1	CARLOS JATO, State Bar No. 282710 819 Eddy Street				
2	San Francisco, CA 94109 Tel: 415.771.6174				
3	Fax: 415.474.3748 E-mail: cgjato@jato-law.com				
4	DANIEL BERKO, State Bar No. 94912				
5	819 Eddy Street San Francisco, CA 94109 Tal: 415 771 6174				
6	Tel: 415.771.6174 Fax: 415.474.3748 E-mail: daniel@berkolaw.com				
7					
8	Attorney for Plaintiff VANESSA BUSTOS, REZE BUSTOS and all others similarly situated	SLLE			
9	SUPERIOR COURT OF THE	STATE OF CALIFORNIA			
10	IN AND FOR THE COUNT	Y OF SAN FRANCISCO			
11	UNLIMITED JU	RISDICTION			
12	VANESSA BUSTOS and all others similarly				
13	situated,	Case No. CGC-19-575734			
14	Plaintiff, -vs-	DECLARATION OF KEVIN LEE WITH RESPECT TO SETTLEMENT			
15	COFFEE MEETS BAGEL, INC.; ARUM	NOTICE ADMINISTRATION			
16	KANG; DAWOON KANG and DOES 1-60 inclusive,	Dept: 613 Hon. Andrew Cheng			
17	Defendants.				
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DECLARATION OF KEVIN LEE

I, Kevin Lee, declare as follows:

3 1. I am a Case Manager at Phoenix Settlement Administrators ("Phoenix"), the Court-appointed Class Action Settlement Administrator for Vanessa Bustos v. Cofee meets Bagel, 4 Inc., et al. (the "Action"). I have personal knowledge of the facts stated herein and, if called upon to testify, I could and would testify competently to such facts.

2. Phoenix was selected by the Parties to provide notice of the Settlement and 7 perform class administration duties in this Action. Pursuant to the Stipulation of Class Action and 8 PAGA Settlement ("Settlement Agreement" or "Settlement") for this matter, Phoenix was 9 responsible for: (i) preparing, printing, and mailing the Notice of Class Action Settlement 10 11 ("Notice"); (ii) responding to inquiries from Class Members; (iii) calculating the number of weeks each Class Member worked during the period from May 6, 2015 to March 30, 2022 12 ("Class Period"); (iv) determining the validity of letters indicating a request to be excluded from 13 the Class Settlement ("Requests for Exclusion"), written objections to the Class Settlement 14 ("Objections"), and/or dispute regarding the number of Workweeks submitted by Class 15 Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to 16 Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing 17 them to Settlement Class Members and Individual PAGA Payments to Aggrieved Employees; 18 (vii) issuing the payment to Class Counsel for attorneys' fees and costs, the Enhancement 19 Payments to both Plaintiffs, and the employer/employee payroll taxes to the appropriate taxing 20 21 authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties 22 mutually agree or as the Court orders.

- 23 3. On April 20, 2022, Phoenix received a data file from Defense Counsel that contained names, last known mailing addresses, Social Security numbers, job titles, and dates of 24 25 employment for each Class Member ("Class List") during the Class Period. The final mailing list contained sixty (60) individuals identified as Class Members. 26
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4. On April 30, 2022, Phoenix conducted a National Change of Address ("NCOA")
 search in an attempt to update the class list of addresses as accurately as possible. A search of this
 database provides updated addresses for any individual who has moved in the previous four (4)
 years and notified the U.S. Postal Service of their change of address.

5 5. On April 30, 2022, Phoenix mailed the Notice via U.S. first class mail, in English,
6 to all sixty (60) Class Members on the Class List. A true and correct copy of the mailed Notice is
7 attached hereto as Exhibit A.

6. As of the date of this declaration, two (2) Notices have been returned to Phoenix.
None were returned with a forwarding address. For the two (2) Notices returned from the Post
Office without a forwarding address, Phoenix attempted to locate a current mailing address using
TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing.
Ultimately, one (1) updated address was obtained and the Notice was promptly re-mailed to that
Class Member via first class mail.

14 7. As of the date of this declaration, one (1) Notices remain undeliverable, since an
15 updated address could not be obtained via skip trace.

8. As of the date of this declaration, Phoenix has received <u>zero (0) Requests for</u>
<u>Exclusion</u> from Class Members. The deadline to request exclusion from the Class Settlement was
June 14, 2022.

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 As of the date of this declaration, Phoenix has received <u>zero (0) Objections</u> from Class Members. The deadline for objecting to the Class Settlement was June 14, 2022.

21 10. As of the date of this declaration, Phoenix has received <u>zero (0)</u> Workweek
 22 <u>disputes</u> from Class Members. The deadline for submitting a dispute was June 14, 2022.

