

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Sydney Castillo-Johnson (State Bar #343881)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for Plaintiff TEVIN BRANDT

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
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: September 6, 2023

Time: 8:30 a.m.

Location: Metropolitan Division Justice Building
1215 Truxtun Ave
Bakersfield, CA 93301

Judge: Hon. Bernard C. Barmann, Jr.

Dept.: H

1 This matter having come before the Honorable Judge Bernard C. Barmann, Jr. of the Superior
2 Court of the State of California, in and for the County of Kern, at 8:30 a.m. on September 6, 2023.
3 The Court, having carefully considered the briefs, argument of counsel and all the matters presented
4 to the Court, and good cause appearing, hereby GRANTS Plaintiff's Motion for Preliminary
5 Approval of Class Action and PAGA Settlement.

6 **IT IS HEREBY ORDERED:**

7 1. The Court preliminarily approves the Stipulation of Settlement of Class and PAGA
8 Action Claims and Release of Claims ("Settlement Agreement" or "Agreement"). This is based on
9 the Court's determination that the Settlement Agreement is within the range of possible final
10 approval, pursuant to the provisions of Section 382 of the California Code of Civil Procedure and
11 California Rules of Court, rule 3.769.

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

14 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount that
15 Defendant shall pay is Six Hundred and Seventy-Five Thousand Dollars and Zero Cents
16 (\$675,000.00). It appears to the Court on a preliminary basis that the settlement amount and terms
17 are fair, adequate, and reasonable as to all Class Members when balanced against the probable
18 outcome of further litigation relating to certification, liability, and damages issues. It further appears
19 that investigation and research have been conducted such that counsel for the Parties are able to
20 reasonably evaluate their respective positions. It further appears to the Court that settlement at this
21 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
22 would be presented by the further prosecution of the litigation. It further appears that the Settlement
23 has been reached as the result of intensive, serious, and non-collusive arms-length negotiations.

24 4. The Court preliminarily finds that the Settlement appears to be within the range of
25 reasonableness of a settlement that could ultimately be given final approval by this Court. The Court
26 has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily
27 finds that the monetary settlement awards made available to the Class Members are fair, adequate,
28 and reasonable when balanced against the probable outcome of further litigation relating to

1 certification, liability, and damages issues.

2 5. Plaintiff seeks Attorneys' Fees and Expenses in the amount of up-to one-third of the
3 Gross Settlement Amount for attorneys' fees, currently estimated at Two Hundred Twenty-Five
4 Thousand Dollars (\$225,000.00), an award of litigation expenses incurred not to exceed Thirty
5 Thousand Dollars and Zero Cents (\$30,000.00), and proposed Service Award to the Class
6 Representative, Tevin Brandt, in an amount not to exceed Ten Thousand Dollars and Zero Cents
7 (\$10,000.00). While these awards appear to be within the range of reasonableness, the Court will not
8 approve the Attorneys' Fees and Expenses or Enhancement Award until the Final Approval Hearing.

9 6. The Court recognizes that Plaintiff and Defendant stipulate and agree to certification of
10 a class for settlement purposes only. This stipulation will not be deemed admissible in this, or any
11 other proceeding should this Settlement not become final. For settlement purposes only, the Court
12 conditionally certifies the following Class:

13 "All current and former non-exempt employees for Defendants employed
14 in California at any time during the period between June 7, 2021 and April
15 27, 2023."

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

26 8. The Court provisionally appoints plaintiff Tevin Brandt as the representative of the
27 Class.

28 ///

1 9. The Court provisionally appoints Jean-Claude Lapuyade, Esq., of the JCL Law Firm,
2 A.P.C., and Shani Zakay, of the Zakay Law Group, APLC, as Class Counsel for the Class Members.

3 10. The Court hereby approves, as to form and content, the Proposed Notice of Pendency
4 of Class Action Settlement and Final Hearing Date (“Notice Packet”) attached to the Agreement as
5 Exhibit “A”. The Court finds that the Notice Packet appears to fully and accurately inform the Class
6 Members and Aggrieved Employees of all material elements of the proposed Settlement, including
7 the right of any Class Member to be excluded from the Class by submitting a written request for
8 exclusion, and of each Class Member’s right and opportunity to object to the Settlement. The Court
9 further finds that the distribution of the Notice Packet substantially, in the manner and form set forth
10 in the Agreement and this Order meets the requirements of due process, is the most reasonable notice
11 under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.
12 The Court orders the mailing of the Notice Packet by first class mail, pursuant to the terms set forth in
13 the Agreement.

