

1 CHARLES E. PATTERSON (CA SBN 120081)
 CPatterson@mofocom
 2 NANCY R. THOMAS (CA SBN 236185)
 NThomas@mofocom
 3 TERI M. STEIN (CA SBN 234648)
 TStein@mofocom
 4 MORRISON & FOERSTER LLP
 555 West Fifth Street
 5 Los Angeles, California 90013-1024
 Telephone: 213.892.5200
 6 Facsimile: 213.892.5454

7 Attorneys for Plaintiff
 8 HERBALIFE INTERNATIONAL OF AMERICA,
 INC.

9
 10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA
 12 WESTERN DIVISION
 13

14 Herbalife International of America, Inc.,
 15 a Nevada Corporation,

16 Plaintiff,

17 v.

18 Robert E. Ford and Julia A. Ford,
 husband and wife; Bruce H. Roth and
 19 Nancy A. Roth, husband and wife; Jeff
 Orr and Kathy Orr, husband and wife;
 20 Dianna N. Thompson; and Jason Fisher,

21 Defendants.
 22
 23
 24
 25
 26
 27
 28

Case No. CV 07 2529 GAF (FMOx)

**SUPPLEMENTAL
 DECLARATION OF NANCY R.
 THOMAS IN FURTHER
 SUPPORT OF PLAINTIFF
 HERBALIFE INTERNATIONAL
 OF AMERICA, INC.'S MOTION
 FOR A PROTECTIVE ORDER
 CONCERNING DEFENDANTS'
 NOTICE OF DEPOSITION OF
 MICHAEL JOHNSON**

Date: Mar. 11, 2009
 Time: 10:00 a.m.
 Place: Courtroom F, 9th Floor -
 Spring Street

Complaint Filed: Apr. 16, 2007
 Discovery Cut-Off: Mar. 13, 2009
 Pretrial Conf.: Apr. 27, 2009
 Trial Date: May 26, 2009

Magistrate Judge Fernando M.
 Olguin

1 I, Nancy R. Thomas, declare as follows:

2 1. I am an attorney licensed to practice in California and am a partner in
3 the law firm of Morrison & Foerster LLP, counsel of record for Plaintiff Herbalife
4 International of America, Inc. (“Herbalife”) in this matter. I am familiar with the
5 facts set forth herein, and if sworn as a witness, I could and would testify
6 competently thereto.

7 2. Defendants have already deposed three Herbalife executives. The first
8 deponent, Jacqueline Miller, was Herbalife’s Vice President of Distributor Policy
9 Information from 1999 to 2008. Ms. Miller testified extensively about Herbalife’s
10 rules, policies and procedures, Herbalife’s focus on retail sales; and sales on eBay
11 of Herbalife products. Defendants deposed Ms. Miller for the full seven hours
12 authorized by Federal Rule of Civil Procedure 30(d)(1). Attached as Exhibit A is a
13 true and correct copy of relevant excerpts from the transcript of Ms. Miller’s
14 February 11, 2009 deposition.

15 3. The second deponent, Paul Greenberg, is Senior Legal Counsel at
16 Herbalife. Mr. Greenberg testified extensively about Herbalife’s rules, policies and
17 procedures, Herbalife’s focus on retail sales, sales on eBay of Herbalife products;
18 and Mr. Ford’s resignation letter. Defendants deposed Mr. Greenberg for the full
19 seven hours authorized by Federal Rule of Civil Procedure 30(d)(1). Attached as
20 Exhibit B is a true and correct copy of excerpts from the transcript of Mr.
21 Greenberg’s February 17, 2009 deposition.

22 4. Mr. Greenberg also testified that he is responsible for promulgating
23 Herbalife’s rules and that Mr. Johnson does not approve the rules. (*Id.* at 73:24-
24 74:2, 74:3-4.) He further testified that he was not aware of Mr. Johnson
25 participating in any corporate meetings regarding the filing of this suit. (*Id.* at
26 34:19-35:21.)

27 5. The third deponent, Michael Mckee, is Herbalife’s Vice President of
28 U.S. Sales. Mr. Mckee also testified about Herbalife’s rules, policies, and

1 procedures, Herbalife's focus on retail sales, sales of Herbalife products on eBay,
2 and attrition rates for Herbalife distributors. Defendants deposed Mr. Mckee for the
3 full seven hours authorized by Federal Rule of Civil Procedure 30(d)(1). Attached
4 as Exhibit C is a true and correct copy of excerpts from the transcript of Mr.
5 Mckee's February 18, 2009 deposition.

6 6. Although Defendants contend Herbalife refused to produce
7 Mr. Probert, the former President of Herbalife, my letter to their counsel dated
8 January 7, 2009, states that my firm represents Mr. Probert and that I was
9 authorized to accept a subpoena on his behalf. Defendants' counsel never
10 responded or indicated in any way that they intended to depose Mr. Probert.
11 Attached hereto as Exhibit D is a true and correct copy of that January 7, 2009
12 letter.

13 7. Within the past month, Defendants served 16 sets of discovery, 14 of
14 which seek information on the topics on which they contend they need to depose
15 Mr. Johnson. Herbalife's responses are due between March 5, 2009 and
16 March 13, 2009. Combined, there are 191 separate outstanding requests for
17 production of documents, interrogatories, and requests for admission in these sets
18 of discovery. At least 122 of these 191 requests concern Herbalife's rules, policies
19 and procedures, Herbalife's focus on retail sales, sales of Herbalife products on
20 eBay, and attrition rates of Herbalife distributors. Attached as Exhibit E is a true
21 and correct copy of the 6 outstanding sets of interrogatories served by Defendants.
22 Attached hereto as Exhibit F is a true and correct copy of the 2 outstanding sets of
23 requests for production served by Defendants that address these issues. Attached
24 hereto as Exhibit G is a true and correct copy of the outstanding set of requests for
25 admission that address these issues.

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct, and that this declaration was
3 executed on February 25, 2009, at Los Angeles, California.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

/s/ Nancy R. Thomas

Nancy R. Thomas

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

HERBALIFE INTERNATIONAL OF)
AMERICA, INC., a Nevada)
corporation,)
)
)
Plaintiff,)

vs.)

) Case No. CV 072529
) GF (FMOx)

ROBERT E. FORD and JULIA A. FORD,)
husband and wife; BRUCE H. ROTH and)
NANCY A. ROTH, husband and wife;)
JEFF ORR and KATHY ORR, husband)
and wife; DIANNA N. THOMPSON; and)
JASON FISHER,)
)
Defendants.)

