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15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
 17

18 ROBERT QUINTERO, an individual,
 19 Plaintiff,

20 vs.
 21

22
 23 MILLER MILLING COMPANY, LLC, a
 California corporation, and Does 1 -10,
 24 inclusive,
 25 Defendants.

CASE NO: 2:19-cv-07459-DMG-JC

Assigned to:
 District Judge: Dolly M. Gee
 Magistrate Judge: Jacqueline Chooljian

26
 27 **CLASS ACTION SETTLEMENT**
AGREEMENT AND RELEASE
 28

Complaint Filed: July 26, 2019
 Removed to Federal: August 28, 2019
 Trial Date: Not Set

1 This Class Action Settlement Agreement and Release (“Agreement” or
2 “Settlement”) is made and entered into by and between Plaintiff Robert Quintero
3 (“Plaintiff”) and Defendant Miller Milling Company, LLC (“Defendant”) (collectively,
4 the “Parties”).

5 RECITALS

6 This Settlement is made and entered into by and between Plaintiff and Defendant,
7 and is subject to the terms and conditions hereof, and to the Court’s approval. The Parties
8 expressly acknowledge that this Agreement is entered into solely for the purpose of
9 settlement and that nothing herein is an admission of liability or wrongdoing by
10 Defendant. If for any reason the Settlement is not approved, it will be of no force or
11 effect, and the Parties shall be returned to their original respective positions.

12 DEFINITIONS

13 The following definitions are applicable to this Agreement. Definitions contained
14 elsewhere in this Agreement shall also be effective:

15 Relevant Parties and Time Periods

16 1. The “**Action**” means the action styled as *Robert Quintero v. Miller Milling*
17 *Company.*, C.D. Cal. Case No. 2:19-CV-07459-DMG-JC, originally filed in Los
18 Angeles Superior Court on July 26, 2019, Case No. 19STCV26093, and removed to the
19 United States District Court, Central District Of California, Western Division on August
20 28, 2019.

21 2. “**Class Counsel**” means Julian Burns King and Elliot J. Siegel of King &
22 Siegel LLP.

23 3. “**Defense Counsel**” means Gabrielle Wirth and Nisha Verma of Dorsey &
24 Whitney LLP.

25 4. “**Defendant**” means Defendant Miller Milling Company, LLC, including its
26 predecessors, if any, as well as each of its respective predecessors, successors, and all
27 former, current, and future related organizations, companies, divisions, subsidiaries,
28 affiliates, insurers, and parents, and collectively, their respective former, current and

1 future directors, officers, employees, agents, representatives, attorneys, fiduciaries,
2 assigns, heirs, executors, administrators, beneficiaries, insurers and trustees.

3 5. “**Court**” means the United States District Court, Central District Of
4 California, Western Division, or any other court taking jurisdiction of the Action.

5 6. “**Preliminary Approval Date**” means the date of the Court’s order granting
6 preliminary approval of the Settlement.

7 7. “**Class Period**” means the period from July 26, 2015 to February 28, 2020
8 or the date of Preliminary Approval, whichever is earlier.

9 8. “**Class Members**” means all non-exempt employees who were employed
10 by Defendant in California and performed work in either the mill, maintenance, or
11 sanitation departments at any time during the Class Period who do not opt out of this
12 Settlement.

13 9. “**Settlement Class**” or “**Settlement Class Members**” means all of the Class
14 Members; Defendant represents there are 131 Class Members as of December 19, 2019.
15 This representation is a material term of this Agreement.

16 10. “**Participating Class Members**” means all Settlement Class Members who
17 do not submit valid Requests for Exclusion.

18 11. “**Effective Date**” means that date on which the settlement embodied in this
19 Settlement Agreement shall become effective after all of the following events have
20 occurred: (i) Final Approval of the Settlement is granted by the Court; and (ii) the
21 Court’s order approving the Settlement becomes a Final Judgment.

22 12. “**Final Judgment**” means the latest of: (i) if there is an appeal of the
23 Court’s order, the date the order is affirmed on appeal, the date of dismissal of such
24 appeal, or the expiration of the time to file a petition for writ of certiorari to the United
25 States Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial
26 of the petition for writ of certiorari, or the date the order is affirmed pursuant to such
27 petition; (iii) if an objection to the settlement is filed by any Settlement Class Member,
28 then the expiration date of the time for filing or noticing any appeal of the order, which

1 is sixty (60) calendar days from entry of the order; and (iv) if no objection has been filed
2 by any Settlement Class Member, then the date that the Court grants final approval of
3 this Settlement.

4 **Settlement Payments**

5 13. “**Settlement**” means the agreement among parties to resolve the Action, as
6 set forth in this Agreement.

7 14. “**Gross Settlement Amount**” means the maximum settlement amount of
8 Five Hundred Thousand Dollars (**\$500,000**) to be paid by Defendant in full satisfaction
9 of all claims arising from the Action, which will be used to make the following payments,
10 as those terms are defined below:

- 11 a. Individual Settlement Payments;
- 12 b. Class Representative Enhancement Payments;
- 13 c. Settlement Administration Costs;
- 14 d. PAGA Settlement Amount;
- 15 e. Class Counsel’s Fee Award; and
- 16 f. Class Counsel’s Cost Award.

