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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 26 2022

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ALAN CHILDS and EDUARDO GARCIA,
individually, and on behalf of other members of
the general public similarly situated,

Plaintiffs,

v.

DAL CHEM, INC., d/b/a ALEXIS OIL
COMPANY, a California corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2100684

Assigned for All Purposes to:
Honorable Craig Riemer
Department 1

CLASS ACTION

**[PROPOSED] ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: October 26, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: February 10, 2021
FAC Filed: September 29, 2021
Trial Date: None Set

1 On October 26, 2022 at 8:30 a.m., Plaintiffs Alan Childs and Eduardo Garcia ("Plaintiffs,"
2 "Plaintiff Childs," or "Plaintiff Garcia") Motion for Final Approval of Class Action Settlement,
3 Attorneys' Fees, Attorneys' Costs, and Class Representative Service Awards came before the
4 Court in Department 1 for a hearing pursuant to the Order Granting Preliminary Approval of the
5 Class Action Settlement, dated May 26, 2022 ("Preliminary Approval Order"). Plaintiffs' Motion
6 for Final Approval of Class Action Settlement, Attorneys' Fees, Attorneys' Costs, and Class
7 Representative Service Awards is based on the Parties' Amended Stipulation of Settlement
8 ("Stipulation" or "Settlement") attached as **Exhibit 2** to the Further Supplemental Declaration of
9 Douglas Han In Support of Plaintiffs' Motion For Preliminary Approval of Class Action
10 Settlement filed on February 24, 2022. Since adequate notice was given to the Class as required
11 in the Court's Preliminary Approval Order, and the Court considered all the papers filed and
12 proceedings held herein, it is ORDERED, ADJUDGED AND DECREED THAT:

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

CR 14 1. This Order incorporates by reference the definitions in the Stipulation, but not
15 defined herein, ~~shall have the same meanings as in the Stipulation.~~

16 2. This Court has jurisdiction over the subject matter of the case and over all Parties
17 to the case, including all Class Members.

18 3. The Motion for final approval is granted. The Court approves the settlement, as
19 set forth in the Stipulation and each of the releases and other terms, as fair, reasonable, and
20 adequate. The Parties are directed to perform in accordance with the terms set forth in the
21 Stipulation and this Order of Final Approval and Judgment ("Order and Judgment"). Pursuant to
22 this, the Court makes the following awards and approves the following payments:

CR 23 a. ^{58,000.00}~~\$62,333.33~~ to Class Counsel as the attorneys' fees;¹

CP 24 b. ^{13,475.30}~~\$13,647.81~~ to Class Counsel as the attorneys' costs;

25
26
27 ¹ The Parties agreed to request attorneys' fees that are one-third (1/3) of the Gross
28 Settlement Amount instead of thirty-five percent (35%) of the Gross Settlement Amount as
reflected in the Settlement Agreement.

- CR
- 6000 3,000
- c. ~~\$15,000~~ to Plaintiffs as the Class Representative Service Awards (~~\$7,500~~ to Plaintiff Childs and ~~\$7,500~~ to Plaintiff Garcia);
- d. \$2,995 to Simpluris, Inc. ("Simpluris"), the Settlement Administrator, as the Settlement Administrator's costs and expenses; and
- e. \$10,000 to the California Labor and Workforce Development Agency ("LWDA") and Aggrieved Employees as the Private Attorneys General Act of 2004 ("PAGA") payment (\$7,500 to the LWDA and \$2,500 to the Aggrieved Employees).

4. Except for the payment due under the Stipulation, the Parties are to bear their own costs and attorneys' fees. The Court approves the Stipulation, and Defendant Dal Chem, Inc. dba Alexis Oil Company ("Defendant") and the Released Parties are discharged from all Class Released Claims and PAGA Released Claims according with the terms of the Stipulation.

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5. In this lawsuit, Plaintiffs sued Defendant for a variety of Labor Code violations. The operative complaints allege Defendant: (a) ~~had a collection of~~ ^{owed} due and unpaid wages per Labor Code section 229; (b) violated Business & Professions Code section 17200, *et seq.*; and (3) violated Labor Code section 2698, *et seq.* (PAGA).

6. In California, the notice to class members must have "a reasonable chance of reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251. More importantly, Plaintiffs need not demonstrate each member of the class received notice. If the notice had a "reasonable chance" of reaching a substantial percentage of class members, it should be found effective.

