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**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]

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

*[Filed concurrently with Declaration of Larry W.  
Lee; Declaration of Simon L. Yang; Declaration  
of Emil Davtyan; Declaration of Patricia  
O'Connor; Declaration of Steven Rodriguez;  
[Proposed] Order]*

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

**Reservation ID: 047642299369**

Complaint Filed: March 18, 2022

1 **TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 5, 2024, at 9:00 a.m., or as soon thereafter as the  
3 matter may be heard in Department 21 of the above-entitled court located at 1221 Oak Street, Oakland,  
4 California 94612, Plaintiffs Patricia O'Connor and Steven Rodriguez will and hereby do move for an  
5 Order:

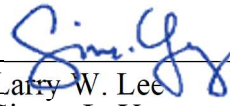
- 6 1. approving the Joint Stipulation of Class Action and PAGA Settlement (the "Agreement")  
7 attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang;
- 8 2. conditionally certifying the following Class for settlement purposes only: all current and  
9 former non-exempt employees who worked for Defendant, Whole Foods Market California,  
10 Inc., in the State of California and received overnight wages at any time from March 18,  
11 2021, through January 29, 2021 (the "Class Period");
- 12 3. appointing Plaintiffs as the Class Representatives and Larry W. Lee and Simon L. Yang of  
13 Diversity Law Group, P.C. and Emil Davtyan of D. Law, Inc. as Class Counsel;
- 14 4. approving the Agreement on a preliminary basis and finding that it, the total Gross  
15 Settlement Amount in the amount of \$1,200,000.00, the amounts requested for the  
16 Administration Costs, Attorneys' Fees and Costs Award, Class Representative Awards,  
17 LWDA Payment, and the allocation of payments to Class Members appear to be within the  
18 range of reasonableness for a settlement that could ultimately be given final approval;
- 19 5. appointing Phoenix Settlement Administrators as the Administrator;
- 20 6. approving the distribution of the Notice of Class Action Settlement attached as Exhibit A to  
21 the Agreement; and
- 22 7. scheduling a Final Approval Hearing.

23 The Motion is made pursuant to Rule 3.769 of the California Rules of Court, which allows the  
24 Court to preliminarily certify a class for settlement purposes and to approve a class action settlement.  
25 The basis for the Motion is that the proposed settlement is fair, adequate, and reasonable, and the  
26 procedures proposed by the Parties are adequate to ensure class members are able to participate in, opt  
27 out of, or object to the settlement.

1 The Motion is based on this notice, the memorandum of points and authorities, the Agreement  
2 and proposed Notice of Class Action Settlement, the supporting Declarations of Larry W. Lee, Simon L.  
3 Yang, Emil Davtyan, Patricia O'Connor, and Steven Rodriguez, all pleadings and papers on file herein,  
4 and any further oral and documentary evidence as may be presented before or at the hearing of this  
5 matter.

6 DATED: December 12, 2023

DIVERSITY LAW GROUP, P.C.

7  
8 By:   
9 Larry W. Lee  
Simon L. Yang  
Attorneys for Plaintiffs

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## SUMMARY OF MOTION

On a classwide basis and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiffs Patricia O’Connor and Steven Rodriguez sue Defendant, Whole Foods Market California, Inc., for alleged failures to furnish lawful wage statements that accurately show all applicable hourly rates to non-exempt employees who were paid overnight wages. Defendant denies the allegations.

Based on their own independent investigations and evaluations, the Parties have agreed to a classwide resolution. The Joint Stipulation of Class Action and PAGA Settlement (“Agreement”), which is attached as Exhibit 1 to the concurrently filed Declaration of Simon L. Yang, requires Defendant to pay at least \$1,200,000.00 for the classwide settlement of wage statement claims. Plaintiffs and their counsel believe the settlement is an exceptional result for the Class. Defendant will have to pay around **\$245.55 for each of approximately 4,887 relevant wage statements** from March 18, 2021, through November 28, 2021. Each of approximately **772 Class Members will, on average, receive \$677.46** (*after* all requested payments from the Gross Settlement Amount). Plus, under PAGA, the **California Labor & Workforce Development Agency (“LWDA”) will receive \$225,000.00** for its share of PAGA penalties. Significantly, the entire settlement amount is non-reversionary; none of the settlement amount will revert back to Defendant.

Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. The Parties and their counsel are of the opinion that the settlement on the terms set forth in the Agreement would be fair, reasonable, and adequate.

As the settlement would be in the best interests of the Class, Plaintiffs respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

## RELEVANT BACKGROUND

On March 18, 2022, Plaintiffs initiated this class action that seeks to remedy Defendant’s alleged failure to furnish lawful wage statements. Declaration of Simon L. Yang (“Yang Decl.”) ¶ 2. On May

26, 2022, Plaintiffs filed the operative first amended complaint to also seek PAGA penalties. *Id.* Upon the filing of the Action, Plaintiffs and Defendant met and conferred about the alleged claims. *Id.*

Class Counsel continued investigating the alleged claims and also analyzed any defenses raised by Defendant, including those relating to two other putative class actions—*Franke v. Whole Foods Market California, Inc.*, San Francisco County Superior Court Case No. CGC-20-586827 (“*Franke*”), and *Vuchkov v. Whole Foods Market California, Inc.*, Alameda County Superior Court Case No. RG21092593 (“*Vuchkov*”). Yang Decl. ¶ 3. The Parties exchanged information and documentation pursuant to informal methods to assist them in exploring the possibility of a mediated resolution. *Id.* Defendant’s willingness to engage in informal discovery enabled Plaintiffs to evaluate the full scope of Defendant’s potential liability. *Id.* Ultimately, the Parties agreed to schedule a mediation. *Id.*

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

On June 7, 2023, the Parties and the parties in the *Vuchkov* matter attended an additional mediation with Mr. Kyriacou. Yang Decl. ¶ 5. With the mediator’s assistance and based on a mediator’s proposal, the Parties were able to negotiate the settlement terms in the Joint Stipulation of Class Action and PAGA Settlement. *Id.* Ex. 1 (the “Agreement”).

## SUMMARY OF PROPOSED SETTLEMENT

### I. Class Definition

The proposed settlement class of “Class Members” includes 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. Agreement ¶ 1.6. The Class Period is from March 18, 2021, through November 28, 2021. *Id.* ¶ 1.8. There are approximately 772 Class Members who received approximately 4,887 relevant wage statements. *Id.* ¶ 1.6.<sup>1</sup>

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<sup>1</sup> All Class Members are also Aggrieved Employees. Agreement ¶ 1.3. The PAGA Period is the same as the Class Period. *Id.* ¶ 1.18.

## II. Settlement Payments

The Agreement requires Defendant to pay a non-reversionary Gross Settlement Amount of \$1,200,000.00. Agreement ¶ 5.1. From the Gross Settlement Amount, the Parties will request that the Court approve allocations for an LWDA Payment, Administration Costs, Attorneys' Fees and Costs Award, and Class Representative Awards. *Id.* ¶ 1.14. Except for these allocations requiring Court approval, the entirety of the remainder of the Gross Settlement Amount will be allocated to Class Members. *Id.* ¶ 1.16. It is expected that each Class Member, on average, will be allocated \$677.46 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8.

## III. Released Claims

Plaintiffs are subject to a general release. Agreement ¶ 6.3. Settlement Class Members release “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.” *Id.* ¶ 6.1. The LWDA releases “any and all claims during the PAGA Period for civil penalties for violations of Labor Code sections 226(a) and 226.3 in connection with the Action or that reasonably could have been alleged based on the facts alleged in the Action.” *Id.* ¶ 6.2.

## LEGAL STANDARD

Any settlement of a class action lawsuit must be reviewed and approved by the trial court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to class members for their comment or objections. As the Manual for Complex Litigation (Third) explains, in the first step “counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation”:

If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Manual for Complex Litigation (Third) § 30.41.

