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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

IVAN MARQUEZ, individually and on
behalf of others similarly situated and as an
aggrieved employee and Private Attorney
General; FERNANDO SALGUERO,
individually and on behalf of others similarly
situated, and as an aggrieved employee and
Private Attorney General,

Plaintiffs,

vs.

COLLABERA, INC. a New Jersey
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00010988-CU-OE-CTL

*Assigned for All Purposes to: Hon. Loren G.
Freestone, Dept. C-64*

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES THEREOF**

Hearing Date: May 19, 2023
Hearing Time: 10:30 a.m.
Department: C-64

Complaint Filed: March 22, 2022
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2023, at 10:30 a.m., or as soon thereafter as this matter may be heard, in Department C-64 of the San Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101, named Plaintiffs Ivan Marquez and Fernando Salguero (“Plaintiffs”) will apply to this Court for an order granting final approval of the proposed Joint Stipulation of Class Action and PAGA Settlement (hereinafter “Settlement Agreement” or “Settlement”) between Plaintiffs and Defendant Collabera, Inc., (“Defendant”). As part of that approval, Plaintiffs will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather Davis, Esq., on the grounds that the proposed Settlement is fair, adequate, and reasonable because:
 - a. The non-reversionary Net Settlement Amount of \$1,055,628.54 will be paid out to the participating members of the Settlement Class;
 - b. Proper Notice was provided to all Class Members pursuant to the terms of the Settlement;
 - c. No objections were submitted to the Settlement;
 - d. Only 5 out of 2,560 Class Members requested to be excluded from the Settlement (a participation rate of 99.80%); and
 - e. Proper notice of the Settlement was provided to the California Labor Workforce Development Agency (“LWDA”) in accord with Labor Code 2699 *et. seq.*;
2. Award 35% of the Gross Settlement Amount (\$875,000.00) to Protection Law Group, LLP for attorneys’ fees incurred in reaching the Settlement (“Class Counsel”);
3. Award costs in the amount of \$20,601.46 to Class Counsel for actual litigation costs and expenses incurred;
4. Award payment of \$33,770.00 to the Settlement Administrator, ILYM Group, Inc., for the costs of Settlement Administration;
5. Award a service payment of \$7,500.00 to Plaintiff Ivan Marquez;
6. Award a service payment of \$7,500.00 to Plaintiff Fernando Salguero;
7. Approve payment of \$500,000.00 for penalties pursuant to the California Labor

1 Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the
2 distribution of seventy-five percent of these penalties (\$375,000.00) to the LWDA and twenty-
3 five percent (\$125,000.00) to PAGA Members as part of the Net Settlement Amount; and

4 8. Order the funding and distribution of the Total Settlement Amount in the manner
5 set forth in the Settlement.

6 The Motion is based upon this Notice; the attached Memorandum of Points and
7 Authorities; the Declaration of Heather Davis, Esq. and exhibits thereto; the Declaration of
8 Plaintiff Ivan Marquez; the Declaration of Plaintiff Fernando Salguero; the Declaration of
9 Nathalie Hernandez of ILYM Group, Inc.; the pleadings and other records on file with the Court
10 in this matter, and any other further evidence or argument that the Court may properly receive at
11 or before the hearing.

12
13 DATED: April 27, 2023

PROTECTION LAW GROUP, LLP

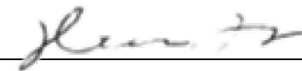
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15 By: 
16 Heather Davis
17 Amir Nayebdadash
18 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After proper notice was sent to the Class Members and Aggrieved employees, Plaintiffs Ivan Marquez and Fernando Salguero (“Plaintiffs”) seek final approval of a class action and PAGA settlement with Defendant Collabera, Inc., (“Defendant”). The settlement provides for: (1) a Total Settlement Amount of \$2,500,000.00, exclusive of employer-side payroll taxes; (2) attorneys’ fees in the amount of \$875,000.00; (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$20,601.46 (4) Settlement Administration Costs of \$33,770.00 to ILYM Group, Inc.; (5) payment of \$500,000.00 in PAGA penalties – 75% (\$375,000.00) of which will be paid to the LWDA and 25% (\$125,000.00) of which will be paid to the PAGA Members; and (6) Service Awards in the amount of \$7,500.00 each to Plaintiffs Ivan Marquez; and Fernando Salguero. The result is a Net Settlement Amount of \$1,055,628.54 that will be distributed to 2,555 Class Participants who worked for Defendant in California at any time between March 22, 2019, and December 16, 2022.

