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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13
14 ERIC JACOBS, an individual, on behalf of
15 himself and on behalf of all persons similarly
16 situated,

17 Plaintiff,

18 vs.

19 CAL-STATE AUTO PARTS, INC., a
20 California Corporation; and DOES 1 through
21 50, inclusive,

22 Defendants.

CASE NO.: **37-2021-00031418-CU-OE-CTL**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: October 6, 2023

Hearing Time: 8:30 a.m.

Judge: Hon, Ronald F. Frazier

Dept.: 65

Action Filed: July 22, 2021

Trial Date: Not set

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24 This matter, having come before the Honorable Ronald F. Frazier of the Superior Court of
25 the State of California, in and for the County San Diego, on October 6, 2023, for the motion by
26 Plaintiff Eric Jacobs ("Plaintiff") for preliminary approval of the class settlement with Defendant
27 Cal-State Auto Parts, Inc. ("Defendant"). The Court, having considered the briefs, argument of
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PRELIMINARY APPROVAL ORDER

1 counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
2 Plaintiff's Motion for Preliminary Approval of Class Action Settlement.

3 **IT IS HEREBY ORDERED:**

4 1. The Court preliminarily approves the Class Action and PAGA Settlement
5 Agreement ("Agreement") attached as Exhibit #1 to the Declaration of Kyle Nordrehaug in
6 support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. This is based
7 on the Court's determination that the Settlement set forth in the Agreement is within the range of
8 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
9 Procedure and California Rules of Court, Rule 3.769.

10 2. This Order incorporates by reference the definitions in the Agreement, and all
11 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

12 3. The Gross Settlement Amount is Nine Hundred Sixty Thousand Dollars
13 (\$960,000). It appears to the Court on a preliminary basis that the settlement amount and terms
14 are fair, adequate, and reasonable as to all potential Class Members when balanced against the
15 probable outcome of further litigation and the significant risks relating to certification, liability and
16 damages issues. It further appears that investigation and research have been conducted such that
17 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
18 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
19 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
20 It further appears that the Settlement has been reached as the result of serious and non-collusive,
21 arm's-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
22 adequate, and reasonable when balanced against the probable outcome of further litigation and the
23 significant risks relating to certification, liability, and damages issues.

24 4. The Agreement specifies for an attorneys' fees award not to exceed one-third (1/3)
25 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$20,000,
26 and proposed Class Representative Service Payment to the Plaintiff in an amount not to exceed
27 \$10,000. The Court will not approve the amount of attorneys' fees and costs or the amount of any
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1 service payment, until the Final Approval Hearing. Plaintiff will be required to present evidence
2 supporting these requests, including lodestar, at the time of final approval.

3 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
4 certification of a class for settlement purposes only. This stipulation will not be deemed
5 admissible in this or any other proceeding should this Settlement not become final. For settlement
6 purposes only, the Court conditionally certifies the following Class: “all individuals who were
7 employed by Defendant in California and classified as hourly, non-exempt employees at any time
8 during the Class Period.” The Class Period is July 22, 2017 through October 28, 2022.

9 6. The Court concludes that, for settlement purposes only, the Class meets the
10 requirements for certification under section 382 of the California Code of Civil Procedure in that:
11 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
12 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
13 community of interest amongst the members of the Class with respect to the subject matter of the
14 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
15 the Plaintiff can fairly and adequately protect the interests of the members of the Class; (e) a class
16 action is superior to other available methods for the efficient resolution of this controversy; and (f)
17 counsel for the Class is qualified to act as counsel for the Class, and the Plaintiff is an adequate
18 representative of the Class.

19 7. The Court provisionally appoints Plaintiff as the representative of the Class. The
20 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
21 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

22 8. The Court hereby approves, as to form and content, the Notice of Proposed
23 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”) attached
24 to the Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and
25 accurately inform the Class of all material elements of the proposed Settlement, of the Class
26 Members’ right to be excluded from the Class by submitting a written opt out request, and of each
27 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
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1 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
2 and this Order meets the requirements of due process, is the best notice practicable under the
3 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
4 Court orders the mailing of the Class Notice by first-class U.S. Mail, pursuant to the terms set
5 forth in the Agreement.

