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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' NOTICE OF MOTION AND
MOTION FOR AN ORDER (1)
PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
SETTING HEARING FOR FINAL
APPROVAL**

*[filed concurrently with Memorandum of Points
and Authorities; Declarations of Douglas Han,
Richard S. Zuniga, Eric Springer, and Diana L.
Jackson; [Proposed] Order; and Compliance
Chart]*

[Reservation ID: 972963440897]

Hearing Date: December 21, 2021
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 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on December 21, 2021 at 8:30 a.m., or as soon thereafter as
3 this matter may be heard, at Department 01, located at 4050 Main Street, Riverside, California
4 92501, Plaintiffs Alan Childs and Eduardo Garcia (collectively referred to herein as “Plaintiffs”),
5 on behalf of themselves and all persons similarly situated, will and hereby does move this Court
6 pursuant to California Code of Civil Procedure section 382 and California Rule of Court 3.769 for
7 an order:

- 8 (1) Preliminarily approving the class action settlement reached between Dal Chem,
9 Inc. d/b/a Alexis Oil Company (“Defendant”), including granting preliminary
10 approval of the following class: “all current and former hourly employees of
11 Defendant who worked in California at some time between August 15, 2016 and
12 July 31, 2021” (“Settlement Class” and “Class Period”);
- 13 (2) Approving the form of notice of class action settlement and procedure for notice to
14 the Settlement Class, and
- 15 (3) Setting the Final Approval Hearing.

16 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
17 proposed settlement’s allocation of funds to claims made under the Labor Code sections 2698, *et*
18 *seq.*, Private Attorneys General Act of 2004 (“PAGA”).

19 Pursuant to the proposed Stipulation of Settlement (“Settlement” or “Stipulation”), filed
20 concurrently herewith as Exhibit 1 to the Declaration of Douglas Han, Defendant does not oppose
21 the preliminary approval of the class action settlement.

22 Under the terms of the Stipulation, the Parties have agreed that all claims brought on
23 behalf of the Settlement Class shall be fully and finally resolved for the total sum of \$187,000
24 (“Gross Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
25 Gross Settlement Amount after the following deductions have been made (“Net Settlement
26 Amount”) shall be available for distribution to class members who do not opt out of the settlement:

- 27 • up to \$65,450 to Class Counsel for attorneys’ fees;
- 28

- up to \$20,000 reimbursement of attorneys' costs and expenses incurred;
- up to \$15,000 to the Class Representatives (\$7,500 to each Plaintiff) for their respective Class Representative Service Awards;
- up to \$7,500 for the Settlement Administrator for the Settlement Administrator's fees and expenses; and
- \$10,000 as the PAGA payment, seventy-five percent (75%) of which (\$7,500) will be payable to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which (\$2,500) will be payable to the PAGA Group as the PAGA Payment;

This Notice of Motion and Motion is based on the fact that this is a fair and reasonable settlement that benefits the Settlement Class and was the product of informed, non-collusive negotiations by the Parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44. The proposed settlement meets the legal standard for preliminary approval and is in the best interests of the Settlement Class; the proposed form of notice explains the settlement terms in a clear and straightforward manner; the proposed procedures for notice provide the best practical notice to the Settlement Class; and Settlement Class Members will have an opportunity to participate in and/or object to the settlement and/or opt-out of the settlement.

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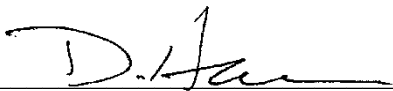
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1 This Notice of Motion and Motion is based on this Notice, and the exhibits thereto
2 (including the Notice of Pendency of Class Action and Proposed Settlement, the Disputes
3 Regarding Notice of Settlement, the Request for Exclusion Form, and the Objection Form), the
4 Memorandum of Points and Authorities, the Declaration of Douglas Han, the Declaration of
5 Richard S. Zuniga, the Declaration Diana L. Jackson, the Declaration of Eric Springer, the
6 pleadings, records and files in the case, and such other oral and documentary evidence which may
7 be submitted at or before the hearing on this Motion.

8
9 Dated: October 20, 2021

JUSTICE LAW CORPORATION

10
11 By 
12 Douglas Han
13 Shunt Tatavos-Gharajeh
14 Chancellor Nobles
15 Haig Hogdanian
16 Attorneys for Plaintiffs

DOUGLAS HAN (SBN 232858)
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Attorneys for Plaintiffs Alan Childs and Eduardo Garcia,
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FOR THE COUNTY OF RIVERSIDE

ALAN CHILDS and EDUARDO GARCIA,
individually, and on behalf of other
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DAL CHEM, INC., d/b/a ALEXIS OIL
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DOES 1 through 100, inclusive,

Defendants.

Case No.: CVRI2100684

Honorable Craig Riemer
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AUTHORITIES IN SUPPORT OF
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(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
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*[filed concurrently with Plaintiffs' Notice of
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Alan Childs and Eduardo Garcia (“Plaintiffs” or “Class Representatives”)
4 filed a class action complaint and representative action complaint against Dal Chem, Inc. d/b/a
5 Alexis Oil Company, a California corporation (“Defendant”) (Plaintiffs and Defendant are
6 collectively referred to herein as the “Parties”) in the Superior Court of California, County of
7 Riverside, Case No. CVRI2100684 (the “Action”).

8 After engaging in substantial investigation and extensive negotiations with the assistance
9 of a respected third-party neutral, Lisa Klerman, Esq., the Parties have agreed to settle all claims
10 alleged in the lawsuit on a class wide non-reversionary basis for \$187,000, which is inclusive of
11 all fees and costs.

12 The proposed settlement reflected in the Stipulation of Settlement (“Stipulation” or
13 “Settlement”) is fair, reasonable, and adequate, and in the best interests of the class.
14 Consequently, Plaintiffs, with the consent of Defendant, hereby moves this Court for an order:
15 (1) granting preliminary approval of the proposed class action settlement, as embodied in the
16 Stipulation; (2) approving the Notice of Pendency of Class Action and Proposed Settlement
17 (“Class Notice”), the Dispute Regarding Notice of Settlement (“Dispute Form”), the Request for
18 Exclusion Form (“Exclusion Form”), and the Objection Form (collectively, known as the
19 “Notice Packet”) to be sent to Settlement Class Members, and the notification schedule as set
20 forth in the Stipulation and the Proposed Order, also filed concurrently herewith; and (3) setting
21 a hearing for final approval of the class action settlement.

22 **II. STATUS OF THE LITIGATION**

23 **A. Procedural History**

24 On February 10, 2021, Plaintiffs, represented by Justice Law Corporation, filed a wage-
25 and-hour class action lawsuit against Defendant in the Superior Court of California, County of
26 Riverside (Case No. CVRI2100684). The wage-and-hour class action lawsuit alleged violation
27 of: (a) Labor Code section 229 (collection of due and unpaid wages); and (b) Business &
28 Professions Code sections 17200, *et seq.* Both causes of action were predicated on Defendant’s

1 alleged failure to pay minimum wages, failure to pay overtime wages, and failure to pay meal
2 and rest premiums for noncompliant meal and rest breaks. (Declaration of Douglas Han (“Han
3 Decl.”), filed concurrently herewith, ¶ 12.)

4 On June 22, 2021, the Parties attended mediation with Lisa Klerman, Esq. Under the
5 auspices of the mediator and after a full day of arm’s-length negotiations, the Parties were able
6 to reach a settlement that will resolve the Action in its entirety. (Han Decl., ¶ 13.)

7 To facilitate the settlement approval process, the Parties agreed to allow Plaintiffs to file
8 a First Amended Complaint (“FAC”) adding a Private Attorneys General Act of 2004
9 (“PAGA”) cause of action. Pursuant to this, on July 14, 2021, Plaintiffs provided a written
10 notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant
11 of the specific provisions of the Labor Code they contend were violated and the theories
12 supporting their contentions. (Han Decl., ¶ 14.)

13 After the 65-day notice period expired, Plaintiffs filed their FAC on September 29, 2021
14 that added the following cause of action (a) violation of Labor Code sections 2698, *et seq.*
15 (PAGA). Plaintiffs’ PAGA cause of action was predicated on Defendant’s alleged failure to pay
16 minimum and overtime wages, failure to provide meal and rest breaks and pay associated
17 premium wages, failure to timely pay wages during employment, failure to timely pay wages
18 upon termination, failure to provide complete and accurate wage statements, and failure to
19 reimburse business expenses. (Han Decl., ¶ 15.)

20 **B. Investigation**

21 Before filing the lawsuit, Class Counsel investigated and researched the facts and
22 circumstances underlying the pertinent issues and the law applicable thereto. This required
23 thorough discussions and interviews between Class Counsel and Plaintiffs, as well as
24 preliminary research into the various legal issues involved in the case, after conducting their
25 initial investigation, Class Counsel determined that Plaintiffs’ claims were well-suited for class
26 and representative action adjudication owing to what appeared to be a common course of
27 conduct affecting a similarly situated group of employees. (Han Decl., ¶ 16.)

28 ///

1 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
2 and claims giving rise to the action, including:

3 • conducting informal discovery and meeting and conferring with counsel for
4 Defendant several times throughout the litigation of the Action. Pursuant to informal discovery
5 Counsel for Defendant informally provided Class Counsel with the following documentation:

- 6 ○ Defendant's applicable employee handbook since 2006;
- 7 ○ Defendant's on-duty meal period agreement since April 2018;
- 8 ○ Excel spreadsheets and a lengthy .pdf document comprising of a random
9 sampling of forty-six (46) Settlement Class Members. The Parties agreed
10 to about a fifty percent (50%) random sampling figure for a total of
11 twenty-five (25) Settlement Class Members across all locations
12 throughout California. The excel spreadsheets and .pdf document were
13 broken down into redacted earnings records, paystubs, and timecards.

14 • reviewing and analyzing time and pay records as well as Defendant's
15 employment handbook, on-duty meal period agreement, Plaintiffs' personnel files, relevant
16 policies, and other documentation;

- 17 • researching the applicable law and potential defenses;
- 18 • constructing damage models based on interpretations of California law; and
- 19 • reviewing information provided by Defendant at the mediation.

20 (Han Decl., ¶ 17.)

21 The Settlement Class enumerated in this action is ascertainable because the Settlement
22 Class Members may be readily identified by reference to Defendant's records. Defendant has
23 agreed to share the information from these records with the Settlement Administrator to identify
24 and contact Settlement Class Members. Our investigation revealed that there are approximately
25 forty-six (46) Settlement Class Members. (Han Decl., ¶ 18.)

