

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
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
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

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 3500
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@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,

Plaintiff,

v.

FERMA GREENBOX, INC. a California
Corporation, and DOES 1-50, inclusive,

Defendants.

Case No. RG21101104

[Complaint Filed: 05/21/2021]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: February 7, 2023

Hearing Time: 10:00 a.m.

Reservation ID: 485754779697

Judge: Evelio Grillo

Dept.: 21

1 This matter having come before the Superior Court of the State of California, in and for the
2 County of Alameda, at 10:00 a.m. on February 7, 2023, with Jean-Claude Lapuyade, Esq., of the
3 JCL Law Firm, APC, and Shani O. Zakay, Esq. of the Zakay Law Group, APLC, as counsel for
4 Plaintiffs PEDRO RODRIGUEZ and JOSE GARCIA (“Plaintiffs”) and Roger Mason, Esq. of
5 Sweeney Mason, LLP, appearing for defendant FERMA GREENBOX, INC (hereinafter
6 “Defendant”). The Court, having carefully considered the briefs, argument of counsel and all the
7 matters presented to the Court, and good cause appearing, hereby GRANTS Plaintiff’s Motion for
8 Preliminary Approval of Class Action Settlement.

9 **IT IS HEREBY ORDERED:**

10 1. The Court preliminarily approves the Stipulation of Settlement of Class Action
11 Claims and Release of Claims (“Settlement Agreement” or “Agreement”) a true and correct copy
12 of which is attached hereto as **Exhibit “1”**. This is based on the Court’s determination that the
13 Settlement Agreement is within the range of possible final approval, pursuant to the provisions of
14 Section 382 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

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

17 3. Subject to the terms of the Settlement Agreement, the Gross Settlement Amount
18 that Defendants shall pay is Two Hundred Thousand Dollars and Zero Cents (\$200,000.00). It
19 appears to the Court on a preliminary basis that the settlement amount and terms are fair,
20 adequate, and reasonable as to the entire Class when balanced against the probable outcome of
21 further litigation relating to certification, liability, and damages issues. It further appears that
22 investigation and research have been conducted such that counsel for the Parties are able to
23 reasonably evaluate their respective positions. It further appears to the Court that settlement at
24 this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks
25 that would be presented by the further prosecution of the litigation. It further appears that the
26 Settlement has been reached as the result of intensive, serious, and non-collusive arms-length
27 negotiations.
28

1 4. The Court preliminarily finds that the Settlement appears to be within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this Court. The
3 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
4 preliminarily finds that the monetary settlement awards made available to the Settlement Class
5 are fair, adequate, and reasonable when balanced against the probable outcome of further
6 litigation relating to certification, liability, and damages issues.

7 5. The Agreement specifies for a Class Counsel Award in the amount of up-to one-
8 third of the Gross Settlement Amount for attorneys' fees, currently estimated at \$66,666 *and* an
9 award of litigation expenses incurred not to exceed \$25,000.00, and proposed Class
10 Representative Service Award to the Class Representatives, Pedro Rodriguez and Jose Garcia, in
11 an amount not to exceed \$7,500.00 each. While these awards appear to be within the range of
12 reasonableness, the Court will not approve the Class Counsel Award or Class Representative
13 Service Award until the Final Approval Hearing.

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

18 “all truck drivers who are or previously were employed by
19 Defendant and performed work in California during the Class
20 Period.”

21 The Class Period means the period from May 21, 2017, to
22 September 30, 2022.”

23 7. The Court concludes that, for settlement purposes only, the Class meets the
24 requirements for certification under section 382 of the California Code of Civil Procedure in that:
25 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
26 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
27 community of interest amongst the Class with respect to the subject matter of the litigation; (c)
28 the claims of the Class Representative are typical of the claims of the Class; (d) the Class

1 Representative will fairly and adequately protect the interests of the Class; (e) a class action is
2 superior to other available methods for the efficient adjudication of this controversy; and (f)
3 Class Counsel are qualified to act as counsel for the Class Representative in his individual
4 capacity and as the representative of the Class Members.

5 8. For settlement purposes only, the Court provisionally appoints plaintiffs Pedro
6 Rodriguez and Jose Garcia as the representatives of the Settlement Class.

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

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

21 11. The Court hereby appoints ILYM Group, Inc., as Settlement Administrator. Within
22 ten (10) business days of this order, Defendants shall provide, to the Settlement Administrator
23 the Class Data, including information regarding Class Members that Defendants will in good
24 faith compile from their records, including each Settlement Class Member’s full name; last
25 known address; Social Security Number; dates of employment during the Class Period. Within
26 fourteen (14) calendar days after receiving the Class Data from Defendants, the Settlement
27 Administrator shall mail the Class Notice to all identified, potential members of the Class via
28 first class U.S. Mail using the most current mailing address information available.

1 12. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
3 from the Settlement as provided in the Notice by following the instructions for requesting
4 exclusion from the Settlement of the Released Claims that are set forth in the Notice. All
5 requests for exclusion must be postmarked or received by the Response Deadline which is forty-
6 five (45) calendar days after the date the Class Notice is mailed to the Class Members or, in the
7 case of a re-mailed Notice, not more than fifteen (15) calendar days after the original Response
8 Deadline. Any such person who chooses to opt out of and be excluded from the Settlement will
9 not be entitled to an Individual Settlement Payment under the Settlement and will not be bound
10 by the Settlement, or have any right to object, appeal or comment thereon. Settlement Class
11 members who have not requested exclusion shall be bound by all determinations of the Court, the
12 Agreement and Judgment. A request for exclusion may only opt out that particular individual,
13 and any attempt to affect an opt-out of a group, class, or subclass of individuals is not permitted
14 and will be deemed invalid.

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

21 14. A final approval hearing shall be held before this Court on _____ in
22 Department 21 of the Alameda County Superior Court to determine all necessary matters
23 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
24 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
25 finally approved by the Court; whether an Order Granting Final Approval should be entered
26 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
27 adequate and reasonable to the Class; and to finally approve the Class Counsel Award, Class
28 Representative Service Award, and the Settlement Administration Costs. All papers in support of

1 the motion for final approval and the motion for Class Counsel Award and Class Representative
2 Enhancement Award shall be filed with the Court and served on all counsel no later than sixteen
3 (16) court days before the hearing.

4 15. Neither the Settlement nor any exhibit, document, or instrument delivered
5 thereunder shall be construed as a concession or admission by Defendant in any way, and shall
6 not be used as evidence of, or used against Defendant as, an admission or indication in any way,
7 including with respect to any claim of any liability, wrongdoing, fault or omission by Defendants
8 or with respect to the truth of any allegation asserted by any person. Whether or not the
9 Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement,
10 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any
11 event be construed as, offered or admitted in evidence as, received as or deemed to be evidence
12 for any purpose adverse to the Defendant, including, but not limited to, evidence of a
13 presumption, concession, indication or admission by Defendant of any liability, fault,
14 wrongdoing, omission, concession or damage.

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

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17. The Court reserves the right to adjourn or continue the date of the final approval hearing and all dates provided for in the Agreement without further notice to Settlement Class and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

IT IS SO ORDERED.

DATED:

JUDGE OF THE SUPERIOR COURT