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11
 12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**
 14

15 DAVID BERLANGA, BRANDON
 EHRESMAN, CHARLES GAETH,
 16 MICHAEL GONZALEZ, JOHN
 LANGLITZ, and CHRISTOPHER
 17 PALACIO, individually and on behalf of all
 similarly situated current and former
 18 employees,

19 Plaintiffs,

20 v.

21 EQUILON ENTERPRISES LLC dba
 SHELL OIL PRODUCTS US, CRI U.S. LP,
 22 CRI CATALYST COMPANY LP, and
 SHELL PIPELINE COMPANY LP, and
 23 DOES 1 through 10, inclusive,
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Case No. 17-cv-00282-MMC

CLASS ACTION

**ORDER GRANTING FINAL APPROVAL OF
 CLASS ACTION SETTLEMENT AGREEMENT
 AND PLAN OF ALLOCATION**

DATE: January 18, 2019
 TIME: 9:00 a.m.
 PLACE: San Francisco Courthouse,
 Courtroom 7, 19th Floor

Honorable Maxine M. Chesney

1 **ORDER**

2 Plaintiffs' Motion for Final Approval of Class Action came on for hearing on January 18, 2019.
3 The Court, having considered whether to order final approval of the settlement of the above-captioned
4 action pursuant to the Joint Stipulation of Class Action Settlement and Release ("Settlement"), having
5 read and considered all of the papers and argument of the parties and their counsel, having granted
6 preliminary approval on September 21, 2018, having directed that notice be given to all Class
7 Members of preliminary approval of the Settlement and the final approval hearing and the right to be
8 excluded from the Settlement, and having received no objections to the terms of the Settlement, and
9 good cause appearing,

10 **IT IS HEREBY ORDERED AS FOLLOWS:**

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

13 2. The Court finds that certification of the following Class is appropriate:

14 Current and former employees of any Defendant or any affiliate of a Defendant
15 who worked as Operators at one or more of the following facilities: (a) Shell
16 Pipeline Company LP's terminal facility in Carson, California (the "Carson
17 Terminal facility"); (b) Equilon Enterprises LLC dba Shell Oil Products US's oil
18 refinery in Martinez, California (the "Martinez Refinery"); (c) CRI Catalyst
19 Company LP's catalyst production facilities in Martinez and Pittsburg, California
20 ("Criterion Catalyst plants"), during the period beginning January 19, 2013 and
21 ending September 21, 2018.

22 3. The Court hereby finds that the Notice of Settlement, as mailed to all Class Members
23 on October 22, 2018, fairly and adequately described the proposed Settlement, the manner in which
24 Class Members could object to or participate in the Settlement, and the manner in which Class
25 Members could opt out of the Settlement Class; was the best notice practicable under the
26 circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with the
27 Federal Rules of Civil Procedure, due process, and all other applicable laws.

28 4. The Court further finds that a full and fair opportunity has been afforded to Class
Members to participate in the proceedings convened to determine whether the proposed Settlement
should be given final approval. Accordingly, the Court hereby determines that all Class Members who

1 did not file a timely and proper request to be excluded from the Settlement are bound by this Order of
2 Final Approval and the Judgment.

3 5. The Court hereby finds that the Settlement, including the Settlement Amount, is fair,
4 reasonable, and adequate as to the Class, Plaintiffs and Defendants, and is the product of good faith,
5 arms-length negotiations between the Parties, and further, that the Settlement is consistent with public
6 policy, and fully complies with all applicable provisions of law. The Court makes this finding based
7 on a weighing of the strength of Plaintiffs' claims and Defendants' defenses with the risk, expense,
8 complexity, and duration of further litigation.

9 6. The Court also finds that the Settlement is the result of non-collusive arms-length
10 negotiations between experienced counsel representing the interests of the Class and Defendants, after
11 thorough factual and legal investigation. In granting final approval of the Settlement, the Court has
12 considered the nature of the claims, the amounts paid in settlement, the allocation of settlement
13 proceeds among the Class Members, and the fact that the Settlement represents a compromise of the
14 Parties' respective positions rather than the result of a finding of liability after appeal. Additionally,
15 the Court finds that the terms of the Settlement have no obvious deficiencies and do not improperly
16 grant preferential treatment to any individual Class Member.

17 7. The Court further finds that the response of the Class to the Settlement supports final
18 approval of the Settlement. Specifically, one Class Member has objected to the Settlement, and none
19 have opted out. Accordingly, pursuant to Rule 23(e), the Court finds that the terms of the Settlement
20 are fair, reasonable, and adequate to the Class and to each Class Member. *Staton v. Boeing*, 327 F.3d
21 938, 960 (9th Cir. 2003).

22 8. The Court further finds that the Objection of Kim L. Kevan fails to present any legal or
23 factual argument that the Agreement is not fair, reasonable and adequate. Accordingly, the objection
24 is overruled.