17 This Gross Settlement Amount has been agreed to by Plaintiff and Defendant based
18 on the aggregation of the agreed-upon settlement value of individual claims. Defendant
19 maintains no reversionary right to any portion of the Gross Settlement Amount. The
20 entire Gross Settlement Amount will be distributed and no part of the Gross Settlement
21 Amount will revert to Defendant. Defendant will be obligated to pay all employer-side
22 payroll taxes applicable to the Individual Settlement Payments outside of the Gross
23 Settlement Amount.

24 15. “**Net Settlement Amount**” means the balance of the Gross Settlement
25 Amount remaining after deduction of the following payments, as those terms are defined
26 below:

- 27 a. Class Representative Enhancement Payment;
- 28 b. Settlement Administration Costs;

- c. LWDA Payment;
- d. Class Counsel's Fee Award; and
- e. Class Counsel's Cost Award.

The entire Net Settlement Amount is the maximum amount that will be available for distribution to Participating Class Members, in the form of Individual Settlement Payments based on the number of workweeks worked by each Class Member during the Class Period.

16. **"Class Representative Enhancement Payment"** means the amount to be paid to the Plaintiff in recognition of his effort and work in prosecuting the Action on behalf of Settlement Class Members.

17. **"Class Counsel's Fee Award"** means attorneys' fees agreed upon by the Parties and approved by the Court for Class Counsel's litigation and resolution of the Action, including, but not limited to, fees associated with litigating the Action, documenting the Settlement, securing the Court's approval of the Settlement, obtaining entry of the Judgment terminating the Action, and other related matters.

18. **"Class Counsel's Cost Award"** means all reasonable costs incurred and to be incurred by Class Counsel in the Action subject to the Court's approval, including, but not limited to, expert witness fees, up through the Court's approval of the Settlement and obtaining entry of the Judgment terminating the Action, and any other expenses.

19. **"Individual Settlement Payment"** means each Participating Class Member's pro-rata share of the Net Settlement Amount.

20. **"PAGA Settlement Amount"** means the portion of the Class Settlement Amount that the Parties have agreed will be allocated to resolve all claims and remedies under the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA"). The amount of the PAGA Settlement Amount is subject to Court approval pursuant to California Labor Code section 2699(1)(2). Pursuant to the PAGA, 75% of the PAGA Settlement Amount shall be paid to the California Labor and Workforce Development Agency ("the **LWDA Payment**"), and 25% of the PAGA

1 Settlement Amount shall remain in the Net Settlement Amount to be included when
2 distributing Individual Settlement Payments to Participating Class Members.

3 21. “**Settlement Administration Costs**” means the costs payable from the
4 Gross Settlement Amount to the Settlement Administrator (as defined below) for
5 administering this Settlement, including, but not limited to, printing, distributing, and
6 tracking documents for this Settlement, tax reporting, distributing the Gross Settlement
7 Amount, and providing necessary reports and declarations, as requested by the Parties.
8 The Settlement Administration Costs shall be paid from the Gross Settlement Amount,
9 including, if necessary, any such costs in excess of the amount represented by the
10 Settlement Administrator as being the maximum costs necessary to administer the
11 Settlement.

12 22. “**Settlement Payment Checks**” means the payments to all Participating
13 Class Members, which shall be mailed to Participating Class Members within fifteen (15)
14 business days after the Effective Date.

15 **Administration of Settlement**

16 23. “**Settlement Administrator**” means a qualified third-party class action
17 settlement administrator proposed by Plaintiff and agreed to by Defendant and approved
18 by the Court for the purposes of administering this Settlement. The Parties each represent
19 that they do not have any financial interest in the Settlement Administrator or otherwise
20 have a relationship with the Settlement Administrator that could create a conflict of
21 interest.

22 24. “**Class Lists and Data**” means complete lists of all Settlement Class
23 Members that Defendant will diligently and in good faith compile from its records and
24 provide to the Settlement Administrator within fifteen (15) calendar days after
25 Preliminary Approval of this Settlement. The Class Lists and Data shall be formatted in
26 Microsoft Office Excel and shall each include a column for each of the following, for
27 each Settlement Class Member:

- 28 a. First Name;

- b. Last Name;
- c. Social Security Number;
- d. Most recent mailing address; and
- e. Dates and number of workweeks in which the Settlement Class Member performed work for Defendant during the Settlement Class Member’s relevant Class Period.

25. “**Notice Packet**” means the Notice of Proposed Class Action Settlement, substantially in the form attached as **Exhibit A**.

26. “**Response Deadline**” means thirty-five (35) days following the date the Settlement Administrator initially mails the Notice Packet to Class Members.

27. “**Notice of Objection**” means a Settlement Class Member’s valid and timely written objection to the Settlement.

28. “**Request for Exclusion**” means a timely letter submitted by a Settlement Class Member indicating a request to be excluded from, i.e., or opt-out of, the Settlement.

