

1 SAMUEL T. REES (State Bar No. 58099)
2 THOMAS P. BLEAU (State Bar No. 152945)
3 MARTIN R. FOX (State Bar No. 155783)
4 BLEAU FOX
5 2801 West Empire Avenue
6 Burbank, California 91504
7 Telephone: (818) 748-3434
8 Facsimile: (818) 748-3436

9 SHANNON LISS-RIORDAN (State Bar No. 310719)
10 LICHTEN & LISS-RIORDAN, P.C.
11 729 Boylston Street, Suite 2000
12 Boston, MA 02116
13 Telephone: (617) 994-5800
14 Facsimile: (617) 994-5801
15 sliss@llrlaw.com

16 Attorneys for Plaintiff
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. James J. Di Cesare
Department C 16

CLASS ACTION

**DECLARATION OF SAMUEL T.
REES IN SUPPORT OF SECOND
AMENDED PRELIMINARY
APPROVAL ORDER**

**[Filed Concurrently with
[Proposed] Revised Second
Amended Preliminary Approval
Order]**

Date: May 14, 2021
Time: 9:30 a.m.
Dept: C 16
Complaint Filed: August 2, 2010
Trial Date: None Set

1 I, SAMUEL T. REES, declare:

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

5 2. I submit this declaration in support of Plaintiff’s request that this
6 Court sign and enter the Revised Second Amended Preliminary Approval Order
7 lodged concurrently herewith.

8 3. The primary purpose of this declaration is to explain the differences
9 between the [Proposed] Revised Second Amended Preliminary Approval Order
10 submitted herewith and the two prior preliminary approval orders signed by
11 Judge Claster on September 16 and 24, 2020 and the background related to
12 those orders.

13 **Changes Between the September 16 and September 24 Preliminary**
14 **Approval Orders.**

15 4. The only changes between this Court’s September 16, 2020 Updated
16 Second Revised Preliminary Approval Order and the September 24, 2020
17 Amended Preliminary Approval Order, other than to type the Court’s
18 handwritten interlineations, was to reinsert Paragraph 8, which was stricken in
19 the first order. The back ground of this change is, as follows:

20 5. On July 30, 2020, Judge Claster considered the parties First
21 Amended and Restated Settlement Agreement. At that time, the Court made
22 the following comment related to payroll discovery in its minute order:

23 4. The Court is concerned by counsel’s apparent position that
24 it’s appropriate to rely on individual class members to verify
25 R&M’s factual recitals that serve as the basis for the settlement.
26 For example, R&M represents that all break class members were
27 paid the applicable minimum wage or a number not materially
28 higher, and that all misclassification class members were paid
\$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

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

5 6. When the tentative settlement was reached, Plaintiff had not
6 conducted formal discovery and did not have access to payroll information for the
7 Settlement Class because of privacy issues.

8 7. As a result of the Court's comment above as well as other comments
9 made by the Court, the parties signed and filed with the Court their Second
10 Amended and Restated Settlement Agreement. Insofar as the above payroll
11 comment is concerned, this amended settlement agreement made two changes,
12 as follows:

13 8. The first change was to add the following to Paragraph 5 defining
14 the information R&M was to provide: "In addition, R&M will provide with the
15 Class Information a listing of the actual rate of pay for each Settlement Class
16 Member for the entire Class Period and a pay stub showing each rate of pay for
17 each Settlement Class Member certified by R&M as accurate."

18 9. The second change was to add Paragraph 60, as follows:

19 "60. Medina shall have ten (10) days from the date R&M
20 provides the payroll information with the Class Information to
21 determine whether the compensation representations provided
22 above are materially inaccurate and, if so, terminate this
23 Settlement upon notification to R&M and the Court. Otherwise,
24 Medina has determined that the compensation representations
25 are true as to himself and as to the non-exempt employees
26 working at the stations that Medina managed, that he was
27 reclassified as a non-exempt employee in or about September
28 2008, that he and non-exempt employees working at the stations
that he managed received certain missed meal break
compensation in 2008 and that R&M changed its rest break and
meal break policies in or around September 2008 to allow all
employees to either receive off-duty meal and rest breaks or
compensation for missed breaks. With these exceptions, neither
Medina nor Class Counsel has verified the truth of the foregoing
representations but recognize that each Settlement Class
Member will be able to determine whether any represented fact

1 is materially untrue as to himself or herself in making a decision
2 as to whether to request to be excluded from the Settlement.”

3 10. On September 4, 2020, Judge Cluster considered the parties’ Second
4 Amended and Restated Settlement Agreement and related documents and
5 granted preliminary approval of the settlement.

