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THI PHAN and ANH TRUONG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THI PHAN and ANH TRUONG, as individuals and on behalf of themselves and on behalf of all others similarly situated,

Plaintiffs

v.

BALT USA, LLC, a Delaware limited liability company; and DOES 1-100 inclusive,

Defendants.

CASE NO.: 30-2023-01339331-CU-OE-CXC (Lead Case); Consolidated Case No.: 30-2023-01339949-CU-OE-CXC (CLASS ACTION)

Assigned for All Purposes to:
Hon. Layne H. Melzer
Dept. CX-102

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT MOTION FOR FINAL APPROVAL OF CLASS ACTION AND REPRESENTATIVE SETTLEMENT AND REQUEST FOR ATTORNEY'S FEES AND COSTS

Date: March 12, 2026
Time: 2:00 p.m.
Dept.: CX-102

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I. INTRODUCTION

Plaintiffs Thi Phan and Anh Truong seek final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 951 individuals employed by Defendant Balt USA, LLC ("Balt" or "Defendant") as current and former non-exempt employees that worked either directly or via a staffing agency for Balt at any location in California at any time during the Class Period of August 2, 2019 to November 2, 2024. The proposed $625,000 total settlement provides about $324,548 in cash payments to the Class, with an average award of about $341, plus additional amounts payable under PAGA. The remaining balance will cover modest service awards to the Plaintiffs, settlement administration costs, civil penalties, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on September 18, 2025. Since then, the Court-approved notice form was mailed to the Class Members on December 9, 2025, and they have reacted very favorably to the settlement. As of the date of this motion, there are no objections and no class members have opted out.

Further, Class Counsel secured an excellent settlement with Balt after two plus years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informs the class members that Class Counsel would request attorney's fees not to exceed 33.33% of the Gross Settlement Amount, or $208,333.33, along with reimbursement of no more than $20,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiffs now respectfully request the Court award Class Counsel's fees in the amount of $208,333.33 and costs in the amount of $18,118.40, as described in the Declaration of Sepideh Ardestani ("Ardestani Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the nearly three-year delay in payment and, when subjected to a lodestar crosscheck, results in a fee equal to the base lodestar with a very reasonable 1.37 upward enhancement.

Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully request the Court grant this motion, give full and final approval to the settlement, grant Class Counsel's request for attorney's fees and costs, and enter judgment accordingly.

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Defendant Balt develops and manufactures medical devices. Plaintiff Phan worked for Balt as an assembler from January 2018 through December 1, 2022. Plaintiff Truong also worked for Balt as an assembler from October 2019 through October 1, 2022. [Declaration of Sepideh Ardestani ("Ardestani Decl."), ¶ 2.]

After notice to the LWDA and Defendant, and after exhausting administrative remedies, on July 31, 2023 Plaintiffs filed a PAGA representative action alleging various violations of the Labor Code by Defendant, including: (1) failure to pay all minimum wages and overtime wages; (2) failure to provide legally compliant meal periods, or compensation in lieu thereof; (3) failure to provide rest periods or compensation in lieu thereof; (4) failure to issue accurately itemized wage statements; (5) failure to reimburse business expenses; and (6) failure to timely pay wages on separation of employment. On August 2, 2023, Plaintiffs filed a class action complaint against Defendant based on the same alleged Labor Code violations as in the PAGA action. This Court consolidated the two matters by Order dated October 26, 2023. [Ardestani Decl., ¶ 3.]

Balt has at all times denied Plaintiffs' allegations and maintained its payroll policies and procedures comply with California law, that it paid the class members all wages due, and that it properly compensated the class members for all hours worked at the correct rates of pay. It further argued its meal and rest break policies are fully compliant and that it provided class members with all required breaks. Likewise, Balt contended there would be no reason for an employee to use their own phone while working and accordingly it owes no reimbursement. Defendant also strongly contends the case cannot be maintained as any kind of class or representative action, arguing determining the reasons for any off the clock work, missed/non-compliant breaks, or personal cell phone use would result individualized issues predominating and that a trial on a representative basis would be unmanageable. [Ardestani Decl., ¶ 4.]