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28 ///

1 **C. Settlement Efforts**

2 Defendant, for its part, vigorously contested liability, the amount of claimed damages,
3 and the propriety of class certification. After Class Counsel analyzed the relevant documents
4 and other gathered data, Class Counsel believed that this case was appropriate for resolution via
5 mediation. Given the high level of risk present for both sides, the Parties elected to mediate
6 Plaintiffs' claims and explore the possibility of settlement. (Han Decl., ¶ 19.)

7 On June 22, 2021, Plaintiffs and Defendant participated in full day mediation with Lisa
8 Klerman, Esq., a respected and highly experienced mediator in wage-and-hour class actions.
9 During mediation, Plaintiffs and Defendant discussed all aspects of the case, including the risks
10 of litigation and the risks to both Parties of proceeding with a motion for class certification as
11 well as the law relating to off-the-clock work, meal breaks, and rest breaks. As a result of the
12 mediation, Plaintiffs and Defendant agreed to settle the Action. From Class Counsel's review of
13 the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation,
14 and Class Counsel's prior litigation experience, Class Counsel believes that the recovery for
15 each Settlement Class Member is fair and reasonable. This is considering the amounts received
16 in other wage-and-hour class actions, the risks inherent in litigation of this genre, and the
17 reasonable tailoring of each Settlement Class Member's claim to the Settlement Award he or
18 she will receive. Based on the settlement negotiations, which were extensive and conducted in
19 good faith and at arm's-length between attorneys with substantial experience litigating class
20 actions and wage-and-hour cases, the Stipulation was the product of a non-collusive settlement
21 process in which the Parties were forced to make significant compromises in the interest of
22 reaching a full and complete settlement of the lawsuit. (Han Decl., ¶ 20.)

23 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

24 The Parties have executed a Stipulation attached to Douglas Han's declaration and
25 incorporated herein as **Exhibit 1**. Defendant has agreed to pay \$187,000 ("Gross Settlement
26 Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in
27 the operative complaints on behalf of the proposed Settlement Class. (Han Decl., ¶ 22; Exhibit
28 1, ¶ 5.) The Stipulation defines the "Settlement Class" as "all current and former hourly

employees of Defendant who worked in California at some time between August 15, 2016 and July 31, 2021.” (Han Decl., ¶ 22; Exhibit ¶ 1.) The amount remaining in the Gross Settlement Amount after the following deductions have been made (“Net Settlement Amount”) shall be available for distribution to Settlement Class Members who do not opt out (Han Decl., ¶ 22):

- up to thirty-five percent (35%) of the Gross Settlement Amount to Class Counsel as the attorneys’ fees (\$65,450) (Han Decl., ¶ 22; Exhibit 1, ¶¶ 5.A.4 & 7);

- up to \$20,000 as reimbursement of actual costs and expenses incurred (Han Decl., ¶ 22; Exhibit 1, ¶¶ 5.A.4 & 7);

- up to \$15,000 to the Class Representatives as the Class Representative Service Awards (\$7,500 to each Plaintiff) (Han Decl., ¶ 22; Exhibit 1, ¶¶ 5.A.3 & 8);

- up to \$7,500 to the Settlement Administrator as the Settlement Administrator’s fees and expenses¹ (Han Decl., ¶ 22; Exhibit 1, ¶¶ 5.A.2 & 10);

- \$10,000 as the PAGA payment, seventy-five percent (75%) of such penalties (\$7,500) will be payable to the LWDA and twenty-five percent (25%) of which (\$2,500) will be payable to all Settlement Class Members who were employed by Defendant in California at any time from July 14, 2020 through July 31, 2021 (“PAGA Amount,” “PAGA Group,” and “PAGA Period”) (Han Decl., ¶ 22; Exhibit 1, ¶ 5.A.5); and

- Defendant’s share of payroll taxes on the portion of the payments designated as wages shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount (Han Decl., ¶ 25; Exhibit 1, ¶ 5.B.)

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¹ The settlement administrator bid is a “capped fee” quote for \$2,995.

1 The balance (approximately \$69,050) will be distributed to the Settlement Class
2 Members who do not exclude themselves from the settlement. If the settlement is approved,
3 Plaintiffs estimate that the average Settlement Class Member will receive approximately
4 \$1,501.09 as his or her Settlement Award. The amount that each Settlement Class Member
5 receives will vary depending on the number of workweeks worked during the time period from
6 August 15, 2016 to July 31, 2021 (“Class Period”). (Han Decl., ¶ 23.)

7 The settlement amount was a compromise figure, factoring in the inherent risks related
8 to certification, liability, and damages. However, considering all the circumstances of the action
9 and the defenses raised by Defendant against certification, liability and damages, Class Counsel
10 believes that the settlement is fair and reasonable. (Han Decl., ¶¶ 26, 64.)

11 **A. Number of Settlement Class Members**

12 There are approximately forty-six (46) individuals in the class. (Han Decl., ¶¶ 18, 86(a).)

13 **B. Attorney’s Estimate of the Recovery by the Average Settlement Class Member**
14 **if the Settlement Were Approved**

15 If the settlement is approved, Plaintiffs estimate that the average Settlement Class
16 Member will receive approximately \$1,501.09 as his or her Settlement Award. The amount that
17 each Settlement Class Member receives will vary depending on the number of workweeks
18 worked during the Class Period. (Han Decl., ¶ 23.) Specifically, from the Net Settlement
19 Amount, the Settlement Administrator will calculate each Settlement Class Member’s
20 Settlement Award based on the following formula: Each participating Settlement Class Member
21 shall receive a proportionate settlement share based upon the number of workweeks worked
22 during the Class Period, the numerator of which is the Settlement Class Member’s total
23 workweeks worked during the Class Period, and the denominator of which is the total
24 workweeks worked by all Settlement Class Members who worked during the Class Period. (Han
25 Decl., ¶ 23; Exhibit 1 ¶ 6.B.i.)

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1 **C. Informal Discovery Exchanged**

2 Section II.B. Investigation above provides a detailed description regarding the informal
3 discovery that was exchanged.

4 **D. Other Pending Litigation**

5 Plaintiffs are not aware of any class, representative, or other collective action in any
6 other court in this or any other jurisdiction that asserts claims like those asserted in this Action
7 on behalf of a class or group of individuals some or all of whom would also be members of the
8 Settlement Class defined in this Action. (Han Decl., ¶ 21.)

9 **E. Counsel for Defendant's Declaration**

10 Counsel for Defendant's declaration is being submitted concurrently with this Motion.

11 **F. Uncashed Checks, Unpaid Residue or Other Unclaimed or Abandoned Funds**

12 Class Members will receive checks for their Settlement Awards. Each Settlement Class
13 Member who receives a Settlement Award must cash the check(s) within one hundred eighty
14 (180) days from the date the Settlement Administrator mails it/them. Any funds payable to
15 Settlement Class Members and PAGA Group Members whose checks were not cashed within
16 one hundred eighty (180) days after mailing will escheat to the California Secretary of State-
17 Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement
18 Class Member. (Han Decl., ¶ 84; Exhibit 1, ¶ 6.E.)

19 **G. Settlement Administrator**

20 The Settlement Agreement provides that up to \$7,500 will be paid to the Settlement
21 Administrator as the Settlement Administrator's fees and expenses. This bid is comprised of
22 hourly, flat fee, per piece, per check, and per year figure rates. The fee was calculated through a
23 projected estimate from the following categories: (i) case startup, (ii) notification, (iii) call
24 center, (iv) administration, (v) distribution; and (vi) case wrap up. (Han Decl., ¶ 82; Exhibit 1,
25 ¶¶ 5.A.2 & 10.)

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1 Class Counsel obtained bids from Simpluris, Inc. (“Simpluris”), CPT Group, Inc. (“CPT
2 Group”), and Phoenix Class Action Administration Solutions (“Phoenix”) regarding the
3 administration of this Action. While the bids from all three (3) administrators were relatively
4 close, Simpluris had the most competitive bid at \$2,995. (Han Decl., ¶ 83.)

5 Simpluris has extensive experience in administering employment class action
6 settlements. (Declaration of Eric Springer (“Springer Decl.”) ¶¶ 5-8.)

7 **H. Release by Class Members is Limited**

8 The Settlement Class Members’ released claims includes the following:

9 All wage and hour claims for any and all violations of California’s Labor
10 Code and Unfair Competition Law based on the factual allegations alleged
11 in the operative complaint in the Action and plaintiff Alan Childs’s letter
12 dated July 14, 2021 to the Labor Workforce and Development Agency
13 seeking civil penalties for Defendant’s alleged Labor Code violations
14 under California’s Private Attorneys General Act of 2004, Labor Code §§
15 § 2698 *et seq.* with respect to the following claims: Defendant’s failure to
16 pay for all hours worked (including minimum wages, hourly rate wages,
17 and overtime wages); failure to provide meal periods, failure to authorize
18 and permit rest periods; failure to timely pay wages during employment;
19 failure to timely pay all wages due at the time of termination; failure to
20 provide complete and accurate wage statements; and failure to reimburse
21 business expenses; civil penalties under PAGA based on the alleged Labor
22 Code violations, and all damages, interest, penalties, attorneys’ fees, costs,
23 and other amounts recoverable under said causes of action under
24 California law, to the extent permissible, including but not limited to the
25 California Labor Code and the applicable Wage Orders (collectively, the
26 “Released Claims”).

27 (Exhibit 1, ¶ 2.A.)

28 The released PAGA claims includes the following:

29 All claims against the Released Parties for civil penalties that could have
30 been assessed upon and collected from the Released Parties under PAGA,
31 based on the factual allegations in the operative complaint in the Action
32 and plaintiff Alan Childs’s letter dated July 14, 2021 to the LWDA
33 seeking civil penalties for Defendant’s alleged Labor Code violations
34 arising during the PAGA Period (“PAGA Released Claims”).

35 (Exhibit 1, ¶ 2.B.)

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1 The Released Parties include Defendant, and its past, present, and future owners,
2 officers, directors, employees, managers, board members, shareholders, attorneys, insurers,
3 reinsurers, customers, partners, investors, members, representatives, predecessors, parent
4 companies, subsidiaries, affiliates, divisions, successors, agents and principals, and their heirs,
5 estates, executors, administrators, servants, insurers, attorneys, and assigns (Exhibit 1, ¶ 2.)

6 **I. The Proposed Class Notice Provides Adequate Notice to the Settlement Class**
7 **Members**

8 The Notice Packet will notify all Class Members of the terms of the settlement, of its
9 effect on their rights, of their options as class members (*i.e.*, participate, object, opt out, do
10 nothing), and of the consequences of exercising those options. (Han Decl., ¶¶ 70-72; Exhibit 1,
11 ¶¶ 12.B & 12.F.)