At Preliminary Approval, the Court determined based on the terms of the settlement and the papers presented that a presumption of fairness existed. It did so after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following the lack of objections and exclusions from the settlement after notice of the proposed Settlement to the Class. Out of 2,560 Class Members, there were only 5 requests to be excluded from the settlement and 0 objections to settlements terms. *See* Declaration of Nathalie Hernandez of ILYM Group, Inc. in support of Motion for Final Approval of Class Action Settlement (“ILYM Decl.”) ¶¶ 11-13. The lack of objections and strong participation by the class (a 99.80% participation rate) is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that demonstrate the Settlement is a fair result. Accordingly, the Court should grant final approval of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Description of the Parties

Defendant Collabera, Inc. is a New Jersey based organization that provides recruiting, staffing, consulting, and business services to clients throughout the country including clients in

1 California. Collabera has provided staffing for clients throughout California and employs
2 employees in a variety of non-exempt positions including Field Technicians, Customer Service
3 Representatives, Clerks, Data Entry Specialists, Administrative Assistants, Network Engineers,
4 amongst other positions. Davis Dec. ¶12. Plaintiffs Ivan Marquez and Fernando Salguero were
5 employed by Collabera as non-exempt employees during the Class Period. Davis Decl. ¶13.

6 **B. Procedural History and Exhaustion of PAGA Complaint**

7 On March 18, 2020, Plaintiff Fernando Salguero provided notice to the California Labor
8 Workforce and Development Agency (“LWDA”) LWDA of Defendant’s alleged unlawful
9 practices pursuant to the Labor Code Private Attorneys General Act of 2004, Cal. Labor Code
10 section 2698, et seq. (“PAGA”). Thereafter, on May 26, 2020, Plaintiff Salguero filed a
11 representative complaint under the Private Attorneys General Act with the Los Angeles Superior
12 Court (“*Salguero* Action”). Davis Decl. ¶14.

13 On March 4, 2022, Plaintiff Ivan Marquez separately provided notice to the LWDA of his
14 intent to seek PAGA Penalties. Thereafter, on March 22, 2022, Plaintiff Marquez filed this Class
15 Action with the San Diego Superior Court as a putative class and representative action against
16 Defendant Collabera Inc. Plaintiff Marquez’s original complaint alleged eight causes of action
17 for violations of the California Labor Code including: (1) Violation of Labor Code §§ 510 and
18 1198 (Unpaid Overtime); (2) Violation of Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period
19 Premiums); (3) Violation of Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation
20 of Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of Labor
21 Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of Labor Code §204
22 (Wages Not Timely Paid During Employment); (7) Violation of Labor Code § 226(a) (Failure to
23 Provide Accurate Wage Statements); and (8) Violation of Labor Code §§ 2800 and 2802
24 (Unreimbursed Business Expenses). Davis Decl. ¶15.

25 On March 28, 2022, Plaintiff Salguero agreed to dismiss his separate representative PAGA
26 action and jointly proceed with the pending Class and PAGA Action in this Marquez Action.
27 Thereafter, on May 12, 2022, Plaintiff Marquez filed the operative First Amended Complaint
28 adding an additional cause of action under the Private Attorneys General Act and adding Plaintiff

