

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  
819 Eddy Street  
5 San Francisco, CA 94109  
Tel: 415.771.6174  
6 Fax: 415.474.3748  
7 E-mail: daniel@berkolaw.com

8 Attorney for Plaintiff VANESSA BUSTOS, REZELLE  
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

NOTICE OF MOTION AND MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND PAGA  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF CARLOS JATO;  
PROOF OF SERVICE.

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

21 TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE that on July 14, 2022 at 2:00 p.m., or as soon thereafter as this  
23 matter may be heard, in Department 613 of the San Francisco County Superior Court, located at  
24 400 McAllister St. San Francisco, California, Plaintiffs Vanessa Bustos and Rezelle Bustos  
25 (“Bustos”) through their attorneys of record Carlos Jato and Daniel Berko, will move this court  
26 for an Order (1) granting final approval of the class action settlement reached in this action, (2)  
27 administration costs and (3) payment to the LWDA to satisfy the payment for the PAGA claim.

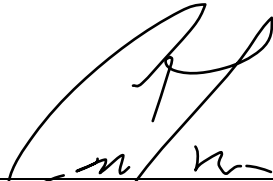
28 NOTICE OF MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT

1 The requests for fees, costs and service awards is submitted separately as instructed by the court.  
2 Good Cause exists for this motion because the parties have reached a settlement of this case that  
3 is in the best interests of the class and which if finally approved will bestow substantial benefits  
4 on the class. Further, this court already granted preliminary approval, no objections or opt-outs  
5 have been received by the administrator (“TPA”) and the number of opt-outs is zero.

6 As explained below, the decision of this court as to what particular amount of fees and  
7 costs to award will not affect final approval. This motion is based on this notice of motion, the  
8 memorandum of points and authorities attached hereto, the declarations of Kevin Lee and Carlos  
9 Jato, and the declarations of Carlos Jato and Daniel Berko supporting the award for attorneys  
10 fees, costs and service awards and such other and/or further evidence as may be presented at the  
11 hearing on this matter. The requisites of numerosity, commonality, typicality, adequacy and  
12 superiority are present in this matter as set forth in the attached memorandum of points and  
13 authorities.

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Dated: June 21, 2022



DANIEL BERKO and CARLOS JATO, Attorney for  
Plaintiff VANESSA BUSTOS and REZELLE  
BUSTOS and all others similarly situated

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1           **I. BACKGROUND AND STATEMENT OF FACTS**

2           This lawsuit involves claims for misclassification and wage and hour violations brought by  
3 two former employees of Coffee Meets Bagel Inc. (“CMB”). CMB is an online dating platform.  
4 Arum Kang and Dawoon Kang are the officers and managing agents of CMB (hereinafter the Kang  
5 sisters). Vanessa Bustos (“VB”) and Rezelle Bustos (“RB”) performed work for defendants as  
6 customer support staff and they are the named plaintiffs and class representatives. VB has also  
7 alleged her own individual wrongful termination claim against CMB in this action (specifically,  
8 VB has alleged that she was terminated when she demanded payment of her overtime wages).

9           The nature of Plaintiffs’ jobs involved responding to customer inquiries and complaints  
10 regarding the CMB’s platform.

11           The case was filed as a class action in May 6, 2019 by Vanessa Bustos. The current  
12 operative pleading is the Second Amended Complaint (SAC) filed on March 21, 2021.

13           After more than two years of litigating the claims and two mediations with two different  
14 mediators, the parties reached a global settlement for the class in the amount of \$230,000.00.

15           Plaintiffs sent out a Bellaire notice in order to contact putative class members. Plaintiffs also  
16 conducted written discovery and deposed the person most knowledgeable at CMB in regards to  
17 employment hire and compensation practices (David Miller, the HR head at CMB). Following the  
18 deposition of Mr. Miller, plaintiff Vanessa Bustos amended her complaint to add Rezelle Bustos  
19 to the complaint as a co-class representative. With a second class representative and on the final  
20 stretch before filing their motion for class certification, the parties agreed to a second mediation  
21 with Michael Loeb which took place on April 19, 2021. (The first mediation, in August 26, 2020  
22 was uncessuccessful in settling the case.)

