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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SANTA CLARA**

ROBERT XAVIER, individually and on  
behalf of other members of the general  
public similarly situated;

Plaintiff,

vs.

NEW LEAF COMMUNITY MARKETS,  
INC., a California corporation; NEW  
SEASONS MARKET, LLC, an unknown  
business entity; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 19CV347412 (lead case)

*Assigned for all purposes to: Hon. Patricia M.  
Lucas, Dept. 3*

**NOTICE OF ENTRY OF FINAL ORDER  
AND JUDGMENT**

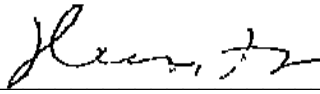
Complaint Filed: May 13, 2019  
Trial: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on October 5, 2022, the Honorable Patricia M. Lucas in  
3 Department 3 in the above-entitled Court, located at 191 N. First Street, San Jose CA 95113,  
4 executed the Order re: Motion for Final Approval of Class Action and PAGA Settlement;  
5 Judgment. Attached hereto as **Exhibit A** is a true and correct copy of the Order and Judgment  
6 which was executed and filed on October 5, 2022.

7 Dated: October 6, 2022

**PROTECTION LAW GROUP, LLP**

8  
9 By: 

10 Heather Davis  
11 Amir Nayebdadash  
12 *Attorneys for Plaintiff*  
13 ROBERT XAVIER  
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# EXHIBIT A

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

ROBERT XAVIER, individually, and on behalf  
of other members of the general public similarly  
situated,

Plaintiff,

vs.

NEW LEAF COMMUNITY MARKETS, INC., a  
California corporation; NEW SEASONS  
MARKET, LLC, an unknown business entity; and  
DOES 1 through 100, inclusive,

Defendants.

Lead Case No. 19CV347412

**ORDER RE: MOTION FOR FINAL  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT; JUDGMENT**

ELEANOR WEISS, as an aggrieved employee  
and Private Attorneys General,

Plaintiff,

vs.

NEW LEAF COMMUNITY MARKETS, INC., a  
California corporation; NEW SEASONS  
MARKET, LLC, an unknown business entity; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 21CV390546

1 The above-entitled matter came on for hearing on Wednesday, October 5, 2022, at 1:30  
2 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. The court reviewed and  
3 considered the written submissions filed by the parties and issued a tentative ruling on Tuesday,  
4 October 4, 2022. No party contested the tentative ruling; therefore, the court orders that the  
5 tentative ruling be adopted as the order of the court, and hereby orders, adjudges and decrees as  
6 follows:

7 **I. INTRODUCTION**

8 This is a consolidated action arising out of various alleged Labor Code violations. On  
9 May 13, 2019, plaintiff Robert Xavier (“Xavier”) filed a putative class action Complaint against  
10 defendants New Leaf Community Markets, Inc. and New Seasons Market, LLC (collectively,  
11 “Defendants”), alleging causes of action for: (1) Violation of California Labor Code §§ 510 and  
12 1198; (2) Violation of California Labor Code §§ 226.7 and 512, subd. (a); (3) Violation of  
13 California Labor Code § 226.7; (4) Violation of California Labor Code §§ 1194, 1197, and  
14 1197.1; (5) Violation of California Labor Code §§ 201 and 202; (6) Violation of California  
15 Labor Code § 204; (7) Violation of California Labor Code § 226, subd. (a); (8) Violation of  
16 California Labor Code § 1174, subd. (d); (9) Violation of California Labor Code §§ 2800 and  
17 2802; (10) Violation of California Business & Professions Code § 17200, et seq.

18 On September 3, 2020, plaintiff Eleanor Weiss (“Weiss”) filed a Complaint against  
19 Defendants in San Mateo County Superior Court, alleging a single cause of action for civil  
20 penalties under the Private Attorneys General Act (“PAGA”) for failure to pay minimum and  
21 overtime wages, failure to provide meal periods and rest periods, failure to timely pay final  
22 wages, failure to provide accurate itemized wage statements, and failure to reimburse for  
23 business expenses.

24 Following mediation, Xavier, Weiss, and Defendants reached a global settlement of the  
25 actions.

26 On June 24, 2021, the San Mateo County Superior Court approved a Joint Stipulation and  
27 Order to Transfer Venue, transferring Weiss’s case to the Santa Clara County Superior Court.  
28

1 On January 10, 2022, the court approved the parties' Joint Stipulation to Consolidate  
2 Actions for Settlement Purposes and Order, which consolidated the two cases for purposes of  
3 settlement.