29. “**Released Claims**” means any and all of Participating Class Members’ claims or causes of action, including for damages, wages, benefits, expenses, penalties, debts, rights, demands, liabilities, obligations, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, based on the following and which accrued during the Class Period:

- a) All claims for failure to provide meal period premiums or failure to provide meal periods under the Labor Code or the applicable wage order(s) that accrued during the Claims Period;
- b) All claims for failure to pay rest period premiums or failure to authorize and permit rest periods under the Labor Code or the applicable wage order(s) that accrued during the Claims Period;
- c) All claims for unpaid wages, failure to pay minimum wage, failure to pay overtime, and any other claim for failure to pay wages under the Labor Code or the applicable wage order(s), any claim for failure to

1 pay wages at the agreed upon rate under Labor Code 221 to 223 during
2 the Claims Period.

- 3 d) All claims for failure to timely pay wages and/or waiting time
4 penalties pursuant to Labor Code §201 to 204 that accrued during the
5 Claims Period;
- 6 e) All claims for failure to maintain records under the Labor Code or the
7 applicable wage order(s), including under Labor Code 1174, which
8 accrued during the Claims Period;
- 9 f) All claims for failure to issue adequate wage statements, whether for
10 any penalty or wage, pursuant to Labor Code §226 that accrued during
11 the Claims Period;
- 12 g) All claims for penalties under the California Private Attorneys’
13 General Act based on the aforementioned alleged Labor Code
14 violations;
- 15 h) All claims for unfair business practices under Business and
16 Professions Code §17200 based on the aforementioned alleged Labor
17 Code violations; and
- 18 i) Any other claims arising, or which could have arisen, from the
19 operative facts alleged in Plaintiff’s Complaint filed on July 26, 2019.

20 30. “Released Parties” means Defendant, and any of its former and present
21 parents, subsidiaries, affiliates, divisions, corporations in common control, predecessors,
22 successors, and assigns, as well as all past and present officers, directors, employees,
23 partners, shareholders and agents, attorneys, insurers, and any other successors, assigns,
24 or legal representatives.

25 **TERMS OF AGREEMENT**

26 Plaintiff, on behalf of himself and the Settlement Class Members on the one hand,
27 and Defendant, on the other hand, agree as follows:

28 **SETTLEMENT PAYMENTS AND RELEASE**

31. Funding of the Gross Settlement Amount. Within ten (10) business days
after the Effective Date, Defendant shall make a one-time deposit of the Gross Settlement
Amount into a Qualified Settlement Fund to be established by the Settlement

1 Administrator. The Class Settlement Amount shall be used to pay:

- 2 a. Individual Settlement Payments;
- 3 b. Class Representative Enhancement Payments;
- 4 c. Settlement Administration Costs;
- 5 d. PAGA Settlement Amount;
- 6 e. Class Counsel's Fee Award; and
- 7 f. Class Counsel's Costs Award.

8 32. Class Counsel's Fee Award. Defendant agrees not to oppose any application
9 or motion by Class Counsel for attorneys' fees of not more than 33% of the Gross
10 Settlement Amount, which equals One Hundred and Sixty-Five Thousand Dollars
11 (**\$165,000**), which shall be paid from the Maximum Settlement Amount. Any portion of
12 Class Counsel's Fee Award not awarded to Class Counsel shall be added to the Net
13 Settlement Amount.

14 33. Class Counsel's Cost Award. Defendant agrees not to oppose any
15 application or motion by Class Counsel for recoverable costs and expenses of not more
16 than Twenty Thousand Dollars (**\$20,000**), which shall be paid from the Maximum
17 Settlement Amount. Any portion of Class Counsel's Cost Award not awarded to Class
18 Counsel shall be added to the Net Settlement Amount.

19 34. Form 1099 to Class Counsel. The Settlement Administrator (and not the
20 Defendant) shall issue an IRS Form 1099 to Class Counsel reflecting Class Counsel's
21 Fee Award and Class Counsel's Costs Award.

22 35. Class Representative Enhancement Payment. In recognition of his efforts
23 and work in prosecuting the Action on behalf of Settlement Class Members, Defendant
24 agrees not to oppose any request, application, and/or motion by Plaintiff for a Class
25 Representative Enhancement Payment of up to Seven Thousand Five Hundred Dollars
26 (**\$7,500**). The Class Representative Enhancement Payment, which shall be paid from the
27 Gross Settlement Amount, shall be in addition to Plaintiff's Individual Settlement
28 Payment to be paid pursuant to the Settlement. The Settlement Administrator (and not

1 the Defendant) shall issue an IRS Form 1099 to Plaintiff reflecting the Class
2 Representative Enhancement Payment. Any portion of the Class Representative
3 Enhancement Payment not awarded to Plaintiff shall be added to the Net Settlement
4 Amount.

5 36. Settlement Administration Costs. The Settlement Administration Costs shall
6 be paid for the reasonable costs of administration of the Settlement. The Settlement
7 Administration Costs shall not exceed Ten Thousand Dollars (**\$10,000**) without prior
8 written approval by both parties. Any portion of the Settlement Administration Costs not
9 allowed shall be added to the Net Settlement Amount.