1 Salguero as a proposed class and PAGA representative. Davis Decl. ¶16.

2 **C. Investigation and Discovery**

3 Prior to reaching a settlement in this matter each side apprised the other of their respective
4 factual contentions, legal theories, and defenses, and the Parties engaged in extensive arms-length
5 negotiations. As part of the *Salguero* Action, the Parties had propounded and responded to formal
6 discovery. All of this discovery, once combined in this Action was used to evaluate the claims
7 and defenses asserted here. Importantly, prior to reaching a settlement in this matter Plaintiffs
8 reviewed substantial informal discovery. The documents and discovery reviewed by Plaintiffs
9 and their Counsel prior to settlement included all relevant personnel policies including
10 Defendant's policies regarding meal periods, rest periods, overtime, and other relevant policies,
11 time data for Plaintiffs and other putative class members, thousands of pages of payroll records,
12 and job titles of the putative class members and a description of their job duties. Defendant also
13 provided information regarding the number of putative class members and the workweeks and
14 pay periods at issue. Plaintiffs thoroughly analyzed each of the documents produced in order to
15 estimate the amount of wages owed and Defendant's potential liability. Plaintiffs have obtained
16 sufficient discovery on both liability and damages to apprise the Court of the fairness of the
17 settlement. Based on the information secured, the Settlement is fair, reasonable, and adequate,
18 given the inherent risk of litigation, the risks and time of any potential appeals, and the costs of
19 pursuing such litigation. Davis Decl. ¶17-20.

20 **D. Mediation and Settlement Efforts**

21 The Parties in the *Salguero* Action originally mediated the *Salguero* matter in April 2021,
22 with Jeffrey Ross, Esq. a highly respected mediator with substantial experience mediating wage
23 and hour issues including both class and PAGA actions. Following the filing of this action, and
24 the addition of the alleged class claims, the Parties reengaged Jeff Ross to assist in further
25 settlement discussions and with the help of the mediator were able to reach a global resolution
26 regarding the alleged class and PAGA claims. Thereafter, the Parties extensively negotiated the
27 terms of the long form settlement agreement and on July 28, 2022, fully executed a long form
28 settlement agreement. Davis Decl. ¶21, Ex. 1. On October 26, 2022, the Parties entered into the

1 First Amendment to the Joint Stipulation of Class Action and PAGA Settlement in order to correct
2 discrepancies within the Agreement. Davis Decl. ¶22, Ex. 2. On November 22, 2022, Plaintiffs
3 filed for preliminary approval of this Settlement Agreement. On December 16, 2022, the Court
4 executed the Order granting Preliminary Approval of Class Action Settlement and certified the
5 Class for settlement purposes, and directed that notice be provided to the Class. Davis Decl. ¶23-
6 24. Plaintiffs now move for final approval of the proposed settlement.

7 **III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

8 The Court approved Settlement Administrator for this matter is ILYM Group, Inc.
9 (“Settlement Administrator”). Davis Decl. ¶25. Class Counsel provided the Settlement
10 Administrator with the contents for the Notice on December 19, 2022. The Notice included the
11 formula for determining the estimated sum to be paid to each individual from the Net Settlement
12 and stated each Class Members’ estimated Individual Settlement Payment, as well as the claims
13 to be released and the rights of the Class Members. Davis Decl. ¶26. ILYM Decl. ¶4. On January
14 23, 2023, counsel for Defendant provided the Settlement Administrator with the Class Mailing
15 List. The Class List contained 2,560 individuals who worked a total of 95,009 workweeks
16 between March 22, 2019, and December 16, 2022. Davis Decl. ¶27. ILYM Decl. ¶5.

17 On February 10, 2023, Notice packets were mailed to all 2,560 Class Members. Davis
18 Decl. ¶ 28. ILYM Decl. ¶ 7. Following this mailing 153 Notice packets were initially returned to
19 the Settlement Administrator without a proper address. However, ILYM was able to perform a
20 skip trace for these individuals and locate an updated address for 109 of the 151 returned notices.
21 ILYM Decl. ¶¶ 6-10. There have been no objections to the Settlement and out of 2,560 Class
22 Members, only 5 requests for exclusion (a participation rate of 99.80%). The last date to submit
23 a request for exclusion or written objection to the settlement was April 11, 2023. Davis Decl. ¶
24 29. ILYM Decl. ¶¶ 11-13. Even weeks after this deadline passed, no additional requests for
25 exclusion were received and no objections were filed.

26 According to the terms of the Settlement Agreement, Defendant shall fund the Total
27 Settlement Amount within fourteen (14) calendar days of the Effective Date (as defined in the
28 Settlement Agreement). Within ten (10) calendar days of full funding of the Total Settlement

1 Amount by Defendant, the Settlement Administrator will issue payments for: (1) Settlement
2 Checks for all Class Participants and all PAGA Members; (2) the PAGA Penalties to the LWDA;
3 (3) the Service Awards to Plaintiffs Ivan Marquez and Fernando Salguero; (4) Class Counsel's
4 Fees and Costs; and (5) Settlement Administration Costs. *See* Davis Decl. ¶ 30. Settlement
5 Agreement Sections D & F.

6 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

7 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48
8 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
9 settlements. *Id.* at 1801, n.7. "In general, questions whether a settlement was fair and reasonable,
10 whether certification of the class was proper, and whether the attorney fee award was proper are
11 matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91
12 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds). A presumption of fairness
13 exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and
14 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
15 experienced in similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V*
16 *Cases*, 135 Cal.App.4th 706, 723 (2006).

17 **V. THE SETTLEMENT IS PRESUMED FAIR**

18 Because this Court preliminarily approved the Settlement, it necessarily already
19 determined the Settlement appeared to be fair and reasonable. Plaintiffs' Motion for Preliminary
20 Approval established the presumption of fairness. The same factors that allowed the Court to
21 previously approve the Settlement apply here and are reinforced in these moving papers
22 including: (1) the Settlement was reached through arm's-length bargaining; (2) investigation and
23 discovery were sufficient to allow counsel and the court to act intelligently; and (3) Class Counsel
24 are experienced in similar litigation. At this stage, the reaction of the Class Members further
25 supports the reasonableness of the Settlement. *See* Davis Decl. ¶¶ 31-37

26 **A. The Settlement Was Reached Through Arm's Length Bargaining**

27 California courts recognize that "a presumption of fairness exists where . . . [a] settlement
28 is reached through arm's-length bargaining." *Wershba*, 91 Cal. App. 4th at 245. Here, the Parties
were assisted in their settlement discussions by Jeffrey Ross, Esq., a highly respected mediator

1 with extensive experience regarding wage and hour class actions and PAGA Actions. The
2 Settlement occurred only after extensive discovery, investigation, and analysis of the claims at
3 issue. These negotiations were at arm's length, non-collusive, and adversarial. At all times
4 Defendant aggressively maintained that it had complied with California wage and hour laws.
5 Similarly, if this matter had not resolved, Plaintiffs were prepared to vigorously litigate this
6 dispute including through class certification and trial. The proposed Settlement was reached at
7 the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the
8 Parties advanced their positions throughout the settlement negotiations. Davis Decl. ¶¶32-33.

9 **B. There was Sufficient Investigation and Discovery by Experienced Counsel**

10 Class Counsel Class Counsel conducted significant investigation into the claims alleged
11 by Plaintiffs before reaching a settlement in this matter. Class Counsel met with Plaintiffs,
12 conducted legal research regarding the applicable Labor Code Sections and thoroughly researched
13 Defendant's employment policies and practices. Prior to entering the settlement now before the
14 Court, the Parties exchanged formal discovery in the *Salguero* Action and reviewed extensive
15 informal discovery including a sampling of time records, payroll records, written policies
16 including Defendant's wage and hour policies, and other relevant documents and information
17 regarding the putative class. This allowed Plaintiffs to conduct a class-wide analysis of
18 Defendant's potential damages and intelligently and effectively analyze the strengths and
19 weaknesses of the case and Defendant's potential exposure. With the mediator's help the Parties
20 were eventually able to reach an agreement to settle this matter based on their analysis and
21 understanding of the case. Davis Decl. ¶¶ 32-33.

22 Moreover, the settlement negotiations were conducted by highly capable and experienced
23 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiffs to enter
24 this Settlement aware of the risks associated with the case and permitted Class Counsel to
25 negotiate an informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶ 2-11. After
26 extensive informal discovery and investigation, it is Class Counsel's opinion that the Settlement
27 is in the best interest of the Class, the PAGA Members, and State because it provides for a
28 guaranteed result over a reasonably short period of time as opposed to waiting years for the same,

1 or possibly a worse, result and will result in significant savings in costs. Davis Decl. ¶¶ 34-35.

2 **C. There Have Been No Objections and Participation by 99.80% of the Class**

3 California courts have consistently found that a small number of objectors indicates the
4 class's support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th
5 at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-
6 53 (final approval granted despite 9 objectors). Here, not a single member of the Class objected
7 to the Settlement and only 5 out of 2,260 Class Members requested to be excluded. ILYM Decl.
8 ¶¶ 11-13. The lack of objections and small number of requests for exclusion speaks volumes about
9 the fairness, reasonableness, and adequacy of this Settlement. Davis Decl. ¶¶ 36-37.

10 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

11 **A. The Standard For Attorneys' Fees In A Class Action**

12 Where the amount of a settlement is a "certain easily calculable sum of money," California
13 courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See*
14 *Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate
15 counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v.*
16 *Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the
17 value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse
18 of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law
19 provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal
20 marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.*
21 at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the
22 vindication of many legal rights . . ." *Id.* at 53. Therefore, fees in a class action should approximate
23 the terms of a contingent-fee contract negotiated by an attorney and client in comparable
24 litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it
25 better approximates the workings of the marketplace than the lodestar approach." *Id.*

26 **B. A Fee Award Based on a Percentage of the Total Settlement Amount is Appropriate**

27 California and federal courts have long recognized that an appropriate method for
28 determining the award of attorneys' fees is based on a percentage of the total value made available

1 to class members by the settlement. *See Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The purpose
2 of this equitable doctrine is to spread litigation costs among all beneficiaries so that the active
3 beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

4 Courts have consistently recognized that class litigation is necessary to protect the rights
5 of individuals whose injuries and/or damages are too small to economically justify individual
6 representation. Accordingly, in determining a reasonable common fund fee award, courts award
7 fees to serve as an economic incentive for lawyers to engage in class litigation that will permit
8 increased access to the judicial system for meritorious claims and deter wrongdoing. *See, R.*
9 *Pearle, California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

10 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending
11 on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to
12 *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a
13 common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award . . . though
14 somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement
15 of a substantial recovery with modest hours expended should not be penalized but should be
16 rewarded for considerations of time saved by superior services performed. *Id.*

17 Here, the amount of attorney fees provided by the Settlement Agreement, *i.e.* thirty-five
18 percent (35%) of the Total Settlement Amount, is well-within the range of reasonableness in light
19 of the facts and circumstances surrounding the case. Class Counsel risked substantial economic
20 loss when they took the case on a contingency basis, knowing that there would likely be a long
21 battle with an aggressive defense firm. As a result of Class Counsel taking on this risk and the
22 efforts of Class Counsel, the Class Participants will now be able to recover for these claims that
23 would otherwise have gone unaddressed. The requested fee therefore makes sense because (1) it
24 is consistent with the private marketplace where contingent-fee attorneys are customarily
25 compensated on such a basis; (2) it aligns the interests of achieving the maximum possible
26 resolution of the case; (3) it encourages the most efficient resolution of the litigation by providing
27 an incentive for early, yet fair and reasonable settlement and (4) reflects the work performed, risks
28 incurred, results obtained, and experience of Plaintiffs’ Counsel in handling similar matters. As

1 such, Class Counsel have obtained a fair recovery for the Class which justifies a fee award based
2 on the percentage of the common fund. *See* Davis Decl. ¶¶ 38-43.

3 **C. The Fee is Reasonable Based on the *Dunkel* Factors**

4 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir.
5 1991), the court identified twelve factors to be considered in determining whether fee awards are
6 reasonable in a common fund case.¹ The court also noted that, “the analysis in a common fund
7 case focuses not on the Plaintiff’s position as ‘prevailing parties,’ but on a showing that the fund
8 conferring a benefit on the class resulted from their efforts” and thus in common fund cases “the
9 monetary results achieved predominate over all other criteria.” *Id.* at 774. Plaintiffs will address
10 some of the factors that are particularly relevant here.

11 **1. Time and Labor Required**

12 Class Counsel have aggressively litigated this matter and the related *Salguero* Action from
13 the initial pleadings to the settlement now before the Court. Class Counsel actively participated
14 in this litigation, attended client meetings, participated in extensive formal and informal
15 discovery, and conducted legal research on unanticipated and remote legal defenses. In order to
16 investigate Defendant’s policies, practices, and procedures, Class Counsel reviewed and analyzed
17 extensive time and payroll data. Indeed, Class Counsel analyzed hundreds of pages of documents,
18 and thousands of pages of time and payroll data and communicated with dozens of Class
19 Members. Further, Class Counsel participated in case strategy and analysis, drafting, reviewing,
20 revising pleadings, meeting and conferring with Defendant, and negotiating the settlement before
21 the Court. In total, the work performed in both this action and the related *Salguero* Action
22 consumed more than 564 hours of Class Counsel’s efforts. However, despite all obstacles, Class
23 Counsel used their complex wage-and-hour litigation experience and skills to obtain this
24 agreement on behalf of the Class. Davis Decl. ¶ 40, Ex. 3.

25
26 ¹ These factors include (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3)
27 the skill requisite to perform the legal services properly, (4) the preclusion of other employment by the attorney due
28 to the acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitation
imposed by the client or the circumstances, (8) the amount involved and results obtained, (9) the experience, reputation
and ability of the attorney, (10) the undesirability of the case, (11) the nature and length of the professional relationship
with the client, and (12) awards in similar cases.

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

2 The Action also required substantial skill to litigate and Class Counsel were required to
3 overcome numerous barriers in order to reach a settlement. Defendant denied liability, felt
4 strongly about its ability to prevail, challenged the theories of Class Counsel, and mounted several
5 defenses that posed significant problems moving forward. Despite this, Class Counsel were able
6 to use their substantial experience in complex wage and hour litigation to convince Defendant to
7 discuss a potential settlement rather than proceed with further litigation. This settlement, against
8 experienced defense counsel and despite strong potential defenses, was possible because of Class
9 Counsel's skill and experience. Davis Decl. ¶ 41.

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

11 The Settlement represents a fair resolution of the Action given the risks inherent in
12 litigating them through trial and possible appeals. Counsel obtained a non-reversionary Total
13 Settlement Amount of \$2,500,000.00, exclusive of employer-side payroll taxes. Although Class
14 Counsel predicts that Plaintiffs would prevail on all causes of action at trial, a number of risks
15 reduced the case's value. For instance, as discussed extensively in Plaintiffs' Motion for
16 Preliminary Approval Defendant contended that it had implemented compliant meal and rest
17 period policies and that at all times had implemented practices and trained employees in a manner
18 that complied with California law. Defendant argued that individualized issues existed with
19 respect to the alleged meal and rest period violations. Plaintiffs faced similar difficulties with their
20 claims regarding off-the-clock work. This case was also unique, and proving the alleged claims
21 particularly challenging, in light of the fact that Defendant assigns employees to clients in a
22 variety of different industries and a wide range of job positions. These differences meant that the
23 job duties and work experience of the class members could vary considerably based on their role
24 and the client they were assigned to. Defendant contended these issues would prevent Plaintiffs
25 from successfully recovering on these claims which were a major focus of the litigation. Despite
26 these challenges, Defendant agreed to pay a non-reversionary Total Settlement Amount of
27 \$2,500,000.00. This will provide an average payment of approximately \$412.35 to the Class
28 Participants. ILYM Decl. ¶ 14. This is an outstanding result. Davis Decl. ¶ 42.

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

2 Whether the representation was provided on a contingency basis, as it was in this Action,
3 is an important factor. In *Cates v. Chiang*, 213 Cal.App.4th 791, 823 (2013) the Court held “A
4 contingent fee must be higher than a fee for the same legal services paid as they are performed.
5 The contingent fee compensates the lawyer not only for the legal services he renders but for the
6 loan of those services.” Here, the fact that the case was litigated on a contingent basis also
7 strongly supports the award of attorneys’ fees requested by Plaintiffs. If Class Counsel had been
8 unsuccessful, they would not receive any fee or recover any portion of the substantial expenses
9 spent litigating this matter. Class Counsel have borne all of the risks and costs of litigation and
10 will not receive any compensation until recovery is obtained in the case. These are the types of
11 risks Class Counsel faced litigating this matter on a contingency basis and this risk is a relevant
12 factor when considering the reasonableness of the requested fees. Davis Decl. ¶ 43.

13 **D. The Fee is Reasonable Under a Lodestar Analysis**

14 While the percentage-of-the-benefit approach is endorsed as the better approximation of
15 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
16 method to “cross-check” the results of the other. This said, Courts have cautioned that the primary
17 basis of the fee award in common fund cases remains the percentage of the fund method and have
18 cautioned that this that class counsel should not necessarily receive a lesser fee achieving a speedy
19 and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft*
20 *Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that “it is widely recognized
21 that the lodestar method creates incentives for counsel to expend more hours than may be necessary
22 on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward
23 early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773-74.)

24 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
25 rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
26 32 (2001). Counsel are entitled to compensation for every hour reasonably spent. *Id.* at 1133.

27 **1. Counsel Spent a Reasonable Amount of Time**

28 Reasonableness of hours is assessed by “the entire course of the litigation, including
pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*

1 *Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this
2 Action and the *Salguero* Action were highly contested and required a significant amount of time
3 and labor. Defendant raised significant defenses and denied liability. Class Counsel spent
4 substantial time investigating Defendant and its operations.

5 As part of both this matter and the *Salguero* Action Class Counsel participated in both
6 formal and informal discovery and gathered, reviewed, and analyzed data from thousands of
7 pages of documents. Additionally, long and difficult battles, including complicated law and
8 motion work would have followed had the case moved forward. After an agreement was reached
9 in principle, Class Counsel spent significant time negotiating terms of the Settlement to obtain
10 the best possible outcome for the settlement Class.

11 Class Counsel conservatively worked a total of 564 hours on this Action. *See* Davis Decl.
12 50, Ex. 3. These services included drafting pleadings, researching the claims and defenses
13 presented by Defendant, drafting both formal and informal discovery requests, responding to
14 discovery, reviewing and analyzing substantial records, policies, and memorandum in preparation
15 for mediation, drafting the mediation brief, attending mediation, drafting of the settlement
16 agreement, preparing the motion for preliminary approval, and many more. *See Id.* Class Counsel
17 diligently took all steps necessary to ensure this matter was litigated effectively and efficiently.
18 Accordingly, the time spent on this matter was reasonable.

19 **2. Class Counsel's Hourly Rate is Reasonable**

20 Both California and federal courts recognize that attorneys should be compensated for
21 providing representation on a contingency basis and for taking on the risks with said
22 representation, as well as being provided with financial incentives to enforce important rights and
23 protections like those at issue here. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding attorneys'
24 fees, the aim is to mirror "the established practice in the private legal market of rewarding
25 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly
26 rates for winning contingency cases." *See Id.* Here, the background and experience of Protection
27 Law Group supports the use of a blended rate of at least \$650.00. Davis Decl. ¶ 46-49.

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

1 at 49. In California, “[m]ultipliers can range from two to four or even higher” and are routinely
2 applied in the range requested by Class Counsel. *Wershba*, 91 Cal.App.4th at 254. Factors
3 considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the
4 extent to which the litigation precluded other employment; and (4) the contingent nature of the
5 fee award and the associated risk. *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). *See, e.g.,*
6 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (approving multiplier of 2.5); *Vizcaino*, 290
7 F.3d at 1051 (approving multiplier of 3.65).

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

22 Here, the use of a multiplier of approximately 2.39 is appropriate. This multiplier is
23 appropriate in light of (1) the outstanding results obtained on behalf of the Class Members; (2) the
24 difficult questions involved and skill displayed by Class Counsel in obtaining this outstanding
25 result; and (3) the contingent risk assumed by Class Counsel. As recognized by the California
26 Supreme Court in *Ketchum*, these risks illustrate that if multipliers are not awarded to class counsel
27 in the cases that are successfully settled class counsel will not be fully compensated because the
28 lodestar in and of itself cannot account for contingent risk associated with the litigation. Thus,

1 given the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the
2 benefit conferred on the Class, and the skill displayed by Class Counsel the application of a
3 multiplier is appropriate. For these reasons, Plaintiffs respectfully request the Court award the
4 requested attorneys' fees of \$875,000.00. *See* Davis Decl. ¶¶ 51-57.

