

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

**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]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

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

Complaint Filed: September 28, 2020

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/18/2023
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff. I make this declaration on the basis of my
4 own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On September 28, 2020, Plaintiff initiated this class and Labor Code Private Attorneys
8 General Act of 2004 (“PAGA”) action that seeks to remedy Defendant’s alleged failure to furnish lawful
9 wage statements. Upon the filing of the Action, Plaintiff and Defendant met and conferred about the
10 alleged claims. On or about November 16, 2020, Plaintiff served initial written discovery. On or about
11 November 20, 2020, Defendant served initial written discovery. On December 22, 2020, Plaintiff served
12 responses to the discovery. On January 11, 2021, Defendant served responses to the discovery. *Id.*

13 3. Class Counsel continued investigating the alleged claims and also analyzed any defenses
14 raised by Defendant. The Parties supplemented formal discovery by continuing to exchange information
15 and documentation pursuant to informal methods to assist them in exploring the possibility of a
16 mediated resolution. Defendant’s willingness to supplement formal discovery with informal discovery
17 enabled Plaintiff to evaluate the full scope of Defendant’s potential liability. For example, Defendant
18 provided the relevant numbers of individuals and wage statements, among other things—enabling
19 Plaintiff to assess the full value of Class Members’ claims and further enabling negotiations to take
20 place between the Parties. Ultimately, the Parties agreed to schedule a mediation.

21 4. On October 18, 2022, the Parties attended a mediation with Gig Kyriacou, an experienced
22 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
23 issue in the Action. With the mediator’s assistance and based on a mediator’s proposal, the Parties were
24 able to negotiate the settlement terms in the Joint Stipulation of Class Action Settlement (the
25 “Agreement”), a true and correct copy of which is attached as **Exhibit 1**.

26 5. The Agreement requires Defendant to pay \$1,200,000.00—or approximately \$24.83, on
27 average, per relevant wage statement. As discussed below, this amounts to approximately 13.02% of
28 Defendant’s potential liability and is an excellent result for Class Members. Plaintiff contended that

1 class claims under Section 226(e) result in a \$50 penalty for the first non-compliant wage statement to
2 each Class Member and a \$100 penalty for each additional non-compliant wage statement to the Class
3 Member, up to a maximum of \$4,000 per class member.¹ Plaintiff also contended that PAGA penalties
4 under Section 2699(f) also result in up to \$100 per non-compliant wage statement.

5 6. Defendant contested the merits and denied it was liable at all. Moreover, even if Plaintiff
6 prevailed on the merits, Defendant contested the extent of liability. For example, Defendant contended
7 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
8 resulting from knowing and intentional violations. Likewise, Defendant contended that PAGA penalties
9 in any event would be subject to discretionary reductions.

10 7. While the Parties disagree on the application of the law to the facts, each Party
11 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
12 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
13 reasonable. Ultimately, Plaintiff argued that the potential total recovery amounted to \$9,214,600.00—
14 which included \$4,382,500.00 in penalties under Section 226(e) and \$4,382,100.00 in penalties under
15 Section 2699(f).² Plaintiff contends that the Gross Settlement Amount of \$1,200,000.00—approximately
16 13.02% of the potential total recovery of \$9,214,600.00—is an excellent result. Based on the terms of
17 the Agreement (and Plaintiff’s request for attorneys’ fees of only 33⅓% of the Gross Settlement
18 Amount), it is expected that, on average, each Class Member would be allocated \$73.12 (*after* all
19 requested payments from the Gross Settlement Amount).³

20 8. Although I am confident that litigation of the claims would result in a classwide judgment
21 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
22 certification could be denied, liability could not be established at trial, or the applicable law could
23 change. I recognize that the settlement resulting from extensive arm’s length negotiations between the

24
25 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

26 ² \$50.00 for each of 8,992 initial wage statement per Class Member and \$100 for each of 39,329
subsequent wage statements = \$4,382,500.00. \$100.00 for each of 48,321 pay periods = \$4,832,100.00.

27 ³ The amount paid on average to each Class Member may increase, depending on how many Class
28 Members opt out of the class action settlement. 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.

Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation.

