

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV18-07480 JAK (MRWx)

Date April 6, 2023

Title Michael Lavigne, et al. v. Herbalife LTD, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

T. Jackson

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) ORDER RE PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (DKT. 384)

I. Introduction

On September 18, 2017, this putative class action was filed in the Southern District of Florida. Dkt. 1. The original named plaintiffs are eight individuals who were distributors, or spouses of distributors, of Herbalife, a multi-level marketing business. *Id.* ¶¶ 2, 147-202. The following Defendants were named: Herbalife, Ltd.; Herbalife International, Inc.; Herbalife International of America, Inc. (collectively, the “Herbalife Defendants”); and 44 high-ranking Herbalife distributors (the “Individual Defendants”). *Id.* ¶¶ 203-327.

On December 14, 2017, Herbalife and the Individual Defendants moved to compel arbitration of Plaintiffs’ claims or, in the alternative, to transfer the claims to the Central District of California. Dkts. 62-63 On August 23, 2018, the motions were granted in part as to the claims against the Herbalife Defendants, and arbitration was compelled as to the claims of four of the plaintiffs. Dkt. 106. The claims of the other four plaintiffs – Jeff Rodgers, Patricia Rodgers, Jennifer Ribalta and Izaar Valdez (“Plaintiffs”) – were transferred to this District, pursuant to the choice-of-law provision in the applicable Herbalife distributor agreements. *Id.* The claims against the Individual Defendants were severed and remained in the Southern District of Florida. Dkt. 106 at 2.

The Individual Defendants appealed the order regarding arbitration, and the Eleventh Circuit affirmed. *Lavigne v. Herbalife, Ltd.*, 967 F.3d 1110, 1121 (11th Cir. 2020). Parallel litigation proceeded in Florida after that decision. That litigation has been stayed pending final approval of this settlement agreement, “with the intention of dismissing the Florida Action should this Court finally approve the parties’ proposed class Settlement.” Dkt. 384 at 14.

On September 28, 2018, the Herbalife Defendants moved to dismiss each of Plaintiffs’ claims. Dkt. 142. On October 22, 2019, the Motion to Dismiss was granted without prejudice. Dkt. 196.

On November 11, 2019, Plaintiffs filed a First Amended Complaint (“FAC”), which is the operative one. Dkt. 202. The FAC only advances claims against Herbalife International of America, Inc. (“Defendant” or “Herbalife”). *Id.*

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The FAC advances four causes of action:

- i. Conducting the Affairs of a Racketeering Enterprise – RICO 18 U.S.C. § 1962(C);
- ii. Conspiracy to Conduct the Affairs of a Racketeering Enterprise – 18 U.S.C. § 1962(D);
- iii. Violation of California’s Unfair Competition Law – Cal. Bus. & Prof. Code §§ 17200 *et seq.*; and
- iv. Negligent Misrepresentation. *Id.*

The claims arise from alleged misrepresentations made by Herbalife to its distributors regarding the financial benefits to them that would result from attending its “Circle of Success” events. *Id.* ¶¶ 1-11.

On November 26, 2019, Herbalife filed a Motion to Dismiss Amended Complaint. Dkt. 208. Plaintiffs opposed the motion on December 23, 2019 (Dkt. 219) and Herbalife replied on January 6, 2020 (Dkt. 222). On November 25, 2019, Plaintiffs filed a Motion for Class Certification. Dkt. 207. Herbalife opposed the Motion for Class Certification on December 20, 2019 ((Dkt. 218) and Plaintiffs replied on January 13, 2020 (Dkt. 234). A hearing on the Motion to Dismiss Amended Complaint and the Motion for Class Certification was held on February 24, 2020, and the matters were then taken under submission. Dkt. 261. On April 7, 2021, Herbalife withdrew the Motion to Dismiss Amended Complaint. Dkt. 350.

On February 15, 2021, Herbalife filed a Motion for Summary Judgment. Dkt. 322. Plaintiffs opposed the motion on March 8, 2021, and Herbalife replied on March 22, 2021. The hearing on that motion was continued several times as the parties worked toward settlement. That motion has not been heard.

On May 27, 2022, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement (the “Motion”). Dkt. 384.

Through the Motion, Plaintiffs seek the following: conditional class certification; preliminary approval of the Settlement Agreement; appointment of Plaintiffs as class representatives; appointment of Plaintiffs’ counsel as class counsel; approval of the proposed notice; appointment of A.B. Data as Claims Administrator; stay of all non-settlement related proceedings in this action pending a determination on the motion for final approval of the Settlement Agreement; and scheduling a hearing on that motion.

On October 21, 2022, Plaintiffs filed a Motion for Class Counsel’s Attorney Fees, Reimbursement of Expenses and Service Awards (“Motion for Attorney’s Fees”). Dkt. 392.

On October 24, 2022, a hearing on the Motion was held, and the Motion was taken under submission. Dkt. 393.

For the reasons stated in this Order, the Motion is **GRANTED**.

II. Background

A. The Parties

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The FAC alleges that Herbalife is a multi-level marketing operation. Dkt. 202 ¶ 4. Herbalife and “approximately 100 leadership level members of its President’s Team” (the “Featured Speakers”) allegedly produce and then sell access to Herbalife-related events, which are marketed as the “Circle of Success.” Dkt. 202 ¶¶ 1-6, ¶ 212. Plaintiffs are individuals who allegedly attended Herbalife events. *Id.* ¶¶ 163-193. They seek to represent a putative class of those who attended such events, but did not achieve any, corresponding financial success. *Id.* ¶ 8, 161.

Patricia and Jeff Rodgers allegedly attended “almost every” Circle of Success event between 2011 and 2015 and spent more than \$100,000 on Herbalife matters, including “at least \$20,000 . . . directly from their participation in the Circle of Success event cycle.” *Id.* ¶¶ 172-174. Izaar Valdez allegedly spent more than \$3500 on Circle of Success events in 2014, and more than \$10,000 purchasing products for “qualification.” *Id.* ¶ 181. Jennifer Ribalta was allegedly selected to become a member of the “event ‘Production Team.’” *Id.* ¶ 186. This position required that she pay to attend events at which she also worked. *Id.* Ribalta allegedly spent more than \$10,000 attending Herbalife events. *Id.* ¶ 193.

B. Other Allegations in the FAC

The FAC alleges that at Herbalife’s events, Herbalife distributors, and others who are recruited to attend, are continually told, “If you go to all the events, you qualify for everything -- you will get rich.” *Id.* ¶ 7. The FAC alleges that Circle of Success events are presented on a yearly cycle, and include three large-scale events for which each attendee is required to pay up to \$120. *Id.* ¶ 61. The large-scale events allegedly include “Leadership Development Weekends” (“LDW”) and “Extravaganzas,” produced and ticketed by Herbalife, as well as “January Spectaculars,” sponsored and ticketed by Herbalife prior to 2014. *Id.* ¶¶ 82-96.

During each year, Herbalife allegedly presented eight local Success Training Seminars (“STS”), for which the cost of admission is up to \$50 per person. *Id.* ¶ 63, 67. The STS and post-2014 January Spectaculars are allegedly ticketed by a “shifting list of top distributor-related entities and individuals.” *Id.* ¶¶ 76-77, 88. Herbalife allegedly collaborates on event production, and reviews in advance the materials that will be presented to attendees. *Id.* ¶¶ 156, 159. The FAC alleges that Herbalife and the Featured Speakers profit from the proceeds of the sale of event tickets. *Id.* ¶ 157-158. It alleges that Herbalife compensates certain high-ranking Featured Speakers for their appearances at events. *Id.* ¶ 157.

The FAC alleges that Herbalife promotes the Circle of Success, and distributes training materials regarding event production by mail and wire. *Id.* ¶¶ 79, 97-114. STS promotional materials allegedly include testimonials by purportedly successful Herbalife distributors. *Id.* ¶¶ 115-117. The FAC alleges that similar testimonials are also presented at the central feature of Circle of Success events. *Id.* ¶ 53. At each event, attendees are allegedly told that the key to success is to continue to attend every future event; this will result in an annual cost of more than \$600. *Id.* ¶¶ 124-139. It is also alleged that attendees are encouraged to buy non-refundable tickets for future events. *Id.* ¶ 81.

The FAC alleges that Herbalife publishes “speaker guidelines” that require those who do so at all Herbalife events to include income disclaimers “as required,” and substantiate earnings claims “that cannot easily be obtained from BizWorks,” including claims such as “I make more money now than I did as a mechanic.” *Id.* ¶ 64-65; see Ex. 5, Dkt. 202-6 at 2-3 (requiring speakers to submit PowerPoint

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presentations or “talking points” for Herbalife’s review prior to presenting the content at an event). It is alleged that Herbalife has not enforced these guidelines. *Id.* ¶¶ 66.

The FAC alleges that the “Herbalife business opportunity” includes selling Herbalife products and recruiting new participants. *Id.* ¶¶ 21, 23. It is alleged that, through the Herbalife business opportunity as well as the event system, Herbalife distributors can rise through a sequence of compensation levels based on the dollar amount of their purchases of Herbalife products and their success in recruiting new distributors. *Id.* ¶¶ 140-143. “Qualification” for new levels allegedly entitles distributors to benefits. *Id.* However, “qualification” also allegedly refers to purchases made specifically to attain recognition within the Circle of Success. *Id.* ¶¶ 144-155. Distributors are allegedly encouraged to “qualify for everything,” with many of the rewards for qualification tied to event participation. *Id.* ¶¶ 151-155. Based on this system, it is alleged that Distributors are “locked in a cycle of mandatory monthly purchases” in order to benefit from the perks of qualification. *Id.* ¶ 158.

III. Summary of Settlement Agreement and Notice

A. Class Definition

The Settlement Agreement defines the “Settlement Class” as “all U.S. Herbalife distributors who purchased tickets to at least two Herbalife Events during the Class Period,” but excludes “past and present members of Herbalife’s Chairman’s Club and Founder’s Circle) to the extent those individuals were members of Herbalife’s President’s Team or above throughout the Class Period, including their spouses, heirs, predecessors, successors, representatives, alter egos, or assigns. Also excluded are any U.S. Herbalife distributors who have previously executed a release of the claims that are the subject matter of this litigation.” Dkt. 383 at ¶ 1.16, 1.16.1.

The “Class Period” is defined as “beginning January 1, 2009, through and including the date the Preliminary Approval Order is entered.” *Id.* ¶ 1.5.

B. Payment to Putative Class Members

1. Gross Settlement Amount

The Settlement Agreement provides for the establishment of a non-reversionary “Settlement Fund” in the amount of \$12,500,000 (“Gross Settlement Amount”).

2. Deductions from the Gross Settlement Amount

a) Overview

The parties propose to allocate the Settlement Fund as follows: to pay the costs of notice and settlement administration; to pay attorney’s fees and expenses and any incentive awards; and “to pay Settlement Class Members who submit a valid claim for a cash award.” Dkt. 383 ¶ 4.1. The third category is the “Net Settlement Amount.” The parties have not provided specific monetary amounts for the three categories, although they have requested an attorney’s fees award in the amount of \$4,166,666 and a total incentive award in the amount of \$78,000, with \$30,000 each to be allocated to

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Rodgers and Ribalta, and \$18,000 to Valdez. Dkt. 392 at 9. The following table summarizes the proposed allocations of the Gross Settlement Amount.

Description of Amount	Amount	Percent
Gross Settlement Amount	\$12,500,000	100%
Enhancement Awards to Class Representatives	\$78,000	0.6%
Attorney's Fees Award	\$4,166,667	33.3%
Litigation Costs and Expenses	\$337,926	2.7%
Third Party Administrator Costs ¹	\$417,000	3.3%
Net Settlement Fund	\$7,500,407	60%

b) Class Representatives' Incentive Awards

The Settlement Agreement provides that, "[t]he Court may award reasonable incentive compensation to the Named Plaintiffs for their service in the case, which shall come from the Settlement Fund." Dkt. 383 ¶ 10.3. As noted, the Motion for Attorney's Fees requests and a total incentive award of \$78,000, with \$30,000 allocated to each of Rodgers and Ribalta, and \$18,000 allocated to Valdez. Dkt. 392 at 9.

c) Settlement Administration Costs

The Settlement Agreement provides that the Claims Administrator will be A.B. Data. Dkt. 383 ¶ 1.3. It does not specify the amount to be allocated to settlement administration costs.

d) Attorney's Fees

The Settlement Agreement does not address a specific amount of attorney's fees. It provides that "Plaintiffs' Counsel may apply to the Court at the Settlement Hearing for an award of attorneys' fees and reimbursement of their expenses and costs from the Settlement Fund in an amount to be determined by the Court as a percentage of the entire value of settlement . . ." Dkt. 383 ¶ 10.1. It states that "Plaintiffs' Counsel will file a separate motion with the Court requesting an award of attorney fees, costs to be reimbursed, and any enhancements from the Settlement Fund in an amount consistent with Ninth Circuit precedent." *Id.* The Agreement further provides that "[a]ny orders or proceedings relating to the application of Plaintiffs' Counsel for an award of attorneys' fees, costs, and expenses shall not operate to terminate or cancel this Settlement Agreement." *Id.* ¶ 10.4.

The Motion for Attorney's Fees requests a fee award of \$4,166,666. Dkt. 392 at 2. It also requests an additional payment of \$337,926.03 for litigation costs. *Id.* The Proposed Notice states that Class Counsel's attorney's fee request will not exceed 33 1/3% of the Gross Settlement Amount, or \$4,166,667. Dkt. 383-1 at 10.

3. Calculation of Individual Settlement Payments

¹ At the hearing on the Motion, Plaintiff's Counsel represented that the estimated cost of settlement administration is \$417,000.

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The Net Settlement Amount will be distributed among members of the Settlement Class (“Settlement Class Members”) based on the number of Herbalife event tickets each purchased. First, “[e]ach Settlement Class Member shall be informed by the Claims Administrator as to the Herbalife Corporate Events for which that Settlement Class Member purchased tickets according to Herbalife’s records.” Dkt. 383 ¶ 4.2.1. Then, Settlement Class Members may “claim additional Herbalife Events for which the Settlement Class Member purchased tickets” if the Member certifies to certain information about the event. *Id.* ¶ 4.2.2.

