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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DAVID EZELL, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

DIAB LEASING, INC., a California
Corporation; and DOES 1-50, Inclusive.

Defendants.

Case No. 34-2021-00305329

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: January 5, 2024
Time: 9:00 a.m.

Judge: Hon. Lauri A. Damrell
Dept.: 28

1 Plaintiff's motion for an order finally approving the First Amended Stipulation of Settlement
2 of Class and PAGA Action Claims and Release of Claims ("Amended Agreement") and Motion for
3 Class Counsel Award and Class Representative's Payment duly came on for hearing on January 5,
4 2024, before the above-entitled Court. JCL Law Firm, APC, and Zakay Law Group, APLC
5 appeared on behalf of Plaintiff DAVID EZELL ("Plaintiff"). Musik, Peeler & Garrett, LLP
6 appeared on behalf of Defendants DIAB LEASING, INC., and FAROUK DIAB (hereinafter
7 "Defendants").

8 **I.**
9 **FINDINGS**

10 Based on the oral and written argument and evidence presented in connection with the
11 motion, the Court makes the following findings:

12 1. All capitalized terms used herein shall have the same meaning as defined in
13 the Amended Agreement.

14 2. This Court has jurisdiction over the subject matter of this litigation pending
15 in the California Superior Court for the County of Sacramento ("Court"), Case No. 34-2021-
16 00305329, entitled *David Ezell v. Diab Leasing, Inc.*, and over all Parties to this litigation, including
17 the Class.

18 **Preliminary Approval of the Settlement**

19 3. On August 25, 2023, the Court granted preliminary approval of a class-wide
20 settlement. At this same time, the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Notice Packet was
25 mailed by first class mail to the Class Members at their last known addresses on October 10, 2023.
26 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
27 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
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1 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
2 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was November 24, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. No Class Members requested
6 exclusion.

7 **Fairness Of the Settlement**

8 6. The Amended Agreement provides for a Maximum Settlement Amount of
9 \$1,600,000.00. The Amended Agreement is entitled to a presumption of fairness. (*Dunk v. Ford*
10 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to allow
15 the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. The percentage of objectors and requests for exclusion is zero. No
20 objections were received. No requests for exclusion were received.

21 e. The participation rate is high. All Class Members will be
22 participating in the Settlement and will be sent settlement payments.

23 7. The consideration to be given to the Class Members under the terms of the
24 Amended Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of
25 the claims asserted in this Action and is fair, reasonable, and adequate compensation for the release
26 of the Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
27 litigation and the delays which would ensue from continued prosecution of the Action.

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1 8. The Amended Agreement is finally approved as fair, adequate, and
2 reasonable and in the best interests of the Settlement Class Members.

3 **Attorneys' Fees and Attorneys' Expenses**

4 9. The Amended Agreement provides for a Class Counsel Award in the amount
5 of up to Five Hundred Fifty-Eight Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three
6 Cents (\$558,333.33). Subject to Court approval, the Class Counsel Award consists of attorneys'
7 fees equal to one-third (1/3) of the Maximum Settlement Amount, or Five Hundred Thirty-Three
8 Thousand, Three Hundred Thirty-Three Dollars and Thirty-Three Cents (\$533,333.33) and
9 reimbursement of costs and expenses in an amount up to Twenty-Five Thousand Dollars and Zero
10 Cents (\$25,000.00).

11 10. Five Hundred Fifty-Two Thousand, Two Hundred Thirteen Dollars and
12 Ninety-Nine Cents (\$552,213.99) for the Class Counsel Award comprised of one-third of the
13 Maximum Settlement Amount, or Five Hundred Thirty-Three Thousand, Three Hundred Thirty-
14 Three Dollars and Thirty-Three Cents (\$533,333.33) and reimbursement of incurred costs and
15 expenses in the amount of Eighteen Thousand, Eight Hundred Eighty Dollars and Sixty-Six Cents
16 (\$18,880.66) is reasonable in light of the contingent nature of Class Counsel's fee, the hours worked
17 by Class Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
18 represents 1/3 of the common fund, which is reasonable and at the low end of the range for fee
19 awards in common fund cases and is supported by Class Counsel's lodestar.

