

JAY SMITH (CA Bar No. 166105)
(Email: js@gslaw.org)
JOSHUA F. YOUNG (CA Bar No. 232995)
(Email: jyoung@gslaw.org)
EMILY OLIVENCIA-AUDET (CA Bar No. 342116)
(Email: eolivencia@gslaw.org)
GILBERT & SACKMAN
A LAW CORPORATION
800 Wilshire Boulevard, Suite 1410
Los Angeles, CA 90017
Telephone: (323) 938-3000
Fax: (323) 937-9139

*Attorneys for Plaintiffs Louis Butel
and Pam Mocherniak*

[Additional counsel listed on the next page]

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

LOUIS BUTEL and PAM MOCHERNIAK,
individually and on behalf of all similarly
situated current and former employees,

Plaintiffs,

v.

MARATHON REFINING AND
LOGISTICS SERVICES LLC, and DOES 1
through 10, inclusive,

Defendant.

Case No.: 2:23-cv-04547-DSF-JPR

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

1 RANDY RENICK (CA Bar No. 179652)
(Email: rrr@hadsellstormer.com)
2 CORNELIA DAI (CA Bar No. 207435)
(Email: cdai@hadsellstormer.com)
3 SARAH CAYER (CA Bar No. 334166)
(Email: scayer@hadsellstormer.com)
4 **HADSELL STORMER RENICK & DAI LLP**
128 North Fair Oaks Avenue, Suite 204
5 Pasadena, California 91103-3645
Telephone: (626) 585-9600
6 Fax: (626) 577-7079

7 *Attorneys for Plaintiffs Louis Butel*
and Pam Mocherniak

8 **GIBSON, DUNN & CRUTCHER LLP**
9 CATHERINE A. CONWAY, SBN 98366
CConway@gibsondunn.com
10 JESSE A. CRIPPS, SBN 222285
JCripps@gibsondunn.com
11 BRADLEY J. HAMBURGER, SBN 266916
BHamburger@gibsondunn.com
12 TIFFANY PHAN, SBN 292266
TPhan@gibsondunn.com
13 MADELEINE F. MCKENNA, SBN 316088
MMcKenna@gibsondunn.com
14 333 South Grand Avenue
Los Angeles, California 90071
15 Telephone: 213.229.7000
Facsimile: 213.229.7520

16 *Attorneys for Defendant*
17 *MARATHON REFINING LOGISTICS*
SERVICES LLC (erroneously sued as
18 *MARATHON REFINING AND*
LOGISTICS SERVICES LLC)
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Plaintiffs Louis Butel and Pamela Mocherniak, individually and on behalf of all similarly situated current and former Operators and Lab Workers (collectively “Plaintiffs”), on the one hand, and Defendant Marathon Refining Logistics Services LLC (“Defendant” or “Marathon”) on the other (collectively, Plaintiffs and Marathon shall be referred to as the “Parties”), subject to the terms and conditions hereof and final approval by the Court, hereby enter into this Joint Stipulation of Class Action Settlement and Release.¹

IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs, for themselves and the Class, and Marathon, by and through their respective attorneys, that subject to final Court approval, the claims alleged in this Class Action will be finally and fully and forever compromised, released, resolved, discharged, and settled, and will be dismissed with prejudice as to Marathon, subject to the terms and conditions set forth in this Agreement.

I. RECITALS

A. Background and Procedural History

On May 4, 2023, Plaintiffs Louis Butel and Pamela Mocherniak filed this action in Los Angeles County Superior Court. Marathon removed the case to federal court on June 9, 2023, and the case was assigned to the Honorable Dale S. Fischer. Plaintiffs filed a First Amended Complaint (“FAC”) on July 10, 2023. Marathon filed a Rule 12(b)(6) motion to dismiss the FAC on July 24, 2023. The Court granted Marathon’s motion in part and denied it in part, holding that Plaintiffs failed to state a claim for travel time pay and under the California Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), but that Plaintiffs had stated a claim for reporting time pay and for their derivative claims under Labor Code sections 200-203 and 226 and the California Private Attorneys General Act of 2004 (Lab. Code § 2698 *et seq.*). Plaintiffs filed the operative Second Amended Class Action Complaint for Damages and Injunctive Relief (“SAC”) on September 29, 2023. On May 16, 2024, the Court dismissed Plaintiffs’ travel time and derivative claims pleaded in the SAC without leave to amend.

On June 3, 2024, the Court granted Plaintiffs’ motion for class certification, certifying a class of “[a]ll current and former operators of Marathon (or any of its affiliates or successors) who worked

¹ See “II. Definitions” below.

1 at the Los Angeles Refinery, and who have been assigned primary relief shifts, since November 25,
2 2019.” Marathon subsequently filed a Petition for Permission to Appeal under Rule 23(f) from the
3 grant of class certification. The Ninth Circuit denied Marathon’s Petition on September 3, 2024. On
4 September 9, 2024, the Court entered an order granting the Parties’ stipulation that Plaintiffs’ reporting
5 time, waiting time, and wage statement claims before May 4, 2020, as well as Plaintiffs’ PAGA and
6 wage statement claims before May 4, 2022, were outside the statute of limitations period. Notice has
7 been distributed to the class.

8 The Parties have engaged in extensive discovery, there is a well-developed factual record, and
9 the Parties have engaged in substantive briefing. Marathon has produced extensive payroll and
10 scheduling data. Marathon has also deposed both named plaintiffs, nine Settlement Class Members,
11 and Plaintiffs’ expert, Kirk Marangi. Plaintiffs have deposed Marathon’s Rule 30(b)(6) witness,
12 Yolanda James, and Marathon’s rebuttal expert, Valentin Estevez.

13 The Parties participated in arm’s-length and informed negotiations at a mediation conducted by
14 the Honorable Carla M. Woehrle of ADR Services on October 22, 2024. At the conclusion of the
15 mediation, Judge Carla Woehrle made a Mediator’s Proposal of Settlement. The Proposal was accepted
16 by all Parties on November 2, 2024, except that, as a condition precedent to any valid long-form
17 settlement agreement addressing the class claims and monetary payment, Marathon and applicable
18 unions must first execute a full and complete written agreement that addresses to Marathon’s
19 satisfaction primary relief practices on a going-forward basis (including modifications of any
20 applicable collective bargaining agreements or related agreements as necessary). If this condition
21 precedent is not met, the long-form settlement agreement addressing the class claims and any monetary
22 payment will be void.

23 The Parties and their counsel are sufficiently familiar with the facts of this case and the
24 applicable laws to make an informed judgment as to the fairness of the Settlement, the respective
25 strengths, and weaknesses of the class Plaintiffs’ claims, and the risks of proceeding in litigation. The
26 Parties are represented by competent counsel and have had the opportunity to consult with counsel
27 prior to the signing this Agreement.
28

1 **B. Parties' Statements and Recognition of the Benefits of the Settlement**

2 This is a wage and hour class action brought by Plaintiffs Louis Butel and Pamela Mocherniak
3 on behalf of themselves and a certified class of current and former operators against Marathon Refining
4 Logistics Services LLC. The case centers on Marathon's alleged failure to pay Settlement Class
5 Members for "Primary Relief shifts," a two-hour period during which Settlement Class Members were
6 scheduled for but did not actually report to work.

7 Settlement Class Members seek relief for Marathon's alleged failure to pay reporting time pay,
8 pay all wages earned at termination, and to furnish timely and accurate wage statements, pursuant to
9 California Labor Code §§ 200-203, 218, 226, and 226.3 and California Industrial Welfare Commission
10 Wage Order No. 1-2001 on behalf of the following proposed settlement class:

11 All current and former operators and lab workers of Marathon (or any of its affiliates or
12 successors) who worked at the Los Angeles Refinery, and who have been assigned primary
13 relief shifts, since May 4, 2020 through Preliminary Approval.

14 Settlement Class Members also seek civil penalties on behalf of all aggrieved employees under
15 California's Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA").
16 There are approximately 700 Settlement Class Members.

17 Class Counsel has investigated the facts relating to the claims alleged in the Action and also
18 has analyzed all defenses. Class Counsel interviewed certain Settlement Class Members regarding the
19 claims in the Action and has examined Marathon's compliance with its policies, procedures, and
20 practices. Class Counsel is also informed of Marathon's practices and procedures from disclosures
21 made in prior litigation and pleadings from other litigation. The Parties have engaged in extensive
22 negotiations and the exchange of data, documents, and information in this litigation. Based on a
23 thorough investigation and evaluation of this case, Class Counsel and Plaintiffs have concluded that
24 the proposed Settlement with Marathon for the consideration and on the terms set forth in this
25 Settlement Agreement, is fair, reasonable, and adequate and is in the best interest of the Class in light
26 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
27 Marathon, and numerous potential appellate issues.

28 Marathon denies each and all of the claims alleged by Plaintiffs in the Action. Marathon
expressly denies any and all charges of wrongdoing or liability arising out of any of the acts, omissions,

1 facts, matters, transactions, or occurrences alleged, or that could have been alleged, in the Action.
2 Nevertheless, Marathon has taken into account the uncertainty and risks inherent in any litigation and
3 has also concluded that further defense of the Action would be protracted and expensive. Marathon,
4 therefore, has determined that it is desirable and beneficial that the Action be settled in the manner and
5 upon the terms and conditions set forth in this Settlement Agreement. Neither this Settlement
6 Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this
7 Settlement Agreement, may be construed as, or may be used as an admission, concession, or indication
8 by or against Marathon of any fault, wrongdoing, or liability whatsoever.

