

1 **SAXENA WHITE P.A.**  
 2 Maya Saxena (*pro hac vice*)  
 3 Lester R. Hooker (SBN 241590)  
 4 Brandon T. Grzandziel (*pro hac vice*)  
 5 5200 Town Center Circle, Suite 601  
 6 Boca Raton, Florida 33486  
 Telephone: (561) 394-3399  
 Facsimile: (561) 394-3382  
 E-mail: msaxena@saxenawhite.com  
 lhooker@saxenawhite.com  
 brandon@saxenawhite.com

7 *Lead Counsel for the Class and*  
 8 *Counsel for Lead Plaintiff*

9 **TOSTRUD LAW GROUP, P.C.**  
 10 Jon A. Tostrud (SBN 199502)  
 11 1925 Century Park East, Suite 2125  
 12 Los Angeles, California 90067  
 Telephone: (310) 278-2600  
 Facsimile: (310) 278-2640  
 E-mail: jtostrud@tostrudlaw.com

13 *Local Counsel for the Class and*  
 14 *Counsel for Lead Plaintiff*

15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**  
 17 **WESTERN DIVISION**

18 **IN RE HERBALIFE, LTD.**  
 19 **SECURITIES LITIGATION**

) No. 2:14-CV-02850-DSF (JCGx)  
 ) **CLASS ACTION**  
 ) **THIRD AMENDED CLASS**  
 ) **ACTION COMPLAINT FOR**  
 ) **VIOLATION OF THE FEDERAL**  
 ) **SECURITIES LAWS**  
 ) **DEMAND FOR JURY TRIAL**

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1 **I. Introduction**<sup>1</sup>

2 1. Herbalife is a multi-level marketing company (“MLM”) specializing  
3 in nutrition and weight management supplements. MLMs employ a system of  
4 direct selling that relies on independent distributors, usually private individuals, to  
5 reach customers by word-of-mouth. Because MLMs frequently involve constant  
6 recruitment of new distributors and a pyramid-like financial structure, the business  
7 model has been subject to harsh criticism and tight oversight and regulation.

8 2. Like other MLMs, Herbalife is subject to various federal and state  
9 consumer protection and anti-pyramid statutes that together form a comprehensive  
10 consumer protection umbrella. Specifically, Herbalife repeatedly touted to  
11 investors that it “satisfies the standards set forth in” *Webster v. Omnitrition*, 79  
12 F.3d 776 (9th Cir. 1996). At all relevant times, *Omnitrition* was the definitive  
13 Ninth Circuit opinion that defined the permissible scope of legitimate MLM  
14 marketing and sales practices, and clearly explained when those practices crossed  
15 the line to constitute an illicit pyramid scheme. In particular, *Omnitrition*  
16 unmistakably established the importance of selling products to “ultimate users” –  
17 meaning customers who are outside of an MLM’s distribution base, even after  
18 taking into account personal consumption.

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21 <sup>1</sup> Lead Plaintiff the Oklahoma Firefighters Pension and Retirement System  
22 (“Oklahoma Firefighters”), on behalf of itself and all persons or entities that  
23 purchased or otherwise acquired the common stock of Herbalife, Ltd. (“Herbalife”  
24 or the “Company”) between February 23, 2011 and December 19, 2012, inclusive  
25 (the “Class Period”) and were damaged thereby (the “Class”), alleges the following  
26 upon personal knowledge as to themselves and their acts, and upon information  
27 and belief as to all other matters, based upon the investigation of counsel. Lead  
28 Counsel’s investigation included, among other things: (i) a review of public filings  
and press releases by Herbalife with the United States Securities and Exchange  
Commission (“SEC”); (ii) media and analyst reports about the Company; and (iii)  
publicly available data relating to Herbalife common stock. Many of the facts  
related to the claims and defenses in this action are known only by the Defendants,  
or are exclusively within their custody or control. Lead Plaintiff believes that  
substantial additional evidentiary support for its allegations will be developed after  
a reasonable opportunity for discovery.

1           3.       Despite assuring investors that it complied with the laws governing  
2 MLMs, Herbalife has a demonstrated history of controversial practices dating back  
3 to the mid-1980s when it was sued by several individuals and the California  
4 Attorney General over various marketing schemes and false health claims, which  
5 ultimately led to a permanent injunction that the California Attorney General  
6 imposed on Herbalife (the “Permanent Injunction”). The Permanent Injunction  
7 compels Herbalife to, among other things, tie its distributors’ compensation  
8 scheme to the retail sales of its products. In doing so, the Permanent Injunction  
9 required Herbalife to distinguish sales within its distribution base from sales  
10 outside of its distribution base. Indeed, the Permanent Injunction unambiguously  
11 defines “retail sales” to include sales outside of its distributor base. Mainstream  
12 financial media such as *The Motley Fool* noted that this “basically means that the  
13 company needs to be able to prove it is selling products to non-members at the end  
14 of the cycle in order for the distributor commissions to be lawful . . . .”

15           4.       Despite these legal requirements, Herbalife was unable (or unwilling)  
16 to comply with, and follow, clearly established and binding law. CEO Michael  
17 Johnson knew since at least 2005 that the Company was in danger of finding itself  
18 on the wrong side of *Omnitrition*. But instead of proactively working to correct the  
19 Company’s deficiencies, for the better part of a decade Herbalife refused to enforce  
20 basic anti-pyramid protections such as the 70% Rule.

21           5.       As a result, the stock price of Herbalife was materially and artificially  
22 inflated during the Class Period. While artificially inflated, Defendant Johnson  
23 (the highest paid CEO in America in 2011) sold over 2.1 million shares of  
24 Herbalife stock for over \$126 million, exercising an astonishing 90% of his  
25 acquired stock options. These sales were highly suspicious as they were executed  
26 pursuant to multiple, overlapping 10b5-1 trading plans which failed to follow  
27 several important industry accepted practices governing the use of such trading  
28

1 plans. Johnson was selling a massive amount of Herbalife shares through abusive  
2 trading plans, well aware that the Company was not in compliance, or at a  
3 minimum recklessly had no way of knowing whether it was in compliance, with  
4 the Permanent Injunction and *Omnitrition*.

5 6. The Company's façade first began to crumble on May 1, 2012, when  
6 Herbalife revealed that it could not, despite clear governing law, distinguish  
7 between sales to distributors and sales to non-distributors, and nonetheless grossly  
8 misrepresented the amount of sales outside the network as 70%. Despite the  
9 marked ability to provide this information due to the Company's technological  
10 sophistication and record-keeping requirements imposed on the distributors,  
11 Herbalife continually refused to reveal the "true" number of retail sales outside of  
12 its distribution network. Instead, Defendants provided investors with wildly  
13 inconsistent answers ranging from 70%, to 90%, to "we don't track this number."  
14 Defendant Johnson went so far as to admit that he was "in a lot of trouble" for  
15 speaking to CNBC about the issue.

16 7. While investors had cause for concern regarding the Company's lack  
17 of verifiable retail sales outside the distribution network, additional information  
18 was subsequently revealed that demonstrated that Herbalife had materially  
19 misrepresented the nature and scope of its business practices. On December 20,  
20 2012, Pershing Square founder and CEO Bill Ackman, a well-known hedge fund  
21 manager presented an expose on Herbalife at an investment conference in New  
22 York. The presentation, entitled *Who Wants to be a Millionaire?* (the "*Millionaire*  
23 *Presentation*"), was extraordinarily detailed and based on a lengthy investigation  
24 and expert analyses.

25 8. As a result of the *Millionaire* Presentation, Pershing Square exposed,  
26 for the first time, unfair and fraudulent practices that were hidden from investors,  
27 law enforcement and consumers. In addition, Pershing Square laid bare a litany of  
28

1 false statements by Herbalife officials with respect to the Company's policies for  
2 ensuring that distributors were adhering to the 70% Rule and controls (or lack  
3 thereof) for enforcing the Company's policies and obligations under consumer  
4 protection laws as well as the Permanent Injunction.

5 9. After the Pershing Square presentation, numerous regulators launched  
6 investigations into the Company's business practices and operations, including  
7 investigations by the FTC, the Canadian Competition Bureau, the New York  
8 Department of Justice, the New York Attorney General's Office, and the Illinois  
9 Attorney General's Office. According to the Company's Form 10-Q filed on May  
10 5, 2015, the Department of Justice is now seeking additional information about  
11 Herbalife's business practices from the Company as well as its distributors. The  
12 investigations not only concern the deceptive nature of Herbalife's business  
13 practices but also Defendants' statements to the investing public, as evidenced by  
14 the ongoing investigation by the SEC. Significantly, a recent report from *Fox*  
15 *Business* quoted Herbalife executives, who have admitted that they are  
16 "expect[ing] some form of disciplinary action" as a result of the FTC's  
17 investigation.

18 10. Events subsequent to the Class Period confirm the accuracy of the  
19 Pershing Square presentations' conclusions, and confirm that impact of  
20 Defendants' illegitimate practices have already taken a toll on the Company's  
21 financial results. For example, the Company's net income for FY 2014 dropped  
22 41% compared with 2013, while its earnings per share declined by 30%. The  
23 disastrous results continued into 2015, when it announced that net sales saw  
24 double-digit declines for every geographic area but China. Ominously, Herbalife  
25 also announced at this time that the Company's bank lending syndicate was  
26 beginning to reduce its exposure to the Company, prompting widespread analyst  
27 concern. Most significantly, Herbalife has had to radically revise its marketing  
28

1 program practices in light of their exposure by Pershing Square and in the face of  
2 overwhelming regulatory scrutiny, which has caused several earnings misses, as  
3 well as a re-shifting of earnings guidance and valuation of the Company. Investors  
4 are no longer buying the previously-touted Herbalife growth story, and have  
5 already sustained significant damages even without any final government action.

6 **II. Parties**

7 **A. Lead Plaintiff**

8 11. Lead Plaintiff Oklahoma Firefighters Pension and Retirement System  
9 (“Oklahoma Firefighters”) purchased publicly-traded Herbalife common stock at  
10 artificially inflated prices during the Class Period and has been damaged thereby.  
11 As of June 30, 2012, Oklahoma Firefighters held over \$1.7 billion in net assets for  
12 the benefit of over 23,000 members who have actively participated in firefighting  
13 activities in the state of Oklahoma. Evidence of Oklahoma Firefighters’  
14 transactions in the Company’s common stock during the Class Period is attached  
15 as Exhibit A.

16 **B. Defendants**

17 12. Defendant Herbalife, Ltd. (“Herbalife” or the “Company”) is a  
18 network marketing company that sells weight management, nutritional supplement  
19 and personal care products through a global network of independent distributors.  
20 The Company was founded in 1980, is based in George Town, the Cayman Islands  
21 and has its principal executive offices in this District, in Los Angeles. Herbalife’s  
22 common stock trades on the New York Stock Exchange (“NYSE”) under the ticker  
23 symbol “HLF.”

24 13. Defendant Michael O. Johnson (“Johnson”) has served as the Chief  
25 Executive Officer (“CEO”) at Herbalife since he joined the Company in April  
26 2003 and as the Company’s Chairman of the Board of Directors (“Board”) since  
27 May 2007.  
28

1           14. Defendant Johnson signed and certified Herbalife’s 2010 Form 10-K  
2 and 2011 Form 10-K pursuant to both Rule 13a-14(a) and Section 906 of Sarbanes-  
3 Oxley.

4           15. Defendants Herbalife and Johnson are collectively referred to herein  
5 as “Defendants.”

6           **C. Non-Party Actors**

7           16. John DeSimone (“DeSimone”) has served as Chief Financial Officer  
8 (“CFO”) of the Company since January 2010. Previously, DeSimone served as  
9 Senior Vice President – Finance and Senior Vice President – Finance & Member  
10 Operations of the Company in December 2008. Mr. DeSimone began his tenure  
11 with Herbalife in November 2007.

12           17. Desmond Walsh (“Walsh”) has served as President of the Company  
13 since January 2010. Previously, Walsh served as Senior Vice President,  
14 Worldwide Member Sales in January 2004 and Executive Vice President for  
15 Worldwide Operations and Sales in April 2008.

16           18. DeSimone and Walsh would regularly speak for the Company on  
17 conference calls, investor presentations and other public events. At all times  
18 mentioned herein, DeSimone and Walsh had authority to speak for, and on behalf  
19 of, Herbalife, and were speaking within the scope of their employment with the  
20 Company. Herbalife has not repudiated any of their statements described herein.  
21 Accordingly, their statements can be attributed to Herbalife.

22           **III. Herbalife’s Fraud**

23           **A. Background Of Herbalife And Its Distributor Base**

24           19. Herbalife is an MLM that sells weight management and nutritional  
25 products worldwide. The Company offers products in four principal categories  
26 consisting of weight management; targeted nutrition; energy, sports, and fitness;  
27 and other nutrition.  
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1           20. As an MLM, Herbalife does not operate “brick and mortar” stores, nor  
2 does the Company sell its products online directly to consumers. The Company  
3 instead depends on a network of independent distributors (or, as Herbalife later  
4 termed them, “Members”) to sell its products. According to Herbalife’s 2010  
5 Form 10-K, Herbalife’s distributors can earn income in two ways: by “selling our  
6 products” and by “earn[ing] royalties and bonuses on sales made by other  
7 distributors whom they recruit to join their sales organizations.”<sup>2</sup>

8           21. At the start of the Class Period, Herbalife claimed to have 2.1 million  
9 distributors, which it broke out into two main groups, and then into three  
10 subgroups:

11           Approximately 483,000 of our 2.1 million distributors have become  
12 sales leaders, which are comprised of approximately 434,000 sales  
13 leaders in the 73 countries where we use our traditional marketing  
14 plan and approximately 49,000 China sales employees and licensed  
15 business providers operating under our China marketing plan.  
16 Collectively, we refer to this group as “sales leaders.” We believe that  
17 the distributors who have not attained the sales leader level can be  
18 segmented into three general categories based on their product order  
19 patterns: discount buyers, small retailers and potential sales leaders.  
20 We define discount buyers as customers who have signed up as  
21 distributors to enjoy a discount on their purchases; small retailers as  
22 product users and sales people who generate modest sales to friends  
23 and family; and potential sales leaders as distributors who are  
24 proactively developing a business with the intention of qualifying to  
25 become a sales leader. In 2010, excluding China, distributor orders for  
26 these three general categories were approximately 29%, 57% and  
27 14%, respectively.<sup>3</sup>

28           22. Similarly, Herbalife told investors that it had approximately 2.7  
million distributors in its 2011 Form 10-K, of which 548,000 were sales leaders.<sup>4</sup>

          23. According to Herbalife’s 2010 Form 10-K and its marketing  
materials, to attain “sales leader” status a distributor needs to accumulate either (i)

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<sup>2</sup> 2010 Form 10-K at 5. The recruits are known as a distributor’s “downline,” while the distributor is known as a recruit’s “upline.”

<sup>3</sup> 2010 Form 10-K at 5.

<sup>4</sup> 2011 Form 10-K at 5.

1 4,000 volume points in one month, or (ii) 2,500 volume points in two consecutive  
2 months.<sup>5</sup> A volume point is a form of internal currency created by Herbalife for  
3 use in its program. Volume points are assigned to each of Herbalife’s products and  
4 are based on the suggested retail price of its products in the United States. One  
5 volume point is roughly equal to one U.S. dollar. Herbalife told newly minted  
6 distributors in its 2012 Marketing Plan and Business Rules (the “Marketing Plan”)  
7 that “[a]s you order products, you accumulate credit for the amount of Volume  
8 Points that are applicable to the products ordered. These accumulated Volume  
9 Points become your sales production and are used for purposes of qualifications  
10 and benefits.”<sup>6</sup>

11 24. Sales leaders are also compensated based on their recruitment efforts.  
12 First, sales leaders can be compensated through volume purchased by their  
13 downline. Sales leaders are also compensated through the use of royalty overrides  
14 and production bonuses. According to the Marketing Plan, royalty overrides are  
15 monthly commissions earned by sales leaders that range between 1% to 5% of their  
16 downline volumes, up to the third downline level. Sales leaders can therefore earn  
17 royalty overrides of up to 15% (5% x 3 downline levels). Herbalife provides the  
18 following example of how royalty overrides work:<sup>7</sup>

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24 <sup>5</sup> Distributors who meet these requirements are known as a “Supervisors.” A  
25 Supervisor is the fifth rung on the distributor ladder, but it is the lowest  
26 classification level of a sales leader. Notably, Herbalife informs distributors that  
they can skip levels 2, 3, and 4 on the ladder and advance immediately to  
Supervisor status. Marketing Plan at 4.

27 <sup>6</sup> Marketing Plan at 6. The Marketing Plan is attached as Exhibit B.

28 <sup>7</sup> Marketing Plan at 13.

Royalty Override Example		
<b>YOU</b>	2,500 Volume Points	= Your Total Royalty Override = 1,500 Royalty Points
<b>First-Level Supervisor</b>	10,000 Volume Points	= 5% = 500 Royalty Points
<b>Second-Level Supervisor</b>	10,000 Volume Points	= 5% = 500 Royalty Points
<b>Third-Level Supervisor</b>	10,000 Volume Points	= 5% = 500 Royalty Points

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25. Production bonuses are separate bonuses available to certain high-level distributors that range from 2% to 7% of their entire downline volume.

26. The Marketing Plan laid out each of the 24 rungs on the Herbalife ladder, from the lowest “Distributor” to the highest “10 Diamond Founder’s Circle.”<sup>8</sup> Notably, the simple accumulation of volume points would only get a distributor to World Team status, which is rung six on the ladder. To get to the next level (the Global Expansion Team) and beyond, a sales leader needs to accumulate royalty override points, which can only be accomplished by recruiting a downline.

27. Importantly, Herbalife clearly warned distributors in the Marketing Plan that they were required to abide by certain rules if they wanted to be paid royalty overrides and production bonuses:<sup>9</sup>

*Supervisors who meet the specified requirements to earn Royalty Overrides must also comply with Herbalife’s 10 Retail Customers Rule and the 70% Rule, to earn and receive both Royalty Overrides and Production Bonus. The Supervisor must confirm their adherence to these requirements by submitting the Earnings Certification Form*

<sup>8</sup> Marketing Plan at 4-5.

<sup>9</sup> Marketing Plan at 14.

1 each month. *If the Supervisor fails to comply with either of these*  
2 *rules, the Royalty Overrides and Production Bonus will not be paid*  
3 *to the Distributor.*

4 28. In every annual and quarterly filing during the Class Period, Herbalife  
5 disclosed to investors that “[r]oyalty overrides’ are our most significant  
6 expense.”<sup>10</sup>

7 **B. Tracking Internal Consumption Is Vital To The Ability Of An**  
8 **MLM To Distinguish Itself From A Pyramid Scheme**

9 29. An Herbalife distributor can only sell products to two categories of  
10 people: other Herbalife distributors in the downline (internal sales), or to  
11 individuals unaffiliated with Herbalife (external sales). The ratio of internal sales  
12 to external sales is one factor that the Federal Trade Commission and others  
13 analyze in distinguishing a legitimate MLM from an illegitimate pyramid scheme.  
14 Simply put, the more sales that occur within an MLM’s distribution network, the  
15 less likely it is that a company has true retail demand for its products, and the more  
16 likely it is that sales are incidental to recruiting additional individuals to join the  
17 network. Thus, if a company has few sales outside the distribution network, it is  
18 more likely to constitute an illegal pyramid scheme.

19 30. Consequently, beginning with *In re Amway Corp.*, 93 F.T.C. 618,  
20 715-16 (1979), a baseline has emerged in the MLM industry known as the 70%  
21 Rule. Stated generally, the 70% Rule requires a distributor to have sold 70% of  
22 previously purchased product before reordering more product.<sup>11</sup> The 70% Rule  
23 balances a distributor’s desire and ability to personally consume products with a  
24 sales requirement to avoid inventory loading.<sup>12</sup> Herbalife’s 70% Rule is encoded

24 <sup>10</sup> 2010 Form 10-K at 54; 2011 Form 10-K at 56; 1Q 2011 Form 10-Q, at 20; 2Q  
25 2011 Form 10-Q, at 22; 3Q 2011 Form 10-Q at 22; 1Q 2012 Form 10-Q at 20; 2Q  
26 2012 Form 10-Q at 20; 3Q 2012 Form 10-Q at 22.

27 <sup>11</sup> See generally *In re Amway Corp.*, 93 F.T.C. 618, 715-16 (1979).

28 <sup>12</sup> The Direct Selling Association defines “inventory loading” as “purchas[ing]  
inventory in an amount which unreasonably exceeds that which can be expected to  
be resold and/or consumed by the independent salesperson within a reasonable

1 as Rule 18-C in the Marketing Plan, and states that “[i]n order to qualify for and  
2 receive Royalty Overrides, Production Bonuses, and other bonuses paid by  
3 Herbalife, at least 70% of the total value of Herbalife products a Distributor  
4 purchases each Volume Month must be sold or consumed that month.”<sup>13</sup>

5 31. *Webster v. Omnitrition Int’l, Inc.*, 79 F.3d 776 (9th Cir. 1996) is the  
6 Ninth Circuit’s definitive interpretation of the 70% Rule. *Omnitrition* began by  
7 quoting the FTC’s so-called *Koscot* Test<sup>14</sup> that it uses to determine what constitutes  
8 a pyramid scheme:

9 The Federal Trade Commission has established a test for determining  
10 what constitutes a pyramid scheme. Such contrivances

11 are characterized by the payment by participants of  
12 money to the company in return for which they receive  
13 (1) the right to sell a product and (2) the right to receive  
14 in return for recruiting other participants into the program  
15 rewards which are unrelated to sale of the product to  
16 ultimate users.

17 *Id.* (emphasis in original). ***The satisfaction of the second element of***  
18 ***the Koscot test is the sine qua non of a pyramid scheme: “As is***  
19 ***apparent, the presence of this second element, recruitment with***  
20 ***rewards unrelated to product sales, is nothing more than an***  
21 ***elaborate chain letter device in which individuals who pay a***  
22 ***valuable consideration with the expectation of recouping it to some***  
23 ***degree via recruitment are bound to be disappointed.”*** *Id.* We adopt  
24 the *Koscot* standard here and hold that the operation of a pyramid

25 period of time.” [http://www.dsa.org/code-of-ethics/code-of-ethics-\(full-text\)#](http://www.dsa.org/code-of-ethics/code-of-ethics-(full-text)#loading)  
26 loading. (last accessed August 27, 2015).

27 <sup>13</sup> Marketing Plan at 72.

28 <sup>14</sup> The *Koscot* Test derives from *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 FTC has warned the public that “[i]f the money you make is based on  
your sales to the public, it may be a legitimate multilevel marketing plan. If the  
money you make is based on the number of people you recruit and your sales to  
them, it’s not. It’s a pyramid scheme.” FTC, “Multilevel Marketing,”  
<https://www.ftc.gov/tips-advice/business-center/guidance/multilevel-marketing>.  
(last accessed August 27, 2015). Similarly, the SEC was arned that one “hallmark[]  
of a pyramid scheme” is an “[e]mphasis on recruiting. If a program primarily  
focuses on recruiting others to join the program for a fee, it is likely a pyramid  
scheme. Be skeptical if you will receive more compensation for recruiting others  
than for product sales.” SEC, “Beware of Pyramid Schemes Posting as Multi-  
Level Marketing Programs,” [http://www.sec.gov/investor/alerts/ia\\_pyramid.htm](http://www.sec.gov/investor/alerts/ia_pyramid.htm#VA4Y7vldV8E)  
#.VA4Y7vldV8E. (last accessed August 27, 2015).

1 scheme constitutes fraud for purposes of several federal antifraud  
statutes.<sup>15</sup>

2 32. The Ninth Circuit proceeded to focus on this second *Koscot* element,  
3 and whether Omnitrition's 70% Rule satisfied it:

4 The key to any anti-pyramiding rule in a program like Omnitrition's,  
5 where the basic structure serves to reward recruitment more than  
6 retailing, is that the rule must serve to tie recruitment bonuses to  
actual retail sales in some way. Only in this way can the second  
7 Koscot factor be defeated. Omnitrition has failed to prove that as a  
matter of law its rules operate in that manner.

8 \* \* \*

9 Second, Omnitrition produced no evidence of enforcement of its 70%  
10 rule. It merely states that, in order to place further orders  
[distributors] must "certify" that they have sold 70% of the product  
11 they previously ordered. There is no evidence that this "certification"  
requirement actually serves to deter inventory loading. ***Importantly,***  
12 ***the requirement can be satisfied by non-retail sales to a supervisor's***  
***own downline [distributors]. This makes it less likely that the rule***  
***will effectively tie royalty overrides to sales to ultimate users, as***  
***Koscot requires.***

13 In addition, ***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" of a product.***<sup>16</sup>

14 15 16 33. Evidencing the material nature of *Omnitrition's* restrictions on  
17 Herbalife's network marketing program, Herbalife assured investors in its annual  
18 filings that it "***satisfies the standards set forth in the Omnitrition case. . . .***" These  
19 assurances first appeared in the 2004 Form 10-K and were also contained in  
20 Herbalife's 2010 Form 10-K and 2011 Form 10-K.<sup>17</sup>

21 34. In addition to being subject to *Omnitrition*, Herbalife and its  
22 executives were (and continue to be) bound by the Permanent Injunction that  
23 applies to both the Company and its executives. In the mid-1980s, the California  
24 Attorney General filed suit against Herbalife over certain of its business and  
25

26 <sup>15</sup> *Omnitrition*, 79 F.3d at 781-82 (emphasis added).

27 <sup>16</sup> *Omnitrition*, 79 F.3d at 783 (emphasis added).

28 <sup>17</sup> 2010 Form 10-K at 22; 2011 Form 10-K at 22.

1 marketing practices. The suit, *California v. Herbalife Int'l, Inc.*, No. 92767 (Cal.  
2 Sup. Ct.), ended in October 1986 when Herbalife agreed to pay the State of  
3 California a settlement amount of \$850,000 and be bound by the Permanent  
4 Injunction imposed on the Company.

5 35. Section 5(A) of the Permanent Injunction prohibits Herbalife from  
6 paying its distributors for anything other than retail sales of the Company's  
7 products. "Retail sales" are defined as:

8 [A] sale [of Herbalife's] product(s) in any of the following situations:  
9 (1) ***to persons who are not part of defendant's marketing program or***  
10 ***distribution system***; or, (2) to persons who are not buying to become  
11 part of defendants marketing program or distribution system; or, (3) to  
12 persons who, although desirous of becoming or who are a part of  
13 defendants' marketing plan or distribution system are buying for their  
14 own personal or family use.

15 36. Section 5(B) requires Herbalife to implement a system to document its  
16 retail sales, and provides that the Company "shall be in compliance" with Section  
17 5:

18 ***[A]s long as a verification or documentation system they implement***  
19 ***allows them, at any given point in time, to verify or document . . .***  
20 ***that any and all participants who receive commissions, bonuses,***  
21 ***overrides and/or advancement from defendants in defendants***  
22 ***marketing program, after entry of this judgment, are based on retail***  
23 ***sales made by or through such participant(s) or others introduced***  
24 ***directly or indirectly under participant(s).***

25 37. With respect to the Permanent Injunction, Herbalife informed  
26 investors in its annual regulatory filings that "[a]ll of our officers and directors are  
27 subject to a permanent injunction . . . . ***The injunction . . . required us to***  
28

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25 <sup>18</sup> Permanent Injunction Section 5(C) (emphasis added). Notably, subsection (1)  
26 specifically categorizes and delineates those who are completely outside of  
27 Herbalife's distribution base and who do not intend or want to become Herbalife  
28 distributors. In order to be able to perform the analysis required by the Injunction,  
Herbalife must have the ability to group persons purchasing products into one of  
these three definitions, including individuals completely outside the distribution  
network.

1 *implement some documentation systems with respect to payments to our*  
2 *distributors.*”<sup>19</sup>

3 38. The meaning of the Permanent Injunction is unambiguous: Herbalife  
4 must be able to categorize and distinguish between sales inside the distribution  
5 base and sales outside of the distribution base. This understanding is also shared  
6 by the mainstream investment media. *The Motley Fool*, for example, noted that it  
7 “basically means that the company needs to be able to prove it is selling products  
8 to non-members at the end of the cycle in order for the distributor commissions to  
9 be lawful . . . .”<sup>20</sup>

10 39. Indeed, the importance of being able to distinguish internal sales from  
11 external sales – and thus satisfy both the terms of *Omnitrition* and those of the  
12 Permanent Injunction – were vital to Herbalife. A May 8, 2012 *CNBC* article  
13 explained the importance of tracking sales outside of the distribution base:

14 [B]ased on my research and discussions with multi-level marketing  
15 experts and former distributors, *it may be the most relevant question.*

16 Without mentioning any company by name, David Vladeck, Director  
17 of the Bureau of Consumer Protection of the Federal Trade  
18 Commission, told me Monday that *it would be “red flag” if a multi-*  
19 *level marketing company didn’t keep track of unrelated customers.*<sup>21</sup>

20 40. Similarly, John Hempton of Bronte Capital, a self-described Herbalife  
21 “ardent bull,” wrote:

22 And the most ardent Herbalife bull (and I am an ardent bull) must  
23 admit that a multi-level-marketing scheme where all the consumption  
24 is by people in the pyramid gives you pause. You have to ask where

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23 <sup>19</sup> 2004 Form 10-K at 18; 2005 Form 10-K at 20; 2006 Form 10-K at 20; 2007  
24 Form 10-K at 20; 2007 Form 10-K/A at 18; 2008 Form 10-K at 20; 2009 Form 10-  
25 K at 21; 2010 Form 10-K at 20; 2011 Form 10-K at 22; 2012 Form 10-K at 20.

26 <sup>20</sup> *The Motley Fool*, “3 Crucial Questions for Herbalife” (February 7, 2013),  
27 <http://www.fool.com/investing/general/2013/02/07/3-crucial-questions-for-herbalife.aspx> (last accessed August 27, 2015).

28 <sup>21</sup> *CNBC*, “Reasons to Worry About Herbalife: Greenberg” (May 8, 2012),  
<http://www.cnbc.com/id/47340065> (last accessed August 27, 2015)

1 are the real customers? And if there are no real customers then surely  
2 it is a pyramid as a matter of fact (if not a matter of law).<sup>22</sup>

3 41. Herbalife's own documents and statements plainly demonstrate that  
4 the Company has immediate access to all of the data that *Omnitrition* and the  
5 Permanent Injunction require it to maintain. Herbalife's Wholesale Product Order  
6 Form requires the names and Herbalife ID numbers for distributors and  
7 supervisors, and the name, address, phone and email address for product  
8 shipment.<sup>23</sup> Its Retail Order Form similarly requires the name, address, phone  
9 number and email address of both the distributor and the customer.<sup>24</sup> Rule 17-A  
10 contractually requires distributors to maintain and provide distributors' retail  
11 receipts to the Company upon request.<sup>25</sup> Even Founder's Circle Member and  
12 former Board of Directors member Leon Waisbein told distributors to "[t]rack how  
13 many customers you have . . . . Your goal should be to build a customer group of  
14 30-40 people."<sup>26</sup>

15 42. Thus, to ensure compliance with *Omnitrition*, the 70% Rule and the  
16 Permanent Injunction, Herbalife simply has to require distributors to provide the  
17 names of their customers to the Company.

18 **C. Herbalife's Computer Systems Provide Defendants With  
19 Unmatched Data Access**

20 43. Submission of customer names to Herbalife to ensure compliance  
21 would not result in an avalanche of paper, nor thousands of records sitting

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22 <sup>22</sup> *Bronte Capital*, "Herbalife internal consumption: a comment" (March 24, 2014),  
23 [http://brontecapital.blogspot.com/2014/03/herbalife-internal-consumption-](http://brontecapital.blogspot.com/2014/03/herbalife-internal-consumption-comment.html)  
24 [comment.html](http://brontecapital.blogspot.com/2014/03/herbalife-internal-consumption-comment.html).

25 <sup>23</sup> Marketing Plan at 40.

26 <sup>24</sup> Marketing Plan at 42.

27 <sup>25</sup> Notably, on November 22, 2013, Pershing Square offered Herbalife to pay for  
28 the cost of providing all of these records to the Company.

<sup>26</sup> Notes – Leon Waisbein – Sun City Extravaganza 2010 at 14, <http://www.factsaboutherbalife.com/media/2012/12/Waisbein-Extravaganza-Notes-2010.pdf>  
(last accessed August 27, 2015).

1 forgotten in a filing cabinet. In fact, in order to comply with the 70% Rule and not  
2 run afoul of other anti-pyramid laws, MLMs employ advanced computer and  
3 logistical systems to drill down into their distributors' sales data and records.  
4 During a January 29, 2013 interview with Jim Cramer on *Mad Money*, for  
5 example, Tupperware CEO Rick Goings explained:

6 You wouldn't believe the level of detail we have.

7 \* \* \*

8 We have a report there of what happened the previous week, what the  
9 sales were, what the recruits were, who they were to and people that  
10 went to the party. We manage our business right down to the detail of  
11 it.<sup>27</sup>

12 44. Herbalife and its executives would similarly often boast of the  
13 unmatched ability to track distributor sales the resulting vast swaths of data  
14 ostensibly at their fingertips by virtue of its sophisticated information systems.  
15 This took place unabated both during and after the Class Period.

16 45. During the Class Period, at the September 7, 2011 Barclay's Back to  
17 School Consumer Conference,<sup>28</sup> DeSimone explained that the Company's Oracle  
18 computer system:

19 [P]rovides great visibility. *We get daily sales updates.*

20 \* \* \*

21 *[W]e have a detailed distributor database that gives us dozens of*  
22 *metrics on each distributor.* It is really too much information to look  
23 at, but you identify your outliers, and you find distributors that are  
24 performing very well and you find out why. And if they're  
25 performing well because they have a nuance for the business model  
26 that's valuable, then we commercialize it globally. *We have a lot of*  
27 *access to distributor performance also.*

28 \_\_\_\_\_  
29 <sup>27</sup> CNBC, "Tupperware CEO on Direct Selling" (January 29, 2013), <http://video.cnbc.com/gallery/?video=3000144377> (last accessed August 27, 2015).

30 <sup>28</sup> The Barclay's Back to School Consumer Conference is an annual public event at  
31 which consumer companies as diverse as Herbalife, Altria, Pepsico and Kellogs  
32 present on issues facing the companies and the industry. Thomson Reuters  
33 transcribed Herbalife's presentation at this conference.

1 46. Also during the Class Period, at the April 24, 2012 Barclays Capital  
2 Retail and Restaurant Conference,<sup>29</sup> Vice President of Investor Relations Amy  
3 Green similarly boasted of Herbalife’s technological prowess:

4 [W]hat we look at, we do have from a technology standpoint have the  
5 ability to do deep dive within the – into a distributorship or into either  
6 from corporately we can look at a region, a country, a city, the  
7 different layers, *you can kind of peel off the onion to see what kind  
8 of granularity you want to look at. You can look at an individual  
9 distributorship, you can look at the whole lineage of a distributor  
10 that has a downline.* But it’s not so much looking at a saturation  
11 analysis, it’s more looking at what the opportunity says because I’m a  
12 distributor and I’m looking at my tool, the distributor only sees their  
13 business.

14 47. Defendant Johnson was no stranger to Herbalife’s sophisticated  
15 information systems and apparent ability to track the tiniest details of its  
16 distributors, and also actively boasted of Herbalife’s purported prowess. During  
17 the 1Q 2013 earnings call, Johnson stated that “[l]ike most large consumer-  
18 packaged group companies, *we know who we sell our products to.* And like those  
19 companies, *we then rely upon research tools and techniques to gain a better  
20 understanding of the end-use consumer.*” Notably, Johnson made this comment a  
21 mere three months after he admitted that his avowal that 90% of Herbalife’s sales  
22 were to non-distributors was “a misstatement.” *See* ¶¶6, 69. In an October 21,  
23 2014 interview with *Los Angeles Magazine*, Johnson confirmed that at Herbalife  
24 “[w]e know all the numbers, we know who recruits people, we know who sells  
25 product to someone else.”<sup>30</sup>

26 48. Herbalife had access to such granular data due to the implementation  
27 of its Oracle GoldenGate, Agile Product Life Management (“PLM”), Primavera

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28 <sup>29</sup> This conference is also an annual public event at which retail and restaurant  
companies as diverse as The Cheesecake Factory, Herbalife and Dollar General  
present on various issues. Thomson Reuters transcribed Herbalife’s presentation at  
this conference.

<sup>30</sup> *Los Angeles Magazine*, “Big Shots: Michael Johnson” at 13:40 (October 21,  
2014), <http://www.lamag.com/citythinkblog/big-shots-michael-johnson/> (last  
accessed August 27, 2015).

1 P6, HCM Cloud, and E-Business Suite Enterprise Resource Planning (“ERP”) IT  
2 systems.<sup>31</sup> Working closely with Oracle, Herbalife implemented each of these  
3 systems to better manage the company, its employees and distributors, and  
4 importantly, its supply chain and product management capabilities:

5 a. A 2012 Oracle case study specifically revealed that Herbalife  
6 implemented the PLM suite in part to remedy the problem of “shar[ing]  
7 product information both internally and with regulators.”<sup>32</sup> As a result,  
8 Herbalife’s PLM suite “enhanced efficiency and visibility” throughout  
9 Herbalife, while also ostensibly “supporting better informed decisions and  
10 regulatory compliance.”<sup>33</sup>

11 b. Similarly, a May 2010 Oracle case study on Herbalife’s  
12 Primavera implementation<sup>34</sup> revealed that the software suite “Enabled  
13 executives to view real-time IT project timeline and costing data for  
14 corporate initiatives as well as projects related to the company’s various  
15 nutrition, weight management and personal care product lines.”

16 c. An Infosys case study on the implementation of Herbalife’s  
17 Oracle Applications R11.5.9 system revealed that the software suite allowed  
18 Herbalife to achieve better supply chain planning, which reduced out of  
19

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20 <sup>31</sup> Mark Schissell, Herbalife Senior Vice President and Chief Information Officer,  
21 lauded the advantages of the HCM Cloud system because “[i]t had had all the  
22 pieces of functionality we needed, whether it was core human resources, whether it  
23 was recruiting, talent management, compensation, it was a complete solution.”  
24 Youtube.com, *Herbalife’s Success With Oracle HCM Cloud* at 2:34 (October 24,  
2013), <https://www.youtube.com/watch?v=f7HL0OKB1Ac>. (last accessed August  
27, 2015) Schissell further stated that the “biggest [improvement]” over the  
previous system “is the quality of the data and the ability to get that data to our  
executives, to our line-level managers, it’s changed the culture.” *Id.*

25 <sup>32</sup> [http://www.oracle.com/us/products/applications/agile/enterp-prod-lifecycle-  
manag-rept-1621419.pdf](http://www.oracle.com/us/products/applications/agile/enterp-prod-lifecycle-manag-rept-1621419.pdf), at 21 (last accessed August 27, 2015).

26 <sup>33</sup> *Id.*

27 <sup>34</sup> <http://www.oracle.com/oms/eppm/herbalife-customer-snapshot-1707367.pdf>  
28 (last accessed August 27, 2015).

1 stock products and improved inventory turn-around time and warehouse  
2 efficiency.<sup>35</sup>

3 49. As Johnson and other Herbalife senior executives boasted, these  
4 systems gave them unparalleled access to granular sales data on every Herbalife  
5 distributor.

6 **D. Johnson Is “100% Engaged” With All Aspects Of The Company**

7 50. In addition to closely examining every facet of every detail of every  
8 distributor’s volume point purchases and sales lines, Herbalife executives worked  
9 closely with the distributors to market and sell products. Johnson in particular was  
10 front and center when it came to dealing with distributors’ sales and marketing  
11 issues. In his October 21, 2014 *Los Angeles Magazine* interview, Johnson boasted  
12 of being “100% engaged,” to the point of being “OCD” because “no detail is too  
13 big or too small”:

14 Q. [Giselle Fernandez]: How much would you say the Company  
15 has your imprint and identity in it?

16 A. [Michael Johnson]: Well that’s a good question. I think you  
17 have to ask a distributor that. You have to ask, you know,  
18 somebody who is participating in the business.

18 *On a very personal level, I’m 100% engaged. And love the*  
19 *Company, love what we do, love the way we go to market . . . .*  
20 *I’m impassioned about this place. I am, you know, everybody*  
21 *will tell you I’m OCD, you know, in here that I’m that no*  
22 *detail is too big or too small . . . .*

21 Q. [Fernandez]: You just gave me a tour of the Company and *you*  
22 *know every minute detail of every division*, its history, the  
23 ingredients in products, the seeds that go into making your soy  
24 products . . . . *How much of your passion is now reflected in*  
25 *the brand?*

26 A. [Johnson]: *Probably too much.*<sup>36</sup>

25 <sup>35</sup>[http://www.infosys.com/Oracle/case-studies/Pages/herbalife-](http://www.infosys.com/Oracle/case-studies/Pages/herbalife-oracleimplementation.aspx)  
26 [oracleimplementation.aspx](http://www.infosys.com/Oracle/case-studies/Pages/herbalife-oracleimplementation.aspx). (last accessed August 27, 2015).

27 <sup>36</sup> *Los Angeles Magazine*, “Big Shots: Michael Johnson” at 2:18 (October 21,  
28 2014), <http://www.lamag.com/citythinkblog/big-shots-michael-johnson/> (last  
accessed August 27, 2015).

1           51. Johnson went on to explain that “the Company is personal to me.”<sup>37</sup>  
2 Indeed, his “OCD” level of involvement with every minute aspect of Herbalife’s  
3 business was his hallmark, and began long before the Class Period started. On a  
4 January 5, 2007 guidance call, Johnson described the mutually beneficial  
5 relationship between senior executives (including himself) and top distributors:

6           [O]ur Chairman’s Club who are the real, real go-getters, the real  
7 leaders, the people who take the stage, who lead the parade in this  
8 company, who are the heavily inspiring, motivating people who have  
9 highly aspirational folks. ***We will be on the phone with them in two  
10 hours to go through this in more depth with more decisions this year  
as we have got to do. They will give us a ton of input*** and say, here is  
11 what you need to do and here is the support we need to integrate the  
12 market. Yeah, and together and this will also be because these are  
13 global leaders.

14           52. This was not an isolated, one-off comment. Johnson repeatedly told  
15 investors how he worked closely with all of the Company’s distributors – not just  
16 those in the Founder’s Circle or Chairman’s Club. He described how “[a]t every  
17 one of these big [distributor] events I spend time with probably ten distributors  
18 who are distributors starting their business, on their way up trying to figure it out . .  
19 . .”<sup>38</sup>

20           53. Johnson’s relationship with distributors was not limited to helping  
21 them out of the gate. He was also closely involved with the Company’s  
22 distributors and compliance function due to the tight regulation of the MLM  
23 industry. During the April 24, 2012 Barclays Capital Retail and Restaurants  
24 Conference,<sup>39</sup> Senior Vice President and Managing Director Ibi Fleming told

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25 <sup>37</sup> *Los Angeles Magazine*, “Big Shots: Michael Johnson” at 10:47 (October 21,  
26 2014), <http://www.lamag.com/citythinkblog/big-shots-michael-johnson/> (last  
27 accessed August 27, 2015).

28 <sup>38</sup> *Los Angeles Magazine*, “Big Shots: Michael Johnson” at 6:22 (October 21,  
2014), <http://www.lamag.com/citythinkblog/big-shots-michael-johnson/> (last  
accessed August 27, 2015).

<sup>39</sup> Herbalife’s presentation at this conference was public and transcribed by  
Thomson Reuters.

1 investors that “*Our CEO – our Chairman and CEO talk constantly to distributors*  
2 *and internally* about always taking the high roads, *because it is an industry that’s*  
3 *regulated . . . .*” Johnson himself would later describe how he “worked closely  
4 with our distributor leadership,” “as hard and vigorously as we can” to purportedly  
5 ensure that distributors abide by Herbalife’s rules, which Johnson stated were “the  
6 ethos of this Company.”<sup>40</sup>

7 54. Despite this purported emphasis on compliance, however, Herbalife  
8 did not have a chief of compliance until after the Class Period, when Pamela Jones  
9 Harbour was appointed as Senior Vice President of Global Member Compliance  
10 and Privacy on October 6, 2014. Indeed, Herbalife’s compliance department was  
11 shrouded in mystery as the Company was never fully honest with investors even  
12 with respect to such basic information such as how many people worked in that  
13 department. On August 15, 2013, for example, Herbalife stated that it had a “350-  
14 strong global distributor business practices and compliance team,”<sup>41</sup> Just two  
15 months later, CNBC reported that Herbalife spokesperson Barb Henderson said  
16 there were 250 compliance staff members worldwide.<sup>42</sup> Further, the Company has  
17 never disclosed the amount of money or resources it spends (annually or quarterly)  
18 on compliance.

19 55. Top Herbalife distributors shared such a close relationship with senior  
20 executives that there was a veritable revolving door between the two groups.  
21 Further still, Johnson enjoys close personal relationships with many of the  
22 distributors and executives who have passed through this revolving door. Former

23 \_\_\_\_\_  
24 <sup>40</sup> *Los Angeles Magazine*, “Big Shots: Michael Johnson” at 12:01 (October 21,  
25 2014), <http://www.lamag.com/citythinkblog/big-shots-michael-johnson/> (last  
accessed August 27, 2015).

26 <sup>41</sup> [http://www.theglobeandmail.com/report-on-business/herbalife-kept-links-to-](http://www.theglobeandmail.com/report-on-business/herbalife-kept-links-to-canadian-pyramid-scheme-for-a-decade/article13789659/)  
27 [canadian-pyramid-scheme-for-a-decade/article13789659/](http://www.theglobeandmail.com/report-on-business/herbalife-kept-links-to-canadian-pyramid-scheme-for-a-decade/article13789659/) (last accessed August 27,  
2015).

28 <sup>42</sup> <http://www.cnbc.com/id/101103661> (last accessed August 27, 2015).

1 distributors Pedro Cardoso and John Tartol currently serve on the Company’s  
2 Board of Directors, while distributors-turned-directors Leon Waisbein and Leslie  
3 Stanford resigned from the Board in 2009 and 2005, respectively:

4 a. Herbalife has described Cardoso as a “direct collaborator of  
5 CEO Michael Johnson.”<sup>43</sup>

6 b. Tartol has appeared at Herbalife-sponsored events as recently as  
7 December 2013, when he spoke on the Chairman’s Club Tour at events in  
8 Las Cruces and Orange County. Defendant Johnson recalls that when he  
9 first became CEO in 2003, Tartol was “personally training” him.<sup>44</sup> In 2009  
10 and 2010, Herbalife counted Tartol among its Top 10 distributors in the  
11 world.

12 c. Waisbein was also among the Company’s Top 10 distributors  
13 those years. Even after his 2009 resignation, however, he continued to speak  
14 on behalf of Herbalife, including at the 2010 Sun City Extravaganza and at a  
15 2010 “retreat” in Malta where his presentation was entitled *How to get to*  
16 *President’s Team?*

17 d. Stanford is a Founders’ Club member who served on the Board  
18 from 2002 to 2005. Similarly to Waisbein, she continues to appear at  
19 promotional events for the Company, most recently in December 2013 in  
20 Montreal and in Toronto.

21  
22  
23  
24 \_\_\_\_\_  
25 <sup>43</sup> <http://www.herbalifepyramidscheme.com/media/2014/12/Exhibit-Z1.pdf>. (last  
26 accessed August 27, 2015). The original Portuguese is “colaborador direto do  
CEO Michael Johnson.”

27 <sup>44</sup> *Herbalife Today*, “An interview with CEO Michael O. Johnson at 6  
28 <http://herbalifepyramidscheme.com/media/2014/02/JTExhibit-M.pdf> (last accessed  
August 27, 2015).

1 e. Doran Andry's brother, Donte Andry, sits on the Strategy and  
2 Planning Committee and the Product Committee for Herbalife North  
3 America.<sup>45</sup>

4 56. In addition to this revolving door, Herbalife would also often use its  
5 top distributors from the Founder's Circle, Chairman's Club and President's Club  
6 to shill the lifestyle opportunities supposedly awaiting new distributors:

7 a. Chairman's Club member Doran Andry, who boasted that he  
8 would often "step out of the Ferrari, the Bentley, or whatever,"<sup>46</sup> told  
9 distributors at a training session in Chicago that they could reach annual  
10 revenues of nearly **\$1.4 billion** and net annual incomes of **\$55.8 million** by  
11 becoming Herbalife distributors.<sup>47</sup>

12 b. Chairman's Club Member and current Board member John  
13 Tartol has asked "[h]ow many of you would like to make at least a million  
14 dollars a year? Every extra million dollars, I find, comes in handy. 2  
15 million? 5 million?"<sup>48</sup>

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18 <sup>45</sup> <http://cmwellnessworks.com/about-us/meet-the-team/donte-andry> (last accessed  
19 August 27, 2015).

20 <sup>46</sup> Doran Andry's statement was featured in an April 2014 ABC News undercover  
21 investigation. See ABC News, "Herbalife, Ackman Respond to 'Nightline'  
22 Undercover Report" (April 24, 2014) <http://abcnews.go.com/Blotter/herbalife-ackman-respond-nightline-undercover-report/story?id=23457777> (last accessed August 27, 2015).

23 <sup>47</sup> Letter from David Klafter to Pamela Jones Harbour dated November 6, 2014, at  
24 14, [http://www.factsaboutherbalife.com/media/2014/11/Letter\\_to\\_Pamela\\_Jones\\_Harbour11.6.14.pdf](http://www.factsaboutherbalife.com/media/2014/11/Letter_to_Pamela_Jones_Harbour11.6.14.pdf) (last accessed August 27, 2015). Unsurprisingly, *The Atlantic*  
25 described Andry's promotional claims of income as "unrealistic." *The Atlantic*, "Is  
26 Herbalife a Pyramid Scheme?" (June 2014) <http://www.theatlantic.com/magazine/archive/2014/06/wall-streets-6-billion-mystery/361624/> (last accessed August 27, 2015).

27 <sup>48</sup> John Tartol, Herbalife 2012 Summit at 4:00 - 4:13,  
28 <http://www.herbalifepyramidscheme.com/es/perpetrators/john-tartol/> (last accessed August 27, 2015).

1 c. Chairman’s Club member Stephan Gratziani, who Johnson  
2 endearingly told “I know you well enough to know that you are on the climb  
3 my friend,”<sup>49</sup> boasted that “[t]oday, I, you know, live a lifestyle that I never  
4 could have thought possible. I got to see more things than you could have  
5 ever imagined possible. Recently, I took my daughter to Washington D.C.  
6 She had a chance to walk out on the field with David Villa and F.C.  
7 Barcelona in front of 88,000 people. Where can kids have that experience?  
8 It’s only with Herbalife.”<sup>50</sup>

9 d. Maurice and Sandra Smith, two Executive President’s Team  
10 members, tell of a similar story. In a promotional video Maurice Smith  
11 states that before Herbalife, “I felt like I was going to die before I ever had a  
12 chance to live my life. And you may be feeling that way too.”<sup>51</sup> Once a  
13 factory worker, a presentation featuring their story boasts that they now  
14 enjoy life in a home with a “Penthouse Suite bigger than first apartment,”  
15 three luxury cars in the driveway, and vacations to exotic foreign locations.<sup>52</sup>

21 <sup>49</sup> See <http://www.factsaboutherbalife.com/stephan-gratziani-chairmans-club-member-profile/> (last accessed August 27, 2015).

22 <sup>50</sup> <http://www.factsaboutherbalife.com/stephan-gratziani-chairmans-club-member-profile/> (last accessed August 27, 2015). Gratziani’s comment begins roughly at 5:30.

24 <sup>51</sup> Herbalife Recruiting Video, Total Business Machine at 3:05-4:15, *available at*  
25 <http://www.herbalifepyramidscheme.com/perpetrators/maurice-sandra-smith/>  
26 (accessible by clicking on the link <https://vimeo.com/106532209> (last accessed August 27, 2015)).

27 <sup>52</sup> *Total Business Machine Presentation*, “Executive President’s Team Members  
28 Maurice & Sandra Smith,” <http://www.herbalifepyramidscheme.com/media/2014/09/Smith-Exhibit-K.ppt> (last accessed August 27, 2015).

1 e. President’s Team Member Michael Burton has bragged that  
2 “[j]ust after six months in the business, our income was over \$6,000 a  
3 month. And by the eleventh month in the business, we were over \$12,000 a  
4 month. . . . After sixteen months in the business, we were over \$25,000 a  
5 month. And that number’s staggering—the type of lifestyle you can have  
6 with that income. And since then, the income’s doubled, tripled, quadrupled.  
7 It’s just been absolutely exciting. And over the last nine years, we have  
8 made millions, we have been paid millions of dollars for doing this business.  
9 And what I know, you could have the same opportunity as we had.”<sup>53</sup>

10 57. Notably, it would be impossible for distributors to achieve these  
11 fantastical incomes without recruiting massive downlines – and the resulting  
12 royalty override and production bonus payments from those downlines. As  
13 Pershing Square later revealed, the median annual compensation for World Team  
14 members, the highest distributor level achievable without recruited downlines in  
15 pace, was just \$5,659.<sup>54</sup>

16 58. The distributor compensation structure resulted in two outcomes.  
17 First, it incentivized distributors to recruit downlines to make more money.  
18 Johnson himself recognized this fact. At the September 5, 2007 Goldman Sachs  
19 Annual Global Retailing Conference, then-CFO Rich Goudis and Johnson  
20 described top Herbalife distributors as:

21  
22  
23  
24 \_\_\_\_\_  
25 <sup>53</sup> Herbalife Recruiting Video Global Home Business Systems 1:40–2:46  
26 *available at* <http://www.herbalifenvramidscheme.com/nernetrators/michael-burton/>  
(accessible by clicking on the link <https://vimeo.com/91648899>) (last accessed  
27 August 27, 2015).

28 <sup>54</sup> *Who Wants to be a Millionaire* (“*Millionaire*”) Slide 74. The *Millionaire*  
Presentation is attached as Exhibit C.

1 [Goudis]: So then you're looking at now our retail sales, because the  
2 single biggest opportunity for those supervisors is their 50% off list  
3 discount. That's the biggest component of their income. They get a  
4 small piece on their royalties, because they really haven't started  
building a sales organization yet to get rewards down below. Whereas  
someone up in the very top, they're \$2+ million, they're probably  
working on very little retail margin, because they're not really  
retailers.

5 [Johnson]: *They're recruiters.*

6 59. Second, the compensation structure that Herbalife pushed would  
7 result in Herbalife paying royalty overrides and production bonuses to its  
8 distributors. These bonuses are the Company's "most significant expense" and  
9 purportedly only paid subject to verification that they were earned pursuant to the  
10 70% Rule.

11 60. As described above, *Omnitrition* and the 70% Rule were supposed to  
12 cut a balance by recognizing and allowing for a distributor's personal  
13 consumption, while simultaneously putting restrictions in place to prevent  
14 inventory loading.

15 61. The *New York Post* reported that as far back as 2005, Johnson saw  
16 problems with distributors' inventory loading practices – which were supposed to  
17 be prevented by the 70% Rule – personally lamenting that “[w]hen the credit card  
18 bill comes, the spouse says, ‘[h]ow are we going to pay for this? You didn’t sell  
19 this stuff. It’s in the garage. It’s in the pantry.’”<sup>55</sup> The *Post* quoted Johnson as  
20 exhorting Herbalife distributors that they “gotta do things right because Rich  
21 [Goudis, then Herbalife’s CFO] and *I have one major job . . . to say out of jail.*  
22 *We go to the gray-bar hotel together if you don’t operate with ethics.*” As of  
23 2005, Johnson was therefore on notice of the 70% Rule, the inventory loading  
24 problems that it was intended to prevent, and that violation of the strict laws  
25 regulating MLMs (including *Omnitrition*) could result in criminal liability.

26 \_\_\_\_\_  
27 <sup>55</sup> “Video reveals Herbalife boss saw ‘pyramiding’ signs early on,” *New York Post*,  
28 June 25, 2015, available at <http://nypost.com/2015/06/25/video-reveals-herbalife-boss-saw-pyramiding-signs-early-on/> (last accessed August 27, 2015).

1           62. Johnson was once again put on notice of Herbalife's compliance with  
2 *Omnitrition* and its formulation of the 70% Rule in 2009 as a result of *Herbalife*  
3 *Int'l of Am., Inc. v. Ford, et al.*, Case No. 07-CV-2529 GAF (FMOx) (C.D. Cal.).  
4 In that case, Herbalife sued a group of former distributors. Those distributors  
5 counter-claimed, alleging that Herbalife operated an endless chain pyramid scheme  
6 in violation of state and federal law. As part of their discovery efforts, the  
7 counterclaimants deposed several Herbalife executives:

8           a. Vice President of Distributor Policy Administration Jacqueline  
9 Miller testified that Herbalife conducted no audits to verify compliance with  
10 the 70% Rule (except in the context of a broader investigation), and would  
11 not investigate alleged 70% Rule violations on their own.<sup>56</sup> Instead of  
12 tracking between internal and external sales, Miller testified that Herbalife  
13 would simply add up amounts from a distributor's retail receipts to ascertain  
14 if those amounts were at least 70% of what that distributor had purchased.<sup>57</sup>  
15 Miller also testified that, as of February 11, 2009, Herbalife had conducted  
16 no studies to determine whether the 70% Rule is effective.<sup>58</sup>

17           b. Michael McKee, Vice President of Sales and Marketing,  
18 testified that in the 500 to 1,000 distributor training events that he attended,  
19 he never remembered anyone educating trainees about the 70% Rule.<sup>59</sup> In  
20 fact, McKee testified that he did not even know what the 70% Rule was, and  
21  
22

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23 <sup>56</sup> Deposition of Jacqueline A. Miller, Volume 1 (February 11, 2009), at 25:14-  
24 28:11. *Herbalife Int'l of Am. Inc. v. Ford*, Case No. 07-CV-2529, (C.D. Cal.) (ECF  
No. 143-2).

25 <sup>57</sup> *Id.* at 70:7-12.

26 <sup>58</sup> *Id.* at 96: 5-8.

27 <sup>59</sup> Deposition of Mike McKee (February 18, 2009), at 129:10-14. *Herbalife Int'l of*  
28 *Am. Inc. v. Ford*, Case No. 07-CV-2529, (C.D. Cal.) (ECF No. 143-4).

1 that he did not train on the Rule because he did not consider it to be  
2 “exciting stuff.”<sup>60</sup>

3 63. On February 18, 2009, Johnson signed a declaration attesting that he  
4 has a “general knowledge regarding the case and its issues,” was “briefed by others  
5 at Herbalife” on the case, and had “discussion with counsel” about the case.<sup>61</sup>

6 64. On August 25, 2009, Judge Fees issued a Memorandum and Order on  
7 the parties’ cross-motions for summary judgment. Judge Fees discussed  
8 Herbalife’s 70% Rule and found, citing *Omnitrition*, that “Herbalife’s entire  
9 business model appears to incentivize primarily the payment of compensation that  
10 is ‘facially unrelated to the sale of the product to ultimate users because it is paid  
11 based on the suggested retail price of the amount ordered from [Herbalife], rather  
12 than based on actual sales to customers.”<sup>62</sup>

13 **E. Defendants Recklessly Fail To Provide Basic Answers To**  
14 **Questions Concerning Herbalife’s Fundamental Business**

15 65. As the “100% engaged,” “OCD” CEO that he was, Johnson was  
16 aware of the application of *Omnitrition* and the 70% Rule to Herbalife as early as  
17 2005 and in any event no later than 2009. Indeed, the 70% Rule was the only  
18 protection keeping Herbalife from needlessly paying out tens of millions of dollars  
19 of bogus royalty overrides and production bonuses to distributors.

20 66. During a May 1, 2012 earnings call on which Johnson participated,  
21 Greenlight Capital founder and president David Einhorn posed a series of simple  
22 questions to Herbalife executives, first asking “[w]hat is the percentage [of final

23 \_\_\_\_\_  
24 <sup>60</sup> *Id.* at 127:21-128:9.

25 <sup>61</sup> “Declaration Of Michael O. Johnson In Support Of Joint Stipulation Re:  
26 Plaintiff Herbalife International Of America, Inc.’s Motion For A Protective Order  
27 Concerning Defendants’ Notice Of Deposition Of Michael Johnson,” *Herbalife*  
*Int’l of Am. Inc. v. Ford*, Case No. 07-CV-2529, (C.D. Cal.) (ECF No. 139)

28 <sup>62</sup> *Herbalife Int’l of Am. Inc. v. Ford*, Case No. 07-CV-2529, (ECF No. 374 at 16)  
(C.D. Cal.) “Memorandum and Order.”

1 product sales] that is actually sold to consumers that are not distributors?”  
2 Specifically citing Herbalife’s 70% Rule, Walsh explained “[s]o again, going back  
3 to our 70 percent rule, we believe that it’s at 70 percent or potentially in excess of  
4 that.” The next day, on May 2, Herbalife filed a Form 8-K stating that “in order to  
5 minimize the risk of product being accumulated by distributors, the company has  
6 policies in place such as the 70% Rule . . . .”

7 67. On June 27, 2012 SEC Assistant Director John Reynolds wrote  
8 directly to Johnson asking him to clarify “why the 70% Rule should not be  
9 considered a part of your core business model.”<sup>63</sup> On July 5, 2012, Herbalife  
10 responded. Johnson stayed silent, instead requiring Principal Accounting Officer  
11 Bosco Chiu to bear the brunt of the SEC’s inquiry. Shockingly, Chiu told the SEC  
12 that “we do not rely on the ‘70% rule’ in any meaningful way.”<sup>64</sup> Chiu’s statement  
13 fatally undermined Walsh’s reliance on the 70% Rule to ensure that products were  
14 being sold outside of Herbalife’s distribution base.

15 68. Despite the ease of relying on Herbalife’s unparalleled access to  
16 distributor data to satisfy the 70% Rule to establish genuine retail sales to non-  
17 distributors – indeed, despite the requirement of doing so under *Omnitrition’s*  
18 binding precedent – Herbalife simply did not do so. And they continued to be  
19 dogged by questions regarding sales to non-distributors. On December 19, 2012,  
20 Johnson called in to CNBC’s *Street Signs* in anticipation of Pershing Square’s  
21 *Millionaire* Presentation that was to take place the next day. The following  
22 exchange occurred between Johnson and co-host Kate Kelly, during which  
23 Johnson stated:

24 \_\_\_\_\_  
25 <sup>63</sup> June 27, 2012 Letter from John Reynolds to Michael Johnson.

26 <sup>64</sup> July 5, 2012 Letter from Bosco Chiu to John Reynolds. Notably Chiu also  
27 acknowledged that Herbalife “av not assert Staff comments as a defense in any  
28 proceeding initiated by the Commission or any person under the federal securities  
laws of the United States.”

1 Q. [Kelly]: Can you give us a percentage figure though Mr. Johnson as to what percentage of your sales are outside [Herbalife's] distribution network?

2 A. [Johnson]: **90%**

3 Q. [Kelly]: So the vast majority?

4 A. [Johnson]: **Absolutely.**

5 69. Johnson's "absolute[]" statement lacked any factual basis. The only  
6 possible support for his statement – that the Company relied on the 70% Rule –  
7 was demolished when Chiu told the SEC months earlier that Herbalife did not rely  
8 on that rule "in any meaningful way." Johnson acknowledged the blatant falsity of  
9 his statement just one month later. On January 10, 2013 during an second, follow-  
10 up interview on CNBC's *Squawk on the Street*, Johnson flatly confessed that his  
11 "90%" statement on December 19, 2012 "was a misstatement . . . . **That was a**  
12 **misstatement on that day**" he made because he was "hyped up."<sup>65</sup> Johnson further  
13 admitted that he "**got in a lot of trouble**" for making that statement.<sup>66</sup>

14 70. In a last-ditch attempt to show that genuine retail demand for its  
15 products existed among non-distributors, Herbalife has resorted to commissioning  
16 multiple costly research "surveys" which are inconsistent with their previous  
17 publicly-issued statements, inconsistent with each other, and inconsistent with  
18 secret internal documents.

19 71. For example, in early 2012, Herbalife hired Lieberman Research to  
20 conduct a survey of its distributors and prepare a report (the "Lieberman Report").  
21 Johnson often touted this report as evidence that Herbalife had customers outside  
22

23  
24  
25 <sup>65</sup> *CNBC*, "CNBC Exclusive: CNBC Transcript: Herbalife Chairman & CEO Michael Johnson Sits Down with Kate Kelly Today on CNBC" (January 10, 2013),  
26 <http://www.cnbc.com/id/100370378> (last accessed August 27, 2015).

27 <sup>66</sup> *CNBC*, "CNBC Exclusive: CNBC Transcript: Herbalife Chairman & CEO Michael Johnson Sits Down with Kate Kelly Today on CNBC" (January 10, 2013),  
28 <http://www.cnbc.com/id/100370378> (last accessed August 27, 2015).

1 of the Company’s distribution network.<sup>67</sup> While the Lieberman Report was never  
2 fully released to the public, its methodology was summarized at Herbalife’s  
3 Investor Day presentation on January 10, 2013.<sup>68</sup> This summary allowed *The New*  
4 *York Times* to observe that “[t]he study was not based on Herbalife’s actual sales  
5 data. Instead, Lieberman extrapolated from an Internet survey that the company  
6 had more than six million customers.”<sup>69</sup> The Lieberman Report found that:

- 7 a. 92% of consumers that purchased Herbalife product in the  
8 preceding three months were non-distributors;
- 9 b. 73% of former distributors joined for product discounts;
- 10 c. 44% of all distributors had no earnings expectations when  
11 joining Herbalife.

12 72. After the Class Period, on June 11, 2013, Herbalife released the  
13 results of another study, conducted by Nielsen Research during April and May of  
14 2013 (the “Nielsen Report”). The Nielsen Report found that 87% of consumers  
15 were outside of the Herbalife distribution base. As with the Lieberman Report,  
16 Johnson touted the Nielsen Report as evidence that Herbalife’s products were  
17 being sold to non-distributors.

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20 <sup>67</sup> For example, during the 3Q 2012 earnings call, Johnson used the Lieberman  
21 Report for his assertion that “more than 90% [of customers] were outside [of  
22 Herbalife’s] distribution network.” Similarly, the night before Ackman’s  
23 *Millionaire* presentation, on December 19, 2012, Johnson touted the Lieberman  
report on CNBC for supposedly proving that Herbalife had “millions upon millions  
of customers.” <http://www.cnbc.com/id/100328911> (last accessed August 27,  
2015).

24 <sup>68</sup> Herbalife, “Investor Day Presentation” (January 10, 2013)  
25 [http://files.shareholder.com/downloads/ABEA-48ZAJ9/2270072295x0x627448/  
e3de3984-4dff-4ca3-90a1-a1c1cafecb4e/Herbalife\\_Investor\\_Day\\_Presentation\\_-  
26 \\_01.10.13.pdf](http://files.shareholder.com/downloads/ABEA-48ZAJ9/2270072295x0x627448/e3de3984-4dff-4ca3-90a1-a1c1cafecb4e/Herbalife_Investor_Day_Presentation_-_01.10.13.pdf) (last accessed August 27, 2015).

27 <sup>69</sup> *The New York Times*, “Seeking a Company’s Elusive Sales Data” (February 4,  
28 2013), [http://dealbook.nytimes.com/2013/02/04/seeking-a-companys-elusive-sales-  
data/](http://dealbook.nytimes.com/2013/02/04/seeking-a-companys-elusive-sales-data/) (last accessed August 27, 2015).

1           73. Importantly, the results of the Lieberman Report and the Nielsen  
2 Report contradict each other. Key parameters and findings of the Lieberman  
3 Report included that 5% of adults purchased an Herbalife product within the prior  
4 three months, which was based from a survey of 2,000 interviews conducted;  
5 meanwhile, the key parameters and results of the Nielsen Report include that 3.3%  
6 of adults purchased an Herbalife product within the prior three months, which was  
7 based from a survey of 10,525 interviews conducted. At the 95% confidence level  
8 (which is the accepted standard in survey research), the Lieberman Report estimate  
9 of 5% has a margin of error of +/- 0.96%. That means that with 95% certainty,  
10 Lieberman estimates the range for the true population proportion to be between  
11 4.04% and 5.96%. At the 95% confidence level, the Nielsen Report estimate of  
12 3.3% has a margin of error of +/- 0.34%. That means that with 95% certainty,  
13 Nielsen estimates the range for the true population proportion to be between 2.96%  
14 and 3.64%. The results contradict each other because the ranges do not overlap.

15           74. The Lieberman and Nielsen Reports directly contradict a non-public  
16 Herbalife study to which the Company's senior executive had access. Sometime in  
17 late 2010 or early 2011, Herbalife commissioned Actionable Research to conduct a  
18 study of distributors who had left Herbalife. The resulting Herbalife Former  
19 Distributor Study, dated April 2011 (the "Actionable Report"), directly contradicts  
20 the Lieberman Report and the Nielsen Report.<sup>70</sup> Significantly, the Actionable  
21 Report reveals that:

22           a. 44% of former distributors joined Herbalife to supplement their  
23 income while only 17% joined to purchase product at a discounted price.  
24

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25 <sup>70</sup> The Actionable Report was nonpublic and known to Defendants throughout the  
26 Class Period. The Actionable Report was not made public until January 26, 2015.  
27 *Seeking Alpha*, "Leaked Internal Herbalife Survey Gives FTC More 'Actionable'  
28 Results" (January 26, 2015) <http://seekingalpha.com/article/2848956-leaked-internal-herbalife-survey-gives-ftc-more-actionable-results> (last accessed August 27, 2015).

1 This information directly contradicts the Lieberman Report’s finding that  
2 73% of distributors joined for product discounts.

3 b. 78% of the distributors were “active in the business,” meaning  
4 they were attempting to sell product and/or recruit new distributors. Of  
5 those “active in the business distributors,” 74% worked more than 20 hours  
6 per week. This information directly contradicts the Lieberman Report’s  
7 finding that 44% of distributors did not have an income expectation when  
8 signing up with Herbalife.

9 c. Only 55% of distributors sold at least half of their product to  
10 customers.<sup>71</sup> Nearly all of the remaining 45% consumed the products  
11 personally or “gave them” to immediate family.

12 75. The Actionable Report revealed that Herbalife’s distributors were not  
13 adhering to the 70% Rule, since only half of the distributors were selling half of  
14 their products to customers. The same inventory loading dangers that Johnson first  
15 identified in 2005 were still present during the Class Period. Moreover, as made  
16 clear by the testimony in the *Ford* action, Herbalife was doing nothing to remedy  
17 its distributors’ violations of the 70% Rule.

#### 18 **IV. Defendants’ False And Misleading Statements**

##### 19 **A. False Statements Regarding Compliance With *Omnitrition* And** 20 **Herbalife’s Ability To Track Retail Sales**

21 76. In its 2010 Form 10-K, Herbalife falsely stated that:

22 We also are subject to the risk of private party challenges to the  
23 legality of our network marketing program. For example,  
24 in *Webster v. Omnitrition International, Inc.*, 79 F.3d 776 (9th Cir.  
25 1996), the multi-level marketing program of Omnitrition  
26 International, Inc., or Omnitrition, was successfully challenged in a  
class action by Omnitrition distributors who alleged that Omnitrition  
was operating an illegal “pyramid scheme” in violation of federal and

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27 <sup>71</sup> “Customers” is not defined, and it is unclear whether it combines distributors  
28 and non-distributors.

1 state laws. *We believe that our network marketing program satisfies*  
2 *the standards set forth in the Omnitrition case* and other applicable  
3 statutes and case law defining a legal network marketing system, in  
4 part based upon significant differences between our marketing system  
5 and that described in the Omnitrition case.<sup>72</sup>

6 77. This false statement was repeated in substantially identical form in  
7 Herbalife's 2011 Form 10-K.<sup>73</sup>

8 78. The previously emphasized statements were false and misleading  
9 because:

10 a. Herbalife admitted that at the time they were made, the  
11 Company could not distinguish between sales to distributors and sales to  
12 non-distributors. As *Omnitrition* held, “[i]f Koscot is to have any teeth, such  
13 a sale [within the distributor base] cannot satisfy the requirement that sales  
14 be to ‘ultimate users’ of a product.”

15 b. Because Herbalife could not distinguish between internal and  
16 external product sales, the royalty overrides and production bonuses paid to  
17 top distributors (which were the Company's “most significant expense”) were, under *Omnitrition*, “unrelated to the sale of the product to ultimate  
18 users.”

19 c. Only two months later, on July 5, 2012, Herbalife Principal  
20 Accounting Officer Bosco Chiu told the SEC that “we do not rely on the  
21 ‘70% Rule’ in any meaningful way,” contrary to the Company's perceived  
22 existing and historical Company practices.

23 d. Johnson has admitted that his statements regarding sales outside  
24 of the distribution network (and thus, the Company's compliance with the  
25

26 \_\_\_\_\_  
27 <sup>72</sup> 2010 Form 10-K at 21 (filed February 22, 2011).

28 <sup>73</sup> 2011 Form 10-K at 22 (filed February 21, 2012).

1 70% Rule) were not true, including that he “got in a lot of trouble” for  
2 speaking on the matter.

3 79. In its 2010 Form 10-K, Herbalife misleadingly stated that:

4 All of our officers and directors are subject to a permanent injunction  
5 issued in October 1986 pursuant to the settlement of an action  
6 instituted by the California Attorney General, the State Health  
7 Director and the Santa Cruz County District Attorney. We consented  
8 to the entry of this injunction without in any way admitting the  
9 allegations of the complaint. ***The injunction prevents us and our  
10 officers and directors from making specified claims in future  
11 advertising of our products and required us to implement some  
12 documentation systems with respect to payments to our  
13 distributors.***<sup>74</sup>

14 80. This false statement was repeated in substantially identical form in  
15 Herbalife’s 2011 Form 10-K.<sup>75</sup>

16 81. The previously emphasized statements were false and misleading  
17 because:

18 a. Despite being able to “peel back the onion” and thereby have  
19 purportedly unparalleled access to distributor sales data, Herbalife’s  
20 implementation of its documentation systems did not permit it to distinguish  
21 between sales to distributors and sales to non-distributors as the Permanent  
22 Injunction requires.

23 b. Herbalife has the documented ability, through the use of the  
24 customer information required to be provided on its wholesale and retail  
25 order forms, to ascertain which of its customers are distributor and which are  
26 not. Yet the Company has resorted to peddling the Lieberman and Nielson  
27 Reports which are inconsistent with each other and inconsistent with the  
28 nonpublic April 2011 Actionable Report.

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27 <sup>74</sup> 2010 Form 10-K at p. 20 (filed February 22, 2011).

28 <sup>75</sup> 2011 Form 10-K at 22 (filed February 21, 2012).

1 82. At the September 7, 2011 Barclays Capital Back to School Consumer  
2 Conference, DeSimone misleadingly told the public that Herbalife's computer  
3 systems:

4 [P]rovide[] great visibility. *We get daily sales updates.*

5 \* \* \*

6 *[W]e have a detailed distributor database that gives us dozens of*  
7 *metrics on each distributor.* It is really too much information to look  
8 at, but you identify your outliers, and you find distributors that are  
9 performing very well and you find out why. And if they're  
10 performing well because they have a nuance for the business model  
11 that's valuable, then we commercialize it globally. We have a lot of  
12 access to distributor performance also.

13 83. At the April 24, 2012 Barclays Capital Retail and Restaurants  
14 Conference, Vice President of Investor Relations Amy Green similarly boasted of  
15 Herbalife's technological prowess:

16 [W]hat we look at, we do have from a technology standpoint have the  
17 ability to do deep dive within the – into a distributorship or into either  
18 from corporately we can look at a region, a country, a city, the  
19 different layers, *you can kind of peel off the onion to see what kind*  
20 *of granularity you want to look at. You can look at an individual*  
21 *distributorship, you can look at the whole lineage of a distributor*  
22 *that has a downline.* But it's not so much looking at a saturation  
23 analysis, it's more looking at what the opportunity says because I'm a  
24 distributor<sup>77</sup> and I'm looking at my tool, the distributor only sees their  
25 business.

26 84. The previously emphasized statements were false and misleading  
27 because Herbalife admitted that it was unable to distinguish between sales to  
28 distributors and sales to non-distributors, which is required under *Omnitrition* and  
the Permanent Injunction, and one factor used to distinguish pyramid schemes  
from legitimate MLMs.

85. On May 1, 2012, the Company held an earnings call to discuss its 1Q  
2012 financial results. During the Q&A session, David Einhorn, founder and

26 \_\_\_\_\_  
27 <sup>76</sup> September 7, 2011 Barclays Capital Back to School Consumer Conference.

28 <sup>77</sup> April 24, 2012 Barclays Capital Retail and Restaurants Conference.

1 president of Greenlight Capital, posed several questions which resulted in the  
2 following exchange between him and Walsh:

3 Q. [Einhorn]: What is the percentage [of final product sales] that is  
4 actually sold to consumers that are not distributors?

5 A. [Walsh]: We don't have exact percentage, David, because we  
6 don't have visibility to that level of detail.

7 Q. [Einhorn]: Do you have an approximation?

8 A. [Walsh]: So again, *going back to our 70 percent rule, we*  
9 *believe that it's at 70 percent or potentially in excess of that.*

10 86. The previously emphasized statement was false and misleading  
11 because:

12 a. Herbalife had no reasonable basis to make this statement  
13 because the testimony of its executives in the *Ford* case revealed that the  
14 Company did not enforce the 70% Rule and that those responsible for  
15 training distributors on its meaning and application have admitted that they  
16 are unaware of the Rule.

17 b. Just two months later, on July 5, 2012, Herbalife Principal  
18 Accounting Officer Bosco Chiu told the SEC that "we do not rely on the  
19 '70% Rule' in any meaningful way."

20 87. On May 2, 2012, Herbalife issued a Form 8-K in response to  
21 questioning from David Einhorn on the previous day. In the filing, Herbalife  
22 misleadingly stated:

23 Question #1 from David Einhorn: "First, how much of the sales that  
24 you'd make in terms of final sales are sold outside the network and  
25 how much are consumed within the distributor base?"

26 Answer: *We don't track this number and do not believe it is relevant*  
27 *to the business or investors.*

28 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.

1 The percentage of product of any multi-level marketing company  
2 consumed by its distributors is substantial. This is not surprising since  
3 consumers who are enthusiastic about the products become  
4 distributors in order to purchase at a discount and possibly to share  
5 and sell the products to others. *In addition, in order to minimize the  
6 risk of product being accumulated by distributors, the company has  
7 policies in place such as the 70% Rule, the Ten Customer Rule and  
8 the Buy Back policy.*

9 88. The previously emphasized statement was false and misleading  
10 because:

11 a. It revealed that Herbalife did not, in fact, track sales to non-  
12 distributors *at all* and did not even consider them to be “relevant,” despite  
13 *Omnitrition’s* holding that they contributed to the “sine qua non” sign of an  
14 illegitimate pyramid scheme.

15 b. This new disclosure further flipped the statement made just one  
16 day prior on its head. Instead of the majority of purchasers being consumers  
17 *outside* the distribution network, Herbalife admitted that the majority of  
18 customers were *inside* the network, or purchasing for self-consumption.  
19 This statement is directly contradicted by the Actionable Report, which  
20 revealed that nearly half of distributors joined Herbalife to supplement their  
21 income.

22 c. Just two months later, on July 5, 2012, Herbalife Principal  
23 Accounting Officer Bosco Chiu told the SEC that “we do not rely on the  
24 ‘70% Rule’ in any meaningful way.”

## 25 **B. False Statements Regarding The Composition Of Herbalife’s 26 Distributor Base**

27 89. In its 2010 Form 10-K, Herbalife broke out its distributors into two  
28 main groups, and then into three subgroups:

*Approximately 483,000 of our 2.1 million distributors have become  
sales leaders, which are comprised of approximately 434,000 sales  
leaders in the 73 countries where we use our traditional marketing  
plan and approximately 49,000 China sales employees and licensed  
business providers operating under our China marketing plan.  
Collectively, we refer to this group as “sales leaders.” We believe that  
the distributors who have not attained the sales leader level can be*

1 *segmented into three general categories based on their product*  
2 *order patterns: discount buyers, small retailers and potential sales*  
3 *leaders. We define discount buyers as customers who have signed up*  
4 *as distributors to enjoy a discount on their purchases; small retailers*  
5 *as product users and sales people who generate modest sales to*  
6 *friends and family; and potential sales leaders as distributors who*  
7 *are proactively developing a business with the intention of*  
8 *qualifying to become a sales leader. In 2010, excluding China,*  
9 *distributor orders for these three general<sup>78</sup> categories were*  
10 *approximately 29%, 57% and 14%, respectively.*

11 90. During the May 1, 2012 earnings call discussing Herbalife's 1Q 2012  
12 results, Einhorn continued his pointed questions for Company executives. During  
13 the Q&A session, the following exchange occurred during which DeSimone falsely  
14 and misleadingly stated:

15 Q. [Einhorn]: One last question, when you had your previous 10-  
16 K, you disclosed three groups of distributors at the low end –  
17 you called 29 percent self consumers, 57 percent small retailers,  
18 and 14 percent potential sales leaders. Then that disclosure did  
19 not repeat in the subsequent 10-K, so I have two questions. First  
20 of all, how do you track that and how do you characterize and  
21 know which ones are which? And second, why did you stop  
22 disclosing that in the last 10-K? Is that something that you've  
23 stopped tracking or just stopped disclosing?

24 A. [DeSimone]: David, hi, this is John. The criteria for grouping  
25 distributors into different classes was based off of their volume  
26 purchases. *We're making assumptions that people below a*  
27 *certain volume weren't doing the business, they were buying*  
28 *self consumption.* And I don't remember the exact amounts,  
but I can get it to you after the call. It's how we delineated  
between the three classes. The reason we took it out of 10-K is  
a change in CFO, from Rich to me. *I didn't view it as valuable*  
*information to the business or to the investors.* However we  
can easily provide the exact same breakout going forward, if  
you'd like. I could email it to you and to our investors. Again, I  
don't remember the exact delineation between the three classes  
but I can certainly get it to you. Our objective is to be  
completely transparent.

Q. [Einhorn]: Thanks, I'd appreciate that sort of follow up, that  
would be helpful. Thanks so much, guys.

78 2010 Form 10-K at 5.

1 91. In the Form 8-K filed the next day, on May 2, the Company falsely  
2 amended and elaborated on certain answers to Einhorn's questions from the  
3 previous day:

4 Question #3 from David Einhorn: "When you had your previous 10-  
5 K, you disclosed three groups of distributors at the low end. You  
6 called 29 percent self consumers, 57 percent small retailers and 14  
7 percent potential sales leaders, and then that disclosure did not repeat  
8 in the subsequent Form 10-K. I have two questions; first, how do you  
9 track that and how do you characterize and know which ones are  
10 which? And second, why did you stop disclosing that in the last 10-K?  
11 Is that something that you stopped tracking or just stopped  
12 disclosing?"

13 Answer: We segment the distributors who have not attained the  
14 supervisor level into three general categories based on their product  
15 order patterns: discount buyers, small retailers and potential  
16 supervisors. We define discount buyers as customers who have signed  
17 up as distributors to receive a discount on their purchase; small  
18 retailers as product users and sales people who generate modest sales  
19 to friends and family; and distributors who are actively developing a  
20 business with the intention of qualifying to become a supervisor. *We  
21 did not include the percentages from the 2011 Form 10-K in our  
22 more recent filings because we do not view the information as  
23 valuable to the business or to investors.* For complete transparency,  
24 however, the full year 2011 information is as follows:

- 25 • *Discount buyers were 27 percent (distributors who receive a 25  
26 percent discount);*
- 27 • *Small retailers were 61 percent (distributors who receive a 35  
28 percent discount);*
- *Potential supervisors were 12 percent (distributors who receive a  
42 percent discount).*

92. The previously emphasized statements were materially false and  
misleading because:

a. Herbalife's "assumptions" based on purchase volume were  
directly contradicted by the Actionable Report, which revealed that nearly  
half of distributors joined Herbalife to supplement their income.

b. Herbalife had no way of verifying that the this purchased  
volume was legitimate. The Company did not audit distributors to enforce  
the 70% Rule, and the Company's Chief Accounting Officer later informed

1 the SEC that the Company did not rely upon the Rule in “any meaningful  
2 way.”

3 **C. False Statements Regarding Herbalife’s Certification of**  
4 **Disclosure**

5 93. Pursuant to Exchange Act Rule 13a-14(a), Defendant Johnson signed  
6 the following certifications in Herbalife’s 2010 Form 10-K and 2011 Form 10-K:

7 I, Michael O. Johnson, certify that:

8 1. I have reviewed this Annual Report on Form 10-K of  
9 Herbalife Ltd.;

10 2. Based on my knowledge, *this report does not contain any*  
11 *untrue statement of a material fact or omit to state a material fact*  
12 *necessary to make the statements made, in light of the circumstances*  
13 *under which such statements were made,*<sup>79</sup> *not misleading with respect*  
14 *to the period covered by this report . . . .*

15 94. The previously emphasized statements were materially false and  
16 misleading because Johnson described himself as “100% engaged,” to the point of  
17 “OCD.” Since at least 2005 he was aware of the problems that the 70% Rule and  
18 *Omnitrition* were intended to counteract. Yet he certified the Forms 10-K despite  
19 knowing that the statements regarding compliance with *Omnitrition* (§76, above)  
20 and the classification of Herbalife’s distributor base (§89, above), were materially  
21 false and misleading.

22 **V. The Truth Emerges: Herbalife Does Not Track Sales Or Adhere To The**  
23 **70% Rule In Violation Of Omnitrition And The Permanent Injunction**

24 **A. Loss Causation: The May 1-2, 2012 Partially Corrective**  
25 **Disclosures Send Herbalife’s Stock Tumbling**

26 95. On May 1, 2012, the Company held an earnings call to discuss its 1Q  
27 2012 financial results. During the Q&A session, David Einhorn, founder and  
28 president of Greenlight Capital, posed several questions which resulted in the  
following exchange with Walsh:

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<sup>79</sup> 2010 Form 10-K at Ex. 31.1 (filed February 22, 2011); 2011 Form 10-K at Ex. 31.1 (filed February 22, 2012).

1 Q. [Einhorn]: What is the percentage [of final product sales] that is  
actually sold to consumers that are not distributors?

2 A. [Walsh]: *We don't have exact percentage, David, because we*  
3 *don't have visibility to that level of detail.*

4 Q. [Einhorn]: Do you have an approximation?

5 A. [Walsh]: So again, *going back to our 70 percent rule, we*  
6 *believe that it's at 70 percent or potentially in excess of that.*

7 96. Herbalife's answers to Einhorn's May 1 questions constitute a  
8 partially corrective disclosure because they revealed, for the first time, previously  
9 nonpublic information: that, despite the requirements of *Omnitrition* and the  
10 Permanent Injunction, Herbalife was unable to distinguish sales to distributors  
11 from sales to non-distributors, even though it was required and had the  
demonstrated ability to do so.

12 97. Herbalife's May 1, 2012 answers to Einhorn's questions shocked the  
13 market with new, previously undisclosed nonpublic information. The conference  
14 call began at 11:00 am EDT and Einhorn began posing his questions at 11:36 EDT,  
15 which is the exact time that Herbalife stock began its steep decline. This was the  
16 direct and proximate cause of Herbalife's common stock price immediately  
17 plummeting \$14.02 per share – or 19.94% – to close at \$56.30. This price decline  
18 was statistically significant at the 95% confidence level. An intraday event study  
19 confirms the timing of the share price decline:  
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98. The media also quickly attributed the stock price decline to Herbalife’s answers to Einhorn’s questions, taking note not only of the questions, but more importantly of Herbalife’s failure to answer those questions with any specifics or reference to supporting data. The *Associated Press*, for example, described Walsh’s answers as “the big picture”:

**THE SPARK:** During Herbalife’s Tuesday morning call with analysts and investors, Greenlight Capital’s David Einhorn asked exactly how much of the company’s products are sold to consumers who are not distributors. Einhorn also asked why the company did not disclose its breakdown of different kinds of distributors in the last regulatory filing, while it had in previous quarters.

**THE BIG PICTURE:** Herbalife executives said on the call that they couldn’t provide specific numbers regarding the percentage of its products purchased by consumers, rather than by distributors, who then resell them. But they said that the company generally sells about 70 percent of its products to consumers, or to distributors for their own personal use.

The executives also attributed the lack of a distributor breakdown in the company’s last quarterly report to the hiring of a new chief

1 financial officer, who didn't realize how important those details are to  
investors.<sup>80</sup>

2 99. *The Wall Street Journal* noted that:

3 Herbalife Ltd.'s typically mundane quarterly earnings call became  
4 more interesting when a noted U.S. hedge-fund manager pressed the  
5 maker of nutrition and weight-loss products for details on its financial  
reporting.

6 Shares tumbled 20%, leaving company executives scrambling to  
defend the business Tuesday.<sup>81</sup>

7 100. *Business Insider* similarly explained that:

8 Herbalife . . . was a little more than 36 minutes into its conference call  
9 when the operator turned the call's second question over to David  
Einhorn of Greenlight Capital.

10 Seconds later the stock would collapse nearly 20 percent, erasing  
11 about \$2 billion in market cap.<sup>82</sup>

12 101. Despite Herbalife's admission, Walsh nonetheless informed investors  
13 that sales to non-distributors were 70% or potentially in excess of 70%. Thus,  
14 while investors had cause for alarm based on the revelation that Defendants had  
15 misrepresented Herbalife's ability to track data on this level, investors were  
16 reassured by Walsh's assurance that at *least* 70% of sales were to outside  
17 consumers, creating the false impression that while the "visibility" into sales was  
18 not as transparent as previously represented, it was still sufficient to accurately  
19 estimate the number of true outside retail sales. As detailed herein, Walsh's 70%  
20 representation meant that the vast majority of the Company's sales were to  
21 purchasers not connected with the Herbalife business opportunity, and that there  
22 was enormous genuine retail demand for the Herbalife shakes and diet products.  
23 Walsh's affirmation regarding the 70% figure was therefore highly material.

24 \_\_\_\_\_  
25 <sup>80</sup> "Shares of Herbalife plunge after Einhorn questions company executives on  
distribution system," *Associated Press Newswires*, May 1, 2012.

26 <sup>81</sup> Joan E. Solsman, "Herbalife's Surprise Plunge," *The Wall Street Journal*, May  
27 1, 2012.

28 <sup>82</sup> "David Einhorn Singlehandedly Crushed A Stock Today By Asking These  
Questions," *Business Insider*, May 1, 2012.

1           102. On May 2, 2012, Herbalife issued a Form 8-K in response to  
2 questioning from Greenlight Capital founder and president David Einhorn on the  
3 previous day. As detailed in Section IV, this statement was false. However, this  
4 statement was also a partially corrective disclosure. In the filing, Herbalife stated:

5           Question #1 from David Einhorn: “First, how much of the sales that  
6 you’d make in terms of final sales are sold outside the network and  
7 how much are consumed within the distributor base?”

8           Answer: ***We don’t track this number and do not believe it is relevant  
9 to the business or investors.***

10           Herbalife believes the majority of its distributors are discount buyers,  
11 who become distributors in order to purchase their favorite Herbalife  
12 products at a minimum discount of 25 percent (either directly from the  
13 company or from their upline distributor/supervisor). In addition,  
14 some of these distributors will also share with, or retail the products to  
15 other friends, family, and customers. The percentage of product of  
16 any multi-level marketing company consumed by its distributors is  
17 substantial. This is not surprising since consumers who are  
18 enthusiastic about the products become distributors in order to  
19 purchase at a discount and possibly to share and sell the products to  
20 others. ***In addition, in order to minimize the risk of product being  
21 accumulated by distributors, the company has policies in place such  
22 as the 70% Rule, the Ten Customer Rule and the Buy Back policy***

23           103. The 8-K revealed, for the first time, previously nonpublic information.  
24 Specifically, Defendants viewed compliance with *Omnitrition* and the Permanent  
25 Injunction as irrelevant to investors.

26           104. The news on May 2, 2012 further directly and proximately hastened  
27 Herbalife’s plummeting stock price. Herbalife’s stock price continued to plummet  
28 on May 2 and 3, to close down 6.39% to \$52.70 on May 2 on unusually heavy  
volume of 23,207,502, and down 12.33% to close at \$46.20 on unusually heavy  
volume of 24,933,903 on May 3, 2012. The price declines on May 2 and 3 were  
statistically significant at the 95% confidence level.

          105. *Bloomberg* directly attributed the three-day slide to the Company’s  
response to Einhorn’s questions, stating that “Herbalife . . . posted a record three-  
day decline in New York trading after hedge-fund manager David Einhorn

1 questioned the company’s disclosures.”<sup>83</sup> At the time, the May 2-3 drop was  
2 Herbalife’s largest two-day drop in nearly a decade.

3 106. Mainstream investors were understandingly appalled. A May 8, 2012  
4 *CNBC* article entitled “Reasons to Worry About Herbalife: Greenberg,”  
5 commented that:

6 [T]here are reasons for investors to worry.

7 \* \* \*

8 The top reason, as it turns out, was the first question Einhorn asked on  
9 the call: How much product is sold to customers outside the  
company?

10 In a response on its website and in an SEC filing, Herbalife said: “We  
11 don’t track this number and do not believe it is relevant to the  
business or investors.”

12 *Yet, based on my research and discussions with multi-level*  
13 *marketing experts<sup>84</sup> and former distributors, it may be the most*  
*relevant question.*

14 107. While the answers to Einhorn’s May 1 questions and the Company’s  
15 May 2 filing were partially corrective in that they exposed issues with respect to  
16 the Company’s internal retail sales, Defendants still nevertheless failed to reveal  
17 the entire truth to investors with respect to the amount of outside sales.  
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20 <sup>83</sup> *Bloomberg*, “Three-Day Decline on Einhorn Query” (May 3, 2012),  
21 [http://www.bloomberg.com/news/articles/2012-05-03/herbalife-posts-record-three-](http://www.bloomberg.com/news/articles/2012-05-03/herbalife-posts-record-three-day-decline-on-einhorn-query)  
22 [day-decline-on-einhorn-query](http://www.bloomberg.com/news/articles/2012-05-03/herbalife-posts-record-three-day-decline-on-einhorn-query) (last accessed August 27, 2015). A multi-day event  
23 window is not unusual in academic event studies or in analysis for securities  
24 litigation. Former SEC staff members have noted that a multi-day event period is  
25 common practice: “The main advice is to carefully identify the exact dates during  
26 which the information in question reached the market, and then restrict the window  
27 to a short period if possible, generally two or three days around each release of  
28 new information . . . . [D]epending upon market factors, the window often can  
extend beyond the close of trading the day after the public announcement.  
Mitchell, Mark L. and Jeffrey M. Netter, “The Role of Financial Economics in  
Securities Fraud Cases: Applications at the Securities and Exchange Commission,”  
*The Business Lawyer*, (February 1994), 49, pp. 545–590 at 558–9.

<sup>84</sup> *CNBC*, “Reasons to Worry About Herbalife: Greenberg” (May 8, 2012),  
<http://www.cnbc.com/id/47340065> (last accessed August 27, 2015).

1           **B. Loss Causation: The December 20, 2012 Corrective Disclosure**  
2           **Craters Herbalife's Stock**

3           **1. News Of Pershing Square's Short Position Hits The**  
4           **Markets On December 19**

5           108. At 1:58 pm on December 19, 2012, CNBC reported breaking news  
6 that Pershing Square founder and CEO Bill Ackman considered Herbalife to be a  
7 “pyramid scheme” and had held a short position in Herbalife common stock for 7-8  
8 months.<sup>85</sup> Though holding a short position, Ackman is notably not known as a  
9 short seller.<sup>86</sup> At 2:05 pm, Dow Jones News reported Herbalife's share price had  
10 dropped 11% before a trading halt.<sup>87</sup>

11           109. Ackman publicly stated that day that he had been examining Herbalife  
12 for about 15 months and that “[w]e have done our homework here.”<sup>88</sup> Importantly,  
13 Ackman did not release the details of his presentation on December 19, instead  
14 promising that he would “detail the reasons for his bet against Herbalife, which

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15 <sup>85</sup> “Pershing Square's Ackman Short Herbalife,” CNBC, December 19, 2012;  
16 Hedge Fund Manager Ackman Shorting Herbalife, Calls Company a ‘Pyramid  
Scheme’ – CNBC,” Dow Jones News Service, December 19, 2012.

17 <sup>86</sup> Ackman is an established and highly credible Wall Street hedge fund manager.  
18 He is not known as a short-seller. As of December 16, 2014, Pershing Square had  
19 only one other short position, which is undisclosed and comprises only 1% of its  
20 portfolio. Pershing Square International posted a return of 32.8 percent for the first  
21 10 months of 2014, making it the No. 1 fund in Bloomberg Markets' annual  
22 ranking of the best-performing large hedge funds. Ackman's past successes in  
23 shorting stock, which he rarely does absent extraordinary circumstances, include  
24 taking a short position in MBIA stock in 2002. He accused MBIA Inc., a triple-A  
25 rated bond insurer, of being insolvent and shorted the stock. For five years,  
26 virtually no one believed him. Finally, in 2007, the financial crisis exposed  
27 MBIA's troubles and the company's stock collapsed. *The Washington Post*, “The  
28 big bad ‘alpha wolf’? William Ackman, like it or not, sits atop the hedge-fund  
world” (January 23, 2015) [http://www.washingtonpost.com/business/the-big-bad-alpha-wolf-william-ackman-like-it-or-not-sits-atop-the-hedge-fund-world/2015/01/22/722b1ab6-a0e7-11e4-b146-577832eafcb4\\_story.html](http://www.washingtonpost.com/business/the-big-bad-alpha-wolf-william-ackman-like-it-or-not-sits-atop-the-hedge-fund-world/2015/01/22/722b1ab6-a0e7-11e4-b146-577832eafcb4_story.html) (last accessed August 27, 2015).

<sup>87</sup> “Herbalife Shares Drop 11% Before Halt,” *Dow Jones News Service*, December 19, 2012.

<sup>88</sup> “WSJ 2nd UPDATE: Pershing's Ackman Shorting Herbalife; Calls Company ‘Pyramid Scheme,’” *Dow Jones News Service*, December 19, 2012; “Pershing Square's Ackman shorts Herbalife,” *Reuters News*, December 19, 2012.

1 he's calling his 'new investment idea,' at what is being billed as an 'Inaugural  
2 Sohn Conference Special Event' on Thursday in New York."<sup>89</sup>

3 110. On December 19 Herbalife stock closed down 12.14%, at \$37.34.  
4 News releases attributed the decline to the news of Ackman's short position in  
5 Herbalife stock. For example, the *Los Angeles Times* observed that:

6 Investors dumped Herbalife Ltd. shares Wednesday after a news  
7 report that New York hedge fund manager Bill Ackman was shorting  
the stock and considered the nutrition company a "pyramid scheme."

8 The stock fell \$5.16, or 12.1%, to \$37.34 in heavy trading after CNBC  
9 first reported that Ackman's fund had been shorting the company for  
months. Short-sale investors seek to profit by betting on a decline in a  
10 company's stock.

11 Ackman, founder and chief executive of Pershing Square Capital  
Management, said he plans to explain his concerns about Herbalife "in  
12 exhaustive detail" on Thursday at a conference in New York.<sup>90</sup>

13 111. The events occurring on December 19, 2012 are not a corrective  
14 disclosure, since Ackman's detailed findings were not revealed until the next day.

## 15 2. December 20: Pershing Square Reveals Herbalife's 16 Fraudulent Practices

17 112. On December 20, 2012, Bill Ackman, along with two other Pershing  
18 Square employees, presented the *Millionaire* Presentation at the Sohn Conference  
19 Foundation Special Event in New York. The in-depth, 334-slide presentation  
20 lasted over three hours. Ackman summarized how his firm was able to put  
together such a massive undertaking:

21 *We started work in the summer of 2011. Our analysis became more*  
22 *intensive beginning in December of 2011. We went public in*  
23 *December of 2012, and our team of analysts and lawyers who*  
24 *worked on the idea had done an enormous amount of work over that*  
*period of time. We sought independent legal advice and an*  
*independent assessment* of Herbalife's legitimacy from a highly  
regarded law firm. We also gave a heads-up to one of the regulators

25 \_\_\_\_\_  
26 <sup>89</sup> "Pershing Square's Ackman shorts Herbalife," *Reuters News*, December 19,  
2012.

27 <sup>90</sup> "Herbalife is hit by fund firm's short bets," *Los Angeles Times*, December 20,  
28 2012.

1 prior to releasing the presentation, but we had not had any sort of  
2 meaningful dialogue with regulators prior to going public with the  
3 idea.<sup>91</sup>

4 113. During this year-and-a-half long analysis period, Pershing Square  
5 spent millions of dollars to conduct its investigation, which included:

6 a. Obtaining, reviewing and analyzing non-public documents  
7 including (i) Herbalife Australasia Pty Ltd. Earnings Certification Form (6-  
8 25-11); (ii) Manual de Entremiento para Distribuidores Herbalife; (iii)  
9 Statement of Average Gross Compensation of Irish Supervisors; (iv)  
10 Statement of Average Gross Compensation of US Supervisors – 2011; and  
11 (v) Nutrition Club presentations by independent distributors;<sup>92</sup>

12 b. Hiring a third party research firm to analyze 40,000 Formula 1  
13 eBay transactions over a five year period;<sup>93</sup>

14 c. Obtaining copies of *Herbalife Today* (which were only  
15 available to distributors) and analyzing 393 income testimonials therein  
16 covering a seven year period;<sup>94</sup>

17 d. Obtaining, reviewing and analyzing multiple non-public  
18 distributor presentations and video clips,<sup>95</sup> including from Shawn Dahl's  
19 Online Business Systems' lead generation business;<sup>96</sup>

20 e. Deploying on-the-ground investigators to Nutrition Club  
21 locations in Queens, New York and Omaha, Nebraska;<sup>97</sup>

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22 <sup>91</sup> *Seeking Alpha*, "An Exclusive Interview with Pershing Square's Bill Ackman,"  
23 (December 18, 2014), <http://seekingalpha.com/article/2765435-an-exclusive-interview-with-pershing-squares-bill-ackman> (last accessed August 27, 2015).

24 <sup>92</sup> *Millionaire* Presentation at 126 (Herbalife Australasia Pty Ltd. Earnings  
25 Certification Form (6-25-11)), 190 (Manual de Entremiento para Distribuidores  
26 Herbalife), 192 (Statement of Average Gross Compensation of Irish Supervisors),  
27 210 (Statement of Average Gross Compensation of US Supervisors – 2011), and 7  
28 (Nutrition Club presentations by independent distributors).

<sup>93</sup> *Id.* at 107.

<sup>94</sup> *Id.* at 197.

<sup>95</sup> *Millionaire* Slides at 7, 9, 53, 58, 73, 75, 78, 79, 86, 145, 173.

<sup>96</sup> *Id.* at 323.

1 f. Obtaining court documents and sworn deposition testimony  
2 from other lawsuits, including *McDowell v. Herbalife*, Case No. 00-2011  
3 (W.D. Wash.); *Herbalife Int'l of America, Inc. v. Ford et al.*, Case No. CV  
4 07-2529 (C.D. Cal.); and *Jacobs v. Herbalife Int'l, Inc.*, Case No. CV-02-  
5 1431 (C.D. Cal.);<sup>98</sup>

6 g. Analyzing international markets, including years of financial  
7 data from Japan, Israel, Spain, France, Germany, and Russia;<sup>99</sup>

8 h. Conducting in-depth research regarding multi-level marketing  
9 and pyramid schemes, including reviewing SEC and FTC guidance (*e.g.*  
10 “Bottom Line about Multilevel Marketing Plans” (Oct. 2009)), international  
11 and state anti-pyramid laws and consumer protection statutes, case law, and  
12 scholarly articles (*e.g.* Vander Nat, Peter J and Keep, William W. (2002),  
13 “Marketing Fraud: An approach for differentiating Multi-level Marketing  
14 from Pyramid schemes.” *Journal of Public Policy and Marketing*. Vol 21-1,  
15 139-151)), and consulting with and seeking out the opinions of outside legal  
16 experts;<sup>100</sup>

17 i. Reviewing and analyzing the Company’s regulatory filings,  
18 conference call transcripts, investor presentations, news articles and media  
19 appearances, as well as reviewed those of competitors (*e.g.*, GNC, Abbott  
20 and Unilever), fast food restaurants (*e.g.*, Burger King, McDonald’s and  
21 Starbucks), and other MLMs (*e.g.*, Avon, Tupperware).<sup>101</sup>

22 114. After the presentation was over, Ackman would tell Andrew Ross  
23 Sorkin (of *The New York Times* and *CNBC*) that he was motivated to expose  
24 Herbalife’s hidden fraud because he “simply want[ed] the truth to come out.”<sup>102</sup>  
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29 <sup>97</sup> *Id.* at 270.

30 <sup>98</sup> *See id.* at 164, 313, and 325.

31 <sup>99</sup> *Id.* at 251-256.

32 <sup>100</sup> *Id.* at 232.

33 <sup>101</sup> *Id.* 53, 245, 294.

34 <sup>102</sup> *Vanity Fair*, “The Big Short War,” (April 2013), <http://www.vanityfair.com/news/2013/04/bill-ackman-dan-loeb-herbalife> (last accessed August 27, 2015).

1           115. What set this effort by Pershing Square apart from other criticisms of  
2 Herbalife was the enormous investment of time, expertise, and money to reveal  
3 this information. The knowledge, resources, skills and expertise entailed in  
4 Pershing Square’s analysis makes it highly unlikely that anyone else could have  
5 conducted this investigation and revealed this information. Indeed, nobody else  
6 has undertaken a similar endeavor. So groundbreaking was Ackman’s analysis  
7 that shortly after the *Millionaire* Presentation hedge fund manager Whitney Tilson  
8 of T2 Partners LLC exclaimed that “*Pershing Square’s analysis of Herbalife is*  
9 *the most remarkable piece of investment analysis I have ever seen. Simply*  
10 *astonishing.*”<sup>103</sup>

11           116. Based upon the non-public information enumerated above, Pershing  
12 Square’s *Millionaire* Presentation revealed that Herbalife never abided by the 70%  
13 Rule – and thus could never have been in compliance with *Omnitrition* and the  
14 Permanent Injunction – and that the majority of its non-sales leaders were actual  
15 failed distributors.

16           117. Pershing Square revealed that in the past decade, Herbalife has only  
17 disciplined about ten distributors for violating the 70% Rule:  
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27 <sup>103</sup> *The Wall Street Journal*, “Witney Tilson: I’m Shorting Herbalife, Too”  
28 (December 26, 2012) <http://blogs.wsj.com/marketbeat/2012/12/26/whitney-tilson-im-shorting-herbalife-too/> (last accessed August 27, 2015).

## Herbalife's Lax Enforcement of Its Rules

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- ▶ Between 2006 and 2009, Herbalife possibly disciplined about 10, but fewer than 25, distributors for violating the 70% Rule (fewer than 1 out of every 100,000 distributors)

### Deposition of Jacqueline Miller in Herbalife v. Ford (2009):

**Mr. Stephens: (Ford Counsel)**

"Have more than 50 distributors since January of 2006 been disciplined for violating the 70-percent rule?"

**Ms. Miller: (Herbalife Employee)**

"I don't believe so."

**Mr. Stephens:**

"Have more than 25 distributors been disciplined for violating that rule?"

**Ms. Miller:**

"I don't believe so."

**Mr. Stephens:**

"Have more than 10 distributors been disciplined for violating the 70-percent rule?"

**Ms. Miller:**

"That's possible."

118. Indeed, Herbalife only audits distributors' compliance with its policies and procedures when distributors seek to return product to the Company:

## Herbalife's Lax Enforcement of Its Rules (*cont'd*)

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- ▶ Herbalife appears to audit compliance only when distributors seek to return product to the company

### Deposition of Jacqueline Miller in Herbalife v. Ford (2009):

**Mr. Stephens: (Ford Counsel)**

"How did you know about the 1200 [audits performed for the ten customer rule]?"

**Ms. Miller: (Herbalife Employee)**

"I asked."

**Mr. Stephens:**

"Who did you ask?"

**Ms. Miller:**

"Julie Delaney... She works for Jenny [Heinrich]... She's director or senior director. She's been in the refunds and repurchase area, and I think she might have responsibility for the audits."

- ▶ Distributors seeking to return product to the Company who cannot demonstrate compliance with the rules will have their previous rewards payments netted against their product return. In many cases, this "clawback" is greater than the returned value of the products

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1 119. Pershing Square also revealed that the majority of distributors did not,  
2 as Herbalife claimed, purchase products for personal consumption, but rather were  
3 in fact failed distributors.<sup>104</sup> Pershing Square exposed the stunning fact that 93%  
4 of Herbalife distributors earn no compensation:

5 And a *de minimus* fraction of Herbalife distributors earn enough to  
6 achieve the wealth and lifestyle in the [Doran Andry] video that you  
7 watched there so only the top 0.04 percent, one in about 2,500 of  
8 Herbalife distributors, even earn \$300,000 or \$336,000 a year and we  
9 based off these numbers on their U.S. compensation disclosure so  
10 other people around the world are less or even lower.

11 What I particularly like is the millionaire team, that is the name that  
12 Herbalife has given this level, median income \$97,000 a year before  
13 expenses. It's going to take a few years before you become a  
14 millionaire.

15 ***And then at the bottom of the pyramid, 93 percent of distributors  
16 earn no gross compensation as the company defines it.***<sup>105</sup>

17 120. Pershing Square then revealed Herbalife was able to hide this fact  
18 because it excluded a whole category of distributors, which it termed “inactive  
19 sales leaders,” and defined as those distributors who did not generate at least 2,500  
20 volume points after being promoted to Supervisor status.<sup>106</sup> Notably, this  
21 definition would only include Supervisors (the lowest form of sales leaders), since  
22 World Team members and above are required to generate at least 2,500 volume  
23 points in four consecutive months to maintain their status.<sup>107</sup> Ackman explained:

24 Herbalife leaves off 93 percent of the people who become distributors.  
25 They vanish, OK? How do they do this?

26 Well, first they remove what they call inactive sales leaders. These are  
27 people who make nothing. So the people that fail, they don't include  
28 in their so-called “disclosure chart”. Ninety-three percent of the

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29 <sup>104</sup> *Millionaire* Slide 122.

30 <sup>105</sup> *Millionaire* Tr. at 10. The Transcript is attached as Exhibit D.

31 <sup>106</sup> *Millionaire* Slide 179.

32 <sup>107</sup> Marketing Plan at 4.

1 people are off the chart. *They don't tell you this. You have to figure this out.*<sup>108</sup>

2 121. Indeed, it makes no economic sense for anyone to sign up as an  
3 Herbalife distributor, Pershing Square explained, to simply consume products. As  
4 part of its investigation, Pershing Square endeavored to find out how much people  
5 were actually paying for Herbalife's products. To do so, they engaged a third party  
6 research firm to shoulder the massive burden of analyzing 40,000 Formula 1 sales  
7 on eBay in the preceding five years. The results were stunning: the 750 gram  
8 canister of Formula 1 sold for an average of \$25 (a 32% discount to the \$37 SRP),  
9 while the 550 gram Formula 1 canister sold for a 38% discount.<sup>109</sup> Niteworks, in  
10 comparison, sold for a 50% discount on eBay.<sup>110</sup> Meanwhile, competitors'  
11 products, such as GNC's Lean Shake, sold for a premium on eBay.<sup>111</sup> Ackman  
12 explained:

13 OK, so Herbalife says the majority of distributors signed up on a  
14 discount buyers. They just like the product and [INAUDIBLE] the  
15 majority of the distributors are discount buyers and so they become  
16 distributors and [INAUDIBLE] Herbalife products at minimum  
17 discount of 25 percent.

18 But why would anyone pay \$55 to get a 25 percent discount on  
19 [INAUDIBLE] when those products are widely available online for  
20 discounts of 35 percent or more?<sup>112</sup>

21 122. Corroborating Pershing Square's stunning conclusion is the internal  
22 April 2011 study that Actionable Research conducted for Herbalife (discussed in  
23 Section III(E)) which shows that only 17% of distributors joined to purchase  
24 Herbalife products at discounted prices, while nearly half joined to supplement  
25

26 \_\_\_\_\_  
27 <sup>108</sup> *Millionaire* Tr. at 24.

28 <sup>109</sup> *Millionaire* Slide 107.

<sup>110</sup> *Millionaire* Slides 106-108.

<sup>111</sup> *Millionaire* Slide 109.

<sup>112</sup> *Millionaire* Tr. at 15.

1 their income and over three-quarters spent more than twenty hours per week  
2 attempting to do so.

3 123. Pershing Square found that when distributors did make money, they  
4 made it from recruiting other distributors, not from selling Herbalife products. In  
5 fact, Pershing Square's analysis revealed that distributors can earn over 10 times as  
6 much from recruitment as they do by selling Herbalife products.<sup>113</sup> Herbalife  
7 kindled these income fantasies by publishing testimonials in its distributors-only  
8 magazine, *Herbalife Today*. Pershing Square has found that, between 1997 and  
9 2004, *Herbalife Today* featured about 393 of these income testimonials. Taken  
10 together, the testimonials implied an average annual income of \$178,000 per year  
11 (which, Pershing Square would later disclose, a distributor would only have a  
12 chance of 1 in 5,000 chance of attaining).<sup>114</sup> It was impossible to earn this annual  
13 income as an Herbalife distributor without recruiting others and earning royalty  
14 overrides and production bonuses based off of them.

15 124. The *Millionaire* Presentation sent Herbalife common stock into  
16 another nosedive. As a direct and proximate result of the *Millionaire* Presentation,  
17 Herbalife stock declined 9.75%, to close at \$33.70 on December 20, 2012 on  
18 volume of 34,508,678. The stock continued its decline on December 21 as a direct  
19 and proximate result of the *Millionaire* Presentation, to close down 19.08% to  
20 \$27.27, on volume of 43,353,236. These stock price declines were statistically  
21 significant at the 95% level.

22 125. News outlets directly attributed Herbalife's shattered stock directly to  
23 Ackman. The *New York Post* observed on December 21 that "Ackman has sparked  
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26 \_\_\_\_\_  
27 <sup>113</sup> *Millionaire* Tr. at 19.

28 <sup>114</sup> *Millionaire* Slide 197.

1 a two-day, sell off of the company's shares . . . ."<sup>115</sup> *The Associated Press*  
2 similarly noted that Pershing Square's presentation "pummeled the company's  
3 stock."<sup>116</sup>

4 126. Indeed, market observers noted that shares of other MLMs had fallen  
5 along with the price of Herbalife shares, recognizing that Herbalife was driving the  
6 valuation of the MLM industry as a whole, and not vice versa:

7 Largely unremarked in the wake of Herbalife's (HLF) stock shredding  
8 the past week is how fellow multilevel marketers NuSkin (NUS) and  
9 Usana (USNA) have been also pummeled by stock investors. As HLF  
is down 40% this month amid Bill Ackman's push against the  
company, NUS has slumped 27% and USNA is off 25%.<sup>117</sup>

10 **C. Herbalife's Stock Price Rebound Is Attributable To Regular  
11 Market Forces**

12 127. The market's reaction to the corrective disclosures was swift and  
13 harsh. Untold numbers of investors lost staggering amounts of money, and billions  
14 of dollars' worth of market cap was erased in just minutes.

15 128. Between December 26, 2012 and Herbalife's January 10, 2013  
16 presentation, Herbalife's share price gradually increased. This increase, however,  
17 was caused, in part, by other large investors' significant purchases of Herbalife  
18 stock, not by any disapproval or falsification of Ackman's thesis.

19 129. Importantly, the remaining increases in Herbalife's share price can all  
20 be attributed to normal market activity, with no Herbalife-specific cause. Notably,  
21 *The Wall Street Journal Blog* observed that that valuations of shares of other multi-  
22 level marketers had moved with Herbalife: "[i]nvestors in direct-selling companies

23 <sup>115</sup> "Flare-up in war of words between Ackman, Herbalife," *New York Post*  
24 (December 21, 2012) <http://nypost.com/2012/12/21/flare-up-in-war-of-words-between-ackman-herbalife/> (last accessed August 27, 2015).

25 <sup>116</sup> "Herbalife calls analyst meeting amid firestorm," *Washington Examiner*  
26 (December 21, 2012) <http://www.washingtonexaminer.com/herbalife-calls-analyst-meeting-amid-firestorm/article/feed/2058437> (last accessed August 27, 2015).

27 <sup>117</sup> "Market Talk: NuSkin, Usana Have Been Caught in Herbalife's Wake," *Dow*  
28 *Jones News Service*, December 27, 2012.

1 have seen the value of their shares rise and fall with each twist in the Herbalife  
2 drama,” including NuSkin and Usana.<sup>118</sup>

3 130. The first trading day following the *Millionaire* Presentation on which  
4 there was a positive company-specific change in Herbalife’s share price was  
5 December 26, 2012. On this day, Herbalife stated that in connection with its  
6 dispute with Pershing Square, it had hired law firm Boies, Schiller law firm.<sup>119</sup>

7 131. From December 26 to the analyst meeting on January 10, 2013, share  
8 price increases were associated with news of other investors’ significant purchases  
9 of Herbalife stock:

10 a. Herbalife’s share price “surged” on December 31, 2012, on  
11 news that hedge fund manager Robert Chapman of Chapman Capital had  
12 taken a very large position in the stock.<sup>120</sup>

13 b. The largest share price increase during this period was on  
14 January 3, 2013, when there was further discussion of purchasing Herbalife  
15 shares by John Hempton of Bronte Capital, “Kid Dynamite,” and Chapman  
16 Capital.<sup>121</sup>

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21 <sup>118</sup> “Herbalife Drama shines Light on Direct-Selling Stocks,” *The Wall Street*  
22 *Journal Blog* (January 15, 2013) <http://blogs.wsj.com/marketbeat/2013/01/15/herbalife-drama-shines-light-on-direct-selling-stocks/> (last accessed August 27, 2015).

23 <sup>119</sup> “Global Finance: Herbalife Goes on Offensive,” *The Wall Street Journal*,  
24 December 26, 2012.

25 <sup>120</sup> “The Morning Brief: Herbalife Surges on News of Activist Chapman’s Stake,”  
26 *Absolute Return + Alpha*, January 1, 2013. A later article quantified the position as  
35% of the fund’s portfolio. “Activist Takes on Ackman Over Herbalife,” *CNBC*,  
January 2, 2013.

27 <sup>121</sup> “Bill Ackman’s bet against Herbalife triggers unusual response; Many are  
28 betting the famed hedge fund manager has reached the wrong conclusion and are  
bidding up the stock,” *The Globe and Mail (Breaking News)*, January 3, 2013.

1 c. On January 8, 2013, another date on which Herbalife's share  
2 price increased, Robert Chapman of Chapman Capital promised unspecified  
3 "big news" about Herbalife "sometime today or early tomorrow."<sup>122</sup>

4 d. On January 9, 2013, another increase in Herbalife's share price  
5 coincided with news of a major investor, Dan Loeb of hedge fund Third  
6 Point, taking a stake in Herbalife.<sup>123</sup>

7 132. Herbalife's "Investor Day," where it halfheartedly attempted to rebut  
8 Pershing Square's facts, drew the market's attention. When Herbalife began  
9 presenting its case, the share price spiked.<sup>124</sup> Yet as the *Los Angeles Business*  
10 *Journal* noted, market reactions were mixed:

11 On Thursday morning, Herbalife defended itself in a long presentation  
12 in New York. Its stock see-sawed during the day as investors parsed  
13 words, news, and reaction. Herbalife's chief, Michael Johnson, didn't  
14 help his case by being evasive under questioning.<sup>125</sup>

15 133. It is therefore not surprising that, by the end of the day, the market  
16 remained unconvinced of Herbalife's case. Herbalife shares closed at \$39.24,  
17 down a total of 1.78% from the previous day's close.

18 134. On January 14, 2013, Herbalife's shares increased by 9.5%. This  
19 news coincided with reports that analyst Timothy Ramey at D.A. Davidson & Co.  
20 "reiterated his buy rating on the company, suggesting that Herbalife's fourth-  
21 quarter earnings may exceed guidance."<sup>126</sup> *Bloomberg News* also reported that

22 <sup>122</sup> "Chapman says 'big news' regarding Herbalife coming, Gasparino says,"  
23 *Theflyonthewall.com*, January 8, 2013.

24 <sup>123</sup> "Herbalife rallies on Third Point's 8% stake," *CNN Wire*, January 9, 2013.

25 <sup>124</sup> "WSJ BLOG/MarketBeat: Herbalife's Wild Ride Continues: Shares Jump  
26 Again," *Dow Jones News Service*, December 28, 2012.

27 <sup>125</sup> "Leveling off multilevel marketing. (COMMENT)," *Los Angeles Business*  
28 *Journal*, January 14, 2013.

<sup>126</sup> Monday's movers: Apple closes at 11-month low; Dell surges 13% on buyout  
talk," *MarketWatch*, January 14, 2013,

1 Herbalife “shares jumped today after analysts at D. A. Davidson & Co. and  
2 Barclays Plc said Herbalife may announce stock repurchases this week.”<sup>127</sup>

3 135. On January 15, 2013, Herbalife’s shares increased 4.12%, which  
4 coincided with news that hedge fund manager John Hempton of Bronte Capital,  
5 whose fund owned shares in Herbalife, blogged about his visit to an Herbalife  
6 nutrition club in Queens, NY.<sup>128</sup>

7 **VI. Post Class Period Events Confirm Herbalife’s Fraudulent Practices**

8 136. Even prior to the end of the Class Period, the pressure began  
9 mounting on Herbalife as more voices joined the chorus calling for regulatory  
10 intervention to end the Company’s abusive practices. On January 9, 2013, *The*  
11 *New York Times* and the *Wall Street Journal* reported that the SEC opened an  
12 inquiry into the Company. The *New York Times* article stated that “[t]he agency’s  
13 enforcement unit has opened an investigation into the company, according to a  
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16 <sup>127</sup> “Herbalife Rises to Highest Price Since Ackman Pyramid Allegation,”  
17 *Bloomberg News*, January 14, 2013. It is well established in the academic finance  
18 literature that share repurchases can “signal a manager’s confidence in the future”  
19 and a “belie[f] that [the firm’s] stock is substantially undervalued.” (Brealey,  
20 Richard A., Stewart C. Myers and Franklin Allen, *Principles of Corporate*  
21 *Finance*, 8th ed., McGraw-Hill Irwin, 2006, pp. 420, 421.) On average,  
22 “announcements of open-market repurchase programs...resulted in an abnormal  
23 price rise of 2 percent,” while “announcements of offers to buy back shares above  
24 the market price have prompted a larger rise in the stock price, averaging about 11  
25 percent.” (*Id.*, citing Comment, R. and G. Jarrell, “The Relative Signaling Power of  
26 Dutch-American and Fixed Price Self-Tender Offers and Open-Market Share  
27 Repurchases,” *Journal of Finance*, (September 1991), 46, pp. 1243–1271.) This  
28 principle of finance was reflected in the Herbalife share price recovery of  
December 26 through January 15 described above, as recounted in the following  
news coverage just after that period: “The company said it plans to repurchase  
shares of Herbalife stock in fiscal 2013, pursuant to its existing authorization – a  
key sign of financial health that analysts and investors have expected.... [A]s the  
other hedge-fund managers announced their Herbalife investments and analysts  
predicted a share repurchase, the share price has recovered.” (“Herbalife reports  
stronger-than-expected fourth-quarter earnings,” McClatchy-Tribune Regional  
News, Winston-Salem Journal, January 17, 2013).

<sup>128</sup> “WSJ BLOG/MarketBeat: Ackman’s Bet on Herbalife: ‘Most Easily Falsified  
Bear-Thesis I Have Seen,’” *Dow Jones News Service*, January 15, 2013.

1 person briefed on the matter. The inquiry . . . is likely to examine the company’s  
2 sales practices.”<sup>129</sup>

3 137. Notably, a formal SEC investigation is typically launched when the  
4 SEC staff concludes after an informal inquiry that a securities law violation has  
5 occurred. Accordingly, the full extent of the fallout from Defendants’ fraud is  
6 unclear as the “Commission generally neither confirms nor denies the existence of  
7 an inquiry or investigation unless and until made a matter of public record in  
8 proceedings instituted before the Commission or in court” to “to protect the  
9 integrity and effectiveness of our investigative process and to preserve the privacy  
10 of the individuals and entities involved.”<sup>130</sup>

11 138. As the Class Period was drawing to a close, Herbalife’s problems also  
12 began to manifest outside of the U.S. The *New York Post* reported on January 28,  
13 2014 that Canada’s top consumer regulator had launched a formal probe into  
14 complaints that Herbalife runs a pyramid scheme.<sup>131</sup> The Competition Bureau,  
15 which is similar in scope to the U.S. FTC – except it can bring criminal charges –  
16 declined to comment. On this news, Herbalife’s stock price dropped approximately  
17 3% on January 28, 2013 from a closing of \$64.06 on January 27, 2014 to \$62.54  
18 on January 28, 2014.

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23 <sup>129</sup> *The New York Times*, “S.E.C. Opens Investigation Intro Herbalife” (January 9,  
24 2013), <http://dealbook.nytimes.com/2013/01/09/s-e-c-opens-investigation-into-herbalife/> (last accessed August 27, 2015).

25 <sup>130</sup> Letter from Mary Jo White to Senator Edward J. Markey (March 4, 2014),  
26 [http://www.markey.senate.gov/imo/media/doc/2014-03-04\\_SEC\\_re\\_Herbalife.pdf](http://www.markey.senate.gov/imo/media/doc/2014-03-04_SEC_re_Herbalife.pdf)  
(last accessed August 27, 2015).

27 <sup>131</sup> *New York Post*, “Canadian regulator probing Herbalife” (January 28, 2014),  
28 <http://nypost.com/2014/01/28/canadian-regulator-probing-herbalife/> (last accessed  
August 27, 2015).

1 139. On March 12, 2014, Herbalife disclosed that the FTC had begun a  
2 civil investigation into the Company's business practices,<sup>132</sup> and had requested  
3 documents and other information dating back to January 1, 2009. The Company's  
4 stock, which had been halted, fell as much as 17% following the news and closed  
5 down more than 7% on March 12, 2014. Fox Business later reported on October 7,  
6 2014 that after discussions with "attorneys, academics and former FTC officials,"  
7 Herbalife "[s]enior executives" were "expect[ing] some form of disciplinary  
8 action" as a result of the investigation.<sup>133</sup>

9 140. On April 11, 2014, the *Financial Times* reported that the United States  
10 Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI")  
11 had opened a criminal probe of Herbalife. Herbalife's stock price closed at \$51.48  
12 per share, a drop of more than 14% from a previous close of \$59.84 on April 10,  
13 2014.<sup>134</sup>

14 141. On April 14, 2014, the *New York Post* reported that New York  
15 Attorney General Eric Schneiderman is investigating Herbalife with at least two  
16 other whistleblowers coming forward and providing sworn testimony to  
17 Schneiderman's investigators.<sup>135</sup> Attorney General Schneiderman also fielded  
18 complaints from former distributors who say they were defrauded by Herbalife.

19 \_\_\_\_\_  
20 <sup>132</sup> The FTC's investigation was opened in the wake of the formal probe of  
21 Herbalife by the Canadian Competition Bureau announced on January 28, 2014.  
22 The Competition Bureau is similar in mission and scope to the FTC, except that it  
23 can bring criminal charges.

24 <sup>133</sup> "Herbalife Execs: All But Certain FTC Won't Shut Down Company" *Fox  
25 Business*, (October 7, 2014) [http://www.foxbusiness.com/industries/2014/10/07/  
26 herbalife-execs-all-but-certain-ftc-wont-shut-down-company/](http://www.foxbusiness.com/industries/2014/10/07/herbalife-execs-all-but-certain-ftc-wont-shut-down-company/) (last accessed  
27 August 27 2015).

28 <sup>134</sup> *Yahoo! Finance*, "FBI conduct a probe into Herbalife: sources" (April 11, 2014)  
[http://finance.yahoo.com/news/fbi-conducting-probe-herbalife-source-211828762-  
-sector.html](http://finance.yahoo.com/news/fbi-conducting-probe-herbalife-source-211828762--sector.html) (last accessed August 27, 2015).

<sup>135</sup> *New York Post*, "NY attorney general probes Herbalife: sources" (April 14,  
2014) [http://nypost.com/2014/04/14/ny-attorney-general-probes-herbalife-sources/  
\(last accessed August 27, 2015\).](http://nypost.com/2014/04/14/ny-attorney-general-probes-herbalife-sources/)

1 142. On April 17, 2014, yet another investigation into Herbalife was  
2 announced. A spokeswoman for Illinois Attorney General Lisa Madigan stated that  
3 Madigan’s office had “received consumer complaints and are investigating based  
4 on those complaints.” Latino groups in particular had urged Madigan to  
5 investigate the Company.<sup>136</sup>

6 143. After the close of the market on July 28, 2014, Herbalife shocked the  
7 investing public when it posted quarterly earnings and revenue that fell  
8 significantly short of Wall Street estimates. Notably, the earnings marked the first  
9 time since 2008 that Herbalife missed estimates. The Company also stated that  
10 2014 sales would be up to 3.5% lower than it predicted in April just three months  
11 earlier. In response Herbalife shares plummeted nearly 14%. A July 29, 2014 *New*  
12 *York Post* article entitled “Street Doubts Herbalife Growth Story After Earnings  
13 Miss,” commented on Herbalife’s declining U.S. market results after heightened  
14 regulatory scrutiny regarding the Company’s illegitimate practices.<sup>137</sup> The article  
15 noted that “[i]nvestors are no longer buying Herbalife’s growth story” after its first  
16 earnings miss in five years.

17 144. On November 3, 2014 Herbalife announced financial results for 3Q  
18 2014. For the second straight quarter, Herbalife failed to beat Wall Street’s  
19 expectations. Defendants reported a decline of over 90% in net income per diluted  
20 share, from \$1.32 to \$0.13. Commenting on the quarter, Defendant Johnson cited  
21 “changes” and “initiatives” such as “first order limits”<sup>138</sup> that were being

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22  
23 <sup>136</sup> “Madigan’s Office Investigating Herbalife Pyramid Scheme Allegations” (April  
24 17, 2014), [http://www.progressillinois.com/quick-hits/content/2014/04/17/  
25 madigans-office-investigating-herbalife-pyramid-scheme-allegations](http://www.progressillinois.com/quick-hits/content/2014/04/17/madigans-office-investigating-herbalife-pyramid-scheme-allegations) (last accessed  
26 August 27, 2015).

27 <sup>137</sup> *New York Post*, “Street doubts Herbalife growth story after earnings miss” (July  
28 29, 2014) [http://nypost.com/2014/07/29/street-doubts-herbalife-growth-story-  
after-earnings-miss/](http://nypost.com/2014/07/29/street-doubts-herbalife-growth-story-after-earnings-miss/) (last accessed August 27, 2015).

<sup>138</sup> The first order limit prevents a new distributor from ordering more than 1100  
volume points on their first order, which will lengthen the time it will take for a

1 implemented to “drive long term improvements in activity, productivity and  
2 retention of [Herbalife’s] Sales Leaders.” A *Forbes* article released that same day  
3 confirmed that Pershing Square’s revelations forced the Company to attempt to  
4 legitimize some of its practices, stating:

5 [I]t appears that billionaire hedge fund manager William Ackman’s  
6 campaign against Herbalife has forced the company to change its  
7 operations in a way that has made it harder for the company to keep  
8 delivering huge financial results in the face of heightened regulatory  
9 scrutiny. Prior to this summer, Herbalife had beaten earnings  
10 expectations for 21 straight quarters.<sup>139</sup>

11 145. Analysts following the Company similarly attributed Herbalife’s  
12 declining financial results to forced changes in its business practices. For example,  
13 a November 5, 2014 report issued by Barclays entitled “Doing the Right Thing  
14 Can Hurt stated: “[i]t is not exactly clear why these changes are being made so  
15 quickly, but the negative publicity around HLF’s business model probably  
16 provided a strong incentive to take action now.”

17 146. On this disappointing news of forced changes to its business practices,  
18 Herbalife’s stock price declined on November 4 by 19.84%, from \$55.90 to  
19 \$44.26.

20 147. On February 26, 2015, Defendants reported financial results for the  
21 fourth quarter and year end 2014. Compared with previous years, the results were  
22 nothing short of disastrous, and yet further proof that changed business practices  
23 Ackman caused were directly and negatively impacting Herbalife’s bottom line:  
24

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25 distributor to become a sales leader. The Company also implemented changes to  
26 its marketing campaign, because of the rampant misleading claims distributors  
27 were making about the efficacy of Herbalife’s products.

28 <sup>139</sup> “The Herbalife Earnings Machine Sputters, Shares Tumble” *Forbes* (Nov. 3, 2014) <http://www.forbes.com/sites/nathanvardi/2014/11/03/the-herbalife-earnings-machine-sputters-shares-tumble/> (last accessed August 27, 2015).

