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7 8	Attorneys for Defendant ConocoPhillips Company	S
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9		TES DISTRICT COURT
10	CENTRAL DIST	TRICT OF CALIFORNIA
11	WESTERN DIVISION	I - ROYBAL FEDERAL BLDG
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13	UNITED STEEL, PAPER &	Case No. CV08-2068 PSG (FFMx)
14	FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE	
15	WORKERS INTERNATIONAL UNION, AFL-CIO, CLC, on behalf its	DEFENDANT CONOCOPHILLIPS COMPANY'S SEPARATE STATEMENT OF
16	members employed by defendants,	UNCONTROVERTED FACTS AND
17	and RAUDEL COVARRUBIAS, DAVID SIMMONS AND STEPHEN S SWADER SP. individually and on	CONCLUSIONS OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AS TO
18	S. SWADER, SR., individually and on behalf of all similarly situated current and former employees,	PLAINTIFFS RAUDEL COVARRUBIAS AND DAVID
19	Plaintiffs,	SIMMONS
20		
21	V.	Date: February 9, 2009
22	CONOCOPHILLIPS COMPANY and DOES 1 through 10, inclusive,	Time: 1:30 p.m. Ctrm: 790
23	Defendants.	Judge: Hon. Phillip S. Gutierrez
24		Date Action Filed: February 15, 2008 Date Removed: March 27, 2008
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Pursuant to Local Rule 56-1 of the United States District Court for the Central District of California, Defendant ConocoPhillips Company ("ConocoPhillips" or "Defendant") submits this Statement of Uncontroverted Facts and Conclusions of Law in support of its Motion for Summary Judgment as to Plaintiffs Raudel Covarrubias and David Simmons.

## I. <u>UNCONTROVERTED FACTS</u>

Uncontroverted Facts	Supporting Evidence
1. ConocoPhillips operates four	Declaration of Anastasia M. Boles
refineries in California – Los Angeles	("Boles Decl.") ¶ 6, Exh. E (Deposition
("LAR") (comprised of two separate	of Patrick Prosser on November 25, 2008
facilities, Carson and Wilmington),	("Prosser Depo.") at 17:24-18:3; 18:5-6;
Rodeo and Santa Maria.	18:14-16).
·	
2. Plaintiff USW is the collective	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
bargaining representative of the putative	20:5-12).
class members at the LAR, Rodeo, and	
Santa Maria facilities, and a collective	
bargaining agreement ("CBA") between	
ConocoPhillips and the USW sets forth	
the wages, hours and working conditions	
of the employees.	
3. The 12-hour shift worked by	Boles Decl. ¶ 4, Exh. C (excerpts from
Plaintiffs Raudel Covarrubias and David	Exhibit 205 to the Deposition of Raudel
Simmons is pursuant to a USW-proposed	Covarrubias on December 1, 2008) at
and negotiated "12-Hour Shift	CP_USW000515.

Boles Decl. ¶ 5, Exh. D (Deposition of
Howard Muto on December 12, 2008
("USW-M Depo.") at 55:11-22); Boles
Decl. ¶ 8, Exh. G (Deposition of Stephen
Swader on December 2, 2008 ("USW-S
Depo.") at 29:2-17).
Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
21:16-22).
Boles Decl. ¶ 4, Exh. C, at
CP_USW000515.
Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
48:24-49:9); Boles Decl. ¶ 4, Exh. C, at
CP_USW000515.
Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
49:1-9); Boles Decl. ¶ 7, Exh. F
(Deposition of David Simmons on
December 1, 2008 ("Simmons Depo.") at

1	units are adjusted based upon t	the desires   32:6-17).
2   3	of the unit employees.	
4	9. Most employees rotate s	shifts from Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
5	a day schedule to a night sched	dule. 49:1-9); Boles Decl. ¶ 7, Exh. F
6		(Simmons Depo. at 32:6-17).
7	10. Stephen Swader, chair o	Boles Decl. ¶ 8, Exh. G (USW-S Depo.
8	union negotiating committee for	for the at 30:11-15).
9	1997 negotiations, testified:	
10	"Q: But my example of	of
11	someone taking an hour meal l	break and
12	let's say five breaks to smoke,	none of
13	those breaks would be deducte	ed. They
14	would be paid for the full 12 h	nours; is
15	that correct?	
16	A: Yes."	
17	11. Patrick Prosser testified	
18	also contemplated that operato	
19	12-hour shift schedule will have	
20	sufficient time to eat a meal or	
21	opportunities for rest during th	hat 12-hour
22	period."	
23	12. Patrick Prosser testified	
24	"[O]perators enjoy a great dea	
25	freedom to manage their work	
26	that 12-hour shift period, so th	
27	the flexibility to take breaks as	nd have a