23           The mediation before Michael Loeb was conducted in two stages: First, the parties  
24 negotiated the resolution of the individual wrongful termination claim of VB.<sup>1</sup> Only after her  
25 individual claims were settled, the parties proceeded to negotiate resolution of the class and PAGA

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26  
27           <sup>1</sup> A separate confidential settlement agreement was reached to settle VB wrongful  
28 termination claims. The confidential settlement agreement of VB was submitted to the court for  
review as part of the court’s preliminary approval stage.

1 claims. Through arms-length negotiation, the parties reached an agreement in principle of the class  
2 and PAGA claims and a memorandum of understanding (“MOU”) was executed with the basic  
3 parameters of the terms of the settlement.

4 After the parties reached the tentative settlement for an agreed putative class, the deal almost  
5 broke down during the subsequent negotiations of the full-length agreement because defendants  
6 attempted to impose a change in the composition of the putative class. Eventually, the parties were  
7 able to reach an agreement and executed a settlement agreement. This was presented to the Court  
8 on November 2, 2021 as part of the motion to preliminary approve the class action settlement.

9 In the tentative ruling issued by the court in December 2021, the court asked for the parties  
10 to amend the settlement agreement and the class notice in several aspects. The parties went back to  
11 the drawing board and implemented the changes requested by the court in the signed amended  
12 agreement and notice to the class that was attached in the Supplemental Declaration of Carlos Jato  
13 in support of preliminary approval submitted to the court on February 18, 2022.<sup>2</sup> The Supp Jato  
14 dec. re. PA attached (1)the final settlement agreement and (2) the amended notice to the class.

15 After considering the supplemental submission by the plaintiffs, on March 30, 2022, the  
16 court issued its order granting preliminary approval of the class action settlement and instructing  
17 the elected TPA to administer the revised notice of settlement to the class.

## 18 **II. CHALLENGED PRACTICES**

19 During the class period, the class representatives allege that defendants CMB, AK and DK  
20 misclassified as independent contractors multiple individuals who performed services for CMB.  
21 Plaintiffs allege that this deprived the putative employees of the protections of many California  
22 labor laws. In this case, plaintiffs allege the failure of defendants to pay overtime, failure to  
23 provide meal and rest breaks, failure to pay minimum wages, the failure to pay all wages due  
24 upon discharge, layoff, or resignation; violation of California Business & Professions Code  
25 (“Business & Professions Code”) section 17200 and California Labor Code (“Labor Code”)  
26 sections 201, 202, 221, 226, 226.7, 510, 1194, 1198. In addition, plaintiffs seek penalties due  
27 under the Private Attorneys General Act (“PAGA”).

28 \_\_\_\_\_  
<sup>2</sup> This declaration is hereinafter referred to as Supp Jato dec. re. PA.

1           **III.    DEFINITION, SIZE OF THE SETTLEMENT CLASS AND BENEFIT**  
2                           **METRICS**

3           In summary, the settlement agreement (Supp Jato dec. re. PA exh “A”) provides that the  
4 defendants agree to pay \$230,000.00 to settle the Class/PAGA claims on a non-reversionary,  
5 common fund basis. (Id. exh “A” ¶ 8).

6           The settlement Class is defined as:

7  
8           “5(a) All individuals who have worked for Defendant Coffee Meets Bagel, Inc. in  
9 the four years from May 6, 2015 and who were classified as independent  
10 contractors at any time.

11           5(b) All individuals who have worked for Defendant Coffee Meets Bagel, Inc. in  
12 the four years from May 6, 2015 and who were classified as salaried or  
13 exempt employees at any time.

14           5(c) Class Member excludes any officer or individual defendant.”

15           (Id. exh “A” at ¶ 4)

16           There are 60 class members. For the 60 individuals and based upon the calculations  
17 stipulated in the Settlement, the highest Individual Settlement Share to be paid is approximately  
18 \$20,495.33, the lowest Individual Settlement Share to be paid is approximately \$14.23 (for a  
19 recruiter who only performed work for a week in the class period), while the average Individual  
20 Settlement Share to be paid is approximately \$2,030.56. (see declaration of Kevin Lee at ¶14 –  
21 “Lee dec.”).