AND RELATED COUNTERCLAIMS.)
_____)
_____)

VOLUME I

DEPOSITION OF JACQUELINE A. MILLER

February 11, 2009

Tracy L. Mafi, CSR # 11850
⊗ 276987

BARKLEY
Court Reporters

(212) 808-8500 New York
(702) 366-0500 Las Vegas

(310) 207-8000 Los Angeles
(915) 922-5777 Sacramento
(858) 455-5444 San Diego

(949) 955-0400 Irvine
(408) 885-0550 San Jose
(951) 686-0606 Riverside

(415) 433-5777 San Francisco
(760) 322-2240 Palm Springs
(818) 702-0202 Woodland Hills

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

HERBALIFE INTERNATIONAL OF)
AMERICA, INC., a Nevada)
corporation,)

Plaintiff,)

vs.)

Case No. CV 072529
GF (FMOx)

ROBERT E. FORD and JULIA A. FORD,)
husband and wife; BRUCE H. ROTH and)
NANCY A. ROTH, husband and wife;)
JEFF ORR and KATHY ORR, husband)
and wife; DIANNA N. THOMPSON; and)
JASON FISHER,)

Defendants.)

AND RELATED COUNTERCLAIMS.)
_____)

VOLUME I

Deposition of JACQUELINE A. MILLER, taken
on behalf of the Defendants and Counterclaimants, at
4695 MacArthur Court, Suite 310, Newport Beach,
California, commencing at 9:05 a.m., Wednesday,
February 11, 2009, before Tracy L. Mafi, Certified
Shorthand Reporter No. 11850.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q What responsibilities, if any, do you have with

1 respect to the enforcement of Rule 20-C and 20-D?

2 A I, in the past, oversaw the department, and
3 through -- through the enforcement. So I have direct
4 communication with Cheryl Strong on that enforcement and
5 various, you know, procedural aspects of it.

6

7

8

9

10

11

12

13

14

15

16

17 REDACTED

18

19

20

21

22

23

24

25

1 Q Since January of 2006, to your knowledge, have
2 any Herbalife distributors been disciplined in any way
3 for violating the 70-percent rule, 20-D?

4 A I believe there have been a number of those.

5 Q How many?

6 A I can't -- I can't say how many.

7 Q Can you please give me a range?

8 A I would really be guessing to give you a
9 range.

10 Q Okay. Then I'm entitled to narrow the field, so
11 I'm going to do so. Have more than 50 distributors since
12 January of 2006 been disciplined for violating the
13 70-percent rule?

14 A I don't believe so.

15 Q Have more than 25 distributors been disciplined
16 for violating that rule?

17 A I don't believe so.

18 Q Have more than ten distributors been disciplined
19 for violating the 70-percent rule?

20 A That's possible.

21 Q So now we've established a range of between 10
22 and 25; is that correct?

23 A Yes.

24 Q Can you narrow the range further?

25 A In what way?

1 Q In other words, can you tighten the range up?
2 We know it's less than 25. Can you bring the 25 down a
3 little bit for me so we could be more precise?

4 A No.

5 Q Do you remember the names of any of those
6 distributors

7 A No.

8 Q -- who

9 Do you remember the nature of the discipline
10 that those distributors faced?

11 A No.

12 Q Since January of 2006, have you received any
13 reports regarding Herbalife distributor compliance with
14 the ten-customer rule, Rule 20-C?

15 A Received reports?

16 Q In other words -- let me ask you another
17 question.

18 What, if anything, does Herbalife do to ensure
19 that its distributors are complying with the ten-customer
20 rule, Rule 20-C?

21 A We conduct -- and when I say "we,"
22 Herbalife -- conducts random audits on a monthly basis.
23 And in the process of ethical investigations, we may also
24 investigate the ten-customer rule.

25 Q Have you personally received any reports

1 regarding the random audits about which you've testified
2 since January of 2006?

3 A No.

4 Q Who is responsible for conducting the random
5 audits?

6 A A group in Jenny Hienrich's other departments.
7
8
9
10
11

12 REDACTED
13
14
15
16

17 Q The departments that you've just listed in your
18 previous answer, are any of them responsible for
19 enforcing Rule 20-C or 20-D?

20 A Someone in her departments -- and I don't know
21 in which area -- conducts the audits.

22 Q Do you know the person who conducts the
23 audits -- and this is the ten-customer audits that we're
24 talking about, just to make sure we're on the same track.
25 The ten-customer audits, Rule 20-C, the person that

1 conducts those audits, do you know what department that
2 person is in?

3 A No, I don't.

4 Q Do you know the name of that person?

5 A No.

6 Q Do you know whether that person is a man or a
7 woman?

8 A No. I don't even know if it's only one person.
9 It may be more than one.

10 Q Do you know any of the people that conduct the
11 audits?

12 A No.

13 Q Have you ever seen any documents that relate to
14 any of the audits?

15 A No. I've only seen documents that relate to the
16 procedure, at some time.

17 Q If you wanted to find those documents -- if you
18 wanted to find them and, let's say, produce them to me in
19 this case, how would you go about doing that?

20 A I would call Jenny Hienrich.

21 Q Okay. What would you ask her?

22 A For documents related to the audits.

23 Q And are you certain those documents exist?

24 A I'm sure that if audits are being conducted,
25 they're keeping documentation; yes.

1 Q Are you sure that audits are being conducted?

2 A Yes.

3 Q And are you then certain that documents exist?

4 A Yes.

5 Q Who, if anyone, is responsible for conducting
6 the audits regarding the 70-percent rule, Rule 20-D?

7 A As far as I understand, the audit does not
8 include -- the ten-customer audit does not include an
9 audit of the 70-percent rule.

10 Q I figured that, but I'm not asking you -- maybe
11 I'll ask you a better question

12 A Okay.

13 Q -- which is more precise.

14 Are audits conducted to ensure that customers
15 are complying with the 70-percent rule, Rule 20-D?

16 A You mean distributors; right?

17 Q Sorry. Distributors.

18 A I'm not aware of audits on that, except for the
19 ones that are conducted within an ethical
20 investigation.

21 Q Do you know -- maybe I asked you that question.
22 Do you know whether any Herbalife distributor, since
23 January of 2006, has been disciplined in any way for
24 violating the 70-percent rule, 20-D?

25 A I believe I said "yes" to that before.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q Okay.

MR. PATTERSON: Let me interrupt for a second.
When she was talking about the 10 to 25, that was with
respect to the 70-percent rule.

MR. STEPHENS: Okay.

THE WITNESS: Yes.

MR. PATTERSON: You asked her first about
ten-customer, and she said she didn't know how many.

MR. STEPHENS: Okay.

MR. PATTERSON: And she estimated them between
10 and 25 of the 70 percent.

BY MR. STEPHENS:

Q Do you agree with what he just said?

A Yes.

Q Okay. With respect to those that have been
disciplined -- those Herbalife distributors that have
been disciplined for violations of the 70-percent rule,
as best you can remember, what was the discipline?

A I do not recall.

Q Are there records that you could go to
documentation -- that would answer that question; what
was the nature of the discipline for those that were
disciplined for violating the 70-percent

1 A Yes.

2 Q -- rule?

3 And how would you go about looking for those
4 records?

5 A I would ask Cheryl Strong to run a report on
6 that kind of violation.

7 70-percent rule -- just to clarify a little
8 bit -- when it's investigated, it's within the context of
9 a broader investigation, and the -- and may involve
10 stacking volume. So the -- if there were penalties, it's
11 related to that, in some cases.

