

King & Siegel LLP

1 Julian Burns King (Bar No. 298617)  
 julian@kingsiegel.com  
 2 Elliot J. Siegel (Bar No. 286798)  
 elliot@kingsiegel.com  
 3 John L. Schwab (Bar No. 307599)  
 john@kingsiegel.com  
 4 **KING & SIEGEL LLP**  
 5 724 S. Spring Street, Ste. 201  
 6 Los Angeles, California 90014  
 7 *tel:* (213) 465-4802  
*fax:* (213) 465-4803

8 Attorneys for Plaintiff and the Putative Class

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ROBERT QUINTERO, individually and  
 12 on behalf of all similarly situated individu-  
 13 als,

14 Plaintiff,

15 vs.

16 MILLER MILLING COMPANY, LLC, a  
 17 California corporation, and Does 1-10, in-  
 18 clusive,

19 Defendants.

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

**PLAINTIFF’S NOTICE OF MOTION  
 AND MEMORANDUM IN SUPPORT  
 OF MOTION FOR FINAL  
 APPROVAL OF CLASS ACTION  
 SETTLEMENT**

*Declarations of Julian Burns King and Bry-  
 an Valdez filed concurrently; [Proposed] Or-  
 der*

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

Removed On: August 28, 2019

King & Siegel LLP

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that, on July 31, 2020 at 10:00 a.m., or as soon thereafter as the matter may be heard in Courtroom 8C of the United States District Court for the Central District of California, located at 350 West 1st Street, Los Angeles, California 90012, before the Honorable Dolly M. Gee, Plaintiff Robert Quintero, as an individual and on behalf of all others similarly situated, will and hereby does move this Court for entry of an Order: (1) granting final approval of the class action settlement achieved in this matter and entering judgment pursuant to the terms of the settlement; (2) fully and finally approving and directing distribution of the Net Settlement Amount pursuant to the terms of the settlement; (3) fully and finally approving the ward of attorneys' fees in the amount of \$165,000; (4) fully and finally approving the reimbursement of actual litigation costs in the amount of \$9,900.99; (5) fully and finally approving an incentive payment totaling \$7,500 to named Plaintiff and Class Representative Robert Quintero; (6) fully and finally approving Settlement Administration Costs in the amount of \$10,000.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the declarations of Julian Burns King and Bryan Valdez in support thereof; the Joint Stipulation of Settlement and Release of Class Action; the other records, pleadings, and papers filed in this action; and upon such other documentary and verbal evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: July 17, 2020

Respectfully Submitted,

**KING & SIEGEL LLP**

By:   
\_\_\_\_\_  
Julian Burns King  
Elliot J. Siegel  
John L. Schwab  
Attorneys for Plaintiff and the Putative Class

King & Siegel LLP

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion seeks final approval of a wage and hour class action settlement between  
 4 Plaintiff Robert Quintero and Defendant Miller Milling Company, LLC (“Miller”) (collec-  
 5 tively, the “Parties”). Pursuant to the Court’s May 15, 2020 order preliminarily approving  
 6 the Settlement, notice was mailed to all Class Members on or before June 3, 2020. Valdez  
 7 Decl. ¶ 7. The reaction of Class Members to the Settlement has been overwhelmingly posi-  
 8 tive. Of the 133 Class Members, no Class Members have objected to or requested exclusion  
 9 from the Settlement. *Id.* ¶ 10. This is likely because the Settlement is a good result for the  
 10 class: it achieves almost 40% of the total maximum realistic damages exposure and is a non-  
 11 reversionary, guaranteed fund that will be automatically disbursed to all Class Members  
 12 without the need for making a claim. *See* Dkts. 19 at 8, 19-1 at ¶ 29. Given that the total ex-  
 13 posure for the strongest claim (based on time clock rounding) was only \$140,000, and the  
 14 remaining claims faced barriers to class certification, this is an excellent result. Dkts. 19 at  
 15 10, 19-1 ¶ 31. Following entry of an Order granting final approval, Class Members will re-  
 16 ceive an average of \$2,199.99, with the highest payments totaling \$3,650.07, less applicable  
 17 taxes and garnishments. Valdez Decl. ¶ 11.

18 For these reasons, Plaintiff and Class Counsel respectfully ask the Court to enter an  
 19 order granting final approval ensuring.