After amounts from the Gross Settlement Fund have been allocated to settlement administration costs, attorney’s fees and incentive awards, the Claims Administrator is to calculate the remaining Net Settlement Amount. *Id.* ¶ 4.2.3. The Net Settlement Amount will be divided by the total number of Herbalife Event tickets purchased by Authorized Claimants² (the “Per Event Award”). *Id.* Each Authorized Claimant will then be entitled to receive a Per Event Award based on each event for which they purchased a ticket. *Id.* ¶ 4.2.4. Payments made to each Claimant are subject to a payment ceiling of 150% of the total amount that Claimant spent on tickets. *Id.*

The Settlement Agreement provides that the “total amount of payments allocated to Authorized Claimants may not exceed the amount of the Net Settlement Fund.” *Id.* ¶ 4.2.5. If the total amount of payments allocated to Authorized Claimants exceeds the amount of the Net Settlement Fund, the amount of the Per Event Award will be reduced according to a graduated scale. *Id.* A Claimant’s Per Event Award will be reduced according to the number of events for which the Claimant purchased tickets. The amount each receives will be as calculated by applying the following scale:

- (a) 2 to 5 Herbalife Events: Per Event Award.
- (b) 6 to 10 Herbalife Events: 75 percent of Per Event Award for the tickets purchased for this subset of events.
- (c) 11 to 15 Herbalife Events: 50 percent of Per Event Award for the tickets purchased for this subset of events.
- (d) 16-plus Herbalife Events: 25 percent of Per Event Award for the tickets purchased for this subset of events.

Id.

The Agreement further provides that if the total amount of payments allocated to Claimants exceeds the amount of the Net Settlement Fund under the above scale, “cash awards shall be paid to Authorized Claimants on a pro rata basis.” *Id.* ¶ 4.2.6.

4. Non-Monetary Relief

The Settlement Agreement provides that Herbalife will adopt changes to its corporate policies that will continue for no less than three years from the issuance of the order of final approval or “such earlier date as Herbalife shall elect to implement them.” *Id.* ¶ 5.1.1. The corporate changes are as follows:

² The Settlement Agreement defines “Authorized Claimant” as “a Settlement Class Member who submits a timely and valid Claim Form to the Claims Administrator or is otherwise authorized to receive benefits under this Settlement Agreement.” *Id.* ¶ 1.2.

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5.1.2 Herbalife shall amend its U.S. Rules of Conduct and Distributor Policies to indicate that U.S. event attendance is not mandatory and does not guarantee financial success.

5.1.3 Herbalife shall amend its U.S. Rules of Conduct and Distributor Policies to indicate that representations made by distributors that U.S. event attendance is mandatory or that it guarantees financial success are prohibited.

5.1.4 U.S. Herbalife Corporate Event flyers, and the portion of Herbalife’s website promoting U.S. STS events, shall include a disclaimer that U.S. event attendance is not mandatory and does not guarantee financial success.

5.1.5 Herbalife shall amend its U.S. Rules of Conduct and Distributor Policies to provide that ticket purchases for U.S. Herbalife Corporate Events shall be refundable via the company’s existing buyback procedure pursuant to its Gold Standard Guarantee.

(a) Additionally, Herbalife shall also allow distributors to cancel their U.S. Herbalife Corporate Event ticket purchases within 24 hours of purchase.

5.1.6 Herbalife distributors shall be precluded from purchasing more than two tickets per distributorship for any given U.S. Herbalife Corporate Event.

Id. ¶¶ 5.1.2-5.1.6.

C. Notice and Payment Plan

1. In General

The Settlement Agreement does not describe in detail the general process for notifying Class Members of the Settlement. However, in support of the Motion and in the Declaration by Eric Miller, Senior Vice President at A.B. Data (“Miller Declaration”), the process is described. Dkt. 384; Dkt. 384-2.

In support of the Motion, it is stated that, as part of the Settlement, Herbalife has agreed to provide contact information “for all individuals who were Herbalife distributors during the Class Period, or about 2.7 million individuals.” Dkt. 384 at 39. It is then stated that the putative class is a much smaller subset of these groups, which includes approximately 80,000 distributors. *Id.* at 39-40. Using this contact information, the “Claims Administrator will send an email to each and every person who was a U.S. Herbalife distributor (excluding those distributors who are not part of the Settlement Class) during the Class Period.” *Id.* at 40.

The email “will include a link to the Settlement Website where Settlement Class Members can be and download the Long Form, Claim Form, and other relevant documents.” *Id.* For any emails that bounce back, or for any distributors for whom there is no known email address, the Claims Administrator will mail a paper copy “via First-Class Mail to the last known address of the applicable individual.” *Id.* The Claims Administrator will also conduct a search through the United States Postal Service National Change of Address database. Dkt. 384-2 ¶ 9. The Claims Administrator will also create a website and a

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toll-free telephone number that can be used to provide information about the Settlement. *Id.* ¶¶ 12-13. The notice program is “designed to deliver a calculated reach of at least 70%.” *Id.* ¶ 18.

A copy of the Proposed Notice is attached to the Settlement Agreement as “Exhibit A.” The Proposed Notice provides general information about the class action and summarizes the terms of the Settlement Agreement. Dkt. 383-1 at 2-14. It describes how the share of the Net Settlement Amount for each Class Member will be calculated, and explains that Class Members must submit a Claim Form to receive a payment. *Id.* at 6-7. It explains that “[b]ecause the amount of each payment depends on the number of approved claims, nobody can know in advance how much their ultimate payment will be.” *Id.* at 7. The Notice also provides each Class Member with information on how to complete a Claim Form online or how to request a paper from the Claims Administrator by email, telephone or mail. *Id.*

The Notice also states that Class Counsel “will seek an award of attorneys’ fees out of the Settlement Fund, as well as reimbursement for litigation costs they advanced in pursuing the claims.” *Id.* at 10. It further states that Class Counsel “will also ask the Court to approve service award payments not to exceed thirty thousand dollars (\$30,000) to each of the individual Class Representatives” *Id.*

2. Opt-Outs and Objections

The Agreement provides that Settlement Class Members may object to the Settlement within 120 days after entry of a preliminary approval order. Dkt. 383 ¶ 6.1.12. Objectors must file a written objection with the Court. *Id.*

Settlement Class Members who wish to opt out must send a request to the Claims Administrator by mail or email “before the date specified in the Preliminary Order.” *Id.* ¶ 9.1. The moving parties propose that this deadline be 120 days after the entry of a preliminary approval order. Any request for exclusion must state:

- (1) the name, address, and telephone number of the Person requesting exclusion,
- (2) the statement “I wish to exclude myself from the Settlement Class and do not wish to participate in the Settlement in *Lavigne, et al. v. Herbalife*, No. 2:18-cv-07480-JAK (MRWx)” or substantially similar words to this effect that are clear and unambiguous, and
- (3) signed by the individual personally and not by a lawyer or someone acting on that person’s behalf.

Id.

D. Release of Claims

The Settlement Agreement provides for a release of claims against Defendants and related parties by Class Members upon the Effective Date. *Id.* ¶ 8.1. The Release states:

As of the Effective Date and in consideration of this Settlement Agreement and the benefits extended to the Settlement Class, Herbalife Nutrition Ltd., Herbalife International, Inc., and Herbalife International of America, Inc., and each of their present and former, direct and indirect, subsidiaries, parents, affiliates, unincorporated entities, divisions, groups, officers, directors,

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shareholders, partners, partnerships, joint ventures, employees, agents, servants, assignees, successors, insurers, indemnitees, attorneys, transferees, and/or representatives, as well as any non-Settlement Class Members who spoke at, presented at, planned, or promoted any Herbalife Event or sold tickets to any Herbalife Event during the Class Period (collectively, the “Released Parties”) shall be released and forever discharged by (i) the Named Plaintiffs, for themselves and as the representatives of each Settlement Class Member; (ii) each Settlement Class Member on behalf of himself or herself or itself; and (iii) their respective present and former, direct and indirect, subsidiaries, parents, affiliates, unincorporated entities, divisions, groups, officers, directors, shareholders, partners, partnerships, joint ventures, employees, agents, servants, assignees, successors, insurers, indemnitees, attorneys, transferees, spouses, and/or representatives (collectively, the “Releasing Parties”) from all claims, demands, rights, liabilities, suits, or causes of action, known or unknown, that were or could have been asserted in the Action that are based upon, arise out of, or relate to Herbalife Events, whether organized by Herbalife or independent distributors (“Released Claims”).

Id.

The Release further provides:

The Released Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Settlement Class Members do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement. With respect to the Released Claims only, the Settlement Class Members stipulate and agree that, upon the Effective Date, the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Id. ¶ 8.2.

IV. Analysis

A. Class Certification

1. Legal Standards

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The first step in considering whether preliminary approval of the Settlement Agreement should be granted is to determine whether a class can be certified. “[T]he Ninth Circuit has taught that a district court should not avoid its responsibility to conduct a rigorous analysis because certification is conditional: Conditional certification is not a means whereby the District Court can avoid deciding whether, at that time, the requirements of the Rule have been substantially met.” *Arabian v. Sony Elecs., Inc.*, No. 05-CV-1741 WQH (NLS), 2007 WL 627977, at *2 n.3 (S.D. Cal. Feb. 22, 2007) (quoting *In re Hotel Tel. Charges*, 500 F.2d 86, 90 (9th Cir. 1974)). “When, as here, the parties have entered into a settlement agreement before the district court certifies the class, reviewing courts ‘must pay “undiluted, even heightened, attention” to class certification requirements.’” *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir. 2003) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)).

That the parties have reached a settlement “is relevant to a class certification.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 619 (1997). Consequently, when

[c]onfronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems for the proposal is that there be no trial. But other specifications of the Rule—those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Id. at 620 (internal citations omitted). “In the context of a request for settlement-only class certification, the protection of absentee class members takes on heightened importance.” *Gallego v. Northland Grp. Inc.*, 814 F.3d 123, 129 (2d Cir. 2016) (citing *Amchem Prods.*, 521 U.S. at 620).

The first step for assessing potential class certification is to determine whether the proposed class meets each of the requirements of Fed. R. Civ. P. 23(a). *Dukes*, 564 U.S. at 350–51; *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). These are: (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. Fed. R. Civ. P. 23(a)(1)–(4). Further, “Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.” *Dukes*, 564 U.S. at 350. If these four prerequisites are met, the proposed class must meet one of the requirements of Fed. R. Civ. P. 23(b). *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Plaintiffs rely on Rule 23(b)(3). See Dkt. 65-2 at 23–25. It provides, in relevant part, that a class proceeding “may be maintained” if “questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

1. Application
 - a) Fed. R. Civ. P. 23(a) Requirements

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(1) Numerosity

Rule 23(a)(1) requires that a class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “[I]mpracticability’ does not mean ‘impossibility,’ but only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (quoting *Advert. Specialty Nat’l Ass’n v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956)). Although there is no specific numeric requirement, courts generally have found that a class of at least 40 members is sufficient. See *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010); *In re Cooper Cos. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

Plaintiffs state that, through discovery, “Herbalife has agreed to produce a detailed list of all Herbalife Event ticket purchases made by Settlement Class Members within its records.” Dkt. 384 at 21; Dkt. 384-2, Miller Decl. ¶ 7. Herbalife has “advised that its records show just over 80,000 distributors purchased tickets to at least two Herbalife Corporate Events during the Class Period.” Miller Decl. ¶ 7. This is sufficient to satisfy the numerosity requirement.

(2) Commonality

Rule 23(a)(2) provides that a class may be certified only if “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality requires a showing that the “class members ‘have suffered the same injury,’” *Dukes*, 564 U.S. at 349–50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)), and “does not mean merely that they have all suffered a violation of the same provision of law.” *Id.* at 350. The class claims must “depend on a common contention” that is “of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.*

“Rule 23(a)(2) has been construed permissively. All questions of fact and law need not be common to satisfy the rule.” *Hanlon*, 150 F.3d at 1019. In assessing commonality, “even a single common question will do.” *Dukes*, 564 U.S. at 359 (internal quotation marks omitted). In general, the commonality element is satisfied where the action challenges “a system-wide practice or policy that affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499 (2005).

Plaintiffs’ claims present several common questions of law and fact. They include whether “Herbalife misrepresented that [its] events guarantee success,” whether it “misrepresented that event attendance was required,” and whether it “misrepresented that event attendance was correlated with financial success.” Dkt. 384 at 22.

Plaintiffs allegedly attended various Herbalife events, that occurred in various locations across the country, over a period spanning more than a decade. Dkt. 202 ¶ 4; Dkt. 383 at ¶ 1.5. Such allegations suggest that all Settlement Class Members may not have had precisely the same experience at Herbalife events. Nonetheless, Plaintiffs allege an “intricately coordinated pattern of manipulation” wherein Herbalife’s event speakers repeated the same false mantra “thousands of times over the past decade.” Dkt. 202 ¶¶ 6-7. The FAC also alleges that “Featured Speakers constantly reiterate the central importance of attending Circle of Success events and of getting guests and prospects to do the same,” and they allege that “[a]t every event, Herbalife promotes the importance of attending the next

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event in a preset agenda item called either ‘Next Steps’ or ‘Last Five Minutes.’” *Id.* ¶¶ 56, 58. Thus, the FAC alleges a pattern of similar misrepresentations by Herbalife. It also alleges that Herbalife engaged in a common scheme to manipulate and deceive distributors. *Id.* ¶¶ 2-3.

Commonality has been found when similar misrepresentations were allegedly made to all class members:

The overwhelming weight of authority holds that repeated misrepresentations of the sort alleged here satisfy the “common question” requirement. Confronted with a class of purchasers allegedly defrauded over a period of time by similar misrepresentations, courts have taken the common sense approach that the class is united by a common interest in determining whether a defendant's course of conduct is in its broad outlines actionable, which is not defeated by slight differences in class members' positions, and that the issue may profitably be tried in one suit.

