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Attorneys for Plaintiffs

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

## **AMENDED SETTLEMENT AGREEMENT**

Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for Settlement of the claims herein described against Defendants.

WHEREAS, Plaintiffs filed the above-captioned class action lawsuit against the Defendants Exxon Mobil Corporation, Texaco, Inc., Star Enterprise, Motiva Enterprises LLC, and Spark Electric Services, Inc. alleging that Defendants had contaminated Plaintiffs' and members of the class' properties.

WHEREAS, the Defendants other than Texaco, Inc., Star Enterprise, Motiva Enterprises LLC (collectively known as "Texaco"), Exxon Mobil Corporation ("ExxonMobil") and Spark Electric Services, Inc ("Spark Electric" or "Spark") subsequently were dismissed by stipulation.

WHEREAS, this is a class settlement on behalf of all property owners who allegedly suffered a loss of the beneficial use, enjoyment and exclusive possession of their property due to gasoline contamination from underground storage tanks which were owned, controlled, possessed and/or maintained by Defendants. Plaintiffs contend that as a result of the Defendants' contamination allegedly being deposited on their property, Plaintiffs and the class members have suffered damages including but not limited to property damage, economic loss, a decline in their property value, inconvenience and incurred other costs, expenses and losses.

WHEREAS, Spark Electric, Texaco and ExxonMobil have denied and continue to deny Plaintiffs' claims, and Defendants deny any wrongdoing, liability or malfeasance of any kind to

Plaintiffs or to any members of the Class (as defined hereinafter).

WHEREAS, the Parties to this Settlement Agreement have conducted and are continuing to conduct a thorough examination and investigation of the facts and law relating to the matters in this Litigation and that such examination included documentary and deposition discovery in the course of the Litigation.

WHEREAS, while denying any and all liability, Spark Electric, Texaco and ExxonMobil have entered into a Settlement in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of the Plaintiffs and all Class Members relating to alleged conduct involved in this Litigation.

WHEREAS, Plaintiffs and Class Counsel recognize the costs and risks of prosecuting this Litigation, and believe that it is in their interest, and the interest of all Class Members, to resolve this Litigation, and any and all claims against the Spark Electric, Texaco and ExxonMobil.

WHEREAS, substantial, adversarial settlement negotiations have taken place between the Parties, including mediation conducted by retired Judge C. Judson Hamlin, and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

WHEREAS, the Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members.

WHEREAS, this Settlement Agreement is made and entered pursuant to R.4:32 - et. seq. of the New Jersey Rules of Civil Procedure by and among Spark Electric, Texaco, ExxonMobil

and Plaintiffs Joseph Meneghin, Iacono Enterprises, LLC and Neil and Michelle Brodksy individually and on behalf of a class (the "Class") of similarly situated persons (the "Class Members") defined as:

All property owners located in Toms River or Lakewood, New Jersey whose properties allegedly have been contaminated with Benzene and/or 1,2 DCA from leaking underground storage tanks owned, controlled, possessed and/or maintained by settling defendants. The members of class are identified on the property list attached as Exhibit "A" to the Settlement Agreement. This class also includes all persons or entities that sold their property since January 1, 2006, to a buyer that had knowledge of the Litigation or of any claims that the property was contaminated, and excludes all persons or entities that bought their property since January 1, 2006 with knowledge of the Litigation or of any claim that the property was contaminated.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned as follows:

## **I. DEFINITIONS**

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Claim Form. "Claim Form" shall mean a form in substantially the same form and Affidavit as that attached hereto as Exhibit B.

B. Claims Period. "Claims Period" shall mean the time period during which claims may be made by Class Members, extending from the Notice Date until the date 90 days thereafter, including weekends and holidays, provided that if the last day of the Claims Period

falls on a weekend or Federal holiday, then the end of the Claims Period shall be the next following day that is not a weekend or Federal holiday.

C. Class Counsel. “Class Counsel” shall mean: Charles E. Schaffer, Esquire and Daniel C. Levin, Esquire, Levin, Fishbein, Sedran & Berman, Philadelphia.

D. Class Notice. “Class Notice” shall mean the Court-approved form of notice in substantially the same form as Exhibit C.

E. Class Representatives: “Class Representatives” shall mean Plaintiffs Joseph Meneghin, Iacono Enterprises, LLC and Neil and Michelle Brodsky.

F. Class Settlement. “Class Settlement” shall mean the terms provided in this Settlement Agreement.

G. Court. “Court” shall mean the Superior Court of New Jersey Law Division, Ocean County, Judge Craig L. Wellerson, J.S.C., or his duly appointed or designated successor.

H. Defendants. “Defendants” shall mean Spark Electric, Texaco and ExxonMobil, and shall include all agents, servants, officers, directors, employees, heirs, executors, administrators, insurance carriers, claims handlers and claims administrators, predecessors, successors, affiliates, assigns, parents and subsidiaries, members, related entities and representatives.

I. Defendants’ Counsel. “Defendants’ Counsel” shall mean Angela A. Iuso, Esquire, CONNELL FOLEY LLP, 85 Livingston Avenue, Roseland, NJ 07068 for Spark; Shelia A.

Woolson, Esquire, EPSTEIN BECKER & GREEN, 1 Gateway Center, 13<sup>th</sup> Floor, Newark, NJ 07102 for Texaco, and Robert Lehman, ARCHER & GREINER, One Centennial Square, P.O. Box 3000, Haddonfield, NJ 08033-0968 for ExxonMobil.

J. Distribution Amount. “Distribution Amount” shall mean the amount available from the Settlement Fund after payment of the costs of Class Notice and administration of the Settlement, attorneys’ fees and expenses, and incentive awards to Class Representatives.

K. Effective Date. “Effective Date” shall mean thirty days after the date on which the Settlement has been finally approved by the Court, and/or the date on which any appeals from final approval are resolved, whichever is later.

M. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Judgment.

N. Final Judgment. “Final Judgment” shall mean that Court order that finally certifies the Settlement Class, approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement, in substantially the same form as Exhibit D.

O. Litigation. “Litigation” shall mean the above-captioned lawsuit pending in the Superior Court of New Jersey Ocean County, OCN-L-002696-07.

P. Mediator. The “Mediator” shall mean The Honorable C. Judson Hamlin.

Q. Notice Program. “Notice Program” shall mean the program for disseminating the Class Notice to Class Members, including public dissemination of the Summary Notice, in

accordance with the terms herein.

R. Notice Date. “Notice Date” shall mean the date upon which Class Notice is mailed to known Class Members in accordance with the terms herein.

S. Objection Date. “Objection Date” shall mean the date agreed upon by the Parties or otherwise ordered by the Court by which Settlement Class Members must submit any objection to the Settlement Agreement's terms or provisions and submit any required statements, proof, or other materials and/or argument.

T. Opt-Out Deadline. “Opt-Out Deadline” shall mean the date agreed upon by the Parties or otherwise ordered by the Court by which any Class Members who do not wish to be Settlement Class Members and participate in the Settlement must complete the acts necessary to properly effect such election to opt out.

U. Opt-Out List. “Opt-Out List” shall mean a written list prepared by Class Counsel of the names of all Class Members who submit timely Requests for Exclusion or Opt-Out Notices.

V. Opt-Out Notice. “Opt-Out Notice” or “Opt-Out” shall mean a Request for Exclusion.

W. Parties. “Parties” shall mean the Plaintiffs and Defendants.

X. Plaintiffs. “Plaintiffs” shall mean Joseph Meneghin, Iacono Enterprises, LLC and Neil and Michelle Brodsky.

Y. Preliminary Approval Order. “Preliminary Approval Order” shall mean the Order

of the Court preliminarily approving this Settlement Agreement and conditionally certifying a provisional Settlement Class, in substantially the same form as Exhibit E.

Z. Release. “Release” shall mean the release described in Section VII herein.

AA. Released Claims. “Released Claims” shall mean and include any and all claims or causes of action by or on behalf of any and all Settlement Class Members for property damage against the Defendants, and their agents, servants, officers, directors, employees, heirs, executors, administrators, insurance carriers, claims handlers and claims administrators, predecessors, successors, affiliates, assigns, parents and subsidiaries, members, related entities and representatives that are released by the Release described in Section VII herein that were, could have been, or should have been asserted, whether known or unknown, by the named Plaintiffs or any member of the Settlement Class, against the Released Parties, based upon or related to the actions or series of operative facts that are the subject of the Complaint or this Litigation or of this Settlement Agreement.

BB. Released Parties. “Released Parties” shall mean all persons or entities against whom Released Claims will be released pursuant to the Release described in Section VII herein.