Once the matters were at issue, the Parties initiated discovery and later, after engaging in meet and confer discussions regarding discovery, potential law and motion, and the merits of the case, ultimately agreed to attempt mediation. They then engaged in significant informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. In September 2024, the Parties participated in mediation with Tagore Subrmanian, Esq., a respected wage and hour class action mediator. After a full day of negotiations, Mr. Subramaniam issued a mediator's proposal that was accepted by all Parties. [Ardestani Decl., ¶ 8.] The Court granted preliminary approval to the settlement on September 18, 2025.

Class notices were mailed to class members on December 9, 2025, with a 60-day window (to December 29, 2025) for class members to opt out of or object to the proposed settlement. [Declaration of Madely Nava ("Nava Decl."), ¶¶ 7, 11-12.]

III. TERMS OF THE PROPOSED SETTLEMENT

Under the settlement, Balt will pay $625,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $208,333.33 (33.33% of the GSA), litigation costs of up to $20,000 (only $18,118.40 is requested), settlement administration costs of $13,490, service awards to Plaintiffs of no more than $5,000 each, and PAGA civil penalties of $50,000 divided 75% to the Labor & Workforce Development Agency and 25% to the Aggrieved Employees), all will be paid from the GSA. The balance of around $324,548 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Balt. [Ardestani Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all current and former non-exempt employees that worked either directly or via a staffing agency for Balt at any location in California at any time during the Class Period of August 2, 2019 to November 2,

2024. The Settlement Administrator ultimately mailed class notices to 951 individuals identified as members of the Class. [Nava Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Balt to pay $625,000 to resolve the claims of the Settlement, inclusive of attorney's fees and costs. A minimum of approximately $324,548 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent with Balt's potential liability as discussed below. Balt will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Division. [Ardestani Decl., ¶ 11.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Balt during the Class Period while employed in a non-exempt service position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Balt and the number of instances they allegedly missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost hours worked due to time rounding. [Ardestani Decl., ¶ 12.]

The average class settlement award is estimated at approximately $341.81, and class awards will range from about $1.46, to about $2,812. There are an estimated 869 Aggrieved Employees, the average PAGA award will be around $15.26, and PAGA awards will range from approximately $0.81 to $80.55. [Nava Decl., ¶¶ 16, 18.]

C. <u>Settlement Administration</u>

Apex Class Action, LLC, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-10.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Nava Decl., ¶ 7; Exh. A.] Apex mailed 951 Notice Packets on December 9, 2025. [Nava Decl., ¶ 7.] As of the filing of this motion, 19 Notice Packets were deemed undeliverable, for a 98% success rate. [Nava Decl., ¶ 10.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on February 9, 2026. [Nava Decl., ¶¶ 11-13.] As of the filing of this motion, Apex has received zero requests for exclusion, zero objections to the settlement, and no disputes have been submitted regarding the information used to calculate class member settlement shares. [Nava Decl., ¶¶ 11-13.]

D. <u>Release of Claims</u>

All Participating Class Members will release Balt from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint, including PAGA claims, during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Ardestani Decl., ¶ 16.]

E. <u>PAGA Claims and Notice to the LWDA</u>

The Parties allocated $50,000 to payment of civil penalties under PAGA, as addressed in more detail below, and which amount the Parties submit is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and the approval hearing to the LWDA via its online portal, and further served the LWDA with the motion papers. [Ardestani Decl., ¶ 18; Exh. 1.]

IV. ARGUMENT

A. Standards For Approval

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to determine whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

On a motion for final approval, the trial court is charged with determining whether, in light of the total circumstances of the action and the response of the class members to the proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. Id. In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

B. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members as there are no objections and zero class members requested exclusion.

