

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

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

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

PEDRO RODRIGUEZ and JOSE GARCIA,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

v.

FERMA GREENBOX, INC., a California
Corporation; FERMA CORPORATION, a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. RG21101104

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL**

Date: July 28, 2023

Time: 9:00 AM

Judge: Hon. Evelio Grillo

Dept.: 10B

Reservation ID: 131351394793

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 Class Counsel Award
3 and Class Representative Service Award duly came on for hearing on July 28, 2023, before the
4 above-entitled Court. Zakay Law Group, APLC, and the JCL Law Firm, APC, appeared on behalf
5 of Plaintiffs PEDRO RODRIGUEZ and JOSE GARCIA ("Plaintiffs"). Sweeney Mason LLP
6 appeared on behalf of Defendants FERMA GREENBOX, INC. and FERMA CORPORATION., a
7 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 Alameda ("Court"), Case No. RG21101104,
16 entitled *Rodriguez v. Ferma Greenbox, Inc., et al.* and over all Parties to this litigation, including
17 the Class.

18 **Preliminary Approval of the Settlement**

19 3. On March 15, 2023, the Court granted preliminary approval of a class-wide
20 settlement. At this same time the court approved certification of a provisional settlement class for
21 settlement purposes only. The Court confirms this Order and finally approves the settlement and
22 the certification of the Class.

23 **Notice to the Class**

24 4. In compliance with the Preliminary Approval Order, the Notice Packet was
25 mailed by first class mail to the Class Members at their last known addresses on April 14, 2023.
26 Mailing of the Notice Packet to their last known addresses was the best notice practicable under
27 the circumstances and was reasonably calculated to communicate actual notice of the litigation
28

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

3 5. The Response Deadline for opting out or objecting was March 30, 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. No Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$200,000.00.
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. No requests for exclusion were
20 received.

21 e. The participation rate is high. All 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.

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 Settlement**

4 9. The Agreement provides for a payment of PAGA Settlement in the amount
5 of \$10,000.00. The Court has reviewed the PAGA Settlement and finds and determines that the
6 PAGA Settlement and the allocation of \$7,500.00 to LWDA and \$2,500.00 of the PAGA
7 Settlement to Aggrieved Employees is fair and reasonable and complies with the requirements set
8 forth in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Attorneys' Fees and Litigation Expenses**

10 10. The Agreement provides for a Class Counsel Award in the amount of up to
11 \$91,666.00. Subject to Court approval, the Class Counsel Award consists of attorneys' fees equal
12 to one-third (1/3) of the Gross Settlement Amount, or \$66,666.00 and reimbursement of costs and
13 expenses in the amount of \$25,000.00.

14 11. A Class Counsel Award of \$83,267.73 comprised of attorneys' fees in the
15 amount of \$66,666.00 and reimbursement of costs and expenses in the amount of \$16,601.73 is
16 reasonable in light of the contingent nature of Class Counsel's fee, the hours worked by Class
17 Counsel, and the results achieved by Class Counsel. The requested attorneys' fee award
18 represents 1/3 of the common fund, which is reasonable, and is supported by Class Counsel's
19 lodestar.

20 **Class Representative Service Award**

21 12. The Agreement provides for a Class Representative Service Award of up to
22 \$7,500.00 for each Plaintiff, Pedro Rodriguez and Jose Garcia, subject to the Court's approval.
23 The Court finds that the amount of \$7,500.00 for each Plaintiff is reasonable in light of the risks
24 and burdens undertaken by the Plaintiffs in this class action litigation.

25 **Settlement Administration Costs**

26 13. The Agreement provides for Settlement Administration Costs to be paid in
27 an amount not to exceed \$8,000.00. The Declaration of the Settlement Administrator provides
28

1 that the actual claims administration expenses were \$8,000.00. The amount of this payment is
2 reasonable in light of the work performed by the Settlement Administrator.

3 **II.**

4 **ORDERS**

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

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

8 All truck drivers who are or previously were employed by Defendants performed
9 work in California from May 21, 2017, to September 30, 2022.

10 2. There are 52 members of the Class. Every person in the Class who did not
11 opt out is a Settlement Class Member. After providing Notice to the Class, there are zero opt-outs
12 to the Settlement.

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

16 4. Defendants shall fund the Gross Settlement Amount on the Funding Date.
17 In exchange the Class Members shall release the Defendants from the “Released Class Claims”
18 and the “Aggrieved Employees” shall release the “Released Parties” from the “Released PAGA
19 Claims.”

20 a. The “Released Class Claims” are defined as all class claims alleged
21 or which could have reasonably been alleged, based on the facts set forth in either the Complaint
22 filed on May 21, 2021 or the First Amended Complaint filed on October 18, 2021, which occurred
23 during the Class period, and expressly excluding all other claims, including claims for vested
24 benefits, wrongful termination, unemployment insurance, disability, social security, workers’
25 compensation, and class claims outside of the Class Period.

26 b. The “Aggrieved Employees” are defined as all of all truck drivers
27 who are or previously were employed by Defendants and performed work in California during the
28

1 PAGA Period. The PAGA Period is defined as the period between March 3, 2020 to September
2 30, 2022.

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

8 5. Class Counsel are awarded attorneys’ fees in the amount of \$83,267.73
9 comprised of attorneys’ fees in the amount of \$66,666.66 and reimbursement of costs and
10 expenses in the amount of \$16,601.73. Class Counsel shall not seek or obtain any other
11 compensation or reimbursement from Defendants, Plaintiff, or members of the Class.

12 6. The payment of the Class Representative Service Award to each Plaintiff in
13 the amount of \$7,500.00 is approved.

14 7. The payment of \$8,000.00 to the Settlement Administrator for Settlement
15 Administration Costs is approved.

16 8. The PAGA Settlement of \$10,000.00 is hereby approved as fair, reasonable,
17 adequate and adequately protects the interests of the public and the LWDA. Further, the Court
18 finds that Plaintiffs and Class Counsel negotiated the PAGA Settlement at arms-length, absent of
19 any fraud or collusion.

20 9. Final Judgment is hereby entered in this action. The Final Judgment shall
21 bind each Participating Class Member.

22 10. Final Judgment shall also bind Plaintiffs, acting on behalf of the State of
23 California and all Aggrieved Employees, pursuant to the California Private Attorneys’ General
24 Act (“PAGA”).

25 11. The Court further finds and determines that Class Counsel satisfied
26 California Labor Code § 2699(1)(2) by giving the LWDA notice of the proposed Settlement of
27 claims arising under the Private Attorney General Act (“PAGA”) on January 5, 2023, and again on
28 July 5, 2023.

1 12. The Court orders Class Counsel to comply with California Labor Code §
2 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
3 Court's entry of this Order.

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

20 14. Notice of entry of this Final Approval Order and Judgment shall be given to
21 Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary to send
22 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
23 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
24 indicated in the Notice Packet.

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

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

6 **IT IS SO ORDERED.**

7
8 DATED: _____, 2023

9
10 _____
11 Hon. Evelio Grillo
12 JUDGE OF THE SUPERIOR COURT
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28