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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

BRISA CENICEROS, NELY RIOS
ESCOBAR, AND SOK CHUNG, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

HERBALIFE MANUFACTURING LLC, a
Delaware Corporation; and DOES 1-50,
inclusive.

Defendants.

CASE NO.: 30- 2022-01289409-CU-OE-CXC

[Consolidated with the *Escobar* Action Case
No.: 30-2023-01349666-CU-OE-CXC]

Assigned to the Hon. William Claster

**PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

Hearing Information:

Date: July 25, 2025

Time: 9:00 a.m.

Dept.: CX101

Reservation No.: 74564660

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Attorneys for Plaintiffs Nely Rios Escobar, Sok Chung,
and the Putative Classes

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 25, 2025, at 9:00 a.m. or as soon thereafter as the matter may be heard by the Honorable William Claster in Department CX101 of the Orange County Superior Court in the State of California, located at 751 West Santa Ana, Santa Ana, California 92701, Plaintiffs Brisa Cenicerros, Nely Rios Escobar, and Sok Chung, individually and on behalf of all others similarly situated, will move the Court for entry of an Order granting preliminary approval of the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" and/or "Settlement"), including:

1. Certifying the Class for purposes of settlement only;
2. Preliminarily appointing Plaintiffs Brisa Cenicerros, Nely Rios Escobar, and Sok Chung as Class Representatives for purposes of settlement only;
3. Appointing Kashif Haque, Samuel Wong, Jessica L. Campbell and Joseph M. Szilagyi of Aegis Law Firm, PC, Joshua S. Falakassa of Falakassa Law PC, and Mehrdad Bokhour of Bokhour Law Group, P.C. as Class Counsel for purposes of settlement only;
4. Appointing Phoenix Settlement Administrator as the Settlement Administrator;
5. Preliminarily approving the Settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
6. Directing distribution of the Class Notice, including notice of the opportunity to exclude oneself from, or object to, the Settlement; and
7. Setting a date for a final fairness hearing to determine, following dissemination of the Class Notice, whether to grant final approval of the Settlement.

This motion is based upon the accompanying Memorandum of Points and Authorities; the Declarations of Class Counsel Mehrdad Bokhour, Joshua Falakassa, Joseph M. Szilagyi, and Natalie F. Price; Declarations of Plaintiffs Brisa Cenicerros, Nely Rios Escobar, and Sok Chung in support thereof; the Settlement Agreement; the proposed Order; all other records, pleadings, and papers filed; and upon such other evidence or argument as may be presented to the Court at the hearing.

1 Dated: May 14, 2025,

BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.

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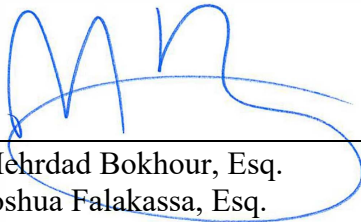

Mehrdad Bokhour, Esq.
Joshua Falakassa, Esq.
Attorneys for Plaintiffs and the Putative Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiffs Brisa Cenicerros, Nely Rios Escobar, and Sok Chung
4 (“Plaintiffs”), individually and on behalf of all others similarly situated, seek preliminary
5 approval of a \$783,174.27¹ wage-and-hour class and Private Attorneys General Act (“PAGA”)
6 action settlement (the “Settlement”) between the Settlement Class Members and Defendant
7 Herbalife Manufacturing, LLC (“Defendant” or “Herbalife”), collectively referred to as the
8 “Parties”.

9 Specifically, Plaintiffs seek to represent a class of all persons currently or formerly
10 employed by Defendant as a non-exempt employee in the State of California at any time from
11 November 1, 2018, through September 18, 2024. For the purposes of the PAGA Settlement,
12 Plaintiffs seek to represent all persons currently or formerly employed by Defendant as non-
13 exempt employees in the State of California from October 31, 2021, through September 18, 2024.

14 The Class Action and PAGA Settlement Agreement is attached as Exhibit “A” to the
15 Declaration of Mehrdad Bokhour in Support of Preliminary Approval of Class Action Settlement
16 (“Bokhour Decl.”) submitted herewith and referred to as the “Settlement Agreement” or, at times,
17 the “Settlement.” The proposed Class Notice is also attached to the Bokhour Decl. as Exhibit “B.”

18 Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s
19 request for a reasonable award of Attorney’s Fees not to exceed one-third of the Gross Settlement
20 Amount, Class Counsel’s reasonable litigation Costs not to exceed \$40,000, Administrator
21 Expenses Payment not to exceed \$10,000, PAGA penalties of \$20,000 (of which \$15,000 or 75%
22 will be paid to the LWDA and the remaining \$5,000 or 25% will be paid to the Aggrieved
23 Employees), and a Class Representative Service Payments to Plaintiffs not to exceed \$10,000
24 each, as follows:

25 ///

26
27 ¹ \$650,000 will be paid in addition to the \$133,174.27 previously paid to approximately 259 class members
28 for a maximum settlement amount of \$783,174.27.

	Total Amount
<i>Gross Settlement Amount</i>	\$783,174.27
Attorneys' Fees (33.33%)	\$261,031.98
Previous Payment to 259 Class Members	\$133,174.27
Litigation Costs	\$40,000
Administrator Costs	\$10,000
PAGA payment to LWDA (75% of 20K allocation)	\$15,000
PAGA payment to aggrieved workers	\$5,000
Plaintiffs' Class Representative Service Payments	\$30,000
Employer Payroll Taxes	\$7,143.04
<i>Net Settlement Amount</i>	\$281,824.98

(Bokhour Decl. ¶ 7.)

The Settlement Class includes approximately 474 non-exempt workers who all worked and/or work for Defendant in California during the Class Period (259 of whom have already received some payment as a result of Defendant's Pick-Up Stix Campaign). The Individual Class Payments will be paid pro rata based on the number of weeks worked by participating Class Members during the Class Period. Assuming a total class size of 474 Settlement Class Members, the average class payment to each Settlement Class Member will be approximately **\$875.52**. Of course, those with more weeks worked stand to recover proportionally more. (Bokhour Decl. ¶ 10.)

In addition, approximately 362 Aggrieved Employees worked for Defendant in California during the PAGA Period. The Individual PAGA Payments will be paid pro rata based on the number of pay periods paid by Aggrieved Employees during the PAGA Period. Assuming a total group of 362 Aggrieved Employees, the average PAGA payment to each PAGA Member will be approximately **\$13.81**. Again, those with more pay periods worked stand to recover proportionally more. (*Id.*)

The Settlement, once approved, is non-reversionary in that any amounts left over (*e.g.*, based on an undeliverable check) will not be returned to the Defendant. Settlement Class Members will not be required to submit claim forms to receive payment. However, each Settlement Class Member will receive the Class Notice, which contains information about their share, the opportunity to dispute the number of weeks worked by the Settlement Class Member,

1 and the opportunity to opt out or object to the Class Settlement. All Settlement Class Members
2 who do not affirmatively opt out will receive a settlement check upon the Court granting final
3 approval. (Bokhour Decl. ¶ 12.) Aggrieved Employees do not have a right to opt out of the PAGA
4 Settlement.