- 11. There are sixty (60) Class Members who did not submit timely and valid Requests
 for Exclusion and are therefore deemed Settlement Class Members, representing 100% of the
 Class. Settlement Class Members have worked a collective total of four thousand eight hundred
 twenty-four (4,824) Workweeks during the Class Period.
- 27 28

1 12. The Net Settlement Amount of \$121,833.33 available to pay Settlement Class 2 Members was determined by subtracting the requested Class Counsel attorneys' fees and costs 3 (\$76,666.67), requested Enhancement Payments to Plaintiffs Vanessa Bustos (\$2,500.00) and 4 Rezelle Bustots (\$1,000.00), totaling \$3,500.00, the PAGA Payment to the Labor and Workforce 5 Development Agency ("LWDA") (\$22,500.00), and the Settlement Administration Costs 6 (\$5,500.00) from the Gross Settlement Amount (\$230,000.00).

7 13. Based upon the calculations stipulated in the Settlement, the highest Individual 8 Settlement Share to be paid is approximately \$20,495.33, the lowest Individual Settlement Share 9 to be paid is approximately \$14.23, while the average Individual Settlement Share to be paid is 10 approximately \$2,030.56. Settlement Class Members will be issued payment of their Individual 11 Settlement Shares subject to reduction for the employee's share of taxes and withholdings with 12 respect to the wages portion of the Individual Settlement Share (the net payment is their 13 "Individual Settlement Payment").

14 14. Pursuant to the Settlement, Defendant has agreed to fund the employer-side taxes
15 due separately and apart from the Gross Settlement Amount. As of this date, and utilizing the
16 maximum tax rates, Phoenix estimates that the employer-side taxes should not exceed \$4,130.29.
17 15. Phoenix's costs associated with the administration of this matter are \$5,500.00.
18 This includes all costs incurred to date, as well as estimated costs involved in completing the
19 settlement distribution. A true and correct copy of the invoice from Phoenix is attached hereto as

- 20 Exhibit B.
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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed this 20th day of June 2022, at Orange, California.

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KEVIN LEE

Exhibit A

Bustos, et al. v. Coffee Meets Bagel, Inc., et al., Case No. CGC-19-575734 SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF SAN FRANCISCO NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: All persons who have worked for Defendant Coffee Meets Bagel, Inc. and who were classified as independent contractors at any time. From May 6, 2015 to March 30, 2022; and

All persons who have worked for Defendant Coffee Meets Bagel, Inc. and who were classified as salaried or exempt employees at any time from May 6, 2015 to March 30, 2022.

On March 30, 2022, the Honorable Andrew Y.S. Cheng of the Superior Court of California, County of San Francisco granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. You have received this notice because Defendants' records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.

Unless you choose to opt out of the settlement by following the procedures described below, <u>you will be deemed a</u> <u>Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share</u> <u>of the settlement fund</u>. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at 2:00 p.m. on July 14, 2022 in Department 613 of the Superior Court of California, County of San Francisco located at 400 McAllister Street, San Francisco, California 94102. You are not required to attend the hearing, but you are welcome to do so.

Summary of the Litigation

Plaintiff Vanessa Bustos and Rezelle Bustos, on their behalf and on behalf of other current and former allegedly misclassified individuals, allege that Defendants violated California state labor laws as a result of their alleged failure to, among other things: (1) pay overtime wages to individuals for all hours worked; (2) provide individuals with meal and rest breaks; (3) timely pay all wages owed to individuals during each pay period and upon termination; and (4) provide individuals with accurate, itemized wage statements.

After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. On April 19, 2021, the parties participated in a mediation with Michael Loeb, Esq., an experienced and well-respected class action mediator. With Mr. Loeb's guidance, the parties were able to negotiate a complete settlement of Plaintiffs' claims.

Counsel for Plaintiff, and the attorneys preliminarily appointed by the Court to represent the class, Daniel Berko of Law Office of Daniel Berko and Carlos Jato of Law Office of Carlos Jato ("Class Counsel"), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendants have denied, and continue to deny the factual and legal allegations in the case and believe that they have valid defenses to Plaintiff's claims. By agreeing to settle, Defendants are not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendants have agreed to settle the case as part of a compromise with Plaintiff.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendants have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$230,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members (individuals who do not submit timely requests to be excluded from this settlement); (2) a Class Representative Enhancement Payment

