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over \$13,000 a month now.

- d. My income ended up getting to \$4,000 a month, part time, at Herbalife. . . . It's been five years, my income got up to \$10-1.2( incom2o9rk.12 -.Tj0 -1.9r792 c.66 -792 ln2ome got ago-10.31g to \$4140





1 her son. However, she had to put her son in daycare and work  
2 long hours while her husband worked eighty-hour weeks. After  
3 just four months as an Herbalife Distributor, she “went full-  
4 time, took [her] son out of daycare, and [] became that stay-at-  
5 home mom.” Today, she and her husband are both stay-at-  
6 home parents, “we travel the world, we have a six-figure  
7 income, and this company and the products have totally  
8 changed my life.”

9 30. Defendants also sponsor numerous events for Distributors in both  
10 English and Spanish. Many of these events include live presentations at which  
11 speakers boast about the high incomes they earn as Herbalife Distributors. These  
12 events have names such as “Extravaganzas,” “Leadership Development  
13 Weekends,” and “Success Training Seminars.”

14 31. Defendants strongly encourage Distributors to attend these events,  
15 which often require Distributors to pay an attendance fee and/or purchase a  
16 minimum amount of product from Herbalife. Defendants craft the agendas and  
17 select the speakers who present at these events. Speakers are usually chosen from  
18 among the very small percentage of Herbalife participants who have reached the  
19 highest status levels of the Herbalife organization. The presentations made by the  
20 selected top Distributors repeatedly empha

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States . . . . I lasted 7 years in a cleaning company, 7 years  
earning \$2,000 a month. We started the business doing it part  
time, the income started coming, it was something incredible,  
our lifestyle started to change spectacularly. . . . In the last  
three months the company has paid us more than \$45,000.

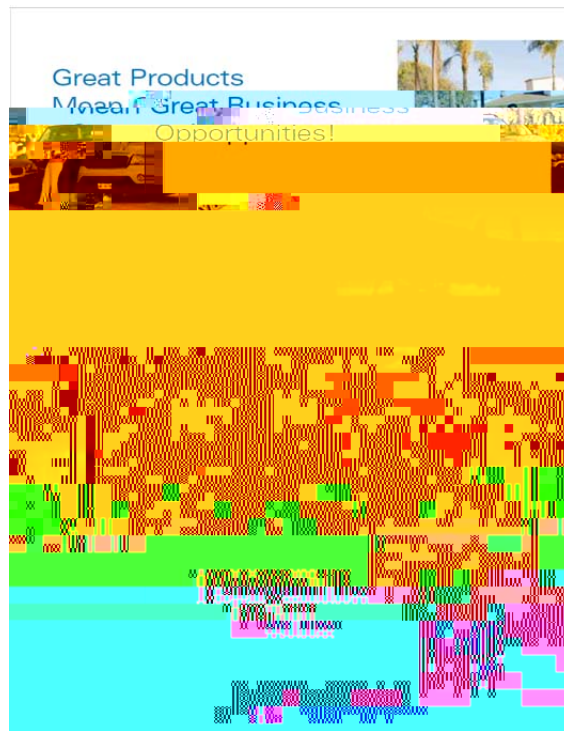
Welcome to Herbalife!

[Raul Sánchez, Herbalife Pre

1 determine. Thousands of others like you have achieved success  
2 with Herbalife. You can do it!

- 3 d. From nutrition to the business opportunity, you'll see there's no  
4 limit to your personal or financial potential, and others just like  
5 you have tapped into this incredible opportunity.

6 37. The "Presentation Book" is another of Defendants' publications that is  
7 available in both English and Spanish and that is provided to all new Distributors.  
8 It is designed to be shown to potential recruits. The English-language version of  
9 the Presentation Book that was included in the starter pack from 2012 through  
10 2014 stated that Herbalife offers "[t]he opportunity to earn more than you ever  
11 thought possible and make your dreams come true!" That publication, a page of  
12 which is shown below, included pictures of big houses, fancy cars, cash, and boats  
13 alongside the text "Great Products Mean Great Business Opportunities! Dream it.  
14 Do it."



27 38. Other versions of the Presentation Book have also included  
28 Distributor income testimonials:

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a. . . . I started my Herbalife business with the goal of quitting my job as a collection specialist within a year. Just 13 months later, I realized that dream! . . . And with my \$6,500-a-month income, we've been able to move into a new house and renovate.

b. Now, while earning \$25,000 a month with Herbalife, I get to do all the things I love: play music and ride my motorcycle!

c. We went from bankruptcy to being set for life!

