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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 PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 26, 2023
Time: 10:30 a.m.
Dept.: SSC-1

Action Filed: September 2, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April
3 26, 2023 at 10:30 a.m. in Department SSC-1 of the above-entitled Court, located at 312 North Spring
4 Street, Los Angeles, California, 90012, Plaintiff Jose Salcido ("Plaintiff"), individually and on behalf
5 of a class of similarly situated individuals, will and hereby does move this Court for:

- 6 1. Preliminary approval of the proposed class settlement of this lawsuit;
7 2. Pursuant to section 382 of the California Code of Civil Procedure, and for settlement
8 purposes only, provisional certification of the following Settlement Class defined as follows:

9 All current and former hourly-paid, non-exempt employees who worked for
10 Defendant Electro Adapter, Inc. in California at any time from September 2, 2017
11 through November 15, 2022.

- 12 3. Permission for Plaintiff to file the proposed First Amended Complaint attached as Exhibit 2
13 to the Declaration of Elizabeth Nguyen, filed concurrently herewith;
14 4. Preliminary appointment of Plaintiff Jose Salcido as Class Representative;
15 5. Preliminary appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
16 Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
17 6. The scheduling of a hearing to consider whether the Settlement should be finally approved
18 and to permit a service award to Plaintiff, Settlement Administration costs, civil penalties
19 payable to the California Labor Workforce Development Agency, and attorneys' fees and
20 costs to Class Counsel;
21 7. Appointment of Phoenix Class Action Administration Solutions as the third-party Settlement
22 Administrator for mailing notices; and
23 8. Approval of the proposed Notice of Class Action Settlement and Hearing Date for Final
24 Court Approval ("Class Notice") and is attached to the Settlement as Exhibit A and an order
25 that it be disseminated to the proposed Settlement Class Members as provided in the
26 Settlement Agreement.

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

1 Salcido, and Jodey Lawrence of Phoenix Class Action Administration Solutions, and the exhibits
2 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: January 25, 2023

Respectfully submitted,
LIDMAN LAW, APC

6
7
8 By:



Elizabeth Nguyen
Attorney for Plaintiff
JOSE SALCIDO

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Salcido (“Plaintiff”) brought this class and representative action against Defendant
4 Electro Adapter, Inc. (hereinafter “Electro Adapter” or “Defendant”) alleging various wage and hour
5 and related violations. Plaintiff’s primary claims/allegations are that Electro Adapter: (1) failed to pay
6 all minimum wages owed; (2) failed to pay all overtime wages owed; (3) failed to provide all legally
7 required meal periods; (4) failed to authorize and permit all legally required rest periods; (5) failed to
8 provide accurate, itemized wage statements; (6) failed to timely pay all wages upon termination; (7)
9 engaged in unlawful business practices; and (8) is liable for civil penalties under the Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”).

11 Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary,
12 class action settlement,¹ in which Electro Adapter has agreed to pay Two Hundred Ninety Thousand
13 Dollars and Zero Cents (\$290,000.00) on behalf of the following Settlement Class:

14 All current and former hourly-paid, non-exempt employees who worked for
15 Defendant Electro Adapter, Inc. in California at any time from September 2, 2017
16 through November 15, 2022.

17 Significantly, Settlement Class Members do not need to file a claim to benefit from the
18 Settlement because all Settlement Class Members will automatically receive a payment unless they
19 affirmatively opt-out. After deducting administration costs, Plaintiff’s service payment, attorneys’ fees
20 and costs, and the PAGA Payment to the LWDA, the remaining Net Settlement Amount (“NSA”) of
21 approximately \$144,833.34 will be distributed to all Settlement Class Members who do not opt-out of
22 the Settlement. There were approximately 126 Settlement Class Members as of the date of mediation,
23 and including the \$3,750 for 67 Aggrieved Employees, the average payment to participating Settlement
24 Class Members is estimated to be approximately **\$1,205.44**.

25 This proposed Settlement is well-within the range of possible approval in light of the significant
26 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible
27 monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff

28 ¹ The Settlement is attached to the Declaration of Elizabeth Nguyen as Exhibit 3. The proposed Class Notice is attached to the Settlement as Exhibit A.

respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Electro Adapter manufactures connector accessories for the military and aerospace industry. *See* Declaration of Elizabeth Nguyen (“Nguyen Decl.”), ¶ 10. Plaintiff, a former employee, was employed by Electro Adapter as an hourly, non-exempt employee from approximately 1971 through approximately April 23, 2020. *See* Declaration of Jose Salcido (“Salcido Decl.”), ¶ 2.