9. I am one of the primary attorneys on this matter. My qualifications are as follows: After completing my undergraduate education at The Wharton School at the University of Pennsylvania in 2004 with concentrations in Management and Human Resources, I continued studying labor and employment issues by enrolling in post-graduate education at the School of Labor and Employment Relations at the University of Illinois. I determined before enrolling in law school that I wanted to practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

10. Upon graduating from law school in 2008, I practiced labor and employment law at Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My practice focused on wage and hour class, collective, and representative actions, with a particular emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”). During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class, collective, and representative actions that resulted in published opinions, including for example, *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also able to obtain experience litigating representative claims or wage and hour matters through trial and appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015) (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App’x 631 (9th Cir. Jan. 9, 2014) (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective action with involving deductions from final paychecks). I also litigated class certification on numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (denial of class certification on behalf of retail employees alleging off-the-clock work).

11. Based on my experience in wage and hour class, collective, and representative actions, I have been interviewed and quoted in articles published in the Northern California Record about legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and hour class and representative action litigation, including for example articles on California kin care requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break laws in *California Transportation News*, a publication of the California Construction Trucking Association.

12. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C., which also focuses primarily on employment law. I have handled a number of wage and hour class and representative actions and continue litigating such matters in numerous Superior Courts and District Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have obtained class certification and been appointed class counsel. No court has ever found me to be inadequate class counsel.

13. My co-counsel and I will adequately represent the Class Members in this action. We have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

14. Along with the filing of the motion for preliminary approval of the settlement in this matter, my regular practice would be to direct my office staff to similarly upload a copy of the motion papers to the Labor and Workforce Development Agency (“LWDA”) in compliance with Section 2699(1)(2) and (4). Similarly, upon approval of a settlement in this matter, my regular practice would be to direct my office staff to similarly upload a copy of the Court’s judgment, papers, or other orders awarding civil penalties under PAGA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of January 2023, at Pasadena, California.

Simon L. Yang

EXHIBIT 1

DIVERSITY LAW GROUP, P.C.
 Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
 Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
 515 South Figueroa Street, Suite 1250
 Los Angeles, California 90071
 Telephone: (213) 488-6555
 Facsimile: (213) 488-6554

POLARIS LAW GROUP
 William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
 501 San Benito Street, Suite 200
 Hollister, California 95023
 Telephone: (831) 531-4214
 Facsimile: (831) 634-0333

Attorneys for Plaintiff and the Class

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 A Limited Liability Partnership
 Including Professional Corporations
 DEREK R. HAVEL, Cal. Bar No. 193464
 MATTHEW A. TOBIAS, Cal. Bar No. 271291
 BRETT D. YOUNG, Cal. Bar No. 305657
 333 South Hope Street, 43rd Floor
 Los Angeles, California 90071-1422
 Telephone: 213.620.1780
 Facsimile: 213.620.1398
 E mail dhavel@sheppardmullin.com
mtobias@sheppardmullin.com
byoung@sheppardmullin.com

Attorneys for Defendant

**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]

**JOINT STIPULATION OF CLASS ACTION
 SETTLEMENT**

Complaint Filed: September 28, 2020

Trial Date: None Set

JOINT STIPULATION OF CLASS ACTION SETTLEMENT

This Joint Stipulation of Class Action and PAGA Settlement is entered into by and between Plaintiff, Tessa Franke, on the one hand, and Defendant, Whole Foods Market California, Inc., on the other hand.

1. Definitions

As used in this Agreement, the following terms shall have the following meanings:

1.1. Action. “Action” means the civil lawsuit originally entitled *Tessa Franke v. Whole Foods Market California, Inc.*, filed on or about September 28, 2020, in the Superior Court of the State of California for the County of San Francisco designated as Case No. CGC-20-586827.

1.2. Administrator. “Administrator” means the third-party settlement administrator approved by the Court to administer the settlement.

1.3. Agreement. “Agreement” means this Joint Stipulation of Class Action Settlement.

1.4. Class Counsel. “Class Counsel” means Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L. Marder of Polaris Law Group.

1.5. Class Member. “Class Member” and “Aggrieved Employee” mean any current or former non-exempt employee who worked for Defendant in the State of California and received shift differential wages at any time during the Class Period. Defendant represents that there are approximately 8,992 Class Members.

1.6. Class Notice. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached as Exhibit A.

1.7. Class Period. “Class Period” and “PAGA Period” mean April 6, 2019, through January 29, 2021.

1.8. Court. “Court” means the Superior Court of California for the County of San Francisco.

1.9. Defendant. “Defendant” means Whole Foods Market California, Inc..

1.10. Defendant’s Counsel. “Defendant’s Counsel” means Derek R. Havel, Matthew A. Tobias, and Brett D. Young of Sheppard, Mullin, Richter & Hampton LLP.