12 Specifically, within thirty (30) calendar days after entry of an order preliminarily
13 approving the Stipulation, Defendant will provide the Settlement Administrator with the names,
14 last known addresses, social security numbers, the number of workweeks worked by each
15 Settlement Class Member while employed during the Class Period (the “Class Data”), and the
16 number of pay periods worked by each Settlement Class Member during the PAGA Period (the
17 “PAGA Data”). (Han Decl., ¶ 70; Exhibit 1, ¶ 12.A.) The Settlement Administrator will send
18 the Notice Packet to each Settlement Class Member within ten (10) business days from the
19 receipt of the Class Data and PAGA Data from Defendant. (Han Decl., ¶ 70; Exhibit 1, ¶ 12.B.)

20 Any Notice Packets returned to the Settlement Administrator as non-delivered on or
21 before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no
22 forwarding address is provided, the Settlement Administrator shall make reasonable efforts,
23 including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business
24 days of receiving the returned Notice Packet. If an updated mailing address is identified, the
25 Settlement Administrator shall resend the Notice Packet to the Settlement Class Member
26 immediately, and in any event within three (3) business days of obtaining the updated address.
27 (Han Decl., ¶ 70; Exhibit 1, ¶ 12.F.)

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1 **J. Settlement Does Not Require Any Settlement Class Members to Submit Claims**

2 Settlement Class Members will be automatically paid from the settlement and do not
3 need to submit claim forms to be entitled to receive Settlement Awards. (Exhibit 1, ¶ 6.)

4 **K. Settlement Does Not Provide Any Reversion to Defendant**

5 This is a non-reversionary settlement. None of the settlement funds will revert to
6 Defendant. (Exhibit 1, ¶ 5.A.)

7 **L. Employer's Share of Payroll Taxes Will Not Be Paid Out of the Settlement**

8 Defendant's share of payroll taxes on the portion of the payments designated as wages
9 shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
10 (Han Decl., ¶ 25; Exhibit 1, 5.A.) For purposes of calculating applicable taxes and withholdings,
11 each Settlement Award shall be allocated as follows: sixty-seven percent (67%) as penalties and
12 interest; and thirty-three percent (33%) as wages. The Settlement Administrator will be
13 responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts
14 deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest.
15 (Exhibit 1, ¶ 6.D.) Furthermore, the amount of the proposed Settlement is not sought to be
16 justified in part by the assertion that Defendant cannot afford to pay any greater sum.

17 **M. Settlement Class Members Are Bound by the Released Claims**

18 Settlement Class Members are bound by the Released Claims and PAGA Released
19 Claims as set forth in the Settlement.

20 **N. Proposed Class Notice, Dispute Form, Exclusion Form, and Objection Form**

21 Attached as **Exhibit A**, **Exhibit B**, **Exhibit C**, and **Exhibit D** to the Class Notice, the
22 Dispute Form, the Exclusion Form, and the Objection Form and were drafted to be reasonably
23 understood by the Settlement Class Members.

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1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

2 Express judicial policy favors maintaining wage and hour actions as class actions.
3 *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries,*
4 *Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be
5 resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29
6 Cal. 3d at 473-75. The decision to certify a class is a procedural one, and should be based on the
7 allegations in the operative complaint, and not in the perceived factual or legal merit of the class
8 claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

9 To certify a settlement class, the Court must find the two primary requirements for
10 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
11 defined community of interest in the questions of law and fact involving the parties to be
12 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
13 *Company* (1967) 67 Cal. 2d 695, 704. The criteria are met here for the reasons set forth below.

14 **A. There Is A Numerous and Ascertainable Settlement Class**

15 Whether a class is ascertainable is determined by examining the class definition, the size
16 of the class, and the means available for identifying class members. *See Vasquez, supra*, 4 Cal.
17 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d
18 1263, 1271. Class members are “ascertainable” where they may be readily identified without
19 unreasonable expense or time.

20 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the
21 requirement of numerosity is met. Documents and information exchanged between the Parties
22 reflect a Settlement Class of approximately forty-six (46) Class Members. (Han Decl., ¶ 86(a).)
23 The Settlement Class Members have already been identified by reference to Defendant’s payroll
24 and personnel records. (*Id.*, at ¶ 86(b).)

25 Thus, and notwithstanding the foregoing, there is a numerous and ascertainable
26 Settlement Class.

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1 **B. There Is A Well-Defined Community of Interest**

2 A community of interest is established by the predominance of common issues of law
3 and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

4 [Does] not depend upon an identical recovery, and the fact that
5 each member of the class must prove his separate claim to a
6 portion of any recovery by the class is only one factor to be
7 considered ... The mere fact that separate transactions are involved
8 does not of itself preclude a finding of the requisite community of
9 interest so long as every member of the alleged class would not be
10 required to litigate numerous and substantial questions to
11 determine his individual right to recover subsequent to the
12 rendering of any class judgment which determined in plaintiffs'
13 favor whatever questions were common to the class.

14 *Id.* at 809.

15 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
16 common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and
17 the class is united in its proof. (Han Decl., ¶ 86(f).) Because Plaintiffs have alleged a single
18 scheme, “the relevant proof [does] not vary among class members” and “clearly presents a
19 common question fundamental to all class members.” *See In Re NASDAQ Market-Makers*
20 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*
21 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy”
22 in inferring class-wide causation, class-wide injury, and class-wide damages when a common
23 course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This
24 inference ““eliminates the need for each class member to prove individually the consequences of
25 the defendants’ actions to him or her.”” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp*
26 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

27 This Action involves, *inter alia*, a determination about Defendant’s alleged failure to
28 provide meal and rest breaks, failure to reimburse business expenses, failure to pay minimum
wages, failure to pay all wages owed due to allegedly common and unlawful policies and
practices, the resulting failure to pay final wages when required, the failure to provide accurate
wage statements, and largely derivative claims under the Business & Professions Code and
PAGA. Plaintiffs contend these practices, including an alleged practice of failing to provide

1 complete meal and rest breaks, the alleged failure to provide corresponding premium wages,
2 and alleged systemic policies and practices of pressuring employees to work off-the-clock
3 affected Settlement Class Members in the same way. All Settlement Class Members were
4 employed during the Class Period. Thus, the outcome of litigation on this matter depends upon
5 questions that are common to Class Members. While Defendant maintained otherwise, these
6 issues will not be decided on the basis of facts peculiar to each Settlement Class Member but on
7 the basis of facts common to them all. It is also true that these issues of liability can be
8 determined on a class wide basis. (Han Decl., ¶ 86(e).)

9 **C. The Plaintiffs' Claims Are Typical**

10 A class representative's claims are typical when they arise from the same event, practice,
11 or course of conduct that gives rise to the claims of other putative class members, and if their
12 claims rest on the same legal theories. The class representative's claims must be "typical" but
13 not necessarily identical to the claims of other class members. It is sufficient that the
14 representative is similarly situated so that he or she will have the motive to litigate on behalf of
15 all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v.*
16 *Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in
17 California that the class representative must have identical interests with the class members.").
18 Thus it is not necessary that the class representative should have personally incurred all of the
19 damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001)
20 91 Cal.App.4th 224, 228.

21 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
22 Plaintiffs' claims are typical of Settlement Class Members' claims because they arose from the
23 same factual basis and are based on the same legal theories. Plaintiffs were employed by
24 Defendant during the Class Period and subject to the allegedly unlawful meal and rest break
25 policies and pay practices at issue in this litigation. Accordingly, Plaintiffs are members of the
26 Settlement Class. The central issues of this litigation (whether Defendant failed to pay all
27 wages, whether Defendant failed to provide meal and breaks, whether Defendant failed to pay
28 premium wages for noncompliant meal and rest breaks, etc.), which would arise if this was an

individual action of Plaintiffs applies to the other Settlement Class Members as well. In other words, the answer to these questions would determine Defendant's liability to the putative class. Consequently, Plaintiffs' claims are typical of the claims of the putative class. Accordingly, the typicality requirement is satisfied. (Han Decl., ¶ 86(c).)

D. Adequacy of Class Counsel and Class Representatives

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. Moreover, the Class Representatives' interests are aligned with those of the Settlement Class Members, they have suffered the same injuries as the Class Members, and they have no conflicts of interest. (Han Decl., ¶¶ 3-10, 86(d).) Therefore Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Han Decl., ¶ 86(f).) Furthermore, the class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.*, at ¶ 86(g).)

V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The Manual for Complex Litigation (Third) states:

"Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement." § 30.41.

Consequently, preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg

1 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or
2 conference concerning a tentative settlement proposal may vary. The court may find that the
3 settlement proposal contains some merit, is within the range of reasonableness required for a
4 settlement offer, or is presumptively valid subject only to any objections that may be raised at a
5 final hearing.” 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th
6 ed. 2002).

7 The procedures for the Parties’ submission of a proposed settlement for preliminary
8 approval by the court also are discussed in 4 Newberg on Class Actions:

9 “When the parties to an action reach a monetary settlement, they will
10 usually prepare and execute a joint stipulation of settlement, which is
11 submitted to the court for preliminary approval. The stipulation should
12 set forth the central terms of the agreement, including but not limited to,
13 the amount of settlement, form of payment, manner of determining the
14 effective date of settlement and any recapture clause.” *Id.* at § 11.24.
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16

17 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

18 As a matter of public policy, the courts both encourage the use of the class action device
19 and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal.
20 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to
21 prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955
22 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex
23 class action litigation is concerned.”)

24 Moreover, the courts presume the absence of fraud or collusion in the negotiation of a
25 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
26 negotiations were conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.*
27 (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir.
28 1989) 883 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents,

1 particularly when settlement has been reached by experienced counsel familiar with the
2 litigation. *Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752
3 F. Supp. 1087.

4 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid out
5 several factors that should be analyzed in determining if a class action settlement should be
6 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
7 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
8 status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed
9 and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
10 governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

11 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
12 informal discovery before entering meaningful settlement negotiations in this matter, including
13 a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and
14 pay records. (Han Decl., ¶ 17.) This discovery permitted Class Counsel to fairly evaluate the
15 strengths of the case and the risks associated with ongoing litigation. Class Counsel is very
16 experienced in the handling of wage and hour class actions and supports this Settlement. (*Id.*, at
17 ¶¶ 3-10.)

18 **A. The Strength of Plaintiffs' Case.**

19 The claims in this action include failure to provide meal and rest breaks, failure to
20 provide accurate wage statements, failure to pay minimum overtime wages, and double time
21 wages, failure to pay final wages when due, failure to reimburse necessary business expenses,
22 and related claims for violations of California's Business & Professions Code and for penalties
23 under PAGA. (Han Decl., ¶¶ 12-15.)

24 Class Counsel felt confident that the claims in this case would be certified given that
25 Defendant's policies were applicable to all Settlement Class Members. (Han Decl., ¶¶ 27-64.)

