

ANNEXURE A

NOTICE OF PROPOSED SETTLEMENT

Raymond Boulos v M.R.V.L. Investments Pty Ltd (NSD2168/2019) ('Class Action')

You should read this Notice carefully as it concerns your legal rights. You have been sent this Notice by order of the Federal Court of Australia because you may be a Group Member in the above proceedings. It contains important information about the proposed settlement of these proceedings and your rights to register your claim for consideration in the proposed settlement or object to the settlement. This notice is not legal advice. You should seek independent legal advice if you are unsure what to do, noting the time limits to register to participate or object to the proposed settlement.

SECTION 1 – INFORMATION ABOUT THE PROPOSED SETTLEMENT

What is this Class Action?

1. This Class Action was commenced in December 2019 by Raymond Boulos (the **Applicant**), on his own behalf and on behalf of all persons who are Group Members, against M.R.V.L. Investments Pty Ltd (**Merivale**).
2. The Class Action arose out of Merivale's reliance upon and paying employees in accordance with its Employee Collective Agreement, which had been formally approved by the government's Workplace Authority Director at the time of its inception (**Merivale Agreement**), rather than the relevant industry award applicable at the time. It is alleged that, in doing so, Merivale underpaid Group Members.
3. Merivale denies the allegations, and continues to do so.

Are you a Group Member?

4. You are a Group Member if you were at any time, in the period between **25 December 2013 to 24 December 2019**, employed by Merivale:
 - a. to work in the Hospitality Industry as defined in cl. 4.2 of the Hospitality Industry (General) Award 2010 (**Award**); and
 - b. in a position with duties and functions described in one or other of the classifications in Schedule D of the Award, and

the Merivale Agreement was applied to your employment.

5. The Merivale Agreement was terminated with the consent of Merivale on 4 March 2019. You will **not** be a Group Member if your employment with Merivale **commenced** on or after 4 March 2019 and this notice **does not apply to you**.
6. If you are unsure if you are a Group Member, you should contact Adero Law, the solicitors for the Applicant, on (02) 6189 1022 or at merivale@aderolaw.com.au or seek your own legal advice without delay.

What does the Settlement involve?

7. The parties participated in a settlement conference on 6 December 2023.
8. The outcome of this settlement conference is a settlement of the Class Action (**Settlement**), which means that the parties agreed to resolve the Class Action out of Court without going to trial.
9. The Settlement requires the approval of the Court.
10. In reaching the Settlement, all parties including the Applicant and Merivale agree that the Settlement was made without any admission of any wrongdoing by Merivale. In particular, the parties acknowledge and agree that:
 - a. Merivale acted at all times in reliance upon the decision of a statutory authority, the Workplace Authority, in proceeding on the basis that the Merivale Agreement, which was approved by the Workplace Authority, had lawful effect and operated.
 - b. Any alleged failure by Merivale to pay Group Members in accordance with the Award was caused by the erroneous decision of the Workplace Authority in relation to the Merivale Agreement, and was not the result of any attempt by Merivale to pay Group Members anything less than they were entitled to by law.
11. The terms of the Settlement include the payment by Merivale of a fixed lump sum figure of \$18,000,000 in full and final settlement of the claims of the Applicant and all Group Members and inclusive of all costs, including legal and administration costs, expenses, disbursements, interest, and penalties (**Settlement Sum**). The Settlement Sum is to be paid by Merivale without any admission of liability or wrongdoing and on a commercial basis to resolve the proceedings without the parties

incurring further legal fees, noting that the Class Action has already been on foot since December 2019.

12. If the Settlement is approved by the Court, the Class Action will be dismissed, and Registered Group Members may receive a payment from the Settlement Sum. In order to be a **Registered Group Member**, you must:

- a. have already registered for the purposes of participating in any settlement in accordance with a notice that you may have received in **January or February 2023**;

OR

- b. register to participate in this Settlement in accordance with **Section 3** below.

13. If you are unsure if you have already registered, you should contact Adero Law, the solicitors for the Applicant, on (02) 6189 1022 or at merivale@aderolaw.com.au.