20 **II. THE PARTIES HAVE GIVEN THE BEST PRACTICABLE NOTICE OF THE**  
 21 **SETTLEMENT**

22 In approving a class action settlement, “the court must direct to class members the  
 23 best notice that is practicable under the circumstances, including individual notice to all  
 24 members who can be identified through reasonable effort.” Fed. R. Civ. Proc. 23(c)(2)(B);  
 25 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to  
 26 class members who can be identified through reasonable means); *Mullane v. Cent. Hanover*  
 27 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is “reason-  
 28 ably calculated, under all the circumstances, to apprise interested parties of the pendency of

1 the action and afford them an opportunity to present their objections”). The notice satisfies  
2 due process if it contains a description of the litigation and explanation of the right to opt-  
3 out of the settlement. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985).

4 The notice procedure approved by the Court was the best notice practicable. Pursu-  
5 ant to this Court’s order granting preliminary approval on May 15, 2020, Dkt. 24, CPT  
6 Group, Inc. (“Administrator”) mailed the court-approved notice to all Class Members by  
7 first class mail on June 3, 2020. Valdez Decl. ¶ 7, Ex. A (final Court-approved notice). The  
8 deadline to opt out of or object to the settlement was 35 days thereafter, on July 8, 2020. *Id.*  
9 ¶ 9. Class Members were not required to file a claim in order to participate in the settle-  
10 ment; the administration of the settlement payments to Class Members is an automatic pro-  
11 cess. *Id.* ¶ 9.

12 A total of seven notice packets were returned as undeliverable to the Administrator.  
13 The Administrator made reasonable efforts to find a valid mailing address for each of these  
14 Class Members by using standard skip-tracing devices. *Id.* ¶ 8. After the Administrator  
15 made diligent efforts to identify a correct mailing address, only two notice packets were re-  
16 turned as undeliverable. *Id.* ¶ 8.

17 The notice packet was thorough and accurately informed Class Members of their  
18 rights. It explained the Settlement; how to object; how to request exclusion; the deadlines  
19 for objecting/requesting exclusion; the attorneys’ fees to be paid under the Settlement; the  
20 incentive award to be sought under the Settlement; and individual Class Members’ estimat-  
21 ed recovery under the Settlement net of expenses, fees, incentive awards, and costs, which  
22 are all specified in the notice papers. It clearly informed Class Members that those who  
23 chose not to opt out would be bound by the Settlement. *Id.*, Ex. A. No Class Members opted  
24 out. *Id.* ¶ 10.

25 In addition, Class Counsel provided notice of the Settlement to the Labor and Work-  
26 force Development Agency, as required by PAGA, on April 3, 2020. King Decl. ¶ 36. The  
27 LWDA did not object to the Settlement. *Id.*

28 The Court should proceed to consider the fairness and adequacy of the Settlement

1 and enter an order approving it, secure in the knowledge that Class Members have been af-  
 2 forded the right and opportunity to participate fully in the approval process.

3 **III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE**  
 4 **SETTLEMENT**

5 **A. Legal Standard**

6 Federal Rule of Civil Procedure 23 provides that class actions may only be settled,  
 7 voluntarily dismissed, or compromised with the Court’s approval. Fed. R. Civ. Proc.  
 8 23(e)(1). The Court should engage in a two-step process to evaluate a proposed class action  
 9 settlement. First, the Court must decide whether the Settlement merits preliminary approv-  
 10 al. *Nat’l Rural Telecomms. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). Sec-  
 11 ond, after notice is given to class members, the Court must determine whether final approv-  
 12 al is warranted. *Id.* A court should approve a class settlement under Rule 23(e) if it “is fun-  
 13 damentally fair, adequate and reasonable.” *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370,  
 14 1375 (9th Cir. 1993) (internal quotation marks omitted); *accord In re Mego Fin. Corp. Sec.*  
 15 *Litig.*, 213 F.3d 454, 458 (9th Cir. 2000) (citation omitted).

