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12 *Attorneys for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 JASON CRAIG and MICHAEL ROSS,
 individually and on behalf of all similarly situated
 17 current and former employees,

18 Plaintiffs,

19 v.

20 CORTEVA, INC., E.I. DU PONT DE
 NEMOURS & COMPANY, DOW
 21 AGROSCIENCES LLC, THE DOW CHEMICAL
 CO., DOWDUPONT, INC. n/k/a DUPONT DE
 22 NEMOURS, INC., DOW INC., and DOES 1
 through 10, inclusive,

23 Defendants.
24

Case No. 3:19-cv-07923-JCS

CLASS ACTION

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

DECLARATION OF RANDY RENICK

I, Randy Renick, hereby declare and say:

1. I am a partner at the law firm of Hadsell Stormer Renick & Dai LLP. I am an attorney licensed to practice law in California and counsel of record for Plaintiffs in this action. I have reviewed the documents identified herein and am fully familiar with the facts set forth therein. Based on my own personal knowledge and on my familiarity with the documents, pleadings and files in this action, I can state that the following information is true and accurate.

A. USDC Northern District Procedural Guidance for Class Action Settlements

2. Differences Between the Settlement Class and the Class Proposed in the Operative Complaint. In the Complaint filed on December 3, 2019, Plaintiffs alleged the following class: “All current and former hourly employees of Defendants who worked a 12-hour rotating shift at the chemical manufacturing plant in Pittsburg, California, since December 3, 2015.” Dkt. 1, ¶ 4. The Settlement Class definition is identical to this definition but for the inclusion of the preliminary approval of the Settlement as an end date and the exclusion of those class members who request to exclude themselves (i.e., opt out) from the settlement. See Exhibit 1, Joint Stipulation of Class Action Settlement and Release (hereinafter “Settlement Agreement” or “SA”), ¶ 5.

3. Differences Between the Released Claims and the Claims in the Operative Complaint. For Class Members, the Settlement Agreement releases all claims under state, federal and local law that were or could have been asserted based on the facts and allegations made in the Action, and any amendments thereto, as well as all claims and allegations alleged in the Action: (1) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512; Wage Order 1-2001); (3) Private Attorneys General Act (“PAGA”)(Lab. Code § 2698 et seq.); and (4) Violation of the Unfair Competition Law (“UCL”)(Bus. & Profs. Code §17200 et seq. SA ¶¶ 16, 48-50. For the two Named Plaintiffs, they have executed a general release relinquishing all claims they have or might have had against Defendants resulting from any act committed or omitted prior to the Effective Date of the Settlement and to the extent permitted at law. SA ¶¶ 16, 51-54.

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1 4. Anticipated Recovery, Potential Class Recovery if Plaintiffs Had Fully Prevailed on
2 Each of Their Claims. The settlement provides for the payment of \$3,800,000. There are
3 approximately 207 class members. The gross settlement is \$3,800,000. The net settlement, after the
4 deduction of the California Labor and Workforce Development Agency (“LWDA”) portion of the
5 PAGA penalties, attorney’s fees and costs, and administration costs is estimated to be \$2,770,000. The
6 average net payment to each class member will be approximately \$13,350.

7 5. Based on Plaintiffs’ review of timecard and payroll data of all shifts during the class
8 period, the total recovery amount at the time of the August 17, 2020 mediation was approximately
9 \$8,200,000. The settlement amount of \$3,800,000 is, therefore, approximately 46% of the total
10 amount that Plaintiffs could have recovered on the rest break, meal break, PAGA and UCL claims.

11 6. Plaintiffs believe that the California Supreme Court’s clarification of the off-duty nature
12 of rest breaks in *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016), provided clear
13 guidance regarding an employer’s rest break obligations under California law and confirmed
14 Defendants’ failure to provide operators with lawful rest breaks. Nonetheless, district courts have not
15 consistently interpreted or applied the decision in all circumstances. *See, e.g., Bell v. Home Depot*
16 *U.S.A., Inc.*, No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 55442, at *5 (E.D. Cal. Apr. 10,
17 2017) (concluding Augustus was not applicable because the court did not consider an on-premises rest
18 break policy which does not require employees to remain on call).

