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Attorneys for Plaintiffs Alan Childs and Eduardo Garcia, on behalf of themselves and all others similarly situated

**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

Honorable Craig Riemer
Department 01

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Supplemental Declaration of Proposed
Class Counsel (Douglas Han); Declaration
of Richard S. Zuniga; and Amended
[Proposed] Order filed concurrently
herewith]*

Hearing Date: February 23, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 01

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

1 Plaintiffs Alan Childs and Eduardo Garcia (“Plaintiffs”) provide this supplemental
2 submission in response to the Court’s tentative ruling on Memorandum of Points and Authorities in
3 Support of Plaintiffs’ Motion for an Order (1) Preliminarily Approving the Class Action Settlement;
4 (2) Approving Notice of Class Action Settlement; and (3) Setting Hearing for Final Approval
5 originally scheduled for hearing on December 21, 2021. On December 21, 2021, the Court continued
6 the Motion to February 23, 2022, with instructions to address the concerns outlined in the ruling.

7 **I. Estimated Maximum Recovery**

8 The estimated maximum recovery has been recalculated to only include causes of action that
9 were alleged in the First Amended Complaint. Specifically, the calculation for damages only
10 includes: (a) failure to pay for all hours worked (minimum wages and overtime pay); (b) failure to
11 pay meal premiums; and (c) failure to pay rest premiums.

12 According to Plaintiffs’ expert’s analysis, there were approximately 23,515 shifts that were
13 eligible for rest breaks. Considering Defendant Dal Chem, Inc. d/b/a Alexis Oil Company’s
14 (“Defendant”) counterarguments, its exposure for rest break premiums caused by its improper,
15 uniform policies and practices is likely around \$99,938.75 ((23,515 shifts x 20% violation rate) x
16 \$21.25). With regards to meal breaks, Plaintiffs’ expert also analyzed that there were around 8,922
17 shifts in which either late or short meal breaks were taken, or meal breaks were automatically
18 deducted. It is likely half these shifts (4,461) were caused by Defendant’s improper, uniform
19 practices, meaning employees chose to forgo receiving full and timely meal breaks. By extension,
20 the fact that meal breaks were automatically deducted from shifts exceeding (5) hours is not
21 indicative that employees did not receive meal breaks. There were also 11,616 shifts worked more
22 than six (6) hours without recorded meal breaks. If proven, Defendant’s exposure for meal break
23 premiums would likely be about \$341,636.25 (16,077 shifts x \$21.25).

24 Regarding Defendant’s purported failure to pay Class Members for all hours worked, based
25 on the reasonable estimate that Class Members can prove that they worked approximately one (1)
26 hour of off-the-clock work per week, a reasonable estimate of damages at trial would be around
27 \$99,450 (4,680 workweeks x 1 hour x \$21.25). If using the overtime rate, as certain shifts exceeded
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eight (8) hours per day or forty (40) hours per week, the estimated damages at trial would be \$149,198.40 (4,680 workweeks x 1 hour x \$31.88 overtime rate).

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$541,025 on the low end and \$590,773.40 on the high end.

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$99,938.75	70%	60%	\$11,992.65
Meal Break Premiums	\$341,636.25	40%	50%	\$102,490.88
Overtime/Minimum Wage: Off-the-Clock	\$99,450 to \$149,198.40	60%	60%	\$15,912 to \$23,871.74
MAXIMUM TOTAL EXPOSURE	\$541,025.00 to \$590,773.40			\$130,395.53 to \$138,355.27

Based on this analysis, the realistic recovery for this case is approximately \$130,395.53 on the low end and \$138,355.27 on the high end. The Gross Settlement Amount of \$187,000 is approximately thirty-one percent (31.65%) of the maximum potential exposure and about one hundred thirty-five percent (135.16%) of the maximum realistic exposure at trial, which is an excellent settlement.

The calculations for paystub violations, failure to pay final wages, and failure to reimburse necessary business expenses have only been used to calculate Private Attorneys General Act of 2004 (“PAGA”) penalties. In other words, the PAGA calculations remain unchanged.

II. Reasonable Inquiries By the Parties’ Counsel

After making reasonable inquiries of the other members of Class Counsel’s firm, Class Counsel discovered that Plaintiff Childs had previously filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of California, County of Riverside (Case No. CVRI2100020), Childs v. Dal Chem Inc. The case was assigned in Honorable Sunshine Sykes in Department 06. The Court determined that Case No. CVRI2100020 was duplicative of this case (Case No. CVRI2100684). Thus, on the Court’s own motion, Case No. CVRI2100020 was dismissed without prejudice and proceeded under this case (Case No. CVRI2100684). (Minute Order

(attached as Exhibit 5 to the Amended Proposed Order); Supplemental Declaration of Douglas Han in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Supp. Han Decl.”), ¶ 5.)

Richard S. Zuniga, Defendant’s counsel, has filed a declaration concurrently herewith to explain that he has made comparable inquiries as Class Counsel to determine the existence of similar class, representative, or other collection of actions. (Declaration of Richard S. Zuniga, ¶ 3.)

III. Modifications to the Settlement Agreement and Notice Packet

The chart below lists the Court’s concerns, provided in the tentative ruling, and the revisions/submissions made to address each concern.