39. From 2012 through 2013, the Spanish-language version of Presentation Book offered similar income testimonials (translated here into English):

a. The days when I would earn a living cleaning houses are behind me because now we are fully dedicated to our prosperous Herbalife business.

b. When we worked in factories our earnings could only pay for basic needs, but now we can take our 12 grandkids on vacations. These are the best years of our lives.

c. Before Herbalife I worked on a ranch tending cattle, but when



1 and wellness megatrend / the premier nutrition and wellness company in the world.  
2 Get in on Herbalife.”

3 44. In 2013, Defendants created and made available to Distributors a  
4 PowerPoint presentation to show prospective and newly-recruited Distributors.  
5 The presentation, which was still in use in 2015, claims that “total revenue in the  
6 fitness industry reached \$21.8 billion in 2012,” and that “statistics show a rise in  
7 consumer spending for body image concerns.” The presentation goes on to portray  
8 Herbalife as “the brand leader” in the meal replacement category, noting that in  
9 2012 the company had “over \$6.4 billion [i

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1 do, I earned \$1,000! . . . [M]y first month, part-time, I earned  
2 over \$5,000!

3 b. I earned \$420 in my first ten days. . . . working this business  
4 part-time. I was able to fire my boss, and I've never had a real  
5 boss since.

6 c. When I got started on these products, I got such great results  
7 that I made a thousand extra dollars my first month. . . . And so  
8 I kept working my business part-time . . . while I was still  
9 [working as a nurse] full-time . . .

10 d. When I got started, my first day I actually earned \$420 . . . .

11 e. [I]n the month of August I had retail sales of \$3,700.

12 49. Print materials included in the starter packs that all new Distributors  
13 must purchase also portray an opportunity to earn significant income through retail  
14 sales of Herbalife products. For example, from 2014 through at least December  
15 2015, the "Sales & Marketing Plan and Business Rules" book, which is included in  
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1 track either the existence or profitability of Distributor attempts to retail Herbalife  
2 products.

3 53. The overwhelming majority of Herbalife Distributors who pursue the  
4 business opportunity do not make anything approaching full-time or even part-time  
5 minimum wage because the promised retail sales to customers simply are not there.

6 54. Even according to Defendants' own survey, sales to customers outside  
7 the Herbalife network account for only 39% of Herbalife's product sales each year;  
8 the remaining approximately 60% is simply Herbalife selling to its own  
9 Distributors. [Herbalife Press Release, July 22, 2014]

10 55. Analysis of Defendants' own Distributor purchase data shows that,  
11 even under favorable assumptions about Distributors' market reach and sales price,  
12 the overwhelming majority of Herbalife Distributors who pursue the business  
13 opportunity make little or no money from retail sales. Under these assumptions,  
14 and assuming no costs other than an individual's total payments to Herbalife, half  
15 of Distributors whom the Defendants designate as "Sales Leaders"<sup>1</sup> average less  
16 than \$5 per month in net profit from retail alone, and half of these Distributors lose  
17 money.<sup>2</sup>

18 56. As a direct-selling company, Defendants encourage Distributors to  
19 sell product face-to-face to family and friends, and to customers with whom they  
20 are supposed to develop personal relationships. Distributors are taught to follow  
21 three key steps in retailing the product: use the product themselves, wear a button

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23 <sup>1</sup> "Sales Leaders" are defined by Defendants as Distributors who have reached  
24 status levels of "Supervisor" and above. Approximately \$3,000 in product  
25 purchases are required to reach the lowest level of "Sales Leader." "Sales  
26 Leaders" may purchase products from the Defendants at a 50% discount, which is  
27 the largest discount available to Distributors. See ¶¶ 111–18.

28 <sup>2</sup> This figure is based on analysis of Distributors who joined in 2009–11 and were  
designated as "Sales Leaders." It assumes that they sold 75% of the product they  
purchased, at the full suggested retail price, and incurred no expenses other than  
the monies they paid to Herbalife.

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advertising Herbalife, and talk to people (“use, wear, talk”).