19 7. In addition, Plaintiffs believe that the facts here direct that an off-duty meal period
20 should have been provided to the operators since the employer could schedule the work in a manner
21 that allows operators to be relieved by other operators qualified and certified to cover their positions so
22 they could take their meal breaks. While Defendants presented an on-duty meal break agreement to
23 employees, Plaintiffs believe the agreement is not valid to qualify for the “exceedingly narrow” on-
24 duty exception because the facts do not satisfy the requirement that “the nature of the work prevents an
25 employee from being relieved of all duty.” *See Augustus*, 2 Cal. 5th at 266–67. Nonetheless,
26 Defendants would certainly argue that recent legislation and requests for exemptions granted by the
27 California Labor Commissioner’s Office for other companies in the same or similar industries
28 involving safety-sensitive positions indicate that this requirement would be met.

1 8. Plaintiffs alleged claims for violation of Labor Code section 226.7, the UCL, and
2 PAGA. The Settlement provides that \$40,000 will be allocated to penalties under PAGA, with 75% of
3 the PAGA penalties (\$30,000) being paid to the LWDA and 25% of the PAGA penalties (\$10,000)
4 being paid to Settlement Class Members who do not opt out. SA ¶ 38. This amount is reasonable and
5 adequate given that the possible recovery on the PAGA claim is within the Court’s discretion and
6 varies tremendously from thousands to over a million dollars, and that there is “a substantial risk of
7 recovering nothing” or very little. *See, e.g., Vicerol v. Mistras Group, Inc.*, No. 15-cv-02198-EMC,
8 2017 WL 661352, at *3 (N.D. Cal. Feb. 17, 2017). Here Plaintiffs face a substantial risk of recovering
9 nothing on either the PAGA or class claims.

10 9. Proposed Plan of Allocation. The proposed plan of allocation involves cash payment to
11 members of the settlement class according to the number of “workweeks.” “Workweeks” shall mean
12 the number of weeks worked by a Class Member during the Class Period while assigned a 12-hour
13 rotating shift at the Pittsburg, California manufacturing plant. The Settlement Administrator will
14 calculate the number of workweeks, excluding leaves, worked by the Class Members during the Class
15 Period, by dividing the total days employed as a Class Member during the Class Period by seven (7).
16 Partial workweeks will not be counted; however, if a Class Member worked less than one week as a
17 Class Member, such Class Member will be credited with having worked one workweek for purposes of
18 the Settlement. The amount to be paid per workweek to Class Members will be calculated by dividing
19 the Net Settlement Proceeds by the total number of workweeks for all Class Members; any person who
20 opts out of the Settlement is not a Class Member. SA ¶¶ 21, 43(a)-(b). This formula for calculating a
21 Class Member’s payment relies on information readily available from Defendants’ records, and the
22 Administrator is able to apply the formula in a fair and transparent manner. Thus, this method
23 represents the fairest method of distribution to Class Members and does not grant preferential
24 treatment to any Class Members.

25 10. Claim Form. There is no claim form. All Class members who do not opt out will
26 receive their share of the settlement. SA ¶¶ 5, 21, 43(a)-(b).

27 11. Reversion. This is a non-reversionary settlement. SA ¶ 24. In addition to the Gross
28 Settlement Amount, Defendant is obligated to pay its share of payroll taxes, including FICA and

1 FUTA. SA ¶ 23.

2 12. Proposed Settlement Administrator. Bids were submitted upon request by three
3 administrators, CAC Services Group, LLC (“CAC”), EPIQ and AB Data. CAC, located in Eden
4 Prairie, Minnesota, submitted a bid of \$ 7,479.39. EPIQ’s bid was \$38,774, and AB Data’s bid was
5 \$9,953. CAC had the lowest bid of the three. A bid of \$5,729 was submitted later by Simpluris, which
6 was lower than CAC’s bid. Based on my prior positive experience with CAC’s administering the
7 settlement process in similar cases involving the failure to provide breaks to oil refinery workers,
8 however, I had higher confidence in CAC carrying out the administration process efficiently and
9 without delay; therefore, the parties selected CAC (SA ¶ 25).

10 13. I have used many different claims administrators including CAC over the past 20 years.
11 I have found CAC to be responsive to class members and able to provide clear answers and
12 instructions to class members. In addition, CAC has been able to quickly resolve issues as they arise
13 and has fairly resolved class member disputes. CAC’s documentation of claims and communications
14 with class members has been complete and the records have been easily accessible to counsel and the
15 court. Based on my experience, I believe that CAC provides the best services and does so at the lowest
16 cost to class members. Moreover, I know CAC to be an experienced and well-regarded class action
17 settlement administrator.

