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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE SALCIDO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

ELECTRO ADAPTER, INC., a California
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. 21STCV32600

*[Assigned for all purposes to the Hon. Stuart M.
Rice, Dept. SSC-1]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: November 15, 2023
Time: 10:30 AM
Dept.: SSC-1

Action filed: September 2, 2021
Trial Date: None set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on November 15, 2023 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Jose Salcido ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

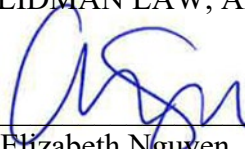
1. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure;
2. Confirming the appointment of Plaintiff Jose Salcido as Class Representative for settlement purposes;
3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, and Paul Haines of Haines Law Group, APC, as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement (herein "Settlement");
5. Approving an award of \$96,666.66 in attorneys' fees to Class Counsel;
6. Approving an award of \$20,639.09 in costs to Class Counsel;
7. Approving an award of \$7,250.00 in costs to Phoenix Class Action Administration Solutions for its settlement administration services;
8. Approving an incentive payment of \$5,000.00 to Plaintiff Jose Salcido for his services as Class Representative;
9. Approving an award of \$11,250.00 to the Labor & Workforce Development Agency ("LWDA"); and
10. Entering final judgment in the form of the [Proposed] Order of Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

This Motion is based on this notice of motion, the attached memorandum of points and authorities attached hereto, the declarations of Scott M. Lidman, Elizabeth Nguyen, Paul K. Haines, Milan Moore,

1 Plaintiff Jose Salcido,¹ and Jarrod Salinas of Phoenix Class Action Administration Solutions, and the
2 exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or
3 documentary evidence or argument presented at the time of hearing.

4
5 Dated: October 23, 2023

Respectfully submitted,
LIDMAN LAW, APC

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7 By: 

Elizabeth Nguyen
Attorney for Plaintiff
Jose Salcido

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¹ The declaration of Plaintiff Jose Salcido was originally filed with this Court on January 25, 2023 in connection with the Motion for Preliminary Approval. For the convenience of the Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Salcido (“Plaintiff”) submits this memorandum of points and authorities in support
4 of his motion for final approval of the class action settlement (the “Settlement”) with Defendant Electro
5 Adapter, Inc. (hereinafter “Electro Adapter” or “Defendant”). The Settlement Class is defined as: all
6 current and former hourly-paid, non-exempt employees who worked for Defendant Electro Adapter, Inc.
7 in California at any time from September 2, 2017 through November 15, 2022.

8 In this non-reversionary Settlement, the average settlement payment to each Settlement Class
9 Member is approximately \$1,054.78. This is a favorable resolution of the highly disputed wage and hour
10 claims in this case and the significant litigation risks that Plaintiff faced. Since this Court granted
11 preliminary approval on April 26, 2023, nothing has changed to impact the propriety, fairness, adequacy
12 and reasonableness of the Settlement. In addition, after receiving notice of the Settlement and of their
13 projected Settlement payments, no one has opted-out or submitted a written objection to the Settlement.

14 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the Class
15 continues to meet the requirements for class certification for settlement purposes under Code of Civil
16 Procedure section 382; (2) the Settlement warrants final approval because it is a fair, adequate, and
17 reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
18 Counsel’s attorneys’ fees and costs, Plaintiff’s Service Award, payment to the Labor Workforce
19 Development Agency (“LWDA”), and settlement administration costs are all fair, adequate, and
20 reasonable. For these reasons, Plaintiff respectfully requests that this Court enter the [Proposed] Order
21 of Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 On September 2, 2021, Plaintiff filed a putative class action complaint against Electro Adapter
24 in Los Angeles County Superior Court. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10.
25 On August 23, 2022, in connection with the Parties’ settlement, Plaintiff submitted a letter to the
26 California Labor & Workforce Development Agency (“LWDA”) and Electro Adapter of his intention
27 of filing a PAGA claim based on the labor code violations as alleged in his complaint. *Id.* Therefore,
28 on April 20, 2023, after exhausting his administrative remedies, Plaintiff filed a First Amended Class