	Year Ended December 31,				
	2014	2013	2012	2011	2010
Net income	\$ 308.7	\$ 527.5	\$ 464.0	\$ 415.0	\$ 292.9
Growth Rate	<b>-41%</b>	<b>14%</b>	<b>12%</b>	<b>42%</b>	
<b>Earnings per share</b>					
Basic	\$ 3.58	\$ 5.14	\$ 4.13	\$ 3.53	\$ 2.46
Growth Rate	<b>-30%</b>	<b>24%</b>	<b>17%</b>	<b>43%</b>	
Diluted	\$ 3.40	\$ 4.91	\$ 3.94	\$ 3.32	\$ 2.32
Growth Rate	<b>-31%</b>	<b>25%</b>	<b>19%</b>	<b>43%</b>	

148. During the 4Q and YE 2014 earnings call on that day, Herbalife blamed the disastrous financial results directly on the changes that the Company was being forced to make:

The enhancements we started making to our marketing plan at the end of quarter two last year as part of our broader transition had a greater short-term impact than anticipated on volumes and net sales in key markets.

\* \* \*

[O]ur consolidated results were also negatively affected by the impact of declines in four markets, the U.S., Mexico, Brazil, and [Korea]... Each of these four markets is being impacted slightly differently by the marketing plan changes discussed by Michael. And importantly, we expect these changes to cycle through in 2015.

149. These disappointing results caused Herbalife’s share price to close down 10.94%, from \$34.82 to \$31.01.

150. On May 1, 2015, *Seeking Alpha* reported that Herbalife products are being stockpiled in warehouses across Mexico.<sup>140</sup> The stockpiling is part of practice called “field sales,” first mentioned in February 2015, whereby high-level distributors buying large volumes of products, storing them in a network of

<sup>140</sup> *Seeking Alpha*, “Herbalife’s Top Distributors Hold Warehouses Full Of Product In Mexico – Why?” (May 1, 2015) <http://seekingalpha.com/article/3127346-herbalifes-top-distributors-hold-warehouses-full-of-product-in-mexico-why> (last accessed August 27, 2015).

1 warehouses across Mexico and then selling them to lower-level distributors. While  
2 Herbalife purported to end the practice in 2014, a March 9, 2015 BTIG Research  
3 report nevertheless found that field sales accounted for 70% of all sales in  
4 Mexico.<sup>141</sup> *Seeking Alpha* reported that three Chairman’s Club members were  
5 among those who owned the warehouses.<sup>142</sup> One high-level distributor described  
6 to *Seeking Alpha* how several upper-level distributors banded together to buy  
7 products and then filled out a form instructing Herbalife to reallocate credit for  
8 those purchases to lower-level distributors. This allowed the top distributors to  
9 “help out” those beneath them while using their own purchases to earn  
10 commissions.<sup>143</sup> This practice directly contravenes Herbalife’s public  
11 compensation plan substantially undermines the Company’s goal of daily  
12 consumption. The high-level distributor further stated that “[g]roups have  
13 implemented strategies that go against independent sales of Herbalife products . . .  
14 ***Michael Johnson has reports about these discrepancies and anomalies.***”<sup>144</sup>

15 151. On May 4, 2005, Herbalife opaquely announced that it had closed the  
16 third amendment to extend its syndicated credit agreement,<sup>145</sup> which consists of a  
17 revolving credit facility and a term loan. “[A]mong other things” – which remain  
18 undisclosed – the amendment reduces the capacity on the Company’s revolving  
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21 <sup>141</sup> *Id.* According to February 23, 2015 Barclays research report, Herbalife  
22 purported to eliminate the use of field sales as of November 1, 2014.

23 <sup>142</sup> *Id.*

24 <sup>143</sup> *Id.*

25 <sup>144</sup> *Id.*

26 <sup>145</sup> *Herbalife Announces Amendment to Extend Credit Facility* (May 4, 2015)  
27 [http://files.shareholder.com/downloads/ABEA-48ZAJ9/4125919357x0x826169/  
2E035022-4B9A-454E-AD63-107AC417DF5E/HLF\\_News\\_2015\\_5\\_4\\_General  
28 Releases.pdf](http://files.shareholder.com/downloads/ABEA-48ZAJ9/4125919357x0x826169/2E035022-4B9A-454E-AD63-107AC417DF5E/HLF_News_2015_5_4_General_Releases.pdf) (last accessed August 27, 2015). Herbalife filed a Form 8-K  
containing this press release on May 6, 2015.

1 credit facility from \$700 million<sup>146</sup> to \$425 million, and extends the maturity of  
2 that \$425 million from March 9, 2016 until March 9, 2017. Significantly, upon  
3 closing the amendment Herbalife is required to pay a forced acceleration of \$51  
4 million on the revolving credit facility and an additional \$20 million on a term loan  
5 (for a total of \$71 million), and to further reduce the balance of the revolving credit  
6 facility to \$425 million (which matures on March 9, 2017) with an additional \$24  
7 million in payments in September 2015. Notably, only the maturity of the  
8 revolving credit facility was extended; the maturity of the term loan was not.  
9 Undisclosed in the press release, but mentioned by DeSimone during the 1Q 2015  
10 earnings call, is that the amendment also significantly restricts Herbalife's ability  
11 to buy back stock by requiring a dollar pay down on the term note for every dollar  
12 used to buy back stock.

13 152. Analysts quickly concluded that, as a result of these payments and the  
14 subsequent reclassification of Herbalife's short-term debt, the Company's creditors  
15 moved to reduce their exposure to the Herbalife.<sup>147</sup> One analyst wrote:

16 Since the disclosure of the FTC's CID, it seems apparent that  
17 Herbalife' bank group has been getting nervous. Cash management  
18 policies changed and changed abruptly last year. The company went  
19 from buying back stock at a furious pace to buying back none. . . . The  
20 truth, of course, is that the bank group dropped the hammer on the  
21 company and has been squeezing them ever since.

22 \* \* \*

23 To summarize, Herbalife paid its bankers \$7 million in order to  
24 receive a reduction in credit capacity from \$1.2 billion to \$425 million  
25 with the banker securing additional incentives for the company to

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25 <sup>146</sup> The press release did not disclose the total amount of the revolver, but in its  
26 2014 Form 10-K at 64, Herbalife stated that it was for \$700 million.

27 <sup>147</sup> "Herbalife: Good News on Debt Might Not Be Such Good News After All."  
28 *Seeking Alpha* (May 5, 2015), <http://seekingalpha.com/article/3138776-herbalife-good-news-on-debt-might-not-be-such-good-news-after-all> (last accessed August 27, 2015).

1 draw down its revolver even further in the future and collect \$100  
2 million in capital back no later than September 15.

3 When you consider the idea that as a general rule, banks want to be in  
4 the business of lending money it becomes apparent pretty quickly that  
5 this is one credit that this particular bank group can't wait to leave in  
6 the rear-view mirror.

7 What else can we glean from this little transaction?

8 Obviously, Herbalife had nowhere else to turn for access to credit.<sup>148</sup>

9 153. The reason for the banks' move to reduce their exposure to Herbalife  
10 soon became apparent. On May 5, 2015, Herbalife added yet another  
11 governmental investigation to the list – this time, with criminal consequences:

12 The Department of Justice recently sought information from the  
13 Company, certain of its Members and others regarding allegations  
14 being made about the business practices of the Company and its  
15 Members. In the future, these and other governmental authorities may  
16 determine to seek information from the Company and other persons  
17 relating to these same or other allegations.<sup>149</sup>

18 154. Just three months later, on August 4, 2015, Jim Berklas, Herbalife's  
19 Associate General Counsel abruptly resigned. That same day, the *New York Post*  
20 reported that at least one "veteran" Chairman's Club member "has become a  
21 whistleblower with law enforcement."<sup>150</sup> The *Post* also revealed that that the  
22 DOJ's probe was wide-ranging, with "a number of top executives and distributors"  
23 having "been subpoenaed by the Department of Justice."

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24 <sup>148</sup> "FTC: There's Never Been A Better Time To Arrest Herbalife," *Seeking Alpha*  
25 (May 7, 2015), <http://seekingalpha.com/article/3152946-ftc-theres-never-been-a-better-time-to-arrest-herbalife> (last accessed August 27, 2015).

26 <sup>149</sup> 1Q 2015 Form 10-Q at 13.

27 <sup>150</sup> "Top Herbalife exec leaves embattled company," *The New York Post*, August 4,  
28 2015, *available at* <http://nypost.com/2015/08/04/top-herbalife-exec-leaves-embattled-company/> (last accessed August 27, 2015).

1 155. With respect to the Company’s financial results, net sales were down  
 2 year-over year in every region but China:<sup>151</sup>

3 **3 Months Ended:**

4 <b>Net sales by geographic region:</b>	<b>3/31/2015</b>	<b>3/31/2014</b>	<b>% Change</b>
5 North America	\$ 226.7	\$ 247.8	(8.5)
6 Mexico	123.6	142.7	(13.4)
7 South and Central America	161.7	244.7	(33.9)
8 EMEA	186.4	211.2	(11.7)
9 Asia Pacific	242.8	280.4	(13.4)
10 China	164.2	135.8	20.9
11 <b>Total Net Sales</b>	<b>\$ 1,105.40</b>	<b>\$ 1,262.60</b>	<b>(12.5)</b>

12 156. With China’s low per capita GDP, these results further indicate that  
 13 the Company is continuing to target low-income and economically disadvantaged  
 14 demographics while sales in legacy markets such as North America continue to  
 15 decline.

16 157. The fact that Herbalife is changing its practices indicates that there are  
 17 genuine legal infirmities in its business model, which the Company is belatedly  
 18 trying to “reset” in the wake of tremendous regulatory scrutiny. The  
 19 implementation of these changes in the wake of the Pershing findings and  
 20 increased regulatory scrutiny have already harmed investors. The above financial  
 21 reports and reaction by the market and analysts following Herbalife evidence the  
 22 fact that Herbalife’s illegitimate business practices are not sustainable, and further  
 23 demonstrate the veracity of Pershing’s findings.

24 **VII. Johnson’s Highly Unusual And Suspicious Stock Sales Support A**  
 25 **Strong Inference of Scienter**

26 158. In addition to the facts detailed herein which set forth at minimum,  
 27 Defendants’ deliberate recklessness, Defendant Johnson was motivated to  
 28 perpetuate the fraudulent scheme in order to benefit from the artificially inflated

<sup>151</sup> 1Q 2015 Form 10-Q at 14.

1 price of the Company's common stock through sales that were highly suspicious in  
2 both amount and timing. While in possession of material, nonpublic information,  
3 Johnson sold 2,119,473 million shares of the Company's common stock at  
4 artificially inflated prices, reaping enormous insider trading proceeds of \$126  
5 million.<sup>152</sup>

6 **A. The Value And Amount of Sales Were Highly Unusual**

7 159. The Class Period sales of Herbalife stock by Defendant Johnson were  
8 highly unusual and suspicious as measured by (i) the total amount and percentage  
9 of shares sold; (ii) the contrast with Johnson's prior trading history; and (iii) the  
10 timing of sales. Such sales raise a strong inference of scienter.

11 **1. Johnson's Extraordinary Amount And Percentage Sold**

12 160. Johnson's massive \$126 million in proceeds from selling over 2.1  
13 million shares of Herbalife common stock in a relatively short time frame of 14  
14 months, from March 1, 2011 through May 1, 2012, made him the highest-paid  
15 CEO in America in 2011.<sup>153</sup>

16 161. Notably, the amount and percentage sold is highly suspicious.  
17 According to Herbalife's 2011 proxy filing, at the start of the Class Period,  
18 Johnson beneficially owned 2,571,668 shares of Herbalife common stock as of  
19 February 28, 2011, equating to 5,143,336 shares on a split-adjusted basis. From  
20 March 1, 2011 through May 1, 2012, Johnson sold 2,303,414 shares (on a split-  
21 adjusted basis) of Herbalife common stock representing 45% of the 5.14 million  
22 shares he held at the start of the Class Period, a material percentage of nearly half  
23 his holdings.

24 **2. The Sales Were Inconsistent With Prior Trading**

25 \_\_\_\_\_  
26 <sup>152</sup> On a split-adjusted basis, Defendant Johnson sold 2.30 million shares.

27 <sup>153</sup> *The Guardian*, "Michael Johnson of Herbalife: America's highest paid CEO in  
28 2011" (May 2, 2012) <http://www.theguardian.com/business/2012/may/02/michael-johnson-highest-paid-ceo> (last accessed August 27, 2015).

1           162. Johnson’s Class Period sales were not only large in both absolute and  
2 percentage terms, but also inconsistent with his selling activity during the three  
3 years prior to the Class Period, from January 1, 2008 through December 31, 2010  
4 (the “Comparison Period”).

5           163. During the entirety of the Comparison Period, Johnson sold 588,236  
6 shares of Herbalife stock, resulting in proceeds of \$28.9 million. During the three  
7 year span within the Class Period, Defendant Johnson engaged in a selling spree of  
8 2,119,473 shares for proceeds of \$126,060,784.<sup>154</sup> Adjusting for the May 2011  
9 stock split, Johnson sold the equivalent of 1,176,652 shares of Herbalife during the  
10 Comparison Period, still less than half the 2.30 million share amount he sold on  
11 split-adjusted basis during a short period at the beginning of the Class Period.

12           164. Thus, Defendant Johnson increased his stock sales by **3.7 times**, from  
13 588,326 shares to 2,119,473 shares; **2.1 times** on a split-adjusted basis. Defendant  
14 Johnson’s sales, as measured in dollars, is also striking. Defendant Johnson’s sales  
15 increased more than **four-fold** during the Class Period, from approximately \$28.9  
16 million during the Comparison Period to over \$126 million during the Class  
17 Period.

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27 <sup>154</sup> The \$126 million in proceeds from Johnson’s Class Period sales was  
28 approximately **102 times** the base salary Johnson earned as CEO during the Class  
Period. Defendant Johnson’s 2013 base salary was \$1,236,000.



### 3. The Timing Of The Stock Sales Was Suspicious

165. Also suspicious was the timing of Defendant Johnson's Class Period sales as they occurred during a period when Herbalife was announcing "record" quarterly and yearly financial results and was continually raising guidance which led to a more than doubling of Herbalife's stock price in a short time frame. Equally, if not more suspicious, was the fact that Johnson implemented an overlapping trading plan which doubled the number of shares he was selling during this time frame.



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166. Defendant Johnson had no sales during late-2012 and 2013, as the Company’s stock had drastically fallen in response to the market’s increased awareness regarding the Company’s fraudulent business model, in particular Einhorn’s questioning and Pershing Square’s investigation into Herbalife’s business practices. Defendant Johnson thus sold and profited before the impact of the investigations into Herbalife’s business practices would be made public and would negatively impact the stock price.

**B. The Trading Plans Adopted By Johnson Cannot Shield Him From Liability**

167. Johnson’s use of multiple 10b5-1 trading plans raises significant red flags and suspicion that the proper purpose of these plans was subverted. Johnson sold his shares via these 10b5-1 trading plans during the Class Period and all shares resulted from the exercise of stock options. All the sales were from the exercise of stock options and Johnson sold approximately 90% of the shares he exercised:

1 168. These trading plans activities raised a number of the red flags  
2 commonly applied by corporate law firms, the Securities and Exchange  
3 Commission, the Council for Institutional Investors and academic research:

4 a. Multiple and overlapping plans: Johnson operated three  
5 separate trading plans, including two that were overlapping.<sup>155</sup> Herbalife's  
6 own counsel in the *Ford* case warned that "a person should not maintain  
7 multiple Rule 10b5-1 plans for a single issuer because it raises suspicion that  
8 the person is seeking to evade the requirements of the rule . . . ."<sup>156</sup>

9 b. Abnormal stock divestment: the first trade under Johnson's first  
10 plan occurred three weeks after the plan adoption, with sales occurring every  
11 three months thereafter. The first trade of the second plan occurred more  
12 than four months after the second plan was adopted, with trades being made  
13 every two months thereafter. Trades under the third plan were made every  
14 two months, but since the second plan was still in operation, trades  
15 effectively occurred every month. This divestment resulted in Johnson  
16 selling nearly half of the shares he beneficially owned at the start of the class  
17 period during a single 14 month stretch.

18 c. Abnormal delay: the first trade of Johnson's first plan occurred  
19 just three weeks after the plan's adoption, while the first trade of the third  
20 plan occurred approximately five weeks after the plan's adoption. Best  
21 practices dictate a period of at least three months before the adoption of a  
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24 <sup>155</sup> The first plan was adopted on November 9, 2009; the second on November 19,  
25 2010; and the third on June 7, 2011 (while the second was still in operation).

26 <sup>156</sup> Frequently Asked Questions About Rule 10b5-1 Plans" (2015)  
27 <http://media.mofo.com/files/Uploads/Images/FAQ10b51.pdf> (last accessed August  
28 27, 2015); see also Brandon C. Parris, "Rule 10b5-1 Plans: Staying Out of  
Trouble," ABA Business Law Section, *Business Law Today*, Volume 17, Number  
5 May/June 2008.

1 trading plan and the execution of the first trade subject to that plan.<sup>157</sup> A  
2 trade that is executed pursuant to a 10b5-1 plan a very short period of time  
3 after adoption can heighten the risk for scrutiny, and potentially create the  
4 perception that the executive was attempting to use the 10b5-1 plan as cover  
5 for a trade based on material, nonpublic information.<sup>158</sup>

6 d. Irregular disclosure: Johnson's first plan was announced via a  
7 press release on November 11, 2009.<sup>159</sup> None of Johnson's other plans were  
8 announced (including the multiple overlapping plans).

9 e. Conflicting stock buybacks: during the Class Period Herbalife  
10 bought back approximately 15.4 million shares at a cost of approximately  
11 \$826 million, while during this time Johnson was engaged in large stock  
12 sales via his trading plans.

13 **VIII. Applicability of the Presumption of Reliance: The Fraud on the Market**  
14 **Doctrine**

15 169. At all relevant times, the market for Herbalife common stock was an  
16 open, efficient and well-developed market for the following reasons, among others:

17 a. Herbalife's common stock met the requirements for listing and  
18 was listed and actively traded on the NYSE under the symbol "HLF" and the  
19 NYSE is a highly efficient and automated market;

20 b. As a public company, Herbalife filed periodic public reports  
21 with the SEC;

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23  
24 <sup>157</sup> May 9, 2013 letter from CII to SEC (reiteration of a Dec 28, 2012 request)  
25 [http://www.cii.org/files/issues\\_and\\_advocacy/correspondence/2013/05\\_09\\_13\\_cii\\_letter\\_to\\_sec\\_rule\\_10b5-1\\_trading\\_plans.pdf](http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_09_13_cii_letter_to_sec_rule_10b5-1_trading_plans.pdf) (last accessed August 27, 2015).

26 <sup>158</sup> Brandon C. Parris, "Rule 10b5-1 Plans Staying out of Trouble," ABA Business  
27 Law Section, *Business Law Today*, Volume 17, Number 5 May/June 2008.

28 <sup>159</sup> <http://ir.herbalife.com/releasedetail.cfm?ReleaseID=543691> (last accessed August 27, 2015).

1           c.     The average weekly trading volume for Herbalife common  
2 stock during the Class Period was over 9.4 million shares, well above the  
3 threshold indicative of an efficient market;

4           d.     Herbalife regularly communicated with public investors via  
5 established market communication mechanisms, including through regular  
6 disseminations of press releases on the national circuits of major newswire  
7 services and through other wide-ranging public disclosures, such as  
8 communications with the financial press and other similar reporting services;

9           e.     Herbalife was followed by securities analysts employed by  
10 major brokerage firms, including Argus Research Corp., SunTrust Robinson  
11 Humphrey Inc., Barclays Capital Inc., Wedbush Morgan Securities, D.A.  
12 Davidson & Company, Caris & Company and S&P Capital IQ. Each of  
13 these reports was publicly-available and entered the public marketplace;

14           f.     Institutional investors reported owning a majority of all  
15 Herbalife common stock during the Class Period. Currently, over 90% of  
16 total shares are held by institutional owners, according to Yahoo Finance.  
17 This high level of institutional ownership of Herbalife common stock during  
18 the Class Period indicates that the market price was reflective of active  
19 trading by sophisticated and knowledgeable investors; and

20           g.     As a result of the foregoing, the market for Herbalife common  
21 stock promptly digested current information regarding the Company from all  
22 publicly-available sources and reflected such information in the Company's  
23 common stock price. Under these circumstances, all purchasers of  
24 Herbalife's common stock during the Class Period suffered similar injury  
25 through their purchase of the Company's common stock at artificially  
26 inflated prices and a presumption of reliance applies.

1           h.       A Class-wide presumption of reliance is also appropriate in this  
2       action under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah*  
3       *v. United States*, 406 U.S. 128 (1972), because Lead Plaintiff’s fraud claims  
4       are grounded in Defendants’ omissions of material fact of which there is a  
5       duty to disclose. As this action involves Defendants’ failure to disclose  
6       material adverse information regarding Herbalife’s business practices,  
7       financial results and condition and internal controls—information that  
8       Defendants were obligated to disclose during the Class Period but did not—  
9       positive proof of reliance is not a prerequisite to recovery. All that is  
10      necessary is that the facts withheld be material in the sense that a reasonable  
11      investor might have considered such information important in the making of  
12      investment decisions.

13   **IX. Inapplicability Of The Statutory Safe Harbor**

14           170. The statutory safe harbor provided for forward-looking statements  
15      under certain circumstances does not apply to any of the allegedly false or  
16      misleading statements pleaded in this Complaint. The statements alleged to be  
17      false or misleading herein all relate to then-existing facts and conditions. In  
18      addition, to the extent certain of the statements alleged to be false or misleading  
19      may be characterized as forward-looking, they were not adequately identified as  
20      forward-looking statements when made, and there were no meaningful cautionary  
21      statements identifying important facts that could cause actual results to differ  
22      materially from those in the purportedly forward-looking statements.

23           171. To the extent that the statutory safe harbor is intended to apply to any  
24      forward-looking statements pleaded herein, Herbalife and the Individual  
25      Defendants are liable for those false forward-looking statements because at the  
26      time each of those forward-looking statements was made, each of these Defendants  
27      had actual knowledge that the particular forward-looking statement was materially  
28

1 false or misleading. Defendants are liable for the statements pleaded because, at  
2 the time each of those statements was made, Defendants knew the statement was  
3 false and the statement was authorized and/or approved by an executive officer of  
4 Herbalife who knew that such statement was false when made.

5 **X. Class Action Allegations**

6 172. Lead Plaintiff brings this action as a class action pursuant to Rule 23  
7 of the Federal Rules of Civil Procedure on behalf of all persons who purchased or  
8 otherwise acquired Herbalife's common stock during the Class Period and were  
9 damaged thereby (the "Class"). Excluded from the Class are (i) Defendants; (ii)  
10 members of the immediate family of each Individual Defendant; (iii) any person  
11 who was an officer or director of Herbalife during the Class Period; (iv) any firm,  
12 trust, corporation, officer, or other entity in which any Defendant has or had a  
13 controlling interest; (v) any person who participated in the wrongdoing alleged  
14 herein; and (vi) the legal representatives, agents, affiliates, heirs, beneficiaries,  
15 successors-in-interest, or assigns of any such excluded party.

16 173. The members of the Class are so numerous that joinder of all  
17 members is impracticable. The disposition of their claims in a class action will  
18 provide substantial benefits to the parties and the Court. Throughout the Class  
19 Period, Herbalife's common stock was actively traded on the NASDAQ, an  
20 efficient market. As of February 12, 2014, the Company had more than 101  
21 million shares of common stock outstanding. While the exact number of Class  
22 members is unknown to Lead Plaintiff at this time, and can only be ascertained  
23 through appropriate discovery, Lead Plaintiff believes that there are at least  
24 hundreds of thousands of members in the Class.

25 174. There is a well-defined community of interest in the questions of law  
26 and fact involved in this case. Questions of law and fact common to the members  
27  
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1 of the Class predominate over questions that may affect individual Class members,  
2 including:

3 a. Whether Defendants violated the federal securities laws;

4 b. Whether Defendants misrepresented material facts concerning  
5 Herbalife;

6 c. Whether Defendants' statements omitted material facts  
7 necessary to make the statements not misleading in light of the  
8 circumstances under which they were made;

9 d. Whether Defendants knew or recklessly disregarded that their  
10 statements were false and misleading;

11 e. Whether Defendants engaged in perpetrating a manipulative  
12 and deceptive device and/or scheme and/or otherwise engaged in a  
13 fraudulent course of conduct;

14 f. Whether the Herbalife SEC filings issued during the Class  
15 Period, which contained financial information (*e.g.*, its Forms 10-K, 10-Q  
16 and 8-K) contained untrue or materially misleading statements;

17 g. Whether the prices of the Company's common stock were  
18 artificially inflated; and

19 h. The extent of damages sustained by Class members and the  
20 appropriate measure of damages.

21 175. The claims of Lead Plaintiff are typical of those of the Class.

22 176. Lead Plaintiff will adequately protect the interests of the Class and  
23 have retained counsel experienced in class action securities litigation. Lead  
24 Plaintiff has no interests that conflict with those of the Class.

25 177. A class action is superior to other available methods for the fair and  
26 efficient adjudication of this controversy.

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1 **XI. Jurisdiction And Venue**

2 178. The claims asserted herein arise under Sections 10(b) and 20(a) of the  
3 Exchange Act (15 U.S.C. §§ 78j(b), 78t(a), 78t-1) and the rules and regulations  
4 promulgated thereunder, including Rule 10b-5 (17 C.F.R. § 240.10b-5).

5 179. This Court has jurisdiction over the subject matter of this action  
6 pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. §  
7 78aa).

8 180. Venue is proper in this Judicial District pursuant to 28 U.S.C. §  
9 1391(b) and Section 27 of the Exchange Act. Herbalife maintains its corporate  
10 headquarters in this District, and many of the acts charged herein, including the  
11 preparation and dissemination of materially false and misleading information,  
12 occurred in substantial part in this District.

13 **XII. Claims Brought Pursuant to the Exchange Act**

14 **FIRST CLAIM FOR RELIEF**

15 **For Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5(b)**  
16 **(Against Defendants Herbalife And Michael Johnson)**

17 181. Lead Plaintiff repeats and re-alleges each and every allegation  
18 contained above as if fully set forth herein.

19 182. During the Class Period, Defendants disseminated or approved the  
20 false statements specified herein, which they knew or recklessly disregarded were  
21 misleading in that they failed to disclose material facts necessary in order to make  
22 the statements made, in light of the circumstances under which they were made,  
23 not misleading, and they contained material misrepresentations.

24 183. These Defendants violated Section 10(b) of the Exchange Act and  
25 Rule 10b-5 thereunder in that they: (i) employed devices, schemes, and artifices to  
26 defraud; (ii) made untrue statements of material facts or omitted to state material  
27 facts necessary in order to make the statements made, in light of the circumstances  
28

1 under which they were made, not misleading; and/or (iii) engaged in acts,  
2 practices, and a course of business that operated as a fraud or deceit upon Lead  
3 Plaintiff and others similarly situated in connection with their purchases of  
4 Herbalife common stock during the Class Period. As detailed herein, the  
5 misrepresentations contained in, or the material facts omitted from, these  
6 Defendants' public statements, concerned, among other things, the Company's  
7 improper business and operational practices.

8 184. These Defendants, individually and in concert, directly and indirectly,  
9 by the use of means or instrumentalities of interstate commerce and/or of the mails,  
10 engaged and participated in a continuous course of conduct that operated as a fraud  
11 and deceit upon Lead Plaintiff and the Class; made various false and/or misleading  
12 statements of material facts and omitted to state material facts necessary in order to  
13 make the statements made, in light of the circumstances under which they were  
14 made, not misleading; made the above statements with a reckless disregard for the  
15 truth; and employed devices and artifices to defraud in connection with the  
16 purchase and sale of securities, which were intended to, and did: (i) deceive the  
17 investing public, including Lead Plaintiff and the Class, regarding, among other  
18 things, Herbalife's business practices and operations; (ii) artificially inflate and  
19 maintain the market price of Herbalife stock; and (iii) cause members of the Class  
20 to purchase the Company's common stock at artificially inflated prices.

21 185. Defendant Herbalife is liable for all materially false and misleading  
22 statements made during the Class Period, as alleged above.

23 186. Herbalife is further liable for the false and misleading statements  
24 made by the Company's officers in press releases and during conference calls and  
25 at conferences with investors and analysts, as alleged above, as the makers of such  
26 statements and under the principle of *respondeat superior*.

1 187. Defendant Johnson, as a top executive and director of the Company, is  
2 liable as a direct participant in the wrongs complained of herein. Through his  
3 positions of control and authority as an officer and director of the Company, he  
4 was able to and did control the content of the public statements disseminated by  
5 Herbalife. Johnson had direct involvement in the daily business of the Company  
6 and participated in the preparation and dissemination of the false and misleading  
7 statements, as set forth above.

8 188. As described above, these Defendants acted with scienter throughout  
9 the Class Period in that they either had actual knowledge of the misrepresentations  
10 and omissions of material facts set forth herein, or acted with reckless disregard for  
11 the truth in that they failed to ascertain and to disclose the true facts, even though  
12 such facts were available to them.

13 189. Lead Plaintiff and the Class have suffered damages in that they paid  
14 artificially inflated prices for Herbalife common stock. Lead Plaintiff and the  
15 Class would not have purchased the Company's common stock at the prices they  
16 paid, or at all, if they had been aware that the market price had been artificially and  
17 falsely inflated by Defendants' misleading statements.

18 190. As a direct and proximate result of these Defendants' wrongful  
19 conduct, Lead Plaintiff and the Class suffered damages in connection with their  
20 purchases of Herbalife stock during the Class Period.

21 **SECOND CLAIM FOR RELIEF**

22 **For Violations Of Section 20(a) Of The Exchange Act**  
23 **(Against Defendant Michael Johnson)**

24 191. Lead Plaintiff repeats and re-alleges each and every allegation  
25 contained above as if fully set forth herein.

26 192. This Count is asserted against Michael Johnson for violations of  
27 Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a), on behalf of Lead Plaintiff  
28 and all members of the Class.

1           193. As alleged in detail above, Herbalife and Johnson committed a  
2 primary violation of the federal securities laws through its knowing and/or reckless  
3 dissemination of materially false and misleading statements and omissions  
4 throughout the Class Period.

5           194. During his tenures as an officers and director of Herbalife, Johnson  
6 was a controlling person of the Company within the meaning of Section 20(a) of  
7 the Exchange Act. By reason of his positions of control and authority as an officer  
8 and director of the Company, Johnson had the power and authority to cause  
9 Herbalife to engage in the wrongful conduct complained of herein. As set forth in  
10 detail above, Johnson able to and did control, directly and indirectly, and exert  
11 control over Herbalife, including the content of the public statements made by the  
12 Company during the Class Period, thereby causing the dissemination of the false  
13 and misleading statements and omissions of material facts as alleged herein.

14           195. In his capacity as CEO and Chairman of the Company, and as more  
15 fully described above, Johnson had direct involvement in the day-to-day operations  
16 of Herbalife and in the Company's financial reporting and accounting functions.  
17 Johnson was also directly involved in providing false information and certifying  
18 and/or approving the false statements disseminated by Herbalife during the Class  
19 Period, including filings with the SEC.

20           196. Johnson received various written and oral reports from different  
21 divisions of the Company, and attended in-person and telephonic meetings, on a  
22 routine basis. Johnson's knowledge of and participation in the Company's affairs  
23 through the various reports he received and/or had access to, and the meetings he  
24 attended, are described above.

25           197. By reason of his positions as an officer and director of Herbalife, as  
26 can be seen by his corresponding ability to influence and control the Company,  
27 Johnson is a "controlling person" within the meaning of Section 20(a) of the  
28

1 Exchange Act and had the power and influence to direct the management and  
2 activities of the Company and its employees, and to cause the Company to engage  
3 in the unlawful conduct complained of herein. Because of his positions, Johnson  
4 had access to adverse nonpublic financial information about Herbalife and acted to  
5 conceal the same, or knowingly or recklessly authorized and approved the  
6 concealment of the same. Moreover, Johnson was also involved in providing false  
7 information and certifying and/or approving the false statements disseminated by  
8 the Company during the Class Period regarding its improper business practices and  
9 operations. Johnson was provided with or had access to copies of the Company's  
10 reports, press releases, public filings and other statements alleged by Lead Plaintiff  
11 to be misleading prior to and/or shortly after these statements were issued and had  
12 the ability to prevent the issuance of the statements or cause the statements to be  
13 corrected.

14 198. As set forth above, Herbalife violated Section 10(b) of the Exchange  
15 Act by its acts and omissions alleged in this Complaint. By virtue of his position  
16 as a controlling person of the Company and as a result of his own aforementioned  
17 conduct, Johnson is liable pursuant to Section 20(a) of the Exchange Act, jointly  
18 and severally with, and to the same extent as the Company is liable under Section  
19 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, to Lead  
20 Plaintiff and the other members of the Class who purchased or otherwise acquired  
21 Herbalife common stock.

22 199. As a direct and proximate result of these Johnson's conduct, Lead  
23 Plaintiff and the Class suffered damages in connection with their purchase or  
24 acquisition of Herbalife stock.

25 **XIII. Prayer For Relief**

26 200. Wherefore, Lead Plaintiff prays for judgment individually and on  
27 behalf of the Class, as follows:  
28

1 a. Declaring this action to be a proper class action pursuant to  
2 Rule 23 of the Federal Rules of Civil Procedure;

3 b. Awarding Lead Plaintiff and the Class members damages,  
4 including interest;

5 c. Awarding Lead Plaintiff reasonable costs, including attorneys'  
6 and experts' fees; and

7 d. Awarding such equitable/injunctive or other relief for the  
8 benefit of the Class as the Court may deem just and proper.

9 **XIV. Jury Demand**

10 201. Lead Plaintiff demands a trial by jury for all issues so triable.

11 Dated: August 27, 2015

Respectfully submitted,

12  
13 By: /s/ Jon A. Tostrud

14 **TOSTRUD LAW GROUP, P.C.**  
15 Jon A. Tostrud (SBN 199502)  
16 1925 Century Park East, Suite 2125  
17 Los Angeles, CA 90067  
18 Telephone: (310) 278-2600  
19 Facsimile: (310) 278-2640  
20 E-mail: jtostrud@tostrudlaw.com

21 *Local Counsel and Counsel for Lead  
22 Plaintiff*

23 **SAXENA WHITE P.A.**  
24 Maya Saxena (*pro hac vice*)  
25 Lester R. Hooker (241590)  
26 Brandon T. Grzandziel (*pro hac vice*)  
27 5200 Town Center Circle, Suite 601  
28 Boca Raton, FL 33486  
Telephone: (561) 394-3399  
Facsimile: (561) 394-3382  
E-mail: msaxena@saxenawhite.com  
hooker@saxenawhite.com  
brandon@saxenawhite.com

*Lead Counsel and Counsel for Lead  
Plaintiff*



**Mailing Information for a Case 2:14-cv-02850-DSF-JCG Abdul Awad v. Herbalife Ltd. et al****Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

- **Patrick V Dahlstrom**  
pdahlstrom@pomlaw.com
- **Jonathan C Dickey**  
jdickey@gibsondunn.com
- **Daniel S Floyd**  
dfloyd@gibsondunn.com,jameson@gibsondunn.com
- **Lionel Zevi Glancy**  
lglancy@glancylaw.com
- **Michael M Goldberg**  
mmgoldberg@glancylaw.com,dmacdiarmid@glancylaw.com,info@glancylaw.com
- **Brandon T Grzandziel**  
brandon@saxenawhite.com
- **Lester R Hooker**  
lhooker@saxenawhite.com,e-file@saxenawhite.com
- **Sarah L Kushner**  
skushner@gibsondunn.com
- **Jeremy A Lieberman**  
jalieberman@pomlaw.com,disaacson@pomlaw.com
- **Francis P McConville**  
fmconville@labaton.com
- **Alexander K Mircheff**  
amircheff@gibsondunn.com,mostrye@gibsondunn.com,ineyman@gibsondunn.com,cnowlin@gibsondunn.com,lgadberry@gibsondunn.com
- **Robert Vincent Prongay**  
rprongay@glancylaw.com,info@glancylaw.com,echang@glancylaw.com,bmurray@glancylaw.com
- **Maya Saxena**  
msaxena@saxenawhite.com
- **Jon A Tostrud**  
jtostrud@tostrudlaw.com,acarter@tostrudlaw.com

**Manual Notice List**

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

# Exhibit A

**CERTIFICATION AND AUTHORIZATION OF LEAD PLAINTIFF**

I, Robert E. Jones, on behalf of the Oklahoma Firefighters Pension and Retirement System (“Oklahoma FF”), hereby certify, as to the claims asserted under the federal securities laws, that:

1. I am authorized in my capacity as Executive Director of Oklahoma FF to initiate litigation and to execute this Certification on behalf of Oklahoma FF.
2. I have reviewed the Third Amended Class Action Complaint for Violation of the Federal Securities Laws (“Complaint”) in this action and authorized the filing of this Certification in connection with the Complaint or any substantively similar complaint or amended complaint to be filed in the future.
3. Oklahoma FF did not purchase the securities that are the subject of this action at the direction of counsel, or in order to participate in any action arising under the federal securities laws.
4. Oklahoma FF is willing to serve as a representative party on behalf of the Class, including by providing testimony at deposition and trial, if necessary.
5. Oklahoma FF’s transactions in Herbalife, Ltd. common stock are set forth in the Schedule A attached hereto.
6. Oklahoma FF has sought to serve and was appointed as lead plaintiff and representative party on behalf of a class in the following actions under the federal securities laws filed during the three-year period preceding the date of this Certification:

*Reinschmidt v. Zillow, Inc., et al.*, Case No. 12-cv-02084-RSM (W.D. Wash.)

*Fialkov v. Microsoft Corporation, et al.*, Case No. 13-cv-11928-DPW (D. Mass.)

*In re Edwards Lifesciences Corp. Securities Litigation*, Case No. 13-cv-1463-JLS-RNB (C.D. Cal.)

*Santore v. Ixia, et al.*, Case No. 13-cv-8440-MMM-SH (C.D. Cal.)

*In re Tower Group International, Ltd. Securities Litigation*, Case No. 13-cv-5852-AT (S.D.N.Y.)

*In re K12, Inc. Securities Litigation*, Case No. 14-cv-00108-AJT-JFA (E.D. Va.)

*In re Rocket Fuel, Inc. Securities Litigation*, Case No. 14-cv-03998-PJH (N.D. Cal.)

*Oklahoma Firefighters Pension & Retirement System. v. Rayonier Advanced Materials, Inc., et al.*, Case No. 15-cv-546-TJC-PDB (M.D. Fla.)

*City of St. Clair Shores Police and Fire Retirement System v. Nationstar Mortgage Holdings Inc., et al.*, Case No. 15-cv-61170-WPD (S.D. Fla.)

7. Oklahoma FF has sought to serve as a lead plaintiff and representative party on behalf of a class in the following actions under the federal securities laws filed during the three-year period preceding the date of this Certification, but either withdrew its motion for lead plaintiff, was not appointed lead plaintiff or the lead plaintiff decision is still pending:

*Sanders v. Verifone Systems, Inc., et al.*, Case No. 13-cv-01038-EDJ (N.D. Cal.)

*Mazzaferro v. Aruba Networks, Inc., et al.*, Case No. 13-cv-2342-YGR (N.D. Cal.)

*Singh v. Orthofix International N.V., et al.*, Case No. 13-cv-5696-JGK (S.D.N.Y.)

*In re Velti plc Securities Litigation*, Case No. 13-cv-3889-JGK (N.D. Cal.)

*Hatamian v. Advanced Micro Devices, Inc. et al.*, Case No. 14-cv-226-PJH (N.D. Cal.)

*In re Ply Gem Holdings, Inc. Securities Litigation*, Case No. 14-cv-3577-JPO (S.D.N.Y.)

*Glore v. SanDisk Corp. et al.*, Case No. 15-cv-1455-VC (N.D. Cal.)

*Rihn v. Acadia Pharmaceuticals, et al.*, Case No. 15-cv-575-BTM (S.D. Cal.)

8. Oklahoma FF will not accept any payment for serving as a representative party on behalf of the Class beyond Oklahoma FF's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class, as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 27<sup>th</sup> day of August 2015.

Oklahoma Firefighters Pension and  
Retirement System

A handwritten signature in black ink, appearing to read "Robert E. Jones", is written over a horizontal line.

Robert E. Jones, Executive Director

<p><b><u>SCHEDULE A</u></b></p> <p><b>Oklahoma Firefighters Pension and Retirement System</b></p> <p><b>Transactions in Herbalife, Ltd.</b></p> <p><b>Period: February 23, 2011 through December 19, 2012</b></p>
---

**Beg. Hold.**                      13,400

<b>Common Stock Purchases</b>		
<b>Date</b>	<b>Shares</b>	<b>Price</b>
12/09/11	17,361	\$54.79
12/09/11	12,000	\$54.54

<b>Common Stock Sales</b>		
<b>Date</b>	<b>Shares</b>	<b>Price</b>
05/10/11	1,400	\$53.62
05/11/11	800	\$53.52
05/12/11	600	\$53.22
05/13/11	800	\$53.50
09/27/11	1,900	\$57.50
11/01/11	300	\$56.82
11/02/11	100	\$59.61
11/03/11	100	\$60.68
11/04/11	300	\$59.80
11/07/11	200	\$60.04
11/07/11	1,300	\$59.02

***Post CP Sales***

<i>01/29/13</i>	<i>3,600</i>	<i>\$39.47</i>
<i>01/30/13</i>	<i>1,900</i>	<i>\$36.46</i>
<i>01/31/13</i>	<i>100</i>	<i>\$36.67</i>
<i>02/11/13</i>	<i>9,126</i>	<i>\$36.16</i>
<i>02/11/13</i>	<i>3,263</i>	<i>\$36.16</i>
<i>02/12/13</i>	<i>6,749</i>	<i>\$36.00</i>

Notes: Transactions prior to May 18, 2011 adjusted for 2:1 stock split

# Exhibit B



*“With self-discipline most anything is possible.”*

**Theodore Roosevelt**  
26th President  
of the United States

FUN  
SIMPLE  
PRACTICAL

UNDERSTAND      PLAN      BUILD

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# 4

# Sales & Marketing Plan and Business Rules

## Overview

Herbalife's Marketing Plan offers you unique opportunities which can lead to higher levels of success and to great achievement. The plan was developed for Distributors by Herbalife's first Distributor and founder, Mark Hughes. The result is arguably the best Marketing Plan in the industry. Herbalife's Marketing Plan pays out up to 73% of product revenues to Distributors in the form of Retail and Wholesale Profits, Royalty and bonus income and incentives. This tested, proven business plan is designed to maximize rewards for effort and provide substantial and ongoing income.

The Herbalife opportunity and the Marketing Plan are identical for every Distributor. Each Distributor's success is dependent on two primary factors:

- The time, effort and commitment a Distributor puts into their Herbalife business and
- The product sales made by a Distributor and their downline organization.

These two factors raise the importance of a Distributor's responsibility to train, support and motivate their downline organization.

The following pages describe the different levels of Herbalife's Sales & Marketing Plan. Each level has specific qualifications and associated benefits to reward Distributors for their efforts and enhance their success.

### Becoming a Distributor – The Important First Step

The only required purchase in order to become an Herbalife Independent Distributor is the Herbalife Mini IBP (the smaller version of our official Distributor Kit). The Mini IBP (as well as the larger version) contains the Application for International Distributorship, which you must complete and submit in order to receive an Herbalife Identification Number and purchase products.

### Registration

You officially become an Herbalife Distributor when your properly completed Application has been processed and accepted by the Herbalife World Operations Home Office. This process takes only a few days, but in the meantime, you are entitled to buy Herbalife® products from or through your Sponsor, first upline Fully Qualified Supervisor or the Herbalife Sales Order Department at the applicable discount. Once your Application has been accepted, your contract with Herbalife becomes effective immediately, giving you all the rights, responsibilities and privileges of a Distributor.

### Income Opportunities

The Herbalife Marketing Plan provides many opportunities to earn income and other rewards.

### Immediate Retail Profit

25% to 50%

The profit from direct sales to customers.

### Daily Wholesale Profit

Up to 25%

The difference between what you pay for products and what Distributors in your personal organization pay for products.

### Monthly Royalty Override Income

Up to 5% on three levels of downline

As a Supervisor, you earn up to 5% on the Personal Volume of all of your Supervisors, three active levels of downline.

### Monthly Production Bonuses

TAB Team members can earn an extra 2% to 7% Organizational Production Bonus.

### Annual Bonuses

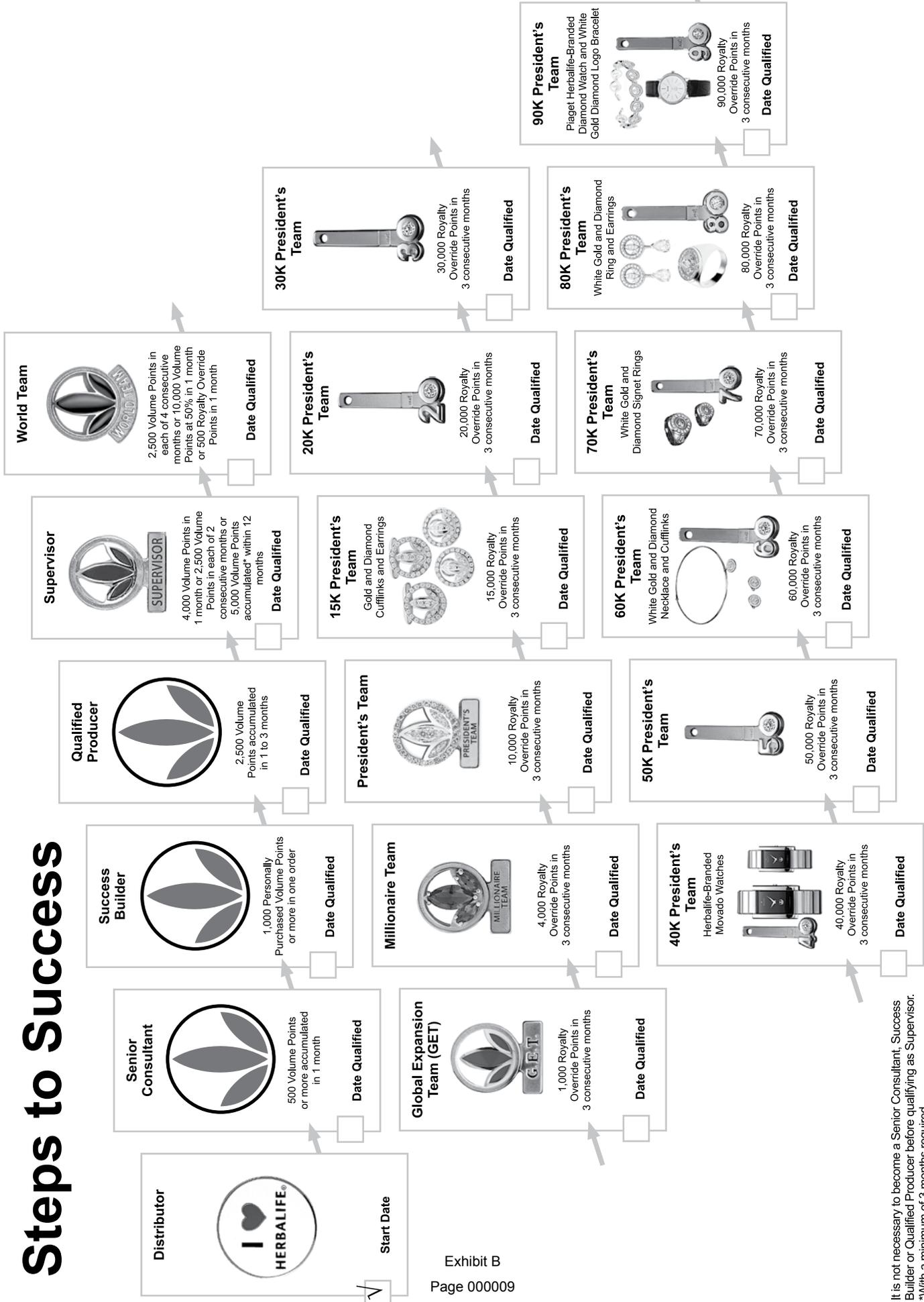
A bonus to Top Achievers in recognition of outstanding performance.

### Qualify for Special Vacations and Training Events

Distributors who qualify are rewarded for consistent performance and efforts in building their business.

**Plus other special promotions and bonuses throughout the year.**

# Steps to Success



It is not necessary to become a Senior Consultant, Success Builder or Qualified Producer before qualifying as Supervisor. \*With a minimum of 3 months required.

# President's Team Plus Awards and Recognition

**1 Diamond**



**Executive President's Team**

1 first line, Fully Qualified President's Team member in any line of your organization

**Date Qualified**

**2 Diamond**



**Senior Executive President's Team**

2 first line, Fully Qualified President's Team members in 2 separate lines of your organization

**Date Qualified**

**3 Diamond**



**International Executive President's Team**

3 first line, Fully Qualified President's Team members in 3 separate lines of your organization

**Date Qualified**

**4 Diamond**



**Chief Executive President's Team**

4 first line, Fully Qualified President's Team members in 4 separate lines of your organization

**Date Qualified**

**5 Diamond**



**Chairman's Club**

5 first line, Fully Qualified President's Team members in 5 separate lines of your organization

**Date Qualified**

**10 Diamond**



**Founder's Circle**

10 first line, Fully Qualified President's Team members in 10 separate lines of your organization

**Date Qualified**

**Cartier "Tank" Watch**



250,000 Royalty Override Points

**Date Qualified**

**Marquis Diamond Ring**



500,000 Royalty Override Points

**Date Qualified**

**Gold and Diamond Watch**



750,000 Royalty Override Points

**Date Qualified**

**Diamond Watch**



1 Million Royalty Override Points

**Date Qualified**

**1 Million Lifetime Achievement Award**



1 Million Volume Points

**Date Qualified**

**2 Million Lifetime Achievement Award**



2 Million Volume Points

**Date Qualified**

**3 Million Lifetime Achievement Award**



3 Million Volume Points

**Date Qualified**



UNDERSTANDING VOLUME

Throughout this manual, we use the term volume extensively. Volume is a key element in the Marketing Plan and is the basis for qualifying and working your way to higher levels.

Each Herbalife® product has a Volume Point value assigned to it that is equal in all countries (see order forms and price lists for exact information). Official Herbalife Distributor Kits (IBPs), literature items and sales tools do not count as volume. As you order products, you accumulate credit for the amount of Volume Points that are applicable to the products ordered. These accumulated Volume Points become your sales production and are used for purposes of qualifications and benefits.

Volume is credited to you in various ways depending on who purchased the volume, their status and discount, your own status as a Distributor and other factors of the Herbalife Sales & Marketing Plan. Volume is calculated on the accumulated Volume Point value of products ordered in a Volume Month.

**Explanation of Sales Volume Month**

**Definition of Volume Month**

Sales Volume is credited to and accumulated by a Supervisor on a Volume Month basis. The Volume Month begins on the first business day of the month and ends on the last business day of the month. If the last day is Sunday, the Volume Month will be extended to Monday. Likewise, if the last day of the month is considered a holiday, the month may be extended to the first business day after the holiday. Herbalife reserves the right to modify the Volume Month as it deems appropriate.

**Determination of Volume Month**

Sales Volume is credited to the Volume Month in which the order is both placed and full payment is received by Herbalife, except for orders that meet the rules and conditions that apply to Add-On Sales Volume.

Under no circumstances can volume be placed for a prior order month, with the exception of a Matching Volume order.

**Add-On Sales Volume**

All of the following conditions must be met for an order to be accepted as Add-On Sales volume:

1. Order must be placed no later than the designated last order day of a Volume Month, plus
2. Full payment must be made, or initiated, by the same last order day of the month. If payment is mailed, then the postmark must be stamped the designated last day. If the payment is a wire transfer, direct deposit or other bank transaction, a receipt must be supplied to verify the transaction date was on, or prior to, the last designated order day of the month, plus

3. Full payment must be received by Herbalife no later than the 5th day of the following month. If the 5th of the month falls on a Sunday or a holiday, then the payment must be received by the 4th of the following month.

If for any reason, a payment is not approved for acceptance, such as with a credit card, personal check or APS, then the order will be canceled and the Volume will not be applied unless another order was placed and paid within the time periods indicated.

There are a number of ways volume is credited in the Herbalife Marketing Plan. The following definitions and examples illustrate these:

**Personally Purchased Volume**

Personally Purchased Volume is the volume on orders purchased directly from Herbalife using your Herbalife Identification Number.

**Downline Volume**

As a non-Supervisor, Downline Volume is based on volume which is placed by your downline Distributors directly from Herbalife who are ordering between 25% to 42% discount. \*For Fully Qualified Supervisors, Downline Volume is credited as Personal Volume or Group Volume.

Downline Volume Example		
	Purchases/ Discount %	Downline Volume
<b>A Supervisor</b>	2,500 Volume Points @ 50% Discount	= *
<b>B Distributor</b>	500 Volume Points @ 35% Discount	= 900 Volume Points (C & D's Volume)
<b>C Distributor</b>	500 Volume Points @ 35% Discount	= 400 Volume Points (D's Volume)
<b>D Distributor</b>	400 Volume Points @ 25% Discount	= 0

**Personal Volume**

As a Fully Qualified Supervisor, Personal Volume is the volume purchased using your Herbalife Identification Number, as well as the volume purchased by your non-Supervisor downline, down to your first Fully Qualified Supervisor.

Non-Supervisor Distributors may purchase only from their Sponsor, first upline Supervisor (only if their Sponsor is not a Fully Qualified Supervisor) or directly from Herbalife.

Therefore, if you are a Fully Qualified Supervisor, all of your own orders purchased at 50% – as well as all orders purchased by your downline Distributors, Senior Consultants, Success Builders and Qualified Producers at 25% to 42% discount – count as your Personal Volume.

**Personal Volume Example**

	<b>Purchases/ Discount %</b>	<b>Personal Volume</b>
<b>A Supervisor</b>	1,500 Personal Volume Points + B, C & D's Volume	= 3,500 Personal Volume
<b>B Distributor</b>	1,400 Volume Points + C & D's Volume @ 42% Discount	= 2,000 Personal Volume
<b>C Distributor</b>	200 Volume Points + D's Volume @ 35% Discount	= 600 Personal Volume
<b>D Distributor</b>	400 Volume Points @ 25% Discount	= 400 Personal Volume

**Group Volume**

Group Volume is the volume on orders purchased at a temporary 50% discount by Qualifying Supervisor(s) in their qualifying month.

This Temporary 50% Volume is accumulated as Personal Volume for the Qualifying Supervisor who purchased it, but is Group Volume for the Fully Qualified Supervisor. The Fully Qualified Supervisor may earn Royalty Overrides on their Group Volume if all other Royalty Override requirements are met. (Refer to the "Qualifying as a Supervisor" and "Temporary 50%" sections of this book for complete details.)

**Group Volume Example**

	<b>Purchases/ Discount %</b>	<b>Personal Volume</b>
<b>A Supervisor</b>	2,500 Volume Points + B & C's Volume	6,500 Personal Volume + 1,000 Group Volume <b>7,500 Total Volume</b>
<b>B Distributor</b>	1,000 Volume Points @ Temporary 50% Discount + C's Volume	= 5,000 Personal Volume
<b>C Distributor</b>	4,000 Volume Points @ 42% Discount	= 4,000 Personal Volume

**Total Volume**

Total Volume is the combined total of a Supervisor's Personal Volume plus Group Volume. (See "Group Volume Example" for Supervisor A's Total Volume.) Total Volume is the factor on which some qualifications are based.

**Organizational Volume**

Organizational Volume is the accumulated Volume amount on which a Supervisor earns Royalty Overrides. (See the "Organizational Volume Example" on the following page.)

**Encumbered and Unencumbered Volume**

**Encumbered Volume**

Encumbered Volume is all volume produced by any Distributor qualifying for Supervisor in your personal organization.

**Unencumbered Volume**

Unencumbered Volume is all volume produced by anyone in your personal organization, down to the first qualified Supervisor, who achieves less than 2,500 Volume Points in one Volume Month, plus all your own Personal Volume. Therefore, this is volume that is not used by anyone for Supervisor qualification purposes.

The example on the following page illustrates the use of Encumbered and Unencumbered Volume for each of the Distributors.

**Matching Volume**

Matching Volume is the volume a sponsoring Supervisor must have through personal orders, or by Distributors in their personal organization in a given month, to equal or exceed the volume achieved by their downline Distributor(s) who are qualifying for Supervisor.

Matching Volume is how Herbalife verifies and validates the qualification of new Supervisors. Whenever a Supervisor sponsors a Distributor to the Supervisor position, the sponsoring Supervisor's Total Volume must be at least the same as the Total Volume of their downline Distributor(s) qualifying within that same month. Without adequate Matching Volume, the new Supervisor will go to the next upline Supervisor.

The Matching Volume example on the following page illustrates the amount of Personal Volume and Total Volume that must be achieved by the sponsoring Supervisor for the downline Distributors who are qualifying for Supervisor. In this example, "A" (the sponsoring Supervisor) must have at least 4,000 Personal Volume Points and at least 1,000 Group Volume Points in the month that "B" and "C" are qualifying for Supervisor, in order to confirm the volume they report on their Supervisor Qualification Form. This volume obligation for the Supervisor is

DISTRIBUTOR BENEFITS

Organizational Volume Example	
<b>A Supervisor</b>	2,500 Volume Points
<b>1st Level Supervisor</b>	10,000 Total Volume Points
<b>2nd Level Supervisor</b>	10,000 Total Volume Points
<b>3rd Level Supervisor</b>	10,000 Personal Volume Points

= **30,000 Organizational Volume**

Encumbered and Unencumbered Volume		
<b>A Supervisor</b>	2,500 Total Volume Points + B & C's Volume	= 2,500 Unencumbered 5,000 Encumbered to A
<b>B Distributor Qualifying Supervisor</b>	1,000 Total Volume Points + C's Volume	= 1,000 Unencumbered 4,000 Encumbered to B
<b>C Distributor Qualifying Supervisor</b>	4,000 Total Volume Points	= 4,000 Unencumbered to C

Matching Volume Example	
<b>A Sponsoring Supervisor</b>	<b>Matching Volume Requirement for Supervisor "A"</b> 4,000 Personal Volume + 1,000 Group Volume = 5,000 Total Volume
<b>B Qualifying Supervisor</b>	1,000 Volume Points @ Temporary 50% Discount = 1,000 Group Volume for "A"
<b>C Qualifying Supervisor</b>	4,000 Volume Points @ 42% Discount = 4,000 Personal Volume for "A"

**Retail Profit**

As a Distributor, you may purchase Herbalife products at a wholesale discount of 25% to 50%. As your volume increases, this discount will increase up to a maximum of 50% when you qualify as a Supervisor. You earn an immediate Retail Profit of 25% to 50% when you sell these products to customers, depending on volume. The difference between the discounted product price paid by you and the retail price paid by your customer is your Retail Profit. (See the "Retail Profit Example.")

Retail Profit Example		
Full Retail	Cost (at 25% discount)	Profit
\$100	\$75	\$25

**Wholesale Profit (Commissions)**

In addition to Retail Profit, as an Herbalife Distributor, you can also earn Wholesale Profit on products purchased by your Distributors. Your Wholesale Profit, also called Commissions, is the difference between the discounted price you pay for products and the discounted price paid by your Distributors.

If you sell products directly to your Distributors, you can earn up to 25% Wholesale Profit immediately. If your Distributors purchase their product directly from Herbalife, then Herbalife pays the difference in discount percentage to the Qualified Producer and/or Fully Qualified Supervisor on the order during the monthly Royalty Override process. These payments are called Commissions and are Wholesale Profit. (See the "Wholesale Profit [Commissions] Example" below.)

Wholesale Profit (Commissions) Example			
Retail	Your Cost (at 50%)	Your Distributor's Cost (at 25%)	Your Profit
\$100	\$50	\$75	\$25

Split Commission Example				
Total Retail	Discount Level	Your Distributor's Cost	Spilt Commissions	
			To the Qualified Producer (QP)	To the Supervisor
\$100	25%	\$75	\$17	\$8
\$100	25%	\$75	N/A (no QP)	\$25
\$100	35%	\$65	\$7	\$8
\$100	35%	\$65	N/A (no QP)	\$15

# Senior Consultant

## Improve Your Profits With the Distributor Discount Scale

As you and your non-Supervisor Downline Distributors sell more Herbalife products, your Total Volume increases and you may reach the next level of Senior Consultant. As such, you become entitled to buy products at a 35% or 42% discount off the retail price, giving you a greater profit margin.

### Distributor Discount Scale

Distributors purchase at a 25% discount for all orders until they become eligible for a higher discount. Thereafter, they begin purchasing on the Distributor Discount Scale each month as indicated below at no less than 35% discount.

The accumulating Volume Points can either come from orders placed by you directly with Herbalife, which are referred to as Personally Purchased Volume, or they can also come from orders your downline Distributors place with Herbalife, which are called Downline Volume. Both types of volume may be used to achieve Senior Consultant Level at 35% or 42% discount.

Distributor Level	Monthly Volume	Discount	Eligibility
<b>Distributor</b>	0-499 Volume Points	25%	Until you become eligible for a higher discount.
<b>Senior Consultant</b>	Achieve 500 Volume Points	35%	All orders will be placed at 35% discount until you become eligible for a higher discount.
<b>Senior Consultant</b>	Achieve 2,000 Volume Points	42%	Once you have achieved 2,000 Volume Points, you are eligible to place this order and all orders for the remainder of the Volume Month at a 42% discount.
<b>Success Builder</b>	Minimum 1,000 Volume Points (One Order)	42%	This order entitles you to a 42% discount on this order and all orders for the remainder of the Volume Month.

Distributor Level	Monthly Volume	Discount	Eligibility
<b>Qualified Producer</b>	Achieve 2,500 Personally Purchased Volume (PPV) in 1-3 months	42%	As a Qualified Producer you are entitled to a 42% discount on every order. (Must requalify annually) <b>Volume can be achieved with all PPV or utilizing up to 1,000 Downline Volume Points, with the remaining 1,500 as Personally Purchased Volume.</b>
<b>Qualifying Supervisor</b>	Achieve 4,000 Volume Points	Temporary 50%	Once 4,000 Volume Points are achieved in one Volume Month, additional orders are purchased at a Temporary 50% discount.
<b>Supervisor</b>	3 ways to qualify: See "Qualifying as a Supervisor" in this section of the Career Book for details	50%	As a Supervisor, you are entitled to a 50% discount on every order. (Must requalify annually.)

### Note:

All of your Personal Sales Volume, plus your Distributors' Sales Volume, count as your Total Volume. Once you are on the Distributor Discount Scale, your discount will never be less than 35% for as long as you remain an active Distributor. The more you sell, the greater your profit potential. Remember that each Volume Month you begin again at 35% and can work your way up the scale – up to 42% discount.

You may also earn Wholesale Profits on sales to your downline Distributors. For example: One of your Distributors places an order with you. Your discount is 35%, and your Distributor's is 25%. You earn 10% Wholesale Profit on your downline Distributor's order.

## Herbalife Advantage Program

### Activate your HAP order and immediately enjoy a 35% to 50% discount

The Herbalife Advantage Program (HAP) is open to all Distributors. HAP is a monthly automatic shipment program that provides Herbalife Distributors the following added benefits:

- 35% to 50% Discount - You'll save on the products you use most while you enjoy all the benefits of being a HAP member.
- Minimum Order - Your HAP order must be a minimum of 100 to a maximum of 1,000 Volume Points of products per month. Additional wholesale product purchases can be made at any time according to the Distributor Discount Scale.
- No Activation Fee - There is no activation fee to gain automatic service, regular communications or any of the other benefits associated with being a HAP Distributor.
- Sales Tax Savings - Since your HAP order is a personal use order and not intended for resale, you benefit from a sales tax savings.

- Placing Your Monthly HAP Order - Determine the products you use most or wish to sample from the Herbalife product line and place your personal automatic monthly HAP order over the phone with the Herbalife Advantage Program Department at 866-866-4744, or mail your completed HAP order form. Your monthly HAP order will be sent to you four business days after your monthly deadline.
- Changing Your Monthly Order - You have a choice of two HAP deadlines: the 11th or the 18th of each month. You may change your monthly order at any time during the month – from the day after your deadline, up to and including your deadline day.

## Success Builder

As an Herbalife Distributor, you have an opportunity to place a single order of 1,000 Volume Points purchased at a 42% discount. This qualifies you to become a Success Builder. As a Success Builder, you will be able to order at a 42% discount for the remainder of the Volume Month. If you place your Success Builder order directly with Herbalife, you are automatically updated to this prestigious position.

As a Success Builder, you will:

- Receive a 42% discount on your Success Builder Order
- Receive a 42% discount on additional purchases in the same Volume Month

## Qualified Producer

As an Herbalife Distributor, you have the opportunity to place your orders directly with Herbalife and accumulate personally purchased volume that counts towards your Qualified Producer status. When you achieve 2,500 personally purchased volume points within 1 to 3 months, you will become a Qualified Producer. **You can also reach this status by utilizing up to 1,000 Downline Volume Points, with the remaining 1,500 as Personally Purchased Volume.**

You are automatically updated to this prestigious position on the 1st of the month following the month your qualification volume was achieved.

You will be able to maintain your 42% discount as long as you retain your Qualified Producer status.

**A Qualified Producer is eligible to:**

- Earn a 42% Retail Profit
- Earn up to 17% Wholesale Profit (Commissions) on purchases made by downline Distributors at 25% or 35%.

## Requalification:

All Qualified Producers must requalify their status annually between February 1 and January 31 to maintain their rights and privileges. The requalification requirements are the same as the Qualified Producer requirements.

**In addition to requalifying their Qualified Producer status, a Qualified Producer must assure their Annual Processing Fee is current and paid.**

Failure to requalify each year by January 31, will cause a Qualified Producer to be demoted to Senior Consultant (35% discount level) and lose all of their Qualified Producer privileges.

## Supervisor

As an Herbalife Supervisor you will earn the highest discount of 50%, plus Retail and Wholesale Profit, and become eligible to earn Royalty Overrides (R.O.).

A Fully Qualified Supervisor is eligible to:

- Earn a 50% Retail Profit
- Earn up to 25% Wholesale Profit
- Earn an R.O. of 1% to 5% on their first-level Supervisor
- Earn an R.O. of 1% to 5% on their second-level Supervisor
- Earn an R.O. of 1% to 5% on their third-level Supervisor
- Attend special workshops and training sessions
- Qualify for special Supervisor recognition



## Qualifying as a Supervisor

There are three ways to qualify as a Supervisor:

- One-Month Qualification: Achieve 4,000 Volume Points in one Volume Month (with a minimum 1,000 of those 4,000 Volume Points Unencumbered).
- Two-Month Qualification: Achieve 2,500 Volume Points for two consecutive months (with a minimum of 1,000 of those 2,500 Volume Points Unencumbered for each month).
- Accumulated Qualification: Achieve 5,000 Personally Purchased Volume Points within 12 months (of which a minimum of 3 months is required). Distributors have the opportunity to qualify via this method when purchasing their orders directly with Herbalife. **You can use up to 1,000 Downline Volume Points with the remaining 4,000 as Personally Purchased Volume.**

### Supervisor Qualification Form:

If orders are placed directly with Herbalife, a Supervisor Qualification Form is not required. Distributors are promoted to Supervisor on the 1st of the month following the month their qualification volume was achieved.

It is necessary for a Supervisor Qualification Form to be completed and sent to Herbalife for all Distributors who are qualifying for Supervisor. These forms are available in the "Sample Forms" section of this book and from your upline Supervisor. This form must be completed in full with all necessary attachments and submitted on or after the 1st of the month following the qualification, and received by Herbalife no later than the 5th of the month. If a Distributor is completing a two-month Supervisor qualification, then a Supervisor Qualification Form must be completed and sent to Herbalife at the 1st of each month following the month the Qualifying Volume was achieved.

## Qualifying Supervisor

### Eligibility for Temporary 50% Discount

A Distributor who has completed a one-month Supervisor Qualification of 4,000 Volume Points is considered a **Qualifying Supervisor** until the 1st of the following month, when they become a **Fully Qualified Supervisor**. As a **Qualifying Supervisor**, they are eligible for a temporary 50% discount for the remainder of the Volume Month in which their 4,000 Volume Points were purchased.

All 50% discount orders must be purchased directly from Herbalife. If you have not purchased your qualifying order directly from Herbalife, your Supervisor must contact Herbalife to authorize you to purchase at the temporary 50% discount. The authorization, once approved, will be in effect until the 1st of the following month, at which time you will be entitled to all the privileges of a Fully Qualified Supervisor, assuming all other Supervisor requirements have been met.

Distributors who are qualifying for Supervisor in two consecutive months of 2,500 Volume Points, or accumulative 5,000 personally purchased Volume Points, are not eligible for a temporary 50% discount. They become eligible for a 50% discount on the 1st of the month following completion of their qualification when they are promoted to Fully Qualified Supervisor, providing all other Supervisor requirements have been met.

The upline Supervisor must have adequate Personal Volume credited with Herbalife in that month to qualify the Supervisor.

To assure volume on the order is credited properly, it is imperative that the Order Form be completed correctly. The Temporary 50% Purchaser must assure that their Name and Herbalife ID Number are entered on the Wholesale Product Order Form **Exhibit B**

the "Qualifying Supervisor - Temporary 50%" space to assure proper crediting of Volume. The name and Herbalife ID Number of the first upline "Fully Qualified Supervisor" who is authorizing the 50% discount must also be entered in the "Fully Qualified Supervisor" space. Adjustments to the order after the order is placed are not permitted. Volume purchased at Temporary 50% is considered Group Volume for the Fully Qualified Supervisor.

### Definition of Matching Volume

The definition of Matching Volume is the Total Volume a sponsoring Supervisor must achieve in any given Volume Month when their downline Distributor(s) are qualifying as Supervisor.

Whenever a Fully Qualified Supervisor sponsors a Distributor(s) to the Supervisor position, the sponsoring Supervisor's Total Volume must be at least the same amount as the Distributor's Volume within that same Volume Month. Supervisors are not permitted to qualify Distributors as Supervisors using Volume purchased in a prior Volume Month, unless an equal amount is purchased from Herbalife in the current month to replace it.

### Matching Volume for Supervisor Qualification

The sponsoring Supervisor must have at least 4,000 Personal Volume Points for each of their downline organizations that are qualifying for Supervisor using a one-month qualification. The sponsoring Supervisor must have at least 2,500 Personal Volume Points each month for each of their downline organizations who is qualifying for Supervisor with a qualification of two consecutive months.

The sponsoring Supervisor, however, must have enough Total Volume to match all orders submitted by their downline Distributors who are qualifying for Supervisor.

For example, suppose a Supervisor sponsors a Distributor who qualifies for Supervisor in September with 4,000 Total Volume Points. If the orders to qualify are purchased directly from Herbalife, either at 42% by the Distributor or directly by the Supervisor, the volume will be automatically matched. If the orders are purchased directly from the Supervisor, the Supervisor must ensure that an equal amount of volume is purchased from Herbalife during the qualifying month in order to match volume.

### Failure to Match Volume

When a Supervisor Qualification Form is received from a Distributor and the first upline Fully Qualified Supervisor does not have enough Total Volume Points for the month the qualifying Supervisor's volume was achieved to confirm the orders submitted by the Distributor to qualify, then the Fully Qualified Supervisor is "short" Matching Volume. Herbalife will notify the Supervisor that they must place a Matching Volume Order for the amount they are short. The Order

Department will be authorized to accept the Matching Volume Order for the appropriate month.

To place this volume, the order must be clearly identified as "Matching Volume Order for Month of \_\_\_\_\_."

**Matching Volume Order**

To receive proper credit for this volume, the order must be clearly identified as Matching Volume Order for the appropriate month and year, with full payment included. The order may not be combined with other volume. A Matching Volume Order can only be accepted by Herbalife if the Company has identified a Matching Volume problem and notified the Supervisor accordingly, and has authorized the Order Department to accept the order. This order will be applied to the Volume Month specified. Matching Volume Orders placed after the Volume Month in question do not count for Royalty Point qualifications for TAB Team Production Bonuses or other earnings for the Supervisor. However, appropriate adjustments will be made on the order to the upline Royalty and Production Bonus receiving Supervisors of the sponsoring Supervisor.

**Matching Volume Permanent Penalty**

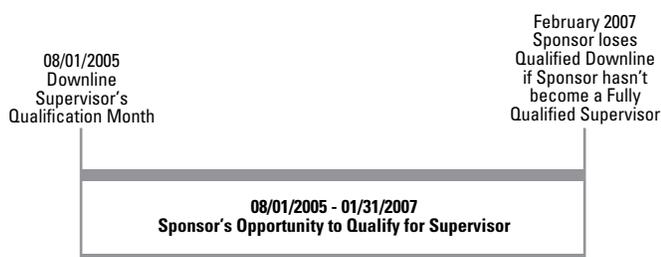
The Supervisor must place the Matching Volume Order once they have received notification to do so from Herbalife to avoid a penalty. If the Supervisor who is short volume, fails to place an order to Match Volume, a Matching Volume Penalty will be assessed. The penalty is that the Supervisor will permanently lose a Supervisor who qualified the month in question and that Supervisor's downline.

**Failure to Qualify as a Supervisor**

If a Distributor's sponsored downline becomes a Fully Qualified Supervisor before the Distributor does, the Distributor will have one year from the date of the downline's qualification to also become a Fully Qualified Supervisor (applied at the end of the Supervisor's first requalification year).

If the Distributor does not become a Fully Qualified Supervisor within the one year following their downline's Supervisor qualification, the Distributor will permanently lose that downline to their first upline Supervisor.

Example:



**Requalification**

All Supervisors must requalify their status annually between February 1 and January 31 to maintain their rights and privileges. The requalification requirements for this are described below.

- One-Month Qualification: Achieve 4,000 Volume Points in one Volume Month (with a minimum 1,000 of those 4,000 Volume Points unencumbered).
- Two-Month Qualification: Achieve 2,500 Volume Points for two consecutive months (with a minimum of 1,000 of those 2,500 Volume Points unencumbered for each month).
- Twelve-Month Requalification: Accumulate 4,000 Unencumbered Total Volume Points over the 12-month Requalification period.

Or,

Accumulate 10,000 Unencumbered Total Volume Points over the 12-month requalification period.

The computer system will automatically requalify you each year if the volume requirements are met during the qualification period, so there is no need to resubmit an application. As a reminder, you have the advantage of receiving a 50% discount on your requalification volume.

In addition to requalifying their Supervisor status, a Supervisor must assure their Annual Processing Fee is current and paid. Failure to pay the Annual Processing Fee prior to or within 90 days after requalification will result in suspension of qualification, ordering privileges and earnings until the Annual Processing Fee is paid.

Supervisors who do not complete their Supervisor Requalification will lose all rights and privileges of a Supervisor. This includes, but is not limited to, the loss of any lineage that includes a Supervisor. In this case, the entire downline lineage will be moved to the next upline Fully Qualified Supervisor.

Failure to requalify each year by January 31 will cause a Supervisor to be demoted to the position of Senior Consultant, unless they have met the requirements to requalify as a Qualified Producer. To requalify as a Qualified Producer, the Supervisor must achieve 2,500 Personal Volume points within 1 to 3 consecutive Volume months between the requalification period of February 1 and January 31.

Supervisors who accumulate 4,000 unencumbered Volume Points between February 1 and January 31 will retain their Supervisor status and 50% buying privileges. It is important to note that if you requalify using this method, any leg with a Supervisor will be lost to the upline Supervisor.

However, if you accumulate 10,000 unencumbered Volume Points you will be able to retain your downline Supervisors.

As a Supervisor with Fully Qualified or Qualifying Supervisors in your first three downline levels, you may qualify to earn Royalty Overrides of 1% to 5% of your Organizational Volume. Royalty Overrides are paid on the 15th of each month for the prior month's business.

**Three Levels of Success**

The people you personally sponsor as Herbalife Distributors are known as your First-Level. They may be friends or family or business associates, or even people you have just met. You can personally sponsor as many people as you want in any country in which Herbalife officially operates around the world. When these Distributors in your First-Level sponsor other Distributors themselves, these new Distributors become your second level. When your Second Level, in turn, sponsor others, those they sponsor become the third level in your Herbalife organization.

By training your Distributors and encouraging them to follow your example, you are assisting every member on your team to qualify at the Supervisor level. As a Supervisor with Fully Qualified or Qualifying Supervisors in your first three levels, you may qualify to earn Royalty Overrides between 1% to 5% of your Organizational Volume.

<b>Royalty Override Sliding Scale</b>	
<b>Your Total Volume Points</b>	<b>Royalty Override Earning %</b>
0-499	0%
500-999	1%
1,000-1,499	2%
1,500-1,999	3%
2,000-2,499	4%
2,500 plus	5%

**Payment of Royalty Overrides**

Your Royalty Override percentage is based on your Total Volume for each month, and if you produce less than 500 Volume Points, then no Royalty Overrides are earned. If you produce 2,500 Volume Points or more, then a full 5% is earned on three active downline levels. The Royalty Override scale above shows the volume requirements that a Supervisor must meet every month to earn Royalty Overrides.

**Royalty Overrides are paid as follows:**

- The 1% to 5% Royalty Override is paid on the Total Volume of personally sponsored first-level qualified Supervisors.
- The 1% to 5% Royalty Override is paid on the Total Volume of second-level qualified Supervisors (e.g., a Supervisor who has been sponsored in turn by your personally sponsored Supervisor).
- The 1% to 5% Royalty Override is paid on the Personal Volume of third-level Supervisors (e.g., a Supervisor who has been sponsored in turn by a second-level Supervisor).

In the following example, at a full 5%, your Royalty Override is calculated on 30,000 Organizational Volume, which gives you 1,500 Royalty Override Points. Royalty Override Points are used for qualification purposes. As a general matter, earnings are calculated on the retail price of the products in the country from which the product is ordered.\* In certain countries, these Royalty Override earnings are converted to your local currency.

**Royalty Override Example**

<b>YOU</b>	2,500 Volume Points	=	Your Total Royalty Override = 1,500 Royalty Points
<b>First-Level Supervisor</b>	10,000 Volume Points	=	5% = 500 Royalty Points
<b>Second-Level Supervisor</b>	10,000 Volume Points	=	5% = 500 Royalty Points
<b>Third-Level Supervisor</b>	10,000 Volume Points	=	5% = 500 Royalty Points

\*In some cases, for reasons which relate to currency, cost and other factors, the base against which earnings are calculated may not be equal to the retail price in the particular country.

**Additional Requirements**

Supervisors who meet the specified requirements to earn Royalty Overrides must also comply with Herbalife’s 10 Retail Customers Rule and the 70% Rule, to earn and receive both Royalty Overrides and Production Bonus. The Supervisor must confirm their adherence to these requirements by submitting the Earnings Certification Form each month. If the Supervisor fails to comply with either of these rules, the Royalty Overrides and Production Bonus will not be paid to the Distributor.

**Royalty Override Roll-Up**

As a Supervisor, you also have the opportunity to earn Royalty Override Roll-Ups. Royalty Override Roll-Ups are paid to the appropriate qualified upline Supervisor(s) when any downline Royalty Override contributing Supervisor earns less than the maximum 5% payout. This “roll-up” percentage is the difference between the 5% maximum Royalty Override and the actual percentage earned by the downline Royalty contributing Supervisor.

To be eligible for Royalty Override Roll-Ups, a Supervisor must be at the maximum 5% earning level, based on the Royalty Override Sliding Scale. A Supervisor may not earn more than 5% Royalty Override on any volume.

<b>Royalty Override Roll-Up Example</b>		
<b>YOU</b>	2,500 Total Volume Points 5% Royalty Override	= Earns 5% Royalty Override on First, Second and Third-Level Supervisors  = Earns 4% Royalty Override Roll-Up on Fourth-Level Supervisor
<b>First-Level Supervisor</b>	2,500 Total Volume Points 5% Royalty Override	= Earns 5% Royalty Override on Second, Third and Fourth-Level Supervisors
<b>Second-Level Supervisor</b>	2,500 Total Volume Points 5% Royalty Override	= Earns 5% Royalty Override on Third and Fourth-Level Supervisors
<b>Third-Level Supervisor</b>	500 Total Volume Points 1% Royalty Override	= Earns 1% Royalty Override on Fourth-Level Supervisor
<b>Fourth-Level Supervisor</b>	1,000 Total Volume Points No Royalty Override	= Supervisor does not have downline to earn Royalty Overrides

**World Team**

Qualifying as a World Team member is an important step in your Herbalife business. You have demonstrated your success by qualifying for this prestigious team. World Team is your launching pad to move on to qualifying for the TAB Team.



**To Qualify:**

Achieve 10,000 Total Volume Points in one Volume Month after becoming a Qualifying Supervisor or a Fully Qualified Supervisor.

**OR As a Fully Qualified or Qualifying Supervisor, achieve 2,500 Total Volume Points, each Volume Month, for four consecutive months.**

**OR Achieve 500 Royalty Points in one Volume Month.**

Providing you have achieved your Supervisor qualification, after achieving the required Volume or Royalty Points listed above, you are promoted to World Team member status on the first of the following month.

**You Receive:**

- All the benefits of a Supervisor
- A World Team pack, containing a personalized World Team Certificate, World Team pin and Herbalife daily journal

**Plus You Become Eligible to:**

- Attend special planning and training sessions targeted to accelerate your progress to TAB Team membership.
- Qualify for special Company qualifications.

**TAB Team**

Successful Supervisors have the opportunity to proceed to the higher scale of the Herbalife Marketing Plan, which is the Top Achievers Business (TAB) Team. Upon meeting initial requirements, Supervisors may obtain TAB Team status. There are three steps within the TAB Team: Global Expansion Team (GET), Millionaire Team and President’s Team.

Achieving TAB Team status is a prestigious recognition within Herbalife. TAB Team status indicates that the Supervisor has developed a strong, active downline Supervisor base and has demonstrated a willingness to take a leadership role within Herbalife. Your Form and Acknowledgement to qualify for this status brings with it the responsibility to exclusively promote the Herbalife products and opportunity. You’ll receive

additional benefits and earn leadership status. Reaching each new level enables you to participate in advanced training, earn unrivaled Production Bonuses and qualify for exceptional awards and incentives.

### TAB Team Production Bonus

As a TAB Team member, you are eligible to receive from a 2% to 7% Production Bonus on your entire downline organization's volume. Production Bonus earnings are paid monthly to all qualified TAB Team members. It is necessary to submit a completed TAB Team Production Bonus Acknowledgement Form and also comply with Herbalife's 10 Retail Customers Rule and the 70% Rule to be eligible for Production Bonus payments. The TAB Team Production Bonus is, in part, a reward for your undivided loyalty. (Please refer to the "Sample Forms" section of this book.) The Application must have been accepted and approved by Herbalife in order to receive payments. This form will be sent to you by Herbalife during your qualification period. (See individual team qualifications for specific Production Bonus qualifications.)

### Annual Bonuses

A bonus payment representing a percentage of Herbalife's worldwide sales is distributed annually among Herbalife's President's Team members in recognition of their outstanding performance in advancing sales of Herbalife products. (Refer to "Mark Hughes Bonus Award Rules" distributed to President's Team members, and available online at [MyHerbalife.com](http://MyHerbalife.com).)

### Vacation and Training Events

Reward, recognition and training are of the utmost importance at Herbalife. Vacation and Training Events (when offered) are both fun and informative and are held in exciting locations around the world. The Vacation and Training Events will teach you how to meet your goals, increase your earning power and build an international business without leaving the comfort of your own home! You'll learn all this while enjoying an exciting, adventurous vacation guaranteed to make an extraordinary impact on your life.

## Global Expansion Team (GET)

#### To Qualify:

Achieve 1,000 Royalty Points each month for three consecutive months. The first of the following month you are promoted to Global Expansion Team (GET) member.



#### You Receive:

- A Global Expansion Team plaque and pin
- All the benefits of a Supervisor

#### Plus You Become Eligible to:

- Earn TAB Team Production Bonus based on your qualification level. (Please refer to the "TAB Team Production Bonus Payout Guidelines" section in this book.) Upon completion of your Qualification, you will receive a detailed communication that further specifies your monthly TAB Team Production Bonus earning requirements.
- Qualify for Vacation and Training Events.
- Participate in special advanced trainings.
- Participate in special conference calls.

## Millionaire Team

#### To Qualify:

Achieve 4,000 Royalty Points each month for three consecutive months. The first of the following month, you are promoted to Millionaire Team member.



#### You Receive:

- A Millionaire Team plaque and pin
- All the benefits of a Supervisor

#### Plus You Become Eligible to:

- Earn TAB Team Production Bonus based on your qualification level. (Please refer to the "TAB Team Production Bonus Payout Guidelines" section of this book.) Upon completion of your Qualification, you will receive a detailed communication that further specifies your monthly TAB Team Production Bonus earning requirements.
- Qualify for Vacation and Training Events.
- Develop your teaching skills and assist with worldwide trainings.
- Participate in special conference calls.

## President's Team

### To Qualify:

- President's Team: Achieve 10,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6% Production Bonus.
- 20K President: Achieve 20,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6.5% Production Bonus.
- 30K President: Achieve 30,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 6.75% Production Bonus.
- 50K President: Achieve 50,000 Royalty Points in three consecutive months. After a waiting period of three months, earn a 2% to 7% Production Bonus.



### You Receive:

- A prestigious President's Team plaque and pin
- All the benefits of a Supervisor

### Plus You Become Eligible to:

- Earn TAB Team Production Bonus based on your qualification level. (Please refer to the "TAB Team Production Bonus Payout Guidelines.") Upon completion of your Qualification, you will receive a detailed communication that further specifies your monthly TAB Team Production Bonus earning requirements.
- Qualify for Vacation and Training Events.
- As a leader, assist with worldwide trainings.
- Participate in special conference calls.

### Awards Policies

Herbalife International delivers recognition awards (such as, but not limited to) pins, plaques, and jewelry in a timely manner to Distributors that have achieved such recognition.

In the event an award is not received, the Awards and Recognition Department should be contacted in writing (via email or at the postal address below). The request must be received by Herbalife no later than six (6) months after the qualification date associated with the Award.

### Awards Replacement and/or Repair Policy:

Herbalife strives to provide the highest quality awards available. In the event that a Distributor receives an award that is defective or otherwise damaged, the Distributor may return the item(s) for free replacement within (6) months of the original qualification date associated with the award. After this (6) month period, the Distributor may return damaged item(s) to be professionally refurbished or repaired which shall be at Distributor's cost paid through an earning deduction. Any deviations from this policy shall be at the sole and absolute discretion of Herbalife.

Request may be submitted by phone or in writing to:

Local Distributor Relations  
P.O. Box 80210  
Los Angeles, CA 90080-0210  
or  
toll-free at 866-866-4744.

## President's Team Plus Awards and Recognition

		<p><b>Gold and Diamond Cufflinks and Earrings</b></p> <p>To qualify, you must achieve 15,000 Royalty Points for three consecutive months.</p>
	One Diamond	<p><b>Executive President's Team</b></p> <p>To achieve this reward, you must have one (1) first-line, Fully Qualified President's Team member in any line of your downline organization.</p>
	Two Diamonds	<p><b>Senior Executive President's Team</b></p> <p>To achieve this reward, you must have two (2) first-line, Fully Qualified President's Team members in two separate lines of your downline organization.</p>
	Three Diamonds	<p><b>International Executive President's Team</b></p> <p>To achieve this reward, you must have three (3) first-line, Fully Qualified President's Team members in three separate lines of your downline organization.</p>
	Four Diamonds	<p><b>Chief Executive President's Team</b></p> <p>To achieve this reward, you must have four (4) first-line, Fully Qualified President's Team members in four separate lines of your downline organization.</p>
	Five Diamonds	<p><b>Chairman's Club</b></p> <p>To achieve this reward, you must have five (5) or more first-line, Fully Qualified President's Team members in five or more separate lines of your downline organization.</p>
	Ten Diamonds	<p><b>Founder's Circle</b></p> <p>To achieve this reward, you must have 10 or more first-line, Fully Qualified President's Team members in 10 or more separate lines of your downline organization.</p>

### Presidential Plus Awards

The Presidential Plus Awards are based on production (January through December Volume). These awards are presented annually at Herbalife's Extravaganza event.



Cartier "Tank" Watch  
250,000 Royalty Override Points



Marquis Diamond Ring  
500,000 Royalty Override Points



Gold and Diamond Watch  
750,000 Royalty Override Points



Diamond Watch  
1,000,000 Royalty Override Points

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.

**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

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 efforts.

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.



## Qualifications by Team Level

Following is an easy-to-understand graph of qualifications for each team level.

Qualifications	Waiting and Earning Periods		
	Team	Achieve required Royalty Points each month for 3 consecutive months	Waiting Period
Global Expansion Team (GET)	1,000	None	12 months from Fully Qualified/Requalified Date
Millionaire Team (MILL)	4,000	2 months	12 months after waiting period is complete
President's Team (PRES)	10,000	3 months	12 months after waiting period is complete
PRES 20K (20K)	20,000	3 months	12 months after waiting period is complete
PRES 30K (30K)	30,000	3 months	12 months after waiting period is complete
PRES 50K (50K)	50,000	3 months	12 months after waiting period is complete

## Production Bonus Earning % Requirements

Once you have qualified and/or requalified for a particular TAB Team earning % level, the following must be achieved in each of the earning months to receive a TAB Team Production Bonus ("PB" on the following table) during your earning period:

Max Earning % Level	Total Volume Points Required	Royalty Points Required for Max 2% TAB Team PB	Royalty Points Required for Max 4% TAB Team PB	Royalty Points Required for Max 6% TAB Team PB	Royalty Points Required for Max 6.5% TAB Team PB	Royalty Points Required for Max 6.75% TAB Team PB	Royalty Points Required for Max 7% TAB Team PB
2%	5,000	1,000					
4%	3,000	1,000	4,000				
6%	2,500	1,000	4,000	10,000			
6.5%	2,500	1,000	4,000	10,000	20,000		
6.75%	2,500	1,000	4,000	10,000	20,000	30,000	
7%	2,500	1,000	4,000	10,000	20,000	30,000	50,000

To help you better understand the TAB Team Production Bonus Payout, we've put together the following guidelines.

- When a TAB Team member in your downline earns a TAB Team Production Bonus at a lower % level than you, you will earn the % difference on their downline. For example, if you earn a TAB Team Production Bonus at the 6% level and your downline TAB Team member earns a TAB Team Production Bonus at the 2% level, you will earn 6% on that TAB Team member and the remaining 4% TAB Team Production Bonus on their downline organization down to the next TAB Team Production Bonus earning member. Your TAB Team Production Bonus earnings below those downline TAB Team earners will depend upon the earning % of each TAB Team member.
- When a downline TAB Team member earns a TAB Team Production Bonus at the same % level as you, you will earn on that TAB Team member, but you will be unable to earn a TAB Team Production Bonus on their downline.
- When a downline TAB Team member earns a TAB Team Production Bonus at a higher level than you, you will be unable to earn a TAB Team Production Bonus on that downline and their organization.
- Remember, to be eligible to receive the TAB Team Production Bonus, your completed TAB Team Production Bonus Acknowledgement Form must have been accepted and approved by Herbalife, and all other terms and conditions must be met.

## Production Bonus Eligibility Period Examples

Qualification Period			Global Expansion Team (GET)														
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
1,000 Royalty Points	1,000 Royalty Points	1,000 Royalty Points	Eligible to earn 2% TAB Team PB from April to March														
			Requalification Period from April to March														

Qualification Period			Millionaire Team														
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
4,000 Royalty Points	4,000 Royalty Points	4,000 Royalty Points	Waiting Period		Eligible to earn 4% TAB Team PB from June to May												
			Requalification Period from April to March														

Qualification Period			President's Team														
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
10k, 20k, 30k, 50k Royalty Points x 3 months			Waiting Period			Eligible to earn 6% TAB Team PB from July to June											
			Requalification Period from April to March														

## Production Bonus Requalification

To continue earning your TAB Team Production Bonus, you need to requalify at your team level or above. Here's how you do just that:

### Requalification

To remain at your earning level, simply achieve three consecutive months of Royalty Point requirements (same as original qualification) every year during your requalification period.

**Please note:** When you qualify for any Team status, you retain that status regardless of your TAB Team Production Bonus earning % level (unless you achieve a higher TAB Team status or are demoted as a Supervisor).

If you don't requalify for any TAB Team Production Bonus earning % level during your last requalification period and later qualify for the same level, you will need to observe the waiting period before you start earning at that level.

### Requalification Period

To allow you ample time to requalify and continue to earn your TAB Team Production Bonus, you have a 12-month time frame from your last Team qualification/requalification date.

The following terms are used throughout this text. Some have specific Herbalife connotations, so please become familiar with them and make them a part of your vocabulary as quickly as possible.

**Blocking:** As a Production Bonus earner, when you have a Production Bonus earner below you earning at a higher Production Bonus earning percentage, you will be “blocked” from earning on that Production Bonus earner as well as their downline organization.

**Commission:** The difference between the discounted price paid by the Sponsor and the price paid by the downline Distributors. It is also known as Wholesale Profit.

**Customer:** Anyone who is not an Herbalife Distributor who purchases Herbalife products at retail price.

**Cut Off:** As a Production Bonus earner, when you have a downline Production Bonus earner earning an equal Production Bonus earning percentage, you will be able to earn your eligible Production Bonus percentage on volume down to and including that person, but will be “cut off” from earning a Production Bonus on any lineage below that person. When you have a downline Production Bonus earner earning at a lower Production Bonus earning percentage than you are, you will earn your full Production Bonus percentage down to and including the volume of that Production Bonus earner and earn the percentage difference on their downline below. For example, if your Production Bonus earning percentage is 6% and the Production Bonus earning percentage of the person downline is 4%, you’ll earn 6% on volume down to and including the volume of that person and 2% (6% to 4%) on the volume down to the next Production Bonus earner.

**Distributor:** Anyone who purchases an official Herbalife Distributor Kit (IBP) and submits to Herbalife a valid and complete Application for Distributorship and whose application has been accepted by Herbalife.

**Distributor Discount Scale:** An earned discount of 35% to 50% which is allowed after reaching specified sales goals.

**Downline Organization:** All Distributors personally sponsored by you as well as all other persons sponsored by them.

**Earn Base:** Base amount assigned to a product on which earnings are calculated.

**First-Level Distributor:** All Distributors you personally sponsor are considered your First Level.

**Fully Qualified Supervisor:** A Distributor who has met all the requirements for Supervisor qualification and is now entitled to all Supervisor privileges.

**HAP Distributor:** A Distributor who activates the regular monthly automatic ordering procedure called Herbalife Advantage Program (HAP).

**Lineage:** All Distributors who are part of one organization as a result of sponsoring or being sponsored.

**Production Bonus:** A bonus of 2%, 4%, or 6% to 7% on downline Organizational Volume earned by eligible members of the TAB Team who meet certain requirements.

**Profit, Retail:** The difference between the discounted product price paid by a Distributor and the retail price paid by a customer.

**Profit, Wholesale:** The difference between the discounted price paid by the Sponsor and the price paid by the downline Distributors. Also known as Commission.

**Qualified Producer:** A Distributor who accumulates 2,500 personally purchased Volume Points within 1 to 3 months and is entitled to purchase at a 42% discount and earn split commissions. This status can be reached by utilizing up to 1,000 Downline Volume Points, with the remaining 1,500 as Personally Purchased Volume.

**Qualifying Month:** The month in which a Distributor achieves the required volume for Supervisor qualification.

**Qualifying Supervisor:** A Distributor who has achieved 4,000 Volume Points in one calendar month. Assuming that all qualifications are met, they will be recognized as a Fully Qualified Supervisor on the first of the following month. A Qualifying Supervisor is eligible to purchase from Herbalife at a temporary 50% discount.

**Royalty Override:** A payment ranging from 1% to 5% made to Fully Qualified Supervisors on the Monthly Volume of their three levels of active downline Supervisors.

**Royalty Points:** Used for qualification purposes, this is the sum of a Supervisor’s Organizational Volume times their royalty earnings percentage.

**Royalty Roll-Ups:** Herbalife pays Supervisors the full 5% for each of three active downline Supervisor levels. Royalty Roll-Ups are paid to the appropriate upline Supervisor(s) when a downline Supervisor earns less than the maximum 5% Royalty Override payout per level. In these instances, the difference between 5% and the Supervisor’s earning percentage (1% to 4%) results in the Royalty Roll-Ups.

**Senior Consultant:** A Distributor who has qualified to purchase at 35% to 42% discount.

**Split Commission:** The commission earned from a downline Distributor purchasing at less than 42% discount. A commission of 7% or 17% is first paid to the first upline Qualified Producer and the remaining 8% is paid to the first upline Fully Qualified Supervisor.

**Sponsor:** A Distributor who brings another individual into Herbalife as a Distributor.

**Success Builder:** A Distributor who places an order of 1,000 Volume Points at 42% discount.

**Supervisor's Personal Organization:** Includes all Distributors in the Supervisor's downline who are at Distributor, Senior Consultant, Success Builder, Qualified Producer and Qualifying Supervisor levels.

**TAB Team Member:** A Distributor who has met all the requirements for GET, Millionaire Team or President's Team membership.

**10 Retail Customers Rule:** A Distributor must make sales to at least 10 separate retail customers each month to qualify and receive Royalty Overrides and Production Bonus.

**The 70% Rule:** In any given month, a Distributor must sell to retail customers, and/or sell at wholesale to downline Distributors, at least 70% of the total value of Herbalife products they hold for resale, in order to qualify for TAB Team and to earn and receive Royalty Overrides and Production Bonus for that month's business.

**Upline Organization:** Your Sponsor and their Sponsor and their Sponsor's Sponsor, and so on.

**Volume, Downline:** As a non-Supervisor, Downline Volume is based on volume which is placed by your downline Distributors directly from Herbalife or ordering between 25% to 42% discount.

**Volume, Encumbered:** All volume produced by anyone in your personal organization who has achieved 2,500 Volume Points or more in one Volume Month. This is volume being used by them for Supervisor qualification purposes.

**Volume, Group:** Orders purchased at a temporary 50% discount, by Qualifying Supervisor(s) in a Supervisor's personal organization.

**Volume, Matching:** The Total Volume a sponsoring Supervisor must have in a given month to equal or exceed the volume achieved by their downline Distributor(s) who are qualifying for Supervisor.

**Volume, Organizational:** The volume on which a Supervisor is paid a Royalty Override.

**Volume, Personal:** The volume purchased by you as a Fully Qualified Supervisor and all others in your downline organization, excluding any 50% orders by Qualifying Supervisors and Qualified Supervisors.

**Volume, Personally Purchased:** The volume purchased directly from Herbalife using your Herbalife Identification Number.

**Volume, Total:** The combined total of Personal Volume plus Group Volume.

**Volume, Unencumbered:** All volume produced by anyone in your personal organization who has achieved less than 2,500 Volume Points in one Volume Month, and all your own Personal Volume. Volume that is not used by anyone else for Supervisor qualification purposes.

**Volume Point:** A point value assigned to each Herbalife product that is equal in all countries. Volume Points are used for qualification and bonuses.

Herbalife guarantees the quality of any product which carries the Herbalife name and certifies that the products manufactured for it meet high standards of freshness and purity for customer use.

We are confident that our consumers will find our products satisfactory in every way. However, if for any reason, a retail customer is not completely satisfied with any Herbalife product purchased from an Herbalife Distributor, the customer may request a refund from the Distributor within 30 days from the date the customer receives the product. The customer will be instructed to return the unused portion of the product, or the original product labels, or the empty product containers, along with a copy of the retail receipt/copy of the Retail Order Form, to the Distributor from whom the customer purchased the product. The Distributor must offer the customer a full credit toward the purchase of other Herbalife products or a full refund of the purchase price. Similarly, Distributors who purchase a product for their own consumption and who are not satisfied with the product, may return it within 30 days of purchase to the company in exchange for other products as soon as all required documentation has been received.

This guarantee is limited only by the terms of certain specific warranties attached to or packaged with certain products and does not apply to any product intentionally damaged or misused. If the retail customer is not satisfied, the Distributor must honor the product guarantee quickly and courteously, according to the instructions that follow.

### **Distributor Must Honor Guarantee**

A Distributor is required to fully complete and provide an official Herbalife Retail Order Form with each retail sale made. It is important for the customer to know how to reach the Distributor for more products, questions, etc. The Distributor must maintain a copy of the Retail Order Form for their records so they can properly follow up with their customer.

If, however, a customer requests a refund, then the Distributor must complete a Request for Refund Form, a copy of which is included in the "Sample Forms" section of this book. The Distributor is to calculate the amount of the customer's refund or credit due, have the customer sign the Refund Form, and immediately pay the refund to the customer or apply their credit to other products.

The Distributor may then submit the Request for Refund Form, a copy of the customer's original Retail Order Form, along with the unused portion of the product, or the original product labels, or the empty product containers to Herbalife within 30 days of making the refund to the customer. Herbalife will exchange the returned product with the identical replacement product for the Distributor as soon as all the required documentation has been received. In the case of a Distributor returning product, there may be additional inquiry to ensure that the reason for the return is the Distributor's dissatisfaction as a consumer of the products returned.

## ORDERING PROCEDURES

This section of the Career Book is designed to acquaint you with Herbalife's administration policies, which ensure the smooth flow of daily business activity.

Every profitable enterprise establishes clear guidelines for the conduct of its own business. The rules provide the parameters within which the business operates freely. Many of the rules relating to the conduct of business are applied externally, by government, regulatory bodies, consumer legislation, or industry codes and practices. In addition to the rules governing companies in the United States, other countries and the direct-selling industry, Herbalife has developed a set of rules for the conduct of an Herbalife Distributorship, to ensure the maximum fairness and protection for all Distributors.

These rules provide consistency, security, integrity and honesty, enabling the Company, Distributors and the public to enjoy total confidence in the system and respect for our industry.

Please read and become familiar with these policies and procedures.

### Ordering Procedures

To place your orders via phone, mail or email, or to place and pick up your orders in person, please contact Herbalife at 866-866-4744. For TTY assistance please contact 800-503-6180.

### Important Ordering Tips

As soon as you have become a Distributor, you may purchase from your Sponsor, your first upline Supervisor, or directly from Herbalife.

Once you qualify as an Herbalife Supervisor, you must always purchase directly from Herbalife. There are several convenient methods you may use to place an order directly with Herbalife: telephone, mail or in person at an Herbalife Sales or Distribution Center. All orders will be shipped on the next business day, whenever possible, if all moneys have cleared. Please remember that our ordering process is computerized, so once you complete your order it cannot be adjusted or altered in any way. Therefore, no matter what method you choose to place your order, it is important that you prepare your order in advance to ensure accurate and speedy processing.

All orders must be paid in full, confirmed and processed for Herbalife to release the order. Please always have the following information readily available.

- Prepare your order in advance to ensure accurate and speedy processing.
- Clearly indicate order month.
- Have your Herbalife Identification Number ready.
- Have the name and Identification Number of your Sponsor and upline Fully Qualified Supervisor (FQS).
- Have shipping method and shipping address, recipient's name and corresponding telephone number (if applicable).
- Provide the appropriate discount percentage.
- Provide method of payment and appropriate details (i.e., credit card number, expiration date, Automatic Payment System [APS] PIN number, etc.).
- All calculations – prices, discounts, Volume Points, and taxes of the city/county/state to which you are shipping. (Please have the correct ZIP code available.) Refer to the latest U.S. price list on [MyHerbalife.com](http://MyHerbalife.com).
- Provide the stock number(s), description and quantity of the item(s) you are ordering.
- Complete all calculations and totals.

### Mail Orders

All orders must be completely filled out, with appropriate payment included. Herbalife sells in individual units, only as specified on the order form.

Depending on the method of mail, you should address your orders as follows:

#### VIA REGULAR MAIL

Herbalife International of America, Inc.  
Attn: Sales Order Department  
P.O. Box 80210  
Los Angeles, CA 90080-0210  
United States of America

#### VIA EXPRESS MAIL (e.g., Federal Express)

Herbalife International of America, Inc.  
Attn: Sales Order Department  
950 West 190th Street  
Torrance, CA 90502-1001  
United States of America

To assure correct and prompt processing of your orders, make sure they are correctly and completely filled out, with an acceptable form of payment attached.

**Telephone Orders**

To place your telephone orders, please call the Sales Order Department toll-free at 866-866-4744 between the hours of:

Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
Saturday: 6:00 a.m.–2:00 p.m. (PT)  
EOM: 9:00 a.m.–12:00 a.m. (PT)  
Holidays: 9:00 a.m.–2:00 p.m. (PT) or Closed  
Closed Sunday

**TTY Assistance**

TTY Users: 800-503-6180  
Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
Closed Saturday and Sunday

After payment has cleared, your order will be transmitted.

**Acceptable methods of telephone payment are:**

- Major Credit Cards (Visa, MasterCard, American Express and Discover).
- Automatic Payment System (APS); approved applications must be on file at the World Home Office (must have 4-digit code). Contact the Sales Order Department for an APS Application.
- Wire Transfers must be bank-to-bank transactions.

Upon payment clearance, your order will be transmitted to the Distribution Center for shipment.

All telephone orders must be placed and fully paid by the close of business day on the designated “End of Month” (EOM) day. Please have your order ready before calling the Sales Order Department.

**Walk-In Orders**

If you are located near Los Angeles, Riverside or Tracy, CA; Memphis, TN; Dallas or Houston, TX; Phoenix, AZ; Chicago, IL; or Bronx or Brooklyn, NY, the fastest way to receive product(s) is to place, pay for and pick up your order in person at one of our Sales or Distribution Centers. The addresses of our U.S. Sales and Distribution Centers are listed below for your reference:

**Los Angeles Distribution Center (LADC)**

18431 S. Wilmington Avenue  
Carson, CA 90746  
Telephone: 310-952-0100  
Monday–Friday: 9:00 a.m.–7:00 p.m. (PT)  
Saturday: 9:00 a.m.–5:00 p.m. (PT)  
Closed Sunday

**Memphis Distribution Center**

5025 Crumpler Road  
Memphis, TN 38141  
Telephone: 901-795-5056  
Monday–Friday: 8:00 a.m.–7:00 p.m. (CT)  
Closed Saturday and Sunday

**Dallas Sales Center**

8105 North Beltline Road, Suite 100  
Irving, TX 75063  
Telephone: 214-441-3333  
Monday–Friday: 10:00 a.m.–7:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

**Phoenix Sales Center**

1606 E. University Dr., Suite #109  
Phoenix, AZ 85034  
Telephone: 602-358-2066  
Monday–Friday: 10:00 a.m.–7:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

**Chicago Quick Response Center**

200 Howard Avenue, Suite 232  
Des Plaines, IL 60018-5910  
Telephone: 847-298-9533  
Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

**Bronx Quick Response Center**

2359 Hollers Avenue  
Bronx, NY 10475  
Telephone: 718-708-7020  
Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (ET)  
Saturday: 10:00 a.m.–3:00 p.m. (ET)  
Closed Sunday

**Tracy Quick Response Center**

470 West Larch Road, Suite 10  
Tracy, CA 95304  
Telephone: 209-832-4110  
Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

**Houston Quick Response Center**

4702 N. Sam Houston Pkwy. W., Suite 130  
Houston, TX 77086  
Telephone: 281-895-8193  
Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

**Riverside Quick Response Center**

7560 Jurupa Avenue  
Riverside, CA 92504  
Telephone: 951-689-4444  
Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

**Brooklyn Quick Response Center**

919 Flushing Avenue  
Brooklyn, NY 11206  
Telephone: 718-381-9610  
Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
Tuesday, Thursday: 12:00 p.m.–8:00 p.m. (ET)  
Saturday: 10:00 a.m.–3:00 p.m. (ET)  
Closed Sunday

All walk-in orders must be placed and fully paid by the close of business day at the respective Sales or Distribution Center on the designated EOM day. Please have your order ready before handing it to a Sales Order Representative. You must have your Herbalife Distributor ID number, photo ID and order number with you when you pick up your order.

Cashier’s checks, money orders, most major credit cards, wire transfers or cash are the acceptable terms for purchasing products and other materials through the Herbalife Sales or Distribution Centers.

**Payment Policy**

Please note that all orders must be paid in full, processed and accepted for Herbalife to ship and release the order. The following are acceptable methods of payment:

**Personal Checks**

Those who become Supervisors and who have been fully qualified for 30 days may use (in addition to the previously listed methods of payment) personal checks to purchase products. A check-writing policy of \$5,000 in one day is the maximum amount allowed. Any order in excess of this amount must be paid for by one of the methods previously noted.

**Guaranteed Checks**

Cashier’s checks, traveler’s checks and money orders, which

must be made out to Herbalife International of America, Inc., and must be in U.S. dollars only. Guaranteed checks may be used for mail and walk-in orders only.

**Most Major Credit Cards**

Visa, MasterCard, American Express (dollar amount is at Amex’s discretion, mostly under \$200.00) and Discover. The credit card must be in the name of the purchaser. Credit cards may be used for telephone, mail and walk-in orders.

**Cash**

U.S. dollars only. Cash may be used for walk-in orders only. Please do not mail cash!

**Automatic Payment System (APS)**

To speed up and simplify the processing of your telephone order, Supervisors who have been fully qualified for 30 days may authorize Herbalife to deduct the exact amount from their bank or other financial institution as payment for their order.

**Wire Transfers**

- Distributors may purchase products from Herbalife by bank-to-bank transaction.
- Wire transfers must be initiated by the designated End of Month (EOM) day, and must be received no later than the 5th of the following month (regardless of what day the actual EOM falls on).
- You must reference your Herbalife ID Number and order number with your transfer.
- If you wish to use this method, contact Herbalife’s Sales Order Department for the correct procedure.
- Wire transfer orders will be shipped when the correct payment is received by Herbalife.

**Shipping Procedures**

All orders will be shipped on the next business day, whenever possible, if all moneys have cleared. You must indicate the method of shipment as applicable (e.g., air, FedEx, motor freight, etc.) on each order.

Selecting the right method of shipment for your order is an important decision. You will want to keep the freight cost as low as possible and at the same time, get the best results in terms of service. The decision must be based on distance, weight and size of the order, and how rapidly you want it delivered. You should call the various freight carriers in your area for rates and service details. However, here is some general information on how they work:

**Federal Express (FedEx) Home Delivery**

Federal Express home delivery is our standard ground carrier. This may be one of your best options for shipping.

**Things to Remember:**

- FedEx Home Delivery takes typically three to five (3 to 5) working days Tuesday to Saturday for delivery. It is recommended that someone be available at the "Ship To" address to accept the shipment. (You may desire to address your shipment to your neighbor, friend, relative, etc.)
- Herbalife allows a maximum weight of 48 pounds per box.
- When your shipment consists of several boxes, they may not all be delivered at the same time. (If this happens, simply allow two [2] additional days for the balance of the shipment to be delivered.)

All orders to be shipped via FedEx are shipped from the Los Angeles and Memphis Distribution Centers on a freight prepaid basis. When you request FedEx as the method of shipment on an order, your delivery and freight will be calculated as indicated in the following ground chart.

**FedEx Home Delivery**

Rate	times (X)	Retail Value
2.50%		\$1,000 and Up
3%		\$700 - \$999
3.50%		\$400 - \$699
4%		\$125 - \$399
\$6.00	Minimum	\$0 - \$124

**Examples:**

- A) \$400 retail value x 3.5% = \$14.00 freight cost
  - B) \$130 retail value x 4% = \$5.20 freight cost
  - C) \$124 retail value - add \$6.00 minimum freight cost
- Please be sure to include the shipping costs in your payment to avoid any delay in processing and shipping your order.

**FedEx 2 and 1 Day Delivery**

FedEx - 2 Day 6% - \$8 minimum

FedEx - 1 Day 10% - \$16 minimum

All Other Shipping Methods COD

**Motor-Freight Carrier**

When your order weight exceeds 100 pounds, you may want to consider a motor-freight carrier. Generally you will pay for a minimum of 100 pounds of freight.

**Things to Remember:**

- All truck shipments are made on a freight-collect basis.
- This service will range from overnight delivery to five (5) or more working days, depending on the distance between the shipping point and the destination.
- Door-to-door delivery is provided to most locations or, upon request, your order may be held at the dock for pickup.
- Generally, the complete shipment is delivered at once.

- If door-to-door is requested, there must be someone available at the "Ship To" address to accept the shipment.
- The heavier the shipment, the lower the freight rate per pound. For more detailed information, call your local trucking companies.

**Air Shipping**

Special rates are available for almost any shipment size, but when your order weighs over 200 pounds, it may be to your advantage to consider the delivery time and the possible cost savings. The airfreight industry is becoming very cost competitive with ground-freight transportation. Convenient special freight-cost programs are available through most airlines. For example, E and EH Disposable Corrugated Air Containers can be shipped at special rates, or you can take advantage of the special rates of the deferred airfreight programs.

**Things to Remember:**

- All air shipments are made on a freight-collect basis.
- Airfreight offers the fastest means of transportation.
- They offer call-upon-arrival service.
- Your order can be delivered to your door. (This requires an additional charge, and someone must be available to accept the shipment.)
- Shipments may be held at the airport terminal for pickup.
- Weekend service is available at most major airports.
- Air containers have special rates. (When using this method, remember that the total cubic footage cannot be 100% utilized due to the variance of product dimensions.)
- Please specify the airport of destination, or the airline will ship to the airport closest to the "Ship To" address.
- There is excellent traceability. For more specific information, call the airfreight carriers at the airport(s) closest to you.

**Air- and Truck-Freight Insurance**

Herbalife recommends that you insure your air and truck shipments at their full discounted value for a small premium. Typically the cost of the airfreight insurance is approximately 40 cents for each \$100 declared value. For example, if you are a Supervisor placing a \$2,000 retail order at a 50% discount, you are paying \$1,000. If you declare this \$1,000 as your freight value, your full insurance coverage will cost \$4. When ordering, indicate in the shipping instructions that you wish to have your order "insured at full value." The additional insurance amount will be added to your freight charges. Without the insurance, you can only collect the amount determined by the freight company policy. (Flat and per pound rates vary from carrier to carrier, but tend to be in the area of 50 cents to 60 cents per pound.)

## When Receiving Your Shipment

All Herbalife® products are in perfect condition when the carrier takes possession of the shipments at our Distribution Center loading docks. Upon receipt of your package, here are some things to remember:

- Your signature means that you have received your shipment in a satisfactory manner (unless otherwise specified).
- Determine the number of boxes your shipment includes, either by the packing slip or by the number of boxes marked on top of each box (e.g., 1 of 3, 2 of 3, etc.).
- Only sign “Received” for the number of boxes actually received.
- Check your shipment for obvious outside damages. (Even though there is no apparent damage on the outside of a box, some damage may have occurred inside.) See “Shipping Inquiries and Claims” below.
- Note any damages and/or box shortages on the carrier’s delivery documents. (FedEx may not deliver all boxes the same day.)

## Shipping Inquiries and Claims

For any specific inquiry or problem associated with a particular shipment (damaged and lost order claims, etc.) please call Herbalife’s Order Support Department toll-free at 866-866-4744.

## FedEx Home Delivery Claims

- FedEx lost shipments (complete or partial) must be reported to Herbalife International within seven (7) days after the estimated time of arrival.
- Any hidden damages found on a FedEx delivery, discovered after the FedEx driver has left, must be reported to your local FedEx office immediately. FedEx will send a driver to pick up the damaged items for inspection. Keep the damaged items in the original package as found, including all packing material and the master container.
- FedEx will forward a copy of the damage-inspection report to the Herbalife Distribution Center that originated the shipment.
- The Distribution Center, upon receiving this report, will initiate the proper FedEx claim(s) procedures and follow up to completion.
- In some instances, FedEx may desire not to send an inspector to pick up the damaged items. However, the damage report will still be generated, and the same procedure as above will take effect. In either case, you will be given a control number from FedEx.

## Month-End Ordering Guidelines

### General – United States

The Herbalife U.S. Sales Order Department, as well as all Herbalife International Sales Order Departments, will be open extended business hours on the designated End of Month (EOM); Distribution Centers will be open regular business hours that day.

### A. Business Hours

#### 1. Sales Order Department:

English and Spanish Lines  
 Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
 Saturday: 6:00 a.m.–2:00 p.m. (PT)  
 EOM: 9:00 a.m.–12:00 a.m. (PT)  
 Holidays: 9:00 a.m.–2:00 p.m. (PT) or Closed  
 Closed Sunday

#### 2. TTY Users: 800-503-6180

Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
 Closed Saturday and Sunday

#### 3. Los Angeles Distribution Center (LADC):

Monday–Friday: 9:00 a.m.–7:00 p.m. (PT)  
 Saturday: 9:00 a.m.–5:00 p.m. (PT)  
 Closed Sunday

#### 4. Memphis Distribution Center:

Monday–Friday: 8:00 a.m.–7:00 p.m. (CT)  
 Closed Saturday and Sunday

#### 5. Dallas Sales Center:

Monday–Friday: 10:00 a.m.–7:00 p.m. (CT)  
 Saturday: 10:00 a.m.–3:00 p.m. (CT)  
 Closed Sunday

#### 6. Phoenix Sales Center:

Monday–Friday: 10:00 a.m.–7:00 p.m. (PT)  
 Saturday: 10:00 a.m.–3:00 p.m. (PT)  
 Closed Sunday

#### 7. Chicago Quick Response Center:

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
 Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
 Saturday: 10:00 a.m.–3:00 p.m. (CT)  
 Closed Sunday

#### 8. Bronx Quick Response Center:

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
 Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (ET)  
 Saturday: 10:00 a.m.–3:00 p.m. (ET)  
 Closed Sunday

9. Tracy Quick Response Center:

Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

10. Houston Quick Response Center:

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

11. Riverside Quick Response Center:

Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

12. Brooklyn Quick Response Center:

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
Tuesday, Thursday: 12:00 p.m.–8:00 p.m. (ET)  
Saturday: 10:00 a.m.–3:00 p.m. (ET)  
Closed Sunday

B. Business Numbers/Addresses

1. World Operations Home Office

- a. Toll-Free Number (Distributor Relations in English and Spanish): 866-866-4744
- b. TTY Users: 800-503-6180
- c. HAP Order Line: 866-866-4744
- d. Mailing Address  
Herbalife International of America, Inc.  
Sales Order Department  
P.O. Box 80210  
Los Angeles, CA 90080-0210
- e. Express Mail Only  
Herbalife International of America, Inc.  
Sales Order Department  
950 West 190th Street  
Torrance, CA 90502

2. Los Angeles Distribution Center (LADC) (Walk-In and Pickup Service)

Herbalife International of America, Inc.  
18431 S. Wilmington Avenue  
Carson, CA 90746

3. Memphis Distribution Center (Walk-In and Pickup Service)

Herbalife International of America, Inc.  
5025 Crumpler Road  
Memphis, TN 38141

4. Dallas Sales Center

(Walk-In and Pickup Service)  
8105 North Beltline Road, Suite 100  
Irving, TX 75603

5. Phoenix Sales Center

(Walk-In and Pickup Service)  
1606 E. University Dr., Suite #109  
Phoenix, AZ 85034

6. Chicago Quick Response Center

(Walk-In and Pickup Service)  
200 Howard Avenue, Suite 232  
Des Plaines, IL 60018-5910

7. Bronx Quick Response Center

(Walk-In and Pickup Service)  
2359 Hollers Avenue  
Bronx, NY 10475

8. Tracy Quick Response Center

(Walk-In and Pickup Service)  
470 West Larch Road, Suite 10  
Tracy, CA 95304

9. Houston Quick Response Center

(Walk-In and Pickup Service)  
4702 N. Sam Houston Pkwy. W., Suite 130  
Houston, TX 77086

10. Riverside Quick Response Center

(Walk-In and Pickup Service)  
7560 Jurupa Avenue  
Riverside, CA 92504

11. Brooklyn Quick Response Center

(Walk-In and Pickup Service)  
919 Flushing Avenue  
Brooklyn, NY 11206

For additional information on products, qualifications, Marketing Plan, etc., please contact the Distributor Relations Department English and Spanish Lines:

Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
EOM: 9:00 a.m.–6:00 p.m. (PT)  
Closed Holidays, Saturday and Sunday

End of Month Ordering and Payment Deadlines

The deadlines specified below are set to ensure accurate payment of Royalty Overrides to each and every Distributor.

- All orders MUST be received on or before the End of Month (EOM) day in order to count for that month’s Volume. The EOM day is absolutely the last day for us to process your order in the current month.

- Telephone orders must be placed and fully paid by the end of business day on each country's specified EOM day.
  - Mail orders must be postmarked on or before each country's specified EOM day and received by Herbalife NO LATER than the 5th of the following month. Appropriate payment must be included with the order.
  - Walk-in orders must be placed and fully paid by close of business day on the specified EOM day.
  - Wire transfers or postal payments must be initiated on or before each country's specified EOM day. These transactions must be received by Herbalife no later than the 5th of the following month.
  - All payments for all orders placed on the EOM day must be processed, accepted and paid in full by the end of that same day to count for that month's Volume, no matter what day the EOM actually falls on.
  - Herbalife shall not be held responsible for monetary transfers that are not deposited to our account by the specified deadline.
  - Distributors are responsible for making whatever arrangements necessary to ensure payment is received on time and that adequate credit is available to assure approval of any credit card purchases. If payment is not received by the specified date, the order will count as the following month's Volume.
  - If the EOM falls into the beginning of the next month, causing a dual Volume Month, Distributors are responsible for specifying the order month they wish the Volume of the order to count towards.
  - International orders must be placed on or before the shipping country's End of Month date.
2. It is important to establish and maintain a proper set of books and records for your business. Inexpensive manual and computerized systems are available, or you may prefer to hire an experienced bookkeeper. Under federal law, tax records should be maintained for a minimum of three (3) years, but it may be prudent to maintain them for a longer period.
  3. Federal and state tax laws impose certain reporting requirements upon Herbalife. On or before January 31 of each year, U.S. Distributors will be sent a Form 1099 in which they must specify the amount of earnings (commissions, overrides, bonuses, etc.) they received during the prior calendar year. The form will also note whether the Distributor purchased \$5,000 or more retail value of products. This information is also filed with the Internal Revenue Service (IRS), and from there is made available to the states.
  4. For these reporting reasons, all Distributors in the United States and those who are citizens of the United States, wherever resident, must provide proper taxpayer identification numbers (usually their Social Security number or Individual Tax Identification Number). It is the Distributor's responsibility to assure that the name, legal address and taxpayer identification number are properly recorded in the Herbalife computer system and to immediately advise if a correction is needed. If such information is not correct, tax laws impose a "backup" withholding tax. The tax so withheld can be claimed by the Distributor on their individual income tax return as a prepayment of tax.

## Tax Information

The following notes highlight key points of interest for Herbalife Distributors. These notes are not intended to cover all aspects of registration or taxation that may affect your Distributorship, so we recommend that Distributors consult with their own tax or business advisor, or their local, state or federal taxation offices.

### A. Federal/State Income Tax and Reporting

1. Income tax laws in the United States, and in various states and municipalities within the United States, require that individuals with income from businesses report such income. Residents and those who are citizens of the United States, wherever resident, are required to file income tax returns reporting all of their income. Nonresidents may also need to report their U.S. income. Distributors are solely responsible for the proper reporting of their income and payment of their taxes.

### B. Nonresident Withholding Tax

1. All payments of commissions, overrides and bonuses resulting from U.S. orders are deemed by the IRS to be U.S. source income. As such, payments to upline Distributors residing outside the United States are subject to U.S. nonresident withholding tax (currently 30%).
2. On or before March 15 of each year, Herbalife will send a Form 1042-S to Distributors in which they will report the amount of earnings paid and the amount of U.S. tax withheld. Depending on the Distributor's situation and the laws of the Distributor's resident country, a refund from the IRS may be requested or relief from double taxation is often available. Affected Distributors are encouraged to consult with their tax advisors.

### C. State and Local Sales Taxes

1. Many Herbalife products are taxable under the various states' sales tax laws. Distributors are primarily

responsible for their own sales tax liability and should ensure they are in compliance with all applicable sales tax laws.

- Herbalife has voluntarily registered in many states to pre-collect state sales taxes on behalf of Distributors and, thus, reduce the Distributors' compliance requirements. In these instances, sales tax is based on the ultimate retail price of products shipped for resale to these states. In some states, Distributors may obtain from the state and submit to Herbalife a resale/exemption certificate. By doing so, the Distributor retains primary responsibility for the collection, reporting and payment of all such taxes. For a list of these states, please contact the Distributor Relations Department toll-free at 866-866-4744.

#### **D. Business Licenses and Registrations**

Many cities or municipalities within the United States require that Distributors register their business when starting their business activity. We recommend that U.S. Distributors contact their local government offices for information about these requirements.

#### **E. Social Security or Individual Tax Identification Number and Other Taxes**

All Herbalife Distributors are independent and as such, are responsible for their own social security or Individual Tax Identification Number, Medicare and other taxes as may apply. Advance payments of these taxes may be required. Further information is available from the respective tax office or your tax advisor.

The information noted above may be modified from time to time by the respective authorities. To ascertain your personal situation or if you have any questions, we suggest that you consult the respective federal, state and local tax offices in your area, or your qualified tax advisor.

## **Frequently Asked Questions**

### **Do I have to wait for my Distributor Application to be processed before placing an order?**

It's not necessary to wait for your Application to be processed. You are entitled to buy Herbalife products from your Sponsor, first upline Fully Qualified Supervisor or the Herbalife Sales Order Department (at the applicable discount) utilizing the Herbalife ID number on the Registration Card contained in your International Distributor Kit (IBP).

### **How do I place an order?**

It's easy! You may place orders through your Sponsor, upline Supervisor, or Herbalife directly. When you become

a Supervisor you must purchase directly from Herbalife. It is important for you to have certain information prepared prior to placing an order directly with Herbalife. You may place orders with Herbalife by telephone, mail, by going to one of our Distribution Centers (Los Angeles or Memphis) or via our online ordering system on [MyHerbalife.com](http://MyHerbalife.com).

### **May I go to the Distribution Center and pick up the products myself?**

You may either place your order with our Sales Order Department and specify that you will pick it up in person, or you can simply go to our Los Angeles, Memphis, Dallas or Phoenix Sales and Distribution Centers, place and pay for your order there, and pick up the products at the same time.

### **May I call Herbalife directly with questions?**

We're here to assist you in any way possible. We always encourage you to first consult your IBO/Career Book and to work closely with your Sponsor and upline Supervisor, since they have a great deal of field experience. However, if we may assist you, please call Herbalife's Distributor Relations Department toll-free in Los Angeles at 866-866-4744.

### **How quickly will my order be processed and how long will it take to reach me?**

All orders will be shipped the next business day, whenever possible, if payment is received and processed. Shipping times vary, of course, depending on the shipping method you choose. All orders shipped from our Los Angeles and Memphis Distribution Centers via FedEx home delivery service are shipped freight prepaid, and will generally arrive within three to five (3 to 5) working days. Distributors commonly use FedEx when an order weighs under 200 pounds. Express, motor carrier and air services are also available on a freight-collect basis, in order to provide you with the widest possible variety of choices.

### **Do I have to pay any other charges on top of the price of the products?**

Orders shipped via FedEx, Herbalife's most popular freight service, are shipped freight prepaid. All other freight services are shipped freight collect. We also add a 7% packaging and handling charge to the full retail of all products, giftables and promotional orders. Taxes, of course, are based on the tax rates of your shipping destination.

### **Why do I have to pay a 7% packaging and handling charge?**

A great deal of administrative time and labor goes into processing, handling and marketing. Charging by products ordered is the fairest way to cover these costs.

## I've heard a lot about the HAP Program. What is it all about?

HAP stands for **Herbalife Advantage Program**. HAP is an automatic monthly product shipment program, providing Distributors with an effortless, flexible and convenient method for selecting and automatically shipping the products they use the most. HAP also provides Herbalife Distributors who activate their HAP orders with exclusive added benefits, including free activation no Annual Processing Fee for non-Supervisors with active HAP orders for 12 consecutive months; 35% to 50% discount; multiple HAP orders – one for personal use and one consisting of products for resale; additional sales tax savings (on personal use orders only); single-unit purchases; automatic, consistent monthly home delivery; special promotional offers; flexibility to change your HAP order (anytime before HAP deadline); free monthly literature and communications; and easy automatic payment options. You will find a HAP Distributor Activation and Order Form in this book. You may download the form from [MyHerbalife.com](http://MyHerbalife.com). There also are dedicated HAP Sales Order telephone numbers listed in the "Ordering Procedures" section of this book. For additional information, please contact Herbalife's Distributor Relations Department at 866-866-4744.

## How do I retail the products?

Retailing the Herbalife products will be one of the most important keys to your success! As Herbalife's founder and first Distributor, Mark Hughes always stressed, use the products, wear the button and talk to people. You will develop your own selling style, which might include talking to your circle of influence, distributing flyers, conducting surveys and/or participating in seasonal promotions. Your Sponsor has the field experience to provide you with the proper training.

## Wear the Button

- You become a walking advertisement.
- Wear or use or any Herbalife item that will attract people to talk to you – this makes conversation easy.

## Talk to People

- When they ask, tell your weight-management success story or your income success story.
- Explain the products and business opportunity.
- Explain how they can improve their health and also make immediate profits.
- Talk to people you know.
- Talk to everyone.

## May I export the products?

Regulations vary from country to country in which we are

officially open. Each country has its own line of products, literature and promotional items specific to each of these countries. Distributors may only bring products approved for a specific country within that country. Distributors may not bring products from one Herbalife country to another, unless approved for sale there.

## Where can I get more training on the Herbalife products and selling methods?

You have a multitude of fantastic choices! Your Sponsor and/or upline Supervisor should be able to assist you, and we always suggest you contact them first. There are many training sessions held throughout the world every year, and by clicking on [MyHerbalife.com](http://MyHerbalife.com), you can access training and business-building tools 24/7. Some of our websites include:

### Herbalife.com

Herbalife's official website establishes Herbalife as the leading weight loss, targeted nutrition and outer nutrition site for information, education and retail/business opportunity lead captures.

### MyHerbalife.com

The primary business management and success resource website for Herbalife Distributors – optimizing recruitment, retention, retail and community. Login requires Distributor ID and PIN Code.

### HerbalifeCentral.com

An administrative website dedicated to Herbalife Distributors worldwide.

### LivingHerbalifeLean.com

A lifestyle management program dedicated to helping people break the emotional-eating habit.

### HerbalifeFamilyFoundation.org

This website is dedicated to the Herbalife Family Foundation, which helps at-risk children around the world. If prompted for a password, please contact the Sales and Communications or Distributor Relations Departments.

There is also the Herbalife Broadband Network (HBN), which features fast, high-quality audio and video streaming to anyone with Internet access, 24 hours a day.

## Herbalife Broadband Network (HBN) offers:

- Exciting product launches
- Unbeatable video training from Herbalife's founder Mark Hughes
- Live question-and-answer sessions with top Distributors and Herbalife's doctors

- Motivation by Jim Rohn, world-renowned business speaker
- House-party training

Our Sales and Communications Department also operates a Touchfon information service that will keep you updated with the latest Herbalife information at a nominal charge. For additional information on these and many other business tools available, please contact Herbalife's Distributor Relations Department toll-free at 866-866-4744.

### **Once I qualify for earnings, are there any special procedures to follow?**

Yes, and they are quite simple. In order to receive your earnings, as a Fully Qualified Supervisor or TAB Team member you must strictly adhere to Herbalife's 10 Retail Customers/70% Rule. (Please refer to Rules 18-B and 18-C in the "Rules of Conduct and Distributor Policies" section of this book for complete information.)

### **Are there any tax issues I should be aware of?**

Yes, and they are similar to any business you would independently operate. Distributors are solely responsible for the proper reporting of their income and payment of their taxes. Any questions should be referred to the individual Distributor's own tax advisor. (For more information, please refer to the "Tax Information" section after the "Ordering Procedures" section of this book.)

### **Rules of Conduct and Distributor Policies USA IMPORTANT NOTICE!**

Following are the answers to some of the most commonly asked questions by new Distributors regarding Herbalife's Rules of Conduct and Distributor Policies. Please carefully review the "Rules of Conduct and Distributor Policies" section in this book, which will provide you with the full details. These Rules of Conduct and Distributor Policies have been established for your protection. They represent the code of ethics by which all Herbalife Distributors must operate.

We encourage you to read and understand them, so you are fully aware not only of your own obligations, but also of your rights as an Herbalife Distributor. We believe Herbalife® products and Sales & Marketing Plan are the best in the industry. We also believe in our Distributors and in supporting them by working together to uphold the highest possible ethical standards. We are committed to maintaining the integrity of Herbalife, its Sales & Marketing Plan and its global distribution network of Distributors.

### **What are the age requirements for becoming a Distributor?**

An Applicant must be at least 18 years of age to become an

Herbalife Distributor and to conduct business in the United States. However, a minor who is above the age of 14 may submit an Application for a Minor Distributorship, under certain conditions. (Please refer to Section 3 in the "Rules of Conduct and Distributor Policies" section for full details.)

### **May my spouse and I have separate Distributorships?**

Married couples may have only one Distributorship. Married couples wishing to become Distributors together, must complete and sign a single Distributor Application, thereby having only one Sponsor. It is very important for new Distributors to note that an individual may have only one Herbalife Distributorship and should never sign more than one Distributor Application. (Please refer to Sections No. 4 and No. 5 in the "Rules of Conduct and Distributor Policies" section of this book for full details.)

### **May I submit my Distributor Application in the name of a Corporation or Partnership?**

The long-term success of Herbalife's Sales & Marketing Plan has been based on the entrepreneurial spirit of individuals. In order to help protect the integrity of the Sales & Marketing Plan, Herbalife only accepts Distributor Applications in the name of individuals. (Please refer to Section 6 in the "Rules of Conduct and Distributor Policies" section of this book for full details.)

