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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. Evelio Grillo, Department 21]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFFS' 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

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiffs. I make this declaration on the basis of
4 my own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On March 18, 2022, Plaintiffs initiated this class action that seeks to remedy an alleged
8 failure to furnish lawful wage statements by Defendant, Whole Foods Market California, Inc. On May
9 26, 2022, Plaintiffs filed the operative first amended complaint to also seek Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”) penalties. Upon the filing of the Action, Plaintiffs and
11 Defendant met and conferred about the alleged claims.

12 3. Class Counsel continued investigating the alleged claims and also analyzed any defenses
13 raised by Defendant, including those relating to two other putative class actions—*Franke v. Whole*
14 *Foods Market California, Inc.*, San Francisco County Superior Court Case No. CGC-20-586827
15 (“*Franke*”), and *Vuchkov v. Whole Foods Market California, Inc.*, Alameda County Superior Court Case
16 No. RG21092593 (“*Vuchkov*”). The Parties exchanged information and documentation pursuant to
17 informal methods to assist them in exploring the possibility of a mediated resolution. Defendant’s
18 willingness to engage in informal discovery enabled Plaintiffs to evaluate the full scope of Defendant’s
19 potential liability. For example, Defendants provided the relevant numbers of individuals and wage
20 statements, among other things—enabling Plaintiffs to assess the full value of Class Members’ claims
21 and further enabling negotiations to take place between the Parties. Ultimately, the Parties agreed to
22 schedule a mediation.

23 4. On October 18, 2022, the Parties and the parties in the *Franke* matter attended a
24 mediation with Gig Kyriacou, an experienced mediator knowledgeable of both the wage and hour laws
25 and class and representative action claims at issue in the Action. While the *Franke* parties were able to
26 resolve their matter, the Parties were unable to resolve the Action.

27 5. On June 7, 2023, the Parties and the parties in the *Vuchkov* matter attended an additional
28 mediation with Mr. Kyriacou. With the mediator’s assistance and based on a mediator’s proposal, the

1 Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA
2 Settlement (the “Agreement”), a true and correct copy of which is attached as **Exhibit 1**.

3 6. The Agreement requires Defendant to pay \$1,200,000.00, which as discussed below,
4 amounts to approximately 71.78% of Defendant’s potential liability—and is an excellent result for Class
5 Members. To wit, Plaintiffs contended that class claims under Section 226(e) result in a \$50 penalty for
6 the first non-compliant wage statement to each Class Member and a \$100 penalty for each additional
7 non-compliant wage statement to the Class Member, up to a maximum of \$4,000 per class member.¹
8 Plaintiffs also contended that PAGA penalties under Section 226.3 also result in up to \$250 per non-
9 compliant wage statement.

10 7. Defendant contested the merits and denied it was liable at all. Moreover, even if Plaintiffs
11 prevailed on the merits, Defendant contested the extent of liability. For example, Defendant contended
12 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
13 resulting from knowing and intentional violations. Likewise, Defendant contended that PAGA penalties
14 would amount to only \$100 per non-compliant wage statement under Section 2699(f). Defendant also
15 contended that PAGA penalties in any event would be subject to discretionary reductions.

16 8. While the Parties disagree on the law and its application to the facts, each Party
17 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
18 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
19 reasonable. Ultimately, Plaintiffs argued that the potential total recovery amounted to \$1,671,850.00—
20 which included \$450,100.00 in penalties under Section 226(e)² and \$1,221,750.00 in penalties under
21 Section 226.3.³ Plaintiffs contend that the Gross Settlement Amount of \$1,200,000.00—approximately
22 71.78% of the potential total recovery of \$1,671,850.00—is an excellent result. It is expected that each
23
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26 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

27 ² \$50.00 for each of 772 initial wage statements + \$100 for each of 4,115 subsequent wage statements =
28 \$450,100.00.

³ \$250.00 for each of 4,887 wage statements = \$1,221,750.00.

1 Class Member, on average, will be allocated \$677.46 (*after* all requested payments from the Gross
2 Settlement Amount).⁴

3 9. Although I am confident that litigation of the claims would result in a classwide judgment
4 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
5 certification could be denied, liability could not be established at trial, or the applicable law could
6 change. I recognize that the settlement resulting from extensive arm's length negotiations between the
7 Parties is fair, reasonable, and adequate for each Class Member, given the inherent risks of litigation, as
8 well as the potential for appeals and the costs of pursuing litigation.