9 This Agreement is contingent upon approval of class certification under Federal Rule of Civil
10 Procedure 23 for settlement purposes only. Marathon expressly reserves its rights to challenge the
11 propriety of class certification or representative treatment for any other purpose should the Court decide
12 to not approve this Settlement.

13 II. DEFINITIONS

14 As used in this Agreement, the following terms shall have the meanings specified below:

15 1. **“Agreement,” “Settlement,” or “Settlement Agreement”** means this Joint Stipulation
16 of Class Action Settlement and Release and all actions taken pursuant to and in furtherance of this
17 Agreement.

18 2. **“Administrator”** means AB Data, or such other third-party administrator as may be
19 approved by the Court, which shall be responsible for administering the Settlement pursuant to the
20 terms of the Agreement, the Notice Packet, the Preliminary Approval Order, and the Judgment.

21 3. **“Administration Costs”** means the amount approved by the Court to be paid to the
22 Administrator to perform the Administration Duties described in this Agreement. The Administration
23 Costs are estimated to be no more than \$25,000. The Administration Costs shall be paid out of the
24 Gross Settlement Amount.

25 4. **“Attorneys’ Fees and Costs Payment”** shall mean the amount of Attorneys’ Fees and
26 out-of-pocket expenses incurred to prosecute the Class Action to be paid to Class Counsel, as approved
27 by the Court.

1 5. **“Class Action” or “Action”** shall mean the above-captioned class action: *Louis Butel*
2 *and Pam Mocherniak, individually and on behalf of all similarly situated current and former*
3 *employees, Plaintiffs, v. Marathon Refining and Logistics Services LLC, and Does 1 through 10,*
4 *inclusive, Case No.: 2:23-cv-04547-DSF-JPR, United States District Court for the Central District.*

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

8 7. **“Class List and Data”** shall mean the information and data Marathon shall provide to
9 the Administrator following Preliminary Approval for purposes of providing notice of the Settlement
10 to the Class. The Class List and Data shall be prepared in a readable Microsoft Excel Spreadsheet that
11 shall include for each Settlement Class Member, from Marathon’s business records: (1) full name, (2)
12 most recently known mailing address, (3) email address (to the extent available), (4) Social Security
13 number, (5) date of termination, if any, and (6) the number of Work Weeks worked during the Class
14 Period as determined by Marathon’s business records.

15 8. **“Class Period”** shall mean the period beginning on May 4, 2020, and ending on the date
16 the Court grants Preliminary Approval of the Agreement.

17 9. **“Class Representatives”** shall mean Louis Butel and Pamela Mocherniak.

18 10. **“PAGA Class Period”** shall mean the period beginning on May 4, 2022, and ending on
19 the date the Court grants Preliminary Approval of the Agreement.

20 11. **“Complaint”** refers to any and all complaints filed in the Action.

21 12. **“Court”** refers to the judge presiding over this Action in the United States District Court
22 for the Central District of California.

23 13. **“Defense Counsel”** refers to the attorneys representing Marathon: Catherine A.
24 Conway, Jesse A. Cripps, Bradley J. Hamburger, Tiffany Phan, Madeleine F. McKenna, and Katie
25 Geary of Gibson, Dunn & Crutcher LLP.

26 14. **“Effective Date”** shall mean seven (7) calendar days after all of the following conditions
27 have been satisfied:

28 a. Execution of this Settlement Agreement by all Parties, Class Counsel, and Defense

Counsel;

- b. Submission of this Settlement Agreement to the Court, along with appropriate motions and requests for approval of this Settlement Agreement by the Court;
- c. Preliminary Approval (as defined below) of the Settlement Agreement by the Court;
- d. Mailing of the Class Notice (as defined below) to the Settlement Class Members (as defined below) in accordance with the Court's Preliminary Approval Order (as defined below);
- e. Expiration of the opt-out date as defined in the Class Notice (as defined below);
- f. Three percent (3%) or fewer of the Settlement Class Members (as defined below) submit timely and valid requests to opt out of the Settlement Class (as defined below) (or if more than three percent (3%) opt out, and Defendant does not exercise its right to rescind and void the Settlement Agreement); and
- g. A formal fairness hearing, and Final Approval (as defined below). Except that, in the event there are written objections made prior to the formal fairness hearing, or an appeal of the Court's approval of the Settlement Agreement taken, then the Effective Date shall be the later of the following events: when the period for filing any appeal, writ, or other appellate proceeding opposing the settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; or any appeal, writ, or other appellate proceeding opposing the settlement has been dismissed finally and conclusively with no right to pursue further remedies or relief; or any appeal, writ, or other appellate proceeding has upheld the Court's final order with no right to pursue further remedies or relief.

15. **"Final Fairness / Final Approval Hearing"** means the hearing to be conducted by the Court, or any other Court taking jurisdiction of this matter, to determine whether the terms of the Agreement are fair, reasonable, and adequate and meet all requirements for Final Approval.

16. **"Final Approval Order"** is the order the Court issues, in connection with the Final Fairness / Final Approval Hearing that approves this Agreement.

1 17. **“Gross Settlement Amount”** means the sum of Nine Million Dollars (\$9,000,000),
2 which is the total and maximum payment Marathon will be required to pay under this Settlement
3 Agreement, except that Marathon will be required to pay the employer’s share of any payroll taxes
4 (FICA and FUTA) on Individual Settlement Payments. The Gross Settlement Amount will include: (i)
5 the payments to all Participating Settlement Class Members, as described herein; (ii) the PAGA
6 Payment; (iii) Service Payments to the Class Representatives; (iv) Class Counsel’s Attorneys’ Fees and
7 Costs Payment; (v) Administration Costs; and (vi) union dues. Under no circumstances shall any
8 portion of the Gross Settlement Amount revert to Marathon.

9 18. **“Individual Settlement Payment”** shall mean the proportionate share of the Net
10 Settlement Amount paid to Participating Settlement Class Members based upon the number of Work
11 Weeks he or she worked during the Class Period in relation to the number of Work Weeks by all
12 Settlement Class Members during the Class Period.

13 19. **“Judgment”** refers to the final judgment entered by the Court in this Action after finally
14 approving the Agreement.

15 20. **“Marathon”** shall mean Defendant Marathon Refining Logistics Services LLC (and
16 any of its parents, subsidiaries, affiliates, or successors).

17 21. **“Net Settlement Amount”** means the Gross Settlement Amount less the Court-
18 approved Class Counsel’s Attorneys’ Fees and Costs Payment, Administration Costs, the Service
19 Payments to the Class Representatives, and the PAGA Payment portion paid to the State of California
20 Labor & Workforce Development Agency (“LWDA”). To the extent the Court does not approve the
21 full amount of the requested Attorneys’ Fees and Costs, Administration Costs, the Service Payments,
22 or the PAGA Payment to the LWDA, the unawarded portions will remain with the Net Settlement
23 Amount for distribution to Participating Settlement Class Members.

24 22. **“Notice of Class Action Settlement”** or **“Class Notice”** means the Court-approved
25 notice of the terms of the Agreement, substantially in the form attached as Exhibit A to be disseminated
26 to the Class.

23. **“Notice Packet”** refers to the documents mailed to Settlement Class Members pursuant to the terms of this Settlement Agreement and includes the Court-approved Notice of Class Action Settlement (Exhibit A).

24. **“Notice Response Deadline”** means 60 days from the initial date of mailing the Notice Packet to Settlement Class Members, or such other date as set by the Court in the Preliminary Approval Order, to postmark a timely objection, request for exclusion, or dispute of the information upon which an Individual Settlement Payment is calculated.

25. **“PAGA Payment”** means the amount to be paid to settle claims under California’s Private Attorneys General Act of 2004 (“PAGA”), California Labor Code sections 2698 *et seq.* Of the amount allocated to the PAGA Payment, 75% shall be paid to the State of California Labor and Workforce Development Agency (“LWDA”) and 25% shall remain as part of the Net Settlement Amount for distribution to Settlement Class Members, regardless of whether they opt out of the Settlement Class.

26. **“Participating Settlement Class Member(s)”** means any or all Settlement Class Members who have not returned a valid request for exclusion from the Settlement postmarked by the Notice Response Deadline. Participating Settlement Class Members shall be issued Individual Settlement Payments without the need to return a claim form.

27. **“Parties”** refers collectively to (1) Plaintiffs Louis Butel and Pam Mocherniak and (2) Marathon Refining Logistics Services LLC.

28. **“Preliminary Approval”** and **“Preliminary Approval Order”** means the order preliminarily approving this Agreement, which shall, among other things, preliminarily find the Settlement to be fair, reasonable and adequate; conditionally certify the Class under Rule 23 of the Federal Rules of Civil Procedure for settlement purposes; approve AB Data as the Administrator; approve the content of the Class Notice and distribution of the Notice Packet to the Class; and set the date of the Fairness Hearing / Final Approval Hearing to determine whether to grant final approval of this Agreement.

