

1 Philip D. Dracht (SBN 219044)  
pdracht@fabianlaw.com  
2 Scott M. Petersen (*pro hac vice*)  
spetersen@fabianlaw.com  
3 Jason W. Hardin (*pro hac vice*)  
jhardin@fabianlaw.com  
4 Fabian & Clendenin  
215 South State Street, Suite 1200  
5 Salt Lake City, UT 84151-0210  
Telephone: (801) 531-8900

6  
7 Thomas G. Foley, Jr., SBN 65812  
tfoley@foleybezek.com  
8 Justin P. Karczag, SBN 223764  
jkarczag@foleybezek.com  
9 Foley Bezek Behle & Curtis, LLP  
15 West Carrillo Street  
10 Santa Barbara, CA 93101  
Telephone: (805) 962-9495

11 Attorneys for Plaintiffs Dana Bostick,  
Anita Vasko, Judi Trotter, Beverly  
12 Molnar, and Chester Cote and the Class

13  
14 **IN THE UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16  
17 DANA BOSTICK, a California  
18 citizen, *et al.*,

19 PLAINTIFF,

20 vs.

21  
22 HERBALIFE INTERNATIONAL  
OF AMERICA, INC., a Nevada  
23 Corporation, *et al.*,

24 DEFENDANTS.  
25

Case No.: 2:13-cv-02488-BRO-SH

**FINAL REPORT OF COUNSEL  
RE STATUS OF CLASS ACTION  
SETTLEMENT DISTRIBUTION**

Hon. Beverly Reid O’Connell

26 Complaint filed: April 8, 2013  
27  
28

1 Plaintiffs submit this report under Paragraph 17 of the Amended Final  
2 Judgment and Order of Dismissal entered on June 17, 2015 and their previous  
3 report submitted to the Court. An issue addressed by this report and requesting  
4 Court assistance is how to proceed forward with uncashed settlement checks. Class  
5 Counsel requests the Court order those funds to escheat to the state in which the  
6 Claimant has last resided.

7 1. Distribution of Settlement Proceeds to Class Members and Attempts  
8 to Find Updated Addresses.

9 Accompanying this Final Report and being filed concurrently is the  
10 Declaration of Eric Robin regarding case administration. As set forth in Mr.  
11 Robin's Declaration, Kurtzman Carson Consultants LLC ("KCC") disbursed  
12 Settlement Payments to Class Members under the Settlement Agreement. Robin  
13 Decl. ¶2

14 The void date on each of the settlement checks was March 22, 2016. Robin  
15 Decl. ¶3. By February 21, 2016, 866 Class Members had not cashed the settlement  
16 checks sent to them by KCC. Robin Decl. ¶5. The aggregate value of the uncashed  
17 checks was \$682,580.55. Robin Decl. ¶5.

18 Before March 22, 2016, KCC emailed and called Class Members who have  
19 not cashed their settlement checks inquiring on the proper address and reminding  
20 them to cash their check before the stale date of March 22, 2016. Robin Decl. ¶6.

21 After March 22, 2016, which was the stale date on the initial round of  
22 checks, KCC did a skip trace analysis for the addresses of all Class Members who  
23 had uncashed checks to determine if they had moved or updated their address  
24 without informing KCC or Class Counsel. Robin Decl. ¶7.

25 On April 1, 2016, KCC reissued and mailed 211 checks to Class Members  
26 who had either provided a new address in response to the telephone and email  
27 campaign or the skip trace analysis provided a more accurate address. Robin Decl.  
28 ¶8. On April 7, 2016, KCC re-mailed all other Class Members who had not cashed

1 their checks but who had no additional address information. Robin Decl. ¶9.

2 As of April 7, 2016, 435 Class Members have not cashed their settlement  
3 checks sent to them by KCC. Robin Decl. ¶10. As of April 7, 2016, the aggregate  
4 value of the uncashed checks was \$265,677.49. Robin Decl. ¶10.

5 2. Uncashed Check Funds.

6 The Stipulation of Settlement provided for the Court to “oversee the  
7 distribution of any amounts remaining in the Net Settlement Fund pursuant to the  
8 *cy pres* doctrine to Consumer Federation of America, or such organization(s) as the  
9 parties may jointly propose and the Court approves.” Stipulation of Settlement,  
10 Docket no. 95, page 9, paragraph 4.1. While the unused funds to which no Class  
11 Member has made a claim – the “common funds” – will still go to the Consumer  
12 Federation of America under the Stipulation and the Court’s Final Order, the  
13 uncashed check funds are different because Class Members have made a claim on  
14 the funds – they just have not cashed their checks.

