

1 SAMUEL T. REES (State Bar No. 58099)  
THOMAS P. BLEAU (State Bar No. 152945)  
2 MARTIN R. FOX (State Bar No. 155783)  
BLEAU FOX  
3 A Professional Law Corporation  
2801 West Empire Avenue  
4 Burbank, CA 91504  
Telephone: (818) 748-3434  
5 Facsimile: (818) 748-3436  
[STReesEsq@earthlink.net](mailto:STReesEsq@earthlink.net)

6 Attorneys for Plaintiff and Plaintiff Class

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8 KERRI N. POLIZZI (State Bar No. 318477)  
KRING & CHUNG, LLP  
38 Corporate Park  
9 Irvine, CA 92606  
Telephone: (949) 261-7700  
10 Facsimile: (949) 261-8800

11 Attorneys for Defendant R&M Pacific Rim, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ORANGE

14 RAYMOND STODDARD and )  
SANTIAGO MEDINA etc., )  
15 Plaintiffs, )  
16 vs. )  
17 EQUILON ENTERPRISES, LLC, et )  
18 al., )  
19 Defendants. )

Case No. 30-2010-00395208-CU-0E-CXC  
Hon. William Claster  
Department CX 104  
CLASS ACTION  
**JOINT *EX PARTE* APPLICATION TO  
VACATE DEADLINES AND FINAL  
APPROVAL HEARING DATE AND SET  
HEARING FOR RECONSIDERATION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS OF  
SAMUEL T. REES AND KERRI N.  
POLIZZI AND [PROPOSED] ORDER**  
Date: January 8, 2021  
Time: 8:30 a.m.  
Dept: CX 104  
Complaint Filed: August 2, 2010  
Trial Date: None Set

1 TO THIS HONORABLE COURT:

2 Plaintiff Santiago Medina (“Medina”) and Defendant R&M Pacific Rim,  
3 Inc. (“R&M”) will and do jointly apply *ex parte* to vacate deadlines and the  
4 hearing date for the Final Approval Hearing as established by this Court’s  
5 September 24, 2020, Amended Preliminary Approval Order (the “PAO”).  
6 Medina and R&M also respectfully request that this Court set a hearing to  
7 reconsider the PAO and set new deadlines and a hearing date for final approval  
8 of the parties’ settlement. The parties do not seek to vacate the PAO because  
9 that order authorizes R&M to provide Class Counsel with the Class Information,  
10 which R&M has done.

11 The PAO required the Settlement Administrator to mail the Class Notice  
12 on November 3, 2020. This did not occur because the Settlement Administrator  
13 was unable to timely provide the individualized class information to be sent to  
14 Settlement Class Members with the Class Notice. Moreover, the Settlement  
15 Administrator did not notify the parties of its failure to mail the Class Notices  
16 until fairly recently. Since receiving such notice, the parties have been working  
17 diligently to provide the Settlement Administrator with additional information  
18 and/or clarification requested by the Settlement Administrator to allow it to  
19 provide the individualized information needed to proceed with the mailing.

20 Virtually all of the subsequent actions to be taken in connection with this  
21 settlement are keyed to the timely mailing of the Class Notice. Since the Class  
22 Notice has yet to be finalized and mailed, the parties request that the deadlines  
23 imposed by the PAO be vacated and the currently scheduled Final Approval  
24 Hearing be taken off calendar.

25 After reviewing the Class Information and payroll data provided by R&M  
26 on October 5, 2020, as subsequently updated, the parties have determined that  
27 it would be appropriate to further amend and restate the parties’ settlement  
28 agreement. The primary purposes of these further modifications are to correct

1 certain information contained in R&M's factual representations and make a  
2 slight modification of the proration formula used for calculating the Individual  
3 Settlement Payments for the Misclassification Subclass. These modifications  
4 will also require corresponding slight modifications to the Class Notice. The  
5 parties expect to complete these amendments promptly and would request that  
6 the Court set a further hearing to reconsider the PAO. Medina shall provide the  
7 Court at least ten (10) days in advance of this hearing with copies of the  
8 amendments, a revised Preliminary Approval Order and redlines showing all  
9 changes made. Medina shall also provide a memorandum and supporting  
10 declaration explaining the reasons for all amendments.

