

SEP 16 2019

STEPHANIE CAMERON, CLERK
BY: *[Signature]*

1 Jeremy F. Bollinger (SBN 240132)
2 Dennis F. Moss (SBN 77512)
3 Ari E. Moss (SBN 238579)
4 **MOSS BOLLINGER LLP**
5 15300 Ventura Blvd., Ste. 207
6 Sherman Oaks, California 91403
7 Telephone: (310) 982-2984
8 Facsimile: (310) 861-0389
9 jeremy@mossbollinger.com
10 dennis@mossbollinger.com
11 ari@mossbollinger.com

12 Attorneys for Plaintiff RAFAEL NUNEZ COVARRUBIAS

13 Howard A. Sagaser (SBN 72492)
14 Ian B. Wieland (SBN 285721)
15 Amanda M. Kjar (SBN 298680)
16 **SAGASER, WATKINS & WIELAND, PC**
17 5260 North Palm Avenue, Suite 400
18 Fresno, California 93704
19 Telephone: (559) 421-7000
20 Facsimile: (559) 473-1483

21 Attorneys for Defendant WESTERN MILLING LLC

22
23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **FOR THE COUNTY OF TULARE**

25 RAFAEL NUNEZ COVARRUBIAS, an
26 individual, on behalf of himself and all others
27 similarly situated,

28 Plaintiffs,

vs.

Western Milling, LLC, a California limited
liability corporation; and DOES 1-50, inclusive,

Defendants.

Case No.: VCU273798

CLASS ACTION

[PROPOSED] FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT; AND JUDGMENT

(Filed concurrently with the Notice of Motion and Motion for Final Approval of Class Settlement; Declarations of Jeremy F. Bollinger, Ari E. Moss, Elizabeth Kruckenberg, Rafael Nunez Covarrubias, Mark La Bounty; and Supplemental Declaration of Rafael Nunez Covarrubias)

Date: September 12, 2019

Time: 8:30 a.m.

Judge: Hon. David C. Mathias

Department: 2

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
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Plaintiffs,

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**~~PROPOSED~~ FINAL ORDER
APPROVING CLASS ACTION
SETTLEMENT; AND JUDGMENT**

1 The above-referenced class action ("Action") having come before the Court on September
2 12, 2019, for a hearing and Final Order Approving Class Settlement and Judgment ("Final
3 Order"), consistent with the Court's Revised Preliminary Approval Order ("Preliminary Approval
4 Order"), entered April 18, 2019, and as set forth in the Stipulation of Class Settlement and the
5 Exhibits attached thereto (hereafter collectively, the "Settlement Agreement") in the Action, and
6 due and adequate notice having been given to all Class Members as required in the Preliminary
7 Approval Order, and the Court having considered all papers filed and proceedings had herein and
8 otherwise being fully informed and good cause appearing therefore,

9 **THE COURT HEREBY ORDERS AS FOLLOWS:**

10 1. For purposes of this Final Order, the Court incorporates by reference the
11 definitions in the Settlement Agreement, and all defined terms herein shall have the same
12 meaning as set forth in the Settlement Agreement.

13 2. Consistent with the definitions in the Settlement Agreement, the term "Settlement
14 Class" and "Class Members" is defined as all current and former hourly-paid, non-exempt
15 employees employed by Defendant Western Milling LLC ("Defendant" or "Western Milling") in
16 California at any time during the period of May 4, 2014 through November 30, 2018,
17 ("Settlement Class Member"). The Settlement Class, however, shall not include any person who
18 opted out by submitting a timely and valid Request for Exclusion as provided in this Settlement.
19 For purposes of the Settlement and this Final Order, "Released Parties" shall mean Defendant,
20 including all of Defendant's past, present and future direct or indirect predecessors, successors,
21 subsidiaries, investors, parent companies, holding companies, sister and affiliated companies,
22 divisions, assigns and other related entities, as well as their successors, predecessors,
23 shareholders, subsidiaries, investors, parent, sister and affiliated companies, officers, directors,
24 partners, members, managers, assigns, agents, employees, principals, heirs, administrators,
25 attorneys, vendors, accountants, auditors, consultants, fiduciaries, insurers, reinsurers, employee
26 benefit plans, and representatives of each of them, both individually and in their official or
27 corporate capacities, past or present, as well as all persons acting by, through, under or in concert
28 with any of these persons or entities.