1.11. Effective Date. “Effective Date” means: (a) if no objections to the settlement are filed, the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed and

1 no appeals are filed, the day following the expiration of the time for the filing of an appeal of the Final
2 Approval Order; or (c) if any appeals of the Final Approval Order are filed, the day following the
3 expiration of time to further appeal an order affirming the Final Approval Order.

4 **1.12. Final Approval Order.** “Final Approval Order” means an order granting final approval
5 of a settlement pursuant to this Agreement.

6 **1.13. Gross Settlement Amount.** “Gross Settlement Amount” means the maximum potential
7 settlement amount—inclusive of any Administration Costs, Attorneys’ Fees and Costs Award, Class
8 Representative Award, PAGA Penalty Fund, and Individual Settlement Payments—that Defendant may
9 be required to pay in connection with a Final Approval Order.

10 **1.13.1. Administration Costs.** “Administration Costs” means a Court approved payment
11 from the Gross Settlement Amount to the Administrator for administering the settlement, which includes
12 but is not limited to printing, distributing, and tracking Class Notices, processing any required tax
13 payments and reporting, providing any required tax forms, distributing payments pursuant to a Final
14 Approval Order, and providing necessary reports or declarations, as requested by the Court or Class
15 Counsel and Defendant’s Counsel.

16 **1.13.2. Attorneys’ Fees and Costs Award.** “Attorneys’ Fees and Costs Award” means a
17 Court approved payment from the Gross Settlement Amount for Class Counsel’s attorneys’ fees and
18 costs associated with the litigation and resolution of the Action (excluding third-party Administration
19 Costs separately addressed above).

20 **1.13.3. Class Representative Award.** “Class Representative Award” means a Court
21 approved payment from the Gross Settlement Amount to Plaintiff in recognition of her efforts and work
22 in prosecuting the Action on behalf of Class Members and in consideration of Plaintiff’s additional
23 general release of claims inapplicable to Settlement Class Members.

24 **1.14. Individual Settlement Payment.** “Individual Settlement Payment” means a Class
25 Member’s potential payment from the Net Settlement Amount and PAGA Penalty Fund.

26 **1.14.1. Individual Class Payment.** “Individual Class Payment” means a Settlement
27 Class Member’s potential payment from the Net Settlement Amount for settlement of class action
28 claims.

1 **1.14.2. Individual PAGA Payment.** “Individual PAGA Payment” means an Aggrieved
2 Employee’s potential payment from the PAGA Penalty Fund for settlement of PAGA claims.

3 **1.15. Net Settlement Amount.** “Net Settlement Amount” means the remainder of the Gross
4 Settlement Amount after Court approved deductions for the PAGA Penalty Fund, Attorneys’ Fees and
5 Costs Award, Class Representative Award, and Administration Costs.

6 **1.16. PAGA Penalty Fund & LWDA Payment.** “PAGA Penalty Fund” means the portion of
7 the settlement allocated to PAGA penalties. “LWDA Payment” means a payment of 75% of the PAGA
8 Penalty Fund to the Labor & Workforce Development Agency (“LWDA”).

9 **1.17. Parties.** “Parties” means Plaintiff and Defendant.

10 **1.18. Plaintiff.** “Plaintiff” means Tessa Franke.

11 **1.19. Preliminary Approval Order.** “Preliminary Approval Order” means an order granting
12 preliminary approval of a settlement pursuant to this Agreement.

13 **1.20. Released Party.** “Released Party” means Defendant and each of its past, present and
14 future agents, employees, servants, officers, directors, partners, trustees, representatives, shareholders,
15 stockholders, attorneys, parents, subsidiaries, equity sponsors, related companies/corporations and/or
16 partnerships, divisions, assigns, predecessors, successors, insurers, consultants, service providers, joint
17 venturers, joint employers, co-employers, dual employers, alleged joint employers, alleged co-
18 employers, alleged dual employers, affiliates, alter-egos, and affiliated organizations, and all of their
19 respective past, present and future employees, directors, officers, agents, attorneys, stockholders,
20 fiduciaries, parents, subsidiaries, and assigns.

21 **1.21. Settlement Class Members.** “Settlement Class Members” means Class Members who do
22 not exclude themselves from the class action settlement by complying with the procedures set forth in
23 the Class Notice to opt out of the class action settlement.

