

04/25/2024

David W. Slayton, Executive Officer / Clerk of Court

By R. Arraiga, Deputy

FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT
Department SSC-9

Israel Contreras v. Felbro Foods, Inc.

Case No.: 21STCV26323

Hearing: April 25, 2024

Plaintiff's Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is **\$260,985.61**, non-reversionary. (§3.1)
- B. The Net Settlement Amount is the GSA minus the following:
 - o **\$86,995.20** (1/3) for attorney fees to Class Counsel (§3.2.2);
 - o **\$12,901.62** for litigation costs to Class Counsel (Ibid.);
 - o **\$5,000** incentive award to the Named Plaintiff (§3.2.1);
 - o **\$2,300** for settlement administration costs (§3.2.3); and
 - o **\$52,500** (75% of \$70,000 PAGA penalty) to the LWDA. (§3.2.5)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the GSA by Defendant. (§3.1)
- D. Plaintiffs' release of Defendants from claims described herein.

By **June 24, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699 (1)(3).

By **April 24, 2025**, Class Counsel must file a Final Report Re: Distribution of the Settlement Funds.

The Court hereby sets a **Non-Appearence Case Review for May 1, 2025, 8:30 a.m., Department 9.**

BACKGROUND

This is a wage and hour class action. Defendant Felbro Food Products, Inc. provides food manufacturing services and operates a food production facility in Los Angeles, California.

On July 19, 2021, Plaintiff filed a complaint with the Los Angeles County Superior Court (Case No. 21STCV26323) (“the Action”) alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Keep Requisite Payroll Records; (9) Violation of Business and Professions Code § 17200, et seq., and (10) Private Attorney General Act, Labor Code § 2698, et seq.

Counsel represents that prior to mediation, Defendant provided informal discovery including all relevant policies and handbooks in place during the Class Period, Plaintiff’s personnel file, a 20% sampling of time and payroll data for the putative class, figures and information regarding the class size and composition, and exemplar arbitration agreements along with the number of employees covered by these agreements. The randomly selected sampling included records for putative class members who were employed throughout different time periods during the Class Period, that is representative of the Class.

On June 7, 2022, the Parties attended a full day mediation with Jeffrey Krivis, Esq., and were able to come to an agreement. A fully executed copy of the Settlement Agreement was filed with the Court on November 18, 2022 attached to the Declaration Cody Payne (“Payne Decl.”) ISO Preliminary Approval as Exhibit 3.

Preliminary Approval was granted on September 28, 2023. Notice was given to the Class Members as ordered. (See Declaration of Mayra Gonzalez (“Gonzalez Decl.”).)

Now before the Court is the motion for final approval of the settlement agreement.

CLASS DEFINITION AND ESSENTIAL TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- “Class” means all current and former California non-exempt hourly employees of Felbro who worked at any time during the Class Period, excluding those employees in that period who have signed arbitration agreements with Felbro. (Settlement Agreement, ¶1.5)
 - “Class Period” means the period from July 19, 2017 to the date of preliminary approval. (¶1.12)
 - There are forty-nine (49) Class Members who worked a collective total of eight thousand seven hundred ninety (8,790) Workweeks during the Class Period. (Gonzalez Decl., ¶11.)
- “Aggrieved Employee” means all current and former California non-exempt hourly employees of Felbro who worked at any time during the PAGA Period, including those employees in that period who have signed arbitration agreements with Felbro. (¶1.4)
 - “PAGA Period” means the period from May 14, 2020 to the date of preliminary approval. (¶1.31)
 - There are thirty-three (33) Aggrieved Employees who worked a total of three thousand one hundred fifty-eight (3,158) Pay Periods during the PAGA Period. (Gonzalez Decl., ¶15.)
- Based on a review of its records to date, Felbro estimates there are 49 Class Members who collectively worked a total of 7,261 Workweeks, and 107 Aggrieved Employees who worked a total of 6,614 PAGA Pay Periods. (¶4.1) Based on its records, Felbro estimates that, as of the date of this Settlement Agreement, (1) there are 49 Class Members and 7,261 Total Workweeks during the Class period . If the actual number of Workweeks by the date of preliminary approval exceeds 7,261 by more than 10%, the

Gross Settlement Amount will be increased proportionally. In other words, if the excess is 11%, the increase will be 1%, if the excess is 12%, the increase will be 2%. (¶9)