22   a) Class Representatives’ Incentive Payments and Attorney’s  
23   fees.

24           In recognition of the Plaintiffs efforts in this litigation, assisting in pursuing the case including  
25 the settlement process, the representative plaintiffs have applied to the Court for an award of a  
26 class representative service award of \$2,500.00 for Vanessa Bustos (who worked in the case  
27 assisting plaintiffs’ counsel from the inception of the case) and \$1,000.00 for Rezelle Bustos, both  
28 to be paid from the common fund. Class Counsel has applied for payment of \$76,666.67 in fees  
and costs (one-third of the common fund settlement). The payment of fees, costs and service  
award are addressed separately as instructed by the court in the 3/30/22 order.

  b) Scope of the Release



1 Each participating class member is releasing: “all claims, rights, demands, liabilities, and  
2 causes of action, arising from, or related to, the same set of operative facts as those set forth in the  
3 operative complaint, including: (i) all claims for unpaid overtime; (ii) all claims for meal and rest  
4 break violations; (iii) all claims for unpaid minimum wages; (iv) all claims for the failure to  
5 timely pay wages upon termination based on the preceding claims; (v) all claims for the failure to  
6 timely pay wages during employment based on the preceding claims; (vi) all claims for wage  
7 statement violations based on the preceding claims; (vii) all claims for unpaid sick leave based on  
8 the preceding claims; (viii) all claims asserted through California Business & Professions Code  
9 §§ 17200 et seq., and California Labor Code §§ 2698 et seq. based on the preceding claims; and  
10 (ix) all claims asserted through California Labor Code § 558.1 based on the preceding claims.”  
11 (Settlement Agreement Jato dec. ISO Prelim Approval exh “A” par. 22).

12 There is also a waiver to Civil Code sec. 1542 waiver applicable to the class representatives only  
13 (Supp Jato dec. re PA exh “A” par. 61).

14 c) Administration of the Settlement Notice and Response from  
15 the Class

16 Phoenix Class Actions Administrator (“TPA”) was appointed to administer the settlement  
17 from beginning to final distribution of payment. The amount budgeted to that end is \$5,500.00  
18 which has not changed (see Lee dec. par. 15 and exh “B”).

19 On April 30, 2022, the TPA submitted the notice to the 60 class members( Id. par. 5).  
20 Only two notices were returned and none were returned with a forwarding address. For the two  
21 (2) Notices returned from the Post Office without a forwarding address, the TPA attempted to  
22 locate a current mailing address using TransUnion TLOxp and ultimately, one updated address  
23 was obtained and the Notice was promptly re-mailed to that Class Member via first class mail.  
24 Only one of the 60 notice remained undelivered since a good address could not be obtained via  
25 skip trace (Id. at par. 6 and 7).

26 As of June 20, 2022 (a day before the filing of this motion and six after the  
27 optout/objection deadline), the TPA has received no objections to the settlement and no requests  
28 to opt out (Lee dec. par. 8-9). Similarly, not a single request to revise work week calculations has

1 been received by the TPA (Id at par 10).

2 **IV. ARGUMENT**

3 *a) Criteria for Final Settlement Approval*

4 The Court’s final approval is the second stage necessary to effectuate the Final Settlement.  
5 (Cal. Rules of Court, rule 3.769(a) [“settlement or compromise of an entire class action . . . requires  
6 the approval of the court after hearing”].) “The settlement of a class action requires court approval  
7 to prevent fraud, collusion, or unfairness to the class.” (*In re Cellphone Termination Fee Cases*  
8 (2009)180 Cal.App.4th 1110, 1117 [citation omitted] (In re Cellphone).) Court approval of a class  
9 settlement is “[a] two-step process[.]” (Id. at p. 1118.) The Court completed the first step when it  
10 entered the Preliminary Approval Order on March 30, 2022, and directed the parties to issue notice  
11 of the Settlement Agreement to the Class.

