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Attorneys for Plaintiffs and the Putative Class

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 Cluster

**DECLARATION OF MEHRDAD
BOKHOUR IN SUPPORT OF
PLAINTIFFS ' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

HEARING INFO

Date: July 25, 2025

Time: 9:00 a.m.

Dept.: CX101

Reservation No.: 74564660

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1 from 2017 through 2022, and as a “Super Lawyer” in 2023-2025—a distinction awarded to no more
2 than 2.5% of attorneys practicing in the field..

3 6. Through a contested but productive mediation, Plaintiffs and Defendant Herbalife
4 Manufacutirng LLC (“Defendant”) (collectively, the “Parties”) entered into a Class Action and
5 PAGA Settlement Agreement (“Settlement Agreement” or “Settlement”), resolving the wage and
6 hour claims asserted on behalf of the Settlement Class. A true and correct copy of the Settlement
7 Agreement is attached hereto as **Exhibit “A”**.

8 7. The Settlement Agreement provides for a full and final release of claims asserted in
9 this Action in exchange for Defendant’s agreement to pay a non-reversionary Gross Settlement
10 Amount of \$783,174.27. The Settlement is structured on a non-claims-made basis, meaning that each
11 Settlement Class Member who does not opt out will automatically receive their share of the Net
12 Settlement Amount without the need to submit a claim form or take any affirmative action.

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

18 9. Under the terms of the Settlement Agreement, Defendant will not oppose Class
19 Counsel’s request for a reasonable award of Attorney’s Fees not to exceed one-third of the Gross
20 Settlement 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 Representatives Service Payments to Plaintiffs not to exceed \$10,000 each,
24 as follows:

	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

1	Administrator Costs	\$10,000
2	PAGA payment to LWDA (75% of 20K allocation)	\$15,000
3	PAGA payment to aggrieved workers	\$5,000
4	Plaintiffs' Class Representatives Service Payments	\$30,000
5	Employer Payroll Taxes	\$7,143.04
6	<i>Net Settlement Amount</i>	\$281,824.98

10. 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). 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. 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**. Of course, those with more pay periods worked stand to recover proportionally more.

11. 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, and the opportunity to opt out or object to the Class Settlement. All Settlement Class Members who do not affirmatively opt out will receive a settlement check upon the Court granting final approval.

12. The Settlement is non-reversionary, and Settlement Class Members are not required to submit Claim Forms to receive payment. Each Settlement Class Member will be mailed a Notice Packet containing information about their estimated Individual Settlement Amount, the opportunity to dispute the number of Workweeks credited to them during the Class Period, and instructions on

1 how to submit a Request for Exclusion or an Objection to the Settlement. All Settlement Class
2 Members who do not timely submit a valid Request for Exclusion will automatically receive their
3 Individual Settlement Payment after the Court grants Final Approval. PAGA Members eligible for
4 payments under the PAGA portion of the Settlement may not opt out and will receive their share
5 of the PAGA Amount regardless of participation in the class settlement(attached hereto as **Exhibit**
6 **B**).

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

15 14. On November 1, 2022, Plaintiff commenced this Action by filing a Complaint alleging
16 causes of action against Defendant. On September 14, 2023, Plaintiffs Nely Rios Escobar and Sok
17 Chung filed a separate complaint alleging overlapping causes of action against Defendant. On
18 December 5, 2023, Plaintiffs Nely Rios Escobar and Sok Chung amended their complaint to
19 additionally allege violations of the Private Attorneys General Act ("PAGA") against Defendant. On
20 March 8, 2024, Plaintiffs' separate actions were consolidated. On February 21, 2025, a consolidated
21 Third Amended Complaint was filed in this action by Plaintiffs Brisa Cenicerros, Nely Rios Escobar,
22 and Sok Chung. The consolidated Third Amended Complaint is the operative complaint in the Action.

23 15. Prior to mediation, Plaintiffs obtained from Herbalife—through both formal and
24 informal discovery—the available pay and time records for the putative Class Members, including
25 time and payroll records, applicable Herbalife policies, Plaintiffs' wage statements and records, and
26 class-wide data such as the number of Class Members and total Workweeks during the Class Period.
27 The Parties also conducted the Belaire-West opt-out notice process, engaged in discovery motion
28 practice, and participated in extensive pre-mediation exchanges. This discovery enabled Plaintiffs to

1 thoroughly evaluate their claims and assess Defendant's defenses.

2 16. On July 12, 2023, the Parties participated in an all-day mediation presided over by
3 (Ret.) Hon. Carl J. West, which was unsuccessful. On September 10, 2024, the Parties participated
4 in a second all-day mediation presided over by David Phillips, which led to a mediator's proposal
5 that all Parties accepted on September 18, 2024, to settle the Action.

