

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

NICOLAS NEUTALL, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

URBAN ALCHEMY, a California Corporation;
and DOES 1-50, Inclusive,

Defendants.

Case No. CGC-20-588622

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION**

Hearing Date: July 13, 2023
Hearing Time: 9:30 AM

Department: 302

Trial Date: February 13, 2024
Action Filed: December 23, 2020

1 This matter came on for hearing on July 13, 2023 at 9:30 a.m., in front of the Hon. Richard B.
2 Ulmer, presiding, Plaintiff's unopposed Motion for Order Granting Final Approval of Class and
3 PAGA Action Settlement and Entering Judgment pursuant to California Rule of Court 3.769, with
4 Jean-Claude Lapuyade, Esq. of the JCL Law Firm and Shani O. Zakay, Esq. of Zakay Law Group,
5 APLC appearing as counsel for plaintiff Nicolas Neutall, and Charles C. Cavanagh, Esq. of Messner
6 Reeves, LLP, appearing as counsel for defendant URBAN ALCHEMY (hereinafter "Defendant").

7 The Court, having received and carefully considering the Stipulation of Settlement of Class and
8 PAGA Action Claims and Release of Claims ("Settlement Agreement"), the supporting papers filed by
9 the Parties, the evidence and argument received by the Court in conjunction with the unopposed
10 Motion for Preliminary Approval heard on March 7, 2023 the instant Motion for Order Granting Final
11 Approval of Class and PAGA Action Settlement, the Court grants final approval of the Settlement and
12 HEREBY ORDERS THE FOLLOWING:

13 1. All capitalized terms used herein shall have the same meaning as defined in the
14 Settlement Agreement which was attached to the Declaration of Shani O. Zakay, Esq. as Exhibit "2".

15 2. This Court has jurisdiction over the subject matter of this litigation pending in the
16 California Superior Court for the County of San Francisco ("Court"), Case No. CGC-20-588622,
17 entitled *Neutall v. Urban Alchemy, et al.*, and over all Parties to this litigation, including the Class.

18 3. Pursuant to the March 7, 2023, Order Granting Preliminary Approval, the Notice Packet
19 was sent to each Settlement Class Member by first-class mail on April 4, 2023. These papers informed
20 the Settlement Class Members of the terms of the Settlement, and of (a) their right to receive an
21 Individual Settlement Payment, (b) their right to comment on or object to the Settlement, (c) their right
22 to request exclusion from the Settlement and pursue their own remedies, and (d) their right to appear
23 in person or by counsel at the final approval hearing and to be heard regarding approval of the
24 Settlement.

25 4. The Response Deadline for opting out or objecting was May 19, 2023. Following the
26 conclusion of the Response Deadline, the Settlement Administrator reports that it received ***zero***
27 ***written objections*** to the Settlement and ***one written Request for Exclusion*** from the Settlement.
28 Adequate periods of time were provided by each of these procedures. All Class Members, other than

1 the two opt-outs, including one Class Member with whom Defendant entered into a separate
2 settlement, will be participating in the Settlement and will be sent Individual Settlement Payments.

3 5. The Court finds and determines that this notice procedure afforded adequate protections
4 to the Settlement Class Members and provides the basis for the Court to make an informed decision
5 regarding approval of the Settlement based on the responses of the Settlement Class. The Court finds
6 and determines that the notice provided in this case was the best notice practicable, which satisfied the
7 requirements of California Rules of Court, rule 3.769.

8 6. With respect to the Settlement Class Members and for purposes of approving this
9 Settlement only, this Court finds and concludes that: (a) the members of the Settlement Class are
10 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions of
11 law or fact common to the Settlement Class Members, and there is a well-defined community of
12 interest among the Settlement Class Members with respect to the subject matter of the Action; (c) the
13 claims of Class Representative NICOLAS NEUTALL are typical of the claims of the Settlement Class
14 Members; (d) the Class Representative has fairly and adequately protected the interests of the
15 Settlement Class Members; (e) a class action is superior to other available methods for an efficient
16 adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e., Jean-
17 Claude Lapuyade, Esq. of the JCL LAW FIRM, APC and Shani O. Zakay, Esq. of ZAKAY LAW
18 GROUP, APLC (hereinafter “Class Counsel”), are qualified to serve as counsel for the Class
19 Representative and the Settlement Class Members in their individual and representative capacity for
20 the Settlement Class Members.

21 7. The Court has certified the class, as defined in and by the terms of the Settlement
22 Agreement as follows: all non-exempt employees who are or previously were employed by Urban
23 Alchemy and performed work in California during the period of December 23, 2016 to July 1, 2022
24 (the “Class Period”).

25 8. The Court deems the definition of the class sufficient for purposes of California Rule of
26 Court 3.765(a).

27 9. The Court hereby confirms Jean-Claude Lapuyade, Esq., of the JCL LAW FIRM, APC
28 (“JCL”) and Shani O. Zakay, Esq. of ZAKAY LAW GROUP, APLC (“ZLG”) as Class Counsel.

1 10. The Court hereby confirms plaintiff Nicolas Neutall as the Class Representative in this
2 Action.

3 11. The Court finds and determines that the terms set forth in the Settlement Agreement are
4 fair, reasonable, and adequate and directs the Parties to effectuate the Settlement according to its terms
5 having found that the Settlement was reached as a result of informed and non-collusive arms' length
6 negotiations facilitated by a neutral mediator. The Court further finds that the Parties conducted
7 extensive investigation, research, and discovery and that their attorneys were able to reasonably
8 evaluate their respective positions. The Court also finds that Settlement will enable the Parties to avoid
9 additional and potentially substantial litigation costs, as well as delay and risks if the Parties were to
10 continue to litigate the case. The Court has reviewed the monetary recovery provided as part of the
11 Settlement and recognizes the significant value accorded to the Settlement Class.