Blackie v. Barrack, 524 F.2d 891, 902 (9th Cir. 1975); see also *Zakaria v. Gerber Prod. Co.*, No. LA CV15-00200 JAK (EX), 2016 WL 6662723, at *5 (C.D. Cal. Mar. 23, 2016).

Although Plaintiffs have not presented evidence of the use of standardized scripts and sales presentations, which are viewed favorably by courts when assessing commonality and predominance in cases involving similar misrepresentations, identical misrepresentations are not required. *McPhail v. First Command Fin. Plan., Inc.*, 247 F.R.D. 598, 609 (S.D. Cal. 2007). Further, attached to the FAC is evidence of standard “Speaker Guidelines” that are to be “use[d] at all Herbalife [e]vents.” Dkt. 202-6, Ex. 5 at 2. As noted, every Settlement Class Member attended at least two Herbalife events. Questions whether Herbalife’s alleged repeated statements were misrepresentations may be resolved on a classwide basis.

For these reasons, the commonality requirement is satisfied.

(3) Typicality

The next issue is whether the “representative claims are ‘typical,’” *i.e.*, “if they are reasonably co-extensive with those of absent class members.” *Hanlon*, 150 F.3d at 1020. Representative claims “need not be substantially identical.” *Id.* The test for typicality is whether “other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon*, 976 F.2d at 508 (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). Like commonality, typicality is construed permissively. *Hanlon*, 150 F. 3d at 1020. The commonality and typicality requirements of Rule 23(a) tend to merge. *Dukes*, 564 U.S. at 349 n.5.

Plaintiffs’ claims are typical of those of the Settlement Class because Plaintiffs and all other Settlement Class Members “purchased tickets to a finite universe of Herbalife Events,” and their claims are based on the same alleged pattern of consistent misrepresentations at each event. Dkt. 384 at 22, 23. Although Plaintiffs may have attended a different number of events than other Settlement Class Members, and may not have spent the same amount for those events as others, all have suffered the same alleged injury, *i.e.*, being fraudulently induced to purchase the tickets.

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In the Opposition to Plaintiffs' Motion for Class Certification, which was filed before the Settlement Agreement was entered, Herbalife raised a challenge to typicality. Dkt. 218 at 30. It argued that Plaintiffs did not sign arbitration agreements with Herbalife, but many putative class members did so. *Id.* Plaintiffs contend that Herbalife's records show that approximately 37,000 distributors purchased their first tickets before Herbalife added the arbitration provision. Dkt. 234 at 8.

The Ninth Circuit has held that it was an abuse for a district court to certify a class where the named plaintiff had signed an arbitration agreement that did not include a class action waiver, but other class members had signed agreements with such waivers. *Avilez v. Pinkerton Gov't Servs., Inc.*, 596 F. App'x 579, 579 (9th Cir. 2015). *Avilez* stated that the class members who had signed such waivers would have potential defenses that the named plaintiff could not make on their behalf. *Id.* The facts here are different. In *Avilez*, all class members had apparently signed arbitration agreements; the difference was whether they included class action waivers. *Id.* Further, there is less of a risk given the entry of the Settlement Agreement.

Nitsch found that typicality was satisfied where some class members were bound by arbitration agreements, but the named plaintiff was not, because "defenses that may bar recovery for some members of the putative class, but that are not applicable to the class representative do not render a class representative atypical under Rule 23." *Nitsch v. Dreamworks Animation SKG Inc.*, 315 F.R.D. 270, 284 (N.D. Cal. 2016) (Koh, J.) (quoting *Barnes v. AT & T Pension Benefit Plan–Nonbargained Program*, 270 F.R.D. 488, 494 (N.D. Cal. 2010), *modified by* 273 F.R.D. 562 (N. D. Cal. 2011)). This reasoning is persuasive. That some class members in this action are bound by arbitration agreements that include class action waivers does not create a per se risk as to a failure to raise defenses. Further, the plaintiffs would have an incentive to challenge the enforceability of the class action waivers.

Defendants also cited *Tan v. Grubhub* in their Opposition to the Motion for Class Certification, which concluded that a named plaintiff's failure to have signed an arbitration agreement precluded a finding of typicality. *Tan v. Grubhub, Inc.*, No. 15-CV-05128-JSC, 2016 WL 4721439 (N.D. Cal. July 19, 2016), *aff'd sub nom. Lawson v. Grubhub, Inc.*, 13 F.4th 908 (9th Cir. 2021). However, in that case, the named plaintiff was one of only two GrubHub drivers in California to opt out of the class action waiver provisions, that placed him in a unique position. *Id.* at *2-3. Similarly, in *Quinlan Macy's Corp. Servs., Inc.*, the court found a lack of typicality in part because the named plaintiff was not subject to an arbitration agreement, but 94.5% of the employees he sought to represent had signed such agreements. No. CV1200737DDPJCX, 2013 WL 11091572 (C.D. Cal. Aug. 22, 2013), at *3. Here, there is evidence that nearly half the Settlement Class purchased at least one ticket before the arbitration provision was added. The actual number of Class Members who are not bound by arbitration agreements may be less than that, because the Settlement Class includes only distributors who purchased at least two tickets, but the evidence suggests that this still represents a substantial portion of the Settlement Class.

Tschudy concluded that typicality was not satisfied where the named plaintiff had not signed an arbitration agreement, the class period spanned from 2007 to 2014, and employees who joined before 2009 had not signed arbitration agreements. *Tschudy v. J.C. Penney Corp., Inc.*, No. 11CV1011 JM (KSC), 2015 WL 8484530, at *3 (S.D. Cal. Dec. 9, 2015) (finding a lack of typicality). However, *Tschudy* suggests that this issue may present less of a concern where the parties have reached a settlement. It

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reasoned that “[p]utative class members with arbitration provisions likely cannot be included in the class because they are uniquely subject to having their disputes resolved in a non-judicial forum.” *Id.* Here, by contrast, the dispute has already been resolved, and any class members subject to an arbitration agreement will have the opportunity to opt out of the settlement and instead pursue arbitration. By agreeing to a settlement, Defendant has agreed to waive its right to compel arbitration with Settlement Class Members who signed such agreements.

Also relevant is that the Settlement Agreement excludes from the Settlement Class any Herbalife distributor who has “previously executed a release of the claims that are the subject matter of this litigation.” Dkt. 383 at 5. To the extent that any Herbalife distributors have already engaged in and concluded arbitration with Herbalife regarding the claims at issue here, they would have released their claims and would be excluded from the Settlement Class.

Further, district courts have held in the context of the predominance inquiry that “[t]he fact that some members of a putative class may have signed arbitration agreements or released claims against a defendant does not bar class certification.” *Herrera v. LCS Fin. Servs. Corp.*, 274 F.R.D. 666, 681 (N.D. Cal. 2011); see also *Ehret v. Uber Techs., Inc.*, 148 F. Supp. 3d 884, 902 (N.D. Cal. 2015) (“Here, whether an absent class member is bound by the arbitration clause is a question that can be dealt with on a class-wide basis, as it does not appear that there will need to be an individualized inquiry as to whether the arbitration clause is generally enforceable.”). For the reasons stated, that Plaintiffs did not sign arbitration agreements does not prevent a finding that the typicality requirement is satisfied.

Another potential issue presented with respect to typicality is that Herbalife has argued in this litigation that a prior class action settlement in *Bostick, et al. v. Herbalife Int’l of Am., Inc., et al.*, Case No. 2:13-cv-02488 BRO (SHX), 2015 WL 12731932 (C.D. Cal. May 14, 2015) bars many of the claims of the Settlement Class. See Dkt. 384 at 36 (citing Dkt. 142 at 5-12). However, that Herbalife has raised this defense does not defeat typicality. Two of the named Plaintiffs, Patricia Rodgers and Izaar Valdez, are *Bostick* settlement class members, but Jennifer Ribalta is not. *Id.* Therefore, the Plaintiffs, taken together, are typical of the Settlement Class Members.

For these reasons, the typicality requirement is satisfied.

(4) Adequacy of Lead Plaintiffs and Class Counsel

Rule 23(a)(4) requires that the “representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *Hanlon*, 150 F.3d at 1020. “Adequate representation depends on, among other factors, an absence of antagonism between representatives and absentees, and a sharing of interest between representatives and absentees.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). “Adequacy of representation also depends on the qualifications of counsel.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) (citing *In re N. Dist. of Cal., Dalkon Shield IUD Prods. Liab. Litig.*, 693 F.2d 847, 855 (9th Cir. 1982), *abrogated on other grounds by Valentino*, 97 F.3d 1227 (9th Cir. 1996)). “[T]he named representative’s attorney [must] be qualified, experienced, and generally capable to

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conduct the litigation” *Id.* (quoting *Jordan v. L.A. Cnty.*, 669 F.2d 1311, 1323 (9th Cir.), *vacated on other grounds by* 459 U.S. 810 (1982)).

There is no evidence that any of the Plaintiffs or Class Counsel have any conflicts of interest with other Class Members. Plaintiffs state that they “have actively pursued this litigation and fully understand their duties as representatives of the plaintiff class.” Dkt. 384 at 23. Additionally, Plaintiffs state that Class Counsel “have substantial experience in handling class actions and complex litigation, and have sufficient resources to aggressively prosecute the case, as demonstrated thus far.” *Id.* 24. Class Counsel includes the law firms of Mark Migdal & Hayden, Jason Jones, Attorney at Law, Mortgage Recovery Law Group, LLP, and Jennifer Jones Law. Dkt. 392 at 9.

Etan Mark, who is lead counsel for Plaintiffs, declares that he is the co-founder of the law firm Mark Migdal & Hayden (“MMH”), which is approximately five years old. Dkt. 384-1 ¶¶ 3-5. He states that partners of MMH have represented parties in many class actions, on behalf of both plaintiffs and defendants. *Id.* ¶ 5. The firm “only practices in the area of complex litigation and regularly acts as lead counsel in all manner of complex litigation matters.” *Id.* ¶ 4. Mark attaches firm biographies, which show that the five MMH attorneys working on the case have a range of 14 to 32 years of legal experience. *Id.* at 8-12. Jason Jones is “a solo practitioner with extensive investigate experience” and Jennifer Jones is “a former attorney with the Department of Justice and current Deputy Attorney General, Public Advocacy Division at the Office of the Attorney General for the District of Columbia.” Dkt. 392-1 at 8. Jennifer Jones’ resume has also been filed. Dkt. 392-1. Paul Levin, local counsel, is a partner at Mortgage Recovery Law Group. Dkt. 392-1 at 49-50.

As noted, the Settlement Agreement does not state an amount of attorney’s fees to be requested, and states that is an issue that will be addressed by the court. Therefore, the Settlement Agreement does not raise concerns that the amount allocated for attorney’s fees is disproportionate. Issues about the attorney’s fees and incentive award are more appropriately addressed when considering whether the Proposed Settlement Agreement is reasonable and fair. *See Staton*, 327 F.3d at 958 (“Although we later question whether the settlement agreement . . . was the result of disinterested representation, that question is better dealt with as part of the substantive review of the settlement than under the Rule 23(a) inquiry. Otherwise, the preliminary class certification issue can subsume the substantive review of the class action settlement.”).

The Settlement is the result of “extensive arm’s length settlement negotiations,” which “included two mediation sessions before two separate respected and skilled mediators, the latter of which extended over several months under the direction of a retired judge of this District and ultimately culminated in a mediator’s proposal that both sides accepted.” Dkt. 384-1 ¶ 15. This also confirms that Class Counsel has provided adequate representation.

For these reasons, the adequacy requirement is satisfied for the purposes of conditional certification of the Settlement Class.

b) Requirements of Fed. R. Civ. P. 23(b)(3)

(1) Predominance

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“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.*, 521 U.S. at 623. The predominance analysis assumes that the Rule 23(a)(2) commonality requirement has already been established, *Hanlon*, 150 F.3d at 1022, and “focuses on whether the ‘common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication,’” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 557 (9th Cir. 2019) (quoting *Hanlon*, 150 F.3d at 1022). “An individual question is one where ‘members of a proposed class will need to present evidence that varies from member to member,’ while a common question is one where ‘the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.’” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (quoting 2 William Rubenstein, *Newberg on Class Actions* § 4:50, at 196–97 (5th ed. 2012)). Where the issues of a case “require the separate adjudication of each class member’s individual claim or defense, a Rule 23(b)(3) action would be inappropriate.” *Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (quoting 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778 at 535–39 (2d ed. 1986)).

“Predominance is not, however, a matter of nose-counting. Rather, more important questions apt to drive the resolution of the litigation are given more weight in the predominance analysis over individualized questions which are of considerably less significance to the claims of the class.” *Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016) (internal citations omitted). “Therefore, even if just one common question predominates, ‘the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately.’” *In re Hyundai*, 926 F.3d at 557–58 (quoting *Tyson Foods, Inc.*, 577 U.S. at 453).

Further, the requirements of Fed. R. Civ. P. 23(b)(3) “must be considered in light of the reason for which certification is sought—litigation or settlement” *Id.* at 558. A class may be certifiable for settlement even though it “may not be certifiable for litigation” where “the settlement obviates the need to litigate individualized issues that would make a trial unmanageable.” *Id.*

Plaintiffs’ claims turn substantially on common proof and common questions of law. A central legal issue is whether Herbalife’s statements to members of the class were misrepresentations. Plaintiffs bring a RICO claim that would require them to show that “they were harmed by Herbalife’s: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” Dkt. 384 at 24-25 (citing *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 160 (2001)). This inquiry focuses primarily on Herbalife’s conduct throughout the class period, not on individualized issues. The UCL claims turn on similar misrepresentations allegedly made to all class members who attended Herbalife events. The negligent misrepresentation claims turn in part on “whether or not Herbalife had any reasonable grounds to believe that its repeated statements regarding Herbalife Events were true,” which is a question subject to classwide resolution. Dkt. 384 at 26.

