



FILED
San Francisco County Superior Court

OCT 27 2023

CLERK OF THE COURT
BY: [Signature] Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

JONATHAN SHOMRONI, Individually and on behalf of others similarly situated,

Plaintiff,

v.

FEI LABS INC., a Delaware Corporation,
JOSEPH SANTORO, an Individual, BRIANNA MONTGOMERY, an Individual, SEBASTIAN DELGADO, an Individual, and DOES 1-10,

Defendants.

Case No. CGC-22-598995

ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AND PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES AND SERVICE AWARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 On June 28, 2023, this Court entered an Order preliminarily approving the class action
2 Settlement set forth in the Amended Stipulation of Settlement dated May 29, 2023 (the “Amended
3 Stipulation”), finding that the Settlement appeared fair, reasonable and adequate to the Class
4 Members, free of collusion or indicia of unfairness, and within the range of possible final approval,
5 and thereby sufficient to warrant dissemination of Notice to the Class Members. The Court also
6 conditionally certified the Class pursuant to California Code of Civil Procedure section 382 and
7 California Rules of Court, rule 3.769(d).

8 On October 26, 2023, based upon this Court’s Tentative Ruling, dated October 24, 2023, the
9 parties further amended the Amended Stipulation (“Second Amended Stipulation”).

10 Currently pending before the Court is Plaintiff Jonathan Shomroni’s Motion for Final
11 Approval of Class Action Settlement (the “Motion”), which was heard on October 27, 2023. In
12 connection with the Motion, the Court considered the Second Amended Stipulation, the submissions
13 of counsel, and all other papers filed in this action.

14 Due and adequate notice having been given of the class action Settlement and of the final
15 Settlement Hearing as required by the Preliminary Approval Order, and the Court having considered
16 all papers, including the number of objections and exclusions filed, and having heard oral argument
17 by the Settling Parties and any Class Member who wished to be heard, and otherwise being fully
18 informed, and for good cause appearing:

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

20 1. This Final Approval Order incorporates by reference the definitions in the Second
21 Amended Stipulation, as submitted to the Court as Exhibit A to the October 26, 2023 Declaration
22 of William R. Restis In Support of Plaintiff’s Supplemental Filing for Final Approval of Class
23 Action Settlement. All capitalized terms used in this Final Approval Order shall have the meanings
24 and/or definitions given to them in the Second Amended Stipulation unless otherwise defined
25 herein.

26 2. This Court has jurisdiction over the subject matter of the Litigation, the parties, all
27 Class Members, and over those persons and entities undertaking affirmative obligations to
28 effectuate the Settlement, including the Claims Administrator and Escrow Agent.

1 3. Pursuant to California Code of Civil Procedure section 382 and California Rules of
2 Court, rule 3.769(d), and for purposes of, and solely in connection with, the Settlement, the Court
3 hereby certifies the Class comprised of:

4 All Persons who, directly or through an intermediary, purchased the digital assets
5 “FEI” and “TRIBE” in exchange for ETH as part of the Genesis Group between
6 March 31, 2021 and April 3, 2021, including those who “pre-swapped” their
7 Genesis Group FEI token allocation for TRIBE tokens.

8 Excluded from the Class are: (i) Defendants; (ii) any person, firm, trust, corporation, or other entity
9 directly affiliated with any Defendant; and (iii) any justice or judicial officer presiding over this
10 matter and members of their immediate families and judicial staff. Also excluded from the Class
11 are those Persons who timely and validly request exclusion.

12 4. The Court finds, for Settlement purposes only, that certification of the Class satisfies
13 the requirements of California Code of Civil Procedure section 382 and California Rules of Court,
14 rule 3.769(d). In support of this ruling, the Court finds that: (a) there is an ascertainable Class; (b)
15 the Class Members are so numerous that joinder of all members is impracticable; (c) there are
16 questions of law and fact common to the Class Members that predominate; (d) the named Plaintiff’s
17 claims are typical of the claims of the Class Members; (e) the named Plaintiff and Plaintiff’s
18 Counsel, identified below, are able to fairly and adequately represent the Class Members; and (f)
19 class-wide treatment of the disputes raised in the Complaint is superior to other available methods
20 for adjudicating the controversy. (See *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
21 1004, 1021.)

22 5. The Court hereby appoints and designates Plaintiff as the Class Representative.

23 6. The Court hereby appoints and designates the Restis Law Firm, P.C., AFN Law
24 PLLC, and HGT Law as Class Counsel.

25 7. The Court finds that notice was given to Class Members in accordance with the
26 Preliminary Approval Order entered on June 28, 2023. As described in the September 21, 2023
27 Declaration of Simpluris In Support of Plaintiff’s Motion for Final Approval of Class Action
28 Settlement, notice has been successful and (i) fairly and accurately described the Litigation and the

1 proposed Settlement; (ii) provided sufficient information so that Class Members were able to decide
2 whether to accept the benefits of the Settlement, exclude themselves from the Settlement or object
3 to the Settlement; (iii) adequately described the manner in which Class Members could file Claims,
4 exclude themselves from the Settlement or object to the Settlement, and/or appear at the final
5 Settlement Hearing; and (iv) provided the date, time and place of the Settlement Hearing.

