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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF KERN

14
15 ISAAC RODRIGUEZ, MARIA ALVAREZ,
16 CECILIO GUZMAN VIVEROS, KATE
17 LOPEZ and GILBERTO SERRATOR
18 MORENO, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

19 Plaintiffs,

20 vs.

21 FEGHALI FOODS, a Corporation; and DOES
22 1 through 50, inclusive,

23 Defendants.

CASE NO.: **BCV-23-100142**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: October 1, 2024_

Hearing Time: 8:30 a.m.

Judge: Hon. T. Mark Smith

Dept: T-2

Date Filed: January 17, 2023

Trial Date: Not set

1 The unopposed motion of Plaintiffs Isaac Rodriguez, Maria Alvarez, Cecilio Guzman
2 Viveros, Kate Lopez, and Gilberto Serrato Moreno (“Plaintiffs”) for an order finally approving the
3 Class Action and PAGA Settlement Agreement (“Agreement”) with Defendant Feghali Foods
4 (“Defendant”), attorneys’ fees and costs, service payment, and the expenses of the Administrator
5 duly came on for hearing on October 1, 2024 before the Honorable T. Mark Smith.

6 **I.**

7 **FINDINGS**

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

10 1. All terms used herein shall have the same meaning as defined in the Agreement.
11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Kern, and over all Parties to
13 this litigation, including the Class.

14 3. Based on a review of the papers submitted by Plaintiffs and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of is Eight Hundred Thousand
16 Dollars (\$800,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
17 The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA
18 Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation
19 Expenses Payment, Class Representative Service Payments, and the Administration Expenses
20 Payment. This Gross Settlement Amount is an all-in amount without any reversion to Defendant,
21 and excludes any employer payroll taxes, if any, due on the portion of the Individual Class
22 Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the
23 separate additional obligation of Defendant.

24 4. The Court further finds that the Settlement was the result of arm’s length
25 negotiations conducted after Class Counsel had adequately investigated the claims and became
26 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
27 Settlement, and the assistance of an experienced mediator in the settlement process, among other
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1 factors, support the Court's conclusion that the Settlement is, in all respects, fair, reasonable,
2 adequate, consistent, and compliant with all applicable requirements of the California Code of
3 Civil Procedure, the California and United States Constitutions, including the Due Process clauses,
4 the California Rules of Court, and any other applicable law, and in the best interest of each of the
5 Parties and Class Members.

6 **Preliminary Approval of the Settlement**

7 5. On May 30, 2024, the Court granted preliminary approval of the Settlement. At
8 this same time, the Court approved conditional certification of the Class for settlement purposes
9 only.

10 **Notice to the Class**

11 6. The Court is satisfied that Apex Class Action, which was appointed as the
12 Administrator, completed the distribution of the Class Notice to the Class in a manner that
13 comports with California Rule of Court 3.766. The Class Notice informed 1,728 prospective Class
14 Members of the Agreement's terms, their rights under the Agreement to receive their settlement
15 share, their rights to submit a request for exclusion, their rights to comment on or object to the
16 Agreement, and their rights to appear at the Final Approval and Fairness hearing and be heard
17 regarding approval of the Agreement. Sufficient periods of time to respond and to act were
18 provided by each of these procedures.

19 7. In compliance with the Preliminary Approval Order, the Court-approved Class
20 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
21 about July 2, 2024, as well as posted on the Administrator's website on the same date. Mailing of
22 the Class Notice to their last-known addresses and posting the notice on the Administrator's
23 website was the best notice practicable under the circumstances and was reasonably calculated to
24 communicate actual notice of the litigation and the proposed settlement to the Class. The Class
25 Notice given to the Class Members fully and accurately informed the Class Members of all
26 material elements of the proposed Settlement and of their opportunity to object to or comment
27 thereon or to seek exclusion from the Settlement; was valid, due, and sufficient notice to all Class
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1 Members; and complied fully with the laws of the State of California, the United States
2 Constitution, due process and other applicable law. The Class Notice fairly and adequately
3 described the Settlement and provided Class Members adequate instructions and a variety of
4 means to obtain additional information.