Complaint adding causes of action for: (i) failure to provide accurate, itemized wage statements and (ii) civil penalties under the PAGA. In the FAC, Plaintiff's primary allegations are that Electro Adapter: (1) failed to pay all overtime wages owed; (2) failed to pay all minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to timely pay all wages upon termination; (6) engaged in unlawful business practices; (7) failed to provide accurate, itemized wage statements; and (8) is liable for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"). *Id.*

A. Plaintiff's Claims

As explained in detail in the Motion for Preliminary Approval, Plaintiff's primary theories of liability are related to Defendant's alleged failure to pay for all time worked and failure to provide Settlement Class Members all legally compliant duty-free meal and rest periods. Nguyen Decl., ¶ 11. Specifically, Plaintiff alleges that he and Settlement Class members were not fully compensated for all of their time worked. *Id.* Plaintiff alleges Electro Adapter would keep track of his hours and the hours of the other non-exempt employees, and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. *Id.* Plaintiff also alleges that this time shaving and/or rounding practice utilized by Electro Adapter was not-even handed over time and would almost exclusively round and shave in Electro Adapter's favor such that the employees were routinely underpaid for their time worked. *Id.*

Plaintiff alleges that he and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the fifth hour of work. Nguyen Decl., ¶ 13. Specifically, Plaintiff alleges that as a result of the work demands imposed by Electro Adapter and the bell signaling system, the Settlement Class Members were not provided a full uninterrupted 30-minute meal period before the end of the fifth hour of work. *Id.* Based on a review of the timekeeping data, there was an approximate 68% violation rate, with the majority of the violations being for late and short meal periods. *Id.*

Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Electro Adapter's rest period policies and practices that fail to authorize and permit a third rest period on shifts over 10.0 hours. Nguyen Decl., ¶ 15.

1 As a result of the alleged unpaid wages and unpaid meal period and rest period premium wages
2 described above, Plaintiff alleges that Defendant issued inaccurate wage statements in violation of Labor
3 Code § 226, failed to pay all wages to Settlement Class Members upon their separation of employment,
4 and is thus liable for civil penalties under the Labor Code Private Attorney General Act (“PAGA”). *See*
5 Nguyen Decl., ¶¶ 17-21.

6 As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, Defendant denies
7 Plaintiff’s claims and asserts several affirmative defenses, both on the merits and with respect to class
8 certification.

9 **B. Mediation and Settlement**

10 After agreeing to participate in early mediation, Electro Adapter informally produced time records
11 and payroll data for a sampling of the putative class, as well as its wage and hour policies and other
12 relevant documents and information relevant to the claims alleged in advance of mediation. Nguyen
13 Decl., ¶ 24. After the detailed review of the payroll and time records and other documents and policies
14 produced by Electro Adapter, Class Counsel drew on their extensive experience in similar cases to assess
15 the strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the
16 merits and value of Plaintiff’s claims and Electro Adapter’s defenses thereto, if a settlement could not be
17 reached. *Id.*

18 On August 16, 2022, after extensive research and analysis, a mediation was held with Jeffrey
19 Krivis, a well-respected wage and hour class action mediator. Nguyen Decl., ¶ 25. During mediation,
20 the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s
21 claims, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on
22 a class-wide resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and
23 executed the Stipulation of Settlement (“Settlement”). *Id.*

24 **C. Preliminary Approval of Settlement**

25 Plaintiff submitted the Stipulation of Settlement to the Court with his Motion for Preliminary
26 Approval on January 25, 2023. Nguyen Decl., ¶ 26. On April 19, 2023, the court continued the hearing
27 and requested supplemental briefing. On April 20, 2023, Plaintiff submitted supplemental briefing
28 addressing the issues identified by the court. On April 26, 2023, the Court signed an Order Granting

1 Preliminary Approval of the Settlement. *Id.*; Exh. A.

2 Plaintiff submitted the Settlement and the Court’s Order Granting Preliminary Approval of the
3 Settlement to the LWDA via the LWDA’s website on January 25, 2023 and April 26, 2023 respectively.
4 *See* Nguyen Decl., ¶ 40; Exhs. D and E. Plaintiff will also provide the LWDA with a copy of the instant
5 motion for final approval and supporting documents after the instant motion is filed and will file a
6 supplemental proof of service prior to the hearing. *See* Nguyen Decl., ¶ 41.