18 14. CAC will be retained to calculate each class members share, determine the amount of
19 payroll taxes owed by Defendants, set up and maintain a Qualified Settlement Fund (“QSF”) for the
20 Settlement Fund, send out notice to the class members, maintain a website containing the key
21 documents in the case, including the settlement agreement, class notice and motion for attorneys’ fees,
22 to resolve any challenges any party lodges to all or part of a particular claim, and to mail the settlement
23 checks to the authorized claimants. SA ¶¶ 43-47, 61-69, 75-82. The parties agreed that costs of
24 administration are estimated to be no more than \$10,000 and are to be paid out of the settlement fund.
25 SA ¶ 37.

26 15. Methods of Notice and Claims Payment Proposed. Each class member who does not
27 opt out will receive his or her share of the settlement. SA ¶¶ 5, 21, 43(a)-(b). Class members do not
28 need to file a claim form to receive their share. In three similar lawsuits litigated by my firm cases

1 involving the failure to provide breaks to oil refinery workers, *Valliere, et al. v. Tesoro Refining and*
2 *Marketing Company, LLC, et al.*, Case No. 3:17-cv-00123-JST (N.D. Cal.) (“Tesoro”), *Berlanga, et al.*
3 *v. Equilon Enterprises LLC, et al.*, Case No. 4:17-cv-00282-MMC (N.D. Cal.) (“Shell”), and *Buzas v.*
4 *Phillips 66 Company*, Case No. 4:17-cv-00163-YGR (N.D. Cal) (“Phillips 66”), no claim form was
5 required and Class Members who did not opt out were paid their share of the settlement. In Phillips
6 66, three of 677 Class Members opted out of the Settlement with class members receiving checks
7 which averaged \$5,881.20. In Shell, none of the 497 Class members opted out. In Shell, 497 class
8 members received checks which averaged \$11,419. In Tesoro, two of 1560 class members opted out
9 with class members received checks which averaged \$7,239.37. Accordingly, the participation rate in
10 these cases was over 99%. Given the success in those three matters, co-counsel and I determined that
11 no claim form should be required here and all class members who do not opt out should participate in
12 the settlement.

13 16. Lead Class Counsel’s History of Engagements with the Settlement Administrator over
14 the Last Two Years. My firm has engaged CAC Services Group, Inc. four times in the last two years in
15 the following matters: *Valliere, et al. v. Tesoro Refining and Marketing Company, LLC, et al.*, Case
16 No. 3:17-cv-00123-JST (N.D. Cal.); *Berlanga, et al. v. Equilon Enterprises LLC, et al.*, Case No. 4:17-
17 cv-00282-MMC (N.D. Cal.); *Kendig, et al. v. ExxonMobil Oil Corp., et al.*, Case No.: 2:18-cv-9224
18 MWF (C.D. Cal.); and *Gates v. Mission Bay Sports Center*, San Diego Superior Court, Case No. No.:
19 37-2016-00036639. In three of those matters, CAC has served as the settlement administrator. In
20 *Gates*, CAC was retained to provide privacy and class notice.

21 17. Notice. The notice includes the following information: (1) contact information for class
22 counsel to answer questions; (2) the address for a website, maintained by the settlement administrator
23 or class counsel, that has links to the notice, motions for approval and for attorneys' fees and any other
24 important documents in the case; (3) instructions on how to access the case docket via PACER or in
25 person at any of the court’s locations. The notice states the date of the final approval hearing and
26 clearly states that the date may change without further notice to the class. The notice also states that
27 class members should check the settlement website to confirm that the date has not been changed. SA,
28 Exhibit A (hereinafter “Notice”), pp. 2, 3, 7, 8.

1 18. Measures to Increase Notice to Class Members. Plaintiffs were successful in reaching
2 nearly all class members in the Tesoro, Phillips 66, and Shell settlements by holding multiple in-person
3 meetings in Northern and Southern California. During the meetings, new addresses and contact
4 information of former employees were sought and obtained. The workplace in this case, a chemical
5 manufacturing plant facility, is similar to the oil refinery in the other three cases in that the type of
6 work and rotating work schedule sustain a cohesive, longstanding workforce with infrequent turnover.
7 Given the success in the Tesoro, Phillips 66, and Shell settlements, Plaintiffs’ Counsel intends to
8 schedule virtual meetings in April and May 2021. At these virtual meetings, Plaintiffs’ Counsel intends
9 to describe the Settlement Agreement, approval and settlement payment process, and answer questions.

