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

13 RAYMOND STODDARD and
14 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. James J. Di Cesare
Department C 16

CLASS ACTION

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF REQUEST FOR
RECONSIDERATION OF
AMENDED PRELIMINARY
APPROVAL ORDER**

**[Filed Concurrently with
Declaration of Rees and Plaintiffs'
[Proposed] Second Amended
Revised Preliminary Approval
Order]**

Date: March 19, 2021
Time: 9:30 a.m.
Dept: C 16
Complaint Filed: August 2, 2010
Trial Date: None Set

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1 **I. INTRODUCTION.**

2 Plaintiff Santiago Medina (“Medina”) submits this memorandum in
3 support of his request that this Court reconsider its Amended Preliminary
4 Approval Order in connection with a settlement reached with Defendant R&M
5 Pacific Rim, Inc. (“R&M”). This request is based upon the following facts:

6 On September 24, 2020, this Court signed and filed its Amended
7 Preliminary Approval Order preliminarily approving the parties’ Second Amended
8 and Restated Settlement Agreement and setting certain dates upon which
9 additional action needed to be taken in connection with that settlement.

10 Among other actions required by that order, R&M was required to deliver
11 to the Settlement Administrator and Class Counsel certain Class Information
12 and payroll data concerning the Settlement Class Members by October 4, 2020.
13 That Class Information was necessary for the Settlement Administrator to
14 complete the individualized attachment to the approved Class Notice. The
15 Settlement Administrator was then required to mail the Class Notice to the
16 Settlement Class on November 3, 2020.

17 While R&M provided the Class Information and thereafter supplemented
18 that Class Information, the Settlement Administrator was unable to complete
19 the individualized attachments to the Class Notice in sufficient time to allow the
20 Class Notices to be prepared and timely mailed.

21 Based upon the Class Information and payroll information provided by
22 R&M, the parties determined that it would be appropriate to further amend
23 their settlement agreement, class notice and this Court’s preliminary approval
24 order.

25 On January 12, 2021, the parties jointly moved this Court *ex parte* to
26 vacate certain dates set forth in the Amended Approval Order and set a hearing
27 to reconsider that order in light of the anticipated amendments to the settlement
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1 documents. This Court granted that application and set a reconsideration
2 hearing for March 19, 2021.

3 Subsequently, the parties have now executed their Third Amended and
4 Restated Settlement Agreement and modified the previously approved Class
5 Notice and approval order. The purpose of this memorandum is to explain those
6 amendments. Copies of all amended documents and redlines showing the
7 changes are attached to the accompanying declaration of Samuel T. Rees.

8 **II. THIRD AMENDED AND RESTATED SETTLEMENT AGREEMENT.**

9 While there have been several changes to the parties settlement
10 agreement, only a few of those changes merit a detailed explanation. Most of the
11 significant changes were made to the representations of R&M contained in
12 Paragraph 59 of the Third Amended and Restated Settlement Agreement. These
13 changes are based upon the parties' detailed review of the Class Information and
14 payroll information provided. Additional changes were made because it was
15 determined that certain terms were too difficult and time consuming to perform.

16 **Class Size.**

17 Upon review of the information, it was determined that the Settlement
18 Class consists of 368 individuals. It was further determined that the Settlement
19 Misclassification Subclass consists of 29 individuals, 12 of which are also
20 members of the Settlement Break Subclass. Finally, it was determined that the
21 Settlement Break Subclass consists of 351 individuals, 12 of which are also
22 members of the Settlement Misclassification Subclass. These changes have
23 resulted in modifications of Paragraph 59 A and 59 B.

24 **Salary and Hourly Rates.**

25 Upon review of the payroll information, it was determined that the
26 salaries of members of the Settlement Misclassification Subclass during the
27 Class Period actually equated to a range of \$10.38 per hour to \$16.15 per hour
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1 when their annual salaries were divided by 2,080 hours to equate to a 40 hour
2 work week. This changes resulted in a modification to Paragraph 59 D.

3 Upon review of the hourly rates actually paid to members of the
4 Settlement Break Subclass, those hourly rates ranged from \$6.75 to \$9.00 for
5 2006, ranging from \$7.50 to \$8.75 for 2007 and ranging from \$8.00 to \$11.00 for
6 2008. However, it should be noted that 7 Settlement Misclassification Subclass
7 Members, who were station managers, were always hourly rate employees and
8 that 24 Settlement Misclassification Subclass Members were reclassified from
9 exempt to non-exempt employees during the Class Period. These employees
10 commanded generally higher hourly rates than cashiers working at the station.
11 However, since the calculation of the Individual Settlement Payments for the
12 Settlement Break Subclass are based upon their gross annual wages while non-
13 exempt, this variation does not believe to have any material impact. These
14 changes resulted in a modification of Paragraph 59 C.

