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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROBERT QUINTERO, individually and on behalf of all similarly situated individuals,

Plaintiff,

vs.

MILLER MILLING COMPANY, LLC, a California corporation, and Does 1-10, inclusive,

Defendants.

Case No. 2:19-CV-07459-DMG-JC

DECLARATION OF JULIAN BURNS KING IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Judge: Hon. Dolly Gee
Date: July 31, 2020
Time: 10:00 a.m.
Dept.: 8C

Complaint Filed: July 26, 2019
Removed On: August 28, 2019

I, Julian Burns King, declare as follows:

1. I am a partner at the law firm of King & Siegel LLP, and counsel for the named plaintiff Robert Quintero ("Plaintiff") and the proposed Settlement Class in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice before this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

A. Proposed Class Counsel's Academic and Professional Background

2. I am a 2012 *cum laude* graduate of Harvard Law School, where I was an editor and a member of the submissions committee on the *Harvard Journal of Law & Gender* and an editor of the *Harvard International Law Journal*. After graduating from law school, I spent five years as an Associate Paul, Weiss, Rifkind, Wharton and Garrison, LLP (2012 to 2013); Quinn Emanuel Urquhart & Sullivan LLP (2013 to 2015); and Bird Marella Boxer Wolpert Nessim Drooks Lincenberg & Rhow, PC (2015 to 2017), before starting my own practice at King & Siegel LLP.

3. At my prior firms, I worked on a variety of class actions on both the plaintiff and defense side, including *Precht v. Kia Motors America, Inc.*, No. 8:14-cv-01148-DOC-MAN (C.D. Cal. 2014) (consumer class action alleging violations of CLRA relating to allegedly defective brake switches); *In re Hyundai Fuel Economy Litig.*, No. 2:13-ml-02424-GW-FFM (C.D. Cal. 2013) (consumer class action alleging violations of CLRA and other consumer protection laws relating to allegedly misleading fuel economy advertising); *In re Polyurethane Foam Antitrust Litig.*, No. 1:10-md-02196 (N.D. Oh. 2010) (antitrust class action alleging horizontal price-fixing in violation of the Sherman Act); *Mendoza v. Hyundai Motor Company, Ltd.*, No. 5:15-cv-01685-BLF (N.D. Cal. 2015) (consumer class action alleging violations of CLRA and other consumer protection laws relating to alleged engine defects in certain models of Hyundai vehicles); and *Brady, et al. v. Air Line Pilots Association*, No. 02-2917 (JEI) (D.N.J. 2002) (labor law class action alleging breach of duty of fair representation).

4. I have also worked on complex, high-stakes civil and criminal matters including *In re Countrywide Financial Corporation Mortgage-Backed Securities Litig.*, Case Nos. 2:11-ml-02265-MRP and 2:11-cv-10549-MRP (C.D. Cal. 2011) (fraud and securities case alleging false representations regarding residential mortgage-backed securities ("RMBS")); *Asian Am. Entertainment Corp., Ltd. v. Las Vegas Sands Corp., et. al.*, No. 2:14-cv-01124-RFB-GWF (D. Nev. 2014) (intellectual property case involving failed joint venture to develop a casino in Macao); *Westlake Services LLC v. Credit Acceptance Corporation*, No. 2:15-cv-07490 (C.D. Cal. 2015) (antitrust case alleging anticompetitive conduct in market for certain used vehicles); *People v. Plains All American Pipeline LP*, No. 1495091 (Santa Barbara Cnty. Sup. Ct. 2016) (criminal case arising from 2015 Refugio oil spill*); United States v. Agility Pub. Warehousing* Co. KSC, No. 1:05-CV-2968-TWT (N.D. Ga. 2005) (False Claims Act case involving contracts for provisions to troops in the Middle East); and *Dadey, et al. v. City of Costa Mesa*, No. 30-2016-00832585-CU-WM-CJC (Orange Cnty. Sup. Ct. 2016) (civil rights case on behalf of low-income long-term residents of extended-stay motel in Costa Mesa).