10 37. PAGA Settlement Amount and LWDA Payment. Subject to Court approval,
11 the Parties agree that the amount of Twenty Thousand Dollars (**\$20,000**) from the Gross
12 Settlement Amount shall be designated for satisfaction of Plaintiff's and Settlement Class
13 Members' PAGA claims. Pursuant to the PAGA, Seventy-Five Percent (25%), i.e.
14 Fifteen Thousand Dollars (**\$15,000**), of the PAGA Settlement Amount shall constitute the
15 LWDA Payment and be paid to the LWDA, and Twenty-Five Percent (25%), i.e. Five
16 Thousand Dollars (**\$5,000**), shall remain part of the Net Settlement Amount and shall be
17 included in the Individual Settlement Payments to Participating Class Members. Any
18 portion of the LWDA Payment not approved by the Court shall be added to the Net
19 Settlement Amount; in no event shall Defendant be required to pay in excess of the Gross
20 Settlement Amount, except as expressly provided herein (including, but not limited to, as
21 provided in Paragraphs 40 and 41).

22 38. Notice of Settlement to LWDA. In conjunction with, or prior to, their
23 Motion for Preliminary Approval, Class Counsel will submit the proposed Settlement to
24 the LWDA, in accordance with Labor Code section 2699, subdivision (1)(2).

25 39. Net Settlement Amount. The Net Settlement Amount shall be used to satisfy
26 Individual Settlement Payments to Participating Class Members from the Settlement
27 Class in accordance with the terms of this Agreement. Participating Class Members are
28 entitled to 100% of the Net Settlement Amount. Defendant maintains no reversionary

1 right to any portion of the Net Settlement Amount.

2 40. Escalator Clause. The Gross Settlement Amount was negotiated with, and
3 is premised on, the understanding based on Defendant's representation that the number
4 of Class Members is 131 individuals as of December 19, 2019. If, as of the date of
5 Preliminary Approval, the number of class members exceeds 144, then the Gross
6 Settlement Amount will increase proportionally by 0.69% per each additional Class
7 Member above 144.

8 41. Tax Treatment of Individual Settlement Payments. All Individual
9 Settlement Payments shall be allocated as follows: One-Third (1/3rd) wages, for which a
10 W-2 shall be issued, and Two-Thirds (2/3rd) penalties, reimbursement, and interest, for
11 which a 1099 shall be issued. Defendant shall be solely responsible for paying the
12 employer's share of payroll taxes on any amounts allocated as wages, which amount shall
13 be paid separately from the Gross Settlement Amount.

14 42. No Credit Toward Benefit Plans. The Individual Settlement Payments made
15 to Participating Class Members under this Agreement, as well as any other payments
16 made pursuant to this Agreement, shall not be utilized to calculate any additional benefits
17 under any benefit plans to which any Settlement Class Members may be eligible,
18 including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock
19 purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan.
20 Rather, it is the Parties' intention that this Settlement will not affect any rights,
21 contributions, or amounts to which any Settlement Class Members may be entitled under
22 any benefit plans. The Parties agree that the amounts paid pursuant to this Settlement are
23 not for days or hours worked, and are not included toward any regular rate of pay
24 calculation, or any benefit vesting or accrual purpose.

25 43. Release of Claims by Settlement Class Members. Upon the Effective Date,
26 Plaintiff and all Participating Class Members, as well as their spouses, heirs, executors,
27 administrators, trustees, and/or permitted assigns, hereby do and shall be deemed to have
28 fully, finally and forever released, settled, compromised, relinquished and discharged any

1 and all of the Released Parties of and from any and all Released Claims.

2 44. General Release by Named Plaintiff. Prior to the Final Approval of
3 Settlement, Plaintiff will execute a release of all claims against Defendant, which includes
4 a waiver under California Civil Code section 1542, in substantially the same form as
5 **Exhibit B**, attached hereto. Such general release will only be effective as of the Effective
6 Date, and only if this Settlement is given Final Approval by the Court.

7 45. Class Action Certification. The parties are agreeing to class certification for
8 settlement purposes only. This Agreement shall not constitute, in this or any other
9 proceeding, an admission of any kind by Defendant, including without limitation, that
10 certification of a class for trial or any other purpose is appropriate or proper or that
11 Plaintiff can establish any of the requisite elements for class or representative treatment
12 of any of the claims in this Action.

13 If, for any reason, the Settlement is not approved, this Agreement will be void and
14 the Parties will be restored to their respective positions as if they had not entered into this
15 Agreement; however Defendant will remain liable for all Administration Costs paid up
16 through that point. The Parties further agree that this Agreement, the Settlement Term
17 Sheet, the final Stipulation of Settlement, or any documents generated or orders issued
18 related to the Settlement, will not be admissible in this or any other proceeding as
19 evidence that either (i) a class action should be certified, or that this matter may proceed
20 as a representative action; or (ii) Defendant is liable to Plaintiff or any Settlement Class
21 Member, other than according to the Settlement's terms. In the event that the Settlement
22 is not approved or otherwise voided, Defendant expressly reserves all rights to challenge
23 certification of a class, or Plaintiff's ability to maintain a representative action, for all
24 purposes in the Action.

