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17 and the Plaintiff Class

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF ORANGE

20 RAYMOND STODDARD and  
21 SANTIAGO MEDINA etc.,

22 Plaintiffs,

23 vs.

24 EQUILON ENTERPRISES, LLC, et  
25 al.,

26 Defendants.

Case No. 30-2010-00395208-CU-0E-CXC

Hon. William Claster  
Department CX 102

CLASS ACTION

**PLAINTIFF'S SECOND  
SUPPLEMENTAL MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

**[Filed Concurrently with Third  
Supplemental Declarations of Rees  
and Plaintiffs' Second Revised  
[Proposed] Preliminary Approval  
Order]**

Date: September 4, 2020

Time: 9:00 a.m.

Dept: CX 104

Complaint Filed: August 2, 2010

Trial Date: None Set

**Reservation No. 73219881**

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1 **I. INTRODUCTION.**

2 Plaintiff Santiago Medina (“Medina”) submits this second supplemental  
3 memorandum in support of his motion for preliminary approval of a settlement  
4 reached with Defendant R&M Pacific Rim, Inc. (“R&M”).

5 On July 31, 2020, this Court issued its Minute Order with comments on  
6 the settlement and continued the hearing on the motion for preliminary  
7 approval to September 4, 2020.

8 Following receipt of the Court’s comments, Medina and R&M have further  
9 amended their settlement agreement resulting also in amendments of the  
10 parties’ proposed Class Notice and [Proposed] Preliminary Approval Order. To  
11 keep all changes in a single agreement, the parties have now executed a Second  
12 Amended and Restated Settlement Agreement, which attaches as exhibits  
13 thereto the further amended Class Notice and Second Revised [Proposed]  
14 Preliminary Approval Order.

15 Accompanying this second supplemental memorandum is a third  
16 supplemental declaration by Samuel T. Rees. That declaration attaches as  
17 exhibits both the amended settlement documents referenced above and redlines  
18 showing the changes made to the prior documents submitted in connection with  
19 the July 31, 2020, hearing.

20 The primary purposes of this second supplemental memorandum is to list  
21 the Court’s July 31 comments and discuss how the amended documents will  
22 hopefully satisfy this Court’s concerns.

23 **II. COMMENTS CONCERNING THE SETTLEMENT AGREEMENT.**

24 1. R&M has the ability to void the settlement if class  
25 members whose total estimated recovery exceeds 10% of the  
26 estimated Total Settlement Amount opt out. What is the  
27 smallest number of class members whose total estimated  
28 recovery will exceed 10% of the estimated Total Settlement  
Amount? That is, what is the smallest number of opt-outs that  
would allow R&M to void the settlement?

1 The short answer to the Court's question is that the smallest number is 6,  
2 provided that all 6 are members of the Settlement Misclassification Subclass and  
3 were so employed throughout the entire Class Period. Representation 59.A. has  
4 been modified to state that of the 37 employers who are part of the Settlement  
5 Misclassification Subclass, approximately 12 were members of that subclass for  
6 the entire Class Period. Thus, any 6 of these approximately 12 subclass  
7 members could trigger R&M's termination rights if they opt-out of the  
8 Settlement.

9 Medina reaches this conclusion based on the following: The Total  
10 Settlement Amount is \$845,000. As a result and in order for R&M to be entitled  
11 to terminate the Settlement pursuant to Paragraph 105, Settlement Class  
12 Members, whose combined estimated Individual Settlement Payments equal or  
13 exceed \$84,500, must request to be excluded from the settlement.

14 Deducting the estimated legal fees and expenses, Administrator fees and  
15 expenses and the Service Award, the amount which would be paid to the  
16 Settlement Misclassification Subclass would be \$390,966.67, divided among the  
17 37 members of that subclass. During the Class Period, R&M had 27 stations,  
18 each with a full time manager. A member of the Settlement Misclassification  
19 Subclass, who was so employed during the entire Class Period, would have an  
20 estimated Individual Settlement Payment of \$14,480.25. Six of those managers  
21 would have a combined estimated Individual Settlement Payments of \$85,081.50  
22 or enough to trigger R&M's termination rights.

23 2. The settlement now includes a SSN verification procedure.  
24 How long do the parties expect this procedure to take? Will it  
25 affect the 60-day timeline for mailing the notice to class  
members?

26 3. The SSN verification procedure provides that if a class  
27 member's name and SSN do not match, he or she will be required  
28 to either submit a new W-9 or accept backup withholding. How  
long will the W-9 process take? Will delays in the W-9 process  
delay payment to class members who have validated SSNs? Does

1 the notice instruct class members on how to obtain a W-9 if  
2 needed? Would it be easier to simply use backup withholding for  
all class members whose SSNs can't be verified?

3 After meeting and conferring with counsel for R&M and the proposed  
4 Settlement Administrator, Medina has determined that the SSN verification  
5 procedure previously proposed is unworkable and it has been removed from the  
6 Second Amended and Restated Settlement Agreement with corresponding  
7 changes to the Amended Class Notice and Second Revised [Proposed]  
8 Preliminary Approval Order.

9 Medina has learned Phoenix Settlement Administrators does not provide  
10 SSN verification because of the time and expense involved. Based upon a review  
11 of the handbook for SSN verification, it appears that Class Counsel would not be  
12 permitted to seek such verification.