4 On February 9, 2022, the court granted preliminary approval of the settlement.

5 Xavier and Weiss (collectively, "Plaintiffs") now move for final approval of the  
6 settlement. Defendants New Leaf Community Markets, Inc. and New Seasons Market, LLC  
7 ("Defendants") filed a Statement of Non-Opposition.

## 8 **II. LEGAL STANDARD**

9 Generally, "questions whether a settlement was fair and reasonable, whether notice to the  
10 class was adequate, whether certification of the class was proper, and whether the attorney fee  
11 award was proper are matters addressed to the trial court's broad discretion." (*Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235 (*Wershba*), citing *Dunk v. Ford Motor Co.*  
13 (1996) 48 Cal.App.4th 1794 (*Dunk*).)

14 In determining whether a class settlement is fair, adequate and reasonable, the  
15 trial court should consider relevant factors, such as "the strength of plaintiffs'  
16 case, the risk, expense, complexity and likely duration of further litigation, the  
17 risk of maintaining class action status through trial, the amount offered in  
18 settlement, the extent of discovery completed and the stage of the proceedings, the  
19 experience and views of counsel, the presence of a governmental participant, and  
20 the reaction of the class members to the proposed settlement."  
(*Wershba, supra*, 91 Cal.App.4th at pp. 244-245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1801  
and *Officers for Justice v. Civil Service Com'n, etc.* (9th Cir. 1982) 688 F.2d 615, 624  
(*Officers*).)

21 "The list of factors is not exclusive and the court is free to engage in a balancing and  
22 weighing of factors depending on the circumstances of each case." (*Wershba, supra*, 91  
23 Cal.App.4th at p. 245.) The court must examine the "proposed settlement agreement to the  
24 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
25 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
26 whole, is fair, reasonable and adequate to all concerned." (*Ibid.*, quoting *Dunk, supra*, 48  
27 Cal.App.4th at p. 1801 and *Officers, supra*, 688 F.2d at p. 625, internal quotation marks omitted.)

28 The burden is on the proponent of the settlement to show that it is fair and  
reasonable. However "a presumption of fairness exists where: (1) the settlement

1 is reached through arm's-length bargaining; (2) investigation and discovery are  
2 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
experienced in similar litigation; and (4) the percentage of objectors is small."

3 (*Wershba, supra*, 91 Cal.App.4th at p. 245, citing *Dunk, supra*, 48 Cal.App.4th at p. 1802.)

### 4 **III. DISCUSSION**

#### 5 **A. Provisions of the Settlement**

6 The case has been settled on behalf of the following class:

7 [A]ll current and former hourly-paid, non-exempt employees who worked for  
8 Defendants within the State of California at any time during the Class Period.

9 (Declaration of Heather Davis in Support of Plaintiffs' Motion for Final Approval of Class  
10 Action and PAGA Settlement ("Davis Dec."), Ex. 1 ("Settlement Agreement"), ¶ 6.) The Class  
11 Period is May 13, 2015 to May 16, 2021. (*Id.*, at ¶ 7.) The class contains a subset of PAGA  
12 Members that are defined as all current and former hourly-paid, non-exempt employees who  
13 worked for Defendants in California at any time from June 29, 2019 to May 16, 2021. (*Id.*, at  
14 ¶¶ 25-26.)

15 As discussed in connection with the motion for preliminary approval, Defendants will  
16 pay a total non-reversionary amount of \$3,100,000. (Settlement Agreement, ¶ 15.) The total  
17 settlement payment includes attorney fees of \$1,085,000 (35 percent of the gross settlement  
18 amount), costs up to \$75,000, an incentive award of \$7,500 for each class representative,  
19 settlement administration costs up to \$25,000, and a PAGA allocation of \$300,000 (from which  
20 \$225,000 will be paid to the LWDA and \$75,000 will be paid to the aggrieved employees). (*Id.*,  
21 at ¶¶ 4, 9, 24, 41, & 54.)

22 The net settlement amount of approximately \$1,600,000 will be distributed to the class  
23 members on a pro rata basis based on the number of workweeks worked during the Class Period.  
24 (Settlement Agreement, ¶¶ 15 & 53-55.) Similarly, PAGA Members will receive a pro rata share  
25 of the 25 percent portion of the PAGA payment allocated to aggrieved employees based on the  
26 number of workweeks worked during the PAGA Period. (*Ibid.*)

27 With respect to uncashed checks, the parties have now agreed that the funds from any  
28 checks remaining uncashed more than 180 days after mailing will be distributed to Watsonville

1 Law Center as the *cy pres* recipient. (Davis Dec.), Ex. 2 (First Amendment to Joint Stipulation  
2 of Class Action and PAGA Settlement), ¶ 1.)