14. If the Court approves the Settlement, the Applicant and all Group Members (except for those who have opted out) will release Merivale and its related entities from:

- all claims that are made against Merivale by all Group Members in the Class Action; and
- to the extent permitted by law, all claims by Group Members that are in respect of, or arise out of, directly or indirectly, the same, similar or related circumstances to the claims made in the Class Action,

including any claim for compensation, damages, interest, other losses, pecuniary penalties, or costs.

As a Group Member, you will be bound by the Settlement if it is approved by the Court regardless of whether you have registered for the Class Action or whether you receive any money from the Settlement.

How Much Will Group Members Receive Under the Settlement?

15. The dollar amount you receive if you register to participate and are found to be eligible will be worked out following a process set out in the Settlement Distribution Scheme. The Settlement Distribution Scheme outlines the process by which the Settlement Sum is proposed to be paid to Registered Group Members on a fair and reasonable basis and must also be approved by the Court.

16. The Settlement Distribution Scheme will propose that after making deductions (see paragraph 22 below) the balance of the Settlement Sum will be distributed between Registered Group Members.
17. The precise amount that will be payable to each individual Registered Group Member is not yet known and cannot yet be accurately estimated, including because it depends on the number of Group Members that register (in accordance with the process outlined in section 3 below), information about Group Members, such as their employment type, length of time Group Members were employed and the number of hours worked each day), any interest earned in relation to an individual Registered Group Member's claim (which depends on when they were employed), and the total amount of the deductions from the Settlement Sum which are to be approved by the Court.
18. It is currently proposed that Registered Group Members' claims will be calculated using a claims calculation model that has regard to, at least, the factors mentioned above (**Calculation Model**). As mentioned above, the Settlement Distribution Scheme, including the Calculation Model must be approved by the Court.
19. Please note that Registered Group Members will **not** receive the full value of their alleged claim under the Settlement and some Registered Group Members may not receive any monies from the Settlement Sum if the Administrator of the Settlement Distribution Scheme determines that there is no evidence to support their individual claims. The Settlement is a compromise of the claims made taking into account, amongst other matters, the time and cost of continuing to pursue the matter and the risk the Applicant may not be successful if the claims were to proceed to trial.
20. If the Court approves the Proposed Settlement, the Applicant will seek to have Adero Law appointed as the Administrator of the Settlement Distribution Scheme. If Adero Law is appointed as the Administrator, a copy of the Settlement Distribution Scheme will be available on its website, once approved by the Court.

Are Group Members liable for legal or other costs?

21. If the Court approves the Settlement, the Settlement Sum will be in full and final satisfaction of all costs. The costs incurred by the Applicant in pursuing the Class Action, in an amount approved by the Court, will be paid from the Settlement Sum prior to the distribution of any Settlement Payments to Registered Group Members.

This ensures that all Group Members who benefit will contribute to the legal or other costs and are treated equally.

22. The amounts which are proposed to be deducted from the Settlement Sum (each of which is subject to Court approval) before it is distributed to Registered Group Members are for:
- a. **Project Costs** paid and/or that will be paid by the Funder by the time of the Settlement Approval Application hearing, currently estimated to total \$2,474,448.73 comprising \$2,159,737.05 in legal costs and \$314,711.68 in costs relating to bookbuild and registration and the establishment of a managed investment scheme pursuant to obligations under the *Corporations Act 2001* (Cth) which were in place at the relevant time.
 - b. **Funding Commission and Management Fee** of not more than \$4,393,731.10, representing not more than 28.3% of the **Net Claim Proceeds**. The Net Claim Proceeds is the Settlement Sum less the Project Costs, currently estimated to be \$15,525,551.27 (this is explained further below under the heading ‘Litigation Funding Arrangements’).
 - c. **Adero Law’s Deferred Legal Costs** for work already done but not yet paid for, and work which will be done up to and including the Settlement Approval Application hearing, which total an estimated amount of \$1,247,546.17 (including a 25% uplift fee chargeable on a portion of deferred fees).
 - d. **Administration Costs** of administering the Settlement Distribution Scheme, in an estimated amount of \$500,000. As noted in paragraph 20 above, it is proposed that Adero Law be appointed as Administrator of the Settlement Distribution Scheme under Court supervision.
23. The Court will need to approve deduction of any of these costs in advance and may approve lesser amounts than what is proposed. These costs will also be subject to a costs assessment by an independent Court-appointed costs referee. If you have a concern about the costs proposed to be deducted, you are free to file a “Notice of Objection” (see paragraphs 37 to 38 and 44 to 45 below). The Settlement (including the Settlement Sum) may be approved by the Court even if the Court does not approve any or some of the proposed deductions above.