29. **“Released Claims”** shall mean those Class and PAGA claims described in paragraphs 63-64.

1 30. **“Released Parties”** shall mean Marathon and each and all of its current or former
2 successors, subsidiaries, parents, holding companies, partners, affiliates, divisions and other related
3 entities, joint ventures, predecessors, and other related entities, as well as the successors, predecessors,
4 subsidiaries, investors, parent and affiliated companies, insurers, reinsurers, agents, employees,
5 assigns, officers, officials, directors, attorneys, principals, heirs, administrators, vendors, accountants,
6 auditors, consultants, fiduciaries, accountants, personal representatives, executors, and shareholders,
7 including its pension, profit sharing, savings, health, and other employee benefits plans of any nature,
8 and representatives of each of them, both individually and in their official capacities, past or present,
9 as well as all persons acting by, through, under, or in concert with, any of these persons or entities.

10 31. **“Request for Exclusion”** means a written request made by a Settlement Class Member
11 to the Administrator seeking to be excluded from the Class, in the manner set forth in this Agreement
12 and described in the Class Notice.

13 32. **“Service Payment”** means a payment, as approved by the Court, to Class
14 Representatives Louis Butel and Pamela Mocherniak in accordance with Section III.C.

15 33. **“Settlement Class” or “Settlement Class Members”** shall mean: All current and
16 former operators and lab workers of Marathon who worked at the Los Angeles Refinery, and who have
17 been assigned primary relief shifts, since May 4, 2020 through Preliminary Approval.

18 34. **“Withholdings and Taxes”** means all withholdings from the Individual Settlement
19 Payments required by law plus all federal, state, and local employment payroll taxes due in regard to
20 the Individual Settlement Payments, whether owed by a Participating Settlement Class Member or by
21 Marathon. Marathon shall pay an additional amount sufficient to cover Marathon’s share of
22 Withholdings and Taxes arising from the Individual Settlement Payments, as computed by the
23 Administrator.

24 35. **“Work Weeks”** shall mean the total number of calendar weeks during the Class Period
25 during which the Settlement Class Member was assigned primary relief.
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III. DISTRIBUTION OF THE SETTLEMENT FUND

A. Payment of the Gross Settlement Amount.

36. In full settlement of the Released Claims and within fifteen (15) calendar days following the Final Approval Order, Marathon shall deliver the Gross Settlement Amount to a Qualified Settlement Fund established by the Administrator in accordance with the timeline described in this Agreement. No distribution of attorney's fees, costs, or class member distributions shall take place until the Effective Date.

B. Attorneys' Fees and Costs.

37. Class Counsel may request a reasonable award of Attorneys' Fees and Costs from the Court to compensate them for fees and costs incurred for work already performed in this Class Action, and the work remaining to be performed in documenting the Settlement, securing court approval of the Settlement Agreement, administering the Settlement, and defending against any appeals, as well as all associated expenses. The amount awarded to Class Counsel shall be left to the discretion of the Court. Class Counsel shall provide the Administrator with an IRS Form W-9 prior to the receipt of the Attorneys' Fees and Costs Payment.

38. Class Counsel will submit an application for Attorneys' Fees and Costs to the Court for approval prior to the date of the Final Fairness / Final Approval Hearing. The Parties agree that, except for the total amount of the Court-approved Attorneys' Fees and Costs awarded, each Party, including all persons eligible to be Settlement Class Members, shall bear their own fees and costs relative to the investigation, filing, prosecution, or settlement of the Class Action, the negotiation, execution, or implementation of this Settlement Agreement, and/or the process of obtaining, administering or challenging a Preliminary Approval Order and/or Final Approval Order.

39. The Parties agree that Class Counsel shall be solely responsible for the division and distribution of any and all Court-approved Attorneys' Fees and Costs Payment awarded in the Class Action to Class Counsel. Class Counsel release Marathon and the Released Parties from any responsibility for or liability arising out of or related to the division and distribution of any Court-approved Attorneys' Fees and Costs Payment to Class Counsel.

1 40. Approval of the Attorneys' Fees and Costs Payment is not a material term of this
2 Settlement Agreement. In the event that the Court denies, modifies, or reduces Class Counsel's request
3 for Attorneys' Fees and Costs Payment, then Plaintiffs, Class Counsel, and the Participating Settlement
4 Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement Agreement
5 and will not seek, request, or demand an increase in the Gross Settlement Amount.

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

11 42. All claims for attorneys' fees or costs or expenses that Class Counsel, Plaintiffs, and the
12 Participating Settlement Class Members may possess against Marathon have been compromised and
13 resolved by this Agreement and shall not be affected by any appeal that Class Counsel may file.

14 43. The Attorneys' Fees and Costs Payment shall represent payment of all claims for Class
15 Counsel's attorneys' fees and costs, past and future, incurred in the Action. The Attorneys' Fees and
16 Costs Payment shall be paid from the Gross Settlement Amount, and Marathon shall not otherwise be
17 required to pay for any portion of Plaintiffs' or the Settlement Class Members' attorneys' fees, costs,
18 or expenses. An award by the Court of Attorneys' Fees or Costs that is less than the amounts applied
19 for will not be grounds for Plaintiffs or Class Counsel to challenge or withdraw from the Settlement.
20 Class Counsel will, however, in such circumstances retain its right to appeal any Attorneys' Fees and
21 Costs Payment award that is less than the amount applied for.

22 **C. Service Payments to Class Representatives.**

23 44. In addition to the amounts determined to be due to the Class Representatives as
24 Participating Settlement Class Members under this Settlement Agreement, Class Counsel and Plaintiffs
25 intend to apply to the Court for Service Payments to the Class Representatives, in the total amount of
26 up to \$15,000 each in consideration of their efforts to initiate and prosecute the Class Action, work
27 performed, risks for payment of costs in the event of loss, and general releases of all claims each may
28 have against Marathon, and the substantial benefits conferred upon the Class by this Agreement. Each

1 Class Representative shall be issued an Internal Revenue Service Form 1099 for such Service Payment
2 and must provide an IRS Form W-9 as a condition of the Service Payment. Each agrees to be solely
3 responsible for the tax consequences of the Service Payments, if any.

4 45. In exchange for this Service Payment, the Class Representatives agree not to publicize
5 the Settlement, agree to limit any response to a media inquiry to a statement that the matter has been
6 resolved, and agree to the General Release as described in Sections IV and VI.S.

7 46. Approval of a Service Payment is not a material term of this Settlement Agreement. In
8 the event that the Court denies, modifies, or reduces any request for a Service Payment, Plaintiffs
9 reserve their right to appeal such an order, however, Plaintiffs, Class Counsel, and the Participating
10 Settlement Class Members may not seek to modify, revoke, cancel, terminate, or void this Settlement
11 Agreement and will not seek, request, or demand an increase in the Settlement Amount.

12 47. If Plaintiffs appeal the Court's ruling on Plaintiffs' request for a Service Payment for
13 the Class Representatives, any ruling of any appellate court in such an appeal (regardless of its
14 substance) shall not constitute a material alteration of this Settlement Agreement, and shall not give
15 Plaintiffs, Class Counsel, or the Participating Settlement Class Members the right to modify, revoke,
16 cancel, terminate, or void this Settlement Agreement.

17 **D. PAGA Payment.**

18 48. The total amount of the Gross Settlement Amount allocated to PAGA penalties shall be
19 \$75,000 for resolution of the PAGA claims alleged in the Action. Of this amount, the Parties agree
20 that \$56,250 (75%) of the PAGA Payment shall be paid to the LWDA and \$18,750 (25%) of the PAGA
21 Payment shall remain with the Net Settlement Amount to be paid to the Settlement Class Members (the
22 "PAGA Payment to Employees"). Any reduction or increase in the requested PAGA Payment is not a
23 material term of this Settlement Agreement. If the Court approves only a lesser amount than that
24 requested, then the other terms of this Agreement shall remain in effect. But some approval of a PAGA
25 Payment is a material term. If the Court does not approve the release of all of Plaintiffs' or Settlement
26 Class Members' claims under PAGA, then the entire Agreement will be, at Marathon's sole discretion,
27 void and unenforceable.
28

E. Administration Costs.

49. Class Counsel shall seek approval for the payment of Administration Costs, which will be deducted from the Gross Settlement Amount. Administration Costs are estimated to be no more than \$25,000. No fewer than ten (10) court days prior to the Final Fairness / Final Approval Hearing, the Administrator shall provide the Court and all counsel for the Parties with a declaration detailing the Administration Costs. The Parties agree to cooperate in the settlement administration process and to make all efforts to control and minimize the costs and expenses incurred in the administration of this Settlement. Administration Costs are not a material term; if the Court approves a lesser amount, then the other terms of this Agreement shall remain in effect.

F. Plan of Allocation and Calculation of Individual Settlement Payments.

50. The Administrator shall be responsible for calculating Participating Settlement Class Members' individual and proportionate share of the Net Settlement by using the information included within the Class List and Data.

