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JS-6

IN THE UNITED STATES DISTRICT COURT  
THE CENTRAL DISTRICT OF CALIFORNIA

BALTAZAR A. RAFALES, *individually*  
*and on behalf of all other Seafarers*  
*similarly situated,*

Plaintiffs,

vs.

MS EURODAM, MS PRINSEDAM, *in*  
*rem,* and HAL ANTILLEN, N.V., *in*  
*personam,*

Defendants.

Case No. CV 10-4845 AHM (AJWx)

**IN ADMIRALTY**

Complaint filed: March 10, 2010

Hon. A. Howard Matz

**SETTLEMENT ORDER AND  
FINAL JUDGMENT**

THIS MATTER came before the Court for final approval of the proposed class settlement, as last amended on September 19, 2011 (the "Settlement"). The Court has considered all papers filed and proceedings in this matter and is fully informed regarding the facts surrounding the proposed Settlement. Based upon this information, the Court has determined to approve the proposed Settlement as fair, reasonable, and adequate to the Class. The Court hereby enters this Final Judgment, which constitutes a final adjudication on the merits of all claims of the Settlement

1 Class described below with respect to their employment on Holland America Line  
2 vessels within the Class Period.

3 On May 27, 2011, this Court granted preliminary approval to the proposed  
4 class action Settlement between Class Plaintiffs and Defendants Holland America  
5 Line Inc. *et al.* (“HAL”). The Proposed Settlement resolves all of the Class’s claims  
6 against HAL in exchange for HAL’s promise to compensate Class members as set  
7 forth in the Settlement Agreement. On September 1, 2011, this Court held a fairness  
8 hearing to consider whether to grant final approval to the Settlement and to consider  
9 Class Counsel’s application for an award of attorneys’ fees and costs. The Court  
10 heard and considered argument from the parties and all others who elected to appear  
11 to voice their support for, or objection to, the Settlement. The Court then took the  
12 motion for final approval of the Settlement under submission, pending a status  
13 report on further negotiations. On September 19, 2011, the parties, along with the  
14 Balen Objectors, filed a Status Report Concerning Settlement Improvements [Dkt.  
15 135], reporting on enhancements to the Settlement and a resolution of the Balen  
16 Objectors’ objections to the Settlement. The Court then re-set to October 31, 2011,  
17 the hearing on the motion for final approval of the Settlement, as amended.

18 Having read, reviewed and considered the papers filed in support of and in  
19 opposition to final approval of the Settlement, including the declarations submitted  
20 by counsel and the Class Representative, and oral arguments of counsel, along with  
21 Class Counsel’s Fee and Cost Application, the Settlement Agreement, and the  
22 pleadings, it is hereby

23 ORDERED, ADJUDGED AND DECREED that:

24 1. The definitions and provisions of the Settlement Agreement and the  
25 Notice of Pendency of Class Action and Proposed Settlement are hereby  
26 incorporated as though fully set forth herein.

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1           2.     This Court has jurisdiction over the subject matter of the Settlement  
2 Agreement with respect to and over all parties to the Settlement Agreement,  
3 including all members of the Settlement Class.

4           3.     The Court approves the Settlement and finds that, as amended, the  
5 Settlement is, in all respects, fair, reasonable, and adequate to the Plaintiff  
6 Settlement Class, within the authority of the parties, and the result of extensive  
7 arm's length negotiations.

8           4.     This Court confirms that the proposed Settlement Class satisfies the  
9 requirements of Federal Rule of Civil Procedure 23, as found in the Court's  
10 Preliminary Approval Order. Accordingly, this Court makes final its May 27, 2011,  
11 Order Conditionally Certifying Settlement Class.

12          5.     Two (2) members of the Class have timely requested to be excluded  
13 from the Class and the Settlement. Exhibit A, attached hereto, lists the Class  
14 members who timely requested exclusion from the Class. This Order shall not bind  
15 or affect Class members listed on Exhibit A.

16          6.     The Court hereby grants final approval to the Settlement and finds that,  
17 as amended, it is fair, reasonable and adequate, and in the best interests of the Class  
18 as a whole. The Court has considered and hereby overrules all objections brought to  
19 the Court's attention, whether properly filed or not.

20          7.     Neither this Final Judgment nor the Settlement Agreement is an  
21 admission or concession by HAL of the validity of any claims or of any liability or  
22 wrongdoing or of any violation of law. This Final Judgment and the Settlement  
23 Agreement do not constitute a concession and shall not be used as an admission or  
24 indication of any wrongdoing, fault or omission by HAL or any other person in  
25 connection with any transaction, event or occurrence, and neither this Final  
26 Judgment nor the Settlement Agreement nor any related documents in this  
27 proceeding, nor any reports or accounts thereof, shall be offered or received in  
28 evidence in any civil, criminal, or administrative action or proceeding, other than

1 such proceedings as may be necessary to consummate or enforce this Final  
2 Judgment, the Settlement Agreement, and all releases given thereunder, or to  
3 establish the affirmative defenses of *res judicata* or collateral estoppel barring the  
4 pursuit of claims released in the Settlement Agreement.

5 8. This Court hereby dismisses with prejudice all claims of members of  
6 the Settlement Class that have been, or could have been, alleged in the Actions  
7 relating in any way to (a) payment of wages, including gratuities or service charges,  
8 prior to the date of the Parties' agreement, or (b) the reimbursement of deployment  
9 costs or other employment-related expenses prior to the date of the Parties'  
10 agreement.