5. During my employment at Paul, Weiss, Quinn Emanuel, and Bird Marella, I played a significant role on the employment law and class action matters I was staffed on and received an array of experience, including drafting demurrers and motions to dismiss, removing actions from state court to federal court, drafting and responding to discovery, drafting and opposing discovery-related motions, arguing discovery-related motions, interviewing and deposing putative class members and obtaining declarations in connection with class certification and decertification motions, drafting and opposing motions for class certification, conducting exposure analysis to determine the strength of the claims and the likelihood of prevailing on class certification or the merits, drafting mediation briefs, deposing plaintiffs, defendants, and lay witnesses, and defending depositions of corporate witnesses. I also supervised the work of more junior attorneys.

6. Throughout my career, I have gained significant experience regarding the obligations and burdens of representing a class. This knowledge has allowed me and my firm,

King & Siegel LLP, to successfully represent employees in class actions. Our practice is devoted to representing employees in individual and class action litigation in California State and federal courts, as well as in arbitration hearings. Though our firm is only two years old, we have been appointed class counsel in wage and hour class actions, including *Martinez v. Arvato Digital Servs., LLC*, No. CIVDS1823989 (San Bernardino Cnty. Sup. Ct. 2018) (final approval granted March 2, 2020) and *Ayala, et al. v. Four Seasons Heating & Cooling, Inc., et al.*, No. 56-2019-00529287-CU-OE-VTA (Ventury Cnty. Sup. Ct. 2018) (preliminary approval granted February 4, 2020). We are currently prosecuting claims on behalf of putative class members in *Awwad, et al. v. Splitsville*, Case No. 30-2018-01026248-CU-OE-CXC (Orange Cnty. Sup. Ct. 2018) (wage and hour case relating to failure to authorize and permit off-duty rest periods); *Torres v. D/T Carson*, Case No. RIC1821431 (Riverside Cnty. Sup. Ct. 2018) (wage and hour case relating to failure to authorize and permit off-duty, off-premises rest periods); *Padilla v. Rooter Hero, et al.*, Case No. PC058809 (Los Angeles Cnty. Sup. Ct. 2018) (wage and hour case relating to misclassification of employees as exempt); *Lachman v. Berlitz Corporation, et al.*, Case No. 19STCV01533 (Los Angeles Cnty. 2019) (wage and hour case relating to failure to pay piece rate workers separately and hourly for rest periods); and *Talkington v. Sanrose Home Health*, Case No. RIC1902475 (Riverside Cnty. Sup. Ct. 2019) (wage and hour case relating to failure to pay piece rate workers separately and hourly for rest periods). Our firm filed a contested motion for class certification in *Le, et al. v. Walgreen Co., et al.*, No. 18-cv- 01548 (C.D. Cal. 2018).

7. I have received a variety of professional awards and honors and am active in the plaintiffs' bar and other community organizations. In each year from 2018 to 2020, I was named as a Southern California Super Lawyers Rising Star. I have been recognized for my pro bono work by the State Bar of California and the Western Center for Law and Poverty. From 2017 to the present, I have been a board member for the Los Angeles Center for Community Law and Action. I am also an active member of the California Employment Lawyers'

Association; Consumer Attorneys of California; Consumer Attorneys Association of Los Angeles; and the Women's Law Association of Los Angeles.

8. In addition to myself, the attorneys at my law firm who seek to be appointed Class Counsel also have significant experience in employment litigation, wage and hour class actions, and other complex litigation.