5 8. The Response Deadline for opting out or submitting written objections to the
6 Settlement was August 16, 2024, which for re-mailings was extended by fourteen (14) days.
7 There was an adequate interval between notice and the deadline to permit Class Members to
8 choose what to do and to act on their decision. A full and fair opportunity has been afforded to the
9 Class Members to participate in this hearing, and all Class Members and other persons wishing to
10 be heard have had a full and fair opportunity to be heard. Class Members also have had a full and
11 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
12 Court determines that all Class Members who did not timely and properly submit a request for
13 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

14 **Fairness of the Settlement**

15 9. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
16 48 Cal.App.4th 1794, 1801 (1996).

17 a. The settlement was reached through arm's-length bargaining between the
18 Parties during an all-day mediation before Tagore Subramaniam, Esq., an experienced mediator of
19 wage and hour class actions. There has been no collusion between the Parties in reaching the
20 Settlement.

21 b. Plaintiffs and Class Counsel's investigation and discovery have been
22 sufficient to allow the Court and counsel to act intelligently.

23 c. Counsel for all Parties are experienced in similar employment class action
24 litigation. Class Counsel recommended approval of the Agreement.

25 d. The percentage of objectors and requests for exclusion is small. No
26 objections were received. Two (2) requests for exclusion were received.

1 e. 1,726 Participating Class Members will be mailed a settlement payment,
2 representing 99.88% of the overall Class.

3 10. The consideration to be given to the Class Members under the terms of the
4 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the
5 claims asserted in this action and is fair, reasonable and adequate compensation for the release of
6 Class Members' claims, given the uncertainties and significant risks of the litigation and the
7 delays which would ensue from continued prosecution of the action.

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

10 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

11 12. From the Gross Settlement Amount, an award of \$266,666 for attorneys' fees,
12 representing one-third of the Gross Settlement Amount, and \$30,000 for litigation costs and
13 expenses, is reasonable, in light of the contingent nature of Class Counsel's fee, the hours worked
14 by Class Counsel, and the results achieved by Class Counsel. The requested award has been
15 supported by Class Counsel's lodestar and billing statement.

16 **Class Representative Service Payments**

17 13. The Agreement provides for Class Representative Service Payments of not more
18 than \$10,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that Class
19 Representative Service Payments in the amount of \$10,000 from the Gross Settlement Amount to
20 each of the Plaintiffs is reasonable in light of the risks and burdens undertaken by the Plaintiffs in
21 this litigation and for their time and effort in bringing and prosecuting this matter on behalf of the
22 Class.

23 **Administration Expenses Payment**

24 14. The Administrator shall calculate and administer the payment to be made to the
25 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
26 Class Representative Service Payments to the Plaintiffs, issue all required tax reporting forms,
27 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
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1 Administrator has documented \$18,400 in fees and expenses, and this amount is reasonable in
2 light of the work performed by the Administrator.

3 **PAGA Penalties**

4 15. The Agreement provides for a PAGA Penalties out of the Gross Settlement
5 Amount of \$50,000, which shall be allocated \$37,500 to the Labor & Workforce Development
6 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
7 Agreement pursuant to the PAGA and \$12,500 to be distributed to the Aggrieved Employees and
8 allocated by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties
9 (\$12,500) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during
10 the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay
11 Periods. “Aggrieved Employees” are all individuals who were employed by Defendant in
12 California and classified as a non-exempt employee at any time during the PAGA Period (October
13 31, 2021 through May 30, 2024). Pursuant to Labor Code section 2699, subdivision (l)(2), the
14 LWDA was provided notice of the Agreement and these settlement terms and has not indicated
15 any objection thereto. The Court finds the PAGA Penalties to be reasonable.

16 **II.**

17 **ORDERS**

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

19 16. The Class is certified for the purposes of settlement only. The Class is defined as
20 follows, which the Court deems sufficient for the purpose of rule 3.765(a) of the California Rules
21 of Court and solely for the purposes of effectuating the Agreement:

22 All individuals who were employed by Defendant in California and classified as a
23 non-exempt employee at any time during the Class Period (February 16, 2020
through May 30, 2024).

24 17. The Court finds that an ascertainable class of 1,726 class members exists and a
25 well-defined community of interest exists on the questions of law ad fact involved because in the
26 context of the Agreement: (i) all related matters, predominate over any individual questions; (ii)
27 the claims of the Plaintiffs are typical of claims of the Class Members; and (iii) in negotiating,
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1 entering into and implementing the Agreement, Plaintiffs and Plaintiffs' counsel have fairly and
2 adequately represented and protected the interest of the Class Members.

