

Record 9 of 13

| | |
|--------------------------------------|-----------------|
| Reference Number | 32277551 |
| Created Date | 08/31/2011 |
| Complaint Source | BBB GA Atlanta |
| Originator Reference Number | 04430027213063 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBATGA-USER |
| Entered Date | 08/31/2011 |
| Updated By | BBBATGA-USER |
| Updated Date | 07/01/2012 |
| Agency Contact | External Agency |
| Complaint Date | 08/31/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | b(6) |
| Consumer Address, Line 3 | |
| Consumer Address, City | NAPLES |
| Consumer Address, State Code | FL |
| Consumer Address, State Name | Florida |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | b(6) |
| Consumer Home Phone, Number | b(6) |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |

| | |
|--|----------------------|
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Incomeathome.com |
| Company Address, Line 1 | 167 Teague Drive |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | CANTON |
| Company Address, State Code | GA |
| Company Address, State Name | Georgia |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 30114 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | www.incomeathome.com |
| Company Rep First Name | Shawn |
| Company Rep Middle Name | |
| Company Rep Last Name | Dahl |
| Company Rep Salutation | |
| Company Rep Comments | Owner |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |

| | |
|--|--|
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | \$39.95 |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>I got online and communicated with people that said you received a pack for an income at home information package. It was \$9.95. I charged it to a credit card. I received the package, the instructions were to call your 'mentor' and have a phone conversation about the package. I did as directed. Basically, I found out it was a pyramid scheme with Herbalife and I told the woman I was not interested, thank you for your time. Now, I paid \$10 for this. A couple days later it occurred to me that they had my credit card # and I called, did not get an answer, left a message and asked that they would please destroy my card. Never heard another word. Then the next month there was an unauthorized charge for \$39.95. I called several times and left email messages for 2 weeks to no avail. I had to cancel my credit card and dispute the charges, a pain. Finally, I left a not so nice message to call and she finally called back a week later. Telling me that they charged my account because I didn't send the booklet back, which I was not instructed to do. I asked why they didn't answer my calls and she made many excuses. The bottom line is they misrepresented themselves and made an unauthorized charge to my account. I closed the account so they can't do it again, with much trouble to me. They got their \$10 for nothing as far as I'm</p> |

concerned. Who knows what else they would charge to my account. I was very angry. I also notified the radio station that promotes them.
 Product_Or_Service: Internet business starter pack
 Order_Number: 366944
 Purchase_Price: 10.00
 IsB2BComplaint: false
 HasComplainedToBusiness: false
 IsBusinessProblemAdjusted: false
 IsAcceptedByConsumer: false ---
 Additional Comments: DesiredSettlementID: Other (requires explanation)I've disputed the charges and if that is settled then I will be fine. But otherwise, I want my money back. And I don't want them to be able to continue to rip off other people. You pay \$10 to find out it's something you don't want to get involved with and then they have your number. I won't fall for that again. Tired of these rip off people. I work too hard for my money. You hear an advertisement on a reputable radio station and think it may be an opportunity and this is how it works out'

Complaint Info CRA Dispute Flag

Complaint Info CRA Dispute 45 Days Flag - FOIA only

| Record 10 of 13 | |
|--------------------------------------|-----------------|
| Reference Number | 32667026 |
| Created Date | 09/26/2011 |
| Complaint Source | BBB GA Atlanta |
| Originator Reference Number | 04430027216751 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBATGA-USER |
| Entered Date | 09/26/2011 |
| Updated By | BBBATGA-USER |
| Updated Date | 07/01/2012 |
| Agency Contact | External Agency |
| Complaint Date | 09/26/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | MILAN |
| Consumer Address, State Code | OH |
| Consumer Address, State Name | Ohio |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |

| | |
|--|----------------------|
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Incomeathome.com |
| Company Address, Line 1 | 167 Teague Drive |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | CANTON |
| Company Address, State Code | GA |
| Company Address, State Name | Georgia |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 30114 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | www.incomeathome.com |
| Company Rep First Name | Shawn |
| Company Rep Middle Name | |
| Company Rep Last Name | Dahl |
| Company Rep Salutation | |
| Company Rep Comments | Owner |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested | |

| | |
|--|--|
| Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | \$45.99 |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>I went to the website hoping to find several options for an online business and they said they would get back to me. What I got was a packet with all these claims and two cds. At that time they asked for a payment of \$9.99 for a 30 day try. I played the cds and they told me nothing. I called the number on the packet but had trouble catching up with her to get more info. During that time the trial period ended and I was charged an additional \$35.00 and I hadn't even talked to anyone yet. Well, here recently I finally reached her and guess what the great business opportunity was? Herbalife!!!! Diet aids & supplements. That was the great opportunity? It was all about recruiting more suckers like me to pay money to a coach, create a downline, recruit more people to recruit more people and so on. Can you say pyramid scheme? sure you have the option to sell stuff but in her own words she made most of her money from her downline. Ripoff. Oh, and to get started it cost \$399.00 to do it right. I originally contacted them because I was strapped for money. started with income at home.com, ended with onlinebusiness systems.Product_Or_Service: information on business --- Additional Comments: DesiredSettlementID: Refund\$9.99 & \$35.00'</p> |
| Complaint Info CRA Dispute Flag | |

Complaint Info CRA Dispute 45 Days
Flag - FOIA only

Record 11 of 13

| | |
|--------------------------------------|-----------------|
| Reference Number | 35147912 |
| Created Date | 02/15/2012 |
| Complaint Source | BBB GA Atlanta |
| Originator Reference Number | 04430027238717 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBATGA-USER |
| Entered Date | 02/15/2012 |
| Updated By | BBBATGA-USER |
| Updated Date | 03/04/2012 |
| Agency Contact | External Agency |
| Complaint Date | 02/15/2012 |
| Transaction Date | |
| Consumer First Name | b(6)ll |
| Consumer Middle Name | ll |
| Consumer Last Name | b(6)lb(6)lb(6) |
| Consumer Salutation | ll |
| Consumer Address, Line 1 | b(6)ll |
| Consumer Address, Line 2 | ll |
| Consumer Address, Line 3 | ll |
| Consumer Address, City | MESAll |
| Consumer Address, State Code | AZll |
| Consumer Address, State Name | Arizonall |
| Consumer Address, Country Code | USAll |
| Consumer Address, Country Name | UNITED STATESll |
| Consumer Address, ZIP Code | b(6)ll |
| Consumer Address, ZIP Code Extension | ll |
| Consumer Home Phone, Country Code | ll |
| Consumer Home Phone, Area Code | ll |
| Consumer Home Phone, Number | ll |
| Consumer Work Phone, Country Code | ll |
| Consumer Work Phone, Area Code | b(6)ll |
| Consumer Work Phone, Number | b(6)ll |
| Consumer Work Phone, Extension | ll |
| Consumer Fax, Country Code | ll |

| | |
|--|----------------------|
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Incomeathome.com |
| Company Address, Line 1 | 167 Teague Drive |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | CANTON |
| Company Address, State Code | GA |
| Company Address, State Name | Georgia |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 30114 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | www.incomeathome.com |
| Company Rep First Name | Shawn |
| Company Rep Middle Name | |
| Company Rep Last Name | Dahl |
| Company Rep Salutation | |
| Company Rep Comments | Owner |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested | |

| | |
|--|---|
| Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| | <p>In August, 2011 I was searching for an online part-time home business opportunity and, based on the widespread radio advertising for the site, requested information on the opportunity at www.incomeathome.com. What the site promised was a turnkey online home business, great income potential (always with the careful legal disclaimer, results not typical for the constant stream of testimonials in each succeeding video), no door-to-door sales, no sales experience, etc, ad nauseum. What I got instead was three months of increasing expenses not previously disclosed when I originally signed up at the Supervisor level, time away from my family and regular job on weekends and during the week, three boxes of unsellable products, no support or encouragement at all from my upline manager, and the final realization by the first week of December that I could not begin to afford the exorbitant fees necessary to pay for the paid sales leads needed to make the online business function. At that point I canceled my membership and shut down the business, having to pay all the third-party cancelation fees not previously disclosed, which now are harassing me and my family. The website www.incomeathome.com is simply the online gateway to the multi-level marketing</p> |

Complaint Info Comments

(MLM) pioneer and health products giant, Herbalife (HL). After requesting more information, and paying a fee for the overnight shipment of the sales DVD, I became what I later learned was a Paid Pack online sales lead, the most valuable AND MOST EXPENSIVE sales lead of all the potential leads in the HL online system. I got a series of telephone interviews by the person who would later be my upline manager, being directed each time to a different website, all of which constantly pressured the prospect, ME, to enter the HL marketing system at the Supervisor level, where the maximum income-producing methods are available. Lower levels, beginning with Distributor, are available for prospects to enter the marketing system much more cheaply, but are studiously passed over in the sales presentations where entry at the Supervisor level is always emphasized. Why? Because the traditional method to obtain the Supervisor membership level is to pay \$4,000.00 by credit card upfront on the final call which is a conference call with your future managers higher level manager. An alternate method is to recruit 2 other prospects, which will pay the Supervisor fees, bringing you in as their manager. Ive been in MLM organizations before, and this is how MLMs make their money; not by selling products, done at the lower levels of the organization, but by recruiting Supervisors who will pay high upfront fees for the privilege of making sales income, bonuses, and residual income faster. Recruiting and creating your own sales group, not retail sales, is the fastest method to reach the upper MLM income levels. After I had paid my Supervisor fee, which cost me all of my remaining 401k loan balance, pay bonuses, and added significantly to our family credit card balance, I had to focus intensely (since I was determined to put all I had into this business to make it succeed) on several levels of online training. This included having to participate in evening or morning conference calls three times per week, which required us to go out and buy a special 3-way call-capable telephone and install an expensive landline, which we had avoided previously because of the expense.

| | |
|---|---|
| | <p>Because of my work schedule, I had to take several days off to participate in morning conference calls just to keep up with training. What I also quickly began to experience during the first two levels of training was that I was being led through steps to set up the online business. These steps involved contracting with third-party vendors who charged significant setup and first-month fees for their services. I was already stretched to the limit financially, and none of these fees had been disclosed to me prior to signing up as a Supervisor. By</p> |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

Record 12 of 13

| | |
|--------------------------------------|-----------------|
| Reference Number | 38732796 |
| Created Date | 06/28/2012 |
| Complaint Source | BBB AZ Phoenix |
| Originator Reference Number | 11260009101155 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBPHAZ-USER |
| Entered Date | 06/28/2012 |
| Updated By | |
| Updated Date | |
| Agency Contact | External Agency |
| Complaint Date | 06/28/2012 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | b(6) |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | PACIFIC |
| Consumer Address, State Code | MO |
| Consumer Address, State Name | Missouri |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | |
| Consumer Work Phone, Number | |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |

| | |
|--|--------------------------------|
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | IncomeAtHome.com |
| Company Address, Line 1 | c/o |
| Company Address, Line 2 | 6946 N. Academy Blvd. Ste. 166 |
| Company Address, Line 3 | |
| Company Address, City | COLORADO SPRINGS |
| Company Address, State Code | CO |
| Company Address, State Name | Colorado |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 80918 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | |
| Company Rep First Name | |
| Company Rep Middle Name | |
| Company Rep Last Name | |
| Company Rep Salutation | |
| Company Rep Comments | |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested | |

| | |
|--|--|
| Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>I ordered an online package through incomeathome.com I heard about it on various radio stations. I was going through the training to sell a product called Herbalife, a weight loss product. I saw I had 90 days to ask for a refund. As soon as I found out I had to take their products as part of my training, I could not follow through it because I cannot vouch for a product to customers I would have need for. The 2nd package I purchased online cost me \$199.95. I have tried to contact the person who took my order fo this package, Heidi Craig through email twice out of Scottsdale AR. and I have not heard from her. I don't think this was a scam because as I stated before I hard about it on the radio and sent both packages back over a week ago. I am still waiting for my refund. Now I found out this business is not accredited through the BBB. Is there anyway to get my money back? The total package cost \$229.95. Part of that cost includes the starter's kit for \$9.95 and a purchase from Experian protection on 6/21/12 866-5792218 CA 0000000078000. It appears I am going to be charged monthly for this protection. I need that to stop as well. I closed my account as soon as I found out I had to take this product as part of my training for reason's I just explained. --- Additional Comments: Just have the money refunded back into my debit account. That is</p> |

| | |
|---|-------------------------------|
| | all I have been asking for. ' |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

Record 13 of 13

| | |
|--------------------------------------|-----------------|
| Reference Number | 43861651 |
| Created Date | 02/14/2013 |
| Complaint Source | BBB GA Atlanta |
| Originator Reference Number | 04430027292751 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBATGA-USER |
| Entered Date | 02/14/2013 |
| Updated By | |
| Updated Date | |
| Agency Contact | External Agency |
| Complaint Date | 02/14/2013 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | MARSHFIELD |
| Consumer Address, State Code | WI |
| Consumer Address, State Name | Wisconsin |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |

| | |
|--|----------------------|
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Incomeathome.com |
| Company Address, Line 1 | 167 Teague Drive |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | CANTON |
| Company Address, State Code | GA |
| Company Address, State Name | Georgia |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 30114 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | www.incomeathome.com |
| Company Rep First Name | Shawn |
| Company Rep Middle Name | |
| Company Rep Last Name | Dahl |
| Company Rep Salutation | |
| Company Rep Comments | Owner |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested | |

| | |
|--|--|
| Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>'Incomeathome.com is advertised on radio (WSAW 99.9) as a way to make money at home to supplement income or replace a current job. The claim states that this requires only 'spare time' from home, and does not 'involve selling soap'. This is false and misleading. In reality, this is a link to 'Herbalife' while in it's right arguably legitmate, Herbalife is a long known pyramid marketing scheme. Once enrolled a 'sponsor' or 'mentor' is assigned in this case (Connie Skelton, 1098 Venable Rd Waynesboro Tn 931 722-9255) who requires 'on line meetings' daily which required 4-6 hours a day in 'training'. On enrollment I made the expectation clear of 4-6 hours per week. The sponsor then sends dvd videos that urge you to become a 'supervisor' to put you on the 'road to success' by purchasing \$2400.00 in merchandise, and requiring you to purchase approximately \$500.00 in on line so called business and marketing tools ('I-Office') all this without ever specifying how income is generated. Finally once the 'tools' are bought, and the product is delivered to your home-a cost of apprixamtely \$3000.00 you are pretty well left to selling the diet potients consisting of 'milk shakes' and other packaged diet foods to your friends personally and on facebook. Great way to lose friends! So much for 'no selling soap'.</p> |

When it became clear to me that this was a scam I decided to return the product to the sponsor. I was unable to get my money back and months later my credit card company (Discover) finally reimbursed my account for an unauthorized charge. I am still out several hundred dollars for 'on line tools' that I was told that I needed but could not get a refund for. My credit score was impacted also when this so called sponsor managed to open an 'Herbalife Merchant account' that I did not authorize and that I did not ask for. Product_Or_Service: Diet supplemets --- Additional Comments: DesiredSettlementID: Other (requires explanation)Remove this fraudulent advertising from being used on air as is. The ad is misleading,and does not mention required start up costs and realistic time required. The ad should mention start up costs of aproximatley \$3000.00, time required equall a full time job, and the company name behind the ad: Herbalife.',

Complaint Info CRA Dispute Flag

Complaint Info CRA Dispute 45 Days Flag - FOIA only

As a Consumer Sentinel Network member, you must properly protect any information printed, downloaded, or otherwise removed from the Network as stated in OMB Memo M-06-16. Please delete or destroy this information within 90 days unless its use is still required for law enforcement purposes. When destroying the information you should burn, pulverize, or shred the information saved in paper format and destroy or erase information that has been saved electronically so that it cannot practicably be read or reconstructed. Proper erasure of electronic information must include the overwriting or "wiping" of the information from the electronic media on which it is stored.



Provided by the Federal Trade Commission



Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Report Date:05/13/2014

Time:3:51:38 PM

Requests Report
Received between 01/01/2010 and 05/05/2014

| Request ID | Received Date | Requester Name | Requester Category | Organization | Request Description |
|-----------------|---------------|----------------------|-------------------------|----------------------------|--|
| FOIA-2010-00992 | 07/15/2010 | Lampley, Michael | Commercial Organization | CanIReallyWorkFromHome.com | Herbalife Complaints |
| FOIA-2011-00083 | 10/20/2010 | Marti, Daniel | Law Firm | Kilpatrick Stockton LLP | Herbalife International of America, Inc. |
| FOIA-2011-00888 | 05/06/2011 | Wagschal, Gerry | News Media | ABC News | Complaints against Herbalife |
| FOIA-2012-00806 | 04/18/2012 | Frayter, Karina | News Media | CNBC | Herbalife |
| FOIA-2012-01131 | 07/16/2012 | Low, Kevin | Private Individual | - | Herbalife International, Inc. |
| FOIA-2012-01252 | 08/17/2012 | Han, Dong | Private Individual | - | Herbalife |
| FOIA-2013-00280 | 12/26/2012 | Celarier, Michelle | News Media | New York Post | Herbalife |
| FOIA-2013-00321 | 01/09/2013 | Quinn, Patrick | Private Individual | - | Consumer Complaints re: Herbalife |
| FOIA-2013-00339 | 01/14/2013 | Jacobovitz, Yitzchak | Commercial Organization | Capstone LLC | Herbalife |
| FOIA-2013-00341 | 01/14/2013 | Graham, Caroline | Private Individual | - | Herbalife |
| FOIA-2013-00376 | 01/17/2013 | Ofoche, Natalie | Private Individual | - | Herbalife International |
| FOIA-2013-00398 | 01/25/2013 | Muchanic, Christine | Law Firm | Height Analytics | Herbalife, etc. |
| FOIA-2013-00416 | 01/29/2013 | Sole, Andrew | Commercial Organization | Esopus Creek Advisors | Herbalife |
| FOIA-2013-00417 | 01/29/2013 | Daftary, Krish | Commercial Organization | New Mountain Capital | Herbalife |
| FOIA-2013-00426 | 01/30/2013 | Eavis, Peter | News Media | The New York Times | Herbalife |
| FOIA-2013-00429 | 01/30/2013 | Tang, Carol | News Media | dealReporter | Herbalife |
| FOIA-2013-00434 | 01/31/2013 | Celarier, Michelle | News Media | New York Post | Herbalife |
| FOIA-2013-00436 | 01/31/2013 | Wise, Aubrey | Commercial Organization | One East Partners | Herbalife |
| FOIA-2013-00456 | 02/04/2013 | Miller, Jason | Commercial Organization | Ionic Capital | Herbalife, Avon, and GNC |

| | | | | | |
|-----------------|------------|---------------------|-------------------------|----------------------------------|---|
| FOIA-2013-00484 | 02/07/2013 | Celarier, Michelle | News Media | New York Post | Herbalife Investigations |
| FOIA-2013-00568 | 02/27/2013 | Holley, Steven | Law Firm | Sullivan & Cromwell LLP | Herbalife Lead Generation Firms |
| FOIA-2013-00740 | 04/09/2013 | Wise, Aubrey | Commercial Organization | One East Partners | Herbalife |
| FOIA-2013-00741 | 04/10/2013 | Eavis, Peter | News Media | The New York Times | Herbalife records from FOIA-2013-00568 |
| FOIA-2013-00752 | 04/15/2013 | Muchanic, Christine | Law Firm | Height Analytics | Herbalife |
| FOIA-2013-00764 | 04/16/2013 | Holley, Steven | Law Firm | Sullivan & Cromwell LLP | Herbalife Lead Generation Firms |
| FOIA-2013-00821 | 04/29/2013 | Sampson, Kyle | Law Firm | Hunton & Williams | Herbalife International Inc., Melaleuca, Inc., Puritan's Pride, Inc., et al |
| FOIA-2013-00849 | 05/06/2013 | Levine, Marshall | Commercial Organization | Soros Fund Management | Herbalife |
| FOIA-2013-01002 | 06/11/2013 | Celarier, Michelle | News Media | New York Post | Herbalife Letter |
| FOIA-2013-01086 | 07/02/2013 | Holley, Steven | Law Firm | Sullivan & Cromwell LLP | Herbalife distributors, et al |
| FOIA-2013-01138 | 07/17/2013 | Gardner, Jeffrey | Private Individual | - | Herbalife, et al. |
| FOIA-2013-01147 | 07/19/2013 | Chin, Sandy | Commercial Organization | Visium Asset Management | Herbalife |
| FOIA-2013-01228 | 08/06/2013 | Becker, Henry | Private Individual | - | Herbalife |
| FOIA-2013-01247 | 08/12/2013 | Abrahamian, Atossa | News Media | Thomson Reuters | Herbalife |
| FOIA-2013-01318 | 08/28/2013 | Celarier, Michelle | News Media | New York Post | Herbalife Letters |
| FOIA-2013-01330 | 09/03/2013 | Gardner, Jeffrey | Private Individual | - | Herbalife |
| FOIA-2013-01382 | 09/16/2013 | Celarier, Michelle | News Media | New York Post | Herbalife |
| FOIA-2014-00018 | 10/17/2013 | Samuels, Michael | Commercial Organization | Apex Capital | Herbalife |
| FOIA-2014-00034 | 10/17/2013 | Levine, Marshall | Commercial Organization | Soros Fund Management | Herbalife FOIA Requests |
| FOIA-2014-00035 | 10/17/2013 | Levine, Marshall | Commercial Organization | Soros Fund Management | Herbalife Letters |
| FOIA-2014-00036 | 10/17/2013 | Levine, Marshall | Commercial Organization | Soros Fund Management | Herbalife Investigative Records |
| FOIA-2014-00355 | 12/18/2013 | McCall, Joanna | Commercial Organization | National Corporate Research, LTD | Herbalife Complaints |
| FOIA-2014-00490 | 01/29/2014 | Miller, Rueben | News Media | Policy and Regulatory Report | Herbalife Communications |
| FOIA-2014-00529 | 02/07/2014 | McLaughlin, | News Media | Bloomberg News | Herbalife |

| | | | | | |
|-----------------|------------|--------------------|-------------------------|--|--|
| | | David | | | |
| FOIA-2014-00565 | 02/20/2014 | McLaughlin, David | News Media | Bloomberg News | Pershing Square/Herbalife |
| FOIA-2014-00586 | 02/25/2014 | Gardner, Jeffrey | Private Individual | - | Herbalife Letter from Sen. Ed Markey |
| FOIA-2014-00641 | 03/14/2014 | Lipton, Eric | News Media | The New York Times | Herbalife |
| FOIA-2014-00646 | 03/18/2014 | Gauthier, Rolland | Commercial Organization | Falcon Research | Office of International Affairs/ Herbalife |
| FOIA-2014-00696 | 03/26/2014 | Grofman, Udi | Law Firm | Paul, Weiss, Rifkind, Wharton & Garrison LLP | Herbalife FOIA Requests |
| FOIA-2014-00710 | 03/31/2014 | Dracht, Philip | Law Firm | Fabian, Attorneys at Law | Herbalife investigatory records and CID |
| FOIA-2014-00720 | 04/02/2014 | Celarier, Michelle | News Media | New York Post | FOIA Requests for Herbalife |
| FOIA-2014-00825 | 04/22/2014 | McCall, Joanna | Commercial Organization | National Corporate Research, LTD | Herbalife |
| FOIA-2014-00846 | 04/28/2014 | James, Joshua | Law Firm | Bryan Cave | Herbalife, Mary Kay, MonaVie, et al. |

Total No of Requests : 52

Edwards, DeAnna

2010-00992

From: WebServer User [www@m217465vwbs2004.pnj1.attens.net]
Posted At: Thursday, July 15, 2010 8:03 AM
Posted To: FOIA

FEDERAL TRADE COMMISSION
RECEIVED

JUL 15 2010

FOIA BRANCH
GENERAL COUNSEL

name = Michael E. Lampley
staddr = 2832 Hiawatha Trail
city = Lake Worth
state = TX
zipcode = 76135
telno = 817 705 9727
faxno =

email = melampley@gmail.com
coinfo = Herbalife, 800 W Olympic Blvd, Los Angeles, CA 90015-1360, phone
310-410-9600.

Have there been any complaints to the FTC filed against this company in the last 3 years?
How many? What allegations are being made? what is the status of those complaints?

Thanks

Michael

EdSciName =
describe = Private Corporation or Law Firm
privatelawname = CanIReallyWorkFromHome.com
medianame =
money = Contact me if above \$100
B13 = Submit

Edwards, Deanna

2011-00083

From: WebServer User [www@m217465vwbs2004.pnj1.attens.net]
Sent: Wednesday, October 20, 2010 3:38 PM

FEDERAL TRADE COMMISSION
RECEIVED

OCT 20 2010

FOIA BRANCH
GENERAL COUNSEL

name = Daniel Marti
staddr = 607 14th Street, N.W., Suite 900
city = Washington
state = DC
zipcode = 20005
telno = (202) 508-5800
faxno = 202-585-0033
email = dmarti@kilpatrickstockton.com
coinfo = All consumer complaints and/or FTC investigation materials concerning
Herbalife International of America, Inc. (California)
EdSciName =
describe = Private Corporation or Law Firm
privatelawname = Kilpatrick Stockton LLP
medianame =
money = Contact me if above \$200
B13 = Submit

FOIA - 2011 - 00888

Bajorek, Rosemary

From: Fye, Eleanor A. [Eleanor.A.Fye@abc.com]

Sent: Friday, May 06, 2011 1:51 PM

To: FOIA

Cc: Wagschal, Gerry

Subject: Herbalife FOIA request

FEDERAL TRADE COMMISSION
RECEIVED

MAY 06 2011

FOIA BRANCH
GENERAL COUNSEL

Hello,

I'm working with ABC News on an investigative story about the company Herbalife. We're specifically interested in consumer complaints and investigatory records from 2005 to the present that involve the company or its contractors. We're willing to pay all fees.

Here's the contact info for my producer, Gerry Wagschal.

Gerry Wagschal
ABC News
47 W. 66th St.
New York, New York 10023
212- 456 - 3948
Gerry.wagschal@abc.com

Thank you!

Chender, Julian M.

FOIA-2012-0086

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Wednesday, April 18, 2012 10:49 AM

FEDERAL TRADE COMMISSION
RECEIVED

APR 18 2012

FOIA BRANCH
GENERAL COUNSEL

name = Karina Frayter
staddr = 900 Sylvan Avenue
city = Englewood Cliffs
state = NJ
zipcode = 07632
telno = 201-735-3117
faxno =
email = karina.frayter@nbcuni.com

coinfo = Dear Sir/Madam: This is a request under the Freedom of Information Act. I request information on the number of complaints filed with the FTC against Herbalife, located at 950 West 190th Street, Torrance, CA 90502, in the years 2000-2012 (pls breakdown numbers for each year). I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not in my commercial interest. If you need to discuss this request, I can be reached at 201-735-3117. Thank you for your consideration of my request. This is a time sensitive inquiry and if you expedite the request, I would greatly appreciate it. Sincerely, Karina Frayter CNBC | Markets Producer Office: (201)735-3117 Email: Karina.Frayter@nbcuni.com

EdSciName =
privatelawname =
describe = News Media
medianame = CNBC
money = None
B13 = Submit

Chender, Julian M.

FOIA-2012-01131

From: KEVIN LOW (b)(6)
Sent: Sunday, July 15, 2012 4:27 PM
To: FOIA
Subject: Information Request - Herbalife Consumer Complaints

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
RECEIVED

JUL 16 2012

FOIA BRANCH
GENERAL COUNSEL

Dear Sir/Madam:

This is a request under the Freedom of Information Act. I request that a copy of the following document(s) be provided to me: any Complaint Detail Reports, or similar reports if the name has changed, regarding Herbalife International Inc. for the years 2011-2012 as of July 15, 2012. This request is similar to request "FOIA Request No. 2002-324" but covers a different time period.

In order to help determine fees, you should know that I am an individual. I have removed the optional fee section in the hope this request would avoid any fees, but please let me know if fees are required.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

If you need to discuss this request, I can be reached at (b)(6). Thank you for your consideration of my request.

Sincerely,

Kevin Low

(b)(6)

Foster City, CA (b)(6)

FOIA 2012-01252

Gray, Nathaniel

From: Dong Han (b)(6)
Sent: Friday, August 17, 2012 2:10 PM
To: FOIA
Subject: information request - Herbalife

I would like to request all the investigatory records for the company Herbalife.

Name: Dong Han
My phone number is (b)(6)
Address is:
(b)(6) New York, NY (b)(6)

Thank you

FEDERAL TRADE COMMISSION
RECEIVED

AUG 17 2012

FOIA BRANCH
GENERAL COUNSEL

FOIA - 2013 - 00280

Bajorek, Rosemary

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Wednesday, December 26, 2012 11:40 AM

FEDERAL TRADE COMMISSION
RECEIVED

DEC 26 2012

FOIA BRANCH
GENERAL COUNSEL

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = I am looking for any data on consumer complaints about Herbalife, including the number of consumer complaints against the company.
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$100
B13 = Submit

FOIA-2013-00321

Peterson, Mark D.

From: Patrick Quinn (b)(6)
Sent: Wednesday, January 09, 2013 12:29 PM
To: FOIA
Subject: FOIA request

FEDERAL TRADE COMMISSION
RECEIVED

JAN 09 2013

FOIA BRANCH
GENERAL COUNSEL

Dear Sir/Madam:

This is a request under the Freedom of Information Act. I request that electronic copies of the following document(s) be provided to me:

1. All consumer complaints and investigative complaints related to Herbalife.

In order to help determine fees, you should know that I am an individual.

I am willing to pay fees up to \$100. If you expect the fees will exceed this, please contact me before proceeding.

If you need to discuss this request, I can be reached at (b)(6) Thank you for your consideration of my request.

Sincerely,

Patrick Quinn

(b)(6)

New York, NY (b)(6)

Kelly, Andrea

From: Apache server <apache@hq1-webdmz-s3.ftc.gov>
Sent: Monday, January 14, 2013 1:24 PM

FOIA - 2013 - 00339

name = Yitzchak Jacobovitz
staddr = 300 Independence Ave.
city = Washington
state = DC
zipcode = 20003
telno = 2024499859

FEDERAL TRADE COMMISSION
RECEIVED

JAN 14 2013

FOIA BRANCH
GENERAL COUNSEL

faxno =
email =
coinfo = Herbalife1800 Century Park E Los Angeles, CA I am requesting information on any investigative actions related to Herbalife, any consumer complaints that FTC received regarding Herbalife, and information on meetings between FTC and the SEC relating to Herbalife. Thanks for your help.

EdSciName =
describe = Private Corporation or Law Firm
privatelawname = Capstone LLC
medianame =
money = Up to \$100
B13 = Submit

(b)(6)

Arlington, VA (b)(6)

January 4, 2013

Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FOIA-2013-00341

FEDERAL TRADE COMMISSION
RECEIVED

JAN 14 2013

FOIA BRANCH
GENERAL COUNSEL

Re: FOIA Request

To Whom It May Concern:

Under the provisions of the Freedom of Information Act, I would like to request copies of all publicly releasable complaints made against Herbalife, located in Los Angeles and Torrance, California, and any of its distributors nationwide since December 17, 2001.

I agree to pay reasonable duplication fees for the processing of this request. If my request is denied in whole or part, I ask that you provide references to the specific exemptions under the Freedom of Information Act.

Should you have any questions regarding this request, I can be reached by phone at (b)(6) or by e-mail at (b)(6)

Thank you for your assistance.

Sincerely,



Caroline Graham

FOIA-2013-00376

January 17, 2013

VIA E-MAIL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
RECEIVED

JAN 17 2013

FOIA BRANCH
GENERAL COUNSEL

Re: Freedom of Information Act Request: Herbalife International

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., I hereby request copies of the following information: *all correspondence, documents, and data records from 2003 through 2013 regarding investigations into Herbalife International, located at 800 W. Olympic Boulevard, Suite 406, Los Angeles, California. This company is a multi-level marketing company that sells nutrition, weight management and skin-care products.*

I am willing to pay fees up to \$200. If you expect the fees will exceed this, please contact me before proceeding. Please send all available records to my attention at:

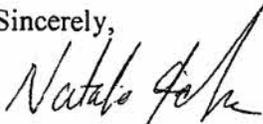
Natalie Ofoche

(b)(6)

Alexandria, Virginia (b)(6)

I can be reached at (b)(6) Thank you for your consideration of my request.

Sincerely,



Natalie N. Ofoche

Mischler, Erin

From: Vera, Elena R.
Sent: Friday, January 25, 2013 11:29 AM
To: Mischler, Erin
Subject: FW: FOIA request

From: Christine Muchanic [<mailto:cmuchanic@heightanalytics.com>]
Sent: Friday, January 25, 2013 11:22 AM
To: Vera, Elena R.
Subject: FOIA request

Elena,

As discussed, please see below my amended/new FOIA request for information and records related to:

Consumer complaints related to the following companies: Herbalife (HLF) and Nature's Sunshine Products (NATR)

Correspondence between the FTC and any external parties related to the following companies. Please limit the search to a five year period.

Avon (AVP)
Blyth, Inc. (BTH)
Medifast (MED)
Mannatech (MTEX)
Nature's Sunshine Products (NATR)
Natural Health Trends Corp (NHTC)
Primerica (PRI)
Reliv International (RELV)
Tupperware Brands Corp (TUP)

Correspondence between the FTC and any external parties related to the companies listed below. Please do not put a time exclusion/limitation on the search for these companies.

Herbalife (HLF),
Nu Skin Enterprises (NUS)
USANA Health Sciences (USNA)

As discussed, for all the companies listed above, we are particularly interested in any correspondence or other records related to discussion of the companies' business practices.

We agree to pay fees of up to \$300. Should the estimated fees exceed this amount, please contact me again.

Thank you for your help and please let me know if I can provide any further information.

Best,
Christine

*Christine Muchanic
Special Situations*

Height Analytics, LLC
1775 Pennsylvania Avenue NW, 11th Floor
Washington, DC 20006
Office: (202) 629-0038
Email: cmuchanic@heightanalytics.com
<http://www.heightllc.com/>

Seery, Alexander

FOIA-2013-00416

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Tuesday, January 29, 2013 8:47 AM

name = Andrew L. Sole
staddr = 1330 Avenue of Americas
city = New York
state = NY
zipcode = 10019
telno = 9173495930
faxno =
email = Andrewsole@ecvlp.com
coinfo = I wish to obtain all copies of consumer complaints filed against Herbalife for years 2006 through 2012. I agree to pay any reasonable fee associated with this request.
EdSciName =
describe = Private Corporation or Law Firm
privatelawname = Esopus Creek Advisors
medianame =
money = Contact me if above \$200
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JAN 29 2013

FOIA BRANCH
GENERAL COUNSEL

Seery, Alexander

FOIA-2013-00417

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Tuesday, January 29, 2013 12:55 PM

name = Krish B Daftary
staddr = 787 7th Avenue, 49th Floor
city = New York
state = NY
zipcode = 10019
telno = 2122204255
faxno =
email = kdaftary@newmountaincapital.com
coinfo = Can we please have a record of all consumer complaints filed against Herbalife from calendar year 2011-today (Jan 2013)? Thank you.
EdSciName =
describe = Private Corporation or Law Firm
privatelawname = New Mountain Capital
medianame =
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JAN 29 2013

FOIA BRANCH
GENERAL COUNSEL

Seery, Alexander

FOIA-2013-00426

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Tuesday, January 29, 2013 5:09 PM

name = Peter J. Eavis
staddr = The New York Times, 620 Eighth Avenue,
city = New York
state = New York
zipcode = 10018
telno = 212 556 7493
faxno =
email = peter.eavis@nytimes.com

coinfo = Please send me any documents that show:1/ The number of complaints submitted to the FTC about Herbalife in each calendar year from 2000 to 2012.2/ Please state the nature of the complaints. Namely, were they related to i) allegedly false claims by Herbalife about the opportunity to make a certain level of earnings; ii) allegedly misleading claims about Herbalife products, or allegedly poor quality of Herbalife products; iii) or sales practices of Herbalife members?3/ Please send documents that show how many investigations that the FTC has made of Herbalife since 2000. Thanks!

EdSciName =
privatelawname =
describe = News Media
medianame = The New York Times
money = Contact me if above \$200
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JAN 30 2013

FOIA BRANCH
GENERAL COUNSEL

Seery, Alexander

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Wednesday, January 30, 2013 3:52 PM

name = Carol Tang
staddr = 11 West 19th Street 2nd Floor
city = New York
state = NY
zipcode = 10011
telno = 2126865063

FEDERAL TRADE COMMISSION
RECEIVED

JAN 30 2013

FOIA BRANCH
GENERAL COUNSEL

email = carol.tang@dealreporter.com

coinfo = Freedom of Information Act Request Office of General Counsel Federal Trade Commission 600

Pennsylvania Avenue, N.W. Washington, D.C. 20580 Dear FOIA officer, This is a request under the Freedom of Information Act. I would like to place a request for all documents in the last five years (2009-2013) relating to investigative records concerning Herbalife, including all complaints that have been made to the FTC in regards to the company. Herbalife is based at Uglan House, South Church Street, P.O. Box 309GT in Grand Cayman, Cayman Islands. In order to help determine fees, I am a member of the press at dealReporter with the Financial Times group and am requesting these documents as part of my continual coverage of the company as the reporter for consumer and retail companies. I am willing to pay fees up to \$25. If you expect the fees will exceed this, please contact me through email or phone before proceeding. My contact information is in the signature below if there are any questions about my request. Thank you for your consideration, and I appreciate your help. Hope you have a wonderful day. Best, Carol Tang
11 West 19th Street, Floor 2 New York, NY 10011 (212) 686 - 5063

EdSciName =
privatelawname =
describe = News Media
medianame = dealReporter, Financial Times group
money = Up to \$25
B13 = Submit

FOIA-2013-00434

Seery, Alexander

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Thursday, January 31, 2013 1:21 PM

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = Herbalife:I am seeking all consumer complaints between Dec. 20, 2012 and Jan. 31, 2013
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JAN 31 2013

FOIA BRANCH
GENERAL COUNSEL

FOIA-2013-00436

Seery, Alexander

From: Aubrey Wise <awise@oneeastcap.com>
Sent: Thursday, January 31, 2013 2:48 PM
To: Seery, Alexander
Subject: One East Partners FOIA Request - Herbalife Ltd.

FEDERAL TRADE COMMISSION
RECEIVED

JAN 31 2013

FOIA BRANCH
GENERAL COUNSEL

Alex,

Thanks for your call earlier. We would like to establish an initial budget of \$1,000 for our FOIA request regarding Herbalife Ltd. Please let me know if you need a credit card or other form of deposit.

In order of priority, we would like to have our request processed in this order:

- 1) All emails between the FTC and Dr. Peter Vander Nat regarding Herbalife over the past three years
- 2) All records related to any ongoing or closed FTC investigations of Herbalife over the past ten years.
- 3) All emails among FTC Commissioners and FTC Senior Staff regarding Herbalife over the past three years
- 4) All correspondence between FTC and Herbalife over the past ten years
- 5) Any inter-government letters between the FTC and other federal agencies or offices of state attorneys general over the past three years
- 6) Any correspondence between FTC and international government agencies over the past three years
- 7) List of all FOIA requests made to the FTC regarding Herbalife over the past two years
- 8) Generic question: does the FTC advise against investing in Herbalife?
- 9) Consumer complaints against Herbalife over the past three years
- 10) Procedural question: if the FTC were conducting an active civil or criminal investigation into Herbalife, would the existence of such investigation be a matter of public record?

As I mentioned during our conversation, this FOIA request is being made by "One East Partners".

Thanks for your help,
Aubrey

Aubrey Wise
One East Partners
551 Madison Avenue, 10th Floor
New York, NY 10022
212-230-4525
awise@OneEastCap.com

The information contained in this message (including any attachment) is confidential and may be legally privileged or otherwise protected from disclosure. This message is not an offer to sell or the solicitation of an offer to buy any security or other investment or to provide investment services or advice of any kind. If you have received this message in error, please notify the sender immediately and delete the message from your computer. Any unauthorized use, reproduction, or dissemination of this message is strictly prohibited and may be in violation of law. All messages sent to or from this address are subject to electronic storage and review by One East Capital Advisors, LP.

Seery, Alexander

From: Aubrey Wise <awise@oneeastcap.com>
Sent: Wednesday, January 30, 2013 12:17 PM
To: FOIA
Subject: FOIA Request - Herbalife, Ltd.

January 30, 2013

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Ave, N.W.
Washington, D.C. 20580

Dear FTC Staff,

We would like to make a request under the Freedom of Information Act. Please find below a precise list of the information we are requesting. All of the items relate to Herbalife, Ltd. (hereafter "Herbalife", corporate headquarters located at 800 West Olympic Boulevard, Suite 406, Los Angeles, CA 90015).

- 1) All records related to any ongoing or closed FTC investigations of Herbalife over the past ten years.
- 2) All emails among FTC Commissioners and FTC Senior Staff regarding Herbalife over the past three years
- 3) All emails between the FTC and Dr. Peter Vander Nat regarding Herbalife over the past three years
- 4) All correspondence between FTC and Herbalife over the past ten years
- 5) Any inter-government letters between the FTC and other federal agencies or offices of state attorneys general over the past three years
- 6) Any correspondence between FTC and international government agencies over the past three years
- 7) Consumer complaints against Herbalife over the past three years
- 8) List of all FOIA requests made to the FTC regarding Herbalife over the past two years
- 9) Generic question: does the FTC advise against investing in Herbalife?
- 10) Procedural question: if the FTC were conducting an active civil or criminal investigation into Herbalife, would the existence of such investigation be a matter of public record?

Thank you very much for your help in fielding this request under the Freedom of Information Act. Please call me directly at (212) 230-4525 to discuss fees.

Regards,

Aubrey Wise

Note: an identical copy of this letter is attached in PDF format.

The information contained in this message (including any attachment) is confidential and may be legally privileged or otherwise protected from disclosure. This message is not an offer to sell or the solicitation of an offer to buy any security or other investment or to provide investment services or advice of any kind. If you have received this message in error, please notify the sender immediately and delete the message from your computer. Any unauthorized use, reproduction, or dissemination of this message is strictly prohibited and may be in violation of law. All messages sent to or from this address are subject to electronic storage and review by One East Capital Advisors, LP.

Chender, Julian M.

FOIA-2013-00456

From: Jason Miller <Jason.Miller@ionicap.com>
Sent: Monday, February 04, 2013 10:44 AM
To: FOIA
Subject: foia request

FEDERAL TRADE COMMISSION
RECEIVED

FEB 04 2013

FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir/Madam:

This is a request under the Freedom of Information Act. I request that a copy of the following document(s) be provided to me:

File Request log from 2005 through 2013 for Herbalife International.

The number of complaints from 2012 through 2013 filed against Herbalife International.

The number of complaints from 2006 through 2013 filed against Avon Products (produces cosmetics and beauty related products via direct selling)

The number of complaints from 2006 through 2013 filed against GNC Holdings (produces nutritional products and sells on line and via retail stores)

In order to help determine fees, you should know that I am a financial analyst.

I am willing to pay fees up to \$100.00. If you expect the fees will exceed this, please contact me before proceeding.

If you need to discuss this request, I can be reached at 212 294 8585. Thank you for your consideration of my request.

Sincerely,

Jason Miller

Ionic Capital

366 Madison Avenue 9th Floor

New York, NY 10017

==== This email and the attached documentation, if any, are confidential and access by anyone other than the intended addressee(s) is unauthorized. Due to the confidential nature of any attached documentation, its use for any other purpose might involve serious legal consequences. Therefore, any attached documentation may not be reproduced in whole or in part, and may not be delivered to any person without the prior written consent of Ionic Capital Management LLC ("Ionic Capital"). This email may not be forwarded or otherwise provided to any other party. If you are not the intended recipient, any disclosure, copying, forwarding or distribution of this email is strictly prohibited and this email and any attached documentation should be deleted immediately. This message is provided for informational purposes and should not be construed as a solicitation or offer to buy or sell any securities or related financial instruments.

Chender, Julian M.

FOIA - 2013-00484

From: Apache server <apache@hq1-webdmz-s3.ftc.gov>
Sent: Thursday, February 07, 2013 4:58 PM

name = Michelle Celarier
staddr = 1 Nordica Dr
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917-971-0279
faxno =
email = mcelarier@nypost.com
coinfo = I am requesting all investigations and regulatory actions against Herbalife
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

FEB 07 2013

FOIA BRANCH
GENERAL COUNSEL

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

FOIA-2013-00568

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

FEDERAL TRADE COMMISSION
RECEIVED

FEB 27 2013

FOIA BRANCH
GENERAL COUNSEL

February 22, 2013

Via Certified Mail

Freedom of Information Act Request,
Office of General Counsel,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: FOIA Request re Herbalife Lead Generation Firms

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request an opportunity to review and copy all consumer complaints, investigatory records and administrative records concerning any of the following persons or entities, which I believe are involved in selling leads and other business tools to Herbalife distributors:

1. Shawn Dahl
2. Centurion Media Group
3. Herbal Hub
4. Online Business Systems
5. IncomeAtHome.com
6. IncomeAtHomeTV.com
7. Income@home.com
8. Great Shape Today
9. Networx Online
10. The Lead Store
11. Deborah Stoltz
12. Global Online Systems
13. Doran Andry
14. HB International Group, Inc.
15. Financial Success System
16. Financial Success System, LLC

17. FSSDomains.com
18. BusinessCenter.com
19. Ignite Global Communications LLC
20. The Nutrition Coach
21. Dan Waldron
22. Michael Burton
23. Michelle Burton
24. Sydney Mercedes
25. Atomic Nutrition
26. Nutrition Addiction
27. Merelle Worldwide
28. Line Logix
29. Nutrition Clubs Worldwide
30. OBTDomains.com
31. Global Home Business System
32. iOffice
33. Anthony Powell
34. John Beall
35. Carla Berg
36. Rick Berg
37. eTeam Marketing
38. Crazy Fox
39. Home Based Business (HBB.com)
40. Home Sweet Income
41. Kurt O'Connell
42. Cindy O'Connell
43. Herbalink
44. Touchfon International Inc.
45. DWS International
46. Susan Peterson
47. John Peterson
48. Recruit System
49. Peak Success System
50. Success Connection
51. Steve Combs
52. Debbie Combs
53. 96billion.com
54. David DeSaegher
55. Karen DeSaegher
56. Home Employed
57. A&A International
58. Donte Andry

59. John Tartol
60. Leslie Stanford
61. Herbal-leads.net
62. Geri Cvitanovich
63. Small Planet Online
64. Work At Home Tycoon
65. Elkton Nutrition Inc.
66. First Data
67. GoHerbalife
68. CCS Services
69. www.theonlinebusiness.com
70. www.incomeforever.com
71. www.theonlinebusinesspro.com
72. www.14incomeathome.com
73. www.growyourincome.com
74. www.growyourincome48.com
75. www.online-business-systems.shopmybbb.com
76. online-business-systems.com
77. www.incomeathomela.com
78. www.incomeathomeradio.com
79. www.earnincomeonline.com
80. www.homeincomematch.com
81. www.earnrealincome.com
82. www.homebusinessmatch.com
83. At Home Business System
84. Body Basics
85. Cash Mail Box
86. CWIG Health
87. Discount Club New Jersey
88. eHome Business Network
89. eHome Distribution
90. Freedom Connection System
91. Freedom Lifestyles Group
92. Gateway2Wealth
93. Kay-Lee Enterprises
94. Magnetic Sponsoring
95. My Diet Basics
96. My Success System, LLC
97. Network Consultants
98. O'Connell System
99. Online Business Mentors
100. Online System

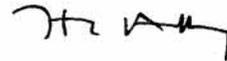
101. Power Queue Inc.
102. Premiere Team International
103. 60 Minute Money
104. Skip Ahead Tech
105. The Home Business Solution
106. VSM
107. Work From Home Business Center
108. Work From Home, Inc.

Please send copies of all documents satisfying this request to me at 125 Broad Street, Room 2842, New York, New York 10004. I am prepared to reimburse the reasonable costs of searching for and copying these documents.

Please do not hesitate to contact me at (212) 558-4737 if I can provide any additional information about this request.

Thank you in advance for your assistance.

Sincerely,



Steven L. Holley

Bajorek, Rosemary

From: Vera, Elena R.
Sent: Monday, April 08, 2013 3:25 PM
To: Bajorek, Rosemary
Subject: FW: FOIA request

FEDERAL TRADE COMMISSION
RECEIVED

APR 09 2013

FOIA BRANCH
GENERAL COUNSEL

From: Aubrey Wise [mailto:awise@oneeastcap.com]
Sent: Monday, April 08, 2013 3:23 PM
To: Vera, Elena R.
Subject: FOIA request

Hi Elena,

Thanks again for all your help with our original FOIA request. We would like to amend it / submit a new request to view more recent records. Please see details below.

FOIA Request on behalf of One East Partners regarding Herbalife, Ltd. (hereafter "Herbalife", corporate headquarters located at 800 West Olympic Boulevard, Suite 406, Los Angeles, CA 90015).

- 1) All emails between the FTC and Dr. Peter Vander Nat regarding Herbalife since February 1, 2013
- 2) All records related to any FTC investigation of Herbalife that has been opened since February 1, 2013
- 3) All email among FTC Commissioners and FTC Staff regarding Herbalife since February 1, 2013 but EXCLUDING any emails that are generated by the FTC's automated Daily Clips program for media stories
- 4) All correspondence between the FTC and Herbalife since February 1, 2013
- 5) Any inter-government letters between the FTC and other federal agencies or state attorneys general regarding Herbalife since February 1, 2013
- 6) A list of all FOIA requests made to the FTC regarding Herbalife since February 1, 2013.

Please send the completed requests and associated invoice to me at the address below (USPS is fine). Please use a cap of \$1,000 for this request.

Thank you again.

Regards,
Aubrey

Aubrey Wise
One East Partners
551 Madison Avenue, 10th Floor
New York, NY 10022
212-230-4525
awise@OneEastCap.com

The information contained in this message (including any attachment) is confidential and may be legally privileged or otherwise protected from disclosure. This message is not an offer to sell or the solicitation of an offer to buy any security or other investment or to provide investment services or advice of any kind. If you have received this message in error, please notify the sender immediately and delete the message from your computer. Any unauthorized use, reproduction, or dissemination of this message is strictly prohibited and may be in violation of law. All messages sent to or from this address are subject to electronic storage and review by One East Capital Advisors, LP.

FOIA-2013-00741

Bajorek, Rosemary

FEDERAL TRADE COMMISSION

RECEIVED

From: Stearns, Dione J.
Sent: Wednesday, April 10, 2013 10:29 AM
To: Bajorek, Rosemary
Subject: FW: fact checking something
Attachments: FOIA 02.22.2013 Request to FTC re Lead Generation[2].pdf; Lead generators Herbalife FOIA.pdf

APR 10 2013

FOIA BRANCH
GENERAL COUNSEL

Not Responsive

From: Dorman, Frank
Sent: Wednesday, April 10, 2013 8:51 AM
To: Stearns, Dione J.
Subject: FW: fact checking something

Not Responsive

From: Eavis, Peter [<mailto:Peter.Eavis@nytimes.com>]
Sent: Tuesday, April 09, 2013 5:02 PM
To: Dorman, Frank
Subject: fact checking something

Hi Frank,

I am working on a Herbalife story and it involves some material that was apparently obtained through a Freedom of Information Act request to the FTC. I have attached the two documents relating to the request. I didn't see them posted in your FOIA reading room. So I am coming to you to ask if the attached documents are genuine and were issued by the FTC. I'd need to hear back by 3PM tomorrow.

I am on 212 556 7493, if you want to chat.

Many thanks,
Peter

--

Office phone: 212 556 7493

Vera, Elena R.

FOIA 2013-00752

From: Vera, Elena R.
Sent: Friday, April 12, 2013 9:25 AM
To: 'Christine Muchanic'
Subject: RE: article

FEDERAL TRADE COMMISSION
RECEIVED

APR 15 2013

FOIA BRANCH
GENERAL COUNSEL

Christine,

This email confirms our April 12, 2013 discussion narrowing your request to seek all consumer complaints regarding Herbalife from January 14, 2013 through April 12, 2013.

Thanks,
Elena Vera

Paralegal Specialist
Office of the General Counsel
Federal Trade Commission
202-326-3368

From: Christine Muchanic [<mailto:cmuchanic@heightanalytics.com>]
Sent: Friday, April 12, 2013 9:18 AM
To: Vera, Elena R.
Subject: RE: article

Please, if it is not posted on the FTC website, consider this a FOIA request for the consumer complaints mentioned in the news article.

Thank you,
Christine

*Christine Muchanic
Special Situations*

Height Analytics, LLC
1775 Pennsylvania Avenue NW, 11th Floor
Washington, DC 20006
Office: (202) 629-0038
Email: cmuchanic@heightanalytics.com
<http://www.heightllc.com/>

From: Christine Muchanic
Sent: Friday, April 12, 2013 9:17 AM
To: evera@ftc.gov
Subject: article

http://dealbook.nytimes.com/2013/04/11/herbalife-ties-to-work-from-home-promoters-may-draw-new-scrutiny/?source=email_rt_mc_body

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

*125 Broad Street
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

April 8, 2013

Via Certified Mail

Freedom of Information Act Request,
Office of General Counsel,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

FEDERAL TRADE COMMISSION
RECEIVED

APR 16 2013

FOIA BRANCH
GENERAL COUNSEL

Re: FOIA Request re Herbalife Lead Generation Firms

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request an opportunity to review and copy all consumer complaints, investigatory records and administrative records concerning any of the following persons or entities, which I believe are involved in selling leads and other business tools to Herbalife distributors:

1. Online Marketing Systems
2. Online Marketing Solutions
3. Online Business Solutions
4. Christopher Reese
5. Mayumi Reese
6. Mary Holloway
7. Alan Lorenz
8. United Marketing Partners
9. Russell Gain
10. David Bevan
11. Jane Clark
12. Michael Boyd
13. Craig Tsutakawa
14. Caroline Tsutakawa
15. Harry Johnson
16. Harold Johnson

17. Lee Johnson
18. Jack Gibson
19. John Gibson
20. FTS Marketing
21. Earn2ez.com
22. Automated Data Direct System
23. Bill Herron
24. William Herron
25. Clem Herron
26. Trey Herron
27. Mamie Smith Herron
28. Debi Katz
29. Debra Katz
30. Deborah Katz
31. Michael Katz
32. Sam Guerra
33. Samuel Guerra
34. Rodney Marcantel
35. Mary Ann Marcantel
36. I-Msuccess.com
37. I-Msuccess.biz
38. Nutrition Club Pro
39. Nutritionclubpro.com
40. Ryan Swanson
41. Glenn Kirkpatrick
42. Daniel Waldron
43. Richard Berg
44. Steven Combs
45. Deborah Combs
46. www.ticket2cash.com
47. www.ebusinessforyou.net
48. www.quickcashnow.net
49. Wellness Depot
50. Herbal Way Inc.
51. www.60minutemoney4u.net
52. Home Business Systems
53. Thrive Nutrition & FITClub
54. Wealth in Wellness Nutrition Club System
55. AzDiet.com
56. Michigan Success Training Seminars
57. www.wldwidebiz4u.com
58. www.steps2mill.net

59. www.morehomecash.net
60. Prospect Performance
61. Work from Home and Love It
62. www.vitaljetics.com
63. www.hbr11.com
64. www.morehomecash.net
65. www.steps2mill.net
66. www.checks4life.com
67. www.housewivesfortune.com
68. Newest Way to Wealth
69. Dream Builder & Associates
70. www.haveitallbiz.com
71. www.netbiz-4you.com
72. www.changeyourwork.com
73. www.richerfuture2002.com
74. www.dollarsigns4u.com
75. www.scorefreedom.com
76. www.amazingcashplus.com
77. www.work-from-home.net
78. www.lookandfeelgreat2.com
79. www.egoldenopportunity.com
80. www.beteachable.com
81. www.workingfrommyhome.com
82. www.workfromhome.com
83. www.bossnot.com
84. Mandi Adamson
85. Amanda Adamson
86. Vaughn Adamson
87. www.wfhbiz.com
88. www.ecommercesetsyoufree.com
89. www.adreamlife4u.com
90. Carin Hendrikz
91. www.4you4menow.com
92. www.60minsucccess.com
93. www.formula2success.org
94. Home Business System
95. Lifetimeopportunity.com
96. Leave the Rat Race
97. www.leave-the-rat-race.com
98. DreamTeam
99. www.dreamteamHQ.com
100. Financial Success System LLC

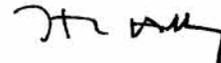
101. Financial Success System International LLC
102. FSS-America LLC
103. www.online-business-system.com
104. cmg.onlinebusinesssystem.com
105. gatewaytowealth.com
106. Karen Umstatt
107. Allstar Health & Nutrition
108. Allstar Nutrition & Fit Camp
109. www.karenu.clearlythebest.com
110. www.clearlythebest.com

Please send copies of all documents satisfying this request to me at 125 Broad Street, Room 2842, New York, New York 10004. I am prepared to reimburse the reasonable costs of searching for and copying these documents, including fees up to \$500.

Please do not hesitate to contact me at (212) 558-4737 if I can provide any additional information about this request.

Thank you in advance for your assistance.

Sincerely,



Steven L. Holley



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL. 202 • 955 • 1500
FAX 202 • 778 • 2201

KYLE SAMPSON
DIRECT DIAL: 202 • 955 • 1587
EMAIL: ksampson@hunton.com

FILE NO: 78481.000004

April 29, 2013

FOIA 2013-00821

Via Facsimile (202) 326-2477
Via E-mail FOIA@FTC.gov

FEDERAL TRADE COMMISSION
RECEIVED

APR 29 2013

FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: FOIA Request for (1) Complaints, Inquiries, or Other Information Submitted to the FTC Related to Certain Dietary Supplement Manufacturers and (2) FOIA Requests Related to Such Complaints, Inquiries, and Other Information

Dear Sir or Madam:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* Hunton & Williams LLP hereby requests a copy of the following document(s):

1. Complaints, inquiries, or other information submitted to the Federal Trade Commission ("FTC") since January 1, 2007, and any exhibits or attachments to the same, regarding the following dietary supplement manufacturers:
 - a. Herbalife International of America, Inc. and/or Herbalife International, Inc.;
 - b. Melaleuca, Inc.; and
 - c. Puritan's Pride, Inc.
2. FOIA requests submitted to the FTC since January 1, 2007, regarding complaints, inquiries, or other information about the above-listed dietary supplement manufacturers, and the FTC's responses to the same, if any.

Hunton & Williams LLP is prepared to pay the reasonable costs of search, review, and duplication of the requested records; if you estimate that fees will exceed \$1,000, please contact me before proceeding. Hunton & Williams LLP requests that the FTC provide the



Federal Trade Commission
April 29, 2013
Page 2

requested records in electronic format, to the above-referenced e-mail address. If you deny all or any part of this request, please cite each specific FOIA exemption that justifies your denial and notify me of appeal procedures available under the law.

Thank you in advance for your assistance. If you have any questions about this request or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Sampson', with a long horizontal flourish extending to the right.

Kyle Sampson

Mischler, Erin

From: Apache server <apache@hq1-webdmz-s4.ftc.gov>
Sent: Saturday, May 04, 2013 3:43 PM

FOIA-2013-00849

name = Marshall P. Levine
staddr = 888 Seventh Avenue, 32nd Floor
city = New York
state = NY
zipcode = 10106
telno = 212-320-5167
faxno = 646-731-5167
email = marshall.levine@soros.com

coinfo = I would like to know how many consumer complaints have been filed against Herbalife Ltd. per year for the last ten years. If possible, I would like the complaints themselves. I would also like to know about allegations that Herbalife is a pyramid scheme. I would also like to know if the FTC is investigating Herbalife as a possible pyramid scheme. Herbalife's official address is: Uglan House, South Church St PO Box 309 GT Grand Cayman 90015 Cayman Islands 1-213-745-0500 Its headquarters seems to be: Herbalife Ltd. 800 W. Olympic Blvd, Suite 406 Los Angeles, CA 90015

EdSciName =
describe = Private Corporation or Law Firm
privatelawname = Soros Fund Management
medianame =
money = Contact me if above \$200
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

MAY 06 2013

FOIA BRANCH
GENERAL COUNSEL

Bajorek, Rosemary

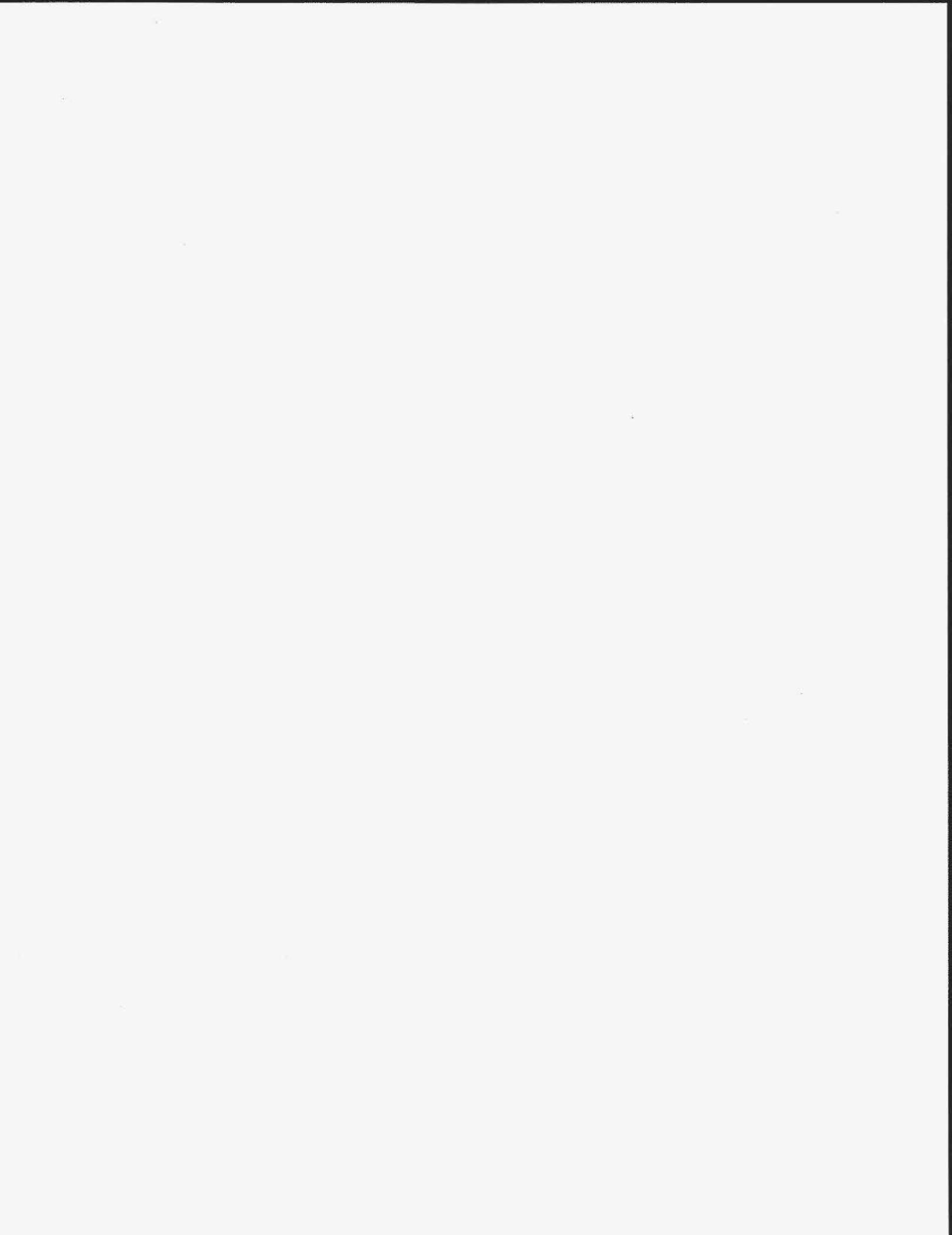
From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Tuesday, June 11, 2013 12:46 PM

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = Letter from Cong. Linda Sanchez requesting FTC open an investigation into Herbalife
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JUN 11 2013

FOIA BRANCH
GENERAL COUNSEL



FOIA - 2013-01086

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

FEDERAL TRADE COMMISSION
RECEIVED

JUL 02 2013

FOIA BRANCH
GENERAL COUNSEL

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

June 24, 2013

Via Certified Mail

Freedom of Information Act Request,
Office of General Counsel,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: FOIA Request re Herbalife Lead Generation Firms

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I respectfully request an opportunity to review and copy all consumer complaints, investigatory records and administrative records using the phrases "nutrition club," "decision pack" or "\$39.95," or concerning any of the following persons or entities, which I believe are involved in selling leads and other business tools to Herbalife distributors:

1. 2moremoney
2. Berg Marketing
3. Brad Harris
4. Brett Bartholomew
5. Brunette Marketing
6. Burton Marketing
7. Cashmailbox.com
8. CRM Logix
9. Cynthia Robinson
10. Dare to Succeed
11. Dean Shafer
12. Dreambuilders
13. Fab-U-Life
14. Health Coach Mobile
15. Home Wealth International

Freedom of Information Act Request

-2-

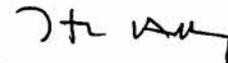
16. Homeemployed.com
17. MyHCMTouch.com
18. S&C Marketing
19. Tanya McDowall
20. Wealth to Wellness
21. Yvonne Engelbrecht

Please send copies of all documents satisfying this request to me at 125 Broad Street, Room 2842, New York, New York 10004. I am prepared to reimburse the reasonable costs of searching for and copying these documents, including fees up to \$500.

Please do not hesitate to contact me at (212) 558-4737 if I can provide any additional information about this request.

Thank you in advance for your assistance.

Sincerely,



Steven L. Holley

Chender, Julian M.

FOIA-2013-01138

From: Jeffrey Gardner (b)(6)
Sent: Wednesday, July 17, 2013 2:06 PM
To: FOIA
Subject: FOIA Request

The most frequently requested categories of FTC records are consumer complaints, material relating to investigations, and administrative records.

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
RECEIVED

JUL 17 2013

FOIA BRANCH
GENERAL COUNSEL

Dear Sir/Madam:

This is a request under the Freedom of Information Act. I request that a copy of the following document(s) be provided to me: 1.) all consumer complaints filed against Herbalife since the FTC's most recent disclosure in January 2013 of consumer complaints against Herbalife, 2.) all complaints filed against Herbalife Lead Generation Firms since the FTC's most recent disclosure in March 2013, 3.) a copy of the meeting minutes, (including attendees, discussion topics and FTC recommendations) as well as a transcript of Lois Greisman and Jessica Rich's meeting on Monday July 15, 2013 with the National Consumer League, the Hispanic Federation, the League of United Latin American Citizens, and Consumer Action, 4.) a copy of the meeting minutes, (including attendees, discussion topics and FTC recommendations) as well as a transcript of any FTC meetings with Herbalife and/or Herbalife representatives 5.) a copy of the meeting minutes, (including attendees, discussion topics and FTC recommendations) as well as a transcript of any FTC meetings with William Ackman and/or Pershing Square representatives 6.) a copy of all Herbalife related FTC correspondence from January 1, 2012 to July 17th, 2013 and 7.) a copy of all scheduled meeting dates and attendees the FTC has had or plans to have with external persons or entities from January 1, 2012 through December 31, 2013, that specifically relate to Herbalife 8.) a copy of all correspondence between Herbalife and/or Herbalife representatives 9.) and lastly I would like to request a copy of investigatory records of Herbalife, including, but not limited to commercial or financial information submitted to the FTC but that were not submitted by Herbalife, inter and intra-agency memoranda and letters, attorney opinions and notes, and decisions or orders regarding investigations and adjudicative proceedings specifically relating to Herbalife from January 1, 2012 through July 17, 2013.

In order to help determine fees, you should know that I am an individual that is not an attorney, company or news organization.

I am willing to pay fees up to \$500. If you expect the fees will exceed this, please contact me before proceeding.

If you need to discuss this request, I can be reached at (b)(6) or (b)(6) Thank you for your consideration of my request.

Sincerely,

Jeffrey Gardner

(b)(6)

New York, NY (b)(6)

Chender, Julian M.

FOIA - 2013-01148

From: Apache server <apache@hq1-webdmz-s4.ftc.gov>
Sent: Friday, July 19, 2013 10:45 AM

name = Sandy Chin
staddr = 888 Seventh Avenue
city = New York
state = NY
zipcode = 10019
telno = 212.484.2716
faxno =
email = schin@visiumfunds.com

coinfo = Dear sir or madam, I would like to request a copy of any investigatory records of Herbalife specifically between the period of January 1, 2013 to July 19, 2013.

EdSciName =
describe = Private Corporation or Law Firm
privatelawname = Visium Asset Management
medianame =
money = Up to \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JUL 19 2013

FOIA BRANCH
GENERAL COUNSEL

Peterson, Mark D.

FOIA - 2013-01228

From: Apache server <apache@hq1-webdmz-s3.ftc.gov>
Sent: Tuesday, August 06, 2013 1:55 PM

name = Henry Becker
staddr = (b)(6)
city = Southlake
state = TX
zipcode = (b)(6)
telno =
faxno =
email =

FEDERAL TRADE COMMISSION
RECEIVED

AUG 06 2013

FOIA BRANCH
GENERAL COUNSEL

coinfo = Herbalife-I would like a list or simply the number of complaints filed against this company in the past 5 years. I would also like to know the number of support letters you have received on Herbalife's behalf. Thank you very much for your time.

describe = Individual
EdSciName =
privatelawname =
medianame =
money = Contact me if above \$200
B13 = Submit

Kelly, Andrea

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Monday, August 12, 2013 1:56 PM

FOIA-2013-01247

name = Atossa
staddr = 3 times square
city = new york
state = ny
zipcode = 10036
telno = Abrahamian
faxno =
email = atossa.abrahamian@thomsonreuters.com
coinfo =

FEDERAL TRADE COMMISSION
RECEIVED

AUG 12 2013

FOIA BRANCH
GENERAL COUNSEL

Dear FOIA officer, I'm writing to request records of all communication (emails, letters, call logs, text messages, etc) on the subject of the direct-selling nutritional company Herbalife between the FTC and the following groups or individuals: a. New York hedge fund manager William Ackman and all individuals working for or associated with his firm, Pershing Square Capital b. Representative Linda Sanchez (D-IL) and anyone working for her or with her. The National Consumer's League. The Hispanic Federation. Herbalife or any firms or individuals acting on behalf of Herbalife. This includes the P.R. firm Joele Frank, the company's Board of Directors, any major shareholders in the company, and investor Carl Icahn. Kindly expedite this request for news purposes. Given all the noise and uncertainty in the media about Herbalife's products and business model, as well as the infighting among investors, we believe a greater understanding of the FTC's actions with regard to the company are of great public interest. Call anytime if you have questions. Thanks, Atossa Abrahamian

EdSciName =
privatelawname = 3 times square
describe = News Media
medianame = Thomson Reuters
money = Contact me if above \$100
B13 = Submit

Seery, Alexander

FOIA-2013-01318

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Wednesday, August 28, 2013 2:54 PM

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = All letters to the FTC requesting an investigation of Herbalife
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

AUG 28 2013

FOIA BRANCH
GENERAL COUNSEL

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Saturday, August 31, 2013 9:43 AM

FEDERAL TRADE COMMISSION
RECEIVED

SEP 03 2013

FOIA BRANCH
GENERAL COUNSEL

name = jeffrey gardner
staddr = (b)(6)
city = new york
state = New York
zipcode = (b)(6)
telno =
faxno =
email =

coinfo = Wall Street journal article claims Prof. William (Bill) Keep of the College of New Jersey has sent a letter on August 8th 2013 to the FTC regarding Herbalife in which he claims Herbalife lacks sufficient transparency for consumers and investors to make this critical assessment. I would like to request a copy of this letter that was sent by Professor Keep. I would also like a copy of the FTC's response sent to Proferssor Keep. I would like to request a copy of letters sent to the FTC requeusting that the FTC conduct an investigation of Herbalife from January 1 2012 through August 29 2013. I would also like to request a copy of all investigatory records the FTC has gathered with respect to Herbalife from July 1 2012 through August 29 2013. Lastly, I would like to request a copy of FOIA requests submitted to the FTC from July 1, 2013 through August 29 2013.

describe = Individual
EdSciName =
privatelawname =
medianame =
money = Up to \$100
B13 = Submit

Kelly, Andrea

From: Apache server <apache@hq1-webdmz-s3.ftc.gov>
Sent: Saturday, September 14, 2013 3:03 PM

FOIA-2013-01382

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917-971-0279
faxno =
email = mcelarier@nypost.com
coinfo = All letters with the word investigate or investigation and Herbalife(I made this request on Aug. 28, but I know I did not receive all of the letters because you did not include some letters I already have. Please look again.)
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

SEP 16 2013

FOIA BRANCH
GENERAL COUNSEL

FOIA - 2014 - 00018

Vera, Elena R.

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Wednesday, October 02, 2013 8:24 AM

name = michael samuels
staddr = 492 broome street #5
city = new york
state = New York
zipcode = 10013
telno = 917 596 1333
faxno =
email = msamuels@apexcap.com
coinfo = Is there currently an open investigation into the company Herbalife and if yes any findings that i could view
EdSciName =
describe = Private Corporation or Law Firm
privatelawname = apex capital
medianame =
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

OCT 17 2013

FOIA BRANCH
GENERAL COUNSEL

SOROS

Marshall P. Levine
Soros Fund Management LLC
888 Seventh Avenue, 32nd Floor
New York, New York 10106
Tel (212) 320 5167
Fax (646) 731-5167
marshall.levine@soros.com

CONFIDENTIAL TREATMENT
REQUESTED BY
SOROS FUND MANAGEMENT LLC

FOIA-2014-00034

FEDERAL TRADE COMMISSION
RECEIVED

OCT 17 2013

September 30, 2013
FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir or Madam:

I request records, regardless of format, medium, or physical characteristics, including electronic records and information, pursuant to the Freedom of Information Act, on:

- A copy of all FOIA requests relating to Herbalife submitted to the FTC from January 1, 2012 to September 27, 2013.

I ask that you treat this request and any identifying information as confidential information pursuant to FOIA and your related policies and procedures.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. US. Dep 't of Justice*, 830 F.2d 210,223-24 (D.C. Cir. 1987). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224, citing *Mead Data Central v. US. Dep 't of the Air Force*, 566 F.2d. 242,251 (D.C. Cir. 1977).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions in accordance with 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments that are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt

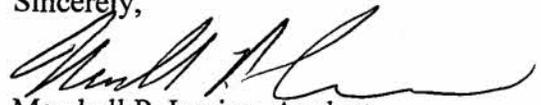
CONFIDENTIAL TREATMENT REQUESTED BY SOROS FUND MANAGEMENT LLC

and how the material is dispersed throughout the documents. Mead Data Central, 566 F.2d at 261. Claims of non-segregability must be made with the same degree of detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

We will be willing to pay up to \$500 for the cost of responding to this request. Please contact me if this amount is insufficient.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Marshall P. Levine", with a long, sweeping horizontal flourish extending to the right.

Marshall P. Levine, Analyst
Soros Fund Management, LLC

SOROS

Marshall P. Levine
Soros Fund Management LLC
888 Seventh Avenue, 32nd Floor
New York, New York 10106
Tel (212) 320 5167
Fax (646) 731-5167
marshall.levine@soros.com

CONFIDENTIAL TREATMENT
REQUESTED BY
SOROS FUND MANAGEMENT LLC

FEDERAL TRADE COMMISSION
RECEIVED

OCT 17 2013

FOIA-2014-00035

September 30, 2013
FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir or Madam:

I request records, regardless of format, medium, or physical characteristics, including electronic records and information, pursuant to the Freedom of Information Act, on:

- Any letters sent to the FTC from January 1, 2012 through September 27, 2013 requesting an investigation into Herbalife and any subsequent responses.

I ask that you treat this request and any identifying information as confidential information pursuant to FOIA and your related policies and procedures.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after-information." *King v. US. Dep 't of Justice*, 830 F.2d 210,223-24 (D.C. Cir. 1987). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224, citing *Mead Data Central v. Us. Dep 't of the Air Force*, 566 F.2d. 242,251 (D.C. Cir. 1977).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions in accordance with 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments that are so dispersed throughout the document as to make

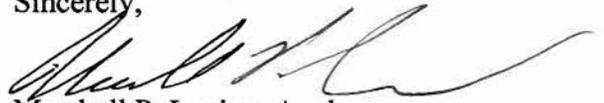
CONFIDENTIAL TREATMENT REQUESTED BY SOROS FUND MANAGEMENT LLC

segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the documents. Mead Data Central, 566 F.2d at 261. Claims of non-segregability must be made with the same degree of detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

We will be willing to pay up to \$500 for the cost of responding to this request. Please contact me if this amount is insufficient.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Marshall P. Levine", with a long, sweeping flourish extending to the right.

Marshall P. Levine, Analyst
Soros Fund Management, LLC

SOROS

Marshall P. Levine
Soros Fund Management LLC
888 Seventh Avenue, 32nd Floor
New York, New York 10106
Tel (212) 320 5167
Fax (646) 731-5167
marshall.levine@soros.com

CONFIDENTIAL TREATMENT
REQUESTED BY
SOROS FUND MANAGEMENT LLC

FOIA-2014-00036 FEDERAL TRADE COMMISSION
RECEIVED

OCT 17 2013

September 30, 2013 FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir or Madam:

I request records, regardless of format, medium, or physical characteristics, including electronic records and information, pursuant to the Freedom of Information Act, on:

- All investigative records pertaining to Herbalife from January 1, 2012 through September 27, 2013.

I ask that you treat this request and any identifying information as confidential information pursuant to FOIA and your related policies and procedures.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. US. Dep 't of Justice*, 830 F.2d 210,223-24 (D.C. Cir. 1987). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224, citing *Mead Data Central v. US. Dep 't of the Air Force*, 566 F.2d. 242,251 (D.C. Cir. 1977).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions in accordance with 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments that are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt

CONFIDENTIAL TREATMENT REQUESTED BY SOROS FUND MANAGEMENT LLC

and how the material is dispersed throughout the documents. Mead Data Central, 566 F.2d at 261. Claims of non-segregability must be made with the same degree of detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

We will be willing to pay up to \$500 for the cost of responding to this request. Please contact me if this amount is insufficient.

Thank you for your assistance.

Sincerely,



Marshall P. Levine, Analyst
Soros Fund Management, LLC

December 16, 2013

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

FEDERAL TRADE COMMISSION
RECEIVED

DEC 16 2013

FOIA BRANCH
GENERAL COUNSEL

Re: Herbalife

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, National Corporate Research, Ltd. hereby requests any consumer complaints referring to or otherwise related to Herbalife, any Herbalife distributor, or any entity purportedly relating to Herbalife including—but not limited to—any complaints pertaining to Shawn Dahl or Anthony Powell, to the extent such complaints relate to Herbalife.

I agree to pay to all reasonable costs associated with obtaining the requested information. However, should related charges be anticipated to exceed \$100.00, I would like to be contacted.

If there is anything we can do to further expedite the response to this request, please contact me at your earliest convenience. Please direct any inquiries, notices, or determinations to me at 800.494.5225 or agency@nationalcorp.com.

Thank you for your attention to this matter.

Sincerely,

Joanna McCall, Assistant Secretary
On behalf of:
National Corporate Research, LTD.
800.494.5225
agency@nationalcorp.com

Seery, Alexander

FOIA-2014-00490

From: Reuben Miller <reuben.miller@parr-global.com>
Sent: Wednesday, January 29, 2014 1:43 PM
To: FOIA
Subject: MEDIA REQUEST: Herbalife communications

Hi there,

Can you please send me any communications (especially between Congress and the FTC, and any complainants and the FTC) that relate to Herbalife.

Please let me know if you have any questions.

Thanks,
Reuben

ADDRESS:
405 Howard St., suite 310
San Francisco, CA 94105

Reuben Miller
Editor-at-Large

PaRR (Policy and Regulatory Report)
Competition Law – Global Intelligence

Tel: (415)249-0224
Mobile: (831)252-0071

Twitter: @ReubenMillerSF

www.PaRR-Global.com

A part of the Financial Times Group, a Pearson company

FEDERAL TRADE COMMISSION
RECEIVED

JAN 29 2014

FOIA BRANCH
GENERAL COUNSEL

This email was sent by a company owned by Pearson plc, registered office at 80 Strand, London WC2R 0RL.
Registered in England and Wales with company number 53723

FOIA - 2014-00529

Bloomberg
FINANCIAL MARKETS
COMMODITIES
NEWS

February 6, 2014

Freedom of Information Act Request
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
FOIA@FTC.GOV

FEDERAL TRADE COMMISSION
RECEIVED

FEB 07 2014

FOIA BRANCH
GENERAL COUNSEL

~~FEDERAL TRADE COMMISSION
RECEIVED
FEB 07 2014
FOIA BRANCH
GENERAL COUNSEL~~

FREEDOM OF INFORMATION ACT REQUEST

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552, I request copies of (or access to) records ("the Records") related to Herbalife Ltd. ("Herbalife") and Pershing Square Capital Management ("Pershing Square"), specifically:

1. Provide visitor logs ("Visitor Logs") identifying any visits to the Federal Trade Commission ("FTC") by: William Ackman ("Ackman"), the chief executive officer of Pershing Square; any representative of Pershing Square; or any employee or representative of Herbalife. The Visitor Logs should identify the names of individuals visiting, the dates of the meetings, the purpose of the meetings, and the names of those at the FTC who met with the visitors.
2. Provide calendars ("Calendars") for current and former FTC commissioners identifying any meetings with: Ackman; any representative of Pershing Square; or any employee or representative of Herbalife. The Calendars should include the names of individuals visiting, the dates of the meetings, and the purpose of the meetings.
3. Provide telephone logs identifying any calls between current and former FTC commissioners or FTC staff members and Ackman; any representative of Pershing Square; or any employee or representative of Herbalife.
4. Identify and provide all correspondence between any current and former FTC commissioners or FTC staff members and Ackman; any representative of Pershing Square; or any employee or representative of Herbalife.

For the purposes of responding to this request, representatives of Pershing Square and Herbalife should include any employee of either company or any representative of the following firms:
Sullivan & Cromwell

Podesta Group
Ogilvy Government Relations
Downey McGrath Group
Wexler & Walker
The Moffett Group
Global Strategy Group
Edelman
Dewey Square Group
Robert Brandon & Associates
Mirram Group
Mercury Public Affairs

I am a reporter for Bloomberg News, an accredited and recognized newsgathering organization. I request the Records to inform the public about matters of public concern.

FOIA requires that the FTC respond to this request within 20 business days. This request is segregable, and the FTC may not withhold entire records because of one section that it believes is exempt from disclosure. Under federal law, if the FTC chooses to withhold any such parts of the Records from disclosure, it must specify in a written response the factual and legal basis for withholding any part of the Records.

I am further requesting that the Records be provided to me on computer files in the same format as they are currently maintained at the department, pursuant to *Burka v. Dep't of Health & Human Svcs.*, 87 F.3d 508 (D.C. Cir. 1996).

In responding to FOIA requests, the FTC must operate with a presumption in favor of disclosure. As stated in a January 21, 2009, Presidential Memorandum signed by Barack Obama: "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open government."

I agree to pay reasonable fees for the Records, including actual costs up to \$250. If you estimate that actual costs will exceed this amount, please contact me so that I may make the appropriate arrangements for payment. Please contact me if I may assist in your office's response to this request.

Sincerely,

David McLaughlin
Bloomberg News
1399 New York Ave. NW
Washington, DC 20005-4711
Phone: 202-654-7354
Email: dmclaughlin9@bloomberg.net

FOIA-2014-00565



FEDERAL TRADE COMMISSION
RECEIVED

FEB 20 2014

FOIA BRANCH
GENERAL COUNSEL

FEDERAL TRADE COMMISSION
RECEIVED

FEB 19 2014

GENERAL COUNSEL

February 6, 2014

Freedom of Information Act Request
Office of the General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
FOIA@FTC.GOV

FREEDOM OF INFORMATION ACT REQUEST

Dear Sir/Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. Section 552, I request copies of (or access to) records ("the Records") related to Herbalife Ltd. ("Herbalife") and Pershing Square Capital Management ("Pershing Square"), specifically:

1. Provide visitor logs ("Visitor Logs") identifying any visits to the Federal Trade Commission ("FTC") by: William Ackman ("Ackman"), the chief executive officer of Pershing Square; any representative of Pershing Square; or any employee or representative of Herbalife. The Visitor Logs should identify the names of individuals visiting, the dates of the meetings, the purpose of the meetings, and the names of those at the FTC who met with the visitors.
2. Provide calendars ("Calendars") for current and former FTC commissioners identifying any meetings with: Ackman; any representative of Pershing Square; or any employee or representative of Herbalife. The Calendars should include the names of individuals visiting, the dates of the meetings, and the purpose of the meetings.
3. Provide telephone logs identifying any calls between current and former FTC commissioners or FTC staff members and Ackman; any representative of Pershing Square; or any employee or representative of Herbalife.
4. Identify and provide all correspondence between any current and former FTC commissioners or FTC staff members and Ackman; any representative of Pershing Square; or any employee or representative of Herbalife.

For the purposes of responding to this request, representatives of Pershing Square and Herbalife should include any employee of either company or any representative of the following firms:
Sullivan & Cromwell

Podesta Group
Ogilvy Government Relations
Downey McGrath Group
Wexler & Walker
The Moffett Group
Global Strategy Group
Edelman
Dewey Square Group
Robert Brandon & Associates
Mirram Group
Mercury Public Affairs

I am a reporter for Bloomberg News, an accredited and recognized newsgathering organization. I request the Records to inform the public about matters of public concern.

FOIA requires that the FTC respond to this request within 20 business days. This request is segregable, and the FTC may not withhold entire records because of one section that it believes is exempt from disclosure. Under federal law, if the FTC chooses to withhold any such parts of the Records from disclosure, it must specify in a written response the factual and legal basis for withholding any part of the Records.

I am further requesting that the Records be provided to me on computer files in the same format as they are currently maintained at the department, pursuant to *Burka v. Dep't of Health & Human Svcs.*, 87 F.3d 508 (D.C. Cir. 1996).

In responding to FOIA requests, the FTC must operate with a presumption in favor of disclosure. As stated in a January 21, 2009, Presidential Memorandum signed by Barack Obama: "All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open government."

I agree to pay reasonable fees for the Records, including actual costs up to \$250. If you estimate that actual costs will exceed this amount, please contact me so that I may make the appropriate arrangements for payment. Please contact me if I may assist in your office's response to this request.

Sincerely,



David McLaughlin
Bloomberg News
1399 New York Ave. NW
Washington, DC 20005-4711
Phone: 202-654-7354
Email: dmclaughlin9@bloomberg.net

Witherington, James

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Tuesday, February 25, 2014 11:39 AM

FEDERAL TRADE COMMISSION
RECEIVED

FEB 25 2014

FOIA BRANCH
GENERAL COUNSEL

name = Jeffrey R Gardner
staddr = (b)(6)
city = NEW YORK
state = NY

zipcode = (b)(6)
telno =
faxno =
email =

coinfo = Senator Ed Markey recently wrote a letter to Chairwoman Ramirez requesting that the FTC look into the business practices of Herbalife http://www.markey.senate.gov/imo/media/doc/2014-1-22_Ramirez_Herbalife.pdf and also requesting a response from the FTC by February 28th. I am requesting a copy of the response sent by the FTC to the office of Senator Markey. I am also requesting a copy of any correspondence that was exchanged between the FTC and Senator Markey or members of his staff (including emails) from the period of Jan 1st 2014 through February 25th, 2014. I would also like to request a copy of any information either in support of or against the letter's claim that a family in Norton, MA lost \$130,000. Mr Johnson (HERBALIFE CEO) recently wrote a letter to Senator Markey (<http://www.scribd.com/doc/208141372/Herbalife-response-to-Markey>) stating that Herbalife was unable to find any profiles within their databases that fit the alleged profile referenced in the letter, inferring that no such individual exists. Thank you in advance for your assistance.

describe = Individual
EdSciName =
privatelawname =
medianame =
money = Contact me if above \$200
B13 = Submit

Peterson, Mark D.

FOIA 2014 - 00641

From: Stearns, Dione J.
Sent: Friday, March 14, 2014 2:10 PM
To: Peterson, Mark D.
Subject: FW: Request for FTC meeting logs

Not Responsive

FEDERAL TRADE COMMISSION
RECEIVED

MAR 14 2014

FOIA BRANCH
GENERAL COUNSEL

From: Lipton, Eric [mailto:lipton@nytimes.com]
Sent: Friday, March 14, 2014 1:04 PM
To: Stearns, Dione J.
Subject: Request for FTC meeting logs

Under the FOIA law, I would like to request copies of logs that detail who visited the FTC and with whom these individuals met, and on what dates, as it relates to issues involving Herbalife, from January 2013 until the current date.

If this is a topic that you have already previously received a similar FOIA request and as a result already have pulled similar material, can you please provide that related material, even if the scope of the prior request is somewhat different.

Please respond to this request via email. If you have any questions about this request or need any clarification on it, please call me at 202 862 0448

Thank you in advance

Eric Lipton
The New York Times
1627 I Street NW #700
Washington DC
20006

Eric Lipton
The New York Times
Washington Bureau
202 862 0448 desk
202 370 7951 cell

FOIA-2014-00644

Seery, Alexander

From: Rolland Gauthier <Rolland.gauthier@falconresearch.net>
Sent: Monday, March 17, 2014 10:37 AM
To: 'foia@ftc.gov'
Subject: FOIA request

FEDERAL TRADE COMMISSION
RECEIVED

MAR 18 2014

FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

March 17, 2014

FTC Office of International Affairs
Attention FOIA officer:

Pursuant to the Federal Government's Freedom of Information Act Laws, and the applicable FOIA laws, I would like to obtain a copy of the following public records:

Any documentation between your agency, FTC Office of International Affairs and Herbalife during January 1, 2009 to present date (March 2014).

I understand there may be a fee associated with this request. I am willing to pay \$100.00 for these records. If the cost exceeds the amount set forth, please contact me so that I may either (1) increase my authorized amount or (2) reduce the scope of my request.

According to the statute, this request should be acted upon as soon as possible, but in no event later than the twentieth (20th) business day following receipt of this letter. If access to the records I requested is going to take longer, please contact me so we can work out a reasonable date.

If you choose to deny the request, then you are required to respond in writing and state the statutory exception authorizing the withholding of all or part of the public record and the name and title or position of the person responsible for the denial.

Records may be submitted to me electronically via email (preferred) if data size permits.
Thank you for your assistance on this matter.

Respectfully,
Rolland Gauthier
Falcon Research
Office: 727-298-5312
Email: rolland@falconresearch.net
1230 South Myrtle Avenue
Suite 401
Clearwater, FL 33756

FOIA - 2014-00896

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1948-1991)
RANDOLPH E. PAUL (1948-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS E. WEISS (1927-1960)
JOHN F. WHARTON (1927-1977)

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2548-0300

WRITER'S DIRECT DIAL NUMBER

212-373-3918

WRITER'S DIRECT FACSIMILE

212-492-0918

WRITER'S DIRECT E-MAIL ADDRESS

ugrofman@paulweiss.com

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1800

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3547-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19809-0032
TELEPHONE (302) 855-4410

MATTHEW W. ABBOTT
ALAN J. ARFFA
ROBERT A. ATKINS
DAVID J. BALL
JOHN J. BLOCHMAN
LYNN B. BAYARD
DANIEL J. BULLER
CRAIG A. BENSON
MITCHELL L. BERG
MARC S. BERMAN
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
DAVID D. BONVINO
JAMES L. BROCHIN
RICHARD J. BRONSTEIN
DAVID W. BROWN
SUSANNA M. BUERGERL
PATRICK S. CAMPBELL
JESSICA S. CAREY
JEANETTE K. CHAN
YVONNE F. CHAN
LEWIS R. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
CHARLES E. DAVIDOW
DOUGLAS R. DAVIS
THOMAS V. DE LA BASTIDE III
ARIEL J. DECKELBAUM
ALICE BELLE E. EATON
ANDREW J. EHRLICH
ANGELO BONVINO
LESLIE GORDON PAGEN
MARC FALCONE
ANDREW C. FINCH
BRAD J. FINKELSTEIN
ROBERTO FINZI
ROBERT E. FISCH
ROBERT C. FLEDER
MARTIN FLUMENBAUM
ANDREW J. FOLEY
HARRIS B. FRIEDUS
MANUEL S. FRYE
ANDREW L. GAINES
KENNETH A. GALLO
MICHAEL E. GERTSMAN
PAUL D. GINSBERG
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
ROBERT D. GOLDBAUM
NEIL GOLDMAN
ERIC S. GOLDSTEIN
ERIC GOODISON
CHARLES H. GOODGE, JR.
ANDREW G. GORDON
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
GAINES GWATHNEY III
ALAN S. HALPERIN
JUSTIN G. HAMILL
CLAUDIA HANMERMAN
GERARD E. HARPER
BRIAN S. HERMANN
ROBERT M. HIRSH
MICHELE HIRSHMAN
MICHAEL S. HONG
JOYCE S. HUANG
DAVID S. HUNTINGTON
JEH C. JOHNSON

MEREDITH J. KANE
ROBERTA A. KAPLAN
BRAD S. KARP
JOHN C. KENNEDY
JAMES W. KORNBERG
DANIEL J. KRAMEL
DAVID K. LAKHDHIR
STEPHEN F. LAMB
JOHN E. LANGE
DANIEL J. LEFFPELL
XIAOYU GREG LIU
JEFFREY D. MARELL
MARCO V. MASOTTI
EDWIN S. MAYNARD
DAVID W. MAYO
ELIZABETH R. MCCOLM
MARK F. MCELROTH
WILLIAM B. MICHAEL
TERRY S. WYSE
CATHERINE NYARADY
JOHN J. O'NEIL
ALEX YOUNG K. DH
BRAD R. OKUN
NELLEY D. PARKER
MARC S. PERLUTTER
VALERIE E. RADWANER
CARL L. REISNER
WALTER G. RICCIARDI
WALTER RIEMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
JACQUELINE P. RUBIN
RAPHAEL H. RUBSO
JEFFREY D. SAFERSTEIN
JEFFREY S. SAHUELS
DALE M. SARRO
TERRY E. SCHIMEK
BENEFM M. SCHNEIDER
ROBERT B. SCHUMER
JAMES H. SCHWAB
JOHN H. SCOTT
STEPHEN J. SHIMSHAK
DAVID R. SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
MARILYN SOBEL
AUDRA J. GOLDWAY
TARUN N. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F. TARNOWSKY
MONICA K. THURMOND
DANIEL J. TOAL
LIZA M. VELAZQUEZ
MARIA T. VULLO
ALEXANDRA H. WALSH
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
BETH A. WILKINSON
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
MARK B. WLAZLO
JULIA MASON WOOD
JORDAN E. YARETT
KAYE N. YOSHINO
TONG YU
TRACEYA A. ZACCONE
T. ROBERT ZOCZOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

March 26, 2014

By Facsimile

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2477

FEDERAL TRADE COMMISSION
RECEIVED
MAR 26 2014
FOIA BRANCH
GENERAL COUNSEL

Re: Freedom of Information Act Request: Request(s) for Investigative
Records or Consumer Complaints Regarding Pershing Square
Capital Management, L.P. and/or Herbalife and/or William (Bill)
Ackman

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request that photocopies of the following records be sent to me at the above address:

All documents related to FOIA requests made between June 5, 2013 and November 20, 2013 seeking investigative records, consumer complaints and/or correspondence regarding Pershing Square Capital Management, L.P. and/or Herbalife and/or William (Bill) Ackman, including all correspondence between the requester(s) and the FTC related to the request(s).

Office of General Counsel, Federal Trade Commission

2

On November 20, 2013, an anonymous person posted online a copy of a letter dated June 5, 2013 sent by U.S. Representative Linda T. Sanchez to FTC Chairwoman Edith Ramirez. The letter is stamped as having been received on June 7, 2013. A copy of the document posted online is enclosed with this letter (the "posted letter"). The posted letter was posted on a blog located at <http://theskeptic21.blogspot.com/2013/11/for-hire-bathroom-attendant-fine.html>. Our request above includes any correspondence in response to which a copy of the posted letter was sent by your office.

If you regard any of the records requested as exempt from disclosure, please segregate the nonexempt portions and release those. In addition, if any records or portions thereof require internal review on the issue of exemption, please release any immediately publicly releasable records (or portions thereof) first, pending such determination. In the event of a denial to release any records, please include in your letter sufficient information to appeal the denial. In accordance with the minimum requirements of administrative due process, this information should identify: (i) the subject matter, originator, addressee, date and length of the withheld material, and (ii) the legal and factual basis for the denial.

I agree in advance to pay search and copying fees up to \$1,000. If you expect the fees to exceed this amount, or if you need further explanation as to the nature or scope of this request, please contact me at the telephone number above.

Thank you for your assistance with this request.

Very truly yours,

Udi Grofman/TS

Udi Grofman

MEMBER:
 COMMITTEE ON ETHICS
 (Former Member)
 COMMITTEE ON
 WAYS AND MEANS
 SUBCOMMITTEE ON SELECT BUDGET ALLOCATIONS
 SUBCOMMITTEE ON DEFENSE
 SENIOR WHIP

Linda T. Sánchez
 38TH DISTRICT, CALIFORNIA

Congress of the United States
House of Representatives
 Washington, DC 20515

14008387

Edith Ramirez, Chairwoman
 Federal Trade Commission
 600 Pennsylvania Avenue, NW
 Washington, DC 20580

June 5, 2013

Dear Chairwoman Ramirez:

I am writing to express my concern about the marketing and business practices of Herbalife, Ltd. In particular, I am troubled by allegations that this company may be harming consumers - especially those from our country's most vulnerable populations.

There have been extensive media reports and allegations about Herbalife's business practices. On March 12, 2013, the National Consumers League wrote a letter urging the FTC to conduct an investigation into the possibility that Herbalife is a complex pyramid scheme.¹ More recently, on May 17, 2013, the Hispanic Federation also wrote a letter urging an FTC investigation.² Both groups have voiced concerns over whether Herbalife's distributors are primarily incentivized by recruiting others, or by selling the Herbalife product. Additionally, as the National Consumers League letter states, "Low-income consumers, as well as African-Americans and Hispanics, were found to be especially vulnerable to pyramid-schemes masquerading as legitimate home-based business opportunities."³

As I have learned more about this issue from my constituents and from outside groups, I believe it is the Federal Trade Commission's (FTC) responsibility to examine these allegations. Given the FTC's mission to investigate claims of fraud and potential pyramid schemes, I encourage you to investigate this matter. I have confidence that such an investigation will provide clarity to consumers and I expect you will aggressively pursue it in a timely manner.

¹ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

² Jose Calderon, Hispanic Federation to Edith Ramirez, Federal Trade Commission, 17 May 2013, <http://www.scribd.com/doc/142002752/The-Honorable-Edith-Ramirez-FTC>

³ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

DC OFFICE:
 2423 HAYBURN BUILDING
 WASHINGTON, DC 20513
 (202) 226-6676

DISTRICT OFFICE:
 17908 CRUSADER AVENUE
 SUITE 100
 CERRITOS, CA 94530
 (925) 861-8000
 www.lindaosorioramirez.house.gov



FOIA-2014-00710

Bartek, Alice

From: Philip D. Dracht <pdracht@fabianlaw.com>
Sent: Saturday, March 29, 2014 5:19 PM
To: FOIA
Subject: FOIA Request - Herbalife

FEDERAL TRADE COMMISSION
RECEIVED

MAR 31 2014

FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Sir/Madam:

This is a request under the Freedom of Information Act. I request that a copy of the following document(s) be provided to me: (1) the Civil Investigatory Demand(s) issued to Herbalife International of America, Inc., or Herbalife LTD, or Herbalife International, Inc. or any other subsidiary of Herbalife LTD in March 2014 relating to Herbalife; (2) written communications between the FTC and Herbalife or its attorneys regarding the above CID; (3) any documents, testimony, or other responses provided by Herbalife in response to the above CID; and (4) any complaints that you have received as of February 28, 2013 through the present relating to or regarding Herbalife.

In order to help determine fees, you should know that I am an attorney who represents Dana Bostick, a former Herbalife distributor and other current and former Herbalife distributors in the case *Bostick v. Herbalife*, Case No. 2:13-cv-02488 (C.D. Cal.). I am willing to pay fees up to \$1,000.00. If you expect the fees will exceed this, please contact me before proceeding.

If you need to discuss this request, I can be reached at 801-323-2251. Thank you for your consideration of my request.

Sincerely,

Philip D. Dracht
Office (801) 531-8900
Direct (801) 323-2251
Fax (801) 531-1716

FABIAN, ATTORNEYS AT LAW
215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
www.fabianlaw.com

FOIA-2014-00720

Bartek, Alice

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Wednesday, April 02, 2014 1:23 PM

FEDERAL TRADE COMMISSION
RECEIVED

APR 2 2014

FOIA BRANCH
GENERAL COUNSEL

name = Michelle Celarier
staddr = 1 Nordica Dr
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = All FOIA requests for letters requesting an investigation of Herbalife, or FOIA requests specifically requesting the letter from Cong. Linda Sanchez dated June 5, 2014
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$25
B13 = Submit

April 21, 2014

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FOIA Request re. Herbalife

Dear Sir or Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, National Corporate Research, Ltd. hereby requests any consumer complaints received by your office from December 18, 2013 to the present (as well as any records not included in your December 24, 2013 response to my request dated December 16, 2013) referring to or otherwise related to Herbalife, any Herbalife distributor, or any entity purportedly relating to Herbalife including—but not limited to—any complaints pertaining to Shawn Dahl or Anthony Powell, to the extent such complaints relate to Herbalife.

We agree to pay to all reasonable costs associated with obtaining the requested information. However, should related charges be anticipated to exceed \$100.00, we would like to be contacted.

If there is anything we can do to further expedite the response to this request, please contact us at your earliest convenience. Please direct any inquiries, notices, or determinations to us at 800.494.5225 or agency@nationalcorp.com.

Thank you for your attention to this matter.

Sincerely,

Joanna McCall, Assistant Secretary
On behalf of:
National Corporate Research, LTD.
800.494.5225
agency@nationalcorp.com

FOIA 2014-00825

FEDERAL TRADE COMMISSION
RECEIVED

APR 21 2014

FOIA BRANCH
GENERAL COUNSEL

Joshua James
Bryan Cave LLP
1155 F Street NW
Washington, DC 20004
Direct: (202) 508-6265
josh.james@bryancave.com

April 28, 2014

FEDERAL TRADE COMMISSION
RECEIVED

APR 28 2014

FOIA BRANCH
GENERAL COUNSEL

VIA E-MAIL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
E-Mail: FOIA@FTC.gov

Dear FOIA Officer:

Pursuant to the Freedom of Information Act ("FOIA"), I would like to request a copy of all complaints that are recorded in the Consumer Sentinel database filed on or after January 1, 2013 that refer to the following companies:

- Herbalife
- Mary Kay (alternate spellings: "MaryKay")
- MonaVie
- NuSkin (alternate spellings: "Nu Skin")
- Quixtar
- Alticor
- Visalus

Please include alternate spellings of any name above.

This request is a follow-on request to a prior FOIA request designated FOIA-2014-00636 which was handled by Alice Bartek. Please confer with her regarding how to complete this request.

If possible, I would appreciate it if you could produce the above referenced information in Microsoft Excel format or some other digital format. Please separate the records for each company into a separate Excel file.

In order to help determine fees, I am an attorney and this request is being made on behalf of a law firm. We are willing to pay fees up to \$500. If you expect that the fees will exceed this, please contact me before proceeding.

April 28, 2014

Page 2

If you have any questions about this request, please contact me at (202) 508-6265.

Thank you for your consideration of my request.

Sincerely,

/s/

Joshua James

FOIA-2013-00376

January 17, 2013

VIA E-MAIL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

FEDERAL TRADE COMMISSION
RECEIVED

JAN 17 2013

FOIA BRANCH
GENERAL COUNSEL

Re: Freedom of Information Act Request: Herbalife International

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq., I hereby request copies of the following information: *all correspondence, documents, and data records from 2003 through 2013 regarding investigations into Herbalife International, located at 800 W. Olympic Boulevard, Suite 406, Los Angeles, California. This company is a multi-level marketing company that sells nutrition, weight management and skin-care products.*

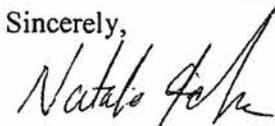
I am willing to pay fees up to \$200. If you expect the fees will exceed this, please contact me before proceeding. Please send all available records to my attention at:

Natalie Ofoche

(b)(6)

I can be reached at (b)(6) Thank you for your consideration of my request.

Sincerely,



Natalie N. Ofoche

Mischler, Erin

From: Vera, Elena R.
Sent: Friday, January 25, 2013 11:29 AM
To: Mischler, Erin
Subject: FW: FOIA request

From: Christine Muchanic [<mailto:cmuchanic@heightanalytics.com>]
Sent: Friday, January 25, 2013 11:22 AM
To: Vera, Elena R.
Subject: FOIA request

Elena,

As discussed, please see below my amended/new FOIA request for information and records related to:

Consumer complaints related to the following companies: Herbalife (HLF) and Nature's Sunshine Products (NATR)

Correspondence between the FTC and any external parties related to the following companies. Please limit the search to a five year period.

Avon (AVP)
Blyth, Inc. (BTH)
Medifast (MED)
Mannatech (MTEX)
Nature's Sunshine Products (NATR)
Natural Health Trends Corp (NHTC)
Primerica (PRI)
Reliv International (RELV)
Tupperware Brands Corp (TUP)

Correspondence between the FTC and any external parties related to the companies listed below. Please do not put a time exclusion/limitation on the search for these companies.

Herbalife (HLF),
Nu Skin Enterprises (NUS)
USANA Health Sciences (USNA)

As discussed, for all the companies listed above, we are particularly interested in any correspondence or other records related to discussion of the companies' business practices.

We agree to pay fees of up to \$300. Should the estimated fees exceed this amount, please contact me again.

Thank you for your help and please let me know if I can provide any further information.

Best,
Christine

*Christine Muchanic
Special Situations*

Height Analytics, LLC
1775 Pennsylvania Avenue NW, 11th Floor
Washington, DC 20006
Office: (202) 629-0038
Email: cmuchanic@heightanalytics.com
<http://www.heightllc.com/>



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL. 202 • 955 • 1500
FAX 202 • 778 • 2201

KYLE SAMPSON
DIRECT DIAL: 202 • 955 • 1587
EMAIL: ksampson@hunton.com

FILE NO: 78481.000004

April 29, 2013

FOIA 2013-00821

Via Facsimile (202) 326-2477
Via E-mail FOIA@FTC.gov

FEDERAL TRADE COMMISSION
RECEIVED

APR 29 2013

FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: FOIA Request for (1) Complaints, Inquiries, or Other Information Submitted to the FTC Related to Certain Dietary Supplement Manufacturers and (2) FOIA Requests Related to Such Complaints, Inquiries, and Other Information

Dear Sir or Madam:

This is a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* Hunton & Williams LLP hereby requests a copy of the following document(s):

1. Complaints, inquiries, or other information submitted to the Federal Trade Commission ("FTC") since January 1, 2007, and any exhibits or attachments to the same, regarding the following dietary supplement manufacturers:
 - a. Herbalife International of America, Inc. and/or Herbalife International, Inc.;
 - b. Melaleuca, Inc.; and
 - c. Puritan's Pride, Inc.
2. FOIA requests submitted to the FTC since January 1, 2007, regarding complaints, inquiries, or other information about the above-listed dietary supplement manufacturers, and the FTC's responses to the same, if any.

Hunton & Williams LLP is prepared to pay the reasonable costs of search, review, and duplication of the requested records; if you estimate that fees will exceed \$1,000, please contact me before proceeding. Hunton & Williams LLP requests that the FTC provide the



Federal Trade Commission
April 29, 2013
Page 2

requested records in electronic format, to the above-referenced e-mail address. If you deny all or any part of this request, please cite each specific FOIA exemption that justifies your denial and notify me of appeal procedures available under the law.

Thank you in advance for your assistance. If you have any questions about this request or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Sampson", with a long horizontal flourish extending to the right.

Kyle Sampson

Bajorek, Rosemary

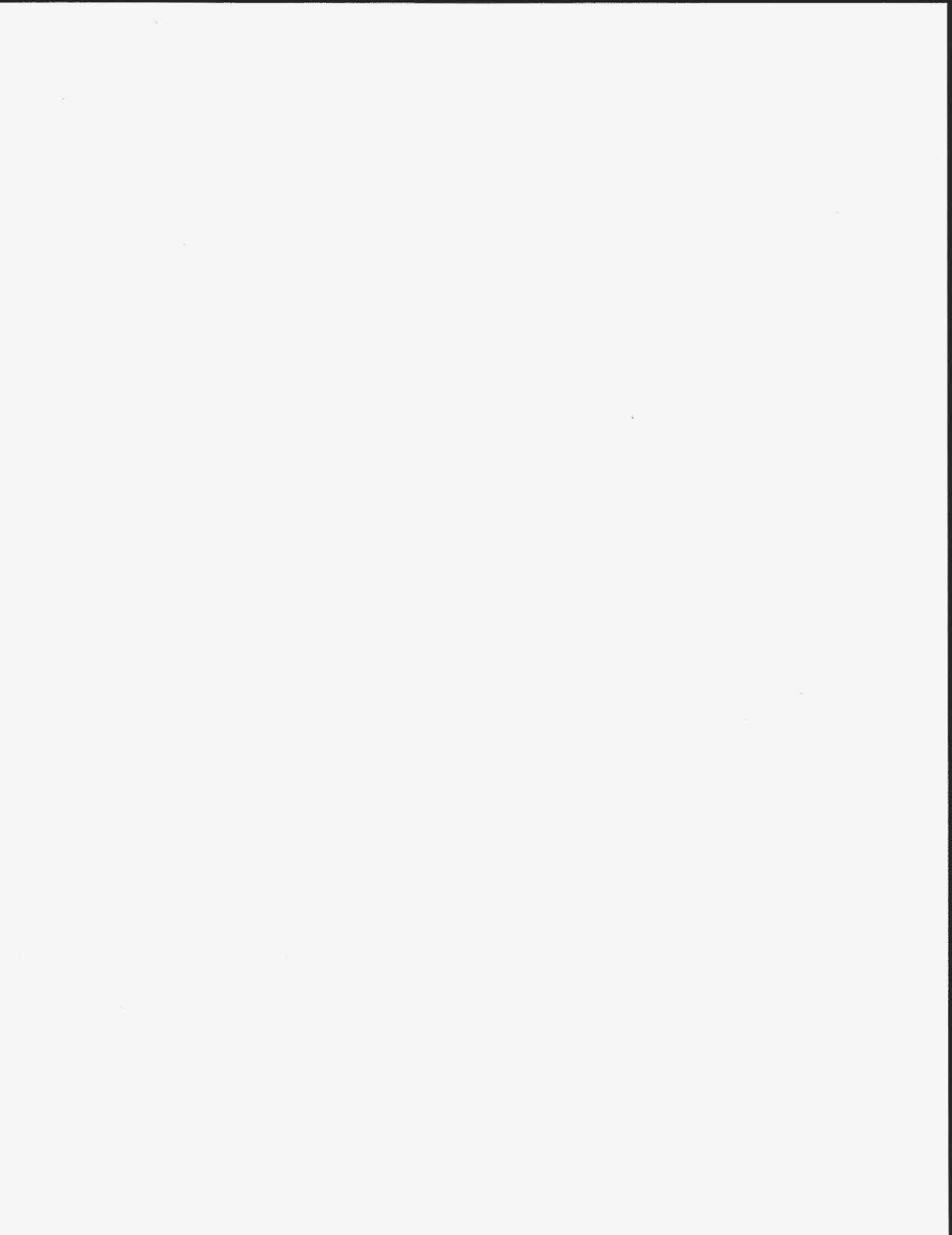
From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Tuesday, June 11, 2013 12:46 PM

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = Letter from Cong. Linda Sanchez requesting FTC open an investigation into Herbalife
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Contact me if above \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

JUN 11 2013

FOIA BRANCH
GENERAL COUNSEL



Kelly, Andrea

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Monday, August 12, 2013 1:56 PM

FOIA-2013-01247

name = Atossa
staddr = 3 times square
city = new york
state = ny
zipcode = 10036
telno = Abrahamian
faxno =
email = atossa.abrahamian@thomsonreuters.com
coinfo =

FEDERAL TRADE COMMISSION
RECEIVED

AUG 12 2013

FOIA BRANCH
GENERAL COUNSEL

Dear FOIA officer, I'm writing to request records of all communication (emails, letters, call logs, text messages, etc) on the subject of the direct-selling nutritional company Herbalife between the FTC and the following groups or individuals: a. New York hedge fund manager William Ackman and all individuals working for or associated with his firm, Pershing Square Capital b. Representative Linda Sanchez (D-IL) and anyone working for her or with her. The National Consumer's League. The Hispanic Federation. Herbalife or any firms or individuals acting on behalf of Herbalife. This includes the P.R. firm Joele Frank, the company's Board of Directors, any major shareholders in the company, and investor Carl Icahn. Kindly expedite this request for news purposes. Given all the noise and uncertainty in the media about Herbalife's products and business model, as well as the infighting among investors, we believe a greater understanding of the FTC's actions with regard to the company are of great public interest. Call anytime if you have questions. Thanks, Atossa Abrahamian

EdSciName =
privatelawname = 3 times square
describe = News Media
medianame = Thomson Reuters
money = Contact me if above \$100
B13 = Submit

Chender, Julian M.

FOIA-2013-01330

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Saturday, August 31, 2013 9:43 AM

FEDERAL TRADE COMMISSION
RECEIVED

SEP 03 2013

FOIA BRANCH
GENERAL COUNSEL

name = jeffrey gardner
staddr = (b)(6)
city = (b)(6)
state = New York
zipcode = (b)(6)
telno = (b)(6)
faxno = (b)(6)
email = (b)(6)

coinfo = Wall Street journal article claims Prof. William (Bill) Keep of the College of New Jersey has sent a letter on August 8th 2013 to the FTC regarding Herbalife in which he claims Herbalife lacks sufficient transparency for consumers and investors to make this critical assessment. I would like to request a copy of this letter that was sent by Professor Keep. I would also like a copy of the FTC's response sent to Proferssor Keep. I would like to request a copy of letters sent to the FTC requeusting that the FTC conduct an investigation of Herbalife from January 1 2012 through August 29 2013. I would also like to request a copy of all investigatory records the FTC has gathered with respect to Herbalife from July 1 2012 through August 29 2013. Lastly, I would like to request a copy of FOIA requests submitted to the FTC from July 1, 2013 through August 29 2013.

describe = Individual
EdSciName =
privatelawname =
medianame =
money = Up to \$100
B13 = Submit

SOROS

Marshall P. Levine
Soros Fund Management LLC
888 Seventh Avenue, 32nd Floor
New York, New York 10106
Tel (212) 320 5167
Fax (646) 731-5167
marshall.levine@soros.com

CONFIDENTIAL TREATMENT
REQUESTED BY
SOROS FUND MANAGEMENT LLC

FEDERAL TRADE COMMISSION
RECEIVED

OCT 17 2013

FOIA-2014-00035

September 30, 2013
FOIA BRANCH
GENERAL COUNSEL

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dear Sir or Madam:

I request records, regardless of format, medium, or physical characteristics, including electronic records and information, pursuant to the Freedom of Information Act, on:

- Any letters sent to the FTC from January 1, 2012 through September 27, 2013 requesting an investigation into Herbalife and any subsequent responses.

I ask that you treat this request and any identifying information as confidential information pursuant to FOIA and your related policies and procedures.

If it is your position that any portion of the requested records is exempt from disclosure, I request that you provide an index of those documents as required by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972). As you are aware, a Vaughn index must describe each document claimed as exempt with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA." *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the Vaughn index must "describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after-information." *King v. US. Dep 't of Justice*, 830 F.2d 210,223-24 (D.C. Cir. 1987). Further, "the withholding agency must supply 'a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.'" *Id.* at 224, citing *Mead Data Central v. Us. Dep 't of the Air Force*, 566 F.2d. 242,251 (D.C. Cir. 1977).

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions in accordance with 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments that are so dispersed throughout the document as to make

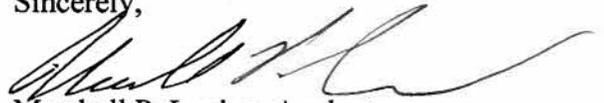
CONFIDENTIAL TREATMENT REQUESTED BY SOROS FUND MANAGEMENT LLC

segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed throughout the documents. Mead Data Central, 566 F.2d at 261. Claims of non-segregability must be made with the same degree of detail as required for claims of exemption in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

We will be willing to pay up to \$500 for the cost of responding to this request. Please contact me if this amount is insufficient.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Marshall P. Levine", with a long, sweeping flourish extending to the right.

Marshall P. Levine, Analyst
Soros Fund Management, LLC

Seery, Alexander

FOIA-2014-00490

From: Reuben Miller <reuben.miller@parr-global.com>
Sent: Wednesday, January 29, 2014 1:43 PM
To: FOIA
Subject: MEDIA REQUEST: Herbalife communications

Hi there,

Can you please send me any communications (especially between Congress and the FTC, and any complainants and the FTC) that relate to Herbalife.

Please let me know if you have any questions.

Thanks,
Reuben

ADDRESS:
405 Howard St., suite 310
San Francisco, CA 94105

Reuben Miller
Editor-at-Large

PaRR (Policy and Regulatory Report)
Competition Law – Global Intelligence

Tel: (415)249-0224
Mobile: (831)252-0071

Twitter: @ReubenMillerSF

www.PaRR-Global.com

A part of the Financial Times Group, a Pearson company

FEDERAL TRADE COMMISSION
RECEIVED

JAN 29 2014

FOIA BRANCH
GENERAL COUNSEL

This email was sent by a company owned by Pearson plc, registered office at 80 Strand, London WC2R 0RL.
Registered in England and Wales with company number 53723

Witherington, James

From: Apache httpd <apache@hq1-webdmz-s1.ftc.gov>
Sent: Tuesday, February 25, 2014 11:39 AM

FEDERAL TRADE COMMISSION
RECEIVED

FEB 25 2014

FOIA BRANCH
GENERAL COUNSEL

name = Jeffrey R Gardner

staddr = (b)(6)

city = NEW YORK

state = NY

zipcode = (b)(6)

telno =

faxno =

email =

coinfo = Senator Ed Markey recently wrote a letter to Chairwoman Ramirez requesting that the FTC look into the business practices of Herbalife http://www.markey.senate.gov/imo/media/doc/2014-1-22_Ramirez_Herbalife.pdf and also requesting a response from the FTC by February 28th. I am requesting a copy of the response sent by the FTC to the office of Senator Markey. I am also requesting a copy of any correspondence that was exchanged between the FTC and Senator Markey or members of his staff (including emails) from the period of Jan 1st 2014 through February 25th, 2014. I would also like to request a copy of any information either in support of or against the letter's claim that a family in Norton, MA lost \$130,000. Mr Johnson (HERBALIFE CEO) recently wrote a letter to Senator Markey (<http://www.scribd.com/doc/208141372/Herbalife-response-to-Markey>) stating that Herbalife was unable to find any profiles within their databases that fit the alleged profile referenced in the letter, inferring that no such individual exists. Thank you in advance for your assistance.

describe = Individual

EdSciName =

privatelawname =

medianame =

money = Contact me if above \$200

B13 = Submit

FOIA - 2014-00896

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
TELEPHONE (212) 373-3000

LLOYD K. GARRISON (1948-1991)
RANDOLPH E. PAUL (1946-1956)
SIMON H. RIFKIND (1950-1995)
LOUIS E. WEISS (1927-1960)
JOHN F. WHARTON (1927-1977)

UNIT 3601, FORTUNE PLAZA OFFICE TOWER A
NO. 7 DONG SANHUAN ZHONGLU
CHAO YANG DISTRICT
BEIJING 100020
PEOPLE'S REPUBLIC OF CHINA
TELEPHONE (86-10) 5828-6300

12TH FLOOR, HONG KONG CLUB BUILDING
3A CHATER ROAD, CENTRAL
HONG KONG
TELEPHONE (852) 2548-0300

WRITER'S DIRECT DIAL NUMBER

212-373-3918

WRITER'S DIRECT FACSIMILE

212-492-0918

WRITER'S DIRECT E-MAIL ADDRESS

ugrofman@paulweiss.com

ALDER CASTLE
10 NOBLE STREET
LONDON EC2V 7JU, U.K.
TELEPHONE (44 20) 7367 1800

FUKOKU SEIMEI BUILDING
2-2 UCHISAIWAICHO 2-CHOME
CHIYODA-KU, TOKYO 100-0011, JAPAN
TELEPHONE (81-3) 3547-8101

TORONTO-DOMINION CENTRE
77 KING STREET WEST, SUITE 3100
P.O. BOX 226
TORONTO, ONTARIO M5K 1J3
TELEPHONE (416) 504-0520

2001 K STREET, NW
WASHINGTON, DC 20006-1047
TELEPHONE (202) 223-7300

500 DELAWARE AVENUE, SUITE 200
POST OFFICE BOX 32
WILMINGTON, DE 19809-0032
TELEPHONE (302) 855-4410

MATTHEW W. ABBOTT
ALAN J. ARFFA
ROBERT A. ATKINS
DAVID J. BALL
JOHN J. BLOCHMAN
LYNN B. BAYARD
DANIEL J. BULLER
CRAIG A. BENSON
MITCHELL L. BERG
MARC S. BERMAN
BRUCE BIRENBOIM
H. CHRISTOPHER BOEHNING
DAVID D. BONVINO
JAMES L. BROCHIN
RICHARD J. BRONSTEIN
DAVID W. BROWN
SUSANNA M. BUERGEL
PATRICK S. CAMPBELL
JESSICA S. CAREY
JEANETTE K. CHAN
YVONNE F. CHAN
LEWIS R. CLAYTON
JAY COHEN
KELLEY A. CORNISH
CHRISTOPHER J. CUMMINGS
CHARLES E. DAVIDOW
DOUGLAS R. DAVIS
THOMAS V. DE LA BASTIDE III
ARIEL J. DECKELBAUM
ALICE BELLE E. EATON
ANDREW J. EHRLICH
ANGELO BONVINO
LESLIE GORDON PAGEN
MARC FALCONE
ANDREW C. FINCH
BRAD J. FINKELSTEIN
ROBERTO FINZI
ROBERT E. FISCH
ROBERT C. FLEDER
MARTIN FLUMENBAUM
ANDREW J. FOLEY
HARRIS B. FRIEDUS
MANUEL S. FRYE
ANDREW L. GAINES
KENNETH A. GALLI
MICHAEL E. GERTSMAN
PAUL D. GINSBERG
ADAM M. GIVERTZ
SALVATORE GOGLIORMELLA
ROBERT D. GOLDBAUM
NEIL GOLDMAN
ERIC S. GOLDSTEIN
ERIC GOODISON
CHARLES H. GOODE, JR.
ANDREW G. GORDON
UDI GROFMAN
NICHOLAS GROOMBRIDGE
BRUCE A. GUTENPLAN
GAINES GWATHNEY III
ALAN S. HALPERIN
JUSTIN G. HAMILL
CLAUDIA HAMMERMAN
GERARD E. HARPER
BRIAN S. HERMANN
ROBERT M. HIRSH
MICHELE HIRSHMAN
MICHAEL S. HONG
JOYCE S. HUANG
DAVID S. HUNTINGTON
JEH C. JOHNSON

MEREDITH J. KANE
ROBERTA A. KAPLAN
BRAD S. KARP
JOHN C. KENNEDY
ALAN W. KORNBERG
DANIEL J. KRAMEL
DAVID K. LAKHDHIR
STEVEN F. LAMB
JOHN E. LANGE
DANIEL J. LEFFPELL
XIAOYU GREG LIU
JEFFREY D. MARELL
MARCO V. MASOTTI
EDWIN S. MAYNARD
DAVID W. MAYO
ELIZABETH R. MCCOLM
MARK F. MCELROTH
WILLIAM B. MICHAEL
TERRY S. WYSE
CATHERINE NYARADY
JOHN J. O'NEIL
ALEX YOUNG K. DH
BRAD R. OKUN
NELLEY D. PARKER
MARC S. PERLUTTER
VALERIE E. RADWANER
CARL L. REISNER
WALTER G. RICCIARDI
WALTER RIEMAN
RICHARD A. ROSEN
ANDREW N. ROSENBERG
JACQUELINE P. RUBIN
RAPHAEL H. RUBSO
JEFFREY D. SAFERSTEIN
JEFFREY S. SAHUELS
DALE M. SARRO
TERRY E. SCHIMEK
BENEFM M. SCHNEIDER
ROBERT B. SCHUMER
JAMES H. SCHWAB
JOHN H. SCOTT
STEPHEN J. SHIMSHAK
DAVID R. SICULAR
MOSES SILVERMAN
STEVEN SIMKIN
JOSEPH J. SIMONS
MARILYN SOBEL
AUDRA J. GOLDWAY
TARUN N. STEWART
ERIC ALAN STONE
AIDAN SYNNOTT
ROBYN F. TARNOWSKY
MONICA K. THURMOND
DANIEL J. TOAL
LIZA M. VELAZQUEZ
MARIA T. VULLO
ALEXANDRA H. WALSH
LAWRENCE G. WEE
THEODORE V. WELLS, JR.
BETH A. WILKINSON
STEVEN J. WILLIAMS
LAWRENCE I. WITDORCHIC
MARK B. WLAZLO
JULIA MASON WOOD
JORDAN E. YARETT
KAYE N. YOSHINO
TONG YU
TRACEYA A. ZACCONE
T. ROBERT ZOCZOWSKI, JR.

*NOT ADMITTED TO THE NEW YORK BAR

March 26, 2014

By Facsimile

Freedom of Information Act Request
Office of General Counsel
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-2477

FEDERAL TRADE COMMISSION
RECEIVED
MAR 26 2014
FOIA BRANCH
GENERAL COUNSEL

Re: Freedom of Information Act Request: Request(s) for Investigative
Records or Consumer Complaints Regarding Pershing Square
Capital Management, L.P. and/or Herbalife and/or William (Bill)
Ackman

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I request that photocopies of the following records be sent to me at the above address:

All documents related to FOIA requests made between June 5, 2013 and November 20, 2013 seeking investigative records, consumer complaints and/or correspondence regarding Pershing Square Capital Management, L.P. and/or Herbalife and/or William (Bill) Ackman, including all correspondence between the requester(s) and the FTC related to the request(s).

Office of General Counsel, Federal Trade Commission

2

On November 20, 2013, an anonymous person posted online a copy of a letter dated June 5, 2013 sent by U.S. Representative Linda T. Sanchez to FTC Chairwoman Edith Ramirez. The letter is stamped as having been received on June 7, 2013. A copy of the document posted online is enclosed with this letter (the "posted letter"). The posted letter was posted on a blog located at <http://theskeptic21.blogspot.com/2013/11/for-hire-bathroom-attendant-fine.html>. Our request above includes any correspondence in response to which a copy of the posted letter was sent by your office.

If you regard any of the records requested as exempt from disclosure, please segregate the nonexempt portions and release those. In addition, if any records or portions thereof require internal review on the issue of exemption, please release any immediately publicly releasable records (or portions thereof) first, pending such determination. In the event of a denial to release any records, please include in your letter sufficient information to appeal the denial. In accordance with the minimum requirements of administrative due process, this information should identify: (i) the subject matter, originator, addressee, date and length of the withheld material, and (ii) the legal and factual basis for the denial.

I agree in advance to pay search and copying fees up to \$1,000. If you expect the fees to exceed this amount, or if you need further explanation as to the nature or scope of this request, please contact me at the telephone number above.

Thank you for your assistance with this request.

Very truly yours,

Udi Grofman/TS

Udi Grofman

MEMBER:
 COMMITTEE ON ETHICS
 (Former Member)
 COMMITTEE ON
 WAYS AND MEANS
 SUBCOMMITTEE ON SELECT BUDGET ALLOCATIONS
 SUBCOMMITTEE ON DEFENSE
 SENIOR WHIP

Linda T. Sánchez
 38TH DISTRICT, CALIFORNIA

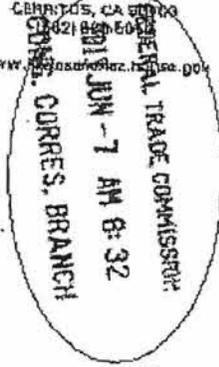
Congress of the United States
House of Representatives
 Washington, DC 20515

14008387

Edith Ramirez, Chairwoman
 Federal Trade Commission
 600 Pennsylvania Avenue, NW
 Washington, DC 20580

DC OFFICE:
 2423 RAYBURN BUILDING
 WASHINGTON, DC 20515
 (202) 226-6676

DISTRICT OFFICE:
 17908 CRUSADER AVENUE
 SUITE 100
 CERRITOS, CA 90703
 (921) 861-8000
 www.ltasosheraz.house.gov



June 5, 2013

Dear Chairwoman Ramirez:

I am writing to express my concern about the marketing and business practices of Herbalife, Ltd. In particular, I am troubled by allegations that this company may be harming consumers – especially those from our country’s most vulnerable populations.

There have been extensive media reports and allegations about Herbalife’s business practices. On March 12, 2013, the National Consumers League wrote a letter urging the FTC to conduct an investigation into the possibility that Herbalife is a complex pyramid scheme.¹ More recently, on May 17, 2013, the Hispanic Federation also wrote a letter urging an FTC investigation.² Both groups have voiced concerns over whether Herbalife’s distributors are primarily incentivized by recruiting others, or by selling the Herbalife product. Additionally, as the National Consumers League letter states, “Low-income consumers, as well as African-Americans and Hispanics, were found to be especially vulnerable to pyramid-schemes masquerading as legitimate home-based business opportunities.”³

As I have learned more about this issue from my constituents and from outside groups, I believe it is the Federal Trade Commission’s (FTC) responsibility to examine these allegations. Given the FTC’s mission to investigate claims of fraud and potential pyramid schemes, I encourage you to investigate this matter. I have confidence that such an investigation will provide clarity to consumers and I expect you will aggressively pursue it in a timely manner.

¹ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

² Jose Calderon, Hispanic Federation to Edith Ramirez, Federal Trade Commission, 17 May 2013, <http://www.scribd.com/doc/142002752/The-Honorable-Edith-Ramirez-FTC>

³ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

Seery, Alexander

FOIA-2013-01318

From: Apache httpd <apache@hq1-webdmz-s2.ftc.gov>
Sent: Wednesday, August 28, 2013 2:54 PM

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917 971 0279
faxno =
email = mcelarier@nypost.com
coinfo = All letters to the FTC requesting an investigation of Herbalife
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

AUG 28 2013

FOIA BRANCH
GENERAL COUNSEL

Kelly, Andrea

From: Apache server <apache@hq1-webdmz-s3.ftc.gov>
Sent: Saturday, September 14, 2013 3:03 PM

FOIA-2013-01382

name = Michelle Celarier
staddr = 1 Nordica Drive
city = Croton on Hudson
state = NY
zipcode = 10520
telno = 917-971-0279
faxno =
email = mcelarier@nypost.com
coinfo = All letters with the word investigate or investigation and Herbalife(I made this request on Aug. 28, but I know I did not receive all of the letters because you did not include some letters I already have. Please look again.)
EdSciName =
privatelawname =
describe = News Media
medianame = New York Post
money = Up to \$100
B13 = Submit

FEDERAL TRADE COMMISSION
RECEIVED

SEP 16 2013

FOIA BRANCH
GENERAL COUNSEL

CIS COMPLAINT

| | |
|--------------------------------------|-----------------|
| Record 1 of 1 | |
| Reference Number | 29933310 |
| Created Date | 03/11/2011 |
| Complaint Source | BBB AB Edmonton |
| Originator Reference Number | 00270001639212 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBB-USER |
| Entered Date | 03/11/2011 |
| Updated By | BBBCNAB-USER |
| Updated Date | 06/08/2012 |
| Agency Contact | External Agency |
| Complaint Date | 02/10/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | b(6) |
| Consumer Address, Line 3 | |
| Consumer Address, City | LEFROY |
| Consumer Address, State Code | ON |
| Consumer Address, State Name | Ontario, Canada |
| Consumer Address, Country Code | CAN |
| Consumer Address, Country Name | CANADA |
| Consumer Address, ZIP Code | |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | b(6) |

| | |
|-------------------------------------|---------------------------|
| Consumer Home Phone, Number | b(6) |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Online Business Solutions |
| Company Address, Line 1 | 1139 117 St |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | EDMONTON |
| Company Address, State Code | AB |
| Company Address, State Name | Alberta, Canada |
| Company Address, Country Code | CAN |
| Company Address, Country Name | CANADA |
| Company Address, ZIP Code | |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | |
| Company Website | www.ucanworkathome2.com |
| Company Rep First Name | |
| Company Rep Middle Name | |
| Company Rep Last Name | |
| Company Rep Salutation | |
| Company Rep Comments | |

| | |
|--|---|
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 4006 |
| Complaint Info Product Service Description | Business Opportunities\Work-At-Home Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>Through OBS I ordered a kit, in late September, for \$450.00 on my Visa. In the kit was manuals and Herbalife data and products. I was told if I wasn't satisfied, within 30 days, I could return the manuals and data and receive a full refund minus delivery. At the time I was told that I didn't have to return any Herbalife products to receive my refund. (Unfortunately, this was said over the phone so I have no back-up) I decided against selling the products and asked where to return manuals in order to receive the refund. I was talking to both (b)(6) who I originally brought the kit from, and her supervisor (b)(6) (b)(6) told me to send Herbalife data straight back to Herbalife and to return the OBS manuals to the address they came from. I included my name, phone number and that I was returning for refund, in each package. Items were delivered on Oct.20th, 2010 and I supplied Canada Post tracking numbers for proof. I was later informed, by (b)(6) that I was supposed to send remaining Herbalife products back, as well, in order to receive full refund. She said I would still get a</p> |

refund but less products. It cost me another \$30.00 to return everything and I have yet to see a refund. I have been e-mailing back and forth, with (b)(6) and she said she is trying her best to get my refund and has no idea what the holdup is. No response to my e-mail to (b)(6)--- Additional Comments: I would like to see a refund of \$450.00 less delivery as I would have had no problem sending everything back had I known but will be happy to see anything'

Complaint Info CRA Dispute Flag

Complaint Info CRA Dispute 45 Days Flag - FOIA only

As a Consumer Sentinel Network member, you must properly protect any information printed, downloaded, or otherwise removed from the Network as stated in OMB Memo M-06-16. Please delete or destroy this information within 90 days unless its use is still required for law enforcement purposes. When destroying the information you should burn, pulverize, or shred the information saved in paper format and destroy or erase information that has been saved electronically so that it cannot practicably be read or reconstructed. Proper erasure of electronic information must include the overwriting or "wiping" of the information from the electronic media on which it is stored.



Provided by the Federal Trade Commission



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

November 1, 1991

Steven J. Klearman, Esquire
50 West Liberty Street, Second Floor
Reno, Nevada 89501

Re: Request of Yarnell Enterprises, Inc. for Commission
Review of the Denial of its Petition to Quash
Specification Number 3 of Civil Investigative Demand;
File No. 912-3071

Dear Mr. Klearman:

The Commission has considered: (a) the Petition to Quash Specification Number 3 of the Civil Investigative Demand and the supporting materials that you filed on behalf of Yarnell Enterprises, Inc. ("Petition"); (b) the October 25, 1991 letter ruling by Commissioner Owen denying the Petition; (c) your request for Commission review filed October 29, 1991, the Supplement thereto and Request for Stay, and accompanying Memorandum of Points and Authorities filed on October 31, 1991; (d) the civil investigative demand specification at issue; and (e) the transcript from the October 15, 1991 hearing on the Petition.

The Commission has determined that your request for full Commission review does not raise any new facts or issues. Upon review of all the materials noted above, including the October 25 ruling, the Commission has determined that the Petition was properly denied for the reasons stated in the ruling.

Accordingly, the full Commission concurs with and hereby adopts the October 25, 1991 letter ruling in this matter. The Commission has also determined to deny your request for a stay of the November 4 return date specified in the October 25 ruling for compliance with the CID. Yarnell Enterprises, Inc. is directed to comply with the civil investigative demand by November 4, 1991.

By direction of the Commission.

Donald S. Clark
Secretary

MATTER: 9123071 Nu Skin Intl

DOC.#: B114330 Commission response denying Yarnell Enterprises, Inc.'s petition for full Commission review of the denial of its petition to quash specification 3 of CID.

FILED: 10/31/91 RECORDS STAFF: Dolores Wood

OFFICE OF PUBLIC AFFAIRS

COMMERCE CLEARING HOUSE

DIRECTOR

FOIA/PA

GENERAL COUNSEL

Commissioner Azcuenaga

Chairman Steiger

Commissioner Owen

Commissioner Starek

Commissioner Yao

IMB-IRIS

DONALD S. CLARK, SECRETARY

PHYLLIS JOHNSON

EXTRA COPY OF DOC TO H-240

TO BE COMPLETED BY MAILROOM STAFF

The documents were mailed and documents were distributed

PLEASE SIGN ->

PLEASE DATE ->

RETURN THIS CERTIFICATE TO: PUBLIC RECORDS, H-159



NU SKIN



June 10, 1994

Secretary, Federal Trade Commission
Washington D.C. 20580

To whom it may concern,

As per instructions from Ms. Rose Toufexis, attorney at the Division of Enforcement for the Federal Trade Commission, I am enclosing only a copy of the compliance report. Due to the large amount of exhibits that are referenced in the report (over 250 pounds), Ms. Toufexis suggested that I send only one copy of the exhibits directly to her.

If you have any questions, please call me at (801) 345-3828.

Sincerely,

Joe Zeidner
Nu Skin International Inc.
Legal Counsel



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
)
NU SKIN INTERNATIONAL INC.,)
CJM, INC.,)
CST MANAGEMENT, INC.,)
CK&C, INC.,)
corporations,)
)
CLARA MCDERMOTT,)
individually and as an officer)
and director of CJM, Inc.,)
)
CRAIG TILLOTSON,)
individually and as an officer)
and director of CST Management, Inc.,)
and)
)
CRAIG BRYSON,)
individually and as an officer)
and director of CK&C, Inc.)

FILE NO. 912 3071
COMPLIANCE REPORT

Nu Skin International Inc., CJM, Inc., CST Management Inc., and CK&C, Inc., corporations; Clara McDermott, individually and as an officer and director of CJM, Inc.; Craig Tillotson, individually and as an officer and director of CST Management, Inc.; Craig Bryson, individually and as an officer and director of CK&C, Inc., (hereafter referred to as "Respondents") pursuant to the Agreement Containing Consent Order to Cease and Desist (hereafter referred to as "Order") hereby submit this Compliance Report (hereafter "Report").

Pursuant to Part I of the Order, Respondents have ceased and desisted from:

- A. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Nutriol Hair Fitness Preparation (hereafter "Nutriol"), or any substantially similar hair loss treatment product or service in or affecting commerce that:
 - 1. the use of the product or service can or will stop, prevent, cure, relieve, reverse or reduce hair loss;

2. the use of the product or service can or will promote the growth of hair where hair has already been lost;
3. the product or service is as effective as, or more effective than, the prescription drug Minoxidil in the treatment of hair loss; or
4. competent and reliable data show that the product or service is effective in stopping hair loss and promoting hair growth.

Furthermore, to ensure that such representations are not made in the future, Respondents have:

- B. Included in the corporate Policies and Procedures, beginning in 1986 to present, the following language: (The year represented by the Policies and Procedures and the corresponding text for each version of the Policies and Procedures is set forth below.)
 1. April 1986 - "**XXIX. PRODUCT CLAIMS** Nu Skin products are subject to various state and federal regulations with respect to product claims and labeling, and no product claims not set forth in official Company literature may be made. Nu Skin Distributors must represent Nu Skin products ethically. No representations or sales offers shall be made relating to Nu Skin products which are not accurate and truthful as to price, grade, quality, performance, and availability. No Distributor shall make any medical claim for any Nu Skin product. Distributors must never in any way prescribe Nu Skin products for use for any specific condition except that it is intended to improve personal appearance. "
 2. August 1986 - "**XVIII. PRODUCT CLAIMS** Nu Skin products are subject to various state and federal regulations with respect to product claims and labeling, and no product claims not set forth in official Company literature may be made. Nu Skin Distributors must represent Nu Skin products ethically. No representations or sales offers shall be made relating to Nu Skin products which are not accurate and truthful as to price, grade, quality, performance, and availability. No Distributor shall make any medical claim for any Nu Skin product. Distributors must never in any way prescribe Nu Skin products for use for any specific condition except that it is intended to improve personal appearance. "
 3. July 1991 - "**SECTION 18. PRODUCT CLAIMS** Distributors may make only product claims and representations found in the literature

distributed by Nu Skin. The majority of Nu Skin products fall under cosmetic classifications set forth by the U.S. Food and Drug Administration (FDA). The FDA regulates and oversees the production and sale of cosmetic products to assure their safety and proper representation to the public. The FDA also has labeling and packaging standards with which Nu Skin must comply. A Distributor may represent that Nu Skin products are safe to use and are intended to improve personal appearance. A Distributor may not make any medical claim for any Nu Skin product nor specifically prescribe any Nu Skin product as suitable for any specific ailment, as that type of representation implies the products are drugs rather than cosmetics. Under no circumstance should Nu Skin products be likened to drug products prescribed for the treatment of specific ailments. All product claims and representations must be the same as those found in the current literature distributed by Nu Skin.

SECTION 19. GENERAL BUSINESS ETHICS A Distributor may not make unfair or inaccurate comparisons, or disparaging statements about other network marketing companies. A Distributor may not make disparaging representations about specific competitors' products."

4. November 1991 - "**Section 18 Product Claims.** Distributors may make only product claims and representations found in the literature distributed by Nu Skin. The majority of Nu Skin products fall under cosmetic classifications set forth by the U.S. Food and Drug Administration (FDA). The FDA regulates and oversees the production and sale of cosmetic products to assure their safety and proper representation to the public. The FDA also has labeling and packaging standards with which Nu Skin must comply. A Distributor may represent that Nu Skin products are safe to use and are intended to improve personal appearance. A Distributor may not make any medical claim for any Nu Skin product nor specifically prescribe any Nu Skin product as suitable for any specific ailment, as that type of representation implies the products are drugs rather than cosmetics. Under no circumstances should Nu Skin products be likened to drug products prescribed for the treatment of specific ailments. All product claims and representations must be the same as those found in the current literature distributed by Nu Skin. While Nu Skin makes every effort to achieve full compliance with complicated and periodically amended FDA regulation, no Distributor should state or intimate that any Nu Skin product is approved by the FDA. The FDA does not require or grant specific approval for individual cosmetic products. **Section 19 General Business Ethics** Each Distributor agrees that he/she will not make, by any means, misleading, unfair, inaccurate, or

disparaging comparisons, claims, representation or statements about other persons (including competitors), companies, their products, or their commercial activities. Each Distributor also agrees that he/she will not make unfair, misleading or inaccurate claims about Nu Skin, Nu Skin products or the commercial activities of Nu Skin. "

5. April 1992 - "**Section 19 Product Claims** Independent Distributors may make only product claims and representations found in the literature distributed by Nu Skin. The majority of Nu Skin products fall under cosmetic classifications set forth by the U.S. Food and Drug Administration (FDA). The FDA regulates and oversees the production and sale of cosmetic products to ensure their safety and proper representation to the public. The FDA also has labeling and packaging standards with which Nu Skin must comply. An Independent Distributor may represent that Nu Skin products are safe to use and are intended to improve personal appearance. An Independent Distributor may not make any medical claim for any Nu Skin product nor specifically prescribe any Nu Skin product as suitable for any specific ailment, as that type of representation implies the products are drugs rather than cosmetics. Under no circumstances should Nu Skin products be likened to drug products prescribed for the treatment of specific ailments. All product claims and representations must be the same as those found in the current literature distributed by Nu Skin. While Nu Skin makes every effort to achieve full compliance with complicated and periodically amended FDA regulation, no Independent Distributor should state or intimate that any Nu Skin product is approved by the FDA. The FDA does not require or grant specific approval for individual cosmetic products.

Section 20 General Business Ethics Each Independent Distributor agrees that he/she will not make, by any means, misleading, unfair, inaccurate, or disparaging comparisons, claims, representations, or statements about other persons (including competitors), companies, their products or their commercial activities. Each Independent Distributor also agrees that he/she will not make unfair, misleading, or inaccurate claims about Nu Skin, Nu Skin products or the commercial activities of Nu Skin. "

6. August 1992 - "**Section 18 Product Claims** Distributors may make only product claims and representations found in the literature distributed by the Company. Many products fall under cosmetic classifications set forth by the U.S. Food and Drug Administration (FDA). The FDA regulates and oversees the production and sale of cosmetic products to assure their safety and proper representation to the

public. The FDA also has labeling and packaging standards with which the Company must comply. A Distributor may represent that products are safe to use and are intended to improve personal appearance. A Distributor may not make any medical claim for any product nor specifically prescribe any given product as suitable for any specific ailment, as that type of representation implies the products are drugs rather than cosmetics or nutritional. Under no circumstances should these products be likened to drug products prescribed for the treatment of specific ailments. All product claims and representations must be the same as those found in the current literature distributed by the Company. While the Company makes every effort to achieve full compliance with complicated and periodically amended FDA regulation, no Distributor should state or intimate that any product is approved by the FDA. The FDA does not require or grant specific approval for individual cosmetic or nutritional products. **Section 19 General Business Ethics** Each Distributor agrees that he/she will not make, by any means, misleading, unfair, inaccurate, or disparaging comparisons, claims, representations or statements about other persons (including competitors), companies, their products, or their commercial activities. Each Distributor also agrees that he/she will not make unfair, misleading or inaccurate claims about the Company, products or the commercial activities of the Company. "

- C. Also, beginning in December 1985, Nu Skin International Inc. issued statements regarding product claims in its various magazines and newsletters, informing distributors about the importance of making accurate, company approved product claims. The following list summarizes the information published to distributors regarding product claims. Copies of each of these articles are included as Exhibits 1a. thru 1k.

Nu Skin News, Vol. I Number 7 - December 1985

"Nutriol - What Do I Say?"

-this article informs distributors of the company approved claims regarding Nutriol.

Nu Skin News, February 1986 Issue

"NUTRIOL TAKES THE NATION BY STORM"

- "The company continues to encourage its independent distributors of the product to market it and other Nu Skin products by making only company approved claims. Speculation as to extra cosmetic benefits derived from the use of Nutriol are unfounded and should not be reiterated by any distributors in marketing Nutriol."

Nu Skin News, Holiday Issue - December 1986

"IMPORTANT NOTE ON PRODUCT CLAIMS:"

- distributors may not make claims which extend beyond those contained in company literature.
- it has come to the company's attention that in the past there have been various promotional materials developed by some distributors that extend beyond company claims.
- specific claims about Nutriol have been made (i.e., hair growth, reduce hair loss, etc.) which violate Nu Skin policies and procedures.
- no comparisons between Nutriol and other products which are reputed to grow hair.
- violations are committed at the risk of loss of distributorships. Several distributorships have already been terminated for these reasons.

Executive Flash, May 1989

- no inaccurate earnings representations are allowed.
- distributors encouraged to use only company produced sales aids. Independently produced sales aids making improper claims violate company policies and jeopardize distributorships.
- only product and business claims contained in company literature are permissible.

"Letter to Dear Executive or Qualifying Executive (August 1989):"

- FDA has released a statement that baldness prevention or hair growth claims are inappropriate for any product not approved by the FDA.
- some distributors will need to make adjustments to insure that their claims conform with company policies.
- NSI does not claim that their products promote hair regrowth or prevent baldness. NSI discourages distributors from making such claims.

Executive Flash, October 1989

- only NSI distributed sales aids may be used to promote the Nu Skin products or business opportunity, effective immediately.

Nu Skin News, Vol. 4 Number 7 - December 1990

- all product claims and representations need to be consistent with those in the official literature distributed by the company.

Executive Flash, August 1991

-articles in "Muscle Training Illustrated" and "Fitness Plus" concerning Nutriol preventing baldness and stimulating hair growth were not solicited or approved by the company. Using these articles to promote Nutriol violates company policies.

Executive Flash, October 1991

-all independent sales aids must be reviewed by Nu Skin.

Executive Flash, December 1991

-"Nutriol Women's Brochure" discontinued because it contained information considered to be drug claims by the FDA.

Executive Flash, February 1992

-disciplinary procedures (NSI P&P, Section 6) published to the distributors.

- D. Enclosed as Exhibits 2 through 11 are copies of all advertising, packaging, labeling, and promotion for Nutriol, which is the only Hair Fitness Preparation offered by Respondents. Pursuant to Order Part I (B) 1-4, the enclosed material as set forth in Exhibits 2 through 11 do not represent that:
1. the use of the product or service can or will stop, prevent, cure, relieve, reverse or reduce hair loss;
 2. the use of the product or service can or will promote the growth of hair where hair has already been lost;
 3. the product or service is as effective as, or more effective than, any other product or service in the treatment of hair loss; or
 4. competent and reliable data show that the product or service is effective in stopping hair loss and promoting hair growth.
- E. Nutriol is not a product subject of an approved new drug application for such purpose under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301.