A preliminary approval by the trial court thus is a conditional finding that the settlement does not appear to be unfair. As Professor Newberg comments, “[t]he strength of the findings made by a judge at

1 a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may  
2 find that the settlement proposal contains some merit, is within the range of reasonableness required for  
3 a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final  
4 hearing.” 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

5 The parties also may, at the preliminary approval stage, request that the court provisionally  
6 approve certification of the class—conditioned upon final approval of the settlement. As further  
7 explained by Professor Newberg:

8 The strength of the findings made by a judge at a preliminary hearing or conference concerning a  
9 tentative settlement proposal ... may be set out in conditional orders granting tentative approval  
10 to the various items submitted to the court. Three basic rulings are often conditionally entered at  
this preliminary hearing. These conditional rulings may approve a temporary settlement class,  
the proposed settlement, and the class counsel’s application for fees and expenses.

11 4 Newberg on Class Actions, at § 11.26. Indeed, “pre-certification settlements are routinely approved if  
12 found to be fair and reasonable.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001);  
13 accord *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1803 (1996) (explaining that a settlement  
14 before any “adversary certification” may still be approved if a court is satisfied that it is “fair, adequate  
15 and reasonable”).

## 16 DISCUSSION

### 17 I. The Proposed Settlement Is Fair, Adequate, and Reasonable.

#### 18 A. The Settlement Is Entitled to a Presumption of Fairness.

19 A trial court must determine and approve a class action settlement is fair to “prevent fraud,  
20 collusion or unfairness to the class” through settlement and dismissal of the class action.” *Consumer*  
21 *Advocacy Grp., Inc. v. Kintetsu Enters. of America*, 141 Cal. App. 4th 46, 60 (2006). Courts presume the  
22 absence of fraud or collusion in the negotiation of settlement unless there is evidence to the contrary.  
23 *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat’l*  
24 *Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig.*, 560 F. Supp. 957,  
25 962 (N.D. Ga. 1980). Indeed, a presumption of fairness exists where (i) the settlement is reached  
26 through arm’s length bargaining; (ii) investigation is sufficient to allow counsel and the court to act  
27 intelligently, (iii) counsel is experienced in similar litigation, and (iv) the percentage of objectors is  
28 small. *Wershba*, 91 Cal. App. 4th at 245 (citing *Dunk*, 48 Cal. App. 4th at 1802).

1 While the recommendations of counsel proposing the settlement are not conclusive, the Court  
2 can properly take them into account, particularly where counsel have conducted thorough investigation,  
3 are experienced with this type of litigation, and agreed to a resolution through arm's length negotiation.  
4 See Newberg on Class Actions, *supra*, at § 11.47; *National Rural Telecomms. Coop.*, 221 F.R.D. at 528  
5 ("So long as the integrity of the arm's length negotiation process is preserved, however, a strong initial  
6 presumption of fairness attaches to the proposed settlement ... and 'great weight' is accorded to the  
7 recommendations of counsel, who are most closely acquainted with the facts of the underlying  
8 litigation.") (citations omitted). In such circumstances, courts do not substitute their judgment for that of  
9 the proponents. *National Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.  
10 2004); *accord Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp.  
11 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers*  
12 *v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

13 Here, both Plaintiffs' counsel and Defendant's counsel have a great deal of experience in wage  
14 and hour class action litigation. Plaintiffs' counsel have extensive class action and litigation experience  
15 and have been approved as class counsel in numerous wage and hour class actions. Declaration of Larry  
16 W. Lee ("Lee Decl.") ¶¶ 5-8; Yang Decl. ¶¶ 10-14; Declaration of Emil Davtyan ("Davtyan Decl.") ¶¶  
17 2-6. Each side has apprised the other of their respective factual contentions and legal theories, and each  
18 side has considered the other's contentions and theories. Defendant provided the relevant numbers of  
19 individuals and wage statements, among other things—enabling Plaintiffs to assess the full value of  
20 Class Members' claims and further enabling negotiations to take place between the Parties. Yang Decl. ¶  
21 4. As further discussed below, the settlement is the result of extensive arm's length negotiations between  
22 the Parties and their counsel. *Id.* ¶¶ 3-5.