6 8. The Court hereby finds that the Notice was (i) the best notice practicable under the
7 circumstances, (ii) constituted notice that was reasonably calculated, under the circumstances, to
8 apprise Class Members of the Settlement; (iii) was reasonable and constituted due, adequate, and
9 sufficient notice to all Persons entitled to receive notice; and (iv) constituted due and sufficient
10 notice of the Litigation, the Settlement, and the final Settlement Hearing to all Persons affected by
11 and/or authorized to participate in the Settlement, in full compliance with California Code of Civil
12 Procedure section 382, California Rules of Court, rules 3.766 and 3.769, the California and United
13 States Constitutions (including the Due Process Clauses), and all other applicable laws and rules.

14 9. The Court considered that there were no objections by Class Members.

15 10. One Class Member, as reflected in **Exhibit 1** to this Final Approval Order, timely
16 and validly requested exclusion from the Settlement (the "Opt Out"). This sole Opt Out is hereby
17 excluded from any and all terms of the Second Amended Stipulation and Settlement, including the
18 releases contained therein.

19 11. The Court hereby finds that no objections and the single Opt Out from the Settlement
20 support a finding that the Settlement is fair, reasonable, and adequate.

21 12. The Court finds that a full and fair opportunity has been afforded to the Class
22 Members to exclude themselves from and object to the Settlement, and to participate in the
23 Settlement Hearing. Therefore, pursuant California Rules of Court, rule 3.769, all Class Members,
24 other than the sole Opt Out listed in Exhibit 1, are bound by this Final Approval Order and by the
25 terms of the Second Amended Stipulation.

26 13. This Court gives final approval to the Settlement and finds that the Second Amended
27 Stipulation is fair, reasonable, adequate, and in the best interests of the Class Members considering
28 the strength of Plaintiff's case; the risk, expense, complexity and likely duration of further

1 litigation; the risk of maintaining class action status through trial; the amount offered in settlement;
2 the extent of discovery completed and the stage of the proceedings; the experience and views of
3 counsel; and the reaction of the Class Members.

4 14. The Court finds that the record in this Litigation was sufficiently developed, and
5 that the publicly-available nature of blockchain records, the information exchanged by the Settling
6 Parties during mediation, the damages analysis performed at the direction of Plaintiff's Counsel,
7 and the exchange of confirmatory discovery in connection with the Settlement were sufficient for
8 Plaintiff, Plaintiff's Counsel, and the Court to evaluate and consider the fairness, adequacy, and
9 reasonableness of the Settlement.

10 15. The Court finds that the Settlement Amount of \$17,850,000 provided for under the
11 Second Amended Stipulation and Settlement, constitutes a fair value given in exchange for the
12 Released Claims against the Released Defendants. The complex legal and factual posture of this
13 case, including multiple issues of first impression, and the fact that the Settlement is the result of
14 arm's-length negotiations between the Parties, support this finding.

15 16. The Court gives final approval to the Plan of Allocation, and finds that the Plan of
16 Allocation is fair, reasonable and adequate, and is based on a reasonable and rational basis.¹ The
17 Court further finds that the Plan of Allocation appropriately allocates the Net Settlement Fund
18 among Class Members who qualify as Authorized Claimants based on a formula reasonably related
19 to Class Members' underlying claims under Section 12(a) of the Securities Act of 1933, in a manner
20 that treats all Class Members equitably relative to each other, and does not grant preferential
21 treatment to the Plaintiff or other segments of the Class.

22 17. The Court finds there is no evidence or indicator of fraud or overreaching by, or
23 collusion between, the Settling Parties. All evidence indicates the Settlement is the product of an
24 arm's-length negotiating process facilitated by a skilled mediator, Michelle Yoshida of Phillips
25 ADR Enterprises.

26
27 ¹ The Plan of Allocation is attached as Exhibit J to the Supplemental Declaration of William R. Restis
28 in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement filed May 30,
2023.

1 18. The Court finds that Plaintiff and Plaintiff's Counsel adequately represented the
2 Class Members for the purposes of litigating this matter and entering into and implementing the
3 Settlement.

4 19. The Court finds that the Settling Parties' Supplemental Agreement with respect to
5 opt-out thresholds was sufficiently disclosed to the Class Members and the Court *in camera* to
6 ensure the Supplemental Agreement did not affect the interests of Class Members by altering what
7 they might receive or forgo through the Settlement.

8 20. Accordingly, the Settlement is hereby finally approved in all respects, and the
9 Settling Parties and their counsel are hereby directed to implement and consummate the Second
10 Amended Stipulation and Settlement according to the Second Amended Stipulation's terms and
11 provisions. The Second Amended Stipulation is hereby incorporated into this Final Approval Order
12 in full and shall have the full force of an Order of this Court.