24 **2. Recitals**

25 **2.1. Initiation of Action.** On or about September 22, 2020, Plaintiff sent notice to the LWDA
26 and Defendant regarding violations of the Labor Code resulting from Defendant’s alleged failure to
27 furnish non-exempt employees with wage statements that accurately showed the total hours worked
28 whenever they were paid shift differential wages. On or about September 28, 2020, Plaintiff filed the

1 original complaint pursuing class action claims on behalf of a putative class of current and former non-
2 exempt employees of Defendants in the State of California who were paid shift differential wages. The
3 Complaint also pursues claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”)
4 for the same Labor Code violations.

5 **2.2. Class Counsel’s Investigation.** On numerous dates, Plaintiff and Defendant met and
6 conferred about the alleged claims. Plaintiff served written discovery and met and conferred with
7 Defendant about supplemental responses to the written discovery. Defendant also served written
8 discovery. The Parties also continued engaging in informal discovery, and Defendant provided Plaintiff
9 with information about various defenses. Class Counsel continued investigating the alleged claims and
10 also analyzed any defenses raised by Defendant.

11 **2.3. Mediation and Settlement.** On October 18, 2022, the Parties attended a mediation with
12 Gig Kyriacou, an experienced mediator knowledgeable of both the wage and hour laws and class and
13 representative action claims at issue in the Action. With the mediator’s assistance and based upon a
14 mediator’s proposal, the Parties were able to agree to settlement terms. The settlement was achieved
15 after extensive arm’s length negotiations in light of all known facts and circumstances—including the
16 uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate
17 issues.

18 **2.4. No Admission of Liability.** Defendant denied and continues to deny all of the allegations
19 made by Plaintiff in the Action. Although Defendant denied and continues to deny all of the allegations
20 made by Plaintiff in the Action, Defendant—without admitting or conceding any liability or wrongdoing
21 whatsoever—has agreed to settle the Action on the terms and conditions set forth in this Agreement for
22 the sole purpose of avoiding the burden, expense, and uncertainty of continuing the Action.

23 **2.5. Class Counsel’s Evaluation.** Based on Class Counsel’s ongoing investigation and
24 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,
25 adequate, and in the best interests of Class Members.

26 **2.6. Certification of Settlement Class.** This Agreement is contingent upon the approval and
27 certification by the Court of a class for purposes of settlement. The Parties agree to cooperate and take
28

all steps necessary and appropriate to effectuate all aspects of this Agreement and to obtain a Preliminary Approval Order and then Final Approval Order.

3. Notice to Class Members

3.1. Administrator. Plaintiff and Class Counsel shall request that the Court appoint Phoenix Settlement Administrators as the Administrator for purposes of sending notice of the settlement to Class Members. The Parties agree that Administration Costs should not exceed \$42,500.00.

3.2. Class Data for Administrator. Within fourteen calendar days of the Preliminary Approval Order, Defendant shall provide to the Administrator each Class Member's last known mailing address, as well as data sufficient for the Administrator to perform all necessary responsibilities pursuant to this Agreement.

3.3. Class Notice of Settlement. The Administrator shall send Class Notice to Class Members to provide notice of settlement within 28 calendar days of the Preliminary Approval Order, pursuant to the procedures below. This shall be the sole means of notice to Class Members.

3.4. Mailing of Notice. The Administrator shall send Class Notice to each Class Member via First Class U.S. Mail, using the last known mailing address for each Class Member, based on class data provided by Defendant. Any Class Notice returned to the Administrator as undeliverable shall be sent promptly via First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Administrator shall promptly attempt to determine the correct address using a single skip-trace search and shall then promptly send a single re-mailing.

3.5. Proof of Mailing. The Administrator shall provide Class Counsel and Defendant's Counsel a declaration of due diligence and proof of mailing with regard to mailing of Class Notice.

4. Class Members' Response Options

4.1. Consideration Period. Class Members shall be provided 45 calendar days after the postmark date of the initial mailing of Class Notice to exercise any rights to opt out of or object to the class action settlement. Except as provided herein, no Class Member responses that are postmarked more than 45 calendar days after the initial mailing of Class Notice shall be considered. The Parties shall do nothing to encourage or solicit Class Members to opt out of or object to the class action settlement.

