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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. Noël Wise, Department 21]

**DECLARATION OF YAMI BURNS WITH
RESPECT TO NOTICE AND
SETTLEMENT ADMINISTRATION**

Date: June 18, 2024
Time: 1:30 p.m.
Department: 21

Reservation ID: 120997891563

Complaint Filed: March 18, 2022

1 I, Yami Burns, declare as follows:

2 1. I am a Case Manager at Phoenix Settlement Administrators (“Phoenix”), the Court-
3 appointed Class Action Settlement Administrator for *O’Connor et al. v. Whole Foods Market California,*
4 *Inc.* (the “Action”). I have personal knowledge of the facts stated herein and, if called upon to testify, I
5 could and would testify competently to such facts.

6 2. Phoenix was selected by the Parties to provide notice of the Settlement and perform class
7 administration duties in this Action. Pursuant to the Amendment to Joint Stipulation and PAGA
8 Settlement (“Settlement Agreement” or “Settlement”) for this matter, Phoenix was responsible for: (i)
9 preparing, printing, and mailing the *Notice of Class Action Settlement* (“Notice”); (ii) responding to
10 inquiries from Class Members; (iii) calculating the number of pay periods each Class Member worked
11 during the period from March 18, 2021, through November 28, 2021 (“Class Period”) and the number of
12 pay periods that each Aggrieved Employee worked during the time period from March 18, 2021, through
13 November 28, 2021 (“PAGA Period”); (iv) determining the validity of letters indicating a request to be
14 excluded from the Class Settlement (“Requests for Exclusion”), written objections to the Class
15 Settlement (“Objections”), and/or dispute regarding the number of pay periods submitted by Class
16 Members; (v) calculating the Net Settlement Amount and the Individual Settlement Payments to Class
17 Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to
18 Participating Class Members and Individual PAGA Payments to Aggrieved Employees; (vii) issuing the
19 payment to Class Counsel for attorneys’ fees and costs, the Enhancement Payment to Plaintiff; and (viii)
20 such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court
21 orders.

22 3. On March 5, 2024, Phoenix received a data file from Defense Counsel that contained
23 names, last known mailing addresses, Social Security numbers, dates of employment, and pay periods
24 for each Class Member (“Class List”) during the Class Period. The final mailing list contained seven
25 hundred seventy-two (772) individuals identified as Class Members.

26 4. On March 6, 2024, Phoenix conducted a National Change of Address (“NCOA”) search
27 in an attempt to update the class list of addresses as accurately as possible. A search of this database
28

provides updated addresses for any individual who has moved in the previous four (4) years and notified the U.S. Postal Service of their change of address.

5. On March 15, 2024, Phoenix mailed the Notice via U.S. first class mail, to all contained seven hundred seventy-two (772) Class Members on the Class List. A true and correct copy of the mailed Notice is attached hereto as **Exhibit A**.

6. As of the date of this declaration, zero (0) Notices have been returned to Phoenix.

7. Phoenix has received one (1) Requests for Exclusion from Class Members. The deadline to request exclusion from the Class Settlement was April 29, 2024.

8. Phoenix has received zero (0) Notices of Objection from Class Members. The deadline for objecting to the Class Settlement was April 29, 2024.

9. Phoenix has received zero (0) Workweek disputes from Class Members. The deadline for submitting a dispute was April 29, 2024.

10. There are seven hundred seventy-one (771) Class Members who did not submit timely and valid Requests for Exclusion and are therefore deemed Participating Class Members, representing 99.87% of the Class. Participating Class Members have worked a collective total of four thousand eight hundred eighty-six (4,886) Compensable Pay Periods during the Class Period. Each Compensable Pay Periods is valued at approximately \$91.69.

11. The Net Settlement Amount of \$466,356.93 available to pay Participating Class Members was determined by subtracting the requested Class Counsel attorneys' fees (\$400,000.00), and Class Counsel costs (\$2,143.07), requested Incentive Payment to Plaintiff O'Connor and Rodriguez of \$10,000.00 each (\$20,000.00), the PAGA Amount (\$300,000.00), and the requested Settlement Administration Costs (\$11,500.00) from the Gross Settlement Amount (\$1,200,000.00).

12. Based upon the calculations stipulated in the Settlement, the highest Individual Settlement Payment to be paid is approximately \$1,622.61, the lowest Individual Settlement Payment to be paid is approximately \$95.45, while the average Individual Settlement Payment to be paid is approximately \$604.87.