### **What is the relationship with my Sponsor?**

The relationship between a Distributor and their Sponsor is the foundation of Herbalife's Sales & Marketing Plan. Many Sponsors spend a significant amount of time locating new Distributors, training and working with them over a period of time. (Please refer to Section 11 in the "Rules of Conduct and Distributor Policies" section of this book for details regarding the responsibilities of a Sponsor.)

### **May I sell Herbalife products anywhere in the world?**

As an Herbalife Independent Distributor, you may sponsor Distributors, train and build your downline business in any of the countries where Herbalife is officially open. Please note, Distributors may only sell products approved for a specific country within that country. They may not bring products from one Herbalife country to another, unless approved for sale. Permissible Herbalife business activities vary in each country, depending on local laws. Please contact Herbalife's Distributor Relations Department for detailed information on a specific country's rules. Officially opening a country is an involved and complicated process. All countries have rules and regulations regarding the manufacture, labeling and sale of products and other regulations with which we must comply. Therefore, we cannot allow the sale of our products in a country in which we are not yet officially open. Additionally, country

openings will be delayed if government officials find that our products are being improperly imported into that country. For these reasons, we consider violations of our export policy to be extremely serious. Such violations could result in the immediate termination of a Distributorship. (Please refer to Section 9 of the "Rules of Conduct and Distributor Policies" section of this book for complete information.)

**What is Herbalife's Customer Refund Policy?**

Herbalife® products have a 30-day money-back guarantee for the retail customer, from the time the product is received. Distributors must respond quickly and courteously when the retail customer requests this guarantee be honored. The Distributor may offer the retail customer a choice of a full refund of the purchase price or full credit for exchange of other Herbalife products, and the Distributor must honor the retail customer's choice. (Please refer to page 23 of the "Sales & Marketing Plan" section and Section 17 in the "Rules of Conduct and Distributor Policies" section of this book for full details on these procedures, policies and rules.)

**Does Herbalife have specific policies and rules regarding advertising and promotion?**

The integrity of Herbalife's Sales & Marketing Plan and legalities make it necessary for us to enforce important rules and policies regarding advertising and promotion. We are confident that you will find these rules and policies protect you and your business as much as they protect Herbalife.

Distributors may produce their own ads or flyers, provided they follow all of Herbalife's rules for advertising. It is the Distributor's responsibility to ensure they are complying with these rules. If you have any questions regarding our advertising guidelines, please contact Herbalife's Distributor Relations Department. (Additionally, please refer to Sections 19 through 28 in the "Rules of Conduct and Distributor Policies" section for full details.)

**Herbalife Worldwide Offices**

Listed on this page are the addresses, phone numbers and hours of operation for Herbalife's Worldwide Corporate Headquarters, Operations Home Office and U.S. Distribution and Sales Centers. Herbalife Distributors may order products or literature to be shipped from any of our Worldwide Distribution Centers. However, no material can be shipped across international boundaries. Please contact your local Sales Order Department to place an international order.

For information regarding Herbalife's Distribution Centers throughout the world, please refer to the listing on [MyHerbalife.com](http://MyHerbalife.com), or contact the Distributor Relations Department toll-free at 866-866-4744.

If you have any questions or require assistance placing an order, please call Herbalife's Sales Order Department or the Distribution Center nearest you.

**Herbalife International of America, Inc.**

Worldwide Corporate Headquarters  
800 West Olympic Boulevard, Suite 406  
Los Angeles, CA 90015, USA  
Main Number: 310-410-9600  
Monday–Friday: 8:30 a.m.–5:30 p.m. (PT)  
Closed Saturday and Sunday

**Herbalife International of America, Inc.**

Operations Home Office  
950 West 190th Street  
Torrance, CA 90502  
Main Number: 310-410-9600  
Monday–Friday:  
8:30 a.m.–5:30 p.m. (PT)  
Closed Saturday and Sunday

**Sales Order Department**

Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
Saturday: 6:00 a.m.–2:00 p.m. (PT)  
EOM: 9:00 a.m.–12:00 a.m. (PT)  
Holidays: 9:00 a.m.–2:00 p.m. (PT) or Closed  
Closed Sunday

Sales Order Department: 866-866-4744 (All orders)

**Distributor Relations Department**

Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
EOM: 9:00 a.m.–6:00 p.m. (PT)  
Closed Holidays, Saturday and Sunday

Distributor Relations: 866-866-4744  
Distributor Relations Fax: 310-258-7019

**TTY Assistance**

TTY Users: 800-503-6180  
Monday–Friday: 9:00 a.m.–6:00 p.m. (PT)  
Closed Saturday and Sunday

**Los Angeles Distribution Center (LADC)**

18431 S. Wilmington Avenue  
Carson, CA 90746  
Monday–Friday: 9:00 a.m.–7:00 p.m. (PT)  
Saturday: 9:00 a.m.–5:00 p.m. (PT)  
Closed Sunday  
Main Number: 310-952-0100  
Main Fax: 310-952-0111

**Memphis Distribution Center**

5025 Crumpler Road  
Memphis, TN 38141

Monday–Friday: 8:00 a.m.–7:00 p.m. (CT)  
Closed Saturday and Sunday

Main Number: 901-795-5056  
Main Fax: 901-547-2105

**Dallas Sales Center**

8105 North Beltline Road, Suite 100  
Irving, TX 75063

Monday–Friday: 10:00 a.m.–7:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

Main Number: 214-441-3333  
Main Fax: 214-441-3338

**Phoenix Sales Center**

1606 E. University Dr., Suite #109  
Phoenix, AZ 85034

Monday–Friday: 10:00 a.m.–7:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

Main Number: 602-358-2066  
Main Fax: 602-384-2180

**Chicago Quick Response Center**

200 Howard Avenue, Suite 232  
Des Plaines, IL 60018-5910

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

Main Number: 847-298-9533  
Main Fax: 847-298-9710

**Bronx Quick Response Center**

2359 Hollers Avenue  
Bronx, NY 10475

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (ET)  
Saturday: 10:00 a.m.–3:00 p.m. (ET)  
Closed Sunday

Main Number: 718-708-7020  
Main Fax: 718-708-7023

**Tracy Quick Response Center**

470 West Larch Road, Suite 10  
Tracy, CA 95304

Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

Main Number: 209-832-4110  
Main Fax: 209-833-3650

**Houston Quick Response Center**

4702 N. Sam Houston Pkwy. W., Suite 130  
Houston, TX 77086

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (CT)  
Tuesday and Thursday: 12:00 p.m.–8:00 p.m. (CT)  
Saturday: 10:00 a.m.–3:00 p.m. (CT)  
Closed Sunday

Main Number: 281-895-8193

**Riverside Quick Response Center**

7560 Jurupa Avenue  
Riverside, CA 92504

Monday and Wednesday: 12:00 p.m.–8:00 p.m. (PT)  
Tuesday, Thursday and Friday: 10:00 a.m.–6:00 p.m. (PT)  
Saturday: 10:00 a.m.–3:00 p.m. (PT)  
Closed Sunday

Main Number: 951-689-4444

**Brooklyn Quick Response Center**

919 Flushing Avenue  
Brooklyn, NY 11206

Monday, Wednesday and Friday: 10:00 a.m.–6:00 p.m. (ET)  
Tuesday, Thursday: 12:00 p.m.–8:00 p.m. (ET)  
Saturday: 10:00 a.m.–3:00 p.m. (ET)  
Closed Sunday

Main Number: 718-381-9610

SAMPLE FORMS

**Introduction**

The following pages contain samples of forms which you may be required to use to communicate with Herbalife as you conduct your business. They are included to help you become familiar with them and to assist you in completing them. Please review them and become familiar with their use.

Downloadable and printable forms are also available online at [MyHerbalife.com](http://MyHerbalife.com) by clicking "Distributor Documents" in the "My Office" area on the home page. Then select "USA" from the drop-down menu.

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HERBALIFE INTERNATIONAL OF AMERICA, INC.  
 P.O. Box 80210  
 Los Angeles, California 90080-0210  
 Tel: (310) 410-9600

Sales Order Department/Distributor Relations  
 Tel: (866) 866-4744  
 TTY User: (800) 503-6180

IDENTIFICATION NUMBER

The number above is your Herbalife ID Number once your Application is accepted

**APPLICATION FOR INTERNATIONAL DISTRIBUTORSHIP**

Application must be completed accurately and in its entirety in order to be considered by Herbalife International

**APPLICANT INFORMATION**

Last Name First Name Middle Initial

Street Address (P.O. Box/Rural Route Number) If P.O. Box indicated, Legal/Fiscal Residence Address must be completed below.

City State ZIP Code

Country Code Area Code Day Phone Area Code Evening Phone Area Code Fax

Area Code Mobile Phone

What is your preferred language for certain communications when available?: English  Spanish

Email Address (if applicable) Your email address must be unique and not shared by another Distributor. By providing your email address, you have consented to receive business-related email communications from Herbalife.

Date of Birth (month - spelled out) (day) (year) Applicant's Social Security Number or Individual Taxpayer Identification Number Spouse's Social Security Number or Individual Taxpayer Identification Number

Spouse's Last Name First Name Middle Initial

c/o - "In Care Of" Name (if applicable). If completed, Legal/Fiscal Residence Address must be completed below.

**LEGAL/FISCAL RESIDENCE (IF DIFFERENT FROM ABOVE)**

Street Address (cannot be a P.O. Box)

City State ZIP Code

Country Country Code Area Code Phone Number

**SPONSOR'S INFORMATION**

Sponsor's Name (print)

Phone

Sponsor's Herbalife ID Number

**SUPERVISOR'S INFORMATION**

Supervisor's Name (print)

Phone

Supervisor's Herbalife ID Number

**AGREEMENT OF DISTRIBUTORSHIP**

1. I apply to become an Independent Distributor of Herbalife products on the terms and conditions set forth below and on the back of this form, as well as the documents which are expressly incorporated into this Agreement of Distributorship. I will become a Distributor only when this Application for Distributorship is accepted by entering it into Herbalife's records at Herbalife's Home Office in Los Angeles, California, in its sole and absolute discretion. Until then, I am granted a provisional license to buy and sell Herbalife products.

2. If my spouse or I have previously owned or assisted in an Herbalife Distributorship, I will fill out the following:  
 Distributorship ID/Name/Application Date \_\_\_\_\_, \_\_\_\_/\_\_\_\_/\_\_\_\_. Date of last activity in connection with that Distributorship \_\_\_\_/\_\_\_\_/\_\_\_\_. I acknowledge that the Rules of Conduct and Distributor Policies require a one-year period of inactivity following:  
 (a) non-payment of the Annual Processing Fee or (b) resignation of any prior Distributorship, and I represent and warrant to Herbalife that such period has passed.  
 I also acknowledge that my spouse and I may not operate an Herbalife Distributorship other than this Distributorship for which we are applying. Failure to observe the period of inactivity may result in reactivation of the prior Distributorship and/or extension of the waiting period required prior to becoming eligible to sign an Application under a new Sponsor.  
 Additionally, any Application processed prior to the completion of the waiting period may be deemed an invalid Distributorship. The corrective measure applied to protect the lines of sponsorship can cause significant lineage and monetary adjustments or fines, as well as the termination of the invalid Distributorship, all within the sole and absolute discretion of Herbalife.

3. I hereby represent, warrant and agree that I:  
 a. Have received and have reviewed thoroughly the contents of a previously unopened Herbalife International Business Pack ("IBP") or Mini IBP. The Mini IBP is the basic package containing only explanatory materials and forms and product sample packages. The IBP includes Herbalife products in addition to the materials and forms in the Mini IBP.  
 b. Am not relying upon any representations as to the financial results I might achieve.  
 c. Am aware that the only required purchase to become, succeed or advance as an Herbalife Independent Distributor is the Mini IBP.  
 d. Although a Distributorship is not employment, I confirm that I am authorized to work in the United States.  
 e. Have received and reviewed the Statement of Average Gross Compensation of U.S. Supervisors and the Policy Statement on Business Methods, both of which are contained in the Mini IBP and the IBP and which are available on [www.MyHerbalife.com](http://www.MyHerbalife.com) or upon request from my Sponsor or the Distributor Relations Department.

(For additional important terms and conditions, see the back of this form.)

Applicant's Signature: \_\_\_\_\_  
 I hereby acknowledge that I have reviewed and understand the terms and conditions set forth above and on the back of this form and agree to be bound by them.

Month Day Year

# 4843  
**AGREEMENT OF DISTRIBUTORSHIP (CONTINUED)**

4. The Herbalife International Business Pack ("IBP"), contains (among other things) the Rules of Conduct and Distributor Policies, the Sales and Marketing Plan, Ordering Procedures and Sample Forms. Those documents and such other rules and policies as Herbalife has published, or in the future may publish, together with such modifications and amendments as Herbalife shall make from time to time in its sole and absolute discretion (collectively, the "Rules"), are each hereby incorporated into this Agreement of Distributorship (each in its then most recently published form).
5. The term of my Distributorship will be indefinite, subject to procedures, requirements and processing fees as Herbalife shall determine in its sole and absolute discretion. I may cancel the Distributorship at any time by notifying Herbalife in writing that I wish to do so. Following termination of my Distributorship, I have the right to resell to Herbalife unused and resalable products purchased from Herbalife and unused and resalable portions of the IBP, subject to the limitations, terms and conditions set forth in the Rules.  
**Montana Residents:** A Montana resident may cancel his or her Distributor Agreement within 15 days from the date of enrollment, and may return his or her Distributor Kit (IBP) for a full refund within such time period.
6. Herbalife may terminate my Distributorship if it determines I have violated this Agreement (including without limitation the Rules or applicable law). It may suspend or take other action regarding my Distributorship, in its sole and absolute discretion subject only to the limitations explicitly set forth in the Rules.
7. As an Herbalife Independent Distributor:
- I will use my best efforts to promote the sale of Herbalife products to consumers in a manner that enhances the reputation of Herbalife. My success will only come from my sales of Herbalife product for consumption and those of persons I have sponsored, directly or indirectly.
  - I will not engage in any deceptive, unfair or illegal practice. I must comply with all local, state and federal laws and regulations that apply to the Herbalife business and shall not engage in any practice or activity that could discredit or damage the image or reputation of Herbalife. This applies not only to the laws where I live but also to any country where I conduct the business as a result of taking advantage of Herbalife's International Sponsoring. I will indemnify, defend and hold harmless Herbalife from any cost or liability relating to any breach of this Agreement or violation of applicable law. Herbalife may offset against amounts which would otherwise be due to me reasonable amounts to cover such indemnity.
  - I will comply with Herbalife's Rules of Conduct and Distributor Policies published in the countries I operate.
  - I will conduct my Herbalife business as a self-employed independent contractor (determining my own schedule and objectives, responsible for my own expenses and any applicable taxes – including self-employment taxes), not as an employee, agent, franchisee, securities holder, joint venturer, fiduciary or beneficiary of Herbalife or any other Distributor. I will not be treated as an employee with respect to such services for federal or state tax purposes or any other purpose, and will assert no position to the contrary.
  - If I sponsor others to become Distributors, I will do so in an ethical and lawful manner, and I will thereafter continue to sell and promote the sale of Herbalife products for consumption, will use my best efforts to train, assist and support those I sponsor to do the same and will communicate and lead by example. I will make no representations about Herbalife's products or income opportunity except in compliance with Herbalife's Rules and applicable law. 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.
  - Herbalife International of America, Inc., P.O. Box 80210, Los Angeles, CA 90080, collects certain personal identifiable information about its Distributors. It does so to fulfill its obligations under the Distributor relationship and to provide its Distributors with the products and services requested. I understand my information may be used to send me materials about Herbalife products and services, or other commercial information, including information on products of Herbalife's business partners.
8. During the term of my Distributorship:
- And, thereafter for so long as they have economic value, my spouse and I will hold in confidence and trust for the exclusive benefit of Herbalife any trade secrets, formulas, business plans, or confidential or proprietary business information (including, without limitation, genealogies and other compilations of identifying and other data relating to other Distributors or customers), and any other information of commercial value relating to other Distributors or customers, provided by Herbalife or which I develop or obtain while a Distributor, and I will not use them, directly or indirectly, for any purpose other than the conduct of my Herbalife Distributorship.
  - And, for one (1) year thereafter, neither my spouse nor I will, directly or indirectly (through or by means of any person, entity or artifice), solicit, promote, sponsor or recruit any Herbalife Distributor or any customer of Herbalife of whom I became aware in the course of my Herbalife Distributorship, to join, promote, sell or purchase products of, or participate (as a salesperson or otherwise) in any multi-level marketing or direct sales company and I will not encourage anyone to do what I have agreed not to do.
  - And, in perpetuity thereafter, I will use Herbalife's trade name, logo, trademarks and intellectual property only if and to the extent expressly permitted by Herbalife in writing.
9. Neither this Distributorship nor any interest therein may be assigned or transferred, voluntarily or involuntarily, except as provided in the Rules and then only with the prior written consent of Herbalife, given (and if so, on such terms and conditions specified by Herbalife) or withheld by Herbalife in its sole and absolute discretion.
10. Herbalife is a family-oriented business that expects its Distributors to conduct themselves with the highest ethics and integrity. I agree to do so. I represent and warrant that I have not been convicted of a crime involving dishonesty or violence to others.
11. PRIVATE STATUTE OF LIMITATIONS AND CHOICE OF LAW AND FORUM. Despite any law or equitable doctrine or authority to the contrary, any Claim must be brought within one (1) year from the date the person or entity asserting the Claim first knew, or through the exercise of reasonable diligence should have known, that the Claim existed. Any Claim shall be resolved exclusively in a judicial proceeding in either the Superior Court or the United States District Court, both located in Los Angeles, California. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the domestic law of the State of California without the application of conflict of law principles.  
**Louisiana Residents:** Notwithstanding the foregoing, a Louisiana resident may bring an action against the Company with jurisdiction and venue as provided by Louisiana law.
12. MISCELLANEOUS LEGAL PROVISIONS:
- Neither Herbalife nor I shall be liable for any incidental or consequential damages caused by breach, termination or suspension of this Agreement, whether or not the possibility of such damages is known by either Party, and no punitive or exemplary damages shall be awarded against either of us in any dispute against the other except as explicitly required by California statute.
  - This Agreement (including documents incorporated herein, in their then published form) constitutes the entire Agreement between Herbalife and me.
  - If any one or more of the provisions contained herein shall for any reason be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provisions shall be ineffective, but shall not in any way invalidate or otherwise affect any other provision.
  - This Agreement shall be binding upon and inure to the benefit of the parties, their heirs and permitted successors in interest.
13. Neither I or my spouse, nor any other person assisting in my Distributorship will directly or indirectly (through or by means of any person, entity, or artifice) conduct any Herbalife business activities with an individual who (i) is (or whom I have reason to believe is) a citizen of Iran, Sudan, Cuba, or North Korea (regardless of place of residence); (ii) is a resident of, or operates businesses in Iran, Sudan, Cuba or North Korea; or (iii) who is believed to onsell to citizens or residents of Iran, Sudan, Cuba or North Korea. Business activities include but may not be limited to the following:
- promoting the Herbalife business opportunity;
  - sponsoring Herbalife Distributors;
  - promoting or selling Herbalife products; or
  - encouraging others to do what is prohibited under this rule
- Violation of this rule shall result in termination of the Distributorship.

Exhibit B

Distribution: White- Herbalife's copy Pink- Sponsor's copy Canary- Supervisor's copy Gold- Applicant's copy

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Form 4010-USEN-37 Rev. 05/12







**SUPERVISOR QUALIFICATION FORM**

Date: \_\_\_\_\_

Please mail/fax this completed form using the information below:

Herbalife International of America, Inc.  
950 West 190th Street  
Torrance, CA 90502-1001

Distributor Relations: (866) 866-4744  
Fax: (310) 258-7112

Fully Qualified Supervisor:

**Only one (1) Supervisor Qualification Form is required for each leg qualifying in your organization.** Please submit this Form to your Distributor Relations Department no later than the 5th of the month following your Distributor's qualifying orders. Please attach copies of the original Distributor Applications for each of the Distributors qualifying in your organization.

Please mark the appropriate box(es) below

Qualifying Month/Year: \_\_\_\_\_

<p><b>*One-Month Qualification</b> <input type="checkbox"/></p> <p>Achieve a minimum of 4,000 Volume Points in one calendar month, of which at least 1,000 Volume Points are Unencumbered Volume Points (ie., not used by another Distributor to qualify).</p>	<p><b>Two-Month Qualification</b> <input type="checkbox"/></p> <p><b>FIRST MONTH OF A TWO-MONTH QUALIFICATION:</b> <input type="checkbox"/> Achieve a minimum of 2,500 Volume Points in one calendar month, of which at least 1,000 Volume Points are Unencumbered Volume Points.</p> <p><b>SECOND CONSECUTIVE MONTH OF A TWO-MONTH QUALIFICATION:</b> <input type="checkbox"/> Achieve a minimum of 2,500 Volume Points in one calendar month, of which at least 1,000 Volume Points are Unencumbered Volume Points.</p> <p>When completing a two-month qualification, an application must be turned in separately each month.</p> <p>*50% status applies on the 1st of the month following the completion of your two-month qualification.</p>	<p><b>Qualifying With Organization</b> <input type="checkbox"/></p> <p>Did your downline qualify with their organization? Please list below the names, Herbalife ID numbers and Unencumbered Volume Points of the Distributors qualifying in this organization.</p> <p>Each Distributor must have a minimum of 1,000 Volume Points that are not being used by another Distributor becoming a Supervisor (Unencumbered Volume Points). The bottom Distributor in the organization must have 4,000 Volume Points for a one-month qualification or a minimum of 2,500 Volume Points for a two-month qualification.</p>
--	--	---

If there are more Distributors qualifying in this organization, please add to the chart as appropriate, and attach additional Distributor information (i.e., Name, Herbalife ID number and Volume Points) or complete a new form. Please complete a separate form for each new leg qualifying.

**FULLY QUALIFIED SUPERVISOR**

**1<sup>ST</sup> LEVEL**

1-Month

1st Month

2nd Month

**2<sup>ND</sup> LEVEL**

1-Month

1st Month

2nd Month

**3<sup>RD</sup> LEVEL**

1-Month

1st Month

2nd Month

**4<sup>TH</sup> LEVEL**

1-Month

1st Month

2nd Month

Please check one box for each Distributor qualifying

Fully Qualified Supervisor Name	
Herbalife ID Number	
Telephone Number	
Fully Qualified Supervisor: Please write the name, Herbalife ID number and Volume Points below for each Distributor qualifying in your organization.	

**1st Level:**

Distributor Name	
Herbalife ID Number	
Unencumbered Volume Points	

**2nd Level:**

Distributor Name	
Herbalife ID Number	
Unencumbered Volume Points	

**3rd Level:**

Distributor Name	
Herbalife ID Number	
Unencumbered Volume Points	

**4th Level:**

Distributor Name	
Herbalife ID Number	
Unencumbered Volume Points	

\*Don't forget to call Distributor Relations Toll-Free at (866) 866-4744 to place these qualifying Distributors at Temporary 50% status.



Herbalife International of America, Inc.
950 West 190th Street, Torrance, CA 90502-1001
P.O. Box 80210 Los Angeles, CA 90080-0210
Distributor Relations: (866) 866-4744
TTY User: (800) 503-6180
Fax Number: (310) 258-7112

Please carefully review and complete this Acknowledgment Form confirming your understanding of the eligibility rules to compete for TAB Team Production Bonuses and, to earn the right to other payments from Herbalife International of America, Inc.

Your Acknowledgment Form must be received and approved by Herbalife International of America, Inc., in its discretion, before any TAB Team Production Bonuses are earned. The TAB Team Production Bonus is only available to Fully Qualified TAB Team Members who continue to comply with all of the terms and conditions as provided in their Distributor Agreement. Mail or fax this form using the information above, Attention: Records Administration Department.

Personal Information (please print)

Herbalife ID Number grid

Herbalife ID Number

Distributor's Last Name and First Name grids

Distributor's Last Name

Distributor's First Name

Spouse's Last Name and First Name grids

Spouse's Last Name

Spouse's First Name

Current Mailing Address grid

Current Mailing Address

City grid

City

State grid

State

Zip Code grid

Zip Code

Country Code / Area Code / Day Phone grid

Country Code / Area Code / Day Phone

Area Code / Evening Phone grid

Area Code / Evening Phone

Area Code / Fax grid

Area Code / Fax

Acknowledgment

In order to have the opportunity to qualify to receive the TAB Team Production Bonus, and to protect the integrity and loyalty of the Herbalife business, I acknowledge and reconfirm that:

- A. I must not make medical claims or misrepresent Herbalife's products or earnings opportunity and I must abide by all applicable tax requirements.
B. Participation in the TAB Team Production Bonus Program ("Program") is a privilege and not a right.
C. I must not, directly or indirectly through any person, entity, or artifice, participate in or promote the products, services or earnings opportunity associated with any other multi-level marketing or direct sales company.
D. All aspects of my relationship with Herbalife, including but not limited to those relating to the Program, are and shall remain subject to modification by Herbalife in its discretion from time to time.
E. I am an independent contractor selling Herbalife products and sharing its earnings opportunities with others.
F. I may not conduct business in any country in which Herbalife has not yet officially opened for business.
G. If, in connection with the conduct of my Herbalife business, I violate Herbalife rules, including those rules mentioned or referred to above, Herbalife shall have the right not to pay me the TAB Team Production Bonus ("Bonus") and not to pay me any other monies for which I may be otherwise qualified.
H. Herbalife, at its sole discretion may disqualify a Distributor from receiving the TAB Team Production Bonus.
I. A condition of receiving the TAB Team Production Bonus is accepting responsibility for the methods by which members of my downline are recruited and the development of my downline according to applicable law and by Herbalife's rules.
J. Any dispute between Herbalife and me arising from or relating to this Agreement or any other aspect of my relationships with Herbalife, shall be adjudicated solely and exclusively in the State or Federal Court sitting in Los Angeles, California, and shall be construed under and governed by the domestic law of the State of California.

Acknowledge:

Distributor's Signature: \_\_\_\_\_ / / \_\_\_\_\_
Date

Distribution: Send original to Herbalife. Keep a copy for your records.

Reproduction of this page in whole or in part is illegal.
© 2012 Herbalife International of America, Inc. All rights reserved.

FOR OFFICE USE ONLY box



# Automatic Payment Service (APS) Authorization Agreement & Application

Attach voided check or deposit slip here

I authorize HERBALIFE INTERNATIONAL (HERBALIFE) to begin deductions from my account with the financial institution named for payment of my Herbalife product, literature and/or sales promotion orders (Herbalife orders).

This authorization will remain in effect until properly revoked by me in writing. I understand that my right to stop automatic payment of my HERBALIFE orders will be effective upon receipt of timely written notice by HERBALIFE and/or my designated financial institution prior to the time my account is charged. I understand that HERBALIFE and/or the financial institution indicated reserve the right to end this payment plan and my participation therein upon dispatch of timely written notice.

**APS IS AVAILABLE TO SUPERVISORS WHO HAVE BEEN QUALIFIED FOR 30 DAYS OR MORE.**

**NOTE: IMPORTANT INFORMATION BELOW - PLEASE COMPLETE ONE APS APPLICATION PER DISTRIBUTORSHIP**

(      )

---

Please print your name (as shown on financial institution records) Daytime Telephone Number

---

Home Address      Street      City      State      Zip Code

---

Email Address

---

Name and ID Number on HERBALIFE Distributor Application (please print) Social Security Number or  
Individual Tax identification Number

---

Indicate four-digit code number (must be numerical, no letters) to be used for verification\*

---

Signature (Primary Distributor) If Joint Account (Other Signature)      Date

**Please allow 15 days for processing**

**IMPORTANT:** To avoid delay in processing, you must attach a check marked "VOID," or a savings account deposit slip (most savings accounts only allow a limited number of deductions per month) with your bank's routing number and your account number noted on the deposit slip. In addition, please verify this information with your bank especially if using a credit union account as the transit routing number may be different than what is on your check or deposit slip. Please fill in the spaces provided below:

\_\_\_\_\_

Transit Routing Number (9 digits)      Bank Account Number      Checking      Savings

(      )

---

Name of Your Bank, Savings & Loan, etc.      City, State      Bank Telephone #

\* Please fill in the boxes provided with a four-digit Personal Identification Number (PIN). (You decide the code- it may be a birth date, anniversary date, etc.) Please remember your PIN and refer to it each time you place an APS Phone-In Order. Please keep a copy of this Agreement & Application form for your records.

**RETURN THIS ENTIRE PAGE TO: HERBALIFE WORLD HOME OFFICE**  
**ATTN: ACCOUNTS RECEIVABLE DEPARTMENT**  
 P.O. BOX 80210  
 LOS ANGELES, CA 90080-0210

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 Exhibit B



HERBALIFE INTERNATIONAL OF AMERICA, INC.  
950 West 190th Street  
Torrance, CA 90502-1001  
P.O. Box 80210  
Los Angeles, CA 90080-0210

**Distributor Relations**  
Phone: (866) 866-4744  
Fax: (310) 258-7112  
TTY User: (800) 503-6108

**CHANGE OF ADDRESS FORM**

If you wish to request a change of address, the following procedure must be followed:

- Complete this form.
- Mail/Fax this form using the information above to the attention of DISTRIBUTOR RELATIONS
- You may also submit your change of address information directly to Herbalife online at [MyHerbalife.com](http://MyHerbalife.com) (if change is within same country)

Do you wish to change your (please check):

- Email Address
- Mailing Address
- Legal/Fiscal Address

\*If this is a change to your country of legal/fiscal address, please contact Distributor Relations, as you will need to supply additional documentation for this change to be processed.

All changes will be effective immediately upon completion of the processing of this form by Herbalife.

**Personal Information**

[Grid of 30 empty boxes for personal information]

**Last Name** [Grid of 15 boxes]      **First Name** [Grid of 10 boxes]      **Middle Name** [Grid of 5 boxes]

**Herbalife ID Number** [Grid of 15 boxes]      **U.S. Social Security Number or Individual Tax Identification Number** [Grid of 15 boxes]

**Previous Email Address** [Grid of 30 boxes]

**New Email Address** [Grid of 30 boxes]

**Previous Mailing Address**

[Grid of 30 empty boxes for previous mailing address]

**Country of Address** [Grid of 15 boxes]

[Grid of 15 empty boxes for country of address]

**Street Address** [Grid of 30 boxes]

**City** [Grid of 10 boxes]      **State** [Grid of 5 boxes]      **Zip Code** [Grid of 10 boxes]

**Country Code** [Grid of 3 boxes]      **Area Code** [Grid of 3 boxes]      **Day Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Evening Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Fax** [Grid of 7 boxes]

**Previous Legal/Fiscal Mailing Address**

[Grid of 30 empty boxes for previous legal/fiscal mailing address]

**Country of Address** [Grid of 15 boxes]

[Grid of 15 empty boxes for country of address]

**Street Address** [Grid of 30 boxes]

**City** [Grid of 10 boxes]      **State** [Grid of 5 boxes]      **Zip Code** [Grid of 10 boxes]

**Country Code** [Grid of 3 boxes]      **Area Code** [Grid of 3 boxes]      **Day Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Evening Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Fax** [Grid of 7 boxes]

**New Mailing Address**

[Grid of 30 empty boxes for new mailing address]

**Country of Address** [Grid of 15 boxes]

[Grid of 15 empty boxes for country of address]

**Street Address** [Grid of 30 boxes]

**City** [Grid of 10 boxes]      **State** [Grid of 5 boxes]      **Zip Code** [Grid of 10 boxes]

**Country Code** [Grid of 3 boxes]      **Area Code** [Grid of 3 boxes]      **Day Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Evening Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Fax** [Grid of 7 boxes]

**New Legal/Fiscal Mailing Address**

[Grid of 30 empty boxes for new legal/fiscal mailing address]

**Country of Address** [Grid of 15 boxes]

[Grid of 15 empty boxes for country of address]

**Street Address** [Grid of 30 boxes]

**City** [Grid of 10 boxes]      **State** [Grid of 5 boxes]      **Zip Code** [Grid of 10 boxes]

**Country Code** [Grid of 3 boxes]      **Area Code** [Grid of 3 boxes]      **Day Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Evening Phone** [Grid of 7 boxes]

**Area Code** [Grid of 3 boxes]      **Fax** [Grid of 7 boxes]

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_



HERBALIFE INTERNATIONAL OF AMERICA, INC.  
Main Phone: (310) 410-9600  
Distributor Relations: (866) 866-4744  
TTY Users: (800) 503-6180

Los Angeles Distribution Center  
18431 S. Wilmington Ave.  
Carson, CA 90746

**REQUEST FOR REFUND FORM**

Memphis Distribution Centers  
5025 Crumpler Road  
Memphis, TN 38141

**HERBALIFE DISTRIBUTOR**

Within 30 days following the refund to your Customer, this form must be completely and accurately filled out, signed and returned **in duplicate** to your nearest Herbalife Distribution Center, along with a copy of your Customer's Retail Order Form, **and the unused portion of the product, or the original product labels, or the empty product containers.** Note: All of the items listed above are required in order to process this request.

Herbalife ID Number
Distributor's Name
Distributor's Address
City State Zip Code
Phone

Please indicate the shipping address for your replacement product.

Same as Distributor's address

Name
Address
City State Zip Code

I certify that on this date \_\_\_/\_\_\_/\_\_\_ I have refunded the Customer (stated below) for the sum of \$ \_\_\_\_\_, or upon their request, I have issued my Customer full credit toward the purchase of other Herbalife products. (Please refer to the Herbalife Satisfaction Guarantee in the Career Book for detailed requirements.)

Distributor's Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

**HERBALIFE CUSTOMER**

Name
Address
City State Zip Code
Phone

Please state the reasons you were dissatisfied with the products:


After trying the Herbalife® product for:  1 week  2 weeks  3 weeks  4 weeks

In accordance with Herbalife's 30-Day Money-Back Guarantee: I herewith return a copy of my Retail Order Form, along with **the unused portion of the product, or the original product labels, or the empty product containers**, to my Herbalife Distributor, for:

- A full credit toward the purchase of other Herbalife products, or
- A full refund of the purchase price indicated below.

I certify, on this date \_\_\_/\_\_\_/\_\_\_ I requested a refund or credit toward the purchase of other Herbalife products in the amount of \$ \_\_\_\_\_, and I acknowledge receiving the:

- Refund
- Full credit toward other Herbalife products

Customer's Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

**HERBALIFE DISTRIBUTION CENTER**

- LADC
- Memphis

Within 30 days following the Distributor's refund to the Customer, the Distribution Center has:

- Received **the unused portion of the product, or the original product labels, or the empty product containers**
- Received the Retail Order Form.
- Replaced the identical product and shipped to the Distributor.

Returns Clerk Signature: \_\_\_\_\_ Date: \_\_\_/\_\_\_/\_\_\_

Description of Return

Shipped By

Pick up

**30-Day Money-Back Guarantee**



Herbalife International of America, Inc.  
P.O. Box 80210  
Los Angeles, California 90080-0210  
Tel: (310) 410-9600

**EARNINGS CERTIFICATION FORM  
ROYALTY OVERRIDE/PRODUCTION BONUS and  
10 RETAIL CUSTOMERS/70% RULE DOCUMENTATION**

This form must be completed and submitted to Herbalife monthly to comply with the 10 Retail Customers and 70% Rules. Listed below are several methods the Form can be submitted to Herbalife. No matter which method is chosen, **the form must be received by Herbalife no later than the fifth of each month** for the prior month's activity. (**Note:** Mail must be postmarked no later than the last day of the month).

**METHODS TO SUBMIT THE FORM:**

- 1. **Download the form:** [Log on to] [MyHerbalife.com](#) [Click on] [MyOffice](#) [Click on] [Distributor Documents](#)
- 2. **Submit the form electronically:** [Log on to] [MyHerbalife.com](#) [Click on] [MyAccounts & Reports](#) [Click on] [Submit 10 Customers Form](#)
- 3. **By Mail:** Herbalife International of America, Inc.  
P.O. Box 80210  
Los Angeles, CA 90080-0210
- 4. **By Fax:** 310-216-5147

**In addition to all the existing Royalty Override requirements**, you must also comply in a timely manner with the 10 RETAIL CUSTOMERS and 70% RULES in order to receive your Royalty Override/Production Bonus payments.

**The 10 RETAIL CUSTOMERS RULE** means that you must make not less than one sale at retail to each of 10 customers during a given month.

**Other activities that can count towards this requirement are:**

*A sale to a first line 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; and*

*\* A Nutrition Club member who consumed products during ten (10) visits to a Nutrition Club within one Volume month, which may be counted by the Nutrition Club operator as a sale to one (1) retail customer.*

**The 70% RULE** means that at least 70% of the total value of products you purchase each month must be sold or consumed, each month. Sales may be to retail customers, or wholesale to downline Distributors. For the purpose of this rule, consumption means product consumed at Nutrition Clubs.

**EACH OF THESE REQUIREMENTS MUST BE MET OR ROYALTY OVERRIDE/PRODUCTION BONUS EARNINGS WILL NOT BE PAID**

I certify that during the month of \_\_\_\_\_, in the year of \_\_\_\_\_ I have fulfilled the requirements outlined in the box above.

And will, upon request (for verification purposes) furnish to Herbalife the following information concerning such customers: names, addresses, phone numbers, email addresses and copies of retail receipts (and/or in the case of Nutrition Club activities, a log of member visits inclusive of member names, dates of visits, contact information). I agree to maintain all such records for a period of two (2) years.

My total personal retail sales for the month total: \$ \_\_\_\_\_

Please Print Name: \_\_\_\_\_ Herbalife ID Number: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Keep one copy of this form for your personal files.  
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Rev. 09/01/11

The opportunity to be an Herbalife Independent Distributor is entirely voluntary. A resigning Distributor may return unused products or sales materials, which are unopened and in resalable condition, for repurchase by Herbalife if the products were purchased from Herbalife within the last 12 months and the resigning Distributor provides proof of purchase. Reimbursement to the Distributor will be issued for the full amount paid for the returned product by the Distributor, less appropriate setoffs. Shipping paid on the original order and for returning those items to Herbalife will not be reimbursed.

Herbalife will deduct the amount of Royalty Overrides, Commissions, Production Bonuses and any other earnings or benefits paid on the returned products from the appropriate Distributors, and adjust qualifications as necessary.

Distributors residing in Georgia, Maryland, Massachusetts, Puerto Rico, and Wyoming may exceed the 12-month repurchase period, provided all the above criteria have been met.

#### How to Initiate a Repurchase of Inventory

- Under Rule 10-D "Inventory Repurchase" of the Rules of Conduct and Distributor Policies, as amended from time to time, a Distributor may have the right to have Herbalife repurchase resalable inventory that was purchased from Herbalife, under certain terms and conditions.
- To initiate a repurchase of inventory the first step is to complete the required forms for the Repurchase of Inventory that follow.
- The forms may be mailed, emailed or faxed to:

#### Mailing Address

Herbalife International of America, Inc.  
**Attention: Refunds & Repurchase Department**  
950 W. 190th St.  
Torrance, CA 90502-1001

#### Email Address

DS\_CSSupport@Herbalife.com

#### Fax Number

310-258-7155

- The forms must be accompanied by or preceded by a signed resignation letter, or instead of the resignation letter, the completed and signed Inventory Repurchase Request Form will be accepted by Herbalife as your resignation letter.

#### Return Product Authorization

- If you have met the requirements specified on the Inventory Repurchase Request Form, and submitted your forms to Herbalife via any of the methods described above, we extend the opportunity for you to return your inventory to any of the following Distribution Centers of your choice:

Herbalife International of America, Inc.

#### **Los Angeles Distribution Center**

18431 S. Wilmington Avenue  
Carson, CA 90746  
310-952-0100, extension 45817

or

Herbalife International of America, Inc.

#### **Memphis Distribution Center**

5025 Crumpler Road  
Memphis, TN 38141  
901-795-5056

- Please be aware that all terms and conditions must be met, and to avoid handling delays, your shipment should be prepared as indicated below:
  - Each side of your package must reflect the letters "BB" followed by your Herbalife Identification Number in large print (i.e., BB100000000).
  - Herbalife highly recommends that you insure your shipment.
- Once Herbalife has processed the return, the payment due will be issued.
- If you wish to hand deliver your inventory to the warehouse, please contact them directly for hours of operation.
- Herbalife will have no responsibility for items shipped that are outside of Rule 10-D "Inventory Repurchase," and guidelines provided.

For questions regarding the process, please contact Herbalife's Distributor Relations Department toll-free at 866-866-4744, or Herbalife's Repurchase Department at extension 43132.



HERBALIFE INTERNATIONAL OF AMERICA, INC.  
Attn: Refunds and Repurchase Department  
950 W. 190th St.  
Torrance, CA 90502-1001

# Inventory Repurchase Request Form

(This form is required.)

This form must be signed, dated, and returned to Herbalife to initiate your request.

To process your request, please provide Herbalife with the details requested, if you have not already done so.

- I hereby permanently resign as an Herbalife Independent Distributor.
- I understand that only unopened and resalable products or sales materials which were purchased from Herbalife within the last 12 months\* are eligible for resale to Herbalife, and are in all other respects in accordance with Rule 10-D "Inventory Repurchase" of the Herbalife Rules of Conduct and Distributor Policies.
- I understand my reimbursement will be issued for the full amount I paid for the products less appropriate setoffs and legal claims. I understand that reimbursement will not include the shipping fees paid on the original order or the shipping costs paid to return those items to Herbalife.
- I understand that I will be refunded via the same method of payment that was used when I originally bought the merchandise. (If paid by check, money order or wire transfer, the reimbursement will be refunded with a check. If paid by credit card, the same credit card will be refunded.)
- I understand that Herbalife reserves the right to determine which products and quantities fall within the limits of Herbalife's repurchase of inventory policy. I will return only items that are unopened and in resalable condition, that were purchased within the last 12 months, and which comply with Rule 10-D. I understand that Herbalife will have no responsibility for items returned that fall outside Rule 10-D and the guidelines provided, and that Herbalife will not pay for or assume responsibility for returning items that are not repurchased.
- I have included proof of purchase for this merchandise (copies of credit card statements, money orders or cancelled checks).
- I understand that if within 90 days after the acceptance of my Application for Distributorship in Herbalife's records, I decide not to continue as a Distributor, I also may return to Herbalife the official Distributor Kit (IBP) whether or not in resalable condition.

By my signature, I acknowledge and agree to the above.

\_\_\_\_\_  
(Name - Please Print)

\_\_\_\_\_  
(Herbalife Identification Number)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

- If you agree to the terms and meet the requirements specified above, you may return your inventory to any of the following Distribution Centers of your choice:

Herbalife International of America, Inc.  
Los Angeles Distribution Center  
18431 S. Wilmington Avenue  
Carson, CA 90746  
310-952-0100, ext. 45817

OR

Herbalife International of America, Inc.  
Memphis Distribution Center  
5025 Crumpler Road  
Memphis, TN 38141  
901-795-5056

Please refer to the Return Product Authorization section for more details.

\*May be longer for residents of Georgia, Maryland, Massachusetts, Puerto Rico and Wyoming.





## POLICY STATEMENT ON EXPENDITURES BY NEW DISTRIBUTORS

One of the unique and wonderful things about becoming an Herbalife Distributor is that no investment is required to start or grow your Herbalife business and that you can choose for yourself how to pursue the many opportunities afforded by Herbalife products and the Herbalife Sales & Marketing Plan. The only required expenditure is the purchase of the International Business Pack.

As with any business, you may be attracted to spend or invest more than the minimum and just as with any business, you should be cautious about spending or committing. You should ask yourself questions.

- **For example, "Should I buy a large starting inventory?"** Our advice is not to purchase product beyond your own needs and amounts you are confident you can resell within a reasonable amount of time.
- **Another example, "Should I buy services and products that might be helpful in recruiting other Distributors?"** These are typically referred to as "Sales Aids" or "Business Methods" and include, but aren't limited to, advertising and prospect lists or leads.

Our advice is that you should first gain significant experience with Herbalife products and the Marketing Plan before you purchase sales aids, especially advertising and leads. Your upline is expected to provide support, encouragement and training regardless of whether you buy such services or materials. In addition, Herbalife offers training materials for its Distributors relating to product, product merchandising and business skills. However, if you freely choose to purchase sales aids, we urge you to spend no more than a reasonable proportion of the earnings generated from your Herbalife business. As with all business expenditures, be prudent.

Business Methods are not produced, approved or endorsed, by Herbalife, and Herbalife assumes no responsibility, with regard to their purchase, sale or use.

A number of Business Methods have been registered with Herbalife and as a part of that procedure (which does not constitute approval or disapproval by Herbalife) have provided a favorable opinion letter from a reputable and competent Multilevel Marketing (MLM) lawyer about whether the content and methods employed by the Business Method comply with the law and our rules. You can check if a Business Method has been registered with Herbalife by visiting [MyHerbalife.com](http://MyHerbalife.com) under the following headings: Business Methods Registration Advisory under My Office / Distributor Policies / Business Methods.

In contrast, some Business Methods have not been registered with Herbalife and there may have been little or no legal review of their content and methods.

- Using or selling those Business Methods which do not strictly comply with the law and Herbalife's rules, may put you in violation of Herbalife rules and/or applicable law.
- For that reason, we urge Distributors against purchasing or using Business Methods (including, but not limited to, advertising and leads) from any person or company that has not registered them with Herbalife.
- **Another example, "Should I sign a lease and buy the fixtures and other things needed to open a Nutrition Club or an Herbalife Office?"** Our advice is that you should observe and study how Nutrition Clubs or Offices operate and carefully consider whether to engage in a large expenditure or enter into what could be a substantial obligation in the form of a lease, before you do so.

No aspect of the Herbalife business is or may be considered a franchise and you should therefore never be asked for payment to buy the "right" to open or operate your own Nutrition Club or office. Similarly, you should not pay anyone to set up a Nutrition Club or an office for you. However, if you work out of another Distributor's Club or Office, it is normal to pay a reasonable rental fee for space or a workstation or to pay a reasonable percentage of the Club's or office's operating expenses.

- **And, lastly, "Should I incur debt to pursue the Herbalife opportunity?"** One of the unique aspects of the Herbalife Marketing Plan is that you can achieve the level required to earn Royalties and Production Bonuses by building a solid customer base and without purchase of inventory other than that required to service your customers and for your own personal consumption. As a result, it is not necessary and we discourage incurring debt to pursue the Herbalife opportunity.

Our founder, Mark Hughes, founded Herbalife on the principle that success in Herbalife was only limited by your own hard work and imagination. After more than 30 years, that principle is still true today and we hope that all new Distributors will bear this in mind as you evaluate expenditures in your Herbalife business.

**Introduction**

These Rules of Conduct and Distributor Policies have been established for your protection. They represent the code of ethics and standards by which all Herbalife Independent Distributors (hereinafter referred to as “Distributors”) must operate. Herbalife has the sole and absolute discretion to amend (on a prospective basis) the Rules of Conduct and Distributor Policies and such other Rules and Policies Herbalife has published, or in the future may publish. It is your responsibility to read and understand Herbalife’s Rules and Distributor Policies so you are fully aware of your rights and obligations as an Herbalife Distributor. We believe Herbalife’s products and Marketing Plan are the best in the industry. We also believe in our Distributors and in supporting them by working together to uphold the highest possible ethical standards. We are committed to maintaining the integrity of Herbalife, its Sales & Marketing Plan and its global distribution network of Distributors. In its sole and absolute discretion, Herbalife may impose any remedy or sanction it determines best addresses any breach of the Rules of Conduct and Distributor Policies. Herbalife also reserves the right in its sole and absolute discretion to waive wholly or partially, or to pardon or forgive wholly or partially, any breach of any of the rules contained in this section.

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## Section 1 Becoming a Distributor and the Distributor Agreement

### Rule 1-A Becoming a Distributor

To become an Herbalife Distributor, an Applicant must be sponsored by an Herbalife Distributor in good standing, and Herbalife must receive the Applicant's completed Application for Distributorship. The Application for Distributorship is available with the purchase of Herbalife's official International Business Pack (IBP) from the sponsoring Distributor or online at [MyHerbalife.com](http://MyHerbalife.com).

The only required purchase in order to become, succeed or advance as a Distributor is the Mini IBP. The sponsoring Distributor must offer the Applicant the opportunity to buy the Mini IBP or, at the Applicant's election, the full Herbalife IBP, without any markup or profit to the Sponsor or the Sponsor's upline.

It is the responsibility of the Sponsor to make the unaltered official Herbalife Distributor Kit (IBP) available and to assure the Application for Distributorship is completed fully and accurately and is immediately submitted to Herbalife International.

In the case of an online Application, the official Herbalife Distributor Kit (IBP) will be mailed to the Applicant directly from the Company. No Application for Distributorship should be submitted unless the Applicant has purchased a Distributor Kit (IBP).

Herbalife reserves the right at its sole and absolute discretion, to accept or reject any Application, without having to provide justification for acceptance or rejection.

The Applicant becomes a Distributor when their Application for Distributorship is accepted and entered into Herbalife's records at Herbalife's Home Office. Until then, the Applicant is granted a provisional license to buy and sell Herbalife products.

### Rule 1-B Applications From Former Distributors

Former Distributors, and/or their spouse, or other individual who previously owned or assisted in a Distributorship, and who want to apply to become a Distributor under a different Sponsor, must comply with all the requirements and the Rules of Conduct required for rejoining as a Distributor, including but not limited to, maintaining a minimum of a one-year period of inactivity following a) resignation or non-payment of Annual Processing Fee or b) resignation of any prior Distributorship.

Failure to comply with these rules is a serious violation of the rules and regulations of the Company and will result in serious penalties, usually termination of Distributorship. (Refer to Rule 7-D "Period of Inactivity" in this section for complete details on the requirements and rules that apply to these individuals.)

## Section 2 Requirements of Applicant

### Rule 2-A Restrictions on Purchase Requirements

The only cost that can be required of an Applicant for Distributorship is the purchase of an unaltered official Mini International Business Pack (IBP) or at the Applicant's election, the full Herbalife IBP. No other requirements may be made of either prospective or existing Distributors, including, but not limited to, the following:

- Maintain any minimum stock levels of products or materials.
- Purchase any amount of materials, products or services, either those produced by Herbalife or by a party other than Herbalife, except for the official Herbalife Distributor Kit (IBP).
- Purchase admission tickets to attend any seminars, meetings or other events. (Refer to Business Methods, Rule 1-C "No Required Purchase Other Than International Business Pack" in the "Supplemental Rules" section.)

### Rule 2-B Payment for Information

Except as provided in Business Methods, Rule 1-C "No Required Purchase Other Than International Business Pack" (in the "Supplemental Rules" section), a Distributor may not request a prospect or an Applicant to make any payment, or purchase products or materials in return for any information or assistance about becoming a Distributor. Distributors may not represent or imply that payment or purchases are required (legally, or as a matter of practicality) to do or succeed in the business, participate in the income opportunity, or receive training or upline support. (Refer to Business Methods, Rule 1-C in the "Supplemental Rules" section of this book.)

## Section 3 Age Requirements for a Distributor

### Rule 3-A Applicant Must Be 18 Years of Age

An Applicant must be at least 18 years of age to become an Herbalife Distributor and to conduct business in the United States. The minimum age requirements vary from country to country. For the requirements for other countries, please contact Distributor Relations.

### Rule 3-B Minor Distributorships

A minor who is at least 14 years of age, who lives and proposes to conduct business in the United States, may submit an Application to become an Independent Herbalife Distributor.

For consideration to become a minor age Distributor, the Applicant must provide to Herbalife's Distributor Relations Department, the following:

1. Written approval from the parent(s) or legal guardian(s). The parent(s) or guardian(s) must accept responsibility for the actions of the minor.

2. If the parent(s) or guardian(s) is an Herbalife Distributor, then the parent(s) or guardian(s) must provide

- a. written consent from their own Sponsor and upline Distributors (up to and including their first three active upline Supervisors) or explanation satisfactory to Herbalife in its discretion why such consents have not been obtained or should not be required; and
- b. a signed statement that they will not help or participate in the development of the minor's Distributorship to the detriment of the parents'/guardians' upline, or in a manner that constitutes Marketing Plan manipulation or that violates the Rules of Conduct.

In its discretion, Herbalife may accept the request without upline response or acceptance, and may require additional authorizations or information it deems necessary to making a final decision on the acceptance of this Application.

#### **Section 4 Individuals Limited to One Distributorship**

##### **Rule 4-A One Distributorship Per Person**

An individual may have and participate in only one Herbalife Distributorship under one Sponsor. A Distributor is not permitted to retail, recruit, promote, train, educate or otherwise assist in the development of the Herbalife business, for any Distributorship other than their own, except to assist their downline organization, as is appropriate for a Sponsor. This policy applies to both the Distributor and their spouse.

##### **Rule 4-B Applicant/Spouse or Individual Assisting in the Distributorship Is a Former Distributor**

If an individual applying to become a Distributor, their spouse or other individual assisting in a Distributorship was formerly an Herbalife Distributor, the Application will only be considered as valid if all the conditions set out in Rule 7-D "Period of Inactivity" and any other applicable Rules of Conduct have been met.

##### **Rule 4-C Responsibility for Individuals Assisting in a Distributorship**

If there is another person who assists in the operation of a Distributorship, who appears at Herbalife functions with the Distributor, or who presents themselves as assisting in that Distributorship, who makes statements about their income or business achievements from the Herbalife business, or whom the Company is advised to recognize and acknowledge as assisting in the Distributorship, then the Distributor who submitted the Application for Distributorship is responsible for ensuring that the other individual assisting in the Distributorship follows all Distributor rules and regulations. Herbalife has sole and absolute discretion as to the determination and application of this policy.

#### **Rule 4-D Determination and Penalty for Dual Distributorships**

If an individual, their spouse or other individual participating in a Distributorship completes and signs more than one Application for Distributorship, the first time the Applicant enters into a Distributor Agreement that is accepted by Herbalife is considered the valid Distributorship. If Herbalife determines that an individual or their spouse has signed an Application for Distributorship, or has worked or assisted in the development of another Distributorship while involved with or in a prior Distributorship, Herbalife shall have sole and absolute discretion to determine the disposition of both Distributorships, including but not limited to decisions whether to terminate or place conditions on one or both of those Distributorships, and whether to impose penalties or sanctions upon the Distributorships and/or Sponsoring organizations, including the determination whether to make adjustments to Volume and compensation of either or both Sponsoring organizations for any period prior to the transfer or deletion of Sponsoring organizations. (Refer to Rule 7-D "Period of Inactivity" in the "Rules of Conduct and Distributor Policies" section.)

#### **Section 5 Distributors Who Are Married**

##### **Rule 5-A Married Couples May Have Only One Distributorship**

Married couples may have or participate in only one Distributorship, unless their circumstances fall under the guidelines of Rule 5-D "Two Distributors Who Marry" or Rule 14-D "Rights to Continue a Distributorship Under the Same Sponsor" (in the "Rules of Conduct and Distributor Policies" section).

##### **Rule 5-B Couples Becoming Distributors Together**

Married couples wishing to become Distributors together must complete and sign a single Application for Distributorship, thereby having only one Sponsor. They may not be under separate Sponsors nor can they sponsor each other.

##### **Rule 5-C A Distributor Who Marries**

If a Distributor marries and the spouse wishes to become a Distributor, the spouse must conduct business in the existing Distributorship. They may request to have the spouse's name added to Herbalife's records for event attendance purposes.

##### **Rule 5-D Two Distributors Who Marry**

If two separate Distributors marry each other, then the couple must relinquish one of their Distributorships and become partners in the other. However, if both Distributors are Supervisors at the time of marriage and they choose to continue operating their own separate Distributorships, each

spouse must conduct their Herbalife business activities separately, remaining in their original lines of sponsorship. Rules for remaining a Distributor still apply.

#### **Rule 5-E Liability of Married Distributorship**

The liability of two married Distributors who operate a Distributorship together shall be joint so that both such Distributors shall be responsible, and shall accept liability for, and shall be bound by, any act or omission of either Distributor and any payment by Herbalife to one such Distributor shall be deemed as payment to both such Distributors.

#### **Rule 5-F Resignation of Spouse**

In the event that one spouse of a Distributorship resigns their Distributorship, then Herbalife reserves the right to terminate the Distributorship whether or not the spouse was a joint Distributor, if the activities of the resigned Distributor diminish, damage or weaken the reputation of Herbalife or its products.

#### **Rule 5-G Responsibility of Married Distributor**

A Distributorship shall be responsible for the activities of a spouse, whether or not the spouse participated in the Distributorship. For example, if a Distributorship may not engage in an activity (such as conduct which violates Rule 5-A "Married Couples May Have Only One Distributorship" [in the "Rules of Conduct and Distributor Policies" section] or which diminishes, damages or weakens the reputation of Herbalife or its products) and the spouse engages in that activity, the Distributorship shall be deemed to have engaged in that activity and shall be considered to be in violation of the applicable rule, and subject to appropriate penalties.

### **Section 6 Corporations and Partnerships**

#### **Rule 6-A Distributorships Must Be Individuals**

Herbalife only accepts Applications for Distributorship in the name of individuals. Applications in the names of corporations or partnerships will not be accepted. Distributors may request their Herbalife earnings be issued on checks made payable to someone else by submitting a written request to Herbalife's Distributor Relations Department, provided there is a legitimate business reason. However, the Distributorship will remain in the name of the individual, and the earnings of the Distributorship will be reported in the name and tax identification number of the individual Distributor.

### **Section 7 Remaining a Distributor**

#### **Rule 7-A Annual Processing Fee**

Herbalife agrees to provide computer processing services for Distributors for which an Annual Processing Fee is due. Such computer services are limited to maintaining discount

rates, lineage records and qualification status. Please contact Herbalife's Distributor Relations Department for all appropriate fees.

#### **Rule 7-B Acceptance of Annual Processing Fee**

Herbalife has absolute discretion to refuse any Processing Fee from any Distributor, without having to provide a reason for such refusal. In the event that Herbalife does refuse to accept a Processing Fee when due, the Distributorship will be deleted, the Distributor losing all rights and privileges of a Distributor. If a payment has been made, it will be refunded, unless applied to an outstanding debt of the Distributor, along with a written notice of the refusal from Herbalife. Payments for your downline may not be made without their written permission.

#### **Rule 7-C Non-Payment of Annual Processing Fee**

In the event that a Distributor does not submit payment for the Annual Processing Fee by the date due, then Herbalife reserves the right to cease maintaining such computer records. Additionally, in the event that a Distributor does not submit payment, the Distributor will be deemed to relinquish their Distributor status and thereby all rights and interests in their lineage and Royalty Override or bonus entitlement.

#### **Rule 7-D Period of Inactivity**

Any Distributor who resigns or who relinquishes their Distributorship due to non-payment of the Annual Processing Fee, or anyone who ceases participating in a Distributorship, must wait a minimum of one year before becoming a Distributor again under another Sponsor, or participating in another Herbalife Distributorship, unless the Distributor, their spouse, and any other individual assisting have remained inactive for at least the required one-year waiting period from the date of relinquishment, resignation or participation in any Herbalife Distributorship (also known as the "period of inactivity").

The period of inactivity for the Distributor must be complete and absolute for consideration to re-join the Company as a Distributor or to participate in any Distributorship. This means that during the one-year waiting period, the Distributor, their spouse, and any other individual assisting in a Distributorship may not:

- Be involved in the Herbalife business in any way.
- Purchase products other than for personal use, bought at full retail price.
- Sell any Herbalife products, literature or sales materials.
- Sponsor or offer the Herbalife business opportunity to anyone.

- Participate in Herbalife trainings or meetings whether sponsored by the Company or a Distributor.
- Participate in any way in promotion, assisting or supporting any Herbalife Distributorship.

Failure to observe the period of inactivity may result in the reactivation of the Distributorship and/or extension of the waiting period. The period of inactivity is calculated as follows:

#### **Example 1: Distributor Resigns**

- Prior application date is December 5, 2003.
- Resignation effective as of August 28, 2004.
- The period of inactivity for this Distributorship would be from August 28, 2004 through August 27, 2005.
- This Distributor would be eligible to sign a new Distributor Application under a different Sponsor as of August 28, 2005.

If a Distributor has not paid their Annual Processing Fee by their anniversary date and has not submitted a letter of resignation Herbalife will conclude that the Distributorship has been relinquished on the anniversary date of the Distributorship. The Distributor remains responsible for maintaining the period of inactivity.

#### **Example 2: Distributor Does Not Officially Resign and/or Fails to Pay Annual Processing Fee**

- Prior application date is December 5, 2003.
- Annual Processing Fee is due on December 5, 2004 (anniversary date).
- If the Fee is not paid, the period of inactivity for this Distributorship would be from December 5, 2004 through December 4, 2005.
- This Distributor would be eligible to sign a new Distributor Application under a different Sponsor as of December 5, 2005.

An individual who was formerly a Distributor or who participated in a Distributorship and is applying or re-applying to become a Distributor under a different Sponsor is required to advise Herbalife of the former Distributorship they were involved in and the conditions under which they ceased to be a Distributor or ceased participation in that Distributorship. Herbalife maintains the right to terminate any Distributorship where the Distributor failed to inform Herbalife of a prior Distributorship or makes misrepresentations regarding it.

If the Distributor, their spouse, or other individual assisting wishes to initiate a new Distributorship under their original Sponsor and that Sponsor has remained in the original organization, they may do so without a waiting period provided they have an official Herbalife Distributor Kit (IBP) and complete and submit a new Application for Distributorship.

#### **Rule 7-E Annual Processing Fee Is the Responsibility of the Distributor**

Herbalife endeavors to remind Distributors by mail/electronic mail, at their last address listed with the Company, when the date for Annual Processing Fee is near. However, the responsibility lies with the Distributor to assure this Processing Fee is paid each year on the anniversary of their original application date.

#### **Section 8 Distributor Conduct**

##### **Rule 8-A Inducement to Sell Other Products or Services**

During the course of a Distributorship and for one year thereafter, neither the Distributor nor their spouse, nor any other person assisting in a Distributorship will, directly or indirectly (through or by means of any person, entity or artifice), solicit, promote, sponsor or recruit any Herbalife Distributor, or any Herbalife customer they became aware of in the course of their Herbalife Distributorship, to join, promote, sell or purchase products of, or participate in as a salesperson or otherwise, any multi-level marketing or direct-sales company, nor will they encourage anyone to do what is prohibited under this rule. Violation of this rule is likely to result in termination of the Distributorship.

##### **Rule 8-B May Not Associate Other Organizations With Herbalife**

The Herbalife business is an equal opportunity, regardless of gender, race, religious beliefs or political affiliations. It is our philosophy that everyone has a personal right to their individual beliefs and the freedom to choose.

Therefore, when training their organization or other Distributors, or selling products or offering the business opportunity, Distributors are not permitted to promote, discuss or offer, any company, organization or individual other than Herbalife, its staff and its Distributors. Likewise, Distributors may not include literature or other material that promotes any other organizations or individuals, whether religious, political, business or social or that implies any association between Herbalife and any other organization.

Herbalife meetings may not be used as a forum to express personal beliefs or promote any other organization, company, event or individual.

##### **Rule 8-C Keep Informed of Herbalife's Policies**

Stay informed of Herbalife's policies by reading the Career Book and regularly visiting Herbalife's official website [MyHerbalife.com](http://MyHerbalife.com). All material is provided by the Company from time to time. Review these policies with downline organization to ensure they are aware of and understand them.

### **Rule 8-D Comply With the Laws**

Distributors must comply with all local, state and federal laws and regulations that apply to their Herbalife business and shall not engage in any practice or activity that could discredit or damage the image or reputation of Herbalife. This applies not only to the laws where the Distributor lives but also to any country where the Distributor conducts their business as a result of taking advantage of Herbalife's International Sponsoring. (Refer to Business Methods, Rule 1-S "Limit on Sales of Business Methods" in the "Supplemental Rules" section of this book.)

### **Rule 8-E Independent Distributors**

Distributors conduct their Herbalife business as a self-employed independent contractor (determining their own schedule and objectives, they are responsible for their own expenses and any applicable taxes – including self-employment taxes), not as an employee, agent, franchisee, securities holder, joint venturer fiduciary or beneficiary of Herbalife or any other Distributor. They are not employees of Herbalife for federal or state tax purposes or any other purpose, and will not assert any position to the contrary.

For example, a Distributor may not use in connection with their Herbalife business the words "employee", "agent" or "company representative" either orally or on any stationery, business cards, or other printed material is prohibited.

### **Rule 8-F False or Misleading Information**

No Distributor shall submit false or misleading information to the Company.

### **Rule 8-G Maintaining Reputation and Image of the Company**

No Distributor shall do anything (whether or not in the course of their Distributorship) which Herbalife determines, in its sole and absolute discretion, is or could be detrimental to the reputation or image of the Company, its products, Distributors, trademarks, trade names or goodwill.

### **Rule 8-H Indemnity**

Without prejudice to the other rights of Herbalife under these Rules of Conduct and other rules and regulations of the Company, Distributors shall indemnify Herbalife from and against all actions, claims, demands, prosecutions, fines, penalties and the costs thereof (including Herbalife's actual legal costs), which might be made or brought against Herbalife in respect of, or arising directly or indirectly out of, any breach of any laws or regulations applying to the operation of their Distributorship. Herbalife shall have no liability to any Distributor in respect of any cost, loss, damage or expense suffered by any Distributor directly or indirectly as a result of any act, omission, representation or statement of any other Distributor.

### **Rule 8-I Choice of Law, Damages**

All aspects of a Distributor's relationship with Herbalife shall be governed by and interpreted in accordance with domestic law of the State of California without the application of conflict of law principles. Neither Herbalife nor the Distributor shall be liable for any incidental or consequential damages caused by breach, termination or suspension of the Distributor Agreement, whether or not the possibility of such damages is known by either party, and no punitive or exemplary damages shall be awarded against Herbalife or the Distributor in any dispute against the other except as authorized by California statute.

**Louisiana Residents:** Notwithstanding the foregoing, a Louisiana resident may bring an action against the Company with jurisdiction and venue as provided by Louisiana law.

### **Rule 8-J Violations of Rules of Conduct**

Whenever there is any violation of the Herbalife Rules of Conduct or other rules and regulations and/or any procedures or directions issued by Herbalife, Herbalife may in its sole and absolute discretion take whatever actions or measures it deems necessary and appropriate, including but not limited to, suspension of buying privileges, suspension of earnings, monetary fines or deletion or termination of the Distributorship.

### **Rule 8-K Reporting Violations of Rules of Conduct**

In order to protect the goodwill and reputation of Herbalife and its Distributors, Herbalife urges its Distributors to promptly report alleged violations of the rules to Herbalife, as soon as they become aware, by completing an official complaint form which can be obtained through Herbalife's Distributor Relations Department, or through Herbalife's official website, [MyHerbalife.com](http://MyHerbalife.com). Refer to 1-B "Complaint Procedure" in the "Enforcement Procedures" section of this book.

### **Rule 8-L Marketing Plan Manipulation and Improper Enrollment Practices**

In all of their dealings, Distributors must comply with the letter and spirit of Herbalife's Rules of Conduct and Distributor Policies and the Herbalife Marketing and Compensation Plan as set forth in official Herbalife literature.

Proper enrollment of Applicants to become Distributors is required by the Rules and is essential for the proper operation of the Marketing Plan:

- To become an Herbalife Distributor, an Applicant must be sponsored by an Herbalife Distributor.
- The Applicant and the enroller must fully complete the Application (providing the Sponsor's name, phone number and Herbalife ID Number).
- A copy of the Application must be provided to the Applicant Exhibit B upon its signing by the Applicant.

- The Application must be submitted immediately to Herbalife.
- Fraudulent or unlawful enrollment of a Distributor is prohibited.

Examples of fraudulent or unlawful enrollment are:

- Filling out the Application form with false or misleading information, and
- Enrolling someone in circumstances in which the enroller knows or has reason to believe violates the Rules or Marketing Plan, such as promising an Applicant that the Sponsor or upline will provide downline members for the Applicant once he or she becomes a Distributor.

Other illustrations of Marketing Plan manipulation are:

- Purchasing products in another Distributor's name, other than as expressly allowed in the Rules.
- Purchasing products primarily as an attempt to benefit under the Marketing Plan, as contrasted with the purchase of products for the purpose of sales to customers within a reasonable period.
- Discouraging a downline Distributor from placing orders, as a means for the upline to benefit under the Marketing Plan.
- Submitting false information to Herbalife.
- The Marketing Plan allows Distributors to utilize their downline Distributors' sales Volume plus their own sales Volume to count as their Total Volume for certain qualification purposes. However, advertising or publicly promoting, as a means to induce prospects to attend meetings or to become Distributors or for any other purpose, the enrollment of new applicants under each other, when they have little or no prior relationship with each other, is considered a manipulation of the Marketing Plan.
- Teaching or encouragement of another person to violate the Rules or manipulate the Marketing Plan.

Improper enrollment practices and other attempts to manipulate the Marketing Plan are considered serious violations and will result in severe sanctions and penalties including, but not limited to, loss of earnings and qualifications of the Distributorships of anyone involved (directly or indirectly) in such activities or in teaching or encouraging others to engage in such activities.

#### **Rule 8-M Interviews or Statements to Media**

Distributors, from time to time, may be approached by reporters interested in interviewing them about the Herbalife products or Herbalife business. While we appreciate any interest expressed in our products and business opportunity, only the Company may grant interviews or authorize advertising of the Company or product names. Only authorized officials of Herbalife are

permitted to speak with or write to the press or other media for, or on behalf of, Herbalife or any of its subsidiaries. If a Distributor should be approached with a request for an interview or statement, they must advise the reporter to contact Herbalife. Likewise, Distributors are advised not to knowingly invite the press or media to an Herbalife meeting or event. Reporters should attend such an event accompanied by an authorized Herbalife representative.

### **Section 9 Export**

#### **Rule 9-A Activities in Countries or Territories Which Herbalife Has Not Announced as Officially Open for Business**

Whether or not the name "Herbalife®" is used, Distributors may not engage in any business activity (including "preparatory" activity) relating to Herbalife in these countries or territories, including but not limited to efforts or attempts to:

- Register or license Herbalife names or products or its Marketing Plan;
- Sell or distribute Herbalife products;
- Promote Herbalife products or the business opportunity (including, but not limited to, wearing the button, or advertising using any media); or
- Hold meetings (large or small) or sponsor or recruit persons who reside in these countries.

This prohibited activity includes activity which occurs physically outside of an unopen country, but which has the purpose or effect of causing any of the results prohibited by subparagraph 1 above.

#### **Rule 9-B Herbalife-Related Activities in Open Countries (Other Than China)**

Herbalife products are intended for sale and distribution only within the specific countries for which those products are approved and produced.

- The sale of these products in any other country is prohibited.
- Distributors may not ship or arrange the shipment (directly or indirectly) of products from one country to another, whether or not it is for personal consumption.
- A Distributor may personally, physically pick up product from Herbalife in one country and take it to another country, BUT only a "reasonable amount of product" for the purpose of their own personal consumption or gift, not for resale. A "reasonable amount of product" means an up to two- (2-) month supply for an individual (or a one- [1-] month supply for two [2] individuals) of a reasonable assortment of products, not to exceed in any one 30-day period 1,000 Volume Points in total for all such products.

- The Distributor shall be solely responsible for the consequences of bringing from one country to another any products and shall indemnify the Company for any adverse consequences.
- No Distributor is authorized or permitted to approach government authorities in any country regarding the importation or distribution of Herbalife products or registration of the Herbalife trademarks. Only Herbalife International, Inc. is responsible for assuring that Herbalife's products and Marketing Plan fully comply with local laws and regulations.

The Company reserves the right in its sole and absolute discretion to act against practices which it believes violate the letter or spirit of the foregoing or which appear to do so.

#### **Herbalife-Related Activities in China**

- Non-Chinese nationals may not do business in China.
- No one may ship (or arrange for shipment) or bring any Herbalife product into China, whether or not the product is for personal use, consumption or gift.
- Distributors registered in China may NOT purchase, sell or distribute Herbalife products outside of China.
- Violations of these or other Rules applicable to China are likely to result in termination of the violator's commercial relationships with Herbalife worldwide.

#### **Rule 9-C Penalties for Violations**

Any violation of these Rules may result in legal or regulatory problems for the Company and endanger the business for all Distributors. For this reason, the penalties to Distributors who, directly or indirectly, violate these Rules will be severe. Herbalife shall have sole and absolute discretion to determine the appropriate penalty based on the severity of the violation and damage that resulted or could result, including, but not limited to:

- Suspension of all Distributor rights and privileges
- Monetary sanctions
- Obligation to reimburse Herbalife's legal fees
- Removal from the Speaker Program
- Disqualification from participation in the Annual Mark Hughes Bonus
- Permanent loss of lineage
- Termination of Distributorship

Important Note: Herbalife may hold the upline(s) of the violator responsible for violations of these Rules if investigations find they have knowledge of them or were a party to them.

### **Section 10 Resignation of a Distributor**

#### **Rule 10-A Conditions of Resignation**

A Distributor may resign their Distributorship for any reason or without reason at any time, by submitting a signed letter of resignation to Herbalife's Distributor Relations Department. The resignation becomes effective when received, validated and accepted by Herbalife. If Herbalife does not receive the resignation letter or the conditions are not met, then the Distributor is still deemed to be a Distributor until deleted by Herbalife.

#### **Rule 10-B Resigning Within 90 Days**

If within 90 days after the acceptance of their Application for Distributorship in Herbalife's records, a Distributor decides not to continue as a Distributor, the resigning Distributor may return to Herbalife (1) the official Distributor Kit (IBP) whether or not in resalable condition, and (2) unopened, unused and resalable products and sales materials that were purchased since becoming a Distributor from Herbalife or the Distributor's Sponsor or upline Supervisor. Reimbursement will be issued for the net price paid by the Distributor for Herbalife materials and Herbalife products returned which comply with these two requirements less appropriate setoffs and legal claims.

To initiate the return of the items specified above, please follow the directions provided to complete the form entitled Inventory Repurchase Request Form which is provided in the "Sample Forms" section of this book, available online for download from [MyHerbalife.com](http://MyHerbalife.com), or you may contact Distributor Relations at 866-866-4744 for assistance.

For Distributors who wish to resign after 90 days, please refer to Rule 10-D "Inventory Repurchase."

For transactions occurring in Wyoming, the refund period may exceed 90 days.

#### **Rule 10-C Liability for Unpaid Debts**

A Distributor who resigns will remain liable for unpaid debts owed to Herbalife or for liabilities for violations of the Herbalife Rules of Conduct or other rules and regulations that govern the business practices of Distributors.

#### **Rule 10-D Inventory Repurchase**

A Distributor leaving the business may return unused products or sales materials which are unopened and in resalable condition, for repurchase if the products were purchased from Herbalife within the last 12 months and the resigning Distributor provides proof of purchase. If the conditions are fulfilled, the Distributor may return the products to Herbalife. Reimbursement to the Distributor will be issued for the full amount paid for the returned product by the Distributor less appropriate setoffs and legal

claims. The cost of shipping paid on the original order and in returning those items to Herbalife will not be reimbursed.

Herbalife will deduct the amount of Royalty Overrides, Commissions, Production Bonuses and any other earnings or benefits paid on the returned products from the appropriate Distributors, and adjust qualifications as necessary.

Distributors residing in Wyoming may exceed the 12-month repurchase period provided all the above criteria have been met.

For Distributors who wish to resign within 90 days after the acceptance of their Application for Distributorship in Herbalife's records, please refer to Rule 10-B "Resigning Within 90 Days."

## **Section 11 Sponsoring and Leadership**

### **Rule 11-A Training**

One of the Sponsor's roles is to stay informed of Herbalife's Policies so they can properly advise and train their downline Distributors on a regular basis about the Herbalife products and their usage, Herbalife's rules and regulations, the Sales & Marketing Plan, and the proper use of advertising, including the use of literature and sales aids.

A Sponsor may seek assistance from their upline Supervisor or TAB Team member, but the primary responsibility for training is their own.

No Sponsor may require payment from a personally sponsored Distributor for training or training facilities, unless they fully explain that the Distributor may choose whether or not they want to participate in such training and state in advance the cost for such training. If the Distributor declines to participate in such paid training, the Sponsor is obligated to provide the basic training necessary to learning the business.

### **Rule 11-B Independent Relationship**

A Sponsor must maintain and uphold the independent relationship between themselves and their Distributors. They may assist their downline, as is appropriate for a Sponsor, by training and educating them on the Herbalife products and business opportunity. They may not participate in or interfere with the business of their downline Distributors, and may not suggest or develop an employee/employer relationship between themselves and their downline.

### **Rule 11-C Support Company-Sponsored Events**

A Sponsor shall keep informed of Company-sponsored events and when appropriate, encourage their personally sponsored Distributors to attend Herbalife-sponsored meetings and trainings, and to participate and support all Company-sponsored events.

### **Rule 11-D Maintain Permanent Address**

A Distributor must maintain a permanent home or business address, and provide this to both Herbalife and their organization so they may maintain contact with them.

### **Rule 11-E Ensure Proper Preparation of Distributor Documents**

A Sponsor must ensure the proper preparation of Applications for Distributorships and Supervisor Qualification Forms, and require each Sponsor to send the appropriate copy to Herbalife immediately.

### **Rule 11-F Ensure Understanding and Compliance With Customer Refund Policy**

A Distributor must ensure that the Herbalife customer refund policy is thoroughly and properly understood and applied, and intervene in any disputes between customers and Distributors to assure that they are aware of and understand the policy.

## **Section 12 Protecting and Maintaining Lines of Sponsorship**

### **Rule 12-A Changes in Sponsorship**

The Distributor/Sponsor relationship is the foundation of the Herbalife Sales & Marketing Plan and, as such, the principles and rules of the Company protect the rights of the Sponsor. Changes of sponsorship are believed to be detrimental to the integrity of the business and, as such, are discouraged and rarely permitted, and then only under certain conditions and at the sole and absolute discretion of Herbalife.

### **Rule 12-B Inducement to Change Sponsors**

In order to protect the Sponsor, no Distributor may interfere with the relationship between another Distributor and their Sponsor in any way. A Distributor may not offer, entice, encourage, solicit, or otherwise influence or attempt to persuade another Distributor to change their Sponsor or line of sponsorship, either directly or indirectly.

### **Rule 12-C Applying for Change of Sponsorship**

A Distributor who wishes to pursue changing Sponsors must obtain a written, notarized release from their Sponsor and all upline Distributors, up to and including their active President's Team member earning 7% Production Bonus.

If both current and proposed Sponsors share the same upline Sponsor and each are at equal status and earning levels under the Marketing Plan, the Distributor requesting the change need only obtain a notarized letter of release from the current Sponsor along with a notarized letter of consent from the proposed Sponsor.

These notarized releases must be submitted to Herbalife's Distributor Relations Department detailing the reasons for this request and forfeiting all rights to the existing Distributorship if the request is approved. Only after all this documentation is submitted will Herbalife review the request.

Fulfillment of any part of this requirement does not in any way imply or guarantee approval of the request.

The determination of this request will only be made by Herbalife World Operations Home Office in Los Angeles, California. Herbalife has sole and absolute discretion to approve or deny such a request, without providing justification for acceptance or rejection.

If Herbalife approves the change, the requesting Distributor will be allowed to keep their downline Distributors upon meeting the following conditions: The requesting Distributor must obtain permission from his upline in order to keep his downline. The requestor's first-level downline will also have to sign off on staying with their current Sponsor. If the upline agrees to allowing the downline to move, this will consist of that downline's entire organization.

If the request for a change of sponsorship is denied and the Distributor is determined to change their Sponsor, the only remaining alternative is to resign their Distributorship, forfeiting current and future rights to their downline organization, and both the Distributor and their spouse, or other individual assisting in a Distributorship, must remain completely inactive as a Distributor for one year after the effective date of resignation before re-applying as a Distributor. (Refer to Rules 7-D "Period of Inactivity" and 10-A "Conditions of Resignation" in this section for complete rules for resignation from and rejoining the Company.) Herbalife has sole and absolute discretion in determining if the former Distributor and their spouse, or other individual assisting in a Distributorship, have met the conditions of inactivity when either of them reapply as a Distributor. Herbalife does not guarantee that a Distributor who resigns will be accepted again as a Distributor.

#### **Rule 12-D Penalty for Violation of the Change of Sponsorship Rule**

Herbalife has sole and absolute discretion to rescind the acceptance of an Application for Distributorship from a former Distributor at any time in the future if evidence is provided that shows the former Distributor, their spouse or other individual assisting in a Distributorship was not completely inactive the full one-year waiting period after resignation or non-payment of the Annual Processing Fee; failed to advise Herbalife of a prior Distributorship; or did not otherwise meet the terms and conditions of the resignation or relinquishment as set forth in these Rules of

Conduct. If Herbalife determines it is necessary to reverse an acceptance of a former Distributor due to a violation of the rules for protecting the lines of sponsorship, then Herbalife has sole and absolute discretion to assess whatever penalties are deemed necessary and appropriate. These include, but are not limited to, the transfer of all sponsored Distributors in the new Distributorship to the original Sponsor's organization, financial penalties, suspension and possible termination of the Distributor in violation of these rules.

### **Section 13 Assignment, Sale or Transfer of Distributorship**

#### **Rule 13-A Not Permitted Without Prior Written Consent From Herbalife**

The Herbalife business and the benefits, rights and obligations therein are personal to the achievements of the individual Distributor. The sale, assignment or transfer of any right or interest in a Distributorship is not permitted without prior written consent by the Legal Department of Herbalife's World Home Office in Los Angeles, California. Such requests should be forwarded to Herbalife's Distributor Relations Department that will then submit the requests to the Legal Department, on behalf of the Distributor, when all necessary documentation is received.

#### **Rule 13-B May Only Be Assigned or Transferred to a Non-Herbalife Distributor**

A Distributorship can only be assigned or transferred to an individual who is not an Herbalife Distributor. If the individual wishing to assume responsibility for the Distributorship was formerly an Herbalife Distributor, or participated in another Herbalife Distributorship, then they must meet all requirements of a former Distributor to rejoin the Company.

#### **Rule 13-C Retention of Status and Benefits**

The achievements of a Distributor are personal to the individual, and as such, if an assignment or transfer should be authorized, the status and benefits achieved by the Distributor are not necessarily transferred with the Distributorship. The individual assuming responsibility may be required to achieve all qualifications for status and earning requirements after the assignment or transfer is made. This includes, but is not limited to, Supervisor status, TAB Team status, vacation qualifications or any other rights of the individual Distributor.

#### **Rule 13-D Rule for Rejoining the Company**

If the Distributor transferring or assigning the Distributorship wishes to become a Distributor again, they must maintain one year of inactivity as defined by Herbalife in Rule 7-D "Period of Inactivity" after the assignment or transfer is completed before reapplying for or participating in another Herbalife Distributorship.

Herbalife reserves the right to reject this reapplication, without having to provide justification for such rejection.

#### **Section 14 Distributors Who Divorce or Separate**

Herbalife requires Distributors to build a business that is separate from the original Distributorship when they have separated or divorced from their spouse (or when in the process of separation or divorce), so that the downline, volume, and earnings established after the separation or divorce will be properly credited to the new, separate individual Distributorship (hereinafter referred to as "individual Distributorship"). This is especially important because Herbalife cannot dismantle the original Distributorship by transferring its downline to either party. Therefore, supporting the original downline organization is a shared responsibility.

Whenever a Distributor is in the process of a separation, divorce, or dissolution of a marriage (hereinafter referred to as "divorce"), the Distributor must ensure that the interests of the Distributorship and the Sponsor are protected.

#### **Rule 14-A Establishing a New Distributorship**

In order to continue the Herbalife business during or after the divorce, each person must submit the following documents:

- a signed and notarized Divorce Policy form (available through Distributor Relations)
- a copy of the Petition for Dissolution, Property Settlement Agreement, or Final Judgment
- a newly completed Application for Distributorship in his or her own name, sponsored by the original Distributorship's Sponsor (application available through Distributor Relations)
- a newly completed TAB Team Production Bonus Acknowledgement Form, reflecting the Distributor ID number of the individual Distributorship (TAB Team level Distributorships only)

#### **Rule 14-B Removal of Spouse's Name/Transfer Due to Divorce**

If a Distributor wishes to remove the name of the spouse from the Distributorship due to divorce, Herbalife must receive a Remove Spouse Request Form, with notarized signature by each party. (The Remove Spouse Request Form is available for download on [MyHerbalife.com](http://MyHerbalife.com) or through Distributor Relations.)

If the spouses mutually agree to transfer the Distributorship, each person must sign, notarize, and submit the Divorce Policy Transfer Request Form, which is included in the Divorce Policy.

If the transfer or name removal is due to court order, Herbalife must receive a copy of the final judgment, specifying this change.

If the Distributorship to be transferred is associated with another Distributorship as a result of a previous divorce, the transferred Distributorship will no longer be associated with that Distributorship.

#### **Rule 14-C Joining Under a Different Sponsor/ Participating in Another Distributorship**

During the divorce, neither parties may develop nor assist in developing (either alone, with, or on behalf of someone else) any other Herbalife Distributorship except under their original Sponsor.

It is not permitted for either spouse to sign an Application for Distributorship under a different Sponsor unless a one-year period of inactivity, as defined by Rule 7-D "Period of Inactivity," has been maintained following the final judgment, and Distributor is in compliance with all other rules and regulations.

#### **Rule 14-D Rights to Continue a Distributorship Under the Same Sponsor**

Distributors who have divorced (or married Distributors who have separated) must conduct an Herbalife business that is separate from their spouse, under their original Sponsor, with the approval, and at the sole and absolute discretion, of Herbalife.

Upon receipt of the documentation described in Rule 14-A "Establishing a New Distributorship," Herbalife will deactivate the buying privileges of the original Distributorship, and each party must continue the business by sponsoring and placing orders using their individual Distributor ID number. The individual Distributorships will each receive the current status of the original Distributorship – Supervisor, World Team, or TAB Team (TAB Team Distributors will be required to submit a new TAB Team Production Bonus Acknowledgement Form).

Each person may only sponsor Distributors and place orders under their individual Distributor ID number, and must ensure that the downline organization of the original Distributorship receives sufficient support as detailed in Section 11 "Sponsoring and Leadership."

Changes to the original Distributor ID number will not be allowed through the Internet.

#### **Rule 14-E Requirements to Earn, Recognition, and Events**

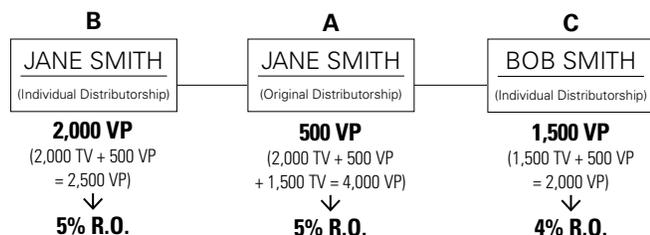
Total Volume: Each individual Distributorship will be allocated Volume Points from their individual Distributorship plus Volume Points of the Original Distributorship. This will determine the eligibility to receive Royalty earnings, qualifications, requalifications and/or Production Bonus.

For the purpose of Royalty Overrides percentage eligibility, the original Distributorship will combine volume with each of the individual Distributorships, plus its own Volume. Production Bonus eligibility for the original Distributorship will be determined based on the achievement of the highest individual Distributorship (see example below).

**Volume Points**

**Volume for B and C will be as follows:**

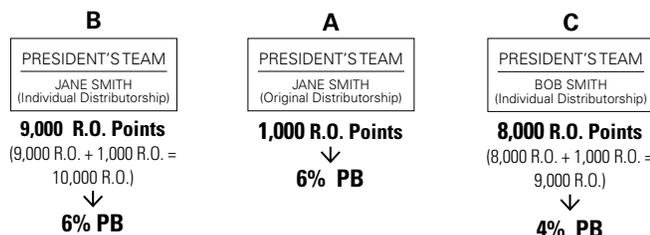
**B + A and C + A**



**Royalty Points**

**The Royalty Override Points for Production Bonus purposes are combined as follows:**

**B + A and C + A**



The individual Distributorships must comply with the 10 Retail Customers Rule and the 70% Rule and any other requirements to earn Royalty Overrides. Each individual Distributorship is required to achieve the necessary volume to meet the Matching Volume requirements for their own downline who are qualifying for Supervisor status. The buying privileges of the original Distributorship will be temporarily granted to accommodate any Matching Volume requirements for its downline qualifiers.

Recognition: Each Distributor will be recognized for their own accomplishments under the Sales & Marketing Plan. The original Distributorship will not receive recognition.

If the original and an individual Distributorship reach the level of President's Team, only one diamond will be awarded to the upline President's Team member, which remains consistent with the diamond allocation for Distributorships that are not part of a divorce. If the individual Distributorship qualifies for a diamond, only that Distributorship will advance within the diamond status(es).

Events: Rules related to event attendance are specific to each event and may vary. Please refer to event materials for information about accommodations, tickets, transportation, etc.

**Rule 14-F Annual Processing Fee and Requalification of Status**

Each Distributor is responsible for the payment of the Annual Processing Fee for their individual Distributorship. The original Distributorship is exempt from payment of the Annual Processing Fee.

Each Distributor is individually responsible for meeting the annual Supervisor re-qualification volume requirements, the original Distributorship will requalify as long as one of the individual Distributorships requalifies; however, they may each use the Royalty Points of the original Distributorship in combination with their own, to meet TAB Team re-qualification requirements.

**Rule 14-G Requests to Modify Earnings Distribution of the Original Distributorship and Other Changes**

Herbalife will only accept written, notarized requests to make changes to the original Distributorship, and all requests must be mutual.

Herbalife will continue to pay the earnings of the original Distributorship in the manner established prior to the separation/divorce. Earnings divisions can only be accommodated upon court order or upon receipt of a written and notarized letter of request from each Distributor. Each Distributor must also submit a notarized Request to Pay form in addition to the court order or letter of request. The request must include specific directions about the distribution percentage and the tax liability of each person in regard to these earnings.

Once Herbalife approves the earnings division, future changes to payment direction must be contained in an order from the court or in a notarized, joint letter of request.

The earnings statements for the original Distributorship will be mailed to the address of record, unless each party submits a written and notarized letter of instruction.

**Rule 14-H Authority of a Legal Decision**

This associated Application as defined in Rule 14-D "Rights to Continue a Distributorship Under the Same Sponsor" or 14-C "Joining Under a Different Sponsor/Participating in Another Distributorship," and any other Herbalife rule or regulation, in no way supersedes the dictates of any court of law as to the disposition of the Distributorship and/or the rights, benefits or obligations of either party to the Distributorship.

**Rule 14-I Impact of Policy Violations**

If Herbalife determines that a Distributor’s conduct violates any Rule, Herbalife shall have sole and absolute discretion to determine the disposition of each associated Distributorship, including but not limited to decisions whether to terminate, impose penalties or sanctions, or place conditions on any of the Distributorships.

**Rule 14-J Transfers**

If the Distributorship is awarded to a spouse or if a Distributor relinquishes their entire interest in the original Distributorship and decides to establish a new Distributorship, the following will apply:

- The Sponsor of the original Distributorship must sponsor the new Distributorship, OR the Distributor must maintain a one-year period of inactivity from the date of the Final Divorce Decree or Judgment before signing under a new sponsor. (Please refer to Rule 7-D “Period of Inactivity.”) Failure to abide by Rule 7-D is considered a violation of the Sales & Marketing Plan and will result in termination of the Distributorship in question.
- The new Distributorship will be wholly independent from the original.
- If Herbalife receives the new Application for Distributorship within one year of the transfer, the status of the new Distributorship will be equal to the status of the original at the time of the transfer. Otherwise, it will be at Distributor status, with 25% discount buying privileges.
- Advancement within the Sales & Marketing Plan, royalty earnings, and/or other bonuses are based on the volume achievements of the new Distributorship only.
- The transfer will be retroactive to the first day of the month during which it is approved.

**Rule 14-K Re-Marriage/Multiple Divorces**

Herbalife will only accept and associate one set of divorced Distributorships. The first time Herbalife is notified about a divorce, the result will be the establishment of two new Distributorships that will be associated to the original Distributorship as described in Rule 14-D “Rights to Continue a Distributorship Under the Same Sponsor.” In the event that one Distributor remarries, their spouse can be added to their individual Distributorship

The policy for multiple divorces is best understood by the following example:



If Bob remarries, the three Distributorships are still associated and the new marriage does not affect the divorce setup. The situation becomes this:



**Section 15 Disposition of a Distributorship**

**Rule 15-A Inheritance**

Upon the death of a Distributor, the deceased’s Distributorship may be transferred to an heir, subject to applicable laws and Herbalife’s rules, and with Herbalife’s approval and acceptance in its sole discretion.

The Rules of inheritance allow an active Distributor to own and operate a maximum of three Distributorships – their own, plus up to two others acquired by inheritance from a \*qualified family member. An inherited Distributorship may be transferred to the heir directly, or in the case of a Distributorship that is President’s Team status, to a Corporation owned by the heir.

Through this process, the Period of Inactivity (as specified in Rule 7-D) shall be waived, provided the following additional conditions apply:

1. The lineage relationship between the heir’s existing Distributorship and the inherited Distributorship(s) must be vertical (in the same line).
2. The inherited Distributorship must be at TAB Team level.
3. The heir must provide documentation, including indemnities and assurances satisfactory to Herbalife in its sole discretion regarding their legal ability to instruct Herbalife as to the disposition of the deceased’s Distributorship.

Inherited Distributorships will be considered as separate entities, each subject to fulfilling the business activities, sales Volume and compensation terms as set forth in Herbalife’s Marketing Plan, with the exception of Lifetime Volume achievements, which allow for the combination of the heir’s own total volume with the inherited Distributorship’s total volume. The heir will be responsible for payment of fees, fines (if/when applicable), and subscriptions for each Distributorship maintained, including the Annual Processing Fee, and BizWorks (as applicable).

The heir must abide by all Rules of Conduct and Sales & Marketing Plan, not only for their personal Distributorship, but also for any Distributorship inherited.

\*A qualified family member is defined as a spouse, parent, child, brother, sister, grandparent, grandchild, mother-in-law, father-in-law, stepparents, stepchildren, stepbrother, stepsister, cousin, aunt, uncle, niece, and nephew.

For transfer consideration or to request the cancellation of a deceased's Distributorship, please contact your local Distributor Services team in order to receive instructions and paperwork about initiating either process.

The final disposition of the Distributorship will be subject to approval by the Legal Department of Herbalife's Worldwide Corporate Headquarters in Los Angeles, California.

## **Section 16 Purchasing and Sale of Products**

### **Rule 16-A Proper Purchasing**

Non-Supervisor Distributors may purchase Herbalife products only from their Sponsor, their first upline Supervisor (only if their Sponsor is not a Fully Qualified Supervisor) or directly from Herbalife.

Products purchased directly from Herbalife by non-Supervisor Distributors (at discount of less than 50%) are credited to the first upline Fully Qualified Supervisor's Personal Volume.

### **Rule 16-B Orders Purchased at 50% Discount**

All product purchases eligible for a 50% discount (Supervisor orders) must be purchased directly from Herbalife and may not be purchased from an Upline Supervisor or other Distributor.

### **Rule 16-C Buying and Selling Products Outside Proper Line of Sponsorship**

A Distributor is prohibited from buying products from any Distributor other than as authorized in Rules 16-A "Proper Purchasing" and 16-B "Orders purchased at 50% Discount." Likewise, a Distributor is prohibited from selling to any Distributor other than their downline personal organization, in keeping with Rules 16-A and 16-B. (Refer to Business Methods, Rule 1-L "Restrictions on Solicitations and Sales of Business Methods to Herbalife Distributors" in the "Supplemental Rules" section.)

### **Rule 16-D Orders Must Be Paid by Purchaser**

Payment for all orders purchased from Herbalife must be made by the Distributor designated as Purchaser on the order, their spouse or the first upline Supervisor if the Purchaser is a non-Supervisor, unless specific written approval is given to Herbalife for payment to be made by another individual. If written approval is given, it is for a specific order only and all subsequent orders will have above rules applied.

Distributors may not provide payment for product orders in another Distributor's name, unless a Supervisor is ordering for a non-Supervisor, which is considered the Supervisor's own Personal Volume.

Attempts to purchase products in another Distributor's name could be interpreted as attempts to improperly advance in the Marketing Plan.

## **Rule 16-E Unacceptable Forms of Payment**

Distributors may not use the credit cards, personal checks or any other form of payment from their Distributors, retail customers or other individuals to pay for orders purchased from Herbalife.

## **Section 17 Customer Retail Receipts and the Customer Refund Policy**

### **Rule 17-A Providing Retail Receipts to Customer**

A Distributor must provide an official completed Herbalife Retail Order Form to all retail customers when the sale is completed. This must list the products sold, the sales price, and the name, address and telephone number of the Distributor and the customer. Distributors are required to maintain their copy of all Retail Order Forms on file for a period of two (2) years. Herbalife maintains the right to request copies of these and to verify the transactions and the terms and conditions of the sale, and the service provided by the Distributor.

### **Rule 17-B Customer Refund Policy**

The Herbalife products have a 30-day money-back guarantee for the retail customer. The 30 days commence on the date the customer receives the product. When a customer requests the guarantee be honored, the Distributor must respond quickly and courteously. They may offer the customer a choice of a full refund of the purchase price or full credit for exchange of other Herbalife products, in accordance with the return procedures set forth in this book. The Distributor must honor the customer's choice. (Refer to the procedures on page 23 of the "Sales & Marketing Plan" section of this book.)

## **Section 18 Payments and Adjustments**

To qualify for monthly Royalty Overrides, Production Bonuses or other bonuses offered by the Company, Distributors must meet sales production and Royalty Point requirements that are fully defined in the "Sales & Marketing Plan" section of this book, or in other literature and promotional material. Additionally, in order to earn these payments, Distributors must meet certain requirements for retail customers and product distribution, and confirm those on the 1st of each month on the Earnings Certification Form. The additional requirements are defined below.

### **Rule 18-A Product Distribution**

Herbalife is a wholesale/retail distribution Company. Products purchased from the Company are intended to be sold and distributed to retail customers and downline Distributors, or used for Distributors' and their immediate families' own personal consumption. The purchase of products primarily as an attempt to qualify for advancement in the Marketing Plan

Exhibit B not permitted.

Any such attempts will result in severe sanctions, including, but not limited to, demotion in team status, probation, suspension of buying privileges, suspension of earnings, disqualification from bonus participation, and deletion or termination of the Distributorship.

#### **Rule 18-B The 10 Retail Customers Rule**

A Distributor must personally make sales to at least ten (10) separate retail customers in a given Volume Month to qualify for and receive Royalty Overrides, Production Bonuses, and other bonuses paid by Herbalife. For the purpose of fulfilling the certification requirements of this Rule, a Distributor may count any or all of the following each Volume Month.

- A sale to a retail customer;
- A sale to a first-line Distributor with up to 200 Personally Purchased Volume Points (and no downline Distributors) may be counted as a sale to one (1) retail customer; and
- \*A Nutrition Club member who consumed products during ten (10) visits to a Nutrition Club within one Volume Month may be counted by the Nutrition Club operator as a sale to one (1) retail customer.

If the Distributor fails to timely certify to Herbalife that they have sold to at least ten (10) retail customers in a given Volume Month, Royalty Overrides, Production Bonuses, and other bonuses will not be paid to the Distributor.

#### **Rule 18-C The 70% Rule**

In order to qualify for and receive Royalty Overrides, Production Bonuses, and other bonuses paid by Herbalife, at least 70% of the total value of Herbalife products a Distributor purchases each Volume Month must be sold or consumed that month. For the purpose of fulfilling the certification requirements of this Rule, a Distributor may count any or all of the following:

- Sales to retail customers;
- Sales at wholesale to downline Distributors; and
- \*Product consumed at Nutrition Clubs.

If the Distributor fails to timely certify to Herbalife that they have sold or consumed 70% of the product purchases made that Volume Month, Royalty Overrides, Production Bonuses, and other bonuses will not be paid to the Distributor.

#### **Rule 18-D Commission Payments for Downline Distributors**

On orders purchased directly from Herbalife, the Wholesale Profit or Commissions earned by downline Distributors will

be paid to the Qualified Producer (when one is within the line of payout) or the Supervisor. The Qualified Producer and Supervisor are required to pay these Commissions out to their downline Distributors by the end of the month the Commission payment is received.

#### **Rule 18-E Maintenance of Records**

Distributors must maintain records of all their product distribution for a minimum of two (2) years. The records must contain the name, address and telephone number of the customer or Distributor to whom products were sold, complete information on products bought, and amount and method of payment. These records must be provided to Herbalife immediately upon request. Herbalife maintains the right to contact retail customers and downline Distributors to confirm these transactions and the level of service provided by the Distributor.

#### **Rule 18-F Debts Owed to Herbalife**

If a Distributor owes Herbalife a debt, including, but not limited to, any amount owing to Herbalife for products ordered, adjustments to earnings for inventory repurchases by downline Distributors or other earning adjustments, penalties assessed due to violations of the Rules of Conduct or other regulations of the Company, return of check or other form of payment for insufficient funds or past due Annual Processing Fees, Herbalife reserves the right to deduct the amount owed from any sum payable to the Distributor, or to withhold payment of monies owed until such time as all amounts owing by the Distributor to Herbalife have been paid in full and/or may decide not to recognize any qualification until the amount due Herbalife has been paid or settled.

#### **Rule 18-G TAB Team Production Bonus**

This bonus is paid to TAB Team members who complete all the qualification requirements and who demonstrate leadership both within their organization and to all other Distributors. Any TAB Team member who is in violation of any of the Rules of Conduct, Distributor Policies or other rules and regulations of the Company may forfeit the right to participate in this bonus program. Herbalife, in its sole and absolute discretion, may determine a Distributor's eligibility to participate in this bonus.

#### **Section 19 Activities and Locations**

The fundamental business of an Herbalife Distributor is the selling of Herbalife products to consumers through direct selling, meaning sales occurring away from a "Retail Location", whether by long distance or face-to-face, in a

\*If a Distributor utilizes Nutrition Club sampling activity towards compliance, the Distributor shall maintain a log of member visits for at least two years, setting forth the name of the member, dates of visits, and contact information, and shall make those records available for verification purposes if requested by the Company.

transaction in which there is a direct and personal interaction between the Distributor and the customer.

#### **Rule 19-A Retail Establishments**

No Distributor shall (directly or indirectly, through any person, means or device) display or sell Herbalife products, product-related literature, or promotional items in any retail establishments, including but not limited to stores, open or enclosed markets, pharmacies, grocery, health food or military stores, temporary kiosks, booths in malls, outlets, or any other location which Herbalife determines, in its sole and absolute discretion, is inconsistent with direct selling. (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

#### **Rule 19-B Distributor's Private Offices**

A Distributor with a private office may sell, sample, and display Herbalife products, product-related literature, or promotional items from such an office, provided that products are not advertised for sale, and no products, signs, posters, flyers or brochures are visible from the street or sidewalk. Exterior signage to identify an office is permissible subject to the following restrictions:

- Must not invite passersby to purchase product, and may not indicate to a passersby that Herbalife products are available inside
- Must ensure the location is not perceived as a store, restaurant, franchise or other "Retail Location" (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

#### **Rule 19-C Doctor's or Other Professional Offices**

Doctors, healthcare or other professionals who are also Distributors may sell Herbalife products from their offices provided that products are not advertised for sale, and there are no products on display. It is permissible to have Herbalife-produced brochures or literature on a counter top or table, provided they are not presented in a display

fashion. (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

#### **Rule 19-D Service Establishments**

Distributors may not advertise that Herbalife products are available at service establishments which include but are not limited to beauty salons, barbershops, gyms and health clubs. Product, product-related literature, promotional items, or signs may not be on display in any service establishment, nor may any signs be visible from the exterior of the location that indicate to a passerby that Herbalife products are available inside. Subject to these restrictions, sales and sampling of Herbalife products are allowed.

Herbalife has sole and absolute discretion as to the determination and application of this policy. (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

#### **Rule 19-E Trade Fairs, Athletic and Community Events**

Herbalife products may not be available for sale at trade fairs, or athletic and other community events. However, sampling and display of Herbalife products are permissible. Artwork for branded banners, table skirts, flags and tents/canopies which are approved for use in association with sampling may be downloaded from the Assets Library at [MyHerbalife.com](http://MyHerbalife.com). (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

#### **Rule 19-F Swap Meets, Flea Markets, Open-Air Markets, Street/Vendor Carts**

Distributors may not sell, sample, or display Herbalife products at swap meets, flea markets, open-air markets, street/vendor carts, or similar locations/events, or other locations that Herbalife determines, in its sole and absolute discretion, are inconsistent with "direct selling" or are not conducive to the brand image of Herbalife. (Refer to the "Direct Sales Do's and Don'ts" table at the end of this section.)

Direct Sales Do's and Don'ts						
Locations	Display	Sales	Promotion or Advertising of Product Sales	Exterior Signs	Sampling	Branded Materials
Retail Locations	No	No	No	No	Yes	Yes
*Temporary Kiosks, Booths in Malls and Outlets	No	No	No	No	Yes	Yes
Swap Meets, Flea Markets, Open-Air Markets, Street/ Vendor Carts	No	No	No	No	No	No
Distributor's Private Offices	Yes <sup>1</sup>	Yes	No	Yes <sup>2</sup>	Yes	Yes
Doctor's or Other Professional Offices	No	Yes	No	No	Yes	Yes
Nutrition Clubs (Non-Residential Locations)	Yes <sup>1</sup>	Yes	No	Yes <sup>2</sup>	Yes	Yes
Nutrition Clubs (Home Locations)	Yes <sup>1</sup>	Yes	No	No	Yes	Yes
Service Establishments	No	Yes	No	No	Yes	Yes
Trade Fairs, Athletic & Community Events	Yes	No	No	Yes <sup>3</sup>	Yes	Yes

\* "Temporary" is defined as occasionally present, not permanent. Permanent locations are not permitted.

1 Not visible from the exterior.

2 Subject to limitations as to content.

3 Allowed for booth identification. Subject to limitations as to content.

## Section 20 Sponsoring and Offering the Business Opportunity

### Rule 20-A Franchises or Territories

Herbalife does not have territories nor franchises. No Distributor may represent, imply, or mention in any way, that there are franchises or territories available under the Herbalife Sales & Marketing Plan, when presenting or offering the business opportunity.

### Rule 20-B Offering the Business Opportunity

When offering the business opportunity or presenting the Herbalife Sales & Marketing Plan, a Distributor must:

- Clearly indicate that the principle activity of a Distributor is to sell and distribute Herbalife products to Retail Customers and may not represent or imply that this is secondary to sponsoring or building the business.
- Not imply or represent that a Distributor can benefit solely by the sponsoring of other Distributors.
- Not imply that a Distributor is under any obligation to sponsor others to become Distributors.

- Not imply that success may be achieved with little or no effort and must clearly indicate that Royalty Overrides, Production Bonuses or other earnings of an Herbalife Distributorship may only be achieved through the continuing sales of Herbalife products to retail customers by themselves and their sponsored Distributors, and after certain qualifications have been met.
- Not represent that there is any obligation to purchase products, literature or sales aids except for the Herbalife Distributor Kit (IBP), nor may they represent that Royalty Overrides, Production Bonuses or other benefits may be obtained solely from the purchase of products rather than the sale of products. (Refer to Rule 22-F "Home-Based Business Claims" and 22-G "Claims Regarding Relationship Between Herbalife and Herbalife Distributors" in the "Rules of Conduct and Distributor Policies" section of this book.)
- Not make any statements which are not accurate and truthful. (Refer to Rules 22-F "Home-Based Business Claims" and 22-G "Claims Regarding Relationship Between Herbalife and Herbalife Distributors" in the "Rules of Conduct and Distributor Policies" section.)

## Section 21 Selling Practices

### Rule 21-A Undesirable Selling Practices

A Distributor shall not engage in high-pressure selling, but shall always conduct themselves in a courteous and considerate manner. All presentations of Herbalife products must be complete and truthful, including but not limited to, instructions on the usage directions and precautions if any, as specified on the product labels and any accompanying literature.

### Rule 21-B Product Sales to Non-Distributors for Resale

No Distributor may sell or otherwise provide Herbalife products to persons who are not Herbalife Distributors and whose intention it is to resell those products.

Additionally, Distributors may not purchase Herbalife products with an intent to commercially provide or resell those products within the 12-month period following the relinquishment or resignation of their Distributorship, in a manner which they could not have done while a Distributor under the Rules.

### Rule 21-C Modifications to Labels and Materials

A Distributor may not delete, add, modify or alter any labels, literature, material or packaging for any Herbalife product or literature, including the official Herbalife Distributor Kit (IBP).

In addition, products or samples packaged for daily use may not be resold individually.

### Rule 21-D Directions for Use

Distributor shall explain the directions for use and cautions, if any, specified on product labels when selling, or providing samples of the products.

### Rule 21-E Product Storage

Distributors are responsible for properly storing and following storage instructions provided on Herbalife product labels. Proper storage of products may include, but is not limited to, keeping products properly sealed, maintaining products in a cool dry place, and keeping products out of direct sunlight.

## Section 22 Claims and Representations

### Claims and Representations Generally

In addition to the specific Rules that follow, all claims, representations and testimonials, including those related to weight loss and product efficacy and financial performance (including income) must be lawful, truthful and not misleading. They must have a reasonable basis in fact and must have been substantiated in writing in advance of publication or other communication. They must also be consistent with claims and representations made in current Herbalife marketing publications or on current Herbalife product labels. Since the law in this area is subject to change, and as an accommodation to its Distributors (but not as the rendering of legal advice), Herbalife may post

updates of this Rule, updated disclaimers, and updated Average Gross Compensation of U.S. Supervisors at [MyHerbalife.com](http://MyHerbalife.com). Distributors are required to visit the website and review these advisories or Rule changes with care.

### Rule 22-A Audio and Visual Presentations

In addition to the Rules that follow, there are specific requirements for including appropriate disclaimers (described below) on audio and visual presentations whether they are branded or unbranded.

The disclaimers must appear at the beginning and the end of the presentations, long enough for anyone to read (in the case of visual), or hear (in the case of an oral presentation).

### Rule 22-B Weight-Loss Claims

All weight-loss claims and representations, including testimonials, must be accompanied by the following disclaimer, placed prominently, using a font size no less than 10-point type on every page on which the claims appear:

*An extensive questionnaire generated responses from more than 200 U.S. Herbalife Independent Distributors about their weight-loss programs and results. They reported weight loss ranging from 4 pounds to 167 pounds and a reduced body mass index (BMI) of 1.5 points to 24.1 points, suggesting that consumption of Herbalife products is associated with weight loss and improvement in BMI in those ranges.*

### Rule 22-C Structure/Function Claims

Distributors may make only those structure/function claims that appear on Herbalife's label and marketing materials for the product in question. A structure/function claim is one that the product may "assist" or "support" a particular organ/bodily function (example: "calcium in this product helps build strong bones"). All structure/function claims, including testimonials, must be accompanied by the following disclaimer, placed adjacent to the claims, and in a minimum of 10-point type on every page on which the claims appear:

*These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease.*

### Rule 22-D Product Claims

Distributors must not:

- Make any oral or written medical, therapeutic or curative claims about Herbalife products. If a customer is under a physician's care, Distributors are advised to recommend the customer consult with a physician before undertaking any changes in diet. Any person with heart, liver or kidney disorders, or who is under current medical treatment, should always be urged to seek the advice of a physician before changing their diet.

- Make any claims about the Herbalife products, either orally or in print, other than those presented in the Career Book, Product Brochure or other official Herbalife literature.
- Misrepresent, in any way, the price, quality, performance or availability of Herbalife products.
- Use the name of the Food and Drug Administration (FDA) when representing the Herbalife products.

### Rule 22-E Earnings Claims and Testimonials and Compliance With the Law

Distributors are responsible for understanding and following the laws relating to earnings claims and testimonials in each jurisdiction in which they intend to conduct business.

**Branded Materials:** If an income claim is made in advertising copy or other materials that mention Herbalife, a disclaimer must accompany the claim. "Lifestyle Claims" (such as those involving cars, pools, vacations, etc.) and personal testimonials about earnings or lifestyle are "income claims" and subject to this Rule. All branded income claims require a disclaimer as follows:

*Income 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. Supervisors at [Herbalife.com](http://Herbalife.com) and [MyHerbalife.com](http://MyHerbalife.com).*

Alternate Disclaimer: When describing the results achieved by the top 1% of Herbalife Distributors, the following disclaimer is also acceptable (with the same font and placement requirement):

*The incomes presented are those of persons within the top 1% of Herbalife Distributors.*

**Unbranded Materials:** If an "income claim" is made in advertising copy or other materials that do not mention Herbalife, a disclaimer must accompany the claim. "Lifestyle" claims (such as those involving cars, pools, vacations, etc.) and personal testimonials about earnings or lifestyle are income claims and subject to this Rule. All unbranded income claims require a disclaimer as follows:

*Income applicable to the individuals (or examples) depicted and not average.*

The disclaimer must be displayed in a font size no less than 10-point type or 75% of the size of the income claim, whichever is larger. Under the following limited circumstances, alternate disclaimers are acceptable on unbranded materials as follows (same font and placement requirement):

1. When describing the results achieved by the top 1% of Herbalife Distributors:

*The incomes presented are those of persons within the top 1% of all participants.*

2. When advertising on business cards, opportunity cards,

classified ads, or any other format which is less than 6 square inches:

*Incomes presented not typical.*

### Rule 22-F Home-Based Business Claims

When promoting the Herbalife income opportunity, Distributors may not misrepresent the extent to which the activities of a Distributor can be conducted solely in the home.

### Rule 22-G Claims Regarding Relationship Between Herbalife and Herbalife Distributors

The Herbalife income opportunity is a potential career for Distributors, but under no circumstances is it a job, as that term is commonly understood. Distributors are, at all times, self-employed independent contractors, and may not claim, represent or imply that they are employed by, speak for, or provide any kind of consulting services to Herbalife, or that the Herbalife business is a job. For example, Distributors may not use the terms "job," "salary," "employment," or "paid vacations" (or any similar terms) in promoting the income opportunity, nor may Distributors market the income opportunity using tools primarily or wholly devoted to advertising job opportunities including, but not limited to "Help Wanted" ads, employment bulletin boards, and Internet job search engines, unless the advertisements clearly and conspicuously indicate that what is being offered is an independent income opportunity, and not a job or employment.

### Section 23 Use of Copyrights, Trademarks, Trade Names and Logos

#### Rule 23-A Copyright Infringement

No Distributor or any other person may reproduce, in whole or in part, any printed material or audio or visual recordings that have been produced by Herbalife unless given written authorization to do so by Herbalife. These materials are protected by copyright, whether registered or unregistered, and are considered proprietary to Herbalife.

#### Rule 23-B Consent for Reproduction

Distributors wishing to use full and exact reproductions of articles or materials contained in official Herbalife material such as the Career Book, the Product Brochure, Herbalife Today magazine, audio/visual recordings or other literature, to be incorporated into presentations to their own Distributor organization or for informational purposes, may do so only if they have received prior written approval from Herbalife and if such reproduction is followed by this statement:

*Reproduced with the permission of Herbalife International. All rights to the Herbalife name and logo and any trademarks or trade names of Herbalife, are the property of Herbalife International and its subsidiaries or associated companies.*

### Rule 23-C Trademarks, Trade Names and Logos

A trademark or logo is a proprietary name or symbol which Herbalife has the exclusive legal right to use. For example, the symbol and the word "Herbalife" are Herbalife trademarks. A trademark also includes the name used for an Herbalife product, such as Cell-U-Loss®, Herbalifeline®, etc.

A trade name is a business name which Herbalife has the exclusive right to use. Company names such as Herbalife International of America, Inc. or Herbalife of Canada, Ltd. are our legal trade names.

Subject to the following conditions, it is permissible for Distributors to use those trademarks, trade names and logos which Herbalife makes available for downloading from the Assets Library at [MyHerbalife.com](http://MyHerbalife.com).

- Herbalife's logos/assets may not be obtained from any source other than Herbalife.
- Use of logos, including the Tri-Leaf logos, must always be accompanied by identifying yourself as an Herbalife Independent Distributor, and removal of this wording is strictly prohibited. Failure to do so can cause confusion in the marketplace.
- Distributors may not alter the logos in any way, except to resize as necessary to fit the specific tools and materials you create. Removal of the "Independent Distributor" wording (in conjunction with the logo) is absolutely prohibited.
- Logos may only be used in a manner that is in compliance with the law and Herbalife's rules and regulations (including the Rules of Conduct and Distributor Policies, the Supplemental Rules of Conduct, and the Nutrition Club Rules) all of which can be accessed on [MyHerbalife.com](http://MyHerbalife.com).

Herbalife, or any of its subsidiaries, reserves the right to withdraw its consent at any time at its sole and absolute discretion.

### Rule 23-D Use of Herbalife Name in TV, Radio, Magazines or Newspapers

The word "Herbalife" or the specific mention of any Herbalife products or pictures of products may not be used in any media advertisements, whether in print, audio or visual recordings, including, but not limited to, newspapers, magazines, radio and television, other than as indicated in the advertising regulations.

### Rule 23-E Toll-Free Telephone Numbers

Distributors may have a toll-free telephone number; however, it is not permissible to use any Herbalife trademarks, trade names, product names, or slogans such as: Herbalife®, Herbalife International, Herbalifeline® and Cell-U-Loss® in conjunction with the toll-free number. Distributors may only identify or list themselves as Herbalife Distributor or Herbalife Independent Distributor.

### Rule 23-F For Use Only With Herbalife Business

Distributors may use Herbalife-produced literature or promotional material solely for the purpose of conducting their Herbalife business.

### Rule 23-G Mark Hughes

The name or image of Mark Hughes (founder of Herbalife) may not be used in any form of advertisement.

### Rule 23-H Addresses

The Herbalife International World Operations Home Office address, or the addresses of any Herbalife companies or offices, may not be used, published, or promoted by any Distributor, as their own.

## Section 24 Advertising and Promotion

Herbalife endeavors to produce and make available effective promotional literature and sales tools for Distributors' use in advertising or promoting their business.

### Rule 24-A Approved Advertisements and Promotional Materials

Distributors may produce their own promotional materials provided they are truthful and accurate in content; make no therapeutic, disease or medical claims; do not imply an employment opportunity; and otherwise follow all Rules of Conduct that apply to Advertising.

### Rule 24-B Local Laws

In addition to Herbalife's policies, Distributors must comply with any and all local, state and federal ordinances, laws or other regulations when advertising or promoting Herbalife products or the business opportunity. It is the responsibility of the Distributor to determine what these may be and how they apply to their business.

### Rule 24-C Price Advertising

Herbalife Distributors are independent businesspersons and may sell Herbalife products, Herbalife-produced literature, and promotional items at any price they choose. It is prohibited, however, to advertise prices or pricing information such as "special offer," "\_\_\_\_% off," "free shipping" or "special discounts" to the GENERAL public (i.e., persons who have not had prior personal contact, related to Herbalife products or opportunity, with the Distributor placing the advertisement).

Distributors may advertise prices and pricing information to existing customers, downline, and potential new customers who have made direct, personal contact and indicated an interest in purchasing, subject to Herbalife's other Rules.

The price advertising restriction applies to branded and unbranded advertising and to all forms of media, including,

but not limited to, television, radio, telephone, Internet, newspapers, magazines, flyers, leaflets, handbills, pull-tabs and all forms of signage.

Materials of any kind, whether produced by Herbalife or by a Distributor, that indicate Herbalife's suggested retail prices may not be provided or shown to persons who have not had prior personal contact with the Distributor in connection with the Herbalife product or opportunity. In addition, Distributors may not modify Herbalife-produced literature or material which in its original form features suggested retail prices, including relevant pages of the Company's website.

#### **E-COMMERCE:**

Independent Distributors who operate personal websites may advertise product prices or pricing information only on the pages that are password protected. That is, in order to view prices or pricing information a consumer must first input a password or access code that is unique to each individual customer, and which has been obtained from the Distributor through a personal interaction, with the consumer. Personal interaction is defined as a personal phone call, a one-on-one email, or an in person conversation. The use of recorded messages and auto-responses and the like (whether by phone, Internet, or email) do not constitute personal interaction. The word "Herbalife" (or any variation of the word "Herbalife") may not be used as a password.

Distributors selling through public e-commerce sites not otherwise prohibited by the Rules of Conduct may advertise products for sale, however pricing and price related information may not be displayed except as otherwise permitted by this Rule 24-C.

Pages which are not password-protected (or third party e-commerce sites) may feature the following live hyperlink related to prices/purchasing:

**"FOR PRICING INFORMATION OR TO INITIATE AND COMPLETE A PURCHASE CLICK HERE."**

The above link may only direct consumers to a page or screen that indicates the Distributor's contact information (name, email address and/or telephone number) for consumers to obtain pricing information or a password (if prices appear on the website) directly from the Distributor.

Prices and pricing information may not be advertised by any other means or on any other websites, including, but not limited to:

- Email (where there is no pre-existing business or personal relationship – including email sent to handheld devices);
- Banner ads anywhere on the Internet;

- Popup ads anywhere on the Internet;
- "Sponsored search results" or "sponsored ads" anywhere on the Internet;
- On social networking sites that allow public viewing, including, but not limited to, MySpace or Facebook;
- On any blog or public message boards.

#### **Rule 24-D Telephone Directory Listings**

Distributors may list themselves in the telephone directory under the heading "Herbalife Distributor." The only information that may follow this is the Distributor's name, address, telephone number, fax number, email address or website.

Display ads must conform to all Herbalife advertising regulations, and the word "Herbalife" (other than "Herbalife Independent Distributor"), logos and/or trademarks of Herbalife International may not be used in any way other than as used in the approved advertisements. Categorical listings are permissible under accurate (non-medical, non-therapeutic and non-curative) headings. Accurate headings would include: "Hair Care Products," "Skincare Products," "Health Products" or "Nutritional Products," and "Weight Loss/Control."

Distributors may use display ads as long as the advertisement is within the guidelines for print advertising.

#### **Section 25 Posting Advertising Materials**

Herbalife periodically updates, publishes, and makes available a wide variety of advertising templates for Distributor's use. Distributors may not alter these templates other than to personalize them with their name and contact information.

The advertising templates are available for download from [MyHerbalife.com](http://MyHerbalife.com), or may be requested from Herbalife's Distributor Relations Department at 866-866-4744.

Distributors may only use these templates as allowed by the rules.

#### **Rule 25-A Posting Locations**

##### **Private Property:**

Distributors may post advertising materials on private property with the written consent of the owner of such property. Herbalife offers a "Letter of Consent to Post Advertising on Private Property" which Distributors may download and use at [MyHerbalife.com](http://MyHerbalife.com), or which they may obtain from Herbalife's Distributor Relations Department at 866-866-4744.

Advertising materials may not be visible from the street or sidewalk when used in connection with a private office or other location in which Herbalife business is done, and may not be posted or distributed in a manner that might be a distraction to motorists or pedestrians.

### Public Property:

Distributors may not post advertising materials on public property, including utility poles, street lights, traffic lights, parking meters or traffic signs.

### Rule 25-B Pull-Tabs, Flyers and Hot Pockets

Pull-tabs, flyers and hot pockets may be used provided their content and manner of use complies with the rights of others, Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife Rules, and the law. An example of a permitted use is posting of flyers on bulletin boards and other locations established for the specific purpose of allowing the posting or commercial notices.

### Rule 25-C General Rules

Distributors must comply with all applicable laws, regulations and ordinances when advertising and promoting Herbalife products or income opportunity.

Although Herbalife provides guidance and, in some cases, imposes additional restrictions, it is the responsibility of the Distributor as an independent businessperson to determine what the law requires.

- All materials covered by this Rule must include the name and postal address (or personally answered telephone) of the Distributor who posted or distributed the material.
- No materials may be attached to ATMs, telephones, vending machines or gasoline pumps, or be attached or left in a manner that creates a nuisance.
- Materials must be promptly removed upon the request of any government authority, the owner of the property (in the case of a withdrawal of consent) or Herbalife.

This Rule is likely to undergo periodic updates. Distributors are required to check for updates to this Rule by visiting [MyHerbalife.com](http://MyHerbalife.com) or by calling Herbalife's Distributor Relations Department at 866-866-4744. Materials which do not comply with updated Rules must be taken down or removed promptly.

### Rule 25-D Penalties for Violations

Violations of this Rule may have serious consequences, including formal reprimands, significant fines, suspension of buying privileges or termination of Distributorships. Where a landowner, property owner or governmental entity charges for clean-up costs, these costs shall be borne (or at Herbalife's option, reimbursed to Herbalife) by the responsible Distributor. Penalties are determined in Herbalife's sole and absolute discretion.

## Section 26 Electronic Marketing and Promotion

### Rule 26-A Must Disclose Relationship to Herbalife on Home Pages Featuring Corporate Logos/Marks

Distributors operating websites related to their Herbalife business may feature the Herbalife®/Shapeworks® logos and other Herbalife trademarks on their sites, but must disclose their relationship to Herbalife by placing the phrase "Herbalife Independent Distributor" in a prominent location on the home page, appearing in the same font size as the surrounding text, and the phrase must also appear on every Web page on which a logo or trademark appears. In the case of a Distributor marketing the Shapeworks® brand, "Shapeworks® Independent Distributor" may be used. Trademarked/copyrighted words and phrases may not be used in the website domain name (URL), the titles for any pages within websites (including, but not limited to, the home page), or in email addresses.

### Rule 26-B Domain Names, Email Addresses and Websites

Distributors using websites that offer product sales as part of their Herbalife business must clearly and conspicuously display the Distributor's personal name and business address along with "Herbalife Independent Distributor," on the home page and as part of any contact and within unrestricted, publicly accessible profile information within the website. Anonymous postings or the use of an alias is prohibited.

The Distributor's business name may not be a substitute for the personal name of the individual Distributor, but may be included in addition to the Independent Distributor's personal name.

If multiple Distributors are ordering or fulfilling product or otherwise participating in support on the same website, all names and current contact information must be listed.

Distributors may not use the name "Herbalife®," Herbalife®/Shapeworks® trade names, Herbalife®/Shapeworks® product names, or other intellectual property of Herbalife (or any variations thereon) in domain names (URLs), the titles for any pages within websites (including, but not limited to, home pages), or email address. However, the Herbalife name and product names may be used in search engine Meta tags, and title tags. In the case of a domain name violating this Rule, Herbalife shall have the right to require the owner to transfer it to Herbalife immediately and at no cost to Herbalife. This shall be in addition to Herbalife's other rights and remedies.

### Rule 26-C Hyperlinking and Associations

Distributors may not use third parties trademarks, trade names, or product names (or any variations thereon) in domain names (URLs), the titles for any pages within websites (including, but not limited to home pages), email addresses or Meta tags, unless they have sought and obtained prior written consent

from the owner. Independent Distributors shall indemnify and keep Herbalife safe and harmless from and against any liability or claim of any nature filed by any third party arising or related to the use of third-party trademarks, trade names or product names by Independent Distributors.

Distributors may link their websites to:

1. Herbalife's official home page or any other website produced or maintained by Herbalife.
2. Any other websites maintained by them to promote Herbalife's product line and income opportunity.
3. Any third-party websites that will assist them in promoting Herbalife's product line and income opportunity, so long as such websites are compliant with Rule 26-D "Associating Other Organizations" in this section of the Rules of Conduct.

#### **Rule 26-D Associating Other Organizations**

Distributors may feature third-party advertisements on their websites so long as, in Herbalife's sole and absolute judgment, the advertisements:

1. Are unconnected to any religious or political organization;
2. Do not damage the name or reputation of Herbalife or its Distributors;
3. Do not misuse Herbalife's service marks, trademarks, trade names, product names or other intellectual property; and
4. Do not directly or indirectly promote any other direct-selling or network marketing companies (regardless of products offered) or any products which are competitive with those sold by Herbalife (including, but not limited to, meal replacements, nutritional supplements and cosmetics).

#### **Rule 26-E Email**

The following discussion and Rules on email are generally applicable to all activities of Distributors related to their Herbalife business. They are in addition to federal, state and local legal requirements. As the law in this area is relatively new and constantly evolving, and as an accommodation to its Distributors (but not as the rendering of legal advice), Herbalife may post periodic legal updates at [MyHerbalife.com](http://MyHerbalife.com). Distributors are expected to visit the website and review these advisories with care, but nevertheless, Distributors are solely responsible for compliance with all applicable laws. Herbalife strongly recommends that Distributors pay regular visits to the Federal Trade Commission website, [ftc.gov](http://ftc.gov), in order to learn about the most recent developments in this area.

#### **1. Generally**

Herbalife has adopted the following Rules to comply with the CAN-SPAM Act of 2003, a federal law that governs the use of email messages to advertise or promote a commercial product or service, including content on an Internet website operated for commercial purposes. The law applies to all Distributors who promote the sale of Herbalife products or the earnings opportunity by sending email, regardless of whether the Distributor has a pre-existing business or personal relationship with the recipient. Failure to obey the requirements of the CAN-SPAM Act could result in criminal and civil enforcement actions, imprisonment and severe financial penalties.

#### **2. Rules and Definitions**

The following restrictions and prohibitions apply to all Distributors who transmit commercial email messages to promote Herbalife products or the earnings opportunity:

- a. Distributors are prohibited from sending messages unless the Distributor has a prior existing business or personal relationship with the recipient, or the recipient has provided prior affirmative consent to receive the message. "Prior existing business relationship" means a relationship formed by a voluntary, two-way communication between the Distributor and the recipient based on the recipient's prior purchase or transaction. "Personal relationship" means a relationship based on the recipient's status as a family member, friend or acquaintance with respect to the Distributor. "Affirmative consent" means that the recipient has expressly consented to receive the message, either in response to the Distributor's clear and conspicuous request for such consent or at the recipient's own initiative. Consent must specifically address receipt of messages regarding Herbalife products or the earnings opportunity.
- b. Distributors are prohibited from disguising the origin of any email message. Each message must include accurate header information. "Header information" means the source, destination and routing information attached to an email message, including the originating domain name and originating email address, and any other information that identifies the person initiating the message.
- c. The "from" line of each message must accurately identify the person who initiated the message.
- d. The "subject" line of each message must not mislead the recipient about the contents or subject matter of the message.
- e. Each message must contain a functioning return email address or Internet-based mechanism that a recipient may use to submit a reply email message or other form of Internet-based communication requesting that they not

receive future commercial email messages from the sender at the email address where the message was received ("opt-out request"). Each message must provide clear and conspicuous notice of the opportunity to make an opt-out request and how to do so.

- f. Distributors are prohibited from initiating or transmitting commercial email to a recipient who has made an opt-out request more than 10 business days after receiving the opt-out request. Each Distributor must produce and maintain its own Do-Not-Email List ("DNE list") to track and honor all opt-out requests.
- g. Each message must include a valid physical postal address of the Distributor.
- h. Any Distributor who uses a third-party list vendor or Lead Generator (lead service, or lead provider) to obtain email addresses must verify that each addressee obtained from such vendor or service is not on that Distributor's DNE list before sending any commercial message to that addressee, even if the list vendor or Lead Generator claims that the addressee has "opted-in" to receive commercial mail or has provided "consent" or "permission" or any other indication that they want to receive commercial messages.
- i. Distributors are prohibited from selling, leasing, exchanging, or otherwise transferring or releasing the email address of a person from whom the Distributor has received an opt-out request.
- j. Distributors are prohibited from obtaining the email addresses of message recipients by address harvesting or dictionary attacks. "Address harvesting" refers to the use of software or any other automated means to collect email addresses that are listed on an Internet website or online service, which may include chat rooms, message boards or online directories. Collecting email addresses from such sources is prohibited if that source posts a notice stating that the operator of such website or online service will not give, sell or otherwise transfer addresses maintained by such website or online service to any other person for the purpose of initiating commercial email messages. "Dictionary attack" refers to automated means used to generate possible email addresses by combining names, letters or numbers into numerous permutations.
- k. Distributors are prohibited from using scripts or other automated means to register for multiple email accounts or online user accounts from which to transmit commercial email messages.
- l. "Lead Generation Services" (also known as "lead generators" or "lead providers") use marketing techniques to locate potential customers for their clients. Herbalife

Distributors are prohibited from selling leads; however, they may recommend third-party lead provider services to other Distributors, but a Distributor may NOT earn any compensation (directly or indirectly) for referrals leading to sales of leads or other sales aids. Some Distributors buy "leads" to see if the lead might be interested in purchasing Herbalife products or in the Herbalife income opportunity. It is important to know, some Lead providers use techniques that may violate laws that restrict the sending of commercial email. The consequences of contacting leads that have been purchased from or supplied by a service which is using questionable methods can be very severe, even if the Distributor is acting in good faith. It is the Distributor's responsibility to know and abide by the law and to determine that those with whom they do business do so as well. This means the Distributor must investigate the Lead provider's techniques that the service employs and confirm to a certainty their compliance with applicable laws. For example, federal law requires that Lead providers using unsolicited email to contact prospects have prior affirmative consent to be contacted from those recipients. Until a Distributor has received written proof that a service's methods are in compliance with the law, Distributors may not purchase or use leads supplied by that service. The Distributor must keep in mind their own activities and once they have acquired the lead must comply with the CAN-SPAM Act and any other applicable laws. In addition to its other rights and remedies, Herbalife shall have the right to suspend, terminate or take other disciplinary action against a Distributorship using leads generated by means which do not comply with the law, or using those leads in a manner which does not comply with this Rule, Herbalife's other Rules of Conduct and Distributor Policies, all other Herbalife Rules, and applicable laws.