24. You will not otherwise be required to pay any costs for the Class Action, regardless of whether you receive a Settlement Payment.

Litigation Funding Arrangements

25. Under the terms of the funding agreement with the lead applicant, the Funder, ICP Funding Pty Ltd (**ICP Funding**) and the Manager, Investor Claim Partner Pty Ltd (**ICP**), provided litigation funding and claim management services respectively in support of the Applicant's prosecution of the Class Action on behalf of Group Members. Under this arrangement, the Funder paid **Project Costs** including legal costs and other costs incurred including the costs of solicitors, barristers, and independent experts, external costs associated with book build and registration for the mediation, and the establishment of a managed investment scheme which was a requirement for a funded class action at the relevant time.
26. In a notice you may have received in around **January or February 2023**, you were told that the costs of the Class Action were being paid by a litigation funder, ICP Funding, and that if the Class Action was successful and any money compensation was received, the Court would be asked to distribute the legal and funding costs, including a funding commission, fairly, among all Group Members so that all Group Members who benefited would contribute to the legal and funding costs whether they had signed a funding agreement with ICP or not.
27. As part of the Court approval of the Settlement, ICP will seek a distribution order (also known as a common fund order) for a Funder's commission and Management fee, representing no more than 28.3% of the Net Claim Proceeds (see paragraph 22(b) above), and if granted, the order would allow a deduction from the Settlement Sum for all Registered Group Members regardless of whether they have signed a funding agreement. It would mean that all Registered Group Members who stand to benefit from the Settlement contribute to the funding costs. The Settlement (including the Settlement Sum) may be approved by the Court even if the Court does not approve the distribution order sought by ICP.

What is the settlement approval process?

28. The Court still needs to approve the Settlement. The Settlement does not come into effect unless it is approved by the Court.

29. The Settlement Approval Application must be made by the Applicant. This will involve orders being made by the Court for the following steps:
- a. orders for any person to file evidence in respect of the Settlement Approval Application;
 - b. Court approval of this notice to be distributed to Group Members regarding the Settlement;
 - c. a hearing date being 7 May 2024 for the Court's consideration and approval of:
 - (1) The Settlement;
 - (2) The proposed Settlement Distribution Scheme;
 - (3) Arrangements for the reimbursement of any costs incurred by the Applicant but not recovered from the Respondent; and
 - (4) An appropriately framed order to prevent unjust enrichment and equitably and fairly distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action;
 - d. following the completion of a Settlement Distribution Scheme – disposing of the proceeding (ie by dismissing the proceeding).
30. When applying to the Court for approval of the Settlement, the parties will be required to persuade the Court that:
- a. the Settlement is fair and reasonable having regard to the claims made on behalf of the Group Members who will be bound by the settlement; and
 - b. the Settlement has been undertaken in the interests of Group Members, as well as those of the Applicant, and not just in the interests of the Applicant and the Respondent.
31. You may file a Notice of Objection to the Settlement and/or any aspect of the proposed distribution of the Settlement Sum to eligible Group Members. If you wish to file a Notice of Objection to the Settlement, you must do so by no later than **11:59pm on 3 April 2024**. The Court will take any objections into account in deciding whether or not to approve the Settlement.

How can I access confidential documents?

32. Upon signing a Request for Inspection Form at Schedule 3 of this Notice of Settlement, Group Members may obtain a copy of certain documents which are to be kept strictly confidential including:

- the Deed of Settlement and Settlement Distribution Scheme; and
- certain evidence and documents filed by the Applicant in support of the proposed settlement.

