially to the
22 preparation of the Settlement Agreement.

23 12.15 Except where this Settlement Agreement itself provides otherwise, all terms,
24 conditions, and Exhibits are material and necessary to this Settlement Agreement and have
25 been relied upon by the Parties in entering into this Settlement Agreement.

26 12.16 This Settlement Agreement shall be governed by California law. Any action
27 based on this Settlement Agreement, or to enforce any of its terms, shall be venued in the Los
28 Angeles County Superior Court, which shall retain jurisdiction over all such disputes. All

1 Parties to this Settlement Agreement shall be subject to the jurisdiction of this Court for all
2 purposes related to this Settlement Agreement.

3 12.17 The Court shall retain continuing and exclusive jurisdiction over the Parties to
4 this Settlement Agreement for the purpose of the administration and enforcement of this
5 Settlement Agreement.

6 12.18 The headings used in this Settlement Agreement are for the convenience of the
7 reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

8 12.19 In construing this Settlement Agreement, the use of the singular includes the
9 plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

1 **SO STIPULATED.**

2
3 Date: 26/09/2024, 2024

Plaintiff EFREN PALOMINO

4
5 
6 Efrén Palomino (Sep 26, 2024 22:31 PDT)

Plaintiff

7
8 Date: _____, 2024

Defendant WINALL OIL CO.

9
10 _____
11 by Allen Gimenez

12
13 Date: _____, 2024

Defendants ALLEN GIMENEZ

14
15 _____
16
17 Date: _____, 2024

Defendants GARY GIMENEZ

1 **APPROVED AS TO FORM**

2
3
4 Date: September 26, 2024, 2024

HUNTER PYLE LAW

5
6 
7 Hunter Pyle
John J. Darin

8 *Attorneys for Plaintiff, the Putative Class,*
9 *and all other aggrieved employees*

10
11 Date: _____, 2024

MURCHISON & CUMMING, LLP

12
13 _____
Kenneth H. Moreno
Laurie E. Yoon

14
15 Attorneys for Defendants
16 Winall Oil Co., Allen Gimenez, and
17 Gary Gimenez
18
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EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT
SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

Efren Palomino v. Winall Oil Co., et al., No. 23STCV04401

You are receiving this Notice because you are or were employed by Winall Oil Co. (“Winall Oil”) as a gas-station attendant in California at any time during the period of February 28, 2019, through [date of preliminary settlement approval]. All such persons are referred to in this Notice as “Class Members.”

Additionally, Class Members who also worked for Winall Oil at any time during the period of October 28, 2021, through [date of preliminary settlement approval] are referred to in this Notice as “PAGA Employees.” “PAGA” refers to the Private Attorneys General Act.

All PAGA Employees are also Class Members; however, not all Class Members are PAGA Employees. Those Class Members who stopped working for Winall Oil before October 28, 2021 are not PAGA Employees.

The Superior Court of California, County of Los Angeles, authorized this Notice.
This is not a solicitation from a lawyer.

- This Notice contains important information about your legal rights as part of a class and PAGA action settlement. Please read it fully and carefully.
- Efren Palomino is a current employee who filed a lawsuit against Winall Oil and its officers: Allen Gimenez and Gary Gimenez (the “Gimenez Defendants”). Mr. Palomino is called “Plaintiff” in this Notice.
- The lawsuit is pending in the Superior Court of California, County of Los Angeles (Case No. 23STCV04401) (the “Action”). Plaintiff, Winall Oil, Allen Gimenez, and Gary Gimenez are referred to collectively as the “Parties.”
- Plaintiff’s allegations are brought on his own behalf and on behalf of all Class Members and PAGA Employees, as defined in this Notice.
- Plaintiff has asserted a variety of claims, described in more detail below, against Winall Oil and the Gimenez Defendants that pertain to rest-break violations and other alleged wage and hour violations.
- Winall Oil and the Gimenez Defendants deny Plaintiff’s allegations, deny that they violated the law in any manner, and contend that its policies and practices have complied with the law at all times.
- The Court has not decided whether Winall Oil or the Gimenez Defendants did anything wrong. The Court also has not decided whether Plaintiff’s claims have merit.
- Under the proposed Stipulation of Settlement (“Settlement”), Winall Oil and the Gimenez Defendants will pay a total of \$1,384,804.25 to be apportioned and paid among Class

Members, after deductions for Court-approved payments for attorneys' fees and costs, a service payment to the Plaintiff, payment to the State of California for civil penalties under PAGA, and settlement administration costs.

YOUR OPTIONS	
Do Nothing	You will receive a proportionate share of the Settlement if final approval is granted and will give up any right to bring any claims in the future that are part of the Settlement.
Opt Out of the Settlement	If you opt yourself out of the Settlement, you will not receive an Individual Settlement Payment, but you will retain the right to assert claims that are included in the Settlement. By doing so, you will bear the risk that you may lose those claims. To opt out, you must timely write to the Settlement Administrator and follow the procedures described below. However, you may not exclude yourself from the PAGA Release, and the PAGA claims described in this Notice will be released even if you opt-out of the Settlement.
Object to the Settlement	If you disagree with any aspect of this Settlement, you may assert your objections by timely writing to the Settlement Administrator and filing with the Court your objection according to the procedures described below. If you opt out, you may not object. If you object, you will still be bound by the Settlement if it is approved by the Court.

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payments will be made only if the Court approves the Settlement and that approval becomes final, which may be after appeals (if any) are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice, and why should I read this Notice?

The records of Winall Oil indicate that you are a Class Member. If the Court approves the Settlement, you will receive a payment, and your legal rights will be affected. Thus, you have a right to information about the Settlement and your legal rights. That is the intent of this Notice.

2. What is this lawsuit about?

Plaintiff has asserted the following claims against Winall Oil and the Gimenez Defendants on behalf of Class Members:

(1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek.

Plaintiff have asserted the following claims against Winall Oil on behalf of PAGA Employees:

Civil Penalties Pursuant to PAGA ("PAGA Claims").

All of these claims are referred to in this Notice collectively as the "Claims."

Winall Oil and the Gimenez Defendants deny that the Claims are valid, deny that the Court should permit Plaintiff to bring the Claims on behalf of the Class Members and PAGA Employees, and contend that they complied with the law at all times. Winall Oil and the Gimenez Defendants further contend that they have complied with the requirements of the California Labor Code applicable to the employment and compensation of its employees.

3. What is a class action?

In a class action, one or more people sue on behalf of people who they allege have similar claims.

4. Why is there a settlement?

The Court has not yet decided in favor of either of the Parties on the Claims being settled. Plaintiff thinks he could recover a significant amount of wages, penalties, and interest on behalf of the Class Members if he were to win at trial. On the other hand, Winall Oil and the Gimenez Defendants deny all liability and believe that Plaintiff will not win anything in the case. After extensive negotiations, both sides have agreed to the Settlement of the Claims.

The Parties have entered into the proposed settlement agreement voluntarily. The purpose of the Settlement is so that the risks and costs of trial, for both sides, are eliminated.

The Court has given its preliminary approval of the Settlement as fair and reasonable to the Class Members.

5. How do I know if I am part of the Settlement?

Everyone who fits this description is a Class Member: all current and former and former gas-station attendants who were employed by Winall Oil throughout California at any time between February 28, 2019, through [date of preliminary settlement approval].

6. Are there exceptions to being included?

Yes. If you are a Class Member, you may opt out as stated in Section 13 below. If you do not opt out, you will receive part of the Settlement if approved.

However, if you are a PAGA Employee, you are not able to exclude yourself from the PAGA Release and you will receive an Individual PAGA Payment, whether or not you request exclusion from the Action and the Settlement. All claims for PAGA penalties are settled by operation of law.

7. What if I'm still not sure if I am included?

If you are still not sure whether you are included, you can call the Settlement Administrator at [Number] or write to the Settlement Administrator at [address]. You also may contact Class Counsel identified below for more information.

8. How much money is the Settlement for, and how is it allocated?

In exchange for the release of claims against it and final disposition of the Action, Winall Oil and the Gimenez Defendants will pay a total of One-Million-Three-Hundred-Eighty-Four-Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25) ("Total Settlement Amount"). Plaintiff is asking the Court to approve the following payments that, if approved, will be deducted from the Total Settlement Amount.

- **Class Representative Service Award:** For acting as the Class Representative, Plaintiff will request from the Court a service award of no more than Twenty Thousand Dollars and No Cents (\$20,000.00), in recognition of and as compensation for his efforts, such as starting the Action, volunteering time to assist with the Action, and providing information and documents, as well as risks he assumed in starting and assisting with the prosecution of the Action.
- **Class Counsel Award:** Class Counsel will request from the Court no more than Four-Hundred-Sixty-One-Thousand-Six-Hundred-One Dollar and Forty-Two Cents

(\$461,601.42) as attorneys' fees for litigation and resolution of the Action. Class Counsel will also request from the Court reimbursement for actual litigation costs advanced on behalf of the Class Members, which will be no more than Fifty-Thousand Dollars and No Cents (\$50,000.00).

- **PAGA Payment:** Sixty Thousand Dollars and No Cents (\$60,000.00) from the Total Settlement Amount is allocated for settlement of Plaintiff' claims under PAGA. Upon Court approval, 75% of the PAGA Payment (\$45,000.00) will be paid to the California Labor & Workforce Development Agency, and 25% of the PAGA Payment (\$15,000.00) will be distributed to the PAGA Employees.
- **Settlement Administrator Expenses:** The costs of settlement administration will not exceed Six Thousand Dollars and No Cents (\$6,000.00), which pays for tasks such as mailing and tracking this Notice, mailing checks and tax forms, and reporting to the parties and the Court. Any amount ordered by the Court for settlement administration will be paid from the Total Settlement Amount.

After Court-approved payments for attorneys' fees and costs, service awards to the Plaintiff, the PAGA Payment to be paid to the State, and settlement administration costs are deducted from the Total Settlement Amount, the remaining "Net Distribution Fund" will be distributed to Class Members.

The Settlement Administrator will apportion the Net Distribution Fund to be paid to Class Members based on their number of workweeks during the Class Period, as explained below.

9. How much will my payment be, and what is the information used to calculate my share?

Based on the calculation described above, it is currently estimated that your share of the Settlement will be [amount].

This amount could change based on how many Class Members opt out or based on further determinations by the Settlement Administrator or rulings by the Court.

If you are entitled to an Individual Settlement Payment, the Settlement Administrator will allocate twenty percent (20%) as taxable wages to be reported on IRS Form W-2. Twenty percent (20%) will be allocated to interest, and sixty percent (60%) will be allocated to penalties, both of which will be reported on IRS Form 1099, if applicable ("Individual Settlement Payment").

If you are entitled to an Individual PAGA Payment under the Settlement, the Settlement Administrator will allocate one hundred percent (100%) of the PAGA payment as penalties, which will be reported on IRS Form 1099 ("Individual PAGA Payment").

No other tax or deductions will be taken out of your share of the Settlement. Ultimately, you are responsible for all tax liability in relation to payments to you under the Settlement.

This Notice is not tax advice. Do not ask Class Counsel or Winall Oil or the Gimenez Defendants or their counsel for tax advice, as they will not provide it. You should consult your own tax advisor.

Winall Oil's records show that the following information is pertinent to the calculation of your estimated share of the Settlement:

- Your number of workweeks during the Class Period is [number].
- Your number of pay periods during the PAGA Period (October 28, 2021, through [date of preliminary settlement approval] (the "PAGA Period")) is [number].

If you disagree with this information, you must notify the Settlement Administrator by writing to them at the address set forth in paragraph 7. Be sure to include your full name, email address, mailing address, telephone number, last four digits of your social security number, and all supporting documentation, and sign your document.

Your notification must be signed and postmarked no later than [60 days from mailing]. After inquiring further of Winall Oil, the Settlement Administrator will make a final decision of dispute.

10. How can I get a payment?

You do not need to do anything to qualify for a payment. It is important that you immediately notify the Settlement Administrator if your mailing address is different from the address to which this Notice was sent, or if that address changes.

11. When will I receive a payment?

Payments will be distributed under a schedule established by the Settlement and by the Court. Presently, the expected date of payment is estimated to be [date]. This could change depending on factors influencing the Settlement Administrator's tasks, any objections to the Settlement, and actions by the Court.

12. What am I giving up to get a payment?

In exchange for the Settlement payment, each Class Member (except those who properly opt out) will release the following Released Claims: any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, during the Class Period, known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have during the Class Period against Defendants and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's operative Second Amended Complaint, regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law. The Released Class Claims specifically include, but are not limited to Labor Code §§ 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431, and the related IWC

Wage Order No. 7-2001 and Business & Professions Code §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; (4) Unlawful Business Practices; (5) Failure to Maintain and Furnish Records; (6) Failure to Post Compensation Insurance Carrier and Safety Notices; and (7) Failure to Provide One Day's Rest Per Workweek, as well as interest, fees, and costs. The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

Additionally, Plaintiff acting in their capacity as private attorneys general on behalf of the State of California pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.*, and on behalf of the Labor and Workforce Development Agency and the PAGA Employees. The PAGA Release shall operate to release and discharge the Released Parties from any claim for civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 *et seq.* that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff's Second Amended PAGA Notice submitted to the Labor Workforce and Development Agency, including but not limited to claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 246, 248.5, 512, 551, 552, 1174, 1198.5, 2810.3, 3550, 3551, 6430, and 6431 and the applicable IWC Wage Orders.

13. How do I opt out of the Settlement?

To exclude yourself from the Settlement, you must send a signed letter by mail to the Settlement Administrator stating words to the effect of "I wish to be excluded from the Settlement Class." You must include your name and signature.

Your request to opt out of the Settlement must be postmarked no later than [60 days from mailing] to the Settlement Administrator at the address in paragraph 7.

If you ask to be excluded, you will not be legally bound by the Settlement if approved. You will not get any Individual Settlement Payment from the Settlement, and you will not be allowed to object to the Settlement.

14. If I don't exclude myself, can I sue Winall Oil for the same thing later?

No. Unless you exclude yourself, you will give up any right to sue Winall Oil, Allen Gimenez, or Gary Gimenez for the claims that this Settlement resolves. If you have a pending lawsuit for the same claims that are being settled against Winall Oil, Allen Gimenez, or Gary Gimenez, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement in order to

continue your own lawsuit if it involves the same claims. However, you are not able to exclude yourself from the PAGA Release.

15. If I exclude myself, can I get money from this Settlement? Will any money be returned to Winall Oil?

No. If you exclude yourself, you will not receive any money from this Settlement except for your Individual PAGA Payment if you are a PAGA Employee. If you exclude yourself from the Settlement, the monies you would have received will be distributed on a pro-rata basis to all the other Class Members. No money will revert to Winall Oil.

16. Who is my legal representative in this case?

The Court has appointed as Class Counsel the following attorneys:

HUNTER PYLE LAW
Hunter Pyle, Esq.
John J. Darin, Esq.
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

You will not be charged for the work performed by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

If you have questions about this Settlement, you may contact Class Counsel. They will consult with you and attempt to answer your questions. Do not contact Winall Oil or the Gimenez Defendants with any questions about the Settlement.

17. How do I object to the Settlement?

If you are a Class Member and do not opt out, you can object to the Settlement if you don't like any part of it. However, the Court cannot order a larger settlement. The Court can only approve or deny the proposed Settlement.

If the Court denies approval, no settlement payments will be sent out, and the Action will continue. If that is what you want, you must object. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views.

To object to the Settlement, you must send a written objection to the Court no later than **[60 days from mailing]** to the Settlement Administrator at the address in paragraph 7. Your objection must include your full name, address, telephone number, the last four digits of your Social Security Number, and your signature, as well as the case name and number. It must set forth, in clear and concise terms, a statement of the specific reasons why you believe the Court should find that the

Settlement is not in the best interest of the Class Members and the reasons why the Settlement should not be approved. Your objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class.

If you also wish to appear at the Fairness Hearing, in person or through an attorney, you must *also* file a notice of your intention to appear at the same time as the objection is filed. You must state whether you plan to appear either remotely, in person, or through counsel, and, if through counsel, submit a statement identifying that counsel by name, bar number, address, and telephone number. Unless otherwise ordered by the Court, you will not be entitled to speak at the Final Approval Hearing unless you have submitted a timely written objection and notice of intention to appear.

Please see section 19, below, for more information about how to appear in person.

18. What's the difference between objecting and opting out?

Objecting is simply saying that you don't like something about the Settlement and do not want it approved. Opting out is saying that you don't want to be part of the Class and participate in the Settlement of the Class Claims. If you opt out, you have no basis to object because the case no longer affects you.

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at 9:00 a.m. on December 5, 2024, in Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. 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. At or after the hearing, the Court will decide whether to grant final approval to the Settlement. At the Fairness Hearing, the Court may continue the hearing to another date without additional notices being sent out.

The judge overseeing this case encourages remote appearances. Class members who wish to appear remotely should contact class counsel at least three days before the hearing if possible.

Any class member who wishes to appear in person may do so at Department 17 of the Los Angeles County Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012.

20. Do I have to come to the hearing?

No. Class Counsel will answer questions the Judge may have. You are welcome to come at your own expense. If you properly submit an objection, you do not have to come to Court to talk about it. As long as you properly submit your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. You cannot appear and speak at the hearing if you opt out.

22. What happens if I do nothing at all?

If you do nothing, or fail to act timely, you'll receive your share of the Settlement, but you will be barred from bringing the Released Claims against Winall Oil, Allen Gimenez, and Gary Gimenez as described in paragraph 12.

23. Can Winall Oil or the Gimenez Defendants retaliate against me for participating in this Settlement?

California law makes it unlawful to retaliate against you for participating in a lawsuit like this one.

24. How do I get more details about the Settlement?

This Notice is intended as a summary and does not fully describe this action, the claims, the defenses, or the proposed Settlement, which is subject to the terms and conditions of the Stipulation of Settlement filed with the Court and as preliminarily approved by the Court. For the precise terms and conditions of the Settlement, you are referred to the detailed Stipulation of Settlement, which is on file with the Clerk of the Court. The pleadings and other records in this Action, including the Settlement Agreement, may be examined (a) online on the Superior Court of California, County of Los Angeles's Electronic Filing and Service Website at <https://www.lacourt.org/paos/v2/Login>, or (b) in person at Records, Superior Court of California, County of Los Angeles, 312 North Spring Street, Los Angeles, CA 90012, between the hours of 8:30 a.m. and 3:00 p.m. Monday through Thursday and between 8:30 a.m. and 12:00 p.m. on Fridays, excluding Court holidays and closures.