57. In order to restrict sales to the direct-selling channel, Defendants have adopted rules that effectively prevent Distributors from being able to sell to a larger customer base. Defendants’ rules prohibit the sale of product in retail stores and impose many restrictions on online selling. Nonetheless, Defendants foster an illusion that Distributors can make significant full-time or part-time income from retail sales. One way in which Defendants accomplish this is by promoting the concept of the “Nutrition Club.” The Nutrition Club model was developed from an idea that started in Mexico and, according

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1 but not limited to product purchases, rent, utilities, supplies, and licensing fees—  
2 that they are unable to recover through the operation of their clubs, and end up  
3 losing money.

4 67. In fact, Defendants’ own telephone survey of 433 current and 69  
5 former Nutrition Club owners in February 2013 paints a discouraging picture of  
6 the experience of many Nutrition Club owners. Fifty-seven percent of Nutrition  
7 Club owners reported that their clubs made no profit or lost money. Club owners  
8 reported spending an average of about \$8,500 to open their club.

9 68. Some Nutrition Club owners continue to operate their clubs for little  
10 or no profit—or at a loss—for years, in the hope that things will turn around and  
11 their investment will eventually pay off. However, the promised retail-based  
12 business opportunity is simply not there.

13 69. Because Nutrition Clubs are expressly not retail establishments and  
14 are often unprofitable, they are principally of value to a small minority of  
15 financially successful Herbalife Distributors as a location from which they can  
16 recruit new participants.

17 70. As one top Distributor explained in a PowerPoint presentation:  
18 [Nutrition Club] Operators need to realize that the end goal is not how  
19 many \$4.00 services they sell each day as that is not the way for them  
20 to achieve their financial goals. Rather, it’s upgrading a Consumer to  
21 become a Customer and eventually a Distributor and ultimately  
22 having Distributors become Operators who will duplicate the  
23 Nutrition Club method.

24 [“Financial Success System” presentation dated March 24, 2010]

25 71. “Successful” Nutrition Club owners make money not from retailing  
26 product, but from recruiting other participants who are encouraged to open their  
27 own clubs, buy more product, and recruit more participants. When recruited  
28 participants purchase product to sell at their clubs, these purchases generate

1 recruiting rewards for the sponsor, even if the clubs themselves lose money. These  
2 recruiting rewards are the only pathway to achieve the high incomes touted in  
3 Defendants' promotional materials.

4 72. Regardless of whether Distributors operate a Nutrition Club,  
5 Distributors experience difficulty in selling product to customers outside the  
6 network. Nevertheless, Defendants' compensation structure puts pressure on  
7 Distributors to purchase large quantities of product in order to qualify for greater  
8 wholesale discounts and recruiting-based rewards (*see* discussion below at ¶¶ 135–  
9 44).

10 73. As a result, many Distributors buy product that they find difficult to  
11 sell. Although Defendants have a buy-back policy, in order to take advantage of  
12 the policy, a Distributor must resign his distributorship. Many Distributors have  
13 been unaware of the policy or, for various reasons, have been reluctant to attempt  
14 to use it.

15 74. Distributors dispose of excess product purchases in numerous ways.  
16 At the simplest level, when Distributors are left with product they are unable to sell  
17 they may give it to friends, throw it away, or gradually consume it themselves.  
18 Such self-consumption is not driven by genuine demand for the product, but is the  
19 easiest and most convenient way for a Distributor to get some benefit from product  
20 that the Distributor would not have bought absent his or her participation in the  
21 business opportunity. In other instances Distributors attempt to sell their excess  
22 inventory at a discount on auction websites or at flea markets, although such  
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1                    ***Distributors Abandon the Business Opportunity in Large Numbers***

2                    76. In light of their poor financial results, many Distributors either stop  
3 buying product or leave the organization altogether, resulting in a high turnover  
4 rate.

5                    77. Despite Defendants’ efforts to promote retention of Distributors  
6 whom it characterizes as “Sales Leaders,” in 2014 nearly 60% of first-time Sales  
7 Leaders did not purchase sufficient product to requalify as Sales Leaders.  
8 [Statement of Average Gross Compensation Paid by Herbalife to U.S. Members in  
9 2014]

10                   78. Retention for non-Sales Leaders, many of whom are pursuing the  
11 business opportunity, is even worse. An analysis of Defendants’ data shows that  
12 the majority of Distributors stop ordering Herbalife products within their first year,  
13 and nearly 50% of the entire Herbalife U.S. Distributor base quits in any given  
14 year. Roughly half of all Herbalife Distributors at any given time are in their first  
15 12 months of membership, and roughly 40% of the volume of Herbalife products  
16 sold by Defendants each year is sold to participants in their first year.