14 11. The Court hereby appoints APEX Class Action, LLC as Settlement Administrator.
15 Within ten (10) business days of the Preliminary Approval Date, Defendant shall provide to the
16 Settlement Administrator the Class Data, including information regarding Class Members that
17 Defendant will in good faith compile from its records, including the Class Member’s name, last-
18 known mailing address, Social Security number, and start dates and end dates of employment. Within
19 twenty-one (21) calendar days after preliminary approval of the Settlement, the Settlement
20 Administrator shall mail the Notice Packet to all identified, potential Class Members via first class
21 U.S. Mail using the most current mailing address information available.

22 12. The Court hereby preliminarily approves the proposed procedure for exclusion from the
23 Settlement. Any Class Member may individually choose to opt out of and be excluded from the
24 Settlement as provided in the Notice Packet by following the instructions for requesting exclusion
25 from the Settlement of the Released Class Claims that are set forth in the Notice Packet. All requests
26 for exclusion must be postmarked or received by the Response Deadline which is forty-five (45)
27 calendar days after the date the Notice Packet is mailed to the Class Members or, in the case of a re-
28 mailed Notice, not more than fifteen (15) calendar days from the date of re-mailing of the Notices.

1 Any such person who chooses to opt out of and be excluded from the Settlement will not be entitled
2 to an Individual Settlement Payment under the Settlement and will not be bound by the Settlement, or
3 have any right to object, appeal or comment thereon. Class Members who have not requested
4 exclusion shall be bound by all determinations of the Court, the Agreement and Judgment. A request
5 for exclusion may only opt out that particular individual, and any attempt to affect an opt-out of a
6 group, class, or subclass of individuals is not permitted and will be deemed invalid.

7 13. Any Class Member who has not opted out may appear at the final approval hearing and
8 may object or express the Class Member's views regarding the Settlement and may present evidence
9 and file briefs or other papers that may be proper and relevant to the issues to be heard and
10 determined by the Court as provided in the Notice. Class Members will have forty-five (45) calendar
11 days from the date the Settlement Administrator mails the Notice Packet to postmark their written
12 objections to the Settlement Administrator.

13 14. A final approval hearing shall be held before this Court on _____ at
14 _____ AM in Department H of the Kern County Superior Court to determine all necessary matters
15 concerning the Settlement, including: whether the proposed settlement of the Action on the terms and
16 conditions provided for in the Agreement is fair, adequate and reasonable and should be finally
17 approved by the Court; whether an Order Granting Final Approval should be entered herein; whether
18 the plan of allocation contained in the Agreement should be approved as fair, adequate and reasonable
19 to the Class; and to finally approve the Attorneys' Fees and Expenses, Service Award, and the
20 Administration Costs.

21 15. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder
22 shall be construed as a concession or admission by Defendants in any way, and shall not be used as
23 evidence of, or used against Defendants as an admission or indication in any way, including with
24 respect to any claim of any liability, wrongdoing, fault, or omission by Defendants or with respect to
25 the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved,
26 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the
27 Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or
28 admitted in evidence as received as or deemed to be evidence for any purpose adverse to the

1 Defendants, including, but not limited to, evidence of a presumption, concession, indication or
2 admission by Defendants of any liability, fault, wrongdoing, omission, concession or damage.

3 16. In the event the Settlement does not become effective in accordance with the terms of
4 the Agreement, or the Settlement is not finally approved, or is terminated, canceled, or fails to
5 become effective for any reason, this Order shall be rendered null and void and shall be vacated, and
6 the Parties shall revert to their respective positions as of before entering into the Agreement. In such
7 an event, the Court's orders regarding the Settlement, including this Preliminary Approval Order,
8 shall not be used or referred to in litigation for any purpose. Nothing in this paragraph is intended to
9 alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if
10 it is not approved.

11 17. Pending final determination of whether the Settlement should be approved, Class
12 Representative and all Class Members are barred and enjoined from filing, commencing, prosecuting,
13 intervening in, instigating or in any way participating in the commencement or prosecution of any
14 lawsuit, action or administrative, regulatory, arbitration or other proceeding, in any forum, asserting
15 any claims that are, or relate in any way to, the Released Claims, unless and until they submit a
16 timely request for exclusion pursuant to the Agreement.

17 18. 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 proposed
20 Settlement.

21
22 Dated: _____

23 JUDGE OF THE SUPERIOR COURT
24
25
26
27
28