23 **B. The Settlement Obtains an Excellent Result for Class Members.**

24 **1. The Settlement Amount Is Reasonable.**

25 The Agreement requires Defendant to pay at least \$1,200,000.00. Agreement ¶ 5.1. This is an  
26 excellent result for Class Members. This amounts to approximately 71.78% of Defendant's potential  
27 liability and is an excellent result for Class Members. Yang Decl. ¶ 6.

1 To wit, Plaintiffs contended that class claims under Section 226(e) result in a \$50 penalty for the  
2 first non-compliant wage statement to each Class Member and a \$100 penalty for each additional non-  
3 compliant wage statement to the Class Member, up to a maximum of \$4,000 per class member. Yang  
4 Decl. ¶ 6.<sup>2</sup> Plaintiffs also contended that PAGA penalties under Section 226.3 also result in up to \$250  
5 per non-compliant wage statement. *Id.*

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

13 While the Parties disagree on the law and its application to the facts, each Party recognized in  
14 negotiations that, if taken to trial, the other Party would at least have reasonable arguments, such that the  
15 Gross Settlement Amount to which the Parties ultimately agreed was reasonable. Yang Decl. ¶ 8.  
16 Ultimately, Plaintiffs argued that the potential total recovery amounted to \$1,671,850.00—which  
17 included \$450,100.00 in penalties under Section 226(e)<sup>3</sup> and \$1,221,750.00 in penalties under Section  
18 226.3.<sup>4</sup> *Id.* Plaintiffs contend that the Gross Settlement Amount of \$1,200,000.00—approximately  
19 71.78% of the potential total recovery of \$1,671,850.00—is an excellent result. *Id.*

20 Numerous courts have held that gross settlement amounts of less than 20%—and as little as  
21 8%—of a defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*  
22 *Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (holding that class action settlement recovering 16% of  
23 potential exposure was fair and reasonable; “It is well-settled law that a cash settlement amounting to  
24 only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.  
25 Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing

26 <sup>2</sup> Except as otherwise noted, all “Section” references are to the Labor Code.

27 <sup>3</sup> \$50.00 for each of 772 initial wage statements + \$100 for each of 4,115 subsequent wage statements =  
28 \$450,100.00.

<sup>4</sup> \$250.00 for each of 4,887 wage statements = \$1,221,750.00.

the litigation to judgment.”); *Bellinghausen v. Tractor Supply Co.*, 2015 WL 1289342, at \*6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, 2014 WL 2472316, at \*3 (C.D. Cal. May 30, 2014) (acknowledging risks of continued litigation and granting preliminary approval of wage and hour class action settlement obtaining 9.1% of projected damages); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL 5878390, at \*6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable).

Although Plaintiffs and their counsel are confident that litigation of the claims would result in a classwide judgment against Defendant, they recognize the inherent risks in litigation, including the specific risks that class certification could be denied, liability could not be established at trial, or the applicable law could change. Yang Decl. ¶ 9. The settlement for each Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. *Id.*

Class Members would not need to do anything to receive their share of settlement funds. This eliminates any burden to Class Members who wish to participate in the class action settlement. Despite the fairness of the settlement terms, should any Class Member wish to pursue his or her own case for the claims proposed to be settled and released, each Class Member has the right to object or to submit a request for exclusion (i.e., opt out) from the settlement.

## **2. The Settlement Releases Are Appropriate.**

As discussed above, only Plaintiffs are subject to a general release. Agreement ¶ 6.3. Settlement Class Members are only subject to a release of claims 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. *Id.* ¶ 6.1. Moreover, the settlement releases apply to claims arising during the Class Period only. *Id.* Similarly tailored, the LWDA releases only claims for civil penalties for violations of Sections 226(a) and 226.3 during the PAGA Period in connection with the Action or that reasonably could have been alleged based on the facts alleged in the Action. *Id.* ¶ 6.2.

