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8 Attorney for Plaintiff VANESSA BUSTOS and all others
similarly situated

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN FRANCISCO
11 UNLIMITED JURISDICTION

12 VANESSA BUSTOS and all others similarly
13 situated,

14 Plaintiff,

15 -vs-

16 COFFEE MEETS BAGEL, INC.; ARUM
KANG; DAWOON KANG and DOES 1-60
17 inclusive,

18 Defendants.

Case No. CGC-19-575734

DECLARATION OF DANIEL BERKO
IN SUPPORT OF MOTION FOR
ATTORNEY'S FEES, COSTS AND
SERVICE AWARD

Date: July 14, 2022
Time: 2:00 p.m.
Dept 613
Hon. Andrew Cheng

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21 I, DANIEL BERKO, declare and state as follows:

22 1. I am an attorney for plaintiffs VANESSA BUSTOS and REZELLE BUSTOS
23 (Hereinafter Plaintiffs) in the case of *Bustos v. Coffee Meets Bagel Inc. San Francisco County*
24 Superior Court Case no. CGC-19-575734 ("CMB" case). I make this declaration in support of
25 plaintiffs' motion for an Order for an Award of attorneys fees and costs and for a service award to
26 the class representatives.

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1 2. I have been an attorney for over 41 years practicing civil litigation the entire time.
2 I have been sole or lead counsel in numerous class or representative actions including actions
3 against Office Depot, Empire Today, Bath and Body Works, American Airlines, Sleeptrain, City
4 Park, BP West Coast Products (Arco), Wells Fargo, Bank of America, the Good Guys, Nth
5 Connect, OCC Communications, Safeway, Mattress Discounters, Mancini's Sleepworld,
6 California Parking, AC Square, Cato Corporation, and this case. Eleven of these cases have been
7 wage and hour cases. In a recent case I settled (Empire) Judge Marie Weiner, Complex Litigation
8 judge for San Mateo Superior Court, stated on the record that her fee award was informed by the
9 fact I and my co-counsel had achieved an "excellent result" for the class. I have never had a fee
10 application reduced where I was class counsel in the more than 10 applications I have made. I
11 have been awarded substantial multipliers several times. I was also sole counsel in a qui tam
12 action in federal court that resulted in an important victory for qui tam plaintiffs in a published
13 Ninth Circuit Court of Appeal decision. I was an amicus before the California Supreme Court in
14 an important case where the court decided that restitution under Business and Professions Code
15 §17200 did not have to be ancillary to an injunction but was an alternative remedy. The Court
16 referenced me and information that I supplied to it in support of its holding that restitution did not
17 have to be ancillary to injunctive relief. It would be hard to overstate the value of that victory for
18 plaintiffs utilizing section 17200. I have also been a commentator on legal issues on the local
19 National Public Radio station. I have had seven different judges in the San Francisco Superior
20 Court refer cases to me after I appeared before them, or ask me to represent them personally,
21 including two cases that in total settled for over one million dollars (one after a jury trial settled
22 for \$675,000, another settled for \$350,000). All but one of the cases referred by the seven judges
23 (I declined to take the case) were resolved successfully as far as the client was concerned. Class
24 Actions are only a part of my practice. I also have very extensive experience in civil litigation
25 generally. Finally, I received an award from the State Bar of California for my pro bono work.

26 3. As far as I can recall, in the twelve wage and hour class settlements I have been
27 involved in the San Francisco Bay Area, I (and usually co-counsel with me together) have been

1 awarded 33 and 1/3rd percent of the common fund. The one exception is a case in San Mateo
2 before Judge Weiner, where my co-counsel and I were awarded 1/3 of the common fund and also
3 received \$100,000 in addition for the same work from attorneys for the Legal Aid Society
4 because our work benefitted a related class action against the same defendant (Empire Today)
5 that was settled in Alameda County. (Of course, the additional \$100,000 was fully disclosed to
6 the courts prior to our being awarded the 1/3rd plus \$100,000.00.)

7 4. Mr. Jato and I began this class action on May 6, 2019. We have incurred
8 \$12,014.00 in litigation expenses (our offices have paid in this case \$1,950.00 in court filing fees,
9 \$864.25 for court reporters and \$9,200.00 in mediation fees.)

10 5. I would first note we did not seek a “clear sailing” agreement from CMB for our
11 fees. I do not need or even want the defendant to approve or support any fee request I make. Mr.
12 Jato and my fee request stands on its own merits

13 6. I am extremely familiar with attorney fee awards in class actions in Alameda
14 County, San Francisco County, Orange County, and to a lesser extent San Mateo and Los
15 Angeles Counties and federal courts in the Northern and Central Districts of California. I have
16 probably read tthree dozen motions for fees and awards based on them in the last five years alone.
17 Based on all of that, I believe that an award of 28.11% of the common fund as attorneys fees to
18 myself and Mr. Jato and reimbursement of the \$12,014.00 costs incurred by our firms is
19 extremely well justified.

20 7. I have read many awards of one third of the fund in the last year and a large
21 percentage involved settlement with little formal discovery and certainly less time, effort and risk
22 than exists in this case. (Although some involve extensive very high quality work as well, but
23 they tend to be cases with much larger recoveries than here and much larger fees awarded.)

24 8. In this action, with one deposition, a great deal of written discovery involving the
25 production of over eight hundred pages of documents followed by months of meet and confer
26 efforts and lengthy settlement discussions stretching out over two full-day mediations, based on
27 how I know other attorneys are compensated for similar work in the cases I reviewed, a one third

1 award inclusive of costs and attorney's fees is very well justified and earned. But, similarly and
2 equally, the fee is proper and fair using the lodestar multiplier method.

3 9. If one considers the lodestar method, I believe my hourly rate should be \$800.00
4 an hour, I base that on many declarations I have read that were submitted in this court and other
5 Bay Area courts in other cases stating hourly rates in the Bay Area for attorneys with similar
6 experience to mine. (Fees of \$600-\$1100 an hour are not uncommon anymore.) I believe Mr.
7 Jato's hourly rate should be \$575.00 an hour or higher based on the same declarations already
8 mentioned. Together, we have 153 hours incurred in this case (See Exh "A" to Jato dec. for a
9 breakdown of my hours and Mr. Jato's). More hours are likely, but assuming no appeals they
10 should be five hours or less.

11 10. I feel certain that the same multiplier approved in *Laffitte v. Robert Half*
12 *International, Inc.* (2016) 1 Cal.5th 480 is justified in this case. First, the contingent risk here is
13 significant. If CMB chose to contest the case through trial, the time, effort and risk would have
14 been enormous especially, but not only, because a judgment might not not have been collectable.
15 Yet, we seek no multiplier at all and in fact seek less than the amount due using simply a lodestar.

16 I declare under the penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct and that this declaration was executed on May 31, 2022 at San
18 Francisco, California.

19 Dated: May 31, 2022

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21 _____
22 DANIEL BERKO