

OCT 05 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)
 Kyle R. Nordrehaug (State Bar #205975)
 2255 Calle Clara
 La Jolla, CA 92037
 Telephone: (858) 551-1223;
 Facsimile: (858) 551-1232

By KCM
 KRISTEN COLLIER, *clerk*

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
 Jackland K. Hom (State Bar #327243)
 Julieann Alvarado (State Bar #334727)
 5440 Morehouse Drive, Suite 3600
 San Diego, CA 92121
 Telephone: (619) 255-9047
 Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

ROBINSON DILANDO, APLC

Orion S. Robinson (State Bar #293796)
 801 South Grand Avenue, Suite 500
 Los Angeles, California 90017
 Telephone: (213) 229-0100
 Facsimile: (213) 229-0114
orobinson@rdwlaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA**IN AND FOR THE COUNTY OF SAN BERNARDINO**

CHRISTOPHER CHACON, an individual, on
 behalf of himself and on behalf of all persons
 similarly situated and the State of California,

Plaintiff,

v.

PANDA MOTORS, INC. a California
 Corporation; EDGAR CASTELLANOS, an
 individual; and DOES 2-50, Inclusive,

Defendants.

Case No. CIVDS2022220

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL**

Date: October 5, 2023
 Time: 1:30 p.m.

Judge: Hon. Joseph Ortiz
 Dept.: S-17

1
2 Plaintiff's motion for an order finally approving the Class Action Settlement Agreement
3 and Release of Claims ("Agreement") and Motion for Class Counsel Fees and Litigation Expenses
4 Payment and Class Representative Service Payment duly came on for hearing on October 5, 2023,
5 before the above-entitled Court. Zakay Law Group, APLC appeared on behalf of Plaintiffs
6 CHRISTOPHER CHACON, VYNZ PUNONGBAYAN, NICHOLAS CORDERO, and LUIS
7 VEGA. Madison Law appeared on behalf of Defendant PANDA MOTORS, INC. (hereinafter
8 "Defendant").

9 **I.**

10 **FINDINGS**

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

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

15 2. This Court has jurisdiction over the subject matter of this litigation pending
16 in the California Superior Court for the County of San Bernardino ("Court"), Case No. CIV-
17 CIVDS2022220, entitled *Chacon v. Panda Motors, Inc. et al.* and over all Parties to this litigation,
18 including the Class.

19 **Preliminary Approval of the Settlement**

20 3. On May 4, 2023, the Court granted preliminary approval of a class-wide
21 settlement. At this same time the court approved certification of a provisional settlement class for
22 settlement purposes only. The Court confirms this Order and finally approves the settlement and
23 the certification of the Class.

24 **Notice to the Class**

25 4. In compliance with the Preliminary Approval Order, the Class Notice was
26 mailed by first class mail to the Class Members at their last known addresses on June 22, 2023.
27 Mailing of the Class Notice to their last known addresses was the best notice practicable under the
28 circumstances and was reasonably calculated to communicate actual notice of the litigation and

1 the proposed settlement to the members of the Class Members. The Court finds that the Class
2 Notice provided fully satisfies the requirements of California Rules of Court, rule 3.769.

3 5. The Response Deadline for opting out or objecting was August 7, 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. Two Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$950,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 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
15 allow 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. No objections were received. Two requests for exclusion were
20 received.

21 e. The participation rate is high. 99.8% of the 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 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
25 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
26 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.
28

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

3 **PAGA Civil Penalty Payment**

4 9. The Agreement provides for a payment of PAGA Civil Penalty Payment in
5 the amount of \$50,000.00. The Court has reviewed the PAGA Civil Penalty Payment and finds
6 and determines that the PAGA Civil Penalty Payment and the allocation of \$37,500.00 to LWDA
7 and \$12,500.00 of the PAGA Civil Penalty Payment to Aggrieved Employees is fair and
8 reasonable and complies with the requirements set forth in *Moniz v. Adecco USA, Inc.* (2021) 72
9 Cal.App.5th 56.

10 **Class Counsel Fees and Litigation Expenses**

11 10. The Agreement provides for a Class Counsel Fees and Litigation Expenses
12 Payment in the amount of up to \$346,666.66. Subject to Court approval, the Class Counsel Fees
13 and Litigation Expenses consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement
14 Amount, or \$316,666.66 and reimbursement of costs and expenses in the amount of \$26,479.68.

15 11. A Class Counsel Fees and Litigation Expenses of \$343,146.34 comprised of
16 attorneys' fees in the amount of \$316,666.66 and reimbursement of costs and expenses in the
17 amount of \$26,479.68 is reasonable in light of the contingent nature of Class Counsel's fee, the
18 hours worked by Class Counsel, and the results achieved by Class Counsel. The requested
19 attorneys' fee award represents 1/3 of the common fund, which is reasonable, and is supported by
20 Class Counsel's lodestar.

