

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

FILED
ALAMEDA COUNTY

OCT 27 2023

CLERK OF THE SUPERIOR COURT

By Nicole Hall

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

JESUS ALDANA, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

v.

LYRICAL FOODS, INC. d/b/a KITE HILL, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 22CV005107

Assigned for All Purposes to:
Honorable Evelio Grillo
Department 21

CLASS ACTION

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

[Reservation ID: 602990273577]

Hearing Date: October 20, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 21

Complaint Filed: January 7, 2022
FAC Filed: March 1, 2023
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Jesus Aldana's ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, Attorney Fee Award, Cost Award, and
3 Class Representative Enhancement Payment, and after considering the papers submitted in
4 support of the motion, including the Joint Stipulation and Settlement Agreement ("Settlement
5 Agreement," "Settlement," or "Agreement"), hereby FINDS AND ORDERS as follows:

6 Plaintiff and Defendant Lyrical Foods, Inc. d/b/a Kite Hill Co. ("Defendant") entered a
7 Settlement Agreement on or about March 23, 2023 to settle this class action lawsuit.

8 The Court entered an Order dated May 5, 2023 preliminarily approving the settlement of
9 this class action lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
10 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
11 Members, scheduling a Final Approval Hearing, and providing Class Members with an
12 opportunity to object to the settlement or exclude themselves from the Class.

13 The Court held a Final Approval Hearing on October 20, 2023 to determine whether to
14 grant final approval to the settlement of this class action.

15 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
16 ("Order and Judgment") incorporates the Settlement Agreement. Unless otherwise provided
17 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
18 in the Settlement Agreement.

19 2. Jurisdiction. Because adequate notice has been disseminated, and all Class
20 Members have been given the opportunity to request exclusion from the Class, the Court has
21 personal jurisdiction with respect to the claims of all Class Members. The Court also has subject
22 matter jurisdiction over this class action, including jurisdiction to approve the Settlement, grant
23 final certification of the Class, and dismiss this case.

24 ///

25 ///

26 ///

1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. Accordingly, the Court certifies a Class consisting of all current and former hourly-paid
4 or non-exempt employees of Defendant within the State of California at any time during the
5 period from July 12, 2017, to December 31, 2022 ("Class," "Class Members," and "Class
6 Period"). There are currently one hundred thirty-two (132) Class Members who did not submit
7 valid and timely requests to exclude themselves from the Class portion of this Settlement
8 ("Participating Class Members")¹.

9 4. Adequacy of Representation. Class Counsel fully and adequately represented the
10 Class for purposes of entering and implementing the Settlement and have satisfied the
11 requirements of Code of Civil Procedure section 382.

12 5. Notice Packet. The Court finds the Notice of Class Action and PAGA Settlement
13 ("Notice") and Election Not to Participate In ("Opt Out" From) Class Action Settlement
14 ("Exclusion Form") (collectively, known as the "Notice Packet") and its distribution to Class
15 Members have been implemented pursuant to the Agreement and this Court's Preliminary
16 Approval Order. The Court further finds the Notice Packet:

- 17 a. constitutes notice reasonably calculated to apprise Class Members of the: (i)
18 pendency of this case; (ii) material terms and provisions of and rights under the
19 Settlement; (iii) right to object to any aspect of the Settlement; (iv) right to
20 exclude themselves from the Class; (v) right to receive a settlement payment; (vi)
21 right to appear at the Final Approval Hearing; and (vii) binding effect of the
22 orders and judgment in this case on all Participating Class Members;
23 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
24 section 382, California Rule of Court 3.769, and due process;

26 ¹ The Settlement Administrator mailed Notice Packets to one hundred thirty-three (133)
27 Class Members and received one (1) request for exclusion. So, there are one hundred thirty-
28 two (132) Participating Class Members.

1 c. constitutes the best practicable notice to Class Members under the circumstances
2 of this case; and

3 d. constitutes notice reasonable, adequate, and sufficient to all Class Members.

4 6. Final Settlement Approval. The terms and provisions of the Settlement
5 Agreement have been entered into good faith and are the product of arm's-length negotiations by
6 experienced counsel who have done a meaningful investigation of the claims in the dispute. The
7 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
8 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
9 implement the Settlement Agreement according to its terms and provisions.