12 Q What do you mean by a "broader investigation"?

13 A Just that we may not just be investigating a
14 70-percent rule violation; that we're looking at the
15 possibility that the person is manipulating the marketing
16 plan.

17 Q And what are the factors that would trigger such
18 an investigation?

19 A There could be a complaint from another
20 distributor, or there may be, for instance, a president's
21 team audit conducted.

22 Q What is a president's team audit?

23 A That's an audit of someone, who's qualifying for
24 the president's team, into their business practices.

25 Q Is an audit one of the standard procedures that

1 Herbalife does before a distributor is qualified to be a
2 member of the president's team?

3 A It is triggered by a certain amount of increase
4 in royalties, so a percentage. And so in that respect,
5 it's more of a -- not a random audit, but it's triggered
6 by a certain amount of increase.

7 Q Okay. But I want to drill down on the term
8 "president's team audit."

9 Prior to becoming a president's team member,
10 does Herbalife do an audit into the business practices of
11 the person who is a candidate to be a member of the
12 president's team?

13 A In the case that I explained, yes.

14 Q Okay. But not in all cases; is that correct?

15 A Correct.

16 Q You said in one of your previous answers that an
17 audit may be triggered by an increase in royalties. Can
18 you give me any more information about the amount of
19 royalties that would trigger a 70-percent audit?

20 MR. PATTERSON: Excuse me. 70-percent audit or
21 president's team audit?

22 MR. STEPHENS: 70-percent audit.

23 MR. PATTERSON: For a president's team member?

24 MR. STEPHENS: For anyone.

25 MR. PATTERSON: For anyone. All right.

1 THE WITNESS: No.

2 BY MR. STEPHENS:

3 Q Is there any threshold of royalties within
4 Herbalife where if a distributor reaches that threshold,
5 it triggers an inquiry into whether or not that
6 distributor is complying with the 70-percent rule?

7 MR. PATTERSON: Let me just clarify. You're
8 talking about all distributors?

9 MR. STEPHENS: All distributors.

10 MR. PATTERSON: Not just president's team?

11 MR. STEPHENS: Not just president's team.

12 MR. PATTERSON: Do you understand that?

13 THE WITNESS: I think so.

14 MR. PATTERSON: Okay.

15 THE WITNESS: I would say "no."

16

17

18

19

REDACTED

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Now, the 70-percent rule -- we can break it out and look at it if you want, but the 70-percent rule requires what? What's your understanding of the 70-percent rule?

A At least -- it's a difficult rule. At least 70 percent of the product that distributor purchases in a month has to be sold to down-line distributors or customers. And I hope I didn't misstate that.

Q Well, I've read it, and I think that that's a pretty good try.

A Oh, thank you.

Q Okay. And you did a good job, I think, on that

1 one. So congratulations.

2 Now, my question, though, is: Is there any
3 requirement within Herbalife that any percentage of the
4 product that the distributor buys must be sold to retail
5 customers outside of Herbalife, as opposed to the
6 distributor's down line?

7 A Is there -- can you repeat that?

8 Q Yes, I will.

9 Is there any requirement within Herbalife that a
10 distributor must sell a certain percentage of the product
11 the distributor purchases, to retail customers who are
12 not affiliated in any way with Herbalife?

13 A I don't understand what that would be.

14 Q I'll say it again.

15 A I don't understand what a customer not
16 affiliated with Herbalife is.

17 Q I'm not affiliated with Herbalife. I'm not a
18 distributor.

19 A As a distributor, you mean?

20 Q Right. So if I went to -- you might notice that
21 I could stand to lose a few pounds. So if I saw "Lose
22 weight now, Ask me how," and I went to an Herbalife
23 distributor, and I said, "Can I have a can of that so I
24 could lose 10 pounds before my high school reunion," they
25 could sell me a can; right?

1 A Yes.

2 Q And then -- but I'm not an Herbalife
3 distributor, so I would be a true retail customer. Do
4 you understand?

5 A Yes.

6 Q Okay. If I use that definition for a "true
7 retail customer," will you understand what I'm talking
8 about?

9 A Maybe.

10 Q Okay. Is there any requirement that any
11 percentage of the product purchased by an Herbalife
12 distributor be sold to any true retail customer, as I've
13 described it?

14 A It is -- as it's stated, it can be a customer or
15 a distributor. So I would say the requirement is not
16 only to a customer, if I'm making sense.

17 Q Right.

18 A And you're asking me a requirement that says
19 only to customers?

20 Q Yes.

21 A Aside from the requirement to have ten customers
22 a month -- we have that. I'm not exactly sure of the
23 whole question you're asking.

24 Q Okay. Well, then I'll make sure I ask it again
25 until you understand it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Okay. Is there any rule that prevents the Herbalife distributor from selling that entire 70 percent to its down line distributors, and zero percent to true retail customers?

A If they don't sell to true retail customers, then they're not going to be able to -- sorry. I lost my word -- follow the ten-customer rule.

Q Okay. So the ten-customer rule -- what is the ten-customer rule?

A It says they must have ten retail customers every month.

Q Right. And those ten retail customers -- that means the true retail customer -- as we've described it?

A Yes.

Q -- right?

How much is a can of Herbalife weight loss

1 product, whatever it's called?

2 A I don't know.

3 Q With respect to those ten customers, is there
4 any minimum sale that you must make to those ten
5 customers under the Herbalife rules?

6 A No.

7 Q What is the least expensive Herbalife product?

8 A I don't know.

9 Q Can I buy any Herbalife product -- what about
10 those bars? Herbalife sells those bars; right?

11 A Yes.

12 Q Okay. How much do they cost?

13 A I haven't looked at the prices in a long time.

14 Q Can you give me your best estimate?

15 A I think that a box of the bars is about \$14.

16 Q Can you buy one bar?

17 A No.

18 Q Can an Herbalife distributor sell one bar to a
19 customer?

20 A I suppose they could, but my best recollection
21 is they're not labeled individually for resale.

22 Q But they own -- once Herbalife sells the box of
23 bars to the distributor, the distributor owns the bars;
24 right?

25 A Yes.

1 Q Okay. And so there's nothing that would stop a
2 distributor from breaking open that box and selling one
3 bar to his neighbor; correct?

4 A No.

5 Q No rule that would

6 A No. I believe that they are not permitted to
7 sell the bars or any other product that doesn't have a
8 label on it.

9 Q Is it your testimony that the bars don't have a
10 label on them?

11 A I don't believe they do. Only the box that they
12 come in.

13 Q So is it your testimony that it would be against
14 the rules for an Herbalife distributor to sell anything
15 less than a box of bars to their neighbor?