6 11. On September 16, 2020, Judge Cluster signed and filed the Updated
7 Second Revised Preliminary Approval Order. In doing so, the Court (i) made
8 certain interlineations to the parties’ proposed order and (ii) struck Paragraph 8
9 which allowed for Class Counsel to receive the Class Information and payroll
10 information discussed above.

11 12. Upon receipt of the Updated Second Revised Preliminary Approval
12 Order, I was concerned that by striking Paragraph 8, I would be unable to
13 perform my review obligations noted above.

14 13. As a result, I moved *ex parte* on September 24, 2020, to amend the
15 Updated Second Revised Preliminary Approval Order to reinsert Paragraph 8
16 into the preliminary approval order. With this application, I submitted a
17 [Proposed] Amended Preliminary Approval Order for the Court’s consideration.
18 That Proposed Order made all of the interlineations contained in the Updated
19 Second Revised Preliminary Approval Order and reinserted Paragraph 8. Thus,
20 the only change made by the [Proposed] Amended Preliminary Approval Order
21 was to reinsert Paragraph 8.

22 13. On September 24, 2020, my *ex parte* was heard. Judge Cluster
23 acknowledged at that time that he had made a mistake in striking Paragraph 8
24 and he immediately signed and filed the Amended Preliminary Approval Order.

25 **Class Information and Payroll Review Process**

26 14. Paragraph 8 of the Amended Preliminary Approval Order required
27 R&M to provide to the Settlement Administrator and Class Counsel with the
28 Class Information and payroll data on or before October 4, 2020.

1 15. Upon my review of the Class Information and payroll data, I
2 determined that certain of the representations provided in Paragraph 59 of the
3 Second Amended and Restated Settlement Agreement ought to be amended to
4 more accurately reflect what was shown in the payroll data. I also determined
5 that during the Class Period, one individual was promoted from a station
6 manager, who Plaintiff contended was misclassified, to an area manager which
7 was properly classified as exempt position. That individual received a
8 substantial salary increase on that promotion. Since the Amended Preliminary
9 Approval Order would have included that individual in the Settlement
10 Misclassification Subclass after his promotion, I believed that this subclass
11 definition should be modified to exclude that individual’s time following that
12 promotion. I discussed my concerns with counsel for R&M and as a result, the
13 parties created and signed their Third Amended and Restated Settlement
14 Agreement, which among other items made the definitional change to the
15 Settlement Misclassification Subclass and corrected the misrepresentations.

16 **Vacating Deadlines and Hearing Dates**

17 16. The Amended Preliminary Approval Order set certain deadlines and
18 hearing dates for the settlement. Paragraph 13 thereof required that the
19 approved Class Notice be mailed to the Settlement Class on November 3, 2020.
20 This did not occur. Moreover, since other deadlines and hearing dates were
21 keyed to the Class Notice being mailed on November 3, 2020, those dates were
22 not achievable.

23 17. As a result, the parties jointly applied *ex parte* to this Court to have
24 the deadlines and future hearing dates contained in the Amended Preliminary
25 Approval Order vacated. The parties also sought a date when the parties could
26 present to the Court for its consideration the parties’ anticipated Third Amended
27 and Restated Settlement Agreement and revised Class Notice and issue an
28 updated preliminary approval order approving those documents, setting new

1 deadlines and establishing new dates for the mailing of the Class Notice and the
2 Final Approval hearing. That application was presented to this Court on
3 January 12, 2021. At that time, this Court granted the application and set a
4 further hearing for March 19, 2021.

5 **Submission of Amended Documents.**

6 18. On March 10, 2021, I caused to be filed a Memorandum in which I
7 attempted to explain each of the substantive changes made by the Third
8 Amended and Restated Settlement Agreement, including changes made to the
9 Class Notice to conform to the changes made in the settlement agreement. I also
10 filed my declaration which attached (i) the Amended Preliminary Approval
11 Order [Exhibit A], (ii) the fully executed Third Amended Settlement Agreement
12 with exhibits thereto [Exhibit B], (iii) a redline showing all changes made by the
13 settlement agreement [Exhibit C], (iv) a redline showing all changes made to the
14 Class Notice [Exhibit D], and (v) a redline showing the differences between the
15 [Proposed] Second Amended Approval Order, which was lodged with the
16 memorandum and declaration, and this Court's September 24, 2020 Amended
17 Approval Order signed by Judge Claster. Note that the exhibits to the fully
18 signed Third Amended and Restated Settlement Agreement were the revised
19 Class Notice [Exhibit 1] and the Proposed Second Amended Approval Order
20 [Exhibit 2].