11 If this Court modifies the PAO at this reconsideration hearing, the parties  
12 expect to be able to mail the amended Class Notice to all Settlement Class  
13 Members one week following the entry of that modified PAO.

14 This application will be presented to the Court on January 8, 2021, at 8:30  
15 a.m. in Department CX 104.

16 This Ex Parte Application based upon this Ex Parte Application, the  
17 attached Memorandum of Points and Authorities and Declarations of Samuel T.  
18 Rees and Kerri N. Polizzi and upon such evidence and oral argument as may be  
19 presented at the time of the hearing.

20 Dated: January 7, 2021

BLEAU FOX  
A Professional Law Corporation

22 By: /s/ Samuel T. Rees  
23 SAMUEL T. REES  
24 Attorneys for Medina and the Class  
25 KRING & CHUNG, LLP

26 By: /s/ Kerri N. Polizzi  
27 KERRI N. POLIZZI  
28 Attorneys for R&M Pacific Rim, Inc.

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2           On September 24, 2020, this Court signed and filed its Amended  
3 Preliminary Approval Order (the “PAO”). In addition to preliminarily approving  
4 the parties’ settlement and the form of Class Notice, the PAO required R&M to  
5 provide the Settlement Administrator and Class Counsel with the Class  
6 Information, including payroll information, by October 4, 2020 and required the  
7 Settlement Administrator to mail the completed Class Notices to the Settlement  
8 Class Members on November 3, 2020. A conformed copy of the PAO was served  
9 by email on R&M and the Settlement Administrator by Class Counsel on  
10 September 25, 2020.

11           On October 5, 2020, R&M served the Settlement Administrator and Class  
12 Counsel with a spreadsheet containing what was believed to be all of the Class  
13 Information. On the same day, the Settlement Administrator acknowledged  
14 receipt of the Class Information and stated that it would be in touch with any  
15 questions.

16           On October 6, 2020, R&M served Class Counsel with copies of payroll  
17 stubs verifying information contained in the Class Information. The parties’  
18 settlement agreement provided Medina with a ten (10) day period to review this  
19 payroll information and determine whether to terminate the settlement based  
20 upon material inaccuracies. Class Counsel made this review and recommended  
21 to Medina that the settlement not be terminated notwithstanding some minor  
22 inaccuracies. Medina accepted this representation and elected not to terminate  
23 the settlement.

24           Class Counsel made a thorough review of the Class Information and on  
25 October 18, 2020, provided R&M and the Settlement Administrator with an  
26 updated spreadsheet noting certain areas where information necessary to  
27 complete the Class Notice appeared to be missing. In a follow-up telephone  
28 conversation on the same day, the Settlement Administrator advised Class

1 Counsel that its “data processing team” was fully capable of analyzing the Class  
2 Information. No further communication was received by Class Counsel from the  
3 Settlement Administrator prior to the deadline for mailing of the Class Notices.

4 On December 10, 2020, Class Counsel received confirmation that the Class  
5 Notices were not timely mailed and that the Settlement Administrator was  
6 requiring additional information from R&M to complete the Class Notices.

7 Thereafter, Class Counsel and R&M worked together to determine what  
8 information needed to be supplemented or clarified for the Settlement  
9 Administrator to complete the Class Notices. The required information which  
10 Class Counsel believed needed to be provided required R&M again searching  
11 payroll records over 10 years old to gather the additional information. On  
12 December 21, 2020, R&M provided all of the information which Class Counsel  
13 believed was missing to complete the Class Notices. On January 5, 2020, the  
14 Settlement Administrator provided R&M and Medina with an updated  
15 spreadsheet which it believes contains all of the necessary information for  
16 completing the Class Notices. Class Counsel expects to complete its review of  
17 this updated spreadsheet within the next week.