Pursuant to Part II of Order, Respondents have ceased and desisted from:

- F. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Face Lift with Activator (hereafter "Face Lift"), or any

substantially similar facial treatment product or service in or affecting commerce that:

1. the use of the product or service can or will permanently remove facial wrinkles; or
2. the product or service is as effective as, or more effective than, the prescription drug Trentinoin (Retin-A) in the removal of facial wrinkles.

Furthermore, to ensure that such representations are not made in the future, Respondents have:

- G. Included in the corporate Policies and Procedures, beginning in 1986 to present, the following language: (The year represented by the Policies and Procedures and the corresponding text for each version of the Policies and Procedures is set forth previously on page two (2) of this report, paragraphs B. (1) through B.(6).)
- H. Enclosed as Exhibits 12 through 17 are copies of all advertising, packaging, labeling, and promotion for Face Lift which is the only facial treatment product offered by Respondents. Pursuant to Order Part II (B) 1-2, the enclosed material as set forth in Exhibits 12 through 17 do not represent that:
 1. the efficacy of the product or service in the treatment of facial wrinkles; or;
 2. that the product or service is as effective as, or more effective than, any other product or service in the treatment of facial wrinkles.

Pursuant to Part III of the Order, Respondents have ceased and desisted from:

- A. Representing, in any manner, directly or by implication, in connection with the advertising, packaging, labeling, promotion, offering for sale, sale or distribution of Celltrex or any substantially similar skin treatment product or service in or affecting commerce that:
 1. the product or service will promote the healing of third degree burns.

Furthermore, to ensure that such representations are not made in the future, Respondents have:

- B. Included in the corporate Policies and Procedures, beginning in 1986 to present, the following language: (The year represented by the Policies and

Procedures and the corresponding text for each version of the Policies and Procedures is set forth previously on page two (2) of this report, paragraphs B. (1) through B.(6.)

- C. Enclosed as Exhibits 18 through 20 are copies of all advertising, packaging, labeling, and promotion for Celltrex which is the only skin treatment product offered by Respondents. Pursuant to Order Part III (B), the enclosed material as set forth in Exhibits 18 through 20 do not represent that:
 - 1. the product or service will promote the healing of, or is otherwise an effective treatment for burns.

Pursuant to Part IV of the Order, Respondents have ceased and desisted from:

- A. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any food, drug, or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. Section 55, except for those representations based upon competent and reliable scientific evidence which respondents possess and which substantiates the representation.
 - 1. Enclosed as Exhibits 21 through 104(D) are copies of all advertising, packaging, labeling, and promotion for any food, drug, or device, as those terms are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. Section 55, offered by Respondents.
- B. Making any representation, directly or by implication, regarding the performance, benefits, efficacy or safety of any product or service, except for those representations based upon competent and reliable scientific evidence which respondents possess and which substantiates the representation.
 - 1. Enclosed as Exhibits 105 through 192 are copies of all advertising, packaging, labeling, and promotion for any product or service (other than a product or service covered under Part IV.A. of Order), offered by Respondents.

Pursuant to Part V of the Order, Respondents have ceased and desisted from:

- A. Misrepresenting , in any manner, the past, present, or future profits, earnings, income, or sales from such participation; and
- B. Representing, in any manner, directly or by implication, by use of hypothetical examples or otherwise, that distributors earn or achieve from such participation any stated amount of profits, earnings, income, or sales in excess

of the average profits, earnings, income, or sales of all active distributors in any time period respondents may select, unless in conjunction therewith such average profits, earnings, income, or sales are clearly and conspicuously disclosed, and the percent of all distributors who actually achieved such stated profits, earnings, income, or sales in such time period are clearly and conspicuously disclosed.

Furthermore, to ensure that such representations of past, present, or future profits, earnings, income, or sales from such participation are adequately and fairly disclosed, Respondents have instituted a process to disclose this information as follows:

- C. Any person is free to call the Communications Department of Nu Skin International Inc. at any time and request a complete list of the commission earnings of the average active distributor at each level. When such a request is made, Respondents policy is to give out the entire spectrum of average earnings for all levels of active distributors.

When such a request is made, the communications representative accesses the data from the Sequoia database and gives the person the average commission amount for each level of active Nu Skin International Inc. independent distributors for the previous month. This information is updated monthly to reflect the previous month's activity. The communications representative also discloses the percent of active distributors who earn which amounts and have attained which level as an independent distributor during the previous month. For convenience purposes, a copy of one such report is included as Exhibit 193.

Furthermore, each new distributor receives a Nu Skin starter kit. Within this kit is a letter addressed to every new distributor explaining the Policies and Procedures of Nu Skin International Inc. including the requirement that distributors not make unreasonable, untrue, misleading, or unrepresentative earnings claims or guarantees. Also, distributors are made aware that they may not exhibit actual or facsimile bonus checks. However, distributors are told that they may receive information about earnings of independent distributors by calling the Communications department as set forth above. A copy of those letters are included as Exhibits 194 through 198.

- D. Included in the corporate Policies and Procedures, beginning in 1986 to present, the following language: (The year represented by the Policies and Procedures and the corresponding text for each version of the Policies and Procedures is set forth below.)
 - 1. July 1991 - "Nu Skin Distributors are independent entrepreneurs who may establish their own retail prices for products. A Distributor must

represent the Nu Skin products and opportunity ethically and professionally. No representations or sales offers may be made relating to Nu Skin products which are not accurate and truthful as to price, grade, quality, performance, and availability. No unreasonable, misleading, or misrepresentative earnings representations, claims may be made. No income guarantees of any kind may be made. Exhibiting actual or photocopied Bonus checks is prohibited. "

2. November 1991 - "Nu Skin Distributors are independent entrepreneurs who may establish their own retail prices for products. A Distributor must represent the Nu Skin products and opportunity ethically and professionally. No representation or sales offers may be made relating to Nu Skin products which are not accurate and truthful as to price, grade, quality, performance, and availability. No unreasonable, misleading or unrepresentative earnings representations, claims may be made. No income guarantees of any kind may be made. Exhibiting actual or facsimile bonus Checks is Prohibited. "
3. April 1992 - An Independent Distributor must represent the Nu Skin products and opportunity ethically and professionally. No representation or sales offers may be made relating to Nu Skin products which are not accurate and truthful as to price, grade, quality, performance, and availability. No unreasonable, misleading, or unrepresentative earnings representations or claims may be made. No income guarantees of any kind may be made. Exhibiting actual or facsimile Bonus checks is prohibited.
4. August 1992 - A Distributor must represent the products and opportunity ethically and professionally. No representation or sales offers may be made relating to products which are not accurate and truthful as to price, grade, quality, performance, and availability. No unreasonable, misleading or unrepresentative earnings representations, claims may be made. No income guarantees of any kind may be made. Exhibiting actual or facsimile bonus Checks is Prohibited."

Pursuant to Part VI of the Order, Respondents have:

- A. Within 30 days of the effective date of Order, delivered a dated and signed notification letter in the form set forth in Appendix A of Order to each of its current officers, agents, representatives, employees and distributors. A signed acknowledgement that Nu Skin International Inc. delivered a dated and signed notification letter in the form set forth in Appendix A of Order to each of its current officers, agents, representatives, employees and distributors is attached as Exhibit 199.

- B. Constructed a program whereby, for a period of five (5) years from the effective date of Order, all future officers, agents, representatives, employees and distributors will receive a signed notification letter in the form set forth in Appendix A of Order. Said persons will receive copy of within three (3) days of the date the person assumes such position. The process to ensure this future notification is as follows:
1. The Assistant Director of Distributor Affairs of the Distributor Services Department, and the Inventory Planner of the Purchasing Department will work together and will jointly be responsible for assuring that all starter kits sent out to new distributors include the signed notification letter in the form set forth in Appendix A of Order for five (5) years from the effective date of Order.
 2. Copies of the notification letter will be printed and tracked by Nu Skin International Inc. They will then be sent for warehousing and assembly at the Salt Lake City Franklin Quest Inc. warehouse.
 3. Each starter kit will be assembled at the Salt Lake City, Utah, Franklin Quest Inc. warehouse. A Member of the Nu Skin International Inc. marketing team will provide quality checks to assure that the notification letter appears in all starter kits.
 4. Each fiscal quarter, new starter kits will be assembled and sent to the Nu Skin International Inc. warehouse in Provo, Utah where they will be stored until sold.
 5. The notification letter will appear as a 8 1/2 by 11 size sheet and will be placed in each starter kit which will go to every new distributor.
- C. Constructed and implemented a program of continuing surveillance adequate to reveal whether the practices of each person described in Part VI A. and B. of Order are conforming to said Order. This program includes prompt investigation of complaints about any such person received by Respondents and maintenance of records of the investigation and disposition of the complaint. These records are kept indefinitely within the company document retention system. A detailed description of the aforesaid program of surveillance, investigation and disposition is set forth as follows:
1. The responsibility for surveillance of the distributor force and investigation of complaints is conducted by the legal liaison. The findings of the legal liaison are then reported to the distributor discipline committee. The processes that the legal liaison and distributor discipline committee employ are as follows:

- a. The legal liaison is responsible for managing investigations and evidence gathering on distributorships whose business activities may be questionable. The objective of the legal liaison is to ensure that distributor activities are in compliance with the Nu Skin Policies and Procedures, to which the distributors are contractually bound. An investigation may be opened on a distributorship after a complaint is filed by another distributor or after a possible violation is discovered in house by observations from communications representatives, or other company personnel. Complaints, observations, and other remarks which describe potentially inappropriate behavior are logged into the distributor's account on the Sequoia database system and a file is created for each individual. Evidence is then gathered and reviewed which may either support or refute the suggestion of a potential violation. This information is added to the file. Evidence produced by the investigation may indicate probable cause that a violation of the policies has taken place. In such case, a letter is sent to the Distributor which describes the alleged violation and asks the Distributor to provide his or her version of the facts. The company asks the distributor to furnish this information within ten working days. When evidence verifies that a violation of the Policies has taken place, a meeting of the Distributor Discipline Committee (DDC) is held. The meeting is attended by representatives from the following Nu Skin Departments: Legal, Communications, Distributor Services and occasionally Promotions and Commissions. The DDC meeting is a tribunal for the offending distributorship. The DDC is responsible for determining the appropriate action to be taken to bring the offending distributorship back into compliance with the Policies. Often, the DDC deems it necessary to impose penalties on distributorships. Penalties and sanctions assessed on distributors are based on system of precedent which has been established over the course of years in dealing with effective methods of distributor discipline. Sanctions imposed by the DDC may include and educational letter, probation of the distributorship, placing a hold on the distributorship, withholding commissions for a specified period of time, imposing fines or penalties, or termination of the distributorship. The type of sanction used is based upon the severity of the offense, the past history of the alleged violator, and the level the distributor has achieved (higher levels requiring more responsibility on the part of the distributor). The legal liaison oversees the enforcement of the decision of the DDC. These decisions are documented and

logged into the distributor's files, which are kept by the Legal Department. The distributor's communication representative is then notified of the decision so the distributor's ongoing activities can be monitored. The Legal Department file system contains records of every action taken by the Company against any distributorship established since the Company was founded. Currently there are over 1700 files which document any possible policy violation by a distributor including ordering under another person's account, false product claims, earnings representations, pre-networking violations and advertising violations.

- D. If a distributor does not cease and desist from violating the Policies and Procedures, or if a distributor continues to engage in acts or practices prohibited by Parts I.A., II.A. or III.A. of Order, after having received notification by Respondents to cease and desist, Nu Skin International Inc. will then terminate that person's distributorship and cease dealing with that person.

Pursuant to Part VII of Order, CJM, Inc., CST Management, Inc., CK&C, Inc., Clara McDermott, Craig Tillotson and Craig Bryson have:

- A. Within (30) days from the effective date of Order delivered a dated and signed notification letter in the form set forth in Appendix A of Order to each of their officers, agents, representatives, employees, and present distributors other than those persons whom Nu Skin International Inc. is required to notify pursuant to part VI. A and B. of Order.
- B. Created a process whereby for a period of five (5) years from the effective date of Order they will deliver a dated and signed notification letter in the form set forth in Appendix A of Order to each of their future officers, agents, representatives, employees, and distributors who are engaged in the advertising, promotion, offering for sale, sale or distribution of any food, drug, device or cosmetic within the meaning of Section 15 of the Federal Trade Commission Act, 15 U.S.C. Section 55, or who are engaged in any multilevel marketing plan or business, other than those persons whom Nu Skin is required to notify pursuant to part VI.A and B of Order. This notification will be accomplished within three (3) days after the person assumes such position.
- C. A signed acknowledgement that CJM, Inc., CST Management, Inc., CK&C, Inc., Clara McDermott, Craig Tillotson and Craig Bryson have delivered a dated and signed notification letter in the form set forth in Appendix A of Order to each of their officers, agents, representatives, employees, and present distributors other than those persons whom Nu Skin International Inc. is

required to notify pursuant to part VI.A. and B. of Order. The signed acknowledgement also states that CJM, Inc., CST Management, Inc., CK&C, Inc., Clara McDermott, Craig Tillotson and Craig Bryson have created a process whereby for a period of five (5) years from the effective date of Order they will deliver a dated and signed notification letter in the form set forth in Appendix A of Order to each of their future officers, agents, representatives, employees, and distributors who are engaged in the advertising, promotion, offering for sale, sale or distribution of any food, drug, device or cosmetic within the meaning of Section 15 of the Federal Trade Commission Act, 15 U.S.C. Section 55, or who are engaged in any multilevel marketing plan or business, other than those persons whom Nu Skin is required to notify pursuant to part VI.A and B of Order. This signed acknowledgement is enclosed as Exhibits 200-202.

Pursuant to Part VIII of Order, Respondents have produced this Report within sixty days of the service of Order. This written Report sets forth in detail the manner in which Respondents are complying with Order.

Pursuant to part XI of Order, Respondents have created and maintain a file which includes:

- A. All materials which come into Respondents possession from a distributor or any other source that were relied upon in disseminating any representation covered by Order
- B. All tests, reports, studies, surveys, demonstrations, or other evidence in Respondents possession or control that contradict, qualify, or call into question such representations, or the basis relied upon for such representations, including complaints from consumers.
- C. This file is maintained in the Legal Department file room containing this information.

Pursuant to Part XII of Order, Nu Skin International Inc. has:

- A. Paid the Federal Trade Commission Regional Director, 55 East Monroe Street, Suite 1437, Chicago, Ill. 60603 on or about April 28, 1994, check number 61-305478740 drawn on Zions First National Bank in the amount of One Million Dollars (\$1,000,00). A copy of the check is enclosed as Exhibit 203.

Pursuant to Part XIII of Order, CJM, Inc., CST Management, Inc., CK&C, Inc., Clara McDermott, Craig Tillotson and Craig Bryson have:

A. Paid the Federal Trade Commission Regional Director, 55 East Monroe Street, Suite 1437, Chicago, Ill. 60603 on or about April 28, 1994, check numbers as follows

1. For CJM Inc. and Clara McDermott, drawn on Zions First National Bank in the amount of Seventy-Five Thousand Dollars (\$75,000), check number 8287. A copy of the check is enclosed as Exhibit 204.
2. For CST Management Inc. and Craig Tillotson, drawn on Key Bank in the amount of Seventy-Five Thousand Dollars (\$75,000), check number 51005708. A copy of the check is enclosed as Exhibit 205.
3. For CK&C Inc. and Craig Bryson, drawn on Zions First National Bank in the amount of Seventy-Five Thousand Dollars (\$75,000), check number 61-305475726. A copy of the check is enclosed as Exhibit 203.

SIGNED this 10th day of June, 1994.

NU SKIN INTERNATIONAL, INC.
a corporation

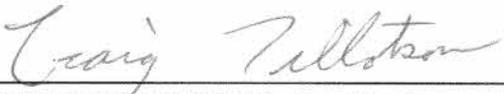
BY: Michael D. Smith
MICHAEL D. SMITH, General Counsel
75 West Center Street
Provo, Utah 84601

CJM, INC.
a corporation

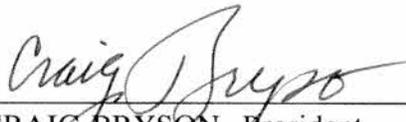
BY: James McDermott
JAMES MCDERMOTT, President
1565 East 3300 South
Salt Lake City, Utah 84106

BY: Clara McDermott
CLARA MCDERMOTT, individually and as an
officer and director of CJM, Inc.

CST MANAGEMENT, INC.
a corporation

BY: 
CRAIG TILLOTSON, President
11 Northridge Way
Sandy, Utah 84092

CK&C, INC.
a corporation

BY: 
CRAIG BRYSON, President
3800 Sherwood Drive
Provo, Utah 84604



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

June 16, 1994

Joe Zeidner
Legal Counsel
Nu Skin International Inc.
75 West Center Street
Provo, Utah 84601

Re: Nu Skin International Inc.
Docket No. C-3489

Dear Mr. Zeidner:

The Commission has received the communication dated June 10, 1994, which you have filed as Nu Skin International Inc.'s report of compliance in accordance with the order in this matter. The compliance report has been forwarded to the attention of appropriate members of the Commission staff.

If you have questions regarding your compliance report, please call the Bureau of Consumer Protection's Enforcement Division at (202) 326-2996. In the meantime, please regard this letter as an acknowledgement.

Sincerely,

A handwritten signature in cursive script that reads "John J. Thielen".

John J. Thielen
Supervisor
Document Processing Section

BECKLEY, SINGLETON, DE LANOY, JEMISON & LIST, CHTD.

DRAKE DE LANOY
REX A. JEMISON
ROBERT LIST
MARK C. SCOTT, JR.
JACK C. CHERRY
J. MITCHELL COBEAGA
H. ROGER MCPHIE
ROBERT F. SAINT-AUBIN
BRUCE A. LESLIE
ROLAND K. MARTIN, JR.
GREG W. MARSH
PATRICIA L. BROWN
DANIEL F. POLSENBERG
ROBERT AARON CALLAWAY
STEPHEN S. KENT
CAROL R. DAVIS
ELIZABETH GOFF GONZALEZ

A PROFESSIONAL LAW CORPORATION

50 WEST LIBERTY STREET
SECOND FLOOR
RENO, NEVADA 89501
(702) 323-8866

FACSIMILE (702) 323-5523

W. BRUCE BECKLEY (1915-1986)
RENE C. ARCENEUX (1947-1990)

OF COUNSEL
WILLIAM SINGLETON
RICHARD G. CAMPBELL, JR.

LAS VEGAS OFFICE
530 LAS VEGAS BOULEVARD SOUTH
LAS VEGAS, NEVADA 89101-6515
(702) 385-3373
FACSIMILE (702) 385-9447

B114140

CHARLES R. ZEH
GEORGE T. MORSE, III
LAYNE T. RUSHFORTH, III
N. PATRICK FLANAGAN, III
PHILIP M. HYMANSON
RANDAL A. DESHAZER
THOMAS HUGH PETERSON, III
J. KENNETH CREIGHTON
RICHARD J. PYATT
PAUL R. CONNAGHAN
JAY T. HOPKINS
STEVEN J. KLEARMAN
ROBERT T. EGLET
JAMES P. C. SILVESTRI
JOHN F. WILES
R. TODD JENSEN
PAUL A. ACKER
JOHN H. MC KISSICK
STEVEN J. SZOSTEK
DAVID J. WINTERTON
STEVEN B. WILLIAMS
T. LOUIS PALAZZO
BARBARA I. JOHNSTON
PAUL ANDREW LIPPARELLI
KWASI NYAMEKYE
DAN R. WAITE
ROBERT E. MURDOCK
CARRIE J. MCCREA

VIA TELEFAX #202/326-2050 & FEDERAL EXPRESS

October 28, 1991

Mr. Donald S. Clark, Secretary
FEDERAL TRADE COMMISSION
Mail Drop H342
Washington, D.C. 20580

Re: **Petition of Yarnell Enterprises, Inc., to Quash Specification
3 of Civil Investigative Demand
File No. 912-3071**

Dear Mr. Clark:

Please consider this to constitute a formal request, pursuant to Commission Rule of Practice 2.7(f), that the full Commission review the Commission's ruling on the Petition of Yarnell Enterprises, Inc., to Quash Specification 3 of the Commission's Civil Investigative Demand.

We received the Commission's ruling via facsimile, on October 25, 1991.

If you have any questions or comments, please do not hesitate to contact me.

Thank you for your attention and consideration.

Sincerely,

BECKLEY, SINGLETON, De LANOY,
JEMISON & LIST, CHTD.



STEVEN J. KLEARMAN, ESQ.

SJK/cr



OFFICE OF
THE COMMISSIONER

CLEARED FOR PUBLIC RECORD

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Cynthia A. Hogue
Attorney-Advisor
202-326-2158

October 8, 1991

N. Patrick Flanagan III, Esquire
Beckley, Singleton, DeLanoy, Jemison & List
50 W. Liberty, Second Floor
Reno, NV 89501

Re: Petition of Yarnell Enterprises, Inc. to Quash CID
Specification, File No. 912 3071

Dear Mr. Flanagan:

This letter will confirm that Commissioner Owen will hold a hearing on the petition of Yarnell Enterprises, Inc. to quash the civil investigative demand issued to it, on Tuesday, October 15, 1991, at 2:00 p.m. in Commissioner Owen's offices, in Room 342 of the Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, D.C.

Pursuant to Section 2.7(d)(4) of the Commission's Rules, Commissioner Owen has been delegated the authority to rule upon petitions to quash civil investigative demands. Hearings on such petitions are not required under the Commission's rules, the Administrative Procedure Act, nor by due process. However, pursuant to your request, Commissioner Owen will hold a hearing on your petition.

Section 2.7(g) of the Commission's Rules specifies that petitions to quash civil investigative demands shall be made part of the public records of the Commission, except for any information that is exempt from disclosure under Section 4.10(a) of the Commission's Rules. See also Section 4.9(b)(4)(i). Under Section 4.9(c) of the Commission's Rules, the petitioner may request confidentiality with respect to information contained in the petition to quash civil investigative demands.

Hearings on petitions to quash civil investigative demands are public. Following the ruling on your petition, the transcript of the hearing will also be included in the public record. In the event you desire a portion of the hearing to be held in camera, you may make that request at the appropriate time in the hearing, or prior thereto. In the event you wish to exclude any portion of the transcript from the public record, you may make the appropriate request under Section 4.9(c) of the Commission's Rules.

N. Patrick Flanagan III, page two

If you have any questions, please call me on (202) 326-2158
or (202) 326-2153.

Sincerely


Cynthia A. Hogue
Attorney Advisor

cc: Nicholas J. Franczyk
James M. Spears
Donald S. Clark ✓



OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

B113984

October 25, 1991

N. Patrick Flanagan III, Esquire
50 West Liberty, Second Floor
Reno, Nevada 89501

Re: Petition of Yarnell Enterprises, Inc., to Quash
Specification 3 of Civil Investigative Demand, File No.
912-3071

Dear Mr. Flanagan:

This is to advise you of the Federal Trade Commission's ruling on the Petition to Quash Specification 3 of the Civil Investigative Demand (the "Petition"), which you filed on behalf of your client, Yarnell Enterprises, Inc. ("Yarnell" or "Petitioner"), in the above-referenced matter.

The ruling set forth herein has been made by Commissioner Deborah Owen pursuant to authority delegated under Commission Rule of Practice 2.7(d)(4). Pursuant to Rule 2.7(f), within three days after service of this decision, Petitioner may file with the Secretary of the Commission a request for full Commission review. The timely filing of such a request shall not stay the return date in this ruling, unless the Commission otherwise specifies.

The Petition is denied for the reasons stated below.

I. Background

The Civil Investigative Demand ("CID") challenged here was issued pursuant to the Commission's Resolution of July 5, 1991, directing use of compulsory process in a nonpublic investigation. That investigation focuses on whether Nu Skin International, Inc. and its officers or others are engaging in acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, including but not limited to the offering for sale, sale or other promotion of Nu Skin International, Inc. products and distributorships in or affecting commerce. The investigation is also to determine whether Commission action to obtain redress of injury to consumers would be in the public interest.

A CID for Documentary Material was served on Yarnell on September 3, 1991. This CID sought, *inter alia*, promotional or

N. Patrick Flanagan III, Esquire
October 25, 1991

advertising documents relating to Nu Skin products and distributorships from Yarnell. By letter of September 5, 1991, the Chicago Regional Director extended the compliance date from September 26, 1991 until October 3, 1991.¹ On September 30, 1991, Yarnell's counsel telephoned Commission staff to discuss an objection to Specification 3 of the CID. See Statement of N. Patrick Flanagan III, October 2, 1991 (Attachment to Petition to Quash). On October 3, 1991, Yarnell filed at the Chicago Regional Office its Petition asking the Commission to quash Specification 3 of the CID that sought the following information:²

[A]ll promotional or advertising documents for Nu Skin products or distributorships which were never disseminated or otherwise used by Yarnell Enterprises, Inc. in the offering for sale, sale or promotion of Nu Skin products or distributorships. This submission should include all such documents developed, prepared or produced by Yarnell Enterprises, Inc. as well as such documents developed, prepared or produced by any other person.

Yarnell advances essentially two arguments in support of its Petition: (1) the demand is indefinite, and requires Petitioner to produce documents that may not exist; and (2) the documents called for in response to Specification 3 of the CID have no

¹ Neither staff nor Yarnell's counsel made explicit reference to an extension of time for filing a Petition to Quash in that correspondence and prior oral discussion. See Transcript of Hearing on Petition to Quash ("Hearing Transcript") at 6, 22-23, 28. Staff asserts, therefore, that Yarnell's Petition should be denied as untimely. Staff notes that the September 5 letter to Yarnell specified Commission Rule 2.7(c), which provides for extensions of time in which to comply. The letter did not specify Commission Rule 2.7(d)(3), which provides for an extension of time to file a Petition to Quash. In staff's view, this effectively put Yarnell on notice that the extension did not affect the time for filing a Petition to Quash. Counsel for Petitioner stated at the hearing on its Petition to Quash that it understood the extension to apply to both compliance and filing of a Petition. See Hearing Transcript at 6, 28. Under the circumstances, we have chosen, in the exercise of our discretion, to address Petitioner's objections on the merits.

² Staff forwarded the Petition to Quash to the Office of the Secretary and informed counsel for Petitioner of its action.

N. Patrick Flanagan III, Esquire
October 25, 1991

relevance to the nonpublic investigation. Petitioner attached to its Petition a Memorandum of Points and Authorities in Support of the Petition to Quash, in which it elaborated upon the arguments raised therein.

Commissioner Owen has carefully reviewed the Petition and Memorandum. She has also considered the oral presentation on the Petition conducted on October 15, 1991. The Petitioner's objections to the CIDs are denied for the reasons stated below.

II. Discussion of Petitioner's Objections

A. Petitioner Alleges that Specification 3 is Indefinite.

Petitioner asserts that it has had some difficulty ascertaining whether a particular document is a promotional or advertising document where it has never been disseminated or otherwise used. At the Hearing on the Petition to Quash, counsel for Petitioner stated that "[i]t is therefore impossible to ascertain whether a particular document is a promotional or advertising document if it has never been used or disseminated." See Hearing Transcript at 10. Counsel asserted that the demand requires the production of documents that were created with no intent that they be used for promotional or advertising purposes, but were in fact later used for such purposes. Counsel noted that a medical study, conducted by an independent laboratory to test a product and later used in advertisements for the tested product, could be a promotional or advertising document within the scope of Specification 3.

We find Petitioner's argument to be untenable. First, the suggestion that a document cannot be identified as falling within Specification 3 absent actual dissemination flatly contradicts counsel's admission that preliminary drafts of advertisements are clearly advertising documents. See Hearing Transcript at 21. Second, our understanding of the common meaning of the terms "advertising" and "promotional" provides considerable guidance in divining the nature of a document. Webster's Ninth New Collegiate Dictionary (1990) defines "advertising" to involve any action to "call public attention to [a product] . . . [,] so as to arouse a desire to buy."³ Webster defines the term "promotional" as any action in "furtherance of the acceptance and sale of merchandise through advertising, publicity, or discounting." These guidelines would rule out the sort of non-

³ See also *Public Citizen v. FTC*, 869 F.2d 1541, 1554 (D.C. Cir. 1989).

N. Patrick Flanagan III, Esquire
October 25, 1991

promotional documents cited by Petitioner. For instance, an independent medical study undertaken to test a product is not conducted to arouse a desire to buy or to further the sale of merchandise. Instead, its purpose is to examine or analyze carefully a phenomenon or scientific question. Accordingly, in and of itself, it is not a promotional or advertising document as Petitioner suggests, even though it may later be used in a product advertisement.

Counsel for Petitioner also stated at the hearing that Petitioner cannot know how others have used documents that have been forwarded to Petitioner by other Nu Skin distributors. Because it also cannot ascertain whether such documents were *intended* for promotional or advertising purposes, Petitioner argues that it cannot properly identify responsive documents. However, Specification 3 does not require Petitioner to divine a drafter's intent in identifying responsive documents. It simply calls for Petitioner to determine whether, on its face, a document is a promotional or advertising document, as those terms are commonly used. This process is not different from that followed by Petitioner to identify documents responsive to Specification 2,⁴ which Petitioner has not challenged.

Petitioner asserts that the demand for documents "developed, prepared or produced by any other person," coupled with the request for documents "which were never disseminated or otherwise used" requires it to produce documents that "may not exist," presumably in their own files. See Petitioner's Memorandum of Points and Authorities in Support of Petition to Quash at 3. We do not agree. The term "documents" is defined in Definition 5 of the CID as items that are in the "possession, custody or control" of Petitioner "or to which [it] has access." Section 20(c)(10) of the Federal Trade Commission Act requires only the production of "all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the

⁴ Specification 2 seeks, *inter alia*, promotional or advertising documents that were disseminated or otherwise used by Petitioner. Although the question of actual dissemination must be addressed in responding to Specification 2, the process of determining whether the document is of a promotional or advertising nature must take place as well.

N. Patrick Flanagan III, Esquire
October 25, 1991

demand is directed." 15 U.S.C. § 57b-1(c)(10).⁵ Accordingly, to the extent that responsive documents are not within Yarnell's possession, custody or control, Petitioner need not produce them.

The request to quash Specification 3 on grounds of vagueness is denied.

B. Petitioner Alleges that Documents Sought by Specification 3 are Irrelevant.

The starting point in analyzing the relevance of information called for by a specification to a Commission CID is recognition that courts give "relevance" a broad interpretation in enforcing Commission compulsory process. As the United States District Court for the District of Columbia recently stated:

Because the need for investigating allegations of unlawful activity is a substantial one, the law requires that courts give agencies leeway when considering relevance objections.

Federal Trade Commission v. Invention Submission Corp., 1991-1 Trade Cas. (CCH) ¶ 69,338 (D.D.C. Feb. 13, 1991). More particularly, relevance is measured against the agency's general purpose in gathering the investigative materials as described by the underlying resolution authorizing compulsory process. Federal Trade Commission v. Texaco Inc., 555 F.2d 862, 874 (D.C. Cir. 1977), cert. denied, 431 U.S. 974 (1977).

Petitioner argued in its Petition that, because Specification 3 seeks promotional or advertising documents that were never disseminated or otherwise used, the CID requires irrelevant information. Petitioner contends that a document that was never used or disseminated cannot form the basis for a Section 5 violation. In the hearing, Petitioner retreated from this position and conceded that precursors to advertisements and other documents clearly used for advertising purposes are relevant to the staff's investigation. Hearing Transcript at 20-21.

⁵ Staff indicated during the oral argument on this matter that the phrase "or to which [it] has access" was not intended to expand the reach of the CID beyond the scope permitted by Section 20. We incorporate staff's interpretation herein. Of course, any responsive documents in the possession of a third-party production company, for instance, yet within the legal control of Yarnell, must be produced pursuant to the CID at issue here.

N. Patrick Flanagan III, Esquire
October 25, 1991

The Commission's Resolution of July 5, 1991, directing the use of compulsory process, describes the nature and scope of the investigation as determining whether Nu Skin International, Inc. and its officers or others, may be engaging in violations of Section 5 of the Federal Trade Commission Act. Petitioner may have promotional and advertising documents, although never disseminated or otherwise used by Petitioner itself, that identify other persons who may be engaging in acts or practices which violate Section 5.⁶ Such documents are relevant to the Commission's investigation. In its oral presentation, counsel for Petitioner failed to refute this basis for relevance.

In addition to their role in identifying others who may be guilty of law violations, in a recent decision, the Commission found that undissemminated advertisements were relevant in determining the appropriate scope of relief. In Kraft, Inc., 5 Trade Reg. Rep. (CCH) ¶ 22,937 (Jan. 31, 1991), appeal docketed, No. 91-1691 (7th Cir. Apr. 1, 1991), the respondent's advertising agency developed several copy alternatives to the challenged advertisements. Kraft declined to adopt these alternatives, despite repeated warnings from various outside sources that the challenged ad copy might be implicitly misleading. The Commission noted that Kraft was clearly aware of acceptable alternatives to the misleading ad copy, but declined to adopt them. Such conduct was among the factors that led the Commission to conclude that the violations were sufficiently serious and deliberate to warrant a broad order, extending to advertisements for products not mentioned in the challenged advertisements.

Finally, the Commission determined that undissemminated advertisements were relevant in the Cigarette Advertising and Promotion Investigation of the mid-1970s. Several parties challenged the subpoenas in that investigation, asserting that undissemminated advertisements were examples of "non-practices" and therefore irrelevant. The Commission found that such documents represent preliminary and increasingly refined versions of final distributed advertisements. Moreover, as they are successively revised, undissemminated advertisements may be

⁶ For example, responsive documents may identify an advertising agency that substantially participated in the creation and dissemination of a deceptive advertisement. The Commission will hold an advertising agency liable where the deception is clear and should have been obvious to the agency. See e.g., Lewis Galoob Toys, Inc. and Towne, Silverstein, Rotter, Inc., File No. 892-3212 (consent agreements with toy manufacturer and its advertising agency).

N. Patrick Flanagan III, Esquire
October 25, 1991

subjected to sophisticated consumer impact tests that lead to final dissemination or abandonment. The Commission observed that this developmental process may reveal much more about an advertisement's effect on, or possible deception of, consumers than would the final copy alone. Statement of the Commission on Motions to Quash or Limit the Subpoenas Duces Tecum Issued in the Cigarette Advertising and Promotion Investigation, File No. 762-3065 (May 25, 1977). Similar relevant information may be found in response to the CID Specification challenged here.

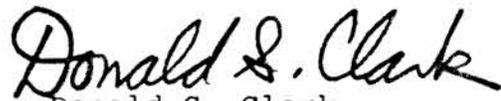
The Commission finds that the information requested by the challenged specification is relevant to the Commission's inquiry.

III. Conclusion

For the foregoing reasons, the Petition is denied. Pursuant to Rule 2.7(e), Yarnell Enterprises, Inc., is directed to comply with the Civil Investigative Demand on or before November 4, 1991.

Pursuant to Rule 2.7(f), within three days after service of this ruling, Petitioner may file with the Secretary of the Commission a request that the full Commission review the ruling. Commission Rule of Practice 4.4(b) provides that a document shall be deemed filed when it is received by the Office of the Secretary. See 16 C.F.R. 4.4(b). The timely filing of such a request shall not stay the return date of this ruling, unless the Commission otherwise directs.

By direction of the Commission.


Donald S. Clark
Secretary



NETWORK

Law Enforcement's source for consumer complaints

CIS COMPLAINT

| | |
|--------------------------------------|-----------------------|
| Record 1 of 5 | |
| Reference Number | 22638538 |
| Created Date | 04/07/2009 |
| Complaint Source | BBB UT Salt Lake City |
| Originator Reference Number | 11660022070159 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBB-USER |
| Entered Date | 04/07/2009 |
| Updated By | |
| Updated Date | |
| Agency Contact | External Agency |
| Complaint Date | 04/07/2009 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | NUTLEY |
| Consumer Address, State Code | NJ |
| Consumer Address, State Name | New Jersey |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |

| | |
|---------------------------------------|--------------------------------|
| Consumer Work Phone, Area Code | |
| Consumer Work Phone, Number | |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Nature's Sunshine Products Inc |
| Company Address, Line 1 | 75 East 1700 South |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | PROVO |
| Company Address, State Code | UT |
| Company Address, State Name | Utah |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 84606 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | 801 |
| Company Phone, Number | 3424300 |
| Company Phone, Extension | |
| Company Email | |
| Company Website | |
| Company Rep First Name | |
| Company Rep Middle Name | |
| Company Rep Last Name | |
| Company Rep Salutation | |
| Company Rep Comments | |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response | |

| | |
|---|---|
| Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | \$0.00 |
| Complaint Info Product Service Code | 1704 |
| Complaint Info Product Service Description | Health Care: Diet Products\Centers\Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | Complaint Type: - Refund or Exchange Issues |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

Record 2 of 5

| | |
|--------------------------------------|-----------------------|
| Reference Number | 25684319 |
| Created Date | 02/01/2010 |
| Complaint Source | BBB UT Salt Lake City |
| Originator Reference Number | 11660022090297 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBB-USER |
| Entered Date | 02/01/2010 |
| Updated By | |
| Updated Date | |
| Agency Contact | External Agency |
| Complaint Date | 02/01/2010 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | GRAND BLANC |
| Consumer Address, State Code | MI |
| Consumer Address, State Name | Michigan |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | |
| Consumer Work Phone, Number | |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |
| Consumer Fax, Number | |

| | |
|--|--------------------------------|
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Nature's Sunshine Products Inc |
| Company Address, Line 1 | 75 East 1700 South |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | PROVO |
| Company Address, State Code | UT |
| Company Address, State Name | Utah |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | 84606 |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | 801 |
| Company Phone, Number | 3424300 |
| Company Phone, Extension | |
| Company Email | |
| Company Website | |
| Company Rep First Name | |
| Company Rep Middle Name | |
| Company Rep Last Name | |
| Company Rep Salutation | |
| Company Rep Comments | |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested | |

| | |
|---|--|
| Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | \$0.00 |
| Complaint Info Product Service Code | 1704 |
| Complaint Info Product Service Description | Health Care: Diet Products\Centers\Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | Complaint Type: - Contract Issues |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

| Record 3 of 5 | |
|--------------------------------------|-----------------------|
| Reference Number | 29540969 |
| Created Date | 02/11/2011 |
| Complaint Source | BBB UT Salt Lake City |
| Originator Reference Number | 11660022108678 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBB-USER |
| Entered Date | 02/11/2011 |
| Updated By | BBBSAUT-USER |
| Updated Date | 02/26/2012 |
| Agency Contact | External Agency |
| Complaint Date | 01/31/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | MONCKS CORNER |
| Consumer Address, State Code | SC |
| Consumer Address, State Name | South Carolina |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | |
| Consumer Work Phone, Number | |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |

| | |
|--|----------------------------------|
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Nature's Sunshine Products, Inc. |
| Company Address, Line 1 | 75 E 1700 S |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | PROVO |
| Company Address, State Code | UT |
| Company Address, State Name | Utah |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | questions@natr.com |
| Company Website | www.naturessunshine.com |
| Company Rep First Name | Denise |
| Company Rep Middle Name | |
| Company Rep Last Name | Bird |
| Company Rep Salutation | |
| Company Rep Comments | Director/Paralegal Servic |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested | |

| | |
|--|---|
| Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 1704 |
| Complaint Info Product Service Description | Health Care: Diet Products\Centers\Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | <p>Although I have talked to several people who 'promise' a refund 'soon', it never happens. Specifically Celia Samuelson in online customer service. On 12/22/10 I order herbal products online. The person I purchased this for passed before the order arrived. I contacted the company to cancel the order and was told to call the next day when shipping was there. Called the next morning, shipping already sent package. UPS tracking # (b)(6) shows that I refused the package. I do not want the product, all I want is a refund of \$80.62. I called and chatted online with Customer Service and told the package was never received back. Spoke with Celia Samuelson on January 18, 2011 and was told she would forward my order info 'to the person that tracks down lost orders', and 'once the person that tracks down lost orders finds it my credit card will be credited.' When I ask when I should expect the credit I'm told 'soon' and no one will give me specific dates for my credit. Celia sent me an email that same day letting me know that since this order (order #19573174) was my 1st order with their company, my membership would be canceled until I order later. I told Celia that I understood and that was fine. On 1/24/11 I sent Celia an email asking her when I could expect my credit because it had been almost a week. She never responded. I chatted again with online customer service</p> |

| | |
|---|--|
| | 1/25/11 and was told a credit was not issued to the account and they didn't know when a credit would be issued. The tracking number from UPS clearly shows that I no longer have their product and with that said, I want my money back. I'm not responsible for what happens during shipping, only sending it back. I did my part, now I would like for Nature's Sunshine to do their part and credit my credit card back the full amount of the order. --- Additional Comments: My full refund of \$80.62 back to my credit card.' |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

| Record 4 of 5 | |
|--------------------------------------|-----------------------|
| Reference Number | 30395639 |
| Created Date | 04/26/2011 |
| Complaint Source | BBB UT Salt Lake City |
| Originator Reference Number | 11660022113024 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBB-USER |
| Entered Date | 04/26/2011 |
| Updated By | BBBSAUT-USER |
| Updated Date | 02/26/2012 |
| Agency Contact | External Agency |
| Complaint Date | 04/26/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | BROOMFIELD |
| Consumer Address, State Code | CO |
| Consumer Address, State Name | Colorado |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | |
| Consumer Home Phone, Number | |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |

| | |
|--|----------------------------------|
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Nature's Sunshine Products, Inc. |
| Company Address, Line 1 | 75 E 1700 S |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | PROVO |
| Company Address, State Code | UT |
| Company Address, State Name | Utah |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | questions@natr.com |
| Company Website | www.naturessunshine.com |
| Company Rep First Name | Denise |
| Company Rep Middle Name | |
| Company Rep Last Name | Bird |
| Company Rep Salutation | |
| Company Rep Comments | Director/Paralegal Servic |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested | |

| | |
|---|--|
| Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | \$100000.00 |
| Complaint Info Product Service Code | 1704 |
| Complaint Info Product Service Description | Health Care: Diet Products\Centers\Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | Refer to 'ALL ATTACHMENTS FOR THIS COMPLAINT' on your complaint website link. --- Additional Comments: ' |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

| Record 5 of 5 | |
|--------------------------------------|-----------------------|
| Reference Number | 31093322 |
| Created Date | 04/26/2011 |
| Complaint Source | BBB UT Salt Lake City |
| Originator Reference Number | 11660022113044 |
| Contact Type | Complaint |
| Data Source | Organization |
| DNC? | N |
| Entered By | BBBSAUT-USER |
| Entered Date | 04/26/2011 |
| Updated By | BBBSAUT-USER |
| Updated Date | 02/26/2012 |
| Agency Contact | External Agency |
| Complaint Date | 04/26/2011 |
| Transaction Date | |
| Consumer First Name | b(6) |
| Consumer Middle Name | |
| Consumer Last Name | b(6) |
| Consumer Salutation | |
| Consumer Address, Line 1 | b(6) |
| Consumer Address, Line 2 | |
| Consumer Address, Line 3 | |
| Consumer Address, City | APPLETON |
| Consumer Address, State Code | WI |
| Consumer Address, State Name | Wisconsin |
| Consumer Address, Country Code | USA |
| Consumer Address, Country Name | UNITED STATES |
| Consumer Address, ZIP Code | b(6) |
| Consumer Address, ZIP Code Extension | |
| Consumer Home Phone, Country Code | |
| Consumer Home Phone, Area Code | b(6) |
| Consumer Home Phone, Number | b(6) |
| Consumer Work Phone, Country Code | |
| Consumer Work Phone, Area Code | b(6) |
| Consumer Work Phone, Number | b(6) |
| Consumer Work Phone, Extension | |
| Consumer Fax, Country Code | |
| Consumer Fax, Area Code | |

| | |
|--|----------------------------------|
| Consumer Fax, Number | |
| Consumer Cell Phone, Country Code | |
| Consumer Cell Phone, Area Code | |
| Consumer Cell Phone, Number | |
| Consumer Email | b(6) |
| Consumer Age range | |
| Consumer Military Status | |
| Consumer Military Station | |
| Consumer Complaining Company/Org | |
| Company Name | Nature's Sunshine Products, Inc. |
| Company Address, Line 1 | 75 E 1700 S |
| Company Address, Line 2 | |
| Company Address, Line 3 | |
| Company Address, City | PROVO |
| Company Address, State Code | UT |
| Company Address, State Name | Utah |
| Company Address, Country Code | USA |
| Company Address, Country Name | UNITED STATES |
| Company Address, ZIP Code | |
| Company Address, ZIP Code Extension | |
| Company Phone, Country Code | |
| Company Phone, Area Code | |
| Company Phone, Number | |
| Company Phone, Extension | |
| Company Email | questions@natr.com |
| Company Website | www.naturessunshine.com |
| Company Rep First Name | Denise |
| Company Rep Middle Name | |
| Company Rep Last Name | Bird |
| Company Rep Salutation | |
| Company Rep Comments | Director/Paralegal Servic |
| Complaint Info Initial Contact Method | |
| Complaint Info Initial Contact Date | |
| Complaint Info Initial Response Method | |
| Complaint Info Initial Response Date | |
| Complaint Info Amount Requested Method | |
| Complaint Info Amount Requested | |

| | |
|---|--|
| Value | |
| Complaint Info Amount Paid Method | |
| Complaint Info Amount Paid Value | |
| Complaint Info Product Service Code | 1704 |
| Complaint Info Product Service Description | Health Care: Diet Products\Centers\Plans |
| Complaint Info Law Violation Code | |
| Complaint Info Law Violation Description | |
| Complaint Info Statute Code | |
| Complaint Info Statute Description | |
| Complaint Info Topic Code | |
| Complaint Info Topic Description | |
| Complaint Info Comments | NSP set up a prepaid Visa debit card in my name for 'refunds' They cannot tell me how to undo the account. I did not authorize.I infrequently order products from NSP. They charge and they 'refund' small amounts. This month, without notifying me, they opened a Visa Debit card in my name with CITI. The card has monthly fees that I will be charged. When I called NSP they wanted my checking account nu,ber to 'cancel the card.' I would not give it. Now they say they cannot cancel and it call CITI. The number given goes to an automated # that will not reroute. I want the card canceled and my credit unaffected - and no fees charged to me. --- Additional Comments: I want the card cancelled. I want that in writing from CITI. I want NSP to stop doing this. I want my 'membership' cancelled and my 'annual fee' refunded.' |
| Complaint Info CRA Dispute Flag | |
| Complaint Info CRA Dispute 45 Days Flag - FOIA only | |

As a Consumer Sentinel Network member, you must properly protect any information printed, downloaded, or otherwise removed from the Network as stated in OMB Memo M-06-16. Please delete or destroy this information within 90 days unless its use is still required for law enforcement purposes. When destroying the information you should burn, pulverize, or shred the information saved in paper format and destroy or erase information that has been saved electronically so that it cannot practicably be read or reconstructed. Proper erasure of electronic information must include the overwriting or "wiping" of the information from the electronic media on which it is stored.

...

Provided by the Federal Trade Commission



March 12, 2013

The Honorable Edith Ramirez
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Petition for FTC Investigation of Recent Allegations Against Herbalife Ltd.

Dear Chairman Ramirez:

On behalf of the National Consumers League¹ (NCL), I am writing to urge the Federal Trade Commission (FTC) to open an investigation into allegations by Pershing Square Capital Management, L.P. ("Pershing Square") and others that the multi-level marketing company Herbalife Ltd. ("Herbalife") is in fact a complex pyramid scheme. Specifically, in December 2012, after an eighteen-month investigation, Pershing Square published a report² alleging a range of potential violations of federal and state consumer protection and anti-pyramiding laws, including Section 5 of the FTC Act.³

Since the publication of the Pershing Square report, numerous charges and counter-charges have been publicly leveled against Pershing Square and Herbalife by supporters of both companies. Lost in the media frenzy has been one central concern: Are consumers being harmed?

Given these allegations and their implications for America's consumers, NCL recently met separately with representatives of Pershing Square, the Direct Selling Association and Herbalife. Having heard the arguments presented on both sides of this issue, we believe that only the Federal Trade Commission has the resources and expertise to investigate these claims and determine whether Herbalife is, in fact, an illegal pyramid scheme rather than a legitimate multi-level marketing business.

¹ The National Consumers League, founded in 1899, is the nation's pioneering consumer organization. Our non-profit mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, visit <http://www.nclnet.org>.

² Pershing Square Capital Management, L.P. "Who wants to be a Millionaire?" December 20, 2012. Online: <http://factsabouterherbalife.com/wp-content/uploads/2013/01/Who-wants-to-be-a-Millionaire.pdf>.

³ 15 U.S.C. § 45.

Background on NCL's Anti-Pyramid Scheme Advocacy

The National Consumers League has partnered with the direct-selling industry to educate consumers about the threat from fraudulent pyramid schemes. In 2009, with a grant from the Direct Selling Education Foundation, NCL launched a consumer education campaign to help consumers spot the differences between legitimate multi-level marketing (MLM) plans and fraudulent pyramid schemes.⁴

As part of this campaign, NCL conducted a survey into consumer vulnerability to pyramid schemes. This survey revealed a significant lack of consumer awareness about pyramid schemes. Fully a third (33%) of consumers surveyed were unable to identify a pyramid scheme when it was described to them. Low-income consumers, as well as African-Americans and Hispanics, were found to be especially vulnerable to pyramid schemes masquerading as legitimate home-based business opportunities.⁵

Pershing Square's Allegations and NCL's Pyramid Scheme "Red Flags"

In addition to surveying consumers, NCL also published a consumer guide, checklists and side-by-side comparisons to help consumers spot the warning signs of pyramid schemes posing as legitimate MLMs.⁶ Pershing Square's research suggests that Herbalife's business practices may run afoul of many of the "red flags" of pyramid scheme activity in NCL's guide.

For example, NCL's anti-pyramiding checklist informs consumers that the central difference between a legitimate MLM business and a pyramid scheme is that an MLM succeeds largely by selling products and services, whereas a pyramid scheme makes profits primarily by recruiting new distributors.⁷ Legitimate MLMs sell household goods or services that consumers typically use in everyday life, and price those products competitively with comparable products sold at retail. In addition, NCL has warned consumers that legitimate MLMs offer no promise of easy riches and do not use high-pressure tactics, whereas a pyramid scheme involves the promise of guaranteed profits with minimal work.

⁴ National Consumers League. "More bad economic news: Recession putting consumers at increased risk of being duped by pyramid schemes," Press release. February 26, 2009. Online: <http://nclnet.org/newsroom/press-releases/260-more-bad-economic-news-recession-putting-%20consumers-at-increased-risk-of-being-duped-by-pyramid-schemes>

⁵ National Consumers League. "National Consumers League's 2009 Pyramid Scheme Survey: Key Findings," February 2009. Online: http://nclnet.org/images/PDF/pyramid_survey_022009.pdf

⁶ See e.g. National Consumers League. "Pyramid Schemes: Don't Let One Collapse on You,," February 26, 2009. Online: http://www.nclnet.org/images/PDF/pyramidschemes_brochure.pdf.

⁷ National Consumers League. "MLM's and Pyramid Schemes: What the difference?" February 2009. Online: http://fraud.org/pyramids/pyramid_mlm.htm

For its part, Herbalife has stated that is a global nutrition company with a strong balance sheet and millions of consumers in and out of its distribution network.⁸ Specifically in response to Pershing Square's allegations, Herbalife has stated that:

- Its products are priced competitively with other supplements;⁹
- 92% of the retail customers of its products are not distributors;¹⁰
- It meets or exceeds the industry standard on buybacks and has minimal buyback restrictions;¹¹ and
- 80% of the top 100 earners in the company in 2011 earned more than their sponsors.¹²

However, Pershing Square's report alleges that Herbalife's business practices raise the very "red flags" that NCL's checklist would deem indicative of an illegal pyramid scheme, including:

- Overstating the amount of income distributors are likely to earn;
- Requiring distributors to recruit new members into the business opportunity in order to realize significant returns on investment;
- Failing to accurately disclose the true profits earned by the distributors at the very top of the business; and
- Making the "buyback" of unsold merchandise extremely difficult.¹³

As these conflicting statements from Pershing Square and Herbalife suggest, it is difficult for the typical consumer, and even for the National Consumers League – which has expertise in this area – to weigh these conflicting claims. We believe this necessitates an investigation of the kind that the FTC is well equipped to conduct. Indeed, the FTC is the federal agency with the greatest experience in investigating fraud and exposing pyramid schemes, as the Commission's recent enforcement action against Fortune Hi-Tech Marketing illustrates.¹⁴

We therefore ask that the FTC launch an investigation to determine whether Herbalife is a legitimate MLM, as the company claims, or a pyramid scheme, as its detractors claim. We would welcome the opportunity to speak with officials at the

⁸ Herbalife. "Herbalife Investor Day Presentation." Pgs. 3, 5. January 10, 2013. Online:

http://files.shareholder.com/downloads/ABEA-48ZAJ9/2277344498x0x627448/e3de3984-4dff-4ca3-90a1-a1c1cafecb4e/Herbalife_Investor_Day_Presentation_-_01.10.13.pdf

⁹ *Ibid.* Pg. 26

¹⁰ *Ibid.* Pg. 42.

¹¹ *Ibid.* Pg. 100.

¹² *Ibid.* Pg. 62.

¹³ Pershing Square Capital Management, L.P. "Executive Summary of Pershing Square Capital Management, L.P.'s Presentation of 'Who Wants to be a Millionaire?'" Pgs. 1-2. December 20, 2012. Online: <http://factsaboutherbalife.com/wp-content/uploads/2012/12/Final-Exec-Summary-1.pdf>

¹⁴ Federal Trade Commission. "FTC Action Leads Court to Halt Alleged Pyramid Scheme," Press Release. January 28, 2013. Online: <http://www.ftc.gov/opa/2013/01/fhtm.shtm>

Commission about this matter and our interest in getting at the truth on behalf of U.S. consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Sally Greenberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Sally Greenberg
Executive Director
National Consumers League
1701 K Street, NW
Suite 1200
Washington, DC 20006
Tel: (202) 835-3323 x830

cc: The Honorable Julie Brill
The Honorable Maureen K. Ohlhausen
The Honorable Joshua D. Wright

Vera, Elena R.

Subject: Meeting with Steve Holley
Location: HQ 385

Start: Tue 8/20/2013 1:00 PM
End: Tue 8/20/2013 2:00 PM

Recurrence: (none)

Meeting Status: Accepted

Organizer: Todaro, Christine

Required Attendees: Vaca, Monica E.; Greisman, Lois C.; Ammerman, Janet; Anguizola, Roberto

We are back on for the original date and time.

Todaro, Christine

Subject: Sullivan & Cromwell represents Pershing Square; Ackman et al want to meet with us -- call Christine at # below

Location: Meeting will be held in 294

Start: Mon 3/4/2013 2:00 PM

End: Mon 3/4/2013 4:00 PM

Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Greisman, Lois C.

Required Attendees: Vaca, Monica E.; Todaro, Christine; Hipsley, Heather; Vander Nat, Peter J.; Davis, Regina L.

Optional Attendees: Ammerman, Janet

I allowed 2 hours Not Responsive

Let's use the Blackberry #: (b)(6)

Hipsley, Heather

Subject: Sullivan & Cromwell represents Pershing Square; Ackman et al want to meet with us -- call Christine at # below
Location: Meeting will be held in 294
Start: Mon 3/4/2013 2:00 PM
End: Mon 3/4/2013 4:00 PM
Recurrence: (none)
Meeting Status: Accepted
Organizer: Greisman, Lois C.
Required Attendees: Vaca, Monica E.; Todaro, Christine; Hipsley, Heather; Vander Nat, Peter J.; Davis, Regina L.
Optional Attendees: Ammerman, Janet

I allowed 2 hours Not Responsive

Let's use the Blackberry #: (b)(6)

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Wednesday, November 13, 2013 6:01 PM
To: Ammerman, Janet <jammerman1@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>; Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Hart, Melissa <mhart2@ftc.gov>
Subject: FW: Herbalife: A Pyramid Scheme Disguised as a Business Opportunity

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Wednesday, November 13, 2013 1:34 PM
To: Greisman, Lois C.
Subject: Herbalife: A Pyramid Scheme Disguised as a Business Opportunity

Hi Lois –

I thought you might be interested in a recent blog post by Brent Wilkes, National Executive Director of the League of United Latin American Citizens, about Herbalife. It appeared on Monday on the Huffington Post website. http://www.huffingtonpost.com/brent-a-wilkes/herbalife-a-pyramid-scheme_b_4220426.html

Best regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Friday, August 16, 2013 2:58 PM
To: Todaro, Christine <ctodaro@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>
Subject: FW: Herbalife

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Friday, August 16, 2013 11:29 AM
To: Greisman, Lois C.
Subject: Herbalife

Hi Lois –

I wanted to be sure you saw the article in the Financial Times about Shawn Dahl and Online Business Systems, as well as the related blog posting. It is difficult to believe that Herbalife was unaware that Dahl was carrying on the business that that the Canadian authorities ordered his mother-in-law to shut down because it was an illegal pyramid scheme.

We are looking forward to discussing the role of senior distributors in the Herbalife scheme at our meeting next week.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

Herbalife distribution network in the spotlight

By Dan McCrum in New York

A fraud cannot survive the truth, which is why regulators opposed to pyramid schemes have focused on the mundane but important role played by disclosure in undercutting a fraudulent sales pitch of easy riches.

So when, in 2004, a Canadian federal court convicted Global Online Systems, a promoter for the nutritional supplement seller Herbalife, of being a “scheme of pyramid selling”, included in the remedies was a requirement for more disclosure.

Representations about compensation would have to be fair, reasonable and timely in all communications. All future materials were to comply with the law by clearly disclosing “the average income actually received by all participants operating in Canada”.

Yet, by the time GOS and its two directors were convicted, their customers had been encouraged to move to a new venture, Online Business Systems.

Both promoted the business of the Los Angeles-based direct seller, finding new Herbalife recruits, and then selling lucrative services to those recruits.

Herbalife this year banned the purchase or sale of materials and business leads from OBS, but practices by its promoter before the rift go to the heart of questions surrounding Herbalife's business model, under intense scrutiny since shortseller Bill Ackman last year accused the company of being a pyramid scheme, a charge it denies.

Herbalife is a direct-selling business, one with a network of over 3m salespeople, known as distributors, responsible for its sales of diet shakes and nutritional pills.

A legitimate multi-level marketing scheme is based around selling a product to end consumers, where higher sales to happy customers mean higher profits, and Herbalife says that it is such a business.

By contrast, a pyramid scheme can still have a product, but the great majority of its sales people will not make a profit from selling it. Instead those at the top of the pyramid exploit a steady series of new recruits who invest money in their new business before eventually giving up, going bankrupt or moving on.

Those recruits might be encouraged to buy more product than they can sell in order to join the scheme and qualify for bonuses and royalties earned by a team of distributors below them. Or they might be sold expensive services to help them set up and run their own business, incurring costs that can only be recouped by more recruiting.

Such costs can be high. OBS for instance, could charge several hundred dollars a year for sales materials, and for providing websites for recruits. It could charge hundreds more for "sales leads", the contact details for potential new recruits to expand the network.

William Keep, professor of marketing at the College of New Jersey said that the lucrative sale of such leads "is the underbelly of multi-level marketing".

The profits made by powerful distributors from providing marketing services, website operations and sales leads to new recruits can, he said, over time "bias an organisation towards recruiting: the tail wags the dog".

Sales leads come from attracting recruits, which GOS found through a series of websites such as *successontherise.com*, or *freedomforgood.com*, telling visitors that "sometimes the greatest risk...is not taking one".

Before GOS's conviction in late 2004, customers were encouraged to move to Online Business Systems, and the websites were rebranded. Herbalife distributors were told that OBS's leaders had left GOS to "develop enhanced automated marketing tools to improve our system while decreasing the cost of running our businesses".

The sales pitch remained the same – as did at least some of the tactics. A potential recruit would be encouraged to sign up for a "decision package", sent at an initial cost of only \$9.95 for postage and packaging, but subject to a further \$39.95 charge if not sent back in 15 days. If they kept it, their details could then be sold as a lead to a distributor for as much as \$100 or more.

Among the testimonials of success and pictures of yachts in a recent OBS pack there are broad answers to the question of how a distributor will earn income: "You'll acquire retail customers and develop business leaders who are interested in building a lifetime of residual income".

In the small print it mentions that the income available – \$500 to \$1,000 a month from five to 10 hours per week – are "representative of some of the most successful participants and the majority of individuals earn less". There is no mention, however of the company that for almost a decade was the source of this opportunity, Herbalife, or the disclosure of all participants' average income.

Distributors aiming to build a business would need to buy enough product from Herbalife to qualify for royalties. Herbalife declined to comment on its Canadian disclosure or specific distributors.

The company said that its 350-strong compliance team ensures that distributors obey applicable laws, and that “the vast majority of Herbalife distributors are successfully creating long-term customers through the daily consumption of our nutrition products”. This year, Herbalife took steps to distance itself from OBS by restricting distributors’ use of leads and marketing materials provided by the company. OBS did not respond to requests for comment.

Herbalife does disclose earnings for Canadian distributors each year, but only for a subset of “active leaders” that represents a tenth of overall participants, and before any expenses paid to an organisation such as OBS. In 2011 the median gross annual earnings for that select group of distributors was C\$534 (US\$517).

<http://ftalphaville.ft.com/2013/08/15/1604391/spot-the-difference-herbalife-edition/>

Spot the difference, Herbalife edition

This guest post is submitted by Dan McCrum, the FT's US investment correspondent.

Hoisted from the web archives of the wayback machine, lets take a look at what 4u4meletsdream.com had to offer back in 2004.

In February it looked like this:

The screenshot shows the homepage of 'GLOBAL ONLINE SYSTEMS'. The header includes the company name and a testimonial: 'Learn how 2 moms have helped many others achieve financial freedom, working from home using the Online System. > Details Inside'. Below the header is a navigation menu with links: 'What's It All About?', 'What's the First Step?', 'Do I Have What It Takes?', 'What's the Risk?', and 'FREE Online Presentation'. The main content area features a large text block on the left stating: 'Whatever circumstances that attracted you to this opportunity, one thing is certain, there are many other people just like you. No matter what you do for a living - whether you are a teacher, a doctor, a lawyer, a secretary, housewife or construction worker - do you find yourself thinking, "there must be a better way, a less complicated way, a smoother road" - the opportunity to run your own Internet business can be the answer for you. Our system is so simple that even if you are an Internet beginner, you can capitalize on our turnkey system.' To the right is a 'View Our FREE Online Presentation!' form with fields for 'FIRST NAME' and 'EMAIL', and a 'VIEW PRESENTATION' button. Below the form is a 'Privacy Policy' notice: 'We will NOT share your information with ANYONE and you can remove your name from our database at any time.' At the bottom, there are three small testimonials with photos of people, and a copyright notice: 'Copyright © 2003 GLOBAL ONLINE SYSTEMS, Inc. | All Rights Reserved. 4u4meletsdream.com is owned by: Lead Systems Marketing'.

In October though, there was a subtle change:

The screenshot shows the homepage of 'ONLINE BUSINESS SYSTEMS'. The header includes the company name and a testimonial: 'Learn how 2 moms have helped many others achieve financial freedom, working from home using the Online System. > Details Inside'. Below the header is a navigation menu with links: 'What's It All About?', 'What's the First Step?', 'Do I Have What It Takes?', 'What's the Risk?', and 'FREE Online Presentation'. The main content area features a large image of a group of people with the headline '> Financial Freedom Online!'. Below the image is a text block: 'Whatever circumstances that attracted you to this opportunity, one thing is certain, there are many other people just like you. No matter what you do for'. To the right is a 'View Our FREE Online Presentation!' form with fields for 'FIRST NAME' and 'EMAIL', and a 'VIEW PRESENTATION' button.

Did you spot it? The online system that 2 moms had used to help others achieve financial freedom was still available, it was just now offered by Online Business Systems, totally different you see from Global Online Systems.

Both were promoters of Herbalife, that nutritional supplement direct seller which says claims by a dastardly short seller that it is a pyramid scheme are the stuff of nonsense.

Global Online Systems would recruit distributors for Herbalife, and help the internet beginners build their own empire of diet shakes. Of course a turnkey website is not cheap, but when customers were urged to switch to Online Business Systems in September 2004, there were price cuts!

From the site:

+ Until September 15th, the cost to upgrade to your new OBS business tools (for those currently using GOS) is FREE! Not only that, but your first month's service fees will also be included for FREE. Your monthly fees in the future will be only \$39.99 USD. To the right, you'll find a link to detailed instructions on how to cancel your old system tools – in order to avoid paying for services you won't be needing anymore, it's very important that you do this right away!

+ The costs of all of your new OBS system tools have been greatly reduced so that everyone can take advantage of what we have to offer. Everyone will get a recruiting site, administration system, training site, retailing site, and voicemail system for only \$100.00 USD. The costs associated with the Global Online Systems tools were over \$300.00 USD and the monthly fees exceeded \$60.00 USD per month!

Why the change, a Herbalife man might have asked, well, the Q&A had the reason:

Why did we leave Global Online Systems?

A team of leaders wanted to develop enhanced automated marketing tools to improve our system while decreasing the cost of running our businesses. Our goal was to provide our groups with higher-tech marketing tools so our distributors could manage their businesses with greater efficiency. The Online Business System includes automated lead management technology, advanced recruiting/retailing sites and improved training manuals.

One of the greatest changes we've made within our new Online Business System is the superior quality of our Decision Package. Our Decision Package includes an information booklet, a DVD, an audio CD and a Video. It was developed by a team of professional writers, video producers and the Online Business Systems Leadership Team. Once you see it, you'll understand how this new Decision Package will help you

build your business to the next level.

But about those Moms. The Canadian Competition Bureau had taken a look at Global Online Systems and didn't like what it found:

It was a "scheme of pyramid selling", and the two directors, Deborah Stoltz and her sister Marilyn Thom paid a C\$150,000 fine in November of 2004. A prohibition order also prevented them from taking part in any more schemes of pyramid selling:

For the purposes of this agreement, a scheme of pyramid selling means a multi-level marketing plan that includes any of the following elements:

(a) participants in the plan give consideration, including cash or any other benefit, for the right to receive consideration when others are recruited into the plan who, in turn give consideration for the same right. For greater certainty, consideration may include profit derived from the sale of all marketing material including all videos, audio tapes, distribution packages and promotional booklets.

The rest is in the prohibition order.

That judgement is in line with Canadian Law, but it didn't specifically apply to Online Business Systems, which has a totally different name and was run by the daughter of Ms Stoltz, Nicole Dahl and husband Shawn Dahl.

Team Dahl went on to become one of the most important distributors in Herbalife's network, gracing the cover of its 2009 magazine when they entered the elite Chairman's Club, so we were sure that Herbalife checked it out and made certain everything was above board, before the company took steps to cut Online Business Systems out of its network of distributors in February this year.

The company gave us this statement:

We believe this story is yet another desperate example of Pershing Square's reckless \$1 billion bet against Herbalife, which according to recent media estimates currently represents an approximately \$350 million loss for Mr. Ackman's fund.

Herbalife's 350-strong global Distributor Business Practices and Compliance team takes proactive and responsive measures to identify, research, and address each and every infraction of Herbalife's Distributor Rules and applicable regulation and law. Their efforts range from counseling and education to sanctions such as suspensions, fines, and even termination of distributorships. The vast majority of Herbalife distributors are successfully creating long-term customers through the daily consumption of our nutrition products and the unique support they provide.

We've asked Online Business Systems, Ms Stoltz, Ms Thom and Mr & Mrs Dahl for comment, but no response has yet arrived.

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Monday, October 28, 2013 2:59 PM
To: Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>
Subject: FW: Herbalife

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Monday, October 28, 2013 1:26 PM
To: Greisman, Lois C.
Subject: Herbalife

Hi Lois –

I thought you might be interested in this article by Matt Stewart, which was posted on Seeking Alpha last Friday.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

<http://seekingalpha.com/article/1773702-has-carl-icahns-herbalife-position-left-him-exposed?>

Has Carl Icahn's Herbalife Position Left Him Exposed?

Oct 25 2013, 10:34

Matt Stewart

Full Disclosure: I am short HLF.

Up until last December I had never heard of Herbalife (HLF). It seems all of the fitness crazed Moms and Dads here in Short Hills, NJ don't see Formula 1 as the key to the fountain of youth. To this day I have never seen anyone around where I live mention or drink an F-1 shake.

I had, however, followed Mr. Ackman's investing career. I was certainly familiar with his in-depth analysis on MBIA and Ambac Financial and his success outsmarting both Warburg Pincus and Third Avenue Management on that investment. I have also read [Confidence Game](#). Anyone who underestimates Mr. Ackman's tenacity should read this book. The story is fascinating.

So, when I heard that Mr. Ackman had made a 3 hour presentation on a new Short Sale idea I was intrigued. I did not watch the presentation live. I watched a postview. I am not affiliated with Pershing Square in any way. I have never met nor spoken to Mr. Ackman. My contact with Pershing Square begins and ends with a request from one of their analysts to link to some of my Seeking Alpha articles on factsabouterherbalife.com. Otherwise, I know nothing about their progress on this investment other than what is reported in the news.

My due diligence started by watching Pershing Square's presentation. From there I jumped to the 10ks and 10Qs and 8ks. I struck up a dialogue with some very well-informed individuals including Mr. William Keep who I highly regard and Mr. Robert Fitzpatrick. I have also been shown great kindness by other concerned citizens including Bruce Craig and Doug Brooks to name but a few.

I am a marketer by training with an MBA from Babson College. I studied retail strategy with Douglas Tigert,

the world's pre-eminent expert in his field. I used to run the marketing department for Canada's largest bank's Wealth Management Division. Marketers become experts in demographics and psychographics and consumer behavior, etc. Mostly what we are preoccupied with is the acquisition, development, and retention of customers that have a high life-time value/positive NPV.

The first time I looked at Herbalife's financials I was immediately perplexed by the following.

Herbalife prints some of the most outstanding financial metrics I have ever seen.

Specifically:

- 80% gross margins
- double digit net margins
- ROE north of 80%
- ROIC north of 50%
- executive compensation in the multiple millions of \$

Investors can review Herbalife's metrics [here](#). These metrics are what I would call "super normal".

Companies like Proctor and Gamble or Diageo would drool to get these kinds of gross margins for a consumer product. Funny, when something seems too good to be true it usually is.

So, I started digging further. The more research I did the more obvious it became to me that the reason Herbalife is able to make so much money is because their business partners make so little. In practice it is likely that most Herbalife distributors realize a negative NPV on the capital they risk.

By now you all know that the reason they all make so little is because they are deceived - deceived by a deceptive enterprise. At least that is my thesis.

Yesterday Carl Icahn was on CNBC talking about how Herbalife is undervalued. As I listened to him talk to Scott Wapner it struck me that perhaps Mr. Icahn himself has become the promoter of a fraud. More on that later.

The building blocks for the thesis that Herbalife is an illegal enterprise are as follows:

- Herbalife manufactures an array of undifferentiated weight management products.
- These products are sold to a network of individual distributors
- The company attains usurious gross margins when it sells the product.
- The company also surcharges the product with usurious Shipping, Handling and Administrative Fees
- In order to move product the company markets a business opportunity to its distributors.
- The business opportunity is outlined in the company's Marketing Plan.
- The company's Marketing Plan is a pyramid scheme

Why is the Marketing Plan a pyramid scheme?

At the top of the scheme are the plan's sponsors. These are the folks like Doran Andre and John Tartol and Leslie Stanford. These folks spend the bulk of their time traveling the globe as evangelists for the company's Marketing Plan. These individuals are the company's most senior recruiters. Let's call them the P.T.

Barnums of Herbalife. To the plan's sponsors "Every Crowd Has a Silver Lining." If you are part of the Latino crowd all the better it would seem.

The first step in the Herbalife pyramid scheme is obvious - the promise of riches. Distributors up and down the Herbalife pyramid scheme routinely advance wildly exaggerated earnings claims/business prospects to naive recruits. The evidence of this kind of exaggeration is literally everywhere. For a small taste of it visit factsaboutheralife.com. [Here](#) is but one small example of a recruiter romanticizing a group of new recruits.

Indicia #1 of a Pyramid Scheme - Exaggerated Earnings Claims

What is the key to achieving great wealth and prosperity? How do you too drive a Ferrari like Doran Andre?

A. Follow the Company's Marketing Plan

The company's Marketing Plan has a pathway to success. You start as a distributor at the bottom and immediately look-up to the Top of the pyramid *11 levels above you* as a newbie.

How do you advance in the plan?

Volume Points. Every time you make a purchase you acquire Volume Points. The more Volume Points you acquire the faster you advance in the plan.

Herbalife's Marketing Plan immediately encourages the purchase of Volume Points. To advance to SUPERVISOR and to acquire a 50% discount on product purchased you must acquire 4,000 Volume Points or two consecutive months at 2,500 Volume Points. Let's let John Tartol and Leslie Stanford tell you how it works.

The acquisition of Volume Points to secure a higher discount/to advance in the Marketing Plan is called Inventory Loading.

Aside: "Inventory loading" occurs when distributors make the minimum required purchases to receive recruitment-based bonuses without reselling the products to consumers.

Indicia # 2 of a Pyramid Scheme - Incentives that Promote Inventory Loading

How do you make money?

All commissions in the Herbalife Marketing plan are paid out based upon product purchases. Not a single commission is paid when product is purchased by a retail customer. Whether or not a can of shake mix is ever sold to a retail customer does not influence whether or not an upline sponsor earns a commission. As long as the upline sponsor can convince a downline recruit to make a purchase of inventory the upline sponsor makes a commission.

Indicia # 3 of a Pyramid Scheme - The payment of compensation facially unrelated to retail sales.

What is the focus of the Marketing Plan?

Legitimate Multi-Level marketing plans focus on retailing as their primary objective. Herbalife's marketing plan incentivizes recruiting.

How can we be sure?

Over 4 million new recruits have been recruited in the past two years alone.

Indicia #4 of a Pyramid Scheme - a compensation system that emphasizes recruitment over retail sales.

Do distributors make money?

According to the company's annual Statement of Compensation the promises of great riches advanced by the recruiters like Doran Andre don't exactly come to pass. Most participants don't make much money at all. As a result, most participants quit the business within a year or two.

Indicia # 5 of a Pyramid Scheme - High Churn Rates/Failure Rates

How does the company continue to grow even as it loses so many of its distributors?

A. Relentless recruiting. Specifically, Herbalife's marketing plan encourages an endless chain of recruitment. The company is now in over 88 countries around the world. The Marketing Plan has aggressively saturated most geographies globally.

Indicia # 6 of a Pyramid Scheme - a compensation system that encourages an Endless Chain of Recruitment.

Q. Is Herbalife one of the largest frauds in history operating within the jurisdiction of both the FTC and the SEC?

The answer is likely "Yes"

Why? What is unique about Herbalife is the following.

Not only does the company's Marketing Plan siphon cashflow from junior recruits into the hands of these recruits' upline sponsors, the company takes the initiative a dramatic step further.

The company has taken the cashflow produced by its Marketing Plan and issued securities to the public. Retail and institutional investors can acquire a stake in the work product of Herbalife's Marketing Plan. This is a critical observation for the following reasons.

If Herbalife is a multi-billion dollar pyramid scheme then not only are its promoters likely guilty of promoting a business opportunity fraud but in all likelihood the promoters are also guilty of promoting securities fraud.

The securities fraud would likely exist on two levels.

1) The distributorships themselves are likely fraudulent securities. Selling a business opportunity that doesn't deliver the goods due to the systemic problems manifest in a pyramid scheme is a form of securities fraud under both state and federal law.

2) The equity and debt issued by the company is also a fraud of epic proportions. Selling securities in a firm under the premise that said firm is legitimate if and when it is actually an illegitimate pyramid scheme is an obvious promotion of fraud. Today, the capitalized value of HLF common equity is around \$7 billion. Almost all of it likely financed by the churn in Herbalife's distributor base.

Which leads me to Mr. Icahn.

Mr. Icahn has taken an aggressive long position in Herbalife's common equity. Ostensibly, this sets-up Icahn Partners to be a potential victim of the fraud advanced by Mr. Johnson and the rest of Herbalife's Board of Directors. Mr. Icahn may find himself a victim as might any other long investors in Herbalife's common equity when regulators intervene, except for one thing.

Mr. Icahn crossed over the line from being an outside, passive, minority investor to being an inside, active, minority investor.

Specifically, Mr. Icahn's company has two seats on the Herbalife board and now forms an integral part of

the company's governance.

In effect, Mr. Icahn is now a promoter of the Herbalife narrative or if you prefer a promoter of the Herbalife scheme. As investors we have already seen evidence of Mr. Icahn talking his book. As recently as yesterday, Mr. Icahn repeated again publically that Herbalife is an undervalued company. This struck me as odd as we sit here 2 days before their Q3 release but what do I know?

More notably, as the Chairman of a company that has two seats on Herbalife's Board of Directors, Mr. Icahn is now a promoter of the Herbalife Marketing Plan, just as John Tartol is, just as Mike Johnson is, just as John Di Simone is and just as every other participant in the Herbalife story is.

From Webster v. Omnitrition the case law on this point is clear. Pyramid schemes not only violate a number of anti-fraud statutes but they also run contra to securities laws.

[4] In S.E.C. v. Glenn W. Turner Enters., Inc., 474 F.2d 476 (9th Cir.), cert. denied, 414 U.S. 821, 94 S.Ct. 117, 38 L.Ed.2d 53 (1973), we declared that investments in a pyramid scheme were "investment contracts" and thus securities within the meaning of the federal securities laws. If Omnitrition's program is a pyramid scheme, investments in the program's supervisor positions are securities.

If Omnitrition's program involves the sale of securities, Omnitrition is liable under § 12(1) for failing to file a registration statement. Section 12(1) imposes civil liability on one who "offers or sells a security in violation of section 77e." 15 U.S.C. § 77l(1) (1981). Section 77e(c) makes it unlawful "to offer to sell ... any security, unless a registration statement has been filed as to such security ..." 15 U.S.C. § 77e(c) (1981). There is no scienter requirement to § 12(1). Wolf v. Banco Nacional De Mexico, 549 F.Supp. 841, 853 (N.D.Cal.1982), rev'd on other grounds, 739 F.2d 1458 (9th Cir.1984), cert. denied, 469 U.S. 1108, 105 S.Ct. 784, 83 L.Ed.2d 778 (1985).

The ruling goes on to state the following:

Section 10(b) of the Securities Exchange Act of 1934 makes it unlawful "[t]o use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe ..." 15 U.S.C. 78j(b).

Securities and Exchange Commission Rule 10b-5 prohibits engaging "in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(c). Federal antifraud securities laws are to be construed broadly. Herman & MacLean v. Huddleston, 459 U.S. 375, 386- 87, 103 S.Ct. 683, 689, 74 L.Ed.2d 548 (1983).

[6] We hold that operation of a pyramid scheme violates 10b-5's prohibition against engaging in an "act, practice or course of business which operates as a fraud or deceit upon any person." A jury could rationally conclude that the promotion of a pyramid scheme demonstrates the necessary fraudulent intent. See In re Software Toolworks, Inc. Sec. Litigation, 50 F.3d 615, 628-29 (9th Cir.) (holding summary judgment on 10b-5 claim to be improper, even in absence of direct evidence of fraudulent intent, where evidence permitted a "reasonable inference" of scienter), cert. denied, --- U.S. ---, 116 S.Ct. 274, 133 L.Ed.2d 195 (1995).

Because there is a genuine dispute of material fact as to whether Omnitrition operated a fraudulent pyramid scheme, the district court should not have granted summary judgment on Webster's 10b-5 claims.

Section 12(2) imposes civil liability on any person who "offers or sells a security ... by means of a prospectus or **oral communication**, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading ..." 15 U.S.C. § 77l(2). There is genuine dispute over whether Omnitrition made false statements of fact when it declared Omnitrition was not a pyramid scheme. **Even absent such statements, a company which promotes an inherently fraudulent pyramid scheme "omits to state a material fact" for purposes of § 12(2) when it does not explain that the program is bound to collapse.**

Mr. Ackman is convinced that Herbalife is a pyramid scheme. I agree with this analysis. If we are correct, there are a number of second-order effects/implications for those on the other side of the trade.

To say that the members of Herbalife's management team are "all-in" reputationally with the Herbalife juggernaut would be an understatement. Nothing might be more humbling than going from making \$10 million one year to doing a perp walk the next. Even a small probability of this kind of outcome must be very stressful for Herbalife executives and their families.

One might wonder if some insider will turn state's evidence at some point along the way to mitigate his/her exposure as a whistle blower. Who knows?

As for Mr. Icahn?

It strikes me as curious as to why anyone would voluntarily want to try to pick-up reputational nickels in front

of a bulldozer. If Mr. Icahn is correct about Herbalife then he likely makes a great amount of money. If he is incorrect then it strikes me that he has now exposed himself to the potential liability that comes with being the promoter of a fraud.

After completing a significant amount of due diligence piggy-backing on the great work done by Shane Dineen and his team at Pershing Square it is obvious to me that Herbalife's Marketing Plan is a pyramid scheme. That's my take. To be long and disagree is one thing. To be long and disagree and take two seats on the company's Board of Directors is quite another.

It seems doubtful that both the SEC and the FTC will turn a blind eye to a massive fraud now that it has been brought to their attention with both thorough and rigorous amounts of investigation and evidence. How anyone can argue rationally that this company's senior distributors don't over-exaggerate earnings potential escapes me completely. These exaggerations are, of course, the first step down the Yellow Brick Road on the way to find the Wizard of Oz.

"We hear he is a wizardful Wiz if ever a Wiz there was." - at least that is what Michael Johnson tells us (metaphorically speaking).

It seems equally unlikely that the members of the Hispanic Caucus in Congress will stand by idly as their fellow citizens are victimized.

It also seems doubtful that Herbalife will be able to prove that upline recruiting rewards are financed by legitimate retail sales rather than the ongoing purchases of distributors churning and dying on the climb to Mount SUPERVISOR in pursuit of riches that will never materialize.

As for whether or not Mr. Icahn may be involved in the promotion of a fraudulent business venture?

As always, Time will Tell

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Wednesday, October 16, 2013 9:53 AM
To: Vaca, Monica E. <MVACA@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>; Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>
Subject: FW: HLF - Bostick
Attach: Bostick - Order Denying Motion to Dismiss.pdf

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Tuesday, October 15, 2013 6:52 PM
To: Greisman, Lois C.
Subject: HLF - Bostick

Hi Lois –

I thought you might be interested to know that the federal district court in California recently denied Herbalife's motion to dismiss the complaint in the Bostick case. In doing so, the court rejected a couple of Herbalife's central arguments. The following sections of the opinion are particularly notable:

- "Plaintiff's concession that purchasing an International Business Pack is not an investment inventory does not mean that Plaintiff cannot use this payment to satisfy the first element of the Koscot test. Rather, this payment of money satisfies both the 'significant consideration' language of Penal Code § 327 and the 'payments of money' language of Koscot— absent this payment an individual may not become a distributor within the Herbalife hierarchy. . . . Further, similar to Omnitrition, distributors in the Herbalife hierarchy can purchase large inventories of goods in order to more fully receive the benefits of the program, such as increased discounts on future purchases." (p. 8.)
- "The considerable discounts and advantages offered to supervisors presents the same risk of a recruitment focus present in Omnitrition. See Omnitrition, 79 F.3d at 782. Although Defendants contend that distributors should be classified as ultimate users, Omnitrition points out that '[i]f Koscot is to have any teeth, [a sale for a distributor's personal use] cannot satisfy the requirement that sales be to "ultimate users" of a product.' Id. at 783. Therefore, downline distributors are not ultimate users for purposes of the second element of the Koscot test. Accordingly, Plaintiff has adequately alleged that supervisors pay money to receive recruitment rewards which are unrelated to the sale of products to ultimate users." (p. 9 (footnote omitted).)

If sales to those inside the Herbalife distribution system do not count as true retail sales, then it is difficult to see how Herbalife is a legitimate MLM as opposed to an illegal pyramid scheme.

Regards,
Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

Case No. **CV 13-02488-BRO** Date October 11, 2013

Title **Dana Bostick v. Herbalife International of America Inc et al**

Present: The Honorable **BEVERLY REID O'CONNELL, United States District Judge**

Renee A. Fisher

Not Present

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS)

ORDER RE MOTION TO DISMISS [22]

Plaintiff Dana Bostick seeks to represent a putative class against Defendants Herbalife International of America, Inc; Herbalife International, Inc.; and Herbalife, LTD (collectively “Herbalife” or “Defendants”). Plaintiff alleges that Defendants: (1) violated California’s Endless Chain Scheme Law, Cal. Penal Code § 327; (2) violated California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 ; (3) violated California’s False Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500; and (4) committed multiple violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*¹ Presently before the Court is Defendants’ Motion to Dismiss. (Dkt. 22.) For the following reasons, the Court **DENIES** Defendants’ Motion.

I. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff Dana Bostick, an individual residing in California, seeks to represent a putative class of individuals injured by joining an alleged pyramid scheme run by Herbalife. (Compl. ¶¶ 4, 5.) An individual may become a vendor of Herbalife products, known as a distributor, if they purchase an Herbalife International Business Pack for \$95.95 or a mini International Business Pack for \$57.75. (*Id.* ¶ 34.)

Herbalife is a multi-level distribution system, which relies on individual distributors to market, promote, and distribute Herbalife products. (*Id.* ¶ 32.) Herbalife

¹ Plaintiff concedes that his second, third, and fourth causes of action, alleging RICO violations, should be dismissed. (Opp’n at 9, 25.) Accordingly, the Court will not consider those causes of action and dismisses them.

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| | | | |
|----------|--|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

recruits potential distributors by promising chances for immediate, daily profit while providing an opportunity to take charge of one's life by being one's own boss. (*Id.* ¶ 35–37.) Herbalife promotes itself through a magazine titled “*Live The Good Life! Herbalife*” as well as testimonial videos recounting individual success stories. (*Id.* ¶¶ 49, 139.)

Herbalife is comprised of a hierarchy of distributors, with the various levels determining eligibility for discounted Herbalife products and other benefits. (*See id.* ¶¶ 58–131). This hierarchy is comprised of eleven levels of distributors, starting from the Distributor rank and ending at the Founder's Circle rank. (*Id.* ¶ 58.) If a distributor recruits another Herbalife distributor, the recruit becomes a junior or “downline” distributor. (*Id.* ¶ 60.) “Upline” distributors earn bonuses when downline distributors make purchases. (*Id.*) All new distributors join a line of sponsorship that is traced upline to the highest level of the Herbalife hierarchy. (*Id.* ¶ 59.) Distributors may return products purchased from Herbalife within twelve months of the purchase date. (*Id.* ¶ 209.) However, a distributor may not return a product purchased from an upline Supervisor. (*Id.* ¶ 210.)

In order for a Distributor to move up to higher ranks within the hierarchy, he must accumulate a certain amount of “Volume” in a specific time period. (*Id.* ¶ 62.) Volume is calculated by the number of Volume Points a distributor amasses, which is based on a ratio between products and their monetary value. (*Id.* ¶ 63.) A distributor can earn Volume Points if a downline distributor purchases Herbalife products, or if the distributor personally orders products. (*Id.* ¶ 65.) When a distributor personally purchases the product, they amass Personally Purchased Volume Points. (*Id.*)

Distributors, as the lowest rung of the Herbalife hierarchy, earn a 25% discount from the retail price of goods. (*Id.* ¶ 67.) For every one dollar that a Distributor spends on Herbalife products, \$0.64 goes upline. (*Id.* ¶ 69.) The fifth rung in the hierarchy, Supervisor, classifies a distributor as a Sales Leader, and allows them to purchase Herbalife products at a 50% discount. (*Id.* ¶ 98.) Although there are a number of ways to become a Supervisor, a distributor can become a Supervisor without personally purchasing or reselling any Herbalife products. (*Id.* ¶ 91.)

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

A Supervisor receives an additional benefit by becoming eligible for “Royalty Overrides,” a commission from other downline Supervisors. (*Id.* ¶¶ 101, 102.) However, to qualify for Royalty Overrides, a Supervisor must comply with both the “10-Retail Customer Rule” and the “70% Rule.” (*Id.* ¶ 104.) Under these rules, a Supervisor must personally sell to at least ten separate retail customers, and at least 70% of the total value of Herbalife products that the Supervisor purchases must be sold or consumed within that month. (*Id.* ¶ 104.)

On April 6, 2012, Plaintiff became an Herbalife Distributor. (*Id.* ¶ 50.) Over a four month period, Plaintiff placed 8 total orders for Herbalife products. (*Id.* ¶ 52.)² Although Plaintiff worked hard, he recruited only one person—his lifelong friend. (*Id.* ¶ 51.) Plaintiff’s attempts to sell the products he purchased to wholesalers were unsuccessful because he had to sell at nearly full retail value to make a profit—an unappealing rate compared to prices offered by higher upline distributors. (*Id.* ¶ 54.)

Plaintiff contends that he cannot make a profit because Herbalife’s system of graduated discounts means those getting Herbalife products at a 25% discount must compete with those getting products at a 50% discount. (*Id.* ¶ 183.) Further, the Herbalife structure systematically rewards recruiting other distributors over retail sales. (*Id.* ¶ 2.)

Dissatisfied with Herbalife’s structure and misrepresentations regarding the chance to generate meaningful income, Plaintiffs filed his Complaint on April 8, 2013. (Dkt. 1.) Presently before the Court is Defendants’ Motion to Dismiss. (Dkt. 22.)

II. LEGAL STANDARD

A complaint may be dismissed for failure to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads factual

² Plaintiff placed these orders on April 6, 2012; April 26, 2012; May 21, 2012; June 18, 2012; June 19, 2012; June 22, 2012; June 27, 2012; and July 20, 2012. (*Id.* ¶ 52.)

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007)). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusion, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555 (internal quotation marks and ellipsis omitted).

To determine whether a complaint states a claim sufficient to withstand dismissal, a court considers the contents of the complaint and its attached exhibits, documents incorporated into the complaint by reference, and matters properly subject to judicial notice. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-34 (2007); *Lee b. City of Los Angeles*, 250 F.3d 668, 668 (9th Cir. 2001). The court must accept as true all factual allegations contained in the complaint. That principle, however, “is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

Where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation omitted).

IV. ANALYSIS

The Court will first examine whether it retains subject matter jurisdiction following the dismissal of the RICO causes of action, which were pleaded as the original basis for subject matter jurisdiction. The Court will then examine the sufficiency of Plaintiff’s allegations as to the first cause of action for a violation of California’s Endless Chain Scheme Law, the fourth cause of action for a violation of California’s UCL, and the fifth cause of action for a violation of California’s FAL.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

A. Subject Matter Jurisdiction

After the dismissal of the RICO claims, Defendants contend that the Complaint must be dismissed for lack of subject matter jurisdiction. On the other hand, Plaintiffs contend that after the dismissal of the federal question causes of action, the Court still has subject matter jurisdiction based on the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d).

Federal courts have a continual *sua sponte* duty to examine their subject matter jurisdiction. *See United Investors Life Ins. Co. v. Waddell & Reed, Inc.*, 360 F.3d 960, 966–67 (9th Cir. 2004). Section 1332(d)(9)(C) provides that a district court shall not have original jurisdiction when a class action solely involves a claim that “relat[es] to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1993 (15 U.S.C. 77b(a)(1)).” 28 U.S.C. § 1332(d)(9)(C). “If a complaint contains a claim implicating one of CAFA’s exceptions, *but also involves other non-excepted claims*, the case should remain in federal court.” *Tuttle v. Sky Bell Asset Mgmt., LLC*, 2011 U.S. Dist. LEXIS 7466, *14 (N.D. Cal. Jan. 21, 2011) (emphasis in original) (citing to *Anwar v. Fairfield Greenwich Ltd.*, 676 F. Supp. 2d 285, 293 (S.D.N.Y. Dec. 23, 2009)). Investments in a pyramid scheme are investment contracts, and therefore classified as securities under federal securities law. *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776, 784 (9th Cir. 1996) (citing to *S.E.C. v. Glenn W. Turner Enters., Inc.*, 474 F.2d 476, 482 (9th Cir.), *cert. denied*, 414 U.S. 821, 38 L. Ed. 2d 53, 94 S. Ct. 117 (1973)).

Here, Defendants allege that Plaintiff’s only remaining claims arise out of a security interest. While it is true that, under *Omnitrition*, Plaintiff’s Herbalife purchases are classifiable as securities, Plaintiff’s fourth and fifth causes of actions allege violations of California’s UCL and FAL laws. These causes of action assert violations based on false and misleading advertising. (Compl. ¶¶ 274, 282.) Therefore, the Complaint’s allegations are not solely based on investments into a pyramid scheme which must be considered security interests, but rather contain claims which do not fall under the Section 1332(d)(9)(C) exception. Thus, Plaintiff does not *solely* sue under the 1933 Securities Act and the Court has jurisdiction under CAFA. Accordingly, this Court retains subject matter jurisdiction as established by the factual allegations of the Complaint, and may proceed to the merits of Defendants’ motion.

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

B. First Cause of Action: Endless Chain Scheme

Defendants contend that Plaintiff’s Endless Chain Scheme claim should be dismissed because: (1) Plaintiffs fail to state a claim and (2) Plaintiffs’ only requested relief, rescission, is precluded.

1. Failure to State a Claim

Pyramid schemes are considered inherently fraudulent, because they must eventually collapse. *See, e.g., S.E.C. v. International Loan Network, Inc.*, 968 F.2d 1304, 1308-09 (D.C. Cir. 1992). “Like chain letters, pyramid schemes may make money for those at the top of the chain or pyramid, but must end up disappointing those at the bottom who can find no recruits.” *Omnitrition*, 79 F.3d at 781 (citing *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff’d mem. sub nom, Turner v. F.T.C.*, 580 F.2d 701 (D.C. Cir. 1978)). The *Koscot* Court applied the Federal Trade Commission test in determining what constitutes a pyramid scheme. *Omnitrition*, 79 F.3d at 781. The *Koscot* test specifies that a pyramid scheme is “characterized by the payment of participants of money to the company in return for which they receive the right to (1) sell a product and (2) receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.” *Koscot*, 86 F.T.C. at 1181. The Ninth Circuit has adopted the *Koscot* test in determining the existence of a pyramid scheme. *Omnitrition*, 79 F.3d at 782.

Plaintiffs allege that Herbalife has violated Section 327 of the California Penal Code, which defines an endless chain scheme as:

[A]ny scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant. Compensation, as used in this section, does not mean or include payment

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| | | | |
|----------|--|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

based upon sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

Cal. Penal Code § 327. The Ninth circuit has determined that the test for section 327 is nearly identical to the *Koscot* test. *Omnitrition*, 79 F.3d at 787 (“This definition is equivalent, if not identical, to the *Koscot* test.”)

A party may rebut allegations of a pyramid scheme by showing that its policies prevent inventory loading and encourage retail sales. *See in re Amway Corp.*, 93 F.T.C. 618, 715–16 (1979). However, the existence of rules patterned after *Amway* is not sufficient; there must be evidence that the “safeguards are enforced and actually serve to deter inventory loading and encourage retail sales.” *Omnitrition*, 79 F.3d at 782-83.

The Court will first examine whether the Complaint alleges facts sufficient to satisfy the *Koscot* test, then whether Defendants’ distribution rules, which have been modeled after *Amway*, are enforced and effective.

a. *Koscot* Test

i. Distributors Pay Money for the Right to Sell Herbalife Products.

The first element of the *Koscot* test requires a showing that participants pay money for the right to sell products. *Koscot*, 86 F.T.C. at 1181. Plaintiff alleges that the only investment necessary to become a Distributor is \$95.55 for an International Business Pack, or \$57.75 for a mini International Business Pack. (Compl. ¶ 189.) Plaintiff further admits that this fee does not constitute an investment inventory under *Amway*. (*Id.*) However, Plaintiff alleges that the discounted rate on purchases that is available to Supervisors requires an investment beyond the purchase of an International Business Pack. (*Id.* ¶ 190.) Despite this, Plaintiff admits that one can become a Supervisor without purchasing or reselling any Herbalife products. (*Id.* ¶ 91.)

Both parties interpret the following passage from *Omnitrition* as being dispositive in their favor as to the first *Koscot* element:

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

To become a supervisor, a participant must pay a substantial amount of money to Omnitrition in the form of large monthly product orders. The "payment of money" element of a pyramid scheme can be met where the participant is required to purchase "non returnable" inventory in order to receive the full benefits of the program. In exchange for these purchases, the supervisor receives the right to sell the products and earn compensation based on product orders made by the supervisor's recruits. This compensation is facially "unrelated to the sale of the product to ultimate users" because it is paid based on the suggested retail price of the amount *ordered* from Omnitrition, rather than based on *actual sales* to consumers.

79 F.3d at 782 (internal citations omitted) (emphasis in original).

Here, Plaintiff's concession that purchasing an International Business Pack is not an investment inventory does not mean that Plaintiff cannot use this payment to satisfy the first element of the *Koscot* test. Rather, this payment of money satisfies both the "significant consideration" language of Penal Code § 327 and the "payments of money" language of *Koscot*— absent this payment an individual may not become a distributor within the Herbalife hierarchy.

Further, similar to *Omnitrition*, distributors in the Herbalife hierarchy can purchase large inventories of goods in order to more fully receive the benefits of the program, such as increased discounts on future purchases. Although Defendants rely heavily on Plaintiffs' concession that distributors need not purchase any inventory in order to become a supervisor, the existence of such a policy, or distributors who may have attained the rank of supervisor despite not having purchased inventory, does not negate Plaintiff's satisfaction of the first element of the *Koscot* test. See *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 481–82 (6th Cir. 1999) (noting that the actual effect of a pyramid scheme's policies has far more weight than their mere existence.). Plaintiff has adequately alleged, for purposes of a motion to dismiss, that distributors pay money for the right to sell Herbalife products.

LINK:

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

ii. Distributors Pay Money for the Right to Receive Recruiting Awards Unrelated to User Sales.

The second element of the *Koscot* test requires a showing that participants pay money to receive recruiting rewards which are unrelated to the sale of products to ultimate users. *Koscot*, 86 F.T.C. at 1181. Plaintiff alleges that he attempted to “pay for his position” as a supervisor in order to access Royalty Overrides which maximize profits from downline distributor sales. (Compl. ¶ 251, 101–02 .)

There is no question that the Herbalife scheme allows for several recruiting rewards. Rather, the issue is whether a distributor is considered an ultimate user, such sales from supervisors to distributors would result in benefits which are unrelated to sales to ultimate users. The *Koscot* court explained the reason behind the ultimate user requirement was that “[t]he promise of lucrative rewards for recruiting others tends to induce participants to focus on the recruitment side of the business at the expense of their retail marketing efforts, making it unlikely that meaningful opportunities for retail sales will occur.” *Koscot*, 86 F.T.C. at 1181.

The considerable discounts and advantages offered to supervisors presents the same risk of a recruitment focus present in *Omnitrition*. See *Omnitrition*, 79 F.3d at 782. Although Defendants contend that distributors should be classified as ultimate users, *Omnitrition* points out that “[i]f *Koscot* is to have any teeth, [a sale for a distributor’s personal use] cannot satisfy the requirement that sales be to ‘ultimate users’ of a product.” *Id.* at 783. Therefore, downline distributors are not ultimate users for purposes of the second element of the *Koscot* test.³ Accordingly, Plaintiff has adequately alleged that supervisors pay money to receive recruitment rewards which are unrelated to the sale of products to ultimate users.

³ *Whole Living, Inc. v. Tolman*, held that a holistic food and health products company did not have a marketing plan resulting in an illegal pyramid scheme. 344 F. Supp. 2d 739, 745 (D. Utah 2004). Distinct from this case, the defendant charged each distributor the same price for products. Ultimately, the district court found this did not lead to a recruitment focus where compensation was “derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.” *Id.* at 747.

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| | | | |
|----------|--|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

b. *Amway* Defense

Defendants contend that even if Plaintiffs have adequately alleged that Herbalife is an endless chain scheme, Herbalife has various safeguards in place, which are patterned after *Amway* and necessitate the dismissal of this action. Herbalife defends its business model by pointing out Plaintiff’s concessions regarding the 10-Retail Customer Rule, 70% Rule, and return policy. (Compl. ¶ 104, 209.) These rules require supervisors who want to qualify for advantageous Royalty Overrides to personally make ten retail sales each month, and either sell or consume seventy percent of the total volume of Herbalife products purchased each month. (*Id.* ¶ 104.) The rules also permit a distributor to return any products purchased from Herbalife within the last 12 months, contingent on resignation as an Herbalife distributor. (*Id.* ¶ 209.)

In *Amway*, based on a finding that a similar set of safeguards were both enforced and effective in preventing inventory loading, the court concluded that there was no pyramid scheme. The *Omnitrition* court cautioned that where a distribution plan meets the Koscot definition of a pyramid scheme, “the existence and enforcement of rules like *Amway*’s” must be substantiated as effectively deterring inventory loading and encouraging retail sales. 79 F.3d at 783. The *Omnitrition* court declined to grant summary judgment because “the crucial evidence of the actual *effectiveness* of its anti-pyramiding distribution rules is missing.” *Id.* at 784 (emphasis in original). Here, not only is Defendant asserting this defense at the motion to dismiss stage, but Plaintiff has affirmatively alleged that these safeguards are in fact ineffective. (Compl. ¶196–97). Therefore, dismissal based on Herbalife’s alleged anti-pyramiding safeguards is inappropriate at this stage in the litigation.

2. Rescission

The only remedy which Plaintiff seeks for his Endless Chain Scheme claim is rescission. Defendants contend that Plaintiff is not entitled to rescission because he has failed to comply with the statutory requirements to effect a rescission.

“A participant in an endless chain scheme, as defined in Section 327 of the Penal Code, may rescind the contract upon which the scheme is based, and may recover all

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES – GENERAL

| | | | |
|----------|---|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme.” Cal. Civ. Code § 1689.2. However, in order to effect a rescission, the party must “(a) give notice of rescission to the party as to whom he rescinds; and (b) restore to the other party everything of value which he has received from him under the contract . . .” Cal Civ. Code. §1691. Section 1691 goes on to provide: “When notice of rescission has not otherwise been given or an offer to restore the benefits received under the contract has not otherwise been made, the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice or offer or both.” *Id.*

Here, Plaintiff sold or otherwise gave away his Herbalife products. (Compl. ¶ 55.) Thus, even if this suit satisfied rescission’s notice requirement, Plaintiff cannot return the Herbalife products that he purchased. Defendants correctly point out that, under California law, “[r]escission is not allowable where the party demanding it cannot or does not restore the other party to the condition he would have been in but for the contract.” *Joshua Tree Townsite Co. v. Joshua Tree Land Co.*, 224 P.2d 85, 90 (Cal. Ct. App. 1950). However, Plaintiff can still return the International Business Pack that he purchased. (Compl. Ex. C.) Therefore, if Plaintiff prevails in this action, he will be entitled to \$95.95 in rescission, and the first cause of action cannot be dismissed on the ground that no remedy is available.

C. Fourth⁴ and Fifth Causes of Action

Plaintiff’s fourth cause of action asserts violations of California’s UCL, which prohibits unfair competition, including unlawful, unfair, and fraudulent business acts or practices. Cal. Bus. & Prof. Code §§ 17200 *et seq.* Section 17200 borrows violations from other laws by making them independently actionable as unfair competitive practices. *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003). Therefore, if Defendants’ business model violates Penal Code § 327, it is also actionable under Section 17200. *Omnitrition*, 79 F.3d at 788.

⁴ Plaintiffs’ Complaint erroneously labels two causes of action as “Fourth Claim For Relief.” Because the other fourth cause of action concerns RICO violations that Plaintiffs intend to dismiss, the Court will refer to the unfair and deceptive practices claim as the fourth cause of action.

LINK:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

| | | | |
|----------|--|------|------------------|
| Case No. | CV 13-02488-BRO | Date | October 11, 2013 |
| Title | Dana Bostick v. Herbalife International of America Inc et al | | |

Plaintiff’s fifth cause of action asserts violations of California’s FAL, which makes it unlawful for anyone to use false or misleading statements for marketing purposes. Cal. Bus. & Prof. Code §§ 17500 *et seq.* “The operation and promotion of an Endless Chain scheme within the meaning of Penal Code § 327 is an inherently deceptive marketing practice, actionable under § 17500.” *Omnitrition*, 79 F.3d at 788.

Accordingly, because the Court previously concluded that Plaintiff adequately pleaded a violation of Penal Code § 327, Defendants’ Motion to Dismiss the fourth and fifth causes of action is **DENIED**.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendants’ Motion to Dismiss.

IT IS SO ORDERED.

| | |
|----------------------|----|
| | : |
| Initials of Preparer | rf |

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Tuesday, October 15, 2013 10:58 AM
To: Todaro, Christine <ctodaro@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>; Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>
Subject: FW: HLF

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Monday, October 14, 2013 11:34 AM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

I thought you might be interested in reading this morning's article by Dan McCrum of the Financial Times concerning Herbalife's bobbing and weaving on the important issue of how many retail customers it has outside its distribution network.

Regards,
Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

<http://ftalphaville.ft.com/2013/10/14/1663542/thats-my-answer-and-if-you-dont-like-it-well-i-have-others-herbalife-edition/>

That's my answer and if you don't like it... well, I have others, Herbalife edition

Who are Herbalife's customers?

A fair question, yes. An innocent one, not at all. And answers came there... well many, actually.

The question has been loaded and pointed at the Los Angeles-based maker of nutritional diet shakes many times since David Einhorn appeared on an earnings call in May 2012. It is the polite way of inquiring whether Herbalife, is actually a pyramid scheme.

But the answers have not been conclusive. So let's take a tour of the company's responses, with the aim of showing why the question should continue to be asked.

First though, a quick reminder of why the identity of Herbalife's customers is so crucial to the question of whether it is a pyramid scheme — something which the company denies and has said is based on a misunderstanding of its business model.

We have laid out before the underlying case law surrounding pyramid schemes in the US. The courts have repeatedly taken the view that someone is either a participant in a pyramid scheme (known as a distributor, in the jargon), or a customer of it. That definition is crucial, because a company that makes the majority of its profits from putting products into the hands of willing customers is clearly legitimate.

A direct seller that makes most of its money from sales to recruits into its multi-level enterprise, however: that one deserves a closer look at its more triangular aspects.

Furthermore, if the law allowed for muddy waters between the two, then you would become extremely difficult to prosecute.

Who me, officer? I was just sampling the taste of the smoke. I would never inhale...

So what has Herbalife said about its customer base?

When noted hedge fund manager and short seller David Einhorn popped up on that earnings call, he asked what proportion of sales go to consumers who are not distributors. Herbalife President Desmond Walsh said:

So, we don't have an exact percentage, David, because we don't have visibility to that level of detail.

Asked for an approximation, he said potentially more than 70 per cent.

Then a day later, Herbalife lodged an 8K document with the SEC in which it gave some more detailed responses (our emphasis):

Question #1 from David Einhorn: “First, how much of the sales that you’d make in terms of final sales are sold outside the network and how much are consumed within the distributor base?”

Answer: We don’t track this number and do not believe it is relevant to the business or investors.

Herbalife believes the majority of its distributors are discount buyers, who become distributors in order to purchase their favorite Herbalife products at a minimum discount of 25 percent (either directly from the company or from their upline distributor/supervisor). **In addition, some of these distributors will also share with, or retail the products to other friends, family, and customers.**

Question #3 from David Einhorn: “When you had your previous 10-K, you disclosed three groups of distributors at the low end. You called 29 percent self-consumers, 57 percent small retailers and 14 percent potential sales leaders, and then that disclosure did not repeat in the subsequent Form 10-K.

I have two questions; first, **how do you track that and how do you characterise and know which ones are which?** And second, why did you stop disclosing that in the last 10-K? Is that something that you stopped tracking or just stopped disclosing?”

Answer: We segment the distributors who have not attained the supervisor level into three general categories based on their product order patterns: discount buyers, small retailers and potential supervisors. **We define discount buyers as customers who have signed up as distributors to receive a discount on their purchase;** small retailers as product users and sales people who generate modest sales to friends and family; and distributors who are actively developing a business with the intention of qualifying to become a supervisor. We did not include the percentages from the 2011 Form 10-K in our more recent filings because **we do not view the information as valuable to the business or to investors.** For complete transparency, however, the full year 2011 information is as follows:

- **Discount buyers were 27 percent** (distributors who receive a 25 percent discount);
- Small retailers were 61 percent (distributors who receive a 35 percent discount);
- Potential supervisors were 12 percent (distributors who receive a 42 percent discount)

The 27 per cent number for discount buyers — people who have paid \$58 or more to receive a starter pack designed to help them grow a direct sales business, and signed the application form attached to the 124 page rule book for distributors, just in order to buy shakes and pills more cheaply — is consistent with previous financial disclosures.

Keep in mind also the unanswered part of the question — how do you know which one is which?

But back to the answers. In December Bill Ackman called Herbalife a pyramid scheme. Chief executive Michael Johnson immediately appeared on CNBC to explain why Mr Ackman was wrong, and he was again asked the question: what percentage of sales are outside the network?

90 per cent.

So the vast majority?

Absolutely.

Yet a few weeks later, Mr Johnson was back on CNBC with a different message.

That was a misstatement, 90 per cent of our distributors, ok, who are buying our product, and let me just try to clarify this, buy it for one reason, they buy it for self-consumption, it was kind of a misstatement to that there. It was kind of hyped up that day wasn’t it?

The January interview coincided with a presentation from Herbalife designed to rebut Mr Ackman, one which relied heavily on market research from Lieberman Research (methodology undisclosed), which found that there are a good five or six million households in the US purchasing Herbalife products.

There was also a shifting of the argument and the emphasis, which introduces another piece of direct sales jargon, self-consumption. The Lieberman research found that not 90 per cent, or 27 per cent, but actually 73 per cent of people join Herbalife just to get discounts: they are self-consumers.

See, nothing to worry about here. It just looks like we don’t have customers because they and the distributors are all wearing green hats. If only we had thought to give customers blue hats instead. No wonder you were all confused.

For Herbalife’s part, it has said that its description of its customer base has remained the same over time.

Although there is no requirement to document or provide retail sales data, in line with its commitment to ongoing improvement and transparency, Herbalife has provided greater insight into the breakdown of its customer base and the motivations of those segments.

And it told the FT earlier this year.

The make up of the customer base is not at the heart of the question of pyramid schemes and it demonstrates a lack of understanding of the law to suggest it is. Rather, the deciding factor remains whether any payment is made for recruiting – Herbalife does not pay for recruitment; all payments are related to the sale of Herbalife products.

Now, explicitly paying for recruitment would be a rather obvious way to run a pyramid scheme, but not the only way. As we have described previously, the question is where the profits within the system are coming from, and whether that biases the scheme towards recruitment, which is why we think the make up of the customer base is important

So realise what this concept of self-consumption does to attempts to prove that a company and its top distributors have constructed a pyramid scheme.

At its heart, such a fraud is one that exploits its recruits hopes of making money, and lets them blame themselves when they fail.

If, after the fact, you can say that those people who failed to recruit their own distributors (or in the jargon, build their own downline) as self-consumers, you have magically turned victims into customers.

We have reached the subtext to Mr Einhorn's question. How do you track that? How do you know the discount buyers from the budding entrepreneurs when they are all part of the same structure?

That problem is why the case law makes a distinction between participants and non-participants. There is no third category of self-consumption within the context of pyramid scheme law.

This is not to say that Herbalife is trying to hide victims — we simply cannot see the underlying data, and pyramid schemes are fact specific.

Rather it is to say that the answers to questions about its customer base are not sufficient to judge whether it is a pyramid scheme or not. Self-consumption, like pointing to the existence of a certification scheme, is a circular argument. Without the underlying details we cannot see if it is fig leaf or fact.

Herbalife says it is not a pyramid scheme, and responded to what it sees as a problem of terminology in [July](#).

We know a large percentage of our distributors or participants are simply discount customers who use our weight management, nutrition sports, and personal care products primarily for their own use. Knowing that most of our participants are discount buyers, we have decided to change and simplify the terminology we use for participants in our network.

Beginning this quarter, the term we will use for participants will change from distributor to member. This change will require modifications to all participant agreements, rule and training materials and will take several quarters to implement across all platforms around the world.

They will be called members, but they are still participants. For those changes to be meaningful, there must be a clear and obvious distinction difference a member and an aspirant distributor, beyond the fact of different coloured hats.

Indeed, look again at that answer to Mr Einhorn's first question again in this light, where Herbalife says that the majority of customers are discount buyers.

Herbalife believes the majority of its distributors are discount buyers... In addition, some of these distributors will also share with, or retail the products to other friends, family, and customers.

They are discount buyers, you see, except when they are not.

And finally, one puzzle remains. The argument for self-consumption means that company is in many respects a discount club.

Yet, historically at least, distributors do not look like loyal customers. In 2005 the company disclosed, with our emphasis: For the latest twelve month re-qualification period ending January 2005, approximately 60 per cent of our supervisors did not re-qualify and **more than 90 per cent of our distributors that are not supervisors turned over**.

Churn in the supervisor ranks (know as sales leaders) remains high, but we can't see the distributor churn printed in the more recent annual reports.

Perhaps Herbalife's weight control products are so effective that former distributors are off leading happy, skinny, lives. Or, that churn rate has dropped significantly and Herbalife hasn't mentioned it.

So, one more question. If three-quarters of the distributors are discount buyers who love the product, why don't they stick around?

This entry was posted by [Dan McCrum](#) on Monday October 14th, 2013 12:46.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Wednesday, September 25, 2013 7:13 PM
To: Vaca, Monica E. <MVACA@ftc.gov>; Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>
Subject: FW: HLF

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Wednesday, September 25, 2013 10:23 AM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

I thought you might find the enclosed article interesting. It nails the point about Herbalife's reliance on internal consumption.

Best regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

Herbalife and the FTC

Dan McCrum | Sep 25 10:29 | 3 comments | ShareFT Alphaville

Which was your favourite Herbalife moment this year? The billionaire playground spat, an inside trading auditor, the dubious surveys and unanswered questions, George Soros, angry Latinas, the whistleblower, or the high profile departures and appointments?

Yet the fun has also obscured the underlying issues. While there have been some great pieces looking at parts of the story – the Verge on online scammers pitching the Herbalife business opportunity, or the NY Post on the departure of top Herbalife salesman, Shawn Dahl, for instance – there was little that got to the heart of accusations that Herbalife is a pyramid scheme.

We want to change that, starting with this post about why the question for Herbalife investors should be less about whether the FTC will investigate Herbalife and more about what the Federal Trade Commission has already said and done.

As to Herbalife shares hitting a record high, we would note that the short interest remains considerable. Declining availability of stock in official lending programmes also suggests that institutional owners have been sellers this year. We'll be very surprised if there isn't more fun to come.

So, the place to begin is the problem of law: there isn't any. Or rather there isn't one US statute that defines a pyramid scheme. Instead the FTC rules are based on broad anti-fraud statutes and case law, in particular two suits from the 1970s, but also on subsequent prosecutions.

The first, known as Koscot Interplanetary, attacked the inherently fraudulent nature of pyramid schemes. But the more relevant case was a 1979 administrative court judgement against Amway Corp that allowed the group to continue selling its brushes and housewares, because it had put certain safeguards in place to ensure that it was legitimate.

Even though Avon had been selling cosmetics direct to consumers for almost a century, the Amway decision is largely seen as the birth of the modern multi-level marketing industry. Direct sellers were handed guidelines for behaviour, and with that legal cover and a deregulation minded White House, the industry flourished. Herbalife began life in Los Angeles in 1981.

Before we get into those rules, and more importantly how they have evolved, let's pause for a moment to consider why they are needed. A pyramid scheme is an insidious type of fraud because its victims often don't realise they've been had.

Imagine you answer an online ad promising financial freedom from just a few hours of work each week. Perhaps the pictures of people with perfect smiles and new Mercedes won you over. You invest time and money in buying a product to sell, materials to help you sell it, maybe even a ready-made website and "sales leads" to expand your burgeoning empire.

But despite all that investment, it doesn't work out. You don't blame the system which has so clearly made other people rich, you blame yourself. If only you had worked harder. If only you had been able to borrow a bit more money to get you to the point where that lifetime of royalty income kicks in.

The game, however, was rigged. As the FTC describes Fortune High Tech Marketing, an alleged pyramid scheme it persuaded a Chicago court to shut down this year (our emphasis):

What about all the rags-to-riches stories the company promotes? Only true for a few at the top tier. In fact, the FTC charged, the company structured its business in a way that guarantees most people who join would lose money. The compensation plan is confusing, and commissions on product sales are very small. There's no training on how to sell the products — things you might be familiar with and can buy elsewhere — like subscriptions to DISH Network, cell phone services, or dietary supplements. According to the FTC, the only way to make any money working for FHTM is to recruit other employees.

That last line is key. The promise of a pyramid scheme is a lie, an endless steady drip of commissions from the sales people you recruit, and then from the sales from people they recruit, and so on as the pyramid expands.

Each time it expands, the center benefits. Debra Valentine, FTC General Counsel:

consider the matrix from the promoter/con artist's point of view. He is the person at the top of the pyramid but in fact looks at the scheme from the bottom. He views each new investor as a predictable set of revenues and expenses, with the revenues flowing down to him.

So a very high turnover of salespeople, known as distributors, can be one indicator of a pyramid scheme. There will be a product, but the principal profits within the system will come from recruitment.

Its important to think here about the question of profits within the system as a whole. Herbalife is both a company that makes nutritional shakes and vitamin pills, and a structure around which distributors build their own businesses. The two are separate but intimately intertwined, and investors can only see what the company side chooses to disclose.

Ultimately, it is what the largest distributors do that shapes the business of a multi-level marketing scheme. If they profit mainly from recruitment, it will tilt the whole business in that direction. As William Keep, professor of marketing at the College of New Jersey and a widely consulted expert on pyramid schemes told the FT this year:

The profits made by powerful distributors from providing marketing services, website operations and sales leads

to new recruits can, he said, over time “bias an organisation towards recruiting: the tail wags the dog”.

What the FTC has looked for to spot frauds are two things: inventory loading and a lack of true retail sales.

To begin with, the Commission focused on inventory loading, one of the more obvious ways to run a pyramid scheme: you load up new distributors with boxes of products they will never be able to sell, then make it really hard to return unsold stock. Price gouging on the shipping and handling is also a nice way to juice profits.

The 1979 Amway decision was largely about inventory, and it was the internal company rules championed by Amway that became industry standards. Distributors were able to return Amway’s brushes and soaps for a refund; they were required to sell at least 70 per cent of their existing inventory each month on a wholesale or retail basis; and they had to make at least 10 sales per month to a retail customer.

You can see this standard in Herbalife’s own rules, updated in 2011. Distributors “must personally make sales to at least 10 separate retail customers” in any given month to qualify for royalties and bonuses, and “at least 70 per cent of the total value of Herbalife products a Distributor purchases each volume month must be sold or consumed that month”.

Now, after Herbalife answered some questions from David Einhorn last year, the SEC wrote a series of letters to the company looking to clarify the role of the 70 per cent rule. As Kid Dynamite has dissected, the company eventually walked away from the rule saying there are other safeguards in place.

But what is important here is the way Herbalife defines its “retail customers”. In line with the Amway decision, distributors can count sales to other distributors below them in the chain as retail sales.

We have arrived at the fundamental question. The second central characteristic of a pyramid scheme, as far as the FTC is concerned, is a lack of retail sales. And the case law since the Amway decision suggests a different view of what counts as a retail sale from Herbalife’s definition.

By the 1990s, the FTC and the courts had realised that the Amway rules were useless if they weren’t enforced, and if sales commissions were based on a distributor’s wholesale sales that include those to new recruits. (In the jargon of pyramid schemes, a distributor’s downline).

A 1996 Federal appeals court reversed a lower court decision in the case Webster versus Omnitrician and added some extra language, moving much closer to the view found in the 1970s Koscot judgement that multi-level marketing schemes are “inherently fraudulent”.

The court labeled Omnitrician, a nutritional supplement company, a fraudulent pyramid scheme. It said that distributors purchased product in order to earn compensation on product orders made by their recruits — again, known in the jargon as a distributors downline:

This compensation is facially “unrelated to the sale of the product to ultimate users” because it is paid based on the suggested retail price of the amount ordered from Omnitrition, rather than based on actual sales to consumers.

(Keen Herbalife watchers will know that Herbalife’s system also relies on suggested retail prices.) More from the case:

On its face, Omnitrition’s program appears to be a pyramid scheme. Omnitrition cannot save itself simply by pointing to the fact that it makes some retail sales....

The mere structure of the scheme suggests that Omnitrition’s focus was in promoting the program rather than selling the products.

The court looked at the Amway defences and found that just because Omnitrician required distributors to certify that they were following the rules did not make it so:

There is no evidence that this “certification” requirement actually serves to deter inventory loading.

It was then specific about what constitutes a retail sale:

Importantly, the requirement can be satisfied by non-retail sales to a supervisor’s own downline IMAs. This makes it less likely that the rule will effectively tie royalty overrides to sales to ultimate users, as Koscot requires.

And the judges had harsh words about counting orders by recruits towards retail sales:

Omnitrition’s “70 per cent Rule” allows supervisors to count products sold at wholesale to their own downlines toward their 70 per cent sales requirement. This allows supervisors to be compensated on the basis of sales other than “sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.”

That last bit being a key quote from pertinent Californian law, which as the FT has said could also be important to Herbalife.

However, the picture has since been muddied by the FTC. In 2004 the commission made public a Staff Advisory Opinion sent to the Direct Selling Association addressing questions about internal consumption. In asking for clarity, the industry gained useful ambiguity:

the amount of internal consumption in any multi-level compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme.

This letter has a tendency to bring out the animated side in long-term campaigners against pyramid schemes, who see in it further evidence of the influence of effective lobbying by a well organised industry, one which also persuaded lawmakers in 2007 that multi-level marketing schemes did not need to be covered by business opportunity fraud legislation.

But for investors considering Herbalife, go back to the court decisions, in particular one rendered against BurnLounge this year. The court emphatically endorsed the Koscot and Omnitrician decisions, and attacked the reasoning of the defendants:

Defendants argue that, like Amway, BurnLounge paid commissions to its Mogul-distributors for internal sales to recruits. They pull isolated references from an FTC staff opinion and from Whole Living to support their claim that commissions for internal sales for the purchaser’s own use are not proof of a pyramid.

The court chastised the defendants for “misreading these authorities”, and then reaffirmed the view of the earlier judgement.

This Court in Omnitrition definitively ruled that “ultimate users” are the external customers for the business’s ostensible product, not the business’s own internal sales force...

As this Court said, “If Koscot is to have any teeth, such a [non-retail] sale cannot satisfy the requirement that sales be to ‘ultimate users’ of a product.”

Pretty emphatic, and finally that brings us to the point that investors should look at what the FTC does, as well as what it says. Go back to the complaint filed by the FTC this year against Fortune High Tech Marketing (an alleged pyramid scheme that has said it will defend itself and expects to be exonerated).

FRTM claims that its representatives will be able to easily sell its products and services to consumers not affiliated with FRTM. In fact, few of FRTM’s products and services are ever sold to anyone other than the Reps themselves. Furthermore, Reps receive minimal financial rewards from FRTM for selling the products and services to outside consumers.

And in the FTC’s restraining order, it enjoins the group from taking part in any marketing scheme that (emphasis

ours):

Pays any compensation related to the purchase or sale of goods or services unless the majority of such compensation is derived from sales to persons who are not members of the Marketing Program.

Where does that leave us? It is clear that large amounts of sales to your own distributors is a problem for a direct sales company. Herbalife has said many times that it is legitimate. We think it still has some tough questions to answer about the nature of its customer base — questions it has chosen to answer with external surveys rather than its own hard data.

We'll take a closer look at its responses and the issue of Herbalife's sales to its own distributors in another post.

Another conclusion is that it would be unwise to assume that the FTC's inaction so far means that it has no intention of acting, or relying just on the old Amway defenses and a benign reading of the 2004 advisory opinion as a basis for doing business.

Indeed, Bill Keep has suggested that one thing the FTC could do is issue a new staff advisory opinion to clarify the waters it has muddied. That would give investors greater confidence in the Commission's views, and might give state attorneys general confidence to bring their own prosecutions against pyramid schemes.

California in particular was active in prosecuting such frauds in the last century, and in 1985 won an injunction against Herbalife that is still in force. It also has a large Hispanic population, and at least one Congresswoman who is concerned about the issue.

As we said, we'll be very surprised if there isn't more to come

<http://ftalphaville.ft.com/2013/09/25/1639882/herbalife-and-the-ftc/>

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Thursday, October 17, 2013 10:10 PM
To: Vaca, Monica E. <MVACA@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>
Subject: Fw: HLF

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Thursday, October 17, 2013 11:36 AM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

I thought you might be interested in reading this morning's article by Dan McCrum of the Financial Times concerning Herbalife's compliance (or lack thereof) with the 1986 California injunction requiring the company to implement a system for tracking retail sales.

Regards,
Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

California approves this message, Herbalife edition

Dan McCrum

FT Alphaville

10/17/13

Part of the LIVING THE HERBALIFE SERIES

California has nurtured Herbalife for more than three decades. From Los Angeles, the multi-level nutritional-milkshake marketing and distribution scheme has spread to 75 countries worldwide.

Yet the state was not always friendly. In 1986 it won a permanent injunction against the company that is still in force, and we wonder if — following a more recent California court ruling — it might look at that injunction once again.

As we reported in the last instalment of this series, a district court in the state has denied a motion from Herbalife seeking to dismiss a suit from a former salesman, Dana Bostick.

Without deciding on the merits of Mr Bostick's claims at this stage of the process, Judge Beverly Reid O'Connell indicated that there was sufficient cause for the suit to go ahead.

As we have said before, we think Herbalife's argument — that sales to fellow salespeople, known as distributors in the direct sales jargon, may be counted as true retail sales to end consumers — lacks support in the case law, and is in conflict with a key appeal court judgement known as Omnitrician.

But note this piece of legal argument in Herbalife's motion to dismiss the Bostick suit, with our emphasis:

Further—a factor not present in Omnitrition — reading the statute to mean that sales to Distributors do not “count” as legitimate sales would gut the Attorney General's approval of Herbalife's business model under this very statute.

The statute in question is the Californian law on “endless chains” (pyramid schemes) and Herbalife was referring to the 1986 injunction, giving us a couple of implications to think through.

One is the idea that California has “approved” Herbalife’s business model.

Section 7 of the injunction is quite clear that it is not an approval to be trumpeted to potential customers:

defendants shall not represent in advertising that their marketing plan or product claims have been approved by this court, the California Attorney General’s office, the California Department of Health Services, the Santa Cruz County District Attorney’s office or any other governmental agency.

The following paragraph does say that the matter is settled, so long as Herbalife abides by the terms of the injunction.

Provided, however, defendants may represent, after the entry of this judgment, that the action evidenced by the complaint on file herein, has been settled and is no longer pending and defendants in conformity with the provisions hereof can legally continue to conduct business in California.

Approval though? Maybe, but the legal language in the injunction, as it refers to the idea of ultimate customers, is out of date. As Herbalife says of the injunction in its motion to dismiss:

Notably, this consent order allowed Herbalife to continue to pay commissions and determine Distributor rank based on “retail sales,” which were defined to include:

A sale of defendants’ product(s) in any of the following situations: (1) to persons who are not part of defendant’s marketing program or distribution system; or, (2) to persons who are not buying to become part of defendants’ marketing program or distribution system; or, (3) to persons who, although desirous of becoming or who are a part of defendants’ marketing plan or distribution system are buying for their own personal or family use.

Point (3) there is at the heart of Herbalife’s argument that it is legitimate. The company says that three-quarters of its distributors sign up simply to get cheap shakes and pills, and so are not really participants in their marketing scheme.

Yet point (3) also appears to be in conflict with Omnitrician, which Judge O’Connell relied upon in her recent ruling.

Plaintiffs allege that Herbalife has violated Section 327 of the California Penal Code, which defines an endless chain scheme as:

[A]ny scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

Compensation, as used in this section, does not mean or include payment based upon sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

So what are the implications if Omnitrician does indeed “gut” the approval of Herbalife’s business model by the Attorney General?

For one, Herbalife would have a higher bar to meet to demonstrate its compliance with section 327 of the California Penal Code. That question of who its ultimate customers are becomes ever more important.

The injunction itself is not entirely gutted however. It is still in force and could be useful to determine whether the safeguards Herbalife has in place are effective or perfunctory. To quote Judge O’Connell again:

A party may rebut allegations of a pyramid scheme by showing that its policies prevent inventory loading and encourage retail sales...

However, the existence of rules patterned after Amway is not sufficient; there must be evidence that the “safeguards are enforced and actually serve to deter inventory loading and encourage retail sales.”

The 1986 injunction won by Attorney General John van de Kamp, and Arthur Danner III, the Santa Cruz District Attorney,

requires Herbalife to monitor what its salespeople (distributors in the direct sales jargon) are up to in the state.

Or at least it does on our reading of the document. Herbalife disagrees.

Here is the answer the company provided after it asked the FT for questions in writing on the topic earlier this year. (Our emphasis).

The 1986 judgement by the superior court of California granted a permanent injunction against Herbalife that requires the company to implement a system to verify that “all participants who receive commissions, bonuses, overrides and/or advancement... are based on retail sales”.

- a. Is Herbalife collecting this data in accordance with the terms of the injunction?
- b. Has the state of California or the AG’s office of Santa Cruz ever made a request for such verification and documentation?
- c. If Herbalife is required to document Californian retail sales, why has it never published these numbers?

Herbalife is in compliance with the consent order, which defines retail sales as those made by the participant and his or her downline to persons (participants or nonparticipants) who are purchasing for their own personal or family use.

The order does not require Herbalife to implement a system to collect or document retail sales data, but does create a complete defense against liability if Herbalife were to establish a system to verify such data.

Herbalife’s own requirement that its sales leaders collect and retain retail receipts for two years, and provide them to us upon audit, allows us to verify sales data. Herbalife is unaware of any request for verification or documentation from the state of California (note: there is no AG for Santa Cruz), at least during the last 20 years.

(OK, hands up. Santa Cruz has a District Attorney, Bob Lee. Only the state has an Attorney General, currently Kamala Harris)

As we have said before, it is weird that Herbalife doesn’t use the retail receipts it mentions to rebut its critics, preferring instead to use market research surveys to show it has millions of customers.

But who are we to tell Herbalife how to fight its battle with a billionaire hedge fund manager.

We have suggested that the company could hire an accountancy firm to audit those receipts, publishing the aggregate data in a way that would preserve the anonymity of its customers — a concern the company has said is why it has not used that data.

The FT previously floated the idea that the 1986 injunction gives Californian authorities the power to conduct their own audit of Herbalife’s safeguards.

We would merely note the Californian constituency of Angry Latinas with a concerned Congresswoman, among others, who have taken more than a passing interest in Herbalife.

Certainly it would be nice to know the opinion of Mr Lee and Ms Harris about it all. We’ve asked their offices a few times this year, and we’ll let you know if they pass along any thoughts.

<http://ftalphaville.ft.com/2013/10/17/1668602/california-approves-this-message-herbalife-edition/>

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Friday, June 7, 2013 4:41 PM
To: Todaro, Christine <ctodaro@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>; Ammerman, Janet <jammerman1@ftc.gov>
Subject: FW: Open Letter from Pyramid Scheme Alert to Direct Selling Association Regarding Herbalife
Attach: Pyramid_scheme_alert_4_29.pdf

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Thursday, June 06, 2013 12:04 PM
To: Greisman, Lois C.
Subject: Open Letter from Pyramid Scheme Alert to Direct Selling Association Regarding Herbalife

Hi Lois –

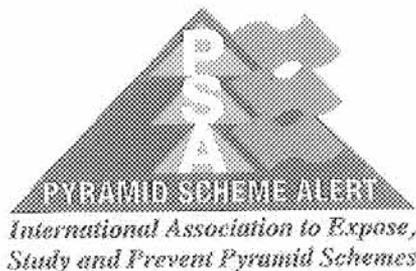
You may have seen this already, but attached is a letter that details the serious economic harm being inflicted on U.S. consumers by Herbalife, and specious nature of the claim that Herbalife is providing a livelihood for large numbers of Americans. The sad truth is that even among distributors who reach the level of Supervisor, only a small fraction earn gross compensation in excess of what they would earn in a job paying the minimum wage, and that is before deducting expenses and inventory purchases. In practice, Herbalife functions as a money transfer scheme in which the lost investments of large numbers of aspiring distributors end up in the hands of a small number of wealthy recruiters at the top of the pyramid.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.



1800 Camden Rd.
Ste. 107 #101
Charlotte, NC 28203
Tel. (704)334-2047
Fax (888)334-1944
info@PyramidSchemeAlert.org
www.PyramidSchemeAlert.org

OPEN LETTER

April 29, 2013

To: Joseph Mariano, Pres.
DIRECT SELLING ASSOCIATION
1667 K Street, NW, Suite 1100
Washington, DC 20006

From: Robert L. FitzPatrick, Pres.
PYRAMID SCHEME ALERT
1800 Camden Rd.
Charlotte, NC 288203

Dear Mr. Mariano,

This open letter responds to your publicized statement regarding the *National Consumers League's* request for an FTC investigation of DSA member, Herbalife, and your defense of Herbalife as a source of "livelihood" for large numbers of people.

In a March 12, 2013 press release, you stated, "direct selling companies like Herbalife are committed to protecting consumers and creating a better life for their communities, their salesforce members and their customers." You then sought to associate NCL's investigation request with Wall Street short-selling, and you stated, "Sadly, the livelihoods of millions of hard-working Americans are being threatened..."

Pyramid Scheme Alert challenges you to explain and clarify your statements. Herbalife's own data show that, relative to the enormous numbers of consumers who respond to Herbalife's business opportunity solicitations, virtually no one earns a "livelihood" or even a net profit. Herbalife's own data show hundreds of thousands of consumers being financially harmed.

Your defense of this model raises questions about what the Direct Selling Association has become and what it now stands for. If Herbalife's practices and economic effects on consumers are indicative of those of other DSA members, you have made a case for a far wider investigation than NCL requested.

I enclose a statistical evaluation of Herbalife's payout data for 113,000 Americans who invested as "Supervisor/Leaders" in the Herbalife "business opportunity" in 2012. Herbalife has claimed that nearly all other distributors -- 320,000 in total -- are not distributors at all, but rather "customers" and any financial losses those distributors suffered are therefore statistically invalidated. This Herbalife claim that most of the distributors are not actual distributors is disputed on legal, contractual and economic grounds.

However, no question is raised by Herbalife or any other party about the status and intent of those classified as "Supervisors." They are indisputably *investors* in Herbalife's widely advertised *business opportunity*, described by Herbalife on its website as a "proven system" and "lucrative compensation plan." The attached report calculates the economic impact only on those at the Supervisor level.

According to Herbalife's data, in all of America only 2,321 of the Supervisors received an average payment of more than \$35,000 from Herbalife and that is *before* deducting inventory purchases business expenses and marketing costs. This is only 2% of the Supervisors and less than 1/2 of one percent (0.5% or 1 out of 200) of all who actually made investments as Herbalife distributors, using Herbalife's reported total of 493,000 American distributors in 2012. The data show that virtually all others suffer net losses.

- * 96% of "Supervisor/Leaders" averaged in gross compensation, before deducting expenses and inventory purchases, the equivalent of less than *one-half* the wages of a minimum-wage job. These income figures are *before* all product purchases, business expenses and marketing costs are deducted, taking the true average "income" to a much lower figure.
- * The *median* (half make more and half less) income of the bottom 96% of all Supervisors is *zero*.
- * 49% of Supervisor/Leaders received *no income* from Herbalife at all -- zero.
- * 49% of all Supervisor/Leaders drop out or lose Supervisor status *each year*.
- * 67% of all who *join each year* drop out *within a year*.

In addition to near total losses, the data reveal an extraordinary money transfer from the vast numbers of those who lose to a small group at the peak of the Herbalife recruiting chain.

- * 84% of Herbalife payments to the entire sector of Supervisors was transferred to the top 4% of the Supervisor recruitment chain. These payments are gained solely from the *inventory purchases* of the lower level distributors, not their sales to retail consumers outside the chain. The data reveal a churning base of tens of thousands of consumers losing their investments *each year*, and their lost funds transferred to a small group of professional recruiters at the very top.

The predatory and deceptive nature of Herbalife's "income opportunity" is further manifested when total revenue in the United States is factored. In its 2012 10K report to the SEC, Herbalife reported that \$816 million of product was sold under contract and at wholesale pricing to its USA distributor chain of 493,000. Yet, only 2,321 (2%) of the distributors gained, on average, what might be considered a "livelihood." Half of the other Supervisors received *nothing* in compensation from Herbalife, and the rest received, on average, less than the costs of qualifying purchases to gain or maintain the Supervisor status.

Herbalife's data refute your claim complaints and investigations of Herbalife, "threaten" the "livelihoods" of "millions" of Americans. Rather, the data show it is *failure* to investigate that harms millions who, unfortunately for them, invest in Herbalife's income opportunity. In the USA, this business opportunity is deceptively advertised to millions of people, using the internet, the postal service and radio commercials. Those who are lured to invest at the Supervisor level are also sold undisclosed millions in "sales lead" charges and other marketing materials by some of Herbalife's top recruiters, compounding their losses.

Herbalife's business proposition does not qualify as an "opportunity" as the term is generally understood. It should be properly characterized as a *predatory financial trap*. The financial harm it inflicts is made all the worse by Herbalife's targeting of Hispanic and other low income groups in the country. Losses to people living under harsh economic conditions can be devastating to entire families.

The data make clear:

- * Herbalife sells an income opportunity proposition that is existentially reliant on business opportunity investors recruiting more business opportunity investors, *ad infinitum*. The incomes of the top 2%, which receives on average what might be called a “livelihood,” are based upon the lost capital investments of all other Supervisors in an endless recruitment chain.
- * The Herbalife financial solicitation ties and calibrates rewards to recruiting levels, not to retail sales. Indeed, Herbalife does not document *any* retail sales levels.
- * Herbalife’s claim to legitimacy now rests on an extraordinary assertion that it operates a business model that is unnamed in the field of economics. In this model, virtually all sales transactions occur only between contract salespeople. They buy and sell to one another with product shipments and commission payments managed by Herbalife. The sales are transacted under restrictive, non-competitive terms at prices fixed by Herbalife inside a closed market controlled by Herbalife. In this model, the lost investments of newer distributors are called “revenue”; recruiters of the new consumer investors are called “retailers;” new distributors who make capital investments under contract terms are renamed “customers.”

Herbalife’s business proposition constitutes a redefinition of “direct selling” and in no way resembles a retail sales model. The damaging economic effects of Herbalife’s *recruitment* campaign on participants surpass those of Equinox International and Your Travel Biz, two other DSA members that perpetrated a similar model and were consequently prosecuted by the government regulators for deception and pyramid fraud. Key factors in those prosecutions included:

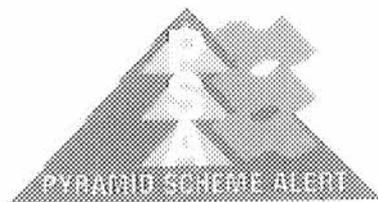
- ✓ a recruitment-based reward program,
- ✓ deceptive earning claims,
- ✓ the sales of most goods inside a closed market,
- ✓ few, if any, salespersons earning advertised rewards from retailing to true end-users
- ✓ nearly total losses among the vast majority at the lower levels of the sales chain
- ✓ the bottom of the chain perpetually “churned,”
- ✓ a high concentration of payments transferred to the top ranks of the recruiting chain.

Your defense of Herbalife, in the face of the Herbalife recruitment model and the documented financial damage it causes, implicates the Direct Selling Association in Herbalife’s operation and reinforces the importance of NCL’s and other consumers’ calls for an FTC investigation of Herbalife and other multi-level marketing businesses.

We look forward to an explanation and clarification of your statements upon your review of the Herbalife compensation data.

Sincerely,

Robert L. FitzPatrick, Pres.
PYRAMID SCHEME ALERT



Pyramid Scheme Alert Data Analysis

Robert L. FitzPatrick ©2013

MLM Company: Herbalife

Data Source:

"Statement of Average Gross Compensation Paid by Herbalife to United States Distributors in 2012"
<http://opportunity.herbalife.com/Content/en-US/pdf/business-opportunity/StatementAverageCompensation2011EN.pdf>

Notes on Calculations:

- This income analysis includes only Supervisor/Leaders, the uppermost level of the Herbalife distributor channel. Consumer investors in this sector, by definition and by required investment level, are unquestionably pursuing the Herbalife "income opportunity." A Supervisor/Leader has purchased and/or sold \$3-4,000 dollars or more of Herbalife product in a limited time frame within a year. The rank can be gained by making personal inventory purchases without subsequent sales.
- Herbalife's "Statement of Average Gross Compensation" reports that:
 - ✓ 49% of Supervisor/Leaders received no payment from Herbalife.
 - ✓ 27% recruited no downline.
 - ✓ 49% of all Supervisors dropout or lose Supervisor status within one year.
 - ✓ 67% of first-year Supervisors dropout within a year.
- Calculations are based only on data provided by Herbalife on Supervisors/Leaders, including those with or without a recruited downline and those who received payments and those that did not receive payments.
- Some lower level distributors who are not Supervisor/Leaders also gained payments from Herbalife after recruiting other distributors. All distributors have the right to recruit, and have made some level of business investment. However, only Supervisor/Leaders are included in this analysis because (1) The reported average income of non-Supervisor/Leaders who did receive payments based on recruiting a downline is too small to be statistically significant, \$2 per week, according to Herbalife, and (2) Herbalife's "Statement of Average Gross Compensation" asserts that 73% of Distributors participate in the pay plan "primarily" for the benefit of "buying Herbalife products at a preferred price for their consumption and that of their families."
- Due to the claim by Herbalife that a large majority of Herbalife distributors do not function as "distributors" but as "end-users", only those defined as "leaders" or "supervisors" are included in the analysis.
- Since Herbalife does not validate retail profits of any distributors and claims that 73% of all distributors are actually "end-users," buying only for their own use or for close friends and family, rather than to resell on a retail basis, this report excludes any calculations of possible retail profits.

Herbalife Data Analysis:

| Levels | % of All Leaders in Each Level | No. in Each Level | Average Payment per "Leader" in Each Level | Total Payment per Level | % of Total Payments per Level |
|---------------------------|--------------------------------|-------------------|--|-------------------------|-------------------------------|
| >\$250,000 | 0.171% | 194 | \$ 724,030 | \$ 140,461,820 | 38% |
| \$100,001 - \$250,000 | 0.399% | 452 | \$ 148,808 | \$ 67,261,216 | 18% |
| \$50,000 - \$100,000 | 0.476% | 539 | \$ 68,912 | \$ 37,143,568 | 10% |
| Top 1% of All Leaders | 1% (rounded) | 1,185 | \$ 206,638 | \$ 244,866,604 | 66% |
| \$25,000 - \$50,000 | 1.00% | 1,136 | \$ 35,581 | \$ 40,420,016 | 10.9% |
| \$10,000 - \$25,000 | 1.715% | 1,940 | \$ 15,538 | \$ 30,143,720 | 8.15% |
| \$5,000 - \$10,000 | 2.256% | 2,552 | \$ 7,008 | \$ 17,884,416 | 4.836% |
| \$1001 - \$5,000 | 9.998% | 11,307 | \$ 2,216 | \$ 25,056,312 | 6.775% |
| \$1 - \$1,000 | 34.620% | 39,151 | \$ 292 | \$ 11,432,092 | 3.091% |
| \$0 | 22.277% | 25,193 | \$0 | \$0 | 0% |
| No Downline, \$0 Income | 27.077% | 30,621 | \$0 | \$0 | 0% |
| Bottom 99% of All Leaders | 99% (rounded) | 111,900 | \$ 1,116 | \$ 124,936,556 | 34% |
| Total Leaders | 100% | 113,085 | \$ 3,270 | \$ 369,803,160 | \$100% |

Financial Results of Herbalife's USA Sales Force, 2012:

- * The top 1% of Herbalife's reported "Supervisor/Leaders" – 1,185 individuals – received 66% of all commission payments.
- * The mean average annual "gross compensation" of the bottom 99% of all reported "Supervisors/Leaders" in the USA in 2012 was \$21.46 per wk., *before all purchase costs and all other business expenses are deducted*, indicating an average net loss.
- * The median average (half receive more and half receive less) is very near zero. The bottom 49% received no payment and the next 35% on the chain earned only \$292 per year, on average. The mean average for the bottom 84% of the reported Supervisor/Leaders is \$120 per year or \$2.31 per week.
- * Less than 2% of reported Herbalife Supervisors received \$35,000 or more on average, *before expenses and product purchases are deducted*. The reported income of the top 2% is based on *worldwide*, not domestic-only recruitment chains.
- * 96% of reported "Supervisor/Leaders" received, on average, the equivalent of *less than one-half the wages of a minimum-wage job*, before all purchase costs and all other business expenses are deducted.
- * 49% of reported Supervisor/Leaders received *no income from Herbalife at all*.
- * 67% of reported Americans who joined as *first-year Supervisors* drop out within the year they join.
- * 49% of *all* reported Supervisor/Leaders *dropped out or lost Supervisor status within a year*.

10-Year Projection:

If Herbalife were allowed by federal and state regulators to continue in current form and maintained current recruitment, dropout and payment rates over the next 10 years, (dropouts are replaced with equal number of new recruits)...

- * 553,700 more Americans will join the ranks of 2012's total of 113,000, as "Supervisor/Leaders" investing through direct inventory purchases and/or sales of between \$3,000 - \$4,000 each. Including sales lead charges, fees, marketing materials and all other business costs, the total investment per recruit can be far more.
- * In total 666,700 Americans will be enrolled as Herbalife Supervisor/Leaders during the ensuing 10-year period, including the currently reported base of 113,000
- * 326,683 (49%) will *earn nothing in payments* from Herbalife.
- * A total of 553,700 – 83% of the total that participate – will dropout during this 10-year period and 67% of them – 326,683 – will dropout *within the first year they are recruited*.
- * Projected losses during this period for consumers who invest as Herbalife "Supervisors", based on investments of approximately \$3,000 or more, range from \$2 - 4 billion and potentially much more when all costs are factored.
- * Of the total 666,700 enrolled, just 2,321 (the non-churning top 2% each year) will have received, on average, an annual income approaching a "livelihood", (gross payments, before expenses, of \$35,000 or more, on average). This group will constitute approximately *one-third of one percent* of all consumer-investors in the Herbalife "Supervisor" business opportunity. The top 0.177% of the 10-year total (1 out of every 575 Supervisors) will each receive approximately \$250,000 per year, on average.

Herbalife Pyramid Scheme Characteristics (Structural):

- ✓ *Flawed, uneconomic, deceptive, and unsustainable business proposition for consumer-investors based upon offering rewards for perpetually extending an “endless” distribution chain.*
- ✓ *Recruitment rewards are high while low gross profit margin offered on retail sales.*
- ✓ *Pay-to-play qualifications of upfront fees or purchases to gain access to recruitment-based rewards.*
- ✓ *Multiple tiers tied directly to recruitment progression incentivized by escalating rewards, with no apparent relevance to sales management.*
- ✓ *Top-loaded reward formula that transfers greater rewards -- per transaction -- to the top ranks.*
- ✓ *Non-retail model -- no verifiable bona fide retail sales; fixed prices and restricted competition within closed system.*

Herbalife Pyramid Scheme Characteristics (Functional):

- ✓ *Deception: The Herbalife “business opportunity” is falsely described by Herbalife as a “proven system” and a “lucrative compensation plan, paying out up to 73 percent of product revenues to Distributors”. Actual results show a plan with massive failure/dropout rates, extraordinarily low success rates. “Lucrative” rewards are paid only to tiny sector at the peak of a recruiting chain. The actual, documented record of success for the latest recruits, is close to zero. The claim of the 73% “payout” is falsely based upon unverified “retail” sales. That payout is contradicted by Herbalife itself which now claims that 73% of all distributors purchase only for their own or for family use at wholesale pricing, without retail profit.*
- ✓ *Money Transfer: Extreme concentration of all rewards in the upper 1-4% of the sales channel (84% paid to top 4%).*
- ✓ *Almost Total Losses among “last ones in” who are the vast majority of participants and the classic victims of pyramid pay plans. 96% of “Supervisor/Leaders” received, on average, the equivalent of less than one-half the wages of a minimum-wage job, before all purchase costs and all other business expenses are deducted. This low average reward indicates massive loss losses. In fact, 49% of Supervisor/Leaders received no income from Herbalife at all.*
- ✓ *Continuous Collapse with extraordinary attrition rates among bottom ranks that almost universally “fail” annually and must be replaced. (49% of the entire sales chain dropouts each year, the same percentage that receive no payments from Herbalife. 67% of newest recruits dropout within first year.) Without relentless, aggressive recruiting of consumer-investors, Herbalife’s business collapses within one year. The illusion of economic viability is maintained by geographic expansion where new recruits are found and by enrolling recruits in saturated market areas, while concealing the historical loss rates and actual market expansion opportunity for new recruits in those areas.*
- ✓ *Closed Market with attempted redefinition of the churning bottom-level channel members as an end-user “customer” base. Herbalife cannot validate external revenue on which profits and rewards are based. Rather, the profits and rewards are generated directly from consumer investors inside the recruiting/reward chain.*
- ✓ *Not Market-based: Reward and promotional program defies normal market/sales factors, i.e., market limitation for product, geographic saturation, number of salespersons related to market size, competitive pricing, brand awareness and marketing support for distribution channel.*



STATEMENT OF AVERAGE GROSS COMPENSATION PAID BY HERBALIFE TO UNITED STATES DISTRIBUTORS IN 2012

People become Herbalife Distributors for a number of reasons. The majority (73%)⁽¹⁾ primarily join us to receive a wholesale price on products they and their families enjoy. Some wish to earn part-time money, wanting to give direct sales a try and are encouraged by Herbalife's low start-up costs (at their option, a mini-International Business Pack (IBP) at \$57.75 or full IBP at \$89.56) and money-back guarantee⁽²⁾. Others are drawn to Herbalife because they can be their own boss and can earn rewards based on their own skills and hard work.