#### **Rule 26-F Discontinuance of Emailing**

Distributors must immediately discontinue email activity if they receive any inquiry or notice of action from a governmental authority regarding their email practices. Distributors must report all such notices or inquiries immediately to Herbalife's World Operations Home Office. Herbalife retains the option to suspend, terminate and take other disciplinary or legal action against any Distributorship that is not in compliance with Herbalife's Rules and the laws. This is in addition to Herbalife's other rights and remedies.

#### **Rule 26-G Search-Engine Advertising**

The Herbalife name and product names may be used in search engine Meta tags and title tags. In the case of a domain name violating this Rule, Herbalife shall have the right to require the owner to transfer it to Herbalife immediately and at no cost to Herbalife.

Distributors are permitted to advertise the Herbalife® product line and income opportunity on Internet search engines, but they may only use words and phrases that have been preapproved by Herbalife for such advertising. This restriction applies to the URL, title tag, 25-word description, keywords that make up a Meta tag, alt/image tags that describe the images of a site, sponsored ads that Distributors purchase on search engines, and any other page-related factors used by search engines in determining website rankings. A list of keywords that may optimize your search-engine ranking, and a list of approved advertising phrases are available from Herbalife's Distributor Relations Department (toll-free) at 866-866-4744 or online at [MyHerbalife.com](http://MyHerbalife.com). These lists will be updated from time-to-time. Distributors should view the lists regularly and promptly ensure that their search-engine advertising is in conformity.

#### **Rule 26-H Obtaining Priority or Preference With a Search Engine**

Distributors may not use any misleading or deceptive tactics (as determined by Herbalife, in its sole and absolute judgment) in order to improve their index preference with search engines.

#### **Rule 26-I Offering Web Services**

Distributors offering any Web services through a vendor must provide to each recipient in an easily understandable, direct and permanently available manner, the name, address, fax and phone numbers, and email address of the Vendor/Service Provider.

#### **Rule 26-J Offering Herbalife Products for Auction**

Auction sales and sales on auction sites weaken the personal relationships which Distributors must develop with their customers, as well as the Herbalife brand and the image which Herbalife wants to establish for its products. Therefore, Distributors may not (directly or indirectly through any intermediary or instrumentality) offer or facilitate the offering of Herbalife products for sale by soliciting or receiving open bids. This prohibition includes, but is not limited to, soliciting or receiving bids for Herbalife products on the Internet, through a commercial auction website, online auction marketplace, or otherwise. Furthermore, commercial auction websites or online auction marketplaces, and any other sites determined by Herbalife to have an auction focus, are prohibited sales channels even when the proposed sales are at a fixed price.

#### **Rule 26-K International Business**

Distributors conducting or seeking to conduct business in international markets via their own or other websites must comply with Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife Rules, as well as the laws and regulations of each country which has jurisdiction over their commercial and Internet activities, including, but not limited to,

rules, laws and regulations pertaining to the confidentiality of consumer data, privacy rights, restrictions on telemarketing and restrictions on marketing over the Internet. Product references may include only those products that are for sale in the particular country to which such communications are directed.

#### **Rule 26-L Privacy Statements**

Distributor websites that promote Herbalife products or income opportunity, or any other relationship with Herbalife, must maintain the confidentiality of consumers and site users by complying with the privacy laws in each country from which they receive consumer information. Distributors must post, in a prominent location, a "Privacy Statement" that informs consumers whether or not personal information is being collected about them and how such information will be used.

#### **Rule 26-M Consumer Data**

Distributors may not sell, trade or use consumer or site user information, except in connection with Herbalife products or Herbalife income opportunity. If any person or entity requests that their information not be used, the Distributor must immediately honor such request.

#### **Rule 26-N Standard of Personal Conduct**

Distributors may not publish, post or distribute any materials on or via the Internet, whether or not in connection with Herbalife that are, in Herbalife's sole and absolute judgment, defamatory, libelous, disparaging, threatening, offensive, harassing, abusive, obscene or pornographic.

#### **Rule 26-O Unauthorized Computer Access**

Distributors may not interfere or take any action that results in interference with or disruption of [Herbalife.com](http://Herbalife.com), [MyHerbalife.com](http://MyHerbalife.com) or other websites maintained by Herbalife or its Distributors, nor may they gain or attempt to gain access to computer systems or networks connected to those sites or any other sites without prior written permission or authorization from Herbalife.

#### **Rule 26-P Audio/Visual Recordings**

A Distributor may not display or mention the name of any Herbalife products, trademarks or trade names in any audio/visual recordings made by, for, on behalf of, or at the direction of a Distributor, unless such recording has been approved for use by Herbalife. For additional details regarding the use of audio/video recordings with Social Media, refer to Rule 27-G "Photos, Video/Audio Recordings."

#### **Rule 26-Q Television, Cable, Satellite or Radio Broadcasting**

It is not permitted for any Distributor to broadcast any audio/visual recording of any kind that relates to, mentions, displays or promotes in any way, either directly or indirectly, the

Herbalife name, products, materials, business opportunity or methods of conducting business, except for the following approved advertisement:

Herbalife Independent Distributor  
Call Me for products or opportunity  
(Distributor Name and Phone No./Fax No.  
or Email Address)

### Rule 26-R Television Advertising

In the event that Herbalife should broadcast on a television, satellite or radio station, no Distributor may advertise on that station or network at any time during the period beginning one hour before through one hour following the Herbalife broadcast, even though such advertisement may otherwise conform with Herbalife's Advertising Regulations or other rules.

## Section 27 Social Media

**Introduction:** Social networking websites such as Twitter, YouTube, MySpace and Facebook, and online communities (like blog sites) are now among the most popular, talked-about and visited sites on the Internet. The Herbalife business is one of personal communication, so these sites may offer important tools and capabilities that you, as Independent Distributors, will want to use to communicate.

The following Rules are applicable to your activities with online social media and have been created to protect and preserve the integrity of Herbalife's brand, as well as your business operation.

### Rule 27-A Responsibility for Postings

- Distributors are responsible for all Herbalife-related content that they post online, including but not limited to blogs, videos, comments, and any other submissions that can be traced back to them, whether or not they own, operate, or control the website.
- Distributors must fact-check materials they intend to post online to ensure the information is truthful and accurate.
- Distributors using social media outlets as part of their Herbalife business must clearly and conspicuously identify themselves (by both name and as an Herbalife Independent Distributor) within unrestricted, publicly accessible profile settings. Anonymous postings or the use of an alias is prohibited.

### Rule 27-B Social Media as a Sales and Promotion Forum

Social Media sites are relationship-building sites. Building relationships is an important part of the sales process and these sites may become useful for Distributors. However, social media sites may not be used as a forum to conduct

sales transactions. Online sales may only be transacted from an Independent Distributor's Herbalife website.

### Rule 27-C Deceptive Postings and Claims

Distributors must be accurate and truthful when posting biographical information and credentials.

All claims, representations and testimonials, including those related to weight loss and product efficacy and financial performance (including income) must be lawful, truthful and not misleading. They must have a reasonable basis in fact and must have been substantiated in writing in advance of publication or other communication. They must also be consistent with claims and representations made in current Herbalife marketing publications or on current Herbalife product labels.

When making claims Distributors must adhere to all applicable rules and laws. This includes, but is not limited to the use of disclaimers which are required for all types of Claims (income, lifestyle, product efficacy, and weight-loss). For example: All weight-loss claims and representations, including testimonials, must be accompanied by the following disclaimer, placed prominently, using a font size no less than 10-point type on every page on which such claims appear:

*An extensive questionnaire generated responses from more than 200 U.S. Herbalife Independent Distributors about their weight-loss programs and results. They reported weight loss ranging from 4 pounds to 167 pounds and a reduced body mass index (BMI) of 1.5 points to 24.1 points, suggesting that consumption of Herbalife products is associated with weight loss and improvement in BMI in those ranges.*

Distributors must include this disclaimer when making claims about their own or anyone else's weight-loss results associated with use of Herbalife® products. Although the Claims and Representations section of the latest Career Book provides the disclaimers and the proper placement details for all types of Claims (income, lifestyle, product efficacy, and weight-loss), because the law in this area is subject to change, and as an accommodation to its Distributors (but not as providing legal advice), Herbalife may post updates of this Rule and updated Average Gross Compensation of U.S. Supervisors at [MyHerbalife.com](http://MyHerbalife.com). Distributors are required to visit the website and review these advisories or Rule changes with care.

### Rule 27-D Use of Third-Party Intellectual Property

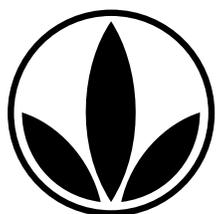
Distributors may not use third parties' trademarks, trade names, or product names (or any variations thereon) text, photo images, videos, or graphics owned or created by third parties unless they have sought and obtained prior written consent from the owner.

All third-party intellectual property must be properly referenced as the property of the third-party, and Distributors must adhere to any restrictions and conditions that the owner of the intellectual property places on the use of its property.

**Rule 27-E Use of Herbalife’s Trade Names, Logos and Assets**

Distributors may only use Herbalife’s trade name in a manner that clearly distinguishes themselves as Herbalife Independent Distributors. Without limitation, this restriction applies to the identification of online groups, forums, and other pages created in online environments.

Examples of unauthorized use of the Herbalife name are: “Herbalife Wellness Challenge,” “The Herbalife Page,” “Let’s Talk Herbalife,” etc.



**HERBALIFE**  
Independent Distributor

Professionally designed logos are available and assets that incorporate the logos, such as those shown below, may be downloaded in multiple file formats from the “Assets Library” in [MyHerbalife.com](http://MyHerbalife.com).

However, the use of these logos and assets is subject to the restrictions defined below:

- Logos & assets may not be obtained from any source other than Herbalife.
- Distributors may not use logos without conspicuously and clearly identifying themselves as “Herbalife Independent Distributor.” Removal of the “Independent Distributor” wording is prohibited.
- Logos and assets may not be altered in any way, except resizing to fit tools and materials created.

**Rule 27-F Respecting Privacy**

Always respect the privacy of others in your postings, and be mindful of Herbalife’s Rules of Conduct & Distributor Policies, Rule 8-G “Maintaining Reputation and Image of the Company,” which states: No Distributor shall do anything (whether or not in the course of their Distributorship) which Herbalife determines, in its sole and absolute discretion, is or could be detrimental to the reputation or image of the Company, its products, Distributors, trademarks, trade names or goodwill.

**Rule 27-G Photos, Video/Audio Recordings**

Distributors may post audio/video material on YouTube and similar social media sites, provided the content complies with Herbalife’s Rules of Conduct and Distributor Policies.

Distributor’s Personal Meetings	Corporate Events
<p><b>Still Photos:</b> Distributors may not post still photos from their personal meetings or trainings on social media websites. Such photos may be posted on Herbalife Independent Distributor’s website provided they are behind a password-protected page.</p>	<p><b>Still photos:</b> Still photos taken by Distributors at Company-sponsored meetings or events may be used on Herbalife Independent Distributor websites and social media websites. Herbalife provides a variety of professional photos that are available for Distributors to download from Assets Library in <a href="http://MyHerbalife.com">MyHerbalife.com</a>. These photos are approved for Distributor’s use and may also be used on both personal and social media websites.</p>
Distributor’s Personal Meetings	Corporate Events
<p><b>Audio/Video Recordings:</b> Distributors may not post audio/visual recordings from their personal meetings, or personal trainings on any social media website. Such recordings may be posted on Herbalife Independent Distributor websites provided they are behind a password-protected page.</p>	<p><b>Audio/Video Recordings:</b> Distributors may not record video or audio of Herbalife-sponsored meetings, trainings or events, and may not post video or audio recordings on their personal websites, or on social media environment.</p> <p>However, Herbalife provides a variety of <b>professional</b> video and audio recordings of Company-sponsored events that are available for Distributors to download from <a href="http://MyHerbalife.com">MyHerbalife.com</a> (or any site Herbalife makes available for that purpose). Recordings provided by Herbalife are acceptable for posting on social media websites and Herbalife Independent Distributor websites.</p>

Exhibit B

In its sole and absolute discretion, Herbalife reserves the right to determine if recordings and images (including their manner of use) conflict with Herbalife's branding efforts or Rules of Conduct and Distributor Policies, including disclaimer requirements. Herbalife reserves the right to request the removal of such images or recordings.

At all times, Distributors must comply with all privacy laws and social media policies when using images or recordings of other individuals.

#### Rule 27-H Prohibited Postings

Distributors may not post or link to any postings or other material that:

- Is sexually explicit, obscene, or pornographic;
- Is offensive, profane, hateful, threatening, harmful, defamatory, libelous, harassing, or discriminatory (whether based on race, ethnicity, creed, religion, gender, sexual orientation, physical disability, or otherwise);
- Is graphically violent, including any violent video game images;
- Is solicitous of any unlawful behavior;
- Engages in personal attacks on any individual, group, or entity;
- Is in violation of any intellectual property rights of the Company or any third party.

#### Rule 27-I Professionalism

Distributors should not respond to those who place negative posts about them, other independent Distributors, or Herbalife, as this may trigger discussions that potentially damage the Distributor's or Herbalife's reputation and goodwill. If you see such negative posts, please email us at [DPCcomplaintsNAM@herbalife.com](mailto:DPCcomplaintsNAM@herbalife.com) and we will consider whether a Company response is appropriate.

#### Rule 27-J Cancellation of Your Herbalife Business

If an individual's Herbalife Distributorship becomes cancelled for any reason, the individual must discontinue use of Herbalife's intellectual property (such as the Herbalife name, trademarks, trade names, and any derivative) in postings and social media websites the individual utilizes.

Individuals who have previously identified themselves as Herbalife Independent Distributors must conspicuously disclose that they are no longer Herbalife Independent Distributors in future postings, and must appropriately update their profile information.

#### Rule 27-K Sports Sponsorships

When promoting Herbalife-sponsored teams and athletes,

- Distributors may ONLY use marketing tools provided by Herbalife, which may not be altered in any way. These marketing tools are available for download at [MyHerbalife.com](http://MyHerbalife.com).

#### Logos and Assets

- Distributors may ONLY use marketing tools provided by Herbalife, which may not be altered in any way. These marketing tools are available for download at [MyHerbalife.com](http://MyHerbalife.com).

#### Describing the Relationship for Major League Soccer (MLS)

- There are many specific and useful ways permitted to describe Herbalife's relationship with LA Galaxy and FC Barcelona therefore, Distributors are encouraged to cite this relationship in promoting Herbalife® products and the Herbalife business opportunity (provided they do so responsibly).
- Deviation from permitted usages will put the relationship at risk and potentially damage Herbalife's brand and business reputation. For this reason, violations of the following guidelines will result in severe penalties, up to and including suspension or termination of Distributorships.

The following statements, as they are worded below, are accurate, permissible and encouraged; they may be used individually and in combination:

##### LA GALAXY

Herbalife is the Official Presenting Sponsor of the LA Galaxy team.

Herbalife is the Official Nutrition Company of the LA Galaxy team.

Dr. Luigi Gratton is a Nutrition Advisor to the LA Galaxy team.

Herbalife is an Official Sponsor of LA Galaxy players Chris Klein, Donovan Ricketts, and Omar Gonzalez.

**FC BARCELONA**

Herbalife is the Official Nutritional Supplement Sponsor of FC Barcelona.

Herbalife is the Official Nutrition Sponsor of FC Barcelona.

Herbalife is the Official Weight Management Sponsor of FC Barcelona.

Herbalife-sponsored athlete.

Herbalife is the Official Nutrition Sponsor of Leo Messi. The Leo Messi Foundation and Herbalife join in supporting children around the world.

persons with whom there is no pre-existing business relationship, and particularly when they are contacted at home. There are other federal and state regulations applicable to the use of telemarketing with which Distributors must comply.

As independent businesspersons, Distributors are individually responsible for understanding and following the federal laws and regulations relating to telemarketing practices, as well as those in each state or jurisdiction in which they intend to conduct telemarketing activities. When purchasing or using the products or services of an unrelated or unaffiliated vendor, the actions or omissions of that vendor shall be deemed to be actions or omissions of the Distributor for the purpose of compliance with this Rule and Distributors must use due diligence to confirm that the vendor’s services comply with all applicable laws.

**Media Coverage for Major League Soccer (MLS)**

- Distributors may review or refer to LA Galaxy, or FC Barcelona media coverage with their organization, their customers, or when presenting the business opportunity.
- Distributors may not reproduce, reprint, or post (on their Herbalife Independent Distributor websites) any media coverage, including, but not limited to, articles, titles and headlines. However, personally owned and maintained websites may include links to LA Galaxy, or FC Barcelona media coverage, but such links must be accompanied by the following disclaimer: **“By clicking on this link, you will exit this Herbalife Independent Distributor website and visit a website that is not formally associated with Herbalife or its Independent Distributors.”**

**Section 28 Marketing by Means of “Telemarketing”**

**1. Generally**

**Telemarketing**

The following discussion and Rules on telemarketing are generally applicable to all activities of Distributors related to their Herbalife business. They are in addition to federal, state and local legal requirements. Since the law in this area is constantly evolving, and as an accommodation to its Distributors (but not as the rendering of legal advice), Herbalife may post updates at [MyHerbalife.com](http://MyHerbalife.com). Distributors should pay regular visits to the website and review these advisories or Rule changes with care, but nevertheless, Distributors are solely responsible for compliance with all applicable laws. Moreover, Herbalife strongly recommends that Distributors pay regular visits to the Federal Trade Commission and Federal Communications Commission websites ([ftc.gov](http://ftc.gov), [fcc.gov](http://fcc.gov)) in order to learn about the most recent developments in this area.

Federal and state laws prohibit or severely restrict telemarketing operations, especially when the telemarketer is approaching

**2. Definitions**

For purposes of this section the following definitions apply:

**Autodialer**

Equipment that has the capacity to dial telephone numbers automatically. The term includes any computerized equipment that performs the dialing function whether or not the machine is pre-programmed with a list of numbers or dials the numbers on a random basis. The term also includes **Predictive Dialers**, which are hardware and software used to dial telemarketing calls while telemarketers are talking to other customers. Predictive Dialers “predict” the average time it takes for a consumer to answer the phone and when a telemarketer will be free to take the next call.

**Broadcast Fax/Blast Fax**

The act of sending or transmitting faxes to a recipient who has not requested the fax. The term includes any equipment that has the capacity to send or transmit multiple faxes at one time to multiple recipients.

**Established Business Relationship (EBR)**

A prior existing relationship formed by a voluntary two-way communication between a Distributor and a residential subscriber:

1. On the basis of the subscriber’s purchase or transaction within the 18 months immediately preceding the date of the telephone call, if the relationship has not been previously terminated by the Distributor or the other party; or
2. On the basis of the subscriber’s inquiry regarding products or services within three months immediately preceding the date of the telephone call, if the relationship has not been previously terminated by the Distributor or the other party.

If the telephone subscriber makes a company-specific “Do-Not-Call” request, that request terminates the established

business relationship even if the subscriber continues to do business with the Distributor.

### Prior Express Consent/Prior Express Permission

Consent or permission evidenced by a written agreement or email between the Distributor and the consumer in which the consumer clearly states that they agree to be contacted by the Distributor regarding the Herbalife products or the business opportunity, and specifies the telephone or fax number through which such contact may be made.

### Telemarketing

The act of selling, soliciting, marketing or promotion of a product or service (including but not limited to Herbalife products and/or the Herbalife business opportunity) using a telecommunication device such as a telephone, fax machine, automated telephone equipment, and pre-recorded or artificial voice recording. The term includes, without limitation, messages sent to mobile phones, text or SMS messages, and similar media.

### 3. Rules

The following rules are applicable to all Telemarketing activities of Distributors and to Telemarketing activities conducted on behalf of Distributors. When purchasing or using the telemarketing services of unrelated or unaffiliated vendors, Distributors are responsible for the vendor's telemarketing activities and must use due diligence to confirm that the services comply with these Rules.

#### Rule 28-A Do-Not-Call Lists

Distributors are responsible for complying with all applicable federal, state or local laws that govern Telemarketing, including any obligation to purchase and apply the Do-Not-Call Registry maintained by the Federal Trade Commission (FTC) and available at [donotcall.gov](http://donotcall.gov). This requirement applies to all Telemarketing calls, including without limitation, calls made to landline and cell phone numbers.

Distributors may not contact, either by telephone or by fax, any person or entity whose telephone number is on any government-sponsored Do-Not-Call list, unless the Distributor has an EBR with such person or entity.

- Distributors engaged in Telemarketing must purchase and apply the Do-Not-Call Registry maintained by the federal government and any state in which they conduct Telemarketing activities. Distributors are required to access the National Do-Not-Call Registry and purge newly registered numbers from their call lists at least every 31 days. Each Distributor must set up its own business account with the Do-Not-Call Registry. Distributors will be required to provide identifying information including name and address,

contact person, and contact person's name and address. Distributors must use their personal or company name as "Seller" identification and must not identify Herbalife as the "Seller" or "Client." Distributors are responsible for any fees associated with accessing the Do-Not-Call Registry.

- Distributors engaged in Telemarketing must also maintain their own "Do-Not-Call" lists that record the number(s) of any person or entity that requests that they not be contacted by the Distributor.
- Distributors must maintain a written policy governing Do-Not-Call and other Telemarketing requirements and all personnel engaged in telephone solicitation on a Distributor's behalf must be trained in the existence and use of this policy.
- Distributors may not use any telephone number supplied by a third-party vendor or Lead Generator for Telemarketing if that telephone number appears on any Do-Not-Call list maintained by the federal government or any state government, or if that telephone number appears on the Distributor's own Do-Not-Call list. Telephone numbers, opt-in names, and permission-based leads supplied by a third-party vendor or Lead Generator do not provide an EBR or Prior Express Consent/Prior Express Permission.
- Additional or other requirements may apply if a Distributor is calling within the same state. It is the Distributor's responsibility to determine the requirements of federal and any state laws relating to Do-Not-Call lists and to comply with these requirements.

Compliance with the Do-Not-Call requirements does not relieve Distributors from complying with other provisions of the FTC and FCC Telemarketing laws and rules and with the additional requirements of these Rules of Conduct.

#### Rule 28-B Autodialers

Distributors may not use an Autodialer (which includes Predictive Dialers) to offer Herbalife products or the business opportunity.

#### Rule 28-C Prerecorded or Artificial Voice Messages

Distributors may not use prerecorded or artificial voice messages and may not call cell phone numbers or send text messages to offer Herbalife products, or the earnings opportunity.

#### Rule 28-D Unsolicited Faxes

Distributors may not use a Broadcast Fax, Blast Fax or similar program or service to send messages by fax. Distributors may only send fax messages to individuals with whom the Distributor has an EBR and to individuals who have provided

their Prior Express Consent/Prior Express Permission to receive fax messages from the Distributor.

All faxes sent to those with whom the Distributor has an EBR are subject to the following rules:

- The Distributor must obtain the recipient's fax number either through the recipient's voluntary communication of such number, within the context of the EBR, or from a directory, advertisement or site on the Internet to which the recipient voluntarily agreed to make available his or her fax number for public distribution.
- Faxes must include a clear and conspicuous notice on the first page that the recipient may opt-out of receiving any further fax advertisements from the Distributor ("Do-Not-Fax request"), stating that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful.
- Faxes must include a domestic contact telephone number, as well as a fax machine number, for the recipient to transmit a Do-Not-Fax request.
- Faxes must include at least one cost-free mechanism that the recipient can use to transmit a Do-Not-Fax request to the Distributor, such as a website address, email address or toll-free number.
- Distributors must accept and process Do-Not-Fax requests 24 hours a day, seven days a week, and all requests must be honored fully within 30 days.
- All faxes must include, either in the top or bottom margins on each page, or on the first page of the fax:
  - The date and time the fax is sent;
  - The identity of the sender (which must be the Distributor's personal or company name); and
  - The telephone number of the sending fax machine and of the Distributor

Distributors must comply with any other applicable federal, state or local laws and regulations that govern faxing.

### 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, including but not limited to the FTC Act, the CAN-SPAM Act, FTC regulations and guidelines implementing the FTC Act and the CAN-SPAM Act, FTC Guides Concerning the Use of Endorsements and Testimonials in Advertising and all other applicable federal and state laws, regulations, and guidelines.

The consequences of contacting leads that have been purchased from or supplied by a service which is using unlawful methods can be very severe, even if the Distributor is acting in good faith. It is the Distributor's responsibility to know and abide by the law and to determine that those with whom they do business do so as well. Distributors must investigate the lead techniques that the service employs and confirm their compliance with applicable laws. Additionally, leads obtained through a Lead Generator do not create an EBR with a Distributor and do not constitute Prior Express Consent/Prior Express Permission for outbound Telemarketing. Until a Distributor has received written proof that a service's methods are in compliance with all applicable laws, Distributors may not purchase or use leads supplied by that service.

The Distributor must keep in mind their own activities and once they have acquired the lead must continue to comply with applicable Telemarketing laws and the Company's Rules. In addition to its other rights and remedies, 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. (Refer to the Business Methods, Rule 1-O "Lead Sales Prohibited," in the "Supplemental Rules" section).

### Rule 28-F Compliance With Herbalife's Rules and the Law

Distributors must immediately discontinue telemarketing activity if they receive any inquiry or notice of action from a governmental authority regarding their Telemarketing practices. Distributors must report all such notices or inquiries immediately to [DistributorNotification@Herbalife.com](mailto:DistributorNotification@Herbalife.com). Herbalife retains the option to suspend, terminate and take other disciplinary action against any Distributorship that is not in compliance with this Rule, Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife Rules, and the law. This is in addition to Herbalife's other rights and remedies.

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**Introduction**

Every Herbalife Independent Distributor (hereinafter referred to as “Distributor”) is a self-employed, independent business person engaged in the sale of Herbalife products for consumption and, if the Distributor desires, in the promotion of the Herbalife income opportunity. The relationship between Herbalife and its Distributors begins with, and is defined by, the Application for International Distributorship and Agreement of Distributorship. That relationship incorporates those Rules published by Herbalife from time to time in its discretion, defining the rights and responsibilities of Herbalife Distributors, each in their most recent form. Those Rules include, but are not limited to, Herbalife’s Rules of Conduct and Distributor Policies, and any other Herbalife Rules. Nothing in Herbalife’s Rules is intended to serve as or should be interpreted as legal advice; Herbalife does not provide legal advice to its Independent Distributors. The following “Business Methods” Rules apply specifically to the promotion of Herbalife products and the Herbalife income opportunity in the United States of America:

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### Definition of Business Methods

Some Distributors produce, sell and utilize merchandising aids and support services or materials, excluding the names and contact information of prospects (e.g., "leads") and the recommendation, provision, and placement of advertising. These aids, support services and materials include (but are not limited to) books, magazines and other printed materials, audio/visual materials, software, telemarketing tools, websites, Internet services and other electronic media, rallies, meetings and educational seminars.

Aids, support services and materials which were not produced by Herbalife are referred to in these Rules as "Business Methods."

Business Methods (as that term is used in these Rules) are NOT produced, approved, endorsed, guaranteed or authorized by Herbalife, and Herbalife assumes no responsibility or obligation, and shall have none, with regard to their purchase, sale or use.

### 1-A-1 Legal Review and Registration of Business Methods Prior to Sale, Endorsement, Recommendation, Promotion, or Use of Business Methods – Country by Country

Distributors may produce, sell, endorse, recommend, promote, and/or use only those Business Methods which are then listed by Herbalife as having a current registration in effect as to each country in which the Business Method is to be sold, promoted or used. To determine whether a Business Method is listed, visit [MyHerbalife.com](http://MyHerbalife.com) under the following headings: [My Office / Distributor Policies / Business Methods](#), to view the [Business Methods Registration Advisory](#), which is regularly updated, or you may contact Distributor Relations at 866-866-4744.

As a condition of registration, there must be a full review and approval by the Business Method's owner's or principal seller's legal counsel. The legal counsel and letter shall be subject to Herbalife's approval in its discretion. The legal review must include content, method of operation, advertising and promotion, and terms of sale and use and such other matters as these may require or such counsel or Herbalife may consider necessary or advisable. The legal counsel must be competent in the laws applicable to Multilevel Marketing (MLM) and must provide a letter addressed to Herbalife that specifically identifies in detail the materials reviewed and represents that, based upon the legal counsel's review, if the Business Method is operated as reflected in his/her review, that:

a. the Business Methods comply with Herbalife's Rules and relevant Advisories (collectively, the "Rules"), based upon

such counsel's review of Herbalife's then-current Rules and procedures which would also be specifically identified in the letter; and

b. counsel is not aware of any existing law, rule or regulation that the Business Methods, in counsel's opinion, would violate.

The legal review and letter must be renewed and submitted to Herbalife every two years and also before material changes are made.

### Legal Counsel's Letter:

1. May include a caveat that the letter is not a formal legal opinion nor is it a representation that there are no statutes, rules or regulations that exist in the country in which the Business Methods are to be sold, endorsed, recommended, promoted, or used which might be violated by the Business Method, and that the firm cannot predict whether particular enforcement agencies might change their interpretation of applicable rules and regulations;
2. Will confirm that the Business Method client has agreed to a limited waiver of the attorney-client privilege to allow counsel to discuss with Herbalife counsel, any questions the latter may have regarding the content or method employed by Business Methods reviewed, and advice/recommendations given to the Business Method client regarding those materials; and
3. Will confirm that counsel has reviewed with the Business Method client any documents that Herbalife may require to be signed by the client in connection with the Business Methods.

As a further condition of registration, Herbalife must also receive confirmation and written certification from the legal counsel referred to above (or at the election of the Business Methods provider, an independent certified public accountant acceptable to Herbalife which regularly audits the Business Methods provider's books, records and accounts) that it has independently verified, without qualification or reliance upon factual certifications or representations, and based upon a review of records, documents or other instruments sufficient to establish the legal accuracy of that verification, that:

4. No Herbalife Distributor or family member of a Distributor, directly or indirectly (through one or more corporations, trusts or other intermediaries or otherwise), owns any ownership or income interest ("Interest") in any entity ("Entity") involved in the creation or provision of products or services sold, provided or accommodated by Entity or

any person or firm affiliated with such Entity ("Affiliate") or derives any income or compensation from the sales or income ("Income") of such Entity or Affiliate;

5. If one or more Distributors, directly or indirectly, owns such an Interest or derives such Income, the identities of such individuals and the character and amount of such Interest or Income; and
6. No remuneration or other payment has been made during the twelve months preceding counsel's certification or is contracted or expected to be made, directly or indirectly, by Entity or any Affiliate, to or for the benefit of any Herbalife Distributor or family member of a Distributor. Without limiting the generality of the foregoing, neither Entity nor any Affiliate had any transactions (including the payment of money or other property in any form or for any reason), directly or indirectly, with or for the benefit of any Herbalife Distributor or family member of a Distributor, other than the sale of Business Methods to Distributors for their use in promoting their respective Herbalife business.

### Registration Form

Distributors must submit a registration form to Herbalife in addition to the legal review and opinion letter. Registration is for tracking purposes only. No Business Method and no Distributor shall claim or represent that Herbalife (whether or not a Business Method has been registered with Herbalife) has reviewed, approved, endorsed, guaranteed or assumed any responsibility or obligation with regard to a Business Method.

Registration forms are available at [MyHerbalife.com](http://MyHerbalife.com) or by calling your local Herbalife Distributor Relations Department. A new form must be submitted with each change to the Business Method. To determine whether a Business Method is currently registered, Distributors may go to [MyHerbalife.com](http://MyHerbalife.com) or contact Distributor Relations.

The legal opinion and registration form must be provided to Herbalife by either of the following methods:

By mail to:

Herbalife International of America, Inc.

**Attention: Legal Department**

P.O. Box 80210

Los Angeles, CA 90080-0210

OR

Via email: [busmethodlawyersletter@herbalife.com](mailto:busmethodlawyersletter@herbalife.com) to be followed by the original letter using the address above.

Herbalife shall have the right to suspend and apply other sanctions against any Distributor who sells, endorses, recommends, promotes or uses an unregistered Business

Method, or who provides false or incomplete information on the Business Methods Registration Form or to their legal counsel.

Due to the potential exposure to Herbalife and all of our Distributors, we regrettably are unable to recognize qualifications for Distributors which in our view was attributable to the use of unregistered Business Methods by them or their downline. Doing so 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 has been registered with Herbalife by visiting [MyHerbalife.com](http://MyHerbalife.com) under the following headings: [Business Methods Registration Advisory](#) under [My Office / Distributor Policies / Business Methods](#).

### 1-A-2 Compliance of Business Methods With the Law and Herbalife's Rules

Distributors creating, selling or using Business Methods, directly or indirectly (such as through corporations) must comply with Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife rules, and the law, including, but not limited to, laws relating to confidentiality of consumer data, privacy rights, restrictions on telemarketing in all its forms, and marketing over the Internet.

If Herbalife determines that one or more Business Methods violates its Rules, the law, or the legal rights of others, or that they produce a significant risk that they might damage Herbalife's business or reputation, brand or image, Herbalife shall have the right to require the Distributor to immediately cease the sale or utilization of the Business Method in question, without liability to Herbalife.

### 1-B Restrictions on Use of Herbalife Data Obtained via Creation, Promotion or Sale of Business Methods

Distributors may produce, sell or re-sell Business Methods to other Distributors solely for the purpose of selling Herbalife products and building, training and motivating other Distributors to sell Herbalife products. In order to protect the intellectual property rights and goodwill of Herbalife, and the income opportunity it affords the Distributors, and in addition to any other restriction or prohibition contained in any agreement with Herbalife or any applicable Rule:

No Distributor or, for a period of three (3) years following the termination of their Distributorship (by any means, including voluntary resignation), no former Distributor shall, directly or indirectly:

1. Use any information relating to the identity, contact information, sponsorship relationships, preferences or any

other significant business or personal information about any Herbalife Distributor, which was acquired or derived from such activity for any purpose other than the promotion and sale of Herbalife products pursuant to the Herbalife Marketing Plan; or

2. Offer, promote or sell to any Herbalife Distributor, or third party who acquired or used the Business Method, the products, services or earnings opportunity associated with any other multi-level marketing or direct-sales company.

For example, for the period covered by these restrictions, no Distributor or former Distributor (including the spouse of such Distributor or former Distributor, and no company or entity controlled by either of them or in which either of them have an economic interest) shall offer, invite, encourage, induce, solicit, promote, sponsor, recruit or attempt to recruit, any of those acts directly or indirectly, to any Herbalife Distributor or third party who acquired or used the Business Method, the opportunity to join, participate in any way with, or purchase or sell the products or services of any other multi-level marketing or direct-sales company.

Violation of the foregoing restrictions will be regarded as a serious violation of the Distributor's contract with Herbalife because it puts at risk the relationships, business and incomes of the Company and persons upline of those Distributors to whom access was given by their involvement in Business Methods intended solely to promote the Herbalife business. Distributor acknowledges that Herbalife and its Distributors would suffer irreparable harm as a result of any breach of these restrictions and that monetary damages are insufficient to compensate Herbalife for such harm. Therefore, in addition to the Company's other rights and remedies under Herbalife's Rules of Conduct and Distributor Policies, any other Herbalife Rules, and the law, if a breach of these restrictions has occurred, Herbalife shall be entitled to an injunction or temporary restraining order, without notice to the Distributor or former Distributor, restraining any impermissible disclosure or use of the confidential information in addition to any other available remedy.

### 1-C No Required Purchase Other Than International Business Pack

The only required purchase in order to become, succeed or advance as an Herbalife Distributor is the Herbalife IBP (that is, Herbalife's official International Business Pack/Distributor Kit). When a Distributor is recruited, they must be offered the opportunity to buy a Mini IBP (or, at the Applicant's election, the full Herbalife IBP), without any markup or profit to the Sponsor or the Sponsor's upline. To illustrate:

1. If a potential Distributor is offered the opportunity to purchase products, services or materials (whether or not they were produced by Herbalife) in addition to the IBP, it must be with the understanding that this is an optional purchase and not a condition or requirement for becoming a Distributor or succeeding or advancing in Herbalife's Marketing Plan. Furthermore, Distributors may not promote or tout the profits to be made from selling a Distributor-produced IBP or kit which contains anything in addition to that which is contained in the standard Herbalife IBP.
2. Distributors may not represent or imply that Business Methods are required (legally, or as a matter of practicality) to do or succeed in the business, participate in the income opportunity, or receive training and upline support.

### 1-D Right to Cancel Subscriptions and Satisfaction Guarantee

Those persons or entities who sell Business Methods components to Herbalife Distributors which are:

1. **Sold on a subscription basis**, must offer to the Purchaser in writing at the time of such sale, the right to terminate such subscriptions at any time and to obtain a refund for the unexpired portion of those subscriptions. If there are varying published rates for different periods of service, the rate charged for the purpose of calculating any subscription refund will be that which most closely corresponds to the actual period of service, provided that no additional payment will be due upon cancellation.
2. **Tangible** (meaning: having physical form, such as CDs and DVDs), must offer to the Purchaser in writing at the time of sale, the right to return such materials to the Seller for the amount paid by the Purchaser plus shipping and handling. The guarantee period shall be at least 180 days from the time the Purchaser received the components. The Seller must issue the refund within seven (7) business days of Seller's receipt of the returned materials in the case of tangible components.
3. **Not described above** (in subparagraph [1] or [2]), must offer to the Purchaser in writing a satisfaction guarantee which satisfies (at the election of the Seller) subparagraph (a), (b) or (c) that follows:
  - a. An unconditional satisfaction guaranteed refund for a period of at least 30 calendar days from the date of receipt of the component;
  - b. An unconditional satisfaction guarantee for a period of at least seven (7) calendar days from the date of receipt of the component, but Seller may choose to offer this (rather than the 30-day satisfaction guarantee) only if both of the following apply to the sale:

- i. The components developed or purchased by Seller from an unrelated third-party supplier (from whom neither Seller nor any other Herbalife Distributor derives, directly or indirectly, any compensation or economic benefit, pursuant to a written agreement between that supplier and Seller provided to Herbalife which contains the following provision, "We agree, for the benefit of, and subject to confirmation by, Herbalife Ltd., its affiliates or subsidiaries, not to pay any referral fee or any other compensation or economic benefit, directly or indirectly, to any Herbalife Distributor."), and the price charged by Seller to Purchaser is no greater than the reasonable direct costs evaluated on a financial-year basis (net of discounts, allowances and the like) incurred by Seller to purchase or create and sell the particular component (including reasonable direct administrative costs, such as customer support, accounts payable and receivable administration and actual bad debt), plus a mark up of no more than 5% of such direct costs; and
- ii. Seller retains and makes available for audit at Herbalife's expense and conducted by a nationally recognized accounting firm, all documents, invoices and records relating to such purchases and development costs and sales or resales by Seller; or
- c. An unconditional satisfaction guaranteed refund for a period of at least seven (7) calendar days from the date of receipt of the component, but Seller may choose to offer this (rather than the 30-day satisfaction guarantee) only if, in addition to the letter or letters previously provided by legal counsel to Herbalife in compliance with Business Methods Rule 1-A-2 "Compliance of Business Methods With the Law and Herbalife's Rules," Herbalife has received a current letter addressed to Herbalife (and such further assurances as Herbalife may request) from competent Multilevel Marketing (MLM) legal counsel, confirming that the Business Methods, of which the components are a part, are, as to content and operation, in material compliance with federal law applicable to MLM, including that relating to business opportunities, and that counsel is not aware of any existing law, rule or regulation that the Business Methods, in his/her opinion, would violate. The legal counsel and letter shall be subject to Herbalife's approval. The legal review and letter to Herbalife shall be renewed annually and also before material changes are made.

Whether or not covered by the above refund provisions, Herbalife may pay, on behalf of the Seller, refunds to a requesting party, if it determines, in good faith, that such payment protects the goodwill or reputation of Herbalife or its Distributors, in addition to such sanctions as Herbalife may determine.

Additionally, Herbalife may pay, on behalf of persons or firms who are not Herbalife Distributors who are involved in the creation, administration or sale of a Business Method, refunds to or other reasonable demands by a requesting party, if it determines, in good faith, that such payment protects the goodwill or reputation of Herbalife or its Distributors, which payment shall be repayable to Herbalife promptly upon written demand.

### 1-E Receipts

The Seller of Business Methods must provide to the Buyer an itemized, dated receipt for all purchases, which shall assign a price for each component sold and include the following language:

*The products or services being purchased, while they may be a legitimate and helpful tool for building your business, are not required in order to pursue the income opportunity being offered. The Seller is solely responsible for the preparation and sale of these materials or services, and the Company that affords the income opportunity does not approve, endorse or guarantee these materials. If, for any reason, you are not satisfied with any tangible materials you have purchased, you may return them to the Seller at the address listed on this receipt within 180 days of your receipt of those materials for a full refund of the cost of those tangible materials, including shipping and handling.*

Alternatively, if the Seller maintains a website which clearly and conspicuously sets forth a refund policy which complies with Business Methods Rule 1-D "Right to Cancel Subscriptions and Satisfaction Guarantee," the following language may be used with respect to Business Methods delivered over the Internet:

*The products or services being purchased, while they may be a legitimate and helpful tool for building your business, are not required in order to pursue the income opportunity being offered. The Seller is solely responsible for the preparation and sale of these materials or services, and the Company that affords the income opportunity does not approve, endorse or guarantee these materials. You may qualify for a refund upon your return to the Seller of tangible materials. To review those rights go to [NOTE: Fill in the URL of the website that sets forth how the Buyer may obtain their refund.]*

**1-F The Purpose of Sales of Business Methods – Not for Profit**

Distributors may produce and sell Business Methods strictly for the purpose of selling Herbalife products, building the Herbalife business, or training and motivating their own organization to sell Herbalife products (and subject to the provisions of Business Methods Rule 1-L “Restrictions on Solicitations and Sales of Business Methods to Herbalife Distributors” provided they do not become (and are not perceived as) income-generating enterprises that are being conducted, instead of, or in conjunction with the Herbalife business). Accordingly, the Creator, Seller and Reseller of a Business Method may charge prices no greater than the cost of the unit(s) being sold.

**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. This includes the sale of a Decision Package and includes packing, handling or shipping or any charge. Further, Distributors must maintain written or electronic evidence of disclosure for a period of 90 days in order to provide it to Herbalife upon request, for the purpose of verifying that the conditions of the sale were in compliance with this Rule.

**1-H Fee for Using Websites**

Distributors may charge users of their website a reasonable fee, provided the fee does not exceed the cost for the development, setup and maintenance of the website.

**1-I No Compensation for Recruitment or Sale of Business Methods**

Distributors may not offer or pay endorsement or recommendation fees, referral fees, or administrative fees or reimbursement, or any other form of compensation (including rebates, bonuses, discounts, etc.) relating, in whole or in part, or in any way, to the purchase or sale of Business Methods, nor may any Distributor accept such compensation.

**1-J Encouraging or Requiring Personal Debt Not Permitted**

No Herbalife Distributor, in connection with Business Methods, may encourage or require that a current or prospective Distributor go into debt in order to become a Distributor, grow an existing business, or purchase Business Methods or Herbalife products.

**1-K Required Disclosure Statement**

Before or concurrent with the first sale to a particular Buyer of any Business Method which does not come within and comply with Business Methods, Rule 1-G “Business Methods, Sales Aids and Decision Packages” of this section, both Seller and Buyer must review the Business Methods Disclosure Statement in the form most recently published by Herbalife. For the protection of Herbalife and the Seller, Herbalife requires that both parties sign this document in the spaces provided and that Seller retain the signed originals for at least two (2) years. As an alternative, Seller’s and Buyer’s signatures may be accomplished and stored electronically in compliance with applicable law.

The current version of the Business Methods Disclosure Statement can be found in Appendix A at the end of Section 1, and is available on [MyHerbalife.com](http://MyHerbalife.com) for downloading and printing.

**1-L Restrictions on Solicitations and Sales of Business Methods to Herbalife Distributors**

Distributors may promote, solicit or sell Business Methods to downline and crossline organizations, but only if they have received prior written consent to such promotion, solicitation or sale from the first qualified President’s Team member above the Distributor(s) to whom such promotion, solicitation or sale is to be made (except that Distributors do not need consent to promote, solicit or sell Business Methods to their own downline organization to the level of the next qualified President’s Team member). A single written consent is valid as to all Distributors, down to the next qualified President’s Team member, of the person giving the consent. All written consents must be maintained on file for two (2) years and provided to Herbalife immediately upon request.

**1-M Restrictions on Sales or Promotion of Business Methods at Meetings and Other Official Events**

Distributors may not display, promote or sell any Business Methods at meetings, programs or other functions sponsored and conducted (in whole or in part) by Herbalife.

**1-N Use of Vendors**

Distributors may use or recommend Vendors of Business Methods or the use of those Business Methods. However, no such Vendors or their Business Methods may be used to circumvent the law or Herbalife’s Rules. Distributors who use or recommend such Vendors shall use due diligence to confirm that the Vendors’ services and Business Methods they provide are in compliance with the law and Herbalife’s Rules. Further, if a Distributor has an economic interest in a Vendor of Business Methods or in any of its transactions,

the actions of the Vendor shall be regarded as the actions of the Distributor for purposes of these Rules (including, but not limited to, Business Methods, Rules 1-D "Right to Cancel Subscriptions and Satisfaction Guarantee" and 1-S "Limit on Sales of Business Methods").

#### **1-O Lead Sales Prohibited**

Distributors may not sell leads, advertising slots or advertising to other Distributors. Distributors may recommend third-party providers of leads and advertising to other Distributors, but they may not earn any compensation (directly or indirectly) for referrals leading to sales of these or other sales aids.

#### **1-P Herbalife Does Not Approve, Guarantee or Assume Any Obligation**

Business Methods, as well as the representations made by Distributors engaged in their creation, promotion, offering, sale or use, may not state, suggest or give the impression that any Business Method was produced, approved, endorsed, guaranteed, authorized or offered by Herbalife, or that Herbalife assumes any obligation with regard to their creation, sale or use.

#### **1-Q License to Use Herbalife-Produced Sales Tools and Related Materials**

Business Methods may use Herbalife-produced sales tools, sales aids and related materials, including, but not limited to, audio/visual recordings, pictures or descriptions of Herbalife products taken from any sales materials and literature, or audio/visual recordings that are currently available for sale or distribution from Herbalife. Distributors may not use any materials that are specifically identified as not to be reproduced. At all times, Distributors using the materials referenced above must comply with the following conditions:

1. Distributors using materials in unaltered form must include "©Herbalife" (on every page or screen, or by voice-over, if using audio materials).
2. Distributors using materials in altered form must indicate that the materials were "produced by an Herbalife Independent Distributor" (on every page or screen, or by voice-over, if using audio materials).
3. Reproductions of materials produced by Herbalife must be of a quality comparable to the original (as judged by Herbalife).
4. All usage and alteration must be in compliance with these Rules, all of Herbalife's Rules and the law.

#### **1-R Updating Materials**

Herbalife regularly modifies its product and sales materials. Distributors must keep themselves up-to-date with regard to these modifications, and must promptly revise and update the Business Methods they produce or sell, to reflect current information.

#### **1-S Limit on Sales of Business Methods**

Each Distributor who sells Business Methods must ensure that the quantity and amounts charged for the Business Methods sold are reasonable in relation to the Sales Volume and profits of the Buyer from his or her Herbalife business.

#### **1-T Notification of Source**

All Business Methods shall display the date of publication or recording, and the name of the publisher/producer.

For questions about the rules regarding Business Methods or their application, you may call Herbalife's Distributor Relations Department toll-free at 866-866-4744, for TTY Users 800-503-6180, or send an email to [RulesComments@Herbalife.com](mailto:RulesComments@Herbalife.com).

## CORPORATE POLICY STATEMENT ON BUSINESS METHODS

Each day, many thousands of Independent Distributors around the world share their life-changing success stories about Herbalife's amazing nutrition products and unparalleled business opportunity.

### **Sales Aids**

As an Herbalife Independent Distributor, you may be attracted to purchase, promote, use, or sell non-Herbalife products or services and products that might be helpful in prospecting for customers and potential Distributors, as well as communicating with your downline. These products or services include, but are not limited to, business aids, books, magazines, flip charts, and other printed material, online literature, Internet websites, audio, video or digital media, rallies, meetings and educational seminars, as well as the names and contact information of prospects (known as "leads") and advertising or other means of acquiring, developing or the handling or administration of leads. These are typically referred to as "Sales Aids."

It is essential that the content and methods you use in connection with your Herbalife business, whether or not associated with or incorporated in Sales Aids you use or promote, comply with Herbalife's rules and applicable law. For example, they may not make factual assertions that contain material misrepresentations or omissions that render a statement materially misleading.

### **Business Methods**

Sales Aids that are not produced by Herbalife are referred to in the Rules as "Business Methods." Please be aware that: Business Methods are NOT produced, approved, endorsed, guaranteed or authorized by Herbalife or affiliated with Herbalife in any way. Herbalife assumes no responsibility or obligation, and shall have none, with regard to the value, content, methods, promotion, use or sale of Business Methods. And, at all times, the principal business focus of Distributors is the sale of Herbalife products for consumption, not the sale of Sales Aids or Business Methods.

### **Expenditures For Sales Aids, including Business Methods**

Some of the unique and wonderful things about becoming an Herbalife Distributor is that no investment is required to start or grow your Herbalife business and that you can choose for yourself how to pursue the many opportunities afforded by Herbalife products and the Herbalife Sales & Marketing Plan.

Purchasing Sales Aids, including Business Methods, is strictly voluntary. Their purchase or use is not required to become an Herbalife Distributor, nor is it necessary in order for you to progress or succeed as a Distributor, or to receive training and support from your Sponsor and/or upline. No one may pressure you to purchase Sales Aids or Business Methods. Distributors should buy Sales Aids or Business Methods if they decide for themselves, after a reasonable time in the Herbalife business, that these materials might assist them in developing their business further. The money and time Distributors expend on Sales Aids or Business Methods should be limited and consistent with their own evaluation of the reasonably likely benefits to their business. And, it is not necessary and we discourage anyone from incurring debt to pursue the Herbalife opportunity.

At all times, the principal business focus of Distributors is the sale of Herbalife products for consumption.

Herbalife's Business Methods Rules and Distributor Policies contain important provisions affecting your potential decision to purchase, sell or use Business Methods, including a 180-day unconditional refund on tangible materials which must be offered and honored by any Distributor who sells Business Methods. These Rules are included in the International Business Pack (IBP), or you can access them on Herbalife's official website [MyHerbalife.com](http://MyHerbalife.com). They may also be requested by phone through Herbalife's Distributor Relations Department toll-free at 866-866-4744. If a Buyer has a dispute or claim regarding Business Methods that they are unable to resolve with the Seller, and if the Seller is an Herbalife Independent Distributor, Herbalife encourages the Buyer to contact Herbalife's Distributor Business Practices and Compliance (DPC) Department at 310-410-9600, ext. 24656. DPC personnel will attempt to assist the Buyer and Seller to reach a satisfactory resolution of their dispute.

## APPENDIX A

### BUSINESS METHODS DISCLOSURE STATEMENT

Herbalife Independent Distributors (hereinafter referred to as "Distributors") are primarily engaged in the marketing and sale of Herbalife products for consumption. However, they may also promote the Herbalife income opportunity, and they are responsible for training those whom they sponsor. To assist in the latter process, some Distributors produce, sell and utilize merchandising aids and support services or materials, which are not produced, approved, endorsed, guaranteed, or offered by Herbalife. These materials and services are referred to, collectively, as "Business Methods." Business Methods include, but are not limited to, books, magazines and other printed materials, audio and visual materials, software, telemarketing tools, websites, Internet services and other electronic media, rallies, meetings and educational seminars.

This Statement contains important information about buying or selling Business Methods, and advises as to your legal rights and responsibilities. Each person who chooses to sell or purchase Business Methods must sign this required Disclosure Statement prior to consummating any transaction. The Statement does not determine price, quantity or selection – these are individual decisions – but it does obligate Buyers and Sellers to obey the Rules applicable to Distributor conduct, particularly as they relate to the creation, sale and use of Business Methods.

### IMPORTANT INFORMATION

**You must carefully consider each of the following factors prior to purchasing Business Methods:**

**Not Herbalife Materials.** Business Methods are not produced, approved, endorsed, guaranteed, authorized, or offered by Herbalife. Herbalife assumes no responsibility or obligation, and shall have none, with regard to their purchase, sale or use.

**No Required Purchase Other Than the Mini International Business Pack.** The only required purchase in order to become and progress as an Herbalife Distributor is the Mini International Business Pack ("IBP") produced by Herbalife. In other words, to become an Herbalife Distributor, succeed in the business, advance in the Sales & Marketing Plan, or receive upline training and support, you are NOT required to buy any amount of materials, products or services, either those produced by Herbalife or by a party other than Herbalife, or to attend any seminars, meetings or events. You should buy Herbalife products for your own consumption and for resale to others, but only in amounts you independently determine you wish to consume or can resell in a reasonable amount of time. You should buy non-Herbalife products and business materials and services and attend events, only if you independently decide that they will assist you in building a more successful and profitable Distributorship. If you purchased any product, services or materials based upon the belief that you were required to do so, you may demand a full and unconditional refund within the refund period set out in this Statement, and if that demand is not promptly honored, contact Herbalife's Distributor Relations Department at 866-866-4744.

**Focusing on Retail.** Your primary focus as a Distributor must always be the promotion and sale of Herbalife products for consumption.

**Limiting Expenditures.** You must carefully monitor what you spend on Business Methods so expenditures do not become unreasonable or excessive. These costs must be justified by the benefit to your business. You must only purchase items or attend events that provide information helpful to you in selling products or sponsoring others to do the same.

**Limiting Time Commitments.** You must decide how much time you need to spend attending events or working with materials associated with a given Business Method. You must carefully consider the impact of this time expenditure (if any) on your primary occupation (if not Herbalife), your Herbalife-related activities and your family.

**Compliance With Herbalife's Rules of Conduct and Distributor Policies and the Law.** The Rules applicable to Distributor conduct contain important provisions affecting your potential decision to purchase, sell or use Business Methods. They are included in the International Business Pack (IBP) that contains the Herbalife registration materials and are available at [MyHerbalife.com](http://MyHerbalife.com). They may also be requested by phone through Herbalife's Distributor Relations Department at 866-866-4744.





**Introduction**

Nutrition Clubs, conducted at residential or non-residential locations, are social gatherings, bringing together persons who become members wishing to focus on good nutrition and regular exercise in order to achieve optimum health.

These Nutrition Club Rules have the same force and effect as the full body of Herbalife’s Rules of Conduct and Distributor Policies (including the U.S. Supplemental Rules of Conduct). The U.S. Nutrition Club Rules were introduced in December of 2007. The most current version is effective December 1, 2009, and supersedes all previously released documents which contain Nutrition Club Rules or informal operational guidance. Violations of any Rule or Distributor Policy may result in disciplinary action, up to and including suspension or termination of Distributorships, and Distributors may lose their ability to operate Nutrition Clubs.

The Rules of Conduct and Distributor Policies (and the U.S. Supplemental Rules of Conduct) are included in the International Business Pack (IBP) and may also be obtained online, at [MyHerbalife.com](http://MyHerbalife.com), or by calling Herbalife’s Distributor Relations Department toll-free at 866-866-4744. Where available, Nutrition Club Manuals also contain the Nutrition Club Rules.

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### **1-A Compliance With Herbalife's Rules**

Any Distributor operating a Nutrition Club must be familiar and comply with the most recent versions of Herbalife's Rules.

### **1-B Corporate Audits**

Distributors must cooperate with Herbalife when it conducts audits of Nutrition Club practices for compliance with Herbalife's Rules. Failure to cooperate with an audit or to promptly make changes required by an auditor or audit report will result in disciplinary action, up to and including suspension or termination of Distributorships.

### **1-C Training**

Rule 11-A of Herbalife's "Rules of Conduct and Distributor Policies" provides as follows:

#### **Rule 11-A Training**

One of the Sponsor's roles is to stay informed of Herbalife's Policies so they can properly advise and train their downline Distributors on a regular basis about the Herbalife products and their usage, Herbalife's rules and regulations, the Sales & Marketing Plan, and the proper use of advertising, including the use of literature and sales aids. A Sponsor may seek assistance from their upline Supervisor or TAB Team member, but the primary responsibility for training is their own. No Sponsor may require payment from a personally sponsored Distributor for training or training facilities, unless they fully explain that the Distributor may choose whether or not they want to participate in such training and state in advance the cost for such training. If the Distributor declines to participate in such paid training, the Sponsor is obligated to provide basic training necessary to learning the business.

A Nutrition Club operator must be trained by a knowledgeable member of their upline, or through local corporate or individual training events regarding the proper operation of the Club under the law and according to Herbalife's Rules. The ultimate responsibility for the training of the Club operator is that of the first upline TAB Team member.

### **1-D Independent Distributors as Club Operators**

Nutrition Clubs may only be operated by Herbalife Independent Distributors.

### **1-E Employees**

While Distributors are generally permitted to utilize employees in operating their Herbalife businesses, they may not use employees to assist with any Nutrition Club operations.

### **1-F Not Franchises**

Nutrition Clubs are not franchises, and Distributors may not compare Nutrition Clubs to franchises when promoting them as a business tool. In addition, no Distributor may represent, imply, or mention in any way, that Nutrition Clubs are franchises. Nutrition Clubs are only a means of doing the core Herbalife business which is retailing, recruiting and retention.

### **1-G Independent Business Operations**

As with all other Distributor business activities, Herbalife does not approve, endorse, authorize, guarantee or assume any obligation with regard to individual Nutrition Clubs.

### **1-H One Responsible Distributor**

At least one Herbalife Independent Distributor must accept full responsibility for and oversee all operations of each Nutrition Club. This Distributor must post the Nutrition Club Advisory provided at the end of this document. The Nutrition Club Advisory will reflect the Distributor's name, and contact information at the Club at all times. This Distributor must be present during all Club sessions, except for short-term absences when attending Company-sponsored meetings, and if absent, must assign a Distributor who they personally trained, to oversee Club operations in-person.

If multiple Distributors share a common space to operate their Nutrition Clubs, the posted information of the responsible Distributors may be alternated accordingly.

### **1-I Good Neighbor Policy**

Nutrition Club operators must be good and considerate neighbors, especially when operating out of their homes.

Operators must limit Club attendance and take any other necessary steps to ensure that Club meetings do not cause unreasonable amounts of noise, traffic congestion or other forms of nuisance to the public.

### **1-J Comply With the Law**

Nutrition Club operators must comply with all laws and regulations that apply to the operation of their Club. In dealing with relevant government agencies, prospective and current Club operators must be cooperative and represent their proposed or actual activities accurately.

### **1-K No Assigned or Exclusive Territories**

There are no territorial assignments or exclusive territories for Nutrition Clubs; they may be opened and operated anywhere it is legally permissible to do so.

**1-L Multiple Clubs**

Nutrition Club operators may operate in more than one (1) location (e.g., operate multiple Clubs), but only if they do not operate two (2) or more Clubs simultaneously.

**1-M Required Advisory for Posting**

Every Club operator must post the following Advisory in the Club:

***Nutrition Club Advisory***

*This Nutrition Club is operated by Herbalife Independent Distributor (“Operator”)\_\_\_\_\_. Operator’s mailing address is \_\_\_\_\_, and Operator’s business phone number is \_\_\_\_\_. Operator, not Herbalife, is responsible for all of the activities related to this Nutrition Club.*

*Nutrition Clubs are social gatherings, bringing people together with a focus on good nutrition. They are not retail stores or outlets, nor are they restaurants. Registered Club members may carry out one shake, or one COLD tea, per day from the Club, but only in unbranded containers of not more than one single serving. Carry-out of a shake, or COLD tea, may only be for the personal consumption of that Club member or another registered Club member. Carry-out is limited to one shake, or one COLD tea, and does not include Formula 1 pies or Herbal Aloe Concentrate.*

*Nutrition Club fees cover general operational costs and do not represent the price or cost of products. Participants may share their experiences after having used the products, but must always remember that the products are not intended to diagnose, treat, prevent or cure any disease or medical condition. Income reported in Nutrition Club materials, or in oral testimony at Club gatherings, is applicable to the individuals (or examples) depicted and not average.*

This sign containing the Advisory must be at least **8.5 inches by 11 inches** and the Advisory itself must be in a font size **no smaller than 17 points**. The specific wording of the Advisory may change from time to time, but the most recent version can always be obtained by calling your local Distributor Relations Department, or it can be downloaded from [MyHerbalife.com](http://MyHerbalife.com).

A copy of this Advisory is provided for your use at the end of Subsection 5 of the Nutrition Club Rules.

**1-N Good Hygiene**

Although Nutrition Clubs are not restaurants, carry-outs, or any other form of food service establishment, the provision of complimentary shakes, teas, Formula 1 pies and Herbal Aloe Concentrate to Club members requires that Nutrition Club operators always practice good hygiene and maintain clean and sanitary Club premises. The following practices are always required:

**Food Sourcing, Handling and Preparation**

- Always obtain fruits, vegetables and other non-Herbalife ingredients from reputable suppliers; inspect these ingredients for freshness and quality on delivery and again before use.
- Always use purified water in preparing the Club’s complimentary beverages; non-purified water can be used after it is boiled.
- All kitchen equipment which is used for Club activities, including, but not limited to, blenders and cutting boards, must be cleaned thoroughly before and after every use.
- Always use disposable cups to serve complimentary beverages.

**Non-Perishable Products**

- Always use your stock of Herbalife products, and non-perishable ingredients on a “first-in, first-out” basis; this means, always using the older products first.
- Always store your Herbalife products and non-perishable ingredients in a cool, clean, well-ventilated space; the fact that items are non-perishable does not excuse poor storage practices.

**Perishable Products**

- Always use your stock of perishable food items on a “first-in, first-out” basis, and perishable items such as fruits and vegetables must be washed prior to use.
- Clean your refrigeration units at least once a week and always store perishable products in a manner that protects them from damage, spoilage or contamination.

**Personal Hygiene**

- Keep your hands and forearms clean at all times by washing thoroughly with antibacterial soap and warm water, and take special care to wash in the following instances:
  - After using the restroom
  - Before and after handling any food items
  - After sneezing, coughing or blowing your nose
  - After smoking, eating, drinking or leaving the Club premises

- After touching your hair or any other body part
- After touching another person
- After touching used or dirty kitchen equipment or utensils
- Leave the Club premises immediately if you are sick or feel sick, even if this means the Club must be closed until you are back to good health.
- Keep your clothing and hair clean and neat at all times.

#### **Club Premises**

- Be careful to watch for spillage and clean up any spills immediately; warn members and guests to avoid the affected areas until clean-up is complete.
- Maintain multiple covered trash receptacles lined with high-quality garbage bags throughout the Club premises; remove and empty them frequently.

#### **1-O Required Advisory for Posting; Hygiene and Sanitary Practices**

Every Club operator must post the following Hygiene and Sanitary Practices Advisory in the Club:

##### ***Advisory for Nutrition Club Operator***

*Although Nutrition Clubs are not restaurants, carry-outs, or any other type of food service establishment, Herbalife expects Nutrition Club Operators to adopt the highest standards of hygiene and sanitary practices. Listed below are the core principles of good hygiene and sanitation that are always required. Refer to Rule 1-N "Good Hygiene" which details these required hygiene practices:*

- *Keep your Club, particularly your entire kitchen area, clean at all times.*
- *Keep all tools and utensils used in food preparation, and in particular blenders and cutting boards, clean at all times.*
- *Keep your hands and forearms clean at all times by washing them frequently with antibacterial soap and warm water.*
- *Always use purified (or boiled) water in preparing the Club's complimentary beverages.*
- *Inspect fruits and vegetables for freshness and quality, and wash them prior to use.*
- *Always use disposable cups.*
- *Clean up any spillage immediately, and remove all trash promptly.*

This sign containing the Hygiene and Sanitary Practices Advisory must be at least **8.5 inches by 11 inches** and the Advisory itself must be in a font size **no smaller than 17 points**. The specific wording of the Advisory may change from time to time, but the most recent version can always be obtained by calling your local Distributor Relations Department, or it can be downloaded from [MyHerbalife.com](http://MyHerbalife.com).

A copy of this Advisory is provided for your use at the end of Subsection 5 of the Nutrition Club Rules.

### **2-A Fees**

Daily, weekly or monthly membership fees may be charged to cover operational premise-related costs, for example, product and ingredients consumed in the operation of the club, rent and utilities.

Membership fees may not be represented as the price or cost of products offered to members or their guests for consumption as these are benefits of membership, nor may they be in exchange for any services that the club operator may choose to offer (such as but not limited to seminars or classes).

Distributors who choose to provide more than one membership option may be more likely to be required to pay sales tax and to comply with food service regulations and requirements. It is the club operator's sole responsibility to diligently research and comply with these and other important legal and tax requirements as applied to the way their club operates.

### **2-B Club Attendance Not Mandatory**

Attending Club sessions is a personal decision for the member or guest (whether or not he or she is a Distributor); Club operators must never state or imply that there is an obligation to attend.

### **2-C Club Activities and Services**

Nutrition Clubs must offer their members regular opportunities to socialize, as well as frequent educational and coaching sessions (group and one-on-one) on nutrition and weight management.

### **2-D Member Referral Incentives**

Club operators may offer reasonable rewards, such as free products, for the referral of new members, but Club operators are prohibited from paying cash or cash equivalents for such referrals.

### **3-A Authorized Herbalife Products Only**

Only Herbalife products authorized for the United States may be provided for consumption or sale while operating a Nutrition Club. Non-Herbalife products may not be provided, sold or promoted on the Club premises.

### **3-B Product Consumption**

Nutrition Clubs are social gatherings, bringing people together with a focus on good nutrition. They are not retail stores or outlets, nor are they restaurants or carry-out establishments.

Subject to this restriction, Club operators may offer complimentary products such as shakes, teas, Formula 1 pies and Herbal Aloe Concentrate. Club operators may post a list of available flavors of shakes and teas, as well as any optional ingredients such as protein or fiber, but consistent with the proper operation of a Nutrition Club they may not post, list or charge individual prices for these products or ingredients. The only permissible Nutrition Club fees are daily, weekly or monthly membership fees to cover operational costs such as rent and utilities.

In the Nutrition Clubs and elsewhere, Herbalife products must always be served, consumed and applied in accordance with the instructions on the printed product labels.

### **3-C Carry-Outs**

Although it is preferable that all product offerings be consumed on the Club premises, registered Club members may carry out one shake per day.

Carry-outs must be in unbranded containers of not more than one single serving. Carry-outs may only be for the personal consumption of that Club member, or another registered Club member. Carry-out is limited to one shake, or one COLD tea, and does not include Formula 1 pies or Herbal Aloe Concentrate.

### **3-D Product Retailing**

Nutrition Clubs are social gatherings, bringing people together with a focus on good nutrition. They are not retail stores or outlets, nor are they restaurants or carry-out establishments.

Club operators may keep product inventory on hand, and they may sell their inventory at retail. All Herbalife products must be sold unopened and in their original Herbalife packaging.

Products which are not packaged and labeled for individual sale as individual units or single servings may not be sold in the Nutrition Clubs, or elsewhere. An official Herbalife product catalog may be made available to Club members, but product pricing may not be posted. Club operators may not pressure their members or guests to buy the products, and may not state or imply that product purchases are required in order to enter, attend, become a member, or remain a member of the Club.

### **3-E Sampling**

Sampling of Herbalife products is permissible at Nutrition Clubs. Club operators may offer complimentary (sample) products such as shakes, teas, Formula 1 pies and Herbal Aloe Concentrate. Loose tablets may not be sampled. Club operators may post a list of available flavors of shakes and teas, as well as any optional ingredients such as protein or fiber, but consistent with the proper operation of a Nutrition Club, they may not post, list or charge individual prices for these products or ingredients. The only permissible Nutrition Club fees are daily, weekly or monthly membership fees to cover operational costs such as rent and utilities.

### **3-F Mixtures**

Club operators may not mix shakes, teas or Herbal Aloe Concentrate using alcoholic beverages, medications or other inappropriate ingredients.

### **3-G Product Packaging and Display**

Club operators may display product-related literature, promotional items, and one unit (per product) of Herbalife products, unopened and in their original packaging, but such displays may not be visible from the exterior.

When preparing shakes, teas and Herbal Aloe Concentrate for consumption, these products must be available for inspection by members and guests (again, unopened and in their original packaging).

### **3-H Proper Disposal of Product Containers**

To protect against those who might seek to counterfeit Herbalife product, Club operators are required to deface or destroy product labels and containers before disposing of empty containers.

#### 4-A Testimonials/Product Claims

Club members may share their experiences from using the products, but the products are not intended to diagnose, treat, prevent or cure any disease or medical condition, and under no circumstances should there be any statements or implications to the contrary, whether by the Club operator or by members or guests who are offering testimony. All information which is given to Club members should be consistent with the information which is provided in Herbalife support materials and publications, both in general and for specific products. Refer to Herbalife's Rules of Conduct and Distributor Policies Section 22, "Claims and Representations." These Rules are also available, on [MyHerbalife.com](http://MyHerbalife.com), or through Distributor Relations, upon request.

#### 4-B Testimonials/Income Claims

Income and earnings testimonials, whether made orally at a Club event, or in writing in websites or Club-related materials must be appropriately disclaimed, orally and/or in writing. The appropriate disclaimer is:

*Income reported in Nutrition Club materials, or in oral testimony at Club gatherings is 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. Supervisors at [Herbalife.com](http://Herbalife.com) and [MyHerbalife.com](http://MyHerbalife.com).*

Refer to Herbalife's Rules of Conduct and Distributor Policies Section 22, "Claims and Representations." These Rules are also available on [MyHerbalife.com](http://MyHerbalife.com) or through Distributor Relations upon request.

#### 4-C Offering Nutritional Advice to Members and Guests

Club operators may offer the general health, wellness and nutritional information which is a part of their daily activities as Herbalife Independent Distributors. This includes guidance about the products, their usage and their key benefits, as well as information about the business opportunity. Operators may also provide appropriate product and income testimonials both orally and in writing (accompanied by Herbalife's required disclaimers).

However, Club operators may not state or imply that using the products will diagnose, treat, prevent, or cure any disease or medical condition, and all information which is given to Club members and guests should be consistent with the information that is provided in Herbalife's support material and publications, both in general and specific products.

#### 4-D Advertising

Nutrition Clubs are social gatherings publicized exclusively through word of mouth and attended only by persons who are personally invited by the Club operator, another independent Distributor, a club member, or a customer, either through oral conversation or through conversation accompanied by the provision of a written invitation. Nutrition Clubs are not intended to attract "walk-in" traffic; therefore, Nutrition Club advertising is limited to promoting services that are offered at the Club's location, such as a Weight loss Challenge, a wellness evaluation or wellness presentation. Advertising such services may include the following details:

- Name of Club and Club operator
- Phone number

Using radio and television to advertise services that occur in a Club is not permissible.

#### 4-E Personal Websites

Every Nutrition Club operator is permitted to create a website under the following conditions:

- **Password-protected websites** that are not accessible by the general public, dedicated or partially dedicated to Nutrition Clubs, may be operated subject to their full compliance with Herbalife's Rules.
- **Non-password-protected websites**, accessible by the general public, are permitted with regard to a Distributor's overall Herbalife business, but not with regard to Nutrition Clubs specifically. A publicly accessible website may only provide the following Nutrition Club information:
  - Services available at Club (for example, a Weight Loss Challenge, a wellness evaluation, or wellness presentation)
  - Name of Club and Club operator
  - Phone number

Any other information specific to Nutrition Club(s) which is posted on publicly accessible websites will be considered and treated as prohibited Nutrition Club advertising.

#### 4-F Nutrition Club Signage (Residential)

**Residential Locations:** Clubs operating from residential locations may not use exterior signage of any kind. For signage Rules that apply to Clubs operating from non-residential locations, refer to Subsection 5 of these Nutrition Club Rules.

**5-A Notification Form**

As an aid for Distributors to comply with Herbalife’s Rules regarding notification of Nutrition Clubs (for Clubs operating from non-residential locations) the “Notification Form” is available (in its current form) at the end of this Document, on [MyHerbalife.com](http://MyHerbalife.com), or from your local Distributor Relations Department. Distributors are required to complete and submit the “Nutrition Club Notification Form” at least 30 days in advance of opening their Club.

**5-B Retail/Service Establishments**

**Retail Establishments:** Nutrition Clubs may not operate on the premises of retail establishments. Retail establishments are defined as fixed locations whose primary activity is the on-site sale or delivery of goods to consumers.

**Service Establishments:** Nutrition Clubs may not operate on the premises of service establishments whose primary purpose is to provide prepared foods (such as, but not limited to, restaurants, cafés, ice cream shops, etc.).

However, it is permissible to operate within other types of service establishments including but not limited to, beauty salons, barber shops, gyms, and health clubs, provided that the Nutrition Club activities and all signage are restricted to an enclosed room and are not visible to passersby or to the public frequenting the service establishment.

Herbalife has the sole and absolute discretion as to the determination and application of this policy.

**5-C Signage Restrictions for Clubs Operating in Non-Residential Locations**

A Nutrition Club may have a sign identifying itself, but that signage must meet the following standards:

- The design and content of the proposed sign must meet Herbalife’s published standards to ensure that the location is not perceived as a store, restaurant, franchise or similar operation, or other retail location, and does not invite passersby to purchase product.
- Utilizing signage which is unreasonably large or unreasonably noticeable, as determined by Herbalife at its sole and absolute discretion, will be considered and treated as an attempt to attract walk-in traffic to a Nutrition Club, which is prohibited. Please refer to Rule 5-H “Walk-In Traffic.”

- No two clubs operating from non-residential locations may have identical or substantially similar names or signage within a (100) mile radius (as determined by Herbalife, at its sole and absolute discretion). This would include anything visible from the exterior that might suggest that the location is a franchise.
- Signs may not directly or indirectly identify, imply or signal that the occupant is an Herbalife Independent Distributor (or otherwise indicate an Herbalife business).
- Signs may not advertise services offered as part of a Nutrition Club (for example, Herbalife product available, Weight Loss Challenge, etc.).

The following are a few examples of signage do’s and don’ts:

**Examples of Signage:**

Do’s	Don’ts
“Angela’s Wellness Center”	“Angela’s Shake Café”
“Healthy Lifestyle’s Club”	“Healthy Nutrition Bar”
“The Feel Good Zone”	“Herbalife Weight Loss Shop”

- Signs may not state or suggest that Herbalife products are available for retail purchase on the premises.
- Signs may not use the terms “Nutrition Club,” “Herbalife®,” “L.A. Live,” “Mark Hughes,” “Liftoff®,” “Shapeworks®,” “Skin Activator®,” “NouriFusion®” or any other Herbalife intellectual property, product names or brands, or the word “shake” or any other words that imply or signal that Herbalife products are available at that location.
- The following terms, and any similar terms, are not acceptable: “café,” “restaurant,” “bar,” “mart,” “store,” or “shop.”
- Signs that depict “Open/Closed” may not be visible from the exterior.

Provided that the Club operator adheres to the specified points, the use of the following terms and any similar terms are acceptable: “club,” “center,” or “meeting”; Club operators may also use their business name or the name of the individual or group.

**5-D Window and Door Coverings**

Nutrition Clubs operating in non-residential locations must ensure the interior of the Club is not visible to persons from the exterior, by use of window and door coverings, and external doors must remain closed.

For example:

- Window and door coverings must be unbranded, and they may not state, imply or suggest (even without words) that retail products are available for purchase inside.
- “Before & After” photographs may not be used, or incorporated as window and door coverings.
- The word “shake” or pictures of shakes, or any other products, even if unbranded, are not permitted and, may not be used, or incorporated as window and door coverings.
- Herbalife products, posters, materials, images used inside the Club must not be visible from the exterior.

#### **5-E Nutrition Club Exterior**

Because Nutrition Clubs are not retail establishments, cafés, restaurants or take-out establishments and to avoid any misconceptions by the public, the exterior of a Nutrition Club may NOT have:

- tables, chairs, or outdoor seating;
- *Visa* or *MasterCard* (or any other credit card merchant) decals or signs;
- the word “welcome,” pictures or logos of shakes, blenders, pictures of food or products, telephone numbers, or “.com,” “www,” “.net,” or any other reference to a website;
- repetitive names with numbers (e.g., Rockin’ wellness #3, Rockin’ wellness #4); or
- *Tag lines or slogans*. A tag line is a descriptive term used in conjunction with the name of a Nutrition Club.

Herbalife shall have the right in its sole and absolute discretion to determine if a Nutrition Club’s appearance conflicts with this or any other Distributor policy, or Nutrition Club Rule.

#### **5-F Cash Registers**

Since Nutrition Clubs are not retail establishments, cash registers, cash boxes and the like may not be visible to Club members.

#### **5-G Leasing, Renting or Sharing Club Locations**

Nutrition Club operators may lease, rent or otherwise charge for clubs located in non-residential locations which they make available to, or share with, members of their downline organizations. However, the fees derived may not exceed a 5% net profit to the offering Distributor, and the offering Distributor(s) may not solicit or promote these locations to Distributors in other organizations.

#### **5-H Walk-In Traffic**

A “walk-in prospect” is a person who visits a Nutrition Club for the first time without a personal invitation and without having had any direct contact with or a referral from the operator of the Club or an existing Club member. Nutrition Club operators may sign up a walk-in prospect as a member, but if the prospect cannot or will not sign up as a member, the operator is then limited to offering the prospect a complimentary shake, tea, Formula 1 pies, and Herbal Aloe Concentrate as samples, and explaining the Nutrition Club concept of socialization, product consumption and wellness education among Club members, all in a fun and relaxed atmosphere. Nutrition Clubs are not retail locations and operators may not state or imply that they are. It is not permissible to sell product servings to anyone. Product servings are only available to registered Nutrition Club members as part of their daily, weekly or monthly membership fee. Free samples of prepared products may be provided to encourage walk-ins to return and become Club members. Please refer to Rule 5-C “Signage Restrictions for Clubs Operating in Non-Residential Locations.”

## Nutrition Club Advisory

This Nutrition Club is operated by Herbalife Independent Distributor (“Operator”) \_\_\_\_\_ . Operator’s mailing address is \_\_\_\_\_ , and Operator’s business phone number is \_\_\_\_\_. Operator, not Herbalife, is responsible for all of the activities related to this Nutrition Club.

Nutrition Clubs are social gatherings, bringing people together with a focus on good nutrition. They are not retail stores or outlets, nor are they restaurants. Registered Club members may carry out one shake, or one COLD tea, per day from the Club, but only in unbranded containers of not more than one single serving. Carry-out of a shake, or COLD tea, may only be for the personal consumption of that Club member or another registered Club member. Carry-out is limited to one shake, or one COLD tea, and does not include Formula 1 pies or Herbal Aloe Concentrate.

Nutrition Club fees cover general operational costs and do not represent the price or cost of products. Participants may share their experiences after having used the products, but must always remember that the products are not intended to diagnose, treat, prevent or cure any disease or medical condition. Income reported in Nutrition Club materials, or in oral testimony at Club gatherings, is applicable to the individuals (or examples) depicted and not average.



## Advisory for Nutrition Club Operator

Although Nutrition Clubs are not restaurants, carry-outs, or any other type of food service establishment, Herbalife expects Nutrition Club Operators to adopt the highest standards of hygiene and sanitary practices. Listed below are the core principles of good hygiene and sanitation that are always required. Refer to Rule 1-N “Good Hygiene” which details these required hygiene practices:

- Keep your Club, particularly your entire kitchen area, clean at all times.
- Keep all tools and utensils used in food preparation, and in particular blenders and cutting boards, clean at all times.
- Keep your hands and forearms clean at all times by washing them frequently with antibacterial soap and warm water.
- Always use purified (or boiled) water in preparing the Club’s complimentary beverages.
- Inspect fruits and vegetables for freshness and quality, and wash them prior to use.
- Always use disposable cups.
- Clean up any spillage immediately, and remove all trash promptly.



## CLUB NAME, SIGNAGE, WINDOW AND DOOR COVERING REQUIREMENTS

Distributors operating Nutrition Clubs from **non-residential** locations are required to submit a *Notification Form* to Herbalife, at least 30 days prior to the official opening date of their Club.

### WHY DO I NEED TO SUBMIT A NOTIFICATION FORM?

Submitting your *Notification Form* will help you stay connected with the latest news and updates on Nutrition Club trainings and promotions. This notification process will allow Herbalife to review your proposed Club name, signage, window and door covering ideas prior to your Club's opening date and avoid premature expenditures that may not be compliant with Herbalife's *Rules of Conduct and Distributor Policies*. **As stated in Herbalife's Nutrition Club Rules, Nutrition Clubs are not franchises. Therefore, their overall appearance must be unique to avoid the appearance of a franchise.**

### DO I NEED TO SUBMIT ADDITIONAL INFORMATION WITH MY NOTIFICATION FORM?

Yes. Please, submit the following with your completed *Notification Form*:

#### For planned Nutrition Clubs located in a non-residential location:

- A drawing of each exterior sign.
- A drawing of each window and door covering (curtain or shade).
- A brief description, including the dimensions, locations and the number of signs and window and door coverings needed.

#### For existing Nutrition Clubs located in a non-residential location:

- Photos of each exterior sign.
- Photos of each window and door covering (curtain or shade).
- A brief description, including the dimensions, locations and the number of signs and window and door coverings needed.
- An overall photo that captures the entire exterior of the Club's structure and any signage or message visible to passersby.

## PRIMARY NUTRITION CLUB OPERATOR

Only one Distributor is responsible for submitting a Nutrition Club *Notification Form*. This Distributor is considered the **Primary Nutrition Club Operator**. Additional Club Operators may be listed on the *Notification Form*. A *Notification Form* is required for every non-residential Nutrition Club location.

## WHERE DO I SUBMIT MY NOTIFICATION FORM AND ADDITIONAL INFORMATION?

For your convenience, there are three (3) simple ways to submit your *Notification Form* and the additional information required:

**1) Email:** [DPCNutritionClubsNAM@Herbalife.com](mailto:DPCNutritionClubsNAM@Herbalife.com).

**2) Mail:** Herbalife International of America, Inc.  
Attention: DPC  
950 W. 190th Street  
Torrance, CA 90502

**3) Fax:** **(310) 216-5145**. Please do not submit your photographs by fax. They need to be sent via email or mail.

Distributors operating Nutrition Clubs from residential locations are also encouraged to submit a *Notification Form*.

# U.S. Nutrition Club Notification Form



## PRIMARY (MAIN) NUTRITION CLUB OPERATOR'S INFORMATION:

Last name: \_\_\_\_\_ First name: \_\_\_\_\_  
 Primary Distributor ID#: \_\_\_\_\_ Team level: \_\_\_\_\_

Country: \_\_\_\_\_ Club Address: \_\_\_\_\_

Club type:  Residential  Non-Residential Suite #: \_\_\_\_\_

Primary language spoken in Club:  English  Spanish City: \_\_\_\_\_

The Club is:  Existing or  Planned State: \_\_\_\_\_

Date of opening or estimated opening: \_\_\_\_\_ Zip: \_\_\_\_\_

I have a Club name: \_\_\_\_\_

I do not have a Club name

I previously submitted this form, but have an update/change to my Nutrition Club name, signage and/or window coverings.

I am closing or have closed my Nutrition Club. Date of closure: \_\_\_\_\_

I wish to change the Primary Operator **\*For changes to the Primary Distributor, both Distributors must sign\* this form.**

Proposed Primary Operator's Name: \_\_\_\_\_ Proposed Primary Operator's #ID: \_\_\_\_\_

Seating capacity: \_\_\_\_\_ Main contact number: \_\_\_\_\_

Averaged daily consumption/memberships: \_\_\_\_\_ Alternate contact number: \_\_\_\_\_

Website: \_\_\_\_\_

Email: \_\_\_\_\_

### How did you learn about the Nutrition Club Rules?

- Upline  Other Distributor  At a training  
 IBP Books  Other

What percentage of your business comes from the Club? \_\_\_\_\_

Number of additional Distributors who operate the Club? \_\_\_\_\_

### Additional Club Operator information

Distributor name: \_\_\_\_\_

Distributor ID#: \_\_\_\_\_

Team level: \_\_\_\_\_

Distributor name: \_\_\_\_\_

Distributor ID#: \_\_\_\_\_

Team level: \_\_\_\_\_

*If there are more than two (2) Operators for your Club, submit them on a separate page.*

For marketing purposes only, select Business Methods conducted at this Club.

- Weight Loss Challenge  Total Plan  
 Wellness Coach method  Other

### Club hours of operation

Club is open all day Monday - Friday: \_\_\_\_\_ to \_\_\_\_\_

OR daily hours of operation:

Morning: \_\_\_\_\_ to \_\_\_\_\_ Afternoon: \_\_\_\_\_ to \_\_\_\_\_ Evening: \_\_\_\_\_ to \_\_\_\_\_

Club is open all day Saturday: \_\_\_\_\_ to \_\_\_\_\_

OR daily hours of operation:

Morning: \_\_\_\_\_ to \_\_\_\_\_ Afternoon: \_\_\_\_\_ to \_\_\_\_\_ Evening: \_\_\_\_\_ to \_\_\_\_\_

Club is open all day Sunday: \_\_\_\_\_ to \_\_\_\_\_

OR daily hours of operation:

Morning: \_\_\_\_\_ to \_\_\_\_\_ Afternoon: \_\_\_\_\_ to \_\_\_\_\_ Evening: \_\_\_\_\_ to \_\_\_\_\_

Comments:

*I acknowledge that I have reviewed and understand Herbalife's Rules of Conduct, and Supplemental Rules, which include Nutrition Club Rules.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*Please be aware that an incomplete form may delay the signage, window and door covering confirmation process of your Nutrition Club. Failure to submit a Notification Form to Herbalife may result in sanctions to your Distributorship.*



**Introduction**

It is noteworthy that these Weight Loss Challenge Rules have the same force and effect as the full body of Herbalife’s Rules of Conduct & Distributor Policies (including the U.S. Supplemental Rules of Conduct and Nutrition Club Rules). Violations of any Herbalife Rule or Distributor Policy can result in disciplinary action, up to and including suspension or termination of Distributorships. Violations of these Rules can result in Distributors being denied the ability to operate Weight Loss Challenges. The Weight Loss Challenge Participation Agreement which is attached is required by these Rules. The Rules of Conduct & Distributor Policies (the U.S. Supplemental Rules of Conduct and Nutrition Club Rules) are included in the International Business Pack (“IBP”) and may also be obtained online at [MyHerbalife.com](http://MyHerbalife.com), or upon request from Distributor Relations toll-free at 866-866-4744. Where available, Weight Loss Challenge Manuals may also contain the Weight Loss Challenge Rules and Participation Agreement.

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## RULES AND GUIDELINES

The Weight Loss Challenge Rules and Guidelines set forth below have the force and effect of, and are in addition to, Herbalife's other Rules, including the Rules of Conduct and Distributor Policies, the U.S. Supplemental Rules and the Herbalife Nutrition Club® Rules.

Non-italicized content represents the Rule itself and is mandatory. Italicized content represents "best practices" and/or further details.

### 1. Maximum Number of Participants

*Each Weight Loss Challenge ("Challenge") is limited to a maximum of 40 participants. We recommend that you have 20 to 30 participants per Challenge. Keep in mind that a Challenge may include as few as 3 and up to the maximum of 40 participants. For example, if you have 120 people ready to start their Challenge today, you must start 3 or more separate Challenges in order to comply with this Rule. We also recommend that an Independent Distributor be assigned as a personal coach to every 12 to 15 participants.*

### 2. Permissible Fees

**Participation Fee:** The Participation Fee covers all prize payouts, plus minimal operational costs. Participation fees may not be used to generate a profit and, under no circumstance, may they exceed \$35.

**Weight-Gain Fee:** Distributors may charge a weight-gain fee of \$1 per pound for weight gained since a participant's last recorded weigh-in.

**Absence Fee:** Distributors may charge an absence fee of \$5 for each absence from a weekly meeting. One (1) absence is allowed without penalty.

The only permissible action for non-payment of weight-gain and absence fees is disqualification from the Challenge; Distributors may not otherwise press or pursue participants (or former participants) for payment.

### 3. Maximum Payout

First-prize payout for each Challenge may not exceed \$599.

*There are 2 reasons for this maximum payout amount:*

- Participants should be driven by the results they will achieve, with the "extra" benefit of possibly winning money.*
- Larger funds could encourage participants to engage in unhealthy or excessive weight loss and exercise practices; therefore, we dictate this reasonable maximum prize amount.*

### 4. Duration

Each Challenge must run for a minimum of 6 weeks.

- We recommend that each Challenge runs for 12 weeks. This allows the participants to better reach their goals during the course of the Challenge.*
- The Weight Loss Challenge Manual, [MyHerbalife.com](http://MyHerbalife.com) support materials, and Herbalife's Weight Loss Challenge website for participants ([HerbalifeWLC.com](http://HerbalifeWLC.com)) are based on a 12-week program.*

### 5. Weekly Meetings

Weekly meetings are a required element of any Challenge. They may be conducted in any suitable location or online.

*Meetings should include a weekly weigh-in, discussion of the participants' progress, educational talks by the Distributor(s)/coach(es), and formulation of a plan and/or goal for the coming week.*

### 6. Recommending Herbalife Products

Distributors may always recommend, promote and educate on Herbalife products, but may not require that the products be purchased or consumed as part of a Challenge.

### 7. Refunding the Participation

The participation fee must be fully refunded if requested by the participant within the first 48 hours of the Challenge start date. Refunds requested more than 48 hours after the Challenge commences may be granted at the discretion of the responsible Distributor(s).

### 8. Advertising

Herbalife creates a variety of finished ads for the Weight Loss Challenge. These tools can be found at [MyHerbalife.com](http://MyHerbalife.com). Distributor-created ads must be compliant with all Herbalife Rules, including the Rules of Conduct and Distributor Policies, the U.S. Supplemental Rules and (where appropriate) the Herbalife Nutrition Club Rules.

When advertising a Weight Loss Challenge, Distributors may include their name and phone number in the ad. If the Challenge is to take place at a Nutrition Club, the ad may include the name of the Nutrition Club, name of the Club operator, and the Club's phone number; however, Distributors may only provide the address for the Challenge through personal interaction, not through the advertisement.

In addition, Weight Loss Challenge ads may not state or imply that persons will receive money for the mere act of participating in a Challenge. Only 4 participants in each Challenge actually receive cash payouts. Ads may state or imply that persons who win the Challenge can earn money for doing so.

**Examples of Acceptable Ad Statements:**

- “Weight Loss Challenge winners can earn dollars for losing pounds!”
- “Challenge winners can earn cash to lose weight!”

**Examples of Unacceptable Ad Statements:**

- “Earn dollars for losing pounds!”
- “We pay you to lose weight!”

**9. Required Participation Agreement**

Every participant must review and sign a Participation Agreement, which must be kept on file by the Distributor(s) for at least 1 year from signing and produced to Herbalife upon request.

The Participation Agreement form is provided for your use at the end of the Weight Loss Challenge Rules and Agreement.

**10. State of Vermont**

The standard Weight Loss Challenge model, as set forth in this Manual and in these Rules, is prohibited by law in the state of Vermont. If you are interested in using this tool in Vermont, you must contact the Herbalife Distributor Relations department for specific guidance.

**11. Minimum Age**

The minimum age for participation in a Weight Loss Challenge is 14, and persons ages 14 to 17 require written permission from a parent or legal guardian.

PARTICIPATION AGREEMENT

## Weight Loss Challenge Participation Agreement

Thank you for your interest in the Weight Loss Challenge! Through the Challenge, Herbalife Independent Distributors (also known as “coaches”) are able to help participants work toward their weight-loss goals and improve their overall wellness. We want you to have a great time as you have fun and meet new friends at our Weight Loss Challenge. Remember that any reasonable diet or weight-management program includes exercise and sensible meals, and it’s always a good idea to consult your primary physician before starting an exercise or weight-management program.

The coach(es) responsible for this Challenge:

Name(s): \_\_\_\_\_

Contact Information: \_\_\_\_\_

Please read this document carefully and sign it to confirm that you understand all of the general terms of the Weight Loss Challenge.

- In return for your Participation Fee of \$35\* and upon signing this document, you are entitled to participate in the Weight Loss Challenge identified below and you will be eligible for the various prizes and/or payouts which are awarded upon its conclusion. You will also attend weekly weigh-ins where you will have the opportunity to ask questions, receive coaching and education.
- This Weight Loss Challenge begins the week of \_\_\_\_\_ / \_\_\_\_\_, 20\_\_\_\_ and ends the week of \_\_\_\_\_ / \_\_\_\_\_, 20\_\_\_\_.
- Coaches are independent businesspersons; they are solely and exclusively responsible for the operation and details of each Weight Loss Challenge.
- The purchase or consumption of Herbalife® products in conjunction with your participation is recommended, but not required.
- The *Participation Fee* of \$35\* covers all prize payouts, plus minimal operational costs.
- The *Weight-Gain Fee* is \$1\* per pound for weight gained since the last recorded weigh-in.
- The *Absence Fee* is \$5\* for each absence. One (1) absence is allowed without penalty.
- The Participation Fee is fully refundable if requested by the participant within the first 48 hours of the Challenge start date.

\*Amount is in U.S. dollars.

- *Weight-Loss Payouts* are paid to the top 3 weight losers as follows:
  - **1st Place:** 50 percent will be paid to the person who has lost the greatest percentage of his/her body weight by the end of the Challenge.
  - **2nd Place:** 30 percent will be paid to the person who has lost the next greatest percentage of his/her body weight by the end of the Challenge.
  - **3rd Place:** 20 percent will be paid to the person who has lost the next greatest percentage of his/her body weight by the end of the Challenge.
- An *Inches Payout* is paid to the participant who loses the most inches and is not also a top 3 weight loser; this winner receives all money collected from Weight-Gain and Absence Fees.
- If, after reading this document, you have any further questions about the Weight Loss Challenge, do not hesitate to ask the coach(es) listed in this Agreement.
- As a participant, you should communicate regularly and fully about your progress and never hesitate to ask questions, so you can receive the appropriate advice and coaching.
- You must be at least 14 years of age to enter a Weight Loss Challenge; if you are 14 to 17 years old, your parent or legal guardian must sign this Agreement on the line provided.

I, \_\_\_\_\_, have reviewed and agree to all of the above.  
(PRINT NAME)

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
(Parent or legal guardian signature required if participant is under the age of 18.)

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Email: \_\_\_\_\_

How did you hear about this Challenge? (please check)

- Prior participant       Referred by a friend (name): \_\_\_\_\_
- Newspaper ad           Postcard (color of postcard or name listed): \_\_\_\_\_
- Other: \_\_\_\_\_

## ENFORCEMENT PROCEDURES

### Introduction

The Herbalife Rules of Conduct are in place to protect the business for all Distributors. Violations of these rules are considered extremely serious. Violations can have a significant negative impact on the business for all Distributors as well as negatively influence the opinion of regulators, the media or the public about Herbalife, its products and Distributors. Herbalife attempts to educate our Distributors as to appropriate ethical business practices. In the event of a violation, the Company attempts to correct the violation by counseling the Distributor. However, more severe measures may be required in more serious cases, including, but not limited to, the following:

- Suspension of buying privileges
- Suspension of earnings
- Temporary or permanent suspension from the TAB Team Production Bonus
- Suspension from speaking at an Herbalife function
- Financial penalties or sanctions
- Termination or deletion of the Distributorship

### 1. Complaint Procedure

A. Upon learning of a violation of the Rules of Conduct or other rules and regulations, it is recommended that a Distributor attempt to contact the Distributor in violation, advise them of the appropriate guidelines of the Company referencing the section in the Rules and discuss the matter with them. It is recommended that the complainant then advise the Distributor in violation of the purpose of the rule and how the Distributor should correct their conduct.

B. If the alleged violator shows by word or conduct that they are unwilling or refuse to cooperate, then Herbalife requests the Distributor report the violation to the Company in writing on an Official Complaint Form which can be obtained through Herbalife's Distributor Relations Department or by accessing Herbalife's official website [MyHerbalife.com](http://MyHerbalife.com). The details required will include the nature of the complaint and specific details to support the allegations, such as names, addresses and telephone numbers of all persons involved; dates, times, places, etc. It is important that the complainant provide specific details to prove the violation. Herbalife is not able to investigate or take action on insinuations or speculative infringements. The Official Complaint Form must be signed and include the Complainant's Herbalife ID number. Anonymous complaints cannot be made the basis for disciplinary action.

### 2. Suspension of a Distributorship

A. The Distributorship may be placed in suspension at any time by Herbalife while it is conducting an investigation. Suspension may include any or all of the following:

- Suspension or denial of buying privileges
- Suspension or denial of payment for Royalty Overrides
- Suspension or denial of payment for TAB Team Production Bonus
- Suspension or denial of awards or benefits (i.e., vacations, pins, etc.)
- Suspension from Speaking at Corporate Training Seminars or other meetings representing the Company
- Prohibition from attending any Corporate Event, even if Distributor has qualified for this event
- Suspension of any qualifications that may be in progress
- Suspension to hold one's self out as an Herbalife Distributor

B. Herbalife reserves the right to publish the violating Distributor's name, violation and penalty at its sole and absolute discretion.

### 3. Termination or Deletion of a Distributorship

A. Herbalife maintains the right to terminate or delete a Distributorship at any time, with or without giving prior notice, whenever it deems this is the necessary and appropriate action.

B. Termination means the complete cancellation of a Distributorship and revocation of the Distributor's right to conduct the Herbalife business. This includes cancellation of their right to receive any further income from the Distributorship whether accruing before or after the termination date. The termination is effective on the date indicated in the written notification from Herbalife to the Distributor.

C. In cases of Dual Distributorships and other similar infringements, the Distributor may be allowed to continue as an Herbalife Distributor, but must do so in the proper line of sponsorship, as determined by the Company in the application of the Rules of Conduct. In most cases, the downline lineage of the deleted Distributorship's organization will be moved to the rightful line of sponsorship, with the Distributor.

D. Upon termination or deletion of a Distributorship for any cause pursuant to these rules, the Distributor will have no claim against Herbalife as a result of the termination or deletion.

#### 4. Procedures for Appeal

If a Distributor wishes to appeal a decision reached by Herbalife in cases concerning suspension, monetary sanctions, termination or deletion of a Distributorship, the Distributor has 15 days from the date of receiving written notification from Herbalife advising of the decision, to submit additional information or facts they believe should be considered. If the request for appeal is not received within the allotted period of time, the request will be denied.

The Distributors involved in the dispute may provide evidence and additional proof they believe may be relevant to the decision by Herbalife. However, Distributors must state why this information was not provided during the initial investigation.

Herbalife will advise the Distributors in writing of the results of their appeal. This decision does not create liability on the part of Herbalife to pay compensation to the Distributor for loss of profits or goodwill.

PRIVACY AND DATA PROTECTION

Herbalife collects information on the business you generate, and other information necessary for the performance of your Distributor relationship with Herbalife, such as your bank account or credit card number. Your information will be used: (1) to provide services to you (such as taking and processing orders, and calculating the earnings that you and others are entitled to under the Herbalife Marketing Plan); (2) to support and improve the services you render to your customers; (3) to provide you with additional services; (4) to maintain the proper functioning of the Herbalife Marketing Plan, and (5) compliance.

In order to fulfill its obligations under the Distributor relationship, Herbalife needs to share your information, or parts of it, with other Herbalife entities (a list of Herbalife subsidiaries can be found online at [MyHerbalife.com](http://MyHerbalife.com), or at [Herbalife.com](http://Herbalife.com)), with Herbalife's corporate headquarters in the United States, and with Distributors in your upline. In specific cases we may also be legally required to disclose your information to public authorities, and we may disclose part of your information to service providers (e.g., IT support, accounting, legal advisors, etc.) in the framework of our regular business, internal investigations or business transactions. In all of these cases, Herbalife will take appropriate measures to ensure the confidentiality of your information. Herbalife does not share your information with other third parties.

Some of Herbalife's entities, and possibly Distributors in your upline, may be established in countries that offer less privacy protection than your country of residence. However, Herbalife is committed to protecting your privacy wherever your information is used. To that effect, Herbalife International of America, Inc. in the United States has certified to the EU-US Safe Harbor Agreement, thereby committing to a level of protection equivalent to that in the European Union.

You have a right to access your personal information and a right to have erroneous information corrected. If you want to exercise those rights, please contact Distributor Services in your country or check your account information online at [MyHerbalife.com](http://MyHerbalife.com).

Herbalife will provide you with materials about its products and services to assist you in developing your business. In addition, Herbalife may send you additional commercial information about itself or its business partners.

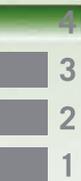
The information collected by Herbalife is necessary to perform the Distributor Agreement. Refusal to provide this information or refusal to authorize us to use the information in the manner described above means that you will be unable to become or remain a Distributor. Moreover, when you terminate your Distributor relationship, Herbalife must keep some of your information for accounting purposes and for the calculation of earnings under the Herbalife Marketing Plan.





HERBALIFE

FUN - SIMPLE - MAGICAL



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# Exhibit C

# Who wants to be a Millionaire?



**Pershing Square Capital Management, L.P.**

Exhibit C

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# Disclaimer

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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 common stock of Herbalife 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”) is 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 includes 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. 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.

Source: Herbalife Independent Distributor Presentation (2012)

Welcome to Herbalife!

A great solution, at the right time

'If you can dream it,  
you can do it!'  
*Walt Disney*

HERBALIFE

**Introduction to Herbalife**

# Herbalife Ltd. (“HLF”)

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**HERBALIFE™**

**Ticker: “HLF”**

**Stock price: \$42.84 <sup>(1)</sup>**

**Daily Volume: ~\$100mm**

- ▶ **Herbalife sells weight-management, nutritional supplement, energy, sports and fitness, and personal care products through its network of 3 million independent distributors in 84 countries**
  
- ▶ **Capitalization:**
  - Enterprise value: \$4.6 billion
  - Equity market value: \$4.8 billion
  
- ▶ **Recent valuation multiples:**
  - Dividend Yield: 2.8%
  - ‘13e Price-to-Earnings: 9.4x <sup>(2)</sup>

1) As of 12-17-12.

2) Capital IQ consensus estimate (as of 12-17-12).

# Herbalife's Mission Statement

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***“Our Mission is to change people’s lives by providing the best business opportunity in direct selling and the best nutrition and weight-management products in the world”***

# Is Herbalife a Product Company or a Business Opportunity?

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## Product Company

*Herbalife's mission is to change people's lives by providing the best nutrition and weight-management products in the world*

## Business Opportunity

*Herbalife's mission is to change people's lives by providing the best business opportunity in direct selling*

Source: Herbalife Independent Distributor Presentation (2012)

## The Products

It's all about the products!



**Herbalife:  
The Product Company**

***“In the product area, which we’re very proud of, we’re continuing to develop our science-based nutritional supplements to support our mission, which is to provide the best nutrition and weight-management products in the world.”***

**– Michael Johnson, Herbalife CEO, 5/2/07**

# Herbalife has Experienced Remarkable Growth Since its Formation in 1980

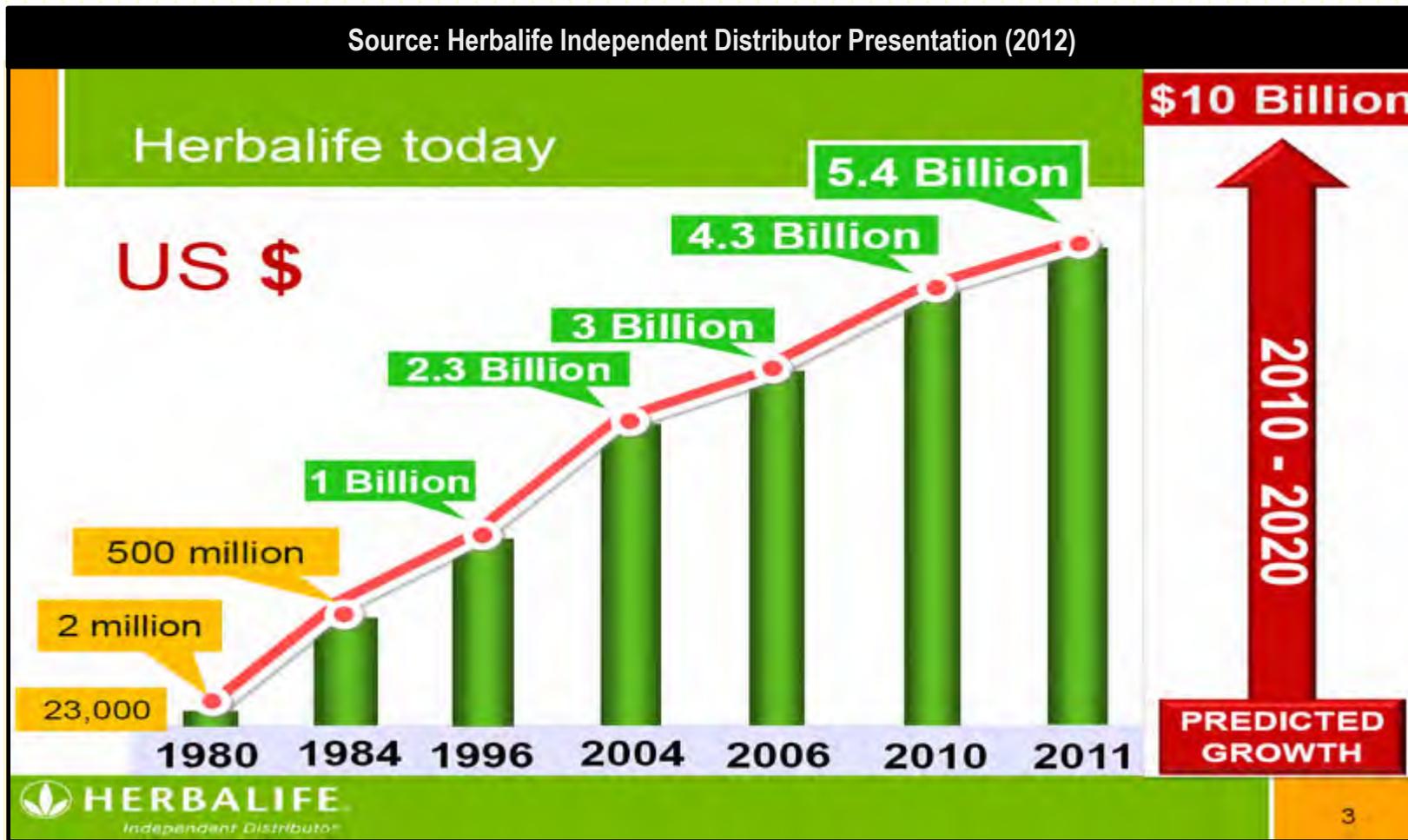


Exhibit C

Note: The chart depicts Herbalife's Retail Sales. "Retail Sales" is a Non-GAAP term defined by the Company, which represents the gross sales amount reflected on Herbalife's invoices to its distributors (at Suggested Retail Price ("SRP")).

# Herbalife Has Grown to Become One of the World's Leading Consumer Product Companies...



Ticker	NYSE:CHD	NYSE:ENR	NYSE:CLX	NYSE:HLF
Company Value <sup>(1)</sup>	\$7.2bn	\$6.7bn	\$11.7bn	\$8.1bn
Revenue <sup>(2)</sup>	\$2.8bn	\$4.6bn	\$5.5bn	\$3.9bn
Countries <sup>(3)</sup>	80+	160+	100+	80+
Year Founded	1846	1875	1913	1980

Exhibit C

(1) Based on Total Enterprise Value as of 4/30/12 (pre-Einhorn). Source: Capital IQ.

(2) LTM as of 9/30/12. Source: public company filings.

(3) Represents the number of countries where a portion of each company's products can be purchased. Source: public company filings.

# ... But It Is Not a Typical Consumer Product Company



<b>Gross Margin <sup>(1)</sup></b>	43.9%	46.8%	42.4%	80.2%
<b>Key Brands</b>				

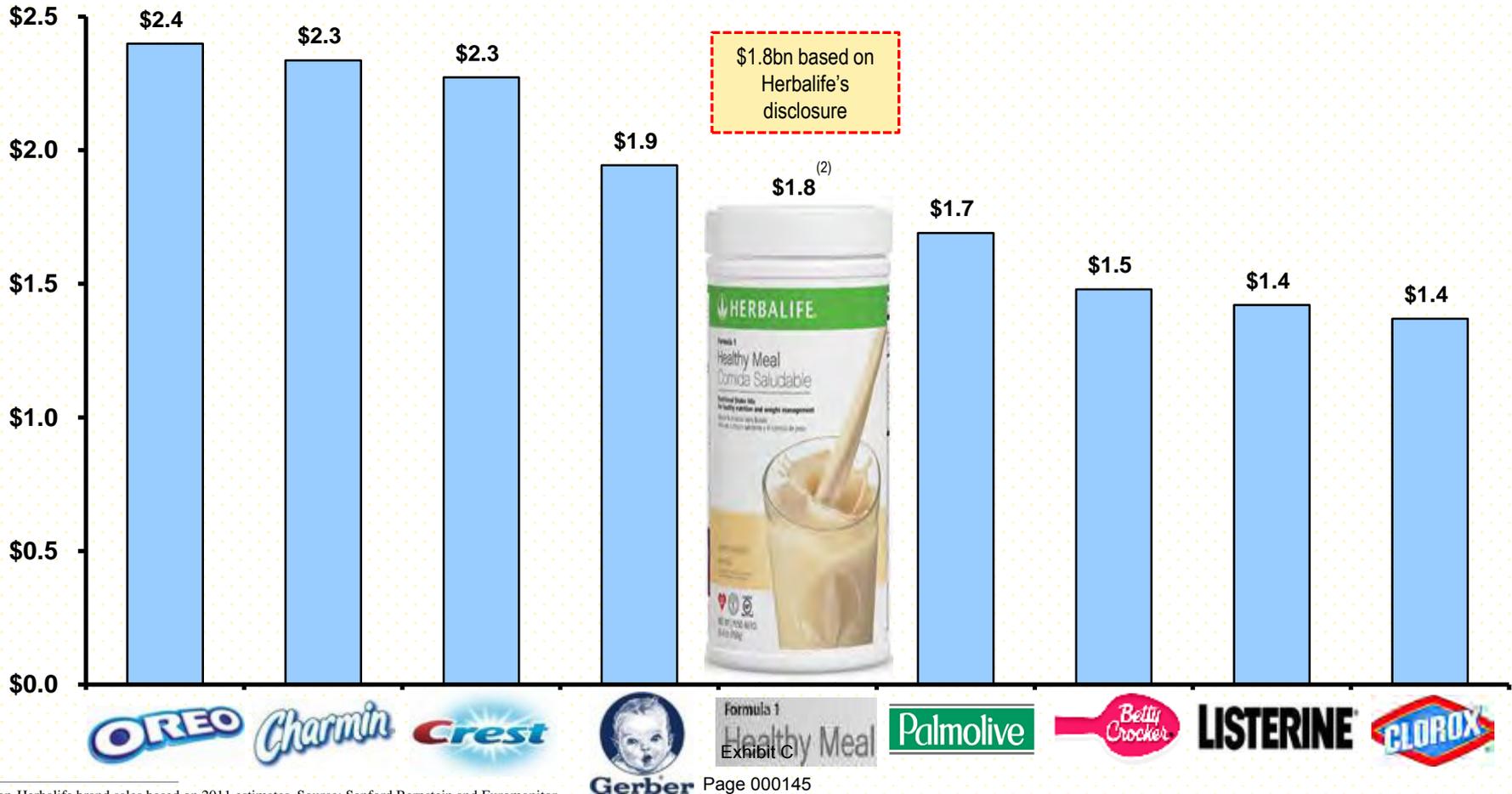
***Has anyone ever purchased an Herbalife product?***

(1) LTM as of 9/30/12. Source: public company filings.

# Herbalife's Top-Selling Product: Formula 1

*Formula 1: the only ~\$2bn brand nobody's ever heard of*

**Global Retail Sales by Brand (\$ in billions) <sup>(1)</sup>**



(1) Non-Herbalife brand sales based on 2011 estimates. Source: Sanford Bernstein and Euromonitor.

(2) Source: Herbalife 2011 10-K notes Formula 1 was 29% of net sales. To get to Retail Sales, assumes Formula 1 is also 29% of Product Sales. Product Sales were 53% of Retail Sales (excluding literature, promotional and other). Includes 29% of Shipping & handling revenue in Retail Sales as these expenses have to be passed through at retail for distributors to capture their full markup.

# What is Formula 1, Herbalife's Top-Selling Product at 29% of Sales?

Formula 1 is a nutritional shake mix like Lean Shake, Slim-Fast or Ensure



Formula 1



Lean Shake



Slim-Fast

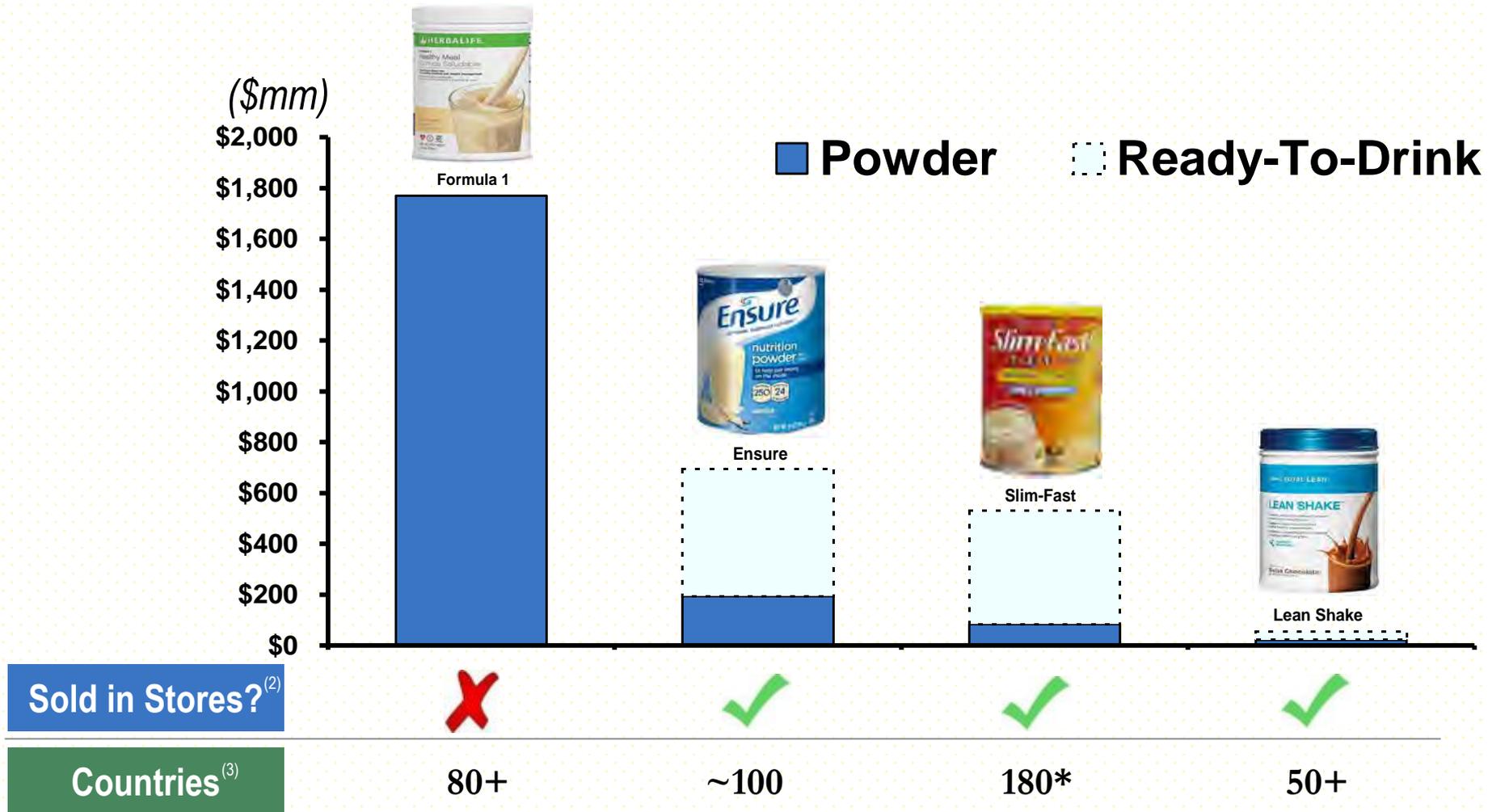


Ensure

Company	Herbalife	GNC	Unilever	Abbott Labs
Powder Offering?	✓	✓	✓	✓
Ready-To-Drink Offering?	✗	✓ 	✓ 	✓ 

Exhibit C

# Herbalife Sells ~10 to 20 Times More Nutrition Powder than its Competitors<sup>(1)</sup>



(1) Source: public company filings, Euromonitor, sell-side research and Pershing Square estimates.  
 (2) Herbalife products are not sold in stores; however, they are distributed at nutrition clubs. Per the company's Exhibit G presentation disclosure, Formula 1 (along with tea and aloe, the other two products primarily distributed at nutrition clubs) accounted for ~35% of total volume in 2002 (pre nutrition clubs) and 52% in 2011. This suggests ~1/3<sup>rd</sup> of Herbalife's Formula 1 sales could be to nutrition clubs.  
 (3) In 2011: Herbalife distributed its products in ~80 countries. Ensure was distributed in ~100 countries (source: Capital Markets research 11-12-12). Unilever does not disclose how many countries Slim-Fast is distributed in, but Unilever products are available for purchase in 180 countries (source: public filings). GNC products are available for purchase in 53 countries (source: public filings).

**How is it possible that Herbalife sells six times more nutrition powder than Abbott Labs (Ensure), Unilever (Slim-Fast), and GNC (Lean Shake), combined?**

**Perhaps it is cheaper...**

# No, Formula 1 is Materially More Expensive than Comparable Nutrition Shake Powders

**Retail Price Per 200 Calorie Serving <sup>(1)</sup>**

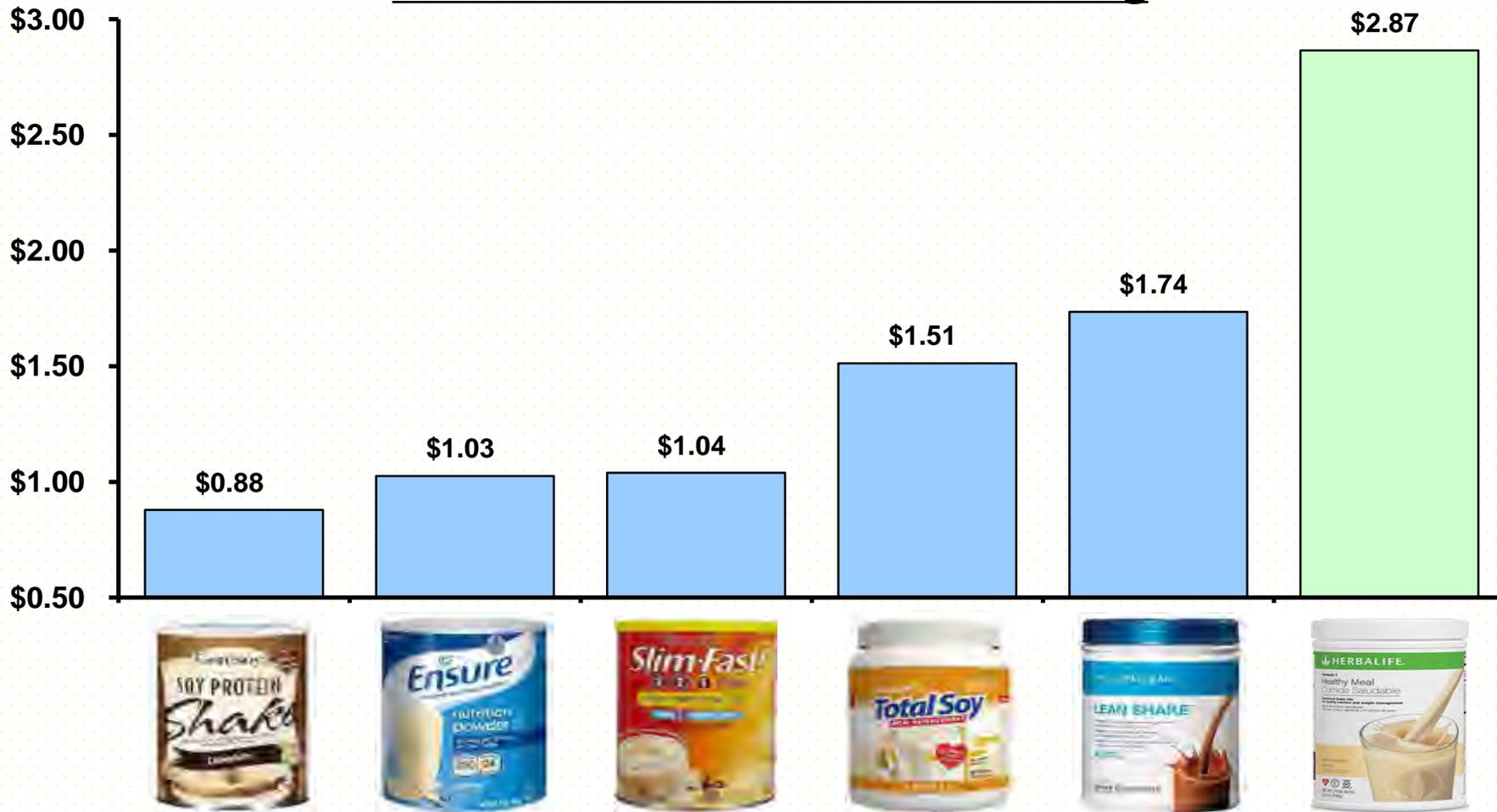


Exhibit C

(1) Retail Price per 200 Calorie Serving includes Herbalife's 7% surcharge ("packaging and handling charge") which is fixed despite quantity purchased or if distributors manually pick-up the product. To create an apples to apples comparison, prices are evaluated on a per 200 calorie serving basis and assume the product is mixed with water.

HLF Source: Herbalife Product Price List - Los Angeles (3-6-12). GNC Source: GNC website (11-19-12). Slim-Fast/Ensure/Genisoy/Naturade Source: Walmart.com (11-19-12).

# **How does Herbalife price its other products?**

# Herbalife's Multivitamin is more than 3x the Price of Comparable Products

## Retail Price Per Multivitamin Tablet <sup>(1)</sup>

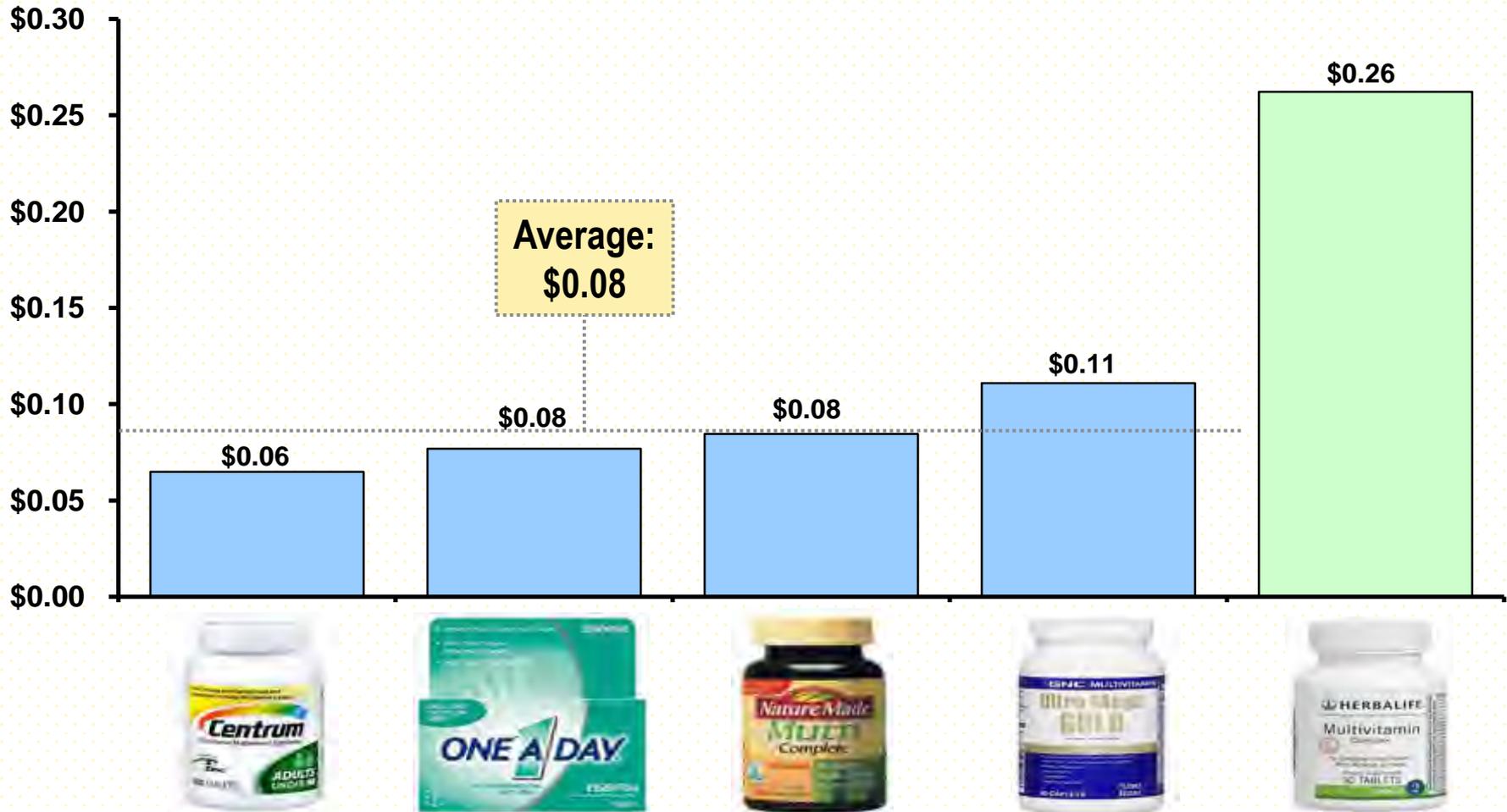


Exhibit C

(1) Retail Price per Tablet includes Herbalife's 7% surcharge ("packaging and handling charge"). This charge is fixed despite quantity purchased or if distributors manually pick-up the product.

HLF Source: Herbalife Product Price List - Los Angeles (3-6-12). Centrum source: Walmart.com (11-20-12). GNC source: gnc.com (11-20-12). One a Day source: drugstore.com (11-20-12). Multi Complete source: CVS.com (11-20-12).

# Herbalife's Niteworks (L-Arginine Supplement) is Nearly 3x the Price of Comparable Products

**Retail Price Per Serving (1)**

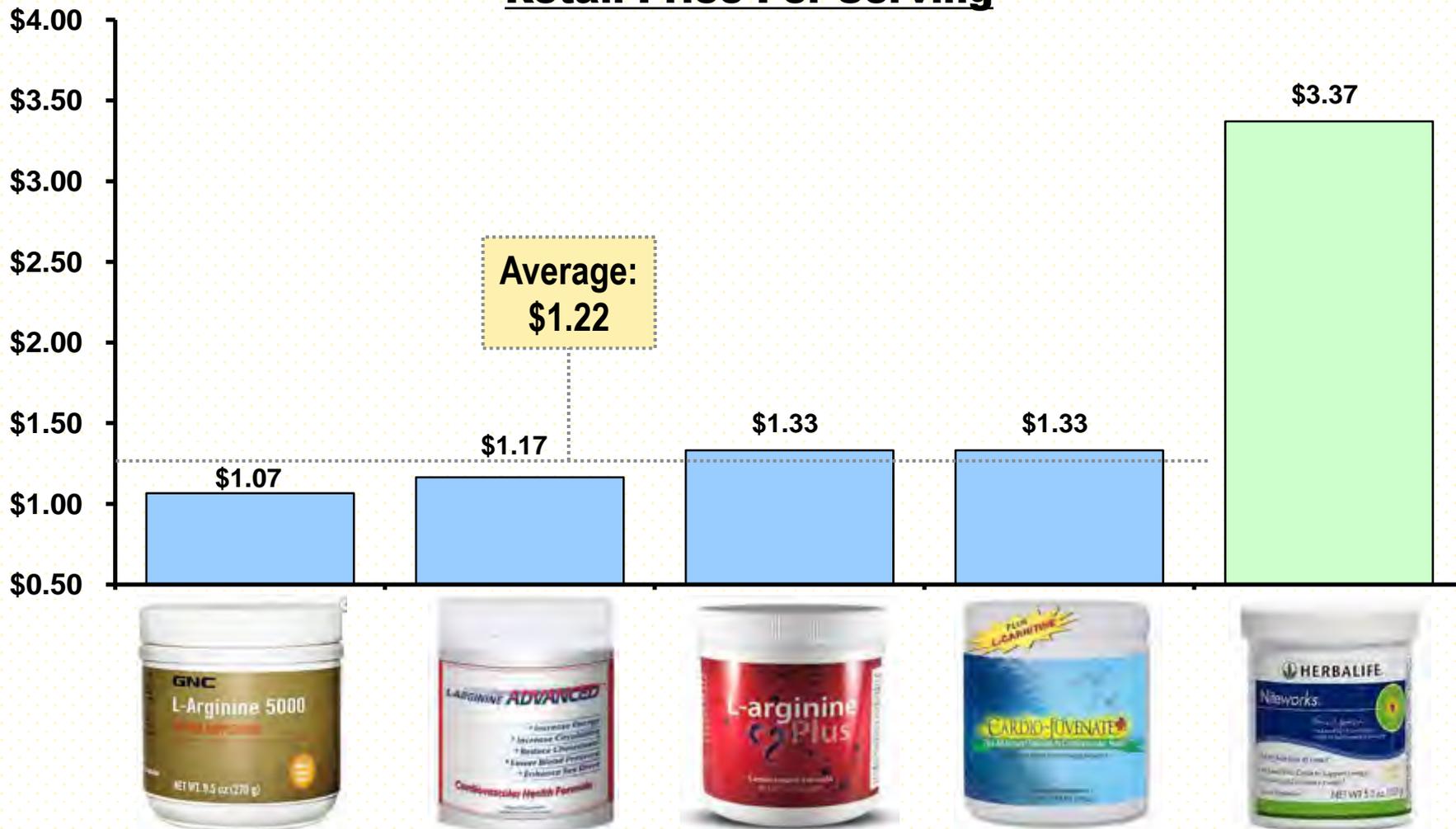


Exhibit C

(1) Retail Price includes Herbalife's 7% surcharge ("packaging and handling charge"). This charge is based on the quantity purchased or if distributors manually pick-up the product.  
HLF Source: Herbalife Product Price List - Los Angeles (3-6-12). GNC source: gnc.com (11-24-12). L-Arginine Plus source: l-arginine.com (11-24-12). Cardio-Juvenate source: erasedisease.com (11-24-12).  
L-Arginine Advanced source: advancedhealthsupplements.com (11-24-12).

# **How Can Herbalife Justify Such a Meaningful Retail Price Premium for its Products?**

---

**Is it because Herbalife has proprietary products for which there is limited competition?**

# No, Herbalife's Products are Commodities

	% of Volume <sup>(1)</sup>	Herbalife Product	Comparable Products				
Nutrition Powder	32%	 Formula 1	 Lean Shake	 Slim-Fast	 Ensure	 Genisoy Protein Shake	 Naturade Total Soy
Herbal Tea	12%	 Herbal Tea	 Yogi Herbal Tea	 Lipton Herbal Tea	 Tazo Herbal Tea	 Twinings Herbal Tea	 Celestial Herbal Tea
Protein Powder	7%	 Protein Powder	 Muscle Milk	 GNC AMP	 EAS Whey Protein	 MET-RX Natural Whey	 Optimum Nutrition
L'Arginine Powder	4%	 Niteworks	 GNC L'Arginine 5000	 L'Arginine Plus	 AHS L'Arginine Advanced	 Cardio Juvenate	 now L'Arginine Powder

(1) Source: HLF 2012 Investor Day presentation.

