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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 FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 26, 2024

Time: 8:30 a.m.

Dept.: 1

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 June 26, 2024 at 8:30 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. Final 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 October 25, 2023 (the “Class Period”).
3. Confirming the appointment of Plaintiff Maria D. Perez as the Class Representative for settlement purposes;
4. Confirming the appointment of Abramson Labor Group as Class Counsel;
5. Approving an award of \$423,634.57 in attorneys’ fees to Class Counsel;
6. Approving an award of \$16,148.52 in costs to Class Counsel;
7. Approving an award of \$7,250.00 in costs to ILYM Group, Inc. for its settlement administration services;
8. Approving an incentive payment of \$7,500.00 to Plaintiff for her service as the Class Representative;
9. Approving an award of \$56,250.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement filed herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Cal. Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested amounts for Class Counsel’s attorneys’ fees and costs,

1 settlement administration costs, and the Class Representative's incentive payment are all fair,
2 adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order
3 Granting Final Approval of Class Action Settlement submitted herewith should be entered so as
4 to give finality to, and allow for disbursements from, the Settlement.

5 This motion is based on this notice of motion; the attached memorandum of points and
6 authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of
7 Cassandra Polites and exhibits attached thereto; the declaration of Plaintiff; the pleadings and
8 other papers filed in this action; and any further oral or documentary evidence or argument
9 presented at the time of hearing.

10
11 Respectfully Submitted,

12 Dated: June 4, 2024

13 ABRAMSON LABOR GROUP

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15 Neil Larsen
16 Neil M. Larsen
17 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Amanda Maria D. Perez (“Plaintiff”) submits this memorandum of points and
4 authorities in support of her motion for final approval of the class action settlement (the
5 “Settlement”) with Defendant EDPO, LLC (“EDPO” or “Defendant”) (together with Plaintiff, the
6 “Parties”). Under the Settlement, EDPO has agreed to pay \$1,270,903.71¹ to the following
7 Settlement Class, which consists of 389 individuals:

8 All current and former non-exempt employees who worked for EDPO in California
9 at any time from August 11, 2018 through October 25, 2023 (the “Class Period”).

10 In this non-revisionary Settlement, all Participating Class Members will receive automatic
11 payments without the need to submit a claim form, resulting in an average payment (“Settlement
12 Award”) of approximately **\$1,429.83** to Participating Class Members. This is a favorable
13 resolution of the highly disputed wage and hour claims in this case, especially in light of the
14 significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the proposed
15 Settlement and projected estimated settlement payments, **not a single Settlement Class member**
16 **has objected to the Settlement or elected to opt-out of the Settlement, resulting in a 100%**
17 **participation rate.**

18 As explained further below, the Court should grant Plaintiff’s motion in its entirety
19 because: (1) the Settlement Class continues to meet the requirements for certification for
20 settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and
21 reasonable compromise of the disputed claims in this case; and (3) the requested amounts for
22 attorneys’ fees and costs, settlement administration costs, and class representative incentive
23 payment are all fair, adequate, and reasonable.

24 ///

25 ///

26 _____
27 ¹ The Settlement called for a Gross Settlement Amount of \$1,000,000.00. However, the
28 Settlement also contained an “escalator clause,” which increased the Gross Settlement Amount
proportionally if the number of workweeks worked was more than 5% greater than
29,921 workweeks during the Class Period. As noted below, the escalator was triggered and the
Gross Settlement Amount has increased accordingly. See Settlement, § 4(E).

1 **II. SUMMARY OF THE LITIGATION**

2 **A. FACTUAL AND PROCEDURAL BACKGROUND**

3 EDPO is a propane distributor and marketer with operations in many states, including
4 California. *See* Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff is a former non-
5 exempt Customer Service Representative who worked for EDPO in California during the Class
6 Period. *Id.*

7 On August 11, 2022, Plaintiff filed this Action, alleging claims for: (1) failure to pay
8 overtime wages, (2) meal period violations, (3) rest period violations, (4) waiting time penalties,
9 (5) wage statement penalties, and (6) unfair business practices. Larsen Decl., ¶ 8. Plaintiff
10 subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 9.