Plaintiffs’ claims may involve some individualized assessments of injury and reliance. However, individual reliance need not be shown as part of Plaintiffs’ misleading advertising claims under the UCL. *Prescott v. Reckitt Benckiser LLC*, No. 20-CV-02101-BLF, 2022 WL 3018145, at *4 (N.D. Cal. July 29, 2022) (citing *Bradach v. Pharmavite, LLC*, 735 F.App’x 251, 254 (9th Cir. 2018) (“Under California law, class members in CLRA and UCL actions are not required to prove their individual reliance on the allegedly misleading statements.”)). With respect to the RICO claims, whether Herbalife directed its

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speakers to adhere to a standardized message that attending Herbalife events would lead to financial success is a question capable of classwide resolution. The underlying inquiry focuses on Herbalife's conduct. Further, Plaintiffs have presented evidence throughout this litigation that Herbalife speakers delivered a consistent message at each Herbalife event. See, e.g., Dkt. 207 at 16. Similarly, whether Herbalife is responsible for the statements by the Featured Speakers is a question capable of classwide resolution.

Common questions predominate over any individual issues presented. Although awards to claimants will be calculated based on the number of event tickets they purchased, "damage calculations alone cannot defeat certification," even if individual issues predominate. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 513 (9th Cir. 2013); see also *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1167–68 (9th Cir. 2014). "[A]s long as an efficient mechanism exists to calculate damages on a class-wide basis, the existence of potential individualized damages will not defeat the predominance requirement." *Aichele v. City of Los Angeles*, 314 F.R.D. 478, 496 (C.D. Cal. 2013). Such a mechanism has been proposed here.

For these reasons, the predominance requirement is satisfied.

(2) Superiority

Rule 23(b)(3) requires a showing that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). This issue is evaluated by considering the following factors: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.*

The benefits of resolving the claims at issue in a class action are substantial. Plaintiffs state that they do not know of any other pending litigation involving this controversy, other than the related case pending in the Southern District of Florida, "which involves essentially the same claims brought on behalf of the same class and which is stayed and administratively closed pending final approval of the proposed Settlement here." Dkt. 384 at 27.

Defendants have provided an estimate of 80,000 class members. The FAC alleges that the cost of attending Herbalife events ranges from \$50 per person to \$120 per person. Dkt. 202 ¶¶ 61, 63, 67. Expected damages for individual class members appear unlikely to provide sufficient incentive to bring individual actions. Notwithstanding that some class members, including Patricia and Jeff Rodgers, have spent a substantial amount on attending events, *id.* ¶¶ 172-174, the range of potential recovery among all class members, as well as the risks of litigation, support finding that the class action process will be superior.

For these reasons, the factors presented by Fed. R. Civ. P. 23(b)(3) support conditional certification of a settlement class as the superior means to resolve this action.

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For the foregoing reasons, the request to certify the Settlement Class for purpose of settlement is **GRANTED**.

B. Preliminary Approval of the Settlement Agreement

1. Legal Standards

Fed. R. Civ. P. 23(e) requires a two-step process in considering whether to approve the settlement of a class action. First, a court must make a preliminary determination whether the proposed settlement “is fundamentally fair, adequate, and reasonable.” *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (quoting *Staton*, 327 F.3d at 952). In the second step, which occurs after preliminary approval, notification to class members, and the compilation of information as to any objections by class members, a court determines whether final approval of the settlement should be granted. See, e.g., *id.*

At the preliminary stage, “the settlement need only be *potentially fair*.” *Id.* This is due, in part, to the policy preference for settlement, particularly in the context of complex class action litigation. See *Officers for Just. v. Civil Serv. Comm’n of City and Cnty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (“[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . .”).

As the Ninth Circuit has explained:

[T]he court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id.

Notwithstanding the foregoing rules, “[w]here . . . the parties negotiate a settlement agreement before the class has been certified, ‘settlement approval requires a higher standard of fairness and a more probing inquiry than may normally be required under Rule 23(e).’” *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048 (9th Cir. 2019) (quoting *Dennis v. Kellogg Co.*, 697 F.3d 858, 864 (9th Cir. 2012)). “Specifically, ‘such [settlement] agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court’s approval as fair.’” *Id.* (quoting *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). This scrutiny “is warranted ‘to ensure that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.’” *Id.* (quoting *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012)).

In evaluating fairness, a court must consider “the fairness of a settlement as a whole, rather than

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assessing its individual components.” *Lane*, 696 F.3d at 818–19. A court is to consider and evaluate several factors as part of its assessment of a proposed settlement. The following non-exclusive factors, which originally were described in *Hanlon*, are among those that may be considered during both the preliminary and final approval processes:

- (1) the strength of the plaintiff’s case;
- (2) the risk, expense, complexity, and likely duration of further litigation;
- (3) the amount offered in settlement;
- (4) the extent of discovery completed and the stage of the proceedings;
- (5) the experience and views of counsel;
- (6) any evidence of collusion between the parties; and
- (7) the reaction of the class members to the proposed settlement.

See *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458–60 (9th Cir. 2000).

Each factor does not necessarily apply to every settlement, and other factors may be considered. For example, courts often assess whether the settlement is the product of arms-length negotiations. See *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (“We put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution.”). As noted, in determining whether preliminary approval is warranted, a court is to decide whether the proposed settlement has the potential to be deemed fair, reasonable and adequate in the final approval process. *Acosta*, 243 F.R.D. at 386.

Amended Fed. R. Civ. P. 23(e) provides further guidance as to the requisite considerations in evaluating whether a proposed settlement is fair, reasonable and adequate. It provides that a court is to consider whether:

- (A) the class representatives and [Plaintiff’s] counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3);³ and
- (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

The factors set forth in Fed. R. Civ. P. 23(e) distill the considerations historically used by federal courts to evaluate class action settlements. See Fed. R. Civ. P. 23(e) advisory committee’s note to 2018

³ Fed. R. Civ. P. 23(e)(3) provides that “[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal.”

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amendment. As the comments of the Advisory Committee explain, “[t]he goal of [the] amendment [was] not to displace any factor” that would have been relevant prior to the amendment, but rather to address inconsistent “vocabulary” that had arisen among the circuits and “to focus the court and the lawyers on the core concerns” of the fairness inquiry. *Id.*

2. Application

a) Whether the Class Representatives and Plaintiff’s Counsel Have Adequately Represented the Putative Class

As noted, Plaintiffs and their counsel have adequately represented the Settlement Class. Counsel and Plaintiffs have made substantial efforts in pursuing this litigation since it was initiated in 2017. Plaintiffs “expended thousands of hours and hundreds of thousands of dollars engaging in discovery in the California and Florida Actions.” Dkt. 384-1 ¶ 14. Plaintiffs’ Counsel states that “[i]n the California Action alone, Plaintiffs had seven separate discovery hearings before Magistrate Judge Michael R. Wilner . . . , took thirteen separate full-day fact depositions, an additional four expert depositions, and defended an additional eight depositions.” *Id.* Plaintiffs state they have reviewed hundreds of thousands of pages of discovery and have also engaged in extensive expert discovery. *Id.* Thus, Plaintiffs appear to have had sufficient information to make informed decisions about this action and its settlement.

This factor weighs in favor of preliminary approval of the Settlement Agreement.

b) Whether the Settlement was Negotiated at Arms’ Length

Courts evaluate the settlement process as well as the terms to which the parties have agreed to ensure that “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties.” *Rodriguez*, 563 F.3d at 965. (quoting *Hanlon*, 150 F.3d at 1027). Three factors may raise concerns of collusion: (1) “when counsel receive[s] a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded”; (2) “when the parties negotiate a ‘clear sailing’ arrangement providing for the payment of attorneys’ fees separate and apart from class funds”; and (3) “when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 947 (internal quotation marks and citations omitted).

There is no evidence of any fraud, overreaching or collusion among the parties. The parties engaged in extensive settlement negotiations, including two mediation sessions. Dkt. 384 at 15. The parties reached an impasse at the first mediation, which was conducted on August 17, 2020. *Id.* The parties participated in a second mediation on May 27, 2021 with Judge Otero, after which they continued to engage in “extensive” negotiations over the course of five months. *Id.* at 15-16. The parties finally “both accepted a mediator’s proposal to resolve the matter, and through counsel, reached the proposed Settlement Agreement.” *Id.* at 16.

Further, the Settlement Fund is non-reversionary. Dkt. 383 ¶ 4.1. Any funds remaining in the Net Settlement Fund are to be distributed as *cy pres* to Consumer Federation of America. *Id.* Additionally, there is no clear-sailing provision. As noted, the Settlement Agreement does not include a term as to the amount of a proposed award of attorney’s fees. *Id.* Thus, a disproportionate distribution has not

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been allocated to counsel. *Id.*

For the foregoing reasons, this factor supports preliminary approval.

- c) Whether the Relief Provided for the Class Is Adequate
 - (1) Strength of Plaintiffs' Claims, and the Costs, Risks and Delays of Trial and Appeal

It is “well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *Officers for Just.*, 688 F.2d at 628. “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys “R” Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014); see also *Rodriguez*, 563 F.3d at 965 (“In reality, parties, counsel, mediators, and district judges naturally arrive at a reasonable range for settlement by considering the likelihood of a plaintiffs’ or defense verdict, the potential recovery, and the chances of obtaining it, discounted to present value.”).

Plaintiffs estimate that their potential damages range from under \$4 million to \$121.1 million. Dkt. 392 at 15. As noted, the Gross Settlement Amount is \$12.5 million.

There would be substantial risks and potential delays associated with a trial and potential appeal in this matter. Herbalife currently has a Motion for Summary Judgment pending, and Plaintiffs have a pending Motion for Class Certification. There is a risk that Herbalife could prevail on one or both of those motions. If they were to prevail on the Motion for Summary Judgment, there would be no recovery in this proceeding, absent appellate relief. Plaintiffs also face a risk of small or no recovery at a trial. For example, “Herbalife presented expert survey evidence opining that 88.7% of Herbalife distributors found ‘value’ in Herbalife Event attendance, and expert correlation evidence opining that there is a positive, statistically significant relationship between attending Herbalife Events and distributor earnings.” Dkt. 384 at 35.

Additionally, Plaintiffs note there is a risk that the class action settlement in *Bostick, et al. v. Herbalife International of America, Inc.*, Case No. 2:13-cv-02488 (C.D. Cal.), could be found to preclude some or all of the relief sought in this action. *Id.* at 36. The “central claim” in that action “was that Herbalife made misleading claims about the likelihood of success in pursuing the Herbalife business opportunity and success was unattainable.” *Id.* The class period in that case overlaps in part with the class period in this one. Plaintiffs state that Defendant “has argued that the *Bostick* settlement covered broad business opportunity losses allegedly incurred by Herbalife distributors; so the Settlement Class here is barred from seeking to recover those same losses.” *Id.* Two of the Named Plaintiffs here are *Bostick* settlement class members. Given these factors, there are material risks presented if this matter were to proceed to trial.

These considerations support the conclusion that the Settlement is reasonable.

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(2) Effectiveness of Any Proposed Method of Distributing Relief to the Class

The proposed method of distributing relief to the class is fair. The notification process, which is described in detail in support of the Motion, provides that the Claims Administrator will email notice to all individuals who were Herbalife distributors during the class period. Dkt. 384 at 39. According to Herbalife's records, this consists of 2.7 million individuals. *Id.* The Notice will include a link to the settlement website. *Id.* at 40. For any emails that bounce back, the Claims Administrator will send notice by First-Class Mail to the last known address of that individual. *Id.*

The Claims Administrator will inform each Settlement Class Member as to the Herbalife Corporate Events for which they purchased tickets. Dkt. 383 ¶ 4.2.1. Class Members may also claim additional events for which they purchased a ticket if they certify certain basic information about the event. *Id.* ¶ 4.2.2. The Notice instructs Class Members to fill out a claim form, available either online or in hard copy, to receive payment. Dkt. 383-1 at 7.

This notice program should be sufficiently effective. Therefore, this factor weighs in favor of preliminary approval.

(3) Terms of Any Proposed Award of Attorney's Fees

The Settlement Agreement provides that attorney's fees and expenses will be in the amounts ordered by the court. Dkt. 383 ¶ 10.1. Under the Settlement Agreement, any fees and costs not awarded, and not designated for costs of administering the settlement fund, will remain as part of the Net Settlement Amount that will be distributed to members of the class, and will not revert to the Defendant. *Id.* ¶ 4.1. This also supports approval of the Settlement Agreement.

d) Whether the Proposal Treats Putative Class Members Equitably Relative to Each Other

The Settlement Agreement provides that the Net Settlement Amount will be divided among Class Members as described earlier. In the event that the total amount of payments allocated to claimants exceeds the Net Settlement Amount, a claimant's Per Event Award will be reduced based on the number of tickets they purchased, according to a graduated scale. *Id.* ¶ 4.2.5. A claimant would then receive the Per Event Award for the first 2 to 5 event tickets purchased, 75% of the Per Event Award for the next 6 to 10 tickets, 50% of the Per Event Award for the next 11 to 15 tickets, and 25% of the Award for 16-plus tickets purchased. *Id.* If the total amount of payments allocated under this scale exceeds the Net Settlement Amount, cash awards will be paid on a pro rata basis. *Id.*

This method of calculating the award to each Settlement Class Member is fair and reasonable. Although Class Members who purchased large numbers of tickets may, in the event that the total amount allocated exceeds the Net Settlement Amount, receive an award that represents a smaller share of the amount they spent on tickets than those who purchased fewer tickets, this method ensures that each Settlement Class Member receives an equal award for the first two to five tickets purchased.

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Further, Plaintiffs explain in the Motion that “Herbalife’s expert evidence showed that, on the spectrum of event attendance, those who attended the most events were more likely to be higher-earning distributors.” Dkt. 384 at 38. Therefore, “the graduated scale seeks to ensure that the bulk of the Net Settlement Fund is apportioned to those Herbalife distributors who, on balance, were less likely to have found monetary value in event attendance.” *Id.*

A consideration of the applicable factors demonstrates that the Settlement is sufficiently fair, reasonable and adequate to warrant preliminary approval. Accordingly, the Motion is **GRANTED** as to the request that the Settlement be preliminarily approved.