10 19. Notice Distribution Plan. The Plan relies on U.S. Mail. SA ¶ 63(a). The Notice has
11 been customized to include the number of weeks worked during the Class Period (“workweeks”) and
12 anticipated share of settlement for each class member. SA ¶ 63(b); Notice, p. 1. The language
13 suggested by the Northern District Procedural Guidance for inclusion in class notices (i.e., a summary
14 of the proposed settlement; reference to the Administrator’s website and to PACER where the
15 settlement documents will be available, and an advisement that Class members not call the Court), has
16 been included in the proposed Notice. Notice, pp. 7-8.

17 20. Opt-Outs. The Notice instructs class members who wish to opt out of the settlement to
18 send a request, setting forth their name and information needed to be properly identified and to opt out
19 of the settlement, to the Settlement Administrator. Notice, p. 6. The Notice does not require any
20 additional or extraneous information. The Notice advises class members of the deadline, methods to
21 opt out, and the consequences of opting out. *Id.*

22 21. Objections. The Notice instructs class members who wish to object to the settlement to
23 send their written objections only to the court. Notice, pp. 6-7. The Notice makes clear that the court
24 can only approve or deny the settlement and cannot change the terms of the settlement. *Id.* at p. 6. The
25 notice clearly advises class members of the deadline for submission of any objections. *Id.* at pp. 6-7.

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1 22. Attorneys' Fees. Plaintiffs will seek an award of attorneys' fees of 25% of the
2 settlement, or \$950,000. The current lodestar for Plaintiffs' Counsel is set forth in the chart below:

<u>Firm</u>	<u>Hours</u>	<u>Lodestar</u>	<u>Costs</u>
Gilbert & Sackman	64.8	\$48,562.50	\$3,327.05
Hadsell Stormer & Renick & Dai LLP	344.4	\$274,395.00	\$18,165.68
Totals=	409.2	\$322,957.50	\$21,492.73

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4
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6 23. At the time of Final Approval, counsels' total lodestar will be approximately
7 \$362,957.50 and Plaintiffs will seek a multiplier of less than 2.7. Plaintiffs' Counsel will provide a full
8 detailing of the time spent on this case in Plaintiffs' Motion for an Award of Attorneys' Fees and
9 Costs, which will also be posted by the Class Action Administrator on its website to allow class
10 members at least 35 days to review the fee motion before the deadline by which to opt out or object to
11 the Settlement.

12 24. Costs. Plaintiffs' Counsel intends to seek reimbursement for up to \$30,000 in costs
13 reasonably incurred in this action.

14 25. Incentive Awards. The Settlement Agreement provides for additional compensation in
15 an amount not to exceed \$ 5,000 for each of the two Named Plaintiffs in recognition of the risks and
16 burdens they undertook in the litigation, mediation, and settlement of this case. SA ¶ 26. The Service
17 Award is in addition to whatever portion of the settlement proceeds each such individual is otherwise
18 entitled to receive. The enhancements are intended to compensate these individuals fairly in
19 relationship to the rest of the class in light of the additional burdens and risks they have undertaken by
20 assisting in the prosecution of the lawsuit, including their participation in mediation sessions, and their
21 active assistance with the litigation. The named Plaintiffs have also agreed to a general release of all
22 claims they might have against Defendants. SA ¶¶ 26-27. As they will set forth more fully in their
23 declarations to be filed in conjunction with the final approval motion, Plaintiffs invested a great deal of
24 personal time and effort into the investigation, prosecution, and settlement of the case, which included
25 taking on the risks of serving as the named representatives, providing factual information and
26 documentation necessary to the prosecution of this class action, participating in the mediation session,
27 and maintaining contact and working closely with Plaintiffs' Counsel. Such an award is consistent with
28 and even below the incentive award amount approved by Judge Gonzalez Rogers to each of the named

1 plaintiffs in a similar rest break case filed on behalf of oil refinery operators by Plaintiffs' Counsel, in
 2 *Buzas v. Phillips 66 Company*, Case No. 4:17-cv-00163-YGR (March 6, 2018), Dkt. 47. There, the
 3 court approved the amount of \$7,500.