5 Because the Settlement is fair and reasonable and was negotiated at arm's length by
6 experienced counsel and an experienced mediator following a sufficient exchange of information
7 and documents before mediation, it should be preliminarily approved. Plaintiffs respectfully
8 request that the Court enter an order preliminarily approving the Settlement, conditionally
9 certifying the Settlement Class under Code of Civil Procedure § 382 for settlement purposes,
10 approving the proposed Class Notice, appointing Plaintiffs' counsel as Class Counsel, appointing
11 Phoenix Settlement Administrator as the Settlement Administrator, and scheduling a hearing for
12 the final approval of the Settlement. (Bokhour Decl. ¶ 13.)

13 **II. BACKGROUND**

14 **A. THE PARTIES AND THE PROPOSED SETTLEMENT CLASS**

15 Defendant Herbalife Manufacturing LLC, a subsidiary of Herbalife Nutrition Ltd.,
16 produces dietary supplements, protein powders, and other nutritional products at company-owned
17 facilities across California and United States. These facilities support Herbalife's global
18 distribution network.

19 Plaintiffs and other non-exempt employees, including technicians, mechanics,
20 maintenance technicians, machine operators, production workers, packaging technicians, and all
21 other non-exempt positions, were responsible for all aspects of Herbalife's manufacturing and
22 business operations in California.

23 The settlement class consists of Plaintiffs and all current and former non-exempt
24 employees who worked for Defendant in California at any time from November 1, 2018, through
25 September 18, 2024. (S.A. ¶¶ 1.5, 1.12.)

26 **B. PROCEDURAL HISTORY**

27 On November 1, 2022, Plaintiff commenced this Action by filing a Complaint alleging
28 causes of action against Defendant.

1 On September 14, 2023, Plaintiffs Nely Rios Escobar and Sok Chung filed a separate
2 complaint alleging overlapping causes of action against Defendant.

3 On December 5, 2023, Plaintiffs Nely Rios Escobar and Sok Chung amended their
4 complaint to additionally allege violations of the Private Attorneys General Act (“PAGA”)
5 against Defendant.

6 On March 8, 2024, Plaintiffs’ separate actions were consolidated.

7 On February 21, 2025, a consolidated Third Amended Complaint was filed in this action
8 by Plaintiffs Brisa Cenicerros, Nely Rios Escobar, and Sok Chung. The consolidated Third
9 Amended Complaint is the operative complaint in the Action. (Bokhour Decl. ¶ 14.)

10 Prior to mediation, Plaintiffs obtained from Herbalife—through both formal and informal
11 discovery—the available pay and time records for the putative Class Members, including a
12 representative sampling of the time and payroll records, applicable Herbalife policies, Plaintiffs’
13 wage statements and records, and class-wide data such as the number of Class Members and total
14 Workweeks during the Class Period. The Parties also conducted the *Belaire-West* opt-out notice
15 process, engaged in discovery motion practice, and participated in extensive pre-mediation
16 exchanges. This extensive discovery enabled Plaintiffs to thoroughly evaluate their claims and
17 assess Defendant’s defenses. (Bokhour Decl. ¶ 15.)

18 On July 12, 2023, the Parties participated in an all-day mediation presided over by (Ret.)
19 Hon. Carl J. West, which was unsuccessful.

20 After further pursuing the case, on September 10, 2024, the Parties participated in a second
21 all-day mediation presided over by David Phillips, Esq., which ultimately led to a mediator’s
22 proposal that all Parties accepted on September 18, 2024, to settle the Action. (Bokhour Decl., ¶
23 16, Exhibit “A”.) The Parties subsequently memorialized the terms of the Settlement in a long-
24 form Settlement Agreement. The Parties now seek the Court’s preliminary approval of the
25 Settlement.

26 Class Counsel is knowledgeable about and have done extensive research with respect to
27 the applicable law and potential defenses to the claims of the Settlement Class Members and
28 Aggrieved Employees. (Bokhour Decl. ¶ 17.)

1 Class Counsel has diligently investigated the Class Members' claims against Defendant.
2 Based on the data and information disclosed, and on Class Counsel's own independent
3 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant
4 for the consideration and on the terms set forth in this Settlement Agreement are fair, reasonable,
5 and adequate, as well as in the best interest of the Settlement Class Members and Aggrieved
6 Employees in light of all known facts and circumstances, including the risk of significant delay
7 and uncertainty associated with continued litigation, various defenses asserted by Defendant, and
8 numerous potential appellate issues. (Bokhour Decl. ¶ 18.)

9 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

10 The following is a summary of the principal terms of the Settlement Agreement.

11 **A. SETTLEMENT CONSIDERATION AND ALLOCATION**

12 The \$783,174.27 Settlement Amount is non-reversionary and will be paid out to
13 Settlement Class Members without the need to submit a claim form or take any affirmative action.
14 It includes (1) Plaintiffs' Attorneys' Fees and Costs up to one-third of the Settlement Amount, as
15 approved by the Court; (2) Class Representative Service Payments of \$10,000 to each named
16 Plaintiff, as approved by the Court; (3) Administrator Expenses Payment, not to exceed \$10,000,
17 as approved by the Court; (4) a \$20,000 PAGA award, 75 percent of which is to be paid to the
18 LWDA pursuant to California Labor Code § 2699(i); (5) the aggregate of all Individual Class
19 Payments to Participating Class Members; (6) the aggregate of all Individual PAGA Payments to
20 Aggrieved Employees; (7) the \$133,174.27 previously paid to approximately 259 class members;
21 and (8) the employer payroll taxes. (S.A. ¶ 3 *et seq.*)

22 After all Court-approved deductions from the Settlement Amount, it is estimated that
23 \$281,824.98 will be available to pay the Individual Class Payments to Settlement Class Members,
24 in addition to the \$5,000 available to pay the Individual PAGA Payments to the Aggrieved
25 Employees. As noted above, the average Individual Class Payment to Settlement Class Members
26 is approximately **\$875.52** each, in addition to an average payment of **\$13.81** to Aggrieved
27 Employees, which is a fair and reasonable recovery. (Bokhour Decl. ¶ 8.)

28 ///

1 **B. NOTICE PROCEDURES**

2 The proposed Class Notice (including a Spanish translation) will be provided to the
3 Settlement Class Members, showing the estimated amount each Settlement Class Member will
4 receive and the number of weeks worked for which they will be credited during the putative Class
5 Period. (Exhibit “B” to the Bokhour Decl.) Within fifteen (15) days after entry by the Court of its
6 Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list
7 of all Settlement Class Members containing names, last four digits of social security numbers,
8 last-known addresses, phone numbers, and number of Class Period Workweeks and PAGA Pay
9 Periods (the “Class Data”). (S.A. ¶ 7.4.2.)

10 Within fifteen (15) days after receipt of the Class Data, the Settlement Administrator shall
11 calculate the number of Class Period Workweeks and PAGA Pay Periods for each Settlement
12 Class Member, populate the Class Notice, and send each Settlement Class Member the Class
13 Notice via first-class, United States mail. (S.A. ¶ 7.4.2.)