Whatever the motivation, an Herbalife Distributorship is something like a gym membership: results vary with the time, energy and dedication you put into it. Anyone considering an active Distributorship needs to understand the realities of direct selling. It is hard work. There is no shortcut to riches, no guarantee of success. However, for those who devote the time and energy to develop a stable base of customers and then mentor and train others to do the same, the opportunity for personal growth and an attractive part- or full-time income exists. Moreover, unlike other businesses, there are minimal start-up costs in beginning your Herbalife Distributorship. There is no need for a Distributor to spend significant amounts of money on sales aids or other materials. In fact, Herbalife's corporate policy discourages the use of such sales aids, especially in the first few months of a Distributorship.

The majority of Herbalife's Independent Distributors (71%) have not sponsored another Distributor and are therefore "single-level" Distributors. Single-level Distributors benefit from buying Herbalife products at a preferred price for their consumption and that of their families, and for many this is the only benefit they seek. Some may also be retailing products for a profit and this profit is not included in any of the compensation figures below.

Some Distributors (29%) have decided to sponsor others to become Herbalife Distributors. In that way, they may seek to build and maintain their own downline sales organizations. They are not paid anything for sponsoring new Distributors. They are paid solely based on product sales to their downline Distributors for their own consumption or for retail to others. This multi-level compensation opportunity is detailed in Herbalife's Sales & Marketing Plan, which is available to all Distributors on line at www.nyherbalife.com.

For potential Distributors to make an informed decision, we offer the following chart to show the different ranges of average gross compensation that Herbalife pays to its Distributors. The figures below do not include any retail / wholesale profit that a Distributor makes from selling Herbalife's products to others nor do these figures include expenses incurred by a Distributor in the operation or promotion of his or her business. Such business expenses can vary widely. They might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses. The compensation received by the Distributors in this chart is not necessarily representative of the gross compensation, if any, that any particular Distributor will receive. These figures should not be considered as guarantees or projections of your actual gross compensation or profits. Success with Herbalife results only from successful product sales efforts, which require hard work, diligence and leadership. Your success will depend upon how effectively you exercise these qualities.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

(2) 90 days on the return of the IBP and one year on the return of restorable inventory, upon leaving the business.

The compensation chart below indicates that 434,125 Distributors (88%) received no payments from Herbalife during 2012. However, this chart does not include amounts earned by Distributors on their sales of Herbalife products to others.

Additionally, this chart does not include the benefit to Distributors buying Herbalife products at a preferred price for their consumption and that of their families. Based on the company's survey, 73%⁽¹⁾ of individuals became Distributors primarily for this benefit.

| Single-Level Distributors (No Downline) | | | | | | | |
|--|---------------|-----|--|-----------------------------------|---------------------|--|-----------|
| Economic Opportunity | Distributors* | | | | | | |
| | Number | % | | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors | 351,055 | 71% | The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule. | | | | |
| Non-Sales Leaders** With a Downline | | | | | | | |
| Economic Opportunity | Distributors | | | | | | |
| | Number | % | | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor | 60,333 | 12% | <p>In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife.</p> <p>2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104.</p> | | | | |
| Sales Leaders** With a Downline | | | | | | | |
| Economic Opportunity | Distributors | | Average Payments from Herbalife | All Sales Leaders with a Downline | | | |
| | Number | % | | Number of Distributors | % of Total Grouping | Average Gross Payments | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses | 82,464 | 17% | | | | This chart does not include amounts earned by Distributors on their sales of Herbalife products to others. | |
| | | | >\$250,000 | 194 | 0.2% | | \$724,030 |
| | | | \$100,001-\$250,000 | 452 | 0.5% | | \$146,808 |
| | | | \$50,001-\$100,000 | 539 | 0.7% | | \$84,912 |
| | | | \$25,001-\$50,000 | 1,136 | 1.4% | | \$35,581 |
| | | | \$10,001-\$25,000 | 1,940 | 2.4% | | \$15,538 |
| | | | \$5,001-\$10,000 | 2,552 | 3.1% | | \$7,008 |
| | | | \$1,001-\$5,000 | 11,307 | 13.7% | | \$2,216 |
| | | | \$1-\$1,000 | 39,151 | 47.5% | | \$262 |
| | | | 0 | 25,183 | 30.8% | | \$0 |
| | | | Total | 82,464 | 100.0% | \$4,485 | |

* 30,821 of the 351,055 single-level Distributors are sales leaders without a downline.

** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com.

51.0% of all sales leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33.5% of first time sales leaders)

The majority of those Distributors who earned in excess of \$100,000 in 2012 had reached the level of Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of President's Team. They averaged 9 years as an Herbalife Distributor before reaching President's Team, with the longest being 20 years and the shortest being less than three years.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

From: Greisman, Lois C. </O=FTCEXCHANGE/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=LGREISMAN>
Sent: Tuesday, June 18, 2013 5:31 PM
To: Ammerman, Janet <jammerman1@ftc.gov>; Vander Nat, Peter J. <PVANDERNAT@ftc.gov>; Todaro, Christine <ctodaro@ftc.gov>; Vaca, Monica E. <MVACA@ftc.gov>
Subject: FW: Pershing Square Press Release
Attach: Press Release re HLF Surverys Final 6 18 13.pdf

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Tuesday, June 18, 2013 1:30 PM
To: Greisman, Lois C.
Subject: Pershing Square Press Release

Hi Lois –

I am sending along a press release that Pershing Square just issued concerning the latest survey commissioned by Herbalife on the issue of retail sales to customers outside Herbalife's distribution network. The strange thing about the continued use of such surveys is that Herbalife has the contractual right to obtain detailed data about actual retail sales from its distributors under the plain terms of its Sales and Marketing Plan. It seems fair to infer that the company's refusal to use such readily accessible data is based on its concern about what the data will show, namely, that very few products are sold to actual retail customers as opposed to aspiring distributors.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Herbalife Ltd.'s New Survey and Public Statements Raise More Questions about the Legality of its Business

NEW YORK, June 18, 2013//--Pershing Square Capital Management, L.P. ("Pershing Square") today released the following statement:

Yet Another Herbalife Poll

The polling results recently released by Herbalife Ltd. (NYSE: HLF) contradict the results of two surveys previously released by the company – begging the question why it won't simply release actual data that are collected by its distributors – and calling into question the accuracy of these survey results. The company continues to refuse to release these surveys to the public so that their assumptions, methodologies, and approaches can be analyzed.

We note that Herbalife's Nielsen survey relied on data from 349 respondents to determine the buying habits of 7.9 million Americans. Using surveys of a tiny fraction of the population which are then extrapolated to determine the occurrence of rare events for the population at large often leads to overestimates of actual results.¹

Herbalife Refuses to Release Actual Sales Data

Herbalife has incurred substantial expense in commissioning surveys while it has avoided collecting contractually available empirical data which would answer questions about the sales of Herbalife products to end consumers. Under its Sales & Marketing Plan, Herbalife requires all distributors to complete an official Herbalife Retail Order Form for each sale, a form which includes each buyer's name, contact information, product purchased, and price paid. These records must be maintained by distributors for at least two years and provided to the company upon request.²

If Herbalife wished to determine its actual retail sales and the profits earned by distributors on these retail sales, it can simply request the required Retail Order Forms

¹ According to a paper sponsored by the *American Statistical Association* written by Harvard Ph.D David Hemenway, "[u]sing surveys to estimate rare events typically leads to overestimates. For example, the National Rifle Association reports 3 million dues-paying members, or about 1.5% of American adults. In national random telephone surveys, however, 4-10% of respondents claim that they themselves are dues-paying NRA members. Similarly, although Sports Illustrated reports that fewer than 3% of American households purchase the magazine, in national surveys 15% of respondents claim that they are current subscribers."

² See Herbalife Sales & Marketing Plan (Rule 17-A: Providing Retail Receipts to Customer).

from its distributors. Herbalife's refusal to obtain the actual empirical data which would answer questions as to the amount and profitability of consumer sales begs the question as to why Herbalife continues to attempt to rely on inherently unreliable and incomplete surveys as a defense to its being a pyramid scheme.

If Herbalife is a Legitimate Consumer Products Company, It Should be Tracking Retail Sales as Closely as Possible.

Even putting aside the legal requirements of collecting data about its customers, what legitimate consumer products company would not collect available empirical consumer data for research, sales, and marketing purposes if it could access this information?

Other direct sellers openly collect and report their empirical sales data. In a CNBC interview earlier this year, Tupperware CEO Rick Goings said, "Over 90% of our sales are through a retail customer. Only 10% to the sales force, and they buy that because we have so many new products every year." When asked how he could be so confident in the numbers, Goings said, "We have a report there of what happened the previous week, what the sales were, what the recruits were, who they were to and people that went to the party. We manage our businesses right down to the detail of it."

Herbalife's Surveys Do Not Refute That It is a Pyramid Scheme

Whether Herbalife is a pyramid scheme depends on whether its distributors earn more from retail profits than from recruiting-related compensation. Since the surveys that Herbalife has commissioned only seek to determine whether adults have purchased Herbalife products – and not which products, the amount of products, or the prices paid – the surveys do not provide any information which could be used to determine the amount of retail profits, if any, that distributors have generated from these reported sales. Furthermore, Herbalife has refused to provide copies of either the Lieberman or Nielsen surveys to the public further limiting the public's ability to assess the company's claims.

Herbalife products are offered for sale on the internet from numerous websites at large discounts, often as much as 45% off suggested retail prices with free shipping. The high degree of availability of discounted products calls into question the amount of actual retail sales that are occurring at suggested retail prices. Even if it were factually correct that 7.9 million Americans have purchased Herbalife products, only if those sales occurred at prices which enabled distributors to earn more from these sales than from recruitment rewards would this information be helpful to Herbalife in demonstrating that it is not a pyramid scheme.

A 1986 Permanent Injunction with the State of California Requires Herbalife to Track Retail Sales

Herbalife's failure to track actual retail sales puts the company squarely in violation of its 1986 consent decree with the State of California, which imposed a permanent injunction on the company. The injunction, among other things, prohibits Herbalife from operating a marketing program that pays compensation to distributors unless it is based upon "retail sales." The order requires Herbalife to implement a system to "verify and document" sales of products and requires that "their records are current and accurate to a point in time which does not precede [a] request for verification or documentation by more than 90 days."

Regulators Should Investigate Herbalife Following Repeated Demands from Not-for-Profit Organizations and Federal and Local Legislators

Recently, the National Consumers League, the Hispanic Federation, Congresswoman Linda Sanchez (CA-38), and New York City Councilwoman Julissa Ferraras (21st District – Queens) have called upon regulators to investigate Herbalife.

Councilwoman Ferraras wrote: "Latinos and others in my district are being unnecessarily harmed by [Herbalife's] aggressive recruitment techniques."

Congresswoman Sanchez's letter to FTC Chairwoman Edith Ramirez, dated June 6, 2013, closed with this statement: "I expect you will aggressively pursue [an investigation] in a timely manner."

Herbalife responded to Congresswoman Sanchez by stating that Herbalife offers an "excellent business opportunity" in order to "change people's lives." But in a court filing on May 30, 2013 in *Bostick v. Herbalife*, a class action against the company, Herbalife said it "made it clear to [Bostick] that only a small percentage of individuals similarly situated could expect to – as is true – generate significant income as a result of their relationship with Herbalife." And "even the top Herbalife distributors, on average, earn only a modest amount of income." In Herbalife's recently revised Statement of Average Gross Compensation, the company admitted that 88% of distributors received no payments from Herbalife in 2012 – and that is before accounting for any expenses distributors incurred trying to profit from the business.

Herbalife wants it both ways – when recruiting, Herbalife aggressively promotes its "excellent business opportunity" to unwary consumers. When caught, Herbalife argues that everyone should know that it does not offer any meaningful chance of making money.

Pershing Square joins these non-profit public interest groups and members of our government in requesting regulators to promptly investigate Herbalife. If, in fact, Herbalife is a legitimate company, it should welcome a review of its business practices by the FTC, the SEC, and other regulators to put to rest whether or not it is a pyramid scheme.

About Pershing Square Capital Management, L.P. Pershing Square Capital Management, L.P., based in New York City, is a SEC-registered investment advisor to private investment funds. Pershing Square manages funds that are in the business of trading — buying and selling — securities and other financial instruments. Funds managed by Pershing Square are short the stock of Herbalife Ltd. Pershing Square may increase, decrease, dispose of, or change the form of its investment in Herbalife for any or no reason, at any time.

Media Contacts:

Anna Brower
D: 212-392-5271
M: 734-645-2703
abrower@globalstrategygroup.com

Mike Geller
D: 212-729-2163
M: 646-567-3596
mike.geller@edelman.com

###

APPENDIX: STATISTICAL DIFFERENCES BETWEEN LIEBERMAN AND NIELSEN HERBALIFE STUDIES

In January, Herbalife released the results of a market research study conducted on their behalf by Lieberman Research. Key parameters of that survey were as follows:

- 5% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 2,000 interviews conducted in July 2012 and replicated in October 2012 (both surveys found the same 5% figure)

Meanwhile, key parameters from the Nielsen survey released recently by Herbalife are as follows:

- 3.3% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 10,525 interviews conducted in April and May of 2013

To determine whether these two studies produced statistically different results, we can use accepted statistical principles to calculate a margin of error for each of these estimates.

- At the 95% confidence level (the accepted standard in survey research), the Lieberman estimate of 5% has a margin of error of +/- 0.96%*. **That means that with 95% certainty, Lieberman estimates the range for the true population proportion to be between 4.04% and 5.96%**
- At the 95% confidence level, the Nielsen estimate of 3.3% has a margin of error of +/- 0.34%*. **That means that with 95% certainty, Nielsen estimates the range for the true population proportion to be between 2.96% and 3.64%**
- These two ranges contradict each other because they do not overlap. In addition, by applying a commonly used statistical test to compare the difference between two independently collected percentages (z-test of sample proportions), **we can determine that these results are statistically different with 99% certainty**

These survey results are not compatible. From here, we can conclude that the two survey results contradict each other for one of two reasons:

- 1) **The two surveys produced different results because sales of Herbalife decreased from October 2012 to April/May 2013.** However, sales data provided by the company does not confirm this hypothesis. (Herbalife reported \$216.2mm of net sales in the U.S. in Q1'13, roughly the same as the \$218.1mm it reported in Q2'12)
- 2) **The two results produced different results because one or both studies relied on an unreliable methodology.** This is the only other possible conclusion one can draw – that one or both of these surveys was flawed in some way. Whether it was

due to an online methodology, question wording, or some other bias is impossible to say without Herbalife releasing the full results and methodology of both surveys (as well as the results of any other surveys the Company may have commissioned that have not been released publicly)**

***NOTE ON MARGIN OF ERROR CALCULATIONS:** A commonly misunderstood fact about margin of error calculations is that they change depending on the percentage estimate in question (e.g. a 3.3% or 5% estimate vs. a much larger estimate like 25%, 50% or 75%). It is industry standard to report the maximum margin of error for a survey – but in practice, the maximum margin of error only applies when the percentage estimate is 50%. The margin of error shrinks as the percentage estimates approach the extremes of either 0% or 100%. In this case, the margin of error reported in Herbalife’s press release on the Nielsen study was +/- 0.96% – the correct number for the survey as a whole. However, on the specific issue of the margin of error on the 3.3% estimate for Herbalife purchasers, the margin of error is much smaller (+/- 0.34%). It is these precise margin of error estimates that we are appropriately relying upon in the explanation above.

**We note that the Lieberman survey results are extrapolated to U.S. households, whereas the Nielsen survey results are extrapolated to the U.S. adult population. Without a full release of the surveys, it is unclear whether Lieberman asked if respondents had purchased Herbalife product within the last three months (as suggested by the transcript of Kim Rory at the January 10th, 2013 Herbalife investor presentation), or if Lieberman inquired as to whether respondents or any member of their household had purchased Herbalife product within the last three months.

From: Holley, Steven L. <HolleyS@sullcrom.com>
Sent: Tuesday, June 18, 2013 1:30 PM
To: Greisman, Lois C. <LGREISMAN@ftc.gov>
Subject: Pershing Square Press Release
Attach: Press Release re HLF Surverys Final 6 18 13.pdf

Hi Lois –

I am sending along a press release that Pershing Square just issued concerning the latest survey commissioned by Herbalife on the issue of retail sales to customers outside Herbalife's distribution network. The strange thing about the continued use of such surveys is that Herbalife has the contractual right to obtain detailed data about actual retail sales from its distributors under the plain terms of its Sales and Marketing Plan. It seems fair to infer that the company's refusal to use such readily accessible data is based on its concern about what the data will show, namely, that very few products are sold to actual retail customers as opposed to aspiring distributors.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Herbalife Ltd.'s New Survey and Public Statements Raise More Questions about the Legality of its Business

NEW YORK, June 18, 2013//--Pershing Square Capital Management, L.P. ("Pershing Square") today released the following statement:

Yet Another Herbalife Poll

The polling results recently released by Herbalife Ltd. (NYSE: HLF) contradict the results of two surveys previously released by the company – begging the question why it won't simply release actual data that are collected by its distributors – and calling into question the accuracy of these survey results. The company continues to refuse to release these surveys to the public so that their assumptions, methodologies, and approaches can be analyzed.

We note that Herbalife's Nielsen survey relied on data from 349 respondents to determine the buying habits of 7.9 million Americans. Using surveys of a tiny fraction of the population which are then extrapolated to determine the occurrence of rare events for the population at large often leads to overestimates of actual results.¹

Herbalife Refuses to Release Actual Sales Data

Herbalife has incurred substantial expense in commissioning surveys while it has avoided collecting contractually available empirical data which would answer questions about the sales of Herbalife products to end consumers. Under its Sales & Marketing Plan, Herbalife requires all distributors to complete an official Herbalife Retail Order Form for each sale, a form which includes each buyer's name, contact information, product purchased, and price paid. These records must be maintained by distributors for at least two years and provided to the company upon request.²

If Herbalife wished to determine its actual retail sales and the profits earned by distributors on these retail sales, it can simply request the required Retail Order Forms

¹ According to a paper sponsored by the *American Statistical Association* written by Harvard Ph.D David Hemenway, "[u]sing surveys to estimate rare events typically leads to overestimates. For example, the National Rifle Association reports 3 million dues-paying members, or about 1.5% of American adults. In national random telephone surveys, however, 4-10% of respondents claim that they themselves are dues-paying NRA members. Similarly, although Sports Illustrated reports that fewer than 3% of American households purchase the magazine, in national surveys 15% of respondents claim that they are current subscribers."

² See Herbalife Sales & Marketing Plan (Rule 17-A: Providing Retail Receipts to Customer).

from its distributors. Herbalife's refusal to obtain the actual empirical data which would answer questions as to the amount and profitability of consumer sales begs the question as to why Herbalife continues to attempt to rely on inherently unreliable and incomplete surveys as a defense to its being a pyramid scheme.

If Herbalife is a Legitimate Consumer Products Company, It Should be Tracking Retail Sales as Closely as Possible.

Even putting aside the legal requirements of collecting data about its customers, what legitimate consumer products company would not collect available empirical consumer data for research, sales, and marketing purposes if it could access this information?

Other direct sellers openly collect and report their empirical sales data. In a CNBC interview earlier this year, Tupperware CEO Rick Goings said, "Over 90% of our sales are through a retail customer. Only 10% to the sales force, and they buy that because we have so many new products every year." When asked how he could be so confident in the numbers, Goings said, "We have a report there of what happened the previous week, what the sales were, what the recruits were, who they were to and people that went to the party. We manage our businesses right down to the detail of it."

Herbalife's Surveys Do Not Refute That It is a Pyramid Scheme

Whether Herbalife is a pyramid scheme depends on whether its distributors earn more from retail profits than from recruiting-related compensation. Since the surveys that Herbalife has commissioned only seek to determine whether adults have purchased Herbalife products – and not which products, the amount of products, or the prices paid – the surveys do not provide any information which could be used to determine the amount of retail profits, if any, that distributors have generated from these reported sales. Furthermore, Herbalife has refused to provide copies of either the Lieberman or Nielsen surveys to the public further limiting the public's ability to assess the company's claims.

Herbalife products are offered for sale on the internet from numerous websites at large discounts, often as much as 45% off suggested retail prices with free shipping. The high degree of availability of discounted products calls into question the amount of actual retail sales that are occurring at suggested retail prices. Even if it were factually correct that 7.9 million Americans have purchased Herbalife products, only if those sales occurred at prices which enabled distributors to earn more from these sales than from recruitment rewards would this information be helpful to Herbalife in demonstrating that it is not a pyramid scheme.

A 1986 Permanent Injunction with the State of California Requires Herbalife to Track Retail Sales

Herbalife's failure to track actual retail sales puts the company squarely in violation of its 1986 consent decree with the State of California, which imposed a permanent injunction on the company. The injunction, among other things, prohibits Herbalife from operating a marketing program that pays compensation to distributors unless it is based upon "retail sales." The order requires Herbalife to implement a system to "verify and document" sales of products and requires that "their records are current and accurate to a point in time which does not precede [a] request for verification or documentation by more than 90 days."

Regulators Should Investigate Herbalife Following Repeated Demands from Not-for-Profit Organizations and Federal and Local Legislators

Recently, the National Consumers League, the Hispanic Federation, Congresswoman Linda Sanchez (CA-38), and New York City Councilwoman Julissa Ferraras (21st District – Queens) have called upon regulators to investigate Herbalife.

Councilwoman Ferraras wrote: "Latinos and others in my district are being unnecessarily harmed by [Herbalife's] aggressive recruitment techniques."

Congresswoman Sanchez's letter to FTC Chairwoman Edith Ramirez, dated June 6, 2013, closed with this statement: "I expect you will aggressively pursue [an investigation] in a timely manner."

Herbalife responded to Congresswoman Sanchez by stating that Herbalife offers an "excellent business opportunity" in order to "change people's lives." But in a court filing on May 30, 2013 in *Bostick v. Herbalife*, a class action against the company, Herbalife said it "made it clear to [Bostick] that only a small percentage of individuals similarly situated could expect to – as is true – generate significant income as a result of their relationship with Herbalife." And "even the top Herbalife distributors, on average, earn only a modest amount of income." In Herbalife's recently revised Statement of Average Gross Compensation, the company admitted that 88% of distributors received no payments from Herbalife in 2012 – and that is before accounting for any expenses distributors incurred trying to profit from the business.

Herbalife wants it both ways – when recruiting, Herbalife aggressively promotes its "excellent business opportunity" to unwary consumers. When caught, Herbalife argues that everyone should know that it does not offer any meaningful chance of making money.

Pershing Square joins these non-profit public interest groups and members of our government in requesting regulators to promptly investigate Herbalife. If, in fact, Herbalife is a legitimate company, it should welcome a review of its business practices by the FTC, the SEC, and other regulators to put to rest whether or not it is a pyramid scheme.

About Pershing Square Capital Management, L.P. Pershing Square Capital Management, L.P., based in New York City, is a SEC-registered investment advisor to private investment funds. Pershing Square manages funds that are in the business of trading — buying and selling — securities and other financial instruments. Funds managed by Pershing Square are short the stock of Herbalife Ltd. Pershing Square may increase, decrease, dispose of, or change the form of its investment in Herbalife for any or no reason, at any time.

Media Contacts:

Anna Brower
D: 212-392-5271
M: 734-645-2703
abrower@globalstrategygroup.com

Mike Geller
D: 212-729-2163
M: 646-567-3596
mike.geller@edelman.com

###

APPENDIX: STATISTICAL DIFFERENCES BETWEEN LIEBERMAN AND NIELSEN HERBALIFE STUDIES

In January, Herbalife released the results of a market research study conducted on their behalf by Lieberman Research. Key parameters of that survey were as follows:

- 5% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 2,000 interviews conducted in July 2012 and replicated in October 2012 (both surveys found the same 5% figure)

Meanwhile, key parameters from the Nielsen survey released recently by Herbalife are as follows:

- 3.3% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 10,525 interviews conducted in April and May of 2013

To determine whether these two studies produced statistically different results, we can use accepted statistical principles to calculate a margin of error for each of these estimates.

- At the 95% confidence level (the accepted standard in survey research), the Lieberman estimate of 5% has a margin of error of +/- 0.96%*. **That means that with 95% certainty, Lieberman estimates the range for the true population proportion to be between 4.04% and 5.96%**
- At the 95% confidence level, the Nielsen estimate of 3.3% has a margin of error of +/- 0.34%*. **That means that with 95% certainty, Nielsen estimates the range for the true population proportion to be between 2.96% and 3.64%**
- These two ranges contradict each other because they do not overlap. In addition, by applying a commonly used statistical test to compare the difference between two independently collected percentages (z-test of sample proportions), **we can determine that these results are statistically different with 99% certainty**

These survey results are not compatible. From here, we can conclude that the two survey results contradict each other for one of two reasons:

- 1) **The two surveys produced different results because sales of Herbalife decreased from October 2012 to April/May 2013.** However, sales data provided by the company does not confirm this hypothesis. (Herbalife reported \$216.2mm of net sales in the U.S. in Q1'13, roughly the same as the \$218.1mm it reported in Q2'12)
- 2) **The two results produced different results because one or both studies relied on an unreliable methodology.** This is the only other possible conclusion one can draw – that one or both of these surveys was flawed in some way. Whether it was

due to an online methodology, question wording, or some other bias is impossible to say without Herbalife releasing the full results and methodology of both surveys (as well as the results of any other surveys the Company may have commissioned that have not been released publicly)**

***NOTE ON MARGIN OF ERROR CALCULATIONS:** A commonly misunderstood fact about margin of error calculations is that they change depending on the percentage estimate in question (e.g. a 3.3% or 5% estimate vs. a much larger estimate like 25%, 50% or 75%). It is industry standard to report the maximum margin of error for a survey – but in practice, the maximum margin of error only applies when the percentage estimate is 50%. The margin of error shrinks as the percentage estimates approach the extremes of either 0% or 100%. In this case, the margin of error reported in Herbalife’s press release on the Nielsen study was +/- 0.96% – the correct number for the survey as a whole. However, on the specific issue of the margin of error on the 3.3% estimate for Herbalife purchasers, the margin of error is much smaller (+/- 0.34%). It is these precise margin of error estimates that we are appropriately relying upon in the explanation above.

**We note that the Lieberman survey results are extrapolated to U.S. households, whereas the Nielsen survey results are extrapolated to the U.S. adult population. Without a full release of the surveys, it is unclear whether Lieberman asked if respondents had purchased Herbalife product within the last three months (as suggested by the transcript of Kim Rory at the January 10th, 2013 Herbalife investor presentation), or if Lieberman inquired as to whether respondents or any member of their household had purchased Herbalife product within the last three months.

From: Holley, Steven L. <HolleyS@sullcrom.com>
Sent: Tuesday, June 18, 2013 1:30 PM
To: Greisman, Lois C. <LGREISMAN@ftc.gov>
Subject: Pershing Square Press Release
Attach: Press Release re HLF Surverys Final 6 18 13.pdf

Hi Lois –

I am sending along a press release that Pershing Square just issued concerning the latest survey commissioned by Herbalife on the issue of retail sales to customers outside Herbalife's distribution network. The strange thing about the continued use of such surveys is that Herbalife has the contractual right to obtain detailed data about actual retail sales from its distributors under the plain terms of its Sales and Marketing Plan. It seems fair to infer that the company's refusal to use such readily accessible data is based on its concern about what the data will show, namely, that very few products are sold to actual retail customers as opposed to aspiring distributors.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

Herbalife Ltd.'s New Survey and Public Statements Raise More Questions about the Legality of its Business

NEW YORK, June 18, 2013//--Pershing Square Capital Management, L.P. ("Pershing Square") today released the following statement:

Yet Another Herbalife Poll

The polling results recently released by Herbalife Ltd. (NYSE: HLF) contradict the results of two surveys previously released by the company – begging the question why it won't simply release actual data that are collected by its distributors – and calling into question the accuracy of these survey results. The company continues to refuse to release these surveys to the public so that their assumptions, methodologies, and approaches can be analyzed.

We note that Herbalife's Nielsen survey relied on data from 349 respondents to determine the buying habits of 7.9 million Americans. Using surveys of a tiny fraction of the population which are then extrapolated to determine the occurrence of rare events for the population at large often leads to overestimates of actual results.¹

Herbalife Refuses to Release Actual Sales Data

Herbalife has incurred substantial expense in commissioning surveys while it has avoided collecting contractually available empirical data which would answer questions about the sales of Herbalife products to end consumers. Under its Sales & Marketing Plan, Herbalife requires all distributors to complete an official Herbalife Retail Order Form for each sale, a form which includes each buyer's name, contact information, product purchased, and price paid. These records must be maintained by distributors for at least two years and provided to the company upon request.²

If Herbalife wished to determine its actual retail sales and the profits earned by distributors on these retail sales, it can simply request the required Retail Order Forms

¹ According to a paper sponsored by the *American Statistical Association* written by Harvard Ph.D David Hemenway, "[u]sing surveys to estimate rare events typically leads to overestimates. For example, the National Rifle Association reports 3 million dues-paying members, or about 1.5% of American adults. In national random telephone surveys, however, 4-10% of respondents claim that they themselves are dues-paying NRA members. Similarly, although Sports Illustrated reports that fewer than 3% of American households purchase the magazine, in national surveys 15% of respondents claim that they are current subscribers."

² See Herbalife Sales & Marketing Plan (Rule 17-A: Providing Retail Receipts to Customer).

from its distributors. Herbalife's refusal to obtain the actual empirical data which would answer questions as to the amount and profitability of consumer sales begs the question as to why Herbalife continues to attempt to rely on inherently unreliable and incomplete surveys as a defense to its being a pyramid scheme.

If Herbalife is a Legitimate Consumer Products Company, It Should be Tracking Retail Sales as Closely as Possible.

Even putting aside the legal requirements of collecting data about its customers, what legitimate consumer products company would not collect available empirical consumer data for research, sales, and marketing purposes if it could access this information?

Other direct sellers openly collect and report their empirical sales data. In a CNBC interview earlier this year, Tupperware CEO Rick Goings said, "Over 90% of our sales are through a retail customer. Only 10% to the sales force, and they buy that because we have so many new products every year." When asked how he could be so confident in the numbers, Goings said, "We have a report there of what happened the previous week, what the sales were, what the recruits were, who they were to and people that went to the party. We manage our businesses right down to the detail of it."

Herbalife's Surveys Do Not Refute That It is a Pyramid Scheme

Whether Herbalife is a pyramid scheme depends on whether its distributors earn more from retail profits than from recruiting-related compensation. Since the surveys that Herbalife has commissioned only seek to determine whether adults have purchased Herbalife products – and not which products, the amount of products, or the prices paid – the surveys do not provide any information which could be used to determine the amount of retail profits, if any, that distributors have generated from these reported sales. Furthermore, Herbalife has refused to provide copies of either the Lieberman or Nielsen surveys to the public further limiting the public's ability to assess the company's claims.

Herbalife products are offered for sale on the internet from numerous websites at large discounts, often as much as 45% off suggested retail prices with free shipping. The high degree of availability of discounted products calls into question the amount of actual retail sales that are occurring at suggested retail prices. Even if it were factually correct that 7.9 million Americans have purchased Herbalife products, only if those sales occurred at prices which enabled distributors to earn more from these sales than from recruitment rewards would this information be helpful to Herbalife in demonstrating that it is not a pyramid scheme.

A 1986 Permanent Injunction with the State of California Requires Herbalife to Track Retail Sales

Herbalife's failure to track actual retail sales puts the company squarely in violation of its 1986 consent decree with the State of California, which imposed a permanent injunction on the company. The injunction, among other things, prohibits Herbalife from operating a marketing program that pays compensation to distributors unless it is based upon "retail sales." The order requires Herbalife to implement a system to "verify and document" sales of products and requires that "their records are current and accurate to a point in time which does not precede [a] request for verification or documentation by more than 90 days."

Regulators Should Investigate Herbalife Following Repeated Demands from Not-for-Profit Organizations and Federal and Local Legislators

Recently, the National Consumers League, the Hispanic Federation, Congresswoman Linda Sanchez (CA-38), and New York City Councilwoman Julissa Ferraras (21st District – Queens) have called upon regulators to investigate Herbalife.

Councilwoman Ferraras wrote: "Latinos and others in my district are being unnecessarily harmed by [Herbalife's] aggressive recruitment techniques."

Congresswoman Sanchez's letter to FTC Chairwoman Edith Ramirez, dated June 6, 2013, closed with this statement: "I expect you will aggressively pursue [an investigation] in a timely manner."

Herbalife responded to Congresswoman Sanchez by stating that Herbalife offers an "excellent business opportunity" in order to "change people's lives." But in a court filing on May 30, 2013 in *Bostick v. Herbalife*, a class action against the company, Herbalife said it "made it clear to [Bostick] that only a small percentage of individuals similarly situated could expect to – as is true – generate significant income as a result of their relationship with Herbalife." And "even the top Herbalife distributors, on average, earn only a modest amount of income." In Herbalife's recently revised Statement of Average Gross Compensation, the company admitted that 88% of distributors received no payments from Herbalife in 2012 – and that is before accounting for any expenses distributors incurred trying to profit from the business.

Herbalife wants it both ways – when recruiting, Herbalife aggressively promotes its "excellent business opportunity" to unwary consumers. When caught, Herbalife argues that everyone should know that it does not offer any meaningful chance of making money.

Pershing Square joins these non-profit public interest groups and members of our government in requesting regulators to promptly investigate Herbalife. If, in fact, Herbalife is a legitimate company, it should welcome a review of its business practices by the FTC, the SEC, and other regulators to put to rest whether or not it is a pyramid scheme.

About Pershing Square Capital Management, L.P. Pershing Square Capital Management, L.P., based in New York City, is a SEC-registered investment advisor to private investment funds. Pershing Square manages funds that are in the business of trading — buying and selling — securities and other financial instruments. Funds managed by Pershing Square are short the stock of Herbalife Ltd. Pershing Square may increase, decrease, dispose of, or change the form of its investment in Herbalife for any or no reason, at any time.

Media Contacts:

Anna Brower
D: 212-392-5271
M: 734-645-2703
abrower@globalstrategygroup.com

Mike Geller
D: 212-729-2163
M: 646-567-3596
mike.geller@edelman.com

###

APPENDIX: STATISTICAL DIFFERENCES BETWEEN LIEBERMAN AND NIELSEN HERBALIFE STUDIES

In January, Herbalife released the results of a market research study conducted on their behalf by Lieberman Research. Key parameters of that survey were as follows:

- 5% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 2,000 interviews conducted in July 2012 and replicated in October 2012 (both surveys found the same 5% figure)

Meanwhile, key parameters from the Nielsen survey released recently by Herbalife are as follows:

- 3.3% of adults purchased a Herbalife product in the last three months
- The results came from a survey of 10,525 interviews conducted in April and May of 2013

To determine whether these two studies produced statistically different results, we can use accepted statistical principles to calculate a margin of error for each of these estimates.

- At the 95% confidence level (the accepted standard in survey research), the Lieberman estimate of 5% has a margin of error of +/- 0.96%*. **That means that with 95% certainty, Lieberman estimates the range for the true population proportion to be between 4.04% and 5.96%**
- At the 95% confidence level, the Nielsen estimate of 3.3% has a margin of error of +/- 0.34%*. **That means that with 95% certainty, Nielsen estimates the range for the true population proportion to be between 2.96% and 3.64%**
- These two ranges contradict each other because they do not overlap. In addition, by applying a commonly used statistical test to compare the difference between two independently collected percentages (z-test of sample proportions), **we can determine that these results are statistically different with 99% certainty**

These survey results are not compatible. From here, we can conclude that the two survey results contradict each other for one of two reasons:

- 1) **The two surveys produced different results because sales of Herbalife decreased from October 2012 to April/May 2013.** However, sales data provided by the company does not confirm this hypothesis. (Herbalife reported \$216.2mm of net sales in the U.S. in Q1'13, roughly the same as the \$218.1mm it reported in Q2'12)
- 2) **The two results produced different results because one or both studies relied on an unreliable methodology.** This is the only other possible conclusion one can draw – that one or both of these surveys was flawed in some way. Whether it was

due to an online methodology, question wording, or some other bias is impossible to say without Herbalife releasing the full results and methodology of both surveys (as well as the results of any other surveys the Company may have commissioned that have not been released publicly)**

***NOTE ON MARGIN OF ERROR CALCULATIONS:** A commonly misunderstood fact about margin of error calculations is that they change depending on the percentage estimate in question (e.g. a 3.3% or 5% estimate vs. a much larger estimate like 25%, 50% or 75%). It is industry standard to report the maximum margin of error for a survey – but in practice, the maximum margin of error only applies when the percentage estimate is 50%. The margin of error shrinks as the percentage estimates approach the extremes of either 0% or 100%. In this case, the margin of error reported in Herbalife’s press release on the Nielsen study was +/- 0.96% – the correct number for the survey as a whole. However, on the specific issue of the margin of error on the 3.3% estimate for Herbalife purchasers, the margin of error is much smaller (+/- 0.34%). It is these precise margin of error estimates that we are appropriately relying upon in the explanation above.

**We note that the Lieberman survey results are extrapolated to U.S. households, whereas the Nielsen survey results are extrapolated to the U.S. adult population. Without a full release of the surveys, it is unclear whether Lieberman asked if respondents had purchased Herbalife product within the last three months (as suggested by the transcript of Kim Rory at the January 10th, 2013 Herbalife investor presentation), or if Lieberman inquired as to whether respondents or any member of their household had purchased Herbalife product within the last three months.

From: Holley, Steven L. <HolleyS@sullcrom.com>
Sent: Thursday, February 7, 2013 11:11 AM
To: Greisman, Lois C. <LGREISMAN@ftc.gov>
Subject: [WARNING: MESSAGE ENCRYPTED]Herbalife
Attach: Herbalife_Questions.pdf; StatementAverageCompensation2011EN.pdf

Hi Lois –

It was nice speaking with you on the telephone yesterday. I am still figuring out who will be attending the March 4 meeting on our side, but I will let you know soon.

You are probably aware of this, but I wanted to be sure you saw the new Statement of Gross Compensation for U.S. Distributors released by Herbalife yesterday, as well as some initial reaction to it on the Seeking Alpha website. <http://seekingalpha.com/article/1163881-herbalife-s-disclosures-don-t-add-up-again?source=yahoo> Also, in response to the invitation from Herbalife's president Des Walsh, Pershing Square has posed a long series of questions to Herbalife about its business. A copy of those questions, which are now up on the Facts About Herbalife website, are attached. Please let me know if you have any questions about these materials.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

STATEMENT OF AVERAGE GROSS COMPENSATION PAID BY HERBALIFE TO UNITED STATES DISTRIBUTORS IN 2012

People become Herbalife Distributors for a number of reasons. The majority (73%)⁽¹⁾ primarily join us to receive a wholesale price on products they and their families enjoy. Some wish to earn part-time money, wanting to give direct sales a try and are encouraged by Herbalife's low start-up costs (at their option, a mini-International Business Pack (IBP) at \$59 or full IBP at \$109) and money-back guarantee⁽²⁾. Others are drawn to Herbalife because they can be their own boss and can earn rewards based on their own skills and hard work.

Whatever the motivation, an Herbalife Distributorship is something like a gym membership: results vary with the time, energy and dedication you put into it. Anyone considering an active Distributorship needs to understand the realities of direct selling. It is hard work. There is no shortcut to riches, no guarantee of success. However, for those who devote the time and energy to develop a stable base of customers and then mentor and train others to do the same, the opportunity for personal growth and an attractive part- or full-time income exists. Moreover, unlike other businesses, there are minimal start-up costs in beginning your Herbalife Distributorship. There is no need for a Distributor to spend significant amounts of money on sales aids or other materials. In fact, Herbalife's corporate policy discourages the use of such sales aids, especially in the first few months of a Distributorship.

The majority of Herbalife's independent Distributors (71%) have not sponsored another Distributor and are therefore "single-level" Distributors. Single-level Distributors benefit from buying Herbalife products at a preferred price for their consumption and that of their families, and for many this is the only benefit they seek. Some may also be retailing products for a profit and this profit is not included in any of the compensation figures below.

Some Distributors (29%) have decided to sponsor others to become Herbalife Distributors. In that way, they may seek to build and maintain their own downline sales organizations. They are not paid anything for sponsoring new Distributors. They are paid solely based on product sales to their downline Distributors for their own consumption or for retail to others. This multi-level compensation opportunity is detailed in Herbalife's Sales & Marketing Plan, which is available to all Distributors on line at www.myherbalife.com.

For potential Distributors to make an informed decision, we offer the following chart to show the different ranges of average gross compensation that Herbalife pays to its Distributors. The figures below do not include any retail / wholesale profit that a Distributor makes from selling Herbalife's products to others nor do these figures include expenses incurred by a Distributor in the operation or promotion of his or her business. Such business expenses can vary widely. They might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses. The compensation received by the Distributors in this chart is not necessarily representative of the gross compensation, if any, that any particular Distributor will receive. These figures should not be considered as guarantees or projections of your actual gross compensation or profits. Success with Herbalife results only from successful product sales efforts, which require hard work, diligence and leadership. Your success will depend upon how effectively you exercise these qualities.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

(2) 90 days on the return of the IBP and one year on the return of resalable inventory, upon leaving the business.

The compensation chart below indicates that 434,125 Distributors (88%) received no payments from Herbalife during 2012. However, this chart does not include amounts earned by Distributors on their sales of Herbalife products to others.

Additionally, this chart does not include the benefit to Distributors buying Herbalife products at a preferred price for their consumption and that of their families. Based on the company's survey, 73%⁽¹⁾ of individuals became Distributors primarily for this benefit.

| Single-Level Distributors (No Downline) | | | | | | |
|--|---------------|-----|---|-----------------------------------|---------------------|------------------------|
| Economic Opportunity | Distributors* | | | | | |
| | Number | % | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors | 351,065 | 71% | The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule | | | |
| Non-Sales Leaders** With a Downline | | | | | | |
| Economic Opportunity | Distributors | | | | | |
| | Number | % | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor | 60,333 | 12% | In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife. 2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104. | | | |
| Sales Leaders** With a Downline | | | | | | |
| Economic Opportunity | Distributors | | Average Payments from Herbalife | All Sales Leaders with a Downline | | |
| | Number | % | | Number of Distributors | % of Total Grouping | Average Gross Payments |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses | 82,464 | 17% | >\$250,000 | 194 | 0.2% | \$724,030 |
| | | | \$100,001-\$250,000 | 452 | 0.5% | \$148,808 |
| | | | \$50,001-\$100,000 | 539 | 0.7% | \$68,912 |
| | | | \$25,001-\$50,000 | 1,136 | 1.4% | \$35,581 |
| | | | \$10,001-\$25,000 | 1,940 | 2.4% | \$15,538 |
| | | | \$5,001-\$10,000 | 2,552 | 3.1% | \$7,008 |
| | | | \$1,001-\$5,000 | 11,307 | 13.7% | \$2,216 |
| | | | \$1-\$1,000 | 39,151 | 47.5% | \$292 |
| | | | 0 | 25,193 | 30.6% | \$0 |
| | | | Total | 82,464 | 100.0% | \$4,485 |
| * 30,621 of the 351,065 single-level Distributors are sales leaders without a downline ** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com . | | | | | | |

51.0% of all sales leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33.5% of first time sales leaders)

The majority of those Distributors who earned in excess of \$100,000 in 2012 had reached the level of Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of President's Team. They averaged 9 years as an Herbalife Distributor before reaching President's Team, with the longest being 20 years and the shortest being less than three years.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

From: Holley, Steven L. <HolleyS@sullcrom.com>
Sent: Thursday, February 7, 2013 11:11 AM
To: Greisman, Lois C. <LGREISMAN@ftc.gov>
Subject: [WARNING: MESSAGE ENCRYPTED]Herbalife
Attach: Herbalife_Questions.pdf; StatementAverageCompensation2011EN.pdf

Hi Lois –

It was nice speaking with you on the telephone yesterday. I am still figuring out who will be attending the March 4 meeting on our side, but I will let you know soon.

You are probably aware of this, but I wanted to be sure you saw the new Statement of Gross Compensation for U.S. Distributors released by Herbalife yesterday, as well as some initial reaction to it on the Seeking Alpha website. <http://seekingalpha.com/article/1163881-herbalife-s-disclosures-don-t-add-up-again?source=yahoo> Also, in response to the invitation from Herbalife's president Des Walsh, Pershing Square has posed a long series of questions to Herbalife about its business. A copy of those questions, which are now up on the Facts About Herbalife website, are attached. Please let me know if you have any questions about these materials.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

STATEMENT OF AVERAGE GROSS COMPENSATION PAID BY HERBALIFE TO UNITED STATES DISTRIBUTORS IN 2012

People become Herbalife Distributors for a number of reasons. The majority (73%)⁽¹⁾ primarily join us to receive a wholesale price on products they and their families enjoy. Some wish to earn part-time money, wanting to give direct sales a try and are encouraged by Herbalife's low start-up costs (at their option, a mini-International Business Pack (IBP) at \$59 or full IBP at \$109) and money-back guarantee⁽²⁾. Others are drawn to Herbalife because they can be their own boss and can earn rewards based on their own skills and hard work.

Whatever the motivation, an Herbalife Distributorship is something like a gym membership: results vary with the time, energy and dedication you put into it. Anyone considering an active Distributorship needs to understand the realities of direct selling. It is hard work. There is no shortcut to riches, no guarantee of success. However, for those who devote the time and energy to develop a stable base of customers and then mentor and train others to do the same, the opportunity for personal growth and an attractive part- or full-time income exists. Moreover, unlike other businesses, there are minimal start-up costs in beginning your Herbalife Distributorship. There is no need for a Distributor to spend significant amounts of money on sales aids or other materials. In fact, Herbalife's corporate policy discourages the use of such sales aids, especially in the first few months of a Distributorship.

The majority of Herbalife's independent Distributors (71%) have not sponsored another Distributor and are therefore "single-level" Distributors. Single-level Distributors benefit from buying Herbalife products at a preferred price for their consumption and that of their families, and for many this is the only benefit they seek. Some may also be retailing products for a profit and this profit is not included in any of the compensation figures below.

Some Distributors (29%) have decided to sponsor others to become Herbalife Distributors. In that way, they may seek to build and maintain their own downline sales organizations. They are not paid anything for sponsoring new Distributors. They are paid solely based on product sales to their downline Distributors for their own consumption or for retail to others. This multi-level compensation opportunity is detailed in Herbalife's Sales & Marketing Plan, which is available to all Distributors on line at www.myherbalife.com.

For potential Distributors to make an informed decision, we offer the following chart to show the different ranges of average gross compensation that Herbalife pays to its Distributors. The figures below do not include any retail / wholesale profit that a Distributor makes from selling Herbalife's products to others nor do these figures include expenses incurred by a Distributor in the operation or promotion of his or her business. Such business expenses can vary widely. They might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses. The compensation received by the Distributors in this chart is not necessarily representative of the gross compensation, if any, that any particular Distributor will receive. These figures should not be considered as guarantees or projections of your actual gross compensation or profits. Success with Herbalife results only from successful product sales efforts, which require hard work, diligence and leadership. Your success will depend upon how effectively you exercise these qualities.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

(2) 90 days on the return of the IBP and one year on the return of resalable inventory, upon leaving the business.

The compensation chart below indicates that 434,125 Distributors (88%) received no payments from Herbalife during 2012. However, this chart does not include amounts earned by Distributors on their sales of Herbalife products to others.

Additionally, this chart does not include the benefit to Distributors buying Herbalife products at a preferred price for their consumption and that of their families. Based on the company's survey, 73%⁽¹⁾ of individuals became Distributors primarily for this benefit.

| Single-Level Distributors (No Downline) | | | | | | |
|--|----------------------|-----|---|--|---------------------|------------------------|
| Economic Opportunity | Distributors* | | | | | |
| | Number | % | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors | 351,065 | 71% | The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule | | | |
| Non-Sales Leaders** With a Downline | | | | | | |
| Economic Opportunity | Distributors | | | | | |
| | Number | % | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor | 60,333 | 12% | In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife. 2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104. | | | |
| Sales Leaders** With a Downline | | | | | | |
| Economic Opportunity | Distributors | | Average Payments from Herbalife | All Sales Leaders with a Downline | | |
| | Number | % | | Number of Distributors | % of Total Grouping | Average Gross Payments |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses | 82,464 | 17% | >\$250,000 | 194 | 0.2% | \$724,030 |
| | | | \$100,001-\$250,000 | 452 | 0.5% | \$148,808 |
| | | | \$50,001-\$100,000 | 539 | 0.7% | \$68,912 |
| | | | \$25,001-\$50,000 | 1,136 | 1.4% | \$35,581 |
| | | | \$10,001-\$25,000 | 1,940 | 2.4% | \$15,538 |
| | | | \$5,001-\$10,000 | 2,552 | 3.1% | \$7,008 |
| | | | \$1,001-\$5,000 | 11,307 | 13.7% | \$2,216 |
| | | | \$1-\$1,000 | 39,151 | 47.5% | \$292 |
| | | | 0 | 25,193 | 30.6% | \$0 |
| | | | Total | 82,464 | 100.0% | \$4,485 |
| * 30,621 of the 351,065 single-level Distributors are sales leaders without a downline ** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com . | | | | | | |

51.0% of all sales leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33.5% of first time sales leaders)

The majority of those Distributors who earned in excess of \$100,000 in 2012 had reached the level of Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of President's Team. They averaged 9 years as an Herbalife Distributor before reaching President's Team, with the longest being 20 years and the shortest being less than three years.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

From: Greisman, Lois C.
Sent: Friday, May 10, 2013 4:07 PM
To: Ammerman, Janet; Todaro, Christine; Vaca, Monica E.; Vander Nat, Peter J.
Subject: FW: HLF
Attachments: Haaretz Full Text.docx

From: Holley, Steven L. [<mailto:HolleyS@sullcrom.com>]
Sent: Friday, May 10, 2013 2:52 PM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

I thought you might find interesting the attached story about Herbalife that appeared yesterday on the Israeli new website Haaretz. Although the story concerns events in Israel, it points out the importance of senior distributors and their organizations in generating new recruits for the Herbalife pyramid scheme. The story also discusses some of the unorthodox methods those senior distributors use to recruit and retain new distributors, and the large amounts of money they earn in the process.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP

125 Broad Street, New York, NY 10004-2498

☎ (212) 558-4737 | 📠 (212) 291-9074

✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

The dream catcher: A Herbalife guru and his regime of sexual control and humiliation

Tzachi Gozali was a young man from Kiryat Ata when he decided to join Herbalife and start his own organization, GTEAM. Former members of his team speak of humiliation, financial loss and intrusion into their personal affairs and sex lives.

By Ayelett Shani | May.09, 2013 | 11:11 AM



Tzachi Gozali.

 Get HAARETZ on iPad

Ayelett Shani



The GTEAM logo. "Gozali always said, "When you leave here you will badmouth me. You will say that Tzachi is a son of a bitch. You don't mess with me," says Meital.



Gozali and a distributor. "Whenever the leader experiences challenges," says his right-hand person, "the wolves come to life and search for every way to reach the flock."



Gozali with organization members. "He says people on the outside are pathetic," says Ella. "Only those who listen to him will achieve success."



Gozali outside a Tel Aviv restaurant. All attempts to reach people who know him ended with the phone being hung up. No one wanted to talk.



A GTEAM party. "Lots of girls, alcohol flowing like water. All very glamorous," says an invitee.

"I was a kid from Kiryat Ata. Today I'm Gaydamak's neighbor. Bibi's neighbor. I live in Caesarea. I drive a car that costs as much as a house. Anyone who listens to me will succeed the way I did. Put some money in. You don't have any? Get a loan from the bank. Bring your discharge payment from the army. Don't listen to your parents. They're dream-stealers. They don't want you to succeed because they didn't succeed. All the people on the outside are miserable and unhappy. They make NIS 5,000. Only those who listen to me will achieve success. What's up with your friends? Why aren't they here? Friends that aren't involved in this aren't true friends. Erase them. If someone has the flu – don't you stay away from them? It's the same thing. This organization is your only family. You have no true friends. I care about you more than your parents do."

– Tzachi Gozali, in the mantra he delivers to members of his organization.

In the early 1990s, Herbalife – the huge American company that manufactures nutritional supplements and diet products, and operates by the network marketing method – arrived in Israel. Many locals joined its ranks.

Herbalife distributors' profits are based not just on sales but also on bonuses for recruiting other sales agents, in a pyramid structure. The broader and deeper the organization that a distributor builds, the bigger his profits. Distributors at the highest levels of the company, who've managed to construct a large organization for themselves, can earn hundreds of thousands of shekels a month.

Tzachi Gozali, a young man from Kiryat Ata who was working in an electronics shop, discovered Herbalife shortly after it began operating locally. Gozali, a highly charismatic fellow and talented salesman, had told people he knew that he always dreamed of making lots of money. The network marketing business opportunity appealed to him. He started selling company products and recruiting more people below him. In 2003, Gozali founded his own organization for selling Herbalife products: GTEAM.

Initial entry into GTEAM costs NIS 18,000, an investment that earns a person the rank of "supervisor." How does one persuade people to invest such a hefty sum in a business whose potential for success is uncertain?

According to a Haaretz investigation, the method involves, among other things, humiliation, threats, incitement against friends and family, insistence upon celibacy, total control of members' lives, efforts to persuade people to invest more and more money, and even sexual relations with some of the female members of the organization.

One method is to appeal to a relatively naive and gullible target audience – i.e., recently discharged soldiers – and to dazzle them with promises of big money, without elaborating on what exactly has to be done to earn this money. And then apply intensive pressure.

Ella (all the names in this article, except for Gozali and Liran Kettler, are pseudonyms) was 23 and working as the manager of a clothing store. An acquaintance by the name of Aviv, who later became her boyfriend, brought her into Gozali's "company."

"He told me he worked for an American company and that he couldn't elaborate," she says. "I asked him if they needed workers. He said he didn't think so and also that it cost money. Right away I said, 'I'm coming.' I'm a person who's always looking for opportunities. I went to Zichron Yaakov [for an organization seminar] and had to pay NIS 100 for lunch. Aviv said, 'Don't look now, but that guy' – he pointed to Tzachi – 'is someone who changes people's lives. If you're accepted, but only if you're accepted, I'll introduce you to him.' My curiosity was piqued. I went through the interview. I was told to come to a meeting, where they explain how the business works. It was at the Check Post [in Haifa]. Everyone there seemed high.

"'Why aren't you smiling?' they asked me. They explained how to get ahead in the business. There's a fast way and a slow way, and those who move ahead slowly usually drop out. I asked what it takes to get ahead fast, and they said: 'You have to put in NIS 17,000.' 'And what happens if you don't succeed?' 'There is no such thing. You're under the command of the No. 1 Herbalife person in Israel, Tzachi Gozali.'

"At this point, Aviv and I had started to be a couple. It was hard for me to say no to him. He came with me to take the loan from the bank, to make sure I didn't back out. And I myself, later on, when I started to work in the organization, went to the bank with other recruits. So I go to the bank, a 23-year-old girl who knows nothing about money, the daughter of divorced parents. I have a mother who had a kidney transplant and I help her, and of course I've got an overdraft. The bank manager says to me, 'There's no chance of you receiving a loan.' Aviv tells me, 'Go back again, and don't leave until you get one.' And that's what happened. I went back, and I got the loan. That's how it started."

'Trust me'

NIS 17,000 is a lot of money for a 23-year-old.

"Two days later I realized what I'd done. I told Aviv it wasn't for me. And he said, "Trust me."

"Tzachi knows how to recognize people's vulnerable points," says Tomer, a former member of the organization. "I got to it after my business partner cheated me out of a lot of money. I was a wreck. I had to sell my house. We'd just had a baby. I was very vulnerable, financially and emotionally. I didn't even have NIS 100 to pay to enter the seminar. He [Gozali] took me for a spin in his nice car and told me, 'I was like you and look where I am now.' I was invited to a party of the organization. I went. I'd been with three women my whole life. And I married two of them. All of a sudden, at this party there are all these good-looking people, lots of girls, alcohol flowing like water. All very glamorous.

“I thought to myself: This is a dream job. If you’d have been at the seminar, you’d have felt the same way. Everybody is nice-looking and healthy and happy. Clapping, dancing. So much fun. And on top of that, you’ll make millions. People from the organization are sitting there, having a great time. Everything is orchestrated. The songs are orchestrated. The jokes are orchestrated. It all works like clockwork.”

“I was 21,” Tamar recalls. “I answered an ad on the Internet. I came to this event, a seminar, it lasted five hours. They didn’t explain anything about the job. I asked questions and got no answers.

“It’s intriguing – you see people there in suits, they talk to you about big money. A lot of waiting and a lot of applause. I was asked over and over how badly I wanted it, and all this was before I even really knew what they were talking about. Everything there is very dazzling. I came back dazzled. I couldn’t fall asleep that night. They steamroller you.

“On Thursday I was at the seminar, and the next day I already brought the money. They tell you to come with NIS 18,000 and you don’t even know why.”

Where did you get the money from?

“My army payment, and I broke into savings.”

A sum of NIS 17,000-18,000 is approximately what the Israel Defense Forces gives soldiers upon discharge from compulsory service, a fact not lost on Gozali and others on his team. “It was the trick of someone in the organization,” says Tomer. “People from the organization would ambush people as they left the IDF release center. They stand there in their suits, acting like millionaires.”

Michal joined the organization together with another friend. Both women were told that if they brought in their grant payment, they’d get a discount. Na’ama, another former organization member, was recruited at a convention for discharged soldiers. Once she had joined, she was directed to go and recruit at such events herself.

Gozali avoids direct contact with new recruits when they’re just starting out in the organization. If they see him at all, it’s on stage. Meanwhile, his close circle works hard to foster an extreme cult of personality.

‘You’re a robot’

“In this life I’ve been privileged to meet an angel of justice who watches over me,” writes Liran Kettler – considered Gozali’s right hand in the organization – in its newsletter. “I’ve met a lot of people who think I’m blindly following a charismatic leader and ‘forgetting’ myself. For seven years I’ve been walking with wide-open and appreciative eyes after a great man ... Whenever the leader experiences personal challenges, the wolves, the vampires and the monsters come to life and search for every possible way to reach the flock and breach the fence.”

Ella describes how this approach is manifested. “Sitting in the first rows at the seminar are Aviv [her boyfriend at the time] and another aide named Oren, and they go wild over everything Tzachi says,” she relates. “For the new supervisors in the audience they play a song called ‘Oh How I Love You.’ Tzachi stands in the middle and everyone bows to him. Two of the women in his circle, Riki and Tal, are so overcome with admiration that they cry. They really cry.”

Michal: “The first time I saw him on stage, he was funny, charming, charismatic. You fall in love with the guy, with his abilities. At first I had no connection with him. Only with the tutor. And once in a while there’s a committee thing, sort of like on ‘Kochav Nolad’ [the Israeli version of “American Idol”], where judges sit and tell you what you need to do to be better and improve. And then you hear his opinion. At the end of every seminar, we would go up to him to ask him to sign our notebooks.”

Like an autograph?

“Yes. You do it because the tutor says to and it’s what everybody is doing. You don’t think. If you ask me about it now, I say it doesn’t make sense. But you just don’t think. There’s no place for rationality at all. You’re a robot.”

Tomer: “At the seminar, people go up on stage. They say, ‘I made NIS 70,000 or 20,000.’ In fact, as far as I can tell, very few people in the organization really make anything. All the rest lose their shirts. Then at the very end the big star of the night appears: Tzachi Gozali. Everyone dances and sings and applauds.”

Ella: “At first you fall in love. With the show. He’s a manipulator. He’s the Kiryat Ata boy who came from nothing and became No. 1. His car. His watch. He made me see there was a quick path to making it big. At the meetings they do all this promotion about him, “Don’t sell him cheap, say fancy things.” And you can’t just say ‘Tzachi.’ You have to say ‘Tzachi Gozali, No. 1 in Herbalife.’ It will be a great privilege for you to meet him. He says all the people on the outside are pathetic and miserable. Only those who listen to him will achieve success. And he’s the king – you have to tell him that, of course.

“There’s this one woman in the organization, his right hand. Her name is Riki, and she sleeps with his picture under her pillow. She slept at my house like that. And then she even says to me – ‘What, you don’t kiss his picture? Tzachi is the king.’ I said, ‘Riki, cool it.’ She told him [I said that]. You don’t want to know what he did to me after that.”

‘Like a wanted man’

Who is this man who has crowned himself king? Gozali, 46, was born and raised in Kiryat Ata, the eldest of six siblings. “He comes from very modest means,” Tomer explains. “He told me that every night, when he went to sleep, he would promise himself that one day he would be a rich man. He told me he was oppressed and bullied as a kid. He had a problem with the color of his skin, which is

brown and not white. He had a problem with the fact that he was from Kiryat Ata and not someplace posh.”

“Tzachi said he was the ugly duckling when he was younger,” says Meital, another young woman who used to work in the organization. “He said his brother was the hunk and always had lots of girls, and Tzachi was the kid who always got beat up. He said he also had a problem with his weight. That he lost weight thanks to Herbalife. He once told me that when he was fat, he had friends who would drink and smoke and tease him. And that since he’s been in Herbalife, he’s no longer in touch with them. That now he has smart, beautiful and rich friends.”

When Gozali got out of the army, he started working as a salesman at an electronics store in Kiryat Bialik. Tomer says Gozali’s uncle, Yishai Gozali, a Herbalife distributor abroad, is the one who suggested that Tzachi try it in Israel. In 2003, Gozali founded GTEAM, short for Gozali TEAM.

Gozali now lives in Caesarea. He has two children. He was widowed a few years ago, after his wife died from an illness. All attempts to reach people who know him end with the phone being hung up. No one wants to talk. Even anonymously. He barely has any presence on the Web. “Don’t bother trying,” one of the interviewees for this article told me. “He’s been living in hiding like a wanted man for years now. He works at hiding things and hiding himself.”

“He has no friends,” Meital explains. “He always said he was in conflict with his family. He also always said, ‘There is no such thing as friends.’ He had another saying about family: ‘Your parents are your dream-stealers, and the fact that they’re your parents and you have a blood tie doesn’t mean they have to be part of your life.’”

“He said his parents stole his dreams. That his father worked in a factory and his mother was a cleaning woman or a housewife, and that his father didn’t believe in Herbalife. He wanted him to learn a profession.”

Ella: “He used to say that none of his siblings ever encouraged him, but that it was okay, because we were his family.”

There’s one thing everyone agrees on: Anyone who ever met Tzachi Gozali will never forget him. Even now, years after leaving the organization and starting new chapters in their lives, most dropouts are afraid to talk. Most have changed their phone numbers and moved to new addresses. Some even left the country.

Gozali himself declined to personally respond to the charges made in the article and refused all offers to meet. He referred Haaretz to his attorney, but a response eventually came from Tami Ulman, one of the country’s leading criminal attorneys (see box at end of story).

‘Now it sounds crazy’

New recruits very quickly discover that the road to becoming a millionaire is not paved with good intentions, and to become full-fledged members of Gozali's team, they need to do a little more than just sell vitamins and diet shakes. Testimonies from former members show that as part of the coaching plan for quick success that Gozali developed, they are forced to disconnect completely from the outside world. They are persistently and systematically incited against families and friends.

At the same time, they are forbidden to maintain ties with other members in the organization. Gozali does not suffice just with warnings: He has also established mechanisms for oversight, enforcement and punishment that come in the form of weekly meetings and marketing seminars.

"They tell you, 'If your friends don't come into Herbalife, they're not really your friends. Stay away from them,'" says Meital. "They tell you that because your parents didn't succeed themselves, they're afraid that you will succeed. And then you start to hate your parents and the people around you. After that, they start to inculcate other lines, like: This organization is your only true family. But the amazing thing is that you're forbidden to talk to each other. It's forbidden to form social ties. If you want to talk to someone, you can only go to someone who's above you. So then you end up disconnected on the inside, too. They teach you that Tzachi is the only one who can help you in life – romantically, financially, in business. In every way. If you don't listen to him, you shouldn't be here. This is your father in this organization."

"There was no one to talk to there," Michal adds. "You're not allowed to talk to anyone. You don't have anyone's phone number."

How is that possible? Say we met in the organization and hit it off, and I want to go out for coffee with you – who's going to stop me?

Michal: "They'll ambush you. There are spies everywhere who are part of the organization. If they see you talking with someone, the report will get to where it needs to get to. If you sat next to someone at the parties they throw, or danced with someone – they pass on the reports. The isolation is terrible. They teach you how much your family doesn't have your interests at heart, how they're against you, and that only the people here are good for you."

"I was in a state where if anyone said one word against Tzachi, they'd better watch out," says Tamar. "At meetings they badmouthed my family; they said they were dumb and didn't really care about me. One day Liran said to me, 'Tell your parents that if they love you they'll come [to the organization].' I told them, in those words. And they came. I was torn. On the one hand, I had to bring people; on the other, if my father were to invest NIS 18,000 right now, in his condition, I would die. You see the frustration? I bring my parents, I bring my sister, I recite to them the words that I learned, but I'm scared to death that they'll really go ahead and do it."

You're very pretty. Were your looks a factor? Was that a subject of interest?

“Tzachi would say once in a while, ‘You’re making problems for me.’ Because relationships within the organization were forbidden.”

What does that mean exactly – forbidden? Explain it.

“Forbidden. There are people in the organization who know everything. I don’t know how. I had girlfriends whom I was secretly in touch with. When my friend Na’ama and I would meet, we’d go to the beach and be scared to death that they’d see us together. Ella and I became close, too. She was a level above me, so at first they liked that. They thought she would teach me things. Then they decided that it wasn’t right. One day my tutor tells me, ‘You will not approach Ella or talk to her anymore.’ I asked why and was told, ‘You don’t ask why.’ And that was it. I didn’t talk to Ella anymore.”

Because you were afraid?

“Yes.”

Loyal subjects

How could the head of the organization possibly know everything about all of its members, who come from different parts of the country, and basically, only meet in the context of the weekly seminars and marketing courses?

Tomer: “It’s very simple. The idea is first of all to create a very, very small group of loyal people. Six or seven people, out of whom two or three are his [Gozali’s] confidants. Through this group he forms subgroups, because each of these people has a group of people below him in the organization. And then each one of the people in the organization is obligated to report to the one above him if he sees someone else doing something. Doesn’t matter what. Peeing in the bathroom? He reports it. Sitting in a cafe? He reports it.”

But they can’t be everywhere all the time.

“They see everything. Say I was walking down the street and I saw you sitting at a cafe with someone I don’t recognize. I immediately report it to the person above me. An investigation starts. You get a phone call from Tzachi. ‘What are you doing? Why are you not working? Whom are you sitting with? Is it a business meeting? Did you sell him something?’ And now, if, heaven forbid, you tell him that you’re in Haifa, but whoever saw you said he saw you in Tel Aviv – it’s the end for you.”

Confession and humiliation

The weekly meetings where Gozali is supposed to teach members the incredible sales methods that made him a millionaire become rituals of confession and humiliation.

“The higher up you get, the harsher the humiliation,” says Tomer. “Every week, at the meeting, they take someone and make him stand up in front of everyone. ‘Did you put on a little weight? Now go up on stage and lift up your shirt so everyone can see your paunch.’ ‘Did someone say that she lost a few kilos? Fine, let her get up on the scale now, in front of everyone.’ And if it turns out she didn’t actually lose weight, then she’s really in for it. Girls get abuse for how they’re dressed: ‘How can you dress like such a slob around me?’ Or, ‘Look how you’re dressed, you slut.’ I was shell-shocked in the army: now, in certain situations I can’t fully control my bladder. I once told him that, in a very private conversation. He told everyone!”

“He would say to me, ‘I ordered you NIS 9,000 worth of products,’” Ella explains. “I’d tell him I didn’t need it. He’d say, ‘Okay, fine’ – and then abuse me at meetings. Everyone was afraid of him. Terrified. These meetings were pure humiliation. One time we were at an event and I dared to remark that somebody I met looked good. You know what they did to me? For an entire meeting they shouted at me that I was a whore and how dare I say some man looks good, a man who isn’t Tzachi.”

The fear and loneliness leave their mark. The external oversight mechanisms are internalized. The need to please Gozali becomes primal. It dictates the mood of the organization members.

Ella: “It’s all about pleasing Tzachi. If he’s happy, I’m happy. If he’s not happy, I’m in a terrible state of anxiety, afraid that he’ll know the truth. That he’ll know, let’s say, that now I’m goofing off and not working. Or that I’m friends with other girls in the organization. Or just that I go out, that I drink.”

And how do you feel while you are doing those things?

“I hear him inside my head all the time. Talking to me. All the time.”

Gozali intervenes in every aspect of members’ lives. From their daily schedule to their appearance. There is a dress code. With a special emphasis placed on weight. Girls are given a clear target: Get down to a size 34 or you won’t be able to succeed. Dalit joined the organization when she had a bit of a weight problem. Within months, she’d lost 26 kilograms. “I got myself into a state of malnutrition,” she says. “I starved myself. I lived on 500 calories a day. I wanted to please him.”

“You become a puppet on a string,” another woman notes. “You have no opinion on anything. Not even what to wear. [They say] ‘What’s with those earrings? Take them off. What’s that nail polish? Take it off.’ Colorful nail polish is banned because that’s for whores. It’s forbidden to open a Facebook account. It’s forbidden to go to a pub. At meetings they explain how only whores and rapists go to pubs. People go there to do drugs and have orgies. You’re not allowed to go to the gym. That’s for whores.”

“During the first year, you’re in this real state of euphoria, and then your mental situation starts to deteriorate. You start to fear the next day,” says Meital. “Because every time you come back from a seminar, you’re infused with this energy – you say, ‘Okay, now I’m about to make it big,’ and then you find that it’s not that way at all. And then you really start to be afraid, and all the things he says –

'If you don't listen to me, you won't succeed'; 'If you don't drink five [Herbalife] shakes a day, you won't succeed.' You hear that 24/7. Wouldn't you believe it already? You feel like there's something wrong with you, and you're getting all these negative thoughts and you're scared. You're scared that Tzachi will read your thoughts."

The abstinence stage

Isolated, frightened, almost buckling under the pressure, many girls start to lose a grip on reality. They are convinced Gozali can read their thoughts. Once confronted with the next prohibition – not being allowed to have sex – they accept it in the most natural way. The more so because, in contrast to the other prohibitions, this time Gozali offers a pure business rationale: If you have sex, he explains to them, you will not have the energy for business.

The demand for abstinence "was something very basic in this group," Meital says. "Tzachi knew at once if someone could not abstain from sex. Don't ask me how. He would look the girl in the eyes and know that she had slept with someone the day before, or two days earlier, or half a year before."

How can that be?

Meital: "I swear to you. He knew."

He was able to look you in the eyes and say, "Meital, I see you had sex a week ago"?

"Yes."

That doesn't make sense.

"I can't explain it. Maybe it's because of the way he is presented. Whenever he's introduced onstage there's a big promotion for 'Tzachi the Great.' People say: 'Beware of him, he reads minds.' You see the people who have been with him for four or five years, and he really does read their thoughts. They are the dominant group, they earn a lot of money and are fanatic about him. And then you yourself start to be afraid: He knows what you're thinking, he knows that I just thought something bad about him, or he knows that I wasn't listening to him, or that I didn't abstain from sex.

"Riki, his assistant, is his biggest lackey," Meital continues. "He sent her to make sure the girls did not have sex. It's not a secret – he says so onstage. He can stand on the stage and call someone a whore, in front of everyone, only because he found out she went out with someone the night before."

The next stage follows naturally. After forbidding the girls to maintain romantic relations either inside or outside the group, and forcing them to renounce sex, Gozali chooses to fill that void in their lives himself.

Ella: “He separated me from my partner Aviv. He sent him to the Caribbean, to work. I begged him to let me go, too. I saved up money. He refused. I was shattered by the separation. I cried all day. One day, Tzachi said to me: ‘Listen, I see you are in a funk, let’s go for breakfast.’ Well, when you are starting out in a big organization like this and he, the guru, invites you for breakfast – you feel you are in a dream. We went for that bloody breakfast, which changed my life.”

What happened?

“We got to Herzliya, and he said: ‘Let’s go for a drive.’ He took me to the Daniel hotel. I had never been in a such a posh place. I find myself with him in a room. The whole room is mirrors. He says: ‘This is where all the rich people bring their mistresses.’”

Didn’t you ask him why he brought you to the hotel?

“There were questions you were not allowed to ask.”

What happened in the room?

“He undresses and starts to touch himself. [He says] ‘Tell me what you feel like doing, touch me.’ That was the beginning of four years of hell.”

He never tried before that?

“One day, after I’d been in the organization for around half a year, he took me to the bathroom with another girl. He tells me to undress. He wants to see my breasts. I say, ‘What?’ He says: ‘Undress, because my wife is getting radiation and I want to see if the same thing will happen, if the result will be the same.’ Now this is Tzachi, you can’t say no. ‘I want to see the work they did on you, maybe I’ll take her to your plastic surgeon.’

“That day,” she continues, “I had a talk with Tzachi. I wasn’t in touch with my father at the time. Tzachi exploits girls who have a particular deficiency. When I started to cry about my father and told him I hadn’t been in touch with him for 10 years, and how happy I was to have met him [Tzachi] – he suddenly starts kissing me. ‘What are you doing?’ I said, and he says, ‘Sorry, sorry.’ I told him, ‘It’s all right.’ Because, you know, you have great respect for him.”

You felt you had caught him in a vulnerable place.

“Yes. He told me about his wife, who was undergoing radiation treatment ... He has no boundaries. He would say that as a boy he could masturbate 15 times a day. One day he told me, ‘You don’t know how to have sex.’ He brought a woman from the organization, undressed her and slept with her in front of me. He told me, ‘That’s how it’s done.’ Then he slept with me. I was a girl of 24. I was shocked.”

And all this time you went on working in the organization?

“I went up the ranks of the organization. After becoming a supervisor, there is a higher and bloodier rank called ‘World Team.’”

Which gives you what?

“For me it was just an opening to more serious abuse. You need to show total sales of \$10,000 in one month. Or to recruit three supervisors. I recruited two and made up the rest with another loan, of course – this one for NIS 8,000. I already had a prior loan of NIS 17,000, but I was in the World Team. Tzachi let me speak on the stage. Liran shook my hand. And then came a trip to the World Team school, in Lisbon. I was in shock when I got back.”

Why?

“Because he came to my room every day. I can’t even call it sleeping with me. He just showed up, entered, came and left. And if I wasn’t in the room, or didn’t let him have his way, there was big trouble. I kept telling him, ‘You are married, I can’t do things like this, I wasn’t brought up like this.’”

How did you deal with what was happening to you?

“I scratched myself until I bled. I showered with boiling water. I wept bitterly. I looked in the mirror and said, ‘You are ugly, miserable, you have nothing to live for.’ I would cry until I passed out. I pounded my head on the wall for hours. You don’t really sleep. He would say to me, ‘I hate you for being so smart. If anyone will overthrow me one day, it will be you.’”

Did you know about the other women?

“One day we had a seminar in a hotel. I saw a woman disappearing with him and returning without lipstick. I said to him, ‘Is it true that you did it with her, too?’ He said, ‘I’m wild about my jealous girl.’ I said, ‘What did you do to her?’ He replied, ‘Shut your mouth, you whore.’

“He knew I knew what was happening to those girls who suddenly disappeared with him. I can’t explain the look on the faces of the girls after they got back from the trip with him. Like they didn’t have a muscle in their face. It was the same with me. People who knew me thought I had gone crazy. They wanted to know what happened to Ella and her joie de vivre. The real Ella. He made me hate the whole world except for him.”

How long did this go on?

“Five years.”

Including the sexual relationship?

“I was smart about that. I was always with people. I didn’t let him get to me when I was alone. But there were situations when I had no choice. Lisbon was a catastrophe. Then there was another event abroad, in Barcelona.

“In Barcelona they wouldn’t let us go sightseeing, only poked into our souls. They told Michal that she wasn’t doing well in the business because she never stopped thinking about sex. How could she not think like that after what she went through with him?”

And for part of the time you also had a boyfriend in the organization, right?

“That meant more fear, more concealment. I didn’t invite people over. I was afraid they would see we were living together.”

Lots of pressure then: the business, Tzachi, the concealment.

“There was also pressure because of my partner, who didn’t do well in the business. So I financed him, too. I was working for two; having sex with two. It’s madness. Do you know what it is when you have been seeing someone for three-and-a-half years, and he is in the organization, and you say to him, ‘If you see me disappearing, come and save me’? Do you know what it’s like when your partner knows someone else is having sex with you and can’t do anything about it? He is a dishrag, just like you, because if he were a man he would kill him.”

He knew all along?

“Knew, and said nothing.”

‘No way to say no’

Tamar: “In the first two months I didn’t exchange a word with [Tzachi]. Then, one day, he spoke with me at a seminar. It was a good conversation. He asked questions about me. I told him. Then he announced he’ll become my tutor. I was like, ‘Wow, great! Tzachi is tutoring me.’

“We arranged to meet in Ceasarea,” she recalls. “In the evening. In a restaurant. We spent maybe three hours there, the time just flew by. He kept saying things like, ‘If we kiss, what will happen?’ And I was just an innocent, a girl of 21.”

Were you flattered?

“Obviously.”

Were you afraid?

“Yes, of course. Like, now I’m going to say no to him? Little me – I am going to say no to him? Because you see all the admiration. Everyone was always talking ‘Tzachi, Tzachi, Tzachi.’ Somehow that seeps into your head. You also start saying, ‘Tzachi, Tzachi, Tzachi.’”

What happened next?

“One day, at a seminar, he drove to some grove in Pardes Hanna. The seminars were in [nearby] Binyamina. He undressed – in a second. So, what’s the problem? Because it’s like, supposedly, with your consent. Like, if you were to ask me now, then no way. But then, what will you say – no? He undresses and tells me to do all kinds of things to him. Like, he doesn’t force me in the sense that he grabs my head and makes me, but there is no way to say no to him. You have to understand that from our point of view he is a leader. A spiritual leader. Will you say no to your leader?”

Does he say, “This is a secret, just between us”?

“He doesn’t have to. Sometimes he throws out something like, ‘If I didn’t trust you, I wouldn’t do these things with you.’ But he didn’t have to say.”

How long did it go on?

“Half a year intensively, then half a year on and off. After that I left.”

Creative solutions

All along, the members of the organization are subjected to powerful economic pressure. Most are unable to make a living from the business or meet their assigned sales targets. Gozali’s solution: more courses they have to pay for; more money to be invested; more loans from the bank or from parents. The debts start to pile up.

“You take out a bank loan, let’s say NIS 20,000, at 7 or 8 percent interest,” Tomer explains. “You have bought products for NIS 16,000, after being told that you can sell them for NIS 32,000. What’s the problem? You only need three people a month. What’s three people a month? Don’t you have some fat friend? You’ll pay back the loan in a jiff and come out with a profit of NIS 10,000.”

The social pressure also plays a part here.

“Of course. You’re in a supervisors’ meeting. One guy says, ‘I made NIS 30,000. I put ads in the paper, I put up signs, I made the money.’ So he has that money to invest. You don’t. So take out loans. Bring your army discharge grant, take money from your parents. The pressure makes you feel terribly uncomfortable. How can it be that he took in NIS 30,000 and I didn’t make one shekel? How could that 19-year-old kid make NIS 15,000 and I didn’t make anything? Well, it’s all nonsense, of course. At best he made NIS 250. But you don’t know that.”

And you're stressed.

“Absolutely. You go to Tzachi. You say, ‘Please teach me how to do it.’ He says: ‘Look, when I started I had no money. I had a jalopy of a car. I would take a loan from the bank and invest it in advertising straightaway. That’s how I made money.’ Well, Tzachi is the guru. If that’s what he did, and I follow suit, I will be a millionaire, too. People are under pressure. Economic distress. Very strong social pressure. It’s like this is the last rope that’s left to pull them out of their plight. They don’t understand they are sinking deeper.”

Tamar: “First of all, they hide information. For example, I didn’t know that I had to renew ‘supervisor’ status every year. At the end of the year they start pressuring you. [Renewal entails another payment of NIS 17,000.] Liran calls me while I’m in the bank and being told I had better do something about the state of my account. He says: ‘You have a week to come up with a solution.’

“I take loans. Lie. I say I need the money for school. The whole time I am pressured to buy more and more products. Every seminar costs NIS 200. That’s NIS 200 a week and you have no income. And you have to show up. Anyone who doesn’t show up is under scrutiny right away. You’re scared. Pressure makes you do things.

“I remember I recruited a distributor. A lovely guy, Ethiopian, from Tirat Hacarmel, with so-so Hebrew. I was sent to his home to talk to his parents and put on a show for him. I came dressed to the nines and put on a show for him and his parents, and I took money from them for the products. You see this tiny home, seven children living in a matchbox. My tutor praised me. He said I was doing the right thing.”

Na’ama: “You commit yourself to all kinds of things. You’re made to feel like, here, do this now and it will be your route to success, or you’ll blow it. You just have to do it. You end up under obligation to the credit companies and paying unbelievable commissions, even if you make maybe one sale a month.”

To maximize the commissions they get from Herbalife, the distributors have to accumulate a quota of volume points – that is, to demonstrate a certain amount of sales, according to their rank. Gozali used to inflate his sales turnover with creative methods.

For example, he bought distributors’ kits and sold them himself to new recruits, even though it was not he who recruited them. So he pocketed the commissions and also met his optimal monthly sales target.

The creativity spilled over into pricing. According to the testimonies, Gozali sold the kits at a markup of 30 percent over their true price. “A kit like that costs NIS 850 today,” Tomer says, “but he sold them for NIS 750 eight years ago.”

Mired in debt

The same big money that lures young women into the organization is the reason they eventually leave. They manage to cope with the fear, the loneliness, the frustration, even with the sexual exploitation. What finally gets them is the economic pressure. By the time they muster the courage to get out, they are mired in debt.

Na'ama says she ran up debts of NIS 70,000. "I am still working to repay them," she adds. "I reached a point where I had 30 agorot in my purse, after using all the resources I could find. I can't explain his impact.

"You understand that you are doing something irrational, that you have debts of NIS 40,000 and are taking another loan of NIS 27,000. But you do it. You isolate yourself from the outside. You feel that your family is against you, that your friends are against you. The pressure was so great. I reached a state of totally hallucinatory physical illness. My body would just become bloated with pressure."

Which only increased.

"Yes. From week to week you have to arrive with proof. Did you sell? Did you lose weight? I was 24 and had three bank accounts. I told him: 'Tzachi, I have no money.' He said, 'You'll get by, I'm counting on you.' He is a guy with insane charisma. I have no doubt he is aware of his power and of what he is doing. He has an incredible power to influence people. Just think, 150 people in the hall are cheering and applauding him."

Tamar: "You don't do well in the business and you want out, but you can't get out, because you are in a type of mental prison. You are made to understand that if you don't make it here, you won't make it anywhere. You will be a cipher in this life. And this is the only place where they know how to live right; only Tzachi will make sure you take the right road. Anyone who doesn't want to come here is a retard. Anyone who leaves is a nothing. And you're afraid of that, too. What, when I leave will I get that kind of verbal abuse too? I have no money. I take money from my sister. I babysit. And every week I come to the seminar and spend NIS 200, and I don't succeed and I am frustrated."

Adds Na'ama, "There was a stage when I simply had no money for the seminar. I told my tutor, 'I don't have the money for it, I don't have money for gas.' I started coming sporadically."

'Scared to death'

Weren't you afraid to leave?

Na'ama: "I was scared to death. So I made sure to settle it with him as neatly as possible. I called and told him I have to work out a few things with myself, so I won't be coming to the seminars."

Meital: "Most of Tzachi's seminars were about people who had left Herbalife. He always said, 'When you leave here you will badmouth me. You will say that Tzachi is a son of a bitch. I'll show you. You don't mess with me. You are here by choice. I did not put a gun to your head. You gave the money by

your choice. Whoever doesn't listen to me will not succeed. But you have to know that if you leave here and badmouth me, I will come to you at night and threaten you, and I will get to your family, too, and I will pursue you for your whole life.”

Then how did you dare leave?

“I didn't. There was a stage at which Tzachi said, 'People are sitting here who are not succeeding, and I am excluding them from the business.' He had Liran call me and tell I needn't bother coming to the seminar until I made a certain amount of money. That was it. Then came all the suits and debtors. I had debts in four banks and I no longer had a choice. I went to work in a restaurant to cover my debts. In the first year he still called, to ask where I was.”

Ella relates that she also left in dire straits. “I was scared to death to leave. But I told myself: either that or I commit suicide or hospitalize myself in a mental institution. I couldn't cope with so much crap anymore.”

How did it happen?

“He let me teach a two-day program in a hotel in Tiberias. I had NIS 20,000 in my pocket. He told me he had ordered some merchandise for me. I said I didn't need it, and he said: 'I know you will do it, I am counting on you.' I told him that my whole house was filled with merchandise. He didn't leave me alone for the whole seminar until I cracked and gave him NIS 9,000. I remember coming off the stage and saying to myself, 'Ella, you will never come here again. This is it.' And it was.”

Weren't you afraid?

“No. I was already past that. Because everything had hurt me, nothing hurt me anymore.” As Ella tells me her story in a cafe, her eyes continually dart about. She maintains surveillance, scans the passersby. “It's a habit by now,” she sighs, “I'm always watching to see if they're after me.”

Did he threaten you?

“He would tell me, 'Don't mess with me.' On the stage he would scream, 'Show me a son of a bitch who can mess with me.' [He'd say] 'Be careful, Ella, you have a big mouth, you don't know who I am. I will come to your home.' I was very scared.”

Of what? Of him? Of the business failure?

“With me he created a sense of dependency. You come to believe that without him you are not worth anything in life. That you will never find a job. You lose the taste of life. You are a robot. I really wanted to like the business, but he wouldn't allow that. He let you like only what he wanted you to like in the business.”

What did he want you to like?

“Recruiting. I brought a girlfriend. Suddenly she disappeared, she didn’t want to come. I said to him, ‘You messed with her, didn’t you?’ He said, ‘When will you bring her, so we can have an orgy?’”

Why didn’t you go to the police?

“I am afraid to go through it all again. Also, my mother made me swear I wouldn’t go to the police. She told me, ‘Your future is ahead of you, it will stain your reputation, you still have to meet men.’ What men?! I don’t have any. I can’t sleep. I don’t have a relationship, I don’t trust them. I can’t bear the thought of being touched by a man.

“After I left the organization, I just lay in bed for a month and a half. My weight shrank to 42 kilos. Slowly you return to life. Get to know a sense of enjoyment ... You go to the beach. Four years I wasn’t at the beach, because if I had worn a bathing suit I would be in big trouble.”

Tamar: “With my partner now, I am realizing all kinds of things that changed in me. All kinds of inner scars. I was a super-assertive person, and suddenly I became so unassertive. In fact, it was really hard for me to meet men. I don’t trust men, I am suspicious of all of them. After I left the organization I was sure that everyone who came over and talked to me was one of their collaborators. [Gozali] has to be stopped. He is doing it to more marvelous, innocent people.”

Responses

Attorney Tami Ulman, on behalf of Tzachi Gozali: “Tzachi Gozali totally denies what appears above. He reserves the right to sue for libel anyone who damages his reputation.”

A spokesperson for Herbalife: “The distributors of Herbalife are self-employed businesspeople and are not employed by the company. We teach and promote activity at the ethical level and at the highest level of integrity of business management. The company operates according to clear rules of consumer protection. These rules include a policy of unconditional return of products within 30 days of their purchase date. In addition, the distributors themselves are entitled to a policy of returning goods within 12 months of their purchase.

“If anyone has an issue to take up with someone, he is invited to make this known to the company, and we will do our best to provide an appropriate response to his needs.”

Liran Kettler stated: “Write that I do not want to comment.”

From: Greisman, Lois C.
Sent: Tuesday, March 19, 2013 6:07 PM
To: Vaca, Monica E.; Vander Nat, Peter J.; Todaro, Christine; Ammerman, Janet
Subject: FW: HLF

From: Holley, Steven L. [mailto:HolleyS@sullcrom.com]
Sent: Tuesday, March 19, 2013 12:08 PM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

You probably are aware of Matt Stewart's postings about Herbalife on the Seeking Alpha website, but this one posted yesterday morning struck me as particularly lucid. The guy could use a good editor because he tends to repeat himself, but his analysis of the situation faced by new Herbalife distributors, from a commonsense perspective, is quite compelling.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

Herbalife: 5 Common Sense Arguments

Mar 18 2013, 08:06 by: Matt Stewart

Seeking Alpha

I have written numerous articles arguing that Herbalife ([HLF](#)) is a pyramid scheme. Many Seeking Alpha contributors have tried to analyze the data to either confirm or deny the idea that Herbalife is either a legitimate or an illegitimate business. Analysts have poured through court cases, financial models, etc. Sometimes the shortest distance between two points is common sense.

In this article, I would like to summarize my thesis and try to use basic common sense to articulate concisely why my analysis leads me to conclude that Herbalife

is engaged in a pyramid scheme which is a form of "business opportunity" fraud. The answer lies in the way it misleads its distributors.

To begin, I think it is important to understand what business Herbalife is in, what its value proposition is, what its brand promise is.

Taken from the company's latest [10k](#), Herbalife states:

We are a global nutrition company founded in 1980 that sells weight management, healthy meals and snacks, sports and fitness, energy and targeted nutritional products as well as personal care products. Herbalife distributes and sells its products through a network of independent distributors, using the direct selling channel. As of December 31, 2012, we sold our products in 88 countries to and through a network of approximately 3.2 million independent distributors.

In my own words, Herbalife is a product company that rents its salesforce by recruiting independent entrepreneurs to sell product and then compensates them accordingly. In order for Herbalife to successfully recruit individual entrepreneurs to distribute product, the company must table and present a legitimate "business opportunity" to participants. Alternatively, the company must mislead recruits in order to secure their services.

I would like to argue that the question of whether or not Herbalife is a scheme or not boils down to the answers to these simple questions.

Does Herbalife need to deceive its new recruits to acquire their services or not? If a potential recruit was fully informed, would they sign-up? If a participant signs-up to pursue the Herbalife retail "business opportunity" can that individual make money or not?

Q. What does legitimate success look like?

Legitimate success in the context of a Herbalife distributorship is the ability to purchase products for a wholesale price, mark them up, and resell them for a retail profit to ultimate users of the product. This is the legitimacy that must be

produced for the business to pass the Koscot test. [William Keep and Peter Van Der Nat](#) have tried to look at the generic MLM compensation scheme in aggregate to determine whether or not a given MLM company is a pyramid scheme. [Bill Ackman](#) has attempted to apply the Van Der Nat/Keep model to Herbalife. All of this research has stimulated robust debate.

In this article I would like to advance the idea that there is a more straightforward or direct way to conclude that Herbalife is a pyramid scheme. This direct way is to look at the experience of the distributor at an individual level.

Q. What is the likely business outcome for a new recruit who joins Herbalife today to pursue the retail "business opportunity"? I submit that if we can answer this question fairly and honestly, we can tell if Herbalife is a pyramid scheme or not.

The reason I am thoroughly convinced that Herbalife is a pyramid scheme is because the company's pricing and compensation policies make it virtually impossible for a Junior recruit to make any retail profit pursuing the "business opportunity". In practice, Herbalife's policies promote an endless chain. Evidence of market saturation is literally everywhere. As a result, the company is selling a retail "business opportunity" to new recruits that simply doesn't exist and is misleading new recruits to do so.

It is also my firm conclusion that a significant percentage of Herbalife's sales volume is the direct result of [Inventory Loading](#), the up-front purchases of wholesale product made by new recruits to achieve advancement in the scheme.

In more aggressive language, the company recruits individuals to participate as partners in its business, gets them to "buy-in" by ordering product. Then, the company turns around and cuts these partners off at the knees with unfriendly policies and procedures.

I would like to point to 5 specific things that Herbalife does that leads me to that conclusion. These are 5 things that are directly in the company's control but serve to directly undermine its business partners.

1) Geographic Saturation - Herbalife does not offer its distributors any territorial protection, exclusivity nor territorial franchise rights whatsoever as it doles out distributor rights seemingly to anybody with a heartbeat and \$59 to spare.

Specifically, retail market viability is an irrelevance to the company as it expands its distribution network ad nauseum. The company is unconcerned about the ratio of retail customers to distributors and does nothing to prevent saturation from occurring. This lack of control must inevitably lead to market saturation by geography. This inevitably means that the last participants to join the distribution network in a given territory are destined to lose money *ceteris paribus*.

Geographic saturation is inevitable. Retail customers will prove elusive.

Geographic saturation also makes Herbalife an endless chain.

Imagine, if you will, a McDonalds restaurant on all 4 corners of a busy intersection. What would we say to the franchisee for such a business? Would we say: "Boy, your business partners are treating you well!" or would we say "Boy, your franchisor is hosing you!"

Common sense leads me to conclude that too much competition can only be good for Herbalife and not the marginal recruit. The greater the number of distributors the worse the economic prospects for those same distributors.

2) Price Discrimination - As if an endless supply of distributorships weren't enough, Herbalife charges its new recruits 50% more for wholesale product than it charges its Sales Leaders. This deliberate price discrimination is likely an illegal anti-trust violation. Certainly, it encourages Inventory Loading. Certainly, it makes it impossible for Junior recruits to compete with Sales Leaders for actual retail customers in the end market. The actual retail price that real product transactions occur at guarantees economic losses for a Junior distributor were that distributor to retail at the same price. Herbalife's arguments that a new recruit can buy product for 25% off and retail it for SRP are a fiction.

The company knows for a fact that its Sales Leaders buy wholesale product for 50% off. The company also knows its Sales Leaders sell product routinely to end-users for 25% to 35% off. Yet still, the company misleads new recruits that legitimate retail opportunity exists at full SRP and continues to market a retail "business opportunity" to new recruits that doesn't really exist.

Common sense leads me to conclude that very little product may actually be sold at full SRP at all because no rational customer would pay full SRP.

3) Channel Conflict - as if price discrimination wasn't bad enough, Herbalife now tells us without apology that 73% of its distributors are simply "discount customers" purchasing product **directly from the company** at prices 25% - 50% off. This revelation is further evidence of market saturation. Instead of recruiting distributors as participants of the scheme, supposedly Sales leaders are left to recruit customers because no legitimate distributors are left to recruit. While this disclosure seems to be related to the company's desire to pass the Koscot test, the obvious implication of this unapologetic disclosure has to be: "Where on earth is the retail "business opportunity" then?"

The recently disclosed fact that the company now sells directly to end users must make it virtually impossible for anyone pursuing the "business opportunity" to find retail customers willing to pay full price. How is a new recruit supposed to compete against the company itself for retail sales if the company unabashedly is engaged in direct selling and at a lower price point?

It is easy for the company to say: "No big deal. Distributors with no downline are just customers", except for one thing. It's a huge deal! This revelation basically confirms that there simply is no legitimate retail "business opportunity" at all for a new distributor recruit trying to sell product at full SRP.

Common sense tells me that channel conflict can't be good for those chasing the "business opportunity".

4) Tariffs and Taxes- as if Direct Selling wasn't bad enough, Herbalife also imposes additional tariffs and duties that elevates the COGS for participants by 10% or more. This practice also makes the retail business unviable for a new recruit.

Common sense tells me the higher the cost of the product, the more difficult it would be to retail.

5) Misrepresentations - Most if not all of the marketing materials produced by the company and its distributors likely mislead potential participants as to their real probabilities of success in pursuit of the "business opportunity". Specifically, the company fails to disclose how its endless recruiting policies, discriminatory pricing

policies and direct selling policies all conspire to undermine the new recruit's chances of ever succeeding as a retailer. The company also does not include the number of recruits who fail in its annual [Statement of Average Gross Compensation](#). In fact, the company's Statement of Average Gross Compensation includes exactly zero information at all on how much money a distributor might make **as a retailer**. Rather, the entire disclosure is focused on recruiting rewards paid to upline participants.

Common sense tells me that if Herbalife gave its new recruits robust and complete information on the retail "business opportunity" including actual retail profits earned and churn rates, most distributors would never sign-up at all.

To summarize, the reason I am convinced Herbalife is an endless chain is because it seems obvious to me that the company is peddling a retail "business opportunity" that simply doesn't exist for a new recruit. While it may be true that an individual who was fortunate enough to get in early in the recruitment cycle can make some money, this is not evidence that a "business opportunity" misrepresentation does not exist. Nor is evidence of retail sales evidence that a "business opportunity" misrepresentation does not exist.

I would argue that the endless and relentless chain of recruiting activity to the inevitable point of market saturation is the common sense trump card that makes Herbalife a pyramid scheme. One must look at the entire scheme and not just select individuals to determine whether or not a pyramid scheme exists.

All evidence of actual business success in the business model accrues to participants above the Supervisor level. All evidence of failure in the scheme is directly connected to those at or below the Supervisor level. Specifically, the participants who churn out or fail at the enterprise are the most Junior participants year after year after year. Last year 1.5 million left, this year that number is likely to be higher.

Longs like to argue that the company has lots of customers and that the company moves lots of product and that there are lots of retail sales, etc.

My questions to each of you who advance that position are simply these:

What does any of this have to do with whether or not the company is a pyramid scheme or not? What does any of this have to do with whether or not new recruits can make any money? What does any of this have to do with whether or not the company treats its distributors fairly and honestly or not?

Q. How does Herbalife treat its new recruits?

The answer to this question is the central evidence that this company is a pyramid scheme. It is the central evidence of deception.

Herbalife is a pyramid scheme because as its business matures in each geography it penetrates it ends-up deceiving its new recruits by promising them the opportunity for success at a retail "business opportunity".

Then, the company immediately turns around and supports policies and procedures that make it absolutely impossible for that success to be achieved unless you happen to be lucky enough to have signed-up early in a geography or unless you are a Sales Leader or higher in the scheme.

End markets obviously get saturated, the company imposes no limits on saturation.

End retail prices obviously get discounted, the company imposes no limits on price discounting nor reveals to new recruits the actual likelihood that they will be able to sell product at SRP.

End users obviously get sold to directly, yet the company does nothing to prevent channel conflict.

The evidence of market saturation is everywhere.

Herbalife's policies and procedures helped the company move \$4 billion of product last year by saturating 88 countries around the world. These policies and procedures also likely victimized as many as 1.5 million distributors in the process last year alone.

If I sign up today as a distributor, Herbalife's policies and procedures would conspire to transfer economic value from me as a new recruit who would make

product purchases to finance inventory to participants up the line including shareholders. Herbalife's policies and procedures basically guarantee that I will lose as and when I go to retail product because there is no material mark-up to be had. Herbalife's compensation policies and procedures meanwhile reward those in the upline on my product purchases/Inventory Load whether I succeed or not as a retailer.

Herbalife markets a retail "business opportunity" that no longer exists, not for the last guy in, not for the late entrant, not for the marginal recruit.

Common sense analysis tells me that Herbalife is misleading its new recruits by recruiting them into saturated end markets. The building blocks for the deception are as obvious as the blue skies above:

- Aggressive and Relentless Recruiting
- Misrepresentations/Omission of Key Details
- Geographic Saturation
- Wholesale Price Discrimination to encourage Inventory Loading
- Aggressive Discounting off SRP by Senior Participants
- Deliberate Direct Selling/Channel Conflict and
- An 85% plus churn rate

Or if you prefer, a "business opportunity" that simply doesn't exist for the majority of the **newest participants**.

Common sense is the reason the FTC should intervene. Common sense is the reason the SEC should shut the endless chain of recruitment down.

If you want to know why Herbalife is a pyramid scheme all you have to do is zero-in on the obvious idea. All you have to do is reduce the argument to its simplest and most granular level. **How does the company treat its newest distributors, its so-called business partners?** 85% churn rates tell us the answer is "not well." Most lose money.

If you were to become a distributor today, what would happen to you and your money? Would you sign-up to retail Formula 1? What does common sense tell you?

The answer will guide you quickly to conclude whether or not Herbalife is a pyramid scheme (an endless chain) or not. Ackman has it right. The FTC and SEC regulators will quickly see it too. Icahn will ultimately figure it out when he asks the right question.

A pyramid scheme is a form of "business opportunity" misrepresentation. If you are selling a retail "business opportunity" to new recruits that doesn't really exist how do you argue that your business model is legit?

What does common sense tell you?

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

From: Greisman, Lois C.
Sent: Wednesday, March 27, 2013 3:46 PM
To: Ammerman, Janet; Todaro, Christine; Vaca, Monica E.; Vander Nat, Peter J.
Subject: FW: HLF

FYI

From: Holley, Steven L. [<mailto:HolleyS@sullcrom.com>]
Sent: Wednesday, March 27, 2013 3:11 PM
To: Greisman, Lois C.
Subject: HLF

Hi Lois –

I wanted to call your attention to an interesting article that was published today on a website called The Verge. The article discusses in detail how lead generation businesses associated with senior Herbalife distributors operate to the detriment of unwitting consumers.

<http://www.theverge.com/2013/3/27/4099100/income-at-home-herbalife-scamworld-biz-opp>

Pershing Square continues to believe that these lead generation businesses have operated for many years with the full knowledge and at least tacit approval of Herbalife.

Regards,

Steve

Steven L. Holley | Sullivan & Cromwell LLP
125 Broad Street, New York, NY 10004-2498
☎ (212) 558-4737 | 📠 (212) 291-9074
✉ holleys@sullcrom.com

This e-mail is sent by a law firm and contains information that may be privileged and confidential. If you are not the intended recipient, please delete the e-mail and notify us immediately.

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

October 1, 2013

Via FedEx

Lois C. Greisman, Esq.,
Associate Director, Division of Marketing Practices,
Federal Trade Commission – Bureau of Consumer Protection,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: Herbalife

Dear Lois:

I write on behalf of our client Pershing Square Capital Management, L.P. (“Pershing Square”) to bring to your attention the enclosed bankruptcy petition filed by senior Herbalife distributor Michael Burton and his wife Michelle in the Eastern District of Texas, Case No. 13-41669.

By way of background, Michael Burton is a member of Herbalife’s Senior Executive President’s Team and part of the downline of Chairman’s Club member Dan Waldron. I enclose a disc containing slides that detail some of the deceptive practices engaged in by Burton and Herbalife’s complicity in those practices.¹

Burton’s bankruptcy petition is interesting in several respects, including the following:

- Burton, who tells potential recruits that he has made millions of dollars with Herbalife and enjoys a lavish lifestyle, has assets of \$74,135.92 and liabilities in excess of \$7.1 million.

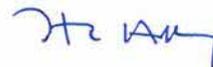
¹ Sources for the materials featured in those slides are provided in the Comments field.

- Burton owes the Internal Revenue Service an enormous amount of money, including \$938,097 for the years 2004-2008, \$63,410 for 2009, and an undetermined amount for the years 2010-2012.
- Burton owes exactly \$500,000 to a total of ten individuals or entities. These debts, which are all in the amounts of \$25,000, \$50,000 or \$100,000, are either not described at all in the bankruptcy petition or are vaguely described as "Debt of Corporate Affiliate." Two of the creditors on these debts are based in the Bahamas.
- Burton owes money not only to his own online recruiting businesses (which are described in the enclosed slides), but also owes money to other companies that we believe are involved in selling leads and other business tools to Herbalife distributors, including eHome Business Network (associated with Anthony Powell) and On-Line Marketing Solutions/Centurion Media (associated with Shawn Dahl).
- Burton owes a very large amount of money to courier services, including \$196,110 to FedEx, \$405,311 to UPS and \$288,000 to Worldwide Express.
- Burton owes \$1,472,203 to something called LG Technology and \$746,374 to something called Revshare, both of which are based at the same address in Temecula, California.

Similar to John Beall, who recently went through personal bankruptcy despite being a senior lieutenant under Anthony Powell, Burton professes in his videos to be making millions of dollars through Herbalife while in fact incurring millions of dollars of debt (much of which appears to be related to operating his Herbalife business.)

In short, Burton's bankruptcy petition provides a number of interesting angles for investigating the activities of senior Herbalife distributors, many of whom are connected with one another in various ways and are likely to have the same issues as Burton with the Internal Revenue Service and other creditors.

Yours sincerely,



Steven L. Holley

(Enclosures)

BI (Official Form 1)(04/13)

**United States Bankruptcy Court
Eastern District of Texas**

Voluntary Petition

| | |
|---|---|
| Name of Debtor (if individual, enter Last, First, Middle): BURTON, MICHAEL TRACY | Name of Joint Debtor (Spouse) (Last, First, Middle): BURTON, MICHELLE RENEE |
| All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): |
| Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all) xxx-xx-9379 | Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) xxx-xx-7338 |
| Street Address of Debtor (No. and Street, City, and State): 3804 Hidden Trail Flower Mound, TX <div style="text-align: right; font-size: small;">ZIP Code 75022</div> | Street Address of Joint Debtor (No. and Street, City, and State): 3804 Hidden Trail Flower Mound, TX <div style="text-align: right; font-size: small;">ZIP Code 75022</div> |
| County of Residence or of the Principal Place of Business: Denton | County of Residence or of the Principal Place of Business: Denton |
| Mailing Address of Debtor (if different from street address): <div style="text-align: right; font-size: small;">ZIP Code</div> | Mailing Address of Joint Debtor (if different from street address): <div style="text-align: right; font-size: small;">ZIP Code</div> |

Location of Principal Assets of Business Debtor (if different from street address above):

| | | |
|--|---|--|
| Type of Debtor (Form of Organization) (Check one box) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) | Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other | Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding |
| Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending: | Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code). | Nature of Debts (Check one box) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts. |

| | |
|--|--|
| Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B. | Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4/01/16 and every three years thereafter). Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b). |
|--|--|

Statistical/Administrative Information

Debtor estimates that funds will be available for distribution to unsecured creditors.
 Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

| | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 1-49 | 50-99 | 100-199 | 200-999 | 1,000-5,000 | 5,001-10,000 | 10,001-25,000 | 25,001-50,000 | 50,001-100,000 | OVER 100,000 |

Estimated Assets

| | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|-----------------------------|------------------------------|-------------------------------|--------------------------------|------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| \$0 to \$50,000 | \$50,001 to \$100,000 | \$100,001 to \$500,000 | \$500,001 to \$1 million | \$1,000,001 to \$10 million | \$10,000,001 to \$50 million | \$50,000,001 to \$100 million | \$100,000,001 to \$500 million | \$500,000,001 to \$1 billion | More than \$1 billion |

Estimated Liabilities

| | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|--------------------------|-----------------------------|------------------------------|-------------------------------|--------------------------------|------------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| \$0 to \$50,000 | \$50,001 to \$100,000 | \$100,001 to \$500,000 | \$500,001 to \$1 million | \$1,000,001 to \$10 million | \$10,000,001 to \$50 million | \$50,000,001 to \$100 million | \$100,000,001 to \$500 million | \$500,000,001 to \$1 billion | More than \$1 billion |

THIS SPACE IS FOR COURT USE ONLY

| | |
|---|--|
| <p>Voluntary Petition <i>(This page must be completed and filed in every case)</i></p> | <p>Name of Debtor(s): BURTON, MICHAEL TRACY BURTON, MICHELLE RENEE</p> |
|---|--|

All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)

| | | |
|---------------------------------------|--------------|-------------|
| Location Where Filed: - None - | Case Number: | Date Filed: |
| Location Where Filed: | Case Number: | Date Filed: |

Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet)

| | | |
|------------------------------------|---------------|-------------|
| Name of Debtor: - None - | Case Number: | Date Filed: |
| District: | Relationship: | Judge: |

| | |
|--|--|
| <p align="center">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p> | <p align="center">Exhibit B</p> <p><small>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</small></p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).</p> <p>X /s/ JAMES P. MOON July 3, 2013 <small>Signature of Attorney for Debtor(s) (Date)</small> JAMES P. MOON 14316300</p> |
|--|--|

Exhibit C

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No.

Exhibit D

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

Exhibit D completed and signed by the debtor is attached and made a part of this petition.

If this is a joint petition:
 Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.

Information Regarding the Debtor - Venue

(Check any applicable box)

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.
- Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

Certification by a Debtor Who Resides as a Tenant of Residential Property

(Check all applicable boxes)

- Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(Name of landlord that obtained judgment)

(Address of landlord)

- Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and
- Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.
- Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

Voluntary Petition

(This page must be completed and filed in every case)

Name of Debtor(s):

**BURTON, MICHAEL TRACY
BURTON, MICHELLE RENEE**

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.
[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).
I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ MICHAEL TRACY BURTON
Signature of Debtor **MICHAEL TRACY BURTON**

X /s/ MICHELLE RENEE BURTON
Signature of Joint Debtor **MICHELLE RENEE BURTON**

Telephone Number (If not represented by attorney)

July 3, 2013
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

- I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.
- Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
Signature of Foreign Representative

Printed Name of Foreign Representative

_____ Date

Signature of Attorney*

X /s/ JAMES P. MOON
Signature of Attorney for Debtor(s)

JAMES P. MOON 14316300
Printed Name of Attorney for Debtor(s)

JAMES P. MOON PLLC
Firm Name
**3102 Maple Ave.
Suite 200
Dallas, TX 75201**

Address

Email: jpmpllc@gmail.com

214-522-4900 Fax: 800-930-7112
Telephone Number

July 3, 2013
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X _____

_____ Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. §110; 18 U.S.C. §156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

_____ Date

**United States Bankruptcy Court
Eastern District of Texas**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

| NAME OF SCHEDULE | ATTACHED (YES/NO) | NO. OF SHEETS | ASSETS | LIABILITIES | OTHER |
|---|-------------------|---------------|--------------|-------------------|--------------|
| A - Real Property | Yes | 1 | 0.00 | | |
| B - Personal Property | Yes | 5 | 74,135.92 | | |
| C - Property Claimed as Exempt | Yes | 2 | | | |
| D - Creditors Holding Secured Claims | Yes | 1 | | 18,554.36 | |
| E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E) | Yes | 2 | | 63,410.57 | |
| F - Creditors Holding Unsecured Nonpriority Claims | Yes | 25 | | 7,065,928.62 | |
| G - Executory Contracts and Unexpired Leases | Yes | 1 | | | |
| H - Codebtors | Yes | 1 | | | |
| I - Current Income of Individual Debtor(s) | Yes | 1 | | | 13,000.00 |
| J - Current Expenditures of Individual Debtor(s) | Yes | 2 | | | 13,921.00 |
| Total Number of Sheets of ALL Schedules | | 41 | | | |
| | | | Total Assets | 74,135.92 | |
| | | | | Total Liabilities | 7,147,893.55 |

**United States Bankruptcy Court
Eastern District of Texas**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

| Type of Liability | Amount |
|---|--------|
| Domestic Support Obligations (from Schedule E) | |
| Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E) | |
| Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed) | |
| Student Loan Obligations (from Schedule F) | |
| Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E | |
| Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F) | |
| TOTAL | |

State the following:

| | |
|--|--|
| Average Income (from Schedule I, Line 16) | |
| Average Expenses (from Schedule J, Line 18) | |
| Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20) | |

State the following:

| | | |
|--|--|--|
| 1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column | | |
| 2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column | | |
| 3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column | | |
| 4. Total from Schedule F | | |
| 5. Total of non-priority unsecured debt (sum of 1, 3, and 4) | | |

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

| Description and Location of Property | Nature of Debtor's Interest in Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption | Amount of Secured Claim |
|--------------------------------------|---|------------------------------------|--|-------------------------|
|--------------------------------------|---|------------------------------------|--|-------------------------|

None

Sub-Total > **0.00** (Total of this page)
Total > **0.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petitioner is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

| Type of Property | N O N E | Description and Location of Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|--|------------------|--|---|---|
| 1. Cash on hand | X | | | |
| 2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives. | | Checking Account JPMorgan Chase Bank, N.A. Account Ending 8370 | H | 14.92 |
| | | Checking Account JPMorgan Chase Bank, N.A. Account Ending in 0628 | H | 25.00 |
| | | Savings Account JPMorgan Chase Bank, N.A. Account Ending in 6250 | H | 25.00 |
| | | Checking Account JPMorgan Chase Bank, N.A. Account Ending in 7672 | W | 15.00 |
| | | Savings Account JPMorgan Chase Bank, N.A. Account Ending in 8928 | W | 10.00 |
| 3. Security deposits with public utilities, telephone companies, landlords, and others. | | Security Deposit - Bonnie Ansley Property: 3804 Hidden Trail, Flower Mound, Texas 75022 | C | 3,000.00 |
| | | Security Deposit - Metro Works Realty (David Wright) Property: 353 Hamilton, Lewisville TX 75067 | C | 1,795.00 |
| 4. Household goods and furnishings, including audio, video, and computer equipment. | | Household Goods and Furnishings, Furniture, Etc. (Detailed listing available upon request to Counsel for Debtors) | C | 22,728.00 |
| 5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles. | | [See Items included and Values in Item #4 above] | C | 0.00 |
| 6. Wearing apparel. | | [See Items included and Values in Item #4 above] | C | 0.00 |

Sub-Total > 27,612.92
(Total of this page)

4 continuation sheets attached to the Schedule of Personal Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | N O N E | Description and Location of Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|------------------|--|---|---|
| 7. Furs and jewelry. | | Jewelry | C | 4,000.00 |
| 8. Firearms and sports, photographic, and other hobby equipment. | | Glock 9mm | C | 499.00 |
| | | Smith-Wesson .357 Magnum | C | 549.00 |
| 9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. | | Life Insurance Policy (Universal Life) Aviva Life and Annuity Company Policy Number Ending in 9390 Face Amount: \$2,000,000 (Policy has \$17,873.87 Cash Value, but can't draw without paying Surrender Value of \$53,274.66) | H | 0.00 |
| | | United Life Insurance Insured: Michelle R. Burton Policy No. ending in 9164 Face Amount: \$750,000.00 (Policy has \$7,950.46 Cash Value, but can't draw without paying Surrender Value of \$19,500.00) | W | 0.00 |
| 10. Annuities. Itemize and name each issuer. | X | | | |
| 11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).) | X | | | |
| 12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars. | X | | | |
| 13. Stock and interests in incorporated and unincorporated businesses. Itemize. | | Jackson Bo Group, LLC - 100% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | C | Unknown |
| | | Tix Tat Properties, LLC - 40% Membership Interest State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held: Non-Marketable Security | C | Unknown |

Sub-Total > **5,048.00**
(Total of this page)

Sheet 1 of 4 continuation sheets attached to the Schedule of Personal Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | NONE | Description and Location of Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|--|------|---|------------------------------------|--|
| | | Worldwide Nutrition Group, Inc. (Michael Burton) - 80 Shares Common Stock Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | H | Unknown |
| | | Worldwide Nutrition Group, Inc. (Michelle Burton) - 10 Shares Common Stock Location: 353 Hamilton Street, Lewisville, Texas 75067 Privately Held; Non-Marketable Security | W | Unknown |
| | | Factor Media Group, LLC 34% Membership Interest State of Formation: Texas Privately Held; Non-Marketable Security (Company has no business operations) | H | Unknown |
| | | Merelle Holdings, Ltd. - 95% LP Interest State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | H | 0.00 |
| | | Global Card Systems, LLC - 95% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | H | 2,500.00 |
| | | Bombers Management Group, LLC - 95% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | H | Unknown |
| 14. Interests in partnerships or joint ventures. Itemize. | X | | | |
| 15. Government and corporate bonds and other negotiable and nonnegotiable instruments. | X | | | |
| 16. Accounts receivable. | X | | | |

Sub-Total > **2,500.00**
(Total of this page)

Sheet 2 of 4 continuation sheets attached to the Schedule of Personal Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | N O N E | Description and Location of Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|---|------------------|--|---|---|
| 17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars. | X | | | |
| 18. Other liquidated debts owed to debtor including tax refunds. Give particulars. | X | | | |
| 19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property. | X | | | |
| 20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust. | X | | | |
| 21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each. | X | | | |
| 22. Patents, copyrights, and other intellectual property. Give particulars. | X | | | |
| 23. Licenses, franchises, and other general intangibles. Give particulars. | | Herbalife Distributorship - Contingent Reversion Rights under Corporate Distributorship Agreement and Shareholder Guaranty and Indemnity, dated February 29, 2012 [Distributorship, if reverted, constitutes Personal Service Contract that is not assignable under 11 U.S.C, section 365(c)] | H | 0.00 |
| 24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. | X | | | |
| 25. Automobiles, trucks, trailers, and other vehicles and accessories. | | 2012 BMW Sedan SUV Location: 3804 Hidden Trail, Flower Mound TX 75022 | C | 38,000.00 |

Sub-Total > **38,000.00**
(Total of this page)

Sheet 3 of 4 continuation sheets attached to the Schedule of Personal Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

| Type of Property | N O N E | Description and Location of Property | Husband, Wife, Joint, or Community | Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption |
|--|------------------|--|---|---|
| | | Open Utility Trailer | C | 200.00 |
| | | Closed Utility Trailer | C | 200.00 |
| 26. Boats, motors, and accessories. | X | | | |
| 27. Aircraft and accessories. | X | | | |
| 28. Office equipment, furnishings, and supplies. | X | | | |
| 29. Machinery, fixtures, equipment, and supplies used in business. | X | | | |
| 30. Inventory. | X | | | |
| 31. Animals. | | 2 Toy Poodles Chocolate Lab White Lab Rotweiller 1 Cats Pet Accessories | C | 575.00 |
| 32. Crops - growing or harvested. Give particulars. | X | | | |
| 33. Farming equipment and implements. | X | | | |
| 34. Farm supplies, chemicals, and feed. | X | | | |
| 35. Other personal property of any kind not already listed. Itemize. | X | | | |

Sub-Total > **975.00**
(Total of this page)
Total > **74,135.92**

(Report also on Summary of Schedules)

Sheet 4 of 4 continuation sheets attached to the Schedule of Personal Property

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:

(Check one box)

11 U.S.C. §522(b)(2)

11 U.S.C. §522(b)(3)

Check if debtor claims a homestead exemption that exceeds \$155,675. (Amount subject to adjustment on 4/1/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.)

| Description of Property | Specify Law Providing Each Exemption | Value of Claimed Exemption | Current Value of Property Without Deducting Exemption |
|--|--------------------------------------|----------------------------|---|
| Household Goods and Furnishings Household Goods and Furnishings, Furniture, Etc. (Detailed listing available upon request to Counsel for Debtors) | 11 U.S.C. § 522(d)(3) | 22,728.00 | 22,728.00 |
| Books, Pictures and Other Art Objects; Collectibles [See Items included and Values in Item #4 above] | 11 U.S.C. § 522(d)(3) | 0.00 | 0.00 |
| Wearing Apparel [See Items included and Values in Item #4 above] | 11 U.S.C. § 522(d)(3) | 0.00 | 0.00 |
| Furs and Jewelry Jewelry | 11 U.S.C. § 522(d)(4) | 3,100.00 | 4,000.00 |
| Firearms and Sports, Photographic and Other Hobby Equipment Glock 9mm | 11 U.S.C. § 522(d)(5) | 499.00 | 499.00 |
| Smith-Wesson .357 Magnum | 11 U.S.C. § 522(d)(5) | 549.00 | 549.00 |
| Stock and Interests in Businesses Jackson Bo Group, LLC - 100% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | 0.00 | Unknown |
| Worldwide Nutrition Group, Inc. (Michael Burton) - 80 Shares Common Stock Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | Unknown | Unknown |
| Worldwide Nutrition Group, Inc. (Michelle Burton) - 10 Shares Common Stock Location: 353 Hamilton Street, Lewisville, Texas 75067 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | Unknown | Unknown |
| Merelle Holdings, Ltd. - 95% LP Interest State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | 0.00 | 0.00 |

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT
(Continuation Sheet)

| Description of Property | Specify Law Providing Each Exemption | Value of Claimed Exemption | Current Value of Property Without Deducting Exemption |
|--|---|----------------------------|---|
| Global Card Systems, LLC - 95% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | 2,500.00 | 2,500.00 |
| Bombers Management Group, LLC - 95% Membership Interests State of Entity Formation: Texas Location: 3804 Hidden Trail, Flower Mound TX 75022 Privately Held; Non-Marketable Security | 11 U.S.C. § 522(d)(5) | 0.00 | Unknown |
| Licenses, Franchises, and Other General Intangibles | | | |
| Herbalife Distributorship - Contingent Reversion Rights under Corporate Distributorship Agreement and Shareholder Guaranty and Indemnity, dated February 29, 2012 [Distributorship, if reverted, constitutes Personal Service Contract that is not assignable under 11 U.S.C, section 365(c)] | 11 U.S.C. § 522(d)(5) | 0.00 | 0.00 |
| Automobiles, Trucks, Trailers, and Other Vehicles | | | |
| 2012 BMW Sedan SUV Location: 3804 Hidden Trail, Flower Mound TX 75022 | 11 U.S.C. § 522(d)(2) Balance of Value Exempted by 11 USC Section 522(d)(5) | 19,445.64 | 38,000.00 |
| Open Utility Trailer | 11 U.S.C. § 522(d)(5) | 200.00 | 200.00 |
| Closed Utility Trailer | 11 U.S.C. § 522(d)(5) | 200.00 | 200.00 |
| Animals | | | |
| 2 Toy Poodles Chocolate Lab White Lab Rotweiller 1 Cats Pet Accessories | 11 U.S.C. § 522(d)(5) | 575.00 | 575.00 |

Total: **49,796.64** **69,251.00**

B6D (Official Form 6D) (12/07)

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

| CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B T O R | Husband, Wife, Joint, or Community | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL | UNSECURED PORTION, IF ANY |
|--|--------------------------------------|------------------------------------|--|--|--|--------------------------------------|---|---------------------------|
| | | H W J C | DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN | | | | | |
| Account No. EECU | | | Purchase Money Security 2012 BMW Sedan SUV Location: 3804 Hidden Trail, Flower Mound TX 75022 | | | | 18,554.36 | 0.00 |
| | | C | Value \$ 38,000.00 | | | | | |
| Account No. | | | | | | | | |
| | | | Value \$ | | | | | |
| Account No. | | | | | | | | |
| | | | Value \$ | | | | | |
| Account No. | | | | | | | | |
| | | | Value \$ | | | | | |
| Subtotal (Total of this page) | | | | | | | 18,554.36 | 0.00 |
| Total (Report on Summary of Schedules) | | | | | | | 18,554.36 | 0.00 |

0 continuation sheets attached

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic support obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$12,475* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$6,150* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,775* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and certain other debts owed to governmental units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to maintain the capital of an insured depository institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

Claims for death or personal injury while debtor was intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

**Taxes and Certain Other Debts
Owed to Governmental Units**

TYPE OF PRIORITY

| CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.) | C O D E B O R R | H W J C Husband, Wife, Joint, or Community | D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | A M O U N T O F C L A I M | AMOUNT NOT ENTITLED TO PRIORITY, IF ANY | |
|---|--------------------------------------|--|--|--|--|--------------------------------------|---|---|------------------|
| | | | | | | | | AMOUNT ENTITLED TO PRIORITY | |
| Account No. | | | Income Taxes (Federal) - Amount listed for 2009. Amounts for 2010-2012 to be determined. | | | | | | |
| Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101-7346 | C | | | | X | X | | 0.00 | |
| | | | | | | | 63,410.57 | 63,410.57 | |
| Account No. | | | | | | | | | |
| Account No. | | | | | | | | | |
| Account No. | | | | | | | | | |
| Account No. | | | | | | | | | |
| Account No. | | | | | | | | | |
| Subtotal (Total of this page) | | | | | | | 63,410.57 | 0.00 | 63,410.57 |
| Total (Report on Summary of Schedules) | | | | | | | 63,410.57 | 0.00 | 63,410.57 |

Sheet 1 of 1 continuation sheets attached to
Schedule of Creditors Holding Unsecured Priority Claims

B6F (Official Form 6F) (12/07)

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. **13-41669-BTR-7**

Debtors

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B T O R | Husband, Wife, Joint, or Community | | | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------------------------|---|---|---|--|--|--------------------------------------|------------------|
| | | H | W | J | C | | | | |
| Account No. Acct: 27373034; 28599561; 2858 | | | | | | | | | |
| Account Services 1802 NE Loop 410, Suite 400 San Antonio, TX 78217 | | | | | | | | | 847.00 |
| Account No. | | | | | | | | | |
| Accountants Inc. PO Box 60000 San Francisco, CA 94160 | | | | | | | | | 45,000.00 |
| Account No. | | | | | | | | | |
| ADT PO BOX 371490 Pittsburgh, PA 15250 | | | | | | X | X | | Unknown |
| Account No. ACCT: 2270-96-1202 | | | | | | | | | |
| Affiliated Acceptance Corporation PO BOX 790001 Sunrise Beach, MO 65079-9001 | | | | | | | | | 1,352.00 |
| Subtotal (Total of this page) | | | | | | | | | 47,199.00 |

24 continuation sheets attached

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. **13-41669-BTR-7**

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|-----------------|
| | | | | | | | | |
| Account No. Albart Industrial Center 4021 SW 103d Lane Ocala, FL 34476 | | H | | | X | X | | Unknown |
| Account No. Andrew Park 13 Rosalita Lane Millbrae, CA 94030 | | H | | | | | | 50,000.00 |
| Account No. Atmos PO BOX 790311 St. Louis, MO 63179 | | C | | | X | X | | Unknown |
| Account No. Aviva USA 7700 Mills Civic Parkway West Des Moines, IA 50266 | | H | | | X | X | | Unknown |
| Account No. Bank of America PO Box 45224 Jacksonville, FL 32232 | | C | Credit card purchases | | | | | 51,567.56 |
| Subtotal (Total of this page) | | | | | | | | 101,567.56 |

Sheet no. 1 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|---------------------------------|------------------------------------|--|--|--------------------------------------|-------------------|
| | | H W J C | | | | |
| Account No. Bank of America- Safe Deposit box PO BOX 2518 Houston, TX 77252 | C | Bank Services | | | | 26.00 |
| Account No. Bank of America-9789 PO BOX 15019 Wilmington, DE 19866-5019 | C | Credit card purchases | | | | 15,941.42 |
| Account No. Bay Gulf Credit Union 3202 W. Waters Ave. Tampa, FL 33164 | C | Unsecured Loan/Obligation | X | X | | 120,519.18 |
| Account No. Blue Cross Blue Shield PO BOX 731428 Dallas, TX 75373 | C | Medical Expenses | | X | | Unknown |
| Account No. Bob's Pool Service 100 Cross Timbers Drive Double Oak, TX 75077 | C | Household Services | | X | | Unknown |
| Subtotal (Total of this page) | | | | | | 136,486.60 |

Sheet no. 2 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B T O R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|--|--|------------------|------------------------------------|---|--|--|--------------------------------------|------------------|
| | | | | | | | | |
| Account No. Bonnie Ansley 1235 S. Prairie Ave. #2805 Chicago, IL 60605 | | H | | Lease Obligation | | X | | Unknown |
| Account No. Bruce Nagal 3 Chekee Drive Wallington, NJ 07057 | | H | | | | | | 25,000.00 |
| Account No. Burton Irrevocable Life Insurance Trust 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | H | | | | X | | Unknown |
| Account No. Burton Marketing International, PO BOX 2569 Grapevine, TX 76099 | | H | | Debt of Corporate Affiliate | X | X | | Unknown |
| Account No. C. James Jensen 650 Bellevue Way NE, Suite 3704 Bellevue, WA 98004 | | H | | | | | | 50,000.00 |
| Subtotal (Total of this page) | | | | | | | | 75,000.00 |

Sheet no. 3 of 24 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------------------------|--|--|--|--------------------------------------|------------------|
| | | H W J C | | | | | |
| Account No. CBRE Investors 909 Lake Carolyn, Lock Box 730024 Dallas, TX 75373-0024 | | | | | | | |
| | | H | | X | X | | 63,524.13 |
| Account No. Central Parking System PO BOX 790402 St. Louis, MO 63179-0402 | | | | | | | |
| | | H | | | X | X | Unknown |
| Account No. Cherry Lane Music Publishing Co., Inc. 6 E. 32nd St. 11th Floor New York, NY 10016 | | | | | | | |
| | | H | | | | | Unknown |
| Account No. CIT Technology PO BOX 550599 Jacksonville, FL 32255 | | | | | | | |
| | | H | | X | X | X | 1,209.60 |
| Account No. CitiCorp PO BOX 7247-0118 Philadelphia, PA 19170-0118 | | | | | | | |
| | | H | | X | X | X | 490.28 |

Sheet no. 4 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **65,224.01**

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. **13-41669-BTR-7**

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|------------------|
| | | | | | | | | |
| Account No. City of Flower Mound Utilities 2121 Cross Timbers Flower Mound, TX 75028 | | | | Utilities | | X | | Unknown |
| Account No. City of Lewisville Utilities 151 W. Church St Lewisville, TX 75057 | | | | Utilities | | X | | Unknown |
| Account No. Core Fund LP 201 One SW Columbia St, Suite 900 Portland, OR 97258 | | | | | | | | 50,000.00 |
| Account No. Core Fund Management LP David Baker 3120 NW Metke Place Bend, OR 97701 | | | | Debt of Corporate Affiliate | X | X | X | Unknown |
| Account No. CoServ PO BOX 650785 Dallas, TX 75265 | | | | Utilities | | X | X | Unknown |
| Subtotal (Total of this page) | | | | | | | | 50,000.00 |

Sheet no. 5 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | | D A T E C L A I M W A S I N C U R R E D A N D C O N S I D E R A T I O N F O R C L A I M. I F C L A I M I S S U B J E C T T O S E T O F F, S O S T A T E. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | A M O U N T O F C L A I M |
|--|--------------------------------------|------------------------------------|---|--|--|--|--------------------------------------|---|
| | | H W J C | | | | | | |
| Account No. Cox Cable PO BOX 9001077 Louisville, KY 40290-1077 | | | H | Household Services | X | X | X | 59.79 |
| Account No. Daintree Holdings Inc. 3rd Floor, Montague Sterling Centre E. Bay St. Nassau | | | H | Business Trade Debt (Affiliate) | | | | 25,000.00 |
| Account No. Dell Commercial Credit PO BOX 689020 Des Moines, IA 50368-9020 | | | H | Business Trade Debt (Affiliate) | X | X | X | 684.00 |
| Account No. Dell Financial Services 4307 Collection Center Dr Chicago, IL 60693 | | | H | Business Trade Debt (Affiliate) | X | X | X | 1,433.49 |
| Account No. DHL Express USA PO BOX 277264 Atlanta, GA 30384-7264 | | | H | Business Trade Debt (Affiliate) | X | X | X | 382.42 |

Sheet no. 6 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **27,559.70**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B T O R | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|--|---|--|--|--------------------------------------|-----------------|
| | | | | | | | |
| Account No. Domain Listing Services 27 N. Wacker Dr., Suite 650 Chicago, IL 60606 | | H | Business Expense | X | X | X | 75.00 |
| Account No. Acct: 4968987; 4969154 Dr's Reporting Service of Texas 800 E. Campbell Rd, Suite 399 Richardson, TX 75081 | | C | Medical Expenses | | | | 197.08 |
| Account No. EECU Credit Union- BMW X5 PO BOX 1777 Fort Worth, TX 76101 | | C | Auto Loan | | X | | Unknown |
| Account No. Ehome Business Network 15333 N. Pima Rd, Suite 235 Scottsdale, AZ 85260 | | H | Business Trade Debt (Affiliate) | X | X | X | Unknown |
| Account No. Embark PO BOX 219100 Kansas City, MO 64121-9100 | | H | | X | X | X | 105.48 |
| Subtotal (Total of this page) | | | | | | | 377.56 |

Sheet no. 7 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|--|--------------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|-------------------|
| | | | | | | | | |
| Account No. EMC Mortgage PO BOX 141358 Irving, TX 75014-1358 | | | | Real Property Loan | | | | 950,000.00 |
| Account No. FEDEX PO BOX 94515 Palatine, IL 60094-4515 | | | | Business Trade Debt (Affiliate) | X | X | X | 196,110.33 |
| Account No. Fighters Management Group, LLC PO BOX 2569, Grapevine Grapevine, TX 76099 | | | | | X | X | | Unknown |
| Account No. Flat Universal, LLC 3120 NW Metke Place Bend, OR 97701 | | | | Debt of Corporate Affiliate | | | | 50,000.00 |
| Account No. Florida Department of Revenue 5050 West Tennessee Street Tallahassee, FL 32399 | | | | Taxes | | | | 343.75 |

Sheet no. 8 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **1,196,454.08**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|---------------------------------|--|--|--|--------------------------------------|-----------------|
| | | H W J C | | | | |
| Account No. Freemantle Media 4000 West Alameda Ave. 3rd Floor Burbank, CA 91505 | | Debt of Business Affiliate | | | | Unknown |
| | H | | X | X | X | |
| Account No. George Albright, Marion County Tax Asses PO BOX 970 Ocala, FL 34478 | | Taxes | | | | Unknown |
| | H | | | X | | |
| Account No. George Albright, Tax Collector PO BOX 1178 Ocala, FL 34478 | | Taxes | | | | 22.75 |
| | C | | | | | |
| Account No. Global Card Systems, LLC 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | Business Trade Debt (Affiliate) | | | | Unknown |
| | H | | X | X | X | |
| Account No. Global Vision Entertainment, LLC PO BOX 2569 Grapevine, TX 76099 | | Business Trade Debt (Affiliate) | | | | Unknown |
| | H | | X | X | X | |
| Subtotal (Total of this page) | | | | | | 22.75 |

Sheet no. 9 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B T O R | Husband, Wife, Joint, or Community H W J C | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--|--|---|--|--|--------------------------------------|------------------|
| | | | | | | | |
| Account No. Grapevine Collier Prperty Tax/School Tax 3072 Mustang Drive Grapevine, TX 76051 | | C | Taxes | | | | 990.00 |
| Account No. GreatAmerica Leasing 8742 Innovation Way Chicago, IL 60682 | | H | Trade debt | | | | 18,000.00 |
| Account No. Greenburg Trauig 200 Park Ave, 14th Floor New York, NY 10166 | | H | Trade debt | | | | 38,897.44 |
| Account No. Grimes & Reese 615 Hoopes Ave Idaho Falls, ID 83401 | | H | Debt of Business Affiliate | X | X | X | Unknown |
| Account No. Gronberg Orthodontics 3000 Village Parkway, Suite 430 Highland Village, TX 75077 | | C | Medical Expenses | | X | | Unknown |
| Subtotal (Total of this page) | | | | | | | 57,887.44 |

Sheet no. 10 of 24 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R | H W J C | Husband, Wife, Joint, or Community DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|---------------------------------|------------------|---|--|--|--------------------------------------|-------------------|
| | | | | | | | |
| Account No. Guerra Communications PO BOX 2569 Grapevine, TX 76099 | | H | Debt of Corporate Affiliate | | | | 350,000.00 |
| Account No. HC Wainwright & Co 52 Vanderbilt Ave, 12th Floor New York, NY 10017 | | H | Trade debt | X | X | X | 17,861.79 |
| Account No. Hee K. Park 6708 Barcelona Irving, TX 75039 | | H | Debt of Business Affiliate | X | X | X | Unknown |
| Account No. Herbalife International of America, Inc. 800 West Olympic Blvd. Suite 406 Los Angeles, CA 90015 | X | C | February 29, 2012 Personal Guaranty of Corporate Distributorship Agreement | X | X | | Unknown |
| Account No. Herman Miller Capital PO BOX 7247-0118 Philadelphia, PA 19170-0118 | | H | Debt of Corporate Affiliate | X | X | X | 983.10 |
| Subtotal (Total of this page) | | | | | | | 368,844.89 |

Sheet no. 11 of 24 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|-----------------|
| | | | | | | | | |
| Account No. ID Wholesalers 16526 W. 78th St., Suite 239 Eden Prairie, MN 55346 | | H | | Trade debt | | | | 710.50 |
| Account No. Ingen Systems PO BOX 703542 Dallas, TX 75370 | | H | | Debt of Corporate Affiliate | | | | 7,495.00 |
| Account No. Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101-7346 | | C | | Federal Income Taxes 2004-2008 | | X | X | 938,096.73 |
| Account No. Internap - Dept. 0526 PO BOX 120526 Dallas, TX 75312-0526 | | H | | Trade debt | X | X | X | 7,114.38 |
| Account No. Invent Data Solutions, LLC PO BOX 2569 Grapevine, TX 76099 | | H | | Debt of Corporate Affiliate | X | X | X | Unknown |

Sheet no. 12 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **953,416.61**

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B I T O R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|---|------------------|------------------------------------|---|--|--|--------------------------------------|---------------------|
| | | | | | | | | |
| Account No. Jackson Bo Group, LLC 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | H | | Business Trade Debt (Affiliate) | X | X | | Unknown |
| Account No. Jaguar Credit PO BOX 55000 Detroit, MI 48255-1939 | | C | | Auto Loan | | X | | 20,040.54 |
| Account No. Last Second Media 827 Kenny Way Las Vegas, NV 89107 | | H | | Debt of Corporate Affiliate | | | | 12,475.73 |
| Account No. LG Technology 32840 Wolf Store Rd, Suite C Temecula, CA 92592 | | H | | Debt of Corporate Affiliate | X | X | X | 1,472,203.50 |
| Account No. LineLogix Technologies, LLC 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | H | | Business Trade Debt (Affiliate) | X | X | | Unknown |
| Subtotal (Total of this page) | | | | | | | | 1,504,719.77 |

Sheet no. 13 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O O R D I N A T O R | Husband, Wife, Joint, or Community | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|--|---|------------------------------------|--|--|--|--------------------------------------|-----------------|
| | | H W J C | | | | | |
| Account No. Lofts at Las Colinas 1000 Lake Carolyn Pkwy. Irving, TX 75039 | | H | | X | X | X | Unknown |
| Account No. Logix PO BOX 3608 Houston, TX 77253 | | H | | | | | 3,472.47 |
| Account No. Malnory/McNeal & Company 5551 Yale Blvd. Dallas, TX 75206 | | H | | | | | 1,019.75 |
| Account No. Mark Litwin 919 Sir Frances Drake Blvd, Suite 202 Kentfield, CA 94904 | | H | | | | | 50,000.00 |
| Account No. Matryx Marketing, LLC 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | H | | X | X | | Unknown |

Sheet no. 14 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **54,492.22**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM | |
|---|--------------------------------------|------------------------------------|--|--|--|--------------------------------------|----------------------------------|-------------|
| | | H W J C | | | | | | |
| Account No. MB3 Motorsports, LLC PO BOX 2569, Grapevine Grapevine, TX 76099 | H | Debt of Corporate Affiliate | | X | X | | Unknown | |
| | | | | | | | | |
| Account No. MediaCor, LLC PO BOX 2569, Grapevine Grapevine, TX 76099 | H | Debt of Corporate Affiliate | | X | X | | Unknown | |
| | | | | | | | | |
| Account No. Merelle Worldwide, LLC 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | H | Debt of Corporate Affiliate | | X | X | X | Unknown | |
| | | | | | | | | |
| Account No. Meryl & Stephen Eddy 2206 Mt. Hebron Dr. Ellicott City, MD 21042 | H | Debt of Business Affiliate | | X | X | X | Unknown | |
| | | | | | | | | |
| Account No. Metro Works Reality 9500 Ray White Rd, Floor 2 Keller, TX 76244 | H | Business Expense | | | X | | Unknown | |
| | | | | | | | | |
| Sheet no. <u>15</u> of <u>24</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims | | | | | | | Subtotal (Total of this page) | 0.00 |

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | H W J C | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|------------------|---|--|--|--------------------------------------|-------------------|
| | | | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | | | | |
| Account No. Mixed Martial Arts Authority Magazine 26246 US Highway 19 N Clearwater, FL 33761 | | H | Business Trade Debt (Affiliate) | | | | 1,000.00 |
| Account No. Muhammad & Sadaf Aliasim C/O Law Office 115 West 2nd Street, Suite 201 Fort Worth, TX 78102 | | C | Lease Obligation | | X | | 77,933.33 |
| Account No. National Registered Agents 100 Canal Pointe Blvd, Suite 212 Princeton, NJ 08540 | | H | Business Trade Debt (Affiliate) | | | | 159.00 |
| Account No. On-Line Marketing Solutions/Centurion Ma 246 Fifth Ave, Penthouse New York, NY 10001 | | H | Debt of Corporate Affiliate | | | | 116,800.00 |
| Account No. Panell Kerr & Forester 5847 San Felipe, Suite 2400 Houston, TX 77057-3092 | | H | Debt of Corporate Affiliate | | | | 113,671.74 |
| Subtotal (Total of this page) | | | | | | | 309,564.07 |

Sheet no. 16 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B T O R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM | |
|---|--|------------------|------------------------------------|---|--|--|--------------------------------------|----------------------------------|-------------------|
| | | | | | | | | | |
| Account No. Prospect Performance, LLC PO BOX 2569 Grapevine, TX 76099 | | H | | Debt of Corporate Affiliate | X | X | X | Unknown | |
| Account No. PTPC 1916 Stafford Rd Grapevine, TX 76051 | | H | | Debt of Corporate Affiliate | | | | 32,916.00 | |
| Account No. Rack Space PO BOX 671337 Dallas, TX 75267-1337 | | H | | Debt of Corporate Affiliate | X | X | X | Unknown | |
| Account No. Responsive Data 3514 N. Power Rd, Suite 115 Mesa, AZ 85215 | | H | | Debt of Corporate Affiliate | X | X | X | Unknown | |
| Account No. Revshare 32836 Wolf Store Rd Temecula, CA 92592 | | H | | Debt of Corporate Affiliate | X | X | X | 746,374.00 | |
| Sheet no. <u>17</u> of <u>24</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims | | | | | | | | Subtotal (Total of this page) | 779,290.00 |

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|--|--|--|--------------------------------------|-------------------|
| | | H W J C | | | | |
| Account No. Richardson & Patel LLP 10900 Willshire Blvd., Suite 500 Los Angeles, CA 90024 | | Business Trade Debt (Affiliate) | | | | |
| | H | | X | X | X | 271,450.78 |
| Account No. Rick Sanjek 825 19th Ave. South Nashville, TN 37203 | | Debt of Business Affiliate | | | | |
| | H | | X | X | X | Unknown |
| Account No. ROAR, LLC c/o Fulton & Meyer 17530 Venture Blvd. Suite 201 Encino, CA 91316 | | Debt of Business Affiliate | | | | |
| | H | | X | X | X | Unknown |
| Account No. Robert Penderson 2873 Tolcate Salt Lake City, UT 84121 | | Debt of Corporate Affiliate | | | | |
| | H | | X | X | X | 50,000.00 |
| Account No. Silver Meadows Home Owners Association PO BOX 1709 Silver Springs, FL 34489-1709 | | Business Expense | | | | |
| | C | | X | X | X | Unknown |

Sheet no. 18 of 24 sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **321,450.78**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. **13-41669-BTR-7**

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|--|--------------------------------------|------------------------------------|-----------------------------------|---|--|--|--------------------------------------|-----------------|
| | | H | W | J | | | | |
| Account No. Silver Springs Bottled Water PO BOX 926 Silver Springs, FL 34489 | C | Household Services | | | X | X | | Unknown |
| Account No. Southwest M & S Investments 1205 W. Trinity Mills Rd. Suite 106 Carrollton, TX 75006 | | H | Debt of Business Affiliate | | | X | X | |
| Account No. Acct:242163 Southwestern Medical Center PO BOX 845347 Dallas, TX 75284 | C | Medical Expenses | | | | | | 418.87 |
| Account No. Southwestern Medical Center PO BOX 3475 Toledo, OH 43607 | | C | Medical Expenses | | | | | |
| Account No. Spotlight Pranks, LLC c/o Greenberg Traurig 200 Parl Ave. New York, NY 10166 | H | Debt of Business Affiliate | | | X | X | X | Unknown |
| Subtotal (Total of this page) | | | | | | | 2,066.67 | |

Sheet no. 19 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B T O R | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--|--|--|--|--------------------------------------|------------------|
| | | H W J C | | | | |
| Account No. | | Business Trade Debt (Affiliate) | | | | |
| Sprocket Networks c/o John Clutter 2020 Live Oak Suite 100 Dallas, TX 75201 | H | | X | X | X | Unknown |
| Account No. | | Business Expense | | | | |
| State Farm 3018 N. Belt Line Rd Irving, TX 75062 | H | | | X | X | Unknown |
| Account No. | | Debt of Corporate Affiliate | | | | |
| Steve Shun 12278 NW Hibbard Drive Portland, OR 97229 | H | | | | | 50,000.00 |
| Account No. | | Business Expense | | | | |
| Steven Gummer 9023 Pinewood Dr. Dallas, TX 75243 | H | | | | | 990.00 |
| Account No. | | Household Services | | | | |
| Terminex 4601 Langland Rd Dallas, TX 75244 | C | | | X | | Unknown |
| Subtotal (Total of this page) | | | | | | 50,990.00 |

Sheet no. 20 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|--|---------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|-------------------|
| | | | | | | | | |
| Account No. Texas Health Presbyterian PO BOX 677300 Dallas, TX 75267 | | | | Medical Expenses | | | | 3,078.72 |
| Account No. The O'Donnell Group. Ltd. P.O. Box 1671 Addison, TX 75001 | | | | Debt of Business Affiliate | X | X | X | Unknown |
| Account No. TL Thompson & Associates 330 Oaks Trail, Suite 200 Garland, TX 75043 | | | | Business Expense | X | X | X | 2,729.88 |
| Account No. Trow Appelget & Perry Orleans Building Second floor 21 N. Magnolia Ave Ocala, FL 34475 | | | | Debt of Corporate Affiliate | | | | 3,065.38 |
| Account No. Twin Falls LTD 3rd Floor, Montague Sterling Centre E. Bay St. Nassau | | | | Debt of Corporate Affiliate | X | X | X | 100,000.00 |
| Subtotal (Total of this page) | | | | | | | | 108,873.98 |

Sheet no. 21 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R | H W J C | Husband, Wife, Joint, or Community | DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE. | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM | |
|---|---------------------------------|------------------|------------------------------------|---|--|--|--------------------------------------|-----------------|------------|
| | | | | | | | | | |
| Account No. TXU PO BOX 650700 Dallas, TX 75265 | | C | | Utilities | | | X | Unknown | |
| Account No. Universal Systems 2960 Wesley Way Fort Worth, TX 76118 | | H | | | X | X | | Unknown | |
| Account No. Acct: 1342183-9 University Hospital- Lipsy PO BOX 849927 Dallas, TX 75284 | | C | | Medical Expenses | | | | 1,855.32 | |
| Account No. Acct: 6140164-2 University Hospital- St. Paul PO BOX 849228 Dallas, TX 75284 | | C | | Medical Expenses | | | | 2,128.53 | |
| Account No. UPS PO BOX 7247-0244 Philadelphia, PA 19170-0001 | | H | | Debt of Corporate Affiliate | | | | 405,311.83 | |
| Subtotal (Total of this page) | | | | | | | | | 409,295.68 |

Sheet no. 22 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E D E B T O R | Husband, Wife, Joint, or Community | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--|------------------------------------|--|--|--------------------------------------|-----------------|
| | | H W J C | | | | |
| Account No. Acct: M73965936 | C | Medical Expenses | | | | 2,851.25 |
| UT Southwestern Medical Service Plan PO BOX 845347 Dallas, TX 78284 | | | | | | |
| Account No. | C | Business Expense | | X | | Unknown |
| Verizon PO BOX 11328 St. Petersburg, FL 33733 | | | | | | |
| Account No. | C | | X | X | | Unknown |
| Water Event 2109 Luna Rd, Suite 100 Carrollton, TX 75006 | | | | | | |
| Account No. | H | Business Trade Debt (Affiliate) | X | X | X | Unknown |
| Work At Home Institute, LLC PO BOX 2569, Grapevine Grapevine, TX 76099 | | | | | | |
| Account No. | H | Business Trade Debt (Affiliate) | X | X | X | 288,000.00 |
| Worldwide Express c/o David Otey 732 Lexington Ave Coppell, TX 75019 | | | | | | |

Sheet no. 23 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

Subtotal
(Total of this page) **290,851.25**

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors
SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

| CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.) | C O D E B O R R | Husband, Wife, Joint, or Community | | C O N T I N G E N T | U N L I Q U I D A T E D | D I S P U T E D | AMOUNT OF CLAIM |
|---|--------------------------------------|-------------------------------------|--|--|--|--------------------------------------|-------------------|
| | | H W J C | | | | | |
| Account No. | | Shareholder/Partner Advances | | | | | |
| Worldwide Nutrition Group, Inc 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | | H | | | | | 154,294.00 |
| Account No. | | Business Expense | | | | | |
| XO Communications 14239 Collections Center Drive Chicago, IL 60693 | | H | | X | X | | Unknown |
| Account No. | | | | | | | |
| Account No. | | | | | | | |
| Account No. | | | | | | | |

Sheet no. 24 of 24 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

| | |
|---|---------------------|
| Subtotal (Total of this page) | 154,294.00 |
| Total (Report on Summary of Schedules) | 7,065,928.62 |

In re MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON

Case No. 13-41669-BTR-7

Debtors

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

| Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract | Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract. |
|---|--|
| Bonnie Ansley 1235 S. Prairie Ave. Unit # 2805 Chicago, IL 60605 | Lease Agreement - 3804 Hidden Trail, Flower Mound, Texas Lease Term: 12 Months Monthly Rental: \$3,000.00 |
| David Wright Metro Works Realty 9500 Ray White Rd., 2nd Floor Keller, TX 76244 | Lease Agreement - 353 Hamilton Street, Lewisville, Texas 75067 Lease Term: 12 months Monthly Rental: \$1,795.00 |
| Herbalife International of America, Inc. 800 West Olympic Blvd. Suite 406 Los Angeles, CA 90015 | Personal Guarantee of corporate distributorship agreement Other Contracting Parties: Worldwide Nutrition Group, Inc. Date of Agreement: February 29, 2012 |
| Worldwide Nutrition Group, Inc 601 Cross Timbers, Suite 118-7716 Flower Mound, TX 75028 | Agreement on Repayment of Shareholder Advances |

In re **MICHAEL TRACY BURTON,
MICHELLE RENEE BURTON**

Case No. 13-41669-BTR-7

Debtors

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

| NAME AND ADDRESS OF CODEBTOR | NAME AND ADDRESS OF CREDITOR |
|---|--|
| Worldwide Nutrition Group, Inc. 250 North Main St. Grapevine, TX 76051 | Herbalife International of America, Inc. 800 West Olympic Blvd. Suite 406 Los Angeles, CA 90015 |

B6I (Official Form 6I) (12/07)

In re **MICHAEL TRACY BURTON**
MICHELLE RENEE BURTON

Case No. **13-41669-BTR-7**

Debtor(s)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

| | | |
|--|---|---------|
| Debtor's Marital Status: Separated | DEPENDENTS OF DEBTOR AND SPOUSE | |
| | RELATIONSHIP(S): None. | AGE(S): |
| Employment: | DEBTOR | SPOUSE |
| Occupation | Manager | |
| Name of Employer | Worldwide Nutrition Group, Inc. | |
| How long employed | 17 months | |
| Address of Employer | 601 Cross Timbers Suite 126 Flower Mound, TX 75028 | |

INCOME: (Estimate of average or projected monthly income at time case filed)

| | DEBTOR | SPOUSE |
|--|---------------------|---------------|
| 1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly) | \$ <u>12,000.00</u> | \$ <u>N/A</u> |
| 2. Estimate monthly overtime | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 3. SUBTOTAL | \$ <u>12,000.00</u> | \$ <u>N/A</u> |
| 4. LESS PAYROLL DEDUCTIONS | | |
| a. Payroll taxes and social security | \$ <u>4,000.00</u> | \$ <u>N/A</u> |
| b. Insurance | \$ <u>0.00</u> | \$ <u>N/A</u> |
| c. Union dues | \$ <u>0.00</u> | \$ <u>N/A</u> |
| d. Other (Specify): _____ | \$ <u>0.00</u> | \$ <u>N/A</u> |
| _____ | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 5. SUBTOTAL OF PAYROLL DEDUCTIONS | \$ <u>4,000.00</u> | \$ <u>N/A</u> |
| 6. TOTAL NET MONTHLY TAKE HOME PAY | \$ <u>8,000.00</u> | \$ <u>N/A</u> |
| 7. Regular income from operation of business or profession or farm (Attach detailed statement) | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 8. Income from real property | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 9. Interest and dividends | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 11. Social security or government assistance (Specify): _____ | \$ <u>0.00</u> | \$ <u>N/A</u> |
| _____ | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 12. Pension or retirement income | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 13. Other monthly income (Specify): Bonuses (Estimated) - WWNG | \$ <u>5,000.00</u> | \$ <u>N/A</u> |
| _____ | \$ <u>0.00</u> | \$ <u>N/A</u> |
| 14. SUBTOTAL OF LINES 7 THROUGH 13 | \$ <u>5,000.00</u> | \$ <u>N/A</u> |
| 15. AVERAGE MONTHLY INCOME (Add amounts shown on lines 6 and 14) | \$ <u>13,000.00</u> | \$ <u>N/A</u> |
| 16. COMBINED AVERAGE MONTHLY INCOME: (Combine column totals from line 15) | \$ <u>13,000.00</u> | |

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

Debtor expects to take one-time charge against ordinary income of \$50,00.00 in payment of shareholders advances.