5 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

6 Class Counsel's costs amount to \$20,601.46. These include filing fees, all costs associated
7 with mediation, fees for expert analysis of records, court reporter transcripts and other costs that
8 were necessary for the resolution of this matter. Davis Decl. ¶ 58, Ex. 4.

9 **VIII. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

10 Named plaintiffs in class action lawsuits are eligible for reasonable enhancements as
11 compensation "for the expense or risk they have incurred in conferring a benefit on other members
12 of the class." *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal.App.4th 399,
13 412 (2010). The criteria courts may consider in determining whether to make an enhancement
14 payment include: (1) risks faced by the representative; (2) personal difficulties encountered; (3)
15 the time and effort spent on the case; (4) the duration of the litigation; and (5) the personal benefit
16 to the representatives. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.
17 1995); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23,
18 2015 (finding service award of \$15,000 to be "fair and reasonable").

19 The requested Service Awards in the amount of \$7,500.00 each to named Plaintiffs Ivan
20 Marquez and Fernando Salguero are fair and appropriate based on the substantial amount of effort
21 Plaintiffs invested into bringing this lawsuit and assisting Class Counsel on the Action.
22 Throughout the litigation, Plaintiffs spent substantial time and effort searching for relevant
23 documents, speaking with Class Counsel, and providing the facts and evidence necessary to prove
24 the allegations. Plaintiffs actively attempted to obtain information that would benefit the
25 Settlement Class. Prior to signing the Settlement Agreement, Plaintiffs reviewed the Settlement
26 Agreement, asked questions, and discussed the settlement with Class Counsel. The information
27 and documentation provided by Plaintiffs was instrumental in establishing the wage and hour
28 violations alleged in the Action, and the recovery provided for in the Settlement would have been

impossible to obtain without their participation. These services unquestionably merit the requested Service Awards to Plaintiffs. Davis Decl. ¶ 59; Declaration of Ivan Marquez (“Marquez Decl.”) ¶¶ 3-9, 13; Declaration of Fernando Salguero (“Salguero Decl.”) ¶¶ 3-10, 13.

Plaintiffs have also agreed to grant Defendant a much broader release of all claims they may have against them, rather than the more limited release agreed to by the remainder of the class. Additionally, Plaintiffs face many risks in adding themselves as class. Plaintiffs face actual risks with their future employment, as putting themselves on public record in an employment lawsuit could also very well affect their likelihood for future employment. Despite this, Plaintiffs chose to bring this litigation on behalf of others and they have put those interests ahead of their own. Davis Decl. ¶ 60-61 Marquez Decl., ¶¶ 10-11; Salguero Decl., ¶¶ 11-12.

As a result of Plaintiffs’ service, 2,560 Class Members have the opportunity to participate in a settlement, reimbursing them for wage violations they may have never known about on their own or been willing to pursue on their own. If these Class Members would have each tried to pursue their legal remedies on their own, that would have resulted in each having to expend a significant amount of their own monetary resources and time, which were obviated by Plaintiffs putting themselves on the line on behalf of these other Class Members. Davis Decl. ¶¶ 62-63. Plaintiffs have not received any compensation to date, and will not without Court approval, but should be compensated for the time, efforts, and risk they took to successfully bring the Action on behalf of others. Marquez Decl., ¶¶ 13-17; Salguero Decl., ¶¶ 14-18.

IX. PAYMENT TO THE SETTLEMENT ADMINISTRATOR

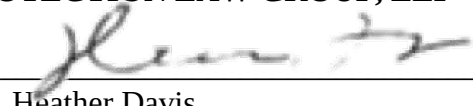
The Settlement Agreement calls for the award of \$33,770.00 to the Settlement Administrator, ILYM Group, Inc., for the costs associated with administration of the settlement. The Settlement Administrator is a necessary third-party who has performed substantial services on behalf of the putative class, and this payment should be approved by the Court. Davis Decl. ¶ 64. *See also* ILYM Decl. ¶ 15.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the Motion for Final Approval and enter Judgment in this Action pursuant to the terms of the Settlement.

1 Dated: April 27, 2023

PROTECTION LAW GROUP, LLP

2 By: 

3 Heather Davis

4 *Attorneys for Plaintiffs*