CC. Request for Exclusion. “Request for Exclusion” shall mean any request by any Class Member for exclusion from being a Settlement Class Member in compliance with Section V herein.

DD. Rescind or Cancel Settlement. “Rescind or Cancel Settlement” shall mean a rescission or cancellation of the settlement by a Defendant or Defendants after receipt and review of the information of all Requests for Exclusions or Opt-Out Parties in accordance with Section



V.C. and X.N. herein.

EE. Settlement. "Settlement" shall mean the agreement by the Plaintiffs and Defendants to resolve the Litigation, the terms of which have been memorialized in this Settlement Agreement.

FF. Settlement Agreement. "Settlement Agreement" shall mean this Amended Settlement Agreement, including any amendment hereto pursuant to Section III.X.D hereof, and all the exhibits attached hereto.

GG. Settlement Class. "Settlement Class" shall mean:

All property owners located in Toms River or Lakewood, New Jersey whose properties allegedly have been contaminated with Benzene and/or 1,2 DCA from leaking underground storage tanks owned, controlled, possessed and/or maintained by settling defendants. The members of class are identified on the property list attached as Exhibit "A" to the Settlement Agreement. This class also includes all persons or entities that sold their property since January 1, 2006, to a buyer that had knowledge of the Litigation or of any claims that the property was contaminated, and excludes all persons or entities that bought their property since January 1, 2006 with knowledge of the Litigation or of any claim that the property was contaminated.

HH. Settlement Class Members. "Settlement Class Members" shall mean all persons in the Settlement Class who do not exclude themselves pursuant to Section V herein.

II. Settlement Fund. "Settlement Fund" shall mean a fund or funds, governed by terms to be agreed to between Class Counsel and Defendants' Counsel.

LL. Settlement Amount. "Settlement Amount" shall mean the amount of Three Million Dollars (\$3,000,000) to be paid by or on behalf of the Defendants. Spark Electric shall

pay \$1,100,000, ExxonMobil shall pay \$1,800,000 and Texaco shall pay \$100,000.

## **II. REQUIRED EVENTS**

Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendants' Counsel shall use their best efforts to cause the Court to enter the Final Judgment and the Preliminary Approval Order in substantially the forms attached hereto as Exhibits D and E, respectively.

2. The Parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in substantially the same form as Exhibit E, which by its terms shall:

a. Preliminarily approve the terms of the Settlement Agreement, including the certification of the Settlement Class for purposes of this Settlement Agreement only, as within the range of fair, reasonable and adequate Settlement for purposes of issuing notice;

b. Approve the contents of the Class Notice and methods in the Notice Plan;

c. Schedule a Final Approval Hearing to review comments regarding the proposed Class Settlement and to consider the fairness, reasonableness, and adequacy of the proposed Class Settlement and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Judgment (in substantially the same form as Exhibit D) approving the Class Settlement, granting Class Counsel's application for fees and expenses, granting the incentive awards application by the Class Representatives, and dismissing the claims against Spark Electric, ExxonMobil and Texaco with

prejudice.

3. Class Counsel and Defendants' Counsel will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Judgment.

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Judgment, Class Counsel and Defendants' Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; provided, however, that in no event shall Defendants be required to agree to any such cure that would increase the cost or burden of the Settlement Agreement to the Defendants.

5. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. Any Party may apply to the Court in the course of the settlement process to enforce the requirements of this paragraph.

### **III. SETTLEMENT TERMS**

#### **A. Settlement Fund**

1. Within five (5) days of the Effective Date, the Defendants shall provide

Plaintiffs with documentation verifying that their respective portion of the Settlement Amount is available and will not be utilized for any other payments or purposes.

2. Any obligation on the Defendants part to make payment for the settlement amounts referenced herein shall be several and not joint and several.

3. All administrative expenses, including the costs of Settlement administration and the provision of notice to class members, as well as the amounts awarded by the Court for attorneys' fees and expenses, and incentive awards to the Class Representatives, will be deducted from the Settlement Fund prior to determining the "Distribution Amount."

**B. Payments to Settlement Class Members**

1. The Settlement Class Members will receive \$3,000,000 of the Settlement Fund minus a proportionate share of attorneys' fees, expenses, administrative costs, including the costs of class notice, and Class Representative incentive awards. Each Settlement Class Member who submits a timely Claim Form will be entitled to a share of that Settlement Fund.

2. If a potential Settlement Class Member has either purchased or sold a property identified on the property list attached as Exhibit "A" after January 1, 2006, the seller of the property will be a Settlement Class Member and will be entitled to a share of the Settlement Fund if prior to the sale the buyer had knowledge of the Litigation or of any claim that the property was contaminated. The seller will be required to submit the Affidavit attached to the Claim Form attesting that prior to the sale the buyer had knowledge of the Litigation or of any claim that the property was contaminated. However, if prior to the sale the buyer did not have knowledge of the Litigation or of any claim that the property was contaminated, then the buyer

of the property, not the seller, will be a Settlement Class Member and will be entitled to a share of the Settlement Fund. The buyer will be required to submit the Affidavit attached to the Claim Form attesting that prior to the sale the buyer did not have knowledge of the Litigation or of allegations that the property was contaminated.

3. If there is a dispute between the buyer and the seller as to who is entitled to a share of the Settlement Fund, an arbitrator agreed upon by Class Counsel and Defendants, will provide a decision binding on both the seller and the buyer with no right of appeal as to who, pursuant to the above criteria, is entitled to a share of the Settlement Fund. No part of the Settlement Fund will be used to pay the arbitrator's fees and costs, but rather, such fees and costs will be paid by the loser of the dispute.

4. The parties anticipate that late claims may be filed subsequent to the end of the claims period. Late claims may be allowed, if submitted on or before the date of the Final Approval Hearing, under the sole discretion of Class Counsel for good cause shown. All late claims will be approved by the Court prior to being paid as part of the distribution of the Settlement.

5. The Parties acknowledge that the Class list and list of claimants was compiled, pursuant to the mutually-agreed upon definition of the Settlement Class.

**C. Attorneys Fees and Expenses**

Class Counsel will petition the Court pursuant to R. 4:32-2(h) and such other rules that are deemed to apply for an award of attorneys' fees and expenses in the amount not to exceed 45% of the entire Settlement Fund. Defendants shall not oppose Class Counsel's application for

said award of fees and expenses, nor will they oppose any appeal filed by Class Counsel relative to their application for an award of attorneys' fees and expenses. Defendants have had no participation in any determinations or issues regarding attorneys' fees and expenses, nor do Defendants have any obligations for any additional payment related to attorneys' fees and expenses.

**D. Partial Distribution Pending Appeal**

In the event that Final Approval of the Settlement is appealed by any Party or by any Settlement Class Member or by any third party objector, and if the payment of some portion of the Settlement Fund is not subject to dispute, that undisputed portion of the Settlement Fund shall be distributed in accordance with this agreement. In the event that Final Approval of the Settlement is overturned on appeal, all unpaid funds will remain with Defendants, as per the Settlement Fund.

**IV. NOTIFICATION TO CLASS MEMBERS**

**A. Responsibilities of the Administration of the Class**

1. Class Counsel shall implement and administer the Notice Program.
2. Class Counsel shall be responsible for, without limitation: (i) mailing the Class Notices; (ii) responding to requests for a copy of the Class Notice; (iii) otherwise administering the Notice Program; and (iv) distributing payments to the Settlement Class Members. The Notice Program shall comply with all requirements of applicable law.

**B. Notice**

1. Notice will be provided to the Settlement Class by direct mailing of Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address and by publication. The mailed notice will be provided in English, and will provide instruction that a Spanish copy of either notice will be provided upon request.

2. Class Counsel shall also provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication to Class Counsel, or through a toll-free telephone number to be established by Class Counsel.

3. Defendants will cooperate in the Notice Program by providing Class Counsel with information necessary to effect notice to the Settlement Class.

4. Class Counsel shall provide an affidavit to the Court attesting to the measures undertaken to provide Notice of the Settlement to the Settlement Class.

## **V. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to Class Counsel. Any Request for Exclusion must be postmarked or delivered not later than the Opt-Out Deadline. Any Request for Exclusion shall state the name, address and telephone number of the person requesting exclusion and contain a clear statement communicating that such person elects to be excluded from the Settlement, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to the Settlement.

B. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, Class Counsel shall provide an Opt-Out List to Defendants' Counsel together with copies of each Request for Exclusion. Defendants shall have thirty (30) days from receipt of Requests for Exclusions and opt-out information to review the Requests for Exclusion and advise Class Counsel of whether they agree to proceed with the Settlement or Rescind or Cancel Settlement in accordance with this Section and Section X.N. herein. A Defendant shall only Rescind or Cancel Settlement in good faith if, upon review of the opt outs, it believes that the number of Class Members or the nature of the Class Members opting out reaches a level that threatens to frustrate the essential purpose of this agreement. Also, Class Counsel shall make a good faith reasonable attempt to meet with any Opt-Out Parties in an attempt to address their issues, if any, and have and Opt-Out parties participate in the Settlement. Class Counsel and Defendants' Counsel shall jointly report the names appearing on the Opt-Out List to the Court at the time of the Final Approval Hearing. The effect of any Defendant electing to Rescind or Cancel Settlement shall be as reflected in Section X.N. herein.

D. Class Counsel agrees that they will not represent any individuals who opt out from the Settlement in asserting claims against any Defendant that are the subject of this agreement.

## **VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS**



A. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection by the Objection Date. Such objection shall state the name, address and telephone number of the person and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person wishes to be considered in support of the objection.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Clerk of the Court, and serve by mail or hand delivery such notice of objection or request to be heard, including all papers or evidence in support thereof, upon one of the Class Counsel and Defendants' Counsel, at the addresses set forth in the Class Notice, no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court, along with the required information and documentation set forth above, or to serve them as provided above, shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

C. In accordance with law, only Settlement Class Members who have objected to the

Settlement pursuant to the terms immediately above may appeal any Final Judgment. The proposed Final Judgment shall provide that any Settlement Class Member who wishes to appeal the Final Judgment, which appeal will delay the distribution of the Settlement to the Class, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

## **VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT**

A. By this Settlement Agreement and specifically as provided in this paragraph, Spark Electric, Texaco and ExxonMobil, and all of their respective agents, servants, officers, directors, employees, heirs, executors, administrators, insurance carriers, claims handlers and claims administrators, predecessors, successors, affiliates, assigns, parents and subsidiaries, members, related entities and representatives are released from any and all property damage claims or causes of action, known or unknown, that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Settlement Class against the Released Parties, based upon or related to the actions or series of operative facts that are the subject of the Complaint or this Litigation or of this Settlement Agreement.

B. Settlement Class Members shall verify that notice of this Release and Settlement will be provided upon future transfer of the property identified within the Settlement Class.

C. This Settlement Agreement does not affect the rights, if any, of Class Members who timely and properly exclude themselves from the Settlement.

D. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain

jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Settlement Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

E. Upon the Effective Date: (i) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Settlement Class Members; (ii) the Released Parties shall not be subject to liability or expense of any kind to any Settlement Class Members or their successors, predecessors or assigns except as set forth herein; and (iii) Settlement Class Members and their successors, predecessors and assigns shall be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

F. Tolling of Statute of Limitations. Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted by any Class Member who has properly opted out of the Settlement, Defendants shall not assert any statute of limitations, repose, or laches defense unless such defense (i) existed as of August 7, 2007, the date this class action was filed or (ii) arose after a Request for Exclusion was effected pursuant to Section V, or a combination thereof. Further, in the event that the Court does not approve this Settlement Agreement, or an appellate court reverses the Court's order approving this Settlement Agreement, Defendants agree that, with respect to any claims asserted in the Litigation that are

subsequently asserted or maintained in any existing or subsequently filed class action lawsuit, or by any Settlement Class Member, Defendants shall not assert any statute of limitations, repose or laches defense that is premised upon the time period of August 7, 2007 through and including the date of the latter of either: the entry of the Court's order disapproving this Settlement Agreement or the appellate court's decision reversing the Court's order approving this Settlement Agreement. This tolling will cease thirty days after one of the events detailed in the preceding sentence comes to pass.

#### **VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVES**

Given the efforts of the named Plaintiffs on behalf of the Settlement Class, Class Counsel shall seek an award of \$15,000 on behalf of the Class Representatives Joseph Meneghin, \$10,000 on behalf of Iacono Enterprises, LLC and \$5,000 on behalf of Neil and Michelle Brodsky to be paid out of the Settlement Fund only after the Court has entered the Final Order approving the Settlement and any and all appeals have been resolved in favor of the Settlement. Such application shall be made in accordance with Rule 4:32-4 and such other rules that may be deemed to apply. It is agreed that Defendants will not object to such an application or the payment of any such awards from the Settlement Fund that are deemed appropriate by the Court.

#### **IX. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes

their legal valid and binding obligation.

B. Defendants, through their undersigned attorneys, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Defendants of this Settlement Agreement and the consummation by them of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

## **X. MISCELLANEOUS PROVISIONS**

A. This Settlement Agreement, and the exhibits and related documents hereto as well as any payment of moneys, or any other action taken, by the Defendants pursuant to any provision of this Settlement Agreement are not, and shall not at any time be construed or deemed to be evidence of any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Judgment as contemplated herein. Defendants and each of them deny any liability to Plaintiffs and to all Class Members. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final Judgment is not entered, then this Settlement Agreement, including any Releases or dismissals hereunder, is cancelled. In the event this Settlement Agreement is cancelled or deemed cancelled, no term or condition of

this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence to prove either liability or damages or used for any purposes whatsoever in the Litigation or in any other litigation, and all Parties shall be restored to their prior rights and positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties or their counsel.

E. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

F. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New Jersey, without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

G. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his or its own costs of the Litigation.

H. If any clause, provision or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or paragraph of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph, or other provisions had not been contained herein.

I. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

J. All applications for Court approval or Court orders required under this Settlement Agreement shall be made on notice to Plaintiffs and Defendants.

K. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of Settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. In entering into this Settlement Agreement, none of the Parties relied on advice received from any other Party or any other Party's counsel.

L. Integrated Agreement

1. All of the exhibits to this Settlement Agreement are material and integral

parts hereof, and are fully incorporated herein by reference.

2. This Settlement Agreement and the exhibits thereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation.

M. Notice

1. Any notice, request or instruction or other document to be given by any Party to this Settlement Agreement to any other Party to this Settlement Agreement (other than class notification) shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid:

**If to Defendants to:** Angela A. Iuso, Esquire, Connell Foley LLP, 85 Livingston Avenue, Roseland, NJ 07068 for Spark; Shelia A. Woolson, Esquire, Epstein Becker & Green, 1 Gateway Center, 13<sup>th</sup> Floor, Newark, NJ 07102 for Texaco; and Robert Lehman, Archer & Greiner, One Centennial Square, P.O. Box 3000, Haddonfield, NJ 08033-0968 for ExxonMobil.

**If to Class Counsel or Plaintiffs to:** Charles E. Schaffer, Esquire and Daniel Levin, Esquire, Levin Fishbein Sedran & Berman, LLP, 510 Walnut Street, Philadelphia, PA 19106.

N. Dispute Resolution

1. The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement shall be submitted to the Court under due course of law and consistent with the rules governing in the courts of the State of New Jersey.

2. Defendants may only withdraw in good faith from this agreement. Each Defendant shall have the option to withdraw if it believes that the number of Class Members

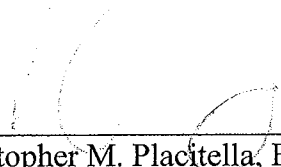


opting out or the nature of the opt out claims reaches a level that threatens to frustrate the essential purpose of the agreement .

3. In the event that any Defendant exercises such an option to withdraw, a written notice of such withdrawal shall be promptly delivered to all signatories to this Settlement Agreement and shall be binding on the Parties upon mailing. As a result of any such withdrawal, this Settlement Agreement and the Settlement and action taken or to be taken in connection therewith shall be terminated and shall become void and have no further force and effect with respect to that Defendant but shall remain in full force and effect as to those Defendants who have not elected to withdraw.