1 **4.2. Objection Right and Effect.** Settlement Class Members shall be given the opportunity to
2 object to the terms of the class action settlement. Settlement Class Members may object to the class
3 action settlement by mailing to the Administrator an objection within 45 calendar days after the
4 postmark date of the initial mailing of Class Notice, which describes the objection and states any
5 intention to appear at the final approval hearing. Alternatively, Settlement Class Members may appear at
6 the final approval hearing to object to the class action settlement. Absent good cause as determined by
7 the Court, any Settlement Class Member who does not comply with the objection procedures in the
8 Class Notice shall be deemed to have waived any objections and shall be foreclosed from making any
9 objection, whether by appeal or otherwise, to the class action settlement. Settlement Class Members who
10 object to the class action settlement pursuant to the terms of the Class Notice shall remain subject to
11 being bound by the release provisions in this Agreement pursuant to a Final Approval Order and shall
12 remain eligible to receive an Individual Class Payment.

13 **4.3. Opt-Out Right and Effect.** Class Members shall be given the opportunity to opt out of
14 the class action settlement. Class Members may opt out of the class action settlement by mailing to the
15 Administrator a Request for Exclusion within 45 calendar days after the postmark date of the initial
16 mailing of Class Notice. Any Request for Exclusion that does not comply with the procedures in the
17 Class Notice shall be deemed void and ineffective. Class Members who opt out of the class action
18 settlement pursuant to the terms of the Class Notice shall not receive any Individual Class Payments,
19 shall not be bound by the class action release provisions in this Agreement pursuant to a Final Approval
20 Order, and shall not be permitted to object to the settlement or appeal. If a Class Member submits both a
21 Request for Exclusion and an objection, the Administrator shall attempt to determine whether the Class
22 Member would like to withdraw either the Request for Exclusion or the objection. If the Class Member
23 does not withdraw a Request for Exclusion, or if the Administrator cannot contact the Class Member
24 who submits both a Request for Exclusion and an objection, the Request for Exclusion shall be deemed
25 valid and shall be deemed to invalidate the objection.

26 **4.4. PAGA Exclusion.** Because this settlement resolves claims and actions brought pursuant
27 to PAGA by Plaintiff acting as a proxy and as Private Attorneys General of, and for, the State of
28 California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude

1 himself or herself from the release of the PAGA claims, and all Aggrieved Employees will receive their
2 shares of the PAGA Penalty Fund. The Parties also agree that no PAGA Member has the right to object
3 to the PAGA Penalty Fund.

4 **4.5. Objection Response.** The Administrator must provide a copy of any objection received
5 to Class Counsel and Defendant's Counsel upon receipt. Either of the Parties may file a response to any
6 written objection no later than five court days before the final approval hearing.

7 **4.6. Defendant's Right to Terminate.** If more than 5% of Class Members opt out of the class
8 action settlement, then Defendant shall have the right to terminate the Agreement by notifying Plaintiff's
9 Counsel within seven days of notification that more than 5% of Class Members have opted out of the
10 class. If Defendant exercises the right to terminate the Agreement, Defendant shall be responsible for
11 any Administration Costs incurred to date.

12 **4.7. Proof of Class Members' Responses.** As soon as practicable after the end of the
13 consideration period, the Administrator shall provide a declaration attesting to (by number of relevant
14 individuals), its mailing of Class Notice, its inability to deliver Class Notice due to invalid addresses,
15 and its receipt of valid Requests for Exclusion or objections. The Administrator shall prepare any
16 supplemental declarations regarding the administration of the settlement, as necessary or as jointly
17 requested by the Parties or the Court.

18 **5. Settlement Proceeds**

19 **5.1. Gross Settlement Amount.** Defendant agrees to pay a non-reversionary Gross
20 Settlement Amount of \$1,200,000.00. The Gross Settlement Amount was negotiated based on the
21 Parties' understanding that there were approximately 48,321 relevant Class Member pay periods during
22 the Class Period. If the number of relevant Class Member pay periods during the Class Period exceeds
23 48,321 by more than 10% (i.e., 53,154 or more), the Gross Settlement Amount shall increase on a pro
24 rata basis equal to the percentage increase exceeding 10% (e.g., if the actual number were 14.5% greater
25 than 48,321, then the Gross Settlement Amount would be increased by 4.5%). Under no other
26 circumstance will Defendant's payment exceed the Gross Settlement Amount.

