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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

DECLARATION OF CARLOS JATO
IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND PAGA
SETTLEMENT

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

19 I, CARLOS JATO, declare and state as follows:

20 1. I am an attorney for plaintiffs VANESSA BUSTOS and REZELLE BUSTOS (hereinafter
21 Plaintiffs) in the case of *Bustos v. Coffee Meets Bagel Inc. San Francisco County Superior Court*
22 Case no. CGC-19-575734 (“CMB” case).

23 2. I make this declaration in support of plaintiffs’ Motion for Final Approval of Class Action
24 Settlement.

25 3. There is no doubt in my mind based on the discovery I conducted and my valuation of the
26 claims taking into account the defenses asserted by CMB that the settlement reached of
27 \$230,000.00 in this case is a very good outcome for the class. I reviewed over eight hundred
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DECLARATION OF CARLOS JATO

1 pages of documents produced by counsel for Coffee Meets Bagel (CMB). The records produced
2 included employment agreements and contractor agreements signed by every putative class
3 member. In addressing the concerns of the court regarding typicality, a key fact to establish
4 typicality in this case are the contracts used by CMB with the putative class members. My review
5 showed that for the most part, the same form of contract (with slight variations) was used by
6 CMB with most if not all putative class members who joined the company as “consultants”. That
7 same form of agreement spells out the high degree of control over the work that the CMB
8 reserved for itself in regards to the putative employment of the class members. Similarly, for
9 those workers who were treated as salaried employees (of which VB is a good example), the
10 company used substantially the same form of employment agreement. It is my opinion after
11 reviewing the contracts produced (with the risks analyzed below in this declaration) that plaintiff
12 would likely succeed in establishing that there was an across the board policy of misclassifying
13 employees. The mediation with Michael Loeb in this case took place only after we had completed
14 the above discovery.

15 4. Early in the case, I valued the damages of the named plaintiff, Vanessa Bustos. I am
16 familiar with her damages as to each cause of action and in this declaration, in order to value the
17 putative class claims, I have extrapolated her damages to calculate the potential damages of the
18 putative class members. The putative class is comprised of 60 individuals.

19 5. There is a total of 4957 workweeks for the putative class members. On average, the 60
20 putative class members have worked approximately 82 workweeks. This also means that on
21 average, plaintiff Vanessa Bustos’ damages (who worked approximately for two years for CMB)
22 represent almost double the amount of damage suffered by the average class member The
23 following valuation of the claims assumes that, on average, every class member suffered the same
24 or substantially the same damages (by prorating VB projected damages) and that the defenses
25 applicable to VB have the same strength as the defenses applicable to the remaining putative class
26 members. (I address the defenses to all other categories of class members in a second step at par.
27 six below). With all this in mind, and because the class consists of 60 individuals , the highest

1 possible recovery on behalf of the class is \$2,553,382.00. I value each claim for the putative class
2 as follows:

- 3 a. For the PAGA cause of action, the projected damages per Labor Code violation is
4 as follows: Separate from penalties under Labor Code 2699 are damages for
5 violation of Labor Code 226.8. Then, there is in addition the penalties under
6 2699 et seq based on each predicated Labor Code violation. My review of the
7 records, has revealed that there are 41 individuals that worked during the 1 year of
8 statute of limitations of this claim. As to the set of penalties under 226.8, those
9 would range between 205,000.00-615,000.00 (assuming no pattern and practice of
10 violations is proved) and 410,000.00-1,025,000.00 if a pattern and practice is
11 established under 226.8. Separately from the Labor Code 226.8 penalties under
12 Labor Code 2699(f)(2), there are potentially a total of 4 Labor Code violations
13 under Labor Code sections 203, 226, 226.7, 510 per pay period, for each one of the
14 41 individuals within the 1 year statute of limitations. The potential penalty under
15 Labor Code 2699(f)(2) amounts to approximately \$426,000.00
- 16 b. As to the Labor Code sec. 203 Claim: Based on my review of the records provided
17 by CMB and extrapolating the damages sustained by Vanessa Bustos to the
18 putative class members who worked the penalty could be as high as \$264,000.00
19 for the entire class.
- 20 c. As to the 226 Payscale Penalty Claim: Based on my review of the records provided
21 by CMB and extrapolating the damages sustained by Vanessa Bustos to the rest of
22 the class, the penalty could be as high as \$65,250.00 for the entire class.
- 23 d. As to the Overtime Cause Claim: Based on my review of the records provided by
24 CMB and extrapolating the damages sustained by Vanessa Bustos to the rest of the
25 class, the claim could be as high as \$195,000.00 for the entire class.
- 26 e. As to the Meal and Rest Break Period Claim: Based on my review of the records
27 provided by CMB and extrapolating the damages sustained by Vanessa Bustos to

1 the rest of the class, the claim could be as high as \$314,632.00 for the entire class.
 2 f. As to the San Francisco Sick Leave Penalty – The projection of this penalty claim
 3 amounts to \$266,500.00 for the putative class. This assumes a violation of \$250.00
 4 for each one of the 41 individuals within the 1 year SOL per pay period.