B. BRIEF PROCEDURAL HISTORY

On September 2, 2021, Plaintiff filed the instant putative class action complaint. Nguyen Decl., ¶ 10. On August 23, 2022, in conjunction with effectuating the terms of the settlement agreement, Plaintiff submitted a letter to the California Labor & Workforce Development Agency (“LWDA”) and Electro Adapter of his intention of filing a PAGA claim based on the labor code violations as alleged in his complaint. *Id.*, **Exhibit 1**. Now, after exhausting his administrative remedies, and pursuant to effectuating the terms of the settlement agreement, Plaintiff seeks to file a First Amended Class and Representative Action Complaint adding causes of action for wage statement penalties and civil penalties under the PAGA. *Id.*, **Exhibit 2**.

Further, Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration showing the submission. Nguyen Decl., ¶ 34.

III. DUNK/KULLAR ANALYSIS

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm’s-length by class counsel and with the assistance of a mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

In advance of mediation, Electro Adapter produced a 20% sampling timekeeping and payroll data for the putative class, as well as its wage and hour policies and other relevant documents and

1 information relevant to the claims alleged. Nguyen Decl., ¶ 11. Electro Adapter also provided sufficient
2 information for Plaintiff to calculate the necessary metrics, including without limitation, class size,
3 number of workweeks and pay periods. After the detailed review of the documents and data produced
4 by Electro Adapter, Class Counsel drew on their extensive experience in similar cases to assess the
5 strengths and weaknesses of Plaintiff’s case. *Id.* This discovery allowed the parties to assess the merits
6 and value of Plaintiff’s claims and Electro Adapter’s defenses thereto.

7 **B. ARMS-LENGTH NEGOTIATIONS**

8 On August 16, 2022, a mediation was held with Jeffrey Krivis, Esq., a well-respected wage and
9 hour class action mediator. Nguyen Decl., ¶ 12. During mediation, the parties vigorously debated their
10 opposing legal positions, the likelihood of certification of Plaintiff’s claims, and the legal basis for the
11 claims and defenses. *Id.* Ultimately, the Parties agreed on a class-wide resolution that included Plaintiff
12 filing an amended complaint adding causes of action for wage statement penalties and civil penalties
13 under the PAGA. *Id.*

14 **C. THE EXPERIENCE AND VIEWS OF COUNSEL**

15 “Parties represented by competent counsel are better positioned than courts to produce a
16 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
17 *Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent,
18 experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class
19 actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See*
20 Nguyen Decl., ¶¶ 2-8; Lidman Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-8. Class Counsel conducted an in-depth
21 review of Electro Adapter’s policies and timekeeping and payroll records, and drew on their extensive
22 experience in similar cases to assess the strengths and weaknesses of Plaintiff’s case. *See* Nguyen Decl.,
23 ¶¶ 10-28. The Settlement was also reached with the assistance of a mediator. *Id.* This factor strongly
24 supports preliminary approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

25 **D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF** 26 **CLAIMS**

27 The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in
28 the face of disputed claims. Plaintiff’s analysis of the maximum and realistic expected recoveries for
each of the theories of liability pled is set forth below:

1 Electro Adapter Failed to Pay for All Hours Worked: Plaintiff alleges the Settlement Class
2 Members were not fully compensated for all of their time worked due to unlawful shaving of time
3 worked and/or rounding such that they would not be fully paid for all time worked. Nguyen Decl., ¶
4 16. Plaintiff also alleges that this practice was not-even handed over time and would almost exclusively
5 benefit Electro Adapter and the employees were routinely underpaid for their time worked. Plaintiff's
6 estimates the total underpayment of wages due to unlawful rounding is approximately \$105,856.00. *Id.*

7 Electro Adapter contends that it compensated Settlement Class Members for all of their time
8 worked. Nguyen Decl., ¶ 17. Electro Adapter also contends that its rounding practices were lawful,
9 and any unpaid time was *de minimis* and therefore non-compensable. *Id.* Electro Adapter further
10 asserts that Plaintiff would be unable to certify a rounding class given the individualized inquiries that
11 would be required, and also that Electro Adapter's rounding policy/mechanism was, according to it,
12 neutral on its face and in its application. *Id.* In light of these defenses, Plaintiff discounted the
13 maximum exposure by 45% for the risk of non-certification, and an additional 30% to account for
14 Electro Adapter's defenses on the merits, to arrive at an estimated exposure of \$40,754.56. *Id.*