20 **Service Award**

21 11. The Amended Agreement provides for a Class Representative's Payment of
22 Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The
23 Court finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff is
24 reasonable in light of the risks and burdens undertaken by the Plaintiff in this class action litigation.

25 **Administration Costs**

26 12. The Amended Agreement provides for Administration Costs to be paid in an
27 amount not to exceed \$25,000.00. The Declaration of the Settlement Administrator provides that
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1 the actual claims administration expenses were \$17,250.00. The amount of this payment is
2 reasonable in light of the work performed by the Settlement Administrator.

3 **II.**

4 **ORDERS**

5 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

6 1. The Class is certified for the purposes of settlement only. The Settlement
7 Class is hereby defined to all individuals who are or previously were employed by Defendant Diab
8 Leasing, Inc. in California and classified as a non-exempt employee ("Class") during the period
9 from July 30, 2017 up to and including December 2, 2022 ("Class Period").

10 2. Every person in the Class who did not submit a timely and valid Request
11 for Exclusion is a Settlement Class Member. There were zero Requests for Exclusion submitted by
12 the Class Members.

13 3. The Amended Agreement is hereby approved as fair, reasonable, adequate,
14 and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in
15 accordance with this Order and the terms of the Amended Agreement.

16 4. The Class Members shall release the "Released Parties" from the "Released
17 Class Claims" and the "Aggrieved Employees" shall release the "Released Parties" from the
18 "Released PAGA Claims."

19 (a) The "Released Parties" means Defendants and the people and entities set forth in the
20 Amended Agreement. The Amended Agreement definition of "Released Parties" is incorporated
21 herein as if fully set forth.

22 (b) The "Released Class Claims" means all claims that were alleged, or reasonably could
23 have been alleged, based on the facts alleged in the complaint, including, but not limited to claims
24 arising under Labor Code sections 200, 201, 201.5, 202, 203, 204, 205.5, 206.5, 226, et seq., 226.2,
25 226.7, 246, 510, et seq., 512, 515, 558, 1194, 1197, 1197.1, 1198, 2698, et seq., 2802, California
26 Code of Civil Procedure sections 382, 395, 395.5, 410, 474, Business and Professions Code section
27 17200, et seq., 17203, and the requirement for the Industrial Welfare Commission Wage Order, as
28 well as claims for failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197 &

1 1197.1; failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq.; failure to
2 provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable IWC
3 Wage Order; failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7 & 512
4 and the applicable IWC Wage Order; failure to provide accurate itemized statements in violation of
5 Cal. Lab. Code §§ 226, 226.2; failure to provide wages when due in violation of Cal. Lab. Code §§
6 201, 202 and 203; failure to timely pay wages in violation of Cal. Lab. Code § 204; failure to
7 reimburse employees for required expenses in violation of Cal. Lab. Code § 2802; and claims
8 involving any alleged unfair competition in violation of Cal. Bus. & Prof. Code § 17200, et seq.
9 arising from the Labor Code violations released herein, that occurred during the Class Period. The
10 Class Period means the period from July 30, 2017, up to and including December 2, 2022.

11 (c) “Aggrieved Employees” is defined as each of the Class Members who was employed
12 by Defendants at any time during the PAGA Period.

13 (d) The “Released PAGA Claims” are defined as all claims for PAGA penalties that
14 were alleged, or reasonably could have been alleged, based on the facts alleged in the complaint and
15 PAGA notice provided to the LWDA pursuant to Labor Code section 2699.3, subd. (a), including
16 but not limited to, claims arising under Labor Code sections 200, 201, 201.3, 201.5, 202, 203, 204,
17 205.5, 206.5, 210, 218.5, 218.6, 226, et seq., 226.2, 226.3, 226.7, 246, 510, et seq., 512, 515, 558,
18 1174, 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2695, et seq., 2698, et seq., 2699, 2699.3,
19 2699.5, 2802, 2804, and the requirement for the Industrial Welfare Commission Wage Order, as
20 well as claims involving failure to pay minimum wages in violation of Cal. Labor Code §§ 1194,
21 1197 & 1197.1; failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, et seq.; failure
22 to provide required meal periods in violation of Cal. Lab Code §§ 226.7 & 512 and the applicable
23 IWC Wage Order; failure to provide required rest periods in violation of Cal. Lab. Code §§ 226.7
24 & 512 and the applicable IWC Wage Order; failure to provide accurate itemized statements in
25 violation of Cal. Lab. Code §§ 226, 226.2; failure to provide wages when due in violation of Cal.
26 Lab. Code §§ 201, 202, and 203; failure to reimburse employees for required expenses in violation
27 of Cal. Lab. Code § 2802, that occurred during the PAGA Period. The PAGA Period means the
28 period of May 25, 2020, and continuing through up to and including December 2, 2022.