11 **B. DISCOVERY AND MEDIATION**

12 In preparation for mediation, the Parties engaged in extensive informal discovery. EDPO
13 produced a class list with putative class members’ hire dates, termination dates, rates of pay, and
14 other information. EDPO also produced a sampling of timekeeping and payroll records for
15 putative class members during the Class Period, its wage and hour policies, and other information.
16 Larsen Decl., ¶ 10. Plaintiff’s counsel hired an expert data analyst to analyze and extrapolate the
17 data produced by EDPO. *Id.* This discovery allowed the Parties to assess the merits and value of
18 Plaintiff’s claims and EDPO’s defenses, as well as the chances for class certification. *Id.*

19 The Parties attended a mediation with Jeff Krivis, Esq. on July 24, 2023, at which they
20 vigorously debated Plaintiff’s claims and EDPO’s defenses, the potential value of Plaintiff’s
21 claims, and the chances of certification. Larsen Decl., ¶ 11. At the conclusion of the mediation
22 session, the Parties agreed to accept a mediator’s proposal. *Id.* Over the following months, the
23 Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

24 **C. PRELIMINARY APPROVAL, MAILING OF NOTICES, ESCALATOR**
25 **CLAUSE TRIGGERED**

26 On September 29, 2023, Plaintiff submitted the proposed Settlement to this Court with
27 her Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 12. On October
28 25, 2023, this Court granted preliminary approval. *Id.* & Exhibit A (Order Granting Preliminary

1 Approval).

2 On November 27, 2023, the Court-approved Class Notice was mailed to Settlement Class
3 members, who had until January 26, 2024 to submit objections, requests for exclusion, or
4 workweek disputes. *See* Declaration of Cassandra Polites (“Polites Decl.”), ¶¶ 6-10. The Class
5 Notice advised Settlement Class members that, “the Final Approval Hearing may be postponed
6 or moved without further notice to the Settlement Class.” Polites Decl., Exh. A.

7 After the November 27, 2023 Class Notice mailing, three (3) of EDPO’s employees
8 contacted Plaintiff’s counsel advising that had not received Notice Packets, and asked to be added
9 to the Settlement Class. Larsen Decl., ¶ 13. Those requests were granted, and those individuals
10 were added to the Settlement Class and were mailed Notice Packets. Larsen Decl., ¶ 13; Polites
11 Decl., ¶¶ 11-12.

12 After receiving those requests from the aforementioned employees, Plaintiff’s counsel met
13 and conferred with EDPO’s counsel, and the Parties agreed that EDPO should conduct an audit
14 to determine whether other additional employees had been inadvertently left off the class list.
15 Larsen Decl., ¶ 14. After conducting an audit, EDPO determined that an additional 89 employees
16 were inadvertently left off the class list, and that the Settlement Class members worked a total of
17 38,026 workweeks during the Class Period. *Id.* As a result of the increase in total workweeks, the
18 Settlement’s “escalator clause” was triggered, and pursuant to that clause, the Gross Settlement
19 Amount increased from \$1,000,000.00 to \$1,270,903.71. *Id.*

20 In order to provide notice to the additional 89 Settlement Class members, the Parties
21 stipulated to continue the Final Approval hearing. Larsen Decl., ¶ 15. The Court granted the
22 Parties’ stipulated request, and continued the Final Approval hearing to June 26, 2024 at 8:30
23 a.m. Larsen Decl., ¶ 15, Exh. B.

24 On March 8, 2024, Class Notices were mailed to the additional 89 Settlement Class
25 members. Polites Decl., ¶¶ 13-15. The deadline to request exclusion, submit a dispute or objection
26 to the Settlement for the additional 89 Settlement Class members was May 7, 2024. *Id.*

27 As of the date of this filing, ILYM Group, Inc. (“ILYM”) received no objections, no
28 requests for exclusion, and only two workweek disputes. Polite Decl., ¶¶ 8-9, 15. Now that notice

has been provided to the Settlement Class and the Notice process is complete, Plaintiff respectfully submits the Settlement for this Court's final approval.

III. SUMMARY OF THE SETTLEMENT

A. Settlement Class Definition

As noted above, the Settlement Class is comprised of, "all current and former non-exempt employees who worked for EDPO in California at any time from August 11, 2018 through October 25, 2023 (the "Class Period"). *See* Exhibit A to Larsen Decl.

B. Monetary Terms

The Settlement provides for EDPO to pay a non-reversionary Gross Settlement Amount ("GSA") of \$1,000,000.00. *See* Settlement, § 4. As noted above, however, because the escalator clause was triggered (Settlement, §4(E)), the GSA increased to \$1,270,903.71. The Net Settlement Amount ("NSA") is the amount remaining from the GSA after deducting Class Counsel's requested attorneys' fees (\$423,634.57), litigation costs (\$16,148.52), Class Representative Service Payment (\$7,500.00), Settlement Administration costs (\$7,250.00), the amount set aside as PAGA penalties (\$56,250.00), and the PAGA Payment Amount (\$18,750.00). Polites Decl., ¶ 17. The total NSA amount to be paid to Settlement Class members is approximately \$741,370.62. Polites Decl., ¶ 17.