51. The Individual Settlement Payment to each Participating Settlement Class Member shall be allocated as follows:

- a. Waiting Time Penalty Payment for Terminated Employees. The Administrator will allocate \$1,000 for each Participating Class Member terminated during the Class Period.
- b. California Labor Code Claims. The Administrator shall calculate the total number of Work Weeks worked by all Participating Settlement Class Members during the Class Period. The Administrator will then divide the Net Settlement minus the Waiting Time Payment Allocation by the total number of Work Weeks worked by Participating Settlement Class Members during the Class Period, resulting in a credit value for each Work Week. The Administrator will then take the credit value and multiply it by each Participating Settlement Class Member's Work Weeks. The Administrator shall assign a minimum of four (4) Work Weeks worked to each Participating Settlement Class Member.

52. If any Settlement Class Member opts out of the Settlement Class, the Administrator

1 shall determine whether the Settlement Class Member worked any Work Weeks during the PAGA
2 Class Period. The Administrator will then calculate a pro-rata share of the PAGA Payment to
3 Employees by dividing the PAGA Payment to Employees by the total number of Settlement Class
4 Members who worked during the PAGA Class Period (the "Individual PAGA Allocation"). Settlement
5 Class Members who opt out of the Settlement Class and who worked Work Weeks during the PAGA
6 Class Period will receive only the Individual PAGA Allocation and not an Individual Settlement
7 Payment as calculated in paragraph 51 above.

8 53. The Administrator shall use the information contained in the Class List and Data to
9 calculate each Participating Settlement Class Member's Individual Settlement Payment. In the event
10 a dispute arises with respect to the information upon which an Individual Settlement Payment is
11 determined, the Administrator shall review the information provided by the Settlement Class Member,
12 consult with Counsel for the Parties, and, with the presumption that the Class List and Data are accurate,
13 make the final and binding determination of the amount to be awarded, which shall not be appealable.

14 54. In accordance with state, local, and federal tax laws, the Administrator shall withhold
15 such sums from each Individual Settlement Payment as is required in order to comply with employee-
16 side state, local, and federal tax laws. After appropriate tax withholding from Individual Settlement
17 Payments, the Administrator shall pay over all such withheld funds to the appropriate state, local, and
18 federal taxing authorities to comply with applicable law and shall do so as soon as practicable. In
19 addition, the Administrator shall make deductions from the wage portion of each Participating
20 Settlement Class Member's Individual Settlement Payment for union dues consistent with the
21 applicable collective bargaining agreements. The Administrator shall also pay over all such union dues
22 to the union. The Administrator shall provide each Participating Settlement Class Member with
23 appropriate documentation setting forth the amount of any tax, union dues, or other payment withheld,
24 and employer contribution made, in accordance with state and federal tax requirements. If requested
25 by Marathon, the Administrator shall also provide to Marathon the same documentation for each
26 Participating Settlement Class Member.

G. No Effect on Benefits for Settlement Class Members.

55. Plaintiffs agree, on behalf of all Settlement Class Members, that this Agreement and any payments under this Agreement shall not have any effect on the eligibility or calculation of employee benefits under any employee benefit plans with respect to the Settlement Class Members. This Agreement does not represent any modification of any previously credited hours of service, compensation or other earnings, income, or other eligibility or benefit accrual criteria under any employee benefit plan, or other program or policy sponsored or maintained by the applicable union and/or any of the Released Parties. For purposes of this Agreement, the term “employee benefit plan” means an “employee benefit plan,” as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and includes any 401(k) plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing, retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation, or any other similar benefit plan, practice, program, or policy, regardless of whether any such plan, practice, program, or policy constitutes an employee benefit plan subject to ERISA.

56. Likewise, Plaintiffs agree, on behalf of all Settlement Class Members, that no payment provided under this Settlement Agreement shall be considered compensation or other earnings in any year for purposes of determining eligibility for or benefit accrual under any employee benefit plan.

H. Taxes.

57. The payment by Marathon pursuant to this Agreement is for alleged failure to pay reporting time, interest, and penalties, and all other claims as set forth in the Action. For purposes of this Settlement, the Parties agree that Individual Settlement Payments will be allocated 50% to wages subject to withholdings for which IRS W-2 Forms shall be issued, and 25% to interest and 25% to penalties under the California Labor Code for which IRS 1099 Forms shall be issued. For any Settlement Class Members who opt out of the settlement, the Individual PAGA Allocation will be allocated as 100% to penalties, which will be reported to the IRS on Form 1099. Approval of the tax allocations set forth above is not a material term. If the Court approves a different tax allocation, then the other terms of this Agreement shall remain in effect.

1 58. Nothing in this Agreement is advice by Defense Counsel regarding taxes or taxability,
2 and no Party is relying upon Defense Counsel for such advice. Each Party instead is relying exclusively
3 on the Party's own independent tax counsel in connection with this Agreement.

4 59. Participating Settlement Class Members receiving an Individual Settlement Payment
5 shall be responsible for paying his or her share of applicable federal, state, and local income taxes on
6 all amounts such person receives pursuant to this Agreement.

7 60. Administrator Responsibilities Regarding Taxes. It shall be the responsibility of the
8 Administrator or its designee to timely and properly withhold all applicable Withholdings and Taxes
9 from Participating Settlement Class Members based on their Individual Settlement Payments and to
10 prepare and deliver the necessary tax documentation for signature by all necessary parties and,
11 thereafter, to pay the Withholdings and Taxes to the appropriate authorities, and to file all necessary
12 information and other tax returns. Payments to Settlement Class Members, Plaintiffs, and Class
13 Counsel pursuant to this Agreement shall be reported on IRS Forms W-2 or 1099-MISC as applicable,
14 with copies provided to the respective Settlement Class Members, Plaintiffs, Class Counsel, Marathon,
15 and all applicable governmental entities as required by law. All Withholdings and Taxes deposited
16 with the applicable governmental entities in accordance with this Agreement, other than Marathon's
17 share of employer Withholdings and Taxes arising from the Individual Settlement Payments, shall be
18 part of, and paid out of, the Individual Settlement Payments to each Participating Settlement Class
19 Member.

20 61. Tax Expenses Resulting from Administration. All reasonable and direct expenses and
21 costs incurred by or at the direction of the Administrator in connection with the administration of the
22 Settlement (including, without limitation, expenses of tax attorneys and/or accountants incurred in
23 providing advice to the Administrator, and mailing and distribution costs and expenses relating to the
24 filing (or failure to file) the informational and other tax returns described above) shall be considered a
25 cost of administration of the Settlement and shall be part of the Administration Costs, to be paid out of
26 the Gross Settlement Amount.

27 62. Employer's Share of Withholdings and Taxes. The Administrator will notify Marathon
28 of the amount of the employer share of Withholdings and Taxes no later than three (3) calendar days

1 after Final Approval and sooner to the extent possible. Marathon will pay that amount to the
2 Administrator in addition to the Gross Settlement Amount within twenty-one (21) calendar days
3 following the Effective Date. The Administrator will also give Marathon an estimate of the employer's
4 share of these Withholdings and Taxes within five (5) calendar days of sending out the Settlement
5 Notice.

6 **IV. CLAIMS RELEASED BY SETTLEMENT AGREEMENT**

7 63. In exchange for the payments by Marathon as described herein, upon Final Approval,
8 and except as to such rights or claims as may be created by this Settlement Agreement, the Participating
9 Settlement Class Members, including the Class Representatives (who shall not opt out), jointly,
10 severally, shall, and hereby do fully release and discharge Marathon and the Released Parties for the
11 Class Period from any and all claims, judgments, liens, losses, debts, liabilities, demands, obligations,
12 guarantees, penalties, costs, expenses, attorneys' fees, damages, indemnities, actions, causes of action,
13 and obligations of every kind and nature in law, equity or otherwise, known or unknown, suspected or
14 unsuspected, disclosed or undisclosed, contingent or accrued, occurring up to the execution of this
15 Settlement Agreement and arising out of the dispute which is the subject of the Actions or which could
16 have been asserted in the Actions based on the facts alleged, whether in contract, violation of any state
17 or federal statute, rule or regulation, arising out of, concerning or in connection with any act or omission
18 alleged in the Actions by or on the part of Released Parties, including, without limitation, those relating
19 to the failure to pay reporting time pay, failure to pay for travel time, failure to provide accurate wage
20 statements, failure to timely pay wages due at the time of termination of employment, penalties relating
21 to inaccurate wage statements, or other alleged wage and hour violations and related record-keeping
22 requirements, including, without limitation, violation of Business & Professions Code section 17200,
23 the applicable California Industrial Welfare Commission Order, or any other California or federal laws
24 relating to the failure to pay wages and penalties based on the facts alleged in the Complaints. ("Class
25 Claims Released"). Class Claims Released include any unknown claims that Participating Settlement
26 Class Members do not know or suspect to exist in their favor, which if known by them, might have
27 affected this Settlement Agreement with Marathon and release of the Released Parties, including, but
28 not limited to, conduct that is intentional, negligent, with or without malice, or a breach of any duty,

1 law, or rule, without regard to the subsequent discovery or existence of such different or additional
2 facts. The Claims Released do not include any workers' compensation claims, claims for physical
3 bodily harm, discrimination claims, or any other claims not directly related to the Class Claims
4 Released.