16 A Yes.

17 Q How many bars are in a box?

18 A Don't know. Seven, ten. I'm not sure.

19 Q Do you have any estimate for how much a box of
20 bars costs?

21 A I said, I think about \$14.

22 Q Okay. \$14.

23 So if I had ten customers and each one of them
24 bought a \$14 box of bars, that would be \$140; correct?

25 A Uh-huh.

1 Q "Yes"?

2 A Yes. Sorry.

3 Q And I would be in compliance with the
4 ten-customer rule; correct?

5 A Yes.

6 Q And if I sold all the rest of the 70 percent of
7 my product to down line distributors, I would then be in
8 compliance with the 70-percent rule; correct?

9 A As long as they weren't supervisors.

10 Q So if I sold Herbalife product to a down line
11 distributor who was a supervisor, that would not count
12 toward my 70 percent?

13 A Actually, it would put you in violation of the
14 rules -- other rules.

15 Q What rule?

16 A Proper purchasing of product, I think. In that
17 area.

18

19

REDACTED

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Do Herbalife distributors have to comply with Rule 8-A?

A Yes.

Q Do they have to comply with Rule 8-A after they terminate the distributorship?

MR. PATTERSON: Again, it calls for an opinion or -- a legal opinion or conclusion. There's no foundation that she can give that.

You may answer, Jackie.

THE WITNESS: I would say yes, based upon the restrictions that are on the distributor application. I don't have the wording in front of me of 8-A.

BY MR. STEPHENS:

Q Okay. Here, let me give you that. We'll make that Exhibit 3.

(Whereupon Defense Exhibit 3 was marked for identification by the deposition officer and is attached hereto.)

BY MR. STEPHENS:

Q Now, you have the wording of 8-A in front of you. I took this exact document from the exhibits of a

1 declaration that you signed in the case.

2 And so what I'd like to do is have my last
3 question read back, and I want it answered, please.

4 (The record was read by the deposition
5 officer as follows:

6 "QUESTION: Do they have to comply with
7 Rule 8-A after they terminate the
8 distributorship?")

9 THE WITNESS: Yes.

10 MR. PATTERSON: Same objection, but go ahead.

11 BY MR. STEPHENS:

12 Q In fact, according to the terms of 8-A, the
13 terms apply to a distributor for one year after the
14 termination of the distributorship; correct?

15 A Yes.

16 Q Okay. And under the terms of 8-A, a distributor
17 is not allowed to solicit a distributor of which they
18 became aware while they were an Herbalife distributor,
19 for one year; isn't that true?

20 A Yes.

21 MR. PATTERSON: Among other things.

22 BY MR. STEPHENS:

23 Q And let me ask you this question: Under 8-A,
24 if -- and under your understanding of 8-A, of somebody
25 who is responsible for enforcing Rule 8-A -- and you are,

1 aren't you? You're responsible for enforcing 8-A;
2 right?

3 A I was, yes.

4 Q And you were during the period you gave a
5 declaration in this case; right?

6 A Yes.

7 Q And you so testified in your declaration?

8 A Yes.

9 Q And based on your understanding of Rule 8-A, if
10 a former Herbalife distributor solicited an Herbalife
11 distributor of which they were aware, while the former
12 Herbalife distributor was an Herbalife distributor, and
13 they did not use any confidential information to do so,
14 would they be in violation of Rule 8-A?

15 A Yes.

16 MR. PATTERSON: I'll object. It calls for a
17 legal conclusion.

18 You can answer.

19 THE WITNESS: Yes.

20 BY MR. STEPHENS:

21 Q And what is your basis for that answer?

22 A Can you ask the question one more time, because
23 now I've forgotten the question?

24 Q Okay. I'm an Herbalife distributor; right? Let
25 me give you an example. And I'm giving it to you, and I

1 want your answer based on your experience -- extensive
2 experience with the Herbalife rules.

3 Let me give you this hypothetical. Let's say
4 that I leave Herbalife, and I'm aware of a lot of
5 Herbalife distributors. I just know them. I've met them
6 over the years many, many times. Okay? I know a lot of
7 them. And I take all the information that I've ever
8 received from Herbalife, and I take it to a trash dump
9 and I burn it. Right? And then I take a phone book;
10 right? And I go on the Internet, and I recreate all the
11 contact information of those people that I was aware of,
12 and I go and I call on 100 of them. I bring them all
13 over to Melaleuca.

14 Did I violate Rule 8-A; yes or no?

15 A Yes.

16 Q What is the purpose of Rule 8-A?

17 A To protect the company and its distributors from
18 distributors taking the down line organizations of other
19 distributors into another company, so that they lose
20 income and they lose their organization.

21

22

23

REDACTED

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Tell me -- give me your best description of what a ten-customer audit entails.

A The distributor would be contacted, and we would request a list of their customers for a particular month or months that we are auditing the volume on. We would then make attempts to contact those customers in order to verify their purchases.

Q Under Rule 20-C -- that's the ten-customer rule -- does a distributor have to submit, on a monthly basis, its ten customers to Herbalife -- it's list of customers with the customer contact information?

A Can you repeat the question?

1 Q Yes, I can.

2 Under Rule 20-C -- and I'm happy to show it to
3 you. I'm not trying to trick you. You can look at it if
4 you wish.

5 Under Rule 20-C, is there a requirement that on
6 a monthly basis the Herbalife distributor has to send
7 Herbalife its list of retail customers with the contact
8 information for those customers? Is that required?

9 A No.

10 Q Is it required that the distributor retain that
11 information -- the ten-customer information -- for two
12 years?

13 A Yes.

14 Q Okay. And is it required that if Herbalife
15 requests the customer for that information, they must
16 provide the ten-customer information to Herbalife?

17 A Yes.

18 Q Are there -- how are they supposed to keep the
19 information, these Herbalife distributors? Is there a
20 form of some sort that they have to write on?

21 A There's a retail order form that they should be
22 providing to the customer.

23 Q So

24 A They can keep that.

25 Q So the way the process should work is each time

1 a true retail customer -- and we used myself as an
2 example -- purchases an Herbalife product, the
3 distributor will write down that order on a form, and
4 take the name and the contact information of the
5 customer; correct?

6 A Yes.

7 Q And, presumably, they give a part of the form to
8 the customer, and they keep a copy; correct?

9 A Yes.

10 Q And then they're supposed to keep those forms in
11 their files -- these Herbalife distributors -- for two
12 years; correct?

13 A Yes.

14 Q If they're complying with the rule, they should
15 have ten -- at least ten such forms that are filled out
16 for true retail customers; correct?

17 A If they are earning.

18 Q What does that mean?

19 A The requirement for the ten-customer form is to
20 collect your earnings.

21 Q So if a customer does not -- sorry. If a retail
22 distributor does not comply with the ten-customer rule,
23 the risk to them is that they don't get their earnings?

24 A Yes.

25 Q And by "earnings," do you mean royalty

1 overrides?