15 Electro Adapter Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that
16 Settlement Class Members were not provided with all legally-compliant first meal periods beginning
17 before the end of the fifth hour of work. Nguyen Decl., ¶ 18. Specifically, Plaintiff alleges that as a
18 result of the work demands imposed by Electro Adapter and the bell signaling system, the Settlement
19 Class Members were not provided a full uninterrupted 30-minute meal period before the end of the fifth
20 hour of work. *Id.* Based on a review of the timekeeping data, there was an approximate 68% violation
21 rate, with the majority of the violations being for late and short meal periods. *Id.* Accordingly, Plaintiff
22 calculated Electro Adapter's maximum exposure for the alleged meal period violations at approximately
23 \$1,126,162 (64,242 shifts with non-compliant meal periods x \$17.53 average hourly rate). *Id.*

24 Electro Adapter counters that it has always maintained a lawful meal period policy and provided
25 non-exempt employees with an opportunity to take legally compliant meal periods, and any non-
26 compliant meal periods reflected in employee timekeeping records were solely the result of employee
27 choice, rather than any policy or practice of Electro Adapter. Nguyen Decl., ¶ 19. Electro Adapter also
28 contends its bell signaling system alerts its employees five (5) minutes before the start of the meal period

1 and five (5) minutes before the end. Further, Electro Adapter points out that under *Brinker Restaurant*
2 *Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, it is only required to “provide” the opportunity to take
3 meal periods, not “ensure” meal periods are taken, and that they have always done so. *Brinker, supra*,
4 53 Cal.4th at 1038 (rejecting “ensure” standard). Finally, Electro Adapter contends Plaintiff’s meal
5 period claim is not suited for class certification, since individual inquiries would be required to assess
6 which employees took non-compliant meal periods, how many meal periods were non-compliant or
7 missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal
8 period during a particular shift. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 50%
9 for the risk of non-certification, and an additional 60% to account for Electro Adapter’s defenses on the
10 merits to arrive at an estimated exposure of \$225,232.40. *Id.*

11 Electro Adapter Failed to Authorize and Permit All Rest Periods: Plaintiff alleges that the
12 Settlement Class Members were not authorized and permitted to take all required rest periods due to
13 Electro Adapter’s rest period policies and practices because Electro Adapter did not authorize and permit
14 a third rest period on shifts over 10.0 hours. Nguyen Decl., ¶ 20. Thus, Plaintiff alleges the Settlement
15 Class Members experienced at least one rest period violation on every shift worked in excess of 10.0
16 hours. *Id.* Therefore, Plaintiff calculated Electro’s maximum exposure for the alleged rest period
17 violations at approximately \$576,194 (32,869 shifts over 10.0 hours x \$17.53 average hourly rate). *Id.*

18 Electro Adapter contends that its policies and procedures authorized and permitted Settlement
19 Class Members to take all off-duty rest periods in compliance with California law. Nguyen Decl., ¶ 21.
20 Electro Adapter also argues that Plaintiff’s rest period claim is inherently unsuited for class treatment
21 as it requires an individualized inquiry into whether each Settlement Class Member was in fact
22 authorized and permitted to take a compliant rest period, which would evolve into an unmanageable
23 series of mini-trials. *Id.* Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk
24 of non-certification, and an additional 55% to account for Electro Adapter’s defenses on the merits to
25 arrive at an estimated exposure of \$103,714.92. *Id.*

26 Electro Adapter Issued Inaccurate Itemized Wage Statements: Plaintiff further alleges that
27 Electro Adapter issued inaccurate wage statements in violation of Labor Code section 226 as a result of
28 the alleged unpaid minimum wages and overtime wages, and meal and rest period premium wages

described above. Nguyen Decl., ¶ 22. Plaintiff also contends that this conduct violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid. *Id.* Plaintiff’s data analysis reflected that there were approximately 5,287 wage statements issued during the relevant time period. *Id.* Therefore, Plaintiff calculated Electro Adapter’s maximum exposure for wage statement violations at approximately \$525,850.00 (($\50.00×57 current employees) + ($\$100.00 \times 5,230$ subsequent wage statements)). *Id.*