9 10. I am one of the primary attorneys on this matter. My qualifications are as follows: After
10 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
11 2004 with concentrations in Management and Human Resources, I continued studying labor and
12 employment issues by enrolling in post-graduate education at the School of Labor and Employment
13 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
14 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
15 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
16 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

17 11. Upon graduating from law school in 2008, I practiced labor and employment law at
18 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
19 practice focused on wage and hour class, collective, and representative actions, with a particular
20 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 ("PAGA").
21 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
22 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
23 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
24 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
25 not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal.

26 ⁴ The amount paid on average to each Class Member may increase, depending on how many Class
27 Members opt out of the class action settlement. The amount actually paid to any Class Member may
28 increase or decrease depending on his or her number of relevant wage statements during the Class
Period.

1 Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was
2 also able to obtain experience litigating representative claims or wage and hour matters through trial and
3 appeal. *E.g., Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
4 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
5 pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014)
6 (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in
7 collective action with involving deductions from final paychecks). I also litigated class certification on
8 numerous matters. *E.g., Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326
9 (denial of class certification on behalf of retail employees alleging off-the-clock work).

10 12. Based on my experience in wage and hour class, collective, and representative actions, I
11 have been interviewed and quoted in articles published in the Northern California Record about
12 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
13 hour class and representative action litigation, including for example articles on California kin care
14 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
15 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
16 laws in *California Transportation News*, a publication of the California Construction Trucking
17 Association.

18 13. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
19 which also focuses primarily on employment law. I have handled a number of wage and hour class and
20 representative actions and continue litigating such matters in numerous Superior Courts and District
21 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
22 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
23 obtained class certification and been appointed class counsel. No court has ever found me to be
24 inadequate class counsel.

25 14. My co-counsel and I will adequately represent the Class Members in this action. We have
26 and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

27 15. Along with the filing of the motion for preliminary approval of the settlement in this
28 matter, my regular practice would be to direct my office staff to similarly upload a copy of the motion

1 papers to the Labor and Workforce Development Agency (“LWDA”) in compliance with Section
2 2699(1)(2) and (4). Similarly, upon approval of a settlement in this matter, my regular practice would be
3 to direct my office staff to similarly upload a copy of the Court’s judgment, papers, or other orders
4 awarding civil penalties under PAGA.

5 16. The settlement provides for any remaining monies from uncashed settlement checks to be
6 distributed to a cy pres recipient, Legal Aid at Work, in accordance with Code of Civil Procedure
7 section 384. I do not have any relationship with or connection to said organization. I also am informed
8 and believe that neither my co-counsel nor Defendant’s counsel have any relationship with or
9 connection to said organization.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing is
11 true and correct. Executed this 12th day of December 2023, at Pasadena, California.

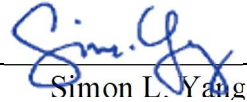
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EXHIBIT 1

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Attorneys for Defendant

(Additional Counsel on Following Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

PATRICIA O'CONNOR and STEVEN
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WHOLE FOODS MARKET CALIFORNIA,
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 through 50, inclusive,

Defendants.

Case No. 22CV008620

[Hon. Evelio Grillo, Department 21]

**JOINT STIPULATION OF CLASS ACTION
 AND PAGA SETTLEMENT**

Complaint Filed:

March 18, 2022

FAC Filed:

May 26, 2022

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Attorneys for Plaintiffs and Class

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiffs Patricia O'Connor and Steven Rodriguez, on the one hand, and Defendant, Whole Foods Market California, Inc., on the other hand.

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. "Action" means the civil lawsuit originally entitled *Patricia O'Connor and Steven Rodriguez v. Whole Foods Market California, Inc.*, filed on or about March 18, 2022, in the Superior Court of the State of California for the County of Alameda designated as Case No. 22CV008620 as amended in the Second Amended Complaint pursuant to Paragraph 2.5 below.

1.2. Administrator. "Administrator" means the third-party settlement administrator approved by the Court to administer the settlement.

1.3. Aggrieved Employee. "Aggrieved Employee" means any current or former non-exempt employee who worked for Defendant in the State of California and received overnight wages at any time during the PAGA Period.

1.4. Agreement. "Agreement" means this Joint Stipulation of Class Action Settlement.

1.5. Class Counsel. "Class Counsel" means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and Emil Davtyan of Davtyan Law Firm, Inc.

1.6. Class Member. "Class Member" means any current or former non-exempt employee who worked for Defendant in the State of California and received overnight wages at any time during the Class Period. Defendant represents that there are approximately 772 Class Members.

1.7. Class Notice. "Class Notice" means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.8. Class Period. "Class Period" means March 18, 2021, through November 28, 2021.