In sum, because Plaintiffs alleged targeted claims in the Action, any settlement releases also are specifically tailored to the facts alleged. The settlement releases are thus appropriate. *E.g., Carter v. City*

1 of *Los Angeles*, 224 Cal. App. 4th 808, 820 (2014) (“A general release—covering ‘all claims’ that were  
2 or could have been raised in the suit—is common in class action settlements.”).

### 3                   **3.       The Class Notice Is Adequate.**

4               A court has broad discretion in approving appropriate class notice. Code Civ. Proc. § 1781; *Cartt*  
5 *v. Superior Court*, 50 Cal. App. 3d 960, 973-74 (1975). Here, the Agreement requires Defendant to  
6 provide to the Administrator each Class Member’s last known address, among other information (the  
7 “Class Data”), within 14 days of a Preliminary Approval Order. Agreement ¶ 3.2. Within 28 days of a  
8 Preliminary Approval Order, the Administrator would mail the Notice of Class Action Settlement  
9 (“Class Notice”) to each Class Member to provide notice of settlement via First Class U.S. Mail, using  
10 the last known address for each Class Member, based on Class Data. *Id.* ¶¶ 3.3, 3.4. Any Class Notice  
11 returned to the Administrator as undeliverable would be sent promptly via First Class U.S. Mail to the  
12 forwarding address affixed thereto. *Id.* ¶ 3.4. If no forwarding address is provided, the Administrator  
13 would promptly attempt to determine the correct address using a single skip-trace search and then  
14 promptly send a single re-mailing. *Id.*

15               The Class Notice accurately informs Class Members of the settlement and their rights.  
16 Agreement Ex. A. For example, Class Members are informed of their rights to object or to opt out. The  
17 Class Notice is adequate as it “present[s] a fair recital of the subject matter and proposed terms” of the  
18 settlement. *E.g., Mendoza v. United States*, 623 F.2d 1338, 1351 (9th Cir. 1980) (quoting *Marshall v.*  
19 *Holiday Magic*, 550 F.2d 1173, 1177 (9th Cir. 1977)).

### 20                   **C.       The Requested Payments and Allocations Are Reasonable.**

21               The Agreement provides for a Gross Settlement Amount of \$1,200,000.00. Agreement ¶ 5.1.  
22 From the Gross Settlement Amount, attorneys’ fees will be no more than 33⅓% of the Gross Settlement  
23 Amount (or \$400,000.00) and litigation costs are not to exceed \$20,000.00. *Id.* ¶ 5.1.1. The Class  
24 Representative Award will be no more than \$10,000.00 for each Plaintiff. *Id.* ¶ 5.1.2. Administration  
25 Costs will be no more than \$12,000.00. *Id.* ¶ 5.1.3. The PAGA Penalty Fund will be \$300,000.00, and  
26 pursuant to statute, 75% of the PAGA Penalty Fund (or \$225,000.00) would constitute the LWDA  
27 Payment, and 25% of the PAGA Penalty Fund (or \$75,000.00) would be payable to Aggrieved  
28

Employees on a pro rata basis, based on the number of relevant wage statements they received. *Id.* ¶ 5.1.4.<sup>5</sup>

**1. Each Class Member, on Average, Would Receive About \$677.**

It is expected that, on average, each Class Member would be allocated approximately \$677.46 (*after* all requested payments from the Gross Settlement Amount). Yang Decl. ¶ 8. The amount paid on average to each Class Member may increase, depending on how many Class Members opt out of the class action settlement. *Id.* The amount actually paid to any Class Member may increase or decrease depending on his or her number of relevant wage statements during the Class Period. *Id.* After deducting any approved payments for an Attorneys’ Fees and Costs Award, Class Representative Awards, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, the entire remainder would be allocated among Settlement Class Members on a pro rata basis, based on the number of relevant wage statements they received. Agreement ¶ 5.2.