25 46. Non-Admission of Liability. The Parties enter into this Agreement to
26 resolve the dispute that has arisen between them and to avoid the burden, expense and
27 risk of continued litigation. In entering into this Agreement, Defendant does not admit,
28 and specifically denies, it has violated any federal, state, or local law; violated any

1 regulations or guidelines promulgated pursuant to any statute or any other applicable
2 laws, regulations or legal requirements; breached any contract; violated or breached any
3 duty; engaged in any misrepresentation or deception; or engaged in any other unlawful
4 conduct with respect to its employees. Neither this Agreement, nor any of its terms or
5 provisions, nor any of the negotiations connected with it, shall be construed as an
6 admission or concession by Defendant of any such violations or failures to comply with
7 any applicable law. Except as necessary in a proceeding to enforce the terms of this
8 Agreement, this Agreement and its terms and provisions shall not be offered or received
9 as evidence in any action or proceeding to establish any liability or admission on the part
10 of Defendant or to establish the existence of any condition constituting a violation of, or
11 a non-compliance with, federal, state, local or other applicable law.

12 ADMINISTRATION OF SETTLEMENT

13 47. Delivery of the Class Lists and Data. Within fifteen (15) calendar days of
14 Preliminary Approval, Defendant shall provide the Class Lists and Data to the Settlement
15 Administrator.

16 48. Notice Packets. All Settlement Class Members will be mailed a Notice
17 Packet, attached as **Exhibit A**, which was mutually agreed upon by all Parties. It
18 provides:

- 19 a. Information regarding the nature of the Action;
- 20 b. A summary of the Settlement's principal terms;
- 21 c. The Settlement Class definition;
- 22 d. Each Settlement Class Member's estimated Individual Settlement
23 Payment and the formula for calculating Individual Settlement
24 Payments;
- 25 e. The dates which comprise the Class Period;
- 26 f. Instructions on how to submit a valid Notice of Objection and/or
27 the Request for Exclusion Form, attached as **Exhibit C**.
- 28 g. The Response Deadline;

1 h. The date for the Final Approval Hearing, and

2 i. The Released Claims and Released Parties.

3 49. Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after the
4 Court's preliminary approval of the Settlement, the Settlement Administrator shall: (i) run
5 the names of all Settlement Class Members through the National Change of Address
6 ("NCOA") database to determine any updated addressed for Settlement Class Members;
7 (ii) update the addresses of any Settlement Class Members for whom an updated address
8 was found through the NCOA search; and (iii) mail the Notice Packet (including Request
9 for Exclusion Form) to each Settlement Class Member at his or her last known address or
10 at the updated address found through the NCOA search, and retain proof of mailing.

11 50. Re-Mailing of Returned Notices. Any Notice Packets returned to the
12 Settlement Administrator as non-deliverable on or before the Response Deadline shall be
13 re-sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
14 thereto and the Settlement Administrator shall indicate the date of such re-mailing on the
15 Notice Packet. If no forwarding address is provided, the Settlement Administrator shall
16 within five (5) days of receiving the returned Notice Packet, attempt to determine the
17 correct address using a skip-trace, or other search using the name, address and/or Social
18 Security number of the Settlement Class Member involved, and shall then perform a re-
19 mailing within three (3) days of obtaining the updated address. Those Settlement Class
20 Members who receive a re-mailed Notice Packet shall have the later of (i) an additional
21 fifteen (15) days from the remailing or (ii) until the Response Deadline, to respond. Notice
22 Packets that are re-sent shall inform recipients of this adjusted deadline. The Parties agree
23 to cooperate with the Settlement Administrator to locate a more recent address for
24 Settlement Class Members, where necessary.

25 51. Request for Exclusion Procedures. Any Class Member may opt-out from
26 the Settlement by signing a written Request for Exclusion to the Settlement Administrator
27 postmarked on or before the Response Deadline. The Request for Exclusion Form will
28 be included in the Notice Packet and in the same form as **Exhibit C**. Completed Request

1 for Exclusion Forms must:

- 2 a. Contain the name, address, telephone number, and the last four
3 digits of the Social Security number of the person requesting
4 exclusion;
- 5 b. Clearly state that the Settlement Class Member does not wish to be
6 included in the Settlement;
- 7 c. Be signed by the Settlement Class Member;
- 8 d. Be returned by mail to the Settlement Administrator at the
9 specified address; and
- 10 e. Be postmarked on or before the Response Deadline.

11 The date of the postmark on the return mailing envelope shall be the exclusive
12 means to determine whether a Request for Exclusion has been timely submitted. By
13 submitting such a Request for Exclusion, a Settlement Class Member shall be deemed to
14 have exercised his or her option to opt out of the Settlement and not be bound by this
15 Agreement. Accordingly, a Settlement Class Member that timely submits a valid Request
16 for Exclusion will not be entitled to any payments under this Settlement. A Settlement
17 Class Member who does not request exclusion from the Settlement shall be deemed a
18 Participating Class Member and will be bound by all terms of the Settlement, if the
19 Settlement is granted final approval by the Court.