13 Both the Second Amended and Restated Settlement Agreement at  
14 Paragraph 71 and the Amended Class Notice at Paragraph 2.e. provide that the  
15 Settlement Class Members who receive their Individual Settlement Payments  
16 agree to pay "in full all of the federal, state and municipal income taxes owed on  
17 such payments. Presumably, all Settlement Class Members are familiar with  
18 preparing and submitting income tax returns. Moreover, all Settlement Class  
19 Members will have the opportunity to correct any incorrect social security  
20 numbers as shown on Information Sheet which is Enclosure A to the Amended  
21 Class Notice.

22 4. The Court is concerned by counsel's apparent position that  
23 it's appropriate to rely on individual class members to verify  
24 R&M's factual recitals that serve as the basis for the settlement.  
25 For example, R&M represents that all break class members were  
26 paid the applicable minimum wage or a number not materially  
27 higher, and that all misclassification class members were paid  
28 \$12.70 an hour or a number not materially higher. These  
figures are the basis for counsel's valuation of the settlement.  
R&M presumably has payroll records that substantiate these  
representations, but counsel argues review of the records is  
"unnecessary." (Supp. Br. at p. 9.) It appears to the Court that it  
would be far easier for class counsel to verify R&M's

1 representations on a classwide basis after reviewing R&M's own  
2 records than it would be for individual employees to search for  
3 14-year-old pay stubs to confirm their applicable rates of pay.  
4 Further, counsel has a fiduciary duty to the class it represents.  
5 How is this fiduciary duty fulfilled by pushing off verification to  
6 class members?

7 This concern has created a bit of a chicken and egg problem. In order to  
8 Class Counsel to verify that the representations as to rates of pay contained in  
9 Paragraph 59 of the Second Amended and Restated Settlement Agreement are  
10 correct, Class Counsel needs to review those records.

11 However, R&M has objected to providing this information to Class Counsel  
12 absent a Court order because of employee privacy rights. See Footnote 1 at page  
13 3 of the Second Amended and Restated Settlement Agreement.

14 Medina's motion for preliminary approval of the Settlement seeks such an  
15 order, which is Paragraph 8 of the Second Revised [Proposed] Preliminary  
16 Approval Order. Once this order is signed and entered, R&M will provide Class  
17 Counsel with the Class Information.

18 To resolve the above issue, Medina and R&M have revised Paragraphs 5,  
19 59 and 60 of the Second Amended and Restated Settlement Agreement.

20 The revisions to Paragraph 5 now provides that "R&M will provide with  
21 the Class Information a listing of the actual rate of pay for each Settlement  
22 Class Member for the entire Class Period and a pay stub showing each rate of  
23 pay for each Settlement Class Member certified by R&M as accurate."

24 The revisions to Paragraph 59 now include a further representation that  
25 the payroll information described above is true and correct.

26 The revisions to Paragraph 60 now gives Medina ten (10) days from the  
27 date R&M provides the payroll information with the Class Information to  
28 determine whether the compensation representations provided in Paragraph 59  
are materially inaccurate and, if so, terminate this Settlement upon notification  
to R&M and the Court.

1 As a result and while the payroll verification will not precede the entry of  
2 the Second Revised [Proposed] Preliminary Approval Order, it will precede the  
3 mailing of the Amended Class Notice.

4 Medina and Class Counsel are hopeful that the payroll verification process  
5 now included in the Second Amended and Restated Settlement Agreement will  
6 satisfy this Court's prior concern. However, it should be noted that preceding  
7 the mediation, Medina and Class Counsel already had partially verified this  
8 information based on Medina's and Stoddard's personal experience as long term  
9 employees of R&M and their knowledge of the payroll practices for the cashiers  
10 who worked at their stations.

11 Additionally, Medina and Class Counsel remain of the view that the Total  
12 Settlement Amount was at or near the highest amount which could be achieved  
13 through settlement. As stated in Paragraph 57 of the Second Amended and  
14 Restated Settlement Agreement, this Court has been granted permission to  
15 contact Judge West *ex parte* to discuss the Settlement and both its fairness and  
16 reasonableness.

### 17 **III. COMMENTS CONCERNING THE NOTICE.**

18 1. It appears the URL in the notice for accessing the case file  
19 is a single-session ID copied from a browser after logging in.  
20 Please use the following URL for online access to the case file:  
<https://ocapps.occourts.org/civilwebShoppingNS/Login.do>

21 This change has been made to the Amended Class Notice.

22 2. Counsel represents in his declaration that litigation costs  
23 are estimated not to exceed \$15,000. In order to apprise the class  
24 of the estimated litigation costs, please include a statement to  
25 this effect in point 1.a on page 6 of the notice, under the heading  
26 "What Are The Important Terms of the Settlement?"  
27 In addition to the Court's address, the notice should include  
28 information about how to access the case file online for those who  
do not wish to visit the Court in person.

This change has been made to the Amended Class Notice.





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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 580 West Empire Avenue, Burbank, California 91504.

On August 26, 2020, I served the foregoing document(s) described as **PLAINTIFF'S SECOND SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties to this action who are listed on the attached Service List by electronically serving those persons at the electronic addresses noted therein.

**STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**FEDERAL:** I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct of my own personal knowledge, and that I am employed in the office of a member of the Bar of this Court at whose discretion this service was made.

Executed on August 26, 2020, at Burbank, California.

\_\_\_\_\_  
/s/ Nathan Childress

Nathan Childress

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