13. Additionally, \$300,000.00 of the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA Amount"), of which 75%, or \$225,000.00,

1 shall be paid to the Labor and Workforce Development Agency (“LWDA”), and 25%, or \$75,000.00, of
2 which shall be paid to all current and former hourly non-exempt individuals who are or were employed
3 by Defendant during the PAGA Period. There are seven hundred seventy-two (772) Aggrieved
4 Employees who worked a total of four thousand eight hundred eighty-seven (4,887) pay periods during
5 the PAGA Period. The highest Individual PAGA Payment to be paid is approximately \$260.90, and the
6 average Individual PAGA Payment to be paid is approximately \$97.15.

7 14. Pursuant to the Settlement, all payments to Class Members shall be classified for tax
8 reporting purposes as penalties.

9 15. Phoenix’s costs associated with the administration of this matter are \$11,500.00. This
10 includes all costs incurred to date, as well as estimated costs involved in completing the settlement
11 distribution. A true and correct copy of the invoice from Phoenix is attached hereto as **Exhibit B**.

12
13 I declare under penalty of perjury of the laws of the State of California that the foregoing is true
14 and correct.

15 Executed this 20th day of May 2024, at Orange, California.

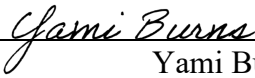
16
17 
18 Yami Burns
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Exhibit A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Patricia O'Connor and Steven Rodriguez v. Whole Foods Market California, Inc.,
Superior Court of the State of California for the County of Alameda, Case No. 22CV008620

If you were a non-exempt employee for Whole Foods Market California, Inc. in the State of California and received overnight wages at any time from March 18, 2021, through November 28, 2021, you could receive a payment from a class action settlement (hereinafter, "Settlement").

Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of Alameda (the "Court") has preliminarily approved a Settlement that could affect your rights. The proposed Settlement resolves a class action and Labor Code Private Attorneys General Act of 2004 ("PAGA") action filed by Plaintiffs Patricia O'Connor and Steven Rodriguez against Defendant, Whole Foods Market California, Inc. (the "Action").

- The Action alleges Defendant failed to provide lawful wage statements when non-exempt employees earned overnight wages. Specifically, the wage statement claim alleges Defendant's wage statements fail to accurately show all applicable hourly rates when non-exempt employees earned overnight wages. On that basis, the Action pursues class action and PAGA claims.
- Defendant denies Plaintiffs' allegations and maintains it has fully complied with the law. By agreeing to the Settlement, Defendant in no way admits any violation of law or any liability whatsoever to Plaintiffs or others and expressly denies all such liability. Both Plaintiffs and Defendant have agreed to the Settlement in light of all known facts and circumstances—including the uncertainty associated with litigation.
- If the Court grants final approval of the settlement, it would provide a cash fund for members of the Class to split based on the number of relevant wage statements that they received during the relevant period.
- Based on Defendant's records, you received 1 relevant wage statements as a Class Member from March 18, 2021, through November 28, 2021. An *estimate* of the amount that could be allocated to you is \$107.02. Whether you receive a payment depends on whether the Court grants final approval of the class action settlement, and the amount you ultimately receive depends on the terms the Court finally approves and whether you opt out of the class action settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS CLASS ACTION SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing and the Court grants final approval of the class action settlement, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the Settlement.
OPT OUT	You may opt out of the class action settlement by submitting a Request for Exclusion. If you opt out, you may not object to the class action settlement, will not be eligible to receive an Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.
OBJECT	You may object to the class action settlement by submitting a written objection. If you object and the Court grants final approval of the class action settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment and will be bound by the class action release provisions of the settlement.

If the Court approves the PAGA settlement, you will receive an Individual PAGA Payment and will be bound by the PAGA release provisions of the Settlement, regardless of whether you opt out of the class action settlement.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF THE CLAIMS.

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Defendant’s records show that you were employed by Defendant in the State of California and received overnight wages at some point from March 18, 2021, through November 28, 2021 (the “Class Period”). Class Members are also “Aggrieved Employees” and may be entitled to share in the funds to be made available for the PAGA settlement.

Because the Settlement preliminarily approved by the Court would affect Settlement Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Action, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the Settlement. If the Court finally approves the Settlement, the Settlement will fully resolve the Action, and your legal rights may be affected by the Settlement.

The Court has preliminary approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and Emil Davtyan of D. Law, Inc. as Class Counsel. Based on their investigation and evaluation, they are of the opinion that the terms of Settlement are fair, reasonable, adequate, and in the best interests of Class Members. The terms of the Settlement are set forth in detail in the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, a neutral third-party appointed by the Court to administer the settlement (the “Administrator”).