6 17. Class Counsel is knowledgeable about and has done extensive research with respect
7 to the applicable law and potential defenses to the claims of the Settlement Class Members and
8 Aggrieved Employees.

9 18. Class Counsel has diligently investigated the Class Members' claims against
10 Defendant. Based on the data and information disclosed, and on Class Counsel's own independent
11 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for
12 the consideration and on the terms set forth in this Settlement Agreement are fair, reasonable, and
13 adequate, as well as in the best interest of the Settlement Class Members and Aggrieved Employees
14 in light of all known facts and circumstances, including the risk of significant delay and uncertainty
15 associated with litigation, various defenses asserted by Defendant, and numerous potential appellate
16 issues.

17 19. Based upon detailed data obtained through informal discovery and information
18 exchanges, Plaintiffs' counsel estimated the following big-picture data points through the mediation
19 date: 474 Class Members who worked approximately 62,086 workweeks and 362 Aggrieved
20 Employees who worked a total of 15,584 PAGA Pay Periods.

21 20. First, Plaintiffs argued that the Defendant's allegedly non-neutral rounding
22 practice/policy resulted in a systemic failure to pay for all hours worked, including all minimum and
23 overtime wages due. Based on Plaintiffs' analysis of the sampling of payroll records and data
24 produced, Plaintiffs concluded that the rounding policy resulted in several Class Members being
25 underpaid, for a net average of approximately 3.8 minutes of unpaid time per shift during a limited
26 time frame in 2018 and 2020.

27 21. However, Defendant argued that this claim would require precisely the type of
28 individualized inquiry that is not appropriate for certification because the court would have to conduct

1 an employee-by-employee analysis to determine if the Class Member was correctly paid. Based on
2 this argument, and others, Plaintiffs believed that the Court would deny class certification on
3 Plaintiffs' rounding claim. Additionally, Defendant alleged that, if certification were granted, it
4 would defeat the rounding claim on the merits at summary judgment or at trial because its policies
5 and/or practices were, always, facially neutral in compliance with *See's I* and further, contrary to
6 Plaintiffs' assertion, those policies and practices resulted in the Class Members being over-
7 compensated over the course of the Class Period.

8 22. Second, Plaintiffs alleged that Defendant failed to account for non-discretionary
9 bonuses and other incentive pay when calculating the "regular rate of pay" when paying overtime
10 and sick pay wages. However, Defendant argued inter alia that it correctly excluded discretionary
11 bonuses and other discretionary pay from its "regular rate of pay" calculations and that any
12 underpayment was in good faith, and *de minimis*. Indeed, Defendant's analysis of pay records
13 revealed that any such underpayment of overtime or sick wages as a result of the "regular rate of pay"
14 violations was minimal.

15 23. Due to this, and in light of Defendant's other defenses, Plaintiffs completely
16 discounted this claim, keeping in mind that the true significant value of these unpaid wage claims lies
17 in the derivative claims for waiting time penalties under Labor Code § 203, and wage statement
18 violations under Labor Code § 226, which is discussed below.

19 24. Plaintiffs alleged that Defendant failed to provide code-compliant and timely meal
20 periods during the Class Periods. With respect to Plaintiffs' meal period violation claims, based on
21 the sampling of data, Plaintiffs estimated that Settlement Class Members worked approximately
22 255,00 shifts during the Class Period. Based on its theory of liability, and an alleged 11% violation
23 rate for the meal period claims, as extrapolated from the pre-mediation sampling of Defendants'
24 timekeeping and payroll records, Plaintiffs estimated Defendant's maximum exposure for meal
25 period violations was \$645,150.

26 25. However, Defendant denied that it had any liability as to this claim. It contended inter
27 alia that all meal periods were taken in a compliant manner or properly waived. Defendant also
28 contended that this claim would not be certified due to the lack of any common evidence tying

1 together the reason Settlement Class Members allegedly experienced a meal period violation, if any.

2 26. In light of these defenses and arguments, Plaintiffs discounted Defendant's maximum
3 exposure by 40% for the risk of non-certification and an additional 25% to account for Defendant's
4 defenses on the merits to arrive at an estimated total of \$290,317.

