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7
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similarly situated

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

13 VANESSA BUSTOS and all others similarly
situated,

14 Plaintiff,

15 -vs-

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

17 Defendants.
18
19

Case No. CGC-19-575734

NOTICE OF MOTION AND MOTION
FOR ATTORNEYS FEES AND
SERVICE AWARDS TO THE CLASS
REPRESENTATIVES;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
CARLOS JATO; DECLARATION OF
VANESSA BUSTOS; DECLARATION
OF REZELLE BUSTOS;
DECLARATION OF DANIEL BERKO

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


22
23 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on July 14, 2022 at 2:00 p.m. in Department 613 of the above
25 entitled court, located at 400 McAllister St. San Francisco, California 94102. Plaintiffs Vanessa
26 Bustos and Rezelle Bustos through their attorneys of record Carlos Jato and Daniel Berko will,
27 and hereby do, move for an order approving an award of attorneys' fees and costs in the amount
28

1 of \$76,666.67 and the amount of \$2,500.00 as service payment to Vanessa Bustos and \$1,000.00
2 as a service payment to Rezelle Bustos. Good Cause exists for this motion because the attorneys
3 have created a common fund and have spent many hours working on this case on behalf of the
4 class and the fee award requested is fully justified. Similarly, the incentive payment requested for
5 Vanessa Bustos and Rezeelle Bustos is more than justified considering the time they both spent
6 assisting in the litigation and their invaluable involvement and collaboration in prosecuting this
7 action.

8 This motion is based on this notice of motion, the memorandum of points and authorities
9 attached hereto, the declarations of Carlos Jato, Daniel Berko, Vanessa Bustos and Rezelle Bustos
10 attached hereto, and such other and/or further evidence as may be presented at the hearing on this
11 matter.

12
13 Dated: May 31, 2022

14
15 
16 DANIEL BERKO and CARLOS JATO,
17 Attorney for Plaintiff VANESSA BUSTOS
18 REZELLE BUSTOS and all others similarly
19 situated
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1
2 **I. INTRODUCTION**

3 This Application is made pursuant to California Rules of Court, Rule 3.769 which requires
4 court approval of the any attorneys’ fees award to class counsel.

5 Mr. Jato and Mr. Berko seek fees and costs totalling \$76,666.67 in total to be shared
6 equally for the work performed by them in the case. The litigation expenses incurred by the
7 attorneys on behalf of the class amounts to \$12,014.25. It is worth noting that the actual
8 attorney’s fees requested to be approved in this motion in the amount of \$64,652.42 are less than
9 1/3 of the total recovery. In effect, plaintiff’s counsel only request the approval of attorney’s fees
10 that represent exactly 28.11% of the total \$230,000.00 settlement being paid by the defendants.

11 **LEGAL ARGUMENT**

12 **II. THE COURT CAN AWARD FEES IN A COMMON FUND CASE AS A**
13 **PERCENTAGE OF THE FUND OR THE LODESTAR MULTIPLIER OR BOTH**

14 California endorses two separate methodologies of awarding fees, at least in a common
15 fund case such as this. Whatever doubt existed as to the propriety of awarding fees as a percentage
16 of a common fund, there is no doubt today that such an award is proper in California. *Laffitte v.*
17 *Robert Half International Inc.* (2016) 1 Cal.5th 480 (hereafter “Laffitte.”) The Court still has wide
18 discretion whether to award fees using the percentage method, or the lodestar multiplier method.
19 *Laffitte* at p. 484. Trial courts are encouraged, but not required, to cross-check whatever method
20 the court uses by ascertaining what the result would be using the other method. *supra*.

21 The Supreme Court stated that class attorneys proved that the range of fee awards in class
22 actions are generally 20-50%. (*supra* at p. 487.) In *Laffitte*, under the percentage method the
23 attorneys would have been awarded \$6,333,333,33 and to reach the same amount under the
24 lodestar multiplier method would need a 2.03-2.13 multiplier (the range depended on various
25 future events and time spent.) (*Laffitte, supra,* at 487.)

26 The Supreme Court discussed the history of courts’ attempts in the United States to award
27 proper fees in class actions which in general swung back and forth between the percentage method
28 and the lodestar multiplier method with the percentage method clearly having primacy today and
since the late 1980s. (*Laffitte* at 494.) While the percentage method is now the preferred method,

1 “courts have sought to ensure the percentage fee is reasonable” by crosschecking it with the
2 lodestar multiplier. (*Laffitte* at 494-495.) In fact, the Supreme Court described the blending of the
3 two fee calculation methods “as the most significant trend” today. (*Laffitte* at p. 496.) The
4 Supreme Court used the *Laffitte* opinion to clarify that without doubt the percentage method to
5 calculate a fee in a common fund case is proper in California. As is a lodestar multiplier
6 crosscheck of the fee. (*Laffitte* at p. 504.) In general, the lodestar multiplier crosscheck is not
7 intended to be a detailed accounting of the attorney time but instead “focuses on the general
8 question of whether the fee award appropriately reflects the degree of time effort expended by the
9 attorneys” (*Laffitte* at p. 505) Even in federal court, which requires much more specificity for fee
10 awards than courts in California, when the lodestar multiplier is used as a crosscheck much less
11 detail and records are required from the attorneys. (*Laffitte* at p. 505.) Regardless of the method
12 used, the goal is fair compensation for the attorneys and fairness to the class as well.

13 **III. REGARDLESS OF THE METHOD USED DETAILED TIME RECORDS ARE**
14 **NOT REQUIRED AND ARE NOT NECESSARILY PREFERRED**

15 In *Laffitte*, The California Supreme Court specifically approved the attorneys not
16 submitting detailed billing records but instead “declarations summarizing overall time spent.”
17 (*Laffitte* at p. 505.)

18 In general, detailed time sheets are not required of class counsel to support fee awards in
19 class action cases. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224 at pp. 254–255,
20 110 Cal.Rptr.2d 145.) The court may award fees based on time estimates for attorneys who do not
21 keep time records. (*Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1006–1007,
22 185 Cal.Rptr. 145.) *Chavez v. Netflix, Inc.* (2008), 162 Cal. App. 4th 43, 64. ““We do not want ‘a
23 [trial] court, in setting an attorney’s fee, [to] become enmeshed in a meticulous analysis of every
24 detailed facet of the professional representation. It . . . is not our intention that the inquiry into the
25 adequacy of the fee assume massive proportions, perhaps dwarfing the case in chief.’”” (*Wershba*
26 *v. Apple Computer, Inc. supra* at p. 254.)

27 It is well established that “California courts do not require detailed time records, and trial
28 courts have discretion to award fees based on declarations of counsel describing the work they

1 have done and the court's own view of the number of hours reasonably spent. [Citations.]” (*Pearl,*
2 *Cal. Attorney Fee Awards*, § 9.83, p. 9-70, and authorities cited therein; see, e.g., *Raining Data*
3 *Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375–1376, 97 Cal.Rptr.3d 196 [declarations
4 sufficient and detailed billing records not required] *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
5 43, 64, 75 Cal.Rptr.3d 413 [same] *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587, 46
6 Cal.Rptr.2d 677 [same]; *Trustees of Cent. States, Southeast & Southwest Areas Pension Fund v.*
7 *Golden Nugget, Inc.* (C.D.Cal.1988) 697 F.Supp. 1538, 1558–1559 [noting more lenient California
8 rule on time records in setting fees under Civ. Code, § 1717].)

9 “Because time records are not required under California law ..., there is no required level of
10 detail that counsel must achieve. See, e.g., *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th at p.
11 1098, 95 Cal.Rptr.2d 198, 997 P.2d 511 (“See, e.g., ... *Jaramillo v [.] County of Orange* (2011)
12 200 [Cal.App.] 4th 811, 830 [133 Cal.Rptr.3d 751] (noting that records included very general
13 descriptions, e.g., “trial prep,” “T/C-Client”); *City of Colton v [.] Singletary* (2012) 206 [Cal.App.]
14 4th 751, 784 [142 Cal.Rptr.3d 74] (declaration stating time spent on various activities); [citation].”
15 (*Pearl, Cal. Attorney Fee Awards, supra*, § 9.84, p. 9-71.)

16 The type of categorical breakout of time expended by each attorney provided here has been
17 specifically lauded by Hon. Vaughn Walker, former Chief Judge of the United States District
18 Court for the Northern District of California, as “an especially helpful compromise between
19 reporting hours in the aggregate (which is easy to review, but lacks informative detail) and
20 generating a complete line-by-line billing report (which offers great detail, but tends to obscure the
21 forest for the trees).” (*In re HPL Technologies, supra*, 366 F.Supp.2d 912, 920.)” *Syers Properties*
22 *III, Inc. v. Rankin*, (2014) 226 Cal. App. 4th 691, 698–700 (2014). In the present case, a generous
23 breakdown of hours of work performed by counsel for plaintiffs has provided (see exh “A” to Jato
24 dec.)

25 **IV. AS A PERCENTAGE OF THE FUND A ONE THIRD AWARD OF THE FUND IS**
26 **CLEARLY JUSTIFIED IN THIS CASE**

27 It is fair to say that a 1/3rd award of the settlement in a common fund case is common in
28 the San Francisco Bay Area at least. (See Declaration of Daniel Berko (hereafter “Berko decl.)

1 Even more reasonable, the requested fee in this matter, equals to 28.11% of the Maximum
2 Settlement Amount (for clarity, in the total 1/3 or 33.33% being requested, the litigation costs of
3 \$12,014.25. -Berko dec. par. 4- are also included)\

4 falls well within the percentages awarded in other class action litigation by this Court and
5 numerous California trial courts. See e.g., *Walgreens Overtime Cases*, JCCP No. 4387
6 (Coordinated Actions) (31% fee award); *Laykin et al. v. Ann Taylor Retail Inc., et al.*, LASC
7 BC328843 and BC342729 (Coordinated Actions) (27.5% fee award); *Collins v. Aaron Bros.*,
8 LASC No. BC 208856 (33 13% fee award); *Gallegos v. Office Depot*, Santa Clara Sup. Ct., Case
9 No. CV 797847 (33 13% fee award); *Chalmers v. Electronics Boutique*, LASC Case No.
10 BC306571 (33% of common fund *Graubard, et al. v. Goodyear Tire & Rubber Co.*, LASC Case
11 No. BC 230520 (33% award); *Viovens, et al. v. Wackenhut Corp.*, LASC Case No. BC290071
12 (31% award); *Goddard v. Longs Drugs Stores, Alameda Super. Ct.* Case No. RG04141291 (25%
13 award); *Crandall v. U-Haul International, Inc.*, LASC Case No. BCI78775 (40% award); *Albrecht*
14 *v. Rite Aid Corp.*, San Diego Super. Ct. Case No. 729219 (35% award); *Marroquin v. Bed Bath &*
15 *Beyond*, Alameda Super. Ct. Case No. RG04145918 (33 1/3% award); *In re Liquid Carbon*
16 *Dioxide Cases*, San Diego Super. Ct Case No. J.C.C.P. 3012 (33 1/3% award plus costs); *In re*
17 *California Indirect-Purchaser Plasticware Antitrust Litigation*, San Francisco Super. Ct. Case
18 Nos. 961814, 963201, and 963590 (33 1/3% fee award plus costs); *Bright v. Kanzaki Specialty*
19 *Papers*, S.F. Super. Ct. Case No. 964899 (33 1/3% fee plus costs); *Andrews v. First Interstate*
20 *Bank of California*, S.F. Super. Ct. Case No. 953575 (30% fee award including costs); *in re*
21 *California Indirect-Purchaser Infant* Case No. 953575 (30% fee award including costs); *in re*
22 *California Indirect-Purchaser Infant Formula Antitrust Class Action Litigation*, LASC Case No.
23 J.C.C.P. No. 2557 (30% fee award including costs); *Sconce/Lamb Cremation Cases*, LASC Case
24 No. J.C.C.P. No. 2085 (30% fee award plus costs). *Estrada, Alvarez vs. Burrtec Waste Group, Inc.,*
25 *et al.*, San Diego Super. Ct., Case No. 37-2011-00096268-CU-OE-CTL (Hon. Joel M. Pressman –
26 approving attorneys’ fees of 33 1/3% of \$2,789,000 in a pre-certification meal violation class
27 action); *White v. Edco Disposal Corp., et al.*, San Diego Super. Ct., Case No. 37-2011-00088803-
28 CU-OE-CTL (Hon. Judith Hayes – approving attorneys’ fees of 33 1/3% of \$3,500,000 in a pre-

1 certification meal violation class action); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494
2 (D.D.C. 1981) (45%); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480 F. Supp.
3 1195 (S.D.N.Y. 1979), *aff'd*, 622 F.2d 1106 (2d Cir. 1980) (in a Sherman Act case, approximately
4 53%); *Parker v. City of L.A.*, (1974) 44 Cal. App. 3d 556,567-68 (33.3%); *Tokar v. GEICO*, No.
5 GIC 810166 (San Diego County Super. Ct. July 9, 2004) (approving award of attorney's fees of 33
6 1/3% of recovery in a wage and hour class action); *Ivlarroquin v. Bed Bath & Beyond*, No.
7 RG04145918 (Alameda County Super. Ct. June 22, 2004) (in a wage and hour class action,
8 33.3%); *Crandall v. U-Haul Int'l, Inc.*, No. BCI78775 (Los Angeles County Super. Ct. Aug.
9 17,2001) (in a wage and hour class action, 40%); *Davis v. The Money Store, Inc.*, No. 99AS01716
10 (Sacramento County Super. Ct. Dec. 26, 2000) (in a wage and hour class action, awarding 33.3%
11 of \$6,000,000 settlement); *Kenemixay v. Nordstrom, Inc.*, (L.A. County Super. Ct., No. BC318850)
12 (50% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego County Super. Ct.) (35%).

13 Federal cases: *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL
14 1230826, at *28 (N.D. Cal. April 1, 2011) (approving fee that amounted to 42% of common fund
15 in wage and hour class action); *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491-93
16 (wageand- hour action putative class-action settlement where court approved award of attorneys'
17 fees in the amount of 33.3% of the common fund); *In re Heritage Bond*, 2005 WL 1594389, at *20
18 (C.D. Cal. June 10, 2005) (award of attorneys' fees in the amount of one-third of \$27,783,000- the
19 Settlement Fund; a 34% award is fair and reasonable); *Fernandez v. Victoria Secret Stores, LLC*,
20 No. CV 06-04149 MMM (SHx), 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (awarding
21 34% in fees of common fund comprised of gift cards).

22 Of course, the court has wide discretion and it needs no one to tell the court how often it
23 awards 1/3rd or some other percentage of the common fund and what justifies a departure from that
24 percentage award. (It is clear based on a review of the court's prior rulings in other cases that the
25 court does use the percentage method, at least at times.)

26 The 28.11% requested here is, we strongly believe, fully justified by the time, risk and the
27 benefits conferred on the class (see Berko at par. 10.) We also respectfully assert that if courts
28 want attorneys to take on these types of cases, the award has to be at least reasonable in terms of

1 the time spent and the risks incurred. The requested fees are well more than reasonable. The time
2 counsel spent and the expenses they incurred has not yet been reimbursed and so, because of the
3 risks they took, the award they seek is fair and for certain it is not high or excessive.

4 **V. USING THE LODESTAR MULTIPLIER METHOD THE FEE IS VERY LOW AND**
5 **MUCH LESS THAN WHAT THAT METHOD WOULD INDICATE WAS DUE**
6 **AND THUS IS OBVIOUSLY REASONABLE AND NOT EXCESSIVE**

7 Under the lodestar method, attorney fees are calculated by first multiplying the number of
8 hours reasonably expended on the litigation by a reasonable hourly rate of compensation (See
9 *Ketchum v. Moses*, supra, 24 Cal.4th 1122 at p. 1136, *Serrano v. Priest* (1977) 20 Cal.3d 25, 48, fn.
10 23, 141 Cal.Rptr. 315, 569 P.2d 1303, (Serrano III); [citation].)” (*Chacon v. Litke* (2010) 181
11 Cal.App.4th 1234, 1259, 1260.) Our Supreme Court has recognized that the lodestar is the basic fee
12 for comparable legal services in the community and that it may be adjusted by the court based on a
13 number of factors in order “to fix a fee at the fair market value for the particular action. In effect,
14 the court determines, retrospectively, whether the litigation involved a contingent risk or required
15 extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate
16 the fair market rate for such services.” (*Ketchum v. Moses supra*, at 1134.) The reasonable market
17 value of the attorney’s services is the measure of a reasonable hourly rate. [Citations.] This
18 standard applies regardless of whether the attorneys claiming fees charge nothing for their
19 services, charge at below-market or discounted rates, represent the client on a straight contingent
20 fee basis, or are in-house counsel. [Citations.]’ [Citation.]” *Syers Properties III, Inc. v. Rankin*,
(2014) 226 Cal. App. 4th 691, 700–01

21 In cases where a common fund analysis is not used, once the court establishes the lodestar
22 amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award.
23 *Serrano III, supra*, 20 Ca1.3d at 48. In applying the multiplier, *Newberg on Class Actions* states
24 that [m]ultiples ranging from one to four frequently are awarded in common fund cases when the
25 lodestar method is applied. A large common fund award may warrant an even larger multiplier. “4
26 *Newberg on Class Actions* 4th (4th ed. 2002) § 14.6. If the class members paid the fees that the
27 market would bear, they would pay a fee of anywhere from one-third to forty percent of any
28 recovery. Since this is the market rate, the lodestar calculation should be enhanced to reflect what

1 the class members would pay on the open market. *Lealao, supra*, 82 Ca1.App.4th at 47-48.
2 In *Lealao*, the Court held that trial courts should award lodestar fees by examining the percentage-
3 of-the-benefit and adjusting the lodestar calculation accordingly. *Id.* at 49, 53. The court indicated
4 that this is an upward adjustment and should be akin to a contingency fee recovery; the court
5 stated, “[a]n adjustment reflecting the amount of the class recovery is not significantly different
6 from an adjustment reflecting a percentage of that amount; and California courts have evaluated a
7 lodestar as a percentage of the benefit.” *Ld.* At 46. The *Lealao* method appears particularly
8 appropriate because class actions generally are contingency fee cases for plaintiffs – and the class
9 action clients do not expect to pay an hourly fee.

10 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is
11 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of
12 nonpayment in contingency cases.” *Ketchum v. Moses* (2001) 24 Ca1.4th 1122, 1138. The *Lealao*
13 court reasoned.

14 “Given the unique reliance of our legal system on private litigants to enforce
15 substantive provisions of law through class and derivative actions, attorneys
16 providing the essential enforcement services must be provided incentives roughly
17 comparable to those negotiated in the private bargaining that takes place in the
18 legal marketplace, as it will otherwise be economic for defendants to increase
injurious behavior. It has therefore been urged (most persistently by Judge
Richard Posner) that in defining a reasonable fee’ in such representative actions
the law should mimic the market.”

19 The hourly rates sought here- \$800.00 per hour for Mr. Berko with over 40 years of
20 experience and \$575.00 an hour for Mr. Jato with 10 years is clearly supported by rates generally
21 awarded in the Bay Area. See e.g. *Berko decl* at par. 6-9 *Jato* par. 9 and 13.

22 In considering the skill employed, the experience of the attorneys and rates awarded in
23 similar cases, the rates sought here are below the rates listed in the Laffite matrix (*Jato dec.* par.
24 14.)

25 **VI. THE HOURS INCURRED WERE REASONABLE AND NECESSARY**

26 Mr. Jato and Mr. Berko detail their hours in great detail. (see *Jato. Decl.* at Exh. A.) The
27 hours claimed are clearly reasonable. This case involved three amended pleadings, a Bellaire
28 Motion , the deposition of the PMK at CMB, and two full day mediations before a settlement in

1 principle was reached, many contacts with class members, several more months of negotiations
2 before a formal settlement agreement was signed, a motion for preliminary approval and soon a
3 motion for final approval. The discovery was laborious and involved many hours of meeting and
4 conferring and very substantial written discovery. See exhibit “A” to Jato dec.

5 **VII. THE COSTS INCURRED ARE REASONABLE**

6 In the course of this litigation, Class Counsel had to (and will) incur substantial out-of
7 pocket costs totaling \$12,014.24 (see Berko dec. at par. 4). Pursuant to the terms of the Final
8 Settlement Agreement and the class notice, the requested cost award are within the third allotted to
9 attorney’s fees. The incurred costs included filing fees, mediation fees and depositions. Such costs
10 are appropriate for cost reimbursement in these types of cases. See e.g., *In re United Energy Corp.*
11 *Sec. Litig.* (C.D. Cal. 1989) 1989 WL 73211, *6 (quoting 2 Newberg, Attorney Fee Awards, § 2.19
12 (1987)); see also, *In re GNC Shareholder Litigation* (W.O. Pa. 1987), 668 F. Supp. 450,452.

13 **VIII. THE LODESTAR MULTIPLIER CALCULATION CLEARLY SHOWS THE FEES**
14 **ARE REASONABLE**

15 Very often in the settlement of class actions, the attorneys request a “multiplier” on their lodestar
16 amount to capture risk and other factors. In fact, plaintiffs’ counsel’s “unadorned lodestar reflects
17 the general local hourly rate for a fee-bearing case; it does not include any compensation for
18 contingent risk, extraordinary skill, or any other factors a trial court may consider” *Ketchum*,
19 24 Cal. 4th at 1138; see also *Laffitte, supra* at p. 488, 506 (approving a multiplier of 2.03 to 2.13).

20 Here, Class Counsel request a total award of \$64,652.42 in fees (without multiplier), which,
21 compared to the actual rate and hours incurred, equates to a “negative multiple” of 0.65 on their
22 lodestar of \$98,336.25 (see Jato dec. exh “A”). Courts routinely hold that a negative multiplier
23 strongly supports the reasonableness of the requested fee. See, e.g., *Oxina v. Lands' End, Inc.*, No.
24 14cv2577-MMA (NLS), 2016 U.S. Dist. LEXIS 191738, at *13 (S.D. Cal. Dec. 2, 2016) (“Class
25 Counsel’s request for fees is reasonable, given that the requested fees are a negative multiplier of
26 Class Counsel’s lodestar to date.”); *In re Amgen Sec. Litig.*, No. CV 7-2536 PSG (PLAx), 2016
27 U.S. Dist. LEXIS 148577, at *27 (C.D. Cal. Oct. 25, 2016) (“Moreover, courts have recognized
28 that a percentage fee that falls below counsel’s lodestar strongly supports the reasonableness of the