20 52. Settlement Terms Bind All Settlement Class Members Who Do Not Opt-
21 Out. Any Settlement Class Member who does not affirmatively opt-out of the Settlement
22 by submitting a timely and valid Request for Exclusion shall be bound by all of its terms,
23 including those pertaining to the Released Claims, as well as any Judgment that may be
24 entered by the Court.

25 53. Objection Procedures. Any Settlement Class Member who does not opt-out
26 of this Settlement shall be entitled to object to the Settlement on or before the Response
27 Deadline. The Notice of Objection must:

- 28 a. Contain the name, address, telephone number, and the last four

1 digits of the Social Security number of the person objecting to the
2 Settlement;

3 b. Clearly state that the Settlement Class Member wishes to be
4 included in the Settlement and does not wish to opt out of the
5 Settlement;

6 c. State the basis for the objection;

7 d. Be signed by the Settlement Class Member;

8 e. Be returned by mail to the Settlement Administrator at the
9 specified address (after which the Settlement Administrator shall
10 be responsible for providing the Notice of Objection to the Parties);

11 and

12 f. Be postmarked on or before the Response Deadline.

13 The date of the postmark on the return mailing envelope shall be the exclusive
14 means to determine whether a Notice of Objection has been timely submitted.

15 54. Notwithstanding any other term of this Settlement, all Settlement Class
16 Members who do not opt-out from this Settlement will have a right to appear at the Final
17 Approval Hearing in order to have their objections heard by the Court, at their own
18 expense. At no time shall any of the Parties or their counsel seek to solicit or otherwise
19 encourage Settlement Class Members to submit written objections to the Settlement or
20 appeal from the Order and Judgment. Neither Class Counsel nor Defense Counsel shall
21 represent any Settlement Class Members with respect to any such objections to this
22 Settlement. Any Settlement Class Member who opts-out of this Settlement shall not be
23 allowed to object to this Settlement. If any Settlement Class Member both submits a
24 Request for Exclusion and objects, the Request for Exclusion shall be disregarded and the
25 Settlement Class Member shall be deemed a Participating Class Member whose objection
26 shall be addressed.

27 55. Defendant's Right To Rescind. If more than ten percent (10%) of the
28 Settlement Class Members opt out of the settlement by submitting valid and timely

1 Requests For Exclusion, Defendant has the unilateral right in its sole and absolute
2 discretion to rescind and void the Parties' Settlement by giving written notice to Class
3 Counsel at least ten (10) business days prior to the final approval hearing. The Parties
4 agree that they will not encourage any Settlement Class Member to object to, or to opt
5 out of, the Settlement. In the event Defendant exercises this option to rescind, Defendant
6 shall be solely responsible for all costs incurred by the Settlement Administrator up to the
7 date of Defendant's notice to rescind.

8 56. Certification Reports Regarding Administration of Settlement. The
9 Settlement Administrator shall provide Defendant's counsel and Class Counsel a weekly
10 report that certifies the number of Settlement Class Members who have submitted valid
11 Requests for Exclusion and Notices of Objection. Additionally, the Settlement
12 Administrator will provide to counsel for both Parties any updated reports regarding the
13 administration of the Settlement as needed or reasonably requested.

14 57. Distribution and Timing of Individual Settlement Payments. Within five (5)
15 business days of Defendant funding the Gross Settlement Amount, the Settlement
16 Administrator shall issue the following payments:

- 17 a. Individual Settlement Payments to Participating Class Members;
- 18 b. Class Representative Enhancement Payment to Plaintiff;
- 19 c. Settlement Administration Costs to itself;
- 20 d. The LWDA Payment to the LWDA;
- 21 e. Class Counsel's Fee Award to Class Counsel; and
- 22 f. Class Counsel's Cost Award to Class Counsel.

23 58. Uncashed Settlement Payment Checks. Any checks issued by the Settlement
24 Administrator to Participating Class Members will be negotiable for one-hundred eighty
25 (180) calendar days. After one-hundred eighty (180) calendar days from the date of
26 mailing, the checks shall become null and void, and any monies remaining in the
27 distribution account shall be distributed to the Controller of the State of California to be
28 held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, for

1 the benefit of those Settlement Class members who did not cash their checks until such
2 time that they claim their property. The Settling Parties agree that this disposition results
3 in no “unpaid residue” under California Civil Procedure Code § 384, as the entire Net
4 Settlement Amount will be paid out to Participating Settlement Class Members, whether
5 or not they all cash their checks representing their Individual Settlement Payments. In
6 such event, those Participating Class Members will nevertheless remain bound by the
7 Settlement.

8 59. Certification of Completion. Upon completion of administration of the
9 Settlement, the Settlement Administrator shall provide a written declaration under oath to
10 certify such completion to the Court and counsel for all Parties.

11 60. Administration Costs if Settlement Fails. If the Settlement does not
12 ultimately receive Final Approval by the Court, or is voided or rescinded by Defendant,
13 any costs incurred by the Settlement Administrator shall be borne by Defendant.