1 3. This Court has jurisdiction over the subject matter of this Action and over all
2 Parties to this Action, including all Class Members.

3 4. Distribution of the Notice and the Claim Form directed to the Class Members as
4 set forth in the Settlement Agreement and the other matters set forth therein has been completed
5 in conformity with the Preliminary Approval Order, including individual notice to all Class
6 Members who could be identified through reasonable effort, and the best notice practicable
7 under the circumstances. The Notice provided due and adequate notice of the proceedings and
8 of the matters set forth therein, including the proposed Settlement set forth in the Settlement
9 Agreement, to all persons entitled to such Notice, and the Notice fully satisfied the requirements
10 of due process. All Class Members and all Released Claims are covered by and included within
11 the Settlement and this Final Order.

12 5. The Court hereby finds the Settlement was entered into in good faith pursuant to
13 and within the meaning of California Code of Civil Procedure section 877.6. The Court further
14 finds that the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the
15 standards and applicable requirements for final approval of this class action settlement under
16 California law, including the provisions of California Code of Civil Procedure section 382 and
17 Federal Rule of Civil Procedure 23, approved for use by the California state courts in *Vasquez*
18 *v. Superior Court* (1971) 4 Cal.3d 800, 821.

19 6. The Court hereby approves the Settlement set forth in the Settlement Agreement,
20 and finds that the Settlement, including the Gross Settlement Amount (which is Eight Hundred
21 Thousand Dollars [\$800,000.00]) is, in all respects, fair, adequate and reasonable, and directs
22 the Parties to effectuate the Settlement according to its terms. The Court finds that the
23 Settlement has been reached as a result of intensive, serious and non-collusive arms-length
24 negotiations. The Court further finds that the Parties have conducted extensive investigation
25 and research, and counsel for the Parties are able to reasonably evaluate their respective
26 positions. The Court also finds that Settlement at this time will avoid additional substantial
27 costs, as well as avoid the delay and risks that would be presented by the further prosecution of
28 the Action. The Court has reviewed the benefits that are being granted as part of the Settlement

1 and recognizes the significant value to the Class Members. The Court also finds that the Class
2 is properly certified as a class for settlement purposes only.

3 7. As of the date of entry of this Final Order, each and every Released Claim (as
4 defined in the Settlement Agreement and set forth below) of each and every Participating
5 Settlement Class Member is and shall be deemed to be conclusively released as against the
6 Released Parties. As of the date of this Final Order, the Class Representative and each and
7 every Class Member who has not submitted a valid request for exclusion ("Verified Settlement
8 Class Members" or "Participating Settlement Class Members") is hereby released and forever
9 barred and enjoined from prosecuting the Released Claims, except as to such rights or claims as
10 may be created by the Settlement, against Defendant and the Released Parties from any and all
11 claims, debts, liabilities, demands, obligations, guarantees, liens, promises, penalties, costs,
12 expenses, interest, restitution, attorneys' fees and costs, losses, damages, liquidated damages,
13 punitive damages, equitable relief, complaints, actions or causes of action of whatever kind or
14 nature, whether known or unknown, contingent or accrued, against Defendant or the Released
15 Parties or any of them, under any state, municipal or federal law, statute, ordinance, regulation,
16 order or common law principle or theory, arising out of or related to the First Amended
17 Complaint, including without limitation: (1) wage statement claims (Lab. Code Sect. 226); (2)
18 waiting time penalties (Lab. Code Sect. 203) arising from a termination during the period
19 beginning three years preceding the filing of the complaint; (3) Labor Code Sect. 226.7 claims;
20 (4) PAGA claims arising from the aforementioned Labor Code violations; (5) Bus. & Prof.
21 Code Sect. 17200 et seq.; (6) any other claims alleged in the First Amended Complaint,
22 including damages, penalties, interest and other amounts recoverable under said causes of
23 action under California law, including but not limited to the California Labor Code and
24 California Unfair Competition Law; and (7) interest, attorney's fees, and costs arising from any
25 of the above, arising between May 4, 2014 through November 30, 2018

26 8. Neither the Settlement nor any of the terms set forth in the Settlement
27 Agreement is an admission by Defendant, or any of the other Released Parties, nor is this Final
28 Order a finding of the validity of any claims in the Action or of any wrongdoing by Defendant,

