

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

D. LAW, INC.
Emil Davtyan (State Bar No. 299363)
emil@d.law
400 N. Brand Blvd., Suite 700
Glendale, California 91203
Telephone: (818) 875-2008
Facsimile: (818) 722-3974

Attorneys for Plaintiffs and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

PATRICIA O'CONNOR and STEVEN
RODRIGUEZ, as individuals and on behalf of all
others similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No. 22CV008620

[Hon. Noël Wise, Department 21]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 18, 2024
Time: 1:30 p.m.
Department: 21

Reservation ID: 120997891563

Complaint Filed: March 18, 2022

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 Plaintiffs. I make this declaration on the basis of
4 my 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. Although I am confident that litigation of the claims would result in a classwide judgment
8 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
9 certification could be denied, liability could not be established at trial, or the applicable law could
10 change. I believe the settlement for each Class Member is fair, reasonable, and adequate, as well as in
11 their best interests, given the inherent risks of litigation, as well as the potential for appeals and the costs
12 of pursuing litigation. The settlement is the result of extensive arms' length negotiations between the
13 Parties and their counsel.

14 3. Class Counsel in this matter faced particular risks in litigating this matter. There were
15 two related matters with arguably overlapping claims—*Franke v. Whole Foods Market California, Inc.*,
16 San Francisco County Superior Court Case No. CGC-20-586827 (“*Franke*”), and *Vuchkov v. Whole*
17 *Foods Market California, Inc.*, Alameda County Superior Court Case No. RG21092593 (“*Vuchkov*”).
18 Both matters created plausible scenarios in which Defendant would argue that Plaintiffs’ claims were
19 precluded by settlements in those matters. Nonetheless, Plaintiffs and Class Counsel did not agree to
20 resolve the matter at an initial mediation on October 18, 2022, at a value that would be unfair to the
21 Class. Instead, Plaintiffs and Class Counsel continued litigating until obtaining an excellent result for the
22 Class at the second mediation on June 7, 2023.

23 4. I am one of the primary attorneys on this matter. My qualifications are as follows: After
24 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
25 2004 with concentrations in Management and Human Resources, I continued studying labor and
26 employment issues by enrolling in post-graduate education at the School of Labor and Employment
27 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
28 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.

5. 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 Corp.*, 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 Corp.*, 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 Corp.*, 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 (obtaining denial of class certification on behalf of retail employees alleging bag check claims).

6. 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.

7. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C., which also focuses 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 no court has ever found me to be inadequate class counsel.

8. My current billing rate is \$750 per hour, which is less than my billing rate would have been had I remained at my prior firm. In January of 2019, clients were billed and paid my rate of \$630 per hour. In January of 2020, clients were billed and paid my rate of \$670 per hour. Had I remained at my prior firm, I am informed and believe that my billing rate would have increased in January of 2021 to approximately \$710 per hour and in January of 2022 to approximately \$750 per hour. Numerous courts have approved my hourly billing rate of \$750.

9. I have incurred a total of 184.8 hours to date in litigating this matter. Attached as **Exhibit A** is a summary of my hours and tasks on this matter. I also anticipate spending at least 15.0 additional hours on this matter in connection with the final approval hearing and post-approval matters. The total lodestar for my hours will be approximately \$149,850.00 based on an hourly rate of \$750.00 per hour.

10. With respect to the cy pres recipient, Legal Aid at Work, neither my co-counsel nor I have any relationship with or connection to said organization. In meeting and conferring with counsel for Defendant, I have also confirmed that counsel for Defendant does not have any relationship with or connection to Legal Aid at Work.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 23rd day of May 2024, at Pasadena, California.

Simon L. Yang

EXHIBIT A

Time and Task Summary
for O'Connor et al. v. Whole Foods Market California, Inc.
Simon L. Yang

Description of Work	Hours
Review Plaintiff O'Connor's wage statements and other documents	1.3
Review Plaintiff Rodriguez's wage statements and other documents	0.9
Review and research complaints for pending related matters	3.6
Review LWDA notice and related documents	0.6
Draft and revise complaint; confer with co-counsel on litigation strategy	6.2
Review court's notice of assignment, case management orders, complex rules and procedures, peremptory challenge, notice of reassignment	1.9
Draft first amended complaint	0.8
Review notice of related cases and review case dockets	0.8
Meet and confer regarding stay and draft various joint stipulations to stay and extend response deadlines	3.3
Draft joint case management conference reports and subsequent status reports	6.2
Prepare and respond to various case management correspondences with defendant, co-counsel, and plaintiffs	6.3
Calls with defendant	5.8
Calls with co-counsel or plaintiffs	11.2
Research on recent decisions addressing PAGA remedies for 226(a) violations	3.8
Prepare issues for mediation with Franke matter	8.2
Attend mediation [Franke]	10.0
Prepare authorities regarding plaintiffs' position with respect to potential preclusive effect of settlements in Franke or Vuchkov matters	4.2
Draft requests for production of documents	2.4
Draft special interrogatories	2.6
Prepare strategy for evidence and admissions needed to support class certification	6.4
Review defendant's production of documents and information for mediation with Vuchkov matter	8.8
Analyze, prepare, and revise exposure model for mediation	7.2
Conduct pre-mediation calls with mediator	0.8
Draft and revise mediation brief	15.6
Prepare for and attend mediation [Vuchkov]	12.0
Draft second amended complaint	1.2
Review and revise settlement documents, including memorandum of understanding, joint stipulation of class action settlement, class notice	14.2
Draft and revise preliminary approval documents, including motion, declarations, and proposed order	15.2
Review tentative ruling on preliminary approval motion; confer with defendant's counsel and draft amendment to settlement and revised class notice	6.2
Confer with settlement administrator regarding administration process, class member responses, and declaration regarding administration process	3.8
Draft and revise final approval documents, including motion, declarations, and proposed order	13.3
TOTAL	184.8