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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

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

Plaintiffs,

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 PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: March 7, 2023

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Department: 302

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1 **I. INTRODUCTION**

2 Plaintiff Nicolas Neutall (“Plaintiff”) respectfully submits this memorandum in support of
3 the motion for preliminary approval of the proposed class action settlement with Defendant Urban
4 Alchemy (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed
5 settlement of this class action with Defendant; (2) approving the form and method for providing
6 class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4)
7 scheduling a final approving hearing date to consider Plaintiff’s motion for final approval of the
8 settlement and entry of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and
9 litigation expenses.

10 Plaintiff and Defendant have reached a full settlement of the above-captioned action, which
11 is embodied in the Stipulation of Settlement of Class and PAGA Action Claims and Release of
12 Claims (“Agreement”) filed concurrently with the Court. A copy of the fully executed Agreement
13 is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl. Zakay”), served and filed
14 herewith.

15 As consideration for this Settlement, the total amount to be paid by Defendants is Nine
16 Hundred Eighty Thousand Dollars (\$980,000) (the “Gross Settlement Amount”). The Gross
17 Settlement amount will settle all issues pending in this litigation between the Plaintiff and the Class,
18 on the one hand, and the Defendant, on the other hand, including: Individual Settlement Payments,
19 the Class Representative Service Award, the Class Counsel’s Attorneys’ Fees and Attorneys’
20 Expenses, PAGA Payment, and the Settlement Administrator’s administration costs. The Gross
21 Settlement Amount does not include Defendant’s share of payroll taxes. The Settlement is all-in
22 with no reversion to Defendant and no need to submit a claim form. (Decl. Zakay at ¶3).

23 On February 28, 2022, the parties participated in a full day mediation before David Rotman,
24 Esq., a well-respected wage and hour class action mediator. The mediation concluded with a
25 settlement following the Parties’ acceptance of Mr. Rotman’s mediator’s proposal, which was
26 subsequently memorialized in the form of a Memorandum of Understanding. The parties then
27 prepared the full Agreement, which was signed by all counsel and the parties and is now presented
28 to this Court for preliminary approval. (Decl. Zakay at ¶5).

1 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
2 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
3 Agreement and enter the proposed order submitted herewith.

4 II. DESCRIPTION OF THE SETTLEMENT

5 The Gross Settlement Amount to be paid by Defendant is Nine Hundred Eighty Thousand
6 Dollars (\$980,000). (Agreement at ¶I(N)). Under the Settlement, the Gross Settlement Amount
7 consists of the following elements: (1) Individual Settlement Payments, (2) the Class Representative
8 Service Award, (3) the Class Counsel's Attorneys' Fees and Attorneys' Expenses, (4) PAGA
9 Payment, and (5) the Settlement Administration Costs. (Agreement at ¶I(N)). The Gross Settlement
10 Amount does not include Defendant's share of payroll taxes. (Agreement at ¶I(N)). The Gross
11 Settlement Amount shall be all-in with no reversion to Defendant (Agreement at ¶III(A)). (Decl.
12 Zakay at ¶15).

13 Upon final approval and the Judgment becoming Final, Defendant shall pay 50% of the
14 Gross Settlement Amount to the Settlement Administrator. Defendant shall then pay the remaining
15 50% within 9 months of payment the first installment (Agreement at ¶I(M)). The Settlement
16 Administrator shall then mail the Individual Settlement Payments and Aggrieved Employee
17 Payments within 15 days of the Funding Date. (Agreement at ¶III(L)(7)). (Decl. Zakay at ¶16).

18 The Net Settlement Amount shall equal the net amount available for Settlement shares to
19 Settlement Class Members from the Gross Settlement Amount after deducting the Court-approved
20 amounts for the Class Representative Service Award, the Class Counsel Attorneys' Fees and
21 Expenses, the PAGA Payment, and the Settlement Administration Costs. (Agreement at ¶I(P)). The
22 Settlement Administrator will pay a Settlement Share from the Net Settlement Amount to each
23 Participating Class Member. (Agreement at ¶III(J)). The Settlement Share for each Settlement
24 Class Member will be calculated by (a) dividing the respective Workweeks for each Class Member
25 by the total Workweeks for all Class Members, and (b) multiplying the result by the Net Settlement
26 Amount. (Agreement at ¶III(L)(1)). The entire Net Settlement Fund shall be distributed. (Decl.
27 Zakay at ¶17).