12 At final approval, the Court “must determine the settlement is fair, adequate, and  
13 reasonable. The purpose of [this] requirement is the protection of those class members, including  
14 the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.”  
15 (*In re Cellphone, supra*, 180 Cal.App.4th at p. 1117 [citation, punctuation omitted].) “The court  
16 has a fiduciary responsibility as guardian of the rights of the absentee class members when  
17 deciding whether approve a settlement agreement.” (*Ibid.* [same].)

18  
19 [I]n the final analysis it is the court that bears the responsibility to ensure that the  
20 recovery represents a reasonable compromise, given the magnitude and apparent  
21 merit of the claims being released, discounted by the risks and expenses of  
22 attempting to establish and collect on those claims by pursuing the litigation.  
(*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [citation  
omitted; italics applied].)

23 Thus, the Court must “receive and consider enough information about the nature and  
24 magnitude of the claims being settled . . . to make an independent assessment of the  
25 reasonableness of the terms to which the parties have agreed.” (*Id.* at p. 133.)

26 At final approval, the Court determines whether to enter final judgment approving the  
27 settlement, taking into account the Class Members’ reaction to the Class Notice. The Court’s  
28 “inquiry must be limited to the extent necessary to reach a reasoned judgment that the agreement

1 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
2 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*In re*  
3 *Cellphone, supra*, 180 Cal.App.4th at pp. 1117-18 [citation, punctuation omitted].)

4 However, at final approval, “Due regard should be given to what is otherwise a private  
5 consensual agreement between parties.” (*Dunk v. FoMoCo* (1996), 48 Cal.App.4th 1799 “Dunk”)  
6 In this vein, it is material that California has a “strong public policy of this state to encourage the  
7 voluntary settlement of litigation.” (*Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1359  
8 [collecting citations].) This judicial policy is particularly compelling in cases such as this  
9 involving a complex representative action. (*Officers for Justice v. Civil Service Comm’n of City*  
10 *and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625 [“voluntary conciliation and  
11 settlement are the preferred means of dispute resolution . . . especially . . . in complex class action  
12 litigation”].)

13 **V. THE COURT SHOULD CONCLUDE THAT THE SETTLEMENT IS FAIR**  
14 **ADEQUATE AND REASONABLE**

15 In complex class litigation, “[v]oluntary conciliation and settlement are the preferred means of  
16 dispute resolution.” (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85  
17 Cal.App.4th 1135, 1151 quoting *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d  
18 615, 625.) The trial court has broad discretion in reviewing a proposed class settlement for approval.  
19 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235; *Kullar v. Footlocker Retail,*  
20 *Inc.* (2008) 168 Cal.App.4th 116, 127-128.) In deciding whether to grant final approval to a proposed  
21 class action settlement under Code of Civil Procedure § 382, the Court’s overriding concern is  
22 whether the proposed settlement is “fair, adequate, and reasonable.” (*Dunk* at 1801.)

23 Courts bear the responsibility of ensuring that the settlement is a reasonable compromise,  
24 “given the magnitude and apparent merit of the claims being released, discounted by the risks and  
25 expense of attempting to establish and collect on those claims by pursuing the litigation.” (*Kullar,*  
26 *supra*, 168 Cal.App.4th at p. 127.) When considering the fairness of a proposed settlement, courts  
27 consider a number of factors including, but not limited to: (a) the strength of plaintiff’s case; (b) the  
28

1 risk, expense, complexity, and likely duration of further litigation; (c) the risk of maintaining class  
2 action status through trial; (d) the benefits conferred by the settlement; (e) the experience and views of  
3 plaintiff's counsel; (f) the extent of discovery completed and the state of the proceedings; and (g) the  
4 reaction of class members to the proposed settlement. (E.g., *Dunk, supra*, 48 Cal.App.4th at p. 1802.)  
5 While the proponent of the settlement bears the burden of showing that the proposed settlement is fair  
6 and reasonable, California courts generally recognize a presumption of fairness where (1) the  
7 settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient  
8 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and  
9 (4) the percentage of objectors is small. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) "Ultimately, the  
10 court's determination is nothing more than an amalgam of delicate balancing, gross approximations  
11 and rough justice." (*Id.* at p. 1801.)