21 **Class Representative Service Payment**

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

1 **Administration Expenses**

2 13. The Agreement provides for Administration Expenses to be paid in an
3 amount not to exceed \$15,500.00. The Declaration of the Settlement Administrator provides that
4 the actual claims administration expenses were \$15,500.00. The amount of this payment is
5 reasonable in light of the work performed by the Settlement Administrator.

6 **II.**

7 **ORDERS**

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

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

11 all non-exempt employees who are or previously were employed by Defendant and
12 performed work in California during the period of October 14, 2016 to December
13 13, 2022.

14 2. There are 965 members of the Class. Every person in the Class who did not
15 opt out is a Participating Class Member. After providing Notice to the Class, there two zero opt-
16 outs to the Settlement.

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

20 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
21 exchange the Class Members shall release the "Released Parties" from the "Released Class
22 Claims" and the "PAGA Members" shall release the "Released Parties" from the "Released
23 PAGA Claims."

24 5. The "Released Parties" means Defendant, and each of its past, present and
25 future agents, officers, directors, managing agents, members, owners (whether direct or indirect),
26 partners, trustees, shareholders, stockholders, attorneys, parents, subsidiaries, related
27 companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers,
28

1 joint venturers, joint employers, potential and alleged joint employers, affiliates, and affiliated
2 organizations.

3 6. The “Released Class Claims” are defined as all class claims alleged in the
4 operative complaint which occurred during the Class Period, and expressly excluding all other
5 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
6 disability, social security, workers’ compensation, and class claims outside of the Class Period.

7 7. The “Aggrieved Employees” or “PAGA Class Members” are defined as all
8 non-exempt employees who are or previously were employed by Defendant and performed work
9 in California during the period of August 7, 2019 to December 13, 2022.

10 8. The “Released PAGA Claims” are defined as all PAGA claims alleged in
11 the operative complaint and Plaintiff’s PAGA notice to the LWDA which occurred during the
12 PAGA Period, and expressly excluding all other claims, including claims for vested benefits,
13 wrongful termination, unemployment insurance, disability, social security, workers’
14 compensation, and PAGA claims outside of the PAGA Period.

15 9. Class Counsel are awarded \$343,146.34 comprised of attorneys’ fees in the
16 amount of \$316,666.66 and reimbursement of costs and expenses in the amount of \$26,479.68.
17 Class Counsel shall not seek or obtain any other compensation or reimbursement from
18 Defendants, Plaintiff, or members of the Class.

19 10. The payment of the Class Representative Service Payment to the Plaintiffs
20 in the amount of \$10,000.00 each is approved.

21 11. The payment of \$15,500.00 to the Settlement Administrator for
22 Administration Expenses is approved.

23 12. The PAGA Civil Penalty Payment of \$50,000.00 is hereby approved as fair,
24 reasonable, adequate, and adequately protects the interests of the public and the LWDA. Further,
25 the Court finds that Plaintiff and Class Counsel negotiated the PAGA Civil Penalty Payment at
26 arms-length, absent of any fraud or collusion.

27 13. Final Judgment is hereby entered in this action. The Final Judgment shall
28 bind each Participating Class Member.

1 14. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
2 California and all PAGA Members, pursuant to the California Private Attorneys' General Act
3 ("PAGA").

4 15. The Court further finds and determines that Class Counsel satisfied
5 California Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of
6 claims arising under the Private Attorney General Act ("PAGA") on September 8, 2023.

7 16. The Court orders Class Counsel to comply with California Labor Code §
8 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
9 Court's entry of this Order.

10 17. The Agreement is not an admission by Defendant, nor is this Final
11 Approval Order and Judgment, a finding of the validity of any claims in the Action or of any
12 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
13 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
14 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
15 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
16 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
17 concession with regard to the denials or defenses by Defendant and shall not be offered in
18 evidence in any action or proceeding against Defendant in any court, administrative agency or
19 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
20 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
21 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
22 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
23 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
24 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
25 claims being released by the Settlement.

26 18. Notice of entry of this Final Approval Order and Judgment shall be given to
27 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
28 notice of entry of this Final Approval Order and Judgment to individual Class Members and the

1 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
2 indicated in the Class Notice.

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

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

12 **IT IS SO ORDERED.**

13 DATED: Oct. 5, 2023
14

15
16 
17 _____
18 Hon. Joseph Ortiz
19 JUDGE OF THE SUPERIOR COURT
20
21
22
23
24
25
26
27
28