

FILED

San Francisco County Superior Court

JUN 27 2023

CLERK OF THE COURT

BY:

Christina E. Allen

Deputy Clerk



SUPERIOR COURT OF CALIFORNIA

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

ORDER GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT

1 On or about June 1, 2023, Plaintiff, Tessa Franke, filed a motion for an Order Granting Final
2 Approval of Class Action Settlement, and on June 26, 2023, a hearing was held on this matter.

3 The Court has considered the papers and evidence, including the Joint Stipulation of Class
4 Action Settlement (collectively, the “Agreement”),¹ the arguments of counsel, and all other matters
5 presented to the Court regarding final approval of the settlement, approval of requested allocations from
6 the settlement fund, and entry of final judgment.

7 **I. Background**

8 On September 28, 2020, Plaintiff, Tessa Franke, initiated this class and Labor Code Private
9 Attorneys General Act of 2004 (“PAGA”) action against Defendant, Whole Foods Market California,
10 Inc. on behalf of a putative class of current and former non-exempt employees who worked for
11 Defendant in the State of California and received shift differential wages, and as a proxy for the State,
12 the lawsuit pursues class action and PAGA claims for Defendant’s alleged failures to furnish wage
13 statements that accurately show the total hours worked. Defendant denies the allegations.

14 **A. Class Members**

15 The Class is defined to include all current and former non-exempt employees who worked for
16 Defendant in the State of California and received shift differential wages from April 6, 2019, through
17 January 29, 2021 (the “Class Period”). All Class Members are also Aggrieved Employees. The PAGA
18 Period is the same as the Class Period.

19 **B. Operation of the Settlement**

20 Pursuant to the Court’s February 27, 2023 Preliminary Approval Order, the Court conditionally
21 certified the Class and granted preliminary approval to the settlement. The Preliminary Approval Order
22 also approved of the proposed forms of notice to the Class. The Court entered the Preliminary Approval
23 Order after review and consideration of all of the pleadings filed in connection herewith, and the oral
24 presentations made by counsel at the hearing. In compliance with the Preliminary Approval Order, the
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26

27 ¹ The Agreement is attached as Exhibit 1 to the Second Supplemental Yang Declaration filed February
28 22, 2023.

1 Notice of Class Action Settlement ("Class Notice") was sent to all Class Members via first class mail.
2 The notice process was timely completed.

3 This Court finds that the Agreement appears to be the product of serious, informed, non-
4 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment
5 to any individuals. The Court further finds that the Agreement is fair, adequate, and reasonable and that
6 Plaintiff has satisfied the standards for final approval of a class action settlement under California Code
7 of Civil Procedure section 382. .

8 Certification of a settlement class is the appropriate judicial device under these circumstances.

9 Good cause appearing **IT IS HEREBY ORDERED** as follows:

10 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
11 Agreement.

12 2. The Court has jurisdiction over the subject matter of the litigation, the Class
13 Representative, Settlement Class Members, and Defendant.

14 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
15 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice
16 practicable under the circumstances to all Class Members, and fully met the requirements of California
17 law and due process.

18 4. The Court approves the settlement of the above-captioned action, as set forth in the
19 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. The Parties are directed
20 to perform in accordance with the terms set forth in the Agreement.

21 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
22 and attorneys' fees.

23 6. The Court hereby certifies the following Class of all current and former non-exempt
24 employees who worked for Defendant, Whole Foods Market California, Inc., in the State of California
25 and received shift differential wages from April 6, 2019, through January 29, 2021.

26 7. With respect to the Class and for purposes of approving the settlement only and for no
27 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
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1 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
2 the Class, and there is a well-defined community of interest among members of the Class with respect to
3 the subject matter of the non-exempt claims in the Action; (c) the claims of Class Representative are
4 typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately
5 protected the interests of the members of the Class; (e) a class action is superior to other available
6 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
7 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in her individual and
8 representative capacities and for the Class.

9 8. The Court appoints Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and
10 William Marder of Polaris Law Group as Class Counsel.

11 9. The Court appoints Plaintiff Tessa Franke as Class Representative.

12 10. No Class Members objected to the Settlement following a full and fair opportunity to
13 participate.

14 11. Six Class Members requested exclusion.

15 12. Pursuant to the PAGA, Class Counsel provided the Labor and Workforce Development
16 Agency ("LWDA") notice of the settlement on January 19, 2023, and notice of the revised settlement on
17 February 22, 2023. The LWDA did not object to the settlement. The Court finds that the notice
18 complied with the statutory requirements of the PAGA.

19 13. Within 21 days after the grant of Final Approval of the settlement, Defendant shall
20 deposit the Gross Settlement Amount of \$1,200,000.00 with the Administrator, pursuant to the terms of
21 the Agreement.

22 14. From the Gross Settlement Amount, the Administrator shall pay:

- 23 • to Class Counsel attorneys' fees in the amount of \$400,000.00 and reimbursement of
- 24 costs in the amount of \$12,350.32;
- 25 • to Class Representative Tessa Franke for her unique services to the Class, and as
- 26 consideration for the execution of a general release, the amount of \$2,500.00;
- 27 • to the LWDA the amount of \$60,000.00 for its 75% share of PAGA Penalties; and
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- to Phoenix Settlement Administrators the amount of \$42,500.00 for its fees and costs in administering the settlement.

15. The Court finds that these amounts are fair and reasonable. The Administrator is directed to make such payments in accordance with the terms of the Agreement.

16. The Court approves the Individual Settlement Payment and Individual PAGA Payment amounts, which shall be distributed by the Administrator pursuant to the terms of the Agreement, after allocation of the amounts set forth in Paragraph 9.

