

**MERIVALE CLASS ACTION – RAYMOND BOULOS V M.R.V.L. INVESTMENTS PTY LTD
(NSD2168/2019)**

**FURTHER IMPORTANT NOTICE – INFORMATION FOR UPCOMING SETTLEMENT
NEGOTIATION (MEDIATION)**

THIS IS A NOTICE APPROVED BY THE FEDERAL COURT OF AUSTRALIA

You are getting this notice because it is likely that you are a Group Member in the underpayment class action that has been filed in the Federal Court of Australia against M.R.V.L. Investments Pty Ltd (**Merivale**). The class action is subject to mediation, which means there will be discussions between the parties that could lead to a settlement for commercial purposes, without admission of liability.

You should read this notice carefully. If there is anything in it that you don't understand, you should seek legal advice.

WHY HAVE YOU RECEIVED THIS NOTICE?

This notice is separate from the Opt Out Notice you were sent previously. This notice is to inform you that:

- a. there will be a mediation in the class action by 30 June 2023;
- b. if you have not already registered your interest in the class action or signed a retainer agreement with Adero Law, you will need to register for your individual claim to be taken into account in the mediation or any other settlement discussions (subject to court approval of any settlement agreement); and
- c. to tell you how to register.

This is because, if a settlement of the class action is agreed, your individual claim will not have been taken into account at the mediation or in any settlement. The parties will then seek the Court's approval of any settlement agreement. If a settlement agreement is reached, you will be able to register to take part in that settlement but registering now will ensure that your claim is part of the negotiations. So, If you are permitted to receive any part of the settlement sum, you will have to register in any event in order to participate.

ABOUT THE CLASS ACTION

The class action claims money as compensation for people employed by MRVL Investments Pty Ltd (**Merivale**) who were employed in the period 25 December 2013 to 24 December 2019 (**Relevant Period**) and who would have been covered by the *Hospitality Industry (General) Award 2010 (Award)* if the *Merivale Employee Collective Agreement 2007 (Merivale Agreement)* is set aside by the Court. The Applicant, Raymond Boulos, has made the claims on his own account and also for the Group Members. If you have received this notice, it is likely that you are a Group Member. Merivale is the Respondent to the claim.

On 30 March 2021, Justice Thawley made orders that the Merivale Agreement was beyond power. As a result of the decision, Mr Boulos says the workers should have been paid according to the **Award** not the Merivale Agreement, from 25 December 2013 instead of from 4 March 2019. The case claims that Merivale did not pay in accordance with the Award when it should have, and the wages paid were insufficient to satisfy the moneys owing. Merivale says that the Court should exercise its discretion to declare that no compensation is payable because Merivale had conducted its business on the lower wages and entitlements that applied under the Merivale Agreement which had been approved by the Workplace Authority. Merivale says that it would be unfair to pay the higher amount.

The claimed compensation includes payment for all hours worked, as well as Award entitlements (such as payment of penalty rates, overtime rates and allowances) which were not paid. The class action also seeks money penalties (like a fine) imposed on Merivale. If ordered by the Court, compensation for underpayments and penalties may be paid to eligible Group Members.

It is important that you register for mediation, because the types of payments owed under the Award will have a different impact depending on your circumstance. Secondly, Merivale may make different arguments as to why it shouldn't have to pay money to you based on your work circumstances. These things will be part of the mediation and any resolution.

COSTS OF THE CLASS ACTION

The costs of the class action are being paid by a commercial funder, called ICP Funding and will be deducted from any amount agreed to be paid to settle the proceedings. If the class action is successful, and any money compensation is recovered, the Court will be asked to distribute the legal and funding costs, including a funding commission, fairly, among all Group Members.

If such an order is made, all Group Members who benefit would contribute to the legal and funding costs, whether they have signed a funding agreement with ICP Funding or not.

If the class action is unsuccessful, Group Members will have no liability to pay any legal or funding costs.

POSSIBLE SETTLEMENT – AND THE NEED TO REGISTER TO PARTICIPATE

Mr Boulos and Merivale will engage in negotiations in a mediation by 30 June 2023 to try to reach a settlement for Mr Boulos himself and for all Group Members. The mediation can only consider the individual claims of Group Members who are registered.

So, if you want your individual claim to be taken into account, you need to register by 4:00pm on 27 February 2023, unless you have already registered your interest in the class action or signed a retainer agreement with Adero Law.

Any settlement agreed will be subject to Court approval. That means the Court will assess whether it is a fair and reasonable compromise, and it will only be approved if the Court says it is fair and reasonable for all Group Members.

COPIES OF RELEVANT DOCUMENTS

The allegations made against Merivale are set out in a Second Further Amended Statement of Claim, and Merivale's response denying those claims is set out in its Amended Defence. These documents are available at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>.

YOUR OPTIONS

You have **two options**:

1. **Register to participate**

If you wish to have your individual claim taken into account at the mediation and in any other settlement discussions, then you need to be registered by **4:00pm on 27 February 2023. As part of the registration process, you will need to provide details about yourself and your claim to Adero Law.**

To register, complete the form online at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>. A copy of the Registration Form is attached as Schedule 1 to this Notice. In the event that you do not have access to the internet, a copy of your completed registration form may be emailed to merivale@aderolaw.com.au or sent by mail to Adero Law at 3 Hobart Place, Canberra ACT 2601.