B6J (Official Form 6J) (12/07)

MICHAEL TRACY BURTON

In re MICHELLE RENEE BURTON

Case No. 13-41669-BTR-7

Debtor(s)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

■ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

| | | | |
|--|---|----|------------------|
| 1. Rent or home mortgage payment (include lot rented for mobile home) | | \$ | <u>1,795.00</u> |
| a. Are real estate taxes included? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| b. Is property insurance included? | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> | | |
| 2. Utilities: | | \$ | <u>300.00</u> |
| a. Electricity and heating fuel | | \$ | <u>50.00</u> |
| b. Water and sewer | | \$ | <u>300.00</u> |
| c. Telephone | | \$ | <u>50.00</u> |
| d. Other <u>Gas</u> | | \$ | <u>48.00</u> |
| 3. Home maintenance (repairs and upkeep) | | \$ | <u>500.00</u> |
| 4. Food | | \$ | <u>200.00</u> |
| 5. Clothing | | \$ | <u>0.00</u> |
| 6. Laundry and dry cleaning | | \$ | <u>250.00</u> |
| 7. Medical and dental expenses | | \$ | <u>0.00</u> |
| 8. Transportation (not including car payments) | | \$ | <u>200.00</u> |
| 9. Recreation, clubs and entertainment, newspapers, magazines, etc. | | \$ | <u>0.00</u> |
| 10. Charitable contributions | | \$ | <u>0.00</u> |
| 11. Insurance (not deducted from wages or included in home mortgage payments) | | \$ | <u>130.00</u> |
| a. Homeowner's or renter's | | \$ | <u>2,500.00</u> |
| b. Life | | \$ | <u>0.00</u> |
| c. Health | | \$ | <u>108.00</u> |
| d. Auto | | \$ | <u>500.00</u> |
| e. Other <u>Trust</u> | | \$ | <u>0.00</u> |
| 12. Taxes (not deducted from wages or included in home mortgage payments) | | \$ | <u>0.00</u> |
| (Specify) _____ | | \$ | <u>0.00</u> |
| 13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan) | | \$ | <u>0.00</u> |
| a. Auto | | \$ | <u>0.00</u> |
| b. Other _____ | | \$ | <u>0.00</u> |
| c. Other _____ | | \$ | <u>0.00</u> |
| 14. Alimony, maintenance, and support paid to others | | \$ | <u>0.00</u> |
| 15. Payments for support of additional dependents not living at your home | | \$ | <u>0.00</u> |
| 16. Regular expenses from operation of business, profession, or farm (attach detailed statement) | | \$ | <u>0.00</u> |
| 17. Other _____ | | \$ | <u>0.00</u> |
| Other _____ | | \$ | <u>0.00</u> |
| 18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.) | | \$ | <u>6,931.00</u> |
| 19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: | | | |
| 20. STATEMENT OF MONTHLY NET INCOME | | | |
| a. Average monthly income from Line 15 of Schedule I | | \$ | <u>13,000.00</u> |
| b. Average monthly expenses from Line 18 above | | \$ | <u>13,921.00</u> |
| c. Monthly net income (a. minus b.) | | \$ | <u>-921.00</u> |

**United States Bankruptcy Court
Eastern District of Texas**

In re MICHAEL TRACY BURTON
MICHELLE RENEE BURTON

Debtor(s)

Case No. 13-41669-BTR-7
Chapter 7

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 43 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date July 29, 2013

Signature /s/ MICHAEL TRACY BURTON
MICHAEL TRACY BURTON
Debtor

Date July 29, 2013

Signature /s/ MICHELLE RENEE BURTON
MICHELLE RENEE BURTON
Joint Debtor

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

Michael Burton



Who is Michael Burton?



Michael & Michelle Burton – USA

Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a downturn. “We were heavily in debt and had no idea what the future would hold,” Michael recalls. Then, they were introduced to Herbalife and realized it was exactly what they were looking for. “We followed the business model and duplicated what works,” Michael says. “Now we live the life of our dreams, thanks to Herbalife.”*

- Like other senior Herbalife distributors, Burton often emphasizes his humble beginnings.
- He and his wife Michelle tell recruits they owned a chain of automobile dealerships and lost everything after the financial crisis.
- “We were heavily in debt and had no idea what the future would hold. . . . We followed the [Herbalife] business model and duplicated what works. Now we live the life of our dreams, thanks to Herbalife.”

About Michael

Michael began his career in business at the age 27 when things were financially at rock bottom. Being introduced to the Network Marketing industry at that time changed his life. Just two short years of learning and building his business allowed him to quit his job to pursue the industry full time! He has now built a Multi-Million dollar Networking business, which has allowed him to pursue other investment and business ventures. He also now travels around the country teaching and training others to have success in business as well. Now, with Michael becoming one of the most powerful Success Coaches in the world today, he is also in the process of writing his first book on achieving success. Michael is definitely an individual that the world will hear more from!

“Michael began his career in business at the age 27 when things were financially at rock bottom. . . . He now has built a Multi-Million dollar Networking business”

Who is Michael Burton?

2009

Executive
President's Team



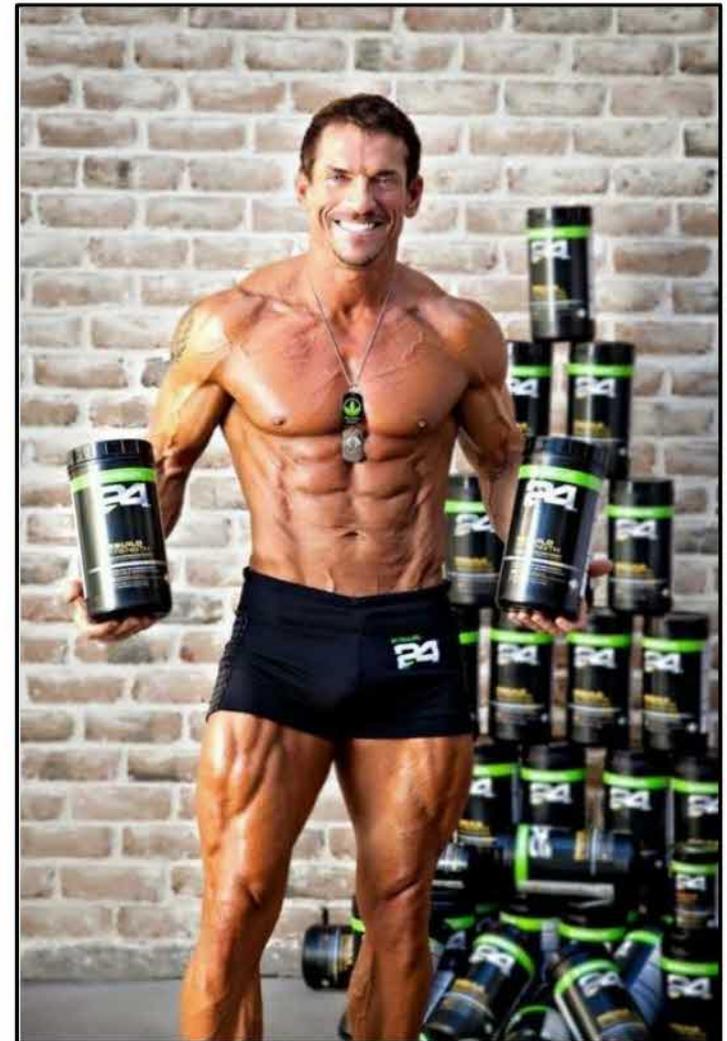
Michael Burton
Executive President's Team Member

2010

15K Senior Executive
President's Team



Burton Pretends He Rose to the Top by Selling Herbalife Products



How Did Burton Really Get to the Top?

- Burton controls the lead generation and online recruiting business called Merelle Worldwide.
- Merelle Worldwide owns the trademark “LineLogix.”

Merelle Worldwide

LineLogix



From left to right: Dan Waldron (“Work From Home!”, The 2-4-1- Plan), Eric Do (“Chief architect” of Linelogix), Dan Penick (former LineLogix Director of Operations, Merelle Worldwide Business Operations Manager), Michael Burton

LineLogix “Powers” Numerous Lead Generation Websites

The following websites state (or stated) that they are “Powered by LineLogix”:

| | | | |
|-----------------------------|-----------------------|--------------------------|-----------------------------|
| 4incomeathome.com | buddyupncww.com | ez101biz.com | jhphomebiz.us |
| amdhomebusiness.com | carolinanutrition.net | fromhomeopportunity.com | wfhinternational.com |
| bbhonlinebiz.com | dallassts.com | gatewaytowealth.com | linelogixtraining.com |
| bestwebbiz.com | earn-extra-income.ws | genasmission4success.com | lovethiswork.com |
| bizathome.us | eteampro.com | yourhomebasedincome.com | ncwwresources.com |
| bskhomebiz.com | excitingbiz4you.com | incomeathome1000.com | nutritionclubsworldwide.com |
| nutritionclubsworldwide.net | onlinesystem241.com | rewardinglifestyles.com | slimhealthyandfit.com |
| tenpoundsin1week.com | thephoenixsts.com | usafreedomonline.com | westernhealthandwealth.com |

LineLogix “Powered” a Lead Generation Business Called “Nutrition Clubs Worldwide”

The screenshot shows the website's navigation bar with 'HOME', 'HOW IT WORKS', and 'WHAT YOU'. Below the navigation is a large black banner with 'HOW IT WORKS' in white and a yellow 'JOIN NOW' button. The main content area is titled 'Three Easy Steps' and features three columns of text and icons. Below this is a horizontal arrow graphic with 'STEP 1', 'STEP 2', and 'STEP 3' labels. Under each step are two bullet points with green checkmarks. At the bottom, there is a 'Core Features' section with three items: 'Customer / Prospect Manager', 'Marketing Website', and 'Tracking & Reports'.

STEP 1

✓ Send prospects to your lead generating website to view a persuasive presentation

Main Features

 **Persuasive Lead Capture Pages**

These web pages act as a sales and recruiting team who persuade people to listen to your presentation and business information. This means no more cold calling.

Burton Promotes an Online Recruiting Business Called “Global Home Business System”



Video

“We understood that there was a system and that it was duplicate-able and we had a coach and we had a mentor and we got really excited and we got started and I tell you, it has been unbelievable for us over the last 9 years. Just after the six months in the business, our income was over \$6,000 a month, and by the eleventh month in the business, we were over \$12,000 a month.... It’s just gotten incredible since then as well. After 16 months in the business, we were over \$25,000 a month and that number’s staggering—the type of lifestyle you can have with that income. And since then, the income’s doubled, tripled and quadrupled, it’s just been absolutely exciting. And over the last 9 years, we have made millions, we have been paid millions of dollars for doing this business. And what I know, you can have the same opportunity as we had.”

-Michael Burton, 2007-2008

Burton’s lavish income claims are bogus.

Burton Also Promotes Nutrition Clubs

- Burton is an owner of Nutrition Addiction, which operates a network of Herbalife Nutrition Clubs.
- These nutrition clubs recruit new Herbalife distributors by telling them they can make money as weight loss challenge coaches.



We are looking for Weight Loss Challenge Coaches.

Would you like to make an extra \$500 - \$1500/month working 1 or 2 evenings per week?

We will give you all necessary training, contact us for details.

Burton Emphasizes Recruiting through Nutrition Clubs



Video

“Sharing with you guys a little bit about mine and my wife’s incredible Herbalife journey over the last fourteen years, and really what we’re doing in America right now that’s really working”

“Very excited to share what we’re doing here in America in our Nutrition Clubs We call it ‘social marketing.’ All of those things we’re doing to drive the business every day, to create more new customers, and create more new distributors, and health coaches and wellness coaches on our team. So things are out of control here in the United States. . . .”

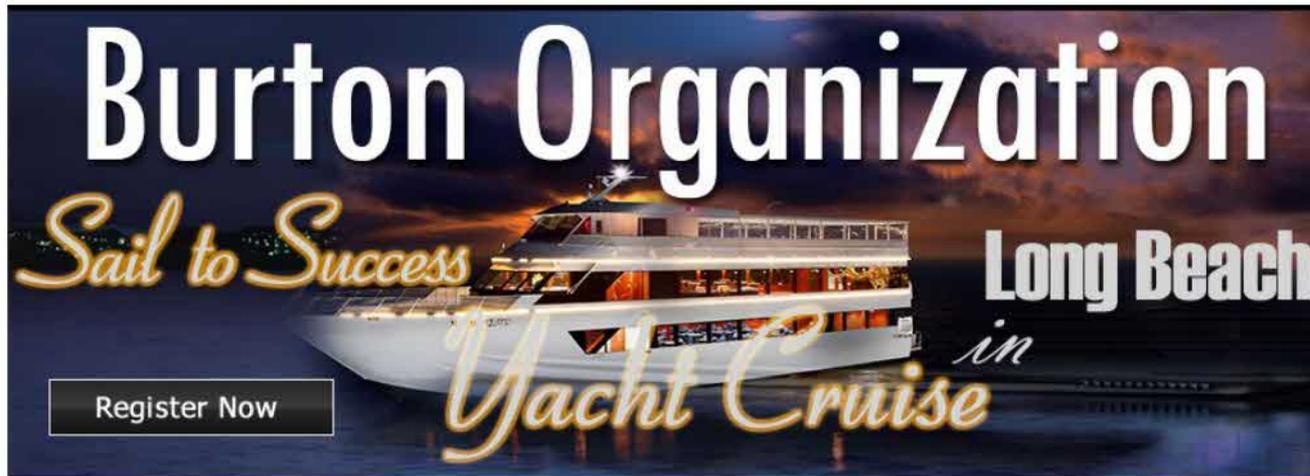


Video

“It’s great times at Herbalife right now. Better times than ever.”

-Video posted to YouTube in July 2012, before Burton’s trip to Croatia and Slovenia

Burton Organizes Lavish Events for His Distributor Organization



- Cruise was scheduled on **October 17, 2012**, two days prior to Herbalife Extravaganza.
- Cruise attendees required to attend Herbalife Extravaganza and be part of the Burton Organization (either downline or upline).

Burton's Public Image Is Designed to Project Wealth and Success



The Reality

- **2005:** \$528,320.64 federal tax lien filed against Burton in Florida
- **2008:** Mortgage on Burton's residence at 6192 North East 72nd Street Place in Silver Springs, Florida is foreclosed upon – principal outstanding balance: \$949,693
- **2013:** three federal tax liens filed in Texas against Burton and his wife for the tax years 2004 to 2009 – total owed: \$1,155,073.72
- **2013:** \$16,138 federal tax lien filed against Merelle Worldwide
- **2013:** Burton and his wife file for personal bankruptcy with total liabilities of \$7.1 million and total assets of only \$74,000



Burton tells recruits he has made “millions of dollars” as an Herbalife distributor, but the truth is that he is more than \$7 million in debt.

Herbalife's Response to Burton's Misconduct

- What has Herbalife done to halt the predatory and deceptive conduct of Burton through Merelle Worldwide, LineLogix, Global Home Business System and Nutrition Addiction?

NOTHING

- Instead, Herbalife holds Burton out as the paradigm of a successful distributor.

Herbalife Promotes Burton as the Personification of Success



Distributors on the Rise

Congratulations Qualifiers of May 2012



Michael & Michelle Burton – USA

Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a downturn. "We were heavily in debt and had no idea what the future would hold," Michael recalls. Then, they were introduced to Herbalife and realized it was exactly what they were looking for. "We followed the business model and duplicated what works," Michael says. "Now we live the life of our dreams, thanks to Herbalife."*

In May 2012, Herbalife congratulated Burton as a "Distributor on the Rise."

Herbalife Promotes Burton as the Personification of Success

- In August 2012, Herbalife featured Burton as a speaker on its African-American Recruiting Tour.

AFRICAN-AMERICAN RECRUITING Tour 2012

Build Your Community

Encourage healthy living in your community while building your business. Attend our African-American Recruiting Tour this August. Invite your family and friends to learn about Herbalife's innovative, science-based nutrition products, as well as the amazing business opportunity behind them. Our experts will show how you can make a significant impact in the African-American community, in both health and financial success.

August 25, 2012

Raleigh

Embassy Suites
Raleigh-Durham Airport/Brler Creek
8001 Arco Corporate Dr.
Raleigh, NC, 27617
919-572-2200

Spanish translation will be available at all events.



SPEAKER

Michael Burton

Senior Executive
President's Team Member 15K

In the 1990s, Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a turn for the worse. "We were forced to close and file bankruptcy," Michael recalls. "Those were tough days. We were heavily in debt and had no idea what the future would hold." Fortunately, they were introduced to Herbalife during that challenging time, and realized it was exactly what they were looking for. "We followed the business model and duplicated what works," Michael says. "It's great to see your diligence pay off into such a bright future. Herbalife is our way of life!"

*Incomes applicable to the individuals (for examples) depicted and not average. For average financial performance data, see the Statement of Average Gross Compensation of U.S. Supervisors at Herbalife.com and MyHerbalife.com.

Events open to all Distributors who purchase a ticket.

| | | |
|---|---|---|
| <p>Agenda</p> <p>8:00 a.m.-10:00 a.m. Registration, Greet Guests</p> <p>10:00 a.m.-11:30 a.m. Herbalife Opportunity Meeting (HOM)</p> <p>11:30 a.m.-12:00 p.m. Shake Break</p> <p>12:00 p.m.-5:00 p.m. Training</p> <p>5:00 p.m.-6:00 p.m. Mixer</p> | <p>Tickets SKU #D814</p> <p>Advance: \$20 <small>(Available until five business days prior to the event)</small></p> <p>At the Door: \$30</p> <div style="border: 1px dashed orange; padding: 2px; display: inline-block; color: orange; font-weight: bold;">FREE Admission for Guests</div> | <div style="background-color: #333; color: white; padding: 5px; font-weight: bold; font-size: 1.2em;">FREE GIFT</div> <p style="font-size: 0.8em; color: white;">WITH ADVANCE TICKET PURCHASE</p>  <p style="font-size: 0.7em; color: white;"><small>*Free admission for guests applies only to the HCM.</small></p> |
|---|---|---|

Purchase your advance tickets today at

HerbalifeEvents.com or by calling 866-866-4744!

© 2012 Herbalife International of America, Inc. All rights reserved. USA. EV117004-USEN 07/12



HERBALIFE.

Nutrition for a better life.

Herbalife Promotes Burton as the Personification of Success

- In 2012, Herbalife featured Burton as a speaker on its Jamaica Business Methods Tour.



2012 Jamaica Business Methods Tour

Take advantage of this amazing opportunity to learn easy and efficient ways to advance your business to new levels. Secure your spot today!

Get in-depth training on Business Methods that have helped successful Distributors build robust organizations.

Learn how to include Business Methods such as:

- Weight Loss Challenges
- Social Events
- Nutrition Clubs
- And much, much more

This informative tour is sure to inspire you on your way up to the next level!

QUALIFICATION

Open to all Distributors who purchase a ticket.

DATES

| | |
|--|---|
| <p>August 18 MONTEGO BAY SKU #E935</p> <p>The Ritz-Carlton Golf & Spa Resort, Rose Hall, Jamaica 1 Ritz-Carlton Dr. Rose Hall, St. James Jamaica 876-953-2800</p> | <p>August 19 KINGSTON SKU #E941</p> <p>Jamaica Pegasus Hotel 81 Knutsford Blvd. Kingston 5, Jamaica 876-926-5199</p> |
|--|---|

AGENDA

8:00 a.m.–10:00 a.m.Registration
 9:00 a.m.–10:00 a.m.TAB Team Meeting
 10:00 a.m.–5:00 p.m.Training

Ticket sales are final – they are nontransferable and nonrefundable. Video cameras are not allowed. Children are not permitted.
 © 2012 Herbalife International of America, Inc. All rights reserved. USA, TX1712102-JM 0813

TICKETS

\$20 Advance
(Available three (3) business days prior to the event)

\$30 At the Door

Buy your tickets now by calling 866-866-4744!



Nutrition for a better life.



SPEAKER:
MICHAEL BURTON
 Senior Executive President's Team 15K

In the 1990s, Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a turn for the worse. Fortunately, they were introduced to Herbalife during that challenging time, and realized it was exactly what they were looking for. "We followed the business model and duplicated what works," Michael says. "It's great to see your diligence pay off into such a bright future. Herbalife is our way of life!"

Accession applicable to the individuals (or examples) depicted and not average. For average financial performance data, see the Statement of Average Gross Compensation of U.S. Supervisors at herbalife.com and MyHerbalife.com.

Herbalife Facilitates Burton's Misconduct Featuring Him at Company Events



Burton featured at 2012
Herbalife Extravaganza in
Barcelona, Spain

Herbalife Facilitates Burton's Misconduct Featuring Him at Company Events

- Burton featured at an event in Jacksonville, Florida in 2012.

JACKSONVILLE, FL

April 13-15, 2012

PLACE OF THE EVENT
Hyatte Regency Jacksonville Riverfront
225 East Coastline Drive, Jacksonville, FL 32202 • 904-588-1234

JUST ANNOUNCED!
SATURDAY TRAINING FOR DISTRIBUTORS TICKET NOW AVAILABLE!
(NON-SUPERVISORS)



LEADERSHIP DEVELOPMENT WEEKEND
APRIL 2012
HERBALIFE

SPEAKERS

MICHAEL BURTON



Senior Executive President's Team 15K

DAVID HAYES



President's Team

In the 1990s, Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a turn for the worse. "We were forced to close and file bankruptcy," Michael recalls. "Those were tough days. We were heavily in debt and had no idea what the future would hold." Fortunately, they were introduced to Herbalife during that challenging time, and realized it was exactly what they were looking for. "We followed the business model and duplicated what works," Michael says. "It's great to see your diligence pay off into such a bright future. Herbalife is our way of life!"*

David Hayes worked as a landscaper by day and aspiring musician by night. A friend recommended Herbalife® products and after David experienced positive results, he shared the products with his family and friends. He opened a Nutrition Club as people were making New Year's resolutions to improve their wellness. His customers' positive results fueled David's business. Now, he has achieved his dream of improving his music career, his wellness and his income. He shares, "By fighting for other people's dreams, we in fact put ourselves within reach of our own dreams!"*

*Results applicable to the individuals (or example) depicted and are not average. For average financial performance data, see the Statement of Average Gross Compensation of U.S. Supervisors of Herbalife USA and MyHerbalife.com.

AGENDA

FRIDAY, APRIL 13
1:00 p.m. - 4:00 p.m. TAB & Active World Team Meeting
5:00 p.m. - 9:00 p.m. President's Team Experience
(Please meet at the lobby 30 minutes prior)

SATURDAY, APRIL 14
8:45 a.m. - 9:45 a.m. TAB & Active World Team Meeting
10:00 a.m. - 12:00 p.m. Herbalife Opportunity Meeting
Be a Product of the Product:
1:00 p.m. - 5:00 p.m. Leadership Development Training: *Build for Success, Lead by Lead.* City by City
5:30 p.m. - 7:30 p.m. "Happy Days" Dinner
(Open to Supervisors who qualify)
7:00 p.m. - 12:00 a.m. '50s Sock Hop Party
(Open to all meeting attendees)

SUNDAY, APRIL 15
10:00 a.m. - 4:00 p.m. Leadership Development Training
Build It Better!

PRESIDENT'S TEAM EXPERIENCE

ONE OCEAN RESORT & SPA
Minutes from the coastal retreat of Jacksonville, spend time at the elegant and comfortable beachside resort, One Ocean Resort & Spa. The experience begins with a relaxing cocktail reception with plenty of appetizers and finishes with a dinner, prepared by the resort's award-winning culinary team, on the expansive Veranda patio.

TICKETS SKU #D044

ADVANCED: \$90
(Available until the US business days prior to the event)
AT THE DOOR: \$110
(Available at event)

SATURDAY TRAINING FOR DISTRIBUTORS! (NON-SUPERVISORS)

ADVANCED ONLY: \$50

*Results are not eligible for compensation purposes in advance and will not be available at the time. Tickets are non-transferable and cannot be used for other events. See ticket conditions for more details.

PURCHASE YOUR EVENT TICKETS AT HERBALIFEEVENTS.COM
OR BY CALLING 866-866-4744 TODAY!

*Two tickets maximum per Distributorship. Ticket sales are final - they are non-transferable and non-refundable. Video cameras are not allowed. Children are not permitted. All qualifications must be completed prior to the day of the event. Herbalife reserves the right to invalidate Distributor qualifications up to and including the day of the event. Must be present at the event to receive all promotions.

© 2012 Herbalife International of America, Inc. All rights reserved. USA, US 176103 USM 03/12



HERBALIFE.

Nutrition for a better life.

Herbalife Facilitates Burton's Misconduct Featuring Him at Company Events

- Burton featured at Herbalife event in Orange County, California in January 2013



Orange County, CA

January 12-13

Event Location
Anaheim Marriott
 700 W. Convention Way, Anaheim, CA 92802 • 714-750-8000

MICHAEL BURTON



Senior Executive President's Team USA

NIKI SANDELIN



Millionaire Trainers

Host Hotel

Anaheim Marriott
 700 W. Convention Way
 Anaheim, CA 92802
 714-750-8000

(Located right across the street from the prior location, the Hilton Anaheim)

Agenda

Saturday

7:30 a.m. Registration
 8:45 a.m. IAB Team Meeting
(Open House: Meet members and share)
 10:00 a.m. "City by City" HCM
 Herbalife Product Showcase
(Open to all Distributors who purchased a ticket)
 1:00 p.m. - 5:00 p.m. Level 10 Training
(Open to all Distributors who purchased a ticket)
 6:00 p.m. - 7:00 p.m. Exclusive: Team Building/Networking Seminar
(Qualifies only)
 Herbalife Green Party
(Open to all Distributors who purchased a ticket)

Sunday

7:30 a.m. Registration
 8:30 a.m. - 10:00 a.m. Supervisor Steps to Success
(Open to all Distributors who purchased a ticket)
 10:00 a.m. - 4:00 p.m. 2013, Starting the Year Off Right
(Open to all Distributors who purchased a ticket)

About the Speakers

Michael and Michelle Burton owned a chain of automobile dealerships, but lost everything when the economy took a downturn. "We had no idea what the future would hold," Michael recalls. Then, they were introduced to Herbalife and realized it was exactly what they were looking for. "We followed the business model and duplicated what works," Michael says. "Now we live the life of our dreams, thanks to Herbalife."

Niki Sandelin was a real estate agent. But after the economic downturn she decided to get into personal training and began teaching some boot camp classes. She was introduced to Herbalife® products by one of her clients and became an Independent Distributor. Niki works closely with her organization and uses Weight Loss Challenges, Herbalife Opportunity Meetings and Success Training Seminars to build her business.

*Certain options in the program are subject to approval and are not eligible for the average success performance rate. See the Statement of Average Success Compensation for full program details and restrictions.

Tickets • SKU #C0551

| | |
|--|--|
| <p>Advance</p> <p>\$50</p> <p><small>(Available until 2 business days prior to the event)</small></p> | <p>At the Door</p> <p>\$60</p> <p><small>(Available 3 days prior)</small></p> |
|--|--|

Purchase your advance tickets by calling 866-866-4744.
Visit HerbalifeEvents.com today!

Two tickets maximum per Distributorship. Ticket sales are final - they are non-transferable and non-refundable. Video cameras are not allowed. Children are not permitted. All qualifications must be completed prior to the day of the event. Herbalife reserves the right to reevaluate Distributor qualifications up to and including the day of the event. Must be present at the event to redeem all promotions.

© 2013 Herbalife International of America, Inc. All rights reserved. USA. EFT18356-1050-03 01/13

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

*125 Broad Street
New York, NY 10004-2498*

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

October 29, 2013

Via FedEx

Lois C. Greisman, Esq.,
Associate Director, Division of Marketing Practices,
Federal Trade Commission – Bureau of Consumer Protection,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: Herbalife

Dear Lois:

I write on behalf of our client Pershing Square Capital Management, L.P. (“Pershing Square”) to provide you with a memorandum describing an ongoing investigation being conducted at the direction of Pershing Square into Herbalife’s deceptive recruiting practices, as well as a disc of supporting materials that are referenced in that memorandum.

I also enclose another memorandum regarding an investor alert issued by the Securities & Exchange Commission on October 17, 2013, which describes ways to distinguish a legitimate multi-level marketing firm from an illegal pyramid scheme. In our view, Herbalife displays all seven hallmarks of a pyramid scheme that are listed in the Commission’s investor alert.

Yours sincerely,



Steven L. Holley

(Enclosures)

**THE dMk TEAM: A CASE STUDY IN
DECEPTIVE HERBALIFE RECRUITING**

This memorandum analyzes materials which show, among other things, that businesses associated with senior Herbalife distributors, including at least one member of Herbalife's board of directors, continue to promote the predatory practice of lead generation, despite Herbalife's purported ban on that practice.¹ These materials, which are enclosed with this memorandum, also illustrate more generally the deceptive manner in which unsuspecting recruits continue to be lured into the Herbalife scheme.

I. Background

On October 4 and October 6, 2013, an undercover investigator posing as a potential Herbalife recruit named "Sam" participated in two calls with Herbalife distributor Kari Taylor and her "coach" Joe Kirkendoll. During those calls, Taylor and Kirkendoll attempted to recruit Sam as an Herbalife distributor and persuade her to join the "dMk Team," which is associated with Herbalife Millionaire Team members David and Karen DeSaegher.² In addition to making various representations to Sam over the telephone, Taylor and Kirkendoll also directed Sam to a website associated with the dMk Team, www.96billion.com, where she downloaded a "workbook" purporting to describe the business opportunity being offered by Herbalife and the dMk Team (the "dMk Team Workbook" or "Workbook").

After the October 4 and October 6 calls, Sam agreed to sign up as an Herbalife distributor and to become a member of the dMk Team. The dMk Team

¹ Herbalife supported lead generation as early as 2001, when then-President of Herbalife Francis X. Tirelli sent a memorandum (a copy of which is enclosed) to members of Herbalife's President's Team stating that Lead Generation was "[o]ne of our greatest opportunities" and that "Herbalife is committed to take full advantage of all the collective innovative and creative solutions in the marketplace with respect to Lead Generation Systems." Many senior Herbalife distributors in the President's Team, Chairman's Club and Founder's Circle have profited handsomely from the practice of lead generation for at least a decade.

² The "d" and "k" refer to David and Karen DeSaegher, respectively, and the "M" refers to Mark Hughes, Herbalife's founder.

requires its new members to proceed through a series of “steps,” in which, among other things, they purchase access to various business tools and lead generation systems. Additional information about the dMk Team may become available as Sam proceeds through the dMk Team’s required steps.

Upon signing up, Sam paid \$399 for access to an account shared among members of the dMk Team on the website www.fssebc.com, which is operated by Doran Andry’s Financial Success System (“FSS”), and individual accounts with the dMk Team websites www.96billion.com and www.dmktrillion.com. She also received a small package of Herbalife products. Sam was also required to pay \$499 for an individual account on the website www.myobsoffice.com, which is operated by Shawn Dahl’s Online Business Systems (“OBS”).³ On October 10, Sam downloaded from the OBS website an audio recording of a conference call during which Phil Keogh, a senior distributor involved with OBS, discussed the history of OBS and recent tensions between Shawn Dahl and the management of Herbalife (the “Keogh Recording”).

To date, Sam has not been able to purchase leads, but she has been encouraged to do so, and she has been charged substantial amounts of money to join a system that is supposed to allow her to purchase leads. This investigation is ongoing, and additional materials may become available as the investigation proceeds.

Enclosed with this memorandum is a disc containing the dMk Team Workbook, recordings of the October 4 and October 6 calls,⁴ screenshots of the OBS website, and the Keogh Recording. Among other things, these materials confirm that new Herbalife distributors are recruited into the Herbalife scheme by means of promises that even the financially unsophisticated can earn passive income for life through systems developed by more senior distributors. These systems rely on the efforts of those that

³ Sam was pressured to “upgrade” her OBS account for \$100 plus an \$80 monthly fee.

⁴ The undercover investigator who recorded the October 4 and October 6 calls was located at the time in New Jersey, which permits surreptitious recording of telephone calls with the consent of one party to the call. N.J. Stat. Ann. § 2A:156A-4(d).

distributors recruit into the scheme, thus confirming that the Herbalife business opportunity is an “investment contract” under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The marketing and promotion of that investment contract is deceptive in many ways.

The enclosed materials are remarkable in a number of respects, as discussed in the following sections of this memorandum.

II. Herbalife’s Recent Rule Changes Are Ineffective and the Promotion of Lead Generation Continues.

The enclosed materials demonstrate that the promotion of lead generation continues despite Herbalife’s purported ban on that practice. By way of background, until recently, Herbalife required all third-party sellers of business methods, including lead generation systems, to be registered with Herbalife. In order to register, the sponsoring distributor was required to provide Herbalife with a letter from legal counsel describing, among other things, the business method’s “content, method of operation, advertising and promotion and terms of sale and use.” (Herbalife Sales & Marketing Plan at 91.) As a result of these registration requirements, Herbalife was made aware that members of its Founder’s Circle and Chairman’s Club own and/or operate lead generation systems. In addition, if Herbalife was enforcing its own registration requirements, it was also aware of the recruiting tactics being engaged in by these lead generation systems—which, as Pershing Square has shown in the past, are highly misleading and rely on exaggerated earnings claims.

On April 5, 2013, under intense scrutiny of its business practices from Pershing Square and others, Herbalife revised its longstanding policy on lead generation and now purports to prohibit the sale or purchase of leads altogether. This change in policy did not include an enforcement mechanism of any kind, which Herbalife should have known would be necessary if it truly wanted to halt a practice as lucrative and well-established as lead generation. Shortly after announcing its supposed ban on lead generation, Herbalife attempted to wash its hands of the practice altogether. On June 18, 2013, Herbalife announced that the company “will no longer require registration of

Business Tools,” including lead generation systems, in light of “the potential exposure to Herbalife.”⁵ This is willful blindness on Herbalife’s part because it knows—or could easily discover—that lead generation systems remain in operation.

The enclosed materials demonstrate that, despite Herbalife’s announced rule changes, new distributors continue to be recruited into the Herbalife scheme—and pressured to invest thousands of dollars or more—through promises that they can make large amounts of money with little effort through lead generation. For example, the dMk Team Workbook encourages new recruits to pay \$500 for access to a “Multi-Million-Dollar Automated ‘Turn-Key’ Radio & Television Advertising Internet & MAIL ORDER Recruiting System!!” and a “Private Personal Lead Store, Unlimited Access to Exclusive Decision Packs Leads + CML Leads generated from the Radio & T.V. Commercials/Infomercials.” (Workbook at 3.) These are precisely the sorts of leads Pershing Square has described in the past, the vast majority of which prove to be worthless because the persons who have provided their contact details (and, in some instances, credit card information) in order to become “leads” have no interest in becoming Herbalife distributors once they realize that Herbalife is the business opportunity being promoted.

During the October 4 call, Kirkendoll told Sam that “[w]e have something called a lead system. OK? Once again, you’re gonna learn all the different ways to attract people to you so you don’t have to go looking for people. OK? And that’s the beauty of what we have here, people will come right in—we have a system where people come right into your computer.” (Oct. 4 Recording at 18:13-29.) During the same call, Kirkendoll told Sam that “we’re pretty lucky because should you join you’ll be a part of Herbalife the Company but you’ll also be a part of a system called OBS, that’s called Online Business Systems.” (Oct. 4 Recording at 33:48-58.) Kirkendoll explained that “[w]hat’s really unique about being a part of OBS is that we have a system where leads

⁵ In making this statement, Herbalife conceded both the predatory nature of lead generation and Herbalife’s potential liability for that practice.

come right into our computer” and “they will also bring their credit card with them when they come in, meaning you will open your computer and there will be Sally Smith and her credit card, she’s waiting on you to give her a call. So, pretty unique.” (Oct. 4 Recording at 34:04-59.) Note that there is no mention of selling weight loss powder or any other Herbalife products; this is all about recruitment.

Further, Kirkendoll told Sam that by participating in lead generation she could earn thousands of dollars a month:

“What’s exciting about the lead system is this. We’ve done all the numbers . . . , 500 DVDs into the mail, 500 DVDs—and you’ll begin to see a lot of this stuff in the workbook by the way—500 DVDs into the mail will get you \$5,000 a month for the rest of your life.”

(Oct. 4 Recording at 39:14-39.) Of course, the notion that putting 500 DVDs containing recruiting videos in the mail is all that is required to generate \$5,000 of what Doran Andry calls “passive residual income” for the rest of a distributor’s life is preposterous, and such a claim is emblematic of the deceptive nature of lead generation.

During the October 6 call, Kirkendoll made similar statements, telling Sam that (i) her ability to participate in a lead generation system “mean[s] you don’t have to go out and try to find retail, you don’t have to do any of that stuff” (Oct. 6 Recording at 27:46-57), (ii) by sending out 500 Decision Packs per month she could generate “\$5,000 a month for the rest of your life” (Oct. 6 Recording at 28:43-50), and (iii) if she agreed to participate, “as many credit cards as you want will be coming in your computer” (Oct. 6 Recording at 45:51-54). When Sam indicated some interest in participating in a lead generation system, Kirkendoll responded, “[T]hat’s all that I do, that’s all Kari do[es], and that’s all everybody’s doing.” (Oct. 6 Recording at 1:06:14-39.) Such candor about the recruiting focus of the Herbalife scheme stands in stark contrast to Herbalife’s insistence that it is a consumer products company focused on making retail sales.

Screenshots of the OBS website, to which Sam bought access through the dMk Team, feature a “Recruiting” tab that appears to track, among other things, the number of “Decision Packs”⁶ a distributor has shipped and the number of “Call Me Leads” available. Additionally, the OBS website offers bundles of Decision Packs for sale.⁷ Thus, it appears that Herbalife distributors are still purchasing leads and recruiting materials from OBS,⁸ despite an express instruction from Herbalife that they not do so.⁹ Given the ease with which Herbalife could confirm this fact, its purported ignorance of what senior distributors like David and Karen DeSaegher are doing is akin to Captain Renault’s famous line in the movie *Casablanca*: “I am shocked—shocked—to find that gambling is going on in here.”

The Keogh Recording is not entirely clear with respect to the current relationship between Herbalife and OBS. On the one hand, Keogh acknowledges that senior distributors in his upline who were involved with OBS were suspended by Herbalife on December 27, 2012 (one week after Pershing Square’s December 20, 2012 presentation, which featured numerous screenshots of OBS marketing and training materials). (Keogh Recording at 40:55-41:24.) Keogh states that those distributors were

⁶ “Decision Packs” are promotional materials that distributors send to leads they are attempting to recruit into the Herbalife scheme. The Decision Packs encourage prospective recruits to become wealthy as independent business owners, but they generally do not mention Herbalife.

⁷ Notably, the OBS store also sells materials that explain how Herbalife distributors can minimize their tax burden. Pershing Square has not evaluated whether the advice being provided to distributors about ways to reduce their taxes is legitimate or is instead encouraging distributors to engage in tax fraud.

⁸ In addition, during calls with David and Karen DeSaegher, Sam was told that members of the dMk Team also use FSS to purchase leads. Sam has not yet been provided access to the lead generation components of FSS, which is run by Chairman’s Club member Doran Andry.

⁹ On February 14, 2013, Herbalife issued a notice informing distributors that OBS and Centurion Media Group, another business operated by Shawn Dahl which operated two OBS websites and hundreds of other websites affiliated with Dahl’s businesses, were no longer registered providers of “leads or advertising.”

later “reinstated” by Herbalife, but he claims that Shawn Dahl continued to be “kicked and beaten” by the company. (Keogh Recording at 41:24-42:15.) Further, Keogh describes a divergence of interests between Herbalife and the leadership of OBS with respect to business methods, as Herbalife emphasizes nutrition clubs and OBS continues to emphasize lead generation. (Keogh Recording at 8:19-9:17.) On the other hand, Keogh indicates that OBS members continue to order Herbalife products from the company (Keogh Recording at 25:17-19),¹⁰ that “Herbalife knows all about this” (Keogh Recording at 24:16-26), and that “[t]here were meetings this week with the president of Herbalife, all is good” (Keogh Recording at 24:27-31). In any event, Taylor and Kirkendoll repeatedly told Sam that dMk Team Members—who are Herbalife distributors—purchase recruiting leads through OBS.¹¹

In short, the predatory practice of lead generation continues despite Herbalife’s touted “Build It Better” campaign. Herbalife’s new policies concerning lead generation are window dressing designed to deflect criticism of deceptive methods routinely used by senior Herbalife distributors to lure new distributors into the Herbalife scheme.

¹⁰ Interestingly, Keogh also notes that, “by the way, if there ever was a problem and we couldn’t keep getting the products that we wanted to, you can always get everything cheaper on eBay anyway.” (Keogh Recording at 25:23-30.) This underscores what Pershing Square has been saying for the last ten months—Herbalife products are widely available on the Internet at prices lower than the supposedly discounted prices at which Herbalife sells those products to new distributors.

¹¹ Additionally, in explaining his own history with OBS, Keogh refers to “the pre-version of OBS that attracted us to this industry.” (Keogh Recording at 2:19-48.) Keogh may have been referring to Global Online Systems (“GOS”), the lead generation business that was run by Shawn Dahl’s mother-in-law Deborah Stoltz and her sister Marilyn Thom and was shut down by the Canadian Competition Bureau in 2004. If so, Keogh’s reference to GOS as a “pre-version of OBS” confirms that OBS is merely a continuation of the unlawful GOS business under another name.

III. Business Associated with Senior Herbalife Distributors and at Least One Herbalife Board Member Are Involved in Aggressive Online Recruiting and Lead Generation.

The recordings of the October 4 and October 6 calls demonstrate the ongoing involvement of businesses associated with senior Herbalife distributors, including current Herbalife board member and Chairman's Club member John Tartol, former Herbalife board member and current Founder's Circle member Leslie Stanford, and current Chairman's Club member Doran Andry, in aggressive online recruiting and lead generation. Indeed, the lead generation system being offered to Sam through the dMk Team was designed by Andry, who continues to promote the system, and is operated by David and Karen DeSaegher, who are senior members of the downlines of John Tartol and Leslie Stanford. In other words, lead generation systems like those promoted by the dMk Team are not operating in obscure outposts beyond the reach of Herbalife—they are connected to senior distributors at the very top of the Herbalife pyramid.

A. John Tartol and Leslie Stanford

During the October 4 call, Kirkendoll told Sam that John Tartol would be one of her “upline people” and invoked his rags-to-riches story in attempting to recruit Sam:

John Tartol, who was—the landlord was beating on the roof, “I want my rent!” He and his wife trying to sneak out the back door, but they didn't have the rent. OK? Driving an old Subaru, you know, driving down the freeway, afraid the tires were gonna to burst 'cause they were so thin. You know what I mean? So, but now he makes over \$350,000 a month. So there are gonna be many, many, many, many stories, you know what I mean, and we just average people—that's all this is—who decided that they want life to change.

(Oct. 4 Recording at 52:40-53:30.) Kirkendoll further stated that Tartol is David DeSaegher's “mentor.” (Oct. 4 Recording at 58:04-25.) In subsequent follow-up calls

with Karen and Michael DeSaegher, the DeSaeghers explained that John Tartol is in David's upline and Leslie Stanford is in Karen's upline.

It is very unlikely that Tartol and Stanford are ignorant of what the DeSaeghers are doing with the dMk Team. In fact, the dMk Team website to which Taylor and Kirkendoll referred Sam, www.96billion.com, features photographs of Tartol and Stanford, as well as Susan Peterson, a member of the Herbalife Founder's Circle. The website refers to Tartol, Stanford and Peterson as "Our multi-millionaire U.S. mentors."¹²

B. Doran Andry

During the October 4 call, Kirkendoll emphasized Andry's financial success (Oct. 4 Recording at 19:07-27) and explained that Andry played an instrumental role in setting up the lead generation system being offered through the dMk Team:¹³

So Sally Smith comes in with her credit card and all she's sayin' to you is, "Please send me a DVD." And at that point she'll get an extended version of what you've already seen. OK? And that's Doran, once again, the number one distributor in North America, laying everything out for them. So you don't even have to give the pitch to Sally Smith.

(Oct. 4 Recording at 35:17-40.) Kirkendoll also told Sam that "Doran invited us to be a

¹² That website can be accessed using the username "Iamwealthy" and the password "IProsper." It is worth spending some time perusing the website because it confirms what Pershing Square has been saying, namely, that unwitting people are duped into becoming Supervisors in the Herbalife scheme—often at a cost of more than \$3,000—based on false promises that they can earn thousands of dollars a month in their spare time with little or no effort. The website is notable in other respects. It includes comical disclaimers, which appear after pages of outlandish income claims and say things like "*Special Note* This is not a Lottery Ticket, there is work involved." The website goes on to display a mock-up of a trillion dollar bill. In addition, the website includes a number of outlandish medicinal and nutritional claims about Herbalife products.

¹³ Kirkendoll may have been referring to the lead generation system offered by FSS, to which Sam does not yet have access.

part of this amazing system” and that “often times David and Karen, they’re on calls with Doran, and once in a while we’re on calls with Doran.” (Oct. 4 Recording at 1:10:50-1:11:03:05.)

During the October 6 call, Kirkendoll described in lurid detail Andry’s responsibility for—and ongoing efforts to promote—the lead generation system being offered through the dMk Team:

I saw Doran myself, I saw Doran. Right? I saw this with my physical eyes. He was walking in the back of a group, it’s only about 500 people, it’s people who are part of this lead generating system thing, ‘cause it’s not the whole Herbalife world. Right? And he actually had a hood on his head, and he actually started crying. I want you to understand, here’s a guy who makes \$300,000 a month, he’s sitting in the back row, they got a spotlight on him, he had a hoodie on his head so nobody knew who he was, and he took the hood off and he’s talking to us about the lead system, letting us know our life can change, and he actually started crying, with tears coming down his eyes. Here’s a guy, at that very moment, had a Rolls Royce in the lobby of the hotel, had a Bentley in the lobby of the hotel, and had a Ferarri in the lobby of the hotel. You know, just in the lo—I got no idea how they got those cars in there. And what he said—and he had a \$150,000 motorcycle outside, think he had about two of those outside. And what he said to us, “Guys, I brought these things here not to show off, not to show off, but to show you what’s possible.” OK? So basically, he’s the one that let David [DeSaegher] come into the lead system, ‘cause a lot of people wanted to come in, but he didn’t let ‘em in. OK? But David bugged him for about three months and Doran finally said, “OK, man. I’ll let you come in.” OK? So that’s what you have a chance to become part of.

(Oct. 6 Recording at 1:13:43-1:15:12.) Later in the call, Kirkendoll again explained that lead generation “is something that Doran, Doran, he put together for you, meaning he orchestrated all of the newspaper—not newspapers, but radio stations, he put all the TV advertisements together, he put his money—you know, he’s the one that put all of that together to make this happen for his team.” (Oct. 6 Recording at 1:19:02-22.)

IV. New Herbalife Distributors Are Encouraged to Focus on Recruiting.

The enclosed materials leave no doubt about the recruiting focus of the Herbalife business opportunity. For example, despite formulaic disclaimers that “Herbalife is a company based on the quality of its health-related products and the use of these products by its consumer” and that “dMk Team members are reminded that every Herbalife Distributor should emphasize and focus his or her efforts on the retail sale of Herbalife products for use by the purchaser” (Workbook at 1), the dMk Team Workbook tells new distributors that “Position Determines Your Pay” and teaches them that the way to make money with Herbalife is to qualify for Supervisor immediately and then build a downline by sending out large numbers of Decision Packs to recruit others into the scheme (Workbook at 4-11). There is no mention of making money by selling Herbalife products at retail.

The pressure on new distributors to become supervisors immediately—often at a cost of \$3,000—is pervasive. The Workbook depicts large earnings from “Royalty Checks coming in” (Workbook at 5) and entices recruits with depictions of “\$MONEY\$ YOU WILL EARN as a SUPERVISOR when you bring-in (Sponsor) Distributors” (Workbook at 9). The Workbook tells recruits, “If you are planning on working/doing the Business NEXT month, You Need to Be a Supervisor THIS Month!!!” (Workbook at 10) and “No Supervisor No Check” (Workbook at 11).

The Workbook explicitly promotes the pyramidal nature of the Herbalife scheme, asking recruits to “Imagine Sponsoring 3 Distributors who Become SUPERVISORS & they each Duplicate Your Effort and Sponsor 3 Distributors who Become SUPERVISORS...and so on Infinite Levels!” (Workbook at 15.) Indeed, the Workbook invites recruits to play the “Power Recruit Numbers Game.” (Workbook at 18.) Read as a whole, the message conveyed by the Workbook is unmistakable—the Herbalife business opportunity is not about trying to make money selling weight loss powder at retail; it is about recruiting new distributors.

The recordings are even clearer than the Workbook that new distributors are told to focus on recruiting if they want to make money. During the October 4 call, Kirkendoll told Sam that “one of the main things that we focus on in OBS is that you don’t have to focus on retailing.” (Oct. 4 Recording at 35:51-57.) Later in the call, Kirkendoll was even more direct:

“We mostly focus on recruiting. OK? So, recruiting is what gets you rich. Recruiting is what gets you rich. That’s what’s called duplicating yourself.”

(Oct. 4 Recording at 40:36-49.)

“Remember, you get rich from recruiting. You don’t get rich from retail.”

(Oct. 4 Recording at 59:13-18.) Kirkendoll made similar comments during the October 6 call:

“Your true money is going to come from as people coming into your business. That’s where the true money is going to come. As you begin to build a business. As you get distributors who are excited. That’s where it really—that’s where the true money comes in, when you begin to understand the marketing plan.”

(Oct. 6 Recording at 1:35:17-33.) The dichotomy between the Herbalife party line and the reality of what is going on in the marketplace could not be sharper.

V. New Recruits Are Pressured to Take on Large Amounts of Debt to Qualify for Supervisor and Recruit Others into the Herbalife Scheme.

Herbalife has said repeatedly that the only purchase required to become an Herbalife distributor is the purchase of the International Business Pack or mini-IBP. The Workbook, however, demonstrates that the pernicious practice of encouraging new distributors to go deeply into debt in order to become a Supervisor continues. Recruits are encouraged to use “Other People’s Money” to qualify for Supervisor and advance up the steps of the Herbalife Sales & Marketing Plan, including by applying for multiple credit cards. (Workbook at 13.) Indeed, the Workbook provides recruits with a list of potential funding sources and encourages them to “[a]pply to 100 sources in one calendar

day to help increase the opportunity to obtain the operating capital.” (Workbook at 13.) The Workbook tells recruits that they should obtain \$10,000 to \$30,000 in “operating capital” if they “want to build fast,” and that “\$50,000 funding would not be too much.” (Workbook at 19.)

The pressure exerted by the dMk Team on new distributors to borrow large sums of money violates Herbalife’s Rule 1-C, revised in May 2013, which purports to prohibit distributors from going into debt (or encouraging others to do so) in order to pursue the Herbalife business opportunity. Herbalife knows—or could easily discover—that Rule 1-C is being ignored on a routine basis by senior distributors like the DeSaeghers.

The enclosed materials also demonstrate that new distributors are pressured to incur large amounts of debt in order to recruit others into the Herbalife scheme. The dMk Team Workbook tells new distributors that the only way to “Duplicate Your Efforts,” “Create Residual Income” and “Create[] Exponential Growth” is to send out at least 500 Decision Packs to so-called “Paid Pack Leads” or “Decision Pack Leads.” (Workbook at 20-21.) These leads cost \$115 each (Workbook at 19), so purchasing 500 such leads requires an investment of “up to \$57,500” (Workbook at 21). In addition, the Decision Packs themselves cost \$39.95 each, requiring the new distributor pursuing this strategy to invest an additional \$20,000. (Workbook at 21.) This explains why failed Herbalife distributors often report having lost tens of thousands of dollars before dropping out of the scheme. New members of the dMk Team are encouraged to invest nearly \$80,000 just to get started. Indeed, the Workbook goes on to encourage dMk Team members to quickly get “Another Round of 500+ DP’s out.” (Workbook at 22.)

The Workbook assures distributors that, if they send out 500 DVDs, 75 of the recipients will sign up as distributors, and 25 of those new distributors will qualify for Supervisor immediately. (Workbook at 20.) The Workbook also assumes that distributors pursuing this strategy will recoup the full cost of the Decision Packs they send out. (Workbook at 21.) Indeed, the Workbook tells those distributors that, for each round of 500 Decision Packs, they can expect to earn \$80,000 to \$100,000 “PLUS 5%

Royalties & 2% Bonus!” (Workbook at 21.) Of course, the suggestion that new distributors can earn six figures by putting 500 DVDs in the mail is absurd, but the Workbook presents these figures as if they are realistically achievable.

On the October 6 call, Kirkendoll expressed similar confidence in the dMk Team approach to recruiting:

So the thing that excited me with the lead system is I saw that it was a mathematical equation that I could get to where I wanted to go. And that’s what totally blew my mind. And that’s why I’ve been walking on air for the last couple of years. It’s a mathematical equation that you will get to where you want to go.

(Oct. 4 Recording at 1:15:37-54.) It is difficult to imagine clearer evidence that the Herbalife business opportunity, as promoted by senior distributors like David and Karen DeSaegher, is a wealth transfer scheme in which Herbalife products are ancillary to the main goal of bringing new people into the scheme and getting them to invest large amounts of money as quickly as possible—before they realize that the deck is stacked against them.

* * *

In sum, the enclosed materials provide a glimpse behind the curtain at how the Herbalife scheme actually functions in practice. What you see is a dramatically different picture than the rosy one painted by Herbalife and its senior executives. As a result, Herbalife is well aware that—despite cosmetic efforts to stop the most egregious practices in the United States—thousands of people every day are persuaded by means of calculated deception to become Herbalife distributors. Like huge numbers of people who preceded them, these new distributors are destined to fail because Herbalife is an illegal pyramid scheme.

SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

July 29, 2013

Via FedEx

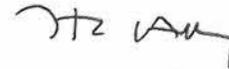
Christine M. Todaro, Esq.,
Division of Marketing Practices,
Federal Trade Commission,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: Herbalife

Dear Christine:

On behalf of Pershing Square Capital Management, L.P., I enclose five copies of slides relating to the predatory practices of senior Herbalife distributors, including aggressive recruitment of new distributors by means of outlandish income claims and lead generation, and Herbalife's complicity in these practices. We look forward to discussing the content of these slides and other matters with you at our upcoming meeting.

Yours sincerely,



Steven L. Holley

(Enclosure)



The Top of the Herbalife Pyramid

Business Methods, Lead Generation
and Deceptive Income Claims

Disclaimer

Pershing Square Capital Management, L.P. (“Pershing Square”) is an investment adviser to funds that are in the business of buying and selling securities and other financial instruments.

Pershing Square currently has a short position in Herbalife Ltd. (“Herbalife”) common stock. We do not own any options on Herbalife common stock.

Pershing Square will profit if the trading price of Herbalife common stock declines and will lose money if the trading price of Herbalife common stock increases.

Pershing Square may change its views about or its investment positions in Herbalife at any time, for any reason or no reason. Pershing Square may buy, sell, cover or otherwise change the form or substance of its Herbalife investment. Pershing Square disclaims any obligation to notify the market of any such changes.

The information and opinions expressed in this presentation (the “Presentation”) are based on publicly available information about Herbalife. Pershing Square recognizes that there may be non-public information in the possession of Herbalife or others that could lead Herbalife or others to disagree with Pershing Square’s analyses, conclusions and opinions.

The Presentation may include forward-looking statements, estimates, projections and opinions prepared with respect to, among other things, certain legal and regulatory issues Herbalife faces and the potential impact of those issues on its future business, financial condition and results of operations, as well as, more generally, Herbalife’s anticipated operating performance, access to capital markets, market conditions, assets and liabilities. Any such statements, estimates, projections and opinions may prove to be substantially inaccurate and are inherently subject to significant risks and uncertainties beyond Pershing Square’s control.

Although Pershing Square believes the Presentation is substantially accurate in all material respects and does not omit to state material facts necessary to make the statements therein not misleading, Pershing Square makes no representation or warranty, express or implied, as to the accuracy or completeness of the Presentation or any other written or oral communication it makes with respect to Herbalife, and Pershing Square expressly disclaims any liability relating to the Presentation or such communications (or any inaccuracies or omissions therein). Thus, shareholders and others should conduct their own independent investigation and analysis of the Presentation and of Herbalife and other companies mentioned.

The Presentation is not investment advice or a recommendation or solicitation to buy or sell any securities. Except where otherwise indicated, the Presentation speaks as of the date hereof, and Pershing Square undertakes no obligation to correct, update or revise the Presentation or to otherwise provide any additional materials. Pershing Square also undertakes no commitment to take or refrain from taking any action with respect to Herbalife or any other company.

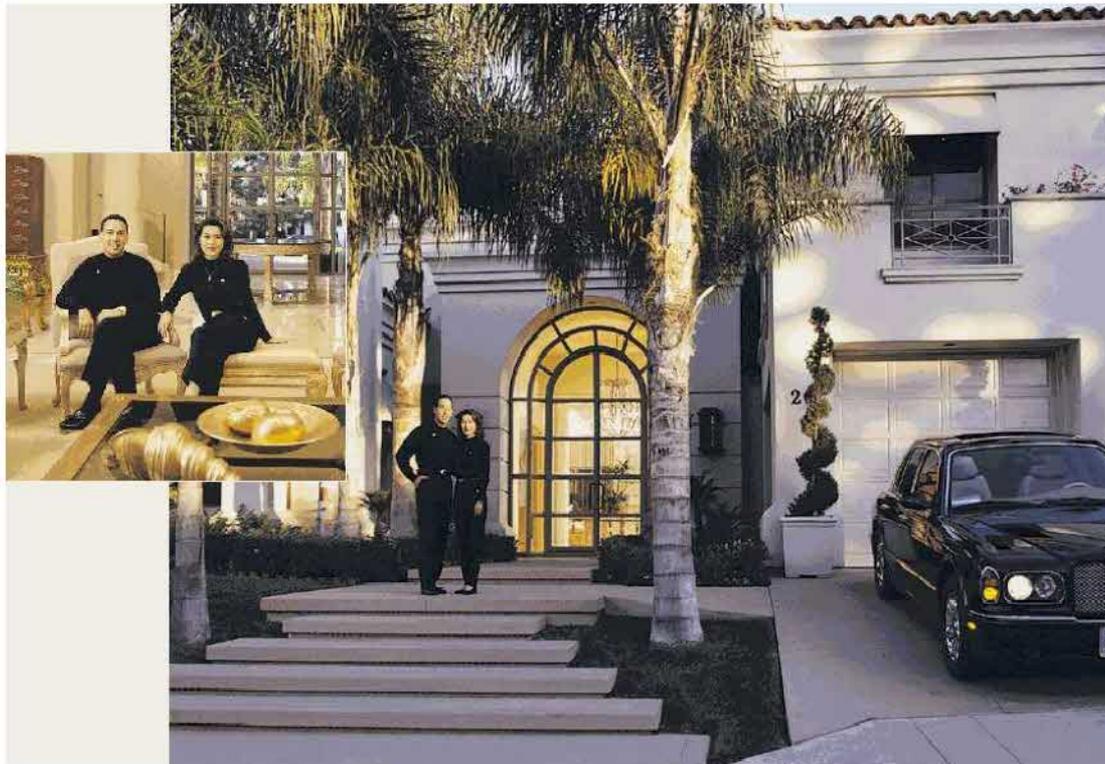
As used herein, except to the extent the context otherwise requires, Pershing Square includes its affiliates and its and their respective partners, directors, officers and employees.

Who's at the Top of the Herbalife Pyramid?

How Did They Get There?

- The following stories illustrate the types of “Business Methods” that enable Herbalife Chairman’s Club members to prey on unsophisticated consumers and reach the top of the pyramid.
- These methods include outlandish income claims, accompanied by pictures of luxury cars, yachts and mansions, deceptively suggesting that great wealth is easy to achieve. In fact, success is impossible for the vast majority of new distributors.
- These methods also include “lead generation” – the sale of names and contact details of people supposedly interested in the Herbalife business opportunity (sometimes for more than \$100 per “lead”).
- These predatory practices have resulted in losses totaling billions of dollars for millions of unfortunate victims.
- Herbalife has known about and profited from these Business Methods for years.
- At the end of this presentation, we include additional information about Business Methods, lead generation and Herbalife’s complicity in these practices.

Doran Andry



Who is Doran Andry?

- Doran Andry is 48 years old and resides in Orange County, California.
- Andry often emphasizes his humble beginnings to imply that it is possible to get rich as an Herbalife distributor. He grew up in a one bedroom house with five siblings and did not attend college.
- Andry joined Herbalife as an independent distributor in 1992.
- In 1999, Andry joined the Chairman's Club, a small group of senior distributors at the top of the Herbalife pyramid.
- Andry trumpets the fact that Herbalife made him and his wife "millionaires."



 **DORAN & EMIKO ANDRY**
Chairman's Club



Doran Andry passed up the Herbalife opportunity in the late 1980s, but in 1992, he decided to work the business part time while continuing to run a financial-planning business. Eventually, he sold his business and focused solely on the Herbalife opportunity. Doran and his wife, Emiko, joined the Chairman's Club in 1999 and have two homes—one in Japan and one in the United States—that they share with their young sons.

Andry Flaunts His Wealth in Promoting Herbalife



Video

“There was a business model that all we needed to do is execute. And then, before you know it, in four months, working the same hours, two to three hours a week, the income hit \$1,500 a month...and in 90 days, our income hit \$10,000 a month. In our very first calendar year, our income hit \$350,000. In our second year...our income hit a million one. We had become millionaires.”



Video

“You know, it’s really amazing. I step out of the Ferrari, the Bentley, or whatever, and people go, ‘What does that guy do for a living?’ And I go, ‘I’m an Herbalife independent distributor.’ And people are absolutely amazed that that’s what I do. It’s an incredible quality of life.”

How Did Andry Get to the Top?

- In the late 1990s, Andry and other distributors formed Newest Way to Wealth (“NWTW”), an internet-based method for recruiting new Herbalife distributors.
- NWTW required members to “buy in” through large purchases of NWTW promotional and support materials, as well as large purchases of Herbalife products to enable members to achieve “Supervisor” status immediately.
- Members were sold websites to recruit new people into the scheme. NWTW charged members up to \$609.00 a year for a top-level domain and \$389.00 for an “affiliate website.”
- NWTW also required members to recruit new distributors using scripted sales pitches.
- NWTW promised to provide members with leads, to help them select “serious people out of the leads,” and to provide training and other support for their recruiting efforts.

Getting Started
The Newest Way to Wealth

Get started now!

We have a decision package priced at \$36.00 that includes an electronic book, digital audio files, and digital video files. This package explains our “Work From Home” Internet and mail-order program. Your mentor will contact you after purchasing this decision package. Your mentor will work closely with you to help assure your success. Remember, “Your success is our success”. Can you be successful working from home? Yes - anyone can do this, provided you are willing to spend the time, effort, and dedication to building your business. You don't need any special skills. All you need is the courage to get started. You can do this business, as long as you are teachable and have the motivation to achieve your goals. We have countless success stories to prove this.

Be Your Own Boss!
Work at Your Pace
Change Your Life



If you would have told me six years ago that my life would be as it is now I would have told you that you were talking about someone else. Yes I had dreams and desires but I didn't know how to make them real. Now my wife Emiko and I wake up and pinch ourselves everyday because we can't believe how far we've come in such a short amount of time. Especially since we didn't really believe that we could do it in the beginning.

When I first learned about the system that you are about to experience I was excited but I was skeptical. I thought that surely one had to be lucky, or smart or have some special talent in order to make it happen big. My personal mentors Henry and Stania showed me the system but I let my fears and the comments of others sway me from pursuing it further. I tried it but I didn't really do the simple steps that I was taught. I even remember thinking “It can't be this simple, there's got to be something I'm missing.” I made every excuse in the book to justify not going for it. So I let the opportunity fall by the wayside.

NWTW Sued and Cited by the FCC

- In 2002, three years after Andry joined the Chairman's Club, Andry, NWTW and Herbalife were sued in a class action in federal district court in Los Angeles.
- Plaintiffs alleged that Herbalife and NWTW constituted a pyramid scheme and that the defendants were committing common law fraud and securities fraud.
- The complaint further alleged that:
 - NWTW's projected earnings estimates were deceptive.
 - NWTW's seminars, promotional literature, video tapes, and websites omitted and misrepresented the risks inherent in the business.
 - NWTW/Herbalife participants typically lost \$10,000 to \$50,000 and many were forced into bankruptcy.
- The case was settled for \$6 million in 2004.
- Also in 2002, Andry, NWTW and Herbalife were cited by the FCC for violating the Telephone Consumer Protection Act.

| | | | |
|---|--|--|--|
| SCHUBERT & REED LLP 750 California Street, Suite 1600 San Francisco, CA 94111 (415) 788-4220 | 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 | UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION | Case No. CV-02-1431 SJO (RCx) PLAINTIFFS' SECOND AMENDED COMPLAINT JURY TRIAL DEMANDED |
| NANCY JACOBS and ANNETTE M. SANCHEZ, Individually On Behalf Of Themselves And All Others Similarly Situated, and on Behalf of the General Public, | | Plaintiffs, | |
| vs. | | | |
| HERBALIFE INTERNATIONAL, INC., HERBALIFE INTERNATIONAL OF AMERICA, INC., DREAM BUILDERS & ASSOCIATES INTERNATIONAL, INC., H.B. INTERNATIONAL GROUP, INC., ANTHONY POWELL, DORAN ANDRY, CRAIG M. TSUTAKAWA, CAROLINE TSUTAKAWA, TARUN JUNEJA, JOHN BEALL, BRETT BARTHOLOMEW, LEAH SINGLETON, STEPHEN COMBS and DEBERA COMBS, | | Defendants. | |

| | |
|---|---|
|  | FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554 |
| AUGUST 13, 2002 | |
| <u>BY CERTIFIED MAIL</u> <u>RETURN RECEIPT REQUESTED</u> | |
| Future Dreams a.k.a. Dream Builder and Associates, Inc. a.k.a. The Newest Way to Wealth a.k.a. Dream Builders and Associates International a.k.a. HB International Group, Inc. a.k.a. Herbalife International, Inc. a.k.a. Herbalife International of America | |

Dear Correspondent(s):

This is an official **CITATION** and **LETTER OF INQUIRY** related to your business's apparent violation of section 227 of the Communications Act of 1934, as amended, ("Communications Act"), 47 U.S.C. § 227, and section 64.1200 of Federal Communications Commission ("FCC" or "Commission") rules, 47 C.F.R. § 64.1200. These actions are taken pursuant to the provisions of sections 4(i), 403, and 503(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 403, 503(b)(5).

NWTW Becomes “Financial Success Systems”

eBusinessForYou.net
Internet Business Solutions Outside the Box.

Making the Internet
↓
do business your way.

eBusinessForYou.net
support@
sales@
info@
get out of the box!

eBusinessForYou.net
Admin

- In the wake of the NWTW litigation, Andry started a new lead generation business called Financial Success System (“FSS”).



- Around the time NWTW was being dismantled, a website affiliated with FSS, eBusinessForYou.net, featured a form on its front page that enabled NWTW members to transfer their domains to FSS.

[FSS Domain Transfer Form](#)
[Domain Name Renewal Form](#)
[Recruitment Site Renewal Form](#)
[Retail Site Renewal Form](#)
[Recruitment New Website Order Form](#)
[Retail New Website Order Form](#)
[What is included with the Site Document](#)
[FAQ's](#)

The FSS Website Features Andry Making Highly Misleading Income Claims

Profit & Loss - Single Club Model
\$2,500 Avg. Mo. Dist. Sale

| PERIOD ENDING | December 31, 2011 | December 31, 2012 | December 31, 2013 | December 31, 2014 | December 31, 2015 |
|----------------------------------|-------------------|---------------------|---------------------|----------------------|-----------------------|
| Total Revenue | 411,575.00 | 1,150,880.00 | 4,659,300.00 | 28,800,370.31 | 127,213,791.43 |
| Personal Volume (Sales) | 28,750.00 | 30,000.00 | 30,000.00 | 30,000.00 | 30,000.00 |
| Organizational Volume (Sales) | 355,500.00 | 1,088,750.00 | 4,597,500.00 | 28,738,570.31 | 127,151,981.43 |
| Income from Station Rental | 27,325.00 | 31,800.00 | 31,800.00 | 31,800.00 | 31,800.00 |
| Cost of Revenue | 345,125.00 | 1,014,200.00 | 4,382,650.00 | 27,547,077.50 | 122,012,961.77 |
| Gross Profit | 66,450.00 | 136,680.00 | 276,650.00 | 1,253,292.81 | 5,200,829.66 |
| Operating Expenses | 36,259.35 | 37,379.40 | 36,636.40 | 36,179.40 | 36,179.40 |
| Construction & Build-out Costs | 2,000.00 | 2,000.00 | 2,000.00 | 2,000.00 | 2,000.00 |
| Information Technology Equipment | 400.00 | 400.00 | 400.00 | 400.00 | 400.00 |
| Property Lease Expense | 24,000.00 | 25,200.00 | 26,450.00 | 24,000.00 | 24,000.00 |
| Marketing Expense | 6,000.00 | 6,000.00 | 6,000.00 | 6,000.00 | 6,000.00 |
| Utilities Expense | 3,000.00 | 3,000.00 | 3,000.00 | 3,000.00 | 3,000.00 |
| E-Business Expense | 859.35 | 779.40 | 779.40 | 779.40 | 779.40 |
| Staff Compensation | - | - | - | - | - |
| Management Compensation | - | - | - | - | - |
| Buffer Cost of Payroll | - | - | - | - | - |
| Operating Income or Loss | 30,190.65 | 99,300.60 | 239,013.60 | 1,217,113.41 | 5,164,650.26 |
| Net Income | 30,190.65 | 99,300.60 | 239,013.60 | 1,217,113.41 | 5,164,650.26 |

Video

“You do the model for four years and you’re going to have to cut back on your lifestyle and manage your money to live off of \$100,000 a month. And in five years, you’ve got \$5.1 million of passive, residual income.”

The FSS Website Features Andry Making Highly Misleading Income Claims

Profit & Loss - Single Club Model
\$2,500 Avg. Mo. Dist. Sale

| PERIOD ENDING | December 31, 2011 | December 31, 2012 | December 31, 2013 | December 31, 2014 | December 31, 2015 |
|----------------------------------|-------------------|---------------------|---------------------|----------------------|-----------------------|
| Total Revenue | 411,575.00 | 1,190,690.00 | 4,659,300.00 | 28,800,370.31 | 127,213,791.43 |
| Personal Volume (Sales) | 28,750.00 | 30,000.00 | 30,000.00 | 30,000.00 | 30,000.00 |
| Organizational Volume (Sales) | 355,000.00 | 1,088,750.00 | 4,597,500.00 | 28,738,570.31 | 127,151,591.43 |
| Income from Station Rental | 27,825.00 | 31,800.00 | 31,800.00 | 31,800.00 | 31,800.00 |
| Cost of Revenue | 345,125.00 | 1,014,200.00 | 4,382,650.00 | 27,547,077.50 | 122,073,961.77 |
| Gross Profit | 66,450.00 | 136,380.00 | 276,650.00 | 1,253,292.81 | 6,206,329.66 |
| Operating Expenses | 36,259.35 | 37,379.40 | 38,635.40 | 36,179.40 | 36,179.40 |
| Construction & Build-out Costs | 2,000.00 | 2,000.00 | 2,000.00 | 2,000.00 | 2,000.00 |
| Information Technology Equipment | 400.00 | 400.00 | 400.00 | 400.00 | 400.00 |
| Property Lease Expense | 24,000.00 | 25,200.00 | 26,400.00 | 24,000.00 | 24,000.00 |
| Marketing Expense | 6,000.00 | 6,000.00 | 6,000.00 | 6,000.00 | 6,000.00 |
| Utilities Expense | 3,000.00 | 3,000.00 | 3,000.00 | 3,000.00 | 3,000.00 |
| E-business Expense | 859.35 | 779.40 | 779.40 | 779.40 | 779.40 |
| Staff Compensation | - | - | - | - | - |
| Management Compensation | - | - | - | - | - |
| Bad Debt | - | - | - | - | - |
| Bad Debt - Cost of Payroll | - | - | - | - | - |
| Operating Income or Loss | 30,190.65 | 98,970.60 | 238,014.60 | 1,217,113.41 | 5,164,650.26 |
| Net Income | 20,190.65 | 88,970.60 | 238,014.60 | 1,217,113.41 | 5,164,650.26 |

Video

“You can work a 3 to 5 year window and make millions. Guys, I penetrated a little market, we worked 5 ½ years, we’ve walked away making tens of millions of dollars. Over the course of my lifetime, it’ll be hundreds of millions of dollars – for five years.”

FSS Websites Studiously Avoid Any Mention of Herbalife



SECURE A BETTER FINANCIAL FUTURE TODAY!!!

- FINANCIAL SECURITY
- SUCCESS
- FREEDOM

How Would You Like To...

- ✓ Earn up to \$500 - \$3,000 PT
- ✓ Earn up to \$3,000, \$18,000 + FT
- ✓ Be Your Own Boss
- ✓ Work When YOU Want



LeAnn, Minnesota
 "This business is amazing! I started this business very part-time to get out of my job and be home with my three girls. This incredible business has allowed me to leave my job and work from home around my girls."

For a limited time we are offering our Home Based Business Information & Training Online for FREE. Yes that is right for FREE with no hiding payments or charges.

Learn all the details on how to successfully operate this life-changing golden opportunity that is so easy to manage you can even make fantastic income working only part-time.

Join the thousands who have given up their dead-end 9 to 5 jobs to enjoy huge success and freedom!

LIMITED TIME OFFER!

View the Home Based Business Information & Training Presentation Video ONLINE ABSOLUTELY FREE

(*) Indicates required field.

First Name: *

Last Name: *

Street Address: *

Apt/Suite:

City: *

State/Province: *

Zip/Postal Code: *

Country: *

E-mail: *

Confirm E-mail: *

Phone: *

Best Time to Call: *

[Get Access to My FREE Presentation](#)

No hidden charges, payments, etc.

[U.S. Resident's Disclosure](#) [Canadian Resident's Disclosure](#)
[Privacy Policy](#)

FSS Websites Studiously Avoid Any Mention of Herbalife

**Secure a Better
Financial Future Today!**

Join the thousands who have given up their dead-end
9 to 5 jobs to enjoy huge success and freedom!



How Would You Like To...

- ✓ Earn up to \$500 - \$3,000 PT
- ✓ Earn up to \$3,000, \$18,000 + FT
- ✓ Be Your Own Boss
- ✓ Work When YOU Want
- ✓ Live the Lifestyle You Deserve

For a limited time we are offering our Home
Based Business Information & Training Online for
FREE. Yes that is right for FREE with no hiding
payments or charges.



Dan and Andrea, California

"This opportunity is absolutely incredible.
Because of this amazing business, we have been
able to leave our jobs, work from our home, set
our own schedules. Best of all, we now have real
financial freedom."



LIMITED TIME OFFER!

View the Home Based Business
Information & Training Presentation Video
ONLINE ABSOLUTELY FREE

(*) Indicates required field.

First Name: *

Last Name: *

Street Address: *

Apt/Suite:

City: *

State/Province: * Please Select

Zip/Postal Code: *

Country: * Please Select

E-mail:

Confirm E-mail:

Phone: *

Best Time to Call: * Please Select

Get Access to My FREE Presentation

No hidden charges, payments, etc.
[U.S. Residents Disclaimer](#) [Canadian Residents Disclaimer](#)
[Privacy Policy](#)

Herbalife's Response to Andry's Misconduct

- What has Herbalife done to halt the predatory and deceptive conduct of Andry through NWTW and FSS?

NOTHING

- Instead, Herbalife holds Andry out as the paradigm of a successful distributor.

Herbalife Promotes Andry as the Personification of Success

In 1999, Andry became a member of the Herbalife Chairman's Club. Andry was featured on the cover of *Today*, a magazine published by Herbalife.

A newsletter featuring the Herbalife Broadcast Network promoted the availability of Andry's "Business Basics" lecture at Herbalife's 2003 Extravaganza in Singapore.

A newsletter promoting Herbalife's 2005 Extravaganza in Atlanta listed Andry as a featured speaker and referred to him as a "Legend of Herbalife."



Herbalife Continues to Promote Andry in High-Profile Settings

In 2010, Andry conducted trainings in Vietnam as part of Herbalife's 30th anniversary celebration and Chairman's Club tour.

A flyer promoting Herbalife's 2011 Leadership Development Weekend in Chicago featured Andry and his twin brother Donte as keynote speakers.

A still-active Herbalife website recognizes Andry as "The Best of the Best."

THÔNG BÁO
Chairman's Club Tour & Anniversary Celebration
Doran Andry
November 28th 2010
Ho Chi Minh City
Nguyen Du Stadium
District 1

"I realized that Herbalife was the chance of a lifetime," says Doran Andry of the USA. "Within four months of working the Business Full-time, I was making \$10,000 a month."
Today, the Andry's live in sunny Southern California and have just moved into their \$30-million dream house that they have built over the past four years. It is like waking up in a beautiful resort every single day. They also just moved into their new multi-million-dollar offices, which are right on the sandy beach of the Pacific Ocean, and just a 10-minute drive from their residence. Herbalife has truly allowed the Andry's to become more and do more than they could have ever imagined. For this reason, they feel morally obligated, in an empowering way, to return this act of mentorship by doing the same for others around the world."

Doran and his wife, Emiko, work the business together. "We are having a wonderful time," he continues. "We get to see each other every day, travel all over the world and build an international organization alongside each other. What we do affects people in such a positive way. With Herbalife, everyone wins!"

AGENDA - Ho Chi Minh City, 28th Nov. 2010

| Time | Training | Qualification |
|-------------------|-----------------------|--|
| 10:00AM - 11:00AM | Leadership Training | T&S Team Members |
| 13:30PM - 15:30PM | Supervisor Training | Ticket: 100,000 VND Open to Success Builders and above with ticket |
| 17:00PM - 18:30PM | Super HOMT Gala Event | Ticket: 55,000 VND Open to all distributors and guests with tickets VIP Seating: 10,000 TVP in Sep-Oct in total, with min 2,500 TVP / month |

To book tickets or for more details, please call: +848 3827 9292.
*Resumes applicable to the individuals (or examples) depicted and not average. For average financial performance data, see the Statement of Average Gross Compensation for U.S. territories at www.herbalife.com and www.myherbalife.com.

HERBALIFE Nutrition for a better life.

CHICAGO, IL
APRIL 8-10, 2011
DEVELOP YOUR LEADERSHIP SKILLS AND
ADVANCE YOUR BUSINESS TO THE NEXT LEVEL.

DORAN ANDRY
Chairman's Club Member

DONTE ANDRY
Executive President's Team Member 20K

Hilton Rosemont Chicago O'Hare
5550 North River Road • Rosemont, IL 60018
647-478-4488 or 800-445-8667
Special Herbalife Room Rate \$110

FREE GIFT!
We will deliver your gift to you at the event.

TICKETS
SHOW US HOW YOU ADVANCE
\$90
SAVE \$20
Available until April 1st
All else above \$110
(Includes 4 nights lodging)

AGENDA
Public Translations will be provided

Friday
10-4pm: T&S & Active World Team Meeting
8-9pm: President's Team Qualification
Please search for code 30 (includes code)

Saturday
8:30-9:30am: T&S & Active World Team Meeting
9:30-10:30am: Leadership Development Training
10:30-11:30am: Super Home Super Achievement Qualification Dinner
11:30am-12:30pm: Super Home Super Achievement Qualification Dinner
12:30-1:30pm: Super Home Super Achievement Qualification Dinner
1:30-2:30pm: Super Home Super Achievement Qualification Dinner
2:30-3:30pm: Super Home Super Achievement Qualification Dinner
3:30-4:30pm: Super Home Super Achievement Qualification Dinner
4:30-5:30pm: Super Home Super Achievement Qualification Dinner
5:30-6:30pm: Super Home Super Achievement Qualification Dinner
6:30-7:30pm: Super Home Super Achievement Qualification Dinner
7:30-8:30pm: Super Home Super Achievement Qualification Dinner
8:30-9:30pm: Super Home Super Achievement Qualification Dinner
9:30-10:30pm: Super Home Super Achievement Qualification Dinner
10:30-11:30pm: Super Home Super Achievement Qualification Dinner
11:30-12:30am: Super Home Super Achievement Qualification Dinner

ABOUT THE SPEAKERS
Doran Andry has been selected to speak at leading industry conferences in over 100 cities and has received numerous awards and honors for his leadership in the industry. He is a successful entrepreneur and has built a multi-million dollar business with Herbalife. He is a successful entrepreneur and has built a multi-million dollar business with Herbalife. He is a successful entrepreneur and has built a multi-million dollar business with Herbalife.

Donte Andry has become a Herbalife Distributor in the USA and has been successful in building a successful business. He is a successful entrepreneur and has built a multi-million dollar business with Herbalife. He is a successful entrepreneur and has built a multi-million dollar business with Herbalife.

HERBALIFE Nutrition for a better life.

Herbalife Recognizes The Best Of The Best

sh Rochin

Tae Ho Kim & Hyun Mo Koo

Doran & Emiko Andry

Herbalife Has Awarded Andry the Mark Hughes Bonus on Two Occasions

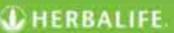
- Herbalife awards a Mark Hughes Bonus to its most “successful” distributors. Key factors Herbalife considers when granting the award include:
 - The **integrity** of the distributor’s business practices;
 - The degree to which the distributor supports, promotes and participates in corporate efforts, including meetings, promotions and developing strategic plans; and
 - Attendance at major corporate events.
- Andry received the Mark Hughes Bonus Award in 2007 and 2009.
- In 2007, Andry’s award was \$1,034,684.32.



Does Telling Aspiring Herbalife Distributors They Can Get Rich Easily Constitute “Integrity”?

 5 yrs...later \$100,000/mo

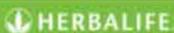


 *Nutrition for a better life.*

 A Dream Realized



30 million dollar Herbalife house

 *Nutrition for a better life.*

 1st day of Prep school



 *Nutrition for a better life.*

Does Telling Aspiring Herbalife Distributors They Can Get Rich Easily Constitute “Integrity”?



Video

“Just imagine, it started with a little dream to want to have a better life. . . . There’s never been a better time. **And all of you, if you just dream, you also too can have everything we have and much more.**”

Shawn Dahl



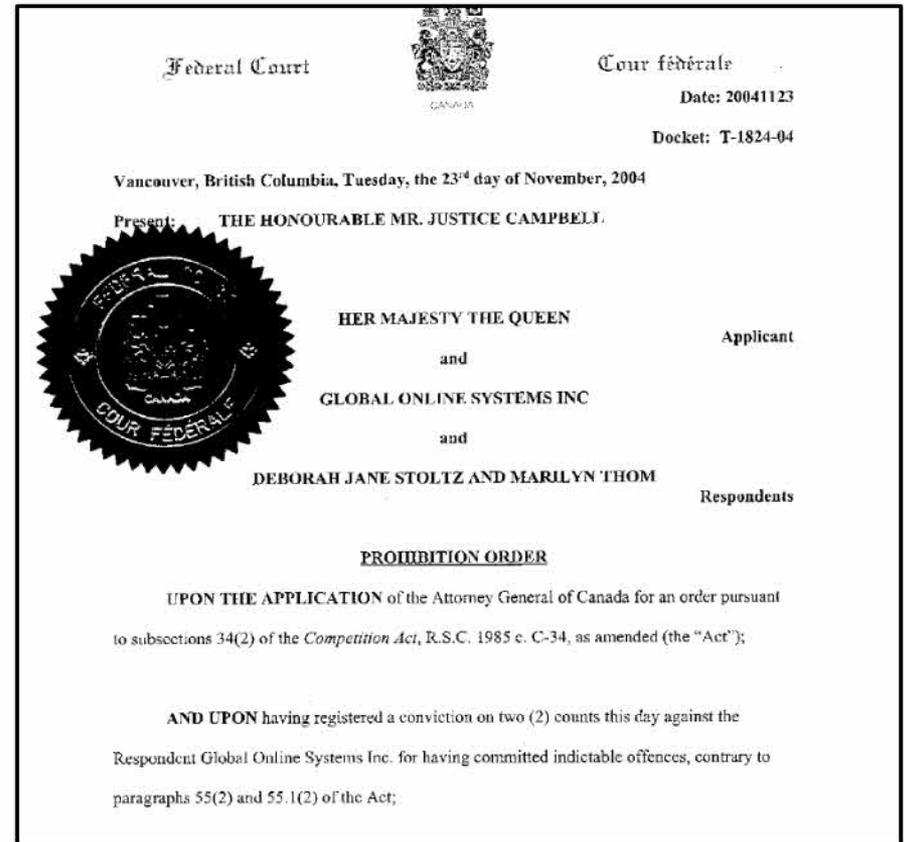
Who is Shawn Dahl?

- Shawn Dahl lives in Vancouver, B.C. with his wife and three children.
- Dahl told people he was “a former Realtor turned Chairman’s Club Team member in Herbalife International.”
- Dahl also described himself as a “Work-at-Home Family Man.” He boasted that, as a result of his “work-at-home opportunity with Herbalife,” “[s]nowmobiling, fishing and biking used to be weekend activities, but now his flexible hours allow him to play when the weather is gorgeous.”



How Did Dahl Get to the Top?

- On November 23, 2004, Deborah Stoltz (Dahl's mother-in-law), her sister Marilyn Thom, and the lead generation business they operated, Global Online Systems ("GOS"), were convicted of operating a pyramid scheme in violation of the Canadian Competition Act and a Prohibition Order was entered against them.
- In the months leading up to their conviction, as Stoltz and Thom negotiated the terms of the Prohibition Order, they recruited Dahl as an Herbalife distributor and simply transferred the GOS business on a wholesale basis to a new company set up by Dahl, called Online Business Systems ("OBS").



GOS Becomes OBS

Several GOS websites were converted into OBS websites in 2004. The websites remained nearly identical; only the name was changed.



GOS Becomes OBS

A series of questions and answers on the OBS website in September 2004 told GOS distributors:

- OBS was not changing the content of any GOS materials
- GOS distributors were “welcome to distribute your old [GOS] materials until your supply is depleted.”
- GOS distributors should not to inform their recruits that GOS had “changed systems” because “they don’t need to know and it makes no difference.”
- “Your Herbalife lineage remains the same regardless of the changes.”

Are we changing the contents of new Distributor Kits and Herbalife Success Builder & Supervisor orders?
No, not at this time.

What do we do with the old Global Online System Decision Packages, CDs, Videos and Training Manuals?
You are welcome to distribute your old materials until your supply is depleted. However, we recommend that you switch to the new Online Business Systems recruiting/retailing Web sites, Decision Packages and Training Manuals right away.

Do I have to tell people that I mailed a Global Online Decision Package to that we have “changed systems?”
Just let people know that we have updated our system and we have made some exciting new changes - they don’t need to know and it makes no difference. In essence, we are not changing systems; we are simply building upon the experience of our Leadership Team - we’re just using different marketing tools now.

Am I still in the same Herbalife downline?
Yes, absolutely. Your Herbalife lineage remains the same regardless of the changes to your new marketing system.

GOS Becomes OBS

In the fall of 2004, just weeks before entry of the Prohibition Order, the OBS website also told GOS distributors that they “need[ed]” to change over to OBS “[r]ight away” because “you need to get set up the same day that Online Business System is launched.”

How quickly do I need to buy all of my new Online Business Systems materials and recruiting/retailing Web sites?

Right away - you need to get set up the same day that the Online Business System is launched.

Websites Affiliated with OBS Recruited with Highly Misleading Income Claims

Be Your Own Boss! Work From Home!

Work around **YOUR** schedule!
Earn up to **\$1,500 P/T** or up to **\$5,000 F/T**
Sound Good?

Call me for details: My Name (888) XXX-XXXX or
Visit: www.myname.unitedonlinebusiness.com

Get Started Today!

“Our listeners love the Income at Home kit - get yours today!”

“THIS KIT HOLDS ALL THE ANSWERS...”
- SEAN HANNITY

“EARN GREAT MONEY”
- GEORGE NOORY

100%
ENTREPRENEUR GUARANTEED
MONETARY SUPPORT

THE INCOME AT HOME KIT THAT'S ENDORSED BY...
Glenn Beck, George Noory, Sean Hannity, and countless others.

These hosts on this site were paid for their endorsement.

Get Your Income Kit Today

First Name

Last Name

Email Address

Phone Number

Where did you hear about IncomeAtHome?
Please Select

Next Step

By submitting your information, you expressly consent to the terms of our [Privacy Policy](#). All hosts on this site were paid for their endorsement.

Websites Affiliated with OBS Recruited with Highly Misleading Income Claims

My best friend was *really mad* at me ...

Sitting in my home office, deeply in debt, he *begged* me to show him how I'm averaging **over \$100,000 a month** online

**See PROOF below*

- and I said *"Sorry Mike, I can't do it."*

Friday, February 8th, 2013

My name is Paul Myers, and I'm one of those "Internet" guys ...

I work from home and pocket **more money in a month** than most people make all year.

More importantly, I'll **PROVE IT** to you right now so you know I'm not wasting your time.

Don't worry, this isn't some lame pyramid scheme or referral system.

On top of that, the more money YOU make the more money I'll make - so I have a vested interest in helping you as much as I can and making sure that you're super successful.

I'm not asking you for any money and neither of us has anything to lose.

Dahl Told Distributors That Success Was Easy with Herbalife and OBS



Video

“Most people who start with us actually know very little about business, advertising or the Internet. And that’s OK, so long as you possess the desire and the drive to make a change. No matter what your ability, you can achieve success in this business.”

Dahl Told Distributors That Success Was Easy with Herbalife and OBS

NAME, now that we've gotten to know each other a little bit, what we're going to do is cover some facts about our industry, our company and our turnkey internet program that we call **Online Business Systems**. So that we don't miss any important details, we've created an audio that both of us are going to listen to over the phone. NAME, are you in a quiet place where you don't have any distractions around and where you can take good notes? **(Wait for them to get into a quiet place if they are not)**. Great! The audio is going to be about 10 minutes and when it's done, we can talk about how to get you started. OK? Perfect, hang on just a moment while I connect us with the presentation...Are you ready?

'3-WAY CALL' TO ONE OF THE CALLS BELOW (BE SURE YOU ARE MUTED DURING THE RECORDING)

MALE (USA): 530-531-1023

FEMALE (USA): 925-800-1029

MALE (CDN): 530-531-1027

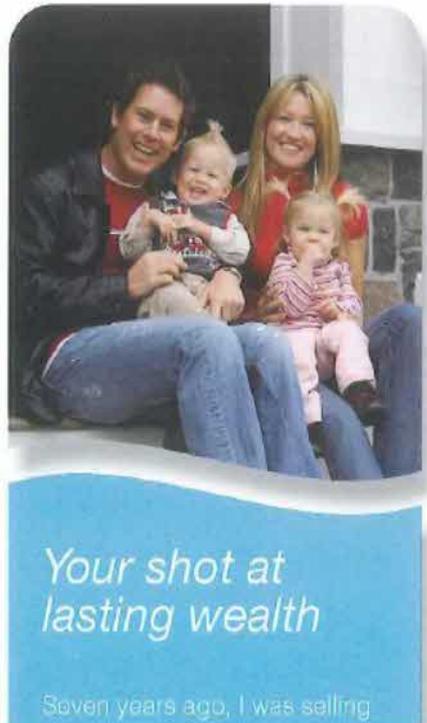
FEMALE (CDN): 530-531-1029

AFTER 3-WAY AUDIO - BE SURE TO HIT YOUR FLASH BUTTON TO DISCONNECT THEM FROM THE AUDIO! (if not using PB)

Audio

“You don't have to think about how to get your customers and distributors, or even how to advertise. You're simply gonna use the proven tools that we already have in place. Now, we understand that you'll probably have some questions. However, this is a step-by-step program. So you just need to get plugged in and get going. The best example of how we build our business is this: You responded to one of our advertisements. Then you went to the website and typed in your information to receive our information booklet—the DVD and the CD—and here we are talking today. You'll be using Online Business Systems to build your business from literally anywhere you have access to a phone and a internet connection.”

OBS Dramatically Understated Costs



Leveraging the Internet

Internet

Did you ever imagine that the internet would 'explode' the way it has over the past several years? It's hard to conceive life without being online. In 1993, 10% of U.S. households were using the internet or an 'online service.' By 2000, 360 million people worldwide were using the net... and today, the online population is a staggering 1.6 billion worldwide. Now that's what we'd call a growing market! Some \$1.2 trillion a year is done in e-commerce.

The average start-up cost for a franchise business is \$87,500, while the average start-up cost for a home-based business or 'micro-franchise' is less than \$500.

The OBS "Decision Packet" implied that the cost of pursuing the business opportunity is "less than \$500."

OBS Dramatically Understated Costs

In fact, costs were very high, as reflected in an online blog post by an OBS victim:

“So, a Merchant Account will cost you \$75 to accept Visa and \$35 to accept MasterCard... MONTHLY, whether you use it or not. Oh! And, if you sign a contract covering a term like, say, 3 years (that was THE only option available when I signed up!)... and you decide to quit for ANY reason BEFORE the 3 years has passed... well... you pay a penalty cost, determined by “the Merchant Account” at the time the account is terminated. Believe me, it WAS a hefty charge for me! So you can add another \$400 to the total shown in the screen print above, because that’s what it cost me AFTER this screen print was taken and published here.”

| DATE | COST | DESCRIPTION |
|-----------|----------|--|
| 03-Aug-09 | \$449.00 | charged by my upline Distributor for Distributorship sign up + remaining cost of decision pkg. |
| 17-Aug-09 | \$562.62 | charged for leads purchased from Online Marketing Solutions |
| 17-Aug-09 | \$112.52 | charged for website access from The Online Business |
| 18-Aug-09 | \$991.26 | charged by Herbalife for an order put in by my upline Distributor and had sent to me |
| 26-Aug-09 | \$25.00 | Merchant Account |
| 27-Aug-09 | \$75.00 | Merchant Account |
| 14-Sep-09 | \$39.55 | charged for new style Decision Package sent to lead |
| 15-Sep-09 | \$55.94 | charged by The Online Business System for website access |
| 21-Sep-09 | \$35.00 | Merchant Account |
| 03-Oct-09 | \$112.22 | charged by Herbalife for website setup for one year |
| 14-Oct-09 | \$168.00 | charged for Online Business System supplies that my upline Distributor order I pay for |
| 15-Oct-09 | \$52.74 | charged by The Online Business System for website access |
| 21-Oct-09 | \$35.00 | Merchant Account |

\$2,713.85 **GRAND TOTAL**

OBS Trained Its Members to Recruit New Distributors with Deceptive Scripts

MONEY/INVESTMENT?

Q: Will I need to invest any more money?

The cost of the business package includes everything you need to get your business set-up and running. We'll develop a specific business plan for you based on your time commitment and your personal goals and we'll work with you to set up different parts of your business depending upon what you want to do.

Does that make sense? Are you ready to get started?

HOW/WHAT?

Q: Exactly, how does the business operate?

Let me ask you **NAME**, how did you learn about Online Business Systems? (wait for answer...)

Great! You followed that marketing to our website because you were interested in a business, you ordered the decision package and here we are talking today. Very simply, Online Business Systems provides all the marketing tools and methods, customer management and tracking, as well as, really great training! It truly is a fantastic system.

Does that answer your question? Are you ready to get started?

Q: What will I be doing? I'm still not sure how it works.

What's really great about the system is that everything is step-by-step. As your coach, I will guide you through the training, which will teach you how to market your business. I'll also be there to answer questions and help you right from day one. You see, there's no point in reinventing the wheel – this system works, everything is there for you, we just have to teach you to use it!

Does that answer your question? Are you ready to get started?

Distributors Involved with OBS Were Even More Likely to Fail than Other Herbalife Distributors

- In 2012, Herbalife's retention rate for all Supervisors was purportedly 51.8%.
- According to the Terms & Conditions of Service for the use of OBS materials, as of September 2012, the retention rate for distributors who utilized OBS materials and became an Herbalife Supervisor was only 14%.

d. Although the marketing and training materials offered by Company are intended to assist those doing business as independent Herbalife Distributors, neither Company nor its Services are owned, controlled by, or affiliated with Herbalife; OBS Materials are not produced, approved, endorsed, guaranteed, authorized, or offered by Herbalife, and Herbalife is not responsible for them. CMG/OBS requires you to read and agree to the following disclosures as a condition of the purchase of more than a cumulative total of \$100 in OBS Materials.

i) The first order you place for Herbalife products may not exceed 1,000 personally purchased volume points (or PPV as that term is used in Herbalife's Sales & Marketing Plan).

ii) Orders you place for Herbalife products for the next ten days, together with the first order, must be cumulatively less than 4,000 PPV.

iii) You may not purchase names or contact information of prospects or advertising services intended to find prospects ("Leads") during the first 90 days after your Distributor Application is submitted to Herbalife.

iv) You understand and acknowledge that of the group of Distributors who use OBS Materials, 14% of persons who became Supervisor renewed as Distributors or Supervisors in the following year.

v) Distributors who decide to leave the Herbalife business have an opportunity to resell their Herbalife product and IBP (or Mini IBP, as applicable) back to Herbalife, under certain terms and conditions. That offer (Herbalife's "Buy Back" offer) and relevant forms may be accessed from MyHerbalife.com via the following link [Repurchase of Inventory Forms](#) .

vi) Herbalife has published policy statements on Business Methods (such as the OBS Materials) and on expenditures by new Distributors, which you should read. The statements can be accessed from MyHerbalife.com via the following links: [Policy Statement on Expenditures By New Distributors](#) and [Corporate Policy Statement on Business Methods](#) .

Distributors Involved with OBS Were Even More Likely to Fail than Other Herbalife Distributors

- The Terms & Conditions of Service for the use of OBS materials appear on a website registered to Centurion Media Group (“CMG”).
- CMG is the registrant and administrative and technical contact for two OBS websites, as well as hundreds of other websites associated with Dahl’s businesses.



OBS Inflicted Serious Harm on Consumers, Sometimes Reaching Tens of Thousands of Dollars

Elaina Tudorovic went \$30,000 into debt in pursuing the Herbalife business opportunity through Online Business Systems. She fell prey to OBS because she needed a “work from home” job after being injured in the 9/11 attacks in New York City.

“Little people are paying for the advertisements in order to get the leads. The money is coming off people who have no money.”

She was told by her mentor in Online Business Systems that she should not worry about going into debt.

“Someday you are going to be making millions so the credit card debt means nothing.”

She said she had wanted to sue OBS but that she and her husband had no money to hire a lawyer because they were deeply in debt by time she quit OBS.

“They cleaned us out.”

Richard Larsen and his wife spent \$10,000 trying to pursue the Herbalife business opportunity through Online Business Systems. They fell prey to OBS because they wanted to generate additional income in their retirement.

“We hoped we could build this organization and have something that would continue to pay us beyond retirement.”

He said he thought the business would be ethical if the leads, which he bought for \$100 each, actually had been qualified as people genuinely interested in pursuing the Herbalife business opportunity. But that wasn’t the case.

“The leads were crap.”

He realized quickly that the people he was being asked to recruit were in dire financial straits:

“There wasn’t anybody in the 25 leads that was close to being interested.... They most definitely did not have the capacity to even charge \$400 to a credit card.”

Herbalife's Response to Dahl's Misconduct

- What did Herbalife do from 2004 to 2013 to halt the predatory and deceptive conduct of Dahl through OBS?

NOTHING

- Instead, Herbalife put Dahl forward as a classic success story—despite the fact that he simply carried on a business which had been outlawed by the Canadian government.

Herbalife Embraced Dahl and His Tactics for Years

HERBALIFE
U.S. EDITION NO. 139
today

**Meet Our New
Chairman's Club Members**
Shawn & Nicole Dahl

Your 90-Day Plan
The blueprint for your business

HERBALIFE. *Making the world healthier*

Chairman's Club Tour

Shawn Dahl
Chairman's Club Member

Shawn Dahl spent weekends and evenings "drapped to a paper" and although he knew what he wanted in life, he was a long way from completing his goals. It was when he met his wife Nicole, whose parents are Herbalife Independent Distributors, that Shawn learned about the Herbalife business opportunity. Shawn emphasizes the cornerstones of his business: urgency to get a lot done in a short period of time; momentum to keep it going; and camaraderie for support. "Even after Chairman's Club we are still working and still moving up the Marketing Plan, spreading these unbelievable products and business opportunity around the world, one person at a time."^{**}

*Not available in the following 16 countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, China, Czech Republic, Denmark, Germany, Greece, Hungary, India, Israel, Italy, Japan, Korea, Lithuania, Mexico, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United States, and Venezuela.

Event Details
Advance Tickets: \$10
(Available until 5 business days prior to the event)
At the Door: \$30
Open to all Distributors.
Free admission for guests during the HOM.

Agenda for Each Location
TAB Team Meeting
5:00 p.m.–6:30 p.m.
Herbalife Opportunity Meeting (HOM)
7:00 p.m.–8:30 p.m.
Finishing the 4th Quarter Strong
9:00 p.m.–10:00 p.m.

Presented in English.
Spanish translation available.

"No matter what, I will not quit for five years. If I'm not making money in three months, I won't quit—I'll just find a way to get smarter. If I'm not making money in six months, I won't quit—I'll get smarter. One year, two years, three years—whatever it takes."

Herbalife CEO Michael Johnson and President Des Walsh Participated in an OBS Recruiting Call

3rd Cut President's Team Call with

Mike & Rosie Bottai and Annie & Jerald Powell

and Herbalife CEO
Michael Johnson

We're celebrating with a **HUGE ALL OBS CALL** to cheer our new **PRESIDENT'S TEAM** members across the finish line. This is a rare opportunity! It's not often that the President and the CEO of a 5 billion dollar company does a call just for our team, but he personally wants to congratulate MIKE & ROSIE and ANNIE & JERALD.



HUGE CALL

(877) 708-2764



3rd Cut President's Team Call!

DATE: Monday, April 30th

TIME: 6:00PM PST

CALL: 877-708-2764

WEB: www.myobswebinar.com

HOSTS: Shawn Dahl
Chairman's Club

Glenn Kirkpatrick

Chief Exec. President's Team

Dahl: "Maybe you've just seen that President's Team position when you were flipping through your career manual, and you saw those steps going up the ladder. This position is attainable for every single one of you guys. You just put your eye on that mark. Incomes reaching \$20,000 a month. It's crazy what's going on right now. . . . It's my great, great privilege to introduce our Herbalife Chairman and **CEO, Michael O. Johnson**. Take it away."

Johnson: "Hey Shawn, thank you, and welcome everybody. And Shawn, you know I heard something about you this week—that someone called you an adrenaline junkie. . . . What's taking place in our company right now is evidenced by a call like this with—Shawn, you said a thousand people are on this call? That's pretty amazing."

Dahl: "I'm gonna guess, yep."

Johnson: "Obviously you wouldn't be on this call tonight if we didn't have a powerful, powerful business opportunity—one that is changing people's lives."



In February 2013, Herbalife Tried to Distance Itself from CMG and OBS

- On February 14, 2013, Herbalife issued a notice informing distributors that CMG and OBS were no longer registered providers of “leads or advertising.”
- Herbalife’s belated efforts to distance itself from OBS only highlight OBS’s improper business practices, and the specific reference to the sale of leads demonstrates Herbalife’s awareness of what OBS has been doing for a decade.



February 14, 2013

Advisory Update: U.S.

Unregistered Business Methods Notice:

- Centurion Media Group
- Online Business Systems

As a service to our Distributors, Herbalife widely communicates and makes available Notices regarding Business Methods providers.

Centurion Media Group (CMG) Online Business Systems (OBS) has been on the list of registered providers of Business Methods, which U.S. Distributors may purchase and use.

Please be advised that effective immediately,

Centurion Media Group (CMG) is no longer a registered provider.

This means that you may not purchase, sell, endorse, recommend, promote or use anything from CMG.

Online Business Systems (OBS) remains a registered provider, but not for leads or advertising.

This means that you may purchase and use support tools provided by OBS.

But, you may not purchase, sell, endorse, recommend, promote or use leads or advertising services provided by OBS.

You can check to see if a Business Method is currently registered with Herbalife by visiting MyHerbalife.com under the following headings: [Business Methods Registration Advisory](#) under [My Office / Distributor Policies / Business Methods](#).

Thank you for your continued support.

Now You See Him, Now You Don't

- Around the same time that Herbalife tried to distance itself from CMG and OBS, the Herbalife Chairman's Club website was taken down, purportedly for "scheduled maintenance." When the website came back up, Dahl no longer appeared. When the press asked Herbalife about his status, the website went down again.
- On April 30, 2013, on an investor call, in response to an analyst question about the removal of Dahl from the website, Des Walsh said:

"So, let me see if I can just kill that one stone-dead because this is so typical of how these rumors begin, right. So on a regular basis, we're actually updating videos. We're constantly involved in maintenance of various kinds and so, what you're seeing is just a reflection of that. . . . So, let also say that we have no changes in our Chairman's Club members. Our Chairman's Club members are committed to the business, committed to working with their organizations into a stronger Herbalife."



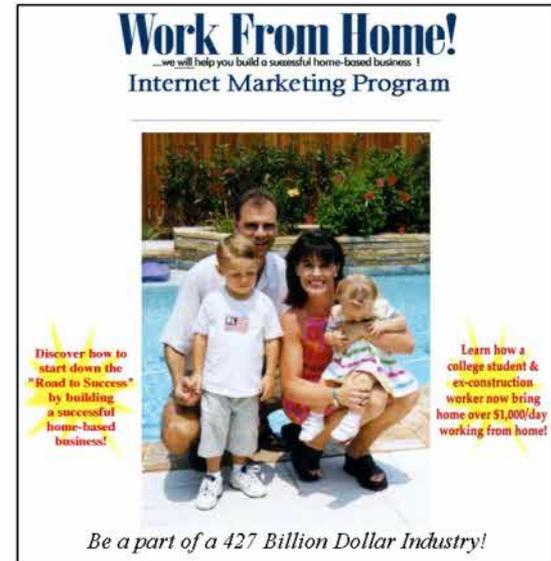
- In fact, as Herbalife confirmed to the New York Post in a story published on June 22, 2013, Dahl has left the Company. Herbalife told the Post that the loss of his business was "not material" and that the parting was "amicable."
- Dahl's departure highlights the crucial role of Business Methods and lead generation in the success of those at the top of the Herbalife pyramid. When Herbalife singled out and banned Dahl's lead generation businesses, Dahl had little incentive to stay with Herbalife.

Rick & Carla Berg



Who Are the Bergs?

- In 1994, Carla Berg married Dan Waldron, already an established Herbalife distributor, and the two worked together until their divorce in 2000.
- She then met Rick Berg through Herbalife and the two married and began working together.
- Rick Berg has been an Herbalife distributor since the late 1990's.



Rick Berg with Mark Hughes (Herbalife Founder)

How Did the Bergs Get to the Top?

- In 2000, Carla Berg incorporated e-Team Marketing. That same year, Rick Berg joined e-Team Marketing as its Chief Technology Officer.
- e-Team Marketing promises a supposedly lucrative work-from-home opportunity without making any mention of Herbalife.
- e-Team Marketing offers iOffice platform, an online portal that provides recruits with scripts, access to leads available for purchase, website hosting, and other services. Recruits are charged for e-Team membership and access to the iOffice platform.
- The domain eteam2000.com continues to host active webpages offering lead generation as well as training materials for e-Team recruits.



e-Team Recruits with Highly Misleading Income Claims



Video

“We gave up our jobs--”
“People thought we were crazy.”
“--and we took in over a quarter of a million dollars in our first year.”

e-Team Websites Contain Highly Misleading Income Claims



"I used to be a college student and my husband was a Systems Engineer. Now, we have several thousand people in our business and generate over \$7,200,000 in annual sales—all from our home and computers. It's AMAZING!"

- Carla & Rick Berg

You Could Be Making
\$5,000 to \$10,000/Month!

Our simple system eliminates the reasons why 99% of people don't succeed at working from home!

This revolutionary system is helping people harness the Power of the Internet!



- Simple and Automated!! You can make money 24/7 through our simple turnkey system!
- You start earning money quickly!
- And you get paid over and over for work you've already done!

Whether you want enough money to pay your monthly car payment or would like to completely quit your job,

we can help you make your financial dreams a reality!

Find out how this system can put more money in YOUR pocket next month! Just fill out the form below to receive A **FREE ONLINE INFORMATION & TRAINING PACKAGE!**

WorkPartTime@Home!

America's Best Home Business Opportunity!



Get a FREE Training Package that shows you how YOU can build a PROFITABLE Home Business!

They did it... So can you!



"I used to be a Bartender and Monica was a Paralegal. With no money and no business experience, the 1st month we made a profit of \$1,000 part time. The 2nd month, it grew to \$2,000. Last year, we made over \$300,000!"

- Glenn & Monica W.

Are you ready to start earning what you're worth?



"We went from bankruptcy to making over \$30,000 a month in less than 2 years! The best thing is that anybody can do it, just like we have!"

- Michelle & Michael B.

Will YOU be next?

[Click Here to Find Out Now!](#)

e-Team Scripts Tell Members Not to Answer Questions

Remember, your job is **NOT TO ANSWER QUESTIONS!** It is to **SELL A WORK FROM HOME TRAINING PACKAGE** and let the training package do the work-you are **NOT** better than the training package and you will run people off if you answer questions! No matter what they try to ask you the answer is as follows:

OBJECTIONS/QUESTIONS:

“(Name) I would love to answer all of your questions; **HOWEVER** that is the purpose of the training package. It’s 2 hours of **VERY** detailed information and we ship it overnight so you’ll be able to talk to our Team Leader and me within 24-48 hours upon receiving it, so there’s **NO WAITING**. If after reviewing you decide this is not for you, you can ship it back. (Name) its unbelievable how good it feels to work from home. I absolutely love it!! Now, How would you like to pay for your package?”

“What type of business is this/ what will I be doing?”

“We are in the Mail Order, Internet and Work From industry and what we’ve done is combined all of those industries together in a very unique and powerful way. (Name) your training package is going to explain to you in **DETAIL** the business - who we are, what we do and how we do it. All you need to do is take care of the shipping fee of \$9.95 and you’ll have your package by (day), so you can get your questions answered immediately. (Name) how would you like to pay for your package?”

e-Team Scripts Use Fake Testimonials

“You know, (Name), it is just so exciting what is happening in our business. Everything is exploding! Our television and radio advertising is bringing in such incredible people like yourself and so many people, like you, are anxious to get started with our system.”

- *(TELL 1 BUSINESS TESTIMONIAL FROM BELOW- WITH A LOT OF ENTHUSIASM- each time you talk to them- tell them another new story!!)*
 - **Story for 1st Contact** - Let me tell you about this one gal we have on our Team – her name is Tracie.....Tracie was a restaurant manager and came home to be a full time mom.....All she was looking for was a way to earn an extra \$1,000 a month to help her family out..... She answered an ad, just like you and ordered the Training Package..... With our System & structure, she saw a great earning potential..... anyway, she got started in the business...in her first 30 days....by simply following the step by step plan and working one on one with her personal mentor... she did over 10,000 in business...by the end of her first year she was earning over \$60,000 annually.... and by her 2nd year she was a six figure income earner.....just think- her goal was just to make an extra \$1,000 a month for her family and now because of her consistency and her ability to follow the plan, she has created financial security for her family. .. there's no reason why you can't do the same.....
 - **Story for 2nd Contact** - Let me tell you about this one fella we have on our Team.....his name is Jim and he is the Mayor of his Town and has been an owner of a construction business for over 17 years....as the owner he has worked over 12hours days- 7 days a week ...and still at the end of the month his employees were making more money than him.....His lifestyle was ok but he wasn't building the kind of future he wanted.....Jim answered an ad, just like you and ordered the training package...all he was looking for was a business that he could do from home without ANY employees and have a chance to secure his financial future.....he saw that possibility with our online business system and got started.....it has been 6 months since Jim started his business and simply by plugging in to the system.... following the steps and working closely with his mentor.....Jim has already earned over \$18,000 US.... and is positioned to make over \$40,000 US before he completes his first year in business....all of this with working part time from home. ... there's no reason why you can't do the same.....

e-Team Scripts Pressure Recruits to Buy Enough Inventory to Qualify as Supervisors Immediately

11. I just want to try the products out for now and then work my way up to supervisor...

A. Boy, I understand wanting to start on the products, they are absolutely fabulous. But let me ask you this, do you feel that way about DELL COMPUTER or NOKIA PHONES? Because Herbalife has been in business over 24 YEARS and we are in 59 COUNTRIES! A lot longer than Nokia OR Dell has been in business! If our products didn't work for the over 40 MILLION consumers we have had, then we would NOT be in business. What I can assure you is that the products work, and they work 100% of the time. So I am certain, you will fall in love with them just as I have and just as thousands of others have around the world... Now, what is it that you are looking for from this business again, income wise?What I can tell you is that starting at the bottom, you have a much longer road to hoe.....and quite frankly working your way up is possible but not probable. And the reason I say that is because I know, I wouldn't be on this phone with you today if I hadn't gotten to supervisor as quickly as I did. What we see countless times, is it is actually the commitment to the business at the supervisor level that helps people launch their business very quickly, and gain the level of success they are seeking....I mean that is what did it for me and it is what has kept me around. That only happens at supervisor level. At the Supervisor level, your likelihood of success is 99% greater than working your way there, and why make it harder for yourself? And really.... your expectation of what you want from the business has got to meet head on with the level you choose to work in order for success to happen.

12. It's seems awfully expensive to get started at the Supervisor Level. Or Boy, that is a lot of money.

A. Well, I guess it depends on what you are comparing us to. Even a small 1,000 sq. foot mom & pop shop-with inventory, franchise fees, building fees, employees, etc. costs at least \$100,000 before they even OPEN THEIR DOORS to make a penny of that investment back! Then, if they even stay in business, which MOST DO NOT, it will take them 4-5 years to BREAK EVEN-BEFORE THEY BEGIN TO SEE ANY PROFIT! This business takes approx \$3,000 investment and it's NO RISK! We teach you step by step how to do every thing!

e-Team Scripts Encourage Recruits to Go into Debt

21) So (name), based on the 3 levels in our marketing plan - Success Builder, Split Month Supervisor or Supervisor which level are you going to qualify yourself with today?

- If No \$ - Or they need to think about it...

- No, problem, if you need assistance in generating the capital we can get you some information on some outside financing institutions that many people use. This allows people to fund their business at a more profitable position allowing them to earn more revenue in a shorter period of time but most importantly not losing out on any potential profits in the mean time!! Is that something you think you might want some information on?"

- If yes- ok, I will go over it with you. In the meantime, let's process your distributor kit so that we can start your training, get you logged in to your iOffice and set up your business plan with our upline (upline's name). He/She is extremely successful in the business and has been doing it for over ____ years and will take time out of his/her schedule to map out your business according to your goals and the time you have to give this business. (Pick up at the "Distributor" Paragraph below)

- e-Team encourages recruits to explore "financing options" if they are concerned about how much it will cost to pursue the Herbalife business opportunity or they don't have enough money to buy in.
- e-Team tells these recruits to avoid **"losing out on any potential profits in the mean time!!"**

e-Team Suggests “Financing Options” to Recruits

10. I am not sure how I can pay for it?

A. Well certainly I can understand that. I didn't either when I got started. But I can tell you this, where there is a will there is a way. I ended up using _____. You can put it on a credit card, a debit card or a combination of several different cards. And if you need assistance in generating the capital we can get you some information on some financing institutions that many people use. This allows people to fund their business at the most profitable position allowing them to earn more revenue in a shorter period of time but most importantly not losing out on any potential profits!! Is that something you think you might want some information on?” (See “Financing Options”, below & then send them the Financing Email)

FINANCING OPTIONS:

1. If they need some help figuring the financing out, you have a few different options:
 - a. Combination of several Credit or Debit Cards
 - b. Family members, friends or use of their credit cards
 - c. Personal Loan
 - d. Co-signer to secure a loan
 - e. 401K – retirement plans, Cds, other money sources
 - f. Mortgages, selling an item not being used like jewelry, 2nd car, etc.
 - g. IF NEED OUTSIDE FINANCING- The best place to go for Personal Loan we have found is Citifinancial – *EXACT PROCEDURE TO FOLLOW!*

e-Team Inflicts Serious Harm on Consumers

“The E team marketing company run by Carla Berg is anchored with Herbalife nutrition products but really hinges on getting new distributors to buy expensive leads that are not good leads. Then they tell you to buy more leads... **Then after you have bought \$ 2500 in product you are told it is time to buy advertising. This is not really true, you are buying leads.** And my experience is that they are not good leads but very expensive. Then you are told to work it for 1 year in order to build a business. They keep calling it a business but it is a **bottomless pit of money spent from your pocket.** I lost around **\$ 45,000** in less than 1 year. **Their system can work but it is not likely that it will work for a new distributor** it tends to enhance the totals for the **people at the top and drain your savings....** You will see this ' opportunity " advertised on major radio shows and late night TV. It seems legit but it is a scam to get you to buy their leads. **Beware when they tell you they have been in business for over 26 years, Herbalife has been in business for over 26 years not E team marketing.** And when they avoid answering direct questions run for the hills. **I lost everything and these people ruined my life.**”

Source: “E Team Marketing Herbalife - Work At Home no information about advertising cost till it is to late,” July 18, 2009, Ripoff Report, Wilkerson from San Antonio, Texas

Herbalife's Response to the Bergs' Misconduct

- What did Herbalife do from 2000 to 2013 to halt the predatory and deceptive conduct of the Bergs through e-Team Marketing?

NOTHING

- Instead, Herbalife expressed pride in the Bergs and paid them large bonuses.

Herbalife Embraces the Bergs

New Chairman's Club Members

United States – January 2009

With Congratulations and a Warm Welcome to the Chairman's Club
Carla & Rick Berg



Carla and Rick Berg each turned to Herbalife to lose weight. Little did they know that it would change the course of their lives.

Carla was pursuing her undergraduate degree in criminal law in preparation for law school. "At the same time, I wanted to lose my 'freshman 15,'" she recalls. "After experiencing incredible results from the products, all my girlfriends wanted to know my weight-loss secret. Becoming an Herbalife Independent Distributor was the natural next step."

While working the business part time, Carla's income grew steadily. A turning point was an Herbalife training that Carla attended in Maui. She explains, "I saw so many people not only earning money, but also making a difference in people's lives. That's when I realized I was onto something big and committed myself to the business opportunity full time."

Meanwhile, Rick was making his living as a software engineer and wanted to get in better shape. "Using Herbalife® products, I lost enough weight that people began asking me how I did it," Rick recalls, "I became an Independent Distributor and started selling the products very casually, very part time. The more I got into it, the more success I experienced."

Carla and Rick met through Herbalife, married and decided to join forces to grow their business even more. "We saw the untapped potential for direct sellers by using the Internet as a business support tool," says Rick, "and we leveraged that." Carla adds, "This approach has allowed us to run our business primarily from home and be there for our children."

"That's the beauty of this business. You can build it in ways that work for you, without compromising your ability to succeed," says Carla. "We live the way we want, enjoy exciting vacations and have the time to enjoy our family. Most importantly, we have the chance to give the gifts of nutrition and wellness to others."

Congratulations Carla and Rick!
We're proud to have you in the prestigious Chairman's Club.

*Incomes applicable to the individuals (or examples) depicted and are not average. For average financial performance data, see the Statement of Average Gross Compensation for U.S. Supervisors at www.herbalife.com and www.myherbalife.com.

 **HERBALIFE.**

©2009 Herbalife International of America, Inc. All rights reserved. USA WW2354 1/09



Winners of the Mark Hughes Bonus Award in 2006, 2008, 2009.

Herbalife Claims to Cut Ties with e-Team

- As of February 2013, e-Team Marketing was no longer one of Herbalife's registered providers of Business Methods.
- That is irrelevant, however, because e-Team Marketing has been replaced by Berg Marketing, Inc. ("BMI").
- Beginning in 2005, Rick Berg appears as president of BMI, which is a continuation of e-Team Marketing under a different name.
- For example, the BMI website lists an e-Team e-mail address:

Founded in 2000, Berg Marketing, Inc. has provided traditional and online marketing solutions to more than 10,000 customers.

Berg Marketing's team has decades of hands-on experience with technology, direct sales, internet marketing, customer service, company operations, copywriting, and network marketing.

The technology infrastructure has been built for high reliability and includes more than half a dozen servers hosted at 2 different hosting facilities throughout the U.S. All of the servers and internet infrastructure is carefully monitored 24 hours per day.

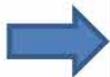
Contact Us

Berg Marketing

Email

Phone

sales@eteammarketing.com sales@berg-marketing.com 866.410.1933



BMI and e-Team Have Nearly Identical Websites

BMI and e-Team appear to offer the exact same products. The e-Team screenshot below is from 2013 while the BMI screenshot below is from 2010. The BMI site today has a slightly different layout, but the text describing what BMI does is identical to what is seen below.

Old

Overview

e-Team Marketing, Inc. creates custom traditional and online marketing solutions, as well as contact management systems for the network marketing industries.

We combine world class technology, training, leads, marketing, and customer service to help industry leaders, distributors, and salespeople achieve massive success.

Whether you are a group of independent salespeople, a network marketing (mlm) company, or a leader, e-Team Marketing, Inc. can build a custom marketing website and follow up system just for you.

All of our systems are custom designed marketing sites that help independent distributors and salespeople achieve massive success.

Our technology allows us to quickly build any type of marketing site that you need-tailored just to your needs.

All of our systems include 4 major components:

Marketing site

A custom marketing site is created that can be used by every distributor.

Followup system

A set of customized autoresponders that are delivered at predetermined or custom intervals to all leads entered through the distributors Marketing Site.

Backoffice site

A professional backoffice for every distributor to manage their business, from Sales and Contact Management, to Scheduling appointments and tracking site and lead statistics.

Administrative site

A special area for the leader of the system to manage the overall system and track system statistics.

<http://www.e-team2000.com>

New

Overview

Berg Marketing, Inc. (BMI) creates custom traditional and online marketing solutions, as well as contact management systems for the network marketing industries.

We combine world class technology, training, leads, marketing, and customer service to help industry leaders, distributors, and salespeople achieve massive success.

Whether you are a group of independent salespeople, a network marketing (mlm) company, or a leader, Berg Marketing, Inc. can build a custom marketing website and follow up system just for you.

All of our systems are custom designed marketing sites that help independent distributors and salespeople achieve massive success.

Our technology allows us to quickly build any type of marketing site that you need-tailored just to your needs.

All of our systems include 4 major components:

Marketing site

A custom marketing site is created that can be used by every distributor.

Followup system

A set of customized autoresponders that are delivered at predetermined or custom intervals to all leads entered through the distributors Marketing Site.

Backoffice site

A professional backoffice for every distributor to manage their business, from Sales and Contact Management, to Scheduling appointments and tracking site and lead statistics.

Administrative site

A special area for the leader of the system to manage the overall system and track system statistics.

<http://web.archive.org/web/20101129172018/http://www.berg-marketing.com/>

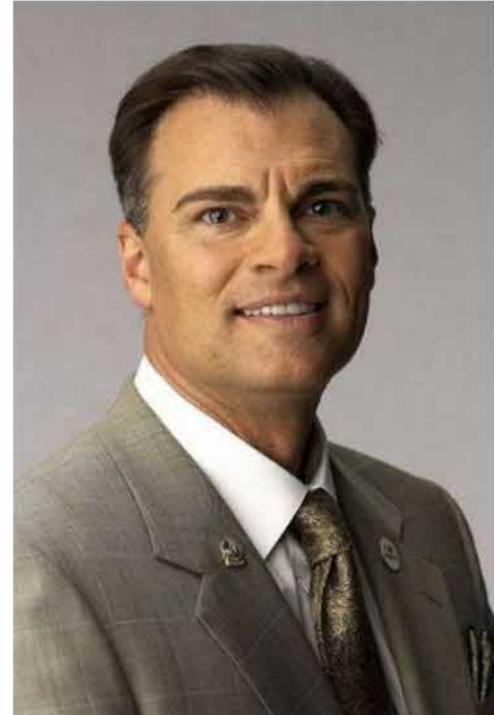
For current BMI website, see: <http://berg-marketing.com>

Dan Waldron



Who Is Dan Waldron?

- Herbalife distributor since 1982.
- Married to Carla Berg until 2000.
- Currently married to Vicki Waldron.
- Member of the Herbalife Chairman's Club.
- Lives in Plano, Texas.



Waldron Claims That Herbalife Made Him Rich



Video

“When I started in Herbalife, it was like my hope: if I could start making a little part-time money, get me out of the situation I was livin’ in.

“Thank God I found Herbalife, I’ll tell ya.”

Waldron Claims Herbalife Paid for His College Education



Video

“When I first started I was a—you know, repairing furniture in Houston. And then when I got involved in the business, very, very shortly after that I moved to Austin and I started going to school. And four years, Herbalife paid, you know, all the university—books, tuition, everything. For four years. Walked out with no loans. Which is unheard of. And then I went right in, went full-time with it.”

How Did Waldron Get to the Top?

- After his divorce from Carla Berg in 2000, Dan Waldron took over their lead generation business called “Work From Home!”
- Waldron also is the registered owner of www.the241plan.com. The 2-4-1 Plan supposedly enables new Herbalife distributors to qualify for the President’s Team in just one year.



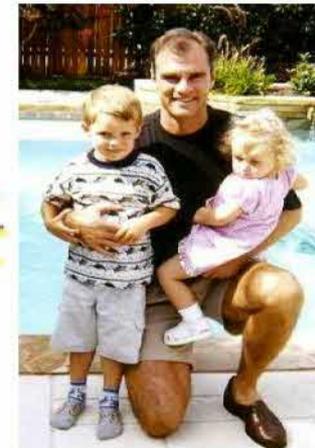
- Waldron has also registered many other “work from home” websites, including:

| | | | | | |
|----------------------|---------------|-----------------------|--------------------|----------------------|------------------|
| 12beselfemployed.com | B-rich-2.com | Ezmoneymoneymoney.com | 419home213.com | Workfromhome-05.com | Forourfuture.com |
| Internet-cash.net | e-zfuture.com | Workfromhome-05.info | Work-from-home.net | Ezbusinessforyou.com | Pc-freedom.net |
| 777ebiz.com | Pc-cash4u.net | Affourdourdreams.com | Pcearns4u.com | Workweb4u.com | U-getrich.com |

Work From Home!

...we will help you build a successful home-based business !

Internet Marketing Program



Discover how to start down the "Road to Success" by building a successful home-based business!

Learn how an ex-construction worker now brings home over \$2000 per day working from home!

Be a part of a 427 Billion Dollar Industry!

Enter Site ►

If these people can work from home and produce monthly incomes like this ...

Waldron Recruits with Misleading Income Claims

Work From Home!
...we will help you build a successful home-based business !
Internet Marketing Program



Discover how to start down the "Road to Success" by building a successful home-based business!

Learn how an ex-construction worker now brings home over \$2000 per day working from home!

Be a part of a 427 Billion Dollar Industry!

[Enter Site ▶](#)

If these people can work from home and produce monthly incomes like this ...

“Learn how an ex-construction worker now brings home over \$2000 per day working from home!”

“If these people can work from home and produce monthly incomes like this...”

“Income over \$8,000/Month!”

HERBALIFE

Building Your Organization using 2-4-1

Month 7

432 x 500 = 216,000 volume points of which 3,000 is personal and 213,000 is group volume = 2nd month qualification for Millionaire Team and the 1st month for **PRESIDENT'S TEAM!!!!**

You have now tapped into 4 areas of income:
Retail, Wholesale, Royalties and Bonus!

Income over \$8,000/Month!

Waldron Emphasizes Recruiting and Encourages Distributors to Use Scripts to Recruit Others



Building Your Organization using 2-4-1

How to APPROACH your acquaintances

What to say to them

Work with your sponsor – they have Scripts for you to use!

Waldron Is Also Featured on the “3 Step Recruiting” Website

TO SEVERAL THOUSANDS OF DOLLARS EVERY MONTH

3 STEP HOME BUSINESS SOLUTION

It's Never Been Easier to Start a Home Business! Here's why...

- How to tap into the fastest growing industries
- How to partner with some top business and technical minds and capitalize on their success
- How to truly work from home -- no more relying on friends and family for your success
- How to build multiple streams of income that pay you and your family forever
- How to generate cash flow every day
- How to get started earning income within days!
- How to use technology and proven marketing methods that get people to your website everyday

Start your 3 Steps right HERE to get clear on the industry, the income, and how our system can be successful for you!

Note: All Fields are required.

Email address:

First Name:

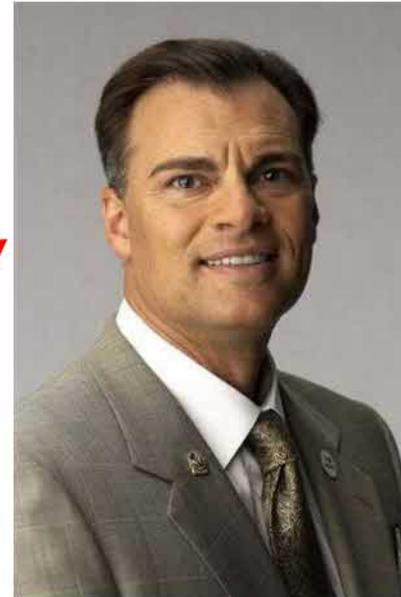
Last Name:

City:

State/Province:

...a furniture repairman and construction work for \$50 per hour. I started with the company to earn extra money for college so I could get a degree. Then I saw the big picture and made a very lucrative career out of it. Now, I live in a very beautiful mansion, I have a Mercedes and my children go to private school. I also make my own hours so I can coach my son's soccer team and take my daughter to her gymnastic classes every week."

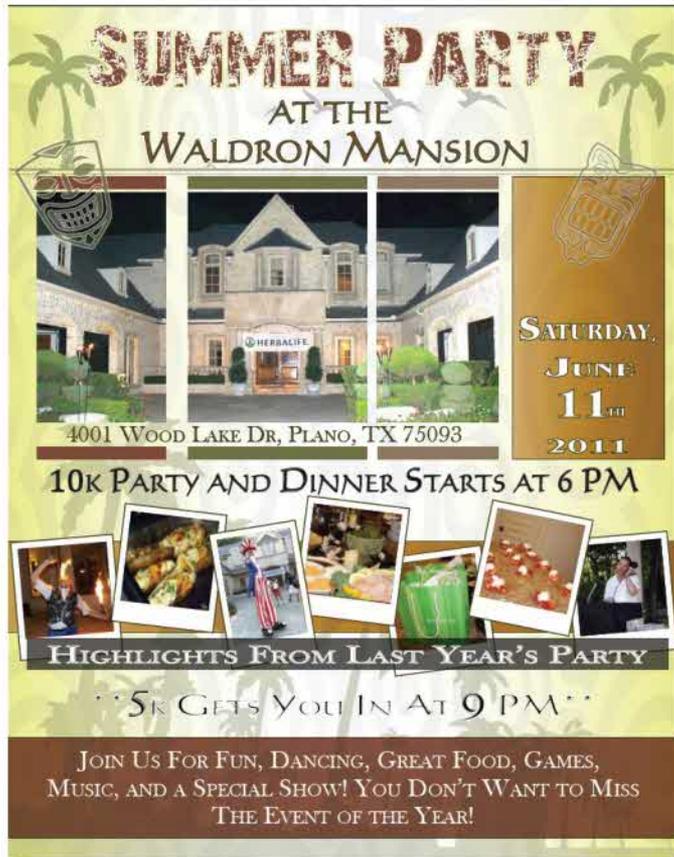
- Dan W.



Recruiting Script (to use with 3-step Website)

The objective is to do as many “presentations” as possible. A presentation is simply presenting the company, products, and business opportunity to someone. You will have a plan to generate leads – drive traffic to your website. If you are working out of a Club – you will book them into an appointment to meet with your prospect at the club. If they are local but you are not working in a club – you can book them in to meet anywhere (your kitchen table, coffee shop, etc). And if they are long-distance, you can do the presentation over the phone. It is all a numbers game: the more calls you get, the more appointments you'll set, the more presentations you'll give, the more distributors you'll sign up, the more supervisors you'll get, the more clubs you'll open, and the higher your royalties!

Waldron Hosts "Mansion Parties" for High Volume Distributors



SUMMER PARTY
AT THE
WALDRON MANSION



4001 WOOD LAKE DR, PLANO, TX 75093

**SATURDAY,
JUNE
11TH
2011**

10K PARTY AND DINNER STARTS AT 6 PM

HIGHLIGHTS FROM LAST YEAR'S PARTY

****5K GETS YOU IN AT 9 PM****

JOIN US FOR FUN, DANCING, GREAT FOOD, GAMES, MUSIC, AND A SPECIAL SHOW! YOU DON'T WANT TO MISS THE EVENT OF THE YEAR!



**10K IN PERSONAL VOLUME
IN MARCH GETS YOU IN THE DOOR!**

JOIN US ON **MAY 26TH**
(AFTER THE DALLAS STS)
FOR FUN, DANCING, GREAT FOOD
CASINO GAMES, AND MUSIC!

**YOU DON'T WANT TO
MISS THE EVENT OF THE YEAR!**

The Waldron Mansion
**CASINO
PARTY**



QUALIFY NOW! STAY TUNED FOR MORE DETAILS...

Waldron Tells Distributors That Success with Herbalife Is Virtually Guaranteed

"HERBALIFE AND THE GALAXY HAVE CREATED A BUZZ THAT HAS MADE IT IMPOSSIBLE FOR US NOT TO SCORE."



Continued from page 8

A MAJOR-LEAGUE OPPORTUNITY

By getting out there and keeping himself "in the mix," Dan has been able to take advantage of new opportunities to fuel his business. And Herbalife's sponsorship of the LA Galaxy soccer team just might represent the biggest opportunity of all. "It has everyone on my team so fired up!" he exclaims. "There's just an unbelievable energy and a collective belief in the company right now."

Dan is turning that energy into success. "Herbalife and the Galaxy have created a buzz that has made it impossible for us not to score."

WEARING IT WELL

Another opportunity Dan is using to his

advantage is wearing his LA Galaxy jersey. "I wear it all the time and I'm blown away by the number of people who come up to me," says Dan. "It makes me proud to be an Herbalife Distributor."

He makes sure he's ready when people approach him. "I never used to carry business cards when I went to the gym," he recalls. "Now I do, because everyone is asking questions about the jersey."

Dan doesn't see the momentum stopping anytime soon. "I'm excited about the future," he says. "Can you imagine 1 million people walking around wearing Galaxy jerseys with the Herbalife name on them? This could be the biggest thing in our history!"

"Herbalife and the Galaxy have created a buzz that has made it impossible for us not to score."

"Dan doesn't see the momentum stopping anytime soon. 'I'm excited about the future,' he says. 'Can you imagine 1 million people walking around wearing Galaxy jerseys with the Herbalife name on them? This could be the biggest thing in our history!'"

Waldron Tells Distributors That the Only Way to Fail Is to Drop Out



Video

“The only way anybody’s ever failed at Herbalife—and I’ve been around over 20 years—is they dropped out. You concentrate, and you focus in on it, and no question about it. I mean, we’re just getting going, and we’re at three billion. Can you imagine in five years where we’re gonna be? What a great company. How blessed we are. Incredible.”

Herbalife's Response to Waldron's Misconduct

- What did Herbalife do to halt the predatory and deceptive conduct of Waldron through The 2-4-1 Plan and his other get-rich-quick schemes?

NOTHING

- Instead, Herbalife highlights Waldron's rags to riches transformation from furniture repairman to Chairman's Club member, giving him a platform to spread the misconception that "it's easier than ever" to succeed as an Herbalife distributor.

Herbalife Embraces Waldron

- Herbalife awarded Waldron the Mark Hughes bonus in 2009.
- Herbalife has featured Waldron as a speaker or guest at multiple company events over the past few years.

MAXIMIZE YOUR BUSINESS FOR SUCCESS
ALBUQUERQUE, NM - JANUARY 28-29, 2012



JANUARY 2012 SPECTACULARS

Hyatt Regency at Albuquerque Convention Center
330 Tijeras Avenue NW, Albuquerque, New Mexico 87102 • 505-842-1234
Herbalife Special Floor Date - \$50 (Available until January 20th)

SPEAKERS:



Dan Waldron
Chairman's Club Member

Prior to becoming an Herbalife Independent Distributor, Dan Waldron was a furniture repairman who, like many Distributors, was initially skeptical of the Herbalife opportunity. Given so, he realized he had nothing to lose by giving Herbalife a shot. Dan helped Maria Sosa, a member of his organization, to achieve President's Team, and as a result, he reached Chairman's Club. For Dan, achieving this new level of success has been a return to the basics. "The company has stuck to the basics created by Mark Hughes, but Michael O. Johnson and his team have taken the brand to the next level," says Dan. "Now my sister and I are over for all of us to build our business successfully!"



Laura Meister
President's Team Member

Laura was awakened and woke from napping her own message inside. At the time, she observed her friends that shared their energy and they told her about Herbalife products and the business opportunity. She became an Herbalife Independent Distributor and attended her first Herbalife Extravaganza shortly thereafter. Laura focused on getting her friends people to each taking a step and generally, qualifying for everything. Now her life looks and feels very different than it used to, she shares, "The most important part of my life is waking up every day excited for another opportunity to help people discover who they can be."

TICKETS • SKU #C950

Advance: \$50 (Available until January 20th)

At the door: \$60 (Available if space permits)

AGENDA

Saturday

8:45 a.m. Leadership in Action
TAB Team/Active World Team

10 a.m. "Pushes to Person, City by City"
HOM

11 a.m. Herbalife: Products for Life

1 p.m. The Right Place at the Right Time

6 p.m. Exclusive 2012 New Year's Dinner

7 p.m. pajama Party

Sunday

9 a.m. Supervisor Steps to Success

11 a.m. Proven, Powerful Strategies

2 p.m.-4p.m. The Next 90 Days

Purchase your tickets today at
HerbalifeEvents.com or by calling 866-866-4744!

*Two tickets maximum per distributorship. Ticket sales are final - they are non-refundable and non-transferable. Visa/cameras are not allowed. Children not permitted.
©2012 Herbalife International of America, Inc. All rights reserved. USA. 10/15/12 0208-0201

Chairman's Club Tour

Dan Waldron
Chairman's Club Member

Prior to becoming an Herbalife Independent Distributor, Dan Waldron was a furniture repairman who, like many Distributors, was initially skeptical of the Herbalife business opportunity. Even so, he realized he had nothing to lose by giving Herbalife a shot. Dan helped Maria Sosa, a member of his organization, to achieve President's Team, and as a result, he reached Chairman's Club. For Dan, achieving this new level of success has been a return to the basics. "The company has stuck to the basics created by Mark Hughes, but Michael O. Johnson and his team have taken this brand to the next level," says Dan. "Now it's easier than ever for all of us to build our business successfully!"



Event Details

Advance Tickets: \$10 (available until 1 business day prior to the event)

At the Door: \$30

Open to all Distributors. Free admission for guests during the HOM.

Agenda for Each Location

TAB Team Meeting
5:00 p.m.-6:30 p.m.

Herbalife Opportunity Meeting (HOM)
7:00 p.m.-8:30 p.m.

Finishing the 4th Quarter Strong
9:00 p.m.-10:00 p.m.

Presented in English.
Spanish translation available.

RALEIGH, NC
November 13
SKU #F564
Shelton Imperial Hotel & Convention Center
4700 Emperor Blvd.
Durham, NC 27700
Parking: TBD

ORLANDO
November 14
SKU #F566
Wyndham Orlando Resort
8001 International Drive
Orlando, FL 32819
Parking: FREE

MIAMI, FL
November 15
SKU #F569
The Westin Diplomat Resort & Spa
3555 S. Ocean Drive
Hollywood, FL 33019
954-602-4000
Parking: \$8

Purchase your advance tickets today at HerbalifeEvents.com or by calling 866-866-4744!

©2012 Herbalife International of America, Inc. All rights reserved. USA. 10/15/12 0208-0201



January Spectaculars 2013

DAN WALDRON



Chairman's Club

Leon Waisbein & Amertat Cohn

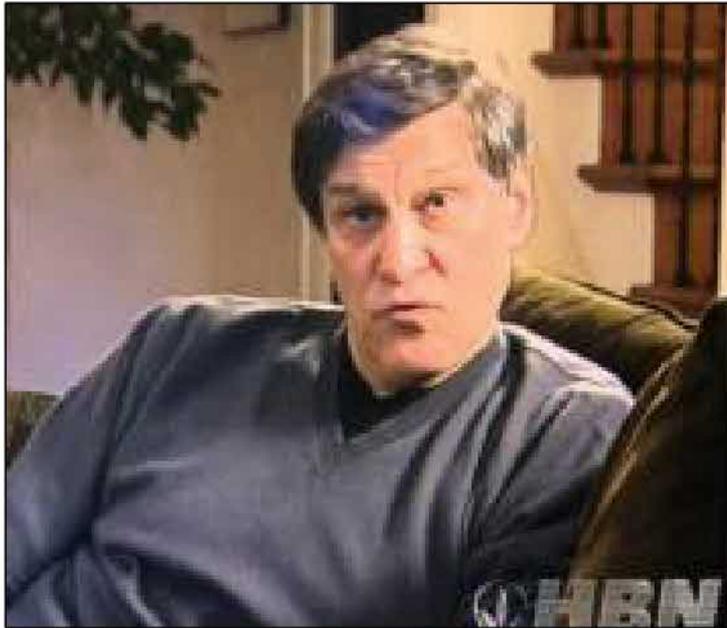


Who Is Leon Waisbein?

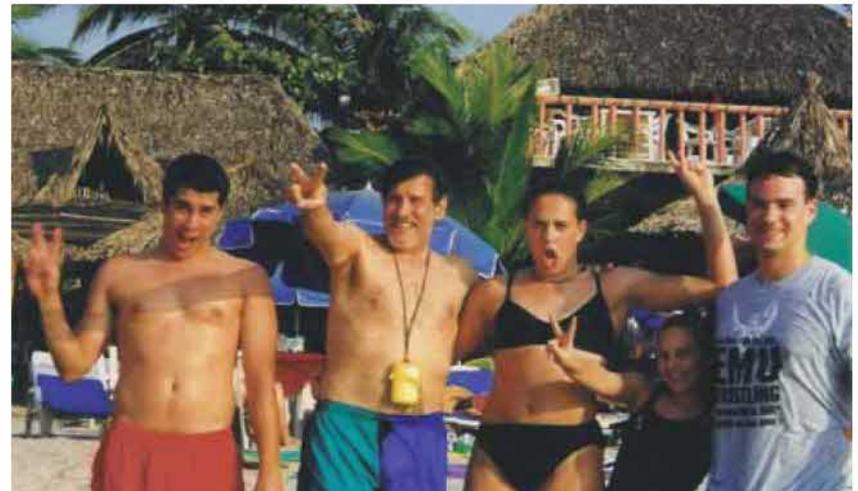
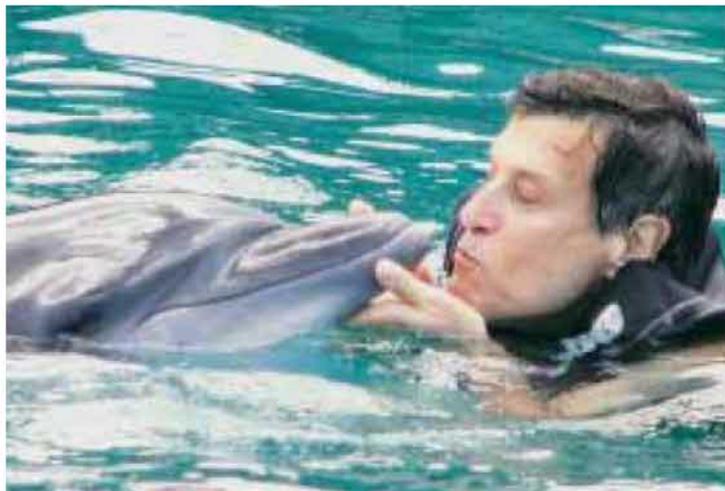
- Leon Waisbein grew up poor in Siberia, and moved to Israel after the collapse of the Soviet Union.
- Waisbein emphasizes his humble beginnings, telling distributors that he met his wife in Siberia while the two had jobs picking tomatoes and that, upon arrival in Israel, he had a job picking oranges for \$400 per month.
- Waisbein's LinkedIn page states that he joined Herbalife as a distributor in 1991. Herbalife publications have stated that he joined in 1993.
- Waisbein qualified for the Chairman's Club in 1995 and qualified for the Founder's Circle in 2009.
- Waisbein was a member of the Herbalife board of directors from 2005 to 2009.



Who Is Amertat Cohn?



- Cohn was a struggling filmmaker for approximately twenty years.
- He tells distributors that he moved to Los Angeles to pursue filmmaking and fell deeply into debt. He discovered Herbalife through a classified ad in a newspaper.
- Cohn joined Herbalife as a distributor in 1990.
- Cohn qualified for the Chairman's Club in 2004.



