

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN FRANCISCO**

14 LAURO GONZALEZ-ARIAS, an individual,
15 on behalf of himself and on behalf of all
16 persons similarly situated,

17 Plaintiffs,

18 v.

19 MXB BATTERY OPERATIONS, LP, a
20 Limited Partnership; and DOES 1 through 50,
21 inclusive,

22 Defendants.

CASE NO.: **CGC-21-595687**

[Consolidated with Case No. CGC-21-595759]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: March 30, 2023 _____

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept.: 302

Action Filed: October 1, 2021

Trial Date: Not set

1 This matter came before the Honorable Richard B. Ulmer of the Superior Court of the
2 State of California, in and for the County San Francisco, on March 30, 2023, for the motion by
3 Plaintiff Lauro Gonzalez-Arias (“Plaintiff”) for preliminary approval of the class settlement with
4 Defendant MXB Battery Operations, LP (“Defendant”). The Court, having considered the briefs,
5 argument of counsel and all matters presented to the Court and good cause appearing, hereby
6 GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action Settlement.

7 **IT IS HEREBY ORDERED:**

8 1. The Court preliminarily approves the Class Action and PAGA Action Settlement
9 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
10 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This
11 preliminary approval is based on the Court’s determination that the Settlement set forth in the
12 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
13 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

16 3. The Gross Settlement Amount is Nine Hundred Thirty-Five Thousand Dollars
17 (\$935,000). It appears to the Court on a preliminary basis that the settlement amount and terms
18 are fair, adequate and reasonable as to all potential Class Members when balanced against the
19 probable outcome of further litigation and the significant risks relating to certification, liability and
20 damages issues. It further appears that investigation and research have been conducted such that
21 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
22 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
23 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
24 It further appears that the Agreement has been reached as the result of serious and non-collusive,
25 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
26 adequate, and reasonable when balanced against the probable outcome of further litigation and the
27 significant risks relating to certification, liability, and damages issues.

1 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
2 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Twenty
3 Thousand Dollars (\$20,000), and a proposed Class Representative Service Payment to the Plaintiff
4 in an amount not to exceed Ten Thousand Dollars (\$10,000) The Court will not approve the
5 amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval
6 Hearing. Plaintiff will be required to present evidence supporting these requests prior to final
7 approval.

8 5. The Court recognizes that Plaintiff and Defendant stipulate and agree to
9 certification of a class for settlement purposes only. This stipulation will not be deemed
10 admissible in this or any other proceeding should this Settlement not become final. For settlement
11 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
12 previously were employed by Defendant MXB Battery Operations, LP in California who were
13 classified as hourly, non-exempt employees at any time during the Class Period." The Class
14 Period is October 1, 2017 through December 21, 2022.

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

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

1 8. The Court hereby approves, as to form and content, the Court Approved Notice of
2 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), submitted
3 as Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and
4 accurately inform the Class of all material elements of the proposed Settlement, of the Class
5 Members’ right to be excluded from the Class by submitting a written opt-out request, and of each
6 Class Member’s right and opportunity to object to the Settlement. The Court further finds that the
7 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
8 and this Order meets the requirements of due process, is the best notice practicable under the
9 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
10 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
11 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
12 Settlement Administrator will promptly search for a more current address for the Class Member
13 and re-mail the Class Notice Packet to the Class Member no later than seven (7) business days
14 after the receipt of the undelivered Class Notice.

15 9. The Court hereby appoints ILYM Group as Administrator for the Settlement. No
16 later than fifteen (15) calendar days after issuance of this Order, Defendant shall provide to the
17 Administrator an electronic spreadsheet with the Class Data. This information will otherwise
18 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
19 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s express
20 written authorization or by order of the Court. The Administrator will perform address updates
21 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
22 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
23 Data spreadsheet, the Administrator will mail the Class Notice to all Class Members via first-class
24 U.S. Mail.

25 10. The Court hereby preliminarily approves the proposed procedure for exclusion
26 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
27 from the Class as provided in the Class Notice by following the instructions set forth in the Class
28

1 Notice. All requests for exclusion must be postmarked by no later than the Response Deadline,
2 which is forty-five (45) calendar days after the Administrator mails the Class Notice Packet to
3 Class Members. If the Class Notice Packet is re-mailed, this Response Deadline will be extended
4 an additional fourteen (14) calendar days. Any person who chooses to opt-out of and be excluded
5 from the Class will not be entitled to any recovery under the Settlement and will not be bound by
6 the Settlement or have any right to object, appeal or comment thereon. Aggrieved Employees shall
7 be sent their share of the PAGA Payment and will be subject to the release of the Released PAGA
8 Claims regardless of whether they opt-out of the Class. Class Members who have not requested
9 exclusion shall be bound by all determinations of the Court, the Agreement, and the Judgment. A
10 request for exclusion applies only to the individual submitting the request for exclusion, and any
11 attempt to effect an opt-out on behalf of any other individual or individuals (including a group,
12 class, or subclass of individuals) is not permitted and will be deemed invalid.

13 11. Any Class Member who has not opted-out may appear at the Final Approval
14 Hearing and may object or express the Member's views regarding the Settlement and may present
15 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
16 and determined by the Court as provided in the Class Notice. Class Members will have until the
17 Response Deadline set forth in the Class Notice to submit their written objections to the
18 Settlement Administrator in accordance with the instructions in the Class Notice. If the Class
19 Notice is re-mailed, the Response Deadline will be extended an additional fifteen (15) calendar
20 days. Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
21 objection.

22 12. A Final Approval Hearing shall be held before this Court on _____
23 _____ at 9:30 a.m. in Department 302 at the Civic Center Courthouse of the San
24 Francisco County Superior Court to determine all necessary matters concerning the Settlement,
25 including: whether the proposed settlement of the Action on the terms and conditions provided for
26 in the Agreement is fair, adequate and reasonable and should be finally approved by the Court;
27 whether the Final Approval Order and Judgment should be entered herein; whether the plan of
28

1 allocation contained in the Agreement should be approved as fair, adequate and reasonable to the
2 Class Members; and to finally approve attorneys' fees and costs, the service award, and the
3 expenses of the Administrator. The motion for final approval and the motion for attorneys' fees,
4 costs and service award shall be filed with the Court and served on all counsel no later than sixteen
5 (16) court days before the hearing and both motions shall be heard at the Final Approval Hearing.

6 13. Neither the Settlement nor any exhibit, document, or instrument delivered
7 thereunder shall be construed as a concession or admission by Defendant in any way that the
8 claims asserted have any merit or that this Action was properly brought as a class or representative
9 action, and shall not be used as evidence of, or used against Defendant as, an admission or
10 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
11 omission by Defendant or with respect to the truth of any allegation asserted by any person.
12 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
13 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
14 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
15 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
16 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
17 liability, fault, wrongdoing, omission, concession or damage.

18 14. In the event the Settlement does not become effective in accordance with the terms
19 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
20 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
21 and the Parties shall revert to their respective positions as of before entering into the Agreement,
22 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
23 including all available defenses and affirmative defenses, and arguments that no claim in the
24 Action could be certified as a class action and/or managed as a representative action. In such an
25 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
26 referred to in litigation or otherwise for any purpose.

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

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

7 **IT IS SO ORDERED.**

8
9 Dated: _____

HON. ROCHARD B. ULMER
JUDGE, SUPERIOR COURT OF CALIFORNIA