1 Class Members will have 45 days after the mailing of the Class Notice to exclude themselves
2 or submit written objections. (Agreement at ¶III(K)(7)). Class Members may choose to opt-out of
3 the Settlement by following the directions in the Notice Packet. (Agreement at ¶III(K)(7) and Ex.
4 A). All Class Members who do not “opt out” will be deemed Settlement Class Members who will
5 be bound by the Settlement and will be entitled to receive a settlement payment. (Agreement at
6 ¶III(K)(7)). Finally, the Notice Packet will advise the Class Members of their right to object to the
7 Settlement (Agreement at ¶III(K)(8) and Ex. A). (Decl. Zakay at ¶18).

8 If a check is not cashed within 90 days, the Settlement Administrator will send the
9 Settlement Class Member and/or Aggrieved Employee a letter informing him or her that unless the
10 check is cashed in the next 90 days, it will expire and become non-negotiable, and offer to replace
11 the check if it was lost or misplaced but not cashed. Any settlement checks not cashed within 180
12 days will be voided and the Participating Class Member and/or Aggrieved Employee will remain
13 bound by the Settlement. The funds from any such uncashed checks will then be reallocated and
14 redistributed by the Settlement Administrator to those Participating Class Members and/or
15 Aggrieved Employees who cashed their Settlement Share checks through a second distribution
16 using the same allocation as the first distribution. (Agreement at ¶III(L)(8)). (Decl. Zakay at ¶19).

17 The Parties have agreed to use ILYM Group, Inc. as the Settlement Administrator for the
18 Settlement (Agreement at ¶I(GG)). Payment of the expenses of the Settlement Administrator from
19 the Gross Settlement Fund shall be made for the expenses of effectuating and administering the
20 Settlement. The Settlement Administrator shall receive payment for services in an amount not to
21 exceed \$28,000. (Agreement at ¶III(L)(12)). (Decl. Zakay at ¶20).

22 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
23 not to exceed 1/3 of the Gross Settlement Amount as their Class Counsel Fees Payment which is
24 currently estimated to be \$326,667.66. (Agreement at ¶III(L)(10)). Class Counsel will also be
25 allowed to apply separately for an award of litigation expenses in an amount not to exceed \$30,000.
26 (Agreement at ¶III(L)(10)). In support of this request, Class Counsel will provide evidentiary
27 support, including lodestar. Subject to Court approval, the Agreement provides for payment of
28 Class Representative Service Award of no more than \$10,000 for the Plaintiff, or such lesser amount

1 as may be approved by the Court at final approval. (Agreement at ¶III(L)(9)). Defendant does not
2 oppose a motion for approval of attorneys' fees, costs and service awards consistent with the
3 Agreement. (Decl. Zakay at ¶21).

4 Subject to Court approval, \$50,000 will be paid from the Gross Settlement Amount for
5 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* (Agreement at
6 ¶III(L)(11)). Pursuant to the requirements of Labor Code §2699(i) the PAGA Payment shall be
7 allocated \$37,500 to the LWDA (the "LWDA Payment") as the LWDA's share of the settlement of
8 civil penalties and \$12,500 to the Net Settlement Amount for distribution to the Aggrieved
9 Employees. (Agreement at ¶III(L)(11)). (Decl. Zakay at ¶22).

10 **III. CASE BACKGROUND**

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

26 Plaintiff seeks to represent a putative class of non-exempt employees who worked for
27 Defendant in California. The Action generally alleges that Plaintiff and other non-exempt
28 employees of Defendant were not properly paid wages, including overtime compensation, and that

1 meal and rest breaks were not provided in accordance with California law. The Action seeks unpaid
2 wages, penalties, civil penalties, attorneys' fees, litigation costs, and any other equitable or legal
3 relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing
4 claims. (Decl. Zakay at ¶9).

