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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Hearing Date: July 13, 2023

Hearing Time: 9:30 AM

Department: 302

Trial Date: February 13, 2024

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1 **I. INTRODUCTION**

2 Plaintiff Nicolas Neutall (“Plaintiff”) and Defendant Urban Alchemy (“Defendant”), have
3 reached a full and final settlement of the above-captioned action, which is set forth in the Stipulation
4 of Settlement of Class and PAGA Action Claims and Release of Claims (hereinafter the
5 “Agreement”) filed herewith.¹ The Court preliminarily approved the Agreement via its Preliminary
6 Approval Order dated March 7, 2023 (“Preliminary Approval Order”); and pursuant to the
7 Preliminary Approval Order the approved Class Notice has been disseminated to the Class.²

8 After disseminating notice to the members of the Class, to date, there has been no objections
9 and only two (2) opt out², which means that 99.5% of the Class is currently participating in the
10 Settlement. (Decl. Zakay ¶9.) This is a positive response from the class evidencing their approval
11 of the Settlement.

12 This \$980,000 settlement is an excellent result for the Class Members in light of the serious
13 doubts as to the result of the adjudication of their claims, along with further uncertainty as to
14 whether class certification can be maintained through trial. Considered as a whole, the \$980,000 in
15 Settlement represents approximately 20% of Defendant’s liability exposure for damages, and 6.7%
16 of Defendant’s liability exposure for damages and statutory penalties, as estimated by Class Counsel
17 at the time of mediation, which Class Counsel calculated to be \$4,908,835 for damages and
18 \$14,644,910 for damages and statutory penalties for violations of Labor Code Sections 226 and
19 203.³ Under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116 (2008), this Settlement is a
20 fair and reasonable recovery on these claims (which were subject to considerable uncertainty, both
21 as to the merits and certification). The response of the Class has been positive. Accordingly,
22 Plaintiff respectfully submits that the Class Settlement should be finally approved as fair,
23 reasonable, and adequate.

24
25 _____
26 ¹ A copy of the Agreement is attached as Exhibit 2 to the Declaration of Shani O. Zakay (“Decl.
Zakay”), served and filed herewith. Capitalized terms in this Memorandum have the same meaning
as contained in the Agreement.

27 ² The “Class” means all non-exempt employees who are or previously were employed by Urban
Alchemy and performed work in California during the period of December 23, 2016 to July 1, 2022.

28 ³ The damage analysis is detailed in the declaration of Shani O. Zakay. (Decl. Zakay, ¶ 14)

II. THE SETTLEMENT BEFORE THE COURT

Plaintiff and Defendant reached a full and final Settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement, Defendant has agreed to pay the all-in, non-reversionary amount of Nine Hundred Eight Thousand Dollars and Zero Cents (\$980,000) (“Gross Settlement Amount”). The Gross Settlement Amount includes all Settlement Shares to Participating Class Members, the Class Representative Service Payment to Plaintiff, Settlement Administration Expenses, the PAGA Payment, and Court-approved attorneys’ fees and costs. Defendant will separately pay the employer’s share of payroll taxes to the qualified settlement fund, per the Agreement. (Decl. Zakay ¶3(a).)

The Net Settlement Amount shall equal the net amount available for Settlement shares to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for the Class Representative Service Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the PAGA Payment, and the fees and expenses of the Settlement Administrator. The Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each Participating Class Member. The submission of a claim form is not required to be paid. The Settlement Share for each Participating Class Member will be calculated based on the workweeks worked by each Participating Class Member during the Class Period. The entire Net Settlement Fund shall be distributed. (Decl. Zakay ¶3(b).)

Class Members were sent the Court approved Class Notice, using the procedure approved by the Court, by mailing the notice packets after updating class members’ addresses using the National Change of Address database and, for any notice packets returned as undeliverable, re-mailing such notices to any forwarding address provided or updated address located through skip tracing. Class Members were provided with the opportunity to exclude themselves (“opt out”) if they did not want to participate in the Settlement. Class Members who do not “opt out” will be deemed Participating Class Members who are bound by the Settlement and will be mailed a settlement payment. The Class Notice also advised Class Members of their right to object to the Settlement. This notice process is documented in the accompanying Declaration of Cassandra Polites (the Settlement Administrator), which is filed concurrently herewith. (Decl. Zakay ¶3(c).)