4 26. Cy Pres Awardee. The settlement contemplates that any uncashed checks be awarded *cy*
 5 *pres* to the University of California Hastings Law School Clinical Programs. SA ¶ 79. UC Hastings'
 6 Workers' Rights Clinic provides services to protect workers' rights under state labor law.

7 27. Timeline. The proposed Notice provides that class members have sixty (60) days to
 8 opt out or object to the settlement and thirty-five (35) days after the motion for attorneys' fees and
 9 costs. Notice, pp. 6-8.

10 28. Class Action Fairness Act (CAFA). CAFA Notice is required and the agreement
 11 provides: "Within ten (10) calendar days after the filing of the Motion for Preliminary Approval,
 12 Defendants shall comply with the 'Notification of Settlement' requirements of the Class Action
 13 Fairness Act (28 U.S.C. § 1715)." SA ¶ 60.

14 29. Past Distributions. My firm and Gilbert & Sackman have served as Class Counsel in
 15 two lawsuits representing similar classes of refinery operators on Class for rest break violations. The
 16 data for those cases and this matter is set forth below.

	<u>Buzas v Phillips 66 Company</u>	<u>Berlanga v. Equilon (Shell)</u>	<u>Craig v. Corteva</u>
Total Settlement Fund	\$5,500,000.00	\$7,750,000.00	\$3,800,000.00
Total Number of Class Members	677	497	207
Total Number Sent Notice	677	497	207 (proposed)
Method of Notice	Mail	Mail	Mail (Proposed)
# and % of Claims Submitted	No Claim Required	No Claim Required	No Claim Required (Proposed)
Average Recovery per Member	\$5,881.20	\$11,419.50	\$13,350.00
Amounts Distributed Cy Pres	\$0.00	\$0.00	TBD, if any
Administrative Costs	\$43,424.68	\$35,587.82	\$10,000.00
Attorneys' Fees	\$1,375,000.00	\$1,937,500.00	\$950,000.00
Litigation Costs	\$32,760.29	\$19,971.75	\$30,000.00

26 **B. Procedural Background**

27 30. On December 3, 2019, Plaintiffs filed this action in the Northern District of the United
 28 States District Court of California. Dkt. 1. The complaint asserted, among other things, that Defendants

1 require Plaintiffs and the putative class members as operators at its Pittsburg chemical manufacturing
2 plant to monitor the chemical production process, respond to upsets and critical events, maintain the
3 safe and stable operation of their units, and remain attentive and reachable at all times during their
4 shifts. Thus, Plaintiffs never receive duty-free 10-minute rest breaks or 30-minute meal breaks because
5 they are constantly and continuously responsible for their units and were never relieved of these duties.
6 Dkt. 1 at 4.

7 31. The Complaint alleged the following legal claims: (1) Failure to Authorize and Permit
8 Rest Periods (Lab. Code § 226.7; Wage Order 1-2001); (2) Failure to Provide Meal Periods (Lab.
9 Code §§ 226.7, 512; Wage Order 1-2001); (3) Private Attorneys General Act (“PAGA”)(Lab. Code §
10 2698 et seq.); and (4) Violation of the Unfair Competition Law (“UCL”)(Bus. & Profs. Code §17200
11 et seq. Plaintiffs sought unpaid wages, statutory and civil penalties, restitution, attorneys’ fees and
12 costs, interest, and injunctive and declaratory relief for the time period from December 3, 2015 to the
13 present. *See* Dkt. 1.

14 32. On March 2, 2020, the Court granted the parties’ stipulation to dismiss without
15 prejudice defendants Corteva, Inc., E.I. Du Pont de Nemours & Company, DowDuPont, Inc. n/k/a
16 Dupont de Nemours, Inc., and Dow Inc, leaving The Dow Chemical Company and Dow Agrosiences,
17 LLC remaining as defendants. *See* Dkt. 32. That same day, Defendants The Dow Chemical Company
18 and Dow Agrosiences filed their Answer to the Complaint. Dkt. 33.