15 **Area Manager.**

16 During the Class Period, one Settlement Class Member was promoted
17 from being a station manager to an Area Manager, commanding a significantly
18 higher salary. Since that individual upon being promoted no longer worked full
19 time in a station and instead performed managerial duties, the Third Amended
20 and Restated Settlement Agreement was clarified to exclude from the
21 Settlement Class that individual once he was promoted. This changes resulted
22 in a modification of Paragraph 31.

23 **Proration Changes.**

24 Initially, the proration formula for members of the Settlement
25 Misclassification Subclass was based upon weeks as exempt with a provision to
26 roundup a partial week to a full week. Since the information provided allowed
27 the Settlement Administrator to prorate on days rather than weeks, the Third
28 Amended and Restated Settlement Agreement was amended to so provide and

1 also eliminate the rounding up, which would have been extremely difficult in
2 any event. These changes resulted in modification to Paragraphs 5, 30 and 79.

3 **Class Counsel Payroll Information Review.**

4 Since at the time the Second Amended and Restated Settlement
5 Agreement was signed, discovery had not be undertaken and Class Counsel was
6 not privy to payroll information for the Settlement Class, that agreement
7 provided a short period of time from receipt of that payroll information for Class
8 Counsel to undertake a review to determine whether R&M's payroll
9 representations were materially at odd with the actual information.

10 In October 2020, the payroll information was provided to and reviewed by
11 Class Counsel. As a result of that review and a similar review by R&M's
12 counsel, the modifications to the payroll information noted above were made.
13 Because the representations as contained in the Third Amended and Restated
14 Settlement Agreement track the actual payroll information, there is no need for
15 a further review and the review provision in Paragraph 60 was eliminated.

16 **High/Low Individual Settlement Payments.**

17 The Second Amended and Restated Settlement Agreement required that
18 the Settlement Administrator provide the Court with the high and low
19 Individual Settlement Payments for each subclass. That requirement was
20 deleted in Paragraph 92 of the Third Amended and Restated Settlement
21 Agreement because it was impossible to achieve.

22 The amounts of the Individual Settlement Payments cannot be calculated
23 until this Court rules on the Class Counsel Award and the Service Aware and
24 the Settlement Administrator's compensation, which will not occur until the
25 Final Approval Hearing. Thus, the high/low payments cannot be identified in
26 advance of that hearing.

27 However, proration percentages for each subclass have now been
28 determined. Proration percentages for the Settlement Misclassification Subclass

1 range from .31633% to 5.73171%. Proration percentages for the Settlement
2 Break Subclass range from 1.45095% to 0.00109%, with the lowest percentages
3 applicable to certain cashiers who worked less than two weeks during the class
4 period.

5 **III. CLASS NOTICE.**

6 Except for updating the Class Notice to reflect new deadlines and dates,
7 the only significant modification has been to note that the Settlement
8 Misclassification Subclass does not include the time served as an Area Manager,
9 the proration formula is based on days and not weeks without any rounding and
10 the revised representations were reprinted.

11 **IV. SECOND AMENDED PRELIMINARY APPROVAL ORDER.**

12 Except for updating the Amended Approval Order and providing certain
13 historical facts, the only material change is to recognize that Settlement
14 Misclassification Subclass does not include time served as an Area Manager.

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1 **V. CONCLUSION.**

2 Medina and Class Counsel respectfully request that the Court accept the
3 changes to the settlement documents and preliminarily approve the Third
4 Amended and Restated Settlement Agreement, set a date on which the Class
5 Notices are to be mailed, set a Final Hearing Date and sign and filed the Second
6 Amended Preliminary Approval Order as lodged with this Court.

7 Dated: March 10, 2021

BLEAU FOX
A Professional Law Corporation

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

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Attorneys for Plaintiff and Plaintiff Class

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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 March 10, 2021, I served the foregoing document(s) described as **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR RECONSIDERATION OF AMENDED PRELIMINARY APPROVAL ORDER** 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 March 10, 2021, at Burbank, California.

/s/ Nathan Childress

Nathan Childress

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SERVICE LIST

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