1.9. Court. "Court" means the Superior Court of California for the County of Alameda.

1.10. Defendant. "Defendant" means Whole Foods Market California, Inc.

1 **1.11. Defendant’s Counsel.** “Defendant’s Counsel” means Derek R. Havel, Matthew A.
2 Tobias, Brett D. Young, Ian A. Michalak, and Meagan B. Drye of Sheppard, Mullin, Richter &
3 Hampton LLP.

4 **1.12. Effective Date.** “Effective Date” means: (a) if no objections to the settlement are filed,
5 the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed and
6 no appeals are filed, the day following the expiration of the time for the filing of an appeal of the Final
7 Approval Order; or (c) if any appeals of the Final Approval Order are filed, the day following the
8 expiration of time to further appeal an order affirming the Final Approval Order.

9 **1.13. Final Approval Order.** “Final Approval Order” means an order granting final approval
10 of a settlement pursuant to this Agreement.

11 **1.14. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
12 settlement amount—inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class
13 Representative Awards, PAGA Penalty Fund, and Individual Settlement Payments—that Defendant
14 may be required to pay in connection with a Final Approval Order.

15 **1.14.1. Administration Costs.** “Administration Costs” means a Court approved
16 payment from the Gross Settlement Amount to the Administrator for administering the settlement,
17 which includes but is not limited to printing, distributing, and tracking Class Notices, processing any
18 required tax payments and reporting, providing any required tax forms, distributing payments pursuant
19 to a Final Approval Order, and providing necessary reports or declarations, as requested by the Court or
20 Class Counsel and Defendant’s Counsel.

21 **1.14.2. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means
22 a Court approved payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and
23 costs associated with the litigation and resolution of the Action (excluding third-party Administration
24 Costs separately addressed above).

25 **1.14.3. Class Representative Awards.** “Class Representative Awards” means Court
26 approved payments from the Gross Settlement Amount to Plaintiffs in recognition of their efforts and
27 work in prosecuting the Action on behalf of Class Members and in consideration of Plaintiffs’
28 additional general releases of claims inapplicable to Settlement Class Members.

1 **1.15. Individual Settlement Payment.** “Individual Settlement Payment” means a Class
2 Member’s potential payment from the Net Settlement Amount and PAGA Penalty Fund.

3 **1.15.1. Individual Class Payment.** “Individual Class Payment” means a Settlement
4 Class Member’s potential payment from the Net Settlement Amount for settlement of class action
5 claims.

6 **1.15.2. Individual PAGA Payment.** “Individual PAGA Payment” means an Aggrieved
7 Employee’s potential payment from the PAGA Penalty Fund for settlement of PAGA claims.

8 **1.16. Net Settlement Amount.** “Net Settlement Amount” means the remainder of the Gross
9 Settlement Amount after Court approved deductions for the PAGA Penalty Fund, Attorneys’ Fees and
10 Costs Award, Class Representative Awards, and Administration Costs.

11 **1.17. PAGA Penalty Fund & LWDA Payment.** “PAGA Penalty Fund” means the portion of
12 the settlement allocated to PAGA penalties. “LWDA Payment” means a payment of 75% of the PAGA
13 Penalty Fund to the Labor & Workforce Development Agency (“LWDA”).

14 **1.18. PAGA Period.** “PAGA Period” means March 18, 2021 through November 28, 2021.

15 **1.19. Parties.** “Parties” means Plaintiffs and Defendant.

16 **1.20. Pay Period.** “Pay Period” means a two week pay period beginning on Monday and
17 ending 14 days later on Sunday within which a Class Member or Aggrieved Employee received
18 overnight wages.

19 **1.21. Plaintiffs.** “Plaintiffs” means Patricia O’Connor and Steven Rodriguez.

20 **1.22. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
21 preliminary approval of a settlement pursuant to this Agreement.

22 **1.23. Released Party.** “Released Party” means Defendant and each of its past, present and
23 future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
24 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or
25 partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service providers, joint
26 venturers, joint employers, co-employers, dual employers, alleged joint employers, alleged co-
27 employers, alleged dual employers, affiliates, alter-egos, and affiliated organizations, and all of their
28

1 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
2 fiduciaries, parents, subsidiaries, and assigns.

3 **1.24. Settlement Class Members.** “Settlement Class Members” means Class Members who
4 do not exclude themselves from the class action settlement by complying with the procedures set forth
5 in the Class Notice to opt out of the class action settlement.