25 9. The Court also hereby finds that Plaintiffs have satisfied the standards and applicable
26 requirements for final approval of this class action settlement under Fed. R. Civ. P. 23, for the reasons
27 stated in the Motion for Final Approval.

1 10. The Court orders the Parties to implement, and comply with, the terms of the
2 Settlement.

3 11. The Court approves the Plan of Allocation as set forth in the Settlement Agreement.

4 12. The Court approves the settlement of the Released Claims as defined in the Settlement.
5 As of the Effective Date of the Settlement, as defined in the Settlement, all of the Released Claims of
6 each Class Member who did not timely opt out, as well as the Class Representatives' Released Claims,
7 are and shall be deemed to be conclusively released as against Defendants. Except as to such rights or
8 claims that may be created by the Settlement, all Class Members as of the date of the Order of Final
9 Approval and Judgment who did not timely opt out are hereby forever barred and enjoined from
10 commencing or prosecuting any of the Released Claims, either directly, representatively or in any
11 other capacity, against Defendants.

12 13. Class Counsel, Hadsell Stormer & Renick, LLP and Gilbert & Sackman, shall continue
13 to serve as Class Counsel and shall oversee and perform the duties necessary to effectuate the
14 settlement, including the submission to the Court of the Claims Administrator's final distribution
15 report, as well as all papers necessary to allow this court to evaluate the claims process and order
16 distribution of the settlement fund to class members.

17 14. Plaintiffs' Counsel is awarded attorney's fees in the amount of \$1,937,500. The
18 forgoing award is 25% of the settlement fund of \$7,750,000. Plaintiff's Counsel is further awarded
19 reimbursement of reasonable costs and expenses necessarily incurred in order to advance the litigation
20 for the benefit the class in this matter in the amount of \$19,971.25. These awards shall be paid from
21 the Settlement Fund.

22 15. In determining an award of attorney's fees where the class action settlement establishes
23 a common fund for the benefit of the class out of which the attorney's fee is awarded, courts have
24 adopted the percentage of fee calculation. *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 493-
25 94 (2016). The Court finds that a fee award at the Ninth Circuit 25% of the fund benchmark is
26 reasonable in light of the factors to be considered, including: (1) the results achieved; (2) the risk of
27 litigation; (3) the skill required; (4) the quality of work performed; (5) the contingent nature of the fee
28 and the financial burden; and (6) the awards made in similar cases. *See Barbosa v. Cargill Meat*

1 *Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013)(citing *Vizcaino v. Microsoft Corp.*, 290 F.3d
2 1043, 1047 (9th Cir. 2002).

3 16. In addition, the Court finds the fee award reasonable under the lodestar cross-check
4 method. *Laffitte*, 1 Cal. 5th at. at 506; *Vizcaino*, 290 F.3d at 1043. In so finding, the Court has
5 considered a variety of factors, including “the quality of the representation, the novelty and complexity
6 of the issues, the results obtained, and the contingent risk presented.” *Lealao v. Beneficial Cal., Inc.*,
7 82 Cal. App. 4th 19, 26 (2000); see *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

8 17. The Class Representatives are each awarded an incentive, as follows: (1) Christopher
9 Palacio is awarded \$7500; (2) David Berlanga is awarded \$6000; and (3) Brandon Ehresman, Charles
10 Gaeth, Michael Gonzalez, and John Langlitz are each awarded \$5000. These payments shall be made
11 from the Settlement Fund and are in addition to the Class Representatives' respective shares as Class
12 Members.

13 18. Plaintiffs shall also set aside \$35,587.82 from the Settlement Fund to be paid to the court-
14 appointed Claims Administrator, CAC Services Group, LLC.

15 19. The Court allocates fifty thousand (\$50,000) of the Settlement Fund to penalties under
16 the Private Attorneys General Act (“PAGA”), with seventy-five percent (75%) of the PAGA penalties
17 thirty-seven thousand five hundred (\$37,500) to be paid to the California Labor and Workforce
18 Development Agency (“LWDA”) and twenty-five percent (25%) of the PAGA penalties twelve
19 thousand five hundred (\$12,500) being paid to Settlement Class Members who do not opt out.

20 20. Defendants shall have no further liability for costs, expenses, interest, attorneys’ fees,
21 or for any other charge, expense, or liability, in connection with the above-captioned action except as
22 provided in the Settlement.

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1 21. Without affecting the finality of the Order of Final Approval or the Judgment, the Court
2 retains exclusive and continuing jurisdiction over the Action, Plaintiffs, all Class Members and
3 Defendants for purposes of supervising, implementing, interpreting and enforcing the Order of Final
4 Approval and Judgment and the Settlement. Nothing in the Order of Final Approval or Judgment
5 precludes any action to enforce the Parties' obligations under the Settlement or under this Order of
6 Final Approval.

7 **IT IS SO ORDERED.**

8
9 DATED: January 22, 2019



HONORABLE MAXINE M. CHESNEY
United States District Judge