meal whenever their work and the timing	
of their activities permit it."	
13. Patrick Prosser testified, "When	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
we say 'monitoring,' we're not talking	74:24-75:8).
about sitting and staring for 12 straight	
hours at a monitor or devicethe	
operators themselves have a high degree	`
of flexibility to manage the process as	
best they can in regards to doing it	
safely, efficiently, and getting things	
prepared for maintenance and whatnot."	
14. Plaintiff Raudel Covarrubias was	Boles Decl. ¶ 3, Exh. B (Deposition of
a member of the union negotiating	Raudel Covarrubias on December 1,
committee in 1997 when the USW	2008 ("Covarrubias Depo.") at 14:9-14;
bargained for and won the 12-hour shift	Boles Decl. ¶ 8, Exh. G (USW-S Depo.
for Operators, as was Plaintiff Stephen	at 29:2-17); Boles Decl. ¶ 5, Exh. D
Swader.	(USW-M Depo. at 51:24-52:18, 54:5-
	16).
15. Covarrubias signed the 2002	Boles Decl. ¶ 3, Exh. B (Covarrubias
CBA.	Depo. at 127:14-24; 126:19-127:2);
	Boles Decl. ¶ 4, Exh. C, at
	CP_USW000474.
16. The USW agreed that a joint	Boles Decl. ¶ 4, Exh. C, at Art. 20, ¶¶ 5
ConocoPhillips-USW committee on	and 7, pp. CP_USW000464-466;
health and safety ("Joint Committee") is	CP_USW000483.
to address and correct any health and	

safety issues at the Refineries.	
17. The Joint Committee is to meet at	Boles Decl. ¶ 4, Exh. C, at Art. 20, ¶ 7, p.
least once a month for the "purpose of	CP_USW000465.
jointly considering, inspecting,	
investigating and reviewing health and	
safety conditions and practices" as well	
as to make recommendations of	
implementations of corrective measures	
to "eliminate unhealthy and unsafe	
conditions and practices" of the	
Refineries.	
18. The CBA provides that USW	Boles Decl. ¶ 4, Exh. C, at Art. 19, p.
members can refuse to perform services	CP_USW000464.
that are deemed "unsafe" and refusal	
would lead to an immediate conference	
between the union and the company.	
19. A USW Member at each of the	Boles Decl. ¶ 4, Exh. C, at Side
facilities is elected to serve as Health &	Agreement #2, pp. CP_USW000484-
Safety representative and investigate,	486.
review and improve the health and safety	
conditions and practices at the	
Refineries.	
20. Both Covarrubias and Simmons	Boles Decl. ¶ 3, Exh. B (Covarrubias
testified that missed meal breaks for	Depo. at 98:5-10); Boles Decl. ¶ 7, Exh.
Operators raise a potential health and	F (Simmons Depo. at 97:12-16).
safety issue.	

21. The CBA provides for a grievance	Boles Decl. ¶ 4, Exh. C (see generally
procedure to address union member	Art. 24, at pp. CP_USW000467-470).
concerns about their work conditions.	
22. Both Covarrubias and Simmons	Boles Decl. ¶ 3, Exh. B (Covarrubias
testified that they, as union leadership,	Depo. at 16:22-17:1; 17:9-19:5); Boles
have utilized the grievance procedure to	Decl. ¶ 7, Exh. F (Simmons Depo. at
address employee concerns.	61:18-64:21).
23. Both Covarrubias and Simmons	Boles Decl. ¶ 3, Exh. B (Covarrubias
testified that non-operator employees	Depo. at 21:6-22:25); Boles Decl. ¶ 7,
have filed grievances regarding meal	Exh. F (Simmons Depo. at 61:18-64:21).
periods, none of which were related to	
the 12-Hour Shift Agreement.	
24. There are many different types of	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
Operators at each refinery, who are	26:4-12).
generally responsible for maintaining the	
safety of the facility by monitoring the	
refining process and refining equipment.	·
25. Two types of Operators are	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
Console (or Inside) Operators, and Field	26:13-27:2; 58:22-59:14).
(or Outside) Operators.	
26. Although job duties for Console	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
Operators and Field Operators vary by	26:13-27:2; 58:22-59:14).
refinery, shift, and unit, as a general	
matter, Console Operators monitor the	
refinery equipment and process and give	
direction to Field Operators, who	