16 Courts in the Ninth Circuit look to the following eight factors to assess whether final  
 17 approval of a settlement is warranted: “(1) the strength of the plaintiffs’ case; (2) the risk,  
 18 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class  
 19 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of dis-  
 20 covery completed and the stage of the proceedings; (6) the experience and views of counsel;  
 21 (7) the presence of a governmental participant; and (8) the reaction of class members to the  
 22 proposed settlement.” *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*6 (N.D.  
 23 Cal. Apr. 1, 2011); *Churchill Village v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004); *Hanlon*  
 24 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). “Not all of these factors will apply to  
 25 every class action settlement” and “[u]nder certain circumstances, one factor alone may  
 26 prove determinative in finding sufficient grounds for court approval.” *Nat’l Rural Tel-*  
 27 *comms.*, 221 F.R.D. at 525-26. In addition, Ninth Circuit courts consider the manner by  
 28 which the settlement was reached to ensure that it is not a product of fraud or collusion. *See*

1 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009).

2 In considering these factors, courts recognize a strong judicial policy favoring settle-  
3 ments, particularly in the context of complex class litigation. *See In re Syncor ERISA Litig.*,  
4 516 F.3d 1095, 1101 (9th Cir. 2008). The Court is should not ask whether the settlement is  
5 ideal or the best outcome, but “only whether the settlement is fair, free of collusion, and  
6 consistent with Plaintiff’s fiduciary obligations to the class.” *Barnes v. Equinox Grp., Inc.*,  
7 2013 WL 3988804, at \*2 (N.D. Cal. Aug. 2, 2013) (quoting *Hanlon*, 150 F.3d at 1027).

8 **B. Strengths of the Case and Risks of Continued Litigation**

9 The strengths of the case and risks of continued litigation are thoroughly detailed in  
10 the Motion for Preliminary Approval. Dkt. 19 at 8-12. Nonetheless, they are summarized  
11 here for reference.

12 Plaintiff’s unpaid time/unpaid overtime claims were based on Miller’s practice of  
13 rounding time clock entries to the nearest quarter-hour. This meant that, for instance, a  
14 Class Member who clocked in five minutes early and clocked out five minutes late would be  
15 deprived of ten minutes worth of wages that day. Over the Class Period, Class Members on  
16 net lost wages because of Miller’s time clock rounding policy. Class Counsel views these  
17 claims as strong and certifiable, but linked to limited damages: approximately \$140,000 of  
18 unpaid wages over the course of the class period. Dkt. 19 at 9; Dkt. 19-1 ¶ 31.

19 Plaintiff also alleged claims based on non-compliant meal and rest period policies.  
20 Specifically, Miller required workers in certain positions to agree to on-duty meal periods,  
21 and its rest period policies arguably required employees to remain on duty in certain circum-  
22 stances. These claims had higher potential damages, but significant litigation risks—  
23 primarily the vast disparities in policies applicable to employees at different work sites and in  
24 different positions. Dkt. 19 at 10-11.

25 Finally, Plaintiff sought waiting time and PAGA penalties on behalf of himself and  
26 the Class. Here, Defendant faced a wide range of discretionary penalties that would have re-  
27 quired Plaintiff to prove that violations were “willful,” which would have been challenging  
28 and risky. Dkt. 19 at 11-12.

1 The Settlement provides fair and prompt relief to Class Members in lieu of lengthy  
2 and expensive continued litigation. Defendant contested liability and raised arguments  
3 against the possibility of certifying a class, particularly with respect to unionized workers at  
4 the Oakland plant. But even if Plaintiff *had* succeeded in certifying the Class as to all claims,  
5 the Parties would have proceeded to trial, with the inherent possibility of a subsequent ap-  
6 peal. The immediate and substantial recovery now, versus a years-long trial and appeal pro-  
7 cess regarding various potential issues, weighs in favor of approval. *See Nat'l Rural Tele-*  
8 *comms.*, 221 F.R.D. at 526-27 (“Avoiding such a trial and the subsequent appeals in this  
9 complex case strongly militates in favor of settlement rather than further protracted and un-  
10 certain litigation.”).

11 **C. Amount Offered in Settlement**

12 The reasonable high-end exposure estimated by Plaintiff and its expert is approxi-  
13 mately \$1.3 million (including penalties). In light of Defendant’s continued non-admission  
14 of liability, the Court can and should discount the total value of the claims given the risks  
15 and costs described above.