9. My partner, Elliot J. Siegel, received a B.A. from University of California, Los Angeles, in 2007, graduating *summa cum laude*. In 2012, he received a J.D. from New York University School of Law in New York, New York and graduated with *cum laude* honors. He became a member of the Bar of the State of California in June 2012. Mr. Siegel also first practiced with the firm of Quinn Emanuel Urquhart and Sullivan, an AmLaw 100 firm, for approximately three years. His practice covered a wide range of matters running from high-value commercial litigation, to patent matters (including the *Apple v. Samsung* litigation), to class actions (including a wage and hour class action against Barnes & Noble). At his prior firms, Mr. Siegel worked on complex civil litigation matters including *United States ex rel. Bilotta v. Novartis Pharm. Corp.*, No. 11-civ-0071 (PGG) (S.D.N.Y. 2011) (False Claims Act case relating to alleged kickbacks); *In re Countrywide Financial Corporation Mortgage-Backed Securities Litig.*, Case Nos. 2:11-ml-02265-MRP and 2:11-cv-10549-MRP (C.D. Cal. 2011) (fraud and securities case alleging false representations regarding RMBS); *In re RFC and RESCAP Liquidating Trust Litig.*, No. 13-3451 (D. Minn. 2013) (breach of contract case involving RMBS); *Gaming and Leisure Properties, Inc. v. Cannery Casino Resorts LLC*, No. 1:14-cv-08571 (S.D.N.Y. 2014) (breach of contract case involving $465 million casino purchase); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-civ-1846 (N.D. Cal. 2011) (patent case involving smart phones); and *HCT Group Holdings, Ltd., et al. v. Nicholas Gardner, et al.*, No. BC645615 (Los Angeles Cnty. Sup. Ct. 2017) (fraud and breach of fiduciary duty case against former executive).

10. Our associate attorney, John L. Schwab, received a B.A. with honors from Wright State University and earned and a law degree from UC Davis School of Law. While in

law school, he served as Senior Notes and Comments Editor for the *UC Davis Law Review* and worked as a tutor to first-year law students. His law review note, *The Vindication of Rights Doctrine: Still a Key to the Courtroom or Arbitration's Latest Casualty?* , was published in the *UC Davis Business Law Journal* in 2015. He became a member of the Bar of the State of California that same year and has dedicated his legal career to representing plaintiffs ever since. Prior to joining our firm, Mr. Schwab worked for Mizrahi Law, APC, a premier plaintiff-side employment litigation firm in Pasadena, where he successfully represented employees in individual and class action claims involving workplace harassment, discrimination, wage and hour violations, fair pay violations, whistleblower complaints, and retaliation. He also completed a prestigious fellowship at Panish Shea & Boyle LLP, a nationally renowned trial law firm in Santa Monica ranked as one of the "Best Law Firms" by *U.S. News & World Report*. He is active in the employment law community, currently serving on the editorial board of the *California Labor & Employment Law Review*, and as a member of the California Employment Lawyers Association's Mentorship Committee. He is also an active member of the labor and employment law sections of the Los Angeles County Bar Association, the Pasadena Bar Association, and the California Lawyers Association.

11. All three attorneys at my firm—Mr. Siegel, Mr. Schwab, and myself—have been named "Rising Stars" by *Super Lawyers* magazine in each year from 2018 to the present. This is an honor awarded to no more than two and a half percent of attorneys under the age of 40 in California.

B. Procedural History of This Case

12. Shortly after the case was removed, counsel for Miller reached out to my office to discuss the logistics of a potential mediation in this matter. Counsel for Plaintiff agreed to mediate the matter before an experienced wage and hour and class action mediator provided that counsel for Miller produced informal discovery sufficient to analyze and evaluate the risks and rewards of continued litigation and the likelihood of success on the merits and class certification. Specifically, counsel requested: (1) confirmation as to which employees, if any, were

covered by collective bargaining agreements, and the relevant terms of any collective bargaining agreements to the extent Miller claimed they modified any legal obligations imposed by the statutes cited in the Complaint; (2) any arbitration agreements Miller claimed applied to the claims at issue; (3) any meal or rest period waivers to the extent Miller claimed they provided a defense to the claims at issue; (4) a class list, complete with rates of pay, dates of employment, and the location of the facility where the employee was employed; (5) time punch data for the putative class members or a statistically significant sampling thereof; (6) the average shift length for putative class members, to evaluate if unpaid time was subject to a regular or overtime rate of pay; (7) data on whether and when putative class members took meal and/or rest breaks; and (8) all applicable wage and hour policies, among other things.

13. Prior to mediation, Miller provided all or substantially all of the requested information, including: (1) the collective bargaining agreement applicable to employees in the Oakland facility; (2) all three employee handbooks used during the Class Period that set forth formal written meal and rest break policies; (3) updated policies implemented in Fall 2019 that evidence elimination of time clock rounding procedures; (4) meal period waivers executed by putative class members; (5) data recording *all* employee punch records, by employee ID number and facility, from 2015 through the end of August 2019; (6) the total number of workweeks and putative class members; and (7) the final rate of pay for each putative class member, by employee ID number.