12 *a) The Settlement is the Product of Arm's Length Negotiations*

13 There is a presumption of fairness where a settlement is reached through arm's-length  
14 bargaining. (*Wershba, supra*, 91 Cal.App.4th at p. 245.) As outlined in Plaintiff's Motion for  
15 Preliminary Approval of Class Action and PAGA Settlement and subsequent briefs (collectively,  
16 "Motion for Preliminary Approval"), Class Counsel did not engage in settlement negotiations until  
17 they possessed sufficient information to make an informed decision. There can be no doubt as to the  
18 fairness of the Settlement because it was the product of arm's-length and non-collusive negotiations  
19 that were assisted by a reputable mediator only after performing extensive discovery and  
20 investigations (Jato dec. at par. 3).

21 *b) Sufficient Investigation and Discovery Has Been Conducted*

22 Generally, the status of discovery is considered when determining whether a settlement is fair,  
23 reasonable and adequate. (*Dunk, supra*, 48 Cal.App.4th at p. 1801.) The Parties to the action had  
24 engaged in a significant amount of discovery prior to attending private mediation including  
25 interviewing class members after a bellaire motion was granted. Plaintiffs also conducted copious  
26 discovery prompting the production of over 800 pages of documents produced by CMB. Plaintiffs  
27 followed up with the deposition of CMB's person most knowledgeable in payroll practices. This  
28

1 is certainly enough for the Class Counsel and the Court to act intelligently and put them in the  
2 position to negotiate and put forward a fair settlement for the class (Jato dec. par 3).

3 *c) Positive Settlement Class Member Response*

4 On April 30, 2022 the court-approved Class Notice was mailed out to the 60 members of the  
5 Settlement Class. (Lee Decl., ¶ 5.) The Class Notice included information regarding: (1) the nature of  
6 the litigation; (2) a summary of the terms of the settlement; (3) the definition of the Settlement Class;  
7 (4) the PAGA Amount; (5) the estimated payment to the LWDA; (6) the amounts being sought for  
8 Settlement Administration costs, the Class Representative Enhancement Award, attorneys' fees, and  
9 litigation costs; (7) the procedure and time period for submitting a dispute to the eligible number of  
10 qualifying pay periods, an objection to the Settlement, and/or to request for exclusion from the  
11 Settlement; (6) the Class Member's estimated Individual Settlement Payment; and (7) the date, time,  
12 and location for the final approval hearing, among other things. (Id. exh. "A")

13 To ensure that Settlement Class Members were reasonably informed of the Settlement, the  
14 Settlement Administrator performed a diligent search to identify the most updated mailing address for  
15 every Settlement Class Member. (Id. at ¶ 6.) Only two Class Notices have been identified as  
16 undeliverable. (Id. )

17 The response to the Settlement has been extremely positive as the Settlement Administrator  
18 has yet to receive a single objection, request for exclusion to the Settlement or dispute to the number  
19 of qualifying pay periods (Id. at ¶¶ 8-10.) The Settlement Class Member's acceptance of the  
20 Settlement, as evidenced by the lack of objections and low number of requests for exclusion, is a  
21 testament to the fairness, reasonableness and adequacy of the settlement. (See e.g., *7-Eleven Owners*  
22 *for Fair Franchising, supra*, 85 Cal.App.4th at p. 1152-1153 [affirming approval of the settlement  
23 where the response was "overwhelmingly positive" when 80 out of 5,454 class members elected to  
24 opt out]; *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 53 F.3d 948, 967 [affirming approval of  
25 settlement where 52,000 out of 376,301 putative class members submitted claims forms and 54  
26 objected to the settlement].)