IN WITNESS WHEREOF, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: 6/27/9



---

Christopher M. Placitella, Esquire  
COHEN, PLACITELLA & ROTH  
115 Maple Avenue  
Red Bank, New Jersey 07701  
732-747-9003 (telephone)  
732-747-9004 (facsimile)

Daniel C. Levin, Esquire  
Charles E. Schaffer, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
215-592-1500 (telephone)  
215-592-4663 (facsimile)

*Attorneys for Plaintiff*

**TEXACO, INC. and STAR ENTERPRISE**

Signature: \_\_\_\_\_

Shelia A. Woolson, Esquire  
EPSTEIN BECKER & GREEN  
2 Gateway Center, 12<sup>th</sup> Floor  
Newark, NJ 07102  
*Counsel for Defendant Texaco, Inc., Star  
Enterprise and Motiva Enterprises LLC*

**SPARK ELECTRIC SERVICES, INC.**

Signature: Thomas Rugg \_\_\_\_\_

Name: Thomas Rugg  
Title: Vice President

**MOTIVA ENTERPRISES LLC**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXXON MOBIL CORPORATION**

Signature: \_\_\_\_\_

Name: Melissa W. Tacchino \_\_\_\_\_

Title: Agent and Attorney In Fact \_\_\_\_\_

# **EXHIBIT A**

Robert Simons

## Toms River LUST

Loss percentages

Exhibit 9-1 July 3 2011

## RESIDENTIAL Property

Address	Owner
3 Ann Rd.	Kemp
4 Ann Rd.	Vardouniotis
6 Ann Rd.	Thistle
2281 Clover Hill Ln.	Wehrle
2285 Clover Hill Ln.	Swinger
2288 Clover Hill Ln.	Silverstein
2289 Clover Hill Ln.	Majka
2292 Clover Hill Ln.	Triolo
2293 Clover Hill Ln.	Karpinsky
2296 Clover Hill Ln.	Gabler
2297 Clover Hill Ln.	Schubiger
2311 Crystal Mile Ct.	Landskroner
2315 Crystal Mile Ct.	Pallister
2318 Crystal Mile Ct.	Tripop
2319 Crystal Mile Ct.	Morales
2322 Crystal Mile Ct.	Valvano
2323 Crystal Mile Ct.	Maccia
2326 Crystal Mile Ct.	Meyerberg
2327 Crystal Mile Ct.	Skurat
2330 Crystal Mile Ct.	Kumar
2331 Crystal Mile Ct.	Zamora
2334 Crystal Mile Ct.	Fabio
2338 Crystal Mile Ct.	Reid
2342 Crystal Mile Ct.	Smolinski
2304 Donna Dee Ct.	Zicker
2309 Donna Dee Ct.	Barbieri
2310 Donna Dee Ct.	Giambona
2315 Donna Dee Ct.	Esposito
2316 Donna Dee Ct.	McLaughlin
2321 Donna Dee Ct.	Parente
2322 Donna Dee Ct.	McHugh
2327 Donna Dee Ct.	Bartman
2328 Donna Dee Ct.	Machiaverna
2333 Donna Dee Ct.	Brodsky
2334 Donna Dee Ct.	Bragen
2339 Donna Dee Ct.	Jackson
2340 Donna Dee Ct.	Dobbins
2345 Donna Dee Ct.	Hanlon-Schron
2346 Donna Dee Ct.	Isnardi
1910 Fiddlers Run	Kakar

1911 Fiddlers Run	Petrick
1914 Fiddlers Run	DeOliveira
1915 Fiddlers Run	Jonkoski
1919 Fiddlers Run	Ahmed
1920 Fiddlers Run	Castillo
1924 Fiddlers Run	Vajda
1927 Fiddlers Run	Abbatemarco
1928 Fiddlers Run	Schaff
1931 Fiddlers Run	Fedeli
1932 Fiddlers Run	Meneghin
1935 Fiddlers Run	August-Cowan
1936 Fiddlers Run	Putman
1939 Fiddlers Run	Jeong
2321 Lakewood Rd.	Abdi
2321 Lakewood Rd.	Abdi
1044 N. Maple Ave.	Rieling
1052 N. Maple Ave.	Ward
1116 N. Maple Ave.	Nagel
1125 N. Maple Ave.	Kluge
1141 N. Maple Ave.	McPherson
1146 N. Maple Ave.	Hicks
1149 N. Maple Ave.	Maglone
1156 N. Maple Ave.	Bass
1157 N. Maple Ave.	Dilucchio
1165 N. Maple Ave.	van Tassell
1171 N. Maple Ave.	Paciulli
1178 N. Maple Ave.	Deangelis
1179 N. Maple Ave.	Pagnotta
1186 N. Maple Ave.	Skentzos
1187 N. Maple Ave.	Szieber
1195 N. Maple Ave.	Hook
3 Ronda Rd.	Valeo
4 Ronda Rd.	Karch
6 Ronda Rd.	Wristen
2278 Vermont Ave.	Argenziano
2312 Vermont Ave.	Suarez
2318 Vermont Ave.	Sysol
1181 Windham Ct.	Wristen
1184 Windham Ct.	Naryshkin
1185 Windham Ct.	Byrnes
1188 Windham Ct.	Petruski

#### Asssumptions

residential 3 di minimus at \$250  
commercial 13 di minimus at \$100  
residential 80% commerical 20%

\$725,000 available for distribution
--------------------------------------

EXHIBIT 9-2:                      uly 3 2011 with diminimus  
 COMMERCIAL PROPERTY IN THE PROPOSED CLASS

Address	Township
1 Route 70	Lakewood
100 Route 70	Lakewood
1001 Route 70	Toms River
124 Locust Street	Lakewood
150 Locust Street	Lakewood
150 Locust Street	Toms River
Locust Street	Toms River
1065 N. Maple Ave.	Toms River
1065 N. Maple Ave.	Toms River
1359 River Avenue	Lakewood
1399 River Avenue	Lakewood
2345 Lakewood Rd.	Toms River
2373 Lakewood Rd.	Toms River
2373 Lakewood Rd., Rear	Toms River
1028 Fleetwood Blvd.	Toms River
1029 Fleetwood Blvd.	Toms River
1032 Fleetwood Blvd.	Toms River
1033 Fleetwood Blvd.	Toms River
1035 Fleetwood Blvd.	Toms River
1036 Fleetwood Blvd.	Toms River
1037 Fleetwood Blvd.	Toms River
1038 Fleetwood Blvd.	Toms River
1040 Fleetwood Blvd.	Toms River
1042 Fleetwood Blvd.	Toms River
1044 Fleetwood Blvd.	Toms River
1046 Fleetwood Blvd.	Toms River
Totals	
Totals for residential and commerical	

Residential Property Address	Seller	Purchaser
1060 North Maple Ave.	Invictus II LLC	Mancini, C. Trust @ Wachovia
2303 Donna Dee Court	Damore	Gorlick
1923 Fiddlers Run	Soltysik	Cassidy
1194 North Maple Ave.	Sadeghi	DeMasi
2337 Lakewood Road	Grone	Kidz Holding Group LLC
1044 North Maple Ave.	Rieling	Venditto
2359 Lakewood Road	Net Lease Development	Centurian Family Trust
2363 Lakewood Road	Net Lease Development	Centurian Family Trust
2284 Clover Hill Lane	Card	Farley

## **EXHIBIT B**



Christopher M. Placitella, Esquire  
COHEN PLACITELLA & ROTH  
127 Maple Avenue  
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Daniel C. Levin, Esquire  
LEVIN FISHBEIN SEDRAN & BERMAN  
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(215) 592-1500-telephone  
(215) 592-4663-facsimile

Attorneys for Plaintiffs

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

### **CLAIM FORM AND RELEASE**

#### **PLEASE READ THESE INSTRUCTIONS AND CLAIM FORM CAREFULLY**

To determine if you are eligible to receive money from the Settlement, you must fill out the Claim Form and Release ("Claim Form"). The Claim Form is attached at the end of these instructions. The completed and signed Claim Form ***must be postmarked by [insert date]. If you do not send it in by [insert date], you will not get any money. You must sign on the last page.*** You must submit it in the enclosed envelope or another properly addressed, postage prepaid envelope to the following address:

Class Counsel  
[insert address + 800 number]

If you have any questions about how the Settlement Fund will be divided up, you should

write or call the Class Counsel at this number. XXXXXXXXXXXXx

All Settlement Class Members who do not exclude themselves are bound by the terms of the judgment. This is true whether you send in a Claim Form or not.

If you have asked to be excluded, **do not** submit a Claim Form.