For further information, you may call or contact the Settlement Administrator (see paragraph 7) or Class Counsel (see paragraph 16). Do not contact Winall Oil or the Gimenez Defendants.

The Settlement Administrator also maintains a website where some important documents in this Action are available. The URL for the website is **[insert]**.

You may also obtain more information by contacting Class Counsel or by accessing the Court's Electronic Filing and Service Website (https://www.scscourt.org/online_services.shtml).

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR WINALL OIL OR ITS COUNSEL WITH INQUIRIES.

Date: **[redacted]**

This Notice has been approved by the Judge of the Superior Court of California, County of Los Angeles, responsible for overseeing and deciding this case.

EXHIBIT B

HUNTER PYLE, SBN 191125
JOHN J. DARIN, SBN 323730
HUNTER PYLE LAW
505 14th Street, Suite 600
Oakland, California 94612
Telephone: (510) 444-4400
Facsimile: (510) 444-4410
Email: hunter@hunterpylelaw.com
jdarin@hunterpylelaw.com

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

EFREN PALOMINO on behalf of himself, the
Putative Class, and all other Aggrieved
Employees;

Plaintiff,

v.

WINALL OIL CO., a California Corporation;
ALLEN GIMENEZ, an individual; GARY
GIMENEZ, an individual; and DOES 1 through
20, inclusive,

Defendants.

Case No.: 23STCV04401

CLASS AND REPRESENTATIVE ACTION

SECOND AMENDED COMPLAINT

- 1. FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (Labor Code §§ 226.7, 512, & 2810.3; Wage Order No. 7);**
- 2. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS (Labor Code §§ 226.7 & 2810.3; Wage Order No. 7);**
- 3. FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS (Labor Code §§ 226 & 2810.3; Wage Order No. 7);**
- 4. UNLAWFUL BUSINESS PRACTICES (Business & Professions Code §§ 17200 *et seq.*);**
- 5. FAILURE TO MAINTAIN AND FURNISH RECORDS (Labor Code §§ 226, 246, 248.5, 1174, & 1198.5);**
- 6. FAILURE TO POST COMPENSATION INSURANCE CARRIER AND SAFETY NOTICES (Labor Code §§ 3550, 3551, 6430, & 6431);**
- 7. FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK (Labor Code §§ 551, 552); and**

PALOMINO V. WINALL OIL CO., ET AL.
SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

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**8. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698, *et seq*)**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. This is a class action under Code of Civil Procedure section 382 and a representative action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*, brought by Plaintiff EFREN PALOMINO ("Plaintiff").

2. Plaintiff seeks to represent a class of current and former gas-station attendants who were employed by defendants WINALL OIL CO. ("Winall Oil"), ALLEN GIMENEZ ("A. Gimenez"), and GARY GIMENEZ ("G. Gimenez") (collectively, "Defendants") from October 28, 2018 to the present ("Class Members").

3. Defendant Winall Oil is in the gas stations business. Defendants A. Gimenez and G. Gimenez serve as the Chief Executive Officer and Chief Financial Officer, respectively, of Defendant Winall Oil. Defendants own and operate more than a dozen gas stations in Southern California, which they franchise from several major oil companies.

4. Defendants failed to provide Plaintiff and Class Members with off-duty meal and rest periods or meal- and rest-period premiums, in violation of California wage and hour law, throughout Plaintiff's and Class Members' employment. Defendants have sought to avoid various duties and obligations owed to employees under the California Labor Code, Industrial Welfare Commission Wage Order No. 7 ("Wage Order No. 7), including but not limited to failure to: (1) Provide meal periods; (2) Authorize and permit rest periods; (3) Furnish adequate wage statements; (4) Failure to Furnish and Maintain Records; (5) Failure to Post Compensation Insurance and Safety Notices; and (6) Failure to Provide One Day's Rest Per Workweek.

5. Plaintiff brings claims on behalf of Class Members for missed meal and rest periods, statutory penalties, interest, and attorneys' fees and costs under Labor Code sections 218.5 and 226(e), and Code of Civil Procedure section 1021.5. Plaintiff, on behalf of himself and Class Members, also seeks equitable and injunctive relief for these violations pursuant to Business and Professions Code sections 17200-17208 (referred to herein as the "UCL").

6. Plaintiff also brings a claim seeking civil penalties under the Private Attorneys General Act, Labor Code sections 2698 *et seq.* ("PAGA").

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2 **II. JURISDICTION**

3 7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section
4 395(a). Defendants employ or have employed Plaintiff and Class Members throughout California,
5 including in the city of Los Angeles, which is located within the County of Los Angeles,
6 California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff
7 and those similarly situated within the State of California and the County of Los Angeles.

8 8. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of
9 the California Constitution and California Code of Civil Procedure section 410.10.

10 **III. PARTIES**

11 **A. PLAINTIFF**

12 9. Plaintiff and Class Members are gas-station attendants who are or were employed
13 by Defendants in California at some time during the period beginning October 28, 2018 to the
14 present (the "Class Period").

15 10. Plaintiff is a resident of California and has worked for Defendants as gas-station
16 attendants staffing Defendants' gas stations during the relevant time periods herein.

17 11. Plaintiff is informed and believes, and thereon alleges that at all relevant times
18 herein, Defendants were and are subject to the Labor Code and Wage Order 7 as employers, whose
19 employees were and are engaged throughout counties throughout the State of California, including
20 Los Angeles County.

21 **B. DEFENDANTS**

22 12. Winall Oil is a California Corporation with principal place of business in Signal
23 Hill, California and conducts business throughout the Southern California, including out of the City
24 of Los Angeles, located in the County of Los Angeles. At all times relevant herein Defendant
25 Winall Oil was Plaintiff's and other aggrieved employees' employer covered by the Labor Code,
26 Wage Order 7.

1 13. A. Gimenez is, on information and belief, an adult resident of Signal Hill,
2 California. Defendant A. Gimenez has, during the relevant time period, been listed as Chief
3 Executive Officer and Director on Defendant Winall Oil's statement of information filed with the
4 California Secretary of State. At all times relevant herein Defendant A. Gimenez was Plaintiff's
5 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
6 and believes that Defendant A. Gimenez is a joint employer, working with Winall Oil. Defendant
7 A. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
8 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
9 Defendant A. Gimenez has violated or caused to be violated the provisions of Wage Order 7
10 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
11 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
12 Code section 558.1.

13 14. G. Gimenez is, on information and belief, an adult resident of Signal Hill,
14 California. Defendant A. Gimenez has, during the relevant time period, been listed as Secretary and
15 Chief Financial Officer on Defendant Winall Oil's statement of information filed with the
16 California Secretary of State. At all times relevant herein Defendant G. Gimenez was Plaintiff's
17 and Class Members' employer covered by the Labor Code, Wage Order 7. Plaintiff is informed
18 and believes that Defendant G. Gimenez is a joint employer, working with Winall Oil. Defendant
19 G. Gimenez controls and is intimately involved in the day-to-day operations of Defendant Winall
20 Oil and both determined and instituted the unlawful wage and hour violations alleged herein.
21 Defendant G. Gimenez has violated or caused to be violated the provisions of Wage Order 7
22 regulating hours and days of work as well as Labor Code sections 226 and 226.7. As such, he is
23 personally liable for the Wage Order and Labor Code violations cited above pursuant to Labor
24 Code section 558.1

25 15. The true names and capacities, whether individual, corporate, associate, or
26 otherwise, of Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown to
27 Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure
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1 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the
2 defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts
3 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
4 names and capacities of the defendants designated hereinafter as DOES when such identities
5 become known. Plaintiff is informed and believes, and based thereon alleges, that each of the
6 defendants designated herein as DOE is legally responsible in some manner for the events and
7 happenings referred to herein and caused injury and damage proximately thereby to Plaintiff as
8 alleged herein. Each reference in this Complaint to "Defendant," or a specifically named defendant,
9 refers also to all defendants sued under fictitious names.

10 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
11 mentioned each of the defendants are and were the agent, employee and/or servant of each of the
12 remaining defendants, and in doing the things hereinafter alleged was acting within the scope of
13 such agency, employment, and servitude, with the knowledge and consent of each of the
14 defendants. Whenever this Complaint makes reference to a defendant, such allegations shall be
15 deemed to mean the acts of all defendants acting individually, jointly and/or severally.

16 IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

17 17. On October 28, 2022, Plaintiff gave electronic and written notice by certified mail
18 of Winall Oil's violations of various provisions of the California Labor Code as alleged in his
19 initial complaint and First Amended Complaint to the Labor and Workforce Development Agency
20 ("LWDA") and Winall Oil.

21 18. On November 6, 2023, Plaintiff gave electronic and written amended notice by
22 certified mail of Winall Oil's additional violations of various provisions of the California Labor
23 Code to the LWDA and Winall Oil.

24 19. On September 26, 2024, Plaintiff gave electronic and written second amended
25 notice by certified mail, clarifying his allegations of Winall Oil's violations of various provisions
26 of the California Labor Code as alleged in this Second Amended Complaint to the LWDA and
27 Winall Oil.

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1 20. The LWDA has not provided notice pursuant to Labor Code section
2 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of either of Plaintiff's
3 notices. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section
4 2699.

5 **V. STATEMENT OF FACTS**

6 21. Defendants own and operate more than a dozen gas stations in Southern California.
7 Defendants employ gas-station attendants to staff its gas stations and carry on their operations.
8 Plaintiff and Class Members worked as gas-station attendants staffing Defendants' gas stations in
9 Los Angeles County and Southern California.

10 22. Plaintiff is informed and believes and thereon alleges that, through common
11 practices, policies and/or schemes, Defendants failed to adequately staff their gas stations. As a
12 result of these practices, policies and/or schemes, Plaintiff and Class Members were unable to take
13 off-duty meal and rest periods, and Defendants failed to compensate Plaintiff and Class Members
14 for missed meal and rest periods in order to systematically deprive them of the benefits and
15 protections applicable to employees under California law.

16 23. Plaintiff is informed and believes and thereon alleges that, throughout the relevant
17 time period of this action, Defendants have employed at least two dozen (24) Class Members. At
18 all times relevant hereto, the California Labor Code and Wage Order No. 7 have applied to Plaintiff
19 and to Class Members.

20 24. Plaintiff's and Class Members' primary job duties involved accepting cash
21 payments from customers, attending the pumps, performing paperwork related to shift management
22 and accounting, cleaning the booth and the station.

23 25. Defendants controlled all work details, including Plaintiff's and Class Members'
24 respective schedules and work locations. Based on the foregoing and other relevant factors,
25 Plaintiff and other Class Members were employees of Defendants.

26 26. By failing to adequately staff its gas stations, Defendants required Plaintiff and
27 Class Members to work continuously throughout the entirety of their shifts without providing
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1 Plaintiff and Class Members with proper off-duty meal periods. Plaintiff and Class Members
2 regularly worked more than five (5) hours per day without receiving an adequate off-duty meal
3 period of at least thirty (30) minutes during which they were relieved of all duties. Defendants'
4 inadequate staffing also forced Plaintiff and other Class Members to work without a second meal
5 period of not less than thirty (30) minutes during which they are relieved of all duties when they
6 worked more than ten (10) hours per day. Defendants failed to pay one additional hour of pay at
7 Plaintiff's and Class Members' respective regular rates of compensation for each workday
8 Defendants did not provide them with an adequate meal period.

9 27. By failing to adequately staff its gas stations, Defendants also required Plaintiff and
10 Class Members to work continuously throughout the entirety of their shifts without authorizing or
11 providing paid rest periods. Plaintiff and Class Members regularly worked more than three-and-
12 one-half (3½) hours without being authorized or permitted to take a paid ten (10) minute rest
13 period. Defendants failed to pay one additional hour of pay at Plaintiff's and Class Members'
14 respective regular rates of compensation for each workday that they were not provided a rest
15 period.

16 28. Defendants also failed to provide Plaintiff and Class Members with adequate
17 itemized wage statements. For example, the wage statements provided by Defendants to Plaintiff
18 and Class Members do not adequately include all hours worked or meal- and rest-period premium
19 wages earned. Additionally, at various times throughout the Class Period, Defendants knowingly
20 and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage
21 statements in accordance with Labor Code sections 226, 246, 1174, and 1198.5. Specifically,
22 Defendants failed to furnish Class Members with wage statements showing accrued sick time or
23 vacation days. Plaintiff requested furnishment of his personnel and payroll records but was not
24 timely provided with records showing accrued sick time or vacation days.

25 29. At various times throughout the Class Period, Defendants have required Plaintiff
26 and other Class Members to work seven days within a workweek without any day of rest in that
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workweek. Defendants induced Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and 552.

30. Finally, Labor Code section 3550 requires every employer subject to Workers Compensation law to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer. Labor Code section 3551 requires every such employer to provide new employees with written notice of the same. Labor Code sections 6430 and 6431 provide for civil penalties against any employer who fails to post the Workers Compensation information required by Section 3550 or safety information required by Labor Code Section 6318, or who fails to correct a violation of any occupational safety or health standard order. During the Class Period, Defendants failed to post all of the information required by Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations wherein Plaintiff and other Class Members worked.

VI. CLASS ACTION ALLEGATIONS

31. Except as to the PAGA claim set forth below, Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure section 382 on behalf of himself and all similarly situated employees.

32. The class that Plaintiff seeks to represent are defined as:

The Class: Current and former gas-station attendants who were employed by Defendants throughout California at any time between October 28, 2018 through the present ("Class" or "Class Members").

33. The claims herein have been brought and may properly be maintained as a class action under Code of Civil Procedure section 382 because there is a well-defined community of interest among Class Members with respect to the claims asserted herein and the Class is easily ascertainable:

- a. Ascertainability and Numerosity: The potential members of the Class as defined herein are so numerous that joinder would be impracticable. Plaintiff is informed and believes, and based thereon alleges, that Defendants have employed at least two dozen (24) Class Members during the Class Period. The names and addresses of the Class

Members are available from Defendants. Notice can be provided to the Class Members via first class mail using techniques and a form of notice similar to those customarily used in class action lawsuits of this nature.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- i. Whether Defendants have violated Labor Code section 226.7 and Wage Order No. 7 by failing to authorize and permit Class Members paid rest periods;
- ii. Whether Defendants have violated Labor Code sections 226.7 and 512, and Wage Order No. 7 by failing to provide Class Members meal periods;
- iii. Whether Defendants have violated Labor Code section 226 and Wage Order No. 7 by failing to issue Class Members with adequate and legally compliant wage statements;
- iv. Whether Defendants have violated Labor Code sections 226, 246, 248.5, 1174, and 1198.5 by failing to maintain and furnish records reflecting all sick days and vacation days accrued by Class Members;
- v. Whether Defendants have violated Labor Code sections 3550, 3551, 6430, and 6431 by failing to post and keep posted current compensation insurance and other safety information and notices at all of the stations worked by Class Members;
- vi. Whether the violations set forth in subsections i-vi immediately above constitute an unlawful, unfair, and/or fraudulent business practice under Business and Professions Code Section 17200, *et seq.*;
- vii. What relief is necessary to remedy Defendant's unfair and unlawful conduct as herein alleged;

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viii. Whether Defendants A. Gimenez and G. Gimenez should share with Defendant Winall Oil all civil legal responsibility for the violations set forth in subsections i-iii above under Labor Code section 558.1; and

ix. Other questions of law and fact.

- c. Typicality: Plaintiff's claims are typical of the claims of the Class: Plaintiff is and was employed by Defendants as a gas station attendant staffing Defendants' gas stations during the Class Period in California. Plaintiff and all members of the Class have sustained injuries-in-fact due to their damages arising out of and caused by Defendants' common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Plaintiff is a member of the Class that he seeks to represent, and will fairly and adequately represent and protect the interests of Class. Counsel representing Plaintiff is competent and experienced in litigating wage and hour class actions.
- e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class. Class Members have suffered injury and are entitled to recover by reason of Defendants' illegal policies and/or practices as alleged herein. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Further, the prosecution of separate actions against Defendants by individual Class Members would create a risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants.

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VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Labor Code §§ 226.7, 512; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

34. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

35. Plaintiff and Class Members have regularly worked in excess of five (5) hours per day without being permitted to take a thirty (30) minute meal period as required by Labor Code sections 226.7 and 512 and Wage Order No. 7.

36. Plaintiff and Class Members have regularly worked in excess of ten (10) hours a day without being permitted to take a second thirty (30) minute meal period as required by Labor Code sections 226.7 and 512 and Wage Order No. 7.

37. Pursuant to Labor Code section 226.7(c) and Wage Order No. 7, Defendants are liable for one hour of additional pay at Plaintiff's and Class Members' respective regular rate of pay for each workday Defendants failed to provide meal periods to Plaintiff and Class Members.

38. By violating Labor Code section 226.7 and Wage Order No. 7, Defendants are also liable for interest under Labor Code section 218.6, reasonable attorneys' fees and costs under Labor Code section 218.5.

39. On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

40. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid meal period premiums and other relief as described below.

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SECOND CAUSE OF ACTION
FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
(Labor Code § 226.7; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

41. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

42. Plaintiff and Class Members have regularly worked in excess of three and one-half (3½) hours a day without being permitted to take at least a ten (10) minute paid rest period for every three and one-half (3½) hours worked, or major fraction thereof, as required by Wage Order No. 7, and Labor Code section 226.7.

43. Accordingly, Defendants are liable to Plaintiff and Class Members for one hour of additional pay at the regular rate of compensation for each workday a rest period violation occurred, pursuant to Labor Code section 226.7(c) and Wage Order No. 7.

44. On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226.7. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

45. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid rest period premiums and other relief as described below.

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THIRD CAUSE OF ACTION
FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS
(Labor Code § 226; Wage Order No. 7)
(on behalf of Plaintiff and all members of the Putative Class)

46. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout the Class Period.

1 47. Labor Code sections 226(a), 226(a)(2), and Wage Order No. 7 section 7 require
2 employers, semi-monthly or at the time of payment, to furnish employees a statement showing
3 gross and net wages earned and total hours worked.

4 48. An employee suffering injury as the result of a knowing and intentional failure of an
5 employer to comply with Labor Code section 226(a) may recover the greater of all actual damages
6 or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred
7 dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty
8 of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's
9 fees pursuant to Labor Code section 226(e)(1).