# How Can Herbalife Justify Such a Meaningful Retail Price Premium for its Products?

---

**Is it because Herbalife has proprietary products for which there is limited competition?**



**Is it because Herbalife spends so much on advertising its products?**

# HLF Compares its Brand Recognition to that of Disney and Nike

Source: Herbalife Investor Presentation (2010)

STRATEGIC OVERVIEW

## Herbalife Decade: Brand & Image Vision



Everyone in the world knows Herbalife

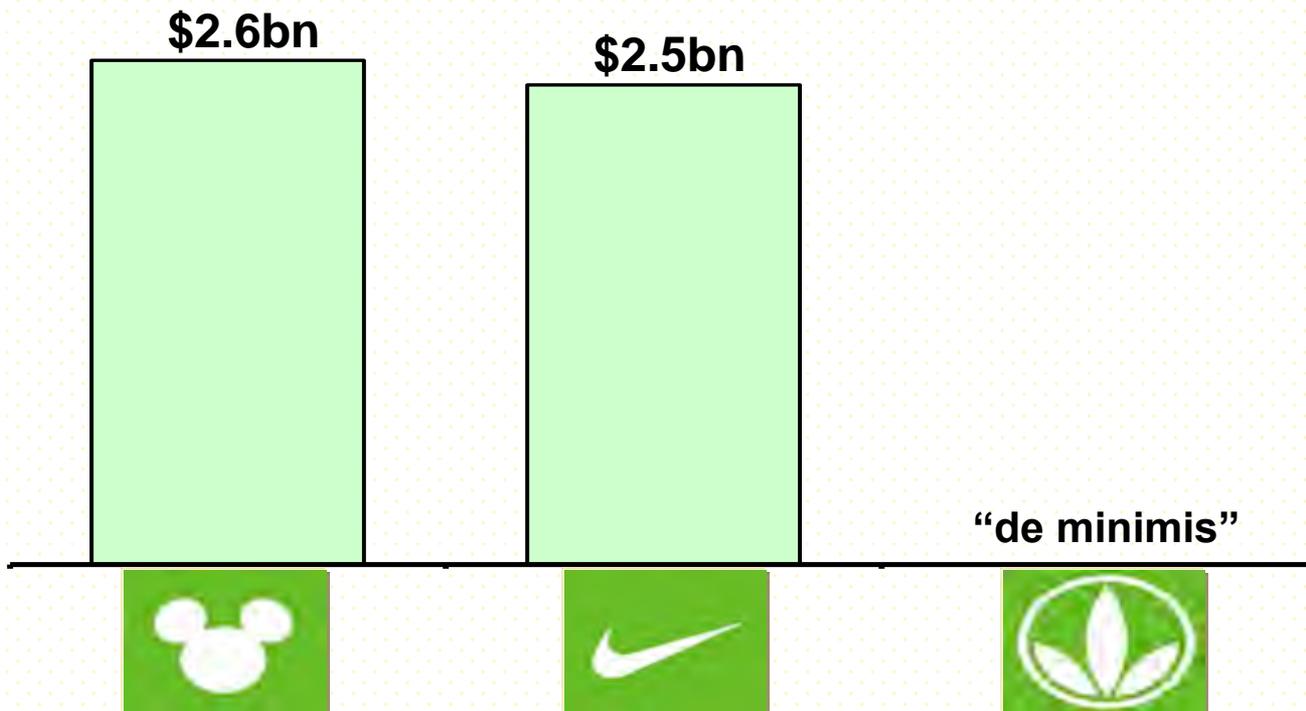


129

Exhibit C

# Yet, Herbalife Spends “de minimis” Dollars on Advertising

## Annual Advertising Spend <sup>(1)</sup>



***“The Company’s advertising costs are de minimis”*** <sup>(2)</sup>

**– HLF Letter to the SEC, November 2004**

Exhibit C

(1) Represents Disney and Nike three-year average advertising expense.

Nike ad spend represented by demand creation expense, which consists of advertising and promotion expenses, and the amount of endorsement contracts.

(2) “The Company’s advertising costs are de minimis, and therefore these costs are not specifically addressed under ‘Significant Accounting Policies.’” Source: Herbalife Letter to SEC, November 2004. As of HLF’s 2011 10-K, advertising costs remain unaddressed in the Company’s Significant Accounting Policies disclosure.

# Surprisingly for a CPG Company, Herbalife Advertises and Promotes its Corporate Name and Logo, But Not its Products



***“We generally do not target promotions or advertising at any particular product or brand. Our significant promotions are generally aimed at generating increased levels of recruiting and retention of distributors.”***

Exhibit C – Herbalife Annual Report 2005

*“I think more people are seeing people walk around with Herbalife on their chest, and approaching them. And people are now asking us, and that is what I talked about the paradigm shift, what is Herbalife? And that is a new paradigm for our distributors, where someone walks up to them and says, you know, what is Herbalife? Who are you? We have become in a way a cool company like almost over night, which is very gratifying and confidence-building for our distributors.*

*When they see that name Herbalife everywhere all the time, they get excited about that, and they get less – what should I say – less cautious about saying who we are, what we are.”*

**– Michael Johnson, Herbalife CEO, Q2’07 Earnings Call (8-7-07)**

# How Can Herbalife Justify Such a Meaningful Retail Price Premium for its Products?

---

**Is it because Herbalife has proprietary products for which there is limited competition?**



**Is it because Herbalife spends so much on advertising its products?**



**Is it because Herbalife spends so much money researching & developing its products?**

# Herbalife Claims to Have the Highest R&D Standards in the Industry

---

Source: Herbalife Website (2012)



The screenshot shows the top portion of the Herbalife website. At the top left is the Herbalife logo, a stylized green leaf inside a white circle, followed by the word "HERBALIFE" in large, white, sans-serif capital letters on a green background. To the right of the logo are language options: "English" and "Español" with a vertical bar between them, and a dropdown menu currently set to "United States - English". Below these are links for "Distributor Login" and "Find a Distributor". Below the green header is a white section titled "OUR SCIENCE" in green, bold, sans-serif capital letters. The text below the title reads: "Everything we do starts with great products; and all our products start with proven science. Herbalife is dedicated to developing innovative, effective products that comply with the highest research, development and manufacturing standards in the industry."

# Herbalife Claims to Have the Highest R&D Standards in the Industry (Cont'd)

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Video Clip:

<http://www.pscmhflibrary.com/herbalife-ceo-on-rd/>

*“We’re doing research around the clock in this company”*  
– Michael Johnson, CEO, CNBC’s *Mad Money*, February 22, 2012

## But Herbalife's R&D Spending is "Not Material"

---

► **From the Herbalife 2011 Annual Report:**

- *"For all periods presented, research and development costs were expensed as incurred and were not material"*

# Herbalife Claims it has “Increased R&D Expenditures Dramatically” Since 2003...

Source: Herbalife Website (2012)



[English](#) | [Español](#)

United States - English

[Distributor Login](#) | [Find a Distributor](#)

## OUR SCIENCE

Everything we do starts with great products; and all our products start with proven science. Herbalife is dedicated to developing innovative, effective products that comply with the highest research, development and manufacturing standards in the industry.

## RESEARCH & DEVELOPMENT

Herbalife is committed to setting the standard by which all nutrition companies are measured. We are advancing the science of nutrition through **scientific research** conducted around the world. **Since 2003, we've increased our research and development expenditures dramatically to advance the product-development process.**

# It's Not Hard to “Dramatically” Increase R&D Expenditures When they are Less than \$2mm/yr

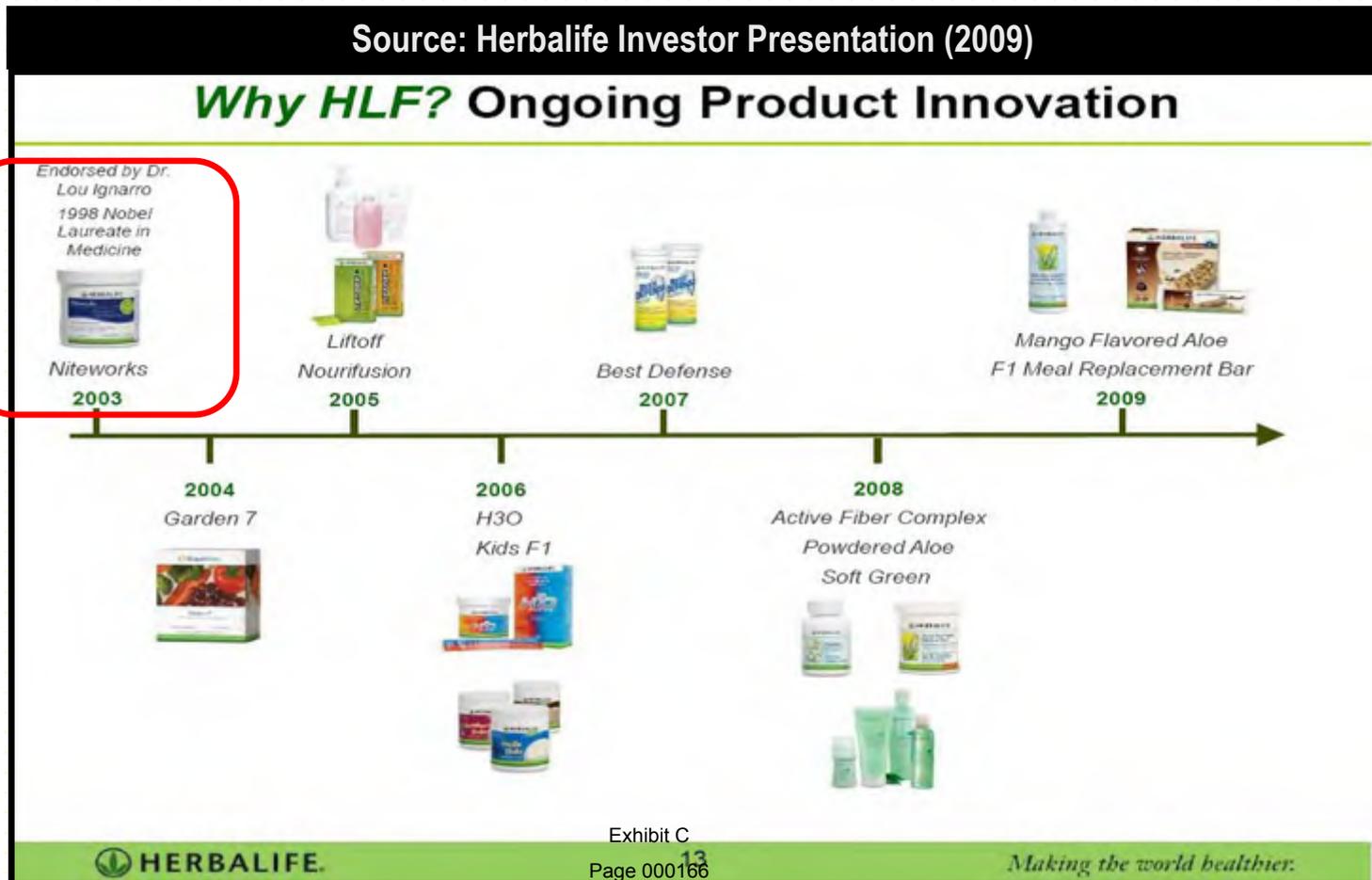
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## ► From the Herbalife 2004 Prospectus:

- ❑ *“The Company’s research and development is primarily performed by outside consultants and is less than \$2 million per year”  
[or less than 0.2% of GAAP Net Sales in 2004]*

# Herbalife Claims to be a Product Innovator

Herbalife highlights Niteworks, introduced in 2003, as one of its most significant product innovations



# Herbalife Claims Niteworks was the First Nitric Oxide Product in the Marketplace



Endorsed by Dr.  
Lou Ignarro  
1998 Nobel  
Laureate in  
Medicine



Niteworks

*“Dr. Ignarro has basically started the world on the track of nitric oxide, has made the world understand that a healthy blood flow is a healthy body. And we are the first company to come out with a nitric oxide product in the marketplace, it was laughed at initially and now it is copied.”*

– Michael Johnson, Herbalife CEO, 11-28-07

***Dr. Ignarro is cited more than 100 times in Herbalife’s SEC filings since the IPO in 2004***

# But Herbalife Was Not the First Company to Develop and Market a Nitric Oxide Product

---

**Unither Pharma introduced a nitric oxide product in 2000**

*“In December 2000, we expanded our cardiovascular focus when we acquired the assets and certain liabilities of Cooke Pharma, Inc., the exclusive maker of the HeartBar® line of arginine-enriched products, which operated as Unither Pharma, Inc. (Unither Pharma), our wholly-owned subsidiary. Arginine is required by the body to produce nitric oxide. Unither Pharma is the exclusive licensee of patents entitling it to claim that arginine is critical for maintaining vascular function and certain other natural functions.”*

**– United Therapeutics Corporation 2007 10-K**

# Niteworks Is Sold Under License from United Therapeutics, which Holds Patents for the Product

**Niteworks®** Herbalife teamed with Nobel Laureate in Medicine, Dr. Lou Ignarro, to develop this refreshing lemon powder mix that helps you create more life supporting nitric oxide during the night, when nitric oxide levels are naturally lowest.\* Research indicates that L-Arginine and L-Citrulline help produce nitric oxide, which can protect your cardiovascular health and helps blood vessel elasticity.\*

Helps to support healthy blood pressure levels already within a normal range.\* Rich in antioxidants natural vitamin E and vitamin C. According to the FDA, "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer."\*\* Niteworks® also contains Folic Acid to protect the vascular system and Lemon Balm to soothe and relax you.\* So drink to your heart's health each night, and wake up feeling rejuvenated.\*

\*\* Some scientific evidence suggests that consumption of antioxidant vitamins may reduce the risk of certain forms of cancer. However, FDA has determined that this evidence is limited and not conclusive.

\*\*\*\* The Nobel Foundation has no affiliation with Herbalife and does not review, approve or endorse Herbalife® products.

Dr. Lou Ignarro is a member of the Scientific and Nutrition Advisory Boards, and receives compensation for his endorsement of Herbalife® products.

**DIRECTIONS: Two scoops (two teaspoons or about 10g) in 8 fl oz of cold water. May also be mixed with sparkling water or juice. Drink at night or before bedtime.**

**30-day money-back guarantee.** This exclusively formulated product is only available through Herbalife Independent Distributors.

This product is sold under license of U.S. patents 5,428,070; 5,891,459; 6,117,872; and 6,646,006.

**NOTICE:** Not recommended for use by children, pregnant or lactating women.

Exhibit C

# Herbalife Pays United Therapeutics a Royalty to Market Niteworks

---

Source: United Therapeutics Press Release (2006)

## UNITED THERAPEUTICS AND HERBALIFE INTERNATIONAL SETTLE ALL PATENT LITIGATION

Silver Spring, MD, November 13, 2006: United Therapeutics Corporation (NASDAQ: UTHR) announced today that its wholly owned subsidiary Unither Pharma, Inc. has settled all patent litigation with Herbalife International, Inc. ("Herbalife"). The patent litigation, which began in August 2003, related to products sold by Herbalife containing the amino acid L-arginine and Herbalife's promotion of such products to support cardiovascular and vascular function.

United Therapeutics is the exclusive licensee of five patents licensed to it by Stanford University and New York Medical College with claims relating to L-arginine and vascular function, in particular L-arginine's role in the cardiovascular system's nitric oxide pathway.

Under the terms of the settlement arrangement, all pending lawsuits will be dismissed with Herbalife, and Herbalife has entered into a royalty-bearing, non-exclusive license under United Therapeutics' patents. Financial terms of the settlement were not disclosed.

# Herbalife Has Only One U.S. Patent<sup>(1)</sup>

The companies below have received approximately the following number of U.S. patents in the healthcare / nutrition area

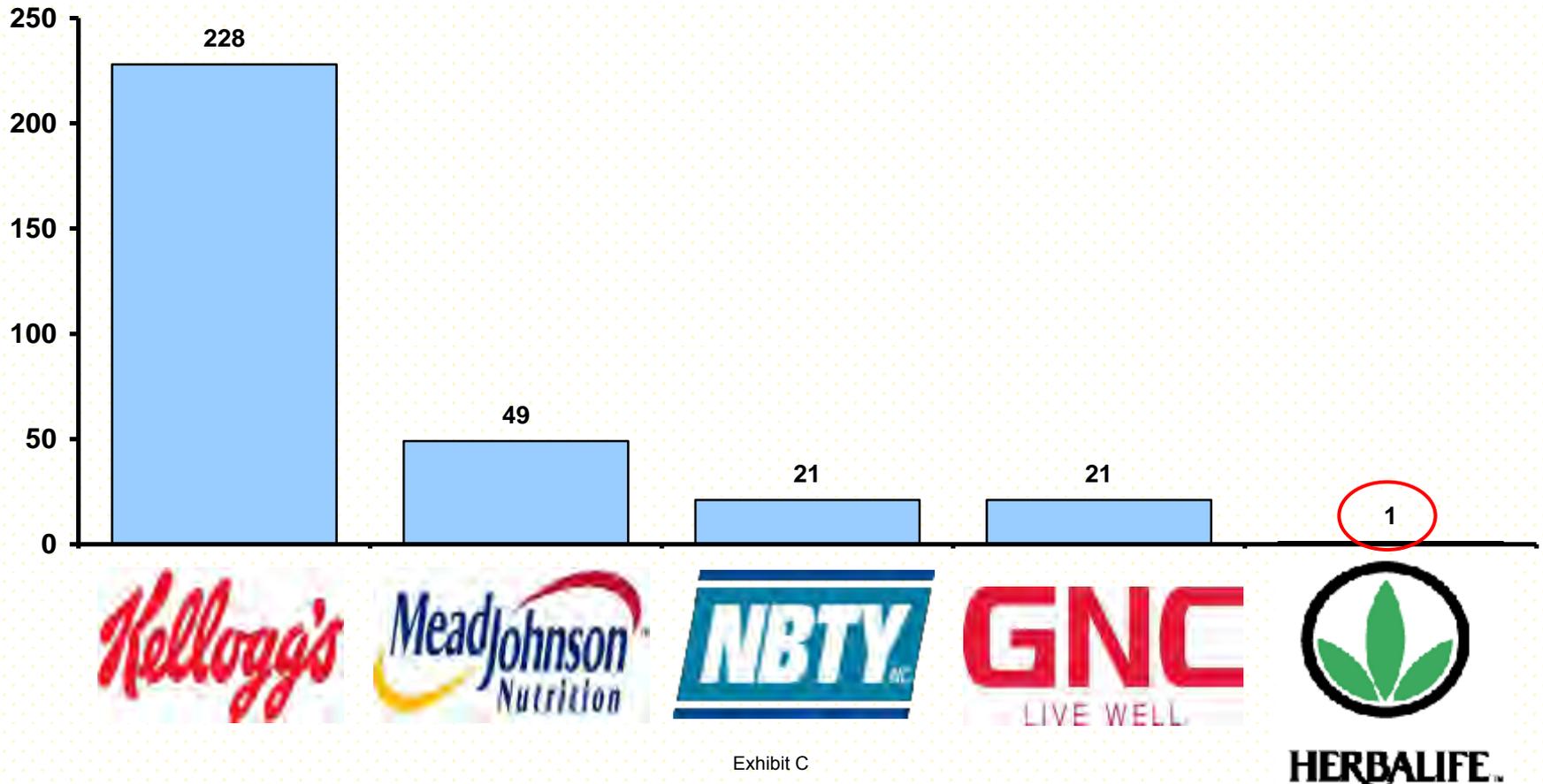


Exhibit C

(1) Herbalife only has one utility patent assigned to it entitled "Herbal Supplement to Support Weight Loss" (U.S. Patent No. 7,329,419). In addition, Herbalife has one design patent for an oral supplement (which appears to be an oral tablet with the Herbalife symbol on it). Source: Sullivan & Cromwell.

# Herbalife Claims its UCLA-led Scientific Research Drives “Meaningful Product Differentiation”...

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## From the 2011 Herbalife Annual Report:

*“We believe our focus on nutrition and botanical science and our efforts at combining our internal research and development efforts with the scientific expertise of our Nutrition Advisory Board and the educational skills of the Nutrition Advisory Board and the resources of the UCLA Lab should result in meaningful product differentiation and give our distributors and consumers increased confidence in our products.”*

# ... and Frequently Cites its “Strong Affiliation” with UCLA

---

*“At UCLA, we have a strong affiliation, where we’ve established the Mark Hughes Cellular and Molecular Nutrition Laboratory at the Center for Human Nutrition.”*

**– Michael Johnson, Herbalife CEO, 11/7/07**

# ... and Frequently Cites its “Strong Affiliation” with UCLA (Cont’d)

Source: Herbalife Independent Distributor Presentation (2007)

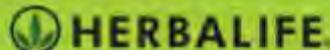


## Herbalife's Commitment to Science and Innovation

### ***The Mark Hughes Cellular and Molecular Nutrition Laboratory***

Herbalife is dedicated to fostering the exploration of nutritional frontiers as a way to help humanity achieve its potential for optimal wellness. In 2003, Herbalife helped establish the Mark Hughes Cellular and Molecular Nutrition Laboratory at the Center for Human Nutrition at UCLA\* as a part of its mission to advance nutritional science through the most progressive research and development technologies available.

*\*The University of California does not endorse specific products or services as a matter of policy*



*Changing people's lives*

Exhibit C

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## ... and Frequently Cites its “Strong Affiliation” with UCLA (Cont’d)

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*“Our product development stems out of our own research and development labs. It comes from UCLA where we have the Mark Hughes Cellular Lab there, University of Mississippi where we have a botanical research lab in the Thad Cochran Center down there. We have doctors placed and scientists placed throughout the world, nutrition experts.”*

– Michael Johnson, Herbalife CEO, 9/3/08

Source: Herbalife at Goldman Sachs Global Retailing Conference (9-3-08).

**Herbalife has cited its UCLA affiliation 440 times in SEC filings since its IPO in 2004**

# Yet, Herbalife has Donated Only \$1.5mm to the UCLA Research Lab

---

## From the Herbalife 2011 Annual Report:

*“We have also made contributions to the UCLA Lab. We have invested in this lab since 2002 with total donations of approximately **\$1.5 million** which includes donations of lab equipment and software. UCLA agreed that the donations would be used for further research and education in the fields of weight management and botanical dietary supplements. In addition, we have made donations from time to time to UCLA to fund research and educational programs.”*

# And, Only a Fraction of HLF's Donations were Earmarked for Clinical Studies

---

## From an HLF Letter to the SEC, December 2004

*Product Development, page 78*

2. *We note your response to comment 15 and the associated revisions to the prospectus. With respect to your disclosure of \$254,000 in fixed costs for the clinical studies at UCLA, please explain why such amount was given as \$420,000 in your response 78 of your previous letter of November 9, 2004.*

In response to the Staff's comment, we note that while an aggregate contribution of \$420,000 was in fact made to UCLA at year end, only \$254,000 of this amount was specifically earmarked for the clinical studies. The remainder of this contribution was an unrestricted donation to UCLA. Therefore, our revised disclosure was intended to more accurately quantify the fixed costs related to the clinicals, notwithstanding our response 78 in our previous letter of November 9, 2004.

# **How Can Herbalife Justify Such a Meaningful Retail Price Premium for its Products?**

---

**Is it because Herbalife has proprietary products for which there is limited competition?**



**Is it because Herbalife spends so much on advertising its products?**



**Is it because Herbalife spends so much money researching & developing their products?**



**Why does Herbalife so heavily promote the R&D and science behind its products?**

# To Inspire Confidence and Create an Aura of Legitimacy

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*“Confidence of our distributors is paramount. It is absolutely the number one thing... We are going through a whole process of making sure that every single thing that we do inside this company has deeper and further substantiation for the distributors, for the web, for anybody in the science industry, anybody in the health community, to make sure that they understand what this company is all about and what we’re doing.*

*This is a company that’s out there at the University of Mississippi, University of Bonn, the University of California at Los Angeles, UCLA. We’re involved in research, development of products, we have our own research facility now in our offices in Southern California. We have doctors dedicated – this nutrition advisory board that’s unlike any other company in our field. We meet with experts on a global basis to review, to study, to understand, to build confidence and substantiation in our products on a global basis.”*

**– Michael Johnson, Herbalife CEO, 12/16/08**

**Herbalife has paid its Nobel Laureate spokesman, Dr. Louis Ignarro and his affiliated consulting firm more than \$15 million to help Herbalife promote its business opportunity to its distributors**

# Herbalife is Not a Product Company

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## HLF View

- Herbalife products are **truly extraordinary**
- Herbalife products are offered at a **fair price**
- “Everybody knows Herbalife”
- “We’re doing research around the clock in this company”
- Renowned scientists are employed to differentiate HLF product offering

■ **It’s all about the products**

## Reality

- Herbalife products are **commodities**
- Herbalife products are offered at a **massively inflated price**
- Herbalife’s advertising expenditures are **de minimis**
- Herbalife’s R&D expenditures are **not material**
- HLF pays PhD’s to lend credibility to HLF’s business opportunity

■ **It’s all about the business opportunity**

Exhibit C

**How does Herbalife sell so much of its unadvertised, commodity products at an inflated price?**

**Herbalife bundles its products with a business opportunity**

Source: Herbalife Earnings Call (Q1'10)

*“What we’re doing at Herbalife, is we’re building the best business opportunity on the face of the earth”*

– Michael Johnson, CEO

**Herbalife:  
The Business Opportunity**

# **What is the Herbalife business opportunity?**

# **An Opportunity To Be Your Own Boss**

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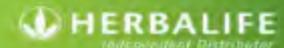
Source: Herbalife Independent Distributor Presentation (2009)

## **Herbalife is a fantastic Business Opportunity!**

- **Start straight away** - part time, full time – flexible to fit with your life
- **Minimal start up costs**
- **No previous experience** required
- **Be your own boss** – take charge of your life
- **Anyone can do it!**

Exhibit C

Page 000186



# **An Opportunity To Achieve Financial Freedom**

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Source: Herbalife Independent Distributor Presentation (2010)

**What are you looking for?**

**Work From Home**

**Extra Income**

**Own Business**

**Financial Freedom**

**More Spare Time**

**Personal Development**

**Helping Others**

**Meeting New People**

**Retirement / Pension**

**Leave a Legacy**

 **HERBALIFE**

Exhibit C

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# An Opportunity To Create a Growing Annuity

Source: Herbalife Independent Distributor Presentation (2011)

## Development of normal income



## Income with Herbalife

After build-up phase you continue to receive income even when you don't work yourself



*Making the world healthier.*

# **An Opportunity To Improve Your Lifestyle**

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Video Clip:

<http://www.pscmhflibrary.com/profile-of-an-herbalife-chairmans-club-member/>

*“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”*

**– Doran Andry, Chairman’s Club Member**

**How could a distributor of nutrition and weight-management products who is working from home possibly achieve this degree of wealth and lifestyle?**

# (Here's a Hint from an Herbalife Distributor Marketing Presentation)

Source: Herbalife Independent Distributor Presentation (2006)

## Growing and Sustaining Royalties

<b>You</b>						<b>Personal Sales = \$2500</b>	
<b>1<sup>st</sup></b>						<b>5 supervisors</b>	
<b>2<sup>nd</sup></b>							<b>25 supervisors</b>
<b>3<sup>rd</sup></b>						<b>125 supervisors</b>	

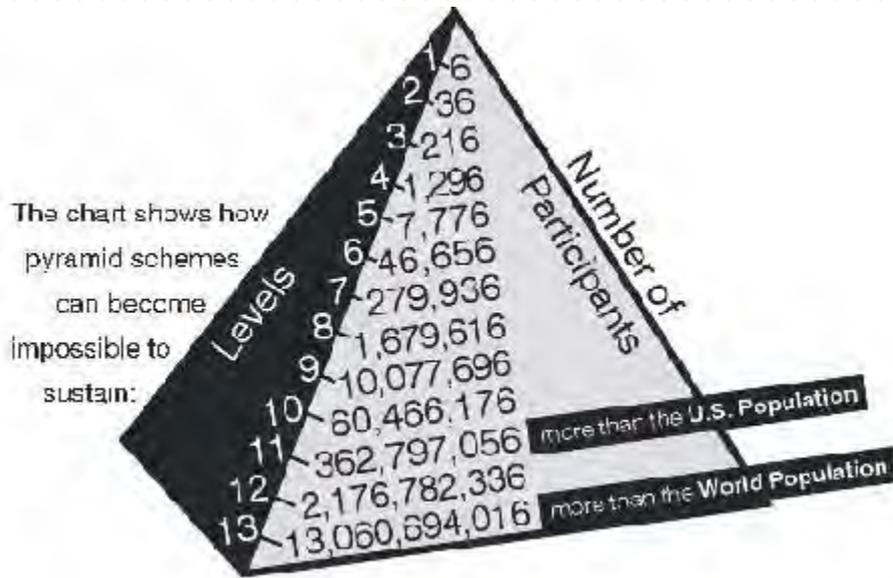
**155 supervisors total**

Each has 25 clients = TOT. \$390,000 in Sales    Royalties 5%    Production Bonus 6%  
**\$1250 retail + \$19,500 R.O. + \$23,400 P.B. = \$44,150/month**



Exhibit C

*Changing people's lives*



# What is a Pyramid Scheme?

Source: SEC.gov.

# What is a Pyramid Scheme?

---

**In 2002, Dr. Peter J. Vander Nat, a senior economist at the FTC, defined a pyramid scheme:**

The FTC settlement orders reached in *Equinox*, *JewelWay*, and *World Class Network* may be viewed as a certain refinement of *Webster v. Omnitrition* (1996). The FTC settlements reflect the following position: If an organization sells goods or services to the public and the participants in the organization obtain monetary benefits from (1) recruiting new members and (2) selling the organization's goods and services to consumers, the organization is deemed a pyramid scheme if the participants obtain their monetary benefits primarily from recruitment rather than the sale of goods and services to consumers (see order provisions and language in *FTC v. World Class Network Inc.* 1997; *FTC v. JewelWay International Inc.* 1997; *FTC v. Equinox International Inc.* 1999).

Vander Nat, Peter J and Keep, William W.: (2002). Marketing Fraud: An approach for differentiating Multi-level Marketing from Pyramid schemes. *Journal of Public Policy and Marketing*. Vol 21-1, 139-151.

Exhibit C

# Herbalife Is Well Aware of the Law

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FINAL TRANSCRIPT

Sep. 03. 2008 / 9:30AM, HLF - Herbalife Ltd. at Goldman Sachs Global Retailing Conference

*Rich Goudis - CFO - Herbalife Ltd.*

Yes, 25% of our revenue is associated with bringing in new people into the business. We're very public about that and the way to look at that is in our public filings. On a quarterly basis look at the number of new supervisors coming into the business, which we use as a key statistic and we report upon. Assume that somewhere between \$2,500 net sales to \$3,000 is the value of that new supervisor coming into the business. There's very strong FTC rules that we measure ourselves against to make sure that at least the FTC rule says less than 50% of your business has to be from recruiting. So that's a real benchmark.

# Why are Pyramid Schemes Illegal?

---

## A.

Pyramid schemes are said to be inherently fraudulent because they must eventually collapse. See, e.g., *S.E.C. v. International Loan Network, Inc.*, 968 F.2d 1304, 1309 (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.” *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).

Source: Webster v. Omnitrition, 79 F.3d 776, 781 (9<sup>th</sup> Cir. 1996).

**In a pyramid scheme, the money at the top is made from the losses of people at the bottom of the pyramid**

## **In the next section, we will demonstrate two facts:**

- 1.** Participants in the Herbalife scheme, the distributors, “obtain their monetary benefits primarily from recruitment rather than the sale of goods and services to consumers.”
- 2.** Herbalife inflates the Suggested Retail Price (“SRP”) of its products and overstates “Retail Sales” in its public filings to conceal the fact that Recruiting Rewards earned by distributors are substantially greater than the Retail Profit they generate

**And we will demonstrate that:**

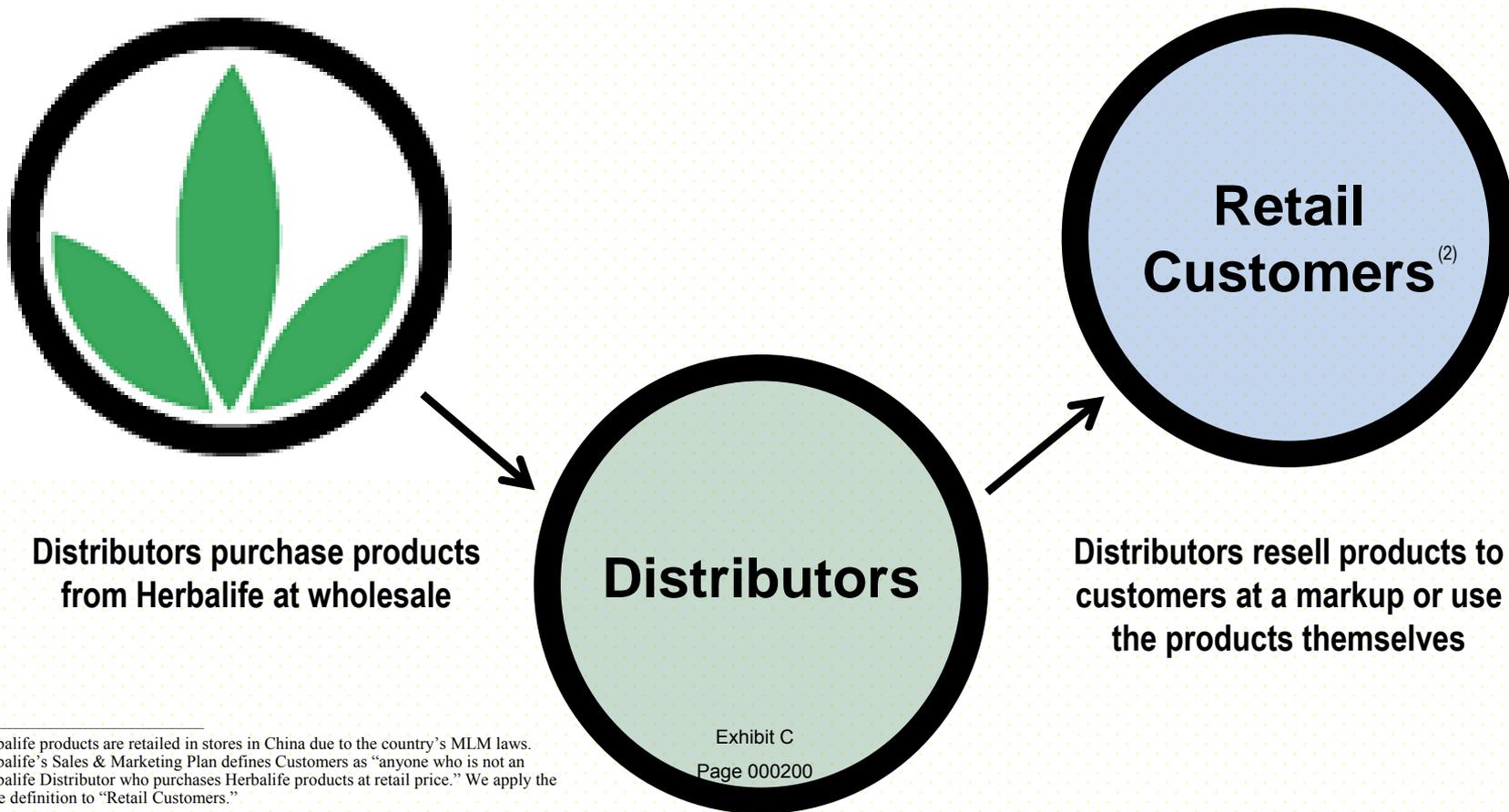
**Herbalife is a Pyramid Scheme**



# **How does Herbalife's business work?**

# Herbalife Is a Direct Seller: Its Products Are Not Sold in Retail Stores<sup>(1)</sup>

Distributors purchase products from Herbalife at what HLF deems to be “wholesale” prices and consume the products themselves (“Internal Consumption”) or resell them at retail prices thereby capturing the markup (“Retail Profit”)



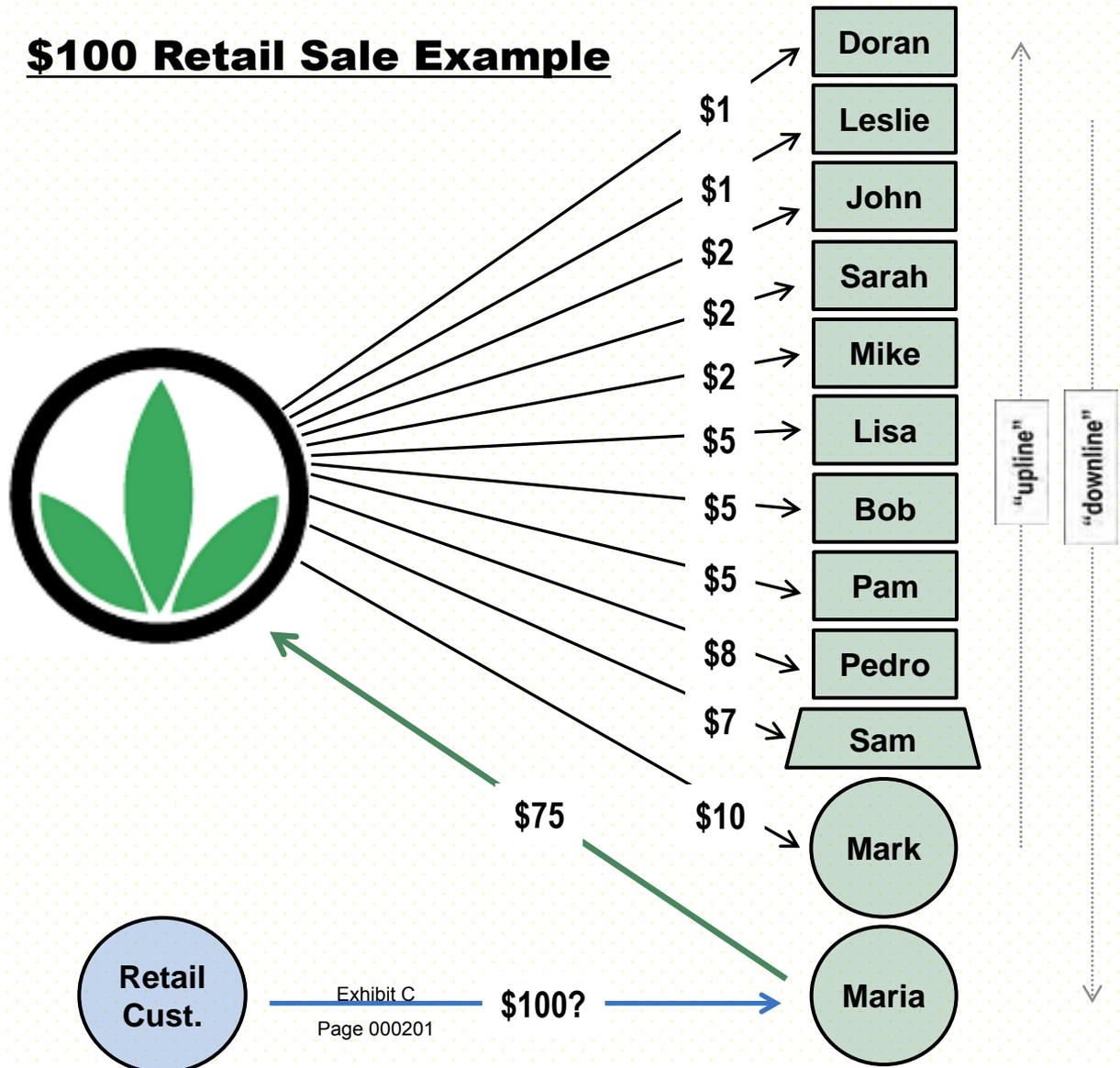
(1) Herbalife products are retailed in stores in China due to the country’s MLM laws.  
(2) Herbalife’s Sales & Marketing Plan defines Customers as “anyone who is not an Herbalife Distributor who purchases Herbalife products at retail price.” We apply the same definition to “Retail Customers.”

# Herbalife is a Multi-Level Marketer (“MLM”)

This means when Doran recruits Leslie who recruits John who recruits Sarah who recruits Mike who recruits Lisa who recruits Bob who recruits Pedro who recruits Sam who recruits Mark who recruits Maria who buys \$75 of product from Herbalife:

Multiple levels of people above Maria receive commissions from Herbalife

## \$100 Retail Sale Example



# How To Become An Herbalife Distributor

---

## ▶ Distributors must buy their way in

- *All independent Herbalife distributors must purchase an International Business Pack (“IBP”) to enroll*
- *Cost: \$55 to \$91*



## ▶ Distributors must sign a Distributor Agreement

- *Herbalife’s Distributor Agreement has 124 pages, 48,000 words and 215 rules*
- *Herbalife’s non-compete restricts senior distributors from soliciting alternative multi-level marketing opportunities (e.g., senior distributors can work part-time at GNC but not Avon)*

# Distributors Have Two Ways to Earn

---



**Retail Profit**

*Profit derived from sales to Retail Customers*

*(paid by Retail Customers)*

**Recruiting Rewards**

*Rewards derived from the purchases of other distributors*

*(paid by the company)*

# Distributors Have Two Ways to Earn (Example)

	Amt.	Pct.
SRP (1)	\$100	100%
Purchase price	(75)	
<b>Retail Profit</b>	<b>\$25</b>	<b>25%</b>
<b>Recruiting Rewards</b>	<b>\$48</b>	<b>48%</b>

(1) Suggested Retail Price ("SRP").

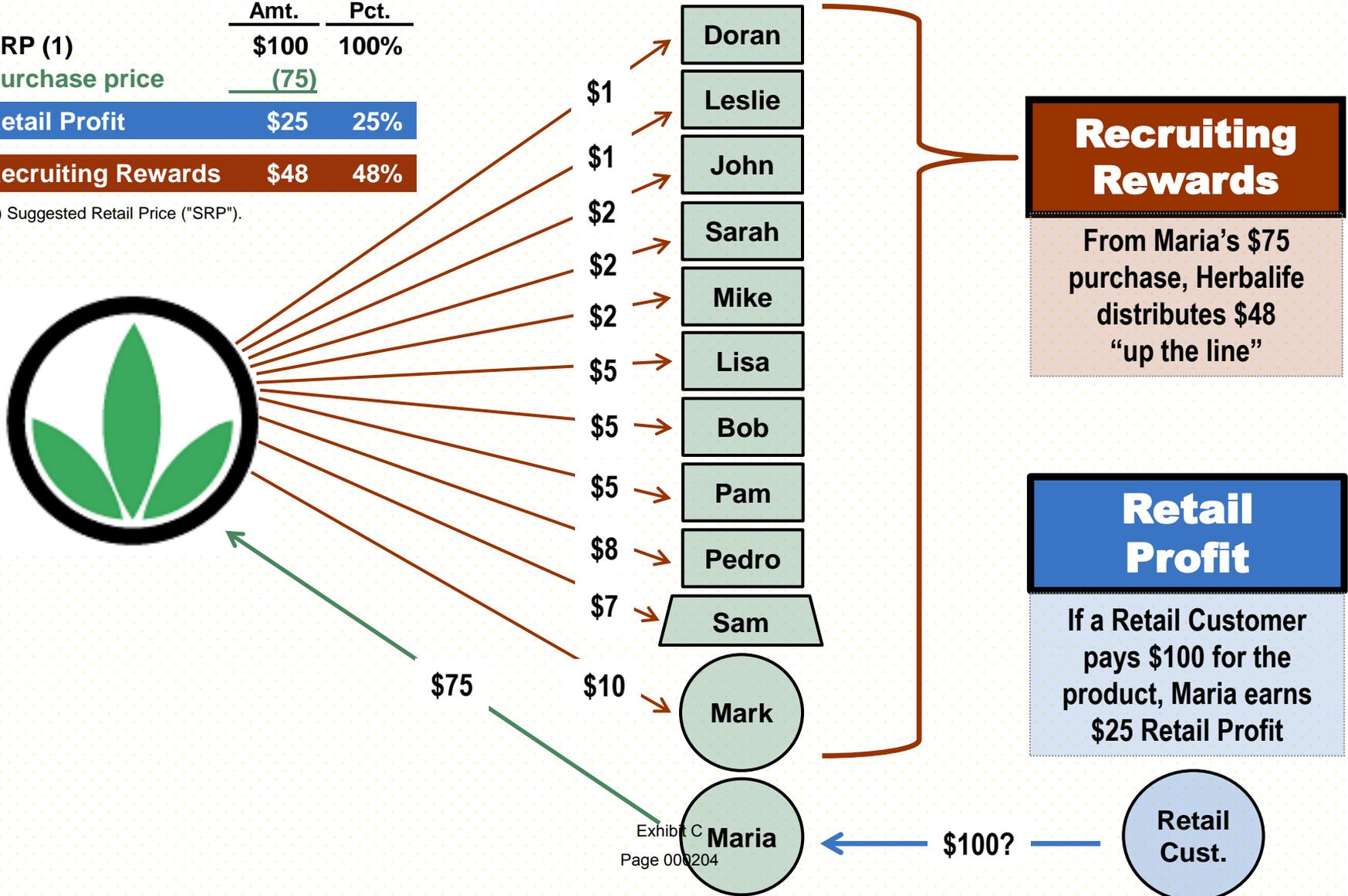


Exhibit C  
Page 000204

# Two Primary Types of Distributors

	<b>Non-Sales Leaders ("NSLs")</b>	<b>Sales Leaders ("SLs")</b>
<b>Retail Profit</b>	Purchase product at a 25%, 35%, or 42% discount	Purchase product at a 50% discount
<b>Recruiting Profit</b>	Not eligible to receive Recruiting Rewards <i>(except 35% and 42% NSLs who are eligible for Wholesale Commissions)</i>	Eligible to receive Recruiting Rewards
<b>Minimum Volume Requirement</b> <sup>(1)</sup>	25%: Must purchase IBP  35%: 500 Volume Points (~\$360)  42%: 1,000 Volume Points (~\$650)	50%: 4,000 Volume Points (~\$2,600)

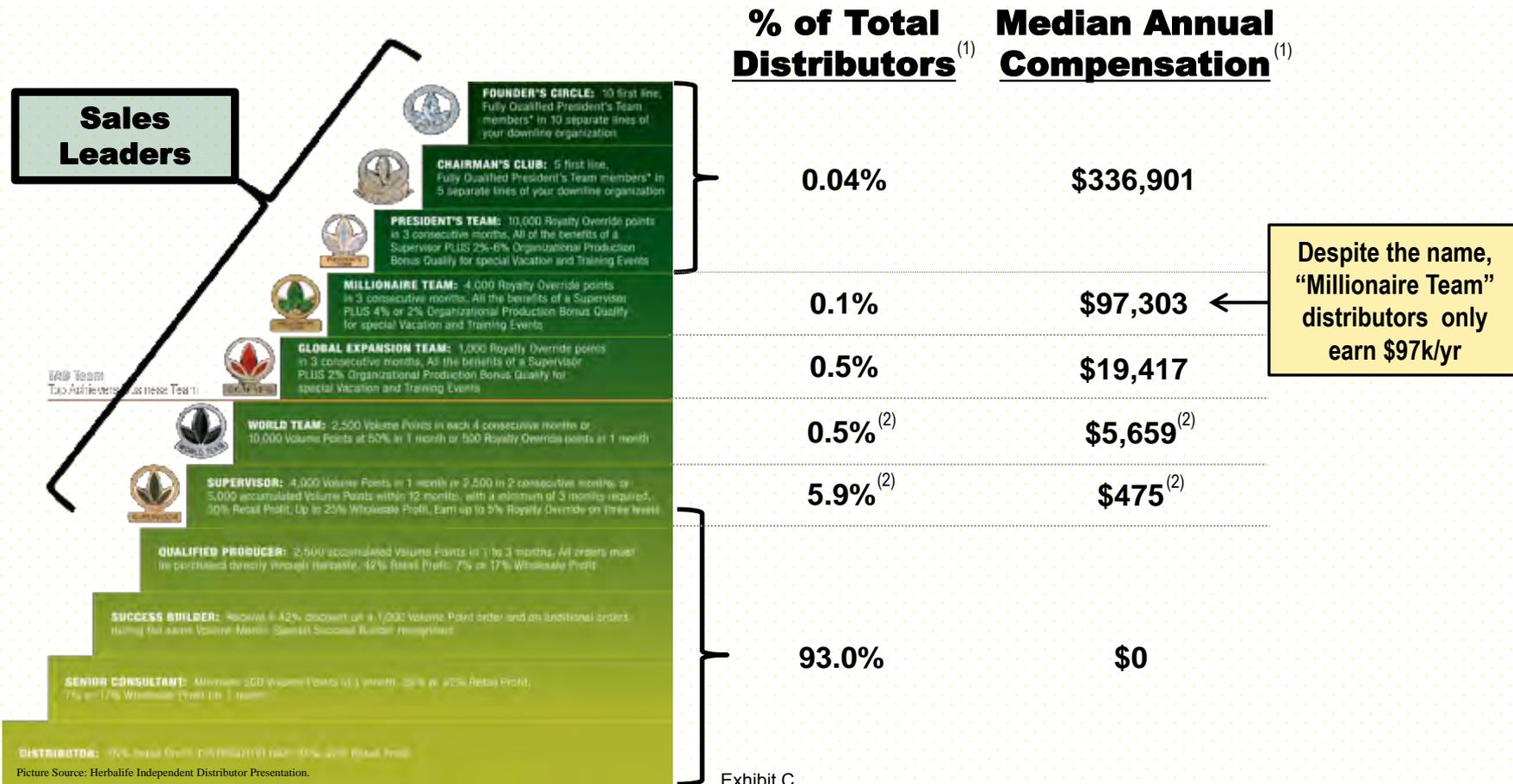
Exhibit C

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(1) Assumes 1 Volume Point = \$1 Retail Sales for simplicity (the actual ratio is a little higher). Cost to achieve the Volume Points includes Herbalife's 7% surcharge (e.g., 500 Volume Points \* 1 VP / RS = \$500 Retail Sales; (1 - 35% + 7%) \* \$500 = \$360).

# Herbalife's Multiple Levels: The Only Way to Make Money is to Get to the Top

A de minimis fraction of Herbalife distributors earn enough to achieve the wealth and lifestyle depicted in distributor recruiting presentations



Despite the name, "Millionaire Team" distributors only earn \$97k/yr

(1) The figures above refer to U.S. distributors. "Compensation" is an Herbalife term and does not include income earned by distributors from Retail Profit or from Wholesale Commissions. "Compensation" is gross, not net of expenses or taxes. Percentages vary from Herbalife's Statement of Gross Compensation because not all distributors are included. Source: Herbalife Statement of Average Gross Compensation of U.S. Supervisors (2011).  
 (2) Only includes "Active" World Team and Supervisors as defined by the Company in its Statement of Gross Compensation of U.S. Supervisors (only 39% of Sales Leaders are "Active").

# The Top 1% of Herbalife Distributors Receive 88% of the Rewards<sup>(1)</sup>

**Median Annual Compensation<sup>(1)</sup>**

**% of Total Distributors<sup>(1)</sup>**

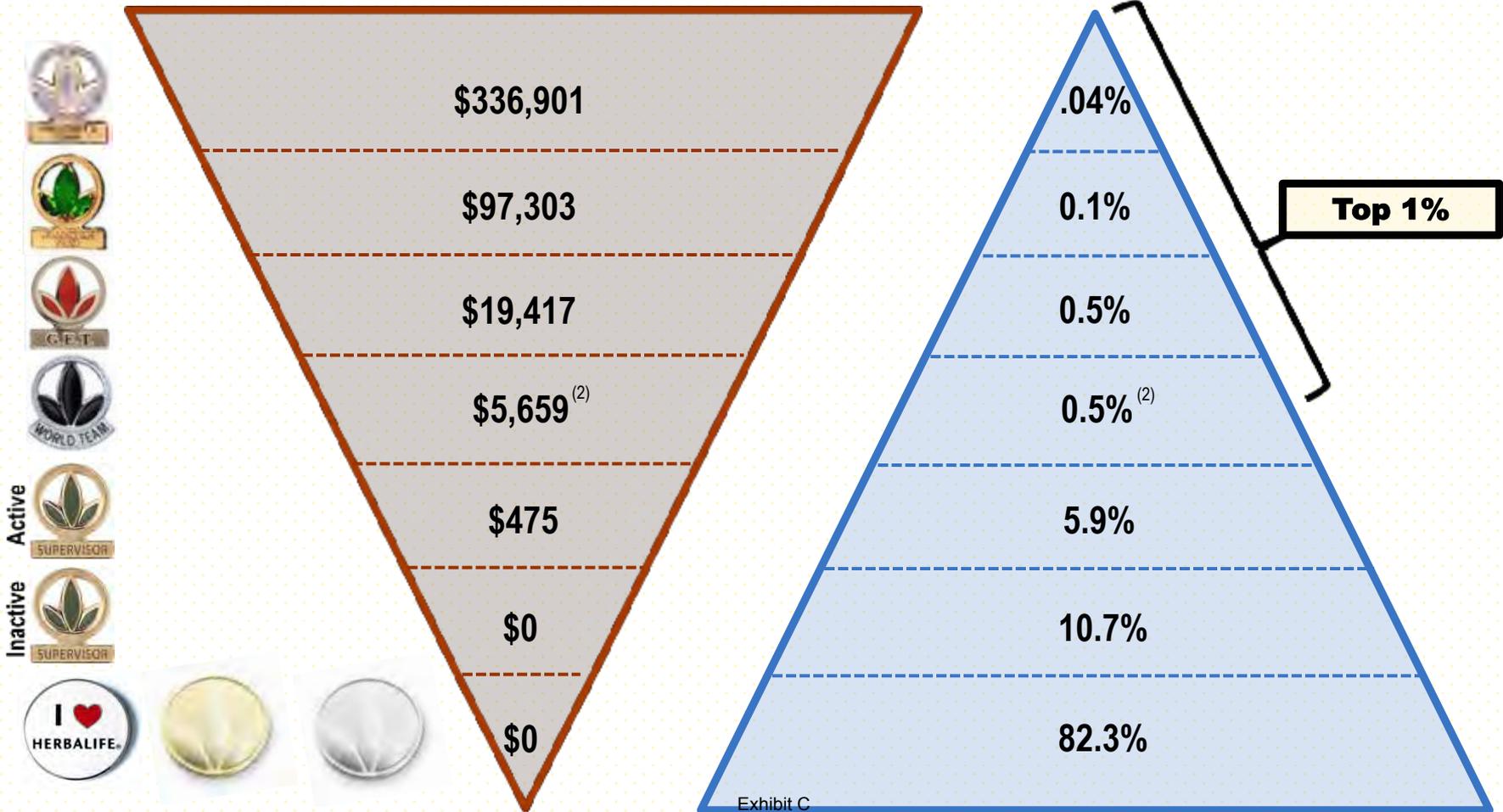
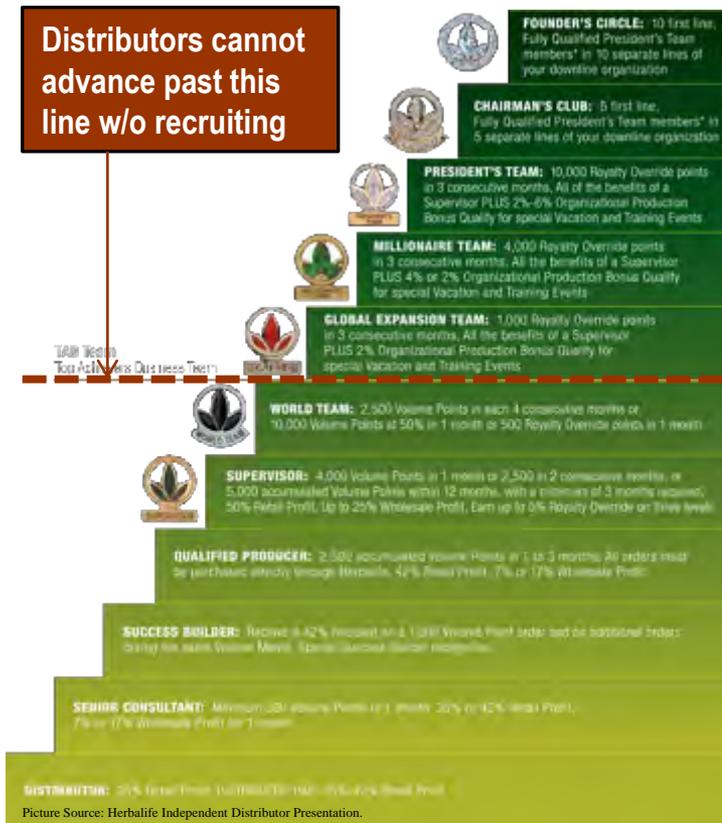


Exhibit C

(1) The figures above refer to U.S. distributors. "Compensation" is an Herbalife term and does not include income earned by distributors from Retail Profit or from Wholesale Commissions. "Compensation" is gross, not net of expenses or taxes. Source: Herbalife Statement of Average Gross Compensation of U.S. Supervisors (2011).  
 (2) Only includes "Active" World Team and Supervisors as defined by the Company in its Statement of Gross Compensation of U.S. Supervisors (only 39% of Sales Leaders are "Active").

# How Distributors Move Up the Chain: Volume Points

In order to advance in the Marketing Plan, distributors must accumulate Volume Points (“VPs”), a form of “currency” created by Herbalife



- One VP is approximately equivalent to \$1 of “Retail Sales”
  - Over time this ratio has increased to greater than 1:1, which is a way for Herbalife to “increase price” to its distributors
- Distributors accumulate Volume Points by purchasing product or by recruiting others who purchase product
- To get to the upper levels of the Herbalife chain, distributors must accumulate a special kind of volume known as Royalty Override Points (“ROPs”)
- Royalty Override Points can be generated only when a Sales Leader recruits other distributors who also become Sales Leaders
- It is impossible for a distributor to get to Active World Team or above without recruiting other Sales Leaders – no matter how much they sell at retail

Exhibit C

# Top Earning Distributors are “Recruiters”

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**Rich Goudis - HERBALIFE LTD - CFO**

No, that's their income. So then you're looking at now our retail sales, because the single biggest opportunity for those supervisors is their 50% off list discount. That's the biggest component of their income. They get a small piece on their royalties, because they really haven't started building a sales organization yet to get rewards down below. Whereas someone up in the very top, they're \$2+ million, they're probably working on very little retail margin, because they're not really retailers.

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**Michael Johnson - HERBALIFE LTD - CEO, Chairman**

They're recruiters.

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**Rich Goudis - HERBALIFE LTD - CFO**

They're building their sales organization, so more of their compensation or income is based on the commission structuring in their multiple level marketing.

Source: Herbalife at Goldman Sachs 14<sup>th</sup> Annual Retailing Conference (9-5-2007).

# Senior Distributors Encourage Other Distributors to Recruit if they Want to Make “Lifestyle Money”

The slide features a yellow header with the text 'Online Business Systems'. Below the header, two lines of text are enclosed in a red dashed box: 'If you want some money today' followed by the word 'RETAIL' in yellow, and 'If you want Lifestyle money' followed by the word 'RECRUIT' in blue. Below this box, the text reads 'Be prepared to Roll your Cash Flow 9 – 12 months straight! – Foundation for life!!!'. Further down, it lists 'Retail 1-2 Starter Program Customers/Week' and 'Recruit 25 – 40 Decision packs per month'.

*“If you want some money today, perfect, put together a retail plan. But if you want lifestyle money, if you want to build that financial independence, you want to lock in that security for life, you need to recruit. And the other thing you need to do to, be prepared to roll that cash flow for straight 9 to 12 months. Because you know what, in that short space of time, by making that commitment, you are going to create a foundation for life. Absolutely. Not just for yourself, but a legacy, a legacy for your family, for your children, and their children’s children.”*

Exhibit C

– Herbalife Independent Distributor

# Senior Distributors Encourage Other Distributors to “Team Build” if they Want a Growing Income Stream

## 4 Income Streams

**Active / Retail - Customers**  
Retail Profit = 25%-50%  
Wholesale Profit = 8%-25%

**Passive / Residual – Team Building**  
Royalties = 5% on 3 Levels  
Bonuses = 2%-7% to Infinity

Income

Income through Team Building

Income through Customers

Time

**HERBALIFE**

Exhibit C

# Senior Distributors Encourage Other Distributors to “Teach to Teach”

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Source: Herbalife Independent Distributor Presentation (2008)

## Teach to Teach

- First step: Teach others what you've learned.
- **Second step:** Teach others to teach others what you've learned.



## Query:

**What company's goal is to recruit as many inexperienced salespeople as possible (on full commission with limited oversight) without regard for the ultimate demand for its products?**

# Top Distributors Earn More Because They Are Eligible To Receive Additional Recruiting Rewards

		Retail Profit	Recruiting Rewards				
		Discount	Wholesale Commission	Royalty Overrides	Production Bonus	Mark Hughes Bonus	Vacations/Promotions
<b>Sales Leaders</b>		50%	8-25%	5% (3x)	7%	>1%	Yes
		50%	8-25%	5% (3x)	6%	<1%	Yes
		50%	8-25%	5% (3x)	4%		Yes
		50%	8-25%	5% (3x)	2%		Yes
		50%	8-25%	5% (3x)			Yes
<b>Non-Sales Leaders</b>		42%	7-17%				
		35%	10%				
		25%					

# Herbalife's Compensation Plan: Two Ways to Earn, Six Different Names

The simplest way to understand the various income streams available to Herbalife distributors is by way of example (next page)

Retail Profit	Discount
Recruiting Rewards	Wholesale Commission
	Royalty Overrides
	Production Bonus
	Mark Hughes Bonus
	Vacations/Promotions

Distributors may earn profits by purchasing the company's products at wholesale prices (which are discounted 25% to 50% from SRP depending on the distributor's level within the company's distributor network) and selling the products to Retail Customers

Distributors receive commissions when other distributors in their Non-Sales Leader organizations purchase product directly from the Company at lower discounts (25%/35%/42%)

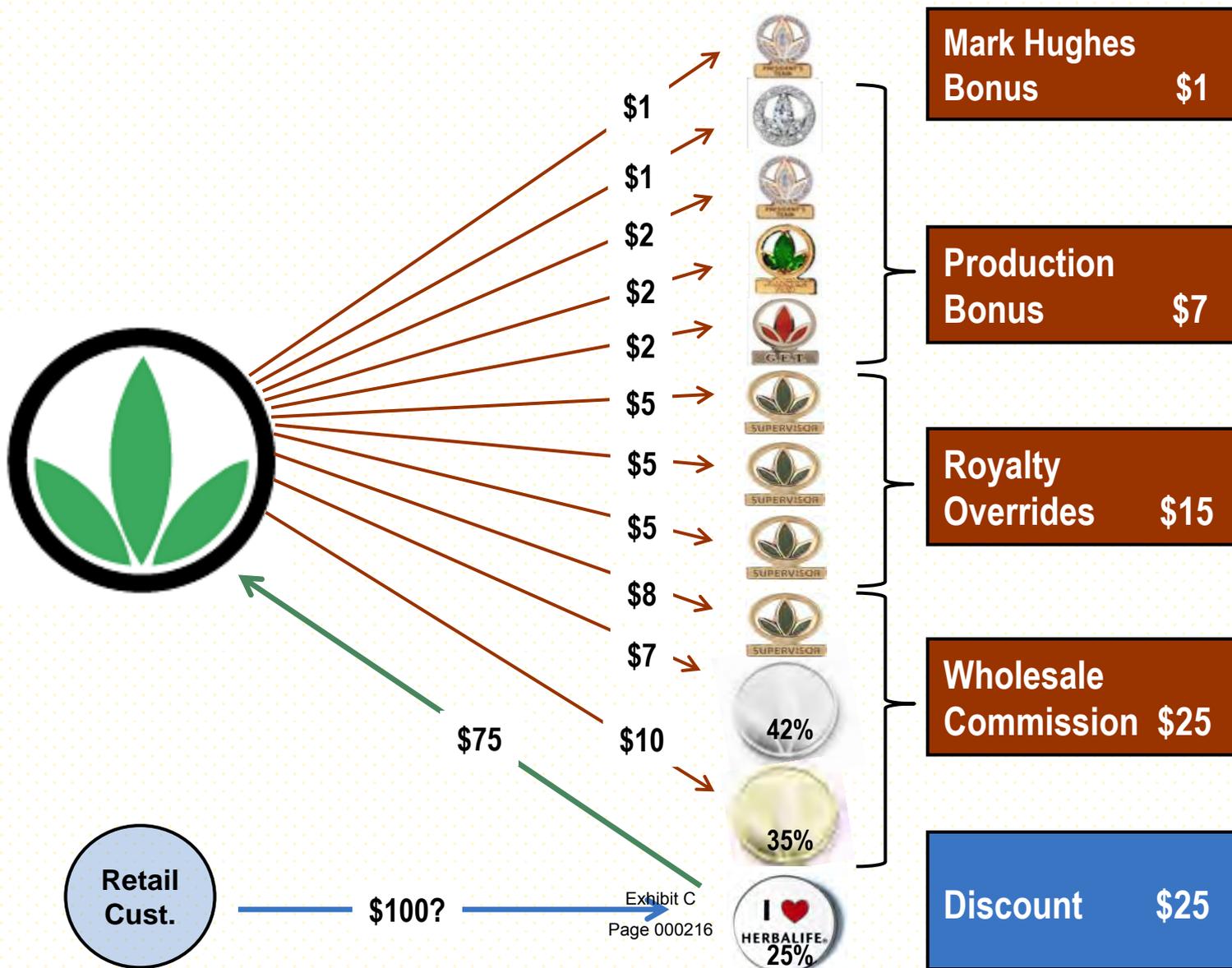
Distributors who sponsor other distributors and establish their own Sales Leader organizations ("downlines") may earn royalties of up to 15% (three active levels, up to 5% each) on the SRP of product purchased by their downline

Senior Sales Leaders may earn Production Bonuses of up to 7% ("infinitely deep" in the chain) on the SRP of product purchased by their downline

A discretionary bonus paid to the most senior Sales Leaders in the aggregate amount of 1% of Retail Sales

Sales Leaders are eligible to qualify for promotions including vacations and other perks

# Herbalife's Compensation Plan: Two Ways to Earn, Six Different Names (Example)



**Query:**

**What is the business purpose or necessity of paying commissions to 11 different upline distributors to make a \$100 Retail Sale of commodity products?**

# Herbalife's Compensation Plan: Two Ways to Earn, Six Different Names (Cont'd)

	<u>Amt.</u>	<u>Pct.</u>
<b>Suggested Retail Price</b>	<b>\$100</b>	<b>100%</b>
<b>Purchase price</b>	<b>(75)</b>	
<b>Retail Profit</b>	<b>\$25</b>	<b>25%</b>
<b>Wholesale Comm.</b>	<b>25</b>	<b>25%</b>
<b>Royalty Overrides</b>	<b>15</b>	<b>15%</b>
<b>Production Bonus</b>	<b>7</b>	<b>7%</b>
<b>Mark Hughes Bonus</b>	<b>1</b>	<b>1%</b>
<b>Recruiting Rewards</b>	<b>\$48</b>	<b>48%</b>
<b>Total Payout</b>	<b>\$73</b>	<b>73%</b>



Source: Herbalife Independent Distributor Presentation (2011)

## Herbalife Compensation Plan

- 50% is the largest discount/profit in the industry
- Paid in 7 different ways!
- WORLDWIDE, Herbalife has created:
  - More people making \$100,000 per year AND
  - More Millionaires than any other company!

Highest Payout In  
The Industry Up  
To:

**73%**

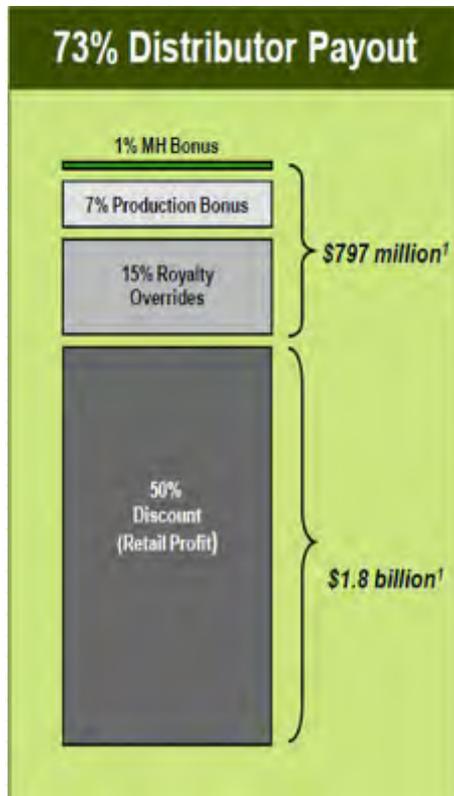


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**Herbalife's "73%"  
Payout Ratio**

## Herbalife's "73%" Payout Ratio (in Theory)

The Company claims that retail represents two-thirds of the profit opportunity for Herbalife distributors (50% of 73%)



(1) Actual results referenced in Herbalife's 2005 10K, not including China.

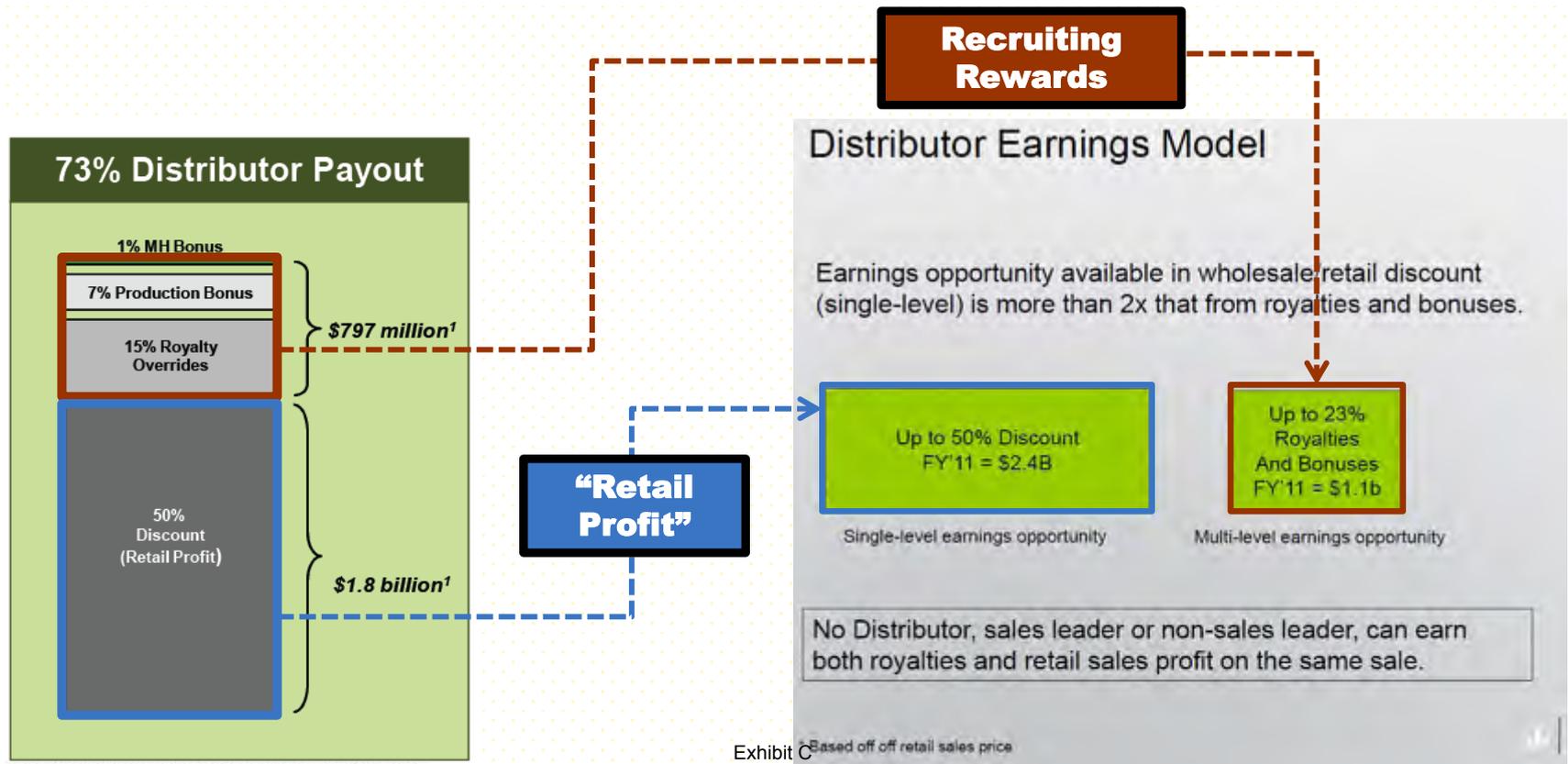
Source: Herbalife Investor Day (2009).

*"There are two ways to make profit as a distributor within Herbalife. It's the retail component, right? So you distribute it, buy the discount and that represents about two-thirds of the profit opportunity. And then there is a royalty component and that royalty component allows a distributor to earn on other distributors they bring into the business."*

**– John DeSimone, CFO of Herbalife, Bank of America Conference (9-14-2010)**

# Herbalife's Perception: Retail Profit is Greater than Recruiting Rewards

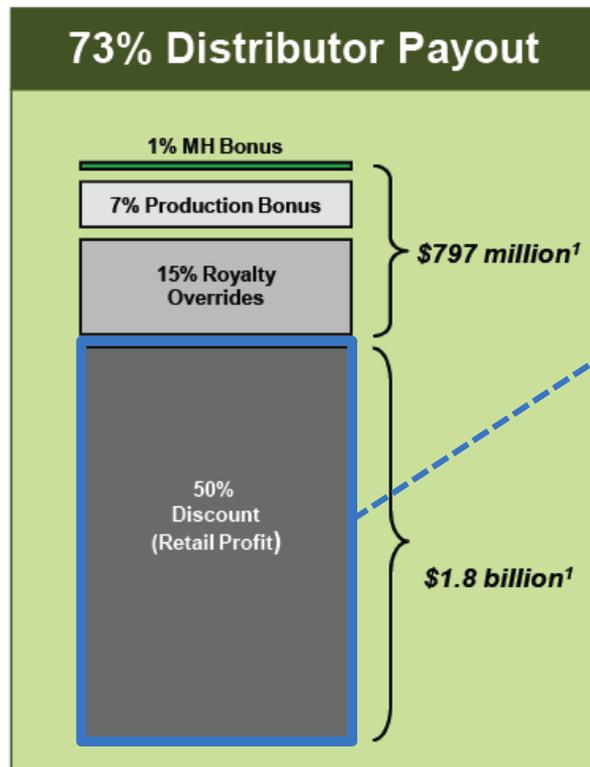
Herbalife makes this claim in an attempt to convince the public and regulators that the opportunity for Retail Profits is greater than that for Recruiting Rewards



(1) Actual results referenced in Herbalife's 2008 10K, not including China.

# Reconciling Herbalife's "73%" Payout Ratio to the P&L

Herbalife records "Retail Profit" as Distributor Allowances, which represents a ~50% discount to Retail Sales<sup>(1)</sup>



<b>Herbalife P&amp;L</b>		
(\$ mms)	<u>2008a</u>	<u>2011a</u>
Retail Sales	\$3,811	\$5,428
<b>Distributor Allowances</b>	<b><u>(1,779)</u></b>	<b><u>(2,483)</u></b>
Product Sales	\$2,032	\$2,945
Shipping & handling revenues	327	510
Net Sales	\$2,359	\$3,455
Cost of sales	(458)	(680)
<b>Royalty overrides</b>	<b><u>(797)</u></b>	<b><u>(1,138)</u></b>
SG&A	<u>(772)</u>	<u>(1,075)</u>
EBIT	\$332	\$562

(1) Actual results referenced in Herbalife's 2008 10K, not including China.

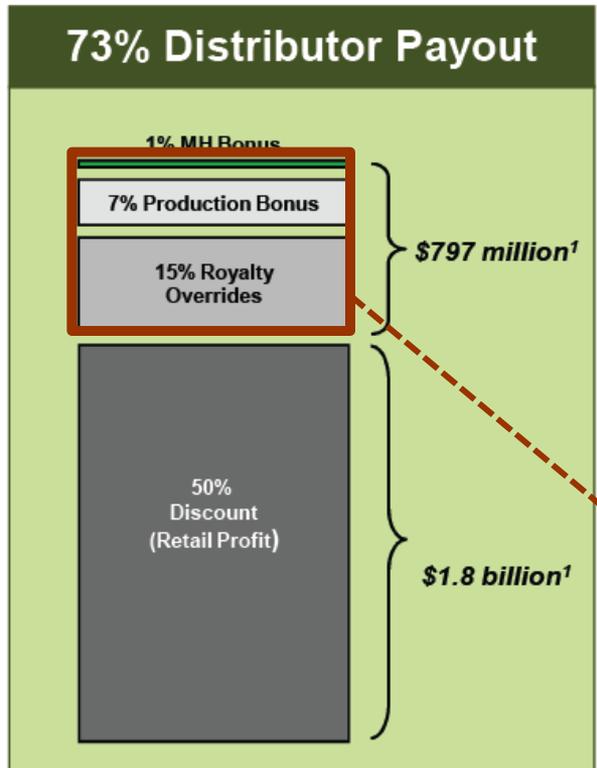
Exhibit C

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(1) In 2011, Distributor Allowances represented ~47% of Retail Sales in Herbalife's consolidated P&L. This is because in some markets Sales Leaders purchase product for less than a 50% discount to SRP.

# Reconciling Herbalife's "73%" Payout Ratio to the P&L (Cont'd)

Herbalife records Recruiting Rewards in "Royalty overrides," which includes Royalty Overrides, Production Bonuses, and the Mark Hughes Bonus, but excludes Vacations / Promotions



(1) Actual results referenced in Herbalife's 2008 10K, not including China.

## Herbalife P&L

(\$ mms)	2008a	2011a
Retail Sales	\$3,811	\$5,428
<b>Distributor Allowances</b>	<b><u>(1,779)</u></b>	<b><u>(2,483)</u></b>
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SG&A	<u>(772)</u>	<u>(1,075)</u>
EBIT	\$332	\$562

Vacations / Promotions are here

# Herbalife's So-Called "Retail Sales"

Herbalife determines its so-called "Retail Sales" by assuming all sales made by distributors are at 100% of Herbalife's inflated Suggested Retail Prices

Source: Herbalife 10-K (2011)

(2) Retail sales represent the gross sales amount reflected on our invoices to our distributors. We do not receive the full retail sales amount. "Product sales" represent the actual product purchase price paid to us by our distributors, after giving effect to distributor discounts referred to as "distributor allowances," which total approximately 50% of suggested retail sales prices. Distributor allowances as a percentage of sales may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances. "Net sales" represents product sales and shipping & handling revenues.

The following represents the reconciliation of retail sales to net sales for each of the periods set forth above:

	Year Ended December 31,				
	2011	2010	2009	2008	2007
			(In thousands)		
Retail sales	\$ 5,427,844	\$ 4,306,262	\$ 3,690,061	\$ 3,811,159	\$ 3,511,003
Distributor allowance	(2,483,122)	(1,968,769)	(1,696,444)	(1,778,866)	(1,658,569)
Product sales	2,944,722	2,337,493	1,993,617	2,032,293	1,852,434
Shipping & handling revenues	509,815	396,733	330,960	326,920	293,405
Net sales	\$ 3,454,537	\$ 2,734,226	\$ 2,324,577	\$ 2,359,213	\$ 2,145,839

*Distributor Allowances are based on this fictitious representation of "Retail Sales"*

# How Would Herbalife's P&L Look If "Retail Sales" were Recorded Based on Actual Retail Prices?

<b>Herbalife P&amp;L (2011a)</b>			
(\$ mms)	<u>As Reported (100% SRP)</u>	<u>As Adjusted (65% SRP)<sup>(1)</sup></u>	
<b>"Retail Sales"</b>	<b>\$5,428</b>	<b>\$3,528</b>	<b>Decreases</b>
<b>Distributor Allowances ("Retail Profit")<sup>(2)</sup></b>	<b><u>(2,483)</u></b>	<b><u>(583)</u></b>	<b>Decreases</b>
Product Sales	\$2,945	\$2,945	
S&H revenues	<u>510</u>	<u>510</u>	
Net Sales	\$3,455	\$3,455	
Cost of sales	(680)	(680)	
<b>Royalty overrides</b>	<b><u>(1,138)</u></b>	<b><u>(1,138)</u></b>	<b>Unchanged</b>
SG&A	<u>(1,075)</u>	<u>(1,075)</u>	
EBIT	\$562	\$562	

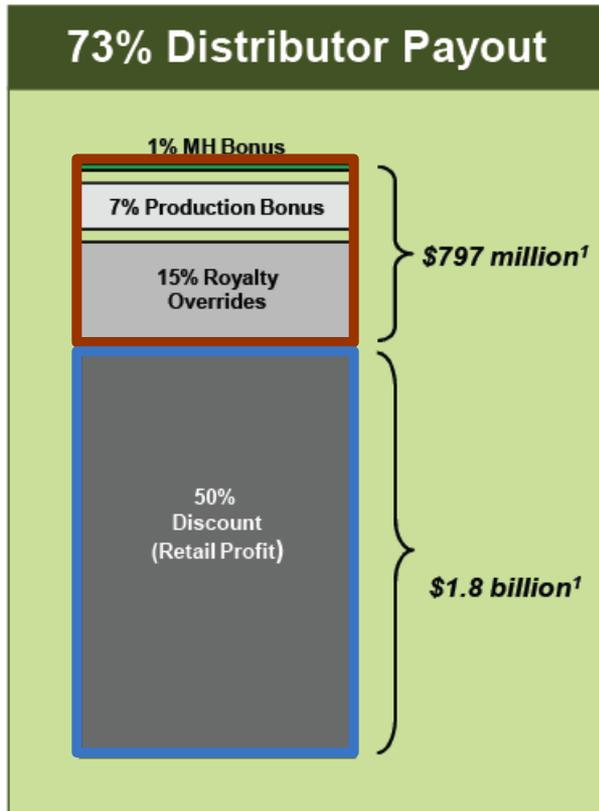
Exhibit C

(1) Illustratively assumes actual retail price is 35% off Suggested Retail Price.  
 (2) Herbalife refers to Distributor Allowances as "Retail Profit" in its 2009 Investor Day presentation.

**Retail Profit varies depending on the ultimate sale price for the product achieved by distributors**

**Royalty overrides paid by Herbalife are unrelated to the ultimate sale price for the product achieved by distributors**

# A Misleading Chart...



(1) Actual results referenced in Herbalife's 2008 10K, not including China.

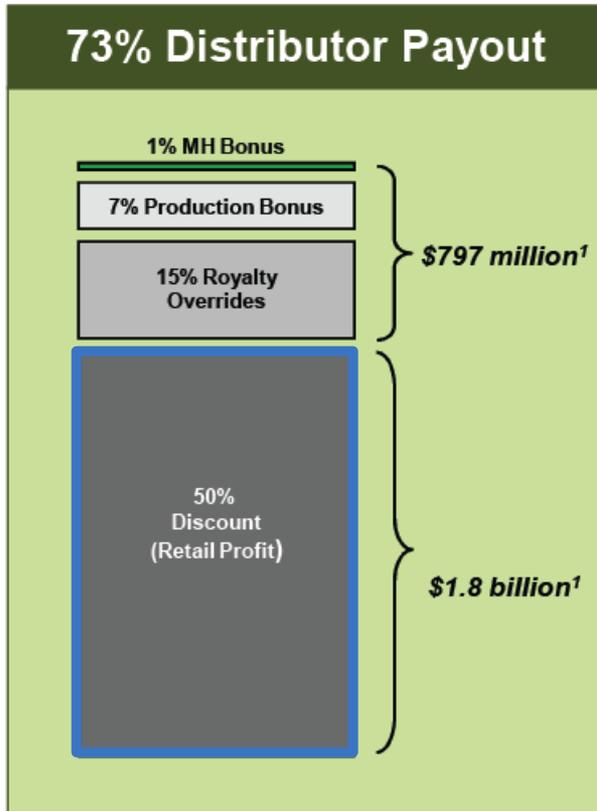
Source: Herbalife Investor Day (2009).

## Herbalife's Representation of 50% "Retail Profit"

- ▶ Assumes product is sold at SRP
- ▶ Assumes 100% of product purchased by distributors is resold to Retail Customers
- ▶ Treats Wholesale Commissions as Retail Profit

## Herbalife's Representation of 23% Recruiting Rewards

- ▶ Excludes Wholesale Commissions
- ▶ Excludes Recruiting Rewards in SG&A



**Adjustment #1:**  
**Suggested Retail Price ≠**  
**Actual Retail Price**

## **Herbalife's 7% "Surcharge"**

---

- ▶ **In order for distributors to sell Herbalife products and receive their full markup ("Retail Profit"), they must pass through surcharges and other expenses to Retail Customers<sup>(1)</sup>**
  
- ▶ **All Herbalife distributors must pay a 7% packaging and handling charge ("Surcharge") on the Suggested Retail Price for products ordered directly from the Company**
  - The Surcharge was instituted in the early 1990s at 5% as a way for the Company to fund the roll out of the Production Bonus. Over time, it has increased to 7%
  
  - Until 2001, Herbalife accounted for the revenue from the Surcharge as an offset to royalty override expenses

(1) In most markets the surcharge is 7%, but in some countries it is in excess of 20%.

## **Herbalife's 7% "Surcharge" (Cont'd)**

---

- ▶ This charge is in addition to the ~4% expense distributors must pay (of SRP) to have the product shipped if they do not pick up the product from one of the limited number of Herbalife's distribution centers
  
- ▶ Unlike the shipping expense which varies depending on the quantity of product ordered and whether or not distributors pick up the product, the 7% Surcharge is fixed

# Herbalife's 7%+ "Surcharge" (Paraguay)

► In some markets, Herbalife has added even more Surcharges



## HERBALIFE.

### Key Points – Paraguay

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**Orders & Shipping**

- The methods to place orders are: Phone-in and E-mail.
- International orders are not allowed.
- Distributors need to submit their RUC (tax registration form) to Herbalife Paraguay. Distributors who are not tax registered in Paraguay will have a 7,500VP per year purchasing limit.
- Packaging and Handling fees will be 7% on retail price.
- There will be a 7% administrative fee.
- VAT: 10% of value added tax.
- The shipping fee varies depending on the order volume and area to be delivered.

Area	Scale	Area	Scale
Gran Asunción	Gs 0 a Gs 2.500.000	Interior	Gs 0 a Gs 2.500.000
	22,000		27,000
Gran Asunción	Gs 2.501.000 a Gs 6.000.000	Interior	Gs 2.501.000 a Gs 6.000.000
	1,6%		1,8%
Gran Asunción	Gs 6.000.001 a Gs 10.000.000	Interior	Gs 6.000.001 a Gs 10.000.000
	1,2%		1,4%
Gran Asunción	Gs 10.000.001 o superior	Interior	Gs 10.000.001 o superior
	1%		1,2%

7% "Packaging & Handling"

7% "administrative fee"

# Herbalife's 7%+ "Surcharge" (Bolivia)

 **HERBALIFE.**  
**DISTRIBUTOR KEY POINTS – BOLIVIA**

**Rules**

- **No** 30-day money back guarantee
- Weight Loss claims are permitted.

**Orders & Shipping**

- International Orders (both inbound and outbound) are not available through Miclar
- 12% Freight Charge on Full Retail Price of Order to make product available local
- VAT 19.05 %
- 7% Packaging & handling on Full Retail
- All Orders can be placed directly at the Sales Center (Miclar) in Bolivia
- Methods to place orders are: Walk-In, Mail-In, Fax-In, and E-mail
- Freight charge is 2.5% of Full retail
- Payment methods
  - Cash – Dollars or Bolivian Pesos
  - Credit Card (Visa/MasterCard)
  - Wire Transfer
- All prices will be Tax Inclusive

**12% "Freight Charge"**

**7% "Packaging & handling"**

**2.5% "Freight charge"**

# Herbalife's 7%+ "Surcharge" (Zambia)

**HERBALIFE.**  
**Zambia**

**Rules**

- New Herbalife Distributor Applications with addresses in Zambia can be accepted as of 9 July 2007. Proof of residency is required in the form of a Zambian National Identity document, and should be attached to your Herbalife Distributor Application Form.
- Any current Herbalife Distributor wishing to change their current address to a Zambian address is required to attach their Zambian National Identity document to the Herbalife change of Address form.
- Non-resident Distributors are allowed to sponsor Zambian residents in Zambia by selling them a Mini-IBP. No product sales may be generated in Zambia by non-residents of Zambia unless they have obtained a non-resident trading permit.
- The legal age in Zambia is 21 years. No persons under the age of 21 years can become a Herbalife Distributor in Zambia.
- IBP's for Zambia will be for sale as of 9 July 2007.
- 30-day money back guarantee for customers applies. These will be processed through the Johannesburg Sales Centre.
- Repurchase policy applies for distributors.
- Weight management claims are permitted.
- Notification of all public gatherings needs to be advised to the Zambian police at least seven days prior to the event.
- Any party wanting to display the Zambian National flag at its function must obtain the approval of the Permanent Secretary, Ministry of Commerce, Trade and Industry.
- Distributors need to apply for a hawker's licence from the municipality within 30 days of signing up as a Herbalife Independent Distributor.
- Prospective Nutritional Club operators must first contact the appropriate local or national government agencies in order to acquire all necessary business, tax and health permits and/or licenses. Distributors can request a copy of the Herbalife Distributor Nutrition Club Manual from their Sponsor or the Herbalife Distributor Relations Department in South Africa.
- Distributors need to register with the Tax Authority.

**Orders & Shipping**

- International orders, both inbound and outbound, are limited to IBP's only.
- 7% Packaging & handling on Full Retail will apply.
- 17.5% on Full Retail will apply to cover cross border duties and cross border V.A.T.
- 15% freight on full Retail will apply.
- Walk-in, Phone-In Orders, Fax-in orders and E-mail orders can only be placed directly through the Johannesburg Sales Centre.
- E-mail Orders may be sent to [sorderline@herbalife.com](mailto:sorderline@herbalife.com).
- Payment Methods - Credit cards (Visa/Mastercard/American Express/Diners) and Wire Transfer.
- EOM rules apply - All orders MUST be received on or before the designated "EOM" day in order to count for that month's volume.
- Orders will need to be shipped directly from Herbalife to an address in Zambia and with the Herbalife designated courier company only.

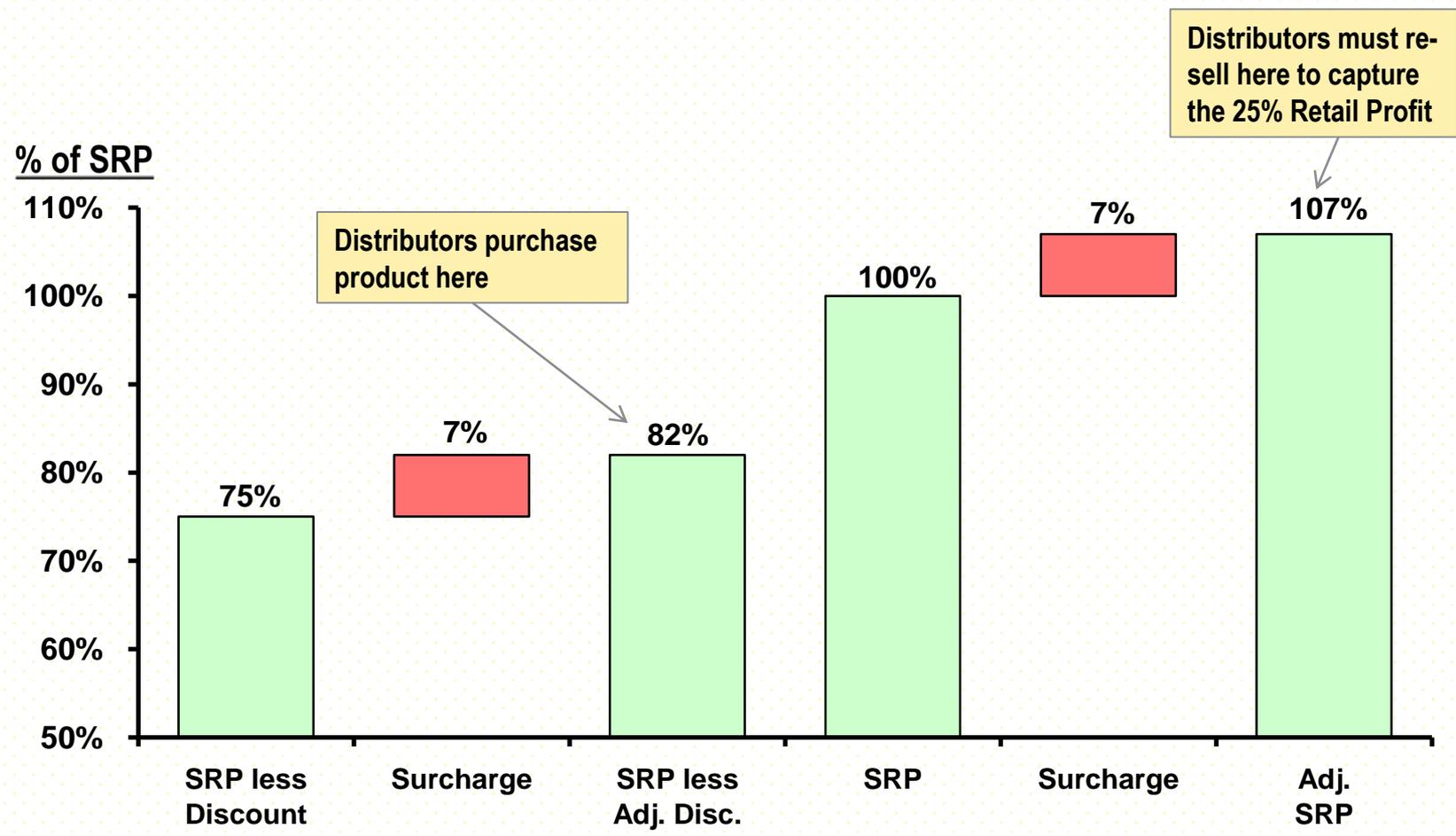
**Earnings**

7% "Packaging & handling"

15% "freight"

EXHIBIT C

# In Order to Realize their Full Markup, Distributors Must Pass the Surcharge through to Retail Customers



# Sales Taxes Must Be Passed Through at Retail

- ▶ In Canada, distributors must pass through 14% of sales taxes in addition to the Surcharge to capture full Retail Profit

**HERBALIFE'S NEW SALES TAX PROCEDURES  
QUESTIONS AND ANSWERS**

Herbalife Canada has entered into pre-collection agreements with the federal and provincial governments to simplify and streamline the collection of GST/HST, QST and provincial retail sales taxes ("PST") (collectively, "sales taxes") effective January 1, 2007. Further details are available in the Sales Tax Simplification Fact Sheet.

**5. Do Distributors still charge Sales Tax to their Customers?**

Yes. Distributors will still charge an amount for sales tax on their customer invoices based on their selling price (usually SRP). The Distributors will keep the amount shown as sales taxes as reimbursement for the sales taxes that they pre-paid to Herbalife at the time of ordering.

For example, when an Ontario Distributor purchases products from Herbalife for sale to their customers, the GST and PST will be calculated as follows:

Where a product has a wholesale price of \$75 and a resale price of \$100, the Distributor will be required to pay \$75 (wholesale price) + \$6.00 (6% GST on the SRP) + \$8.00 (8% PST on the SRP) for a total of \$89.00. When the Distributor sells those products to their customers they will charge the SRP \$100 + \$6.00 GST and \$8.00 PST. Thus the Distributor will be reimbursed from their customer for the \$14 GST/PST that was pre-paid to Herbalife, thereby realizing the same \$25 profit margin they did before.

Source: Google.

- ▶ In California, where Herbalife is headquartered, sales tax is 8.75%

# VAT Charges Must Be Passed Through at Retail

- ▶ Though VAT varies by country and product, it can be as high as 25% in some markets

 **HERBALIFE.**

**Key Points - Hungary**

Orders & Shipping

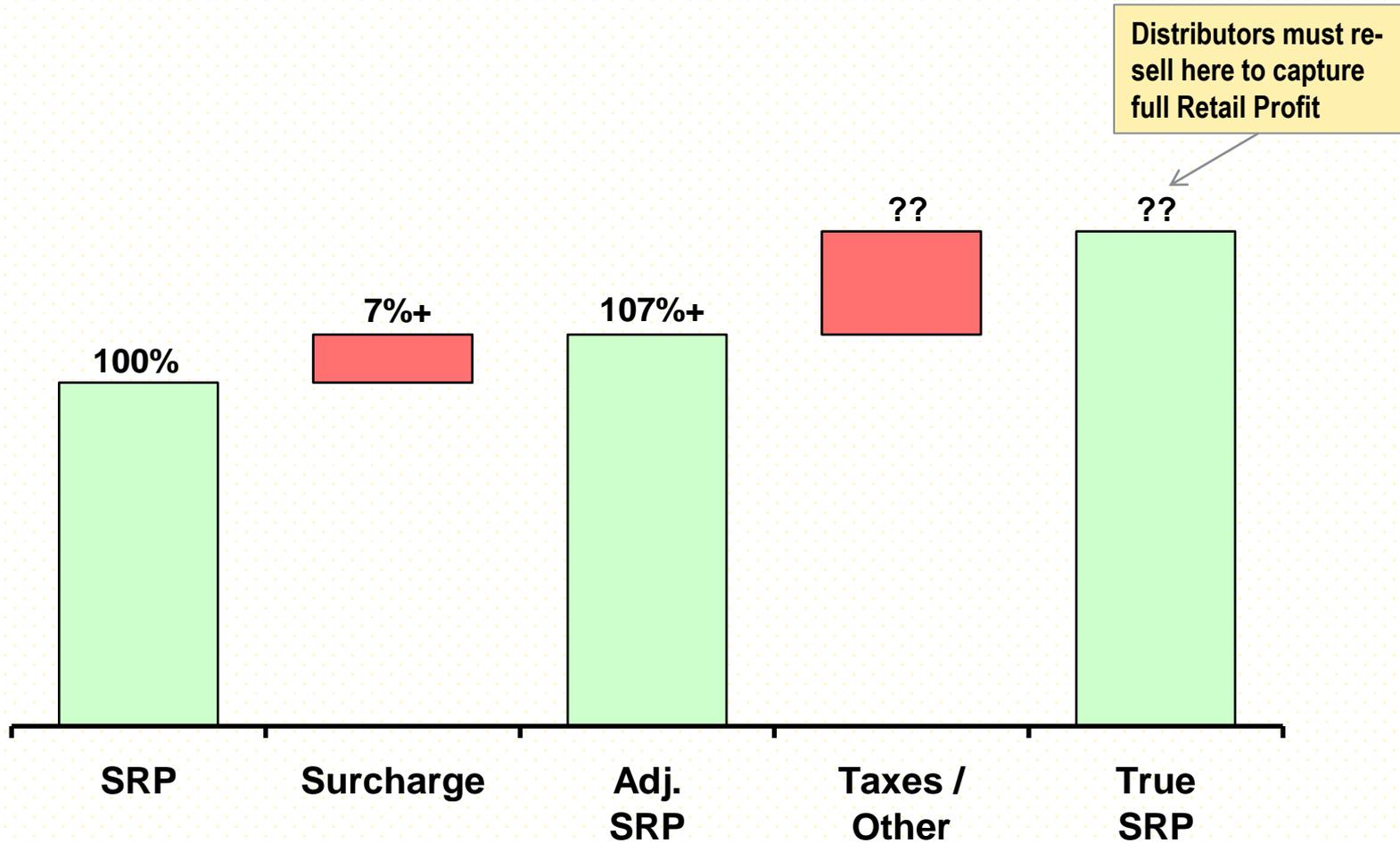
- All Orders can be placed directly at the Sales Center.
- Methods to place orders are: Walk-In, Mail-In, Fax-In, and E-mail
- Walk-In orders can be immediately collected upon full payment.
- Inbound / Outbound internal orders will be accepted.
- Details of shipping options available at ordering time.
- VAT rates:
  - 25% on all products, literature and Promote!
  - 15% on Formula 2 – Multivitamin Complex; Fiber & Herbs; Soy Nuts; Formula #1 in Vanilla and Strawberry.
  - 25% on Formula #1 in Chocolate
- 7% Packaging & handling on Full Retail.
- All prices are in local currency – Hungarian Forint
- Payment methods
  - Cash – Hungarian Forint
  - Credit Cards – Visa, MasterCard
  - Debit Cards – Visa Electron, Cirrus Maestro
  - Bank Wires – Hungarian Forint

**25% VAT on Formula 1**

Source: Google.

Exhibit C  
Page 000236

# Herbalife Distributors Must Resell Product at a Significant Premium to SRP to Earn Full Retail Profit



*We conservatively assume an Adjusted SRP of 107% for the purpose of our analysis*

**What is the actual retail price at which Herbalife products are sold?**

# Herbalife Products Sell for ~40% Discounts to Adjusted SRP on Independent Distributor Websites

As non-distributors, we were able to go online and purchase the products being distributed today for a ~40% discount to Adj. SRP

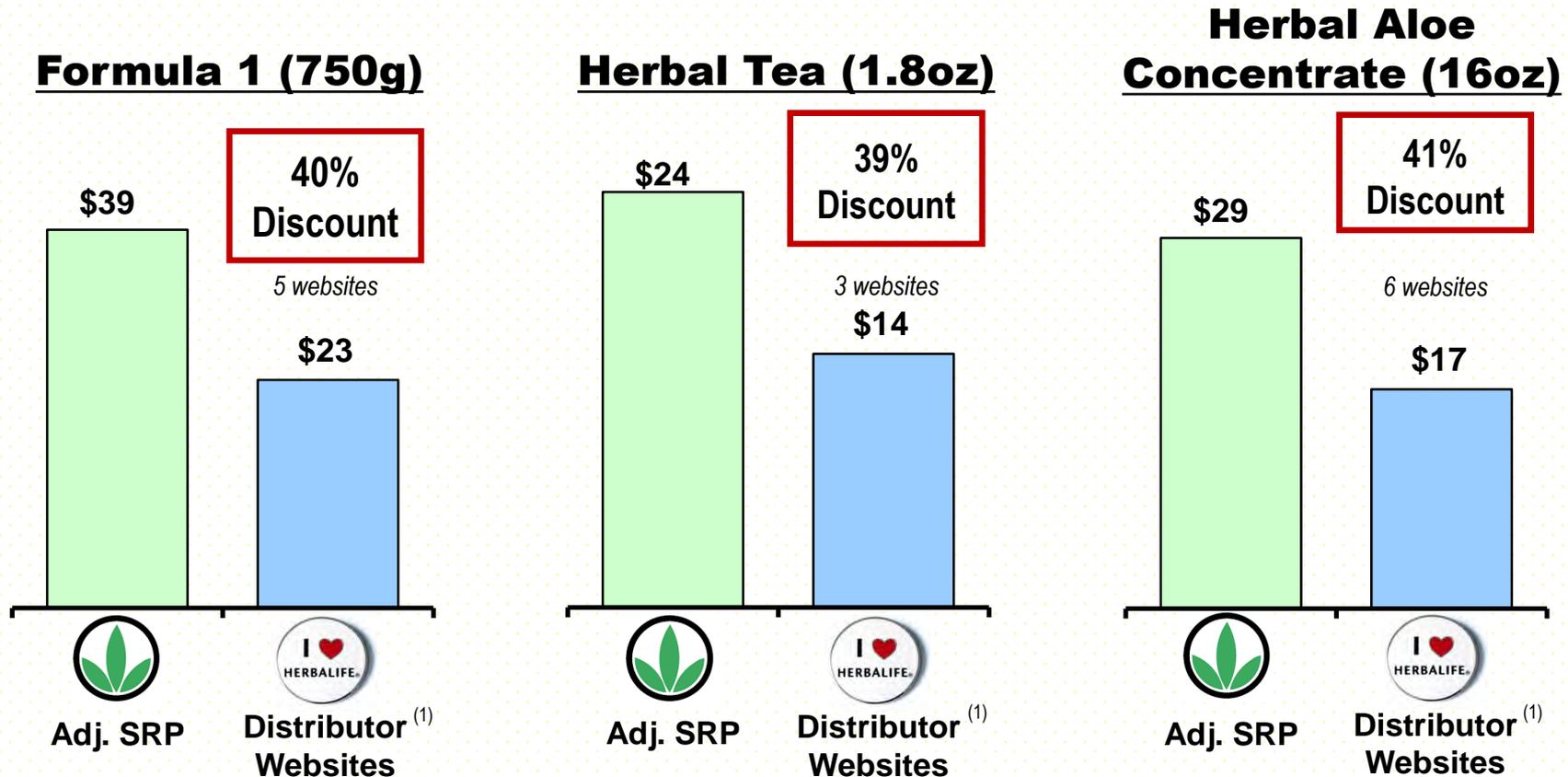


Exhibit C

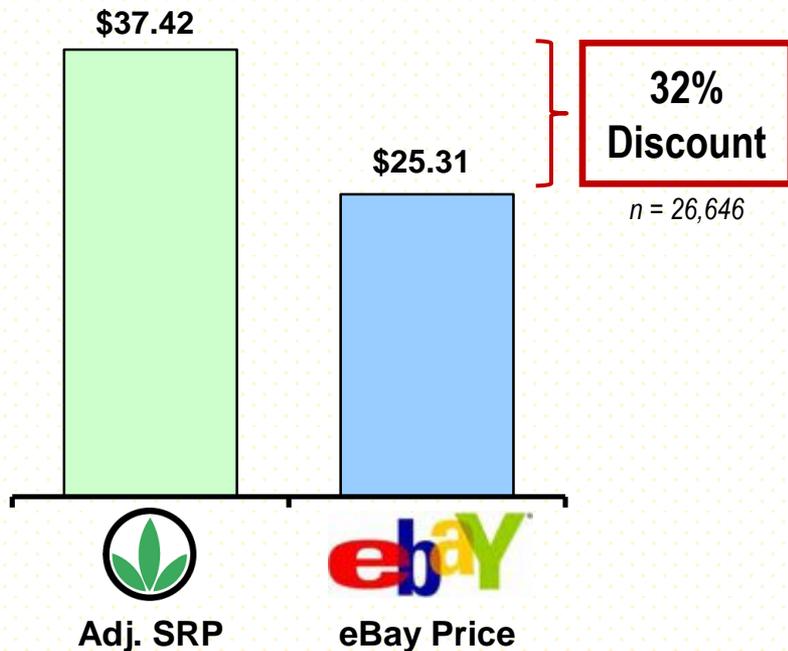
(1) Based on pricing during Nov-12 and Dec-12. Source: herbalforyes.com, lifemanaging.com, goherbalife.com/barbarawilson, freshestherbal.com, herbaloft.com, and herbalhappy.com. Only one site charged shipping and handling.



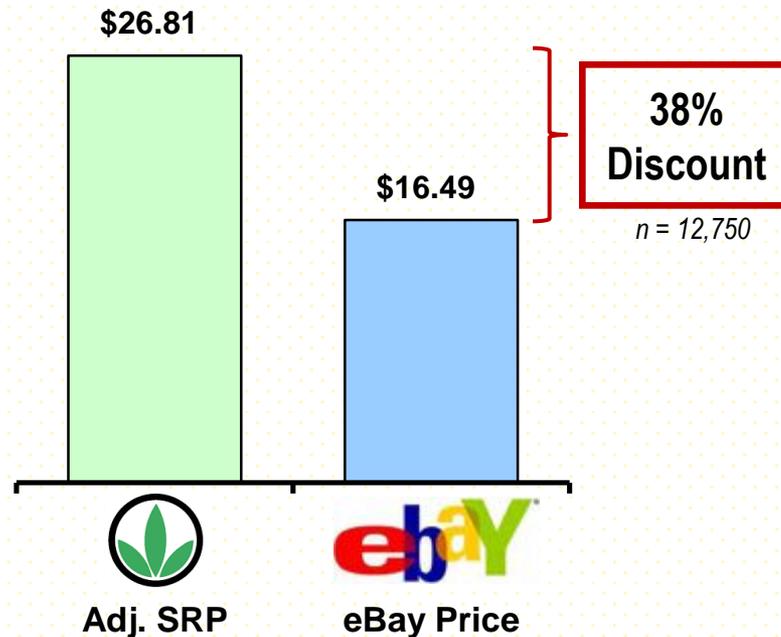
# Formula 1 Sells for a 34% Discount to Adjusted SRP on eBay

We hired a third-party research company to analyze every available Formula 1 transaction on eBay from 2007 through 2012. In total, we obtained price data for 39,396 canisters of 750g and 550g Formula 1

## Formula 1 (750g)



## Formula 1 (550g)



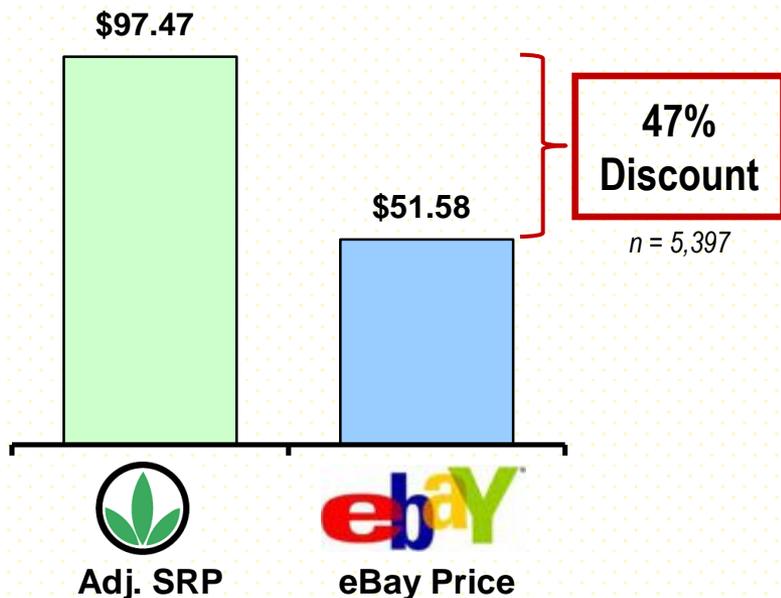
Note: Herbalife Adj. SRP represents the weighted average SRP for Formula 1 from 2007 through 2012 (e.g., as of 3-6-12, a 750g canister of Formula 1 had an Adj. SRP of \$38.68), which includes Herbalife's Surcharge but excludes shipping and taxes. eBay price data excludes shipping and taxes. We obtained data for 68,286 total Formula 1 transactions but only used the 39,396 transactions that included container size detail and were not bundled with other products. The 34% discount represents the weighted average of the discounts for the 750g and 550g canisters.



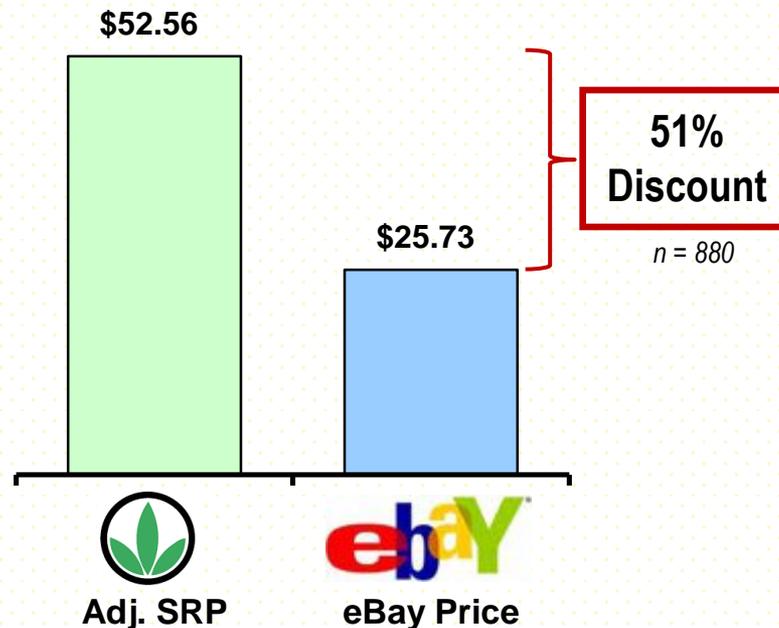
# Niteworks Sells for a 48% Discount to Adjusted SRP on eBay

We hired a third-party research company to analyze every available Niteworks transaction on eBay from 2007 through 2012. In total, we obtained price data for 6,277 canisters of 10.6oz and 5.3oz Niteworks

## Niteworks (10.6oz)



## Niteworks (5.3oz)

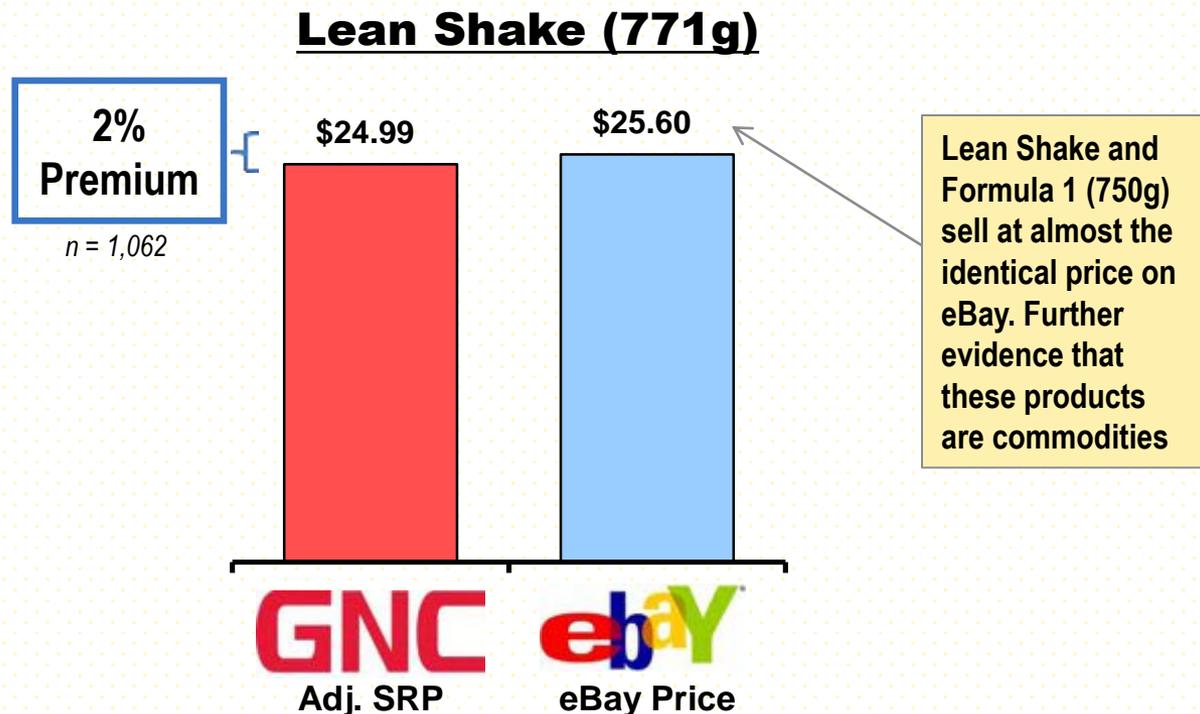


Note: Herbalife Adj. SRP represents the weighted average SRP for Niteworks from 2007 through 2012 (e.g., as of 3-6-12, a 10.6oz canister of Niteworks had an Adj. SRP of \$101), which includes Herbalife's Surcharge but excludes shipping and taxes. eBay price data excludes shipping and taxes. We obtained data for 8,305 total Niteworks transactions but only used the 6,277 transactions that included container size detail and were not bundled with other products. The 48% discount represents the weighted average of the discounts for the 10.6oz and 5.3oz canisters.



# GNC's Lean Shake Sells for a 2% Premium to Adjusted SRP on eBay

Recognizing the possibility that other comparable products might also sell at big discounts on eBay, we obtained price data for the sale of GNC's Lean Shake from 2007 through 2012 (1,062 canisters sold)



Note: GNC Adj. SRP represents the actual retail price for Lean Shake in 2012 (source: GNC.com, drugstore.com), which excludes shipping and taxes. GNC also offers an additional 20% discount for Gold Card members; to be conservative, we did not factor this into our retail price. eBay price data excludes shipping and taxes.  
Source: ITG.

## **Actual Retail Price Summary**

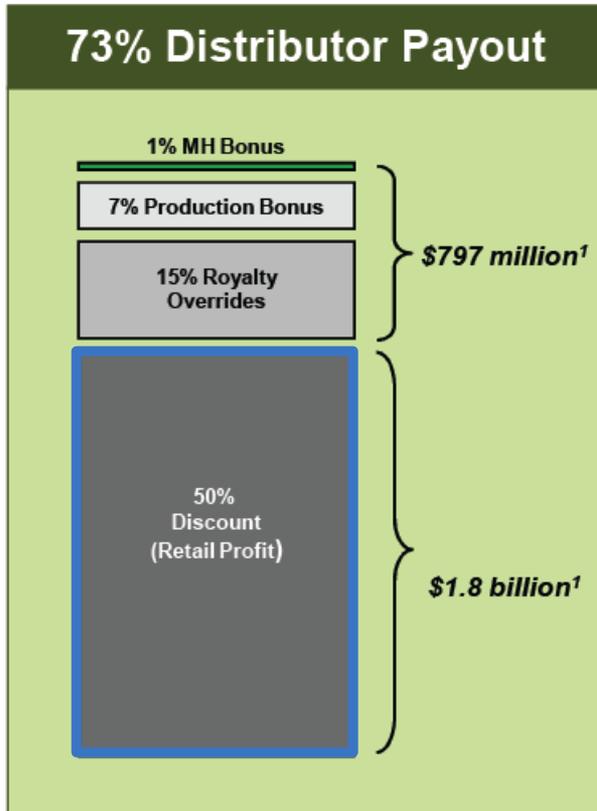
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- ▶ **Because of the Surcharge and other fees, distributors must resell products at a substantial premium to SRP in order to capture Herbalife's promised 25% to 50% Retail Profit**

- ▶ **Suggested Retail Price is an artificial, inflated number with no relation to the price at which Herbalife's products are actually sold to Retail Customers**

- **Independent distributor websites sell Herbalife products for a ~40% discount to Adjusted SRP**
- **eBay data suggest Herbalife's most popular products sell for a 34% to 48% discount to Adjusted SRP**

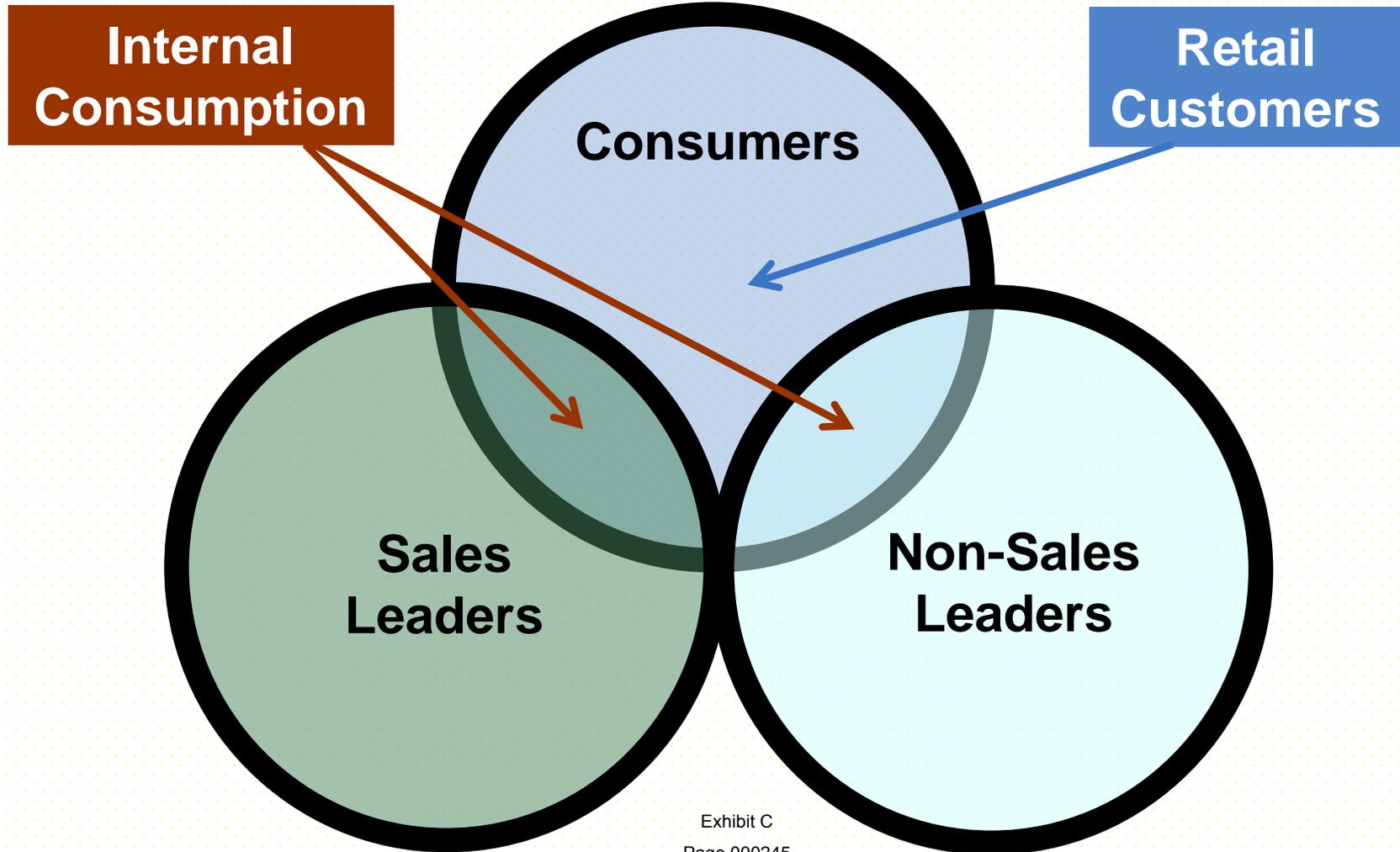
- ▶ **For the purpose of our analysis, we conservatively assume Herbalife products are sold for a 35% discount to Adjusted SRP**



**Adjustment #2:  
Internal Consumption ≠  
Retail Profit**

# Internal Consumption Refers to Product that is Purchased and Consumed by Distributors

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**How much product purchased by Herbalife distributors is actually resold to Retail Customers?**

# Herbalife Does Not Track How Much of its Product is Resold to Retail Customers

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## Herbalife's Published Response to David Einhorn's Questions:

### **Question #1 from David Einhorn:**

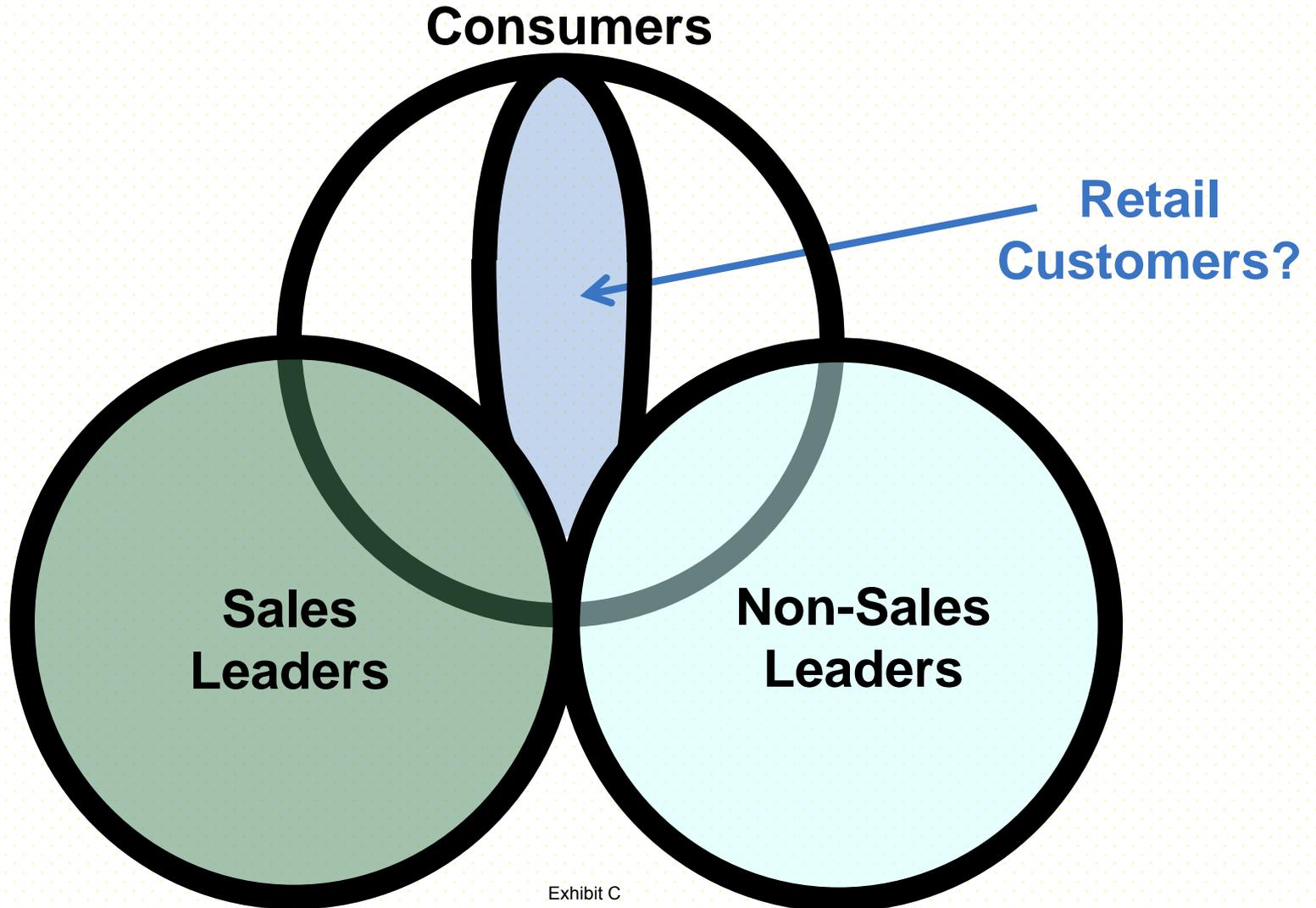
*“First, how much of the sales that you’d make in terms of final sales are sold outside the network and how much are consumed within the distributor base?”*

### **Answer:**

*We don’t track this number and do not believe it is relevant to the business or investors.*

# If Herbalife Doesn't Track Sales Outside the Network, How Many Retail Customers Are There?

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# Herbalife Says that the FTC is not Concerned about Internal Consumption

MAY 23, 2012 / 12:15PM, HLF - HERBALIFE LTD at Citi Global Consumer Conference

John DeSimone - Herbalife Ltd. - CFO

So, the attempt -- I'm going to go back to the beginning of this -- so the attempt of Herbalife 101 was to break the distributors into single and multilevel. Why? Because A, it is truly single, and B, nobody questions single-level, knowing that most people who are in single-level aren't in it to make a lot of money. They are either in it for part time or it is self-consumption. If you go back to the old Avon model, before they were multilevel, right, self-consumption, not even an issue. It isn't not even covered on the FTC's website. It is expected.

So what we are trying to educate the investment community and the media in general is those distributors have no earnings opportunity in the multilevel component. Okay? Yet when the press does their math, they get that 99%, and they use that 82% in the denominator, but they don't use the right numerator. They use -- I'm going to go to this page -- I think it is page five -- give me a second -- they use that far left -- that far right bar, which is the smaller piece of the earnings opportunity.

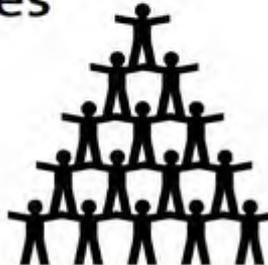
But at the end of the day, it really doesn't matter. It is all about consumption. And if people get in this business for self-consumption or to make a little bit of extra money, which is what most people get in the business for, we're fine with that, as long as the product is being consumed. I think it has been misrepresented as the product needs to be consumed outside the network, which it does not. A, the FTC said it does not. But, B, when you think of the 82% of the people at single-level, which is, again, that is all they are, it is not even a consideration as a challenge to the model.

## From the FTC's Website...

In 2009, the FTC published "The Bottom Line About MLM Plans and Pyramid Schemes" on its website. Though Herbalife believes the amount of Internal Consumption "is not relevant to the business or investors," the FTC highlights it as a red flag for a pyramid scheme

### FTC FACTS for Consumers

#### The Bottom Line About Multilevel Marketing Plans and Pyramid Schemes

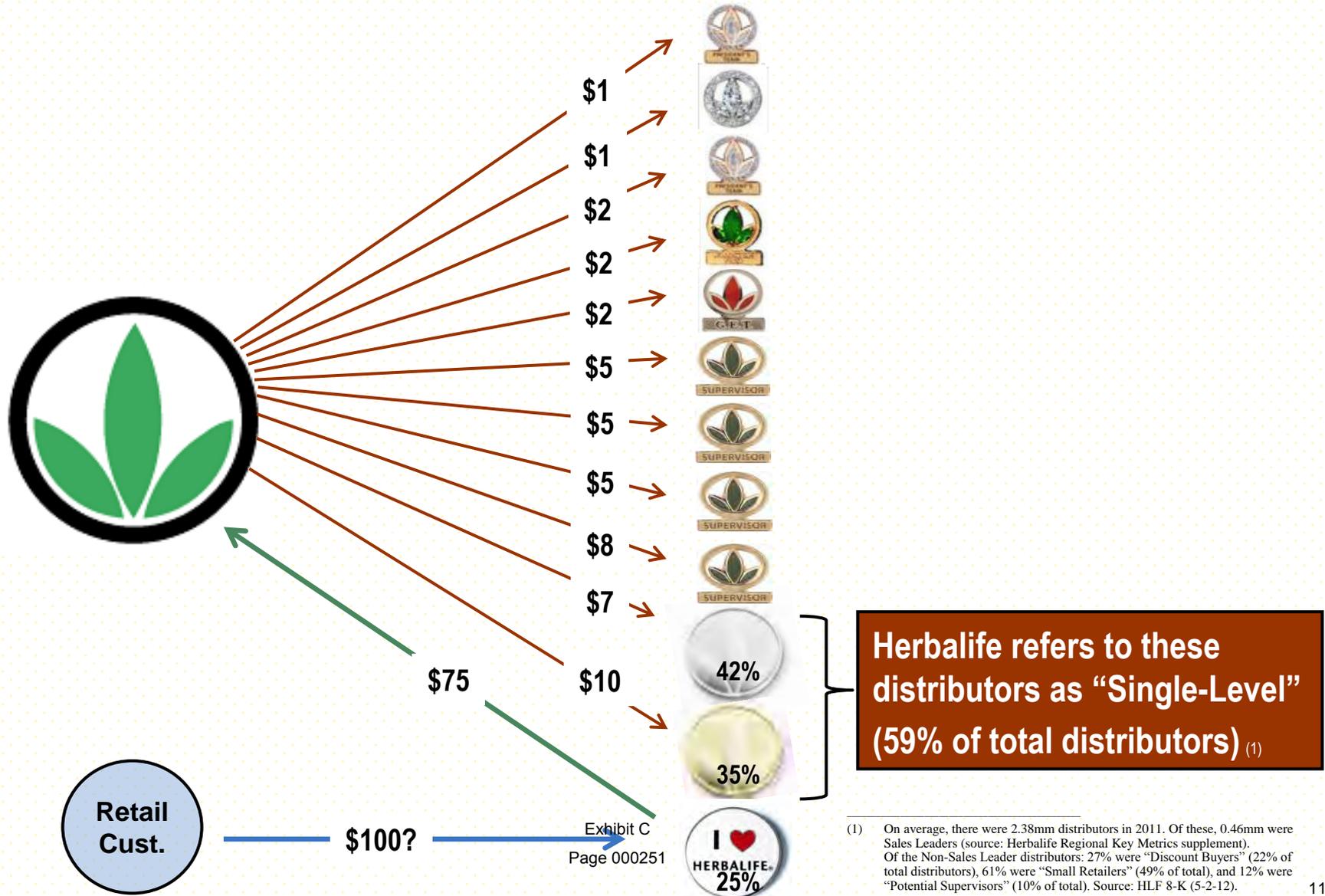


Not all multilevel marketing plans are legitimate. Some are pyramid schemes. It's best not to get involved in plans where the money you make is based primarily on the number of distributors you recruit and your sales to them, rather than on your sales to people outside the plan who intend to use the products.

#### Yes, it's a pyramid scheme!

- Do distributors sell more product to other distributors than they do to the public?
- Does the amount of money distributors make depend more on recruiting, (that is, getting new distributors to pay for the right to participate in the plan)?
- Does the money made depend mostly on selling to other distributors than on sales of the product to the public?

# Herbalife Refers to All Non-Sales Leaders as “Single-Level,” Though Most NSLs are Eligible to Receive Multilevel Wholesale Commissions



(1) On average, there were 2.38mm distributors in 2011. Of these, 0.46mm were Sales Leaders (source: Herbalife Regional Key Metrics supplement). Of the Non-Sales Leader distributors: 27% were "Discount Buyers" (22% of total distributors), 61% were "Small Retailers" (49% of total), and 12% were "Potential Supervisors" (10% of total). Source: HLF 8-K (5-2-12).

# Herbalife Says the Majority of its Distributors Sign Up to Become “Discount Buyers”

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## Herbalife’s Published Response to David Einhorn’s Questions (Cont’d):

### **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.*

**Why would anyone pay \$55 to get a 25% discount when Herbalife products are widely available online for discounts of more than 35%?**

# **Herbalife Would Like Others to Believe that its “Discount Buyer” Distributors are Like Costco Members**

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*“Often people ask well, what does a distributor look like? How do they behave? Last year, when distributors ordered from the Company, 51% of the time, their average order was \$100, and they received about a 25% discount. So most of the distributors tend to be discount buyers, similar to joining Costco or some club like that, where you pay \$49, and you get a 25% discount at Herbalife – just like you would buying a club card at Costco and enjoying the discount on the product.”*

**– Rich Goudis, CFO of Herbalife, Canaccord Adams  
Global Growth Conference (8-11-2009)**

# We Believe the Majority of Herbalife's So-Called "Discount Buyers" are, in Fact, Failed Distributors

			
<b>Signup Cost</b>	\$55	\$55-\$91	\$15
<b>Renewal Fee</b>	\$55	\$15	\$15
<b>Renewal Rate</b>	~90%	~10% <sup>(1)</sup>	~70% <sup>(2)</sup>
<b>Product Offering</b>	Everything	Supplements	Supplements
<b>Paperwork</b>	None	48,000 word Distributor Agreement	None
<b>Product Returns</b>	100% Money Back	82% <sup>(3)</sup> Money Back	100% Money Back
<b>Membership lost if product returned?</b>	No	Yes	No
<b>"Discount" Price</b>	NA	\$30 <sup>(4)</sup> 	\$20 <sup>(4)</sup> 

(1) Source: Herbalife 2005 Annual Report (the last time Herbalife published the churn rate for its Non-Sales Leader distributors): "For 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."