27  
28 //

1 d) Class Counsel is Experienced in Similar Litigation

2 Class Counsel is well versed in class action litigation with over fifty years of combined  
3 experience in wage and hour class actions as thoroughly described in the Declarations of Daniel  
4 Berko and Carlos Jato file with this court on May 31, 2022 (to avoid repetition, plaintiffs refers to the  
5 two declarations submitted on May 31, 2022 in support of the motion for an award of attorneys fees,  
6 costs and incentive payments by counsel Carlos Jato and Daniel Berko – hereinafter referred to as  
7 “Fee Declarations” at par. 2). Counsel for the Class has been appointed as class counsel in over ten  
8 wage and hour class and representative actions. (Fee Declarations at par. 2-3) Based on Class  
9 Counsel’s experience in litigating matters similar to this action, they are of the opinion that the  
10 Settlement represents a favorable resolution for members of the Settlement Class since it provides  
11 significant recovery and eliminates the risk and expense of further litigation. (Jato dec. par. 3)

12 Benefits of the Proposed Settlement A settlement is not judged against what might have  
13 been recovered had plaintiff prevailed at trial, nor does a settlement have to provide 100% of the  
14 damages sought to be fair and reasonable. (*Wershba*, supra, 91 Cal.App.4th at p. 250.) In fact,  
15 courts commonly approve settlements that amount to a fraction of the potential recovery. (See  
16 *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139 [finding a settlement to be fair  
17 and reasonable despite the fact that the relief provided was “relatively paltry”]; *Behrens v.*  
18 *Wometco Enters., Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 542, aff’d, (11th Cir. 1990) 889 F.2d 21  
19 [“A settlement can be satisfying even if it amounts to a hundredth or even – a thousandth of a  
20 single percent of the potential recovery.”]; *City of Detroit v. Grinnel Corp.* (S.D.N.Y. 1972) 356  
21 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount is “well within the ball park”];  
22 *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 \*17 [approving a  
23 settlement of \$75,000 when potential damages were \$1,200,000]; see also 4 William B.  
24 Rubenstein et al., *Newberg on Class Actions* (5th ed. 2016) § 13:15 [the range of reasonableness  
25 percentage could be as low as 1/100th or 1/1000th of 1%].)

26 Plaintiff asserts that the potential liability for the class claims was \$2,553,382.00 and about  
27 \$1,525,000.00 for the PAGA claims. (Jato dec. at par. 5) The Settlement Amount compared with the  
28 potential liability represents 9% of the potential recovery. If the Settlement is approved the average

1 settlement payment is estimated to be \$2,030.56. (see Lee dec. at par 14). The highest payment to a  
2 class member is \$20,495.33, the lowest Individual Settlement Share to be paid is approximately  
3 \$14.23 (for a recruiter who only performed work for a week in the class period (Id. at par 14). This  
4 is an exceptional recovery for the 60 Settlement Class Members which confers a significant benefit to  
5 the Settlement Class Members.

6 e) Risks Associated with Continued Litigation

7 While Plaintiffs believe that they would be successful on the merits, Defendant vehemently  
8 denies any liability or wrongdoing of any kind associated with the claims alleged in the action and  
9 that the action is not suitable for class treatment. CMB maintains that it complied with all of its  
10 obligations under California law and that Plaintiffs and all other putative class members were properly  
11 categorized and compensated and provided with the opportunity to take all meal and rest periods  
12 during the class period. Plaintiffs would also have the challenge of proving that CMB violations of  
13 Labor Code § 203 were willful violations. (*Ibid*; see also *Choate v. Celit Corp.* (2013) 215  
14 Cal.App.4th 1460, 1468 [holding that “an employer’s reasonable, good faith belief that wages are not  
15 owed may negate a finding of willfulness]; *Road Sprinkler Fitters Local Union No. 669 v. G&G Fire*  
16 *Sprinklers, Inc.* (2002) 102 Cal.App.4th 765, 782-783 [a mistaken belief that wages are not owed may  
17 negate a finding of willfulness].

18 Notably, the most critical hurdle is to establish that the two class representatives (who  
19 performed work as customer support) have claims typical to those workers who performed work in  
20 different areas of the company (Marketing, Human Resources, Office Managers Engineers, Data  
21 Scientists, recruiters, Writers event producers or designers) see *Jato* dec. at par 7.