10 49. Defendants knowingly and intentionally failed to furnish Plaintiff and Class
11 Members with legally compliant wage statements in accordance with Labor Code sections 226, and
12 Wage Order No. 7. Defendants failed to furnish Class Members with adequate wage statements
13 showing gross and net wages earned and total hours worked.

14 50. Plaintiff, on behalf of himself and the Class, requests wage statement penalties and
15 other relief as described below.

16 **FOURTH CAUSE OF ACTION**
17 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**
18 **(Business & Professions Code §§ 17200 *et seq.*)**
(on behalf of Plaintiff and all members of the Putative Class)

19 51. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
21 above-described Class of similarly situated gas-station attendants who were employed by
22 Defendants throughout California.

23 52. Defendants' failure to pay legally required compensation, authorize and permit meal
24 and rest periods, provide adequate wage statements, as alleged above, constitute unlawful and/or
25 unfair activities prohibited by Business and Professions Code section 17200. Plaintiff reserves the
26 right to identify additional unfair and unlawful practices by Defendant as further investigation and
27 discovery warrants.

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On information and belief, Defendants A. Gimenez and G. Gimenez are and were, at all relevant times, owners, directors, officers, and/or managing agents of Defendant Winall Oil and violated or caused to be violated the provisions regulating minimum wages or hours and days of work in Wage Order 7 and Labor Code § 226. Therefore, Defendants A. Gimenez and G. Gimenez are individually liable for these violations.

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1 53. Moreover, Business and Professions Code section 17203 provides that the Court
2 may restore to an aggrieved party any money or property acquired by means of unlawful and unfair
3 business practices. Plaintiff seeks a court order requiring an audit and accounting of the payroll
4 records to determine the amount of restitution of all unpaid wages owed to himself and Class
5 Members, as well as a determination of the amount of funds to be paid to current and former
6 employees that can be identified and located pursuant to a court order and supervision.

7 54. Plaintiff and all Class Members are persons who have suffered injury in fact as a
8 result of Defendant's unfair competition within the meaning of Business and Professions Code
9 section 17204, and who comply with the requirements of Code of Civil Procedure section 382, as
10 set forth above, and therefore have standing to bring this claim for injunctive relief, restitution, and
11 other appropriate equitable relief.

12 55. As a result of its unlawful and/or unfair acts, Defendant have reaped and continue to
13 reap unfair benefits and illegal profits at the expense of Plaintiff and proposed Class Members.
14 Defendants should be enjoined from this activity and made to restore to Plaintiff and proposed
15 Class Members their wrongfully withheld wages, interest thereon, and related statutory penalties,
16 pursuant to Business and Professions Code sections 17202 and 17203.

17 56. Private enforcement of these rights is necessary, as no other agency has raised a
18 claim to protect these workers. There is a financial burden incurred in pursuing this action that
19 would be unjust to place upon Plaintiff, as the burden of enforcing workforce-wide rights is
20 disproportionately greater than that of enforcing only Plaintiff's individual claims. Additionally,
21 Plaintiff is a low-income worker who cannot afford to spend part of his wages on enforcing others'
22 wage rights. Therefore, it would be against the interests of justice to force payment of attorneys'
23 fees from Plaintiff's recovery in this action. Accordingly, attorneys' fees are appropriate and
24 sought pursuant to the Code of Civil Procedure section 1021.5.

25 57. Plaintiff, on behalf of himself and the Class, requests restitution of unpaid wage
26 premiums, injunctive relief and other relief as described below.

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FIFTH CAUSE OF ACTION
FAILURE TO MAINTAIN AND FURNISH RECORDS
(Labor Code §§ 226, 246, 248.5, 1174, & 1198.5)
(on behalf of Plaintiff and all members of the Putative Class)

58. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

59. Labor Code sections 226, 246, 248.5, 1174, and 1198.5 all require employers to maintain and furnish to employees upon request certain time and pay records for at least three years. Labor Code section 246 specifically requires employers to maintain and provide an employee with written notice of the amount of paid sick leave available to the employee on either the employee's wage statement or in a separate writing provided on the designated pay date with the employee's payment of wages.

60. An employee suffering injury as the result of a knowing and intentional failure of an employer to comply with Labor Code sections 226 (a) may recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000.00) and is entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code section 226(e)(1).

61. At various times throughout the Class Period, Defendants knowingly and intentionally failed to furnish Plaintiff and Class Members with legally compliant wage statements in accordance with Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Specifically, Defendants failed to furnish Class Members with adequate wage statements showing accrued sick or vacation days.

62. Furthermore, during the Class Period Plaintiff gave Defendants a written request for his time and pay records pursuant to Labor Code sections 226 and 1198.5. However, Defendants failed to timely furnish him with records showing his accrued sick or vacation days.

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63. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and other relief as described below.

SIXTH CAUSE OF ACTION
FAILURE TO POST COMPENSATION INSURANCE CARRIER
AND SAFETY NOTICES
(Labor Code §§ 3550, 3551, 6430, & 6431)
(on behalf of Plaintiff and all members of the Putative Class)

64. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

65. Labor Code section 3550 requires every employer subject to Workers Compensation law to post and keep posted in a conspicuous location frequented by employees a notice that states the name of the current compensation insurance carrier of the employer. Labor Code section 3551 requires every such employer to provide new employees with written notice of the same.

66. Labor Code sections 6430 and 6431 provide for civil penalties against any employer who fails to post the Workers Compensation information required by Section 3550 or safety information required by Labor Code Section 6318, or who fails to correct a violation of any occupational safety or health standard order.

67. During the Class Period, Defendants failed to post all of the information required by Labor Code sections 3550, 3551, 6430, and 6431 at all of its stations.

68. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and other relief as described below.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ONE DAY'S REST PER WORKWEEK
(Labor Code §§ 551, 552)
(on behalf of Plaintiff and all members of the Putative Class)

69. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the

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above-described Class of similarly situated gas-station attendants who were employed by Defendants throughout California.

70. Labor Code section 551 provides that “[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” Section 552 adds, “No employer of labor shall cause his employees to work more than six days in seven.”

71. At various times throughout the Class Period, Defendants have required Plaintiff to work seven days within a workweek without any day of rest in that workweek. Defendants induced Plaintiff to perform this work. Therefore, Defendants have violated Labor Code sections 551 and 552.

72. Plaintiff, on behalf of himself and the Class, requests damages and injunctive and other relief as described below.

EIGHTH CAUSE OF ACTION
PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT
(Labor Code § 2698 *et seq.*)
(on behalf of Plaintiff and all similarly situated aggrieved employees)

73. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference. Plaintiff allege as follows a representative cause of action on behalf of himself and all other aggrieved employees.

74. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

75. Labor Code section 2699(g)(1) provides, in pertinent part: [A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged

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FIFTH CAUSE OF ACTION
PENALTIES UNDER THE PRIVATE ATTORNEYS
GENERAL ACT
(Labor Code § 2698 *et seq.*)
(on behalf of Plaintiff and all similarly situated aggrieved
employees)

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violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs.

76. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

77. Plaintiff's cause of action under Labor Code section 2698, *et seq.* is based on the following allegations:

- a. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal periods as required by Labor Code sections 226.7 and 512. Specifically, Defendant does not pay one additional hour of pay to Plaintiff and other aggrieved employees at their regular rate of pay for a missed meal period.
- b. Violations of Labor Code section 558 for failing to pay wages due, including those for missed rest periods as required by Labor Code section 226.7. Specifically, Defendant does not pay one additional hour of pay to Plaintiff and aggrieved employees at their regular rate of compensation for each missed rest period.
- c. Violations of Labor Code section 226, subdivision (a) for failing to provide Plaintiff and aggrieved employees with adequate itemized wage statements that included, among other things, meal- and rest-period premium wages equal to one-hour's wages for each shift in which a meal- or rest-period was not provided.
- d. Violations of Labor Code sections 201 through 203, requiring the timely payment of wages. Defendant has not timely paid those aggrieved employees who are no longer employed with Defendant all wages owed and due at the time of termination of their employment.
- e. Violations of Labor Code sections 204 and 210, based on Defendant's failure to pay Plaintiff and other aggrieved employees all wages due on their regular paydays.
- f. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has failed to maintain and furnish all records required by Labor Code sections 226, 1174, and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued sick days and vacation days. Plaintiff requested his records from Defendant and

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Defendant did not timely furnish wage statements that included his accrued sick days and vacation days.

g. Violations of Labor Code sections 226, 246, 248.5, 1174, and 1198.5. Defendant has failed to maintain and furnish all records required by Labor Code sections 226, 1174, and 1198.5. Specifically, Plaintiff's wage statements have not included his accrued sick days and vacation days. Plaintiff requested his records from Defendant and Defendant did not timely furnish wage statements that included his accrued sick days and vacation days.

h. Violations of Labor Code sections 551 and 552, based on Defendant's failure to provide one day's rest in every week worked by Plaintiff and other aggrieved employees.

78. As a direct and proximate result of Defendant's unlawful practices and policies, Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

79. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil penalties against Defendant Winall Oil for violations of the Labor Code, as provided under Labor Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be proven at trial.

WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays for judgment against Defendant Winall Oil as set forth below.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the above-described Class, requests relief as follows:

- a. Certification of the above-described Class as a class action, pursuant to Code of Civil Procedure section 382;
- b. Certification of the above-described Class as a representative class under Business and Professions Code section 17200;

- 1 c. Provision of Class Notice to all Class Members who worked for Defendants during the
2 Class Period;
- 3 d. A declaratory judgment that Defendants have knowingly and intentionally violated the
4 Business and Professions Code sections 17200-17208, by the conduct set forth above;
- 5 e. A declaratory judgment that Defendants' violations as described above were willful;
- 6 f. Injunctive relief to correct the violations alleged above herein;
- 7 g. An equitable accounting to identify, locate, and restore to all Class Members the
8 compensation and interest that are due;
- 9 h. An award to Plaintiff and Class Members of meal and rest period premiums pursuant to
10 Labor Code section 226.7 for failure to provide meal and rest periods;
- 11 i. An award of penalties pursuant to Labor Code section 226 to Plaintiff and Class
12 Members for failing to provide lawful itemized wage statements;
- 13 j. An award of civil penalties under Labor Code section 2698, *et seq.*
- 14 k. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and
15 Class Members for Defendants' failure to pay meal and rest period premiums, and
16 interest thereon, in an amount according to proof, pursuant to Business & Professions
17 Code section 17203;
- 18 l. An award to Plaintiff and Class Members of reasonable attorneys' fees and costs,
19 pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 218.5,
20 226(e), and 2699, and/or other applicable law;
- 21 m. An award to Plaintiff and Class Members of such other and further relief as this Court
22 deems just and proper.

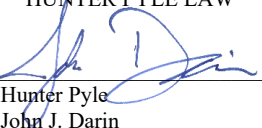
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DATED: September 26, 2024

HUNTER PYLE LAW

By:


Hunter Pyle
John J. Darin

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

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DATED: September 26, 2024

By:

*Attorneys for Plaintiff, the Putative Class,
and all other Aggrieved Employees*

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2024-09-26 Palomino - Stipulation to Settlement +Exhs.jdsign

Final Audit Report

2024-09-27

Created:	2024-09-27
By:	John Darin (jdarin@hunterpylelaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAUrAowkDe-IV_vAg4A4sUNJRGfwcN0vda

"2024-09-26 Palomino - Stipulation to Settlement +Exhs.jdsign" History

-  Document created by John Darin (jdarin@hunterpylelaw.com)
2024-09-27 - 4:04:01 AM GMT- IP address: 135.180.122.40
-  Document emailed to Efren Palomino (efrenpalomino1988@gmail.com) for signature
2024-09-27 - 4:04:09 AM GMT
-  Email viewed by Efren Palomino (efrenpalomino1988@gmail.com)
2024-09-27 - 5:09:22 AM GMT- IP address: 172.58.208.82
-  Document e-signed by Efren Palomino (efrenpalomino1988@gmail.com)
Signature Date: 2024-09-27 - 5:31:00 AM GMT - Time Source: server- IP address: 172.58.208.82
-  Agreement completed.
2024-09-27 - 5:31:00 AM GMT

EXHIBIT 2

Efren Palomino v. Winall Oil Co., et al.
MEMORANDUM OF UNDERSTANDING

On February 15, 2024 the parties to the lawsuit entitled *Efren Palomino v. Winall Oil Co., et al.* (Superior Court of the State of California – County of Los Angeles, Case No. 23STCV04401) (the “Action”), mediated the Action in a private mediation with David Sarnoff, Esq. and reached the following class and representative action settlement, subject to Court approval, which is intended to be a full and final resolution of the Action and all Released Claims.

The parties agree that this MOU is not evidence that the claims asserted have any merit, nor does it constitute an admission of any wrongdoing by Winall Oil Co., Allen Gimenez, or Gary Gimenez (“Defendants”). Defendants do not admit to individual, representative or class liability or to the suitability of this case for class action or representative litigation other than for purposes of settlement. The parties agree that this MOU is not an admission of the validity of any defense asserted by Defendants. This MOU will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement.

1. The “Settlement Class” shall be defined as all current and former gas-station attendants who were employed by Defendants throughout California at any time between February 28, 2019, through the date of preliminary approval of the parties’ settlement agreement by the Court (the “Class Period”).
2. “Aggrieved Employees” shall be defined as all current and former gas-station attendants who were employed by Defendants throughout California during the period running from October 27, 2021 through the earlier of May 30, 2024, or the date of preliminary approval of the parties’ settlement agreement by the Court.
3. Defendants agree to pay, on an all-in and non-reversionary basis, a total of One-Million-Three-Hundred-Eighty-Four-Thousand-Eight-Hundred-Four Dollars and Twenty-Five Cents (\$1,384,804.25), which is inclusive of any attorneys’ fees, litigation costs, service award/individual settlement payments to Plaintiff, and claims administration expenses (the “Settlement Amount”). Of that total up to One-Hundred-Thirty-Thousand (\$130,000.00) shall be allocated for payment as a release of all the PAGA claims as set forth below in “Released Claims.” The PAGA payment will be allocated exclusively as penalties under Labor Code Section 2699, of which 75% of the payment will be paid to the LWDA, and 25% shall be distributed to the Aggrieved Employees.
4. Upon the Effective Date, all Class Members will release all Released Claims. The “Released Claims” shall include all Released Class Claims and Released PAGA Claims, as set forth below:
 - a. The “Released Class Claims” are any and all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, from February 28, 2019 through the date of preliminary approval of the parties’ settlement

agreement by the Court (“Relevant Time Period”), known or unknown, suspected or unsuspected, that each participating class member had, now has, or may hereafter claim to have during the Relevant Time Period against Defendants (“Released Parties”) and that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff’s First Amended Complaint (“Complaint”), regardless of whether such claims arise under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law (“the Released Claims”). The Released Claims specifically include, but are not limited to Labor Code §§ 226, 226.7, 512, and 2810.3 and the related IWC Wage Order No. 7-2001 and Business & Professions Code §§ 17200, et seq., and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts asserted in the Action, including: (1) Failure to Provide Off-Duty Meal Periods; (2) Failure to Authorize and Permit Rest Periods; (3) Failure to Furnish Adequate Wage Statements; and (4) Unlawful Business Practices, as well as interest, fees, and costs (“Released Claims”). The enumeration of these specific statutes shall neither enlarge or narrow the scope of res judicata based on the claims that were asserted in the Action or could have been asserted in the Action based on the facts and circumstances alleged in any Complaint on file in the Action.

- b. The “Released PAGA Claims” are any and all PAGA claims that were asserted in the Action, or that arise from or could have been asserted based on any of the facts, circumstances, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act alleged in Plaintiff’s operative First Amended Complaint and/or Plaintiff’s PAGA Notice and Amended PAGA Notice submitted to the Labor Workforce and Development Agency, including but not limited to claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 551, 552, 558, 3550 and 3551 and the applicable IWC Wage Orders.
5. Defendants have represented that the Class Members have worked a total of no greater than 15,320 total workweeks as of February 15, 2024. Should the actual number of workweeks worked by the Class Members exceed 15,320 by more than 10% greater than this figure (i.e., if there are 16,852 or more total workweeks), then the Settlement Amount will increase by the proportion of the increase in the total workweeks (e.g. if the number of workweeks increases by 12%, the Settlement Amount shall also increase by 12%).
6. Plaintiff’s counsel will draft, with input and approval from Defendant, a Notice of Class Action Settlement (“Notice”) and submit it to the Court for approval. The Notice will be published in English and in Spanish and will include, but shall not be limited to: information regarding the nature of the Action; a summary of the substance of the settlement; the class definition; the claims process; the procedure and

time period to request exclusion from, or object to the settlement; the date set for the Final Approval hearing; and the formula used for the Individual Settlement Payments.

7. Plaintiff's counsel will request, and Defendants and their counsel will not oppose, an award of up to \$461,601.42, or one-third of the Gross Settlement Amount, as an award of attorneys' fees. This amount shall be included in the Settlement Payment.
8. Plaintiff's counsel will request, and Defendants and their counsel will not oppose, litigation costs of up to \$60,000.00. This amount shall be deducted from and encompassed by the Settlement Payment.
9. The parties will agree on a claims administrator. If the parties cannot agree, Plaintiff will propose three claims administrators and Defendants will select one of the them as the administrator.
10. Plaintiff's counsel will request, and Defendants and their counsel will not oppose, a Class Representative Enhancement payment to Plaintiff Efren Palomino in the amount of up to twenty-thousand dollars (\$20,000.00), in addition to whatever payment he is otherwise entitled to receive as a Class Member.
11. The Net Settlement Amount available to the Class Members for Distribution is the Gross Settlement less payment of (1) Plaintiff's Attorney's Fees; (2) Plaintiff's Costs; (3) Enhancement Payment to Plaintiff; (4) PAGA Penalties; and (5) Claims Administration Costs. Defendants shall separately pay the employer's share of the associated taxes, if any. The parties further agree that the settlement payments shall be mailed to participating Class Members no later than thirty (30) days after receipt of the settlement funds.
12. The allocation of the Net Settlement Fund shall be made pursuant to a formula by which each putative class member receives a pro-rata portion of the Net Settlement Fund based upon based upon the number of workweeks the class member was employed by Defendants during the Class Period. Each class member's number of workweeks will be derived from their dates of employment contained in the records kept by Defendants in the ordinary course of business during the Class Period. Individual settlement payments shall be characterized as 20 percent wages, 60 percent penalties, and 20 percent interest. Wage payments shall be subject to all required withholdings. Defendants shall be responsible for the employer's share of any applicable payroll taxes. Each putative class member's gross settlement award will be reported on a W-2 and/or 1099 Form.
13. In addition to the releases made in Sections 4(a) and 4(b), Plaintiff Efren Palomino, in consideration of the enhancement payments described in Section 10, shall execute a separate general release pursuant to Civil Code section 1542 ("General Release") that provides that:

Plaintiff Efren Palomino releases the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever,

known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Party committed or omitted prior to the execution hereof.