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Tagore Subramanian, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Ardestani Decl., ¶ 7.] Moreover, Plaintiffs and their counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Sepideh Ardestani have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 28-40.] Balt likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Members have requested exclusion out of 951 settlement class members. [Nava Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness

Prior to mediation, the parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding Balt's payroll practices, a random sampling of pay stubs and time records for sampling of class members, applicable compensation plans, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiffs then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Ardestani Decl., ¶¶ 7, 23.]

Using that data, Plaintiffs ran various calculations and estimated Balt's likely maximum exposure on the class claims at approximately $7,939,520, including about $470,715 on the unpaid wage claims, around $44,935 on the underpaid overtime claims, about $1,718,975 on the meal period claims, approximately $3,383,820 on the rest break claims, about $162,990 for expense reimbursement, about $655,450 for wage statement violations, and approximately $3,032,635 in waiting time penalties. [Ardestani Decl., ¶¶ 24-25.] Plaintiffs and their counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised numerous defenses and vigorously defended against these claims.

On the unpaid wage claims, Plaintiffs alleged that they worked as much as 15-20 minutes off-the-clock after each shift ended, and at the direction of their supervisors, to complete paperwork related to their shift before they were allowed to clock out at the ADP kiosk. The ADP app on their cellular phones would notify them that they had clocked out late. When they reported this to their supervisors, the supervisors would adjust their time to show that Plaintiffs clocked out at the scheduled end of their shifts, rather than the actual time they finished working. On the other hand, Balt argued it accurately tracks and pays for all hours worked, that its compensation policies are legal and fully comply with California law, and that any adjustments to employee time simply corrected documented errors. Balt likewise its policies strictly prohibited off the clock work and, if any occurred, it was intermittent, against policy, and done with employer authorization or knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For these same reasons Balt argued that class certification on this issue would be impossible since determining if any employee worked off the clock would require individualized proof. [Ardestani Decl., ¶ 26.]

Plaintiffs further alleged Balt underpaid the Class Members for overtime because it paid overtime based on employee's regular hourly rate instead of the "regular rate of pay" as required by the Labor Code and Wage Orders. Here, Plaintiffs argued they received regular bonuses and other forms of non-discretionary pay that Balt failed to include in determining the regular rate of pay for purposes of calculating the correct overtime rate. Alvarado v. Dart Container Corp. of California (2018) 4 Cal. 5th 542, 554; Marin v. Costco Wholesale Corp. (2008) 169 Cal.App.4th 804, 807 (bonuses must be included in the calculation of an employee's regular rate of pay). [Ardestani Decl., ¶ 27.]

On the meal break claim, Plaintiffs contend Balt's written policies were not fully compliant, and regardless per Plaintiffs their expert's review of the time and pay records suggests about a 55.2% violation rate for "de facto" first meal period violations where the break was missed entirely, untimely, or cut short. In response, Balt argued its break policies are fully compliant with California law, that it provided class members with the opportunity to take all required breaks, and that many class members waived their first or second meal periods as appropriate. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Balt, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. Balt further argued that in many instances it paid the required one hour of premium pay for documented violations. [Ardestani Decl., ¶ 28.]

For rest breaks, Plaintiffs again argued that there were numerous “de facto” violations where class members didn’t receive a break, or didn’t receive a compliant break, due to the press of business and understaffing. As with meal breaks, Defendant argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Defendant further contended that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make class certification and a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case by case basis to determine compliance. [Ardestani Decl., ¶ 29.]

For Plaintiffs’ expense reimbursement claim, they argued Defendant failed to reimburse Plaintiffs and the other employees for expenses incurred in using their personal mobile phones and data for business purposes. Of note, Plaintiffs and the other employees were frequently contacted by text message and/or phone call with questions and requests regarding their availability for shifts. When employees must use their personal cell phones for work, this statute required an employer to reimburse them for such use. Cochran v. Schwan’s Home Services, Inc. (2014) 228 Cal.App.4th 1137, 1144. In response, Balt argued there would be no need for an employee use a phone to perform his or her work duties, and thus any such use would have been unnecessary and purely for personal convenience, and therefore not reimbursable. [Ardestani Decl., ¶ 30.]