### **I. CLAIM FORM INSTRUCTIONS**

- A. Please type or neatly print all the information that is asked for. If you need additional space, please attach a separate sheet of paper.
- B. The Claim Form must be notarized.
- C. If you believe you are entitled to money from the Settlement Fund, you must complete the Claim Form.
- D. By signing below you are verifying, under penalty of perjury, that the information you have included is correct. You also agree that, upon sale of the property identified in Part I of the Claim Form, you will provide notice of this settlement and release to the purchasers of the property. Further you agree to provide additional information to Class Counsel to support your claim. They may ask you to do this in the future.
- E. **Please read the instructions carefully.** Your claim will be checked and verified by the Class Counsel. You should provide copies of all documents that support your claim.
- F. A Claim Form will be considered submitted to Class Counsel if it is mailed in a first-class envelope postmarked by the due date. You may want to send in your Claim Form by Certified Mail, Return Receipt Requested. If you send the Claim Form to the Class Counsel in some way other than first-class mail, the Claim Form will be considered "submitted" when it is received by Class Counsel.
- G. Class Counsel will not tell you when they get your Claim Form. If you want to make sure Class Counsel gets your form, you should send it by Certified Mail, Return Receipt Requested. It will take some time to process all the forms and send the checks. This work will be done as fast as possible, but each claim must be checked for accuracy and recorded.
- H. Please write or call Class Counsel if your address changes.
- I. **If the property identified in Part I of the Claim Form was bought or sold after January 1, 2006, you must submit an Affidavit of Buyer or Affidavit of Seller with your Claim Form.**

1. If you sold the property after January 1, 2006, you are required to fill out the attached Affidavit of Seller attesting that prior to the sale, the buyer had knowledge of the claim that the property was contaminated or of the Litigation that was filed on behalf of homeowners against the above defendants for allegedly contaminating the North Maple area. This Affidavit must be submitted with your Claim Form.
2. If you purchased the property after January 1, 2006, you are required to fill out the attached Affidavit of Buyer attesting that prior to the sale, you did not have knowledge of the claim that the property was contaminated or of the Litigation that was filed on behalf of homeowners against the above defendants for allegedly contaminating the North Maple area. This Affidavit must be submitted with your Claim Form.
3. If there is a dispute between the buyer and seller as to who is entitled to a share of the Settlement Fund, the dispute will be resolved by an arbitrator agreed upon by Class Counsel and Defendants. The arbitrator's decision will be binding on both the buyer and seller with no right of appeal as to who, pursuant to the Settlement Agreement, is entitled to a share of the Settlement Fund. No part of the Settlement Fund will be used to pay the arbitrator's fees and costs, but rather, such fees and costs will be paid by the loser of the dispute.
4. All other class members who did not sell or purchase the property from January 1, 2006 through the present, are only required to submit a Claim Form.

**THE CLAIM FORM MUST BE FILLED OUT, SIGNED AND NOTARIZED IF YOU WANT TO DETERMINE IF YOU ARE ENTITLED TO GET MONEY FROM THE SETTLEMENT FUND. THE ENVELOPE MUST BE *POSTMARKED* NO LATER THAN [INSERT DATE] 2011, AND MUST BE MAILED TO:**

**[CLASS COUNSEL / ADDRESS]**

## **II. CLAIM FORM**

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

### **PART I: CLAIMANT IDENTIFICATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Tax Map #    Block \_\_\_\_\_ Lot \_\_\_\_\_

### **PART II: SUBMISSION TO JURISDICTION OF THE COURT**

By signing below, I agree that the New Jersey Superior Court of Ocean County has the power to rule on my claim as a Settlement Class Member, and that the Court has the power to enforce the Release described below.

I also agree that upon sale of the property identified in Part I above, I will provide notice of this Settlement and Release to the purchasers of the property identified in Part I above.

### **RELEASE**

By signing below you acknowledge the Release and Discharge of Defendants Spark Electric Services, Inc., Exxon Mobil Corporation, Texaco, Inc., Star Enterprise and Motiva Enterprises, LLC and any and all agents, servants, officers, directors, employees, heirs, executors, administrators, insurance carriers, claims handlers and claims administrators, predecessors, successors, affiliates, assigns, parents and subsidiaries, members, related entities and representatives (collectively "Released Parties"), from any and all property damage claims or causes of action that were, could have been, or should have been asserted whether known or unknown by the named Plaintiffs or any Settlement

Class Member against the Released Parties, based upon or related to any and all claims for property damage that arise out of the series of operative facts that are the subject of the Complaint in this Litigation and as set forth in the related Settlement Agreement, the terms of which are fully incorporated herein.

**VERIFICATION**

I declare under penalty of perjury under the laws of New Jersey that the foregoing information provided by the undersigned is true and correct.

I filled out and signed this Proof of Claim and Release form on \_\_\_\_\_, 2011, in \_\_\_\_\_.  
(City, State, Country).

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type/Print your name here)

STATE OF \_\_\_\_\_ :  
COUNTY OF \_\_\_\_\_ :ss.

Be it remembered, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the subscriber, a Notary Public, personally appeared \_\_\_\_\_, who I am satisfied is the person named in and who executed the within instrument and she did severally acknowledge that she signed, sealed and delivered the same as her act and deed for the uses and purposes therein expressed.

Witness my hand and seal.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

**AFFIDAVIT OF SELLER**

I, \_\_\_\_\_ ("Seller"), am of full age being duly sworn according to  
law depose and say:

1. I was the owner of \_\_\_\_\_ ("Property").  
Property address \_\_\_\_\_
2. On \_\_\_\_\_, I sold the Property to \_\_\_\_\_ ("Buyer").
3. Pursuant to this sale, Buyer had knowledge of the claim that the Property was  
contaminated or of the lawsuit that was filed on behalf of homeowners against the above  
defendants for allegedly contaminating the North Maple area.
4. If there is a dispute between Buyer and Seller as to who is entitled to a share of the  
Settlement Fund, Seller agrees that an arbitrator agreed upon by Class Counsel and Defendants  
will provide a decision binding on both Buyer and Seller with no right of appeal as to who,  
pursuant to the Settlement Agreement, is entitled to a share of the Settlement Fund. No part of  
the Settlement Fund will be used to pay the arbitrator's fees and costs, but rather, such fees and  
costs will be paid by the loser of the dispute.
4. I submit this Affidavit with the attached Claim Form pursuant to the Settlement

Agreement.

Date: \_\_\_\_\_

\_\_\_\_\_

Sworn to and Subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
NOTARY PUBLIC

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

**AFFIDAVIT OF BUYER**

I, \_\_\_\_\_ (“Buyer”), am of full age being duly sworn according to  
law depose and say:

1. I was the buyer of the home located at \_\_\_\_\_ (“Property”).  
Property address
2. On \_\_\_\_\_, I bought the Property from \_\_\_\_\_ (“Seller”).
3. Prior to this sale, Buyer did not have knowledge of any claim that the Property  
was contaminated or of the lawsuit that was filed on behalf of homeowners against the above  
defendants for allegedly contaminating the North Maple area.
4. If there is a dispute between Buyer and Seller as to who is entitled to a share of the  
Settlement Fund, Buyer agrees that an arbitrator agreed upon by Class Counsel and Defendants,  
will provide a decision binding on both Buyer and Seller with no right of appeal as to who,  
pursuant to the Settlement Agreement, is entitled to a share of the Settlement Fund. No part of  
the Settlement Fund will be used to pay the arbitrator’s fees and costs, but rather, such fees and  
costs will be paid by the loser of the dispute.



5. I submit this Affidavit with the attached Claim Form pursuant to the Settlement Agreement.

Date: \_\_\_\_\_

Sworn to and Subscribed before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT C**

Christopher M. Placitella, Esquire  
COHEN PLACITELLA & ROTH  
127 Maple Avenue  
Red Bank, NJ 07701  
(732) 747-9003-telephone  
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Daniel C. Levin, Esquire  
LEVIN FISHBEIN SEDRAN & BERMAN  
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(215) 592-1500-telephone  
(215) 592-4663-facsimile

Attorneys for Plaintiffs

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

**NOTICE OF PROPOSED SETTLEMENT AND HEARING**

**TO: ALL PERSONS AND ENTITIES WHO CLAIM PROPERTY DAMAGE AS  
A RESULT OF AN ALLEGED UNDERGROUND STORAGE TANK LEAK AT  
THE FORMER HAYTAS STATION AND TEXACO STATION AS SET FORTH  
BELOW**

*The Superior Court for Ocean County New Jersey authorized this notice. It is not  
from a lawyer. You are not being sued.*

- This is a proposed class action suit for property damages brought by the persons or entities with alleged property damage losses as a result of an alleged underground storage tank leak at the former Haytas Exxon Station located at Lot 7 Block no. 34, Lakewood, New Jersey and from the former Texaco station located at 1505 River Avenue, Lakewood, New Jersey.