Plaintiff Efren Palomino shall stipulate and agree that he is not due and owed any additional monies and expressly waives and relinquishes, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, or any other provision under federal or state law, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or 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.

14. The parties expressly agree that the Court's approval or denial of any request for a Class Representative Enhancement is not a material condition to this agreement, and is to be considered by the Court separately from the fairness, reasonableness, adequacy, and good faith of the settlement. Any order or proceeding relating to the application for a Class Representative Enhancement shall not operate to terminate or cancel this agreement. To the extent the Court awards less than the amount of the requested Class Representative Enhancement amount, the consideration referenced above in Section 13 shall not be affected and the requirement for and/or validity of an executed general release by Mr. Palomino shall remain in force and effect. To the extent the Court awards less than the amount of the requested Class Representative Enhancement amount, any remaining amount will be redistributed amongst participating Class Members on a pro rata basis.
15. Each Class Member will be fully advised of the fact of settlement and will be provided with a summary of the provisions of the settlement.
 - (a) Within thirty (30) calendar days of Preliminary Approval by the Court, Defendants shall provide the Claims Administrator with the name, last known mailing address, and dates of employment of each Class Member.
 - (b) The Claims Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. mail. Prior to mailing, the Claims Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes. For each notice packet returned as undeliverable, without a forwarding address, the Claims Administrator will perform a single computer and/or "skiptrace" search to obtain an updated address.
 - (c) Class Members will have sixty (60) days from the mailing of the Notice Packet to submit request for exclusion or objections (which periods shall run concurrently).

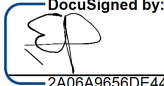
- (d) Any uncashed settlement compensation from the Settlement Fund after distributing the Net Settlement Fund and after the 180-day period for negotiating checks will constitute a *cy pres* fund, to be donated to a mutually agreeable unaffiliated third party not-for-profit organization, subject to Court approval.
 - (e) Defendants will not receive reversion of any part of the Gross Settlement Amount. In the event the settlement is void per this term, or is not given final approval by the Court, Defendants will bear only one half of the already-accrued costs of the settlement administrator.
 - (f) All requests for exclusion will be submitted to the Claims Administrator, who will timely certify jointly to Plaintiff's counsel and Defendant's counsel the forms that were timely and correctly submitted.
 - (g) Defendants' records will be presumptively determinative in any dispute over entitlement to payment or over membership in the Class.
- 16. If Class Members representing more than 10% of the total number of Class Members submit requests for exclusion, Defendants may exercise the option to withdraw from the settlement and this MOU is entirely void. However, if Defendants exercise this option they will be responsible for paying all settlement administration costs incurred to date.
 - 17. The parties and their counsel will support each and every provision of this MOU and the Stipulation of Settlement before the Court.
 - 18. Once the settlement documents are approved by the Court, the payments to each Class Member will be in accordance with the provisions set forth above. The Claims Administrator in consultation with the Defendants shall be responsible for issuing the payments and calculating and withholding all required state and federal taxes, if any.
 - 19. The Claims Administrator shall never be empowered to make payments to Class Members exceeding the total Net Settlement Amount or deviate from the payment formula agreed upon by the parties.
 - 20. The parties agree that David Sarnoff, who has assisted the parties as mediator in this case, may, at his discretion, execute a declaration supporting the settlement.
 - 21. The parties agree to stipulate to class certification and to appointment of Plaintiff's counsel as Class Counsel for purposes of implementing this settlement only.
 - 22. The parties agree that, upon final approval of the settlement, a judgment will be entered confirming the settlement as contemplated herein. This judgment will constitute a binding and final resolution of any and all claims by any Participating Class Members, as defined by the Release herein.
 - 23. This is a binding and enforceable agreement. This document sets forth the essential terms of the settlement and serves as a memorandum of understanding which, when

signed by the necessary parties, is binding on the parties and is admissible under the California Code of Civil Procedure and applicable law and enforceable by motion of any party.

IN WITNESS WHEREOF, the parties hereto have knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Plaintiff Efren Palomino

Dated: 5/22/2024, 2024

By  2A06A9656DE4465...
Efren Palomino

Defendant Winall Oil Co.

Dated: _____, 2024

By _____

Defendant Allen Gimenez

Dated: _____, 2024

By _____
Allen Gimenez

Defendant Gary Gimenez

Dated: _____, 2024

By _____
Gary Gimenez

signed by the necessary parties, is binding on the parties and is admissible under the California Code of Civil Procedure and applicable law and enforceable by motion of any party.

IN WITNESS WHEREOF, the parties hereto have knowingly and voluntarily executed this Memorandum of Understanding as of the dates set forth below:

Plaintiff Efren Palomino

Dated: _____, 2024

By _____
Efren Palomino

Defendant Winall Oil Co.

Dated: 5/22/, 2024

By 

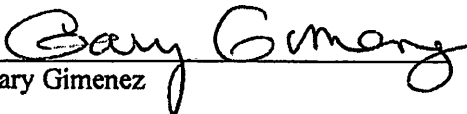
Defendant Allen Gimenez

Dated: 5/22/2024 2024

By 
Allen Gimenez

Defendant Gary Gimenez

Dated: 5-22, 2024

By 
Gary Gimenez

APPROVED AS TO FORM AND CONTENT

Dated: 5/23/2024, 2024

HUNTER PYLE LAW

By: 
92A7BFADAA894F6...
Hunter Pyle
John J. Darin

Attorneys for PLAINTIFF
Efren Palomino

MURCHISON & CUMMING, LLP

Dated: _____, 2024

By: _____
Kenneth H. Moreno
Laurie E. Yoon

Attorneys for Defendants
WINALL OIL CO., ALLEN GIMENEZ,
and GARY GIMENEZ

APPROVED AS TO FORM AND CONTENT

Dated: _____, 2024

HUNTER PYLE LAW

By: _____

Hunter Pyle
John J. Darin

Attorneys for PLAINTIFF
Efren Palomino

MURCHISON & CUMMING, LLP

Dated: May 22, 2024

By: _____


Kenneth H. Moreno
Laurie E. Yoon

Attorneys for Defendants
WINALL OIL CO., ALLEN GIMENEZ,
and GARY GIMENEZ

EXHIBIT 3

Agreement For Paid On Duty Meal Period

It is State law that a 30-minute meal period must be provided for every employee that works a shift of five or more hours. The law allows this meal period to be unpaid, however, under certain circumstances, this meal period may occur while the employee is on duty, but the employee will then receive full pay for the meal period. This paid meal period has been the practice of Winall Oil Company since the law went into effect.

The undersigned Employee and Winall Oil Company hereby agree that the nature of Employee's work prevents the Employee from being relieved of all duty during a lunch break. Therefore, the Employee and Company freely and voluntarily agree as follows:

- (1) Employee has always in the past and will continue to remain on duty during a 30-minute meal period provided during each shift of five or more hours.
- (2) Company has always in the past and shall continue to compensate Employee at full pay during the 30-minute meal period.
- (3) Employee may, in writing, revoke this Agreement at anytime.

Efrin Palomino
Employee

[Signature]
Winall Oil Company

Signed this 6 day of 6, 07
[date] [month] [year]

EXHIBIT 4

Introduction

In any organization, it is necessary to have written policies, procedures and general rules of behavior. You will find that this Manual explains what you may expect from WINALL OIL COMPANY (hereinafter referred to as “the Company”), as well as what will be expected of you. This Office Policies and Benefits Manual is provided for use as a reference and as a summary of the personnel policies, work rules and benefits of the Company.

This Manual highlights the Company's policies, practices and benefits and is not intended to nor does it constitute an employment contract. As is set forth more fully in the Manual, this Manual does not amend, modify or change the Company's policy that all employee's employment is at-will employment. Please understand that this Manual only *highlights* the Company's policies, practices and benefits for your personal education and cannot therefore be construed as an employment contract. In addition, circumstances will obviously require that the policies, practices and benefits described in this Manual may change from time to time.

Consequently, the Company must and does reserve the right to amend, supplement or rescind any provisions of this Manual, other than its employment at will provisions, as it deems appropriate in its sole and absolute discretion. As policies and benefits are revised, updated pages will be distributed. The employee manual is distributed to all Company stations and when a revision is issued, a brief summary of all changes, additions and/or deletions will be posted on the bulletin board for thirty (30) days and an updated manual will be kept at each station. You are responsible for reviewing and abiding by all Company policies and procedures.

This Manual sets forth the entire agreement between an employee and the Company as to the duration of employment and the circumstances under which employment may be terminated. Nothing contained in any personnel document, including benefit plan descriptions, creates, modifies, or is intended to create a promise or representation of continued employment for any employee. Violation of a Company rule may result in disciplinary action up to and including termination.

Please keep this Manual readily available and insert the updated material promptly so that it is current at all times.

If you have any questions, please do not hesitate to call the office or speak with your Supervisor.

Understanding This Manual

If you have any problem reading or understanding any of the provisions of this Manual, please contact your Supervisor. The Company will gladly make assistance available for any employee who is unable to understand the Company's policies.

The Employment Relationship

The Company hopes that you will find the employment relationship satisfying and rewarding in all respects. At the same time, it recognizes that relationships are not always mutually satisfactory.

TO PROTECT BOTH PARTIES' RIGHTS, IT SHOULD BE REMEMBERED THAT THE EMPLOYMENT RELATIONSHIP IS TERMINABLE AT WILL AT THE OPTION OF THE EMPLOYEE OR OF THE COMPANY, WITH OR WITHOUT NOTICE, AT ANY TIME.

Moreover, no one in the Company, other than the President, has the authority or legal ability to modify the at-will nature of this employment relationship. Any modification must be done specifically in a written agreement that is signed by both the President and the employee. This represents an integrated agreement with respect to the at-will nature of the employment relationship.

Nothing in this Manual shall limit the right to terminate this at-will employment relationship.

In the course of administering the Company's policies and procedures, occasional misunderstandings may occur. Wrongs can be righted and misunderstandings cleared up by promptly bringing them to the attention of someone in authority. If at any time an employee feels that he or she was not treated fairly, the employee should go immediately to the Supervisor, who will give all possible assistance in finding a satisfactory solution. If, however, the employee is not satisfied with the action taken by the Supervisor, then the matter should be brought to the attention of the Personnel Administrator.

Introductory Period

The first ninety (90) days of employment is a period for the employee and the Company to get acquainted and evaluate skill levels. During this time, employees are on an introductory status. Employees on introductory status are not eligible for Company benefits.

The completion of the introductory period does not imply any permanent employment status. Employment is strictly at-will and may be terminated at any time by either the Company or the employee during and after this ninety-day period.

The Company has the right to unilaterally modify, extend and/or shorten the introductory period. The at-will nature of the employment relationship exists both during the introductory period and after the introductory period.

For use in calculating employee benefits, an employee's anniversary date will be the date that the Company hired them. Some benefits, however, do not begin accrual until completion of the introductory period and promotion to Regular Employee status.

Orientation Training

The employee's initial status is Trainee Employee. Training is conducted at a station selected by the Company. The orientation/training period is generally forty (40) hours for which the employee will be paid at the Trainee Employee pay rate. In instances where additional training is required, the station Supervisor must get prior approval from the office. The Company will promote the employee to an Introductory Employee status and assign a beginning station to the employee upon successful completion of the training.

Employment Application

All employees must complete an employment application. WINALL OIL COMPANY reserves the right to verify all the information related to the applicant including prior employment, the right to verify all the information related to the applicant including prior employment, experience and references. Any information we receive during our inquiries may affect our decision to retain you as a regular employee. Any employee who provides false information, including I-9 Immigration and Naturalization documents and/or Social Security number, will be terminated.

Falsification of Records

Making a false statement, or attempting to falsify information on applications for employment, shift breaks, daily sheets, timecards or any other Company document or report, will be cause for immediate termination.

Regular Employees

Regular employees are those who are hired to work on a regular schedule. Regular employees may be classified as full-time or part-time.

The Company reserves the right to increase or decrease an employee's hours as is necessary to respond to business needs. As a result, overtime may or may not be required.

Regular Full-Time Employees

A normal schedule for regular full-time employees is forty (40) hours per week. Following the satisfactory completion of ninety (90) days of employment, regular full-time employees are eligible for most employee benefits described in this handbook.

Regular Part-Time Employees

A normal schedule for regular part-time employees is less than forty (40) hours per week, but not less than twenty (20) hours per week. Part-time employees are not eligible for Company benefits except those mandated by applicable law.

Temporary Employees

Temporary employees are those employed for short-term assignments. Short-term assignments generally are periods of three (3) months or less; however, such

assignments may be extended by the Company. Temporary employees are not eligible for employee benefits except those mandated by applicable law.

Inactive Status

Employees who are on any type of leave of absence, work-related or non-work-related, that exceeds the job protected amount of time may ~~will~~ be placed on inactive status. During the time the employee is on inactive status, no benefits (including vacation) will be earned, seniority will not continue to accrue, and health insurance benefits will be terminated.

Temporary Transfers

Employees who request a temporary transfer for medical and/or family medical leave reasons will be considered for that transfer if a position exists at the time the transfer is requested and the employee is qualified to perform the job. The employee will be paid in accordance with the responsibilities and duties of the temporary job.

Arbitration of Disputes

Scope of Arbitration

The parties agree that any controversy or claim arising out of or relating to the employee's employment with the Company, or the termination of that employment, including, but not limited to, claims based upon contract, tort, statutory, equitable law, discrimination, harassment or any other conduct made unlawful by the *Fair Employment & Housing Act* and Title VII of the *Civil Rights Act* and all other similar federal and state statutory schemes should be submitted to and determined exclusively by binding arbitration in conformity with the procedures of the *California Arbitration Act*, *Code of Civil Procedure* section 1280, *et seq.*, including section 1283.05 and all of the *Acts* other mandatory and permissive rights to discovery. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction over the matter.

The employment relationship is at the mutual consent of the employee and the employer. Consequently, either the employee or the employer can terminate the employment relationship at will, at any time, with or without cause, and with or without advance notice.

Costs of Arbitration

Employer shall bear all costs unique to arbitration, such as payment of the Arbitrator's fees.

Responsibility of Arbitrator

The Arbitrator shall be a (one) retired judge of the State of California or a (one) retired federal judge who sat in California. The Arbitrator shall have the authority upon good cause shown to continue the scheduled date of arbitration and dates for any pre-arbitration matters, such as discovery or hearings of motions. All decisions or awards by Arbitrator shall include the written reasoned opinion of the Arbitrator and shall be based solely upon the controlling law.

Resolution of the dispute shall be based solely upon the law of California governing the claims and defenses pleaded and the Arbitrator shall not invoke any basis other than controlling law in rendering any pre-arbitration or arbitration decision or award.

Post-Arbitration Motions and Appeals

Awards may be vacated, modified or enforced as provided under the *California Arbitration Act, California Code of Civil Procedure* sections 1280, *et seq.*,

Waiver of Jury

It is understood that, by agreeing to this binding arbitration proceeding, both parties waive their right to a trial by jury.

Equal Employment Opportunity

It is the Company's policy to employ, retain, promote, terminate and otherwise treat all employees and job applicants on the basis of merit, qualification and competence. The Company does not discriminate against qualified employees and applicants because of race, religion, religious creed (includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, physical and mental disability, medical condition, genetic information, denial of family and medical care leave, marital status, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy), gender, gender identity, gender expression, transitioning, sex stereo type, transgender, age (40 and over), military and veteran status, sexual orientation, pregnancy, registered partner status, and any other local, state, or federal protected basis. Equal employment opportunity will be extended to all persons and all aspects of the employer\employee relationship, including recruitment, hiring, upgrading, training, promotion, transfer, discipline, layoff, recall and termination.

Should any employee feel they have been the victim of discrimination or harassment of any type, he or she should first, if possible, confront the individual involved and request that the offending conduct be stopped.

If such request is either not appropriate under the circumstances or is unsuccessful, anyone who is subject to or aware of any form of discrimination or harassment should report the incident to his/her Supervisor.

If, for any reason, you feel that it would be inappropriate to report the incident to your Supervisor, please report the incident to the Personnel Administrator.

When an incident is reported, the identities of all parties involved in a report will be kept confidential and disclosed on a strict need-to-know basis.

Anyone who feels that his or her complaint of discrimination or harassment has not been properly investigated should bring such concerns to the Personnel Administrator and/or the President.

Protection Against Retaliation

No one who is accused of discrimination or harassment will be permitted to retaliate against any individual who files a complaint, reports such conduct, or testifies or assists in the investigation of such complaint.

Prohibited acts of retaliation include demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make impartial employment recommendations, adversely affecting working conditions or otherwise denying any employment benefit to an individual.

Investigation

ALL complaints of discrimination or harassment will be promptly and thoroughly investigated as will ALL complaints of retaliation relative to the making of a complaint of discrimination or harassment.

Disciplinary Guidelines

If, upon investigation, it is determined that discrimination, harassment or retaliation has occurred, appropriate disciplinary action will be taken.

Additional Information

The Department of Fair Employment and Housing (DFEH) is the State Agency which resolves complaints of unlawful discrimination. After a complaint is filed, the DFEH has one year to investigate the complaint.

To contact the DFEH, consult the local telephone directory under State and Government Offices or ask Directory Assistance for the number of DFEH Headquarters in Sacramento.

The Equal Employment Opportunity Commission (EEOC) is the Federal Agency which resolves discrimination claims. To contact the Commission, contact Directory Assistance for Washington, D.C.