Waisbein & Cohn Promote “Recruit System”

- Waisbein and Cohn promote and conduct trainings for a company called “Recruit System,” which sells Business Methods, including leads.
- Recruit System claims to have “support from several chairman’s Club members.”

Recruit System
@recruitsystem

Did you miss the Monday training with Leon Waisbein? Lucky for you that we have the recording and power point...
<http://fb.me/1cNESxH3f>

← Reply ↻ Retweet ★ Favorite ⋮ More

2:07 AM - 10 Aug 11

Don't miss any updates from Recruit System
Join Twitter today and follow what interests you!

Full name Email Password

Text follow recruitsystem to 40404 in the United States

Sign up

© 2013 Twitter About Help

Leon Waisbein - Leadership: Building a solid business

Recruit System · 126 videos

Subscribe 2,731

7,668

43 3

Video profile of Amertat Cohn, Chairmans Club Member

Recruit System · 126 videos

Subscribe 2,731

1,199

2 0

Recruit System Sells Business Methods, Including Leads

[Home](#) | [Welcome](#)

Welcome to Team RecruitSystem

Team RecruitSystem started to take shape 1995, we where many that needed to provide quality Herbalife Team support to our Distributors that often miss out if they live outside a big city or are unable to travel to our local trainings and HOM's.

We are now the largest Online Team in Herbalife. We are located all over the world and provide sponsor and team support to all prospects and distributors with an upline that is part of our team.

If you dont have active upline, you are still welcome to work with us. Let's reach the next level together as one large Herbalife team, the way Mark Hughes wanted us to work.

Thanks to Team RecruitSystem, we all achieve our goals faster than by working alone.

[LEARN MORE](#)

“We are now the largest Online Team in Herbalife. We are located all over the world and provide sponsor and team support to all prospects and distributors with an upline that is part of our team.”

| | Limited Monthly | Complete Monthly | Complete Yearly |
|------------------------------------|--|--|---|
| Recruiting webpage (Demo). | ✓ | ✓ | ✓ |
| Center Of Influence webpage (Demo) | ✗ | ✓ | |
| Retail Webpage (Demo) | ✗ | ✓ | |
| Prospect Manager | ✗ | ✓ | |
| Email Follow-up System | ✗ | ✓ | |
| Prospect Search | ✗ | ✓ | |
| Herbalife Social Network | ✓ | ✓ | |
| Community discussions | ✓ | ✓ | |
| Online HOM & Desicion Packages | ✗ | ✓ | |
| Ability to use own Domains | ✗ | ✓ | ✓ |
| | \$15 / Month | \$24.95 / Month | \$249 \$149 / Year <small>\$12.41 per month</small> |
| | <input type="button" value="Sign Up"/> | <input type="button" value="Sign Up"/> | <input type="button" value="Sign Up"/> |

Recruit System sells many Business Methods, including:

- “Recruiting Webpage”
- “Prospect Search”
- “Prospect Manager”
- “Email Follow-up System”
- “Decision Packages”

Websites Affiliated with Recruit System Are Highly Misleading

www.buildfinancialfreedom.biz

Personal Wellness Coaches Needed!

Recruit System promises “an unprecedented economic opportunity, a convergence of forces enabling ‘normal’ people to create a satisfying lifestyle, and at the same time tremendous new wealth.”

The Wellness and Work From Home Industry both represent enormous financial opportunities, either opportunity alone has tremendous potential to create new wealth. Our company has combined the best of both worlds, creating a perfect storm of unprecedented economic opportunity, a convergence of forces enabling “normal” people to create a satisfying lifestyle, and at the same time tremendous new wealth.

The Work From Home Boom

The Work From Home Business has grown steadily over the last 20 years, increasing 91% in just the last decade. With more than 53 Million people worldwide involved, it is now a \$100 Billion global industry. Yet as impressive as this is, it's not hard to see that the real growth in this business model has only just begun, the BIG WAVE is on the way and there is still time to get in front of this trend.

“Millions of new Millionaires are in the making”

Millions of new Millionaires are in the making thanks to these 2 Power Industries.

We are a USD 4 Billion, New York Stock Exchange listed company that has set the trend in both of these two industries since 1980. We are now holding offices in 70+ countries with Millions of people gaining great wealth and wellness thanks to our world famous business solution and powerful training system.

“We are now holding offices in 70+ countries with Millions of people gaining great wealth and wellness thanks to our world famous business solutions and powerful training system.”

© health2fortune.com 2013 - All rights reserved by RecruitSystem.com | Privacy Policy | Report A

“All rights reserved by RecruitSystem.com”

Websites Affiliated with Recruit System Contain Highly Misleading Testimonials



Louisa Higgins - Australia

School drop out
US\$47,000 Per Month

Louisa Higgins De Conto now 40 years young was born in Hong Kong – originally from Australia & working her international business from various homes in Hong Kong, Philippines, Taiwan, Africa, Thailand, France, Belgium and Morocco – a great way to visit each country & now earn incomes from 20 countries!

She has NO BACKGROUND experience – a school drop out! She had no credit card or savings either when she started however she WAS willing to learn, the Work From Home System suited Louisa perfectly. Her income grew to US\$12,000 a month by her 3rd year in business and by her 7th year achieved monthly incomes from US\$ 20,000 a month to over US\$47,000 in one month! This means ANYONE can do this business if they have the right attitude and are willing to learn the ropes to succeed!

"It's learning to work the numbers, helping others achieve their goals and being consistent – it's a win win situation really" she says ... Success leaves clues – You have nothing to lose but try!

www.buildfinancialfreedom.biz

Personal Wellness Coaches Needed!

English

+1 0

Tweet 0

Click the images below to read a testimonial.

Use the left & right arrow keys on your keyboard to navigate to the next/previous story.



Louisa Higgins
Australia



Susan Smith
Australia



Mi & Shai
USA



Jeffrey & Connie
USA

More Stories



Jeff Fiore - USA

Musician

Jeffrey was a musician living in Chicago, Illinois when his friend Deborah introduced him to this Wellness company products. As a professional Rock musician his late night hours and lifestyle contributed to bad stomach problems and severe underweight. After having amazing health results in digestion and gaining 30 needed pounds, Jeff decided to help others by becoming a wellness coach.

This was the best decision I ever made, I have traveled the world for over 2 decades now, made tons of great friends and earned Millions if US Dollar in the process. Join our work in this amazing Wellness Industry, we have just got started and the future is bright and exciting.

Websites Affiliated with Recruit System Tell Distributors That There Is No Risk



Change your life today
We have an opportunity that works!

Changing people's lives since 1980

To ensure you success, we provide you:

- ✓ A personal coach to guide you all the way.
- ✓ Working manuals, DVD's and needed materials to give you a great start.
- ✓ Guidance on how to work with your personal website & online events.
- ✓ A complete online & offline support system.
- ✓ A career for life with no risk!

Any risk involved? No. If you work you earn, if you don't work you don't earn. Very simple.

© Home Business Group 2011. All rights reserved by Recruit System

[Privacy Policy](#) | [About Us](#) | [Contact Us](#) | [Earnings Disclaimer](#) | [Partner Company](#) | [Site Map](#) | [Home](#) | [Report Abuse](#) | [Terms Of Use](#) | [Contents Disclaimer](#)

Recruit System Scripts Encourage Members to Tell Recruits They Will Become Millionaires

After Online HOM Call Recruit Script



Call and connect with your prospect, Find common ground, makes the prospect relax and open up for you easier:

-Hi (**Name**) great to see that you took part in our business presentation.

(ask a few friendly questions just to connect with your prospect. E.g. how are you doing tonight, are you at home or office, do you have children, is this the first time you look for a part time business?)

Now, get down to business, that is the reason why you called and the prospects should know that:

-So, (**Name**) Have you understood what our company is doing and what we can do for you? **Prospect: Yes**

Give a brief recap about what Herbalife are doing around the world:

-Great, then you remember that we are 29 years in business, 70 countries are open for business, in which we have 60 million customers and 1.9 million Distributors.

Then share how exciting the future is:

-(**Name**) Herbalife is just getting started, last year we did USD3.8 Billion worth of business & at the same speed that people around the world are falling sick due to poor nutrition, the same speed the demand for our products increase, Herbalife are on the way to become a USD10 billion company and thanks to that many normal people like you and I will become Millionaires, because we got started at the right time....

Make the Prospect Agree with you:

-(**Name**) ,let me ask you, Do you agree that most people lose their health and Gain Weight due to poor Knowledge & Information about how to eat and how stay healthy? **Prospect: Yes**

-Great, most people start to realize this, if these people have a coach that take care of them and support them, do you agree that they would do better? **Prospect: Yes**

Recruit System Trainings Emphasize Recruiting

Next Monday Online Training 20 June

20:30 Malaysia, Taiwan, The Philippines, Hong Kong

19:30 Vietnam, Thailand, Indonesia

18:00 India

13:30 Sweden, Central Europe

12:30 UK, GMT

“I will teach you how I **Build my Royalty through duplication** and how you can do the same”.



Kim Bassett
President's Team
Australia



•Distributors sign in from: www.RecruitSystem.com/Training



A Video on Websites Affiliated with Recruit System Features a Who's Who of Senior Herbalife Distributors

Doran Andry



Video

Dan Waldron



Video

Leslie Stanford



Video

John Tartol



Video

Herbalife's Response to the Misconduct of Waisbein, Cohn and Others Through Recruit System

- What did Herbalife do to halt the predatory and deceptive conduct of Waisbein, Cohn and others through Recruit System?

NOTHING

- Instead, Recruit System claims to be the largest online community of Herbalife distributors worldwide, and Herbalife celebrates Waisbein and Cohn as the pinnacle of success.

Waisbein Was on the Herbalife Board of Directors

- Waisbein served on Herbalife’s Board of Directors between 2005 and 2009.
- The latest proxy statement in which Waisbein appeared (2009) states that he beneficially owned 369,091 shares.

| | | |
|---|----|------|
| <p><i>Leon Waisbein</i> , age 40, has been an independent Herbalife distributor for 17 years. A member of the Chairman’s Club since 1995, Mr. Waisbein has built a successful organization in more than 30 countries. He has been active in training Herbalife distributors around the world, and is a member of various strategy and planning groups for Herbalife. He is Chairman of a charity foundation supporting disabled children and an active volunteer for the Herbalife Family Foundation. He has a Bachelor’s degree in life science from Novosibirsk Medical School.</p> | II | 2005 |
|---|----|------|

| <u>Name of Beneficial Owner</u> | <u>Amount and Nature of Beneficial Ownership</u> | <u>Percentage Ownership (1)</u> |
|---------------------------------|--|---------------------------------|
| John Tartol(7)** | 231,716 | * |
| Leon Waisbein** | 369,091 | * |

In 2009, Herbalife Congratulated Waisbein on Reaching the Founder's Circle



HERBALIFE.

Distributors On The Rise

Congratulations Qualifiers of June 2009



10 Diamonds: Founders Circle



Leon Waisbein - USA

After the collapse of their native Soviet Union, Leon and Irina Waisbein decided to immigrate to Israel, where they planned on finishing medical school and starting a new life. But they soon ran out of money, so Leon took a job picking oranges. One day in 1993, he was introduced to the Herbalife opportunity and immediately started the business with such a passion that he achieved Chairman's Club by 1994. Since then, their business has expanded internationally to over 30 countries, and today the Waisbeins have achieved the highest honor in the Herbalife family – Founder's Circle.*

Herbalife Promotes Waisbein Trainings and Speeches

**You Acknowledge
THEY
Advance**

Congratulate your new Distributors on their first 500 Volume Points in one month!

Acknowledging the successes in a Distributor's business leads to more successes. This 500 Volume Point set of pins and certificates helps you give your downline the recognition they deserve.

Use these rewards at your next meeting and watch your organization move up the Marketing Plan!

500 VIP Pins
#8702 \$9.30
(set of five)

Order Pins Today!
Call 866-866-4744 or
visit MyHerbalife.com

ONLINE TOOLS

Download a free certificate for personalization at MyHerbalife.com.

Learn more on how to use this recognition to build a solid foundation in your business from Founder's Circle Member Leon Waisbein.

MISSION BILLION

HERBALIFE
Nutrition for a better life.

In 2011, Herbalife rewarded distributors achieving 500 volume points with access to a Waisbein training video.

Spectacular
2013 JANUARY - ASIA PACIFIC
HERBALIFE

2013 台灣·香港風尚之旅
2013年1月11日-13日 台北小巨蛋

特邀講師-首波宣布

**創辦人俱樂部成員
Leon Waisbein**

全球賀寶美頂尖行銷高手/活躍世界組計畫概念發想者

Leon 在加入賀寶美前是一名賣柳橙維持生計的貧困移民，每月收入僅有 400 元美金，在一次意外的機緣下接觸了賀寶美，Leon 的生活從此有了 360 度的大改變。而他在加入賀寶美的第一個月就賺取了 2,000 元美金！因為賀寶美，Leon 從窮困的外來移民者變成今日擁有全球事業與豐厚收入來源的成功人士。

如今 Leon 已是賀寶美創辦人俱樂部成員，除了擁有非凡成就，深入透徹了解市場行銷計劃的他同時也是賀寶美最頂尖的行銷高手之一。Leon 曾於 2009 年來台，帶給台港兩地夥伴一場強而有力的課程訓練，Leon Waisbein 也是賀寶美夥伴最引頸期盼的超級講師之一。

Waisbein was a featured speaker at an Herbalife Asia Pacific Spectacular in January 2013.

In August 2012, Michael Johnson Called Waisbein “One of Our Greatest Leaders”



Video

“Many of our leaders say Barcelona Extravaganza was a turning point for them, including one of our greatest leaders, our Founder’s Circle member, Leon Waisbein, whose ideas continue to drive the business forward, not just in EMEA [Europe, the Middle East and Africa], but worldwide.”

Herbalife Features Cohn as a Speaker at Company Events

HERBALIFE MALAYSIA EVENTS

Special Supervisor Workshop

Speaker Profile of Chairman's Club Member, Amerat Cohn

Amerat Cohn started with Herbalife 16 years ago, when the documentary filmmaker was in Los Angeles, California, trying to find work directing feature films. After spotting a classified ad for the Herbalife business opportunity, Amerat had a private meeting with a Herbalife Distributor, Ben Cole, and signed up. Although he got off to a slow start, Amerat finally found the approach that worked for him - taking one-on-one with and taking care of people. Since then, he has built an international Herbalife business with a presence throughout the Europe, as well as in Thailand, India and the United States.



Date : 6th August 2006, Sunday
 Time : 10:30AM - 11:30AM (HOM)
 : 1:00PM - 6:00PM (Supervisor Workshop)
 Venue : Grand Prince Ballroom, Prince Hotel & Residence, Jalan Conlay, Kuala Lumpur.
 Language : English (Mandarin and Bahasa Malaysia translations available)

| Ticket Information | SKU | Price |
|--|------|---------|
| Early Bird (20 th July - 5 th August 2006) | D331 | RM50.00 |
| Purchase at Door | D332 | RM60.00 |

Tickets on sale from 20th July 2006 (Thursday)
 Seats are limited! Get them early!

Only walk to ticket order can be accepted on 6th August 2006 (Saturday) from 16:00AM - 3:00PM. The Call Centre is closed on Saturday.

HERBALIFE

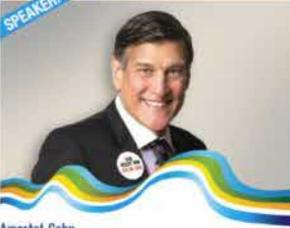
MAXIMIZE YOUR BUSINESS FOR SUCCESS

PHILADELPHIA, PA - JANUARY 14-15, 2012

Dolce Hotel Valley Forge
 301 West Dekalb Pike, King of Prussia, PA 19406 • 610-257-1700
 Herbalife Special Event Rate - \$170 (Available until December 27th)

JANUARY 2012 SPECTACULARS

SPEAKER:



Amerat Cohn
 Chairman's Club Member

Amerat Cohn had produced and directed documentary films for 20 years. When Amerat saw an international business opportunity ad in the newspaper, he decided to become an independent distributor. He found that simply taking one-on-one with people produced the results that helped him move up the Marketing Plan. Today, Amerat has built an international Herbalife Independent Distributorship stretching from the United States to Malaysia. Amerat continues to spread the Herbalife message of healthy living and financial independence.

TICKETS • SKU #0130

Advance: \$50 (Available until January 9th)
 At the door: \$60 (Available 90 days prior)

AGENDA

Saturday

8:45 a.m. Leadership in Action
 100 Team/Active Works Team
 10 a.m. "Person to Person, City by City"
 HOM
 11 a.m. Herbalife Products for Life
 1 p.m. The Right Place at the Right Time
 9 p.m. Exclusive 2012 New Year's Dinner
 7 p.m. Pigeon Party

Sunday

9 a.m. Supervisor Steps to Success
 11 a.m. Private, Powerful Strategist
 2 p.m. - 4 p.m. The Next 90 Days

Reservations and Member's Choice translation will be provided.

Purchase your tickets today at HerbalifeEvents.com or by calling 866-866-4744!

HERBALIFE Nutrition for a better life.

Cohn was a featured speaker at a supervisor workshop in Malaysia in 2006.

Cohn also was a featured speaker at a January 2012 event in Philadelphia.

Canadian 30th Anniversary Chairman's Club Tour

Amerat Cohn
 Chairman's Club Member

Amerat Cohn had produced and directed documentary films for 20 years. When Amerat saw an Herbalife business opportunity ad in the newspaper, he decided to become an independent distributor. He found that simply taking one-on-one with customers produced the results that helped him move up the Marketing Plan. Today, Amerat has built an international Herbalife Independent Distributorship stretching from the United States to Malaysia. Amerat continues to spread the Herbalife message of healthy living and financial independence.



EVENT DETAILS

Advance Tickets: \$10.00 (until December 1, 2012)
 At the Door: \$25 (Available at event)
 Local Canadian taxes apply.
 Open to all Distributors. Free admission for guests during the HOM.

AGENDA FOR EACH LOCATION

5:00 p.m. - 8:30 p.m. 120 Team Meeting
 7:00 p.m. - 8:30 p.m. Herbalife Opportunity Meeting (HOM)
 9:00 p.m. - 10:00 p.m. Finishing the 4th Quarter Strong

Purchase your advance tickets today at HerbalifeEvents.com or by calling 866-622-1222!

HERBALIFE Nutrition for a better life.

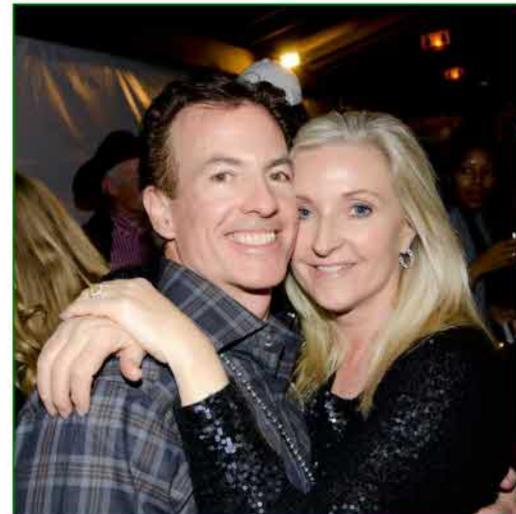
Cohn is a speaker on the 2012 Chairman's Club Tour in Canada.

Leslie Stanford & John Tartol

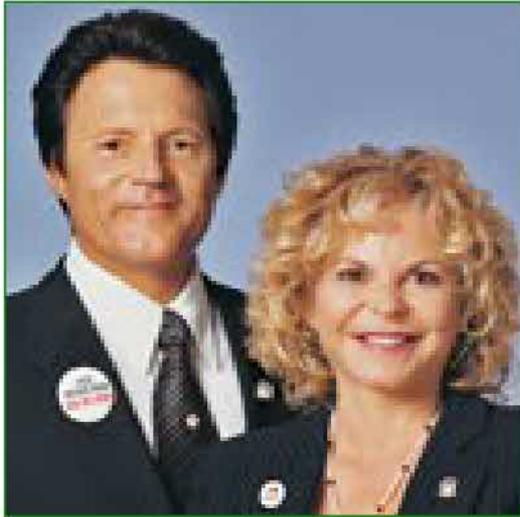


Who Is Leslie Stanford?

- Leslie Stanford was born in Canada in 1957.
- She obtained a degree in dental hygiene from the University of Alberta in 1977.
- Stanford was married until 1991 to Grant Carnie (with whom she had one daughter). She is now married to Don Bailey, with whom she had two more daughters, and lives in Colorado. Stanford's family is prominently featured in her promotion of the Herbalife business opportunity.
- Stanford became an Herbalife distributor in 1981. She joined the Chairman's Club in 1996 and the Founder's Circle in 2011.
- She was a member of Herbalife's board of directors from 2002 to 2005.



Who Is John Tartol?



- John Tartol was born in 1951.
- He received a bachelor's degree in Finance from the University of Illinois.
- In 1981, Tartol married Lori Patton, with whom he initially joined Herbalife. The two were divorced in November 2012.
- He joined the Chairman's Club in 2000.
- He has been a member of Herbalife's board of directors since 2005.



Stanford and Tartol

Attribute Their Wealth to Herbalife



Video

“I never, ever dreamed this big. I’m living a life in my wildest dreams I couldn’t create for myself. I’ve been in Herbalife for 30 years, so Herbalife is a big part of who I am. It’s a part of my identity. I am a wife of an amazing husband, I have three beautiful daughters, and I’m an Herbalife distributor.”



Video

“One of the things that really attracted us was the freedom and the options. And I love to have fun.”

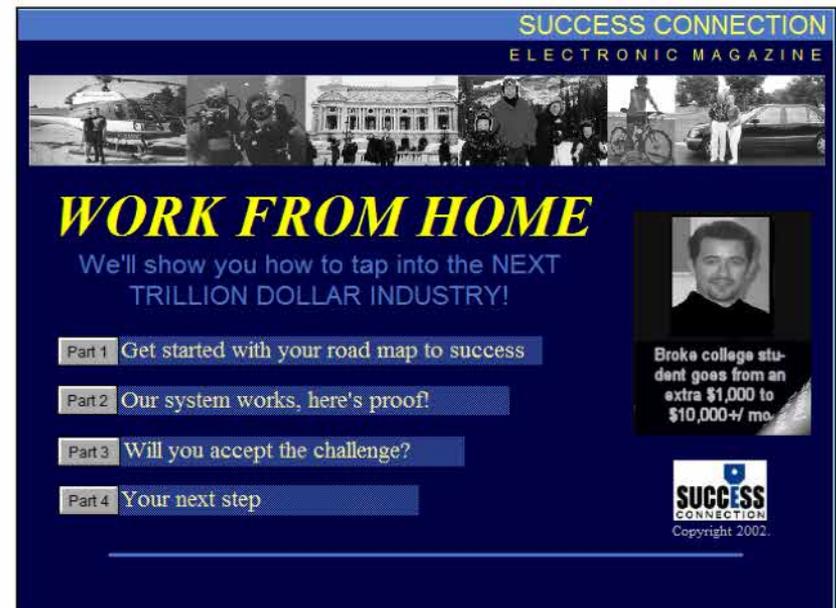
“Herbalife’s afforded me the chance to live the life that I only dreamt possible. . . .”

“I never saw this big money. It just happened. And it just does happen.”

“You know, and all it was was consistency.”

How Did Stanford and Tartol Get to the Top?

- In 2001, Stanford set up a business called “Success Connection LLC,” a lead generation business and purveyor of promotional and recruiting materials.
- From 2001-2005, the website www.successconnection.com featured a link to the Success Connection e-magazine, which includes testimonials from Stanford and Tartol as well as numerous deceptive income claims.
- admin@successconnection.com is the registrant email address for 250+ internet domains, and Success Connection is listed as the copyright owner of multiple other websites.
- Websites affiliated with Success Connection state that Tartol and Stanford “initially put together” the Success Connection “system and tools,” and those websites still feature videos of Stanford and Tartol making deceptive income claims to recruit distributors.



Testimonials in the Success Connection e-Magazine

Stanford

A testimonial from Leslie



My name is Leslie. When I graduated from high school, my dentist told me I should become a dental hygienist –*lots of jobs available, good profession for a young lady, etc.* I went for it. Well, I hated cleaning other people's teeth. But I hung in there because of the benefits – medical insurance, vacation pay, etc.

Besides, what else was I going to do?

Then I met "Prince Charming." (So I thought). I became engaged to marry, quit my job, moved to a strange city. I thought he would "look after me." (I'm ashamed to admit I used to think that way)! In anticipation of marriage, I leased a fully furnished condo on the beach and a brand new sports car. I thought I was set. You've heard the expression, "Before you meet your handsome prince, you have to kiss a lot of toads." Well, this guy turned out to be a real toad!

Tartol

The road map to success!

If John can do it... and if Amy can do it... you can too!

John was a musician, he had dreams of being a "Rock-n-Roller." He had no business skills all he did was follow the Success Connection plan...

Month 1 **\$1,523.03**

Month 10 **\$10,279.63**

NOW **\$100,000+/mo.**

Amy was an out-of-work manager of a fitness studio. She had 7 jobs in 7 years and she doesn't have a college degree. She tried and failed at other business opportunities...and look what happened to her...

Month 10 **\$12,665.54**



Deceptive Testimonials in the Success Connection e-Magazine

The “Any Idiot Can Do It” Theme

“But can I really succeed at this? I have no special skills?” Neither did I. I was a dental hygienist, remember. I was just extremely teachable. I had the desire and I copied people who were already successful. You can too! OK, so maybe you're skeptical. So was I. All the people you've read about had to overcome their doubts and fears and skepticism. Some of them were even skeptical when they saw proof.

The “Backed by a Large and Stable Company” Theme

This is a REAL business and real opportunity -- one that has drawn so much interest from people that we had to put this screening process in place to help us determine who to work with. Our company has been in business for 21 years, is publicly held and traded on the NASDAQ. It is important that you realize that we can help you build a powerful and profitable business, but you will have to put forth effort and be teachable.

*Note: Herbalife is in fact traded on the NYSE, not NASDAQ.

The Success Connection e-Magazine Tells Recruits to Ignore Detractors



A Word of Caution

There are people who will steal your dreams if you let them. The naysayers and the doomsdayers. **Be very careful.** They say they are looking out for your interests. They may even be well intentioned. I shudder to think where I'd be if I listened to them. Often these are the same people who spend hours each week wishing their lives away on *Wheel of Fortune* or standing in line to buy lottery tickets.

Make no mistake; the Millennium will be grim in many ways for many people. Look at the recent headlines. I found these in just one issue of our local newspaper:

- Ø **Troubled Middle Class: Generations Feel Downward Shift**
 - Ø **Young Couple's Dream Meets Up With Reality**
 - Ø **Just Getting by is harder than Ever**
 - Ø **Decline in Income Leading to Disintegrating Society**
 - Ø **Temporary Work Often Permanent**
-

Stanford and Tartol Promote Success Connection with Highly Misleading Income Claims



Video

“So, you must be wondering what it is that we do. Well, I want to introduce you to John. His story is profiled in the booklet, and he’s one of the many people that you can count on to train you at the Success Connection. But, I have to tell you John, you know, did you—would you have ever guessed in a million years that we would be making millions in this?”

“Never, Leslie. It’s unbelievable.”



Video

“And within ten months, I was earning over ten thousand dollars a month, and the lifestyle changes were—were dramatic. . . .”

“So, for me, I thought—wow, this freedom is unbelievable. And I’m telling you, at the Success Connection, it could absolutely help you too.”

Tartol and Stanford Are Still Featured on Websites Affiliated with Success Connection

my future is here

Home

1.- Why Work From Home?

2.- Industry Information

3.- Benefits For You

4.- Work From Home Questionnaire

5.- Will You Be Ready To Retire?

6.- Your Future

Video 1.- Success Connection Intro

Video 2.- Our Industry

Next Step

About Success Connection



Watch our brief Introduction to **Success Connection** to learn How we work from home.

**If you have a slow Internet Connection no problem! You can [click here to download the Video file](#) to your computer then you can watch it "off line" without interruptions.



Herbalife's Response to Stanford and Tartol's Misconduct

- What did Herbalife do to halt the predatory and deceptive conduct of Stanford and Tartol through the Success Connection?

NOTHING

- Instead, Stanford and Tartol have both served on Herbalife's board of directors and are held out as paragons among Herbalife distributors.

Stanford Was, and Tartol Currently Is, on the Herbalife Board of Directors

HERBALIFE

HOME OUR PRODUCT SOLUTIONS LIVE HE

Investor Relations
Press Releases
Media Assets
Events & Presentations
Webcasts/Transcripts
Corporate Governance
Management
Board of Directors
Committee Composition
Contact the Board

Financial Information
Stock Information
Investor FAQs
MLM FAQs
Assessing MLM
Contact Us
Directions to LA Live
Directions to Beverly Hilton Hotel
Email Alerts

Shareholder Tools
Shareholder Briefcase
Printed Materials
Download Library
Snapshot

Board of Directors

- Michael O. Johnson
Chief Executive Officer
- Leroy T. Barnes, Jr.
Director
- Richard P. Bermingham
Director
- Carole Black
Director
- Pedro Cardoso
Director
- Jonathan Christodoro
Director
- Keith Cozza
Director
- Jeffrey T. Dunn
Director
- Michael J. Levitt
Director
- Colombe M. Nicholas
Director
- John Tartol**
Director

- **Stanford** served on Herbalife’s Board of Directors between 2002 and 2005.
 - The latest proxy statement in which Stanford appeared (2005) states that she beneficially owned 1,333,477 shares of Herbalife stock.
- **Tartol** is currently a member of Herbalife’s board of directors and has been since Stanford left in 2005.
 - SEC filings from April 2013 show that last year Tartol earned \$75,874 in director’s fees and \$2,974,981 in “other compensation,” and he was awarded 109,994 stock options.

Herbalife Has Bestowed Numerous Awards on Stanford and Tartol



In 2010, the Herbalife Family Foundation awarded Stanford its **Humanitarian Award**, which is given to distributors who “exemplify the foundation’s mission and, through their outstanding involvement and dedication, have made a significant contribution to changing people’s lives through service in their community.”



Tartol received the Mark Hughes Bonus Award in 2008, 2010, 2011 and 2012.

Stanford received it in 2008, 2009, 2010 and 2011.

Herbalife Holds Out Stanford and Tartol as Shining Examples of Success



In 2011, Herbalife featured Stanford in its quarterly magazine, *Herbalife Today*

The image is a promotional flyer for the 'Chairman's Club Tour'. At the top, it says 'Chairman's Club Tour' in large white letters on a blue background. Below this, on the left, is a photo of John Tartol, a man in a dark suit. To his right, the text reads: 'John Tartol Chairman's Club Member'. Below his name is a testimonial: 'John Tartol was a struggling musician, ex-law student, bartender and waiter who was looking for a change. His girlfriend, Lori, got him started on the products as a customer. His results were fantastic and made him see there was an opportunity with the business. "We had the incredible chance to work and become friends with our founder, Mark Hughes." Consistency is the key! By using the products, wearing the brand and talking with lots of people, his Independent Distributorship has grown to over 75 countries around the world, helping people change their lives with our products and business plan. Herbalife is an adventure helping people's dreams come true!'. To the right of the photo, under 'Event Details', it lists: 'Advance Tickets: \$10 (Valid only 5 business days prior to the event)', 'At the Door: \$30', 'Open to all Distributors. Free admission for guests during the HOM.', and 'Agenda for Each Location' with a schedule: 'TAB Team Meeting 5:00 p.m.-6:30 p.m.', 'Herbalife Opportunity Meeting (HOM) 7:00 p.m.-8:30 p.m.', and 'Finishing the 4th Quarter Strong 9:00 p.m.-10:00 p.m.'. At the bottom right, it says 'Presented in English. Spanish translation available.'. At the bottom, there are three event locations: 'PHOENIX, AZ SKU #F186 November 13' at 'Arizona Grand Resort & Spa', 'LAS CRUCES, NM SKU #F227 November 14' at 'Las Cruces Convention Center', and 'DENVER, CO SKU #F275 November 15' at 'Sheraton Denver West Hotel'. A footer at the bottom says 'Purchase your advance tickets today at HerbalifeEvents.com or by calling 866-866-4744!' and '©2011 Herbalife International, Inc. All rights reserved. See #F186, #F227, #F275 for details. Nutrition for a better life.'

In 2012, Herbalife promoted Tartol in its Chairman's Club Tour

Herbalife's Complicity in Predatory Business Methods



A Typical Story of Victimization, Part 1

- An unsophisticated consumer comes across an attractive advertisement promising easy money working from home and encouraging the consumer to visit a website. These advertisements appear online, on talk radio shows, in mass mailings and flyers, etc.
- The consumer then visits the website, where he is required to provide his name and contact information to learn more. The website provides very little information and is fully of promises of easy money and depictions of an extravagant lifestyle. But the consumer is now a “lead.”
- The consumer spends \$9.95 on shipping & handling to order a free “decision pack.” The consumer is now a high-priced lead.
- A fledgling Herbalife distributor purchases the lead (for up to \$130) and sends the consumer a “decision pack,” which again promises easy money and depicts an extravagant lifestyle.
- The Herbalife distributor begins calling the consumer repeatedly, using deceptive scripts and high-pressure tactics to convince the consumer to sign up for a program that purports to guarantee success with Herbalife.
- The consumer agrees and signs up.

A Typical Story of Victimization, Part 2

- The new distributor is charged \$39.95 for keeping the decision pack.
- The distributor is required to purchase various support and promotional materials, including web services and a merchant account from a company linked to a senior Herbalife distributor.
- The distributor is pressured to spend approximately \$3,000 to qualify for Supervisor immediately.
- The distributor is pressured to buy leads (for up to \$130 per lead) and decision packs to send to them.
- Over time, the new distributor realizes that he cannot make a profit selling the product and that most leads are worthless. The distributor reaches out to the upline distributor who recruited him and is pressured to make a larger commitment, go into debt and buy more leads and promotional materials.
- Ultimately, the distributor fails, having lost \$3,000, or \$10,000, or even \$50,000.
- Meanwhile, the senior distributor has collected substantial revenue from the sale of support and promotional materials, leads and product, and Herbalife has profited handsomely as well.

Herbalife Knows About and Has Encouraged Various Business Methods

- Herbalife’s SEC filings consistently state that the Company works closely with distributors to identify and propagate effective Business Methods:
 - “We work with our distributor leaders to globalize best-practice business methods to enable our distributors to improve their penetration in existing markets.” (*E.g.*, 2010 Report on Form 10-K, filed Feb. 22, 2011, at 7.)
 - “Management’s strategy is to review the applicability of expanding successful country initiatives throughout a region, and where appropriate, financially support the globalization of these initiatives.” (*E.g.*, 1Q 2013 Report on Form 10-Q, filed Feb. 19, 2013, at 57.)

Herbalife Has Attributed Sales Growth to Lead Generation

- In its SEC filings, Herbalife has attributed increases in net sales in the U.S. to the success of “Lead Generation/Sampling” as a Business Method:

The increase in net sales in North America was led by distributor momentum behind the Nutrition Club DMO among our Latino distributors as well as the Lead Generation/Sampling DMO among our non-Latino distributors in the United States. In October 2007, the region hosted over 7,000 distributors in Long Beach, California for the annual Herbalife University and Latino Development Weekend event.

2008 Report on Form 10-K, filed Feb. 24, 2009, at 59; see also 2007 Report on Form 10-K, filed Feb. 22, 2008, at 51.

- In recent years, Herbalife has referred more vaguely to “Internet/Sampling” as a Business Method supported by the Company:

Specific examples of DMOs include the Club concept in Mexico, Premium Herbalife Opportunity Meetings in Korea, the Healthy Breakfast concept in Russia, and the Internet/Sampling and Weight Loss Challenge in the U.S. Management’s strategy is to review the applicability of expanding successful country initiatives throughout a region, and where appropriate, financially support the globalization of these initiatives.

1Q 2013 Report on Form 10-Q, filed Apr. 29, 2013, at 26; see also 2012 Report on Form 10-K, filed Feb. 19, 2013, at 57; 3Q 2012 Report on Form 10-Q, filed Oct. 29, 2012, at 24-25; 2Q 2012 Report on Form 10-Q, filed July 30, 2012, at 22.

Herbalife's Rules Give It Knowledge of Business Methods

- Until very recently, Herbalife required all Business Methods to be registered with the Company.
- In order to register a Business Method, the sponsoring distributor was required to provide Herbalife with:
 1. An annual letter from legal counsel describing, among other things, “content, method of operation, advertising and promotion and terms of sale and use.”
 2. A Registration Form that includes the distributor's Herbalife Identification Number.
- Herbalife therefore knows that members of its Chairman's Club own and/or operate companies offering Business Methods.

Herbalife Has Acknowledged Abusive Business Methods



December 7, 2012

Advisory Update: USA

Unregistered Business Methods - Notice re: Bridge2Business

As previously advised in our Business Methods Registration Advisory in October 2012 and the Advisory regarding Sales Aids in May 2012, under Business Methods Rule 1-A-1, Distributors may produce, sell, endorse, recommend, promote, and/or use ONLY those Business Methods which have a current Registration with Herbalife International of America, Inc. Promoting, selling, purchasing, or using unregistered Business Methods is a significant violation of Herbalife rules.

"Business Methods" are sales aids and tools which are sold to Herbalife Distributors but which were not produced by Herbalife.

Registration includes the provision of an opinion letter to Herbalife from legal counsel who is knowledgeable about the MLM industry and chosen by the Business Methods Operator. In that letter, the legal counsel indicates that he or she has conducted a review of the content and methods of operation employed by the Business Methods Operator, and that, in the view of the legal counsel, they comply with Herbalife's then-current policies and procedures, and that the legal counsel is not aware of any existing law, rule or regulation that, in the legal counsel's opinion, would be violated by the use, sale, or provision of the Business Methods. Although this may provide some comfort, you should know that by allowing the registration of a Business Method, Herbalife does not endorse, adopt, approve or accept the Business Method (in whole or in part) or the legal counsel's review of the Business Method or Operator.

Bridge2Business which is sometimes referred to as B2B, is a company which sells sales aids, including but not limited to leads. Neither Bridge2Business nor its products or services is registered with Herbalife and no opinion letter has been received.

As a result, Distributors may not purchase, sell, endorse, recommend, promote or use any services or products acquired directly or indirectly from Bridge2Business until such time as Herbalife issues an update that Bridge2Business has registered. This includes, but is not limited to, leads – whether acquired directly from Bridge2Business, or indirectly through any other company or person.

Due to the potential exposure to Herbalife and all of our Distributors, we regrettably are unable to recognize qualifications which in our view were attributable to the use of unregistered Business Methods, whether used by the qualifying Distributor or their downline. If we were to do so, it could be misconstrued as supporting and rewarding Distributors with recognition, when the methods used to achieve that qualification may involve misleading advertising or other abuses and therefore put the Distributor and Herbalife at risk.

You can check to see if a Business Method is currently registered with Herbalife by visiting MyHerbalife.com under the following headings: Business Methods Registration Advisory under MyOffice/DistributorPolicies/Business Methods.

Thank you for your continued support.

Herbalife Has Acknowledged Abusive Business Methods



December 7, 2012

Advisory Update: USA

Unregistered Business Methods - Notice re: Bridge2Business

As previously advised in our Business Methods Registration Advisory in October 2012 and the Advisory regarding Sales Aids in May 2012, under Business Methods Rule 1-A-1, Distributors may produce, sell, endorse, recommend, promote, and/or use ONLY those Business Methods which have a current Registration with Herbalife International of America, Inc. Promoting, selling, purchasing, or using unregistered Business Methods is a significant violation of Herbalife rules.

"Business Methods" are sales aids and tools which are sold to Herbalife Distributors but were not produced by Herbalife.

Registration includes the provision of an opinion letter to Herbalife from legal counsel knowledgeable about the MLM industry and chosen by the Business Methods Operator. In the letter, the legal counsel indicates that he or she has conducted a review of the content and methods of operation employed by the Business Methods Operator, and that, in the view of the legal counsel, they comply with Herbalife's then-current policies and procedures, and that the legal counsel is not aware of any existing law, rule or regulation that, in the legal counsel's opinion, would be violated by the use, sale, or provision of the Business Methods. Although the legal counsel may provide some comfort, you should know that by allowing the registration of a Business Method, Herbalife does not endorse, adopt, approve or accept the Business Method (in whole or in part) or the legal counsel's review of the Business Method or Operator.

Bridge2Business which is sometimes referred to as B2B, is a company which sells sales aids, including but not limited to leads. Neither Bridge2Business nor its products or services is registered with Herbalife and no opinion letter has been received.

As a result, Distributors may not purchase, sell, endorse, recommend, promote or use any services or products acquired directly or indirectly from Bridge2Business until such time as Herbalife issues an update that Bridge2Business has registered. This includes, but is not limited to, leads – whether acquired directly from Bridge2Business, or indirectly through any other company or person.

Due to the potential exposure to Herbalife and all of our Distributors, we regrettably are unable to recognize qualifications which in our view were attributable to the use of unregistered Business Methods, whether used by the qualifying Distributor or their downline. If we were to do so, it could be misconstrued as supporting and rewarding Distributors with recognition, when the methods used to achieve that qualification may involve misleading advertising or other abuses and therefore put the Distributor and Herbalife at risk.

You can check to see if a Business Method is currently registered with Herbalife at MyHerbalife.com under the following headings: Business Methods Registration Advisory/MyOffice/DistributorPolicies/Business Methods.

Thank you for your continued support.

Published

Herbalife tells distributors that selling, purchasing or using unregistered Business Methods “is a significant violation of Herbalife rules.”

Herbalife will not recognize distributor qualifications that are generated through the use of unregistered Business Methods due to the “potential exposure.”

Herbalife is aware that unregistered Business Methods may utilize “misleading advertising or other abuses and therefore put the Distributor and Herbalife at risk”

Indeed, Many Business Methods May Violate the Business Opportunity Rule (Among Other Laws)

- The Business Opportunity Rule, promulgated by the FTC, applies where “(1) A seller solicits a prospective purchaser to enter into a new business; and (2) The prospective purchaser makes a required payment; and (3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will: . . . (ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services.” 16 C.F.R. § 437.1(c).
- Many sellers of Business Methods require payments for various support materials, as well as Herbalife products, and promise to provide websites, customers and leads. Accordingly, these Business Methods may fall within the Business Opportunity Rule.
- The Business Opportunity Rule requires sellers to provide potential purchasers with a one-page disclosure document at least seven days before the purchaser makes any payments or signs any contracts, and substantially restricts the potential earnings claims that a seller may make. 16 C.F.R. §§ 437.2-437.4.
- Many sellers of Business Methods that may fall within the Business Opportunity Rule do not provide the mandatory disclosure documents and make outrageous earnings claims in violation of the Rule.

Herbalife Has the Power to Control Business Methods

- The Herbalife Sales & Marketing Plan includes numerous provisions that give the Company the power to control the behavior of distributors, including with respect to Business Methods and lead generation. For example:
 - **1-G Business Methods, Sales Aids and Decision Packages.** Distributors, and any third party providing sales aids or leads to Distributors, must disclose that the business opportunity being offered is Herbalife before a prospect or consumer's credit card is charged or they pay or commit to pay any money for any product, service, content or materials in any form.
 - **Rule 28-E Lead Generators.** Distributors may use Lead Generators to identify potential purchasers of Herbalife products or prospects for the Herbalife business opportunity only when the Distributor has entered into a written agreement with the Lead Generator whereby the Lead Generator agrees to comply with all applicable laws, regulations and guidelines Herbalife shall have the right to suspend, terminate, or take other disciplinary action against a Distributor using leads generated by means which do not comply with the law, or using those leads in a manner which does not comply with Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife Rules, or the law on this subject matter.
- Yet the sale of Business Methods and lead generation continue largely unabated in the United States and elsewhere.

Herbalife Purports to Ban Lead Generation

HERBALIFE

U.S.A. EDITION

ANNOUNCEMENT

Update: Rule 1-O Leads, Advertising, Advertising Slots, and Decision Packs

Dear Herbalife Team,

To eliminate misperceptions in the marketplace, and as part of our commitment to "Building It Better," Herbalife is revising its policy that relates to lead sales, lead purchases, advertising, advertising slots, and decision packs.

[Learn more »](#)

Rule 1-O Leads, Advertising, Advertising Slots, and Decision Packs

Distributors may generate leads for their own use or free distribution to their downline (but not for resale) through any number of advertising channels, but only if the means of advertising and the content of the advertisement comply with the law and Herbalife's Rules of Conduct & Distributor Policies.

Distributors may not purchase (whether from other Distributors or third party lead providers) business opportunity leads or product leads, leads-related advertising, advertising slots, or decision packs for their own use or the use of others.

Distributors may not, directly or indirectly, sell, promote, recommend, refer, facilitate or take any action which Herbalife might deem to encourage or promote the purchase, use or sale of leads, leads-related advertising, advertising slots or decision packs, by another Distributor.

However, as a transition matter, until (but not after) June 30, 2013, Distributors may:

- purchase business opportunity leads or product leads, advertising, advertising slots or decision packs for their own use.
- suggest to persons who have been Distributors for at least 90 (ninety) days the prudent purchase of leads, advertising services or decision packs, but only as a part of a menu of choices of how to build their business and only from well recognized lead sources who are not owned by and who do not pay any compensation (in any form or for any matter) to any Herbalife Distributor, directly or indirectly.

As a reminder, Herbalife makes available free or for a nominal price promotional literature and sales tools for Distributors to advertise and promote the sale of Herbalife products and the sharing of our business opportunity. Likewise, Distributors may create their own promotional materials as set forth in the advertising and advertising related Rules in Sections 22 through 28 of Herbalife's Career Book.

- On April 5, 2013, under intense scrutiny of its business practices, Herbalife revised its longstanding policy on Business Methods and now purports to prohibit the sale or purchase of leads.
- This change supposedly was designed to address "misperceptions in the marketplace," although Herbalife did not explain what those misperceptions might be.
- Despite the change in policy, members of the Chairman's Club—including an Herbalife director—continue to promote websites that offer Business Methods, including those that involve the sale of leads.

Herbalife Tries to Wash Its Hands of Business Methods



Date: June 18, 2013

North America Region: Policy Update Advisory
Business Methods Registration and Cautionary Notices

On September 15, 2006, Herbalife implemented the "Business Methods Registration Process." Registration required Distributors who produced, sold, endorsed, or recommended Business Methods to obtain and provide Herbalife formal legal review by their own MLM counsel of their materials and methods of operation.

With the elimination of lead purchases and decision packs, the scope and cost of tools being offered to Herbalife Distributors ("Business Tools") is much reduced. As a result, we will no longer require registration of Business Tools.

If we learn that a Business Tool is not in compliance with our rules or otherwise problematic, we will issue a "Cautionary Notice" that advises Distributors to avoid the purchase, sale, endorsement, recommendation, promotion or use of such Business Tool until the deficiency is corrected. We believe that this will result in a significant level of awareness and protection for our Distributors.

Herbalife's longstanding approach towards qualifications associated with Business Methods remains the same with Business Tools, and that is, due to the potential exposure to Herbalife and all of our Distributors, we regrettably are unable to recognize qualifications which in our view were attributable to the use of Business Tools listed on a Cautionary Notice, whether used by the qualifying Distributor or their downline. If we were to do so, it could be misconstrued as supporting and rewarding Distributors with recognition, when the methods used to achieve that qualification may involve misleading advertising or other abuses and therefore put the Distributor and Herbalife at risk.

Herbalife reminds Distributors that purchasing Business Tools (other than leads and decision packs) is always optional. Your upline is expected to provide support, encouragement and training regardless of whether you buy such services or materials. Herbalife also offers training materials for its Distributors (for free or a nominal price) relating to product, product merchandising and business skills.

However, if you freely choose to purchase Business Tools (other than leads and decision packs), we urge you to spend no more than a reasonable proportion of the earnings generated from your Herbalife business, and be sure to visit MyHerbalife.com under the following headings: [Business Tools](#), [Cautionary Advisory](#) under [MyOffice/DistributorPolicies/Business Methods](#) to view the latest Cautionary Notice.

Herbalife thanks you for your support in upholding the policies that have been established to provide protections for your Distributorship. Should you have any questions regarding this communication please contact Distributor Relations toll-free at 866-866-4744.

Thank you for your continued support.

Published: June 18, 2013

- On June 18, 2013, Herbalife announced that the Company "will no longer require registration of Business Tools."
- In so doing, the Company again recognized "the potential exposure to Herbalife."
- In light of Herbalife's knowledge of and ability to control abusive Business Methods, and its support for lead generation, this cosmetic effort to distance itself from Business Methods is much too little, far too late.

Conclusion

- Herbalife foists on unwitting consumers a myth that it is possible for a new distributor to make lots of money doing what Mark Hughes said they should do, namely, (1) Use the products, (2) Wear the button, (3) Talk with people.
- Herbalife portrays Doran Andry, Shawn Dahl, Rick & Carla Berg, Dan Waldron, Leslie Stanford, John Tartol, Leon Waisbein and Amertat Cohn as regular people who, by following that simple advice, rose quickly from modest circumstances to great wealth.
- These Horatio Alger tales are a sham.
- In every case, these people got where they are by aggressively recruiting new distributors and selling those distributors leads and other business tools.
- And those people are not alone—the Herbalife Chairman’s Club and Founder’s Circle are full of examples of those who engage in similar activities.
- Herbalife has a long history of trying to evade responsibility by appearing to change course. In this case, we believe that lead generation has created millions of victims who have lost billions of dollars, and we believe it continues unabated in the U.S. and elsewhere.



SULLIVAN & CROMWELL LLP

TELEPHONE: 1-212-558-4000
FACSIMILE: 1-212-558-3588
WWW.SULLCROM.COM

125 Broad Street
New York, NY 10004-2498

LOS ANGELES • PALO ALTO • WASHINGTON, D.C.

FRANKFURT • LONDON • PARIS

BEIJING • HONG KONG • TOKYO

MELBOURNE • SYDNEY

June 5, 2013

Via FedEx

Lois C. Greisman, Esq.,
Associate Director, Division of Marketing Practices,
Federal Trade Commission – Bureau of Consumer Protection,
600 Pennsylvania Avenue, N.W.,
Washington, D.C. 20580.

Re: Herbalife

Dear Lois:

I write on behalf of our client Pershing Square Capital Management, L.P. (“Pershing Square”) to bring to your attention an interesting development in the class action filed against Herbalife recently in federal district court in Los Angeles on behalf of lower-level Herbalife distributors. The complaint in that case, captioned *Bostick v. Herbalife International of America*, Case No. 13-cv-02488 BRO (RZx) (attached as Exhibit A), is worth reading because it contains a detailed explanation of why Herbalife is an inherently fraudulent pyramid scheme. The central claim asserted against Herbalife in the *Bostick* case is for violations of California’s Endless Chain Scheme Law, Cal. Penal Code § 327, but the analysis in the complaint is broadly applicable to other laws—federal and state—proscribing pyramid schemes and deceptive practices.

Late last week, Herbalife filed a motion to dismiss the complaint in the *Bostick* case. (A copy of the motion to dismiss (“MTD”) is attached as Exhibit B.) The motion to dismiss is notable in a number of respects.

First, Herbalife’s principal line of defense is that it should have been apparent to the plaintiff that the majority of Herbalife distributors fail, and that even those who do not fail make very little money. Herbalife makes this point repeatedly in the motion to dismiss. *See, e.g.*, MTD at 3 (“Bostick claims he was the victim of a business that . . . made it clear to him that only a small percentage of individuals similarly situated could expect to—as is true—generate significant income as a result of their relationship

with Herbalife.”); *id.* at 10 (“Bostick was well-informed . . . that most Distributors do not achieve Sales Leader status, and even of those that do, most make only modest, if any, income from commissions.”); *id.* (“Bostick knew that . . . most of even Herbalife’s most successful leaders made only modest amounts of commission income.”); *id.* at 11 (“Bostick knew that even the top Herbalife Distributors, on average, earn only a modest amount of income.”); *id.* at 15 (“The Complaint’s own documents show that Herbalife makes clear that even active Distributors are likely to earn, at most, only modest commissions income.”). Indeed, Herbalife contends that “no reasonable consumer could have believed that success was guaranteed, or (as with most business ventures) even likely.” MTD at 21.

The concession that the vast majority of Herbalife distributors are unable to generate “significant income” underscores the deceptive nature of Herbalife’s recruiting materials. As we have shown you in the past, those recruiting materials convey the impression that anyone can make significant income as an Herbalife distributor if he or she is willing to devote sufficient time and effort to the business. Such recruiting materials prominently feature testimonials from people who claim to be making very substantial amounts of money as Herbalife distributors, and those distributors are shown enjoying lavish lifestyles and all the trappings of wealth. *See* Compl. ¶¶ 138-50. The reality is very different. As Herbalife now admits, the chances of earning “quit your job type money” as an Herbalife distributor are remote, and the chances of a new Herbalife distributor making enough money to drive around in a Bentley or a Ferrari are zero.

By emphasizing in the motion to dismiss the low probability that a new Herbalife distributor will ever make significant amounts of money, Herbalife confirms that it is a pyramid scheme. This conclusion flows directly from Herbalife’s acceptance of the principle that “pyramid schemes are inherently fraudulent in nature because the futility of the plan is not apparent to the participant,” and that “an endless chain perpetuates itself because the participants do not realize that most are doomed to failure.” MTD at 5 (quotations omitted). Having acknowledged that most of its distributors are likewise “doomed to failure,” Herbalife places itself squarely within its own definition of a pyramid scheme.

Herbalife seeks to avoid responsibility for its misleading recruiting materials by relying on boilerplate disclaimers in small print and on its Statement of Average Gross Compensation, *see, e.g.*, MTD at 10-11, 21, but Herbalife’s position is unpersuasive. As an initial matter, Herbalife ignores established law that boilerplate disclaimers do not immunize a defendant from liability for making deceptive income claims. For example, in *FTC v. Equinox International*, No. CV-S-990979HBR (RLH), 1999 WL 1425373, at *6 (D. Nev. Sept. 14, 1999), the court noted that “Equinox, in its recruitment and training seminars, emphasizes the promise of lucrative rewards for recruiting others. Distributors are given unrealistic hypothetical examples that their profits will increase geometrically if distributors focus on recruitment rather than retail

sales. Equinox's video presentations and certain materials provided by Equinox contain disclaimers as to the amount of profits obtainable. These disclaimers, however, are difficult to read, do not accurately indicate the actual amount of earnings that can be expected and do not immunize Equinox's exaggerated claims of income."¹ The same could be said of Herbalife's recruiting materials, which convey the impression that it is easy to get rich being an Herbalife distributor. For example, in the issue of the *Herbalife Today* magazine distributed in late 2012, Chairman's Club member Paulina Riveros is described as "earning amazing income" and having "a lifestyle that she couldn't have imagined in her wildest dreams." Compl. ¶ 144.

Herbalife's argument that its Statement of Average Gross Compensation neutralizes its misleading recruiting materials is equally misplaced. As we explained in the presentation entitled "Herbalife's Disclosure of Distributor Earnings is Inadequate" (attached as Exhibit C), Herbalife's latest Statement of Average Gross Compensation, published in February 2013, is not only an implicit concession that prior versions of the document in use for many years were misleading, but is itself misleading in numerous respects. *See also* Compl. ¶¶ 158-71.

Second, Herbalife seeks to distance itself from actions of its senior distributors, including members of the Founder's Circle and Chairman's Club, by referring to them as "third part[ies]" and asserting that they are "not associated" with the company. MTD at 10. As a factual matter, Herbalife's position is baseless because these senior distributors are very closely affiliated with the company, and they are prominently featured in Herbalife's recruiting materials. *See, e.g.*, Compl. ¶¶ 151-57. As a legal matter, Herbalife's position is baseless because Herbalife bears responsibility for the actions of senior distributors whom it cloaks with apparent authority to speak on its behalf. As the court held in *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 527 (S.D.N.Y. 2000), "[f]or purposes of liability under the FTC Act, it does not matter whether Mr. Cole and Mr. Bewley would be considered at law as employees of the company or independent contractors. The law is clear that under the FTC Act, a principal is liable for misrepresentations made by his/her agents (i.e., those with the actual or apparent authority to make such representations) regardless of the unsuccessful efforts of

¹ *See also* *FTC v. Medicor LLC*, 217 F. Supp. 2d 1048 (C.D. Cal. 2002) (holding, with respect to a "results may vary" disclaimer, that "assuming that their advertisements did include such language, the advertisements are still misleading because consumers could reasonably believe that the statements of earnings potential represent typical or average earnings"); *FTC v. Davidson Associates*, 431 F. Supp. 2d 548, 556 (W.D. Pa. 2006) ("The disclaimers used by defendants, both in written and oral form, to the effect that there are no guarantees of financial success or of a license are not sufficiently prominent and unambiguous and do not clearly, conspicuously, and directly address the misrepresentations made regarding defendants' track record, and are, therefore, ineffective."); Guides Concerning the Use of Endorsements and Testimonials in Advertising, 73 Fed. Reg. 72374, 72379 (proposed Nov. 28, 2008) (discussing results of two FTC studies confirming the ineffectiveness of even prominent disclaimers).

the principal to prevent such misrepresentations. Indeed, it would be inappropriate for Defendants to hold out Mr. Cole and Mr. Bewley as Five Star representatives and to reap the fruits from their acts and doings without incurring such liabilities as attach thereto.” See also *FTC v. Medical Billers Network, Inc.*, 543 F. Supp. 2d 283, 319 (S.D.N.Y. 2008); *FTC v. Stefanchik*, No. C04-1852RSM, 2007 WL 1058579, at *8 (W.D. Wash. Apr. 3, 2007) (“It is well-settled that a principal is liable under the FTC Act for misrepresentations made by its agents, even if those agents do not fall within the traditional definition of agency.”).

Third, Herbalife argues that purchases of products by distributors purportedly for their own personal use should be viewed as retail sales in deciding whether Herbalife is a pyramid scheme. See MTD at 14-16. That argument is wrong because it permits Herbalife to reclassify purchases made by failed distributors as retail sales, even if the products end up stored in attics and garages or are dumped at steep discounts on eBay. The argument is also inconsistent with the holding in *Webster v. Omnitrition*, 79 F.3d 776 (9th Cir. 1996), in which the court held that “[i]f Koscot is to have any teeth, such a sale cannot satisfy the requirement that sales be to ‘ultimate users’ of a product.” *Id.* at 783 (citing *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975)). Herbalife tries to sidestep this holding by arguing that it was “fundamentally tied to the facts of Omnitrition and its plan’s ‘recruitment focus’” (MTD at 15), but that argument is unavailing given the “recruitment focus” of Herbalife’s own marketing plan.

Recent statements by the FTC have reemphasized the critical role of retail sales to customers outside the distribution network in determining whether a multi-level marketing company constitutes an illegal pyramid scheme. For example, on January 24, 2013, the FTC and three state attorneys general filed a complaint alleging that Fortune Hi-Tech Marketing (“FHTM”) was an illegal pyramid scheme. See Complaint in *FTC v. Fortune Hi-Tech Marketing, Inc.*, No. 13cv578 (N.D. Ill.) (“FHTM Compl.”), attached as Exhibit D. That Complaint alleges as follows:

36. FHTM induces new recruits to join FHTM by representing that such recruits will be able to resell FHTM products and services to people not affiliated with FHTM for a profit and simultaneously earn large commissions. FHTM claims that its representatives will be able to easily sell its products and services to consumers not affiliated with FHTM. In fact, few of FHTM’s products and services are ever sold to anyone other than the Reps themselves. Furthermore, Reps receive minimal financial rewards from FHTM for selling the products and services to outside consumers.

On April 1, 2013, the FTC filed its opposition brief in an appeal from a decision embracing the FTC's position that BurnLounge, Inc. was an illegal pyramid scheme. *See* 2d Cross-Appeal and Answering Br. of Pl.-Appellee FTC, *FTC v. BurnLounge, Inc.*, Nos. 12-55926, 12-56197, 12-56288 (9th Cir.) ("BurnLounge Br."), attached as Exhibit E. In that brief, the FTC confirms that sales to distributors do not constitute retail sales: "[I]f *Koscot* is to have any teeth, such a sale *cannot satisfy the requirement that sales be to 'ultimate users' of a product.*" BurnLounge Br. at 42 (emphasis in original) (quoting *Omnitrition*, 79 F.3d at 783). In its motion to dismiss, Herbalife ignores the FTC's interpretation of *Omnitrition* and the need to establish that Herbalife has actual retail sales. Despite Herbalife's denials, it plainly matters that relatively few Herbalife products are sold to people other than aspiring Herbalife distributors.

Fourth, Herbalife ignores the allegations in the complaint that Herbalife artificially inflates the Suggested Retail Price ("SRP") of its products, which has the dual effect of masking the recruiting focus of Herbalife's marketing plan and misleading potential distributors into believing they can make money selling the products at retail. *See, e.g.*, Compl. ¶¶ 26-27, 41, 172-74. Rather than answering these allegations, which are true, Herbalife pretends they do not exist: "[t]here is no allegation, other than a few conclusory assertions, that Herbalife inflates the prices at which its Distributors sell products." MTD at 3. As the plaintiff in *Bostick* will be able to demonstrate, Herbalife inflates the SRP of its products—upon which Herbalife calculates various distributor discounts, fees and rewards—but that SRP bears no relationship to the prices at which distributors actually sell Herbalife products.

Fifth, Herbalife's argument that it is not a pyramid scheme because it merely "encourages" but does not "require[]" large inventory purchases by distributors in order to qualify for Supervisor, *see* MTD at 12-13, is at odds with the maxim that "[w]hether a multi-level marketing plan operates as illegal pyramid scheme is determined by how it functions in practice." *Whole Living, Inc. v. Tolman*, 344 F. Supp. 2d 739, 744 (D. Utah 2004) (citations omitted). In practice, Herbalife distributors are strongly encouraged to make large inventory purchases in order to qualify as a Supervisor quickly and thereby become eligible to receive recruiting rewards. *See, e.g.*, Compl. ¶¶ 190-93.

Sixth, Herbalife argues that the plaintiff in *Bostick* cannot rely on *Omnitrition* because "a Distributor can become a supervisor (which is required to earn certain types of commissions) 'without purchasing or reselling any Herbalife products.'" MTD at 12. Of course, the fact that a distributor, theoretically, can become a Supervisor based solely on purchases made by lower-level distributors who were recruited by the relevant distributor into Herbalife merely confirms that Herbalife pays compensation which is facially unrelated to the sale of product to ultimate consumers, *i.e.*, precisely the sort of "recruitment focus" that led the court to conclude that *Omnitrition*'s marketing plan "appears to be a pyramid scheme." *See Omnitrition*, 79 F.3d at 782.

Seventh, in an effort to avoid the RICO claim asserted in the *Bostick* case, Herbalife concedes that “investments in a pyramid scheme constitute an ‘investment contract,’” both under California law and under federal securities laws. MTD at 23-24. Because Herbalife is a pyramid scheme—as Herbalife effectively concedes by acknowledging that the vast majority of its distributors fail to earn significant income—the operation of Herbalife’s marketing plan is subject to attack under securities laws as well as consumer protection laws. *See* MTD at 23-24 (quoting *Omnitrition*, 79 F.3d at 784 (“We hold that operation of the pyramid scheme violates 10b-5’s prohibition against engaging in an ‘act, practice or course of business which operates as a fraud or deceit upon any person.’”)).

In short, rather than establishing that the attacks on its marketing plan are without merit, Herbalife’s motion to dismiss confirms that Herbalife is an inherently fraudulent pyramid scheme.

Yours sincerely,



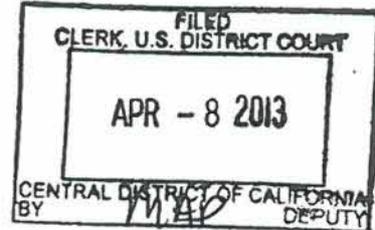
Steven L. Holley

(Attachments)

ORIGINAL

1 Philip D. Dracht, SBN 219044
 2 **FABIAN & CLENDENIN**
 215 South State Street, Suite 1200
 Salt Lake City, UT 84151-0210
 Telephone: (801) 531-8900
 Facsimile: (801) 596-2814

5 Thomas G. Foley, Jr., SBN 65812
 Robert A. Curtis, SBN 203870
FOLEY BEZEK BEHLE & CURTIS, LLP
 15 West Carrillo Street
 Santa Barbara, California 93101
 Telephone: (805) 962-9495



8 *Attorneys for Plaintiff Dana Bostick*

9 **IN THE UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

10 DANA BOSTICK, a California citizen,
 11 on behalf of himself and all others
 12 similarly situated, and on behalf of the
 general public,

Case No: **CV 13-02488** - PA
 (RZ)
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

13 PLAINTIFF,

14 vs.

15 HERBALIFE INTERNATIONAL OF
 16 AMERICA, INC., a Nevada
 Corporation, HERBALIFE
 17 INTERNATIONAL, INC., a Nevada
 Corporation, HERBALIFE, LTD a
 18 Cayman Island Corporation.

19 DEFENDANTS.

I/S
 21
 4/A

20 **INTRODUCTION TO THE CASE**

21 1. Herbalife told Dana Bostick that if he “put in the time, effort, and
 22 commitment,” he could make money from retail sales and, by recruiting others to
 23 become Herbalife distributors, he could make money off them. Bostick paid
 24 Herbalife \$95.95 and became a distributor. He ordered Herbalife products – enough
 25 products that he jumped up the chain and qualified for additional discounts and
 26 commissions from potential recruits’ purchases.
 27
 28

1 International, Inc. and an indirectly wholly-owned subsidiary of Herbalife, Ltd, and
2 is employed by those entities to conduct their U.S. operations.

3 7. Defendant Herbalife International, Inc. is and at all material times was
4 a Nevada corporation headquartered in Los Angeles. Herbalife International, Inc. is
5 an indirect wholly-owned subsidiary of Herbalife Ltd. Herbalife International, Inc.
6 was the former parent company of "Herbalife" but it and its subsidiaries were
7 acquired on July 31, 2002 by an entity that became Herbalife Ltd. Herbalife Ltd.
8 employs Herbalife International, Inc. to manage its global marketing company.

9 8. Herbalife Ltd. is "one of the largest network marketing companies in
10 the world." Herbalife Ltd. is and at all material times was a corporation organized
11 under the laws of the Cayman Islands with its corporate headquarters in Los
12 Angeles. Herbalife Ltd. is a publicly held corporation traded on the NYSE as
13 "HLF." Herbalife Ltd. is the architect, implementer, and operator of a global
14 enterprise that is and has been an illegal and fraudulent pyramid scheme, the
15 "Herbalife Pyramid."

16 9. Although the three entities are legally distinct and have distinct roles
17 within the Herbalife Pyramid, in Herbalife's dealings with Bostick and the Class,
18 Herbalife generally does not distinguish between the three corporate entities but
19 instead refers to itself singularly as "Herbalife." This Complaint, therefore, also
20 refers to Herbalife Ltd., Herbalife International, Inc., and Herbalife International of
21 America, Inc. collectively as "Herbalife."

22 10. John Tartol, an Herbalife Chairman's Club member, is a California
23 resident. Leslie Stanford, an Herbalife Founder's Circle member, is a Colorado
24 resident. Geraldine Cvitanovich, an Herbalife Founder's Circle member, is a Hawaii
25 resident. Susan Peterson, an Herbalife Founder's Circle member, is a Colorado
26 resident. Doran Andre is an Herbalife Chairman's Club member. Maurice Smith, an
27 Herbalife President's Circle member, is an Arizona resident.

28

1 16. In *Webster v. Omnitrition Int'l. Inc.*, the Ninth Circuit adopted the
2 “*Koscot* test” for determining what constitutes a pyramid scheme:

3 Pyramid schemes are “[s]uch contrivances . . . characterized by the
4 payment by participants of money to the company in return for which
5 they receive (1) the right to sell a product and (2) the right to receive
in return for recruiting other participants into the program rewards
which are unrelated to sale of the product to ultimate users.”

6 *Webster v. Omnitrition Int'l. Inc.*, 79 F.3d 776, 781 (9th Cir. 1996) (“*Omnitrition*”)
7 quoting *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975), *aff'd mem.*
8 sub nom. (“*Koscot*”).

9 17. The second element of the *Koscot* test is the determining
10 element for a pyramid scheme:

11 The satisfaction of the second element of the *Koscot* test is the *sine*
12 *qua non* of a pyramid scheme: “As is apparent, the presence of this
13 second element, recruitment with rewards unrelated to product sales,
14 is nothing more than an elaborate chain letter device in which
individuals who pay a valuable consideration with the expectation of
recouping it to some degree via recruitment are bound to be
disappointed.”

15 *Omnitrition*, 79 F.3d at 782. The Ninth Circuit held that “the operation of a pyramid
16 scheme constitutes fraud for purposes of several federal antifraud statutes.” *Id.*

17 18. A multi-level sales organization where members obtain monetary
18 benefits primarily from the recruitment of new members rather than from selling
19 goods to *bona fide* consumers is an endless chain scheme. Endless chain schemes
20 are inherently deceptive because most participants are doomed to failure, even if
21 some retail sales occur:

22 “The promise of lucrative rewards for recruiting others tends to induce
23 participants to focus on the recruitment side of the business at the
24 expense of their retail marketing efforts, making it unlikely that
25 meaningful opportunities for retail sales will occur.” Thus, the fact
that some retail sales occur does not mitigate the unlawful nature of
the overall arrangement.

26 *Omnitrition*, 79 F.3d at 782, citing *In re Ger-Ro-Mar Inc.*, 84 F.T.C. 95, 148-49
27 (1974), *rev'd on other grounds*, 518 F.2d 33 (2d Cir. 1975).

28 19. “Like chain letters, pyramid schemes may make money for those at

1 the top of the chain or pyramid, but ‘must end up disappointing those at the bottom
 2 who can find no recruits.’” *Omnitrition*, 79 F.3d at 781 (quoting *Koscot*, 86 F.T.C.
 3 1106, 1181 (1975), *aff’d mem. sub nom., Turner v. F.T.C.*, 580 F.2d 701 (D.C. Cir.
 4 1978)).

5 20. Endless chain schemes are inherently fraudulent by nature because the
 6 futility of the plan is not apparent to the participant:

7 Misrepresentations, knowledge and intent follow from the inherently
 8 fraudulent nature of a pyramid scheme as a matter of law. As to
 9 justifiable reliance, the very reasons for the *per se* illegality of Endless
 Chain schemes is their inherent deceptiveness and the fact that the
 “futility” of the plan is not “apparent to the consumer participant.”

10 *Omnitrition*, 79 .3d at 788 (citations omitted).

11 21. Section 327 of the California Penal Code prohibits endless chains:

12 Every person who contrives, prepares, sets up, proposes, or operates
 13 any endless chain is guilty of a public offense, and is punishable by
 imprisonment in the county jail not exceeding one year or in state
 14 prison for 16 months, two, or three years.

15 As used in this section, an “endless chain” means any scheme for the
 disposal or distribution of property whereby a participant pays a
 16 valuable consideration for the chance to receive compensation for
 introducing one or more additional persons into participation in the
 17 scheme or for the chance to receive compensation when a person
 introduced by the participant introduces a new participant.

18 Compensation, as used in this section, does not mean or include
 19 payment based upon sales made to persons who are not participants in
 the scheme and who are not purchasing in order to participate in the
 20 scheme.

21 22. In *Herbalife International of America, Inc. v. Ford et al*, Central
 22 District Court, Case No. 2:07-cv-02529-GAF-FMO, Herbalife sued distributors
 23 leaving Herbalife. Those distributors counterclaimed against Herbalife, claiming
 24 that the Herbalife Sales and Marketing Plan was an “endless chain” under
 25 California Penal Code §327. The Court denied Herbalife’s motion for summary
 26 judgment on the distributors’ endless chain-scheme counterclaim, finding that there
 27 was:

28 a genuine issue as to whether Herbalife distributors must pay
 Herbalife to become supervisors—a threshold requirement under the

1 *Koscot* analysis—precludes the Court from granting summary
2 judgment for either side on the endless-chain-scheme claim. As noted
3 above, Herbalife's Sales and Marketing Plan provides that a
4 distributor may qualify to become a Supervisor by achieving 4,000
5 Volume Points in a given month or 2,500 Volume Points in each of
6 two consecutive months. A minimum of 1,000 of these Volume Points
7 must consist of Unencumbered Volume, while the rest may consist of
8 Encumbered Volume. Because both Unencumbered Volume and
9 Encumbered Volume may consist of volume purchased not by the
10 distributor herself but those in her downline, a distributor could
11 qualify to become a Supervisor without purchasing anything.

12 Moreover, in the Court's view, Herbalife's entire business model
13 appears to incentivize primarily the payment of compensation that is
14 "facially unrelated to the sale of the product to ultimate users because
15 it is paid based on the suggested retail price of the amount ordered
16 from [Herbalife], rather than based on actual sales to consumers."
17 *Omnitrition*, 79 F3d at 782 (emphasis and internal quotation marks
18 omitted). Nevertheless, the conflicting evidence before the Court is
19 sufficient to create a triable issue regarding the "payment of money"
20 element of the *Koscot* analysis that only the trier of fact may resolve.
21 Accordingly, the parties' cross-motions for summary judgment are
22 **DENIED** as to the endless-chain-scheme claim

23 *Herbalife International of America, Inc. v. Ford et al*, Central District Court, Case
24 No. 2:07-cv-02529-GAF-FMO, "Memorandum and Order Regarding Cross-
25 Motions for Summary Judgment," [Docket No. 374], 8/25/2009.

26 **FACTS**

27 **SUMMARY OF FACTS**

28 23. From 2009-2012, Herbalife made disclosures of "Statements of
Average Gross Compensation of U.S. Supervisors" that were deceptive and
misleading as to the likelihood that a distributor could reach the level of Supervisor
and earn money from the scheme. Herbalife included these disclosures in the Sales
and Marketing Plan received by Bostick and the class. Herbalife also posted these
disclosures online. None of these disclosures provided any information that would
allow a potential or actual distributor to meaningfully evaluate their likelihood of
success in the scheme. Copies of the 2009-2012 disclosures are attached as **Exhibit**
A and are referred to as the "**2009-2012 Statements**"

24. As recently disclosed by Herbalife in their February 2013 Statement
of Average Gross Compensation Paid by Herbalife to United States Distributors in

1 2012 (attached as **Exhibit B**, and referred to as the “**2013 Statement**”) the majority
2 of Herbalife’s U.S. distributors earn nothing from Herbalife. In 2012, Herbalife’s
3 real business opportunity was:

- 4 a. Herbalife paid nothing to over 87.9% of all distributors;
- 5 b. Herbalife paid \$1 to \$1,000 to 8.43% of all distributors;
- 6 c. Herbalife paid \$1,001 to \$5,000 to 2.2% of all distributors;
- 7 d. Herbalife paid \$5,001 to \$10,000 to 0.5% of all distributors;
- 8 e. Herbalife paid \$10,000 to \$25,000 to 0.393% of all distributors;
- 9 f. Herbalife paid \$25,001-\$50,000 to 0.230% of all distributors;
- 10 g. Herbalife paid \$50,000-\$100,000 to 0.109% of all distributors;
- 11 h. Herbalife paid \$100,001-\$250,000 to 0.092% of all distributors; and
- 12 i. Herbalife paid more than \$250,000 to 0.039% of all distributors.

13 25. These real numbers are in direct contrast to the deceptive earning
14 claims referenced in Herbalife’s promotional materials, including videos on
15 Herbalife’s website, YouTube, and Herbalife distributor’s websites, often featuring
16 the Beneficiaries and Promoters, and Herbalife’s prior Statements of Average Gross
17 Compensations distributed to Bostick and the class.

18 26. An undisclosed fact is that there is little to no opportunity for an
19 Herbalife distributor to earn a “retail profit” on the sales of Herbalife products
20 because Herbalife sets the “Suggested Retail Price” (“SRP”) at a price so high that
21 few if any Herbalife distributors can earn retail profits.

22 27. Herbalife sets the SRP so high because for every dollar a distributor
23 pays Herbalife for Herbalife product (not including packaging, handling, shipping,
24 and tax) Herbalife pays out \$0.46 to \$0.64 to its top distributors as recruiting
25 bonuses. Herbalife makes these payments upline whether the distributor sells the
26 product at retail and whether the distributor sells the product at SRP.

27 28. Besides setting the SRP at an inflated price, Herbalife charges its
28 distributors a 7% fee for “Packaging and Handling” and a 2.5% to 4% fee for

1 shipping, based solely on the inflated SRP and not on Herbalife's actual or
2 estimated costs for packaging, handling, and shipping. This makes it even harder for
3 a distributor to make retail profits as it drives their retail price even higher.

4 29. An undisclosed fact (from at least April 2009 to February 2013) is that
5 a large majority of all distributors (approximately 71%) make few if any retail sales
6 and are forced to self-consume the Herbalife products.

7 30. An undisclosed material fact is that the vast majority of participants in
8 Herbalife's Pyramid scheme drop out within one year of becoming Herbalife
9 distributors and have usually lost most, if not all, of their investment and thousands
10 of dollars expended to build their supposed "business opportunity."

11 31. To avoid being a pyramid scheme, a multi-level marketing plan must
12 have effective provisions to ensure that its distributors sell most products to
13 consumers not a part of the marketing system. Herbalife does or did not employ or
14 enforce such provisions.

15 THE HERBALIFE SALES AND MARKETING PLAN

16 32. As a direct-sales company, Herbalife operates a multi-level
17 distribution system – the Herbalife Sales and Marketing Plan – relying on
18 individual distributors to market, promote, and sell its products.

19 33. A copy of the Herbalife "Sales and Marketing Plan and Business
20 Rules" ("**Sales and Marketing Plan**") purchased by Bostick as part of his
21 International Business Pack is attached as **Exhibit C**. The Sales and Marketing Plan
22 is an incredibly complex set of rules and regulations.

23 34. Anyone can become an Herbalife distributor if they purchase an
24 Herbalife International Business Pack ("**IBP**") or a mini-IBP at a cost of \$95.95 or
25 \$57.75 respectively, apply to become a distributor, and are sponsored by an existing
26 Herbalife distributor.

27

28

1 35. Herbalife recruits prospective participants by offering them the
2 opportunity to participate in a “tested proven business plan” “designed to maximize
3 rewards for effort and provide substantial and ongoing income.”

4 36. Herbalife recruits prospective participants by promising them
5 “Immediate Retail Profit,” “Daily Wholesale Profit,” “Monthly Override Income,”
6 “Monthly Production Bonuses,” “Annual Bonuses” for Top Achievers, and “Special
7 Vacations and Training Events” that will “teach you how to meet your goals,
8 increase your earning power and build an international business without leaving the
9 comfort of your own home!”

10 37. Herbalife’s distributors promise recruits and other distributors that
11 they can “be your own boss – take charge of your life,” achieve “financial
12 freedom,” earn “extra income,” “retirement/pension,” and “leave a legacy.”

13 38. Herbalife recruits prospective participants by boasting that the
14 Herbalife Sales and Marketing Plan is “[t]he best Marketing Plan in the industry”
15 and that it pays out up to 73% of product revenues to distributors in “Retail and
16 Wholesale Profits, Royalty and bonus income and incentives.” Herbalife stresses:

17 Each Distributor’s success is dependent on two primary factors: The
18 time, effort and commitment a Distributor puts into their Herbalife
19 business and the product sales made by a Distributor and their
20 downline organization. These two factors raise the importance of a
Distributor’s responsibility to train, support and motivate their
downline organization.

21 39. Herbalife divides the “73% of product revenue” by apportioning 23%
22 of the SRP to “Royalty, bonus income, and incentives” and 50% to “Retail and
23 Wholesale Profits” Herbalife’s 73% payout claim depends on a distributor reselling
24 the product at 100% of the SRP.

25 40. By basing these “Retail and Wholesale Profits, Royalty and bonus
26 income and incentives” off the SRP, Herbalife masks that for every dollar the
27 purchasing distributor spends on Herbalife product, Herbalife pays from \$0.46 to
28 \$0.64 upline in the form of recruiting rewards.

1 41. Because so much money is paid upline in recruiting bonuses so that
2 Herbalife can retain its "most active and productive distributors," Herbalife's SRP
3 is an inflated price that bears no relation to the actual market price distributors can
4 get for Herbalife's products in sales to retail customers.

5 **BOSTICK IS RECRUITED TO HERBALIFE**

6 **"Position Determines the Pay," "You Determine Your Position"**

7 42. Dana Bostick responded to an internet advertisement for a "trial
8 offer." It offered an "Internet Business Starter Pack" where Bostick paid \$9.95 in
9 Shipping and Handling and would be charged an additional \$39.95 if he did not
10 return the package within fourteen days. Interested in earning monthly and residual
11 income, Bostick signed up for the pack. The Internet Business Starter Pack was
12 mailed to Bostick sometime between late-March and early-April 2012.

13 43. Bostick reviewed the pack, which is attached **Exhibit D**, and the DVD
14 video enclosed in that pack, which revealed the "business" as Herbalife.

15 44. Bostick watched the DVD. A spokeswoman explained that within
16 Herbalife, "the position determines the pay - meaning, the higher you start the more
17 money you can make."

18 45. On the video, Beneficiary and Promoter Maurice Smith reiterates that
19 "position determines the pay" and that "you determine your position." Smith tells
20 viewers that an average Herbalife distributor earns "between \$100 and \$300 per
21 month - part time." And Success Builders "have the opportunity to earn between
22 \$400-\$600 - part time." Smith encourages recruits to become a "Supervisor," a
23 level in the Herbalife Pyramid that requires a significant purchase of product but
24 where distributors, if they have a downline, can start to earn recruiting rewards:

25 Supervisor is the highest level that you can choose to position yourself
26 at today. And, this is very important to know, Supervisor is the
27 gateway to the rest of the levels of the marketing plan. You cannot get
28 to the higher income levels without first becoming a Supervisor.

1 46. The graphics on the video display that Supervisors can earn between
2 \$500-\$1500 a month. Smith explains that a World Team member can earn \$1,500-
3 \$3000 a month, GET Team member can earn \$3,500-\$7,000 a month, Millionaire
4 Team can earn between \$7,500-\$15,000 a month, and President's Team members
5 typically earn between \$25,000-\$100,000+ a month. Images of Smith's presentation
6 and representations of potential distributor's earnings are attached as **Exhibit E**.

7 47. Smith explains why it is so important to become a Supervisor: "It's
8 the highest paying position that you can start at today. You've set yourself up for
9 retail profits of 50% so you've doubled your money for the same work you've been
10 doing." A Supervisor is at the "gateway to the rest of the marketing plan," because
11 Supervisors can begin to get royalties, production bonuses, spontaneous bonuses,
12 1% annual bonus pool, and paid vacations.

13 48. Bostick viewed this video, Herbalife's website, and various other
14 Herbalife related websites. Upon viewing these materials, Bostick believed that
15 retailing Herbalife products and recruiting distributors would be a way for him to
16 build a business where he could earn both monthly income and residual income.

17 49. Bostick ordered an IBP for \$95.95. It was sent to him by FedEx. The
18 IBP contained the magazine, *Live the Good Life! Herbalife* (relevant portions of
19 which are attached as **Exhibit F**) and four distributor workbooks: "Your Business
20 Basics" (relevant portions of which are attached as **Exhibit G** to the Complaint);
21 "Using and Retailing Your Products"; "Building Your Business" (relevant portions
22 of which are attached as **Exhibit H** to the Complaint); and the "Sales & Marketing
23 Plan and Business Rules" (Exhibit C). Bostick reviewed the IBP and the materials
24 in the IBP.

25 50. On April 6, 2012, Bostick went online and signed an Agreement of
26 Distribution. That agreement is attached as **Exhibit I**.

27 51. Bostick worked hard to build his business. He bought and used
28 products himself so he would know what he was selling. He set up three websites.

1 Two were set up to sell Herbalife products to the public and one was to recruit
2 downline distributors. He paid for "coaching" sessions where the coaches "taught"
3 him how to recruit downline distributors to build a downline. In spite of his hard
4 work, the only recruit he made was a long-time friend.

5 52. On April 6, and 26, 2012, May 21, 2012, June 18, 19, 22, and 27,
6 2012, and July 20, 2012, Plaintiff Bostick ordered products from Herbalife. Besides
7 the purchase price for product, Herbalife added a 7% "Packaging and Handling" fee
8 and a shipping fee of anywhere from 2.5% to 4%, solely based on the SRP of the
9 product and not on the actual or estimated costs.

10 53. On June 22, 2012, he attempted to "pay for his position" by
11 coordinating with his friend. They were supposed to both purchase enough product
12 to become a Supervisor, the "gateway to the rest of the marketing plan." On June
13 22, 2012, he made a single order. That order cost him over \$1,800 for the product
14 alone. Bostick's downline did not make the purchase and Bostick did not advance
15 to Supervisor.

16 54. When he tried to resell the product he purchased to qualify as a
17 Supervisor, Bostick learned that there was little opportunity for him to earn monthly
18 income or residual income with Herbalife. The SRP alone was an uncompetitive
19 price in the market, and, when Bostick would add the shipping, handling, and
20 packaging fees to recoup his costs, the retail price was so high that there were
21 virtually no retail purchasers willing to pay the full retail price. And other
22 distributors were selling Herbalife products online on Craigslist and EBay at or
23 below their cost, making retail profits in the amounts promised by Herbalife even
24 more almost impossible to achieve.

25 55. As to the over \$3,000 (SRP) worth of Herbalife products that Bostick
26 purchased that he has not self-consumed or given away to family members, Plaintiff
27 Bostick has tried to sell it on Craigslist at or around his purchase cost.
28

1 56. Bostick's experience is the same as most Herbalife distributors. As
2 Herbalife's 2013 Statement shows, most Herbalife distributors earn nothing from
3 Herbalife. Even if he would have qualified as a Supervisor, only 33% of Newly
4 Qualified Supervisors requalify.

5 57. Bostick's failure and the other distributors' failure are not for lack of
6 time, effort, and commitment to Herbalife. These failures are due to a marketing
7 plan that, by its design, systematically rewards recruiting over retailing and
8 systematically rewards those Beneficiaries and Promoters at the top at the expense
9 of the many distributors at the bottom.

10 **MECHANICS OF THE SALES AND MARKETING PROGRAM**

11 58. Within the Herbalife Pyramid, there are 11 levels of Herbalife
12 distributors. The bottom four categories are Distributors,¹ Senior Consultants,
13 Success Builders, and Qualified Producers. Herbalife calls the bottom four
14 categories "Non-Sales Leaders" ("NSL"). The top seven categories are Supervisors,
15 World Team, Global Expansion Team, Millionaire's Team, President's Team,
16 Chairman's Club, and Founders Circle. Herbalife calls these distributors "Sales
17 Leaders" ("SL"). Bostick was always an NSL.

18 59. Herbalife assigns a new distributor to an existing "line of
19 sponsorship" to which the recruiting distributor already belongs. A line of
20 sponsorship includes a hierarchy of distributors starting with the newly-recruited
21 distributor and proceeding by seniority up to a distributor heading the line of
22 sponsorship. These distributors at the heads of the lines of sponsorship are members
23 of the Founder's Circle and the Chairman's Club – Beneficiaries and Promoters.

24 60. Junior (or "downline") distributors purchase products from more
25 senior (or "upline") distributors within their line of sponsorship or from Herbalife
26 directly. Herbalife pays bonuses upline to distributors based on purchases from

27 ¹ The use of a lower-case "distributor" refers to all Herbalife distributors, regardless
28 of level. The use of a capitalized "Distributor" refers to the first-level Herbalife
distributor.

1 Herbalife by downline distributors. Any distributor at any level may sponsor new
2 distributors.

3 61. Herbalife protects its distributors' downlines. A distributor who wants
4 to change their sponsor must obtain a written, notarized release from their Sponsor
5 and upline distributors. Herbalife can still deny the request. The distributor
6 changing sponsors can only keep her downline if her upline agrees.

7 62. To move up the Herbalife Pyramid and qualify for higher levels of
8 compensation, Herbalife requires a distributor to "achieve" (either through their
9 own purchases of Herbalife products or through their downline's purchases)
10 specific "Volume" during specified time-periods.

11 63. Herbalife calculates a distributor's Volume by using "**Volume**
12 **Points.**" Volume Points are point values that Herbalife assigns to each of their
13 products. In the U.S., Herbalife uses a Volume Point to dollar ratio to assign Value
14 Points to specific products. It displays a product's Value Points on the price sheet.

15 64. For 2012, in the United States, the dollar to Volume Point ratio ranges
16 from \$1:0.57VP to approximately \$1:0.905VP. Most Herbalife Products in 2012
17 have a ratio of approximately \$1:0.905. In 2011, the average ratio was
18 approximately \$1:0.9167.

19 65. If a distributors order products the distributor collects "Personally
20 Purchased Volume" points.² The Volume Points that a distributor accumulates
21 either through Personally Purchased Volume and through the Volume Points
22 purchased by the distributor's downline become the distributor's sales production.
23 Herbalife uses Volume Points to qualify distributors for higher levels, sales
24 commissions, royalties, bonuses, and other incentives and benefits. Herbalife
25 calculates Volume Points monthly.

26
27 ² "**Personally Purchased Volume**" is defined as "The volume purchased directly
28 from Herbalife using your [the distributor's] Herbalife Identification Number." All
defined terms from the Sales and Marketing Plan are found on Exhibit C, pp. 21-22.

1 **NON-SALES LEADERS: DISTRIBUTORS, SENIOR**
2 **CONSULTANTS, SUCCESS BUILDERS, & QUALIFIED PRODUCERS**

3 **Distributors (NSL)**

4 66. Herbalife calls its first-level distributors "Distributors."

5 67. A Distributor buys Herbalife products at a 25% discount off the SRP,
6 whether for personal use or resale. In its promotional materials, Herbalife
7 characterizes the 25% discount as an opportunity for the Distributors to earn 25% in
8 retail profits from reselling the Herbalife products.

9 68. If a Distributor purchases a product with an SRP of \$100, the cost is
10 \$75. Herbalife pays the Distributor's upline \$48 of the \$75 cost – \$25 upline in
11 "Wholesale Profits" and \$23 in Royalty Overrides, bonuses, and other incentives –
12 even if the Distributor cannot resell the product for \$100.

13 69. For a Distributor's purchase, \$0.64 out of every dollar paid for
14 Herbalife product goes upline (\$0.33 in Wholesale Profits and \$0.31 in royalties,
15 bonuses, and incentives).

16 **Senior Consultants (NSL)**

17 70. Herbalife promotes a Distributor to "Senior Consultant" if they buy
18 500 or more Personally Purchased Volume Points, or, if their recruited distributors
19 provide 500 Volume Points in "Downline Volume."³

20 71. Senior Consultants buy Herbalife product at a 35% discount off SRP
21 and are eligible for a 10% commission off their downline Distributor's purchases,
22 so long as that distributor remains a Distributor. Herbalife calls this commission
23 "Wholesale Profit."

24 72. A Distributor can also qualify for Senior Consultant if the distributor
25 gets 2,000 Volume Points in a month, either through Personally Purchased Volume
26 or through Downline Volume. That Senior Consultant gets a 42% discount off of

27 ³ **"Downline Volume"** is defined as "As a non-Supervisor, Downline volume is
28 based on volume which is placed by your downline Distributors directly from
Herbalife or order between 25% to 42% discount.

1 SRP, both on the qualifying purchase and on purchases in the qualifying month.

2 The next month their discount is 35% off of SRP.

3 73. A Distributor can become a Senior Consultant without purchasing or
4 reselling Herbalife product if the Distributor recruits downline distributors and
5 those distributors purchase the required 500 or 2,000 Volume Points in a month.

6 74. If a Senior Consultant with a 35% discount purchases a product with
7 an SRP of \$100, the cost is \$65. Herbalife pays the upline \$38 of the \$65 cost – \$15
8 in “Wholesale Profits” and \$23 in Royalty Overrides, bonuses, and other incentives
9 – even if the Senior Consultant does not resell the product for a \$100.

10 75. For a Senior Consultant’s purchase with a 35% discount, \$0.58 out of
11 every dollar paid for Herbalife product goes upline (\$0.23 in Wholesale Profits and
12 \$0.35 in royalties, bonuses, and incentives).

13 **Success Builder (NSL)**

14 76. A Distributor or Senior Consultant becomes a “Success Builder” if the
15 distributor places a single order of 1,000 Personally Purchased Volume Points.
16 Success Builders get a 42% discount on that order and on other purchases in the
17 same month they qualify. A Success Builder becomes a Senior Consultant with a
18 35% discount the next month.

19 77. Herbalife and the Beneficiaries and Promoters encourage Distributors
20 to become Success Builders to get “higher retail profits” because of the discount. In
21 the video called “Senior Consultant & Success Builder,” which is hosted at
22 <http://www.youtube.com/watch?v=8b2pyw3A6FA> and on the official Herbalife
23 website www.video.herbalife.com, Beneficiaries and Promoters John Tartol and
24 Leslie Stanford encourage distributors to become Success Builders. Tartol explains
25 in minutes 5:20-6:18 how a distributor can “qualify right away” for a 35% discount
26 “with just one order” and “enjoy a substantial 42% discount immediately.” He tells
27 distributors that “this will get you the highest discount for the least expenditure.”

28 **Qualified Producer (NSL)**

1 78. A Distributor, Senior Consultant, or Success Builder becomes a
2 “Qualified Producer” if the distributor purchases 2,500 Personally Purchased
3 Volume Points within one to three months, or the distributor can combine up to
4 1,000 Downline Volume (Volume placed by downline distributors) Points and
5 1,500 Personally Purchased Volume Points in a single month.

6 79. A Qualified Producer gets a 42% discount off SRP for a full year and
7 qualifies for up to 7% to 17% of commissions on the Qualified Producer’s downline
8 distributors’ (below the level of Qualified Producer, Success Builder, or Senior
9 Consultant with a 42% discount) purchases.

10 80. If a Qualified Producer (or Senior Consultant or Success Builder) with
11 a 42% discount purchases a product with an SRP of \$100, the cost is \$58. Herbalife
12 pays the upline \$31 of the \$58 cost – \$8 upline in “Wholesale Profits” and \$23 in
13 Royalty Overrides, bonuses, and other incentives – even if the Qualified Producer
14 does not resell the product for \$100.

15 81. For distributors with a 42% discount, \$0.53 out of every dollar paid
16 for Herbalife product goes upline (~\$0.13 in Wholesale Profits and ~\$0.40 in
17 royalties, bonuses, and incentives).

18 82. According to Herbalife’s recently revised 2013 Statement,
19 Distributors, Senior Consultants, Success Builders, and Qualified Producers (all
20 NSLs) and Supervisors without a downline made up 83% of their total distributors
21 in 2012.

22 83. Unless an NSL is participating in the Herbalife Advantage Promotion
23 (an automatic monthly product shipment program) and has orders for 12
24 consecutive months, the NSL must pay an Annual Processing Fee of \$15.00 on their
25 “anniversary date” to remain an Herbalife distributor. Supervisors also must pay an
26 Annual Processing Fee of \$79.99. Herbalife has described this fee as necessary
27 because “The fee keeps you on our system by letting us know that you are still
28

1 enjoying working your Herbalife business. If it is not paid then your Distributorship
2 is subject to deletion.”

3 84. In Herbalife’s 2004 and 2005 10-Ks to investors, Herbalife disclosed
4 that for the reporting year, “more than 90% of our distributors that are not
5 supervisors turned over.” Herbalife stopped disclosing the turnover rate of Non-
6 Sales Leaders in their 10-Ks and never disclosed turnover rates of its NSL’s to
7 Bostick and members of the class. Based on the 2004 and 2005 disclosures and
8 Plaintiff’s own experience with distributors in his own upline and downline,
9 Plaintiff is informed and believes that the non-Supervisor turnover rate for 2009-
10 2013 is approximately 90%.

11 **SALES LEADERS: SUPERVISORS, WORLD TEAM, TAB TEAM,**
12 **PRESIDENT’S TEAM, FOUNDER’S CIRCLE, CHAIRMAN’S CLUB**

13 **Supervisor (SL)**

14 85. Becoming a “Supervisor” means a distributor moves from being what
15 Herbalife classifies as an “Non-Sales Leader” to a “Sales Leader,” or “SL.”

16 86. According to Herbalife’s Statements of Average Compensation
17 distributed in 2009-2012 (Exhibit A), approximately 25% of Herbalife’s
18 Distributors become Supervisors and above.

19 87. A distributor can qualify to become a Supervisor in one of three ways:

20 88. **One-Month Qualification** – by “achieving” 4,000 Volume Points in
21 a month. A minimum of 1,000 of these Volume Points must be “Unencumbered
22 Volume”⁴

23
24 ⁴ “Unencumbered Volume” is defined as “all volume produced by anyone in [a
25 distributor’s downline], down to the first qualified Supervisor who achieves less
26 than 2,500 Volume Points in one Volume Month,” plus all of the distributor’s
“Personal Volume,” and which is volume that is not used by anyone else for
Supervisor qualification purposes.

27 “Personal Volume” is defined as “The volume purchased by you as a Fully
28 Qualified Supervisor and all others in your downline organization, excluding any
50% orders by Qualifying Supervisors and Qualified Supervisors.”

1 89. **Two-Month Qualification** – by “achieving” 2,500 Volume Points in
2 each of two consecutive months. A minimum of 1,000 of these Volume Points must
3 be “Unencumbered.”

4 90. **Accumulated Qualification** – by buying 5,000 Personally Purchased
5 Volume Points within 12 months or 1,000 Downline Volume Points with 4,000
6 Personally Purchased Volume.

7 91. Under the One and Two Month Qualifications, a distributor can
8 qualify as a Supervisor without purchasing or reselling any Herbalife products if
9 1000 of the downline Volume Points are Unencumbered.

10 92. This was the problem identified by the Court in the *Herbalife*
11 *International of America, Inc. v. Ford et al* order described above: “Because both
12 Unencumbered Volume and Encumbered Volume may consist of volume purchased
13 not by the distributor herself but those in her downline, a distributor could qualify to
14 become a Supervisor without purchasing anything.”

15 93. A distributor can also qualify for Supervisor under any method
16 making no retail sales.

17 94. A distributor who does not become a Supervisor before their downline
18 distributor becomes a Supervisor has one year to become a Supervisor. Otherwise,
19 Herbalife takes away that Supervisor and that Supervisor’s downline from the
20 distributor and gives them to the first upline Supervisor.

21 95. Herbalife requires that a Qualifying Supervisor be sponsored by the
22 first upline Supervisor. The Sponsoring Supervisor must match the Qualifying
23 Supervisor’s Volume Points in the qualifying month with “Total Volume.”⁵

24 **“Encumbered Volume”** is all volume produced by any downline distributor
25 qualifying for Supervisor, down to the first qualified Supervisor, who achieves
26 2,500 Volume Points or more at a 25% to 42% discount in one Volume Month. The
27 basic difference between the two forms of volume is that Unencumbered Volume is
28 volume that no other distributor uses to qualify to become a Supervisor.

⁵ **“Total Volume”** is defined as “the combined total of Personal Volume plus
Group Volume.”

1 96. A Sponsoring Supervisor can sponsor the Qualifying Supervisor
2 without purchasing or reselling any Herbalife products if their downline generates
3 sufficient Total Volume to match the Qualifying Supervisor's Volume Points in that
4 qualifying month.

5 97. If the Supervisor sponsors a distributor who becomes a Supervisor
6 that Supervisor is called a first-level Supervisor. If that first-level Supervisor
7 sponsors a Supervisor that Supervisor becomes the original Supervisor's second-
8 level Supervisor. If that second-level Supervisor sponsors a Supervisor that
9 Supervisor becomes the original Supervisor's third-level Supervisor. Supervisors
10 can earn royalties on all three of these downline level Supervisors' volume.

11 **Benefits for Supervisors**

12 98. A Supervisor can purchase Herbalife's product at a 50% discount off
13 the SRP and can earn from 25% - 15% - 8% in commissions from their downline's
14 purchases. The commissions decrease as the Supervisor's downline distributors'
15 discounts increase - 25% - 35% - 42%.

16 99. If a Supervisor purchases a product with an SRP of \$100, the cost is
17 \$50. Herbalife pays the upline \$23 of that \$50 cost in Royalty Overrides, bonuses,
18 and other incentives - even if the Supervisor does not resell the product for \$100.

19 100. For a Supervisor's purchase, \$0.46 out of every dollar paid for
20 Herbalife product goes upline in Royalty Overrides, bonuses, and other incentives.

21 101. A Supervisor also qualifies for "Royalty Overrides," if that Supervisor
22 has first or second or third level Supervisors in their downline.

23 102. A Royalty Override is a commission that a Supervisor receives on the
24 Volume Points accrued by Supervisor's downline (the First, Second, and Third
25 Level Supervisors). In its 10-Ks, Herbalife calls Royalty payments "compensation
26

27
28 "Group Volume" is defined as "Orders purchased at a temporary 50% discount, by
Qualifying Supervisor(s) in a Supervisor's personal organization."

1 to distributors for services rendered including the development, retention and the
2 improved productivity of their sales organizations.”

3 103. The percentage (1%-5%) of Royalty Overrides that a Supervisor can
4 earn depends on the number of Total Volume Points the Supervisor accumulates in
5 that month. Supervisors can qualify for Royalty Overrides from their three levels of
6 downline Supervisors. In their Sales and Marketing Plan, Exhibit C, p. 13, Herbalife
7 illustrates Royalty Override as:

| Royalty Override Sliding Scale | | Royalty Override Example | |
|--------------------------------|----------------------------|--------------------------|-----------------------------|
| Your Total Volume Points | Royalty Override Earning % | YOU | Your Total Royalty Override |
| 0-499 | 0% | 2,500 Volume Points | = 1,500 Royalty Points |
| 500-999 | 1% | 10,000 Volume Points | = 5% = 500 Royalty Points |
| 1,000-1,499 | 2% | 10,000 Volume Points | = 5% = 500 Royalty Points |
| 1,500-1,999 | 3% | 10,000 Volume Points | = 5% = 500 Royalty Points |
| 2,000-2,499 | 4% | 10,000 Volume Points | = 5% = 500 Royalty Points |
| 2,500 plus | 5% | | |

15 104. To qualify for Royalty Overrides, a Supervisor must certify that they
16 comply with Herbalife’s “10-Retail Customer Rule” and “70% Rule.” Under these
17 rules, a Supervisor “must personally make sales to at least 10 separate retail
18 customers each month,” and “at least 70% of the total value of Herbalife products a
19 Distributor purchases each Volume Month must be sold or consumed that month.”
20 A copy of the Earnings Certificate form is found on page 48 of Exhibit C.

21 105. Herbalife Supervisors must requalify annually by paying the Annual
22 Processing Fee and by meeting similar volume requirements as the original
23 qualification requirements.

24 106. In Herbalife’s 10-Ks, Herbalife reported that for the years 2012, 2011,
25 2010, and 2009, its Sales Leader retention rate was approximately 51.10%, 48.6%,
26 43.3%, and 42.2%, respectively.

27 **World Team (SL)**

1 107. Herbalife promotes Supervisors to the World Team if they meet one
2 of the three following requirements. They achieve 10,000 Total Volume Points in
3 one month after becoming a Qualifying or a Fully-Qualified Supervisor. Or if they
4 achieve 2,500 Total Volume Points each month for four consecutive months. Or if
5 they are awarded 500 Royalty Override Points in one month. World Team members
6 get special planning and training sessions targeted to accelerate their progress to
7 TAB Team membership and all the benefits of being a Supervisor.

8 108. According to Herbalife's 2012 Statement, World Team members'
9 average annual earnings are \$6,224 and the median compensation is \$5,659 in
10 payments from Herbalife.

11 **TAB Team (SL)**

12 109. Supervisors are eligible to become members of the "Top Achievers
13 Business Team" ("**TAB Team**"), which includes three steps: Global Expansion
14 Team ("**GET**"), Millionaire Team, and President's Team.

15 110. TAB team members are eligible for Production Bonuses. The TAB
16 Team Production Bonus is a bonus on the downline Organizational Volume (the
17 volume on which a Supervisor is paid a Royalty Override).

18 **GET Team (SL)**

19 111. Herbalife promotes a Supervisor to the GET Team if that Supervisor
20 accrues 1,000 Royalty Override Points each month for three consecutive months.

21 112. As a GET Team member, the distributor gets all the benefits of a
22 Supervisor and can earn TAB Team Production Bonuses based on the qualification
23 level, can qualify for vacation and training events and can participate in special
24 advanced trainings and conference calls.

25 113. A GET Team member can qualify for a monthly 2% TAB Team
26 bonus payment of the downline Organizational Volume, which Herbalife describes
27 as a partial reward for the team member's "undivided loyalty" to the company.
28

1 114. According to Herbalife's 2012 Statement, GET Team members have
2 an average annual earnings of \$22,766 and median compensation of \$19,417 in
3 payments from Herbalife.

4 **Millionaire Team (SL)**

5 115. If a Supervisor achieves 4,000 Royalty Override Points each month
6 for three consecutive months, Herbalife promotes that Supervisor to the Millionaire
7 Team the following month and, after a waiting period of two months, that
8 Millionaire Team member can earn a 2-4% monthly TAB Team bonus off the
9 downline's Organizational Volume. Millionaire Team members also get all the
10 benefits of being a Supervisor.

11 116. According to Herbalife's 2012 Statement, Millionaire Team members
12 earn an average of \$100,195 and median of \$97,303 in payments from Herbalife.

13 **President's Team (SL)**

14 117. Herbalife promotes a Supervisor who accrues 10,000 Royalty
15 Override Points in three consecutive months to the President's Team where, after a
16 waiting period of three months the President's Team member can earn a 2%-6%
17 Production Bonus.

18 118. To qualify for the President's Team, a Supervisor must accrue 20,000
19 to 50,000 Royalty Override Points in three months. The TAB Team bonuses range
20 from 2% to 7%, depending on the number of Royalty Override Points the
21 Supervisor accrues.

22 119. For all TAB Team members, the Production Bonus decreases from the
23 maximum percentage depending on whether there are other TAB Team members in
24 the Tab Team member's downline earning Production Bonuses on the volume.

25 120. According to Herbalife's 2012 Statement, President's Team members
26 (which include the Chairman's Club and Founder's Circle Members) earn an
27 average of \$514,638 and median of \$336,901 in payments from Herbalife.

28 **Chairman's Club (SL)**

1 121. Herbalife promotes a distributor to the Chairman's Club if the
2 distributor has five Fully-Qualified President's Team members in five separate lines
3 of the distributor's downline organization.

4 122. Chairman's Club Members are eligible for a percentage of Herbalife's
5 global sales. This bonus is the "Mark Hughes Bonus Award."

6 123. The Mark Hughes Bonus Award is a bonus pool representing a 1% of
7 Herbalife's *worldwide* product sales (calculated using SRP). Herbalife distributes
8 this bonus annually among the Chairman's Club and Founder's Circle Members. A
9 copy of the 2010 Mark Hughes Bonus Award Qualifications and Rules (available
10 by searching google for "'MH Bonus' Herbalife") is attached as **Exhibit J**.

11 124. The rules to qualify for a Mark Hughes Bonus are incredibly complex.
12 They largely depend on a distributor having President's Team Members within their
13 downline who meet certain production requirements, the Royalty Override Points
14 that Herbalife awards the distributor, and their overall organization production.
15 Notably, there are no rules requiring additional retail sales beyond the "10-Retail
16 Customer Rule" and "70% Rule."

17 125. Herbalife can also exercise discretion in awarding the MH Bonus.
18 Chairman's Club and Founder's Circle members are encouraged to

19 Demonstrate leadership and Herbalife spirit. ...Support, promotion and
20 participation in Herbalife efforts, including Company meetings and
21 other efforts such as conference calls, Herbalife Broadband Network
22 (HBN), audio/visual recordings, promotions, marketing and sales,
23 projects, suggestions and working with the Company as it develops
24 strategic plans and leads the effort to enhance the Company's overall
25 business... Attendance of the Distributorship at major events.

26 126. This discretionary element of the MH bonus creates symbiotic
27 relationship between Herbalife and the Beneficiaries and Promoters. It is not
28 enough for a Beneficiary and Promoter to build their downline; instead, the
Beneficiary and Promoter must actively work with Herbalife to promote the scheme
and "enhance [Herbalife's] overall business."

1 127. Plaintiff is informed based on information found at
2 <http://www.herbalife.com/chairmansclub> and believes there are only forty-three
3 Chairman's Club members, worldwide, as of April 4, 2013.

4 **Founders Circle (SL)**

5 128. The pinnacle of the Herbalife Pyramid is the Founder's Circle.

6 129. Herbalife promotes a distributor to the Founder's Circle if the
7 distributor has ten first-line, Fully-Qualified President's Team members in ten
8 separate lines of that distributor's downline organization.

9 130. Founder's Circle members are also eligible for the "Mark Hughes
10 Bonus Award."

11 131. Plaintiff is informed based on information found at
12 <http://www.herbalife.com/chairmansclub> that as of April 4, 2013, there are only
13 eight Founder's Circle members, worldwide.

14 **THE ILLEGAL SCHEME**

15 132. Herbalife's compensation structure rewards recruiting of new
16 participants over retail sales and leads to abuses.

17 133. These abuses include: (1) Herbalife and Beneficiaries and Promoters
18 making outlandish statements about potential earnings and the business opportunity
19 for potential and actual distributors; (2) distributors focusing on recruiting new
20 distributors rather than on making retail sales of products; (3) distributors
21 purchasing more products than they can feasibly sell to actual retail customers to
22 meet volume requirements (a practice known as "inventory loading"); (4) Herbalife
23 and Beneficiaries and Promoters encouraging other distributors to make "one-time"
24 purchases to jump up the pyramid to higher levels ("pay determines position" and
25 "position determines pay"); and (5) Herbalife and Beneficiaries and Promoters
26 encouraging their downline distributors to recruit other distributors so they can use
27 those distributors' purchases to move higher up the Herbalife Pyramid and get the
28 Royalty Overrides, bonuses, and other incentives.

1 134. Herbalife Ltd.'s 2011 and 2012 10-Ks describes this compensation
2 structure as necessary to keep "its most active and productive distributors" – the
3 Beneficiaries and Promoters:

4 Once a distributor becomes a sales leader, he or she has the
5 opportunity to qualify by earning specified amounts of royalty
6 overrides for the Global Expansion Team, the Millionaire Team or the
7 President's Team, and thereby receives production bonuses of up to
8 7%. We believe that the opportunity for distributors to earn royalty
9 overrides and production bonuses contributes significantly to our
10 ability to retain our most active and productive distributors.

11 Based on their 10-Ks, Herbalife Ltd. books the payment of these Royalty Overrides,
12 bonuses, and other incentives on its own balance sheet as an expense.

13 135. In its 2011 10-K, Herbalife Ltd. admits its business depends upon its
14 success in recruiting and retaining distributors:

15 Our ability to remain competitive depends, in significant part, on our
16 success in recruiting and retaining distributors through an attractive
17 compensation plan and other incentives. We believe that our
18 production bonus program, international sponsorship program and
19 other compensation and incentive programs provide our distributors
20 with significant earning potential.

21 In its 2012 10-K, Herbalife changed that to mention its products: "Our ability to
22 remain competitive depends on having relevant products that meet consumer needs,
23 a rewarding compensation plan, and a financially viable company."

24 136. With the 2004 and 2005 disclosures by Herbalife regarding its NSL
25 turnover of 90% (who make up 83% of its total distributors) and disclosures that of
26 the remaining 17% who are Supervisors and above, 43%-51% of its Supervisors do
27 not requalify, historically, most Herbalife distributors will fail.

28 137. As illustrated best by Exhibit B, Herbalife's 2013 Statement, the
Herbalife Pyramid makes money for those few at the top of the pyramid – the
Beneficiaries and Promoters – and those are the distributors Herbalife tries to retain
to remain competitive in the industry – and disappoints the many at the bottom who
cannot make retail profits and who give up on the Herbalife "business opportunity"
in droves.

1 **Herbalife's Inducement of New Recruits**

2 138. Herbalife induces new recruits to join the Herbalife program through
3 material false representations that such recruits can re-sell Herbalife products for
4 retail profit and can move up the pyramid and earn commissions, bonuses, and other
5 incentives because of their recruiting activities.

6 139. Besides representations made in the IBP or mini-IBP, Herbalife also
7 promotes the scheme using distributor testimonials. In testimonials Herbalife
8 published on its website, Herbalife tells recruits and distributors:

- 9 a. Natalie and Justin M. say that "'Now we control our destiny.' ... 'We
10 researched different business opportunities,' ... 'But Herbalife offered
11 the chance to work from home, coupled with solid earning potential.'"
12 b. Scotty M. says that "'After just two years working the business, I was
13 able to quit my job and become a full-time Distributor.' 'I wanted to
14 be my own boss.' ... 'I've been able to upgrade to a bigger home and
15 nicer car.'"
16 c. Wendy W. says "'I'm the owner of an International business!' ... 'If
17 you have little or no business experience, don't worry; determination
18 can go a long way!'"

19 These statements taken from Herbalife's website are attached as **Exhibit K**.

20 140. In Herbalife's IBP and Mini-IBP, Herbalife includes a magazine
21 called *Live the Good Life! HERBALIFE* (Exhibit F). There, with images of
22 currency, luxury vehicles, boats, and expensive homes, Herbalife tells recruits that
23 it is a "part-time opportunity," "[a] full-time Opportunity," and "[t]he opportunity
24 to earn more than you ever thought possible and make your dreams come true!"
25 Recruits are also told this is "[a] business opportunity for everyone that's fun,
26 simple and magical!" and that all they need to do is: use the products, wear the
27 button, and talk to people – "Use, Wear, Talk."
28

1 141. In *Live the Good Life! Herbalife*, Herbalife provides the following
 2 example of potential ways that new recruits can earn income. For both of these
 3 examples in the below representation.

4 **Earn an income several**
 5 **different ways**



- Direct Sales**
- As a Distributor \$25 of every \$100 **25%**
 - As a Success Builder \$42 of every \$100 **42%**
 - As a Supervisor \$50 of every \$100 **50%**

- Downline organization**
- Commission checks
 - Royalty checks
 - Bonus checks

- Plus:**
- Recognition
 - Promotions
 - Training

18 **How to earn even more income**

| |
|--|
| <p>19 Example 1</p> <p>You = Supervisor (2,500 Volume Points)</p> <p>You recruit & retain 2 supervisors</p> <ul style="list-style-type: none"> • 2 Supervisors each produce 2,500 Organizational Volume Points • = 5,000 Volume Points R.O. = \$250/month <hr/> <p>They each recruit & retain 2 Supervisors</p> <ul style="list-style-type: none"> • 4 Supervisors each produce 2,500 Organizational Volume Points • = 10,000 Volume Points R.O. = \$500/month <hr/> <p>They each recruit & retain 2 Supervisors</p> <ul style="list-style-type: none"> • 8 Supervisors each produce 2,500 Organizational Volume Points • = 20,000 Volume Points R.O. = \$1,000/month <p>Total of 35,000 Volume Points, Your R.O. = \$1,750 Plus Production Bonus of 2% = \$700</p> <p>Total of Checks \$2,450/mo.</p> |
|--|

| |
|---|
| <p>20 Example 2</p> <p>You = Supervisor (2,500 Volume Points)</p> <p>You recruit & retain 3 supervisors</p> <ul style="list-style-type: none"> • 3 Supervisors each produce 2,500 Organizational Volume Points • = 7,500 Volume Points R.O. = \$375/month <hr/> <p>They each recruit & retain 3 Supervisors</p> <ul style="list-style-type: none"> • 9 Supervisors each produce 2,500 Organizational Volume Points • = 22,500 Volume Points R.O. = \$1,125/month <hr/> <p>They each recruit & retain 3 Supervisors</p> <ul style="list-style-type: none"> • 27 Supervisors each produce 2,500 Organizational Volume Points • = 67,500 Volume Points R.O. = \$3,375/month <p>Total of 97,500 Volume Points, Your R.O. = \$4,675 Plus Production Bonus of 4% = \$3,900</p> <p>Total of Checks \$8,775/mo.</p> |
|---|

26 **Imagine...4 or 5!**

27 *The incomes presented are applicable to the individuals depicted and are not a guarantee of your income, nor are they typical. For the Statement of Average-Gross Compensation for U.S. Supervisors, go to www.Herbalife.com or www.MyHerbalife.com.

28 Based on Herbalife's 2013 Statement, a distributor receiving checks of \$2,450 a

1 month or \$8,775 a month would be at least in the top 0.23% or 0.092% of all U.S.
2 distributors, respectively. Prior to Herbalife's 2013 Statement, a prospective or
3 actual distributor had no way to know how atypical Herbalife's examples were.

4 142. Herbalife also distributes a magazine through the U.S. Mail called
5 *Herbalife Today*. *Herbalife Today* follows a format where Herbalife Ltd.'s CEO
6 and President, Michael Johnson, has a letter to distributors, as well as product
7 advertisements, as well as a section called "Success Stories," featuring a President's
8 Circle member, along with other success stories of TAB Team and GET Team
9 members.

10 143. In the *Herbalife Today* magazine, Issue No.156, which Herbalife
11 distributed in the third quarter of 2012, and which Herbalife sent to Plaintiff Bostick
12 and other members of the class, Michael Johnson writes, "[m]illions of people's
13 lives are being improved through our products and our business opportunity."
14 Selected portions of *Herbalife Today*, Issue No. 156 are attached as **Exhibit L**.
15 Bostick reviewed *Herbalife Today* as they were sent to him.

16 144. For the "Success Story," *Herbalife Today*, Issue No. 156, p.11-12,
17 features a Chairman's Club member, Paulina Riveros. Herbalife tells a tale of
18 Paulina working part-time using "a proven and surprisingly simple approach to
19 breathe life into her organization: using the products, wearing the button, and
20 talking to people." "This is how Paulina began climbing the Marketing Plan and
21 earning amazing income. ... Today she lives in a spacious ranch in Florida, and has
22 a lifestyle that she couldn't have imagined in her wildest dreams."

23 145. *Herbalife Today*, No 156, also features a section called "Where
24 Inspiration Meets Success: At a crossroads in their lives, these Distributors took the
25 high road, and turned their inspiration into success." There, distributors like Daisy
26 T., advises readers:

27 You only have to put in the hard work along with the dedication,
28 patience and discipline, attributes you can learn at the events.
Herbalife is a real opportunity for everyone who is willing to focus

1 and work for his or her goals. Plant a seed every day and you will
2 harvest lifetime success.

3 146. *Herbalife Today* is full of “success” stories of distributors like the
4 Beneficiaries and Promoters. They boast of: their “successful international business
5 that I managed to build from scratch”; leaving high-paying jobs to join the
6 Herbalife business; enjoying “a lifestyle that they always dreamed of”; replacing
7 “two engineering salaries with Herbalife income”; and “making more money than
8 he could have ever imagined.” Herbalife has published similar testimonials in
9 *Herbalife Today* for the last four years.

10 147. Herbalife also has its own official YouTube channel,
11 <http://www.youtube.com/user/HerbalifeIntl>. There, a video entitled “Why
12 Herbalife, Why Now? Building your Business”(uploaded on December 22, 2008
13 and available through the date of filing, <<http://www.youtube.com/watch?v=-990eOlwchw>>) demonstrates the Herbalife “pitch.”

14 148. Herbalife Ltd.’s Chairman and CEO, Michael Johnson, introduces that
15 video, saying “boy do we have a solution to help you in these tough economic
16 times.” Highlighting the economic uncertainty at the time, the video asks “why
17 Herbalife?” To that question, various distributors respond: “it’s recession proof.”
18 “When everybody else is having troubles, listen – we’re flourishing.” “When the
19 economy is bad our business is fueled.” “I got started in a recession – this is my
20 fourth recession. I’m more excited about today than ever before.” And “This
21 opportunity can be your answer.”

22 149. In that video, Distributors tell viewers that with Herbalife “you get to
23 be your own boss,” “earn extra money,” “work from home,” “raise your own
24 children,” “make your own hours,” “make part-time or full-time money,” “take
25 your family on vacations,” “give your family all the extras that they deserve,”
26 “change your lifestyle to do whatever you want to do.” When asked again, “why
27 Herbalife, “recruits are told “because you can finally earn what you’re worth.”
28

1 150. The video ends with the Herbalife's Chairman and CEO exclaiming,
2 "So why are you waiting. Come on – at Herbalife we've got the answer to these
3 tough economic times. Contact the person who sent you this video and start
4 improving your life right now. Become an Herbalife independent distributor today."

5 **Beneficiaries and Promoters' Inducement of New Recruits &**
6 **Rallying the Troops**

7 151. Herbalife features the Beneficiaries and Promoters on its website
8 www.herbalife.com/chairmansclub (visited April 8, 2013) and at
9 www.video.herbalife.com. There, many of the Beneficiaries and Promoters have
10 videos detailing their expensive lifestyles, lavish homes, luxury cars, and their
11 "rags-to-riches" stories, all purportedly made possible through Herbalife.

12 152. Herbalife also prominently features the Beneficiaries and Promoters in
13 literature, flyers, and public events.

14 153. Herbalife sponsors what it calls an "Herbalife Extravaganza." The
15 Herbalife Extravaganza is annual convention that Herbalife promotes in *Herbalife*
16 *Today*, online and through emails. At the Extravaganza, Herbalife distributors come
17 from around the country for sales and marketing advice and tips from Beneficiaries
18 and Promoters.

19 154. In one video taken from the Herbalife 2010 Extravaganza in Los
20 Angeles, California, Beneficiary and Promoter Geri Cvitanovich, in minutes 1:40-
21 3:00, tells a convention hall filled with distributors that the Herbalife plan "is a
22 confidence plan ... to take you from where you are to wherever you want to go,"
23 grooming them to become multimillionaires:

24 all of us are getting groomed to become multi-millionaires. That is an
25 awesome opportunity. Now you can take advantage of it. Or you only
26 want to make \$60,000, \$100,000, couple \$100,000. But the fact that
27 we are all here getting groomed to become millionaires in today's
28 marketplace to me is an awesome privilege to be a part of. And I just
want those of you who are new to know that you are in the right place
at the right time. The fastest amount of growth in the shortest amount
of time in our history. And we are doing nothing but going up.

1 That video can be found at <http://www.youtube.com/watch?v=PmeLJHHKoDk>
2 (visited April 8, 2013).

3 155. In another video taken at the Herbalife 2011 Extravaganza in Las
4 Vegas found at <http://www.youtube.com/watch?v=cVbd8bw4MIQ> (visited April 8,
5 2013) Beneficiary and Promoter Susan Peterson tells attendees, at minutes 1:03-
6 1:58 that, if they are not getting rich in Herbalife, "it's wrong" and that they are
7 taking things for granted:

8 A lot of us, we built our organizations not when it was easy but when
9 it was hard. When it was terrible. When it was tough. And to make a
10 fortune in the tough times is really something. But to make it in the
11 easy times you would think everyone would do it and to not do [it] is
just to me wrong. I mean if you are not getting rich today in Herbalife,
I'm going to be honest, it's wrong. It's really wrong. It means you're
taking things for granted.

12 Peterson instructs attendees at minutes 3:00-5:42 that to increase their royalty
13 checks, they should focus on recruiting people looking for opportunity:

14 If you want to recruit somebody who loves the products and who
15 wants to be your discounted customer because they love the products
... I would say keep doing that and it's wonderful. But you can't
16 count that in business-building recruiting. If you want to move the
check, you need to find other people that want to make money and
17 represent the Herbalife products and Herbalife opportunity. People
that are like you that want to be distributors... find those people that
18 are looking for opportunity. That want to change their family's lives
and their financial situation. [Those are the] people you need to work
19 with. [Those are] the people you need to find. And believe me, there
has never been an easier time to find people like that, okay, because
20 our economy is bad in America. But at the same time our opportunity
has never been stronger. Our brand, our product, our company, our
21 direction. And if you aren't going after this, shame on you. Because
you're going to miss the greatest time-period to literally go here
22 [gestures with her hand down] to here [gestures with her hand up]
with your royalty check. It doesn't happen often. It has happened two
23 times in my Herbalife career. This is number three. This is the time to
work. This is the time to recruit. This is the time to build a new
24 organization. This is the time. There has never been a time this easy.
You've gotta go for this.

25 156. In a video profile of Beneficiary and Promoter Doran Andre found at
26 <http://www.youtube.com/watch?v=2dYK605bAaU> (visited April 8, 2013) Andre
27 tells about how, at minutes 1:08-2:00, he went from working for a company at 22
28 building his own Herbalife distributorship:

1 There [were] people in the company that wanted to mentor us. There
2 was a support system, an infrastructure, a business model that all we
3 needed to do is execute. And then before you know it, in four months
4 working the same amount of hours, two to three hours a week, [our]
income hit \$1,500 a month...and in 90 days our income hit \$10,000 a
month. And our very first calendar year our income hit \$350,000. And
our second year... our income hit a million one.

5 Andre goes on to remark, after a tour of his luxury home and images of his red
6 Ferrari, at minutes 4:00-4:15:

7 You know it's really amazing. I step out of the Ferrari or Bentley or
8 whatever and people go 'what does that guy do for a living?' and I go
9 I'm an Herbalife independent distributor. And people are absolutely
amazed at that that's what I do. It's an incredible quality of life.

10 Andre also operates what he calls the "Financial Success System." In a video found
11 at <http://vimeo.com/20317153> (visited April 8, 2013) promoting his system, he
12 shows his \$30,000,000 home, luxury cars and motorcycle and tells his audience:
13 "the big money hasn't even been made in Herbalife.... The biggest money in the
14 shortest period of time is going to be in the next 3-5 years."

15 157. These types of grand overstatements regarding distributors' potential
16 earnings and opportunities are part of a pattern and practice throughout the
17 Herbalife Pyramid. One Herbalife distributor's website, <http://www.cwgteam.com/>,
18 (visited April 8, 2013) promises that:

19 how far you take your Herbalife business and the income you require
20 or desire is your decision. However, you may be interested in the
following statistics:

- 21 ○ Lottery Win: 1 in 13 million chance of becoming a millionaire
- 22 ○ Herbalife Distributor: 1 in 26,000 chance of becoming a
millionaire
- 23 ○ Herbalife Supervisor: 1 in 2,600 chance of becoming a
millionaire
- 24 ○ Herbalife World Team member: 1 in 800 chance of becoming a
millionaire
- 25 ○ Herbalife Global Expansion Team member: 1 in 80 chance of
becoming a millionaire
- 26 ○ Herbalife Millionaire Team member: 1 in 8 chance of becoming
a millionaire
- 27 ○ Herbalife President's Team member: becoming a millionaire is
a certainty

28 **Herbalife's Deception Regarding Potential Earnings**

1 158. When making statements regarding their wealth and the potential
2 wealth for new recruits, Herbalife and the Beneficiaries and Promoters routinely
3 refer the readers or viewers (with an asterisk and a footnote) to the Herbalife
4 “Statement of Average Gross Compensation of U.S. Supervisors.” They disclaim,
5 “Incomes applicable to the individual (or example) depicted and not average. For
6 average financial performance data, see the Statement of Average Gross
7 Compensation of U.S. Supervisors at Herbalife.com and MyHerbalife.com.”

8 159. At a meeting with Wall Street analysts in 2007, Herbalife’s Chairman
9 and CEO Michael Johnson characterized these Statements of Average Gross
10 Compensation as “transparent” to distributors:

11 We are transparent with our earnings potential among supervisors.
12 The staff [*sic.*] on this page which is the average gross compensation
13 of U.S. supervisors is a public document, it is available on our website
14 and is part of our introductory business pack that all new distributors
 receive. So, every new distributor in this Company knows exactly
 where they stand and what their opportunity is inside the Company.

15 160. As Johnson explains, throughout 2009-2013, Herbalife distributed its
16 “Statements of Average Gross Compensation of U.S. Supervisors” to all of its U.S.
17 distributors both in Book 4, the Sales and Marketing Plan, as well as on the internet.

18 161. At the bottom of each of its disclosures made from 2009-2012
19 (Exhibit A) Herbalife tells its distributors: “The figures stated above are not a
20 guarantee nor are they a projection of a typical Distributor’s earnings or profits.
21 Like any other independent business, the achievement or failure of a Distributor
22 depends upon his or her skill set, commitment and desire to succeed. At Herbalife,
23 the opportunity to earn more is always available to each and every Distributor.”

24 162. From at least 2009 through February 2013, however, Herbalife
25 cherry-picked the data set that they used to create their 2009-2013 Statements. They
26 only reported the incomes of “Supervisors” and above, and further limited that data
27 set to “Active Leaders” – those who “generated at least 2,500 points of volume in”
28 in the year “after becoming Supervisor.”

1 163. According to their 2011 Statement, "Active Leaders" only make up
 2 39.4% of Herbalife's "Leaders." Thus, not only did Herbalife fail to disclose any
 3 earnings as to majority of distributors who were NSLs, Herbalife failed to disclose
 4 the earnings of 60.6% of SLs in their statements distributed in 2012. Below is the
 5 Statement that Herbalife distributed to Bostick in his Sales and Marketing Plan. A
 6 full copy is attached as part of Exhibit A:

7 **STATEMENT OF AVERAGE GROSS
 8 COMPENSATION OF U.S. SUPERVISORS**

9 Herbalife offers its Distributors an opportunity to achieve a lifetime of
 10 better health through its scientifically advanced weight management
 11 and nutrition products. While many of our Distributors join the
 12 Herbalife family simply to enjoy our life-changing products, others
 13 want to share their results and take advantage of the many income
 14 benefits our business opportunity provides. With Herbalife, you can
 15 work part time and earn a supplemental income, or focus solely on
 16 your Herbalife Distributorship and increase your financial potential.
 17 It's completely up to the individual Distributor whether she wants to
 18 achieve! A Distributor earns profits by buying Herbalife products
 19 at wholesale and reselling them at retail. If the Distributor wants
 20 to increase his or her involvement in the business and enjoy the
 21 possibility of higher levels of income, he or she may sponsor others
 22 into the business and develop an organization.

23 Over 25% of Distributors reach the rank of Supervisor and above
 24 ("Leader"), qualifying them for additional compensation, which is
 25 paid by Herbalife based upon the sales production of those they have
 26 sponsored directly and indirectly. The annual gross compensation
 27 paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over
 28 39% of Supervisors are "Active" (defined as those who generated
 at least 2,500 points of volume in 2011 after becoming Supervisors).
 The annual gross compensation paid by Herbalife to Active Leaders
 during 2011 averaged approximately \$7,348.

ACTIVE LEADERS

| Earning Level | % of Total Leaders | % of Active Leaders | Average Earnings (USD) |
|------------------|--------------------|---------------------|------------------------|
| President's Team | 0.2% | 0.6% | \$ 515,689 |
| Millionaire Team | 0.7% | 1.7% | \$ 100,195 |
| GET | 2.6% | 6.5% | \$ 22,766 |
| World Team | 2.9% | 7.3% | \$ 6,224 |
| Supervisor | 33.1% | 83.9% | \$ 901 |
| Total | 39.4% | 100.0% | \$ 7,348 |

29 The amounts above do not include the income Distributors can earn
 30 from their retail or wholesale income, so the actual compensation
 31 can be somewhat higher, depending upon each Distributor's
 32 personal-selling efforts.

33 The figures stated above are not a guarantee nor are they a
 34 projection of a typical Distributor's earnings or profits. Like any
 35 other independent business, the achievement or failure of a
 36 Distributor depends upon his or her skill set, commitment and
 37 desire to succeed. At Herbalife, the opportunity to earn more is
 38 always available to each and every Distributor.

1 164. In February 2013, Herbalife released an updated and extended
 2 disclosure. A full copy is available at Exhibit B. A portion is below:

| Single-Level Distributors (No Downline) | | |
|---|---------------|-----|
| Economic Opportunity | Distributors* | |
| | Number | % |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors | 351,065 | 71% |
| The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule. | | |

| Non-Sales Leaders** With a Downline | | |
|---|--------------|-----|
| Economic Opportunity | Distributors | |
| | Number | % |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor | 60,333 | 12% |
| In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife. 2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104. | | |

| Sales Leaders** With a Downline | | | | | | |
|--|--------------|-----|---------------------------------|-----------------------------------|---------------------|------------------------|
| Economic Opportunity | Distributors | | Average Payments from Herbalife | All Sales Leaders with a Downline | | |
| | Number | % | | Number of Distributors | % of Total Grouping | Average Gross Payments |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses | 82,464 | 17% | >\$250,000 | 194 | 0.2% | \$724,030 |
| | | | \$100,001-\$250,000 | 452 | 0.5% | \$148,808 |
| | | | \$50,001-\$100,000 | 539 | 0.7% | \$68,912 |
| | | | \$25,001-\$50,000 | 1,136 | 1.4% | \$35,581 |
| | | | \$10,001-\$25,000 | 1,940 | 2.4% | \$15,538 |
| | | | \$5,001-\$10,000 | 2,552 | 3.1% | \$7,008 |
| | | | \$1,001-\$5,000 | 11,307 | 13.7% | \$2,216 |
| | | | \$1-\$1,000 | 39,151 | 47.5% | \$292 |
| | | | 0 | 25,193 | 30.6% | \$0 |
| | | | Total | 82,464 | 100.0% | \$4,485 |

This chart does not include amounts earned by Distributors on their sales of Herbalife products to others

* 30,621 of the 351,065 single-level Distributors are sales leaders without a downline
 ** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com.

1 165. Plaintiff is informed and believes based on Herbalife's 2013
2 Statement that Herbalife's representation in its 2009-2012 Statements that "[o]ver
3 25% of Distributors reach the level of Supervisor and above" is false and
4 misleading. The 2013 Statement disclosed that 83% of all of its distributors in 2012
5 were NSLs, leaving only 17% as Supervisors and above in 2013. Including the
6 30,621 distributors who became Supervisors through their own Personally
7 Purchased Volume, brings the percentage of Supervisors to 22.89% of all
8 distributors.

9 166. Herbalife's 2013 Statement discloses that 71% of all U.S. Distributors
10 – 351,065 distributors – are "Single-Level Distributors" with no downline.

11 167. Herbalife's 2013 Statement discloses that there are only 60,333 NSLs
12 with a downline (Senior Consultants and Qualified Producers). Of that number,
13 only 2,466 of those distributors earned "Wholesale Profits." Even then, the average
14 "wholesale profits" of those 2,466 distributors was \$104 for a total payment of
15 \$256,464 paid to NSLs in 2012 in "Wholesale Profits."

16 168. Herbalife's 2013 Statement also discloses that a "majority of those
17 Distributors who earned in excess of \$100,000 in 2012 had reached the level of
18 Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of
19 President's Team. They averaged 9 years as an Herbalife Distributor before
20 reaching President's Team, with the longest being 20 years and the shortest being
21 less than three years."

22 169. Similarly, Herbalife's 2013 Statement discloses that besides the
23 82,464 SLs, there are 30,621 SLs who "paid for their position."

24 170. In its 2012, 2011, 2010, and 2009 10-K disclosures, Herbalife makes
25 at least some disclosure to investors and potential investors that it retains 51.1%,
26 48.6%, 43.3%, and 42.2% of its Sales Leaders; until the 2013 Statement; Herbalife,
27 however, failed to disclose this same fact to distributors and potential distributors.
28 Finally, in the 2013 Statement Herbalife provided distributors the same information

1 that it thinks is important for investors: "51.0% of all sales leaders as of February
2 1st, 2011, requalified by February 1st, 2012 (including 33% of first time sales
3 leaders)."

4 171. All of the information not disclosed in 2009-2012 is relevant for:
5 recruits deciding if Herbalife really is the "answer to these tough economic times";
6 recruits deciding to become Herbalife distributors; distributors deciding to purchase
7 Herbalife product; distributors reading glowing profiles on *Herbalife Today*;
8 distributors evaluating their chances of earning "Wholesale profits," distributors
9 deciding whether to purchase product to "pay for position"; distributors deciding
10 whether to recruit other distributors; and distributors evaluating Founder's Circle
11 members telling them they are "groomed to become multi-millionaires" and that if
12 they are not "getting rich today in Herbalife...It's really wrong."

13 **Herbalife's Recruiting Rewards Price-Out Products**

14 172. Because Herbalife sends such a large percentage of every dollar
15 received by it upline as Wholesale Profits, Royalty Overrides, bonuses, and
16 incentives – \$0.46 to \$0.64 of every dollar paid it for product – Herbalife sets the
17 SRP at an inflated price well over what Herbalife's products sell at in the open
18 marketplace.

19 173. While Herbalife's "competitive compensation structure" supposedly
20 pays out up to 73% of product revenues to distributors in "Retail and Wholesale
21 Profits, Royalty and bonus income and incentives," it falls on the Herbalife
22 distributor retailing the product to recoup this 73%.

23 174. This inflated markup necessary for the "competitive compensation
24 structure" makes Herbalife's products uncompetitive for retail sale at SRP.

25 **Overcharges on Packaging and Handling**

26 175. On top of this inflated SRP, Herbalife charges a 7% "packaging and
27 handling" fee based on the SRP for products ordered directly from Herbalife. A
28

1 distributor must add that 7% fee to the SRP to recoup their costs and earn the
2 promised retail profits.

3 176. Besides this 7% surcharge, Herbalife charges its distributors up to
4 anywhere from 2.5% to 4% of the SRP if they have products shipped to them
5 instead of picking them up at an Herbalife distribution center (there only six centers
6 in the U.S.). For a distributor to earn the promised profit on a retail sale, the
7 distributor would need to resell the product at 109.5% to 111% of SRP.

8 177. Based on Herbalife's 2009-2012 10-Ks, Herbalife's average revenue
9 for North America for "packaging and handling" and shipping is 10.33%, 10.50%,
10 10.59, and 10.7% of its total "Retail Sales" (which it uses the SRP to calculate).

11 178. In an April 21, 2011 letter to the SEC, Herbalife states "[t]he shipping
12 and handlings costs for 2010, 2009, and 2008 were \$58 million, \$49 million and
13 \$48 million, respectively." Herbalife's 2010 and 2009 10-Ks, however, account for
14 Herbalife's revenues for North America (which includes Canada, Jamaica, and
15 Aruba) from shipping and handling for 2010, 2009, and 2008 as \$102.70 million,
16 \$87.30 million, and \$80.8 million, respectively.

17 179. Plaintiff is informed and believes based on the discrepancy between
18 these reported numbers that Herbalife overcharged members of the class in 2009
19 and 2010 by millions of dollars for packaging, shipping, and handling. Because
20 Herbalife has not changed its formula to calculate the "Packaging and Handling"
21 and shipping costs since 2009, Plaintiff is informed and believes that Herbalife has
22 similarly overcharged and profited from Bostick and the class from their supposed
23 "Packaging and Handling" and "Shipping" fees during 2011, 2012, and 2013.

24 180. Plaintiff is further informed and believes that Herbalife uses this
25 surcharge on top of the SRP as a way to avoid having to pay \$0.46 to \$0.64 of the
26 actual revenue it receives from purchases upline. By using a surcharge, Herbalife
27 can increase its profit margin without dramatically raising the SRP on its products
28

1 (and without having to share those price increases with the Beneficiaries and
2 Promoters).

3 181. Because of the inflated SRP and the packaging, handling, and
4 shipping fees, the prices distributors pay for Herbalife's products are so high that
5 the profit Herbalife promises on retail sales at the Distributor level is almost
6 impossible.

7 182. While there is a retail component to the Herbalife Pyramid, the
8 inflated SRP of the products and inflated shipping and handling fees make it
9 unlikely that Herbalife distributors have meaningful opportunities to have retail
10 sales. As Herbalife pays out "Wholesale Profits," royalties, bonuses, and other
11 incentives regardless of whether the downline distributor sells the product at SRP,
12 there is a systematic incentive to recruit other distributors.

13 183. Herbalife's system of graduated discounts depending on the
14 distributor's position exacerbates this problem. Distributors who purchase Herbalife
15 products at a 25%, 35, or 42% discount must compete on price with other
16 distributors higher up the pyramid who can purchase products at greater discount
17 and sell those same products at or around cost.

18 184. Based on Bostick's experience in selling Herbalife products and
19 competing in the marketplace, he is informed and believes that Herbalife's
20 distributors routinely discount Herbalife products on EBay, Craigslist, and on
21 various websites from the SRP, and there is little opportunity for retail profits.

22 185. Because the distributors are Herbalife's actual customers and
23 consumers of its products and those actual customers and consumers are overpaying
24 \$0.46 to \$0.64 on the dollar for product, those distributors drop out at
25 overwhelming numbers, and Herbalife requires an ever expanding network of so-
26 called distributors.

27 **Herbalife's Sales and Marketing Plan Does Not Have or Follow**
28 **Safeguards**

1 186. In *In re Amway Corp.*, 93 F.T.C. 618 (1979) (“Amway”) the FTC
2 ruled that Amway did not violate the FTC Act because it adopted and enforced four
3 rules that would help a direct marketer avoid the characteristics of an FTC Act
4 violation: the initial investment rule, the 70% rule, the buyback rule, and the 10
5 customer rule.

6 187. These rules are designed to deter inventory loading and encourage
7 retail sales. In *Omnitrition*, the Ninth Circuit explained that where “a distribution
8 program appears to meet the *Koscot* definition of a pyramid scheme, there must be
9 evidence that the program’s safeguards are enforced and actually serve to deter
10 inventory loading and encourage retail sales.” *Omnitrition*, 79 F.3d 776 (1996).

11 188. **The Initial Investment Rule.** The FTC decision noted that illegal
12 schemes require a payment or initial disbursement by a new participant for the right
13 to sell products and the right to earn rewards, in return for recruiting other
14 participants into the program and which are unrelated to sale of product to the
15 ultimate user. The FTC found that Amway did not require such an investment
16 because “the Amway system does not involve an ‘investment’ inventory by a new
17 distributor. A kit of sales literature costing only \$15.60 is the only requisite.” *In re*
18 *Amway Corp.*, 93 F.T.C. 618, 716 (1979).

19 189. Defendant Herbalife requires each new Herbalife distributor must
20 purchase an International Business Pack (IBP) or mini-IBP at a cost of \$95.55 or
21 \$57.75, respectively. This requirement, by itself, does not constitute an “investment
22 inventory” under the rule.

23 190. Because Herbalife increases its discount off the SRP on a graduated
24 basis for Distributors, Senior Consultants, Success Builders, Qualified Producers,
25 and Supervisors, however, Herbalife requires an initial investment well beyond the
26 price of the IBP if a distributor wants to compete in the marketplace for retail
27 consumers of Herbalife products or move up the Herbalife Pyramid to a place
28 where they can earn commissions, Royalty Overrides, bonuses, and incentives.

1 Following the mantra of “pay for your position” and “position determines the pay,”
2 Herbalife and Beneficiaries and Promoters pressure distributors to make a
3 significant investment to “buy their discount” and get the “highest discount for the
4 least expenditure.”

5 191. In the IBC, Booklet 3, Building Your Business (Exhibit H) Herbalife
6 encourages its distributors on page 18 to invest in product inventory for customer
7 orders:

8 Here are some areas you may want to consider putting money
9 towards:

- 10 ● Product Inventory for customer orders
- 11 ● Personal product inventory
- 12 ● Advertising for your business
- 13 ● Training events/seminars
- 14 ● Business costs, such as office supplies
- 15 ● And, most of all, yourself!”

16 192. In explaining why it is important to build an investment inventory,
17 Herbalife tells distributors on page 19 of Exhibit H:

18 ● You can’t sell what you don’t have. Carry enough inventory on hand
19 to cover all your local sales

20 ...
21 ● Many people purchase product on the spot. Carry enough product
22 on hand to accommodate spur-of-the-moment sales. You don’t want
23 to make a paying customer wait

24 ...
25 ● If you are doing a one-on-one presentation, don’t make the
26 customer wait for product...”

27 193. Like here, in *Omnitrition* there was no significant charge to become a
28 distributor and the distributors had no quota of product to buy. *Omnitrition*, 79 F.3d
at 780. Similar to Herbalife, however, to receive any “non-retail” benefit from the
Omnitrition system or to move up to the next level as a “Bronze Supervisor,” the
Omnitrition distributors had to purchase and convince three other recruits to
purchase a certain amount of product. *Id.* Omnitrition argued that its business plan
did not meet the first element of the *Koscot* test because: “it does not charge for the
right to sell its products at the distributor level.” The Ninth Circuit disagreed,

1 finding that while that may be the case for the “distributor” level, considering the
2 “supervisor” level, a reasonable jury could conclude the *Koscot* factors are met:

3 A participant must pay a substantial amount of money to Omnitrition
4 in the form of large monthly product orders. In exchange for these
5 purchases, the supervisor receives the right to sell the products and
6 earn compensation based on product orders made by the supervisor’s
7 recruits. This compensation is facially “unrelated to the sale of
8 product to ultimate users” because it is paid based on the suggested
9 retail price of the amount ordered from Omnitrition rather than based
10 on actual sales to consumers. On its face, Omnitrition’s program
11 appears to be a pyramid scheme. Omnitrition cannot save itself simply
12 by pointing to the fact that it makes some retail sales.

13 *Id.* at 782 (emphasis added).

14 194. **The “70%” Rule:** In the *Amway* decision, the FTC explained the 70%
15 rule as follows: “[t]o ensure that distributors do not attempt to secure the
16 performance bonus solely on the basis of purchases, Amway requires that, to
17 receive a performance bonus, distributors must resell at least 70% of the products
18 they have purchased each month.... Amway enforces the 70% rule.” *Amway*, 93
19 F.T.C. 618, 646, ¶73.

20 195. Herbalife’s 70% rule, found at page 71 of Exhibit C is:

21 In order to qualify for and receive Royalty Overrides, Production
22 Bonuses, and other bonuses paid by Herbalife, at least 70% of the
23 total value of Herbalife products a Distributor purchases each Volume
24 Month must be sold or consumed that month. For the purpose of
25 fulfilling the certification requirements of this Rule, a Distributor may
26 count any or all of the following:

- 27 • Sales to retail customers;
- 28 • Sales at wholesale to downline Distributors;
- Product used for personal or family consumption; and
- *Product consumed at Nutrition Clubs.

29 If the Distributor fails to timely certify to Herbalife that they
30 have sold or consumed 70% of the product purchases made that
31 Volume Month, Royalty Overrides, Production Bonuses, and other
32 bonuses will not be paid to the Distributor.

33 *If a Distributor utilizes Nutrition Club sampling activity
34 towards compliance, the Distributor shall maintain a log of member
35 visits for at least two years, setting forth the name of the member,
36 dates of visits, and contact information, and shall make those records
37 available for verification purposes if requested by the Company.
38

1 196. Herbalife's 70% Rule does not require that Herbalife's distributors
2 resell at least 70% of the Herbalife products to resale customers because it allows
3 "[p]roduct used for personal or family consumption" to satisfy the rule. As
4 reiterated by the 9th Circuit in *Webster v. Omnitrition Intern., Inc.*, self-consumption
5 does not count as a retail sale: "If *Koscot* is to have any teeth, such a sale [for self-
6 consumption] cannot satisfy the requirement that sales be to 'ultimate users' of a
7 product." *Omnitrition*, 79 F.3d 776, 783 citing *Koscot*, 86 F.T.C. 1106,1181.

8 197. Herbalife does not require a Supervisor to make *any* retail sales as the
9 rule allows "[s]ales at wholesale to downline Distributors." Again, as explained by
10 the 9th Circuit in *Omnitrition* in finding that where Omnitrition also allowed sales to
11 downline distributors to count for the 70% rule it did not comply: "Importantly, the
12 [70%] requirement can be satisfied by *non-retail* sales to a supervisor's own
13 downline [distributors]. This makes it less likely that the rule will effectively tie
14 royalty overrides to sales to ultimate users, as *Koscot* requires." *Omnitrition*, 79
15 F.3d 776, 783.

16 198. The 70% Rule is not applied to NSL distributors (or Supervisors who
17 do not have a First, Second, or Third Level) even though those distributors can
18 qualify for compensation in promotions up the chain, increased discounts on
19 purchases, and commissions on downline purchases.

20 199. While Herbalife requires Supervisors and above to certify that they
21 have complied with the 70% rule, Plaintiff is informed and believes based the
22 Court's finding of fact in its August 25, 2009 Memorandum & Order Regarding
23 Cross-Motions for Summary Judgment, *Herbalife International of America, Inc. v.*
24 *Ford et al.* Case No. 2:07-CV-2529-GAF-FMO (C.D. Cal.), that "Herbalife does
25 not perform audits to determine compliance with the 70% Rule unless there is an
26 ongoing 'ethical investigation' of a Supervisor suspected of violating Herbalife's
27 policies." *See Memorandum & Order* (Docket No. 374), 8:16-19.

28

1 200. **The Ten Customer Rule:** The “ten customer rule” approved by the
2 FTC in *Amway* provided that “distributors may not receive a performance bonus
3 unless they prove a sale to each of ten different retail customers during each month.
4 . . . The ten customer rule is enforced by Amway and the Direct Distributors. . .”
5 *Amway*, 93 F.T.C. 618, 646, ¶74.

6 201. Herbalife’s Rule is: Rule 18-B The 10 Retail Customers Rule

7
8 A Distributor must personally make sales to at least ten (10) separate
9 retail customers in a given Volume Month to qualify for and receive
10 Royalty Overrides, Production Bonuses, and other bonuses paid by
11 Herbalife. For the purpose of fulfilling the certification requirements
12 of this Rule, a Distributor may count any or all of the following each
13 Volume Month.