14 The Settlement Administrator will take steps to ensure that the Notice is correctly mailed
15 to all Settlement Class Members, including utilization of the National Change of Address
16 Database maintained by the United States Postal Service to review the accuracy of and, if
17 possible, update a mailing address. (S.A. ¶ 7.4.3.) If any notices are returned to the Administrator
18 as undelivered, within three (3) business days, the Administrator shall re-mail the Class Notice
19 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
20 address, the Administrator shall conduct a Class Member Address Search and re-mail the Class
21 Notice to the most current address obtained. (*Id.*)

22 **C. EXCLUSION AND OBJECTION PROCEDURES**

23 Settlement Class Members who do not timely opt out of the Settlement will be deemed to
24 participate in the Class Settlement and shall become Participating Class Members without having
25 to submit a claim form or take any other action. The Class Notice shall inform the Settlement
26 Class Members of their right to opt out of the Settlement. To do so, the Settlement Class Member
27 must submit a written request to the Settlement Administrator no later than 45 days after being
28 mailed the Class Notice by the Settlement Administrator (“Notice Response Deadline”). (S.A. ¶

7.5.1.) Any Opt-Out request that is not postmarked by the Notice Response Deadline will be invalid.

The Class Notice shall inform the Settlement Class Members of their right to object to the Settlement. Any Settlement Class Member who wishes to object to the Settlement must submit a written objection to the Settlement Administrator no later than the Notice Response Deadline. The objection must include the full name, address, telephone number, dates of employment, the basis for the objection, as well as any documentation or evidence in support thereof, and the name and address of his or her counsel, if represented by counsel. (S.A. ¶ 7.7.) Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

Regardless of whether a Class Member opts out of the Class Settlement, all Aggrieved Employees are deemed to release the claims against Defendant and will receive an Individual PAGA Payment.

D. SETTLEMENT ALLOCATION FORMULA FOR SETTLEMENT SHARES

The Individual Class Payment for each Settlement Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendant as follows. Compensable workweeks will be all weeks worked by the Settlement Class Members during the Class Period. The dollars per compensable workweek will be calculated by dividing the total weeks worked by Settlement Class Members into the Net Settlement Amount to determine a per workweek value (“Workweek Value”). The Net Settlement Amount shall be allocated to each Participating Class Member based on their proportionate Workweeks during the Class Period. This is determined by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Participating Class Member’s total Workweeks during the Class Period, and the denominator of which is the total Workweeks by all Participating Class Members during the Class Period.

The Workweek Value will be multiplied by the number of weeks worked by each Participating Class Member during the Class Period to determine the distribution, prior to legal deductions, for each Participating Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Class

1 Payment for each Participating Class Member so that the amount distributed to Participating Class
2 Members equals 100% of the Net Settlement Amount. The Class Notice will inform Settlement
3 Class Members of his/her estimated share and the number of Workweeks he/she worked during
4 the Class Period. Settlement Class Members may dispute their weeks worked if they feel they
5 worked more weeks in the Class Period in California than Defendant's records show by timely
6 submitting evidence to the Settlement Administrator.

7 In addition, all Aggrieved Employees will receive an Individual PAGA Payment, which
8 will be calculated by the Settlement Administrator by dividing the amount of each PAGA
9 Member's 25% share of PAGA Penalties (\$5,000) by the total number of PAGA Period Pay
10 Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result
11 by each PAGA Member's PAGA Period Pay Periods.

12 **E. TIMING OF SETTLEMENT DISBURSEMENTS**

13 Defendant shall fund the Gross Settlement Amount, excluding the One Hundred Thirty-
14 Three Thousand One Hundred Seventy-Four Dollars and Twenty-Seven Cents (\$133,174.27)
15 previously paid to Class Members, by transmitting the remaining Six Hundred Fifty Thousand
16 Dollars and Zero Cents (\$650,000) to the Administrator no later than 14 days after the Effective
17 Date. After transmitting Six Hundred Fifty Thousand Dollars and Zero Cents (\$650,000) to the
18 Administrator, the Parties agree that Defendant will have fully funded the Gross Settlement
19 Amount. (S.A. ¶ 4.3.) The Settlement Amount will be used to fund: (i) Individual Class Payments
20 of Participating Class Members; (ii) Individual PAGA Payments of all Aggrieved Employees;
21 (iii) amounts awarded to Class Counsel for Attorneys' Fees and Costs, (iv) the Class
22 Representative Service Payments to the Plaintiffs, (v) the payment to the LWDA to resolve claims
23 under the PAGA, (vi) Administrator Expenses Payment, and (vii) the employer payroll taxes.
24 The Settlement Administrator will issue the court-approved payments within ten (10) days of
25 receipt of funds from Defendant into the Qualified Settlement Fund. (S.A. ¶ 4.4.)

26 Settlement Class Members will have 180 days after mailing by the Settlement
27 Administrator to cash their settlement checks. If any Participating Class Member's check is not
28 cashed within that period, the check will be void, and a stop payment will be issued. The

1 Administrator shall transmit the funds represented by such checks to the California Controller's
2 Unclaimed Property Fund in the name of the Class Member. (S.A. ¶ 4.4.3.)

3 **F. TAX TREATMENT**

4 The Individual Class Payments will be allocated based on the allegations in the Action as
5 follows: twenty percent (20%) will be paid as wages subject to withholding of all applicable local,
6 state, and federal taxes, and eighty percent (80%) will be paid as interest and as penalties from
7 which no taxes will be withheld. All Individual PAGA Payments will be treated as penalties, and
8 no taxes will be withheld. The Settlement Administrator will issue to each Settlement Class
9 Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the
10 wage allocation and a Form 1099 with respect to the penalties and interest allocations. (S.A. ¶
11 3.2.4.1.)

12 **G. RELEASE OF CLAIMS**

13 In exchange for the payments, all Participating Class Members, on behalf of themselves
14 and their respective former and present representatives, agents, attorneys, heirs, administrators,
15 successors, and assigns, release Released Parties from all claims arising during the Class Period
16 that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
17 Complaint. (S.A. ¶ 5.2.)

18 Likewise, in exchange for the payments, the Settlement Agreement provides that upon the
19 date Defendant fully funds the settlement, all Aggrieved Employees are deemed to release, on
20 behalf of themselves and their respective former and present representatives, agents, attorneys,
21 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
22 penalties arising during the PAGA Period that were alleged, or reasonably could have been
23 alleged, in this Action based on the facts stated in the Operative Complaint or the PAGA Notices.
24 (S.A. ¶ 5.3.)

25 In addition to the foregoing releases, the named Plaintiffs have also agreed to execute
26 separate general releases as set forth in the Settlement Agreement in consideration of their
27 awarded Class Representative Service Payment and Individual Class Payment, among other
28 considerations. (S.A. ¶¶ 5.1., 5.1.1.)