13 21. The Court orders the Claims Administrator and Escrow Agent to effectuate the terms
14 of the Second Amended Stipulation in all respects, including to distribute the Settlement Fund
15 pursuant to the Second Amended Stipulation and this Final Approval Order to such Authorized
16 Claimants who submitted valid Claims; to pay all costs and expenses reasonably and actually
17 incurred, including Notice and Administration Expenses, Taxes and Tax Expenses, the Fee and
18 Expense Award and Service Award, and other expenses reasonably and actually incurred in the
19 administration of the Settlement; and to perform all other duties and responsibilities that remain
20 under the Second Amended Stipulation and this Final Approval Order.

21 22. The Court orders the Settling Parties and their counsel to carry out, or cause to be
22 carried out, all other obligations under the Second Amended Stipulation.

23 23. The Claims Administrator shall post a copy of this Final Approval Order and the
24 Final Judgment on the Settlement Website within five (5) days of entry of this Order.

25 24. The Court orders that total Notice and Administration Expenses shall not exceed
26 \$281,000.00.

27 25. The Court orders the payment of \$4,462,500 in attorneys' fees and litigation
28 expenses in the amount of \$50,713.27 (the Fee and Expense Award) from the Settlement Fund to

1 Class Counsel, finding such Fee and Expense Award to be fair and reasonable for the following
2 reasons. In assessing the requested attorneys' fees, the Court has considered the relief achieved for
3 the Class Members, the time and effort devoted by Class Counsel as demonstrated by their sworn
4 declarations, and the complexity of the legal and factual issues involved. The Court finds that the
5 Fee and Expense Award is fair and reasonable under both a common fund approach and a lodestar
6 approach.

7 26. The Court orders the payment of a Service Award in the amount of \$5,000 to
8 Plaintiff Jonathan Shomroni to be paid from the Settlement Fund to compensate him for his efforts
9 and commitment on behalf of the Class, and finds that this amount is fair, reasonable, and justified
10 under the circumstances of this case.

11 27. Except as otherwise set forth in this Final Approval Order and the Second Amended
12 Stipulation, the Parties shall bear their own costs and attorneys' fees.

13 28. Upon the Effective Date, the Releasing Plaintiff Parties shall be deemed to have,
14 and by operation of this Final Approval Order shall have, fully, finally, unconditionally and forever
15 waived, released, relinquished, dismissed with prejudice, and discharged all Released Claims
16 against the Released Defendants, whether or not the Plaintiff or Class Member executes and
17 delivers a Proof of Claim or shares in the Settlement Fund.

18 29. Upon the Effective Date, each of the Released Defendants shall be deemed to have,
19 and by operation of this Final Approval Order shall have, fully, finally, and forever released,
20 relinquished, and discharged all of Released Defendants' Claims against Plaintiff, Plaintiff's
21 Related Parties, and Class Members.

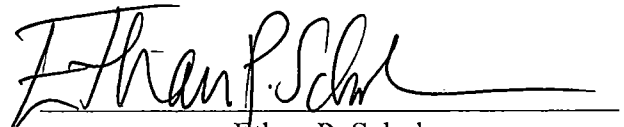
22 30. Neither the Second Amended Stipulation nor any act performed or document
23 executed pursuant to or in furtherance of the Second Amended Stipulation or the Settlement, is or
24 may be deemed to be or may be used as: (a) an admission or concession of, or evidence of, the
25 validity of any Released Claim or any fault, wrongdoing, or liability of the Released Defendants;
26 (b) an admission or concession by Plaintiff or any Class Member of any infirmity in the claims
27 asserted in the Complaint; or (c) an admission or concession of, or evidence of, any fault,
28 wrongdoing, or liability of any of the Settling Parties or the Released Defendants in any civil,

1 criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The
2 Released Parties may file the Second Amended Stipulation and/or this Final Approval Order in any
3 action that may be brought against them in order to support a defense or counterclaim based on
4 principles of res judicata, collateral estoppel, equitable estoppel, judicial estoppel, release, good-
5 faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion
6 or similar defense or counterclaim. Any of the Settling Parties may file the Second Amended
7 Stipulation and documents executed in furtherance thereof in any action to enforce the Settlement.

8 31. A Status Conference regarding settlement distribution is set for June 28, 2024 at
9 11:00 a.m. A status report, accompanied by an admissible evidentiary declaration, shall be filed
10 no later than five court days prior to the Status Conference. The status report must describe the
11 methods of payment to the Class (e.g., check, wire transfer, ACH, PayPal, Zelle, and Venmo) for
12 the initial distribution, state the amount of residual funds following the initial distribution, and a
13 proposal for the disposition of the residual funds (e.g., second distribution or payment to cy pres
14 beneficiary).

15
16 IT IS SO ORDERED.

17
18 Dated: October 27, 2023

19 

Ethan P. Schulman
Judge of the Superior Court

EXHIBIT 1

OPT-OUT

- Evgeny Boxer, Unit 7 2-12 Crows Nest Road, Waverton NSW 2060, Australia

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.251)

I, Ericka Larnauti, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On October 27, 2023, I electronically served the attached document via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: October 27, 2023

Brandon E. Riley, Clerk

By: 

Ericka Larnauti, Deputy Clerk