5 64. All Settlement Class Members, regardless of whether they opt out, will release their
6 right to pursue PAGA claims and PAGA penalties through the PAGA Class Period, based on the facts
7 alleged in the Actions ("PAGA Claims Released").

8 65. The Parties intend that this Settlement Agreement shall be binding on all Settlement
9 Class Members, whether or not they actually receive a payment pursuant to this Settlement Agreement.
10 Upon the Effective Date, the Class Representatives and Participating Settlement Class Members shall
11 be deemed to have, and by operation of the Final Approval Order shall have fully, finally, and forever
12 settled and released any and all of the Class Claims Released and (as to all Settlement Class Members)
13 PAGA Claims Released, whether known or unknown, suspected or unsuspected, contingent or non-
14 contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing
15 or coming into existence in the future. This Settlement Agreement shall constitute, and may be pleaded
16 as, a complete and total defense to any Claims Released if raised in the future.

17 66. Class Representatives, and each of their successors, assigns, heirs, personal
18 representatives and all those who claim through each of them, or who assert claims on their behalf,
19 shall be deemed to have, and by operation of the Judgment shall have, expressly released, waived and
20 relinquished the Released Claims. Additionally, Class Representatives agree that upon the Effective
21 Date, they expressly and generally release and waive any and all claims, demands, rights, liabilities
22 and causes of action each has had or ever had against any of the Released Parties, whether for economic
23 damages, noneconomic damages, punitive damages, penalties, restitution, injunctive or declaratory
24 relief, interest, attorneys' fees, costs or any other forms of monetary or non-monetary relief in any way
25 arising out of or relating to any facts, transactions, events, policies, occurrences, acts, disclosures,
26 statements, omissions or failures to act at any time on or before the Effective Date, including, but not
27 limited to, any claims arising from or related to their employment or separation of employment,
28 contractual, and/or quasi-contractual relationship with Marathon and the Released Parties, or any of

1 them; any allegations as to disputed wages, remuneration, and/or other compensation due by operation
2 of statute, ordinance, contract, or quasi-contract; any federal, state, or local law prohibiting
3 discrimination or retaliation on the basis of age, race, color, ancestry, religion, disability, sex, national
4 origin, or citizenship or any other protected category, including, without limitation, claims under Title
5 VII, the California Fair Employment and Housing Act, the California Labor Code, Fair Labor
6 Standards Act, the California IWC Orders, the Employee Retirement Income Security Act, and the
7 Americans With Disabilities Act or any other similar statutes whatever the city, county, state, or
8 country of enactment; any claims or grievances under collective bargaining agreements or the National
9 Labor Relations Act; any claims under the Family and Medical Leave Act of 1993 and/or the California
10 Family Rights Act; and any transactions, occurrences, acts, statements, disclosures, or omissions,
11 occurring during the Class Period. Class Representatives' General Release specifically excludes claims
12 for workers' compensation. This general release by Class Representatives shall become effective upon
13 the Effective Date and include all statutory claims, common law claims (including, but not limited to,
14 those sounding in contract, tort, and equity), and claims for compensation to the fullest extent permitted
15 by law. Class Representatives further agree not to sue or otherwise make a claim against any of the
16 Released Parties for any of the Released Claims or claims subject to the general release.

17 67. Class Representatives each acknowledge that the General Release also includes a
18 waiver of rights under California Civil Code section 1542, and any similar law of any state or territory
19 of the United States. California Civil Code section 1542 states as follows:

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

24 **V. SCHEDULE FOR FINALIZING SETTLEMENT AGREEMENT**

25 **A. Preliminary Approval.**

26 68. As soon as practicable after execution of this Agreement, Plaintiffs shall apply for
27 Preliminary Approval of the Settlement. Plaintiffs' application shall request the Court to:

- 28 a. Conditionally certify the class under Rule 23 of the Federal Rules of Civil Procedure

for settlement purposes only;

- b. Preliminarily approve this Agreement as fair, reasonable, and adequate;
- c. Preliminarily approve the Notice of Class Action Settlement attached as Exhibit A;
- d. Approve CPT Group as the Administrator;
- e. Set deadlines for the Administrator to provide the Court-approved Class Notice to the Settlement Class, and for Settlement Class Members to request exclusion or object to the Settlement; and
- f. Set the date, time, and department for the Final Fairness / Final Approval Hearing.

69. Class Counsel shall draft the Motion for Preliminary Approval and give Defense Counsel a reasonable opportunity to review and provide comments on the Motion for Preliminary Approval before it is filed. Before filing the Motion, Class Counsel will consider in good faith any comments by Defense Counsel.

70. Upon moving for Preliminary Approval, Class Counsel will also submit the proposed Settlement Agreement to the LWDA, pursuant to California Labor Code section 2699(1)(2).

71. Within ten (10) calendar days after the filing of the Motion for Preliminary Approval, Marathon shall comply with the "Notification of Settlement" requirements of the Class Action Fairness Act (28 U.S.C. § 1715) and give notice of such to Class Counsel.

B. Class List and Data.

72. Within twenty-one (21) calendar days following entry of the Preliminary Approval Order, Marathon will produce the Class List and Data to the Administrator. Marathon will concurrently provide to Class Counsel the names and number of Work Weeks for Settlement Class Members. If data concerns would interfere with the Administrator's ability to comply with the deadlines set by the Court, the Parties agree to jointly apply to the Court for an extension of the schedule provided herein to allow the Parties to resolve the concerns. The Administrator will keep the Class List and Data strictly confidential in accordance with applicable data privacy and security laws and shall use this information only for the purposes described in this Agreement. The Class Administrator will indemnify Marathon for any damages arising out of any breach or misuse of the Class List and Data. The Class Administrator agrees to securely maintain the data and agrees not to use the information for any purpose

1 other than the administration of the settlement of the Action and agrees not to disclose the information
2 to any third party. Notwithstanding the foregoing, the Class Administrator may disclose to Class
3 Counsel the number of Work Weeks for Settlement Class Members along with estimated or calculated
4 payments to Settlement Class Members. Within 60 days of completion of this matter, the Administrator
5 shall, in accordance with the Notice requirements in this Agreement, return the Class List and Data to
6 Defense Counsel or confirm the destruction of the same upon completion of the administration work
7 contemplated by this Agreement.

8 **C. Class Notice.**

9 73. Subject to Court approval, the Parties agree that as soon as practicable after entry of the
10 Preliminary Approval Order, the Administrator shall provide notice to the Class pursuant to the
11 following procedures:

- 12 a. Fourteen (14) calendar days after Marathon provides to the Administrator the Class List
13 and Data, the Administrator shall send a Notice of Class Action Settlement to all
14 Settlement Class Members by regular U.S. Mail, postage prepaid and supplement with
15 email notice, if feasible. In order to provide the best notice practicable, any Class Notice
16 returned as undelivered shall be sent to the forwarding address affixed thereto, if any.
17 If no forwarding address is provided for a Class Notice that is returned as undelivered,
18 the Administrator will use a reliable computer search method to locate a current address.
19 If no current address is located, the Class Notice for that individual will be deemed
20 undeliverable. If the procedures herein are followed, Marathon, Class Counsel, and the
21 Administrator shall be deemed to have satisfied their obligation to provide the Class
22 Notice to the Settlement Class. A copy of the proposed Class Notice is attached hereto
23 as Exhibit A.
- 24 b. The Class Notice shall, at a minimum, include the following: the number of Work
25 Weeks for each Settlement Class Member; the estimated amount the Class Member can
26 expect to receive based on the number of Work Weeks; the contact information for Class
27 Counsel; information informing Settlement Class Members of their right to object
28 and/or opt out; a statement that the Settlement Agreement may have preclusive effect

1 and participation in the Settlement shall result in a release of Released Claims;
2 notification that Settlement Class Members are solely responsible for determining the
3 tax consequences of payments made pursuant to this Settlement Agreement; and
4 notification that any payments under this Settlement Agreement shall not have any
5 effect on the eligibility or calculation of employee benefits nor will it be considered
6 compensation for determining eligibility in any employee pension benefit plan, as
7 discussed in Section III.G.

- 8 c. The Class Notice shall inform Settlement Class Members of their right to opt out of the
9 Settlement Class and be excluded from receiving any benefits for the Class Claims
10 Released under the Settlement Agreement by completing and mailing a written opt-out
11 request to the Administrator no later than sixty (60) calendar days after the postmark
12 date of the Class Notice. Any member of the Settlement Class who submits a timely
13 and valid request to opt out will receive no settlement payment for the Class Claims
14 Released and will not be bound by the terms of the Settlement Agreement nor have any
15 right to object, appeal, or comment thereon. Late-submitted opt-out requests will not
16 be accepted by the Administrator and shall not be effective. The Administrator will
17 certify jointly to Class Counsel and Defense Counsel which requests to opt out were
18 valid and timely submitted.
- 19 d. If a member of the Settlement Class disagrees with the number of Work Weeks, the
20 member must complete and send a notice of dispute to the Administrator, together with
21 any supporting written documentation. Such documentation may consist of official
22 records, pay stubs, weekly schedules, or personal logs. To be considered, the notice of
23 dispute and supporting written documentation must be received by the Administrator no
24 later than thirty (30) calendar days after the postmark date of the Class Notice.
- 25 e. The Administrator shall immediately notify both Class Counsel and Defense Counsel
26 of any disputes submitted by Settlement Class Members. The Administrator shall share
27 with both Class Counsel and Defense Counsel the notice of dispute and any
28 documentation submitted by a Settlement Class Member in support of his or her dispute.