14. Also in advance of mediation, Miller confirmed that it had changed its timekeeping policies in September 2019 and that, going forward, it was no longer rounding time entries, but instead was paying workers based on their actual time punches. Miller also confirmed that it distributed updated policies and notices in September and October 2019 regarding meal and rest periods. It is my informed belief that these policy changes were implemented as a result of this lawsuit.

15. I personally reviewed all of the information provided by Defendant in advance of mediation, as did my partner, Elliot J. Siegel. King & Siegel LLP further retained the

services of an expert, Jarrett Gorlick, who analyzed each and every line in the vast amounts of time punch and pay rate data provided by Defendant to determine, among other things, whether Miller's rounding policy systematically undercompensated putative class members; the amounts of all underpayments; the number of missed meal periods based on time punch data; the number of rest periods to which putative class members were entitled; and the maximum and realistic exposure for each claim alleged in the Complaint. Mr. Gorlick reviewed nearly 90,000 punch records and calculated damages exposure based on Miller's timeclock rounding policy, the timing and existence of time entries for meal and/or rest periods, and the average final rate of pay for the Class Members. Mr. Gorlick concluded that approximately two-thirds of Class Members were disadvantaged by the rounding policy, while approximately 20 percent benefited on net.

16. Miller's production of documents and data was fulsome and allowed me to develop a sound understanding of the merits of the claims; their value; and the viability of defense asserted by Defendant. While preparing for mediation, I requested a significant amount of additional documentation from Miller, all of which was provided to us. I verified this information by speaking with our client, the Plaintiff, and interviewing other Class Members in advance of mediation. The information I received in informal discovery is the same information I would have sought in formal discovery.

17. The parties mediated with Steven Pearl, Esq., a well-respected and experienced wage and hour class action mediator, on December 17, 2019. The mediation lasted approximately eight hours and was attended by Plaintiff, myself, and Mr. Siegel for Plaintiff and the putative class. Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. The parties negotiated at arm's length through Mr. Pearl. The matter did not settle at mediation. The following day, Mr. Pearl presented a mediator's proposal, which the parties confidentially accepted without conferring with one another.

18. The parties then worked to finalize a Memorandum of Understanding, which was executed on February 12, 2020. A fully executed Stipulation of Settlement was finalized

on April 1, 2020 after additional negotiations regarding specific terms of the Settlement and language for the proposed Rule 23 Class Notice. A copy of the Settlement is attached to the Motion as **Exhibit 1**. A copy of the proposed Class Notice is attached to this Motion as **Exhibit 1** as **Exhibit A**.

19. Based on thorough examination and investigation of the facts and law relating to Plaintiff's claims on behalf of the putative class, I believe the Settlement is in the best interest of the Class. Our investigation informed us about the strengths and weaknesses of our positions as well as Miller's and allowed us to conduct an informed, fair, and objective evaluation of the risks of continued litigation.

C. Analysis of the Settlement

20. If the Court approves this Settlement, Defendant will pay a non-reversionary Gross Settlement Amount of $500,000. The Net Settlement Amount is the balance of the Gross Settlement Amount after the following are deducted:

Gross Settlement Amount:	**$500,000**
Minus Court-approved attorneys' fees (up to):	**$165,000**
Minus Court-approved costs (up to):	**$9,900.99**
Minus Court-approved incentive payments (up to):	**$7,500**
Minus PAGA allocation to LWDA:	**$15,000**
Minus settlement administration costs (up to):	**$10,000**
Net Settlement Amount:	**$302,599.01**

Any amounts requested for attorneys' fees, litigation and administration costs, and incentive payments which are not approved by the Court will remain part of the Net Settlement fund and will be distributed to the Class. After 180 days from the date of mailing of Individual Settlement Payments, unclaimed payments will be remitted to the Controller of the State of

California to be held for those Class Members who did not cash their checks, pursuant to the Unclaimed Property Law, Cal. Civ. Code § 1500, *et seq.*