1 **IV. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER**
2 **THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY**
3 **CERTIFICATION IS APPROPRIATE FOR PURPOSES OF SETTLEMENT**

4 California Rule of Court 3.769(d) provides that the Court may make an order approving
5 certification of a provisional settlement class at the preliminary approval stage. It is well-
6 established that trial courts should use a “lesser standard of scrutiny” for determining the propriety
7 of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996)
8 48 Cal.App.4th 1794, 1807 at n.19. The reasons include that no trial is anticipated in a settlement
9 class, so the case management issues inherent in determining if the class should be certified need
10 not be confronted; and the trial court’s fairness review of the settlement protects the interests of
11 the non-representative Class Members. *Id.*; see also *Officers for Justice v. Civil Service Com.* (9th
12 Cir. 1982) 688 F.2d 615, 633 (“Th[e] relationship between the certification determination and the
13 merits of the case is further attenuated within the context of the settlement evaluation process . .
14 . [C]ertification issues raised by class action litigation that is resolved short of a decision on the
15 merits must be viewed in a different light.”); *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S.
16 591, 620 (“Confronted with a request for settlement-only class certification, a district court need
17 not inquire whether the case, if tried, would present intractable management problems . . . for the
18 proposal is that there be no trial.”).

19 As discussed below, for the purposes of this Settlement only, Plaintiffs request that this
20 Court provisionally certify the Settlement Class, as defined above, under Code of Civil Procedure
21 § 382.

22 **A. NUMEROSITY AND ASCERTAINABILITY**

23 Numerosity is met if a proposed class is so large that joinder of all members would be
24 impracticable. *See* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the
25 Class Members can be objectively identified and given notice of the litigation without
26 unreasonable time or expense. *See Medraza v. Honda of N. Hollywood* (2008) 166 Cal.App.4th
27 89, 101. Here, according to Defendant’s records, there are approximately 474 Settlement Class
28 Members. This figure undoubtedly satisfies the numerosity requirement.

1 **B. WELL-DEFINED COMMUNITY OF INTEREST**

2 1. Commonality

3 To justify certification, the class proponent must show that questions of law or fact
4 common to the class predominate over the questions affecting the individual members. *See Arenas*
5 *v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732 (citing *Washington Mut. Bank v.*
6 *Superior Court* (2001) 24 Cal.4th 906, 913.

7 Here, Plaintiffs contends that they and the Settlement Class were subject to common
8 policies and practices relating to timekeeping and payroll, the provision of meal and rest periods,
9 and the payment of minimum and overtime wages, among other things. While Defendant denies
10 those allegations, and the Parties dispute whether a class would be appropriate if the litigation
11 were to continue, they agree to class certification for the purposes of this Settlement only.

12 2. Typicality

13 Typically, “focuses on whether there exists a relationship between the Plaintiffs’ claims
14 and the claims alleged on behalf of the class.” *See* Herbert B. Newberg & Alba Conte, *Newberg*
15 *on Class Actions* (“*Newberg*”) § 3:13 (4th ed. 2002).

16 Again, the Parties dispute whether Plaintiffs’ claims are typical of the Settlement Class
17 for the purposes of any continued litigation of the Action, but agree for the purposes of this
18 Settlement only, that Plaintiffs assert claims regarding Defendant’s timekeeping and payroll
19 practices, alleged failure to pay all minimum and overtime wages, meal and rest break
20 policies/practices, wage statements, and the provisions governing the timely and complete
21 payment of final wages, which are at the core of the Action.

22 3. Adequacy of Representation

23 The proposed Class Representatives must establish that they will adequately represent the
24 proposed Settlement Class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th
25 540, 546. Here, Plaintiffs are adequate to represent the Settlement Class because they were
26 employed by Defendant during the Class Period, allegedly experienced the same alleged wage
27 and hour practices as the rest of the Settlement Class, understand their duties as Class
28 Representatives, have been willing to undergo the risk of litigation, and have no conflicts of

1 interest.

2 Moreover, adequacy may be established because counsel are experienced practitioners.
3 *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir.
4 2001) 244 F.3d 1152, 1162. Here, Plaintiffs are represented by Class Counsel with extensive
5 experience in wage and hour class and PAGA actions like the instant matter. (Bokhour Decl. ¶¶
6 2-5.); (Declaration of Joshua Falakassa in Support of Plaintiffs' Motion for Preliminary Approval
7 of Class Action Settlement ("Falakassa Decl.")). ¶¶ 2-8.); (Declaration of Joseph M. Szilagyi in
8 Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Szilagyi
9 Decl.")). ¶¶ 8-20.)

10 4. Superiority

11 Certification of the Settlement Class for settlement purposes is superior here because there
12 will be a global resolution of all claims at once, which fosters judicial economy. Class certification
13 for settlement purposes is also vastly superior to litigation of numerous individual claims because
14 most of the claims are too small to litigate outside of the class context.

15 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT,**
16 **WHICH IS FAIR, ADEQUATE, AND REASONABLE**

17 **A. CLASS ACTION SETTLEMENTS ARE SUBJECT TO JUDICIAL REVIEW AND**
18 **APPROVAL UNDER THE CALIFORNIA RULES OF COURT**

19 The law favors settlements. *Bush v. Superior Court* (1992) 10 Cal.App.4th 1374, 13150.
20 This is particularly true in class actions where substantial resources can be conserved by avoiding
21 the time, cost, and rigors of formal litigation. However, a class action may not be dismissed,
22 compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules
23 of Court set forth the procedures for court approval of a class action settlement: (1) the Court
24 preliminarily approves the settlement; (2) class members receive notice as directed by the Court;
25 and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed
26 settlement. *See* Cal. R. Ct. 3.769(c), (e-g).

27 The decision to approve or reject a proposed settlement lies within the Court's sound
28 discretion. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.

1 Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval
2 hearing “into a trial or rehearsal for trial on the merits . . . [or] to reach any ultimate conclusions
3 on the contested issues of fact and law which underlie the merits of the dispute.” *Officers for*
4 *Justice*, 688 F.2d at 625.

5 The Court’s ultimate duty is to determine whether the settlement is fair, adequate, and
6 reasonable. *See Dunk*, 48 Cal.App.4th at 1801 (setting forth the “fair, adequate, and reasonable”
7 standard) (citing *Officers for Justice*, *supra*); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177
8 Cal.App.4th 734, 742-43 (a trial court must approve a class action settlement agreement, but only
9 after determining that it is ““fair, adequate and reasonable,”” considering factors such as the ““risk,
10 expense, [and] complexity”” of continued litigation) (citations omitted). The Court enjoys broad
11 discretion in making its fairness determination, and should consider factors including, but not
12 limited to:

13 [T]he strength of Plaintiffs’ case, the risk, expense, complexity and
14 likely duration of further litigation, the risk of maintaining class
15 action status through trial, the amount offered in settlement, the
16 extent of discovery completed and the stage of the proceedings, the
experience and views of counsel . . . and the reaction of the Class
Members to the proposed settlement.

17 *Dunk*, *supra* (setting forth a non-exhaustive list of factors for the court’s consideration at final
18 approval).