17. The Court hereby orders the parties to implement the terms of the Agreement, including distributing the funds from any uncashed settlement checks to the State Controller Unclaimed Property Fund in the name of the recipient.

18. All Class Members who did not opt out of the Settlement shall be bound by the releases provided in the Agreement. The LWDA shall be bound by the PAGA releases provided in the Agreement. The Class Representative shall be bound by the additional general releases provided in the Agreement.

19. Pursuant to California Rule of Court, Rule 3.769(h), California Code of Civil Procedure section 664.6, and applicable law, the Court hereby retains jurisdiction over the Parties to enforce the terms of this Order.

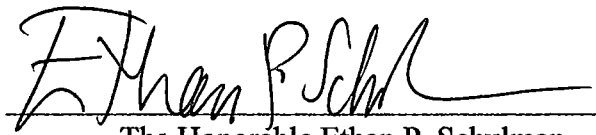
20. Upon completion of administration of the Settlement, the Settlement Administrator shall provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

21. A Status Conference is set for March 8, 2023 at 9:00 a.m. A status report must be filed no later than February 29, 2024. The status report shall provide an update from the Settlement Administrator regarding the distribution of settlement amounts to all designated recipients, the number of outstanding uncashed checks, and the amount of residual funds.

22. Plaintiff shall submit a copy of this Final Approval Order to the LWDA within ten days after entry pursuant to Labor Code section 2699(1)(3).

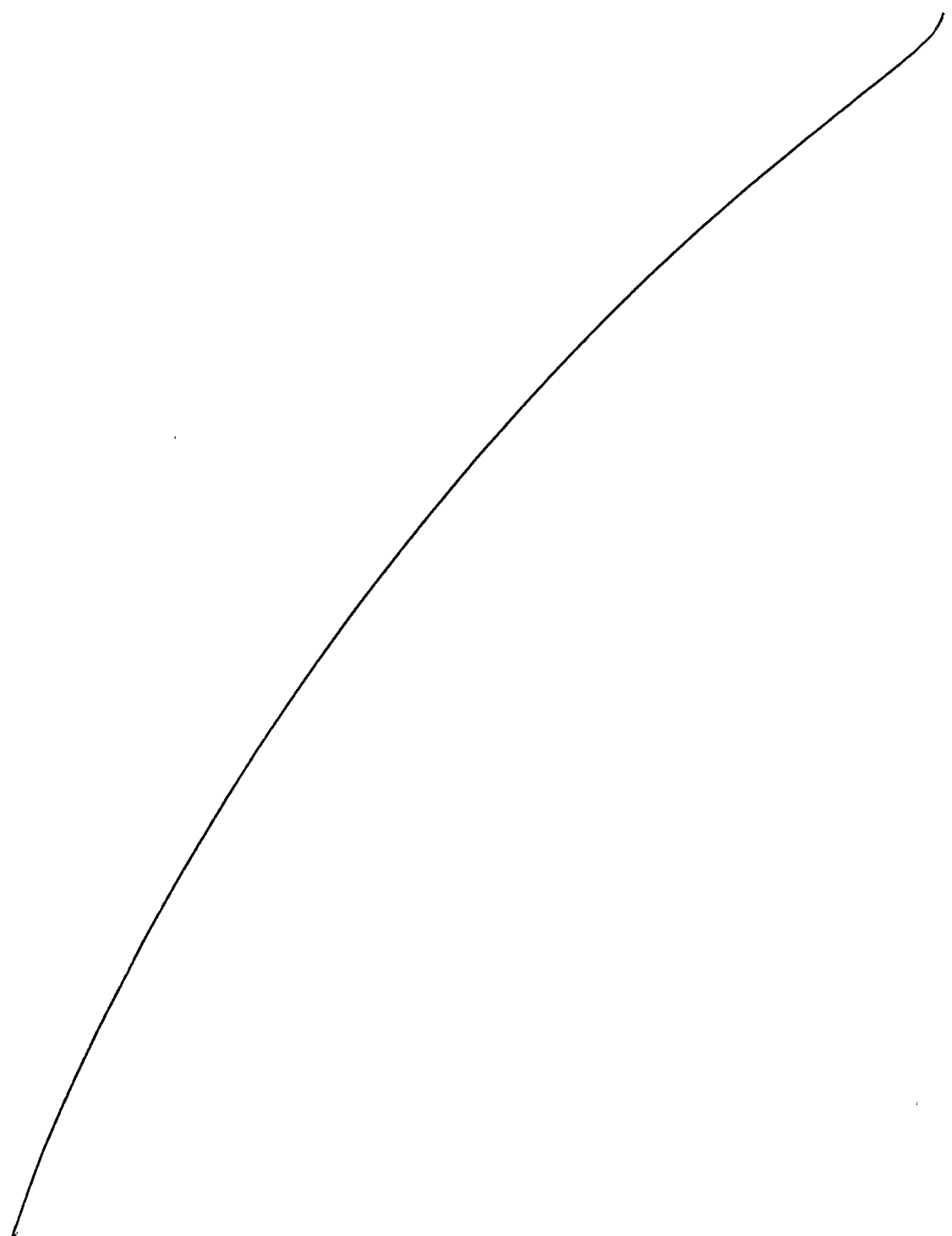
1 **IT IS SO ORDERED.**

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3 DATED: June 27, 2023



The Honorable Ethan P. Schulman
Judge, Superior Court

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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 June 27, 2023, I electronically served ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **JUN 27 2023**

Brandon E. Riley, Court Executive Officer

By: 
Felicia Green, Deputy Clerk