6 **2. Recitals**

7 **2.1. Initiation of Action.** On or about February 18 and March 1, 2022, Plaintiffs sent notices
8 to the LWDA and Defendant regarding violations of the Labor Code resulting from Defendant’s
9 alleged failure to furnish non-exempt employees with wage statements that accurately showed all
10 applicable hourly rates whenever they were paid overnight wages. On or about March 18, 2021,
11 Plaintiffs filed the original complaint pursuing class action claims on behalf of a putative class of
12 current and former non-exempt employees of Defendants in the State of California. On or about May
13 26, 2022, Plaintiffs filed an amended complaint to also pursue claims under the Labor Code Private
14 Attorneys General Act of 2004 (“PAGA”) for the same Labor Code violations.

15 **2.2. Class Counsel’s Investigation.** On numerous dates, Plaintiffs and Defendant met and
16 conferred about the alleged claims. The Parties engaged in informal discovery, and Defendant provided
17 Plaintiffs with information about various defenses, including information about two other pending
18 putative class actions—*Franke v. Whole Foods Market California, Inc.*, San Francisco County Superior
19 Court Case No. CGC-20-586827, and *Vuchkov v. Whole Foods Market California, Inc.*, Alameda
20 County Superior Court Case No. RG21092593. Class Counsel continued investigating the alleged
21 claims and also analyzed any defenses raised by Defendant.

22 **2.3. First Mediation.** On October 18, 2022, the Parties and the parties in the *Franke* matter
23 attended a global mediation with Gig Kyriacou, an experienced mediator knowledgeable of both the
24 wage and hour laws and class and representative action claims at issue in the Action. While the *Franke*
25 parties were able to resolve their matter, the Parties were unable to resolve the Action.

26 **2.4. Second Mediation and Settlement.** On June 7, 2023, the Parties and the parties in the
27 *Vuchkov* matter attended a second mediation with Gig Kyriacou. With the mediator’s assistance and
28 based upon a mediator’s proposal, the Parties were able to agree to settlement terms. The settlement

1 was achieved after extensive arm's length negotiations in light of all known facts and circumstances—
2 including the uncertainty associated with litigation, the risks of significant delay, and numerous
3 potential appellate issues.

4 **2.5. Second Amended Complaint.** Plaintiffs shall seek leave to file a Second Amended
5 Complaint either before or concurrent with seeking approval of the Agreement that limits the class and
6 representative definitions to only Class Members and Aggrieved Employees that received overnight
7 wages during the Class Period and PAGA Period and limiting the claims to all those arising from the
8 alleged failure to accurately identify on wage statements the rates associated with overnight pay. Class
9 Counsel shall provide a copy of the amended complaint to Defendant's Counsel for review and
10 approval prior to seeking leave to file the amended complaint.

11 **2.6. No Admission of Liability.** Defendant denied and continues to deny all of the
12 allegations made by Plaintiffs in the Action. Although Defendant denied and continues to deny all of
13 the allegations made by Plaintiffs in the Action, Defendant—without admitting or conceding any
14 liability or wrongdoing whatsoever—has agreed to settle the Action on the terms and conditions set
15 forth in this Agreement for the sole purpose of avoiding the burden, expense, and uncertainty of
16 continuing the Action.

17 **2.7. Class Counsel's Evaluation.** Based on Class Counsel's ongoing investigation and
18 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair,
19 reasonable, adequate, and in the best interests of Class Members.

20 **2.8. Certification of Settlement Class.** This Agreement is contingent upon the approval and
21 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
22 all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a
23 Preliminary Approval Order and then Final Approval Order.

24 **3. Notice to Class Members**

25 **3.1. Administrator.** Plaintiffs and Class Counsel shall request that the Court appoint
26 Phoenix Settlement Administrators as the Administrator for purposes of sending notice of the
27 settlement to Class Members. The Parties agree that Administration Costs should not exceed
28 \$12,000.00.

1 **3.2. Class Data for Administrator.** Within 14 calendar days of the Preliminary Approval
2 Order, Defendant shall provide to the Administrator each Class Member's last known mailing address,
3 as well as data sufficient for the Administrator to perform all necessary responsibilities pursuant to this
4 Agreement.

5 **3.3. Class Notice of Settlement.** The Administrator shall send Class Notice to Class
6 Members to provide notice of settlement within 28 calendar days of the Preliminary Approval Order,
7 pursuant to the procedures below. This shall be the sole means of notice to Class Members.