- 14 • A sale to a retail customer;
- 15 • A sale to a first-line Distributor with up to 200 Personally
16 Purchased Volume Points (and no downline Distributors) may be
17 counted as a sale to one (1) retail customer; and
- 18 • *A Nutrition Club member who consumed products during ten
19 (10) visits to a Nutrition Club within one Volume Month may be
20 counted by the Nutrition Club operator as a sale to one (1) retail
21 customer.

22 If the Distributor fails to timely certify to Herbalife that they have sold
23 to at least ten (10) retail customers in a given Volume Month, Royalty
24 Overrides, Production Bonuses, and other bonuses will not be paid to
25 the Distributor.

26 202. Herbalife’s Ten Customer Rule does not mandate sales to customers
27 not already Herbalife distributors. Herbalife allows “[a] sale to a first line
28 Distributor with up to 200 personally purchased Volume Points (and no downline
Distributors) which may be counted as a sale to one (1) retail customer,” to count to
satisfy the Retail Customer Rule. Herbalife’s exception takes the “teeth” out of
Koscot.

1 203. Distributors can also satisfy this Herbalife's rule by giving away free
2 samples of Herbalife products at their Nutrition Clubs. This does not constitute an
3 "actual sale" under *Omnitrition* or *Koscot*.

4 204. Herbalife does not apply the Ten Customer Rule to NSL distributors
5 and Supervisors (who do not have a First, Second, or Third Level), even though
6 they can obtain performance bonuses in promotions up the chain, increased
7 discounts on purchases, and commissions on downline purchases.

8 205. Herbalife's 10 Customer Rule and 70% Rule are ineffective in
9 ensuring its distributors focus on retailing the products over recruiting. Because
10 only distributors eligible for Royalty Overrides, bonuses, and other incentives must
11 comply with the rule, to even become a distributor subject to the rules a distributor
12 must recruit heavily and would be in at least the top 10% of all Herbalife
13 distributors.

14 206. **The Buy Back Rule.** Amway had a buy back rule where participants
15 had to buy back from any person they recruited any saleable, unsold inventory upon
16 the recruit's leaving Amway. *Amway*, 93 F.T.C. 618, 716. As the 9th Circuit
17 explained: "The buy-back rule is only effective if it can reduce or eliminate the
18 possibility of inventory loading by insuring that program participants do not find
19 themselves saddled with thousands of dollars' worth of unsaleable products."
20 *Omnitrition*, 79 F.3d 776, 784.

21 207. Herbalife has a 30-Day Money Back Guarantee for "retail customers."
22 When a retail customer returns product, they return the product to the distributor
23 who sold them the product. That distributor is required, within 30 days of paying
24 the refund to the customer, to send back the unused portion of the product or the
25 containers. Then Herbalife exchanges the returned product with an identical
26 replacement product for the Distributor, regardless of whether that distributor has
27 another customer who wants to purchase the product or products.

28 208. Herbalife has no such "Money Back Guarantee," for a distributor.

1 209. The distributor can return products *purchased from Herbalife* within
2 the prior 12 months on the following conditions:

- 3 a. The distributor must resign as an Herbalife Distributor (and forfeit all
4 of their downline).
- 5 b. Herbalife reimburses a distributor the SRP of a product less that
6 distributor's discount to purchase the product, less a 10% restocking
7 fee.⁶ A distributor does not receive a reimbursement of the 7%
8 packaging and handling fee of the SRP or the shipping fee.
- 9 c. If the distributor has received Royalty Overrides, that distributor must
10 return all of their records relative to the 70% rule.

11 An "Inventory Repurchase Request Form" is found at page 50 of Exhibit C.

12 210. If a distributor purchases products from distributors in their upline
13 (and not directly from Herbalife) this return policy does not apply. As NSLs can
14 purchase product from their sponsor or their first upline Supervisor, unlike
15 Amway's rule mandating that participants had to buy back recruit's product,
16 Herbalife leaves its NSLs at the mercy of their upline to determine whether they
17 will accept the return.

18 211. As Herbalife took a 10% restocking fee from 2009 through May of
19 2012, Herbalife has not complied with the *Amway* rule.

20 212. As Herbalife does not reimburse the distributor for the inflated
21 packaging and shipping fees, Herbalife has not complied with the *Amway* rule.

22 213. Herbalife knows of, approves, promotes, and facilitates the systematic
23 noncompliance with or breach of, the rules that purportedly protect against the
24 operation of an illegal scheme.

25 **Herbalife is Bound to Operate as Pyramid Scheme**

26
27
28 ⁶ Plaintiff is informed that the 10% restocking fee was discontinued sometime in
May of 2012.

1 220. The members of the class number are over 400,000 and joinder of all
2 Class members in a single action is impracticable.

3 221. There are questions of law and/or fact common to the class and
4 subclass, including but not limited to:

- 5 a. Whether Herbalife is operating an unlawful scheme;
6 b. Whether Herbalife and Beneficiaries and Promoters were operating an
7 unlawful scheme;
8 c. Whether distributors paid money to Herbalife for (1) the right to sell a
9 product and (2) the right to receive, in return for recruiting others,
10 rewards which were unrelated to the sale of the product to retail
11 consumers
12 d. Whether distributors had to make an initial investment;
13 e. Whether Herbalife had a 70% Rule and enforced it;
14 f. Whether Herbalife had a Ten-Customer Rule and enforced it;
15 g. Whether Herbalife had a buy-back rule and enforced it;
16 h. Whether Herbalife's Sales and Marketing Plan constitutes an endless
17 chain under California state law.
18 i. Whether Herbalife or the Beneficiaries and Promoters omitted to
19 inform Bostick and the plaintiff class that they were entering into an
20 illegal scheme where an overwhelming number of participants lose
21 money;
22 j. Whether Herbalife's Statements of Average Gross Compensation
23 distributed from 2009 through 2012 were deceptive and misleading;
24 k. Whether Herbalife's business model primarily incentivizes the
25 payment of compensation facially unrelated to the sale of the product
26 to ultimate users because it is paid based on the suggested retail price
27 of the amount ordered from Herbalife rather than on actual sales to
28 consumers;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and Section 1689.2 of the California Civil Code)

Against All Defendants

227. Plaintiff realleges the previous allegations.

228. California Penal Code § 327 renders endless chain schemes illegal.

Section 1689.2 of the California Civil Code provides:

A participant in an endless chain scheme, as defined in Section 327 of the Penal Code, may rescind the contract upon which the scheme is based, and may recover all consideration paid pursuant to the scheme, less any amounts paid or consideration provided to the participant pursuant to the scheme.

229. Herbalife is operating an endless chain scheme.

230. Bostick and the class have suffered an injury in fact and have lost money or property because of Herbalife’s business acts, omissions, and practices.

231. Bostick and the class are entitled to recover all consideration paid under the scheme, less any amounts paid or consideration provided to the participant under the scheme.

232. As punishment for violation of California Penal Code §327 is punishable by imprisonment for over one year, violation of California Penal Code §327 can provide the basis for a RICO predicate act of racketeering.

SECOND CLAIM FOR RELIEF

(RICO 18 U.S.C. § 1962(a))

Against All Defendants

233. Plaintiff realleges the previous allegations.

234. Herbalife and others willfully and intentionally violated and continue to violate RICO and California law with the goal of obtaining money, directly and indirectly, through a pattern of racketeering activities in violation of the mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, 18 U.S.C. 1962(a), and California Penal Code §327.

235. Herbalife International of America, Inc., Herbalife International, Inc., and Herbalife, Ltd. and the Beneficiaries and Promoters are engaged in activities

1 affecting federal interstate and foreign commerce and are entities capable of holding
2 a legal or beneficial interest in property. Herbalife International of America, Inc.,
3 Herbalife International, Inc., and Herbalife, Ltd. and the various Beneficiaries and
4 Promoters are "persons," as that term is defined by 18 U.S.C. §1961(3).

5 **The Herbalife Enterprise**

6 236. Herbalife International of America, Inc., Herbalife International, Inc.,
7 and Herbalife Ltd. and the Beneficiaries and Promoters make up the "Herbalife
8 Enterprise" as an association of entities and individuals associated in fact to operate
9 an illegal pyramid scheme. The Herbalife Enterprise is not a legal entity within the
10 meaning of "enterprise" as defined in 18 U.S.C. § 1961(4). Herbalife and the
11 Beneficiaries and Promoters have been members of the Herbalife Enterprise from at
12 least April 2009 and continuing until the present. Herbalife and the Beneficiaries
13 and Promoters are separate entities from the Herbalife Enterprise and play separate
14 and distinct roles in the operation of the Herbalife Enterprise.

15 a. Herbalife Ltd. is the founder, architect, and beneficiary of the
16 Herbalife Pyramid. Through interstate wire and mails, it coordinates
17 the Herbalife Enterprise, a worldwide scheme. It also pays and awards
18 the Royalty Overrides, bonuses, and other incentives to the
19 Beneficiaries and Promoters and others. This includes the Mark
20 Hughes Bonus, which Herbalife Ltd. exercises discretion in awarding,
21 based on the Beneficiaries and Promoters' participation in promoting
22 the Herbalife Enterprise.

23 b. Herbalife Ltd. employs Herbalife International, Inc. to coordinate the
24 operations of the Herbalife Pyramid in the countries in which
25 Herbalife operates, including determining and coordinating Royalty
26 Points, Royalty Overrides, bonuses, and other incentives. Herbalife
27 International, Inc. also coordinates the global marketing and
28 promotion of the Herbalife Pyramid.

1 c. Herbalife Ltd. employs Herbalife International of America, Inc. as its
2 operational arm of the Herbalife Enterprise in the U.S. Herbalife Ltd.
3 employs Herbalife International of America, Inc. to conduct
4 racketeering activities in the U.S.

5 d. Herbalife employs the Beneficiaries and Promoters to induce new
6 recruits into the Herbalife Pyramid, to induce distributors to purchase
7 Herbalife product, and to induce distributors to recruit additional
8 distributors into the Herbalife Pyramid. The Beneficiaries and
9 Promoters also have an agreement with Herbalife Ltd. mandating that
10 Herbalife will not reform its fraudulent marketing plan without their
11 consent.

12 237. From at least April 2009 and continuing until the present, within the
13 Central District of California and elsewhere, Herbalife International of America,
14 Inc., Herbalife International, Inc., and Herbalife Ltd., in association with each other
15 and in association with the Beneficiaries and Promoters, did knowingly, willfully
16 and unlawfully conduct and participate, directly and indirectly, in the conduct of the
17 affairs of the Herbalife Enterprise through a pattern of racketeering activity.

18 238. From at least April 2009 and continuing until the present, Herbalife
19 International of America, Inc., Herbalife International, Inc., and Herbalife Ltd., with
20 each other and the Beneficiaries and Promoters, executed a *per se* scheme to
21 defraud through a pattern of racketeering made up of distinct acts of mail and wire
22 fraud under 18 U.S.C. §§ 1341 and 1343. The Herbalife Enterprise engaged in and
23 affected interstate and foreign trade. The Herbalife Enterprise transacts business
24 through the instrumentalities of interstate commerce such as telephones, facsimile
25 machines, the internet, email, and the United States mail and interstate commercial
26 carrier to communicate in furtherance of the activities of the Herbalife Enterprise.
27 The Herbalife Enterprise advertises, markets, and sells products and services
28 throughout the United States. The operation of the enterprise continued over several

1 years, including activities in every state, and has affected and damaged, and
2 continues to affect and damage, commercial activity.

3 239. To further the goals of the Herbalife Enterprise, which were to (1)
4 earn money through fraudulent means, (2) entice individuals to become Herbalife
5 distributors, (3) entice individuals to purchase products from Herbalife; (4) entice
6 individuals to recruit others to become Herbalife distributors and profit off those
7 recruits' purchases of Herbalife products, and (5) reap large profits for themselves
8 based on false representations, Herbalife International of America, Inc., Herbalife
9 International, Inc., and Herbalife Ltd. and the Beneficiaries and Promoters engaged
10 in various forms of illegal activity, including (a) mail fraud, (b) wire fraud, and (c)
11 conspiracy.

12 240. The pattern of racketeering activity alleged is distinct from the
13 Herbalife Enterprise. Each act of racketeering activity is distinct from the Herbalife
14 Enterprise in that each is a separate offense committed by an entity or individual
15 while the Herbalife Enterprise is an association of entities and individuals. The
16 Herbalife Enterprise has an ongoing structure and/or organization supported by
17 personnel and/or associates with continuing functions or duties.

18 241. The racketeering acts set out above and below, and others, all had the
19 same pattern and similar purpose of defrauding Bostick and the class for the benefit
20 of the Herbalife Enterprise and its members. Each racketeering act was related, had
21 a similar purpose, involved the same or similar participants and methods of
22 commission and had similar results affecting Bostick and the class. The
23 racketeering acts of mail and wire fraud were also related to each other in that they
24 were part of the Herbalife Enterprise's goal to fraudulently induce Bostick and the
25 class to join the illegal scheme, purchase products, and recruit others to join the
26 scheme.

27 242. Herbalife's and members of the Beneficiaries and Promoters'
28 wrongful conduct has been and remains part of Herbalife Enterprise's ongoing way

1 of doing business and constitutes a continuing threat to the property of Bostick and
2 the class. Without the repeated acts of mail and wire fraud, the Herbalife
3 Enterprise's fraudulent scheme would not have succeeded.

4 243. Revenue gained from the pattern of racketeering activity, which
5 constitutes a significant portion of the total income of Herbalife and the
6 Beneficiaries and Promoters, was reinvested in the operations of the Herbalife
7 Enterprise for the following purposes: (a) to expand the operations of the Herbalife
8 Enterprise through additional false and misleading advertising and promotional
9 materials aimed at recruiting new distributors; (b) to facilitate the execution of the
10 illegal scheme; and (c) to convince current distributors to recruit new distributors,
11 and purchase Herbalife products.

12 244. Bostick and the class were injured by the reinvestment of the
13 racketeering income into the Herbalife Enterprise because they invested billions of
14 dollars of their own money through their purchasing of IBP's, promotional
15 materials, and Herbalife products, all of which were packaged and shipped at
16 inflated charges.

17 245. In connection with promoting and executing their illegal scheme,
18 members of the Herbalife Enterprise knowingly and recklessly placed and caused to
19 be placed in the United States mail or by interstate commercial carrier, or took or
20 received therefrom, matters or things to be sent to or delivered by the United States
21 mail or by interstate commercial carrier comprising, among other things product,
22 invoices, letters, promotional materials, brochures, products and checks to Bostick
23 and the class and received communications between and among themselves through
24 the United States mail, in all fifty states and the District of Columbia. It was
25 reasonably foreseeable that these mailings or receipts would take place in
26 furtherance of the fraudulent scheme.

27 246. In connection with promoting and executing their illegal scheme,
28 members of the Herbalife Enterprise engaged in wire fraud, in violation of 18

1 purchased Herbalife products, and recruited others to do the same. *Live the Good*
2 *Life! Herbalife* was sent by Herbalife International of America, Inc. with the
3 purpose and intent of promoting the Herbalife Enterprise's illegal scheme, all in
4 violation of 18 U.S.C. § 1341.

5 **Racketeering Act Number Two**

6 250. In April 2012, plaintiff Bostick received, through private commercial
7 interstate carrier, the International Business Pack, which promoted the Herbalife
8 Enterprise and the Herbalife Pyramid through the Sales and Marketing plan, and
9 which contained material false representations regarding the success that
10 distributors could achieve through Herbalife by purchasing products and recruiting
11 others to do the same. The Sales and Marketing Plan contained a "Statement of
12 Average Gross Compensation of U.S. Supervisors," which contained deceptive and
13 misleading information regarding the likelihood of success in becoming a
14 Supervisor as well as the average earnings of distributors and the amount of product
15 revenues that are paid out by Herbalife to distributors in the form of Wholesale
16 Profits, Royalty and bonus incomes and incentives. Because of his receipt of the
17 International Business Pack, and the representations contained therein, Plaintiff
18 Bostick purchased Herbalife products, signed up as an Herbalife distributor, and
19 recruited others to do the same. Herbalife International of America, Inc. sent the
20 International Business Pack with the purpose and intent of promoting the Herbalife
21 Enterprise's illegal scheme, all in violation of 18 U.S.C. § 1341.

22 **Racketeering Act Number Three**

23 251. On April 13, 2012, April 26, 2012, May 21, 2012, June 18, 19, 22, 27,
24 2012, and July 20, 2012, Plaintiff Bostick ordered, through interstate wire
25 transmissions over the internet on myherbalife.com, an Herbalife hosted website,
26 Herbalife products associated with Volume Points, which were promoted by the
27 Herbalife Enterprise as the means by which distributors such as Bostick could "pay
28 for his position" and get greater retail profits. Herbalife International of America,

1 Inc. hosted these websites. Bostick paid Herbalife International of America, Inc. for
2 these products using an electronic transfer of funds. Herbalife International of
3 America, Inc. shipped Bostick these products through private commercial interstate
4 carrier. Herbalife International Inc., coordinated through interstate wires on at least
5 a monthly basis following the order the collection and accruing of the Volume
6 Points associated with those purchases. Herbalife Ltd., paid 22% of the SRP from
7 Bostick's purchases in Royalty Overrides, bonuses, and other incentives monthly
8 following Bostick's order. Herbalife Ltd., paid 1% of the SRP from Bostick's
9 purchases in Mark Hughes Bonuses annually. Because of the promised "Volume
10 Points," "Retail Profits," and opportunity to advance up the Herbalife Pyramid,
11 Plaintiff Bostick purchased Herbalife Products, paid for those Herbalife Products,
12 and received those products, using instrumentalities of interstate commerce. This
13 violated 18 U.S.C. §§ 1341 and 1343.

14 **Racketeering Act Number Four**

15 252. On a quarterly basis throughout 2012, and occurring from 2009-the
16 present, plaintiff Bostick, as an Herbalife distributor, received, through the United
17 States mail, *Herbalife Today* featuring the "Royalty Achievers" "President's
18 Team," "Millionaire Team," and "Lifetime Achievers," including members of the
19 Beneficiaries and Promoters, which promoted the Herbalife Enterprise and
20 contained material false representations regarding the success that a distributor
21 could achieve through Herbalife by purchasing products and recruiting others to do
22 the same. Because of his receipt of the *Herbalife Today* and the representations
23 contained therein, Plaintiff Bostick purchased Herbalife products, and recruited
24 others to do the same. Bostick continued to receive Herbalife magazines and
25 catalogs through the United States mail. Herbalife International of America, Inc.
26 sent the Herbalife magazines and catalogs with the purpose and intent of promoting
27 the Herbalife Enterprise's illegal scheme. This violated 18 U.S.C. § 1341.

28 **Racketeering Act Number Four**

1 products and recruiting others to do the same. Because of his receipt and review of
2 the Internet Business Starter Pack, and the representations contained therein,
3 Plaintiff Bostick purchased Herbalife products, and recruited others to do the same.
4 Beneficiaries and Promoters sent Bostick the Internet Business Starter Pack
5 Herbalife with the purpose and intent of promoting the Herbalife Enterprise's illegal
6 scheme. This violated 18 U.S.C. § 1341.

7 **Racketeering Act Number Seven**

8 256. Throughout 2012, Bostick purchased Herbalife products and was
9 charged a 7% "Packaging and Handling" fee and a shipping fee. Herbalife
10 International of America, Inc. charged Bostick this fee via interstate wire
11 communications and fraudulently represented that such Packaging and Handling
12 fees and shipping fees were owed through the interstate wire communications,
13 when they were not. Because of the representations of Herbalife, Plaintiff Bostick
14 purchased Herbalife products and paid "Packaging and Handling" fees. Herbalife
15 did this with the purpose and intent of profiting off of the Herbalife Enterprise's
16 illegal scheme. This violated 18 U.S.C. § 1343.

17 **Racketeering Act Number Eight**

18 257. Throughout 2012, Beneficiaries and Promoters Tartol, Stanford,
19 Cvitanovich, Susan Peterson, Andre, and other President's Circle, Founder's Circle
20 and Chairman's Club members distributed information by interstate wire
21 transmissions over the internet promoting Herbalife, such as the videos described in
22 paragraphs 43-47, 77, 147-150, 151, 154, 155, and 156. Just as the Smith's video
23 contained material misrepresentations regarding the potential for success, these
24 videos promoted the fraudulent pyramid scheme and contained material false
25 representations regarding the wealth that a recruit or Herbalife distributor could
26 achieve if that recruit became an Herbalife distributor and if a distributor purchased
27 Herbalife products. This violated 18 U.S.C. §1343.

28

1 affairs of the Herbalife Enterprise, including participation in activities in
2 furtherance of the Herbalife Defendants' fraudulent scheme, through the pattern of
3 racketeering activity earlier alleged.

4 266. As a direct and proximate result of Herbalife's and the Beneficiaries'
5 and Promoters' violation of 18 U.S.C. § 1962(c), Bostick and the class were
6 induced to, and did, become distributors in the Herbalife Pyramid scheme and
7 purchased billions of dollars of the Herbalife products and recruited others to do the
8 same. Bostick and the class were injured by Herbalife's and the Beneficiaries' and
9 Promoters' unlawful conduct. The funds used to buy Herbalife products constitute
10 property of Bostick and the class within the meaning of 18 U.S.C. § 1964(c).

11 267. Under 18 U.S.C. § 1964(c), Bostick and the class are entitled to treble
12 their damages, plus interest, costs and attorney's fees.

13 **FOURTH CLAIM FOR RELIEF**

14 **(RICO 18 U.S.C. § 1962(d))**

15 **Against All Defendants**

16 268. Plaintiff realleges the previous allegations.

17 269. Herbalife and the Beneficiaries and Promoters agreed to work
18 together in a symbiotic relationship to carry on the illegal scheme. Under that
19 agreement, Herbalife International of America, Inc., Herbalife International, Inc.,
20 Herbalife, Ltd, the Beneficiaries and Promoters and others conspired to violate 18
21 U.S.C. § 1962(a) and (c), in violation of 18 U.S.C. § 1962(d).

22 270. As a direct and proximate result of Herbalife's and the Beneficiaries'
23 and Promoters' violation of 18 U.S.C. § 1962(d), Bostick and the class were injured
24 by Herbalife's and the Beneficiaries' and Promoters' unlawful conduct. The funds
25 used to buy Herbalife products constitute property of Bostick and the class under 18
26 U.S.C. § 1964(c).

27 271. Under 18 U.S.C. § 1964(c), Bostick and the class are entitled to treble
28 their damages, plus interest, costs and attorney's fees.

1 282. Defendants' business acts, false advertisements and materially
2 misleading omissions constitute unfair trade practices and false advertising, in
3 violation of the California Business and Professions Code § 17500, *et seq.*

4 283. Defendants engaged in false, unfair and misleading business practices,
5 consisting of false advertising and materially misleading omissions likely to deceive
6 the public and include, but are not limited to:

- 7 a. Defendants failing to disclose to consumers that they were entering
8 into an illegal pyramid scheme;
- 9 b. Defendants misrepresenting the money that a distributor would earn;
- 10 c. Defendants misrepresenting the "Packaging and Handling" fee in
11 connection with the "Shipping" fee. Defendants misrepresented the
12 fee as imposed to recover the costs associated with processing the
13 order, packaging the order, and handling the order. The "Packaging
14 and Handling" and shipping fees are a profit generator for Herbalife,
15 unrelated to the packaging, handling, and shipping of products and
16 designed to maximize Herbalife's overall profit. Herbalife made this
17 misrepresentation to all U.S. distributors.

18 284. Defendants' marketing and promotion of the illegal pyramid scheme
19 and the "Packaging and Handling" fee constitutes misleading, unfair, and fraudulent
20 advertising in connection with their false advertising to induce consumers to
21 purchase products and join the illegal pyramid scheme. Defendants knew or should
22 have known, in exercising reasonable care, that the statements they were making
23 were untrue or misleading and deceived members of the public. Defendants knew or
24 should have known, in exercising reasonable care, that distributors, including
25 Bostick, would rely, and relied on Defendants' misrepresentations and omissions.

26 285. Because of Defendants' untrue and/or misleading representations,
27 Defendants wrongfully acquired money from Bostick and the class members to
28 which it was not entitled. The Court should order Defendants to disgorge, for the

1 benefit of Bostick and all other Herbalife distributors in the class who signed a
2 Distributor Agreement with Herbalife governed by California law their profits and
3 compensation and/or make restitution to Bostick and the class.

4 286. Under California Business and Professions Code section 17535,
5 Plaintiff Bostick and the class seek a judicial order directing Defendants to cease
6 and desist with all false advertising related to the Defendants' illegal pyramid
7 scheme, and "Packaging and Handling" fee, and such other injunctive relief as the
8 Court finds just and appropriate.

9 **PRAYER FOR RELIEF**

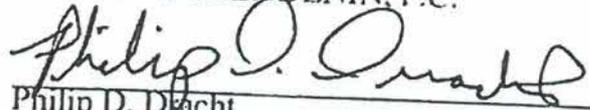
10 The named Plaintiff Bostick and the Plaintiff class request the following
11 relief:

- 12 a. Certification of the class;
- 13 b. A jury trial and judgment against Defendants;
- 14 c. Damages for the financial losses incurred by Bostick and by the class
15 because of the Herbalife Defendants' conduct and for injury to their business and
16 property, all because of the Herbalife Defendants' violations of § 1964(a), (c) and
17 (d) and that such sum be trebled under 18 U.S.C. § 1964(c);
- 18 d. Restitution and disgorgement of monies, under the California
19 Business Code;
- 20 e. Temporary and permanent injunctive relief enjoining Herbalife and
21 the Beneficiaries and Promoters working in concert with Defendant Herbalife from
22 further unfair, unlawful, fraudulent and/or deceptive acts, including, but not limited
23 to, false advertising;
- 24 f. The cost of suit including reasonable attorneys' fees under 18 U.S.C.
25 § 1964(c) and under California Code of Civil Procedure § 1021.5 and otherwise by
26 law.
- 27 g. For general, compensatory and exemplary damages in an amount yet
28 to be ascertained; and

1 h. For such other damages, relief and pre- and post-judgment interest as
2 the Court may deem just and proper.

3 DATED: April 8, 2013

FABIAN & CLENDENIN, P.C.


Philip D. Dracht

6 Thomas G. Foley, Jr.
7 Robert A. Curtis
8 FOLEY BEZEK BEHLE & CURTIS, LLP

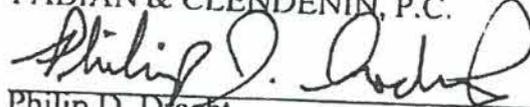
Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Bostick demands a jury trial as provided by Rule 38(a) of the Federal Rules
11 of Civil Procedure.

12
13 DATED: April 8, 2013

14 FABIAN & CLENDENIN, P.C.


16 Philip D. Dracht

17 Thomas G. Foley, Jr.
18 Robert A. Curtis
19 FOLEY BEZEK BEHLE & CURTIS, LLP

Attorneys for Plaintiff

20
21
22
23
24
25
26
27
28

1 BOIES, SCHILLER & FLEXNER LLP
 Jonathan D. Schiller (*pro hac vice* to be submitted)
 2 jschiller@bsfllp.com
 William S. Ohlemeyer (admitted *pro hac vice*)
 3 wohlemeyer@bsfllp.com
 Jonathan Sherman (admitted *pro hac vice*)
 4 jsherman@bsfllp.com
 5 575 Lexington Avenue
 New York, NY 10022
 Telephone: 212-446-2300
 6 Facsimile: 212-446-2350

7 David L. Zifkin (SBN 232845)
 8 dzifkin@bsfllp.com
 401 Wilshire Boulevard, Suite 805
 9 Santa Monica, CA 90401
 Telephone: 310-752-2400
 10 Facsimile: 310-752-2490

11 Attorneys for Defendants *Herbalife International of America, Inc., Herbalife*
 12 *International, Inc., and Herbalife Ltd.*

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA

15 DANA BOSTICK, a California citizen on
 16 behalf of himself and all others similarly
 17 situated, and on behalf of the general
 18 public,

19 Plaintiff,

20 v.

21 HERBALIFE INTERNATIONAL OF
 AMERICA, INC., a Nevada Corporation,
 22 HERBALIFE INTERNATIONAL, INC.,
 a Nevada Corporation, HERBALIFE,
 23 LTD, a Cayman Islands Corporation,

24 Defendants.

Case No. 13-cv-02488 BRO (RZx)

**DEFENDANTS' NOTICE OF
 MOTION AND MOTION TO
 DISMISS THE COMPLAINT
 PURSUANT TO FED. R. CIV. P.
 8, 9(b) AND 12(b)(6)**

Hon. Beverly Reid O'Connell

**Date: July 1, 2013
 Time: 1:30pm**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 4

ARGUMENT 5

I. Relevant Legal Standards for Motion to Dismiss..... 6

II. The Endless Chain Claim Must Be Dismissed..... 7

A. The Complaint Does Not Plead Plausible Facts—Much Less Ones
Satisfying Rule 9(b)—Alleging That Herbalife Operates an Endless
Chain Scheme..... 8

1. Bostick’s Own Representations and Allegations Establish That
He Understood Herbalife’s Sales Focus and that Significant
Commissions Income Was Unlikely: the Antithesis of a Pyramid
Scheme. 10

2. Bostick Concedes That Herbalife Does Not Require an Initial
Investment: The Threshold Determinant of a Pyramid Scheme..... 11

3. Bostick’s Complaint Establishes That Herbalife’s Commission
Payments Are Related to Product Sales to Ultimate Users: Thus It
Is Not a Pyramid Scheme..... 14

B. Bostick Has No Right to Rescission under California Law..... 18

III. The Court Should Dismiss Bostick’s Unfair Competition Law Claim for
Failure to State a Claim. 19

IV. The Court Should Dismiss Bostick’s False Advertising Law Claim for
Failure to State a Claim. 22

V. The RICO Claims Must Be Dismissed..... 23

A. The PSRLA’s RICO Amendment Bars Bostick’s RICO Claims. 23

B. Bostick’s §1962(a) Claim Fails Because the Complaint Does Not
Allege the Requisite Injury Caused by “Investment or Use of
Income.” 24

CONCLUSION..... 25

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Ashcroft v. Iqbal, 556 U.S. 662 (2009).....4, 6, 13

Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc., 189 F.3d 321 (3d Cir. 1999).....24

Baytree Capital Associates, LLC v. Quan, 2008 WL 4447647 (C.D. Cal. Sept. 29, 2008)25

Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).....6

Brittingham v. Mobil Corp., 943 F.2d 297 (3d Cir. 1991)25

Citizens for Open Access to Sand & Tide, Inc. v. Seadrift Ass’n, 60 Cal. App. 4th 1053 (1st Dist. 1998)10

Commerce Redevelopment Agency v. Am. Home Prods., Inc., 1993 WL 13005326 (C.D. Cal. Mar. 26, 1993).....21

Cullen v. Netflix, Inc., 2013 WL 140103 (N.D. Cal. Jan. 10, 2013)22

Das v. WMC Mortgage Corp., 831 F. Supp. 2d 1147 (N.D. Cal. 2011).....19

Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152 (9th Cir. 2012)20, 21, 22

Fisher v. Pennsylvania Life Co., 69 Cal. App. 3d 506 (2d Dist. 1977)21

Freedom Newspapers, Inc. v. Orange Cnty. Employees Ret. Sys., 6 Cal. 4th 821 (1993).....16

Herbalife International of America, Inc. v. Ford, CV 07-02529 (C.D. Cal. Aug. 25, 2009)12

Howard v. Am. Online Inc., 208 F.3d 741 (9th Cir. 2000).....23, 24

In re Amway Corp., 93 F.T.C. 618 (1979)13, 14, 16

In re City Equities Anaheim, Ltd., 22 F.3d 954 (9th Cir. 1994).....21

In re County of Orange, 31 F. Supp. 2d 768 (C.D. Cal. 1998)16

In re Koscot Interplanetary Inc., 86 F.T.C. 1106 (1975).....passim

Johnson v. Lucent Technologies Inc., 653 F.3d 1000 (9th Cir. 2011)25

Joshua Tree Townsite Co. v. Joshua Tree Land Co., 100 Cal. App. 2d 590 (4th Dist. 1950).....19

Metz v. United Counties Bancorp, 61 F. Supp. 2d 364 (D.N.J. 1999)24

MLSMK Inv. Co. v. JP Morgan Chase & Co., 651 F.3d 268 (2d Cir. 2011).....24

Mohamad v. Palestinian Auth., 132 S. Ct. 1702 (2012).....4

1 *Nugget Hydroelectric, L.P. v. Pac. Gas & Elec. Co.*, 981 F.2d 429 (9th
 2 Cir. 1992)..... 25
 3 *Papenfus v. Webb Prods. Co.*, 24 Cal. App. 2d 559 (4th Dist. 1938) 18
 4 *Parrino v. FHP, Inc.*, 146 F.3d 699 (9th Cir. 1998)..... 7
 5 *People v. Frederick*, 142 Cal. App. 4th 400 (2d Dist. 2006) 23
 6 *People v. Herbalife International, Inc.*, No. 92767 (Cal. Super. Ct.
 7 Santa Cruz Cty. Oct. 15, 1986) 9, 16
 8 *Reddy v. Litton Indus., Inc.*, 912 F.2d 291 (9th Cir. 1990)..... 25
 9 *S.E.C. v. Zandford*, 535 U.S. 813 (2002)..... 23
 10 *Sateriale v. R. J. Reynolds Tobacco.*, 697 F.3d 777 (9th Cir. 2012)..... 20, 23
 11 *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946)..... 23
 12 *Steckman v. Hart Brewing*, 143 F.3d 1293 (9th Cir. 1998)..... 6, 20
 13 *Swartz v. KPMG LLP*, 476 F.3d 756 (9th Cir. 2007)..... 7, 23
 14 *Trujillo v. Santa Clara Cnty.*, 775 F.2d 1359 (9th Cir. 1985)..... 9
 15 *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097 (9th Cir. 2003). 6
 16 *Wagh v. Metris Direct, Inc.*, 363 F.3d 821 (9th Cir. 2003)..... 25
 17 *Wayne v. Staples, Inc.*, 135 Cal. App. 4th 466 (2d Dist. 2006)..... 23
 18 *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776 (9th Cir. 1996) passim
 19 *Weisbuch v. County of Los Angeles*, 119 F.3d 778 (9th Cir. 1997) 3, 6
 20 *Westways World Travel v. AMR Corp.*, 182 F. Supp. 2d 952 (C.D. Cal.
 21 2001)..... 25
 22 *Whole Living, Inc. v. Tolman*, 344 F. Supp. 2d 739 (D. Utah 2004)..... 16

STATUTES

21 18 U.S.C. § 1962..... 24, 25
 22 18 U.S.C. § 1964..... 23
 23 Cal. Bus. & Prof. Code § 17200..... 9, 19
 24 Cal. Bus. & Prof. Code § 17204..... 20
 25 Cal. Bus. & Prof. Code § 17500 22
 26 Cal. Bus. & Prof. Code § 17535 22
 27 Cal. Civil Code § 1689.2 3, 8, 18
 28 Cal. Civil Code § 1691 18

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cal. Penal Code § 327passim
H.R. Rep. No. 104-369 (1995) 23
Pub. L. No. 104-67, § 107, 109 Stat 737 (1995)..... 23

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on July 1, at 1:30 p.m., in Courtroom 14 of
3 this Court, located at 312 North Spring Street, Los Angeles, California 90012,
4 Defendants Herbalife International of America, Inc., Herbalife International, Inc.,
5 and Herbalife Ltd. will and hereby move the Court for an order dismissing
6 Plaintiff's Complaint.

7 This Motion is made pursuant to Rules 8, 9(b) and 12(b)(6) of the Federal
8 Rules of Civil Procedure.

9 This motion is made following the conference of counsel pursuant to L.R. 7-
10 3, which took place on May 24, 2013.

11 The Motion will be based upon this Notice, the Memorandum of Points and
12 Authorities in Support of the Motion, the May 30, 2013 Declaration of David L.
13 Zifkin and exhibits thereto, all other pleadings and papers filed in this action, and
14 such further evidence and argument as may be presented at the hearing of this
15 matter.

16
17 DATED: May 30, 2013

BOIES, SCHILLER & FLEXNER LLP

18
19 /s/ William S. Ohlemeyer
20 William S. Ohlemeyer

21 Attorneys for Defendants Herbalife International
22 of America, Inc., Herbalife International, Inc. and
23 Herbalife Ltd.
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 Defendants Herbalife International of America, Inc., Herbalife International,
3 Inc. and Herbalife Ltd. (“Herbalife” or “Defendants”) submit this Memorandum of
4 Points and Authorities in support of their motion to dismiss Plaintiff Dana Bostick’s
5 (“Bostick” or “Plaintiff”) Class Action Complaint dated April 8, 2013 (the
6 “Complaint”).

PRELIMINARY STATEMENT

7
8 The Complaint fails to state a claim and must be dismissed with prejudice.
9 Not only do the allegations fail under well-established Ninth Circuit law but the
10 documents attached to, or referred to, in the Complaint contradict and disprove
11 Bostick’s allegations. In light of those documents—which Bostick understandably
12 would prefer the Court not see but which he cannot evade—repleading would be
13 futile.

14 The gravamen of the Complaint is that because Bostick has been unable to
15 exploit Herbalife’s legitimate multi-level marketing program—the risks and
16 potential rewards of which were fully disclosed to him—it must be an illegal
17 “endless chain” or “pyramid scheme.” All of Bostick’s allegations of wrongdoing
18 rise and fall on the very first two paragraphs of his Complaint: “Herbalife told
19 Dana Bostick” that if he put in “the time, effort, and commitment,” he could “make
20 money” as an Herbalife Distributor; but, in fact, “Bostick did not make money as
21 promised” because Herbalife “systematically rewards recruiting over retail sales.”
22 As Bostick himself alleges, a pyramid scheme is considered fraudulent because “the
23 futility of the plan is not apparent to the consumer participant.” (Compl. ¶ 20.)

24 Everything Bostick needed to know about Herbalife, and of which he now
25 complains, was “apparent to the consumer participant” at the time he became an
26 Herbalife Distributor—the challenges of making money as an Herbalife Distributor,
27 what it takes to generate income (whether selling to the general public or via
28 commissions on sales), the different discounts available to the different levels of
Distributors (which he complains had pernicious effects on his ability to compete)

1 and, most importantly, Herbalife’s consistent statement that it does not promise
2 success. All of this is contained in the very documents appended to the Complaint
3 (and, occasionally, conceded in the allegations of the Complaint itself, *e.g.*, ¶ 161).
4 The documents Bostick attached to his Complaint also show precisely how he could
5 “make money”—the very result he claims in the first sentence of his second
6 paragraph he could not achieve—as well as make “apparent” how difficult doing so
7 could be.

8 In order to become an Herbalife Distributor, and in contrast to the allegations
9 of his Complaint, Bostick “represent[ed], warrant[ed], and agree[d]” that he was
10 “not relying upon any representations as to the financial results [he] might achieve”
11 by distributing Herbalife products, and that he “[was] aware that the only required
12 purchase to become, succeed, or advance as an Herbalife Independent Distributor is
13 the [Mini International Business Pack] Mini-IBP,” which costs \$57.75. (Compl.
14 Ex. I § 3.) Bostick also “represent[ed], warrant[ed] and agree[d]” that he would
15 “review the Statement of Average Gross Compensation of U.S. Supervisors and the
16 Policy Statement on Business Methods both of which are contained in the Mini
17 IBP... and are available on www.MyHerbalife.com or upon request” from
18 Herbalife. (*Id.*) As the statement of average compensation makes clear, only a
19 small fraction of Herbalife Distributors generate commissions on sales based on the
20 sales made by other Distributors. (*E.g.*, Compl. Ex. A at 1.) In fact, and as Bostick
21 should have seen before he chose to become a Distributor—as his Complaint’s own
22 exhibits show—only one out of four Distributors qualify for additional
23 compensation based on sales generated by Herbalife Distributors they sponsor
24 directly or indirectly. Those same documents also show that the annual gross
25 compensation paid to such individuals averaged \$2900 in the year Bostick chose to
26 become an Herbalife Distributor; the median compensation level of \$741 was
27 disclosed to him without ambiguity in Exhibit A of Bostick’s own Complaint.

28 Bostick cannot, and does not, allege that Herbalife’s marketing program

1 shares the characteristics that have been found in virtually every pyramid scheme
2 identified in cases published in the past forty years: There is no allegation that
3 Herbalife requires Distributors to purchase any amount of Herbalife products as an
4 entrance fee; it doesn't. (Compl. Ex. C at 58 "Rule 2-A".) There is no allegation
5 that Herbalife required Bostick to purchase or keep minimum amounts of inventory;
6 it didn't (*id.*), and, in fact, the very document annexed as Exhibit H to the
7 Complaint cautions Distributors "not to order more than you can reasonably
8 consume and sell." (Compl. Ex. H at 19.) There is no allegation, other than a few
9 conclusory assertions, that Herbalife inflates the prices at which its Distributors sell
10 products; it does not, as Bostick himself grudgingly concedes elsewhere in the
11 Complaint. (Compl. ¶ 180.)

12 In other words, Bostick claims he was the victim of a business that required
13 him to buy nothing, offered him a discount on products he chose to purchase,
14 allowed him to return unused and unsold products for a full refund, and made it
15 clear to him that only a small percentage of individuals similarly situated could
16 expect to—as is true—generate significant income as a result of their relationship
17 with Herbalife. This lawsuit must be dismissed not simply because it fails under
18 the law on which it relies, but also because Bostick's central allegations are belied
19 by both (i) the very documents he attaches—and distorts—in the Complaint's
20 allegations and (ii) the documents to which the Complaint refers but which Bostick
21 tactically omits from its attachments. Taken together, the documents make clear
22 that Bostick has "pled [him]self out of court." *Weisbuch v. County of Los Angeles*,
23 119 F.3d 778, 783 n.1 (9th Cir. 1997) (quotation omitted). The pleadings and the
24 documents he has attached to the Complaint (and those that he omits) contradict his
25 claim(s) and demonstrate that he has not plead an actionable claim under the
26 "endless chain scheme" prohibition under section 1689.2 of the California Civil
27 Code (which references section 327 of the California Penal Code), unfair
28 competition/false advertising statutes, or RICO.

STATEMENT OF FACTS¹

The Complaint alleges that Bostick became an Herbalife Distributor on April 6, 2012 by signing an online Agreement of Distributorship. (Compl. ¶ 50 & Ex. I.) In this two-page agreement,² Bostick represented and warranted that he was “not relying upon any representations as to the financial results I might achieve,” that he was “aware that the only required purchase to become, succeed or advance as an Herbalife Independent Distributor is the \$57.75 Mini-IBP,” and that he had “received and reviewed the Statement of Average Gross Compensation of U.S. Supervisors and the Policy Statement on Business Methods.” (*Id.* Ex. I at 1-2.) Bostick further acknowledged that “I have the right to resell to Herbalife unused and resalable produces purchased from Herbalife and unused and resalable portions of the IBP” and agreed that “I may not order product primarily to qualify to earn compensation, as opposed to purchases for my own consumption and amounts I consider reasonable to service my customers.” (*Id.* Ex. I at 2.)

Bostick gave up on his distributorship once he discovered that he was unable to resell the Herbalife products he purchased by merely relying on a website to do his work for him.³ (*Id.* ¶ 54.) Rather than return the purchased products to Herbalife for a full refund, as he concedes he could have done,⁴ Bostick sued.

Bostick acknowledges that “[w]hen making statements about their wealth and the potential wealth for new recruits,” Herbalife and independent Distributors would “routinely” include a disclosure: “Incomes applicable to the individual (or example) depicted and not average. For average financial performance data, see the

¹ The allegations in the Complaint are treated as true solely for purposes of this motion to dismiss. *Mohamad v. Palestinian Auth.*, 132 S. Ct. 1702, 1705 (2012). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

² See Ex. C at 38-39, showing the printed version of the Agreement of Distributorship.

³ The Complaint does not specify when in the course of his *eight separate orders over more than three months* he made this discovery. (See *id.* ¶¶ 52, 54.)

⁴ Compl. at 48 n.6, Ex. C at 65.

1 Statement of Average Gross Compensation of U.S. Supervisors at Herbalife.com
2 and MyHerbalife.com.” (*Id.* ¶¶ 158, 161.) Bostick contends, however, that the
3 Statement of Average Gross Compensation of U.S. Supervisors misleads potential
4 Distributors by using a “cherry-picked data set” comprised of higher-earning
5 Distributors referred to (and openly defined) as “Active Leaders.” (*Id.* ¶¶ 162-63.)

6 Bostick also claims that his Herbalife distributorship was “doomed from the
7 start” because Herbalife’s business is purportedly an illegal endless chain scheme
8 based on a compensation structure that “systematically rewards recruiting of new
9 participants over retail sales.” (*Id.* ¶ 2.) Bostick alleges that Herbalife operates an
10 endless chain scheme because Distributors are pressured to make large initial
11 investments in order to succeed (*id.* ¶¶ 189-93) and because recruiting commissions
12 are derived from the products’ suggested retail price (“SRP”) when purchased by
13 Distributors, rather than the price obtained upon sale to the ultimate consumer (*id.*
14 ¶¶ 68, 182). Bostick claims that he thought it was necessary to “pay for his
15 position” by making a large order of Herbalife products, believing that this
16 purchase would entitle him to vault to “supervisor” status within Herbalife’s
17 business structure and thereby earn greater compensation. (*Id.* ¶ 53.)

18 But, as we show throughout, Bostick attaches a large number of documents
19 to the Complaint and refers to even more. Those documents contradict—and
20 overcome—the conclusory allegations of the Complaint.

21 ARGUMENT

22 As Bostick himself alleges, pyramid schemes are “inherently fraudulent by
23 nature because the futility of the plan is not apparent to the participant.” (Compl. ¶
24 20.) Accordingly, an endless chain perpetuates itself because the participants do
25 not realize that most “are doomed to failure.” (Compl. ¶ 18.) Bostick’s Complaint
26 is built on conclusory allegations concerning Herbalife that this Court is not
27 required to accept as true because they are contradicted by documents referred to in
28 the Complaint. *E.g., Steckman v. Hart Brewing*, 143 F.3d 1293, 1295-96 (9th Cir.

1 1998). The documents attached to the Complaint tell a far different story than the
2 conclusory allegations Bostick makes that Herbalife Distributors are “doomed to
3 failure,” and they surely make the reality of Herbalife “apparent to the participant.”
4 When taken into account, these documents show that Herbalife lacks the indicia
5 associated with pyramid schemes. Rather, Bostick’s own documents show
6 Herbalife to be an established, product-focused direct selling company that provides
7 a statement of average annual earnings to its Distributors up front, which offers to
8 buy back the inventory of Distributors who wish to terminate their relationship with
9 Herbalife, and which has a cluster of rules designed—in direct contrast to the
10 conclusions of the Complaint—to reward sales, not recruiting. Accordingly, under
11 well-established Ninth Circuit law, the Complaint must be dismissed. *Steckman*,
12 143 F.3d at 1295; *Weishbuch* 119 F.3d at 783 n.1 (“[A] plaintiff may plead herself
13 out of court. If the pleadings establish facts compelling a decision one way, that is
14 as good as if depositions and other expensively obtained evidence on summary
15 judgment establishes the identical facts.”) (citation and internal quotation omitted).

16 **I. RELEVANT LEGAL STANDARDS FOR MOTION TO DISMISS.**

17 A Complaint will be dismissed on a Rule 12(b)(6) motion unless it contains
18 “enough facts to state a claim to relief that is plausible on its face” *Bell Atl. Corp.*
19 *v. Twombly*, 550 U.S. 544, 570 (2007). “Threadbare recitals of the elements of a
20 cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
21 556 U.S. at 678 (2009). This means that Bostick must plead *facts* showing “more
22 than a sheer possibility that [Herbalife] has acted unlawfully. . . . Where a
23 complaint pleads facts that are merely consistent with a defendant’s liability, it
24 stops short of the line between possibility and plausibility of entitlement to relief.”
25 *Id.* (citations and quotations omitted). Moreover, Bostick’s claims must be pled
26 with particularity under Rule 9(b) because the gravamen of the Complaint is that
27 Herbalife operates by fraud. *E.g., Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,
28 1103-04 (9th Cir. 2003).

1 On this motion, the Court may properly consider the Complaint, its exhibits
2 and any documents not attached to the Complaint but otherwise incorporated by
3 reference. This includes materials such as International Business Pack (“IBP”)
4 materials and Herbalife’s marketing policies, which are referenced repeatedly in
5 Bostick’s Complaint and integral to his claims. *Swartz v. KPMG LLP*, 476 F.3d
6 756, 763 (9th Cir. 2007) (“[I]n order to prevent plaintiffs from surviving a Rule
7 12(b)(6) motion by deliberately omitting documents upon which their claims are
8 based, a court may consider a writing referenced in a complaint but not explicitly
9 incorporated therein if the complaint relies on the document and its authenticity is
10 unquestioned.”) (quotations omitted); *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th
11 Cir. 1998) (on a motion to dismiss, it was appropriate for the court to consider an
12 insurance plan not explicitly referenced in the complaint, but the terms of which
13 were essential to the complaint). Thus, Bostick cannot avoid dismissal by tactically
14 omitting from the Complaint or its exhibits materials such as Herbalife’s present
15 revisions to marketing policies that went into effect in August of 2012 (May 30,
16 2013 Declaration of David L. Zifkin (“Zifkin Decl.”) Ex. A), which were expressly
17 incorporated into his contract with Herbalife (Compl. Ex. I § 4)⁵ and which, as
18 discussed below, directly contradict the allegations in his Complaint.

19 **II. THE ENDLESS CHAIN CLAIM MUST BE DISMISSED.**

20 For the reasons explained below, Bostick’s first cause of action must be
21 dismissed because (i) he fails to plead facts sufficient to show that Herbalife is an
22 endless chain scheme and (ii) the allegations in the Complaint preclude his
23 entitlement to rescission, his only requested relief.

24
25
26
27 ⁵ Additionally, Bostick represented and warranted in his Agreement of
28 Distributorship that he “reviewed thoroughly” the Sales and Marketing Plan
(Compl. Ex. I § 3(a)), including the notice that “...Herbalife may post updates of
this Rule, updated disclaimers, and updated Average Gross Compensation of U.S.
Supervisors at MyHerbalife.com. Distributors are required to visit the website and
review these advisories or Rule changes with care” (*id.* Ex. C at 74).

1 **A. The Complaint Does Not Plead Plausible Facts—Much Less Ones**
 2 **Satisfying Rule 9(b)—Alleging That Herbalife Operates an Endless**
 3 **Chain Scheme.**

4 Bostick’s Complaint does not plead facts sufficient to show that Herbalife
 5 operates as an endless chain or pyramid scheme under California Penal Code
 6 section 327,⁶ as is required to state a civil claim under California Civil Code
 7 section 1689.2. There is no dispute that this question is determined by reference to
 8 the FTC’s *Koscot* standard, as adopted by the Ninth Circuit.⁷ *Webster v.*
 9 *Omnitrition Int’l, Inc.*, 79 F.3d 776, 781-82 (9th Cir. 1996). Under *Koscot*, a
 10 pyramid scheme “[is] characterized by the payment by participants of money to the
 11 company in return for which they receive (1) the right to sell a product and (2) the
 12 right to receive in return for recruiting other participants into the program rewards
 13 that are unrelated to the sale of product to ultimate users.” *In re Koscot*
 14 *Interplanetary Inc.*, 86 F.T.C. 1106, 1181 (1975).

15 In an attempt to shoehorn Herbalife into the *Koscot* and *Omnitrition*
 16 framework, Bostick’s Complaint is filled with conclusory allegations that he was
 17 misled by Herbalife with “promises” that he would make money and become a
 18 “rags-to-riches” success (*e.g.*, Compl. ¶¶ 2, 254) when in fact he was allegedly
 19 “doomed from the start” because Herbalife “systematically rewards recruiting over
 20 retail sales” (*id.* ¶ 2). Such conclusory allegations (insufficient under both Rule 8
 21 and Rule 9(b)) are belied by Bostick’s own Complaint and the documents
 22 referenced and incorporated therein,⁸ in addition to IBP documents and marketing

23 ⁶ “Every person who contrives, prepares, sets up, proposes, or operates any endless
 24 chain is guilty of a public offense As used in this section, an “endless chain”
 25 means any scheme for the disposal or distribution of property whereby a participant
 26 pays a valuable consideration for the chance to receive compensation for
 27 introducing one or more additional persons into participation in the scheme or for
 28 the chance to receive compensation when a person introduced by the participant
 introduces a new participant. ...” Cal. Penal Code § 327, in pertinent part.

⁷ In *Omnitrition*, the Ninth Circuit found California’s endless chain statute, Penal
 Code § 327, to be “equivalent, if not identical” to the *Koscot* test. 79 F.3d at 787.
⁸ Such documents consist of, *inter alia*, Bostick’s contract with Herbalife (Ex. I)
 and selected documents that Bostick received in his IBP (Compl. Exs. C, G, and H),
 including a version of Herbalife’s marketing policies that was superseded shortly
 after Bostick became a Distributor. (*See* Zifkin Decl. Ex. A.) This Court may (and
 should) take account of these documents on this motion. *See supra* § I.

1 policy updates that Bostick intentionally withheld from the Court.⁹

2 While the Complaint goes into great and unnecessary detail regarding
3 Herbalife's marketing plan in an attempt to manufacture the appearance of factual
4 issues (Compl. ¶¶ 58-131), Bostick fails to acknowledge that California's Attorney
5 General has previously scrutinized Herbalife's compliance with the state's anti-
6 pyramiding and unfair competition statutes—the very statutes on which Bostick
7 bases his Complaint. As disclosed in the Herbalife 10-Ks on which Bostick
8 repeatedly relies and references (Compl. ¶¶ 84, 102, 106), in 1986, Herbalife and
9 the Attorney General consented to the entry of a Final Judgment and Permanent
10 Injunction against Herbalife that settled the section 327 and 17200 claims then
11 pending against it. Notably, this consent order allowed Herbalife to continue to pay
12 commissions and determine Distributor rank based on "retail sales," which were
13 defined to include:

14 A sale of defendants' product(s) in any of the following situations: (1)
15 to persons who are not part of defendant's marketing program or
16 distribution system; or, (2) to persons who are not buying to become
17 part of defendants' marketing program or distribution system; or, (3)
18 to persons who, although desirous of becoming or who are a part of
19 defendants' marketing plan or distribution system are buying for their
20 own personal or family use.

21 *People v. Herbalife Int'l, Inc.*, No. 92767, at 11 (Cal. Super. Ct. Santa Cruz Cty.
22 Oct. 15, 1986). Bostick's attempts to re-litigate issues finally adjudicated long
23 before he became a Distributor should be rejected. *Trujillo v. Santa Clara Cnty.*,
24 775 F.2d 1359, 1367 (9th Cir. 1985) ("[W]hen statutory authority to sue has been
25 given specifically to a public entity, a judgment in such a suit is res judicata as to all
26 those for whose benefit it is prosecuted.") (quotations omitted); *Citizens for Open*

27 _____
28 ⁹ In a misleading attempt to shift focus away from Herbalife's dedication to product
sales, Bostick includes in the exhibits to his Complaint IBP handbooks 1, 2, and 4
(Ex. G, H, and C) but omits Book 2, entitled "Using & Retailing Your Products."
(See Compl. ¶ 49.)

1 *Access to Sand & Tide, Inc. v. Seadrift Ass'n*, 60 Cal. App. 4th 1053, 1065 (1st
2 Dist. 1998) (“A judgment entered by consent or stipulation is as conclusive a bar as
3 a judgment rendered after trial.”) (quotation and citation omitted).

4 Bostick fails to state a claim because his Complaint and the documents
5 referenced therein and available to this Court for review establish that (i) Bostick
6 was well-informed (and, indeed, represented and warranted) that most Distributors
7 do not achieve Sales Leader status, and even of those that do, most make only
8 modest, if any, income from commissions; (ii) Herbalife does not require any initial
9 investment for the right to sell products or receive commissions—the threshold test
10 under *Koscot*; and (iii) that Herbalife’s payments of commissions are based on sales
11 to ultimate users in accordance with the law.

12 **1. Bostick’s Own Representations and Allegations Establish**
13 **That He Understood Herbalife’s Sales Focus and that**
14 **Significant Commissions Income Was Unlikely: the**
Antithesis of a Pyramid Scheme.

15 Bostick knew that he was not guaranteed success as an Herbalife Distributor
16 and that most of even Herbalife’s most successful leaders made only modest
17 amounts of commission income. Nonetheless, to paint Herbalife as a self-
18 advertised get-rich-quick scheme, Bostick’s Complaint makes reference to various
19 literature and videos from Herbalife and entities not associated with it, which he
20 claims contain “misrepresentations about the income that a recruit or a distributor
21 can realize by becoming a distributor.” (Compl. ¶ 277.) Bostick concludes that
22 “grand overstatements regarding distributors’ potential earnings... are part of a
23 pattern and practice” by Herbalife to mislead prospective Distributors. (*Id.* ¶ 277.)

24 Bostick does not allege that he viewed all of the Herbalife and third-party
25 materials mentioned in the Complaint (*e.g., id.* ¶¶ 151-157), much less that he relied
26 on them (reasonably or not) or believed that he was likely to make significant
27 income by becoming an Herbalife Distributor. Rather, he alleges that after viewing
28 certain third party materials attached in Exhibit E, in addition to Herbalife’s website

1 and other unspecified websites, he believed Herbalife would be a business “where
2 he *could* earn both monthly income and residual income.” (*Id.* ¶ 48. (emphasis
3 added).) No reasonable potential Distributor could have so relied on these
4 materials, and Bostick’s claims that he did are belied by his own contractual
5 agreement and the allegations in his Complaint (*e.g., id.* ¶ 48).

6 After viewing Exhibit E, Bostick ordered an IBP from Herbalife. (*Id.* ¶¶ 48-
7 49.) Bostick concedes that he reviewed the IBP and the documents therein,
8 including the contents of Exhibit C. (*Id.* ¶ 49.) Such documents included a
9 Statement of Average Gross Compensation of U.S. Supervisors (the “2010
10 Statement”), which states that (i) only approximately one in four Distributors will
11 qualify for Supervisor (which is necessary to receive royalties and bonuses for
12 downline sales), (ii) only 37% of Supervisors are active (meeting a minimum
13 volume threshold), and (iii) the average active Supervisor is paid only \$812 in
14 commissions annually. (*Id.* Ex. C at 17.) Thus, Bostick knew that even the top
15 Herbalife Distributors, on average, earn only a modest amount of income.

16 **2. Bostick Concedes That Herbalife Does Not Require an**
17 **Initial Investment: The Threshold Determinant of a**
18 **Pyramid Scheme.**

19 Bostick’s endless chain scheme claim must be dismissed because the
20 allegations of the Complaint establish that Herbalife does not require an initial
21 investment of money to participate—the threshold requirement under *Koscot*.
22 Bostick concedes that the only payment required of a Distributor to join Herbalife is
23 the \$57.75 (refundable) cost of the mini IBP. (Compl. ¶¶ 34, 189.) *Bostick further*
24 *concedes that the price of the IBP does not constitute “a payment or initial*
25 *disbursement by a new participant for the right to sell products and the right to*
26 *receive rewards.”* (*Id.* ¶¶ 188-89 (emphasis added)). Bostick further acknowledges
27 that he entered into a contract with Herbalife (*id.* ¶ 50) in which he represented and
28 agreed that he had received and “reviewed thoroughly” the marketing plan and
rules contained in the IBP and was aware that no purchase other than the IBP was

1 required “to become, succeed or advance as an Herbalife Independent Distributor.”
2 (*Id.* Ex. I at §§ 3(a), 3(c).)

3 Bostick further concedes—as he must in light of Herbalife’s marketing
4 plan—that a Distributor can become a supervisor (which is required to earn certain
5 types of commissions) “without purchasing or reselling any Herbalife products.”
6 (*Id.* ¶ 91.) This concession is fatal to Bostick’s attempts to rely on *Omnitrition*. In
7 *Omnitrition*, the Ninth Circuit, reversing a grant of summary judgment in favor of
8 the marketer, stated that the fact that supervisors had to make large purchases of
9 inventory precluded a finding as a matter of law that Omnitrition did not operate as
10 a pyramid scheme:

11 *To become a supervisor, a participant must pay a substantial amount*
12 *of money to Omnitrition in the form of large monthly product orders.*
13 *... In exchange for these purchases, the supervisor receives the right*
14 *to sell the products and earn compensation based on product orders*
15 *made the supervisor’s recruits. The “payment of money” element of a*
16 *pyramid scheme can be met where the participant is required to*
17 *purchase “non returnable” inventory in order to receive the full*
18 *benefits of the program.”*

19 79 F.3d at 782 (emphasis added). Bostick similarly misapprehends this Court’s
20 decision in *Herbalife International of America, Inc. v. Ford*, CV 07-02529 (C.D.
21 Cal. Aug. 25, 2009) as requiring a contrary result. (Compl. ¶ 92.) In *Ford*, the
22 Court held that “a genuine issue as to whether Herbalife distributors must pay
23 Herbalife to become supervisors—a threshold requirement under the *Koscot*
24 analysis—precludes the Court from granting summary judgment for either side on
25 the endless-chain-scheme claim.” *Id.* at 16. Here, by contrast to both cases,
26 Bostick has conceded that no payments are required.

27 To be sure, Bostick alleges that Herbalife encourages Distributors to make
28 large, initial inventory purchases. But, here again, Bostick’s concessions doom the

1 Complaint. Mere encouragement is not enough to meet the first part of the *Koscot*
 2 test concerning a required purchase. Bostick (as discussed above) concedes that an
 3 investment is not *required* to advance to supervisor.¹⁰ (Compl. ¶ 91.) The FTC has
 4 noted that, as with a traditional chain letter, pyramid schemes (including that at
 5 issue in *Koscot*) typically require recruits to “pay a large sum of money,” which is
 6 then used to reward the recruiters via new recruiting. *In re Amway Corp.*, 93 F.T.C.
 7 618, 715-16 (1979). Bostick’s Complaint *acknowledges* that no inventory
 8 purchases are required and the incorporated marketing policy makes clear that no
 9 headhunting fees are paid. (Compl. Ex. C. at 58 (sponsor may not collect “any
 10 markup or profit” on sale of IBP.”).)

11 Bostick’s conclusory assertions that Herbalife “encourages” the overpurchase
 12 of inventory or so-called “inventory loading” are belied by what he omits from his
 13 Complaint: numerous statements by Herbalife that show just the opposite. He
 14 selectively quotes from Herbalife’s “Building Your Business” handbook to imply
 15 that Distributors are encouraged to purchase and maintain inventory. (*Id.* ¶¶ 191-
 16 92.) But he leaves out Herbalife’s express warnings: Distributors should “*be*
 17 *careful not to order more than you can reasonably consume or sell.*” (*Id.* Ex. H.
 18 at 19; emphasis added). And the Complaint conveniently omits from its slew of
 19 exhibits Herbalife’s Policy Statement on Expenditures by New Distributors, which
 20 was issued by Herbalife while Bostick was a Distributor and which has been
 21 included in the IBP as part of Herbalife’s Sales & Marketing Plan and Business
 22 Rules handbook since August 2012, shortly after Bostick became a Distributor.

23
 24 ¹⁰ Bostick’s allegations that *he* failed to earn retail profit with the base 25%
 25 discount cannot support the weight of his claim that success is impossible for entry-
 26 level Distributors. Herbalife’s “Your Business Basics” (as annexed to Exhibit G of
 27 Bostick’s complaint and which Bostick represented to have reviewed thoroughly)
 28 highlights the importance of personal relationships to the direct selling industry and
 suggests that a Distributor initially market products to people that the Distributor
 already has a personal relationship with, while also providing suggestions on “ways
 to talk” to others that the Distributor “do[esn’t] necessarily know.” (Compl. Ex. G
 at 13-15.) Bostick’s personal business failure is more plausibly related to his
 disregard of this advice (by pursuing only impersonal online sales) and does not
 satisfy his pleading burden. *Iqbal*, 556 U.S. at 678 (2009).

1 This advisory expressly counsels Distributors against purchasing large starting
2 inventories, over committing, and taking on debt. (Zifkin Decl. Ex. A at 53; *see*
3 *supra* § I.)

4 Further, only “non returnable” inventory can be considered a “payment of
5 money” sufficient to satisfy *Koscot*’s threshold requirement. *Omnitrition*, 79 F.3d
6 at 782 (*citing Amway*, 93 F.T.C. 618, 715-16). By contrast, as explained below, it
7 is undisputed that Herbalife offers a yearlong return period on inventory purchases.
8 Thus, even were the Court to find that Bostick has adequately alleged the existence
9 of inventory loading—which he has not—it would still be insufficient to state an
10 endless chain claim because it constitutes only one of the two required elements of
11 the *Koscot* test.

12 **3. Bostick’s Complaint Establishes That Herbalife’s**
13 **Commission Payments Are Related to Product Sales to**
14 **Ultimate Users: Thus It Is Not a Pyramid Scheme.**

15 Cutting through the Complaint’s rhetoric, Bostick’s main theory is that
16 Herbalife’s payments of commissions are unrelated to the sale of products to
17 ultimate users. For this point, his Complaint relies extensively on *Omnitrition*.
18 (*See, e.g.*, Compl. ¶¶ 187, 193, 196-97, 203.) But, in fact, the documents attached
19 to the Complaint (and the Complaint itself) show that Herbalife’s sales and
20 marketing structure contains the very characteristics found missing in *Omnitrition*.

21 First, Bostick misconstrues *Omnitrition* in arguing, without more, that
22 allegations that a multi-level marketer calculates commission payments based on
23 the SRP of downline Distributor purchases is sufficient to satisfy the *Koscot* test for
24 identifying a pyramid scheme. (*E.g.*, Compl. ¶ 193.) *Omnitrition* reversed a grant
25 of summary judgment for a multi-level-marketer because, on the record before it,
26 whether the marketer required an initial purchase of product was a question of fact.
27 In so ruling, the Court was particularly influenced by the “recruitment focus” of
28 that firm’s marketing program. 79 F.3d at 782. The court noted that the “promise
of lucrative rewards for recruiting others tends to induce participants to focus on the

1 recruitment side of the business at the expense of their retail marketing efforts.” *Id.*
2 Of course, as discussed above (*see* section (I)(A)(1)), that does not characterize
3 Herbalife. The Complaint’s own documents show that Herbalife makes clear that
4 even active Distributors are likely to earn, at most, only modest commissions
5 income.

6 Second, Bostick misconstrues *Omnitrition* by arguing that Herbalife’s
7 payment of commissions based on a Distributor’s purchase of products for his own
8 consumption satisfies the *Koscot* test for identifying a pyramid scheme. (Compl. ¶¶
9 196-97). In *Omnitrition*, in holding that fact questions required a trial to determine
10 whether the marketer was a pyramid scheme, the Ninth Circuit expressed concern
11 that *Omnitrition* did not treat its distributor-consumers the same as its non-
12 distributor consumers because distributor-consumers were not afforded a
13 satisfaction guarantee. 79 F.3d at 783 n.5. This is not the case here, where it is
14 beyond dispute that Herbalife has offered, since August 2012, a satisfaction
15 guarantee to both Distributor and non-Distributor consumers of its products.
16 (Zifkin Decl. Ex. A at 23.)

17 The *Omnitrition* court’s concern that distributor consumers were not
18 “ultimate users” under *Koscot* was fundamentally tied to the facts of *Omnitrition*
19 and its plan’s “recruitment focus.” Any broader interpretation of that decision—for
20 example, one in which sales to distributors for their own consumption may not be
21 counted as a sale to “ultimate users”—would mean that no multi-level marketing
22 firm could ever survive section 327 scrutiny. This is a sweeping result the
23 legislature could not possibly have intended. The statute is specific and clear, and
24 its very specificity demonstrates that if the legislature had intended to outlaw all
25 multi-level marketing firms (all of which, by definition, sell to some distributors for
26 the purpose of consumption), it would have said so. Cal. Penal Code § 327 (“an
27 ‘endless chain’ means any scheme ... whereby a participant pays a valuable
28 consideration *for the chance to receive compensation for introducing one or more*

1 *additional persons into participation in the scheme* or for the chance to receive
2 compensation when a person introduced by the participant introduces a new
3 participant.”).¹¹ The Complaint does not allege that Herbalife Distributors are paid
4 for locating new Distributors. Further—a factor not present in *Omnitrition* —
5 reading the statute to mean that sales to Distributors do not “count” as legitimate
6 sales would gut the Attorney General’s approval of Herbalife’s business model
7 under this very statute, *People v. Herbalife, supra*, and would not show the
8 Attorney General the proper level of deference, especially as it concerns a state
9 criminal statute. *See Freedom Newspapers, Inc. v. Orange Cnty. Employees Ret.*
10 *Sys.*, 6 Cal. 4th 821, 829 (1993) (“While the Attorney General’s views do not bind
11 us, they are entitled to considerable weight.”) (citations omitted); *accord In re*
12 *County of Orange*, 31 F. Supp. 2d 768 (C.D. Cal. 1998). Other courts have
13 similarly declined to read *Omnitrition* too broadly.¹²

14 Herbalife’s business and marketing/business model are utterly unlike the
15 “recruitment-focused” plan in *Omnitrition*. Herbalife’s business marketing policies
16 are geared to incentivize product sales and not the mere purchase of products for
17 advancement or commissions. Herbalife prohibits Distributors from purchasing
18 inventory for purposes of generating commissions, cautions Distributors not to
19 purchase more inventory than they can sell or consume, and offers to buy-back
20 unsold inventory if a Distributor chooses to exit the business. All of this is

21
22 ¹¹ The Attorney General of California’s current guidance on endless chain schemes
23 recognizes the legitimacy of distributor purchases for personal use. Ca. DOJ, OAG
24 “Pyramid Schemes” [http://oag.ca.gov/consumers/general/pyramid_schemes]
25 (“The difference between a pyramid scheme and a legitimate multi level marketing
26 plan is that in the latter, money is only made through the eventual retail sale of a
product to an end user. It is unlawful if Mr. Washington and Mr. Jefferson obtain
commissions by selling the cosmetics to another distributor, who is buying the
cosmetics *not for their personal use*, but merely to recruit others into joining the
scheme.”) (emphasis added).

27 ¹² *E.g., Whole Living, Inc. v. Tolman*, 344 F. Supp. 2d 739, 745 (D. Utah 2004)
28 (“Defendants misread the relevant case law. A structure that allows commissions
on downline purchases by other distributors does not, by itself, render a multi-level
marketing scheme an illegal pyramid. If it did, the Amway Plan would have been
an illegal pyramid scheme because its distributors received commissions on
purchases by their downline distributors.”) (*citing Amway*, 93 F.T.C. at 20 n.24).

1 demonstrated in the documents appended to Bostick’s Complaint.

2 In becoming an Herbalife Distributor, Bostick (like all Herbalife
3 Distributors) agreed not to “order product primarily to qualify to earn
4 compensation, as opposed to purchases for my own consumption and amounts I
5 consider reasonable to service my customers.” (Compl. Ex. I § 7(d).) Bostick
6 further represented that he had thoroughly reviewed Herbalife’s rules (*id.* § 3),
7 which provide that “[t]he purchase of products primarily as an attempt to qualify for
8 advancement in the Marketing Plan is not permitted.” (*Id.* Ex. C. at 71, Rule 18-A.)
9 Bostick’s Complaint acknowledges that he violated these rules by purchasing a
10 large amount of products solely for advancement (*id.* ¶ 53), and, remarkably,
11 Bostick now seeks legal redress precisely because his breach of contract did not net
12 the benefit for which he had hoped.

13 That Herbalife cautioned against purchasing more than a Distributor could
14 sell or consume is not surprising, because, as Bostick’s Complaint acknowledges,
15 Herbalife’s rules obligated it to buy back unused, unsold inventory purchased by an
16 exiting Distributor within the past twelve months. (*Id.* ¶ 209.) Further, the rules
17 provide that any commissions paid to a recruiter for inventory returned by a
18 downline Distributor are clawed back by Herbalife. (*Id.* Ex. C at 65 “Rule 11-D.”)
19 Thus, Herbalife precludes an upline Distributor from profiting from any inventory
20 that a resigning downline cannot retail and takes away any incentive for an upline
21 to encourage his recruits to inventory-load at the expense of building a sustainable
22 and lasting retail business. Herbalife’s twelve-month buy-back policy provides,
23 moreover, substantially greater time in which to return purchased inventory than the
24 3-month policy at issue in *Omnitrition*. 79 F.3d at 783-84.

25 Bostick’s attacks on the sufficiency of Herbalife’s buy-back policy—of
26 which he never sought to avail himself—fail. First, Bostick alleges that Herbalife
27 previously imposed a 10% restocking fee, but acknowledges that Herbalife
28 eliminated this fee in mid-2012 (only a few months after Bostick became a

1 Distributor). (Compl. ¶¶ 209, 211.) Second, Bostick alleges that Herbalife did not
2 refund its processing and handling fee (*id.* ¶ 209), but fails to note that the same
3 rules that eliminated the restocking fee also made this fee refundable. (Zifkin Decl.
4 Ex. A at 65-66 “Rule 10-D”).

5 In short, the Complaint, its exhibits and the documents incorporated therein
6 show that Herbalife’s policies pass the *Koscot* test and *Omnitrition*’s gloss on
7 *Koscot* by tying commissions to sales to ultimate users, whether those be
8 consumers outside of the network or personal-consumption by Distributors who
9 joined Herbalife to avail themselves of wholesale purchasing discounts.
10 Accordingly, Bostick’s first claim for relief must be dismissed because he does not
11 allege an endless chain scheme.

12 **B. Bostick Has No Right to Rescission under California Law.**

13 Under applicable California law, Bostick is not entitled to rescission of his
14 contracts with Herbalife, which is the sole remedy for his endless chain claim (other
15 than reasonable attorney’s fees). Cal. Civ. Code § 1689.2; Compl. ¶ 231 (seeking
16 only rescission). Claims for rescission under California law are governed by
17 California Civil Code § 1691, which requires the party seeking rescission to: (1)
18 give prompt notice of rescission to his counterparty, and (2) restore to the
19 counterparty everything of value he received under the relevant contract. Bostick
20 has fulfilled neither of these statutory requirements and is therefore not entitled to
21 the remedy he seeks under Section 1689.2.

22 Bostick could easily have complied with the statute by terminating his
23 distributorship and availing himself of Herbalife’s year-long buy-back policy.
24 Instead he brought litigation without notice. Rescission is therefore an inequitable
25 remedy.¹³ *Papenfus v. Webb Prods. Co.*, 24 Cal. App. 2d 559, 563 (4th Dist. 1938)
26 (“It is a general rule that a rescission will not be enforced where it would be
27

28 ¹³ That Bostick alleges a basis for rescission sounding in fraud is no excuse.
Barnette v. Wells Fargo Nevada Nat. Bank of San Francisco, 270 U.S. 438, 444
(1926).

1 inequitable to do so.”). He should not be permitted to obtain through a court’s
 2 equitable powers that which he could have obtained for himself without the aid of
 3 the court.¹⁴

4 In any event, the Complaint concedes that Bostick has rendered himself
 5 incapable of effecting rescission under § 1691 because he alleges that he self-
 6 consumed or gave away whatever products he was not able to sell “at or around his
 7 purchase cost.” (Compl. ¶ 55.) Under California law, “[r]escission is not allowable
 8 where the party demanding it cannot or does not restore the other party to the
 9 condition he would have been in but for the contract.” *Joshua Tree Townsite Co. v.*
 10 *Joshua Tree Land Co.*, 100 Cal. App. 2d 590, 596 (4th Dist. 1950); *Das v. WMC*
 11 *Mortgage Corp.*, 831 F. Supp. 2d 1147, 1162 (N.D. Cal. 2011) (dismissing claim
 12 for rescission because “to state a valid claim for rescission, Plaintiffs must at least
 13 allege that they have offered to tender to support a claim for equitable rescission
 14 under section 1691”). Bostick is not permitted to dispose of products he purchased
 15 from Herbalife and then seek rescission, which by definition requires tendering
 16 back the benefits he received under the contract.

17 **III. THE COURT SHOULD DISMISS BOSTICK’S UNFAIR**
 18 **COMPETITION LAW CLAIM FOR FAILURE TO STATE A CLAIM.**

19 Bostick’s claim under California Business and Professions Code sections
 20 17200, *et seq.* (the “UCL” claim) must also be dismissed. Bostick supports his
 21 UCL claim with four allegations, all which fail for the same reasons that his endless
 22 chain scheme allegations fail: Herbalife operates a legal direct-selling business
 23 (entirely consistent with the Attorney General’s interpretation of the law) and
 24 Bostick has no basis for asserting that Herbalife made any promises—whether
 25 supporting an alleged endless chain scheme or not—that Distributors would achieve
 26

27 ¹⁴ Rescission is an equitable remedy. It would be particularly inequitable to order it
 28 here where (i) Herbalife has relied for nearly three decades on the court-ordered
 consent decree with the Attorney General, the state official responsible for
 enforcing section 327; and (ii) Bostick knew about that reliance via Herbalife’s
 public filings.

1 specific levels of success.

2 The claims also fail for two additional reasons: (i) no reasonable consumer
3 would be misled by the alleged misrepresentations and (ii) Bostick does not allege
4 reliance because, as is true throughout the Complaint, the documents attached to the
5 Complaint continuously contradict his conclusory assertions of reliance. *See, e.g.,*
6 Compl. ¶ 259; *Steckman*, 143 F.3d at 1295-96 (“[W]e are not required to accept as
7 true conclusory allegations which are contradicted by documents referred to in the
8 complaint.”).

9 Under the UCL, a business practice is fraudulent only if the public is likely to
10 be deceived, judged by the effect the practice would have on a reasonable
11 consumer. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1169 (9th Cir. 2012)
12 (affirming dismissal of UCL and False Advertising Law claims in light of “other
13 restrictions apply” disclaimer in the allegedly misleading advertisement). To
14 establish standing to bring a UCL claim, a plaintiff must demonstrate reliance: *i.e.*,
15 that he suffered injury as a result of the fraudulent practice at issue. Cal. Bus. &
16 Prof. Code § 17204 (“Actions for relief pursuant to this chapter shall be prosecuted
17 exclusively . . . by a person who has suffered injury in fact and has lost money or
18 property as a result of the unfair competition.”); *Sateriale v. R. J. Reynolds*
19 *Tobacco.*, 697 F.3d 777, 793 (9th Cir. 2012) (“Because the plaintiffs’ UCL claim
20 sounds in fraud, they are required to prove actual reliance on the allegedly
21 deceptive or misleading statements, and that the misrepresentation was an
22 immediate cause of their injury-producing conduct.”) (citations and quotation
23 omitted). As an initial matter, Bostick’s Complaint fails to allege that he even
24 viewed most of the materials mentioned in the Complaint, much less that he relied
25 on them in deciding to join Herbalife or purchase products, or that such reliance
26 caused his harm. This is insufficient to state a claim under *Sateriale*. Even if he
27 viewed these materials, however, Bostick cannot show that he, or a reasonable
28 consumer, relied on the statements he claims are misleading. Bostick concedes that

1 Herbalife and third-party materials alike “routinely refer the readers or viewers ...
2 to the Herbalife Statement of Average Gross Compensation of U.S. Supervisors”
3 and that they routinely state: “incomes applicable to the individual (or example)
4 depicted are not average.” (Compl. ¶ 158.) The 2010 Statement itself provides
5 that:

6 The figures stated above are not a guarantee nor are they a projection
7 of a typical Distributor’s earnings or profits. Like any other
8 independent business, the achievement *or failure* of a Distributor
9 depends upon his or her skill set, commitment and desire to succeed.

10 (*Id.* Ex. C. at 17 (emphasis added).) In light of such disclaimers and the data in the
11 average income statements, “no reasonable consumer could have believed” that
12 success was guaranteed, or (as with most business ventures) even likely. *Davis*,
13 691 F.3d at 1162.

14 Further, in his contract with Herbalife—which Bostick agrees “constitutes
15 the entire agreement”—Bostick represents, warrants, and agrees that he has
16 “received and reviewed thoroughly the contents of a previously unopened Herbalife
17 IBP,” that he is “not relying upon any representations as the financial results [he]
18 might achieve,” and that he has “received and reviewed the Statement of Average
19 Gross Compensation of U.S. Supervisors.” (Compl. Ex. I at 1-3.) These
20 admissions are fatal to Bostick’s claims that he was lured into Herbalife with
21 promises of riches. *E.g.*, *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 958 (9th
22 Cir. 1994) (no reasonable reliance where party in its contract “expressly and
23 unambiguously admitted that it was not relying on any inducements not contained
24 therein.”); *Commerce Redevelopment Agency v. Am. Home Prods., Inc.*, 1993 WL
25 13005326, at *14 (C.D. Cal. Mar. 26, 1993) (“Agency’s representation that it relied
26 solely upon its own investigation is binding under California law.”); *Fisher v.*
27 *Pennsylvania Life Co.*, 69 Cal. App. 3d 506, 511 (2d Dist. 1977) (Because plaintiff,
28 in a contract, “agreed that he had not relied on the representations on which he now

1 seeks recovery, he cannot now claim otherwise.”).

2 Bostick’s UCL claim should be dismissed.

3 **IV. THE COURT SHOULD DISMISS BOSTICK’S FALSE**
4 **ADVERTISING LAW CLAIM FOR FAILURE TO STATE A CLAIM.**

5 Bostick alleges the following three false advertising practices by Herbalife:

6 (i) that Herbalife failed to disclose to consumers that they would be entering into a
7 pyramid scheme; (ii) that Herbalife misrepresented the compensation that a
8 Distributor would earn; and (iii) that Herbalife misrepresented that shipping and
9 packaging and handling (“P&H”) fees were imposed to recover costs, as opposed to
10 being profit generators for Herbalife. (Compl. ¶ 283.)

11 As with his UCL claim, Bostick fails to state a False Advertising Law
12 (“FAL”) claim under California Business and Professions Code section 17500.
13 Bostick’s first two allegations fail for the same reasons they fail under section 327
14 and the UCL: there was no pyramid scheme and there were no misrepresentations
15 about compensation.

16 Bostick’s third FAL claim fails because Herbalife fully discloses how the
17 shipping and P&H fees are calculated and applied in the IBP—a disclosure that
18 Bostick represented, warranted, and agreed he “received and reviewed thoroughly.”
19 (Compl. Ex. I.) The nature of the charges is made crystal clear in a “frequently
20 asked questions” section of the IBP materials and the included product order form.
21 (*Id.* Ex. C at 31, 40.) The IBP materials also make clear that the fees are used to
22 recoup the company’s “processing, handling *and marketing*” costs (as opposed to
23 mere freight expenditures). (*Id.* Ex. C at 31 (emphasis added).) As with his UCL
24 claim, Bostick cannot show that a reasonable consumer would rely on contrary
25 representations (to the extent any exist) and thus be likely to be deceived (as is
26 required to state an FAL claim) or that Bostick so relied to his detriment, a
27 prerequisite for standing. Cal. Bus. & Prof. Code § 17535; *Davis*, 691 F.3d at
28 1162; *Cullen v. Netflix, Inc.*, 2013 WL 140103, at *4 (N.D. Cal. Jan. 10, 2013)
 (“Because Plaintiff’s claims ‘sound in fraud’ he must plead with particularity

1 ‘actual reliance’ on the allegedly deceptive, fraudulent, or misleading statements.”)
 2 (citing *Sateriale*, 697 F.3d at 793). Accordingly, there is no actionable injury
 3 alleged. *E.g.*, *Wayne v. Staples, Inc.*, 135 Cal. App. 4th 466, 484 (2d Dist. 2006)
 4 (“In light of Staples’ clear disclosure of the actual price it would charge its
 5 customers for declared value coverage prior to any purchase, the trial court properly
 6 concluded any ambiguity in the order form as to whether the amount charged
 7 includes a “surcharge” or profit for Staples was not misleading or deceptive.”).

8 **V. THE RICO CLAIMS MUST BE DISMISSED.**

9 **A. The PSRLA’s RICO Amendment Bars Bostick’s RICO Claims.**

10 Section 107 of the PSLRA amended 18 U.S.C. § 1964(c) of the RICO
 11 statute¹⁵ to provide that “no person may rely upon any conduct that would have
 12 been actionable as fraud in the purchase or sale of securities to establish a [RICO
 13 violation]. *See* Pub. L. No. 104–67, § 107, 109 Stat 737, 758 (1995).¹⁶ As
 14 amended, § 1964(c) bars RICO claims based on alleged “fraud in connection with
 15 the sale of securities.” *Swartz v. KPMG LLP*, 476 F.3d 756, 761 (9th Cir. 2007);
 16 *accord S.E.C. v. Zandford*, 535 U.S. 813, 822 (2002). Under California law,
 17 investments in a pyramid scheme constitute an “investment contract” under state
 18 securities laws. *People v. Frederick*, 142 Cal. App. 4th 400, 413 (2d Dist. 2006);
 19 *see also SEC v. W.J. Howey Co.*, 328 U.S. 293, at 298 (1946) (expressly adopting
 20 state courts’ definition of “investment contract” under state ‘blue sky’ securities
 21 laws to define “securities” under federal securities law). Thus the Ninth Circuit, in

22
 23 ¹⁵ To state a claim under RICO, Bostick must plead sufficiently at least two RICO
 24 predicate acts. *Howard v. Am. Online Inc.*, 208 F.3d 741, 746 (9th Cir. 2000). The
 25 Complaint purports to allege nine RICO predicate acts to support its Second, Third,
 26 and Fourth Claims for Relief (the “RICO Claims”), but every one of these
 27 allegations turns upon Bostick’s failed allegations that Herbalife operates a pyramid
 28 scheme. Accordingly, the RICO Claims should be dismissed for the independent
 29 reason that Bostick alleges no viable predicate acts.

30 ¹⁶ Congress intended not simply “to eliminate securities fraud as a predicate offense
 31 in a civil RICO action,” but also to prevent a plaintiff from “pleading other
 32 specified offenses, such as mail or wire fraud, as predicate acts under civil RICO if
 33 such offenses are based on conduct that would have been actionable as securities
 34 fraud.” H.R. Rep. No. 104-369, at 47 (1995) (affirming dismissal of a RICO claim
 35 predicated upon conduct that could give rise to “securities fraud claims . . . by a
 36 plaintiff with proper standing”).

1 *Omnitrition*, 79 F.3d at 784, declared “[w]e hold that operation of a pyramid
2 scheme violates 10b-5’s prohibition against engaging in an ‘act, practice or course
3 of business which operates as a fraud or deceit upon any person.’” *Accord Bald*
4 *Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, 330 (3d Cir. 1999)
5 (“conduct undertaken to keep a securities fraud Ponzi scheme alive is conduct
6 undertaken in connection with the purchase and sale of securities.”).

7 The PSLRA’s RICO amendment therefore proscribes asserting RICO claims
8 based upon conduct said to be in furtherance of a pyramid scheme. The Complaint
9 here alleges a scheme actionable as securities fraud by asserting, in every single one
10 of its predicate acts, the existence of an “illegal Pyramid,” some including “material
11 misrepresentations.” (See, e.g., Compl. ¶ 236 (“Herbalife Enterprise” existed “to
12 operate an illegal pyramid scheme.”)).

13 That Bostick does not himself plead a securities claim is of no moment.
14 Bostick’s RICO Claims are barred whether or not he brings—or even has standing
15 to bring—a securities fraud claim. See *Howard*, 208 F.3d at 749 (rejecting
16 argument that the PSLRA RICO bar does not apply with plaintiffs that lack
17 standing to bring a securities fraud claim); *MLSMK Inv. Co. v. JP Morgan Chase &*
18 *Co.*, 651 F.3d 268, 277 (2d Cir. 2011) (“We conclude that section 107 of the
19 PSLRA bars civil RICO claims alleging predicate acts of securities fraud, even
20 where a plaintiff cannot itself pursue a securities fraud action against the
21 defendant.”); *Metz v. United Counties Bancorp*, 61 F. Supp. 2d 364, 370-71 (D.N.J.
22 1999) (PSLRA RICO amendment barred employees’ claims that they were misled
23 about their post-merger employee benefits because the statements at issue were
24 actionable by *investors* as securities fraud, even though most of the employees were
25 not investors and had no standing to bring securities fraud claims themselves).

26 **B. Bostick’s §1962(a) Claim Fails Because the Complaint Does Not**
27 **Allege the Requisite Injury Caused by “Investment or Use of**
28 **Income.”**

Congress intended § 1962(a) to provide a remedy for those injured by money

1 laundering and similar investments of racketeering proceeds. *Brittingham v. Mobil*
2 *Corp.*, 943 F.2d 297, 303 (3d Cir. 1991); *cf. Nugget Hydroelectric, L.P. v. Pac. Gas*
3 *& Elec. Co.*, 981 F.2d 429, 437 (9th Cir. 1992). “[A] plaintiff seeking civil
4 damages for a violation of section 1962(a) must allege facts tending to show that he
5 or she was injured by the use or investment of racketeering income.” *Nugget*, 981
6 F.2d at 437; *Baytree Capital Assocs., LLC v. Quan*, 2008 WL 4447647 (C.D. Cal.
7 Sept. 29, 2008) (dismissing section 1962(a) claims where the plaintiff “failed to
8 allege any separate ‘investment injury.’”). To plead a claim under § 1962(a),
9 Bostick must “state facts which amount to an injury to [Bostick] arising from
10 Defendants’ use or investment of racketeering income, as opposed to injury from
11 the predicate racketeering acts themselves.” *Westways World Travel v. AMR Corp.*,
12 182 F. Supp. 2d 952, 961 (C.D. Cal. 2001).

13 The Complaint does not meet this standard. Bostick alleges that “Bostick
14 and the class were injured by the reinvestment of the racketeering income into the
15 Herbalife Enterprise.” (Compl. ¶ 244.) But the Ninth Circuit has expressly rejected
16 Bostick’s “reinvestment” allegations as the basis for a § 1962(a) claim. *Wagh v.*
17 *Metris Direct, Inc.*, 363 F.3d 821, 829 (9th Cir. 2003) (“the acquisition and
18 reinvestment of the proceeds of racketeering activity in the general affairs of an
19 enterprise does not qualify as investment injury”) (citations and quotations
20 omitted).

21 CONCLUSION

22 For the reasons stated above, Defendants respectfully request that the Court
23 dismiss the Complaint in its entirety, with prejudice.¹⁷
24
25
26

27 ¹⁷ *Johnson v. Lucent Technologies Inc.*, 653 F.3d 1000, 1012 (9th Cir. 2011)
28 (affirming dismissal with prejudice, holding “[w]e fail to see how [plaintiff] could
have amended his pleadings to cure their deficiencies without contradicting the
factual allegations in his complaint. Leave to amend would have therefore been
futile.”); *Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296-97 (9th Cir. 1990) (same).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: May 30, 2013

BOIES, SCHILLER & FLEXNER LLP

/s/ William S. Ohlemeyer
William S. Ohlemeyer

Attorneys for Defendants Herbalife International
of America, Inc., Herbalife International, Inc. and
Herbalife Ltd.

Source: Herbalife Independent Distributor Presentation

If I Can Do It

Everything is really easy. If I can do it, you can do it as well.

—Mark Hughes



**Herbalife's Disclosure
of Distributor
Earnings is
Inadequate**

Every Herbalife Distributor Sees the Company's Disclosure of Distributor Earnings

FINAL TRANSCRIPT

Nov. 28. 2007 / 1:00PM, HLF - HERBALIFE LTD Analyst Meeting

Michael Johnson - *Herbalife Limited - Chairman and CEO*

We are transparent with our earnings potential among supervisors. The staff on this page which is the average gross compensation of U.S. supervisors is a public document, it is available on our website and is part of our introductory business pack that all new distributors receive. So, every new distributor in this Company knows exactly where they stand and what their opportunity is inside the Company.

Herbalife's Previous Disclosure of Distributor Earnings



Herbalife offers its Distributors an opportunity to achieve a lifetime of better health through its scientifically advanced weight management and nutrition products. While many of our Distributors join the Herbalife family simply to enjoy our life-changing products, others want to share their results and take advantage of the many income benefits our business opportunity provides. With Herbalife, you can work part-time and earn a supplemental income, or focus solely on your Herbalife Distributorship and increase your financial potential. It's completely up to the individual how much he or she wants to achieve! A Distributor earns profits by buying Herbalife products at wholesale and reselling them at retail. If the Distributor wants to increase his or her involvement in the business and enjoy the possibility of higher levels of income, he or she may sponsor others into the business and develop an organization.

Over 25% of Distributors reach the rank of Supervisor and above ("Leader") and pay them for additional compensation which is paid by Herbalife based upon the sales production of those they have sponsored directly and indirectly. The annual gross compensation paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over 39% of Supervisors are "Active" (defined as those who generated at least 2,500 points of volume in 2011 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2011 averaged approximately \$7,300.

STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

| Active Leaders | % of Total Leaders | % of Active Leaders | Average Earnings (USD) |
|------------------|--------------------|---------------------|------------------------|
| Earning Level | | | |
| President's Team | 0.2% | 0.6% | \$ 515,689 |
| Millionaire Team | 0.7% | 1.7% | \$ 100,195 |
| GET | 2.6% | 6.2% | \$ 22,786 |
| World Team | 2.9% | 7.3% | \$ 6,224 |
| Supervisor | 33.1% | 83.8% | \$ 901 |
| Total | 39.4% | 100.0% | \$ 7,348 |

The amounts above are in addition to and do not include profits earned on the resale of products to consumers or other Distributors.

The figures stated above are not a guarantee nor are they a projection of a typical Distributor's earnings or profits. Like any other independent business, the achievement or failure of a Distributor depends upon his or her skill set, commitment and desire to succeed. At Herbalife, the opportunity to earn more is always available to each and every Distributor.

Published: 03/02/12

The table in Herbalife's disclosure of Distributor earnings only included "Active" Sales Leaders. Inactive Sales Leaders and Non-Sales Leaders were excluded

Prior Issue #1: 93% of Distributors Excluded from the Table

Herbalife excluded from the table the 93% of its U.S. Distributor base earning \$0 in “Gross Compensation” (Inactive Sales Leaders and Non-Sales Leaders)

| Active Leaders | | | % of Total Distributors |
|------------------|--------------------|---------------------|-------------------------|
| Earning Level | % of Total Leaders | % of Active Leaders | Average Earnings (USD) |
| President's Team | 0.2% | 0.6% | \$ 515,689 |
| Millionaire Team | 0.7% | 1.7% | \$ 100,195 |
| GET | 2.6% | 6.5% | \$ 22,766 |
| World Team | 2.9% | 7.3% | \$ 6,224 |
| Supervisor | 33.1% | 83.9% | \$ 901 |
| Total | 39.4% | 100.0% | \$ 7,348 |

Inactive Sales Leaders 60.6% \$ 0⁽¹⁾ **10.7%**

Non-Sales Leaders \$ 0 **82.3%**

100.0%

(1) Per the Company's disclosure, Inactive Sales Leaders must not be earning any Royalty Overrides [(39.4%)*(\$7,348) = \$2,900, which implies Inactive Supervisors "Gross Compensation" must be \$0].

93% of Distributors Excluded from the Table (Cont'd)

Consumers should be informed of the number and percentage of zero-earning Distributors

Source: *FTC v. Trek Alliance*, No. 02-9270 (C.D. Cal. June 24, 2003).

- A. Failing to disclose, clearly and conspicuously, before any consumer becomes a Marketing Program participant, all information material to a consumer's decision to participate in the Marketing Program, including but not limited to the following:
- (1) The number and percentage of current Marketing Program participants who have not received any commissions, bonuses or overrides;

Prior Issue #2: “Gross” “Earnings”

Herbalife’s prior Statement of “Gross” Compensation referred to “Average Earnings,” but it was not adjusted for Distributor expenses

STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

| Active Leaders | | | Average Earnings (USD) |
|------------------|--------------------|---------------------|------------------------|
| Earning Level | % of Total Leaders | % of Active Leaders | |
| President’s Team | 0.2% | 0.6% | \$ 513,689 |
| Millionaire Team | 0.7% | 1.7% | \$ 100,195 |
| GET | 2.6% | 6.5% | \$ 22,766 |
| World Team | 2.9% | 7.3% | \$ 6,224 |
| Supervisor | 33.1% | 83.9% | \$ 901 |
| Total | 39.4% | 100.0% | \$ 7,348 |

The amounts above are in addition to and do not include profits earned on the resale of products to consumers or other Distributors.

Published: 03/02/12

“Gross” “Earnings” (Cont’d)

After David Einhorn questioned the company on a conference call, Herbalife revised its disclosure to explain that “Earnings” are before expenses. For at least 10 years, Herbalife had not disclosed this fact to its U.S. Distributors⁽¹⁾

STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

| ACTIVE LEADERS | | | | |
|------------------|--------------------|---------------------|-------------------------------------|---------------------------|
| Earning Level | % of Total Leaders | % of Active Leaders | Average Earnings Compensation (USD) | Median Compensation (USD) |
| President's Team | 0.2 % | 0.6 % | \$ 514,638 | \$ 336,901 |
| Millionaire Team | 0.7 % | 1.7 % | \$ 100,195 | \$ 97,303 |
| Get Team | 2.6 % | 6.5 % | \$ 22,766 | \$ 19,417 |
| World Team | 2.9 % | 7.3 % | \$ 6,224 | \$ 5,659 |
| Supervisor | 33.1 % | 83.9 % | \$ 901 | \$ 475 |
| Total | 39.4 % | 100 % | \$ 7,354 | \$ 637 |

The amounts above do not include the income Distributors can earn from their retail or wholesale income, so the actual compensation can be somewhat higher, depending upon each Distributor's personal-selling effort. Also, the figures above are gross, not net income.

Revised: 07/25/12

(1) Source: Herbalife Statement(s) of Average Gross Compensation of U.S. Supervisors 2002 through 2011.

Failing to Disclose Expenses

This itemized list of Business Support Materials below comes from the blog of a former Herbalife Non-Sales Leader Distributor showing nearly \$2,000 of expenses in only three months, excluding Herbalife product purchases. The Company seldom acknowledges these costs exist

| DATE | COST | DESCRIPTION |
|-------------------|----------|--|
| 03-Aug-09 | \$449.00 | charged by my upline Distributor for Distributorship sign up + remaining cost of decision pkg. |
| 17-Aug-09 | \$562.62 | charged for leads purchased from Online Marketing Solutions |
| 17-Aug-09 | \$112.52 | charged for website access from The Online Business |
| 18-Aug-09 | \$991.26 | charged by Herbalife for an order put in by my upline Distributor and had sent to me |
| 26-Aug-09 | \$25.00 | Merchant Account |
| 27-Aug-09 | \$75.00 | Merchant Account |
| 14-Sep-09 | \$39.55 | charged for new style Decision Package sent to lead |
| 15-Sep-09 | \$55.94 | charged by The Online Business System for website access |
| 21-Sep-09 | \$35.00 | Merchant Account |
| 03-Oct-09 | \$112.22 | charged by Herbalife for website setup for one year |
| 14-Oct-09 | \$168.00 | charged for Online Business System supplies that my upline Distributor order I pay for |
| 15-Oct-09 | \$52.74 | charged by The Online Business System for website access |
| 21-Oct-09 | \$35.00 | Merchant Account |
| \$2,713.85 | | GRAND TOTAL |

\$2,713.85 GRAND TOTAL

<http://www.irishparr.com/what-online-business-systems-and-herbalife-don%E2%80%99t-tell-you/>

In Jacobs v Herbalife, a class action lawsuit of 8,800 Distributors against the company, average Sales Leader expenses were ~\$10,000⁽¹⁾

(1) *Jacobs v Herbalife International, Inc.*, Case No. CV-02-1431 (U.S.D.J., C.D. Cal.). Declaration of Michael Rosenbaum, sworn to August 23, 2005. Rosenbaum, managing director of claims administrator, sent 8,822 notices to potential class members and received back 2,701 claims. Submitted claims totaled \$27,345,366 and averaged \$10,124 per claimant. The highest totaled \$128,241.

Prior Issue #3: Cherry-Picking “Active” Leaders

Herbalife used multiple definitions of the term “Active.” In its public filings, it broadly defines “Active” Sales Leaders. In its Distributor earnings disclosure, it used a narrower definition

STATEMENT OF AVERAGE GROSS COMPENSATION
OF U.S. SUPERVISORS – 2011

| ACTIVE LEADERS | |
|------------------|--------------------|
| Earning Level | % of Total Leaders |
| President's Team | 0.2 % |
| Millionaire Team | 0.7 % |
| Get Team | 2.6 % |
| World Team | 2.9 % |
| Supervisor | 33.1 % |
| Total | 39.4 % |

Herbalife Regional Key Metrics - Reclassified for 6 Regions

| North America | 2011 |
|--------------------------|--------------|
| Volume Points (in 000) | 987,082 |
| Net Sales (\$ in 000) | 688,631 |
| New Distributors | 260,513 |
| Avg Active Sales Leaders | 56,741 |
| Total Sales Leaders | 108,211 |
| % Active | 52.4% |

Source: Herbalife Regional Key Metrics supplement. Consistent with this disclosure, Herbalife reported 56,741 Average Active Sales Leaders in North America for the year ended 12/31/11 in its 2011 10-K.

Herbalife cherry-picked the highest earning “Active” Supervisors for its Distributor earnings disclosure

Prior Issue #4: “Over 25% of Distributors reach Supervisor”

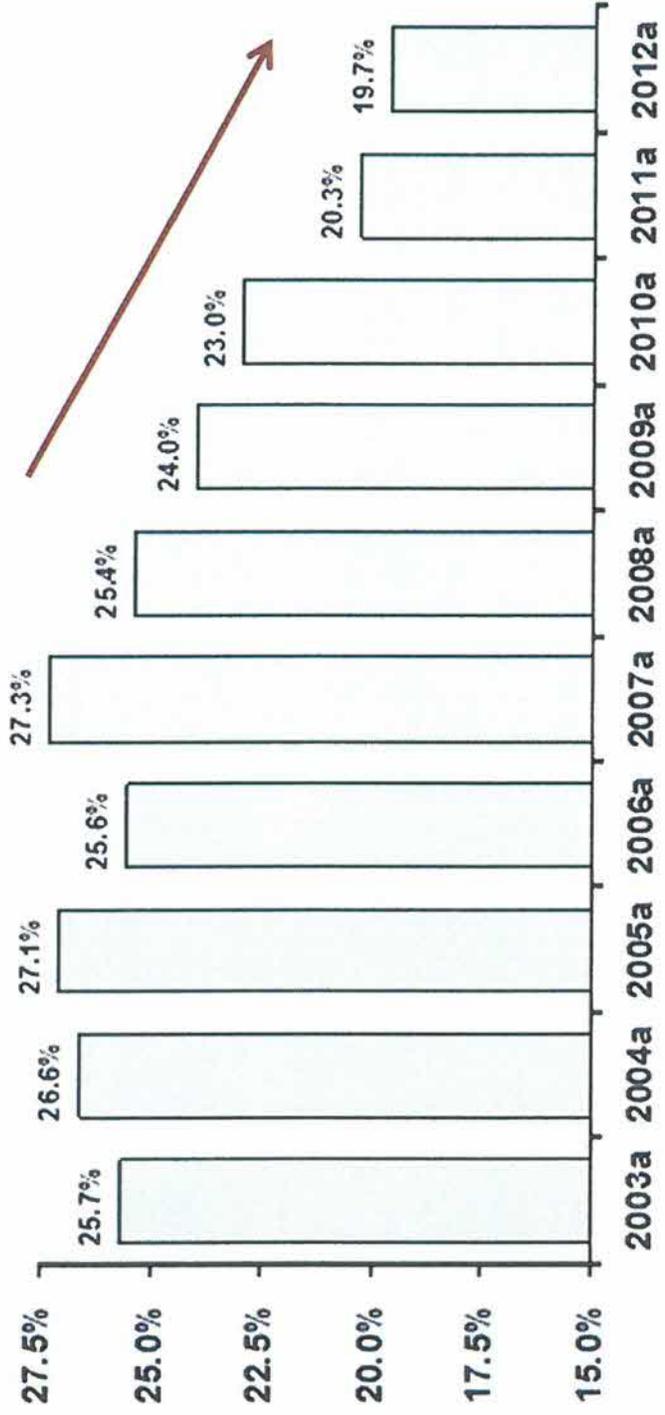
Herbalife stated that “over 25% of Distributors reach the rank of Supervisor and above,” implying a new distributor has a one-in-four chance of being in one of the table’s earnings brackets (so long as they are “Active”)

Over 25% of Distributors reach the rank of Supervisor and above (“Leader”), qualifying them for additional compensation which is paid by Herbalife based upon the sales production of those they have sponsored directly and indirectly. The annual gross compensation paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over 39% of Supervisors are “Active” (defined as those who generated at least 2,500 points of volume in 2011 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2011 averaged approximately \$7,300.

“Over 25% of Distributors reach Supervisor” (cont’d)

Herbalife had made this statement in each of its U.S. distributor earnings disclosures since 2003, even though Sales Leaders as a % of total distributors has been lower than 25% since 2009

% of Total Distributors that are Sales Leaders (1)



(1) Represents % of total distributors that are Sales Leaders for the entire company. Herbalife does not break out total distributors by region. Source: Herbalife public filings, Herbalife's Regional Key Metrics supplemental disclosure, and Herbalife Q1'09 Investor Presentation.

But even this percentage is overstated...

“Over 25% of Distributors reach Supervisor” (Cont’d)

To determine what % of distributors make Sales Leader:

Don’t ask:

what is the ratio of Sales Leaders to distributors?

Ask:

what is the ratio of new Sales Leaders to new distributors?

In 2011, Herbalife stopped disclosing New Sales Leaders

North America Distributor Mix

| | 2009a | | | | 2010a | | | | Total |
|-----------------------|---|--------|--------|--------|--------|--------|--------|--------|---------|
| | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | |
| New Sales Leaders (1) | 7,893 | 10,633 | 10,569 | 9,153 | 8,127 | 12,558 | 11,035 | 9,451 | 79,419 |
| New distributors (2) | 50,738 | 59,712 | 58,586 | 49,642 | 60,453 | 71,223 | 64,662 | 52,075 | 467,091 |
| | Ratio of New Sales Leaders to New Distributors | | | | | | | | |
| | 17.0% | | | | | | | | |

Only about one-out-of-six distributors makes Sales Leader rather than one-out-of-four

(1) 2009 Source: Regional Key Metrics (2009); 2010 Source: Herbalife public filings.

(2) Source: Regional Key Metrics (2011).

Prior Issue #5: Getting to the Top is Much Harder than Advertised

Herbalife overstates a participant's likelihood of getting to the top of the pyramid

Manual de Entrenamiento para

Distribuidores Herbalife

MAYORISTA: SER O NO SER?

QUE SE NECESITA?

- ES IMPOSIBLE LLEGAR A LA SEGUNDA BASE SI SU PIE TODAVIA ESTÁ EN LA PRIMERA. Tiene usted miedo de dejar la primera base?
- Desafíese. ESTABLEZCA SUS METAS PROPIAS. Acuérdese que los únicos que fracasan en la vida son aquellos que no lo intentaron. Usted no puede alcanzar una meta si no la establece primero
- SEA RESPONSABLE DE UD. MISMO. No culpe a los otros por su fracaso, no se queje. Usted es responsable por usted mismo y su negocio.

Use, Wear, Talk → President's Team in two years

- NO SE CONCENTRE EN "COMO HACER DINERO". "Olvídense de cuanto gana usted o las personas de su línea ascendente y concéntrese en cuanto ganan los DISTRIBUIDORES que dependen de Ud."

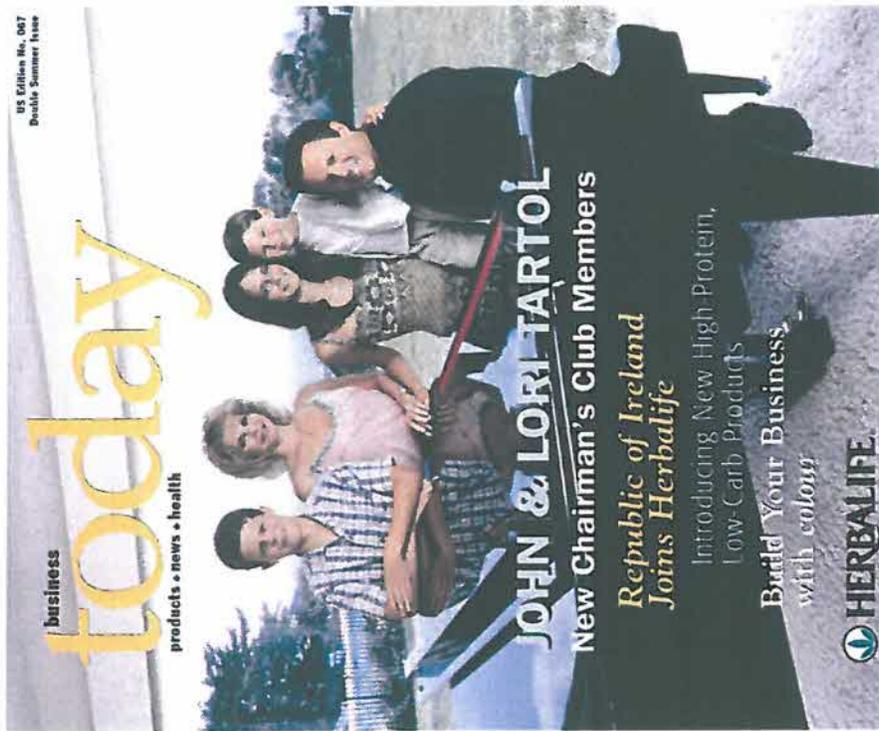
• USE, LLEVE Y HABLE -> EL EQUIPO DE LOS PRESIDENTES EN 2 AÑOS ⁽¹⁾

Source: Manual de Entrenamiento para Distribuidores Herbalife (Buenos Aires, 2001).

(1) Translation: "Use, Wear and Talk → President's Team in two years."

Getting to the Top is Much Harder than Advertised (Cont'd)

John Tartol, Chairman's Club member and an Herbalife director, stated in an Herbalife newsletter that Distributors today could make it to the President's Team in less than three years



US Edition No. 067
Double Summer Issue

business
products • news • health

today

JOHN & LORI TARTOL
New Chairman's Club Members

*Republic of Ireland
Joins Herbalife*

Introducing New High-Protein,
Low-Carb Products

Build Your Business
with *colony*

HERBALIFE

**The Luck
of the Irish Now
Includes Herbalife**
Herbalife welcomes its 49th country!

**In three years, Lori
and John became
members of the
President's Team.**

"Distributors can make it even faster today than we did," says John. "There are so many more sales and marketing tools now and a support system everyone can plug into. We're not only working for ourselves, but for the Company as a whole. When a team succeeds, there's more for everyone!"

Getting to the Top is Much Harder than Advertised (Cont'd)

Herbalife entered Ireland in 2000. Ten years later not a single Irish Distributor had even made it to Millionaire Team

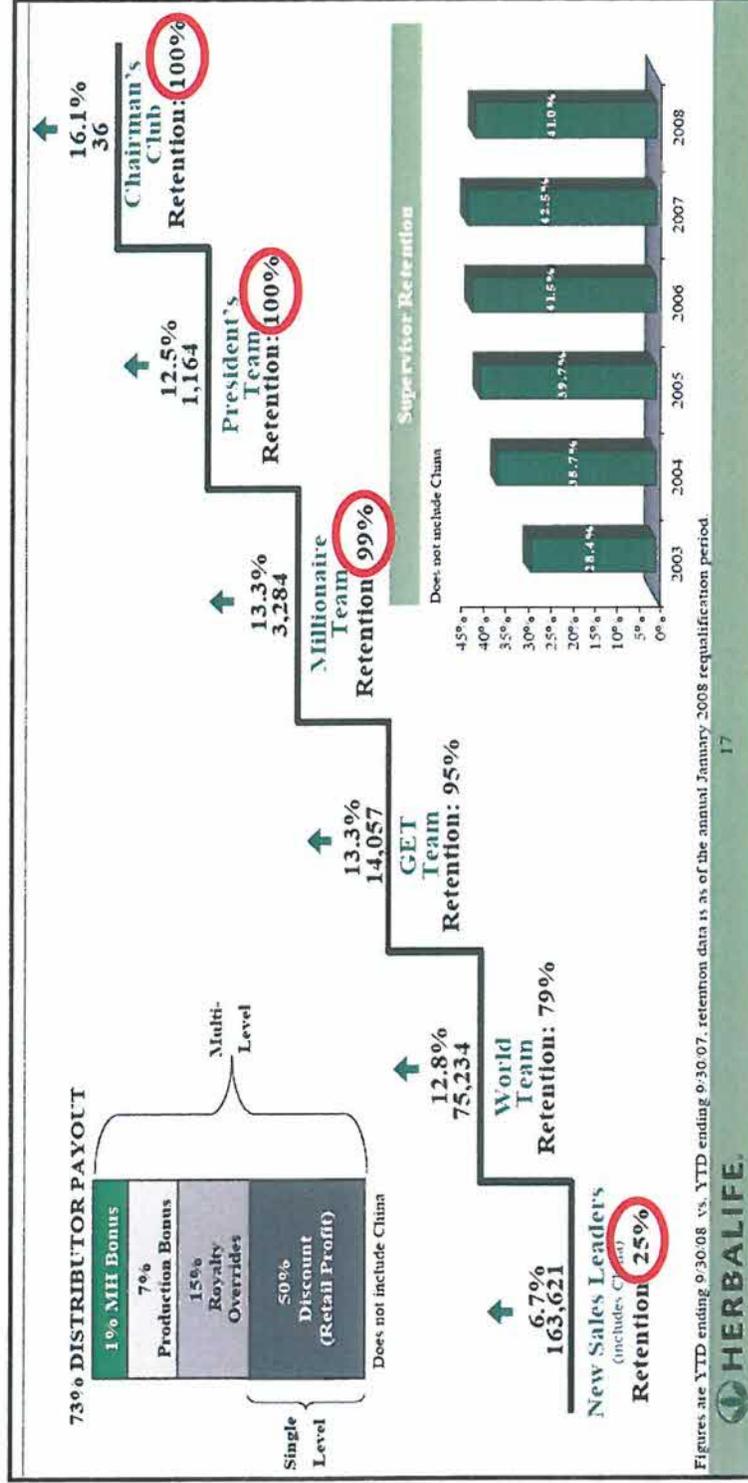
Statement of Average Gross Compensation of Irish Supervisors

Over 21% of Distributors ranked as Supervisor and above ("Leader"), qualifying them for additional compensation which is paid by Herbalife based upon the sales production of those they have sponsored directly or indirectly. The annual gross compensation paid by Herbalife, in addition to profits earned on the resale of products to consumers or other Distributors, to all Leaders during 2010 averaged €1,500. Over 42% of Supervisors are "Active" (defined as those who generated at least 2,500 points of volume in 2010 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2010 averaged approximately €3,700.

| Active Leaders | % of Total Leaders | % of Active Leaders | Average Earnings (EUR) |
|------------------|--------------------|---------------------|------------------------|
| Earning Level | | | |
| President's Team | 0.0% | 0.0% | 0 |
| Millionaire Team | 0.0% | 0.0% | 0 |
| GET | 3.6% | 8.4% | 32,614 |
| World Team | 2.7% | 6.3% | 5,003 |
| Supervisor | 36.5% | 85.3% | 761 |
| Total | 42.8% | 100.0% | EUR 3,711 |

Getting to the Top is Much Harder than Advertised (Cont'd)

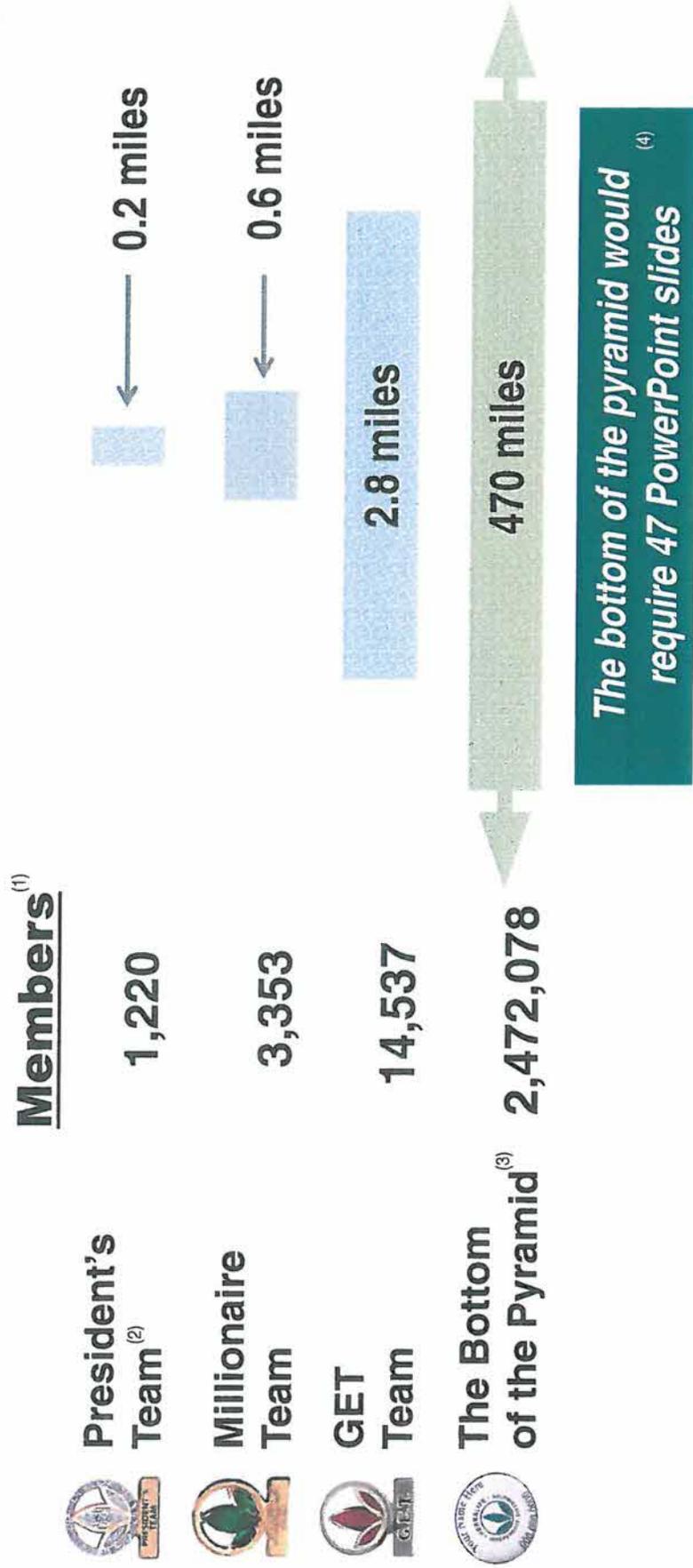
There is almost no turnover at the top



Figures are YTD ending 9/30/08 vs. YTD ending 9/30/07. retention data is as of the annual January 2008 requalification period.

Getting to the Top is Much Harder than Advertised (Cont'd)

If one member equals one foot, then the bottom of the pyramid would equal the distance from New York City to Cleveland (~470 miles)



(1) As of 9/30/08. Source: Herbalife Investor Presentation March 2009.
 (2) President's Team includes Chairman's Club and President's Team members.
 (3) The Bottom of the Pyramid includes Non-Sales Leaders, Supervisors and World Team members.
 (4) Assuming PowerPoint slides are 10 inches wide.

Getting to the Top is Much Harder than Advertised (Cont'd)

The probability of a new Distributor getting to these levels is statistically insignificant



Herbalife offers its Distributors an opportunity to achieve a lifetime of better health through its scientifically advanced weight management and nutrition products. While many of our Distributors join the Herbalife family simply to enjoy our life-changing products, others want to share their results and take advantage of the many income benefits our business opportunity provides. With Herbalife, you can work part-time and earn a supplemental income, or focus solely on your Herbalife Distributorship and increase your financial potential. It's completely up to the individual how much he or she wants to achieve! A Distributor earns profits by buying Herbalife products at wholesale and reselling them at retail. If the Distributor wants to increase his or her involvement in the business and enjoy the possibility of higher levels of income, he or she may sponsor others into the business and develop an organization.

Over 25% of Distributors reach the rank of Supervisor and above ("Leader"), qualifying them for additional compensation which is paid by Herbalife based upon the sales production of those they have sponsored directly and indirectly. The annual gross compensation paid by Herbalife to all Leaders during 2011 averaged \$2,900. Over 39% of Supervisors are "Active" (defined as those who generated at least 2,500 points of volume in 2011 after becoming Supervisor). The annual gross compensation paid by Herbalife to Active Leaders during 2011 averaged approximately \$7,300.

STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS - 2011

| Active Leaders | Earning Level | % of Total Leaders | % of Active Leaders | Average Earnings (USD) |
|----------------|------------------|--------------------|---------------------|------------------------|
| | President's Team | 0.2% | 0.6% | \$ 515,688 |
| | Millionaire Team | 0.3% | 1.3% | \$ 100,785 |
| | SEI | 2.6% | 6.5% | \$ 22,786 |
| | World Team | 2.9% | 7.3% | \$ 6,224 |
| | Supervisor | 33.1% | 83.3% | \$ 901 |
| | Total | 39.4% | 100.0% | \$ 7,348 |

The amounts above are in addition to and do not include profits earned on the resale of products to consumers or other Distributors.

The figures stated above are not a guarantee nor are they a projection of a typical Distributor's earnings or profits. Like any other independent business, the achievement or failure of a Distributor depends upon his or her skill set, commitment and desire to succeed. At Herbalife, the opportunity to earn more is always available to each and every Distributor.

Everything Is Not Really Easy

Source: Herbalife Independent Distributor Presentation (2011)

If I Can Do It

Everything is really easy. If I can do it, you can do it as well.

—Mark Hughes



HERBALIFE.

- ▶ There is nothing easy about achieving the wealth and lifestyle new Distributors are led to believe are possible
- ▶ Herbalife is effectively a closed system at the very top. The probability of making it to Millionaire Team, which would allow a new Distributor to earn an amount commensurate with Herbalife's testimonial earnings claims (~\$178k), is approximately one in five-thousand⁽¹⁾

(1) We analyzed 393 testimonials and earnings claims from editions of Herbalife Today magazines from 1997 – 2004. The average earnings per year from the claims implied an annual income of \$178,000 per year. To earn this amount per year, a new distributor would need to reach Millionaire Team (average income per year: ~\$100,000 in 2011). In 2008, there were ~3x more Millionaire Team members than President's Team members. Millionaire Team members also have a 99% retention rate, which implies roughly 3 times as many Millionaire Team members were created as President's Team members from 2004 through 2009, putting the odds at 1 out of every 3,400 new distributors achieved Millionaire Team. 1 in 5,000 is used because to earn \$178,000 per year, a distributor would either need to be a "senior Millionaire Team member" or a "junior President's Team member."

Even Michael Johnson Acknowledges Prior Disclosure Statements Were Inadequate

Herbalife Ltd., Q4 2012 Earnings Call, Feb 20, 2013

Michael Johnson - Herbalife Limited - Chairman and CEO

“During the last 2 years, we’ve been developing two programs that will help with this simplification, and we’ve accelerated the implementation of these programs.

The first is a recently provided updated and expanded U.S. statement of average gross compensation. We believe this document sets a new disclosure standard for compensation in the MLM industry. It is posted on our website and will be included in all U.S. startup kits, as was the prior disclosure. However, we are taking it a step further. We have decided to include this disclosure document in every new distributor application in the U.S. by the end of this month.

In April of this year, we will announce name changes for how we categorize distributors and customers that will more clearly delineate the portion of our 3.2 million distributors who are in fact wholesale customers versus those who are active distributors or sales leaders.”

Why does it take increased scrutiny for Herbalife to realize its material inadequacies?

**But Significant Issues
Still Exist in the New
Disclosure Statement**

Herbalife's Newly Issued Disclosure of Distributor Earnings

STATEMENT OF AVERAGE GROSS COMPENSATION PAID BY HERBALIFE TO UNITED STATES DISTRIBUTORS IN 2012

People become Herbalife Distributors for a number of reasons. The majority (73%)(*) primarily join us to receive a wholesale price on products they and their families enjoy. Some wish to earn part-time money, wanting to give direct sales a try and are encouraged by Herbalife's low start-up costs (at their option, a mini-International Business Pack (IBP) at \$59 or full IBP at \$109) and money-back guarantee². Others are drawn to Herbalife because they can be their own boss and can earn rewards based on their own skills and hard work.

Whatever the motivation, an Herbalife Distributorship is something like a gym membership: results vary with the time, energy and dedication you put into it. Anyone considering an active Distributorship needs to understand the realities of direct selling. It is hard work. There is no shortcut to riches, no guarantee of success. However, for those who devote the time and energy to develop a stable base of customers and then mentor and train others to do the same, the opportunity for personal growth and an attractive part- or full-time income exists. Moreover, unlike other businesses, there are minimal start-up costs in beginning your Herbalife Distributorship. There is no need for a Distributor to spend significant amounts of money on sales aids or other materials. In fact, Herbalife's corporate policy discourages the use of such sales aids, especially in the first few months of a Distributorship.

The majority of Herbalife's independent Distributors (71%) have not sponsored another Distributor and are therefore "single-level" Distributors. Single-level Distributors benefit from buying Herbalife products at a preferred price for their consumption and that of their families, and for many this is the only benefit they seek. Some may also be retailing products for a profit and this profit is not included in any of the compensation figures below.

Some Distributors (29%) have decided to sponsor others to become Herbalife Distributors. In that way, they may seek to build and maintain their own downline sales organizations. They are not paid anything for sponsoring new Distributors. They are paid solely based on product sales to their downline Distributors for their own consumption or for retail to others. This multi-level compensation opportunity is detailed in Herbalife's Sales & Marketing Plan, which is available to all Distributors on line at www.myherbalife.com.

Herbalife's Newly Issued Disclosure of Distributor Earnings

For potential Distributors to make an informed decision, we offer the following chart to show the different ranges of average gross compensation that Herbalife pays to its Distributors. The figures below do not include any retail / wholesale profit that a Distributor makes from selling Herbalife's products to others nor do these figures include expenses incurred by a Distributor in the operation or promotion of his or her business. Such business expenses can vary widely. They might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses. The compensation received by the Distributors in this chart is not necessarily representative of the gross compensation, if any, that any particular Distributor will receive. These figures should not be considered as guarantees or projections of your actual gross compensation or profits. Success with Herbalife results only from successful product sales efforts, which require hard work, diligence and leadership. Your success will depend upon how effectively you exercise these qualities.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

(2) 90 days on the return of the IGP and one year on the return of resalable inventory, upon leaving the business.

Published: 2/2013

The compensation chart below indicates that 434, 125 Distributors (88%) received no payments from Herbalife during 2012. However, this chart does not include amounts earned by Distributors on their sales of Herbalife products to others.

Additionally, this chart does not include the benefit to Distributors buying Herbalife products at a preferred price for their consumption and that of their families. Based on the company's survey, 73%⁽¹⁾ of individuals became Distributors primarily for this benefit.

51.0% of all sales leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33.5% of first time sales leaders)

The majority of those Distributors who earned in excess of \$100,000 in 2012 had reached the level of Herbalife's President's Team. During 2012, 47 U.S. Distributors joined the level of President's Team. They averaged 9 years as an Herbalife Distributor before reaching President's Team, with the longest being 20 years and the shortest being less than three years.

(1) Based on a Distributor research survey conducted by Lieberman Research Worldwide, January 2013, with a margin of error of +/- 3.7%.

Herbalife's Newly Issued Disclosure of Distributor Earnings (Cont'd)

| Single-Level Distributors (No Downline) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|------------------------|---------------------|---------------------------------|------------------------|---------------------|------------------------|------------|-----|------|-----------|---------------------|-----|------|-----------|--------------------|-----|------|----------|-------------------|-------|------|----------|-------------------|-------|------|----------|------------------|-------|------|---------|-----------------|--------|-------|---------|-------------|--------|-------|-------|---|--------|-------|-----|-------|--------|--------|---------|
| Economic Opportunity | Distributors* | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Number | % | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors | 351,065 | 71% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>The economic rewards for single-level Distributors are the wholesale pricing received on products for consumption by the Distributor and his or her family as well as the opportunity to retail product to non-Distributors. Neither of these rewards are payments made by the company and therefore are excluded from this schedule</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Non-Sales Leaders** With a Downline | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Economic Opportunity | Distributors | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Number | % | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor | 60,333 | 12% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>In addition to the economic rewards of the single-level Distributors above, which are not included in this chart, certain non-sales leaders with a downline may be eligible for payments from Herbalife on downline product purchases made directly with Herbalife.</p> <p>2,466 of the 4,449 eligible Distributors earned such payments in 2012. The average total payments to the 2,466 Distributors was \$104.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sales Leaders** With a Downline | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Economic Opportunity | Distributors | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Number | % | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <ul style="list-style-type: none"> Wholesale price on product purchases Retail profit on sales to non-Distributors Wholesale profit on sales to another Distributor Multi-level compensation on downline sales <ul style="list-style-type: none"> Royalties Bonuses | 82,464 | 17% | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>All Sales Leaders with a Downline</p> <table border="1"> <thead> <tr> <th>Average Payments from Herbalife</th> <th>Number of Distributors</th> <th>% of Total Grouping</th> <th>Average Gross Payments</th> </tr> </thead> <tbody> <tr> <td>>\$250,000</td> <td>194</td> <td>0.2%</td> <td>\$724,030</td> </tr> <tr> <td>\$100,001-\$250,000</td> <td>452</td> <td>0.5%</td> <td>\$148,808</td> </tr> <tr> <td>\$50,001-\$100,000</td> <td>539</td> <td>0.7%</td> <td>\$68,912</td> </tr> <tr> <td>\$25,001-\$50,000</td> <td>1,136</td> <td>1.4%</td> <td>\$35,561</td> </tr> <tr> <td>\$10,001-\$25,000</td> <td>1,940</td> <td>2.4%</td> <td>\$15,538</td> </tr> <tr> <td>\$5,001-\$10,000</td> <td>2,552</td> <td>3.1%</td> <td>\$7,008</td> </tr> <tr> <td>\$1,001-\$5,000</td> <td>11,307</td> <td>13.7%</td> <td>\$2,216</td> </tr> <tr> <td>\$1-\$1,000</td> <td>39,151</td> <td>47.5%</td> <td>\$292</td> </tr> <tr> <td>0</td> <td>25,193</td> <td>30.6%</td> <td>\$0</td> </tr> <tr> <td>Total</td> <td>82,464</td> <td>100.0%</td> <td>\$4,485</td> </tr> </tbody> </table> <p>This chart does not include amounts earned by Distributors on their sales of Herbalife products to others</p> | | | Average Payments from Herbalife | Number of Distributors | % of Total Grouping | Average Gross Payments | >\$250,000 | 194 | 0.2% | \$724,030 | \$100,001-\$250,000 | 452 | 0.5% | \$148,808 | \$50,001-\$100,000 | 539 | 0.7% | \$68,912 | \$25,001-\$50,000 | 1,136 | 1.4% | \$35,561 | \$10,001-\$25,000 | 1,940 | 2.4% | \$15,538 | \$5,001-\$10,000 | 2,552 | 3.1% | \$7,008 | \$1,001-\$5,000 | 11,307 | 13.7% | \$2,216 | \$1-\$1,000 | 39,151 | 47.5% | \$292 | 0 | 25,193 | 30.6% | \$0 | Total | 82,464 | 100.0% | \$4,485 |
| Average Payments from Herbalife | Number of Distributors | % of Total Grouping | Average Gross Payments | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| >\$250,000 | 194 | 0.2% | \$724,030 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$100,001-\$250,000 | 452 | 0.5% | \$148,808 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$50,001-\$100,000 | 539 | 0.7% | \$68,912 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$25,001-\$50,000 | 1,136 | 1.4% | \$35,561 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$10,001-\$25,000 | 1,940 | 2.4% | \$15,538 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$5,001-\$10,000 | 2,552 | 3.1% | \$7,008 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$1,001-\$5,000 | 11,307 | 13.7% | \$2,216 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| \$1-\$1,000 | 39,151 | 47.5% | \$292 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 0 | 25,193 | 30.6% | \$0 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 82,464 | 100.0% | \$4,485 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>* 30,621 of the 351,065 single-level Distributors are sales leaders without a downline ** Sales leaders are Distributors that achieved the level of Supervisor or higher. See details on Herbalife's marketing plan at www.myherbalife.com.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Key New Statements in the New Disclosure Statement

In response to criticisms leveled by Pershing Square and others, on February 6, 2013, Herbalife issued a substantially revised Statement of Average Gross Compensation for U.S. Supervisors. We believe that this new disclosure statement confirms the material inadequacies in the previous disclosures, which Herbalife used for years to misrepresent the business opportunity to millions of Distributors

The following new statements are in direct contradiction to past statements / practices by Herbalife and its senior Distributors:

- ▶ “There is no need for a Distributor to spend significant amounts of money on sales aids or other materials. In fact, Herbalife’s corporate policy discourages the use of such sales aids...”
- ▶ “...nor do these figures include expenses incurred by a Distributor in the operation or promotion of his or her business. Such business expenses can vary widely. They might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses.”
- ▶ “The compensation chart below indicates that 434,115 Distributors (88%) received no payments from Herbalife during 2012.”
- ▶ “51.0% of all sales leaders as of February 1st, 2011, requalified by February 1st, 2012 (including 33.5% of first time sales leaders)”
- ▶ “The majority of those Distributors who earned in excess of \$100,000 in 2012 had reached the level of Herbalife’s President’s Team. During 2012, 47 U.S. Distributors joined the level of President’s Team. They averaged 9 years as an Herbalife Distributor before reaching President’s Team, with the longest being 20 years and the shortest being less than three years.”

These incremental disclosure changes follow a familiar pattern for Herbalife, i.e. when one aspect of their business is scrutinized, Herbalife makes small, incremental revisions

Material Omissions / Changes to the New Disclosure Statement

While Herbalife included many new statements purporting to increase transparency, the new disclosure statement (i) still has material omissions and (ii) makes substantive changes that highlight the inadequacies in its prior disclosures

- ▶ Omission / Change #1: Completely changed Distributor disclosure methodology
 - Herbalife no longer provides compensation data by Distributor level as in past disclosures (now differentiates based on arbitrary average payment ranges from Herbalife)
 - Created new Distributor categories including: “single-level,” “non-sales leaders with a downline” and “sales leaders with a downline”
- ▶ Omission / Change #2: Eliminated median compensation levels
 - After scrutiny of its disclosure statement, Herbalife changed its statement mid-year in 2012 and added median compensation to the compensation table. Herbalife has once again excluded this important disclosure
- ▶ Omission / Change #3: “Active leader” no longer a distinction
 - Pershing Square previously challenged Herbalife’s methodology of only including so-called Active Leaders in its compensation table (which has the effect of inflating compensation amounts). We believe this change is a further acknowledgement of its previously deceptive disclosure statements

Ongoing Issues

- ▶ Ongoing Issue #1: At least 83% of Distributors are still excluded from the average gross payments schedule
 - Herbalife only includes “sales leaders with a downline” in its compensation figures even though many of the other Distributors likely enter the scheme for the business opportunity. This again has the effect of inflating the disclosed compensation amounts
 - Why doesn't Herbalife include all Distributors in the average earnings statements? Why not let prospective Distributors see how much money Founder's Circle and Chairman's Club members make? Why not provide median income levels? Why change terminology and break out by average earnings level vs. Distributor level?
- ▶ Ongoing Issue #2: Herbalife only provides gross earnings levels without any specific cost information
 - For the first time, Herbalife states that Distributor expenses “might include advertising or promotional expenses, product samples, training, rent, travel, telephone and internet costs, and miscellaneous expenses.” Why not provide an estimate of such amounts (including for opening a nutrition club)?
 - We further note that these expenses do not include (i) the significant personal purchases that are typically required to achieve and stay at the Supervisor level and (ii) leads distributors are encouraged to buy

New Issues in Revised Disclosure Statement

- ▶ **New Issue #1:** Relying on Lieberman’s survey to state that 73% primarily join to receive a discount
 - First, this directly contradicts Michael Johnson’s recent statement that 90% of Distributors join for one reason – self consumption (CNBC interview on January 10, 2013)
 - Second, this number is based on a survey (as opposed to using actual internal data), the full details of which have not been released (and which we believe is seriously flawed)
 - Even Herbalife acknowledged in its 2011 and prior 10Ks and recent 8K filings that over 70% of its non-sales leaders are “small retailers” and “potential supervisors” (see decreasing trend of “discount buyers” since 2007 in table)
 - “Small retailer”: product users and sales people who generate modest sales to friends and family
 - “Potential supervisors”: Distributors who are proactively developing a business with the intention of qualifying to become a sales leader

| | 2007 | 2008 | 2009 | 2010 | 2011 ⁽¹⁾ |
|-----------------------|------|------|------|------|---------------------|
| Discount Buyers | 52% | 51% | 47% | 29% | 27% |
| Small Retailers | 26% | 29% | 36% | 57% | 61% |
| Potential Supervisors | 22% | 20% | 17% | 14% | 12% |

- How could 73% of all Distributors primarily join to receive a discount when the Company acknowledges that over 70% of just the non-sales leaders are either selling the product or proactively developing a business? More importantly, why doesn’t Herbalife rely on its own internal data vs. using Lieberman for this important metric?
- Lastly, Herbalife made absolutely no mention of Lieberman in its recently disclosed 10K

(1) Company stopped disclosing Distributor base information in its 2011 10K, but after David Einhorn questioned the Company on a conference call, the Company released 2011 Distributor base information in its 8-K filed on May 2, 2012.

New Issues (Cont'd)

- ▶ **New Issue #2:** Implication that 71% are merely discount customers (given they don't have a downline)
 - **First,** this completely ignores the notion that a significant amount of these Distributors are actually joining the scheme for the business opportunity and do not have a downline because they are either failed Distributors or building up to become a supervisor
 - If Herbalife truly believes 71% of Distributors are discount customers, then why don't they simply have a discount customer option (without the business opportunity) like the competitors? For example, NuSkin has distinctions in its customer base (e.g., Retail Customer & Preferred Customers) that requires its customers to disclose whether or not they plan to retail NuSkin products when they sign up.
 - **Second,** the 71% includes 30,621 Distributors who are actually Supervisors. We believe it is highly unlikely these supervisors are purchasing approximately \$3K - 4K of product over a short period of time solely for personal consumption as discount customers.

New Issues (Cont'd)

- Lastly, if one believes that only the 142K Distributors with a downline are active participants, then those Distributors would have to sell to an average of 36.4 customers (assuming a total of 5.2 million external customers per the Lieberman survey), while inside the pyramid they only have 2.4 discount customers. That would mean the ratio of external customers paying full price to internal customers getting 25%+ discounts is 15:1. One would think the ratio should be the reverse.

- ▶ New Issue #3: “No need for a Distributor to spend significant amounts of money on sales aids or other materials.”
 - Such sales aids and lead generation methods have been a vital part of senior Distributor’s recruitment practices for over 30 years
 - How then has Herbalife allowed its senior Distributors to use these aggressive tactics for the last 30+ years?
 - What portion of new sales leaders use sales aids and other materials (e.g., lead generators)? How much do new sales leaders spend on such materials?

Necessary Additional Disclosure

Pershing Square believes Herbalife should release the same level of newly disclosed data and the following supplemental data for the past 10 years

- ▶ Average and median gross and net (based on cost estimates) payments by each specific level within organization (e.g., Founder’s Circle, Chairman’s Club, President’s Team, etc.).
- ▶ Churn levels for each of the various levels of Distributors including non-sales leaders. Importantly, provide churn data for single level and non-sales leaders.
- Herbalife stated that 51.0% of sales leader requalify and only 33.5% of first time sales leaders requalify
- Based on these churn levels for just the sales leaders, only 2.3% of new sales leaders (who joined in year 1) will remain as sales leaders by year 5.

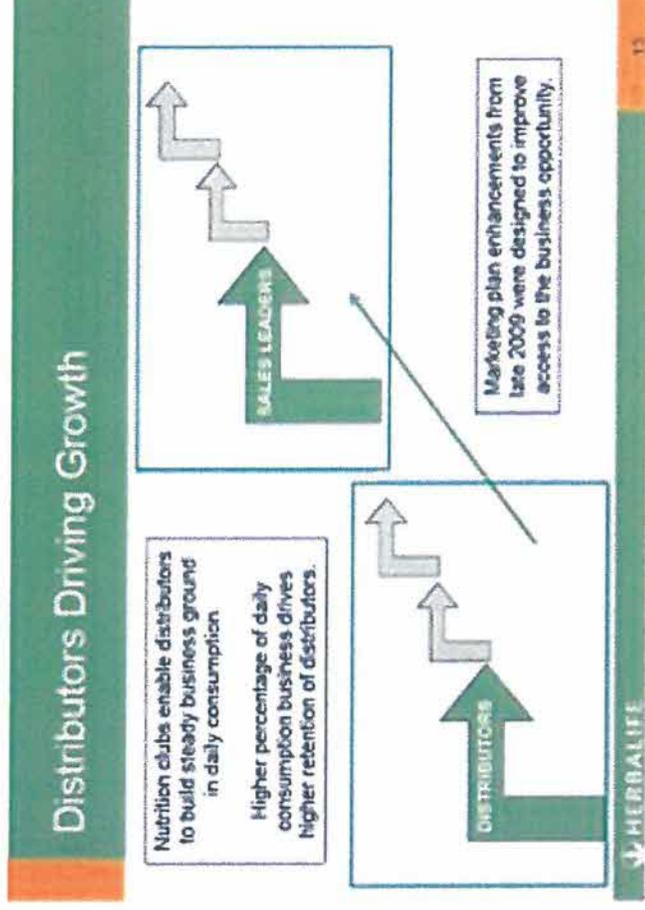
| Year | 1 | 2 | 3 | 4 | 5 |
|--------------|-------|-------|-------|-------|-------|
| Requalifying | 33.5% | 51.0% | 51.0% | 51.0% | 51.0% |
| Distributors | 100.0 | 33.5 | 17.1 | 8.7 | 4.4 |
| Dropping Out | 66.5 | 16.4 | 8.4 | 4.3 | 2.2 |
| Remaining | 33.5 | 17.1 | 8.7 | 4.4 | 2.3 |

- ▶ Total Volume purchased by all of the currently disclosed levels and by each Distributor level

**Notion that Non-Sales
Leaders Primarily
Join to Receive a
Discount**

New Marketing Plan Makes It Easier To Become Sales Leader

Herbalife changed its marketing plan in 2009 to make it easier for Distributors to become sales leaders



daily consumption. So we changed the marketing plan to help people get into the business easier and then build from a distributor to a sales leader, they already have a business. And we tested this idea in a market and it tested very well, and people that became sales leaders were much more productive, much more active when they became a sales leader over a long period of time than those who became a sales leader quickly. So that was an important change for us.

New Marketing Plan Makes It Easier To Become Sales Leader (Cont'd)

Herbalife Investor Presentation (2009)

“We’re making some changes [to our marketing plan]... to increase the addressable population in developing markets. So *we’re going to create a softer approach for people to move from what we call distributor up to supervisor*, going from a 25% discount to 50% discount, where they can participate in more of that discount structure below.”

Barclays Research Report

“The rationale is that the supervisor will give up part of the markup so that the [Non-Sales Leader] distributor now has an incentive to recruit...”

Research Analyst explained the rationale for the marketing plan change

New Marketing Plan Makes It Easier To Become Sales Leader (Cont'd)

Herbalife's new marketing plan encourages Distributors to become sales leaders in a short four months

Marketing Plan – how you can develop your organisation in the next few months

Month 1
THIS MONTH!
Your new business

Starting with 4 - 5 Customers

This example is based on a true story of what happened to a 61 year old lady called Nina who started just as a customer – she got great product results which led to her getting her first customers as a Distributor

HERBALIFE
Independent Distributor

43

Marketing Plan – how you can develop your organisation in the next few months

Month 2

20 Customers in total

11 first level customers
9 second level customers

- You have started developing **MULTI-LEVEL CUSTOMERS!!**

HERBALIFE
Independent Distributor

44

Marketing Plan – how you can develop your organisation in the next few months

Month 3

24 Customers in total

11 first level customers & 1 Distributor
11 second level customer
1 third level customer

- You have developed a few more **MULTI-LEVEL CUSTOMERS!!**

HERBALIFE
Independent Distributor

45

Marketing Plan – how you can develop your organisation in the next few months

Month 4
You are a Supervisor!

43 Customers in total

16 1st level customers
12 2nd level customers
6 3rd level customers
9 4th level customers

AND... there are 4 Senior Consultants in this organisation

HERBALIFE
Independent Distributor

46

Herbalife Distributor Discount Analysis

Herbalife Distributors must pay a 7% packaging and handling charge (“Surcharge”) and ~4% shipping charge on the Suggested Retail Price for products ordered directly from the Company



| | Retail Price: \$36.15 | Price for Formula 1 Shake Mix (750g) in 2012 | | | | | Total Volume Points |
|--------------------------------|--------------------------|--|-----------------|-----------------------------------|------------|-------|---------------------|
| | Discount Level | Shipping ⁽²⁾ 4% | Packaging 7% | Sales Tax ⁽⁴⁾ 8.50% | Total Cost | | |
| Supervisor | 50% | \$1.45 | \$2.53 | \$3.07 | \$25.12 | 32.75 | |
| Qual. Producer | 42% | \$1.45 | \$2.53 | \$3.07 | \$28.02 | 32.75 | |
| Success Builder ⁽⁵⁾ | 42% | \$1.45 | \$2.53 | \$3.07 | \$28.02 | 32.75 | |
| Sr. Consultant ⁽¹⁾ | 35% | \$1.45 | \$2.53 | \$3.07 | \$30.55 | 32.75 | |
| Distributor | 25% | \$1.45 | \$2.53 | \$3.07 | \$34.16 | 32.75 | |

Distributor are also charged sales tax on the Suggested Retail Price in most states.

(1) Once you become a Senior Consultant, you will never go back to the 25% discount.
 (2) FedEx Shipping Rate is variable based on the Retail Value purchase (2.5% for order \$1,000/up; 4% for orders \$125-\$399; Min \$6 for orders under \$125)
 (3) Herbalife charges 7% packaging and handling fee to the full retail of all products, gifts and promotional orders
 (4) Taxes are based on the tax rates of shipping destination. Examples based on Los Angeles, California (NY, AK, HI, NH, DE, MT, NM, NJ, PA, FL, MD, TX don't charge sales tax on Herbalife supplements)
 (5) Singles Order of 1000 Volume Points with temporary 42% discount on this order and next orders for that month only

Discounts and Cost Savings Widely Available

However, discounts are widely available online, which would not require a "customer" to join as a Distributor.

| Retail Price: \$36.15 | | Online Store Fees and Discounts Available to the Public | | | | | Membership |
|--------------------------|---|---|--------------------------|--------------------------|------|------------------------|------------|
| Discount Available | Additional Discount | Handling Fee | Freight | Sales Tax ⁽⁷⁾ | | | |
| 25-50% | 5% ⁽¹⁾ *on orders \$75+ | Free | Free *on orders \$35+ | No Tax | Free | Free | |
| 21-40% | 5-15% ⁽²⁾ *on orders \$50+ | Free | Free *on orders \$45+ | Yes | Free | Free | |
| 26%+ | 5% ⁽³⁾ *on orders \$150+ | Free | Free *on orders \$49+ | Yes | Free | Free | |
| 35-45% | 5-10% ⁽⁴⁾ *on orders \$100+ | Free | Free *on orders \$35+ | Yes | Free | Free | |
| 20-50% | 15% ⁽⁵⁾ *on orders \$150+ | Free | Free *on orders \$75+ | Yes | Free | Free | |
| 20-35% | 5-15% ⁽⁶⁾ *on orders \$99+ | Free | Free *on orders \$35+ | Yes | Free | Free | |
| 25-50% | 0% | 7% *Fee on SRP | 2.5-4% *Based on SRP | Yes | Free | \$68.66 ⁽⁸⁾ | |

Lifemana VIP
herbalForYes!
Freshest Herbal
Fresh Genuine Herbalife Prod.
TrulyHerbal
Fast Shipping. Excellent Service.
HERBALOFT
save more, weigh less.
Herbal Diet Shop
Direct from Herbalife Warehouse
HERBALIFE
Independent Distributor

(1) Lifemana Promo Code is available on the website (<http://www.lifemana.com/main>)
 (2) HerbalForYes Coupons are available on the website (<http://www.herbalforyes.com/herbalforyes-coupons.html>)
 (3) Coupon Code: Fastist-Online to save 5% off on orders over \$150 is available on their website (<http://www.freshestherbal.com/>)
 (4) Coupon Code for 10% off on \$200+ is available online (<http://www.retailment.com/view/trulyherbal.com>)
 (5) Coupon Code discount of 15% available on the website for all orders over \$150
 (6) Additional Discount Coupon Codes available on the website (<http://www.herbaldietshop.com/member-login.html>)
 (7) Taxes are based on the tax rates of shipping destination (our examples is based on Los Angeles, California (NY, AK, HI, NH, DE, MT, NM, NJ, PA, FL, MD, TX don't charge sales tax on Herbalife supplements). Sales tax is calculated after discount and promotions
 (8) Includes \$6 S&H and 8.5% sales tax based on Los Angeles, California.