5 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
6 information in connection with the Action. As part of this process, Defendant provided documents
7 and information to Class Counsel to review and analyze. On February 28, 2022, the Parties
8 participated in mediation presided over by David Rotman, Esq., an experienced mediator of wage
9 and hour class and PAGA actions. The mediation concluded with a settlement following the Parties'
10 acceptance of the mediator's proposal, which was subsequently memorialized in the form of a
11 Memorandum of Understanding. The Parties then prepared the full Agreement which was signed
12 by the Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at ¶10).

13 Accordingly, for purposes of this Settlement, the "Class" or "Class Members" are defined
14 as all non-exempt employees who are or previously were employed by Urban Alchemy and
15 performed work in California during the period of December 23, 2016 to July 1, 2022. (Agreement
16 at ¶I(E)). (Decl. Zakay at ¶11).

17 Although a settlement has been reached, Defendant denies any liability or wrongdoing of
18 any kind associated with the claims alleged in the Action and further denies that, for any purpose
19 other than settlement, the Action is appropriate for class treatment. Defendant contends, among
20 other things, that its has correctly compensated the Class Members and complied at all times with
21 the California Labor Code, and the applicable Wage Orders. Further, Defendant contends that class
22 certification would be inappropriate for any reason other than for settlement. (Decl. Zakay at ¶12).

23 Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further
24 contends that the Action is appropriate for class certification on the basis that the Plaintiff's claims
25 meet the requisites for class certification. Without admitting that class certification is proper,
26 Defendant has stipulated that the above Class may be certified for settlement purposes only.
27 (Agreement at ¶II(I)). The Parties agree that certification for settlement purposes is not an
28 admission that class certification would be proper if the class certification issues were litigated.

1 Further, the Agreement is not admissible in this or any other proceeding as evidence that the Class
2 could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate
3 and agree that the requisites for establishing class certification with respect to the Class, as defined
4 above, are satisfied. (Decl. Zakay at ¶13).

5 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
6 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
7 reviewed the production of documents from the Defendant. Class Counsel conducted extensive
8 review of time records and data with the assistance of an expert. Prior to the settlement negotiations,
9 counsel for Defendant provided Class Counsel with access to the necessary data and information
10 for the Class. Based on the foregoing data and their own independent investigation, evaluation and
11 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
12 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
13 known facts and circumstances, including the risk of significant delay, the defenses asserted by
14 Defendant, and potential appellate issues. (Decl. Zakay at ¶14).

15 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 16 **COURT TO GRANT PRELIMINARY APPROVAL**

17 When a proposed class-wide settlement is reached, the settlement must be submitted to the
18 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
19 p.11-87). Preliminary approval is the first of three steps that comprise the approval procedure for
20 settlements of class actions. The second step is the dissemination of notice of the settlement to all
21 Class Members. The third step is a final settlement approval hearing, at which evidence and
22 argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented
23 and Class Members may be heard regarding the settlement. (See *Dunk v. Ford Motor Co.*, 48
24 Cal.App.4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules
25 of Court, rule 3.769).

26 The primary question presented on an application for preliminary approval of a proposed
27 class action settlement is whether the proposed settlement is “within the range of possible approval.”
28 (*Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3

(7th Cir. 1982)).¹ Preliminary approval is merely the prerequisite to giving notice so that “the proposed settlement... may be submitted to members of the prospective Class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970)). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is presented for court approval. (*Newberg*, 3d Ed., §11.41, p.11-88). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the Class Members and a final settlement hearing is held by the Court.

A. The Role of the Court in Preliminary Approval of a Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. (*Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001); *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794 (1996)). Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. (3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003)).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*, 48 Cal.App. 4th at 1807). The Ninth Circuit explains, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982)). The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a

¹ California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of
2 the compromise with the likely rewards of litigation.” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
3 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
4 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
5 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
6 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

7 With regard to class action settlements, the opinions of counsel should be given considerable
8 weight both because of counsel’s familiarity with this litigation and previous experience with cases
9 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
10 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
11 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
12 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
13 court noted that “[e]xperienced and competent counsel have assessed these problems and the
14 probability of success on the merits.... The parties’ decision regarding the respective merits of their
15 position has an important bearing.” (*Id.* at ¶ 92,520). “The recommendations of plaintiffs’ counsel
16 should be given a presumption of reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
17 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
18 significant weight. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
19 Cal. 2004)).