10 7. Binding Effect. The terms and provisions of the Settlement Agreement and this
11 Order and Judgment are binding on Plaintiff, Participating Class Members, Eligible Aggrieved
12 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
13 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
14 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
15 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
16 that were or could have been raised in this lawsuit and are encompassed by the Released Claims
17 and Private Attorneys General Act of 2004 ("PAGA") Released Claims. The Settlement
18 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
19 Class Members who have submitted timely requests for exclusion.

20 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
21 any action to enforce the terms and provisions of the Settlement Agreement.

22 9. Release of Claims. Upon final approval by the Court and full funding of the
23 Gross Settlement Amount, Plaintiff and Participating Class Members will fully and finally
24 release and discharge the Released Parties from the Released Claims.

25 ///

26 ///

27 ///

1 a. Effect of PAGA Settlement. Upon final approval by the Court and full funding of
2 the Gross Settlement Amount, Plaintiff, as an agent and proxy of the California
3 Labor and Workforce Development Agency ("LWDA"), and any other
4 representative, proxy, or agent thereof, will be barred from seeking PAGA
5 Released Claims from the Released Parties.

6 b. Plaintiff's Release of Claims and General Release. Upon final approval by the
7 Court and full funding of the Gross Settlement Amount, in addition to the
8 Released Claims and PAGA Released Claims, the claims released by Plaintiff, in
9 exchange for the Class Representative Enhancement Payment, include a general
10 release of claims. Plaintiff shall also be deemed to have, and by operation of the
11 Final Judgment shall have, expressly waived and relinquished to the fullest extent
12 permitted by law the provisions, rights, and benefits of section 1542 of the Civil
13 Code, or any other similar provision under federal or state law that purports to
14 limit the scope of a general release.

15 c. Released Parties. The Released Parties include Defendant and its affiliated
16 companies and their respective parent companies, subsidiaries, affiliates,
17 shareholders (including SEMCAP and Arborview), members, owners, agents
18 (including, without limitation, any investment bankers, accountants, insurers,
19 reinsurers, attorneys and any past, present, or future officers, directors, and
20 employees) predecessors, successors, and assigns.

21 10. Class Representative Enhancement Payment. The Court finds the Class
22 Representative Enhancement Payment of \$10,000, to be paid by Defendant to Plaintiff out of the
23 Gross Settlement Amount, to be reasonable and appropriate. The Class Representative
24 Enhancement Payment is to be paid pursuant to the terms and provisions set forth in the
25 Settlement Agreement.

26 ///

27 ///

1 a. The rationale for making enhancement payments is that the class representatives
2 should be compensated for the expense and risk they have incurred in conferring a
3 benefit on other class members. Criteria courts may consider include the: (i) risk
4 to the class representatives in commencing the suit; (ii) notoriety and personal
5 difficulties encountered by the class representatives; (iii) amount of time and
6 effort spent by the class representatives; (iv) duration of the litigation; and (v)
7 personal benefit (or lack thereof) enjoyed by the class representatives.

8 b. The Court has reviewed Plaintiff's declaration outlining his involvement in the
9 lawsuit. Given the risks inherent in serving as a class representative, the duration
10 of the case and time involved, and benefits created for the Class, the Court
11 approves the Class Representative Enhancement Payment of \$10,000 to Plaintiff.

12 11. Attorney Fee Award and Cost Award. The Court finds an award of an Attorney
13 Fee Award of \$108,333.33, to be paid out of the Gross Settlement Amount by Defendant to
14 Class Counsel, to be reasonable and appropriate. The Court further finds an award of a Cost
15 Award for the reimbursement of actual litigation costs of \$15,971.66, to be paid by Defendant to
16 Class Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. Such fees
17 and costs are to be paid pursuant to the terms and provisions set forth in the Settlement
18 Agreement. Defendant shall not be required to pay for any other attorneys' fees and expenses,
19 costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or
20 Class Members. Defendant shall also not be required to pay for any other attorneys' fees and
21 expenses, costs, or disbursements incurred by Plaintiff or Class Members in connection with or
22 related in any manner to this case, Settlement Agreement, settlement administration, and/or
23 Released Claims and PAGA Released Claims.