Electro Adapter further argues that its alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Nguyen Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 45% for a risk of non-certification and an additional 50% for a risk of being unsuccessful on the merits, to arrive at an estimated total of \$144,608.75. *Id.*

Electro Adapter is Liable for Waiting Time Penalties: Plaintiff alleges that Electro Adapter is also liable for waiting time penalties under Labor Code section 203 as a result of its failure to timely pay all wages upon separation. Nguyen Decl., ¶ 24. There are approximately 53 Settlement Class Members who have separated their employment during the relevant time period. *Id.* Therefore, Plaintiff calculated Electro Adapter’s maximum exposure for waiting time penalties at approximately \$222,971 (53 former employees x $\$17.53/\text{hour} \times 30 \text{ days} \times 8 \text{ hours/day}$). *Id.*

Electro Adapter asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties. Nguyen Decl., ¶ 25. *See also* 8 Cal. Code Regs. § 13520 (a “good faith dispute that any wages are due will preclude imposition of waiting time penalties”); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that “good faith dispute” over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and an additional 40% to account for Electro Adapter’s defenses on the merits, to arrive at an estimated exposure of \$73,580.43. *Id.*

Electro Adapter is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Nguyen Decl., ¶ 26. Plaintiff

1 calculated Electro Adapter’s maximum exposure at \$528,700 (5,287 pay periods x \$100 initial violation
2 rate). *Id.*; see *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding “initial”
3 violation rate applies until employer is notified that it is violating a Labor Code provision).

4 Electro Adapter argues that Plaintiff’s PAGA claim will fail for the same reasons that his
5 underlying claims will fail. Nguyen Decl., ¶ 27; see *Price v. Starbucks Corp.* (2011) 192 Cal.App.4th
6 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
7 fail.”). Electro Adapter also maintains that, given its good faith defenses, this Court would exercise its
8 discretion to substantially reduce any PAGA penalties if it were to find Electro Adapter liable for any of
9 Plaintiff’s claims. See Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
10 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal.
11 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from
12 \$2.8 million to \$500,000). *Id.* Therefore, Plaintiff discounted the maximum exposure figure by 45%
13 for a risk of being unsuccessful on the merits, and an additional 55% to account for the possibility of
14 this Court reducing penalties, to arrive at an estimated exposure of \$130,853.25. *Id.*

15 E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

16 Using these estimated figures for each of the claims described above, Plaintiff predicted the
17 realistic total recovery for the Settlement Class would be approximately \$718,744.31. Nguyen Decl., ¶
18 28. The proposed settlement of \$290,000.00 therefore represents approximately 40% of the reasonably
19 forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate as the settlement
20 will provide tangible monetary relief to Settlement Class Members, and will still provide an average
21 recovery to Settlement Class Members of over \$1,200.00.

22 The proposed settlement reflects approximately 40% of the estimated recovery the Settlement
23 Class could reasonably expect in light of the significant litigation risks, and will provide tangible
24 monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure
25 recovered in this case exceeds percentages routinely approved by courts. See, e.g., *Dunleavy v. Nadler*
26 (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential
27 recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527. Thus,
28 Plaintiff submits that the proposed settlement is within the range of approval, such that notice should

1 be provided to the Settlement Class so that they can consider the Settlement. The Court will have the
2 opportunity to again assess the reasonableness of the Settlement after the time to opt-out or object has
3 expired.

4 **F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER**
5 **LITIGATION, AND RISK OF MAINTAINING CLASS ACTION STATUS**

6 Although the parties engaged in informal discovery throughout this action, the parties still had
7 significant discovery to complete in formal litigation had the matter not settled. Nguyen Decl., ¶ 32.
8 Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake
9 of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id.*
10 Even if the classes were certified, the parties would incur considerably more attorneys' fees and costs
11 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those
12 risks and the accompanying expense. Thus, this factor supports preliminary approval.

13 **IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES**

14 California Rule of Court 3.769 conditions settlement of a class action on court approval, which
15 is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of
16 Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322.

17 As further explained below, the Settlement Class satisfies the criteria for certification of a
18 settlement class under California law because: (1) the Settlement Class is so numerous that joinder
19 would be impractical; (2) common questions of law/fact predominate over individual questions such
20 that class certification is the most efficient way to maintain this litigation; (3) Plaintiff's claims are
21 typical of the claims of absent Settlement Class Members; and (4) Plaintiff and his counsel will fairly
22 and adequately represent Settlement Class Members' interest. *See* Cal. Civ. Proc. § 382.