19 33. Defendant The Dow Chemical Company has owned and/or operated the Pittsburg plant,
20 located in Contra Costa County, California, since prior to the beginning of the class period, December
21 3, 2015. Following a merger in or about 2017, Defendant Dow AgroSciences, LLC became a legal
22 owner and/or operator of the plant. The plant manufactures products for agricultural operations and
23 pest control services and operates under the brand Corteva.

24 34. The Pittsburg plant operates continuously, 24-hours per day, and seven days per week.
25 The plant processes hazardous and flammable chemicals that must be constantly monitored in order to
26 ensure safety of those on-site and in the nearby communities. The chemicals must be maintained in a
27 stable state to prevent toxic spills and fires, which requires, among other things, constant monitoring
28 and adjusting of temperatures and pressures, prevention of reactive chemical issues, and monitoring

1 and prevention of chemical leaks.

2 35. Certain employees, principally operators, who are scheduled to work 12-hour shifts
3 (“12-hour shift employees”), are required to operate and/or monitor the production process at all times.
4 12-hour shift employees are required to monitor their units, respond to upsets and critical events, and
5 maintain the safe and stable operation of the units. There are eight units, seven of which operate by
6 sending and receiving materials to other units, processing materials, and shipping out product. The
7 remaining unit provides security and emergency services. Approximately four to eight operators work
8 a given day or night 12-hour shift depending on the size of the unit. An operator must be qualified and
9 certified for his or her position in a unit.

10 36. Because the chemical production process requires non-stop monitoring, Plaintiffs and
11 the other operators work continuous 12-hour shifts on a rotating shift schedule. Their duties include:
12 monitoring the chemical production process, responding to upsets and critical events, maintaining safe
13 and stable operation of their units, being attentive, being reachable during work hours, responding to
14 audible alarms/pages on the intercom system/communications on handheld radios, and being in contact
15 with their supervisors and other employees in their unit during work hours.

16 37. Plaintiffs contend that they and the other operators are not relieved of their duties during
17 the entirety of their 12-hour shifts. They are constantly and continuously responsible for their unit,
18 which includes monitoring the work in their unit, responding to all work-related calls, pages, radio
19 communications and alarms, receiving and taking on continuous work demands, assisting maintenance
20 workers and contractors with projects, and being in communication with supervisors and other
21 employees. As a result, Plaintiffs and the other operators do not receive off-duty 10-minute rest breaks
22 or 30-minute off-duty meal breaks during their shifts.

23 38. Plaintiffs further contend that throughout the class period, Plaintiffs and the other
24 operators have neither been scheduled for 10-minute rest breaks nor provided designated relief in order
25 to take such breaks. Similarly, they have neither been scheduled for 30-minute meal breaks nor
26 provided designated relief in order to take such breaks. Defendants do not have a policy, practice, or
27 system for providing relief to Plaintiffs and the other putative class members to allow them to take off-
28 duty rest or meal breaks.

1 39. Defendants contend that they had a valid rest and meal break policies throughout the
2 class period. Plaintiffs contend that Operators were required to be on duty their entire shift as there
3 was no process or system for providing relief for rest and meal breaks.

4 40. Plaintiffs. Plaintiffs Jason Craig and Michael Ross are Operators who work 12-hour
5 shifts and have worked at the plant for over 15 and 13 years, respectively.

6 41. Discovery and Mediation. On February 28, 2020, the parties filed their Joint Rule 26(f)
7 Report and Case Management Conference Statement, identifying, among other things, their
8 disagreement over whether discovery should be phased and the categories of discovery that should be
9 produced. Dkt. 31 at 6. On March 6, 2020, the Court ordered no bifurcation of discovery and the
10 production by Defendants on an anonymized basis, payroll records and timecards, and policies and
11 procedures. Dkt. 40. On May 12, 2020, June 22, 2020, and July 13, 2020, Defendants produced payroll
12 records and timecards, and policies and procedures, pursuant to the Court's order.

13 42. On July 17, 2020, and July 27, 2020, Plaintiffs served their opening round of discovery
14 upon Defendants The Dow Chemical Company and Dow AgroSciences LLC, which included Special
15 Interrogatories and Requests for Production of Documents. Through this discovery, Plaintiffs primarily
16 sought contact information for the putative Class during the relevant Class Period, as well as their job
17 titles and employee numbers, and documents relevant to the Plaintiffs' claims for rest break and meal
18 break violations, and defenses thereto, and the Named Plaintiffs' adequacy as class representatives.