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1 **B. The Risks Associated with the Merits.**

2 As with all litigation, there are risks that a party will not prevail on the merits. In this
3 case, Plaintiffs contend that they and other Class Members were not properly provided meal and
4 rest breaks. (Han Decl., ¶¶ 30-37.) Defendant countered that Class Members were given
5 reasonable opportunities to take their meal breaks, received their meal breaks all the time, and
6 were never pressured to forgo receiving compliant meal breaks. Defendant further contended
7 that when employees did not receive compliant meal breaks, they were provided premium
8 wages. In other words, employees chose to not to receive compliant meal breaks and failed to
9 report this occurrence to Defendant, resulting in the underpayment of premium wages for
10 noncompliant meal breaks. (*Id.*, at ¶ 36.)

11 Additionally, Defendant asserted it did provide reasonable opportunities for employees
12 to take compliant rest breaks. Defendant also pointed out that unlike meal breaks, rest breaks are
13 not recorded, meaning it will be difficult for Plaintiffs to prove employees did not receive full
14 and timely rest breaks. By extension, Defendant also asserted that employees failed to inform
15 Defendant that they were not receiving compliant rest breaks. (Han Decl., ¶ 31.) As these
16 considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel
17 applied significant and appropriate discounts to the meal and rest break claims. If Defendant's
18 contentions are proven true and prevail in trial, the likely outcome of these claims, particularly
19 rest breaks, would be no recovery for the Settlement Class Members. (*Id.*, at ¶¶ 32 & 37.)

20 Plaintiffs also alleged that they were not paid for all hours worked, including minimum
21 wages, overtime wages, and double time wages as applicable, due to Defendant's improper,
22 uniform policies and practices. Specifically, employees were purportedly instructed or pressured
23 to work off-the-clock pre-shift and post-shift. (Han Decl., ¶¶ 38-40.) Defendant countered that
24 this claim was not suitable for class treatment. Instead, Defendant maintained employees were
25 expected to perform their duties while on-the-clock, meaning employees chose to work off-the-
26 clock without Defendant's knowledge. Defendant added it paid for all reported hours worked,
27 that employees were trained to record all hours worked, and that it paid proper minimum wages,
28 overtime wages, and double time wages to employees. If there were any discrepancies between

employees’ timecards, earnings records, or paychecks, Defendant asserted that it was never made aware of this. Furthermore, Defendant argued any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. (*Id.*, at ¶ 39.) If Defendant’s contentions held true, the likely outcome of this claim would be little to no recovery for employees.

C. The Risks Associated with Paystub Violations and Waiting Time Penalties

To establish liability for these penalties, Plaintiffs would first have to establish liability for the underlying claims. But Defendant argued that meal and rest break violations, even if established, could not be the predicate for a Labor Code section 226 wage statement or section 203 waiting time claim. (Han Decl., ¶¶ 41-49.) For example, the California Supreme Court has recently held that claims for meal and rest break penalties do not constitute “action[s] brought for the nonpayment of wages” for the purpose of determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action for unlawful meal and rest periods under “cannot support a section 203 penalty because section 203, subdivision (b) tethers the waiting time penalty to a separate action for wages.”). Authority is divided on this point. Moreover, although authority is divided, many district court rulings support the conclusion that any unpaid meal and rest break premium pay cannot give rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting a wage statement need only document compensation *actually received* and the hours used to calculate that compensation). Thus, it is unclear if the Court would have permitted untimely wage penalties or wage statement violations for Defendant’s alleged failure to provide meal and rest break penalties.

In addition, Plaintiffs would have to establish that Defendant’s conduct was willful to recover waiting time penalties. (Lab. Code, § 203.) With these penalties, there is always the risk that the trier of fact would not have held that Defendant’s actions were done “willfully.” A good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs allege that Defendant failed to pay for all hours worked and premiums for noncompliant meal and rest

breaks. (Han Decl., ¶¶ 30-40.) Plaintiffs also contend the Class Members are entitled to these wages and premiums, which they allege were not paid at the time of their termination or resignation. If Plaintiffs are successful on their claims, the penalties pursuant to Labor Code section 203 shall attach. Defendant counters that it provided employees with reasonable opportunities to take meal and rest breaks, asked employees to confirm the accuracy of their time records, and therefore had good-faith defenses under *Brinker* and its progeny. (*Id.*, at ¶¶ 47-48.) As such, there was some risk associated with waiting time penalties that Class Counsel had to consider. (*Id.*, at ¶ 49.)

D. The Risks Associated with the PAGA Penalties.

Labor Code section 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) However, if a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(1), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*See Thurman*,

1 *supra*, 203 Cal.App.4th (reducing penalties by 30% under this authority).) (Han Decl., ¶ 54.)

2 Class Counsel calculated penalties under this cause of action by multiplying the number
3 of active Class Members (because of the shortened statutory period for this claim) by the civil
4 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
5 section 2699.5 that were applicable in this case. Class Counsel then applied discounts
6 considering the countervailing arguments regarding the other causes of action, as well as the
7 Court’s power to award “a lesser amount than the maximum civil liability.” (Lab. Code § 2699,
8 subd. (e)(2).) (Han Decl., ¶ 55.)

9 Given the state of the law and the range of PAGA penalties requested and awarded in
10 California courts, it is difficult to determine a reasonable value and actual exposure for PAGA
11 penalties. If PAGA penalties are granted on any one of the violations alleged in Plaintiffs’
12 operative complaints, the total penalties exposure for the eligible pay periods could be around
13 \$102,400 ([32 x \$100] x 32 employees from August 15, 2019 to September 22, 2021).²
14 Plaintiffs calculated Defendant’s PAGA exposure using a one hundred percent (100%) violation
15 rate based on the average number of pay periods (32) during the one-year statutory period.
16 Multiplying the PAGA exposure by the number of alleged individual violations under the
17 PAGA theories of recovery (6) gives potential civil penalties of \$614,400. (Han Decl., ¶ 56.)

18 Although Plaintiff argued he could obtain over \$600,000 for PAGA penalties, it seems
19 unlikely that the Court would award such a large amount. As noted above, courts have reduced
20 PAGA penalties by about ninety percent (90%) where there are mitigating circumstances.
21 (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court’s
22 award of less than 10% of maximum PAGA penalty for meal break violations where company
23 sought to comply with the law).) Furthermore, PAGA’s statutory language is unclear as to
24 whether PAGA penalties may be “stacked” – that is, whether multiple civil penalties can be

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27 ² A recent Ninth Circuit ruling suggests there may be no “subsequent” violation until an actual finding of a
28 violation by a Labor Commissioner or court. (*Bernstein v. Virgin America, Inc.* (9th Cir. Feb. 23, 2021) 2021 WL
867583, at *11-12.) As a result, Plaintiffs estimated the amount of PAGA penalties using the “initial” penalty
amount of \$100 under PAGA.

1 recovered in the same pay period for different Labor Code violations. On one hand, Labor Code
2 section 2699, subdivision (f) establishes “a civil penalty for a violation” (emphasis added),
3 implying a separate civil penalty for each violation. On the other hand, employers cite Labor
4 Code section 2699, subdivision (g)(1), which states that “an aggrieved employee may recover
5 the civil penalty described in subdivision (f)...on behalf of himself or herself and other current
6 or former employees against whom one or more of the alleged violations was committed”
7 (emphasis added). However, Defendant contended that the Ninth Circuit’s opinions in *Ubrino*
8 *v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th
9 Cir. 2015) 795 F.3d 1057, which preclude the aggregation of PAGA penalties for purposes of
10 removal, prevents “stacking” of PAGA penalties. Without stacking and limited to the initial
11 violation, PAGA penalties would be limited to \$3,200 (32 employees x \$100 initial violation)
12 on the low end and \$19,200 on the high end based on six (6) major individual theories of
13 recovery. (Han Decl., ¶ 57.)

14 To the extent Defendant’s exposure remains in the hundreds and thousands of dollars,
15 the civil penalties could be “unjust, arbitrary and oppressive, or confiscatory.” In fact, many
16 courts have taken liberties to dramatically reduce the civil penalties. (*See, e.g., Visceral v.*
17 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving
18 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’
19 full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either
20 class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
21 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
22 the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear”
23 and there was no evidence the defendant acted deliberately or negligently failed to learn about
24 its obligations].) Thus, under a more conservative approach, Class Counsel considered the
25 possibility that the Court could assess only the initial violation rate, bringing the basic PAGA
26 penalty to \$19,200 [32 employees x \$100 x 6 theories of recovery]. (Han Decl., ¶ 58.)

27 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
28 Many of the causes of action brought were duplicative of the statutory claims such as violations

1 of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802.
2 Thus, the maximum penalties for each pay period are not justified. It was indeed arguable
3 whether the Court would award the maximum penalties under the law. Thus, allocating \$10,000
4 to PAGA civil penalties was reasonable based on a rate of \$9.82 per pay period [$\$10,000 \div$
5 $1,018$ Pay Periods in PAGA Date Range = $\$9.82$], given the fact that Defendant is also paying
6 an additional \$177,000 in the class settlement.³ Where PAGA penalties are negotiated in good
7 faith and “there is no indication that [the] amount was the result of self-interest at the expense of
8 other Class Members,” such amounts are generally considered reasonable.⁴ (Han Decl., ¶ 59.)

9 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
10 and in the best interest of the Class. (Han Decl., at ¶¶ 30-64.)

11 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

12 Given the risks outlined above, the issues in this case were complex and the risk for
13 Plaintiffs and Settlement Class Members associated with this litigation was high. (Han Decl., ¶¶
14 65-69.) A class trial would have required the retention of expensive expert witnesses, the
15 accrual of extensive litigation costs, and the Parties would have had to spend a substantial
16 amount of time.

17 Finally, given the complexity and unsettled nature of the issues, it is likely that any
18 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
19 further delay for the Class Members who have already waited years for resolution in this matter.
20 (Han Decl., ¶¶ 66 & 69.)

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26 ³ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a
27 total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA
penalty of \$70,000,000).)

28 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24;
see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in
approving a settlement which does not allocate any damages to the PAGA claims.”).)

F. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must consider.

G. The Amount Offered in Settlement.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the Parties with an experienced mediator. To determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the time records for Plaintiffs and Defendant provided Class Counsel with records for a sampling of the Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiffs were to prevail at trial.

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 \$787,405 on the low end and \$837,153.40 on the high end. (Han Decl., ¶ 61.)