23 **A. NUMEROSITY IS SATISFIED.**

24 Here, the proposed Settlement Class consists of at least 126 members, and is therefore
25 sufficiently numerous as to make joinder impracticable. *See* Nguyen Decl., ¶ 14; *See, e.g., Bowles v.*
26 *Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently
27 numerous). Thus, numerosity is satisfied.

28 Further, the class is "ascertainable" because it is defined as "all current and former hourly-paid,
non-exempt employees who worked for Defendant Electro Adapter, Inc. in California at any time from
September 2, 2017 through granting of preliminary approval of Class Action Settlement or November

1 15, 2022, whichever occurs sooner” and such members can be identified from Defendant’s
2 personnel/business records. Nguyen Decl., ¶ 14.

3 **B. COMMONALITY IS SATISFIED.**

4 The focus in a certification dispute is not the merits, but rather on what types of questions,
5 “common or individual,” are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior*
6 *Court (Rocher)* (2004) 34 Cal.4th 319, 327.

7 Here, Plaintiff alleges Settlement Class Members’ claims arise from Electro Adapter’s
8 common, uniform policies and practices that applied to Settlement Class Members during the class
9 period. Nguyen Decl., ¶ 15. Specifically, Plaintiff alleged that Electro Adapter’s common and uniform
10 policies and practices resulted in the following violations: (1) failure to pay all minimum wages owed;
11 (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4)
12 failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized
13 wage statements; (6) failure to pay all final wages upon separation of employment; (7) engagement in
14 unlawful business practices; and (8) liability for civil penalties under the PAGA. As a result of the
15 common and uniform policies and practices that applied to all Settlement Class Members, their claims
16 involve common questions of law and fact as to whether in fact Electro Adapter committed these
17 alleged violations.

18 These alleged practices result in common questions as to the affected Settlement Class
19 Members. *See e.g., Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

20 **C. TYPICALITY IS SATISFIED.**

21 The typicality requirement is satisfied where class representatives have claims that are typical
22 of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d
23 1341, 1347. Here, Plaintiff’s claims are typical of those held by the members of the proposed
24 Settlement Class. Plaintiff was employed by Electro Adapter during the Class Period as a non-exempt
25 employee and was subject to Electro Adapter’s wage and hour policies at issue in this case. *See* Salcido
26 Decl., ¶ 2. Further, Plaintiff was allegedly injured by the same challenged policies that allegedly injured
27 the Settlement Class as a whole. *Id.* Given that Electro Adapter’s policies and practices applied to all
28 non-exempt employees, Settlement Class Members possess a similar interest and have suffered similar
alleged injuries as Plaintiff. Accordingly, typicality is satisfied.

1 **D. ADEQUACY IS SATISFIED.**

2 The adequacy requirement examines conflicts of interest between named parties and the
3 class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155
4 (2007) Cal.App.4th 676, 697. Here, there are no apparent conflicts of interest between Plaintiff and the
5 Settlement Class he seeks to represent. Nguyen Decl., ¶ 38, Salcido Decl., ¶ 11. Indeed, Plaintiff's
6 interests are aligned with those of the Settlement Class Members, as they all seek monetary relief under
7 the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest
8 with the Settlement Class. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51.

9 Further, Class Counsel also have extensive experience in wage and hour class action litigation
10 and have vigorously litigated this case. *See* Nguyen Decl., ¶¶2-8; Declaration of Scott M. Lidman
11 ("Lidman Decl."), ¶¶ 2-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8; Declaration of Milan
12 Moore ("Moore Decl."), ¶¶ 2-4.

13 **V. SETTLEMENT AGREEMENT**

14 **A. THE BASICS**

15 1. Class Definition and Release Period

16 The proposed Settlement Class is defined as: all current and former hourly-paid, non-exempt
17 employees who worked for Defendant Electro Adapter, Inc. in California at any time from September
18 2, 2017 through November 15, 2022. Nguyen Decl., ¶ 14. For purposes of this Settlement Agreement,
the "Class Period" shall mean the time period of September 2, 2017 through November 15, 2022. *Id.*

19 2. Aggrieved Employees and PAGA Period

20 The proposed Aggrieved Employees are defined as: all current and former hourly-paid, non-
21 exempt employees who worked for Defendant Electro Adapter, Inc. in California at any time from
22 September 2, 2021 through November 15, 2022." Nguyen Decl., ¶ 14. The "PAGA Period" is defined
23 as the time period of September 2, 2021 through November 15, 2022. *Id.*