1 or any of the other Released Parties. Neither this Final Order, the Settlement Agreement, nor
2 any document referred to herein, nor any action taken to carry out the Settlement Agreement is,
3 may be construed as, or may be used as, an admission by or against Defendant, or any of the
4 other Released Parties, of any fault, wrongdoing or liability whatsoever. The entering into or
5 carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto,
6 shall not in any event be construed as, or deemed to be evidence of, an admission or concession
7 with regard to the denials or defenses by Defendant, or any of the other Released Parties, and
8 shall not be offered in evidence in any action or proceeding in any court, administrative agency
9 or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final
10 Order, the Settlement Agreement, the Released Claims, or any related agreement or release.
11 Notwithstanding these restrictions, any of the Released Parties may file in the Action, or submit
12 in any other proceeding, the Final Order, the Settlement Agreement, and any other papers and
13 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
14 *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense as to
15 the Released Claims.

16 9. The Court hereby enters judgment in the entire Action as of the filing date of this
17 Final Order, pursuant to the terms set forth in the Settlement Agreement. Without affecting the
18 finality of this Final Order in any way, the Court hereby retains continuing jurisdiction over the
19 interpretation, implementation and enforcement of the Settlement and all orders entered in
20 connection therewith pursuant to California Code of Civil Procedure section 664.6.

21 10. The Court finds the settlement payments provided for under the Settlement to be
22 fair and reasonable in light of all of the circumstances. The Court orders the calculations and
23 the payments to be made and administered in accordance with the terms of the Settlement
24 Agreement.

25 11. The Court hereby confirms Jeremy Bollinger, Ari Moss and Dennis Moss of
26 Moss Bollinger LLP as Class Counsel in the Action.

27 12. Pursuant to the terms of the Settlement, and the authorities, evidence and
28 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in

1 the amount of Two Hundred Sixty Four Thousand Dollars (\$264,000), and attorneys' costs in
2 the amount of Eight Thousand Nine Hundred Dollars (\$8,900), from the Gross Settlement
3 Amount as final payment for and complete satisfaction of any and all attorneys' fees and costs
4 incurred by and/or owed to Class Counsel and any other person or entity related to the Action.
5 The Court further orders that the award of attorneys' fees and costs set forth in this Paragraph
6 shall be administered pursuant to the terms of the Settlement Agreement, and transferred and/or
7 made payable to Class Counsel in the Action.

8 13. The Court also hereby approves and orders a Service Award payment to Plaintiff
9 and Class Representative Rafael Nunez Covarrubias in the amount of Ten Thousand Dollars
10 (\$10,000.00) from the Gross Settlement Amount.

11 14. The Court also hereby approves and orders payment in the amount of Seven
12 Thousand Five Hundred Dollars (\$7,500.00) from the Gross Settlement Amount for 75% of the
13 PAGA penalties, payable to the California Labor Workforce Development Agency.

14 15. The Court also hereby approves and orders payment from the Gross Settlement
15 Amount for actual claims administration expenses incurred by the Claims Administrator,
16 Phoenix Settlement Administrators, in the amount of Twelve Thousand Five Hundred Dollars
17 (\$12,500).

18 16. The Court also hereby approves and orders that any residue from uncashed
19 Settlement Award checks after the expiration date will be distributed back to Defendant for the
20 benefit of the employees of Defendant through Western Milling's Employee Stock Ownership
21 Plan ("ESOP") and finds that California Code of Civil Procedure section 384(b) does not apply
22 because any un-cashed checks will be distributed for the benefit of class members through the
23 ESOP.

24 17. The Court also hereby finds and orders that the Settlement Agreement is and
25 constitutes a fair, adequate, and reasonable compromise of the Released Claims against
26 Defendant and the Released Parties.

27 18. Provided the Settlement becomes effective under the terms of the Settlement
28 Agreement, the Court also hereby orders that Defendant will pay the Gross Settlement Amount

1 to the Claims Administrator within ten (10) calendar days after the Effective Date defined in the
2 Settlement Agreement, and that the Claims Administrator will mail the Court-approved
3 Settlement Awards, Attorneys' Fees and Costs, and Service Payment within fifteen (15)
4 calendar days after such payment is received by the Claims Administrator.

5 19. The Court also hereby finds that there were no objections to the Settlement
6 raised by any person on the record at the hearing on the Final Order.

7 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

8 *Per 9/12/19 adopted tentative ruling.*

9 Dated: 9/16/19

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11 HON. DAVID C. MATHIAS
12 JUDGE OF THE SUPERIOR COURT
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