12 12. The Court further finds and determines that the terms of the Settlement are fair,
13 reasonable, and adequate to the Settlement Class and to each Settlement Class Member and that the
14 Settlement is ordered finally approved, and that all terms and provisions of the Settlement should be
15 and hereby are ordered to be consummated.

16 13. The Court further finds and determines that Class Counsel satisfied California Labor
17 Code § 2699(1)(2) by giving the LWDA notice of the proposed Settlement of claims arising under the
18 Private Attorney General Act ("PAGA") on February 9, 2023, and again on June 16, 2023.

19 14. The Court orders Class Counsel to comply with California Labor Code § 2699(1)(3) by
20 providing the LWDA a copy of this order within ten (10) calendar days of the Court's entry of this
21 Order.

22 15. The Court finds and determines that the Individual Settlement Payments to be paid to
23 Settlement Class Members as provided for by the Settlement are fair and reasonable. The Court hereby
24 gives final approval to and orders the payment of those amounts be made to the participating
25 Settlement Class Members in accordance with the Settlement Agreement.

26 16. The Court finds and determines that payment to the California Labor and Workforce
27 Development Agency, the LWDA Payment, of \$37,500.00, as its share of the settlement of civil
28 penalties in this case is fair, reasonable, and appropriate. The Court hereby gives final approval to and

orders that the payment of that amount be paid in accordance with the Settlement Agreement.

17. The Court finds and determines that the fees and expenses in administering the Settlement incurred by ILYM, Inc., in the amount of \$8,000.00, are fair and reasonable. The Court hereby gives final approval to and orders that the payment of that amount in accordance with the Settlement.

18. The Court finds and determines the Class Representative Service Award in the sum of \$10,000 to the Class Representative is fair and reasonable. The Court hereby orders the Settlement Administrator to make this payment to the Class Representative in accordance with the terms of the Settlement Agreement.

19. Pursuant to the terms of the Settlement, and the authorities, evidence and arguments submitted by Class Counsel, the Court hereby awards Class Counsel a Class Counsel Award in the amount of \$356,666.66. The Class Counsel Award is comprised of two components. First, \$326,666.66 in attorneys' fees which represents one-third of the Gross Settlement Sum. Second, an amount up to \$30,000.00 for actually incurred litigation costs as evidenced by Class Counsels' billing records. The Court finds such amounts to be fair and reasonable. The Court hereby orders the Settlement Administrator to make these payments in accordance with the terms of the Settlement Agreement.

20. The Court further orders that the attorneys' fee portion of the awarded Class Counsel Award be allocated among Class Counsel in the following percentages:

- a. 50% to JCL; and
- b. 50% to ZLG.

21. The Court further orders that the costs portion of the awarded Class Counsel Award be allocated as follows: \$8,627.17 to JCL and \$15,156.08 to ZLG.

22. Without affecting the finality of this order or the entry of judgment in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this order and the Settlement.

23. Neither Defendant nor any related persons or entities shall have any further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as

provided for by the Settlement Agreement.

24. Neither the making of the Settlement Agreement nor the entry into the Settlement Agreement constitutes an admission by Defendant, nor is this Order a finding of the validity of any claims in the Action or of any other wrongdoing. Further, the Settlement Agreement is not a concession, and shall not be used as an admission of any wrongdoing, fault, or omission of any entity or persons; nor may any action taken to carry out the terms of the Settlement Agreement be construed as an admission or concession by or against Defendant or any related person or entity.

25. Nothing in this order shall preclude any action to enforce the Parties' obligations under the Settlement or under this order, including the requirement that Defendant make payments to the participating Settlement Class Members in accordance with the Settlement, and including use of the Settlement, Judgment, or Order as a bar or affirmative defense, in whole or in part, to any future or other claims.

26. Upon completion of administration of the Settlement, the Settlement Administrator will provide written certification of such completion to the Court and counsel for the Parties which shall be filed with the Court five (5) court days before the non-appearance compliance hearing set for _____, 2024 at _____ a.m., in Dept. 302.

27. The Court hereby enters final judgment in accordance with the terms of the Settlement Agreement, the Order Granting Preliminary Approval of Class Action Settlement granted on March 7, 2023, and this order.

28. The Final Judgment shall bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge of the Released Parties from any and all class claims alleged in the First Amended Complaint, which occurred during the Class Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and class claims outside of the Class Period.

29. Final Judgment shall also bind Plaintiff, acting on behalf of the State of California and all Aggrieved Employees, pursuant to the California Private Attorneys' General Act ("PAGA") and shall release Defendant from all PAGA claims alleged or which could have been alleged based on the

facts alleged in the First Amended Complaint and Plaintiff's amended PAGA notice to the LWDA (attached to the First Amended Complaint), which occurred during the PAGA Period, and expressly excluding all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

30. Notice of entry of this Final Approval Order and Judgment shall be given to Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment to individual Class Members, and the Final Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated in the Notice Packet.

31. After entry of Final Judgment, the Court shall retain jurisdiction to construe, interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with the distribution of settlement benefits.

32. If the Settlement does not become final and effective in accordance with the terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Sum to Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

33. The Parties will bear their own costs and attorneys' fees except as otherwise provided by this Court's Order awarding Class Counsels' Class Counsel Award.

34. Accordingly, the motions for Final Approval of Class Action Settlement and Attorneys' Fees, Costs, and Service Awards are GRANTED, and the corresponding Judgment filed with the motion shall be ENTERED.

IT IS SO ORDERED.

Date: _____, 2023

JUDGE OF THE SUPERIOR COURT