Policy Against Sexual Harassment

We are committed to providing a work environment free of unlawful harassment. The Company's policy prohibits all forms of illegal harassment, including, sexual harassment or harassment based on race, religion, religious creed (includes all aspects of religious belief, observance, and practice, including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, physical and mental disability, medical condition, genetic information, denial of family and medical care leave, marital status, sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy), gender, gender identity, gender expression, transitioning, sex stereo type, transgender, age (40 and over), military and veteran status, sexual orientation, pregnancy, registered partner status, and any other local, state, or federal protected basis. Employment practices within the workplace should treat all individuals equally, evaluating each on the basis of individual skills, knowledge

and abilities and not on the basis of characteristics generally attributed to a group enumerated in the Act. Such behavior is totally unacceptable and will not be tolerated. As part of its dedication to Equal Employment Opportunity, the Company is committed to maintaining a workplace which all of our employees are free to perform their jobs without being subjected to any form of unlawful discrimination or harassment.

The Company will take all reasonable steps to prevent unwanted harassment from occurring. Sexual harassment is prohibited by the Company and is against the law. Every employee should be aware of the following:

- what constitutes sexual harassment;
- what steps are to be taken if harassment occurs; and,
- the state law prohibiting retaliation for reporting sexual harassment.

Although many people think of sexual harassment as involving a male boss and a female employee, not all sexual harassment is done by males. It's against the law for females to sexually harass males or other females, and for males to harass other males or females.

Sexual harassment often involves any employee including but not limited to, co-workers, supervisors, owners, independent contractors, and managers, unpaid interns and volunteers, and other persons doing business with or for the Company, a non-employee, clients, guests, third parties or vendors with whom the employee comes into contact from engaging in conduct prohibited by this policy. Employees must report any complaint of harassment by a third party to a member of management immediately.

Under Federal law, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment at the occurrence of any of the following:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; and,
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

California law defines sexual harassment as:

- Verbal harassment -- epithets, derogatory comments or slurs. Examples: Name-calling, belittling, sexually explicit or degrading words to describe an individual, sexually explicit jokes, comments about an employee's anatomy and/or dress, sexually-oriented noises or remarks, questions about a person's sexual practices, use of patronizing terms or remarks, verbal abuse, graphic verbal commentaries about the body.

- Physical harassment -- assault, impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual. Examples: touching, pinching, patting, grabbing, brushing against or poking another employee's body, hazing or initiation that involves a sexual component, requiring an employee to wear sexually suggestive clothing.
- Visual harassment -- derogatory posters, cartoons, or drawings. Examples: displaying sexual pictures, writing on objects, obscene letters or invitations, staring at an employee's anatomy, leering, sexually oriented gestures, mooning, unwanted love letters or notes.
- Sexual favors -- unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors. Examples: continued requests for dates, any threat of demotion, termination, etc. If requested sexual favors are not given, making or threatening reprisals after a negative response to sexual advances, propositioning an individual.
- Bullying, defined as repeated mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that is:
 1. Threatening, humiliating or intimidating, or
 2. Work interference – sabotage – which prevents work from getting done, or verbal abuse;
- It is impossible to define every action or all words that could be interpreted as sexual harassment. The examples listed above with the state's definition of sexual harassment are not meant to be a complete list of objectionable behavior.

If sexual harassment occurs:

- When possible, confront the harasser and persuade him/her to stop. The harasser may not realize the advances or behaviors are offensive. When it is appropriate and sensible, tell the harasser the behaviors or advances are unwelcome and must stop. Sometimes a simple confrontation ends the problem.
- To report sexual harassment, an employee is to contact their supervisor or their Human Resources Department. Sexual harassment or retaliation should be reported immediately. An employee must report such activities even though they were not the target of the harassment or be subject to disciplinary action. This includes those who merely observe such actions.
- An impartial, thorough and timely investigation will be conducted by a qualified member of management or the Human Resource Department and appropriate action will be taken including a timely closure. The Company will promptly investigate all reported incidents of sexual harassment or retaliation, and the investigation will be kept as confidential as possible.
- All allegations of harassment or retaliation will be taken seriously and will be promptly investigated, that investigation will remain as confidential as possible.

Appropriate remedial, corrective action and resolutions will be taken as warranted. Any individual affiliated with the Company who, after the investigation, is determined to have engaged in any form of discrimination, harassment, or retaliation in violation of this policy will be subject to appropriate disciplinary action, up to and including termination. The company will document and track all information and evidence collected in the fact finding investigative process.

- All members of management and supervisor must report any complaints of misconduct to a designated company representative, such as the human resources manager, President, owner, etc. so the company can investigate the issue immediately.

If an employee is found guilty of sexual harassment they may be personally liable for monetary damages. The Company will not pay damages assessed against an employee personally. In addition, the Company will take disciplinary action, up to and including termination, against any employee who engages in sexual harassment.

The Company's policy, California State law, and Federal law forbids retaliation against any employee who opposed sexual harassment, files a complaint, testifies, assists or participates in any manner in an investigation, proceeding or hearing.

While we hope that all employees will seek the assistance and find resolution through our own internal complaint procedure, be aware that the Department of Fair Employment and Housing (DFEH) is the State agency that resolves complaints of unlawful discrimination, including sexual harassment. The Fair Employment and Housing Commission (FEHC), headquartered in San Francisco, decide cases prosecuted by the DFEH at the State level. If you feel you have been subjected to harassment you may contact the DFEH, consult the local telephone directory under State Government Offices.

Reasonable Accommodation of Disabled Individuals

The Company is committed to principals of equal opportunity for all job applicants and employees. In keeping with this policy, it does not engage in impermissible discrimination based on any protected characteristic, including an individual's disability. The Company will make reasonable accommodations which are necessary to comply with State and Federal disability discrimination laws. This means that the Company will make reasonable accommodations for the known physical or mental disability or known medical condition of an applicant or employee, consistent with its legal obligations to do so.

As part of this commitment, the Company will participate in a timely, good-faith, interactive process with any disabled applicant or employee to determine effective responsible accommodations. The employee must make a request for accommodations. Applicants and employees are asked to identify those reasonable accommodations which can be made to assist them in the performance of the essential function(s) of the position(s) they seek or occupy. Such individuals should contact the Personnel Administrator as soon as possible to request the opportunity to participate in a timely interactive process. The Company will implement any reasonable accommodations which are appropriate and consistent with its legal obligations.

Internet, E-mail, Computer, Phone-mail & All Electronic Communications Policy

The Company has established this policy in an effort to make certain that employees utilize electronic communication devices in a legal, ethical and appropriate manner.

THESE SYSTEMS ARE SOLELY FOR BUSINESS USE AND THE COMPANY RESERVES THE ABSOLUTE RIGHT TO REVIEW, AUDIT AND DISCLOSE ALL MATTERS SENT OVER ITS SYSTEMS OR PLACED INTO ITS STORAGE. THESE SYSTEMS ARE THE EXCLUSIVE PROPERTY OF THE COMPANY.

Scope of Policy

This policy extends to all features of The Company's electronic communication systems, including but not limited to computers, e-mails, connections to the internet, worldwide web and other internal or external networks, voice-mail, video conferencing, facsimile and telephones.

Rules

- A. The Company's policy against unlawful harassment, including sexual harassment, extends to the use of computers, the internet and any component of the Company's communications system. In keeping with that policy, employees should not use any electronic communication device in a manner that would violate that policy. For example, employees may not communicate messages which would constitute sexual harassment, may not use sexually suggestive screen savers and may not receive or transmit pornographic, obscene or sexually offensive material or information.
- B. The Company's anti-discrimination policies extend to the use of the communications system. Any employee who uses any electronic communication device will therefore be subject to disciplinary action, up to and including termination, for use of such a device in any manner which violates the Company's anti-discrimination policies or commitment to equal employment opportunity.
- C. Employees may not use any electronic communication device to solicit outside business ventures, to leak confidential or privileged communication or for personal, political or religious causes. Electronic communication devices should be thought of as written memoranda which can be monitored, forwarded to others and legitimately demanded and produced during litigation. Employees should be aware that the deletion of a message or file may not fully eliminate the message from the system. Employees must exercise caution when using these systems and not put anything in writing, or say anything, which they would not like to see published in a newspaper or produced in a court against them.
- D. Employees should identify all communications as "privileged and confidential" when it is accurate and appropriate to do so. In this manner, the Company can assert any protections, privileges and rights relating to communication when it becomes necessary to do so.

Access

The Company must retain the right and ability to enforce this policy and to monitor compliance with its terms. While computers and other electronic devices are made accessible to employees to assist them to perform their jobs and to promote the Company's interests, all such computers and electronic devices must remain fully accessible to the Company and, to the maximum percent permitted by law, will remain the sole and exclusive property of the Company.

Employees should not maintain any expectation of privacy with respect to information transmitted over, received by or stored in any electronic communication device, owned, leased, or operated in whole or in part by or on behalf of the Company. Employees who are provided access to computers must advise the Company of any password they use to gain access to computers, or to the internet, as well as any change to such password. Such notice must be made immediately.

Compliance Is Essential

Employees who violate any aspect of this policy, or who demonstrate poor judgment in the manner in which they use any electronic communication device, shall be subject to disciplinary action, up to and including termination.

Anti-Substance Abuse Policy (Alcohol and Drug)

The Company is committed to providing a safe working environment to minimize the risk of accident and injuries and to encourage the well being and health of its employees. These commitments are jeopardized when any employee uses, possesses, distributes or sells any kind of drugs or alcohol while working.

Each Company employee has a responsibility to coworkers not to use, possess, distribute or sell any kind of drugs or alcohol while working. Research has proven that even limited quantities of narcotics, abused prescription drugs or alcohol can impair your reflexes and judgment. The Company has adopted a policy that all employees report to work absolutely free from the presence of drugs and the affects of alcohol. Being under the influence of alcohol or drugs while working, even slightly, is strictly prohibited.

All employees are prohibited from possessing, using, manufacturing, cultivating, distributing or dispensing of illegal drugs, alcohol or other unauthorized or intoxicating substances while on the Company premises, including parking areas and grounds or while otherwise performing their work duties away from the Company. Included within this prohibition are lawful controlled substances which have been illegally or improperly obtained and/or used. All employees are prohibited from having drugs, alcohol or other intoxicating substances in their system while at work or on duty. This includes any drinking or use of drugs either before work or during the work day.

The proper use of medication prescribed by your physician is not prohibited; however, the Company does prohibit the misuse of prescribed medication.

It shall be the responsibility of each employee who observes or has knowledge of another employee in a condition which impairs the employee to perform his or her job duties, or presents a hazard to the safety and welfare of others, or as otherwise in violation of this policy, to promptly report this fact to a Supervisor. Further, any employee who contributes to the intoxication of another employee may be disciplined as if the contributing employee were himself or herself intoxicated.

It is essential that all employees comply fully with this policy. Employees who violate this policy are subject to disciplinary action, up to and including termination.

Where there is a reasonable suspicion that an employee has violated the substance abuse policy, a Supervisor (or designated administrative personnel) may inspect work areas, desks, purses, briefcases and other locations or belongings without prior notice in order to ensure a work environment free of prohibited substances consistent with the "Searches and Inspections Policy" contained in this Manual.

"Reasonable suspicion" as used herein shall mean any knowledge gained through an informant or through personal observation which tends to show that improper activity is occurring.

Testing

The Company may require a person to undergo drug and/or alcohol screening, including urinalysis, blood tests or other appropriate tests, without limitation in the following circumstances:

- Upon an offer of employment with the Company.
- Where there are reasonable grounds for believing an employee is under the influence of drugs or alcohol.
- As part of an investigation of any accident in the workplace in which there is reasonable grounds to suspect alcohol and/or drugs contributed to the accident.
- On a random basis, where allowed by Statute.
- As a follow up to a rehabilitation program, where allowed by Statute.
- As necessary for the safety of employees, customers, clients or the public at large, or allowed by Statute.

Treatment

The Company encourages employees with drug or alcohol problems to seek immediate assistance. We will comply with any and all legal requirements and obligations in this regard by reasonably accommodating any protected class of employees.

Entrance into a treatment program does not relieve an employee of the obligation to satisfy the Company's standards regarding an employee's performance and participation will not prevent the Company from administering discipline for violations of its policies or relieve the employee of his or her responsibility to perform his or her job in a satisfactory, safe and efficient manner. Nothing in this policy shall be construed as to prohibit the Company from refusing to hire or discharge an employee who, because of

the employee's current use of alcohol or drugs, is unable to perform his/her duties or cannot perform the duties in a manner which would not endanger his/her health or safety or the health or safety of others.

Wages

The Company periodically evaluates the salary and wage rates paid to employees. Although wage rate reviews are typically done around the time of an employee's performance evaluation, wage adjustments can occur at any time at the discretion of The Company. In most cases, compensation adjustments involve an increase in wage rates. However, downward adjustments are also possible.

It is the policy of the Company to compensate its employees based on their job performance.

Any pay adjustments will be based on job performance and shall be within the established pay range for the position. Pay adjustments will be withheld if job performance has been determined to be below expectations. If you disagree with your Supervisor's evaluation, you may make an appointment and discuss the relevant issues with the Personnel Administrator.

Working Hours

The Company's business hours are 24 hours per day, 7 days a week.

Exception: The Company office is staffed from 8 a.m. to 4:30 p.m., Monday through Friday.

Nothing in this Manual shall limit the right to terminate this at-will employment relationship.

Various factors, such as workload and staffing needs, may require variations in an employee's starting and stopping times. The Company reserves the right to assign employees to jobs other than their usual assignments when necessary.

Overtime for Non-Exempt Employees

Employees may be required to work overtime as necessary. Only actual hours worked in a given workday or workweek can apply in calculating overtime. The Company will attempt to distribute overtime evenly and accommodate individual schedules. All overtime work must be previously authorized by a Supervisor. Due to the nature of WINALL OIL COMPANY's business and the requirements of our supply agreements to open 24 hours per day, overtime is very often required. It is not always possible to notify station personnel in advance when overtime is necessary. The Company provides compensation for all overtime hours worked by non-exempt employees in accordance with state and federal law.

Working hours for the office staff are 8:00 a.m. to 4:30 p.m. Monday through Friday.

Pay Raises

Pay raises are based exclusively on merit. Increases in pay occur only with increases in responsibilities and performance. A schedule of current pay rates and corresponding duties and skill levels is provided at the station.

No employee of the Company is authorized to make any other claim or promise regarding future pay raises.

W2 Yearend Tax Statements

At the end of each year, you will be provided with a W2 form showing your earnings and taxes paid for the year. Current employees will receive theirs at the station; all others will be mailed.

If you lose your copy, there will be a \$5.00 processing and reproduction fee to provide you with another.

Mailed copies will be sent to the last address we have on record. If you do not receive your mailed copy and the mailed copy has been returned to us, we will forward it to you at no cost when you call us with your correct mailing address. If you do not receive your mailed copy and the mailed copy has not been returned, you will be charged a \$5.00 processing and reproduction fee to provide you with another.

Meal and Rest Periods

Employees are provided with a half-hour meal period, to be taken approximately in the middle of the work day. Employees are allowed a 10-minute rest period for every four hours of work. You are responsible for ensuring you take your meal and rest periods.

You are expected to observe your assigned working hours and the time allowed for meal and rest periods. Do not take more than 10 minutes for each rest period, taking longer than the allowed 10 minute time, disciplinary action could result. If you are the only employee at the station during such period of time, the Company will discuss on duty meal and rest periods.

Rest periods are provided on employer-paid time. Meal periods are not compensated, unless you are unable to leave the premises during your meal period because you are the only employee on duty at the station. If you leave the premises during the meal period you must punch out your timecard and clock in upon return.

Timekeeping Requirements

All non-exempt employees are required to use a timecard to record time worked for payroll purposes. The timecard must be punched into an electronic time clock located at each station. Employees must record their own time at the start and at the end of each work period, including before and after the lunch break. Employees also must record their time whenever they leave the premises for any reason other than Company business. Any handwritten marks or changes on the timecard must be initialed by your Supervisor. Punching another employee's timecard is not permissible and is subject to disciplinary action up to and including termination.

Any errors on your timecard should be reported immediately to your Supervisor.

We request that all employees do not clock in prior to five (5) minutes before the beginning of their shift and clock out within five (5) minutes of completing their shift.

Advances

The Company does not permit advances.

Employee Literacy Assistance

Reasonable accommodation and assistance will be provided to any employee, as required by law, who reveals a problem of illiteracy and requests the Company assistance in enrolling in an adult literacy education program, provided that this reasonable accommodation does not impose an undue hardship upon the Company.

Please see the Personnel Administrator for assistance.

All reasonable efforts will be made to safeguard the privacy of the employee.

Immigration Law Compliance

Federal law requires all employers to verify each employee's identity and legal authority to work in the United States. All offers of employment are conditioned upon the receipt of satisfactory evidence of an employee's identity and legal authority to work in the United States.

Minimum Age Requirements

All employees of the Company must be at least eighteen (18) years of age or a mandated adult. Employees must provide proof of such whenever requested.

Employees under eighteen (18) years of age are considered to be minors. All minors must provide a work permit. However, work permits are not required for high school graduates or equivalent (mandated adults). Work permits are to be obtained by students from their school counselors.

Workplace Security Policy

The Company is committed to providing a workplace that is free from acts of violence and threats of violence. In keeping with this commitment, we have established a strict policy that prohibits any employee from threatening or committing any act of violence in the workplace, while on duty, while on Company-related business, or while operating any vehicle or equipment owned or leased by the Company.

Compliance with this policy and the Company's commitment to a workplace free of violence is every employee's responsibility.

Employees are required to report any incident involving a threat of violence or act of violence immediately to his/her Supervisor. The matter will be investigated and appropriate corrective action will be taken. This may include the imposition of

disciplinary action upon any employee who violates this policy, up to and including termination.

Employees are required to report violations of this policy, including any incidents involving actual or threatened violence. They may do so without fear of retaliation of any kind.

Station Security

You must be constantly aware of individuals loitering or hiding on or near the station property. If you notice a suspicious individual loitering nearby, call the police and give them a description of the person(s).

Unauthorized individuals are never allowed in the booth. Only those Company employees conducting business directly related to the operation of the station, governmental agency employees on duty, armored truck guards, or workers authorized by the office will be allowed in the booth. It is your responsibility to call the office or your Supervisor before you open the door of your work area to outside individuals.

Confidentiality Policy

Safeguarding confidential information and trade secrets of the Company and our customers/clients is essential. To protect such information employees may not disclose any trade secrets or confidential information.