14 61. Administration of Taxes by the Settlement Administrator. The Settlement
15 Administrator shall be responsible for issuing to Plaintiff, Participating Class Members,
16 and Class Counsel, W-2 forms, 1099 forms, or other tax forms as may be required by law,
17 for all amounts paid pursuant to this Agreement.

18 62. Tax Liability. Defendant makes no representation as to the tax treatment or
19 legal effect of the payments called for hereunder, and Plaintiff and Participating Class
20 Members are not relying on any statement, representation, or calculation by Defendant or
21 by the Settlement Administrator in this regard. Plaintiff and Participating Class Members
22 understand and agree that they will be solely responsible for the payment of any taxes and
23 penalties assessed on their respective payments described herein and will defend,
24 indemnify, and hold Defendant free and harmless from and against any claims resulting
25 from treatment of such payments as non-taxable damages.

26 63. No Prior Assignments. The Parties and their counsel represent, covenant,
27 and warrant that they have not directly or indirectly assigned, transferred, encumbered, or
28 purported to assign, transfer, or encumber to any person or entity any portion of any

1 liability, claim, demand, action, cause of action or right herein released and discharged.

2 **APPROVAL OF SETTLEMENT**

3 64. Nullification of Settlement. In the event that the Settlement does not become
4 a Final Judgment for any reason, then this Agreement, and any documents generated to
5 bring it into effect, shall be null and void. Any order or judgment entered by the Court in
6 furtherance of this Agreement shall likewise be treated as void from the beginning.

7 65. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the
8 Court to request the Preliminary Approval of the Settlement, and the entry of a
9 Preliminary Approval Order: (i) preliminarily approving the proposed Settlement and (ii)
10 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary
11 Approval Order shall provide for the Notice Packet to be sent to all Settlement Class
12 Members as specified herein. In conjunction with the Preliminary Approval hearing,
13 Plaintiff shall submit this Agreement, which sets forth the terms of this Settlement, and
14 will include the proposed Notice Packet, attached to this Agreement as **Exhibit A**.

15 66. Final Settlement Approval Hearing. Upon expiration of the Response
16 Deadline, and with the Court's permission, a Final Approval/Settlement Fairness Hearing
17 shall be conducted to determine the Final Approval of the Settlement along with the
18 amounts properly payable for:

- 19 a. Individual Settlement Payments;
20 b. Class Representative Enhancement Payment;
21 c. Settlement Administration Costs;
22 d. LWDA Payment;
23 e. Class Counsel's Fee Award; and
24 f. Class Counsel's Cost Award.

25 Class Counsel will be responsible for drafting all documents necessary to obtain
26 Final Approval. Class Counsel will also be responsible for drafting the attorneys' fees
27 and costs application to be heard at the Final Approval Hearing.

28 67. Entry of Judgment and Continued Jurisdiction. Concurrent with the Motion

1 for Final Approval, the Parties shall also jointly seek the entry of Judgment consistent
2 with the terms of this Agreement. After entry of the Judgment, the Court shall have
3 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and
4 enforcement of the terms of the Settlement, (ii) Settlement administration matters, and
5 (iii) such post-judgment matters as may be appropriate under court rules or as set forth in
6 this Agreement.

7 MISCELLANEOUS PROVISIONS

8 68. Exhibits Incorporated by Reference. The terms of this Agreement include
9 the terms set forth in any attached Exhibits, which are incorporated by this reference as
10 though fully set forth herein. Any Exhibits to this Agreement are an integral part of the
11 Settlement.

12 69. Confidentiality Preceding Preliminary Approval. The Parties and their
13 counsel agree that they will not issue any press releases, initiate any contact with the press,
14 respond to any press inquiry, or have any communication with the press about the fact,
15 amount, or terms of the Settlement. Nothing in this Agreement shall limit communications
16 between Plaintiffs or Class Counsel and absent class members.

17 70. Entire Agreement. This Agreement and any attached Exhibits constitute the
18 entirety of the Parties' settlement terms. No other prior or contemporaneous written or
19 oral agreements may be deemed binding on the Parties.

20 71. Disputes Regarding This Agreement. If the Parties have a dispute with
21 regard to the language of the Agreement, the Parties agree to informally resolve the
22 dispute by engaging Steve Pearl to mediate such dispute. Any costs incurred as a result
23 of retaining Mr. Pearl to resolve any such dispute shall be borne equally by Defendant
24 and Plaintiff, unless otherwise specified in this Agreement.

25 72. Amendment or Modification. This Agreement may be amended or modified
26 only by a written instrument signed by the Parties or their successors-in-interest.

27 73. Authorization to Enter Into Agreement. Counsel for all Parties warrant and
28 represent that they are expressly authorized by the Parties whom they represent to

1 negotiate this Agreement and to take all appropriate action required or permitted to be
2 taken by such Parties pursuant to this Agreement to effectuate its terms and to execute
3 any other documents required to effectuate the terms of this Agreement. The Parties and
4 their counsel will cooperate with each other and use their best efforts to effect the
5 implementation of the Settlement. If the Parties are unable to reach agreement on the
6 form or content of any document needed to implement the Settlement, or on any
7 supplemental provisions that may become necessary to effectuate the terms of this
8 Settlement, the Parties agree to informally resolve the dispute by engaging Steve Pearl to
9 mediate such dispute. Any costs incurred as a result of retaining Mr. Pearl to resolve any
10 such dispute shall be borne equally by Defendant and Plaintiff, unless otherwise specified
11 in this Agreement.