21 19. Rather than repeat the discussion contained in the foregoing
22 Memorandum and Declaration, the Court's attention is directed to those filings.

23 20. On March 19, 2021, this Court continued the matter to May 14, 2021
24 to permit me to file this further declaration and a Revised Second Amended
25 Preliminary Approval Order.

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1 **Explanation of Changes Made in the [Proposed] Revised Second**
2 **Amended Preliminary Approval Order.**

3 21. Lodged herewith is a [Proposed] Revised Second Amended
4 Preliminary Approval Order, replacing the [Proposed] Second Amended
5 Approval Order lodged on March 10, 2021.

6 23. Attached hereto as Exhibit A is a redline showing the differences
7 between this [Proposed] Second Amended Preliminary Approval Order and the
8 signed and filed Amended Approval Order.

9 24. As can be seen from Exhibit A hereto, the only substantive change
10 made by this [Proposed] Second Amended Preliminary Approval Order is to
11 approve the parties' Third Amended and Restated Settlement Agreement and
12 exhibits thereto and to modify only slightly the definition of members of the
13 Settlement Misclassification Subclass and to set new deadlines and a new Final
14 Approval hearing date. All other changes merely update the Amended
15 Preliminary Approval Order to reflect events occurring after its filing.

16 25. The changes to the recitals merely reflect that this Court previously
17 approved the parties' Second Amended and Restated Settlement Agreement and
18 that the parties now seek approval of the Third Amended and Restated
19 Settlement Agreement. This is merely an update of events occurring after the
20 Amended Preliminary Approval Order.

21 26. Paragraphs 1 through 3 provides for the approval of the Third
22 Amended and Restated Settlement Agreement.

23 27. Paragraph 4 modifies the definition of the Settlement
24 Misclassification Subclass to exclude the time of one Settlement Class Member
25 after he was promoted from being a station manager to an area manager. This
26 individual will still receive an Individual Settlement Payment for the days
27 during the Class Period that he is included in both the Settlement
28 Misclassification Subclass and the Settlement Break Subclass.

1 28. Paragraphs 5 through 7 re-appoint and re-approve Medina as Class
2 Representative, Bleau Fox as Class Counsel and Phoenix Settlement
3 Administrators as the Settlement Administrator. This merely duplicates those
4 appointments made in the Amended Preliminary Approval Order.

5 29. Paragraph 8 essentially updates Paragraph 8 in the Amended
6 Preliminary Approval Order except that it deletes the requirement for delivery
7 of the Class Information by R&M because that was accomplished in October
8 2020.

9 30. Paragraph 9 requests that this Court set a new Final Approval
10 Hearing on a date in July 2021 convenient to the Court.

11 31. Paragraphs 10 through 12 approve the revised Class Notice which
12 was updated based on small changes in the parties' settlement agreement and
13 revised representations by R&M.

14 32. Paragraph 13 sets a specific date for mailing of the Class Notice to
15 the Settlement Class. This assumes that the [Proposed] Second Amended
16 Preliminary Approval Order is signed and filed prior to the currently scheduled
17 May 14 hearing. Class Counsel has notified the Settlement Administrator to
18 expect April 26, 2021, as the mailing date.

19 33. Paragraph 14 sets a new deadline for filing applications for Class
20 Counsel Award and Medina's Service Award.

21 I declare under penalty of perjury under the laws of the State of California
22 that the foregoing is true and correct.

23 Dated: March 21, 2021

24 

25 _____
26 SAMUEL T. REES

EXHIBIT A

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
6 Attorneys for Plaintiff
and the Plaintiff Class
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10
11 RAYMOND STODDARD and SANTIAGO) Case No. 30-2010-00395208-CU-OE-CXC
MEDINA, etc.,)
12) Hon. ~~William Claster~~ James J. Di Cesare
Plaintiffs,) Department ~~CX-102C-16~~
13)
vs.) CLASS ACTION
14)
EQUILON ENTERPRISES, LLC, et al.,) **[PROPOSED] REVISED SECOND**
15) **AMENDED PRELIMINARY APPROVAL**
R&Ms.) **ORDER**
16)
Date: ~~September 4, 2020~~ May 14,
17) 2021
Time: 9:0030 a.m.
18) Dept: ~~CX-104C-16~~
Complaint Filed: August 2, 2010
19) Trial Date: None Set
20) **Reservation No. 73219881**
21