Due to the competitive nature of the marketplace and the increased number of violent robberies, it is important that all information gathered while employed at WINALL OIL COMPANY be kept confidential. Maintaining personal records of drops, deposits, sales, purchases or other information relating to Company business or revealing this information to any individual not currently employed at WINALL OIL COMPANY will result in disciplinary action up to and including termination.

Safety Policy

Every employee is responsible for safety. Emergency Procedures are posted in each station. It is your responsibility to know these procedures in case of an emergency.

Alan Bliss, as designated by the Company, is the Administrator of the Injury and Illness Prevention Program. All unsafe or hazardous conditions in the workplace, or any accident involving personal injury, regardless of how serious, must be immediately reported. Every effort will be made to remedy problems as quickly as possible.

In case of an accident involving a personal injury, regardless of how serious, please notify your Supervisor immediately. Failure to report accidents can result in a violation of legal requirements and can lead to difficulties in processing insurance and benefit claims.

If an employee is injured on the job, he/she will be entitled to benefits under the State Workers' Compensation Law in most cases. The Company carries Workers'

Compensation Insurance and will assist employees to obtain all benefits to which they are legally entitled.

Emergency Procedures

Emergency procedures in the event of a natural disaster, accident or injury to an employee or customer are found in the Safety Manual and must be followed. If emergency assistance is required, call for help by dialing 911 on the telephone.

Calling 911

If you determine that an emergency response agency such as police, fire department, or paramedics should be called, you must give the dispatcher as much information as possible, including at least the following:

1. Your name.
2. The Company name and the station address.
3. The nature of the emergency.
4. If anyone is hurt and how badly.
5. Any possible hazards to human life or the environment.

Personal Injury

If someone is injured on the station property, the following steps should be taken:

1. Notify the emergency response agency by dialing 911.
2. Eliminate the cause of injury so no others will receive similar injuries.
3. Do not attempt to move any injured individual. Cover the injured person with a blanket or jacket, if available, and try to keep them still until the paramedics arrive.
4. Contact the office and the Senior Cashier or Supervisor as soon as possible.

Riots

In the event of a riot, the first goal is to avoid having employees or customers get hurt. With this in mind, the employee should take as many of the following steps as are possible and safe to do:

1. Call 911.
2. Call your Supervisor
3. Drop all money in the safe.
4. Leave the cash drawer open.
5. Put the cigarettes in the back room.
6. Turn off all circuit breakers, including the main breaker.
7. Lock all doors.
8. Leave the station.

Power Outage

1. Call your supervisor.
2. Turn OFF all computers, printers and monitors.
3. Turn OFF all circuit breakers to the turbines and dispensers.
4. If it is nighttime, turn the switch OFF on all canopy and area lights.
5. Turn ON one light in the cashier's booth.
6. When the power comes on, as indicated by the light in the booth coming on, turn on all computers, dispensers and turbines.
7. If it is nighttime, turn on all canopy and area lights.
8. Call your supervisor when the power has come back on.

Fuel Release

In the event of a spill, or other accident which causes the release of fuel in an amount you consider unsafe or dangerous, or in the event of a fire on the station property in an area or magnitude that endangers the your safety, or the safety of anyone else, please make sure the following steps are taken; using your judgment as to which steps can be safely completed and are most important at the time:

1. Stop the source of the spill. Shut off all turbines and dispensers using the circuit breakers. The emergency shut-off on the cash register or console is not enough.
2. Shut off all electricity, if necessary.
3. If necessary, notify the appropriate emergency response agency by dialing 911 on the telephone.
4. If possible and you can do so without endangering yourself or anyone else, put out any fires using the station fire extinguishers. **DO NOT SPRAY WATER ON GASOLINE OR DIESEL FIRES!**
5. If you need to evacuate the station, notify all employees and customers verbally and make sure that everyone assembles at a safe distance.
6. Try to contain the fuel spill with absorbent material. Do not hesitate to take dirt from the planters to make a dam or cover the spilled fuel.
7. Contact the office and/or the station Senior Cashier or Supervisor as soon as possible.

Accident Reports

Regardless of how serious you may think an injury or incident may be, you must completely fill out an accident report detailing everything you remember about the incident including:

1. Name, address and telephone number of the injured person.
2. Everything you said to anyone related to the incident.
3. Everything the injured person said to you.

4. The name, address and telephone number of each witness.
5. What caused the accident.
6. The date and time of day the accident occurred.

Failure to Report:

Any employee who does not complete an accident report, even when there is no apparent injury and/or the person leaves the station without saying anything to the employee, will be subject to disciplinary action, up to and including termination.

Searches and Inspections Policy

The Company provides desks and credenzas for the use of its employees. Employees should not place any private lock on a credenza. Although credenzas and desks are made available for the convenience of employees while at work, employees should remember that all credenzas and desks remain the sole property of the Company. Moreover, the Company reserves the right to open and inspect credenzas and desks periodically. Such an inspection can occur at any time, with or without advance notice or consent. The Company also reserves the right to inspect the contents, effects, or articles that are in/on desks and credenzas. Such an inspection may be conducted during, before or after working hours by administrative personnel designated by the Company.

Prohibited materials include weapons, explosives, alcohol and non-prescribed drugs or medications. Prohibited materials are not to be brought to the workplace and are not to be placed in any credenza or desk. Perishable items also should not be stored in credenzas or desks or left for prolonged periods. The Company is not responsible for any articles placed or left in any credenza or desk.

Smoking Policy

Smoking is not permitted on or within fifty (50) feet of the gas islands or fill pads or in any Company building or structure.

Telephone

The Company maintains telephones for business purposes only. Personal use is not permitted. Personal phone calls of an emergency nature are, of course, an exception and they should be limited to three (3) minutes. In the event of the necessity to make repeated or extended personal phone calls, your Supervisor must be advised.

Use of Equipment, Property and Supplies

Company property, equipment and supplies is very expensive. The Company urges you to take good care of all equipment and supplies. When using the Company's equipment and property, employees are expected to exercise care, perform the required maintenance and follow all operating instructions, safety standards and guidelines. Promptly report all damage, defect or the need for repairs to prevent deterioration of

equipment and possible injury to employees or others. The improper, careless, negligent, destructive or unsafe use or operation of equipment may result in disciplinary action, up to and including termination. Employees may not use the Company's letterhead or name for personal use.

Company Property

Employees are expected to exercise care in the use of Company property. Items such as tools, adding machines, station supplies, consoles, etc., are for the purpose of maintaining the station and serving the customers and ARE NOT FOR PERSONAL USE!

Change of Name, Marital Status or Address

The Company is required by law to keep current all employees' names and addresses.

It is the responsibility of each employee to immediately advise the Personnel Administrator of any change of name, marital status, address or telephone number.

If your marital status or dependents change, you may wish to change the number of exemptions claimed for income tax withholding and you may also wish to add or delete members of your family to/from the Company's health insurance. However, such changes will only be made if you specifically request them. All such requests should be directed to the Personnel Administrator.

A working residence telephone is required for all station Senior Cashiers and Supervisors. All other employees are required to provide the station with their telephone number or the telephone number of a friend or relative who could immediately contact the employee in an emergency.

Employment of Relatives

Relatives of employees may be considered for employment on the same basis as other qualified applicants. However, relatives may not work at the same station and no person may be put in a position where his/her immediate Supervisor is a relative. Relatives include an employee's parent, child, brother, sister, spouse, in-law and step-relationship.

There may be other relationships not specifically defined in this guidebook that represent an actual or potential conflict of interest. If so, the problem will be discussed with the employee(s), and an opportunity for the affected employees to resolve the situation between them, may be provided. The Company will attempt to provide reasonable accommodation that could include transfer, reassignment and/or release of one or more of the employees.

Celebrations

All festivities acknowledging birthdays, marriages, babies and/or any other type of celebration for any employee must be cleared in advance with a Supervisor.

Solicitations

In order to avoid disruption of the Company operations, the following rules shall apply to solicitations and distribution of literature on Company property.

Outsiders

Persons who are not employed by the Company may not solicit or distribute literature on Company property at any time for any purpose.

Employees of the Company

Employees of the Company may not solicit or distribute literature on Company property at any time for any purpose.

Any employee who solicits (*Example*: work for money) or allows another employee or other individual to solicit, while on station property, will be subject to disciplinary action, including termination.

Age Restricted Product sales

Employees are legally required to verify the age of a customer who is attempting to purchase an age restricted item. Effective June 1, 2016, a person must be at least 21 years of age to purchase cigarettes or other tobacco products and 18 years of age to purchase Lottery products. Any customer that appears to be under the age of 40 years for tobacco items or 30 years for Lottery must show ID. Any employee who sells cigarettes, lottery, or other age restricted products to an under age individual, whether it is a sting by the police or other authorized agency, or an under age customer, will be terminated.

Sale of Unauthorized Merchandise

Only those items provided by the Company for resale at a predetermined price may be sold.

Any employee who offers for sale or to sell unauthorized or stolen items to any individual or allows another employee or individual to sell unauthorized or stolen items will be subject to disciplinary action, including termination.

The Company will cooperate fully with any law enforcement agencies in the investigation of any employee suspected of illegal activity.

Playing Lottery while on duty

Purchasing or playing Lottery Scratchers or On-Line draw games while on duty is not permitted. Any cashier who cashes in a personal winning Lottery or Lotto ticket or who plays a Lottery Scratcher ticket, even a ticket bought before their shift begins or from another Lottery location, will be subject to disciplinary action up to and including termination. Any employee that plays a Lottery scratcher or on-line game without first paying for the item will be terminated.

Lost and Found

All items left at the station by customers or employees must be given to the Supervisor or station Manager and turned into the office. Any employee keeping an item left at the station, including money left by a customer will be subject to disciplinary action, up to and including termination.

Bulletin Board

The Company maintains a bulletin board in each station for the purpose of posting employee notices and other pertinent information. It is the employee's responsibility to be familiar with all of the information posted.

No authorized material will be posted on the bulletin board, windows, or any other location on station property.

Policy Questions

If you have any questions concerning any of the Company's policies, please feel free to contact the Personnel Administrator.

Please be aware that all policies extending benefits to domestic partners include only registered domestic partners, as defined in *California Family Code* Section 297.

Standards of Conduct

It is not possible to provide employees with a complete list of every possible type of disciplinary offense. However, in order to provide employees with guidance concerning unacceptable behavior, the following are some examples of types of conduct which are considered impermissible:

- Insubordination, including improper conduct or refusal to perform tasks in the appropriate manner.
- Possession, distribution, sale, use or being under the influence of alcoholic beverages or illegal drugs while at the Company.
- Sexual harassment or other unlawful harassment, whether verbal, physical or visual.
- Actual or threatened violence.
- Release of confidential information about the Company or its customers/clients.
- Theft or unauthorized removal or possession of property from the Company, fellow employees or anyone on Company property.
- Altering or falsifying timekeeping records; removing any timekeeping record from the designated area without proper authorization or destroying such record.
- Absence for three (3) consecutive work days without notice to your Supervisor, unless a reasonable excuse is offered and accepted, in writing, by your Supervisor.
- Falsifying or making a material omission on an employment application or any other Company record/document.

- Removing, misusing, destroying or damaging property of the Company, a fellow employee or anyone else on Company property.
- Fighting on Company property.
- Bringing on Company property, dangerous or unauthorized materials, such as explosives, firearms or other similar items.
- Misconduct.
- Unsatisfactory performance.
- Malicious or willful destruction or damage to property owned, leased or held by the Company, its employees or visitors.
- Theft or inappropriate removal or possession of the property of the Company, its employees or visitors.
- Falsification, distortion or omission of information on employment application forms.
- Falsification of timekeeping or other accounting records.
- Working unauthorized overtime.
- Working under the influence of alcohol or illegal drugs or inability to perform normal job functions due to alcohol or illegal drug use.
- Possession, distribution, sale, transfer or use of alcohol or illegal drugs in the workplace, while working, or while operating Company-owned or leased equipment.
- Any violation of the Company drug policy, including arrest or conviction for any drug-related offense.
- Fighting or threatening violence in the workplace.
- Intimidating, coercing, harassing or interfering with fellow employees or engaging in harmful gossip.
- Boisterous or disruptive activity in the workplace or using abusive or vulgar language.
- Negligence or improper conduct leading to damage of Company-owned or leased property.
- Insubordination, disrespectful conduct or refusal to perform tasks in the manner described by a Supervisor.
- Violation of safety or health rules.
- Failing to report immediately to a Supervisor any work-related injury, no matter how slight.
- Sexual or unlawful harassment.
- Possession of dangerous or unauthorized materials, such as explosives or firearms, in the workplace.
- Excessive tardiness, absenteeism, unauthorized absence from work during the workday or any absence without notice.

- Gambling on Company premises.
- Performing other than Company work during work hours.
- Unauthorized use of telephones, mail systems or other Company-owned or leased equipment.
- Violation of conflict of interest rules or disclosure of confidential information.
- Slandering the Company or acting in a manner that could damage the Company's reputation.
- Unsatisfactory work quality or quantity.
- Inappropriate appearance or grooming or failure to be in proper uniform.
- Failure to report to the Company, within five (5) days, any criminal charges against the employee.
- Conviction of a crime that indicates unfitness for the job or raises a threat to the safety or well being of the Company, its employees or visitors.
- Sleeping during work hours.
- Violation of Company policies.
- Unauthorized comments or disclosures to customers or the media.

It should be remembered that employment is at the mutual consent of the employee and the Company. Accordingly, either the employee or the Company can terminate the employment relationship at will, at any time, either with or without cause or advance notice.

Courtesy

Respect and confidence from our customers is build on courtesy, efficiency and, quite often, patience. Each employee represents the Company and the impression they present to the customer is important, if the customer is expected to buy from us again. The job of building goodwill with the customers is every employee's responsibility.

Attendance

We realize that periodically employees will be ill and normal salary is not withheld due to an illness. When calling in to report that you will not be coming to work due to illness, please speak directly with your Supervisor. Should your Supervisor not be available, you must speak with the Personnel Administrator.

Your absentee record is a factor in your annual performance appraisal. Excessive absenteeism is unacceptable.

Unsatisfactory attendance, including excessive tardiness, will result in disciplinary action up to and including termination. The Company may require proof for any absence or disability at any time in order to ensure the employees safe return to work.

Absence is defined as any time an employee fails to report to work when scheduled. This also includes leaving work before the end of your shift. This does not include approved time off for vacation, paid sick leave or Company-initiated time off.

Tardiness is defined as punching in after the start of your assigned shift, failure to be at your workstation at the beginning of your shift or punching out before the end of your shift.

If your record shows frequent or patterned absence or tardiness, you will be subject to disciplinary action up to and including termination. "Frequent absence" is considered more than five incidences of absence in any (12) twelve-month period. "Frequent tardiness" is considered to be tardy two or more times in one month.

Leaving Work Premises

Any employee who must leave the premises during working time must obtain permission from his or hers immediate Supervisor and clock out their timecard.

Job Duties

Please be aware that your job responsibilities may change at any time during your employment. From time to time, you may be asked to work on special projects, or to assist with other work necessary or important to the operation of your station, department or the Company. Your cooperation and assistance in performing such work is expected.

The Company reserves the right, at any time, with or without notice, to alter or change job responsibilities, reassign or transfer job positions, or assign additional job responsibilities.

Transfers

To enhance the experience level and knowledge of the employees or for any other reason, WINALL OIL COMPANY, at its sole discretion, may transfer any employee to another station or job.

Cleaning

We take pride in the way our service stations look and the way they are maintained. Cleaning is every employee's responsibility and the Cleaning Schedule must be closely followed, with the employee initialing in the appropriate place upon completing the task.

In addition to the Cleaning Schedule, all employees are responsible for immediately cleaning any spill or unsafe condition that occurs anywhere on the station property. Failure to respond to any unsafe condition will result in disciplinary action, up to and including termination.

Personal Property

To allow the employee to concentrate on servicing the customer, radios and televisions are not allowed in the cashier's booth. Employees who bring personal items onto the station property, including cars, motorcycles and bicycles, do so at their own risk. The Company will assume no liability for lost or damaged employee property.

Internal Complaint Procedure (Grievance Procedure)

Purpose and Scope of Policy

The Company has established this grievance procedure to provide all employees an opportunity to resolve grievances which may arise from time to time. Employees can use this procedure to address any disciplinary action or any claim of unfair treatment or discrimination relating to their wages, hours or working conditions.

Employees are employed on an at-will basis. Based upon the provisions of State law and the Company's policies, employees are free to sever their employment relationship with the Company at their option at any time, either with or without cause or advance notice. In the same manner, the Company reserves the right to terminate its employment relationship with any employee at will, either with or without cause or advance notice. *Nothing in this grievance procedure is intended to create an express or implied agreement which alters the employment at will relationship which exists.*

Grievance Steps

Employees who wish to initiate the Company's grievance procedure must follow the steps listed below.

1. Employee must bring the situation to the attention of his/her Supervisor, who will then investigate and provide a solution or explanation. Employees are expressly prohibited from utilizing e-mails to lodge complaints. Such complaints must be made in person to ensure immediate attention, **either verbally or presented in writing.**
2. A final resolution/decision will be rendered within three weeks of employee's presentation of the complaint, unless an extension of time is necessary. The employee will be advised if such an extension is required.

Employees are encouraged to use this procedure without fear of reprisal. No employee will be discriminated or retaliated against because an employee has elected to use this procedure.

This policy does not apply to claims involving sexual or other forms of unlawful harassment. Such claims should be filed pursuant to the Company's policies against unlawful harassment. They will be addressed in accordance with the provisions of those policies.

Progressive Discipline

The Company retains the ability to discipline employees where it determines that such action is warranted by the circumstances. Although all employment relationships are terminable at will at any time, the Company may exercise its discretion to administer a

system of progressive discipline where it determines it is appropriate to do so. The use of progressive discipline does not negate or change the at-will status of the employment relationship. That system may include various forms of discipline, such as verbal counseling, one or more written counselings, and termination. However, progressive discipline is not mandatory or binding in any case. It is also inapplicable to staff reductions and layoffs. The Company reserves the right, in its discretion, to deviate from any formal system of discipline.

Performance Evaluations

Performance evaluations are conducted annually. They may be delayed from time to time.

If more frequent reviews are desired, it is the employee's responsibility to discuss the matter with his/her Supervisor.