17                   79. During 2009–13, an annual average of approximately 242,000 new  
18 Distributors signed up in the United States. On average, 89% of those newly-  
19 recruited Distributors, however, simply replaced U.S. Distributors who left that  
20 same year, with an annual average of approximately 216,000 Distributors leaving  
21 during this time period.

22                   80. For example, while approximately 277,000 new Distributors joined  
23 Herbalife in the U.S. in 2013 (from a base of approximately 520,000 Distributors  
24 at the end of 2012), approximately 256,000 existing Distributors left that year.

25                    ***Defendants’ Business Opportunity is Based on Recruitment***

26                   81. Notwithstanding Defendants’ express and implied representations that  
27 Herbalife offers a retail-based business opportunity, in truth the only way to  
28 achieve wealth from the Herbalife business opportunity is to recruit other

1 Distributors. Purchases by these recruited Distributors, referred to as a  
 2 “downline,” generate rewards for the sponsoring Distributor. (See ¶ 119.)  
 3 Through a variety of channels, Defendants admit, expressly or by implication, that  
 4 recruiting is the key to financial success.

5 82. Defendants’ print materials emphasize the importance of recruiting  
 6 new Herbalife participants. For example, through at least December 2015 the book  
 7 “Building Your Business,” which is included in the starter kit that every  
 8 Distributor must purchase, discussed “the power of duplication” and illustrated  
 9 “what you can achieve” if “you recruit and retain two active Supervisors.” In the  
 10 illustration, the Distributor purchases a certain quantity of product (costing over  
 11 \$1,000) each month and recruits two new participants who also purchase that  
 12 quantity each month. Those two participants then recruit a total of twelve  
 13 additional participants in two additional levels below them. For each month that  
 14 the Distributor and the fourteen recruits purchase the specified quantity of product,  
 15 the Distributor will earn \$1,750.



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 25 83. The English-language version of the 2012-2014 Presentation Book  
 26 also includes examples of how recruiting two or three new participants can  
 27 translate into \$2,450 to \$8,775 per month for the recruiter, assuming that the new  
 28 participants make substantial wholesale product purchases and themselves recruit





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1 make little or no money from recruitment-based rewards, the top 0.03% of U.S.  
2 Distributors (205 individuals) received average gross reward payments of over  
3 \$600,000 per year. [Statement of Average Gross Compensation Paid by Herbalife  
4 to U.S. Members in 2014]

5 93. For the fewer than 1% of Distributors who receive substantial income  
6 through Defendants' business opportunity, their compensation for recruiting large  
7 numbers of new business opportunity participants dwarfs whatever they might  
8 make from retail sales of the product.

9 94. The overwhelming majority of Herbalife Distributors who pursue the  
10 business opportunity earn little or lose money, while those few Distributors who do  
11 make a living from their Herbalife business do so by recruiting other business  
12 opportunity participants who purchase product, not by retailing the product.

13 **To Confuse Participants and the Public About Distributors' Poor Financial**  
14 **Outcomes, Defendants Understate the Percentage of**  
15 **Distributors Who Are Pursuing the Business Opportunity**

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1 from any cost or liability arising from the participant's breach of the agreement or  
2 the conduct of his or her Herbalife business.

3 98. Since 2013 Defendants have publicly claimed or implied that a mere  
4 27% of their Distributors are pursuing the business opportunity either full-time or  
5 part-time, and that a "substantial majority" (73%) are simply interested in buying  
6 Herbalife products for their own personal consumption.

7 99. Defendants' express or implied claim that a "substantial majority" of  
8 their Distributors are not pursuing the business opportunity is based not on  
9 Distributor behavior, but on surveys commissioned by Defendants beginning in  
10 July 2012 that are flawed and unreliable. For example, many survey participants  
11 who were included in the category of Distributors who purportedly "joined  
12 Herbalife primarily as discount customers" themselves reported that they quit  
13 Herbalife because "finding new customers was too difficult and/or time  
14 consuming," or the "business was harder than [they] originally believed."

15 100. Based on such survey results, even some Distributors who reach  
16 "President's Team" (the highest status level in Herbalife) and earn over \$100,000  
17 in recruiting rewards annually from the business opportunity have been categorized  
18 in Defendants' representations as merely "discount buyers."

19 101. When observable Distributor behavior from Defendants' data is  
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1 Retailing Your Products,” “Building Your Business,” and “Sales & Marketing Plan  
2 and Business Rules”; and a single receipt form that can be given to a customer in  
3 the event of a single sale of product.