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
Unreimbursed Business Expenses	\$33,380	30%	70%	\$7,009.80
Wage Statement Penalty	\$100,800	50%	50%	\$25,200
Waiting Time Penalty	\$112,200	50%	50%	\$28,050
MAXIMUM TOTAL EXPOSURE	\$787,405 to \$837,153.40			\$190,655.33 to \$198,615.07

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1 Based on the analysis described above, the realistic recovery for this case is around
2 \$190,655.33 on the low end and \$198,615.07 on the high end. The Gross Settlement Amount of
3 \$187,000 is approximately twenty-two percent (22.34%) of the maximum potential exposure
4 and about ninety-four percent (94.15%) of the maximum realistic exposure at trial, which is an
5 excellent settlement. (Han Decl., ¶ 62.)

6 Plaintiffs also believe in the fairness of the settlement that is based on factoring in the
7 uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of
8 action or theories alleged in their complaints, the possibility of losing at trial and potential for
9 appeals. While Plaintiffs believe that they could win, Plaintiffs would need to prove that they
10 and the certified class are entitled to the full amount of penalties. Moreover, as Defendant
11 adamantly disputes that it should be liable for the full extent of the penalties, there is a
12 possibility that Plaintiffs and the Settlement Class would be awarded less or no penalties at trial.

13 Once Class Counsel was able to determine the maximum potential damages, it was able
14 to determine a fair and reasonable settlement for the Settlement Class. (Han Decl., ¶ 26.) Class
15 Counsel analyzed the likelihood of success on the merits. Plaintiffs believe that the Settlement
16 Class had a reasonable likelihood of success on the core claims. (*Id.*, at ¶¶ 61-69.) However,
17 Defendant disputes this contention, denies all wrongdoing in this matter and is confident it has
18 strong legal and factual defenses to Plaintiffs' claims. (*Id.*, at ¶ 68.) Moreover, Class Counsel
19 determined that the likelihood of success on the claims for rest breaks, unpaid wages and for
20 waiting time penalties, and failure to reimburse necessary business expenses was not as strong,
21 because various defenses including Defendant's arguments that due to the individualized nature
22 of each location the issues were not suitable for class treatment. After considering the likelihood
23 of success on each claim and the challenges faced with certifying these claims, Class Counsel
24 determined that the settlement amount of \$187,000 was fair and reasonable.

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1 To summarize, the Settlement here is fair because it provides a substantial payment to
2 each Settlement Class Member for releasing his or her claims; extinguishes the risk of litigation;
3 and provides a fair and adequate distribution of the settlement proceeds whereby the funds are
4 allocated to Settlement Class Members proportionally based upon the number of workweeks
5 worked during the Class Period.

6 As detailed at length in the accompanying Declaration of Douglas Han, the settlement is
7 the result of extensive settlement negotiations between the Parties, conducted at arm's length,
8 and informed by substantial factual and legal investigations. (Han Decl., *passim*.) Throughout
9 this case, Class Members have been represented by experienced counsel with many years of
10 experience in employment class action litigation. (*Id.*, ¶¶ 3-10.)

11 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
12 including but not limited to, interviewing Plaintiffs at length on repeated occasions; drafting
13 pleadings, conducting informal discovery, and meeting and conferring with counsel for
14 Defendant about same; reviewing and analyzing time records, employee handbook, and policies,
15 Plaintiffs' personnel files; researching California law; interviewing numerous Settlement Class
16 Members regarding their experiences; preparing for and attending mediation; and negotiating
17 and finalizing the Stipulation and related documents. (Han Decl., ¶¶ 16-21.)

18 Among those matters considered during the course of settlement negotiations were the
19 strength of Plaintiffs case versus the amounts offered in settlement; the risks, expenses, and
20 length of further litigation, including class certification and the appeals process; the present state
21 of the law as it applies to wage-and-hour class actions, particularly in light of *Brinker*; the
22 present value of a settlement versus the long wait necessitated by any potential judgment in
23 Settlement Class Members' favor; the burdens of proof necessary to establish liability against
24 Defendant; and Defendant's defenses to the action. (Han Decl., *passim*.)

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1 These factors each indicated that the interests of Settlement Class Members are best
2 served by a settlement of this action in the manner and upon the terms set forth in the
3 Stipulation. The Stipulation confers a substantial benefit on the class of up to \$187,000.
4 Furthermore, the Settlement Awards for each Settlement Class Member will be tailored to their
5 workweeks during the Class Period. (Han Decl., at ¶ 24.) In addition Class Counsel secured
6 prospective relief for the Settlement Class in that Defendant will ensure their policies comply
7 with California law.

8 Class Counsel believes that the settlement is fair and reasonable and serves the best
9 interests of the Settlement Class Members. Although the recommendations of counsel proposing
10 the class settlement are not conclusive, the Court can properly take the recommendations into
11 account, particularly if counsel has been involved in litigation for some period of time, appear to
12 be competent, and have experience with this type of litigation, and significant discovery has
13 been completed. *See Newberg*, § 11.47.

14 **VII. THE TWO CLASS REPRESENTATIVE SERVICE AWARDS ARE FAIR AND**
15 **REASONABLE**

16 It is appropriate to provide a relatively modest additional incentive payment to the class
17 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
18 901 F.Supp. 294.

19 Plaintiffs are entitled to reasonable service payments for their efforts and initiative in
20 bringing and helping to prosecute this class action. Plaintiffs spent significant time better
21 apprising themselves of their rights, deciding whether remedial action should be taken, how it
22 should be taken, searching for attorneys, and contacting Class Counsel who spent many hours
23 with Plaintiffs discussing their cases and the law. Plaintiffs decided to vindicate not only their
24 own rights but also those of their co-workers by filing a class action. (Han Decl., ¶ 77.)

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1 The courage it took to do this should not be underestimated. By suing Defendant,
2 Plaintiffs contend they increased the risk of retaliation by prospective employers. Plaintiffs'
3 lawsuit have now cost Defendant considerable resources, and Plaintiffs contend such conduct
4 will not be lost on a prospective employer who must choose between an applicant who has
5 never sued a prior employer and one who has. Plaintiffs contend this risk is particularly real in
6 the information age, where employers can, more easily than ever, perform background checks of
7 prospective employees, sometimes with the stroke of a key. (Han Decl., ¶ 78.)

8 But Plaintiffs did not allow their fears of the potential repercussions of being class
9 representatives deter them from acting for the benefit of Class Members. To the contrary,
10 Plaintiffs have been intimately involved in this case since its inception. They have devoted a
11 substantial amount of time to helping Class Counsel effectively develop and prosecute this
12 action at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiffs
13 conferred with Class Counsel to discuss every aspect of this case, provided Class Counsel with
14 information about Defendant and about the industry generally, reviewed documents, identified
15 witnesses, time sheets, consulted Class Counsel throughout the litigation, participated in the
16 mediation process, monitored the progress of the litigation with Class Counsel, and reviewed
17 and signed the Stipulation. (Han Decl., ¶ 79.)

18 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
19 knowledge of Defendant's practices. They have diligently, adequately, and fairly represented
20 Settlement Class Members, and have not placed their own interests above any member of the
21 putative class. This sort of payment to a class representative has been a common feature of
22 settlements negotiated by Class Counsel and has been routinely approved by trial courts. (Han
23 Decl., ¶ 80.)

24 Considering the forgoing, Class Counsel believes that a combined Class Representative
25 Service Award in the amount of \$15,000 (\$7,500 to each Plaintiff) to the Class Representatives
26 is fair and reasonable. (Han Decl., ¶ 81.)

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1 **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an
4 award of up to \$65,450 for attorneys' fees, and actual litigation costs and expenses amounting to
5 \$20,000.⁵ The requested fees are fair compensation for a law firm involved in undertaking
6 complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (Han
7 Decl., ¶¶ 74-76.) Defendant will not oppose Class Counsel's attorneys' fee and costs and
8 expenses request.

9 California courts routinely look to the federal courts on class action approvals. The
10 Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class
11 actions is to award a percentage of the "common fund" created as a result of the settlement.
12 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common
13 fund/percentage approach is to "spread litigation costs proportionally among all the
14 beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id.*
15 Accordingly, courts have discretion to choose either the percentage-of-the-fund method or the
16 lodestar method. *In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d
17 1291, 1295-96.

18 Several courts have, however, expressed frustration with the "lodestar" approach for
19 deciding fee awards, which usually involves wading through voluminous time records. Thus,
20 the percentage approach can be preferable to the lodestar in certain situations because: (1) it
21 aligns the interests of class counsel and absent class members; (2) it encourages efficient
22 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
23 (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F.
24 Supp. at 1378-79. The Ninth Circuit has used the percentage of the common fund approach to
25 determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir.

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⁵ Class Counsel's request for attorneys' fees consists of thirty-five percent (35%) of \$187,000.

1 1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

2 Class Counsel's application for attorneys' fees when considering the facts and
3 circumstances surrounding this case is well within the range of reasonableness. Historically,
4 courts have awarded percentage fees in the range of twenty percent (20%) to fifty percent (50%)
5 of the common fund, depending on the circumstances of the case. *Newberg*, at §14.03; *see also*
6 *In re Activision Securities Litigation*, 723 F. Supp. at 1378. *Newberg* further notes:
7 "[A]chievement of a substantial recovery with modest hours expended should not be penalized
8 but should be rewarded for considerations of time saved by superior services performed." *Id.* at
9 §§ 14-10:14-11.

10 The attorneys' fees request provided for in the Stipulation is commensurate with judicial
11 precedent. Both state and federal courts regularly approve fee awards equal to or greater than
12 the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation*
13 (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re*
14 *Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs'
15 counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust*
16 *Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million settlement fund);
17 *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to
18 counsel of one-third (1/3) of recovery achieved).

19 In wage-and-hour class actions in particular, California trial courts have customarily
20 approved attorney's fees consistent with or greater than the percentage of the common fund
21 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super. Ct. Case No. BC
22 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at
23 least 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
24 Super. Ct. Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller*
25 *Brewing*, Los Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. Douglas M.
26 Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No.
27 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los
28 Angeles County Super.Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman);

1 *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006)
2 (Hon. Ronald L. Bauer).

3 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
4 any compensation until recovery is obtained. (Han Decl., ¶¶ 75-76.) The Court should also
5 consider the benefit obtained by Class Counsel on behalf of Settlement Class Members. Thus,
6 the requested award for Class Counsel is reasonable.

7 **A. Fee Splitting Agreement**

8 Class Counsel is not splitting the costs associated with the settlement with any other
9 individuals or firms. (Han Decl., ¶ 85.)