7 On May 19, 2023, Phoenix mailed the Notice via U.S. first class mail, in English and Spanish, to
8 all one hundred thirty-six (136) Settlement Class members on the Class List who had until July 3, 2023
9 to request for exclusion, objections, and/or submit disputes. *See* Declaration of Jarrod Salinas of Phoenix
10 Class Action Administration Solutions. (“Salinas Decl.”), ¶¶ 5 and 9-11. After the May 19, 2023, Notice
11 mailing, two individuals contacted Phoenix believing that they should have been included in the Class
12 List. Phoenix confirmed with Defense Counsel that these individuals were inadvertently left off of the
13 original Class list. Phoenix has added these two Settlement Class members to the Class list. Adding these
14 two Settlement Class members to the Class list has increased the Class size to one hundred thirty-eight
15 (138). *Id.* at ¶¶ 6. As of the date of this filing, there have been **no requests for exclusion, no objections,**
16 and **no disputes** received. *Id.* at ¶¶ 9-11. Plaintiff now respectfully submits the Settlement for this
17 Court’s final approval.

18 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

19 **A. Settlement Class Definition**

20 The Settlement Class encompasses: all current and former hourly-paid, non-exempt employees
21 who worked for Defendant Electro Adapter, Inc. in California at any time from September 2, 2017
22 through November 15, 2022. Nguyen Decl., ¶ 27.

23 **B. Monetary Terms of the Settlement**

24 The Settlement provides for Defendant to pay a Gross Settlement Amount of Two Hundred
25 Ninety Thousand Dollars and Zero Cents (\$290,000.00). *See* Salinas Decl., ¶ 13. The Net Settlement
26 Amount is the amount remaining from the Gross Settlement Amount after deducting requested Class
27 Counsel attorneys' fees (\$96,666.66), and Class Counsel costs (\$20,639.09), requested Service Award to
28 Plaintiff Jose Salcido (\$5,000.00), the payment to the LWDA for its share of civil penalties (\$11,250.00),

1 and the requested Settlement Administration Costs (\$7,250.00). *Id.* Based on these requested amounts,
2 the Net Settlement Amount is calculated to be approximately **\$149,194.25**. *Id.*

3 The Net Settlement Amount, shall be allocated to Settlement Class Members who worked during
4 the Class Period, as follows: An Individual Class Payment calculated by (a) dividing the Net Settlement
5 Amount by the total number of Workweeks worked by all Participating Class Members during the Class
6 Period and (b) multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶
7 3.2.4.

8 The Settlement Administrator will also be responsible for calculating each PAGA Employee's
9 share of the PAGA Settlement Amount, as follows: Three Thousand Seven Hundred Fifty Dollars and
10 Zero Cents (\$3,750.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as
11 described above. The Administrator will calculate each Individual PAGA Payment by (a) dividing the
12 amount of the Aggrieved Employees' 25% share of PAGA Penalties \$3,750.00 by the total number of
13 PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
14 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees
15 assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement,
16 ¶ 3.2.7.1.

17 For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be
18 allocated as follows: 70% as penalties and interest; and 30% as wages. Settlement, ¶ 3.2.5.

19 Defendant will pay the employer's share of payroll taxes separately from, and in addition to, the
20 Gross Settlement Amount. Settlement, ¶ 3.1.