(2) Source: Goldman Sachs.

(3) Herbalife NSL distributors who purchase from their upline in the "field" have no return policy. Herbalife NSL distributors who purchase directly from the company are entitled to return product to the Company, subject to a 10% restocking fee. The 82% assumes the surcharge is not reimbursed (e.g., a 25% discount buyer who pays \$75 plus a \$7 Surcharge for \$100 of SRP product is entitled to get back \$67.50 (\$82-\$7-10%\*\$75)). In mid-2012, Herbalife eliminated the restocking fee.

(4) A 25% distributor can buy a 750g canister of Formula 1 for \$29.64 including the Surcharge (Source: HLF Price List – Los Angeles (3-6-12)). Represents 20% Gold Card discount to 771g canister of Lean Shake (Source: GNC website (11-19-12)).

# Herbalife Admits that Internal Consumption is “Substantial”

## Herbalife’s Published Response to David Einhorn’s Questions (Cont’d):

*“The percentage of product of any multi-level marketing company consumed by its distributors is substantial. This is not surprising since consumers who are enthusiastic about the products become distributors in order to purchase at a discount and possibly to share and sell the products to others. In addition, in order to minimize the risk of product being accumulated by distributors, the company has policies in place such as the 70% Rule, the Ten Customer Rule and the Buy Back policy.”*

***Though Herbalife admits Internal Consumption is substantial for any MLM, it notes that it has put in place rules to limit it***

## **The 70% Rule and Ten Customer Rule**

---

**The 70% Rule:** In any given month, a Distributor must sell to retail customers and/or sell at wholesale to downline Distributors, at least 70% of the total value of Herbalife products they hold for resale. In order to qualify for TAB Team and to earn and receive Royalty Overrides and Production Bonus for that month's business.

**Ten Retail Customers Rule:** A Distributor must make sales to at least ten (10) separate retail customers each month to qualify and receive Royalty Overrides and Production Bonus.

## **These Rules Do Not Limit Internal Consumption**

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- ▶ **Not all distributors have to comply with these rules. Only Sales Leaders, those entitled to Royalty Overrides, are required to sign certifications demonstrating compliance (~19% of total distributors)** <sup>(1)</sup>
- ▶ **Sales Leaders do not receive their paychecks from Herbalife unless they sign a certification demonstrating compliance with these rules**

- ▶ **The 70% volume requirement can include sales to one's downline. By definition, this does nothing to limit Internal Consumption**

Exhibit C

Page 000258

(1) Less than half of U.S. Sales Leaders earn royalties, which implies fewer than 10% of Herbalife distributors sign certifications demonstrating compliance with these rules. Source: Herbalife Statement of Average Gross Compensation of U.S. Supervisors (2011).

## Distributors Count as “Retail Customers”

- ▶ In some markets, and contrary to Herbalife’s definition of a “Customer,” distributors can use sales to downline distributors to meet the Ten Retail Customers Rule

In addition to all the existing Royalty Override requirements, you must also comply in a timely manner with the 10 RETAIL CUSTOMERS and 70% RULES in order to receive your Royalty Override/Production Bonus payments.

The 10 RETAIL CUSTOMERS RULE means that you must make not less than one sale at retail to each of 10 customers during a given month.

Other activities that can count towards this requirement are:

*A sale to a first line 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, and*

*\* A Nutrition Club member who consumed products during ten (10) visits to a Nutrition Club within one Volume month, which may be counted by the Nutrition Club operator as a sale to one (1) retail customer.*

The 70% RULE means that at least 70% of the total value of products you purchase each month must be sold or consumed, each month. Sales may be to retail customers, or wholesale to downline Distributors. Consumption may include Nutrition Club activities.

**EACH OF THESE REQUIREMENTS MUST BE MET OR ROYALTY OVERRIDE/PRODUCTION BONUS EARNINGS WILL NOT BE PAID**

## Herbalife's Lax Enforcement of Its Rules

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- ▶ Between 2006 and 2009, Herbalife possibly disciplined about 10, but fewer than 25, distributors for violating the 70% Rule (fewer than 1 out of every 100,000 distributors)

### Deposition of Jacqueline Miller in Herbalife v. Ford (2009):

**Mr. Stephens: (Ford Counsel)**

*"Have more than 50 distributors since January of 2006 been disciplined for violating the 70-percent rule?"*

**Ms. Miller: (Herbalife Employee)**

*"I don't believe so."*

**Mr. Stephens:**

*"Have more than 25 distributors been disciplined for violating that rule?"*

**Ms. Miller:**

*"I don't believe so."*

**Mr. Stephens:**

*"Have more than 10 distributors been disciplined for violating the 70-percent rule?"*

**Ms. Miller:**

*"That's possible."*

## **Herbalife's Lax Enforcement of Its Rules (*cont'd*)**

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- ▶ **Herbalife appears to audit compliance only when distributors seek to return product to the company**

### **Deposition of Jacqueline Miller in Herbalife v. Ford (2009):**

**Mr. Stephens: (Ford Counsel)**

*"How did you know about the 1200 [audits performed for the ten customer rule]?"*

**Ms. Miller: (Herbalife Employee)**

*"I asked."*

**Mr. Stephens:**

*"Who did you ask?"*

**Ms. Miller:**

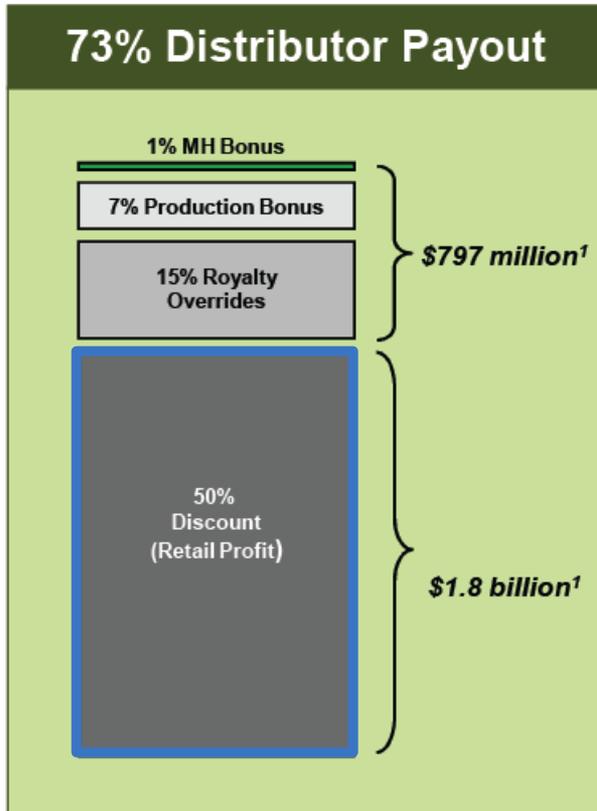
*"Julie Delaney... She works for Jenny [Heinrich]... She's director or senior director. She's been in the refunds and repurchase area, and I think she might have responsibility for the audits."*

- ▶ **Distributors seeking to return product to the Company who cannot demonstrate compliance with the rules will have their previous rewards payments netted against their product return. In many cases, this "clawback" is greater than the returned value of the products**

## **Internal Consumption Summary**

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- ▶ **Herbalife does not track the amount of product that is sold outside the network, though it could if it wanted to**
- ▶ **Contrary to Herbalife’s belief that a large part of its “customer” base is comprised of distributors who sign up to receive a discount on product purchases, we believe the vast majority of “discount buyers” are nothing more than failed distributors**
- ▶ **Herbalife has put rules in place to limit Internal Consumption, but these rules are ineffective and enforcement is lax**
- ▶ **A “substantial” amount of the product purchased from Herbalife is never sold at retail. For the purpose of our analysis, we conservatively assume that means 30%, though the true amount of Internal Consumption could be meaningfully higher**



**Adjustment #3:**  
**Wholesale Commissions ≠**  
**Retail Profit**

**Herbalife's accounting attempts to conceal the total amount of commissions paid to distributors and increase the amount of so-called "Retail Profit"**

# Herbalife Accounting 101

- ▶ When a Non-Sales Leader distributor purchases product directly from Herbalife, Herbalife accounts for the transaction as if the product had been purchased from Herbalife by the upline Sales Leader

## How Herbalife Accounts For It



SL pays HLF \$50



25% distrib. pays SL \$75 for SRP\$100 of product and resells at retail for \$100



### Herbalife P&L

Retail Sales	\$100
Distributor Allowances	(50)
Product Sales	\$50

## What Actually Happens



HLF pays upline SL \$25 Wholesale Commission



25% distributor pays HLF \$75 (ex fees) for SRP\$100 of product



# Herbalife's Accounting is Misleading: Wholesale Commissions ≠ Retail Profit

- ▶ Wholesale Commissions “disappear” in the Distributor Allowances line item. This has the effect of reducing the perceived amount of commissions paid and increases the amount of so-called “Retail Profit”

## How Herbalife Accounts For It



SL pays HLF \$50



25% distrib. pays SL \$75 for SRP\$100 of product and resells at retail for \$100



Herbalife P&L	
Retail Sales	\$100
Distributor Allowances	<u>(50)</u>
Product Sales	\$50

## What Actually Happens



HLF pays upline SL \$25 Wholesale Commission



25% distributor pays HLF \$75 (ex fees) for SRP\$100 of product

### Corrected

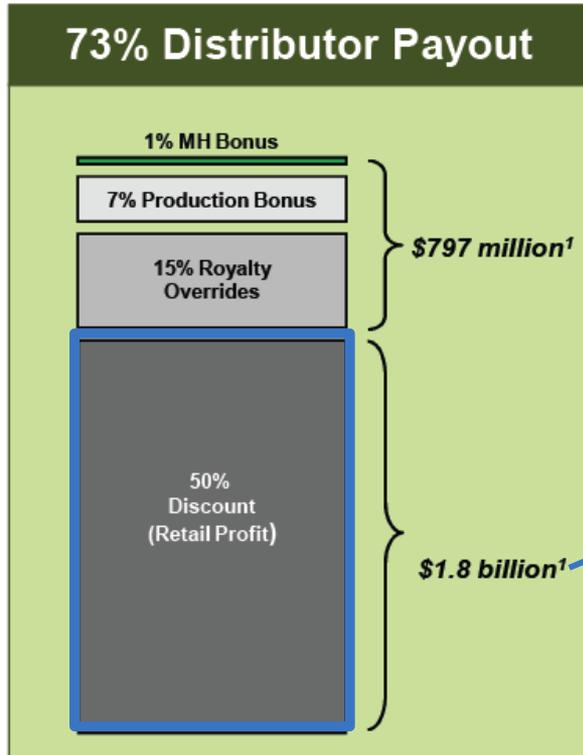
### Herbalife P&L

Retail Sales	\$100
<b>Wholesale Commissions</b>	<b>(25)</b>
Distributor Allowances	<u>(25)</u>
Product Sales	\$50



# Wholesale Commissions ≠ Retail Profit (*cont'd*)

Recall that Herbalife refers to Distributor Allowances as “Retail Profit” in its investor presentations. Distributor Allowances include Wholesale Commissions, which are a form of Recruiting Rewards

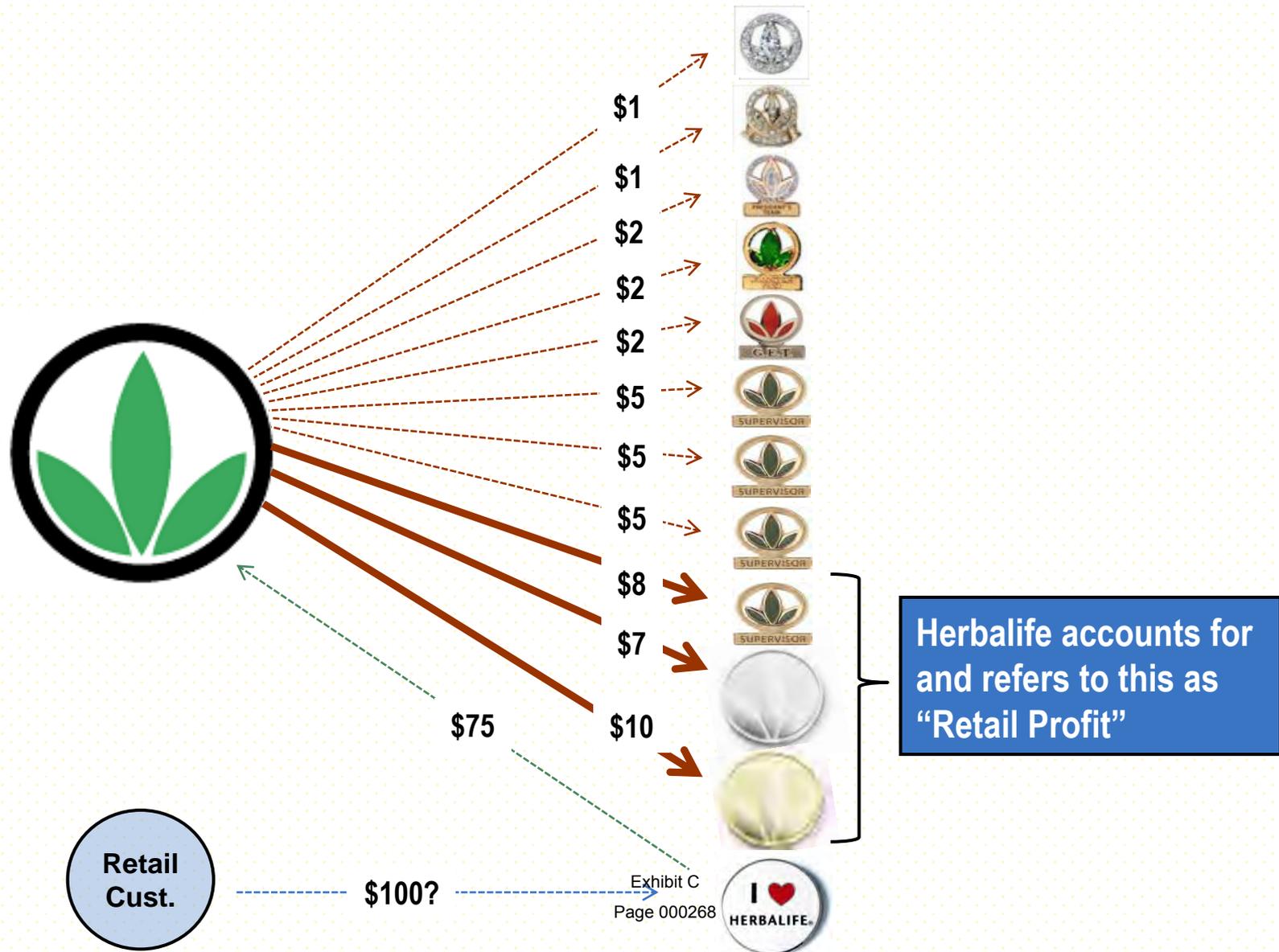


(1) Actual results referenced in Herbalife's 2008 10K, not including China.

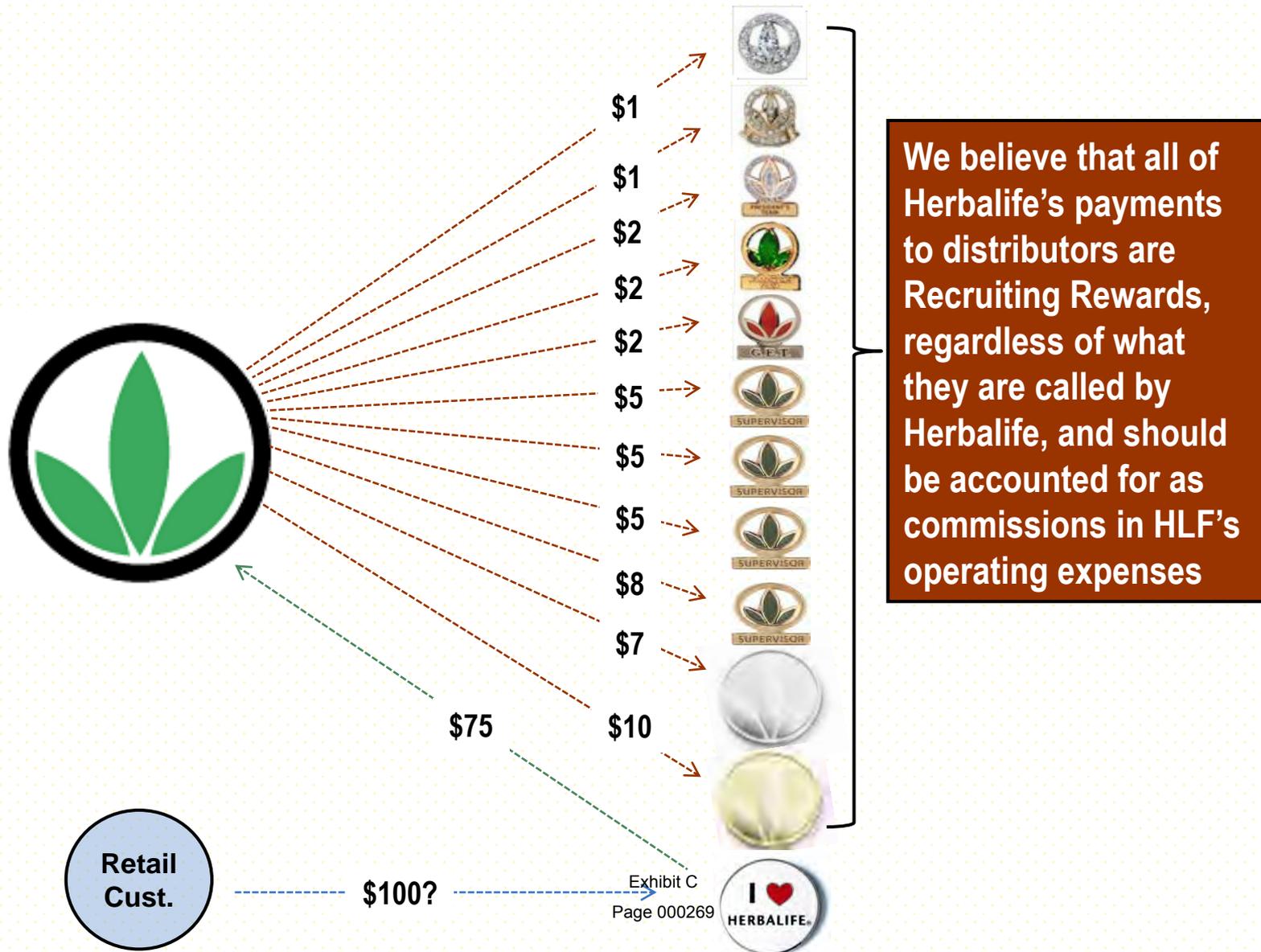
Herbalife P&L		
(\$ mms)	2008a	2011a
Retail Sales	\$3,811	\$5,428
<b>Distributor Allowances</b>	<b>(1,779)</b>	<b>(2,483)</b>
Product Sales	\$2,032	\$2,945
Shipping & handling revenues	327	510
Net Sales	\$2,359	\$3,455
Cost of sales	(458)	(680)
<b>Royalty overrides</b>	<b>(797)</b>	<b>(1,138)</b>
SG&A	(772)	(1,075)
EBIT	\$332	562

Exhibit C

# Wholesale Commissions ≠ Retail Profit (*cont'd*)



# Wholesale Commissions ≠ Retail Profit (*cont'd*)



## ***Wholesale Commissions ≠ Retail Profit (cont'd)***

---

### **Other MLMs account for Wholesale Commissions as operating expenses**

#### ***“Revenue Recognition***

*The Company receives payment by credit card, personal check, or guaranteed funds for orders from independent distributors and makes related commission payments in the following month. Net sales reflect product sales less the distributor discount of 20 percent to 40 percent of the suggested retail price. Sales revenue and commission expenses are recorded when the merchandise is shipped, as this is the point title and risk of loss pass. In accordance with EITF 01-09, the Company presents distributor royalty and commission expense as an operating expense, rather than a reduction to net sales, as these payments are not made to the purchasing distributor.”*

**– Reliv International, Inc. Annual Report (2007)**

# Wholesale Commissions are a Form of Recruiting Profit

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- ▶ **Retail Profit is profit on sales to Retail Customers, not other distributors. This interpretation is both intuitive and supported by the case law<sup>(1)</sup>**
- ▶ **Wholesale Commissions are substantively no different from royalty overrides. They are a form of Recruiting Rewards paid based upon the SRP of product purchased (not sold) by downline distributors<sup>(2)</sup>**
- ▶ **Other MLMs account for Wholesale Commissions as operating expenses**
- ▶ **We question how many of Herbalife's distributors are "discount buyers"**
  - **The vast majority of Herbalife's "discount buyers" are failed distributors**
  - **A Belgian court, which found Herbalife to be operating a pyramid scheme, dismissed the notion that distributors can be classified as customers<sup>(3)</sup>**

(1) *FTC v. JewelWay International*, No. 97-383, slip op. at 2 (D. Ariz. Dec. 1, 1997):

"Under this definition, sales to businesses or corporations connected to the company or to its participants, or to members of a participant's household, or otherwise not solely for the purpose of sale of the product to a person with no connection to the company's sales force, shall not be considered retail sales."

(2) *Webster v. Omnitrition*, 79 F.3d 776, 782 (9th Cir. 1996):

"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."

(3) *Test-Aankoop v. Herbalife International Belgium* [Comm. Ct. Brussels], Nov. 23, 2011, AR 2004/7787, No. JC-D-097 (Belg.), slip op. at 11:

"Herbalife confuses the terms 'distributor' and 'consumers...' From this [distributorship] agreement follows that all distributors in the network of Herbalife, without exception, are independent entrepreneurs and thus should be considered as such."

# Quantifying Wholesale Commissions

Herbalife does not disclose the amount of Wholesale Commissions paid to distributors in its SEC filings. We have estimated them below:

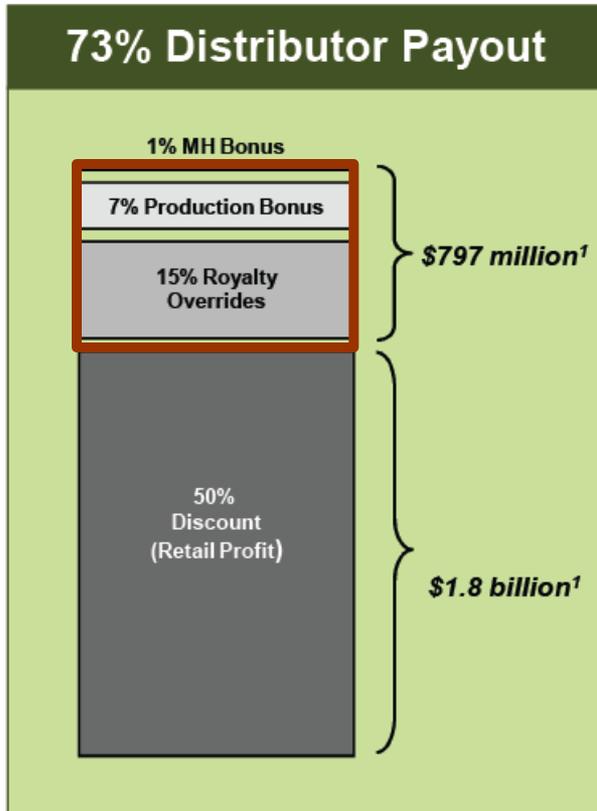
## Wholesale Commissions

(\$mms)	NSL			% of NSLs (2)
	"Direct" Retail Sales (1)	Wholesale Spread	Wholesale Comm.	
Discount Buyers	\$497	25.0%	\$124	27.0%
Small Retailers	1,124	15.0%	169	61.0%
Potential Sales Leaders	<u>221</u>	8.0%	<u>18</u>	12.0%
<b>Subtotal</b>	<b>\$1,842</b>		<b>\$311</b>	

(1) Wholesale Commissions are only earned when NSL distributors purchase product "directly" from Herbalife. Assumes 35% of 2011 Retail Sales, excluding literature/promotional/other products, were NSL "direct" purchases.

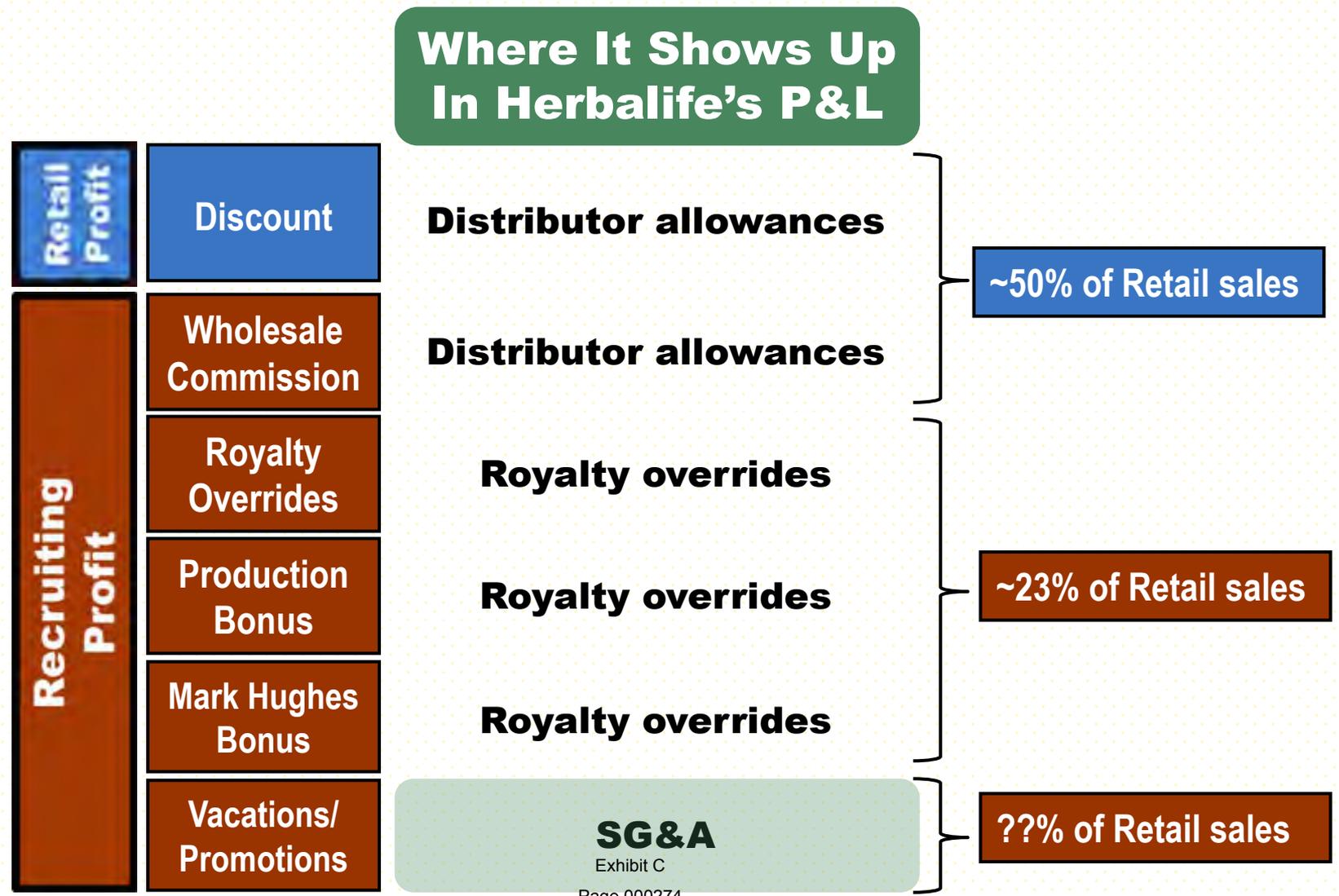
Source: HLF at Citi Global Consumer Conference (5-23-12). NSL "Direct" Retail Sales allocation is based on Herbalife's 2011 distributor composition. Source: HLF 8-K (5-2-12).

(2) For 2011, 27% of Herbalife Non-Sales Leader distributors were "Discount Buyers" (25% Discount), 61% were "Small Retailers" (35% Discount), and 12% were "Potential Supervisors" (42% Discount).



**Adjustment #4:**  
**Recruiting Rewards in SG&A**

# Herbalife Pays More Than 23% of Retail Sales to Distributors in Recruiting Rewards



# SG&A's Lockstep Move with Royalty Overrides Provides a Clue as to Where Herbalife Conceals Other Reward Payments

## Herbalife SG&A and Royalty Overrides (\$mms) <sup>(1)</sup>

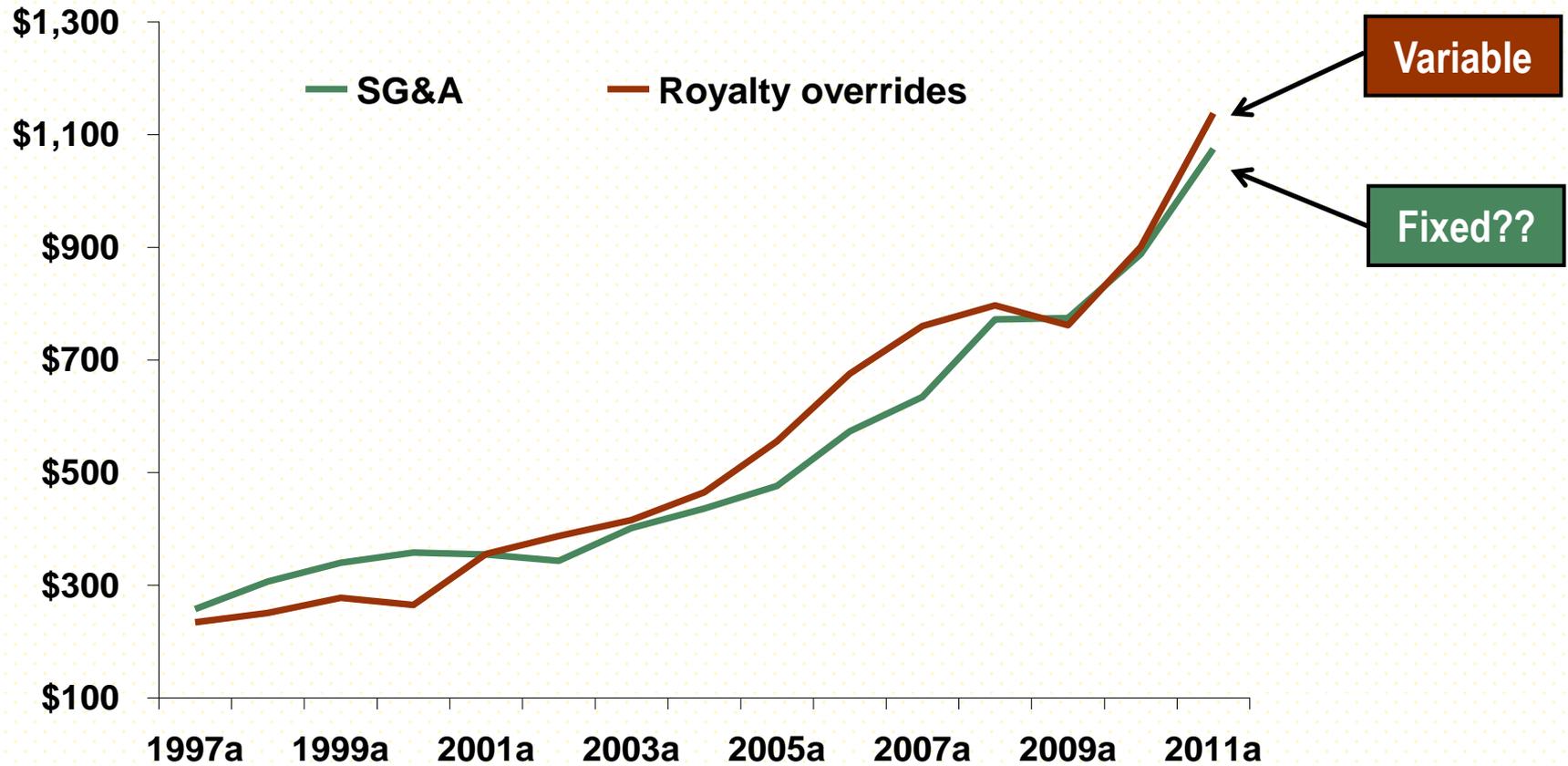
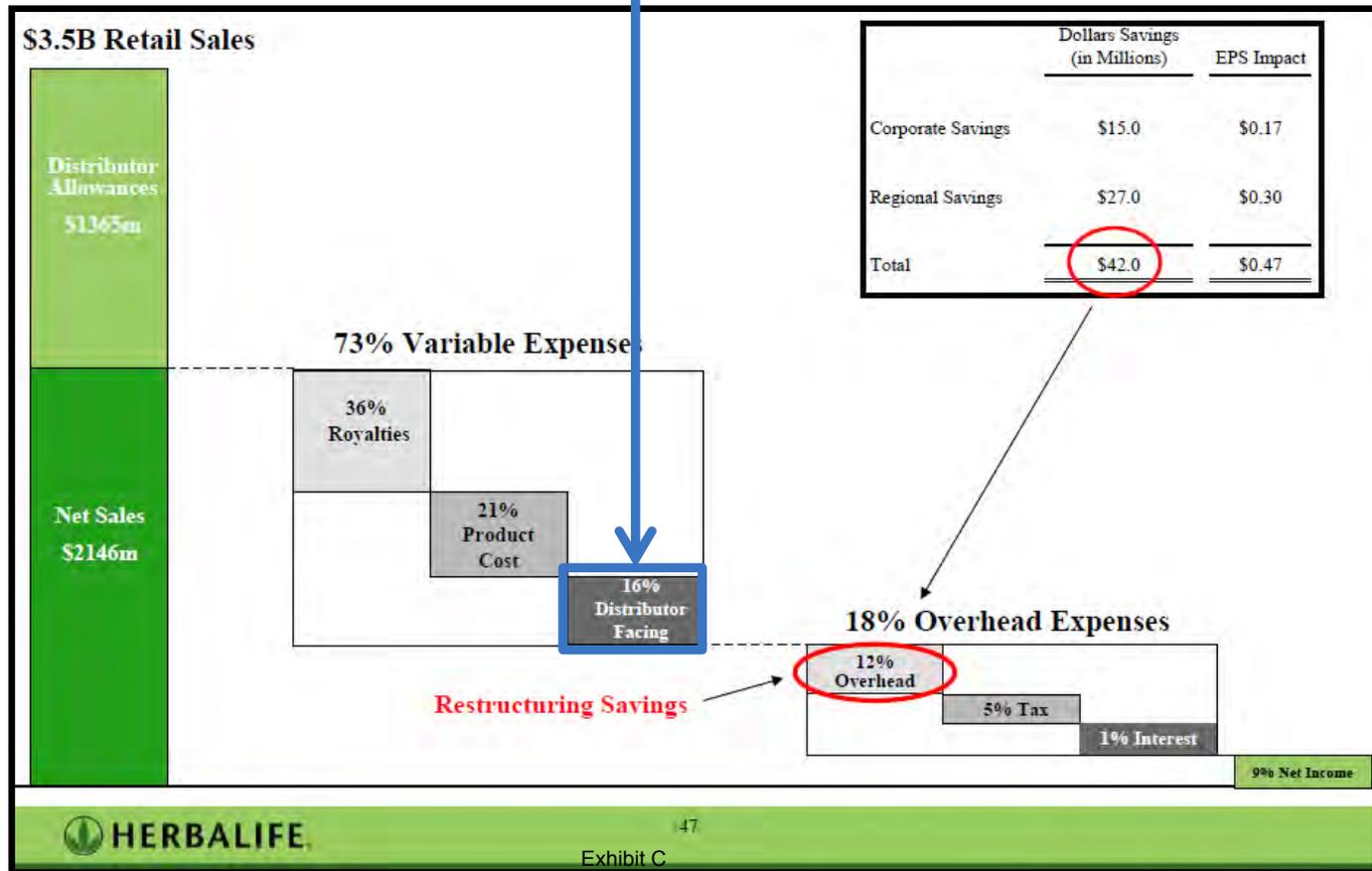


Exhibit C  
Page 000275

# “Distributor Facing” Expenses

At its 2008 Investor Day presentation, Herbalife disclosed that approximately 54% of SG&A was “Distributor Facing” expenses<sup>(1)</sup>



(1) “Distributor Facing” expenses were 16% of net sales in 2007, or \$343mm, which represents 54% of reported SG&A (\$634mm). Source: Herbalife Investor Day presentation (12-16-08)

# “Distributor Facing” Expenses are Incentives Similar to Royalty Overrides

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## From the Investor Day Transcript (12-16-08):

“Of our net sales, we believe that 73% of our business or our cost structure is highly variable. Our royalties that we pay distributors, about 36% of sales. Our product costs, 21%, and distributor facing spending, which is sort of sacrosanct. This is what Des mentioned earlier, and Michael. This is the last area that we want to touch as it relates to trying to leverage our margins.”

In fact, if anything, what we try to do is over-invest in this area because we do believe that complementing our royalty expense with very prudent incentives and promotion can actually drive incremental ROI on the spending. So, when we look at our essentially fixed overhead, and fixed is relative depending on what time horizon, we look at 12% of our cost structure being essentially fixed.”

– Rich Goudis, CFO, Herbalife

# A Substantial Portion of Distributor Facing Expenses are Effectively Recruiting Rewards

Though Herbalife's SG&A disclosure is limited, we estimate a meaningful portion of Distributor Facing expenses are dedicated to vacation packages, one-time cash bonuses, Herbalife pins and watches, and other similar promotions that can only be gained via recruiting



Exhibit C

# Quantifying Recruiting Rewards in SG&A

Using the Company's 2008 statement that half of "Distributor Facing" expenses are vacation packages, one-time cash bonuses, Herbalife pins and watches, and other similar promotions that can only be gained via recruiting, \$291mm of Herbalife's SG&A in 2011 were Recruiting Rewards

## Recruiting Rewards in SG&A

<i>(\$mms)</i>	<u>2011a</u>
<b>SG&amp;A</b>	<b>\$1,075</b>
<b>% Distributor Facing expenses (1)</b>	<u><b>54%</b></u>
<b>Distributor Facing expenses</b>	<b>\$582</b>
<b>% of Distributor Facing expenses that are Recruiting Rewards (2)</b>	<u><b>50%</b></u>
<b>Recruiting Rewards in SG&amp;A</b>	<b>\$291</b>

Exhibit C

(1) Assumes 54% of SG&A is Distributor Facing expenses (per Herbalife's Investor Day presentation on 12-16-08). Page 000279  
 (2) Pershing Square assumption.

# Summary:

## Herbalife Distributors Earn Almost No Retail Profit

### HLF Representation

	<u>2011a</u>
Distributor Allowances (1)	\$2,492,300,000
Less: Internal Consumption	-
Less: Actual Retail Price adj.	-
Less: Wholesale Commissions	<u>-</u>
<b>Retail Profit</b>	<b>\$2,492,300,000</b>

Avg distributors (2) 2,380,000

#### Avg Retail Profit per Distributor:

Per Year	<b>\$1,047</b>
Per Month	<b>\$87</b>

### Reality

	<u>2011a</u>
Distributor Allowances (1)	\$2,492,300,000
Less: Internal Consumption (3)	(747,690,000)
Less: Actual Retail Price adj. (4)	(1,289,631,000)
Less: Wholesale Commissions (5)	<u>(310,616,838)</u>
<b>Retail Profit</b>	<b>\$144,362,162</b>

Avg distributors (2) 2,380,000

#### Avg Retail Profit per Distributor:

Per Year	<b>\$61</b>
Per Month	<b>\$5</b>

***Using reasonable assumptions, the typical Herbalife distributor only earns \$5 per month in Retail Profit (before taxes / expenses)***

(1) Distributor Allowances excluding literature, promotional and other. Source: Herbalife 10-K (2011).  
 (2) Source: Herbalife public filings.  
 (3) Assumes 30% of product is self-consumed.  
 (4) Assumes Actual Retail Price is 35% off SRP; applied to 70% of Retail Sales.  
 (5) Treats Wholesale Commissions as Recruiting Profit.

# Summary:

# Recruiting Rewards are Greater than Retail Profit

## HLF Representation

	2011a	
	Amt.	Pct.
Retail Sales (@ SRP) (1)	\$5,264	100%
Distributor Allowances (1)	\$2,492	47%
Less: Internal Consumption	-	-
Less: Actual Retail Price adj.	-	-
Less: Wholesale Commissions	-	-
<b>Retail Profit</b>	<b>\$2,492</b>	<b>47%</b>
Royalty overrides (2)	\$1,138	22%
Plus: Wholesale Commissions	-	-
Plus: Rewards in SG&A	-	-
<b>Recruiting Rewards</b>	<b>\$1,138</b>	<b>22%</b>
<b>Payout Ratio</b>		<b>69%</b>
<b>% of Payout that is Recruiting Rewards</b>		<b>31%</b>

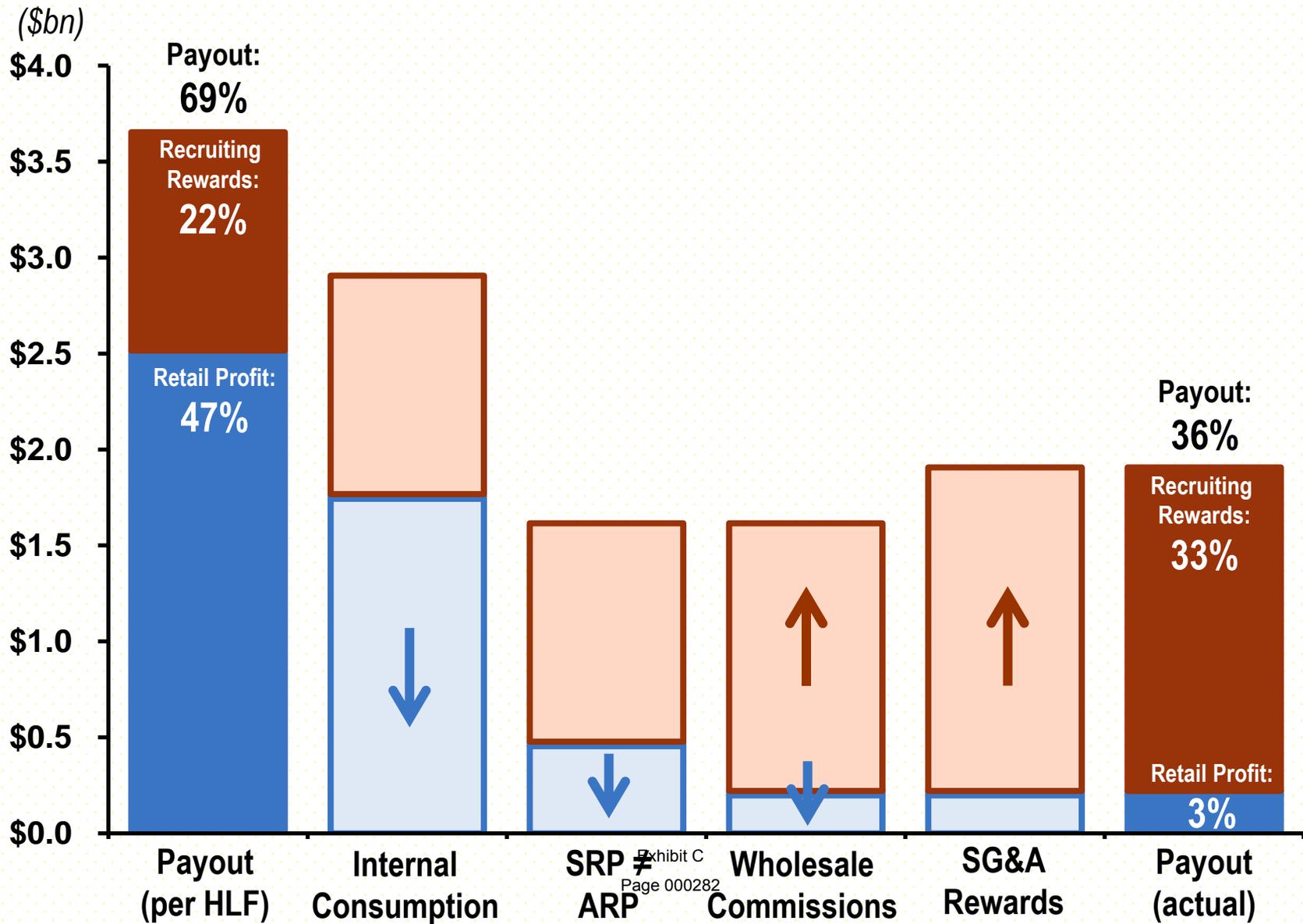
## Reality

	2011a	
	Amt.	Pct.
Retail Sales (@ SRP) (1)	\$5,264	100%
Distributor Allowances (1)	\$2,492	47%
Less: Internal Consumption (3)	(748)	(14%)
Less: Actual Retail Price adj. (4)	(1,290)	(25%)
Less: Wholesale Commissions (5)	(311)	(6%)
<b>Retail Profit</b>	<b>\$144</b>	<b>3%</b>
Royalty overrides (2)	\$1,138	22%
Plus: Wholesale Commissions (5)	311	6%
Plus: Rewards in SG&A (6)	291	6%
<b>Recruiting Rewards</b>	<b>\$1,739</b>	<b>33%</b>
<b>Payout Ratio</b>		<b>36%</b>
<b>% of Payout that is Recruiting Rewards</b>		<b>92%</b>

(1) 2011a Retail Sales and Distributor Allowances exclude literature, promotional and other. Distributor Allowances percentage is less than 50%, as Herbalife Sales Leaders purchase at less than 50% discounts in certain markets. Source: HLF 10-K.  
 (2) Source: HLF 10-K.  
 (3) Assumes 30% of product is self-consumed.  
 (4) Assumes Actual Retail Price is 35% off SRP; applied to 70% of Retail Sales (@ SRP).  
 (5) Treats Wholesale Commissions as Recruiting Rewards.  
 (6) Assumes \$291mm of SG&A are Recruiting Rewards.

# Summary:

## Recruiting Rewards are Greater than Retail Profit

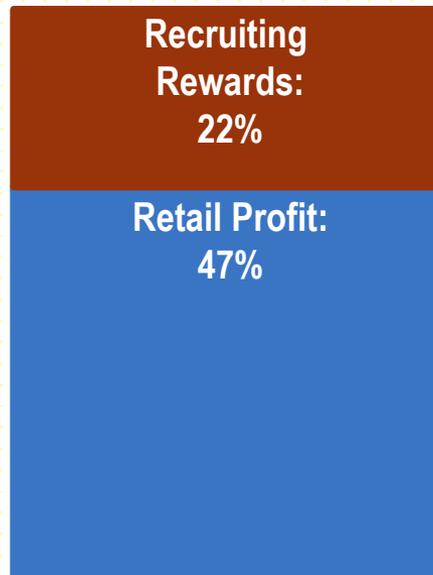


**“[T]he organization is deemed a pyramid scheme if the participants obtain their monetary benefits primarily from recruitment rather than the sale of goods and services to consumers”**

**- Dr. Peter J. Vander Nat, Senior Economist at the FTC <sup>(1)</sup>**

**Percent of Participants’  
Income from Recruiting Rewards:**

**31%**



**Payout  
(per HLF)**

**Percent of Participants’  
Income from Recruiting Rewards:**

**92%**



**Payout  
(actual)**

Exhibit C

(1) Vander Nat, Peter J and Keep, William W.; (2002). Marketing Fraud: An approach for differentiating Multi-level Marketing from Pyramid schemes. *Journal of Public Policy and Marketing*. Vol 21-1, 139-151. Page 000283



# **Herbalife's Compensation Plan Incentivizes Distributors to Recruit Aggressively**

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- ▶ **Distributors cannot get to the higher-income, upper levels of the Herbalife chain without recruiting**
  - **To get to Active World Team, GET Team, Millionaire Team, President's Team, or Chairman's Club, a distributor must accumulate Royalty Override Points, which requires having (recruiting) downline Sales Leaders**
  
- ▶ **Herbalife's most lucrative rewards (Royalty Overrides, Production Bonuses, and the Mark Hughes Bonus) are only available to distributors who have reached the rank of Sales Leader and have recruited Sales Leaders beneath them**
  - **As Sales Leaders recruit, and as they incentivize their recruits to recruit, they become eligible to receive additional recruiting rewards, and their commissions grow geometrically**
  
  - **Production Bonuses go "infinitely deep" into the distributor's downline**
  
- ▶ **Wholesale Commissions are only available to distributors who have recruited Non-Sales Leaders**

# **A Distributor's Ability to Earn Retail Profit via Herbalife's Business Opportunity is De Minimis**

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- ▶ **We estimate that the typical Herbalife distributor earns less than \$10 per month in Retail Profit**
  - **Even using Herbalife's reported "Retail Sales," the typical distributor only earns \$87 per month**
  - **Furthermore, these figures are gross, not net of distributor expenses, which we believe to be material**
  
- ▶ **The "wholesale" price paid by distributors for Herbalife products does not allow for meaningful Retail Profits. As a result, a distributor's only real chance to earn the money promised in Herbalife distributor presentations is by recruiting**
  - **No distributor can achieve "financial freedom," "generate perpetual income," or earn enough to buy a Ferrari by simply retailing**

**Herbalife's inflated Suggested Retail Prices for its products mask the fact that the Recruiting Rewards earned by distributors vastly exceed their Retail Profits**

# What Would You Rather Do?

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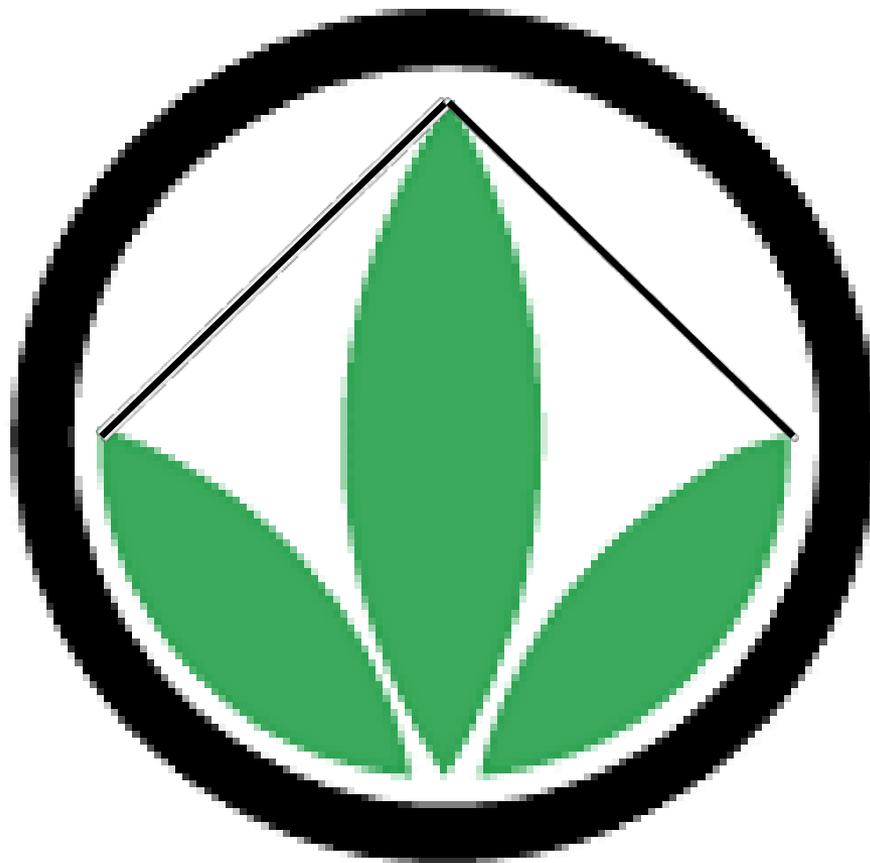
## Retail

*Sell an overpriced, unadvertised white powder to strangers, from whom you are required to obtain name, address, and purchase details*

**Or**

## Recruit

*Recruit friends and family to a business opportunity*



**What other factors might the FTC consider in determining whether a company is a pyramid scheme?**

# An Alternative Way to Approach the Question

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**In 2004, the FTC issued a Staff Advisory Opinion stating the following:**

The critical question for the FTC is whether the revenues that primarily support the commissions paid to all participants are generated from purchases of goods and services that are not simply incidental to the purchase of the right to participate in a money-making venture.

***Simply stated:  
Why do participants buy the product?***

# Why Do Senior Distributors Buy Product? To “Pay-for-your-Paycheck”

In 2009, Bruce Roth (former President’s Team member) provided the following declaration as part of a legal dispute against Herbalife that alleged that Herbalife was illegally perpetuating a pyramid scheme

6. By 2007, operating an Herbalife independent distributorship business had become unsustainable. Herbalife’s entire program is based on purchases made from Herbalife. Distributors have to purchase product from Herbalife each month in order to obtain their paychecks. Under this system, we would not be paid any money or commissions from the sales by people in our business organization in a given month unless we purchased products from Herbalife during that month. Herbalife products became almost impossible to retail because the “pay-for-your-paycheck” Herbalife product was being dumped by distributors on eBay for much less than we could sell it. Moreover, this product could not be returned to Herbalife or the distributor lost his or her paycheck and had to permanently resign from Herbalife. In addition, Herbalife’s product line is very limited and consists primarily of weight loss and nutritional products. This also makes it very difficult to retail because customers do not continue to buy the product or the customers find it cheaper to buy from eBay.

Exhibit C

Page 000292

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *Herbalife’s Compensation Plan Revisited*

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- ▶ Herbalife’s compensation plan is based on two types of volume

### **Personal Volume**

*Derived from a distributor’s personal purchases and the purchases of his Non-Sales Leader downline*

### **Organization Volume**

*Derived from the Personal Volume of a distributor’s Sales Leader downline (“organization”)*

***Personal Volume is the monthly volume requirement that determines whether a distributor gets their paycheck; Organization Volume determines the size of the paycheck***

# Why Herbalife Distributors “Pay-for-your-Paycheck”

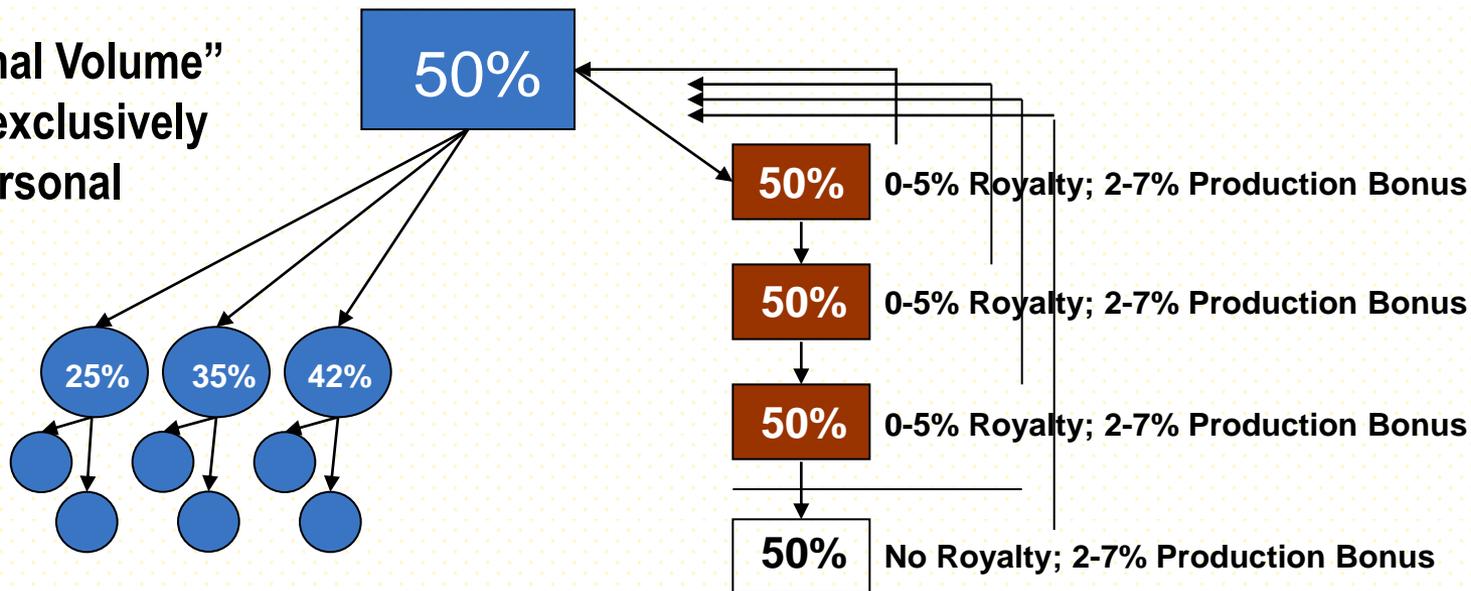
## *Herbalife’s Compensation Plan Revisited (Cont’d)*

- ▶ Herbalife’s compensation plan is based on two types of volume

**Personal Volume**

**Organization Volume**

“Personal Volume”  
is not exclusively  
personal



# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *Herbalife’s Compensation Plan Revisited (Cont’d)*

- ▶ In order to receive Royalty Overrides, Sales Leaders must generate a set amount of Personal Volume *each month*. This can be achieved by “paying-for-your-paycheck” or by recruiting new NSL distributors

**Personal Volume Requirement (monthly)**

<b>Personal Volume determines Royalty Override Earning % (“Royalty %”)</b>	
<b>Royalty Override Scale</b>	
<b>Your Total Volume Points</b>	<b>Royalty Override Earning %</b>
0–499	0%
500–999	1%
1,000–1,499	2%
1,500–1,999	3%
2,000–2,499	4%
2,500 plus	5%

Exhibit C

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *Herbalife’s Compensation Plan Revisited (Cont’d)*

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- ▶ In addition, in order to receive Royalty Overrides, Sales Leaders must generate Organization Volume

**Royalty Override Points = (Royalty %) \* (Organization Volume)**

**One Royalty Override Point = ~ \$1.00 Royalty Override**

# **Why Herbalife Distributors “Pay-for-your-Paycheck”**

## ***The (not so) Curious Case of Anthony Powell***

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- ▶ In 2000, Jason McDowell (President’s Team member) filed a lawsuit against Herbalife alleging that the company had unjustifiably removed a Sales Leader, Anthony Powell, from his downline<sup>(1)</sup>
- ▶ In order to assess the damages incurred by McDowell for the loss of Powell’s Organization Volume, the monthly volume of Anthony Powell was made available as part of discovery
- ▶ Because Anthony Powell ascended the Herbalife chain from World Team to President’s Team, his Personal Volume purchasing behavior provides valuable insights into the incentives created by Herbalife’s compensation plan

(1) *McDowell v. Herbalife*, No. C00-2011Z (W.D. Wash.), complaint dated October 30, 2000.  
Exhibit C  
Page 000297

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

The chart below shows Anthony Powell’s monthly Personal Volume from 1996 to 2000. You might think it would be driven by the vagaries of retail demand...

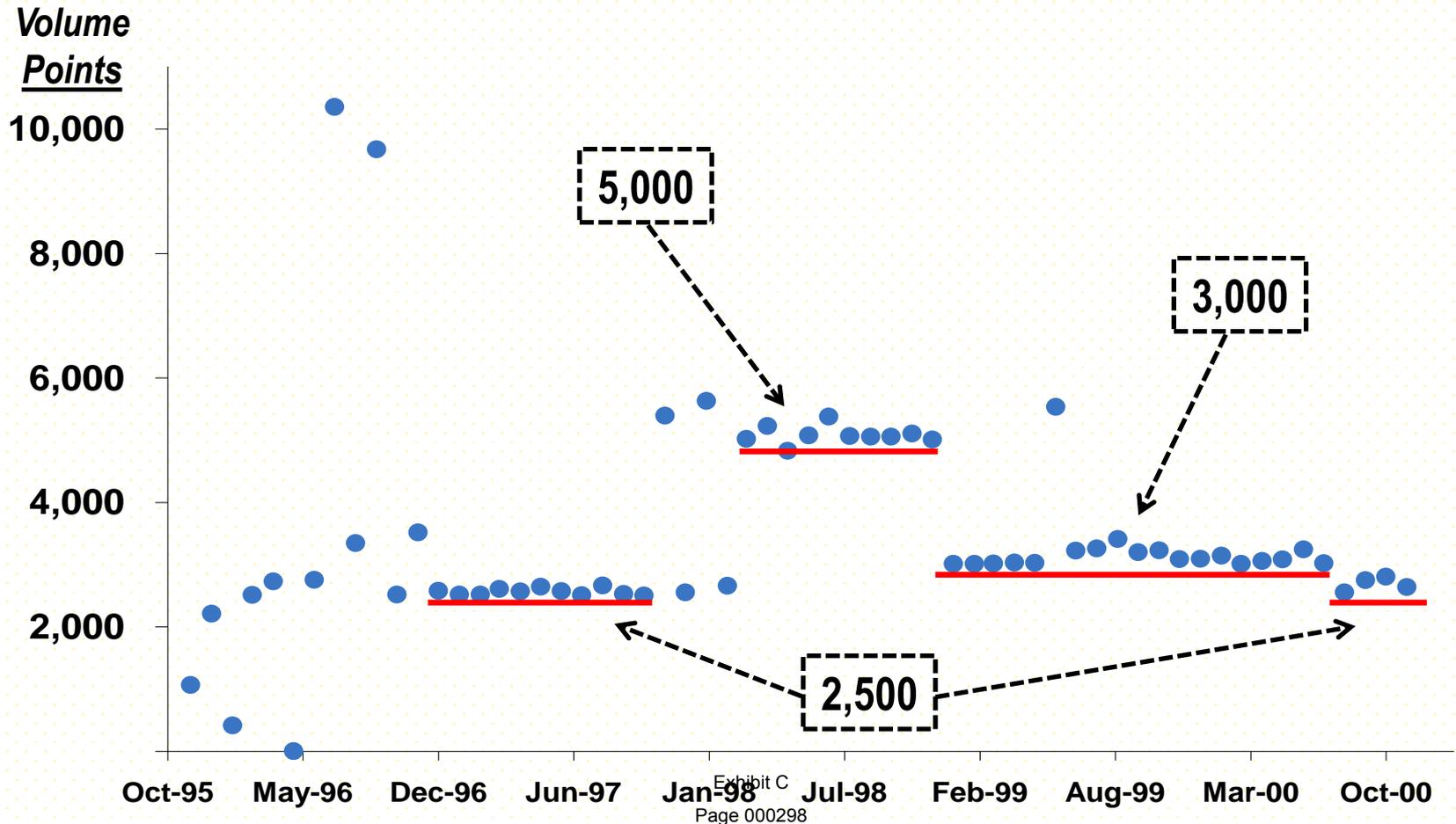


Exhibit C  
Page 000298

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

- ▶ In order to receive Production Bonuses, GET Team / Millionaire Team / President’s Team members (collectively, “TAB Team”) must generate a minimum amount of Personal Volume per month

**Personal Volume Requirement (monthly)**

	Production Bonus %	Total Volume Points Required	Royalty Points Required for Max 2% TAB Team PB	Royalty Points Required for Max 4% TAB Team PB	Royalty Points Required for Max 6% TAB Team PB	Royalty Points Required for Max 6.5% TAB Team PB	Royalty Points Required for Max 6.75% TAB Team PB	Royalty Points Required for Max 7% TAB Team PB
GET	2%	5,000	1,000					
Millionaire	4%	3,000	1,000	4,000				
President’s	6%	2,500	1,000	4,000	10,000			
20K	6.5%	2,500	1,000	4,000	10,000	20,000		
30K	6.75%	2,500	1,000	4,000	10,000	20,000	30,000	
50K	7%	2,500	1,000	4,000	10,000	20,000	30,000	50,000

Exhibit C  
Page 000299



# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

Powell purchases just enough Personal Volume to earn his Production Bonus (“pay-for-his-paycheck”)

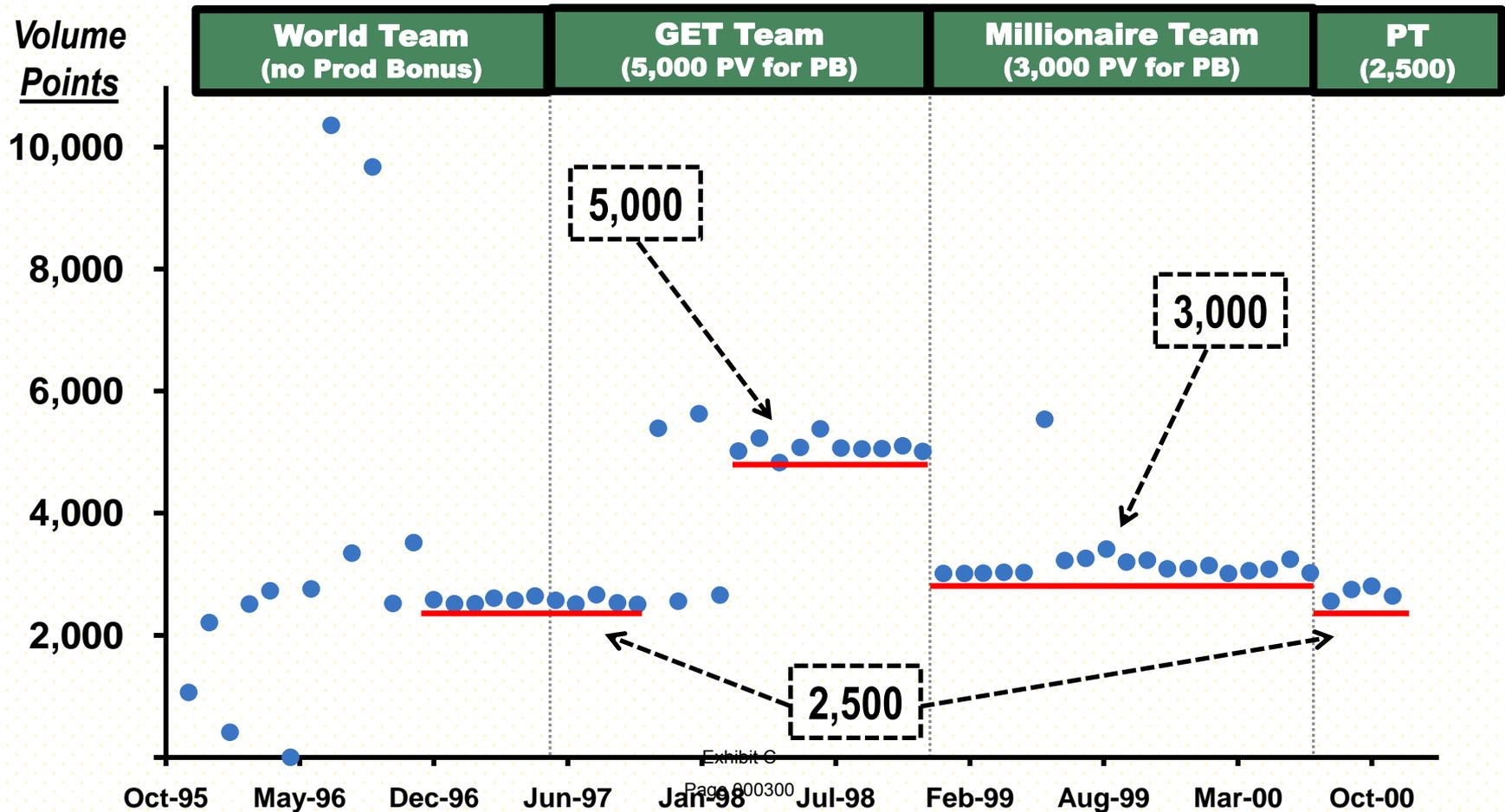


Exhibit C

Page 600300

# **Why Herbalife Distributors “Pay-for-your-Paycheck”**

## ***The (not so) Curious Case of Anthony Powell (Cont’d)***

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- ▶ **Herbalife distributors supposedly meet their Personal Volume requirements by establishing a base of Retail Customers. If Powell had a sufficient base of Retail Customers as a GET Team member to support 5,000 VPs, why did it suddenly disappear when he reached Millionaire Team?**
  
- ▶ **Per Herbalife’s rules, “the purchase of products primarily as an attempt to qualify for advancement in the Marketing Plan is not permitted;” yet, Powell purchases just enough Personal Volume each month to advance up the chain<sup>(1)</sup>**

Exhibit C

Page 000301

(1) See the Herbalife Sales & Marketing Plan (Rule 18-A Product Distribution).

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

Why does Powell alternate between 2,500 and 5,000 Personal Volume when he first reaches GET Team?

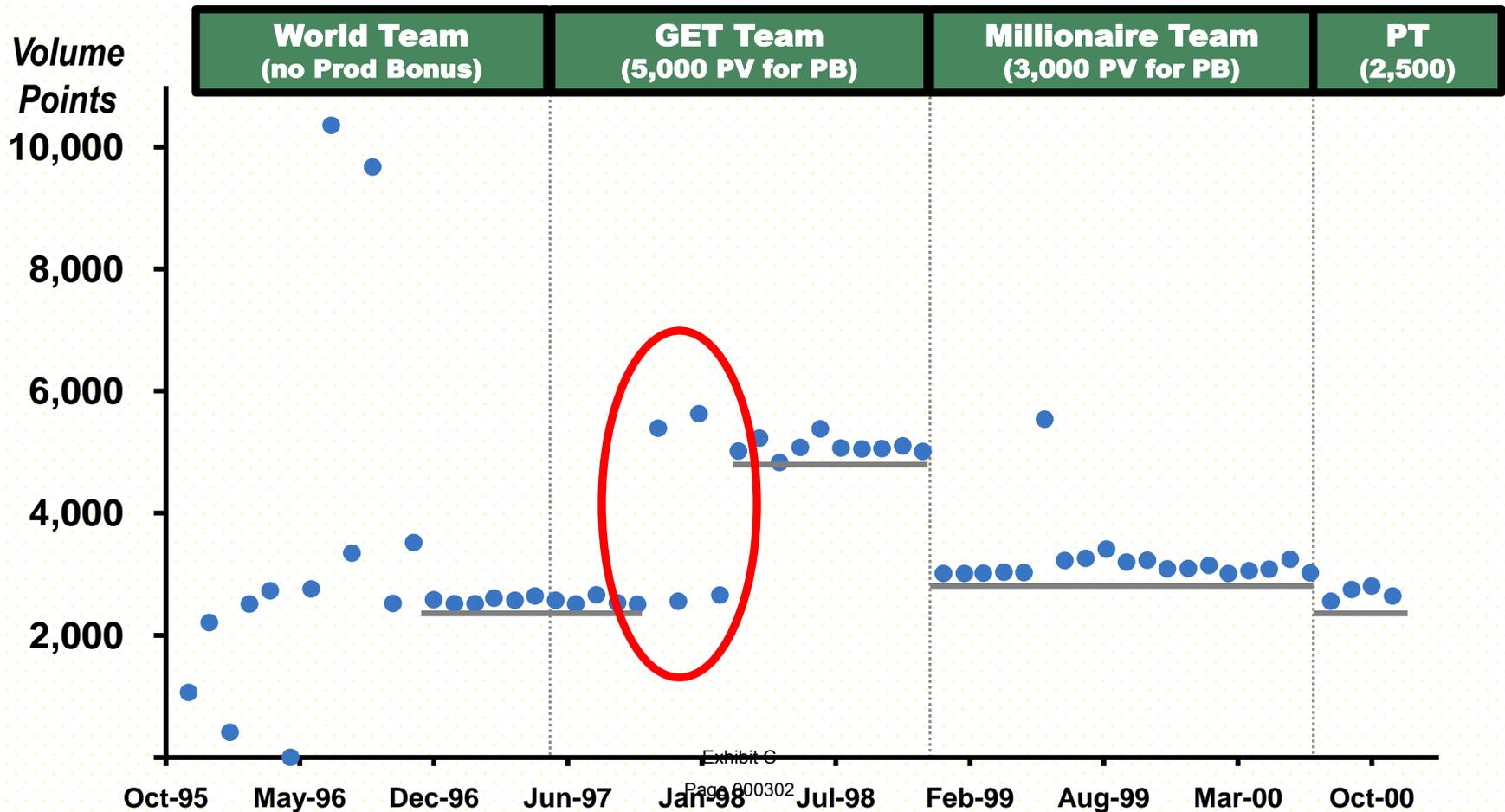


Exhibit C  
Page 600302

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

**At the GET Team level, it makes sense for Powell to pay for his royalties. This is why his Personal Volume is at least 2,500 Volume Points (“VPs”)**

Cost of 5% Royalties		Month	Pers. Volume	Org. Volume <sup>(2)</sup>	Royalty Overrides			Pay-for-Royalties? C > D?
					%	Value	Cost	
				A	B	A*B=C	D	
VP requirement	2,500	Oct-97	2,504	61,874	5.0%	\$3,094	\$1,400	Yes
RS / VP	1.0x	Nov-97	5,390	98,610	5.0%	4,930	1,400	Yes
RS requirement	\$2,500	Dec-97	2,553	56,698	5.0%	2,835	1,400	Yes
Discount	(50.0%)	Jan-98	5,627	89,946	5.0%	4,497	1,400	Yes
Surcharge (1)	6.0%	Feb-98	2,656	48,446	5.0%	2,422	1,400	Yes
<b>Cost for VPs</b>	<b>\$1,400</b>	Mar-98	5,017	70,883	5.0%	3,544	1,400	Yes

Source: Affidavit of William Partin (*McDowell v. Herbalife*, No. 00-2011 (W.D. Wash.)).

(1) Herbalife’s Surcharge was 6% in 1998.

(2) Technically, distributors earn Production Bonus off more than just Organization Volume because Org. Volume is only 3 levels and the Production Bonus goes “infinitely deep.” Powell’s third, fourth, and fifth levels were not disclosed as part of discovery. Exhibit C, Page 00930. Level 3 volume is related to Level 2 volume as Level 2 volume is related to Level 1 volume.

# Why Herbalife Distributors “Pay-for-your-Paycheck”

## *The (not so) Curious Case of Anthony Powell (Cont’d)*

**Powell only “pays-for-his-Production Bonus” when his Organization Volume is large enough to justify the cost**

Incr. Cost for Prod Bonus		Month	Pers. Volume	Org. Volume <sup>(2)</sup>	Production Bonus			Pay-for-Prod Bonus? D > C?
					%	Value	Cost	
				A	B	A*B=C	D	
VP requirement	2,500							
RS / VP	<u>1.0x</u>	Oct-97	2,504	61,874	2.0%	\$1,237	\$1,400	No
RS requirement	\$2,500	Nov-97	5,390	98,610	2.0%	1,972	1,400	Yes
		Dec-97	2,553	56,698	2.0%	1,134	1,400	No
Discount	(50.0%)	Jan-98	5,627	89,946	2.0%	1,799	1,400	Yes
Surcharge (1)	<u>6.0%</u>	Feb-98	2,656	48,446	2.0%	969	1,400	No
<b>Cost for VPs</b>	<b>\$1,400</b>	Mar-98	5,017	70,883	2.0%	1,418	1,400	Yes

***If purchases were truly driven by retail demand, Powell’s Personal Volume and his Organization Volume should be independent of one another***

Source: Affidavit of William Partin (*McDowell v. Herbalife*, No. 00-2011 (W.D. Wash.)). Exhibit C

(1) Herbalife’s Surcharge was 6% in 1998.

(2) Technically, distributors earn Production Bonus off more than just Organization Volume because Org. Volume is only 3 levels and the Production Bonus goes “infinitely deep.” Powell’s third, fourth, and fifth levels were not disclosed as part of discovery. Assumes Level 3 volume is related to Level 2 volume as Level 2 volume is related to Level 1 volume.

# Why Do Mid-level Distributors Buy Product?

## Answer: Requalification

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### From Herbalife's Q4'06 Earnings Transcript:

**Greg Probert** - Herbalife Ltd. - President, CEO

Right. Well, if you remember, January is our requalification month. So we have to take on that 52 million volume points is the requalification volume. So, a lot of our distributors requalified that month, so the orders are unusually high. January is always a big, big month for us, around the world due to that. So what we do is we take the 52 and try and cull out the requalification volume to really look at sort of the organic, and that gets us into the high 40s, and like we said, 45 to 47, we are tracking in February. Remember, February, again, is a shorter month. That leads us to believe that our guidance of 600 million volume points for the year is pretty good we are not coming off that guidance right now.

### What does requalification have to do with Retail Sales?

# Why Do Junior Distributors Buy Product?

## Answer: Advancement

**Non-Sales Leaders are encouraged to work their way up the Herbalife chain to get to Supervisor<sup>(1)</sup>**



Source: Herbalife independent distributor presentation (2012).

***“I want everyone to understand that the most important thing in this business is to get to Supervisor” – Shawn Dahl (Chairman’s Club)***

(1) John Tartol, (Chairman’s Club member, director of Herbalife), Herbalife Broadcast Network. “Mentoring your downline to help them reach to Supervisor level – it’s such a large part of building a strong team and it can make or break your success at Herbalife.”

## **Why Do Distributors Buy Herbalife Product?**

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- ▶ **Senior distributors purchase product to “pay-for-their-paycheck”**
  - ▶ **Mid-level distributors purchase product to re-qualify and maintain their downline “lineage”**
  - ▶ **Junior distributors purchase product to participate and advance in the business opportunity**
- ▶ **Herbalife’s compensation plan incentivizes orders without regard to retail demand**

**How does Herbalife sell so much of its unadvertised, commodity products at an inflated price?**

**Herbalife bundles its products with a business opportunity**

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

**Deception**

# Recruitment and Deception: The Two Hallmarks of Any Transfer Scheme

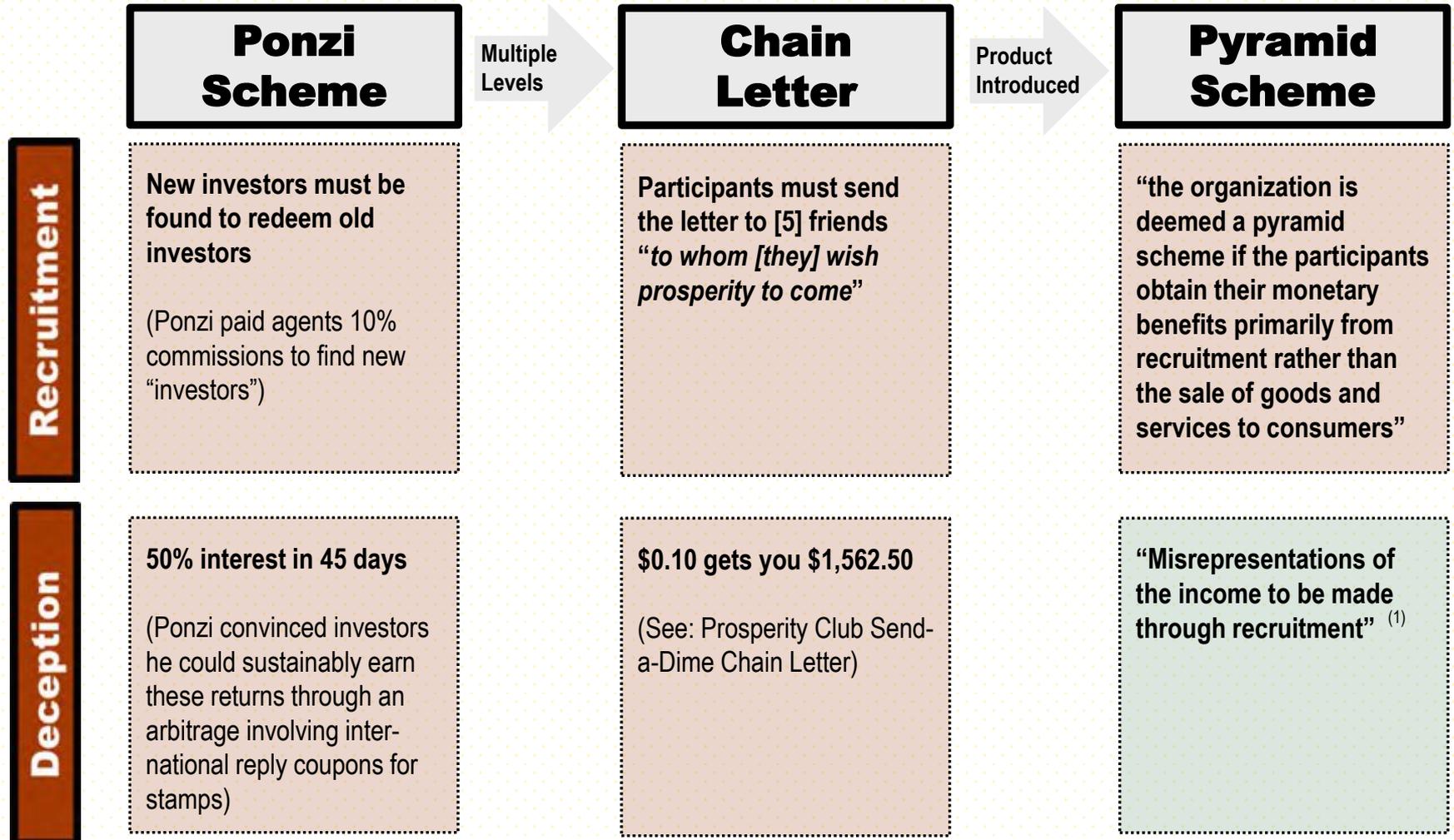


Exhibit C

(1) In *Koscot*, 86 F.T.C. at 1136-37, the FTC found (¶54): "The deception inherent in the endless chain element of Koscot's marketing plan is but one of the numerous misrepresentations made by respondents. This basic deception necessarily involved, of course, gross misrepresentations of the income to be made through recruitment."

# Every Herbalife Distributor Sees the Company's Disclosure of Distributor Earnings

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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 Disclosure of Distributor Earnings



## STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

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.

### 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

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 includes "Active" Sales Leaders. Inactive Sales Leaders and Non-Sales Leaders are excluded**

# Deception #1:

## 93% of Distributors Excluded from the Table

**Herbalife excludes 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				<b>% of Total Distributors</b>
Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings (USD)	
President’s Team	0.2%	0.6%	\$ 515,689	0.04%
Millionaire Team	0.7%	1.7%	\$ 100,195	0.1%
GET	2.6%	6.5%	\$ 22,766	0.5%
World Team	2.9%	7.3%	\$ 6,224	0.5%
Supervisor	33.1%	83.9%	\$ 901	5.9%
<b>Total</b>	<b>39.4%</b>	<b>100.0%</b>	<b>\$ 7,348</b>	<b>7.0%</b>
<b>Inactive Sales Leaders 60.6%</b>				<b>\$ 0<sup>(1)</sup> 10.7%</b>
<b>Non-Sales Leaders</b>				<b>\$ 0 82.3%</b>
				<b>100.0%</b>

(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)**

**The FTC believes the exclusion of zero-earning distributors is relevant to a determination that an MLM is a pyramid scheme**

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;

# Deception #2: “Gross” “Earnings”

Herbalife’s Statement of “Gross” Compensation refers to “Average Earnings,” but it is not adjusted for distributor expenses

## STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

Active Leaders			
Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings (USD)
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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 <sup>(1)</sup>

## 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

Exhibit C

Page 000316

(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**

<http://www.trishparr.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 <sup>(1)</sup>***

Exhibit C

(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.

# Deception #3: Cherry-Picking “Active” Leaders

Herbalife uses multiple definitions of the term “Active.” In its public filings, it broadly defines “Active” Sales Leaders. In its distributor earnings disclosure, it uses a more narrow 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 %
<b>Total</b>	<b>39.4 %</b>

Herbalife Regional Key Metrics - Reclassified for 6 Regions

	2011
North America	
Volume Points (in 000)	987,082
Net Sales (\$ in 000)	698,631
New Distributors	280,513
Avg Active Sales Leaders	56,741
Total Sales Leaders	108,211
<b>% Active</b>	<b>52.4%</b>

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-picks the highest earning “Active” Supervisors for its distributor earnings disclosure**

## Deception #4:

### **“Over 25% of Distributors reach Supervisor”**

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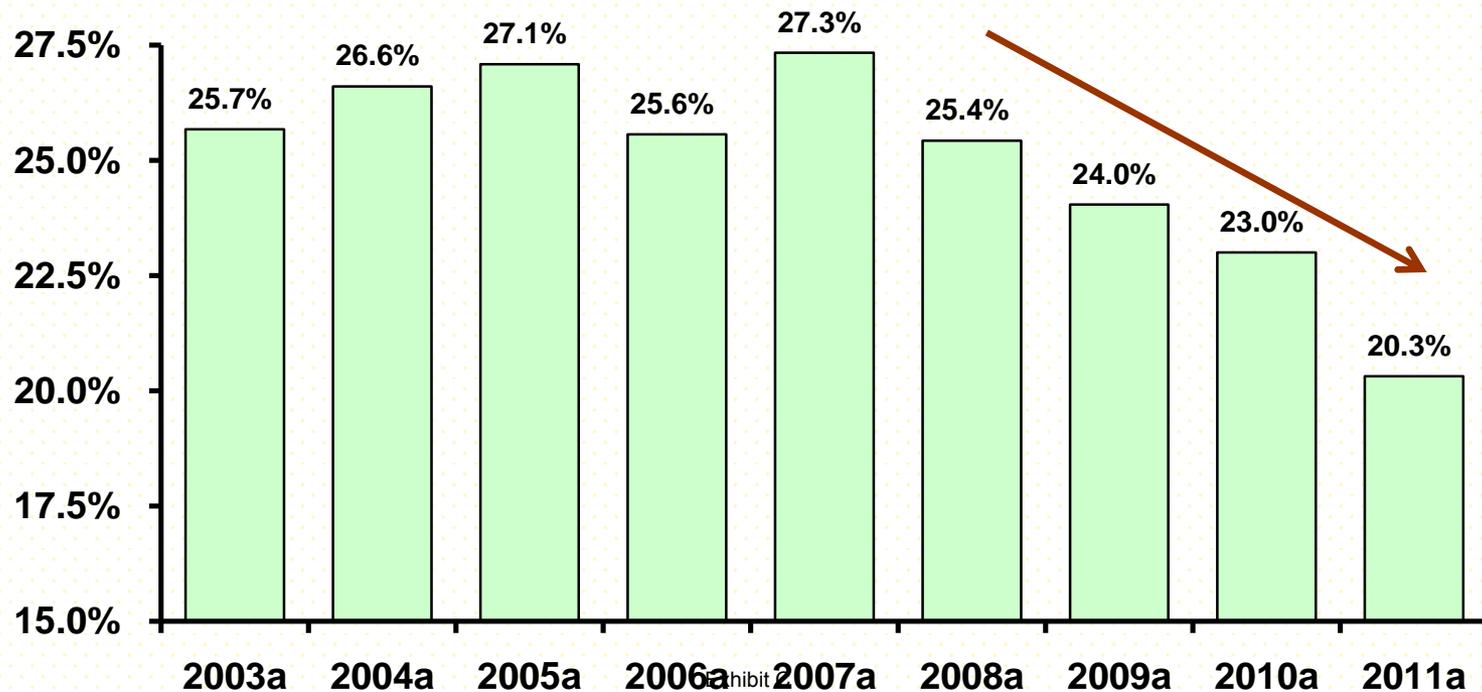
Herbalife states that “*over 25% of Distributors reach the rank of Supervisor and above,*” implying a new distributor has a one-in-four chance of being in one of the table’s earnings brackets (so long as they are “Active”)

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 has 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)



Page 000320

(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	<b>79,419</b>
New distributors (2)	50,738	59,712	58,586	49,642	60,453	71,223	64,662	52,075	<b>467,091</b>
<b>Ratio of New Sales Leaders to New Distributors</b>									<b>17.0%</b>

*Only about one-out-of-six distributors makes Sales Leader rather than one-out-of-four*

Exhibit C

(1) 2009 Source: Regional Key Metrics (2009); 2010 Source: Herbalife public filings page 000322

(2) Source: Regional Key Metrics (2011).

# Deception #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. Acuérdesse 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". "Olvídese 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 <sup>(1)</sup>

Exhibit C

## 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



**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!”

Exhibit C  
Page 000324

## 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

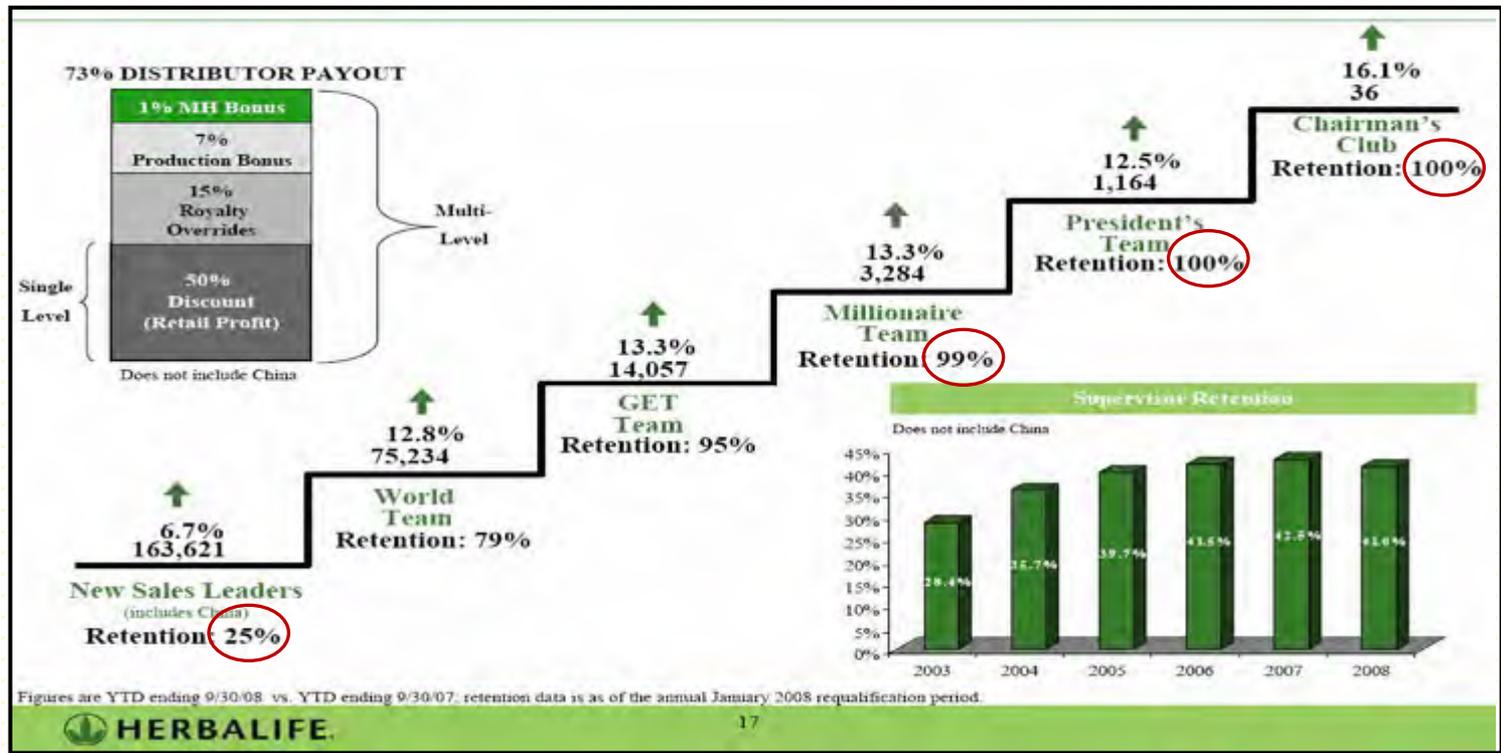
### Statement of Average Gross Compensation of Irish Supervisors

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			
Earning Level	% of Total Leaders	% of Active Leaders	Average Earnings (EUR)
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**



# Getting to the Top is Much Harder than Advertised (Cont'd)

**From 2004 through 2009, we estimate that only one new President's Team member was created for every 10,000 new distributors**

	2004a	2005a	2006a	2007a	2008a	2009a
<b>Beginning of Period</b>						
President's Team (1)	697	787	886	1,018	1,137	1,220
Non-PT SLs	<u>274,182</u>	<u>298,341</u>	<u>333,114</u>	<u>401,925</u>	<u>450,418</u>	<u>455,638</u>
Sales Leaders (2)	274,879	299,128	334,000	402,943	451,555	456,858
Non-Sales Leaders	<u>796,000</u>	<u>825,000</u>	<u>899,000</u>	<u>1,163,793</u>	<u>1,153,291</u>	<u>1,296,236</u>
Total Distributors (3)	1,070,879	1,124,128	1,233,000	1,566,736	1,604,846	1,753,094
<b>Churn</b>						
President's Team (4)	(7)	(8)	(9)	(10)	(11)	(12)
Non-PT SLs	<u>(105,244)</u>	<u>(120,611)</u>	<u>(121,669)</u>	<u>(146,072)</u>	<u>(177,702)</u>	<u>(188,297)</u>
Sales Leaders	(105,251)	(120,619)	(121,678)	(146,082)	(177,713)	(188,309)
Non-Sales Leaders (5)	<u>(796,000)</u>	<u>(742,500)</u>	<u>(767,631)</u>	<u>(940,048)</u>	<u>(878,367)</u>	<u>(927,444)</u>
Total Distributors	(901,251)	(863,119)	(889,309)	(1,086,130)	(1,056,080)	(1,115,753)
<b>Additions</b>						
President's Team	97	107	141	129	94	93
Non-PT SLs	<u>129,403</u>	<u>155,384</u>	<u>190,480</u>	<u>194,565</u>	<u>182,922</u>	<u>162,667</u>
Sales Leaders (2)	129,500	155,491	190,621	194,694	183,016	162,760
Non-Sales Leaders	<u>825,000</u>	<u>816,500</u>	<u>1,032,424</u>	<u>929,546</u>	<u>1,021,312</u>	<u>903,899</u>
Total Distributors	954,500	971,991	1,223,045	1,124,240	1,204,328	1,066,659
<b>End of Period</b>						
President's Team (1)	787	886	1,018	1,137	1,220	1,301
Non-PT SLs	<u>298,341</u>	<u>333,114</u>	<u>401,925</u>	<u>450,418</u>	<u>455,638</u>	<u>430,008</u>
Sales Leaders (2)	299,128	334,000	402,943	451,555	456,858	431,309
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Total Distributors (3)	1,124,128	1,233,000	1,566,736	1,604,846	1,753,094	1,704,000

**From 2004 – 2009:**

**New President's  
Team Members:**

**661**

**÷**

**New Distributors:**

**6,544,763**

**=**

**~1 in 10,000**



(1) Source: Herbalife press releases. Uses Q3'09 for EOP 2009 as HLF stopped disclosing this metric in Q3'09.

(2) Source: Herbalife public filings. Excludes China.

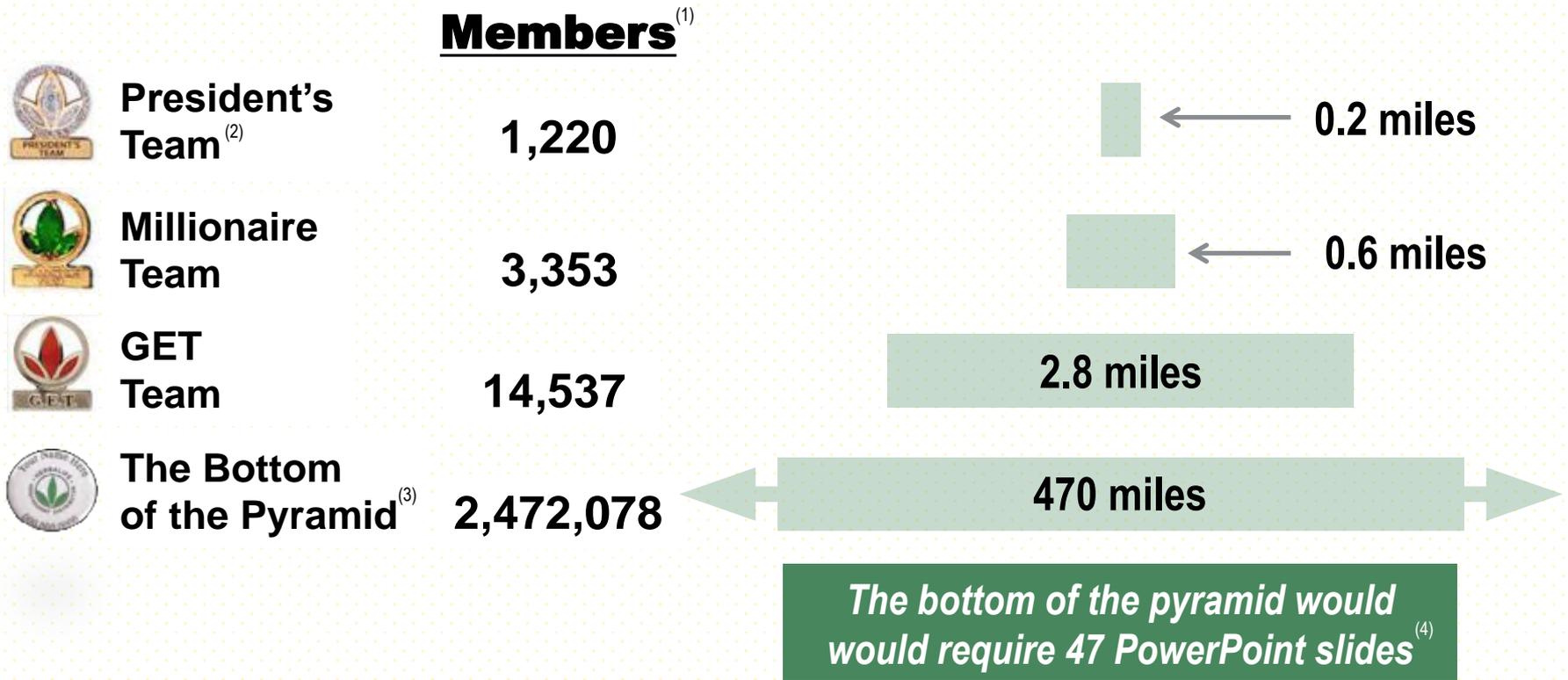
(3) Source: Herbalife public filings and Investor Presentations. Excludes China.

(4) Assumes PT retention is 99%. Source: Herbalife Investor Presentation (2008) (President's Team retention disclosed as 100%).

(5) 2004-2005 Source: HLF reported Non-SL churn in its 10-K (100% and 90%). 2009 Source: HLF reported new distributors in its Register of Key Metrics disclosure. 2006-2008: churn assumed to be linear average. Excludes China.

# 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***



### STATEMENT OF AVERAGE GROSS COMPENSATION OF U.S. SUPERVISORS – 2011

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# Summary: Everything Is Not Really Easy



- ▶ 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 <sup>(1)</sup>

(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.”

# **Indicia of Pyramid Schemes & Other Legal Issues**

## **Disclaimer – This is Not Legal Advice**

*This presentation reflects PSCM's own views of applicable legal standards and authorities.*

*PSCM is not a law firm and is not purporting to provide legal advice to anyone.*

*Readers should review the cited sources and other related materials and reach their own conclusions.*

*Readers should consult their own legal counsel on the subjects discussed here.*

## **Federal Trade Commission Act – Section 5**

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**Section 5 of the FTC Act provides: “unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.” 15 U.S.C. § 45**

- ✓ A general, flexible provision that is designed to protect consumers from unfair, misleading or abusive practices
- ✓ An objective standard: Are the acts or practices at issue likely to mislead consumers acting reasonably under the circumstances?
- ✓ No requirement to show that consumers were actually confused or misled or that they actually relied upon the challenged acts or practices
- ✓ Enforcement is by the Federal Trade Commission
- ✓ Remedies can include injunctive and monetary relief, restitution, and disgorgement. Aims for both remedies and prevention.

## State & Non-U.S. Laws

### States and non-U.S. jurisdictions regulate consumer protection and multi-level marketing

- ▶ States have their own consumer-protection statutes, some known as ‘Little FTC Acts’ that track federal standards, and some providing private rights to sue
- ▶ Many States have specific laws against pyramid schemes
- ▶ Non-U.S. jurisdictions have consumer protection regimes that regulate pyramid schemes. Some bar MLMs

### Overlapping roles for Feds, States and non-U.S. gov'ts and private actions

*Little FTC Acts: E.g., N.Y. Gen. Bus. Laws § 349; Tex. Bus. & Com. Code Ann. § 17.46(c); 815 Ill. Comp. Stat. Ann. 505/2. General consumer-protection statutes: E.g., California. Statutes with private rights of action: e.g., 815 Ill. Comp. Stat. Ann. 505/10a; Conn. Gen. Stat. Ann. § 41-100g; 73 PA Cons. Stat. Ann. § 201-9.2; Tex. Bus. & Com. Code Ann. § 17.50. For a compendium of state anti-pyramid laws, as of 1999, see U.S. v. Gold Unlimited, 177 F.3d 472, 483-84 (6<sup>th</sup> Cir. 1999). See F.T.C. v. Equinox International Corp. 1999 WL 1425373 (D. Nev. 1999), 1999-2 Trade Cases ¶ 72,704 (Index No. CV-S-99-0969). Canadian Competition Act, R.S.C. 1985, c. C-34 § 55.1 (penalties for ‘scheme of pyramid selling’); U.K. Fair Trading Act of 1973, c. 41, Part XI § 118 (prohibiting ‘trading scheme’ based upon introduction of other persons who become participants with prospect of payment for introducing other persons); People’s Republic of China Ban of Operational Activities of Pyramid Sales (April 1998). India Ministry of Corporate Affairs has proposed (Disguised) Money Circulation Scheme (Banning) rules, 2012 (to curb pyramids conceived as MLMs).*

Exhibit C

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# **What are “Unfair or Deceptive Practices”?**

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**In a key 1983 Policy Statement on Deception, the FTC explained that deceptive acts or practices involve three elements:**

- 1. A representation, omission or practice**
- 2. Likely to mislead reasonable consumers under the circumstances**
- 3. And that is material, meaning likely to affect a consumer’s choice or conduct with respect to the goods or services**

**The Policy Statement on Deception specifically mentions “failure to disclose information regarding pyramid sales” as a situation in which the FTC has found deception**

See FTC Policy Statement on Deception (Oct.14, 1983), appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984); *F.T.C. v. Five-Star Auto Club, Inc.*, 97 F. Supp. 502, 526 (S.D.N.Y. 2000).

Exhibit C

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# **Herbalife Acknowledges its Regulatory Risks...**

## **From Herbalife's 10K – Risk Factors:**

***Our network marketing program could be found to be not in compliance with current or newly adopted laws or regulations in one or more markets, which could prevent us from conducting our business in these markets and harm our financial condition and operating results.***

...

We are subject to the risk that, in one or more markets, our network marketing program could be found not to be in compliance with applicable law or regulations. Regulations applicable to network marketing organizations generally are directed at preventing fraudulent or deceptive schemes, often referred to as “pyramid” or “chain sales” schemes, by ensuring that product sales ultimately are made to consumers and that advancement within an organization is based on sales of the organization’s products rather than investments in the organization or other non-retail sales-related criteria. The regulatory requirements concerning network marketing programs do not include “bright line” rules and are inherently fact-based and, thus, we are subject to the risk that these laws or regulations or the enforcement or interpretation of these laws and regulations by governmental agencies or courts can change. The failure of our network marketing program to comply with current or newly adopted regulations could negatively impact our business in a particular market or in general.

## **...And Tries to Mitigate Those Risks**

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*“We put together a political action committee inside our company. I am in Washington every quarter, if not more than that. I have a list of Senators and Congressman that I go in and see. . . .”*

- Michael O. Johnson, CEO  
Goldman Sachs 14th Annual Global Retailing Conference  
9/5/2007

# **Indicia of Pyramid Schemes**

# **Indicia of Pyramids: Summary**

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- ▶ **Exaggerated Earnings Claims**
- ▶ **Inflated Prices & Need to Sell to Other Members**
- ▶ **Emotional Sales Pitch – the ‘Dream’**
- ▶ **A History of Lawsuits**
- ▶ **Targeting the Financially Unsophisticated**
- ▶ **Complex Compensation Rules**

# Indicia of Pyramids: Exaggerated Earnings Claims



Federal Trade Commission  
Protecting America's Consumers

PREPARED STATEMENT OF  
**DEBRA A. VALENTINE**, GENERAL COUNSEL FOR  
THE U.S. FEDERAL TRADE COMMISSION  
on  
"PYRAMID SCHEMES"

presented at the  
INTERNATIONAL MONETARY FUND'S  
SEMINAR ON CURRENT LEGAL ISSUES AFFECTING CENTRAL BANKS  
Washington, D.C.  
May 13, 1998

Here are some tips that consumers and business might find helpful.

1. Beware of any plan that makes exaggerated earnings claims, especially when there seems to be no real under-lying product sales or investment profits. The plan could be a Ponzi scheme where money from later recruits pays off earlier ones. Eventually this program will collapse, causing substantial injury to most participants.

# Indicia of Pyramids: Exaggerated Earnings Claims

Under FTC Act § 5, representations of profit potential are clearly material to consumers

*F.T.C. v. Five Star Auto*, 97 F. Supp. 2d at 529

The case law is clear that representations regarding the profit potential of a business opportunity are important to consumers, and therefore such are material misrepresentations in violation of Section 5. *See FTC v. Minuteman*, 53 F. Supp.2d at 258 (“misrepresentations -- which tend to bear directly on the economic viability of the transaction under consideration -- are both likely to deceive and material.”) (citing *FTC v. Security Rare Coin & Bullion Corp.*, 1989-2 Trade Cas. (CCH) ¶68,807 at 62,219 (D. Minn.)), *aff'd*, 931 F.2d 1312 (8<sup>th</sup> Cir. 1991); *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282, 1292 (D. Minn. 1985). *See also FTC v. U.S. Oil and Gas Corp*, 1987 U.S. Dist. LEXIS 16137 (S.D. Fl. 1987).

# Exaggerated Earnings Claims

## Actual Herbalife Testimonials – The Formula:

### Before Herbalife:

"I had to seek hospital treatment for a stress-related illness because of my job."

"I felt like I was in a dark sea, without a light to guide me."

"With 500,000 in debt, we were devastated and all we could do was pray for wisdom and guidance!"

"I had my back against the wall. I needed to make some money!"

### After Herbalife:

"In that first month we were able to save our home. Herbalife saved us from bankruptcy."

"Thanks to the income opportunity offered by Herbalife, we paid back all our creditors."

"Within a year of doing business together, we were debt-free and saving money."

"Herbalife is the key to waking people up and giving them the success I have received."

"If I can do it, anybody can. I only have a high-school education and no business background."

Source: [Herbalife Today](#) for 1997-2004 (as many editions as could be found through online research).

## **Exaggerated Earnings Claims**

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Data compiled from *Herbalife Today* magazines (published by HLF)

From 1997-2004, 392 testimonials and earnings claims:

Average Earnings/Year: ~\$178,000

Median Income/Year: ~\$120,000

These represent approximately the top **1/10<sup>th</sup> of 1% of Distributors**  
**Fewer than 1 in 1000 achieve these results**

**Gross earnings** – limited mention of COGS and other business costs.

One person said: *"We sold everything—even our children's toys—just to pay for gasoline and the expenses of moving to California,"* after hearing people were having success with Herbalife.

# Exaggerated Earnings Claims

## Herbalife's More Recent Format – Similar Stories, Fewer Numbers

1 Million Lifetime Achievement:  
Health & Wealth  
(luxury cars, yachts, exotic travel, etc.) –  
“more money than he could have imagined”



QUALIFIED MARCH 2012

### ENRIQUE CARRILLO



Enrique was studying kinesiology at New Mexico State University, but wasn't living a lifestyle he was proud of. Enrique was introduced to the Herbalife® products, and eventually lost weight. He decided to become an Herbalife Independent Distributor, and grew his business by consistently working hard and staying positive. Now he is making more money than he could have imagined. He shares, "My Herbalife Independent Distributorship has transformed my life with health, wealth and happiness.\*\*†



QUALIFIED JANUARY 2012

### IRENE HAMASAKI



Irene Hamasaki worked as a legal secretary for 13 years, and had struggled with weight problems since childhood. Introduced by a co-worker to Herbalife® products, Irene achieved great results and, encouraged by others wanting to know her secret, she became an Herbalife Independent Distributor. Now, she's healthy and has the freedom to travel to places she could never have imagined, and help others live healthier, happy lives.\*\*†

\*\*Incomes 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.

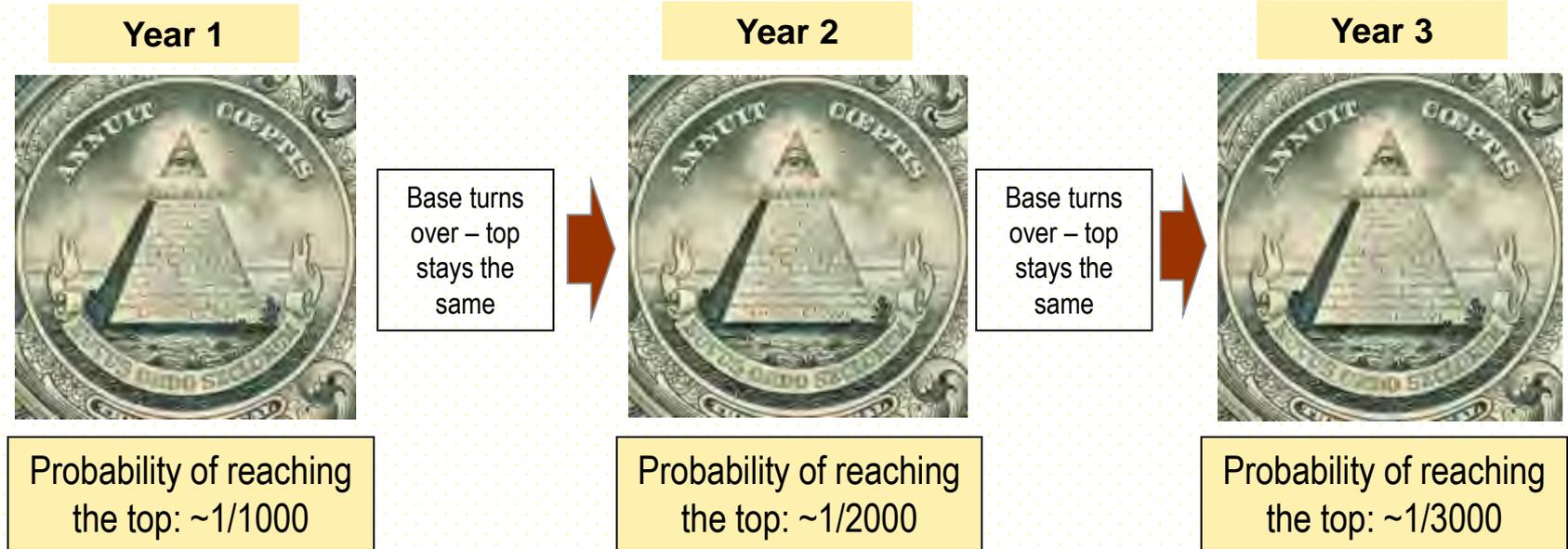
†An extensive questionnaire generated responses from more than 200 U.S. Herbalife Independent Distributors about their weight-loss programs and results. They reported weight loss ranging from 4 pounds to 167 pounds and a reduced body mass index (BMI) of 1.5 points to 24.1 points, suggesting that consumption of Herbalife® products is associated with weight loss and improvement in BMI in those ranges.



# Anybody Can Do It? An Illustration

The probability of success declines over time as more and more entrants arrive, but most can't reach the upper levels because the market is saturated

Illustrative timeline



Statistically, it is highly unlikely that any new Distributor will cross the gap from bottom to top. The precise statistics require knowing the relative turnover rates in the top and bottom segments. HLF provides minimal data on these rates

Exhibit C

Disclaimer: This is only an illustration of a time series of new entrants vs. a static upper group – These are not HLF numbers.

# **The Importance of “Anybody Can Do it”**

Webster v. Omnitrition, 79 F.3d 776, 782 (9th Cir. 1996):

***“[T]he very reason for the per se illegality of the Endless Chain schemes is their inherent deceptiveness and the fact that the ‘futility’ of the plan is not ‘apparent to the consumer participant.’”***

**Anybody Can't Do it**

# MLM's Responsibility for Their Representatives' Conduct

## MLM Sponsors can be held responsible for misrepresentations by independent contractors

From *FTC v. Five-Star Auto Club*, 97 F. Supp. 2d 502, 527 (S.D.N.Y. 2000):

**Sponsors can be held responsible for misrepresentations by independent contractors.  
Principals can be personally liable**

See also *F.T.C. v. Equinox Int'l, Inc.*, No. CV-S-990969HBR, 1999 WL 1425373, at \*9 (D. Nev. Sept. 14, 1999)

3. Defendants suggest that they should not be held responsible for misrepresentations about the Five Star program made by others, and specifically for misrepresentations made by the Five Star Marketing Directors Kevin Cole and Thomas Bewley. Defendants' position is based on their assertions that both Mr. Cole and Mr. Bewley were independent contractors rather than employees of Five Star, and therefore not under Defendants' control, and that at least Mr. Cole sent out some material not authorized by Defendants.
4. However, for 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. *See Goodman v. FTC*, 244 F.2d 584, 591-92 (9<sup>th</sup> Cir. 1957). 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 the principal to prevent such misrepresentations. *See Standard Distributors v. FTC*, 211 F.2d 7, 13 (2d Cir. 1954); *Goodman v. FTC*, 244 F.2d at 591-593. *See also Southwest Sunsites, Inc. v. FTC*, 785 F.2d 1431, 1438-39 (9<sup>th</sup> Cir.), *cert. denied* 479 U.S. 828 (1986). 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." *Goodman*, 244 F.2d at 592 (quoting *International Art Co. v. FTC*, 109 F.2d 393, 396 (7<sup>th</sup> Cir.), *cert. denied* 310 U.S. 632 (1940)).

## **State Laws on Earning Claims by MLMs**

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**Five States – Georgia, Louisiana, Maryland, Massachusetts, and Wyoming – specifically regulate or bar earnings claims with respect to multi-level marketing programs.**

For example, Massachusetts and Wyoming statutes provide:

“Multi-level distribution companies shall not represent, directly or indirectly, that participants in a multi-level marketing program will earn or receive any stated gross or net amount, or represent in any manner, the past earnings of participants . . .

“Multi-level distribution companies shall not represent, directly or indirectly, that additional distributors or sales personnel are easy to secure or retain, or that all or substantially all participants will succeed.”

Ga. Code § 10-1-414(2); La. Rev. Stat. § 51:1823(1); Md. Code, Bus. Reg. § 14-303; Mass. Gen. L. ch. 93 § 69(e); Wyo. Stat. § 40-3-107.

# Disclaimers of Typicality re Earnings Claims

## “Your Results May Vary”

In *Herbalife Today* ('97-'04), the company used what are called “disclaimers of typicality” . . . but not on every page

***“The financial testimonials in this publication reflect the results of individual Distributors. Your results may vary.”***

FTC Policy Statement on Deception (1983): “Pro forma statements or disclaimers may not cure otherwise deceptive messages or practices.”

Exhibit C

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**President's Team**

**Rox Ann & John Chauvenne**

Rox Ann Chauvenne has her brother, Brad Harris, to thank for her introduction to Herbalife. He had watched Rox Ann and her husband, John, struggle to make ends meet, and knew that Herbalife could offer them a way out. And it did.

**“We were living paycheck to paycheck, and there were no ‘extras’ in our budget.”**

“I had worked for TWA for years, but when we had children I decided to stay home with them,” explains Rox Ann. “We went from two paychecks to one, and that’s when we really had to watch what we were spending.”

“It was also at this time that I was trying to lose the last 20 pounds after having had two children,” she continues. “So when Brad told us about Herbalife’s weight-loss products, we decided to try them. I lost 20 pounds, and my husband dropped 35 pounds. People started asking us for the products and we referred them to Brad and his wife, Ann. When Brad told me how much money I could earn selling the products myself, I signed up as a Distributor.”

**“I was earning \$1,500 a month part time.”**

After Rox Ann’s children started school, she focused her attention on her Herbalife business full time. She also began attending Success Training Seminars (STS) and encouraged her downtime to do the same.

“I make a big deal out of going to an STS because that’s where my group is going to see the ‘big picture’ and get trained fast. It maximizes my time, so I can be at home with my family as well as have a knowledgeable downtime.”

**“We are earning on average \$20,000 a month.”**

“So many things have changed since Brad told us about Herbalife,” Rox Ann says. “Now we can take vacations whenever we want and stay in the most luxurious hotels. And we recently purchased a brand new Ford Expedition. Before Herbalife, I had never owned a new car. We are also saving for our daughters’ college education, so they can go to whatever schools they choose. Herbalife is a dream come true for us!”

The Chauvenne’s children, Courtney and Kyrone, enjoying a family vacation.

Herbalife International, January 2004

“The financial testimonials in this publication reflect the results of individual Distributors. Your results may vary.”

# Disclaimers of Typicality re Earnings Claims

## Herbalife's More Recent Approach:

Disclaimer-of-typicality, directing the reader to find online the "Average Gross U.S. Supervisor Compensation." Each term in this phrase is an important qualifier

***"Incomes applicable to the individuals (or examples) depicted [are] not average. For average financial performance data, see the Statement of Average Gross Compensation of U.S. Supervisors at Herbalife.com and MyHerbalife.com."***



**ENRIQUE CARRILLO**



Enrique was studying kinesiology at New Mexico State University, but wasn't living a lifestyle he was proud of. Enrique was introduced to the Herbalife® products, and eventually lost weight. He decided to become an Herbalife Independent Distributor, and grew his business by consistently working hard and staying positive. Now he is making more money than he could have imagined. He shares, "My Herbalife Independent Distributorship has transformed my life with health, wealth and happiness.\*\*"



**IRENE HAMASAKI**



Irene Hamasaki worked as a legal secretary for 13 years, and had struggled with weight problems since childhood. Introduced by a co-worker to Herbalife® products, Irene achieved great results and, encouraged by others wanting to know her secret, she became an Herbalife Independent Distributor. Now, she's healthy and has the freedom to travel to places she could never have imagined, and help others live healthier, happy lives.\*\*

\*\*Incomes 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.

\*An extensive questionnaire generated responses from more than 200 U.S. Herbalife Independent Distributors about their weight-loss programs and results. They reported weight loss ranging from 4 pounds to 167 pounds and a reduced body mass index (BMI) of 1.5 points to 24.1 points, suggesting that consumption of Herbalife® products is associated with weight loss and improvement in BMI in those ranges.

# FTC Guides on Testimonials

The FTC is concerned that businesses make “clear and conspicuous disclosure of the generally expected performance whenever the testimonial is not generally representative of what consumers can expect.” 72 Fed. Reg. 2214, 2217 (Jan. 18, 2007).

The FTC’s 2009 Guides Concerning the Use of Endorsements and Testimonials in Advertising note the Commission’s concern with the *ineffectiveness* of “disclaimers of typicality.”

## Section 255.2. Consumer Endorsements:

(b) An advertisement containing an endorsement relating the experience of one or more consumers on a central or key attribute of the product or service also will likely be interpreted as representing that the endorser’s experience is representative of what consumers will generally achieve with the advertised product or service in actual, albeit variable, conditions of use. Therefore, an advertiser should possess and rely upon adequate substantiation for this representation. If the advertiser does not have substantiation that the endorser’s experience is representative of what consumers will generally achieve, the advertisement should clearly and conspicuously disclose the generally expected performance in the depicted circumstances, and the advertiser must possess and rely on adequate substantiation for that representation.<sup>105</sup>

**Guides Concerning the Use of Endorsements and Testimonials in Advertising** (published in Fed. Reg. Vol. 74, No. 198, amending Rules appearing at 16 CFR Part 255, effective Dec. 1, 2009)

# Testimonials, Earnings Claims & Disclaimers

Based upon its own research, the FTC considers pro forma disclaimers (“Results are not typical”) unlikely to be effective to negate testimonials – unless the advertiser presents empirical tests showing non-deception

## Section 255.2. Consumer Endorsements - footnote:

<sup>105</sup>The Commission tested the communication of advertisements containing testimonials that clearly and prominently disclosed either “Results not typical” or the stronger “These testimonials are based on the experiences of a few people and you are not likely to have similar results.” Neither disclosure adequately reduced the communication that the experiences depicted are generally representative. Based upon this research, the Commission believes that similar disclaimers regarding the limited applicability of an endorser’s experience to what consumers may generally expect to achieve are unlikely to be effective.

Nonetheless, the Commission cannot rule out the possibility that a strong disclaimer of typicality could be effective in the context of a particular advertisement. Although the Commission would have the burden of proof in a law enforcement action, the Commission notes that an advertiser possessing reliable empirical testing demonstrating that the net impression of its advertisement with such a disclaimer is non-deceptive will avoid the risk of the initiation of such an action in the first instance.

“The Effect of Consumer Testimonials and Disclosures on Ad Communication for a Dietary Supplement,” Report by Manoj Hastak, Ph.D. and Michael B. Hazis, Ph.D, submitted to the FTC Sept. 30, 2003, available at <http://www.ftc.gov/reports/endorsements/study1/report.pdf>; “Effects of Consumer Testimonials in Weight Loss, Dietary Supplement and Business Opportunity Advertisements,” Report by Manoj Hastak, Ph.D. and Michael B. Hazis, Ph.D, submitted to the FTC Sept. 22, 2004, available at <http://www.ftc.gov/reports/endorsements/study2/report.pdf>

Summary on FTC website:  
<http://business.ftc.gov/documents/bus71-ftcs-revised-endorsement-guideswhat-people-are-asking>

# Testimonials, Earnings Claims & Disclaimers

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Herbalife acknowledges that, under the 2009 FTC Guides, its and its distributors' use of income opportunity testimonials may be "significantly impacted and therefore might negatively impact our sales."

## From Herbalife's 2009-2011 10Ks (emphasis added):

The FTC has approved revisions to its Guides Concerning the Use of Endorsements and Testimonials in Advertising, or Guides, which became effective on December 1, 2009. Although the Guides are not binding, they explain how the FTC interprets Section 5 of the FTC Act's prohibition on unfair or deceptive acts or practices. Consequently, the FTC could bring a Section 5 enforcement action based on practices that are inconsistent with the Guides. Under the revised Guides, advertisements that feature a consumer and convey his or her atypical experience with a product or service are required to clearly disclose the results that consumers can generally expect. In contrast to the 1980 version of the Guides, which allowed advertisers to describe atypical results in a testimonial as long as they included a disclaimer such as "results not typical", the revised Guides no longer contain such a safe harbor. The revised Guides also add new examples to illustrate the long-standing principle that "material connections" between advertisers and endorsers (such as payments or free products), connections that consumers might not expect, must be disclosed. Herbalife has adapted its practices and rules regarding the practices of its independent distributors to comply with the revised Guides. However, **it is possible that our use, and that of our independent distributors, of testimonials in the advertising and promotion of our products, including but not limited to our weight management products and of our income opportunity[,] will be significantly impacted and therefore might negatively impact our sales.**

# Indicia of Pyramids: Inflated Prices

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Federal Trade Commission  
Protecting America's Consumers

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PREPARED STATEMENT OF  
**DEBRA A. VALENTINE**, GENERAL COUNSEL FOR  
THE U.S. FEDERAL TRADE COMMISSION  
on  
"PYRAMID SCHEMES"

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presented at the  
INTERNATIONAL MONETARY FUND'S  
SEMINAR ON CURRENT LEGAL ISSUES AFFECTING CENTRAL BANKS  
Washington, D.C.  
May 13, 1998

3. If a plan purports to sell a product or service, check to see whether its price is inflated, whether new members must buy costly inventory, or whether members make most “sales” to other members rather than the general public. If any of these conditions exist, the purported “sale” of the product or service may just mask a pyramid scheme that promotes an endless chain of recruiting and inventory loading.

Exhibit C

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# Indicia of Pyramids: Inflated Prices

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Compare Herbalife products with other nutrition products:

- ❌ Suggested Retail Price is substantially above market value
- ❌ *De minimus* advertising of products
- ❌ Limited, if any, proprietary or innovative science

To be successful, Distributors need to recruit and sell to other Distributors

## **Indicia of Pyramids: Emotional Sales Pitch – the ‘Dream’**

High-pressure, emotional sales techniques, emphasizing lifestyle, achieving one’s dreams and rapid success are often used.

In *Koscot*, 86 F.T.C. at 1136-37, the FTC found (¶ 68):

### Opportunity Meetings and GO-Tours

68. Distributorship sales were generally accomplished by high-pressure sales methods applied at golden opportunity meetings and on golden opportunity tours (GO-Tours). The opportunity meetings were carefully contrived and scripted to create a highly-charged emotional atmosphere in which prospects were persuaded that Koscot offered a fantastic opportunity to “achieve financial success beyond [their] greatest expectations” (CX 11, p. 1). Koscot was presented as an opportunity for “ordinary men and women” to earn from \$5,000 to \$20,000 a month (CX 15, p. 13; CX 11, p. 5; CPF 70, 76, 82). Scripts were generally followed, but even the exaggerated figures that they contained would sometimes be further exaggerated by overly enthusiastic distributors (CPF 71-72).

“more money than he could have imagined” –  
“anybody can do it”

**Koscot: Offering “virtually unlimited potential to earn large sums of money in a relatively short time . . . [in] the charged atmosphere of an old-fashioned revival meeting, except that the god was Mammon.”**

## **Emotional Sales Pitch – the ‘Dream’**

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**“Part of our business is entertainment. We entertain our distributors with opportunity, with dreams, stories, it's all a part of what this company is.”**

**--CEO Michael O. Johnson  
Goldman Sachs 14th Annual Global Retailing Conference  
9/5/2007**

## **Emotional Sales Pitch – the ‘Dream’**

---

**“Michael sets the tone for not only the Company, but, more importantly, for independent distributors, that there is room at the top, that this is an aspirational business, and he paints that picture with kind of dreamy type of goals.”**

**--CFO Rich Goudis  
Herbalife Ltd. Investor Day at NYSE  
12/16/2008**

# Indicia of Pyramids: A History of Lawsuits

The FTC recommends considering whether the MLM has a history of lawsuits that allege deceptive practices?



- Has anyone sued the company for deceptive business practices? Checking with your local Better Business Bureau, Chamber of Commerce and state Attorney General for complaints about any company you're considering investing in is a prudent thing to do. But remember that a lack of complaints doesn't guarantee a company's legitimacy.

Source: FTC publication "Bottom Line about Multilevel Marketing Plans" (Oct. 2009).

# A History of Lawsuits

Herbalife has been in approximately 270 lawsuits around the world. Many involve run-of-the-mill commercial disputes, but a significant number go to the heart of Herbalife's business and practices

- **Test-Aankoop v. Herbalife Int'l Belgium.** After seven years of proceedings, in 2011, a Belgian judge in the Commercial Court in Brussels (capital of the EU) determined Herbalife was operating a pyramid scheme. The case is on appeal.
- **Herbalife v. Ford.** In federal court in California, Herbalife sued former distributors for joining another MLM, alleging a violation of Herbalife's non-competition rule (no. 8A in the Sales and Marketing Plan). The distributors invoked California's Endless Chain Scheme statute. In a key pre-trial ruling, the Court found Herbalife's compensation system to be facially unrelated to sales of products to end users. Before trial, the case was disposed of on other grounds.
- **Minton v. Herbalife.** In 2009, in a California state court proceeding, Herbalife was sued by a group of former distributors that claimed Herbalife's Sales and Marketing Plan constituted an endless chain scheme.
- **Jacobs v. Herbalife.** In 2004, Herbalife settled a lawsuit brought on behalf of a class of 8,700 former and current Herbalife distributors, accusing the company of running a pyramid, securities-law violations and other deceptive practices, including its "Newest Way to Wealth" promotion. HLF discontinued this promotion and defendants entered into a settlement totaling \$6 million.

# A History of Lawsuits (*cont'd*)

## Additional Significant Herbalife Cases

- **Her Majesty the Queen v. Global Online Systems, Inc.** In 2004, a Canadian Competition Bureau investigation revealed that Global Online Systems Inc., a recruiting front led by senior Herbalife distributors, was operating a pyramid selling scheme. Following indictment and conviction, the Federal Court entered a Prohibition Order against Global Online Systems, Inc. and its principals Deborah Stoltz and Marilyn Thom.
- **Mey v. Herbalife.** In 2003, consumers filed a class action in West Virginia, alleging that Herbalife and its distributors were violating the Telephone Consumer Protection Act of 1991 by the use of “Herbatel” phone service and the Herbal Dialer Lead Generation System to auto-dial tens of thousands of consumers. Herbalife discontinued the practice, and defendants settled for \$7 million. A similar case was filed 10/2012.
- **Ralo v. Zehavi.** In 2003, an Israeli judge, deciding a dispute between distributors, noted that Herbalife’s “method of marketing reminds [me] of the ‘pyramid’ marketing method.” The Court cited FTC warnings about what to watch for in assessing potential pyramids.
- **People of the State of California v. Herbalife International, Inc.** In 1986, Herbalife consented to the entry of a Final Judgment and Permanent Injunction, under which the company promised to desist from certain product claims and to pay \$850,000 to settle allegations by the Attorney General of the State of California that it operated as an “endless chain” and made deceptive medicinal claims. The Final Judgment included provisions regulating the compensation structure of Herbalife’s marketing program and the medicinal claims made by Herbalife.

## A History of Lawsuits: the *Ford* case

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In 2009, the California federal court stated that Herbalife appears to pay compensation facially unrelated to sale of products to ultimate users – an essential element of finding of an MLM to be a pyramid.

In *Herbalife v. Ford*, a group of senior Herbalife distributors, including a former President's Team member (top 0.1%) – network insiders who knew how the system works – accused HLF of operating an illegal pyramid scheme. In 2009, after extensive factual discovery, the Federal Court in California, Herbalife's headquarters, applied the Ninth Circuit's *Omnitrition* decision to Herbalife and stated:

***“Herbalife’s entire business model appears to incentivize primarily the payment of compensation that is ‘facially unrelated to the sale of the product to the ultimate users because it is paid based on the suggested retail price of the amount ordered from [HLF], rather than based on actual sales to consumers.’”***  
***- District Judge Gary A. Feess***

Memorandum & Order Regarding Cross-Motions for Summary Judgment, No. CV 07-02529, slip op. at 16 (C.D. Cal. Aug. 25, 2009) (quoting *Webster v. Omnitrition*, 79 F.3d 776, 782 (9th Cir. 1996)). The Ninth Circuit in *Omnitrition* said that **compensation unrelated to ultimate-user sales is the “sine qua non” of a pyramid scheme.** 79 F.3d at 781 (emphasis added). The marketing system in *Omnitrition* (found prima facie to be a pyramid) is nearly identical to Herbalife's plan. While the *Ford* case was disposed of on other grounds – namely, the parties challenging Herbalife as a pyramid failed to show that they were victims of the scheme, as opposed to participants who profited from it – the Court's finding was not disturbed or changed.

## Indicia: Targeting People Vulnerable to the ‘Dream’

Pyramids target people with little or no business experience, those most vulnerable to high-pressure offers of an ‘opportunity,’ but who may not see the risks and costs – and people of similar profiles

In *Koscot*, 86 F.T.C. at 1145, the FTC found (¶ 100) (emphasis added):

100. Many persons who purchased Koscot distributorships were unqualified to operate a cosmetics selling business by reason of their age, lack of education and training, or lack of business, administrative, or sales experience. Koscot's recruitment methods tended to result in the enrollment of persons without any special qualifications, including frequently the credulous, who in turn tended to recruit others with similar profiles. By reason of their limited education and modest backgrounds, such persons tended to have a limited degree of sophistication in financial and business matters. (CPF 100, 103, 106-09, 111, 304-06, 310-11) They were particularly vulnerable to the misrepresentations and the high-pressure enrollment techniques used at opportunity meetings and on GO-Tours (*supra*, p. 26 [p.1137, herein]).

# Indicia of Pyramids: Herbalife Targets People of Similar Profile

Herbalife targets Latinos, African-Americans, ethnic minorities, the young, and stay-at-home moms – focusing on those in financial need

## From Herbalife's 2010 Analyst Day Presentation



### Further Opportunities for Growth – Market Segmentation

Continue to focus on metro areas and states that are **under-penetrated** via city-by-city analysis

Expand into **Gen H** market (under 30 age group)

Target additional **ethnic markets** (Korean, Vietnamese, Chinese, Russian, Polish)

Support African-American initiative with Distributor trainings and events

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, 141 (Spring 2002) (“The lucrative earnings emphasized in promotional messages depend on reaching a high position in the pyramid, but new participants lack requisite information on the realistic odds of obtaining such a position.”).