27 **5.1.1. Attorneys' Fees and Costs.** Class Counsel intends to request—and Defendant
28 agrees not to oppose—that the Court approve an Attorneys' Fees and Costs Award in the amount of (a)

35% of the Gross Settlement Amount (or \$420,000.00) and (b) litigation costs of up to \$30,000.00. Except as stated in this Agreement, the Parties are to be responsible for their own attorneys' fees and costs.

5.1.2. Class Representative Award. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve a Class Representative Award of \$10,000. Any Class Representative Award would be supplemental to Plaintiff's Individual Settlement Payment.

5.1.3. Administration Costs. Class Counsel intends to request—and Defendant agrees not to oppose—that the Court approve Administration Costs of up to \$42,500.00. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize Administration Costs.

5.1.4. PAGA Penalty Fund and LWDA Payment. The Parties intend to request that the Court approve a PAGA Penalty Fund of \$80,000.00. The PAGA Penalty Fund shall be distributed pursuant to statute with 75% of the PAGA Penalty Fund payable as an LWDA Payment. The remaining 25% of the PAGA Penalty Fund is to be distributed to Aggrieved Employees on a pro rata basis, based on the number of relevant wage statements they received as reflected in Defendant's records.

5.1.5. Differences in Requested and Approved Payments. If the Court does not approve the requested amounts for the Attorneys' Fees and Costs Award, Class Representative Award, or Administration Costs, or PAGA Penalty Fund, any differences in the requested and approved amount shall be allocated to the Net Settlement Amount from the Gross Settlement Amount.

5.2. Net Settlement Amount and Individual Settlement Payments. After deducting the approved Attorneys' Fees and Costs Award, Class Representative Award, Administration Costs, and PAGA Penalty Fund from the Gross Settlement Amount, Individual Settlement Payments shall be distributed to Settlement Class Members, without the need to submit a claim form on a pro rata basis, based on the number of relevant wage statements they received during the Class Period as reflected in Defendant's records.

5.3. Funding and Distribution. Within twenty-one calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount with the Administrator. Within seven calendar days after the deposit of funds, the Administrator shall distribute all amounts to be paid pursuant to the

1 Final Approval Order. Upon completion of administration of the settlement, the Administrator shall
2 provide written certification of such completion to Class Counsel and Defendant's Counsel.

3 **5.4. Undeliverable or Uncashed Checks.** All uncashed or undeliverable settlement checks
4 will expire 180 days after the postmarked date of their initial mailing. After 180 days, the sum value of
5 all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for
6 any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court
7 order that the principal for any expired checks escheat to the State of California's Unclaimed Property
8 Fund in the name of the Class Member.

9 **5.5. No Tax Advice or Liability.** All payments from the Net Settlement Amount shall be
10 classified for tax reporting purposes as penalties. The Administrator shall issue an IRS Form 1099 to
11 Plaintiff for any Class Representative Award, to Class Counsel for any Attorneys' Fees and Costs
12 Award, to the LWDA for any LWDA Payment, and to the Administrator for any Administration Costs.
13 The Parties have had an opportunity to consult with independent tax counsel. The Parties are not giving
14 any tax advice in connection with the settlement or any payments to be made pursuant to the Agreement.
15 The Parties do not intend anything contained in this Agreement to constitute legal advice regarding the
16 taxability of any amount paid hereunder, nor shall anything in this Agreement be relied upon as such. By
17 participating in the settlement, each Class Member shall agree to be solely and legally responsible for
18 paying any applicable taxes on their respective Individual Settlement Payments and shall indemnify and
19 hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of
20 the payments.

21 **6. Releases**

22 **6.1. Releases by Settlement Class Members.** By operation of the entry of the Final Approval
23 Order, and except as to such rights or claims as may be created by this Agreement, all Settlement Class
24 Members fully release Defendant and each Released Party from any and all claims during the Class
25 Period either asserted in the Action, arising from or related to the facts and claims alleged in the Action,
26 or that could have been raised in the Actions based on the facts and claims alleged. The released claims
27 include all claims for failure to issue accurate itemized wage statements; deductions; penalties,
28 including, but not limited to, civil penalties, statutory penalties, wage statement penalties; and attorneys'

fees and costs; all claims related to the Released Claims arising under: the California Labor Code (including, but not limited to, sections 226, 226.3, 2698 *et seq.*, 2699 *et seq.*, and 2699.3), the Wage Orders of the California Industrial Welfare Commission; and the California Private Attorneys General Act of 2004 (“PAGA”). The right to obtain PAGA penalties arising during the Settlement Class Period shall be released regardless of whether the Class Member opts out of the settlement. This release excludes the release of claims not permitted by law.