21. The Settlement Class Period is defined as July 26, 2015 to February 28, 2020 or the date of preliminary approval, whichever is earlier. Because it is after February 28, 2020, the Class Period ends on February 28, 2020. The Settlement Class is defined as "*all non-exempt employees who were employed by Defendant in California and performed work in either the mill, maintenance, or sanitation departments at any time during the Class Period who do not opt out of this Settlement.*" This class definition differs slightly from the formulation in the Complaint—which included all non-exempt employees at the relevant facilities, as opposed to those in the mill, maintenance, and sanitation departments—because non-exempt employees in administrative positions—the only non-exempt employees who are not members of the enumerated departments—were not subject to all of the policies and practices at issue in this case. The Settlement Class had 131 members as of the date of mediation, for an average payment of approximately $2,282.82 per Settlement Class Member ($292,500/131=$2,232.82).

22. The parties have selected CPT Group, Inc. ("CPT Group") as a Settlement Administrator. My firm obtained quotes from Simpluris and CPT Group for this matter and negotiated with both settlement administration firms to obtain competitive rates. CPT Group was selected because they agreed to cap their fees at $10,000, while Simpluris could not provide a cap.

23. Other than the Settlement Agreement, no agreements were made in connection with any settlement proposal in this case. There are no "side agreements" between Plaintiff, proposed Class Counsel, and any party affiliated with Defendant. Neither Plaintiff nor Plaintiff's counsel will receive any payments relating to this case, other than those approved by this Court as part of this Settlement.

D. The Settlement is Fair, Adequate, and Reasonable

24. With our expert, our firm calculates the maximum realistic exposure—assuming we prevail on class certification as to all claims, an assumption that is addressed in greater depth below—at approximately $1.3 million.

25. ***Rounding-related claims.*** Plaintiff's expert analyzed Miller's time punch data and determined the exact number of minutes for which Class Members were underpaid through August 2019 based on Miller's rounding policy. This analysis showed that Class Members were shorted an average of approximately 2.2 minutes of pay per shift, with a net loss to the Class of 3,206.1 hours of compensable time in violation of California law. Only one-quarter of shifts resulted in overpayments because of the rounding policy, while more than twice as many shifts, or 63 percent, were underpaid. Moreover, because data provided by Miller showed that 80 percent of shifts were over eight hours long, most of the 3,206.1 unpaid hours worked were compensable at overtime rates of pay. Plaintiff's expert calculated that Miller failed to pay Class Members approximately $140,000.00 in wages and interest, including unpaid minimum wages and overtime wages, as a result of its rounding policy. If the Class were awarded the maximum amount of discretionary penalties associated with the rounding policy—approximately $35,000.00 in liquidated damages for unpaid minimum wages under Lab. Code § 1194.2 and $250,000.00 in wage statement penalties[1] under Lab. Code § 226—the total damages are no more than $425,000.

26. In defense of the rounding-related claims, Miller argue that it paid Class Members at their Fresno facility and certain Class Members at the Commerce facility for an additional half-hour of work during certain shifts, thus eliminating any harm to these Class Members from underpayments due to rounding.

[1] For wage statement penalties, Plaintiff would have to prove that there was a violation in each pay period for which a penalty was assessed. Here, approximately two-thirds of pay periods contain underpayments according to Plaintiff's expert's analysis. With a maximum total exposure of $388,000, this makes the maximum *realistic* exposure no more than two-thirds that amount, or approximately $250,000.

27. ***Meal and rest period claims.*** Plaintiff's expert reviewed time records and determined that 65 percent of second meal periods were late, missed, or otherwise non-compliant. Assuming that each missed second meal period was a violation, Plaintiff's expert calculated the maximum realistic exposure relating to the meal period claims at approximately $170,000. Regarding rest periods, Plaintiff's expert's model calculated the maximum realistic exposure at just under $800,000, assuming one violation per shift per employee.

28. While Plaintiff's claims for meal and rest period violations had a greater total potential exposure than the rounding-related claims, these claims faced obstacles to class certification and on the merits.

29. *First*, Miller claimed that its meal and rest period policies were not uniform across facilities. The evidence obtained in advance of mediation suggests that Plaintiff had real litigation risks associated with the lack of uniform policies and implementation. For instance, at Miller's Oakland, California plant, union-represented workers were paid for their meal periods—even though they were off-duty—at all points during the Class Period. Their time records thus do not show whether or when they took their meal periods.