10 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
11 **APPROVAL**

12 The Parties respectfully request this Court, as part of the preliminary approval process,
13 to grant the following relief and make the following orders:

14 1. Review and approve the Stipulation attached to Douglas Han's declaration as
15 **Exhibit 1;**

16 2. Review and approve the Class Notice, the Dispute Form, the Exclusion Form,
17 and the Objection Form attached to the Proposed Order as **Exhibit A, Exhibit B, Exhibit C,**
18 **and Exhibit D;**

19 3. Consider and determine that the proposed class action settlement as set forth in
20 the Stipulation preliminarily appears fair, reasonable, and adequate;

21 4. Enter an order conditionally certifying the action as a class action for settlement
22 purposes only and preliminarily approving the proposed class action settlement and Stipulation;

23 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor
24 Nobles of Justice Law Corporation to serve as Class Counsel for settlement purposes;

25 6. Approve and appoint Simpluris as the Settlement Administrator to handle the
26 notice procedures as set forth in the Stipulation;

27 7. Approve the proposed settlement's allocation of funds to the claims made under
28 **PAGA;**

- 1 8. Order Defendant to disclose to Simpluris the Class Data and PAGA Data as set
2 forth in the Stipulation;
3 9. Order that Simpluris mail the Notice Packet to Settlement Class Members; and
4 10. Set a date for the Final Approval Hearing.
5

6 Dated: October 20, 2021

JUSTICE LAW CORPORATION

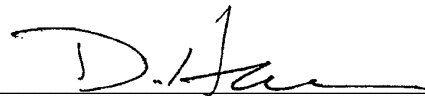
7
8 By 
9 Douglas Han
10 Shunt Tatavos-Gharajeh
11 Chancellor Nobles
12 Haig Hogdanian
13 Attorneys for Plaintiffs Alan Childs and
14 Eduardo Garcia, and the putative class
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EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Alan Childs and Eduardo Garcia (“Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Dal Chem, Inc. dba Alex Oil Company (“Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs and the Settlement Class are represented by Douglas Han, Shunt Tatavos-Gharajeh and Chancellor Nobles of Justice Law Corporation, (collectively, “Class Counsel”). Defendant is represented by James A. Bowles, Elissa Gysi and Richard S. Zuniga of Hill, Farrer, & Burrill LLP.

On February 10, 2021, Plaintiffs file a Complaint against Defendant in Riverside County Superior Court, in the matter entitled *Alan Childs and Eduardo Garcia as individuals and on behalf of others similarly situated v. Dal Chem, Inc. dba Alexis Oil Company*, Riverside County Superior Court Case No. CVR12100684 (the “Action”). On September 29, 2021, Plaintiffs filed the operative First Amended Complaint adding a cause of action under the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* (“PAGA”). The FAC’s class action causes of action against Defendant allege Labor Code violations for based on Defendant’s purported failure to pay for all hours worked (including minimum wages and overtime wages); failure to provide meal periods and pay meal period premiums; and failure to authorize and permit rest periods and pay rest period premiums. The FAC further alleges that Defendant is liable for civil penalties pursuant to PAGA for Labor Code violations based on Defendant’s alleged failure to pay for all hours worked (including minimum wages and overtime wages); failure to provide meal periods and pay meal period premiums; failure to authorize and permit rest periods and pay rest period premiums; failure to timely pay wages during employment; failure to pay timely pay wages upon termination of employment; failure to provide complete and accurate wage statements; and failure to reimburse business expenses. As a result of the foregoing alleged violations, Plaintiffs contend that Defendant is further liable to Plaintiffs and the Settlement Class (defined below) because it engaged in unlawful business practices. Defendant denies Plaintiffs’ claims.

Given the uncertainty of litigation, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to the certification of the following Settlement Class:

All current and former hourly employees of Defendant Dal Chem, Inc. dba Alexis Oil Company who worked in California at some time between August 15, 2016 and July 31, 2021.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period from August 15, 2016 to July 31, 2021.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiffs and every member of the Settlement Class (except those who timely and properly submit a Request for Exclusion as set forth below) will fully, forever and completely release and discharge Defendant, and its past, present, and future owners, officers, directors, employees, managers, board members, shareholders, attorneys, insurers, reinsurers, customers, partners, investors, members, representatives, predecessors, parent companies, subsidiaries, affiliates, divisions, successors, agents and principals, and their heirs, estates, executors, administrators, servants, insurers, attorneys, and assigns (collectively the “Released Parties”), as follows:

- A. Settlement Class Members’ Release: Settlement Class Members and Plaintiffs will release all wage and hour claims for any and all violations of California’s Labor Code and Unfair Competition Law based on the factual allegations alleged in the operative complaint in the Action and plaintiff Alan Childs’s letter dated July 14, 2021 to the Labor Workforce and Development Agency seeking civil penalties for Defendant’s alleged Labor Code violations under California’s Private Attorneys General Act of 2004, Labor Code §§ § 2698 *et seq.* with respect to the following claims: Defendant’s failure to pay for all hours worked (including minimum wages, hourly rate wages, and overtime wages); failure to provide meal periods, failure to authorize and permit rest periods; failure to timely pay wages during employment; failure to timely pay all wages due at the time of termination; failure to provide complete and accurate wage statements; and failure to reimburse business expenses; civil penalties under PAGA based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys’ fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders (collectively, the “Released Claims”).

Except for the claim under the PAGA, the time period of the Settlement Class Members’ Release shall be the same time period as the Class Period.

- B. **Release of PAGA.** Plaintiffs and all Settlement Class Members who were employed by Defendant in California at any time from July 14, 2020 through July 31, 2021 (“PAGA Period”) (hereinafter, the “PAGA Group”), will not have the opportunity to opt out or object to the PAGA Amount, as described below in section 4.B.ii, and/or the release of PAGA claims set forth in this Agreement although the release of PAGA claims will be subject to Court approval. The PAGA claims released by this Settlement Agreement are all claims against the Released Parties for civil penalties that could have been assessed upon and collected from the Released Parties under PAGA, based on the factual allegations in the operative complaint in the Action and plaintiff Alan Childs’s letter dated

July 14, 2021 to the LWDA seeking civil penalties for Defendant's alleged Labor Code violations arising during the PAGA Period ("PAGA Released Claims").

- C. In light of the Class Representative Service Awards, Plaintiffs Alan Childs and Eduardo Garcia each agree to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties. Notwithstanding the foregoing, Plaintiffs Alan Childs and Eduardo Garcia each understand that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

- D. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement by each Plaintiff does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers' compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.
- E. The releases identified herein shall be effective upon Defendant fully funding the Gross Settlement Amount.

3. **Effective Date.** This Settlement Agreement shall become effective on the latter of: (a) the Court's final approval of the Settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; (c) the final resolution of any appeal that has been filed ("Effective Date"). Defendant agrees to deposit the Gross Settlement Amount with a mutually-selected third party administrator within thirty (30) days after the Effective Date.

4. **Settlement Administrator.** The Parties have agreed to engage Simpluris, Inc. as the "Settlement Administrator" to administer this Settlement. All administrative costs shall be paid from the Gross Settlement Amount. Immediately upon receipt of the Gross Settlement Amount by the Settlement Administrator, these funds shall be transferred into a Qualified Settlement Fund. The Qualified Settlement Fund shall be established by the Settlement Administrator for the benefit of Settlement Class Members, the PAGA Group, Plaintiffs and Plaintiffs' Counsel, and shall be a fund within the meaning of Treasury Regulation §1.46B-1, 26 C.F.R. §1.468B-1 *et seq.*

5. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a "Gross Settlement Amount" of \$187,000 in full and complete settlement of the Action, as follows:

- A. The Gross Settlement Amount is non-reversionary and includes:

- (1) All payments to the Settlement Class Members;
 - (2) All costs of the Settlement Administrator and settlement administration, which shall not exceed \$7,500;
 - (3) A Class Representative Service Award, which shall not exceed \$7,500 to each Plaintiff in recognition of their respective contributions to the Action, their respective services to the Settlement Class, and their release of all claims against the Released Parties. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to thirty-five percent (35%), or \$65,450, of the Gross Settlement Amount in Class Counsel's attorneys' fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which shall not exceed \$20,000. In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) \$10,000 of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or \$7,500 will be payable to the LWDA, and the remaining twenty-five percent (25%), or \$2,500, will be payable to the PAGA Group as the "PAGA Amount," as described below.
- B. Defendant's share of payroll taxes on the portion of the payments designated as wages shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
- C. **Escalator Clause.** Defendant represents that there are an estimated 4,680 workweeks worked by Class Members in California ("Affected Workweeks") during the Class Period. If the actual number of Affected Workweeks during the Class Period is more than 10% greater than this number (i.e., if there are more than 5,148 Affected Workweeks during the Class Period), Defendant shall increase the Gross Settlement Amount in proportion to the increase in Affected Workweeks over 10% (e.g., if the number of Affected Workweeks in the Class Period is 12% greater than 4,680, Defendant will increase the Gross Settlement Amount by 2%).

6. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiffs' Class Representative Service

Awards, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."

- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class Member's Settlement Award based on the following formula:
- i. Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.
 - ii. PAGA Amount: \$2,500 of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Group Member who worked at least one pay period for Defendant during the PAGA Period, shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class Member's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all Settlement Class Members during the PAGA Period.
- C. Within fourteen (14) calendar days following an order from the Court preliminarily approving the parties' Settlement, Defendant will provide the Settlement Administrator with the number of workweeks worked by each Settlement Class Member during the Class Period and the number of pay periods worked by each Settlement Class Member during the PAGA Period.
- D. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Sixty-Seven percent (67%) as penalties and interest; and Thirty-Three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class Member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class Member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- E. Each Settlement Class Member who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members and PAGA Group Members whose checks were not cashed within 180 days after mailing will escheat to the California Secretary of State- Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class Member.
- F. Neither Plaintiffs nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

7. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of thirty-five percent of the Gross Settlement Amount, which shall not exceed \$65,450. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, which shall not exceed \$20,000 from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The Settlement Administrator shall pay the Court-approved Attorneys' Fees and Costs to Class Counsel within 21 days of the deposit of the Gross Settlement Amount by Defendant. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

8. **Class Representative Service Award.** Defendant will not object to a request for a Class Representative Service Awards of up to \$7,500 to each Plaintiff for their time and risk in prosecuting this case, their service to the Settlement Class and their release of claims against the Released Parties. The Settlement Administrator shall pay the Court-approved awards to Plaintiffs within 21 days of the deposit of the Gross Settlement Amount by Defendant. The awards will be in addition to each Plaintiff's Settlement Award as a Settlement Class Member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Service Award, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

9. Within 21 days of the deposit of the Gross Settlement Amount by Defendant, the Settlement Administrator will prepare and mail the Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class Members and to PAGA Group Members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel.

10. **Settlement Administrator.** Defendant will not object to the appointment of the Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay to the Settlement Administrator up to \$7,500 for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendant's share of taxes

payable on the wages, which shall be paid by Defendant separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after the payments to Settlement Class Members have been made by the Settlement Administrator..

11. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall submit this Settlement Agreement and the Preliminary Approval Motion to the LWDA as required by PAGA. Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement and for the purpose of settlement only;
- B. Appointing Justice Law Corporation as Class Counsel for the purpose of settlement only;
- C. Appointing Alan Childs and Eduardo Garcia as Class Representatives for the Settlement Class for the purposes of settlement only;
- D. Approving Simpluris, Inc. as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the (i) the Notice of Pendency of Class Action and Proposed Settlement; (ii) Dispute Regarding Notice of Settlement; (iii) Request for Exclusion Form; and (iv) Objection Form, drafts of which are attached hereto as Exhibits A through D, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

12. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) calendar days after entry of an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, social security numbers, the number of workweeks worked by each Settlement Class Member while employed during the Class Period (the "Class Data"), and the number of pay periods worked by each Settlement Class Member during the PAGA Period (the "PAGA Data"). The Class Data and PAGA Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the

National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class Member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class Member; and (iv) mail a Notice Packet to each Settlement Class Member in English and Spanish at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

- C. Requests for Exclusion. Any Class Member who wishes to opt-out of the Settlement must complete and mail the Request for Exclusion Form, a proposed draft of which is attached hereto as Exhibit C (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, and telephone number; (2) contain a statement that the Settlement Class Member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class Member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement, except the PAGA payment allocated to the Class Member, and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon, except that the Class Member will be bound by the PAGA settlement.
 - ii. Excluded from receiving a class settlement payment under the terms of this Settlement Agreement are those members of the Settlement Class who submit a valid and timely request for exclusion from the Settlement. If five percent (5%) or more of the members of the Class timely and affirmatively opt out of this Settlement, Defendant shall have the absolute right, in its sole discretion, and notwithstanding any other provisions of this Settlement, to revoke the settlement and its stipulation to class certification prior to the final fairness hearing, whereupon this Settlement will be null and void for all purposes, and may not be used or introduced in further litigation. This right can be exercised only by a writing stating clearly that Defendant is revoking, and withdrawing from, this Settlement, which is sent by counsel for Defendant to Class Counsel, Justice Law Corporation, Attn: Douglas Han, Shunt Tatavos-Gharajeh, and Chancellor Nobles by mail at 751 N. Fair Oaks Ave. Suite 101 and by e-mail at dhan@justicelawcorp.com, statavos@justicelawcorp.com, and cnobles@justicelawcorp.com, no later than ten (10) calendar days after

the Settlement Administrator first notifies counsel of record for Defendant in writing of the total number of timely opt-outs. If the right provided in this paragraph is not so exercised, it shall be waived and cannot later be exercised. Should Defendant exercise this right, it shall pay all expenses incurred by the Settlement Administrator through the date of withdrawal.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by completing the Objection Form, the proposed version of which is attached hereto as Exhibit D and submitting to the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, as well as file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class Member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class Member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. The Parties agree that late written objections should not, absent extraordinary circumstances, be considered. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class Member shall disclose the amount of the Settlement Class Member's estimated Settlement Award as well as the Settlement Class Member's number of workweeks worked during the Class Period, and the number of pay periods worked during the PAGA Period. Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class Member and the Parties.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the

returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class Member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class Member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class Member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant's Counsel to provide notice of the proposed settlement.

13. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving the PAGA penalty allocation to the LWDA and PAGA Amount to eligible members of the Settlement Class;
- C. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and costs, Class Representative Service Awards, and settlement administration costs; and
- D. Entering judgment pursuant to California Rule of Court 3.769.

14. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendant and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

15. **Non-disclosure and Non-publication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement

Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class Members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

16. **Obligation of Plaintiff's Counsel to Submit Settlement Agreement to the LWDA.** To permit judicial review and approval of the PAGA Payment, as required by Labor Code section 2698, et seq., Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Lab. Code § 2699(1)(2).

17. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

18. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

19. **Interim Stay of Proceedings.** The Parties agree to stay all proceedings in this litigation, except such proceedings necessary to implement and complete the terms of the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court.

20. **Costs and Fees:** The Parties shall each bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement Agreement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

21. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: James A. Bowles and Elissa L. Gysi of Hill, Farrer & Burrill LLP,
300 So. Grand Ave., 37th Floor, Los Angeles, CA 90017;
jbowles@hfbllp.com, egysi@hfbllp.com.

if to Plaintiffs: Douglas Han, Shunt Tatavos-Gharajeh and Chancellor Nobles of
Justice Law Corporation, 751 N. Fair Oaks Ave. Suite 101,
Pasadena, CA 91103; ghan@justicelawcorp.com,
statavos@justicelawcorp.com, cnobles@justicelawcorp.com.

22. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

23. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

24. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: _____

**DEFENDANT DAL CHEM, INC. DBA ALEXIS
OIL COMPANY**

By: _____

Its: _____

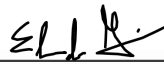
DATED: _____

PLAINTIFF ALAN CHILDS

By: _____
Plaintiff and Settlement Class Representative

DATED: 10/15/2021

PLAINTIFF EDUARDO GARCIA

By: 
Plaintiff and Settlement Class Representative

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

22. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

23. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

24. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: 10.15.21

DEFENDANT DAL CHEM, INC. DBA ALEXIS
OIL COMPANY

By: 
Its: CEO

DATED: _____

PLAINTIFF ALAN CHILDS

By: _____
Plaintiff and Settlement Class Representative

DATED: _____

PLAINTIFF EDUARDO GARCIA

By: _____
Plaintiff and Settlement Class Representative

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPROVED AS TO FORM:

DATED: _____

HILL, FARRER & BURRILL LLP

By: _____
James A. Bowles
Elissa L. Gysi
Richard S. Zuniga
Attorneys for Defendant Dal Chem, Inc. dba
Alexis Oil Company

DATED: 10/20/2021

JUSTICE LAW CORPORATION

By:  _____
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiffs
Alan Childs and Eduardo Garcia

HFB 2397485.4 A3389018

APPROVED AS TO FORM:

DATED: 10/15/21

HILL, FARRER & BURRILL LLP

By: 
James A. Bowles
Elissa L. Gysi
Richard S. Zuniga
Attorneys for Defendant Dal Chem, Inc. dba
Alexis Oil Company

DATED: _____

JUSTICE LAW CORPORATION

By: _____
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiffs
Alan Childs and Eduardo Garcia

HFB 2397485.4 A3389018

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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

Plaintiff,

vs.

DAL CHEM, INC. DBA ALEXIS OIL COMPANY, a
California corporation; and Does 1 through 100,

Defendants.

Case No. CVR12100684

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former hourly employees who have worked for Defendant Dal Chem, Inc. doing business as Alexis Oil Company ("Defendant" or "Alexis Oil") in California at some time between August 15, 2016 and July 31, 2021. Collectively, these employees will be referred to as "Settlement Class Members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Alan Childs and Eduardo Garcia* individually, and on behalf of other members of the general public similarly situated v. *Dal Chem, Inc. doing business as Alexis Oil Company*, Riverside County Superior Court Case No. CVR12100684 (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Alexis Oil's records show that you were employed at Alexis Oil as an hourly employee in California at some time between August 15, 2016 and July 31, 2021 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to object to or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Alan Childs and Eduardo Garcia ("Plaintiffs") brought this Lawsuit against Alexis Oil seeking to assert claims on behalf of a class of current and former hourly employees who worked for Alexis Oil in California on or after August 15, 2016. Plaintiffs Alan Childs and Eduardo Garcia are known as the "Class Representatives," and their attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Lawsuit alleges that Alexis Oil failed to pay Settlement Class members for all hours worked including minimum wages, hourly rate wages, overtime; and failed to provide to Settlement Class members all required meal and rest breaks. Plaintiffs further allege that Defendant is liable for civil penalties pursuant to the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698 et seq. ("PAGA") based on Defendant's alleged failure to pay minimum wages and overtime wages, failure to provide meal and rest

periods, failure to timely pay wages during employment, failure to pay timely pay wages upon termination of employment, failure to provide complete and accurate wage statements, and failure to reimburse business expenses. As a result of the foregoing alleged violations Plaintiffs also allege that Defendant engaged in unfair business practices.

Alexis Oil asserts that it has complied with California law at all times. Alexis Oil denies that it has done anything wrong, and says that all hourly employees in the class were properly compensated for all hours worked and were provided with meal and rest breaks. Alexis Oil denies that any unlawful policy or practice exists as to the above claims. Alexis Oil further denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Alexis Oil, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Alexis Oil has concluded that it is in its best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. The Settlement was reached after mediation between the parties.

The Class Representative and Class Counsel support the Settlement after conducting an investigation of the facts and applicable law. Among the reasons for support are the defenses to liability potentially available to Dal Chem, Inc. dba Alexis Oil Company, the risk of not being able to proceed in the lawsuit on behalf of all current and former hourly employees of Dal Chem, Inc. dba Alexis Oil Company who worked in California at some time between August 15, 2016 and July 31, 2021, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

The Court has only determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable and that any final determination of those issues will be made at the final hearing.

If you are still employed by Alexis Oil, your decision about whether to participate in the Settlement will not affect your employment. California law and Alexis Oil's policies strictly prohibit unlawful retaliation. Dal Chem, Inc. dba Alexis Oil Company will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class Member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members:	Attorneys for Defendant Dal Chem, Inc. dba Alexis Oil Company, Inc.
JUSTICE LAW CORPORATION Douglas Han Shunt Tatavos-Gharajeh Chancellor Nobles 751 N. Fair Oaks Avenue, Suite 101 Pasadena, California 91103 Tel: (818) 230-7502 Fax: (818) 230-7259 info@justicelawcorp.com	HILL, FARRER & BURRILL LLP James A. Bowles jbowles@hfbllp.com Elissa L. Gysi egysi@hfbllp.com 300 So. Grand Ave., 37 th Floor Los Angeles, California 90071 Tel: (213) 621-0817 Fax: (213) 624-9441 www.hillfarrer.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former hourly employees who worked for Alexis Oil in California at any time from August 15, 2016 through July 31, 2021. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Alexis Oil as described below.

Alexis Oil has agreed to pay \$187,000 (the "Gross Settlement Amount") to fully resolve all claims in the Lawsuit, including payments to Settlement Class members, attorneys' fees and expenses, payment to the Labor Workforce Development Agency ("LWDA"), settlement administration costs, and the Class Representative's Service Award. Alexis Oil's share of payroll taxes associated with any wage payments to Settlement Class members shall be paid by Alexis Oil separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved _____ to act as the "Settlement Administrator," who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved payment of up to \$7,500 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys' fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel's attorneys' fees or expenses. Class Counsel will ask for fees of up to thirty-five percent of the Gross Settlement Amount, which is estimated to be \$65,450, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount that shall not exceed \$20,000 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award service awards of \$7,500 to each of the Class Representatives to compensate them for their service and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$10,000 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act ("PAGA"). Per Labor Code section 2699(i), seventy-five percent (75%) of such penalties, or Seven Thousand Five Hundred Dollars (\$7,500) will be payable to the LWDA, and the remaining twenty-five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500), will be payable to certain Settlement Class members as the "PAGA Amount," as described below.