Ruling	Revisions/Submissions
CMO, ¶ H(3)(e)(i) – The Released Parties are not limited to the Defendant, together with its officers, directors and employees but also include numerous additional parties without identifying the parties by name and without providing facts to justify their inclusion among the Released Parties. (Settlement, ¶ 2.)	The Settlement Agreement has been amended to address this issue. (Redlined Settlement Agreement (attached as Exhibit 2 to the Amended Proposed Order), ¶ 4.A.; Supp. Han Decl., at ¶ 7.)
CMO, ¶ H(3)(e)(ii-iii) – the Released Claims exceed the parameters set forth in the CMO. Notably, Plaintiffs’ first cause of action for collection of due and unpaid wages is specifically based upon (1) the failure to pay minimum wage, (2) the failure to pay overtime, (3) the failure to pay meal premiums and (4) the failure to pay rest break premiums. However, the Released Claims include, among others, the failure to timely pay wages, the failure to provide accurate wage statements and the failure to reimburse	The Settlement Agreement has been amended to address this issue. (Redlined Settlement Agreement (attached as Exhibit 2 to the Amended Proposed Order), ¶ 4.B.; Supp. Han Decl., at ¶ 8.)

1 2 3 4 5 6 7 8 9 10 11 12	business expenses. While these other claims are bases for the PAGA claim, they should not be included in the general release, especially given that PAGA specifically provides that it does not “operate to limit an employee’s right to pursue or recover other remedies available under state or federal law.” (Lab. Code § 2699(g)(1).) Moreover, the Released Claims include civil penalties under PAGA. Regardless of the res judicata effect of the settlement of the PAGA claim, the release should not extend to the unnamed aggrieved employees who had no opportunity to opt out of the PAGA claim.	
13 14 15 16 17 18 19 20 21 22 23 24 25 26	CMO, ¶ H(3)(k) – The motion is supported by the Jackson Declaration. Jackson does not indicate the likely age of Class Members but indicates that most Class Members have a high school education and that they all can read and understand English. (Jackson Decl., ¶ 3.) Notably, while the Settlement indicates that the Notice Packet will be mailed out in both English and Spanish (as does the Proposed Order), there is no indication that Simpluris will be mailing Notice Packets in Spanish; nor is providing a Spanish version of the Notice Packet included in Simpluris’s estimate. (See Springer Decl., ¶ 10, Exhibit B, p. 1 [indicates that the Notice Packet will be in English (only)].) That inconsistency must be resolved.	The Settlement Agreement has been amended to address this issue. (Redlined Settlement Agreement (attached as Exhibit 2 to the Amended Proposed Order), ¶ 17.B.; Supp. Han Decl., at ¶ 9.) The Declaration of Diana L. Jackson, the Chief Financial Officer and General Manager of Defendant, filed with Plaintiffs’ initial motion for preliminary approval on October 20, 2021, states that Class Members can read and understand English. (Declaration of Diana L. Jackson, ¶ 3.)
27 28	CMO, ¶ H(5)(c) – The Notice erroneously indicates	The Class Notice has been amended to

1 the case name to be “Ramirez vs. Dal Chem, Inc.	address these issues. (Redlined Class
2 Doing Business as Alexis Oil Company” and also	Notice (attached as Exhibit 3 to the
3 refers to the Han Declaration as the “Declaration of	Proposed Order), p. 6.; Supp. Han Decl., ¶
4 Douglas.” (Notice, p. 6-7.)	10.)
5 CMO, ¶ H(5)(e) – The Notice includes a description	The Class Notice has been amended to
6 of the Release to be given by Class Members;	reflect the changes made to the Settlement
7 however, as discussed above, the release is	Agreement. (Redlined Class Noticed
8 overbroad. In addition, the Notice includes a separate	(Attached as Exhibit 3 to the Proposed
9 PAGA Release (and the Proposed Order indicates	Order, p. 4.; Supp. Han Decl., at ¶ 11.)
10 that all Class Members will be bound by the PAGA	
11 settlement).	
12 CMO, ¶ H(9)(d) – The release of PAGA purports to	The Settlement Agreement has been
13 bind all aggrieved employees and not just the named	amended to address this issue. (Redlined
14 Plaintiffs and the State of California. (Settlement, ¶	Settlement Agreement (attached as
15 2(B).)	Exhibit 2 to the Amended Proposed
16	Order), ¶ 6.B.; Supp. Han Decl., at ¶ 12.)
17 CMO, ¶ H(9)(e) – The Settlement provides that the	The Settlement Agreement has been
18 value of uncashed PAGA payments will escheat to	amended to address this issue. (Redlined
19 the California Secretary of State Unclaimed Property	Settlement Agreement (attached as
20 Fund and not to the LWDA as required by this	Exhibit 2 to the Amended Proposed
21 paragraph of the CMO. (Settlement, ¶ 6(E).)	Order), ¶ 11.E.; Supp. Han Decl., at ¶ 13.)

22
23 Dated: February 9, 2022

JUSTICE LAW CORPORATION

24
25 By: 
26 Douglas Han
27 Attorneys for Plaintiffs
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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 February 10, 2022, I served the foregoing document described as

PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

for the following case: **Childs 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 February 10, 2022, at Pasadena, California.



Mariah Anderson