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

11 28. However, Defendant disputed Plaintiffs' allegations and assumptions and asserted
12 that, at all relevant times, it maintained and strictly enforced rest periods as required by law. Further,
13 Defendant contended that any purported deviations from its rest period policy and practices, would
14 necessarily require individualized inquiries to determine which workers, if any, failed to take rest
15 periods, and why. Moreover, Defendant denied any common practice requiring the workers to remain
16 on premises during their rest periods, making this claim not amenable to class treatment. Based on
17 Defendant's arguments, Plaintiffs discounted Defendant's maximum exposure by 70% to account for
18 the risk of non-certification, and an additional 60% to account for Defendant's defenses on the merits
19 to arrive at an estimated exposure of approximately \$229,249.

20 29. With respect to the waiting time penalty claim, based on Defendant's sampling of
21 timekeeping and payroll records, there were 213 Settlement Class Members who separated from
22 Defendant during the relevant statutory period. As such, Plaintiffs estimated the maximum potential
23 and theoretical penalty under Labor Code § 201 – 203 at \$1,175,760 (213 workers x 8.0 hours per
24 day * average rate of \$23 * 30 days). Because this claim was derivative, it was subject to the defenses
25 to the underlying claims as set forth above. Additionally, Defendant argued that it would defeat the
26 waiting time penalty claim because the purported failure to pay wages, if any, was not willful.
27 Therefore, Plaintiffs applied a 50% risk of defeat at the class certification stage, and an additional
28 25% risk of defeat at the summary judgment stage or on the merits, resulting in the risk-adjusted

1 value of \$440,910 for the waiting time penalty claim.

2 30. With regards to Plaintiffs' derivative wage statement violation claim, Plaintiffs
3 estimate the maximum potential penalties were \$685,050 (based on, according to Plaintiffs'
4 estimates, approximately 13,701 allegedly violative wage statements issued during the Class Period).
5 In calculating Defendant's maximum exposure, Plaintiffs gave Defendant the benefit of assuming
6 Plaintiffs could only obtain the "initial" wage statement penalty of \$50 per violation, for a total of
7 \$685,050 in potential wage statement penalties.

8 31. In response to Plaintiffs' derivative wage statement violation claim, Defendant
9 contended that any alleged violations were not "knowing and intentional," and that Plaintiffs could
10 not establish that they or anyone else suffered "injury" as a result of any alleged wage statement
11 violations, therefore precluding the assessment of any wage statement penalties. Further, Defendant
12 argued this derivative claim would fail for the same reasons Plaintiffs' underlying claims would fail,
13 both on the merits and as to class certification. As such, Plaintiffs discounted the calculated maximum
14 exposure by 30% for the risk of non-certification, and by an additional 50% for the risk of being
15 unsuccessful on the merits to arrive at an estimated total of \$239,767.50.

16 32. Plaintiffs also sought PAGA penalties for each violation for which they are available
17 and alleged that these penalties can be "stacked." Assuming that a PAGA penalty is available in the
18 default amount of \$100 per pay period and is not reduced, Plaintiffs estimated that the maximum
19 potential PAGA penalty would be \$1,370,100 per claim for the 13,701 pay periods in the PAGA
20 period.

21 33. However, this maximum figure fails to account for numerous unclear issues relating
22 to PAGA claims. First, it is unclear whether stacking is permissible and/or whether the court would
23 award penalties in such a way (especially for purely derivative penalties). Second, the maximum
24 figure fails to acknowledge that courts have wide latitude to reduce the amount of civil penalties
25 "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an
26 award that is unjust, arbitrary and oppressive, or confiscatory."

27 34. And while the PAGA penalties had a maximum value of \$363,100, this fails to
28 acknowledge that courts have wide latitude to reduce the civil penalties "based on the facts and

circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2). Moreover, Defendant argued against the merits of the underlying claims, particularly that the “willfulness” standard and/or “good faith” defenses mitigated the civil penalty claims and rendered any such penalties uncertain. Defendant also argued that it is improper to stack civil penalty claims on top of the underlying statutory claim. Therefore, Plaintiffs discounted the maximum figure to account for the risk of losing on the merits and applied an additional discount to account for the possibility of this Court reducing penalties to arrive at an allocation of \$20,000.

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

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

36. The reasonableness of the settlement is apparent from the fact that the proposed settlement is 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.

37. 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. The Settlement reached is the product of substantial effort by the Parties and their counsel. Although Plaintiffs and his counsel believe 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 their defenses, the employees

1 may not have received any substantial monetary recovery.

2 38. The Settlement will result in a fair payment to each Settlement Class Member based
3 on the number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiffs and
4 counsel have diligently investigated the claims and defenses on behalf of the Settlement Class
5 Members and worked to achieve a resolution of the claims to maximize the recovery by avoiding
6 further expenditure of Attorneys' Fees and Costs. After evaluating the significant risks attendant with
7 further litigation described above and weighing them against the benefits of a known compromise
8 and settlement as set forth in the Settlement Agreement, settlement on the terms agreed to is believed
9 to be in the best interest of Plaintiffs and the Settlement Class, and is a fair and reasonable resolution
10 of the claims alleged.