22 Failing to certify a class for all these categories of employees would leave no remedy (in the  
23 context of this case) to those workers. In turn, a defeat in class certification would mean that the  
24 court may also be forced to address the claims asserted in a piecemeal, costly and time-consuming  
25 manner. In absence of settlement, this action would continue to take up significant judicial resources.  
26 Given the risks, the settlement amount is a considerable resolution and is consistent with the  
27 “overriding public interest in settling and quieting litigation.” (*Van Bronkhorst v. Safeco Corp.* (9th  
28 Cir. 1976) 529 F.2d 943, 950; see also 4 *Newburg on Class Actions* at § 11.41.) This Court should

1 finally approve the Settlement because it provides all Settlement Class Members with significant  
2 recovery in a prompt and efficient manner

3 **VI. IV. REAFFIRMATION OF CONDITIONAL CERTIFICATION IS PROPER**

4 Pursuant to Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable  
5 and its members are too numerous for joinder to be practical; (2) the representative and absent class  
6 members share a community of interest and questions of law and facts common to the class  
7 predominate over questions unique to individual class members; (3) the representative's claims are  
8 typical of the members of the class; and (4) the representative will fairly and adequately represent the  
9 interest of the class. (See e.g., *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.)

10 In granting preliminary approval of the settlement on March 30, 2022, this Court determined that for  
11 settlement purposes only, the defined class set forth in the Settlement Agreement meets all of the  
12 requirements for class certification. There have been no subsequent events that would cast doubt on  
13 this determination. Accordingly, Plaintiff requests that the Court reaffirm its prior conditional grant of  
14 class certification for settlement purposes.

15 **VII. THE COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE**  
16 **IS FAIR AND APPROPRIATE**

17 Counsel for plaintiff caused the proposed PAGA settlement to be submitted to the DLSE  
18 through their electronic portal and to this date, the DLSE has not raised any objection or question  
19 to the proposed PAGA settlement (Jato dec. par. 21). This clearly weights in favor of finding that  
20 the PAGA settlement is just and adequate.

21 Plaintiff requests that the Court finally approve the PAGA Amount of \$30,000 for payment of  
22 civil penalties under the PAGA. The PAGA Amount represents approximately 7% of the realistic  
23 value of recoverable PAGA civil penalties. In accordance with Labor Code § 2699(i) and pursuant to  
24 the Settlement Agreement, \$22,500 (75% of \$30,000), shall be paid to the LWDA. The remaining  
25 25% is to be allocated to the Net Settlement Amount and distributed to Settlement Class Members.  
26 This allocation is consistent with previous settlements, particularly as courts have held that no part of  
27 the settlement must necessarily be allocated and distributed to the LWDA. (See e.g. *Carrington*,  
28 *supra*, 30 Cal.App.5th at p. 528 [awarding PAGA penalties of only 0.2% of the maximum]; *Jennings*



1 *v. Open Door Marketing, LLC* (N.D. Cal. Oct. 3, 2018) 2018 WL 47773057 \*9 [approving a  
2 settlement allocating \$10,000 to PAGA, or 0.06% of its total estimated value]; *Smith v. Am. Greetings*  
3 *Corp.* (N.D. Cal. May 19, 2016) 2016 U.S. Dist. LEXIS 66247 [granting final approval of class action  
4 settlement allocating \$37,500 of \$4 million settlement to PAGA]; *Willner v. Manpower Inc.* (N.D.  
5 Cal. June 20, 2015) 2015 U.S. Dist. LEXIS 80697 [granting final approval of a class settlement  
6 allocating \$65,655 of \$8.75 million settlement to PAGA]; *Chu v. Wells Fargo Investments, LLC*  
7 (N.D. Cal. Feb. 15, 2011) 2011 U.S. Dist. LEXIS 15821 [approving \$10,000 PAGA allocation in \$6.9  
8 million settlement]; *Nordstrom Commissions Cases*, 186 Cal.App.4th at p. 589 [affirming a settlement  
9 allocating \$0 of \$6.4 million settlement to PAGA].)

10 If a higher amount is allocated to PAGA penalties, then the burden to pay the penalties would  
11 effectively shift to the Settlement Class Members since a higher allocation would reduce the amount  
12 that the Settlement Class Members would receive under the settlement. While this burden shifting  
13 may achieve the enforcement objective of the statute, it would do so at the expense of the employees  
14 that the statute was designed to protect. Thus, the proposed allocation of \$30,000 to PAGA civil  
15 penalties strikes a balance between the interest of all the parties, including the LWDA and general  
16 public, by penalizing the employer and providing relief to the Settlement Class Members. The PAGA  
17 allocation is therefore fair, adequate, and reasonable.