Almost Always Cheaper to Buy Products Online

As shown in this analysis, unless you reach the Supervisor level (4,000 VP), it is generally cheaper to buy the products online through one of these sources.

| | Retail Price: \$36.15 | Purchases based on Quantities of Formula 1 Shake Mix (750g) | | | | | Total Cost 123 Units (~4000VP) |
|---|--------------------------|---|--------------------|--------------------|--------------------|------------|-----------------------------------|
| | Shipping and P&H Cost | 8 Units (~260 VP) | 16 Units (~500 VP) | 31 Units (~1000VP) | 77 Units (~2500VP) | Total Cost | |
|  | Free | \$179.99 | \$359.97 | \$705.74 | \$1,735.14 | \$2,775.59 | |
|  | Free | \$193.60 | \$387.19 | \$750.18 | \$1,863.36 | \$2,976.54 | |
|  | Free | \$216.05 | \$432.09 | \$837.18 | \$2,079.44 | \$3,321.70 | |
|  | Free | \$206.16 | \$412.32 | \$798.86 | \$1,984.28 | \$3,169.69 | |
|  | Free | \$208.47 | \$414.94 | \$807.81 | \$2,006.55 | \$3,205.30 | |
|  | Free | \$214.85 | \$429.69 | \$832.53 | \$2,067.90 | \$3,303.27 | |
|  | 9.5-11% *Fee on SRP | \$273.29 | \$485.29 | \$848.42 | \$2,107.36 | \$3,010.58 | |

- (1) Lifemana VIP offers free shipping with purchases over \$35.; no taxes on purchases; and additional promotional coupon of 5% off with purchases over \$75
- (2) HerbalForYes offers free shipping over \$45, additional coupons 5-15% on orders of \$50 or more. All prices include sales tax of 8% based on zip code 90010 (Los Angeles, CA)
- (3) Freshest Herbal offers free shipping with over \$43 and additional 5% off orders over \$150. Sales tax of 8.5% is included in all prices based on zip code 90010 (Los Angeles, CA)
- (4) TrulyHerbal offers: 20-30% Off + FREE Shipping over \$35 + FREE P/H = 35-50% Total Savings! Also additional coupon available to receive 10% off of orders over \$200. Includes 8.5% sales tax based on zip code 90010 LA, California
- (5) Herbaloft shipping is free on orders over \$75, additional discount available up to 15%, no handling fee. Tax is calculated at 8.5% is based on LA, California zip code 90010
- (6) Herbal Diet Shop offers additional discount 5-15%. Tax is based on LA, California with the zip code 90010
- (7) Taxes are based on the tax rates of shipping destination (our examples is based on Los Angeles, California (NY, AK, HI, NH, DE, MT, NJ, PA, FL, MD, TX don't charge sales tax on Herbalife supplements)
- (8) Singles Order of 1000 Volume Points with temporary 42% discount on this order and next orders for that month only

Lastly, Compensation Numbers Don't Even Add Up

Pershing Square tried to reconcile the U.S. royalty override and found a large discrepancy.

Royalty Overrides Implied by Herbalife's New Statement of Average Gross Compensation (2012)

| | # of Distributors | Avg Payments (\$) | Royalty Overrides (\$mm) |
|----------------------------------|-------------------|-------------------|--------------------------|
| <u>SLs w/ a Downline</u> | | | |
| Tranche 1 | 194 | \$724,030 | \$140.5 |
| Tranche 2 | 452 | 148,808 | 67.3 |
| Tranche 3 | 539 | 68,912 | 37.1 |
| Tranche 4 | 1,136 | 35,581 | 40.4 |
| Tranche 5 | 1,940 | 15,538 | 30.1 |
| Tranche 6 | 2,552 | 7,008 | 17.9 |
| Tranche 7 | 11,307 | 2,216 | 25.1 |
| Tranche 8 | 39,151 | 292 | 11.4 |
| Tranche 9 | 25,193 | 0 | 0.0 |
| <u>SLs w/o a Downline</u> | 30,261 | 0 | 0.0 |
| <u>NSLs w/ a Downline</u> | 2,466 | 104 | 0.3 |
| Implied Royalty Overrides | | | \$370.1 |

Royalty Overrides Implied by Herbalife's Public Filings⁽¹⁾

| United States (\$mm) | Q1 2012 | Q2 2012 | Q3 2012 | Q4 2012 | FY 2012 |
|--|---------------|---------------|---------------|---------------|----------------|
| Net Sales | \$205 | \$218 | \$203 | \$191 | |
| Gross Margin ⁽²⁾ | 79.7% | 80.3% | 80.2% | 80.1% | |
| Implied COGS | \$42 | \$43 | \$40 | \$38 | |
| <u>Royalty Overrides Buildup⁽³⁾</u> | | | | | |
| Net Sales | \$205 | \$218 | \$203 | \$191 | \$817 |
| Less: COGS | (42) | (43) | (40) | (38) | (163) |
| Less: Cont. Margin | (95) | (94) | (91) | (80) | (360) |
| Implied Royalty Overrides | \$67.5 | \$81.4 | \$71.7 | \$73.8 | \$294.4 |

\$370 ≠ \$294

- (1) Source: Herbalife 10-Q filings from Q1 2012 to Q3 2012 and 2012 10-K filing.
 (2) Assumes United States Gross Margin is equal to Consolidated Gross Margin.
 (3) Includes Royalty Overrides, Production Bonuses and Mark Hughes Bonus.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION,)
STATE OF ILLINOIS,)
COMMONWEALTH OF KENTUCKY, and)
STATE OF NORTH CAROLINA,)
Plaintiffs,)
v.)
FORTUNE HI-TECH MARKETING, INC.,)
a Kentucky corporation,)
FHTM, INC., a Kentucky corporation,)
ALAN CLARK HOLDINGS, LLC, a)
Kentucky corporation,)
FHTM CANADA, INC., a Canadian corporation,)
FORTUNE NETWORK MARKETING (UK)
LIMITED, an United Kingdom Private)
Limited Company,)
PAUL C. ORBERSON, and)
THOMAS A. MILLS,)
Defendants.)

13cv578
Judge John W. Darrah
Magistrate Arlander Keys

RECEIVED

JAN 24 2013

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiffs, the Federal Trade Commission ("FTC"), the State of Illinois, the
Commonwealth of Kentucky, and the State of North Carolina, for their Complaint, allege:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade

Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendants' acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

2. The State of Illinois brings this action under Section 7(a) of the Illinois Consumer Fraud Act, 815 ILCS 505/7(a), to obtain a preliminary or permanent injunction, restitution, and civil penalties against Defendants for engaging in deceptive acts or practices in violation of the Illinois Consumer Fraud Act, 815 ILCS 505/1 *et seq.*

3. The Commonwealth of Kentucky, by and through Jack Conway, Attorney General of Kentucky, brings this action pursuant to the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, and under the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, to obtain a permanent injunction, preliminary relief, consumer restitution, damages, civil penalties, and reimbursement of its costs, expenses and attorney's fees against Defendants for their violations of the Kentucky Consumer Protection Act and provisions of the Kentucky Pyramid Sales Act.

4. The State of North Carolina, by and through its Attorney General, Roy Cooper, brings this action for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, to obtain temporary and permanent injunctive relief, restitution for consumers, civil penalties, and attorneys' fees pursuant to N.C. Gen. Stat. §§ 14-291.2, 75-1.1, 75-14, 75-15.1, 75-15.2, and 75-16.1.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the FTC's claims pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

6. This Court has supplemental jurisdiction over the claims of Plaintiffs State of Illinois, Commonwealth of Kentucky, and State of North Carolina, pursuant to 28 U.S.C. § 1367.

7. Venue is proper in this district under and 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

PLAINTIFFS

8. Plaintiff, the FTC, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

9. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

10. Plaintiff State of Illinois is one of the fifty sovereign states of the United States. Lisa Madigan is the duly elected and qualified Attorney General acting for Plaintiff State of Illinois, and brings this action for and on behalf of the People of the State of Illinois, pursuant to the provisions of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS §§ 505/1 *et seq.*, and her common law authority as Attorney General to represent the People of the State of Illinois.

11. Plaintiff Commonwealth of Kentucky is one of the fifty sovereign states of the United States. Jack Conway is the duly elected and qualified Attorney General acting for

Plaintiff Commonwealth of Kentucky, and brings this action under the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.* and the Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*

12. Plaintiff State of North Carolina is one of the fifty sovereign states of the United States. Roy Cooper is the duly elected and qualified Attorney General acting for Plaintiff State of North Carolina and brings this action pursuant to authority granted under Chapters 75 and 114 of the North Carolina General Statutes for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*

DEFENDANTS

13. Defendant Fortune Hi-Tech Marketing, Inc., is a Kentucky corporation with its principal place of business at 880 Corporate Dr., Suite 300, Lexington, Kentucky 40503. Fortune Hi-Tech Marketing, Inc., transacts or has transacted business in this district and throughout the United States.

14. Defendant FHTM, Inc., is a Kentucky corporation with its principal place of business at 880 Corporate Dr., Suite 300, Lexington, Kentucky 40503. FHTM, Inc., transacts or has transacted business in this district and throughout the United States.

15. Defendant Alan Clark Holdings, LLC, is a Kentucky limited liability company with its principal place of business at 20 Gose Pike, Danville, Kentucky 40422. Alan Clark Holdings, LLC, transacts or has transacted business in this district and throughout the United States.

16. Defendant FHTM Canada, Inc., is a Canadian corporation that has its registered office in Ottawa, Ontario, but its principal place of business at 880 Corporate Dr., Suites 200 and

300, Lexington, Kentucky 40503. FHTM Canada, Inc., transacts or has transacted business in this district and throughout the United States.

17. Defendant Fortune Network Marketing (UK) Limited, is a United Kingdom Private Limited Company that has its registered office in Berkshire, United Kingdom, but its principal place of business at 880 Corporate Dr., Suites 200 and 300, Lexington, Kentucky 40503. Fortune Network Marketing (UK) Limited transacts or has transacted business in this district and throughout the United States.

18. Defendant Paul Orberon is the President and Director of Fortune Hi-Tech Marketing, Inc. and FHTM, Inc., a Member of Alan Clark Holdings, Inc., and a Director of FHTM Canada, Inc. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Orberon, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

19. Defendant Thomas A. Mills is the Chief Executive Officer of Fortune Hi-Tech Marketing, Inc., the Vice President and Director of FHTM, Inc, a Member of Alan Clark Holdings, Inc., a Director of FHTM Canada, Inc., and Director and Chief Executive Officer of Fortune Network Marketing (UK) Limited. At all times material to this Complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of the corporate Defendants, including the acts and practices set forth in this Complaint. Defendant Mills, in connection with the matters alleged herein, transacts or has transacted business in this district and throughout the United States.

20. Defendants Fortune Hi-Tech Marketing, Inc., FHTM, Inc., Alan Clark Holdings,

Inc., FHTM Canada, Inc., Fortune Network Marketing (UK) Limited (collectively, "FHTM Defendants" or "FHTM") have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. FHTM Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations, that commingle funds and operate a common scheme. Because FHTM Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below. Defendants Orberson and Mills have formulated, directed, controlled, had the authority to control, or participated in the acts and practices of FHTM Defendants that constitute the common enterprise.

COMMERCE

21. At all times material to this Complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFENDANTS' BUSINESS ACTIVITIES

22. Since approximately 2001, FHTM has purported to operate a multilevel marketing company, selling various products and services using a network of "Independent Representatives" ("Reps"). In order to become a Rep, consumers must pay FHTM an initial fee, previously as high as \$299, but now \$250. In return, FHTM claims to pay its Reps lucrative bonuses and commissions once they satisfy certain sales and recruiting requirements.

23. In reality, since at least 2001, FHTM has been operating an illegal pyramid scheme. FHTM's complicated and convoluted compensation plan ensures that the vast majority of FHTM's Reps make little or no money. To the extent that Reps can make any income, this

income results primarily from recruiting new consumers to become FHTM Reps and not from the sale of products or services.

24. FHTM promotes its business through a variety of channels, including websites, live presentations, videos, and print materials. In addition to holding annual conventions during which Reps speak about the company, FHTM provides its Reps with access to videos and print materials that instruct Reps on how to explain FHTM's business and encourage others to join. FHTM's website also serves as a platform for its Reps, providing links to Reps' individual FHTM websites, training telephone calls, and other social media outlets.

25. Through these various channels, FHTM instructs, encourages, and authorizes its high level Reps to misrepresent both the nature of FHTM's business and the income available to new FHTM recruits.

26. Defendants Orberson and Mills each have, among other things, delivered live presentations for FHTM, including during FHTM's annual conferences.

Building the Pyramid

27. There are several levels of FHTM Reps. New entrants now pay \$250 to join as Managers, and must pay \$250 annually to remain with FHTM. Previously, the initial fee was as high as \$299. Unlike a legitimate multi-level marketing business, FHTM's business model emphasizes recruiting new Reps over the sale of products and services.

28. Managers are strongly encouraged to immediately purchase either "starter packs" or "bundles," which contain various FHTM health and beauty products, as well as other products and services offered by FHTM.

29. FHTM assigns a "point" value to most of the products and services it offers. In most cases, FHTM Reps must buy or sell products and services comprising a minimum required

number of points to be eligible to obtain commissions and bonuses. Depending on the Reps' level in the pyramid and the type of commission or bonus, a Rep must earn five, ten, or fifteen points to be eligible for most commissions or bonuses. "Bundles" typically count as five or ten points.

30. The purchase of a "starter pack" or "bundle" will qualify a new Manager to receive commissions. These bundles typically have cost between \$130 and \$400 and require the Rep to agree to a "negative option continuity plan," whereby the Rep is billed monthly for products and services unless the Rep affirmatively cancels the plan. According to FHTM, "most" FHTM Reps have purchased a 10-point bundle to "maximize the pay plan."

31. After making this qualifying purchase, FHTM Reps are eligible to obtain commissions for the sale of products and services and to obtain bonuses from the recruitment of new FHTM Reps.

32. As Managers recruit additional Reps and maintain a minimum of purchases or sales of FHTM products and services, they can earn promotions to higher levels within FHTM.

33. For example, if Managers purchase or sell at least ten products or services through FHTM each month, and recruit at least twelve new Managers, they are promoted to the position of Regional Sales Manager ("RSM"), allowing them to earn greater commissions and recruitment bonuses.

34. By recruiting additional new Managers into FHTM, RSMs may be promoted to "Executive Sales Manager" ("ESM"), "National Sales Manager" ("NSM"), "Platinum Sales Manager" ("PSM"), and ultimately to "Presidential Ambassador."

35. Nearly all FHTM Reps are either Managers or RSMs, and never reach the level of ESM or above.

36. FHTM induces new recruits to join FHTM by representing that such recruits will be able to resell FHTM products and services to people not affiliated with FHTM for a profit and simultaneously earn large commissions. FHTM claims that its representatives will be able to easily sell its products and services to consumers not affiliated with FHTM. In fact, few of FHTM's products and services are ever sold to anyone other than the Reps themselves. Furthermore, Reps receive minimal financial rewards from FHTM for selling the products and services to outside consumers.

37. FHTM instructs its Reps to purchase sufficient products and services through FHTM to be eligible for bonuses, and to spend their time recruiting others to become Reps. Including the required fees, FHTM Reps may spend more than \$1500 annually to remain eligible for such recruiting bonuses.

Compensation Plan

38. The FHTM compensation program has two parts: (1) recruitment bonuses, and (2) commissions earned from product sales.

39. Each Rep has a position in the pyramid immediately below another FHTM Rep. As a result, each Rep in this structure has the potential to develop "downline" recruits. The "level" of the downline is defined by how many steps a recruit is removed from the original Rep. For example, if Rep A recruits Rep B, and Rep B recruits Rep C, Rep C would be defined as being on the second level of Rep A's downline.

40. FHTM's recruitment bonus rewards a Rep for his or her recruitment efforts, as well as the recruitment efforts of his or her downline recruits.

41. FHTM provides much larger rewards for recruiting new Reps than for sales of products or services, thereby encouraging Reps to recruit new members rather than to sell

products or services to ultimate users.

42. Particularly after a Rep has been promoted to ESM and above, FHTM's recruitment bonuses dwarf the potential commissions available for product and service sales.

43. More than 85% of the compensation paid to FHTM Reps is tied directly to recruiting new members.

44. FHTM pays many types of recruitment bonuses. These bonuses are earned from enlisting new recruits. FHTM calls the most common of these bonuses the "Customer Acquisition Bonus."

45. Customer Acquisition Bonuses are not available until a Rep becomes at least an RSM. Thus, an FHTM Rep must personally recruit at least three new Managers into FHTM, and together with those three new Managers, be responsible for the recruitment of at least nine additional new Managers into FHTM, for a total of twelve new Managers, in order to become eligible for a Customer Acquisition Bonus.

46. Once they become eligible, FHTM RSMs earn a Customer Acquisition Bonus of at least \$100 for each new individual they personally recruit to join FHTM, as well as for each individual recruited by Reps in their downline.

47. FHTM calls commissions earned by FHTM Reps on product sales "Customer Generated Usage" ("CGU"). In comparison to recruitment bonuses, CGUs available to FHTM Reps are much smaller.

48. For example, the monthly CGU available to an FHTM Rep for the sale of a Dish Network package is \$0.80. The monthly CGU available to an FHTM Rep for the sale of a cellular telephone contract is typically \$0.50. For other products and services, the CGU for sales by FHTM Reps is 2% or less.

49. FHTM Reps also earn monthly CGUs based on the sale of products and services by their downline recruits. For some products and services, FHTM Reps earn 1% CGU on the sales of products and services by their downline recruits, although the monthly CGU for Dish Network and cellular telephone service sales by downline recruits earns FHTM Reps only \$0.08 and \$0.05, respectively.

50. In contrast to the claims of profitability, the compensation plan used by FHTM is designed so that, at any particular time, the majority of Reps will spend more money to participate in FHTM than they earn through their involvement with the company, and the majority of Reps will not make the substantial incomes represented.

Income Misrepresentations

51. FHTM promotes its business by misrepresenting in various ways that FHTM is a good way for average people to make substantial income and achieve financial independence.

52. One way that FHTM encourages recruits to join FHTM is by claiming that Reps can earn significant income from commissions obtained by selling various products and services for FHTM's various "partner" companies.

53. FHTM Reps often tell recruits that they earned significantly more money in their first few months or first year as an FHTM Rep than they had made in their previous jobs.

54. Some FHTM Reps assert that they have made double or triple the money in their first year at FHTM than they had made in their previous jobs, including one Rep who claimed in a recorded video presentation, posted on her Vimeo (video-hosting) website dedicated to her FHTM business, that "four months in [with FHTM]... I had actually quadrupled what I have ever made as a Registered Nurse." Some have claimed that they earned more than ten times as much as their previous earnings in their second and subsequent years as FHTM Reps.

55. FHTM Reps also make claims about specific amounts of earnings. One of FHTM's Platinum Sales Managers claims in a September 2012 video posted to her Vimeo site that FHTM Reps who reach the National or Executive Sales Manager levels "are making thirty-, forty-, fifty-, sixty-, seventy-thousand a month." An FHTM Presidential Ambassador claimed in a recorded conference call, which was posted to his FHTM team's website, that another current FHTM Presidential Ambassador, "in his sixth month [with FHTM] earned over \$50,000 in one month," and has "earned millions and millions beyond that" in the years since. An FHTM Executive Sales Manager reports in another recorded conference call, posted to his FHTM team's website, that yet another Platinum Sales Manager has reached earnings of "over \$100,000 a month ... that man has achieved in three years" with FHTM.

56. One Platinum Sales Manager maintains an active Twitter account through which she frequently promotes FHTM. She recently posted about an FHTM recruiting meeting, encouraging people to "Bring ur friends & learn how 2 make \$100k aYR."

57. At its 2012 national convention in Dallas, Texas, FHTM called its top 30 earners to the stage to present them with a mock up of a \$64 million check, which was intended to represent the amount these individuals have earned from FHTM. Several FHTM Reps shared a photo of the check presentation ceremony on social networking websites.

58. Similarly, FHTM Reps frequently describe or exhibit in video presentations the lavish lifestyles they are able to lead as a result of their FHTM income, including paying for extended family vacations to exotic locations, driving luxury automobiles, and purchasing mansions with extravagant amenities.

59. FHTM represents that potential recruits will achieve these results while becoming "business owners" or "entrepreneurs."

60. To support its earnings claims, FHTM represents to recruits that it has “special relationships” with various “partner” companies such as Dish Network, Frontpoint Home Security, Xoom Energy, Taxbot, DuPont, and various cellular telephone providers.

61. In reality, FHTM is not a partner with any of these companies. Rather, FHTM is a third-party independent contractor or “affiliate” authorized to sell products or services on behalf of these companies. Moreover, FHTM is not able to offer its customers prices for these products or services that are any lower than the prices otherwise available in the marketplace.

62. In addition to selling on behalf of other companies, FHTM has its own line of health and beauty products. These FHTM products comprise the vast majority of sales generated by FHTM Reps and are purchased almost exclusively by FHTM Reps themselves.

VIOLATIONS OF THE FTC ACT

63. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

64. Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act.

COUNT I

Illegal Pyramid

65. As alleged above, Defendants promote participation in FHTM, which has a compensation program based primarily on providing payments to participants for the recruitment of new participants, not on the retail sale of products or services, thereby resulting in a substantial percentage of participants losing money.

66. Defendants’ promotion of this type of scheme, often referred to as a pyramid scheme, constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15

U.S.C. § 45(a).

COUNT II

False Earnings Claims

67. In numerous instances, in connection with the advertising, marketing, promotion, offering for sale, or sale of the right to participate in the FHTM program, Defendants represent, directly or indirectly, expressly or by implication, that consumers who become FHTM Reps are likely to earn substantial income.

68. In truth and in fact, in numerous instances in which Defendants have made the representation set forth in Paragraph 67 of this Complaint, consumers who become FHTM Reps have not earned substantial income.

69. Therefore, Defendants' representation as set forth in Paragraph 67 of this Complaint is false or misleading and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT III

Means and Instrumentalities

70. By furnishing FHTM Reps with promotional materials to be used in recruiting new participants that contain false and misleading representations, Defendants have provided the means and instrumentalities for the commission of deceptive acts and practices.

71. Therefore, Defendants' practices, as described in paragraph 70 of this Complaint, constitute deceptive acts and practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a).

VIOLATIONS OF ILLINOIS LAW
(By Plaintiff State of Illinois)

COUNT IV

Illinois Consumer Fraud and Deceptive Business Practices Act Violation

72. Plaintiff State of Illinois re-alleges and incorporates by reference, each and every allegation in the foregoing paragraphs of this Complaint.

73. The Illinois Attorney General believes this action to be in the public interest and brings this lawsuit pursuant to Section 7 of the Illinois Consumer Fraud and Deceptive Business Practices Act.

74. Section 2 of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, prohibits unfair or deceptive acts or practices.

75. Misrepresentations or the deceptive omissions of a material fact constitute unlawful acts or practices within the meaning of Section 2 of the Illinois Consumer Fraud Act.

76. Section 2A of the Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2A, makes it an unlawful practice for any person to sell, offer to sell, or attempt to sell the right to participate in a pyramid sales scheme as defined by Section 505/1(g) of the Illinois Consumer Fraud Act.

77. At all times relevant hereto, but at least since 2001, Defendants have engaged in the trade or commerce of marketing pyramid sales programs to consumers in the State of Illinois and elsewhere.

78. In the course of their trade or commerce, and in furtherance of Defendants' own business gains, Defendants have engaged in the following unlawful acts or practices in violation of Sections 2 and 2A(2) of the Consumer Fraud Act:

- a) promoting a pyramid scheme which constitutes an unlawful practice in violation of Section 2A(2) of the Illinois Consumer Fraud Act;
- b) failing to disclose all fees and costs associated with participating in the programs being offered;
- c) representing, directly or indirectly that consumers will earn substantial income after joining the program, when such is not the case; and
- d) furnishing consumers with promotional material to be used in recruiting new participants that contain false and misleading representations.

VIOLATIONS OF KENTUCKY LAW
(By Plaintiff Commonwealth of Kentucky)

THE KENTUCKY CONSUMER PROTECTION ACT

79. The Kentucky Consumer Protection Act, KRS 367.010 *et seq.*, prohibits “unfair, false, misleading, or deceptive practices in the conduct of trade or commerce.” KRS 367.170.

80. The Commonwealth alleges that Defendants made solicitations to Kentucky residents and to residents of other states from their domicile in the Commonwealth of Kentucky, which solicitations are subject to the restrictions of both KRS 367.170 and the Kentucky Pyramid Sales Act, KRS 367.832 *et seq.*

81. Defendants’ acts and practices, as set forth herein, were conducted in trade or commerce within and from the Commonwealth of Kentucky and Defendants’ practices constitute unfair, false, misleading and deceptive acts or practices in violation of KRS 367.170 of Kentucky’s Consumer Protection Act.

82. KRS 367.834(1) provides that “All of the remedies and powers granted to the

Attorney General by KRS 367.990 for enforcement of KRS 367.170 shall be granted to the Attorney General with equal force and effect for enforcement of KRS 367.832.”

83. KRS 367.990(2) provides: “In any action brought under KRS 367.190, if the Court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by KRS 367.170, the Attorney General, upon petition to the Court, may recover, on behalf of the Commonwealth, a civil penalty of not more than two thousand dollars (\$2,000) per violation, or where the defendant’s conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation....”

COUNT V

Kentucky Consumer Protection Act Violation

84. The Commonwealth of Kentucky alleges that Defendants’ acts and practices as alleged in the foregoing paragraphs and herein were “unfair, false, misleading, or deceptive acts or practices in the conduct of trade or commerce” in violation of the Kentucky Consumer Protection Act.

85. Defendants have violated the Kentucky Consumer Protection Act, KRS 367.170 by, *inter alia*, engaging in unfair, false, misleading and deceptive acts or practices described herein in connection with trade or commerce. These acts or practices include, but are not limited to:

a) Defendants’ promotion of and inducement into the FHTM compensation plan which bases compensation payments to participants primarily on their recruitment of new participants, not the retail sale of products or services, thereby inducing each new participant to participate in an illegal scheme to defraud each new participant, many of whom have lost money;

b) Defendants' advertising, marketing, promoting and selling of the right to participate in the FHTM program representing that participants will likely earn substantial income when in truth the new participants are not likely to earn substantial incomes but lose money invested; and

c) Defendants' providing participants with promotional materials to recruit new participants that contain false, misleading and deceptive information and representations.

86. The Commonwealth of Kentucky alleges that each of the acts and omissions of Defendants alleged herein were committed willfully.

COUNT VI

Kentucky Pyramid Sales Act Violation

87. The Kentucky Pyramid Sales Act, KRS 367.832 *et seq.*, declares it unlawful for any person to establish, promote, operate, or participate in any pyramid distribution plan.

88. Pyramid distribution plans are characterized by the payment of money to the promoters of the plan in return for which participants receive the right to recruit new participants and the right to receive commission payments from the promoters based upon the number of new participants they recruit into the program and/or commission payments based upon the recruitment efforts of those individuals the promoters recruited into the program (i.e. commonly referred to as a "downline"). Commission payments in a pyramid sales plan are derived primarily from recruiting new participants into the program, not from the sale of products or services.

89. Pyramid distribution sales plans are inherently deceptive and injure consumers because they must eventually collapse. Pyramid sales distribution plans may make money for those who originate the program and those at the top of the pyramid, but the vast majority of

participants at the bottom (those who buy into the program at later stages) can find few if any new recruits, particularly where market saturation has occurred. For these reasons, pyramid distribution plans are unlawful in the Commonwealth of Kentucky.

90. Upon information and belief, Defendants' FHTM compensation plan rewards participants for the act of recruiting new participants by way of recruitment bonuses substantially more than is paid to participants for the sale of products or services offered by FHTM.

91. Notwithstanding Defendants' assertion that they purport to operate a multi-level marketing company, which would focus on and weight commissions paid to participants based upon the sales of goods or services, the focus of the FHTM compensation plan is to pay for the act of recruitment, with only minimal payments for the act of selling product or services. This results in a substantial number of participants losing money.

92. Defendants' promotion of this type of compensation plan is a pyramid scheme and Defendants' acts and practices constitutes multiple violations of the Commonwealth of Kentucky's Pyramid Sales Act, KRS 367.832 *et seq.*

93. Defendants' violations of the Kentucky Pyramid Sales Act were willful.

VIOLATIONS OF NORTH CAROLINA LAW
(By Plaintiff State of North Carolina)

COUNT VII

The North Carolina Pyramid and Chain Schemes Statute

94. Plaintiff State of North Carolina re-alleges the foregoing paragraphs of this Complaint and incorporates them herein.

95. The North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat § 14-291.2, declares unlawful all pyramid schemes whereby a participant gives valuable consideration

for the opportunity to receive compensation in return for inducing other persons to become participants in the program.

96. Defendants' acts and practices, as alleged in the foregoing paragraphs, constitute the operation of a pyramid scheme and therefore violate the North Carolina Pyramid and Chain Schemes Statute.

COUNT VIII

The North Carolina Unfair and Deceptive Practices Act

97. Plaintiff State of North Carolina re-alleges the foregoing paragraphs of this Complaint and incorporates them herein.

98. North Carolina General Statute § 75-1.1(a) declares unlawful all unfair and deceptive acts or practices in or affecting commerce.

99. Defendants' acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to citizens in North Carolina, in violation of N.C. Gen. Stat. § 75-1.1.

100. Pursuant to N.C. Gen. Stat. 14-291.2(c), Defendants' operation and continuation of a pyramid scheme may be enjoined as unfair and deceptive trade practice and subject to the assessment of civil penalties and attorneys' fees pursuant to N.C. Gen. Stat. §§ 75-15.2 and 75-16.1, respectively.

CONSUMER INJURY

101. Consumers have suffered and will continue to suffer substantial injury as a result of Defendants' violations of the FTC Act and the laws of the State of Illinois, the Commonwealth of Kentucky, and the State of North Carolina. In addition, Defendants have been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court,

Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

102. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

103. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of Illinois to enforce its state law claims against Defendants in this Court for violations of the Illinois Consumer Fraud Act, and to grant such relief as provided under state law, including injunctive relief, restitution, costs and attorneys fees, and such other relief to which the State of Illinois may be entitled. Section 7 of the Illinois Consumer Fraud Act authorizes this Court to grant civil penalties, injunctions, and other relief the Court deems appropriate.

104. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff Commonwealth of Kentucky to enforce its state law claims against Defendants in this Court for violations of the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.* and the Kentucky Pyramid Sales Act, K.R.S. 367.832, and to obtain a permanent injunction, preliminary relief, consumer restitution, damages, civil penalties, and reimbursement of its costs, expenses and attorney's fees and such other equitable relief to which the Commonwealth of Kentucky may be entitled against Defendants for their violations of the Kentucky Consumer Protection Act and the provisions of the Kentucky Pyramid Sales Act.

105. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction to allow Plaintiff State of North Carolina to enforce its state law claims against Defendants in this Court for violations of the North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*, and to grant such relief as provided under state law, including injunctive relief, restitution, costs and attorneys fees, and such other relief to which the State of North Carolina may be entitled..

PRAYER FOR RELIEF

WHEREFORE Plaintiff Federal Trade Commission, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b); Plaintiff State of Illinois, pursuant to 815 ILCS 505/7; Plaintiff Commonwealth of Kentucky, pursuant to the Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*; and Plaintiff State of North Carolina, pursuant to North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*; and pursuant to the Court's supplemental jurisdiction, 28 U.S.C. § 1367, and the Court's own equitable powers, request that the Court:

1. Award Plaintiffs such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, temporary and preliminary injunctions, an order freezing assets, allowing for immediate access, and the appointment of a receiver;

2. Enter a permanent injunction to prevent future violations by Defendants of the FTC Act; Illinois Consumer Fraud Act, 815 ILCS 505/1; Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, and Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*; and North

Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*;

3. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, Illinois Consumer Fraud Act, 815 ILCS 505/7, Kentucky Consumer Protection Act, K.R.S. 367.010 *et seq.*, Kentucky Pyramid Sales Act, K.R.S. 367.832 *et seq.*, North Carolina Pyramid and Chain Schemes Statute, N.C. Gen. Stat. § 14-291.2, and the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, the disgorgement of ill-gotten monies;

4. Require Defendants to pay a civil penalty in the amount of \$50,000 for each violation of the Illinois Consumer Fraud Act and an additional penalty if the Court finds that Defendants committed violations of the Illinois Consumer Fraud Act with the intent to defraud;

5. Require Defendants to pay a civil penalty as set forth by KRS 367.200 and pursuant to KRS 367.990(2), on behalf of the Commonwealth, of not more than two thousand dollars (\$2,000) per violation or where Defendants' conduct is directed at a person aged sixty (60) or older, a civil penalty of not more than ten thousand dollars (\$10,000) per violation;

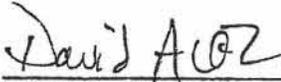
6. Require Defendants to pay a civil penalty in the amount of \$5,000 as set forth by N.C. Gen. Stat. § 75-15.2 for each violation found; and

7. Award Plaintiffs the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated 1/24/13

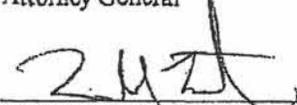
Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel



DAVID A. O'TOOLE
ELIZABETH C. SCOTT.
ROZINA C. BHIMANI
Attorneys for Plaintiff
Federal Trade Commission

JACK CONWAY
Attorney General



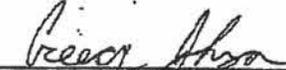
TODD LEATHERMAN
HAROLD TURNER
Attorneys for Plaintiff
Commonwealth of Kentucky

LISA MADIGAN
Attorney General



ADAM SOKOL
COLLEEN BISHOP
Attorneys for Plaintiff
State of Illinois

ROY A. COOPER
Attorney General



CRECY C. JOHNSON
Attorney for Plaintiff
State of North Carolina

12-55926, 12-56197 and 12-56288 (Consolidated)

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee

v.

BURNLOUNGE, INC., JUAN ALEXANDER ARNOLD, AND JOHN TAYLOR,
Defendants-Appellants

and

ROB DEBOER,
Defendant

On Appeal from the United States District Court
for the Central District of California
No. 2:07-03654 – Honorable George Wu

SECOND CROSS-APPEAL AND ANSWERING BRIEF
OF PLAINTIFF-APPELLEE
FEDERAL TRADE COMMISSION

Of Counsel:
CHRIS M. COUILLOU
DAMA J. BROWN
Federal Trade Commission
Atlanta, GA

DAVID C. SHONKA
Acting General Counsel

JOHN F. DALY
Deputy General Counsel for
Litigation

BURKE W. KAPPLER
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
(202) 326-2043

TABLE OF CONTENTS

| | PAGE |
|--|------|
| TABLE OF AUTHORITIES | iv |
| JURISDICTION | 1 |
| ISSUES PRESENTED | 2 |
| STATEMENT OF THE CASE | 3 |
| A. Nature of the case, the course of proceedings, and the disposition below | 3 |
| B. Facts and proceedings below | 5 |
| 1. Introduction | 5 |
| 2. BurnLounge Background | 6 |
| 3. Bonuses | 8 |
| a. Mogul Team Bonuses | 9 |
| b. Concentric Retail Rewards | 12 |
| 4. BurnLounge's Promotion and Marketing | 14 |
| 5. Results and Harms to Consumers | 15 |
| 6. Trial | 20 |
| 7. The Court's Decision | 21 |
| a. Count I: Pyramid Scheme | 22 |

| | | |
|------|--|----|
| b. | Counts II and III: Misrepresentations and Omissions | 24 |
| c. | Consumer Harm | 25 |
| d. | Individual Liability | 26 |
| 8. | Post-trial Proceedings | 27 |
| | STANDARD OF REVIEW | 29 |
| | SUMMARY OF ARGUMENT | 30 |
| | ARGUMENT | 33 |
| I. | The court correctly determined that BurnLounge was an illegal pyramid scheme. | 33 |
| A. | Burnlounge’s structure and operations match precisely those of an illegal pyramid scheme as defined by this Court and others. | 33 |
| B. | Defendant’s argument misapplies governing law and is belied by the district court’s findings of fact. | 41 |
| II. | The court properly allowed Dr. Vander Nat’s expert testimony. ... | 47 |
| III. | The court properly determined that the remedies should include injunctive relief and equitable monetary relief in the form of disgorgement. | 53 |
| A. | The court’s injunctive relief was proper. | 54 |
| B. | The court’s determination of equitable monetary relief was proper. | 55 |

| | | |
|-----|---|----|
| 1. | The FTC’s authority to obtain this relief is well-established. | 55 |
| 2. | The court’s calculation was proper. | 56 |
| 3. | Defendants’ liability on Counts II and III supports the court’s equitable monetary relief | 60 |
| IV. | The court properly calculated disgorgement amounts for defendant Arnold. | 62 |
| V. | The court erred in determining the amount of disgorgement owed by defendant DeBoer. [FTC Cross-Appeal No. 12-56228] . . | 65 |
| VI. | The court properly ordered defendant Taylor to disgorge his full receipts. | 68 |
| | CONCLUSION | 70 |
| | CERTIFICATE OF SERVICE | |
| | CERTIFICATE OF COMPLIANCE | |

TABLE OF AUTHORITIES

| CASES | PAGE |
|--|--------------------|
| <i>In re Amway Corp.</i> , 93 F.T.C. 618, 1979 WL 198944 (1979) | 33, 34, 40, 42, 46 |
| <i>Brown v. United States</i> , 329 F.3d 664 (9th Cir. 2003) | 29 |
| <i>Cigna Prop. & Cas. Ins. Co. v. Polaris Pictures Corp.</i> , 159 F.3d 412 (9th Cir. 1998) | 43 |
| <i>Daubert v. Merrill Dow Pharm.</i> , 509 U.S. 579 (1993) | 28, 47, 49 |
| <i>De Saracho v. Custom Food Mach., Inc.</i> , 206 F.3d 874 (9th Cir. 2000) | 29, 49 |
| <i>FTC v. Affordable Media</i> , 179 F.3d 1228 (9th Cir. 1999) | 62 |
| <i>FTC v. American Standard Credit Sys., Inc.</i> , 874 F. Supp. 1080 (C.D. Cal. 1994) | 62 |
| <i>FTC v. Amy Travel Serv., Inc.</i> , 875 F.2d 564 (7th Cir.1989) | 61, 62, 63, 66 |
| <i>FTC v. Bronson Partners. LLC</i> , 654 F.3d 359 (2d Cir. 2011) | 55, 56, 67 |
| <i>FTC v. Cyberspace.com, LLC</i> , 453 F.3d 1196 (9th Cir. 2006) | 62, 66 |
| <i>FTC v. Direct Mktg. Concepts, Inc.</i> , 624 F.3d 1 (1st Cir. 2010) | 55 |

FTC v. Febre,
128 F.3d 530 (7th Cir. 1997) 55, 56, 57, 67

FTC v. Figgie Int’l, Inc.,
994 F.2d 595 (9th Cir. 1993) 56, 61, 68

FTC v. Five Star Auto Club, Inc.,
97 F. Supp. 2d 502 (S.D.N.Y. 2000) *passim*

FTC v. Freecom Comm’ns, Inc.,
401 F.3d 1192 (10th Cir. 2005) 55

FTC v. Garvey,
383 F.3d 891 (9th Cir. 2004) 29

FTC v. Gem Merch. Corp.,
87 F.3d 466 (11th Cir. 1996) 55

FTC v. H. N. Singer,
668 F.2d 1107 (9th Cir. 1982) 53

FTC v. Kitco of Nevada, Inc.,
612 F. Supp. 1282 (D. Minn. 1985) 60

FTC v. Minuteman Press,
53 F. Supp. 2d 248 (E.D.N.Y. 1998) 60

FTC v. Pantron I Corp.,
33 F.3d 1088 (9th Cir. 1994) 27, 30, 53, 55, 68

FTC v. Publishing Clearing House, Inc.,
104 F.3d 1168 (9th Cir. 1997) 26, 62, 63

FTC v. QT, Inc.,
512 F.3d 858 (7th Cir. 2008) 25

FTC v. Sec. Rare Coin & Bullion Corp.,
931 F.2d 1312 (8th Cir. 1991) 55, 61, 68

| | |
|---|---------------|
| <i>FTC v. Southwest Sunsites, Inc.</i> , 665 F.2d 711 (5th Cir. 1982) | 55 |
| <i>FTC v. Stefanchik</i> , 559 F.3d 924 (9th Cir. 2009) | <i>passim</i> |
| <i>FTC v. Washington Data Resources</i> , 704 F.3d 1323 (11th Cir. 2013) | 67 |
| <i>Gen. Elec. Co. v. Joiner</i> , 522 U.S. 136 (1997) | 29, 48 |
| <i>Ger-Ro-Mar, Inc. v. FTC</i> , 518 F.2d 33 (2d Cir. 1975) | 46 |
| <i>Goodman v. FTC</i> , 244 F.2d 584 (9th Cir. 1957) | 60 |
| <i>Great-West Life & Annuity Co. v. Knudson</i> , 534 U.S. 204 (2002) | 55, 56 |
| <i>Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie</i> , 508 F. Supp. 2d 295 (D. Vt. 2007) | 48, 49 |
| <i>Grosz-Salomon v. Paul Revere Life Ins. Co.</i> , 237 F.3d 1154 (9th Cir. 2001) | 30 |
| <i>In re Holiday Magic</i> , 84 F.T.C. 748, 1974 WL 175319 (1974) | 39, 40 |
| <i>In re Koscot Interplanetary, Inc.</i> , 86 F.T.C. 1106, 1975 WL 173318 (1975), <i>aff'd mem. sub nom.</i> , <i>Turner v. FTC</i> , 580 F.2d 701 (D.C. Cir. 1978) | <i>passim</i> |
| <i>Kumho Tire Co., Ltd. v. Carmichael</i> , 526 U.S. 137 (1999) | 47, 48 |

| | |
|--|----------------|
| <i>N. Queen Inc. v. Kinnear</i> , 298 F.3d 1090 (9th Cir. 2002) | 29 |
| <i>Perry v. Brown</i> , 667 F.3d 1078 (9th Cir. 2012) | 30, 66 |
| <i>SEC v. Int’l Loan Network, Inc.</i> , 968 F.2d 1304 (D.C. Cir. 1992) | 34 |
| <i>SEC v. JT Wallenbrock & Assocs.</i> , 440 F.3d 1109 (9th Cir. 2006) | 67, 69 |
| <i>SEC v. Levine</i> , 462 Fed. Appx. 717 (9th Cir. 2011) | 69 |
| <i>SEC v. Platforms Wireless Int’l Corp.</i> , 617 F.3d 1072 (9th Cir. 2010) | 69 |
| <i>SEC v. TLC Invs. & Trade Co.</i> , 179 F. Supp. 2d 1149 (C.D. Cal. 2001) | 69 |
| <i>Shore v. County of Mohave</i> , 644 F.2d 1320 (9th Cir. 1981) | 48 |
| <i>Stull v. YTB Int’l</i> , Civ. No. 10-600-GPM, 2011 WL 4476419(S.D. Ill. Sept. 26, 2011) .. | 33, 45 |
| <i>United States v. Gold Unlimited, Inc.</i> , 177 F.3d 472 (6th Cir. 1999) | 35, 37, 46, 51 |
| <i>United States v. Hinkson</i> , 585 F.3d 1247 (9th Cir. 2009) | 30 |
| <i>Webster v. Omnitrition Int’l</i> , 79 F.3d 776 (9th Cir. 1996) | <i>passim</i> |
| <i>Whole Living, Inc. v. Tolman</i> , 344 F. Supp. 2d 739 (D. Utah 2004) | 34, 41, 45, 46 |

Zivkovic v. S. Cal. Edison Co.,
302 F.3d 1080 (9th Cir. 2002) 29

FEDERAL STATUTES

Federal Trade Commission Act:

15 U.S.C. § 45 3
15 U.S.C. § 45(a) 1, 3
15 U.S.C. § 53(b) 1, 3, 53
28 U.S.C. § 1291 1
28 U.S.C. § 1331 1
28 U.S.C. § 1337(a) 1
28 U.S.C. § 1345 1

RULES AND REGULATIONS

Fed. R. App. P. 4(a)(1)(B) 1
Fed. R. App. P. 4(a)(3) 1
Fed. R. Civ. P. 59 1, 5, 28, 58
Fed. R. Evid. 702 47, 53

JURISDICTION

The Federal Trade Commission (“Commission” or “FTC”) initiated an action in the United States District Court for the Central District of California seeking relief under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), for deceptive acts and practices that violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). The district court had jurisdiction under 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

The district court entered a final judgment on all counts of the complaint on July 25, 2011, and an amended final judgment on March 1, 2012. Defendants BurnLounge, Inc. (“BurnLounge”) and Juan Alexander Arnold filed a timely motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59, which the district court denied on May 3, 2012.

Pursuant to Fed. R. App. P. 4(a)(1)(B), defendants BurnLounge and Arnold timely filed notices of appeal on May 17, 2012, and defendant John Taylor timely filed a notice of appeal on June 27, 2012.¹ The Commission timely filed a cross-appeal notice on June 29, 2012, pursuant to Fed. R. App. P. 4(a)(3). This court has jurisdiction pursuant to 28 U.S.C. § 1291.

¹ Defendant Robert DeBoer did not appeal.

ISSUES PRESENTED

1. Illegal pyramid scheme: Whether the district court correctly determined that BurnLounge was an illegal pyramid scheme, where the evidence showed that the company's revenue and commissions relating to recruitment far outweighed those relating to the sale of digital music – its ostensible product – and that 93.84% of those recruited did not recover even their initial investment.
2. Admission of expert testimony: Whether the district court abused its discretion in admitting during a bench trial the testimony of Dr. Peter Vander Nat, an FTC economist and mathematician with extensive experience in analyzing pyramid schemes.
3. Equitable monetary relief: Whether the district court abused its discretion in ordering BurnLounge to disgorge \$16 million of funds paid to it by consumers.
4. Individual liability: Arnold: Whether the district court abused its discretion in finding Juan Alexander Arnold liable for equitable monetary relief where the evidence showed that he had the requisite participation and knowledge.
5. Individual liability: DeBoer: (FTC Cross-Appeal No. 12-56228): Whether the district court abused its discretion in finding Robert DeBoer individually liable but allowing him credit for his expenses and sales of music connected with the illegal pyramid scheme.

6. Individual liability: Taylor: Whether the district court abused its discretion in finding John Taylor individually liable where the evidence showed he was directly and centrally involved in BurnLounge.

STATEMENT OF THE CASE²

A. Nature of the case, the course of proceedings, and the disposition below.

These cross-appeals arise from an action by the FTC, pursuant to Sections 5 and 13(b) of the FTC Act, 15 U.S.C. §§ 45 and 53(b), seeking preliminary and permanent injunctive relief, and equitable monetary relief, against defendants BurnLounge, Arnold, Taylor, and DeBoer for promoting an illegal pyramid scheme.³

On June 6, 2007, the FTC filed its complaint, alleging three violations of Section 5 of the FTC Act, 15 U.S.C. § 45(a): (1) defendants promoted an illegal pyramid scheme; (2) defendants misrepresented that participants were likely to

² Citations to docket entries from the district court record are in the form “Dkt. ___.” Citations to exhibits are in the form “Ex. ___.” Citations to the Excerpts of Record are cited as “ER” and citations to the Supplemental Excerpts of Record are cited as “SER.” Citations refer to Bates page numbers or ECF header page numbers where available. Finally, citations to the trial transcript will follow the district court’s convention and identify the witness, volume, and page number. *See* Dkt. 385.

³ The complaint named a fourth defendant, Scott Elliott. Elliott entered into a separate stipulated order in June 2008. Dkt. 248.

make substantial income from BurnLounge; and (3) defendants failed to disclose that most participants were not likely to make substantial income. Dkt. 1.

Defendants BurnLounge and Arnold filed motions for summary judgment which were denied on November 10, 2008. Dkt. 351 [83 ER]. The case proceeded to a nine-day bench trial from December 9 to 22, 2008, during which the court received testimony from 28 witnesses.

The court issued its Statement of Decision on July 1, 2011, finding for the FTC on all counts. Dkt. 431 [5 ER] (“Decision”). The court entered final judgment on July 25, 2011, ordering injunctive relief and equitable monetary relief in the following amounts: BurnLounge and Arnold, \$16,245,799.70; Taylor, \$620,139.64; DeBoer, \$150,000. Dkt. 437.

Defendants filed objections to the form of the judgment, challenging several specifications relating to the injunctive relief. Dkt. 438. After additional briefing and hearings, on March 1, 2012, the court entered an amended final judgment and order that affirmed the earlier relief with minor changes. Dkt. 473 [39 SER], 474 [3 ER]. The amended order provided that the amounts received from Arnold would contribute to a redress fund for consumers, and that, consistent with the Decision, Arnold would be responsible for a minimum of \$1,664,506.45. *See* Dkt. 474 at 10 [3 ER 0033] (citing Decision, 28 n.48 [5 ER 0071]).

On March 29, 2012, defendants BurnLounge and Arnold filed a motion to alter or amend judgment under Fed. R. Civ. P. 59, alleging that the court had erred in its calculations of equitable monetary relief. Dkt. 477 [10 ER]. The court denied the motion on May 3, 2012. Dkt. 488 [2 ER]. These appeals followed.

B. Facts and proceedings below

1. Introduction

This case presents the old problem of pyramid schemes in the new context of online music sales. A pyramid scheme occurs where participants pay money for the right to sell a product and for the right to receive rewards for recruiting others that are unrelated to the retail product sales. *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1180, 1975 WL 173318, *59 (1975), *aff'd mem. sub nom., Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978). The right to receive rewards for recruiting is inherently deceptive because it promises that participants can recoup their investment by persuading others to invest, a practice described as “nothing more than an elaborate chain letter” *Koscot*, 86 F.T.C. at 1180-81, 1975 WL 173318, *59-*60.

BurnLounge and its representatives told consumers that BurnLounge offered the opportunity to run an online music store. In reality, BurnLounge’s business was predominantly a pyramid scheme that depended on the recruitment of

additional salespeople through the sales of “packages.” These packages were essentially fees for the opportunity to participate, although they were accompanied by different collections of ancillary items, such as music downloads, magazines, or DVDs. The FTC showed that, under the best of circumstances, at least 87.5% of BurnLounge participants would not recoup their initial investment, *i.e.*, the money they paid to BurnLounge primarily for the purchase price of these “packages.” BurnLounge’s own sales data corroborated this and showed the actual failure rate was closer to 94%. Defendants never disclosed this colossal failure rate to participants. Instead, they falsely claimed that participants could earn six- or seven-figure incomes. Ultimately, over 60,000 people accepted this vaunted opportunity, suffering losses of \$21.4 million.

2. BurnLounge Background

The defendants in the case are BurnLounge; Arnold, BurnLounge’s founder and CEO; Taylor, Arnold’s “right-hand man” and “Retailer 001” at the top of the pyramid; and DeBoer, one of BurnLounge’s most prominent and successful salesmen. Taylor, 4 RT 124 [6 SER 020], 5 RT 22 [7 SER 026]; DeBoer, 6 RT 35-37 [8 SER 032-34]; Arnold, 6 RT 142-43 [9 SER 054-55]; Dkt. 353-2 at 3 [82 ER 1090].

BurnLounge operated from late 2005 until June 2007, when the FTC

commenced this lawsuit and the parties agreed to a stipulated preliminary injunction. Dkt. 49 [89 ER]; Ex. 353-2 at 3-4 [82 ER 1090-91]. Describing itself as a combination of MySpace, iTunes, and Amway, the company operated in two aspects.⁴ *See, e.g.*, Dkt. 417, at 3.

First, BurnLounge offered consumers the opportunity to become independent retailers selling digital music online. Consumers did so by purchasing a BurnLounge package at one of three price levels: Basic, for \$29.95; Exclusive, for \$129.95; or VIP, for \$429.95. Ex. 10 at 2-3 [55 ER 0686-87].⁵ Each of these packages provided a webpage (or “BurnLounge”) that served as an online store and software for retailers to market and sell digital music and other music-related paraphernalia licensed and provided by BurnLounge. *Id.* In doing so, retailers earned points, known as BurnRewards points, that they could redeem for their own music and merchandise. *Id.* at 4 [55 ER 0688]. Each package also included additional promotional items. The Basic package offered the fewest items, while

⁴ This discussion of BurnLounge’s operations is taken largely from Exhibit 8, “Statement of Policies and Procedures,” Dec. 18, 2006 [56 ER], and Exhibit 10, “Shared Compensation Plan,” Nov. 1, 2006 [55 ER]. These documents are described collectively as BurnLounge’s “compensation plan.”

Defendants claim the trial judge erroneously ignored earlier versions of the compensation plan. BurnLounge Br. 23-24 & n.10, 64; Taylor Br. 12. As discussed below, these claim are unavailing. *See* Argument, III.B.2., *infra*.

⁵ Participants paid additional monthly dues of \$8 for the Exclusive and VIP packages. Ex. 10 at 3 [55 ER 0687].

the VIP package included, among other things, a magazine subscription, special event passes, music downloads called “BurnLounge Presents,” and a DVD set called the “BurnLounge University.”⁶ *Id.* at 2-3 [55 ER 0686-87]; Dkt. 353-2 at 4-5 [82 ER 1091-92]. These items were developed by BurnLounge; none had ever been offered outside of the packages.

Second, BurnLounge offered retailers the business opportunity to become Moguls for an additional \$6.95 per month. Ex. 10 at 3-4 [55 ER 0687-88]. Retailers who became Moguls could redeem their BurnRewards points for cash, at the rate of \$1 for 1 BurnRewards point. Ex. 10 at 4 [55 ER 0688]. Critically, Moguls were also eligible to earn bonuses for selling packages to other consumers and thereby recruiting them to become retailers. The illegal pyramid scheme arises from the Mogul program and compensation plan.

3. Bonuses

BurnLounge offered multiple types of bonuses and rewards. The structure of these bonuses steered participants to become Moguls and buy and sell the most expensive VIP package, thereby recruiting others and developing the pyramid. To be eligible to receive these bonuses or rewards in cash, a participant needed to

⁶ Though the items included with the packages changed during BurnLounge’s operation, the prices of the packages did not change. Ex. 353-2 at 4-5 [82 ER 1091-92].

become a qualified Mogul by: (1) purchasing one of the three types of packages; (2) recruiting two participants by selling them a premium, *i.e.*, Exclusive or VIP, package; (3) paying monthly Mogul dues of \$6.95; and (4) selling two albums per month. Ex. 10 at 3, 7-8 [55 ER 0687, 0691-92]; Ex. 8 at 5-6 [56 ER 0699-0700].

a. Mogul Team Bonuses

The Mogul Team Bonus is the most important for the pyramid analysis because it paid cash to Moguls for recruiting, and it constitutes the greater part of the bonuses paid by BurnLounge. Only Moguls could earn the Mogul Team Bonus. Ex. 10 at 7 [55 ER 0691].

The requirement that a Mogul sell packages to two other participants established two sales teams – an A-side and a B-side – beneath that Mogul. Ex. 10 at 9 [55 ER 0693]; Ex. 8 at 30 [56 ER 0724]; Ex. 43 at 1169-70 [21 SER 171-72]; Ex. 417 [44 ER]. In turn, each of these recruits could themselves become eligible for the Mogul Team Bonus by meeting the requirements above.

Each package sale by a Mogul or within her organization earned points for that Mogul.⁷ Sale of a VIP package earned 400 points, sale of an Exclusive package earned 100 points, but sales of a Basic package earned 0 points. Ex. 10 at

⁷ These points are known as “Mogul Points” and are different from the BurnRewards points participants could earn through sales of music or merchandise. *See, e.g.*, Ex. 10 at 8 [55 ER 0692].

8 [55 ER 0692]; Ex. 8 at 30-31 [56 ER 0724-25].

Whenever a Mogul balanced 300 points – meaning that she had 300 points or more on both her A-team and her B-team – the Mogul earned a cash bonus.⁸ Ex. 10 at 9 [55 ER 0693]; Ex. 8 at 30-31 [56 ER 0724-25].

The calculation of these bonuses varied depending upon the type of package the Mogul herself had initially purchased. For Moguls who had invested over \$400 by buying a VIP package, the bonus amount for each 300-point balance was \$50. For Moguls who bought the less expensive Exclusive package, the bonus was only \$25, *unless* the Mogul also sold at least \$500 worth of music.⁹ If so, then the bonus amount was \$50. Moguls who bought a Basic package were not eligible to earn bonuses at all, except in the (unlikely) event that they sold \$500 worth of music, in which case they could theoretically earn a \$25 bonus. If the Basic Mogul sold \$1000 worth of music, then the Mogul could earn a \$50 bonus. Ex. 10 at 7-8 [55 ER 0691-92]; Ex. 8 at 30-31 [56 ER 0724-25].

⁸ This bonus was also known as a “cycle bonus,” because it could be earned repeatedly as the Mogul and her organization sold packages and generated points. *See, e.g.*, Ex. 43 at 1169 [21 SER 171].

⁹ There was no evidence showing that any Mogul sold at least \$500 in music sufficient to increase the Mogul Team Bonus. Decision, 23-24 & n.39 [5 ER 0066-67]. In fact, the evidence showed that per capita music sales only totaled \$26.80. Ex. 176 [25 SER 185] (\$1,607,979.56 in music sales); Ex. 422 [42 ER] (60,270 Moguls).

This bonus structure encouraged Moguls to buy and sell the most expensive VIP packages. Moguls who bought the VIP package were automatically eligible for the highest bonus (\$50) with only minimal album sales required.¹⁰ And Moguls who sold VIP packages would receive higher Mogul Team points and thus would earn bonuses more quickly.¹¹ *See, e.g.*, Ex. 43 at 1169-70 [21 SER 171-72]. Thus, ironically for a company that advertised itself as being in the music business, the highest bonuses were paid to the individuals who were required to sell the least amount of music.

The Mogul Team Bonus was the most lucrative of the bonuses, and BurnLounge paid out over \$11 million in Mogul Team Bonuses in 2006 and 2007. Ex. 258 at D0013677 [30 SER 196] (\$8,480,975 in FY 2006); Ex. 259 at D0013680 [31 SER 199] (\$2,660,850 in FY 2007); Vander Nat, 11 RT 72-74 [14 SER 135-37].

¹⁰ Indeed, retailers were advised to have their spouses buy albums as a painless way of meeting these requirements. Taylor, 4 RT 149-50 [6 SER 024-25]; Keranen, 14 RT 12-14 [16 SER 141-43].

¹¹ Another incentive to sell VIP packages came from the Product Package Bonus, a different program that simply paid a one-time bonus for a direct sale of a package. A Mogul earned \$50 for selling a VIP package, \$25 for an Exclusive package, and \$10 for a Basic package. Ex. 10 at 6-7 [55 ER 0690-91]; Ex. 8 at 30 [56 ER 0724].

b. Concentric Retail Rewards

The Concentric Retail rewards were the only compensation ostensibly related to music sales. Here, participants – retailers or Moguls – could earn BurnRewards points based on music or merchandise sales through their own BurnLounge store. The rewards were based on a calculation of BurnLounge’s gross margin on that item. For each song sold, a Mogul could earn 2 or 5 cents, while a non-Mogul retailer could earn the fractional equivalent amount in BurnRewards points. For each album, a participant could earn 50 cents, or 20% of the gross margin on the album. Ex. 10 at 4-5 [55 ER 0688-89]; Ex. 8 at 29 [56 ER 0723]. The Concentric Retail program also paid rewards for the first \$30 of any package sold, and for the \$8 in monthly dues for the Exclusive and VIP packages. Ex. 10 at 6 [55 ER 0690] (“Product sales” definition); Ex. 8 at 28 [56 ER 0722] (same).

Like the Mogul Team Bonus, Concentric Retail offered another opportunity to earn rewards from sales by recruits. Unlike the Mogul Team Bonus, however, Concentric Retail operated in “rings.” Ex. 10 at 5-6 [55 ER 0689-90]; Ex. 8 at 28-29 [56 ER 0722-23]. To earn rewards from these rings, a retailer or Mogul had to maintain her own monthly album sales, generate album sales through her sales team, and sell additional packages (or “stores”). Ex. 10 at 5-6 [55 ER 0689-90].

As structured, the Concentric Retail program was opaque, onerous, and not nearly as lucrative as the Mogul Team Bonus. *See, e.g.,* Vander Nat, 8 RT 93-94 [11 SER 091-92]; Ex. 369 [34 SER]. For these reasons, Concentric Retail rewards were dwarfed by Mogul Team Bonuses. For example, in 2006, BurnLounge paid over \$9 million in Mogul Team and Product Package Bonuses, but only \$2.7 million in Concentric Retail rewards. Ex. 258 at D0013677 [30 SER 196].

And, because Moguls could earn Concentric Retail rewards for package sales, the overwhelming amount of the rewards paid related to packages, not music. During its operation, BurnLounge paid over \$3.7 million in Concentric Retail rewards for package sales, but only paid \$161,500 in Concentric Retail rewards for music sales. Vander Nat, 11 RT 86 [14 SER 139]; Ex. 247 [27 SER].

Thus, the Concentric Retail program to promote the sale of music actually reinforced package sales and recruitment.¹² The FTC's expert testified that, in the time a Mogul could earn \$277,006 in Concentric Retail rewards, she would have earned over \$1.86 million in Mogul Team Bonuses. Vander Nat, 8 RT 123-27 [11 SER 093-97]; Vander Nat Decl., 46-47 [90 ER 1286-87]; Ex. 371 [35 SER]. And of this \$277,006 reward, only \$25,217, or less than 10%, actually related to the sale

¹² The program also reinforced recruitment because a Mogul had to be qualified to earn rewards and qualification required the Mogul to sell at least two premium packages. Ex. 10 at 4, 7-8 [55 ER 0688, 0691-92].

of music. Vander Nat, 8 RT 126-27 [11 SER 096-97]; Vander Nat Decl., 46 [90 ER 1286].

4. BurnLounge's Promotion and Marketing

BurnLounge promoted its offerings through a variety of means, but relied heavily on sales meetings and conference calls. All of the individual defendants participated in these presentations and, in doing so, they made false claims about the potential income from BurnLounge. Decision, 17-19 [5 ER 0060-62]. Defendants made these claims despite the fact that doing so contravened BurnLounge's policies and procedures. Ex. 8 at 13 [56 ER 0707]. And defendants never disclosed that these claims were false, or that, in truth, most Moguls would not earn any profit at all.

In this appeal, defendants concede that these claims were false, and have raised no challenge to the district court's findings. *See* Appellants' Opening Brief by BurnLounge, Inc. and Juan Alexander Arnold ("BurnLounge Br."), 12-13, 25; Appellant's Opening Brief by John Taylor ("Taylor Br."), 8.

BurnLounge's marketing was disseminated nationally. The FTC introduced transcripts from meetings in six different locations, and from conference calls or pre-recorded calls available online. Ex. 1163 [19 ER]. In addition, all of the individual defendants testified that they regularly traveled and presented at

meetings around the country.¹³ Decision, 17-19 & n.32 [5 ER 0060-62]; Taylor, 4 RT 126 [6 SER 021], 5 RT 46-47 [7 SER 027-28]; DeBoer, 6 RT 35 [8 SER 032]; Arnold, 7 RT 62 [10 SER 062].

Another aspect of this promotion and marketing was a marked focus on the VIP package. Moguls were encouraged to sell it, and interested participants were encouraged to buy it, to generate lucrative rewards. *See, e.g.*, Ex. 43, at 1169-70 [21 SER 171-72]; Vander Nat Decl., 13-18 [90 ER 1253-58] (reviewing various marketing materials). This promotion served to reinforce the bonus structure, and through it, the pyramid.

5. Results and Harms to Consumers

BurnLounge's structure and marketing resulted in sharp contrasts between Moguls and non-Moguls. BurnLounge's sales data showed that Moguls— those retailers who wanted to convert BurnRewards points to cash and who paid the monthly \$6.95 Mogul fee – overwhelmingly preferred to buy the premium Exclusive and VIP packages. Out of 60,270 Moguls, 67% (or 40,393) bought VIP packages, 28.8% (or 17,359) bought Exclusive packages, while only 4.2% (or 2,518) bought Basic packages. Ex. 422 [42 ER]. The data showed the opposite for

¹³ Contrary to his assertion that false income claims were only presented to a total of 590 people, Taylor Br. 21, Taylor admitted at trial that he made earnings claims all over the country, including at a single event in Las Vegas with 2,500 attendees. Taylor, 4 RT 126-28 [6 SER 021-23], 5 RT 46 [7 SER 027].

non-Moguls – those customers who purchased music or packages, but did not opt to become a Mogul. Ex. 422 [42 ER]. Of the 57,997 non-Moguls, only 3.4% (or 1,980) even purchased a package, and of those, 65.5% (or 1,297) purchased the cheapest Basic package.¹⁴ *Id.* In sum, 95.8% of Moguls – those individuals who wanted cash for their sales – purchased one of the premium packages that offered bonuses with only minimal music sales required, while 96.6% of non-Moguls purchased no package at all. *Id.*

As a further result, packages sales drove 92.6% of BurnLounge's revenue in 2006, its one full year of operation, while music sales during the same year only amounted to 4.9% of revenue. Ex. 242 at 52 [26 SER 188]. During BurnLounge's entire operation, the company earned \$19,686,327 from sales of packages to Moguls, compared to \$1,503,240 in music sales. Ex. 1051 [40 ER].

Through its expert, Dr. Peter Vander Nat, the FTC showed these results and why they demonstrated BurnLounge was a pyramid. Dr. Vander Nat's analysis looked at four types of evidence: (1) the terms and conditions for earning compensation; (2) the variety of materials for marketing the program; (3) an optimal scenario in which every participant in the scenario attempts to achieve the

¹⁴ A non-Mogul who purchased a package could earn BurnRewards points that he could exchange for music or merchandise, but could not convert these points to cash without becoming a Mogul. Ex. 10, at 4 [55 ER 0688].

highest rewards possible within the scope of the plan; and (4) the company's sales data, to compare actual performance to the optimal model. Vander Nat, 8 RT 44-45, 53-54 [11 SER 074-77]; *see generally* Vander Nat Decl. [90 ER].

Dr. Vander Nat's optimal scenario demonstrated that a Mogul needed a sales organization with at least three levels below her in order to recoup her initial investment. Under an optimal scenario, Dr. Vander Nat assumed the Mogul would purchase a VIP package since this offered the fastest and easiest way to generate bonuses, and thus would invest \$450 (the basic cost of the VIP package plus dues and taxes). A Mogul with three levels below her would receive bonuses totaling \$550 and recoup this \$450. But Moguls with fewer than three levels below them would not. And, mathematically, the lowest three levels in a binary sales organization comprise 87.5% of the sales force, meaning that, under the best of circumstances, at least 87.5% of BurnLounge's Moguls would not recoup their initial investment. Moreover, this optimal failure rate did not change regardless of the number of Moguls. As Dr. Vander Nat demonstrated, no matter how large the organization, or how many levels, the bottom three always comprise at least 87.5% of the participants.¹⁵ Vander Nat, 8 RT 60-69 [11 SER 078-87]; Vander Nat Decl.,

¹⁵ This 87.5% figure assumes that the pyramid has at least 10 levels, which BurnLounge did. For pyramids with fewer than 10, the optimal failure rates are actually higher. Vander Nat Decl., 27 n.19, 50 [90 ER 1267, 1290].

24-27 [90 ER 1264-67]; Ex. 365 [32 SER]; Ex. 418 [37 SER].

Comparing the optimal scenario to BurnLounge's sales data showed that the actual failure rate was even worse. Dr. Vander Nat calculated each Mogul's net position by simply comparing the total payments made by the Mogul to BurnLounge against the total commissions and bonuses paid by BurnLounge to the Mogul. He found that, of the 60,270 moguls, 56,557 – or 93.84% – had a net return of \$0 or less. The data further showed that the rewards payments skewed heavily towards the top levels of the organization, with the top 6% of earners taking 85% of the rewards and bonus payments, while the top 1% earned 66%. Vander Nat, 9 RT 6-21 [12 SER 098-113]; Ex. 421 [38 SER].

Moreover, Dr. Vander Nat's optimal scenario also demonstrated that the BurnLounge rewards program was unsustainable. Assuming that the sales force was limited to ten layers and that every participant maximized their return, the sales force would generate \$40,720 in album sales revenue. Vander Nat, 8 RT 71-72 [11 SER 089-90]; Ex. 366 [33 SER]. But, at the same time, the Moguls would receive rewards and bonuses in the amount of \$705,400, a 17-to-1 ratio of bonuses to revenue that showed that BurnLounge could not sustainably fund rewards through album sales. Vander Nat, 8 RT 71-72 [11 SER 89-90]; Vander Nat Decl.,

28-30 [90 ER 1268-70]; Ex. 365 [32 SER].¹⁶

Dr. Vander Nat calculated the extent of the consumer harm caused by BurnLounge. By adding the net payments made by all those Moguls whose lost money and subtracting out the bonuses and other rewards they received, he concluded that Moguls lost nearly \$21.4 million to BurnLounge. Vander Nat, 9 RT 31 [12 SER 115].

As Dr. Vander Nat testified, this harm calculation did not include any value from the items included with the packages because it was impossible to value separately items that were bundled and that had never been sold independently. Vander Nat, 9 RT 30 [12 SER 114]. More importantly, he testified that he used the decision to become a Mogul as an indicator of a given individual's motivation to buy a BurnLounge package for the business opportunity. Vander Nat, 9 RT 30-32 [12 SER 114-16].

Dr. Vander Nat's assessment of the items' value was confirmed by BurnLounge's decision in June 2007 to abandon multilevel marketing and offer the packages without the Mogul business opportunity. Dkt. 353-2 at 4 [82 ER 1091].

¹⁶ BurnLounge claims that its revenues were sufficient to sustain the commissions paid and it points to supporting testimony from its CFO and its statements of operations from 2005 to 2007. BurnLounge Br. 25. But as that testimony and those statements show, BurnLounge always lost millions when all of the company's expenses were included. Piemonte, 14 RT 154-57 [17 SER]; Ex. 66 [53 ER]; Ex. 64 [54 ER].

Revenues plummeted, from \$476,516 in June 2007 to \$15,270 in July 2007 and to \$10,880 in August 2007. Decision, 9, 16 [5 ER 0052, 0059] (citing Ex. 67 [23 SER] (June); Ex. 65 [22 SER] (July); Ex. 68 [24 SER] (August)). This collapse showed that consumers were not interested in the packages or their items without the business opportunity.

6. Trial

The case proceeded to trial in December 2008. The FTC presented 16 witnesses, including consumers who had been Moguls, and 6 FTC employees who had observed and recorded various BurnLounge presentations. The FTC also called defendants, Arnold, Taylor, and DeBoer. Finally, the FTC called Dr. Vander Nat as its expert witness. Dkts. 367-73.

In turn, the defendants called 12 witnesses. These witnesses included several BurnLounge executives and retailers. Defendants provided testimony from two expert witnesses: David Nolte, who addressed the valuation of the items included with the various packages, and Alan Luce, who testified on multilevel marketing companies. Dkts. 373 [68 ER], 375 [64 ER], 377 [62 ER], 381 [59 ER].

Nolte, a professional appraiser and accountant, testified that the items included in the packages had value that exceeded the prices of the packages. Nolte, 14 RT 177-79 [18 SER]. Nolte reached this conclusion by comparing each

item to supposedly similar items available for sale. Nolte, 14 RT 179-81 [61 ER 0872-74]. On cross-examination, however, Nolte admitted that he had never valued an Internet store like BurnLounge before. Nolte, 16 RT 9-10 [19 SER 153-54]. He admitted that he had never valued individual issues of magazines. Nolte, 16 RT 24-27 [57 ER 0752-55]. With respect to the DVD set included with the VIP package, Nolte admitted he had not watched either BurnLounge's DVDs or the disc sets he compared it to, but instead relied on outlines prepared by others. Nolte, 16 RT 16-23 [19 SER 155-62]. And he admitted that viewing the objects to be valued, as well as the objects of comparison, was part of a typical assessment. Nolte, 16 RT 20-23 [19 SER 159-62].

In turn, Luce, a lawyer and former President of the Direct Sales Association ("DSA"), the trade association for multilevel marketing ("MLM") companies, testified about MLMs and compensation plans, his interpretations of pyramid law, and the application of this law to BurnLounge. *See generally* Luce, 16 RT 49-128. Luce testified, for instance, that he believed the percentage of individuals who join MLMs for reasons other than income ranged as high as 40-60%. Luce, 16 RT 73-75 [57 ER 0770-72].

7. The Court's Decision

The district court issued its Statement of Decision on July 1, 2011.

Describing BurnLounge's compensation plan as more of a "labyrinth of obfuscation rather than a readily understood compensation system[.]" Decision, 10 [5 ER 0053], the court discussed in detail BurnLounge's compensation plan, sales data and statistics, and marketing and promotional activities. Decision, 4-20 [5 ER 0047-63].

a. Count I: Pyramid Scheme

On the first count alleging that BurnLounge was an illegal pyramid scheme, the court agreed, stating:

Both as designed and in execution, the BurnLounge enterprise resulted in a large return for a small percentage of the Moguls which was funded by the substantial losses (*i.e.* the failure to recoup their initial investments) of the vast majority of recruited participants.

Decision, 21-22 [5 ER 0064-65].

In reaching this conclusion, the court identified those aspects of the BurnLounge business opportunity that encouraged recruitment. The court quoted this Court for the principle that rewards for recruitment unrelated to retail sales was "the *sine qua non*" of a pyramid scheme. Decision, 20-21 [5 ER 0063-64] (citing *Webster v. Omnitrition Int'l*, 79 F.3d 776, 781 (9th Cir. 1996)). Applying this principle, the court found that BurnLounge's promotional materials, presentations, and data showed that all of the packages were tools for recruitment, and the more lucrative the rewards, the greater the incentive to recruit. Decision, 22-23 [5 ER

0065-66].

The court accepted Dr. Vander Nat's analysis of the impact on consumers, finding that this emphasis on recruitment meant that, at a minimum, 87.5% of recruits would not recoup their investment, and in fact, 93.84% did not. Decision, 16-17 [5 ER 0059-60]. The court further found that while BurnLounge did generate some revenue from music sales – its ostensible product – these sales “could never (and in fact never did) fund any substantial portion of the rewards for the Mogul program.” Decision, 17 [5 ER 0060].

The court squarely rejected defendants' argument that the items included with the packages had independent value, and thus that rewards from the sales of these packages were related to “sales to ultimate users.” The court found “clearly that was not the case.” Decision, 23 [5 ER 0066]. The court reviewed Nolte's valuations of the items in each package and found each valuation not credible and factually unsupported.¹⁷ Decision, 6-10 [5 ER 0049-53]. Ultimately, the court rejected defendants' valuation evidence as not “even remotely persuasive.” Decision, 8 [5 ER 0051].

¹⁷ The court also did not accept Nolte's alternative harm calculation and in fact plainly rejected his premises. *Compare* Nolte, 15 RT 20-23 [58 ER 0786-89] with Decision, 11 n.19, 26-27 [5 ER 0054, 0069-70]. With respect to defendants' other expert, the court never mentioned Luce and apparently did not credit his testimony at all.

As the court determined, the major problem was that Nolte performed a comparative valuation. But, as Dr. Vander Nat explained, and as the court accepted, it is impossible to value items that were never separately available to consumers. Decision, 6 n.9 [5 ER 0049] (citing Vander Nat, 9 RT 30-31 [12 SER 114-15]). Moreover, the court found that many of Nolte's comparisons "ma[de] no sense," such as when Nolte compared the 6-disc "BurnLounge University" DVD set with the 10-disc documentary film on jazz by acclaimed director Ken Burns. Decision, 9 [5 ER 0052].

The court nonetheless concluded that the items included with the packages were not completely worthless because value is subjective. Decision, 10 [5 ER 0053]. After reviewing the evidence, the court concluded that the items had "*extremely* limited value to some consumers" Decision, 23 [5 ER 0066] (emphasis in original); *see also id.* at 10 & n.16 [5 ER 0053] (describing this as "giving the benefit of the doubt to BurnLounge"). But, "[t]o individuals who considered the bundled products as merely incidental to the business opportunity, the Court finds the products were *of no relevant value.*" Decision, 10 [5 ER 0053] (emphasis added).

b. Counts II and III: Misrepresentations and Omissions

On the second and third counts, the court found that BurnLounge and the

individual defendants made “misleading affirmative representations . . . and also failed to disclose material information” Decision, 24-25 [5 ER 0067-68].

The court also recognized that the statements were widely disseminated. It quoted statements made by Arnold, Taylor, and DeBoer in live and pre-recorded calls and presentations available nationwide. Decision, 17-19 & n.32 [5 ER 0060-62].

c. Consumer Harm

Having found for the FTC on all counts, the court then calculated the harm defendants inflicted on consumers. The court undertook a detailed analysis using BurnLounge’s sales data (Ex. 330 [45 ER]) and Dr. Vander Nat’s calculations (Ex. 422 [42 ER]). Decision, 26 [5 ER 0069] (citing *FTC v. QT, Inc.*, 512 F.3d 858, 864 (7th Cir. 2008)). First, the court limited the population of consumers harmed, by excluding Moguls who made a profit. *Id.* Then, using the company’s data and Dr. Vander Nat’s analysis, the court determined that 10.8% of Moguls found enough value in the Basic package to buy it without the business opportunity, meaning that 89.2% of Moguls would not have bought it but for the business opportunity. Decision, 26-27 [5 ER 0069-70]. The court multiplied this 89.2% rate against the number of Moguls who bought the Basic package and its cost to calculate the consumer harm from the Basic package. *Id.* The court performed the

same calculation for each of the premium package levels. The court found that 65.5% of Exclusive Moguls, and 82.7% of VIP Moguls would not have bought their packages but for the business opportunity and thus were harmed. Decision, 27 [5 ER 0070]. The court multiplied these rates against the Mogul populations for each package and the incremental cost for the package level and then added these figures together to reach a total consumer harm of \$16,245,799.70. *Id.*

d. Individual Liability

The court ruled that Arnold should be jointly and severally liable for this amount. Applying *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997), the court found that he had the requisite participation and knowledge because he created the BurnLounge concept, served as a primary investor and shareholder, developed the compensation plan, and was the “boss” and the “ultimate authority.” Decision, 28 [5 ER 0071]. The court’s imposition of joint and several liability on Arnold was premised on the understanding that the FTC intended to use the funds it received to reimburse consumers. In the event the FTC did not undertake to repay consumers, the court alternatively ordered Arnold to disgorge his receipts in the amount of \$1,664,566.45. Decision, 28 n.48 [5 ER 0071].

For Taylor, the court found that while he was not an officer or employee, he

was nonetheless deeply involved: Taylor helped raise capital, he was a shareholder, he was placed at the top of the pyramid as “Retailer 001,” and he made material misrepresentations at BurnLounge events where he was introduced as Arnold’s “right-hand man.” Decision, 28 [5 ER 0071]. Based on this involvement, the court concluded that Taylor should be liable for \$620,139.64, the amount he received from the scheme. Decision, 28-29 [5 ER 0071-72] (citing *FTC v. Pantron I Corp.*, 33 F.3d 1088, 1102 (9th Cir. 1994)).

For DeBoer, the court acknowledged that he had participated in the scheme and had made misrepresentations, but it also found that he had been an “effective . . . salesman,” who could have been one of the victims. Decision, 29 [5 ER 0072]. The court also found that the FTC had not established the number of consumers who relied on DeBoer’s statements or the amount of their losses. *Id.* Moreover, though it was “not disputed” that DeBoer received \$908,293.69, the court allowed DeBoer credit for his expenses and for income from music sales he made outside of the pyramid scheme. Decision, 30 [5 ER 0073]. However, the court found that the FTC had not established what these figures were. *Id.* The court then set DeBoer’s disgorgement at \$150,000.

8. Post-trial Proceedings

After the Statement of Decision and Order in July 2011, the court addressed

three separate post-trial motions from defendants. First, the court denied defendants' motion to strike Dr. Vander Nat's testimony, Dkt. 374 [65 ER], finding "no basis" to do so under *Daubert v. Merrill Dow Pharm.*, 509 U.S. 579, 592-93 (1993). Dkt. 450 at 1 [4 ER 0042]. Second, following defendants' objections, the court issued an amended final judgment that made minor changes to the final order and corrected clerical errors, but did not alter the court's conclusions. Dkts. 438, 473 [39 SER], 474 [3 ER]. The amended order did, however, alter the terms of Arnold's financial liability. To ensure that the FTC would implement any consumer redress program promptly, the amended judgment provides that funds provided by Arnold as part of his joint and several liability for such redress are to be returned to him periodically, if not used for that purpose. Dkt. 473 at 2 [39 SER 217]; Dkt. 474 at 10 [3 ER 0033]. However, in keeping with its earlier merits ruling, the amended order makes clear that Arnold remains liable, in any event, for \$1,664,506.45, representing disgorgement of his own income from the scheme. Dkt. 474 at 10 [3 ER 0033] (citing Decision, 28 n.48 [5 ER 0071]). Third, the court denied defendants' Motion to Alter or Amend Judgment under Fed. R. Civ. P. 59. Dkt. 477 [10 ER], 488 [2 ER].

STANDARD OF REVIEW

1. Findings of fact and conclusions of law: Following a bench trial, the trial judge's findings of fact are reviewed for clear error. *FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir. 2004) (citing *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088, (9th Cir. 2002)). The standard is "significantly deferential" and the trial court's findings should be accepted unless there is a "definite and firm conviction that a mistake has been committed." *Garvey*, 383 F.3d at 900 (citing *N. Queen Inc. v. Kinnear*, 298 F.3d 1090, 1095 (9th Cir. 2002)).

The trial court's conclusions of law following a bench trial are reviewed *de novo*. *Garvey*, 383 F.3d at 900 (citing *Brown v. United States*, 329 F.3d 664, 671 (9th Cir. 2003)).

2. Admission of expert testimony: A trial court's decision to admit expert testimony is reviewed for abuse of discretion; an appellate court should give "deference" to a trial court and may only reverse if the trial court's determination was "manifestly erroneous." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 141-43 (1997); *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 879 (9th Cir. 2000).

3. Equitable monetary and injunctive relief: The district court has broad authority under the FTC Act to "grant any ancillary relief necessary to accomplish

complete justice[.]” *FTC v. Stefanichik*, 559 F.3d 924, 931 (9th Cir. 2009) (citing *Pantron I Corp.*, 33 F.3d at 1102). A district court’s decision to award equitable monetary or injunctive relief is a matter of discretion. *Id.* (citing *Grosz-Salomon v. Paul Revere Life Ins. Co.*, 237 F.3d 1154, 1163 (9th Cir. 2001)).

However, it is an abuse of discretion for a court to make an error of law; a court must identify and apply the correct legal rule and not overlook or misconstrue binding precedent. *Perry v. Brown*, 667 F.3d 1078, 1084 (9th Cir. 2012); *United States v. Hinkson*, 585 F.3d 1247, 1261-62 (9th Cir. 2009).

SUMMARY OF ARGUMENT

BurnLounge was an illegal pyramid scheme that caused losses of \$21.4 million to over 56,000 consumers. After conducting a bench trial and receiving evidence that included expert testimony and BurnLounge’s own compensation plan and sales data, the district court properly concluded that BurnLounge fits squarely within the definition of an unlawful pyramid applied by this Court and other tribunals. In both its marketing strategy and its compensation scheme, Burnlounge evinced the “recruitment focus” that this Court has recognized as the hallmark of a pyramid scheme. BurnLounge earned the great bulk of its income not from music sales, but from the sales of packages – particularly the expensive premium packages – that were essentially fees to participate in the money-making business

opportunity. Likewise, the primary rewards went not for music sales, but for the sale of yet more packages to more levels of participants. The inevitable result was that the vast majority of participants – nearly 94% – suffered substantial losses.

Defendants attempt to defend their program by characterizing the sales of packages to BurnLounge Moguls – including the expensive premium packages – as sales to “ultimate users” that take the program out of the pyramid mold. But this Court has held definitively that such internal sales do not exempt a business from the legal definition of a pyramid, and this Court may affirm on that ground alone. In any event, defendants’ argument is also belied by the district court’s detailed factual findings. The court conclusively rejected defendants’ evidence for value in the packages, determined that their purchase patterns showed they were bought predominantly for the business opportunity, and found that the included items had “no relevant value” to Moguls who sought to earn cash for their recruiting efforts.

The district court properly admitted the testimony of Dr. Peter Vander Nat, an FTC economist and mathematician who is also one of the foremost experts on pyramid schemes. Dr. Vander Nat’s testimony was highly relevant to the issue of whether BurnLounge was a pyramid. The testimony was also reliable, surviving vigorous cross-examination and opposing testimony from two other experts. Defendants’ argument rests on a misunderstanding of pertinent law and on

mischaracterizations and distortions of Dr. Vander Nat's testimony.

The district court properly awarded injunctive and equitable monetary relief. Both the injunctive relief and equitable monetary relief were consistent with governing law. In calculating monetary relief, the court did not accept the FTC's proposed relief of \$21.4 million, but developed its own figure from BurnLounge's sales data in order to give defendants "a generous benefit of the doubt." This calculation was proper and consistent with the broad discretion afforded a district court in fashioning an equitable remedy.

The district court properly determined that both Arnold and Taylor played central roles in the BurnLounge scheme. Arnold was the creator, manager, and ultimate authority, with knowledge that BurnLounge was a pyramid, while Taylor was deeply involved as his "right-hand man." The court's disgorgement orders for both of these defendants properly reflect the evidence at trial.

But for DeBoer, the court erred in allowing him credit for his expenses and music sales and ordering him to disgorge only \$150,000 of the \$908,293.69 he earned from the scheme. This aspect of the court's decision and order should be reversed and DeBoer ordered to disgorge all of his receipts.

ARGUMENT

- I. **The court correctly determined that BurnLounge was an illegal pyramid scheme.**
 - A. **BurnLounge’s structure and operations match precisely those of an illegal pyramid scheme as defined by this Court and others.**

A pyramid scheme arises where individuals pay money to a business “in return for which they receive (1) the right to sell a product *and* (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.” *Koscot*, 86 F.T.C. at 1180, 1975 WL 173318, *59 (emphasis in original); *accord Omnitrition*, 79 F.3d at 781.

Pyramid schemes differ from legitimate multilevel marketing, or MLM, businesses because the primary purpose of pyramid schemes is to reward associates for the recruitment of others, while the purpose of legitimate MLMs is to encourage retail sales to end-consumers. *In re Amway Corp.*, 93 F.T.C. 618, 716-17, 1979 WL 198944, *70 (1979); *see also Stull v. YTB Int’l*, Civ. No. 10-600-GPM, 2011 WL 4476419, *5 (S.D. Ill. Sept. 26, 2011); *FTC v. Five Star Auto Club, Inc.*, 97 F. Supp. 2d 502, 531 (S.D.N.Y. 2000). As this Court has held, it is this “recruitment focus” that distinguishes a true pyramid scheme. *Omnitrition*, 79 F.3d at 781-82 (citing *Koscot*, 86 F.T.C. at 1181). Pyramid schemes typically require participating individuals to pay large sums of money for this recruitment

right, either by conditioning rewards on purchases of inventory or by requiring an “entry” or “headhunting” fee. *Amway*, 93 F.T.C. at 715-16, 1979 WL 198944, *69.

Pyramid schemes are inherently deceptive in violation of Section 5 because they represent that any individual can recoup his or her investment by means of inducing others to invest. *Koscot*, 86 F.T.C. at 1181, 1975 WL 173318, *60. This is deceptive because “the presence . . . of recruitment with rewards unrelated to product sales[] is nothing more than an elaborate chain letter device in which individuals who pay a valuable consideration with the expectation of recouping it to some degree via recruitment are bound to be disappointed.” *Omnitrition*, 79 F.3d at 781-82 (quoting *Koscot*, 86 F.T.C. at 1180, 1975 WL 173318, *59). This recruitment focus ultimately leads to collapse because it cannot be sustained in the long term. 79 F.3d at 781 (citing *SEC v. Int’l Loan Network, Inc.*, 968 F.2d 1304, 1309 (D.C. Cir. 1992)).

To distinguish an illegal pyramid scheme from a legitimate MLM, a court must look at how the business functions in practice. *Whole Living, Inc. v. Tolman*, 344 F. Supp. 2d 739, 745 (D. Utah 2004) (citing *Omnitrition*, 79 F.3d at 783; *Amway*, 93 F.T.C. at 715-17, 1979 WL 198944, *68 -*70). In particular, a court should look at “the marketing strategy (*e.g.*, emphasis on recruitment versus sales)

and the percent of product sold compared with the percent of commissions granted.” *United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 475 (6th Cir. 1999).

The court below correctly applied the facts it found to these cases to find that in practice BurnLounge was an illegal pyramid scheme. BurnLounge meets the *Koscot* definition precisely. *See Koscot*, 86 F.T.C. at 1180, 1975 WL 173318, *59. Through the packages, the company offered consumers “the right to sell a product,” here, music and related merchandise. Through the Mogul program and its bonuses, BurnLounge offered “the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.” Moguls recruit by selling packages to others and encouraging them to become Moguls, too. The “rewards” for doing so are the cash payouts through the bonuses, the greatest of which were paid to those who bought and sold VIP packages – at a \$400 premium over the Basic package. Decision, 21-24 [5 ER 0064-67]. And, as the court found, these rewards were “clearly” unrelated to sales to ultimate users because the included items had “no relevant value” to those who were instead buying the package for the opportunity to get cash through downline sales. Decision, 10, 23-24 [5 ER 0053, 0066-67].

As a result, BurnLounge created exactly the type of “recruitment focus” – with the same detrimental results – warned of in *Omnitrition* and the other pyramid

cases. For one, BurnLounge received over \$2.3 million in revenue from sales of music and merchandise, its ostensible products, but it received approximately \$25 million – or more than 90% of its total revenue – from recruiting through sales of packages and related dues and fees. Decision, 16 [5 ER 0059] (citing Ex. 330 [45 ER]). Indeed, BurnLounge made \$2.8 million in monthly \$6.95 Mogul fees alone, more than in all music and merchandise sales combined. *Id.* Too, the rewards paid by BurnLounge were overwhelmingly related to sales of packages, not sales of music. As Dr. Vander Nat explained, in 2006, BurnLounge paid \$8,480,975 in Mogul team bonuses and \$680,458 in product package bonuses, both of which are based on package sales. In the same period, the company paid \$2,726,965 in Concentric Retail rewards, but the vast majority of this was related to package sales as well. Vander Nat, 8 RT 126-27 [11 SER 096-97], 11 RT 72-74 [14 SER 135-37]; Ex. 258 at D0013677 [30 SER 196]. In sum, BurnLounge paid more than \$17 million in commissions to its Moguls, a figure that dwarfs either revenues from or rewards paid for music sales. Decision, 16 [5 ER 0059] (citing Ex. 330 [45 ER]).

The stark contrasts in the purchase patterns of Moguls and non-Moguls further confirm that the participants understood that BurnLounge was primarily offering a business opportunity. Over 95% of Moguls – those interested in making

money – purchased one of the premium packages that offered faster and larger bonuses, while over 96% of non-Moguls – those uninterested in the business – purchased no package at all. Decision, 16 [5 ER 0059] (citing Ex. 422 [42 ER]). These distinct patterns led the court to conclude, “[I]t was the business opportunity and not the products that drove sales of product packages.” Decision, 17 [5 ER 0060] (citing Ex. 422 [42 ER]).¹⁸ This was further confirmed when BurnLounge began to offer packages without the business opportunity and sales plummeted, confirming that participants only wanted the packages for the business opportunity. Decision, 16 [5 ER 0059] (citing Exs. 65 [22 SER], 67 [23 SER], 68 [24 SER]).

BurnLounge also mirrored *Koscot* and *Omnitrition* in another aspect: those at the bottom of the pyramid were unable to recoup their initial investment. Decision, 21-22 [5 ER 0064-65]. As the court found, nearly 94% of BurnLounge participants were unable to earn their money back, a figure even larger than that predicted by Dr. Vander Nat in his optimal scenario. Decision, 16-17 [5 ER 0059-60].

¹⁸ This is why defendants’ claim about the FTC’s burden to prove buyer motivation fails. BurnLounge Br. 50-51. For one, there is no such burden. See *Gold Unlimited*, 177 F.3d at 482 (finding government had “to do no more” than satisfy *Koscot*, while defendant had burden to prove that anti-pyramid policies were effective). But even if it existed, the FTC more than met it with this sales data and the testimony of four former Moguls. Ex. 422 [42 ER]; Baccus, 2 RT 13-15 [2 SER]; Becker, 2 RT 72-76 [3 SER]; Sharp, 2 RT 127, 149-50 [4 SER]; Bowers, 3 RT 8-9, 16-17 [5 SER].

For these reasons, the court's decision is consistent with other pyramid scheme cases. For instance, BurnLounge parallels *Omnitrition* because neither scheme provided sufficient incentives for participants to engage in retail sales. As this Court held, *Omnitrition* was not entitled to summary judgment on the pyramid claim because it could not show that its program tied recruitment to actual retail sales. 79 F.3d at 783-84. Similarly, BurnLounge's own sales data confirms that recruitment, not retail sales, was primary. Notably, the district court rejected defendants' claim that *Omnitrition* was different from BurnLounge because it involved "inventory-loading" – the practice of requiring participants to purchase quantities of merchandise to receive commissions. As the court found, this was a "distinction without a difference." Decision, 24 [5 ER 0067]. As the court recognized, the inventory-loading pyramid schemes condemned in prior cases were not illegal simply because of the purchasing requirements, but because the purchases were spurred by commissions that result from recruiting others to join the scheme, just like BurnLounge. *Id.*

The similarities between BurnLounge and *Five Star Auto Club* are even more striking.¹⁹ Like BurnLounge, Five Star Auto Club offered participants the

¹⁹ Contrary to defendants' claim, *Five Star Auto Club* involved the sale of memberships and was not an inventory-loading case. BurnLounge Br. 46-48; *Five Star Auto Club*, 97 F. Supp. 2d at 509-12.

chance to enter at one of three levels, with the most expensive level – “member-consultant” – offering the greatest opportunity to earn commissions and rewards from the sale of memberships to others. *Five Star Auto Club, Inc.*, 97 F. Supp. 2d at 509-10. Like BurnLounge, Five Star Auto Club included some ancillary services with the memberships – including roadside towing, specially-priced insurance, and even a dental plan – but few participants were interested in these and the court found they were included “solely to stave off regulators.” *Id.* at 509. Dr. Vander Nat also testified as an expert in *Five Star Auto Club*, and determined there, as here, that participants predominantly joined at the highest levels. *Id.* at 517. That court found that this purchase pattern demonstrated the motivations of the customers involved: “For those participants who joined as consultants, the only lure offered was the opportunity to earn commissions by recruiting others. The fact that virtually no one joined Five Star as just a member [a level that did not offer commissions] indicates that the services purportedly available to members . . . were neither the focus nor the appeal of the Five Star program.” *Id.* at 530. Finally, as in the present case, participants were virtually guaranteed not to recoup their payments. Dr. Vander Nat calculated that 95% of all participants lost money on the scheme. *Id.* at 518, 532.

The pyramid scheme found illegal in *In re Holiday Magic, Inc.*, 84 F.T.C.

748, 1974 WL 175319 (1974), is also similar to BurnLounge. Defendants claim that the FTC found Holiday Magic to be an illegal pyramid because it involved “exorbitant” inventory purchases with no regard for retail sales. BurnLounge Br. 48. But this mistakes the Commission’s reasoning: “While some attention was certainly paid by the organization to the retail sales of its products, it is clear from the record that the major emphasis in promoting the program, and the major attraction for many participants, was the prospect of the profits to be made through recruitment of others.” 84 F.T.C. at 1035, 1974 WL 175319, *206. This description could be applied to BurnLounge without alteration.

Conversely, *Amway* is clearly distinguishable. The FTC found Amway not to be a pyramid scheme because of its policies to deter inventory-loading and to promote retail sales. 93 F.T.C. at 716-17, 1979 WL 198944, *69-*70. But BurnLounge had no such policies. Instead, the company paid the highest bonuses for the sales of packages, and only rewarded sales of music – its ostensible product – through the Concentric Rewards portion of the compensation plan, which was so convoluted that even BurnLounge did not try to illustrate fully how it worked. Vander Nat, 8 RT 93-94 [11 SER 091-92]. Because BurnLounge did not encourage outside retail sales of music as Amway did, BurnLounge is

distinguishable.²⁰

For these reasons, the district court's conclusion that BurnLounge had demonstrated the "recruitment focus" and customer harm that are the hallmarks of an illegal pyramid scheme was entirely consistent with this Court's controlling decision in *Omnitrition*, the Commission's seminal ruling in *Koscot*, and the entire body of case law condemning pyramid schemes.

B. Defendants' argument misapplies governing law and is belied by the district court's findings of fact.

In response, defendants claim that the items included with the packages had independent value and that Moguls who purchased the packages did so for these items. Thus, they claim, any rewards paid for package sales were related to sales

²⁰ Defendants argue that, like Amway, BurnLounge paid commissions to its Mogul-distributors for internal sales to recruits. They pull isolated references from an FTC staff opinion and from *Whole Living* to support their claim that commissions for internal sales for the purchaser's own use are not proof of a pyramid. BurnLounge Br. 44-45. To the extent this revisits defendants' claim that the FTC had to prove motivation, it fails for the reasons discussed above. But defendants also misread these authorities.

The FTC staff opinion concludes, "[A] multi-level compensation system funded primarily by payments made for the right to participate in the venture is an illegal pyramid scheme." Ex. 1049 at 1 [41 ER 0623]. BurnLounge's funding primarily flowed from the sales of packages required for recruiting. Ex. 1051 [40 ER]; Decision, 16 [5 ER 0059].

Similarly, *Whole Living* states, "The fact that there are some retail sales does not mitigate the unlawful nature of a pyramid scheme." *Whole Living*, 344 F. Supp. 2d at 745 (citing *Omnitrition*, 79 F.3d at 782-83). That BurnLounge made some retail sales, or that a few purchasers saw value in the items, does not alter the emphasis on recruitment found by the court. Decision, 22-23 [5 ER 0065-66].

of these items to ultimate users and BurnLounge could not be a pyramid scheme under the definition in *Koscot*. BurnLounge Br. 39-42. This claim is erroneous both in law and in fact.

For one, defendants are simply incorrect in claiming that sales of packages from one Mogul to another are sales to “ultimate users.” Although they purport to rely on a “*Koscot/Omnitrition* test,” BurnLounge Br. 39 n.20, this Court in *Omnitrition* definitively ruled that “ultimate users” are the external customers for the business’s ostensible product, not the business’s own internal sales force. 79 F.3d at 783. In that case, Omnitrition argued that it could not be found a pyramid because it employed the same anti-loading policies as in *Amway*. 79 F.3d at 782-83. But Omnitrition allowed these policies to be satisfied by sales downline to internal distributors or for the distributor’s own personal use. *Id.* at 783. This Court found this insufficient to promote the retail sales necessary to avoid pyramiding. As this Court said, “If *Koscot* is to have any teeth, such a [non-retail] sale cannot satisfy the requirement that sales be to ‘ultimate users’ of a product.” *Omnitrition*, 79 F.3d at 783 (emphasis added).

For this reason, though defendants strain to find references in the district court’s opinion that suggest the items in the packages had value, these are of no moment. BurnLounge Br. 41; Taylor Br. 20. Applying this Court’s teachings in

Omnitrition, internal sales to other Moguls cannot be sales to ultimate users consistent with *Koscot*. And if such sales are correctly ignored, no more is needed to uphold the district court's conclusion that Burnlounge was an unlawful pyramid scheme.

As noted above, the district court did not treat this consideration as dispositive,²¹ although it recognized the importance of the fact that the vast majority of Burnlounge's sales and revenues came from such transactions, especially the sale of premium "packages" to Moguls. The court's analysis turned on two key findings it made, based on its exhaustive review of the record. First, although the court below acknowledged that items included in the packages "had at least some minor value in and of themselves . . .," Decision, 10 [5 ER 0053], it soundly rejected defendants' attempt to portray the sale of packages to Moguls as constituting the sale of goods for fair value. The court rejected in its entirety the purported market-based valuation by defendants' expert Nolte, finding this evidence "neither overwhelming nor even remotely persuasive." Decision, 8 [5 ER 0051]. The court reviewed each of Nolte's comparisons and accepted none of

²¹ This Court may, however, affirm on this ground alone, which is legally sufficient, was argued below by the Commission, and is well supported by the record. See *Cigna Prop. & Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412, 418-19 (9th Cir. 1998).

them, describing them variously as “not credible and unsupported by the evidence[,]” “inapt and without convincing supporting evidence[,]” “defective[,]” and “mak[ing] no sense. . . .” Decision, 7-9 [5 ER 0050-52].

Second, as discussed above, the court below carefully analyzed the patterns of consumers’ purchases of the various packages, in relationship to the compensation plan that made it quicker and easier for those consumers who purchased the expensive premium packages to qualify for bonuses, with minimal sales of music. Decision, 16 [5 ER 0059]. Unsurprisingly, the vast majority of premium packages were purchased by consumers who also became Moguls – thus indicating that they joined the program in order to earn money – while only a handful of non-Mogul participants purchased those expensive packages. *Id.* As the court concluded, “[b]y and large, however, it was the business opportunity and not the products that drove the sales of packages.” Decision, 17 [5 ER 0060]. In other words, while the court gave the defendants the “benefit of the doubt” by assuming that some small number of consumers valued the incidental items included in the packages – and reduced its assessment of total consumer harm accordingly – it correctly found, on the basis of all of this evidence, that for those Moguls interested in the business opportunity, the included items had “no relevant value.” Decision, 10 & n.16, 23-24 [5 ER 0053, 0066-67].

Thus, the court below found that the great majority of participants were making payments to Burnlounge – most notably in the form of the \$100 or \$400 premiums for the higher-level packages – in the hope of earning bonuses from the sale of such packages to downstream customers. Decision, 22-24 [5 ER 0065-67]. This is the very hallmark of a pyramid scheme. As this Court stated in *Omnitrition*, “Omnitrition cannot save itself simply by pointing to the fact that it makes some retail sales.” 79 F.3d at 782. *See also Stull*, 2011 WL 4476419 at *5 (holding that the fact that an alleged pyramid scheme’s product had some inherent value did not mean that it was not a pyramid); *Whole Living*, 344 F. Supp. 2d at 745 (citing *Omnitrition*, 79 F.3d at 782-83).

These holdings make sense from a policy perspective. If the test for a pyramid scheme hinged on whether the product or service was *entirely* devoid of value, then every pyramid scheme would do as defendants here have done – provide items of little marginal value to every participant in conjunction with the payment required to join the program, and then claim these are sales to ultimate users “to stave off regulators” and evade liability. *See Five Star Auto Club*, 97 F. Supp. 2d at 509.

Defendants point to cases about the limits of statistical evidence, but these cases involve the use of statistics to prove race and age discrimination and thus are

not appropriate for pyramid scheme analysis. BurnLounge Br. 50-51. Defendants also point to *Ger-Ro-Mar v. FTC* to claim that mathematical evidence is insufficient to establish a pyramid. *Id.*, 45-46. But in that case, the only mathematical evidence offered was a hypothetical projection of the number of participants, without any data reflecting actual effects. *Ger-Ro-Mar, Inc. v. FTC*, 518 F.2d 33, 37 (2d Cir. 1975). Here, the mathematical evidence included BurnLounge's own sales data, calculated on the basis of each customer's payments into and receipts from BurnLounge. Such evidence of the actual practices and effect of a pyramid is exactly what courts find necessary to establish its existence.²² *Gold Unlimited*, 177 F.3d at 475, 481-82; *Omnitrition*, 79 F.3d at 783-84; *Whole Living*, 344 F. Supp. 2d at 745-46; *Amway*, 93 F.T.C. at 715-17, 1979 WL 198944, *68-*70.

²² Defendants claim that the FTC failed to account for those participants who opted to become Moguls but generated no sales or commissions, a group known as the "non-entrepreneurs." BurnLounge Br. 51; Vander Nat, 9 RT 35-36 [12 SER 117-18]. But, as Dr. Vander Nat testified, he did account for them by treating them exactly like other Moguls. Vander Nat, 9 RT 37-38 [12 SER 119-20]. Though defendants imply that the non-entrepreneurs had some alternative motivation, the court noted that BurnLounge offered no evidence to support this conclusion. Decision, 26 [5 ER 0069]. Instead, the court found it more likely that these individuals intended to participate in the business opportunity but found it too difficult. Decision, 11 n.19 [5 ER 0054].

Defendants also observe that, on average, an individual opted to be a Mogul for 6.8 months, but they do not explain why this has any relevance. BurnLounge Br. 51. Since Dr. Vander Nat calculated actual harm to each consumer based on their net receipts, the length of time each was a Mogul is irrelevant.

For all these reasons, the court correctly determined that BurnLounge was an illegal pyramid scheme.

II. The court properly allowed Dr. Vander Nat's expert testimony.

Defendants attempt to challenge the admission of Dr. Vander Nat's testimony, but their claims rest on nothing more than erroneous statements of the law and mischaracterizations of the record.

The admission of expert testimony is governed by Rule 702 of the Federal Rules of Evidence. This rule was amended in 2000 to reflect the Supreme Court's decisions in *Daubert* and in *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). FED. R. EVID. 702 advisory committee's note. In *Daubert*, the Court established a "liberal" standard for expert opinion testimony, holding such testimony admissible if it is scientifically valid and will assist the trier of fact to understand or determine a fact in issue – in other words, if the testimony is reliable and relevant. *Daubert*, 509 U.S. at 588, 592-93, 594-95. The Court offered a number of factors that a district court may consider in evaluating the proposed testimony, including testing, peer review and publication, and error rates, but ultimately "emphasize[d]" that the test for admissibility must be "a flexible one." *Daubert*, 509 U.S. at 593-94. In *Kumho*, the Court reaffirmed that these factors are "not definitive," and that a trial judge has "broad latitude to determine" whether to

admit expert testimony. 526 U.S. at 151, 153 (citing *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997)).

This “broad latitude” is particularly appropriate in a bench trial, where there is no risk that expert testimony would mislead or confuse a jury. *See Shore v. County of Mohave*, 644 F.2d 1320, 1322-23 (9th Cir. 1981) (“Since this was a bench trial, there was little danger under the circumstances that the court would have been unduly impressed by the expert’s testimony or opinion.”); *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 312 (D. Vt. 2007).

For these reasons, the district court acted well within its discretion in admitting Dr. Vander Nat’s expert testimony. The testimony was unquestionably relevant to facts in issue, including whether BurnLounge operated a pyramid and the amount of consumer harm. The testimony was also reliable. Dr. Vander Nat is an established expert in the field, with a doctorate in economics and advanced graduate study in mathematics. Vander Nat, 8 RT 34-35 [72 ER 1042-43]; Ex. 399 [36 SER]. He has provided expert opinions on behalf of the FTC and other government agencies in numerous cases, having analyzed at least 15 different companies, and having testified as an expert at trial involving five of those, including some cited favorably by defendants. Ex. 399 [36 SER]; BurnLounge Br.

47-48 (citing *Five Star Auto Club*). He is also the co-author of the leading academic article on the analysis of pyramid schemes. Ex. 1130 [24 ER].

As this Court and others have recognized, the preferred method to challenge expert testimony is not exclusion, but cross-examination and opposing evidence. See *De Saracho*, 206 F.3d at 880; *Green Mountain Chrysler Plymouth Dodge Jeep*, 508 F. Supp. 2d at 312 (citing *Daubert*, 509 U.S. at 596). Defendants' counsel did just that, cross-examining Dr. Vander Nat over two trial days. Defendants also introduced evidence from two separate experts in an attempt to rebut Dr. Vander Nat's findings. As the district court relied heavily on Dr. Vander Nat, refused to credit Nolte, and never mentioned Luce, it is plain that they failed.

Defendants now seek to exclude Dr. Vander Nat's testimony, based largely on distortions of what he said. Defendants primarily claim that Dr. Vander Nat used a four-factor test that is not published and would not necessarily lead to results consistent with *Koscot's* definition of a pyramid. *BurnLounge Br.* 29-30; *Taylor Br.* 17-19, 20.

But this was not Dr. Vander Nat's testimony. Instead, he articulated a definition of a pyramid that is entirely consistent with both *Koscot* and *Omnitrition*. See *Koscot*, 86 F.T.C. at 1180-81, 1975 WL 173318, *59-*60; *Omnitrition*, 79 F.3d at 781-82. He stated:

A pyramid scheme is an organization in which the participants obtain their monetary rewards primarily through enrolling new people into the program rather than selling goods and services to the public. And because the funding of the rewards hinges critically on the ongoing enrollment of new participants, a situation is created in which, in fact, the vast majority of participants will not be in a position to recoup the rewards and, therefore, they fail to do so and they are harmed.

Vander Nat, 8 RT 43-44 [11 SER 073-74].

The “four factors” to which defendants repeatedly refer are the facts that Dr. Vander Nat examined to analyze BurnLounge according to this definition. Vander Nat, 8 RT 44 [72 ER 1045]. These factors were the terms and conditions of the compensation plan, an optimal scenario based on the assumption that all participants sought to maximize their benefits, the company’s sales and financial data, and finally, the company’s promotional materials. Vander Nat, 8 RT 44-45 [72 ER 1045-46]. In other words, Dr. Vander Nat looked at BurnLounge’s plan, how it worked in theory, how it worked in practice, and what BurnLounge and its representatives said about it.

This definition and these factors are entirely consistently with *Koscot* and the other pyramid scheme cases described above, as Dr. Vander Nat recognized and stressed repeatedly. *See* Vander Nat, 9 RT 61-62 [70 ER 1030-31] (Dr. Vander Nat is familiar with *Koscot* and sees his factors as consistent); Vander Nat, 9 RT 63 [70 ER 1032] (“I see my four factors as a deepening analysis of the

Koscot test.”); Vander Nat, 11 RT 36-41 [14 SER 129-34]; Ex. 1130 at 141 [24 ER 0532] (citing *Koscot* and *Omnitrition* in his published article). They are also consistent with those cases holding that pyramid schemes are identified by their practical effects. *See, e.g., Gold Unlimited, Inc.*, 177 F.3d at 475; *Omnitrition*, 79 F.3d at 783-84.

Defendants err in contending that Dr. Vander Nat admitted his test would lead to inconsistent results. BurnLounge Br. 30; Taylor Br. 17. As he stated, applying these factors in evaluating a possible pyramid scheme could lead to different results where the specific facts in a case are different. Vander Nat, 9 RT 63-64 [12 SER 125-26].

Defendants’ criticism of Dr. Vander Nat’s testimony that there are similarities between legal MLMs and illegal pyramids is entirely misplaced. BurnLounge Br. 30. The very purpose of his expert analysis and testimony is to assist courts in distinguishing between legitimate MLMs and the many unlawful pyramid schemes that – like defendants’ – are disguised to resemble legitimate MLMs.²³ Nor is there any merit to the critique that Dr. Vander Nat’s analysis here differed from the mathematical test described in his earlier article. BurnLounge

²³ Accordingly, it is unremarkable that Dr. Vander Nat has never studied a legal MLM in detail, because, as he pointed out, he only analyzes those cases brought to him in his capacity as a government expert on pyramid schemes. Vander Nat, 8 RT 35-41 [11 SER 066-72]; 9 RT 51-52 [12 SER 121-22].

Br. 31; Taylor Br. 17. As Dr. Vander Nat testified, the test in the article applied to inventory cases, and this is not such a case. Vander Nat, 11 RT 53 [67 ER 956]. In fact, his article explicitly acknowledged that “Because pyramid schemes come in variations, our model will not serve as a template for all situations.” Ex. 1130 at 140 [24 ER 0531].

Defendants distort Dr. Vander Nat’s testimony in several other ways. BurnLounge Br. 27-28, 29-31. For instance, Dr. Vander Nat did not disregard consumer declarations, but rather considered them “one source” among many. Vander Nat, 10 RT 107-08 [69 ER 997-98]. He did not avoid survey evidence; instead, he testified that he was not aware of a single pyramid scheme case in which a consumer survey was done and that such evidence was not necessarily even relevant.²⁴ Vander Nat, 10 RT 112-14 [69 ER 1002-04]. The fact that Dr. Vander Nat formed an initial opinion that BurnLounge was a pyramid before

²⁴ At trial, defendants sought to admit two surveys by the Direct Selling Association on the reasons consumers join MLMs. The court twice sustained objections to this evidence. Vander Nat, 10 RT 115-16 [69 ER 1005-06]; Luce, 16 RT 73-74 [57 ER 0770-71].

Now, on appeal, the DSA has submitted an amicus curiae brief in which it asserts that a 2002 survey shows that 91% of MLM participants buy their companies’ products for their own consumption. Brief Amicus Curiae of the Direct Selling Association in Support of Neither Party, 10 n.5, 21 (“DSA Br.”). Judge Wu correctly excluded DSA’s surveys as irrelevant to the trial, and this court should do the same on appeal. As discussed above, this Court’s analysis in *Omnitrition* establishes that such internal sales do not save an otherwise unlawful pyramid scheme.

considering its sales data is likewise of no moment. He reached his initial conclusions after reviewing the company's compensation plans and promotional materials. Vander Nat Decl., 1 [90 ER 1241]. Once he received the data, it not only confirmed his initial conclusions, but showed that they were too conservative. *Compare* Vander Nat Decl., 26-27 [90 ER 1266-67] *with* Vander Nat, 9 RT 11-12 [12 SER 103-04].

Defendants' challenges to Dr. Vander Nat's testimony thus rest on misunderstandings of the law and mischaracterizations of his testimony. Dr. Vander Nat's testimony was reliable and relevant, and thus properly admitted under Fed. R. Evid. 702.

III. The court properly determined that the remedies should include injunctive relief and equitable monetary relief in the form of disgorgement.

Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides that a court may grant a permanent injunction against violations of "any provision of law enforced by the Federal Trade Commission." 15 U.S.C. § 53(b); *Pantron I Corp.*, 33 F.3d at 1102. Once the equitable power of a court has been invoked, the court can impose "any ancillary relief necessary to accomplish complete justice," including ordering disgorgement or restitution to fully compensate injured consumers. *Pantron I Corp.*, 33 F.3d at 1102; *FTC v. H. N. Singer*, 668 F.2d 1107, 1111-13 (9th Cir.

1982). The district court correctly identified and applied these principles.

A. The court's injunctive relief was proper.

Taylor objects to the court's definition of "Prohibited Marketing Scheme" in the Final Amended Order and Judgment. Taylor Br. 13. He claims that this definition, which excludes internal sales from "sales to ultimate users," will have a "potentially significant adverse consequences" if it used to classify as a pyramid every activity where one participant sells to another. *Id.*

But this definition is already embedded in the definition of a pyramid scheme. *Omnitrition*, 79 F.3d at 783. And the district court's order, when read in context, clearly ties the definition of sales to rewards for recruiting consistent with governing law; it is not a blanket prohibition on paying rewards for internal sales. Dkt. 474 at 5 [3 ER 0028]. More importantly, this definition was formulated by the court under its broad authority to fashion relief after finding that BurnLounge had violated Section 5. As such, it is well within the court's remedial discretion in this case, regardless of the proper treatment of "internal" sales in other contexts. Indeed, this order is consistent with orders entered in other pyramid scheme cases, including *Koscot* itself. *See Koscot*, 86 F.T.C. at 1186, ¶ 2, 1975 WL 173318, *63. For these reasons, Taylor's argument about potential consequences is without

basis.²⁵

B. The court's determination of equitable monetary relief was proper.

1. The FTC's authority to obtain this relief is well-established.

Defendants challenge the FTC's authority to obtain equitable monetary relief with arguments dating back to *Singer* and the legislative history of Section 13(b). *BurnLounge Br.* 54-59. But it is now firmly established, in this Circuit and the majority of others, that the equitable monetary relief ordered here is authorized under Section 13(b). *Stefanchik*, 559 F.3d at 931-32; *Pantron I Corp.*, 33 F.3d at 1102; *accord FTC v. Bronson Partners, LLC*, 654 F.3d 359, 365-67 (2d Cir. 2011); *FTC v. Direct Mktg. Concepts, Inc.*, 624 F.3d 1, 14-15 (1st Cir. 2010); *FTC v. Freecom Comm'ns, Inc.*, 401 F.3d 1192, 1202 n.6 (10th Cir. 2005); *FTC v. Febre*, 128 F.3d 530, 534 (7th Cir. 1997); *FTC v. Gem Merch. Corp.*, 87 F.3d 466, 468-70 (11th Cir. 1996); *FTC v. Sec. Rare Coin & Bullion Corp.*, 931 F.2d 1312, 1314-15 (8th Cir. 1991); *FTC v. Southwest Sunsites, Inc.*, 665 F.2d 711, 717-22 (5th Cir. 1982).

Though defendants cite *Great-West Life & Annuity Co. v. Knudson*, 534 U.S. 204 (2002), for the principle that the FTC must trace assets to defendants in

²⁵ Amicus curiae DSA raises a similar concern in its brief, DSA Br. 13-14, 20-23, and it is likewise without basis.

order to obtain equitable relief, they offer no support – either from this Court’s precedents or those of any other court – for this proposition. BurnLounge Br. 58-59. Indeed, the Second Circuit has rejected this argument, and the application of *Great-West* to violations of the FTC Act like this one, in *Bronson Partners*. 654 F.3d at 371-74. That court recognized that “[B]ronson can point to no case in which a public agency seeking to obtain equitable monetary relief has been required to satisfy the tracing rules.” *Id.* at 374.

2. The court’s calculation was proper.

Although defendants challenge the amount and calculation of the award, BurnLounge Br. 61-64, a district court’s decision to award equitable monetary or injunctive relief is a matter of discretion. *Stefanchik*, 559 F.3d at 931. Here, the court did not abuse its discretion by electing to make its own calculation. In fact, as the court explained, it was trying to give defendants “a generous benefit of the doubt” – a fact which undercuts many of defendants’ challenges. Decision, 27 [5 ER 0070].

For one, defendants’ claims fail as a matter of law. It is widely accepted that consumers should receive “the full amount lost . . .” *Stefanchik*, 559 F.3d at 931; *Febre*, 128 F.3d at 536. This Court has also held that relief need not account for inherent value in a product sold deceptively, because “[t]he fraud in the selling, not

the value of the thing sold, is what entitles consumers” to relief. *FTC v. Figgie Int’l, Inc.*, 994 F.2d 595, 606 (9th Cir. 1993). Here, 94% of consumers lost money on what was supposed to be a money-making proposition. Under *Stefanchik* and *Febre*, defendants should therefore disgorge the full amounts received from these consumers, and the court would have been correct not to offset these amounts for any value of the included items.

These arguments also fail in fact. As discussed above, the court decisively rejected defendants’ proposed valuation of the package merchandise. Decision, 8-10 [5 ER 0051-53]. Accordingly, it was not error for the court to decline to offset any award by this nonexistent value. Nonetheless, the court bent over backwards to account for the perceived value of the items in the packages by offsetting the total populations of Moguls participating at various price points to reflect those who apparently found some value in the package. Decision, 26-27 [5 ER 0069-70]. Thus, it is simply incorrect for defendants to complain that the court did not account for the value of the items, even though by law and its own factual findings the court was not required to do so.

Nonetheless, defendants also argue that the relief should be calculated from the minimal cost required to qualify as a Mogul: the \$29.95 for the Basic package. *BurnLounge Br.* 63-64. The court flatly rejected this argument, finding as a matter

of fact “clearly that was not the case. . . . Participants paid the additional \$100 or \$400 for the ability to more quickly earn higher Mogul Team Bonuses for inducing others to do the same.” Decision, 23-24 [5 ER 0066-67].

Defendants attempt to rebut this by arguing that earlier versions of the compensation plan documents in Exhibits 8 and 10 offered the same rewards to Moguls who bought an Exclusive package level as to those who bought a VIP package. Thus, defendants claim, the additional \$300 paid for the VIP package over and above the \$129 cost of the Exclusive package offered no bonus advantage and was not tied to the business opportunity. BurnLounge Br. 23 & n.10, 64; Taylor Br. 12. But this argument is nothing more than defendants’ attempt to relitigate their case using a different strategy from that they pursued at trial.²⁶ At trial, defendants could not have been more clear that they relied on the version of the compensation plan embodied in Exhibits 8 and 10. In two separate colloquies defendants and Judge Wu discussed the importance of this version. In the first, counsel for BurnLounge stated, “Well, Your Honor, there were some material

²⁶ The district court properly rejected this argument when defendants asserted it in their Rule 59 motion, finding that they “could have raised and focused on [it] during the trial but did not.” Dkt. 528 at 4 [1 ER 0004]. The court also noted that defendants’ claim was questionable because Dr. Vander Nat saw “no substantive differences” between the earlier versions and those presented at trial. *Id.* at 5 [1 ER 0005]; Vander Nat, 3d Supp. Decl., Dkt. 480-2, Att. A, at 2-3 [40 SER 220-21].

changes and, again, we haven't given you all the iterations, but, as I said, our defense will rely on two sets of them." DeBoer, 6 RT 45-46 [8 SER 038-39] (referring to Exhibits 8 and 10 and later versions); *see also* Vander Nat, 10 RT 148-49 [13 SER 127-28]. Exhibits 8 and 10 were also the ones used by BurnLounge's expert Luce. Luce, 16 RT 88-92 [20 SER]. Having made the strategic decision to limit its case, defendants cannot now change theories in anticipation of a better outcome.

Defendants incorrectly claim that the court erred in not offsetting its harm calculation for commissions paid by BurnLounge to Moguls. BurnLounge Br. 62. As the court explained, its calculation did not subtract for commissions paid *to* Moguls, but did not add in the \$6.95 monthly fees received *from* Moguls either. Decision, 27 n.47 [5 ER 0070]. The court excluded these amounts because they related to both the legitimate and illegitimate parts of the business and because these amounts were roughly equivalent, thus offsetting each other. *Id.* (citing Ex. 330 [45 ER]).²⁷ Thus, the court's calculation accounted for commissions, a

²⁷ Ex. 330 [45 ER] shows that BurnLounge paid out \$17,316,980 in commissions to Moguls, and received \$2,869,043 in monthly Mogul fees. *See also* Ex. 1051 [40 ER] (same). As the court also recognized, however, 85% of the commissions paid went to the top 6% of Moguls – all of whom had a positive net reward. Decision, 16 [5 ER 0059] (citing Ex. 421 [38 SER], Vander Nat, 9 RT 14-15 [12 SER 106-07]). The commissions paid to Moguls with a negative net reward therefore totaled \$2,597,547 (or 15% of \$17,316,980), which, though slightly less than the fees paid to BurnLounge, nonetheless roughly approximates that amount.

determination that is well within the court's discretion.

3. Defendants' liability on Counts II and III supports the court's equitable monetary relief.

Defendants argue that the monetary relief in this case hinges on the pyramid scheme count and "may not be saved on any alternative ground." *BurnLounge Br. 61*; *Taylor Br. 21*. But defendants do not dispute that they are liable under Counts II and III. Even if *BurnLounge* were an otherwise lawful business and not a pyramid, the FTC would still be entitled to equitable monetary relief for these deceptive income claims. *Stefanchik*, 559 F.3d at 926-28, 931-32 (affirming equitable monetary relief for deceptive income claims); *accord FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292, 1295-96 (D. Minn. 1985) (citing *Goodman v. FTC*, 244 F.2d 584, 596, 599 (9th Cir. 1957)). Accordingly, this Court could properly affirm the judgment below on the basis of defendants' unappealed liability on Counts II and III, even if it were to reject all of our arguments for affirmance of the lower court's ruling on Count I.

The profit potential of a business opportunity is important to consumers, and a misrepresentation is a material violation of Section 5. *Five Star Auto Club*, 97 F. Supp. 2d at 529 (citing *FTC v. Minuteman Press*, 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998)); *Kitco*, 612 F. Supp. at 1292. The court below agreed that the income claims were material, stating "[W]here a person markets what is in essence

a pyramid scheme, he/she must at a minimum advise potential investors of the unlikelihood of any substantial returns.” Decision, 25 [5 ER 0068]. This is logical, because if defendants had not misrepresented the earnings potential, few, if any, consumers would have elected to participate.

Defendants challenge the relief for the false claims by claiming the FTC did not prove that the claims were widely disseminated or that consumers relied on them. BurnLounge Br. 62 n.35; Taylor Br. 21 n.6. To prove reliance in a 13(b) action, the FTC must show the misrepresentations were the kind usually relied upon by reasonable and prudent persons, they were widely disseminated, and injured consumers actually purchased the products. *Sec. Rare Coin & Bullion Corp.*, 931 F.2d at 1316 (citing *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573 (7th Cir. 1989)). As material information, income claims are the types of statements usually relied upon by reasonable consumers. The evidence of nationwide dissemination was plain. And BurnLounge’s own sales data definitively confirmed consumer purchases. Accordingly, the FTC sufficiently established reliance.

Nor must the FTC prove actual reliance. “Requiring proof of subjective reliance by each individual consumer would thwart effective prosecutions of large consumer redress actions and frustrate the statutory goals of [Section 13(b)].” *Five*

Star Auto Club, 97 F. Supp. 2d at 530 (quoting *Figgie*, 994 F.2d at 605-06).

IV. The court properly calculated disgorgement amounts for defendant Arnold.

An individual may be personally liable for injunctive relief under Section 5(a) of the FTC Act if he participated directly in the corporation's acts or practices, or had authority to control them. *FTC v. Cyberspace.com, LLC*, 453 F.3d 1196, 1202 (9th Cir. 1996) (citing *FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170-71 (9th Cir. 1997)). Further, he may be subject to equitable monetary relief if he "had actual knowledge of material misrepresentations, [was] recklessly indifferent to the truth or falsity of a misrepresentation, or had an awareness of a high probability of fraud along with an intentional avoidance of the truth." *Publishing Clearing House*, 104 F.3d at 1171. Performance of the duties of a corporate officer is probative of an individual's participation or authority, and the degree of participation in corporate affairs is probative of knowledge. *FTC v. Affordable Media*, 179 F.3d 1228, 1235 (9th Cir. 1999); *Amy Travel Serv., Inc.*, 875 F.2d at 573-74; *FTC v. American Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1089 (C.D. Cal. 1994). The FTC is not required to prove a subjective intent to defraud; reliance on counsel or other claims of good faith are not defenses. *Amy Travel*, 875 F.2d at 574-75; *Cyberspace.com*, 453 F.3d at 1202.

The court below correctly applied these standards to defendant Arnold. As

the court found, he had the highest possible degree of participation in the company's affairs: he originated the concept, he served as one of the primary investors and shareholders, he developed the compensation plan, and he controlled BurnLounge as the "boss" and "ultimate authority." Decision, 28 [5 ER 0071]. Under these circumstances, Arnold's participation and knowledge are evident, and he is therefore subject to equitable monetary relief. *Publishing Clearing House, Inc.*, 104 F.3d at 1170-71.²⁸

Moreover, Arnold's claims that he lacked an intent to deceive consumers or could not have known BurnLounge was a pyramid are not defenses. *See, e.g., Amy Travel*, 875 F.2d at 574-75. As the court noted, knowledge and intent follow from an inherently fraudulent nature of a pyramid scheme as a matter of law. Decision, 28 [5 ER 0071] (citing *Omnitrition*, 79 F.3d at 788).

In any event, the evidence plainly refutes him. Arnold was deeply experienced in multilevel marketing businesses and thus would be familiar with the risks associated with pyramid schemes. Arnold, 6 RT 137-142 [9 SER 049-54]. Moreover, Arnold himself "[s]pearheaded" the compensation plan that resulted in the pyramid scheme. Arnold, 7 RT 12 [10 SER 058]. He knew others had

²⁸ Though defendants claim otherwise, BurnLounge Br. 60-61, Arnold's participation and knowledge were far more encompassing than the defendant's in *Publishing Clearing House*.

expressed concerns that BurnLounge was a pyramid. Ex. 255 [29 SER]. The private placement memorandum he approved identified pyramid claims as a potential risk. Arnold, 6 RT 143-45 [9 SER 055-57]; Ex. 242 at 48 [26 SER 187]. He was interviewed for, read, and used as validation for BurnLounge a Billboard Magazine article that commented on the possibility BurnLounge was a pyramid. Arnold, 7 RT 99 [10 SER 065]; Ex. 253 [28 SER]. BurnLounge's own documents addressed the issue. Ex. 1015 [13 ER 0355]. And it was Arnold's decision to send counsel to meet with the South Carolina Attorney General to address consumer complaints alleging BurnLounge was a pyramid. Jones, 1 RT 17-20 [1 SER]; Arnold, 7 RT 33-35 [10 SER 059-61]. For these reasons, Arnold's claims that he could not have known BurnLounge was a pyramid fall flat.

For these reasons, the district court correctly found that Arnold was jointly and severally liable with BurnLounge for the full amount of consumer harm it determined. Nonetheless, Arnold also challenges the \$1,664,506.45 ordered by the court as an alternative disgorgement amount, claiming there was no support in the evidentiary record. BurnLounge Br. 65. The FTC offered the following stipulated facts and testimony from Arnold:

- Arnold's wages in 2006-2007 were \$568,941.95. Dkt. 353-2 at ¶ 5(g) [82 ER 1090].
- Arnold's bonus in 2005 was \$202,500.00. Arnold, 7 RT 67 [10 SER

064].

- Arnold's expenses reimbursed by BurnLounge totaled \$893,124.50. Arnold, 7 RT 66 [10 SER 063]; Dkt. 353-2 at ¶ 5(h) [82 ER 1090]; Ex. 55.²⁹

Arnold offered no affirmative evidence to contradict this at trial. Moreover, even if Arnold were correct, the district court nonetheless had broad discretion to fashion this relief. *Stefanchik*, 559 F.3d at 931. Having already found Arnold jointly and severally liable with BurnLounge for over \$16 million, this alternative figure was no abuse.

V. The court erred in determining the amount of disgorgement owed by defendant DeBoer. [FTC Cross-Appeal No. 12-56228]

The court correctly ordered that DeBoer disgorge money he received through BurnLounge. In setting the amount, however, the court seriously erred. Disregarding undisputed evidence that DeBoer received \$908,293.69, the court nonetheless ordered that DeBoer disgorge only \$150,000. Decision, 30 [5 ER 0073]. The court did so for several reasons. First, the court noted that DeBoer was essentially only a participant. Decision, 29 [5 ER 0072]. Second, the court found

²⁹ The evidence of Arnold's expenses rests partially on Ex. 55, an e-mail from his lawyer summarizing his financial position that was not admitted as hearsay. Ex. 55 was used to refresh his recollection, however, and Arnold's own testimony confirmed the amounts. *See* Arnold, 7 RT 66 ("Q: Okay. Let me ask you. The total is 893,000 and some change; is that correct? A: Yes.") [10 SER 063].

that the FTC had not proven how many consumers relied on DeBoer's false statements to their detriment. *Id.* Third, the court elected to credit DeBoer for his expenses and sales of music outside of the pyramid, but found that the FTC had not offered evidence of the amount of these expenses. Decision, 30 [5 ER 0073]. Each of these reasons represents an error of law, and therefore is an abuse of the court's discretion. *See, e.g., Perry*, 667 F.3d at 1084.

The district court erred in reasoning that DeBoer should get credit for his expenses and music sales because he was only a participant. Participation and knowledge are the recognized legal bases for an individual to be found liable and subject to equitable monetary relief. *Cyberspace.com*, 453 F.3d at 1202; *Amy Travel Serv., Inc.*, 875 F.2d at 573. The evidence of DeBoer's participation was manifest. He testified about his considerable sales activities and his resulting successes. DeBoer, 6 RT 35-40 [8 SER 032-37]. Moreover, DeBoer was considered a leader and was deeply involving in marketing and training. Keranen, 13 RT 299 [15 SER]; Ex. 1163 [19 ER]. The evidence of his knowledge was also substantial. DeBoer knew there were allegations BurnLounge was a pyramid; in fact, concerned about this, he consulted the FTC's website for guidance and considered retaining counsel. DeBoer, 6 RT 29-30, 59-60, 131-34 [8 SER 029-30, 043-48]. DeBoer admitted that he discussed the pyramid allegations during his

presentations. DeBoer, 6 RT 59 [8 SER 043]. DeBoer also knew that his own statements were misleading. He admitted at trial that his standard pitch – about his “best friends” and their successes – was not true. Decision, at 18-19 [5 ER 0061-62]; DeBoer, 6 RT 53-55 [8 SER 040-42].

Moreover, “it is well established that defendants in a disgorgement action are ‘not entitled to deduct costs associated with committing their illegal acts.’” *Bronson Partners*, 654 F.3d at 375; accord *FTC v. Washington Data Resources*, 704 F.3d 1323, 1327 (11th Cir. 2013). This Court follows this principle, finding that disgorgement is measured by the full amount lost by consumers. *See Stefanchik*, 559 F.3d at 931-32 (citing *Febre*, 128 F.3d at 536).

For the same reason, the court erred in giving DeBoer credit for music sales made outside of the pyramid. As these sales flowed from the illegal pyramid activity, proceeds from them should be disgorged as well. *See, e.g., SEC v. JT Wallenbrock & Assocs.*, 440 F.3d 1109, 1113-14 (9th Cir. 2006) (“[T]he amount of disgorgement should include ‘all gains flowing from the illegal activities.’”).

Even if DeBoer's expenses were relevant, the district court erred in concluding that it was the FTC's burden to establish these expenses. *See* Decision, 30 [5 ER 0073]. Once the FTC proved that he earned \$908,293.69, the burden of proof should have shifted to DeBoer to show this was inaccurate. *See Bronson*

Partners, 654 F.3d at 368; *Febre*, 128 F.3d at 535. Since DeBoer introduced no evidence of his expenses, he is entitled to no offset. *Stefanchik*, 559 F.3d at 931.

Finally, the district court erred in finding the FTC did not provide any evidence which identified “either the individuals who were in fact mislead [sic] by DeBoer or the amounts of their loss.” Decision, 29 [5 ER 0072]. The FTC sufficiently proved reliance in this case is not required to prove each consumer’s subjective reliance. *Sec. Rare Coin & Bullion Corp.*, 931 F.2d at 1316; *Figgie*, 994 F.2d at 605-06. These facts are sufficient to establish DeBoer’s liability for the full amount of his receipts.

VI. The court properly ordered defendant Taylor to disgorge his full receipts.

The court found that, although Taylor was not an officer or employee, he was nonetheless directly and centrally involved in the business, and it ordered him to disgorge his receipts from the scheme. Decision, 28-29 [5 ER 0071-72] (citing *Pantron I Corp.*, 33 F.3d at 1102). As the court itself recognized, this was a proper exercise of its equitable authority. “[T]he authority granted by section 13(b) is not limited to the power to issue an injunction; rather, it includes the ‘authority to grant any ancillary relief necessary to accomplish complete justice.’” 33 F.3d at 1102.

Taylor claims that the court erred in not treating him like DeBoer and allowing offsets for expenses or earnings from music sales outside of the pyramid.

Taylor Br. 13-15, 21-22. As discussed above, the court did err, but not in Taylor's favor: it was incorrect to offset DeBoer's award for expenses and music sales.

Taylor cites various securities sources for the principle that any disgorgement should be calculated on the basis of his profit, or his receipts minus his expenses. Taylor Br. 13-15. But courts in SEC cases involving disgorgement equate "profits" and "proceeds," or total receipts, and do not allow for the deduction of expenses. *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) (finding the SEC's calculation of the total *proceeds* received by defendants was nonetheless a reasonable approximation of *profits*); *accord SEC v. Levine*, 462 Fed. Appx. 717, 719 (9th Cir. 2011).

In a similar case involving a securities pyramid, this Court rejected an offset for defendants' expenses, finding "it would be unjust to permit the defendants to offset against the investor dollars they received the expenses of running the very business they created to defraud those investors into giving the defendants the money in the first place." *JT Wallenbrock & Assocs.*, 440 F.3d at 1114 (citing *SEC v. TLC Invs. & Trade Co.*, 179 F. Supp. 2d 1149, 1157 (C.D. Cal. 2001) ("expenses in carrying out a fraudulent scheme . . . are hardly appropriate or legitimate deductions")). In doing so, this Court affirmed disgorgement from an individual of his proceeds – not net profits – even though the defendant ultimately lost \$1.2

million in the scheme. *Id.* at 1113, 1117. For the same reasons, this Court should affirm the award against Taylor.

CONCLUSION

For all of the foregoing reasons, the judgment of the district court with respect to defendants BurnLounge, Arnold, and Taylor should be affirmed. The judgment of the district court with respect to defendant DeBoer should be reversed and he should be ordered to disgorge \$908,293.69 – the full amount of his receipts from the illegal scheme.

Respectfully submitted,

DAVID C. SHONKA
Acting General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

s/ Burke W. Kappler

OF COUNSEL:
CHRIS COUILLOU
DAMA BROWN
Federal Trade Commission
Southeast Region Office

BURKE W. KAPPLER
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
202-326-2043

April 1, 2013

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, I certify that the following are related cases:

Case No. 12-55926

Federal Trade Commission, plaintiff-appellee

v.

BurnLounge, Inc., defendant-appellant

Juan Alexander Arnold, defendant-appellant

John Taylor, defendant

Robert DeBoer, defendant

Case No. 12-56197

Federal Trade Commission, plaintiff-appellee

v.

BurnLounge, Inc., defendant

Juan Alexander Arnold, defendant

John Taylor, defendant-appellant

Robert DeBoer, defendant

Case No. 12-56228

Federal Trade Commission, plaintiff-appellant

v.

BurnLounge, Inc., defendant

Juan Alexander Arnold, defendant

John Taylor, defendant

Robert DeBoer, defendant-appellee

s/ Burke W. Kappler

BURKE W. KAPPLER

Attorney

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, D.C. 20580

202-326-2043

April 1, 2013

9th Circuit Case Number(s) 12-55926 (Consolidated with 12-56197 and 12-56288)

NOTE: To secure your input, you should print the filled-in form to PDF (File > Print > PDF Printer/Creator).

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [] .

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Signature (use "s/" format)

[]

CERTIFICATE OF SERVICE

When Not All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date) [Apr 1, 2013] .

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Rob DeBoer, 316 Amberwood Circle, Irmo, SC 29063
(by FedEx and e-mail to coachrobdeboer@gmail.com)

[]

Signature (use "s/" format)

s/ Burke W. Kappler

Form 6. Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

this brief contains 16,483 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

this brief uses a monospaced typeface and contains _____ lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

this brief has been prepared in a proportionally spaced typeface using (*state name and version of word processing program*) WordPerfect 13
(*state font size and name of type style*) 14 pt. Times New Roman, *or*

this brief has been prepared in a monospaced spaced typeface using (*state name and version of word processing program*) _____
with (*state number of characters per inch and name of type style*) _____

Signature s/ Burke W. Kappler

Attorney for Federal Trade Commission

Date Apr 1, 2013



Michael O. Johnson
Chairman and Chief Executive Officer

Herbalife
800 W. Olympic Boulevard, Suite 406
Los Angeles, CA 90015
Phone 213-745-0555
Fax 213-745-0406

February 18, 2014

The Honorable Edward J. Markey
Suite SR-218
Russell Building
Washington, DC 20510-2107

Dear Senator Markey,

Thank you for your letter of January 23, 2014 and for the opportunity for members of our executive team to meet with your staff on January 31 to answer in person the questions you raised. We were pleased to hear that our dialogue during that meeting answered all questions to your satisfaction. We, too, found the meeting to be productive and are grateful to have opened lines of communication with your office.

As we discussed with your staff, Herbalife is focused on the mission of "changing people's lives for the better" by providing high-quality, science-based products to people who seek a healthy lifestyle. In addition, we offer a business opportunity to members who, in addition to purchasing Herbalife products at a discount, seek also to supplement their income. As you noted in your letter, this type of multilevel marketing ("MLM") is a valid business model, recognized as such by courts and regulators and employed by numerous companies with household names, including Amway and Avon. Herbalife is also proud to be a good corporate citizen, employing approximately 7,400 people, apart from the more than 500,000 individuals in the United States and more than 3.5 million global individuals who are members, including approximately 6,750 members and one contract manufacturer employing 94 individuals in the Commonwealth of Massachusetts. In sharp contrast to the many companies exporting manufacturing jobs overseas, Herbalife is committed to expanding in the United States, investing appropriately \$130 million to develop a 500,000 square-foot facility in North Carolina that will begin producing product for worldwide distribution within the next six months and which will create more than 500 American jobs. This is in addition to an existing Herbalife plant located in Orange County, California.

Your letter highlighted four areas where you had particular questions: compensation structure, structure of our business model, sales outside the network, and outreach to specific groups. We were pleased to have had the opportunity to discuss with your staff each of these and to answer all of their questions.

... continued /2



Johnson to Markey
February 18, 2014
Page 2

Herbalife compensation is driven by product sales, not recruitment. Members are compensated through profit derived from direct product sales to customers and also based upon the productivity of their "downline." Members do not receive compensation from Herbalife simply for recruiting other members into their downline. Instead, they become eligible for increased discounts or "commissions" only to the extent that the new members in their downline purchase Herbalife products for resale or consumption.

Our business model has been analyzed by reputable survey research companies and the results underscore its legitimacy and the value of our products. For example, Lieberman Research Worldwide found that 73% of former Herbalife members identified their primary reason for joining as their desire to secure discounts on products purchased for personal use. The same survey showed that 87% of former Herbalife members, who have no continuing relationship with the company, would recommend Herbalife products. Beyond members, millions of American consumers outside of our network buy our products. Nielsen in 2013 found that 87% of respondents who reportedly purchased Herbalife products for personal use in the past three months self-reported that they were not members of the Herbalife network at the time they purchased those products. The Nielsen survey also found that approximately 8% of the entire United States adult population, or approximately 19.2 million people, have purchased at least one Herbalife product for personal use with 3.3%, or approximately 7.9 million people having purchased Herbalife product for personal use within the 90 day period preceding the survey.

Given the breadth of our market, we believe strongly in consumer protections and, as we discussed with your staff, have developed and implemented industry-leading protections, including:

- a low initial purchase price— various size starter kits each costing less than \$90 and each containing sample products having a retail value that exceeds the cost of the kit;
- a generous refund policy— Herbalife will refund 100% of the cost of the start-up kit within 90 days of purchase even if the kit is not returned;
- an industry-leading inventory return policy— upon resigning, a member is entitled to a 100% refund on all products purchased in the prior twelve months, which are unopened, along with the cost of shipping back these products;

... continued /3



Johnson to Markey
February 18, 2014
Page 3

- materials provided as part of the application for membership (which all prospective members must now certify they have read before becoming a member) include comprehensive information and disclosures regarding the potential costs and benefits of becoming an Herbalife member, such as a Statement of Average Gross Compensation (a copy of which is enclosed); and
- meaningful compliance policies and proactive enforcement mechanisms to encourage best practices and prohibit exaggerated income and product claims, including an in-house compliance group that contains more than 300 full-time employees.

We also want to assure you in the strongest possible terms, as we assured your staff, that Herbalife does not "target" members of minority or low-income communities, or any religious, social, or ethnic group. We are dismayed at allegations to the contrary that have appeared recently in the press. Herbalife is incredibly proud of the diversity of its membership. We want to empower all of our members to live a healthier lifestyle and, if they so choose, to take advantage of the business opportunity that a multilevel marketing business model, like Amway, Avon or Tupperware, can offer. We believe that Herbalife's model rewards an entrepreneurial spirit and supports the development of successful members, all while providing low risk and easy entry into and exit out of the business. We made clear to your staff—and will make clear to anyone who asks—that we welcome a meaningful dialogue with any person or group that has this concern. We know that a thorough examination of our practices and protections, such as that we have assisted your office in undertaking, would demonstrate that these concerns are unfounded.

Finally, your letter mentioned your concern about a particular individual from Norton, Massachusetts. We thank you for bringing this case to our attention and assure you that we take such alerts very seriously. Upon receipt of your letter, we immediately conducted a comprehensive review of our business records searching for any individuals from Norton, Massachusetts whose characteristics matched the asserted instance of pecuniary harm mentioned. We have not found any Herbalife member that fits this profile; however, we remain committed to learning about, examining, and resolving appropriately every instance of dissatisfaction involving the company, and would welcome the opportunity to work with your office to address this issue if you can share with us any specifics.

... continued /4



Johnson to Markey
February 18, 2014
Page 4

Thank you again for your consideration of the information we have provided, both through our presentation and in this letter. In particular, we appreciated how generous your staff members were with their time and thoughts. It was a pleasure to discuss our business, and our commitment to best industry-practices, and to address your concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Johnson".

Michael D. Johnson
Chairman and Chief Executive Officer

MOJ\wc

Title:

Multilevel Marketing and Pyramid Schemes in the United States: An Historical Analysis

Authors:

William W. Keep, Dean and Professor of Marketing, The College of New Jersey
Peter J. Vander Nat, Senior Economist, Bureau of Economics, Federal Trade
Commission

Disclaimer:

The views expressed in this article are those of the authors and do not necessarily represent the views of the authors' respective organizations.

Acknowledgements:

The authors want to acknowledge the research assistance of Terrance Bennett and helpful comments from reviewers.

Forthcoming in:

Journal of Historical Research in Marketing, Vol 6, Issue 4 (November), 2014.

Copyright held by:

Emerald Publishing

Multilevel Marketing and Pyramid Schemes in the United States: An Historical Analysis

Introduction and Overview

Face-to-face retailing experienced two noticeable transitions during the 20th century. The first occurred when door-to-door selling, in an increasingly urban environment with rising household income, displaced the itinerant peddler. The second happened when a “business opportunity” via multilevel marketing (MLM) altered single-level, commission-based traditional direct selling.

The success of traditional direct selling pre-WWII caused concerned store retailers to seek legal remedies. Post-WWII, an increase in women salespeople and the “party plan” sustained growth. By the 1980s, with more women in the workforce and improved store retailing, direct selling growth stalled. Beginning in the 1940s, multilevel marketing offered an alternative business model, lowering fixed costs and adding a “business opportunity.” No longer commission-based selling, the MLM model operates on a dual premise of retailing products through a network of independent contractors also responsible for recruiting new distributors. When distributor income primarily derives from purchases undertaken by downline recruits, the MLM model creates an opportunity to operate an illegal pyramid scheme. By the 1970s, product-based MLM/pyramid schemes became a significant form of consumer fraud, creating millions of victims losing hundreds of millions of dollars.

This paper presents an historical analysis of the transition from an industry that began by retailing product to general consumers and evolved into an MLM model that is now apparently heavily reliant on selling to itself. We draw upon a wide range of primary and secondary source material, including: court decisions, company documents (e.g., annual reports), industry data, academic research in business and law, government documents, articles in the public press, and relevant books with an historic perspective. We structure the analysis in five sections. The first briefly examines the development of direct selling in the United States. The second looks at the transition from traditional direct selling to multilevel marketing. The third provides a detailed explanation of the multilevel compensation structure. The fourth highlights key legal decisions regarding the continuing problem of illegal pyramid schemes found to be operating under the guise of multilevel marketing. And the fifth examines MLM growth, stagnation and continuing concerns. We finish with conclusions and recommendations for future research.

The Direct Selling Model in the United States

Early in the 20th century, direct selling bridged the selling tradition of the itinerant peddler into a new era. Where peddlers traveled great distances to sell primarily unbranded products to customers, direct selling salesmen went “door-to-door” and “house-to-house” selling regionally and nationally branded products in an increasingly urbanized environment (Friedman, 2004, p. 15). Over a relatively short period of time direct selling companies offered household consumers: brushes, groceries, radios, sewing machines, phonographs, musical instruments, vacuums, cosmetics, apparel, chinaware, cooking utensils, books, televisions, furniture – even automobiles.

Once viewed as a short-term approach to reduce excess inventory, direct selling established a firm foothold as a retail channel (Biggart, 1989, p. 27). Data on industry growth vary widely. In the mid-1920s estimates of the volume of annual direct selling ranged from \$300 - \$500 million (Curtis, 1925; Botsford, 1926). The Fuller Brush Company, founded in 1906, reported sales in 1923 of \$15M, that dropped to \$10.3M in 1929 in the face of increased competition (Friedman, 2004, p. 206). That same year the California Perfume Company (i.e., Avon), founded in 1886, generated \$2.5M in revenue (Friedman, 2004, p. 202).

Commissions of as much as 40 percent provided part- and full-time career options for the direct selling sales force. Exclusive selling territories created measurable areas of prospective customers, with expectations of a specific number of home demonstrations per day (Friedman, 2004, p. 204). Consistent with the then popular Taylorism method of scientific management, “specialty salesmen” – no longer simply peddlers – educated the American housewife on the “science” of new consumer products (Botsford, 1926). From 1919 to 1929 the percentage of U.S. households with a washing machine increased more than three-fold; vacuum cleaners more than four-fold, and radio ownership increased by a multiple of 400, in part due to direct selling (Friedman 2004, p. 195).

Direct selling firms sought salespeople for a variety of situations. College students were recruited as early as 1913 for summer selling and Fuller Brush recruited African-American male teachers from segregated high schools to sell in segregated markets (Friedman, 2004, p. 205). In the economically challenging 1930s, twenty-seven Eastern colleges - including Harvard, Dartmouth, Princeton, Yale, Williams, Brown, Columbia, and MIT - signed a statement discouraging “the practice of door-to-door salesmen trading upon their college connections to make sales,” a strategy also apparently adopted by some salesmen who did not attend college (*The New York Times*, 1932).

Branch managers recruited and trained new salespeople. Given the high turnover within the sales force, this was an ongoing responsibility. Companies worked hard to determine effective selling strategies and training programs, regularly communicating with the sales force. During the difficult years of the 1930s, top salespeople received prizes as managers tactically adjusted the product range, advertising strategies, and prices to sustain consumer interest (Friedman, 2004, p. 235).