1 5. Five Hundred Fifty-Two Thousand, Two Hundred Thirteen Dollars and
2 Ninety-Nine Cents (\$552,213.99) for the Class Counsel Award comprised of one-third of the
3 Maximum Settlement Amount, or Five Hundred and Thirty-Three Thousand, Three Hundred and
4 Thirty-Three Dollars and Thirty-Three Cents (\$533,333.33) and reimbursement of incurred costs
5 and expenses in the amount of Eighteen Thousand, Eight Hundred Eighty Dollars and Sixty-Six
6 Cents (\$18,880.66) is reasonable in light of the contingent nature of Class Counsel's fee, the hours
7 worked by Class Counsel, and the results achieved by Class Counsel. Class Counsel shall not seek
8 or obtain any other compensation or reimbursement from Defendants, Plaintiff, or members of the
9 Class.

10 6. The payment of the Class Representative's Payment to the Plaintiff David
11 Ezell in the amount of \$10,000.00 is approved.

12 7. The payment of \$17,250.00 to the Settlement Administrator for
13 Administration Costs is approved.

14 8. The PAGA Payment of \$80,000.00 is hereby approved as fair, reasonable,
15 adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds
16 that Plaintiff and Class Counsel negotiated the PAGA Payment at arms-length, absent of any fraud
17 or collusion.

18 9. Final Judgment is hereby entered in this action. The Final Judgment shall
19 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
20 of Released Parties from all Released Class Claims as defined in the Amended Agreement. To the
21 extent employees are required to "opt-in" to have this release be deemed effective under federal law,
22 the acceptance and negotiation of any settlement check shall be deemed effective for that purpose.

23 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
24 California and all Aggrieved Employees, pursuant to the California Labor Code Private Attorneys'
25 General Act ("PAGA") and shall release Released Parties from all Released PAGA Claims as
26 defined in the Amended Agreement.

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1 11. In addition to the release given by each Settlement Class Member, Plaintiff
2 also generally releases Released Parties from any and all claims as set forth in the General Release
3 by Plaintiff in the Amended Agreement.

4 12. The Amended Agreement is not an admission by Defendants, nor is this
5 Order Granting Final Approval and Judgment, a finding of the validity of any claims in the Action
6 or of any alleged wrongdoing by Defendants. This Order Granting Final Approval, the Settlement,
7 and any document referred to herein, and any action taken to carry out the Settlement, may not be
8 construed as, and may not be used as an admission by or against Defendants of any alleged fault,
9 wrongdoing, or liability whatsoever. The entering into or carrying out of the Amended Agreement,
10 and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed
11 to be evidence of, an admission or concession with regard to the denials or defenses by Defendants
12 and shall not be offered in evidence in any action or proceeding against Defendants in any court,
13 administrative agency or other tribunal for any purpose as an admission whatsoever other than to
14 enforce the provisions of this Order Granting Final Approval and Judgment, or the Settlement.
15 Defendants also can enforce the provisions of the Order Granting Final Approval and Judgment.
16 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
17 proceeding this Order Granting Final Approval and Judgment, the Amended Agreement, or any
18 other papers and records on file in the Action as evidence of the Settlement to support a defense of
19 res judicata, collateral estoppel, release, or other theory of claim or issue preclusion or similar
20 defense as to the claims being released by the Settlement and Amended Agreement.

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

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14. 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.

15. If the Settlement does not become final and effective in accordance with the terms of the Settlement and Amended Agreement, resulting in the return and/or retention of the Maximum Settlement Amount to Defendants consistent with the terms of the Settlement, then this Order Granting Final Approval and Judgment, and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

IT IS SO ORDERED.

DATED: _____, 2023

Hon. Lauri A. Damrell
Judge, Superior Court for the State of California,
County of Sacramento