18 In summary, the Class Notice was required to be mailed to the Settlement  
19 Class Members on November 3, 2020. The Class Notice provided deadlines for  
20 Settlement Class Members to (i) opt-out of the settlement, (ii) object to the  
21 settlement, (iii) dispute any of the information on which the Individual  
22 Settlement Payment will be based and/or (iv) correct or supplement information  
23 provided in the Information Sheet. All of those deadlines have now passed. The  
24 PAO also provided a deadline for the filing of an application for Class Counsel  
25 Award and a Service Award which now appears to be premature. Finally, the  
26 PAO set a hearing date for the Final Approval Hearing which ought to be  
27 vacated and reset for a later date.

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1 Based upon the foregoing, Medina and R&M respectfully request that this  
2 application be granted, deadlines vacated, the Final Approval Hearing taken off  
3 calendar and a new hearing date be set for reconsideration of the PAO.

4 Dated: January 7, 2021

BLEAU FOX  
A Professional Law Corporation

6 By: /s/ Samuel T. Rees  
7 SAMUEL T. REES

8 Attorneys for Medina and the Class

10 KRING & CHUNG, LLP

12 By: /s/ Kerri N. Polizzi  
13 KERRI N. POLIZZI

14 Attorneys for R&M Pacific Rim, Inc.

1 **DECLARATION OF SAMUEL T. REES**

2 I, SAMUEL T. REES, declare:

3 1. I remain an attorney at law duly licensed to practice in California  
4 and Louisiana. I also remain “Of Counsel” to Bleau Fox, a PLC, counsel for  
5 Plaintiff and Plaintiff Class herein.

6 2. On September 24, 2020, this Court signed and filed its Amended  
7 Preliminary Approval Order (the “PAO”), a copy of which is attached hereto as  
8 Exhibit A for the Court’s convenience. I caused a conformed copy of the PAO  
9 was served by email on R&M and the Settlement Administrator by on  
10 September 25, 2020.

11 3. On October 5, 2020, I received by email from counsel for R&M a  
12 spreadsheet containing what was believed to be all of the Class Information. On  
13 the same day, I received an email from the Settlement Administrator  
14 acknowledging receipt of the Class Information and stating to R&M’s counsel  
15 that it would be in touch with any questions.

16 4. On October 6, 2020, I received an email from counsel for R&M  
17 containing a dropbox link which included copies of payroll stubs purporting to  
18 verify payroll information contained in the Class Information spreadsheet.  
19 Following receipt, I checked the payroll information against R&M’s  
20 representations of pay rates for Settlement Class Members. While there were  
21 some variations, I did not deem the variations sufficiently material to  
22 recommend that Medina terminate the settlement. After discussions with  
23 Medina, he informed me that he was not going to exercise any right to terminate  
24 the settlement.

25 5. Thereafter, I made a thorough review of the Class Information and  
26 on October 18, 2020, provided R&M’s counsel and the Settlement Administrator  
27 with an updated spreadsheet noting certain areas where information necessary  
28 to complete the Class Notice appeared to be missing. In a follow-up telephone

1 conversation on the same day, the Settlement Administrator advised me that its  
2 “data processing team” was fully capable of analyzing the Class Information. No  
3 further communication was received by me from the Settlement Administrator  
4 prior to the deadline for mailing of the Class Notices.

5 6. On December 10, 2020, and after several inquiries to counsel for  
6 R&M and the Settlement Administrator, I received confirmation that the Class  
7 Notices were not timely mailed and that the Settlement Administrator was  
8 requiring additional information from R&M to complete the Class Notices.

9 7. Following that communication, I worked with R&M’s counsel to  
10 determine what information needed to be supplemented for the Settlement  
11 Administrator to complete the Class Notices. During this time, I did not receive  
12 any communication from the Settlement Administrator for what information it  
13 believed was missing. The required information which Class Counsel believed  
14 needed to be provided required R&M again searching payroll records over 10  
15 years old to gather the additional information.

16 8. On December 21, 2020, R&M’s counsel provided all of the  
17 information which I believed was missing to complete the Class Notices. I then  
18 updated my spreadsheet to include this information and provided that updated  
19 spreadsheet to both R&M’s counsel and the Settlement Administrator.

20 9. On January 5, 2020, the Settlement Administrator provided R&M’s  
21 counsel and me with an updated spreadsheet which it believes contains all of the  
22 necessary information for completing the Class Notices. I expect to complete my  
23 review of this updated spreadsheet within the next week.