24 **B. RELEASE OF CLAIMS**

25 1. Scope of Participating Class Members' Release

26 All Participating Class Members, on behalf of themselves and their respective former and
27 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
28 Released Parties, which means Defendant, Defendant and its respective former, current and future

parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns (“Released Parties”) , from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) wage statement violations under Labor Code section 226, *et seq.*; (6) failure to timely pay all wages due at separation; (7) unfair business practices in violation of Business and Professions Code section 17200, *et seq.* premised on the above claims; and violation of or liability under California Labor Code under sections 201, 202, 203, 204, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 516, 558, 1194, 1197, 1198, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for attorneys’ fees and costs. Settlement, ¶ 5.2.

2. Scope of Aggrieved Employees’ Release

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice including the (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) wage statement violations under Labor Code section 226, *et seq.*; (6) failure to timely pay all wages due at separation, and the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all related claims for attorneys’ fees and costs. Settlement, ¶ 5.3.

3. Releases Effective Date

The releases described above are effective on the date when Defendant fully funds the entire Gross Settlement Amount (including any increase pursuant to the Escalator Clause) and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments. Settlement, ¶ 5.

1 **C. MONETARY TERMS OF SETTLEMENT**

2 1. Gross Settlement Amount and Timing of Payment

3 If the Court approves this Settlement, Electro Adapter will pay a Gross Settlement Amount
4 ("GSA") of \$290,000.00.² Nguyen Decl., ¶¶ 13, Exh. 3 (Settlement, ¶ 3.1). Significantly, this
5 Settlement is **non-reversionary**, and no Settlement Class member will have to submit a claim form to
6 receive a Settlement Award. *Id.* Each Settlement Class member will automatically receive a Settlement
7 Award unless he or she affirmatively opts out of the Settlement. *Id.*

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

17 2. Deductions from Gross Settlement Amount

18 The monetary terms of the Settlement are summarized below:

19	Gross Settlement Amount ("GSA"):	\$290,000.00
20	Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$96,666.66
21	Minus Court-approved, verified costs (up to \$25,000.00):	\$25,000.00
22	Minus Court-approved Class Representative Service Award:	\$5,000.00
23	Minus Settlement Administration Costs:	\$7,250.00
24	Minus PAGA payment to the LWDA:	\$11,250.00
25	Net Settlement Amount ("NSA"):	\$144,833.34

26 ² Based on a review of its records to date, Defendant estimates there are 126 Class Members who collectively worked a total
27 of 15,500 Workweeks, and 67 Aggrieved Employees who worked a total of 5,287 PAGA Pay Periods. If the number of
28 workweeks during the Settlement Class Period increases by more than 10% above 15,500, Defendant agrees to increase the
Gross Settlement Amount on a proportional basis equal to the percentage increase in number of workweeks worked by the
Class Members above the 10% (i.e., if there was an 11% increase in the number of workweeks during the Class Period,
Defendant shall increase the Gross Settlement Amount by 1% and so on). Settlement, ¶ 8.

Settlement Class Members

126

Average Individual Payment: NSA/Settlement Class

\$1,149.47

After deducting amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement results in a Net Settlement Amount ("NSA") of at least \$144,833.34 to be paid out to all Settlement Class Members who do not timely opt out. Nguyen Decl., ¶ 13, Exh. 3.

Therefore, this calculation of $\$144,833.34/126 = \$1,149.47$, assumes the Court approves the requested attorneys' fees, maximum attorneys' costs, service payment, settlement administration costs, and payment to the LWDA. *Id.* This calculation also assumes that all 126 putative class members participate in the settlement and do not submit timely requests for exclusions. *Id.*

3. Class Representative Service Payment

Incentive awards are typical in class action cases and are intended to compensate class representatives for work done on behalf of the class and to make up for reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Plaintiff will separately apply for a service payment at the time of seeking final approval in the amount of \$5,000.00. Nguyen Decl., ¶ 31, Exh. 3 (Settlement, ¶ 3.2.1.); Salcido Decl., ¶¶ 3-8. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Nguyen Decl., ¶ 31; Salcido Decl., ¶¶ 3-8; Settlement ¶ 3.2.1.

The Class Representative Service Payment awarded by the Court shall be paid by the Settlement Administrator to Plaintiff from the Gross Settlement Amount within 14 days after Defendant funds the Gross Settlement Amount. Settlement, ¶ 4.4.