2 A Yes.

3 Q Do you mean production bonuses?

4 A Do you have the form? It's royalty overrides
5 and production bonus. I can't remember if it's
6 commissions. I don't think it is.

7 Q So if I'm an Herbalife -- hypothetically, if
8 I'm -- because I'll just read it right into the record.

9 Here. I don't think we need to mark these yet,
10 but maybe we will. Here's the rules.

11 MR. STEPHENS: Chuck, here. You can have a copy
12 of the rules.

13 THE WITNESS: Can I take this?

14 MR. STEPHENS: Let's just mark that as
15 Exhibit 4. It will make the questioning a little easier
16 here.

17 (Whereupon Defense Exhibit 4 was marked for
18 identification by the deposition officer and is
19 attached hereto.)

20 BY MR. STEPHENS:

21 Q Okay. So I'm on page D-12, which is part of
22 Exhibit 4. Are you with me?

23 A Yes.

24 Q And just to make sure we've got this right, if
25 you look down at the very first page of Exhibit 4, it has

1 down there a little -- like a footer. You see it says,
2 "6149-US-13 Rev. 8/06."

3 Do you see that?

4 A Where are you?

5 Q I'm on the first page.

6 A Yes.

7 Q And does that indicate that this document that I
8 just gave you were the revised rules as of August 2006?

9 A Yes.

10 Q Okay. Now, the ten-customer rule, of course, is
11 on page 12, as I directed you. And I'll read it.

12 "A distributor must personally make sales of at
13 least ten separate" -- sorry. I'm going to start over,
14 because I misspoke.

15 "A distributor must personally make sales to at
16 least ten separate retail customers each month to
17 qualify for and receive royalty overrides and the
18 tab team production bonus or other bonuses paid by
19 Herbalife. If the distributor fails to timely
20 provide confirmation to Herbalife that these ten
21 retail customers" -- I'm sorry -- "of these ten
22 retail customers, the royalty override and the
23 production bonus earnings will not be paid to the
24 distributor."

25 Did I read that correctly?

1 A Yes.

2 Q So is it your testimony that if I'm an Herbalife
3 distributor, and I have no interest in receiving those
4 various overrides and bonuses referred to in the rule,
5 that I do not have to comply with the ten-customer
6 rule?

7 A Yes.

8 Q Now, getting back to -- well, let me ask you one
9 other question: Why is that? Why is the ten-customer
10 rule limited to Herbalife distributors who wish to
11 participate in the overrides and bonuses referred to in
12 the rule?

13 A I don't know.

14 Q Who at Herbalife would know that?

15 A The legal department, perhaps.

16 Q Do you know when the ten-customer rule was put
17 in the Herbalife rules?

18 A It was in the late '80s, as I recall.

19 Q Do you know why it was placed in the Herbalife
20 rules?

21 A I believe -- and I'm really just going on my
22 memory of it, not personal knowledge -- but I believe
23 that it was put in as a result of requirements due to
24 the -- some of the investigations that were being
25 conducted on Herbalife.

1 Q So I'm getting back to my audit question,
2 drilling down on the audit. So the records -- and
3 maintenance of records is 20-F, if you want to refer to
4 that.

5 So the records that the distributor must keep to
6 be in compliance with 20-C and 20-F are these forms that
7 we've described; correct?

8 A Yes.

9 Q Now, what processes or procedures -- processes
10 or procedures does Herbalife have in place, if any, to
11 prevent the following scenario: Herbalife distributor
12 gets called and said, "I want your records for ten
13 customers," and the Herbalife distributor then, after
14 receiving that call, dummies in fake records?

15 How does Herbalife avoid that type of
16 circumvention of this rule?

17 A It would -- the only way we could avoid it is by
18 contacting the customer and finding out that they were
19 not a customer -- or not a customer during that period.

20 Q But if, for example, the distributor writes down
21 their neighbor, and then they call up their neighbor on
22 the cell phone, and they say, "You might be getting a
23 call from Herbalife. You have my back. Tell them you're
24 an Herbalife customer." Is there any process or
25 procedure that Herbalife employs that would prevent that

1 sham or charade from

2 MR. PATTERSON: Fraud.

3 BY MR. STEPHENS:

4 Q -- working?

5 A No.

6 Q Okay. Have you now told me everything that a
7 ten-customer audit entails?

8 A I don't conduct them. So to the best of my
9 knowledge, that is the inquiry process.

10 Q And do you have any understanding of how many
11 ten-customer audits are conducted by Herbalife on an
12 annual basis? And I'm asking for your best estimate.

13 A I believe it's in the neighborhood of about 1200
14 audits.

15 Q Now, the 70-percent rule, are there audits
16 relating to the 70-percent rule?

17 A No.

18 Q When Herbalife does an investigation as to
19 whether or not its independent distributors have complied
20 with the 70-percent rule, what does that investigation
21 entail?

22 A It's basically looking at the volume of the
23 person over the period in question, requesting that the
24 distributor provide documentation as to how they sold
25 their products, and then calculating whether they're

1 within the guidelines.

2 Q What documentation would they look at?

3 A Retail receipts.

4 Q Anything else?

5 A I don't think there's any other documentation,
6 no.

7 Q And then how would Herbalife calculate whether
8 or not -- using those documents, calculate whether or not
9 the Herbalife distributor in question was within the
10 guidelines of Rule 20-D, the 70-percent rule?

11 A Just by adding up the amounts, and then seeing
12 if it is 70 percent of what they purchased.

13 Q If an Herbalife distributor has no interest in
14 receiving the various royalty overrides and bonuses
15 referenced in Rule 20-D, must they comply with the
16 70-percent rule?

17 A No.

18

19

20

REDACTED

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q There's a reference in Rule 20-C -- and it also appears in 20-D -- to production bonuses. Are there

1 production bonuses, other than tab team bonuses?

2 A The tab team bonuses -- actually, the tab team
3 production bonus. There is a yearly bonus

4 Q And what is the

5 A -- but it's called

6 Q I'm sorry. Go ahead.

7 A It's called Mark Hughes bonus.

8 Q Mark Hughes bonus?

9 A Yes.

10 Q That's H-u-g-h-e-s. The name Mark.

11 And at what level within the stair step does one
12 begin to earn the Mark Hughes bonus?

13 A President's team.

14

15

16

17

18

19

REDACTED

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Okay. The 1200 audits regarding the ten-customer rule

A Yes.

Q -- is that on an annual basis?

A Yes.

Q Over what period of time? When did 1200, approximately, audits begin to take place with respect to the ten-customer rule?

A I'm not sure the date they started.

Q Can you give me your best estimate? And I'm looking for a year, not a date.

A Right. Probably in the last four to five years.

Q And during that four to five years, has it always been 1200, approximately, or has it ramped up?

A I don't know.

Q Okay. Who would know that?

A Jenny Hienrich.