24 ///

25 ///

26 ///

1 a. The Court has an independent right and responsibility to review the requested
2 Attorney Fee Award and only award so much as it determines reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
4 127-28.) The Attorney Fee Award requested by Class Counsel of \$108,333.33 is
5 one-third (1/3) of the common fund created for the benefit of the Class Members
6 and is supported by use of the percentage-fee method. (See *Laffitte v. Robert Half*
7 *International, Inc.* (2016) 1 Cal.5th 480, 504.) Considering the results achieved
8 for the Class, financial risk undertaken, difficult nature of this litigation, skill
9 required, percentage fees award in other cases, and contingent fees charged in the
10 private marketplace, the Court finds the request for the Attorney Fee Award is
11 consistent with the legal marketplace, is reasonable, and is approved.

12 b. The Court has reviewed the declaration of Douglas Han regarding the costs
13 expended in the prosecution of this case. Under the terms of the Settlement, Class
14 Counsel may seek reimbursement of up to \$20,000 in litigation costs. The Court
15 finds Class Counsel have expended \$15,971.66 in litigation costs and that such
16 costs were reasonable. Thus, the Court approves the payment of the Cost Award
17 of \$15,971.66 for the reimbursement of Class Counsel's litigation costs.

18 12. Administration Costs. The Court finds the Administration Costs of \$8,250, to be
19 paid by Defendant to the Settlement Administrator out of the Gross Settlement Amount, to be
20 reasonable and appropriate. The Administration Costs are to be paid pursuant to terms and
21 provisions set forth in the Settlement Agreement.

22 a. The Court has reviewed the declaration of Kevin Lee from Phoenix Class Action
23 Administration Solutions, the Court-approved Settlement Administrator. The
24 Court finds notice was provided to the Class pursuant to the Preliminary Approval
25 Order, constitutes the best practicable notice, and satisfies due process. The
26 Settlement Administrator has discharged its duties to provide notice to the Class.
27
28

1 Thus, the Court approves a payment for Administration Costs of \$8,250 for the
2 Settlement Administrator's services in administering this settlement.

3 13. PAGA Payment. The Court finds the PAGA Payment of \$20,000, seventy-five
4 percent (75%) of which (\$15,000) will be paid by Defendant to the LWDA out of the Gross
5 Settlement Amount and twenty-five percent (25%) of which (\$5,000) shall be distributed to
6 Eligible Aggrieved Employees, on a pro rata basis, to be reasonable and appropriate. The PAGA
7 Payment is to be paid pursuant to the terms and provisions set forth in the Settlement Agreement.

8 14. Funding of the Settlement. No later than April 28, 2023, Defendant will fund
9 \$25,000 of the Gross Settlement Amount into the Qualified Settlement Fund ("QSF"). No later
10 than May 26, 2023, Defendant will fund an additional \$25,000 of the Gross Settlement Amount
11 into the QSF. No later than June 30, 2023, Defendant will fund an additional \$25,000 of the
12 Gross Settlement Amount into the QSF. No later than July 28, 2023, Defendant will fund an
13 additional \$25,000 of the Gross Settlement Amount into the QSF. No later than August 25, 2023,
14 Defendant will fund an additional \$25,000 of the Gross Settlement Amount into the QSF. No
15 later than September 29, 2023, Defendant will fund an additional \$25,000 of the Gross
16 Settlement Amount into the QSF. No later than October 27, 2023, Defendant will fund an
17 additional \$25,000 of the Gross Settlement Amount into the QSF. Within fourteen (14) calendar
18 days of the Effective Final Settlement Date, Defendant shall have deposited the remainder of the
19 Gross Settlement into the QSF. Defendant shall also at this time provide any tax information that
20 the Settlement Administrator may need to calculate each Participating Class Member's
21 Individual Settlement Share. Within fourteen (14) calendar days after the Effective Final
22 Settlement Date, the Settlement Administrator shall also calculate and pay all payments due
23 under the Settlement Agreement.

24 ///

25 ///

26 ///

1 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
2 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
3 Settlement was the product of arm's-length negotiations following litigation, discovery, and
4 exchange of documentation relating to the claims. The negotiations were facilitated with the
5 assistance of mediator Lynn S. Frank, an experienced and well-respected class action mediator.