C. Incentive Awards

1. Legal Standards

“[N]amed plaintiffs . . . are eligible for reasonable incentive payments.” *Staton*, 327 F.3d at 977. To determine the reasonableness of incentive awards, the following factors may be considered:

- 1) the risk to the class representative in commencing suit, both financial and otherwise;
- 2) the notoriety and personal difficulties encountered by the class representative;
- 3) the amount of time and effort spent by the class representative;
- 4) the duration of the litigation and;
- 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

2. Application

Preliminary approval is sought for service awards of \$30,000 for Patricia Rodgers, \$30,000 for Jennifer Ribalta, and \$18,000 for Izaar Valdez. Dkt. 392 at 22. “Each of the named Plaintiffs maintained close contact with Class Counsel throughout the case, produced thousands of documents during the course of this complex litigation, Ms. Ribalta and Ms. Rodgers were subjected to multiple depositions, and devoted hundreds of hours in assisting Class Counsel in this case, expending a great deal of time and effort.” Ms. Ribalta and Ms. Rodgers have attested to spending between 250-300 hours on this case, and Ms. Valdez has attested to spending approximately 180 hours. *Id.* at 23. If approved, this service award would result in an hourly rate of \$100-120 for Ms. Ribalta and Ms. Rodgers, and \$120 for Ms. Valdez.

Counsel state that they are “mindful that the requested incentive award is atypically high,” but they note that “as all three have attested, over the past five years, this litigation has had a significant negative impact on their lives and their relationships, including being cut-off from friends and other close personal relationships.” *Id.* at 23. Rodgers declares that “before this case was filed, Herbalife was [her] life,” and “all of [her] friends and closest personal relationships were other Herbalife distributors.” Dkt. 392-3 at 3. She states that when this lawsuit was publicized, her friends ended relationships with her

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and her husband.⁴ *Id.* Ribalta and Valdez each make similar statements. Dkt. 392-4 at 3; 392-4 at 3. Each of the plaintiffs first became involved in this action in 2017. Dkt. 392-3 at 3; Dkt. 392-4 at 3; Dkt. 392-5 at 3.

Based on a consideration of Plaintiffs' active role in assisting Class Counsel, the number of hours spent on the case, the five-year period that it has been pending, and the declared effects on Plaintiffs' personal lives, incentive awards in the range of \$20,000 to \$30,000 are preliminarily approved for Rodgers and Ribalta, and an incentive award in the range of \$12,000 to \$18,000 is preliminarily approved for Plaintiff Valdez. This determination will be subject to de novo review in connection with a motion for final approval.

D. Attorney's Fees

1. Legal Standards

Attorney's fees and costs "may be awarded . . . where so authorized by law or the parties' agreement." *In re Bluetooth Headset Prods.*, 654 F.3d at 941. However, "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable, even if the parties have already agreed to an amount." *Id.* "If fees are unreasonably high, the likelihood is that the defendant obtained an economically beneficial concession with regard to the merits provisions, in the form of lower monetary payments to class members or less injunctive relief for the class than could otherwise have [been] obtained." *Staton*, 327 F.3d at 964. Thus, a district court must "assure itself that the fees awarded in the agreement were not unreasonably high, so as to ensure that the class members' interests were not compromised in favor of those of class counsel." *Id.* at 965.

District courts have discretion to choose between a lodestar method and the percentage method to evaluate the reasonableness of a request for an award of attorney's fees in a class action. *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010). A court may also choose one method and then perform a cross-check with the other. *See, e.g., Staton*, 327 F.3d at 973.

When using the percentage method, a court examines what percentage of the total recovery is allocated to attorney's fees. Usually, the Ninth Circuit applies a "benchmark award" of 25%. *Id.* at 968. However, awards that deviate from the benchmark have been approved. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 272 (9th Cir. 1989) ("Ordinarily, . . . fee awards [in common fund cases] range from 20 percent to 30 percent of the fund created."); *Schroeder v. Envoy Air, Inc.*, No. CV-16-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) (internal citations omitted) ("[T]he 'benchmark percentage should be adjusted, or replaced by a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors,'" including "(1) the results achieved; (2) the risks of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee; (5) the burdens carried by class counsel; and (6) the awards made in similar cases.")

⁴ Ms. Rodgers' husband, Jeff Rodgers, was a named plaintiff in this action before he passed away in February, 2020.

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“The lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer.” *In re Bluetooth Headset Prods.*, 654 F.3d at 941. After the lodestar amount is determined, a trial court “may adjust the lodestar upward or downward using a ‘multiplier’ based on factors not subsumed in the initial calculation of the lodestar.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000). Such factors “includ[e] the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment.” *Stetson v. Grissom*, 821 F.3d 1157, 1166–67 (9th Cir. 2016) (quoting *In re Bluetooth Headset Prods.*, 654 F.3d at 941–42).

2. Application

Counsel for the Settlement Class Members includes the law firms of Mark Migdal & Hayden; Jason Jones, Attorney at Law; Mortgage Recovery Law Group, LLP; and Jennifer Jones Law. Dkt. 392 at 9.

Plaintiffs request an attorney’s fees award of \$4,166,666 and \$337,926.03 to reimburse litigation costs and expenses. *Id.* at 13. This represents 33.33% of the settlement fund.

In support of the Motion for Attorney’s Fees, the history of this litigation is described: “This case began in the Southern District of Florida, where, following Herbalife’s successful motion to transfer venue and Herbalife’s and the Florida individual Defendants’ (of whom there were 44 at the time) unsuccessful motion to compel arbitration, this case was split. The bifurcated action proceeded in both the Southern District of Florida and Central District of California with a detour at the 11th Circuit Court of Appeals.” *Id.* at 9.

Counsel also states that the Settlement Agreement “fully and completely resolves two intertwined matters” – the parallel Florida action and this action. *Id.* at 10. Class Counsel “spent approximately 2,500 hours on the Florida Action, approximately 7,200 hours on this action, for a total approximate amount of fees in the amounts of \$1.1 million and \$3.45 million, respectively.” *Id.* They further state that “the scope of the two actions is the same,” as “they both involve claims regarding the same Herbalife Events, and they both involve claims brought on behalf of the same class that the parties seek to certify through a settlement here.” *Id.* They note that the “primary distinction” between the two actions “was that considering the absence of a contractual relationship between the individual defendants named in the Florida action and the named Plaintiffs, there was no legal basis to transfer the Florida Action to this district,” and as a result the cases were bifurcated. *Id.*

a) Percentage Approach

The requested fee award of \$4,166,666 represents 33.33% of the total settlement amount. This allocation would exceed the 25% “benchmark award” used the Ninth Circuit. However, an attorney’s fees award exceeding the benchmark is not *per se* unreasonable. An upward adjustment from the benchmark may be warranted in light of the results achieved, the risks of litigation, non-monetary benefits conferred by the litigation, customary fees in similar cases, the contingent nature of the fee, the burden carried by counsel, or the reasonable expectations of counsel. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002).

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This litigation has been ongoing for five years, and counsel have recorded approximately 10,000 hours between this action and the related Florida matter. They contend that the litigation presented significant risks to the recovery of any damages or a contingency fee. They also state that the potential amount of recovery, which ranged between \$4 million to \$121.1 million

depended on whether Plaintiffs would be able to prove any damages for non-Herbalife corporate events (or ‘STS’ events), whether Plaintiffs would be able to extend the time period for claims back to 2009 (instead of 2013 – four years before the Florida Action was filed), whether damages for those distributors who signed an arbitration agreement would be recoverable, and whether the damages for the putative class would be limited pursuant to a private one-year statute of limitations in the distributor agreements.

Dkt. 392 at 15.

They also identify the risk that the Motion for Class Certification would not be granted and the

possibility of large swaths of the damages sought in this action being excluded based on statutes of limitations defenses, the applicability of the *Bostick* release, the contention that the alleged ‘fraud’ was mere puffery, the contention that the vast majority of Herbalife distributors reported recognizing ‘value’ from events, and the conclusions of Herbalife’s correlation expert that there is a statistically positive correlation between those who attend events and the amount of money they earn pursuing the Herbalife opportunity.

Id. at 16.

The Settlement Agreement also includes certain changes to the policies and practices of Defendants.
Id.

Taking into consideration all of the relevant factors, an award above the 25% benchmark may be warranted. Whether to do so, as well as the amount of the increase, are matters that are considered in connection with the lode-star cross-check analysis.

b) Lodestar Cross-Check

The following tables summarizes the rates and hours submitted by Plaintiffs’ counsel to date for each attorney, by task:

Attorney	Rate	HOURS BY TASK		TOTALS			
Etan Mark (Partner)	\$550 / hour	Draft Orig. Complaint	78.9	Hours:	1452.1		
		Motion to Stay Discovery	4.2			Amount:	\$798,655
		Motion to Dismiss Before Transfer	19				
		Arbitration and Transfer Motions	154.5				
		Juris. Discovery	40.5				

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		Misc Case Management Before Transfer	29.2	
		Case Assessment After Transfer	7.7	
		Fact Depos	103.1	
		Contested Discovery	88.1	
		Written Discovery	26.2	
		Motion to Dismiss (CA)	63.8	
		Class Cert Motion	67.2	
		Draft FAC (CA)	9.2	
		Second MTD (CA)	36.2	
		Mediation / Settlement	98.8	
		Misc Case Management	119.1	
		Expert Reports	76.2	
		Expert Depos	9.3	
		Daubert Motions	15.4	
		MSJ	77.8	
		Prelim Approval Paperwork	27.9	
		Written Discovery (FL)	7.1	
		Fact Depos (FL)	5.5	
		Draft FAC (FL)	11	
		Draft SAC	12.4	
		Misc Case Mgmt (FL)	8.1	
		Contested Discovery (FL)	16.8	
		MTD (FL)	135.9	
		Appeal	58	
		Proj. Fees	45	
Yaniv Adar (Partner)	\$525 / hour	Fact Depos	75.2	Hours: 1517.1
		Contested Discovery	294.7	Amount: \$796,478
		Written Discovery	69.7	
		Doc Review	13.8	
		Motion to Dismiss (CA)	3.1	
		Class Cert Motion	95.7	
		Draft FAC (CA)	5.5	
		Second MTD (CA)	25.8	
		Mediation / Settlement	34.2	
		Misc Case Management	107.5	
		Expert Reports	46.4	
		Expert Depos	24.8	

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		Daubert Motions	89.8		
		MSJ	29.2		
		Motion to Strike AF	9.5		
		Prelim Approval Paperwork	76		
		Written Discovery (FL)	79.5		
		Fact Depos (FL)	36.7		
		Doc Review (FL)	53.7		
		Draft FAC (FL)	15.3		
		Draft SAC	11.6		
		Misc Case Mgmt (FL)	34.2		
		Contested Discovery (FL)	187.2		
		MTD (FL)	60.8		
		Appeal	7.2		
		Proj. Fees	30		
Don Hayden (Partner)	\$650 / hour	Draft Orig. Complaint	4	Hours: Amount:	150.7 \$97,955
		Motion to Stay Discovery	1.4		
		Motion to Dismiss Before Transfer	0.5		
		Arbitration and Transfer Motions	68.4		
		Juris. Discovery	9.1		
		Misc Case Management Before Transfer	16.3		
		Case Assessment After Transfer	5.7		
		Contested Discovery	0.7		
		Motion to Dismiss (CA)	22.5		
		Class Cert Motion	6		
		Second MTD (CA)	0.5		
		Mediation / Settlement	1.7		
		Misc Case Management	4.8		
		Written Discovery (FL)	0.4		
		Draft SAC	3.1		
		MTD (FL)	3.4		
Appeal	2.2				
Joshua A. Migdal	\$525 / hour	Draft Orig. Complaint	4.1	Hours: Amount:	491.7 \$258,143
		Motion to Stay Discovery	0.9		

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(Partner)		Motion to Dismiss Before Transfer	9.5		
		Arbitration and Transfer Motions	85.6		
		Juris. Discovery	11.5		
		Misc Case Management Before Transfer	6.1		
		Case Assessment After Transfer	27.6		
		Fact Depos	11.1		
		Contested Discovery	8.3		
		Doc Review	3.8		
		Motion to Dismiss (CA)	3		
		Class Cert Motion	35.1		
		Second MTD (CA)	0.8		
		Mediation / Settlement	112.2		
		Misc Case Management	50.6		
		Expert Reports	13.6		
		Expert Depos	4.4		
		Daubert Motions	29.6		
		MSJ	22		
		Motion to Strike AF	2.1		
		Prelim Approval Paperwork	4.9		
		Written Discovery (FL)	0.4		
		Draft SAC	4.9		
		Misc Case Mgmt (FL)	10		
		Contested Discovery (FL)	1		
	MTD (FL)	22.6			
	Appeal	6			
Lara Grillo (Partner)	\$450 / hour	Draft Orig. Complaint	55.7	Hours: Amount:	496.5 \$223,425
		Motion to Stay Discovery	14.4		
		Motion to Dismiss Before Transfer	12		
		Arbitration and Transfer Motions	160.3		
		Juris. Discovery	10.6		
		Misc Case Management Before Transfer	8		
		Case Assessment After Transfer	34.8		

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		Motion to Dismiss (CA)	26.7		
		Misc Case Mgmt (FL)	11.3		
		MTD (FL)	42.1		
		Appeal	120.6		
George Breur (Partner)	\$400 / hour	Arbitration and Transfer Motions	0.8	Hours:	1.9
		Juris. Discovery	1.1	Amount:	\$760
Niki Namazi (Associate)	\$325 / hour	Contested Discovery	17.9	Hours:	688.3
		Second MTD (CA)	0.1	Amount:	\$223,698
		Misc Case Management	11.7		
		Expert Reports	17.7		
		Expert Depos	12.3		
		Daubert Motions	33.8		
		MSJ	16.8		
		Motion to Strike AF	26.6		
		Written Discovery (FL)	101.5		
		Fact Depos (FL)	95.1		
		Doc Review (FL)	84.9		
		Draft FAC (FL)	12.3		
		Draft SAC	48.8		
		Misc Case Mgmt (FL)	60		
		Contested Discovery (FL)	107.1		
		MTD (FL)	41.7		
Jason Jones (Attorney)	\$450 / hour	Pre-Suit Investigation	150	Hours:	3911.52
		Draft Orig. Complaint	80.25	Amount:	\$1,760,184
		Motion to Dismiss Before Transfer	55		
		Arbitration and Transfer Motions	72.2		
		Juris. Discovery	84		
		Invest. and Fact Research	90		
		Misc Case Management Before Transfer	80		
		Case Assessment After Transfer	30		
		Fact Depos	459.11		
		Contested Discovery	26.15		
		Written Discovery	235.74		
		Doc Review	692.22		
		Motion to Dismiss (CA)	74		
		Class Cert Motion	110		