11 9. Class Representative Rafales, and members of the Settlement Class  
12 who have not timely excluded themselves, shall be deemed to (a) be forever barred  
13 from instituting, maintaining, or prosecuting any claim alleged, or that could have  
14 been alleged, in the Actions concerning payment of wages, including gratuities or  
15 service charges, or the reimbursement of deployment costs or other employment-  
16 related expenses, prior to the date of the Parties' agreement, and (b) have released  
17 and discharged HAL and its respective affiliates, direct and indirect subsidiaries,  
18 and any company or companies under common control with any of them, and each  
19 of their respective predecessors, successors, past and present officers, directors,  
20 employees, agents, servants, accountants, attorneys, advisors, shareholders, insurers,  
21 representatives, partners, vendors, issuers, and assigns, or anyone acting on their  
22 behalf, from any and all liability with respect to the Released Claims defined in  
23 Paragraph 1.11 of the Settlement Agreement.

24 10. HAL and its manning agent in the Philippines, United Philippines  
25 Lines, Inc. ("UPL"), completed the delivery of Class Notice according to the terms  
26 of the Settlement Agreement. The notice given by HAL and UPL to the Settlement  
27 Class, which set forth the principal terms of the Settlement Agreement and other  
28 matters, was the best practicable notice under the circumstances. The notice

1 program prescribed by the Settlement Agreement was reasonable and provided due  
2 and adequate notice of these proceedings and of the matters set forth therein,  
3 including the terms of the Settlement Agreement, to all parties entitled to such  
4 notice, and the Notice satisfied the requirements of Federal Rule of Civil Procedure  
5 23 and the requirements of constitutional due process. The notice given to members  
6 of the Class was reasonably calculated under the circumstances to apprise Class  
7 members of the pendency of this action, all material elements of the Settlement, and  
8 their opportunity to exclude themselves from, object to, or comment on the  
9 Settlement and appear at the final fairness hearing. The Court has afforded a full  
10 opportunity to all Class members to be heard. Accordingly, the Court determines  
11 that all members of the Settlement Class, except those who timely excluded  
12 themselves from the Class, are bound by this Judgment and Final Order.

13 11. Without affecting the finality of this judgment, the Court retains  
14 continuing jurisdiction over (a) implementation of the Settlement Agreement,  
15 distribution of the settlement payments, incentive fees and attorneys' fees and costs  
16 contemplated by the Settlement Agreement, and processing of the claims permitted  
17 by the Settlement Agreement, until each and every act agreed to be performed  
18 pursuant to the Settlement Agreement has been performed, and (b) all parties to this  
19 action and members of the Plaintiff Settlement Class for the purpose of enforcing  
20 and administering the Settlement Agreement.

21 12. The Court hereby awards a total of \$6,000.00 to Baltazar Rafales, and  
22 \$3,000 each to Nathaniel De la Pena, Romeo Balen, and Chandler Abenoja as an  
23 incentive fee in compensation for the time, effort, and risk they undertook as  
24 representatives of the Settlement Class.

25 13. An attorney fee and cost award from the Settlement Amount  
26 compensates Class Counsel for the time and expenses advanced over the past three  
27 years, which involved extensive motion practice, as well as the continued case  
28 administration. The Court has concluded that: (a) Class Counsel achieved a

1 favorable result for the Class, in the form of a Settlement Amount that will provide  
2 compensation to all Class members who filed claims; (b) Class Counsel devoted  
3 substantial effort over three years to pre-and post-filing investigation, legal analysis,  
4 and extensive litigation; (c) Class Counsel prosecuted the Class's claims on a  
5 contingent fee basis, investing significant time and accumulating costs with no  
6 guarantee that they would receive compensation for their services or recover their  
7 expenses; (d) Class Counsel employed their knowledge of and experience with class  
8 action litigation in achieving a valuable Settlement for the Class, in spite of HAL's  
9 possible legal defenses and its experienced and capable counsel; (e) Class Counsel  
10 have a standard contingent fee agreement with the Class Representatives, who have  
11 reviewed the Settlement Agreement and been informed of Class Counsel's attorney  
12 fee and cost application and have approved. Similarly, the Notice of Class Action  
13 Settlement informed Class members of the amount and nature of Class Counsel's  
14 fee and cost request under the Settlement Agreement, and no Class member  
15 objected. Therefore, the Court hereby approves Class Counsel's Fee and Cost  
16 Application and awards to Class Counsel fees and costs of \$425,000.00.

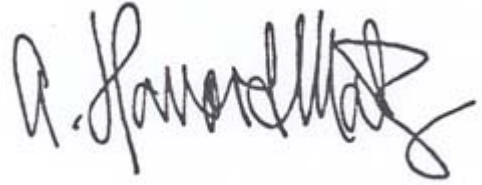
17       14. In addition, the Court finds the efforts of counsel for the Balen  
18 Objectors benefited the Class, in that certain improvements to the Settlement set  
19 forth in the Amendment to Amended Settlement Agreement and Release of Claims,  
20 dated September 19, 2011, *see* Dkt. 135, Ex. A, appear to have resulted at least in  
21 part from arguments made by counsel for the Balen Objectors at the hearing on  
22 September 1, 2011. In light of that benefit, and having reviewed the application for  
23 fees filed by counsel for the Balen Objectors, the Court hereby awards to counsel for  
24 the Balen Objectors fees and costs of \$75,000.00.

25       15. HAL shall pay the fee and cost awards to Class Counsel and counsel  
26 for the Balen Objectors, and shall pay the Class Representative incentive fees, as  
27 well as amounts due to Class members, including Travel Payment Eligible Plaintiffs  
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1 who submit timely and complete Claim Forms, in accordance with and at the times  
2 prescribed by the Settlement Agreement.

3 SO ORDERED:

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5 Date: October 31, 2011



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8 The Hon. A. Howard Matz

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Exhibit A

The following individuals have timely requested exclusion from the Class and are not bound by this Order:

1. Darwin Consuelo
2. Oscar Alexis Encarnacion, Jr.