22
23 WHEREAS, this action is pending before this Court as a Class Action; ~~and~~
24 WHEREAS, Plaintiff Santiago Medina ("Medina") has previously filed an
25 unopposed motion with this Court for an Order preliminarily approving the
26 settlement of the Class Action entered into by and between R & M Pacific Rim,
27 Inc., a California corporation, ("R&M") and Medina, individually and on behalf of
28 Settlement Class Members as defined therein, in accordance with ~~their Second~~

1 ~~Amended and Restated Settlement Agreement, which, together with~~ the
2 ~~Exhibits attached to the parties'~~ Second Amended and Restated Settlement
3 Agreement;

4 WHEREAS, the parties now seek to have this Court reconsider it prior
5 preliminary approval order in light of the parties' the Third Amended and
6 Restated Settlement Agreement, which now sets forth the terms and conditions
7 for a proposed partial settlement of the Class Action; and

8 WHEREAS, the Court having read and considered the ~~Second~~Third
9 Amended and Restated Settlement Agreement and the Exhibits attached
10 thereto;

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 1. This Preliminary Order incorporates by reference the definitions in
13 the ~~Second~~Third Amended and Restated Settlement Agreement, as filed with
14 the Court, and all terms defined therein shall have the same meaning as set
15 forth in the ~~Second~~Third Amended and Restated Settlement Agreement.

16 2. ~~Effective September 4, 2020, the~~The Court hereby ~~grants Medina's~~
17 ~~Motion for Preliminary Approval of Class Action Settlement~~reconsiders its prior
18 preliminary approval order and finds the terms of the ~~Second~~Third Amended
19 and Restated Settlement Agreement to be within the range of reasonableness of
20 a settlement that ultimately could be granted approval by the Court at a Final
21 Approval Hearing.

22 3. The Court preliminarily approves the terms of the ~~Second~~Third
23 Amended and Restated Settlement Agreement and finds that they fall within
24 the range of approval as fair, adequate, and reasonable. The Court hereby
25 preliminarily finds that the Third Amended and Restated Settlement Agreement
26 is the product of informal, non-collusive negotiations conducted at arms' length
27 by the parties. The Court has considered the estimate of the Class Members'
28 total recovery, R&M's potential liability, the allocation of settlement proceeds

1 among Class Members, including the two subclasses, and the fact that a
2 settlement represents a compromise of the parties' respective positions rather
3 than the result of a finding of liability at trial. The assistance of an experienced
4 mediator in the settlement process supports the Court's conclusion that the
5 Settlement is non-collusive and reasonable. The Settlement is presumptively
6 valid.

7 4. For purposes of the Settlement only, the Court finds that the
8 proposed Settlement Class is ascertainable and that there is a sufficiently well-
9 defined community of interest among the members of the Settlement Class in
10 questions of law and fact. Therefore, the Court preliminarily certifies as the
11 Settlement Class, for settlement purposes only, all persons who were employed
12 by R&M and who worked at a Shell branded station operated by R&M and
13 owned by Equilon Enterprises, LLC at any time during the period from August
14 2, 2006 to September 1, 2008. The Settlement Class consists of the Settlement
15 Misclassification Subclass, consisting of all Settlement Class Members during
16 any portion of the Class Period that they were declared by R&M as exempt
17 employees and paid a salary. and the Settlement Break Subclass, consisting of
18 all Settlement Class Members during any portion of the Class Period that they
19 were non-exempt hourly wage employees. The Settlement Misclassification
20 Subclass does not include any Settlement Class Member during any portion of
21 the Class Period such Settlement Class Member was an Area Manager.

22 5. For purposes of the Settlement only, Medina is re-approved as the
23 Class Representative.

24 6. For purposes of the Settlement only, Bleau Fox, a Professional Law
25 Corporation, is re-appointed and approved as Class Counsel.

26 7. The Court hereby re-appoints and approves Phoenix Settlement
27 Administrators as the Settlement Administrator.