19 43. Plaintiffs conducted an extensive investigation of Defendants' wage and hour practices
20 at the Pittsburgh chemical manufacturing plant, particularly as to the provision of meal and rest breaks,
21 both before and after filing suit on December 3, 2019. In May 2020, the parties agreed to attend a
22 mediation with Steve Pearl, a well-respected mediator located in Los Angeles with expertise in wage
23 and hour law, on August 17, 2020. Meanwhile, Defendants produced, and Plaintiffs reviewed over a
24 thousand pages of documents in PDF and Excel, including Defendants' payroll data and time records
25 for the class members, shift schedules, policies and related training materials, related correspondence,
26 and personnel files of the Named Plaintiffs. With sufficient investigation, research, written discovery,
27 class member interviews on relevant topics such as job assignments, work duties, and responsibilities,
28 policies and practices, particularly regarding meal and rest breaks, and document analysis to allow

1 Plaintiffs to evaluate Defendants' liability and damage exposure for the Class Period, the parties
2 moved forward with mediation with Steve Pearl on April 17, 2020. After a full-day of negotiations,
3 the parties were able to reach an agreement.

4 44. The Agreement Was Reached After Extensive Arms-Length Negotiations. Settlement
5 negotiations in this case were, at all times, were adversarial, non-collusive, in good faith, and at arms'
6 length. Class Counsel sought and obtained input from the Named Plaintiffs in this case regarding the
7 terms of a proposed settlement.

8 45. Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of
9 Further Litigation. While Plaintiffs firmly believe in the strength of their claims, Defendants' defenses
10 create a possibility the claims might not be certified or may fail on the merits. Plaintiffs' Counsel
11 considered, among other issues, the risks of an adverse class certification and/or summary judgment
12 ruling and trial and other normal perils of litigation that affect the value of the claims in reaching the
13 proposed Settlement. Moreover, in our experience, with class claims for violation of wage and hour
14 laws, litigation can extend for many years due to the many hurdles facing plaintiffs in class actions. It
15 was also likely that the action would be fiercely litigated by the Parties; accordingly, many more years
16 of litigation, which inevitably involve significant additional expenses, were a real possibility. By
17 contrast, the Settlement will yield a prompt, certain, and substantial recovery for the Class, without
18 need for additional time or judicial resources. Given the risks inherent in litigation and the defenses
19 asserted, this Settlement is fair, adequate, and reasonable, and in the best interests of the class.

20 46. Extent of Discovery and Stage of the Proceedings. During the action's pendency, Class
21 Counsel thoroughly investigated and researched the claims, potential defenses, and the developing
22 body of law relating to the interpretation of the Wage Orders, an employer's duty to authorize and
23 permit rest breaks, and the requirements for the "on-duty" meal break exception. Class Counsel
24 thoroughly engaged in the discovery process and made use of documents and data provided by
25 Defendants through formal and informal discovery to assess Defendants' potential liability and the
26 likelihood the Court could grant class certification. Therefore, the parties have engaged in sufficient
27 investigation and discovery to support the Settlement.

28 ///

1 47. Experience of Counsel. My firm, Hadsell Stormer Renick & Dai LLP, and Gilbert &
2 Sackman, A Law Corporation, are highly experienced class counsel, having handled dozens of similar
3 wage and hour class actions, as well as other types of class and complex litigation. My firm's
4 qualifications are discussed in detail below, and the qualifications of Gilbert & Sackman, A Law
5 Corporation, are set forth separately in the Declaration of Joshua Young. Class Counsel, who have
6 many years of experience in class action and wage and hour law, recommend the proposed settlement
7 and believe that it is in the best interests of the Settlement Class.