24 I declare under penalty of perjury pursuant to California law that the  
25 foregoing is true and correct.

26 Dated: January 7, 2021

27 /s/ Samuel T. Rees  
SAMUEL T. REES



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**DECLARATION OF KERRI N. POLIZZI**

I, KERRI N. POLIZZI, declare:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am an associate attorney with the law firm of KRING & CHUNG, LLP, counsel of record for R&M Pacific Rim, Inc. in this action. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. On October 5, 2020, our office provided Class Counsel and the Settlement Administrator with a secure spreadsheet containing what we believed to be all of the Class Information required to effectuate the notice and settlement. On the same day, I received an email from the Settlement Administrator acknowledging receipt of the Class Information and advising me that it would be in touch with any questions.

3. On October 6, 2020, our office delivered to Class Counsel a Dropbox link, granting secure access to copies of payroll stubs to verify payroll information contained in the Class Information spreadsheet, as required by the Settlement Agreement and directed by the PAO.

4. On October 7, 2020, I received an email from Class Counsel with questions about certain data points contained in the spreadsheet.

5. On October 9, 2020, I provided responses to the questions raised in Class Counsel’s October 7, 2020 email.

6. On October 18, 2020, Class Counsel provided our office and the Settlement Administrator with an updated spreadsheet noting certain areas where he believed information necessary to complete the Class Notice appeared to be missing.

7. On October 19, 2020, the Settlement Administrator advised our office that it had reviewed Class Counsel’s updated spreadsheet and that its data processing team could analyze the Class Information as presented. It was thus our understanding that the Class Notices would proceed without further action on our part. No further communication was received by me from the Settlement Administrator prior to the deadline for mailing of the Class Notices.

1 8. On December 4, 2020, Class Counsel issued an inquiry to our office and the  
2 Settlement Administrator requesting an update on the status of the Class Notice.

3 9. That same day, the Settlement Administrator left me a voicemail message advising  
4 that the Class Notices had not been mailed and indicating that it required additional information from  
5 our client to complete the Class Notices.

6 10. Following that communication, our office worked with Class Counsel to determine  
7 what information needed to be supplemented or clarified for the Settlement Administrator to  
8 complete the Class Notices. During this time, I did not receive any communication from the  
9 Settlement Administrator indicating that it believed any information was missing.

10 11. The information which Class Counsel believed needed to be provided to effectuate  
11 the Class Notice required our client to again undertake the process of searching payroll records over  
12 10 years old to gather the additional information. Our client diligently did so and provided the same t  
13 our office.

14 12. On December 21, 2020, our office provided all of the information which Class  
15 Counsel indicated that he believed was missing or otherwise necessary to complete the Class  
16 Notices.

17 13. On December 29, 2020, Class Counsel sent to the Settlement Administrator, with our  
18 office carbon copied, an updated spreadsheet and indicated that he believed all necessary information  
19 had been provided. Class Counsel requested that the Settlement Administrator confirm the same or  
20 identify specifically any errors.

21 On January 5, 2020, the Settlement Administrator provided R&M's counsel and me with an  
22 updated spreadsheet which it believes contains all of the necessary information for completing the  
23 Class Notices.

24 I declare under penalty of perjury pursuant to California law that the  
25 foregoing is true and correct.

26 Dated: January 7, 2021

27 /s/ Kerri N. Polizzi  
28 KERRI N. POLIZZI

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**[PROPOSED] ORDER GRANTING APPLICATION**

The Court having read and considered the *Ex Parte* Application To Vacate Deadlines and Final Approval Hearing Date and good cause appearing, the Application is granted. The Court sets a hearing to reconsider the Amended Preliminary Approval Date for \_\_\_\_\_, 2021, at 8:30 a.m. in Department CX 104. At least ten (10) days in advance of this hearing, the parties shall file an further amended settlement agreement, class notice and preliminary approval order with redlines showing any changes to those documents as previously approved by this Court.

Dated: January \_\_, 2021

\_\_\_\_\_  
William D. Cluster  
Judge of the Superior Court