1 4. Attorneys' Fees and Costs

2 California courts recognize an appropriate method for awarding attorneys' fees in class actions
3 is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v.*
4 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506. Class Counsel's request for fees of one-third of the
5 GSA is well within the range of reasonableness, and indeed is considered the typical rate for common
6 fund settlements.

7 Here, Class Counsel will also apply for an attorneys' fees award of one-third of the GSA, which
8 is currently estimated to be \$96,666.66, and up to \$25,000.00 in verified costs reimbursement. *See*
9 Settlement, ¶ 3.2.2.; Nguyen Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for
10 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis.
11 *Id.* Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Nguyen
12 Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation,
13 analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and payroll records,
14 preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this
15 Motion, and otherwise litigating the case. Nguyen Decl., ¶ 29. Class Counsel expect to expend
16 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
17 fielding questions from Settlement Class Members, preparing the final approval papers and attending
the Final Approval hearing. *Id.*

18 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys'
19 fees and verified litigation costs at the time of seeking final approval of the Settlement, which will
20 include a lodestar analysis. Class Counsel's fees and costs awarded by the Court shall be paid by the
21 Settlement Administrator to Class Counsel from the Gross Settlement Amount 14 days after Defendant
22 funds the Gross Settlement Amount. Settlement, ¶ 4.4.

23 5. Payroll Taxes

24 The Settlement provides that Electro Adapter's payroll taxes shall be paid separately from, and
25 in addition to, and the Gross Settlement Amount. Settlement ¶¶ 3.1 and 4.3.

26 6. Payment Formula

27 There were approximately 126 total Settlement Class Members as of the date of mediation.
28 Nguyen Decl., ¶ 14.

1 An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total
2 number of Workweeks worked by all Participating Class Members during the Class Period and (b)
3 multiplying the result by each Participating Class Member's Workweeks. Settlement, ¶ 3.2.4. Thus,
4 the average Individual Class Payment is \$1,149.47.

5 Additionally, there were approximately 67 Aggrieved Employees. Nguyen Decl., ¶ 14.

6 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
7 the Aggrieved Employees' 25% share of PAGA Penalties \$3,750.00 by the total number of PAGA
8 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying
9 the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full
10 responsibility and liability for any taxes owed on their Individual PAGA Payment. Settlement, ¶ 3.2.7.1.

11 Thus, the average Individual PAGA Payment is projected to be approximately **\$55.97**. *Id.*

12 7. Tax Allocation

13 For purposes of calculating applicable taxes and withholdings, 30% of each Participating Class
14 Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage
15 Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form.
16 The 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement
17 of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject
18 to wage withholdings and will be reported on IRS 1099 Forms. Settlement, ¶ 3.2.5.

19 8. PAGA Penalty

20 The parties have agreed to a PAGA award of \$15,000.00 and in accordance with California
21 Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties
22 – or \$11,250.00. Settlement ¶ 3.2.7. This \$11,250.00 represents roughly 3.9% of the \$290,000.00 Gross
23 Settlement Amount and is in line with the zero to two percent range for PAGA claims approved by
24 Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864,
25 at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or \$20,000); *Nordstrom*
26 *Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action
27 claims and PAGA claims under which no money was allocated to the PAGA claims).
28

1 **VI. NOTICE ADMINISTRATION**

2 **A. SETTLEMENT ADMINISTRATOR**

3 Phoenix Class Action Administration Solutions (“Phoenix”) costs are estimated not to exceed
4 \$7,250.00. *See* Declaration of Jodey Lawrence in support of Plaintiff’s Motion for Preliminary
5 Approval filed concurrently herewith (“Lawrence Decl.”). This request is reasonable in light of the
6 proposed class size of approximately 126 Settlement Class Members and the costs and expenses
7 associated with administering the notices and distributing the awards. Additionally, Phoenix will
8 translate the Class Notices and mail them in both English and Spanish to Settlement Class Members.

9 Phoenix has extensive experience administering class action matters. Phoenix has administered
10 complex wage and hour, labor and employment, consumer/ product liability, TCPA, FLSA, FACTA,
11 ERISA and PAGA class action matters, though final approval and distribution. Phoenix has developed
12 a system of quality assurance measures, to ensure the highest quality service is provided in our cases
13 and to class members. *Lawrence Decl.*, ¶ 5.