6.2. Releases by LWDA. By operation of the entry of the Final Approval Order, and except as to such rights or claims as may be created by this Agreement, the LWDA fully releases Defendant and each Released Party from any and all claims for civil penalties for violations of Labor Code sections 226(a) and 226.3 during the PAGA Period that were alleged in the Action or that reasonably could have been alleged based on the facts alleged in the Action.

6.3. Additional Release by Plaintiff. In addition to the above releases applicable to Plaintiff as a Settlement Class Member and Aggrieved Employee, Plaintiff also generally releases all claims, known or unknown, in favor of each Released Party, from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, including but not limited to claims arising from or related to their employment with Defendant and their compensation while employees of Defendant. Plaintiff’s released claims include, but are not limited to, all claims arising from or related to the Action. Plaintiff’s released claims include all claims for unpaid wages, including, but not limited to, failure to pay minimum wages, straight time compensation, overtime compensation, double-time compensation, and interest; the calculation of the regular rate of pay; missed meal period and rest-period premiums, including failure to pay premiums at the regular rate of compensation; reimbursement for all necessary business expenses; payment for all hours worked, including off-the-clock work; wage statements; deductions; failure to keep accurate records; unfair business practices; penalties, including, but not limited to, civil penalties, statutory penalties, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs. Plaintiff’s released claims include all claims arising under the California Labor Code (including, but not limited to, sections 90.5, 201, 202, 203, 204, 213, 218.5, 221, 223, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198,

1 1199, 1670.5, 2698 *et seq.*, 2699 *et seq.*, 2699.3, 2800, and 2802); all claims arising under: the Wage
2 Orders of the California Industrial Welfare Commission; the California Private Attorneys General Act of
3 2004 (“PAGA”); California Business and Professions Code section 17200, *et seq.*; the California Civil
4 Code, to include but not limited to, sections 3287, 3336 and 3294; California Code of Civil Procedure §
5 1021.5; the California common law of contract; the FLSA, 29 U.S.C. § 201, *et seq.*; federal common
6 law; and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”).
7 Plaintiff’s released claims also include all claims for lost wages and benefits, emotional distress,
8 retaliation, punitive damages, and attorneys’ fees and costs arising under federal, state, or local laws for
9 discrimination, harassment, retaliation, and wrongful termination, such as, by way of example only, (as
10 amended) 42 U.S.C. section 1981, Title VII of the Civil Rights Act of 1964, the Americans With
11 Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and
12 Housing Act; and the law of contract and tort. This release excludes the release of claims not permitted
13 by law.

14 Plaintiff’s released claims include all claims, whether known or unknown. Even if Plaintiff
15 discovers facts in addition to or different from those that she now knows or believes to be true with
16 respect to the subject matter of Plaintiff’s released claims, those claims will remain released and forever
17 barred. Thus, Plaintiff expressly waives and relinquishes the provisions, rights and benefits of section
18 1542 of the California Civil Code, which reads:

19 **A general release does not extend to claims that the creditor or releasing**
20 **party does not know or suspect to exist in his or her favor at the time of**
21 **executing the release and that, if known by him or her, would have**
materially affected his or her settlement with the debtor or released party.

22 Plaintiff acknowledges that she has read the entirety of the Agreement, including the above language
23 from the Civil Code, and that she fully understands both the Agreement and Civil Code section 1542. By
24 executing this Agreement, Plaintiff expressly waives any benefits and rights granted pursuant to Civil
25 Code section 1542.

26 **7. Court Approval**

27 **7.1. Preliminary Approval.** Plaintiff shall submit a motion seeking a Preliminary Approval
28 Order, which would, among other things: (i) preliminarily approve the proposed settlement according to

1 the terms of this Agreement; (ii) set a date for a final approval hearing; and (iii) provide for Class Notice
2 to be sent to Class Members as specified herein.

3 **7.2. Final Approval.** Not later than 16 court days before the date set by the Court for a final
4 approval hearing, or such other time as the Court requires, Plaintiff shall submit a motion seeking a
5 Final Approval Order, which would, among other things: (i) approve the settlement, (ii) deem the terms
6 to be fair, reasonable, and adequate, (iii) approve the releases, (iv) direct that the settlement's terms and
7 provisions be carried out; (v) enter final judgment; and (vi) retain jurisdiction to oversee administration
8 and enforcement of the terms of this Agreement and the Court's orders.