19 The above factors are not exclusive “and the court is free to engage in a balancing and
20 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at
21 245. However, in doing so, the Court must give “[due] regard to what is otherwise a private
22 consensual agreement between the parties.” *Id.* The inquiry must be limited “to the extent
23 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
24 overreaching by, or collusion between, the negotiating parties.” *Id.* (citation and internal quotation
25 marks omitted).

26 At the preliminary approval stage, the Court need only determine that the settlement falls
27 within the “range of possible judicial approval,” so that notice to the class and the scheduling of
28 the fairness hearing are worthwhile. *See Newberg* § 11:25. Indeed, the Court should grant

preliminary approval if there are no “grounds to doubt its fairness or other obvious deficiencies ... and [the settlement] appears to fall within the range of possible approval.” *Manual For Complex Litigation* (Third) § 30.41 (1995); see *Dunk*, 48 Cal.App.4th at 1802. A “presumption of fairness exists where: (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*, supra (citing *Newberg* § 11:41). As shown below, the Settlement falls well within the range of approval because there are no grounds to doubt its fairness.

B. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS

The Settlement was the product of extensive arm’s-length negotiations between counsel and was facilitated by an experienced wage-and-hour class action mediator. Though cordial and professional, the Settlement negotiations were adversarial and non-collusive in nature. The Settlement reached is the product of substantial effort by the Parties and their counsel. Defendant disputed both certification of class claims and the merits of Plaintiffs’ claims. Although Plaintiffs and Plaintiffs’ counsel believed that there was a possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate. In addition, if Defendant prevailed on any of its defenses, the Class Members may not have received any monetary recovery. (Bokhour Decl. ¶ 37.)

C. THE EXTENT OF THE INVESTIGATION WAS MORE THAN SUFFICIENT TO PERMIT PRELIMINARY APPROVAL OF THE SETTLEMENT

Plaintiffs thoroughly investigated and evaluated this case’s factual and legal strengths and weaknesses before reaching the Settlement. (Bokhour Decl. ¶¶ 22-36.) As described above, the Settlement was reached after extensive investigation and research, thorough calculations and risk evaluation, and a substantial exchange of information relating to Plaintiffs and the Settlement Class Members prior to mediation. (*Id.*)

1 **D. THE SETTLEMENT IS A REASONABLE COMPROMISE OF CLAIMS**

2 To evaluate a settlement, the parties must provide the trial court with “basic information
3 about the nature and magnitude of the claims in question and the basis for concluding that the
4 consideration being paid for the release of those claims represents a reasonable compromise.”
5 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The *Kullar* requirement was
6 further explained in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
7 399, which held that an explicit statement of the maximum theoretical amount that the class could
8 recover was not necessary:

9 Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in
10 all cases to contain evidence in the form of an explicit statement of the maximum
11 amount the Plaintiffs class could recover if it prevailed on all its claims – a number
12 which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell
claims, require any such explicit statement of value; it requires a record which
allows “an understanding of the amount that is in controversy and the realistic range
of outcomes of the litigation.

13 A settlement is not judged against what might have been recovered had a Plaintiff
14 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
15 and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 250
16 (“Compromise is inherent and necessary in the settlement process ... even if the relief afforded
17 by the proposed settlement is substantially narrower than it would be if the suits were to be
18 successfully litigated, this is no bar to a class settlement because the public interest may indeed
19 be served by a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.”)

21 Of relevance to the reasonableness of the proposed Settlement is the fact that significant
22 legal and factual grounds for defending this action exist. As further detailed below, in addition to
23 disputing the merits of Plaintiffs’ claims, Defendant disputed whether Plaintiffs could obtain class
24 certification, arguing a lack of commonality of the legal claims and injuries. (Bokhour Decl. ¶¶
25 18-20.) Defendant argued that it complied with the applicable law, and to the extent any purported
26 deviations existed, they would have been individualized in nature, thereby limiting Plaintiffs’
27 ability to certify a class. (*Id.*)

28 While Plaintiffs assert that this is a suitable case for certification, they realize that there is

1 always a significant risk associated with class certification proceedings, which could significantly
2 limit the claims that they could pursue on a class basis. (Bokhour Decl. ¶ 37.)

3 Considering the uncertainties of protracted litigation, this negotiated Settlement reflects
4 the best practicable recovery for the Settlement Class. (Bokhour Decl. ¶¶ 38-42.) While the total
5 Settlement Amount is, of course, a compromise figure, the potential risks and opportunities of
6 both parties were effectively weighed and considered by the Parties, resulting in a fair and
7 equitable Settlement. (*Id.*)

8 Based upon detailed data obtained through informal discovery and information exchanges,
9 Plaintiffs' counsel estimated the following big-picture data points through the mediation date:
10 474 Class Members who worked approximately 62,086 workweeks and 362 Aggrieved
11 Employees who worked a total of 15,584 PAGA Pay Periods. (Bokhour Decl. ¶ 19.)

12 The following is a detailed *Kullar* analysis of the claims asserted by Plaintiffs, including
13 an outline of Defendant's defenses:

14 **Failure to Pay All Minimum and Overtime Wages**

15 First, Plaintiffs alleged that the Defendant's non-neutral rounding practice/policy resulted
16 in a systemic failure to pay for all hours worked, including all minimum and overtime wages due.
17 Based on Plaintiffs' analysis of the sampling of payroll records and data produced, Plaintiffs
18 concluded that the rounding policy resulted in several Class Members being underpaid, for a net
19 average of approximately 3.8 minutes of unpaid time per shift during a limited time frame in 2018
20 and 2020. (Bokhour Decl. ¶ 20).

21 However, in response Defendant argued that this claim would require precisely the type
22 of individualized inquiry that is not appropriate for certification because the court would have to
23 conduct an employee-by-employee analysis to determine if the Class Member was correctly paid.
24 Based on this argument, and others, Plaintiffs believed that the Court would deny class
25 certification on Plaintiffs' rounding claim. Additionally, Defendant alleged that, if certification
26 were granted, it would defeat the rounding claim on the merits at summary judgment or at trial
27 because its policies and/or practices were, always, facially neutral in compliance with *See's I* and
28 further, contrary to Plaintiffs' assertion, those policies and practices resulted in the Class

1 Members being over-compensated over the course of the Class Period. (Bokhour Decl. ¶ 21).

2 Second, Plaintiffs alleged that Defendant failed to account for non-discretionary bonuses
3 and other incentive pay when calculating the “regular rate of pay” when paying overtime and sick
4 pay wages. However, Defendant argued inter alia that it correctly excluded discretionary bonuses
5 and other discretionary pay from its “regular rate of pay” calculations and that any underpayment
6 was in good faith, and *de minimis*. Indeed, Defendant’s analysis of pay records revealed that any
7 such underpayment of overtime or sick wages as a result of the “regular rate of pay” violations
8 was minimal. (Bokhour Decl. ¶ 22).

9 Due to this, and in light of Defendant’s other defenses, Plaintiffs completely discounted
10 this claim, keeping in mind that the true significant value of these unpaid wage claims lies in the
11 derivative claims for waiting time penalties under Labor Code § 203, and wage statement
12 violations under Labor Code § 226, which is discussed below. (Bokhour Decl. ¶ 23.)