physically check and maintain the	
refinery equipment in the field.	
27. Operators have an important role	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
in ensuring the safety of the refinery	26:13-27:2; 58:22-59:14).
equipment, which must be constantly	
monitored to ensure the equipment is	
functioning properly, temperature levels	
are appropriate, and materials are being	
processed efficiently.	
28. The oil refining process must be	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
"monitored continuously."	63:18-64:4).
29. In the case of an emergency,	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
Operators assist the refinery's fire and	36:14-37:1; 59:15-60:1).
safety professionals.	
30. Prosser testified, "The way we	Boles Decl. ¶ 6, Exh. E (Prosser Depo. at
manage our emergency response is that	36:14-37:1).
is a duty of operators, as well."	
31. For the last year and a half,	Boles Decl. ¶ 3, Exh. B (Covarrubias
Covarrubias has worked exclusively as	Depo. at 32:11-14).
an Inside Console Operator.	
32. Between 1998 and his permanent	Boles Decl. ¶ 3, Exh. B (Covarrubias
assignment as Inside Operator,	Depo. at 31:18-32:7).
Covarrubias split his time between the	
Inside Operator and Outside Operator	
positions.	
33. Since 1997, Covarrubias has been	Boles Decl. ¶ 3, Exh. B (Covarrubias

Depo. at 14:9-17; 15:11-13).
Boles Decl. ¶ 3, Exh. B (Covarrubias
Depo. at 57:3-4).
Boles Decl. ¶ 3, Exh. B (Covarrubias
Depo. at 57:12-18).
Boles Decl. ¶ 3, Exh. B (Covarrubias
Depo. at 120:6-10; 29:18-23).
Boles Decl. ¶ 3, Exh. B (Covarrubias
Depo. at 120:6-10).
Boles Decl. ¶ 3, Exh. B (Covarrubias

43. Covarrubias testified that he had	Boles Decl. ¶ 3, Exh. B (Covarrubias
"no idea" how many times he had to	Depo. at 83:18-84:1).
interrupt a meal at all.	
44. Covarrubias admitted that if his	Boles Decl. ¶ 3, Exh. B (Covarrubias
meal was ever interrupted during a shift,	Depo. at 84:13-25; 85:14-19; 86:4-6).
he could take a meal break after the	,
interruption, and it was his "preference"	
to do so.	
45. Covarrubias conceded that, a	Boles Decl. ¶ 3, Exh. B (Covarrubias
"majority" of the time, his meals went	Depo. at 86:22-24) ("Q: So the majority
uninterrupted.	of the time you were not interrupted? A:
	Yes.").
46. In the last five years, no one at	Boles Decl. ¶ 3, Exh. B (Covarrubias
ConocoPhillips has ever told	Depo. at 42:14-16; 43:1-3; 98:18-20).
Covarrubias he could not take a meal	
break.	
47. Covarrubias has never complained	Boles Decl. ¶ 3, Exh. B (Covarrubias
to a supervisor about an interrupted	Depo. at 84:10-12).
meal.	
48. Covarrubias has never requested a	Boles Decl. ¶ 3, Exh. B (Covarrubias
meal break that a manager denied.	Depo. at 118:19-22).
49. In his capacity as union steward,	Boles Decl. ¶ 3, Exh. B (Covarrubias
Covarrubias has never received a	Depo. at 57:12-25).
complaint from an Operator about a	
missed meal break.	
50. During his deposition,	Boles Decl. ¶ 3, Exh. B (Covarrubias