1 The Administrator shall make the final determination regarding the dispute based on the
2 written documentation submitted by the Settlement Class Member and any materials
3 submitted by counsel within ten (10) calendar days of receipt of the notice of dispute
4 and supporting written documentation, or no later than forty (40) calendar days after the
5 postmark date of the Class Notice. Marathon's business records will be entitled to
6 greater deference in reviewing the materials submitted. The Administrator shall inform
7 each Settlement Class Member of the final determination by a telephone call, followed
8 by an email or regular U.S. Mail if no email for that Settlement Class Member is
9 available.

10 f. The Administrator shall create and maintain a website, which will include links to the
11 Class Notice, Motions for Preliminary and Final Approval, and Motion for Attorney's
12 Fees as they become available, until the Effective Date. The website shall also include
13 links to any other documents or information the Administrator deems necessary to
14 perform its duties but shall in no case include any information or data provided in the
15 Class List or Data. The Motion for Attorneys' Fees and any related filings shall be
16 available on the website for a reasonable period of time of no less than fourteen (14)
17 calendar days prior to the deadline for class members to file an objection to the
18 Settlement Agreement.

19 g. At least twenty-one (21) calendar days before the Final Fairness Hearing, the
20 Administrator shall prepare a declaration of due diligence and proof of mailing with
21 regard to the mailing of the Class Notice and email (if e-mail was deemed feasible), and
22 any attempts by the Administrator to locate the Settlement Class Members ("Due
23 Diligence Declaration"), to Class Counsel and Defense Counsel for presentation to the
24 Court. The Administrator will attach to the Due Diligence Declaration a report showing
25 the name of each individual who submitted a timely and valid opt-out. Class Counsel
26 shall be responsible for filing the Due Diligence Declaration with the Court.

27 h. If at any point the Administrator determines that it needs additional time, the
28 Administrator shall inform the Parties regarding the situation, and the Parties will seek

1 from the Court a modification of the schedules contained in this Settlement Agreement
2 or any Court Order, to be consistent with the recommendations and requests of the
3 Administrator. However, the Administrator shall not make a request for a time
4 modification if the need for additional time is a result of any Party failing to provide
5 information as required in this Settlement Agreement on a timely basis. If a Party fails
6 to provide required information according to this schedule, any other Party reserves the
7 right to seek the Court's intervention to ensure compliance with the agreed terms of this
8 Settlement Agreement.

9 **D. Administrator's Duties.**

10 74. The Administrator's duties shall include the following, without limitation, among
11 others: (i) formatting, printing, and mailing the Notice Packet to the Class via regular U.S. Mail as
12 directed by the Court, and establishing a website domain to host the relevant settlement documents;
13 (ii) taking all steps reasonably necessary to ensure Settlement Class Members timely receive the Notice
14 Packet, i.e., National Change of Address ("NCOA") database search prior to the initial mailing, skip-
15 tracing on receipt of returned undelivered Notice Packets, or similar actions to facilitate notice; (iii)
16 calculating the credit value for each Work Week based on each Participating Settlement Class
17 Member's number of Work Weeks, including resolving any Settlement Class Member disputes about
18 the number of Work Weeks during the Class Period; (iv) establishing and maintaining a Qualified
19 Settlement Fund; (v) calculating and distributing Individual Settlement Payments, the PAGA Payment,
20 the Service Payments, and the Attorneys' Fees and Costs Payment, provided such amounts are
21 approved by the Court; (vi) calculating and paying Marathon's share of employer taxes; (vii)
22 calculating and making deductions for union dues owed from Participating Settlement Class Members'
23 Individual Settlement Payments; (viii) issuing IRS Forms W2 and 1099, as applicable, and reporting
24 all Individual Settlement Payments, Service Payments, and the Attorneys' Fee and Costs Payment; (ix)
25 forwarding sums represented by uncashed checks to the California State Controller's Office
26 Unclaimed Property Fund to be held for the benefit of the Settlement Class Member to whom the
27 payment was designated in accordance with California law; and (x) keeping Class Counsel and Defense
28 Counsel apprised of the status of the administration process and its distribution of Individual Settlement

1 Payments, together with such other tasks as the Parties may mutually agree upon or the Court may
2 order the Administrator to perform.

3 75. The Administrator shall take all reasonable steps to ensure that it has the most current
4 and accurate addresses for Settlement Class Members, and that the highest percentage of Settlement
5 Class Members receive the Notice Packet. It shall perform a NCOA database search of Settlement
6 Class Member addresses prior to the initial mailing of the Notice Packets. In addition, the
7 Administrator shall perform standard searches, also known as “batch,” “skip trace,” or “credit header”
8 searches using Settlement Class Members’ Social Security numbers on Notice Packets returned as
9 undeliverable.

10 76. The Administrator shall also: provide toll-free telephone support and a post office box
11 to facilitate Settlement Class Member communications; maintain appropriate databases to fulfill its
12 duties; receive, control and account for all returned Notice Packets; calculate Settlement Class
13 Members’ Individual Settlement Payments; and prepare and deliver weekly status reports to Class
14 Counsel and Defense Counsel which includes the number of Notice Packets mailed, returned, searches
15 performed, the number re-mailed, as well as the number of disputes, requests for exclusion and
16 objections received. In addition to the duties described in this Section, the Administrator shall prepare
17 final declarations, reports, and invoices that accurately describe the notice process, the level of
18 participation, and actions taken to ensure the best possible notice of the Settlement was provided to
19 Settlement Class Members.

20 **E. Requests for Exclusion/Opt Outs.**

21 77. Settlement Class Members who wish to be excluded from (or opt out of) the Settlement
22 must submit to the Administrator a written Request for Exclusion postmarked by the Notice Response
23 Deadline. Settlement Class Members cannot opt out of the release of their PAGA claims.

24 78. Contents of Request for Exclusion. The Request for Exclusion must contain (i) the
25 name of this Action; (ii) the full name, address, telephone number, and last four digits of the Social
26 Security number of the person requesting to be excluded; (iii) the words “Request for Exclusion” at the
27 top of the document; (iv) be personally signed by the Settlement Class Member seeking to be excluded;
28 and (v) the following statement:

I wish to be excluded from the Settlement of the Action, *Louis Butel and Pam Mocherniak v. Marathon Refining and Logistics Services LLC*, Case No.: 2:23-cv-04547-DSF-JPR, currently pending in the United States District Court for the Central District of California.

79. For purposes of determining timeliness, Requests for Exclusion shall be deemed to have been submitted on the date postmarked by the U.S. Postal Service or other delivery service. The Administrator shall stamp the date received on the original of any Request for Exclusion received. Not later than fifteen (15) days after the Notice Response Deadline, the Administrator will inform Class Counsel and Defense Counsel of the total number of Settlement Class Members who timely submitted valid Requests for Exclusion, and shall serve copies of all date-stamped Requests for Exclusion on Class Counsel and Defense Counsel.

80. Non-Opt Outs Bound. Settlement Class Members who do not submit a valid and timely Request for Exclusion substantially in compliance with this Section and as described in the Notice of Class Action Settlement by the Notice Response Deadline, including because of inability to locate the Settlement Class Member's current address or for other reasons beyond the Settlement Class Member's control, shall be bound by the terms of this Agreement, any Court order approving the terms of the Settlement, and the Judgment entered thereon.

81. Resolution of Disputes. In the event of any issue over completeness, accuracy, timeliness, or validity of a Request for Exclusion, the Parties shall meet and confer in good faith for the purpose of resolving the issue and, if the issue cannot be resolved, shall submit the dispute to the Administrator for a final and binding determination that shall not be appealable.

82. Marathon's Right to Rescind. If more than three percent (3%) of the Class submit a valid and timely Request for Exclusion, then Marathon shall have the option, in its sole discretion, to rescind this Agreement, in which case all of Marathon's obligations under this Agreement shall cease to be of any force or effect and this Agreement shall be null and void. If Marathon exercises this option, it shall provide Class Counsel with written notice of its election any time before Final Approval, with a copy to the Administrator, at which point the Parties shall return to their respective positions that existed before the execution of this Agreement, and no term of this Agreement or any draft thereof, or the negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect or be admissible as evidence for any purpose in the Action, or in any other proceeding.

F. Objections.

83. Only Participating Settlement Class Members (i.e., those Settlement Class Members who have not excluded themselves from the Settlement) shall be entitled to object to the terms of the Agreement.

84. Manner of Objecting. Settlement Class Members who wish to object to the Settlement must send or deliver to the Court a personally signed, written statement objecting to the Settlement, setting forth their name, address, telephone number, the last four digits of their Social Security number, and the basis for their objection along with all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) postmarked on or before the Notice Response Deadline. Settlement Class Members who timely submit a valid objection to the Settlement may, but are not required to, appear at the Final Fairness / Final Approval Hearing.