14 **B. CLASS LIST FROM DEFENDANT**

15 No later than 20 calendar days after entry of an order preliminarily approving the Settlement,
16 Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft
17 Excel spreadsheet. Settlement, ¶ 4.2. To protect Class Members’ privacy rights, the Administrator must
18 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for
19 no other purpose, and restrict access to the Class Data to Administrator employees who need access to
20 the Class Data to effect and perform under this Agreement. *Id.*

21 **C. CLASS LIST UPDATED PRIOR TO INITIAL MAILING AND MAILING**

22 Before mailing Class Notices, the Administrator shall update Class Member addresses using the
23 National Change of Address database. Settlement, ¶ 7.4.2. Using best efforts to perform as soon as
24 possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send
25 to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation. *Id.*

26 **D. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)**

27 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it
28 advises Settlement Class Members of the nature of the claims, basic contentions and denials of the

1 parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement
2 and the procedures by which to do so, explains the recovery formula and expected recovery amount
3 for each Settlement Class Member, provides them the opportunity to contest their total workweeks
4 included in the notice, and advises them that they will be bound by the terms of the Settlement if they
5 do not opt-out. *See* Settlement, Exh. A. The proposed Class Notice will also notify Settlement Class
6 Members of the final approval hearing date and provides Settlement Class Members the contact
7 information for Class Counsel, and advises Settlement Class Members that they may enter an
8 appearance through counsel if they wish to. This manner of giving notice satisfies California Rule of
9 Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class Members.

10 Moreover, the Class Notice includes the sentence “To receive your check, you should
11 immediately notify the Administrator if you move or otherwise change your mailing address.”

12 **E. PROCESSING OF PAYMENTS**

13 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail
14 checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment,
15 the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation
16 Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel
17 Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service
18 Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
19 Settlement, ¶ 4.4. Before mailing any checks, the Settlement Administrator must update the recipients’
20 mailing addresses using the National Change of Address Database. Settlement, ¶ 4.4.1.

21 **F. UNDELIVERABLE SETTLEMENT NOTICES**

22 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by
23 the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address
24 provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall
25 conduct a Class Member Address Search, and re-mail the Class Notice to the most current address
26 obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice
27 to Class Members whose Class Notice is returned by the USPS a second time. Settlement, ¶ 7.4.3.

28 The Administrator will send checks for Individual Settlement Payments to all Participating Class
Members (including those for whom Class Notice was returned undelivered). The Administrator will

1 send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating
2 Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was
3 returned undelivered). Settlement, ¶ 4.4.1.

4 **VII. RESPONSES TO SETTLEMENT NOTICE**

5 **A. REQUESTS FOR EXCLUSION**

6 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the
7 Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after
8 the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class
9 Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative
10 that reasonably communicates the Class Member's election to be excluded from the Settlement and
11 includes the Class Member's name, address and email address or telephone number. To be valid, a
12 Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
Settlement, ¶ 7.5.1.

13 **B. RE-MAILED NOTICES**

14 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay
15 Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 45 days
16 otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The
17 Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
18 Settlement, ¶ 7.4.4.

19 **C. OBJECTION PROCEDURES**

20 Only Participating Class Members may object to the class action components of the Settlement
21 and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested
22 for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
23 Representative Service Payment. Settlement, ¶ 7.7.1.

24 Participating Class Members may send written objections to the Administrator, by fax, email,
25 or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to
26 appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
27 Member who elects to send a written objection to the Administrator must do so not later than 45 days
28

1 after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members
2 whose Class Notice was re-mailed). Settlement, ¶ 7.7.2.

3 **VIII. DISTRIBUTION OF UNCASHED FUNDS**

4 The face of each check shall prominently state the date (not less than 180 days after the date of
5 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the
6 void date. Settlement ¶ 4.4.1.

7 For any Class Member whose Individual Class Payment check or Individual PAGA Payment
8 check is uncashed and cancelled after the void date, the Administrator shall transmit the funds
9 represented by such checks to the California Controller's Unclaimed Property Fund in the name of the
10 Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of
11 Civil Procedure Section 384, subd. (b). Settlement ¶ 4.4.3.

12 **IX. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve
14 the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order
15 Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

16
17 Dated: January 25, 2023

Respectfully submitted,
LIDMAN LAW, APC

18
19 By:



Elizabeth Nguyen
Attorney for Plaintiff
JOSE SALCIDO