7. Simpluris is providing settlement administration services for this settlement. (Declaration of Christina Fowler Regarding Notice and Settlement Administration ("Fowler Decl."), ¶¶ 1-4.) On June 3, 2022, Simpluris received the Court-approved Notice Packet. (*Id.* at ¶ 5.) On June 13, 2022, Defendant delivered to Simpluris the Class Data and PAGA Data that contained information for forty-seven (47) Class Members. (*Id.* at ¶ 6.) On June 27, 2022, Simpluris mailed Notice Packets to forty-seven (47) Class Members via regular First-Class Mail and indicated the Response Deadline was August 26, 2022. (Fowler Decl., *supra*, at ¶ 7.)

1 Simpluris remailed returned Notice Packets using forwarding addresses affixed thereto or using
2 an Accurint search/skip-trace to locate updated addresses. (*Id.* at ¶ 8.) Ultimately, there were no
3 undelivered Notice Packets. (*Id.* at ¶ 9.) Simpluris received no disputes, no objections, and no
4 requests for exclusion. (*Id.* at ¶¶ 10-12.)

5 8. Based on the foregoing, the Court finds the notice provided to Class Members
6 conforms to due process requirements.

7 9. It is the Court's duty to conduct an inquiry in the fairness of the settlement.
8 California Practice Guide, Civil Procedure Before Trial, The Rutter Group, ¶ 14:139.12 (2012).
9 The Court has broad discretion to determine if a settlement is fair. In doing so, the Court considers
10 the following: (a) strength of the case; (b) risk, expense, complexity, and duration of further
11 litigation; (c) risk of maintaining class action status through trial; (d) amount offered in settlement;
12 (e) extent of discovery completed and stage of the proceedings; (f) experience and views of
13 counsel; (g) presence of a governmental participant; and (h) reaction of the class members to the
14 settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re Microsoft I-V Cases*
15 (2006) 135 Cal.App.4th 706, 723. This list is not exclusive, and the Court is free to balance and
16 weigh the factors depending on the circumstances of the case. *Wershba v. Apple Computer, Inc.*
17 (2001) 91 Cal.App.4th 224, 244-245.

18 10. The proponent bears the burden of proof to show the settlement is fair, adequate,
19 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
20 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption a settlement is
21 fair and reasonable when it is the result of arm's-length negotiations. 2 Herbert Newburg & Albert
22 Conte, *Newburg on Class Actions* § 11.41 at 11-88 (3d ed. 1992); *Manual for Complex Litigation*
23 (Third) § 30.42.

24 11. If the case had not settled, there would have been additional risks and expenses
25 associated with continuing to litigate. Procedural hurdles (*i.e.*, motion practice and appeals) are
26 likely to prolong the litigation as well as any recovery by the Class Members.

27 12. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010)
28 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain

1 some flexibility in conducting class actions, which means, under suitable circumstances,
2 entertaining successive motions on certification if the court subsequently discovers that the
3 propriety of a class action is not appropriate.”)

4 13. As part of the Court’s analysis of this factor, the Court should consider the
5 admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. In *Kullar*,
6 objectors to a class settlement argued the trial court erred in finding the terms of the settlement to
7 be fair, reasonable, and adequate without any evidence of the amount to which class members
8 would be entitled if they prevailed in the litigation, and without any basis to evaluate the
9 reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors that the
10 trial court bore the ultimate responsibility to ensure the reasonableness of the settlement terms.
11 Although many factors had to be considered in making that determination, and the court was not
12 required to decide the ultimate merits of class members’ claims before approving a settlement. In
13 other words, an informed evaluation could not be made without an understanding of the amount
14 in controversy and the realistic range of outcomes of the litigation.

15 14. Defendant agreed to settle for the non-reversionary sum of \$187,000. Defendant
16 will have no obligation to pay any amount in connection with the Settlement apart from the Gross
17 Settlement Amount and the employer’s share of payroll taxes due on the portion of Settlement
18 Awards allocated to wages. Moreover, none of the Gross Settlement Amount will revert to
19 Defendant. According to Simpluris’ calculations, the *average* gross Settlement Award is
20 approximately \$1,766.47, the *highest* gross Settlement Award is about \$4,579.89, and *lowest*
21 gross Settlement Award is around \$1.75. (Fowler Decl., *supra*, at ¶ 14.)