6 a. There were no objections to and only one (1) request for exclusion from the
7 Settlement. This is further proof of the fairness of the Settlement.

8 b. With respect to the benefit to the Class Members, the gross *average* Individual
9 Settlement Payment will be about \$1,230.64, and the gross *highest* Individual
10 Settlement Payment will be approximately \$3,544.35.

11 16. Uncashed Checks. Participating Class Members and Eligible Aggrieved
12 Employees must cash or deposit their settlement checks within one hundred eighty (180)
13 calendar days after the checks are mailed to them. Uncashed settlement checks will be canceled
14 and paid to the *cy pres* recipient Legal Aid At Work.

15 17. Modification of Settlement Agreement. The Participating Class Members are
16 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
17 modifications of the Settlement Agreement, by an express written instrument signed by counsel
18 for all Parties or their successors-in-interest. Such amendments or modifications shall be
19 consistent with this Order and Judgment and cannot limit the rights of Participating Class
20 Members under the Settlement Agreement.

21 18. Final Accounting and Compliance. The Court sets a nonappearance case review
22 for ~~November 29, 2024~~ April 26, 2024 in Department 21. Within five (5) court days before this hearing,
23 Plaintiff shall file a compliance status report. Pursuant to Code of Civil Procedure section 384,
24 the compliance status report shall specify the total amount paid to Class Members and residual of
25 the unclaimed settlement funds that will be paid to the entity identified as the recipient of such
26 funds in the Settlement, along with a proposed amended judgment to facilitate this payment.

1 a. Holdback Provision. Ten percent (10%) of the Attorney Fee Award (\$10,833.33)
2 will be held in an interest-bearing account, maintained by the Settlement
3 Administrator, pending the submission and approval of a final compliance status
4 report after completion of the distribution process.

5 19. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
6 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
7 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
8 and for any other necessary purpose, including, without limitation:

- 9 a. enforcing the terms and provisions of the Settlement Agreement and resolving
10 any disputes, claims, or causes of action in this case that, in whole or in part, are
11 related to or arise out of the Settlement Agreement or this Order and Judgment;
12 b. entering such additional orders as may be necessary or appropriate to protect or
13 effectuate this Order and Judgment approving the Agreement, and permanently
14 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
15 fair and orderly administration of this Settlement; and
16 c. entering any other necessary or appropriate orders to protect and effectuate this
17 Court's retention of continuing jurisdiction.

18 For the reasons set forth above, the Motion for Final Approval of Class Action
19 Settlement, Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment
20 is GRANTED. The Settlement Administrator is directed to carry out the terms of the Settlement
21 Agreement forthwith.

22 ///

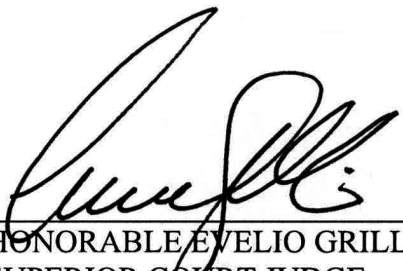
23 ///

24 ///

1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

9
10 DATED: OCT 27 2023


11 HONORABLE EVELIO GRILLO
12 SUPERIOR COURT JUDGE
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 11/02/2023
PLAINTIFF/PETITIONER: Jesus Aldana	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy N. Hall
DEFENDANT/RESPONDENT: LYRICAL FOODS, INC. d/b/a KITE HILL, a California corporation; and DOES 1 through 100, inclusive;	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 22CV005107

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Judgment - Judgment on the Pleading - 10/27/2023 entered for Plaintiff Jesus Aldana against Defendant LYRICAL FOODS, INC. d/b/a KITE HILL, a California corporation. entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Douglas Han
Justice Law Corporation
dhan@justicelawcorp.com

Paul M. Teinert
Ross Wolcott Teinert & Prout LLP
pmt@rossllp.com

Dated: 11/02/2023

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On November 3, 2023, I served the foregoing document described as

ORDER OF FINAL APPROVAL AND JUDGMENT

for the following case: **Aldana v. Lyrical Foods, Inc. dba Kite Hill**
LWDA/Court Case No.: **LWDA Case No.: CM-930677-23**
Court Case No.: 22CV005107
Alameda County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on November 3, 2023, at Pasadena, California.



Sophia Hanneyan