As Plaintiffs’ lawsuit sought penalties only, 100% of Class Members’ Individual Settlement Payments would be characterized as penalties. Agreement ¶ 5.5. None of the settlement funds will revert to Defendant. *Id.* ¶ 5.1. Instead, the principal for any uncashed checks (upon the expiration date) would be distributed pursuant to Code of Civil Procedure section 384 to Legal Aid at Work. *Id.* ¶ 5.4.<sup>6</sup>

**2. The Requested Attorneys’ Fees and Costs Award Is Reasonable.**

California state and federal courts have recognized that an award of attorneys’ fees is appropriately determined based on a percentage of the total value of settlement benefits to Class Members. *E.g., Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Wershba*, 91 Cal. App. 4th at 254; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997). Indeed, under California law, the award of attorneys’ fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the

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<sup>5</sup> Plaintiff files this motion with the Court and with the LWDA via online submission. Yang Decl. ¶ 15.

<sup>6</sup> Neither Class Counsel nor Defendant’s Counsel have any relationship with or connection to Legal Aid at Work. Yang Decl. ¶ 16.

1 trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine  
2 the amount of a reasonable fee by choosing an appropriate percentage of the fund created”). Under the  
3 percentage of the fund method, a court’s objective remains to “mimic the market” in fixing a reasonable  
4 fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (Posner, J.) (“When a fee is set by a court  
5 rather than by contract, the object is to set it at a level that will approximate what the market will set ...  
6 The judge, in other words, is trying to mimic the market in legal services.”).

7 Attorneys’ fees awards of 35% of the fund are within the expected range in the “market in legal  
8 services. *See Fitzpatrick, An Empirical Study of Class Action Settlements and Their Fee Award*, 7 J.  
9 Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that  
10 “[m]ost fee awards were between 25 percent and 35 percent”). An attorneys’ fees award of 35% of the  
11 fund mimics the market and “is supported by the fact that typical contingency fee agreements provide  
12 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is tried.”  
13 *Fernandez v. Victoria Secret Stores LLC*, 2008 WL 8150856, at \*16 n.59 (C.D. Cal. July 21, 2008)  
14 (citing Brickman, *Effective Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-*  
15 *Competitive Fees* (Fall 2003) 81 Wash U. L. Q. 653, 659 n. 11). Indeed, an attorneys’ fees award of 35%  
16 of the fund is consistent with “empirical studies [that] show that ... fee awards in class actions average  
17 around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008).

18 Here, Plaintiffs will request an attorneys’ fees award of 33⅓% of the Gross Settlement Amount.  
19 Agreement ¶ 5.1.1. Further, the Parties have agreed to reimbursement of Class Counsel’s litigation costs.  
20 Class Counsel have incurred costs at their own risk, for example, for filing the lawsuit, service of  
21 process, mediation fees, and payment of other litigation related costs.

### 22 3. The Proposed Class Representative Award Is Reasonable.

23 Plaintiffs and proposed Class Representatives Patricia O’Connor and Steven Rodriguez request a  
24 modest Class Representative Awards of \$10,000.00. The requests are reasonable in light of the general  
25 release that the Agreement requires of Plaintiffs but not of any other Class Member. Independently, the  
26 requests are appropriate in recognition of Plaintiffs’ efforts on behalf of the Class. Declaration of  
27 Patricia O’Connor (“O’Connor Decl.”) ¶¶ 2-3; Declaration of Steven Rodriguez (“Rodriguez Decl.”) ¶¶  
28 2-3.