1 If a Participating Class Member's Settlement Share check is not cashed within 180 days
2 after its last mailing to the Participating Class Member, the funds from such uncashed checks will
3 be reallocated and redistributed by the Settlement Administrator to those Participating Class
4 Members and/or Aggrieved Employees who cashed their Settlement Share checks through a second
5 distribution using the same allocation as the first distribution. (Decl. Zakay ¶4).

6 The Agreement provides for Class Counsel to be awarded a sum not to exceed 1/3 of the
7 Gross Settlement Amount as their Class Counsel Fees Payment. Class Counsel will also be allowed
8 to apply separately for an award of litigation expenses incurred in the prosecution and settlement of
9 the Action in an amount not exceeding \$30,000. **In support of this request, Class Counsel is**
10 **providing evidentiary support, including lodestar, in the declarations submitted concurrently**
11 **herewith.** The Agreement provides for payment of Class Representative Service Payment of no
12 more than \$10,000 for Plaintiff, or such lesser amount as may be approved by the Court in
13 compensation for his services. Defendant does not oppose a motion for approval of attorneys' fees,
14 costs and a service award consistent with the Agreement. (Decl. Zakay ¶5).

15 The Parties allocated \$50,000 from the Gross Settlement Amount for settlement of civil
16 penalties under PAGA, Labor Code Section 2698 et seq. Pursuant to the requirements of Labor
17 Code §2699(i) the PAGA Payment shall be allocated \$37,500 to the LWDA (the "LWDA Payment"
18 or the "PAGA Payment") as the LWDA's share of the settlement of civil penalties and \$12,500 to
19 the Net Settlement Amount for distribution to the Participating Class Members. (Decl. Zakay ¶6).

20 The Settlement was reached through arm's length negotiations. On July 20, 2021, the
21 Parties participated in mediation presided over by David Rotman, Esq., a respected and experienced
22 mediator of wage and hour class and PAGA actions. Prior to the mediation, the Parties prepared
23 by exchanging data, calculating damages, and submitting mediation briefs to the Mediator.
24 Defendant provided Class Counsel with necessary records and information for the members of the
25 Class. Defendant produced a sample consisting of pay records and time records for some of the
26 Class Members for the entire Class Period. Defendant also produced Defendant's relevant
27 employment policies, banquet policy information, including compensation policies and
28 timekeeping policies. Plaintiff analyzed the data with the help of an expert and prepared and

1 submitted a mediation brief to Mr. Rotman. At the conclusion of the mediation, the Parties reached
2 a settlement, which was supported by Mr. Rotman. The Parties documented the agreement in the
3 form of a Memorandum of Understanding. The Parties then prepared the full Agreement that was
4 signed by the Parties and received preliminary approval from the Court by Order dated March 7,
5 2023. (Decl. Zakay ¶7).

6 The Settlement is fair, adequate and reasonable to the Class and should be finally approved
7 for the same reasons the Court granted preliminary approval to the Settlement, finding that it is fair,
8 adequate, and reasonable as to all potential Class Members. In sum, this Settlement valued at
9 \$980,000 is an excellent result for the Class. This result is particularly favorable in light of the fact
10 that liability in this case was far from certain in light of the defenses asserted by Defendant. There
11 have been no objections and two (2) opt out². Given the complexities of this case, the defenses
12 asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and
13 appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved.
14 (Decl. Zakay ¶8).

15 III. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND 16 APPROVAL OF CLASS ACTION SETTLEMENTS

17 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th
18 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is
19 particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners*
20 *for Fair Fran. v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“[V]oluntary conciliation
21 and settlement are the preferred means of dispute resolution. This is especially true in complex class
22 action litigation.”)

23 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
24 class action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)
25 (citing *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579
26 (1980).) The court must decide whether the proposed settlement falls within the range of reasonable
27 settlements, taking into account that settlements are compromises between the parties reflecting
28 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See

1 *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to
2 be judged against a hypothetical or speculative measure of what might have been achieved had
3 plaintiffs prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given
4 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
5 underlying class claims are not a basis for upsetting the settlement of a class action.” *Id.*; see also
6 *7-Eleven, supra*, at 1150.