22 15. Class Counsel’s investigation included discovery, reviewing Defendant’s policy
23 records, reviewing a sampling of time and pay records, reviewing personnel records, and forming
24 a damage model based on all of these. (Declaration of Douglas Han In Support of Plaintiffs’
25 Motion For Preliminary Approval of Class Action Settlement filed on October 20, 2021, ¶¶ 16-
26 17.) The Parties mediated this case with Lisa Klerman, a respected and highly experienced
27 mediator in wage and hour class actions. Class Counsel also discussed all aspects of the case,
28 including the risks of litigation and the risks to both Parties of proceeding with a motion for class

1 certification. (Declaration of Douglas Han In Support of Plaintiffs' Motion for Final Approval
2 of Class Action Settlement ("Han Final Decl."), ¶ 8.)

3 16. Class Counsel have extensive experience with wage-and-hour class litigation.
4 (Han Final Decl., *supra*, at ¶¶ 39-46; Exhibit 5.) Class Counsel are of the opinion the Settlement
5 is in the best interest of the Class and provides substantial benefit to the Class. (*Id.* at ¶¶ 8-10.)

6 17. The Class reacted positively with participation rate of one hundred percent
7 (100%). (Fowler Decl., *supra*, at ¶ 13.)

8 18. On balance, this is a fair settlement that satisfies the *Dunk* factors such that final
9 approval is warranted.

10 19. Fees are sought pursuant to the percentage method. The determination of what
11 constitutes an appropriate percentage "is somewhat elastic and depends largely on the facts of a
12 given case, but certain factors are commonly considered. Specifically, the court may address the
13 percentage likely to have been negotiated between private parties in a similar case, percentages
14 applied in other class actions, the quality of class counsel, and the size of the award." *In re Ikon*
15 *Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

16 20. These factors favor the requested attorneys' fees. As for the first factor, private
17 contingency fee agreements are routinely thirty percent (30%) to forty percent (40%) of the
18 recovery. (*In re Ikon Office Solutions, Inc., Securities Litigation, supra*, 194 F.R.D. at 194.) As
19 for the second factor, although the median percentage of attorney fees in class action is twenty-
20 five percent (25%), "most fees appear to fall in the range of nineteen to forty-five percent." (*In*
21 *re Ikon Office Solutions, Inc., Securities Litigation, supra*, 194 F.R.D. at 194.) As for the third
22 factor, Class Counsel have experience in class actions, including wage-and-hour cases. Most
23 importantly, Class Counsel achieved reasonable results for the Class as evidenced by the Class
24 Members' reaction to the Settlement. As for the fourth factor, Class Counsel negotiated a Gross
25 Settlement Amount of \$187,000. Applying the lodestar cross-check, Class Counsel indicate they
26 invested 248.2 hours of attorney time on this matter. (Han Final Decl., *supra*, at ¶ 22.) The base
27 lodestar fees for Class Counsel is \$159,440. (*Ibid.*) The hourly rates appear to be reasonable for
28 attorneys with their respective years of experience, and the hours spent are reasonable for this

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1 case, which has been pending for over one and one-half (1.5) years. It appears Class Counsel
2 utilized skill in litigating this case and have good reputations in the legal community. It also
3 appears Class Counsel spent appreciable time on the case, which time could have been spent on
4 other meritorious fee generating cases. Based on the \$159,440 base lodestar fees, the requested
5 attorneys' fees translates into a negative multiplier of 0.39. (*Ibid.*) ~~Because the requested~~
6 ~~attorneys' fees is based on a reasonable percentage of the settlement fund, is supported by the~~
7 ~~lodestar calculation, and did not receive any objections from the Class, the Court awards the~~
8 ~~requested attorneys' fees.~~ For these reasons, the Court hereby grants final approval of the
9 requested attorneys' fees of \$62,333.33. *in the reduced sum of \$58,000.00*

CR
10 21. Class Counsel requested attorneys' costs of up to \$20,000. (Han Final Decl.,
11 *supra*, at ¶ 33.) Class Counsel's actual costs and expenses incurred total \$13,647.81 and consist
12 of filing fees, mediation fees, court appearances, copying, filing, and service. (*Ibid.*) These costs
13 appear reasonable and necessary to the conduct of the litigation. Furthermore, as with the
14 requested attorneys' fees, the maximum cost request was disclosed to Class Members, and no
15 objection were submitted. (*Ibid.*) ~~For these reasons,~~ The Court hereby grants final approval of the
16 requested attorneys' costs of \$13,647.81. *13,475.30*

17 22. Simpluris requests Settlement Administrator's costs and expenses of \$2,995.
18 (Fowler Decl., *supra*, at ¶ 16.) Based upon the work performed and work yet to be performed,
19 including the fact the Class was provided notice that up to \$7,500 will be allocated as the
20 Settlement Administrator's costs and expenses and none objected, the request for the Settlement
21 Administrator's costs and expenses of \$2,995 is granted.

