

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ROBERT DELL, an individual, on behalf of
himself and others similarly situated,

PLAINTIFF,

v.

NRC ENVIRONMENTAL SERVICES,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. RG21114398

[Case Assigned for All Purposes to Hon. Evelio
Grillo in Dept. 21]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: October 6, 2023

Time: 9:00 AM

Dept.: 21

Reservation Number: 634546545128

Complaint Filed: September 30, 2021

Trial Date: None Set

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

2 The above captioned Action is a class and representative action lawsuit brought by Plaintiff
3 Robert Dell (“Class Representative” or “Plaintiff”) against Defendant NRC ENVIRONMENTAL
4 SERVICES, INC. (“Defendant”). The Motion for Final Approval of Class Action Settlement came
5 before this Court, on October 6, 2023.

6 **WHEREAS**, Judge Grillo granted preliminary approval of the Class Action and PAGA
7 Settlement Agreement (“Agreement”), attached to the concurrently-filed Declaration of Kelsey M.
8 Szamet as Exhibit “1”, on May 26, 2023.

9 **WHEREAS**, Plaintiff Robert Dell has applied to the Court for an order granting final
10 approval of the Agreement.

11 **WHEREAS**, the Agreement sets forth the terms and conditions for the proposed
12 Agreement and for entry of an Order of Final Approval and entry of final judgment thereon. The
13 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
14 Settlement; Motion for Approval of Attorneys’ Fees and Costs; the Declarations of Kelsey M.
15 Szamet, Robert Dell; and Yami Burns of Phoenix Settlement Administrators; and the supporting
16 documents annexed thereto, now finds:

17 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

18 1. The Court has personal jurisdiction over all Settlement Class Members and that the
19 Court has subject matter jurisdiction to approve the Agreement;

20 2. The terms of the Agreement are fair, just, reasonable, and adequate, consistent and
21 in compliance with California Code of Civil Procedure, the California and United States
22 Constitutions (including the due process clauses), the California Rules of Court and any other
23 applicable law, and in the best interest of each of the Parties and the Settlement Class Members
24 and is hereby finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement as described
26 in the Agreement according to its terms and provisions.

27 4. The Agreement is binding on Plaintiff and all other Settlement Class Members,
28 except those who timely and properly filed Request for Exclusion, as well as their heirs, executors

1 and administrators, successors and assigns.

2 5. There are zero (0) valid requests for exclusion.

3 6. There are no objectors to the Agreement.

4 7. It is ordered that the Class is certified for settlement purposes only. The Court
5 finds that an ascertainable class exists and a well-defined community of interest exists in the
6 questions of law and fact involved because in the context of the Agreement: (i) there are questions
7 of law and fact common to the Settlement Class Members which, as to the Agreement and all
8 related matters, predominate over any individual questions; (ii) the Claims of Plaintiff are typical
9 of the Claims of the Settlement Class Members; and (iii) in negotiating, entering into and
10 implementing the Agreement, Plaintiff and Plaintiff's Attorneys have fairly and adequately
11 represented and protected the interest of the Settlement Class Members.

12 8. The Court finds that the Notice and notice methodology implemented pursuant to
13 this Agreement (i) constituted the best practicable notice; (ii) constituted notice that was
14 reasonably calculated, under the circumstances, to apprise Settlement Class Members of the
15 pendency of the Action, their right to object to or exclude themselves from the proposed
16 Agreement and their right to appear at the Final Settlement Hearing; (iii) were reasonable and
17 constituted due, adequate and sufficient notice to all persons entitled to receive notice; and (iv)
18 met all applicable requirements of the California Code of Civil Procedure, the California and
19 United States Constitution (including the Due Process Clause), the California Rules of Court and
20 any other applicable law.

21 9. The Class is hereby made final. The Class is defined as:

22 all of Defendant's current and former non-exempt employees in the
23 state of California from September 30, 2017 through September 24,
2022. (the "Class").

24 10. The "Class Settlement Period" is September 30, 2017 to September 24, 2022.

25 11. The Aggrieved Employees are hereby made final. The Aggrieved Employees are
26 defined as:

27 all of Defendant's current and former non-exempt employees in the
28 State of California from September 30, 2020 through September 24,
2022. (the "Aggrieved Employees" or "PAGA Members")

12. The “PAGA Settlement Period” is September 30, 2020 to September 24, 2022.

13. The Agreement is not an admission by Defendant, nor is this Final Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final Order, the Agreement, nor any document referred to herein, nor any action taken to carry out the Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant.

14. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each Settlement Class Member shall fully release and discharge the Released Parties pursuant to the following release and expressly waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides:

“any and all facts and claims asserted in the Action or any other claims that could have been asserted in the Action based on the facts alleged or ascertained, including but not limited to claims arising from alleged unpaid wages, minimum wages, regular wages, overtime and double time wages, meal and rest period violations, unpaid reimbursements and expenses, wage statement violations, and separation pay violations; and his or her “individual PAGA penalties” pursuant to *Viking River Cruises, Inc. v. Moriana* (collectively, the “Released Class Claims”) during the Class Settlement Period. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Settlement Period.”

15. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each Aggrieved Employee shall fully release and discharge the Released Parties pursuant to the following release and expressly waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542, which provides:

“any and all claims involving any alleged failure to pay unpaid wages, minimum wages, regular wages, overtime and double time wages, meal and rest period violations, unpaid reimbursements and expenses, wage statement violations, and separation pay violations; and PAGA penalties (collectively, the “Released PAGA Claims”) during the PAGA Settlement Period.”

16. Plaintiff and all Settlement Class Members who have not been timely and properly

1 excluded from the Class, and any person acting on their behalf, are permanently barred and
2 enjoined from: (i) filing, commencing, prosecuting, intervening in, participating in (as class
3 members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any
4 state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any
5 jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Settlement Class
6 Members into a separate class for purposes of pursuing as a purported class action (including by
7 seeking to amend a pending complaint to include class allegations, or by seeking class certification
8 in a pending action) any lawsuit based on or relating to the Released Claims;

9 17. The Agreement provides that the Gross Settlement Amount is seven hundred and
10 fifty thousand dollars and zero cents (\$750,000.00). The Net Settlement Amount shall be
11 determined according to the terms of the Agreement.

12 18. The Court orders the calculations and the payments to be made and administered in
13 accordance with the terms of the Agreement.

14 19. The Court hereby finds that Plaintiff and Class Counsel adequately represented the
15 Class for purposes of entering into and implementing the settlement. The Court hereby confirms
16 Kingsley & Kingsley, APC as Class Counsel in the Action.

17 20. The Court hereby finds the unopposed application of Class Counsel for a costs and
18 attorneys' fees award provided for under the proposed Agreement to be fair and reasonable in light
19 of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$250,000.00
20 shall be paid for attorney fees and \$15,000.00 shall be paid for litigation costs.

21 21. The unopposed application of Class Counsel for an enhancement payment to
22 Plaintiff is hereby granted. Of the Gross Settlement Amount, a \$5,000.00 Class Representative
23 Service Payment shall be allocated to Class Representative Robert Dell.

24 22. The unopposed application of Class Counsel for claims administration fees to
25 Phoenix Settlement Administrators is hereby granted. Of the Gross Settlement Amount,
26 \$10,000.00 shall be paid for settlement administration fees.

27 23. Defendant shall have no further liability for costs, expenses, interest, attorneys'
28 fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

24. The Court approves the PAGA Penalties in the amount of \$100,000.00. The Court approves 75% of the PAGA Penalties being allocated to the Labor and Workforce Development Agency ("LWDA") in the amount of \$75,000.00. The Court further directs that the remaining 25% of the PAGA Penalties, in the amount of \$25,000.00 shall be allocated to the Individual PAGA Payments.

25. If a Settlement Class Member does not cash his or her settlement check within 180 days, the uncashed funds shall be transmitted by the Administrator to the non-profit Bet Tzedek pursuant to Cal. Code Civ. Proc. section 384(b)(3)(C). The Court finds there is a strong nexus between the mission of Bet Tzedek and the interests of the Settlement Class members.

26. Defendant shall have no further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

27. The Court hereby grants and authorizes the Parties, without further approval from the Court, to agree to and to adopt such amendments, modifications and expansions of this Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii) do not limit the rights of Settlement Class Members under the Stipulation.

28. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court shall retain jurisdiction over the Action, the Parties, and the Class, as well as the administration and enforcement of the terms of the Settlement of this action to enforce the terms of the judgment. Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction over the Action, the Parties, and the Class, as well as the administration and enforcement of the Settlement. Any disputes or controversies arising with respect to the interpretation, consummation, enforcement, or implementation of the Settlement shall be presented by motion to the Court; provided however, that nothing in this Part shall restrict the ability of the Parties to exercise their rights to terminate the Settlement pursuant to the terms of the Agreement.

29. This Final Order shall constitute a final judgment.

DATED: _____

JUDGE OF THE SUPERIOR COURT

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 13, 2023, I served all interested parties in this action the following documents described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ENTERING JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

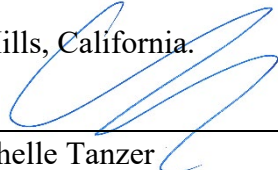
Jason Geller, Esq.
Nathan Low, Esq.
Abby Harrington, Esq.
jgeller@fisherphillips.com
nlow@fisherphillips.com
aharrington@fisherphillips.com
lhamann@fisherphillips.com
nlarios@fisherphillips.com
FISHER & PHILLIPS LLP
1 Montgomery Street, Suite 3400
San Francisco, CA 94104

[XX] (BY ELECTRONIC SERVICE): I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 13, 2023, at Woodland Hills, California.



Michelle Tanzer