The NSA shall be distributed to Participating Class Members 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 October 25, 2023; (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 through October 25, 2023, 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).

Additionally, \$18,750.00 shall be designated as the 25% share of the PAGA civil penalties designated for distribution to the PAGA Members and shall be distributed to Settlement Class members proportionately based on the number of pay periods worked at any time from August

11, 2021 through October 25, 2023 (“PAGA Period”). *See* Settlement § 2, 4(C); Polites Decl., ¶ 23.

C. Funding of the Settlement and Uncashed Settlement Funds

The Settlement will be funded within 30 days of the date the Court grants final approval. *See* Settlement, §4(B). Within 7 business days of EDPO’s deposit of the GSA, and after approval by counsel of the individual Settlement Award calculations, ILYM will prepare and mail individual Settlement Awards to Participating Settlement Class members. *Id.*, §6(D).

After disbursement, Settlement Class members will have 180 days to cash their checks. *See* Settlement, §6(F). Funds remaining unclaimed after 180 days shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, in the name of the Class Member who did not cash his/her check. *Id.*

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because it Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative’s claims are typical of the classes’ claims; and (4) the representative will fairly and adequately represent the class’s interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on October 25, 2023. *See generally* Larsen Decl., Exh. A. No subsequent events have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class has been overwhelmingly positive, with not a single objection or request for exclusion. *See* Polites Decl., ¶¶ 8-9, 15. This Court should therefore confirm its conditional certification of the Settlement Class.

1 **A. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
2 **and Reasonable Compromise of Disputed Wage and Hour Claims**

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

12 The court approval process consists of preliminary settlement approval, notice being given
13 to class members, and a final fairness and approval hearing being held, at which class members
14 have the opportunity to be heard with respect to the settlement. *See Malibu Outrigger Bd. of*
15 *Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). Now that notice has been
16 provided to the Settlement Class, Plaintiff respectfully requests that this Court finally approve the
17 Settlement as fair, adequate, and reasonable.

18 ***1. The Settlement was Reached at Arm’s Length, Through Experienced***
19 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
20 ***Information to Intelligently Negotiate a Fair Settlement in Light of the***
21 ***Claims Asserted and Risks of Continued Litigation***

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

and reasonable in light of the overall balance of factors in this case.

2. The Settlement is Fair, Adequate and Reasonable in Light of the Risks Faced by Plaintiff

The Settlement resulted from extensive arm's-length negotiations between qualified counsel, with the assistance of an experienced mediator, and is fair, adequate, and reasonable for all Settlement Class members. While Plaintiff steadfastly maintains her claims are meritorious, Plaintiff acknowledges her position included substantial risks and uncertainty, which justifies a downward departure from the maximum exposure each claim potentially carried.

As detailed in Plaintiff's Motion for Preliminary Approval, there was a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. Larsen Decl., ¶ 16. For example, with respect to Plaintiff's claim for under-paid overtime wages based on EDPO's alleged failure to include bonuses and other payments in the regular rate, EDPO argues that the payments in question were discretionary, were not tied to the quantity or quality of work performed, and were therefore excludable from the regular rate. *Id.* EDPO further argues that any overtime under-payments were *de minimis* and not recoverable. *Id.* EDPO also maintains that employees received different types of remuneration 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.*

As for Plaintiff's claim for meal and rest period violations, EDPO argues that it has maintained legally-compliant meal and rest period policies and practices throughout the Class Period, and that under *Brinker* it is only required to "provide" the opportunity to take meal periods and "authorize and permit" rest periods, not "ensure" they are taken. *Id.* at ¶¶ 17-18. EDPO further argues that any missed meal or rest periods were due to employee choice, and that individualized inquiries would be required to determine whether individual employees received a non-compliant meal or rest period on each shift, and why any meal or rest period was late, short or missed. *Id.*

As for Plaintiff's derivative claims for wage statement penalties, waiting time penalties, and PAGA civil penalties, EDPO argues that Plaintiff's derivative claims fail for the same reasons

her underlying claims fail. Larsen Decl., ¶ 19. EDPO further asserts it has strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties. *Id.* EDPO further contends any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show she or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e), particularly because the alleged "direct" wage statement deficiencies did not result in unpaid wages, and that Class members could easily calculate their total hours worked by adding the regular and overtime hours reported on the wage statements; and that employee wage statements always accurately reflect amounts paid to employees, as required under the relevant case law. *Id.* Finally, EDPO contends Plaintiff's PAGA claim fails because the underlying claims fail, and that the Court would substantially reduce any potential PAGA penalties given EDPO's good-faith defenses and financial condition. *Id.*