21 **C. Summary of Notice Process**

22 ***1. Mailing of Notice Packets***

23 On May 12, 2023, Defendant provided Phoenix with data files containing the names, last known
24 mailing addresses, Social Security numbers, and workweeks for each Class Member during the Class
25 Period. Salinas Decl., ¶ 3. After performing address updates and verifications, Phoenix mailed the Notice
26 Packet to 136 Settlement Class Members on May 19, 2023 in English and Spanish. *Id.* at ¶ 5. Following
27 the initial mailing, two individuals contacted Phoenix believing that they should have been included in the
28 Class List. *Id.* at ¶ 6. Phoenix confirmed with Defense Counsel that these individuals were inadvertently

1 left off of the original Class list. Phoenix has added these two Settlement Class members to the Class list.
2 *Id.* Adding these two Settlement Class members to the Class list has increased the Class size to one
3 hundred thirty-eight (138). *Id.* Further, 7 Notice Packets were returned to Phoenix by the Post Office, 2
4 Notice Packets were requested, and 8 were re-mailed. *Id.* at ¶ 7. As of the date of filing this final approval
5 motion, 1 Notice Packet remains undeliverable because no forwarding address was provided and/or no
6 new address could be located through Skip Trace. *Id.* at ¶ 8.

7 The deadline for Settlement Class Members to submit objections, requests for exclusion, or
8 disputes was July 3, 2023. Salinas Decl., ¶¶ 9-11. As of the date of this filing, there were no requests
9 for exclusion, no objections, and no disputes. *Id.* at ¶¶ 9-11. Accordingly, as of the date of this Motion,
10 the participation rate amongst the Settlement Class Members is 100% and the average estimated payment
11 is \$1,053.94, with the highest estimated payment to a Settlement Class Member being \$2,415.75, the
12 lowest estimated payment to a Settlement Class Member being \$9.08. *Id.* at ¶ 14.

13 **D. Timing of Payments**

14 Defendant shall deposit the Gross Settlement Amount and the amounts necessary to fully pay
15 Defendant's share of payroll taxes with the Administrator no later than 30 days after the Effective Date.
16 See Settlement, ¶ 4.3. "Effective Date" means the date by when both of the following have occurred: (a)
17 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment
18 is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
19 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating
20 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the
21 Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the
22 Judgment and issues a remittitur. See Settlement, ¶ 1.18.

23 After disbursement, Settlement Class Members will have at least 180 days to cash their checks.
24 See Nguyen Decl., ¶ 28; Settlement ¶ 4.4.1. Funds remaining unclaimed will be distributed to the
25 California State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
26 Member. See Nguyen Decl., ¶ 28; Settlement ¶ 4.4.3.

27 **E. Notice of Judgment**

28 As stated on the Notice of Pendency to Class Action and Proposed Settlement mailed to class

members, the final judgment entered by the Court and any changes to the Final Approval hearing date or location will be posted on the Settlement Administrator's website at <https://www.phoenixclassaction.com/salcido-v-electro-adapter/>. See Salinas Decl., ¶5, Exh. A.

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the 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 section 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 class' claims; and (4) the representative will fairly and adequately represent the class' interests. See *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on April 26, 2023. See Nguyen Decl., ¶ 26; Exh. A. After the Court entered an order granting preliminary approval, no events have occurred to cast doubt on the propriety of this determination. In fact, the reaction of the Settlement Class Members thus far to the Settlement has been strongly in support of the Settlement. No Settlement Class Member has requested for exclusion from the Settlement, no Settlement Class Member has objected to any portion of the Settlement, and no Settlement Class Member has disputed the Settlement. See Salinas Decl., ¶¶ 9-11. This Court should therefore confirm its conditional certification of the Settlement Class.

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

California courts have a strong policy in favor of settlement. See, e.g., *Stambaugh v. Superior Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with

respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

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

A settlement is presumptively fair where it is reached through arm’s length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior Court*, 89 Cal.App.3d 434 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk, supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider include, but are not limited:

[T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case. *Id.* “In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements inherently involve compromise, even settlements providing for substantially narrower relief than likely would be obtained if the suit were successfully litigated can be reasonable because, “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

Here, the Settlement resulted from extensive arm’s length settlement negotiations between qualified and experienced counsel, with the assistance of a well-respected mediator, and is fair, adequate, and reasonable for all Settlement Class Members. While Plaintiff maintains that his claims are

meritorious, Plaintiff acknowledges that his position includes substantial risks and uncertainty, which justifies a downward departure from the maximum exposure that Plaintiff's calculated each claim carried.