6 9. The Court hereby appoints ILYM Group as the Administrator. No later than fifteen
7 (15) calendar days after preliminary approval of the Settlement is granted by the Court, Defendant
8 shall provide to the Administrator an electronic spreadsheet with the Class Data. The
9 Administrator will perform address updates and verifications as necessary prior to mailing the
10 Class Notice. Using best efforts to mail it as soon as possible, and in no event later than 14 days
11 after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members
12 via first-class U.S. Mail.

13 10. The Court hereby preliminarily approves the proposed procedure for exclusion
14 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
15 from the Class as provided in the Class Notice by following the instructions for requesting
16 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
17 postmarked no later than the Response Deadline, which is forty-five (45) calendar days after the
18 date of the mailing of the Class Notice. If the Class Notice is re-mailed, the Response Deadline
19 for requests for exclusion will be extended an additional 14 days. Any such person who chooses
20 to opt out of and be excluded from the Class will not be entitled to any recovery under the
21 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
22 thereon. Class Members who have not requested exclusion shall be bound by all determinations
23 of the Court, the Agreement and the Judgment. A request for exclusion may only opt out that
24 particular individual, and any attempt to effect an opt out of a group, class, or subclass of
25 individuals is not permitted and will be deemed invalid. Subject to the Court's final approval of
26 the Settlement, all Aggrieved Employees will be paid their Individual PAGA Payment and will
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1 remain bound by the release of the Released PAGA Claims in the Agreement regardless of any
2 request for exclusion from the Class.

3 11. Any Class Member who has not opted out may appear at the Final Approval
4 Hearing and may object or express the Class Member's views regarding the Settlement and may
5 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
6 heard and determined by the Court as provided in the Notice. Class Members will have until the
7 Response Deadline to submit their written objections to the Administrator in accordance with the
8 instructions in the Class Notice. If the Class Notice is re-mailed, the Response Deadline for
9 written objections will be extended by an additional 14 days. Alternatively, Class Members may
10 appear at the Final Approval Hearing to make oral objections.

11 12. A Final Approval Hearing shall be held before this Court on February 16, 2024 at
12 8:30 a.m. in Department 65 at the San Diego County Superior Court to determine all necessary
13 matters concerning the Settlement, including: whether the proposed settlement of the Action on
14 the terms and conditions provided for in the Agreement is fair, adequate, and reasonable and
15 should be finally approved by the Court; whether the Final Approval Order and Judgment should
16 be entered herein; whether the plan of allocation contained in the Agreement should be approved
17 as fair, adequate, and reasonable to the Class Members; and to finally approve attorneys' fees and
18 costs, the service payment, and the expenses of the Administrator. All papers in support of the
19 motion for final approval and the motion for attorneys' fees, costs and service payment shall be
20 filed with the Court and served on all counsel no later than sixteen (16) court days before the
21 hearing and both motions shall be heard at the Final Approval Hearing.

22 13. Neither the Settlement nor any exhibit, document, or instrument delivered
23 thereunder shall be construed as a concession or admission by Defendant in any way that the
24 claims asserted have any merit or that this Action was properly brought as a class or representative
25 action, and shall not be used as evidence of, or used against Defendant as, an admission or
26 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
27 omission by Defendant or with respect to the truth of any allegation asserted by any person.

1 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
2 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
3 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
4 deemed to be evidence for any purpose adverse to the Defendant, including, but not limited to,
5 evidence of a presumption, concession, indication or admission by Defendant of any liability,
6 fault, wrongdoing, omission, concession or damage.

7 14. In the event the Settlement does not become effective in accordance with the terms
8 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
9 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
10 and the Parties shall revert to their respective positions before entering into the Agreement, and
11 expressly reserve their respective rights regarding the prosecution and defense of this Action,
12 including all available defenses and affirmative defenses, and arguments that any claim in the
13 Action could not be certified as a class action and/or managed as a representative action. In such
14 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
15 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
16 the Agreement with respect to the effect of the Agreement if it is not approved.

17 15. The Court reserves the right to adjourn or continue the date of the Final Approval
18 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
19 retains jurisdiction to consider all further applications arising out of or connected with the
20 proposed Settlement.

21 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
22 further orders of the Court at the Final Approval Hearing.

23 **IT IS SO ORDERED.**

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25 Dated: _____

HONORABLE RONALD F. FRAZIER
JUDGE OF THE SUPERIOR COURT

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PRELIMINARY APPROVAL ORDER