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		Draft FAC (CA)	35		
		Second MTD (CA)	40		
		Mediation / Settlement	25		
		Misc Case Management	216.29		
		Expert Reports	135		
		Expert Depos	106.62		
		Daubert Motions	33		
		MSJ	158		
		Written Discovery (FL)	7.47		
		Fact Depos (FL)	171		
		Draft FAC (FL)	340.39		
		Doc Review	68.51		
		Misc Case Mgmt (FL)	35.47		
		Contested Discovery (FL)	103.34		
		MTD (FL)	70.45		
		Appeal	127.31		
Jennifer Jones (Attorney)	\$600 / hour	Fact Depos	271.14	Hours:	454.21
		Contested Discovery	32.7	Amount:	\$272,526
		Written Discovery	3.84		
		Doc Review	78.17		
		Motion to Dismiss (CA)	32.7		
		Class Cert Motion	2.75		
		Draft FAC (CA)	3.43		
		Misc Case Management	29.48		
Paul Levin (Attorney)	\$300 / hour	Fact Depos	5.2	Hours:	89.4
		Contested Discovery	21.1	Amount:	\$26,820
		Written Discovery	9.8		
		Motion to Dismiss (CA)	4		
		Class Cert Motion	4.6		
		Mediation / Settlement	1.3		
		Misc Case Management	40.1		
		Expert Reports	0.8		
		Daubert Motions	1.5		
		MSJ	1		
Lauren Gibbs (Attorney)	\$300 / hour	Contested Discovery	3.3	Hours:	24.6
		Written Discovery	2.2	Amount:	\$7,380
		Motion to Dismiss (CA)	9.8		
		Misc Case Management	9.3		

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Mary Melbar (Senior Paralegal)	\$185 / hour	Contested Discovery	13	Hours: Amount:	47.6 \$8,806
		Motion to Dismiss (CA)	9.5		
		Class Cert Motion	6		
		Second MTD (CA)	2		
		Misc Case Management	15.1		
		Expert Reports	2		
Michelle Pelaez (Senior Paralegal)	\$175 / hour	Draft Orig. Complaint	18.2	Hours: Amount:	183.3 \$32,078
		Arbitration and Transfer Motions	22.8		
		Misc Case Management Before Transfer	12.6		
		Case Assessment After Transfer	3.8		
		Fact Depos	9.1		
		Written Discovery	7		
		Doc Review	1.1		
		Motion to Dismiss (CA)	11		
		Class Cert Motion	6.9		
		Draft FAC (CA)	1.6		
		Misc Case Management	58.7		
		Written Discovery (FL)	1.2		
		MTD (FL)	1.6		
		Appeal	27.7		
Viviana Vazquez (Paralegal)	\$175 / hour	Fact Depos	9.3	Hours: Amount:	233.4 \$40,845
		Contested Discovery	10.2		
		Motion to Dismiss (CA)	3		
		Class Cert Motion	28.6		
		Mediation / Settlement	7.7		
		Misc Case Management	41.4		
		Expert Reports	5.7		
		Expert Depos	4.6		
		Daubert Motions	3.4		
		MSJ	2.5		
		Motion to Strike AF	1.4		
		Prelim Approval Paperwork	8.4		
		Written Discovery (FL)	29.5		
		Fact Depos (FL)	15.2		
		Doc Review (FL)	11.6		
		Draft FAC (FL)	3		
Draft SAC	1.5				

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		Misc Case Mgmt (FL)	9.8	
		Contested Discovery (FL)	18.9	
		MTD (FL)	12.2	
		Appeal	5.5	
Victoria Pantin (Paralegal)	\$175 / hour	Fact Depos	38.3	Hours: 97.7 Amount: \$17,098
		Contested Discovery	0.4	
		Doc Review	0.4	
		Class Cert Motion	5.5	
		Second MTD (CA)	0.8	
		Misc Case Management	52.3	
Total Hours: 9840				
Total Amount: \$4,564,849				

The data submitted shows that Plaintiffs’ Counsel have recorded a total of 9840 hours worked on this matter and the related Florida proceeding, with a corresponding fee amount of \$4,564,849 based on the stated hourly rates.

(1) Whether the Rates Claimed Are Reasonable

Etan Mark has provided a declaration in support of the Motion for Attorney’s Fees. He describes the work that counsel has performed in this action, including a motion to compel arbitration, a motion for summary judgment, several motions to dismiss, a motion for class certification, as well as extensive discovery. Dkt. 392-1 at 3-5. The applied hourly rates range from \$325 to \$650 an hour. *Id.* at 8. Josh Migdal and Yaniv Adar discounted their usual rates of \$550 to \$525 for the purposes of this litigation. *Id.* Local counsel Paul Levin, along with his partner Lauren Gibbs, billed at a discounted hourly rate of \$300. *Id.* Mark’s declaration attaches biographies and resumes for Class Counsel, which reflect significant experience. Further, the discounted rates are reasonable in light of the experience of counsel as well as the amounts charged by other counsel who have performed similar work in this District in class action matters.

(2) Whether the Hours Claimed Are Reasonable

Plaintiffs have provided the following tables summarizing the hours worked on this matter by task and projected future hours:

Hours by Task			
<i>Task 1: Pre-Suit Investigation</i>			
Attorney	Rate	Hours	Fee
Jason Jones	\$450	150	\$67,500.00
Total Fee Request for Task 1		150	\$67,500.00
<i>Task 2: Drafting Original Complaint</i>			

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Attorney	Rate	Hours	Fee
Lara Grillo	\$450	55.7	\$25,065.00
Donald J. Hayden	\$650	4	\$2,600.00
Etan Mark	\$550	78.9	\$43,395.00
Joshua A. Migdal	\$525	4.1	\$2,152.50
Jason Jones	\$450	80.25	\$36,112.50
Michelle Pelaez	\$175	18.2	\$3,185.00
Total Fee Request for Task 2		241.15	\$112,510.00
<i>Task 3: Motion to Stay Discovery (Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	14.4	\$6,480.00
Donald J. Hayden	\$650	1.4	\$910.00
Etan Mark	\$550	4.2	\$2,310.00
Joshua A. Migdal	\$525	0.9	\$472.50
Total Fee Request for Task 3		20.9	\$10,172.50
<i>Task 4: Motion to Dismiss (Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	12	\$5,400.00
Donald J. Hayden	\$650	0.5	\$325.00
Etan Mark	\$550	19	\$10,450.00
Joshua A. Migdal	\$525	9.5	\$4,987.50
Jason Jones	\$450	55	\$24,750.00
Total Fee Request for Task 4		96	\$45,912.50
<i>Task 5: Motions to Compel Arbitration and Transfer Venue</i>			
Attorney	Rate	Hours	Fee
George Breur	\$400	0.8	\$320.00
Lara Grillo	\$450	160.3	\$72,135.00
Donald J. Hayden	\$650	68.4	\$44,460.00
Etan Mark	\$550	154.5	\$84,975.00
Joshua A. Migdal	\$525	85.6	\$44,940.00
Jason Jones	\$450	72.2	\$32,490.00
Michelle Pelaez	\$175	22.8	\$3,990.00
Total Fee Request for Task 5		564.6	\$283,310.00
<i>Task 6: Jurisdictional Discovery</i>			
Attorney	Rate	Hours	Fee
George Breur	\$400	1.1	\$440.00
Lara Grillo	\$450	10.6	\$4,770.00
Donald J. Hayden	\$650	9.1	\$5,915.00

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Etan Mark	\$550	40.5	\$22,275.00
Joshua A. Migdal	\$525	11.5	\$6,037.50
Jason Jones	\$450	84	\$37,800.00
Total Fee Request for Task 6		156.8	\$77,237.50
<i>Task 7: Investigation and Research (Post-Filing, Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Jason Jones	\$450	90	\$40,500.00
Total Fee Request for Task 7		90	\$40,500.00
<i>Task 8: Miscellaneous Case and Project Management (Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	8	\$3,600.00
Donald J. Hayden	\$650	16.3	\$10,595.00
Etan Mark	\$550	29.2	\$16,060.00
Joshua A. Migdal	\$525	6.1	\$3,202.50
Jason Jones	\$450	80	\$36,000.00
Michelle Pelaez	\$175	12.6	\$2,205.00
Total Fee Request for Task 8		152.2	\$71,662.50
<i>Task 9: Case Assessment and Strategization After Transfer to California</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	34.8	\$15,660.00
Donald J. Hayden	\$650	5.7	\$3,705.00
Etan Mark	\$550	7.7	\$4,235.00
Joshua A. Migdal	\$525	27.6	\$14,490.00
Jason Jones	\$450	30	\$13,500.00
Michelle Pelaez	\$175	3.8	\$665.00
Total Fee Request for Task 9		109.6	\$52,255.00
<i>Task 10: Fact Depositions</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	75.2	\$39,480.00
Etan Mark	\$550	103.1	\$56,705.00
Joshua A. Migdal	\$525	11.1	\$5,827.50
Jason Jones	\$450	459.11	\$206,599.50
Jennifer Jones	\$600	271.14	\$162,684.00
Paul Levin	\$300	5.2	\$1,560.00
Michelle Pelaez	\$175	9.1	\$1,592.50
Viviana Vazquez	\$175	9.3	\$1,627.50
Victoria Pantin	\$175	38.3	\$6,702.50
Total Fee Request for Task 10		981.55	\$482,778.50

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<i>Task 11: Contested Discovery (Hearings, Meet and Confers, Briefing, etc.)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	294.7	\$154,717.50
Donald J. Hayden	\$650	0.7	\$455.00
Etan Mark	\$550	88.1	\$48,455.00
Joshua A. Migdal	\$525	8.3	\$4,357.50
Jason Jones	\$450	26.15	\$11,767.50
Jennifer Jones	\$600	32.7	\$19,620.00
Niki Namazi	\$325	17.9	\$5,817.50
Paul Levin	\$300	21.1	\$6,330.00
Lauren Gibbs	\$300	3.3	\$990.00
Mary Melbar	\$185	13	\$2,405.00
Viviana Vazquez	\$175	10.2	\$1,785.00
Victoria Pantin	\$175	0.4	\$70.00
Total Fee Request for Task 11		516.55	\$256,770.00
<i>Task 12: Written Discovery</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	69.7	\$36,592.50
Etan Mark	\$550	26.2	\$14,410.00
Jason Jones	\$450	235.74	\$106,083.00
Jennifer Jones	\$600	3.84	\$2,304.00
Paul Levin	\$300	9.8	\$2,940.00
Lauren Gibbs	\$300	2.2	\$660.00
Michelle Pelaez	\$175	7	\$1,225.00
Total Fee Request for Task 12		354.48	\$164,214.50
<i>Task 13: Document Review and ESI Organization</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	13.8	\$7,245.00
Joshua A. Migdal	\$525	3.8	\$1,995.00
Jason Jones	\$450	692.22	\$311,499.00
Jennifer Jones	\$600	78.17	\$46,902.00
Michelle Pelaez	\$175	1.1	\$192.50
Victoria Pantin	\$175	0.4	\$70.00
Total Fee Request for Task 13		789.49	\$367,903.50
<i>Task 14: First Motion to Dismiss in California</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	3.1	\$1,627.50
Lara Grillo	\$450	26.7	\$12,015.00

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Donald J. Hayden	\$650	22.5	\$14,625.00
Etan Mark	\$550	63.8	\$35,090.00
Joshua A. Migdal	\$525	3	\$1,575.00
Jason Jones	\$450	74	\$33,300.00
Jennifer Jones	\$600	32.7	\$19,620.00
Paul Levin	\$300	4	\$1,200.00
Lauren Gibbs	\$300	9.8	\$2,940.00
Mary Melbar	\$185	9.5	\$1,757.50
Michelle Pelaez	\$175	11	\$1,925.00
Viviana Vazquez	\$175	3	\$525.00
Total Fee Request for Task 14		263.1	\$126,200.00
<i>Task 15: Motion for Class Certification</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	95.7	\$50,242.50
Donald J. Hayden	\$650	6	\$3,900.00
Etan Mark	\$550	67.2	\$36,960.00
Joshua A. Migdal	\$525	35.1	\$18,427.50
Jason Jones	\$450	110	\$49,500.00
Jennifer Jones	\$600	2.75	\$1,650.00
Paul Levin	\$300	4.6	\$1,380.00
Mary Melbar	\$185	6	\$1,110.00
Michelle Pelaez	\$175	6.9	\$1,207.50
Viviana Vazquez	\$175	28.6	\$5,005.00
Victoria Pantin	\$175	5.5	\$962.50
Total Fee Request for Task 15		368.35	\$170,345.00
<i>Task 16: Draft First Amended Complaint in California</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	5.5	\$2,887.50
Etan Mark	\$550	9.2	\$5,060.00
Jason Jones	\$450	35	\$15,750.00
Jennifer Jones	\$600	3.43	\$2,058.00
Michelle Pelaez	\$175	1.6	\$280.00
Total Fee Request for Task 16		54.73	\$26,035.50
<i>Task 17: Second Motion to Dismiss in California</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	25.8	\$13,545.00
Donald J. Hayden	\$650	0.5	\$325.00
Etan Mark	\$550	36.2	\$19,910.00