20 **B. Factors to be Considered in Granting Preliminary Approval**

21 A number of factors are to be considered in evaluating a settlement for purposes of
22 preliminary approval. In determining whether to grant preliminary approval, the court considers
23 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
24 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
25 treatment to class representatives or segments of the class, and (4) falls within the range of possible
26 approval.” (*In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No one
27 factor should be determinative, but rather all factors should be considered. The analysis has been
28 summarized as follows:

1 If the proposed settlement appears to be the product of serious, informed,
2 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
3 preferential treatment to class representatives or segments of the class, and falls
4 within the range of possible approval, then the court should direct that notice be
5 given to the class members of a formal fairness hearing, at which evidence may be
6 presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement is the Product of Serious, Informed and Non-collusive Negotiations.

This settlement is the result of extensive and hard-fought litigation and negotiations before an experienced mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims.²

The Parties scheduled a private mediation to take place before David Rotman, Esq., a respected and experienced mediator of class actions and wage and hour lawsuits. In preparation for the mediation, Defendant provided Class Counsel with necessary records and information for the members of the Class. Plaintiff analyzed the data with the assistance of damages expert, Econ One, and prepared and submitted a mediation brief to Mediator Rotman. On February 28, 2022, the parties participated in a full day mediation before Mr. Rotman and were able to reach an agreement following the mediation based on Mr. Rotman's mediator's proposal. The parties then prepared the full Agreement, which was signed by all counsel and the parties and is now presented to this Court

² As of the Funding Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members shall release the Released Parties from the Released Class Claims. Released Class Claims are defined as all claims alleged in the operative complaint, or that could have been alleged in the operative complaint based on the same facts alleged in the operative complaint (including but not limited to claims under the FLSA), which occurred during the Class Period, and excluding all other claims, including claims for wrongful termination, unemployment insurance, disability, workers' compensation, and claims outside of the Release Period. The Released Class Claims include, but are not limited to, a release of all claims for penalties and any other rights and remedies pursuant to PAGA arising out of or related to the claims alleged in the operative complaint, or that could have been alleged in the operative complaint based on the same facts and circumstances alleged in the operative complaint. (Agreement at ¶ I(BB)).

1 for preliminary approval. Plaintiff and Class Counsel believe that this Settlement is fair, reasonable,
2 and adequate. (Decl. Zakay at ¶5).

3 As consideration for this Settlement, the total amount to be paid by Defendants is Nine
4 Hundred Eighty Thousand Dollars (\$980,000) (the “Gross Settlement Sum”). The Gross Settlement
5 amount will settle all issues pending in this litigation between the Plaintiff and the Class, on the one
6 hand, and the Defendants, on the other hand, including: payment of all Settlement shares to
7 Participating Class Members, Class Representative Service Payment, the Class Counsel Attorneys’
8 Fees and Expenses, the PAGA Payment, and the expenses of the Settlement Administrator. The
9 Gross Settlement Amount does not include Defendant’s share of payroll taxes. The Settlement is
10 all-in with no reversion to Defendant and no need to submit a claim form. (Decl. Zakay at ¶3).

11 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
12 Counsel has diligently evaluated the Class Members’ claims against Defendant. Class Counsel
13 reviewed the production of documents from the Defendant. Class Counsel conducted extensive
14 review of time records and data with the assistance of an expert. Prior to the settlement negotiations,
15 counsel for Defendant provided Class Counsel with access to the necessary data and information
16 for the Class. Based on the foregoing data and their own independent investigation, evaluation and
17 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
18 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all
19 known facts and circumstances, including the risk of significant delay, the defenses asserted by
20 Defendant, and potential appellate issues. (Decl. Zakay at ¶14).

21 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
22 trying the Action against Defendant through possible appeals which could take several years. Class
23 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
24 complex actions such as the Action. Class Counsel is also mindful of, and recognize the inherent
25 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
26 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
27 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶23).

