

Electronically Received 12/12/2023 03:46 PM

Electronically Received 12/12/2023 03:46 PM

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

D. LAW, INC.
Emil Davtyan (State Bar No. 299363)
emil@d.law
400 N. Brand Blvd., Suite 700
Glendale, California 91203
Telephone: (818) 875-2008
Facsimile: (818) 722-3974

Attorneys for Plaintiffs and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

PATRICIA O'CONNOR and STEVEN
RODRIGUEZ, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

WHOLE FOODS MARKET CALIFORNIA,
INC., a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV008620

[Hon. ~~Eric G. Gatto~~, Department 21]

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

Date: January 5, 2024
Time: 9:00 a.m.
Department: 21

Reservation ID: 047642299369

Complaint Filed: March 18, 2022

**FILED
ALAMEDA COUNTY**

FEB 28 2024

CLERK OF THE SUPERIOR COURT

By

Nicole [Signature]

1 Plaintiffs' motion for an Order Granting Preliminary Approval of Class Action Settlement was
2 filed with the Court on December 12, 2023, and a hearing was held before this Court on January 5,
3 2024.

4 **I. RECITALS**

5 1. On March 18, 2022, Plaintiffs Patricia O'Connor and Steven Rodriguez initiated this
6 class and Labor Code Private Attorneys General Act of 2004 ("PAGA") action that seeks to remedy
7 alleged failures to furnish lawful wage statements. The wage statement claim alleges that Defendant,
8 Whole Foods Market California, Inc., furnishes wage statements that fail to show all applicable hourly
9 rates to non-exempt employees who were paid overnight wages. Defendant denies the allegations.

10 2. On October 18, 2022, the Parties attended a mediation. The Parties were at that time
11 unable to resolve the Action. On June 7, 2023, however, the Parties attended an additional mediation.
12 The Parties were able negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA
13 Settlement *with amendment* (the "Agreement").

14 **II. FINDINGS**

15 3. The Court conditionally certifies the following Class: any current or former non-exempt
16 employee who worked for Defendant in the State of California and received overnight wages at any time
17 from March 18, 2021, through November 28, 2021 (the "Class Period").

18 4. The Court hereby approves the terms and conditions provided for in the Agreement. The
19 Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a
20 settlement and appears to be presumptively valid, subject to any objections that may be raised at the
21 final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary
22 basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when
23 balanced against the uncertain outcome of further litigation relating to liability and damages issues. It
24 also appears that investigation, research, and proceedings have been conducted so that counsel for the
25 Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement
26 at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
27 would be presented by the further prosecution of the action. It also appears that settlement has been
28 reached as a result of intensive, serious, and non-collusive arms-length negotiations.

1 **III. ORDERS**

2 After considering the papers and evidence, arguments of counsel, and all other matters presented
3 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

4 5. The Court grants preliminary approval of the Joint Stipulation of Class Action and PAGA
5 Settlement (“Agreement”) submitted by the Parties. The Agreement appears to be fair, adequate, and
6 reasonable to the Class.

7 6. The Court appoints and designates: (a) Plaintiffs Patricia O’Connor and Steven
8 Rodriguez as Class Representatives, and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group,
9 P.C., and Emil Davtyan of D. Law, Inc. as Class Counsel for the Class. Class Counsel is authorized to
10 act on behalf of the Class with respect to all acts or consents required by, or which may be given,
11 pursuant to the Agreement, and such other acts reasonably necessary to finalize the Agreement and its
12 terms. Any Class Member may enter an appearance through his or her own counsel at such Class
13 Member’s own expense. Any Class Member who does not enter an appearance or appear on his or her
14 own behalf will be represented by Class Counsel.

15 7. A final fairness hearing on the question of whether the proposed Agreement, the
16 allocation of payments to Class Members, attorneys’ fees and costs to Class Counsel, the payment to the
17 Labor Workforce & Development Agency, and the Class Representative Awards should be finally
18 approved as fair, reasonable, and adequate as to the members of the Class is set for
19 _____, 2024, at 9:00 a.m. in this Court.

20 8. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
21 (“Class Notice”), which is attached as Exhibit A to the Agreement. The Court finds that distribution of
22 the Class Notice to Class Members substantially in the manner and form set forth in the Agreement and
23 this Order meets the requirements of due process and shall constitute due and sufficient notice to all
24 parties entitled thereto.

25 9. The Court appoints and designates Phoenix Settlement Administrators as the
26 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
27 Members using the procedures set forth in the Agreement.
28

1 10. Any Class Member may choose to opt out of and be excluded from the settlement as
2 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.
3 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
4 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
5 signed by each such Class Member opting out and must otherwise comply with the requirements
6 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
7 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
8 Judgment.

9 11. Any Class Member may object to the Agreement or express his or her views regarding
10 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
11 issues to be heard and determined by the Court as provided in the Class Notice.

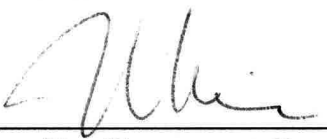
12 12. A Motion for Final Approval shall be filed by the Class Representatives no later than
13 sixteen (16) court days before the final fairness hearing.

14 13. The Court reserves the right to adjourn or continue the date of the final fairness hearing
15 and all dates provided for in the Agreement without further notice to the Class. The Court retains
16 jurisdiction to consider all further applications arising out of or connected with the Agreement.

17 14. Should for whatever reason final approval is not granted, the fact that the Parties were
18 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
19 of whether a class should be certified in a non-settlement context.

20 **IT IS SO ORDERED.**

21 DATED: Feb. 28, 2024



THE HONORABLE ~~EVILIO GRILO~~

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 03/05/2024
PLAINTIFF/PETITIONER: Patricia O'Connor	Chad Finke, Executive Officer / Clerk of the Court By: <u>Nicole Hall</u> Deputy
DEFENDANT/RESPONDENT: WHOLE FOODS MARKET CALIFORNIA, INC., a California corporation	N. Hall
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 22CV008620

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order Granting Motion For Preliminary Approval of Class Action Settlement entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

DEREK R HAVEL
SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
dhavel@sheppardmullin.com

Larry W. Lee
Diversity Law Group
lwlee@diversitylaw.com

Simon Yang
Diversity Law Group
sly@diversitylaw.com

Dated: 03/05/2024

Chad Finke, Executive Officer / Clerk of the Court

By:

Nicole Hall

N. Hall, Deputy Clerk