12 74. Binding on Successors and Assigns. This Agreement shall be binding upon,
13 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
14 defined.

15 75. California Law Governs. All terms of this Agreement and Exhibits hereto
16 shall be governed by and interpreted according to the laws of the State of California.

17 76. Execution and Counterparts. This Agreement is subject only to the
18 execution of all Parties. However, the Agreement may be executed in one or more
19 counterparts. All executed counterparts and each of them, including facsimile and
20 scanned copies of the signature page, shall be deemed to be one and the same instrument
21 provided that counsel for the Parties shall exchange among themselves original signed
22 counterparts.

23 77. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
24 believe this Agreement is a fair, adequate, and reasonable settlement of the Action and
25 have arrived at this Settlement after arms-length negotiations and in the context of
26 adversarial litigation, taking into account all relevant factors, present and potential. The
27 Parties further acknowledge that they are each represented by competent counsel and that
28 they have had an opportunity to consult with their counsel regarding the fairness and

1 reasonably of this Agreement.

2 78. Invalidity of Any Provision. Before declaring any provision of this
3 Agreement invalid, the Court shall first attempt to construe the provision as valid to the
4 fullest extent possible consistent with applicable precedents so as to find all provisions of
5 this Agreement valid and enforceable. Any invalid, illegal, or unenforceable provision
6 determined by the Court shall in no way affect any other provision if Defendant and Class
7 Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to
8 proceed as if such invalid, illegal, or unenforceable provision had never been included in
9 this Agreement.

10 79. Waiver of Certain Appeals. The Parties agree to waive appeals; except,
11 however, that Plaintiff or Class Counsel may appeal any reduction in the Class Counsel's
12 Fee or Cost Award below the amount Class Counsel requests, and either party may appeal
13 any order that materially alters the Agreement's terms.

14 80. Captions. The captions and section numbers in this Agreement are inserted
15 for the reader's convenience, and in no way define, limit, construe or describe the scope
16 or intent of the provisions of this Agreement.

17 81. Waiver. No waiver of any condition or covenant contained in this
18 Agreement or failure to exercise a right or remedy by any of the Parties hereto shall be
19 considered to imply or constitute a further waiver by such party of the same or any other
20 condition, covenant, right or remedy.

21 82. Mutual Preparation. The Parties have had a full opportunity to negotiate the
22 terms and conditions of this Agreement. Accordingly, this Agreement shall not be
23 construed more strictly against one party than another merely by virtue of the fact that it
24 may have been prepared by counsel for one of the Parties, it being recognized that,
25 because of the arms-length negotiations between the Parties, all Parties have contributed
26 to the preparation of this Agreement.

27 83. Representation By Counsel. The Parties acknowledge that they have been
28 represented by counsel throughout all negotiations that preceded the execution of this

1 Agreement, and that this Agreement has been executed with the consent and advice of
2 counsel. Further, Plaintiff and Class Counsel warrant and represent that there are no liens
3 on the Agreement.

4 84. Cooperation and Execution of Necessary Documents. All Parties shall
5 cooperate in good faith and execute all documents to the extent reasonably necessary to
6 effectuate the terms of this Agreement.

7 85. Binding Agreement. The Parties warrant that they understand and have full
8 authority to enter into this Agreement, and further intend that this Agreement shall be
9 fully enforceable and binding on all Parties, and agree that it shall be admissible and
10 subject to disclosure in any proceeding to enforce its terms.

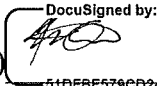
11 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed
12 this Class Action and Settlement Release Between Plaintiff and Defendant as of the
13 date(s) set forth below:

14
15 **[SIGNATURE PAGE FOLLOWS]**
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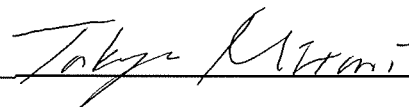
SIGNATURES

READ THE ENTIRE AGREEMENT CAREFULLY BEFORE SIGNING


PLAINTIFF


Dated: 3/16/2020, 2020 
 51DFBF579CD241A... Plaintiff Robert Quintero

**DEFENDANT:
MILLER MILLING COMPANY, LLC**

Dated: 4/1, 2020 
 Takuya Mitani, CEO
 Please Print Name of Authorized Signatory

APPROVED AS TO FORM

Dated: March 16, 2020 **KING & SIEGEL LLP**
 
 Julian Burns King
 Elliot J. Siegel
 Attorneys for Plaintiff Robert Quintero

DATED: April 1, 2020 **DORSEY & WHITNEY LLP**
 
 Gabrielle Wirth
 Nisha Verma
 Attorneys for Defendant
 Miller Milling Company, LLC