7 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
8 that the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not
9 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
10 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel
11 and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3)
12 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
13 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
14 pp. 11-91. Here, all of these factors support a presumption of fairness.

15 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

16 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
17 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service*
18 *Com’n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is “the protection of
19 those class members, including the named plaintiffs, whose rights may not have been given due
20 regard by the negotiating parties.” *Dunk, supra*, at 1801.

21 The trial court has broad discretion to determine whether the settlement is fair. *Cellphone*
22 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). “The well-recognized factors that
23 the trial court should consider in evaluating the reasonableness of a class action settlement
24 agreement include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration
25 of further litigation, the risk of maintaining class action status through trial, the amount offered in
26 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
27 views of counsel, the presence of a governmental participant, and the reaction of the class members
28 to the proposed settlement.’” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008)

(internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 408 (2010).

The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

These factors are analyzed seriatim below, and all support final approval of the class action Settlement before this Court, consistent with this Court’s Preliminary Approval Order.

1. The Investigation and Discovery are Sufficient to Allow Counsel and the Court to Act Intelligently

On December 23, 2020, Plaintiff filed the Action in the Superior Court of the State of California County of San Francisco. On January 11, 2023, Plaintiff submitted for filing the First Amended Complaint which is the Operative Complaint. The Operative Complaint alleges claims for: (1) unfair competition in violation of Cal. Business & Professions Code §§ 17200, et seq.; (2) failure to pay overtime compensation in violation of Labor Code §§ 510, et seq.; (3) failure to pay minimum wages in violation of Labor Code §§ 1194, 1197, & 1197.1; (4) failure to provide required meal periods in violation of Labor Code §§ 226.7 & 512 and the applicable IWC wage order; (5) failure to provide required rest periods in violation of Labor Code §§ 226.7 & 512 and the applicable IWC wage order; (6) failure to provide accurate itemized statements in violation of Labor Code §226; (7) failure to reimburse employees for required expenses (Labor Code § 2802); (8) failure to timely pay wages in violation of Labor Code §203; (9) failure to timely pay earned wages in violation of Cal. Lab. Code §204; (10) failure to maintain payroll records in violation of Cal. Lab. Code § 1174(d); (11) Violation of the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*) [including for suitable seating violations]; and (12) Failure to provide personnel and payroll records (Labor Code §§ 226, 432, 1174, 1198.5, and 2810.5). (Decl. Zakay at ¶11(a)).

1 Defendant denied liability for each of Plaintiff's claims. Defendant denies any liability or
2 wrongdoing of any kind associated with the claims alleged in the Operative Complaint. Defendant
3 contends, among other things, that it has correctly and fully compensated the Class Members for
4 wages, including overtime wages, provided compliant meal and rest periods, provided complete,
5 accurate itemized wage statements, and complied at all times with the California Labor Code and
6 Wage Orders. Further, Defendant contends that class certification would be inappropriate for any
7 reason other than for settlement. (Decl. Zakay at ¶ 11(a)).

8 Class Counsel has conducted a thorough investigation into the facts of the class action.
9 Class Counsel has diligently evaluated the Class Members' claims against Defendant. Class
10 Counsel engaged in informal discovery in preparation for the mediation, and received significant
11 responses and documents to the discovery requests. Defendant produced a sample consisting of
12 employee file and pay records, hiring/review and separation documents, payroll and time records
13 for some of the Class Members for the entire Class Period. Defendant also produced Defendant's
14 relevant employment policies, including compensation policies and timekeeping policies. Class
15 Counsel conducted extensive review of time records and data with the help of an expert. Based
16 on the foregoing data and their own independent investigation, evaluation and experience, Class
17 Counsel believe that the settlement with Defendant on the terms set forth in the Agreement is fair,
18 reasonable, and adequate and are in the best interest of the Class in light of all known facts and
19 circumstances, including the risk of significant delay, the defenses asserted by Defendant, and
20 potential appellate issues.