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Joshua A. Migdal	\$525	0.8	\$420.00
Jason Jones	\$450	40	\$18,000.00
Niki Namazi	\$325	0.1	\$32.50
Mary Melbar	\$185	2	\$370.00
Victoria Pantin	\$175	0.8	\$140.00
Total Fee Request for Task 17		106.2	\$52,742.50
<i>Task 18: Settlement Conferences and Mediation</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	34.2	\$17,955.00
Donald J. Hayden	\$650	1.7	\$1,105.00
Etan Mark	\$550	98.8	\$54,340.00
Joshua A. Migdal	\$525	112.2	\$58,905.00
Jason Jones	\$450	25	\$11,250.00
Paul Levin	\$300	1.3	\$390.00
Viviana Vazquez	\$175	7.7	\$1,347.50
Total Fee Request for Task 18		280.9	\$145,292.50
<i>Task 19: Miscellaneous Case and Project Management</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	107.5	\$56,437.50
Donald J. Hayden	\$650	4.8	\$3,120.00
Etan Mark	\$550	119.1	\$65,505.00
Joshua A. Migdal	\$525	50.6	\$26,565.00
Jason Jones	\$450	216.29	\$97,330.50
Jennifer Jones	\$600	29.48	\$17,688.00
Paul Levin	\$300	40.1	\$12,030.00
Lauren Gibbs	\$300	9.3	\$2,790.00
Niki Namazi	\$325	11.7	\$3,802.50
Mary Melbar	\$185	15.1	\$2,793.50
Michelle Pelaez	\$175	58.7	\$10,272.50
Viviana Vazquez	\$175	41.4	\$7,245.00
Victoria Pantin	\$175	52.3	\$9,152.50
Total Fee Request for Task 19		756.37	\$314,732.00
<i>Task 20: Expert Written Discovery and Reports</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	46.4	\$24,360.00
Etan Mark	\$550	76.2	\$41,910.00
Joshua A. Migdal	\$525	13.6	\$7,140.00
Jason Jones	\$450	135	\$60,750.00

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Paul Levin	\$300	0.8	\$240.00
Niki Namazi	\$325	17.7	\$5,752.50
Mary Melbar	\$185	2	\$370.00
Viviana Vazquez	\$175	5.7	\$997.50
Total Fee Request for Task 20		297.4	\$141,520.00
<i>Task 21: Expert Depositions</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	24.8	\$13,020.00
Etan Mark	\$550	9.3	\$5,115.00
Joshua A. Migdal	\$525	4.4	\$2,310.00
Jason Jones	\$450	106.62	\$47,979.00
Niki Namazi	\$325	12.3	\$3,997.50
Viviana Vazquez	\$175	4.6	\$805.00
Total Fee Request for Task 21		162.02	\$73,226.50
<i>Task 22: Motions in Limine</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	89.8	\$47,145.00
Etan Mark	\$550	15.4	\$8,470.00
Joshua A. Migdal	\$525	29.6	\$15,540.00
Jason Jones	\$450	33	\$14,850.00
Paul Levin	\$300	1.5	\$450.00
Niki Namazi	\$325	33.8	\$10,985.00
Viviana Vazquez	\$175	3.4	\$595.00
Total Fee Request for Task 22		206.5	\$98,035.00
<i>Task 23: Motion for Summary Judgment</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	29.2	\$15,330.00
Etan Mark	\$550	77.8	\$42,790.00
Joshua A. Migdal	\$525	22	\$11,550.00
Jason Jones	\$450	158	\$71,100.00
Paul Levin	\$300	1	\$300.00
Niki Namazi	\$325	16.8	\$5,460.00
Viviana Vazquez	\$175	2.5	\$437.50
Total Fee Request for Task 23		307.3	\$146,967.50
<i>Task 24: Motion to Strike Affirmative Defenses</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	9.5	\$4,987.50
Joshua A. Migdal	\$525	2.1	\$1,102.50

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Niki Namazi	\$325	26.6	\$8,645.00
Viviana Vazquez	\$175	1.4	\$245.00
Total Fee Request for Task 24		39.6	\$14,980.00
<i>Task 25: Drafting Settlement Documents and Preliminary Class Certification Docs</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	76	\$39,900.00
Etan Mark	\$550	27.9	\$15,345.00
Joshua A. Migdal	\$525	4.9	\$2,572.50
Viviana Vazquez	\$175	8.4	\$1,470.00
Total Fee Request for Task 25		117.2	\$59,287.50
<i>Task 26: Written Discovery (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	79.5	\$41,737.50
Donald J. Hayden	\$650	0.4	\$260.00
Etan Mark	\$550	7.1	\$3,905.00
Joshua A. Migdal	\$525	0.4	\$210.00
Jason Jones	\$450	7.47	\$3,361.50
Niki Namazi	\$325	101.5	\$32,987.50
Michelle Pelaez	\$175	1.2	\$210.00
Viviana Vazquez	\$175	29.5	\$5,162.50
Total Fee Request for Task 26		227.07	\$87,834.00
<i>Task 27: Fact Depositions (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	36.7	\$19,267.50
Etan Mark	\$550	5.5	\$3,025.00
Jason Jones	\$450	171	\$76,950.00
Niki Namazi	\$325	95.1	\$30,907.50
Viviana Vazquez	\$175	15.2	\$2,660.00
Total Fee Request for Task 27		323.5	\$132,810.00
<i>Task 28: Document Review and Factual Research (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	53.7	\$28,192.50
Jason Jones	\$450	340.39	\$153,175.50
Niki Namazi	\$325	84.9	\$27,592.50
Viviana Vazquez	\$175	11.6	\$2,030.00
Total Fee Request for Task 28		490.59	\$210,990.50
<i>Task 29: Draft First Amended Complaint (Florida)</i>			
Attorney	Rate	Hours	Fee

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Yaniv Adar	\$525	15.3	\$8,032.50
Etan Mark	\$550	11	\$6,050.00
Jason Jones	\$450	68.51	\$30,829.50
Niki Namazi	\$325	12.3	\$3,997.50
Viviana Vazquez	\$175	3	\$525.00
Total Fee Request for Task 29		110.11	\$49,434.50
<i>Task 30: Draft Second Amended Complaint (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	11.6	\$6,090.00
Etan Mark	\$550	12.4	\$6,820.00
Joshua A. Migdal	\$525	4.9	\$2,572.50
Niki Namazi	\$325	48.8	\$15,860.00
Viviana Vazquez	\$175	1.5	\$262.50
Total Fee Request for Task 30		79.2	\$31,605.00
<i>Task 31: Miscellaneous Case and Project Management (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	34.2	\$17,955.00
Lara Grillo	\$450	11.3	\$5,085.00
Donald J. Hayden	\$650	3.1	\$2,015.00
Etan Mark	\$550	8.1	\$4,455.00
Joshua A. Migdal	\$525	10	\$5,250.00
Jason Jones	\$450	35.47	\$15,961.50
Niki Namazi	\$325	60	\$19,500.00
Viviana Vazquez	\$175	9.8	\$1,715.00
Total Fee Request for Task 31		171.97	\$71,936.50
<i>Task 32: Contested Discovery (Briefings, Conference, Hearings) (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	187.2	\$98,280.00
Etan Mark	\$550	16.8	\$9,240.00
Joshua A. Migdal	\$525	1	\$525.00
Jason Jones	\$450	103.34	\$46,503.00
Niki Namazi	\$325	107.1	\$34,807.50
Viviana Vazquez	\$175	18.9	\$3,307.50
Total Fee Request for Task 32		434.34	\$192,663.00
<i>Task 33: Motion to Dismiss and Supplemental Briefing (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	60.8	\$31,920.00
Lara Grillo	\$450	42.1	\$18,945.00

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Donald J. Hayden	\$650	3.4	\$2,210.00
Etan Mark	\$550	135.9	\$74,745.00
Joshua A. Migdal	\$525	22.6	\$11,865.00
Jason Jones	\$450	70.45	\$31,702.50
Niki Namazi	\$325	41.7	\$13,552.50
Michelle Pelaez	\$175	1.6	\$280.00
Viviana Vazquez	\$175	12.2	\$2,135.00
Total Fee Request for Task 33		390.75	\$187,355.00
<i>Task 34: Appellate Briefing and Argument Before Eleventh Circuit Court of Appeals</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	7.2	\$3,780.00
Lara Grillo	\$450	120.6	\$54,270.00
Donald J. Hayden	\$650	2.2	\$1,430.00
Etan Mark	\$550	58	\$31,900.00
Joshua A. Migdal	\$525	6	\$3,150.00
Jason Jones	\$450	127.31	\$57,289.50
Michelle Pelaez	\$175	27.7	\$4,847.50
Viviana Vazquez	\$175	5.5	\$962.50
Total Fee Request for Task 34		354.51	\$157,629.50

<i>Projected Future Fees - Motion for Preliminary Approval, Motion for Final Approval, Dealing with Objections, Travel to Hearing, Claims Process, etc.</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	30	\$15,750.00
Etan Mark	\$550	45	\$24,750.00
Total Fee Request for Future Fees		75	\$40,500.00

TOTAL FEE REQUEST:

\$4,564,849

Hours: 9840

Based on a review of the evidence submitted with respect to the work performed in this matter, issues are raised about the number of hours spent on certain tasks, as well as the number of attorneys who worked on certain tasks. The evidence reflects that 11 attorneys worked on this matter. The evidence also shows that very substantial hours were recorded for certain tasks, with limited information as to why these hours were necessary. Based on a review the present evidence, certain exclusions and downward adjustments to the time charges, are warranted. These adjustments result in a reduction to the lodestar of \$629,043, i.e., from \$4,564,849 to \$3,935,807. These adjustments are reflected in the following table.

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Adjusted Hours by Task			
<i>Task 1: Pre-Suit Investigation</i>			
Attorney	Rate	Hours	Fee
Jason Jones	\$450	150	\$67,500.00
Total Fee Request for Task 1		150	\$67,500.00
<i>Task 2: Drafting Original Complaint</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	40	\$18,000.00
Donald J. Hayden	\$650	4	\$2,600.00
Etan Mark	\$550	50	\$27,500.00
Joshua A. Migdal	\$525	4.1	\$2,152.50
Jason Jones	\$450	50	\$22,500.00
Michelle Pelaez	\$175	18.2	\$3,185.00
Total Fee Request for Task 2		166.3	\$75,937.50
<i>Task 3: Motion to Stay Discovery (Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	14.4	\$6,480.00
Donald J. Hayden	\$650	1.4	\$910.00
Etan Mark	\$550	4.2	\$2,310.00
Joshua A. Migdal	\$525	0	
Total Fee Request for Task 3		20	\$9,700.00
<i>Task 4: Motion to Dismiss (Before Transfer)</i>			
Attorney	Rate	Hours	Fee
Lara Grillo	\$450	12	\$5,400.00
Donald J. Hayden	\$650	0	
Etan Mark	\$550	19	\$10,450.00
Joshua A. Migdal	\$525	9.5	\$4,987.50
Jason Jones	\$450	45	\$20,250.00
Total Fee Request for Task 4		85.5	\$41,087.50
<i>Task 5: Motions to Compel Arbitration and Transfer Venue</i>			
Attorney	Rate	Hours	Fee
George Breur	\$400	0	
Lara Grillo	\$450	120	\$54,000.00
Donald J. Hayden	\$650	50	\$32,500.00
Etan Mark	\$550	115	\$63,250.00
Joshua A. Migdal	\$525	70	\$36,750.00
Jason Jones	\$450	60	\$27,000.00
Michelle Pelaez	\$175	22.8	\$3,990.00

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Total Fee Request for Task 5			437.8	\$217,490.00
<i>Task 6: Jurisdictional Discovery</i>				
Attorney	Rate	Hours	Fee	
George Breur	\$400	0	\$0.00	
Lara Grillo	\$450	10.6	\$4,770.00	
Donald J. Hayden	\$650	9.1	\$5,915.00	
Etan Mark	\$550	40.5	\$22,275.00	
Joshua A. Migdal	\$525	11.5	\$6,037.50	
Jason Jones	\$450	70	\$31,500.00	
Total Fee Request for Task 6			141.7	\$70,497.50
<i>Task 7: Investigation and Research (Post-Filing, Before Transfer)</i>				
Attorney	Rate	Hours	Fee	
Jason Jones	\$450	90	\$40,500.00	
Total Fee Request for Task 7			90	\$40,500.00
<i>Task 8: Miscellaneous Case and Project Management (Before Transfer)</i>				
Attorney	Rate	Hours	Fee	
Lara Grillo	\$450	8	\$3,600.00	
Donald J. Hayden	\$650	15	\$9,750.00	
Etan Mark	\$550	25	\$13,750.00	
Joshua A. Migdal	\$525	6.1	\$3,202.50	
Jason Jones	\$450	70	\$31,500.00	
Michelle Pelaez	\$175	12.6	\$2,205.00	
Total Fee Request for Task 8			136.7	\$64,007.50
<i>Task 9: Case Assessment and Strategization After Transfer to California</i>				
Attorney	Rate	Hours	Fee	
Lara Grillo	\$450	25	\$11,250.00	
Donald J. Hayden	\$650	5.7	\$3,705.00	
Etan Mark	\$550	7.7	\$4,235.00	
Joshua A. Migdal	\$525	20	\$10,500.00	
Jason Jones	\$450	20	\$9,000.00	
Michelle Pelaez	\$175	3.8	\$665.00	
Total Fee Request for Task 9			82.2	\$39,355.00
<i>Task 10: Fact Depositions</i>				
Attorney	Rate	Hours	Fee	
Yaniv Adar	\$525	75.2	\$39,480.00	
Etan Mark	\$550	103.1	\$56,705.00	
Joshua A. Migdal	\$525	11.1	\$5,827.50	
Jason Jones	\$450	350	\$157,500.00	
Jennifer Jones	\$600	200	\$120,000.00	