2. What Is the Action About?

On March 18, 2022, Plaintiffs filed a complaint in Court that alleged Defendant fails to furnish lawful wage statements. The wage statement claim alleges that, whenever overnight wages are paid to non-exempt employees, Defendant issues wage statements that fail to accurately itemize all applicable hourly rates.

Defendant denied and continues to deny (i) all of the allegations made by Plaintiffs, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Action. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Defendant has agreed to settle the Action, to avoid the burden, expense, and uncertainty of continuing the Action.

3. What Are the Payments Under the Settlement?

Defendant agrees to pay a Gross Settlement Amount of \$1,200,000.00, which is inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class Representative Awards, LWDA Payment, and Individual Class Payments & Individual PAGA Payments awarded by the Court. The Court may approve payment of (i) Administration Costs to the Administrator for administering the settlement (e.g., printing, distributing, or tracking Notices, distributing payments, etc.); (ii) an Attorneys’ Fees and Costs Award to Class Counsel for litigation and resolution of the Action; (iii) a Class Representative Award to each Plaintiff both for their efforts in prosecuting the Action for Class Members and for Plaintiffs’ additional general releases of claims inapplicable to Class Members; and (iv) a PAGA Penalty Fund.

PAGA Penalty Fund: The Settlement requests that the Court approve a PAGA Penalty Fund of \$300,000.00. Pursuant to Labor Code requirements, 75% of the PAGA Penalty Fund, or \$225,000.00, will be allocated to the LWDA as an LWDA Payment. The remainder of the PAGA Penalty Fund, or \$75,000, will be allocated and entirely payable to Aggrieved Employees as described below. These payments shall be classified for tax reporting purposes as penalties.

Individual Class Payments and Individual PAGA Payments: Individual Class Payments shall be distributed to Settlement Class Members and Individual PAGA Payments shall be distributed to Aggrieved Employees, respectively, without the need to submit a claim form. Allocations for amounts payable to Settlement Class Members and Aggrieved Employees will be based on the number of relevant wage statements they received as reflected in Defendant’s records.

All payments to Class Members shall be classified for tax reporting purposes as penalties. Through this settlement, each Settlement Class Member and Aggrieved Employee shall agree to be solely and legally responsible for paying all other applicable taxes on their respective Individual Class Payments and Individual PAGA Payments and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (800)523-5773.

order that the principal for any expired checks shall be distributed pursuant to California Code of Civil Procedure section 384 to Legal Aid at Work.

Attorneys' Fees and Costs Award: You do not need to individually pay any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be determined by the Court. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 33⅓% of the Gross Settlement Amount (or \$400,000.00) and (b) litigation costs of up to \$20,000.00.

Class Representative Award: Any Class Representative Awards are to be determined by the Court and would be supplemental to Plaintiffs' Individual Settlement Payments. Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000.00 to each Plaintiff for their efforts in prosecuting the Action for Class Members and for Plaintiffs' additional general releases of claims inapplicable to Class Members.

Administration Costs: Class Counsel intends to request that the Court approve Administration Costs of up to \$12,000.00, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing all payments under the Settlement.

All Payments Subject to Court Approval: The above payments will be made if and only if the Court concludes the settlement is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of certain payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the class action settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release Defendant and each of its past, present and future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders, stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service providers, joint venturers, joint employers, co-employers, dual employers, alleged joint employers, alleged coemployers, alleged dual employers, affiliates, alter-egos, and affiliated organizations, and all of their respective past, present and future employees, directors, officers, agents, attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns (a "Released Party") from any and all claims during the Class Period either asserted in the Action, arising from or related to the facts and claims alleged in the Action, or that could have been raised in the Action based on the facts and claims alleged. This means that, if you do not timely and formally exclude yourself from the class action settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant about the legal issues resolved by this Settlement. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Upon approval, the LWDA fully releases Defendant and each Released Party from any and all claims during the PAGA Period for civil penalties for violations of Labor Code sections 226(a) and 226.3 as alleged in Plaintiffs' notices to the LWDA.

The right to obtain PAGA penalties arising during the PAGA Period shall be released regardless of whether the Aggrieved Employee opts out of the settlement. This release excludes the release of claims not permitted by law.

5. How Do I Object to the Class Action Settlement?

If you want to participate in the Settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will automatically receive your Individual Class Payment and Individual PAGA Payment if the Court grants final approval of the class action settlement and approves the PAGA settlement.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing at your expense, either in person, telephonically, or through an attorney, provided you notify the Court of your intention to do so. To object to the proposed settlement in writing, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, signature, address, last four digits of your Social Security number, and the basis for your objection.
- (3) If you object, you may but are not required to appear at the final approval hearing either in person or through counsel, paid for at your own expense.
- (4) The written statement must be postmarked by April 29, 2024.