These considerations not only bore heavily on the negotiations leading to the Settlement, but they also confirm that the Settlement is a fair, adequate, and reasonable compromise in view of the risks of further litigation. Larsen Decl., ¶ 20. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable. *Id.*

3. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury

Each individual Settlement Award will be calculated based on the proportionate number of workweeks worked by each Class member during the Class Period, and whether the Class member is also entitled to a portion of the Waiting Time Amount, Wage Statement Amount, and/or PAGA Amount. *See* Settlement, § 6(B). This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as those who worked more workweeks would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks, and those who are eligible for a portion of the Waiting Time Amount, Wage Statement Amount, and/or PAGA Amount would be entitled to additional penalties. Thus, the formula for compensating Settlement Class members is fair, adequate, and

reasonable, as it is tethered to the damages and penalties that could be recovered by them.

4. The Absence of Any Objections and Opt-Outs Confirms that the Settlement is Fair, Adequate, and Reasonable

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, not a single Settlement Class member has objected to the Settlement, nor has any Settlement Class member elected to opt-out of the Settlement, resulting in a 100% participation rate. Polites Decl., ¶¶ 8-9, 15. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. The Requested Award of Attorneys' Fees is Reasonable

Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, and 2699(g). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

1. Under the Common Fund Doctrine, it is Proper to Compensate Class Counsel Based on a Percentage of the Recovery Obtained for the Class

When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), that "[t]he percentage of fund method survives in California class action cases." Specifically, the *Laffitte* Court held:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts."

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)

1 (“when a number of persons are entitled in common to a specific fund, and an action brought by
2 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
3 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Rawlings v.*
4 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
5 method for calculating attorneys’ fees more accurately reflects the results achieved for the
6 putative class than the lodestar method and “establishes reasonable expectations on the part of
7 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
8 avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d
9 Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
10 because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success
11 and penalizes it for failure.’”).

12 Here, Class Counsel’s fee request of \$423,634.57 (one-third of the Gross Settlement
13 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
14 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
15 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
16 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel’s experience in
17 similar wage and hour class action matters. See Larsen Decl., ¶¶ 2-7. Thus, the percentage sought
18 by Class Counsel here (the same percentage approved in *Laffitte*) is reasonable.

19 **2. The Reasonableness of the Fee Request is Confirmed by a Lodestar**
20 **“Cross-Check”**

21 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
22 with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s
23 lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar
24 multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable.
25 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*,
26 at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
27 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-
28 check and use other means to evaluate the reasonableness of a requested percentage fee.”)

1 Under the lodestar method, the court computes the “lodestar” amount by multiplying the
2 number of hours reasonably expended by each attorney or legal staff member by their reasonable
3 hourly rates. *See, e.g., Serrano*, 20 Cal.3d at 48. The court then enhances the lodestar by a
4 “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its
5 contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th
6 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
7 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to
8 increase or decrease a lodestar calculation”).

9 Under California law, lodestar multipliers can range from 2 to 3 or even higher. *See, e.g.,*
10 *Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City*
11 *of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
12 *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d
13 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
14 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where
15 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
16 certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund
17 to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the
18 legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557
19 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
20 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned
21 lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte,*
supra, 1 Cal.5th at 503-05.

22 In this case, Class Counsel have a lodestar of approximately \$201,400.00 without the use
23 of any multiplier, resulting in a modest multiplier of 2.1 compared to the \$423,634.57 fee request.
24 Larsen Decl., ¶ 23.² A general summary showing the number of hours of work performed by each
25 attorney and paralegals is set forth below. The billing rates used are reasonable in view of the
26 evidence submitted herewith. *Id.*, at ¶¶ 22-24; Exh. C (*Laffey Matrix*).

27 ² As noted above, due to the Settlement’s “escalator clause” being triggered, the GSA increased
28 from \$1,000,000.00 to \$1,270,903.71. Per the Settlement, Class Counsel seeks attorneys’ fees
of one-third of the GSA. Settlement § 4(C).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	165.3	\$111,577.50
Neil Larsen (13th Year Attorney)	\$650	68.5	\$44,525.00
Rijenea Appling (2nd Year Attorney)	\$325	126.7	\$41,177.50
Paralegals	\$200	20.6	\$4,120
Total Lodestar			\$201,400.00

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino*, 290 F.3d at 1048-51 (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees. See Polites Decl., ¶¶ 8-9, 15.