3 On March 25, 2022, the settlement administrator mailed notice packets to 2,619 class  
4 members. (Declaration of Krystal Quiroz of ILYM Group, Inc. in Support of Motion for Final  
5 Approval of Class Action Settlement (“Quiroz Dec.”), ¶ 7.) Ultimately, 134 notice packets  
6 remained undeliverable. (*Id.*, at ¶ 10.)

7 As of September 9, 2022, the settlement administrator received no objections to the  
8 settlement. (Quiroz Dec., ¶ 12.) Three individuals requested exclusion from the class but may  
9 remain eligible for PAGA payments: Justus Peacock-Broyles, Johanna Plemons, and Marty  
10 Lucich. (Supplemental Declaration of Krystal Quiroz of ILYM Group, Inc. in Support of Motion  
11 for Final Approval of Class Action Settlement at ¶ 11.) The highest individual settlement  
12 payment is estimated to be \$3,230.68, and the average individual settlement share is estimated to  
13 be \$654.15. (Quiroz Dec., at ¶ 15.) The court previously found the proposed settlement is fair  
14 and the court continues to make that finding for purposes of final approval.

15 Plaintiffs request incentive awards in the total amount of \$15,000 (\$7,500 each for Xavier  
16 and Weiss). The court approved the incentive awards in connection with preliminary approval of  
17 the settlement and continues to do so for purposes of final approval.

18 The court also has an independent right and responsibility to review the requested  
19 attorney fees and only award so much as it determines reasonable. (See *Garabedian v. Los*  
20 *Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Plaintiffs’ counsel state  
21 that they seek attorney fees of \$1,085,000 (35 percent of the total settlement fund), for services  
22 by two law firms: Protection Law Group, LLP (“PLG”) and Lawyers for Justice, PC (“LFP”). As  
23 noted in connection with preliminary approval, the percentage of the total settlement is higher  
24 than is normally awarded, and the amount of costs is also high.

25 Plaintiffs’ counsel have now provided evidence in support of their claim for a total  
26 combined lodestar of \$690,775.00, consisting of \$357,175 for PLG representing 549.5 hours  
27 based at a blended rate of \$650 (Davis Dec.) and \$333,600 for LFJ representing 444.8 hours  
28 based at a blended rate of \$750 (Declaration of Edwin Aiwarzian in Support of Motion for Final

1 Approval of Class Action Settlement (“Aiwazian Dec.”)). For PLG but not LFJ, counsel have  
2 provided essential information concerning individual billing rates and the background and  
3 experience of attorneys other than lead counsel. However, even for PLG, counsel do not provide  
4 information as to what portion of the work was performed by counsel whose stated billing rates  
5 were substantially below the blended rate. This limits the ability of the court to evaluate the  
6 reasonableness of the blended rates and the efficiency with which the services were provided:  
7 high billing rates assume a high level of efficiency. Applying the blended rates results in a  
8 multiplier of 1.57.

9 Notwithstanding this lack of information and accepting that there was substantial risk in  
10 undertaking the litigation and that the settlement represents a good result for the class, the court  
11 finds that the more typical allocation of one-third would result in a reasonable fee in this case.  
12 The court therefore approves a fee award of \$1,033,333.33 which, applying the blended rates,  
13 results in a multiplier of 1.5. If the rates were lower, the multiplier would be higher. The  
14 difference should be included in the distribution to the class members and PAGA members.

15 Plaintiffs’ counsel also provide evidence of incurred costs in the amount of \$36,774.99.  
16 (See Davis Dec. ¶58, Ex. 4; Aiwazian Dec. ¶21, Ex. B.) Costs in that amount are approved. The  
17 settlement administration costs in the amount of \$25,000 are also approved. (Quiroz Dec., ¶ 16.)

18 The motion for final approval of the class action and PAGA settlement is GRANTED as  
19 modified herein.

20 Pursuant to Rule 3.769, subdivision (h), of the California Rules of Court, the court retains  
21 jurisdiction over the parties to enforce the terms of the Settlement Agreement, and the final  
22 Order and Judgment.

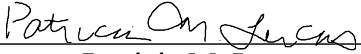
23 The court sets a compliance hearing for July 26, 2023, at 2:30 p.m. in Department 3. At  
24 least ten court days before the hearing, class counsel and the settlement administrator shall  
25 submit a summary accounting of the net settlement fund identifying distributions made as  
26 ordered herein, the number and value of any uncashed checks, amounts remitted to Defendants,

27 //

28 //

1 the status of any unresolved issues, and any other matters appropriate to bring to the court's  
2 attention. Counsel may appear at the compliance hearing remotely.

3  
4 Dated: October 5, 2022

  
Patricia M. Lucas  
Judge of the Superior Court