4 108. Defendants’ rules provide that participants must enter into an  
5 “Agreement of Distributorship” either online or, if the pack is not purchased  
6 online, in hardcopy form. (In 2013, Defendants began calling the agreement an  
7 “Herbalife Membership Application and Agreement” rather than an “Agreement of  
8 Distributorship.” The change in terminology, however, was not accompanied by  
9 any substantive change to the nature of the business opportunity available to  
10 Herbalife participants.) Upon purchasing the International Business Pack and  
11 submitting the Agreement to Defendants, a participant is assigned an Herbalife ID  
12 number and becomes an official Distributor.

13 109. The details of Defendants’ compensation program are complex and  
14 convoluted, and involve specialized terminology and concepts. These details,  
15 terminology, and concepts are laid out in a book included in the International  
16 Business Pack entitled “Sales & Marketing Plan and Business Rules.” The 2014  
17 version of the “Sales & Marketing Plan and Business Rules” has 114 pages and  
18 consists of more than 58,000 words. The book is difficult to read and understand  
19 and many participants rely upon their sponsors to explain the program.

20 110. The core concepts of Defendants’ compensation program are as  
21 follows:

- 22 a. Participants advance to higher status levels in the organization  
23 and qualify for reward payments based on product purchases  
24 (not product sales); and
- 25 b. The only way to reach the highest levels of compensation is to  
26 recruit more participants.

27 A simplified version of the compensation plan is set forth below.

28 111. New recruits start at the lowest level, called “Distributor” (or, since

1 2013, “Member”). A Distributor can purchase product from Defendants at a

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1 recruited a downline, is called “Royalty Overrides.” To understand how Royalty  
2 Overrides work, it is necessary to understand two “volume” concepts in  
3 Defendants’ Sales & Marketing Plan: “Total Volume” and “Organizational  
4 Volume.”

5           123. “Total Volume” is a total of the Volume Points associated with a  
6 participant’s own product purchases, plus the Volume Points associated with the  
7 product purchases made by certain members of the participant’s downline.  
8 Specifically, the “Total Volume” of Participant A would include the product  
9 purchases of Participant A’s downline members who (i) have a status level lower  
10 than “Supervisor,” and (ii) do not have any participants who have a status level of  
11 “Supervisor” or higher in the chain of participants between them and Participant A.

12           124. In simplified form, “Organizational Volume” refers to the Total  
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1           133. In 2011, the top U.S. Distributor received over \$7 million from  
2 Defendants, broken down as follows:

3 Wholesale Profits	\$2,847
4 Royalty Overrides	\$944,058
5 Production Bonuses	\$4,256,817
6 Mark Hughes Bonus	\$2,000,000
7 Total	\$7,203,722

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9 These reward payments were not based on retail sales to consumers, but on  
10 wholesale purchases made by downline Distributors in his worldwide organization.

11           134. The only way to reach the “TAB Team” status levels is to recruit a  
12 large organization of participants at the “Supervisor” status level who purchase  
13 thousands of “Volume Points” worth of product. Thus, for example, to reach the  
14 top level, “President’s Team,” a participant must recruit an organization of  
15 Supervisors who generate at least 10,000 Royalty Override points each month for  
16 three consecutive months. Because the maximum Royalty Override percentage is  
17 5%, this means that the first three levels of Supervisors must collectively generate  
18 a minimum total of 200,000 Volume Points of product purchases each month, for a  
19 total of 600,000 Volume Points of product purchases over the three months.

20           ***Defendants’ Compensation Plan Incentivizes Wholesale Product Purchases***

21           135. Defendants’ compensation plan requires large wholesale purchases of  
22 products in order for a participant to advance to a higher status level and to make  
23 money from rewards. As explained below, participants must purchase product  
24 from Defendants, or convince others to join and purchase product from  
25 Defendants, in order to (i) qualify to move up to a higher status level; (ii) requalify  
26 for those status levels and prevent being demoted; and (iii) qualify to receive  
27 “Royalty Override” and “Production Bonus” payments from Defendants. These  
28 product purchases are made as payments to participate in the Herbalife operation

1 rather than in response to actual retail demand for Herbalife products.

2 ***Product Purchases Are Required to Advance to Higher Levels***

3 136. To advance from the lowest status level, “Distributor,” to any of the  
4 status levels providing a higher discount, an Herbalife participant must make  
5 substantial wholesale product purchases from Defendants and/or recruit downline  
6 participants who will make substantial wholesale product purchases from  
7 Defendants.