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Covarrubias testified that he is able to	Depo. at 33:22-24 ("Q: And during that
take meal breaks.	12-hour shift, you have to take meals; is
	that correct? A: We have time to eat.").
51. Covarrubias admitted that he has	Boles Decl. ¶ 3, Exh. B (Covarrubias
broad discretion over when to eat his	Depo. at 34:20-22; 39:9-11).
meals, and how long to take for his meal	,
breaks.	
52. Covarrubias sometimes takes as	Boles Decl. ¶ 3, Exh. B (Covarrubias
much as 45 minutes to an hour for his	Depo. at 35:18-20); id. (Covarrubias
meal break.	Depo. at 46:8-19) ("Q: And you can
	easily take 45 minutes to eat your meal;
	is that correct? A: If it takes that long to
,	eat. Q: Pardon me? A: If it takes that
	long to eat, yeah."); see also id.
	(Covarrubias Depo. at 51:14-21).
53. Covarrubias always had access to	Boles Decl. ¶ 3, Exh. B (Covarrubias
kitchen facilities to prepare his meals.	Depo. at 26:20-22; 34:12-19; 49:25-
	50:9).
54. Covarrubias testified that he will	Boles Decl. ¶ 3, Exh. B (Covarrubias
sometimes ask other Operators to "keep	Depo. at 72:5-11).
an eye" on his monitor while he takes a	
meal break, and he will return the favor.	
55. Covarrubias often makes himself	Boles Decl. ¶ 3, Exh. B (Covarrubias
breakfasts of bacon and eggs.	Depo. at 28:6-10).
56. Covarrubias testified that he often	Boles Decl. ¶ 3, Exh. B (Covarrubias
makes himself lunches or dinners of	Depo. at 27:11-28:1).

macaroni and cheese, hot dogs, or steak.	
57. At times, Covarrubias and other	Boles Decl. ¶ 3, Exh. B (Covarrubias
Operators order take-out meals from a	Depo. at 54:6-11).
local restaurant.	
58. On day shifts, Covarrubias usually	Boles Decl. ¶ 3, Exh. B (Covarrubias
eats between 11:00 and 11:30 a.m., when	Depo. at 112:5-10).
the maintenance crew takes their lunch.	
59. Covarrubias generally eats his	Boles Decl. ¶ 3, Exh. B (Covarrubias
meals with a group of other Operators in	Depo. at 40:6-12).
the unit, in groups of up to eight	
Operators.	
60. During breakfast on the weekend	Boles Decl. ¶ 3, Exh. B (Covarrubias
shifts, it can take over an hour for	Depo. at 51:14-21 ("Q: Could it take it
Covarrubias to prepare his food, and	an hour, sometimes a little longer, and
then sit down and eat it with the four to	then you sit down have breakfast; is that
five other Operators on the shift with	correct? A: Yes."); 52:5-7.
him.	
61. Covarrubias considers the group	Boles Decl. ¶ 3, Exh. B (Covarrubias
meals a "social gathering."	Depo. at 53:7-9).
62. Even during busy times like	Boles Decl. ¶ 3, Exh. B (Covarrubias
turnarounds, the Operators sit down	Depo. at 44:24-45:5).
together and eat meals.	
63. During his shift, Covarrubias	Boles Decl. ¶ 3, Exh. B (Covarrubias
makes several personal cell phone calls	Depo. at 46:20-47:10).
of five to ten minutes each throughout	
the day, often to his children.	

64. Covarrubias has to step outside,	Boles Decl. ¶ 3, Exh. B (Covarrubias
away from his console, to use his cell	Depo. at 47:18-25).
phone because of poor reception inside.	
65. Covarrubias testified that he has	Boles Decl. ¶ 3, Exh. B (Covarrubias
plenty of time during his shift to "talk	Depo. at 52:18-22).
socially" with other Operators about	
"politics, personal stuff" and to "joke	
around with each other."	
66. Covarrubias also spends five to	Boles Decl. ¶ 3, Exh. B (Covarrubias
ten minutes a day talking with his friend	Depo. at 117:21-118:9).
and fellow plaintiff, David Simmons.	
67. David Simmons currently is and	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
for a majority of the class period has	at 25:11-26:12); Boles Decl. ¶ 2, Exh. A
been a Health and Safety representative.	(Plaintiffs' Complaint, at ¶¶ 29-31)
	(alleging violations of California's unfair
	competition law based on alleged
	conduct from four years prior to filing of
	Complaint on February 15, 2008).
68. Simmons is the Health & Safety	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
representative for the USW at	at 24:19-25:18; 25:11-26:12; 127:8-13;
Wilmington and has held this position	128:2-4).
for the majority of the last five years –	
from May 2003 to May 2005, and from	
January 2007 to the present.	
69. From May 2005 to January 2007,	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
Simmons worked as an Outside Field	at 24:7-9; 24:19-25:18; 25:11-26:12;