33. If you wish to obtain a copy of these documents, you must complete and return the Request for Inspection Form at Schedule 3 of this Notice of Settlement by no later than **3 April 2024**.

Where can I get more information?

34. If you have any questions or queries, you may contact Adero Law, at merivale@aderolaw.com.au with the subject line: Settlement NSD2168/2019.

If you are unsure of what to do, you should seek independent legal advice.

SECTION 2 – SUMMARY OF YOUR OPTIONS

| Step 1 - If you: | Step 2 - Then: | Your Options: |
|---|---|---|
| Have previously registered to participate in the Class Action and have not opted out | You are a Registered Group Member | <ol style="list-style-type: none">1. Do Nothing (and participate in the Proposed Settlement if it is approved)2. Object (and participate in the Settlement if it is nonetheless approved) |
| Have not previously registered to participate in the Class Action and have not opted out | You are an Unregistered Group Member | <ol style="list-style-type: none">1. Register (and participate in the Settlement if it is approved)2. Do Nothing (and be ineligible for any payment even if the Settlement is approved, subject to a further |

| | | |
|---|--|--|
| | | <p>order from the Court and any rights you have to make a claim against Merivale or its related entities as set out at paragraph 14 of this Notice shall be extinguished)</p> <p>3. Object (and, if you also register, participate in the Settlement if it is approved, notwithstanding your objection)</p> |
| <p>Have filed an opt out notice with the Court</p> | <p>You have opted out of the Class Action, and you may disregard the remainder of this notice.</p> | <p>Not Applicable</p> |

SECTION 3 – INFORMATION ABOUT YOUR OPTIONS

Your options if you are a Registered Group Member (that is, you have previously registered)

35. If you have previously registered for the Class Action, you are a Registered Group Member and you have two options.

Option A: Do nothing (and participate in the Settlement)

36. If you wish to remain a Registered Group Member and participate in the Settlement, you do not need to do anything in response to this notice. **If the Settlement is approved by the Court, you may be eligible to receive a payment. You will be bound by the settlement and may need to provide certain information to the administrator in order for the administrator to calculate your share of the settlement.**

Option B: Object by 11:59pm on 3 April 2024

37. You may object to the Settlement by completing the Notice of Objection to Settlement Form attached as Schedule 2 to this Notice and submitting it to the Court and representatives of the parties at the emails or postal addresses on the form **by no**

later than 11:59pm on 3 April 2024. If you choose to do this, you can still remain a Registered Group Member and will still participate in the Settlement if it is approved.

38. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the Applicant and Merivale, in determining whether or not the Settlement should be approved. The Court may grant you the opportunity to opt out of the Class Action, in which case you will not be bound by the Settlement, you will not receive any Settlement Payments, and you will need to pursue an individual claim by yourself.
39. If after considering any objections, the Court does not approve the Settlement and you have not opted out, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues, including directions relating to your individual claim.

Your options if you are an Unregistered Group Member

40. If you have not previously registered to participate in the Class Action and you have not opted out of the Class Action, you are an Unregistered Group Member. You have three options.

Option A: Register to participate in the Settlement by 11:59pm on 3 April 2024

41. You may register your claim by completing and submitting the Group Member Registration Form either online at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/> or completing the hard copy form attached as Schedule 1 to this Notice and returning it to Adero Law at the email or postal address on the form **by no later than 11:59pm on 3 April 2024.**
42. **If you register, you may be eligible to receive a payment from the Settlement.** The precise amount of the payment is presently unknown and will be determined using a model as part of the Settlement Distribution Scheme. There is no cost associated with registering your claim.

Option B: Do nothing

43. If you do nothing and the Settlement is approved by the Court, you will remain a Group Member for all purposes and be bound by the Settlement but:

- 43.1** you will not, unless the Court determines otherwise, be entitled to receive a payment from the Settlement; and
- 43.2** any rights you have to make a claim against Merivale or its related entities as set out at paragraph 14 of this Notice will be extinguished.