- The Settlement would entitle each Settlement Class Member to a share of a \$3,000,000.00 Settlement Fund (after payment of administrative costs and attorneys' fees).
- Your legal rights are affected whether you act or don't act. Read this notice and the Settlement Agreement carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>Submit a Claim Form</b>	You must submit a Claim Form to receive payment under the Settlement. If, after January 1, 2006, you bought or sold the property alleged to be damaged, you will also need to submit an Affidavit of Buyer or Affidavit of Seller, as appropriate. <b>You must submit a Claim Form and, if necessary, an Affidavit by [insert date] to receive any money.</b>
<b>Exclude Yourself</b>	If you exclude yourself from the Settlement, you will not be bound by the Settlement or judgment and will not be entitled to a cash payment. You will be free to pursue your claims against the Defendants. This is the only option that allows you to bring or be part of any other lawsuit against the Defendants in this case about the same legal claims that are or should have been advanced in this case. <b>You must exclude yourself from the Settlement by [Insert Date].</b>
<b>Object</b>	If you do not exclude yourself, you may write to the Court about why you do not like the Settlement or the request for legal fees and costs. <b>You must send a written objection to the Court postmarked no later than [Insert Date].</b>
<b>Go to a Hearing</b>	You may ask to speak in Court about the fairness of the Settlement or the request for fees and costs.
<b>Do Nothing</b>	You get <b><u>no</u></b> payment. You give up your right to sue Defendants on these claims later.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still must decide whether to give final approval to

the Settlement. Likewise, payments to Settlement Class Members will be distributed only if the Court grants final approval of the Settlement and after any appeals are resolved.

## **I. WHY DID I GET THIS NOTICE PACKAGE?**

You or someone in your family as the homeowner/occupant may have suffered damages as a result of an alleged underground storage tank leak at the former Haytas Exxon Station located at Lot 7, Block 34, Lakewood, New Jersey and the former Texaco station located at 1505 River Avenue, Lakewood, New Jersey.

You were sent this notice because you have the right to know about a proposed Settlement of a class action lawsuit with the defendants, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it, and after any possible objections and appeals are resolved, Class Counsel will make the monetary payments that the Settlement allows. You will be informed of the progress of the Settlement. You should understand that the process of Court approval may take a good deal of time.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

The Court in charge of this case is the Superior Court of Ocean County New Jersey *Meneghin, et al v. Exxon Mobil Corporation, et al*, Docket No. OCN-L-002696-07. The persons who sued are called the Plaintiffs, and the Defendants they sued, Texaco, Inc., Star Enterprise, Motiva Enterprises LLC, Exxon Mobil Corporation and Spark Electric Services, Inc (collectively referred to as "Defendants"), are called the Defendants.

## **II. WHAT IS THIS LAWSUIT ABOUT?**

Plaintiffs claim in this lawsuit that defendant ExxonMobil was responsible for maintaining underground storage tanks at the former Haytas Exxon Station in the early 1980's. Plaintiffs allege that as a result of defendant Exxon's negligent care, these underground storage tanks leaked causing property damage to plaintiffs and members of the class. Plaintiffs also sued Spark Electric Services, Inc. for its maintenance of one of the underground storage tanks which allegedly leaked and caused property damage. Finally, Plaintiffs also sued Texaco, Inc., Star Enterprise and Motiva Enterprises LLC for an alleged separate leak at a station located at 1505 River Avenue, Lakewood, New Jersey. Plaintiffs contend in the lawsuit that this leak contributed to the alleged property damage. As a result of substantial litigation, Plaintiffs were able to agree to a settlement with defendants Texaco, Star and Motiva, Spark and ExxonMobil. Your property or former property is identified in this notice and Class Counsel believes you may be entitled to damages. Your damages will relate to whether your property has tested positive for contamination and whether you have an irrigation well. However, everyone

who received mail notice of this action is believed to be a member of the class and entitled to monetary damages.

### **III. WHY IS THIS A CLASS ACTION?**

In a class action, one or more people, called the Class Representatives, sue on behalf of all people who have similar claims. All of these people are a Class or Class Members. A class action resolves the issues for all Class Members, except for those who exclude themselves from the Class. Judge Craig L. Wellerson, J.S.C. is in charge of this class action lawsuit.

### **IV. WHY IS THERE A SETTLEMENT?**

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the Settlement is best for everyone who is alleged to have suffered damages as a result of the leaks of gasoline from the underground storage tanks.

### **V. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?**

The Settlement Class includes the following class:

All property owners located in Toms River or Lakewood, New Jersey whose properties allegedly have been contaminated with Benzene and/or 1,2 DCA from leaking underground storage tanks owned, controlled, possessed and/or maintained by settling defendants. The members of class are identified on the property list attached as Exhibit "A" to the Settlement Agreement. This class also includes all persons or entities that sold their property since January 1, 2006, to a buyer that had knowledge of the Litigation or of any claims that the property was contaminated, and excludes all persons or entities that bought their property since January 1, 2006 with knowledge of the Litigation or of any claim that the property was contaminated.

### **VI. DO I NEED TO PROVE THAT I SUFFERED LOSSES, AND WHAT DOES THAT MEAN?**

In filling out the Claim Form, you will affirm, under penalty of perjury, that you suffered damages. Depending on the amount of your claim, you may be asked to provide

additional documentation before being allowed to participate in the Settlement.

## **VII. HOW DO I KNOW WHETHER THE LOSSES FOR WHICH I SUFFERED QUALIFIES ME FOR INCLUSION IN THE CLASS?**

Your property is identified in this notice and Class Counsel believes you are entitled to damages. Your damages will relate to whether your property has tested positive for Benzene and/or 1,2 DCA and whether you have an irrigation well. However, everyone who received mail notice of this action is believed to be a member of the class and entitled to monetary damages.

**If you sold the property identified as part of this Class after January 1, 2006,** you are a Class Member and will be entitled to a share of the Settlement Fund if prior to the sale the buyer had knowledge of the Litigation or of any claim that the property was contaminated. You will be required to submit an Affidavit of Seller attached to the Claim Form attesting that prior to the sale the buyer had knowledge of the Litigation or of any claim that the property was contaminated.

**If you purchased the property identified as part of this Class after January 1, 2006,** you are a Class Member and will be entitled to a share of the Settlement Fund if prior to the sale you did not have knowledge of the Litigation or of any claim that the property was contaminated. You will be required to submit the Affidavit of Buyer attached to the Claim Form attesting that prior to the sale you did not have knowledge of the Litigation or of allegations that the property was contaminated.

If there is a dispute between the buyer and the seller as to who is entitled to a share of the Settlement Fund, an arbitrator agreed upon by Class Counsel and Defendants, will provide a decision binding on both the seller and the buyer with no right of appeal as to who is entitled to a share of the Settlement Fund. No part of the Settlement Fund will be used to pay the arbitrator's fees and costs, but rather, such fees and costs will be paid by the loser of the dispute.

## **THE SETTLEMENT BENEFITS - WHAT YOU GET**

### **VIII. WHAT DOES THE SETTLEMENT PROVIDE?**

Defendants, Texaco, Star and Motiva, Spark and ExxonMobil, have agreed to pay a total of \$3,000,000.00 to resolve this Litigation. The money will be used to: 1) compensate Settlement Class Members who allegedly have suffered damages; 2) to notice and administer the class; and 3) pay attorneys' fees and expenses.

A complete description of the Settlement is provided in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting [enter website address] or by calling [enter administrator phone number].

## **IX. WHAT CAN I GET FROM THE SETTLEMENT?**

Settlement Class Members who timely submit a Claim Form and, if necessary an Affidavit, will receive an equitable share of \$3,000,000.00 based on their losses. These amounts are dependent on how many claims are received by Class Counsel during the claims period, and are subject to change based on the number of claims received.

## **HOW YOU GET A PAYMENT - SUBMITTING A CLAIM FORM**

### **X. HOW CAN I GET A PAYMENT?**

To qualify for a payment, you **MUST** send in a Claim Form. A Claim Form is attached to this Notice. You can also get a Claim Form on the Internet at [INSERT]. Read the instructions carefully, fill out the form, sign it, and mail it postmarked no later than [insert date].

If you bought or sold your property after January 1, 2006, you must complete either the Affidavit of Buyer or Affidavit of Seller, as appropriate, and return the completed affidavit with the Claim Form no later than [insert date].

You may be asked for additional documents, and will be contacted in writing. You may want to send in your Claim Form and, if necessary, your Affidavit by Certified Mail, Return Receipt Requested, to ensure that it is received by Class Counsel.

### **XI. WHEN WOULD I GET MY PAYMENT?**

The Court will hold a hearing on [insert date] to decide whether to approve the Settlement. If Judge Wellerson approves the Settlement, there may be appeals. It is always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement. Please be patient.

### **XII. WHAT AM I GIVING UP TO GET A PAYMENT OR STAY IN THE CLASS?**

Unless you exclude yourself, you are staying in the Class, and that means you can't sue, continue to sue, or be part of any other lawsuit against the defendants, ExxonMobil, Spark, Texaco, Star and Motiva, and all of their respective agents, servants, officers, directors, employees, heirs, executors, administrators, insurance carriers, claims handlers and claims administrators, predecessors, successors, affiliates, assigns, parents and subsidiaries, members, related entities and representatives for any and all property



damage claims or causes of action, known or unknown, that were, could have been, or should have been asserted by the Plaintiffs or any member of the Class, based upon or related to the actions or series of operative facts that are the subject of this case.. It also means that all the Court's orders will apply to you and legally bind you.