Plaintiffs also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to properly record and pay for all hours worked, and will rise or fall along with that primary claim, in addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiffs discounted these claims significantly in light of these multiple potential defenses. [Ardestani Decl., ¶ 31.]

As far as potential PAGA liability, the theoretical penalties totaled about $7.77 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue for every single eligible pay period. [Ardestani Decl., ¶¶ 32-33.] As with the class claims, Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and further discounted these claims since the Court possesses wide discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Lab. Code § 2899(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $50,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S.

Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement"). Further, courts have held that where PAGA claims are settled in the same agreement with underlying class action claims, courts may look to the overall effect of the two recoveries to determine whether PAGA's purposes have been served. In other words, as held by one federal district court, where the settlement of Labor Code claims on a class basis provides "robust" relief to the class, it supports a greater reduction in PAGA penalties. Viceral v. Mistras Grp., Inc., (N.D. Cal. Oct. 11, 2016) 2016 U.S. Dist. LEXIS 140759, at *9.

Thus, Defendant raised various defenses to each of Plaintiffs' claims, any one of which, if successful, could have decimated Plaintiffs' case. Accordingly, Plaintiffs faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. They concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $625,000 recovery represents a significant percentage of Defendant's potential exposure, and given these risks discussed above a total recovery for the class of $625,000, with an average award of some $321 per class member, is a fair result within the range of reasonableness considering all potential outcomes. [Ardestani Decl., ¶ 34.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFFS' ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiffs seek a modest incentive award of $5,000 each for their service in bringing these claims on behalf of the Class. The requests is reasonable given the risks they undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in their respective declarations submitted at preliminary approval, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Anh Truong, ¶¶ 2-9 (RoA 54); Declaration of Thi Phan, ¶¶ 2-9 (RoA 55); Ardestani Decl., ¶ 24.] Finally, there are no class member objections submitted with respect to the amounts Plaintiff proposes to receive. [Nava Decl., ¶ 8.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. <u>In re Cellphone Fee Termination Cases</u> (2010) 186 Cal. App. 4th 1380, 1393 ("These awards are discretionary…and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex for its services as the Settlement Administrator, and as set forth in the Declaration of Madely Nava Apex has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred $13,490 in fees and expenses. [Nava Decl., ¶ 19.] Accordingly, Plaintiffs request the Court approve payment of $13,490 to Apex from the GSA. [Ardestani Decl., ¶ 25.]

VII. THE ATTORNEY'S FEE REQUESTED ARE FAIR AND REASONABLE AND SHOULD BE APPROVED

This Court has discretion over the amount of attorneys' fees awarded and court approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; <u>Levy v. Toyota Motor Sales, U.S.A.</u> (1992) 4 Cal.App.4th 807, 813; <u>Lealao v. Beneficial Cal., Inc.</u> (2000) 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving significant contingent risk, such as this one. <u>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, 338, <u>rehg. den.</u> 446

U.S. 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached” in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed. As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk that some or all the claims would not be certified for class treatment, as Balt had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. [Ardestani Decl., ¶¶ 15-21.]

Nonetheless, Plaintiffs succeeded and obtained the relief they set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $341, and with a maximum award of over $2,800. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and zero individuals have opted out. [Nava Decl., ¶¶ 11-12.]

A. The Requested Fee Award Is Reasonable and Appropriate

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have “a responsibility to encourage agreement" on fees. Blum v. Stenson (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Balt agreed not to object to an award of no more than 33.33% of the GSA for attorney's fees, or $208,333.33, and up to $20,000 in reimbursement for litigation costs and expenses (although only $18,118.40 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao, 82 Cal.App.4th at 47

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Ardestani Decl., ¶ 26.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

B. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund

In approving fee applications, courts typically apply either a percentage-of-recovery method or the lodestar method. Laffitte v. Robert Half Int’l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California Supreme Court recently recognized the advantages and equities of calculating attorney’s fees using the percentage-of-the-common-fund method in another wage-and-hour case:

> 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.