22 23. The Court approves the PAGA payment of \$10,000 (\$7,500 of which will be paid
23 to the LWDA and \$2,500 of which will be paid to Aggrieved Employees).

24 24. Finally, Class Counsel seeks Class Representative Service Awards of \$7,500 to
25 each Plaintiff (\$7,500 to Plaintiff Childs and \$7,500 to Plaintiff Garcia). The Court considers the
26 following factors, among others, in determining whether to pay an incentive or enhancement
27 award to a class representative: (a) whether an incentive was necessary to induce the class
28 representative to participate; (b) actions taken by the class representative to protect the interests

1 of the class; (c) degree to which the class benefited from those actions; (d) amount of time and
2 effort the class representatives expended in pursuing the litigation; (e) risk to the class
3 representative in commencing suit, both financial and otherwise; (f) notoriety and personal
4 difficulties encountered by the class representative; (g) duration of the litigation; and (h) personal
5 benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. California
6 Practice Guide, Civil Procedure Before Trial, ¶ 14:146.10 (The Rutter Group 2012) (citing *Clark*
7 *v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins.*
8 *Exch.* (2004) 115 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186
9 Cal.App.4th 1380, 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
10 Cal.App.4th 399, 412. Plaintiffs devoted several hours to this litigation. (Declaration of Alan
11 Childs In Support of Plaintiffs' Motion For Final Approval of Class Action Settlement ("Childs
12 Decl."), ¶¶ 6-10; Declaration of Eduardo Garcia In Support of Plaintiffs' Motion For Final
13 Approval of Class Action Settlement ("Garcia Decl."), ¶ 6-10.) Plaintiffs assisted their attorneys
14 by having multiple conferences with them and by providing documents. (Childs Decl., *supra*, at
15 ¶¶ 6-9; Garcia Decl., *supra*, at ¶¶ 6-9.) Plaintiffs also helped Class Counsel prepare for mediation
16 and made themselves available during mediation telephonically and via Zoom. (Childs Decl.,
17 *supra*, at ¶ 10; Garcia Decl., *supra*, at ¶ 10.) Plaintiffs freely chose to champion the rights of the
18 class, accepted the expenses, risks, and sacrifices associated with acting as the class
19 representatives, and do not have interests averse to the Class. (Childs Decl., *supra*, at ¶¶ 11, 13,
20 15-17; Garcia Decl., *supra*, at ¶¶ 11, 13, 15-17.) The Court grants the Class Representative
21 Service Awards of ^{3,000}~~7,500~~ to each Plaintiff for the following reasons: (a) significant time Plaintiffs
22 spent on this matter; (b) benefits Plaintiffs' action conferred; and (c) risks and sacrifices
23 associated with serving as class representatives.

24 25. Plaintiffs are the Court-appointed class representatives.

25 26. Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor Nobles of Justice Law
26 Corporation are the Court-appointed Class Counsel.

27 27. For purposes of effectuating this Order and Judgment, this Court has certified the
28 following Class: "all current and former hourly employees of Defendant who worked in

1 California at some time between August 15, 2016 and July 31, 2021.” The Court deems this
2 definition sufficient for purposes of California Rules of Court, rule 3.765.(a).

3 28. By this Order and Judgment, Plaintiffs and class representatives shall release and
4 discharge the Class Released Claims, as defined in the Settlement. Additionally, pursuant to this
5 Order and Judgment, any and all Class Members who do not opt-out by timely submitting a valid
6 Request for Exclusion (“Settlement Class Members”) shall be deemed to have fully, finally, and
7 forever released, relinquished, and discharged all Class Released Claims.

8 29. By this Order and Judgment, Plaintiffs and the State of California (including its
9 LWDA) shall fully, finally, and forever release, relinquish and discharge Defendant and the
10 Released Parties from all PAGA Released Claims, as defined in the Stipulation. As to the PAGA
11 Released Claims, this Order and Judgment shall have preclusive effect, under the doctrines of res
12 judicata and collateral estoppel, and bind Plaintiffs and the State of California (including its
13 LWDA) to the fullest extent permitted. *See Arias v. Superior Court*, 46 Cal.4th 969 (2009).