8 **3.4. Mailing of Notice.** The Administrator shall send Class Notice to each Class Member via
9 First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data
10 provided by Defendant. Any Class Notice returned to the Administrator as undeliverable shall be sent
11 promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address
12 is provided, the Administrator shall promptly attempt to determine the correct address using a single
13 skip-trace search and shall then promptly send a single re-mailing.

14 **3.5. Proof of Mailing.** The Administrator shall provide Class Counsel and Defendant's
15 Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.

16 **4. Class Members' Response Options**

17 **4.1. Consideration Period.** Class Members shall be provided 45 calendar days after the
18 postmark date of the initial mailing of Class Notice to exercise any rights to opt out of or object to the
19 class action settlement. Except as provided herein, no Class Member responses that are postmarked
20 more than 45 calendar days after the initial mailing of Class Notice shall be considered. The Parties
21 shall do nothing to encourage or solicit Class Members to opt out of or object to the class action
22 settlement.

23 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity
24 to object to the terms of the class action settlement. Settlement Class Members may object to the class
25 action settlement by mailing to the Administrator an objection within 45 calendar days after the
26 postmark date of the initial mailing of Class Notice, which describes the objection and states any
27 intention to appear at the final approval hearing. Alternatively, Settlement Class Members may appear
28 at the final approval hearing to object to the class action settlement. Absent good cause as determined

1 by the Court, any Settlement Class Member who does not comply with the objection procedures in the
2 Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any
3 objection, whether by appeal or otherwise, to the class action settlement. Settlement Class Members
4 who object to the class action settlement pursuant to the terms of the Class Notice shall remain subject
5 to being bound by the release provisions in this Agreement pursuant to a Final Approval Order and
6 shall remain eligible to receive an Individual Class Payment.

7 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
8 the class action settlement. Class Members may opt out of the class action settlement by mailing to the
9 Administrator a Request for Exclusion within 45 calendar days after the postmark date of the initial
10 mailing of Class Notice. Any Request for Exclusion that does not comply with the procedures in the
11 Class Notice shall be deemed void and ineffective. Class Members who opt out of the class action
12 settlement pursuant to the terms of the Class Notice shall not receive any Individual Class Payments,
13 shall not be bound by the class action release provisions in this Agreement pursuant to a Final Approval
14 Order, and shall not be permitted to object to the settlement or appeal. If a Class Member submits both
15 a Request for Exclusion and an objection, the Administrator shall attempt to determine whether the
16 Class Member would like to withdraw either the Request for Exclusion or the objection. If the Class
17 Member does not withdraw a Request for Exclusion, or if the Administrator cannot contact the Class
18 Member who submits both a Request for Exclusion and an objection, the Request for Exclusion shall
19 be deemed valid and shall be deemed to invalidate the objection.

20 **4.4. PAGA Exclusion.** Because this settlement resolves claims and actions brought pursuant
21 to PAGA by Plaintiffs acting as a proxy and as private attorneys general of, and for, the State of
22 California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude
23 himself or herself from settlement of PAGA claims, and all Aggrieved Employees will receive their
24 shares of the PAGA Penalty Fund. The Parties also agree that no Aggrieved Employee has the right to
25 object to the PAGA Penalty Fund.

26 **4.5. Objection Response.** The Administrator must provide a copy of any objection received
27 to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file a response to any
28 written objection no later than five court days before the final approval hearing.

1 **4.6. Defendant's Right to Terminate.** If more than 5% of Class Members opt out of the
2 class action settlement, then Defendant shall have the right to terminate the Agreement by notifying
3 Plaintiffs' Counsel within seven days of notification that more than 5% of Class Members have opted
4 out of the class.

5 Further, this Action was settled in conjunction with and at the same time as the case of *Georgi Vuchkov,*
6 *et al. v. Whole Foods Market California, Inc.*, Alameda County Superior Court Case No. RG21092593. If the
7 *Vuchkov* settlement is denied final approval without the opportunity to amend its non-material terms, Defendant
8 will have the option of terminating this Agreement, assuming this Agreement has not already been finally
9 approved. Defendant must exercise this option by providing written notice to Plaintiffs' counsel within 15
10 calendar days of being notified the *Vuchkov* settlement has been denied final approval.

11 If Defendant exercises either right to terminate the Agreement, Defendant shall be responsible
12 for any Administration Costs incurred to date. If Defendant exercises either option to terminate the
13 Agreement, the Parties and any funds to be awarded under this Agreement shall be returned to their
14 respective statuses as of the date and time immediately prior to the execution of this Agreement, and
15 the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees
16 already incurred by the Administrator shall be paid by Defendant due to its sole election to nullify the
17 Agreement. If Defendant exercises either option to terminate the Agreement, the Parties agree to take
18 all necessary actions to void: (1) any amended complaint filed in the *Vuchkov* action, and (2) the
19 amended complaint Plaintiffs will file in the Action pursuant to the terms of the Agreement.