21 **2. The Settlement Was Reached Through Arm's Length Bargaining**

22 This Settlement was the result of arm's-length negotiations as well as informal settlement
23 conferences between the Parties through their respective attorneys. After comprehensive legal and
24 factual analysis, Class Counsel possessed sufficient information for intelligent evaluation of the
25 case for purposes of settlement. Prior to the initiation of settlement discussions, Class Counsel
26 reviewed and outlined the case based upon the information for the Class, and determined the
27 conditions of settlement that would be fair and reasonable to the Class. Class Counsel was
28

1 experienced in the types of settlement appropriate to resolve these wage and hour claims on behalf
2 of employees. (Zakay Decl. ¶12(a)).

3 The fact that the Settlement was negotiated with the assistance of a mediator supports
4 approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin.*
5 *Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal.
6 2007) (“The settlement was negotiated and approved by experienced counsel on both sides of the
7 litigation, with the assistance of a well-respected mediator with substantial experience in
8 employment litigation[, and] this factor supports approval of the settlement.”)

9 **3. Class Counsel is Experienced in Similar Litigation**

10 California Courts have previously approved Class Counsel as experienced Class Counsel.
11 As set forth in the declarations submitted in support of preliminary approval and this motion, all
12 Class Counsel have extensive experience litigating wage and hour class actions involving
13 employees and claims similar to this case. All Class Counsel support approval of the Settlement
14 based upon their experience in wage and hour litigation.

15 **4. There Are No Objections by the Class Members**

16 The reaction of the Class, so far, unequivocally supports approval of the Settlement. On
17 April 4, 2023, the Settlement Administrator Court-approved Class Notice to the Class Members,
18 which provided each Class Member with the terms of the Settlement, including notice of the claims
19 at issue and the financial terms of the settlement, including the attorneys’ fees, costs, and service
20 awards that were being sought, how individual settlement awards would be calculated, and the
21 specific, estimated payment amount to that individual. In disseminating the Class Notice, the
22 Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary
23 Approval Order. Significantly, to date, there have been no objections and two opt out² (See
24 Declaration of Cassandra Polites at ¶¶ 11-13). As a result, the entire Class has elected to participate
25 in the Settlement so far, and will be sent a settlement check.

26 The administration process, including details regarding the mailing of the Notice Packet,
27 notices returned as undeliverable, the administrator’s efforts to locate class members and remail
28

1 notices, and the final administration results, are all documented in the Declaration of Cassandra
2 Polites, which is filed concurrently herewith. (*See* Decl. of Cassandra Polites).

3 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
4 the Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
5 (S.D.N.Y. 2000) (“If only a small number of objections are received, that fact can be viewed as
6 indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.*, 897 F.2d 115, 118-
7 119 (3d. Cir. 1990) (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
8 *v. Int’l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
9 the proposed settlement should be considered when determining fairness of settlement). Here,
10 where there are no objections, the approval of the Class is evident.

11 **5. The Risk, Expense, Complexity and Likely Duration of Further Litigation**

12 The risks and complexity of the alleged claims are discussed in detail in the Declaration of
13 Zakay at ¶ 13. Where both sides face significant uncertainty, the attendant risks favor settlement.
14 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted
15 by Defendant presented serious threats to the claims of Plaintiff and the other Class Members.
16 Defendant asserted that its employment practices complied with all applicable Labor Laws.
17 Defendants could also argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
18 4th 1004 (2012), weakened Plaintiff’s claims, on liability, value, and class certifiability as to the
19 meal period claim, rest period claim, off-the-clock claims, and any claims derivative thereto. If
20 successful, Defendant’s defenses could eliminate or substantially reduce any recovery to the Class.
21 While Plaintiff believes that these defenses could be overcome, Defendant maintains that these
22 defenses have merit and therefore present a serious risk to recovery for the Class.

23 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
24 to obtain class certification and thereby not recover on behalf of any employee other than himself.
25 Defendant argued that the individual experience of each employee varied with respect to the alleged
26 claims. While other cases have approved class certification of wage and hour claims, class
27 certification in this action would have been hotly disputed and was by no means a foregone
28 conclusion. Finally, even if class certification was successful, as demonstrated by the California

1 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
2 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
3 (Decl. Zakay at ¶13(b)).