8 48. My firm, Hadsell Stormer Renick & Dai LLP, has substantial litigation experience in
9 wage and hour class actions. I am fully familiar with the legal and factual issues in this case, having
10 handled dozens of wage and hour class actions as well as other types of class action and complex
11 litigation. I specialize in complex cases and class action litigation, including wage and hour, antitrust,
12 employment, civil rights, and public interest litigation. I am a graduate of Southwestern School of
13 Law and have been specializing in complex litigation since 1995, first with Hadsell & Stormer, Inc.,
14 and from January 1, 2000 until December 31, 2007, with the Law Offices of Randy Renick. Since
15 January 1, 2008, I have been a partner with Hadsell Stormer Keeny Richardson & Renick, LLP, and its
16 successors Hadsell Stormer Richardson & Renick, LLP and Hadsell Stormer & Renick, LLP. I was
17 selected as a "Rising Star" by the Los Angeles Magazine and Law & Politics Magazine for 2004 and
18 have also been selected as a "Super Lawyer" by Los Angeles Magazine and Law & Politics Magazine
19 for the last fourteen (14) years. I have been one of only a few plaintiff-side employment lawyers
20 selected for inclusion on the "Best Lawyers in America" list each year since 2007. My C.V. is
21 attached hereto as Exhibit 2.

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

27 50. Cornelia Dai is a partner at Hadsell Stormer Renick & Dai LLP, and was formerly an
28 associate with Hadsell & Stormer, Inc. Over the last 15 years, in particular, she has litigated numerous

1 wage and hour class actions, including *Wang v. Chinese Daily News*, a class action in federal court
2 involving violations of overtime and meal and rest break laws that ultimately settled after more than 10
3 years of litigation. Ms. Dai was also one of the plaintiffs' counsel in *South Central Farmers Feeding*
4 *Families v. City of Los Angeles*, a case brought on behalf of over 300 low-income families in a struggle
5 to preserve land for a much-needed urban community garden in South Los Angeles. In addition, she
6 was one of the Doe plaintiffs' counsel in the state litigation of the international human rights case *Doe*
7 *v. Unocal*.

8 51. Ms. Dai has been named to the Southern California Super Lawyers® list as a Rising
9 Star or Super Lawyer each year since 2005, and she has been listed in The Best Lawyers in America
10 every year since 2012. In 2017 and 2019, she was named Lawyer of the Year in Southern California by
11 Best Lawyers for Litigation - Labor and Employment (Pasadena). In 2018, she was named Lawyer of
12 the Year in Southern California by Best Lawyers for Employment Law – Individuals (Pasadena). In
13 2011, she was selected as one of the Top 75 Labor & Employment Lawyers in California by the Daily
14 Journal. Ms. Dai was also featured in the July 2007 issue of Southern California Super Lawyers® -
15 Rising Stars in an article entitled “For Abusive Employers, The Dai Has Been Cast.” Ms. Dai serves
16 on the Board of the California Employment Lawyers Association, the Executive Committee of the Los
17 Angeles County Bar Association’s Labor and Employment Law section, and the Board of the Impact
18 Fund. Ms. Dai is frequently asked to speak on employment and wage and hour topics by legal
19 organizations and law schools. Ms. Dai is a 1995 graduate of U.C. Berkeley, and she earned her Juris
20 Doctorate from U.S.C. Law School in 1999.

21 52. In addition to extensive experience litigating wage and hour matters, Hadsell Stormer
22 Renick & Dai LLP and Gilbert & Sackman have substantial knowledge and background representing
23 workers in cases involving the failure to provide breaks to oil refinery workers who similarly work in
24 rotating shifts at facilities that operate continuously and must be constantly monitored in order to
25 ensure safety. Our firms have represented oil refinery workers in six matters, including: *USW v.*
26 *ConocoPhillips Company*, Case No. CV 08-2068 PSG (N.D. Cal.)(class settlement approved); *Buzas v.*
27 *Phillips 66 Company*, Case No. 4:17-cv-00163-YGR (N.D. Cal.)(class settlement approved); *Berlanga*
28 *v. Equilon Enterprises LLC dba Shell Oil Products US*, Case No. 17-cv-00282-MMC (N.D. Cal.)(class

1 settlement approved); *Valliere v. Tesoro Refining and Marketing Company LLC*, Case No. 3:17-cv-
2 00123-JST (N.D. Cal.)((class settlement approved); *Kendig v. ExxonMobil Oil Corp.*, Case No. 2:18-
3 cv-9224-MWF (C.D. Cal.)((class settlement approved); and *Clack v. Chevron Corporation*, Los
4 Angeles Superior Court, Case No. BC 649514 (class settlement approved).

5
6 I declare under penalty of perjury pursuant to the laws of the United States and the State of
7 California that the foregoing is true and correct and that this declaration was executed on March 19,
8 2021, at Provo, Utah.

9 /s/ Randy Renick

10 Randy Renick