- The total number of Workweeks during the Class Period was eight thousand seven hundred ninety (8,790), which exceeds the Escalator Clause by one thousand five hundred twenty-nine (1,529). (Gonzalez Decl., ¶12.) The additional amount due for the Escalator is \$25,985.61. (*Ibid.*)
- The Gross Settlement Amount (“GSA”) is **\$260,985.61¹**, non-reversionary. (¶3.1; Gonzalez Decl., ¶13.)
- The Net Settlement Amount (“Net”) (**\$75,950**) is the GSA minus the following:
 - Up to **\$91,344.96 (35%)** for attorney fees (¶3.2.2; Gonzalez Decl., ¶13);
 - Up to **\$17,000** for litigation costs (¶3.2.2);
 - Up to **\$5,000** for a Service Payment to the Named Plaintiff (¶3.2.1);
 - Up to **\$2,300** for settlement administration costs (¶3.2.3); and
 - Payment of **\$52,500** (75% of \$70,000 PAGA penalty) to the LWDA. (¶3.2.5)
- Defendants will pay their share of taxes separate from the GSA. (¶3.1)
- Funding of Settlement: Felbro shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Felbro’s share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date. (¶4.3)
- Uncashed Settlement Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days after mailing), the Administrator shall transmit the funds represented by such checks to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (¶4.4.3)
- The proposed settlement was submitted to the LWDA on October 19, 2022. (Payne Decl. ISO Preliminary Approval, Exhibit 4.)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order on September 28, 2023, that the presumption of fairness should be applied. No facts have come to the Court’s attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class and the LWDA.

Reaction of the class members to the proposed settlement.

Number of class members: 49 Class members. (Gonzalez Decl., ¶3.)

Number of notice packets mailed: 49 (*Id.* at ¶5.)

Number of undeliverable notices: 0 (*Id.* at ¶7.)

Number of opt-outs: 0 (*Id.* at ¶8.)

Number of objections: 0 (*Id.* at ¶9.)

¹ \$235,000 GSA + \$25,985.61 (escalator) = **\$260,985.61 GSA**

Number of participating class members: 49 (*Id.* at ¶11.)
Average individual Class payment: \$1,621.20 (*Id.* at ¶14.)
Highest estimated Class payment: \$2,964.28 (*Ibid.*)
Lowest estimated Class payment: \$9.04 (*Ibid.*)
Number of PAGA members: 33 (*Id.* at ¶15.)
Average individual PAGA payment: \$530.30 (*Ibid.*)
Highest estimated PAGA payment: \$742.56 (*Ibid.*)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members and the LWDA to the proposed settlement and for the reasons set for in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. Attorney Fees and Costs

Class Counsel, request \$91,344.96 (35%) in fees and litigation costs and expenses in the amount of \$12,901.62. (Motion ISO Final: 17:8-13.) The Settlement provides for attorney's fees up to \$91,344.96 and costs of \$17,000 (Settlement Agreement, ¶3.2.2); the class was provided notice of the requested awards, and none objected. (Gonzalez Decl., ¶9 and Exhibit A thereto.)

“Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Wershba* at 254.) Here, class counsel requests attorney fees using the percentage method, as cross checked by lodestar. (Motion ISO Final, pgs. 8-17.)

The fee request represents 35% of the gross settlement amount which is above the average generally awarded in class actions. See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”).

Counsel represent that they have incurred 163.6 hours on this litigation at a blended rate of \$525 for a total lodestar of \$85,890, which would require a multiplier of 1.06 to yield the requested fee amount. (Payne Decl. ISO Final, ¶¶49-51 ad Exhibit 3 thereto.)

Having considered the evidence presented, including the average percentage of the gross settlement typically awarded in fees, as well as the lodestar, the Court finds that **\$86,995.20 (1/3)** of the gross settlement amount) adequately and properly compensates Plaintiff for attorney’s fees in this action.

As for costs, class counsel has incurred costs of \$12,901.62. (Payne Decl. ISO Final, ¶56 and Exhibit 4 thereto.) Class Counsel is requesting \$12,901.62 in costs, which is equal to the settlement cap of \$17,000. The costs in this case include, but are not limited to, filing fees (\$1,846.94), mediation (\$9,000), and case anywhere costs. (*Ibid.*) The costs appear reasonable and necessary to litigation.

Based on the above, the Court awards **\$86,995.20 (1/3)** for fees and **\$12,901.62** for litigation costs.

D. Incentive Awards to Class Representatives

The Settlement agreement provides for up to \$5,000 an incentive award for the Named Plaintiff. (Settlement Agreement, ¶3.2.1.)

Plaintiff Contreras's contributions to this litigation include, but are not limited to, obtaining counsel, meeting with counsel, gathering documents, reviewing documents, answering questions, and reviewing the settlement agreement. (Contreras Decl., ¶¶3-10.)

Based on the above, the Court approves the enhancement award in the amount of **\$5,000**.

E. Claims Administration Costs

The claims administrator requests \$2,300 for the costs of administering the settlement. (Gonzalez Decl., ¶17.) This is equal to the \$2,300 maximum amount estimated in the Settlement Agreement; (Settlement Agreement, ¶3.2.3); and disclosed in the notice to class members. Based on all the work performed by the Claims Administrator, the Court awards costs in the requested amount of **\$2,300**.

CONCLUSION

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COURT CLERK TO GIVE NOTICE TO MOVING PARTY (PLAINTIFF). THE MOVING PARTY IS TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: April 25, 2024

A handwritten signature in cursive script, appearing to read "Elaine Lu".

Elaine Lu
Judge of the Superior Court