8 137. For example, reaching the status of “Supervisor” requires wholesale  
9 product purchases totaling a minimum of 4,000 Volume Points. An order totaling  
10 4,000 Volume Points costs roughly \$3,000 and would entail a large amount of  
11 Herbalife product. As an example, the following would represent a 4,000 Volume  
12 Point order sufficient to qualify a participant as a “Supervisor”:

13

14	SKU	Description	Qty	Volume Points Each	Volume Point Total
15					
16	3106	Formula 1 shake mix canister (30 servings)	16	32.75	524.00
17					
18	0365	Protein bar deluxe (14 bars)	32 boxes	13.22	423.04
19					
20	1188	Herbal aloe concentrate (half gallon)	8	92.55	740.40
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22	0106	Herbal tea concentrate (3.5 oz.)	16	34.95	559.20
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1           138. It is impossible to reach the highest status levels of Defendants’  
2 compensation program—“Global Expansion Team,” “Millionaire Team,” and  
3 “President’s Team”—without recruiting new participants who collectively  
4 purchase large quantities of product. Under Defendants’ compensation plan,  
5 recruitment is required to reach these status levels.

6                   ***Product Purchases Are Required to Requalify for Status Levels***

7           139. Participants who obtain a particular status level must annually  
8 “requalify” to retain that level or be demoted. Requalification is based on the  
9 volume of wholesale product purchases by the participant and/or his organization.  
10 To requalify as a Supervisor and retain his or her downline, for example, a  
11 participant must accumulate another 4,000 or 10,000 Volume Points, depending on  
12 the method of requalification.

13                   ***Monthly Product Purchases Are Required to Qualify for Reward Checks***

14           140. Participants who are eligible to receive “Royalty Overrides” or  
15 “Production Bonuses” must also accumulate, on a monthly basis, specific volumes  
16 of product purchases to “qualify” to receive those reward payments. An eligible  
17 participant “qualifies” to receive “Royalty Override” and “Production Bonus”  
18 reward payments for a given month by accumulating in that month a threshold  
19 amount of “Total Volume” ranging from 2,500 Volume Points to 5,000 Volume  
20 Points.

21           141. All of these volume requirements are based on wholesale *purchases* of  
22 product from Defendants. Defendants do not track what happens to the product  
23 after a participant purchases it.

24           142. Higher-level Distributors who are eligible to receive reward payments  
25 frequently buy Herbalife products in order to meet the thresholds for obtaining  
26 these rewards, rather than to satisfy consumer demand. For example, analysis of  
27 Defendants’ purchasing data reflects that, in the months in which participants at the  
28 “TAB Team” levels—the highest levels in the Herbalife marketing plan—received

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**VIOLATIONS OF THE FTC ACT**

150. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in

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1 **CONSUMER INJURY**

2 163. Consumers have suffered and will continue to suffer substantial  
3 monetary loss as a result of Defendants' violations of Section 5(a) of the FTC Act.  
4 In addition, Defendants have been unjustly enriched as a result of their unlawful  
5 acts and practices. Absent injunctive relief by this Court, Defendants are likely to  
6 continue to injure consumers, reap unjust enrichment, and harm the public interest.

7 **THIS COURT'S POWER TO GRANT RELIEF**

8 164. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court  
9 to grant injunctive and such other relief as the Court may deem appropriate to halt  
10 and redress violations of any provision of law enforced by the FTC. The Court, in  
11 the exercise of its equitable jurisdiction, may award ancillary relief, including  
12 rescission or reformation of contracts, restitution, the refund of monies paid, and  
13 the disgorgement of ill-gotten monies, to prevent and remedy any violation of any  
14 provision of law enforced by the FTC.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act,  
17 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

- 18 A. Enter a permanent injunction to prevent future violations of the  
19 FTC Act by Defendants;
- 20 B. Award such relief as the Court finds necessary to redress injury  
21 to consumers resulting from Defendants' violations of the FTC  
22 Act, including but not limited to, rescission or reformation of  
23 contracts, restitution, the refund of monies paid, and the  
24 disgorgement of ill-gotten monies; and
- 25 C. Award Plaintiff the costs of bringing this action, as well as such  
26 other and additional relief as the Court may determine to be just  
27 and proper.
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Respectfully submitted,

DAVID C. SHONKA  
Acting General Counsel

Dated: July 15, 2016

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