of \$2,500 to Plaintiff Vanessa Bustos and \$1,000 to Plaintiff Rezelle Bustos, which is to compensate them in recognition for their effort and work in prosecuting this action on behalf of the class against the defendants¹; (3) \$76,666.67 in attorneys' fees and costs and expenses; (4) a \$22,500 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's (Phoenix Class Action Settlement Solutions – contact information below) fees and expenses currently estimated at \$5,500. After deducting the Class Representative Enhancement Payment, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$121,833.33 will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of Workweeks each Class Member worked as allegedly misclassified during the period from May 6, 2015 to March 30, 2022 ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) Defendants will calculate the total aggregate number of Workweeks that all Class Members worked during the applicable Class Period ("Total Workweeks").
- (b) The value of each individual Workweek shall then be determined by dividing the proceeds of the Net Settlement Amount by the Total Workweeks amount, resulting in the "Workweek Value" or "WV".
- (c) An "Individual Settlement Payment" amount for each Class Member will then be determined by multiplying the individual Class Member's number of Workweeks by the Workweek Value and the Class Member's multiplier based on his/her job while providing services for Defendants. For instance, Customer Support employees will have a WV of 100%, Office Managers' WV will be 100%; Software Engineers' WV will be 25%; Marketing's WV will be 50%; Recruiters' WV will be 25%; Writers' WV will be 25%; Event Organizers WV will be 25%. (specifically, by this adjustment of the WV value, the Net Settlement will be entirely distributed between class members).
- (d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion, which is a timely request to be excluded from this settlement.

Why are you receiving this letter?

According to Defendants' records, you worked during the Class Period for a total of «Workweeks» Workweeks. Accordingly, your estimated payment is approximately «Est_Amt» as a «Classification».

Disputing Workweek Information and Updating Your Contact Information:

If you believe the above Workweek information is incorrect, please contact the Settlement Administrator, Phoenix Class Action Settlement Solutions, by phone at 1-800-523-5773; by fax at (949) 209-2503, or by email at notice@phoenixclassaction.com.

You may also contact the Settlement Administrator to update your contact information. This is important because the Settlement Administrator will be able to provide you with future communications about this matter.

It is important that if you dispute the number of Workweeks or the type of services you provided for Defendants, you must provide records in support of your dispute to the administrator because Defendants' records will control unless you are able to provide documentation that establishes otherwise. This is important because it could impact your share of the settlement. For example, you may submit wage statements, tax returns, agreements, correspondence, or any other documentation showing the number of Workweeks you worked and/or the type of services you provided.

¹ The enhancement payments are not tethered to plaintiffs' general releases.

Questions? Contact Phoenix Class Action Settlement Solutions toll free at 1-800-523-5773

Email: notice@phoenixclassaction.com

Website: www.phoenixclassaction.com/bustos-cmb

IRS Forms W-2 and 1099 will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments they receive under the settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, 25% of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will be issued, and 75% will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims): all claims, rights, demands, liabilities, and causes of action, arising from, or related to, the same set of operative facts as those set forth in the operative complaint, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to timely pay wages during employment based on the preceding claims; (vi) all claims for wage statement violations based on the preceding claims; (vii) all claims asserted through California Business & Professions Code §§ 17200 *et seq.*, and California Labor Code § 558.1 based on the preceding claims:

Option 2 – *Opt Out of the Settlement*

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Bustos v. Coffee Meets Bagel, Inc. c/o Phoenix Settlement Administrators PO Box 7208, Orange, CA 92863 Email: <u>notice@phoenixclassaction.com</u> Fax: (949) 209-2503

The written request to be excluded must be postmarked, faxed or emailed not later than **June 14**, **2022**. If you submit a request for exclusion which is not postmarked, faxed or emailed by **June 14**, **2022**, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not be deemed to have released the Released Claims, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Questions? Contact Phoenix Class Action Settlement Solutions toll free at 1-800-523-5773 Email: notice@phoenixclassaction.com Website: www.phoenixclassaction.com/bustos-cmb Page 3 of 5 **PLEASE NOTE**: While you may elect to opt-out from the class settlement and the class claims, you may not opt-out of the settlement of the PAGA claims. In other words, even if you opt-out of the class settlement you cannot do so from the PAGA claim and you will still receive your share of the settlement PAGA settlement payment and will release your claims under PAGA.

Option 3 – *Object to the Settlement*

If you decide to object to the settlement because you find it unfair or unreasonable, you must submit an objection stating why you object to the settlement. Your objection must provide: (1) your full name, signature, address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at *Bustos v. Coffee Meets Bagel, Inc.*, c/o Phoenix Settlement Administrators, PO Box 7208, Orange, CA 92863.

All objections must be postmarked by not later than **June 14, 2022**. Late objections will not be considered. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

You may also, if you wish, appear at the Final Fairness Hearing set for <u>July 14, 2022 at 2:00 p.m.</u> in the Superior Court of the State of California, for the County of San Francisco and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing. If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection,

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Go to the Hearing:

Regardless of the options you select from above, you can also appear in person at the Final Fairness Hearing set for <u>July</u> <u>14, 2022 at 2:00 p.m.</u> in the Department 613 of the Superior Court of the State of California, for the County of San Francisco. You may also retain an attorney at your own expense to appear for you at the hearing.