13 **Failure to Provide Meal Periods or Compensation in Lieu Thereof**

14 Plaintiffs alleged that Defendant failed to provide code-compliant and timely meal periods
15 during the Class Periods. With respect to Plaintiffs’ meal period violation claims, based on the
16 sampling of data, Settlement Class Members worked approximately 255,00 shifts during the Class
17 Period. (Bokhour Decl. ¶ 24.) Based on its theory of liability, and an alleged 11% violation rate
18 for the meal period claims, as extrapolated from the pre-mediation sampling of Defendant’s
19 timekeeping and payroll records, Plaintiffs estimated Defendant’s maximum exposure for meal
20 period violations was \$645,150. (*Id.*)

21 However, Defendant denied that it had any liability as to this claim. It contended inter alia
22 that all meal periods were taken in a compliant manner or properly waived. (Bokhour Decl. ¶ 25.)
23 Defendant also contended that this claim would not be certified due to the lack of any common
24 evidence tying together the reason Settlement Class Members allegedly experienced a meal period
25 violation, if any. (*Id.*) See *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 25.

26 In light of these defenses and arguments, Plaintiffs discounted Defendant’s maximum
27 exposure by 40% for the risk of non-certification and an additional 25% to account for
28 Defendant’s defenses on the merits to arrive at an estimated total of \$290,317. (Bokhour Decl. ¶

26.)

Failure to Provide Rest Breaks or Compensation in Lieu Thereof

Similarly, Plaintiffs alleged that Defendant failed to authorize and permit all legally compliant rest periods throughout the Class Period. (Bokhour Decl. ¶ 27.) Specifically, Plaintiffs alleged that Defendant did not maintain a formal rest period policy and, in practice, did not allow Settlement Class Members to leave the premises during rest periods. (*Id.*) Plaintiffs estimated approximately 251,701 rest period eligible shifts and assumed a 33% violation rate. (*Id.*) As such, Plaintiffs calculated Defendant's maximum exposure on this claim at \$1,910,410. (*Id.*)

However, Defendant disputed Plaintiffs' allegations and assumptions and asserted that, at all relevant times, it maintained and strictly enforced its lawful rest period policy, and that employees were provided with all rest periods. (Bokhour Decl. ¶ 28.) Further, Defendant contended that any purported deviations from its rest period policy and practices, would necessarily require individualized inquiries to determine which workers, if any, failed to take rest periods, and why. Moreover, Defendant denied any common practice requiring the workers to remain on premises during their rest periods, making this claim not amenable to class treatment. (*Id.*)

Based on Defendant's arguments, Plaintiffs discounted Defendant's maximum exposure by 70% to account for the risk of non-certification, and an additional 60% to account for Defendant's defenses on the merits to arrive at an estimated exposure of approximately \$229,249. (*Id.*)

Waiting Time Penalties

With respect to the waiting time penalty claim, based on Defendant's sampling, there were 213 Settlement Class Members who separated from Defendant during the relevant statutory period. (Bokhour Decl. ¶ 29.) As such, Plaintiffs estimated the maximum potential and theoretical penalty under Labor Code § 201 – 203 at \$1,175,760 (213 workers x 8.0 hours per day * average rate of \$23 * 30 days). (*Id.*) Because this claim was derivative, it was subject to the defenses to the underlying claims as set forth above. Additionally, Defendant argued that it would defeat the waiting time penalty claim because the purported failure to pay wages, if any, was not willful.

1 (*Id.*) See *Naranjo v. Spectrum Sec. Servs., Inc.*, 15 Cal.5th 1056, 1065 (2024).

2 Therefore, Plaintiffs applied a 50% risk of defeat at the class certification stage, and an
3 additional 25% risk of defeat at the summary judgment stage or on the merits, resulting in the
4 risk-adjusted value of \$440,910 for the waiting time penalty claim. (*Id.*)

5 **Failure to Provide Accurate Itemized Wage Statements**

6 With regards to Plaintiffs’ derivative wage statement violation claim, Plaintiffs estimate
7 the maximum potential penalties were \$685,050 (based on, according to Plaintiffs’ estimates,
8 approximately 13,701 allegedly violative wage statements issued during the Class Period).
9 (Bokhour Decl. ¶ 30.) In calculating Defendant’s maximum exposure, Plaintiffs gave Defendant
10 the benefit of assuming Plaintiffs could only obtain the “initial” wage statement penalty of \$50
11 per violation, for a total of \$685,050 in potential wage statement penalties. *Id.*, Lab. Code § 226(e)
12 (providing for a \$50 penalty for “initial” violations); *Amaral v. Cintas Corp.* No. 2, 163
13 Cal.App.4th 1157, 1207 (2008) (finding that “initial” violation rate applies until the employer has
14 been notified that it is violating a Labor Code provision.)

15 In response, Defendant contended that any alleged violations were not “knowing and
16 intentional,” and that Plaintiffs could not establish that they or anyone else suffered “injury” as a
17 result of any alleged wage statement violations, therefore precluding the assessment of any wage
18 statement penalties. (Bokhour Decl. ¶ 31.) Further, Defendant argued this derivative claim would
19 fail for the same reasons Plaintiffs’ underlying claims would fail, both on the merits and as to
20 class certification. (*Id.*) As such, Plaintiffs discounted the calculated maximum exposure by 30%
21 for the risk of non-certification, and by an additional 50% for the risk of being unsuccessful on
22 the merits to arrive at an estimated total of \$239,767.50. (*Id.*)

23 **PAGA Penalties**

24 Plaintiffs also sought PAGA penalties for each violation for which they are available and
25 alleged that these penalties can be “stacked.” Bokhour Decl. ¶ 32; See *Gonzalez v. Corecivic of*
26 *Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018)
27 (“‘stacking’ PAGA penalties is not inappropriate under California law”). Assuming that a PAGA
28 penalty is available in the default amount of \$100 per pay period and is not reduced, Plaintiffs

1 estimated that the maximum potential PAGA penalty would be \$1,370,100 per claim for the
2 13,701 pay periods in the PAGA period. *See* Cal. Lab. Code. § 2699(f)(2). (*Id.*)

3 However, this maximum figure fails to account for numerous unclear issues relating to
4 PAGA claims. (Bokhour Decl. ¶ 33.) First, it is unclear whether stacking is permissible and/or
5 whether the court would award penalties in such a way (especially for purely derivative penalties).
6 (*Id.*) Second, the maximum figure fails to acknowledge that courts have wide latitude to reduce
7 the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to
8 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
9 *Id.*; Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016)
10 (noting in the context of approving settlement that a reduction in PAGA penalties would be
11 “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i)
12 the employer did not “deliberately evad[e] a clear obligation to provide legally required pay and
13 benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations
14 under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear”
15 because “there is no straight answer to the question.”).