1 Q How did you know about the 1200? You gave that
2 testimony earlier today. How did you know about that?

3 A I asked.

4 Q Okay. What did you ask?

5 A I asked how many audits they were performing.

6 Q And who did you ask?

7 A Julie Delaney.

8 Q Who's she?

9 A She works for Jenny.

10 Q And what's her position?

11 A She's director or senior director. She's been
12 in the refunds and repurchase area, and I think she might
13 have responsibility for the audits.

14 Q What did you ask her?

15 A How many audits they're performing each month.

16 Q Each month?

17 A Yes.

18 Q Oh, I thought you said each year. It was 1200 a
19 year.

20 A Yes.

21 Q So how many is it per month?

22 A 100.

23 Q 100 per month.

24 So she told you 100 a month, and you multiplied
25 it by 12?

1 A I did.

2 Q Okay. We'll let you do that.

3 And what time were you focused on? Were you
4 focused on the last 12 months?

5 A I was just asking currently. I didn't get into
6 when it changed or if it changed.

7 Q Okay. So you're just assuming that the 100 a
8 month that she told you goes back for 12 months; right?

9 A Yes.

10 Q Is the 100 audits a month, is that worldwide or
11 U.S. or both? Sorry. Worldwide or just U.S.?

12 A It's U.S.

13 Q Did you ask her how many audits there are
14 worldwide?

15 A No.

16 Q Is she the person most knowledgeable regarding
17 the enforcement of 20-C?

18 A I believe so.

19 Q Who's the person

20 A I'm sorry. As to audits, yes.

21 Q Okay. All right. What is the objective of
22 Rule 20-C? That's the ten-customer rule. What is the
23 objective?

24 A To ensure that distributors are selling products
25 to retail customers.

1 Q Why does it matter?

2 A Because that's the purpose of the business. So
3 that, you know, people aren't just stockpiling products
4 in their garages.

5 Q What would be wrong with that?

6 A Because then, you know, they're stuck with a lot
7 of product that they're not selling.

8 Q Isn't that their risk? What difference does it
9 make?

10 A Well, it makes a difference to us because we
11 want the products to be sold to customers and to be used
12 and, you know....

13 Q Why?

14 A Why? It's a good thing. Um, I think that it
15 helps us to comply with regulations for multi-level
16 marketing.

17 Q That's right, isn't it?

18 Now, how does Herbalife ensure that the
19 ten-customer rule achieves those objectives?

20 A Through audits and investigations.

21 Q Anything else?

22 A I can't think of anything.

23 Q Have you ever -- I'm sorry. Has Herbalife ever
24 had a study done by, like, say, an expert or somebody
25 outside of Herbalife to determine whether the

1 ten-customer rule achieves the objectives of Herbalife?

2 A Perhaps in the legal department.

3 Q Have you ever seen such a study?

4 A Whether a study -- again....

5 Q Okay. You've explained the objectives of the
6 ten-customer rule. What I'm trying to find out is
7 whether the ten-customer rule has effectively achieved
8 those objectives.

9 So my question to you is: Has Herbalife ever
10 done a study, either in-house or externally, to determine
11 whether the ten-customer rule achieves effectively the
12 objectives of the rule?

13 A I'm not aware of one.

14 Q Okay. Now, what are the objectives of the
15 70-percent rule?

16 A They're similar. You know, to ensure that sales
17 to customers are being made.

18 Q But you can comply with the 70-percent rule by
19 selling to down line distributors; right

20 A Right.

21 Q -- at least -- as long as you have your ten
22 retail customers?

23 A Right.

24 Q So does the 70-percent rule effectively achieve
25 the objective that Herbalife has for it?

1 A I don't know that I could answer that.

2 Q Okay. Is there anybody at Herbalife that
3 could?

4 A I don't think so.

5 Q Has Herbalife done any studies to determine
6 whether the 70-percent rule is effective in achieving the
7 objectives it was designed to accomplish?

8 A I'm not aware of any.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q What is poaching, in Herbalife terminology?

A We don't generally use the term "poaching," at least internally. It sounds to me like it refers to solicitation, though.

Q Well, let me ask it this way: Herbalife has produced about 350 documents in this case. A lot of them are E-mails that appears to be -- the testimony will either bear this out or it won't, but it appears -- they appear to be E-mails from distributors to people within Herbalife complaining about poaching.

Have you ever received such an E-mail?

A Where somebody used the word "poaching"?

Q Yes.

A I don't recall.

Q Have you ever seen the word "poaching" in an E-mail that was sent by an Herbalife distributor?

1 A If I have, I don't recall it.

2 Q Have you had any conversations -- verbal
3 conversations with anyone outside of Herbalife in
4 which -- withdraw the question.

5 Have you ever had any verbal conversations with
6 any Herbalife distributors in which they used the term
7 "poaching"?

8 A I don't recall.

9 Q Is poaching against the rules of Herbalife?

10 A We don't have a rule that uses the word
11 "poaching."

12 Q So poaching is not against the rules?

13 A I don't think I said that.

14 MR. PATTERSON: Objection; argumentative.

15 BY MR. STEPHENS:

16 Q Is poaching against the rules, or isn't it?

17 A What does "poaching" mean?

18 Q What is your understanding of the term?

19 A I understand it to mean solicitation.

20 Q Based on that understanding, is poaching against
21 the rules?

22 A Yes.

23 Q Is it against the rules for all former Herbalife
24 distributors?

25 A Is it against the rules for all former Herbalife

1 distributors? I guess subject to a time frame that might
2 be in the rule.

3 Q What's the time frame after which

4 A I don't know which rule or -- which rule are we
5 referring to?

6 Q Any rules or agreements. If I'm an Herbalife
7 distributor -- former Herbalife distributor, can I poach
8 after one year -- one year after my termination?

9 A According to the rule, they have to abstain from
10 doing that for one year after their distributorship
11 ceases.

12 Q So within one year, if I'm an Herbalife
13 distributor -- one year of my termination

14 A After one year.

15 Q Within the one year of my termination, I can't
16 poach?

17 A According to the Rule 8-A, yes.

18

19

20

21

22

REDACTED

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Under the ten-customer rule, Rule 20-C, does an Herbalife distributor who only purchases product for their own personal use qualify as a retail customer?

A Can you repeat that?

Q Yes.

Under Rule 20-C, the ten-retail customer rule, does an Herbalife distributor who only purchases products for their own personal use qualify as a retail customer?

A No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q Have you ever discussed either Rule 20-C or Rule 20-D with Michael O. Johnson?

A No.

Q Have you ever had any discussions of any nature with Michael O. Johnson?

A Yes.

Q How many times have you spoken with Michael O. Johnson, approximately?

A Three or four.

Q When was the most recent time that you talked to Michael O. Johnson?

A I was in the gym, and he came by and said, "Keep pedaling," or something to that effect.

Q Describe the substance of -- that's fair.

Describe the substance of the other two or three times you spoke with Michael O. Johnson. What did you two talk about?

A I recall one conversation on the telephone with he and Greg Probert. They were asking me questions about a distributor, as far as a certain investigation we were doing.