Operator.	35:11-16; 127:8-13; 128:2-4).
70. Simmons is on the executive	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
board of his local union, has been	at 55:8-25).
ConocoPhillips' unit designee since	
2006, and attends national bargaining	
meetings.	,
71. As the Health & Safety	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
representative, part of Simmons' job	at 51:12-22; 53:18-21).
duties include "act[ing] as a liaison	
between the union and the company	
when people have complaints about safe	
conditions" as well as union member's	
job conditions.	
72. As the Health & Safety	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
representative, Simmons' regular	at 98:7-13; 102:13-20).
practice is to take a 30-minute break for	
lunch at his discretion.	
73. Health & Safety representatives	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
work an eight-hour day shift and receive	at 98:7-13).
an unpaid meal break.	
74. Whenever Simmons missed a	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
lunch break, he has been paid overtime.	at 98:14-99:5; 100:24-101:3).
75. As an Operator, Simmons	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
admitted in his deposition that he can	at 76:22-23 ("Q: When is the last time
and does take 30-minute uninterrupted	you didn't eat? A: Well, I'm there 12
meal periods.	hours, I always eat."); id. (Simmons

	Depo. at 98:11-13).
76. Simmons could only recall three	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
times, all of which were prior to 2001,	at 114:23-116:15).
where he missed a meal.	
77. Simmons conceded that it is	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
within his discretion as to when to eat,	at 76:24-77:1 ("Q: So you have
and how long of a break to take.	discretion during that 12 hours on when
	to get something to eat, correct? A: I can
	eat, yes."); id. (Simmons Depo. at
	110:15-24; 111:11-13).
78. Simmons could not recall any	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
time during the past five years that he	at 117:6-9).
had missed a meal break.	
79. Simmons could not recall the last	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
time his meal was interrupted.	at 78:17-19).
80. Simmons could only recall one	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
specific instance when his meal was	at 78:20-79:14; 81:11-21).
interrupted because a piece of equipment	·
shut down.	
81. With respect to the one specific	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
instance that Simmons recalled when his	at 78:20-79:14).
meal was interrupted because a piece of	
equipment shut down, once Simmons	
finished dealing with the emergency, he	
was able to take his meal break.	
82. Other than the one instance that	Boles Decl. ¶ 7, Exh. F (Simmons Depo.

	<del></del>
Simmons recalled when his meal was	at 118:2-4 ("Q: So you can't quantify for
interrupted because a piece of equipment	me how many of your periods to eat
shut down, Simmons could not quantify	were shorter than 30 minutes? A: No, I
or describe another time when he was	can't.").
not able to take a 30-minute	
uninterrupted meal period.	
83. Simmons has never complained	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
about a missed or interrupted meal	at 84:2-4 ("Q: So you have never told a
break.	supervisor if you did not get a chance to
·	eat, correct? A: No."); id. (Simmons
	Depo. at 119:1-12).
84. In his capacity as union leader or	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
Heath & Safety representative, Simmons	at 54:3-20; 65:1-5).
has never heard a complaint from an	
Operator about a missed or interrupted	•
meal break.	
85. No supervisor has ever told	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
Simmons not to take a meal break.	at 89:16-19).
86. Simmons admits that he has never	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
been disciplined for taking too long of a	at 110:2-4).
break.	
87. As an Operator, Simmons had	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
access to a kitchen in the outside shelter.	at 39:24-40:4; 129:1-18).
88. Simmons has used the kitchen to	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
cook his meals, such as chicken breasts	at 95:6-96:4).
with salad, and sometimes ordered food	

from local restaurants with other	
Operators.	
89. Although Simmons' practice was	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
to take 20-minute meal breaks, this was	at 107:23-108:10).
his choice and depended on whether or	
not he cooked his meal at the shelter or	
brought food from home.	
90. No one instructed Simmons to cut	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
his meal period short.	at 107:23-108:10).
91. Once per shift, a Field Operator	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
must take reading sheets (reports that	at 37:12-38:21).
detail readings from the outside	
equipment) to the Console Operator in	
the Central Control Room; this requires	
that Operator to be away from the field	
unit for at least twenty minutes, while	
the other Field Operators "monitor" that	
Operator's units.	
92. Simmons admitted there are other	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
times when the Console Operator at the	at 86:3-14; 87:23-88:2; 88:11-14).
Central Control Room can monitor the	
alarm board when Simmons is away	
from the unit.	
93. Simmons is a cigar smoker, and	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
admitted in his deposition that he	at 90:13-17).
smokes at least three cigars per shift in a	