If you object, you will remain bound by the class action settlement if finally approved and bound by the PAGA settlement if approved. If you do not want to be bound by the class action settlement if finally approved, you must opt out of the class action settlement. Regardless of whether you object to the class action settlement, you will be bound by the PAGA settlement if approved.

6. How Do I Opt Out of the Class Action Settlement?

If you do not want to participate in the class action settlement, you may opt out of the class action settlement. If you opt out of the class action settlement, you may not object to the class action settlement, will not receive any Individual Class Payment, and will not be bound by the class action release provisions of the Settlement.

In order to opt out, you **MUST** express your desire to be excluded from the class action settlement by mailing to the Administrator a “Request for Exclusion,” which must state “Request for Exclusion” and include your name, signature, address, and last four digits of your Social Security number. Any such Request for Exclusion must be postmarked by April 29, 2024.

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. When Will the Settlement Be Finalized?

A hearing will be held before the Alameda County Superior Court on June 18, 2024 at 1:30 p.m. in Department 21 of the Superior Court of California, County of Alameda, at the Administration Building located at 1221 Oak Street, Oakland, California 94612 to determine whether the settlement is fair, adequate and reasonable and should be final approved by the Court. The final approval hearing may be adjourned by the Court from time to time as the Court may determine without further notice.

8. Where Can I Get Additional Information?

This Notice summarizes the Settlement. For more information, you may contact the Administrator. Contact information for the Administrator and Class Counsel are as follows:

Administrator: Phoenix Settlement Administrators P.O. Box 7208 Orange, CA 92863 Telephone: (800) 523-5773 Facsimile: (949) 209-2503 Email: notice@phoenixclassaction.com	Class Counsel: DIVERSITY LAW GROUP, P.C. Larry W. Lee (lwlee@diversitylaw.com) Simon L. Yang (sly@diversitylaw.com) 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 Telephone: (213) 488-6555	D. LAW, INC. Emil Davtyan (emil@d.law) 400 N. Brand Blvd., Suite 700 Glendale, California 91203 Telephone: (818) 875-2008
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If the Court grants final approval, final judgment will be posted on the Administrator’s website at oconnor-v-whole-foods-market-of-california.phoenixcases.com.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (800)523-5773.

Exhibit B



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	771
Opt Out Rate	0%
Opt Outs Received	0
Total Class Claimants	771
Subtotal Admin Only	\$11,728.83

TOTAL COSTS	\$11,500.00
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May 20, 2024

Case: Oconnor v. Whole Foods Market

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	3	\$375.00
Programming Database & Setup	\$125.00	3	\$375.00
Toll Free Setup*	\$140.00	1	\$140.00
Call Center & Long Distance	\$2.00	77	\$154.20
NCOA (USPS)	\$280.00	1	\$280.00
Total			\$1,324.20

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Translation

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	3	\$375.00
Data Merge & Duplication Scrub	\$0.20	771	\$154.20
Notice Packet & Opt-Out Form	\$1.25	771	\$963.75
Estimated Postage (up to 1 oz.)	\$0.64	771	\$493.44
Static Website	\$200.00	1	\$200.00
Total			\$2,186.39

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	4	\$220.00
Skip Tracing Undeliverables	\$1.50	120	\$180.00
Remail Notice Packets	\$1.25	120	\$150.00
Estimated Postage	\$0.64	120	\$76.80
Programing Undeliverables	\$50.00	2	\$100.00
Total			\$726.80

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$150.00	3	\$450.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	3	\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$5.00	1	\$5.00
Case Manager	\$85.00	3	\$255.00
Total			\$1,075.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	3	\$375.00
Disbursement Review	\$125.00	3	\$375.00
Programming Manager	\$95.00	3	\$285.00
QSF Fees, Bank Account & EIN	\$100.00	3	\$300.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Mail Class Checks, W2 and 1099 *	\$1.00	771	\$771.00
Estimated Postage Checks, W2 and 1099	\$0.64	771	\$493.44
Total			\$2,974.44

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	4	\$500.00
Remail Undeliverable Checks (Postage Included)	\$1.50	158	\$237.00
Case Associate	\$75.00	3	\$225.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
Uncashed Check Notice Postcard (Postage Included)	\$1.50	40	\$60.00
Uncashed Check QSF Tax Filing	\$150.00	3	\$450.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,200.00	1	\$1,200.00
Total			\$3,442.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Total: \$11,728.83