15 The court retains broad discretionary powers in shaping equitable decrees  
16 for distributing unclaimed class action funds.” *Six Mexican Workers v. Ariz. Citrus*  
17 *Growers*, 904 F.2d 1301, 1306, 1307 (9th Cir.1990) (citing 2 Newberg on Class  
18 Action § 10.17). One of the options available to the Court is to allow for the funds  
19 to escheat to the state where the Class Member has had their last known address.  
20 *See e.g., Taylor v. Westly*, 402 F.3d 924, 931 (9th Cir. 2005) (describing process of  
21 California’s unclaimed property rules).

22 The checks issued on April 1, 2016 and April 7, 2016 all have an expiration  
23 of 90-days. If those checks are not cashed within 90-days from issuance, those  
24 funds will not be accessible to Class Members. Class Counsel requests that the  
25 Court order that any unclaimed funds held after July 9, 2016 escheat to the state in  
26 which the Claimant has last resided.

27 Class Counsel will submit a stipulation and proposed order for the Court’s  
28 convenience by April 15, 2016.

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DATED: April 8, 2016

FABIAN & CLENDENIN, P.C.

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/Philip D. Dracht

Philip D. Dracht

Scott M. Petersen

Jason W. Hardin

Thomas G. Foley, Jr.

Justin P. Karczag

*Attorneys for Plaintiffs*

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**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

DANA BOSTICK, a California  
citizen, *et al.*,

PLAINTIFF,

vs.

HERBALIFE INTERNATIONAL OF  
AMERICA, INC., a Nevada  
Corporation, *et al.*,

DEFENDANTS.

Case No.: 2:13-cv-02488-BRO-RZ

**DECLARATION OF ERIC ROBIN  
RE: PROOF OF PAYMENTS MADE  
TO BUSINESS OPPORTUNITY  
CLAIMANTS, NAMED  
PLAINTIFFS, AND CLASS  
COUNSEL**

Hon. Beverly Reid O’Connell

I, ERIC ROBIN, declare:

1. I am a Senior Project Manager at Kurtzman Carson Consultants LLC ("KCC"), located at 3301 Kerner Boulevard, San Rafael, California. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth

1 herein and, if called as a witness, could and would testify competently thereto. This  
2 declaration supplements the declaration I executed on February 22, 2016.

3 2. On December 23, 2015, KCC issued and mailed settlement award checks  
4 and check transmittal letters to the 6,641 claimants with approved Business Opportunity  
5 claims. The total of the settlement awards for these 6,641 approved claimants was  
6 \$7,773,979.79.

7 3. The void date on each of the settlement award checks was March 22, 2016.

8 4. On February 5, 2016, KCC sent follow-up email notice to the 1,196 Class  
9 Members (who KCC had an email address on file) who had not cashed their checks  
10 alerting them that a check had been issued to them as payment for their claim in this case  
11 and inviting them to cash or deposit the check immediately or, if they had not received  
12 the check to contact KCC to update their address or to reissue the check.

13 5. As of February 21, 2016, 5,776 checks had been cashed for a total amount of  
14 \$7,091,399.24, and 866 checks were still outstanding for a total amount of \$682,580.55.  
15 In addition, the checks to the class representatives and to class counsel have been cashed.

16 6. Before March 22, 2016, KCC sent an email to those Class Members who  
17 had not cashed their check or otherwise responded and conducted a telephone campaign  
18 calling those Class Members (who KCC has a phone number on file) who have not still  
19 cashed their check or otherwise responded, reminding them of the issuance of the check  
20 and the deadline to cash that check.

21 7. After the March 22, 2016 stale date, KCC did a skip trace analysis for the  
22 addresses of all Class Members who had uncashed checks to determine if they had moved  
23 or updated their address without informing KCC or Class Counsel.

24 8. On April 1, 2016, KCC reissued and mailed 211 checks to Class Members  
25 who had either provided a new address in response to the telephone and email campaign  
26 or the skip trace analysis provided a more accurate address.

27 9. On April 7, 2016, KCC re-mailed all other Class Members who had not  
28 cashed their checks but who had no additional address information.

1           10. As of April 7, 2016, 435 Class Members have not cashed their settlement  
2 checks sent to them by KCC. As of April 7, 2016, the aggregate value of the uncashed  
3 checks was \$265,677.49.

4  
5 I declare under penalty of perjury pursuant to the laws of the State of California that the  
6 foregoing is true and correct to the best of my knowledge and that this declaration was  
7 executed this 8<sup>th</sup> day of April 2016, at Novato, California.

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10 Eric Robin

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