16 And while the PAGA penalties had a maximum value of \$363,100, this fails to
17 acknowledge that courts have wide latitude to reduce the civil penalties “based on the facts and
18 circumstances of a particular case” and if “to do otherwise would result in an award that is unjust,
19 arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant
20 argued against the merits of the underlying claims, particularly that the “willfulness” standard
21 and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties
22 uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the
23 underlying statutory claim. Therefore, Plaintiffs discounted the maximum figure to account for
24 the risk of losing on the merits and applied an additional discount to account for the possibility
25 of this Court reducing penalties to arrive at an allocation of \$20,000. (Bokhour Decl. ¶ 34.)

26 In sum, when factoring in defenses and risks of ongoing litigation, Plaintiffs estimate the
27 risk-adjusted class recovery as follows:
28

• Unpaid Wages:	\$0 (discounted)
• Meal Period Claims:	\$290,317
• Rest Period Claims:	\$229,249
• Labor Code §§ 201 – 203 Claims:	\$440,910
• Wage Statement Violation Claims:	\$239,767.50
• PAGA Claim:	\$20,000
• <u>Total Risk-Adjusted Penalties and Damages:</u>	\$1,220,243.50

(Bokhour Decl. ¶ 35.)

The reasonableness of the settlement is apparent from the fact that the proposed settlement is approximately 64% of Plaintiffs’ estimate of the risk-adjusted class damages and penalties. For these reasons, Plaintiffs submit that the agreed-upon settlement is fair and reasonable. (Bokhour Decl. ¶ 36.) Preliminary approval is thus appropriate since the Settlement will provide significant monetary relief to the Settlement Class. For these reasons, Plaintiffs submit that the agreed-upon Settlement is fair and reasonable.

E. PLAINTIFFS’ COUNSEL IS EXPERIENCED IN SIMILAR WAGE-AND-HOUR LITIGATION

The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *aff’d* (9th Cir. 1981) 661 F.2d 939; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 (court must take into account “the experience and view of counsel”) (internal quotation and citation omitted).

Plaintiffs’ counsel are also highly experienced in Class and PAGA litigation, having respectively litigated over a hundred class actions and PAGA cases, having been named “Super Lawyers Rising Stars” in employment litigation (a distinction awarded to only 2.5% of attorneys), and having achieved class action settlements in California. (Bokhour Decl. ¶¶ 2-5; Falakassa Decl. ¶¶ 2-8; Szilagyi Decl. ¶¶ 8-20.)

Plaintiffs’ counsel, operating at arm’s length, weighed the strengths and risks of this case, and are of the view that this is a fair and reasonable settlement in light of the nature of the claims,

1 realistic risk adjusted value of damages, complexities of the case, the state of the law, and
2 uncertainties of class certification and litigation. (Bokhour Decl. ¶¶ 22-37; Falakassa Decl. ¶¶ 35-
3 42; Szilagyi Decl. ¶ 21.)

4 **F. THE CLASS NOTICE CONFORMS TO ALL APPLICABLE STATUTES AND RULES**

5 The proposed Class Notice should be approved, as it fully informs the Settlement Class
6 Members of the nature of the lawsuit and each Settlement Class Members' rights under the terms
7 of the Settlement Agreement and applicable law. The manner in which the Class Notice shall be
8 disseminated, as outlined above, shall ensure that all or nearly all of the Settlement Class Members
9 shall be properly notified of the proposed Settlement.

10 The proposed Class Notice and proposed plan for the Settlement Administrator to mail
11 the Class Notice to the last known address of all Settlement Class Members complies with all the
12 requirements of California Rule of Court 3.769(f) and 3.766(b). The contents of the proposed
13 Class Notice include (1) the material terms of the Settlement; (2) the proposed Attorneys' Fees
14 and Costs and the Administrator Expenses Payment; (3) details about the final fairness hearing
15 and how Settlement Class Members may elect to exclude themselves or make an objection; and
16 (4) how Settlement Class Members can obtain additional information. *See* Class Notice (Bokhour
17 Decl. ¶ 9, Exhibit B.) In addition, it will inform Settlement Class Members of their estimated
18 settlement share.

19 The Court has wide discretion in approving the means of providing notice, so long as the
20 class representative "provide(s) meaningful notice in a form that should have a reasonable chance
21 of reaching a substantial percentage of Class Members." *Archibald v. Cinerama Hotels*, (1976)
22 15 Cal.3d 853, 861. Here, the parties' notice plan is that notice of the Settlement will be
23 disseminated directly to the Settlement Class Members by first class mail by the Settlement
24 Administrator, since Defendant has the last known addresses of all Settlement Class Members
25 and the Settlement Administrator will perform a skip trace and update those addresses for any
26 Class Notices that are returned and re-send the Class Notice.

27 The Class Notice satisfies the requirements of Rule of Court 3.766 and affords Settlement
28 Class Members with all due process protections required by the United States Constitution.

Moreover, the contents of the Class Notice are in compliance with Cal. R. Ct. 3.766(d), because the Class Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the Parties; (2) a statement that the court will exclude the Settlement Class Member if the Settlement Class Member so requests by a specified date; (3) a procedure for the Settlement Class Members to follow in requesting exclusion from the Settlement Class; (4) a statement that the judgment, whether favorable or not, will bind all Settlement Class Members who do not request exclusion; and (5) a statement that any Class Member who does not request exclusion may if the Settlement Class Member so desires, enter an appearance through counsel. Further, the Class Notice will be provided along with a Spanish language translation to all Settlement Class Members.

The 45-day response deadline for Settlement Class Members to exclude themselves is reasonable, as it provides Settlement Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. If a Settlement Class Member does not opt out, then he or she will automatically be sent a settlement check.

G. THE NON-REVERSIONARY “CHECKS CASHED” DISTRIBUTION ENSURES MAXIMAL RECOVERY FOR CLASS MEMBERS

The fact that each member who does not opt out of the Settlement shall be mailed a check ensures that every Class Member will be paid unless he or she affirmatively acts to exclude himself or herself. Moreover, the Settlement Amount is non-reversionary, which means that no settlement funds will revert to Defendant; instead, if any checks are uncashed by the deadline, the funds will be transferred to the State Controller’s Office subject to the approval of the Court. Such terms are favored by Courts and demonstrate that there was no collusion between counsel for the parties and that the Settlement is fair and favorable to the Class Members.