If you sign the Claim Form, you will agree to release all claims that you have relating to the contamination your property or residence and you also agree that you will provide notice of this Release and Settlement when you transfer the property in the future.

### **XIII. HOW DO I GET OUT OF THE SETTLEMENT?**

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Meneghin, et al v. Exxon Mobil Corporation, et al* Docket No. OCN-L-002696-07. Be sure to include your name, address, telephone number and your signature. You must mail your exclusion request postmarked no later than [insert date] to [insert address].

You can't exclude yourself on the phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) the defendants in the future.

### **XIV. IF I DO NOT EXCLUDE MYSELF, CAN I SUE THE DEFENDANTS FOR THE SAME THING LATER?**

No. Unless you exclude yourself, you give up the right to sue the Defendants for the claims that this Settlement involves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* class action to continue your own lawsuit. Remember, the exclusion deadline is [insert date].

### **XV. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THE SETTLEMENT?**

No. If you exclude yourself, do not send in a Claim Form to ask for money. But, you may sue, continue to sue, or be part of a different lawsuit against the defendants.

## **THE LAWYERS AND INDIVIDUALS REPRESENTING YOU**

Daniel C. Levin, Esquire and Charles E. Schaffer, Esquire of Levin, Fishbein, Sedran & Berman were lead counsel in *Meneghin, et al v. Exxon Mobil Corporation, et al*

**XVI. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?**

If you are a Settlement Class Member, you can object to the Settlement if you don't like any part of it. You can give objections why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Meneghin, et al v. Exxon Mobil Corporation, et al* Docket No. OCN-L-002696-07. Be sure to include your name, address, telephone number, your signature, and the reasons why you object to this Settlement and the docket number (OCN-L-002696-07). Mail the objection to these three different places postmarked no later than [insert date].

**COURT**

Ocean County Superior Court  
Ocean County Courthouse  
120 Hooper Avenue  
Toms River, NJ 08754

**LEAD COUNSEL**

Daniel C. Levin, Esquire and Charles E. Schaffer, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Ste. 500  
Philadelphia, PA 19106

**DEFENSE COUNSEL**

Shelia A. Woolson, Esquire  
EPSTEIN BECKER & GREEN  
1 Gateway Center, 13<sup>th</sup> Floor  
Newark, NJ 07102  
*Counsel for Texaco, Inc., Star Enterprise and Motiva Enterprises LLC*

Angela A. Iuso, Esquire  
CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, NJ 07068  
*Counsel for Spark Electric*

Robert T. Lehman, Esquire  
ARCHER & GREINER  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968

**XVII. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF?**

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be a part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer legally affects you.

**XVIII. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

On [insert date] the Ocean County Superior Court, Ocean County Courthouse 120 Hooper Avenue, Toms River, NJ 08754, will hold a fairness hearing to determine whether the Class was properly certified and whether the proposed Settlement is fair, adequate, and reasonable. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. This hearing may be continued or rescheduled by the Court without further notice. We do not know how long it will take the Court to give its decision.

**XIX. DO I HAVE TO COME TO THE HEARING?**

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

**XX. MAY I SPEAK AT THE HEARING?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Meneghin, et al v. Exxon Mobil Corporation, et al* Docket No. OCN-L-002696-07" Be sure to include your name, address, telephone number and your signature and the docket number. Your Notice of Intention to Appear must be postmarked no later than [insert date] and be sent to the Lead Counsel and Defense Counsel, at the four addresses in question XVI. You cannot speak at this hearing if you excluded yourself.

**IF YOU DO NOTHING**

## **XXI. WHAT HAPPENS IF I DO NOTHING AT ALL?**

If you do nothing, you will get no money from the Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the defendants about the legal issues in this case, ever again. Unless you exclude yourself, you need to file a claim to receive a monetary payment under the Settlement.

## **GETTING MORE INFORMATION**

## **XXII. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?**

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to the Class Counsel at **[insert address]**

## **EXHIBIT D**

Christopher M. Placitella, Esquire  
COHEN PLACITELLA & ROTH  
127 Maple Avenue  
Red Bank, NJ 07701  
(732) 747-9003-telephone  
(732) 747-9004-facsimile

Charles E. Schaffer, Esquire  
Daniel C. Levin, Esquire  
LEVIN FISHBEIN SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
(215) 592-1500-telephone  
(215) 592-4663-facsimile

Attorneys for Plaintiffs

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JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

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SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

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**ORDER GRANTING FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT AND JUDGMENT**

**THIS CASE** coming on for hearing before the Honorable Craig L. Wellerson,  
J.S.C. on \_\_\_\_\_, 2011, pursuant to this Court's Order of \_\_\_\_\_, in order  
for this Court to conduct a final fairness hearing to determine whether the proposed  
Settlement Agreement between the Parties is fair, reasonable and adequate, and to  
address Class Counsel's application for an award of attorney's fees and expenses; and the  
Settlement Class Members being represented by Class Counsel and Defendants, Texaco,

Inc., Star Enterprise and Motiva Enterprises, LLC (collectively "Texaco"), Exxon Mobil Corporation ("ExxonMobil") and Spark Electric Services, Inc. being represented by their respective attorneys; **AND THE COURT** having read and considered the Settlement Agreement, the Notice Plan, and Memorandum of Law submitted by Class Counsel, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendants, and having considered the submissions by Class Members, now makes the following:

### **FINDINGS OF FACT**

1. This action was commenced on August 7, 2007, as a class action.
2. After several years of litigation, including extensive discovery and motion practice, and as a result of, arm's length negotiations between Class Counsel and Defendants, including settlement conferences before retired Judge C. Judson Hamlin, the Parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants, Texaco, Spark and ExxonMobil ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on \_\_\_\_.
3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Class Members notice of the proposed Settlement. The Notice Plan provided an opportunity for Class Members to file objections to the Settlement and an opportunity to opt-out of the Settlement.
4. As of the deadline for the filing of objections, \_\_\_\_ objections were filed. Given the size of this Settlement, and the Notice Plan described above, this Court finds

that the comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendants.

5. Class Counsel filed with the Court an affidavit declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed.

6. The Court finds that the mailed notice constitutes the best practicable notice of the Fairness Hearing, proposed Settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice; and that such notice constituted valid, due and sufficient notice to all Class Members, and complied fully with the requirements of the New Jersey Rules of Civil Procedure, the Constitution of the United States, the laws of New Jersey and any other applicable law.

7. Any persons who wished to be excluded from this action were provided an opportunity to "opt-out" pursuant to the Notice. All persons who have validly excluded themselves from the action have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein and the names of those persons are set forth in Exhibit "A" hereto.

8. Settlement Class Members are bound by the: Settlement, Settlement Agreement, Release contained within the Settlement Agreement and Claim Form, and the Final Order and Judgment. Settlement Class Members do not have a further opportunity to opt-out of this Action.

9. Any Settlement Class Member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Class Counsel's application for fees and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary



Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

10. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendants in this case, pursuant to New Jersey Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

- a. The liability issues in this case have been vigorously contested.
- b. This Settlement has the benefit of providing relief to Settlement Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties to this litigation.
- c. This Settlement provides Settlement Class Members with a substantial monetary benefit.
- d. This Settlement is clearly a product of hard-fought litigation between the Parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendants.

11. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request.

12. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS  
OF FACT, THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS  
OF LAW:**

13. This Court has jurisdiction over the Parties and the subject matter of this proceeding.

14. Pursuant to the New Jersey Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All property owners located in Toms River or Lakewood, New Jersey whose properties allegedly have been contaminated with Benzene and/or 1,2 DCA from leaking underground storage tanks owned, controlled, possessed and/or maintained by settling defendants. The members of class are identified on the property list attached hereto as Exhibit "B". This class also includes all persons or entities that sold their property since January 1, 2006, to a buyer that had knowledge of the Litigation or of any claims that the property was contaminated, and excludes all persons or entities that bought their property since January 1, 2006 with knowledge of the Litigation or of any claim that the property was contaminated.

15. The Court finds that, for the purpose of this Settlement, the requirements of the New Jersey Rules of Civil Procedure are satisfied, and that a class action settlement is an appropriate method for resolving the disputes in this litigation. All the prerequisites for class certification for this settlement purpose are present. The Class Members are ascertainable and for purposes of settlement deemed too numerous to be joined. Questions of law and fact common to all Class Members are present and for purposes of Settlement predominate over individual issues. The Settlement Class Representatives' claims are typical of those of the Settlement Class. Class action settlement is superior to alternative means for adjudicating and resolving this action.