1 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
2 capable advocacy on both sides. The Parties were represented by experienced and capable counsel
3 who zealously advocated their respective positions with the assistance of an experienced mediator.
4 Accordingly, “[t]here is likewise every reason to conclude that settlement negotiations were
5 vigorously conducted at arms’ length and without any suggestion of undue influence.” (*In re Wash.*
6 *Public Power*, 720 F. Supp. at 1392).

7 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
8 **Approval.**

9 The proposed Settlement here has no "obvious deficiencies" and is well within the range of
10 possible approval. All Class Members will receive an opportunity to participate in the Settlement
11 and receive payment according to the same formula if they do not opt out. (Agreement at ¶
12 III(K)(7)).

13 The calculations to compensate for the amount due for the nonpayment of wages at the time
14 this Settlement was negotiated were calculated by Econ One, Plaintiff’s damage expert. For the
15 Class, Plaintiff determined that Defendant was subject to maximum liability for damages in the
16 amount of \$4,908,835 consisting of \$570,645 for unpaid wages, \$2,024,042 for rest break
17 violations, \$2,024,042 for meal break violations, and \$290,106 for unreimbursed expenses.
18 Moreover, Plaintiff also determined that Defendant was subject to maximum liability for statutory
19 penalties in the amount of \$9,736,075, consisting of \$3,607,350 for wage statement penalties, and
20 \$6,128,726 for waiting time penalties. Finally, Plaintiff determined that Defendant was subject to
21 maximum liability for PAGA penalties in the amount of \$16,656,200. (Decl. Zakay at ¶6).

22 Consequently, the settlement of \$980,000.00 represents approximately **20%** of the value of
23 the maximum *damages* at issue, and approximately 6.7% of the value of the maximum damages
24 and statutory penalties, assuming all of these amounts could be proved at trial. Given the amount
25 of the settlement as compared to the potential value of claims in this case, the settlement is fair and
26 reasonable. Clearly, the goal of this litigation to provide compensation to class members for unpaid
27 time and for rest breaks allegedly missed has been met. (Decl. Zakay at ¶6).

1 Further supporting the fairness and reasonableness of the settlement is Defendant's financial
2 condition. Before and during the mediation, Defendant contended, and continues to contend, that
3 it could not financially afford to pay a significant class settlement. Defendant contended that it is a
4 non-profit organization without any significant unrestricted liquidity, and that it could not pay a
5 large class settlement or engage in protracted class action litigation without risking insolvency.
6 Defendant produced financial documents to support this contention to Mediator Rotman, who based
7 his mediator's proposal on his review of Defendant's financial condition.

8 In *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) the federal
9 district court for the Northern District of California approved a settlement of an action claiming
10 unpaid wages where the settlement amount constituted approximately 25% of the estimated actual
11 damages to the class. Here, the settlement consideration exceeds the percentage approved in *Glass*.
12 In *Glass*, the federal court ruled that the settlement which represented approximately 25% of the
13 estimated loss to the class was fair, reasonable, and adequate. (*Id.* at 28). Similarly, in *Stovall-*
14 *Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) the court
15 approved a settlement of an action claiming unpaid wages where the settlement amount constituted
16 roughly 10% of the estimated actual damages to the class. Here, the settlement consideration far
17 exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court ruled that the
18 settlement which represented approximately 10% of the estimated loss to the class was fair,
19 reasonable, and adequate.

20 As a result, this settlement, which exceeds the percentage approved in *Glass* and *Stovall-*
21 *Gusman*, is entitled to preliminary approval.

22 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
23 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, a number of defenses asserted by
24 Defendant presented serious threats to the claims of Plaintiff and the other Class Members.
25 Defendant asserted that its employment practices complied with all applicable Labor Laws.
26 Defendants could also argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.
27 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to the
28 meal period claim, rest period claim, off-the-clock claims, and any claims derivative thereto. If

1 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
2 While Plaintiff believes that these defenses could be overcome, Defendant maintains that these
3 defenses have merit and therefore present a serious risk to recovery for the Class. (Decl. Zakay at
4 ¶24).

