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

MARIA D. PEREZ, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

EDPO, LLC, dba ENERGY DISTRIBUTION
PARTNERS; DASSEL'S PETROLEUM, INC.,
a California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: CU-22-00156

CLASS ACTION

*[Assigned for all purposes to Hon. J.
Omar Rodriguez, Dept. 1]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: October 25, 2023

Time: 10:30 a.m.

Dept.: D1

Action Filed: August 11, 2022

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 25, 2023 at 10:30 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled Court, located at 450 Fourth Street, Hollister, California 95023, Plaintiff Maria D. Perez (“Plaintiff”) will, and hereby does, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant EDPO, LLC (“EDPO” or “Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:
All current and former non-exempt employees who worked for EDPO in California at any time from August 11, 2018 through the date the Court grants preliminary approval of the Settlement (the “Class Period”).
3. Preliminary appointment of Plaintiff as Class Representative;
4. Preliminary appointment of Tuvia Korobkin and Rijenea Appling of Abramson Labor Group as Class Counsel;
5. Appointment of ILYM Group, Inc. as the Settlement Administrator;
6. Approval of the proposed Class Notice and Notice of Estimated Settlement Award (together, the “Notice Packet”), and an order that the Notice Packet be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award a Class Representative Service Payment to Plaintiff, and attorneys’ fees and costs to Class Counsel.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Tuvia Korobkin and exhibits attached thereto; the declaration of Rijenea Appling; the declaration of Kimberly Sutherland and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: September 29, 2023

Respectfully Submitted,
ABRAMSON LABOR GROUP



Tuvia Korobkin
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Maria D. Perez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement agreement (“Settlement”) with Defendant EDPO, LLC (“EDPO” or “Defendant”)
5 (together with Plaintiff, the “Parties”). The Settlement resolves a class and representative action
6 pending before this Court (the “Action”), in which Plaintiff alleges that EDPO failed to pay all
7 earned overtime wages due to its failure to incorporate bonuses and other payments into the
8 “regular rate”; failed to provide all meal periods; failed to authorize and permit all rest periods;
9 and failed to include accurate total hours worked on employee wage statements. Plaintiff further
10 alleges that as a result of these violations, EDPO failed to issue accurate itemized wage
11 statements, failed to pay all wages on termination of employment, and is liable for civil penalties
12 under the Private Attorneys General act (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action Settlement,¹ in which EDPO has agreed to pay
15 \$1,000,000.00 to the following Settlement Class, which is estimated to consist of 300 individuals:

16 All current and former non-exempt employees who worked for EDPO in California
17 at any time from August 11, 2018 through the date the Court grants preliminary
18 approval of the Settlement (the “Class Period”).

19 The Settlement was reached after the parties engaged in mediation with Jeffrey Krivis,
20 Esq., an experienced wage and hour class action mediator. In connection with mediation, EDPO
21 provided Plaintiff’s counsel with extensive informal discovery, including timekeeping and payroll
22 records for a sampling of putative class members; a class list containing putative class members’
23 hire and termination dates, rates of pay, and other information; and relevant written policies.

24 After extensive research and investigation, including a detailed analysis of EDPO’s
25 potential exposure made with the assistance of an expert data analyst, the mediation session was
26 held with Mr. Krivis on July 24, 2023. At the conclusion of the mediation, the Parties agreed to a
27 mediator’s proposal to resolve the Action. Over the following months, the Parties negotiated the
28 finer terms of the settlement, ultimately resulting in the Settlement.

¹ The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice and Notice of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement.

1 Notably, Settlement Class members need not submit a claim to receive a payment
2 (“Settlement Award”). After deductions for proposed administration costs, attorney fees and
3 costs, Plaintiff’s incentive award, and the LWDA’s share of PAGA civil penalties, the average
4 Settlement Award is estimated to be at least \$1,918.06. For the reasons discussed herein, Plaintiff
5 respectfully requests that the Court grant preliminary approval of the Settlement.

6 **II. SUMMARY OF THE LITIGATION**

7 **A. FACTUAL AND PROCEDURAL BACKGROUND**

8 EDPO is a propone distributor and marketer with operations in many states, including
9 California. *See* Declaration of Tuvia Korobkin (“Korobkin Decl.”), ¶ 9. Plaintiff is a former non-
10 exempt Customer Service Representative who worked for EDPO in California during the Class
11 Period. *Id.*

12 On August 11, 2022, Plaintiff filed this Action, alleging claims for failure to pay overtime
13 wages, meal and rest period violations, waiting time penalties, wage statement penalties, and
14 unfair business practices. Korobkin Decl., ¶ 10. Plaintiff subsequently filed a First Amended
15 Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 11.

16 **B. PLAINTIFF’S CLAIMS AND EDPO’S DEFENSES**

17 **1. Claim for Underpaid Overtime Based on Regular Rate Miscalculation**

18 Plaintiff alleges EDPO failed to incorporate bonuses and other payments in employees’
19 “regular rate” and, as a result, under-paid overtime wages and meal period premiums. *See* 29
20 C.F.R. § 778.200 (under FLSA, “regular rate” includes all forms of remuneration except for eight
21 enumerated exceptions); *see also Prachasaisoradej v. Ralphs Grocery Co., Inc.*, 42 Cal.4th 217,
22 242 n.14 (2007) (“California follows the federal standard” for calculating regular rate).

23 EDPO contends that the payments in question were discretionary, were not tied to the
24 quantity or quality of work performed, and were therefore excludable from the regular rate. *See*
25 29 C.F.R. §§ 778.208, 778.211 (excluding “discretionary” bonuses from regular rate). EDPO
26 further argues that any overtime under-payments were *de minimis* and not recoverable. Korobkin
27 Decl., ¶ 12. EDPO also maintains that employees received different types of remuneration
28 throughout the Class Period, thus creating substantive differences among the putative class

members with respect to the payments received as well as the expectations regarding those payments, making class certification unlikely. *Id.*

2. Meal Period Claim

Plaintiff alleges that she and other employees were often forced to take late and/or short meal periods, as a result of the workload imposed on them and work-related interruptions. Korobkin Decl., ¶ 13. Plaintiff further alleges that EDPO failed to provide second meal periods on shifts over 10 hours. *Id.*

EDPO argues that it has maintained legally-compliant meal period practices throughout the Class Period, and that under *Brinker* it is only required to “provide” the opportunity to take meal periods, not “ensure” they are taken. Korobkin Decl., ¶ 13; *see also Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1038 (rejecting “ensure” standard). EDPO further argues that employees were permitted to schedule their own meal periods, and thus any failure to take a timely, 30-minute period was the result of employee choice rather than any policy or practice of EDPO. *Id.* As for second meal periods, EDPO additionally argues that employees waive their second meal period on shifts under 12 hours (which comprise the vast majority of 10+ hour shifts), as they are entitled to do under Labor Code § 512, since employees would rather go home 30 minutes earlier than take a second 30-minute unpaid break. *Id.* EDPO further argues that individualized inquiries would be required to determine whether individual employees, scattered across many locations throughout California and under many different managers, received a non-compliant meal period and/or did not take a second meal period on each individual shift, and why any meal period was late, short or missed, thereby precluding certification of this claim. *Id.*

3. Rest Period Claim

Plaintiff alleges that, as with meal periods, EDPO often failed to authorize and permit 10-minute rest periods as a result of the workload mentioned above. Korobkin Decl., ¶ 14; *Brinker*, 53 Cal.4th at 1028-32 (discussing rest period requirements). EDPO asserts that it has always maintained legally compliant rest period policies, and that, in practice, it has always authorized and permitted all required rest periods to non-exempt employees; that it informs employees of their right to rest periods; and that any failure to take a rest period is the result of employee choice

1 rather than any policy or practice of EDPO. *Id.* EDPO further argues this claim is not amenable
2 to class treatment as individualized inquiries would be required to determine whether individual
3 employees in different job positions were in fact authorized and permitted to take rest periods on
4 any given shift, under various supervisors and time periods and in various locations, thus
5 precluding class certification. *Id.* These manageability concerns are particularly present with
6 respect to rest periods, EDPO contends, since rest periods are not (and need not be) recorded. *Id.*

7 **4. Claims Under Lab. Code §§ 203, 226, and the PAGA**

8 As a result of its alleged failure to pay all overtime wages, as well as its failure to provide
9 all meal and rest periods, Plaintiff asserts that EDPO failed to comply with its final payment and
10 wage statement obligations, in violation of Cal. Labor Code §§ 203 and 226, respectively.
11 Korobkin Decl., ¶ 15. Plaintiff further alleges a “direct” wage statement claim, in that EDPO’s
12 wage statements failed to include an accurate statement of hours worked. *Id.* Finally, Plaintiff
13 seeks civil penalties under the PAGA based on the aforementioned claims. *Id.*

14 EDPO argues that Plaintiff’s derivative claims fail for the same reasons her underlying
15 claims fail. EDPO further asserts it has strong, good-faith defenses to Plaintiff’s underlying
16 claims, precluding waiting time penalties. *See* 8 Cal. Code Regs. § 13520 (a “good faith dispute
17 that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*,
18 12 Cal.App.5th 947, 963 (2017) (holding “good faith dispute” precluded imposition of waiting
19 time penalties). EDPO further contends any alleged wage statement violations were not “knowing
20 and intentional,” particularly given its good-faith defenses; that Plaintiff cannot show she or other
21 employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code
22 § 226(e), particularly because the alleged “direct” wage statement deficiencies did not result in
23 unpaid wages, and that employees could easily calculate their total hours worked by adding the
24 regular and overtime hours reported on wage statements; and that employee wage statements
25 always accurately reflect amounts *paid* to employees. Korobkin Decl., ¶ 16; *see also Maldonado*
26 *v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) (“The purpose of section 226 is to
27 ‘document the paid wages to ensure the employee is fully informed regarding the calculation of
28 those wages.’”) (citing *Soto v. Motel 6 Operating, L.P.*, 4 Cal.App.5th 385, 392 (2016)).

1 Finally, EDPO contends Plaintiff’s PAGA claim fails because the underlying claims fail.
2 *See, e.g., Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
3 causes of action fail, the derivative UCL and PAGA claims also fail.”). EDPO further maintains
4 that given its strong defenses and its good-faith attempts to comply with the law, the Court would
5 substantially reduce PAGA civil penalties even if it were to find in Plaintiff’s favor on her
6 underlying claims. Korobkin Decl., ¶ 16; *see also* Lab. Code § 2699(e)(2) (authorizing reduction
7 in PAGA penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203
8 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties because, *inter alia*, “the
9 evidence showed...defendants took their obligations...seriously and attempted to comply with the
10 law”); *Fleming v. Covidien, Inc.*, No. ED-CV-10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D.
11 Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was “not aware” of
12 violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil
13 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the
14 law).

15 **C. DISCOVERY AND MEDIATION**

16 In preparation for mediation, the Parties engaged in extensive informal discovery. EDPO
17 produced a class list with putative class members’ hire dates, termination dates, rates of pay, and
18 other information. EDPO also produced a sampling of timekeeping and payroll records for
19 putative class members during the Class Period, its wage and hour policies, and other information.
20 Korobkin Decl., ¶ 17. Plaintiff’s counsel hired an expert data analyst to analyze and extrapolate
21 the data produced by EDPO. *Id.* This discovery allowed the Parties to assess the merits and value
22 of Plaintiff’s claims and EDPO’s defenses, as well as the chances for class certification. *Id.*

23 The Parties attended a mediation with Mr. Krivis on July 24, 2023, at which they
24 vigorously debated Plaintiff’s claims and EDPO’s defenses, the potential value of Plaintiff’s
25 claims, and the chances of certification. Korobkin Decl., ¶ 18. At the conclusion of the mediation
26 session, the Parties agreed to accept a mediator’s proposal. Korobkin Decl., ¶ 18. Over the
27 following months, the Parties negotiated the finer terms of the settlement, ultimately resulting in
28 the Settlement. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, EDPO will pay a non-reversionary Gross Settlement Amount (“GSA”) of \$1,000,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$1,000,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$333,333.33
• Minus Court-approved costs (up to):	\$20,000.00
• Minus Court-approved Service Payment:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$75,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$7,500.00</u>
Net Settlement Amount (“NSA”):	\$556,666.67
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$18,750.00
Total Amount Paid to Settlement Class:	\$575,416.67

1. The Settlement Provides for Reasonable Monetary Payments

As noted above, after deducting amounts for a court-approved incentive award, administration costs, attorneys’ fees and costs, and PAGA payment to the LWDA, EDPO will pay at least \$575,416.67 to Settlement Class members. *See* Settlement, § 4(C). EDPO represents that there are approximately 300 Settlement Class members. *Id.*, § 1. Thus, **the average Settlement Award is estimated to be \$1,918.06**. Korobkin Decl., ¶ 20.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt out of the Settlement) as follows: (i) 15% of the NSA is designated the “Waiting Time Amount,” and will be paid in equal amounts to all Participating Class Members whose employment with EDPO ended at any time from August 11, 2019 through the end of the Class Period; (ii) 10% of the NSA is designated the “Wage Statement Amount” and will be paid to all Participating Class Members who were employed by EDPO in California at any time from August 11, 2021 to the end of the Class Period, based on their proportionate number of pay periods worked during that time period; and (iii) the remaining 75% of the NSA will be distributed to all Participating Class Members, proportionally based on the number of workweeks worked during the Class Period. *See* Settlement, § 6(B).

In addition, all Settlement Class members (regardless whether they opt out) who were employed by EDPO in California at any time between August 11, 2021 and the end of the Class Period (the “PAGA Period”), will receive a portion of the \$18,750 PAGA Amount, based on their proportionate number of pay periods worked during the PAGA Period. *See* Settlement, § 6(C).

1 Payments from the NSA will be treated as one-third wages reported on a Form W-2, with
2 the remaining two-thirds treated as interest and penalties and reported on a Form 1099. *See*
3 Settlement, § 6(E). Payments from the PAGA Amount will be treated as 100% penalties. *Id.*
4 EDPO will separately pay the employer's share of payroll taxes on the amount designated as
5 "wages," in addition to the GSA. *Id.*, § 4(D). Settlement Class members will have 60 days from
6 the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing
7 ample time to review the Notice without unduly delaying the Settlement. *See id.*, § 11(C)-(E).

8 Participating Class Members will be bound by the Settlement, and shall release all wage
9 and hour claims that were pled in the Action, or that could have been pled based on the facts
10 alleged in the Action, during the Class Period ("California Released Claims"). *See* Settlement, §
11 2. In addition, all Settlement Class members (regardless whether they opt out) who worked for
12 EDPO in California during the PAGA Period, will release all claims against EDPO for PAGA
13 penalties based on the facts alleged in the operative complaint in the Action, that arose during the
14 PAGA Period ("PAGA Released Claims"). *Id.*

15 **2. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment**

16 At final approval, Plaintiff will apply for a Class Representative Enhancement Award in
17 the amount of \$7,500. *See* Settlement, § 4(C)(iii). "[I]ncentive awards are fairly typical in class
18 action cases...and are intended to compensate class representatives for work done on behalf of
19 the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In*
20 *re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully
21 briefed at final approval, Plaintiff's requested payment is in recognition of the time and effort she
22 expended on behalf of the Settlement Class, including providing factual information and
23 documents to counsel, discussing with counsel the claims and theories at issue in the litigation,
24 attending the first mediation, reviewing the settlement agreement, and otherwise actively
25 participating in the prosecution of this case. Korobkin Decl., ¶ 30. Plaintiff respectfully submits
26 that the requested payment is well within the range of permissible approval. *See, e.g., Alvarado*
27 *v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17,
28 2011) (approving \$7,500 award to each of five named plaintiffs from \$505,058.60 settlement).

1 The parties have also designated \$75,000 of the GSA as PAGA penalties, of which
2 \$56,250 (75%) will be paid to the LWDA, with the remaining \$18,750 (25%) distributed to
3 Settlement Class members (*see* Settlement, § 4(C)(v)), consistent with the PAGA’s requirement
4 that 75% of penalties be allocated to the LWDA with the remaining 25% of penalties allocated to
5 aggrieved employees (Labor Code § 2699(i)). Plaintiff submits this allocation to the LWDA is
6 appropriate in light of other settlements allocating penalties to the LWDA. *See, e.g., Chu v. Wells*
7 *Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011)
8 (approving PAGA payment of \$7,500 to LWDA from \$6.9 million settlement).

9 At final approval, Plaintiff’s counsel will request attorneys’ fees of one-third of the GSA
10 (currently estimated at \$333,333.33), and up to \$20,000 in litigation costs. *See* Settlement, §
11 4(C)(iv). The requested fee is fair compensation for undertaking complex, risky, expensive, and
12 time-consuming litigation on a contingent basis. Plaintiff’s counsel have incurred substantial
13 attorneys’ fees conducting pre-filing investigation and legal research; analyzing timekeeping,
14 payroll, and other data with Plaintiff’s data expert to create a comprehensive damages model;
15 preparing for and attending mediation; negotiating and preparing the Settlement; preparing this
16 Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 29. Counsel will also incur future
17 attorney fees in overseeing the Notice process, fielding phone calls from Settlement Class
18 members, preparing the Final Approval Motion, and appearing at the Final Approval Hearing. *Id.*

19 It is appropriate to award attorneys’ fees as a percentage of the “common fund” created
20 by the settlement. *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480 (2016) (holding “the percentage
21 of fund method survives in California class action cases”). Counsel’s fee request is well within
22 the range of reasonableness and is typical for common fund settlements. *See, e.g., Chavez v.*
23 *Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) (“regardless whether the percentage method or the
24 lodestar method is used, fee awards in class actions average around one-third of the recovery”).
25 As will be briefed at final approval, counsel’s fee request is reasonable in light of the substantial
26 risks and significant work undertaken, the results obtained, and the efficiency with which counsel
27 conducted the litigation.

28 ///

1 **IV. ARGUMENT**

2 **A. PRELIMINARY APPROVAL IS WARRANTED**

3 California Rule of Court 3.769 conditions class action settlements on court approval,
4 which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United*
5 *Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine
6 “that the settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*,
7 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of
9 dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*,
10 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role is to ensure the settlement agreement taken
11 as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a
12 presumption of fairness when a settlement is negotiated at arm’s length by counsel. *See, e.g.,*
13 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

14 **1. Standard for Preliminary Approval**

15 To make a fairness determination, the Court should consider several factors, including:
16 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
17 litigation, the risk of maintaining class action status through trial, the amount offered in
18 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
19 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
20 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
21 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
22 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
23 and reasonable in light of the overall balance of factors in this case.

24 **a. The Strength of Plaintiff’s Case**

25 Although she maintains her claims are meritorious, Plaintiff acknowledges there were
26 substantial risks and uncertainty in proceeding with class certification and eventual trial on the
27 merits. As described in section II.B., *supra*, EDPO presented multiple defenses to Plaintiff’s
28 claims, both on the merits and to class certification, rendering success far from certain.

1 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

2 Although the Parties engaged in significant informal discovery, they had not completed
3 formal written and deposition discovery, which would have required expenditure of substantial
4 time and resources. Korobkin Decl., ¶ 31. Plaintiff also still had to file for class certification. *Id.*
5 Even if Plaintiff obtained certification, the Parties would incur considerable attorneys’ fees and
6 costs through a possible decertification motion, motions for summary judgment, trial, and
7 potential appeals. *Id.* The Settlement avoids those risks and the accompanying expense. *Id.* Thus,
8 this factor supports preliminary approval.

9 **c. Risk of Maintaining Class Action Status**

10 Plaintiff had not yet filed her class certification motion, and as such, the extent to which
11 Plaintiff’s proposed classes were certifiable is somewhat speculative. Absent settlement, there
12 was a risk there would not be a certified class at trial, or if there were, that it would consist of a
13 significantly smaller group of employees than the proposed Settlement Class, and the expected
14 recovery would be significantly reduced. Thus, this factor supports preliminary approval.

15 **d. Amount Offered in Settlement Given Realistic Value of Claims**

16 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class
17 for disputed claims. As detailed in the concurrently-filed Korobkin Declaration, and with the
18 assistance of an expert data analyst, Plaintiff conducted an analysis of potential damages due to
19 EDPO’s allegedly unlawful policies and practices. After applying reasonable discounts for risks
20 of not obtaining class certification and risks of losing on the merits, Plaintiff estimated her claims
21 had a realistic potential value of approximately \$1,249,463. Korobkin Decl., ¶¶ 22-28. The
22 proposed settlement of \$1,000,000.00 therefore represents over 80% of Plaintiff’s reasonably
23 forecasted classwide recovery. *Id.* As noted above, payments under the Settlement will average
24 over \$1,900. Preliminary approval is appropriate as the Settlement will provide significant
25 monetary relief to the Settlement Class.

26 **e. The Experience and Views of Counsel**

27 “Parties represented by competent counsel are better positioned than courts to produce a
28 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pac. Enter.*

1 *Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience
2 litigating wage and hour class actions, and have been appointed class counsel in numerous cases
3 alleging similar claims. *See* Korobkin Decl., ¶¶ 2-7; Declaration of Rijenea Appling, ¶¶ 3-5.
4 Counsel conducted an in-depth review of EDPO's policies, timekeeping and payroll records, and
5 other relevant data, and drew on their extensive experience to assess Plaintiff's claims. Korobkin
6 Decl., ¶¶ 8, 22-28. The Settlement was also reached after a mediation session with Jeffrey Krivis,
7 an experienced and well-respected wage and hour class action mediator. *Id.*, ¶ 18. This strongly
8 supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

9 **2. The Preliminary Approval Standard Is Met**

10 The Court can grant preliminary approval of a proposed settlement and direct that notice
11 be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the
12 product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for*
13 *Complex Litig.*, § 30.41 (3rd Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013).

14 **a. The Settlement Is Within the Range of Possible Approval**

15 As noted, the Settlement reflects over 80% of the realistic estimated recovery on Plaintiff's
16 claims, and will provide tangible, monetary compensation for hotly disputed wage claims.
17 Accordingly, Plaintiff submits the Settlement is within the range of possible approval.

18 **b. The Settlement Resulted from Serious, Informed Negotiations**

19 The Settlement resulted from an exchange of substantial information, arm's-length
20 negotiations, mediation with an experienced mediator, and months of additional negotiations.
21 Plaintiff carefully vetted the claims at issue and conducted a detailed analysis of the relevant data
22 and information. Korobkin Decl., ¶¶ 17-18, 22-28. The Settlement is thus entitled to a
23 presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

24 **c. The Settlement Is Devoid of Obvious Deficiencies**

25 The Settlement provides tangible monetary relief to the Settlement Class, and the amounts
26 proposed for attorneys' fees, costs, Plaintiff's incentive award, and PAGA penalties are all
27 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
28 obvious deficiencies, this supports preliminary approval.

1 **B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS**

2 The proposed Settlement Class satisfies the criteria for certification because: 1) the
3 Settlement Class is ascertainable and numerous; 2) common questions of law and fact
4 predominate; 3) Plaintiff's claims are typical of the Settlement Class; and 4) Plaintiff and her
5 counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

6 **1. The Proposed Class Is Ascertainable and Numerous**

7 A class is "ascertainable" where members "may be readily identified without unreason-
8 able expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189
9 Cal.App.4th 905, 919 (2010). The Settlement Class includes non-exempt employees who worked
10 for EDPO in California during the Class Period, and thus can be readily identified from EDPO's
11 records. EDPO represents there are about 300 Settlement Class members, rendering it
12 impracticable to bring them all before the Court. Numerosity is satisfied.

13 **2. Common Issues of Law and Fact Predominate**

14 The focus on certification is not on the merits of the case, but rather on what types of
15 questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v.*
16 *Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiff's claims are predicated primarily on EDPO's
17 allegedly unlawful failure to include bonuses in the "regular rate" and allegedly unlawful meal
18 and rest period policies/practices. Such claims are commonly held proper for class certification.
19 *See, e.g., Carlino v. CHG Medical Staffing, Inc.*, No. 1:17-cv-01323-DAD-JLT, 2019 WL
20 1005070 (N.D. Cal. Oct. 20, 2019) (certifying regular rate claim); *Benton v. Telecom Network*
21 *Specialists, Inc.* 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

22 **3. The Named Plaintiff's Claims Are Typical**

23 The typicality requirement is satisfied where class representatives have claims that are
24 typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347
25 (1987). Here, Plaintiff's claims are typical of those held by Settlement Class members. Plaintiff
26 was employed by EDPO as a non-exempt employee in California during the Class Period, and
27 was injured by the same challenged policies that allegedly injured the Settlement Class as a whole.
28 *See Declaration of Maria D. Perez*, ¶¶ 2-3. Thus, typicality is satisfied.

1 **4. Plaintiff and Class Counsel Will Adequately Represent the Class**

2 The adequacy requirement examines conflicts of interest between named parties and the
3 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.*, 155
4 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the Settlement
5 Class, as there are no known conflicts between Plaintiff or her counsel and the Settlement Class.
6 *See McGhee v. Bank of Am.*, 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where
7 there was no indication that plaintiff’s counsel was not qualified and the named plaintiff had no
8 interests antagonistic to those of the proposed class). Class Counsel also have extensive
9 experience in wage and hour class action litigation, as noted above.

10 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

11 The Court should order distribution of the proposed Notice by U.S. Mail, using last known
12 mailing addresses provided by EDPO. *See Settlement*, § 11. This is the “best notice practicable”
13 under the circumstances, as it provides “individual notice to all members who can be identified
14 through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Plaintiff
15 proposes the Settlement be administered by ILYM Group, Inc., an experienced class action
16 settlement administrator. *See Kimberly Sutherland Declaration and exhibits*. Settlement Class
17 members’ addresses will be ascertainable through EDPO’s records. ILYM will also run all
18 addresses through the U.S. Postal Service National Change of Address database and/or perform
19 “skip traces” to obtain current addresses. *See Settlement*, § 11(B) & (F).

20 The proposed Notice satisfies Cal. Rule of Court 3.766(d) because it advises Settlement
21 Class members of the nature of the claims; the basic contentions of the parties; the key terms of
22 the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so;
23 explains the recovery formula and expected recovery amount for each Settlement Class member;
24 and explains the releases of claims included in the Settlement. *See Korobkin Decl.*, Exh. A to Exh.
25 1. The proposed Notice also includes the final approval hearing date and time, and it provides
26 contact information for Class Counsel and ILYM in the event Settlement Class members have
27 any questions about the Settlement. *Id.* This Notice satisfies Cal. Rule of Court 3.766(e) as the
28 most reliable and cost-effective method of reaching the Settlement Class.

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D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

Finally, the Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members’ response deadline. *See* Cal. Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: September 29, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

By:


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