## **Herbalife Targets People of Similar Profile (cont'd)**

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*“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.”*

**--COO Greg Probert  
Analyst Meeting  
11/28/2007**

## **Herbalife Targets People of Similar Profile (cont'd)**

---

*“This [soccer] sponsorship supports retailing with sampling and activation opportunities for our distributors and it will help in recruiting a key target segment of the U.S. population, the stay-at-home-mom.”*

**--CEO Michael Johnson  
Earnings Conference Call  
2/27/2008**

## **Herbalife Targets People of Similar Profile (cont'd)**

*“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.”*

**--Amy Greene, VP-IR  
Barclays Capital Retail and Restaurants Conference  
4/24/2012**

## **Herbalife Targets People of Similar Profile**

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*“I'm getting ready to hire somebody that's Korean for the US, because that's a huge opportunity for us. But, again, it has to be -- have been a distributor, starts it right, because we can't. We can hire all the Koreans and -- but if -- there's not a distributor out there that's really taking the business. But, definitely, I mean when we think about Korea, I mean, 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.”*

**-- Ibi Fleming, SVP and Managing Director, North America  
Barclays Capital Retail and Restaurants Conference  
4/24/2012**

## **Targeting People Vulnerable to the ‘Dream’**

---

*“They now are charging people on a daily basis. So if you think about where the money is in the pyramid, and there's more people at the bottom of the pyramid, especially in some of these developing markets, a lot of poor, lower middle class people. They're creating the opportunity for them to have that access to the Herbalife experience. That's what's driving very strong growth in these markets.”*

**--CFO Rich Goudis**

**Herbalife Bank of America Consumer Conference**

**9/12/2009**

## **Targeting People Vulnerable to the ‘Dream’**

*“. . . 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.”*

**--CFO John DeSimone  
Jefferies Consumer Conference  
6/22/2010**

# **Indicia of Pyramids: Complex Compensation Rules**

---

Often, an MLM's compensation system is complex, with many layers of periodic purchase and sales requirements, subject to numerous qualifications and cross-referenced standards.

In *F.T.C. v. BurnLounge*, No. 2:07-cv-03654, slip op. at 9 (C.D. Cal. July 1, 2011) (footnotes omitted), the Court found it difficult to provide an accurate delineation of the compensation plan . . .

*given the degree of complexity in its composition and the failure of its creators to value intelligibility, consistency, and useful definitions. Indeed, it would appear that BurnLounge was attempting to create a labyrinth of obfuscation rather than a readily understood compensation system.*

# Complex Compensation Rules

## Herbalife Sales and Marketing Plan

- ❌ 125 pages of text and forms
- ❌ ~48,000 words
- ❌ Numerous Levels of Distributors
- ❌ Scores of Rules and Subparts
- ❌ Very little marketing advice

### From Sales & Marketing Plan:

#### How do I retail the products?

Retailing the Herbalife products will be one of the most important keys to your success! As Herbalife's Founder and first Distributor Mark Hughes always stressed, use the products, wear the button and talk to people. You will develop your own selling style, which might include talking to your circle of influence, Distributing flyers, conducting surveys and/or participating in seasonal promotions. Your Sponsor has the field experience to provide you with the proper training.



Exhibit C

# **Indicia of Pyramids: Conclusion**

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- ✘ Exaggerated Earnings Claims**
- ✘ Inflated Prices & Need to Sell to Other Members**
- ✘ Emotional Sales Pitch – the ‘Dream’**
- ✘ A History of Lawsuits**
- ✘ Targeting the Financially Unsophisticated**
- ✘ Complex Compensation Rules**

# **Protecting the Consumer**

---

**“In evaluating a tendency or capacity to deceive, it is appropriate to look not at the most sophisticated, but the least sophisticated consumer.” *F.T.C. v. Five Star Auto*, 97 F. Supp. 2d at 532.**

# Red Flags

# **HLF: Not Your Typical MLM**

# The Top 1% of Herbalife Distributors Earn a Greater Share of Total Commissions than Those at Other MLMs

Top 1% of Distributors' Commissions  
As % of Total Commissions <sup>(1)</sup>

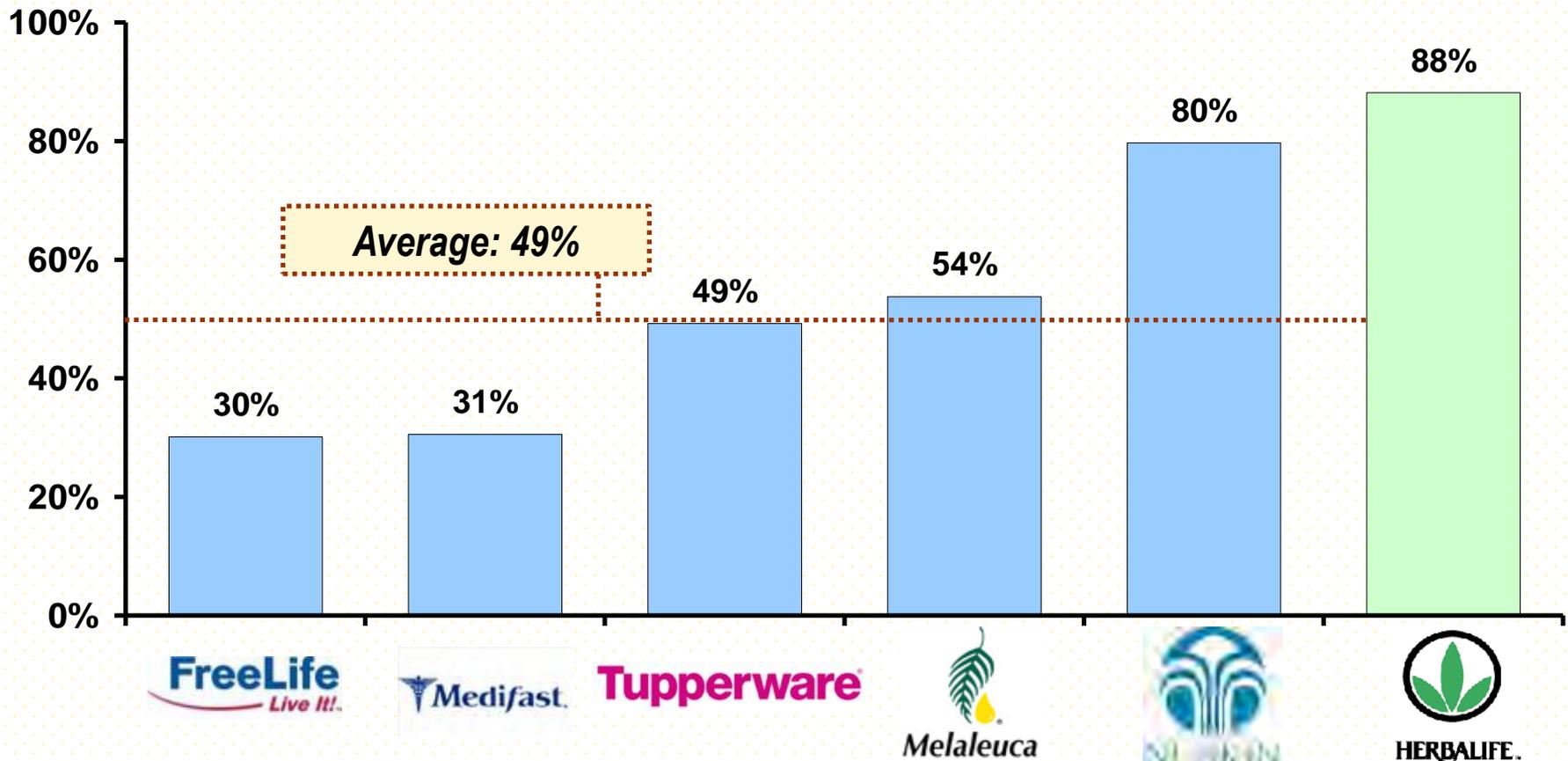


Exhibit C

(1) Source: Company filings. Based on most recently disclosed distributor compensation summary information. Average excludes Herbalife. Herbalife data excludes Wholesale Commissions as they are excluded from the company's Statement of Gross Compensation. Herbalife data applies to U.S. distributors.

# Herbalife v. Avon:

## Herbalife's Compensation Plan Incentivizes Recruiting

In addition to paying out a higher percentage of Retail Sales than Avon, Herbalife's commission structure varies from Avon's in two critical ways: (i) Herbalife's royalties are "flat," whereas Avon's are "descending;" and (ii) Herbalife has a Production Bonus ("infinity bonus"), Avon only pays Recruiting Rewards three levels deep <sup>(1)</sup>

Downline Level	Maximum Distributor Commissions <sup>(2)</sup>		
	Avon (% Net Sales) (As Reported)	Avon (% Retail Sales) (As Adjusted) <sup>(3)</sup>	Herbalife (% Retail Sales) (As Reported)
1	15.0% <sup>(4)</sup>	10.0%	5.0%
2	5.0%	3.3% } Descending	5.0% } Flat
3	2.0%	1.3%	5.0%
Levels 1 to 3	22.0%	14.7%	15.0%
4 to ∞			8.0% ←
Total Payout	22.0%	14.7%	23.0%

**Production Bonus (7%) / Mark Hughes Bonus (1%)**

Source: Company filings, Avon Sales Leader Bonus Chart, Herbalife Marketing Plan. Assumes 1 Herbalife Personal Volume point = \$1 of Herbalife Retail Sales.

(1) Avon FY 2011 10-K: "This program [Sales Leadership] generally limits the number of levels on which Exhibits G can be earned to three and continues to focus on individual product sales by Sales Leadership Representatives."

(2) While all Herbalife Supervisors may receive the levels 1-3 Herbalife maximum commissions, only the most senior Avon distributors (Senior Executive Unit Leaders) may receive the levels 1-3 Avon maximum commissions.

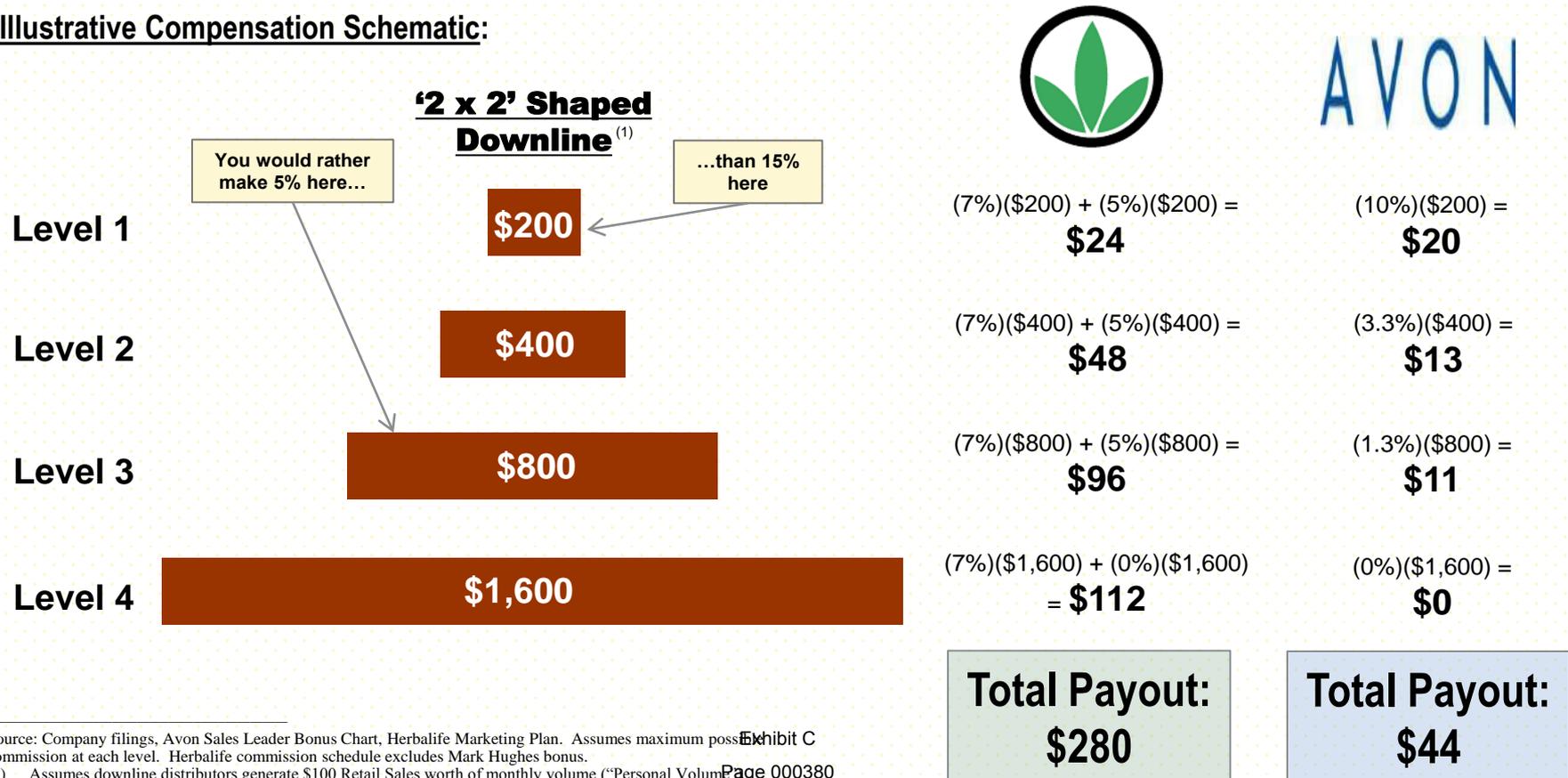
(3) Avon distributes Recruiting Rewards based on net sales. To make the comparison apples to apples, we assume a 25% discount from Retail Sales to Net Sales.

(4) Avon Sales Leader Bonus Chart as of August 2012: "Senior Executive Unit Leaders who are performing at title earn an additional 2% on the Total Unit Leadership Sales of each 1st Generation Executive Unit Leader's Unit."

# Herbalife v. Avon: Which System Would You Prefer?

Not all percentages are created equal. The illustrative example below demonstrates why the top 1% of Herbalife's distributors generate 88% of Recruiting Rewards, and why Herbalife's compensation plan incentivizes distributors to recruit dramatically more so than other MLMs (there is a greater reward *if* you can get to the top)

## Illustrative Compensation Schematic:



Source: Company filings, Avon Sales Leader Bonus Chart, Herbalife Marketing Plan. Assumes maximum possible commission at each level. Herbalife commission schedule excludes Mark Hughes bonus.  
 (1) Assumes downline distributors generate \$100 Retail Sales worth of monthly volume ("Personal Volume")  
 For illustrative purposes, assumes the Herbalife Production Bonus is not "blocked."

**“Pop-and-Drop”**

*“We go through phases in new marketplaces where recruiting is the initial phase of our business and then retailing comes in to function at the base of it. We try to train distributors and we’re taking a much more aggressive stance...*

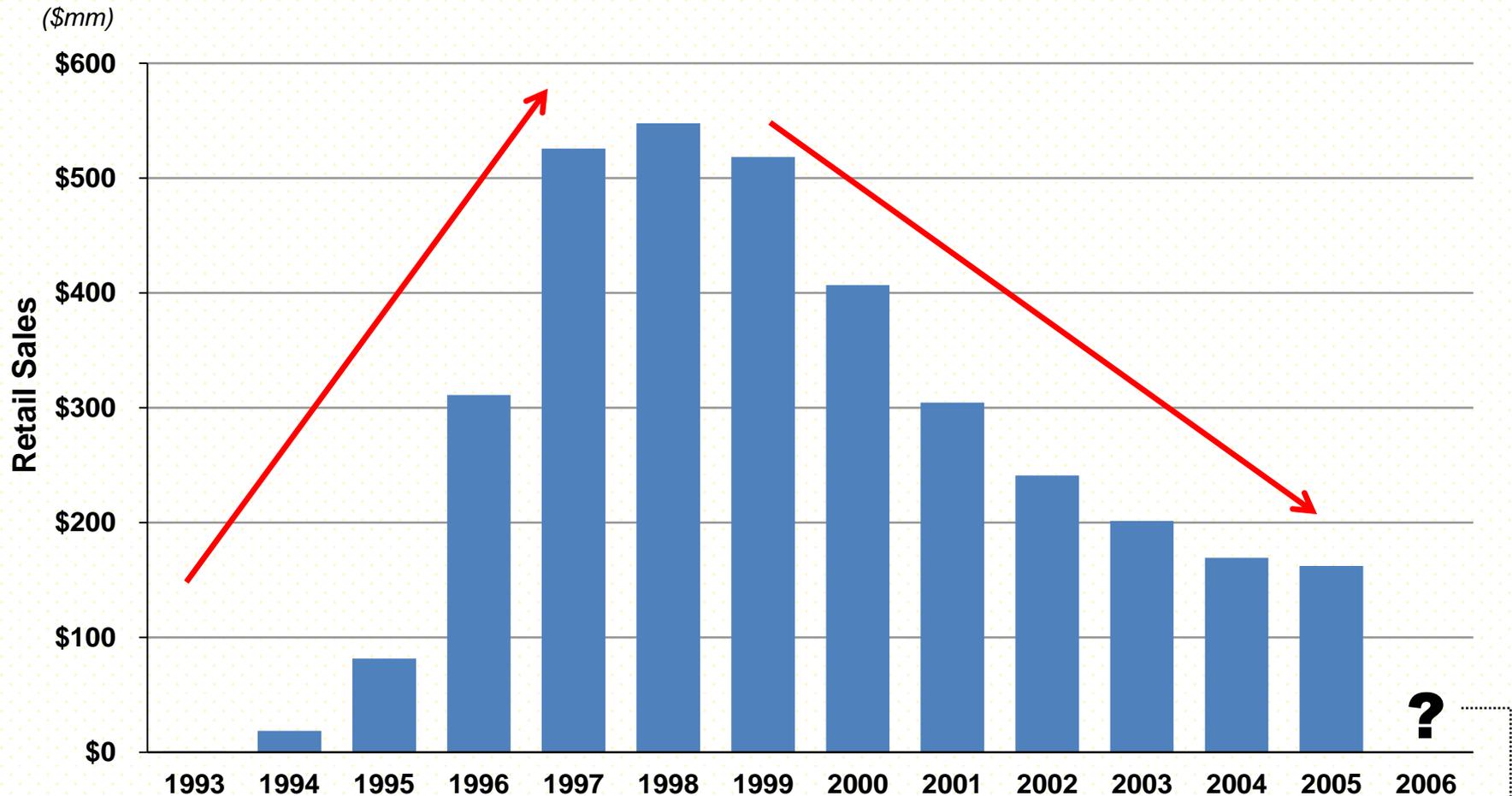
*China is 1.3 billion people, you can recruit for a long time there before we had what was called the classic ‘pop-and-drop’ in that marketplace. So we’re trying to build in right away a retailing base into that marketplace. I would say initially there is going to be a lot of recruiting, a lot of business opportunity development.”*

– Michael Johnson, Herbalife CEO, 8/6/08

*“So India is not -- it's teetering on the top ten market for us. We went into India ten years ago. And we went in and it was a big -- it's called pop and drop. You go in. A lot of distributors come in. They recruit and you get a lot of volume. Those distributors leave the country and you get a big drop.”*

– John DeSimone, Herbalife CFO, 3/10/10

# Japan: 1993–2005



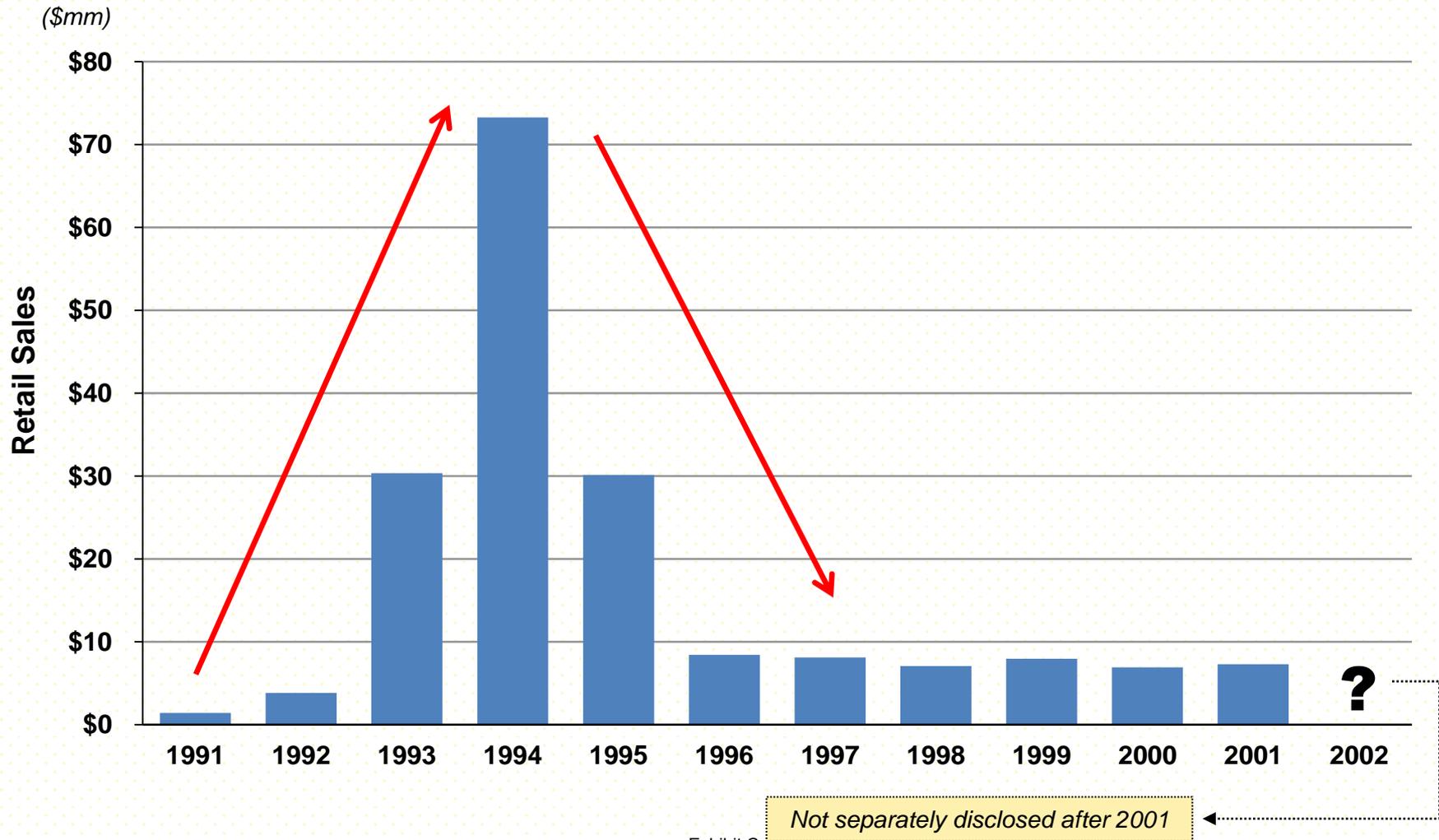
Not separately disclosed after 2005

Exhibit C

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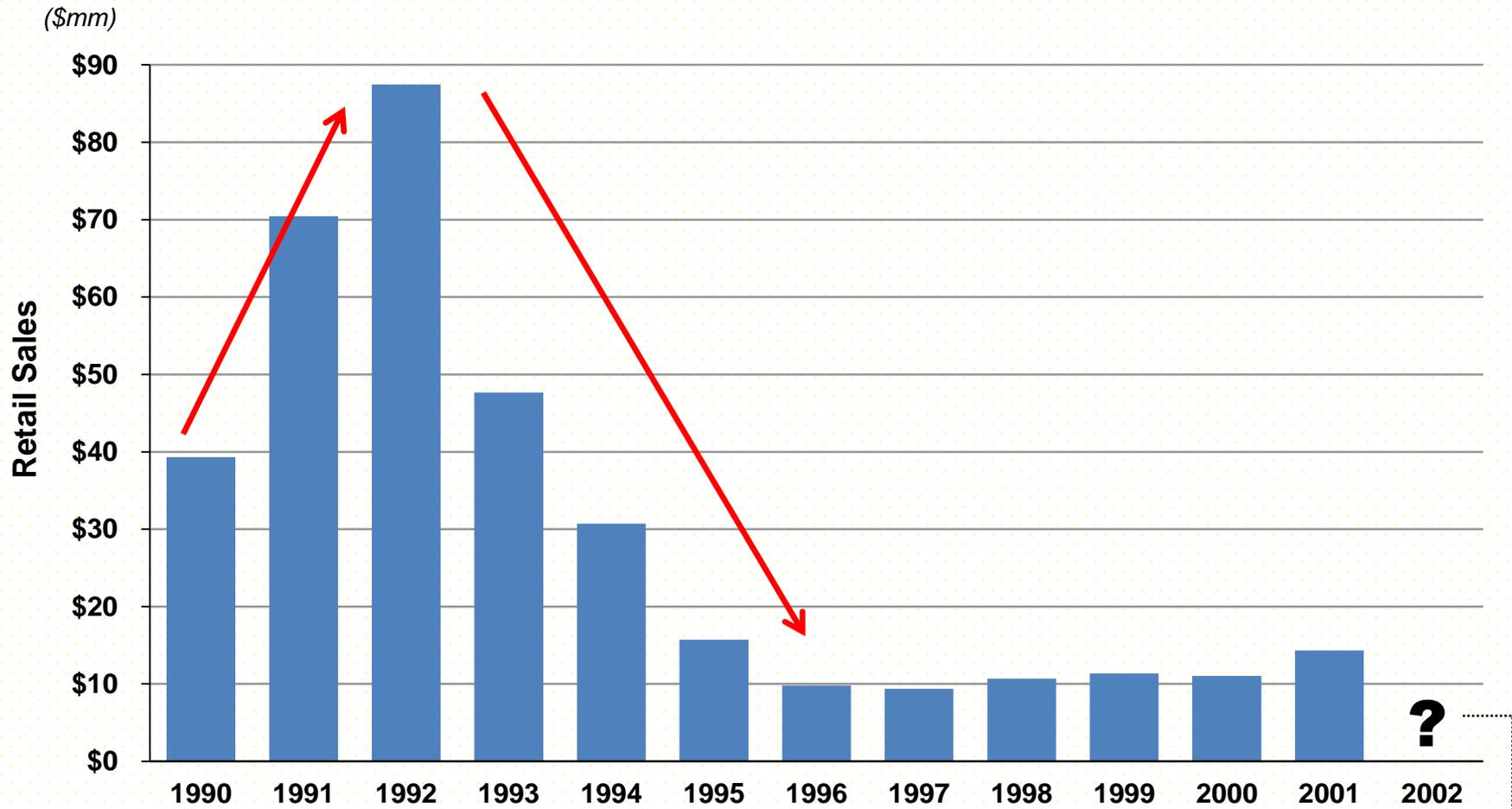
Source: Herbalife filings.

# Israel: 1991–2001



Source: Herbalife filings.

# Spain: 1990-2001



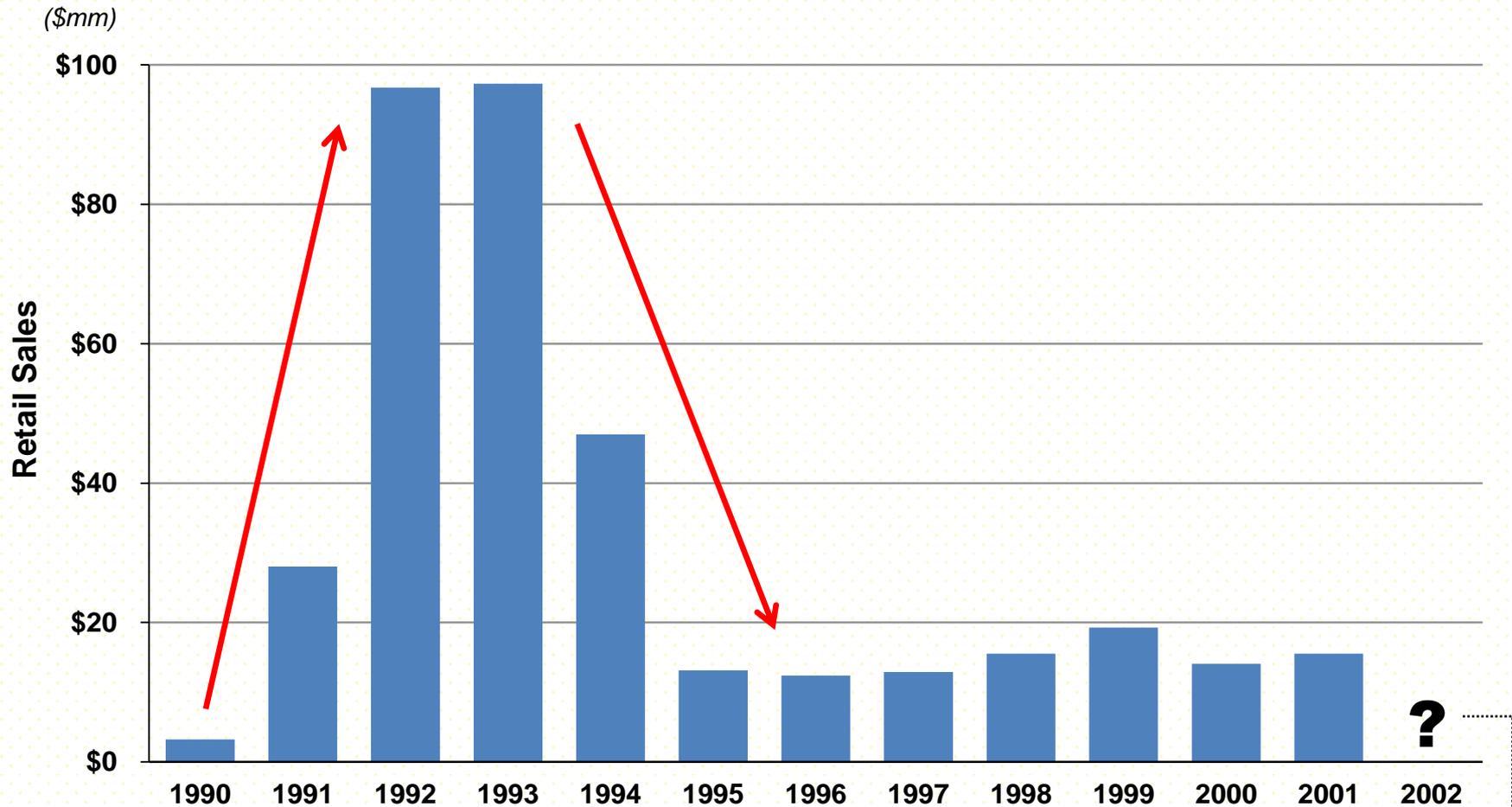
Not separately disclosed after 2001

Exhibit C

Page 000386

Source: Herbalife filings.

# France: 1990–2001

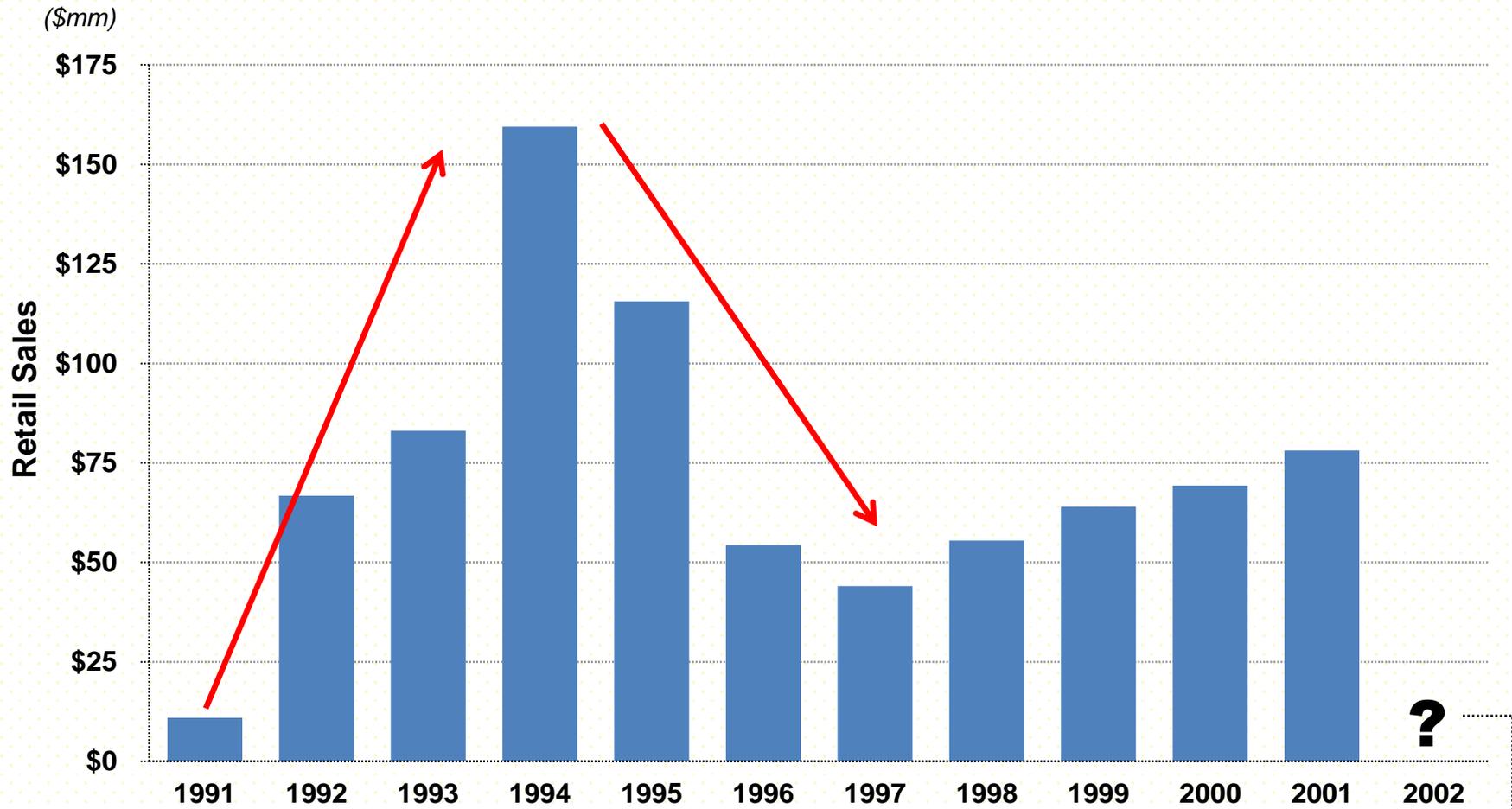


Not separately disclosed after 2001

Exhibit C

Page 000387

# Germany: 1991–2001



Not separately disclosed after 2001

Exhibit C

Page 000388

# Russia: 1995-2001

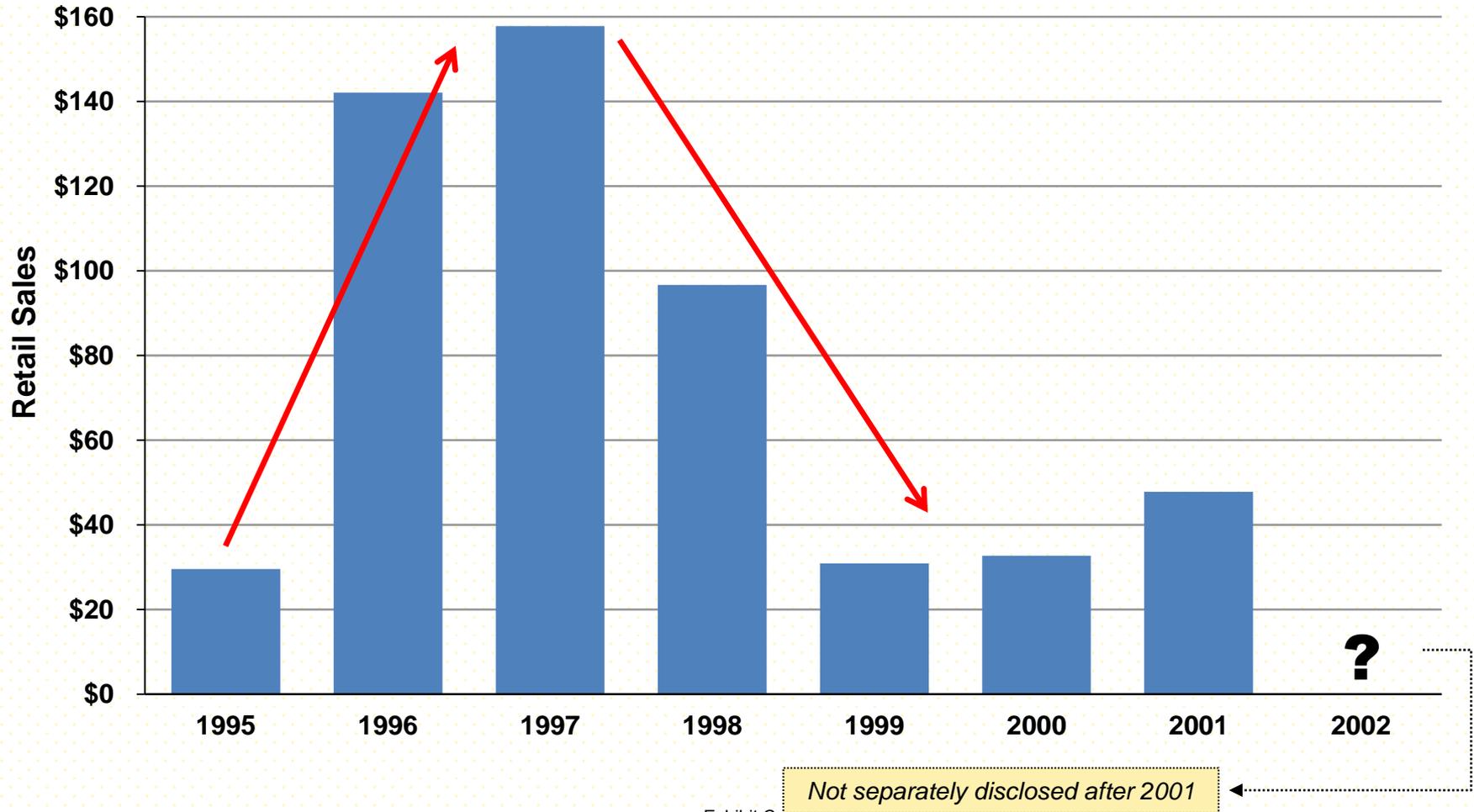
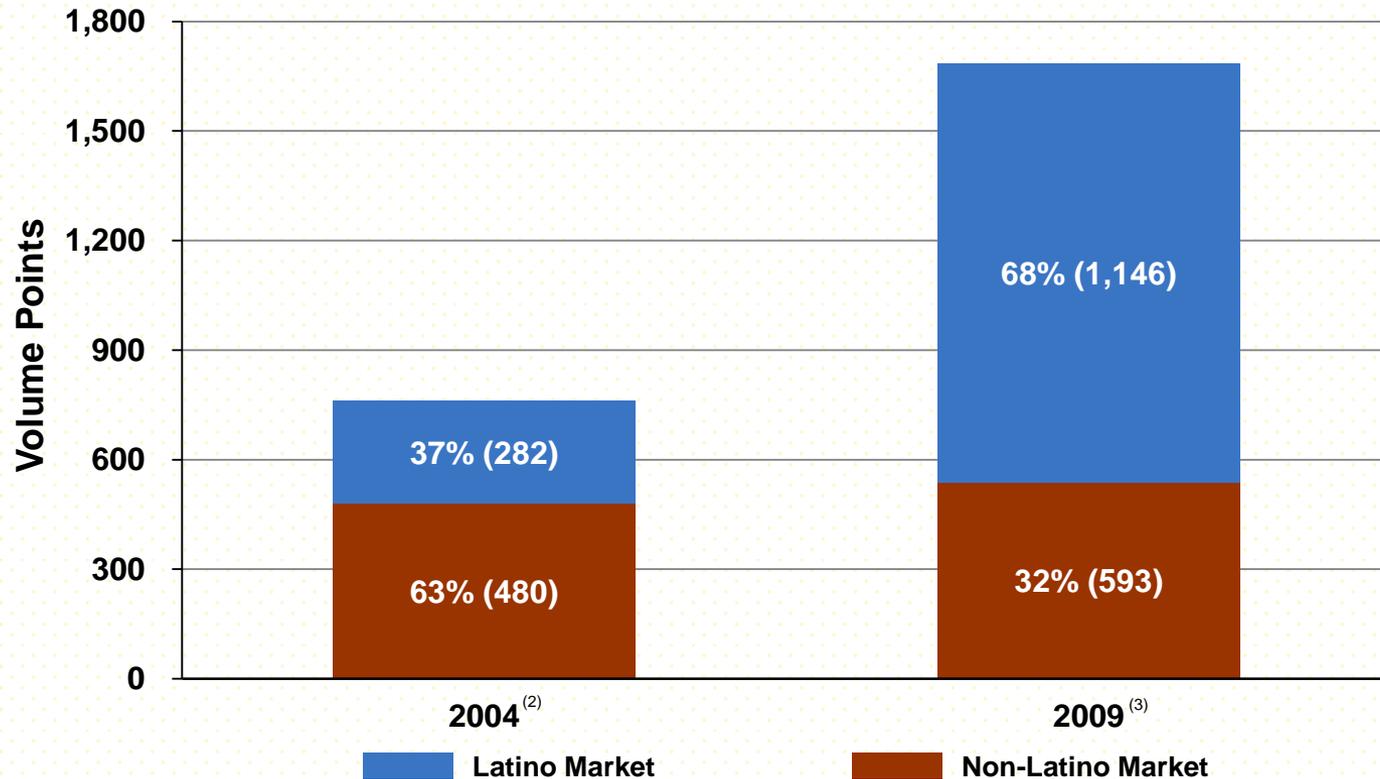


Exhibit C

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# Even Within the N. American Market, It's a Story of "Pop" Latino Nutrition Clubs vs. "Drop" 'Core' N. American Base

**Latino Volume Points as % of Americas (1)**



**From 2004–2009, Latino market Volume Points as a % of total Americas Volume Points more than doubled, while the 'Core' U.S. market appeared to stagnate**

Exhibit C

(1) Source: Herbalife Investors Day Presentation dated December 2009 and Herbalife filings. Page 000390

(2) Source: Herbalife filings. Represents "Americas" as defined in Herbalife's FY2004 10-K.

(3) Source: Herbalife filings. Represents "North America", "Mexico" and "South/ Central America" as defined in Herbalife's FY2009 10-K.

*“We are thirty-two year old company. I think that's incredibly important for a multi-level marketing sales company. Longevity is an indication of credibility.*

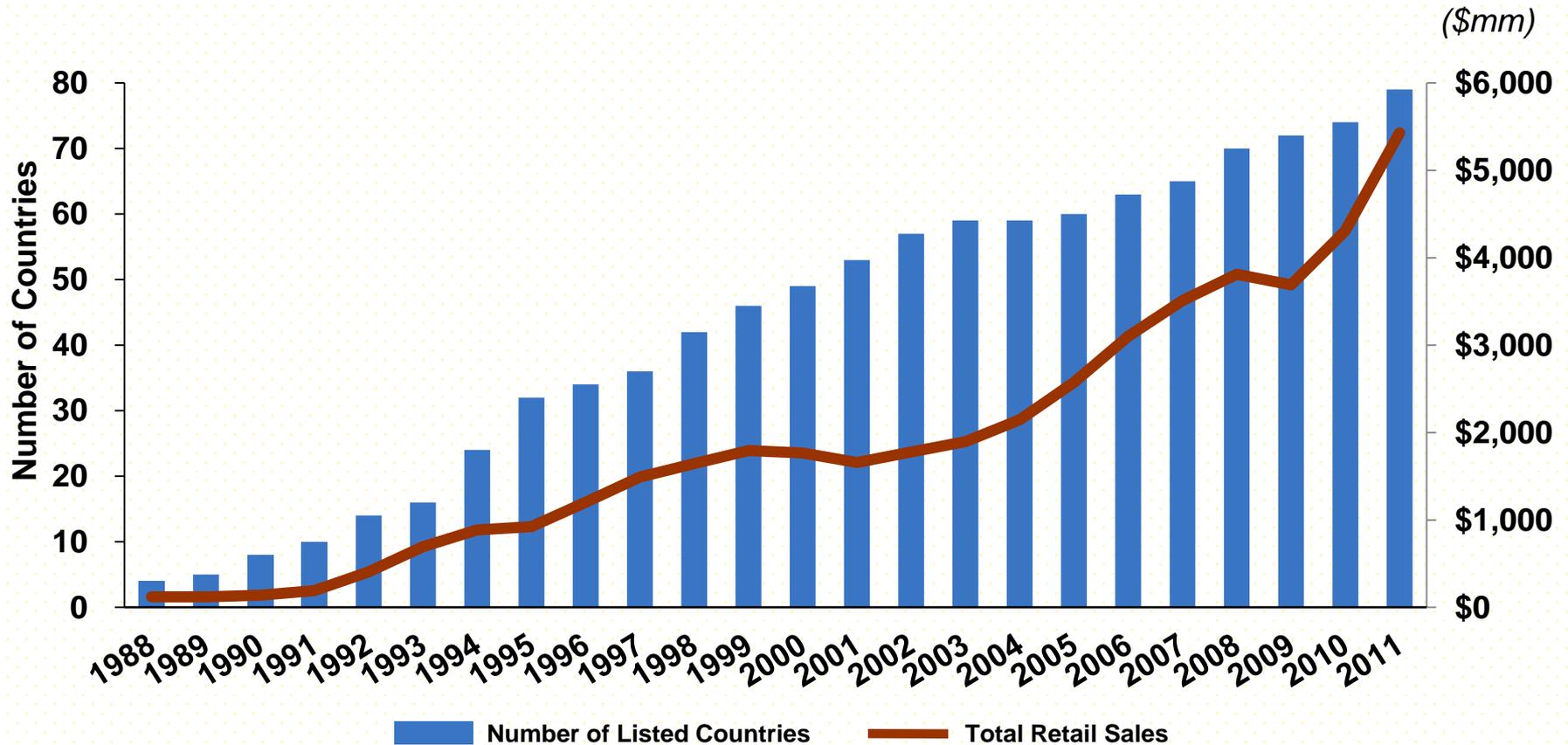
*There are companies that get in the industry that have rapid growth and decline. It's called a pop and drop. They have a rapid growth and then decline quickly also. So, that longevity is an important point for investors from a confidence standpoint into the business model.”*

*– John DeSimone, Herbalife CFO, 9/6/12*

**How has Herbalife stayed in business for over 30 years?**

# As Herbalife Enters New Regions, 'Drops' In Mature Markets are Masked By the 'Pops' of New Markets...

## Number of Listed Countries vs. Total Retail Sales

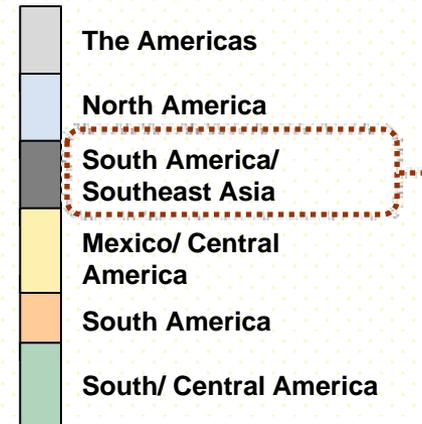


# HLF Re-classified the Countries that Comprise the America's Region Four Times in the Last Five Years

**Geographic Presence in The Americas (1)**

Country	Year Entered	Year				
		2005A	2006A	2007A	2008A	2009A
United States	1980					
Canada	1982					
Jamaica	1999					
Dominican Republic	1994					
Venezuela	1994					
Argentina	1994					
Brazil	1995					
Chile	1997					
Panama	2000					
Colombia	2001					
Bolivia	2004					
Mexico	1989					
Costa Rica	2006	NA				
Peru	2006	NA				
El Salvador	2007	NA	NA			
Ecuador	2008	NA	NA	NA		
Honduras	2008	NA	NA	NA		
Nicaragua	2008	NA	NA	NA		
Guatemala	2008	NA	NA	NA		
Paraguay	2009	NA	NA	NA	NA	
Aruba	2010	NA	NA	NA	NA	NA

**Classification**



**In 2006, South America was grouped with Southeast Asia**

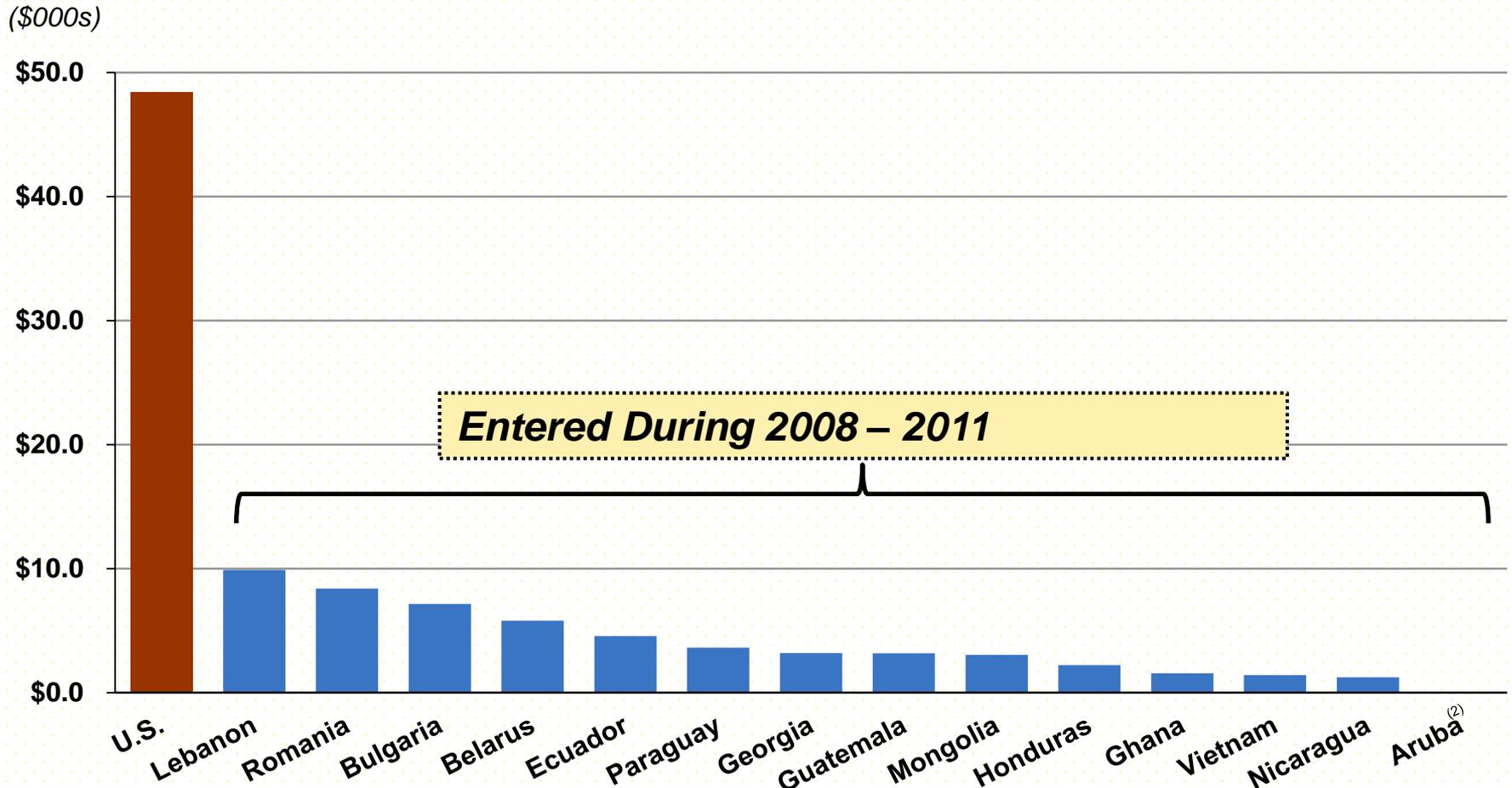
Exhibit C

(1) Source: Herbalife filings. Southeast Asia portion of South America/ Southeast Asia includes Australia, New Zealand, Philippines, Thailand, Indonesia, India, Singapore and Malaysia.

**Herbalife may be running out of growth opportunities to continue its expansion**

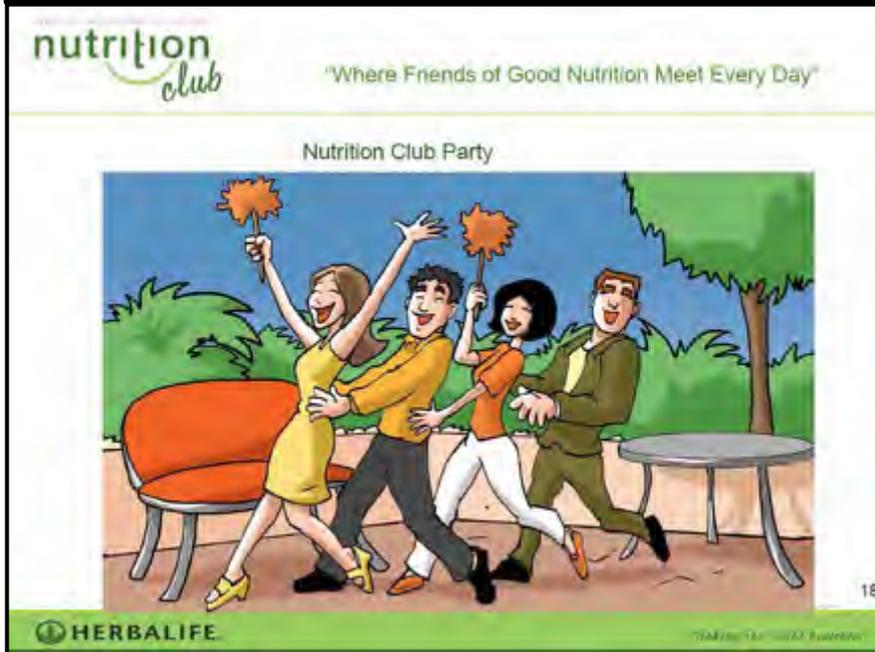
# During 2008–2011, Herbalife Entered Fourteen Countries With an Average GDP Per Capital of \$4,260 <sup>(1)</sup>

## GDP Per Capita



(1) Source: The World Bank. Based on 2011 estimates.  
(2) GDP Per Capita for Aruba not available.

Source: Herbalife Independent Distributor Nutrition Club Presentation



## Nutrition Clubs

# What is a Nutrition Club?

*“Nutrition Clubs, conducted at residential or [brick and mortar] non-residential locations are social gatherings, bringing together persons who become members wishing to focus on good nutrition and regular exercise in order to achieve optimum health.”*

– Herbalife, Sales & Marketing Plan and Business Rules Manual



# What is a Nutrition Club?

## HLF's Proof that Consumption & Retail Sales Exist

*“So metrics that are indicative of consumption, our visibility is always a question in direct selling...And some of the stats on this page were introduced in the last 6 months as just evidence of the type of visibility that we have.*

*So the first row looks at the core 3 products of the foundation of Nutrition Clubs...In 2002, those 3 products represented 35% of our volume. And last year and through this year, third quarter, it represents more than half our volume. Why? Because that shows - because the expansion of daily consumption is driving our growth. In daily consumption, those 3 products are the products that are sold in Clubs...And therefore, that growth is indicative of consumption growth. That growth in those 3 core products.”*

– John DeSimone, CFO, Investor Presentation, November 14, 2012

Source: Herbalife Investor Presentation, November 2012

**Metrics Indicative of Consumption**

Key metrics illustrate significant shift to daily consumption \*

	2002	2007	2011	3Q 2012 YTD
Top 3 products % of total volume (Formula 1, Tea & Aloe)	35%	48%	52%	52%
Retention of Sales Leaders	27%	41%	52%	n/a
Sales Leader activity rate	37%	40%	53%	55%
5K Sales Leader qualification %	n/a	n/a	18%	24%
New Sales Leader qualification volume, % of total volume	27%	26%	16%	14%***
Buyback % of retail sales **	Exhibit C	1.0%	0.4%	0.3%

THIRD QUARTER 2012 IR UPDATE

\* Excludes China because of its different market structure  
 \*\* HLF offers to repurchase product from resigning Distributors for up to 12 months in most countries  
 \*\*\* YTD August, 2012



# Herbalife Portrays Nutrition Clubs as Vibrant, Retail Channels...

Source: Herbalife's Today Magazine



"Nutrition Clubs in commercial locations are a great way to build a stable customer base and downline."

Source: Herbalife 2012 Investor Day Presentation



# ...Selling Desirable Products to Consumers

All nutrition clubs serve the same three products: aloe water, tea, and Formula 1 as a “meal replacement”

Source: Herbalife Nutrition Club Presentation by Independent Distributor

**nutrition club** "Where Friends of Good Nutrition Meet Every Day"

HERBALIFE Products in the Nutrition Club

- ◆ Shakes made of Formula 1
- ◆ Tea, Herbal Concentrate
- ◆ Herbal Aloe Drinks

14

HERBALIFE Making the world healthier.

The slide features the Herbalife logo and tagline at the top. Below, it lists three product categories with corresponding images: 'Shakes made of Formula 1' (a jar of Formula 1 and a glass of shake), 'Tea, Herbal Concentrate' (a jar of concentrate and a cup of tea), and 'Herbal Aloe Drinks' (a bottle of aloe water and a glass of water). The slide number '14' is in the bottom right corner, and the Herbalife logo and tagline are at the bottom.

Source: Herbalife 2012 Investor Day Presentation

INVESTOR DAY 2012

Formula 1 Positioned as a Meal

Replacement spending vs. discretionary

vs.

11

The slide is titled 'INVESTOR DAY 2012' on the left. The main heading is 'Formula 1 Positioned as a Meal'. Below this, it says 'Replacement spending vs. discretionary'. The central visual is a comparison between a glass of Formula 1 shake topped with berries and a hamburger. The word 'vs.' is placed between the two images. In the bottom right corner, there is a small icon and the number '11'.

## **Herbalife Encourages Investors to See the Clubs...**

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*“We've made clubs visible to investors. We have taken investors to clubs. Amy is consistently putting club tours together. I think it's important for somebody interested in this model to go see a club. And you'll understand that within clubs, it is all consumption based.”*

**– John DeSimone, CFO, November 14, 2012**

## **...So We Visited Various Nutrition Clubs**

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**We sent a Pershing Square team member to Queens, NY and Omaha, NE to research nutrition clubs**

**What follows are photos of nutrition clubs we visited...**

## Our Research Revealed a Different Experience

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Exhibit C  
Page 000404

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000405

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000406

## Our Research Revealed a Different Experience

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Exhibit C  
Page 000407

# Our Research Revealed a Different Experience

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Exhibit C

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000409

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000410

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000411

# Our Research Revealed a Different Experience

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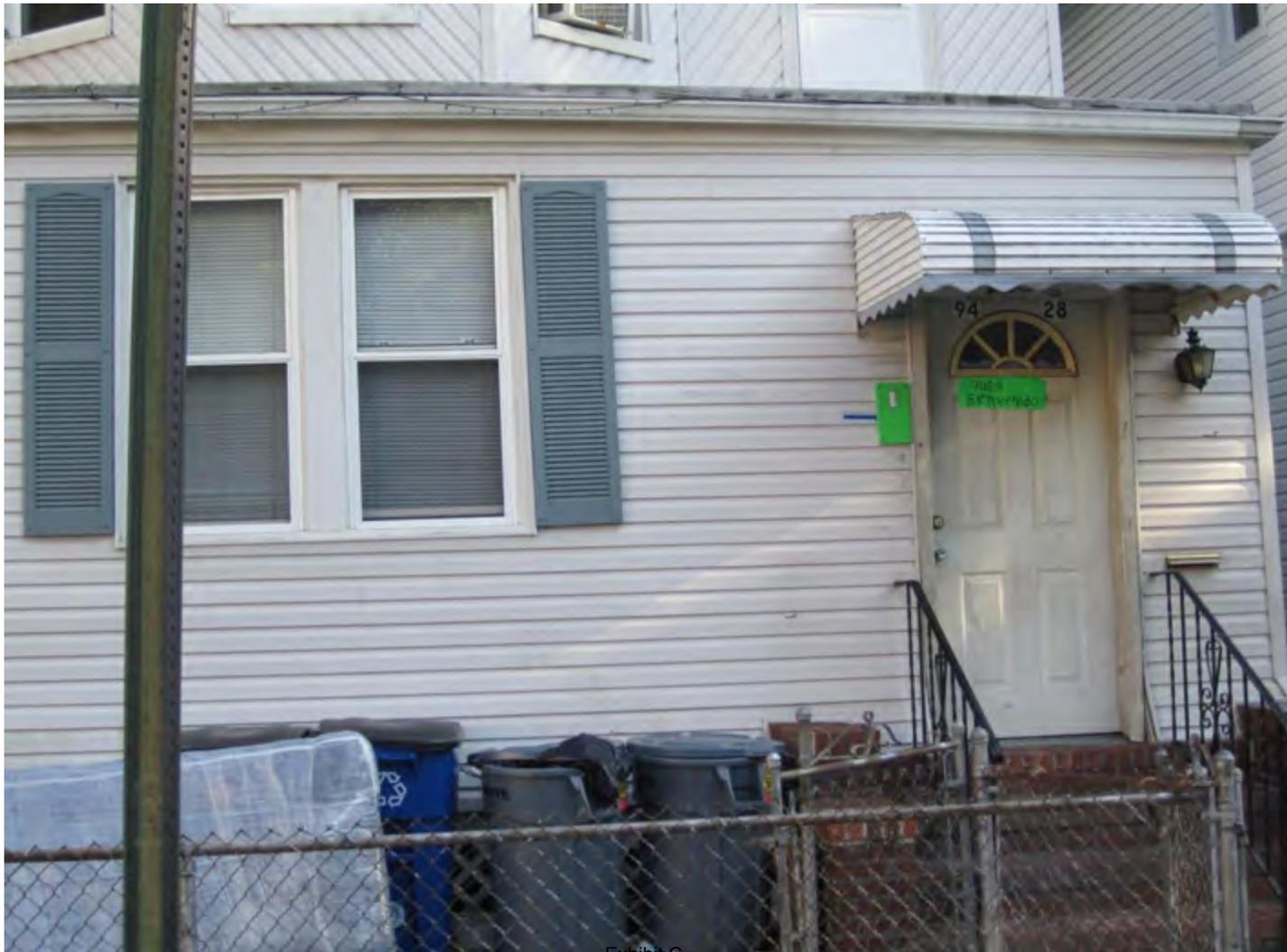


Exhibit C  
Page 000412

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000413

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000414

## Our Research Revealed a Different Experience

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Exhibit C  
Page 000415

# Our Research Revealed a Different Experience

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Exhibit C  
Page 000416

## **Our Research Revealed a Different Experience**

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**You might notice several things about the Nutrition Clubs we observed:**

- ☒ No exterior signage**
- ☒ No mention of Herbalife or its logo on the Club exterior**
- ☒ Windows are covered so you cannot see inside**
- ☒ No advertising or promotion**
- ☒ No depiction of product**
- ☒ No indication when the Club is open or closed**
- ☒ Product is poorly prepared and presented**

# Herbalife Imposes Many Constraints on its Club Operators' Ability to Retail Product

If residential, no exterior signage of any kind →

**4-F Nutrition Club Signage**  
Residential Locations: Clubs operating from residential locations may not use exterior signage of any kind. For signage Rules that apply to Clubs operating from non-residential locations, refer to Section 5 of these Nutrition Club Rules.

If non-residential, may have a sign IF...

- ▶ ...it does not imply a store, restaurant, or retail location and doesn't invite product purchase →
- ▶ ...it does not imply any relationship to Herbalife
- ▶ ...it does not promote shakes or products →
- ▶ ...it does not state if the Club is open / closed →

**5-B Signage Restrictions for Clubs Operating in Non-Residential Locations**  
A Nutrition Club may have a sign identifying itself, but that signage must meet the following standards:

- The design and content of the proposed sign must meet Herbalife's published standards to ensure that the location is not perceived as a store, restaurant, franchise, or similar operation, or other retail location, and does not invite passersby to purchase product.
- Signs may not directly or indirectly identify, imply or signal that the occupant is an Herbalife Independent Distributor (or otherwise indicate an Herbalife business).
- Signs may not state or suggest that Herbalife products are available for retail purchase on the premises.
- Signs may not use the terms "Nutrition Club," "Herbalife," "L.A. Live," "Mark Hughes," "Liftoff," "Shapeworks," "Skin Activator," "NourFusion" or any other Herbalife intellectual property, product names or brands, or the word "shake" or any other words that imply or signal that Herbalife products are available at that location.
- The following terms, and any similar terms, are not acceptable: "café," "restaurant," "bar," "mart," "store," or "shop."
- Signs that depict "Open/Closed" may not be visible from the exterior.

Exhibit C

# Herbalife Imposes Many Constraints on its Club Operators' Ability to Retail Product (cont'd.)

- ▶ No product or other promotional displays visible from the exterior

### 3-G Product Packaging and Display

Club operators may display product-related literature, promotional items, Herbalife products, unopened and in their original packaging, but such displays may not be visible from the exterior.

- ▶ No advertising nor attracting any traffic

### 4-D Advertising

Nutrition Clubs are social gatherings publicized exclusively through word of mouth and attended only by persons who are personally invited by the Club operator, another independent Distributor or a customer, either through oral conversation or through conversation accompanied by the provision of a written invitation. Nutrition Clubs are not intended to nor may they attract "walk-in" traffic. Accordingly, Club operators may not use any advertising materials, including, but not limited to materials on the interiors of their Clubs, in a manner that is visible from the exterior.

- ▶ Must cover windows to ensure interior of Club is not visible

### 5-C Window Coverings

Nutrition Clubs operating in non-residential locations must ensure the interior of the Club is not visible to persons from the exterior, by use of window coverings.

- ▶ Must not state, imply, or suggest any retail products available for purchase

- Window coverings must be unbranded, and they may not state, imply or suggest (even without words) that retail products are available for purchase inside.
- "Before & After" photographs are not permitted in or as window coverings.
- The word "shake" or pictures of shakes, or any other products, even if unbranded, are not permitted in or as window coverings.

# Herbalife Imposes Many Constraints on its Club Operators' Ability to Retail Product (cont'd.)

▶ Club Operators may charge membership fee only to cover operating costs; prohibited from earning Retail Profit



### 2-A Fees

A daily, weekly or monthly membership fee may be charged to cover operational costs such as rent, utilities, etc.; these membership fees must not represent the price or cost of products, which may be offered to members and their guests for consumption.

▶ Not a retail store, nor a restaurant



### 3-B Product Consumption

Nutrition Clubs are social gatherings, bringing people together with a focus on good nutrition. They are not retail stores or outlets, nor are they restaurants or carry-out establishments.

▶ No prices or charges for product servings



Subject to this restriction, Club operators may offer complimentary products such as shakes, teas, Formula 1 pies and Herbal Aloe Concentrate. Club operators may post a list of available flavors of shakes and teas, as well as any optional ingredients such as protein or fiber, but consistent with the proper operation of a Nutrition Club they may not post, list or charge individual prices for these products or ingredients.

▶ Always use disposable cups



### 1-N Good Hygiene

#### Food Sourcing, Handling and Preparation

- Always use disposable cups to serve complimentary beverages.

▶ "Members", not others, only allowed to leave premises with limited carry-outs if in "small, unbranded" containers



### 3-C Carry-outs

Although it is preferable that all product offerings be consumed on the Club premises, registered Club members may carry-out one shake per day.

Carry-outs must be in unbranded containers of not more than 12 oz. (or 354 ml) in capacity. Carry-outs may only be for the personal consumption of that Club member, or another registered Club member. Carry-out is limited to shakes and does not include teas, Formula 1 pies or Herbal Aloe Concentrate.

## As the CFO Explains...

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*“So the clubs first and foremost can't be retail establishments. They can't be Herbalife signed stores. Okay?...The consumer cannot know it is a club until they have come inside.*

*They can't know it has anything to do with Herbalife. So the windows are blocked, or – you can have no reference where somebody walking by will know it is Herbalife.”*

**- John DeSimone, CFO, Nov. 16, 2011**

### Query:

**If the goal is consumption, why does Herbalife make it virtually impossible to generate sales?**

Exhibit C  
Page 000421

# The Company's Depiction of Nutrition Clubs Does Not Adhere to its Own Nutrition Club Rules

Source: Herbalife Today Magazine



**Rule 5-C:**  
Must ensure the interior of the Club is not visible, by use of window coverings

Source: Herbalife 2012 Investor Day Presentation



**Rule 1-N:**  
Always use disposable cups to serve complimentary beverages



## Herbalife Claims its Competition is Fast Food

---

- ▶ Despite the operating constraints placed on its Nutrition Clubs, Herbalife says their competition is McDonald's

*“You're not going to like my answer on competition because strategically we view the competition as fast food...It is the steal a meal a day from fast food. It is not to go after other supplement companies. It's to go after McDonald's, to go after KFC.”*

*- John DeSimone, CFO, Sept. 7, 2011*

- ▶ Note, however, that Herbalife makes no mention of fast food competitors in its SEC filings

*“Our competitors include both direct selling companies such as NuSkin Enterprises, Nature's Sunshine, Altacor/Amway, Melaleuca, Avon Products, Oriflame, Tupperware and Mary Kay, as well as retail establishments such as Weight Watchers, Jenny Craig, General Nutrition Centers, Wal-Mart and retail pharmacies.”*

Exhibit C  
Page 000423 - Herbalife, 2011 10-K

## **Imagine You Operated a McDonald's, But Were Subject to the Following Constraints:**

---

- ☒ No signage, including external displays of the Company's name or logo**
- ☒ No advertising or promotion**
- ☒ Must cover windows**
- ☒ Must serve exact same three liquid products to every customer for breakfast, lunch, and dinner**
- ☒ No "Open / Closed" sign**
- ☒ Not allowed to attract customers or walk-ins**
- ☒ No sales of product servings, only complimentary offerings**
- ☒ Only can charge fees to cover operating costs; product costs explicitly cannot be recovered**
- ☒ Customers not allowed to carry out food unless in a small, unmarked container**

# So How Does HLF Compare to the Competition?

## Herbalife Appears to Have an Impressive Number of Clubs

The number of Nutrition Clubs in Mexico has expanded from 50 to 40,550 in the last decade and Herbalife has 100x the units of the “competition”

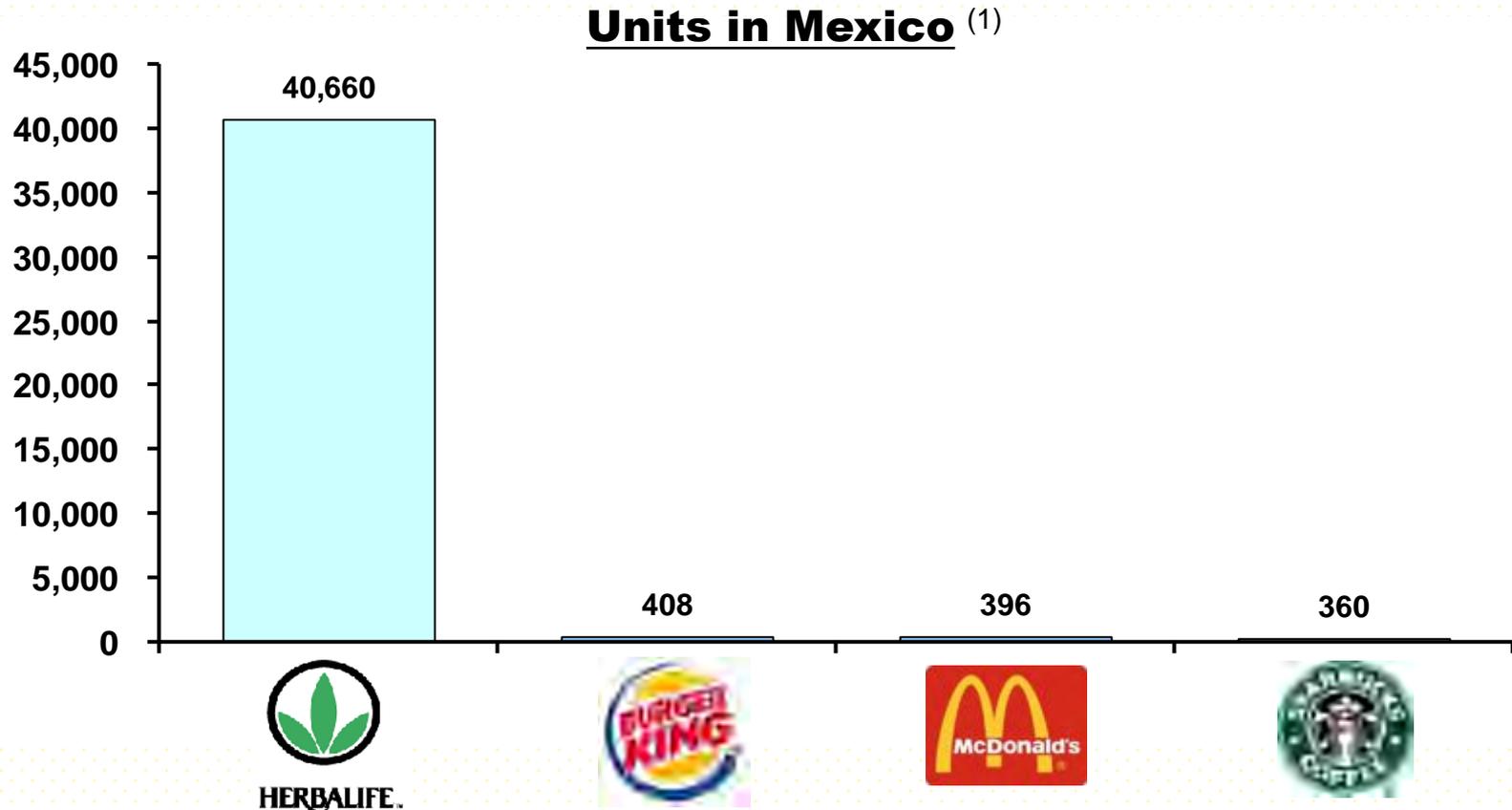


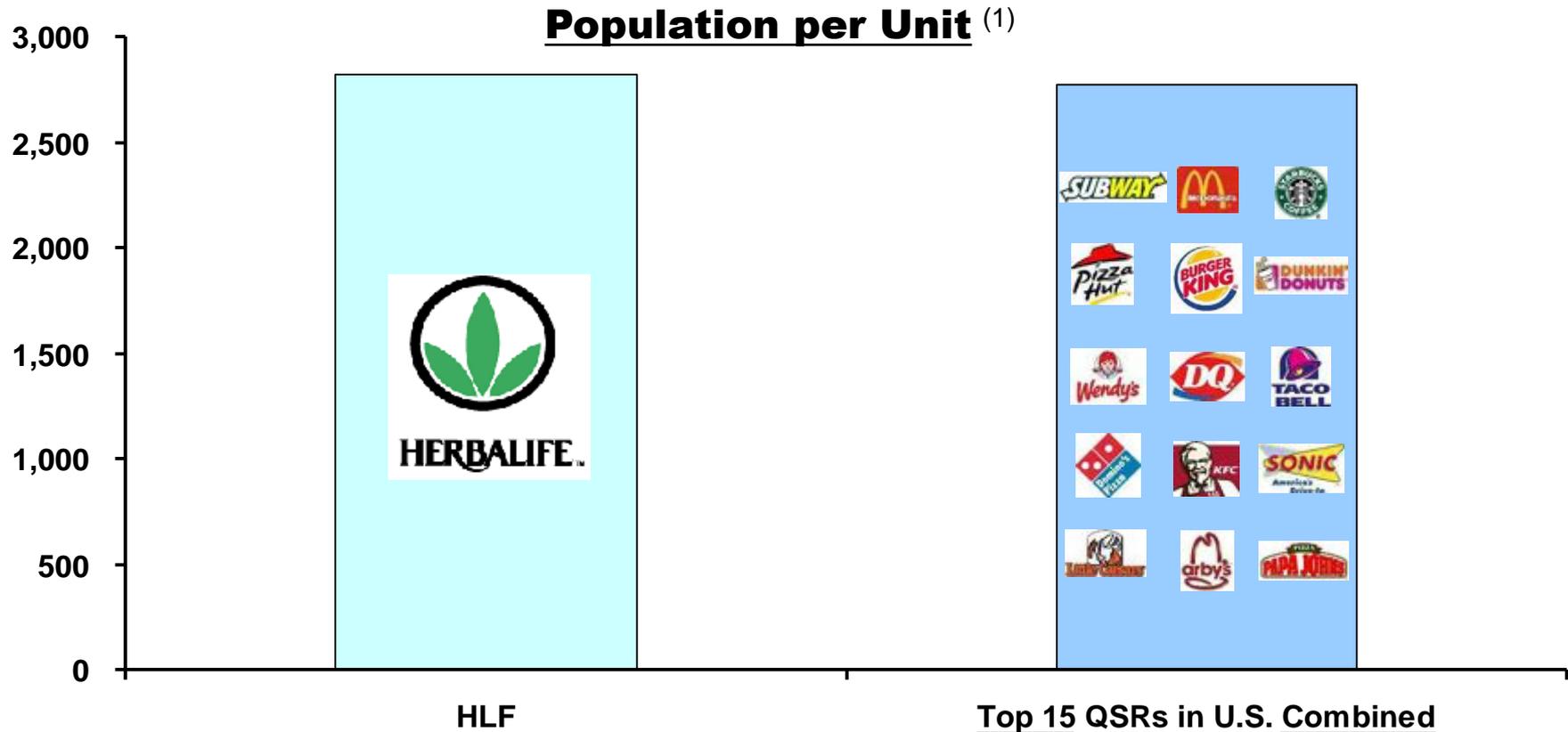
Exhibit C

(1) Source: public company filings and news releases. Represents Herbalife nutrition clubs. For QSR restaurants, represents total number of owned and franchised units.

# So How Does HLF Compare to the Competition?

## One Might Even Conclude HLF has Saturated the Market

Herbalife has one Nutrition Club for every 2,800 people in Mexico, equivalent to the density of the top 15 QSRs in the U.S. combined



**GDP per Capita**

**MX: \$14,800**

Exhibit C

**US: \$49,000**

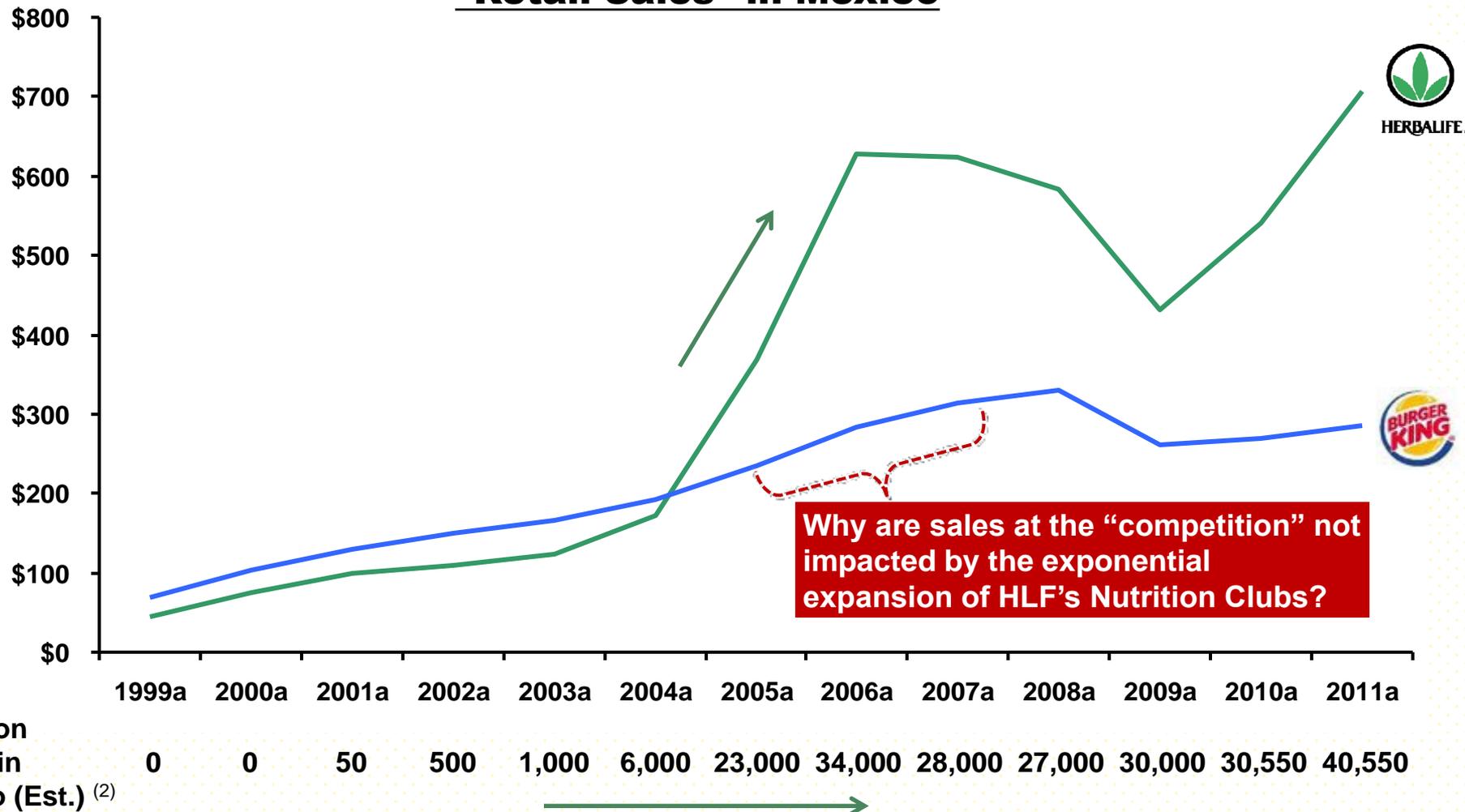
Page 000426

Source: public company filings, QSR Magazine, CIA World Factbook.

(1) Represents Herbalife nutrition clubs per capita in Mexico. For QSR restaurants, represents total number of owned and franchised units per capita in U.S.

# Despite What Seems to be Impressive Growth, Herbalife Doesn't Appear to be "Stealing Meals" from Fast Food

**"Retail Sales" in Mexico (1)**



Why are sales at the "competition" not impacted by the exponential expansion of HLF's Nutrition Clubs?

Exhibit C

Page 000427

(1) Source: Herbalife filings, Burger King. Represents Herbalife "Retail Sales."  
 (2) Pershing Square estimates, per Herbalife filings, presentations, and transcripts.

# **The Nutrition Clubs Have Grown Remarkably Rapidly**

---

*“We have always talked about how long it took for the nutrition clubs to ramp up. It’s exponential. So you’re probably talking 18 -24 months out into the future till you see maybe the explicit exponential growth.”*

**- Michael Johnson, CFO, May 2, 2007**

**Query:**

**What retail business grows exponentially?**

Exhibit C  
Page 000428

***So if Herbalife Nutrition Clubs are not “stealing a meal a day from fast food” what are they really doing?***

# What is the Real Purpose of the Nutrition Clubs?

---



## Guidelines to Run and Operate a "NC Centre" – Western Australia

### Guidelines:

The WA Nutrition Club Owners Committee (Kim Broemer, Mariani Broemer, Bruce Hutchinson, Kaye Hutchinson, Bill Bell) have established the following points as a guide to operating a successful club. It is important to recognize that each club will have its own unique environment and style; however, the fundamentals should remain the same. Keep in mind that your club should be a member based model, the more attractive and interesting the activities you provide the more likely will be your clubs success. These Guidelines should be read in conjunction with the Herbalife Australia Nutrition Club Manual.

### Purpose of an NC:

1. Promote two Supervisors per month
2. Duplicate the Nutrition Club

### Partners/Associates:

# What is the Real Purpose of the Nutrition Clubs?

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FINAL TRANSCRIPT

May. 02. 2007 / 11:00AM, HLF - Q1 2007 HERBALIFE LTD Earnings Conference Call

**Greg Probert** - Herbalife Ltd. - President, COO

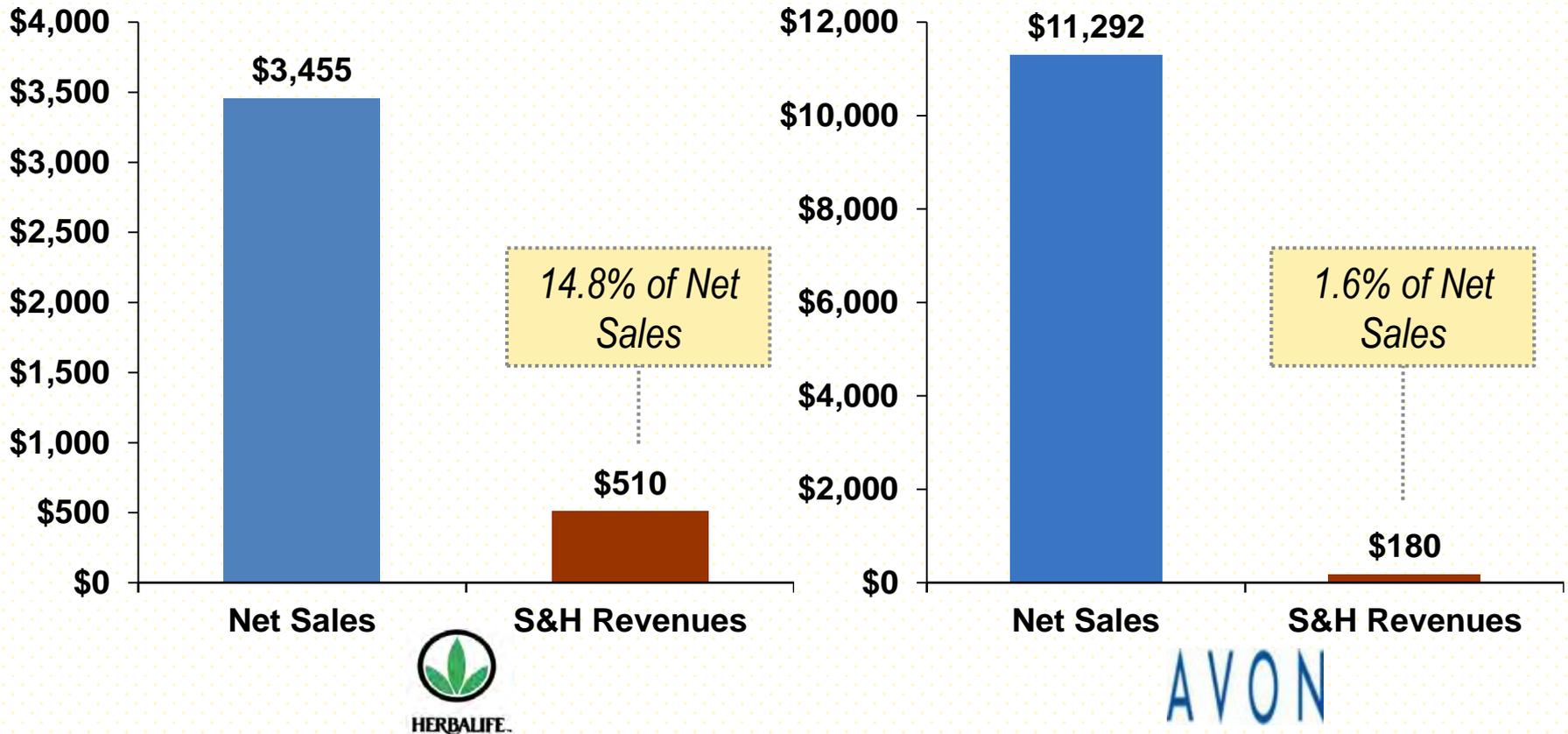
They're not so much dropping out of the business other than I think what we talked about in response to Javier's question about there's maybe 4, 5% of the business that are leaving. What we're seeing is really the slowdown is more attributable to not opening up new stores. And that is on purpose. Our distributors want to retrain and retrain and then go back through a period of accelerated growth.

So I think what you will see is retention will probably actually go up as we go through this phase. And then, we want to get back to active recruiting which is another word for opening new Nutrition Clubs.

## **Shipping & Handling**

# Herbalife's Shipping & Handling Revenues Are Surprisingly High...

**2011 S&H Revenues as % of Net Sales** <sup>(1)</sup>



**Herbalife charges a 7% Shipping & Handling surcharge above ordinary Shipping & Handling costs**

Exhibit C

(1) Source: Company filings. Avon Shipping and Handling Revenues are included in 'Other Revenue', which "primarily includes shipping and handling and order processing fees billed to Representatives".

# ...However, Herbalife's Shipping & Handling Costs Are Surprisingly Low

- ▶ Herbalife does not detail Shipping & Handling costs on its Income Statement
- ▶ In a response letter to an April 11, 2011 SEC inquiry, however, Herbalife disclosed its Shipping & Handling costs for the fiscal years 2008–2010 <sup>(1)</sup>

## Source: Herbalife Response Letter to SEC (2011)

Please tell us where you record shipping and handling costs and provide us with the amounts for each period presented. If these amounts are not included in costs of sales and are material, please confirm in future Exchange Act filings you will revise to disclose (i) your policy for recording shipping and handling costs and (ii) the amounts for each period presented.

### Company Response:

We note the Staff's comment, and in response thereto, respectfully advise the Staff that in Note 2, Basis of Presentation, under the heading of "Revenue Recognition," in the notes to consolidated financial statements on page 104 of the 2010 10-K, we disclose that shipping and handling costs paid by the Company are included in cost of sales. The shipping and handlings costs for 2010, 2009 and 2008 were \$58 million, \$49 million and \$48 million, respectively.

***Based on Herbalife's SEC correspondence, its Shipping & Handling costs as a percentage of Net Sales is 2.1%, or 1.3% of Retail Sales <sup>(1)</sup>***

Exhibit C

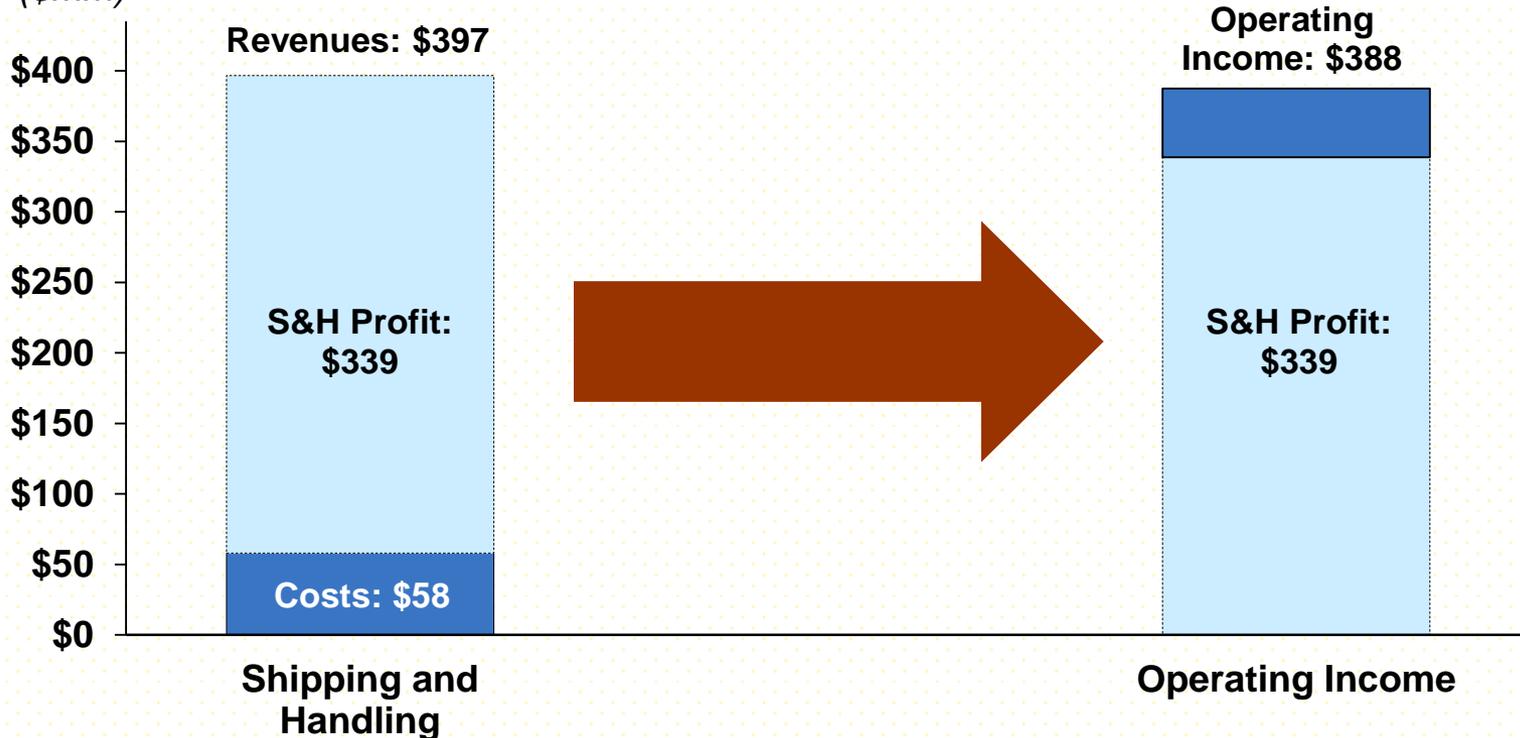
Page 000434

(1) Source: Herbalife filings and SEC response letter dated April 21, 2011.

# As Such, Herbalife's Shipping & Handling Profit Accounts For \$339mm of Its Total Operating Income

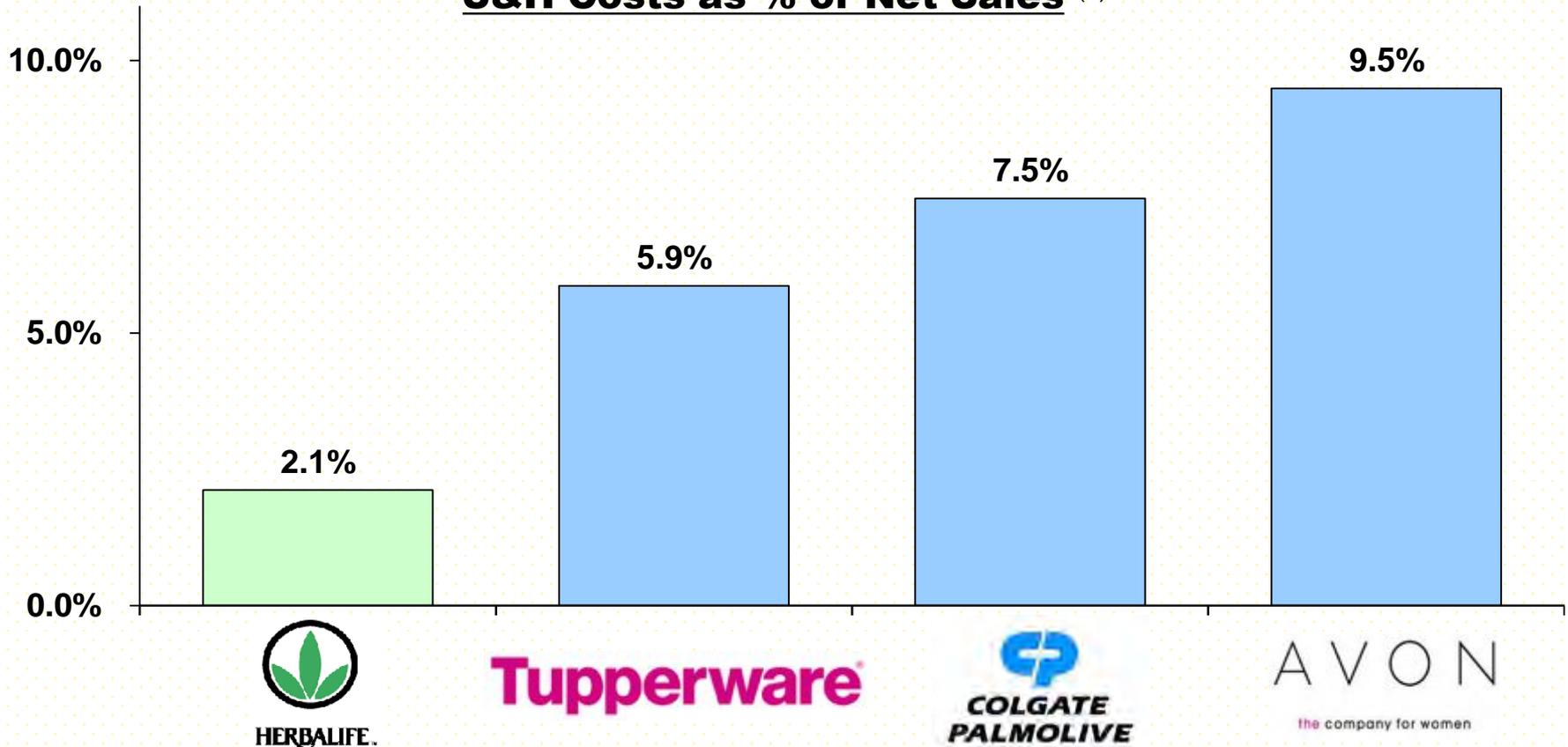
**2010a**

(\$mm)



# S&H Costs Typically Account for 6–9% of Net Sales of Consumer Product Companies

**S&H Costs as % of Net Sales** <sup>(1)</sup>



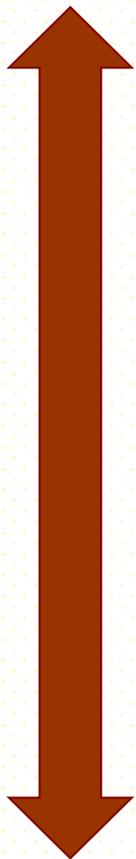
*In addition, Herbalife's products are typically sold at a 50% discount to SRP, whereas many of its competitors sell their products at a 30–40% discount*

Exhibit C

(1) Source: Company filings. Based on 2011 estimates; Herbalife reflects 2010 data, as disclosed in SEC correspondence dated April 21, 2011.

# However, Herbalife's Products are Relatively Heavy and Expensive to Ship

Generally Heavier



Generally Lighter

 <b>HERBALIFE.</b>				
 the company for women				
 <b>COLGATE PALMOLIVE</b>				
 <b>Tupperware</b>				

# Herbalife Also Has a More Limited Logistics Footprint Than That of Similarly-Sized Consumer Product Companies

Herbalife has only three company operated distribution centers of 150k sq. ft or less each

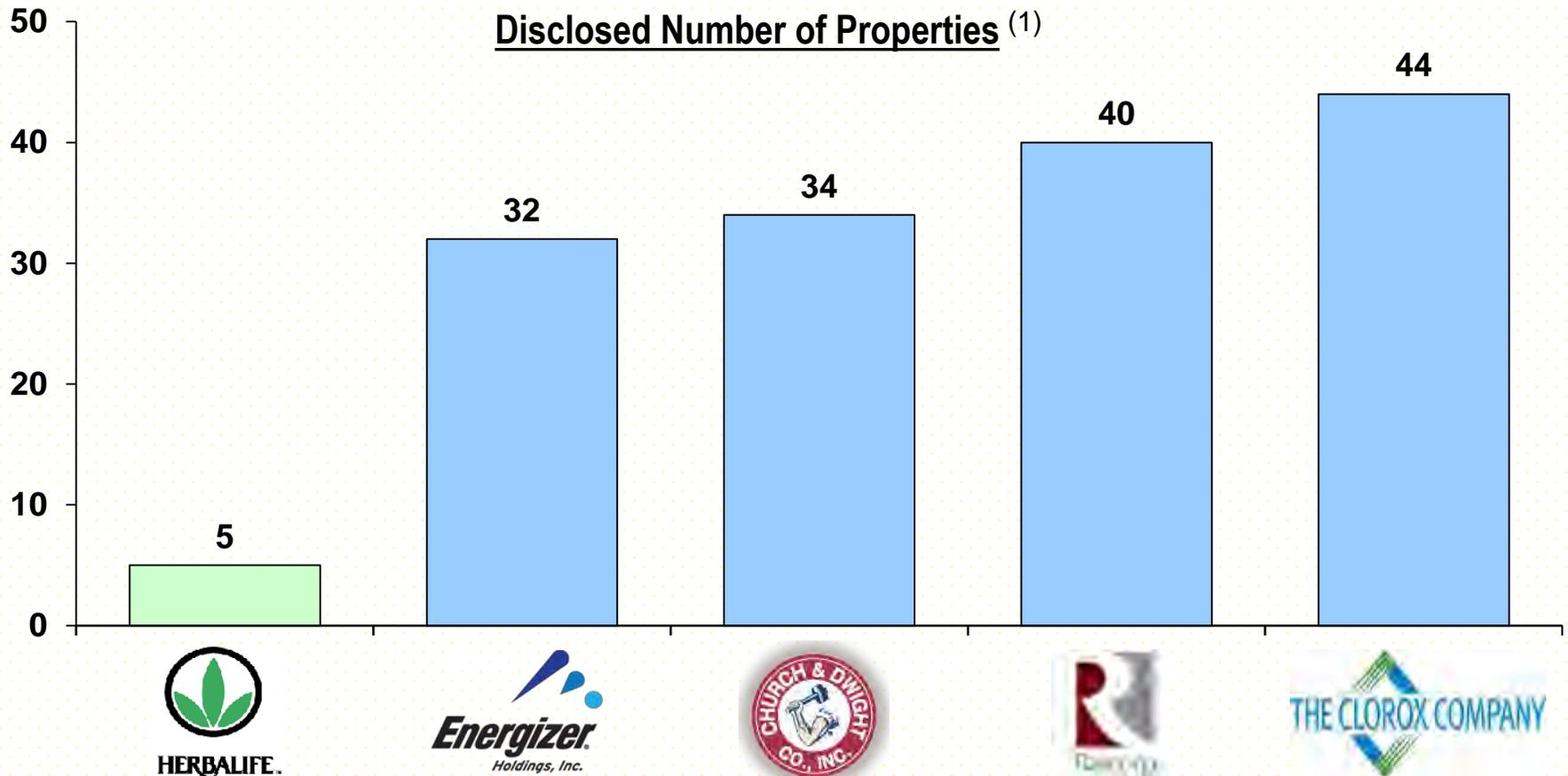


Exhibit C

(1) Source: Company filings. For Energizer, Church & Dwight, Ralcorp and Clorox, represents only disclosed production/ manufacturing, distribution and warehouse facilities, which are a subset of total.

## Why Are Herbalife's Shipping & Handling Costs So Low?

---

- ⊗ **HLF has heavier products at a given price point:** Peers have significantly higher S&H costs despite selling products that are cheaper to ship
  
- ⊗ **HLF has a limited company-operated manufacturing footprint**
  
- ⊗ **HLF has fragmented distribution:** approximately 3 million independent distributors located in 84 countries <sup>(1)</sup>
  
- ⊗ **HLF uses expensive outsourced shipping:** outsourced shipping through FedEx, a relatively expensive distribution form
  
- ⊗ **HLF products have 'fast-moving' consumption patterns:** frequent shipments given customer base and move toward “everyday consumption”

Exhibit C

Page 000439

(1) Source: Herbalife FY 2012 Q3 10-Q..

## **Product Buyback**

# **Herbalife's Primary Evidence that Retail Activity Exists is the Fact that Product Returns are Low (0.4% of Retail Sales)<sup>(1)</sup>**

---

I don't think there's any way that anyone can ensure retail sales, except to look at the evidence of how many people do we have who came back to Herbalife with a garage full of product and said, you know, "I've been duped into this, and here's my product. I can't sell this product. I'm not able to sell this product"? The evidence is to the contrary. The evidence is considerably to the contrary.

- Charles Patterson, Herbalife Attorney<sup>(2)</sup>

Exhibit C

(1) Returns were 0.4% of Retail Sales in 2011. Source: Herbalife Investor Presentation (May 2011) 000441  
(2) *Herbalife International of America v. Ford*, No. 2:07-cv-02529, Hearing Transcript at 16-17 (C.D. Cal. June 2, 2009).

**Herbalife's 'buyback' policy is effective at limiting product returns. Therefore, we believe the 0.4% return percentage is not a useful indicator of Retail Sales**

# Herbalife's 0.4% Return Percentage Does Not Necessarily Indicate Retail Activity

---

- ▶ **A meaningful amount of product is purchased by Non-Sales Leaders from Sales Leaders in the “field,” not directly from the Company, and is not eligible to be returned to Herbalife<sup>(1)</sup>**
  
- ▶ **Herbalife's buyback policy permits the company to deduct recruiting rewards earned on returned product retroactively (“clawback”)**
  - This clawback gives Sales Leaders an incentive to discourage their downline from returning product to Herbalife
  
  - In many cases, Sales Leaders are better off repurchasing product from their downline rather than allowing them to return it to Herbalife
  
- ▶ **Herbalife's buyback policy is not a 100% cash back guarantee**
  - A non-refundable Surcharge and a 10% restocking fee mean that Sales Leaders only get 79% of their money back on returned product<sup>(2)</sup>
  
- ▶ **To return product to the Company, distributors are required to resign, forfeiting their hard-earned downline forever**

(1) Products are only eligible for return to the company “if the products were purchased from Herbalife.” (Source: Herbalife Sales & Marketing Plan); “Purchases directly from the company – of that 82%, a lot of people never purchase from the company. So they sign up to be a distributor from their sponsor, but they still buy product from the sponsor... Again, a million of our distributors don't order directly from the company.” (Source: John DeSimone, CFO, Herbalife at the Citi Global Consumer Conference (5-23-12)).

(2) E.g., a Sales Leader who pays \$50 plus a \$7 Surcharge for \$100 of SRP product is entitled to get back \$45 (\$57-\$7-10%\*\$50). In mid-2012, after David Einhorn questioned the Company, Herbalife eliminated the restocking fee.

# **Herbalife's 0.4% Return Percentage Does Not Necessarily Indicate Retail Activity (Cont'd)**

---

- ▶ **Distributors are encouraged to sell to friends and family**
  - Herbalife encourages new distributors to sell product to friends and family who may be reluctant to return product even if they are not using it
  
- ▶ **Distributors are encouraged to “Use, Wear, Talk”**
  - Herbalife pushes new distributors to create their own personal testimonial by using their newly purchased Herbalife products. Only unopened product can be returned
  
- ▶ **Trend toward smaller order sizes reduces likelihood of returns**
  - Distributors who buy in smaller quantities are less likely to go through the enormous effort required to return product. They are also more likely to sample and use a higher percentage of the product they purchase, thereby making it ineligible for return
  
- ▶ **Returns are reported as a percent of Retail Sales not Product Sales**
  - Herbalife's return percentage would be twice as high if the company reported returns as a percent of GAAP Product Sales

# Herbalife Documentation Requirements Prevent Distributors from Returning Product

---

- ▶ To return product, distributors are required to produce lengthy sales documentation, in part to verify the 70% Rule and Ten Customer Rule certifications

*Equinox, which was found to be a pyramid scheme, had a similar policy:*

As written and applied, the 70% Rule becomes a sword for Equinox to deny refunds, instead of a shield to protect distributors from inventory loading.<sup>(1)</sup>

- Limited distributor sophistication and the financial incentive to falsify certifications make it likely that many distributors lack the proper records to return product

# Distributor Frustration

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**Distributors find Herbalife's Inventory Repurchase conditions so restrictive that they don't even bother to return product:**

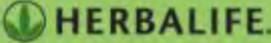
## Deposition of Bruce Roth (Former Distributor):

At the time that we left Herbalife, we had leftover product that we had been forced to purchase to get our paycheck from Herbalife. For approximately the last seven (7) months we were in Herbalife (i.e mid-June 2006 to January 2007), we had to purchase approximately \$7,500 in Herbalife product to be eligible to receive our monthly paycheck from Herbalife. When we left Herbalife, we had to throw out about \$5,000 of useless Herbalife product. We did not ask Herbalife to repurchase this product because Herbalife's buyback policy imposed too many restrictions.

*Herbalife International of America, Inc., v. Robert E. Ford and Julia A. Ford, Et, Al.,*

# And In Some Countries, Herbalife Does Not Even Have a Return Policy...

---



**HERBALIFE.**

## El Salvador

February 2007

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**Country Opening 64**

---

### Rules

Legal age: 18, No Minors.

No 30-day money back guarantee.

No Repurchase policy.

Weight Control claims are not permitted.

No Advertising of any kind will be allowed, including flyers, newspaper advertisements, signs, etc. (Product or Business Opportunity).

No public gatherings or meetings are permitted such as HOM's or STS's. Private Distributor meetings are allowed.

Applications with El Salvador address can be accepted as of February 12, 2007.

We will start selling IBP's as of February 12, 2007.

EOM rules apply - All orders MUST be received on or before the designated "EOM" day in order to count for that month's Volume.

## Existence Of a Buyback Policy Is Not a Safe Harbor

Amway's buyback policy was an important consideration in the court's decision that Amway was not a pyramid scheme; however, courts have later clarified that the policy must be effective and enforced to be a relevant defense

Omnitrition misreads *Amway* as holding that any "multi level marketing" program employing policies like Amway's is not a pyramid scheme as a matter of law. That was not the FTC's holding. The FTC held that Amway was not a pyramid scheme as a matter of fact because its policies were *enforced* and were *effective* in encouraging retail sales. This ruling does not help Omnitrition at the summary judgment stage.

# Compared to Amway, HLF's Buyback Policy Does Not Adequately Protect Distributors From Losses

## (1) Herbalife's restocking fee is 10%; Amway's was 5%

*Courts have established that a 10% restocking fee is large enough to burden distributors with a material non-refundable expense*

*FTC v. Equinox International, Corp., No. 990969HBR, 2008 WL 1425373, at \* 8 (D. Nev. Sept. 14, 1999).*

\*8 Equinox does have a refund policy. Equinox, however, only refunds 90% of the price of the product which is less than Amway refunded in the case considered by the Ninth Circuit. See *Omnitrition*, 79 F.3d at 783. Distributors that enter as Managers and purchase \$5000 in product are effectively paying \$500 for the right to participate in the Equinox opportunity.

## (2) HLF's buyback policy has a 12-Month Expiration; Amway had none

*A court ruled that time limits on product returns significantly increase distributors' financial risk*

*Webster v. Omnitrition, 79 F.3d 776, 784 (9th Cir. 1999).*

The latter fact is very significant. The buy-back rule is only effective if it can reduce or eliminate the possibility of inventory loading by insuring that program participants do not find themselves saddled with thousands of dollars worth of unsaleable products. Omnitrition's rule potentially would not achieve this goal for any person who participated in the program for more than three months.

## **How Much Harm Has Herbalife Caused**

## Let's Revisit:

# Why are Pyramid Schemes Illegal?

---

A.

Pyramid schemes are said to be inherently fraudulent because they must eventually collapse. See, e.g., *S.E.C. v. International Loan Network, Inc.*, 968 F.2d 1304, 1309 (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.” *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).

Source: Webster v. Omnitrition, 79 F.3d 776, 781 (9<sup>th</sup> Cir. 1996).

In a pyramid scheme, the money at the top is made from the losses of people at the bottom of the pyramid

# How Much Financial Harm Has Herbalife Caused?

---

**Number of People Harmed**

**X**

**Net Losses per Person**

---

**Total Net Losses**

# How Many Sales Leaders Have Failed?

---

- ▶ Sales Leaders join Herbalife to participate in the business opportunity, not to consume the product
  
- ▶ Since 1980, we estimate that ~1.9mm Sales Leaders (ex-China) have failed in the business opportunity<sup>1</sup>
  - The Company provides detailed Sales Leader statistics between 2004 and 2012;
  
  - Using this data, we estimate that in the 2006-2012 period ~1.1mm Sale Leaders failed<sup>2</sup> and left the business, a ~90% failure rate<sup>3</sup>

(1) Uses the Company's data to determine how many Sales Leaders "failed" between 2006 and 2012 (using churn as a proxy for failure). Using 1980-2012 Retail Sales as a proxy, we extrapolated our 2006-2012 churned Sales Leaders to approximate the number of Sales Leaders who have failed since 1980.

(2) Total Sales Leaders Demoted and Resigned in Jan. and Feb. between 2006 and 2012 was 1.07mm per HLF 10Ks filed during the period. In addition, by comparing full year Sales Leader additions with the beginning and ending Sales Leader totals, we estimate that an additional 42k distributors left between March and Feb. 2006 – 2012 period (2012 was estimated using prior year trends).

(3) Failure rate = (Total Failed Sales Leaders Feb. 2006 – Feb. 2012)/(New Sales Leaders Mar. 2004 – Feb. 2011).

# How Much Money do Failed Distributors Lose?

Distributors incur substantial non-refundable, non-product expenses in their attempt to succeed

Leon Waisbein – Future President’s Team Retreat Presentation: Malta 2010

## From Supervisor to GET Team



**Step 1:** Making Supervisor business profitable and attractive for duplication

### Supervisor Economics Example

- Personal product use: € 200-300
- Business Tools, Communication: € 200-300
- Events: € 100-200
- Office/Club: € 200-300 and more
- LDW, Extravaganza: € 200-300

**Expenses Total: € 1,000 and more...**

Exhibit C

Page 000454

# Distributors Face a Long List of Expenses

The itemized list of Business Support Materials below comes from the blog of a former (non- Sales Leader) Herbalife 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

Closer Look at Sales Leads

\$2,713.85

- \$991.26 Product purchases

**\$1,723 Total non-product expenses**

## Sales Leads

Senior distributors have profitable side businesses by selling leads at high prices to low-level distributors eager to grow their downlines

GREATSHAPEtoday MARCH 09TH, 2010

GST LEADS ACT NOW! SPECIAL OFFER!

GREATSHAPEtoday  
**RETAIL LEADS!**  
**PROMO**

DON'T MISS OUT...  
GET YOURS NOW!

4 GST SHAKE LEADS &  
12 GST CALL ME LEADS

ONLY  
**\$349**  
REG. \$399

Exhibit C

## **Nutrition Clubs Are Expensive to Operate**

---

**Nutrition Clubs, an increasingly important channel for Herbalife, are expensive to open**

***John DeSimone, Herbalife CFO:***

*“So it depends on the marketplace, but the clubs can vary from \$5,000 to \$6,000 to open to something greater than that”*

*11/16/11, Morgan Stanley Global Consumer Conference*

# **“Newest Way to Wealth”**

## **– Jacobs v Herbalife International Inc.**

---

- ▶ **In 2002, distributor plaintiffs filed a class action against Herbalife challenging the marketing practices of Herbalife and several high-ranking distributors**
- ▶ **Distributors were pitched the costly “Newest Way to Wealth” program as a way to build their Herbalife business**
- ▶ **Claims filed in connection with settling the case totaled \$27mm and averaged \$10k per claimant; the highest claim was \$128k**
- ▶ **Herbalife settled the case for \$6mm**

# How Much Money do Failed Distributors Lose?

We estimate that the average failed Sales Leader has \$2,000 of expenses, net of minimal retail and/or recruiting profit

## Summary Cost Analysis

<b>Waisbein Presentation</b>	<b>\$1,275+</b>
<b>Itemized Business Support Materials</b>	<b>\$1,700 – Non-Sales Leader</b>
<b>Cost to Open a Nutrition Club</b>	<b>\$5,000 - \$6,000</b>
<b>“Newest Way to Wealth”</b>	<b>\$10,000 = Average</b>

## Revenue Assumption

The typical failed Sales Leader makes nearly no retail profit after product expenses, surcharges, and price discounts. According to HLF’s own income disclosure, the median recruiting revenue for Sales Leaders is zero<sup>1</sup>

(1) Herbalife Statement of Gross Compensation 2011. Our analysis includes active and inactive Sales Leaders

# How Much Have Failed Sales Leaders Lost?

---

**1.9mm** = People Harmed

**X**

**\$2k** = Net Losses per Person

---

**\$3.8bn** Total Net Losses Since 1980

This estimate does not include harm done to the ~10mm<sup>1</sup> former Non-Sales Leader distributors. As such, we think the true financial damage Herbalife has inflicted is materially higher than \$3.8bn

Exhibit C

Page 000460

(1) Assumes: 1.9mm failed Sales Leaders 1980-2012 at an 89% Sales Leader failure rate implies 2.2mm Total Sales Leaders. 17% of Distributors become Sales Leaders (previous slide), implies 12.7mm total Distributors 1980-2012. Implies ~10mm Non-Sales Leader Distributors 1980-2012.

**To quantify the harm numerically is inherently conservative. No analysis can properly demonstrate the loss of time, damaged relationships, and emotional harm that is perpetrated by Herbalife on those who have been deceived**



## Management Credibility

# Michael Johnson in His Own Words

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Video Clip:

<http://www.pscmhflibrary.com/herbalife-cnbc-clips/>

# Michael Johnson on CNBC, 12/19/12

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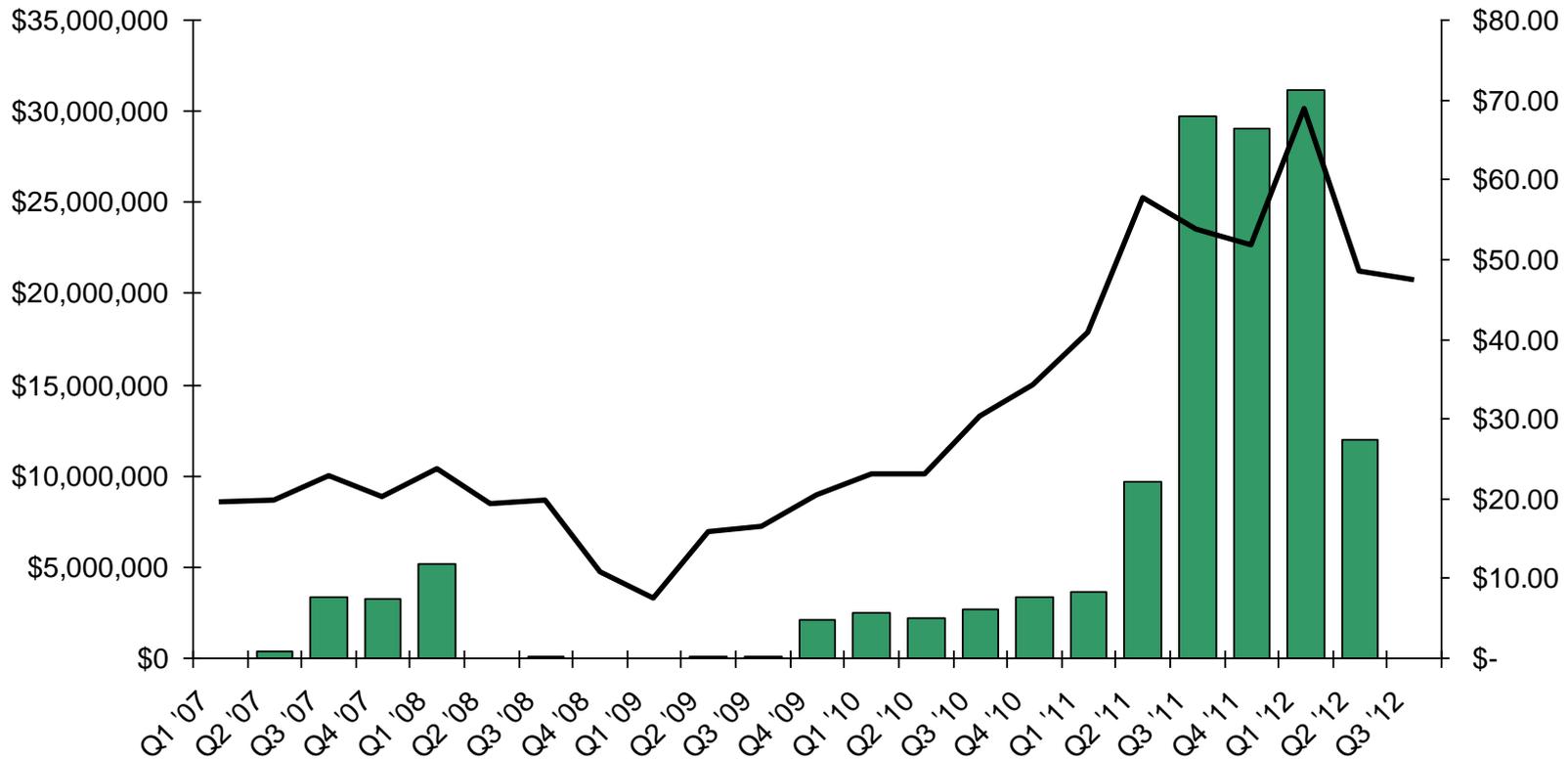
Video Clip:

<http://www.pscmhflibrary.com/herbalife-ceo-on-cnbc-121912/>

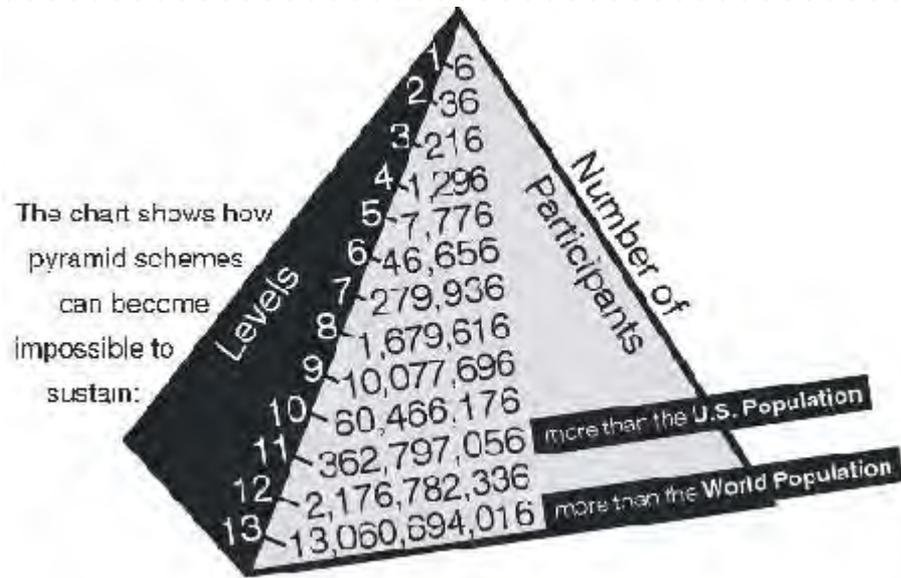
# Actions Speak Louder Than Words

Since 2007, Michael Johnson has sold ~\$140mm of HLF stock. These sales were discretionary. His shortest dated options were not set to expire until 2013

**Michael Johnson Stock Sales and HLF Share Price (Quarterly)**



**Johnson was paid \$89.4mm in 2011, making him the highest earning Russell 3000 CEO that year<sup>1</sup>**



# Conclusion

# Conclusion

---

- ▶ **Herbalife is a Pyramid Scheme**
- ▶ **It has caused and continues to cause enormous harm to the most vulnerable communities in the U.S. and around the world**
- ▶ **Our goal with this presentation is to shine a spotlight on Herbalife**

***“Sunshine is the best disinfectant”***

**Justice Louis Brandeis**

# Exhibit D

**Pershing Square Capital Management, L.P.**  
**December 20, 2012**  
**9:00 A.M. EST**

EVAN SOHN: Good morning, my name is Evan Sohn and I would like to welcome you to the first Sohn Conference Foundation Special Event.

The Sohn Conference honors the memory of my brother Ira, who tragically died of Cancer at the age of 29, 19 years ago. In an attempt to do something visionary in his name, Ira's good friends, Doug Hirsch, Dan Nir, and Lance Laifer, started this conference (INAUDIBLE) where the most sought after investors volunteer their investment ideas and time to our audience to help raise funds to battle pediatric cancer.

We are moved by how the conference has been embraced. The conference now attracts over 2,200 to Aubry Fisher Hall and is further grown into to the Sohn San Francisco excellence in education conference and this past fall, we premiered the Sohn Conference in London.

This conference changes lives. Over the past 17 years, the Sohn Conference has raised \$25 million and enabled the foundation to fund cutting edge research, technology, and quality of care initiatives for pediatric cancer across the city.

Our grants go to leading medical and research institutions including Memorial Sloan Kettering Cancer Center, Rockefeller University, NYU Langone Medical Center, Columbia University Medical Center, New York Presbyterian Hospital while Cornell Medical Center and fellowships with the Damon Runyon Foundation for Cancer Research.

The impact of your support for the conference is making this possible. We thank you and our partners. Thanks for the remarkable generosity of Bill Ackman and today, we share with you our inaugural zone conference special event. Bill Ackman runs Pershing Square, one of the most influential funds in the world. Over the years, there have been many memorable zone presentations and Bill Ackman's 2007 conference presentation titled who is holding the bag on MBIA and the 2009 presentation on general growth properties are counted among the best.

Whenever Bill speaks, there is high likelihood of an earth shattering event and that is why they are so special that he chose to unveil his latest idea in partnership with our foundation. In addition to speaking at the Sohn Conference, Bill has been an incredible financial supporter of the foundation and we greatly appreciate his continued involvement and philanthropy. Enjoy today. You are here as Bill's guests and however, feel free to not only participate in Bill's investment idea but to follow in Bill's footsteps and support and invest in the Sohn Foundation.

Ladies and gentlemen, we look forward to seeing you May 8 at Aubry Fisher Hall and I'm pleased to welcome Bill Ackman.

BILL ACKMAN: OK, so we got a lot to cover today and so we are going to move pretty quickly, why don't we start the title, Who Wants to be a Millionaire? And then we are going to actually spend a moment on the disclaimer.

So yesterday, the CEO of Herbalife went on TV and basically accused me of market manipulation in a reference to the fact that tomorrow is an option expiration date and I just wanted to point out a few things. We are (INAUDIBLE) the stock of Herbalife. Herbalife stock goes down, we make money, Herbalife stock goes up, we lose money. We do not own options on Herbalife. Put options, call options and we are not long or short options, we only are short of stocks. I just want to be clear about that.

OK.

Let us begin. Herbalife.

You can dream it, you can do it.

This is from an Herbalife presentation, OK. So the Company is a - in the weight management business, they sell nutritional supplements, energy products, sports and fitness products through a network of 3 million distributors. The Company had a market capital of about \$4.6 billion prior to yesterday and was trading at a relatively modest earnings P.E. of a little over nine times.

The Company's mission is to change people's lives by providing the best business opportunity and the best nutrition and weight management products in the world. If you think about the business, there are really two components to it. There is the product opportunity or making the best products, weight loss products and nutrition products. And then the best business opportunity, we are going to talk about both of these.

We are going to start with the products. So let us take a look at the products. So in the product area, which we are very proud of, we are continuing to develop our science based nutritional supplements to support our mission which is to provide the best nutrition and weight management products in the world. Michael Johnson, CEO.

The company has grown remarkably from 1980 to the present and you know, zero to \$5 billion, one of the fastest growing companies in the history of the world and if you compare it to other consumer packaged goods companies, it's roughly comparable in terms of revenues and value. The market value we used here before David Einhorn asked a couple of questions on the conference call.

But if you compare with Church and Dwight and Energizer, Clorox, these are businesses that are between 80 and 160 years old, this is a company that is 30 years old, I'm sorry. A business -- I got that wrong, I got the number of countries wrong but 150 year old, 100 year old and nine year old businesses compared to one and three years old so it has grown remarkably rapidly.

Interestingly, a lot of people heard of Church and Dwight, Energizer, Clorox, and let us talk about the products. At Church and Dwight, I think everyone knows the products are on the hammer, Energizer, Schick Razor, Edge, Playtex, Clorox, of course Clorox, Glad bags, Kingsford Charcoal, and then Herbalife.

People have heard of the name, they have seen it on Beckham's uniform but they have not heard of the products, I guess the question I have is -- has anyone in the room purchased an Herbalife product?

I know there are a couple of people from Herbalife here and I'm going to take you guys out of it so we got one in the audience, we got a couple. OK good.

This is not a particularly well-known company. And if you look at the -- where the brand fits in the spectrum of brands, their largest brand is a brand called Formula One. Formula One is a nutrition -- a weight loss type protein powder.

If you look at the chart here, in terms of sales, this nutrition powder is just shy of Gerber in terms of volume and a little bit more than Palmolive, a little bit less than Crest but you get a sense of how large a brand this is, you know, on the low side, it is about 50 percent larger than Clorox and it is only about 15 percent smaller than Oreo so if you think about the dominance of those brands, Formula One and brand I would say almost no one has heard of. You have heard of the race but not the product and it's remarkable in terms of the size of the \$2 billion brand we say that nobody has ever heard of.

If you compare the brand with other like products, this is actually a commodity product, people have heard of Slimfast, I'm sure. Ensure, Lean Shake, these are competitors of Herbalife's powder offering. Interestingly, Herbalife does not have a ready to drink offering, they only sell it in a canister that you can buy only through a distributor, you can't buy this in a retail store.

Now interestingly, it's got ten to 20 times the volume of the competitors. Slimfast, Ensure, and Lean Shake, and that is pretty good for a brand that can -- I think very few people have heard of. Ask the

question, how is it possible that Herbalife sells six times more nutrition powder than Abbot Labs, Unilever and GNC? That is remarkable fact.

So we say well perhaps it costs less, maybe that is why it had so much market share. And you know, it's about anywhere between two to three times the price of the competitors at the suggested retail price which we think is interesting and OK, so perhaps let us think about there are other products, how do they price them? Let us look at their multivitamin.

Again, here they charge somewhere between three to four times the price of the competition, people I'm sure have heard of Centrum vitamins, I took mine this morning and this one -- the pills are three times as much. This whole product which is a supplement, three times the price, it's called Niteworks. You know, there are many other products in the market and it's commodity product, remarkably, they have a suggested retail price is three times the competition. So maybe they have proprietary products (INAUDIBLE) the competition. If you look at their biggest products, everyone of them, there are multiple competitors but the biggest products here are nutrition powder, I mentioned Formula One, and Herbal Tea, again, lots of competitors there and a protein powder, many, many competitors and then there is (INAUDIBLE) powder which is a supplement.

So it's not because the products are proprietary, perhaps they just spend more on advertising. Maybe that is the reason.

And this is from an Herbalife presentation, they compare their brand to Nike and Disney and actually they have done a very good job promoting the Herbalife brand fairly inexpensively by getting it on the uniform of Athletes.

But there has been nothing -- effectively nothing on advertising. So Disney, 2.6 billion, Nike, 2.5 billion, and they don't spend any money on advertising, and it's not because they advertise their products more, as they say in their SEC filings, the company's advertising costs are de minimus, this is in a responsive letter to the SEC where the SEC was asking about what their actual advertising costs are.

But you see the brand name around and what is interesting is they don't advertise the products, they advertise the brand name and here is what they said in the interim report and they generally do not target promotions or advertising any particular product or brand, are significant promotions that are generally aimed at generating increased levels of recruiting and retention of distributors.

Interesting.

So I'm going to read from the earnings call. I think more people are seeing people walk around with Herbalife on their chest, this is the CEO talking about the branding campaign and approaching them and people are now asking us and that is what I talked about, the paradigm shift. What is Herbalife? That is a new paradigm for our distributors where someone walks up to them and says, you know, what is Herbalife, how are you?

We have become, in a way, a cool company like almost overnight which is very gratifying and confidence-building for our distributors. When they see that name Herbalife everywhere all the time, they get excited about that, they get less what should I say -- less cautious about saying who we are and what we are.

Or perhaps, they just do an amazing job in R&D and they got a whole portfolio of incredible products that are coming out, what do they say? Herbalife says we got the highest R&D standards in the industry, everything we do starts with great products, all our products start with proven science. Herbalife is dedicated to developing innovative effective products to comply with the highest research development and manufacturing standards in the industry.

Let me play a video from Michael Johnson on their R&D program.

(Start of Video Presentation)

UNIDENTIFIED SPEAKER: How much of you of what you are doing right is just because you have sat -- you -- you personally have taken this company to develop product that is superior to others because you know, when I used to think that the only reason -- you know, that Herbalife was one of these companies, if they didn't knock on your door, it wasn't going to sell.

MICHAEL JOHNSON: Well, you know, if it is a product development question, we got this terrific team, in here of doctors, scientists, researchers, we are doing research around the clock in this company and we are building our own manufacturing, so we are growing our own crops and we got something very special that is taking place inside Herbalife.

(End of Video Presentation)

ACKMAN: For all period presented, research expenses were -- expenses incurred and were not material, it's happening around the clock. OK.

Let us continue. I lost my monitors in the front, gentlemen, there we go. We are back.

Next please. Again, the Company's research and development is primarily performed by outside consultants and is less than \$2 million a year and as I -- let me just back one slide with the -- I meant to read the previous slide, because they say on research and development, since 2003, we have increased our research and development expenditures dramatically, dramatically to advance the product development process.

And yet on the prospectus, it says the Company's research and development is primarily performed by outside consultants and is less than \$2 million a year so perhaps it is up dramatically, it is still de minimus according to their SEC filings. OK.

OK, so now they say they are a product innovator, they talk a lot about a product called Niteworks, it is introduced in 2003 and they consider it one of their most important product innovations.

And there is a Nobel Prize winner that helps to promote the product on behalf of Herbalife. Dr. Ignarro has basically started the world on a track of nitric oxide and has made the world understand that a healthy blood flow is a healthy body and we are the first company to come out with a nitric oxide product in the market place.

It was less (ph) initially and I just (ph) copy. Now, interestingly, Dr. Ignarro is cited more than 100 times in Herbalife's SEC filings since the IPO in 2004 and again, in connection with this brilliant product launch. The problem is they were not the first company to launch the product, it was launched by a company called NaturPharma, it launched it in 2000 and they sued Herbalife for -- because they had patented the product.