designated outside area, away from the	
unit.	
94. As an Operator, Simmons spoke to	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
his wife at least once per day on his cell	at 92:7-10).
phone for about ten minutes, away from	
the unit.	
95. During deposition, when shown	Boles Decl. ¶ 7, Exh. F (Simmons Depo.
gate records of his time as an Operator,	at 135:23-138:5).
Simmons admitted there were times	
when he stepped away from his unit to	
return to his car and retrieve his keys – a	
trip that he estimates would take him at	
least twenty minutes.	
96. Plaintiffs, including Covarrubias	Boles Decl. ¶ 2, Exh. A (Plaintiffs'
and Simmons, filed the complaint in this	Complaint, ¶¶ 24-31).
action on February 15, 2008 alleging two	
claims: (1) failure to be provided with	
meal periods, and (2) violation of	
California's Unfair Competition Law.	
97. Both Covarrubias and Simmons	Boles Decl. ¶ 3, Exh. B (Covarrubias
testified that their decision to file a	Depo. at 91:2-92:24); Boles Decl. ¶ 7,
lawsuit was prompted by news that	Exh. F (Simmons Depo. at 70:2-19).
employees at another refinery received a	
substantial settlement for missed meal	
periods.	
98. Both Covarrubias and Simmons	Boles Decl. ¶ 3, Exh. B (Covarrubias

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	testified that prior to the news of the	Depo. at 84:10-12; 118:19-22); Boles
	settlement, or even after, neither	Decl. ¶ 7, Exh. F (Simmons Depo. at
	complained to ConocoPhillips	84:2-4; 119:1-12).
	management about missed meal periods.	
	99. Plaintiffs' UCL claim is premised	Boles Decl. ¶ 2, Exh. A (Plaintiffs'
	on Plaintiffs' claim that ConocoPhillips	Complaint, at ¶¶ 24-31).
	violated the Labor Code by denying	
	them proper meal breaks.	

## II. CONCLUSIONS OF LAW

- 1. ConocoPhillips is entitled to judgment as a matter of law with respect to Plaintiffs' claim for allegedly "failing to allow meal periods" because the undisputed evidence establishes that Plaintiffs never missed any meal periods, and thus Plaintiffs cannot create a genuine issue of material fact as to an essential element of their meal break claim.
- 2. ConocoPhillips is entitled to judgment as a matter of law with respect to Plaintiffs' claim for allegedly "failing to allow meal periods" because Plaintiffs cannot establish a genuine issue of material fact as to whether ConocoPhillips failed to provide Plaintiffs with meal periods as required under California law.

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3. ConocoPhillips is entitled to judgment as a matter of law with Plaintiffs' claim under California's unfair competition law because Plaintiff establish a genuine issue of material fact with respect to their meal break cl which their unfair competition claim is based.  Dated: January 7, 2009  AKIN GUMP STRAUSS HAUER & FELD Catherine A. Conway Anastasia M. Boles Jeremy F. Bollinger  By /s/ Catherine A. Conway Attorneys for Defendant ConocoPhillips Conditions and the control of the			
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28 DEFENDANT CONOCOPHILLIPS COMPANY'S SEPARATE STATEMENT OF UNCONTROVER			

1 PROOF OF SERVICE 2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES 3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century 4 Park East, Suite 2400, Los Angeles, California 90067. 5 On January 7, 2009, I served the foregoing document(s) described as: 6 DEFENDANT CONOCOPHILLIPS COMPANY'S SEPARATE STATEMENT OF UNCONTROVERTED FACTS AND SUPPORT OF 7 ITS MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFFS RAUDEL COVARRUBIAS AND DAVID SIMMONS 8 9 on the interested party(ies) below, using the following means: 10 Robert A. Cantore, Esq. Jay Smith, Esq. Joshua F. Young, Esq. GILBERT & SACKMAN 11 12 3699 Wilshire Boulevard, Suite 1200 Los Angeles, California 90010-2732 Telephone: 323.938.3000 Facsimile: 323.937.9139 13 14 Attorneys for Plaintiffs 15 🗵 BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) 16 to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other 17 indication that the transmission was unsuccessful. 18 (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. 19 Executed on January 7, 2009 at Los Angeles, California. 20 21 Linda Tolkert 22 Linda Tolbert [Print Name of Person Executing Proof] 23 24 25 26 27 28 6322465

PROOF OF SERVICE

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