5 6. The modulation of the apportionment of the settlement funds among different categories
 6 of workers is reasonable and necessary to provide the class members with benefits in close
 7 relationship to the strength of their claims. This was one of the main concerns by the class
 8 representatives throughout the process. It is not uncommon that when the putative class members
 9 have claims with different strengths or when different defenses could apply to different sub
 10 categories. In that case, the consideration ought to be distributed accordingly or in a way that is as
 11 fair as possible. A similar distribution to the one being proposed here has been approved in at
 12 least one prior class action I successfully litigated and settled on behalf of a group of truck drivers
 13 in the County of Alameda where drivers employment with Class C or Class A driver’s licenses
 14 where likely subject to different laws and in turn, to different defenses. The below chart lists the
 15 workweek value per class and facts in support of the proposed apportionment from the review of
 16 defendant’s produced records:

CLASS MEMBER	PERCENT PAYMENT	REASONS FOR ALLOCATION
Customer support	100% WV	Lower wages received, worked under stricter control and direction by defendant/employer and inapplicability of Professional managerial or administrative exemptions. Highly likelihood of certifying class.
Designer	25% WV	Very short term of work engagement (1 workweek or so) difficulty to establish employment relationship v. contractor relationship. The inherent creative and independent nature of work can also jeopardize certifying as sub-class
Data scientist	25% WV	Technical workers which are potentially exempt under the Computer Professional Exemption (compensation threshold prong met based on review of contract and pay records)

1 2 3 4 5	Engineers	25% WV	Technical workers which are potentially exempt under the Computer Professional Exemption Lab Code § 515.5(compensation threshold prong met based on review of contract and pay records); furthermore records produced showed that several engineers appeared to conduct a proper consulting business with their own corporate entity.
6 7 8	Human Resources	100% WV	HR is customarily a job position of any business. high chance of establishing that CMB misclassified HR workers as contractors. Very similar to customer support employees.
9 10 11	Event Producers	25%	Workers performed their work out of state and there is a high chance that California wage laws will not apply to them.
12 13 14	Marketing	50% WV	Marketing is customarily a job position of any business. Great chance of establishing that CMB misclassified their Marketing workers. Somewhat similar to customer support employees.
15 16	Office Managers	100% WV	Work in office under control and direction of CMB very similar to customer support employees
17 18 19	Recruiter	25% WV	Very short term of engagement (1 to 23 workweek in average) unlikely to establish employment relationship. The inherent independent nature of work will likely exclude them from being certified as subclass.
20 21	Writers	25% WV	Worker out of state and defense that California wage laws do not apply to them might apply

22 7. To merely distribute the funds based on a per workweek distribution would have
23 conferred too much benefits to individuals whose claims are subject to much stronger defenses
24 not to mention that not having a class representative in each job position The percentages
25 attributed were also reached by using my good judgment in ascertaining what would be the
26 likelihood of CMB succeeding in establishing contractor status using the ABC test set forth in
27 *Dynamex Operations W. v. Superior Court*, 4 Cal.5th 903 (Cal. 2018) as to each category of

1 individuals. In my analysis of the claims, it appeared that most if not all the individuals who
2 worked in California will likely succeed in establishing that they were misclassified as contractors
3 but because *Dynamex* applies to California employees only it will not apply to out of state
4 workers. I analyzed the strength of the claims for each group and attributed the above allocations
5 and percentage reduction in direct correlation to the strength of the defenses that could be
6 asserted. Other factors I considered are the difficulties Plaintiffs will face in establishing
7 typicality as to some of the categories of workers, and, while I still think that plaintiffs will
8 succeed in establishing typicality, the application of certain statutes like Labor Code §515.5 will
9 be problematic because while it is completely immaterial to VB, RB and all other customer
10 support it will be key as to the engineers. I have considered other methods of distributing the
11 money like a claims made basis but it would be too cumbersome and the costs of administration
12 would be a lot higher. I believe this to be the best possible method to distribute the net proceeds
13 among the class.

14 8. I provided the DLSE through their electronic portal with a copy of the proposed
15 PAGA settlement in this action. To this date, I have received no objection or inquiry from the
16 DLSE in regards to the proposed PAGA settlement.

17 I declare under the penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct and that this declaration was executed on June 21, 2022 in San
19 Francisco, California.

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CARLOS JATO