Additional Information

Uncashed Checks

Any settlement checks returned as undeliverable and remaining un-cashed for more than one hundred and twenty (120) calendar days after issuance will be redistributed to the class members who did cash their checks on the 125th day after the initial mailing. In the event that there are any leftover funds not distributed to class members 120 days after the second re-distribution, then any amounts of uncashed checks will be tendered to the *cy pres* beneficiary, San Francisco Legal Aid at Work 180 Montgomery Street, Suite 600 San Francisco, CA 94104 Tel: 415-864-8848. No money will revert back to the Defendants

Additional Information About the Lawsuit

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case which are available at www.phoenixclassaction.com/bustos-cmb.

Questions? Contact Phoenix Class Action Settlement Solutions toll free at 1-800-523-5773 Email: notice@phoenixclassaction.com Website: www.phoenixclassaction.com/bustos-cmb Page 4 of 5 You may obtain such information from the Court's website at <u>https://www.sfsuperiorcourt.org</u>, which provides access to the full docket in this case free of charge. On the homepage, click on "Online Services" and then "Case Query." When prompted, you may "Search by Case Number" and enter case number CGC-19-575734.

All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Daniel Berko	Carlos Jato
Law Office of Daniel Berko	Law Office of Carlos Jato
819 Eddy Street	819 Eddy Street
San Francisco, California 94109	San Francisco, California 94109
Phone: (415) 771-6174	Phone: (415) 771-6174

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, OR DEFENDANTS' ATTORNEYS WITH INQUIRIES.

The settlement website **www.phoenixclassaction.com/bustos-cmb** contains the following documents: Second Amended Complaint,

Notice,

Amended Joint Stipulation of Class Action Settlement and Release,

Order Granting Motion for Preliminary Approval.

Exhibit B



CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS			
Class Members	60		
Opt Out Rate	0%		
Opt Outs Received	0		
Total Class Claimants	60		
Subtotal Admin Only	\$6,570.60		
TOTAL COSTS \$5,500.00			
Not to Exceed			

June 20, 2022

Case: Bustos v. Coffee Meets Bagel, Inc.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)				
Administrative Tasks: Rate		Hours/Units Line I	tem Estimate	
Programming Manager	\$100.00	3	\$300.00	
Programming Database & Setup	\$100.00	3	\$300.00	
Toll Free Setup*	\$140.00	1	\$140.00	
Call Center & Long Distance	\$2.00	6	\$12.00	
NCOA (USPS)	\$0.15	60	\$9.00	
		Total	\$761.00	

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage /Translation				
Project Action	Rate	Hours/Units	Line Item Estimate	
Notice Packet Formatting	\$105.00	3	\$315.00	
Data Merge & Duplication Scrub	\$0.15	60	\$9.00	
Notice Packet & Opt-Out Form	\$0.95	60	\$57.00	
Postage (up to 1 oz.)	\$0.60	60	\$36.00	

\$417.00

Total

Skip Tracing & Remailing Notice Packets			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$1.00	2	\$2.00
Remail Notice Packets	\$0.95	2	\$1.90
Postage	\$0.60	2	\$1.20
Programing Undeliverables	\$50.00	0	\$0.00
		Total	\$170.10

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$100.00	3	\$300.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	3	\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$5.00	0	\$0.00
Case Manager	\$85.00	3	\$255.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	3	\$300.00
Disbursement Review	\$100.00	3	\$300.00
Programming Manager	\$95.00	2	\$190.00
QSF Fees, Bank Account & EIN	\$75.00	3	\$225.00
Check Run Setup & Printing	\$100.00	3	\$300.00
Mail Class Checks, W2 and 1099 *	\$1.00	60	\$60.00
Estimated Postage Checks, W2 and 1099	\$0.50	60	\$30.00
		Total	\$1,405.00

 * Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	3	\$300.00
Remail Undeliverable Checks	\$1.50	40	\$60.00
(Postage Included)			
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	1	\$115.00
Unchashed Check Notice Postcard	\$1.50	5	\$7.50
(Postage Included)			
Uncashed Check QSF Tax Filing	\$150.00	3	\$450.00
IRS & QSF Annual Tax Reporting *	\$1,200.00	1	\$1,200.00
(State Tax Reporting Included)			
		Total	\$2,897.50
* All applicable California State & Federal taxes, which include S	UI, ETT, and SDI, and FUTA filings. Additio	onal taxes are Defendant's resp	oonsibilty.
		Total:	\$6,570.60