Q Is that any of the defendants?

1 A No.

2 Q What was the nature of the investigation?

3 A I don't remember at this time.

4 Q So all of the two or three other communications
5 that you had with Michael O. Johnson had to do with this
6 investigation?

7 A No. That was a single time, and then there was
8 one other meeting I attended that Michael was in
9 attendance with several other people. I can't recall.
10 It might have been about advertising regulations.

11 Q Have you ever written any reports to Michael O.
12 Johnson?

13 A Not that I recall.

14

15

16

17

18 REDACTED

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q You also have to have your 70-percent rule records; correct?

A Yes.

Q And it says in rule -- it's actually Rule 9-B. Let me see if I can find that. Oh, wait. I'm sorry. It's Rule 9-E. I was right. Rule 9-E.

Rule 9-E says that -- there's a reference in the third line to certain terms and conditions. Do you know what those terms and conditions are?

A Certain terms and conditions refer to if the products were purchased from Herbalife within the last 12 months.

Q Okay.

A And that the resigning distributor provides proof of purchase. Those are a number of the conditions. Those are two of the conditions.

Q And you have to have your 70-percent rule

A Correct.

Q -- records?

A If it applies, yes.

1 Q Well, let me ask you a question. If I'm a
2 distributor, an Herbalife distributor, who is not a
3 supervisor, and I terminate my distributorship and I want
4 Herbalife to buy back my product, do I have to give them
5 70-percent rule

6 A No.

7 Q -- records?

8 A No.

9 Q Where is that in this Rule 8-E (sic)? Where is
10 that indicated?

11 A It's not indicated, other than saying "if
12 appropriate."

13 Q Oh, I see. So if I'm not a supervisor, then the
14 70-percent rule doesn't apply, so it's not appropriate?

15 A Right.

16 Q The product must be resalable; correct?

17 A Yes.

18 Q What does that mean?

19 A It means that it needs to be unopened.

20 Basically, in good condition.

21 Q And who determines whether it's unopened and in
22 good condition?

23 A The distribution center receives it and
24 determines that.

25 Q And there's a 10-percent restocking fee; is that

1 right?

2 A Yes.

3 Q Why is that?

4 A To pay for the restocking.

5 Q How did Herbalife come up with that 10-percent
6 restocking fee here in these rules?

7 MR. PATTERSON: Objection; lack of foundation.

8 THE WITNESS: I think it's an industry standard.

9 BY MR. STEPHENS:

10 Q And does the distributor have to pay for
11 shipping to ship the merchandise back to Herbalife?

12 A Yes.

13 Q And is the distributor reimbursed for the
14 shipping, packaging, and handling that was paid in
15 delivering the product to the Herbalife distributor?

16 A No.

17 Q It says that royalty override production bonuses
18 and commissions paid on return product are deducted.
19 What does that mean?

20 A The product that is returned represents an order
21 that was placed. The royalty overrides, commissions,
22 production bonuses are paid on orders that are placed.
23 So when the product is returned and reimbursed, then we
24 deduct the royalties, production, and bonuses on the up
25 line who were paid on that order.

1 Q So they're not deducted from the distributor
2 who's being terminated, it's from their up line;
3 correct?

4 A Unless there's a situation where they earned as
5 a result of the order that was placed.

6 Q Okay. So in other words, if that order was the
7 order that boosted them from 1 percent to 2 percent, then
8 you throttle back to 1 percent, and then there's a
9 deduction?

10 A Yes.

11

12

13

14

15

16

REDACTED

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

BY MR. STEPHENS:

Q Yes.

If an Herbalife distributor sponsors one of their centers of influence -- let's say, their daughter -- and then that Herbalife distributor leaves

1 Herbalife and goes to another company -- let's say
2 Melaleuca -- and the day after they terminate, they call
3 their daughter, and they say, "Honey, I want to solicit
4 you to come over to Melaleuca," and the daughter is an
5 active Herbalife distributor -- under that scenario, have
6 there been any rules that have been violated?

7 A I believe so.

8 Q What rules?

9 A The rule on -- I'm sorry. We have too many
10 different versions going on here. Rule 8-A.

11

12

13

14

15

REDACTED

16

17

18

19

20

21

22

23

24

25

1 REDACTED

2
3 Q Now, I went on E-Bay the other day, and I found
4 thousands of Herbalife products listed. Is that a
5 typical sales route for Herbalife products, for persons
6 to put them on E-Bay?

7 A Is it typical?

8 Q Yes.

9 A There are a lot of Herbalife products out
10 there.

11 Q On E-Bay?

12 A On E-Bay.

13 Q Does that violate any rules at Herbalife?

14 A Yes.

15 Q What rules does that violate?

16 A The auction rule.

17 Q What is the auction rule?

18 A It says you can't sell the products on auction
19 Web sites.

20 Q Is that a significant problem that -- strike
21 that.

22 Is that a significant problem that Herbalife is
23 facing today, auction sales?

24 MR. PATTERSON: Objection; lack of foundation.

25 THE WITNESS: It's a continuing problem. It's a

1 difficult problem to try to handle for many companies,
2 including Herbalife.

3 BY MR. JOLLY:

4 Q In your opinion, as vice president of Herbalife,
5 does it make it difficult for persons to sell retail when
6 customers can simply buy the products for less on
7 E-Bay?

8 A I think it could.

9 Q Have you heard that from any distributors?

10 A Yes.

11 Q Do you recall who?

12 A No.

13 Q Is that a constant complaint that Herbalife is
14 receiving from distributors -- strike that.

15 Is it a frequent complaint that persons are
16 calling Herbalife and saying, "There's this product on
17 E-bay, and it's hurting our sales"?

18 A In the Distributor Ethics and Compliance
19 department, we get a number of complaints about products
20 posted on E-Bay.

21 Q And also on Craig's List?

22 A It's primarily on E-Bay, but sometimes we get
23 other Web sites that they report.

24 Q Auction Web sites?

25 A Yes.

1 Q And the products are being sold, to your
2 knowledge, from what you've seen, at a discount on those
3 auction Web sites?

4 A Yes.

5 Q Have you heard that president's teams members,
6 in order to meet their 2500 volume point quota, will buy
7 product to get their check, and then flip it on E-Bay?

8 A I haven't heard it. I think it's possible. If
9 someone has the names, I'd like to have them.

10 Q Have you ever formed that conclusion?

11 A I just think it's possible. I don't have any
12 basis for it.

13 Q Has any distributor at Herbalife -- strike that.

14 Has any independent distributor of Herbalife
15 been sanctioned for selling product on E-Bay, to your
16 knowledge?

17 A Yes.

18 Q How many?

19 A That number, I don't know. But I would say over
20 a period of years, there probably are at least a couple
21 hundred.

22 Q And do you know whether those distributorships
23 -- those 200 distributorships were terminated?

24 A Some were.

25 Q And do you know what percentage were

1 terminated?

