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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

TEVIN BRANDT, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOTOR CITY SALES & SERVICE, a
California corporation; MCLB, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. BCV-22-102078

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: March 5, 2024
Time: 8:30 a.m.

Judge: Hon. Bernard C. Barrman, Jr.
Dept.: H

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Attorney' Fees,
3 Attorneys' Expenses, and Service Award duly came on for hearing on March 5, 2024, before the
4 above-entitled Court. Zakay Law Group, APLC, and the JCL Law Firm, APC, appeared on behalf
5 of Plaintiff TEVIN BRANDT ("Plaintiff"). Goe Forsythe & Hodges, LLP appeared on behalf of
6 Defendants MOTOR CITY SALES & SERVICE d.b.a. Motor City Buick GMC, a California
7 Corporation, and MCLB, INC., a California Corporation (hereinafter "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 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 Kern ("Court"), Case No. BCV-22-102078,
16 entitled *Tevin Brandt v. Motor City Sales & Service, et al.*, and over all Parties to this litigation,
17 including the Class.

18 **Preliminary Approval of the Settlement**

19 3. On September 6, 2023, the Court granted preliminary approval of a class-
20 wide settlement. At this same time the court approved certification of a provisional settlement class
21 for settlement purposes only. The Court confirms this Order and finally approves the settlement
22 and the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Class Notice was
25 mailed by first class mail to the Class Members at their last known addresses on October 4, 2023.
26 Mailing of the Class Notice 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 Class Notice
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 20, 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. Only three requested exclusion.

6 **Fairness Of The Settlement**

7 6. The Agreement provides for a Gross Settlement Amount of \$675,000.00.
8 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1801.)

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

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

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

18 d. No objections were received. Only three requests for exclusion were
19 received.

20 e. The participation rate is high. 99.01% of Class Members will be
21 participating in the Settlement and will be sent settlement payments.

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

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

3 **PAGA Penalties**

4 9. The Agreement provides for a payment of PAGA Penalties in the amount of
5 \$75,000.00. The Court has reviewed the PAGA Penalties and finds and determines that the PAGA
6 Penalties and the allocation of \$56,250 to LWDA and \$18,750 to the Aggrieved Employees is fair
7 and reasonable and complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021)
8 72 Cal.App.5th 56.

9 **Attorneys' Fees and Attorneys' Expenses**

10 10. The Agreement provides for a payment for Attorneys' Fees and Attorneys'
11 Expenses in the amount of up to Two Hundred Fifty-Five Thousand Dollars and Zero Cents
12 (\$255,000.00). Subject to Court approval, the payment for Attorneys' Fees and Attorneys' Expenses
13 consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Two Hundred
14 Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) and reimbursement of litigation
15 expenses in the amount of Nineteen Thousand, One Hundred Eighty-One Dollars and Thirty Cents
16 (\$19,181.3).

17 11. A payment for Attorneys' Fees and Attorneys' Expenses of Two Hundred
18 Forty-Four Thousand, One Hundred Eighty-One Dollars and Thirty Cents (\$244,181.3) comprised
19 of Attorneys' Fees in the amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents
20 (\$225,000.00) and reimbursement of litigation expenses in the amount of Nineteen Thousand, One
21 Hundred Eighty-One Dollars and Thirty Cents (\$19,181.3) is reasonable in light of the contingent
22 nature of Class Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class
23 Counsel. The requested attorneys' fee award represents 1/3 of the common fund, which is
24 reasonable, and is supported by Class Counsel's lodestar.

25 **Service Award**

26 12. The Agreement provides for a Service Award of up to Ten Thousand Dollars
27 and Zero Cents (\$10,000.00) for Plaintiff, Tevin Brandt, subject to the Court's approval. The Court
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1 finds that the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) is reasonable in light
2 of the risks and burdens undertaken by the Plaintiff in this class action litigation.

3 **Administration Costs**

4 13. The Agreement provides for Administration Costs to be paid in an amount
5 not to exceed \$7,000.00. The Declaration of the Settlement Administrator provides that the actual
6 Administration Costs were \$7,000.00. The amount of this payment is reasonable in light of the work
7 performed by the Settlement Administrator.

8 **II.**

9 **ORDERS**

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

11 1. The Class is certified for the purposes of settlement only. The Settlement
12 Class is hereby defined to include:

13 All current and former non-exempt employees for Defendants employed in
14 California at any time during the period between June 7, 2021 and April 27, 2023
15 (“Class Period”), excluding Ameer Hammad, Juan Ayala, and Arturo Castillo.