4 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
5 trying the Action against Defendant through possible appeals which even if successful could take
6 several years. Class Counsel have also taken into account the uncertain outcome and risk of
7 litigation, especially in complex actions such as this Action. Class Counsel are also mindful of and
8 recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the
9 Action. As demonstrated by the decision in *Duran*, the complexities and duration of further
10 litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal
11 in the event of an adverse judgment. A post-judgment appeal by Defendant would have required
12 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
13 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
14 recovery today outweigh an uncertain result three or more years in the future. Moreover, post-trial
15 motions and appeals would have been inevitable. Costs would have mounted and recovery would
16 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and
17 Class Counsel believe that the Settlement confers substantial benefits upon the Class. Based upon
18 their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the
19 Agreement is in the best interest of the Class Members. (Decl. Zakay ¶13(c)).

20 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
21 significant recovery, particularly when viewed in light of the fact that Defendant asserted serious
22 and substantial defenses both to liability and to class certification. Given the complexities of this
23 case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair,
24 reasonable and adequate, and should be finally approved. (Decl. Zakay ¶13(d)).

25 **6. The Amount Offered in Settlement**

26 The Settlement in this case is fair, reasonable and adequate considering Defendant's
27 significant defenses, which it believes to be valid, to Plaintiff's claims. As detailed during
28 preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims.

1 Class Members will receive immediate and certain payments of considerable amounts under the
2 Settlement. Currently, the overall maximum and average Participating Class Member allocations
3 are estimated to be \$813.23 and \$188.35 respectively (Decl. Polites at ¶ 14).

4 Faced with the serious doubts as to recovery, the Settlement of \$980,000 plus the employer's
5 share of payroll taxes compares favorably to the damage estimates alleged to have been suffered by
6 the Class. Considered as a whole, the \$980,000 in Settlement represents approximately 20% of the
7 maximum estimated *damages*, and 6.7% of the maximum combination of damages and statutory
8 penalties (excluding PAGA) to the Class, assuming all of these amounts could be proved at trial,
9 which Class Counsel estimated to be \$4,908,835 for damages and \$14,644,910 for damages and
10 statutory penalties for violations of Labor Code Sections 226 and 203.

11 If he could prove the claims, Plaintiff estimates that Defendant was subject to maximum
12 liability for damages in the amount of \$4,908,835 consisting of \$570,645 for unpaid wages,
13 \$2,024,042 for rest break violations, \$2,024,042 for meal break violations, and \$290,106 for
14 unreimbursed expenses. In addition, Plaintiff's expert calculated \$6,128,726 in waiting time
15 penalties and \$3,607,350 for wage statement penalties. Finally, Plaintiffs' expert calculated that
16 Defendant could be liable for PAGA penalties in an amount of \$16,656,200⁴.

17 Consequently, the Settlement of approximately \$980,000.00 represents approximately 20%
18 of the value of the maximum actual damages at issue. Furthermore, the Settlement represents
19 approximately 6.7% of the maximum combination of damages and penalties to the Class, assuming
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21

22 ⁴ Plaintiffs recognize that the PAGA penalties claim is also subject to various defenses by
23 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
24 a minimum, Plaintiffs provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
25 1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision
26 (whether or not the commissioner or court chooses to impose penalties), the employer cannot be
27 presumed to be aware that its continuing underpayment of employees is a "violation" subject to
28 penalties."). In addition, Plaintiffs recognize that PAGA claims bear some risk. *See Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 all of these amounts could be proved at trial. Given the amount of the Settlement as compared to
2 the potential value of claims in this case, the Settlement is fair and reasonable. (Decl. Zakay ¶14(c)).

3 **V. CONCLUSION**

4 Plaintiff respectfully submits that the proposed Settlement satisfies the standard of fairness
5 established in California law and should therefore be finally approved as fair, reasonable and
6 adequate and request entry of the Final Approval Order and Judgment.

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8 DATED: June 15, 2023

ZAKAY LAW GROUP, APLC

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10 By: 

11 Shani O. Zakay
12 Attorney for Plaintiff
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