5 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
6 to obtain class certification and thereby not recover on behalf of any employee other than himself.
7 Defendant argued that the individual experience of each employee varied with respect to the alleged
8 claims. While other cases have approved class certification of wage and hour claims, class
9 certification in this action would have been hotly disputed and was by no means a foregone
10 conclusion. Finally, even if class certification was successful, as demonstrated by the California
11 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
12 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
13 (Decl. Zakay at ¶25).

14 After arm's-length negotiations between experienced and informed counsel, the parties
15 recognized the potential risks and agreed on the settlement of \$980,000. As the federal court
16 recently held in *Glass*, where the parties faced uncertainties similar to those here:

17 In light of the above-referenced uncertainty in the law, the risk, expense,
18 complexity, and likely duration of further litigation likewise favors the settlement.
19 Regardless of how this Court might have ruled on the merits of the legal issues, the
20 losing party likely would have appealed, and the parties would have faced the
21 expense and uncertainty of litigating an appeal. "The expense and possible duration
22 of the litigation should be considered in evaluating the reasonableness of [a]
23 settlement." See *Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
(9th Cir. 2000).

24 Here, the risk of further litigation is substantial. Furthermore, here, a risk that the action
25 will be dismissed and the plaintiff be compelled to arbitration exists as well.

26 **3. The Settlement Does Not Improperly Grant Preferential Treatment to Class** 27 **Representatives or Segments of The Class**

28 The relief provided in the settlement will benefit all members of the Class. The settlement
does not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to
the Class Members are all determined under a neutral methodology. All Class Members will receive

1 the same opportunity to participate in and receive payment through a neutral formula that is based
2 upon the weeks worked for that individual. (Decl. Zakay at ¶4).

3 Plaintiff will apply to the Court for a service payment in consideration for his service and
4 for the risks undertaken on behalf of the Class. (Agreement at ¶III(L)(9)). Plaintiff performed his
5 duties admirably by working with Class Counsel. (Decl. Zakay at ¶27). At this stage, the requested
6 Plaintiff's service payment is well within the accepted range of awards for purposes of preliminary
7 approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal.
8 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
9 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
10 award where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S.
11 Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class
12 member recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL
13 4473183, *7 (S.D.Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in
14 overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. Jan. 27 2007)
15 (awarding \$25,000 service award in overtime class action and a pool of \$100,000.00 in
16 enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives
17 to compensate the employees for the time and effort expended on the case, for the risk of litigation,
18 for the fear of suing an employer and retaliation there from, and to serve as an incentive to vindicate
19 the statutory rights of all employees. 2007 WL 22162 at *16-17.

20 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary** 21 **Approval Of The Settlement**

22 The stage of the proceedings at which this settlement was reached also militates in favor of
23 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
24 a thorough investigation into the facts of the class action. Class Counsel began investigating the
25 Class Members' claims before this action was filed. Class Counsel performed significant review
26 and analysis of Defendant's documents. Class Counsel engaged in a thorough research and analysis
27 of the relevant claims and data with the assistance of an expert. Class Counsel was also experienced
28 with the claims at issue here, as Class Counsel previously litigated and settled similar claims in

1 numerous other actions. Accordingly, the agreement to settle did not occur until Class Counsel
2 possessed sufficient information to make an informed judgment regarding the likelihood of success
3 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶28).

4 Based on the foregoing data and their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
6 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
7 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
8 numerous potential appellate issues. There can be no doubt that Counsel for both parties possessed
9 sufficient information to make an informed judgment regarding the likelihood of success on the
10 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶29).

11 In *Glass*, the Northern District of California granted final approval of an overtime wage
12 action although in *Glass* no formal discovery had been conducted prior to the settlement:

13 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
14 observed, however, "[i]n the context of class action settlements, 'formal discovery
15 is not a necessary ticket to the bargaining table' where the parties have sufficient
16 information to make an informed decision about settlement." *See In re Mego
Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

17 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
18 settlement because Class Counsel had the same sufficient information, as well as document
19 production, independent investigations and due diligence to confirm the accuracy of the information
20 supplied by Defendants.

21 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

22 Plaintiff contends that the proposed settlement meets all the requirements for class
23 certification under the California Code of Civil Procedure §382 as demonstrated below, and
24 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
25 should conditionally certify the Class for settlement purposes only, defined as follows:

26 all non-exempt employees who are or previously were employed by Urban Alchemy and
27 performed work in California during the period of December 23, 2016 to July 1, 2022.
28 (Agreement at ¶I(E)).