85. Content of Objection. The objection must state whether it applies only to the objector, to a specific subset of the class, or to the entire class. It must also state with specificity the grounds for the objection.

86. Obligations of Individuals Who Object. Those Settlement Class Members who submit valid and timely objections must be available for deposition within 75 miles of the address of the Court if a Party chooses to take their deposition. Any objector who fails to appear for a duly noticed deposition shall be deemed to have withdrawn the objection. Objectors can appear at the Final Fairness / Final Approval Hearing either in person or through counsel but must state their intent to do so at the time they submit their objection. An objection may be withdrawn at any time except that Court approval after a hearing is required if payment or consideration is provided in connection with the withdrawal.

87. Waiver of Objections. Settlement Class Members who do not submit an objection in the manner specified above and as described in Class Notice shall be deemed to have waived all objections and shall be foreclosed from objecting to this Agreement, whether by appeal or otherwise.

88. Effect of Untimely Objection. No Settlement Class Member shall be entitled to be heard at the Final Fairness / Final Approval Hearing, whether individually or through separate counsel, unless the written statement of objection and any supporting materials are timely filed and served as set forth

1 in this Section and described in the Class Notice unless excused by the Court. Unless excused by the
2 Court, Settlement Class Members who fail to file and serve written objections in the manner specified
3 by the Notice Response Deadline shall be deemed to have waived all objections and shall be foreclosed
4 from making any objection, whether by appeal or otherwise, to the Settlement.

5 89. Appeal Rights. Only a Settlement Class Member who has filed a timely objection has
6 the right to appeal a judgment that is in accord with this Agreement.

7 **G. Final Approval and Entry of Judgment.**

8 90. Following the Notice Response Deadline, and on or before the date set by the Court or
9 set by statute, Plaintiffs shall move for Final Approval of the Settlement, to obtain an order to
10 (a) approve this Agreement, (b) adjudge its terms to be fair, reasonable, and adequate, (c) recite the
11 Released Claims, (d) direct that the terms of the Agreement be carried out, and (e) retain jurisdiction
12 to oversee enforcement of this Agreement. The Proposed Final Judgment and Order Approving
13 Settlement shall (a) enter Judgment in accordance with this Agreement, without further fees or costs,
14 (b) enter an order as to the Attorneys' Fees and Costs Payment, (c) enter an order as to any Service
15 Payments, and (d) enter an order permanently enjoining all Participating Settlement Class Members
16 from pursuing or seeking to reopen claims that have been released by this Agreement. Class Counsel
17 shall draft the Motion for Final Approval and provide Defense Counsel a reasonable opportunity to
18 review and provide comments on the Motion for Final Approval before it is filed. Before filing any
19 motion, Class Counsel will consider in good faith any comments by Defense Counsel.

20 91. Notice of Final Judgment. Notice of Judgment will be posted on the website created by
21 the Administrator in accordance with this Agreement.

22 **H. Funding and Distribution.**

23 92. After the Effective Date, the Individual Settlement Payments and Individual PAGA
24 Allocations shall be distributed to Settlement Class Members in accordance with the procedures set
25 forth below:

26 93. Remittance of the Gross Settlement Amount. At least ten (10) days prior to the Final
27 Fairness / Final Approval Hearing, the Administrator will provide Marathon with all information
28 necessary to remit the Gross Settlement Amount, including but not limited to a W-9 form and wire

instructions. Contingent upon Marathon's receipt of all information necessary to remit the Gross Settlement Amount, within fifteen (15) calendar days following Final Approval, Marathon will remit the Gross Settlement Amount to the Administrator for the establishment of the Qualified Settlement Fund. At the same time, if feasible, Marathon shall also remit Marathon's share of Withholdings and Taxes.

94. Distribution of Payments. Within forty-five (45) calendar days from the Effective Date, the Administrator shall take all reasonable efforts to distribute the following Court-approved payments: (a) Class Counsel's Attorneys' Fees and Costs Payment; (b) the LWDA's PAGA Payment, (c) the Class Representatives Service Payments; and (d) pay to the appropriate government entities the Withholdings and Taxes. The Administrator shall also distribute the Settlement Class Members' Individual Settlement Payment or Individual PAGA Allocation by sending individual checks by regular U.S. Mail to the address on file with the Administrator. Each Settlement Class Member who is entitled to a payment under this Settlement Agreement will receive a single check for the total of his or her settlement payment (less applicable payroll deductions required by federal, state, and local law for the wage portion of the payment and union dues, as described in paragraph 34).

95. No payments shall be made or distributed unless and until the orders and Judgment described in this Agreement are final (meaning that the right to appeal or otherwise seek review of such orders or the Judgment has expired) and on the condition that no appeals from the orders and the Judgment have been filed. Additionally, by no later than the date set by the Court in its Final Approval Order, and if none set, by no later than twenty-one (21) calendar days following distribution of the Court-approved sums, the Administrator shall file a report with the Court setting forth the total amount of money paid to (1) Participating Settlement Class Members, (2) the LWDA and Aggrieved Employees for the PAGA Payment, (3) the Service Payments, (4) to itself for Administration Costs, and (5) the Attorneys' Fees and Costs Payment.

96. Checks mailed to Participating Settlement Class Members under this Agreement shall remain valid and negotiable for 180 calendar days from the date of their mailing, and thereafter may be automatically canceled if not cashed by the payee within that time. The Administrator will provide notice to Class Counsel of any uncashed checks, and the Administrator shall have responsibility to

attempt to locate the impacted Participating Settlement Class Members and re-issue checks with an expiration date ninety (90) calendar days following the re-issuing of the checks.

97. If a Participating Settlement Class Member has not cashed a check by the 30th day from the date of the check's issuance, the Administrator shall send a postcard to the Settlement Class Member to remind each to cash their check before the void date.

98. No person shall have any claim against Marathon, Released Parties, Defense Counsel, the Class Representative, any Participating Settlement Class Member, Class Counsel, or the Administrator based on the formula for distribution and payments made in accordance with this Settlement Agreement.

I. Discharge of Obligations.

99. Marathon shall fully discharge its obligations to Plaintiffs and the Class through the remittance of the Gross Settlement Amount to the Qualified Settlement Fund, regardless of whether checks representing Individual Settlement Payments are actually received and/or negotiated by Participating Settlement Class Members. Once Marathon has complied with its obligation to fund the Gross Settlement Amount, it will be deemed to have satisfied all terms and conditions under this Agreement, shall be entitled to all protections afforded to it under this Agreement, and shall have no further obligations under the terms of the Agreement, regardless of what occurs with respect to the further administration of the Settlement.

J. Questions and Disputes.

100. In the event that questions or disputes arise regarding the entitlement of any Settlement Class Member under this Agreement, counsel for each of the Parties shall cooperate to provide to counsel for the other Party and the Administrator all available information reasonably necessary to resolve them. Such information shall be provided in either electronic form or hard copy, as the Administrator may reasonably request. If the Parties cannot resolve any dispute concerning the entitlement of any Settlement Class Member under this Agreement, the dispute(s) shall be submitted to the Administrator, who shall resolve the dispute(s) and whose decision shall be final and binding and non-appealable. In such a dispute, the information provided by Marathon will be presumed accurate.

K. Interim Stay of Proceedings.

101. The Parties agree to the entry of a formal stay of all proceedings in the Action, except such proceedings as may be necessary to implement, complete and secure Final Approval of the Settlement and entry of Judgment.

VI. ADDITIONAL PROVISIONS

A. Voiding the Settlement Agreement.

102. In the event: (a) the Court does not preliminarily approve the Settlement as provided herein; (b) the Court does not finally approve the Settlement as provided herein; (c) the Court does not enter the Judgment as provided herein; or (d) the Settlement does not become final for any other reason, this Agreement shall be null and void *ab initio* and the Parties shall split Administration Costs, and any order or Judgment entered by the Court in furtherance of this Settlement shall be treated as withdrawn or vacated by stipulation of the Parties. In such case, the Parties shall be returned to their respective statuses as of November 2, 2024. In the event an appeal is taken from the Judgment, or any other appellate review is sought before the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

103. Except as otherwise stated herein, each substantive term of this Agreement is a material term that the Parties have relied upon in making this Agreement. If the Court does not approve any substantive term, or if the Court effects a material change to the Agreement—such as increasing any amount that Marathon must pay—then the entire Agreement will be, at Marathon’s sole discretion, void and unenforceable, and the Parties shall split Administrative Costs. Where this Agreement states that a term is not material, then the Court’s refusal to approve that term leaves all the other terms of the Agreement in effect and does not give the Parties any basis to abrogate this Agreement.

B. No Admission of Liability.

104. Nothing herein shall constitute any admission by Marathon of wrongdoing or liability or of the truth of any factual allegations in the Action. To the contrary, Marathon has denied and continues to deny each and every material factual, procedural, and/or legal allegation and alleged claim asserted in the Action. To this end, the settlement of the Actions, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this

Agreement or the Settlement are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Marathon, or of the truth of any of the factual allegations in the operative complaint, and are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of Marathon, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal.

C. No Claims.

105. No person shall have any claim against any of the Released Parties, Defense Counsel, Plaintiffs, the Settlement Class Members, or Class Counsel based on mailings, distributions, and payments made in accordance with or pursuant to this Agreement.