16 A Settlement of almost 40% the total estimated exposure falls well within the bounds  
17 of reasonableness. *See Ma*, 2014 WL 360196 at \*5 (finding a settlement that is 9.1% of the to-  
18 tal value of the action is within the range of reasonableness) (citing *Linney v. Cellular Alaska*  
19 *Partnership*, 151 F. 3d 1234, 1242 (9th Cir. 1998)). A settlement may be fair and reasonable  
20 even where it provides only a fraction of what could have been obtained at trial. *Linney v.*  
21 *Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (compromise is essence of set-  
22 tlement); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 & n.2 (2nd Cir. 1974) (“that a  
23 proposed settlement may only amount to a fraction of the potential recovery does not, in and  
24 of itself, mean that the proposed settlement is” inadequate and should be disapproved).  
25 Here, the Settlement compensates the Class Members for their unpaid time due to round-  
26 ing, in addition to approximately 1/3 of the total exposure for the remaining claims, which  
27 are challenging. This is a positive result.

28

1           **D.     Extent of Discovery Completed and Stage of Proceedings**

2           The amount of discovery completed affects approval of a stipulated settlement be-  
3 cause it indicates whether the parties have had an “adequate opportunity to assess the pros  
4 and cons of settlement and further litigation.” *In re Cylink Sec. Litig.*, 274 F. Supp. 2d 1109,  
5 1112 (N.D. Cal. 2003).

6           Here, as recounted in detail in the Motion for Preliminary Approval, Dkt. 19 at 3-4,  
7 15, Plaintiff’s counsel requested significant evidence and documentation as a condition of  
8 engaging in early mediation. Specifically, counsel for Plaintiff requested and received the fol-  
9 lowing informal discovery in early December 2019: (1) the collective bargaining agreement  
10 applicable to employees in the Oakland facility; (2) all three employee handbooks used dur-  
11 ing the Class Period that set forth formal written meal and rest break policies; (3) updated  
12 policies implemented in Fall 2019 that evidence elimination of time clock rounding proce-  
13 dures; (4) meal period waivers executed by putative Class Members; (5) all employee punch  
14 records, by employee ID number and facility, from 2015 through the end of August 2019; (6)  
15 the total number of workweeks and putative class members; and (7) the final rate of pay for  
16 each putative Class Members, by employee ID number. King Decl. ¶ 13.

17           In September 2019, counsel for Miller proposed mediation. King Decl., ¶ 12. Plaintiff  
18 agreed to mediate in December 2019, provided counsel for Miller produced documents suf-  
19 ficient to permit a full and fair evaluation of the claims alleged on behalf of the Class. Specif-  
20 ically, counsel for Plaintiff requested and received the following informal discovery in early  
21 December 2019: (1) the collective bargaining agreement applicable to employees in the Oak-  
22 land facility; (2) all three employee handbooks used during the Class Period that set forth  
23 formal written meal and rest break policies; (3) updated policies implemented in Fall 2019  
24 that evidence elimination of time clock rounding procedures; (4) meal period waivers exe-  
25 cuted by putative Class Members; (5) *all* employee punch records, by employee ID number  
26 and facility, from 2015 through the end of August 2019; (6) the total number of workweeks  
27 and putative class members; and (7) the final rate of pay for each putative Class Members,  
28 by employee ID number. King Decl. ¶ 13.

1 Plaintiff's counsel analyzed all of the data provided by Miller and retained the ser-  
 2 vices of an expert, Jarrett Gorlick, who conducted numerous data analyses, including but not  
 3 limited to whether Miller's rounding policy systematically undercompensated putative  
 4 Class Members; the amounts of all underpayments; the number of missed meal periods  
 5 based on time punch data; the number of rest periods to which putative Class Members  
 6 were entitled; and the maximum and realistic exposure for each claim alleged in the Com-  
 7 plaint. *Id.* ¶ 15. Miller's production was fulsome and allowed Plaintiff's counsel to develop a  
 8 sound understanding of the merits of the claims; their value; and the viability of the defenses  
 9 asserted by Defendant. *Id.* ¶ 16.

10 **E. Counsel Believes the Settlement is in the Best Interest of the Settlement**  
 11 **Class**

12 Counsel's views and experience also weigh in favor of approving the Settlement. *See*  
 13 *Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir.1996) (noting that a district court is "entitled to  
 14 give consideration to the opinion of competent counsel that the settlement [is] fair, reason-  
 15 able, and adequate"); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980)  
 16 ("[T]he fact that experienced counsel involved in the case approved the settlement after  
 17 hard-fought negotiations is entitled to considerable weight.") *aff'd*, 661 F.2d 939 (9th Cir.  
 18 1981).