20 **4.7. Automatic Nullification of the Settlement Agreement.** In the event the Court does not
21 enter Preliminary Approval and Final Approval, approving the release of the Released Claims against
22 the Released Parties specified herein, this Agreement shall be null and void. The Stipulations and
23 Recitals contained herein shall be of no force or effect, and shall not be treated as an admission by the
24 Parties or their counsel. In such a case, the Parties and any funds to be awarded under this Agreement
25 shall be returned to their respective statuses as of the date and time immediately prior to the execution
26 of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been
27 executed, except that any fees already incurred by the Administrator shall be paid equally by both
28 Parties.

1 **4.8. Proof of Class Members' Responses.** As soon as practicable after the end of the
2 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
3 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
4 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
5 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
6 requested by the Parties or the Court.

7 **5. Settlement Proceeds**

8 **5.1. Gross Settlement Amount.** Defendant agrees to pay a non-reversionary Gross
9 Settlement Amount of \$1,200,000.00. The Gross Settlement Amount was negotiated based on the
10 Parties' understanding that there were approximately 4,887 Pay Periods during the Class Period. If the
11 number of Pay Periods during the Class Period exceeds 4,887 by more than 10% (i.e., 5,376 or more),
12 the Gross Settlement Amount shall increase on a pro rata basis equal to the percentage increase
13 exceeding 10% (e.g., if the actual number were 12.5% greater than 4,887, then the Gross Settlement
14 Amount would be increased by 2.5%). Under no other circumstance will Defendant's payment exceed
15 the Gross Settlement Amount.

16 **5.1.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendant
17 agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)
18 33⅓% of the Gross Settlement Amount (or \$400,000.00) and (b) litigation costs of up to \$20,000.00.
19 Except as stated in this Agreement, the Parties are to be responsible for their own attorneys' fees and
20 costs.

21 **5.1.2. Class Representative Awards.** Class Counsel intends to request—and
22 Defendant agrees not to oppose—that the Court approve a Class Representative Award of \$10,000 for
23 each Plaintiff. Any Class Representative Awards would be supplemental to Plaintiffs' Individual
24 Settlement Payment.

25 **5.1.3. Administration Costs.** Class Counsel intends to request—and Defendant agrees
26 not to oppose—that the Court approve Administration Costs of up to \$12,000.00. The Parties agree to
27 cooperate in the settlement administration process and to make all reasonable efforts to control and
28 minimize Administration Costs.

1 **5.1.4. PAGA Penalty Fund and LWDA Payment.** The Parties intend to request that
2 the Court approve a PAGA Penalty Fund of \$300,000.00. The PAGA Penalty Fund shall be distributed
3 pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining
4 25% of the PAGA Penalty Fund is to be distributed to Aggrieved Employees on a pro rata basis, based
5 on the number of Pay Periods worked during the PAGA Period as reflected in Defendant's records.

6 **5.1.5. Differences in Requested and Approved Payments.** If the Court does not
7 approve the requested amounts for the Attorneys' Fees and Costs Award, Class Representative Awards,
8 or Administration Costs, or PAGA Penalty Fund, any differences in the requested and approved amount
9 shall be allocated to the Net Settlement Amount from the Gross Settlement Amount.

10 **5.2. Net Settlement Amount and Individual Settlement Payments.** After deducting the
11 approved Attorneys' Fees and Costs Award, Class Representative Award, Administration Costs, and
12 PAGA Penalty Fund from the Gross Settlement Amount, Individual Settlement Payments shall be
13 distributed to Settlement Class Members, without the need to submit a claim form on a pro rata basis,
14 based on the number of Pay Periods worked during the Class Period as reflected in Defendant's
15 records.

16 **5.3. Funding and Distribution.** Within 21 calendar days after the Effective Date, Defendant
17 shall deposit the Gross Settlement Amount with the Administrator. Within seven calendar days after the
18 deposit of funds, the Administrator shall distribute all amounts to be paid pursuant to the Final
19 Approval Order. Upon completion of administration of the settlement, the Administrator shall provide
20 written certification of such completion to Class Counsel and Defendant's Counsel.