28

1 8. After previously balancing the privacy interests of the Settlement
2 Class as asserted by R&M, the Court ~~finds~~continues to find that in order for the
3 Class Notice to be mailed to the Settlement Class at their last known address
4 based upon R&M's employment records, that the Settlement Administrator and
5 Class Counsel have sufficient information to locate Settlement Class members
6 and that the Settlement Administrator and Class Counsel have sufficient
7 information to prorate Individual Settlement payments for each subclass, it
8 is remains necessary and appropriate, without prior notice to the Settlement
9 Class, that R&M be authorized and directed to provide to the Settlement
10 Administrator and Class Counsel the Class Information to be used solely for the
11 purposes of settlement of this Class Action. ~~Having so determined, the Court~~
12 ~~hereby orders R&M to so provide to the Settlement Administrator and Class~~
13 ~~Counsel the Class Information to be so used on or before October 4, 2020.~~

14 9. A hearing ("Final Approval Hearing") shall be conducted before this
15 Court on ~~February 19, July~~ , 2021, at 9:~~00~~30 a.m., in Department ~~CX104C-16~~,
16 to determine whether the proposed settlement of the Class Action on the terms
17 and conditions provided for in the Settlement Agreement is fair, reasonable and
18 adequate, whether said settlement should be finally approved by the Court, and
19 whether a Final Approval Order and Judgment should be entered herein.

20 10. The Court hereby approves, as to form and content, the Class Notice,
21 Information Sheet and Request for Exclusion Form attached as Exhibit 1 to the
22 ~~Second~~Third Amended and Restated Settlement Agreement.

23 11. The Court approves the requirements for disputing the information
24 upon which Settlement Class Members' share of the Settlement will be
25 calculated. The Court approves the requirements for objecting to the Settlement
26 and excluding Settlement Class Members who timely and properly request to be
27 excluded from the Settlement Class, all as provided in the ~~Second~~Third
28 Amended and Restated Settlement Agreement. The Court finds that the

1 procedures and requirements for submitting objections in connection with the
2 Final Approval Hearing are intended to ensure the efficient administration of
3 justice and the orderly presentation of any Settlement Class Member's objection
4 to the Settlement, in accordance with the due process rights of all Settlement
5 Class Members.

6 12. The Court finds that the mailing of the Class Notice substantially in
7 the manner and form as set forth in the ~~Second~~Third Amended and Restated
8 Settlement Agreement and this Preliminary Approval Order meets the
9 requirements of *California Rules of Court* Rules 3.766(d) and 3.769(f), California
10 Code of Civil Procedure section 382, California Civil Code section 1781, other
11 applicable law, and due process, and is the best notice practicable under the
12 circumstances, and shall constitute valid, due and sufficient notice to all
13 Settlement Class Members.

14 13. The Court hereby authorizes and directs the Settlement
15 Administrator to mail or cause to be mailed to Settlement Class Members the
16 Class Notice, completed Information Sheet and the Request for Exclusion Form.
17 Such documents shall be sent by First Class U.S. mail, postage prepaid. Mailing
18 of the Class Notice shall occur on ~~November 3, 2020~~April 26, 2021.

19 ~~14. On or before January 19, 2021~~14. Thirty Five days prior to the
20 Final Approval Hearing, Class Counsel shall serve and file its application for a
21 Class Counsel Award and litigation costs and expenses as well as any
22 application for a Service Award.

23 15. Five days prior to the Final Approval Hearing, Class Counsel shall
24 serve and file the declaration of the Settlement Administrator containing the
25 information required by the ~~Second~~Third Amended and Restated Settlement
26 Agreement.

27 16. The Court reserves the right to adjourn or continue the date of the
28 Final Approval Hearing without further notice to Class Members, and retains

1 jurisdiction to consider all further applications or motions arising out of or
2 connected with the proposed settlement.

3 IT IS SO ORDERED.

4 Dated: ~~September __, 2020~~ March , 2021

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6

~~William D. Cluster~~ James J. Di Cesare
Judge of the Superior Court

7

APPROVED AS TO FORM AND CONTENT.

8

9

Dated: ~~September~~ March 22, 2020 2021 BLEAU FOX
A Professional Law Corporation

10

11

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

12

Attorneys for Plaintiff and the Plaintiff Class

13

Dated: ~~September~~ March 22, 2020 2021 KRING & CHUNG LLP

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15

By: /s/ Allyson K. Thompson Kerri N. Polizzi

16

ALLYSON K. THOMPSON
KERRI N. POLIZZI

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Attorneys for R&M PACIFIC RIM, INC.

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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. My email address is info@bleafox.com

On March 22, 2021, I served the foregoing document(s) described as **DECLARATION OF SAMUEL T. REES IN SUPPORT OF SECOND 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 22, 2021, at Burbank, California.

/s/ Abigail Vargas

Abigail Vargas

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SERVICE LIST

Raymond A. Cardozo, Esq.
Reed Smith, LLP
355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071-3048
RCardozo@reedsmith.com

Kerri N. Polizzi
Attorney at Law
Kring & Chung, LLP
38 Corporate Park
Irvine, CA 92606
kpolizzi@kringandchung.com