14 30. The Settlement is not an admission of wrongdoing or violation by Defendant or
15 any of the other Released Parties, nor is this Order and Judgment a finding of the validity of any
16 claims in this matter or of any wrongdoing by Defendant or any of the other Released Parties.
17 Neither this Order and Judgment, the Settlement, any document referred to herein, or any action
18 taken to carry out the Settlement are, may be construed as, or may be used as an admission by or
19 against Defendant or any of the other Released Parties of any fault, wrongdoing, or liability
20 whatsoever in any action brought by Plaintiffs or any Class Member.

21 31. Simpluris is hereby directed to mail the Settlement Awards in envelopes that bear
22 the notation, “YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED” and take all
23 other actions in furtherance of the settlement administration.

24 32. Settlement Class Members and Aggrieved Employees shall have one hundred
25 eighty (180) calendar days after mailing by the Settlement Administrator to cash their settlement
26 checks. Uncashed settlement checks by Settlement Class Members shall be voided and paid by
27 the Settlement Administrator to the California State Controller’s Office in the name of the
28 Settlement Class Members. Similarly, Aggrieved Employees’ settlement checks that are not

1 cashed within that period shall be voided and paid by the Settlement Administrator to the LWDA
2 in the name of the Aggrieved Employees.

3 33. Simpluris will mail reminder postcards to Settlement Class Members and
4 Aggrieved Employees whose settlement checks have not been negotiated within sixty (60) days
5 after the date of mailing.

6 34. If any of the Class Members are current employees of Defendant and the
7 distribution mailed to those employees is returned to Simpluris as being undeliverable and
8 Simpluris is unable to locate a valid mailing address, Simpluris shall arrange with Defendant to
9 have those distributions delivered to the employees at their place of employment.

10 35. Once the Court grants this Order and Judgment, Simpluris will mail a notice of
11 entry of judgment to Settlement Class Members and Aggrieved Employees along with their
12 settlement checks via regular First-Class Mail. The notice of entry of judgment will state, "The
13 Superior Court of California, County of Riverside, granted final approval of the *Alan Childs, et*
14 *al., Dal Chem, Inc. dba Alexis Oil Company*, Case Number CVRI2100684, on October 26, 2022.
15 Simpluris enclosed your Settlement Award check alongside this notice of entry of judgment."

16 36. Without affecting the finality of this Order in any way, this Court hereby retains
17 continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution
18 of the Gross Settlement Amount, including interest earned thereon; (b) disposition of the Gross
19 Settlement Amount; (c) hearing and determining applications for the Attorneys' Fees and Costs
20 in the lawsuit; and (d) all Parties hereto for the purpose of construing, enforcing, and
21 administering the Stipulation.

22 37. There is no just reason for any delay in the entry of this Order and Judgment
23 approving the Settlement. Pursuant to this, immediate entry by the clerk of the Court is directed.

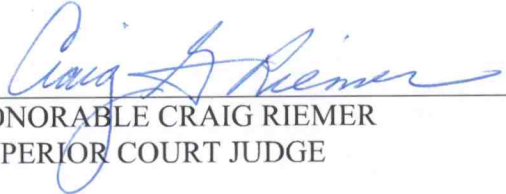
24 38. Without affecting the finality of this Order and Judgment, the Court shall retain
25 continuing jurisdiction over this matter and the Parties and over all matters pertaining to the
26 implementation and enforcement of the terms of the Settlement. Except as provided to the
27 contrary herein, any disputes or controversies arising with respect to interpretation, enforcement,
28 or implementation of the Settlement shall be presented by motion to the Court for resolution.

1 39. A hearing for Final Accounting/Review is scheduled for July 14, 2023 at 8:30
2 a.m., before this same court and department.

3 40. This Order and Judgment is intended to be a final disposition of the above-
4 captioned action in its entirety and is intended to be immediately appealable. Subject to the
5 Court's continuing jurisdiction as set forth above, the Court directs the clerk of the Court to enter
6 Order and Judgment.

7
8 **IT IS SO ORDERED.**

9
10 DATED: October 26, 2022


HONORABLE CRAIG RIEMER
SUPERIOR COURT JUDGE

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On November 1, 2022, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Childs, et al. v. Dal Chem, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-837960-21**
Court Case No.: CVRI21000684
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on November 1, 2022, at Pasadena, California.



Mariah Anderson