30. Moreover, employees in certain positions executed on-duty meal period agreements stating that "due to the nature of the work I perform (*i.e.*, working alone through my shift, . . . responding to emergencies, etc.), I cannot be relieved of all duty for an uninterrupted 30-minute meal period." Miller argued that these waivers were valid and enforceable under the "nature of the work" exception to Lab. Code § 226.7's meal period requirements. And because these employees held different positions and were arguably essential for different reasons, whether the "nature of the work" exception applied to each may not be susceptible to class-wide proof— potentially defeating certification on this issue.

31. *Second*, Miller argued that the "nature of the work" exception would preclude liability on the merits as to meal period claims. Under existing DLSE guidance and case law interpreting it, the "nature of the work" exception can apply where the position involves "the continuous operation of machinery requiring monitoring" that is "essential to the business of

the employer." DLSE Op. Ltr. 1994.09.28 at p. 2; *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 960 (9th Cir. 2013). Many, if not all, of the Class Members' positions at Miller arguably involve "the continuous operation of machinery requiring monitoring," *i.e.*, milling equipment, that is core to Miller's business operations. Accordingly, there was a risk that Plaintiff would lose on the merits of meal period claims relating to Class Members' on-duty meal period agreements.

32. ***Waiting time penalties.*** If each of the 36 Class Members who are former employees received 30 days' wages as waiting time penalties, Miller's exposure would be approximately $225,000. However, at least some of these employees were not adversely affected by Miller's rounding policies and/or executed on-duty meal period agreements. Miller further argued that waiting time penalties are not available because their failure to pay wages due was not "willful" and there was a good faith dispute as to wages owed. *Troester v. Starbucks Corp.*, 387 F. Supp. 3d 1019 (C.D. Cal. 2019), *as clarified on reconsideration*, 2019 WL 2902487; *Diaz v. Grill Concepts Servs., Inc.*, 233 Cal. Rptr. 3d 524 (2018). Given the uncertain state of the law around meal and rest period premiums and rounding claims (and the relatively recent non-applicability of any *de minimus* defense for California Labor Code claims), this argument may be persuasive. Finally, the number of Class Members who left Miller's employ during the applicable statute of limitations is even less than 36—making it unlikely that Plaintiff could certify a Class or Subclass on these claims. As such, there is a risk that Plaintiff and the Class would not recover waiting time penalties.

33. ***Risk, expense, complexity, and duration of further litigation; likelihood of maintaining class action status through trial.*** Here, as discussed above, there is significant risk that Plaintiff could not certify a Class or Subclass relating to meal or rest period claims. The Class is comprised of only 131 current and former employees. If all union-represented employees were excluded from any meal or rest break Class or Subclass, for instance, Plaintiff would risk being unable to show numerosity for the remaining Class Members. Similarly, if certain positions are found to be essential such that the "nature of the job" exception to

California's meal period requirements applies, Plaintiff could also lose certification or have a class decertified. The Settlement eliminates these risks by ensuring Class Members a recovery that is "certain and immediate, eliminating the risk that class members would be left without any recovery . . . at all." These risks are substantial, particularly in light of the relatively small Class size.

34. Plaintiff has been actively involved in this litigation and has provided invaluable support to our firm as we prosecuted this case. He has conducted numerous interviews with our firm both before and after the action was filed; he provided documents that allowed us to cross-check Miller's representations and confirm their accuracy; he reached out to other absent Class Members, who in turn agreed to interview and/or provide declarations in advance of mediation. He also attended an all-day mediation and reviewed Settlement documents. Moreover, Plaintiff informed me months ago that he had been turned down for a job as a result of this lawsuit.

35. I am not aware of any conflicts between Plaintiff and the Class Members. Likewise, I have diligently investigated and there are no potential conflicts between our firm and the Class Members.

E. Notice of Settlement of PAGA Claim

36. On April 3, 2020, I provided notice of settlement in this case to the Labor and Workforce Development Agency. The LWDA did not object to the Settlement.

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

Executed on July 17, 2020, in Los Angeles, California.

Julian Burns King