Personnel Records

The Company employees have a right to inspect certain documents in their personnel file, as provided by law, in the presence of the Personnel Administrator, at a mutually convenient time. No copies of documents in employee personnel files may be made, with the exception of documents which the employee has previously signed. An employee may add comments to any disputed item in his/her personnel file.

The Company will restrict disclosure of employee personnel files to authorized individuals within the Company. Any request for information contained in the Company's personnel files must be directed to the Personnel Administrator. Only the Personnel Administrator is authorized to release information about current or former employees. Disclosure of personnel information to outside sources will be limited. However, the Company will cooperate with requests from authorized law enforcement or local, state or federal agencies, conducting official investigations and as otherwise legally required.

Conflicts of interest

All employees must avoid situations involving actual or potential conflict of interest. Personal or romantic involvement with a competitor, supplier or subordinate employee of the Company, may impair an employee's ability to exercise good judgment on behalf of the Company and may create an actual or potential conflict of interest. Supervisor-subordinate romantic or personal relationships also can lead to Supervisory problems, possible claims of sexual harassment and moral problems.

An employee involved in any type of relationship or situation described in this policy must immediately and fully disclose the relevant circumstances to his or her immediate Supervisor, or any other appropriate Supervisor, for a determination about whether a potential or actual conflict exists. If an actual or potential conflict is determined, the Company may take whatever corrective action appears appropriate, according to the circumstances. Failure to disclose facts shall constitute grounds for disciplinary action, up to and including termination.

Dress Standards

The Company expects all employees to project a neat, clean, and professional image while at the station. Tank tops, shorts, skirts, dresses, sandals, athletic shoes, denim pants, unclean clothing, unshaven faces, etc., will not be tolerated. All male employees must wear their shirts tucked into their pants and all buttons must be buttoned on shirts worn by all employees.

Our supply agreements with the major oil companies require that our employees comply with each oil company's minimum image requirements. Along with the Company's dress standards, they require all station employees on duty to be in approved uniforms. They require that the following items, which all carry the oil company's brand identification, be purchased from their designated uniform suppliers: Shirts, hats, ties, jackets and sweaters. WINALL OIL COMPANY will supply all of these items. The oil companies also require specific colors and styles of the following items, which do not carry any oil company brand identification and can be purchased anywhere: dark shoes (no open-toed shoes) and dark dress pants (no blue jeans). Since these items can be worn at times other than while working, WINALL OIL COMPANY shall not provide them.

All portions of the required uniforms provided by the Company must be returned to the Company upon termination.

Benefits

This section of the Manual is designed to introduce employees to some of the significant features of the employees' benefit programs. However, it is important to remember that more detailed information is set forth in the official Plan documents and insurance policies which govern the Plans. Accordingly, if there is any conflict between the brief summaries contained in this Manual and the terms, conditions, limitations and/or exclusions of the official Plan documents, provisions of the official Plan documents will control.

Employees who wish to inspect such documents can make an appointment with the Personnel Administrator for that purpose.

Part Time, Hourly and Temporary Employees

All part time, hourly and temporary employees are not eligible for any Company benefits except those required by local, state or federal law. Any part time, hourly or temporary employee hired into a full time position is considered a new hire as of the conversion date. These new hires need to meet the eligibility requirements as outlined elsewhere in this employment Manual.

Sick Pay- California

Effective July 1, 2015 all employees will accrue one hour of sick time for every 30 hours worked (including overtime hours). Employees who are exempt administrative, executive, or professional employees accrue sick time based on the employee's normal work week or a 40-hour work week, whichever is less. All employees begin accruing paid sick leave on July 1, 2015, or their first day of employment if hired after July 1,

2015. Employees may begin using any accrued sick leave on their 90th day of employment, provided they have worked for the same employer, on or after January 1, 2015, for at least 30 days within a year in California.

Sick leave will continue to accrue until you reach a cap of 48 hours (or six days) in each year of employment; however employees will only be allowed to utilize 24 hours (or three days). The sick leave will be 24 hours or three days depending on the typical schedule of the employee and will be "compensated at the same wage as the employee normally earns during regular work hours." For example, if an employee normally works 10 hour shift, then the employee would be eligible for 3 days off for 10 hours a day and a total of 30 hours.

Similar to California's requirements related to vacation accrual, the company will allow employees to carry over all accrued paid sick days to the following year of employment. Paid sick time will continue to accrue until it reaches a maximum cap of 48 hours (or six days) and may carry over to the next year. However, employees will still only be allowed to take 24 hours per year of sick leave.

Permitted Uses

Employees are allowed to use the 24 hours of paid sick time per year on the employee's oral or written request for the following reasons:

For his or her own qualifying need, or for that of a "family member," for:

- Diagnosis, care, or treatment of an existing health condition; or
- Preventative care.

Employees can also use additional sick time if:

- The employee is a victim of domestic violence, sexual assault, or stalking.

Employees must use sick leave in two (2) hour increments.

Cash-Out

As per California law, the Company will not cash out employee's accrued, but unused, paid sick time at the end of employment.

Employee Notice

We will provide sick leave upon an employee's oral request. However, if the need for sick time is foreseeable, you must provide a reasonable advance notification. If the sick time is unforeseeable, an employee must provide the Company with notice of the need to use sick time as soon as practicable. At this time, the Company will not be asking for supporting documentation unless sick leave is in association with an extended leave of absence or a work injury. However, we reserve the right to revise this policy as business needs and regulations change.

Sick Pay- Los Angeles

Effective July 1, 2016 all employees will accrue one hour of sick time for every 30 hours worked (including overtime hours). Employees who are exempt administrative, executive, or professional employees accrue sick time based on the employee's normal work week or a 40-hour work week, whichever is less. All employees begin accruing

paid sick leave on July 1, 2016, or their first day of employment if hired after July 1, 2016. Employees may begin using any accrued sick leave on their 90th day of employment, provided they have worked in the City of Los Angeles for the same employer for 30 or more days.

Sick leave will continue to accrue until you reach a cap of 72 hours (or nine days) in each year of employment. The sick leave will be 48 hours or six days depending on the typical schedule of the employee and will be "compensated at the same wage as the employee normally earns during regular work hours." For example, if an employee normally works 10 hour shift, then the employee would be eligible for 5 days off for 10 hours a day and a total of 50 hours.

Similar to California's requirements related to vacation accrual, the company will allow employees to carry over all accrued paid sick days to the following year of employment. Paid sick time will continue to accrue if carried over to the following year until it reaches a maximum cap of 72 hours (or nine days). However, employees will still only be allowed to take 48 hours (or six days) per year of sick leave.

Permitted Uses

Employees can use their sick time to care for themselves or family members, using California's state-wide paid sick leave law's definition of "family member" (child, parent, spouse, registered domestic partner, grandparent, grandchild or sibling).

Employees may also use their paid sick leave to care for "any individual related by blood or affinity whose close association with the employee is equivalent of a family member."

Employees are allowed to use the 48 hours of paid sick time per year on the employee's oral or written request for the following reasons:

For his or her own qualifying need, or for that of a "family member," for:

- Diagnosis, care, or treatment of an existing health condition; or
- Preventative care.

Employees can also use additional sick time if:

- The employee is a victim of domestic violence, sexual assault, or stalking.

There is no minimum in which Paid Sick Leave must be used. Employee may be required to provide reasonable medical documentation per use.

Cash-Out

As per California law, the Company will not cash out employee's accrued, but unused, paid sick time at the end of employment.

Employee Notice

We will provide sick leave upon an employee's oral request. However, if the need for sick time is foreseeable, you must provide a reasonable advance notification. If the sick time is unforeseeable, an employee must provide the Company with notice of the need to use sick time as soon as practicable. The Company may ask for supporting documentation unless sick leave is in association with an extended leave of absence or

a work injury. However, we reserve the right to revise this policy as business needs and regulations change.

Pregnancy Disability Leave

Any employee who is disabled because of pregnancy or a pregnancy-related condition is entitled to up to four months' disability leave (88 working days for full-time employees). This leave may be taken intermittently or all at once, when medically advisable. During the disability leave, the eligible employee is entitled to use whatever accrued vacation or sick benefits are available **at their discretion**. Such benefits cannot be used to extend the four-month leave.

Such leave of absence is without pay, and no benefits shall accrue during the period of the leave.

Pregnancy, child birth or related medical conditions will be treated like any other disability, and an employee on leave will be eligible for temporary disability benefits in the same amount and degree as any other employee on leave.

Any female employee planning to take pregnancy disability leave should advise the Personnel Administrator as early as possible. The individual should make an appointment with the Personnel Administrator to discuss the following conditions:

1. Employees who need to take pregnancy disability must inform the Personnel Administrator when a leave is expected to begin and how long it will likely last. If the need for a leave or transfer is foreseeable, employees must provide notification at least thirty (30) days before the pregnancy disability leave or transfer is to begin. Employees must consult with her Supervisor regarding the scheduling of any planned medical treatment or supervision in order to minimize disruption to the operations of the Company. Any such scheduling is subject to the approval of the employee's health care provider.
2. If thirty days' advance notice is not possible, notice must be given as soon as practical.
3. Upon the request of an eligible employee and the recommendation of the employee's physician, the employee's work assignment may be changed if necessary to protect the health and safety of the employee and her child.
4. Requests for transfers of job duties will be reasonably accommodated if possible and the job and security rights of others are not breached.
5. Temporary transfers due to health considerations will be granted when possible.
6. Pregnancy leave usually begins when ordered by the employee's physician. The employee must provide the Company with a certification from a health care provider. The certification indicating disability should contain: (1) the date on which the employee became disabled due to pregnancy; (2) the probable duration of the period or periods of disability; and (3) a statement that, due to the disability, the employee is unable to perform one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy or to other persons.

7. Leave returns will be allowed only when the employee's physician sends a release.
8. Duration of the leave will be determined by the advice of the employee's physician, but employees disabled by pregnancy may take up to four months. Part-time employees are entitled to leave on a pro rata basis. Four months of leave includes any period of time for actual disability caused by the employee's pregnancy, child birth or related medical condition. This includes leave for severe morning sickness and prenatal care.

Under most circumstances, upon submission of a medical certification that an employee is able to return to work from pregnancy disability leave, an employee will be reinstated to her same position held at the time the leave began or, to an equivalent position, if such are available in accordance with applicable law and business need. However; an employee returning from a pregnancy disability leave has no greater right to reinstatement than if the employee had been continuously employed.

If an employee fails to return to work immediately after the period of an approved leave expires, the employee will be considered to have voluntarily separated from the Company's employ.

Vacation accrues during any period of unpaid pregnancy disability leave only until the end of the month in which unpaid leave began.

Health insurance benefits ordinarily provided by the Company, and for which the employee is otherwise eligible, will be continued during the period of the leave.

If the employee wishes to continue coverage for dependents, the cost of dependent health coverage and/or dental coverage normally borne by the employee will remain the sole responsibility of the employee. The employee must pay her share of the premiums by making timely payments to the Company at the same time as such payments would be made if they were paid via payroll deduction. If an employee does not timely pay her share of insurance premiums for the period of leave, coverage will cease in accordance with the provisions of the law.

Please see the Personnel Administrator for further details.

Disability Leave

Disability leave is available for up to four (4) months to eligible employees who are disabled from working for occupational or non-occupational injury or illness, including disabilities due to pregnancy, child birth or related medical conditions, where disability is certified by a health care provider. Any leave taken under the pregnancy leave disability policy counts against the employee's four-month disability leave allowance (See, Pregnancy Disability Leave section in this Manual for complete discussion of pregnancy disability leave).

Term of Disability Leave

Disability leave may be taken in one or more periods, but may not exceed four months in a twelve-month period.

Total disability is defined as having doctor certification, acceptance of the claim by SDI or Workers' Compensation and five consecutive days out. A total disability situation will require doctor's certification of an employee's fitness to perform the essential functions of his or her job prior to returning to work.

Eligible employees are responsible for filing for appropriate disability reimbursement from SDI or Workers' Compensation.

If an employee is disabled for more than 21 calendar days, the eligible employee shall be paid for earned and unused vacation days and shall cease to accrue new vacation days until he or she returns to full-time work, meeting normal requirements.

Employees who are disabled or sick between five and fifteen working days, including holidays, shall not be eligible to take vacation immediately upon return. For each day disabled, they must work two days before vacation can be taken. *Example:* 12 working days disabled equal 24 working days before vacation may be taken. As always, vacations are subject to your Supervisor's approval.

During the four-month period of total disability, the Company shall maintain medical/disability contracts and service ancillary programs, such as 401K, where applicable.

If an eligible employee is released to return to work within four months, and chooses not to, the employee shall be immediately terminated and the Company may recover the premiums paid for maintaining health coverage.

If an employee returns to work from a disability and within six months of the original disability suffers a related disability, the four-month period shall be cumulative from the date of the first absence.

While the Company shall make every effort to return the employee to his or her prior position when he or she returns from disability leave, it may be necessary to transfer him or her to another position when he or she returns from disability leave, to transfer him or her into another area, or to not reinstate the employee at all.

For return-to-work policies applicable to pregnancy disability leave, please consult the Pregnancy Disability Leave section in this Manual.

If the employee fails to return to work after the expiration of the period of leave to which he or she is entitled, the Company may recover the premiums paid for maintaining the health coverage, unless the employee's failure to return is because of (1) the continuation, reoccurrence or onset of a serious health condition which entitles the employee to leave; or (2) other extenuating circumstances beyond the control of the employee. Employee is deemed to have failed to return from leave if he or she works fewer than thirty days after returning from leave.

After four (4) months of continuous or cumulative disability, an employee shall be terminated. If employee is terminated and rehired within one year from his/her termination date, there will be no loss in seniority.

Please see the Personnel Administrator for further details.

Paid Family Leave

California law allows eligible employees to apply for family temporary disability insurance (FTDI) benefits if they are unable to work due to the need to care for a qualified family member. The right to receive FTDI benefits from the State does not provide employees the right to take time off from work. Eligible employees must request permission to take time off under the Company's policies. The payment of FTDI benefits does not afford employees explicit job protections or reinstatement guarantees.

Eligible employees must provide a minimum of thirty days advance notice whenever the need for the time off is foreseeable. If the need for the absence is not foreseeable at least thirty days in advance, a request for time off must be provided as soon as the need for the time off is foreseeable. If an employee does not qualify for a leave of absence under the Company's policies or any applicable law, or if a written request is not submitted in a timely manner, the request may not be granted. (Medical certifications/proof will be required)

Eligible employees must use their accrued vacation benefits, up to a maximum of one week before they qualify for FTDI benefits. Vacation benefits shall be combined with any FTDI benefits to the extent necessary to replace wages lost due to work missed for reasons covered under the FTDI program. If no vacation benefits are available, employees shall only receive benefits available under the FTDI program.

The FTDI program is administered and financed by the State of California. Although the Company provides employees information about the program, eligible employees must apply for benefits directly with the California Development Department (EDD). Please see the Personnel Administrator for details.

Family Medical Leave Act and California Family Rights Act

Eligibility

Any employee who has completed at least twelve (12) months of service and has worked at least 1,250 hours of service during the twelve-month period preceding the date the leave would begin may request an unpaid family and medical leave of absence. An employee must also work within a seventy-five (75) mile radius of fifty (50) or more employees of the organization in order to be eligible for a leave under this policy. Subject to the conditions of this policy, eligible employees may request up to twelve (12) weeks family and medical leave during a twelve-month period.

Permissible Purposes of Family and Medical Leaves

An eligible employee may request a family and medical leave for any of the following reasons:

1. The birth of an employee's child;
2. The placement of a child with the employee in connection with an adoption or foster care;

3. To care for a child, parent, domestic partner, or spouse who has a serious health condition; or
4. Due to a serious health condition which prevents the employee from performing one or more of the essential functions of his or her position. To the maximum extent permitted by law, any leave of absence that is granted to an employee under this policy or any other policy for a purpose specified above shall be credited against the twelve-week limit contained in this policy.

Benefits During Leave

An employee who is granted a family medical leave of absence may use any or all accrued paid vacation benefits during the period of the leave. Any portion of a leave which occurs after all vacation benefits have been exhausted shall be without pay. For purposes of this policy's twelve-week limitation, any paid and unpaid portions of the leave of absence shall be added together whether or not they are taken consecutively.

Health insurance benefits ordinarily provided by the Company, and for which the employee is otherwise eligible, will be continued during the period of the leave. If the employee wishes coverage to continue, the Company will continue to pay its share of the premiums for the period of the leave, up to a maximum of four months. The cost of dependent health coverage and/or dental coverage normally borne by the employee shall remain the sole responsibility of the employee. The employee must pay his or her share of the premium by making timely payments to the Company, at the same time as such payment would be made if they were paid via payroll deductions. If an employee does not timely pay his or her share of insurance premiums for the period of the leave, coverage will cease in accordance with the provisions of law.

Notification Rules

Employee must provide proper notification as a condition of eligibility for leave. The employee must notify the Personnel Administrator, in writing, of the need for such a leave, the date it will commence, and the anticipated duration of the leave. (See, Request for Leave Form) If the employee knows of the event which necessitates the leave more than thirty (30) calendar days in advance of the date the leave is needed, the employee must provide as much advance notice as practicable. Failure to comply with these notice rules may result in a denial or postponement of the requested leave until the employee complies with these rules. However, if the need for a family medical leave results from an emergency or is otherwise unforeseeable, leave will not be denied simply because an employee fails to provide advance notice.

Certification by Health Care Provider

If an employee requests a leave due to a serious health condition of the employee or a family member, the employee must support the request with a certification issued by the health care provider of the individual with the serious health condition. (See Certification Form) The certification should include the following information:

1. The date, if known, on which the serious health condition commenced;
2. The probable duration of the condition;

3. An estimate of the amount of time that the health care provider believes that the employee needs to care for the individual requiring the care; and
4. A statement that the serious health condition warrants the participation of a family member to provide care during a period of treatment or supervision of the individual requiring care.

If an employee requests intermittent leave for planned medical treatment, the certification should specify the dates on which such treatment is expected to be given and the duration of such treatment. If the time estimated by the health care provider under item (3), above, expires, the employee must submit a recertification if the employee desires additional leave. Extensions will not be granted which cause the total period of the leave to exceed the twelve-week limitation identified above. Failure to provide the required certification in a timely manner (within fifteen (15) days of the leave request) may result in denial of the leave request until certification is provided.