19 Plaintiff's counsel has a significant history of litigating complex cases, including class  
 20 actions, and has represented classes at settlement and class certification phases of numer-  
 21 ous class actions. King Decl. ¶¶ 3-11. Plaintiff's counsel conducted vigorous investigation  
 22 of the claims and defenses in this action, including interviewing class members, reviewing  
 23 policy documents, reviewing time clock and pay rate data, and retaining an expert to evalu-  
 24 ate damages exposure based on this information. *Id.* ¶¶ 12-17. This analysis led Plaintiff's  
 25 counsel to develop a thoughtful and informed opinion that the Settlement amount and the  
 26 terms of the Settlement are fair, adequate, and reasonable. *Id.* ¶ 19.

27 **F. There Are No Opt-Outs or Objectors**

28 The Court may appropriately infer that the class action settlement is fair, adequate

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1 and reasonable when, among other reasons, few class members object to it. *Class Plaintiffs v.*  
2 *City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); *see also Hanlon*, 150 F.3d at 1027 (“[T]he  
3 fact that the overwhelming majority of the class willingly approved the offer and stayed in  
4 the class presents at least some objective positive commentary as to its fairness.”).

5 Here, the reaction of the Settlement Class Members has been one of overwhelming  
6 approval. No Class Members requested exclusion, and there are no objections to the Settle-  
7 ment. Valdez Decl. ¶ 10. *See Bolton v. U.S. Nursing Corp.*, 2013 WL 5700403, at \*2, \*4  
8 (N.D. Cal. Oct. 18, 2013) (approving settlement where no objections filed and one of 2,765  
9 class members requested exclusion from settlement).

10 **IV. THE REQUESTED FEES, COSTS, AND ENHANCEMENT ARE**  
11 **REASONABLE**

12 As detailed in Plaintiff’s Motion for Attorneys’ Fees, Costs, and Class Representa-  
13 tive Incentive Payment, Plaintiff and Class Counsel respectfully request that the Court ap-  
14 prove Class Counsel’s application for attorneys’ fees in the amount of \$165,000 (33% of the  
15 Gross Settlement Amount), reimbursement of actual litigation costs of \$9,900.99 (well be-  
16 low the allotted \$20,000 in the Settlement), Administrator’s costs of \$10,000, and a Class  
17 Representative incentive payment of \$7,500.

18 These awards and reimbursements are all warranted in light of the work performed  
19 on behalf of the Class, particularly in light of the Class Members’ overwhelming approval of  
20 the Settlement.

21 **V. CONCLUSION**

22 For all of the foregoing reasons, the Plaintiff respectfully requests that the Court enter  
23 an order granting final approval to the Settlement, approving distribution of the Settlement  
24 funds to Class Members pursuant to the terms of the Settlement, approving Plaintiff’s re-  
25 quest for an incentive award or enhancement payment, approving Plaintiff’s request for an  
26 award of attorneys’ fees and litigation costs pursuant to the terms of the Settlement, and en-  
27 tering final judgment as to all members of the Class in this action.

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Dated: July 17, 2020

Respectfully Submitted,

**KING & SIEGEL LLP**

By: 

Julian Burns King  
Elliot J. Siegel  
John L. Schwab

Attorneys for Plaintiff and the Putative Class

King & Siegel || LLP

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**I, Julian Burns King, certify and declare as follows:**

I am employed in the County of Los Angeles, California. I am over the age of eighteen and I am not a party to this action. My business address is King & Siegel LLP, 724 S. Spring Street, Ste. 201, Los Angeles, California 90014.

On July 17, 2020, I served the following documents using the method(s) of service indicated herein:

- 1. Motion for Final Approval of Class Action Settlement**
- 2. Declaration of Julian Burns King**
- 3. Declaration of Bryan Valdez**
- 4. [Proposed] Order**

These documents have been served on the interested parties in this action identified below:

**Defendant Miller Milling Company, LLC**  
c/o Gabrielle M. Wirth  
c/o Nisha Verma  
DORSEY & WHITNEY LLP  
600 Anton Blvd., Suite 2000  
Costa Mesa, CA 92626

**[X] BY ELECTRONIC SERVICE:** I hereby certify that a copy of the preceding document was electronically filed and served through the Court’s ECF system and was mailed to the address set forth above by US Mail, postage prepaid.

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

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

By:   
Julian Burns King