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Paul Levin	\$300	5.2	\$1,560.00
Michelle Pelaez	\$175	9.1	\$1,592.50
Viviana Vazquez	\$175	9.3	\$1,627.50
Victoria Pantin	\$175	38.3	\$6,702.50
Total Fee Request for Task 10		801.3	\$390,995.00
<i>Task 11: Contested Discovery (Hearings, Meet and Confers, Briefing, etc.)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	250	\$131,250.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	70	\$38,500.00
Joshua A. Migdal	\$525	8.3	\$4,357.50
Jason Jones	\$450	20	\$9,000.00
Jennifer Jones	\$600	25	\$15,000.00
Niki Namazi	\$325	17.9	\$5,817.50
Paul Levin	\$300	21.1	\$6,330.00
Lauren Gibbs	\$300	0	\$0.00
Mary Melbar	\$185	13	\$2,405.00
Viviana Vazquez	\$175	10.2	\$1,785.00
Victoria Pantin	\$175	0	\$0.00
Total Fee Request for Task 11		435.5	\$214,445.00
<i>Task 12: Written Discovery</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	55	\$28,875.00
Etan Mark	\$550	20	\$11,000.00
Jason Jones	\$450	200	\$90,000.00
Jennifer Jones	\$600	3.84	\$2,304.00
Paul Levin	\$300	9.8	\$2,940.00
Lauren Gibbs	\$300	2.2	\$660.00
Michelle Pelaez	\$175	7	\$1,225.00
Total Fee Request for Task 12		297.84	\$137,004.00
<i>Task 13: Document Review and ESI Organization</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	13.8	\$7,245.00
Joshua A. Migdal	\$525	3.8	\$1,995.00
Jason Jones	\$450	600	\$270,000.00
Jennifer Jones	\$600	78.17	\$46,902.00
Michelle Pelaez	\$175	0	\$0.00
Victoria Pantin	\$175	0.4	\$70.00
Total Fee Request for Task 13		696.17	\$326,212.00

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<i>Task 14: First Motion to Dismiss in California</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	3.1	\$1,627.50
Lara Grillo	\$450	26.7	\$12,015.00
Donald J. Hayden	\$650	22.5	\$14,625.00
Etan Mark	\$550	55	\$30,250.00
Joshua A. Migdal	\$525	0	\$0.00
Jason Jones	\$450	74	\$33,300.00
Jennifer Jones	\$600	25	\$15,000.00
Paul Levin	\$300	4	\$1,200.00
Lauren Gibbs	\$300	5	\$1,500.00
Mary Melbar	\$185	5	\$925.00
Michelle Pelaez	\$175	11	\$1,925.00
Viviana Vazquez	\$175	3	\$525.00
Total Fee Request for Task 14		234.3	\$112,892.50
<i>Task 15: Motion for Class Certification</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	80	\$42,000.00
Donald J. Hayden	\$650	6	\$3,900.00
Etan Mark	\$550	60	\$33,000.00
Joshua A. Migdal	\$525	30	\$15,750.00
Jason Jones	\$450	80	\$36,000.00
Jennifer Jones	\$600	0	\$0.00
Paul Levin	\$300	4.6	\$1,380.00
Mary Melbar	\$185	6	\$1,110.00
Michelle Pelaez	\$175	6.9	\$1,207.50
Viviana Vazquez	\$175	28.6	\$5,005.00
Victoria Pantin	\$175	5.5	\$962.50
Total Fee Request for Task 15		307.6	\$140,315.00
<i>Task 16: Draft First Amended Complaint in California</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	5.5	\$2,887.50
Etan Mark	\$550	9.2	\$5,060.00
Jason Jones	\$450	35	\$15,750.00
Jennifer Jones	\$600	3.43	\$2,058.00
Michelle Pelaez	\$175	1.6	\$280.00
Total Fee Request for Task 16		54.73	\$26,035.50
<i>Task 17: Second Motion to Dismiss in California</i>			
Attorney	Rate	Hours	Fee

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Yaniv Adar	\$525	25.8	\$13,545.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	36.2	\$19,910.00
Joshua A. Migdal	\$525	0	\$0.00
Jason Jones	\$450	40	\$18,000.00
Niki Namazi	\$325	0	\$0.00
Mary Melbar	\$185	2	\$370.00
Victoria Pantin	\$175	0.8	\$140.00
Total Fee Request for Task 17		104.8	\$51,965.00
<i>Task 18: Settlement Conferences and Mediation</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	34.2	\$17,955.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	98.8	\$54,340.00
Joshua A. Migdal	\$525	112.2	\$58,905.00
Jason Jones	\$450	25	\$11,250.00
Paul Levin	\$300	0	\$0.00
Viviana Vazquez	\$175	7.7	\$1,347.50
Total Fee Request for Task 18		277.9	\$143,797.50
<i>Task 19: Miscellaneous Case and Project Management</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	100	\$52,500.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	100	\$55,000.00
Joshua A. Migdal	\$525	50.6	\$26,565.00
Jason Jones	\$450	190	\$85,500.00
Jennifer Jones	\$600	29.48	\$17,688.00
Paul Levin	\$300	40.1	\$12,030.00
Lauren Gibbs	\$300	9.3	\$2,790.00
Niki Namazi	\$325	11.7	\$3,802.50
Mary Melbar	\$185	15.1	\$2,793.50
Michelle Pelaez	\$175	58.7	\$10,272.50
Viviana Vazquez	\$175	41.4	\$7,245.00
Victoria Pantin	\$175	52.3	\$9,152.50
Total Fee Request for Task 19		698.68	\$285,339.00
<i>Task 20: Expert Written Discovery and Reports</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	35	\$18,375.00
Etan Mark	\$550	60	\$33,000.00

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Joshua A. Migdal	\$525	13.6	\$7,140.00
Jason Jones	\$450	100	\$45,000.00
Paul Levin	\$300	0	\$0.00
Niki Namazi	\$325	17.7	\$5,752.50
Mary Melbar	\$185	2	\$370.00
Viviana Vazquez	\$175	5.7	\$997.50
Total Fee Request for Task 20		234	\$110,635.00
<i>Task 21: Expert Depositions</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	20	\$10,500.00
Etan Mark	\$550	9.3	\$5,115.00
Joshua A. Migdal	\$525	4.4	\$2,310.00
Jason Jones	\$450	80	\$36,000.00
Niki Namazi	\$325	12.3	\$3,997.50
Viviana Vazquez	\$175	4.6	\$805.00
Total Fee Request for Task 21		130.6	\$58,727.50
<i>Task 22: Motions in Limine</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	75	\$39,375.00
Etan Mark	\$550	15.4	\$8,470.00
Joshua A. Migdal	\$525	20	\$10,500.00
Jason Jones	\$450	33	\$14,850.00
Paul Levin	\$300	0	\$0.00
Niki Namazi	\$325	30	\$9,750.00
Viviana Vazquez	\$175	3.4	\$595.00
Total Fee Request for Task 22		176.8	\$83,540.00
<i>Task 23: Motion for Summary Judgment</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	25	\$13,125.00
Etan Mark	\$550	70	\$38,500.00
Joshua A. Migdal	\$525	22	\$11,550.00
Jason Jones	\$450	100	\$45,000.00
Paul Levin	\$300	0	\$0.00
Niki Namazi	\$325	16.8	\$5,460.00
Viviana Vazquez	\$175	2.5	\$437.50
Total Fee Request for Task 23		236.3	\$114,072.50
<i>Task 24: Motion to Strike Affirmative Defenses</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	9.5	\$4,987.50

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Joshua A. Migdal	\$525	2.1	\$1,102.50
Niki Namazi	\$325	26.6	\$8,645.00
Viviana Vazquez	\$175	1.4	\$245.00
Total Fee Request for Task 24		39.6	\$14,980.00
<i>Task 25: Drafting Settlement Documents and Preliminary Class Certification Docs</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	76	\$39,900.00
Etan Mark	\$550	27.9	\$15,345.00
Joshua A. Migdal	\$525	4.9	\$2,572.50
Viviana Vazquez	\$175	8.4	\$1,470.00
Total Fee Request for Task 25		117.2	\$59,287.50
<i>Task 26: Written Discovery (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	70	\$36,750.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	7.1	\$3,905.00
Joshua A. Migdal	\$525	0	\$0.00
Jason Jones	\$450	7.47	\$3,361.50
Niki Namazi	\$325	90	\$29,250.00
Michelle Pelaez	\$175	0	\$0.00
Viviana Vazquez	\$175	29.5	\$5,162.50
Total Fee Request for Task 26		204.07	\$78,429.00
<i>Task 27: Fact Depositions (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	36.7	\$19,267.50
Etan Mark	\$550	5.5	\$3,025.00
Jason Jones	\$450	140	\$63,000.00
Niki Namazi	\$325	95.1	\$30,907.50
Viviana Vazquez	\$175	15.2	\$2,660.00
Total Fee Request for Task 27		292.5	\$118,860.00
<i>Task 28: Document Review and Factual Research (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	53.7	\$28,192.50
Jason Jones	\$450	300	\$135,000.00
Niki Namazi	\$325	84.9	\$27,592.50
Viviana Vazquez	\$175	11.6	\$2,030.00
Total Fee Request for Task 28		450.2	\$192,815.00
<i>Task 29: Draft First Amended Complaint (Florida)</i>			
Attorney	Rate	Hours	Fee

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Yaniv Adar	\$525	15.3	\$8,032.50
Etan Mark	\$550	11	\$6,050.00
Jason Jones	\$450	68.51	\$30,829.50
Niki Namazi	\$325	12.3	\$3,997.50
Viviana Vazquez	\$175	3	\$525.00
Total Fee Request for Task 29		110.11	\$49,434.50
<i>Task 30: Draft Second Amended Complaint (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	11.6	\$6,090.00
Etan Mark	\$550	12.4	\$6,820.00
Joshua A. Migdal	\$525	4.9	\$2,572.50
Niki Namazi	\$325	30	\$9,750.00
Viviana Vazquez	\$175	1.5	\$262.50
Total Fee Request for Task 30		60.4	\$25,495.00
<i>Task 31: Miscellaneous Case and Project Management (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	30	\$15,750.00
Lara Grillo	\$450	11.3	\$5,085.00
Donald J. Hayden	\$650	3.1	\$2,015.00
Etan Mark	\$550	8.1	\$4,455.00
Joshua A. Migdal	\$525	10	\$5,250.00
Jason Jones	\$450	30	\$13,500.00
Niki Namazi	\$325	50	\$16,250.00
Viviana Vazquez	\$175	9.8	\$1,715.00
Total Fee Request for Task 31		152.3	\$64,020.00
<i>Task 32: Contested Discovery (Briefings, Conference, Hearings) (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	170	\$89,250.00
Etan Mark	\$550	16.8	\$9,240.00
Joshua A. Migdal	\$525	0	\$0.00
Jason Jones	\$450	90	\$40,500.00
Niki Namazi	\$325	90	\$29,250.00
Viviana Vazquez	\$175	18.9	\$3,307.50
Total Fee Request for Task 32		385.7	\$171,547.50
<i>Task 33: Motion to Dismiss and Supplemental Briefing (Florida)</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	50	\$26,250.00
Lara Grillo	\$450	42.1	\$18,945.00
Donald J. Hayden	\$650	0	\$0.00

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Etan Mark	\$550	100	\$55,000.00
Joshua A. Migdal	\$525	22.6	\$11,865.00
Jason Jones	\$450	60	\$27,000.00
Niki Namazi	\$325	41.7	\$13,552.50
Michelle Pelaez	\$175	0	\$0.00
Viviana Vazquez	\$175	12.2	\$2,135.00
Total Fee Request for Task 33		328.6	\$154,747.50
<i>Task 34: Appellate Briefing and Argument Before Eleventh Circuit Court of Appeals</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	7.2	\$3,780.00
Lara Grillo	\$450	110	\$49,500.00
Donald J. Hayden	\$650	0	\$0.00
Etan Mark	\$550	58	\$31,900.00
Joshua A. Migdal	\$525	6	\$3,150.00
Jason Jones	\$450	110	\$49,500.00
Michelle Pelaez	\$175	27.7	\$4,847.50
Viviana Vazquez	\$175	5.5	\$962.50
Total Fee Request for Task 34		324.4	\$143,640.00

<i>Projected Future Fees - Motion for Preliminary Approval, Motion for Final Approval, Dealing with Objections, Travel to Hearing, Claims Process, etc.</i>			
Attorney	Rate	Hours	Fee
Yaniv Adar	\$525	30	\$15,750.00
Etan Mark	\$550	45	\$24,750.00
Total Fee Request for Future Fees		75	\$40,500.00

TOTAL ADJUSTED LODESTAR: \$3,935,806.50
8536.8

Based on the present evidence, a fee award in the range of \$3.125 million to \$4,166,166 is preliminarily approved. This determination is based on the information presented, without prejudice to de novo review in connection with a motion for final approval in which additional evidence is presented as to the work performed that has been adjusted as shown in the foregoing chart.

E. Litigation Costs

Counsel also seek reimbursement for \$337,926.05 in litigation costs This request is supported by a

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spreadsheet detailing the costs. See Ex. 5, Dkt. 392. These costs include travel and food expenses connected with the litigation. *Id.*

The costs submitted are reasonable. Therefore, an award of litigation costs of \$337,926.05 is preliminarily approved. In connection with any motion for final approval, Counsel may request an additional award for any costs incurred between the time of filing the Motion and the time of final approval.

F. Appointment of Settlement Administrator

As noted, the parties seek approval of A.B. Data as the Settlement Administrator. Eric Miller of A.B. Data has provided a declaration in support of the Motion for Preliminary Approval (“Miller Declaration”) detailing the notice program as well as his experience and qualifications. Dkt. 384-2. Based on the evidence provided, A.B. Data appears to be an appropriate administrator. At the hearing on the Motion, Plaintiff’s Counsel represented that the estimated cost of settlement administration is \$417,000.

A.B. Data is approved as Settlement Administrator. In connection with any motion for final approval, Plaintiff should submit evidence supporting the amount requested for settlement administration costs.

G. Class Notice

1. Legal Standards

Rule 23(e)(1)(B) requires that a court “direct notice in a reasonable manner to all class members who would be bound by” a proposed class settlement. Fed. R. Civ. P. 23(e)(1)(B). Notice is satisfactory if it “generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)).

2. Application

As stated, the Proposed Notice summarizes the terms of the Settlement Agreement, advises each of the Class Members about the process for submitting a claim form, and provides a website and toll-free phone number that Class Members can use to contact the Claims Administrator. Dkt. 384-2 ¶¶ 4-8. It also instructs Class Members how to file objections or to opt out of the settlement. *Id.* ¶¶ 10-12. The Proposed Notice satisfies the requirements of Rule 23(e)(1)(B).

V. Conclusion

For the reasons stated in this Order, the Motion is **GRANTED**.

IT IS SO ORDERED.

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Initials of Preparer

_____ : _____
tj