3 18. All persons who meet the foregoing definition are members of the Class, except for
4 those individuals who filed a valid request for exclusion ("opt out") from the Class. The two (2)
5 individuals who requested exclusion are: Daniel Whittle and Ethan Daniel Park.

6 19. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
7 best interest of the Class. Defendant shall fully fund the Gross Settlement Amount, and also fund
8 the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to
9 the Administrator no later than 14 days after the Effective Date.

10 20. Class Counsel are awarded attorneys' fees in the amount of \$266,666 and costs in
11 the amount of \$30,000, payable from the Gross Settlement Amount. Class Counsel shall not seek
12 or obtain any other compensation or reimbursement from Defendant, Plaintiffs or members of the
13 Class.

14 21. The payment of Class Representative Service Payments from the Gross Settlement
15 Amount in the amount of \$10,000 to each of the Plaintiffs is approved.

16 22. The payment of \$18,400 to the Administrator for its fees and expenses from the
17 Gross Settlement Amount is approved.

18 23. The PAGA Penalties amount of \$50,000 is approved and is to be distributed from
19 the Gross Settlement Amount in accordance with the Agreement.

20 24. Pursuant to Labor Code section 2699, subdivision (1)(2), Class Counsel shall
21 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
22 entry.

23 25. Neither the Agreement nor this Settlement is an admission by Defendant, nor is this
24 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
25 wrongdoing by Defendant or that this Action is appropriate for class or representative treatment
26 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
27 Agreement, nor any document referred to herein, nor any action taken to carry out the Agreement
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1 is, may be construed as, or may be used as an admission by or against Defendant of any fault,
2 wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement, and any
3 negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be
4 evidence of, an admission or concession with regard to the denials or defenses by Defendant.
5 Notwithstanding these restrictions, Defendant may file in the Action or in any other proceeding
6 this Final Approval Order and Judgment, the Agreement, or any other papers and records on file in
7 the Action as evidence of the Settlement to support a defense of *res judicata*, collateral estoppel,
8 release, or other theory of claim or issue preclusion or similar defense as to the Released Class
9 Claims and/or Released PAGA Claims.

10 26. The Court directs the Parties to effectuate the Agreement according to its terms and
11 declares the Agreement to be binding on all Class Members who did not timely submit a Request
12 for Exclusion and on all Aggrieved Employees, whether or not they submitted a Request for
13 Exclusion.

14 27. Notice of entry of this Final Approval Order and Judgment shall be given to all
15 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
16 and Judgment shall be posted on Administrator's website as set forth in the Class Notice to the
17 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
18 to individual Class Members.

19 28. If the Agreement does not become final and effective in accordance with the terms
20 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
21 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
22 revert to their respective positions as of before entering into the Agreement, and expressly reserve
23 their respective rights regarding the prosecution and defense of this Action, including all available
24 defenses and affirmative defenses, and arguments that any claim in the Action could not be
25 certified as a class action and/or managed as a representative action.

26 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

1 29. Except as set forth in the Agreement and this Final Approval Order and Judgment,
2 Plaintiffs, and all members of the Class, shall take nothing in the Action.

3 30. All Parties shall bear their own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 31. Effective on the date when Defendant fully funds the entire Gross Settlement
6 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
7 Payments, Plaintiffs, Participating Class Members, and the LWDA will release claims against all
8 Released Parties as follows:

9 (a) All Participating Class Members, on behalf of themselves and their
10 respective former and present representatives, agents, attorneys, heirs, dependents, administrators,
11 devisees, legatees, executors, trustees, conservators, guardians, personal representatives,
12 successors, and assigns, whether individual, class, representative, legal, equitable, direct or
13 indirect, or any other type of any capacity, shall and do hereby forever release, discharge, and
14 agree to hold harmless the Released Parties from all claims during the Class Period that were
15 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
16 Complaint and ascertained in the course of the Action including any and all claims for: 1)
17 unlawful business practices; 2) failure to pay minimum wages; 3) failure to pay overtime
18 compensation; 4) failure to provide required meal periods and meal period premium pay; 5) failure
19 to provide required rest periods and rest period premium pay; 6) failure to provide accurate and
20 complete itemized statements; 7) failure to reimburse employees for expenses; 8) failure to pay
21 wages when due; and 9) failure to pay sick pay wages ("Released Class Claims"). To the extent
22 based on facts alleged on the Operative Complaint or the PAGA Letter, the Released Class Claims
23 encompass, but are not limited to, all claims pursuant to the applicable IWC Wage Order, and
24 Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226, 226.7, 233, 246, 246.5, 510, 512, 515,
25 1194, 1194.2, 1197, 1197.1, 1198, 2802; California Business and Profession Code §§ 17200, et
26 seq. The Released Class Claims excludes claims, if any, by Class Members for workers
27 compensation; unemployment; disability benefits; causes of action which may be possessed by
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1 Class Members (other than the named Plaintiffs) under state or federal discrimination statutes,
2 including, without limitation, wrongful termination and violation of the Fair Employment and
3 Housing Act; and class claims outside of the Class Period. The “Released Parties,” as used herein,
4 are Defendant and each of its former, future, and present parent, joint venturers, and affiliated
5 corporations and partnerships; their directors, officers, shareholders, principals, owners, members,
6 managers, partners, customers, employees, agents, attorneys, insurers, predecessors, successors,
7 assigns, subsidiaries.

8 (b) All Aggrieved Employees are deemed to release, on behalf of themselves
9 and their respective former and present representatives, agents, attorneys, heirs, administrators,
10 successors, and assigns, the Released Parties from all claims, rights, demands, liabilities and
11 causes of action for civil penalties under the PAGA, that Aggrieved Employees have had, now
12 have, or may have in the future against Released Parties based on any acts or omissions occurring
13 during the PAGA Period and were alleged, or reasonably could have been alleged, based on the
14 PAGA Period facts stated in the Operative Complaint or the PAGA Notice (“Released PAGA
15 Claims”). The Released PAGA Claims include, but are not limited to, claims for PAGA penalties
16 pursuant to Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226, 226.7, 227.3, 233, 246, 246.5,
17 510, 512, 515, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2699, et seq, 2802. Released PAGA
18 Claims excludes claims, if any, by Class Members for workers compensation; unemployment;
19 disability benefits; causes of action which may be possessed by Class Members (other than the
20 named Plaintiffs) under state or federal discrimination statutes, including, without limitation,
21 wrongful termination and violation of the Fair Employment and Housing Act; and PAGA claims
22 outside of the PAGA Period.

23 (c) Plaintiffs and his or her respective former and present spouses,
24 representatives, agents, attorneys, heirs, dependents, administrators, devisees, legatees, executors,
25 trustees, conservators, guardians, personal representatives, successors, and assigns, whether
26 individual, class, representative, legal, equitable, direct or indirect, or any other type of any
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1 capacity, shall and does hereby forever generally release, discharge, and agree to hold harmless
2 the Released Parties from the Plaintiffs' Release, as set forth fully in the Agreement.

3 32. For any Class Member or Aggrieved Employee whose Individual Class Payment
4 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
5 Administrator shall transmit the funds represented by such checks to the Court Appointed Special
6 Advocates of Kern County as the Cy Pres Recipient, which the Court approves as the cy pres
7 beneficiary pursuant to California Code of Civil Procedure Section 384, subd. (b).

8 33. The Court hereby enters judgment in the entire Action as of the filing date of this
9 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
10 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction,
11 including jurisdiction pursuant to California Code of Civil Procedure section 664.6 and rule
12 3.769(h) of the California Rules of Court, solely for the purposes of enforcing the Agreement,
13 addressing settlement administration matters, and addressing such post-judgment matters as may
14 be appropriate under court rules or applicable law.

15 34. Plaintiffs shall file with the Court a report regarding the status of distribution within
16 10 days after the Administrator disburses all funds, including to the cy pres beneficiary.

17 35. This final judgment is intended to be a final disposition of the above-captioned
18 action in its entirety and is intended to be immediately appealable. This final judgment resolves
19 and extinguishes all claims released by the Agreement against Defendant and Released Parties.

20 36. The Court hereby sets a hearing date of _____ at
21 _____ am/pm for a hearing on the final accounting and distribution of the settlement funds.

22 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

23
24 Dated: _____

25 _____
26 HON. T. MARK SMITH
27 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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FINAL APPROVAL ORDER AND JUDGMENT