Additionally, the average settlement payment in this case of approximately \$1,429.83 exceeds payments in similar wage and hour class action settlements. See, e.g., *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108, based on \$239,363.14 distributed to 2,212 claimants). The fact that Class Counsel achieved these results in the face of serious defense challenges, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all

1 the costs of litigation without receiving any compensation. Larsen Decl., ¶ 21. During this time,
2 Class Counsel have expended \$16,148.52 in costs and have devoted substantial time to this
3 litigation. *Id.* at ¶ 21 & Exh. B.

4 Class Counsel's efforts have included conducting pre-filing investigation, analyzing
5 Plaintiff's claims, conducting legal research, reviewing EDPO's documents and policies,
6 conducting extensive informal discovery, analyzing timekeeping and payroll records with help of
7 an expert to develop a comprehensive mediation brief and exposure analysis, preparing for and
8 attending a mediation, negotiating and preparing the short-form Memorandum of Understanding
9 and the long-form Settlement Agreement, preparing the Motion for Preliminary Approval,
10 overseeing the Notice process and fielding inquiries from Settlement Class members, drafting the
11 instant Motion for Final Approval, and otherwise litigating the case. *See* Larsen Decl., ¶ 22. Given
12 the considerable potential for adverse outcomes in this case, including, but not limited to, losing
13 on class certification and/or merits issues, the contingent risk borne by Class Counsel was great.
14 *Id.*

15 Class Counsel's previous experience in litigating wage and hour class actions also
16 supports the reasonableness of the fee request. Class Counsel are well-versed in wage and hour
17 class action litigation, with substantial experience litigating claims for unpaid wages, meal and
18 rest period violations, and related penalties, and have been certified as class counsel in numerous
19 other cases. *See* Larsen Decl., ¶¶ 2-5. Class Counsel's experience in similar matters was integral
20 in evaluating the strengths and weaknesses of the case against EDPO, and the reasonableness of
21 the Settlement. *Id.* Practice in the narrow field of wage and hour litigation requires skill and
22 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
23 procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel
24 commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross
25 Settlement Amount is reasonable as the California Supreme Court held in *Laffitte*.

26 **D. The Requested Litigation Cost Amount Warrants Final Approval as Fair,**
27 **Adequate, and Reasonable**

28 Class Counsel request \$16,148.52 in litigation costs. Larsen Decl., ¶ 21 & Exh. B. The

1 cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs
2 Plaintiff seeks are routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
3 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
4 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
5 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by
6 attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry &*
7 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
8 (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
9 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
10 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
11 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
12 no Class member has objected to them, this Court should grant the request for costs.

13 **E. This Court Should Approve the Requested Settlement Administration Costs**

14 Plaintiff also requests that this Court approve \$7,250.00 in settlement administration costs
15 to the Settlement Administrator, ILYM. As detailed in the declaration of Cassandra Polites
16 submitted herewith, ILYM performed duties in connection with this Settlement that were integral
17 in effectuating the Settlement and the Notice process. Among other things, ILYM calculated each
18 Settlement Class member’s individual payment, updated addresses contained in the class data
19 supplied by EDPO, translated and formatted Notices for mailing, mailed Notice Packets to all 389
20 Settlement Class members, kept the parties informed of any objections or requests for exclusion,
21 and have otherwise administered the Settlement. *See* Polites Decl., ¶¶ 2-15. ILYM’s requested
22 costs are fair, reasonable, and adequate, and should be finally approved.

23 **F. This Court Should Approve Plaintiff’s Requested Class Representative**
24 **Service Award**

25 Courts routinely approve enhancement payments to compensate named plaintiffs for the
26 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*
27 *Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to
28 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*

(N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 service payment).

Here, Plaintiff seeks a Class Representative Service Award of \$7,500.00, and believes this request is reasonable given her efforts in this case and the risks she undertook on behalf of Class members. Larsen Decl., ¶ 26; *see also* Perez Decl. ¶¶ 4-5. Plaintiff gathered documents for use in the lawsuit, reviewed and analyzed documents related to the claims in this case and the policies produced by EDPO, and discussed case strategy and EDPO's wage and hour practices and policies with Class Counsel on numerous occasions. *Id.*, ¶ 5.

Plaintiff also undertook the risk of being liable for EDPO's costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See, e.g., Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec. 11, 2015) (approving \$7,500 incentive payment in \$500,000 wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant 'reputational risk' in bringing this action against his former employer"). *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000 total award to named plaintiff in wage and hour class action settlement, including \$10,000 incentive award plus an additional \$5,000 for plaintiff's release of claims). Moreover, after receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member has objected to it. *See* Polites Decl., ¶¶ 8-9, 15. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

I. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that this Court should grant Plaintiff's motion in its entirety and adopt the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement submitted herewith.

Respectfully submitted,

Dated: June 4, 2024

ABRAMSON LABOR GROUP

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