1 As part of their duties as the Class Representatives, Plaintiffs provided all necessary information  
2 and evidence that resulted in this settlement. O'Connor Decl. ¶¶ 2-3; Rodriguez Decl. ¶¶ 2-3. Plaintiffs  
3 met and conferred with Class Counsel on a number of occasions to discuss the case. *Id.* Plaintiffs  
4 provided information and documents to Class Counsel and made themselves available to answer any  
5 questions during litigation. *Id.* Ultimately, Plaintiffs' efforts secured an exceptional result for the Class.

6 In addition to the invaluable services that Plaintiffs provided, they also took a significant risk,  
7 both professionally and monetarily. O'Connor Decl. ¶ 4; Rodriguez Decl. ¶4. Because the alleged claims  
8 involve the payment of costs to the prevailing party, Plaintiffs could have possibly faced paying  
9 Defendant's costs had Defendant prevailed in the action. Furthermore, Plaintiffs risks prejudice in the  
10 future from other potential employers that may be less willing to hire an individual who has filed suit  
11 against a prior employer. Plaintiffs took these risks upon themselves and the whole class benefited.  
12 Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did  
13 not prevail, nor did they have to face potential prejudice in future employment.

#### 14 **4. The Administration Costs Are Reasonable.**

15 Phoenix Settlement Administrators, a well-recognized class action settlement administrator, has  
16 quoted Administration Costs not to exceed \$12,000.00 to send notices and administer the settlement.  
17 The Administration Costs are reasonable and should be approved.

#### 18 **II. The Class Meets All Requirements for Certification.<sup>7</sup>**

19 For purposes of settlement approval, a detailed analysis of the elements required for class  
20 certification is not required. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 620, 622-27 (1997). The trial  
21 court can appropriately utilize a lesser standard of scrutiny to determine the propriety of a settlement  
22 class as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19; *see also Wershba*, 91 Cal.  
23 App. 4th at 240 (explaining there is no "ironclad requirement" to conduct an evidentiary hearing to  
24 satisfy the prerequisites for class certification). Because a settlement eliminates the need for a trial, when  
25 considering whether to certify a settlement class, the court is not faced with the case management issues  
26

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27 <sup>7</sup> Defendant expressly reserves its objections and does not agree that class certification of any of the  
28 claims would be appropriate outside of the settlement context. Plaintiffs disagree but has considered the  
inherent risk of class certification motion practice.

1 present in certification of a litigation class. *Global Mins. & Metals Corp. v. Superior Court*, 113 Cal.  
2 App. 4th 836, 859 (2003) (“[I]t is well established that trial courts should use different standards to  
3 determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a  
4 lesser standard of scrutiny is used for settlement cases.”) (citing *Dunk*, 48 Cal. App. 4th at 1807 n.19).

5 Even under the standard applicable to litigation classes, the allegations in this lawsuit present  
6 paradigmatic class action claims that satisfy the elements of class certification.

7 **A. The Class Is Ascertainable and Sufficiently Numerous.**

8 Class Members are identifiable from Defendant’s records. The class definition “is precise,  
9 objective and presently ascertainable.” *Sevidal v. Target Corp.*, 189 Cal. App. 4th 905, 919 (2010).  
10 Indeed, there are approximately 772 Class Members. Agreement ¶ 1.6. Numerosity thus is sufficiently  
11 established. *E.g.*, *Rose v. City of Hayward*, 126 Cal. App. 3d 926, 934 (1981) (stating that “[n]o set  
12 number is required as a matter of law for the maintenance of a class action” and citing examples in  
13 which classes of 10—*Bowles v. Superior Court*, 44 Cal. 2d 574 (1955)—and of 28—*Hebbard v.*  
14 *Colgrove*, 28 Cal. App. 3d 1017 (1972)—were upheld).

15 **B. The Class Establishes a Community of Interest.**

16 “The community of interest requirement involves three factors: ‘(1) predominant common  
17 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)  
18 class representatives who can adequately represent the class.’” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429,  
19 435 (2000).