16. The Settlement Class Representatives, Joseph Meneghin, Neil and

Michelle Brodsky and Iacono Enterprises, LLC, are entitled to and are hereby awarded a payment of \$\_\_\_\_\_ each, in recognition of the efforts they undertook in connection with this lawsuit. All Settlement Class Members who have made claims on the settlement are entitled to receive their share of the Settlement Fund, as identified in Exhibit "C". Defendants have taken no position and have no obligation as to the issue of allocation or award of shares to the Settlement Class Members.

17. Class Counsel are qualified, experienced, and have aggressively litigated this case, thereby demonstrating their adequacy as counsel for the Settlement Class. Charles E. Schaffer, Esquire and Daniel C. Levin, Esquire of Levin, Fishbein, Sedran & Berman, Philadelphia, PA are hereby appointed as counsel for the Settlement Class.

18. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to the New Jersey Rules of Civil Procedure.

19. The Courts finds that the request for attorneys' fees is reasonable.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

1. The Motion for Final Approval of the Proposed Settlement is GRANTED.
2. The Settlement Class Representatives, Joseph Meneghin, Neil and Michelle Brodsky and Iacono Enterprises, LLC, are entitled to and are hereby awarded a payment of \$\_\_\_\_\_ each from the Settlement Fund in recognition of the efforts they undertook in connection with this lawsuit. All Settlement Class Members who have made claims on the Settlement are entitled to receive their share of the Settlement Fund, as identified in Exhibit "C".

3. The Class Counsel's application for attorneys' fees and expenses is granted.

4. This Action and all claims against Defendants, Texaco, Spark, and ExxonMobil are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

5. All Class Members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendants, Texaco, Spark, and ExxonMobil. Any Class Member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or proceeding as a class action in any forum.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Craig L. Wellerson, J.S.C.

## **EXHIBIT E**

Christopher M. Placitella, Esquire  
COHEN PLACITELLA & ROTH  
127 Maple Avenue  
Red Bank, NJ 07701  
(732) 747-9003-telephone  
(732) 747-9004-facsimile

Charles E. Schaffer, Esquire  
Daniel C. Levin, Esquire  
LEVIN FISHBEIN SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
(215) 592-1500-telephone  
(215) 592-4663-facsimile

Attorneys for Plaintiffs

JOSEPH MENEGHIN, IACONO ENTERPRISES,  
LLC and NEIL and MICHELLE BRODSKY, on  
behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION, TEXACO, INC.  
STAR ENTERPRISE, MOTIVA ENTERPRISE, LLC  
and SPARK ELECTRIC SERVICES, INC.

Defendants.

SUPERIOR COURT OF  
NEW JERSEY

LAW DIVISION

OCEAN COUNTY

DOCKET NO. OCN-L-002696-07

JURY TRIAL DEMANDED

**ORDER PRELIMINARILY APPROVING AMENDED SETTLEMENT**

WHEREAS, the Plaintiffs and Defendants Texaco, Inc. Star Enterprise and Motiva Enterprises LLC (collectively "Texaco"), Spark Electric Services, Inc. ("Spark") and Exxon Mobil Corporation ("ExxonMobil") have entered into an Amended Settlement Agreement ("Settlement Agreement") intended to resolve the litigation pending in this Court; and

WHEREAS, the Amended Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed Settlement and dismissal with prejudice of

these actions against the Defendants Texaco, Spark and ExxonMobil; and

WHEREAS, the Court has before it the Plaintiffs' and Defendants Texaco, Spark and ExxonMobil's Joint Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants.

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the Parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed Settlement should be given as provided in this Order.

3. Pursuant to New Jersey Rules the Court conditionally certifies the following Settlement Class:

All property owners located in Toms River or Lakewood, New Jersey whose properties allegedly have been contaminated with Benzene and/or 1,2 DCA from leaking underground storage tanks owned, controlled, possessed and/or maintained by settling defendants. The members of class are identified on the property list attached as Exhibit "A" to the Settlement Agreement. This class also includes all persons or entities that sold their property since January 1, 2006, to a buyer that had knowledge of the Litigation or of any claims that the property was contaminated, and excludes all persons or entities that bought their property since January 1, 2006 with knowledge of the Litigation or of any claim that the property was

contaminated.

4. The Court further conditionally finds that Plaintiffs Joseph Meneghin, Neil & Michell Brodsky and Iocono Enterprises are adequate Class Representatives for the Settlement Class.

5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.

6. The Court approves the Class Notice of Settlement attached as Exhibit "C" to the Settlement Agreement. The Court also approves the Notice Program as set forth in Section IV of the Settlement Agreement.

7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, including at the good faith discretion of Defendants upon review of the "Opt-Out" Parties information, the conditional certification of the Settlement Class shall be void, the Defendants shall reserve all their respective rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representative of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs reserve all of their rights, including the right to continue with the litigation pending at the time of the Settlement should the Settlement Agreement not be consummated.

Notice to Settlement Class and Appointment of Settlement Administrator

8. Counsel for the Class ("Class Counsel") are as follows:

Charles E. Schaffer, Esquire  
Daniel C. Levin, Esquire  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Ste. 500  
Philadelphia, PA 19106



9. Beginning no later than sixty (60) days from the date of this Order Preliminarily Approving Settlement, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibit "C" to the Settlement Agreement, in the manner set forth in Section IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have forty-five (45) days from the Notice Date to opt out or to object, and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Class Counsel shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The Class Notice to be provided as set forth in the Settlement Agreement as filed with the Court is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of New Jersey Rules, due process, the Constitution of the United States, the laws of New Jersey and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

*Requests for Exclusion from the Settlement Class*

11. Any Class Member that wishes to be excluded ("opt out") from the Settlement Class must send a written Request for Exclusion to Class Counsel, so that it is received by the Class Counsel at the address indicated in the Notice on or before the close of the opt out period. Class Counsel must immediately, or within five (5) days, provide a copy

of any Request for Exclusion to counsel for Defendants. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Class Members may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Class Counsel.

12. Any Settlement Class Member who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

*The Final Approval Hearing*

13. A hearing on the Settlement is hereby scheduled to be held before this Court on no later than one hundred thirty (130) days from the Notice Date, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendant herein, and the entry of final judgment in this class action. Class Counsel's application for award of attorneys' fees and expenses shall be heard at the time of the hearing.

14. The date and time of the hearing shall be set forth in the Notice, but the hearing shall be subject to adjournment by the Court without further notice to the Settlement Class Members other than that which may be posted by the Court. Class Counsel will advise the Settlement Class Members of any scheduling issues by way of the Settlement Website.

15. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement

Class Members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

16. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Settlement Class Member may object to the proposed Settlement, entry of Final Order and Judgment approving the Settlement, and Class Counsel's application for fees and expenses by serving a written objection.

17. Any Settlement Class Member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

18. Objections, along with any notices of intent to appear, must be filed no later than forty-five (45) days from the Notice Date. If counsel is appearing on behalf of more than one Settlement Class Member, counsel must identify each such Settlement Class Member and each Settlement Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

Superior Court of New Jersey  
Ocean County  
118 Washington Street  
Toms River, NJ 08754

19. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendants at the address listed below:

**CLASS COUNSEL:**

Charles E. Schaffer, Esquire  
Daniel C. Levin, Esquire  
Levin, Fishbein, Sedran & Berman  
510 Walnut Street, Ste. 500  
Philadelphia, PA 19106

**DEFENSE COUNSEL:**

Sheila A. Woolson, Esquire  
EPSTEIN BECKER & GREEN  
1 Gateway Center, 13<sup>th</sup> Floor  
Newark, NJ 07102

*Counsel for Defendant Texaco, Inc., Star Enterprise and Motiva Enterprises LLC*

Angela A. Iuso, Esquire  
CONNELL FOLEY LLP  
85 Livingston Avenue  
Roseland, NJ 07068

*Counsel for Defendant Spark Electric Services, Inc.*

Robert T. Lehman, Esquire  
ARCHER & GREINER  
One Centennial Square  
P.O. Box 300  
Haddonfield, NJ 08033-0968

*Counsel for Defendant, Exxon Mobil Corporation*

20. Only Settlement Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Settlement Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

21. Settlement Class Members wishing to be heard at the hearing are required to

file written comments or objections and indicate in their written comments or objections their intention to appear at the hearing. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

22. All Class Members who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants for the claims made in the Complaint.

Other Provisions

23. Upon approval of the Settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

24. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Honorable Craig L. Wellerson, J.S.C.