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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
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

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

Complaint Filed: September 28, 2020

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. 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. I am one of the primary attorneys on this matter. My qualifications are as follows: After
15 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
16 2004 with concentrations in Management and Human Resources, I continued studying labor and
17 employment issues by enrolling in post-graduate education at the School of Labor and Employment
18 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
19 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
20 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
21 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

22 4. Upon graduating from law school in 2008, I practiced labor and employment law at
23 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
24 practice focused on wage and hour class, collective, and representative actions, with a particular
25 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 ("PAGA").
26 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
27 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
28 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on

1 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
2 not more than six hours), and *Ruelas v. Costco Wholesale Corp.*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8,
3 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also
4 able to obtain experience litigating representative claims or wage and hour matters through trial and
5 appeal. *E.g.*, *Velazquez v. Costco Wholesale Corp.*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
6 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
7 pay wages); *Ward v. Costco Wholesale Corp.*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014) (affirming
8 bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective
9 action with involving deductions from final paychecks). I also litigated class certification on numerous
10 matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (obtaining
11 denial of class certification on behalf of retail employees alleging bag check claims).

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

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

26 7. My current billing rate is \$725 per hour, which is less than my billing rate would have
27 been had I remained at my prior firm. In January of 2019, clients were billed and paid my rate of \$630
28 per hour. In January of 2020, clients were billed and paid my rate of \$670 per hour. Had I remained at

1 my prior firm, I am informed and believe that my billing rate would have increased in January of 2021
2 to approximately \$710 per hour and in January of 2022 to approximately \$750 per hour. Numerous
3 courts have approved my hourly billing rate of \$725.

4 8. I have incurred a total of 172.5 hours to date in litigating this matter. Attached as **Exhibit**
5 **A** is a summary of my hours and tasks on this matter. I also anticipate spending at least 15.0 additional
6 hours on this matter in connection with the final approval hearing and post-approval matters. The total
7 lodestar for my hours will be approximately \$135,937.50 based on an hourly rate of \$725.00 per hour.

8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct. Executed this 31st day of May 2023, at Pasadena, California.

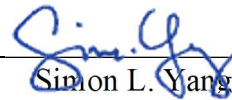
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EXHIBIT A

Time and Task Summary
for Franke v. Whole Foods Market California, Inc
Simon L. Yang

Description of Work	Hours
Review plaintiff's wage statements and other documents	1.6
Draft and revise complaint; confer with co-counsel on litigation strategy	4.8
Review answer to complaint	0.4
Review court's notice of assignment, case management orders, complex rules and procedures	1.6
Draft joint case management conference reports and subsequent status reports	5.6
Prepare and respond to various correspondence with defendant, co-counsel, and plaintiff	7.2
Calls with defendant, co-counsel, and plaintiff	8.6
Research on recent decisions addressing PAGA remedies for 226(a) violations	3.4
Research on additional relevant legal issues, including application of Emergency Rule 9 to statutes of limitation	2.8
Draft requests for production of documents	2.8
Draft special interrogatories	2.0
Draft responses to defendant's request for production of documents; confer with plaintiff and co-counsel re same	7.2
Review defendant's responses to discovery and meet and confer re same and supplemental responses	8.6
Meet and confer re Belaire-West notice	3.4
Prepare authorities regarding plaintiff's position applicable class and PAGA periods and remedies	1.6
Prepare strategy for evidence and admissions needed to support class certification	6.7
Draft PMK deposition outline	6.3
Review defendant's production of documents and information for mediation	7.8
Analyze, prepare, and revise exposure model for mediation	5.7
Research and review other matters pending against defendant	3.2
Conduct pre-mediation calls with mediator	0.8
Draft and revise mediation brief	15.6
Prepare for and attend mediation	10.0
Review and revise settlement documents, including memorandum of understanding, joint stipulation of class action settlement, class notice	15.1
Draft and revise preliminary approval documents, including motion, declarations, and proposed order	13.6
Review tentative ruling on preliminary approval motion; confer with defendant's counsel and draft amendment to settlement agreement and supplemental papers in support of preliminary approval	6.5
Review second tentative ruling on preliminary approval motion; confer with defendant's counsel and draft supplemental papers in support of preliminary approval	2.1
Confer with settlement administrator regarding administration process, class member responses, and declaration regarding administration process	4.2
Draft and revise final approval documents, including motion, declarations, and proposed order	13.3
TOTAL	172.5