As detailed in Plaintiff's Preliminary Approval Motion, there is significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. For example, with respect to Plaintiff's unlawful rounding claims, Electro Adapter contends that it compensated Settlement Class members for all of their time worked. Nguyen Decl., ¶ 12. Electro Adapter also contends that its rounding practices were lawful, and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Electro Adapter further asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that would be required, and also that Electro Adapter's rounding policy/mechanism was, according to it, neutral on its face and in its application. *Id.*

As for Plaintiff's meal period claims, Electro Adapter counters that it has always maintained a lawful meal period policy and provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Electro Adapter. Nguyen Decl., ¶ 14. Electro Adapter also contends its bell signaling system alerts its employees five (5) minutes before the start of the meal period and five (5) minutes before the end. Further, Electro Adapter points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Brinker, supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Electro Adapter contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id.*

As for Plaintiff's rest period claims, Electro Adapter contends that its policies and procedures authorized and permitted Settlement Class Members to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 16. Electro Adapter also argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each

1 Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which
2 would evolve into an unmanageable series of mini-trials. *Id.*

3 As for Plaintiff's claim for wage statement violations, Electro Adapter further argues that its
4 alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff
5 cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement
6 violations, as required by Lab. Code § 226(e) for imposition of penalties. Nguyen Decl., ¶ 18.

7 As for Plaintiff's claim for waiting time penalties, Electro Adapter asserts it has strong defenses
8 to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims,
9 precluding imposition of penalties. Nguyen Decl., ¶ 20. *See also* 8 Cal. Code Regs. § 13520 (a "good
10 faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy*
11 *Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was
12 exempt precluded imposition of waiting time penalties over contested wages owed). *Id.*

13 Lastly, since Plaintiff's PAGA claim is a derivative claim based on the underlying claims, Electro
14 Adapter argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will
15 fail. Nguyen Decl., ¶ 22; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 ("Because the
16 underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Electro Adapter also
17 maintains that, given its good faith defenses, this Court would exercise its discretion to substantially
18 reduce any PAGA penalties if it were to find Electro Adapter liable for any of Plaintiff's claims. *See* Lab.
19 Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135
20 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-
21 01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000).
22 *Id.*

23 These considerations, not only bore heavily on the negotiations leading to the Settlement, but also
24 confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further
25 litigation. Nguyen Decl., ¶ 23. As detailed in the Preliminary Approval Motion, Plaintiff carefully vetted
26 the claims at issue and conducted a detailed liability analysis of class-wide data to calculate the damages
27 figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair,
28 adequate, and reasonable in view of them. *Id.*

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

4 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
5 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
6 multiplying the result by each Participating Class Member's Workweeks. *See* Settlement, ¶ 3.2.4. This
7 method of distribution compensates Settlement Class Members based on the estimated extent of their
8 injuries, as Settlement Class Members who worked more workweeks, would have been subject to more
9 of the alleged wage and hour violations than those who worked fewer weeks. Thus, the formula for
10 compensating Settlement Class Members is fair, adequate, and reasonable, as it is tethered to the damages
11 and penalties that could be recovered by them.

12 3. ***The 100% Participation Rate and Absence of Any Objections Further Confirms***
13 ***That the Settlement is Fair, Adequate, and Reasonable***

14 Class members' response to a settlement is relevant in evaluating whether it merits final approval.
15 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
16 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
17 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
18 "particularly impressive" favorable response from class members). Here, as of the filing of this Motion,
19 not a single Settlement Class Member has objected to the Settlement and no Settlement Class Member
20 have elected to opt-out of the Settlement. In addition, only 1 of the 138 Notice Packets were returned
21 undeliverable. Salinas Decl., ¶¶ 8-12. The extremely favorable response of the Settlement Class further
22 confirms that the Settlement is fair, adequate, and reasonable.

23 **C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Common**
24 **Fund Confirmed by a Lodestar Cross-Check**

25 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
26 their attorneys' fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
27 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
28 *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). 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).