D. Parties Represented by Counsel.

106. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, they have read this Agreement and have had it fully explained to them by such counsel, and they are fully aware of the contents of this Agreement and of its legal effect.

E. Voluntary Agreement.

107. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of either Party, or of any other person, firm, or entity. Each Party has made such investigation of the facts pertaining to this Agreement and of all other matters pertaining hereto as he or it deems necessary.

F. Notices.

108. The Parties, Class Counsel and Defense Counsel acknowledge and agree that for the purposes of any claims, actions or proceedings arising out of this Agreement, notice provided to Class Counsel shall be deemed notice to Plaintiffs and to Settlement Class Members. Except for notices to Settlement Class Members, which are required herein to be made to or by the Class Administrator, all notices, requests, demands and other communications required to be given under this Agreement shall be in writing and shall be delivered personally, faxed, emailed, or mailed, postage prepaid, by first class United States mail, addressed as follows:

To Plaintiffs and Class Counsel:

1 GILBERT & SACKMAN, A Law Corporation
2 Jay Smith
3 Joshua F. Young
4 800 Wilshire Blvd, Suite 1410
5 Los Angeles, CA 90017
6 Telephone: (323) 938-3000 / Fax: (323) 937-9139

7 HADSELL STORMER & RENICK, LLP
8 Randy Renick
9 Cornelia Dai
10 128 N. Fair Oaks Avenue
11 Pasadena, CA 91103
12 Telephone: (626) 585-9600 / Fax: (626) 577-7079

13 To Defendant:

14 Catherine A. Conway
15 Jesse A. Cripps
16 Bradley J. Hamburger
17 Tiffany Phan
18 Madeleine F. McKenna
19 Katie Geary

20 GIBSON, DUNN & CRUTCHER LLP
21 333 South Grand Avenue
22 Los Angeles, California 90071
23 Telephone: 213.229.7000
24 Facsimile: 213.229.7520

25 **G. Authorization.**

26 109. The Parties hereto represent and warrant that each signatory hereto has the full right and
27 authority to enter into this Agreement and bind the Party on whose behalf he, she or it has executed
28 this Agreement. The Parties agree that Settlement Class Members are so numerous that it is impossible
or impractical to have each Settlement Class Member execute this Agreement. This Agreement may
be executed on behalf of Settlement Class Members by the Class Representatives.

29 **H. No Prior Assignments or Undisclosed Liens.**

30 110. The Class Representatives, Settlement Class Members, and Class Counsel represent that
31 they have not, directly or indirectly, assigned, transferred, conveyed, or otherwise disposed of or
32 encumbered any Released Claim or claim to the Attorneys' Fees and Costs Payment to be paid under
33 this Agreement. The Class Representatives and Class Counsel further represent and warrant that there

are not any liens or claims against any amount that Marathon is paying under this Agreement. The Class Representatives, Participating Settlement Class Members, and Class Counsel agree to defend, indemnify, and hold Marathon harmless from any liability, losses, claims, damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these representations or from any lien or assignment. Nothing herein is intended to constitute legal advice regarding the taxability of any amount paid pursuant to this Agreement, nor may it be relied upon as such.

I. Confidential Information.

111. Class Counsel will destroy all confidential documents and information provided by Marathon within 180 calendar days of this Agreement's completion. Class Counsel further agree that no confidential information provided by Marathon shall be used for any purpose other than prosecution of this Action.

J. Agreement Binding on Successors in Interest.

112. This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, heirs, and personal representatives of the Parties.

K. Time Periods.

113. The time periods and dates set forth in this Agreement with respect to the giving of notices and hearings are subject to approval and modification by the Court or the written stipulation of counsel for the Parties.

L. Mutual Full Cooperation.

114. The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including, but not limited to, execution and delivery of any and all additional papers, documents and other assurances and taking such other action that may be reasonably necessary to implement the terms of this Agreement. The Parties and their counsel shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the cooperation of Defense Counsel as reasonably requested by Class Counsel, take all necessary steps to secure Preliminary Approval and Final Approval of the Agreement by the Court, including responding to any objectors, intervenors, or

1 other persons or entities seeking to preclude approval of this Agreement. The Parties represent that
2 they have not solicited, encouraged, or assisted—and will not solicit, encourage, or assist—objections
3 or Requests for Exclusion. Plaintiffs and Class Counsel will make every reasonable effort to accurately
4 explain the benefits of this Settlement Agreement in response to any questions from any member of
5 the Settlement Class.

6 **M. Entire Agreement.**

7 115. Exhibits to this Agreement are integral parts of this Agreement and are hereby
8 incorporated and made a part of the Agreement. This Agreement contains the entire agreement between
9 the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with
10 respect to the subject matter hereof. All prior or contemporaneous settlement agreements,
11 understandings, and statements, whether oral or written, whether express or implied, and whether by a
12 Party or its counsel, are merged herein. This Agreement is executed without reliance upon any promise,
13 representation, or warranty by either Party or any representative of a Party, other than those expressly
14 set forth herein. Any inconsistency between this Agreement and the attached Exhibits will be resolved
15 in favor of this Agreement.

16 **N. Headings.**

17 116. The various headings used in this Agreement are solely for the convenience of the
18 Parties and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any
19 of its provisions.

20 **O. No Construction Against Drafter.**

21 117. This Agreement shall be deemed to have been drafted jointly by the Parties, and any
22 rule that a document shall be interpreted against the drafter shall not apply to this Agreement.

23 **P. Amendment and Modification.**

24 118. Except as expressly provided in this Agreement with respect to time periods and dates
25 set forth herein, this Agreement may be amended or modified only by a written instrument signed by
26 Class Counsel and the Named Plaintiffs, as well as Defense Counsel and Defendant. No rights under
27 this Settlement Agreement may be waived except in writing.
28

1 **Q. Governing Law.**

2 119. This Agreement is entered into in accordance with the laws of the State of California
3 and shall be governed by and interpreted in accordance with those laws, without respect to choice of
4 law provisions of any state.

5 **R. Jurisdiction of the Court.**

6 120. Any dispute regarding the interpretation, implementation, or validity or otherwise
7 arising out of this Agreement, or relating to the Action or the Released Claims, or to the calculation or
8 payment of the Settlement Amount, shall be subject to the exclusive jurisdiction of the Court, and the
9 Plaintiffs, Settlement Class Members and Marathon agree to submit to the personal and exclusive
10 jurisdiction of the Court for the purpose of resolving any such dispute. Following the Effective Date,
11 the Court shall retain jurisdiction solely with respect to the interpretation, implementation and
12 enforcement of the terms of this Agreement and all orders and judgments entered in connection
13 therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of
14 interpreting, implementing and enforcing the Settlement embodied in this Agreement and all orders
15 and judgments entered in connection therewith.

16 **S. Restriction on Publicity.**

17 121. Plaintiffs agree that they and Class Counsel will not issue any press release or press
18 statement, or initiate media coverage, regarding Marathon, the Released Parties, or this Settlement
19 Agreement. Should the media inquire or ask for information about the Settlement or this Settlement
20 Agreement, Class Counsel and Plaintiffs shall decline to comment.

21 **T. Plaintiffs' Waiver of Right to Request Exclusion or to Object.**

22 122. By signing this Agreement, Plaintiffs agree to be bound by the terms herein and further
23 agree not to request exclusion from or object to any of the terms of this Agreement. Any such Request
24 for Exclusion or objection shall therefore be void and of no force or effect.

25 **U. Agreement Constitutes a Complete Defense.**

26 123. The Parties agree that this Agreement and all exhibits thereto shall be inadmissible in
27 any proceeding, except a proceeding to approve or enforce this Agreement. To the extent permitted by
28 law, this Agreement may be pleaded as a full and complete defense to any action, suit or other

proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement. The Class Representatives, Settlement Class, and Class Counsel agree that none of the documents provided to them by Marathon shall be used for any purpose other than the prosecution and settlement of the Action. Specifically, none of the documents provided shall be used to pursue any subsequent claims or litigation against Marathon or the Released Parties.

V. Signatures.

124. Signature by facsimile or in Portable Document Format (PDF) via electronic mail shall have the same force and effect as original signatures.

W. Execution Date and Execution in Counterparts.

125. This Agreement shall be deemed executed upon the last date of signature of all of the undersigned. The Parties may execute this Agreement in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument having the same force and effect as if all Parties had signed the same instrument.

IN WITNESS THEREOF, the Parties hereto have so agreed.

Date: _____, 2025

Louis Butel, Plaintiff

Date: _____, 2025

Pamela Mocherniak, Plaintiff

Date: _____, 2025

By: _____
Molly R. Benson
Chief Legal Officer and Corporate Secretary
Marathon Refining Logistics Services LLC Defendant

1 APPROVED AS TO FORM:

2 GILBERT & SACKMAN, A LAW CORPORATION

3
4 Date: _____, 2025

By: _____

5 Josh Young

6 Attorneys for Plaintiffs

7
8 GIBSON, DUNN & CRUTCHER LLP

9
10 Date: _____, 2025

By: _____

11 Bradley J. Hamburger

12 Attorneys for Marathon Refining Logistics

13 Services LLC