If you have already registered your interest with Adero Law in the class action, or signed a retainer agreement with Adero Law, you do not need to register. If necessary, Adero Law may contact you requesting further information.

2. **Do nothing**

If you have not already registered your interest in the class action with Adero Law or signed a retainer with Adero Law and you do nothing, you will be an "Unregistered Group Member". You will remain a Group Member (and possibly have the opportunity to share in any compensation ordered by the Court if the case has to have a full trial which is successful), but, subject to any further order of the Court, your individual claim will not have been taken into account at the mediation or in any settlement agreement that may be reached at the mediation. To receive any part of the settlement sum, you WILL have to register in order to participate but registering now will ensure that your claim is part of the negotiations. This is because, once a settlement is agreed, the parties will then seek an order, which if made, has the effect of providing that any Group Member who by a second registration date (to occur after the mediation and once a settlement agreement has been reached):

a. has not registered; or

b. has not opted out in accordance with the orders made by the Court,

will remain a Group Member for all purposes of this proceeding but shall not, without leave of the Court be permitted to seek any benefit from any settlement (subject to Court approval) of this proceeding that occurs before final judgement.

THREE IMPORTANT THINGS TO NOTE

1. *First*, you can check that this notice has been authorised by the Court, and get any copies of relevant documents, by:

- a. visiting the Federal Court of Australia website for the class action at: <https://www.comcourts.gov.au/file/Federal/P/NSD2168/2019/actions>; or
 - b. visiting the website of Adero Law: <https://www.aderolaw.com.au/class-actions/hospitality/merivale/> or by email merivale@aderolaw.com.au or by telephoning 02 6189 1022.
2. *Secondly*, since you are a Group Member, you will continue to be bound by all orders and judgments the Court makes in the Merivale Class Action.
 3. *Thirdly*, if you are unsure about something and you don't want to speak with Adero Law, or you want to understand their involvement better, you should get legal advice from a solicitor you choose.

SCHEDULE 1

GROUP MEMBER REGISTRATION FORM

COMPLETE THIS FORM IF YOU WISH TO REGISTER TO PARTICIPATE IN THE CLASS ACTION AND HAVE NOT ALREADY REGISTERED YOUR INTEREST IN THE CLASS ACTION WITH ADERO LAW OR SIGNED A RETAINER WITH ADERO LAW

If you do not complete this form, you may not receive any benefit or money compensation from any settlement approved by the Court. You will still be bound by the terms of any such settlement, which may include releases of M.R.V.L Investments Pty Ltd (Merivale), its related entities and their current and former directors, officers, employees, contractors and agents.

THIS FORM SHOULD BE COMPLETED ONLINE BY 4:00PM ON 27 February 2023 AT [HTTPS://WWW.ADEROLAW.COM.AU/CLASS-ACTIONS/HOSPITALITY/MERIVALE/](https://www.aderolaw.com.au/class-actions/hospitality/merivale/)

(Only persons without internet access should submit this form manually).

Federal Court of Australia

District Registry: New South Wales

Division: Fair Work

Raymond Boulos

Applicant

M.R.V.L. Investments Pty Ltd

Respondent

To: Adero Law

merivale@aderolaw.com.au

OR

Adero Law

3 Hobart Place,

Canberra ACT 2601

The Group Member named below *registers* to participate in the class action and to be bound by, and share in the benefit of any judgment or settlement of the class action.

You may also complete this form online at www.aderolaw.com.au/class-actions/merivale

1. FORM COMPLETION	
The person completing this form is	<input type="checkbox"/> An eligible group member – skip to 2. <input type="checkbox"/> Someone else, completing on behalf of an eligible group member – please complete below.
<i>Personal details of person completing this form</i>	
Title	
First name/s	
Last name	
Email address	
Reason for completing form on behalf of group member	
2. GROUP MEMBER DETAILS	
<i>Personal details of group member</i>	
Title	
First name/s	
Last name	
Email address	
Phone number	
Alternative phone number	
Street address	
Suburb/town	
State	
Postcode / ZIP	
Country (if not Australia)	
4. DOCUMENTARY EVIDENCE	
<p><i>You are required to take reasonable steps to provide the following information. Please attach further sheets of paper if you need more space. Please also attach any supporting documents you want taken into account.</i></p> <p><i>However, failure to do so will <u>not</u> invalidate your registration.</i></p>	
<i>Date your employment started and ended with the Respondent?</i>	
<i>Type of employment (ie. Casual, part-time or full-time)?</i>	
<i>List the positions held during the course of your employment with the Respondent</i>	

<i>List the venues you worked at during the course of your employment with the Respondent</i>	
I have emailed / attached documentary evidence in support of the information herein	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. EXECUTION	
Dated	
Signed by, or on behalf of and with the authority of, the Group Member (as specified above)	
Print name	