1 The Parties estimate that there are 2,750 Class Members who collectively worked 92,923
2 workweeks. (Agreement at ¶III(A)(2)).

3 **A. California Code of Civil Procedure §382**

4 Plaintiffs seek certification of this Class for settlement purposes under California Code of
5 Civil Procedure § 382. The California Supreme Court has summarized the standard for determining
6 whether class certification is appropriate as follows:

7 Code of Civil Procedure Section 382 authorizes class actions “when the question is
8 one of a common or general interest, of many persons, or when the parties are
9 numerous, and it is impracticable to bring them all before the court....” The party
10 seeking certification has the burden to establish the existence of both an
11 ascertainable class and a well-defined community of interest among class members.
12 (*citations omitted*). The “community of interest” requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives
with claims or defenses typical of the class; and (3) class representatives who can
adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court*, 34
Cal. 4th 319, 326 (2004)).

13 While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these
14 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
15 purposes of settlement and therefore, the proposed Class should be certified for purposes of
16 settlement.

17 **B. The Proposed Class Is Ascertainable and Numerous**

18 Plaintiff brings this action on behalf of a class of non-exempt employees during the
19 applicable Class Period. All of these employees are ascertainable because the class members can
20 readily be determined through examination of Defendant’s employment files. Given that the class
21 consists of 2,750 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44 Cal.2d
22 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
23 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Here, the
24 approximately 2,750 current and former non-exempt employees that comprise the Class can be
25 identified based on Defendant’s records and are sufficiently numerous for class certification. (Decl.
26 Zakay at ¶30).

27
28 ///

1 **C. Common Issues of Law and Fact Predominate**

2 Predominance of common issues of law or fact does not require that the common issues be
3 dispositive of the entire controversy or even that they be dispositive of all liability issues. (1
4 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992)). “Predominance is a comparative
5 concept, and ‘the necessity for class members to individually establish eligibility and damages does
6 not mean individual fact questions predominate.’” (*Sav-On*, 34 Cal. 4th at 334).

7 Commonality exists if there is a predominant common legal question regarding how an
8 employer’s policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
9 1524, 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on
10 its drivers.”)). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the
11 certification stage since the question is “essentially a procedural one that does not ask whether an
12 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
13 (2003)).

14 Here, Plaintiff contends that common questions of law and fact are present, and specifically
15 the common questions of whether Defendant’s employment practices were lawful, whether
16 Defendant failed to pay all wages, whether Defendant failed to properly provide and/or pay for meal
17 and rest periods, and whether the Class is entitled to compensation and related penalties. (Decl.
18 Zakay at ¶30). Defendant will not oppose such a finding for purposes of this settlement only.

19 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

20 The typicality requirement requires Plaintiff to demonstrate that the members of the class
21 have the same or similar claims as Plaintiff. “The typicality requirement is met when the claims of
22 the Plaintiff [] arise from the same event or are based on the same legal theories.” (*Tate v.*
23 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011
24 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule's permissive standards, representative
25 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
26 need not be substantially identical.” (50 F.3d at 1020).

27 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
28 Plaintiff, like every other member of the Class, was employed by Defendant and is a member of the

1 Class. Plaintiff was subject to the same employment practices concerning payment of wages and
2 meal and rest periods. Thus, the claims of the Plaintiff and the Class Members arise from the same
3 course of conduct by the Defendant, involve the same employment policies, and are based on the
4 same legal theories. (Decl. Zakay at ¶30). For purposes of settlement, the typicality requirement
5 is met as to the common issues presented in this case. Defendant does not oppose a finding of
6 typicality for purposes of this settlement only.