Laffitte, 1 Cal.5th at 503 (citations omitted).

Indeed, both California and federal courts have long recognized an appropriate method for determining the award of attorney's fees is based on a percentage of the total value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund recovered operates to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without prosecution on a contingent basis and use of the class action mechanism, the courthouse door would effectively be closed to most class members due to the relatively small size of their individual claims in relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit, or $208,333.33. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner

Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

C. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 186.9 hours of time on this matter, resulting in a modest and very reasonable lodestar of $151,595.

As is fully detailed in the Ardestani Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other Balt employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) opposing Defendant's motion to compel arbitration; (6) drafting a first amended complaint; (7) propounding initial written discovery, (8) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (9) engaging in substantial informal discovery, including propounding informal discovery “requests” and reviewing documents and other information produced; (10) drafting a mediation brief and accompanying damages model after review and analysis of Defendant’s informal discovery production; (11) attending an all-day mediation; (12) negotiating and drafting the settlement agreement and related documents; (13) drafting an amended complaint to effectuate the settlement; (14) drafting the motion for preliminary approval, and attending the hearing; (15) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (16) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (17) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. [Ardestani Decl., ¶ 27, Exh. 2.] Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $151,595, based on 186.9 attorney hours. The lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Ardestani Decl., ¶¶ 28-45.] On a lodestar basis, the fee request of $208,333.33 results in a multiplier of 1.37, which is a modest enhancement entirely in line with California law. Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.37 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the 2 plus years counsel has been representing Plaintiffs. [Ardestani Decl., ¶¶ 44-45.] Thus, the multiplier results in a fee constituting a fair return on the contingency.

D. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v. Graulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

Courts apply a five-part test in calculating a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not only one class member opted out. Additionally, the settlement amounts to a substantial percentage of the maximum value of the amount the Class might have obtained if it had tried the case and recovered on all theories seeking recovery of wages and penalties. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Balt would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 46-47.]

3. The Skill Required and the Quality of Work.

Practice in the narrow area of wage and hour litigation requires skill, knowledge and experience. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure. This Settlement was possible only because counsel persuaded Balt that Plaintiffs and the putative class had a realistic chance of prevailing on their claims despite Balt's contrary arguments, and that the case would be pursued through class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

4. The Contingent Nature of the Fee and Risk Assumed

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229

F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market fee considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate.

Counsel retained on a contingency fee basis, whether in private matters or in class action litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee schedule to compensate for both the contingent risk assumed and the delay in payment. The simple fact is that despite the most vigorous and competent of efforts, success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases. Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208 Cal.App.3d 279, 287.

Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a real chance Plaintiffs' counsel would receive nothing for any number of reasons. [Ardestani Decl., ¶¶ 46-47.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiffs also support the fee requested.

5. Awards in Other Cases

As discussed, the attorney's fees requested by Class Counsel are within the range of fees awarded in comparable cases, as cross-checked against the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation.

E. Class Counsel's Costs and Expenses are Reasonable

Plaintiffs' counsel also request reimbursement of actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiffs' counsel also is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

As explained in the Ardestani Declaration, Class Counsel incurred a total of $18,118.40**,** in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter and it is respectfully requested that the Court authorized they be reimbursed in full. [Ardestani Decl., ¶¶ 48-49.]

VII. CONCLUSION

For all the foregoing reasons, Plaintiffs Anh Truong and Thi Phan respectfully request that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiffs further request the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiffs request the Court set a non-appearance case review regarding settlement compliance for March 11, 2027, or a later date convenient for the Court.

Dated: February 17, 2026

CROSNER LEGAL, P.C.

By:______________________________

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