H. THE ATTORNEYS’ FEES ALLOCATION UNDER THE SETTLEMENT AGREEMENT IS FAIR

Under the terms of the Settlement Agreement, Class Counsel is requesting \$261,031.98 in Attorneys’ Fees, which is equal to one-third (33.33%) of the Gross Settlement Amount. California courts routinely award attorneys’ fees equaling one-third or more of the potential

1 value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008)
2 (“Empirical studies show that, regardless of whether the percentage method or the lodestar
3 method is used, fee awards in class actions average around one-third of the recovery”); *See*,
4 *e.g., Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th. 480 (approving 1/3 fee in the amount of
5 \$6.33 million at a 2.13 lodestar multiplier, when class action litigation establishes a monetary
6 fund for the benefit of the Class Members, the trial court may determine the amount of a
7 reasonable fee by choosing an appropriate percentage of the fund created); *see also Stuart v.*
8 *RadioShack Corp.* (N.D. Cal. Aug. 9, 2010) No. C-07-4499 EMC, 2010 WL 3155645 (approving
9 fee award of 1/3 of the total maximum settlement amount of \$4.5 million) (the court noted that
10 the fee award of 1/3 of the total settlement was “well within the range of percentages which courts
11 have upheld as reasonable in other class action lawsuits”); *Singer v. Becton Dickinson and Co.*
12 (S.D. Cal. June 1, 2010) No. 08-cv-1501-IEG (BLM), 2010 WL 2196104, at *8 (approving fee
13 award of 33.33% of the common fund); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. Nov.
14 14, 2007) No. 1:05cv0484 DLB, 2007 WL 3492841, at *4 (awarding fees of 1/3 of common
15 fund, noting: “[f]ee awards in class actions average around one-third of the recovery.”); *Martin*
16 *v. FedEx Ground Package System, Inc.* (N.D. Cal. Dec. 31, 2008) No. C 06-6883 VRW, 2008
17 WL 5478576, at *8 (approving fees of 1/3 of common fund). (Bokhour Decl. ¶ 47.)

18 Once the Court grants preliminary approval of the Settlement Agreement and Class Notice
19 is disseminated, Plaintiffs’ counsel will submit a request for Attorneys’ Fees and Costs with
20 Plaintiffs’ final approval motion.

21 **I. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND**
22 **APPROPRIATE**

23 The Settlement Agreement provides for Class Representative Service Payments to each
24 named Plaintiff in the amount of \$10,000. (S.A. ¶ 3.2.1.) The proposed Class Representative
25 Service Payments are reasonable given the time and effort Plaintiffs each devoted to this case.
26 Plaintiffs’ efforts included: providing factual background for the Complaints and PAGA Letters;
27 providing documents and information about Defendant’s compensation plan and operations;
28 participating in phone calls to discuss litigation and settlement strategy and mediation; speaking

1 with fellow putative Class Members; making themselves available throughout the litigation and
2 during mediation to assist with analyzing the claims and defenses; helping Class Counsel prepare
3 for litigation, motions, hearings, and participating during mediation; and reviewing the Settlement
4 documents. Plaintiffs also assumed significant risk in bringing this litigation—namely, had they
5 lost, they could have been ordered to pay Defendant’s costs, and they also ran the risk of being
6 blackballed in the industry. (Bokhour Decl. ¶¶ 44-45; See Declaration of Plaintiffs Brisa
7 Cenicerros, Nely Rios Escobar, and Sok Chung in Support of Plaintiffs’ Motion for Preliminary
8 Approval of Class Action Settlement concurrently filed in support of the instant motion.)

9 The requested Class Representative Service Payments fall within the range of incentive
10 payments typically awarded to Class Representatives in similar class actions. *See e.g. Bond v.*
11 *Ferguson Enterprises, Inc.* (E.D. Cal. 2011) No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879
12 (approving \$11,250 Class Representative Service Payments to each of the two class
13 representatives in a trucker meal break class action; *Ross v. US Bank National Association* (N.D.
14 Cal. 2010) No. C 07-02951 SI, 2010 WL 3833922, at *2 (approving \$20,000 enhancement award
15 to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast*
16 *Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 4150, 493 (approving Class Representative
17 Service Payments in the amount of \$15,000 each from a \$300,000 settlement fund in a wage/hour
18 class action).

19 **VI. THE COURT SHOULD APPOINT PHOENIX AS THE SETTLEMENT**
20 **ADMINISTRATOR**

21 Subject to the Court’s approval, the parties stipulated that Phoenix would serve as the
22 Settlement Administrator. Phoenix is experienced in administering class action settlements and
23 will not exceed \$10,000 to administer this class action Settlement. (Bokhour Decl. ¶ 47.)

24 **VII. TIMELINE AND SCHEDULING A FINAL APPROVAL HEARING**

25 The last step in the approval process is the formal hearing, whereby proponents of the
26 Settlement may explain and describe its terms and conditions and offer argument in support of
27 approval, and Settlement Class Members or their counsel may be heard in support of or in
28 opposition to the Settlement. Subject to the Court’s approval, the Settlement Agreement stipulates

that the Court schedule a hearing for final approval in accordance with the following schedule:

TBD	Preliminary Approval (PA) hearing
<i>(15 days after receiving the data from Defendant, triggered by the entry of PA)</i>	Deadline for Settlement Administrator to complete first mailing of the Class Notice to all Settlement Class Members.
<i>(45 days after mailing Class Notice)</i>	Response Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the Settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval of Settlement and request for an award of attorney's fees, costs, and service payment.
9 court days before Final Approval hearing	Deadline for filing any written opposition to Plaintiffs' Motion for Final Approval of Settlement or any response to an objection to the Settlement.
5 court days before final approval hearing	Deadline for filing any written reply to opposition Motion for Final Approval of Settlement.
TBD	Final Approval Hearing.

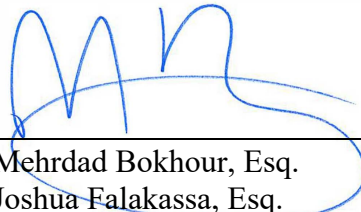
VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Preliminary Approval of Class Action Settlement.

Dated: May 14, 2025,

**BOKHOUR LAW GROUP, P.C.
FALAKASSA LAW, P.C.**

BY:



Mehrdad Bokhour, Esq.
Joshua Falakassa, Esq.
Attorneys for Plaintiffs and the Putative Class



Carlos Garcia <carlos@bokhourlaw.com>

Superior Court of California, County of Orange - Motion Reservation Request - CONFIRMATION

1 message

donotreply@occourts.org <donotreply@occourts.org>
To: carlos@bokhourlaw.com

Wed, May 14, 2025 at 5:35 PM



Reserve a Motion Date

Your reservation request has been CONFIRMED by the Superior Court. The hearing date and time below has been reserved. You will be asked to provide your reservation number to the court at a later date.

MOVING PAPERS MUST BE E-FILED WITHIN 24 HOURS AFTER COMPLETING THE ON-LINE RESERVATION.
Failure to submit your moving papers within 24 hours will result in the automatic CANCELLATION of the reservation.

NOTE: To expedite your motion, please place the appropriate Court Reservation number (e.g. 7XXXXXXX) on each Motion being submitted. If multiple motions are submitted on one document, all reservations numbers must be listed on the face page of the pleading.

Please do not reply to this email.

Reservation Number:	74564660
Hearing Date:	July 25, 2025
Hearing Time:	9:00 AM
Department:	CX101
Motion Type:	Motion for Approval of Class Settlement
Case Number:	30-2022-01289409-CU-OE-CXC
Case Title:	Gates vs. Herbalife Manufacturing LLC
Judicial Officer:	William Claster
Email:	carlos@bokhourlaw.com
Requestor Name:	Carlos Garcia
Requestor Phone:	3109751493
Filing Party:	Brisa Cenicerros

Date of Request: May 14, 2025
Time of Request: 5:35 PM
Transaction Number: 1000549524

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