20 **1. Plaintiffs’ Claims Are Typical of Those of the Class.**

21 Plaintiffs alleges that Defendant furnished unlawful wage statements as a result of Defendant’s  
22 common wage statement policies, practices, or procedures. With respect to typicality, Plaintiffs—  
23 exactly like other members of the Class—were provided wage statements that fail to accurately show all  
24 applicable hourly rates. O’Connor Decl. ¶ 2; Rodriguez Decl. ¶ 2.

25 **2. Plaintiffs’ Claims Raise Common Questions of Law and Fact.**

26 The typical claims raise questions of law and fact common to the class. *See Hanlon v. Chrysler*  
27 *Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared legal issues with divergent legal factual  
28 predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within

the class”). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Indus., Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971).

Where the employer’s conduct is uniformly directed at a class of employees, as it is here, the classwide impact of Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

### **3. Plaintiffs and Their Counsel Adequately Represent the Class.**

With respect to adequate representation, Plaintiffs do not have any interests adverse to the Class, and no such issues have been raised or presented. O’Connor Decl. ¶ 3; Rodriguez Decl. ¶ 3. Plaintiffs have taken all necessary steps to represent the interests of the Class, including by providing information and documents to Class Counsel, making themselves available to discuss the claims, providing wage statements that they were issued, reviewing wage statements while the lawsuit was pending, and answering any questions. *Id.* For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

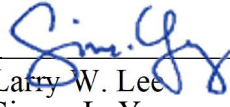
From the inception of the case, Class Counsel has zealously represented the interests of the Class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representatives. Class Counsel have been approved as class counsel in a number of prior cases, have litigated numerous other class action cases, and are competent to represent the Class. Lee Decl. ¶¶ 5-8; Yang Decl. ¶¶ 10-14; Davtyan Decl. ¶¶ 2-6.

### **CONCLUSION**

The proposed settlement would result in substantial monetary benefits to class members. It was the result of informed, arm’s length negotiations conducted by counsel experienced in wage and hour class action litigation. Its terms appear to be fair, adequate, and reasonable, and there is no reason to believe the proposal is outside the range of reasonableness for such a settlement. Accordingly, for the benefit of the Class, Plaintiffs respectfully requests that the Court (i) grant preliminary approval of the settlement, (ii) approve and authorize the mailing of the proposed Class Notice, and (iii) schedule a Final Approval Hearing.

1 DATED: December 12, 2023

DIVERSITY LAW GROUP, P.C.

2  
3 By:   
4 Larry W. Lee  
5 Simon L. Yang  
6 Attorneys for Plaintiffs  
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3  
4 STATE OF CALIFORNIA ]  
5 COUNTY OF LOS ANGELES ]ss.  
6 ]

7 I am employed in the County of Los Angeles, State of California. I am over the age of  
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite  
9 1250, Los Angeles, California 90071.

10 On December 12, 2023, I served the following document(s) described as:

- 11 **1. PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY**  
**APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN SUPPORT**
- 12 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 13 **3. DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFFS' MOTION**  
**FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**
- 14 **4. DECLARATION OF EMIL DAVTYAN IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 15 **5. DECLARATION OF PATRICIA O'CONNOR IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 16 **6. DECLARATION OF STEVEN RODRIGUEZ IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**  
**SETTLEMENT**
- 17 **7. [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL**  
**OF CLASS ACTION SETTLEMENT**

18 on the interested parties in this action as follows:

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23  
24  
25  
26  
27  
28  
Derek R. Havel  
Matthew A. Tobias  
David A. Alvarez

Brett Young  
Ian Michalak  
Sheppard, Mullin, Richter & Hampton LLP  
333 S. Hope Street, 43<sup>rd</sup> Floor

*Attorney for Defendant Whole Foods Market  
California, Inc.*

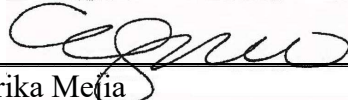
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  X   BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE E-Filing System at the website [www.efile.acelegal.com](http://www.efile.acelegal.com), addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 12, 2023, at Los Angeles, California.

  
\_\_\_\_\_  
Erika Mejia