Calculation of Individual Settlement Class Members' Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount ("NSA"), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately \$_____, to be shared among up to an estimated _____ Settlement Class members. The NSA will be divided as follows:

Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, the numerator of which is the Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members who worked during the Class Period.

In addition, the PAGA Amount will be allocated as follows. Each Settlement Class Member who was employed by Alexis Oil at some time between July 14, 2020 and July 31, 2021, shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked

during the period between July 14, 2020 and July 31, 2021, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class Member's number of pay periods worked during this time period, and the denominator of which is the total number of pay periods worked by all Settlement Class Members during this time period.

The estimate of the likely Individual Settlement Payment to the average Settlement Class Member is \$ _____, and the estimate of the range of possible Individual Settlement Payments is from approximately \$ _____ to \$ _____.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a completed, valid and timely Request for Exclusion form (described in more detail below). In addition, if the Court grants final approval of the Settlement, each Settlement Class members' share of the PAGA Amount will be mailed to all Settlement Class members who were employed by Alexis Oil at some time between July 14, 2020 and July 31, 2021.

Payment by Alexis Oil of Gross Settlement Amount. The Gross Settlement Amount shall be paid by Alexis Oil within thirty (30) calendar days after the "Effective Date" which is defined as the latter of: (a) the Court's final approval of the settlement if no objections by or on behalf of Settlement Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Within ten (10) calendar days following Alexis Oil Company's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: Sixty Seven Percent (67%) as penalties and interest; and Thirty Three Percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms 1099 for the amounts allocated as penalties and interest and IRS Forms W-2 for amounts deemed "wages." Settlement Class members are responsible for the proper income tax treatment of the Settlement award. The Settlement Administrator, Dal Chem, Inc. dba Alexis Oil Company and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release Alexis Oil and all of their past and present officers, directors, employees, and agents (collectively the "Released Parties"), from all wage and hour claims for any and all violations of California's Labor Code and Unfair Competition Law based on the factual allegations alleged in the operative complaint with respect to the following claims: Defendant's failure to pay for all hours worked (including minimum wages, hourly rate wages, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all wages due at the time of termination, failure to furnish accurate, itemized wage statements, failure to timely pay wages during employment, civil penalties under California's Private Attorneys General Act of 2004 ("PAGA") based on the alleged Labor Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under California law, to the extent permissible, including but not limited to the California Labor Code and the applicable Wage Orders (collectively, the "Released Claims"). The time period of the Settlement Class Members' Release shall be the same time period as the Class Period.

Release of PAGA. Plaintiff and all Settlement Class Members who were employed by Alexis Oil in California at some time between July 14, 2020 and July 31, 2021, will not have the opportunity to opt out or object to the PAGA Amount or opt-out of the release of the PAGA claim, although the release of PAGA claim will be subject to Court approval.

The releases identified herein shall be null and void should the Settlement not be fully funded.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above) stated in the accompanying Dispute Regarding Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Regarding Notice of Settlement Award. Your award is based on the proportionate number of workweeks you worked during the Class Period, the number of workweeks worked at some time between August 15, 2016 and July 31, 2021. The information contained in Alexis Oil's records regarding all of these factors, along with your estimated settlement award, is listed on the accompanying Dispute Regarding Notice of Settlement Award. If you disagree with the information in your Dispute Regarding Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Dispute Regarding Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by completing the enclosed "Request for Exclusion" form and sending the completed "Request for Exclusion" form to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>> postmarked no later than <<RESPONSE DEADLINE>>. To be valid, the Request for Exclusion **must** be completely filled out and signed. However, you cannot exclude yourself from the PAGA Amount discussed herein.

Any person who mails a timely and valid Request for Exclusion form shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement (aside from a portion of the PAGA Amount if the person was employed by Dal Chem, Inc. dba Alexis Oil Company at some time between July 14, 2020 and July 31, 2021). **Do not submit both a Dispute Regarding Notice of Settlement Award and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may complete the enclosed "Objection" form and mail it to the Settlement Administrator. To be valid, the Objection form **must** be completely filled out and signed. Written objections must be postmarked on or before <<RESPONSE DEADLINE>>.

If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 1 of the Riverside County Superior Court, located at 4050 Main Street Riverside, CA 92501. You have the right to appear either in person or through your own attorney at this hearing. All objections or other correspondence must state the name and number of the case, which is *Alan Childs, Eduardo Garcia, et al. v. Dal Chem, Inc. dba Alexis Oil Company, Inc.*, Riverside County Superior Court Case No CVR 12100684.

Any Class Member who elects to appear personally at the Court for any reason related to this Action must comply with the Court's social distancing and mandatory face covering requirements, as well as other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.riversidecourts.ca.gov.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 1 of the Riverside County Superior Court, located at 4050 Main Street Riverside, CA 92501. The Court will also be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Award to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members, except the Settlement Administrator will provide notice to any Settlement Class members who have submitted a timely objection. **You have the right to attend the Final Approval Hearing but are not required to do so. If you attend the hearing and/or retain your own separate attorney, it will be at your own expense.**

Any Settlement Class member who elects to appear personally at the Court for any reason related to this Action must comply with the Court's social distancing and mandatory face covering requirements, as well as other orders related to COVID-19. All such rules and orders can be located at the Court's website: www.riversidecourts.ca.gov.

The Court's final judgment will be posted on the Settlement Administrator's website (http://www._____.com).

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Riverside County Superior Court, located at 4050 Main Street Riverside, CA 92501, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information or contact the Settlement Administrator.

You may also access the Court's electronic case file with the following steps; Go to <https://www.riverside.courts.ca.gov/>; (ii) Click on the "Online Services" tab; (iii) Click on the "Search Court Records" option; (iv) in the "Civil, Family Law & Probate Records"; (v) click on "Case Number Search"; (vi) log onto your account or create an account if you do not have one; (viii) in the Case Number box enter "CVR12100684" and click "Search"; and (v) the name of the case should be appear "Ramirez vs. Dal Chem, Inc. dba Alexis Oil Company", click on the Case Number which appears to the right of the Case Name, you can view the schedule of upcoming hearings and other information about the case.

You may also obtain a copy of the Settlement by requesting a copy from the Settlement Administrator or by accessing the Court's electronic file as explained above, locate the entry for the "_____" filed on _____ 2021, click on the document icon (it appears as a small camera) associated with that entry, and follow any additional prompts provided. The Settlement will be attached as Exhibit ____ to _____ Declaration.

PLEASE DO NOT CALL OR WRITE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Dispute Regarding Notice of Settlement Award, Request for Exclusion, or Objection is <<**RESPONSE DEADLINE**>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<**PRELIM APPROVAL DATE**>>.

Exhibit B

ALAN CHILDS, EDUARDO GARCIA INDIVIDUALLY, AND ON BEHALF OF OTHER MEMBERS OF THE
GENERAL PUBLIC SIMILARLY SITUATED V. DAL CHEM, INC. doing business as ALEXIS OIL COMPANY
RIVERSIDE COUNTY SUPERIOR COURT CASE NO. CVR12100684

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Exhibit C

REQUEST FOR EXCLUSION FORM

ALAN CHILDS AND, EDUARDO GARCIA INDIVIDUALLY, AND ON BEHALF OF OTHER MEMBERS OF THE GENERAL PUBLIC SIMILARLY SITUATED V. DAL CHEM, INC. Doing Business As ALEXIS OIL COMPANY

RIVERSIDE COUNTY SUPERIOR COURT CASE NO. CVR12100684

SUBMIT THIS FORM ONLY IF YOU WISH TO BE EXCLUDED FROM PARTICIPATING IN THE CLASS ACTION SETTLEMENT

By signing and returning this form, I represent that it is my desire to exclude myself from participating in the Settlement of the Class Action entitled *Alan Childs and Eduardo Garcia individually, and on behalf of other members of the general public similarly situated v. Dal Chem, Inc. dba Alexis Oil Company*, Riverside County Superior Court Case No. CVR 12100684, and that I received notice of the Settlement, and that I do not want to participate and do not want to receive money from the Settlement.

Please note: Any person who submits this form will not receive a settlement payment, aside from a portion of the PAGA Amount if the person was employed by Dal Chem, Inc. dba Alexis Oil Company between July 14, 2020 and July 31, 2021.

Name (Please Print): _____
(First) (Middle) (Last)

Address: _____
(Street)

(City) (State) (Zip)

Telephone No.: _____

Dated: _____ Signature: _____

**TO BE VALID, THIS FORM MUST BE POST-MARKED NO LATER THAN _____,
AND MAILED TO THE CLAIMS SETTLEMENT ADMINISTRATOR AT:**

Alan Childs, Eduardo Garcia, et al. v. Dal Chem, Inc. dba Alexis Oil Company
Settlement Administrator
c/o _____

DO NOT SUMIT BOTH THIS FORM AND THE OBJECTION FORM

Exhibit D

OBJECTION FORM

ALAN CHILDS, EDUARDO GARCIA INDIVIDUALLY, AND ON BEHALF OF OTHER MEMBERS OF
THE GENERAL PUBLIC SIMILARLY SITUATED V. DAL CHEM, INC. Doing Business As ALEXIS OIL
COMPANY

RIVERSIDE COUNTY SUPERIOR COURT CASE NO. CVR12100684

**COMPLETE THIS FORM ONLY IF YOU WISH TO OBJECT TO THE
CLASS ACTION SETTLEMENT**

In order for you to object to the Class Action Settlement entitled *Alan Childs and Eduardo Garcia individually, and on behalf of other members of the general public similarly situated v. Dal Chem, Inc. dba Alexis Oil Company*, Riverside County Superior Court Case No. CVR12100684 you must complete all steps listed in 1-4 below.

You are not required to appear in Court in order to object to the Settlement but may appear if you wish to do so.

1. Provide the following information:

Your Name (Please Print): _____
(First) (Middle) (Last)

Your Address: _____

Telephone No.: _____

2. Describe your objection to the Settlement (please attach additional documents if you need more space):

3. Date and sign this form below:

Dated: _____ Signature: _____

4. MAIL A COPY OF THIS COMPLETED FORM TO THE SETTLEMENT ADMINISTRATOR AT THE ADDRESS BELOW SO THAT IT IS POST-MARKED NO LATER THAN

DO NOT SUBMIT BOTH THIS FORM AND THE REQUEST FOR EXCLUSION FORM

Alan Childs and Eduardo Garcia, et al. v. Dal Chem, Inc. dba Alexis Oil Company.

Settlement Administrator

c/o

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