16 2. There are 299 members of the Settlement Class. Every person in the Class
17 who did not opt out is a Settlement Class Member. After providing Notice to the Class, there are
18 only three opt-outs to the Settlement.

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

22 4. Defendants shall fund the Gross Settlement Amount on the Funding Date. In
23 exchange the Class Members shall release the “Released Parties” from the “Released Class Claims”
24 and the “Aggrieved Employees” shall release the “Released Parties” from the “Released PAGA
25 Claims.”

26 a. The “Released Parties” means Defendants Motor City sales and
27 Service dba Motor City Buick GMC and MCLB, Inc.

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1 b. The “Released Class Claims” are defined as all class claims alleged
2 in the operative complaint at the time of final approval. Prior to which shall include class action
3 allegations and claims, including the draft Frist Amended Complaint (which includes Class claims),
4 or which could have been alleged in the operative complaint based on the facts alleged, which
5 occurred during the Claim Period, and expressly excluding all other claims, including claims for
6 vested benefits, wrongful termination, unemployment insurance, disability, social security, workers’
7 compensation, PAGA claims (which are separately released herein below), and class claims outside
8 of the Class Period.

9 c. The “Aggrieved Employees” are defined as all current and former
10 non-exempt employees of Defendants employed in California at any time during the PAGA Period,
11 excluding Ameer Hammad, Juan Ayala, and Arturo Castillo. The PAGA Period is defined as the
12 period between June 7, 2021 and April 27, 2023.

13 d. The “Released PAGA Claims” are defined as all PAGA claims
14 alleged in the operative complaint, draft first Amended Complaint and Plaintiff’s June 7, 2022
15 PAGA notice to the LWDA which occurred during the Claim Period, and expressly excluding all
16 other claims, including claims for vested benefits, wrongful termination, unemployment insurance,
17 disability, social security, workers’ compensation and PAGA Claims outside the PAGA Period.

18 5. Class Counsel are awarded a payment for Attorneys’ Fees and Attorneys’
19 Expenses in the amount of \$244,181.3 comprised of Attorneys’ Fees in the amount of Two Hundred
20 Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) and reimbursement of litigation
21 expenses in the amount of Nineteen Thousand, One Hundred Eighty-One Dollars and Thirty Cents
22 (\$19,181.3). Class Counsel shall not seek or obtain any other compensation or reimbursement from
23 Defendants, Plaintiff, or members of the Class.

24 6. The payment of the Service Award to the Plaintiff in the amount of
25 \$10,000.00 is approved.

26 7. The payment of \$7,000.00 to the Settlement Administrator for the
27 Administration Costs is approved.

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1 8. The PAGA Penalties of \$75,000.00 is hereby approved as fair, reasonable,
2 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
3 finds that Plaintiff and Class Counsel negotiated the PAGA Penalties at arms-length, absent of any
4 fraud or collusion.

5 9. Final Judgment is hereby entered in this action. The Final Judgment shall
6 bind each Settlement Class Member.

7 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
8 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General Act
9 ("PAGA").

10 11. The Court further finds and determines that Class Counsel satisfied California
11 Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of claims arising
12 under the Private Attorney General Act ("PAGA") on August 7, 2023, and again on February 8,
13 2024.

14 12. The Court orders Class Counsel to comply with California Labor Code §
15 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the Court's
16 entry of this Order.

17 13. The Agreement is not an admission by Defendants, nor is this Final Approval
18 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
19 Defendants. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
20 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
21 admission by or against Defendants of any fault, wrongdoing, or liability whatsoever. The entering
22 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
23 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
24 to the denials or defenses by Defendants and shall not be offered in evidence in any action or
25 proceeding against Defendants in any court, administrative agency or other tribunal for any purpose
26 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
27 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
28 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and

1 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
2 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
3 or issue preclusion or similar defense as to the claims being released by the Settlement.

4 14. Notice of entry of this Final Approval Order and Judgment shall be given to
5 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
6 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
7 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
8 in the Class Notice.

9 After entry of Final Judgment, the Court shall retain jurisdiction to construe, interpret, implement,
10 and enforce the Settlement, to hear and resolve any contested challenge to a claim for settlement
11 benefits, and to supervise and adjudicate any dispute arising from or in connection with the
12 distribution of settlement benefits.

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

17 **IT IS SO ORDERED.**

18 DATED: _____, 2024
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21 _____
22 Hon. Bernard C. Barrman, Jr.
23 JUDGE OF THE SUPERIOR COURT
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