21 **5.4. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
22 will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of
23 all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for
24 any expired checks in accordance with the Final Approval Order. The Parties shall request that the
25 Court order that the principal for any expired checks be distributed pursuant to Code of Civil Procedure
26 section 384 to Legal Aid at Work.

27 **5.5. No Tax Advice or Liability.** All payments from the Net Settlement Amount shall be
28 classified for tax reporting purposes as penalties. The Administrator shall issue an IRS Form 1099 to

1 Plaintiffs for any Class Representative Awards, to Class Counsel for any Attorneys' Fees and Costs
2 Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs.
3 The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving
4 any tax advice in connection with the settlement or any payments to be made pursuant to the
5 Agreement. The Parties do not intend anything contained in this Agreement to constitute legal advice
6 regarding the taxability of any amount paid hereunder, nor shall anything in this Agreement be relied
7 upon as such. By participating in the settlement, each Class Member shall agree to be solely and legally
8 responsible for paying any applicable taxes on their respective Individual Settlement Payments and
9 shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest
10 arising as a result of the payments.

11 **6. Releases**

12 **6.1. Releases by Settlement Class Members.** By operation of the entry of the Final
13 Approval Order, and except as to such rights or claims as may be created by this Agreement, all
14 Settlement Class Members fully release Defendant and each Released Party from any and all claims
15 during the Class Period either asserted in the Action, arising from or related to the facts and claims
16 alleged in the Action, or that could have been raised in the Action based on the facts and claims alleged.
17 The released claims include all claims for failure to issue accurate itemized wage statements;
18 deductions; penalties, including, but not limited to, civil penalties, statutory penalties, wage statement
19 penalties; and attorneys' fees and costs; all claims related to the Released Claims arising under: the
20 California Labor Code (including, but not limited to, sections 226, 226.3, 2698 *et seq.*, 2699 *et seq.*, and
21 2699.3), the Wage Orders of the California Industrial Welfare Commission; and the California Private
22 Attorneys General Act of 2004 ("PAGA").

23 **6.2. Releases by LWDA.** By operation of the entry of the Final Approval Order, and except
24 as to such rights or claims as may be created by this Agreement, the LWDA fully releases Defendant
25 and each Released Party from any and all claims during the PAGA Period for civil penalties for
26 violations of Labor Code sections 226(a) and 226.3 in connection with the Action or that reasonably
27 could have been alleged based on the facts alleged in the Action. The right to obtain PAGA penalties
28

1 arising during the PAGA Period shall be released regardless of whether the Aggrieved Employee opts
2 out of the settlement. This release excludes the release of claims not permitted by law.

3 **6.3. Additional Release by Plaintiffs.** In addition to the above releases applicable to
4 Plaintiffs as Settlement Class Members, Plaintiffs also generally releases all claims, known or
5 unknown, in favor of each Released Party, from any and all claims, known and unknown, under
6 federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law,
7 including but not limited to claims arising from or related to their employment with Defendant and their
8 compensation while employees of Defendant. Plaintiffs' released claims include, but are not limited to,
9 all claims arising from or related to the Action. Plaintiffs' released claims include all claims for unpaid
10 wages, including, but not limited to, failure to pay minimum wages, straight time compensation,
11 overtime compensation, double-time compensation, and interest; the calculation of the regular rate of
12 pay; missed meal period and rest-period premiums, including failure to pay premiums at the regular
13 rate of compensation; reimbursement for all necessary business expenses; payment for all hours
14 worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records;
15 unfair business practices; penalties, including, but not limited to, civil penalties, statutory penalties,
16 recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time
17 penalties; and attorneys' fees and costs. Plaintiffs' released claims include all claims arising under the
18 California Labor Code (including, but not limited to, sections 90.5, 201, 202, 203, 204, 213, 218.5, 221,
19 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
20 1199, 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3, 2800, and 2802); all claims arising under: the Wage
21 Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act
22 of 2004 ("PAGA"); California Business and Professions Code section 17200, *et seq.*; the California
23 Civil Code, to include but not limited to, sections 3287, 3336 and 3294; California Code of Civil
24 Procedure § 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*; federal
25 common law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* ("ERISA").
26 Plaintiffs' released claims also include all claims for lost wages and benefits, emotional distress,
27 retaliation, punitive damages, and attorneys' fees and costs arising under federal, state, or local laws for
28 discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as

1 amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With
2 Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and
3 Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted
4 by law.