7 **E. The Class Representative Fairly and Adequately Protected the Class**

8 Plaintiff contends that the Class Members are adequately represented here because Plaintiff
9 and representing counsel (a) do not have any conflicts of interest with other class members, and (b)
10 will prosecute the case vigorously on behalf of the class (*See Hanlon* 150 F.3d at 1020). These
11 requirements are met here. First, Plaintiff is well aware of his duties as the representative of the
12 Class and has actively participated in the prosecution of this case to date. He effectively
13 communicated with counsel, provided documents to counsel, and participated in discovery,
14 investigation, and negotiations in the Action. (Decl. Zakay at ¶30). Second, Plaintiff retained
15 competent counsel who are experienced in employment class actions. (Decl. Zakay at ¶¶30 and
16 31). Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both
17 the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal
18 theories. (Decl. Zakay at ¶30).

19 **F. The Superiority Requirement Is Met**

20 To certify a class, the Court must also determine that a class action is superior to other
21 available methods for the fair and efficient adjudication of the controversy. “Where classwide
22 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
23 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
24 1234 (9th Cir. 1996)). As courts have previously observed:

25 Absent class treatment, each individual plaintiff would present in separate,
26 duplicative proceedings the same or essentially the same arguments and evidence,
27 including expert testimony. The result would be a multiplicity of trials conducted
28 at enormous expense to both the judicial system and the litigants. “It would be
neither efficient nor fair to anyone, including defendants, to force multiple trials to

1 hear the same evidence and decide the same issues.” (*Sav-On*, 34 Cal. 4th at 340,
2 citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991)).

3 Here, a class action is the superior mechanism for resolution of the claims as pled by the
4 Plaintiff. While Defendant would dispute that the superiority requirement may be satisfied in the
5 absence of a settlement, it will not dispute such a finding for purposes of this settlement only.

6 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

7 The Court has broad discretion in approving a practical notice program. The parties have
8 agreed upon procedures by which the Class Members will be provided with written notice of the
9 Settlement similar to that approved and utilized in hundreds of class action settlements. In
10 accordance with the Agreement, within 10 days after the Court enters its order granting Preliminary
11 Approval of the Settlement, Defendant will provide to the Settlement Administrator the Class Data.
12 (Agreement at ¶ III(K)(1)). Within 14 days after receiving the Class Data, the Settlement
13 Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S.
14 Mail to their last known addresses. (Agreement at ¶ III(K)(3)).

15 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
16 counsel and to be approved by the Court, includes all relevant information (See Exhibit A to the
17 Agreement). The Class Notice will include, among other information: (i) information regarding the
18 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
19 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
20 estimated settlement payment for each of the Class Members; (v) the amount of attorneys’ fees and
21 litigation expenses to be sought; (vi) the amount of the Plaintiff’s service award request; (vii) the
22 amount being paid to the LWDA; and (viii) the administration fees to be paid to the Settlement
23 Administrator. (Decl. Zakay at ¶32).

24 The Class Notice documents will state that the Class Members shall have forty-five (45)
25 days from the date that the Class Notice is mailed to them to request exclusion or to submit an
26 objection. (Agreement at ¶II(EE)). The Class Members will be given an opportunity to object to
27 the terms of the Agreement and/or the request for attorneys’ fees and costs and to participate at the
28 final approval hearing, in accordance with the instructions set forth in the Class Notice. (Agreement

1 at ¶III(K)(8)). Class Members who do not opt out will automatically receive a settlement payment.
2 (Agreement at ¶III(K)(7)). This notice program was designed to meaningfully reach the Class
3 Members and advises them of all pertinent information concerning the settlement. (Decl. Zakay at
4 ¶32). The mailing and distribution of the Class Notice satisfies the requirements of due process and
5 is the best notice practicable under the circumstances and constitutes due and sufficient notice to all
6 persons entitled thereto. The Class Notice provides information on the terms and provisions of the
7 settlement; the benefits that the settlement provides for Class Members; the date, time, and place of
8 the final settlement approval hearing; and the procedure and deadline for submitting comments,
9 objections, and requests for exclusion. The Class Notice complies with Rules of Court 3.766 and
10 3.769(f).

11 VII. CONCLUSION

12 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement
13 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
14 final fairness hearing for a date that is one hundred twenty (120) days from the date of Preliminary
15 Approval.

16
17 DATED: February 8, 2023

ZAKAY LAW GROUP, APLC

18
19 By:  _____

20 Shani O. Zakay
21 Attorney for Plaintiff
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