Though for many decades a minority in direct selling, women tended to work the beauty category, an approach proven successful by Avon. Post-WWII, the percent of women in direct selling climbed until they became the majority of the sales force. Some companies welcomed women more readily than others. Fuller Brush took sixty years to hire its first “Fullerette” (Nuccio, 1966). Three years earlier Mary Kay Ash, an experienced door-to-door saleswoman, founded the new direct selling company Mary Kay (Nemy, 2001).

In the African-American market, women ownership started with Annie Turnbo Malone selling her hair treatments door-to-door as early as 1900 (Peiss, 1998). Madam C. J. Walker, one of Malone’s selling agents, adopted a similar approach to selling hair treatments and cosmetics to African-American women, a market segment largely ignored by store retailers and manufacturers. Their “agent-operator” earned commissions on

product sales and recruited and trained others to do the same. Those successful at recruiting received recognitions and compensation in the form of cash prizes, diamonds and low-cost mortgages (Peiss, 1998). Walker became the first woman and first African-American millionaire in the United States. Both Walker and Malone used their agent network and wealth to promote social issues.

The growth of direct selling brought with it some complaints – the Federal Trade Commission (FTC) recorded 17 of them in 1920 (*Nation's Business*, 1920). Problems also developed with the popular use of “collect on delivery” (COD), which required an initial payment to the salesman with the balance due when the product was delivered (Layne, 1946). To allay concerns, the modern door-to-door salesman was characterized publicly as different from the peddler, “a shabby, furtive and seedy individual” (Botsford, 1926). Disreputable “door openers,” such as fake surveys and opinion polls, and the “box-top” approach - a bait and switch that substituted a lesser brand after opening with a known brand - caused the National Association of Direct Selling Companies, precursor to the Direct Selling Association (DSA), to work with the Better Business Bureau in 1949 on an industry code of conduct (*The New York Times*, 1949).

Two decades earlier, door-to-door hosiery salesmen were labeled “a real menace,” not for misrepresenting themselves or pocketing deposits but rather for their success at selling. The rise of direct selling in the 1920s brought with it what later would be called “channel conflict,” taking “millions of dollars worth of hosiery business out of your [retail] store” (*The New York Times*, 1925). The consumer protection issue would be inevitably confounded by the loud complaints from store retailers.

Urbanization, the electrification of households, economic growth, and the corresponding development of a wide range of consumer products fueled the rise of direct selling in the early decades of the 20th century. The industry responded by opening new branch offices and developing a professional sales force. At the time, most women did not work outside the home, creating a viable home market for direct selling companies successful enough to create at least the perception of a threat to traditional store retailing.

In Florida store retailers produced full-page ads warning against “the Stranger Who Raps on Your Door” (Curtis, 1925). Chambers of Commerce found themselves in the uncomfortable position of established retail members now condemning new, direct selling members. With the support of store retailers, some communities adopted “Green River ordinances” that prevented direct sellers from making a home visit unless first invited to do so – a maneuver upheld by the U.S. Supreme Court. Store retailers felt sufficiently threatened as to help communities create legal defenses. Direct sellers felt differently, “If the retailers in a town where direct sellers are working feel that they have values which are superior, let them make it known fairly and squarely (Curtis, 1925).”

Though the 1930s brought lower household income and a large pool of available labor, it also brought government policies (e.g., Social Security) that formalized the employer/employee relationship. As a result, direct selling firms clarified the role of the salesperson to be that of an independent contractor (Williams, 1948). The degree of their

independence and extent of their responsibility to adhere to company policies would become a future issue.

Verifiable industry data is lacking but trends are apparent. Post-WWII estimates of direct selling sales varied greatly from “about 7 billion dollars a year – 5% of retail sales,” in 1950 to approximately \$1B in 1952, a number that reportedly held through 1953 and presumably moved to \$4B in 1955 or \$3B in 1963 (*Changing Times*, 1950; *The New York Times*, 1952; Zipser, 1953; *The New York Times*, 1955; Sloane, 1964). Industry data continued to vary – ranging from \$6B in 1974 to \$9B in 1980, \$7.5B in 1982 to \$8.5B in 1983-84 (*Changing Times*, 1975; Salmans, 1981; Goldstein, 1983; Purdum, 1985). Multiple sources report industry stagnation during much of the 1980s (*The New York Times*, 1985a; Hall 1988). The DSA now reports annual estimates of industry sales from 1991 forward, based on self-reported data from an industry overwhelmingly comprised of privately held companies, making the data unverifiable.

The environment that fostered the growth of direct selling would again change, this time in favor of store retailing. By the 1930s the growth of regional and national retail chains brought economies of scale in buying and marketing, standardizing product offerings and lower prices. Self-service, a temporary solution for Depression-era retailers, became permanent, as did the innovation of discount retailing. The percentage of women participating in the workforce also increased from 34 percent of women in 1950 to 58 percent in 2011, with 65 percent of women with children under 18 years of age employed outside the home in 2011 (BLS Reports, 2013; Toosi, 2002).

Direct selling growth from 1950 through 1980 relied on the increasing role of women in the sales force and on a new twist in the direct selling format – the party plan. Instead of going to the consumer, the consumer would come to a party sponsored by a salesperson. The approach successfully highlighted the social aspect of direct selling while efficiently providing product demonstrations to many potential buyers (Tompkins, 1957). Tupperware, PartyLite, Pampered Chef, Home Interiors, Longaberger Baskets, Stanley Home Products and other direct selling companies leveraged the party plan (Jones, 2011, p. 60). Women selling to women in someone’s home with food and drink became an industry staple. Parallel to the development of the party plan, the new multilevel marketing (MLM) business model also grew from the 1950s onward. The MLM business model will change the nature of direct selling by adding a “business opportunity” to the more traditional goal of offering consumers a viable alternative to store retail.

Development of Modern Multilevel Marketing

Nutrilite, founded in 1934 as the California Vitamin company, adopted a multilevel marketing (MLM) business model in 1945 with characteristics similar to but different from traditional direct selling (Federal Security Agency, 1951). Both traditional direct selling, particularly the party plan, and the MLM model rely heavily on selling to friends, family, co-workers and neighbors (Grayson, 2007). Each approach provides the opportunity for product demonstrations, add-on sales, new product introductions, customized selling, and feedback from customer and potential customers.

The MLM model, however, differs in multiple ways. By shifting the recruiting, training, and supervising of new salespeople onto the sales force, the parent firm converts fixed costs to variable costs. Instead of a branch manager being responsible for the size and effectiveness of the sales force, now potentially everyone recruited can recruit others. Under the MLM model each “distributor” can potentially create his/her own business by recruiting new distributors, who also recruit new distributors, creating a “downline” of all direct and indirect recruits, purchasing products and potentially available for selling products and recruiting. Training can now be developed and sold by one distributor to another.

The MLM business model also introduced a new vocabulary, with terms such as: upline, downline, personal volume, and group volume. The vocabulary varies across MLMs with firms labeling their salespeople as “Distributors,” “Independent Representatives,” “Partners,” “Associates,” and “Independent Business Owners” (for simplicity we use “distributor”). Product points determine the amount of potential company compensation from purchases made by a distributor and his/her downline, and discounts from the suggested retail price may vary according to the purchase volume (see below: Multilevel Marketing Plans).

In traditional direct selling, sales to non-distributor customers generate commissions to the sales force, with branch managers rewarded for total sales volume. The MLM “business opportunity” ties together different themes of entrepreneurship: 1) selling products to non-distributors, 2) selling products to other distributors, and 3) earning company compensation based on personal purchases and the purchases of a distributor’s downline. The first two income sources come from margin created by the price negotiated with the buyer. Examples of MLM products sold to non-distributor customers can be found on websites such as eBay. One criticism of the MLM model is the inability to track and document these sources of income. All company compensation derives from purchases by a distributor and his/her downline that reach or exceed pre-specified targets for volume. Failure to achieve these levels means no or little company compensation for the distributor. The vast majority of distributors at two large public MLMs received no company compensation (Herbalife, 2013a; Nu Skin, 2013).

The exclusive territories of early direct selling companies prevented competition among salespeople and allowed some measure of market size and potential. Territory exclusivity began to blur with the development of the party plan and the movement of direct selling into the work environment, a natural outcome of more women working outside the home. In the MLM business model, success at recruiting new distributors reduces the probability of successful recruitment in that area in the future, while distributors face all-against-all competition with no verifiable information regarding the number of distributors in a given area at any given time.

The rapidly growing Nutrilite encountered a problem not uncommon in traditional direct selling – the tendency of some salespeople to over-sell by making false product claims. Concerned that such claims were more than isolated cases, in 1951 the Food and Drug Administration obtained an injunction “prohibiting 15,000 door-to-door salesmen from making ‘extravagant therapeutic claims’ for Nutrilite” (*The New York Times*, 1951). The

company agreed, “not to make certain therapeutic claims,” but did not admit fault or guilt (*Changing Times*, 1952). The issue persisted. In 1957 the FDA began “an educational campaign against door-to-door selling of various food additives and vitamin preparations” designed to counter “a violent campaign...designed to convince the American that he has some peculiar ‘deficiency’” (*The New York Times*, 1957).

Nutrilite also encountered problems with the FTC for violating Section 3 of the Clayton Act and Section 5 of the Federal Trade Commission Act based on the exclusive dealing and non-compete sections of the distributor contract (*Mytinger & Casselberry, Inc., v. FTC*, 1962). Shifting the recruiting and training of new recruits to current distributors decentralized the sales force. Over time, the industry would see entire downlines of thousands of distributors move from one MLM company to another. Distributor actions that may or may not be legal, and may or may not comply with company policies, became part of the industry, as also suggested by this annual report quote: “As a result, there can be no assurance that our distributors will participate in our marketing strategies or plans, accept our introduction of new products, or comply with our distributor policies and procedures” (Herbalife, 2013b).

Tiring of the Nutrilite’s legal troubles, in 1959 two distributors, Jay Van Andel and Richard DeVos, created *The American Way Association* (i.e., Amway), a new MLM firm to sell household products—the company that would come to own Nutrilite and also become the largest MLM in the world (Biggart, 1989, p. 46). Three years earlier, Shaklee, a nutrition supplement company, adopted the MLM model (*The New York Times*, 1985b). For the next three decades, traditional direct selling and MLM companies would share the space of face-to-face retailing to consumers.

The MLM model created the possibility of compensation derived from an endless chain of recruitment to the extent that some were found by the courts to be pyramid schemes (*Changing Times*, 1971). Among other things, a pyramid scheme relies on continual recruitment as a mechanism for generating compensation for participants. Non-product based pyramid schemes are simply wealth transfer schemes similar to but distinguishable from Ponzi schemes. Unlike a Ponzi scheme, which relies on voluntary investments of new entrants to fund the investment returns paid to earlier entrants, a pyramid scheme compensates participants to recruit others (Securities and Exchange Commission, 2013). Product-based pyramid schemes rely on upfront fees and/or high margin products and services purchased by an ever-churning base of distributors to fund the compensation paid to participants, with sales to non-distributors playing a minor role (2004 FTC Advisory, further reviewed below).

In the 1970s, state and federal regulators identified numerous pyramid schemes posing as MLMs. Successful prosecutions included *Holiday Magic*, *Koscot Interplanetary*, and *Dare to be Great* (DeJute, Myers, and Wedding, 1973). By 1973 product-based pyramid schemes became “the number one consumer fraud in the [NYC] metropolitan area,” involving: additives, clothes, a wide range of household products, vitamins, buying clubs, cosmetics and hosiery, fire and burglar alarms, and motivational courses (Lichtenstein, 1973). The MLM model facilitated the growth of pyramid scheme fraud, creating victims rather than customers. The *Koscot* case (*FTC v. Koscot*, 1975), concluded in 1975,

provided pyramid scheme language that would have an enduring impact. That same year the FTC initiated a case against Amway (*FTC v. Amway*, 1979), one that would also have an enduring albeit different impact. The FTC agreed that Amway was not a pyramid scheme, in large part due to company policies designed to ensure retail sales (see below: MLMs and Pyramid Schemes).

The 1980s and 1990s brought new MLM companies, including: Sunrider (1982), Herbalife (1983), Advocare (1983), Nu Skin (1984), Melaleuca (1985), USANA (1992), Neways (1992), ACN (1993), Morinda (1994), and Mannatech (1994), among others. The growth of MLM companies in the 1980s was not matched among traditional direct selling companies, with the entire industry reporting essentially six years of flat revenues.

Perhaps no single event better represents the rise of the MLM model over traditional direct selling than when Amway, the largest MLM company, indicated an interest in buying Avon, the oldest and largest traditional direct selling company (Feder, 1989). Two weeks after announcing its intent, Amway withdrew the offer (Freitag, 1989). Eventually, single-level direct selling companies adopted an MLM model, allowing their sales force to receive commissions by recruiting and training others (e.g., Avon).

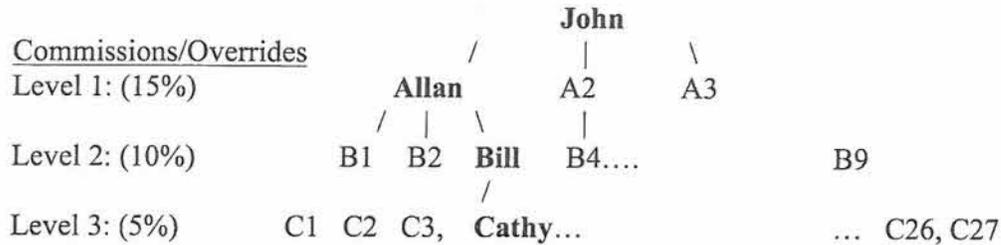
According to the Direct Selling Association, by 1997 multilevel marketing accounted for 72.4 percent of all direct selling sales in the United States. Despite the safeguards described by *Amway* in its successful defense and at least nominally adopted by virtually all MLMs, the FTC and Securities and Exchange Commission (SEC) have successfully prosecuted a number of MLM/pyramid schemes from 1996 through 2013.

Multilevel Marketing Plans

Multilevel marketing is a way of distributing products/services by which distributors earn income from their own sales and from the sales/purchases by those whom they directly or indirectly enroll. Most MLM firms use some form of progressive enrollment to propagate a business venture. To illustrate an MLM reward system under simple terms (Figure 1), assume each participant enrolls others (say 3), creating a *downline* of enrollment levels. Regardless of whether the participants generally enroll 3 others (and some slots remain open), the example is focused on certain sponsorships; i.e., John→Allan→Bill→Cathy:

Figure 1

Illustration of Multilevel Marketing “Downline”
and Compensation Structure



Terminology

For the indicated sponsorships, Bill and Cathy are *indirect* sponsorships for John and Allan is a *direct* sponsorship, i.e., someone whom John has personally enrolled. The term *product volume* comprehends the purchase and/or sale of product and the participants generate product volume by buying/selling product.

Reward system

The firm pays two types of monetary rewards for generating product volume: (1) *direct commissions* for personal volume and (2) *override commissions*, which are additional commissions paid to the sponsors (direct or indirect) of any participant who generates volume. The featured MLM pays a direct commission of 25% on retail sales, with overrides as follows: 15% of volume generated by John’s direct enrollees (his level 1); then 10% of volume generated by his level 2 (indirect sponsorships of John); and 5% of volume generated by his level 3 (indirect sponsorships of John). To illustrate rewards, Cathy is at John’s level 3 and makes a \$100 sale (SRP). She receives a 25% retail commission (thus \$25), and the override commissions to her upline are: Cathy’s sponsor, Bill, obtains \$15 (since Cathy is a level 1 sponsorship for Bill); then Bill’s sponsor, Allan, receives \$10 (Cathy is a level 2 sponsorship for Allan); and Allan’s sponsor, who is John, receives \$5 (Cathy is at John’s level 3). For a retail sale of \$100 at level 3, the array of upline commissions comes to \$30. Adding the \$25 retail commission, each \$100 retail sale at level 3 has a selling expense of \$55 for this MLM. This array of rewards exemplifies MLM compensation: rewards are paid out via a series of percentages applied to downline volume. Equivalently stated, product volume generates an array of simultaneous upline rewards to all relevant sponsors, direct or indirect.

Commissions need not be limited to 3 levels. An MLM’s ability to pay rewards for deeper levels is limited by the firm’s gross profit margin on product sales. Above, should the MLM enjoy (say) a 65% gross margin; i.e., 35% is the firm’s *cost of goods sold*, the above \$100 sale would yield a margin of \$65 to the company and this firm may well be able to afford \$55 in selling expenses. Gross margins as high as 80% are not unusual for

publicly traded MLMs. Depending on the margin, the company may decide to fund deeper levels of rewards.

Above, the firm pays retail and override commissions; however, an MLM may be set up differently. The firm may provide product to distributors with a Suggested Retail Price (SRP) and charge the distributor a wholesale price W . By retailing product, distributors obtain a retail commission via the distributor markup, rather than a commission paid by the MLM firm. Although a dollar calculation of rewards may come out the same when using a respective basis of SRP or W , the incentives are different [1]. If the firm pays commissions and overrides on consummated retail sales, it clearly incentivizes retail sales. If the firm pays rewards on distributor purchases, it incentivizes –first of all– distributor purchases. In the latter case, the firm needs additional safeguards to effectuate retail sales (*FTC v. Amway*, 1979)

Many MLMs characterize their pay plan as follows: upline rewards are paid for downline sales. The term “sales” typically refers to the firm’s sales to its distributors and equally to distributor sales further downline. The company could sell product directly to the public but this is often a small part, if any, of the firm’s total volume. The firm may have a non-compete clause with its distributors; in any event, the firm mostly provides product to the public via its distributors. The compensation plan is then accurately described as follows: upline rewards are based on downline distributor purchases –a compensation structure that can lead to a number of issues. For one, it can evoke *inventory loading*, i.e., purchases of inventory just to meet volume targets that grant multilevel rewards. In a related vein, the distributors may not be retailing any significant amount of product, perhaps pointing to an inability of selling the product at the SRP. In such a case it may also be that the MLM pays recruitment rewards that are unrelated to actual retail sales. These issues comprise the most frequent factors in distinguishing between legitimate MLMs and pyramid schemes.

MLMs and Pyramid Schemes

There are two closely related descriptions of a pyramid scheme. The first is a general economic characterization in use for many years: a pyramid scheme is a perpetual recruitment chain in which the design of the scheme’s compensation plan dooms the vast majority of participants to financial failure [2]. The *Koscot test*—adopted by federal courts—applies this same meaning to ongoing recruitment in the context of multilevel marketing, focusing on an MLM that sells a product or service and pays recruitment rewards that are unrelated to the sale of product/service to people outside the MLM’s network. The *Koscot* analysis (reviewed below) moves from a general characterization of a pyramid scheme to a specific application in a multilevel marketing context.

In general economic terms, a pyramid scheme is an organization that hinges on the continual recruitment of new members, all of whom need to recruit others to recoup their own investment. The primary benefit –indeed, often the sole benefit– from ongoing recruitment is that the participants receive a certain portion of the monies paid by the set of subsequent recruits. The latter comprise a person’s “downline,” which refers to all direct and indirect recruits of a given person. In order for participants to recoup their own investment – and ostensibly much more, as expected by the participants – they all need to

generate further downline enrollment. The specific rules regarding recruitment and the related recoupment of money vary from one scheme to another but the common thread is: monetary returns are tied to an ongoing ability to recruit others into the same venture.

Thereby, a situation is created in which the desired recoupment will not, and *cannot*, come true for the vast majority of the participants. As recruitment continues, the number of people at or near the base of the recruitment structure grows very rapidly, often at an exponential rate for as long as a successful recruitment pattern is maintained. At whatever current enrollment level the program is considered (saturation or not), the most recent recruitment layers typically do not qualify for rewards because their own downlines are either empty or do not have the sufficient numbers required by the pay plan to secure rewards. In sum, a pyramid scheme is a money-transfer scheme in which the foreseen losses of the vast majority become winnings for a small minority at the top of the recruitment structure.

A pyramid scheme may seek to hide its real nature (essentially, a chain letter) by introducing a product or service to fool people into thinking that they are engaged in a business or income opportunity. The “*Koscot* test” (*FTC v. Koscot*, 1975) addresses this version of the scheme [3]. *Koscot*’s analysis assumes a multilevel marketing context in which people pay fees and buy product to participate in the venture. If all purchases/sales were internal to the MLM (no sales outside this network), ongoing recruitment would doom the vast majority of participants to inevitable losses because, as in the above analysis, monetary rewards would be critically tied to an ongoing ability to recruit others into the same venture; i.e., others who pay fees and buy product, who in turn recruit others who pay fees and buy product, indefinitely. In considering the impending losses that such a recruitment chain would create, *Koscot* looks to income that would not depend on recruitment but rather on product sales to people outside the venture. *Koscot* thus looks to retail sales and addresses certain factually based questions about the MLM’s program, namely whether there are any retail sales (product sales to people outside the MLM) and what relation exists, in practice, between such external sales and the rewards paid in connection with recruitment. If there is no relation between recruitment rewards and sales to the ultimate users outside the MLM’s network, the organization is just a perpetual recruitment chain; indeed, in *Koscot*’s words, “nothing more than an elaborate chain letter device.” Such an MLM dooms the vast majority of participants to financial failure; concomitantly, *Koscot* (1975) renders the same organization to be an unlawful pyramid scheme.

FTC v. Amway (1975 - 1979)

One of the most noted cases involving this nexus of issues was *FTC v. Amway* (1979). Under Amway’s plan, a recruit did not pay a large sum of money up-front and the initial sales kit purchase was largely refundable. In paradigm fashion, the upline distributors were rewarded for the volume of product purchased by new recruits – a reward system that held the prospect of significant rewards through the enrollment of others. As a defense against a pyramid allegation, Amway’s “70% rule” required that 70% of a distributor’s monthly purchases be resold at wholesale or retail, which sought to prevent inventory loading. And the “10 customer rule” required every distributor to make retail sales to at least 10 different customers each month. The administrative law judge found

that Amway sufficiently enforced these safeguards, which reassured the judge that the emphasis was on moving product through a wholesale and eventual retail network. A further salient feature was the refund policy, which offered a refund on initial purchases returned in saleable condition. Ultimately, a conclusion was reached in which Amway was prohibited from making false or misleading income claims, while specific company policies at the time rendered the company to be a legitimate MLM.

FTC v. Koscot (1975) and Webster v. Omnitrition (1996)

In connection with the *Amway* matter, a critical test for identifying an MLM firm as a pyramid scheme had been developed under *Koscot* (1975), i.e., if the firm pays “recruitment rewards that are unrelated to product sales to *ultimate users*.” Subsequently, *Webster v. Omnitrition* (1996) clarified that for purposes of pyramid scheme analysis, *ultimate users* (or *end-users*) are *non-participants* in the MLM’s business venture. A certain characterization emerged, namely an MLM is a pyramid scheme if it pays recruitment rewards unrelated to retail sales, which, in turn, led to a further consideration as to when the recruitment rewards are indeed unrelated to retail sales. Although Amway-type safeguards often play a role in this analysis, and many MLMs claim to have such safeguards, the *Omnitrition* court stated that these safeguards may not satisfy *Koscot*, noting that *Koscot* requires recruitment rewards to be tied to retail sales in an effective way. Specifically, the court states (in Part II, C): “That some amount of product was sold by each supervisor to only 10-customers each month does not insure that overrides [Royalty Overrides, the firm’s upline rewards] are being paid as a result of actual retail sales.” And regarding the 70% rule, the court states: “Importantly, the [70%] requirement can be satisfied by non-retail sales to a supervisor’s downline IMAs [Independent Marketing Associates]. This makes it less likely that the rule will effectively tie royalty overrides to sales to ultimate users, as *Koscot* requires.”

Some Recent FTC Pyramid Cases

Now continuing over many cases, FTC pyramid scheme analysis considers reward systems that pay: (a) commissions for product sales and (b) recruitment rewards. The recruitment rewards are generally of two types: (1) lump-sum payments for each new recruit, as in *FTC v. Fortune Hi-Tech Marketing* (2013) and (2) rewards based on volume purchased by recruits (cases below). When present, per-capita enrollment payments are, on their face, direct rewards for recruitment. In contrast, when the rewards related to recruitment are obtained as percentages of the product volume purchased by recruits, more analysis is indicated. The FTC has a record of action when it is evident from the combination of the firm’s pay plan, business presentations, and sales data that the product volume rewards (paid upline when new recruits buy product) are unrelated to retail sales; thus, a direct application of *Koscot* (e.g., *FTC v. Equinox*, 1999; *FTC v. Trek Alliance*, 2002). Some cases exhibit both per-capita recruitment bonuses and rewards for the product volume purchased by recruits. The record shows that when both types are encountered, the per-capita bonuses typically swamp all other rewards, making it manifestly evident that firm’s operation is critically tied to, and funded by, ongoing recruitment (e.g., *FTC v. Fortune Hi-Tech Marketing*, 2013).

The case record further shows that when the *Koscot* test is met (i.e., recruitment rewards unrelated to retail sales), the rewards for recruitment are typically displayed in a prominent

fashion, while retail sales play an incidental role. This incidental nature of retail sales is often supported by financial incentives that give substantially greater rewards for recruiting than for retailing. Participants thus naturally focus their efforts on recruiting others and engage in retailing to the extent that their compensation requires it; for example, as qualifiers for recruitment rewards. In FTC prosecutions of pyramid schemes: the *Koscot* test is shown to hold, as well significant income misrepresentations, high business failure rates for the participants, and substantial consumer injury. These factors are all underscored in the broader *Koscot* analysis; further, the general economic characterization of a pyramid scheme equally holds: the proposed opportunity is a money-transfer scheme in which the losses of the vast majority become winnings for a few at the top [4].

As the FTC strongly argued in *Koscot* (1975), ongoing recruitment cannot be maintained. However, the large-scale failure to obtain financial rewards in a pyramid scheme is *not* postponed until market saturation. Although the names of the most recent enrollees may quickly change as recruitment continues, the *percentage* of members comprising the most recent layers of recruits does not appreciably change for as long as a successful recruitment pattern is maintained, an activity that may be extended by entering international markets. At whatever enrollment level the program is considered, whether the total membership is large or small, saturation or not, the rules and implementation of the program ensure that the vast majority are not in a position to recoup their own investment. The losses are not accidental but are determined by the design of a compensation plan critically tying the financial rewards to a continual ability to recruit others into the same program— manifestly a false premise. Notably, the absolute number of people who lose money increases dramatically for as long as a successful recruitment pattern is maintained. As recruitment begins to falter and many at the bottom drop out, the scheme engages in more recruitment in an effort to replace the dropouts—a churning of the base. While a few fortunate people move up the ladder, the vast majority do not recoup their investment (e.g., *Equinox*, 1999; *Trek Alliance*, 2002; *BurnLounge*, 2008; *Fortune Hi-Tech Marketing*, 2013).

Internal Consumption and the Historic Deconstruction of the 70% Rule

In *Amway* (1979), the “70% rule” had a specific meaning, namely, on a monthly basis, 70% of a distributor’s purchase was to be resold at wholesale or retail. Primarily, the rule would help prevent inventory loading, while it could encourage some retail sales. After *Amway* prevailed against the government’s pyramid scheme allegation, many MLMs claimed to have adopted *Amway*-like safeguards. Specifically, on paper, each has its own version of a “70% rule” and a “customer retail sales rule.” But there was, and continues to be, no uniform meaning or verifiable enforcement for these company rules.

In a number of instances, the firm’s “70% rule” just requires that 70% of a distributor’s monthly purchase be consumed or sold (as in *Equinox*, 1999; *Trek Alliance*, 2002; *BurnLounge*, 2008; *Fortune Hi-Tech Marketing*, 2013). This formulation naturally raises two related questions: consumed by whom, sold to whom? Would a distributor’s own purchase of product be construed as a *product sale* to that same distributor and satisfy the firm’s 70% rule? Or, if distributors consumed (say) 100% of the product they purchased, would that too satisfy this rule? *Amway*’s current statement of its own 70% rule is this: “In order for an IBO to receive a Performance Bonus or recognition due on all the products purchased, an average of 70% of the IBO’s personal Business Volume (BV) per

month must come from products sold at a commercially reasonable price; if the IBO fails to meet this requirement, then such IBO may be paid that percentage of Performance Bonus measured by the amount of products that can be shown to have been actually sold, rather than the amount of products purchased, and recognized accordingly. For purposes of this Rule, a reasonable amount used for personal or family consumption or given out as samples can contribute to the 70% average” (Amway, 2014, p. D-14). The term *reasonable amount* is not defined and apparently left to distributor discretion. Over time MLM firms have formulated versions that, regardless of how a distributor uses or disposes of monthly purchases, their “70% rule” is deemed to be satisfied. Expressed in current vocabulary, all internal consumption satisfies this rule – a conclusion that appears to be generally shared by the MLM industry (Babener, 2013).

In January 2004, FTC staff issued an informal opinion on pyramid scheme analysis (Kohm, 2004). This Advisory letter has been widely circulated and often misread by industry advisors. The most referenced part is that the level of internal consumption does not determine whether the FTC will consider the MLM’s business plan to be a pyramid scheme. The Advisory continues by characterizing an MLM pyramid scheme as an organization whose primary purpose is recruitment and is funded by monthly product purchases that are qualifiers for recruitment rewards. This part of the Advisory is often ignored. Also ignored is the court’s warning in *Omnitrition*; i.e., the firm’s permission that its “70% rule” can be satisfied by a distributor’s purchase for personal use is certainly not a meaning consistent with *Koscot*. The court directly states: “Plaintiffs have produced evidence that the 70% rule can be satisfied by a distributor’s personal use of the products. If *Koscot* is to have any teeth, such a sale cannot satisfy the requirement that sales be to ultimate users” (*Omnitrition*, Part II C, 1996)

Global Information Network—An MLM Based on 100% Internal Consumption

In December 2013, the FTC alleged Global Information Network to be a pyramid scheme – rendered below as it is directly stated in further public filing re *FTC v. Trudeau* (2013). The program offers an educational and business opportunity. By enrolling others in the firm’s seminars on personal development, business acumen, and the like, participants obtain financial rewards. From the filing, there is (was) no sale of product/service to anyone outside GIN’s network; compensation is based solely on internal consumption. Financial rewards are obtained as certain percentages of the monies received from members enrolled in the seminars. Commissions & overrides (illustrated in Figure 1 but with different percentages) are paid over 7 levels of enrollment, adding a 4% override on as many levels as a person might accomplish. All recruitment rewards are tied to, and paid by, the continual enrollment of new members in GIN’s seminars. The *Koscot* test is applied. Since there is no sale of product/service outside this MLM’s network, neither can there be a relation between retail (external) sales of product/service and recruitment rewards. Upon employing the general characterization of a classic pyramid scheme (reviewed above) and the specific analysis under *Koscot*, the FTC maintains Global Information Network to be a pyramid scheme.

MLM Evolution: Growth, Stagnation, and Continued Concerns

Due to changes in households, lifestyles and retailing, the product range offered by contemporary MLM companies does not rival that of traditional direct sellers of the

1920s. Many, however, offer within product category depth (e.g., cosmetics), emphasizing innovation driven by research and development. According to the DSA, the majority of products sold using the MLM model fall into three categories: (a) Home, Family Care and Household Durables; (b) Wellness; and (c) Beauty. As with Nutrilite in the 1940s, some MLM companies have faced scrutiny regarding over-stated product claims (Federal Trade Commission, 1997). Concerns notwithstanding, new products and product improvements continue to be an industry theme.

Traditional direct selling firms began international expansions a century ago. Avon opened a Montreal office in 1914 and reported \$11.2M in 1960 from sales in markets other than the US and Canada (Avon Products, 2012; Avon Products, 1961). Growing MLM firms also quickly learned the potential of international markets. Amway began its international expansion by entering Australia in 1971; Herbalife, founded in 1980, began its international expansion by entering Canada in 1982; and Nu Skin, founded in 1984, entered Canada in 1990.

Amway, the world's largest MLM company and the 25th largest privately held firm in the U.S., operates in over 100 countries (DeVos, 2013). International expansion has meant both growth and change. China, Amway's largest single market, imposed challenging legal constraints on the MLM model. In response, Amway and other companies changed operations, altered compensation plans, and opened retail stores. The firm states the changes did not alter "the essence of the company" and some China-based changes were "exported" to other countries (DeVos, 2013). Amway does not attribute sales to individual countries or selling structures, leaving unclear the extent to which their revenues now rely primarily on the MLM model. The growth and profitability of the MLM model prompted some companies to go public. Reckoned in 2012 net revenues, the largest publicly traded MLM companies - Avon (\$10.7B), Herbalife (\$4.07B), Nu Skin (\$2.17B), Primerica (\$1.18B), and USANA (\$648.7M) - have a combined market capitalization of more than \$25B (sources: online company annual reports, shares and share prices accessed on 12/13/13). The potential risk to investors was recently highlighted when Pershing Square, a U.S. hedge fund, took a \$1B short position against Herbalife, accusing it of being a pyramid scheme (Delevingne, 2013).

Continuing FTC and SEC prosecutions of pyramid schemes posing as a legitimate MLM company raise questions about how these organizations can be distinguished from each other (e.g., *SEC v. CKB168*, 2013; *FTC v. Fortune Hi-Tech Marketing*, 2013; and *FTC v. Trudeau*, 2013). The president of the DSA expressed a similar concern when stating "there are a lot of pyramid schemes that like to disguise themselves as legitimate direct-selling companies. That creates an environment where there can be confusion" and "everybody has their own definition of multi-level marketing" (Greenberg, 2013a; Greenberg, 2013b). Tupperware, relabeled its model to be direct-to-consumer—neither direct selling nor MLM—to distance itself from an industry its CEO described as dominated by "buying clubs and what looked like pyramid schemes" (Greenberg, 2013a).

Academic researchers writing in the 1980s who made no mention of the MLM model with its accompanying business opportunity would soon recognize the new dominant approach (Peterson, Albaum, and Ridgway, 1989; Peterson and Watruba, 1996; Peterson

and Albaum, 2007; Albaum and Peterson, 2011). Researchers noted the characteristics similar to traditional direct selling—capitalizing on the benefits of face-to-face selling and the potential of “social linkages”—and recognized the impact of compensation structures on upline and downline distributor efforts, network growth, and distributor performance, though with little concern expressed regarding the growing list of successful MLM/pyramid scheme prosecutions (Peterson and Watruba, 1996; Coughlan and Grayson, 1998).

Other researchers studied non-financial motivations. An ethnographic study of Amway distributors led researchers to view Amway “as an organization that attempts to manage members’ identification by managing how they make sense of themselves (i.e., their identities), as well as their relationships with people within and outside of distribution.” The success or failure of these efforts followed from organizational “dream building” and “positive programming,” achieved through a combination of “sensebreaking” and “sensegiving” (Pratt, 2000). These observations are consistent with a comment made in an email sent to one of the authors, in which the sender describes the involvement of his family and friends: “Considering what they spend to attend Amway conferences and to market Amway’s ‘business,’ they have suffered financially as well as psychologically. And as for the psychological damage, it amounts to substituting probity with foolery, for which they pay a heavy price in considering that their personal lives become very disrupted” (Eidschun, 2014). The *People’s Daily*, a state newspaper in China, recently claimed Nu Skin “brainwashes its salespeople,” an accusation that would appear consistent with the notion of “positive programming” (Lawrence, 2014).

Some researchers questioned the ethics of the MLM model. In considering differences between the traditional direct selling model and the MLM model, one noted, “some really nasty human relations issues...a fundamentally problematic way of doing business” (Bloch, 1996). A survey of consumer perceptions of MLMs in Australia found, “suspicion of pyramiding, unfair commissions, uncomfortable atmosphere and aggressive salespeople” and Harvard publicly denied claims that it endorsed the MLM model (Kustin and Jones, 1995; Mehta, 1995). The risk of operating a pyramid scheme with an “endless chain” of recruits who quickly become inactive raised serious business ethics concerns (Koehn, 2001). Others sought to document the ethical awareness of MLM executives, finding awareness comparable to that in other industries (Chonko, Wotruba and Loe, 2002).

More than fifty years after Nutrilite, researchers would look at the relationship between successful pyramid scheme prosecutions and the underlying business model. Case law showed consistency in the regulatory emphasis and the courts’ concern for participant compensation primarily reliant on purchases made by non-distributor customers (Vander Nat and Keep, 2002). Claims that the resemblances between a legal MLM and an illegal pyramid scheme are “superficial” (Albaum and Peterson, 2011) ignore: the confusion between the two recognized by the president of the DSA (see above), four decades of case law, and public statements made by the FTC and SEC. In 2011 the FTC noted that “Identifying a pyramid scheme masquerading as an MLM requires a fact-intensive inquiry,” while the SEC recently warned investors against “Pyramid Schemes Posing as

Multi-Level Marketing Programs” (Benway, Greisman, and Vladeck, 2010; Securities and Exchange Commission, 2013).

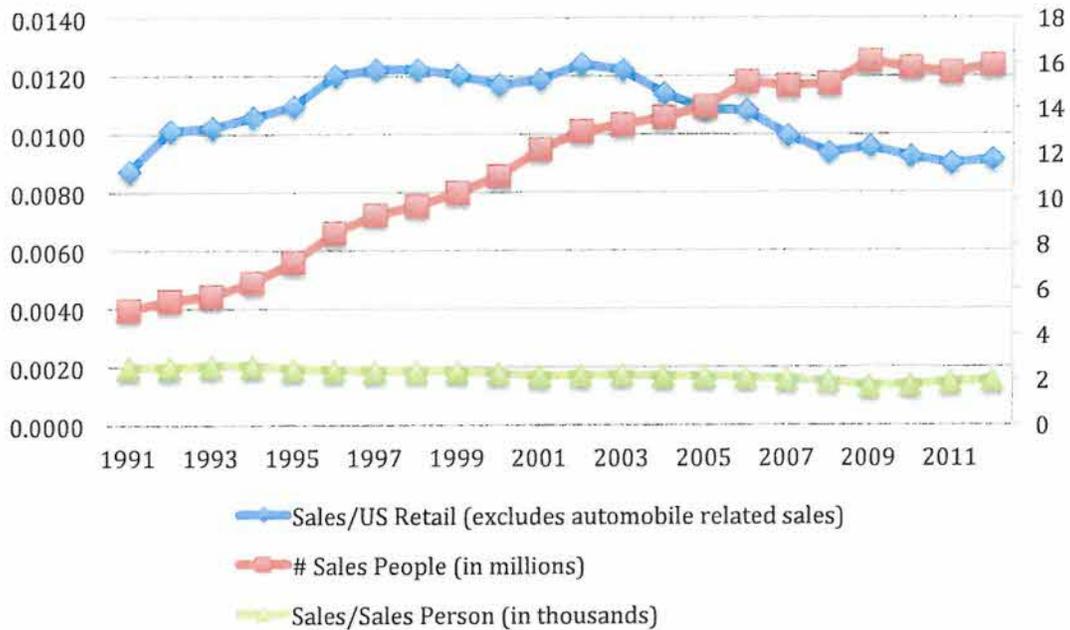
Distributor product purchases, relative to non-distributor purchases, have been alternatively described as ethical and just a variation of the MLM model (Peterson and Wotruba, 1996; Peterson and Albaum, 2007) versus an indicator of a possible pyramid scheme (Vander Nat and Keep, 2002) when being the primary source of compensation to the participants. A prescient 1997 article predicted that the distinctions between a legal MLM and a pyramid scheme would evolve on a “case-by-case” basis (Barkacs, 1997).

One recent article highlights the continuing problem of a lack of verifiable data, a problem that dates back decades. While criticizing the anecdotal evidence used by MLM critics, the authors based their conclusions on unverifiable, self-reported industry data (Albaum and Peterson, 2011). In a time when tracking the movement of products and services through the channel of distribution has become easier and more affordable, and delivering large databases of purchase behavior, no such capacity apparently exists in the MLM channel, despite numerous court decisions that focused on the lack of such data.

Unverifiable data makes understanding the health of the industry difficult. Many MLM companies report increasing sales, driven at least in part by international expansion. Growth within the U.S., however, has been less impressive. From 1974 to 2012, the U.S. direct selling industry grew at an annual rate of 1.45% while US GDP grew twice as fast, at an annual rate of 2.84%. The GDP grew approximately three-fold while the direct selling industry increased by approximately 1.7 times. As the number of people engaged in direct selling tripled from 1991 to 2011, direct sales as a percent of total retail sales at first increased and then declined (Figure 2).

Figure 2

U.S. Direct Selling Sales/Total Retail Sales;
 # Direct Selling Sales People;
 Direct Selling Sales/Sales Person



The MLM-dominated direct selling industry has not proven to be an increasingly important alternative to traditional store retailing. While the MLM model appears to have offset the stagnation of traditional direct selling in the 1980s, the self-reported sales per salesperson decreased over time. Recently three public MLMs relabeled the distributors who were apparently interested in purchasing the product at a distributor discount from SRP as “preferred customers,” making the actual number of direct selling salespersons uncertain (Conway, 2013; Stanford, 2013).

With no information regarding income from selling products to external customers and company compensation heavily skewed toward a small percentage of distributors, the prospective distributors’ ability to evaluate the opportunity remains a challenge. A comparison over time of average annual distributor earnings showed that the average Amway distributors in Wisconsin in 1980 earned \$744 in 2012 dollars (\$267 in 1980), while the average annual earning for all Herbalife and Nu Skin distributors in 2012 were \$749 and \$641, respectively (*State of Wisconsin v. Amway* 1982; Herbalife, 2013a; Nu Skin, 2013); thus little or no change.

The MLM model now apparently depends heavily upon selling to itself: “This is a critical

question, because at the core of the short seller accusation is the claim that a purchase for personal use by distributors (also known as internal consumption) cannot be considered a sale to an ultimate user. If this standard were to be adopted, it would cast a cloud over many well-established direct selling companies, particularly those that sell consumable products such as health, home and personal care” (Babener, 2013). Arguments that treat internal and external consumption the same blur the nature of the selling opportunity and ignore the potential for ongoing recruitment to be the primary source for compensating participants – a key characteristic of a pyramid scheme.

Internal consumption has been argued to be similar to a “buying club” that people join to receive a distributor discount, driving internal consumption above that of external consumption. The analogy is suspect, as an MLM company may lose eighty percent of its “internal customers” each year; in contrast, Costco, a well-known buying club, retains more than eighty percent of its customers each year (Forbes, 2013). The argument is also suspect since MLM firms ubiquitously promote a business opportunity by which people earn income – a set of facts that make a *failed* business venture a more cogent explanation for the noted annual dropout rates regarding general MLM participants.

Communications about the MLM opportunity can be multifaceted and difficult to unravel. For example, for 2012 Herbalife reports an average annual gross earnings for 86,913 “eligible” distributors and sales leaders of \$4,358 before expenses, though there exists no independent way to determine the percentage of the other 406,949 distributors who tried but failed to become eligible (Herbalife, 2013a). In a recent court document Herbalife states “Bostick knew that he was not guaranteed success as an Herbalife Distributor and that most of even Herbalife’s most successful leaders made only modest amounts of commission income” (emphasis added), further describing most participants as discount buyers. That said, its website features success stories highlighting “financial freedom” and “being my own boss” (*Dana Bostick v. Herbalife*, 2013; Herbalife, 2013c). But in 2012 less than 2.7% of eligible distributors and sales leaders (.47% of all distributors) earned more than \$25,000 in annual compensation (Herbalife, 2013a). Selling and recruiting methods that led to the success of others – beyond statements about hard work – are opaque, as is the number of distributors selling in a given area at any time. Untangling the incentives for distributor discounts from a venture promoted to provide business income makes a proper assessment of individual MLMs difficult.

The failure of MLM companies to track sales outside the distributor network exacerbates this problem. Competing explanations of internal consumption, i.e., distributors enjoying a discount on products for personal use coupled with intangible benefits of social connections, versus distributor recruitment incentivized to achieve company-specified volumes (repeated annually with new recruits), all happen simultaneously. The lack of transparency hinders consumers, investors, and regulators from accurately assessing the general MLM business model, as well as individual MLMs.

The ability of high volume distributors to generate and sell business support materials at a profit to downline distributors further obscures the path to financial success. High annual distributor turnover creates a ready market for fee-based training programs offered by upline distributors. While MLM companies typically offer some instructions on selling,

the cost and effective of sales training falls on distributors, an approach different from the company sponsored “scientific” selling training offered to the sales force at no charge in traditional direct selling. Instead, MLM distributor-generated training can deliver profits to the upline distributor regardless of the training effectiveness.

The 2004 FTC Fraud Survey points out the extent of the overall problem of pyramid schemes (Federal Trade Commission Staff Report, 2004). Of the ten most prevalent types of consumer complaints received by the FTC, purchasing a membership in a pyramid schemes ranked seventh, with an estimated 2.55 million incidents and 1.55 million individual victims in the preceding year (the 95 percent interval ranged from .8 to 2.3 million individual victims, effecting between .4 percent and 1.1 percent of the US adult population). The amount lost per individual ranked pyramid schemes second among the ten fraud types. Most notably, pyramid scheme victims were the “least likely to complain,” despite recognizing that they had been victims of consumer fraud.

Conclusions and Future Research

This analysis contributes to the marketing literature by providing a long-term perspective on a specific and continually evolving area of retailing. Through the lens of history we identify forces of change and highlighting the impact of marketing actions. For traditional direct selling, MLMs, and pyramid schemes, the impact has varied from bringing a wide range of products literally to the doors of consumers, to struggling to maintain consumer connections in the face of changing lifestyles, to a restructuring of the business model, to triggering a series of ongoing regulatory actions in the face of consumer fraud. Unlike contemporaneous studies, which document and test theories against current actions, historical studies provide sufficient context to compare the actions and motivations in one time period to those in another.

As noted throughout, the MLM model operates on the dual premise of retailing through a network of distributors and recruiting new distributors to do the same. Federal regulators and courts have consistently focused on the “retail question” – the existence and extent of sales to consumers external to the distributor network (Vander Nat and Keep, 2002). The inability to track sales other than to distributors themselves conflates the dual premise, obscuring the basic role of providing a retail channel. Without a significant external customer base, internal consumption by an ever-churning base of participants resembles neither employee purchases nor a buying club. The MLM industry now appears to be heavily reliant on selling to itself – raising *the retail question* to ever greater urgency.

Academic research and articles in the popular press regularly demonstrate the ability for businesses to add value and make social contributions, and also to do social harm. Our analysis of multilevel marketing and pyramid schemes in the U.S. makes explicit the potential of the MLM business model to have this dual impact on society. This duality motivates further public policy consideration in an effort to protect consumer welfare while providing market-based benefits.

Opportunities for future academic research abound. Little systematic research has been done comparing the variety of compensations structures and company policies across MLM firms, including those found to be pyramid schemes. Studies using experimental

design could tease out the relative value of tangible and intangible rewards associated with becoming an MLM distributor. Studies of current and former distributors could lend understanding to the evident process of being first active, then inactive. And the low level of complaint behavior by victims of pyramid scheme fraud requires additional study. Unlike motivations associated with traditional direct selling, the MLM industry continues to present a less understood and at times illegal business model.

And research is surely warranted to determine the nature/extent of discounts: (a) from an SRP that perhaps no one except uninformed consumers would pay, and (b) with respect to similar products available via non-MLM channels. Further, if deemed plausible to a researcher (though at first sounding like a satire), undertake a genuine study of how new MLM entrants establish a business, earning profit on products available at discounts to people joining as internal customers. This would render a statistical estimate of the number of *uninformed customers*, likely not to be statistically different from zero, who would form the *business entrants'* customer base: customers who do not (yet) know they could avoid paying a mark-up by becoming internal customers. Regrettably, a study that documents such foreseen outcomes is apparently needed for an industry now moving down a very dubious path: i.e., continually replacing retail sales with proposed internal consumption that, if taken seriously, would demand fundamental changes to the current MLM model, or failing that, would render a proposal that is economically infeasible.

1. If the MLM offers commissions on a \$100 sale (SRP), the *level-1 override* may be expressed as 15% of SRP, e.g., \$15 via a \$100 sale. Or, if the firm pays rewards on distributor purchases, the level-1 override can be expressed as 20% of W; e.g., 20% x \$75 = \$15. One obtains the same \$15 reward for level-1 volume, but the incentives are different depending on whether the underlying volume represents retail sales or distributor purchases.

2. For example, see Lichtenstein G. (1973) "Pyramid Sales Are Now Chief Consumer Fraud Here," *The New York Times*, 3, April.

3. In *Koscot*, the FTC articulates its test for a pyramid scheme. The ruling notes that the absence or paucity of retail sales dooms the MLM to be an endless chain that is "nothing more than an elaborate chain letter device..." Re *Koscot Interplanetary, Inc.*, 86 F.T.C. 1180 (1975). The FTC further held that a pyramid scheme is an organization in which the participants pay the company money in return for which they receive (1) the right to sell a product and (2) the right to receive, in return for recruiting other participants into the program, rewards which are unrelated to sale of the product to ultimate users (1180). Federal courts have adopted, and elaborate upon, the *Koscot* test, notably in *Webster v. Omnitrition* (1996); *United States v. Gold Unlimited* (1999); *FTC v. Five Star* (2000); and *FTC v. BurnLounge* (2011). All of these court rulings concur that for purposes of pyramid scheme analysis under *Koscot*, "ultimate users" are people who are not participants in the proposed venture, i.e., are consumers outside the MLM's network.

4. See full text of Opinion and Final Order, re *Koscot Interplanetary, Inc.* 86 F.T.C. 1106-1192 (1975). At times, readers focus narrowly on *Koscot's* "two prongs"; i.e., a payment

of money that grants the right to: (a) sell the firm's product and (b) obtain recruitment rewards which are unrelated to sale of the product to ultimate users. For the historical record, Koscot's analysis identifies *ultimate users* as consumers outside the MLM's network and it affirms the economic characterization of pyramid scheme as an organization based on the false premise of continual recruitment, dooming the vast majority of participants to financial failure.

REFERENCES

- Albaum, G. and Peterson, P.A (2011), "Multilevel (network) marketing: An objective view," *The Marketing Review*, Vol. 11 No. 4, pp. 347-361.
- Amway (2014), *Business Reference Guide*, January.
- Avon Products, Inc. (1961), *1960 Annual Report*, 9 March.
- Avon Products, Inc. (2012), "Avon: the company for women - timeline," <http://media.avoncompany.com/file.php/68428/Long+Format+PDF+timeline.pdf> (accessed 29 December).
- Babener, J.A. (2013), "Herbalife: What the Short Sellers Missed on the Way to the Press Conference," *Direct Selling News*, 1 September,
- Barkacs, C.B. (1997), "Multilevel Marketing and Antifraud Statutes: Legal Enterprises or Pyramid Schemes," *Marketing and the Law*, Cava, A., Sacasas, R. and DiMatteo, L.A., editors, *Journal of the Academy of Marketing Science*, Vol. 25 No. 2, pp. 176-179.
- Benway, K., Himelfarb, A., Greisman, L.C., and Vladeck, D. (2010), *Disclosure Requirements and Prohibitions Concerning Business Opportunities Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule*, 16 CFR Part 437, 8 November.
- Biggart, N.W. (1989), *Charismatic Capitalism: Direct Selling Organizations in America*, The University of Chicago Press, Chicago, IL.
- Bloch, B. (1996), "Multilevel marketing: What's the catch?" *The Journal of Consumer Marketing*, Vol. 13 No. 4, pp. 18-26.
- BLS Reports (2013), *Women in the Labor Force: A Databook*, February, p. 8.
- Botsford, H. (1926), "Direct Distribution," *Barron's*, Vol. 6 No. 12, p. 12.
- Changing Times* (1950), "Door-To-Door Selling Is Back—Strong," Vol. 4 No. 1, p. 32.
- Changing Times* (1952), "letters: Readers Talk Back," Vol. 6 No. 2, p. 47.
- Changing Times* (1971), "Nobody ever got rich on chain letters," Vol. 25 No. 9, p. 31.
- Changing Times* (1975), "Make money selling from your home," Vol. 26 No. 6, p. 18.
- Chonko, L.B., Wotruba, T.R. and Loe, T.W. (2002), "Direct Selling Ethics at the Top: An Industry Audit and Status Report," *Journal of Personal Selling & Sales Management*, Vol. 22 No. 2, pp. 87-95.

- Conway, B. (2013), "Herbalife Versus Ackman: 'Mother of All Short Squeezes' Possible, Analyst Says," *Barron's*, Blogs, <http://blogs.barrons.com/focusonfunds/2013/01/04/herbalife-versus-ackman-mother-of-all-short-squeezes-possible-analyst-says/> (accessed 29 December).
- Coughlan, A.T. and Grayson, K. (1998), "Network marketing organizations: Compensation plans, retail network growth, and profitability," *International Journal of Research in Marketing*, Vol. 15 December, pp. 401-426.
- Curtis, W. (1925), "Direct Selling Has Come to Stay," *Nation's Business*, Vol. 13 No. 9, p. 25.
- Dana Bostick v. Herbalife International of America, Inc.* (2013), 13-cv-02488 BRO (RZx).
- DeJute, A.M., Myers, R.D., Wedding, D.K. (1973), "Wheeler-Lea Versus Pyramidal Sales," *American Business Law Journal*, Vol. 10 No. 3, pp. 207-219.
- Delevingne, L. (2013), "Ackman: Herbalife's bad practices continue," *CNBC*, 23 December. 4:16 PM ET.
- DeVos, D. (2013), "Amway's President on Reinventing the Business to Succeed in China," *Harvard Business Review*, April, pp. 41-44.
- Eidschun, R. (2014), "a change," (personal communication with William Keep, 12 January).
- Feder, B.J. (1989), "Jacobs and Amway Join To Acquire 10.3% of Avon," *The New York Times*, 4 May, p. D4.
- Federal Security Agency (1951), *Notices of judgment under the Federal Food, Drug, and Cosmetic Act*. D.D.N.J., F.D.C. 3381-3383, Food and Drug Administration, August.
- Federal Trade Commission (1997), "Nu Skin To Pay \$1.5 Million Penalty To Resolve FTC Charges over Fat-Loss Claims for Supplements," *Press Release*, 6 August.
- Federal Trade Commission Staff Report (2004), *Consumer Fraud in the United States: An FTC Survey*, August.
- Forbes* (2013), "Costco's Earnings: Steady Sales Growth And Expanding Membership Base In Focus," *Investing* section, 11 March, 5:14 PM ET.
- Friedman, W.A. (2004), *Birth of a Salesman: The Transformation of Selling in America*, Harvard University Press, Cambridge, MA.
- Freitag, M. (1989), "Amway Withdraws Avon Offer," *The New York Times*, 18 May.

- FTC v. Amway Corp.* (1979), 93 FTC 618.
- FTC v. BurnLounge, Inc.* (2007) CV 07-3654 GW FOMx (C.D. California, April 26).
- FTC v. Equinox Int'l Corp.* (1999), CV-S-99-0969-JBR-RLH (Nevada, August 3).
- FTC v. Five-Star Auto Club Inc.* (1999), Civ. No. 99-1693 (CM) (S.D.N.Y., March 8).
- FTC, et al. v. Fortune Hi-Tech Marketing, Inc., et al.*, (2013), No. 13-cv-123-KSF-REW (E.D. KY).
- FTC v. Koscot Interplanetary Inc.* (1975), 86 FTC at 1180.
- FTC v. Trek Alliance, Inc.* (2002), CV-02-9270 DSF (AJWx) (C.D. California, Nov. 27).
- FTC v. Trudeau*, (2013), Case:1:03-cv-03904, (Northern District of Illinois, December 20).
- Goldstein, T. (1983), "The Door Is Open For Person-To-Person Sales on L.I.," *The New York Times*, 7 August.
- Grayson, K. (2007), "Friendship Versus Business in Marketing Relationship," *Journal of Marketing*, Vol. 71 October, pp. 121-139.
- Greenberg, H. (2013a), "Don't Call me a Multi-Level Marketer," *CNBC*, 9 January, 4:04 PM ET.
- Greenberg, H. (2013b), "Why Spotting a Pyramid Scheme Isn't So Easy," *CNBC*, 9 January, 3:19 PM ET.
- Hall, T. (1988), "New Clients for In-Home Shopping," *The New York Times*, 26 May.
- Herbalife (2013a), *Statement of Average Gross Compensation Paid By Herbalife to United States Distributors In 2012*, 21 February.
- Herbalife (2013b), *Herbalife Ltd. Annual Report 2012*, 19 February.
- Herbalife (2013c), "Success Stories: Herbalife had given us financial freedom," <http://opportunity.herbalife.com/success-stories/business-opportunity/alberto-jen> (accessed 29 December).
- Jones, K.A. (2011), *Amway Forever*, John Wiley & Sons, Inc., Hoboken, NJ.
- Koehn, D. (2001), "Ethical issues connected with multi-level marketing schemes," *Journal of Business Ethics*, Vol. 29 No. 1/2, pp. 153-160.

Kohm, J.A. (2004), "Re: Staff Advisory Opinion – Pyramid Scheme Analysis," letter to N.H. Offen, President, Direct Selling Association, 14 January.

Kustin, R.A. and Jones R.A. (1995), "Research note: A study of direct selling perceptions in Australia," *International Marketing Review*, Vol. 12 No. 6, pp. 60-64.

Lawrence, D. (2014), "China's Nu Skin Probe Puts Other Direct Sellers on Notice," <http://www.businessweek.com/articles/2014-01-16/chinas-nu-skin-probe-puts-other-direct-sellers-on-notice> (accessed 18 January).

Layne, D. (1946), "Boon Time for Gyp Schemes," *Nation's Business*. Vol. 34 No. 4, p. 58.

Lichtenstein, G. (1973), "Pyramid Sales Are Now Chief Consumer Fraud Here," *The New York Times*, 3, April.

Mehta, S. (1995), "Not taught at Harvard: Multilevel marketing," *The Wall Street Journal*, 19 December, B1.

Mytinger & Casselberry, Inc. v. FTC (1962), 301 F. 2d 534, Court of Appeals, Dist. of Columbia Circuit

Nation's Business (1920), "A Poll of Bad Practices," Vol. 8 No. 4, p. 82.

Nemy, E. (2001), "Mary Kay Ash, Who Built a Cosmetics Empire and Adored Pink, Is Dead at 83," *The New York Times*, 23, November.

Nuccio, S. (1966), "Fuller Brush Hiring Women, Taking Cue From Avon Products," *The New York Times*, 11, October, p. 63.

Nu Skin (2013), *Nu Skin Enterprises, Inc. Distributor Compensation Summary*.

Peiss, K. (1998), "'Vital Industry' and Women's Ventures: Conceptualizing Gender in Twentieth Century Business History," *Business History Review*, Vol. 72 No. 2, pp. 219 – 241.

Peterson, R.A., Albaum, G., and Ridgway, N.M. (1989), "Consumers Who Buy From Direct Sales Companies," *Journal of Retailing*, Vol. 65 No. 2, pp. 273-286.

Peterson, R.A., and Watruba, T.R. (1996), "What is direct selling? – Definition, perspectives, and research agenda," *The Journal of Personal Selling & Sales Management*, Vol. 16 No. 4, pp. 1-16.

Peterson, P.A., and Albaum, G. (2007), "On The Ethicality Of Internal Consumption In Multilevel Marketing," *The Journal of Personal Selling & Sales Management*, Vol. 27 No. 4, pp. 317-323.

Pratt, M.G. (2000), "The good, the bad, and the ambivalent: Managing identification among Amway distributors," *Administrative Science Quarterly*, Vol. 25 No. 3, pp. 456-493.

Purdum, T.S. (1985), "What's New In Direct Selling," *The New York Times*, 17 March.

Salmans, S. (1981), "Home Parties, Where The Selling Is Easy," *The New York Times*, 3 September.

SEC v. CKB168 Holdings Ltd., et al., (2013), Civil Action No. 13-5584, E.D.N.Y., filed October 9.

Securities and Exchange Commission (2013), *Investor Alert: Beware of Pyramid Schemes Posing as Multi-Level Marketing Programs*, 17 October.

Sloane, L. (1964), "Door-To-Door Sales Expected to Climb," *The New York Times*, 2 February, p. 1.

Stanford, D. (2013) "The Meaning Of Herbalife," *Businessweek*, 27 May, 62-56.

State of Wisconsin v. Amway Corporation, Inc. et al. (1982) Case 589806.

The New York Times (1925), "Merchants Arraign Legislative Trend," 14 February.

The New York Times (1932), "College Group Aims to Curb Canvassers Using Educational Link to Aid Their Sales," 2 May, p. 31.

The New York Times (1949), "Code to Be Drawn to End 'Racket' In Door-to-Door Sales Field," 5 July, p. 33.

The New York Times (1951), "Nutrilite Cited For False Claims," 22 May.

The New York Times (1952), "Sales Top Billion From Door To Door," 12 February, p. 35.

The New York Times (1955), "Gains Are Noted In Direct Selling," 7 June.

The New York Times (1957), "Myths About Nutrition," 25 July.

The New York Times (1985a), "Direct Selling Leaves Home," 3 September.

The New York Times (1985b), "Dr. Forrest Shaklee; Founded Corporation," 17 December.

Tompkins, J.S. (1957), "\$57,841,764 Stanley Sales Built On Fun, Parties and Premiums," *The New York Times*, 11 August.

Toosi, M. (2002), "A century of change: the U.S. labor force, 1950-2050," *Monthly Labor Review*, May, p. 15.

United States v. Gold Unlimited Inc. (1999), No. 96-6713, 13 May US 6th Circuit Court.

Vander Nat, P.J. and Keep, W.W. (2002), "Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes," *Journal of Public Policy and Marketing*, Vol. 21 Spring, pp. 139-151.

Webster v. Omnitrition International Inc. (1996), 79 F. 3d 776, 781- 782 (9th Cir.), cert. denied, 117 S. Ct. 174 U.S. (No. 94-16477).

Williams, J.A. (1948) "Salesmen To Seek Aid In Conventions," *The New York Times*, 20 June, p. 1.

Zipser, A.R. (1953), "House-to-House Selling Is Big Business, With Billion in Goods Disposed of Yearly," *The New York Times*, 24 May, p. 1.



PERSHING SQUARE CAPITAL MANAGEMENT, L.P.

888 SEVENTH AVENUE, 29TH FLOOR
NEW YORK, NY 10019
T: 212 813-3700 F: 212 286-1133

February 25, 2014

By FedEx

Hon. Edward J. Markey
United States Senator
Suite SR-218
Russell Senate Office Building
Washington, DC 20510-2107

Re: Herbalife

Dear Senator Markey:

We write to express our concerns about Herbalife's incomplete and misleading February 18, 2014 response to your January 23, 2014 letter requesting information about the company's business practices. In your letter, you asked Herbalife a series of detailed questions regarding, among other things, (1) the company's compensation system, (2) the rates at which Herbalife distributors fail, (3) the extent to which Herbalife distributors sell Herbalife products to genuine retail customers outside the distribution network, and (4) Herbalife's targeting of ethnic and socioeconomic minorities. Herbalife ignored most of your questions. To the extent Herbalife made any attempt to answer your questions, we think the few answers it gave were incomplete or highly misleading, as explained below.

Compensation

In your letter, you asked Herbalife several questions about various aspects of the company's compensation system. Among other things, you asked Herbalife how many levels there are in the Herbalife compensation system, how distributors advance through those levels, and on what basis distributors earn commissions. These questions are highly important in determining whether Herbalife is a pyramid scheme. Indeed, it is well-established that a multi-level marketing company (an "MLM") constitutes a pyramid scheme where its compensation system "tends to induce participants to focus on the recruitment side of the business at the expense of their retail marketing efforts." *See Webster v. Omnitrition*, 79 F.3d 776, 781 (9th Cir. 1996); *see also* Dr. Peter J. Vander Nat & William W. Keep, *Marketing Fraud: An Approach for Differentiating Multilevel Marketing from Pyramid Schemes*, 21 J. Pub. Pol'y & Marketing 139, 144 (Spring 2002) (an organization is a pyramid scheme where "participants obtain their

monetary benefits primarily from recruitment rather than the sale of goods and services to consumers”).

Herbalife’s disjointed response to your question was:

Herbalife compensation is driven by product sales, not recruitment. Members are compensated through profit derived from direct product sales to customers and also based upon the productivity of their “downline.” Members do not receive compensation from Herbalife simply for recruiting other members into their downline. Instead, they become eligible for increased discounts or “commissions” only to the extent that the new members in their downline purchase Herbalife products for resale or consumption.

This response represents an extreme oversimplification of Herbalife’s complex compensation system. We apologize in advance for the complexity of the discussion below, but even our recitation simplifies the Herbalife Sales & Marketing Plan (“SMP”).¹ The complexity of that plan is daunting for any reader, but especially for an ordinary consumer and first-time business operator.

The SMP creates eleven levels of distributors:

1. Distributor
2. Senior Consultant
3. Success Builder
4. Qualified Producer
5. Supervisor
6. World Team
7. Global Expansion Team
8. Millionaire Team
9. President’s Team
10. Chairman’s Club
11. Founder’s Circle

Distributors qualify for higher levels in the organization by accumulating Volume Points. Each Herbalife product has a Volume Point value associated with it. Each product also has a Suggested Retail Price (“SRP”) that is substantially higher than the actual market price at which Herbalife products are bought and sold on the Internet and elsewhere. In the United States in 2012, the ratio of SRP to Volume Points ranged from \$1:0.57VP to approximately \$1:0.905VP.

A distributor earns Volume Points not based on what Herbalife refers to as “direct product sales to customers,” but instead based on the distributor’s own orders and orders of other distributors in the distributor’s downline. Thus, in order to advance in the compensation system, distributors are incentivized to recruit new distributors into the

¹ A copy of the SMP is available at https://www.myherbalife.com/Content/en-US/pdf/distributorForms/Book4_SalesandMarketingPlanandBusinessRules_USEN.pdf.

scheme and pressure those distributors to order large volumes of Herbalife products—without regard to whether there is retail demand for those products.

In order to qualify for commissions or royalties, a distributor must first reach the level of Supervisor. Herbalife distributors who have reached the level of Supervisor or above are referred to as Sales Leaders. A distributor can qualify for the level of Supervisor in three ways: (i) accumulating 4,000 Volume Points in one month (of which 1,000 Volume Points must not be used by any other distributor to qualify for Supervisor); (ii) accumulating 2,500 Volume Points in each of two consecutive months (of which 1,000 Volume Points in each month must not be used by any other distributor to qualify for Supervisor); or (iii) accumulating 5,000 Personally Purchased Volume Points, or 4,000 Personally Purchased Volume Points and 1,000 Downline Volume Points, over the course of 3 to 12 months.

Thus, in order to qualify as a Supervisor, an Herbalife distributor must either spend thousands of dollars on Herbalife products himself or herself or recruit new distributors into the scheme and pressure those distributors to order large volumes of Herbalife products—again, without regard to whether there is retail demand for those products.

Herbalife distributors who have reached the level of Supervisor earn commissions and royalties. These commissions and royalties are based entirely on orders placed by distributors in their downline. **It makes no difference whether the downline distributor orders Herbalife products to sell those products to a genuine retail customer, sell them to another distributor, consume them, store them in a garage, give them away, or throw them in the trash—when a distributor in the Supervisor’s downline orders products from Herbalife, the Supervisor gets paid by Herbalife.**

Herbalife says distributors are not paid to recruit, but victims repeatedly report being told they are paid well for recruiting others to become Supervisors. Indeed, if a Supervisor can convince a distributor in his or her downline to spend thousands of dollars on Herbalife products to qualify as a Supervisor, the upline Supervisor earns substantial commissions and royalties on the qualifying Supervisor’s order. However these payments may be characterized, these commissions and royalties “tend[] to induce participants to focus on the recruitment side of the business at the expense of their retail marketing efforts.” *Omnitrition*, 79 F.3d at 781. It is the incentive—not the label—that matters.

Supervisors earn the following three forms of commissions and royalties:

- **Wholesale Commissions.** When a distributor who has not reached the level of Supervisor orders products directly from Herbalife, the company pays a Wholesale Commission to the distributor’s first upline Supervisor. If the distributor has a Qualified Producer in his or her upline, the amount of the Wholesale Commission paid to the Supervisor is the difference in discount percentage to which the Supervisor and Qualified Producer are entitled, multiplied by the total SRP of the products ordered by the downline distributor. If the distributor does not have a Qualified Producer in his or her upline, the

amount of the Wholesale Commission paid to the Supervisor is the difference in discount percentage to which the Supervisor and the downline distributor are entitled, multiplied by the total SRP of the products ordered by the downline distributor.

- **Royalty Overrides.** Royalty Overrides are commissions of between 1% and 5% that a Supervisor earns on the Volume Points accumulated by the three most senior Sales Leaders in the Supervisor’s downline in a particular month. The percentage figure used to calculate the Royalty Override to which a Supervisor is entitled is determined by the number of Personal Volume Points accumulated by the Supervisor. The term “Personal Volume Points” refers to Volume Points derived from the Supervisor’s own product orders plus Volume Points derived from the product orders of the Supervisor’s Non-Sales Leader downline.

| Personal Volume Points | Royalty Override Percentage |
|------------------------|-----------------------------|
| 2,500 or more | 5% |
| 2,000 to 2,499 | 4% |
| 1,500 to 1,999 | 3% |
| 1,000 to 1,499 | 2% |
| 500 to 999 | 1% |

When a Supervisor receives Royalty Overrides, the Supervisor is also awarded Royalty Points (in the same amount as Royalty Overrides). Royalty Points are used to qualify for higher levels in the Herbalife compensation system.

- **Royalty Override Roll-Ups.** When a Supervisor receives less than the full 5% Royalty Override, Herbalife pays the difference between the full 5% Royalty Override and the amount actually earned by the Supervisor to the first upline Supervisor entitled to the full 5% Royalty Override in the form of a Royalty Override Roll-Up.

Distributors at higher levels of the organization are entitled to additional bonuses. Once a distributor reaches the level of the Global Expansion Team—and very few do—the distributor is entitled to **Production Bonuses**. A Production Bonus is a commission of between 2% and 7% that a Global Expansion Team member or a distributor at any higher level in the organization earns on the Volume Points accumulated by his or her entire downline.² A Global

² In recent public statements, Herbalife has suggested that a distributor can only earn commissions, royalties and bonuses on the orders of distributors in the first three levels of the distributor’s downline. This suggestion is inconsistent with Herbalife’s SMP and with the statements of senior Herbalife distributors. For example, in a video promoting Global Home Business Systems, a business that purports to train Herbalife distributors, President’s Team member Michael Burton said, “I really want to make sure you understand what I’m saying—if your team went 50 levels deep, you could earn two percent on all 50 levels.” (<http://vimeo.com/70407577> (password: burton), 1:17:45 – 1:17:53.)

Expansion Team member is entitled to a Production Bonus of 2%, provided that the Global Expansion Team member accumulates 5,000 Personal Volume Points per month. Those at higher levels of the organization are entitled to higher Production Bonuses. Like the commissions and royalties to which Supervisors are entitled, **these bonuses have nothing to do with genuine retail sales to consumers outside the Herbalife distribution network.** When downline distributors order products, upline members of the Global Expansion Team or above make money.

The U.S. District Court for the Central District of California scrutinized this compensation system in an action brought by Herbalife against several former distributors. In 2009, in a summary judgment decision based on a full discovery record, the court made the following statement:

Herbalife's entire business model appears to incentivize primarily the payment of compensation that is "facially unrelated to the sale of the product to ultimate users because it is paid based on the suggested retail price of the amount ordered from [Herbalife], rather than based on actual sales to consumers." *Omnitrition*, 79 F.3d at 782 (emphasis and internal quotation marks omitted).

Herbalife v. Ford, No. CV 07-2529, Dkt. #374, at 16 (C.D. Cal. Aug. 25, 2009). Herbalife's conclusory answer to your question about the company's compensation system responds to none of this.

Your letter also asked Herbalife how it ensures first-time, unsophisticated business operators understand the compensation system. Herbalife ignored your question, but the reality is that new distributors cannot possibly understand it. In sharp contrast to a direct sales model in which salespeople earn commissions based on a fixed percentage of the sales they make to third parties, Herbalife's compensation system is replete with qualification and requalification requirements, monthly and annual volume requirements, byzantine compensation levels and numerous rewards for ordering Herbalife products and encouraging others to do the same.

After the 2008 financial collapse, concerns arose about the ability of consumers to understand the mortgages they were being asked to sign, and as a result various new rules were enacted to better ensure fair and simple disclosure. Herbalife's compensation system is far more complex than a typical mortgage, but the disclosure Herbalife gives about it is opaque and unintelligible. This is particularly worrisome given that new distributors are typically financially unsophisticated.

So, why is the Herbalife compensation system so complex? What is the business logic of that complexity? The system is designed to encourage distributors at all levels to recruit new distributors, order products and get distributors in their downline to order products—regardless of whether those products can ever be sold to retail buyers—in order to move up the pyramid. In other words, **Herbalife's compensation system creates strong incentives for distributors to engage (and pressure their downlines to engage) in inventory-loading.** As a

result, new distributors predictably inventory load and then suffer major losses when they discover there are no buyers at anywhere near the SRP fixed by the company.

A group of MLM consultants published a set of “Misconceptions About MLM Compensation Plans” that makes similar points in explaining the complexity:³

Misconception #1: The purpose of the compensation plan is to compensate distributors.

Reality: The purpose of the compensation plan is to motivate behaviors that will grow your company.

...

Misconception #4: The best plan is a simple plan.

Reality: To motivate the right behaviors and to match competition from other companies, your plan may well need a number of moving parts that compensate for varied sales and recruiting activities.

Your letter also asked Herbalife about (1) the relative net profits that distributors can make by selling product to genuine retail customers outside the distribution network versus recruiting new distributors into the scheme, and (2) the average net compensation of Herbalife distributors. Herbalife did not answer these questions, and for good reason. Even though Herbalife has the contractual right under its agreements with distributors to obtain detailed information about their actual retail sales, Herbalife studiously avoids gathering such information. The only fair inference to be drawn from such willful ignorance is that Herbalife knows there are not many actual retail sales of its overpriced commodity products. Most product is sold to aspiring distributors. Moreover, despite what recruits are told about making “quit your job type money,” new Herbalife distributors are unlikely to make any money pursuing the Herbalife business opportunity. Mr. Johnson did not mention it in his letter, but in defending claims asserted by disappointed distributors, Herbalife’s lawyers recently told a federal judge that “most Distributors do not achieve Sales Leader status, and even of those that do, most make only modest, if any, income from commissions.” (Mot. to Dismiss, *Bostick v. Herbalife International of America, Inc.*, No. 2:13-cv-02488-BRO-RZ, Dkt. #22 at 10 (C.D. Cal. May 30, 2013).) Indeed, Herbalife argued that “no reasonable consumer could have believed that success was guaranteed, or (as with most business ventures) even likely.” (*Id.* at 21 (quotation omitted).) Herbalife should not be telling you that it gives people a realistic opportunity to “supplement their incomes” when it is telling a federal judge that nobody in their right mind could believe that successful pursuit of the Herbalife business opportunity is likely.

³ The publication is available at <http://mlm-compensation-plans.net/myths.htm>.

Failure Rates

Your letter asked Herbalife a series of questions about the failure rates of its distributors and the length of time it would take a new distributor to advance through the levels of the Herbalife compensation system. Herbalife ignored these questions entirely, but they are important. It is well-established that pyramid schemes are “inherently unstable,” *SEC v. Glenn W. Turner Enterprises*, 348 F. Supp. 766, 771 (D. Or. 1972), and “must end up disappointing those at the bottom,” *Omnitrition*, 79 F.3d at 781. Thus, failure rates among participants in an MLM and the feasibility of making it to the top are important metrics in determining whether the MLM operates as a pyramid scheme.

Despite the use of ostentatious displays of wealth by the most senior Herbalife distributors in recruiting people into the scheme, the vast majority of Herbalife distributors fail and quit the business. In its 2005 Form 10-K, filed with the U.S. Securities & Exchange Commission, Herbalife disclosed that “[f]or the latest twelve month re-qualification period ending January 2005, approximately 60 percent of our supervisors did not re-qualify **and more than 90% of our distributors that are not supervisors turned over.**” (HLF 2005 10-K at 11 (emphasis added).) Herbalife has not disclosed the failure rate of its non-Supervisor distributors since filing its 2005 Form 10-K (perhaps because doing so would confirm the very high failure rates of those pursuing the Herbalife business opportunity), but we believe a very large majority of new U.S. distributors fail and drop out within a year.

Even among Supervisors, who represent a fraction of total distributors, Herbalife’s February 2013 Statement of Average Gross Compensation discloses that two-thirds of those who qualified between February 2010 and February 2011 failed before February 2012.⁴

These are very high failure rates, which is doubtless why Mr. Johnson failed to mention them. By contrast, there is virtually no turnover at the top of the Herbalife compensation system. A December 2008 Herbalife Investor Day Presentation showed that the retention rates for the Millionaire Team, President’s Team and Chairman’s Club were 99%, 100% and 100%, respectively.⁵

Thus, a new distributor has no realistic prospect of advancing to the top levels of the compensation system (or even to a level on par with a minimum wage job), no matter how much time passes. But this does not prevent Herbalife and its top distributors from claiming otherwise. For example, in the summer 2000 edition of *Herbalife Today*, a magazine published by Herbalife, senior Herbalife distributor and Herbalife board member John Tartol told new distributors that he had qualified for the President’s team in less than three years and said,

⁴ A copy of the February 2013 Statement of Average Gross Compensation is available at <http://www.herbalife.com/Content/en-US/pdf/business-opportunity/statement-of-average-gross-compensation-usen.pdf>.

⁵ A copy of the December 2008 Investor Day presentation is available at <http://files.shareholder.com/downloads/ABEA-48ZAJ9/2942804740x0x431657/85B6C717-A9F3-4FB3-AD93-FCB3441C67EA/HERBALIFE LTD Investor Day Presentation 12-16-08.pdf>. See slide 17.

“Distributors today can make it even faster than we did.”⁶ In the same issue, Herbalife announced its entry into Ireland. Ten years later, not a single Irish distributor had even reached the Millionaire Team.⁷ With Herbalife, the odds of reaching the top of the pyramid scheme are remote, and the odds of failing within a short time are very high.

Retail Sales Outside the Distribution Network

In your letter, you noted the critical importance of genuine retail sales in distinguishing an MLM from a pyramid scheme, and you asked Herbalife a series of questions about the extent to which its products are sold to retail customers outside the distribution network. You asked for specific data—the number of sales outside the network as a percentage of total sales for each of the past five years, and the percentage of retail sales outside the distributor network by product, by quantity and by total retail sales in dollars. You also pointed out a number of inconsistent statements that Herbalife executives have made about the percentage of sales outside its distribution network. You further noted that Herbalife could easily determine the extent to which its products are sold to genuine retail customers outside the distribution network by simply collecting the retail receipts its distributors are required to create, preserve for two years, and provide to Herbalife upon request.

In response, Herbalife did not provide any of the data you requested. Herbalife also offered no explanation for its inconsistent statements with respect to the percentage of sales outside the network, nor for its steadfast refusal to simply collect retail receipts from its distributors.⁸ Such silence speaks volumes.

Instead of answering your questions, Herbalife pointed to two surveys the company commissioned. These retrospective public surveys are highly unreliable, for several reasons. *First*, the sample sizes utilized in these studies were small. The Lieberman study is based on only 100 affirmative responses, and the Nielsen study is based on only 349 affirmative responses, and yet those studies purport to draw conclusions about a nation of well over 300 million people. *Second*, Herbalife has refused to release the surveys, their questions, or their methodologies. *Third*, the studies did not attempt to determine (1) which Herbalife products were supposedly purchased, (2) in what quantities, or (3) at what prices. *Fourth*, it is well-established that surveys of rare events return notoriously high false-positives. See, e.g., David Hemenway, Ph.D., *The Myth of Millions of Annual Self-Defense Gun Uses: A Case Study of*

⁶ A copy of the summer 2000 edition of Herbalife Today is available at <http://herbalifepyramidscheme.com/media/2014/02/JTExhibit-P.pdf>.

⁷ See 2010 Statement of Average Gross Compensation of Irish Supervisors, available at <http://herbalifepyramidscheme.com/media/2014/02/JTExhibit-Q.pdf>.

⁸ Herbalife’s refusal to collect its own retail sales data sets the company apart from other MLMs. For example, in a CNBC interview earlier this year, Tupperware CEO Rick Goings said, “Over 90% of our sales are through a retail customer. Only 10% to the sales force, and they buy that because we have so many new products every year.” When asked how he could be so confident in the numbers, Goings said, “We have a report there of what happened the previous week, what the sales were, what the recruits were, who they were to and people that went to the party. We manage our businesses right down to the detail of it.” <http://video.cnbc.com/gallery/?video=3000144377>.

Survey Overestimates of Rare Events, 10:6-10 (American Statistical Association 1997) (“Using surveys to estimate rare events typically leads to overestimates.”).

Herbalife also suggested that a large majority of its distributors order products from Herbalife in order to consume those products themselves. This suggestion is irrelevant as a matter of law and implausible as a matter of fact. As a legal matter, it is well-established that, “[i]f *Koscot* is to have any teeth, such a sale [to a participant in a pyramid scheme] cannot satisfy the requirement that sales be to ‘ultimate users’ of a product.” *Omnitrition*, 79 F.3d at 783 (citing *Koscot*, 86 F.T.C. at 1181, *aff’d mem. sub nom. Turner v. F.T.C.*, 580 F.2d 701 (D.C. Cir. 1978)). Indeed, in *Bostick v. Herbalife*, a federal judge in California rejected Herbalife’s argument that sales to its own distributors could constitute retail sales for purposes of determining whether Herbalife is a pyramid scheme, and squarely held that “downline distributors are not ultimate users for purposes of the second element of the *Koscot* test.” *Bostick v. Herbalife International of America*, No. 2:13-cv-02488-BRO-RZ, Dkt. #40 at 9 (C.D. Cal. Oct. 11, 2013).

The SEC and the FTC have recently reaffirmed the critical role of genuine retail sales to people outside the distribution network in determining whether an MLM constitutes an illegal pyramid scheme. On October 17, 2013, the SEC issued an investor alert setting forth seven “hallmarks of a pyramid scheme” and encouraging investors to “[a]sk to see documents, such as financial statements audited by a certified public accountant (CPA), showing that the MLM company generates revenue from selling its products or services to people outside the program.”⁹

On December 20, 2013, the FTC filed a brief in the Northern District of Illinois in an action brought by the FTC against an illegal pyramid scheme. (FTC’s Opp. to Pyramid Scheme Participants’ Mot. to Intervene, *FTC v. Trudeau*, No. 03-C-3904, Dkt. #808 (N.D. Ill. Dec. 20, 2013).) One of the exhibits to that brief was an expert report authored by Dr. Peter Vander Nat, whom the FTC described as “arguably the country’s preeminent expert on pyramids.” (*Id.* at 4.) In that report, Dr. Vander Nat definitively rejected the notion that sales to distributors could constitute retail sales for the purposes of *Koscot* analysis:

If all purchases/sales were internal to the MLM (no sales of product or service to people outside this network), ongoing recruitment would doom the vast majority of participants to inevitable losses because, just as in the above analysis, monetary rewards would be critically tied to an ongoing ability to recruit others into the same venture; i.e., others who pay fees and buy product, who in turn recruit others who pay fees and buy product, and so forth, indefinitely. In considering the impending losses that such a recruitment chain would create, *Koscot* looks to income that would not depend on recruitment but rather on product sales to people outside the venture. *Koscot* thus looks to retail sales and addresses certain factually based questions about the MLM’s

⁹ A copy of the SEC’s investor alert is available at http://www.sec.gov/investor/alerts/ia_pyramid.htm.

program, namely (a) whether there are any retail sales (product sales to people outside the MLM) and (b) what relation exists, in practice, between such external sales and the rewards paid in connection with recruitment. If there is no relation between recruitment rewards and sales to the ultimate users outside the MLM's network, the organization is just a perpetual recruitment chain; indeed, in Koscot's words, "nothing more than an elaborate chain letter device." Such an MLM thereby dooms the vast majority of participants to financial failure. Concomitantly, Koscot renders the same organization to be an unlawful pyramid scheme.

(*Id.*, Ex. C, Att. 1.) Thus, sales to distributors who are participants in the Herbalife compensation system are irrelevant as a matter of law to the question of whether Herbalife is a pyramid scheme.

The self-consumption argument is flawed factually as well as legally. The notion that a large majority of Herbalife distributors order products from Herbalife in order to consume those products themselves is implausible. Because low level distributors purchase Herbalife products at 25% off SRP while Herbalife products are widely available on the Internet and elsewhere at approximately 40% off SRP, consumers have no incentive to become Herbalife distributors in order to purchase Herbalife products at a discount. Anyone with access to a computer can purchase Herbalife products more cheaply than by joining the ranks of entry level distributors (or, as Herbalife now calls them, "members").¹⁰ Further, in order to become an Herbalife distributor, one is required to sign a lengthy distributorship agreement containing a large number of onerous rules and restrictions. It is illogical that consumers would subject themselves to such contractual restrictions if all they wanted to do was purchase Herbalife products at a 25% discount. True buying clubs do not require members to sign similar contracts. Indeed, Dr. Vander Nat, together with Dr. William Keep, dean of the School of Business at The College of New Jersey and an expert in pyramid schemes, recently released an article noting that, "[w]ithout a significant external customer base, internal consumption by an ever-churning base of participants resembles neither employee purchases nor a buying club."¹¹

In sum, the extent to which Herbalife products are sold to genuine retail customers outside the distribution network is a critically important question. Herbalife has a ready means to answer that question, but chooses not to do so. Herbalife's continued efforts to sidestep the question are deeply troubling.

Targeting Ethnic and Socioeconomic Minorities

¹⁰ Certainly distributors who spend thousands of dollars on Herbalife products over the course of a month or two in order to qualify as a Supervisor are not ordering those products for self-consumption.

¹¹ William W. Keep & Peter J. Vander Nat, *Multilevel Marketing and Pyramid Schemes in the United States: An Historical Analysis*, forthcoming in *Journal of Historical Research in Marketing*, Vol. 6, Issue 4 (November 2014), available at http://business.pages.tcnj.edu/files/2014/02/Keep-and-Vander-Nat_MLM-and-Pyramid-Schemes_Final.pdf. A copy of the article is attached as **Exhibit A**.

In your letter, you asked whether Herbalife specifically targets members of any minority community to become distributors, and you asked additional questions about the amount of money that Herbalife has spent marketing and advertising to particular groups. In response, Herbalife “assure[d] you in the strongest possible terms” that it “does not target members of minority or low-income communities, or any religious, social, or ethnic group.” It is impossible to square this statement with the facts.

Despite the company’s blithe denial, in developing recruiting and marketing strategies, Herbalife extensively targets particular communities, including the Hispanic community, the Asian community, the African-American community, other racial and ethnic minority communities, and low-income populations, as well as other groups like college students and stay-at-home mothers. Herbalife executives have conceded as much—they have repeatedly touted to analysts and investors the company’s strategy of targeting these groups. In an article published on the news site ValueWalk, Jacob Wolinsky collected examples of such statements by Herbalife executives,¹² which include the following:

| Source | Statements |
|---|--|
| Targeting Ethnic or Racial Minorities | |
| Herbalife Vice President of Investor Relations Amy Greene, HLF Barclays Retail and Restaurant Conference, 4/24/2012 | “For the company though, we do see, right. So we do see the segments that can provide Herbalife a broader base. So, for example, the African-American initiative that we’re doing, it started about three years ago. We see distributors moving up the marketing plan with that.” |
| Herbalife Vice President of Investor Relations Amy Greene, HLF Barclays Retail and Restaurant Conference, 4/24/2012 | “We give them stats; this is how many – if you’re only working with the Latino market, this is how many we have in population in this area of Latinos. If you’re working both markets, if you happen to be Latino bilingual, you can recruit both sides. So it really engages with a trigger.” |

¹² Wolinsky’s article is available at <http://www.valuewalk.com/2014/02/herbalife-sends-letter-markey-questionable-claims/>.

| Source | Statements |
|---|--|
| Herbalife President Des Walsh, Q4 2011 Earnings Call, 2/22/2012 | “The growth in the U.S. continues to be driven by the expansion of daily consumption business methods, particularly in the general market segment of the business, building on the successes of our Latino business. . . . The general market saw a 65% increase in attendees, and two new cities added this year. And at the Latino Future President’s Team Retreat, we had a 28% increase in the number who qualified to attend. We view these as significant indicators of increased distributor engagement.” |
| Herbalife 2010 Analyst Day Presentation | “U.S. Latin Market – Opportunity Remains.” “Further Opportunities for Growth – Market Segmentation,” including “Support African-American initiative with Distributor trainings and events” and “Target additional ethnic markets (Korean, Vietnamese, Chinese, Russian, Polish).” |
| Herbalife Executive Vice President Des Walsh, HLF Q2 2008 Earnings Call, 8/6/2008 | “During the second quarter 66% of the U.S. volume came from the Latino distributors which grew 29% year-over-year reflecting ongoing commitments in execution by our Latino distributor leadership. . . . Key growth initiatives include the launch of our African American initiative and brand building to alliances and sponsorships, including, as Michael mentioned earlier, our successful relationship with the LA Galaxy soccer team.” |
| Herbalife Chief Operating Officer Greg Probert, Analyst Meeting 11/28/2007 | “The Latino business is now about 61% of the U.S. business, 46% up. One of the big things, markets that we are going to penetrate next year is the college market.” |
| Herbalife Chief Operating Officer Greg Probert, HLF Q1 2005 Earnings Call, 5/3/2005 | “We continue to see a strengthening in the recruiting in the United States, and a lot of that is driven by our Hispanic business, is continuing to strengthen.” |

| Source | Statements |
|--|---|
| Targeting Low-Income Populations | |
| Herbalife Chief Financial Officer John DeSimone, Jefferies Consumer Conference 6/22/2010 | If you had to pay \$60 at the beginning of each month for that month's supply of coffee, far fewer people could participate. But when you pay \$2 a day, it is such a low price point, people can afford it. People living hand to mouth or whatever it may be, so far more people can afford that." |
| Herbalife Chief Financial Officer Rich Goudis, Goldman Sachs Consumer Products Conference, 5/14/09 | "Well not everybody has \$100 month supply, especially when you get into these lower income areas like in Mexico, in Indonesia, in India, in Brazil. But what they do have is that ability to afford maybe a meal a day, alright. So maybe it's 20 pesos in Mexico or 25 pesos. You ask the guys at Anheuser Busch Inbev SA (NYSE:BUD), you know they sell a lot more individual servings of beer than they do six packs or cases. So breaking that access to Herbalife down to a daily consumption model has opened up the target audience tremendously. And that's why you see this dramatic growth in a market like Mexico." |
| Herbalife Chief Financial Officer Rich Goudis, Q3 2005 Earnings Conference Call, 11/8/05 | "That being said, specifically into Mexico, we just think the world of what's going on with Nutrition Clubs. We think it's a great concept. Feeding the poor. Individual servings." |
| Herbalife Chief Operating Officer Greg Probert, Q1 2005 Earnings Call, 5/3/05 | "Two programs, the Nutrition Clubs and the Total Plan are catalysts for expanding and strengthening our business on a global basis. Nutrition Clubs are a planning party concept, which allows distributors to penetrate more deeply into the lower income segments of the market." |

The Internet is replete with additional examples of Herbalife executives admitting to targeting specific minority groups. During an April 2012 Barclays conference, Herbalife Senior Vice President and Managing Director of North America Ibi Fleming noted that "Korea is one of the top countries for Herbalife and Los Angeles has a huge Korean population, San Francisco, New York, so, we're targeting that." On a February 2008 earnings call, Mr. Johnson referred to "the stay-at-home mom" as "a key target segment of the U.S. population."

Further, Herbalife flyers promote an "African American Initiative," an "African-American Recruiting Tour," and "African American Business Tools." A few screenshots of such flyers are copied below:

AFRICAN-AMERICAN RECRUITING TOUR 2010

RAISING AWARENESS. RAISING POTENTIAL IN AN UNTAPPED MARKET.

AFRICAN AMERICAN BUSINESS TOOLS

I ♥ HERBALIFE.

Be part of the African American Initiative and grow your opportunities for success!

HERBALIFE. *Making the world healthier.*

It could not be clearer that Herbalife consciously targets racial, ethnic and socioeconomic minorities in marketing its business opportunity.

* * *

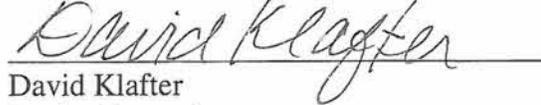
Herbalife’s response to your letter stated several times that the company has “answered all questions.” We do not see it that way. Herbalife dodged most of your questions and gave false or misleading answers to your other questions. That is hardly what one would expect from a “good corporate citizen.”

Similarly, Herbalife President Des Walsh has repeatedly stated that Herbalife is committed to “total transparency.” Again, we do not see it that way. Herbalife’s compensation system is hopelessly complex, the company’s disclosures are misleading and incomplete, and Herbalife has steadfastly refused to answer simple questions about its compensation system and business practices for more than a year.

We think Herbalife is inflicting great harm on consumers and hope you will continue investigating the company's business practices. We are available to answer any questions you may have.

Sincerely,

Pershing Square Capital Management, L.P.



David Klafter
Senior Counsel

cc:

Hon. Mary Jo White, Chair
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Liora Sukhatme, Esq.
U.S. Securities and Exchange Commission
New York Regional Office
Division of Enforcement
3 World Financial Center, Suite 400
New York, NY 10281-1022

Hon. Edith Ramirez, Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Assoc. Dir. Lois Greisman
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

EDWARD J. MARKEY
MASSACHUSETTS

COMMITTEES:

COMMERCE, SCIENCE, AND TRANSPORTATION
SMALL BUSINESS AND ENTREPRENEURSHIP
FOREIGN RELATIONS

CHAIRMAN

SUBCOMMITTEE ON INTERNATIONAL DEVELOPMENT AND
FOREIGN ASSISTANCE, ECONOMIC AFFAIRS,
INTERNATIONAL ENVIRONMENTAL PROTECTION, AND
PLACE CORPS

U.S. SENATE CLIMATE CHANGE CLEARING HOUSE

United States Senate

January 23, 2014

SUITE SR-218
RUSSELL BUILDING
WASHINGTON, DC 20510-2107
202-224-2742

975 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
617-565-8518

222 MILKEN BOULEVARD, SUITE 312
FALL RIVER, MA 02721
508-677-0523

1560 MAIN STREET, 4TH FLOOR
SPRINGFIELD, MA 01101
413-786-4610

Mr. Michael O. Johnson
Chairman and Chief Executive Officer
Herbalife International of America, Inc.
800 W. Olympic Blvd., Suite 406
Los Angeles, CA, 90015
310-410-9600

Dear Mr. Johnson,

I am writing to request information regarding Herbalife, Ltd and its domestic subsidiary Herbalife International of America (collectively, "Herbalife"), which sells nutritional and weight-loss products via a network of individual distributors. According to Herbalife's 10-K statement filed with the Securities and Exchange Commission ("SEC"), the company is a

global nutrition company founded in 1980 that sells weight management, healthy meals and snacks, sports and fitness, energy and targeted nutritional products as well as personal care products. Herbalife distributes and sells its products through a network of independent distributors, using the direct selling channel. As of December 31, 2012, we sold our products in 88 countries to and through a network of approximately 3.2 million independent distributors.¹

The company's SEC filings indicate that the majority of Herbalife products are designed to deal with weight management, though Herbalife also trades in products involving targeted nutrition and "energy, sports, and fitness."² Herbalife sells these products through a vast network of individual distributors rather than through stores or online vendor sales. Pursuant to your company's 10-K statement, "To become a distributor in most markets, a person must be sponsored by an existing distributor and must purchase an International Business Pack," which usually contains, among other items, product samples, training materials, details of the compensation plan, and rules of distributor conduct.³ Distributors make money via two main methods: by selling Herbalife products purchased at wholesale prices to customers outside the distributor network as well as to other distributors and by "sponsor[ing] other distributors and establish[ing] their own sales organizations."⁴ According to the 10-K cited above, the first method is far more common, as "the majority of our distributors have not sponsored another

¹ Herbalife Ltd, 10-K Form for Fiscal Year 2012, filed with the Securities and Exchange Commission on February 19, 2013, at page 4, available at

<http://www.sec.gov/Archives/edgar/data/1180262/000119312513065327/d452887d10k.htm>

² *Id.* at 4.

³ *Id.* at 7.

⁴ *Id.*

distributor and do not earn compensation relating to products [sic] sales made by or to other distributors.”⁵

Although the majority of Herbalife’s distributors apparently do not utilize this sales channel, there appear to be significant pecuniary benefits available to those distributors who sponsor others and establish their own sales organizations. By creating a network of organizations under them, distributors can receive “additional compensation” – so-called “royalty overrides” – for developing, retaining, and managing other distributors.⁶ These royalty overrides can reach 15% of “product retail sales in the aggregate.”⁷ Additionally, these distributors can receive “production bonuses” of up to 7% of retail sales for purchases by persons “in their downline organizations,” i.e. people who are part of that distributor’s sales organization.⁸ Further, distributors who create their own sales organization can also receive the “Mark Hughes bonus” of up to 1% of retail sales in the aggregate for “some of our most senior distributors.”⁹

As a result of the structure and operation of this distribution network, Herbalife claims that it is a multilevel marketing company,¹⁰ a type of entity in which the sales force receives compensation for both the sales they directly generate and the sales generated by a distributor’s downline personnel. However, there have been suggestions that Herbalife may not, in fact, be organized as a multilevel marketing company, but instead may be a pyramid scheme, based on Herbalife’s business operations.¹¹ Multilevel marketing companies and pyramid schemes often involve networks of sellers and a compensation system that rewards sellers based in part on the involvement of people in a seller’s “downline,” who are individuals that a seller “bring[s] into a company to generate sales, their recruits, and so on.”¹² However, there are significant differences between these two types of businesses. For example, while multilevel marketing companies, such as Tupperware, typically use compensation systems that are based on a member’s product

⁵ *Id.*

⁶ *Id.* at 55.

⁷ *Id.* at 7.

⁸ *Id.* at 7, 8 and 55

⁹ *Id.* at 7, 8 and 55

¹⁰ *Id.* at 20

¹¹ See Edward Pettersson, “Herbalife Loses Bid to Dismiss ‘Pyramid Scheme’ Lawsuit,” Bloomberg, October 15, 2013, available at <http://www.bloomberg.com/news/2013-10-15/herbalife-loses-bid-to-dismiss-pyramid-scheme-lawsuit-1-.html> (Herbalife “lost a bid to dismiss a lawsuit by a former California distributor of its nutrition products who alleged the company’s business model is a ‘pyramid scheme’ that didn’t allow him to make a profit.”); Svea Herbst-Bayliss, “Latinos Urge California Attorney General to Probe Herbalife,” Reuters, October 18, 2013, available at <http://www.reuters.com/article/2013/10/18/us-herbalife-demonstration-idUSBRE99H14Z20131018> (“Some prominent Wall Street investors as well as certain civil rights groups have accused Herbalife, which relies on thousands of independent distributors to sell its products, of being a pyramid scheme, something the company denies.”); Duane Stanford, “Herbalife: Pyramid Scheme or Juggernaut? CEO Michael Johnson Fights Back,” Business Week, May 23, 2013, available at <http://www.businessweek.com/articles/2013-05-23/herbalife-pyramid-scheme-or-juggernaut-ceo-michael-johnson-fights-back>.

¹² Herb Greenberg, “Don’t Call Me a Multi-Level Marketer,” CNBC, January 9, 2013, available at <http://www.cnn.com/id/100366770>.

sales to the general public, a pyramid scheme typically uses a compensation system that is “based on the number of people you recruit and your sales to them.”¹³ In effect, the main difference is whether sales are aimed inward at other members of a company or outward to the general public.

Multilevel marketing is a valid business operation, but pyramid schemes are inherently fraudulent. As the United States Court of Appeals for the Ninth Circuit stated in *Webster v. Omnitrition International*, “Operation of a pyramid scheme constitutes fraud for purposes of § 12(2) of the Securities Act of 1933, § 10 of the Securities Exchange Act of 1934, and various RICO predicate acts.”¹⁴ According to the court, “pyramid schemes are said to be inherently fraudulent because they must eventually collapse. . . . Like chain letters, pyramid schemes may make money for those at the top of the chain or pyramid, but ‘must end up disappointing those at the bottom who can find no recruits.’”¹⁵ As such, pyramid schemes are inherently a grave risk to consumers and regulators must be vigilant to prevent such schemes from appearing and growing.

I have seen reports from Massachusetts that suggest Herbalife is a pyramid scheme. For example, one family in Norton, MA reported that it lost \$130,000, including their entire 401(K), investing in Herbalife, and that involvement in Herbalife caused significant stress within their family. Another Massachusetts resident claimed that she was encouraged to recruit new members by approaching her family, a step that she refused to take. She also received pressure to spend money to buy more products so that she could qualify as a Supervisor in the Herbalife system. She also stated that she was encouraged to stay in the program even after she said she wanted out. The second resident also said that she “often wonders how many people have lost money on this... they are going to keep coming up with these ideas and people are going to keep going for it. I wonder if anyone has gone after them for being a pyramid scheme.”

Many of these allegations have been repeated by other groups. In a letter to the Federal Trade Commission, (FTC), Mr. Jose Calderon, the President of the Hispanic Federation, claimed that “[a] particular concern to us about Herbalife is whether distributors make money selling products or recruiting others to sell products. The latter is an indicator of a pyramid scheme.”¹⁶ In a separate letter to the FTC, Alma Morales Riojas, President of CEO of MANA, a National Latina Organization, stated that “According to Herbalife’s own 2012 data, 88 percent of their participants received no payments from the company at all. . . . On a personal level, I believe they

¹³ Bureau of Consumer Protection, Federal Trade Commission, “Multilevel Marketing,” available at <http://business.ftc.gov/documents/inv08-bottom-line-about-multi-level-marketing-plans>.

¹⁴ 79 F.3d 776, 781 (9th Cir. 1996).

¹⁵ *Id.* (quoting *In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1181 (1975)).

¹⁶ Hispanic Federation, Letter to FTC Chairwoman Edith Ramirez, May 17, 2013, available at <http://www.scribd.com/doc/142602752/The-Honorable-Edith-Ramirez-FTC>

prey on our most vulnerable, and I have seen some of my own friends in my home state of Texas fall victim to these terrible practices.”¹⁷

I take no position on the merits of these allegations. However, to better understand Herbalife’s business practices and their impact on my constituents in Massachusetts, I request that you answer the following questions:

- 1) There is a great deal of opacity surrounding Herbalife’s system of compensation.
 - a. Can you explain, in simple terms, how the Herbalife compensation system works? How exactly does a new distributor earn commissions? What metrics or milestones must a new distributor reach in order to advance through each level of the compensation system? How do you ensure first-time, unsophisticated business operators understand the system?
 - b. How many compensation system levels (e.g. Founder’s Circle, Chairman’s Club, President’s Team, Millionaire Team, GET Team, World Team, Supervisor, Non-Sales Leaders, etc.) does Herbalife currently have, and what is required to attain each system level?
 - c. How many people have entered and exited each level of the Herbalife compensation system for each quarter since 2007?
 - d. How much profit (net earnings after expenses) can the average distributor expect to make from retailing to non-distributors (i.e. people who are not directly involved in Herbalife themselves)? How much profit can the average distributor expect to make from retailing to distributors?
 - e. How much profit (net earnings after expenses) can the average distributor expect to make from purchases of products by their downline (i.e. people under a distributor in Herbalife whose sales and membership lead to bonuses and other compensation for that distributor) sales organization?
 - f. On your October 28, 2013 earnings call, a spokesman for your company stated that “we have added our statement of average gross compensation as part of our membership application, ensuring that all new participants are provided this information before they join.” What is the average net compensation, once average expenses and average losses are accounted for, and why is this figure not also included on the application?

- 2) How a company structures its operations typically provides insight into whether a company is a pyramid scheme, and I would like more information on this subject.
 - a. For each fiscal quarter for each of the past five years, how many persons have i) become Herbalife distributors and ii) exited Herbalife’s distributor program?
 - a. Exactly how many people who became an Herbalife distributor at the most basic compensation system level in the first fiscal quarters of 2007, 2009 and 2012 are

¹⁷ MANA, Letter to FTC Chairwoman Edith Ramirez, August 29, 2013, available at <http://www.scribd.com/doc/167326456/MANA-FTC-Herbalife>.

- in each of the compensation levels now? Please include precise numbers about how many of those three classes of people are currently in each separate compensation level
- b. What is the minimum number of years it would take for a distributor who became a Herbalife distributor at the most basic compensation system level in January 2013 to reach each of the distinct compensation system levels?
- 3) There have been inconsistent estimates of sales outside Herbalife's distributor network (i.e. to people who are not distributors). Typically, the more sales occur within a distributor network in which the products are not purchased by those who would be expected to ultimately consume them, the more likely a company is to be a pyramid scheme.
- a) Why have your statements changed materially over time about the percentage of sales outside the network?
- i) May 1, 2012 Conference Call – Pres. Des Walsh: 70% or higher
 - ii) May 2, 2012 – 8K: We don't keep track.
 - iii) Dec. 19, 2012 – CEO Michael Johnson: 90% of customers are outside the network – “Absolutely”
- b) For each of the past five years –
- i) What's the correct number of sales outside the network as a percentage of total sales?
- c) Please provide information about the percentage of your retail sales outside the distributor network
- i. by product
 - ii. by quantity
 - iii. by total retail sales in dollars
- Please provide me with data to support those numbers.
- d) The New York Times reported in February 2013 that Herbalife “does not collect comprehensive data on sales to people outside its network,” but that it does “require its sales representatives to keep records of their transactions.”¹⁸ This data would be helpful in determining the extent of sales outside the distributor network.
- i) Why do you require distributors to create detailed retail receipts?
 - ii) Why do you mandate that these retail receipts must be retained for two years and produced to the Company upon request?
 - iii) Why don't you collect the retail receipts regularly from all distributors? How many times have you requested that a distributor provide you with retail receipts? What percentage of these requests was not fulfilled by the distributors? What happened to those distributors who refused to provide retail receipts?

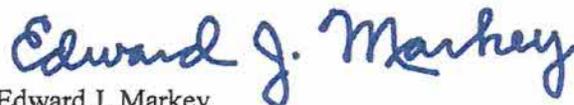
¹⁸ Peater Eavis, “Seeking a Company's Elusive Sales Data,” Dealbook, *New York Times*, February 4, 2013, available at <http://dealbook.nytimes.com/2013/02/04/seeking-a-companys-elusive-sales-data/>.

Chairman Johnson
January 23, 2014
Page 6 of 6

- 4) According to the Attorney General of New York, pyramid schemes often target specific religious or social groups.¹⁹
- a. Does Herbalife specifically target members of any minority community, including the Hispanic, African-American, and Asian communities, to become distributors? Does Herbalife target members of low income communities to become distributors?
 - b. If so, how much money has Herbalife spent in each of the last four fiscal quarters marketing to each of those communities? Please also provide details about how Herbalife advertises to any groups it targets, including the names of the media organizations used for the top 10 ad buys in 2012.

I request that you respond to these questions by February 28, 2014. Thank you for your attention to this important matter. Please have your staff contact Justin Slaughter or Michal Freedhoff of my staff at 202-224-2742 with any questions.

Sincerely,



Edward J. Markey
United States Senator

¹⁹ See Attorney General of New York, "Don't Get Caught in a Pyramid Scheme," available at <http://www.ag.ny.gov/consumer-frauds/pyramid-schemes> ("Pyramid promoters often target closely knit groups such as religious or social organizations").



Federal Trade Commission
 600 Pennsylvania Avenue, N.W.
 Washington, DC 20580

Report Date: 02/11/2013

Time: 9:34:34 AM

Requests Report
 Received between 01/31/2011 and 01/31/2013

| Request ID | Requested Date | Requester Name | Requester Type | Organization | Request Description |
|-----------------|----------------|----------------------|-------------------------|---------------|-----------------------------------|
| FOIA-2011-00888 | 05/06/2011 | Wagschal, Gerry | News Media | ABC News | Complaints against Herbalife |
| FOIA-2012-00806 | 04/18/2012 | Frayter, Karina | News Media | CNBC | Herbalife |
| FOIA-2012-01131 | 07/15/2012 | (b)(6) | Private Individual | - | Herbalife International, Inc. |
| FOIA-2012-01252 | 08/17/2012 | (b)(6) | Private Individual | - | Herbalife |
| FOIA-2013-00280 | 12/26/2012 | Celarier, Michelle | News Media | New York Post | Herbalife |
| FOIA-2013-00321 | 01/09/2013 | (b)(6) | Private Individual | - | Consumer Complaints re: Herbalife |
| FOIA-2013-00339 | 01/14/2013 | Jacobovitz, Yitzchak | Commercial Organization | Capstone LLC | Herbalife |
| FOIA-2013-00341 | 01/04/2013 | (b)(6) | Private Individual | - | Herbalife |

| | | | | | |
|-----------------|------------|---------------------|-------------------------|-----------------------|-------------------------|
| FOIA-2013-00376 | 01/17/2013 | (b)(6) | Private Individual | - | Herbalife International |
| FOIA-2013-00398 | 01/25/2013 | Muchanic, Christine | Law Firm | Height Analytics | Herbalife, etc. |
| FOIA-2013-00416 | 01/29/2013 | Sole, Andrew | Commercial Organization | Esopus Creek Advisors | Herbalife |
| FOIA-2013-00417 | 01/29/2013 | Daftary, Krish | Commercial Organization | New Mountain Capital | Herbalife |
| FOIA-2013-00426 | 01/29/2013 | Eavis, Peter | News Media | The New York Times | Herbalife |
| FOIA-2013-00429 | 01/30/2013 | Tang, Carol | News Media | dealReporter | Herbalife |
| FOIA-2013-00434 | 01/31/2013 | Celarier, Michelle | News Media | New York Post | Herbalife |
| FOIA-2013-00436 | 01/31/2013 | Wise, Aubrey | Commercial Organization | One East Partners | Herbalife |

Total No of Cases : 16

Vera, Elena R.

From: Greisman, Lois C.
Sent: Tuesday, February 05, 2013 11:59 AM
To: Ammerman, Janet; Todaro, Christine; Vander Nat, Peter J.; Vaca, Monica E.
Subject: FW: Herbalife
Attachments: Herbalife.pdf

(b)(5)

From: Baker, Steven
Sent: Thursday, January 10, 2013 2:23 PM
To: Greisman, Lois C.; Vaca, Monica E.
Cc: Kossov, Todd M.; Atleson, Michael; O'Toole, David A.
Subject: RE: Herbalife

(b)(5)

Steve

From: Greisman, Lois C.
Sent: Thursday, January 10, 2013 1:21 PM
To: Baker, Steven; Vaca, Monica E.
Cc: Kossov, Todd M.; Atleson, Michael; O'Toole, David A.
Subject: RE: Herbalife

(b)(5)

From: Baker, Steven
Sent: Thursday, January 10, 2013 11:00 AM
To: Greisman, Lois C.; Vaca, Monica E.
Cc: Kossov, Todd M.; Atleson, Michael; O'Toole, David A.
Subject: Herbalife

(b)(5)

Steve

C. Steven Baker
Director, Midwest Region

Federal Trade Commission
55 West Monroe, Suite 1825
Chicago, IL 60603
(312)960-5628

Vera, Elena R.

From: Vander Nat, Peter J.
Sent: Tuesday, January 15, 2013 1:04 PM
To: Ippolito, Pauline M.
Subject: RE: Herbalife

Tracking:

Recipient

Ippolito, Pauline M.

Delivery

Delivered: 1/15/2013 1:04 PM

We do what we can. Thanks too.

From: Ippolito, Pauline M.
Sent: Tuesday, January 15, 2013 12:00 PM
To: Vander Nat, Peter J.
Subject: RE: Herbalife

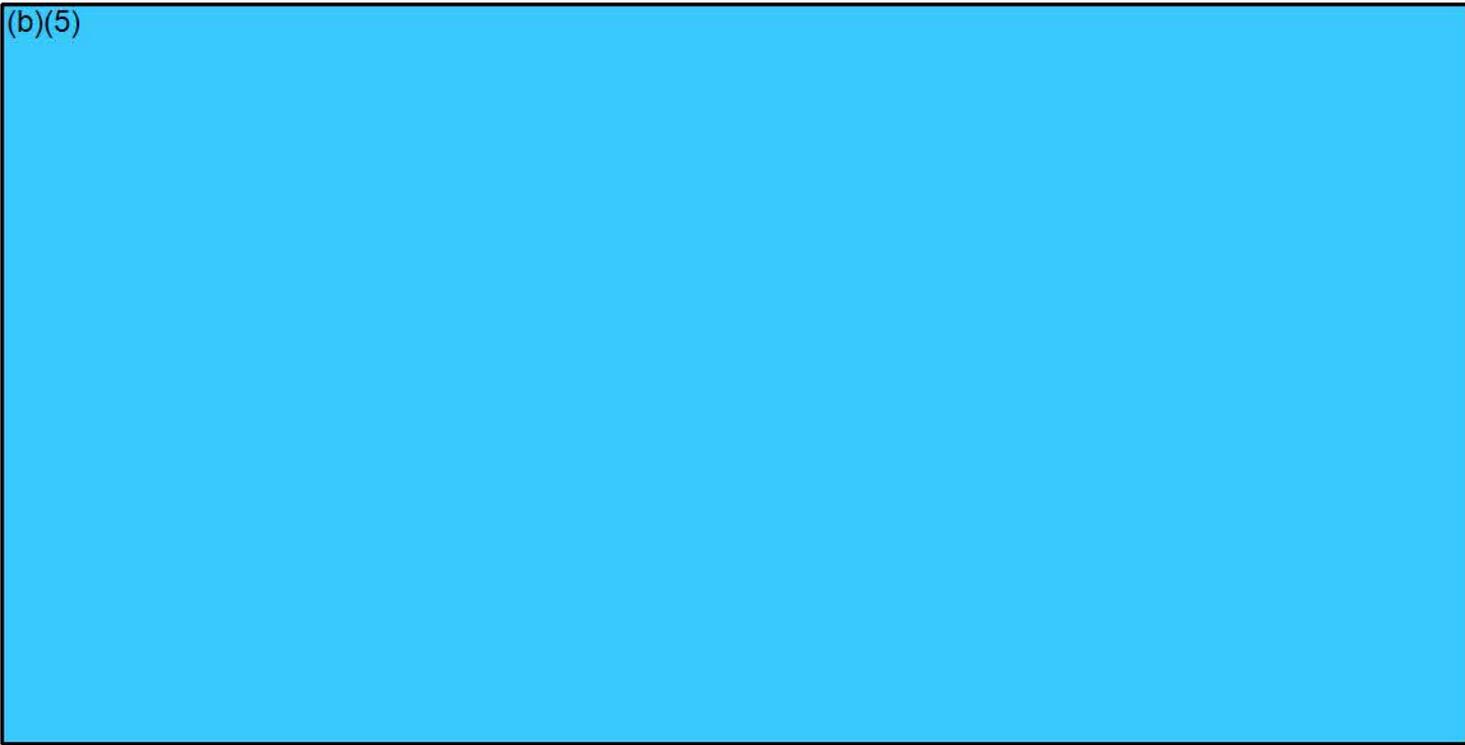
Peter, Thanks for the quick response.

Pauline

From: Vander Nat, Peter J.
Sent: Thursday, January 10, 2013 9:31 PM
To: Greisman, Lois C.
Cc: Ippolito, Pauline M.
Subject: Herbalife

Lois,

(b)(5)



(b)(5)



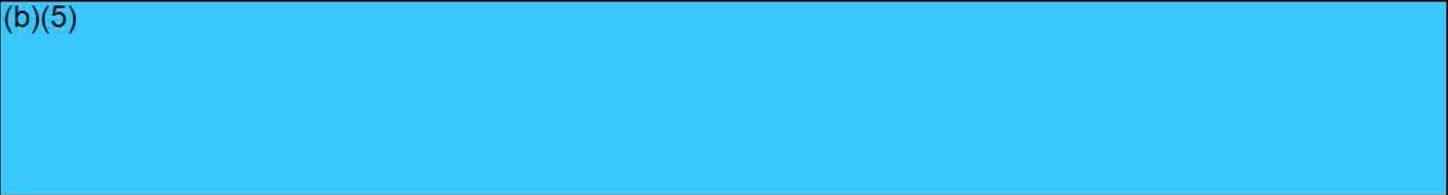
Peter

(Pauline, I am cc'ing you on this since the query to me was passed on through your email.)

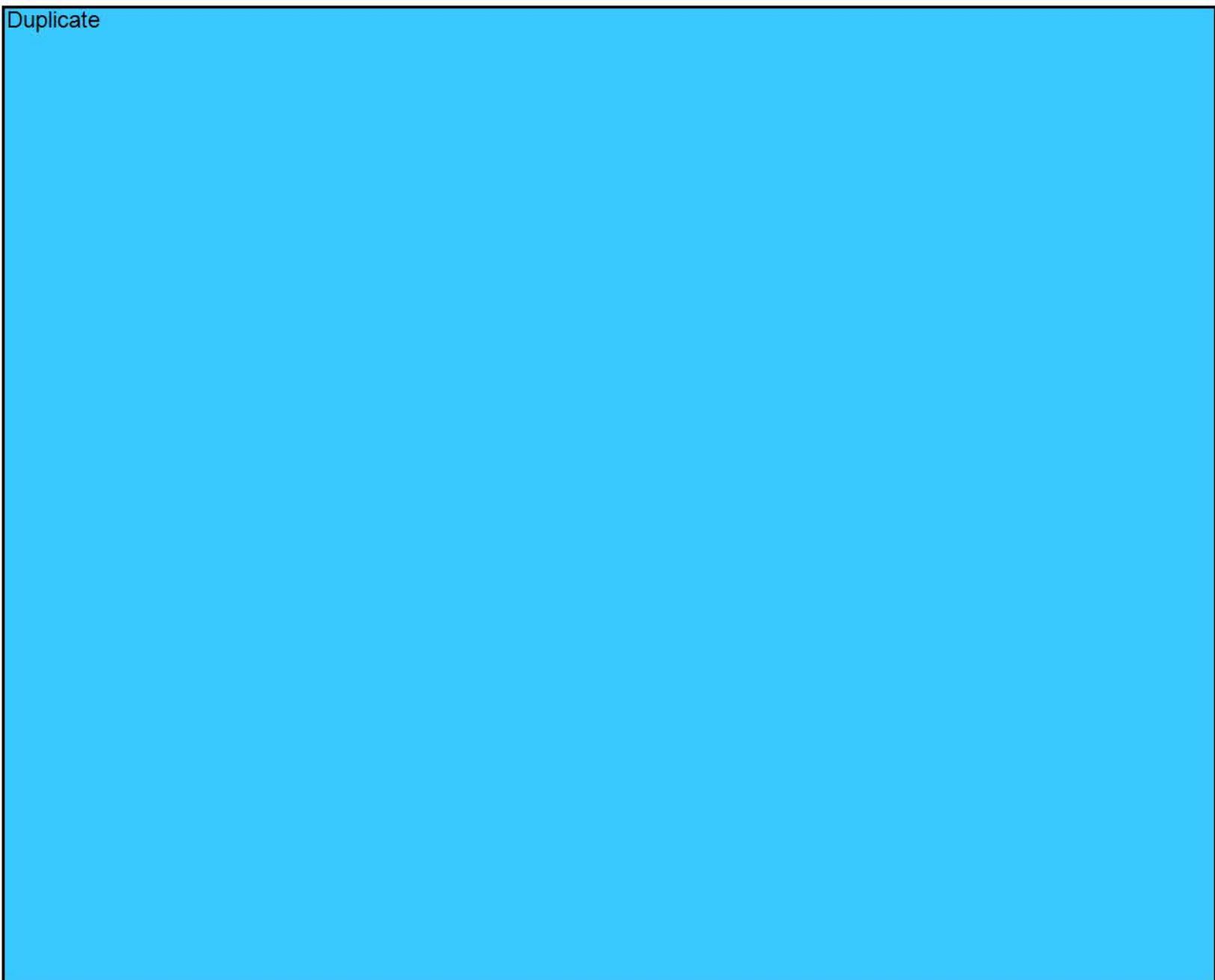
Vera, Elena R.

From: Greisman, Lois C.
Sent: Friday, January 11, 2013 10:34 AM
To: Vander Nat, Peter J.
Cc: Ippolito, Pauline M.
Subject: RE: Herbalife

(b)(5)

A large rectangular area of the document is redacted with a solid light blue fill. The text "(b)(5)" is written in the top-left corner of this redacted area.

Duplicate

A very large rectangular area of the document is redacted with a solid light blue fill. The word "Duplicate" is written in the top-left corner of this redacted area.

Vera, Elena R.

From: Vander Nat, Peter J.
Sent: Thursday, January 10, 2013 11:26 AM
To: Ippolito, Pauline M.
Cc: Pappalardo, Janis K.
Subject: Re: Wall Street Erupts Over Charges of Multi-level Marketing Fraud

(b)(5)

From: Ippolito, Pauline M.
Sent: Thursday, January 10, 2013 10:58 AM
To: Vander Nat, Peter J.
Cc: Pappalardo, Janis K.
Subject: FW: Wall Street Erupts Over Charges of Multi-level Marketing Fraud

Peter,

(b)(5)

Pauline

From: Greisman, Lois C.
Sent: Thursday, January 10, 2013 10:28 AM
To: Ippolito, Pauline M.
Subject: FW: Wall Street Erupts Over Charges of Multi-level Marketing Fraud

I stopped by before but you were not in. Can you give me a call when you return re below?

From: PyramidSchemeAlert.org [<mailto:info@pyramidschemealert.org>]
Sent: Wednesday, January 09, 2013 11:10 PM
To: Greisman, Lois C.
Subject: Wall Street Erupts Over Charges of Multi-level Marketing Fraud

This Update is Available as a Webpage for Linking [Webpage Version of this Update](#)



Pyramid Scheme Alert

Pyramid Scheme Alert is a non-partisan, non-profit, all-volunteer consumer education group.

Website Update - January 2013 Update
All [Previous Update Editions](#) Are Available for Viewing

Herbalife Is Focus

Wall Street Erupts Over Claims of MLM Fraud



After years of willful ignorance or neglect about a business sector worth \$17 billion in stock value and that has solicited money from virtually every household in America, Wall Street has suddenly taken notice of multi-level marketing (MLM). One major hedge fund manager, William Ackman of Pershing Square Capital, has blown the whistle on one iconic member of the MLM field. Ackman charged that Herbalife International is not a business, but a harmful fraud. He charged that its true stock value is zero. Herbalife's stock quickly plunged into volatility in the ensuing debate.



Wall Street Leader, William Ackman, Says Herbalife Is an Illegal Pyramid Scheme

Whatever this heated controversy brings forth, finally there is a real focus on and investigation of what previously was kept in the dark. Those who had dared to raise questions were personally vilified or sued by MLM lawyers or even harrassed by government regulators. The MLM industry is one of the largest influence-buyers and lobbyists in Washington. Ackmam stated that his position against Herbalife is "patriotic" based on the enormous harm that Herbalife does to the country and the public, especially those who are financially struggling. He has purchased a "short" position (if Herbalife's stock value goes down, he makes money) and he said he will donate all personal gains to charity.

[See William Ackman's in-depth analysis of Herbalife.](#)

What's *Your* Herbalife Story?



Herbalife is at the center of headline news stories. Major investors are calling Herbalife a "pyramid scheme" and a money trap. The news media are investigating.

You can help regulators, attorneys, and investors better understand this controversial company by adding your experience and opinion. Please let us hear from you.

-

- Are you an Herbalife distributor? Supervisor?
- Have you ever been involved in Herbalife as a distributor in the past?
- Did you personally retail the products? Did you recruit others to join up?
- Did you try to sell or recruit and but were not successful? Why?
- Did you make a lot of money? Lose money?
- Did you buy "leads"? Go to conferences?
- Why did you join up? Make money? Retail products? Get the products yourself at a discount?
- Are you still buying the products even if you are no longer a distributor?
- Would you recommend others to join up too?



Email Us Your Herbalife Story

Email us with your story, comments, thoughts. Your voice makes a difference!

SEC Staff Reportedly Opens Investigation of Herbalife

~~~~~



~~~~~

The [business media is reporting](#) that the staff of the U. S. Securities and Exchange Commission, the watchdog over the stock market, is opening an investigation of the multi-level marketing company, Herbalife. Hedge Fund manager, William Ackman of Pershing Squarte, publicly laid out charges against Herbalife, which may have prompted the investigation. Earlier questions, claims and complaints about deception and fraud from consumers, a Belgian court ruling that Herbalife is an illegal pyramid, two class action lawsuits against Herbalife for fraud, and the findings of other fraud investigators regarding Herbalife have been ignored by the SEC and FTC.



Among the charges made by William Ackman:

- Herbalife is an unsustainable pyramid scheme in which funds are gained by constantly recruiting salespeople
- Salespeople are the main source of Herbalife's sales, not consumers.
- Herbalife's products - diet shakes - are purchased because they are bundled with a deceptive income promise. Standing alone, the products are over-priced, unknown and unadvertised and are no different from many other less-expensive and more conveniently available products. They would not sell without the income scheme attached.
- Virtually no one who signs up under Herbalife's pay plan ever makes a profit
- The commissions on sales to the new recruits are transferred and concentrated to a tiny few at the very top.
- Most people fail and quit the Herbalife scheme in less than a year, after suffering financial losses, but are convinced that their failure is their own fault, not that of the flawed and deceptive scheme.

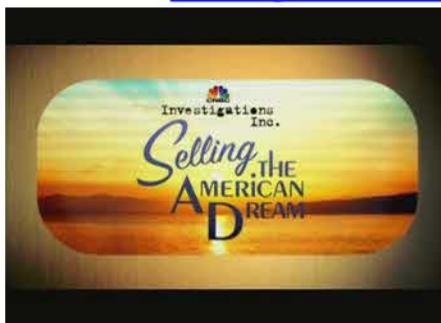
Business Media Investigating MLM



Stock analysts, business writers and television financial networks are focusing on MLM. They are going undercover to MLM recruitment meetings. They are looking at MLM payouts, interviewing distributors and asking the big question, where does MLM money come from, distributors or end-user retail buyers? Retail defines a sales company, recruiting distributors is the hallmark of an "endless chain" fraud.

Business Media have seen that MLM deception, secrecy and manipulations are bad for Wall Street. Will the mainstream media recognize the harm to *Main Street*?

CNBC Documentary on MLM: "[Selling the American Dream](#)"



Click on the Image to See the Documentary

Donations Make It Possible



Pyramid Scheme Alert is all-volunteer and non-profit, but it still has many costs to maintain its website, to help with legal defense, publicize its research and analysis and to assist thousands of individuals worldwide. PSA's costs are covered by contributions from courageous private citizens. You can support PSA's work by making a [donation](#).

Special Reports for Consumers...

[What About This One?](#) Now Available! Free! The new audio and written report published by Pyramid Scheme Alert is the product of years of research and direct experience of analysts, former insiders of multi-level marketing companies and veterans of direct selling. The audio is a down-to-earth, conversational dialogue. that hits the key points for evaluating income opportunities and avoiding pyramid scams. The companion written report outlines the information for easy reference.



Click on the image to receive "What About This One?"

[The Main Street Bubble:](#) (free) The financial bubble is composed of in



To receive a copy, click on the logo and insert "Main Street Bubble" in the subject line.

vestments by millions of Main Street people in MLM "business opportunities" that depend, for their worth, on bringing in new investors. As millions "fail" each year, their individual bubbles collapse. But as millions of other new hopefuls take their places in the schemes, the MLM bubble is re-inflated, year after year. The *Main Street Bubble* report details how the FTC has become corrupted by close ties to the MLM industry, with key FTC leaders working as MLM lobbyists and "experts."



False Profits Blog: Discussion of the Economics, Politics, Legalities, Ethics and Sociology of Pyramid Schemes and multi-level marketing. The False Profits Blog, published by author, Robert FitzPatrick, is a sane, rational and fact-based forum. Read, get podcasts, make comments,

subscribe.

Contact Information



Pyramid Scheme Alert

Tel: 704-334-2047

Fax: 888-334-1944

Email: info@pyramidschemealert.org



[Forward email](#)



This email was sent to lgreisman@ftc.gov by info@pyramidschemealert.org | [Update Profile/Email Address](#) | Instant removal with [SafeUnsubscribe™](#) | [Privacy Policy](#).
Pyramid Scheme Alert.org | 1800 Camden Rd. Ste. 107, #101 | Charlotte | NC | 28203



NETWORK

Law enforcement's source for consumer complaints



Consumer Sentinel Network Complaints

Record # 1 / Consumer Sentinel Network Complaints

Reference Number: 42992409

Originator Reference Number:

Language: English
Source: Consumer

Contact Type: Complaint
DNC? N

Comments: I was approached while christmas shopping by someone trying to sign me up for **Herbalife**. I am familiar with these types of schemes, as my mom has lost of a hundred thousand to a different scheme, Xango. so because of this i am aware of the FTC regulations, and i listened carefully to everything the distributor said, she made express claims of income, that i could be "rich beyond my dreams" that if i invested 10,000 into it it wouldnt matter because I would be making a million within a year, that the products cure cancer etc. i informed her that she was making illegal statements, and she she insisted that everything she had said was true and that i just had a negative attitude. I since learned about Bill Ackmans presentation on **Herbalife**, and learned that things are FAR WORSE than my parking lot conversation. it is IMPERATIVE that you conduct and thorough investigation of this company and this industry

Was the complaint resolved?:

Complaint Resolution:

Data Reference:

Entered By: FTCCIS-FTCUSER

Entry Date: 1/18/2013

Updated By:

Updated Date:

Complaint Source: FTC Online Complaint Assistant (CIS)

Product Service Code: Multi-Level Mktg\Pyramids\Chain Letters

Amount Requested: \$10,000.00

Amount Paid: \$0.00

Payment Method: Not Reported

Agency Contact: Internet

Complaint Date: 1/18/2013

Transaction Date: 12/15/2012

Initial Contact: In Person

Initial Response:

Statute/Rule: FTC Act Sec 5 (BCP)

Law Violation: Deception/Misrepresentation

Topic:

Dispute with Credit Bureau?:

Dispute with Credit Bureau - Responded?:

Dispute with Credit Bureau - Resolved to Satisfaction?:

Member of armed forces or dependent?: No

Consumer Information

Consumer

Complaining Company/Org:

First Name: (b)(6)

Last Name: (b)(6)

Address 1:

Address 2:

City: Mount Vernon

State: Washington

Zip: (b)(6)

Country: UNITED STATES

Home Number:

Work Number:

Fax Number:

Ext:

Email: (b)(6)

Age Range:

Military Service

Branch:

Soldier Station:

Subject: Herbalife

Address: 1800 Century Park E

City: Los Angeles

ZIP: 90067

Email: georgef@herbalife.com

Area Code: 866

Ext:

Subject ID

Issuer State:

Representative Name: n/a n/a

Name:

Soldier Status:

Subject

State/Prov: California

Country: United States

URL: www.herbalife.com

Phone Number: 6174273

Subject ID

Type:

Subject ID

Issuer Country:

Title: distributor

Record # 2 / Consumer Sentinel Network Complaints

Reference Number: 43046486

Originator Reference Number:

Language: English
Source: Consumer

Contact Type: Complaint
DNC? N

Comments: I have been researching business opportunities and discovered **Herbalife**. This company appears to be a pyramid scheme. I read through the companys financial filings and discovered: 1) A high percentage of new recruits quit the company every year. 2) The company promises great wealth and riches for those who sign-up even as the average participant would seem to generate less than \$1,500 per year in sales. 3) The incentive plan promotes the purchase of volume points without regard for retail demand. 4) The company wants recruitment...this has all of the hallmarks of an "endless chain scheme". I am coninced that if i were to sign-up to sell **Herbalife** that i would lose money and fear for others who do not have the means nor knowledge to conduct this kind of due diligence due to relatively weak levels of financial sophistication. **Herbalife** appears to have all of the indicia of a slick Pyramid Scheme... a) an altruistic product masking a diabolical compaensation scheme b) all commissions paid are for wholesale purchases c) major incentives for ongoing recruitment d) inevitable saturation due to zero limitations placed on distributorships e) inability totrack and measure "retail sales" outside the network. f) a slick marketing face wrapped around an incentive plan that takes form the guy at the end of the chain to pay those "upline" g) deliberate marketing to low-income, financially unsophisticated customers around the world...

Was the complaint resolved?:

Complaint Resolution:

Data Reference:

Entered By: FTCCIS-FTCUSER

Entry Date: 1/15/2013

Updated By:

Updated Date:

Complaint Source: FTC Online Complaint Assistant (CIS)

Product Service Code: Multi-Level Mktg\Pyramids\Chain Letters

Amount Requested:

Amount Paid:

Payment Method:

Agency Contact: Internet

Complaint Date: 1/15/2013

Transaction Date:

Initial Contact:

Initial Response:

Statute/Rule: FTC Act Sec 5 (BCP)

Law Violation: Deception/Misrepresentation

Topic:

Dispute with Credit Bureau?:

Dispute with Credit Bureau - Responded?:

Dispute with Credit Bureau - Resolved to Satisfaction?:

Member of No armed forces or dependent?:

Consumer Information

Consumer

Complaining Company/Org:

First Name: (b)(6)

Last Name: (b)(6)

Address 1:

Address 2:

City: Short Hills

State: New Jersey

Zip: (b)(6)

Country: UNITED STATES

Home Number:

Work Number: (b)(6)

Fax Number:

Ext:

Email: (b)(6)

Age Range:

Military Service Branch:

Soldier Status:

Soldier Station:

Subject

Subject: Herbalife

Address:

City: Torrance

ZIP:

Email:

Area Code:

Ext:

Subject ID

Issuer State:

Representative

Name:

State/Prov: California

Country: United States

URL:

Phone Number:

Subject ID

Type:

Subject ID

Issuer Country:

Title:

Record # 3 / Consumer Sentinel Network Complaints

Reference Number: 42722752

Originator Reference Number:

Language: English
Source: Consumer

Contact Type: Complaint
DNC? N

Comments: Herbalife advertised to me a business opportunity that I have every reason to be a pyramid scheme. After soon simple research, I saw that Herbalife had sales of 4 billion dollars with 3.2 million sale people, meaning the average member only had \$1250 sales a year, or \$104 a month, and at a 10 commission rate you would earn only \$125 a year, compared to the \$500 membership fee, plus other expenses. It should seem obvious to the FTC that this is a pyramid scheme, where most people loss money not make.

Was the complaint resolved?:

Complaint Resolution:

Data Reference:

Entered By: FTCCIS-FTCUSER

Entry Date: 1/10/2013

Updated By:

Updated Date:

Complaint Source: FTC Online Complaint Assistant (CIS)

Product Service Code: Multi-Level Mktg\Pyramids\Chain Letters

Amount Requested: \$499.00

Amount Paid: \$0.00

Requested:

Payment Method: Other Payment Method (Note in Comments)

Agency Contact: Internet

Complaint Date: 1/10/2013

Transaction Date: 1/10/2013

Date:

Initial Response: Internet/E-mail

Initial Contact: Internet Web Site

Response:

Statute/Rule: FTC Act Sec 5 (BCP)

Law Violation: Deception/Misrepresentation

Topic:

Dispute with Credit Bureau?:

Dispute with Credit Bureau - Responded?:

Dispute with Credit Bureau - Resolved to Satisfaction?:

Member of No armed forces or dependent?:

Consumer Information

Consumer

Complaining Company/Org:

First Name: (b)(6)

Last Name: (b)(6)

Address 1:

Address 2:

City: Denver

State: Colorado

Zip: (b)(6)

Country: UNITED STATES

Home Number:

Work Number:

Fax Number:

Ext:

Email: (b)(6)

Age Range: 30 - 39

Military Service Branch:

Soldier Status:

Soldier Station:

Subject

Subject: Herbalife International

Address: 800 West Olympic Blvd.

City: Los Angeles

State/Prov: California

ZIP: 90015

Country: United States

Email: CorporateSecretary@herbalife.com

URL: http://ir.herbalife.com/contactus.cfm

Area Code:

Phone Number:

Ext:

Subject ID Type:

Subject ID
Issuer State:
Representative
Name:

Subject ID
Issuer Country:
Title:

Record # 5 / Consumer Sentinel Network Complaints

Reference Number: 42590223

Originator Reference Number:

Language: English
Source: Consumer

Contact Type: Complaint
DNC? N

Comments: I had been part of what **Herbalife** calls Tabulators Team and was with the company for almost 20 years, I have witnessed several injustices from the company to its distributors since the death of the founder and with no way for an "Independent Distributor" to get any justice from the damage the company inflicts to them and that is why I am providing information that might aid in your research of the **Herbalife** Ltd Company as they are "Fooling Some of the People All of the Time". 1.- How much of the sales that you'd make in terms of final sales are sold outside the network and how much are consumed within the distributor base? There are not real sales outside the network The Nutrition Club Clubs originated precisely out of the NECESSITY to try to move some product. The product is very overpriced and thats what gave way to the nutrition clubs, distributors having to break down the products in servings to to be able to sale it because the CUSTOMERS REFUSED to buy whole canisters and bottles. What is happening now is customers stopped buying canisters and bottles and distributors are barely covering their monthly quota just to support the pyramid without making any money. (Fouders Circle Members, Chirmans Club Members and Executive Presidents Team Members ARE NOT SELLING ANY PRODUCT OUTSIDE THE NETWORK, they just buy the product from the company and donate it to some charity (**Herbalife** Houses from the **Herbalife** family foundation, etc) DISTRIBUTORS DO NOT GET PAID "ROYALTIES" UNLESS THEY BUY \$2,500.00 OF PRODUCTS EVERY SINGLE MONTH, and to protect themselves they have a so called 70 Customer Rule in case regulators or people like you start asking questions. That is why HLF says they dont have an exact percentage because they know very well what is going on and not because HLF does not have visibility to that level of detail. Also from time to time HLF will impose hefty fines to its distributors in an effort to not pay royalties and keep this earnings for their bottom line and even go as far as to suspend its distributors and not pay to the upline the proper amount of royalties (AS THEY ARE THE ONES WHO CALCULATE THE PAYMENTS WITHOUT ANY OUTSIDE OVERSIGHT TO THE WHOLE PROCESS) and if a distributor inquires about it, he or she might get fined or suspended. 2.- What is the incentive for supervisor to sign somebody up to become a distributor as opposed to – if they're just going to consume for themselves as opposed to just selling them the product for the markup. How does the distributor – how does the supervisor come out better? There is no incentive other than "new distributors" helping to support the Ponzi scheme. HLF definitely is a Ponzi scheme with very high legal bills (**Herbalife** has been ruled an illegal pyramid scheme by a court in Belgium) and a fraudulent operation that pays returns to its DISTRIBUTORS from their own "PURCHASE" of the "PRODUCTS" paid by subsequent DISTRIBUTORS, rather than from profit earned by the "SELL" of the "PRODUCTS", HLFS Ponzi scheme usually entices new DISTRIBUTORS by offering higher profits, in the form of short-term returns that are either abnormally high or unusually consistent. DISTRIBUTORS DO NOT GET PAID UNLESS THEY BUY \$2,500.00 OF PRODUCTS EVERY SINGLE MONTH, on ebay, amazon and craigslist you will find thousands of distributors trying to unload their inventory. I hope this helps and if I can provide any additional information please do not hesitate to contact me.

Was the complaint resolved?:

Complaint Resolution:

Data Reference:

Entered By: FTCCIS-FTCUSER

Entry Date: 1/3/2013

Updated By:

Updated Date:

Complaint Source: FTC Online Complaint Assistant (CIS)

Product Service Code: Multi-Level Mktg\Pyramids\Chain Letters

Amount Requested: \$2,500.00

Amount Paid: \$2,500.00

Payment Method: Credit Card

Agency Contact: Internet

Complaint Date: 1/3/2013

Transaction Date: 10/23/2012

Initial Contact: Internet/E-mail

Initial Response: Internet/E-mail

Statute/Rule Topic: FTC Act Sec 5 (BCP)

Law Violation: Deception/Misrepresentation

Dispute with Credit Bureau - Responded?:

Dispute with Credit Bureau - Resolved to Satisfaction?:

Member of No armed forces or dependent?:

Consumer Information

Consumer

Complaining

Company/Org:

First Name: (b)(6)

Address 1: [Redacted]

City: Anaheim

Zip: (b)(6)

Home Number: [Redacted]

Fax Number:

Email: (b)(6)

Military Service

Branch:

Soldier Station:

Last Name: (b)(6)

Address 2:

State: California

Country: UNITED STATES

Work Number:

Ext:

Age Range: 30 - 39

Soldier Status:

Subject

Subject: Herbalife Ltd

Address: 800 W. Olympic Blvd, Suite 406

City: Los Angeles

ZIP: 90015

Email:

Area Code: 213

Ext:

Subject ID

Issuer State:

Representative Name: Angie Ramirez

State/Prov: California

Country: United States

URL: http://www.herbalife.com

Phone Number: 7450500

Subject ID

Type:

Subject ID

Issuer Country:

Title: Distributor Business

Record # 6 / Consumer Sentinel Network Complaints

Reference Number: 42522454

Originator Reference Number:

Language: English
Source: Consumer

Contact Type: Complaint
DNC? N

Comments: I was with **Herbalife** International for 12 years. I was one of the few people that achieved one of the top levels in the company (less than 1 of all distributors) called Presidents Team. I have a document received from **Herbalife** that shows **Herbalife** pays royalty and production bonuses on sales volume completely unrelated to retail customers. This does substantiate Bill Ackmans claim that **Herbalife** is a illegal pyramid scheme. How do I file this with FTCs legal department? UPDATE:12/27/2012 Consumer wants to send an excel file to FTC. LMaruca

Was the complaint resolved?:

Complaint Resolution:

Data Reference:

Entered By: FTCCIS-FTCUSER
Updated By: LMARUCA

Entry Date: 12/27/2012
Updated Date: 12/27/2012

Complaint Source: FTC Online Complaint Assistant (CIS)

Product Service Code: Multi-Level Mktg\Pyramids\Chain Letters

Amount Requested:

Amount Paid:

Payment Method:

Agency Phone Contact:

Complaint Date: 12/27/2012

Transaction Date:

Initial Contact:

Initial Response:

Statute/Rule: FTC Act Sec 5 (BCP)
Topic:

Law Violation: Deception/Misrepresentation

Dispute with Credit Bureau - Responded?: N

Dispute with Credit Bureau - Resolved to Satisfaction?: N

Member of No armed forces or dependent?:

Consumer Information

Consumer

Complaining Company/Org:

First Name: (b)(6)
Address 1:

Last Name: (b)(6)
Address 2:

City: Cumming

State: Georgia

Zip: (b)(6)

Country: UNITED STATES

Home Number:

Work Number:

Fax Number:

Ext:

Email: (b)(6)

Age Range:

Military Service

Soldier Status:

Branch:

Soldier Station:

Subject

Subject: Herbalife International

Address:

State/Prov:

City:

Country: United States

ZIP:

Email:

URL:

Area Code:

Phone Number:

Ext:

Subject ID Type:

Subject ID
Issuer State:
Representative
Name:

Subject ID
Issuer Country:
Title:

Associated Subjects

Company: H I
Company Type: Other
Address: 1800 Century Park E
City: Los Angeles
ZIP: 90067
Email:
Area Code: 310

State/Prov: California
Country: United States
URL:
Phone Number: 4109600

Record # 7 / Consumer Sentinel Network Complaints

| | |
|---|---|
| Reference Number: 42886096 | Originator Reference Number: 08850075186194 |
| Language: English | Contact Type: Complaint |
| Source: Organization | DNC? N |
| Comments: please see attached pdf. --- Additional Comments: please see attached pdf.', | Complaint Resolution: |
| Was the complaint resolved?: | |
| Data Reference: | |
| Entered By: BBBDENV-USER | Entry Date: 12/27/2012 |
| Updated By: | Updated Date: |
| Complaint Source: BBB CO Denver | Product Service Code: Health Care: Dietary Supplements\Herbal Remedies |
| Amount Requested: | Amount Paid: |
| Payment Method: | Agency Contact: External Agency |
| Complaint Date: 12/27/2012 | Transaction Date: |
| Initial Contact: | Initial Response: |
| Statute/Rule: | Law Violation: |
| Topic: | Dispute with Credit Bureau?: |
| Dispute with Credit Bureau - Responded?: | Dispute with Credit Bureau - Resolved to Satisfaction?: |
| Member of armed forces or dependent?: | |

Consumer Information

| | |
|--|---------------------------------|
| Consumer | |
| Complaining Company/Org: | |
| First Name: Thomas | Last Name: Carrigan |
| Address 1: 2320 S Quebec Street | Address 2: |
| City: DENVER | State: Colorado |
| Zip: 80231 | Country: UNITED STATES |
| Home Number: | Work Number: 720-2735025 |
| Fax Number: | Ext: |
| Email: Tom_Carrigan@hotmail.com | Age Range: |
| Military Service Branch: | Soldier Status: |
| Soldier Station: | |

Subject

| | |
|--|-----------------------------------|
| Subject: Herbalife Distributor | |
| Address: 9623 Grand Ave. | |
| City: Littleton | State/Prov: Colorado |
| ZIP: 80123 | Country: United States |
| Email: | URL: workathomeplan.com |
| Area Code: 303 | Phone Number: 9481323 |
| Ext: | Subject ID Type: |
| Subject ID Issuer State: | Subject ID Issuer Country: |
| Representative Name: Tena Curtis Golesh | Title: Owner/Manager |

🔍 Do Not Call Complaints

Record # 4 / Do Not Call Complaints

Reference Number: 42961603
Complaint Date: 1/9/2013
Complaint Source: National Do Not Call Registry
Transaction Date: 1/9/2013
Existing Business Relationship?: No
Requested entity to stop calling?: Yes

Is Phone in Registry?: Yes
Product Service Code: National Do Not Call Registry
Complaint Channel: Internet
Transaction Time: 3:00:00 PM
Pre-recorded message?: Yes

Comments: I have called **Herbalife** many times over the years and told them nobody here is interested in their products and were not sales reps for the company and they know that. Yet almost every week somebody from **Herbalife** calls and harasses me about signing up to be a scammer-salesman for their company.

First Name: (b)(6)
Address 1: [Redacted]
City: GREENWOOD
ZIP: (b)(6)

Consumer
Last Name: (b)(6)
Address 2:
State/Prov: California
Phone Number: (b)(6)

Company Name: Herbalife
Country Code:

Subject
State: California
Phone Number: (209) 9577084

.....
 Provided by the Federal Trade Commission

MEMBER:
COMMITTEE ON ETHICS
RANKING MEMBER
COMMITTEE ON
WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES
SUBCOMMITTEE ON OVERSIGHT
SENIOR WHIP

Linda T. Sánchez
38TH DISTRICT, CALIFORNIA

Congress of the United States
House of Representatives
Washington, DC 20515

14008387

DC OFFICE:
2423 RAYBURN BUILDING
WASHINGTON, DC 20515
(202) 225-6676

DISTRICT OFFICE:
17906 CRUSADER AVENUE
SUITE 100
CERRITOS, CA 94503
(925) 899-5062
www.ltasanchez.house.gov

FEDERAL TRADE COMMISSION
JUN - 7 AM 8:32
CONG. CORRES. BRANCH

Edith Ramirez, Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

June 5, 2013

Dear Chairwoman Ramirez:

I am writing to express my concern about the marketing and business practices of Herbalife, Ltd. In particular, I am troubled by allegations that this company may be harming consumers – especially those from our country’s most vulnerable populations.

There have been extensive media reports and allegations about Herbalife’s business practices. On March 12, 2013, the National Consumers League wrote a letter urging the FTC to conduct an investigation into the possibility that Herbalife is a complex pyramid scheme.¹ More recently, on May 17, 2013, the Hispanic Federation also wrote a letter urging an FTC investigation.² Both groups have voiced concerns over whether Herbalife’s distributors are primarily incentivized by recruiting others, or by selling the Herbalife product. Additionally, as the National Consumers League letter states, “Low-income consumers, as well as African-Americans and Hispanics, were found to be especially vulnerable to pyramid-schemes masquerading as legitimate home-based business opportunities.”³

As I have learned more about this issue from my constituents and from outside groups, I believe it is the Federal Trade Commission’s (FTC) responsibility to examine these allegations. Given the FTC’s mission to investigate claims of fraud and potential pyramid schemes, I encourage you to investigate this matter. I have confidence that such an investigation will provide clarity to consumers and I expect you will aggressively pursue it in a timely manner.

¹ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

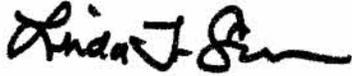
² Jose Calderon, Hispanic Federation to Edith Ramirez, Federal Trade Commission, 17 May 2013, <http://www.scribd.com/doc/142602752/The-Honorable-Edith-Ramirez-FTC>

³ Sally Greenberg, National Consumers League to Edith Ramirez, Federal Trade Commission, 13 March 2013, <http://www.nclnet.org/images/PDF/FTC%20Letter%20on%20Herbalife.pdf>

If I can be of additional assistance, please do not hesitate to contact Mike McGourty of my staff at 202-225-6676 or michael.mcgourty@mail.house.gov.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda T. Sanchez". The signature is fluid and cursive, with the first name "Linda" being the most prominent.

Congresswoman Linda T. Sánchez
Member of Congress (CA-38)