9 **7.3. Effect of Failure to Obtain Final Approval.** In the event the Court effects a material
10 change or fails to enter a Final Approval Order in accordance with this Agreement, or such Final
11 Approval Order is vacated, then this entire Agreement shall be void and unenforceable, the Action shall
12 proceed as if no settlement has been attempted, and the costs of administration shall be split equally
13 between the Parties, subject to the Parties' agreement to the contrary. In such event, except as otherwise
14 stated in this Agreement, this Agreement and any documents in furtherance of this Agreement shall be
15 inadmissible in any future proceedings in this Action or any other action.

16 **8. Miscellaneous**

17 **8.1. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties
18 with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and
19 understandings between the Parties shall be deemed merged into this Agreement. The signatories
20 represent that they are fully authorized to enter into this Agreement and are fully authorized to bind the
21 Parties to all terms stated herein.

22 **8.1.1. Counterparts and Signatures.** This Agreement may be executed in counterparts,
23 and when all signatories have signed and delivered at least one such counterpart, each counterpart shall
24 be deemed an original, and when taken together with other signed counterparts, shall constitute one
25 signed Agreement, which shall be binding upon and effective as to all Parties. Any party may sign and
26 deliver this Agreement by signing on the designated signature block and transmitting that signature page
27 via e-mail to counsel for the other party. Any signature via DocuSign or other electronic means or
28

transmitted via e-mail shall be deemed an original signature and shall be binding upon the party who transmits the signature page.

8.1.2. Waivers, Modifications, Etc. to Be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

8.1.3. Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship. The captions of paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.

8.1.4. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible so as to render all provisions of this Agreement valid and enforceable.

8.2. Further Acts and Cooperation Between the Parties. The Parties shall cooperate and use their best efforts to obtain the Court's approval of this Agreement and its terms. Each of the Parties, upon the request of another, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

8.3. Continuing Jurisdiction. The Court shall retain jurisdiction over the implementation of this Agreement as well as any and all matters arising out of, or related to, the implementation of this Agreement and of the settlement contemplated thereby.

1 **8.4. Disputes.** If the Parties have a dispute with regard to the language of this Agreement,
2 they agree to engage mediator Gig Kyriacou, Esq. to mediate any such dispute. The Parties will split the
3 costs of the mediator, and the Parties will bear their own fees and costs.

4 **8.5. Governing Law and Enforcement Actions.** All terms of this Agreement shall be
5 governed by and interpreted according to the laws of the State of California.

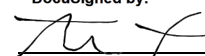
6 **8.6 No Public Comment.** Neither Plaintiff nor Class Counsel shall issue any press release or
7 public announcement of any kind related in any way to the Settlement. Plaintiff and Class Counsel agree
8 that, prior to Preliminary Approval of the Settlement, they will keep the terms of this Settlement
9 confidential except for purposes of communicating with Plaintiff only. Plaintiff shall be informed that
10 the Settlement is confidential and shall be advised to keep the settlement confidential. From and after
11 Preliminary Approval of the settlement, Plaintiff and Class Counsel may: (1) as required by law; (2) as
12 required under the terms of the settlement; or (3) as required under counsel's duties and responsibilities
13 as Class Counsel, comment regarding the specific terms of the settlement. In all other cases, Plaintiff
14 and Class Counsel agree to limit their statements regarding the terms of the Settlement, whether oral,
15 written or electronic (including the world wide web), to say the Actions have been resolved and that
16 Plaintiff and Class Counsel are satisfied with the settlement terms. Nothing in this Paragraph is intended
17 to interfere with either Plaintiff's or Class Counsel's duties and obligations to faithfully discharge their
18 obligations to Class Members, including but not limited to, communicating with Class Members
19 regarding the Settlement.

20 **[SIGNATURES ON FOLLOWING PAGE]**
21
22
23
24
25
26
27
28

PLAINTIFF

Dated: January 6, 2023

DocuSigned by:


Teresa Frank

COUNSEL FOR PLAINTIFF AND CLASS

Dated: January 5, 2023



Larry W. Lee
Simon L. Yang
DIVERSITY LAW GROUP, P.C.

DEFENDANT

Dated: January __, 2023

_____, Title
WHOLE FOODS MARKET CALIFORNIA, INC.

COUNSEL FOR DEFENDANT

Dated: January __, 2023

Derek R. Havel
Matthew A. Tobias
Brett D. Young
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP