

1 HEATHER DAVIS, SBN 239372
2 heather@protectionlawgroup.com
3 AMIR NAYEBDADASH, SBN 232204
4 amir@protectionlawgroup.com
5 **PROTECTION LAW GROUP, LLP**
6 237 California Street
7 El Segundo, California 90245
8 Telephone: (424) 290-3095
9 Facsimile: (866) 264-7880

10 Attorneys for Plaintiff
11 FERNANDO SALGUERO

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 FERNANDO SALGUERO, as an aggrieved
16 employee and private attorney general,

17 Plaintiff,

18 vs.

19 COLLABERA INC., a New Jersey
20 Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants

Case No.: 20STCV19946

*Assigned for all purposes to: Hon. Michael L.
Stern, Dept. 62*

23 **NOTICE OF MOTION AND MOTION FOR**
24 **ORDER APPROVING SETTLEMENT**
25 **PURSUANT TO CALIFORNIA LABOR**
26 **CODE PRIVATE ATTORNEYS GENERAL**
27 **ACT AND ENTERING JUDGMENT**

28 Hearing Date: November 19, 2021
Hearing Time: 9:00 a.m
Department: 62

Reservation ID: 905919296565

Complaint Filed: May 26, 2020
Trial Date: January 31, 2022

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on November 19, 2021, at 9:00 a.m. in Department 62 of
4 the above-entitled court, located at 111 N Hill St, Los Angeles, CA 90012, Plaintiff Fernando
5 Salguero (“Plaintiff”) will and hereby does move the Court for an Order:

6 1. Granting approval of the Joint Stipulation of PAGA Settlement and Release of
7 Claims between Plaintiff and Defendant Collabera Inc. (“Settlement” or “Settlement Agreement”),
8 attached as Exhibit 2 to the Declaration of Heather Davis (“Davis Decl.”), including but not limited
9 to, the plan of allocation and distribution of the Maximum Settlement Amount.

10 2. Approving the distribution of the Net Settlement Amount, currently estimated to be
11 \$1,325,979.12, of which seventy-five percent (75%) shall be paid to the California Labor and
12 Workforce Development Agency and twenty-five percent (25%) shall be paid to the PAGA
13 Employees on a pro rata basis based upon the number of Pay Periods worked during the PAGA
14 Period;

15 3. Appointing ILYM Group Inc. (“ILYM”) as the Settlement Administrator.
16 Settlement Administration costs shall not exceed \$19,990.00 to ILYM in connection with the costs
17 of administering the Settlement;

18 4. Awarding \$7,500.00 to Plaintiff Fernando Salguero as a PAGA Representative
19 Payment in return for his services in bringing the Action;

20 5. Awarding Plaintiff’s Counsel, Protection Law Group, LLP, the Attorney’s Fees
21 Payment of \$735,000.00 and Attorney’s Costs Payment of \$11,530.88 for reimbursement of actual
22 litigation costs and expenses pursuant to California Labor Code section 2699(g)(1).

23 6. Directing Defendant to deposit the Maximum Settlement Amount of \$2,100,000.00
24 into an account for administration of the Settlement and directing the Settlement Administrator to
25 distribute the Maximum Settlement Amount in accordance with the Settlement Agreement;

26 7. Directing the mailing of the PAGA Employees’ Payment Share checks to the PAGA
27 Employees under a cover letter substantially similar in content and form to the proposed covered
28 attached as “Exhibit A” of the Settlement Agreement;

1 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well
2 as information regarding the approval hearing on this matter, were submitted to the California Labor
3 and Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-Attorneys-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)
4 [General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on October 27, 2021. See Davis Dec. ¶74 Ex. 6.

5 This Motion is made on the grounds that the proposed PAGA Settlement is fair, adequate,
6 reasonable, and in the best interest of the affected employees and the parties. The Motion is based
7 on this Notice of Motion, the attached Memorandum of Points and Authorities, the concurrently
8 filed Declaration of Heather Davis and all exhibits attached thereto, the Declaration of Fernando
9 Salguero, the Declaration of Sean Hartranft of ILYM Group, Inc., and all other oral and
10 documentary evidence that may be presented at the hearing on this Motion.

11
12 Respectfully submitted,

13 DATED: October 27, 2021

PROTECTION LAW GROUP, LLP

14
15 By:

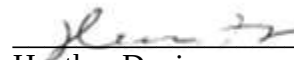

16 Heather Davis
17 Amir Nayebdadash
18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	2
III.	THE SETTLEMENT TERMS	3
A.	Definition of PAGA Employees.....	3
B.	Maximum Settlement Amount	3
C.	Allocation and Funding of the Maximum Settlement Amount	3
D.	Scope of the Release in the Settlement Agreement	4
IV.	STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT	5
V.	THE SETTLEMENT IS FAIR AND RESONABLE	6
A.	Plaintiff Has Complied with the Administrative Requirements of California Labor Code Section 2699.....	7
B.	Arm’s-Length Negotiations.....	7
C.	Sufficient Investigation and Discovery by Experienced Counsel.	7
D.	The Settlement is Reasonable in Light of the Parties’ Legal Positions, the Risks of Continued Litigation, and the Underlying Purpose of the PAGA.	8
1.	Plaintiff’s Counsel’s Analysis of Defendant’s Maximum Potential Liability.	8
2.	Plaintiff’s Counsel’s Risk-Based Analysis and Adjustments	8
3.	The Settlement Fulfills the Fundamental Purpose of PAGA and is Consistent with Other PAGA Settlement Approved by the Court.	11
VI.	THE REQUESTED ATTORNEYS’ FEES PAYMENT IS FAIR AND SHOULD BE APPROVED.....	12
A.	A Fee Award Based on a Percentage of the Entire Settlement Fund is Appropriate.	12
B.	The Requested Fee Award Is Reasonable Based on the Dunkel Factors.	14
1.	Time and Labor Required.	14
2.	The Skill Required to Perform Legal Services.	15
3.	The Value, Amount, and Results Achieved.....	15
4.	Whether the Fee is Fixed or Contingent.	16
C.	The Requested Fee is Reasonable Under a Lodestar Analysis.....	16
1.	Counsel Spent a Reasonable Amount of Time.	17
2.	Plaintiff’s Counsel’s Hourly Rate is Reasonable.....	17
3.	The Use of a Multiplier is Reasonable and Appropriate.....	18

1	D. The Requested Costs Are Fair and Reasonable.....	19
2	VII. THE REQUESTED PAGA REPRESENTATIVE PAYMENT IS FAIR AND	
3	REASONABLE AND SHOULD BE APPROVED.	20
4	VIII. THE PROPOSED SETTLEMENT COVER LETTER TO THE PAGA EMPLOYEES	
5	SHOULD BE APPROVED.	20
6	IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.....	21
7	X. CONCLUSION.	21

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D.Cal., 2013).....	11
<i>Amalgamated Transit Union, Local 1756, AFL-CIO</i> , 46 Cal.4th 993, 1003 (2009)	6
<i>Apple Computer, Inc. v. Super. Ct.</i> , 126 Cal.App.4th 1253 (2005)	13
<i>Arias v. Sup. Ct.</i> , 46 Cal.4th 969, 986 (2009)	6,7
<i>Bell v. Famers Ins. Exch.</i> , 115 Cal.App.4th 715 (2004)	20
<i>Camden I Condominium Association, Inc. v. Dunkel</i> , 946 F.2d 768 (11th Cir. 1991).....	15
<i>Carrington v. Starbucks Corp.</i> , 30 Cal.App.5th 504, 529 (2018).....	10
<i>Cates v. Chiang</i> , 213 Cal.App.4th 791 (2013)	17
<i>Chu v. Wells Fargo Investments, LLC</i> , 2011 WL 672645 (N.D. Cal. 2011)	12
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	7, 20
<i>Cruz v. Sky Chefs, Inc.</i> , 2014 U.S. Dist Lexis 17693 (N.D. Cal. 2014).....	12
<i>Davis v. Brown Shoe Co.</i> , 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015).....	12
<i>Dunk v. Ford Motor Co.</i> 48 Cal.App.4th 1794 (1996).....	13, 15
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	9
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169 (C.D. Cal. 2008).....	9
<i>Estrada v. FedEx Ground Package Sys. Inc.</i> , 154 Cal.App.4th 1 (2007)	13
<i>Fleming v. Covidien, Inc.</i> , 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011).....	10
<i>Franco v. Ruiz Foods, Inc.</i> , 2012 WL 5941801 (E.D. Cal. 2013)	12
<i>Greene v. Dillingham Construction</i> , 101 Cal.App.4th 418 (2002).....	19
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> , 58 Cal.4th 348, 381 (2014)	6
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122 (2001)	17, 18, 19
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal.App.4th 116 (2008)	8
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal.App.4th 19 (2000).....	13, 14
<i>Litty v. Merrill Lynch & Co.</i> , 2014 WL 5904904 (C.D. Cal. Nov. 10, 2014).....	9
<i>Lusby v. Gamestop Inc.</i> , 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)	12
<i>Martino v. Ecolab Inc.</i> , No. 3:14CV04358 (N.D. Cal. 2017)	12
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	20
<i>O’Conner v. Uber Techs.</i> , 201 F.Supp.3d 1110 (N.D. Cal. Aug. 18, 2016).....	12
<i>Ochoa-Hernandez v. CJADERS Foods, Inc.</i> , 2010 WL 1340777 at *4 (N.D. Cal. Apr. 2, 2010)....	6
<i>Ramirez v. Benito Valley Farms, LLC</i> , 2017 WL 3670794 (N.D. Cal. Aug. 25, 2017)	12

1	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6,	
2	2017)	11
3	<i>Serrano v. Priest</i> , 20 Cal.3d 25 (1977)	13, 18
4	<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 (N.D. Cal. June 13, 2013)	11
5	<i>Stafford v. Dollar Tree Stores, Inc.</i> , 2014 WL 6633396 (E.D. Cal. Nov. 2014)	10
6	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112, 1136 (2012).....	10
7	<i>Viceral v. Mistras Group, Inc.</i> , 206 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	12
8	<i>Vizcaino v. Microsoft Corp.</i> , 290 F.3d. 1043 (9th Cir. 2002)	17
9	<i>Vo v. Las Virgenes Municipal Water Dist.</i> , 79 Cal.App.4th 440 (2000).....	17
10	<i>Williams v. Sup. Ct.</i> , 3 Cal.5th 531, 549 (2017).....	5,6
11	Statutes	
12	Code of Civil Procedure section 1021.5.....	13
13	Labor Code section 2699.....	5,7,12, 13
14	Treatises	
15	<i>Newberg on Class Actions</i> , 4 th Ed. 2002, §14:6.....	14
16	R. Pearle, <i>California Attorney Fee Awards</i> (CEB, 1993 §7A)	13

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Fernando Salguero (“Plaintiff”) seeks approval of a Joint Stipulation of PAGA
4 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”) entered into between
5 Plaintiff, individually and on behalf of the State of California and other “PAGA Employees,” and
6 Defendant Collabera, Inc. (“Defendant”) pursuant to California Labor Code section 2699(1)(2). The
7 Settlement was reached following a full day mediation with Jeffrey A. Ross, Esq. and extensive
8 discovery and investigation by Plaintiff. By this Motion, Plaintiff requests that the Court grant the
9 approval of the Settlement Agreement signed by the Parties and Enter Judgment accordingly. The
10 Settlement terms are outlined as follows:

- 11 • Number of PAGA Employees: approximately 2,154 individuals.
- 12 • Maximum Settlement Amount: \$2,100,000.00
- 13 • Attorney’s Fees Payment: \$735,000.00
- 14 • Attorney’s Costs Payment \$11,530.88
- 15 • Settlement Administration Payment: \$19,990.00
- 16 • PAGA Representative Payment: \$7,500.00
- 17 • Net Settlement Amount: \$1,325,979.12

18 The Net Settlement Amount will be distributed as follows: seventy-five percent (75%), *i.e.*
19 \$994,484.34, will be paid to the California Labor and Workforce Development Agency; twenty-
20 five percent (25%), *i.e.* \$331,494.78, will be paid to PAGA Employees on a *pro rata* basis
21 according to the number of Pay Periods worked by each PAGA Employee from March 22, 2019,
22 through May 28, 2021 (the “PAGA Period.”). The PAGA Employees are comprised of all current
23 and former non-exempt employees of Defendant who worked in the state of California from March
24 22, 2019, through May 28, 2021. *See* Declaration of Heather Davis (Davis Decl.) Ex. 2 Section
II(A) ¶12 (hereinafter “Settlement” or Settlement Agreement”).

25 The Settlement is the product of informed discovery, arms-length negotiations by highly
26 experienced counsel, and is fair, reasonable, and adequate in light of the relative strengths of
27 Plaintiff’s PAGA claims, the risk, expense, and uncertainty of further litigation, the benefit
28 conferred by the Settlement, and the underlying goals associated with recovery under the Private

1 Attorneys General Act. Plaintiff therefore respectfully requests that the Court approve the proposed
2 Settlement and enter Judgment thereon.

3 **II. STATEMENT OF FACTS**

4 On or about March 18, 2020, Plaintiff filed a letter with the Labor and Workforce
5 Development Agency (“LWDA”), and provided copies of this letter to Defendant via certified mail,
6 asserting claims for Defendant’s (1) failure to pay for all time worked at correct rates of pay,
7 including minimum wages, straight time wages, and overtime compensation; (2) failure to provide
8 meal periods and pay meal period premiums; (3) failure to authorize and permit rest periods and pay
9 rest period premiums; (4) failure to timely pay wages during employment; (5) failure to provide
10 accurate itemized wage statements; (6) failure to maintain accurate records; (7) failure to reimburse
11 necessary business expenditures; and (8) failure to timely pay all wages upon termination of
12 employment. Attached as Exhibit 1 to the Declaration of Heather Davis is a true and correct copy
13 of the Plaintiff’s March 18, 2020, letter. Davis Decl. ¶12, Ex. 1. On or about May 26, 2020, Plaintiff
14 filed a Complaint against Defendant on behalf of Plaintiff, individually and on behalf of others
15 similarly situated alleging a single cause of action for Violation of California Labor Code § 2699
(Private Attorneys General Act) (“PAGA”). See Complaint; Davis Decl. ¶13.

16 Shortly after the filing of the Complaint, the Parties met and conferred and agreed to
17 informally stay discovery pending private mediation. However, the Parties entered into a Stipulation
18 in which they agreed to negotiate a protective order so that formal discovery, including the
19 production of employees contact information, could proceed swiftly in the event mediation was
20 unsuccessful. As part of the stipulation, Defendant also agreed to provide Plaintiff’s Counsel with a
21 random 20% sampling of time and payroll records at least four weeks prior to mediation as well as
22 additional informal discovery. Davis Decl. ¶ 14. In advance of mediation, Defendant provided
23 Plaintiff’s Counsel with the stipulated time and payroll records and relevant policy documents in
24 place during the PAGA Period. Defendant also supplied information relating to the PAGA
25 Employees including, the total number of pay periods at issue, the number of current and former
26 employees, and other relevant information. Plaintiff’s counsel also conducted extensive independent
27 investigation of the claims and defenses. Davis Decl. ¶15.

1 Following the exchange of informal discovery, on April 26, 2021, the Parties attended
2 mediation with Jeffrey A. Ross, Esq. At the mediation the parties debated their positions with the
3 mediator and exchanged arguments regarding their claims and defenses. The Parties were initially
4 unable to resolve their disputes at mediation. However, at the conclusion of mediation the mediator
5 issued a mediator's proposal to resolve the Action for a Maximum Settlement Amount of
6 \$2,100,000.00, which after considerable consideration by both sides the Parties accepted. Davis
7 Decl. ¶ 16. Thereafter, the Parties executed a memorandum of understanding memorializing this
8 agreement and thereafter spent considerable time negotiating and finalizing the terms of a long form
9 settlement. Then, on October 26, 2021, the Parties fully executed the Joint Stipulation of PAGA
10 Settlement and Release of Claims. Davis Decl. ¶ 17, Ex. 2. On or about October 27, 2021, at the
11 same time this agreement was submitted to the Court, Plaintiff submitted the Proposed Settlement
12 Agreement to the LWDA. Davis Decl. ¶74, Ex. 6.

13 **III. THE SETTLEMENT TERMS**

14 **A. Definition of PAGA Employees**

15 Under the Settlement Agreement, Plaintiff's representative claims include "PAGA
16 Employees" defined as "all current and former non-exempt employees of Defendant who worked in
17 the state of California from March 22, 2019, through May 28, 2021." "PAGA Period" means the
18 period of time from March 22, 2019, through May 28, 2021. Settlement Agreement Section II(A)
19 ¶12 & ¶14. There are approximately 2,154 PAGA Employees. Davis Decl. ¶20.

20 **B. Maximum Settlement Amount**

21 The Parties have agreed to settle the PAGA claims at issue for a Maximum Settlement
22 Amount of \$2,100,000.00. Settlement Agreement Section II(A) ¶8.

23 **C. Allocation and Funding of the Maximum Settlement Amount**

24 The Settlement is a common fund and therefore includes all requested costs, fees, and other
25 allocations. As stated above, subject to Court approval, the Maximum Settlement Amount includes:
26 (1) the Attorney's Fees Payment in the amount of \$735,000.00; (2) the Attorney's Costs Payment of
27 \$11,530.88;¹ (3) the Settlement Administration Payment of up to \$19,990.00; and (4) the PAGA

28 ¹ The Settlement Agreement calls for Plaintiff's Counsel to receive reimbursement in costs up to \$30,000.
Plaintiff's Counsel have incurred and reasonably expect to incur no more than \$11,530.88 in total costs associated

1 Representative Payment to Plaintiff in the amount of \$7,500.00. After the foregoing amounts are
2 deducted from the Maximum Settlement Amount, the remaining Net Settlement Amount will to be
3 paid to the LWDA and PAGA Employees. Settlement Agreement Section II(A) ¶10.

4 The Net Settlement Amount is currently estimated to be \$1,325,979.12 and will be
5 distributed as follows: 75% of the Net Settlement Amount, will be paid to the LWDA, and the
6 remaining 25% will be paid to all PAGA Employees on a *pro rata* basis based upon the number of
7 pay periods worked by each PAGA Employee during the PAGA Period. Davis Decl. ¶23; Settlement
8 Agreement Section II(A) ¶10. The Individual PAGA Payments will be treated as miscellaneous
9 income for which a 1099 will be issued. Davis Decl. ¶24; Settlement Agreement Section II(C) ¶ 14.

10 Accordingly, no later than thirty (30) calendar days after the Motion for Approval is granted,
11 Defendant will provide the Settlement Administrator the Aggrieved Employee List. Davis Decl. ¶
12 25; Settlement Agreement Section II(C) ¶6. Then, within fourteen (14) court days of the Effective
13 Date, Defendant will deposit the Maximum Settlement Amount into a Settlement Account
14 established by the Settlement Administrator. Davis Decl. ¶ 26; Settlement Agreement Section II(C)
15 ¶7. Within ten (10) business days of receipt of the Maximum Settlement Amount, the Settlement
16 Administrator will issue payments to the PAGA Employees, LWDA, Plaintiff, Plaintiff's Counsel,
17 and itself. Davis Decl. ¶ 27; Settlement Agreement Section II(C) ¶12. Payments to the PAGA
18 Employees will be accompanied by a cover letter, substantially similar in content and form to the
19 proposed cover letter attached "Exhibit A" to the Settlement Agreement. *See* Settlement Agreement,
20 Ex. A. All checks to PAGA Employees will be sent by the Settlement Administrator and shall remain
21 valid and negotiable for 180 days from the date of their issuance. If any checks are not cashed within
22 180 days of mailing, those funds shall be transmitted to the Controller of the State of California to
23 be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure § 1500, *et seq.*
Davis Decl. ¶28-29.

24 **D. Scope of the Release in the Settlement Agreement**

25 Upon the funding of the Maximum Settlement Amount, PAGA Employees shall release
26 Defendant and the other Releasees from the following Released Claims:

27 _____
28 with litigation of this Action. Accordingly, an additional \$18,469.12 will be included in the Net Settlement Amount
based on these savings.

1 All claims for civil penalties under PAGA that were actually alleged or that could
2 have been alleged in the Action by Plaintiff, on behalf of the State of California,
3 himself and the PAGA Employees, based on the facts, theories, primary rights,
4 statutory or other legal grounds referenced in or alleged in the Complaint and
5 Plaintiff's PAGA letter dated March 18, 2020 to the LWDA ("PAGA Letter"),
6 including but not limited to: (a) penalties pursuant to Labor Code Section 201, 202,
7 203, 204, et seq., 204(a), 204(d), 210, 218, 218.6, 226, 226(a), 226(e), 226.3, 226.7,
8 226.7(a), 510, et seq., 510(a), 510(b), 512, 512(a), 558, 1174, 1174(c), 1174(d),
9 1174.5, 1194, et seq., 1194(a), 1197, 1197.1, 1198, et seq., 1198.5, 1199, 2698, et
10 seq., 2699, et seq., 2699(a), 2699(f)(2), 2699(g)(1), 2699.3, 2699.3(a), 2699.5,
11 2800, 2802, 2802(a), CCR § 11010, and IWC Wage Orders No. 4, 7 and 9; (b)
12 attorney's fees and costs incurred in the prosecution of this Action on behalf of the
13 PAGA Employees; and (c) any other PAGA penalties based on the facts or theories
14 alleged in the Complaint or PAGA Letter.

15 Nothing under the Settlement Agreement shall be construed to release anything other than
16 the claims for penalties under Labor Code §2699, et seq, on behalf of the State or the PAGA
17 Employees.

18 **IV. STANDARD OF REVIEW FOR APPROVAL OF A PAGA SETTLEMENT**

19 PAGA allows an "aggrieved employees" to bring a civil action on behalf of himself or
20 herself, other aggrieved employees and the State to recover civil penalties which, outside of PAGA,
21 only the LWDA can collect from an employer. Cal. Labor Code § 2699(a). The settlement of a
22 PAGA action requires court approval. See Cal. Labor Code § 2699(l)(2).

23 In reviewing a PAGA settlement, the Court need only ensure that "a negotiated resolution is
24 fair to those affected." *Williams v. Sup. Ct.*, 3 Cal.5th 531, 549 (2017). The court's focus is not the
25 monetary amount which aggrieved employees or the State stand to receive, but on whether the total
26 amount achieves PAGA's objective – "to incentive private parties to recover civil penalties for the
27 government that otherwise may not have been assessed and collective by overburdened state
28 enforcement agencies." See *Ochoa-Hernandez v. CJADERS Foods, Inc.*, 2010 WL 1340777 at *4
(N.D. Cal. Apr. 2, 2010) (citing *Arias v. Sup. Ct.*, 46 Cal.4th 969, 986 (2009)). Penalties recovered
under PAGA are, in part, to "be distributed to the [LWDA] for enforcement of labor laws . . . and
for education of employers and employees about their rights and responsibilities under this code. . .
to supplement the funding to the agency for those purposes." See Cal. Labor Code § 2699(j).

Because a PAGA claim is effectively considered a law enforcement action, it does not have
to meet the requirements of a class action. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court's
holding that "plaintiff need not satisfy class action requirements" to assert a PAGA claim);

1 *Amalgamated Transit Union, Local 1756, AFL-CIO*, 46 Cal.4th 993, 1003 (2009) (stating that
2 PAGA is a mechanism for aggrieved employees to recover civil penalties that would otherwise be
3 sought by state labor law enforcement agencies). Moreover, because PAGA claim is “a statutory
4 action for penalties brought as a proxy for the State,” “there is no need to protect absent employees’
5 due process rights[.]” *Williams*, 3 Cal.5th at 546. “PAGA does not make other potentially aggrieved
6 employees parties” to the action and no “due process concerns arise under PAGA because absent
7 employees do not own a personal claim for PAGA civil penalties and whatever personal claims the
8 absent employees might have for relief are not at stake.” *Id.* at 546-47 (2017) (internal references
9 omitted, citing *Amalgamated Transit Union.*, 46 Cal.4th at 1003; *Iskanian v. CLS Transportation*
10 *Los Angeles, LLC*, 58 Cal.4th 348, 381 (2014)).

11 Accordingly, “[u]nnamed employees need not be given notice of the PAGA claim, nor do
12 they have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
13 1340777 at *5. “[A]bsent fellow employees will be bound by the outcome of any PAGA action[.]”
14 *Williams*, 3 Cal. 4th at 548. A “judgment in such an action is binding not only on the named
15 employee plaintiff but also on government agencies and any aggrieved employee not a party to the
16 proceeding” because “the employee plaintiff represents the same legal right and interest as state
17 labor law enforcement agencies,”... “collateral estoppel applies. . . against those for whom the party
18 acted as an agent or proxy”, and “[w]hen a government agency is authorized to bring an action on
19 behalf of an individual or in the public interest, and a private person lacks an independent right to
20 bring the action, a person who is not a party but is represented by the agency is bound by the
21 judgment as though the person were a party.” *Arias*, 46 Cal.4th at 985-86. This renders approval of
22 a PAGA settlement distinct from a class action settlement and, under both federal and state law, the
23 Court need not employ the two-step approval process that applies to a class action settlement.

24 **V. THE SETTLEMENT IS FAIR AND RESONABLE**

25 As set forth below, the Settlement before the Court is the result of adversarial, arms-length
26 negotiations, extensive investigation, and fulfills the objectives of the PAGA. Moreover, the
27 Settlement is fair and reasonable in light of the relative strengths of the PAGA Claims and risks
28 associated with protracted litigation. Accordingly, the Settlement should be approved by the Court.

1 **A. Plaintiff Has Complied with the Administrative Requirements of California**
2 **Labor Code Section 2699.**

3 Before bringing a civil action under PAGA, an employee must comply with the notice
4 requirements set for in Labor Code section 2699.3. Plaintiff complied with these requirements. *See*
5 Davis Decl. ¶31. In addition, the Settlement Agreement and this motion and supporting papers are
6 being concurrently submitted to the California Labor and Workforce Development Agency, as
7 required by California Labor Code section 2699(l)(2). Davis Decl. ¶32, 74; *See* Proof of Service.

8 **B. Arm’s-Length Negotiations.**

9 Although PAGA settlements are not subject to the same, heightened requirements as a class
10 action settlement, the underlying guidelines utilized in class action settlements may be useful in
11 evaluating the fairness of a PAGA settlement. California courts recognize that “a presumption of
12 fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba v.*
13 *Apple Computer*, 91 Cal.App.4th 224, 245 (2001)(disapproved on other grounds). Here, the Parties
14 engaged in arms-length, non-collusive negotiations at all times including attending a full day
15 mediation with Jeffrey A. Ross, Esq., a highly respected mediator with extensive experience in wage
16 and hour matters including actions brought pursuant to the Private Attorneys General Act. At all
17 times, Plaintiff was willing and prepared to litigate this matter through trial and possible appeals if
18 the Parties had been unable to reach a favorable resolution. The proposed Settlement was reached at
19 the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties
20 advanced their respective positions throughout the settlement negotiations. Davis Decl. ¶33.

21 **C. Sufficient Investigation and Discovery by Experienced Counsel.**

22 The Parties engaged in extensive informal discovery prior to reaching a settlement. Prior to
23 mediation, Defendant informally produced a random sampling of time and payroll records for the
24 aggrieved employees, as well as information regarding the total number of employees, the number
25 of current and former employees, the number of pay periods worked within the relevant time period,
26 and other relevant information. Defendant also produced all applicable wage and hour policies in
27 place during the PAGA Period and exemplar meal and rest premium request and authorization
28 waiver forms. This allowed Plaintiff’s Counsel to conduct an informed assessment and analysis of
Defendant’s potential exposure. Davis Decl. ¶34. The Parties extensively briefed their positions
regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, provided

1 their analyses to the mediator, and debated the merits of their respective positions at mediation.
2 Davis Decl. ¶35.

3 Furthermore, negotiations were conducted by highly capable and respected counsel with
4 strong records of vigorous and effective advocacy handling complex wage and hour litigation.
5 Accordingly, Plaintiff's Counsel had sufficient information and experience to act intelligently in
6 negotiating the Settlement.

7 **D. The Settlement is Reasonable in Light of the Parties' Legal Positions, the Risks
8 of Continued Litigation, and the Underlying Purpose of the PAGA.**

9 The Maximum Settlement Amount of \$2,100,000.00 is a reasonable settlement in light of
10 the strength of Plaintiff's claims and Defendant's defenses, the risks of further litigation, and the
11 unique risks associated with litigation of PAGA claims. A settlement is not judged against what
12 might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain
13 100% of the damages sought. *Wershba*, 91 Cal.App.4th at 250. In the context of class action
14 settlements, the Court of Appeal has held that a trial court should consider "the strength of plaintiffs'
15 case, the risk, expense, complexity and likely duration of further litigation . . . the amount offered in
16 settlement, the extent of discovery completed and the stage of the proceedings,[and] the experience
17 and views of counsel" among other factors. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
18 128 (2008) Here, the reasonableness of the Settlement is underscored by the fact that Defendant has
19 legal and factual grounds for defending the action.

20 1. Plaintiff's Counsel's Analysis of Defendant's Maximum Potential Liability.

21 Prior to mediation Defendant estimated, there were approximately 2,154 employees and
22 approximately 32,793 pay periods. Plaintiff's Counsel reviewed and analyzed an extensive sampling
23 of time records and other relevant documents and data and based on the discovery provided estimated
24 with all claims adjudicated in favor of Plaintiff, Defendant's estimated liability exceeded
25 \$25,560,675.00 in penalties arising from the alleged Labor Code violations. Davis Decl. ¶36.

26 2. Plaintiff's Counsel's Risk-Based Analysis and Adjustments

27 Despite this potentially large liability, substantial barriers to recovery of such penalties exist.
28 First, in order for Plaintiff to prevail at trial on his PAGA claims, he would have to prove the
underlying Labor Code violations, demonstrate that PAGA Employees suffered these violations, and
demonstrate that Defendant's conduct gives rise to penalties. *See Elliot v. Spherion Pac. Work, LLC*,

1 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008) (“Plaintiff’s claim under [PAGA] is wholly
2 dependent upon his other claims. Because Plaintiff’s other claims fail as a matter of law, so does his
3 PAGA claim.”) Plaintiff’s core allegation is that Defendant systematically violated the California
4 Labor Code by, *inter alia*, failing to pay for all time worked, including minimum and overtime
5 wages, failing to provide compliant meal and rest periods and associated premiums, failing to timely
6 pay wages during and upon termination of employment, failing to provide accurate itemized wage
7 statements, failing to maintain accurate payroll records, and failing to reimburse business expenses
8 and costs. Although Plaintiff maintains that such wage and hour claims are amenable to resolution
9 as to a group of employees, many courts have found that the issues raised by Plaintiff, including off-
10 the-clock work, meal and rest period violations, and unreimbursed business expenses, raise
11 individualized issues that render a case unmanageable and unsuitable for adjudication as to a large
12 group of employees. *See, e.g., Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1 (2014); Although
13 California case law clearly states that PAGA actions need not satisfy class action requirements,
14 Plaintiff’s counsel remained mindful of the fact that some courts have nevertheless held that PAGA
15 claims must meet a threshold “manageability” requirement. Davis Decl. ¶38; *see, e.g., Litty v.*
16 *Merrill Lynch & Co.*, 2014 WL 5904904 at *3-4 (C.D. Cal. Nov. 10, 2014) (dismissing PAGA claim
because individualized assessments would be necessary, rendering the claim unmanageable).

17 Defendant also maintained several defenses to Plaintiff’s theory of liability which, if
18 successfully proven, had the potential to eliminate or substantially reduce this recovery. Throughout
19 this litigation, Defendant maintained and continues to maintain that it had legally-compliant
20 employment policies and practices and denies that it ever violated the Labor Code provisions
21 Plaintiff seeks to enforce under PAGA. Defendant argued that given what it maintained were
22 compliant policies and practices, any issues regarding meal periods would require an individualized
23 inquiry that would be unmanageable. Davis Decl. ¶39. Plaintiff’s claims regarding off-the-clock
24 work performed before and after employees shifts and during meal period faced similar challenges
25 and the potential need for individualized inquiry. Plaintiff also anticipates that should the case
26 proceed, Defendant will attempt to challenge Plaintiff’s standing as an aggrieved employee and will
27 deny that any of its other employees whom Plaintiff seeks to represent are aggrieved. Indeed, some
28 courts have taken an approach requiring plaintiffs to establish standing and bifurcating discovery

1 and/or trial of a PAGA claim. Davis Decl. ¶41. *See, e.g., Stafford v. Dollar Tree Stores, Inc.*, 2014
2 WL 6633396 at *4 (E.D. Cal. Nov. 2014).

3 In addition to Defendant’s anticipated defenses, Plaintiff’s Counsel remained mindful of the
4 fact that PAGA gives the Court discretion to lower the penalties assessed if, based on the facts and
5 circumstances of the particular case, to do otherwise would result in an award that is “unjust,
6 arbitrary and oppressive, or confiscatory.” Davis Decl. ¶42; *See* Cal. Labor Code § 2699(e)(2);
7 *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012) (holding that a
8 court may reduce the amount of PAGA penalties awarded to an employee based upon discretionary
9 factors)(disapproved on other grounds); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4
10 (C.D.Cal. Aug. 12, 2011)(reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d
11 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is warranted where good faith dispute
12 exists in legal obligations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529
13 (2018)(approving reduction in penalties from \$50 per pay period to \$5 per pay period based on good
14 faith attempts to comply with obligations and minimal violations).

15 Plaintiff’s Counsel recognized that there was a significant risk that the Court would decline
16 to assess the cumulative penalties for a large number of derivative violations. A significant portion
17 of Defendant’s liability arises from claims that are largely predicated on the successful prosecution
18 of Plaintiff’s unpaid overtime and minimum wage claims and penalties derivative of this conduct
19 could be considered duplicative. Davis Decl. ¶43; *see, Thurman*, 203 Cal.App.4th at 1131
20 (imposition of both statutory and civil penalties for same conduct is impermissible double
21 recovery)(disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3
22 (C.D. Cal. 2013) (“duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA
23 penalty”); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243 at *3 (N.D. Cal. June 13,
24 2013) (declining to stack penalties based on the same conduct); *Sanchez v. McDonalds Restaurants
25 of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties
26 arising out of the same conduct).

27 Moreover, Plaintiff’s Counsel recognized that, protracted litigation of the alleged claims
28 would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove
liability and damages, Plaintiff will be required to conduct additional extensive discovery, conduct

1 numerous depositions, request and analyze thousands of pages of documents, obtain the PAGA
2 Employees' contact information, contact these employees, and obtain numerous declarations at great
3 expense. Obtaining the cooperation of current employees would also be difficult, given the likely
4 reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant
5 would likely be able to obtain the cooperation of its employees. Moreover, even if Plaintiff prevailed
6 at trial, possible appeals could substantially delay recovery. Accordingly, there is a significant risk
7 that Plaintiff could ultimately recover nothing despite protracted litigation. Davis Decl. ¶44.

8 Thus, while Plaintiff maintains that his PAGA claim is meritorious, Plaintiff's counsel took
9 into account the strengths and weaknesses of each side's respective positions in evaluating the
10 Defendant's likely potential exposure. First, taking into account the risk of maintaining the case on
11 a representative basis, arguments regarding manageability, and challenges to Plaintiff's status as an
12 aggrieved employee, my office discounted Defendant's estimated liability 50%. In consideration for
13 merits-based risk factors, including prevailing at trial, my office discounted Defendant's estimated
14 liability an additional 50%. Finally, given the discretionary nature of PAGA penalties, the likelihood
15 that these potential penalties could be severely reduced by the Court's decision to decline to stack
16 such penalties, and the fact that Defendant had potential arguments that the imposition of such
17 penalties would be arbitrary and oppressive, my office discounted Defendant's estimated liability by
18 an additional 66%. This resulted an adjusted estimated liability of \$2,108,775.69. Davis Decl. ¶45.
19 In light of the Parties' respective legal positions and the risks to potential recovery, it is clear that
20 the Maximum Settlement Amount is fair, adequate, and reasonable.

21 3. The Settlement Fulfills the Fundamental Purpose of PAGA and is Consistent with Other
22 PAGA Settlement Approved by the Court.

23 Finally, Plaintiff's counsel was mindful of the fact that PAGA is fundamentally not intended
24 to be compensatory in nature, rather it is intended to facilitate enforcement of California's labor laws
25 by financing state activities and educating and deterring non-compliance. Davis Decl. ¶46; see Cal.
26 Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546;
27 *O'Conner v. Uber Techs.*, 201 F.Supp.3d 1110, 1132-33, 1135 (N.D. Cal. Aug. 18, 2016); *Ramirez*
28 *v. Benito Valley Farms, LLC*, 2017 WL 3670794 (N.D. Cal. Aug. 25, 2017); *Viceral v. Mistras*
Group, Inc., 206 WL 5907869 (N.D. Cal. Oct. 11, 2016).

After considering this multitude of factors, Plaintiff and Plaintiff's Counsel concluded that it

1 was in the best interest of the State of California and the PAGA Employees to enter into the
2 Settlement. The overall relief obtained by the Settlement is significant, not only from a monetary
3 perspective, but also because it fulfills the public policy objectives of PAGA—to promote
4 enforcement of California’s labor laws, provide funds to the state, and deter future non-compliance
5 by Defendant. Moreover, the Settlement is well-within the range of settlements of PAGA claims
6 approved by Courts in other cases. Davis Decl. ¶47-48. *See, e.g., Davis v. Brown Shoe Co.*, 2015
7 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class
8 settlement); *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal.
9 2014) (\$7,500 payment to LWDA on a \$1.5 million class settlement); *Lusby v. Gamestop Inc.*, 2015
10 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (\$5,000 in a \$500,000 class settlement); *Cruz v. Sky Chefs,*
11 *Inc.*, 2014 U.S. Dist. Lexis 17693 1(N.D. Cal. 2014) (\$10,000 to the LWDA out of \$1,750,000 class
12 settlement); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011) (PAGA
13 payment of \$7,500 out of \$6.9 million common-fund settlement); *Martino v. Ecolab Inc.*, No.
14 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as PAGA penalties out of \$21,000,000 settlement
15 amount); *Franco v. Ruiz Foods, Inc.*, 2012 WL 5941801 at *14 (E.D. Cal. 2013) (\$10,000.00 allotted
as PAGA penalties out of \$2.5 million settlement);

16 Thus, taking into consideration both the potential value of the PAGA claim, the significant
17 risks associated with continued litigation, and the underlying objectives of PAGA, the Settlement
18 presented herein is fair, reasonable, and adequate. Davis Decl. ¶49.

19 **VI. THE REQUESTED ATTORNEYS’ FEES PAYMENT IS FAIR AND SHOULD**
20 **BE APPROVED.**

21 **A. A Fee Award Based on a Percentage of the Entire Settlement Fund is**
22 **Appropriate.**

23 Plaintiff’s Counsel is entitled to recover reasonable attorneys’ fees and costs as a matter of
24 right under PAGA. *See* Cal. Labor Code § 2699 (g)(1). Plaintiff’s Counsel is also entitled to fees
25 and costs under Code of Civil Procedure section 1021.5, as the instant PAGA action is by definition
26 “for the benefit” of other and secures substantial monetary recovery of State of California and the
27 PAGA Employees. *See Estrada v. FedEx Ground Package Sys. Inc.*, 154 Cal.App.4th 1, 16-17
(2007) (recovery obtained on behalf of 209 individuals satisfies C.C.P. § 1021.5).

28 Where the amount of a settlement is a “certain easily calculable sum of money,” California

1 courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*
2 *v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1808 (1996). The California Supreme Court has confirmed
3 the propriety of awarding attorneys' fees based on a percentage of the total value made available by
4 the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34 (1977).

5 The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts,
6 irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th
7 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their
8 decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v.*
9 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). Moreover, Courts have consistently recognized
10 that class and representative litigation is necessary to protect the rights of individuals whose injuries
11 and/or damages are too small to economically justify individual representation. Accordingly, in
12 determining a reasonable common fund fee award, courts award fees to serve as an economic
13 incentive for lawyers to engage in representative litigation that will permit increased access to the
14 judicial system for meritorious claims and deter wrongdoing. *See, R. Pearle, California Attorney Fee*
15 *Awards* (CEB, 1993) §7A, p. 5-7. Fee awards that are too small will "chill the private enforcement
16 essential to the vindication of many legal rights and obstruct the representative actions that often
17 relieve the courts of the need to separately adjudicate numerous claims." *Lealao*, 82 Cal.App.4th at
18 53. Therefore, fees awards in representative actions should approximate the terms of a contingent-
19 fee negotiated in comparable litigation based on the result achieved and risk incurred. *Id.* at 47. The
20 percentage-of-the-benefit approach is preferred in such cases because "it better approximates the
21 workings of the marketplace than the lodestar approach." *Id.*

22 Historically, courts have awarded percentage fees in the range of 20% to 50% in complex
23 actions, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6.
24 According to *Newberg*, "... no general rule could be articulated as to what is a reasonable percentage
25 of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award in order to
26 assure that fees do not consume a disproportionate part of the recovery obtained for the class, though
27 somewhat larger percentages are not unprecedented." *Id.* *Newberg* further notes that achievement of
28 a substantial recovery with modest hours expended should not be penalized, but should be rewarded
for considerations of time saved by superior services performed. *Id.*

1 Here, the Settlement provides for Attorney's Fees to Plaintiff's Counsel of \$735,000.00, *i.e.*
2 35% of the Maximum Settlement Amount, subject to Court approval. Settlement Agreement Section
3 II(A) ¶3. The requested fee award is well-within the range of reasonableness in light of the facts and
4 circumstances surrounding this case. Plaintiff's Counsel risked substantial economic loss when it
5 took this case on a contingency basis, knowing that there would likely be a long battle with an
6 aggressive defense firm. As a result of Plaintiff's Counsel's willingness to take on this risk and their
7 efforts in prosecuting this case, the State and PAGA Employees will receive a substantial recovery
8 for violations that would otherwise have gone unaddressed. *See Davis Decl.* ¶50-51.

9 Accordingly, the requested fee award: (1) is consistent with the private marketplace where
10 contingent-fee attorneys are customarily compensated on such a basis; (2) aligns the interests of
11 Plaintiff's counsel, the State of California, and PAGA Employees in achieving the maximum
12 possible resolution of the case; (3) encourages the most efficient resolution of the litigation by
13 providing an incentive for early, yet fair and reasonable settlement; and (4) reflects the work
14 performed, risks incurred, results obtained, and experience of Plaintiff's Counsel in handling similar
15 matters. As such, Plaintiff's Counsel has obtained a fair recovery for the State of California and
16 PAGA Employees which justifies a fee award based on the 35% of the common fund.

17 **B. The Requested Fee Award Is Reasonable Based on the *Dunkel* Factors.**

18 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991),
19 the court identified twelve factors to be considered in determining whether fee awards are
20 reasonable in a common fund case. The court also noted that, "the analysis in a common fund case
21 focuses not on the Plaintiff's position as 'prevailing parties,' but on a showing that the fund
22 conferring a benefit on the class resulted from their efforts" and thus in common fund cases "the
23 monetary results achieved predominate over all other criteria." *Id.* at 774. Evaluation of these
24 factors demonstrates that the fees award requested here is reasonable and should be approved.

25 **1. Time and Labor Required.**

26 Plaintiff's Counsel has extensive experience in the handling of complex employment class
27 actions and PAGA Actions. *See Davis Decl.* ¶¶3-10. Plaintiff's Counsel have aggressively litigated
28 this case from the initial pleading to the settlement of this action. As a result of Plaintiff's Counsel's
aggressive efforts Defendant agreed to attend early mediation rather than proceeding with litigation.

1 The ongoing work performed by Plaintiff's Counsel has been extensive, complex, and ultimately
2 successful in achieving a fair settlement for the PAGA Employees and the State. Plaintiff's Counsel
3 actively participated in this litigation, attending client meetings, attending hearings with the Court,
4 conducting legal research on unanticipated and remote legal defenses, drafting the stipulations
5 necessary to attend mediation, drafting a *Belaire-West* Notice and protective order, participating in
6 case strategy and analysis, and drafting, reviewing, and revising pleadings. Plaintiff's Counsel
7 conducted extensive informal discovery, researched defenses raised by Defendant, and investigated
8 Defendant's policies, practices, and procedures before attending a full day mediation. Plaintiff's
9 Counsel also spent significant time drafting and revising the Settlement before the Court. A
10 settlement was finally achieved despite all of the obstacles, because of Plaintiff's Counsel's time,
11 effort, experience, and skill. See Davis Decl. ¶52.

12 *2. The Skill Required to Perform Legal Services.*

13 The skill required to properly litigate this case is evident not only in the results achieved,
14 but in the steps necessary to reach this result. Defendant retained well-respected counsel and
15 vigorously denied liability. Indeed, Defendant and its Counsel felt very strongly about Defendant's
16 ability to prevail and mounted several defenses that posed significant threats to Plaintiff's claims,
17 challenged the theories of Plaintiff's Counsel, and promised a strong defense moving forward.
18 Further, in order to evaluate these claims and defenses, Plaintiff's Counsel were required to review
19 and analyze a tremendous amount of data to determine Defendant's underlying practices and
20 liability, a complex process that took considerable time, energy, and knowledge. This extremely
21 complicated analysis required substantial skill, but Plaintiff's Counsel were able to successfully
22 navigate these challenges because of their extensive experience in complex wage and hour
23 litigation. This settlement, against experienced defense counsel, and despite the existence of several
24 strong defenses, was made possible through Plaintiff's Counsel's skill and reputation in complex
25 employment matters. Davis Decl. ¶53.

26 *3. The Value, Amount, and Results Achieved.*

27 The Settlement represents a fair resolution of this case given the risks inherent in litigating
28 it through trial and possible appeals. As discussed at length above, although Plaintiff's Counsel
predict that Plaintiff would prevail at trial, a number of risks reduced value of the case. Had the

1 case not settled, Plaintiff anticipates Defendant would have vigorously challenged the
2 manageability of the case, disputed Plaintiff's contentions on the merits, and sought drastic
3 reduction in the amount of any penalties assessed. Preparing the case for trial would have been an
4 extraordinarily expensive and risky proposition. In contrast, settlement at this stage guarantees
5 immediate recovery for the State of California and the PAGA Employees. Indeed, despite the
6 challenges Plaintiff faced moving forward, Defendant agreed to pay a Maximum Settlement
7 Amount of \$2,100,000.00. This is an outstanding result, particularly for a settlement limited to
8 penalties arising under PAGA and which does not affect the PAGA Employees' individual wage
9 claims. Davis Decl. ¶54.

10 *4. Whether the Fee is Fixed or Contingent.*

11 Whether the representation was provided on a contingency basis, as it was in this case, is an
12 important factor:

13 **A contingent fee must be higher than a fee for the same legal services paid as they**
14 **are performed.** The contingent fee compensates the lawyer not only for the legal
15 services he renders but for the loan of those services. A lawyer who both bears the
16 risk of not being paid and provides legal services is not receiving the fair market value
17 of his work if he is paid only for the second of these functions. *Cates v. Chiang*, 213
18 Cal.App.4th 791, 823 (2013).

19 This case was litigated on a contingency basis. If Plaintiff's Counsel had been unsuccessful
20 they would not receive any fee or recover any portion of the expenses spent litigating this matter.
21 Plaintiff's Counsel has borne all risks and costs associated with the litigation and will not receive
22 any compensation until recovery is obtained. If the Covid-19 crisis has made one thing clear, it is that
23 economic uncertainty can arise swiftly and for reasons beyond any parties' control. These are the
24 types of risks Plaintiff's Counsel took in deciding to litigate this matter on a contingent basis and this
25 risk is a relevant factor in considering the reasonableness of the requested fee. Davis Decl. ¶55.

26 **C. The Requested Fee is Reasonable Under a Lodestar Analysis.**

27 While the percentage-of-the-benefit approach is endorsed as the better approximation of the
28 workings of the marketplace than the lodestar approach, courts may also use the lodestar method to
"cross-check" the results of the other. This said, Courts have cautioned that the primary basis of the
fee award in common fund cases remains the percentage of the fund method and have cautioned that
plaintiff's counsel should not necessarily receive a lesser fee achieving a speedy and timely result for
individuals in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d. 1043, 1050

1 fn.1 (9th Cir. 2002). Indeed, courts have noted that “it is widely recognized that the lodestar method
2 creates incentives for counsel to expend more hours than may be necessary on litigating a case so as
3 to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting
4 *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

5 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
6 rates for the attorneys who worked on these matters. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
7 32 (2001). Counsel is entitled to compensation for every hour reasonably spent on the matter. *See*
8 *Id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply
9 multipliers between 1 and 4 to a party’s requested lodestar amount based on some of the same factors
10 identified above. *See Cates*, 213 Cal.App.4th at 822.

11 1. Counsel Spent a Reasonable Amount of Time.

12 Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial
13 matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las*
14 *Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was
15 highly contested, as Defendant raised significant defenses and denied liability. Plaintiff’s Counsel
16 invested significant time and labor into this matter. The services provided include, but were not
17 limited to attending client meetings, attending hearings with the Court, conducting legal research on
18 unanticipated and remote legal defenses, drafting a protective order, conducting extensive informal
19 discovery, investigating Defendant’s policies, practices, and procedures, reviewing hundreds of
20 documents, analyzing time and payroll data, participating in case strategy and analysis, drafting,
21 reviewing, and revising pleadings, preparing for and attending mediation, participating in settlement
22 negotiations and negotiating, reviewing, revising, and finalizing the final version of the Settlement
23 Agreement. Plaintiff’s Counsel conservatively expended a total of 337.40 hours on this matter. The
24 time spent on this matter was time Plaintiff’s Counsel could not spend on other cases or performing
25 other tasks. Moreover, Plaintiff’s Counsel bore the significant risk that, despite all their efforts, there
26 might ultimately be no recovery. Accordingly, Plaintiff’s Counsel has spent a reasonable number of
27 hours working on this matter. *See Davis Decl.* ¶59 Ex. 3.

28 2. Plaintiff’s Counsel’s Hourly Rate is Reasonable.

Both California and federal courts recognize that attorneys should be compensated for

1 providing representation on a contingency basis and for taking on the risks associated with said
2 representation, as well as being provided with financial incentives to enforce important rights and
3 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
4 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
5 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly
6 rates for winning contingency cases." *See Id.* Here, the use of a blended rate of at least \$750 is
7 appropriate based on the complexity of this matter and the background and experience of Protection
8 Law Group, resulting in an approximate lodestar value of \$253,050.00 Davis Decl. ¶57-59.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Use of a Multiplier is Reasonable and Appropriate

The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at 49. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested here. *Wershba*, 91 Cal.App.4th at 254 (noting multipliers commonly applied); *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier); *Vizcaino*, 290 F.3d at 1051, n.6 (noting multipliers of 1-4 are commonly applied). Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other employment; and (4) the contingent nature of the fee award and the associated risk. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) to encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-33. As the court noted, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id.* at 1133. Similarly, in *Greene v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier. The court recognized that "[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate

1 market-level compensation for such services, which typically includes a premium for the risk of
2 nonpayment or delay in payment of attorney fees.” *Id.*

3 Here, the use of a multiplier of approximately 2.9 is appropriate. Plaintiff’s Counsel
4 expended significant time and resources which could have been directed towards other less risky
5 cases. Plaintiff’s Counsel agreed to litigate these Actions on a contingent fee basis and in the process
6 assumed considerable risk. This is particularly relevant here in light of the complex and unique issues
7 relating the litigation of these claims, which presented substantial concerns regarding the potential
8 for individualized issues and the manageability of the case at trial. Attempting to bring these claims
9 on a representative basis required extensive data analysis and also required Plaintiffs to evaluate and
10 analyze complex issues with respect to Defendant’s underlying meal and rest claims, and the alleged
11 off-the-clock work. Given the complex nature of these claims many attorneys would have been
12 unprepared to litigate these claims or obtain the proposed Settlement. This risk is particularly notable
13 given the broad economic uncertainty of these challenging times. Davis Decl. ¶¶60-66

14 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
15 multipliers are not awarded to counsel in the cases that are successfully settled these attorneys will
16 not be fully compensated because the lodestar in and of itself cannot account for contingent risk
17 associated with the litigation. Further, a decision to withhold a multiplier not only fails to compensate
18 attorneys for this associated risk, this decision *actively penalizes* counsel who obtain a timely and
19 efficient result. Thus, the application of a multiplier is appropriate given the contingent risk incurred
20 by Plaintiff’s Counsel, the difficulty of the questions involved, the benefit conferred on the PAGA
21 Employees, and the skill displayed by Plaintiff’s Counsel. For these reasons, Plaintiffs respectfully
22 request the Court award the requested attorneys’ fees of \$735,000.00. Davis Decl. ¶¶60-66.

23 **D. The Requested Costs Are Fair and Reasonable.**

24 Plaintiff’s Counsel request the reimbursement of the costs incurred litigating this case in the
25 total amount of \$11,530.88. These costs include filing fees, costs to attend hearings, mediation fees
26 and other costs associated with the Action. These costs also include \$350 in future costs that will be
27 necessary in order to successfully resolve this action including costs associated with the filing of this
28 Motion, attendance at the final approval hearing, and additional costs for filing declarations
following distribution of the Maximum Settlement Amount. These costs are less than allocated under

1 the Settlement and were necessary for the prosecution of the Action. Accordingly, Plaintiff would
2 respectfully request these costs be reimbursed in full. Davis Decl. ¶67, Ex. 4.

3 **VII. THE REQUESTED PAGA REPRESENTATIVE PAYMENT IS FAIR AND**
4 **REASONABLE AND SHOULD BE APPROVED.**

5 The Settlement provides for a PAGA Representative Payment to be paid to Plaintiff in the
6 amount of \$7,500.00. The payment serves as an incentive award to encourage aggrieved employee
7 to serve as the LWDA's proxy in undertaking the responsibilities associating with initiating a PAGA
8 lawsuit and serving in a representative capacity. *See Bell v. Famers Ins. Exch.*, 115 Cal.App.4th 715,
9 726 (2004) ("service payments" compensate named plaintiff "for [her] efforts in bringing the
10 action"); *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010) (noting that
11 incentive payments compensate plaintiffs for the expense and risk the incur in conferring benefits
12 on others); *Clark*, 174 Cal.App.4th at 804 ("an incentive award is appropriate 'if it is necessary to
13 induce an individual to participate in the suit'").

14 Here, Plaintiff initiated this litigation and invested considerable time and effort to enforce
15 the Labor Code on behalf of the State of California and the PAGA Employees, who will now receive
16 monetary payment as a result. Plaintiff provided Plaintiff's Counsel with relevant documents and
17 information, provided the facts and evidence necessary to attempt to prove his allegations, and had
18 numerous discussions with Plaintiff's Counsel about the case. Plaintiff made himself available,
19 actively monitored the status of the case, assisted in preparation for mediation, and reviewed the
20 Settlement and discussed its terms with Counsel. In short, Plaintiff played an instrumental role in
21 the successful litigation to this case. Davis Decl. ¶68; Declaration of Fernando Salguero ("Salguero
22 Decl.") ¶¶6-8.

23 The payment serves to recognize the actual risk Plaintiff assumed by putting himself on the
24 public record in a representative employment lawsuit and obtaining penalties on behalf of the State.
25 Accordingly, it is reasonable and just for Plaintiff to receive a modest incentive payment of
26 \$7,500.00 in recognition for his contributions in obtaining the settlement. Davis Decl. ¶69-71;
27 Salguero Decl. ¶¶11-14.

28 **VIII. THE PROPOSED SETTLEMENT COVER LETTER TO THE PAGA**
EMPLOYEES SHOULD BE APPROVED.

Although PAGA does not require notice to unnamed aggrieved employees of a settlement,

1 the Parties prepared, and now present for the Court's consideration and approval, a proposed cover
2 letter to be sent to the PAGA Employees along with their settlement shares. The cover letter, which
3 shall be sent to the PAGA Employees in both English and Spanish, informs the PAGA Employees
4 regarding this Action, the Settlement, the PAGA Employees' Individual Pay Periods, their share of
5 the PAGA Payment, and the scope of the PAGA Released Claims. Plaintiff respectfully requests
6 that the Court approve the cover letter and that this letter be sent to the PAGA Employees. Davis
7 Decl. ¶28; Settlement Agreement Section II(A) ¶11 Ex. A.

8 **IX. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.**

9 Subject to Court approval, the Parties have agreed to utilize ILYM Group Inc. ("ILYM") to
10 handle administration of the Settlement. The total fees and expenses of the Settlement Administrator
11 shall not exceed \$19,990.00. These costs include, but are not limited to, expenses for translating the
12 Notice from English to Spanish, preparing, printing and mailing the cover letter and checks to the
13 PAGA Employees, performing skip-traces; remailing returned payments; and handling inquiries
14 from PAGA Employees regarding the Settlement. Accordingly, Plaintiff respectfully requests that
15 the Court approve payment of administration costs in the amount of \$19,990.00 to ILYM Group Inc.
16 See generally Declaration of Sean Hartranft Regarding Settlement Administration by ILYM Group,
Inc.; Davis Decl. ¶73, Ex. 5.

17 **X. CONCLUSION.**

18 For the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
19 Motion and issue an Order approving of the Parties' settlement pursuant to the California Labor
20 Code Private Attorneys General Act and Enter Judgment.

21
22 DATED: October 27, 2021

Respectfully submitted,

PROTECTION LAW GROUP, LLP

23
24 By: 

25 Heather Davis
26 Amir Nayebdadash
27 Attorneys for Plaintiff
28