

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]

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
FINAL JUDGMENT**

Date: June 26, 2023
Time: 11:00 a.m.
Department: 304

Complaint Filed: September 28, 2020

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”), 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
25 Notice of Class Action Settlement (“Class Notice”) was sent to all Class Members via first class mail.
26 The notice process was timely completed.

27 This Court finds that the Agreement appears to be the product of serious, informed, non-
28 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment

1 to any individuals. The Court further finds that the Agreement is fair, adequate, and reasonable and that
2 Plaintiff has satisfied the standards for final approval of a class action settlement under California law.
3 Under the provisions of California Code of Civil Procedure section 382 and Rule 23 of the Federal
4 Rules of Civil Procedure, as approved for use in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971),
5 the trial court has discretion to certify a class where:

6 [Q]uestions of law or fact common to the members of the class predominate over any questions
7 affecting only individual members, and that a class action is superior to the available methods for
the fair and efficient adjudication of the controversy

8 FED. R. CIV. PROC. 23.

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

10 Good cause appearing **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

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

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

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

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

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

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

27 7. With respect to the Class and for purposes of approving the settlement only and for no
28 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so

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

12 9. From the Gross Settlement Amount, the Administrator shall pay:

- 13 • to Class Counsel attorneys' fees in the amount of \$400,000.00 and reimbursement of
- 14 costs in the amount of \$12,350.32;
- 15 • to Class Representative Tessa Franke for her unique services to the Class, and as
- 16 consideration for the execution of a general release, the amount of \$10,000.00;
- 17 • to the California Labor and Workforce Development Agency the amount of
- 18 \$60,000.00 for its 75% share of PAGA Penalties; and
- 19 • to Phoenix Settlement Administrators the amount of \$42,500.00 for its fees and costs
- 20 in administering the settlement.

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

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

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

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

5 14. The Court hereby enters final judgment in this case in accordance with the terms of the
6 Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement
7 or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the
8 Parties, including all Settlement Class Members, for purposes of enforcing and interpreting this Order
9 and the Settlement.

10 15. Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered as of the
11 filing of this judgment. This judgment makes no finding of any violation of the Labor Code, liability, or
12 other wrongdoing. None of the settlement or any of its terms, the order approving the settlement, or this
13 judgment are an admission of any liability or finding of any violation of the Labor Code.

14 **IT IS SO ORDERED AND ADJUDGED.**

15 DATED: _____, 2023

THE HONORABLE ETHAN P. SCHULMAN