Plaintiff has provided written approval of the split of attorneys’ fees in this action. Nguyen Decl., ¶ 38.

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) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys’ fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”) (citation omitted).

Laffitte also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.* at 506 (“[w]e hold further that trial courts have

1 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
2 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
3 requested percentage fee.”)

4 Here, Class Counsel’s fee request of \$96,666.66 (one-third of the Gross Settlement Amount) is
5 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
6 “regardless of whether the percentage method or the lodestar method is used, fee awards in class actions
7 average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
8 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
9 2010) (observing that “30-50% [is] commonly awarded in cases in which the common fund is relatively
10 small” and that in California, “courts usually award attorneys’ fees in the 30-40% range in wage and hour
11 class actions...”); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
12 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
13 attorneys’ fees in wage and hour class actions). This is also consistent with Class Counsel’s experience
14 in similar wage and hour class action matters. *See* Nguyen Decl., ¶ 29. Thus, the percentage sought by
15 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

16 Next, as stated, under the lodestar method the court computes the “lodestar” amount by
17 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
18 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
19 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
20 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
21 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
22 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
23 decrease a lodestar calculation”).

24 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
25 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
26 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
27 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
28 class actions such as this one, where the value of the benefit conferred to the class “can be monetized

with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of \$127,055 which is 1.31 times more than the \$96,666.66 fee request. *See* Nguyen Decl., ¶ 34. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. *Id.*

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (24th Year Attorney)	\$750	33.4	\$25,050
Elizabeth Nguyen (16th Year Attorney)	\$650	85.2	\$ 55,380
Paul K. Haines (15th Year Attorney)	\$675	19.9	\$13,432.50
Milan Moore (6th Year Attorney)	\$450	67.5	\$ 30,375.50
Paralegals	\$175	16.1	\$2,817.50
Total Lodestar			\$127,055

The billing rates used are reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey* Matrix, submitted concurrently herewith. Nguyen Decl., ¶ 35, Exh. C. Based on the *Laffey* Matrix, the hourly rate for a 24rd year attorney is \$997, the hourly rate for a 16th year attorney is \$829, and the hourly rate for a 6th year attorney is \$508. *Id.* 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 v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys’ fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 100%, and not a single Settlement Class Member has objected to the

1 Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Salinas Decl., ¶¶ 9-11.
2 Additionally, the *average* settlement payment in this case of approximately \$1,053.94 is in line with, and
3 above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v.*
4 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action
5 settlement approved where average class member recovery was approximately \$60); *Schiller v. David's*
6 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *18 (E.D. Cal. 2012) (finding that
7 average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*,
8 Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
9 final approval of class action settlement where average recovery for each class member was
10 approximately \$108). The fact that Class Counsel achieved these results without engaging in a protracted
11 legal battle, in the face of serious defense challenges and an uncertain legal landscape, confirms the
12 strength of the results achieved.

13 As discussed above, this case presented significant risk as to both class certification and merits
14 considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class
15 Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation
16 and expending considerable effort, all while working on a pure contingency basis. Since undertaking
17 representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any
18 compensation for over one year. Nguyen Decl., ¶ 31. During this time, Class Counsel have expended a
19 total of \$20,189.09 in actual costs and have devoted substantial time to this litigation and expect to incur
20 approximately \$450.00 in future costs for filing the final declaration regarding distribution of settlement,
21 Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed
22 copies of documents.² Nguyen Decl., ¶ 31; Exh. B. Class Counsel's efforts have included conducting
23 pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendant's
24 documents and policies, analyzing Settlement Class Members' timekeeping data and payroll records,
25 preparing for and attending mediation, negotiating and revising the long-form Settlement Agreement,
26 preparing the Motions for Preliminary and Final Approval, overseeing the settlement administration
27

28 ² This includes total costs incurred by both law firms.

process, communicating with Settlement Class Members, and otherwise litigating this case. *See* Nguyen Decl., ¶ 30. Moreover, Class Counsel have expended time, effort, and money that they could have expended on less risky cases instead. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Nguyen Decl., ¶¶ 30-33.