Option C: Object to the Settlement by 11:59pm on 3 April 2024

44. You may object to the Settlement by completing the **Notice of Objection to Settlement Form** attached as **Schedule 2** to this Notice and submitting it to the Court and representatives of the parties at the emails or postal addresses on the form **by no later than 11:59pm on 3 April 2024**. If you choose to do this, you must still register if you wish to participate in the Settlement if it is approved by the Court.
45. Any objections received by the Court will be considered by the Court, along with any evidence and submissions filed by the Applicant and Merivale, in determining whether or not the Settlement should be approved. The Court may grant you the opportunity to opt out of the Class Action, in which case you will not be bound by the Settlement, you will not receive any Settlement Payments, and you will need to pursue an individual claim by yourself.
46. If after considering any objections the Court does not approve the Settlement and you have not opted out, then the Class Action will continue. At or following a trial of the common issues, the Court may give directions in relation to the determination of any remaining issues, including directions relating to your individual claim.

SCHEDULE 1 – GROUP MEMBER REGISTRATION FORM
Raymond Boulos v M.R.V.L. Investments Pty Ltd (NSD2168/2019)

Please return this form to:

By post: Adero Law, 3 Hobart Place, CANBERRA ACT 2601

OR

By email: merivale@aderolaw.com.au with subject line: Registration Form
NSD2168/2019

YOU MAY ALSO COMPLETE THIS FORM ONLINE
at <https://www.aderolaw.com.au/class-actions/hospitality/merivale/>

The person named below gives notice that the person wishes to **REGISTER** for the Settlement of this proceeding.

Details of Group Member

| | |
|---|--|
| Name of Group Member | |
| Date of Birth | |
| Telephone | |
| Email Address | |
| Postal Address | |
| Merivale Employee ID(s) (from payslips) (optional) | |

SCHEDULE 2 – OBJECTION TO SETTLEMENT

RAYMOND BOULOS v M.R.V.L. INVESTMENTS PTY LTD (NSD2168/2019)

Please return this form to:

By post: Federal Court of Australia (NSW Registry), Locked Bag A6000, Sydney
South NSW 1235

and

Adero Law, 3 Hobart Place, CANBERRA ACT 2601

OR

By email: nswreg@fedcourt.gov.au with subject line: Notice of Objection
NSD2168/2019

and

merivale@aderolaw.com.au with subject line: Notice of Objection
NSD2168/2019

The person named below gives notice that the person **OBJECTS** to the Settlement of this proceeding.

Details of Objector

| | |
|----------------------|--|
| Name of Individual | |
| Period of employment | |
| Telephone | |
| Email Address | |
| Postal Address | |

Ground(s) of Objection

I am a Group Member in the above proceedings and I object to the Settlement of because [*set out below any submissions, attaching additional pages if necessary*]:

| | |
|------------------------|--|
| | |
| Signed | |
| Name of Person Signing | |
| Date | |

SCHEDULE 3 – REQUEST FOR INSPECTION FORM
RAYMOND BOULOS v M.R.V.L. INVESTMENTS PTY LTD (NSD2168/2019)

| | |
|--------------------|--|
| Name of Individual | |
| Email Address | |

Please sign below and send the completed Request for Inspection Form to:

By post: Adero Law, 3 Hobart Place, CANBERRA ACT 2601

OR

By email: merivale@aderolaw.com.au with subject: Inspection Request NSD2168/2019

I, _____ [*print full name*] undertake to keep confidential, and not publish, disclose, or discuss the contents of the documents made available to me by Adero Law in connection with the proposed settlement of the Class Action, to any person or entity other than:

- a) any solicitor of Adero Law acting in the Class Action; or
- b) an Australian Legal Practitioner, for the purposes of seeking and receiving independent legal advice; or
- c) an accountant or financial adviser, for the purposes of seeking taxation advice.

I will not use the documents provided to me by Adero Law for any other purpose other than for considering my rights in the Class Action.

I understand that this undertaking shall not apply in circumstances where I disclose the contents of the documents provided to me:

- a) after I have received written consent of Adero Law; or
- b) as required by law, or as ordered by the Court.

Signed _____

Witness _____

Date _____

Witness Name _____

Witness Date _____