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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

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

[Hon. Ethan P. Schulman, Department 304]

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

Date: February 9, 2023
Time: 11:00 a.m.
Department: 304

Complaint Filed: September 28, 2020

Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on January 18, 2023, and a hearing was held before this Court on February 9, 2023.

I. RECITALS

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

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

II. FINDINGS

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

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

III. ORDERS

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

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

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

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

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

22 9. The Court appoints and designates Phoenix Settlement Administrators as the
23 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
24 Members using the procedures set forth in the Agreement.

25 10. Any Class Member may choose to opt out of and be excluded from the settlement as
26 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.
27 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
28 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and

1 signed by each such Class Member opting out and must otherwise comply with the requirements
2 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
3 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
4 Judgment.

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

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

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

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

16 **IT IS SO ORDERED.**

17 DATED: _____, 2023

THE HONORABLE ETHAN P. SCHULMAN