1 award”) (citing *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, CV 2-3400 (CM), 2010 U.S. Dist.
2 LEXIS 119702, at *77 (S.D.N.Y. Nov. 8, 2010) (“Lead Counsel’s request for a percentage fee
3 representing a significant discount from their lodestar provides additional support for the
4 reasonableness of the fee request.”)); *Evans v. Linden Research, Inc.*, No. C-11-01078 DMR, 2014
5 U.S. Dist. LEXIS 59432, at *23 (N.D. Cal. Apr. 29, 2014) (“The lodestar crosscheck results in a
6 negative multiplier of .43, which suggests that the percentage of the fund amount is reasonable and
7 fair.”) (citing *Pierce v. Rosetta Stone, Ltd.*, No. C 11-01283 SBA, 2013 U.S. Dist. LEXIS 138921,
8 at *18 (N.D. Cal. Sept. 26, 2013).).

9 **IX. THE TWO SERVICE AWARDS ARE FAIR AND REASONABLE:**

10 Class Counsel request a total \$3,500.00 allotment for service fees for the class
11 representatives (\$2,500.00 to Vanessa Bustos and \$1,000.00 to Rezelle Bustos.) The amounts
12 requested are certainly reasonable when compared to service awards issued by other courts: See,
13 e.g., *Cellphone Termination Fee Cases*, (2010) 186 Cal. App. 4th 1380, 1393-95 (affirming
14 \$10,000 incentive awards); *Blacksher*, 2008 Cal. Super. LEXIS 1464, at *10-11 (\$10,000 award);
15 *Antelope Valley Groundwater Cases v. Diamond Farming Co.*, JCCP No. 4408, 2011 Cal. Super.
16 LEXIS 739, at *17 (L.A. Cnty. Super. Ct. May 4, 2011) (same); *Eates v. KB Home*, No. RG-08-
17 384954, 2011 Cal. Super. LEXIS 810, at *6-7 (Alameda Cnty. Super. Ct. June 16, 2011) (same).
18 Considering the time spent by the two class representatives, and the need to encourage employees
19 to accept those risks where warranted, as here, the incentive payments are very modest. The efforts
20 of the Class Representatives in assisting Class Counsel to achieve this excellent settlement are
21 described in the declarations submitted by each Class Representative.

22 **X. CONCLUSION**

23 We respectfully assert that there is no question the fee award requested is justified and based on
24 the lodestar multiplier is very reasonable. Also, as explained above, the litigation costs and the
25 service awards should be granted. For the reasons stated above, the court should grant this motion
26 and order payment from the common fund of attorneys’ fees and costs in the amount of \$76,666.67
27 to class counsel, the amount of \$2,500.00 as service payment to Vanessa Bustos and \$1,000.00 as a
28 service payment to Rezelle Bustos.

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Dated: May 31, 2022

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

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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 May 31, 2022, following ordinary business practice, I caused to have served the foregoing document(s) described as:

NOTICE OF MOTION AND MOTION FOR ATTORNEY’S FEES, COSTS AND SERVICE AWARDS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARLOS JATO; DECLARATION OF REZELLE BUSTOS DECLARATION OF VANESSA BUSTOS; DECLARATION OF DANIEL BERKO; PROOF OF SERVICE

On the parties listed below:

Marcus Dong 425 California Street, Suite 2100 San Francisco, CA, 94104 mdong@kdvlaw.com	

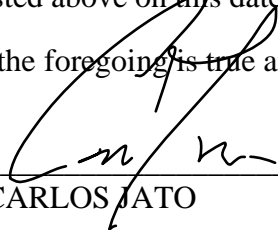
(x) (VIA EMAIL PER AGREEMENT) by transmitting electronically via email the document(s) listed above to the recipient(s) set forth above (or as stated in the attached service list) on this date before.

() (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 May 31, 2022.



 CARLOS JATO