18 **VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**  
19 **REASONABLE**

20 Phoenix Class Action Administrators was appointed as the Settlement Administrator in this  
21 action. Per the Settlement Agreement, the Settlement Administrator is responsible for providing  
22 notice to the members of the Settlement Class, setting up a qualified settlement fund, calculating and  
23 administering payments, tax reporting and other related duties. The Parties contemplated the costs of  
24 administration of the settlement to be \$5,500.00 at preliminary approval.

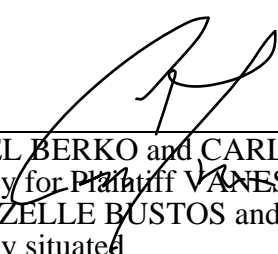
25 Plaintiff requests that administration costs be awarded in the amount of \$5,500.00 to Phoenix  
26 Class Action Administrators because the administration costs are reasonable and necessary to  
27 administer the settlement, including providing notice to the members of the Settlement Class, setting  
28

1 up a qualified settlement fund, calculating and administering payments, tax reporting and other related  
2 duties. (Lee dec. at par 15.)

3 **IX. CONCLUSION**

4 For the reasons set forth herein, Plaintiff requests that the Court finally approve the settlement  
5 under the terms of the Settlement; confirm its conditional certification of the Settlement Class;  
6 confirm its appointment of Carlos Jato and Daniel Berko as Class Counsel; confirm its appointment of  
7 Plaintiff Vanessa Bustos and Rezelle Bustos as the Class Representatives; finally approve the PAGA  
8 Amount of \$30,000 and payment of \$22,500 to the LWDA and award settlement administration costs  
9 in the amount of \$5,500 to the Settlement Administrator, Phoenix Class Action Administrators<sup>3</sup> and  
10 Direct that the Final Approval Order and Final Judgment be entered.

11  
12  
13 Dated: June 21, 2022

14  
15   
16 \_\_\_\_\_  
17 DANIEL BERKO and CARLOS JATO,  
18 Attorney for Plaintiff VANESSA BUSTOS  
19 and REZELLE BUSTOS and all others  
20 similarly situated

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28 <sup>3</sup> As requested by the Court, the motion for attorney's fees and costs was filed separately and therefore the issues of  
litigation costs, attorney's fees and service awards was filed with the court under the motions filed on May 31, 2022  
and published on the settlement website for class members to be able to review it before the objection deadline.

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PROOF OF SERVICE

My business address is 819 Eddy St. San Francisco, California 94109. I am employed in the County and City of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within case.

On June 21, 2022, following ordinary business practice, I caused to have served the foregoing document(s) described as:

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARLOS JATO; DECLARATION OF KEVIN LEE; PROOF OF SERVICE

On the parties listed below:

Marcus Dong 425 California Street, Suite 2100 San Francisco, CA, 94104 <a href="mailto:mdong@kdvlaw.com">mdong@kdvlaw.com</a>	

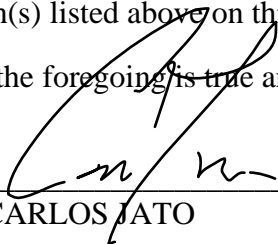
(x) (VIA EMAIL PER AGREEMENT) by transmitting electronically via email the document(s) listed above to the recipient(s) set forth above (or as stated in the attached service list) on this date before.

() (VIA FIRST CLASS MAIL) by placing a true and correct copy of the document(s) listed above enclosed in a sealed envelope(s) with postage fully prepaid in the United States Mail at San Francisco, California. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

() (BY OVERNIGHT SERVICE) by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery on next business day, addressed as set forth below.

() (BY PERSONAL SERVICE) by delivering a true and correct copy of the documents listed above in a sealed envelope, to the person(s) listed above on this date.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on June 21, 2022.



\_\_\_\_\_  
 CARLOS JATO