11 39. Plaintiffs' counsel brought to bear a great deal of collective experience in negotiating
12 the settlement of this case. As detailed herein, Plaintiffs's counsel engaged in necessary informal
13 discovery, investigation, sampling, and expert evaluation, making it possible to exercise informed
14 judgment throughout the settlement process, including significant document review (e.g., documents
15 pertaining to Defendant's policies and procedures, personnel documents, wage statements, time
16 records, among others) and conducted an extensive analysis and extrapolation of the sampling of
17 class-wide data provided by Defendant.

18 40. Based on our experience in other cases, including wage and hour matters, I believe
19 our office, along with Falakassa Law and Aegis Law Firm, are qualified to evaluate the class claims
20 and viability of defenses in this class action. In this case, the recovery for each Settlement Class
21 Member is reasonable, fair, and adequate, and a settlement at this time is in the best interest of the
22 Settlement Class. The Settlement provides each Settlement Class Member with compensation for the
23 alleged violations when viewed in relation to the costs and risks inherent in obtaining class
24 certification and proceeding to trial.

25 41. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
26 conditions of the Settlement as set forth in the abovementioned Settlement Agreement.

27 42. Of course, the Settlement Amount represents a compromise figure, taking into account
28 the various risks surrounding class certification and the merits of Defendant's asserted defenses.

1 Nevertheless, the Settlement provides fair and adequate payments to the Settlement Class Members,
2 with no reversion to Defendant.

3 43. Plaintiffs seeks a Service Award of \$10,000 each, which we believe is fair and
4 warranted. Plaintiffs agreed to come forward in an effort to effectuate a policy and practice change
5 that benefitted all other Settlement Class Members and to recover unpaid wages and penalties.
6 Plaintiffs assumed significant risk in bringing this litigation, namely, had they lost, they could have
7 been ordered to pay Defendant's costs.

8 44. Plaintiffs provided invaluable assistance to the investigation and prosecution of this
9 case, including: providing factual background for the Class Complaint; reviewing the litigation
10 documents; providing information and documentation about Defendant's policies and practices;
11 participating in phone calls to discuss litigation and settlement strategy; participating in the mediation
12 process, and reviewing the settlement documents. Plaintiffs agreed to participate in this case with no
13 guarantee of personal benefit. Plaintiffs' comprehensive declaration setting forth all of the reasons
14 why he believes that the Service Award should be approved has been filed herewith.

15 45. When this case was taken on a contingency fee basis, with our firm agreeing to assume
16 responsibility for all litigation costs, the ultimate result was far from certain. In the course of this
17 litigation, we paid all costs, including the filing fees, court costs, research/database fees, mediation
18 costs, and expert costs. There was never a guarantee that our firms would recoup these expenditures.

19 46. It is our experience that attorneys' fee awards of one-third of a common fund
20 settlement are the standard in California. In this case, Plaintiffs's counsel agreed to seek one-third of
21 the Settlement Amount for Attorneys' Fees. Defendant does not oppose this fee request. The fee is
22 further warranted because it is within the range of reasonableness typically awarded in class actions.
23 Our firm's Costs will not exceed \$40,000 and will be based on the actual amount incurred at the time
24 of final approval.

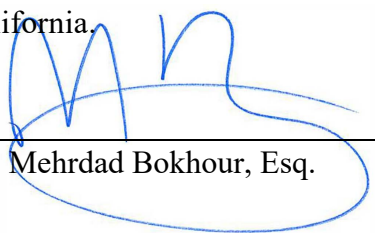
25 47. Subject to the Court's approval, the parties stipulated Phoenix Settlement
26 Administrator to serve as the Settlement Administrator. Phoenix is experienced in administering class
27 action settlements and will not exceed \$10,000 to administer this class action Settlement.

28 48. Plaintiffs have concurrently submitted the Settlement to the LWDA in accordance

1 with Labor Code Section 2699(1)(2). The proof of submission is attached hereto as **Exhibit “C.”**

2 49. For the foregoing reasons, it is respectfully requested that the Court grant preliminary
3 approval of the Settlement as being fair, reasonable, and in the best interests of the Settlement Class,
4 as well as preliminarily approve the requested Attorneys’ Fees and Costs, and Service Award to the
5 Class Representative.

6 I declare under penalty of perjury under the laws of California that the foregoing is true and
7 correct on this 14th day of May 2025, in Los Angeles, California.

8
9 By: 
Mehrdad Bokhour, Esq.