Recertification is required when leave is sought after expiration of the time estimated by the health care provider. Failure to submit required certification may result in termination of the leave.

If the Company has reason to doubt the medical certification supporting the leave because of the employee's own serious health condition, the Company may request a second opinion by a health care provider of its choice (paid for by the Company). If the second opinion differs from the first one, the Company will pay for a third, mutually agreeable, health care provider to provide a final and binding opinion.

Employee Status

Eligible employees will retain their employee status during the period of a family and medical leave. Moreover, their absence shall not be considered a break in service for purposes of determining their longevity or seniority. Once an employee returns from a leave, the employee will be credited with all seniority and service accrued before the leave of absence commenced. However, the employee shall not accrue seniority during the leave.

Re-Employment Privileges

Except where the law authorizes a different result, an employee who complies with the provisions of this policy will be guaranteed re-employment upon expiration of an approved leave, provided that the total period of the leave does not exceed twelve weeks. The employee will be re-employed at the same or an equivalent position as that which he or she occupied when the leave commenced. An employee who takes a leave because of his or her own serious health condition must provide a medical certification verifying that he or she is able to return to work in the same manner as employees who return from other types of medical leave. If an employee fails to return to work immediately after the period of an approved leave expires, the employee will be considered voluntarily separated from the Company's employee.

For Further Details, Please see the Personnel Administrator

FMLA/CFRA LEAVE OF ABSENCE REQUEST FORM

GENERAL INFORMATION SECTION

Employee Name: _____

Position: _____

Office: _____

Date of Hire: _____

Date of This Request: _____

Date Requested by Employee for Leave to Begin: _____

Anticipated Duration of the Leave: _____

ELIGIBILITY FACTORS

1. Reason for Leave Request:

- ☐ Birth of Child
- ☐ Placement of Child for Adoption or Foster Care
- ☐ Serious Health Condition of Child, Parent or Spouse

2. Has the Employee Completed at Least 12 Months of Service?

- ☐ Yes ☐ No

3. Has Employee Worked At Least 1,250 Hours Of Service During The 12-Month Period preceding The Date The Leave Would Commence?

- ☐ Yes ☐ No

4. Does Employer Employ 50 or More Employees Within 75 Miles of The Employee's Worksite?

- ☐ Yes ☐ No

5. Has Employee Taken Any Other Family or Medical Leave Under CFRA and/or FMLA for this, or Any Other Reason, During The 12-Month Computation Period?

- ☐ Yes ☐ No

If Yes, Please State The Dates Each Such Absence Occurred and The Number of Work Days or Hours Missed On Each Occasion.

<u>Date(s) of Absence</u>	<u>Reason for Leave</u>	<u>Time Missed</u>

6. If the leave is requested due to the birth of a child or placement of a child for adoption or foster care, will the leave be concluded within one year of the birth or placement of the child?

☐ Yes ☐ No

NOTICE PROVISIONS

1. If this event was foreseeable, did the employee provide at least 30 calendar days' advance notice in writing?

☐ Yes ☐ No ☐ Not Applicable

2. If this event was unforeseeable 30 days in advance, did the employee provide as much advance notice as practicable after learning of the need for leave?

☐ Yes ☐ No

3. Where a leave is requested due to a serious health condition of employee or employee's child, spouse or parent, is the request supported by a sufficient medical certification by a health care provider?

☐ Yes ☐ No

INSURANCE OBLIGATIONS

1. Has employee been provided written notice of the terms and conditions under which employee must pay the employee's share of health insurance coverage costs?

☐ Yes ☐ No

2. Has employee been advised that employee will be responsible for the costs of maintaining other insurance coverage (such as life and disability coverage where applicable) during the leave and the employer is authorized by federal law to recover such costs from employee?

☐ Yes ☐ No

EMPLOYEE REQUEST

I request a family/medical leave of absence to begin on the date specified in Section 1 above. I understand my continued obligation to pay my share of dental insurance premiums and/or dependent health premiums if applicable during the leave, unless I decline to continue my coverage during my leave by submitting a written waiver. I acknowledge that I will be guaranteed reinstatement from an approved family/medical leave to the same or an equivalent position subject to the terms, conditions, limitations and exceptions provided by law. I understand that my employer is authorized by federal law to recover all costs of maintaining my life and disability insurance in effect during my leave and hereby agree that such sums can be recovered through payroll deductions following my reinstatement if I do not make other arrangements with my employer.

Employee Signature

EMPLOYER ACTION

1. The requested leave is approved to begin on _____, 20____, and end on _____, 20____.

2. Additional comments:

Dated: _____, 20____.

CERTIFICATION OF PHYSICIAN OR PRACTITIONER

FAMILY AND MEDICAL LEAVE ACT OF 1993

1. Employee's Name: _____
2. Patient's Name: _____
3. Date condition commenced: _____
4. Probable duration of condition: _____
5. Regimen of treatment to be prescribed (indicate number of visits, general nature and
6. duration of treatment, including referral to other provider of health services. Include
7. schedule of visits or treatment if it is medically necessary for the employee to be
8. off work on an intermittent basis or to work less than the employee's normal schedule
9. of hours per day or days per week):

10. By Physician or Practitioner: _____

11. By another provider of health services, if referred by Physician or Practitioner: _____

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THROUGH 14 ON THE NEXT PAGE. OTHERWISE, CONTINUE BELOW:

Check Yes or No in the Boxes below as appropriate:

12. Is inpatient hospitalization of the employee required?

☐ Yes ☐ No

13. Is employee able to perform work of any kind? (If "no," skip Item 9).

☐ Yes ☐ No

14. Is employee able to perform the functions of employee's position? (Answer after reviewing

15. statement from employer of essential functions of employee's position, or, if none provided,

16. after discussing with employee.)

☐ Yes ☐ No

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, COMPLETE ITEMS 10 THROUGH 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15.

17. Is inpatient hospitalization of the family member (patient) expected?

☐ Yes ☐ No

18. Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs,

19. safety or transportation?

☐ Yes ☐ No

20. After review of the employee's signed statement (see item 14 below) is the employee's

21. presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort)

☐ Yes ☐ No

22. Estimate the period of time care is needed or the employee's presence would be beneficial:

ITEM 14 TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

23. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently, or on a reduced leave schedule:

24. Signature of Physician or Practitioner: _____

25. Date: _____

26. Type of Practice (Field of Specialization, if any): _____

Dated: _____

Employee Signature

Military Leave

Employees who enter the armed forces of the United States will be granted leaves of absence in accordance with federal and state laws governing such leaves.

Medical Insurance

The Company makes available to all employees a major medical insurance program. The Company allows neither an employee's spouse nor dependent(s) to enroll in the medical insurance program.

Currently, the Company pays 100% of the insurance premium for each eligible employee's medical coverage. Employees are eligible to enroll in the program after one (1) month of employment following their introductory period. The actual effective date of coverage will be determined by the insurance carrier.

At the time of, or sometime following, some medical services, employees may be required by the insurance carrier to pay any "co-pay" charges. These charges are not reimbursed by the Company.

For more detailed information on the above programs, please see the Personnel Administrator.

Insurance Continuation Coverage

Employees of the Company, who are covered by the Company's Health Plan, have the right to choose continuation coverage in the event that group health coverage is lost because of reduction of working hours, termination of employment (for reasons other than gross misconduct), retirement, or the Company's filing for reorganization under Chapter 11 of the *United States Bankruptcy Code*.

Under HIPAA (*Health Insurance Portability and Accountability Act*), the employee or a family member has the responsibility to inform the Company within sixty (60) days of the following:

The Social Security determination that the employee covered under our plan at the time of employee's termination or reduction in working hours, was disabled at any time during the first sixty (60) days of continuation of coverage.

When the Company is notified that this event has occurred, we will, in turn, notify the employee of the availability of continuation coverage. The employee then has sixty (60) days to inform the Company of his or her desire for continued Health Plan Coverage. Notification should be made to the Personnel Administrator.

If an employee does not choose continuation coverage, the group health insurance coverage will end.

If an employee chooses continuation coverage, the Company is required to give the employee coverage which is identical to the coverage provided under the Plan to similarly-situated employees or family members. Please see the Personnel Administrator for details.

The law also provides that the employee's continuation coverage may be terminated for any of the following reasons:

1. The Company no longer provides group health coverage for any of its employees;
2. The premium for the employee's continuation coverage is not timely paid;
3. The employee is covered under another group health plan that does not include a pre-existing condition clause that applies to the employee or to a covered dependent;
4. The employee is covered under another group health plan and any pre-existing condition exclusions or limitations of that plan do not apply or are satisfied by the employee; or
5. The employee is covered by Medicare.

The employee does not have to show that he or she is uninsurable to choose continuation coverage; however, under the law, the employee has to pay all of the premiums for the continuation coverage.

If you have any questions regarding coverage, please contact the Personnel Administrator. Please obtain a COBRA Election Form immediately from the Personnel Administrator.

Disability Insurance

Each employee contributes to the State of California to provide disability insurance mandated by the California Unemployment Insurance Code. Contributions are made through a payroll deduction. Disability insurance is payable when you cannot work because of illness or injury not caused by employment at the Company or when you are entitled to temporary workers' compensation at a rate less than the daily disability benefit amount. Specific rules and regulations governing disability are available from the Personnel Administrator.

Workers' Compensation Insurance

The Company provides Workers' Compensation Coverage at its expense. Workers' Compensation Insurance is intended to provide medical care and pay for lost time resulting from injuries on the job and those illnesses caused by your work. Some benefits become effective following a waiting period. If you are injured on the job, you must report the injury to your Supervisor immediately in order for the proper reports to be filled out.

WINALL OIL COMPANY will fully participate in the investigation of fraudulent worker compensation claims and will cooperate with the authorities to ensure the conviction of all employees who file false claims.

Workers' Compensation Leave:

If you are injured at work, an unpaid leave of absence may be provided until:

1. A physician certifies that you may resume work and that you are able to perform the essential functions of the job, with or without reasonable accommodation;

2. you resign or otherwise indicate that you do not intend to return to your job;
3. the Company no longer is able to hold open your position due to business necessity;
4. you may be eligible for Workers' Compensation insurance during this time, provided you have complied with all of the required procedures, including prompt notification to the Company of your injury.

Unemployment Compensation

The Company contributes the legally-required dollar amount each year to the California Unemployment Insurance Fund on behalf of its' employees.

Vacation

It is the policy of WINALL OIL COMPANY to give vacations with pay to eligible employees. Vacation pay benefits are available to all regular fulltime employees. An employee's first "vacation year" is the completion of continuous fulltime employment with the Company for the 9-month period commencing on the date the employee gained Regular Employee status. Thereafter, a "vacation year" is the completion of continuous fulltime employment with the Company for the (12) twelve-month period commencing on the employee's anniversary date. There are no vacation pay benefits earned by employees who do not complete the introductory period.

Vacation pay is determined by the employee's regularly-scheduled work hours and will be paid the week following their return from vacation.

The allowable vacation time earned for each "vacation year" is based on length of continuous service with the Company, according to the following schedule:

1 through 4 years	1 week
5 through 9 years	2 weeks
10 or more years	3 weeks

The maximum earned vacation benefits any employee may have unused is twice their annual benefit. No additional vacation benefits will be accrued beyond the maximum amount.

All personnel should use all earned vacation time each year. The vacation period will coincide with the regular workweek, Sunday through Saturday. When an employee is eligible for more than one week's vacation, they must be taken as one-week vacations separated by at least two weeks of work. Due to the hardship placed on the other employees at the station, vacations spanning consecutive weeks may be taken only as listed below:

2 consecutive weeks	only once every two years
3 consecutive weeks	only once every three years
4 consecutive weeks	only once every five years
5 or more consecutive weeks	only once every ten years

Only one employee per station may be on vacation at any one time and no two employees will be allowed vacations closer than two weeks apart. All employees must schedule their vacation by written request to the main office at least 30 days prior to the beginning of their vacation. Supervisors and Senior Cashiers should schedule their vacation prior to the beginning of the calendar year and only one Senior Cashier may be on vacation at any one time. No vacations will be authorized for the period from Thanksgiving Day through New Year's Day.

All vacation requests require advance approval from the Personnel Administrator. No other employee has the authority to approve vacation requests.

Upon time of separation of employment- accrued but unused vacation will be paid out at the employee's rate of pay at that time.

Holidays

WINALL OIL COMPANY observes the following holidays:

1. New Years Day
2. Easter Sunday
3. Memorial Day
4. 4th of July
5. Labor Day
6. Thanksgiving Day
7. Christmas

Holiday pay will be paid for the hours worked on these holidays from 12:01 a.m. until 12:00 p.m. (midnight) and is paid at straight time in addition to regular pay earnings. Employees are not eligible to earn holiday pay, if double-coverage or new employee training was provided at the station where they worked during the holiday without Company approval.

Those employees who are scheduled to work, but at the direction of the office do not work; will receive the above holiday pay in place of regular pay.

Pay Periods

The pay period for all employees is Sunday through Saturday. Pay checks for the hours worked during this period will be available at the station on the following Friday. Occasionally, technical problems may disrupt this schedule temporarily. The Supervisor will notify all station employees of any permanent change to this schedule.

Reimbursement

The Company shall reimburse for any direct expense incurred in connection with Company business. Also, if an eligible employee uses his or her car on company business, the number of miles driven shall be reimbursed. Receipts and an expense

account form should be submitted to the Personnel Administrator. Any expense in excess of \$100 requires prior approval by the Personnel Administrator.

Time Off Policy

Employees may occasionally need time off from work to address important matters which are regulated by law. The Company will comply with its legal obligations by providing employees time off, when necessary, to vote, to serve as a witness, to participate in judicial proceedings if they or one of their immediate family members is a victim of a serious crime, to seek relief to help ensure the health, safety or welfare of a domestic violence or sexual assault victim or the child of such a victim, to appear in the school of the employee's child pursuant to the request of the school, or to attend an adult literacy education program, or to perform emergency duty as a volunteer firefighter and/or to attend jury duty. Time off which is provided under this policy will ordinarily be unpaid except for when the law requires that it be compensated or where stated otherwise in this Manual.

All time off requests must be in writing and approved by the Personnel Administrator. All requests must state the exact dates requested for the leave, date of return to work and the reason for the leave in detail. If an extension is later requested, that too must be set forth in writing with the reason for the extension and then submitted to the Personnel Administrator at least three (3) days prior to the leave.

If an employee accepts other employment or fails to return to work on the next regular scheduled workday following the time off, the employee will be considered to have voluntarily terminated employment without notice.

If business conditions require a reduction in force, employees on an approved time off will be considered for layoff and treated as an active employee for purposes of the selection process.

Termination

It must be remembered that the employment relationship is based on the mutual consent of the employee and the Company. Accordingly, either the employee or the Company may terminate the employment relationship, at-will, at any time.

No employee or representative of the Company other than the President has any authority to enter into any agreement for employment for any specified period of time or to make any agreement that is contrary to the employment at-will policy. Further, no modification or alteration of the at-will nature of the employment relationship may be done unless it is done specifically in a written agreement signed by the President and the employee.

Upon termination, all Company-owned property, including vehicles, computers, laptops, phones, pagers, keys, uniforms, identification badges and credit cards, etc., must be returned immediately.

If the employee chooses to terminate, notice to the Company at least two weeks prior to leaving is preferred. Upon receipt of such notice, the Company may, at its sole

discretion, require the employee to cease working anytime thereafter. All employees who terminate are expected to attend an exit interview at the Company offices.

Voluntary Resignation

Voluntary resignation results when an employee voluntarily resigns his or her employment, or fails to report to work for three (3) consecutively scheduled workdays without notice to his/her Supervisor, unless a reasonable excuse is offered and accepted, in writing, by the Supervisor. All Company-owned property, including vehicles, computers, laptops, phones, pagers, keys, uniforms, identification badges and credit cards, *etc.*, must be returned immediately upon termination of employment.

Employee References

Employees should not provide any information regarding current or former employees or volunteers to any outside agency, organization, institution or person who is not employed by the Company. An employee who receives a request for any information concerning a past or present employee should refer the person making the request to the Personnel Administrator without engaging in any on or "off the record" conversation about the individual.

All requests for references must be directed to the Personnel Administrator. By policy, the Company discloses only the dates of employment and the title of the last position held of former employees. If you authorize the disclosure in writing, the Company will also inform prospective employers of the amount of salary or wage you last earned.

Strict observance of this policy is required. Any violation of this policy may result in disciplinary action up to and including possible termination.

Rehire Considerations

Employees who were classified as "eligible for rehire" when they separated from the Company will be considered for re-hire with other applicants if they apply. Their prior record with the Company will be considered. Employees who were classified as "ineligible for rehire" will not be considered for further employment with the Company.

Employees who were terminated due to workplace conduct violations are considered ineligible for rehire. Because such employees are disqualified from future consideration for employment, they should not reapply. If an employee who has been terminated or forced to resign due to a workplace conduct violation submits an application, the employee will not be eligible for rehire.

EMPLOYMENT HANDBOOK & TECHNOLOGY MONITORING ACKNOWLEDGMENT

I certify that I have received and read the Employee Handbook and I understand it is my responsibility to clarify any questions I have regarding the contents. I will familiarize myself promptly with the rules and regulations and will abide and be bound by the rules and regulations now or hereafter in effect.

I understand that my employment is not for a specified or definite term and it is "at will", meaning I may be discharged, or I may resign, at any time, for any reason, with or without cause and with or without prior notice. I understand that nothing in this manual is intended to create a contract of any kind between myself and Winall Oil Co. but instead is intended for my guidance. In addition, I understand that no company representative, other than the President of the company, has the authority to enter into any agreement for employment for any specified period of time, or to make any agreement in writing contrary to the foregoing.

I understand during the course of employment, there is a potential to have contact with many "customers". These "customers" may include, but are not limited to: visitors, vendors, consultants, contractors, service persons, customers, etc. This contact may include, but not be limited to: personal contact, written communication, telephone communications, e-mail communications or telecommunications of any type. The company reserves the right to monitor any type of telecommunications, video surveillance, computer, or Internet activity. If I receive a customer complaint regarding harassment or discrimination, I will report it to a member of management immediately.

I understand that any questions about my job, wages, hours, or other work-related matters should be discussed with my immediate Supervisor or any member of management.

I understand this signed acknowledgment will be placed in my employee personnel file.

Signature: _____ Date _____

Printed Name: _____ Station # _____