Class Counsel’s previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Nguyen Decl., ¶¶ 3-8; Declaration of Scott M. Lidman (“Lidman Decl.”), ¶¶ 3-8; Declaration of Paul K. Haines (“Haines Decl.”), ¶¶ 3-8. They have been certified as class counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the Settlement. *See* Nguyen Decl., ¶ 32. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding Defendant’s requirement to “provide” meal periods and “authorize and permit” rest periods, and the propriety of statutory penalties, to name just a few. Nguyen Decl., ¶¶ 11-32. Thus, Class Counsel’s requested fee award is fair, reasonable, and adequate and should be approved.

D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel seek to be reimbursed a total of \$20,639.09³ in litigation costs. Class Counsel’s request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Nguyen Decl., ¶ 31; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely

³ Class Counsel have expended a total of \$20,189.09 in actual costs and anticipates incurring costs in the amount of \$450.00 for filing the final declaration regarding distribution of settlement, Case Anywhere fees, service and messenger fees, postage fees, and/or online fees to retrieve conformed copies of documents.

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

E. The Court Should Finally Approve the Requested Administration Costs

Plaintiff also requests that the Court approve \$7,250 in administration costs to the Settlement Administrator, Phoenix. As detailed in the declaration of Jarrod Salinas on Behalf of Phoenix Class Action Administration Solutions submitted herewith, Phoenix performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each Settlement Class Member’s individual settlement payment, updated addresses contained in the class data supplied by Defendant, formatted Notice Packets for mailing, mailed Notice Packets to all 138 Settlement Class Members in English and Spanish, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Salinas Decl., ¶¶ 2-17. For these reasons, Phoenix’s requested costs are fair, reasonable, and adequate, and should be finally approved.

F. Plaintiff’s Requested Service Award Is Fair, Adequate, and Reasonable in View of Plaintiff’s Efforts and the Risks that He Assumed on Behalf of the Class

Courts routinely approve service payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving \$50,000 service payment). In analyzing the requested service payment, courts consider the following

factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation. *See Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

Here, analyzing those factors weigh in favor of approving Plaintiff's requested service award of \$5,000.00 because request is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class Members. *See* Nguyen Decl., ¶ 39; Declaration of Jose Salcido ("Salcido Decl."), ¶¶ 6-12. Plaintiff gathered documents for use in the lawsuit, and worked with Class Counsel on the case, including preparing for mediation and discussing the case, the merits, the defenses, and settlement. *See* Nguyen Decl., ¶ 39; Salcido Decl., ¶¶ 6 and 8. The class has benefited from Plaintiff's actions as the average settlement amount is \$1,054.78.

Further, Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could stigmatize him and/or affect future employment. *See* Nguyen Decl., ¶ 39; Salcido Decl., ¶ 7. Plaintiff also understood the risk that he could be liable for Defendant's costs if he lost the case. *See* Nguyen Decl., ¶ 39; Salcido Decl., ¶ 7. Plaintiff accepted these risks and burdens because he wanted Defendants to compensate their current and former employees for unpaid wages. Salcido Decl., ¶¶ 7. Plaintiff estimates he spent 7-10 hours on activities related to this case. *Id.* at ¶ 8.

Moreover, Plaintiff has agreed to release, in addition to the released claims included within the Settlement, all claims, whether known or unknown, under federal, state, or local law against Defendants and the Released Parties. Plaintiff's release includes unknown claims, and that he is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code. *See* Nguyen Decl., ¶ 39; Settlement ¶ 5.1.1.

Moreover, after receiving notice of the proposed Class Representative Service Award for Plaintiff, no Settlement Class Member has objected to the proposed award, as of the date of this filing. *See* Salinas Decl., ¶ 10. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

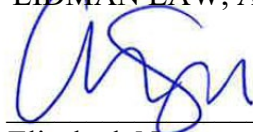
1 **V. CONCLUSION**

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

5
6 Dated: October 23, 2023

Respectfully submitted,
LIDMAN LAW, APC

7
8 By:



Elizabeth Nguyen
Attorney for Plaintiff
JOSE SALCIDO