And if you notice on the back of the Herbalife Niteworks canister is it says the product is sold under a license of US patents, those patents are not held, of course by Herbalife, they are held by this other company which ultimately, United Therapy (ph) settled a lawsuit and Herbalife entered into a royalty bearing non-exclusive license.

So the product they trumpet the most that has come out of their R&D program which they are working around the clock but which cost them nothing -- effectively nothing, they had to license from someone else because it was a copy of someone else's product.

Now let us look at their patent production in that round the clock R&D program and put up a couple of other healthcare nutrition companies and you could only find one patent at Herbalife even GNC has 21 patents.

I thought that was going to be interesting.

He also talked a lot about UCLA and their partnership or they described it as follows, the educate -- they talk about the nutritional advisory board they have and the resources of the UCL lab should result I'm meaningful product differentiation and again I showed you the four biggest products -- (INAUDIBLE) Herbal Tea, Protein Powder, Nutrition Shakes but they got a partnership, they got something going on with UCLA.

The CEO says that at UCLA, we have a strong affiliation, we (INAUDIBLE) established the Mark Hughes cellular and molecular nutrition laboratory at the center for human nutrition, it sounds promising. This is mentioned in every conference call and I have read every conference call transcript from the beginning of time, UCLA is in four or five times typical by memory conference call transcript.

Again, it's in all the distributor presentations, they talked about the Mark Hughes Cellular and Molecular Nutrition Laboratory, Mark Hughes was the founder of Herbalife. They talk about their strong affiliation. Our product development stems out of our own research and development labs, it comes from UCLA, we have the Mark Hughes Cellular Lab there, the University of Mississippi, we have a botanical research lab in the Dan Cochran Center, we have doctors placed and scientists placed throughout the world - they have mentioned the UCLA affiliation 440 times in their SEC filings since 2004 so that sounds like a pretty good initiative.

In 2011, the contributions to the UCLA lab, we have invested (INAUDIBLE) with total donations of approximately \$1.5 million which includes donations of lab equipment and (INAUDIBLE). The Ira Sohn Foundation working to cure cancer have raised \$25 million in the (INAUDIBLE) bucket in terms of R&D spending, well, \$150,000 a year and they have effectively licensed (INAUDIBLE) their product.

Now the SEC (INAUDIBLE) for question in 2004, and they said, well, we note your response to comment 15, the (INAUDIBLE) which expect a disclosure of 254,000 for clinical studies at UCLA, please explain why such amount was given as 420 and your response (INAUDIBLE) 2004, in response to that comment, we note that while an aggregate contribution of \$420,000 was in fact made to UCLA at year end, only \$254,000 of this amount was specifically earmarked for clinical studies. The remainder of this contribution was in unrestricted donation to UCLA.

So of \$1.5 million, again, we don't know the precise number because it's not disclosed, certainly less than half or maybe slightly more than half is gone toward the R&D development.

So it's not because they got proprietary products that they sell so much Formula1, it's not because they spend anything on advertising, it's not because they are spending money on R&D and they have done an amazing job developing proprietary products, so why is it?

Why do they promote the R&D and science behind their products so much?

We have a quote from Mr. Johnson. The confidence of our distributors is paramount, it is absolutely the number one thing.

We are going through a whole process in making sure that every single thing we do inside this company has deeper and further substantiation for the distributors and for the web, for anybody in the science industry, anybody in the health community to make sure that they understand what this company is all about and what we are doing. No, he doesn't mention the consumer, this is company that is out there at the University of Mississippi, the University of Vaughn, the University of California at Los Angeles, we are involved in research and development products and we have our own research facility now in our offices in Southern California, we have doctors dedicated this nutrition advisory board that is unlike any other company in our field, we meet with experts on a global basis to review, to study, and to understand, to build confidence and substantiation in our products on a global basis.

Herbalife has paid its Nobel Laureate spokesman, Dr. Louis Ignarro and his affiliated consulting firm more than \$15 million to help Herbalife promote its business opportunity to its distributors. It's not doing R&D, he is going to extravaganzas and talking about Herbalife.

We will continue.

OK, and so Herbalife's point of view, their products are incredible, their products are attractively priced, everyone knows Herbalife and we are doing research around the clock, and we have renowned scientists who are working to make a great product, it's all about the product.

The reality, their products are commodities, the products are offered at a massively inflated price and spend almost nothing on advertising, their R&D expenditures are not material and they pay Ph.Ds to lend them credibility. They have a nutrition advisory board, they have 20 Ph.Ds on the advisory board, they pay them fees for serving on the advisory board and for again, promoting the business opportunity to distributors, talking about how great products and science but it's not much substance to what is going on here.

Thus Herbalife sells so much with unadvertised commodity products at an inflated price. Herbalife bundles its product with a business opportunity and that is what is really being sold at Herbalife. I'm going to talk more about that.

What we are doing at Herbalife is we are building the best business opportunity on the face of the earth, this is Mr. Johnson at the conference call in 2010, and let us talk about that business opportunity.

This is from a presentation, Herbalife presentation, Herbalife is a fantastic business opportunity, starts right away, part time, full time, minimal start up cost, no previous experience, be your own boss, anyone can do it.

So what are you looking for? You want to work from home, extra income, your own business, financial freedom, more spare time, meet people, retirement pension, leave a legacy, sounds pretty good. Here is a little chart. You know that top is a normal job, you work really hard, you retire, boom, you got a pension, social security, you live off the vapors from your previous employment.

If you do business with Herbalife, you become an Herbalife distributor, you work really hard, again, that is the dark green there for a few years and then you own this remarkable growing annuity, it's incredible.

Let us get a sense of the opportunity, this is from a chairman's club member which is the top of the Herbalife pyramid. Roll.

(Start of Video Presentation)

UNIDENTIFIED SPEAKER: I was 22 years old and I was working for a company like a lot of people in America, what I realize is that the Company grew and the wealth of the owners grew and I thought, gosh, I'm working here like a slave and I'm building someone else's family's future.

I didn't have a clue but I just thought there must be a better way where I can work and build a future for myself and my family. And so I started to make some calls and I called other companies who are in the same space, big companies, and Herbalife of course was one of these companies and I thought to myself, well, let me go take a look.

This is a product that changes people's lives.

Could there be an opportunity or a chance for someone like me to have a better life, to have the American dream?

So I became a distributor, there was people in the Company who wanted to mentor us, there was a support system, an infrastructure and there was a business model that all we need to do is execute.

And before you know it, in four months, working the same hours, two to three hours a week, the income hit \$1,500 a month.

Obviously we (INAUDIBLE) and in 90 days, our income hit \$10,000 a month. And our very first calendar year, our income hit \$50,000. And our second (INAUDIBLE) we turned 30, and then we got and turned 25 and our income hit 1.1 million.

We had become millionaires.

UNIDENTIFIED SPEAKER: Well, we just want to say that welcome to our...

UNIDENTIFIED SPEAKER: The house was custom-built by one of the most incredible international designers...

UNIDENTIFIED SPEAKER: (INAUDIBLE) this guy is running a you know, multimillion dollar business out of here, you think how does he do that? Well, really simple, you open this up and now it's messy because this is where the real work is (INAUDIBLE) believe it or not, this is you know, where we work and the computers on there and we have a computer and then a fax, a copier, and we run our multi-million business from this simple space from home.

You know, it's really amazing, I step out of the Ferrari, and (INAUDIBLE) you know, what does that guy do for a living, and I go I'm an Herbalife independent distributor and people are absolutely (INAUDIBLE) that is what I do. It's an incredible (INAUDIBLE).

UNIDENTIFIED SPEAKER: Well, that is our home and we just want to say thank you very much for allowing us to open our home to all of you and share with you and you know, and just imagine it started with a little dream to want to have a better life and with everything that happening today and all the technology and the leadership, you know, there has never been a better time in all of you if you just dream, you also too can have everything we have and much more.

(End of Video Presentation)

ACKMAN: The video was produced by Herbalife and sounds good.

OK, so how could a distributor of nutrition and weight management products who is working from home possibly achieve this lifestyle? Here is a hint from an Herbalife presentation. So here is you, you recruit five friends, they in turn, recruit each five friends who in turn, recruit five friends and if you look at the bottom here, you sell about \$1,250 worth of products at retail, and you get \$19,500 in royalty overrides, a \$23,400 production bonus and you are making \$44,000 a month.

That sounds pretty straightforward.

OK, so this is from the SEC website and this is -- it would tell you what a pyramid scheme is and if you take a look at the pyramid, that is you there at the top and you are recruiting, in this pyramid, you are recruiting six friends who in turn recruit six friends, by the time you get down to level 12, that is 2 billion people that you have to recruit to keep the thing going.

Skip level 13 where you are at 13 billion because you are beyond the population of the world.

But, by the way, this will come in relevant in the rest of the presentation, OK.

So what is a pyramid scheme, so Dr. Vandernat, senior economist at the FTC defined a pyramid scheme, we this is probably the simplest definition. It reads that if an organization sells goods or services to the public and the participants in the organization obtain monetary benefits from one recruiting new members, and two, selling the organization's goods and services to consumers, the organization is deemed a pyramid scheme an if the participants obtain their monetary benefits primarily from recruitment and rather than from a sale and goods and services to customers.

This is a really, really important thing. Recruitment versus the sale of the products to consumers. OK? And Herbalife understands this law, this is from the conference call transcript, of this current COO of the company at the time, the CFO, he says there is very strong FTC rules that we measure ourselves against to make sure that at least the FTC rules - the FTC rule says less than 50 percent of your business has to be from recruiting so that is a real benchmark.

And why are pyramid schemes legal, again we go back to the law here, 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 of the pyramid but must end up disappointing those at the bottom who can find no recruits.

So it's basically the laws of large numbers or such, if you go back to that pyramid, you need a bigger and bigger base at the bottom to support it.

The problem is the money at the top is made from the losses of the people at the bottom and there are very few people at the top and there are a huge number of people at the bottom and we will talk about this in depth.

And so where is what we will demonstrate in the next section. So number one, participants in Herbalife scheme, the distributors, obtain their monetary benefits primarily from recruitment rather than the sale of goods and services to consumers, again, that is the Vandernet definition, and it's not just primarily, it's almost entirely from recruitment. And we will go into that in detail.

Herbalife inflates the suggested retail price of its products and overstates retail sales, they have a number called retail sales in their SEC filings, OK? Not just public filing, the SEC filings and they do this to conceal the fact that recruiting awards are earned by distributors, the recruiting awards are substantially greater than the retail profit that they generate.

And so this massively inflated suggested retail price number, and again, if you think back to the earlier slides where I show that the retail price of the product was three times and four times and two and a half times the commodity competition, again, this is the way the scheme has largely been concealed.

And we are going to demonstrate by virtue of this that Herbalife is a pyramid scheme.

OK, so now, I'm going to turn it over to Shane Dinneen to give you a brief introduction on Shane, Shane has been an analyst at Pershing Square for probably seven years and is one of the smartest guys I know, and about a year and a half ago, I said you might want to take a look at this Herbalife.

Shane spent the last 12 months of his life 100 percent of his time on Herbalife and the last three months of his life, 200 percent of his time at Herbalife and he has remarkably made it here this morning. Shane is going to take you through because there is no one better to do it and this is a very complicated scheme and Shane is going to do his best to describe it as simply as we can.

We are going to make these slides available to the public, we are going to make a recording of this presentation available to the public, we have sufficient demand that we decided to webcast it in the spirit of full transparency so everyone in the world could be watching it and there is a reasonable number of people in the world who are watching us.

So here is Shane, you are going to be with him for a little while but all yours.

SHANE DINEEN: Hi, my name is Shane Dinneen and I would like to explain to you, I think Herbalife is a pyramid scheme.

So how does Herbalife's business work? Herbalife is a direct seller and this means that its products aren't sold at retail stores. Instead, they are distributed through an independent network of about 3 million distributors who buy the product from Herbalife at a wholesale price.

Herbalife is a direct seller. This means that its products aren't sold at retail stores. Instead, they are distributed through an independent network of about 3 million distributors who buy the product from Herbalife at a wholesale price and then supposedly take that product and resell it to retail customers at a mark up, thereby capturing a retail profit.

Herbalife is also a multi-level marketer and what this means is that when Doreen recruits Leslie who recruits John, who recruits Sarah, who recruits Mike, who recruits Lisa, who recruits Bob, who recruits Pam, who recruits Pedro, who recruits Sam, who recruits Mark, who recruits Maria, to buy \$75 of product from Herbalife, everybody above Maria gets a commission from that \$75. And we use this 11 percent example because this is actually how Herbalife's multilevel marketing scheme works.

Herbalife loves to say it's a direct seller and there are some confusion between (INAUDIBLE) you don't hear them often refer to themselves as (INAUDIBLE) you know, in their mission statement, they say we got the best business opportunity in direct selling, well, I used to sell (INAUDIBLE) door to door, that was direct selling.

If I recruited a friend, I get a \$20 (INAUDIBLE) and I didn't get anything. In Herbalife, it goes all the way up to chain 11 levels. People getting commission from recruitments of recruits who many times they have never even met and why would that be?

And so, how do you become a distributor? First of all, you got at (INAUDIBLE) at the low end, you can buy (INAUDIBLE) business pack for \$55 and the higher end is \$91, it includes (INAUDIBLE) bags and product sample and yes, a 48,000 word, 215 rule, 124 page distributor (INAUDIBLE) you just have to (INAUDIBLE) at a five percent discount.

As a distributor, there is two ways you can make money at a (INAUDIBLE) got the retail opportunity where you buy product from Herbalife and you sell it to retail customers and then there (INAUDIBLE) getting awards, so those are the commissions that the people above Maria got.

And so guys, if you revisit this example, the way that Maria gets retail profit as we are defining it, \$75 worth of product from Herbalife and then (INAUDIBLE) that little blue circle there wants to buy the product for \$100 or the suggested retail price that Herbalife thinks its products (INAUDIBLE) \$75, she will pocket the spare between the \$75 and \$100.

Meanwhile, the \$75 that Maria pays Herbalife to buy the product will be distributed up (INAUDIBLE) amounts to Mark, Sam, Pedro, Pam, Bob, Lisa and all the way (INAUDIBLE) all those payments from Herbalife to the people above Maria recruiting awards. Basically commissions.

So there is at a high level, two ways you can make money. Two different types of distributors, there is sales leaders who account for Herbalife's three million distributor base and the big difference between them and non-sales leaders is the recruiting awards.

Now, non-sales leaders are eligible to (INAUDIBLE) but it's minor. The other difference is sales leaders purchase 50 percent discount so in the example, Maria buys a product for \$75, she's got a \$25 (INAUDIBLE) a sales leader, she would have been able to buy it for \$50 and then the cost to become a sales leader and get that discount and the opportunity to earn those recruiting awards, close to \$3,000.

OK, well, just like anything with Herbalife, there is never just two of anything so there are non-sales leaders and sales leaders and then within sales leaders, there are different levels, and so you got a supervisor, and a world team, global expansion team, millionaire team, the president's team, the chairman's club and a founder circle just to put this stair step chart into context that top bar is about seven people in it and the bottom of the pyramid there has millions of people in it so it's not quite drawn to scale.

And a de minimus fraction of Herbalife distributors earn enough to achieve the wealth and lifestyle in the video that you watched there so only the top 0.04 percent, one in about 2,500 of Herbalife distributors, even

earn \$300,000 or \$336,000 a year and we based off these numbers on their U.S. compensation disclosure so other people around the world are less or even lower.

What I particularly like is the millionaire team, that is the name that Herbalife has given this level, median income \$97,000 a year before expenses. It's going to take a few years before you become a millionaire.

And then at the bottom of the pyramid, 93 percent of distributors earn no gross compensation as the company defines it.

OK so this is a more visual way of presenting the same data and I think what is relevant to note here is the top one percent of Herbalife distributors and you know, you have to be in the top one percent to be earning \$6,000 you know, somewhere around there a year in commissions before expenses.

And so -- OK so let us talk a little bit about how the marketing plan works. How do you get up this stair step? Well, Herbalife has created its own currency its own currency, something they called volume points.

And in order to move up the chain, you have to accumulate volume points and so how do you accumulate volume points, you can either purchase product yourself or you can recruit people who purchase products and the you get volume points, to get to the upper levels of Herbalife's chains and so above that red line there and remember the world team earned something less than \$6,000 in median compensation a year, to get above that line, you need a special type of volume point called the royalty override point.

But you can't get a royalty override point unless you recruit people and not only do you have to recruit people and not only do you have to recruit people, they have to recruit people, they have to become sales leaders too.

So the only way to get royalty at that point, so you can't get into the 6,000 per year income level from gross compensation unless you are recruiting. You could be the top selling Herbalife distributor in the world doing 2 million of retail a year and they are not going to reward you for that with their commissions.

OK, so here is a quote from the CFO and the CEO of the company when they basically describe the top earners as recruiters and not retailers.

And I think this is a little bit better and let me see if I can read this but from an Herbalife distributor presentation. You might notice that it says online business systems in the top right corner there of that page. Don't let that fool you.

Herbalife just doesn't always want to reveal its identity when it is recruiting new people because sometimes, it has a bad connotation but this page is from an Herbalife independent distributor and it's a presentation to Junior distributors where they are encouraging them you know, if you want some money today, retail, and if you want life style money, recruit and here is a quote.

If you want some money today, perfect, put together a retail plan, but if you want lifestyle money, if you want to build that financial independence, you want to lock in that security for life, you need to recruit. And the other thing you need to do is be prepared to roll that cash flow for straight nine to 12 months because you know what, in that short space of time by making that commitment, you are going to create a foundation for life.

Absolutely. Not just for yourself but a legacy. Absolutely. And not just for yourself, but a legacy, a legacy for your family. For your children, and their children's children. Here is a page from an Herbalife independent distributor presentation that shows recruiting income as an exponentially growing line and retail income or income through customers as a sort of flat lining line that approaches the limit. Basically, incentivizing visually the distributors who focus on recruiting or team building.

He doesn't always say recruiting but that is what they mean when they say team building.

Distributors are encouraged to teach to teach and not just to teach - so it's not enough to recruit, the first step is teach others what you have learned, the second step, is teach the people you have recruited to recruit. That is how you make it at Herbalife.

So clearly, what companies needs to recruit as many inexperienced sales people as possible, on full commission with limited dough for say (ph), remember, anyone can do it. And without regard for the ultimate demand for its products. OK.

I'm not going to explain every number of this page but the point is why do people at the top make more? The recruiters, and when you get to the top, they are eligible or receive more types of rewards, so the company has a lot of different names for recruiting rewards, they call it everything but a recruiting reward but what you will notice is up there at the president's team and the founder's circle, the millionaire team, you are eligible to receive things like production bonuses and higher production bonuses, and this is why the president's team earners, are having a median income of \$300,000 a day where somebody at the world team, you know, they are only making 6,000 a year and it's because they are not eligible to receive a production bonus or some of those higher and more lucrative rewards.

So this is for all the analysts who actually are going to read the presentation but I think the easiest way to describe these different sub buckets of recruiting rewards basically commissions is within example, and so just to go back to the Maria example, right? She buys \$75 of product from Herbalife, tries to sell it to a retail customer for \$100, the two non-sales leaders above here, you know, if she has got, if this is the shape of her upline, would receive wholesale commission and so the person who recruited her is a 35 percent and so you take 35 percent, you minus 25 percent and Herbalife issues that person a \$10 wholesale commission, OK.

The 43 percent distributor who recruited the 35 percent distributor, is at a 42 percent discount level and so Herbalife issues that person a seven dollar wholesale commission. And sponsoring sales leaders or supervisor would also receive part of the dollar spread because they are at a 50 percent discount level.

Now three lines -- active lines of five percent of royalty (INAUDIBLE) paid out a production bonus which is also known as an infinity bonus and then at the very top, (INAUDIBLE) it's not so important to focus on the differences which are confusing between (INAUDIBLE) you might just want to think of them as all the exact same thing which is commission paid for (INAUDIBLE).

So what is the business commissions to 11 different upline distributors to make 100 dollar retail sale of commodity products.

And 100 dollar retail sales example, you might notice that (INAUDIBLE) where you can make by reselling the profit to customer and the different commissions that are paid out at a 73 percent of -- if there is 100 dollars of retail sales (INAUDIBLE) distributors get either from retail profit and let us talk about that number.

This is from an Herbalife independent distributor presentation where they (INAUDIBLE) ratio and the industry and when they talk about the industry, it's the industry, this is sort of how Herbalife attracts (INAUDIBLE) looking to pursue a business opportunity.

They say we give more money to our (INAUDIBLE) profit or recruiting awards than any other MLMs, 73 percent and the slide says we got (INAUDIBLE) and this has created more people making 100,000 per year and (INAUDIBLE) capital M (ph) than any other company.

And so this is a chart from the Company and it explains the 73 percent distributor payout to the right of the (INAUDIBLE) current CFO, John Desimone saying that there are two ways (INAUDIBLE) in Herbalife, there is the retail component so you distribute it by the discount and that represents about two thirds of the profit opportunity and two thirds being the 50 percent is two thirds of the (INAUDIBLE) and then there is a royalty component. And that royalty component on other distributors that bring into the business.

That is how the Company talks about recruiting. They don't use the word (INAUDIBLE) and that is the top 23 percent of the box. So two boxes, retail profit and recruiting rewards, the Company actually calls that blue box there retail profit and this investor presentation and the point the Company is trying to make is the blue box is bigger than the red box, why? Because the FTC is -- the FTC definition of a pyramid scheme from Peter Vandernat as a senior economist at the FTC should qualify, says that if the red box is bigger than the blue box, you are a pyramid scheme.

So this makes sense why Herbalife would want to present its business this way. So just before we talk more about this box, there is a little bit of accounting for the financial analysts out there, the way you reconcile the 73 percent payout to Herbalife's P&L, is the 50 percent discount or retail profit shows up in this distributor allowances line item which is a negative number in Herbalife's P&L because presumably, the distributors are getting paid that amount.

The 23 percent which includes royalty overrides, production bonus and the Mark Hughes bonus shows up in a line item called royalty overrides. That is a little confusing because royalty overrides includes more than just royalty overrides but the vacations and rewards that you get as a Herbalife distributor is included in SG&A.

We also think of that as a recruiting reward. OK.

And so just to give you a little more context to the distributor allowances, they come from a number called retail sales that is Herbalife's public filings, 10k, you might think retail sales represents what retail sales are so if Maria buys a product for \$75 and sells it for \$90, that is \$90 retail sales. Or if she consumes the product, there is no retail sales.

Instead, what the company does is they record \$100 of retail sales no matter what, whether Maria sells it for 90 or 80 or consumes it herself and they always base distributor allowances off this number and so retail sales always assumes 100 percent of product just a little bit, it's inflated -- just the retail price and assumes there is no internal consumption of the product by the distributors and distributor allowances are based off this fictitious representation of retail sales. Why is it fictitious, because we don't believe suggested retail price is a real thing. So Herbalife since higher P&L because royalty overrides are based off retail sales and distributor allowances are based off retail sales -- are based off of basically a fake starting point.

So how does Herbalife's P&L look if retail sales were recorded based on actual retail prices or in actual retail sales. Well, assuming that the suggested retail price is a little too high, so Maria can't resell that product for \$100, she can only sell it for 65. Then what would happen is Herbalife who reported \$5.4 billion of retail sales in 2011 didn't really have \$5.4 billion of retail sales, they would have had \$3.5 billion of retail sales.

The distributor allowances are the retail profits that people like Maria get would have been 2.5 billion, it would have been 600 million but notably, the royalty overrides, the commissions that Herbalife paid its distributors for recruiting other distributors would have remained the same. So it's worth asking what commission for a sale isn't a function of price? Don't you guys want to -- you know, give your sales force an incentive to sell product at the best price possible?

In Herbalife that is how it works. If Maria doesn't sell a product, the person above her still gets a commission and if Maria consumes the product, the person above her still gets the exact same commission.

So retail profit, varies depending on the price Maria is actually able to get and royalty overrides are paid no matter what and they are based on the suggested retail price of the purchase of the product. OK.

So still with me. We think this chart is very misleading for four reasons. First of all, that blue box is too big because it assumes products are sold at suggested retail price which is an inflated number and it assumes 100 percent of products purchased by distributors are sold to retail customers and it treats wholesale commissions as retail profit and now we think wholesale commissions are a form of recruiting reward.

The red box is too small because it excludes wholesale commissions which are in the blue box and it excludes recruiting rewards and SG&A so this is vacations, promotions and gold pins and watches that Herbalife gives its distributors as incentives to get them to recruit other people.

So let us talk about each one of these adjustments in a little more detail.

All right. Suggested retail price does not equal actual retail price. Before we talk about the price of Herbalife's products, there is something we should talk about as the surcharge that they put on every single product they sell to distributors. Basically, if you are a distributor, if you are Maria, you don't pay \$75 to get the \$100 in product, you got to pay \$82 because Herbalife charges a 7% packaging and handling fee on every product that it sells and packaging and handling fee is based off the \$100 so the suggested retail price.

This was instituted in early 1990s when the Company rolled out the production bonus and they had to fund it from something so they increased price distributors and until 2001, they way they accounted for this surcharge was by offsetting it with royalty overrides so they kind of get like -- it's great, they were able to both hide the surcharge of revenue and also lower the royalty override recruiting expenses and it's like a double win for Herbalife from a regulatory standpoint.

And notably, this surcharge r packaging and handling fee is an addition to the shipping expense you have to pay which usually is about four percent of the suggested retail price of the products you order which is basically a markup to the cost it cost Herbalife to pay FedEx to send you that product and unlike the shipping expense which varies based on how much product you sell or whether you pick it up from a distribution center, the surcharge is always applied and so we think the surcharge is just another name for price and we include it in the prices.

And so in the United States, the surcharge is seven percent but around the world, Herbalife has gotten more creative and so this is -- the source -- you can get all these flyers from Google and this is when they entered Paraguay, they had the seven percent packaging and handling charge, they also had a seven percent administrative charge.

And so 14 percent and so Maria (INAUDIBLE) for the product she would have paid 89. Libya (ph) they got a 12 percent capital F capital see freight charge and seven percent capital F lower case sea freight charge. 21 (INAUDIBLE) 15 percent freight charge, seven (INAUDIBLE) so 22 percent hidden fees. The five percent discount is really a three percent discount. And so just to explain, the retail price less the discount which is where Maria bought it in the first example at 75 percent, she has not really bought (INAUDIBLE) for 82, right? And for her to get her full retail profit, what is being presented by that investor presentation, she now has to pass the surcharge through.

OK, so the suggested retail price got to true it up seven percent for the full 50 percent retail profit. And in addition there are a whole bunch of other hidden fees and charges and (INAUDIBLE) prepaid and sales taxes and in L.A. where Herbalife (INAUDIBLE) 75 percent and (INAUDIBLE) percent VAT charge on Formula1, Herbalife's most popular product so if you are a (INAUDIBLE) customer that just (INAUDIBLE) in Hungary, you got to buy the product at a premium to SRP because (INAUDIBLE) percent is greater than 100 percent.

As (INAUDIBLE) all of these hidden fees are on a consolidated basis for Herbalife, we just know there is a lot of them and we think we are being conservative by only including seven percent which is just (INAUDIBLE) the United States for a pricing analysis.

But we are going to go out and compare the price that Herbalife products are sold for, we are going to compare it to 107 percent of SRP because that is the surcharge and that is how we are assuming. OK.

So what is the actual retail price at which Herbalife, a relevant question.

And (INAUDIBLE) handing out product here today that we are able to buy online is not distributors, right? It's available to anybody and I don't know which Herbalife independent distributor website to go to. And we were able to buy from six different websites, (INAUDIBLE) everyone here a sample at a 40 percent discount to the adjusted suggested retail price.

And these are three of Herbalife's most popular products and the three most in fact and we are able to buy each of them at about 40 percent discounts to SRP so that means is if you are Maria and you are trying to resell the product (INAUDIBLE) for \$75, you put it online, you are probably going to get \$60.

You lose \$15 before expenses.

OK, what about on e-Bay? So we hired a third party research company to analyze every available Formula1 transaction of e-Bay for the last five years. In total, we are able to get data on about 40,000 canisters of Formula1 again, Herbalife's most popular product and what we saw was you know, adjusted -- suggested retail price for a 750 gram canister of Formula1 for the last five years is about \$37 and on e-Bay, it is sold for \$25 or 32 percent discount.

The smaller container, the 550 gram container is at a 38 percent discount so it blends out to about a 34 percent discount so that is what we think the true retail price for these most popular Herbalife products actually is.

We also looked at Niteworks, Herbalife's most innovative product. And it trades at about a 50 percent discount to the suggested retail price which means that even if you are a 50 percent sales leader, your opportunity to make retail profit buying this at a 50 percent discount before a surcharge and other hidden fees is about nil.

Well, we want to be conservative, we recognize that all products might sell at big discounts on e-Bay so we thought what about a comparable product, what about GNC's Lean Shake, is it sold at a 30 percent to 40 percent discount on e-Bay to its retail price? So we got data on it and for the last five years, are only about 1,000 canisters sold, why? Because if you want to buy a Lean Shake, you go to GNC, you don't go to e-Bay and for Herbalife you have to go to e-Bay or a distributor and we found that the product sells for a premium actually on e-Bay to the GNC price so you can go to GNC and buy 771 gram container for 24.9 9 but on e-Bay, it's going to cost you a little bit more and that excludes shipping and handling.

And what is notable about this is if you could go back to slides -- the lean shake is 25.60 and you might notice that the price for the 750 gram Formula1 is 25.31 and so the Formula1 lean shake trade for about the same price on e-Bay and that is because the same thing, they are commodities, OK?

And so summary.

Because the surcharge and other fees, distributors must sell products at substantial premiums to SRP in order to capture the promised 25 to 50 percent retail profit that is part of that 73 percent payout ratio and suggested retail price is an artificial inflated number with no relationship to the price of which Herbalife's products are actually sold to retail customers you know, the e-Bay data suggest that discounts are anywhere from 34 percent to 48 percent and we were able to buy Herbalife product online from an independent distributor websites for a 40 percent discount to SRP.

So for the purpose of our analysis, where we compare retail profit to recruiting rewards of Herbalife distributors, we are going to assume the 35 percent discount adjusted SRP is the actual retail price. OK?

Second adjustment, the blue box is too big because a lot of distributors buy the product and they can't resell it and nobody wants to buy it and so they have to consume it themselves. And so what does internal consumption? Internal consumption are first a product that is purchased and consumed by distributors and so all retail customers are consumers but not all consumers are retail customers and this would be what happens when Maria buys a product and consumes it herself.

So how much product purchased by Herbalife distributors is actually resold to retail customers? It's a fair question. And David Einhorn asked that question. The Company actually published an 8K putting the Q&A into the 8-K and so this taken from the Company's 8K and quoting David Einhorn first, how much of the sales that you make in terms of final sales are sold outside the network and how much are consumed within the distributor base?

And the Company's answer that is published in its 8K is we don't track this number and do not believe that it is relevant to the business or investors.

OK?

Well, if they don't track internal consumption, how many sales are sold out to the network and do we even know if any retail customers exists? And on a recent call in May, (INAUDIBLE) Herbalife said that the FTC isn't even concerned about internal consumption, they don't care if (INAUDIBLE) product against so many other retailers, she just has to -- you know, they say that you know, this is from the quote -- self consumption is not even an issue, it isn't even covered on the FTC website (INAUDIBLE) here is a clip from the FTC's website, OK? The consumer alert that they published called the bottom line about multilevel marketing plans and pyramid schemes and (INAUDIBLE) from a box that is in the consumer alert that says at the top of the box, yes, it's a pyramid (INAUDIBLE) do distributors sell more product to other distributors than they do (INAUDIBLE)?

Second, does the money made depend mostly on selling to other distributors and on selling -- and so internal consumption is something that the FTC is still focused on as an indicator of a pyramid scheme.

All right. Small point, Herbalife would like (INAUDIBLE) that 82 percent of its distributors are the so called, how could it be a pyramid scheme if only 18 percent are eligible to receive recruiting rewards, well, just something back with this example, in this case, the 35 percent and 40 percent not (INAUDIBLE) recruiting rewards for recruiting Maria and getting her to buy \$75 of product from (INAUDIBLE) Herbalife is calling them Single level so they only include sales leaders when it says 18 percent but in fact, there is a Herbalife non-sales leaders can earn wholesale commissions which is a form of recruiting reward and you know, the majority of Herbalife's distributors are (INAUDIBLE) are multilevel.

OK, so Herbalife says the majority of distributors signed up on a discount buyers. They just like the product and (INAUDIBLE) the majority of the distributors are discount buyers and so they become distributors and (INAUDIBLE) Herbalife products at minimum discount of 25 percent.

But why would anyone pay \$55 to get a 25 percent discount on (INAUDIBLE) when those products are widely available online for discounts of 35 percent or more.

And these are for what Herbalife describes -- Herbalife's 25 percent customers, people like Maria as like discount buyers like Costco and so most of the distributors lend to the discount buyer similar to joining Costco or (INAUDIBLE) Herbalife and just like you would be buying a club card at Costco and enjoying the discount on the product OK? So let us compare the (INAUDIBLE) program to the Herbalife discount buyer program and well, you sign up, it cost you \$55 and if you want to renew, you got to pay another (INAUDIBLE) and you are able to buy basically at (INAUDIBLE) for a discounted price.

Well, every year, about 90 percent of Costco's Gold Star members renew. Let us look at Herbalife, the cost is \$55 to sign up, the discount in Herbalife's wide range of supplements and personal care products, (INAUDIBLE) to renew and every year, (INAUDIBLE) the discount buyers renew so it costs less to renew and 40 percent of them actually renew.

This number is taken from 2005 when (INAUDIBLE) on sales leaders turned -- it wouldn't be a more recent data point but the company is not disclosing the number. (INAUDIBLE) Herbalife's discount program to (INAUDIBLE) program, some of you guys might remember, it gives you a 20 percent discount basically on GNC products and so that only costs \$15 to sign up and what that would allow (INAUDIBLE) from GNC for \$20 per canister.

And if you became a discount customer (INAUDIBLE) you are going to have to pay \$30 for a 750 gram Formula1 and by the way, if you want to return any product you ever buy at Herbalife distributor and give up your discount, if you are a Costco member, you buy a lot of goods and you want to return one, they give you 100 percent of your money back.

OK, so Herbalife admits at the internal consumption of any multilevel marketing company is substantial. We think for Herbalife, it's probably more substantial than others.

But they have put in place two rules to make sure it doesn't get out of hand. What are they -- (INAUDIBLE) the 70 percent rule where sales leaders have to sign certification promising that every month, (INAUDIBLE) they bought from Herbalife in order to receive their commissions (INAUDIBLE) and this is to encourage sales outside the Herbalife network and to ten independent retail customers a month.

How much of your product that you purchased is sold to (INAUDIBLE) retail customers just so long as you sell to ten different retail (INAUDIBLE). And the intent of these rules is to limit internal consumption (INAUDIBLE) asking about on the call. But these rules don't (INAUDIBLE) not all distributors have to comply with these rules first of all, only sales leaders and moreover, only the sales leaders who are 19 percent of total distributors actually earn rewards (INAUDIBLE) (INAUDIBLE) so that is probably less (INAUDIBLE) distributors actually complying with the 70 percent and (INAUDIBLE) retail and sales leaders don't receive their paychecks unless they sign these certification and so if you are entitled to get a (INAUDIBLE) because you know, Maria about \$75 of product, of course you are going to sign a certification and you don't get your commission unless you do.

(INAUDIBLE) to note is that 70 percent (INAUDIBLE) can be met by selling to your own downline, so by selling to other distributors so by definition (INAUDIBLE) to limit the internal consumption or the sales that are happening within the (INAUDIBLE) Herbalife chain.

In Australia, to meet the requirement, you can actually sell to other distributors and so distributors retail customers in that (INAUDIBLE). And we don't think these rules are enforced, this is from the deposition of Jacklyn Miller or somebody in Herbalife's distributor administration in 2009 in connection with a lawsuit, where former Herbalife distributors sued the Company and alleged that it was an illegal pyramid scheme and they are asking it (INAUDIBLE) as part of that trial and the lawyer for LaFord who is (INAUDIBLE) have more than distributors since January of 2006 and has been disciplined for violating the (INAUDIBLE) says I don't believe so.

Have more than 25 distributors have been disciplined for violating (INAUDIBLE) I don't believe so, have more than 10 distributors been disciplined for violating (INAUDIBLE) that is possible, so to put this into context, Herbalife has three (INAUDIBLE) and potentially over a three year period, (INAUDIBLE) with these rules so we don't really think they are enforced.

Moreover, from the same deposition, the person who is in charge of these audits is in the product or return to product (INAUDIBLE) suggest that Herbalife may only be auditing distributors for not complying with the (INAUDIBLE) product because Herbalife can say well, you know, we gave you \$500 a few months ago but if you can't prove that you sold 70% (INAUDIBLE) sold it to ten customers and you have \$100 of product and \$500 of paycheck that you probably shouldn't (INAUDIBLE).

So summary, Herbalife does not track the amount of retail sales outside of its network, I could if I wanted to. Michael Johnson, I guess yesterday on an interview 90 percent of sales might be outside the network so it would be interesting to see how the Company explains that number because -- I don't track retail sales.

Contrary to the belief that a large part of its customer base is (INAUDIBLE) and discount buyers who sign up like Costco members because they like the products (INAUDIBLE) we believe that the vast majority of discount buyers (INAUDIBLE) distributors, people who signed up because they wanted to participate in the business opportunity but it didn't work out for them.

The rule is in place to limit internal consumption but we think these rules are ineffective based on how they are defined and they are (INAUDIBLE) and so for the purpose of our analysis, we are going to go ahead and assume a substantial amount of internal consumption that have been (INAUDIBLE) adjustment, OK.

Herbalife's accounting attempts to conceal the total amount of commissions paid to distributors (INAUDIBLE) the amount of so called retail profit opportunity. So a little accounting and when Maria buys \$75 of product from Herbalife, that is -- they pretend that her upline sales leader or the person at the 50 percent discount level (INAUDIBLE) the Company so they record is as we got \$50 and we are going to report between 150 as a distributor allowance or retail -- put \$100 retail sales, \$50 distributor allowances and our gap sales will be \$50. What actually happens though and (INAUDIBLE) sends Herbalife a check for \$75, Herbalife ships out the product, and in that \$75 and send it to (INAUDIBLE) supervisor in the form of a wholesale commission.

OK? And so the effect of this accounting is the commissions disappear and the distributor allowance line and that is relevant because if we think that we are (INAUDIBLE) recruiting reward, and the comparison of recruiting rewards, the retail profit is relevant to the termination (INAUDIBLE) of the pyramid scheme, you need to break those out.

Just a reminder, retail profits and distributor allowances but in the example, the (INAUDIBLE) commissions right there, the \$10 that Maria's upline, the 35 percent (INAUDIBLE) computer gets the \$7 that that person (INAUDIBLE) 42 percent discount distributor gets in the \$8 that the first (INAUDIBLE) Herbalife accounts for those commissions as distributor allowances or what they have referred to as retail profit in their investor presentation.

Nothing to do with whether or not Maria then sells that product to a retail customer for what price.

(INAUDIBLE) not to over simplify it, but all those red lines are the exact same thing, recruiting (INAUDIBLE) and we think Herbalife should account for them the same way not as a reduction. Other MLMs, Relive International (ph), OK, very similar to Herbalife except that it's sort of like a failed Herbalife, sell supplement kind of (INAUDIBLE) they account for wholesale commissions as an operating expense and as a commission expense and effectively the same thing, you could read both marketing plans and take you a week but you would find out that (INAUDIBLE) same way (INAUDIBLE) it just really puts them and Herbalife uses wholesale commissions as (INAUDIBLE) net sales.

OK. and so just to (INAUDIBLE) are form of recruiting, we are - a form of retail (INAUDIBLE) profit we define retail profits as profits on sales to retail customers and not other (INAUDIBLE) is intuitive, and it is also supported by the case laws and so the FTC case law down there if anyone wants to read about how retail sales cannot (INAUDIBLE) to other distributors.

Wholesale commissions are substantively no different than royalty overrides, they are a form of recruitment (INAUDIBLE) based on the suggested retail price of products not sold by the online distributors.

Other MLMs account for them as operating (INAUDIBLE) and we question how many of Herbalife distributors are actually discount buyers or as Herbalife would say, a 25 percent distributor is actually a retail customer so that is what we included, this retail profit.

We don't think that person is actually a retail -- we think that they are somebody who sign up for the business opportunity and excited about (INAUDIBLE) Ferrari, it didn't work out for them. And I encourage anybody who wants to see how I assumed this number to (INAUDIBLE) but we estimate based on Herbalife disclosure that wholesale commissions were about \$300 million in 2011.

I encourage anybody who wants to see how I assumed this number to read (INAUDIBLE) identification but we estimate based on Herbalife disclosure that wholesale commissions were about \$300 million in 2011. So we do have (INAUDIBLE) and distributor allowances in 2011 and we think that \$300 million of that number was really a wholesale commission.

It should be thought of as a recruiting reward (INAUDIBLE) OK? The last adjustment. SG&A (INAUDIBLE) recruiting rewards but the recruiting rewards aren't in the chart because only royalty overrides, production bonuses and Mark Hughes bonuses there. So this is a reminder of the (INAUDIBLE) P&L the vacation, the promotions, (INAUDIBLE) 23 percent a little bit bigger to include interesting chart if you look at SG&A for its royalty overrides since 1997, they kind of move in lock step and why does that happen?

You might think that the royalty overrides would be a variable expense moving up with revenue -- (INAUDIBLE) revenue, they pay out 23 percent and so they are perfectly very (INAUDIBLE) but SG&A should have like a fixed component to it and some of that - there should be some operating leverage (INAUDIBLE) together. This provides a clue as to actually in SG&A and we think that it's sort of a lot of it is sort of the same thing. And (INAUDIBLE) the Company disclosed that over (INAUDIBLE) the so called distributor facing expense, 54 percent and 2008, they described these distributor facing expenses and royalty and this is from Rich Goudis, the CFO at the time.

30 percent of our business or cost structure is highly variable. Our royalties that we pay distributors, our product cost, distributor facing spending which is sort of this is the last area where we want to touch as it relates to trying to leverage our margins.

In fact, if anything, what we want to try to do is (INAUDIBLE) since we did believe that complementing our role (INAUDIBLE) incentives and promotion can actually drive incremental ROI. And so his referring distributor facing expenses and he is referring to them as incentives and promotions (INAUDIBLE) reward to us.

We know the company (INAUDIBLE) and a lot of its distributors, special training, special onetime cash bonuses, we don't know how much they spend on that, they provide very little detail on their 10-K but (INAUDIBLE) recruiting materials and so we assume that that is what they mean when they say distributor facing expenses or at least the portion (INAUDIBLE) conservative if you assume that half of the SG&A distributor facing expenses and half of distributor facing expenses is something similar to recruiting reward like (INAUDIBLE) when they recruit their tenth person and (INAUDIBLE) a number close to \$300 million of SG&A is probably recruiting rewards.

OK, and so let us summarize.

We don't think that (INAUDIBLE) retail profit even using the Company's numbers, the distributor allowances is only \$2.5 billion and so even assume (INAUDIBLE) by distributors got resold at retail at 100 percent of the suggested retail price, and while they are (INAUDIBLE) distributors in 2011 and so the average (INAUDIBLE) per month could only be \$87 before expenses, before taxes.

But we think that (INAUDIBLE) we don't think that all the products that gets purchased by distributors gets resold at retail and we don't think that at suggested retail price (INAUDIBLE) in reality and we think that wholesale commissions need to be taken out of that distributor allowance line item and to making all those adjustments, we think the average retail profit for Herbalife distributors (INAUDIBLE) there is a table way of saying (INAUDIBLE) we started with Herbalife 73 per payout ratio, the people that join Herbalife to MLM instead of other MLMs, OK?

You are going to earn 73 percent with payout (INAUDIBLE) ratio of rewards and from a retail profit recruiting profit and (INAUDIBLE) 47 percent of its retail profit, 22 percent of it is recruiting rewards and a form of retail profit and recruiting profit.

47 percent of it is retail profit, 22 percent of it is recruiting rewards and (INAUDIBLE) percent is because when you reconcile that to their P&L and some markets, it's only (INAUDIBLE) and the numbers come out.

But in reality, because not all the products that gets purchased gets resold because the suggested retail price has nothing to do with the actual retail price of the products, and because the wholesale commissions -- that blue box and putting that red box, we think that the payout ratio for Herbalife distributors as a percentage of suggested retail price 36 percent, we think of that, the overwhelming majority is from recruiting rewards. And so what this means is Herbalife participants obtain (INAUDIBLE) primarily from -- because that red box is bigger than the blue box after we adjusted for price and things like (INAUDIBLE) it is bigger than the sale of goods and services sold to consumers. And so -- the definition of a pyramid scheme, if that red box is bigger than (INAUDIBLE).

ACKMAN: So it's a year's worth of work. So to summarize, you can't get to the higher income upper levels of the pyramid unless you recruit and 15 (INAUDIBLE) millionaire's team, president's team and (INAUDIBLE) founder circle and I think there are seven people in the founder circle and they make about 15 million to 20 million each per year.

You got to recruit.

The lucrative awards, the (INAUDIBLE) bonuses, the Mark Hughes bonus, you can't get them unless you are a sales leader (INAUDIBLE) beneath you. And the production bonuses go infinitely deep so if you got 20 levels, you still got all the way up to the chain.

And you can only get wholesale commissions if you are recruited people, I think, Shane's numbers are conservative. I don't think (INAUDIBLE) happening at all. But 90 percent (INAUDIBLE) so this is a pyramid scheme.

We think (INAUDIBLE) \$6 a month, even if you use their numbers, it's \$87 a month and think about trying to sell all those canisters, you know, how do you do that? You know, just your gasoline expenses, what are they going to be? And the wholesale price is basically the commodity price for the product at full retail. That is why there is no margin unless you add on the extra fees and sell the product.

You are not going to get the Ferrari, the Bentley, the Mercedes, the chopper, and (INAUDIBLE) so the (INAUDIBLE) scheme is this inflated mass effect that the recruiting awards earn are much, much greater than the (INAUDIBLE) and that is the kind of key insight. And so what would you rather do? And this white powder backed up by no advertising and by the way, you are required -- when you sell the product, have an invoice, (INAUDIBLE) the amount they purchased and the price they paid for each of your customers, OK, you got to do this to strangers, OK?

(INAUDIBLE) quickly here or would you rather recruit some people to a great business opportunity (INAUDIBLE) Mercedes, it's just human nature, it's incentives and what would you do? And by the way, when Herbalife (INAUDIBLE) the ultimate retail sales are, well, they require for every one of their distributors keep a list of every retail customer they have sold, why don't they just ask for the receipts?

And briefly and then I'm back.

DINEEN: OK, and so, we have -- from the context of the definition that was given by Dr. (INAUDIBLE) pyramid scheme with their other ways to approach the question, you don't just have to make a red box and a blue box (INAUDIBLE) the FTC consider in making the determination that the Company is a pyramid scheme.

And in this 2004 FTC letter, (INAUDIBLE) internal consumption was important but not super important and the quote (INAUDIBLE) for the FTC is whether the revenues are primarily support the commission (INAUDIBLE) are generated from purchases of goods and services that are not simply incidental to the purchase of the right to participate (INAUDIBLE) along way of saying what we consider is why people buy (INAUDIBLE) retail it or to participate in a money making venture or business opportunity?

Well it is a good question. (INAUDIBLE) product and to answer that question, (INAUDIBLE) you break it down because they buy the product for different reasons at different levels with (INAUDIBLE) structure

and you've got mid-level distributors and low level distributors, people like Maria and (INAUDIBLE) this is from a declaration of Bruce Roth, the former president's team member and so top 0.04 percent of all Herbalife distributors from the lawsuit where he alleged that Herbalife is perpetuating an illegal pyramid scheme.

By 2007, operating Herbalife independent distributor should (INAUDIBLE) enable (INAUDIBLE) (INAUDIBLE) based on -- it's the minimum you have to meet each month. The organization volume determines how big your paycheck is.

This is a visual representation of personal volume and organization volume and the point to make here is personal volume is not exclusively personal and so there are two ways you can meet your monthly requirement. You can either buy the product yourself to meet the monthly requirement or you can recruit non-sales leaders distributors to buy a product and you are going to count that towards your personal volume requirement so people like Maria and but once Maria becomes a sales leader, if she does, it break away from your personal volume, your personal down line and they get shifted into your organizational down line where you earn royalties off their volume. OK.

And so in order to earn royalty overrides, sales leaders must generate a said amount of personal volume each month. This is what distributors have to do when they are paying for their paycheck and if you get 2,500 volume points and you will get the maximum royalty paycheck that month.

This just says that in order to receive the royalty paycheck, you both need to meet your monthly requirement of personal volume, the 2,500 volume points, you also need to have an organization to begin with, otherwise, you will be multiplying five percent by nothing.

OK. So with that out of the way, I call this the not so curious case of Anthony Powell. In 2000, Jason McDowell president's team member -- a former president's team member also suing Herbalife but for a different reason than it being a pyramid scheme.

Basically sued the Company because he is very senior distributor and he woke up one morning and this guy Tony Powell, who had been one of his productive recruits, had just been taken, removed from his downline. So overnight, he lost a third or so of his organization volume which meant his paycheck went down a third and he thought that Herbalife took Powell out of his downline unjustifiably and so he sued the Company and as part of the discovery in the lawsuit, Tony Powell's monthly purchase activity was provided.

And it also revealed Tony Powell's organization volume and so this provides a really interesting insight into why distributors, how they behave based on Herbalife's complicated incentive program because Tony Powell from 1996 to 2000 moved all the way up from World Team to President's Team so we can look at his monthly behavior and sort of understand how Herbalife's compensation plan incentivizes distributors to behave at the various levels.

So this chart shows Tony Powell's monthly personal volume levels and just from 1996 to 2000 and remember, personal volume is what you are buying from Herbalife, you are supposed to be selling it to retail customers so you might think that these blue dots will be random, are driven by the vagaries of retail demand. But they are not.

They flat line. In 1996, the 2,500, they flat lined and in 1998 at 5,000 they flat lined, and in 1999, at 3,000 they dropped back down to 2,500 and why might that be? Well, when you become a senior Herbalife distributor, you are eligible to receive something called a production bonus which is known as an infinity bonus.

You are able to earn this more than three levels down in your organization and so if a recruit recruits a recruit who recruits a recruit times ten, you get to earn a percent of that recruit's purchases.

And this is a very lucrative reward and it's why the people at the top of Herbalife earn the most. When Herbalife actually rolled out this production bonus in the 1990s, their sales in the U.S. tripled because every

business opportunity participant wanted to go to Herbalife where they can make the most if they could get to the top.

For the purpose of this slide, if you want to get the production bonus, what you need at the GET Team level is 5,000 volume points per month and so not 2,500, just to get your royalty check, now you need 5,000 to get the production bonus and at millionaire team, it drops down to 3,000 and at the President's team, it drops down to 2,500, this has been the monthly requirement in Herbalife for a top team members to get their production bonuses for the last, at least 15 years.

So now, if we layer on top of Tony Powell's personal volume scatter plot, where he was in the Herbalife system, you can see that these dots aren't random at all. When he was a GET Team member, his personal volume was exactly 5,000 volume points because he needed 5,000 volume points to get your production bonus.

When he is a millionaire team member, his personal volume was almost exactly 3,000 volume points every single month because that is what you need to get your four percent production bonus.

And when he graduated to the President's team, it dropped back down to slightly over 2,500 a month because that is all you need at the President's team to get your production bonus, six percent.

And that is what paying for your paycheck looks like in a scatter plot.

So a couple of questions, Herbalife distributors supposedly meet their personal volume requirements by establishing a base of retail customers and so if Powell had a sufficient base of retail customers as a GET Team member to support 5,000 volume points, why did they suddenly disappear when he got to the Millionaire team and he only needed 3,000 volume points to get his production bonus and he still wanted to sell that extra 2,000 volume points and earn the retail profit?

Also per Herbalife's rules, the purchase of products primarily as an attempt to qualify for advancement in the marketing plan is not permitted yet and every month, Powell, purchases exactly what he needs to get at the maximum paycheck and advance to the next level.

So you might say well, at least these six dots here are random. But no, they are not random.

At the GET Team level, it always makes sense, you probably have enough organization volume, it's always going to make sense to get 2,500 volume points to get that royalty check and in 1998, it would have cost Powell about \$1,400 to buy those 2,500 volume points, OK?

And this organization volume was 60,000, 90,000 and if you multiply that by 5 percent, it's always going to be greater than 1,400 and that is why you always had at least, if we could just go back a slide, that is why he never went below 2,500, OK?

And the question is why are those couple of dots there at 5,000? Well, after you get 2,500 volume points, it's going to cost you another \$1,400 dollars to buy another 2,500 volume points to get your two percent production bonus. All right?

And so you would only want to do that assuming you are not actually retailing any of the product that we think is what Powell is doing based on this behavior, you are only going to pay for those extra 2,500 volume points if your organization volume is bigger than you know, two percent whatever to get to 1,400 and so we can see is each month, in October, his organization volume is only 60,000 and so 60,000 times two percent is 1,200 and so it's not worth paying 1,400 dollars to get another 2,500 volume points to get your production bonus because it's only going to be 1,200 dollars.

And big surprise, Powell doesn't pay for his production bonus, he doesn't get 5,000 volume points a month, and the next month though, his organization volume was higher and 98,000, which means that he would have gotten a \$2,000 production bonus and only cost him \$1,400 to buy his production bonus and so he

bought it. For six straight months he goes back and forth, doing this behavior, only buying his production bonus when his organization volume is big enough to justify it.

And he only pays for his paycheck when his paycheck when his paycheck is bigger than his payment.

Completely rational behavior.

So Herbalife puts a rule on the distributors that say you are not supposed to do this but then they created a compensation plan that they follow and we think distributors followed the incentives of the compensation plan and not the 215 rules.

So what about at the mid level? Why did the distributors buy the product? Well, this is a quote from a transcript but it basically says that Herbalife sees these massive spikes in volume in January and it's not because people are drinking more Formula 1 in January and it's because every year, January is the cutoff to requalify as a supervisor and so you have been at Herbalife for three years and you have established a downline and you have recruited people, you got to keep buying at least 2,500 volume points a year to maintain that downline or more than 2,500, I'm sorry.

And we think that that is why they see a spike in activity among mid level distributors in January and we question what pre-qualification has to do with retail sales and now, at a lower level, why people buy a product is because frankly there aren't many more people in the world who can afford to become a sales leader and start right at that 50 percent level at Herbalife in one month.

They are running out of people who have \$3,000 to sign up right away and the addressable market is more low income people in the United States and in other countries where you know, you could still get the sales leader and get those recruiting awards but maybe you are going to have to work your way up to that.

You have only got \$500, great, start at senior consultant and work your way up by buying another couple of hundred dollars of product next month, but the most important thing is you stick with in and you try hard and you keep the faith and because getting the supervisor is the only way you are going to be able to get those recruiting rewards and really win on the business opportunity.

So we think at a low level on the Herbalife chain, people are still buying products because they want to get the supervisor, they just can't afford to do it at day one. And so the FTC says it is relevant to ask why the distributors buy product when determining whether or not that organization is a pyramid scheme, well, we think that the senior distributors buy product to pay for their paychecks as shown by the Bruce Roth declaration, as shown by the Tony Powell data.

We think that mid-level distributor's byproduct to re-qualify and to maintain their downline lineage kind of hoping against hope that one day, somebody beneath them will do very well and they will be able to ride that volume for the top and we think that junior distributors purchase product to participate in and advance in the business opportunity and we believe that everything about Herbalife's compensation plan and incentivizes orders without regard to retail demand.

So how does Herbalife sell so much of its unadvertised commodity products are inflated prices? It's because it bundles its products with the business opportunity.

ACKMAN: And that is a picture of the founder of the Company, Mark Hughes. Everything is really easy if I can do it, you can do it. Deception.

A pyramid scheme is actually a modern day version of a Ponzi scheme and actually it's sort of version that is -- let us call it 3.0 so 1.0 is the Ponzi scheme, how did it work? Charles Ponzi recruited people by promising them they would earn a 50 percent return of their money in 90 days, he had to explain that it was international stamp arbitrage and he used money from new recruits to payout the return to the early participants and eventually lost large numbers causing to fail and actually interesting that the first guy he

approached about the scheme didn't have enough money to participate in the scheme but he said, look, I will get you someone, just pay me a commission.

So it's a sort of Charles Ponzi thought this was an interesting idea, he developed a commission program and he had people recruiting for him.

And the chain letter, you probably got one of these when you were a kid. The first chain letter in 1935, Charles Ponzi was in 1917 and these schemes tend to develop actually at very difficult time economically and right after World War One and then in the middle of the depression with the chain letter, you know, send a dime to the following six addresses and then pass it on to ten friends and then soon you will get you know, boxes of letters and letter each with a dime in them, \$1,500 to \$1,600.

In a pyramid scheme, introduced not clear exactly when it was introduced but sometime, kind of in the middle part of this century.

Actually Herbalife founded in 1980 which if you remember was very difficult economic time with interest rates at 21 percent. Introduces a product into the scheme and so they hide the scheme by creating a product and actually in the beginning of Herbalife where we had some great footage of the beginning of Herbalife and it was actually a CNN investigative study of Herbalife many years ago about a -- we have a website that we will be launching probably tomorrow that has everything on it.

Everything that we -- every deposition transcript, and every video and every you will find it a very fascinating place to spend your time. The video has been incredible. I mean that video is a small -- we have hundreds of videos like that and the episodes of MTV cribs, no these are Herbalife productions.

But basically in all seriousness, the -- what happens here is you hide the scheme behind the product and in the beginning, it was literally you know, Herbalife claimed that their product cured cancer and syphilis and why they hired a bunch of scientists who are sitting on a nutrition advisory board to create this aura of credibility.

But key to all of each of these schemes is deception. You have to convince unwitting participants that this is really an attractive business opportunity. So how do they do that?

Michael Johnson, "We are transparent with our earning 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 distributor in this company knows exactly where they stand and what the opportunity is inside this company."

OK. This is a required disclosure by law. This is the only thing you get in terms of financial disclosure about the business opportunity as to whether this is something that you want to do, something that you don't want to do. I just want to point out a few things.

Number one it says, "Over 25 percent of distributors reach the rank of supervisor and above." It gets pretty clear, greater than 25 percent.

We have this thing on the upper left-hand column of the disclosure statement; it says "Active Leaders". I'm not clear exactly what that means. And then it says, "Percent of Total Leaders," and those numbers add up to 39.4 percent. When you move over and it says, "Percentage of Active Leaders," a 100 percent, and then you look at the compensation numbers.

And again, at the very top, you know, again it don't show chairman's or founders but "President's Team," you know, \$500,000. And again, if someone looks at this and says, "Hey, I get a shot of making \$500,000." You know, 25 percent of distributors make, you know, supervisor, you know, I'll give it a shot.

OK. What's wrong with this chart?

So what's wrong with the chart is Herbalife leaves off 93 percent of the people who become distributors. They vanish, OK? How do they do this?

Well, first they remove what they call inactive sales leaders. These are people who make nothing. So the people that fail, they don't include in their so-called "disclosure chart". Ninety-three percent of the people are off the chart. They don't tell you this. You have to figure this out. OK.

What else is misleading here? Well, of course, more. Hey, I think I'm -- oh, so one important point here is the FTC believes the exclusion of zero-earning distributors is relevant to determination that an MLM pyramid scheme. "Failing to disclose, clearly and conspicuously, before any consumer that comes are marketing program participant, all information material to a consumer's decision to participate in a marketing program, including but not limited to the following -- the number and percentage of current marketing program participants who have not received any commissions, bonuses or overrides.

Let me go back -- previous page.

Now, this is our disclosure which makes it a lot clearer that 93 percent of the people -- only four percent of the people make nothing, OK.

Go back to the previous page. That one please. OK. So take a look here. This is their disclosure. Does anything suggest to you that 93 percent of the people that participate are not included in the table? And bear in mind, this is the one piece of financial disclosure you get as to whether it makes sense for you, a low income person, unemployed, trying to become an entrepreneur about your probability because, by the way, even when you take out 93 percent of participants, the odds are horrible. OK. But with Herbalife there's always more.

What else is also misleading? They have something they call average earnings. Well, most people think of earnings is what you get to keep. OK. Nope.

Average earnings are your gross revenues and there are real expenses here because you can't just be in this business without spending money.

Now interestingly here, this is David Einhorn's contribution. If you go back one slide, that's the way it looked before David Einhorn asked this question. This was March 2, 2012 -- their disclosure statement. Flip the page.

On July 25, 2012, they put in a new disclosure. Also, the figures above are gross, not net income. So for 32 years, they didn't tell people their expenses associated with this scheme. It's almost like you invested in an investment fund and they reported the stocks in which they made a profit but they left off the ones in which they had losses. And then they added the disclosure and now they feel better about it.

OK. Let's go to the next one.

It's hard to know what the exact expenses are, but we've gotten lots of deposition transcripts, lots of evidence from court cases. And this is a list of business support materials which comes from a blog of a former Herbalife non-sales leader distributor, \$2,000 of expenses in three months, excluding product purchases. And these are things for things like sales leads, \$562 charged for leads purchased from Online Marketing Solutions.

The top people in the Herbalife scheme, in addition to collecting their royalty and other bonuses have side businesses that they run selling leads to unwitting kind of early distributors. And it's an enormously profitable business. This is one of them. This is online business systems and it's, you know, something like \$20 a lead.

Shane was a lead at one point. He got called. But it cost money to recruit people. And there was a lawsuit about this. Eighty-eight hundred distributors sued a class-action law suit. And in the law suit, the average sale leader expenses were \$10,000.

OK. So if you go back to the earnings chart, let's go back a page or two. There we go.

So this is again -- this is gross compensation on the right. So even if you make a world team, OK, well, here it says it's 2.9 percent of the people and the answer is a fraction of one percent of the reality, your total gross average median compensation is \$5,600. OK. Take off 10 grand and you lose money until you get to the absolute top of the table.

OK. Let's keep going.

Well, what's interesting is this concept of active leader which is not really defined. And in the table, what's interesting, as I say, only 39 percent of their leaders are active and that's what they put in the disclosure they give their distributors. But the disclosure that they give their investors, they use a different measure of active and the reason why they do that is they convince investors that tracking active sales leaders is important for determining how well the company is doing so they have a different definition that finds another 13 percentage points more active leaders in order to please the Wall Street analysts.

They also say that this is kind of the most straightforward disclosure. "Over 25 percent of distributors reach the rank of supervisor and above." Again from the table, over 25 percent reached the rank of supervisor and above -- leader. It couldn't be more clear. Unfortunately, it's false.

This is the history, you know, like, OK, I overstated it a bit in the last few years, but it used to be over 25 percent. So this looks, OK, it's not the worst thing. Of course, it's not accurate. This percentage is overstated. Why is that?

Well, the way they do the calculation they take the total number of current sales leaders. They divide by the -- then number of -- total number -- overall number of distributors and that create the calculation. But the relevant number in determining your probability of success here to think about how many new sales leaders versus how many -- you know, how many of the new distributors become sales leaders. The answer is about one out of every six as opposed to one out of every four. So that, of course -- well, I shouldn't say, of course, that's also not accurate.

I also, you know, overstate the likelihood of getting to the top of the pyramid. One characteristic of pyramid schemes is the only real way to make money here. The big money is to get in early, OK. If you're a late participant -- and by the way, today, 32 years later you're very late in Herbalife -- your ability to get to the top is basically the probability of that is very, very close to zero. It's almost immeasurable.

This is from -- again, we're going to talk a lot more about this. But the Hispanic community is a major target of Herbalife both in the United States, in Mexico, in South America, and around the world. So a lot of the materials are in Spanish. Unfortunately, I don't speak Spanish.

Shane speaks -- Shane is from Texas. He speaks more Spanish than I do.

Here it says, "Use, Wear, Talk -- President's Team in two years." OK. That is a lie.

This is Herbalife Today. This is a magazine sent to all the distributors. John Tartol who is on the board, he's a Chairman's Club member. He's been on the board for many years. And he said that distributors today can make it to the President's Team in less than three years. This is when they launched in Ireland. This is in 2000. The luck of the Irish now includes Herbalife cover story.

In three years, Lori and John became members of the President's Team, quote, "Distributors can make it even faster today than we did," said John. "There are so many more sales and marketing tools now and a support system everyone can plug into."

By the way, many of these guys sell the sales marketing tools. "We're not only working for ourselves, but for the company as a whole. When a team succeeds, there's more for everyone!" This is a gross mischaracterization.

It entered Ireland in 2000. When that magazine came out 10 years later, not a single Irish distributor had made it to the Millionaire Team -- not one.

They put the slide out. I think they regret putting it out, but they did. We have everything they have ever published we believe.

If you look at this, the retention at the top, if you're a Chairman's Club member and you're collecting millions of dollars a year, obviously, you're not going to quit. The same thing is true in President's Team where you're making half a million dollars. Even that Millionaire Team, you're making -- I don't know -- \$95,000 before expenses. So it's very hard to break into the top. You need to keep a constant recruitment of people to keep the organization going, so everyone of those guys starting at the bottom, you can't make it to the top. OK. They don't -- they fail to tell you this.

So, here's the math. The calculation is, if you look at that green line, OK, that's the number of new President's Team members -- each of those years. OK. They add up over the last six years to 661. Over the same period, 6.5mil distributors were recruited, so it took 6.5 million distributors to create 661 President's Team members. That's one in 10,000. I didn't see that on the disclosure statement.

So, we wanted to graphically draw the pyramid but you can't fit it on the slide. And actually, if you include Chairman's Club, you can't fit in the world, OK. So what we do, we started President's Team. OK. We said, "Look, one foot equals one person. Think about a pyramid, think of those people." A pyramid early on we showed people lined up because the President's Team, 1,220 members, one foot wide is a fifth of a mile they would line up.

The next level down of the pyramid, a little more than half a mile, 3,300 people get to the Millionaire Team. That's 330 make 95,000 on average.

The GET Team is 2.8 miles wide.

OK. Now the base of the pyramid is 470 miles wide, OK. That's from here to Cleveland, OK. So it's not really a pyramid scheme; it's a pancake scheme.

Another way to think about this is the bottom of the pyramid if you did this, it is just PowerPoint slides. Again, this is drawn to scale. The top three things are the scale. You need 47 PowerPoint slides that we could roll out across the screen. That's the base of the pyramid supporting those three levels.

By the way, we left off Chairman's Club which is above that. We left off Founder's Circle which would be, you know, below the atomic level in terms of the depiction on the chart.

They disclosed -- this is again a disclosure that helps you make a decision as to whether you want to write a check for \$3,000. By the way, \$3,000 doesn't sound like a lot of money with the people in the room, but \$3,000 to someone who's unemployed is an enormous amount of money. They are risking their capital on their future, and they show these numbers. But the probability of getting there is not the numbers they show because again 93 percent of the people aren't even on the table. The probability is basically zero statistically.

But everything is really easy. If I can do it, you can do it as well. There's nothing easy about achieving the wealth and lifestyle of new distributors (INAUDIBLE) possible. And it's a closed system at the top. They have done their best to conceal this in recent years. They have stopped disclosing the data on who gets to the top of the pyramid.

The probability of making to the Millionaire Team, right, that's making 95 grand on average. You know, the earnings testimonial claims -- these bigger numbers, it's one in 5,000 chance.

OK. Now, I'm going to turn it over to a lawyer, one of my favorites. This is David Klafter. He's on the Pershing's partner, Pershing Square, and formerly a lawyer at White & Case. I worked with him previously at Gotham Partners.

Yes, thanks.

DAVID KLAFTER: As Bill said, I'm David Klafter. I am senior legal counsel at Pershing Square. I was formerly a litigation partner in a big firm. And at Pershing Square, I work on litigation and regulatory-intensive matters.

My slides have a lot of text on them. I will be reading some. I hope you'll get a chance to read the rest of it later.

First, this is not a legal advice. This is just our views of interpreting the law.

The basic standard here-- Shane and Bill talking about the definition from Dr. Vander Nat about how you have to have -- you'll see what's primarily driving compensation. Is it recruitment rewards or is it retail profits? That is actually a specific case of a general standard.

The general standard is from the FTC Act Section 5 which prohibits unfair or deceptive acts or practices. This is a general flexible standard designed to protect consumers. It's an objective standard. It asks what would happen to the reasonable consumer in the circumstances it doesn't require that you have an actual person who comes up and says I was confused by something. The attention here is that it both remedies prior wrongdoing and it's intended to prevent future wrongdoing. The FTC enforces it. It's not enforced by private parties.

At the same time, many states in non-U.S. jurisdictions have their own laws. Some are general laws to protect consumers and some are specific laws dealing with MLMs, with pyramids, and with endless chains. That's what it's called in California.

And the important thing to understand here is that these various jurisdictions have overlapping control over a regulated business like an MLM. So there's the Feds, the states, non-U.S., and in some cases, there can be private actions, private parties.

So what is an unfair or deceptive practice? The FTC in 1983 put out a policy statement, and they summarized their thinking to date and those principles still prevail today. They see three elements. First is a representation and omission or a general practice and something like an earnings statement or failing to provide information that should be in an earnings statement would qualify for that first element.

Second, it has to be likely to mislead a reasonable consumer under the circumstances. We're not looking for extreme cases. We're not looking for whether Shane can figure out what something means, we're not looking for the least attentive person, we're looking for a reasonable person.

And third, it has to be material. And in this case, it means material to the choice a consumer would make. We also note that the policy statement in 1983 listed among the areas where they are concerned about deception as failure to disclose information regarding pyramids.

Herbalife, of course, is well aware of its regulatory risks. It notes in its 10K among the risk factors that there are regulations governing pyramids and chain schemes, that there's no bright line, that these are fact-based tests, and that if they fail to comply, their business would be negatively impacted.

And here's a quote from Michael Johnson. He says that they have, in effect, their own political action committee. He's in Washington every quarter.

Indicia, the definition of a pyramid is as Shane and Bill have been talking about. It's whether your compensation is primarily from recruiting rewards or from retail profits.

At the same time, you see recurring themes. When you look at the pyramid cases and the regulatory statements have been made about them, so we're going to extract here some of those themes and we're going to show how Herbalife's facts line up against these themes.

So here are the six themes we're going to talk about -- exaggerated earnings claims, inflated prices and the need to sell to others, an emotional sales pitch -- selling the dream, a history of lawsuits, targeting the financially unsophisticated, and complex compensation rules.

So the first one, this is from a speech by former General Counsel of the FTC Debra Valentine who is addressing the IMF in 1998 about issues facing central banks. And she talked there about pyramid schemes, which she said, while it's an old form of fraud, it's become more prevalent and more dangerous because of the Internet. And so she was speaking here about the U.S. experience and things they have found, things they watch for. And her first tip for consumers was beware of any plan that has exaggerated earnings claims.

And here's a quote from a case involving a pyramid where the court says that profit potential statements are always material to consumers.

The before and after, Herbalife uses a number of different types of testimonials and they have a standard formula -- it's a rags to riches story. And I would like to read them to you.

Before finding Herbalife, "I had to seek hospital treatment for a stress-related illness because of my job."

"I felt like I was in a dark sea without a light to guide me. With 500,000 in debt, we were devastated. All we could do is pray for wisdom and guidance!"

"I had my back against the wall. I needed to make some money!"

And then after finding Herbalife and succeeding, "In the first month, we were able to save our home. Herbalife saved us from bankruptcy."

"Thanks to the income opportunity offered by Herbalife, we paid back all our creditors."

"Within a year of doing business together, we were debt-free and saving money."

"Herbalife is the key to waking people up and giving them the success I have received."

"If I can do it, anybody can. I have only a high school education and no business background." And I highlight that one because that is the exact demographic they are going for. This corresponds exactly to what you saw in the Mark Hughes slide, "If I can do it, anybody can do it."

And I would note the source is Herbalife Today which are the magazines that they put out to their distributors. Shane and (INAUDIBLE) on our team have done an incredible job of reconstructing as many of these as we could find. We have hundreds of them and we went through.

And for the years 1997 to '04, we compiled a spreadsheet of every income testimonial without exception, and we highlighted both the numbers which I'll get to and these little descriptions -- the stories. And you'll notice in the stories, these are sort of you go from damnation to redemption. I was lost and now I'm found. There is almost a faith-based component to how they sell their opportunity.

We found from '97 to '04, there are 392 testimonials. The average earnings was 178. The median was 120. The average is higher because there are a few extreme outliers at the top end which drags the average up.

This represented, we believe, less than one-tenth of one percent of distributors. And it focused, as Bill was saying earlier, on gross earnings. It doesn't -- it was limited, if any, mentioned of cost of goods sold or business cost. One person said, we sold everything even our children's toys just to pay for gasoline and the expenses of moving to California.

Since '04 the promotions have become a little more subtle, same type of stories but fewer numbers. So there story is still about modest people with limited prospect who find Herbalife and now, as Mr. Carrillo says, he is making more money than he could have imagined.

They use these medallions, and it says the "1 Million Lifetime Achievement," which sounds at first blush like dollars. It's actually a point system so it's not exactly -- I'm not even sure exactly what the dollar numbers are, but it sounds like a very high achievement to the average reader.

And you find that the people who have succeeded with Herbalife enjoy health and wealth. Luxury cars are commonly mentioned, yachts, exotic travel. People travel whenever they want to. They stay at the finest hotels.

You'll see behind Mr. Carrillo, there's a boat. And I think the name of the boat includes the word "dream" and then above it there's a banner for Herbalife.

While Herbalife has become more subtle about the income testimonials, some of their high-ranking distributors were selling business methods to newcomers are a little less guarded still to this day. This is a page from Online Business Systems. It's one of the names that appeared in that list of expenses that Bill highlighted. And you'll see here they have specific numbers.

Now, my next slide is a little complicated so I'm going to set it up a little bit for you.

When you're entering into a system like this, you need to know both how much can you earn and what's the likelihood, what's the probability that you're going to earn it because if you can make \$100,000 but there's only one in 100,000 chance that you'll do that, it's only worth a dollar to you.

So we're going to try to illustrate here the need for a time series analyzing the statistics if you want to fairly explain to someone what their chances are. So we start on the left with year one. That's, of course, the iconic pyramid from the back of the dollar which makes you wonder why that was there. But the top triangle, you'll see it separated by a gap from the base. And if we assume that there's one person at the top and a thousand at the base, your probability of being that top person is one out of 1,000.

If you move forward to the next year, we assume that same person is on top and there's a new 1,000th person cohort in the bottom, your probability over those two-year period of being that top person is one in 2000. Roll forward another year, you're likely to being the top person is one in 3,000 and you have to have that time series, not a snapshot to understand really what your chances are.

Herbalife has provided minimal data on this. We have a chart we've shown you with the retention rates at the very top being in the high 90 percent range and there are very few people who actually scrape their way up the system in order to get to that range.

This is an important quote. It's from Webster versus Omnitrition. It's one of the leading appellate court cases. It was in California. It was for a company started by a former Herbalife distributor. Its distribution system was almost identical to Herbalife's and it was found at summary judgment to be a pyramid. And the court says, "The very reason for the per se illegality to the endless chain schemes is their inherent deceptiveness." And I think this next part is what I really want to focus on -- the fact that the futility of the plan is not apparent to the consume participant. Anybody can't do it.

Herbalife goes to great length in its sales and marketing plan in many places to say it's the distributor's obligation to know what the law is and to obey the law, including about any income testimonials. But the

courts have had no trouble whatsoever seeing through that. And what they say is that if you have heard the fruits of sending these folks out as your representatives, you bear the liabilities.

Five states -- Georgia, Louisiana, Maryland, Massachusetts, and Wyoming specifically regulate earnings claims with respect to multi-level marketing. And in Massachusetts and Wyoming, they pretty much borrow it. Given that so much of the marketing here occurs online, we wonder how it is that when these income testimonials are being sent into these states over the Internet how it is that they can be in compliance with these statutes.

Disclaimers of typicality, this is -- we sometimes say around the office, our pigs fly, your results may vary.

You have an extreme claim and then you say these results are not average, your results may vary. And Herbalife used essentially that format. That's a sample of a page from the period '97 to'04.

The more recent formulation when they've been a little more subtle about not using specific numbers, they refer to the average gross U.S. supervisor compensation, and Bill talked about why those are very selective and not very meaningful comparisons.

The FTC has been tuned into this issue about testimonials, and endorsements, and disclaimers. And what they are concerned to make sure happens is that people understand what is generally likely to happen for a consumer and they have found that disclaimers of typicality are ineffective.

In 2009, after a rulemaking proceeding, the FTC put in place effective December 2009 some guides on testimonials, and endorsements, and advertising. And as part of that process, they had consumer research done and I've provided you here the citations where you can find and read the research yourself. And what they essentially find is consumers are very good at absorbing the numbers.

If you say I lost 48 pounds using this product or I lowered my cholesterol, or I made a certain amount of money, consumers absorb those numbers. They are then not cured by saying, "Your results may vary."

Herbalife is aware of this. They have a disclaimer in their 10K starting from 2009 when these guidelines took effect saying that if their use and their distributor's use of income opportunity testimonials may be significantly impacted and therefore might negatively impact our sales. And I think it's a fair question to wonder what consumer package company -- packaged goods company feels that if they can't promote how much their distributors are making, their sales will be impacted.

You can think about Kellogg's, or Procter & Gamble, or Kraft Foods -- all of them selling consumer packaged goods -- would they say, our sales of goods might be impacted if we can't promote how much our distributors make.

Another indicia of pyramids -- this comes from Debra Valentine's speech is to see whether the prices are inflated and whether you have to sell a lot to other distributors. I won't rehash all what (INAUDIBLE) said, but I think we have shown that the prices are inflated and you do have to sell to other distributors.

The pitch, a big part of pyramid schemes from the beginning of pyramid schemes is that you have to get people emotionally charged about what they're being offered. This is from one of the key cases called the Koscot Interplanetary where the FTC found the system to be a pyramid and I highlight here that Costco was offering a fantastic opportunity to achieve financial success beyond their greatest expectations. Costco was presented as an opportunity for ordinary men and women and I ask you in that side box (ph) to think about the phrasing we saw from the testimonials.

Mr. Correo (ph) who is standing from the both made more money than he could have imagined and throughout their pave work you'll see anybody can do it. If you remember, I had that testimonial where the person said, "I had high school education and no business background." That's precisely the type of fact that Costco was concerned about.

And then we have some quotes from the company itself. Part of our business is entertainment. We entertain our distributors with opportunity, with dreams, stories. It's all a part of what this company is.

Michael, and that's referring to Michael Johnson, sets the tone for not only the company but more importantly for independent distributors that there is room at the top, that this is an aspirational business and he paints that picture with a kind of dreamy type of goals.

Another, this gets very law-heavy so I'll just apologize and I hope you'll get a chance to read more the details where we'll be putting up all of our research on our website.

The FTC in its 2009 brochure online says, "Has anyone sued the company for deceptive business practices?" The answer is yes. Herbalife has been in 270 lawsuits, many of them, of course, are just ordinary commercial lawsuits, but some of them go to the heart of what they do.

In this first case in Belgium after seven years of proceedings, the Belgium judge found that they were a pyramid. That case is on appeal.

In Herbalife versus Ford, which I'll spend another minute on it at a different slide, but there was a fight between Herbalife and some distributors who left to go to another MLM. And Herbalife tries to control that because MLMs are really their competitors.

These distributors counterclaimed and defended themselves by saying that the non-competition rule is unenforceable which the judge agreed with, and by saying that Herbalife was an endless chain. That's the California term for pyramid.

And then the key pretrial ruling, the court found that Herbalife's compensation says then it's facially unrelated to the sale of products to end users. That ties in directly to the definition of a pyramid that Shane and Bill have been talking about.

Before trial, the case was disposed on other grounds and I'll explain that more. Minton was another class action case on -- not a class, a group of distributors due them. Jacobs was a class action brought on behalf of current and former distributors, 8,700 of them, Herbalife discontinued the promotional package that was issued there and settled for \$6 million.

In 2004 since senior distributors in Canada were convicted of running a pyramid scheme and consented to a prohibition order. In May versus Herbalife in 2003, consumer class action was filed. And West Virginia alleging that they -- Herbalife was violating along with its distributors the Telephone Consumer Protection Act because they were using an autodialing system. They discontinued the practice and settled for \$7 million.

Interestingly, just a couple of months ago, another class action was filed under the same statute claiming that Herbalife is texting people on their cell phones without permission, and one of the plaintiffs there said that when she tried to track down where it was coming from, she was led first to a website and ultimately the Herbalife which was offering at home sales training materials.

In an Israel suit, the Israeli suit, the distributors were in a contract dispute between them and the court said that the method of marketing reminds the court of a pyramid scheme and the court there was citing FTC precedence.

And then in 1986, they entered into a preliminary injunction based on both medicinal claims they were making and on the compensation system that was in the State of California.

I come back to the fourth case because as a lawyer, this one jumped out of me. It's in their home jurisdiction. They are -- this is the dispute where Herbalife sues some former distributors, the distributors counterclaims saying this is an endless chain.

It's important to know those distributors have profited by the system. They've been in it for years. You saw it from Bruce Ford (ph) how he described it. They were almost like family insiders. They knew all how it worked. And their presentation was especially powerful about the practicalities, about how the system works.

There were summary judgment motions and on one of the summary judgment motions, the court found, and this is after extensive discovery, depositions, interrogatories, exchange of documents, a lot of pre-trial jockeying and the company was represented by Morrison and Foerster which was an excellent law firm.

They had pulled out the stuffs to defend this case. The court found Herbalife's entire business model appears to incentivize primarily the payment of compensation facially unrelated to sale of product to ultimate users because it's paid based on suggested retail price of the amount ordered from Herbalife rather than based on actual sales to consumers.

That is a key finding from all of the case law. The internal quotes there are from Webster (ph) versus nutrition (ph). That's the case that I cited earlier which says, the new consumer don't understand the futility of the plan.

So this finding was never disturbed. Ultimately, Herbalife won that case because the people raising the issue had themselves profited. And the court said, this statute is intended to protect victims. If you weren't victims, so you lose, but at the same time for any other person that's been hurt, this finding remains.

Another in this year that you see over and over again is targeting people who are vulnerable to the dream. This is from the Costco which is one of the seminal cases. It talks about how they recruited people by reason of their age, lack of education or training, lack of business, administrative or sales experience.

And then the next underscored tended to recruit with similar profiles. They tried to work within communities to get people to play on the trust that those nearest to them will have. And then the third, they say the limited degrees of sophistication and financial and business matters made them particularly vulnerable.

Herbalife targets people with similar profile. This is from -- these two slides I've incorporated here from their 2010 analysts day, you'll see on the left side, they are -- they're tracking where there are Latino population centers that they can try to exploit.

And on the right side, they talk about what they call is market segmentation. They talk about how they're targeting Generation H which are young people, ethnic American, Korean, Vietnamese, Chinese, Polish, Russian and African-American.

And these are just some quotes from their conference calls where they've described how they do this. This is from the former COO, Greg Probert. Latino business is now of 60 -- is about 61 percent of the U.S. business, 46 percent up.

One of the big things markets that we are going to penetrate next year is the college market. This is from Michael Johnson, the SOC (ph) sponsorship supports retailing with sampling and activation opportunities for our distributors. It will help in recruiting key target segment of the U.S. populations, state home mom.

This is from Amy Greene, vice president of IR for the company though, we do see, right, so we do see the segments that can provide Herbalife for broader base. So for example, the African-American initiative that we are doing, it started about three years ago.

This is from Ibi Fleming, senior VP, managing director of North America, I'm getting ready to hire somebody that's Korean for the U.S. because that's a huge opportunity for us, but again, it has to be have been a distributor, starts it right because we can't.

We can hire all the Koreans and -- but if there's not a distributor out there, that's really taking the business, but definitely I mean when we think about Korea, I mean 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.

They are now charging -- this is from the CFO, by the way, who is later promoted to COO, They're now charging people on a daily basis. He's talking here about nutrition clubs which where you -- for a one day so-called membership, you can come and get one serving at a time. And this is a huge growth opportunity for the company.

Cleo (ph), back one slide please. They're not charging people on a daily basis. If you think about where the money is in the pyramid and there are more people to bond with the pyramid especially in some of these developing markets, a lot of poor lower, middle-class people, they're creating the opportunity for them to have that access to the Herbalife experience. That's what's driving very strong growth in these markets.

This too is talking about the nutrition clubs and how they -- they're priced so that even poor people can get in. If you had to pay \$60 at the beginning of each month for that month 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 (INAUDIBLE) or whatever it may be so far more people can afford that.

The last item I want to highlight are complex compensation systems. In 2011 case involving BurnLounge which was an audio -- online audio pyramid scheme, the judge says that it would appear that the BurnLounge was attempting to create a labyrinth of obfuscation rather than a readily understood compensation system.

So let's look at Herbalife's compensation system. Shane has spent a year figuring out and went through 100 slides. I don't know how many of were actually able to absorb it all. We hope you'd be able to go back and read it in detail, but it's extremely complex.

So 15 pages of texts and forums, about 48,000 words, many different levels, scores of rules, and actually very little sales and marketing advices.

Here's from the Q&A in the bottom left corner. Essentially it says, use the products wear (ph) the button and talk to people and ask your offline for advice.

On the left is the page from a publication this year in Mexico trying to illustrate the different permutations of how you can earn commissions.

So I come back to the six factors we've looked at, exaggerated earnings, claims and inflated prices and the need to sell it to others, an emotion sales pitch, a history of lawsuits, targeting the financially unsophisticated and complex compensation rules.

And I think we have shown based on documents and based on Herbalife's own words that all of these are present. And I want to leave you with one last quote from a case involving a pyramid where you were trying to work your way into having your dream car.

The court said, in evaluating a tendency or capacity to deceive, it is appropriate to look not at the most sophisticated but at the least sophisticated consumer.

UNIDENTIFIED PARTICIPANT: OK, we appreciate you saying through that that legal presentation but it's very important. OK, let's turn on red flags.

First of all, Herbalife is not your typical MLM. This chart is the percentage of the compensation that goes to the top 1 percent of these distributors. And on the far left, you've got this free life, you see there, Tupperware about 49 percent, Nu Skin 80 percent, Herbalife 88 percent.

Why is Herbalife a top 1 percent? The answer is we're in the later stages of pyramid scheme. You have to put more and more compensation to recruit more and more people and retail them in a system and are competing with other MLM. One percent (INAUDIBLE). The rest largely lose money.

So in addition to paying a high percentage of sales, it's actually very interesting chart. So Avon which is also a multi-level marketing company, what they do is they pay commissions three levels down like Herbalife.

Now, Herbalife pays 5 percent for the first level, 5 percent for the next level, 5 percent thereafter, and then Avon pays 10 percent for the guy below you, 3.3 percent for the person below you there and 1.3 percent at the bottom.

The logic of that is the distributor right beneath you is someone that you can actually -- you know, you get a relationship with, you talk to them, you help them, you teach them, you're adding value, so it makes sense for you to be compensated on them.

The distributor -- the next level a little further away and maybe you helped your person recruit them but by the time you get to the third level, you're really not adding any value to the person down there. So Avon cuts it off there.

In Herbalife's case, they actually pay 5 percent for each of the three levels and then to infinity, they paid eight to the top people. Now, if you think about the way a pyramid is structured particularly one which has 470 miles wide at the bottom and the millimeter on top, so we gave a kind of a (INAUDIBLE) kind of a loss of this example.

So let's assume that in this pyramid, you had -- there was \$200 of revenues at the top, \$400 in level two, \$800 in level three and again, the more people at each levels, so it makes sense if the numbers grow, and 1,600 at level four.

So if you apply the Herbalife compensation scheme, on level one, you make \$24, level two \$48, three \$96, level four, \$112 to get \$280 payout in the Herbalife plan.

In Avon, you get \$44, so this shows you that the ability to get infinite participation is enormously valuable, it makes the compensation scheme, it tips it much more to a recruiting-based program.

Let's talk about pop and drop. What is pop and drop? Let's go to the CEO's own words. We go through phrases and new marketplaces where recruiting is the initial phase of our business and then retailing comes into function at the base of it.

We try to train recruiting, people at the top, retailing, the people you try to bring in at the bottom. We try to train distributors and we're taking much more aggressive stance. China is 1.3 billion. You can recruit for a long time there. Before, we have what was called the classic top -- classic pop and drop in that marketplace.

We're trying to build in right away a retailing basis in that marketplace, I would say initially it's going to be a lot of recruiting, a lot of business opportunity development. What does it mean by pop and drop? Let's see what the CFO has to say.

So India is not. It's teetering on the top 10 market for us. We went to India 10 years ago and we went in and it was big. It's called pop and drop. You go in, a lot of distributors come in, they recruit, you get a lot of volume, those distributors leave the country and you get a big drop. What happens is they ran out of participants and the scheme collapses.

Herbalife used to give you data on different countries so you could track how they were doing, and here is Japan popping, peaking and then dropping and then it magically is removed from the company's disclosure.

Let's look at Israel. Israel is a smaller tighter-knit community, enormous pop and then it collapses, again, no data after 2002.

Spain, huge pop, a collapse, data come stabilizes at a relatively low level and then the dataset is withdrawn.

France, explosive growth, collapsed when they ran out of participants, withdraw all data.

Germany, boom, bust, no more information.

Russia, boom, bust, remove it from the dataset.

Now, the United States interestingly, United States is growing enormously for -- it's very rare to have an old market do really well. What Herbalife figured out is we have to go to a different marketplace.

We have to go further deep. OK, what do I mean by deep? I mean lower and lower income. How do they do that? Well, they changed their compensation scheme. It used to be (INAUDIBLE) three grand in a month in order to qualify as a supervisor.

And they said, well, in two months, actually it was 2,600 bucks I think in a month, 3,000 in two months, then last two years, they went to -- well, if you get there in 12 months, you can qualify. And they went into a model where they sell the stuff one serving at a time so they can reach markets like India and China.

They aggressively recruited in Latino market and actually Latino community is known for very tight-knit and there's a lot of loyalty and it's an ideal target unfortunately for a scheme like this one.

And Latino has went from being less -- about a third of the market in 2004 and today, we don't -- they stopped disclosing the number but it's something in the 70s-something percent we believe. (INAUDIBLE) the data for 2009, that's where they stopped in 2009. They withdraw the information when the information somehow harm them.

We're a 32-year-old company. Again, the biggest defense which reminds me of another 30-year-old scheme where people said, well, how can it be a Ponzi scheme, how can it be a Ponzi scheme, it's been around for 30 years?

Well, we're a 32-year-old company. I think that's incredibly important for multi-level marketing sales company. The longevity is an indication of credibility. There are companies again in the industry that have rapid growth, and declined, it's called a pop and drop. They have a rapid growth and then going quickly also. That's longevity, an important point for investors from a confidence standpoint into the business model.

And I encourage you to read the conference call transcripts. The word confidence is used -- I couldn't count a number of times.

Now, how they stayed in business for 30 years? Well, there's -- you know, there are a lot of countries so they just enter new countries. And they pop and they drop and problems are running in the countries, right? Running in countries where people actually have money to spend on the product even if you sell a serving a day to recruit distributors.

So now, they're going deeper, they've redesigned the scheme so that lower and lower income people in countries that they pop and drop in like United States, they can go after new markets and new immigrants.

This is a remarkable chart and it's a little hard to see but it's a good one to look at home. How did they hide this in the financial statements? Well, they changed the categorization of regions. We're giving you just the Americas.

So in 2005, that region that was called the Americas, they created a region that was called South America, Southeast Asia. OK, they combined -- OK, they combined South America and Southeast Asia so that the markets that were popping, markets that were dropping were hidden by the market (INAUDIBLE).

That worked for a year and then they had some problems the next year and so they -- Mexico was doing really well, so they called -- you know, broke out Mexico. And they made five changes over time and then most recently, they went to something that looks a little bit normal, South and Central America so, you know, by combining them altogether, you can hide pop and drop.

This is true not just for South America but I think again, this year in the company's SEC filing, (INAUDIBLE) conference call transcripts and they described why they're doing this. It has to do with alignment of the (INAUDIBLE).

I mean analysts are puzzled by this. They ask questions about why you're doing this (INAUDIBLE) save you. And if you want the transcripts, it will be on the website. You can read them yourselves.

We think they're running out of growth opportunities for expansion. Look at the countries they've entered recently. These are the last few countries, OK, Lebanon, Romania, Paraguay, Georgia, Guatemala, Mongolia, Ghana.

OK, Ghana, they're selling weight loss products. They're selling laxatives in Ghana. OK, Paraguay and Aruba doesn't even have a GDP per capita measurement, OK? It's GDP per capita, this is in the 1,000s. OK, the Lebanon is at 10 grand, right? Think about Mongolia, who's going to buy -- take a meaningful percentage of their annual income and buy weight loss products, herbal tea and something that causes you to loosen your bowels, all right?

Nutrition clubs -- a nutrition club the company describes as being -- this is -- this has been a big growth driver for the company. Nutrition clubs conducted a residential or brick and mortar nonresidential locations or social gatherings bringing together persons to become members wishing to focus on good nutrition and regular exercise in order to achieve optimum health. That's in the sales and marketing plan. It sounds like it's a nice place to hang out with your friends and talk about losing weight.

This is the CFO. So metrics that are indicative of consumption, our visibility is always a question, direct selling and some of the status pages were introduced in the last six months.

Feel free by the way to go to the men's room, ladies' room if you go to the top of the stairs, you can find it. I'll keep going for people on the Web.

It just evidenced the type of visibility that we have. The first (INAUDIBLE) core three products the foundation of nutrition clubs. In 2002, these three products represented 35 percent of their volume and last year, it's about (INAUDIBLE) of formula one is aloe tea which is this digestive laxative product and herbal tea.

You join a club by paying a daily fee and they give you free drinks. This powder, you make a shake out of it, they give you this aloe water which you can try on your way out. We're going to have some product sampling on the way out. And then there are some herbal tea and you pay a fee for joining a club. This has been a massive source of growth.

Last year through this year, it represents more than half our volume, those three products. Why? Because it shows, because the expansion of daily consumption because there is a new metric, the daily consumption of the three products, the products that are sold in clubs and therefore that growth is indicative of

consumption. But basically saying, look, really, people are consuming this stuff. Don't worry, it's not on people's garages, they're consuming it.

OK, here's a picture of club, it looks really nice, (INAUDIBLE), there's a light pouring in. It looks like some very upscale suburban home so that nice beautiful container with food in it, that's the shake, and a nice little Herbalife glass. This is in the investor day presentation.

OK, they don't sell it. Actually, (INAUDIBLE) sell the products. They preserve the three products for being a member of the club and -- there you go, those are the products, interesting. We made clubs visible to investors. We've taken investors to clubs.

Amy, the head of investor relations, consistently putting clubs towards together. I think it's important for somebody who is interested in this model because this is your club. And you'll understand that within clubs, it's all consumption-based. That's a very strange kind of phrase to describe business, OK.

So we sent Mary Sadamsky (ph). I'm going to (INAUDIBLE) sitting in the front row, to go look at some of these clubs. And in Queens, there are a ton of them. And by the way, they're all next to each other in a relatively small block radius. Went to Omaha.

And by the way, Mary (ph) is -- I forgot to mention before, has worked for the last year tirelessly on this presentation. She's a member of the investment team and the research team on this project.

OK, so these are some photos. And by the way, this is not a selected sample or the worse ones. These are the ones. Notice you can't see in. I'll just go through a tour of clubs. Now, these don't look like the most attractive places to drink free drinks.

And by the way, notice there are no signs, right? How do anyone know it's an Herbalife club, nutrition clubs? It doesn't look that appealing. And here's the Herbalife green though. OK, and maybe some inside pictures. OK, hold on. There you go. This guy spent -- they spent as much on marketing.

OK, here's an inside of a club. I don't know if this is fluorescent lit when the lights is out. There's no outdoor lighting here and I'll explain why in a moment. There you go. These ones are the nicer looking ones, OK?

(INAUDIBLE) drinking. You -- actually, under the rules, you're not allowed to distribute the drink in the glass. It's got to a paper cup or in this case, Styrofoam. You get a little cup.

So if you look at those clubs, you'll notice there's no exterior signage, no mention of Herbalife or its logo. The windows are covered, you can't see inside. There's no advertising or promotion. There's no depiction of a product.

When you think of McDonalds when you go buy, it's like a hamburger and it's like there's a price and so on. It can't tell whether the club is open or closed and the product is presented in a Styrofoam cup, OK. Why is that?

Well, the rules for nutrition clubs, and again, these are all being on our website, but if it is a residential nutrition club, you are not allowed to have exterior signage of any kind. Imagine going into a business with a retail location and you can't let anyone in.

If it's not residential, you can have a sign but it can't imply that's a store, restaurant or retail location and doesn't invite product purchase. It can't say it has any relationship to Herbalife. It can't promote shakes or products which is what they're extensively selling here. And it can't state whether the club is open or closed.

It goes on. No product or other promotional displays can be visible from the exterior. No advertising or attracting any traffic. You must cover the windows to ensure the interior of the club is not visible. You

must not state, imply or suggest that any retail products are available for purchase. What are they actually doing in here?

And you can't charge a membership fee because, you know, people may not want to buy a product here but they might want to join the club. But you can only charge a fee to cover operating costs. You can't earn a retail process.

It's not a retail store nor is it a restaurant. You can't have the prices for what -- any of the stuff they sell. You must always use disposable cups. Members not others only allowed to leave premises with limited carry-outs in small unbranded containers. Now, it smells to me like they're trying to stay from regulations with this club, doesn't it?

So I'll tell you what they say. The CFO says, the clubs first and foremost can't be retail establishments. They can't be Herbalife science stores, OK? The consumer cannot know what it is a club.

Now, making this up, they can't know it has anything to do with Herbalife. So that we (INAUDIBLE) or you can have no reference where somebody walking by will know it is Herbalife. (INAUDIBLE) growth driver. If the goal is daily consumption, why is it -- why do they make it impossible to generate sales or customers?

Now, club depicted in Herbalife today, no, it violates their own rules. You -- the club is not visible by use of window coverings, you know, the sun is just streaming in, now you have to use disposable cups to serve (INAUDIBLE). This is a beautiful looking drink in a non-disposable cup.

So what's interesting and fairly unbelievable is they said the competition for the club is McDonalds. There is the CFO, September 7th, 2011, you're not going to like my answer on competition. There's a question an analyst (INAUDIBLE). They view the competition as fast food. It is a different fast food, it is not to go after other supplement companies. It's to go after McDonalds to go out...

Now, if you really ask SEC filings, it says something different because our competitors include both direct selling companies such as Nu Skin Natures Sunshine, Alticor, Amway Melaleuca, Avon, Tupperware, Mary Kay as well as retail establishments. So they do say they compete with Watchers, Jenny Craig, GNC, Wal-Mart and retail pharmacies. I don't see McDonalds on this list.

Now, imagine you operate a McDonalds. We actually know something about the fast food business and we're going to go into fast food business. Rule number one is no signage, so that big M thing, done, OK? No advertising or promotion, no.

Windows? You can't see any. These are same three products, they're all liquids to every customer to breakfast, lunch and dinner.

Open or closed sign, not allowed to attract customers or people who walk in, OK? It clearly don't have a drive thru. No sales of product or complimentary offerings. Most of the Herbalife people are leaving now. I think that's the -- anyway, I wouldn't (INAUDIBLE).

(INAUDIBLE) products and service only company offerings. You can only charge fees to cover operating costs. Product costs explicitly cannot be recovered. OK, now you're in -- let's -- but how well have these clubs done?

Wow, let's look at Mexico. OK, so -- getting -- we -- we got -- we got -- we've got 408 stores and we've been in business for 50 years, OK?

Forty thousand, six hundred from the last time they told us in Mexico and we're at least working with that of McDonald's. McDonald's sucks also, 396,000, and then Starbucks is -- hard to display on the page.

So, in Mexico -- again, this is not a high income marketplace. OK, in -- of every 2,800 people. That's the equivalent market share of every fast food company you've ever heard of including Subway which is everywhere. And by the way, our GDP per capita is four times that of Mexico.

Now, here's another interesting thing. So, the goal here is to -- fast food. We happen to have the data on Burger Kings, we own the company. This is enormous for growth trajectory in Mexico where they go from -- this again -- this is retail sales.

So this is a fair metric. This is not club development which we viewed just a straight line up on the left. This -- they called "retail sales" in Mexico, and magically, it has no impact on sales of Burger King. So, it's amazing.

You have Burger -- McDonald's opened 10,000 -- 40,000 restaurants across from -- OK, here's a CEO, we've always talked about how long it took for the Nutrition Clubs to ramp up its -- so you're probably 18 to 24 months out into the future until you -- exponential growth.

So they launched what they call "Nutrition Club" -- it's in the 24 months, all of a sudden, the growth becomes exponential. What -- establishment has exponential growth? A pyramid scheme.

So if Herbalife Nutrition Clubs are not stealing milk from -- doing, and here, this is from a presentation from a distributor who's trying to recruit other distributors, talking about Nutrition Clubs. Purpose of the NC - Nutrition -- supervisors a month -- Nutrition Club, OK?

But always, we prefer the words of management. What we're seeing is really the slow -- to not opening up new stores that's on purpose or distributors want to retrench. Again, this is when -- and retrain and go back to a period of accelerated growth.

So I think what you will see -- they actually go up is wait through the (INAUDIBLE) blah, blah, blah, and then we want to go back to active recruiting which is another word for opening Nutrition Clubs.

All right. Another red flag, now it's sort of going to get actually really interesting - shipping and handling. I would pay attention. So, Avon, OK, if shipping and handling revenues which is what they -- to ship the stuff to them is actually a very small business. It's 1.6 percent of net sales. Herbalife, it's 50 -- below the company. That's a serious business - shipping and handling. They charge this -- as (INAUDIBLE) talked about.

Now, Herbalife does not detail the shipping and handling costs on its income statement. I know the SEC asked them kind of about that and I think it's useful to read but I'll just summarize. The information's in the -- they gave it to the SEC.

Shipping and handling costs for 2010, 2009, 2008 - 58 million, 49 million, 48 million. This was the correspondence from the SEC in Herbalife. So shipping and handling is 2.1 percent of net sales or 1.3 percent of retail sales but these seem like really small numbers, don't they, for a company in 84 countries with 4.5 billion or 4 billion of revenue?

Well, this is a really profitable business for them. Look at the margin they're earning on shipping and handling, OK? So you've got, you know, 397 million of revenues with 58 million of costs, they're making an operating profit in shipping and handling of 339 million.

So of the operating income of Herbalife, OK, this is the vast majority bid. It's a shipping company, OK? So if you compare them to other consumer product companies, right, as a percentage of net sales, again, the costs look really low. How can that be?

Now think about what Tupperware is shipping and how much it weighs - do that here - Herbalife has actually the heaviest products of the others: Avon are shipping, you know, lipstick; Colgate, toothpaste, and by the way, Colgate has an enormous manufacturing footprint around the world and distribution,

logistics and so on; Tupperware, they're shipping these very lightweight goods. So, Herbalife is the heaviest and it's got the lowest shipping cost and the most profitable shipping business.

They only have three distribution centers that were confined and they are 150,000 square feet and less. And then of that -- then they've got two other pieces of real estate. I think that's the company headquarter building.

But compared to the other companies we mentioned at the beginning, similar size businesses, you know, kind of the number of real estate assets they have there, kind of supply chain, looks awfully strange.

So they've got heavier products, OK? They have a limited footprint - most of the shipping actually comes from the United States. They have fragmented distribution, yet they got 3 million of these little distributors ordering a little bit each month, and they principally use FedEx to send stuff around, and they have, what, this daily consumption model where they constantly need to replenish people because they can't afford to buy more than a few days' worth of product. How is it that their shipping costs are so low? OK. We have some thoughts on that.

Let's start with the product buyback. One of the defenses that a multilevel marketing company does when it's a pyramid scheme is they do their best to say, "Look, we have a buyback policy. Anyone who wants to get out can just give the -- you know, send the product back. We'll give their money back." And this is Herbalife attorney. This is one -- again, one of the court cases arguing about this issue.

I don't think there's any way that anyone can ensure retail sales. Of course, again, they have -- supposed to have a list of every person who buys the product except to look at the evidence of how many people do we have who came back to Herbalife with a garage full of product and said, "You know, I've been duped into this. Here's my product. I can't sell this product and I will sell this product." The evidence is to the contrary. Again, this is Herbalife's attorney arguing they're not a pyramid scheme. The evidence is considerably to the contrary.

So they got a buyback policy, that's true. But they -- returns. And they talk about the fact there are only 40 basis points the product comes back, all -- even that number they exaggerate because they based it on that -- retail price. But even if it were 0.8 percent, that's actually a small number. It implies that 99 percent of the people are happy distributors.

Well, let's talk about why no one returns their product. So when you buy product from -- not the company but your -- you're not allowed to return it. And if you return product, I think Shane alluded this earlier, they -- if all those -- and economically, it just doesn't make sense for you to return in many of the customers.

(INAUDIBLE) was a 90 percent -- get -- there was a 10 percent restocking fee, and then, you know, other deductions. So you're getting 79 cents in the -- when asked this question in May -- now they make it a hundred percent. You get a hundred percent but of course there's these other charges that they don't tell you about.

And they should need to get out to return the product. You have to resign. You have to forfeit your downline. All right. So anyone who's -- you know, guys built -- been paying for his paycheck. There's a garage full of stuff.

It's just -- first of all, you can't return if you haven't bought in the last 12 months. You've got a year's worth of product, you can't send it back. And you're -- and family, and they may be reluctant to return the product but they're not using it.

They're also encouraging you to use the product, and once you open it, you can't return it. And since these are, again, small orders, you know, a lot of these -- guys with a little bit of product, it's kind of a pain to try to even return it. And again -- percentage of suggested retail price.

This issue on the buyback is such a great importance from a legal point of view, and to return the product, you have to -- affidavit you signed about selling to 10 or more customers and 70 percent of your product to third parties. Well, they audit you if you try to return products and -- that you didn't actually sell to -- other people or 10 customers.

And then you have a -- if you think about the customer -- if you didn't read a 48,000-word document, we didn't understand what it said. And you know, so, sign this to get your paycheck. Think about it.

I found this interesting. This is from the deposition of Bruce Roth, "The time we left Herbalife," this is again a senior distributor, "we had leftover product that we've been forced to purchase to get our paycheck from Herbalife.

"For approximately the last seven months we were in Herbalife, in mid-June 2006 to January 2007, we had to purchase approximately 7,500 -- to be eligible to receive our monthly paycheck from Herbalife.

"We left Herbalife, we had to throw out about \$5,000 of useless Herbalife product. We did not ask Herbalife to repurchase this product because Herbalife's buyback policy imposed too many restrictions."

In some countries, they don't even have a return policy. Now, in Amway, this whole 70 percent rule, 10-person -- Amway, the FTC investigated for being a pyramid scheme, ultimately -- and they had a real buyback policy.

So -- (INAUDIBLE) Herbalife has had a 10 percent up until the corporate ruling middle this year. Amway's policy has no expiration. Herbalife's expires in -- OK. Now we're getting closer to the end.

OK, how much hard has this company caused? Pyramid schemes are said to be inherently fraudulent because they must eventually collapsed. Chain letters, pyramid schemes, they make money -- the pyramid but must end up disappointing those at the bottom.

There are a lot of disappointed -- conservative estimate of the math. By the way, this is way too conservative, the number, but we're going to give you a -- harmed, net loss in proportion, total net loss, this is how we get there -- joined Herbalife.

They joined to participate in the business opportunity, not to consume the product. But then, just shy of 2 million -- include China, they use -- that's another story we'll get to some other day. And they have statistics -- 2012 and we can estimate the last six years - 1.1 million have failed. Have failed.

And these are people again, not non-sales (INAUDIBLE). These are people who've met the threshold, bought the \$3,000 of the products -- they can recruit people beneath them. The problem is that there are costs here. It's not just buying -- you got to spend money on business tools, communication leads, rent, gasoline to go to one of these extravaganzas.

You got to pay -- (INAUDIBLE) expenses. In this case, it was this person 1,500 -- we gave that example before the various cost, about \$1,800-\$1,700 in total non-product expenses. (INAUDIBLE) they spent -- a lot of the senior distributors are leads and a lot of the unwitting beginners buy a lot of leads for very large dollar amounts.

Opening a Nutrition Club costs about \$5,000 to \$6,000 according to the CFO and that's real money. And then, we have a little data from the -- class action about the marketing practices of Herbalife and this newest -- business systems that were used to help -- supposedly help people market. In this case, the losses were estimated at -- the expenses were estimated at -- went into the highest expenses of anyone in the class actions was 128,000.

OK. So we've got a couple of different metrics - 10,000 that will average in -- but we're going to be really conservative. We're going to say it's 2,000. The number's 2,000, OK, and we're ignoring the 10 million plus people that never even qualified to be a -- \$3,000 check, got into the scheme.

And we're probably -- we're not including the money they spent on the product, OK? We're just including what they spent to be in the business of being Herbalife. That's -- losses for these failed sales leaders.

Now, the point here is that -- the economic, what do they -- during this period? These are people whose expectations are raised enormously. They (INAUDIBLE) together funds from -- maxed out their credit cards to qualify to be a supervisor. They recruited friends. They recruited family to buy into a scheme that was a pyramid scheme.

Think about the impact on relationships. Your friends, you family, the closest people to you - those are the people you induced to participate. It's hard to quantify. (INAUDIBLE).

Actually -- let's roll.

(Start of Video Presentation)

UNIDENTIFIED PARTICIPANT: Why do people including the -- a pyramid scheme?

UNIDENTIFIED PARTICIPANT: Well, you know, the country Belgium had a lawsuit and we had a lawsuit with them that we have appealed -- that lawsuit.

UNIDENTIFIED PARTICIPANT: Well, but why is this constantly something people bring up regarding Herbalife in the multilevel...

UNIDENTIFIED PARTICIPANT: Well I don't think they constantly bring it up on Herbalife. I haven't heard these complaints. It's kind of fresh.

UNIDENTIFIED PARTICIPANT: Well I...

UNIDENTIFIED PARTICIPANT: ... the first I dealt with.

UNIDENTIFIED PARTICIPANT: OK, one last question because then I got to go.

UNIDENTIFIED PARTICIPANT: Oh, God. In our company?

UNIDENTIFIED PARTICIPANT: Yes.

UNIDENTIFIED PARTICIPANT: No.

UNIDENTIFIED PARTICIPANT: How many?

UNIDENTIFIED PARTICIPANT: No...

(End of Video Presentation)

ACKMAN: OK.

(Start of Video Presentation)

BRIAN(PH): A few years ago, convicted felon, Baron Minco (ph) -- and suddenly he's shut off.

JOHNSON: Yes.

BRIAN(PH): And then, it came out in 2010 in a court -- in a testimony -- in the court's testimony that you would pay him \$300,000. Why did you pay a convicted felon \$300,000?

JOHNSON: Well, we sued him. He -- about to go into litigation with -- our customers are sometimes called "distributors." That's the only confusion that we have, and they are distributors because they get a discount on our product.

BRIAN(PH): OK. (INAUDIBLE).

KATE(PH): Can you give us a -- Johnson, as to what percentage of your sales are outside that...

JOHNSON: (INAUDIBLE) percent.

KATE(PH): So the vast majority.

BRIAN(PH): So...

JOHNSON: Absolutely.

(End of Video Presentation)

ACKMAN: Mr. Johnson never fails to disappoint. That was -- now, we thought the presentation was done and -- he went on to CNBC yesterday. And I thought it would be worth -- I'm not going to present the part where he threatens me or he says the world is better off when Bill Ackman is -- let's hear what he has to say.

(Start of Video Presentation)

BRIAN(PH): Welcome back to street side -- there's Herbalife stock down -- percent. The news Bill Ackman noted investor shorting this stock according to CBC's (ph) -- now we are joined by the CEO of Herbalife, Michael Johnson. He has called in.

Michael, we do appreciate it. We know that it's a tough day. You don't want this kind of news to come out but you heard what -- what Ackman is claiming -- please, sir.

JOHNSON: Hi, Brian (ph). Hi, Kate (ph). First of all, guys, this isn't about Herbalife's business model. This is about Bill Ackman's -- this is wrong. This is totally wrong what's taking place. Where is the SEC protecting the individual shareholder right now? This is -- this appears to be another -- market by a group of short sellers.

Here's what we know, and let me just give you this quickly. An extraordinary number of -- just Friday. We previously learned this activity with (INAUDIBLE) that some kind of -- Mr. Ackman suddenly announced that he will make a presentation on Herbalife on Thursday - the day before the puts expire -- Mr. Ackman this morning and asked him to participate. Mr. Ackman said no and he refused.

Now we know what this has been going on -- as we save for the last eight months. This has been ridiculous what's -- a pyramid scheme? That's a bogus accusation.

KATE(PH): Mr....

JOHNSON: With millions of customers around the world, we don't pay for recruiting. We're -- we just announced the -- facility in North Carolina and plain over 500 people with the Governor of North Carolina this morning. This is a legitimate -- this proposition that -- that United States we better -- United States would be better when Bill Ackman is gone.

KATE(PH): Mr. Johnson, one of the concerns area -- consider your company to be a pyramid scheme and this is something that's come to you through the country of Belgium in a lawsuit more recently today -- and questions have been raised by other major investors including David Einhorn. He -- are the sales that go on of your products -- network, is that the case or is it broader than that?

JOHNSON: We have millions of customers, millions of times -- Lieberman Research was hired by us to go out and verify and validate that. We've been validating it for the last -- that's never been a problem, none with the FTC, none with anyone. Our customers are sometimes called "distributors." That's the -- we have. And they are distributors because they -- in our product.

BRIAN(PH): OK. Could you...

KATE(PH): Can you give us a percentage figure though, Mr. Johnson, as to what percentage of your sales are outside that distribution network, so the vast majority?

BRIAN(PH): So...

JOHNSON: Absolutely.

BRIAN(PH): So, Michael, I...

JOHNSON: (INAUDIBLE) Ackman, OK? I'm not going to agree or disagree. I don't know Bill that well. But...

BRIAN(PH): ... refuse that. Davis Einhorn, smart guy, we don't know his position but he raised questions as well -- what are they missing -- or not understanding...

JOHNSON: ... they need to come out and spend time with us just like Herb Greenberg did two weeks ago. They need to come out and see -- this opportunity, see the way that our products are made, see the way that our business is put into the marketplace.

These guys are listening to a report that was generated by a research firm in New York and we've asked for that, and we've sent her a legal letter as of this week -- report. We'll talk to you about anything. We -- this for 10 months now. This a ridiculous (INAUDIBLE) by people who are trying to manipulate our stock.

KATE(PH): We'll get more details on this tomorrow morning at a Midtown Manhattan presentation where Ackman's going to be getting into more details about his -- and I'm one of our hedge fund reporters. He considers this to be one of the best fundamental research cases he's ever seen, a short thesis on your company...

(End of Video Presentation)

ACKMAN: OK. Again, they're going to have a field day with that. But, I think you're now educated. So, actions speak louder than words. Mr. Johnson talked about boxing in the shadows on the last 10 months.

This is a graph of his stock -- he sold \$140 million of the stock of -- have to sell the stock but even not sure if he purchased -- I'm not aware of it. These were options -- key exercise and sold the shares - \$140 million of the stock.

And by the way, notice his -- sales. I know when David Einhorn came out and made an announcement, I asked a couple of questions. By the way, David has been fairly benign but I think important question as you saw -- the company's response was to launch a massive buyback program.

And they bought in one felt -- you know, they bought -- dollars with the stock. They did this transaction with Merrill or Merrill -- they bought the stock from Merrill. Merrill went to the market to -- CEO sold the shares to Merrill. It went into the market while Merrill was supporting the market. So, he's talking about marketing a relation, the SEC doing the investigation. I think it's a great idea.

Let me -- but let me be clear about Pershing Square where short the -- options expiring tomorrow but they're not options that we own -- going to be short a stock and have options expired tomorrow and not

have the company to have a proper opportunity -- pure. We could have made a lot of money buying put options. We'd rather just -- and we welcome the SEC looking at our books. But we -- OK.

Pyramid scheme, we're at the conclusion. You've been remarkably patient. Herbalife is a pyramid scheme. It's caused enormous harm, not just to millions of people in this country -- for thousands of people in this country, millions around the -- goal. Our goal is for the facts about Herbalife to be made public and Justice Brandeis, "Sunshine is the best disinfectant."

Now this -- give you one quick story and then we're done. OK. The quick story is I talked about a company, as mentioned, having sewn at the beginning called "MDIA" at a presentation I gave. And, it was a battle I have with the company that's a place over really seven years but -- into it December 2007. Not very few -- some people have paid attention short of the stock and did well but it -- in December, I gave another presentation. Six months -- presentation.

And at the end of it, I had all kinds of people saying, "Bill -- short of the stock, of course, you're negative on -- MDIA how can we trust you? You have an incentive to see stock price go down, and interestingly, you own a stock and you tell people why you like it, no one complains. But if you're short, people say, you know -- incentives."

So I said at that conference, I hereby commit to give a hundred percent of my profits from this -- if I ever make any profits on the -- to the Pershing Square Foundation. MDIA blew up. I personally got \$140 million, which is a lot of money, and I see that the Pershing Square Foundation -- \$61 million since that time, focus principally on -- you know, helping people raise people out of poverty in countries around the world, providing access to lower income people to everything from culture events, et cetera. And you know what? We certainly -- so it's time to reload, OK?

So, now this is sponsored by Arison (ph). So the first 25 million that I make goes to pediatric cancer charities, so, goes to Arison (ph), personal experience with cancer.

And, by the way, I guarantee it. So, even if we don't make money on this, OK, 25 million is going -- and, by the way, that takes their 25 million they raised to 50 million, so this is a good conference for them. You should do another.

Thank you, guys.

And the second part of it is I don't want to make any money from this, OK. I knew this is blood money, OK? So -- my after tax, whatever I get from this thing will go to the Pershing Square Foundation. We'll continue our mission which will help ultimately the communities that have been disadvantaged here. It's going to be a big number.

We have -- and we believe, OK, that we're right. So, let me call it a day and let everyone go to the bathroom. And then we'll do Q&A -- wants to stay around.

This time I won't have to wait seven years -- all the questions.

UNIDENTIFIED PARTICIPANT: OK. Appreciate it.

Tell Shane and (INAUDIBLE) to come. We're back. I thought we answered all the questions. Yes? Sir, if you could just say who you are and where you're from.

UNIDENTIFIED PARTICIPANT: (INAUDIBLE).

UNIDENTIFIED PARTICIPANT: Do we have a microphone for this gentleman? Do we have a microphone? Here it is.

BILL ACKER (PH): My name is Bill Acker (ph) from (INAUDIBLE). What do you expect for, you know, this information which you've presented to all these overeducated people who can influence the stock price?

How do you (INAUDIBLE) the kind of you know, people in the street, the you know, the less educated Spanish-speaking (INAUDIBLE) for them through regulation (INAUDIBLE) reading your website

ACKMAN: Well, a few things, we had a (INAUDIBLE) again as I said, we were interested in transparency as we open this up on the web at 8:45, we had 900 people listening for three hours, OK and that is a much more (INAUDIBLE) investment community.

We also, I think, have 50 members of the media here from the U.S. to you know, publications for the international press and international (INAUDIBLE) and also publications that focus on the Hispanic community so I think the message will get out to a very broad array of people and this is a story that affects you know, it has affected millions of people over a very long period of time and a lot of people (INAUDIBLE) are going to find this very interesting but you are a reporter, it is your job.

Next?

If you have a question, raise your hand. Yes in the middle there.

Hold on, let me (INAUDIBLE) were you the one that raised your hand at consuming Herbalife products? Was that you?

LINDA BOLTON-WEISER: Yes.

ACKMAN: So you work with Herbalife?

BOLTON-WEISER: I'm a distributor.

ACKMAN: OK.

BOLTON-WEISER: But in any case, I'm an analyst also, Linda Bolton-Weiser with B. Riley Caris.

And I have two rules when I short stocks and one is valuation and I like to when I short a stock, see a really high valuation and usually based on a cash flow type of valuation.

ACKMAN: Right.

BOLTON-WEISER: And there is a very specific catalyst and that catalyst to me is an actual financial performance catalyst coming from the company and not a presentation by somebody.

ACKMAN: Right.

BOLTON-WEISER: And so talk about your valuation analysis and where you see the stock going...

ACKMAN: Yes.

BOLTON-WEISER: And can you also talk about that (INAUDIBLE) private equity firms that might be interested in the Company because you know, they (INAUDIBLE) valuation and things like that.

ACKMAN: Sure.

BOLTON-WEISER: And...

ACKMAN: I think I understand your question.

BOLTON-WEISER: And can you talk about when you (INAUDIBLE) and cash flow and that will be a headline on the tape. Thanks.

ACKMAN: Sure.

I think that is an excellent question.

Our target price is (INAUDIBLE) we think the business will fail and again, pyramids, if you think about this pyramid, you got this 470 mile wide piece (INAUDIBLE) and you got this 1/5 a mile for the president's team and you need an enormous number of people at the base to support a very tiny number of people at the top and if the people at the base become more informed about the probability getting to the top, they might think twice about signing up and buying \$3,000 worth of product that they are never going to be able to sell.

And so pyramid schemes are inherently very (INAUDIBLE) to the point, I think it's extremely unstable because it's already very close to using up all of the population of the world and therefore, assume the population of the world that has money and again, they have gone very (INAUDIBLE) but they are running out of people to fill the bucket and what -- one of the things that we did here is help the Company and people the telecast and the (INAUDIBLE) watching the web and so on understand that the disclosure is not adequate and so I think they improved it, improved the disclosure and by the way, I think the catalyst here is the truth and we are making sure the truth is heard (INAUDIBLE).

Let me get to a valuation.

(INAUDIBLE) business is based on the present value of the cash you can take out of the business over the remaining life, and (INAUDIBLE) business has very little remaining life and it is also -- what is interesting and this is something I did mention in the presentation, the Company does not look particularly (INAUDIBLE) but actually it has real liquidity issues in my calculation, here is where they come from.

And so number one, the Company borrowed a bunch of money about (INAUDIBLE) and interestingly, if you were the CEO of a company like this, that generated enormous cash flow, you have tremendous confidence in your business and your building plans and all the other things that Mr. Johnson was talking about, and you (INAUDIBLE) stock buyback program that you know, unutilized and you got \$350 million of cash in your balance sheet, you just be in there today, this is like the greatest opportunity in the history of the world, I don't know where the stock is but buy every share back that you (INAUDIBLE) and I don't think they are going to do that because the (INAUDIBLE) the board the management at this point, in my opinion is the indemnity they have from the Company.

And that indemnity the more levers they put on the company (INAUDIBLE) they are unlikely to buy back stock. But if in fact, if you were a distributor (INAUDIBLE) the earnings of this company is going to collapse and because and an interesting thing to do if you are an analyst is go look at the cash flow statements of the Company over the last few years. The Company draws an enormous amount on its revolver and repays it intra-quarter and it's very strange. Why would a consumer products business (INAUDIBLE) stable sales is there so much intra-quarter volatility on the draws on the revolver and they allude to this section in one of the conference call transcripts and part of it has to be because people are -- the highest requalification month is January and by January 31, people need to make a decision whether they want to stay in the scheme or not.

If they choose not to stay in the scheme, it has a huge impact on the cash flow of the Company. It has a huge impact on the cash flow of the company normally because they got to buy it -- the participation of sales that came (INAUDIBLE) and one of the things that the SEC could do or the FTC could do is actually look at the ordering patterns.

We don't have access to it and the customers yield (INAUDIBLE) and the curious case of Mr. Powell. Mr. Powell -- I suspect that Mr. Powell (INAUDIBLE) many and that leads to a very unusual ordering pattern (INAUDIBLE) of the company and so I think the company is trading at an enormously -- gosh, I don't

know where it is right now but I think it is certainly at \$37 or \$20 or \$10 and it is an enormous so we think it's a sell.

All right, next?

Yes. In the back, please identify yourself if you are an Herbalife distributor, I would love to know, maybe buy some product.

UNIDENTIFIED PARTICIPANT: No, (INAUDIBLE) from Reuters.

So Mr. Johnson had a lot to say about you in this position yesterday before you even opened your mouth (INAUDIBLE) speculate what they will have to say today and what they will do about this after your lengthy presentation?

ACKMAN: I have no idea what they are going to do. But I look forward to the response and if we have gotten anything wrong, we will correct it and -- but I don't think we have.

Great questions. Let me give someone else a chance and I'm going to get back to Behrens. Even though I like Behrens, I'm a subscriber.

UNIDENTIFIED PARTICIPANT: It's (INAUDIBLE). I just -- if I understand what you are saying in the very first line on the income statement is a misstated number or a made up number and so I'm just -- like are you surprised the auditor is having kind of -- calm about that or it's just -- it's the very first line on the income statement you are saying is made up.

ACKMAN: Interestingly, so in the SEC filings, this company was public and was taken private and then went public in 2004. Prior to being taken private, they actually had this retail sales number on -- in the 10Q and 10K and when they went public again, they actually took off the retail sales number from the official part -- when the opening part of the 10Q where they have the income statement, they have some (INAUDIBLE) and then they have a section inside the 10Q and the 10k where they build it back up again.

The (INAUDIBLE) the SEC said, no you can't put this fictitious number on the official GAAP income statement of the community but somehow the SEC is allowing them to have this non-GAAP thing which they call retail sales in a separate (INAUDIBLE) public filings and the auditors have a lot of explaining to do.

Yes?

Yes. Behrens. Mr. Behrens.

Mic so the people in the audience and the 900 people on the phone.

Behrens. Sorry. To expect that any state regulators might get off and do anything in light of some of the -- I don't know (INAUDIBLE) you talk about?

ACKMAN: Look, I think, by the way the history here is a few things. Number one is very aggressive a company from a litigation point of view. Mr. Johnson talked about -- he said something like (INAUDIBLE) research firm asking for a copy of the research report, that is not what he did. OK?

I happen to know the research firm he sent a letter to, they sent a cease and desist asking them to retain all of their records. This is a tiny research firm that kind of stuff is frightening when it is a big corporation threatening basically to sue you and they very aggressive (INAUDIBLE) litigation all the time and they you know, they sue people and they sue failed -- you know, people who leave and they sue people (INAUDIBLE) the history of litigation, this is a very aggressive company and it's a very aggressive company politically and in terms of cultivating the Congress and senators and you heard -- quoted Mr. Johnson on what they do there.

So they do their best to manage the regulatory issues and I think the regulators have been look -- Shane is an absolutely brilliant guy (INAUDIBLE) figure out the marketing plan. OK? I have read it four times. OK. I'm pretty good, I'm not as good as Shane, OK?

It is unbelievably complicated and you know, they have done a - this -- let us put it this way, this is the best managed pyramid scheme in the history of the world, and Mr. Johnson should get a lot of credit.

Are you a distributor?

UNIDENTIFIED PARTICIPANT: My name is (INAUDIBLE), Loyalty Capital. I was just wondering in your research process, did you come (INAUDIBLE), Oriflame, any thoughts on their business models (INAUDIBLE)?

ACKMAN: You know, not all multi-level marketing companies are illegitimate. You know, we talked about Avon. We talked about (INAUDIBLE). You know, I think about Avon, people actually (INAUDIBLE), and they use the products, right? The key is you're actually in demand for the products.

And I don't really want to comment on the others. I think it's a spectrum. We think Erba (ph) and what their -- this is an industry that needs much more aggressive regulation. There are other problem companies to focus our energy and our short position.

And again, this is part of a theory of this. I mean, this way from -- even from, as Mr. Johnson says, a marketing manipulation point of view. We knew that all of the multi-level marketing stocks would decline (INAUDIBLE), which shows not to short any of them because I didn't want to make money off of (INAUDIBLE) other than with respect to this particular company if we just show more of the stock.

Do you want to ask another one? Yes, please do.

Again, if you can just remind me your name, I apologize I forgot.

BOLTON-WEISER: Thanks. It's Linda Bolton Weiser with B. Riley Caris.

This company...

ACKMAN: How long have you been a distributor out of curiosity?

BOLTON-WEISER: I just started following the stock a little while ago so it hasn't been that long.

ACKMAN: I know you're following the stock. You said you're a distributor.

BOLTON-WEISER: Yes. And I buy for my own personal use only.

ACKMAN: Only?

BOLTON-WEISER: Yes.

ACKMAN: (INAUDIBLE) price?

BOLTON-WEISER: Oh, can I -- let me just ask my question.

ACKMAN: No, no (INAUDIBLE). OK.

BOLTON-WEISER: This company -- I follow a few different (INAUDIBLE), and this company discloses more information than any of the other ones I follow. And one of the things they disclosed is the number of new distributors, you know, not just total distributors or active distributors.

ACKMAN: OK.

BOLTON-WEISER: And they also -- and they disclosed that by region quarterly.

ACKMAN: Right.

BOLTON-WEISER: So (INAUDIBLE). They also disclosed the total number of distributors which is the number I think they (INAUDIBLE).

ACKMAN: Right.

BOLTON-WEISER: And that's a number that the other companies only disclose about once a year as well. The other companies don't disclose new distributors at all.

ACKMAN: OK.

BOLTON-WEISER: OK.

ACKMAN: Do you have a question?

BOLTON-WEISER: So through those (INAUDIBLE) calculator retention rate for new distributors which would be much lower than the retention rate for the (INAUDIBLE) distributors which are more serious dudes, right? These are just the new ones.

ACKMAN: Again, I wanted to...

BOLTON-WEISER: These -- OK.

ACKMAN: ...(INAUDIBLE). If you want to (INAUDIBLE)...

BOLTON-WEISER: (INAUDIBLE) is what is the retention rate for new distributors and what is the trend of that retention rate? Thanks.

ACKMAN: I'll give that to Shane.

DINEEN: As far as new distributors, they started doing that in 2009. When they started doing that, they stopped disclosing new sales leaders.

I'll take every single number they disclosed (INAUDIBLE). They've got multiple definitions of the term "active." They've changed their qualification criteria retention rates to go up. So when you're looking at distributors and trying to back into retention rate, the 10K disclosure of how many distributors there are and the new distributor number and the regional key metrics supplement, just know that they recently (INAUDIBLE), right?

If you're a supervisor and you don't (INAUDIBLE), you go down to 35 percent. So the reason that the distributor number is higher which makes retention look higher partially and we don't know how much because (INAUDIBLE) doesn't tell somebody that failed supervisors got put in the (INAUDIBLE) makes that implied retention that you'd be calculating require. So rather than trying to speculate what the (INAUDIBLE) graveyard does in the distributor number, we look at things like the 2005 10K (INAUDIBLE) I said 90 percent (INAUDIBLE) the 2004 prospectus when I said 100 percent of non-sales leaders turned over.

And if the company wants to (INAUDIBLE) which is relevant, they should just provide that statistic, not three other statistics that you can (INAUDIBLE) got into it.

ACKMAN: Actually, one of the things you'll find interesting when you follow the company, I encourage you to do this for the geeks in the room, read the conference call transcripts from 2004 (INAUDIBLE) first quarter of 2005 to the present, and watch how they say, "This is the number you should be focused on." And then when a relatively short of period that number is no longer looking good, they create a new number. It was new sales leaders, then average non-sales leader, I mean, it's fairly remarkable.

So kind of the same way you see the boom, and then, you know, they talk about the performance of the countries growing at a 148 percent, 60 (INAUDIBLE). They don't tell you about the countries that are -- where they're falling off. So I do think there's a lot more information we don't have that we'd love to have. I wouldn't buy the stock on the basis of their disclosure.

Yes? (INAUDIBLE).

Any further questions in the room? Yes, sir, up here in front, if you could please introduce yourself.

ERIC(PH): Eric (ph) (INAUDIBLE) Capital. We're a family office. As you know, I used to work in Madoff (INAUDIBLE) a lot about. You can talk about -- educate us more about how the government regulates this and what they missed in this -- truly they know about this company.

ACKMAN: What I (INAUDIBLE) in terms of how the government regulates the company..

KLAFTER: They are subject to all the regulations that I (INAUDIBLE). It's not -- they don't have to formally register and go through some kind of due diligence process. But any of the jurisdictions which have relevant laws could look at our presentation and ask the company questions. So (INAUDIBLE) time, whether they have the resources, where this fits in there we don't know exactly but (INAUDIBLE) good look into this.

Bill stepped off. OK.

Are there other questions? Yes? (INAUDIBLE).

UNIDENTIFIED PARTICIPANT: (INAUDIBLE) with Bloomberg News. Have you guys spoken to David Einhorn and gotten his take on this as he short the stock? I mean, (INAUDIBLE) anything on that?

DINEEN: No, we have not.

KLAFTER: Yes?

BECKHORN(PH): John Beckhorn (ph), (INAUDIBLE). Could you just comment on the politically active side? How active is the industry in terms of lobbying politicians? Is Amway lobbying (INAUDIBLE)? How are they using that influence to maybe avert some pressure?

KLAFTER: Do you have data on that?

DINEEN: They announced yesterday that they opened a new manufacturing facility in Carolina. Michael Johnson references the governor. But to what extent they're using that to protect themselves is difficult to research.

KLAFTER: Other questions? There's one in the back.

KELLY BIT: Hi, I'm Kelly Bit with Bloomberg News. (INAUDIBLE) size of the sure position is pretty large, and I was wondering if you could tell us sort of characterize (INAUDIBLE) largest sure position are among the top sure positions.

KLAFTER: I don't think Shane and I are authorized to make that decision. I don't think Bill will either, but...

Well, thank you all for coming. We appreciate it. And please visit the website and look at our (INAUDIBLE).

END