

FILED

San Francisco County Superior Court

FEB 27 2023

CLERK OF THE COURT

BY: Chadla Green
Deputy Clerk



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

TESSA FRANKE, as an individual and on behalf
of all others similarly situated, and as a private
attorney general,

Plaintiff,

vs.

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

Defendants.

Case No. CGC-20-586827

ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

1 The Court issued a tentative ruling granting Plaintiff's Motion for Preliminary Approval of Class
2 Action Settlement. The parties submitted on the tentative ruling, which is hereby adopted.

3 **I. RECITALS**

4 1. On September 28, 2020, Plaintiff initiated this class and Labor Code Private Attorneys
5 General Act of 2004 ("PAGA") action that seeks to remedy alleged failures to furnish lawful wage
6 statements. The wage statement claim alleges non-exempt employees who were paid shift differential
7 wages by Defendant, Whole Foods Market California, Inc., were furnished wage statements that fail to
8 accurately itemize and show the number of total hours worked. Defendant denies the allegations.

9 2. On October 18, 2022, the Parties attended a mediation. The Parties were able to
10 negotiate the settlement terms in the Amended Joint Stipulation of Class Action Settlement (the
11 "Agreement").¹

12 **II. FINDINGS**

13 3. The Court conditionally certifies the following Class: any current or former non-exempt
14 employee who worked for Defendant in the State of California and received shift differential wages at
15 any time from April 6, 2019, through January 29, 2021 (the "Class Period").

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

27
28 ¹ The operative Amended Settlement Agreement is attached as Exhibit 1 to the Second Supplemental Declaration of Simon L. Yang.

1 **III. ORDERS**

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

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

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

15 7. A final fairness hearing on the question of whether the proposed Agreement, the
16 allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the
17 Labor Workforce & Development Agency, and the Class Representative Award should be finally
18 approved as fair, reasonable, and adequate as to the members of the Class is set for June 26, 2023, at
19 11:00 a.m. in this Court.

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

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

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

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

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

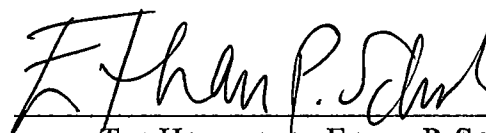
14 13. The Court reserves the right to adjourn or continue the date of the final fairness hearing
15 and all dates provided for in the Agreement without further notice to the Class, although those who
16 submit objections shall be notified of any continuances of the final approval hearing. The Court retains
17 jurisdiction to consider all further applications arising out of or connected with the Agreement.

18 14. Pursuant to California Labor Code section 2699(1)(3), Class Counsel shall provide a copy
19 of this Order to the Labor and Workforce Development Agency within ten (10) calendar days after
20 entry.

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

24 **IT IS SO ORDERED.**

25
26 DATED: Feb. 27, 2023


THE HONORABLE ETHAN P. SCHULMAN

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On February 27, 2023, I electronically served ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **FEB 27 2023**

Mark Culkins, Interim Chief Executive Officer of the
Court

By: 
Felicia Green, Deputy Clerk