5 Plaintiffs' released claims include all claims, whether known or unknown. Even if Plaintiffs
6 discover facts in addition to or different from those that they now know or believe to be true with
7 respect to the subject matter of Plaintiffs' released claims, those claims will remain released and forever
8 barred. Thus, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits of section
9 1542 of the California Civil Code, which reads:

10 **A general release does not extend to claims that the creditor or releasing**
11 **party does not know or suspect to exist in his or her favor at the time of**
12 **executing the release and that, if known by him or her, would have**
materially affected his or her settlement with the debtor or released party.

13 Plaintiffs acknowledges that they have read the entirety of the Agreement, including the above
14 language from the Civil Code, and that they fully understand both the Agreement and Civil Code
15 section 1542. By executing this Agreement, Plaintiffs expressly waive any benefits and rights granted
16 pursuant to Civil Code section 1542.

17 **7. Court Approval**

18 **7.1. Preliminary Approval.** Plaintiffs shall submit a motion seeking a Preliminary Approval
19 Order, which would, among other things: (i) preliminarily approve the proposed settlement according
20 to the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class
21 Notice to be sent to Class Members as specified herein.

22 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final
23 approval hearing, or such other time as the Court requires, Plaintiffs shall submit a motion seeking a
24 Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms
25 to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and
26 provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration
27 and enforcement of the terms of this Agreement and the Court's orders.

28 **7.3. Effect of Failure to Obtain Final Approval.** In the event the Court effects a material

change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final Approval Order is vacated, then this entire Agreement shall be void and unenforceable, the Action shall proceed as if no settlement has been attempted, and the costs of administration shall be split equally between the Parties, subject to the Parties' agreement to the contrary. In such event, except as otherwise stated in this Agreement, this Agreement and any documents in furtherance of this Agreement shall be inadmissible in any future proceedings in this Action or any other action.

8. Miscellaneous

8.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement. The signatories represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated herein.

8.1.1. Counterparts and Signatures. This Agreement may be executed in counterparts, and when all signatories have signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and deliver this Agreement by signing on the designated signature block and transmitting that signature page via e-mail to counsel for the other party. Any signature via DocuSign or other electronic means or transmitted via e-mail shall be deemed an original signature and shall be binding upon the party who transmits the signature page.

8.1.2. Waivers, Modifications, Etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of

any and all of the provisions of this Agreement.

8.1.3. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.1.4. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to render all provisions of this Agreement valid and enforceable.

8.2. Further Acts and Cooperation Between the Parties. The Parties shall cooperate and use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

8.3. Continuing Jurisdiction. The Court shall retain jurisdiction over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and of the settlement contemplated thereby.

8.4. Disputes. If the Parties have a dispute with regard to the language of this Agreement, they agree to engage mediator Gig Kyriacou, Esq. to mediate any such dispute. The Parties will split the costs of the mediator, and the Parties will bear their own fees and costs.

8.5. Governing Law and Enforcement Actions. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of California.

8.6 No Public Comment. Neither Plaintiffs nor Class Counsel shall issue any press release or public announcement of any kind related in any way to the Settlement. Plaintiffs and Class Counsel agree that, prior to seeking Preliminary Approval of the Settlement, they will keep the terms of this Settlement confidential except for purposes of communicating with Plaintiffs only. Plaintiffs shall be informed that the Settlement is confidential and shall be advised to keep the settlement confidential.

From and after Preliminary Approval of the settlement, Plaintiffs and Class Counsel may: (1) as

required by law; (2) as required under the terms of the settlement; or (3) as required under counsel's duties and responsibilities as Class Counsel, comment regarding the specific terms of the settlement. In all other cases, Plaintiffs and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral, written or electronic (including the world wide web), to say the Action has been resolved and that Plaintiffs and Class Counsel are satisfied with the settlement terms. Nothing in this Paragraph is intended to interfere with either Plaintiffs' or Class Counsel's duties and obligations to faithfully discharge their obligations to Class Members, including but not limited to, communicating with Class Members regarding the Settlement.

PLAINTIFF

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Patricia O'Connor

Dated: October ³____, 2023**PLAINTIFF**

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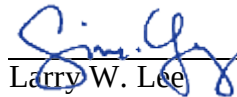


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Steven Rodriguez

Dated: October ²____, 2023**COUNSEL FOR PLAINTIFFS AND CLASS**

Dated: October 2, 2023



Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

DEFENDANT

DocuSigned by:



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Keith Manbeck, President
WHOLE FOODS MARKET CALIFORNIA, INC.

Dated: October 25, 2023**COUNSEL FOR DEFENDANT**


Derek R. Havel
Matthew A. Tobias
Ian A. Michalak
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Dated: November 1, 2023