2 A No.

3 Q How many people at Herbalife are responsible for
4 enforcement of the auction rule?

5 A I would say, currently, two.

6 Q What are their names?

7 A I don't know their names. We've done some
8 restructuring and assigned a couple of people to do it,
9 so I don't know. We have new people, as well. I don't
10 know the names of the people who are doing that function
11 right now.

12

13

14

15

16

REDACTED

17

18

19

20

21

22

23

24

25

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript ~~XX~~] was [] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated: February 23, 2009

10

11



12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

HERBALIFE INTERNATIONAL OF AMERICA,)
INC., a Nevada Corporation,)

Plaintiff,)

vs.)

ROBERT E. FORD and JULIA A. FORD,)
husband and wife; BRUCE H. ROTH)
and NANCY A. ROTH, husband and)
wife; JEFF ORR and KATHY ORR,)
husband and wife;)
DIANNA N. THOMPSON; and)
JASON FISHER,)

Defendants.)

CASE NO.
CV 072529
GAF (FMOx)

DEPOSITION OF PAUL GREENBERG, taken on behalf
of the defendants at 555 West Fifth Street,
Los Angeles, California, beginning at
10:15 A.M., and ending at 6:30 P.M., on
Tuesday, February 17, 2009, before
Lena Mescall, Certified Shorthand Reporter
No. 13018.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Okay. Did Herbalife have corporate meetings to discuss the filing of this lawsuit?

A. Corporate meetings?

Q. Yes.

A. What do you mean a "corporate meeting"?

Q. Meetings with persons in the -- in management or officers of the corporation.

1 A. By "meetings," do you include telephone calls?

2 Q. Yes.

3 MR. PATTERSON: The fact that they -- they
4 occur would not be privilege, but go ahead.

5 THE WITNESS: Yes.

6 BY MR. JOLLY:

7 Q. Okay. And without revealing the content of any
8 discussions, who were -- who was involved in those
9 corporate meetings?

10 THE WITNESS: Is that covered by the privilege?

11 MR. PATTERSON: No. The identity of those who
12 were present, I think, is fair game.

13 THE WITNESS: I -- I don't believe that Michael
14 Johnson was involved in any of those meetings or in a
15 meeting or meetings. He -- he was not involved.

16 The only people that I can recall would be my
17 boss, who is the general counsel, Brett Chapman,
18 B-r-e-t-t Chapman; and the head of sales and
19 Des Walsh, D-e-s Walsh, W-a-l-s-h. That's in terms of
20 corporate officers. I won't go into discussions with
21 counsel.

22

23

24

25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Is it fair to say that you are in charge of promulgating the rules at Herbalife?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Well, subject to approval by management, by senior management.

Q. Does Michael Johnson approve the rules?

A. No.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. When you write the rules, do you write them to -- within a certain audience in mind?

A. I write them for the distributors to -- to read and follow; correct.

Q. Well, do you consider the education level and the income level or the sophistication level of distributors when you're writing the rules?

A. I am -- my group have been in the business for a long time, and, yes, we take into account what ordinary nonlawyers, ordinary human beings can -- can read and understand.

Q. Okay. Does Herbalife ever caution these independent distributors that, if they build up a network, they won't be able to continue to do business with their own network, if they should choose to leave Herbalife?

A. Define what you mean by "network."

Q. Well, it says -- you know what network marketing is?

A. Yes.

Q. Okay. What is network marketing?

A. Well, I think -- I -- I don't know that there's an official definition for network marketing. I think

1 of network marketing as another name for multilevel
2 marketing, and I think that what you call someone's
3 network is probably what we would refer to as someone's
4 downline. And I think it's very clear in our industry
5 to companies and distributors, particularly distributors
6 that have been around for a long time and have achieved
7 any sort of level, that no one owns a downline.

8 That A -- if A recruits B, and B recruits C, C
9 recruits D, all the way down, that people don't own in
10 the sense that A will say, "Well, that's my downline,"
11 where B would say, "Well, A, you don't -- you're not in
12 my downline. You're not in my" -- what Melaleuca would
13 call something like "organization," but they call it
14 something else, but everybody else does.

15 So -- so C, for example, is in the downline of
16 both A and B, and D is in the downline of -- and on and
17 on and on. Okay. And so would any -- would -- would
18 would the -- would -- would -- are distributors aware
19 that it's unfair and in violation of rules for them to
20 take the livelihood out from under people above them and
21 below them because they -- they see a better opportunity
22 somewhere else? Yes. I think that it's very common
23 it's entirely common in the industry, and it's
24 well-known by the distributors, and it's -- and it's
25 clear in our -- in our rules, and it's clear in our

1 manuals. It's clear in our trainings. It's clear.

2 Q. What rules are you referring to?

3 A. 8-A, for example.

4

5

6

7

8

9

10 REDACTED

11

12

13

14

15

16

17

18

19 Q. Okay. And you said that Rule 8-A has been
20 discussed in trainings?

21 A. I -- I believe so, but I don't know that.

22 Q. Okay. Did you discuss Rule 8-A in your
23 training?

24 A. I don't know.

25 Q. Rule 8-A, though, is made public to all of the

1 distributors of Herbalife?

2 A. Yes.

3 Q. So all of the distributors of Herbalife are
4 told that if they leave Herbalife, they can't, for a
5 period of one year, solicit any distributor or customer
6 they met while working a Herbalife distributorship?

7 A. If you -- if you have just stated 8-A, that's
8 what it is, yes.

9 Q. Other than Rule 8-A itself, are there any other
10 manuals or documents that caution distributors about the
11 contents of Rule 8-A?

12 A. Well, there -- there are the distributor
13 applications in recent years.

14

15

16

17

18

19

REDACTED

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Now, if Kathy Orr received a business card of Dean Mandryke, which we -- was produced in this case, and called Dean Mandryke to ask him to join Melaleuca, would that be in violation of any rules of Herbalife?

A. When -- when did she do it?

Q. I think -- I don't know her testimony on that. I remember Mr. Mandryke saying sometime in 2000-

1 early 2007.

2 A. And when did she cease to be a distributor?

3 Q. November -- September, November of 2006. So
4 it's within that one year.

5 A. Okay. So within the one year

6 Q. Yes.

7 A. -- she receives his card.

8 Q. Yes.

9 A. She knows he's an Herbalife distributor.

10 Q. Yes.

11 A. And she solicits him from Melaleuca.

12 Q. Yes.

13 A. It's in violation of 8-A.

14

15

16

17

18

19

REDACTED

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Okay. Now, going back Mr. Ford's letter, you authored the letter?

A. Yes.

Q. Okay. It starts at HL 49 and ends at HL 50?

A. Yes.

Q. And you were responding to the letter that Mr. Ford sent to Mr. Johnson?

A. Yes.

Q. Did you read the letter that Mr. Ford sent to Mr. Johnson?

A. Yes.

Q. Okay. And after you read the letter that Mr. Ford sent to Mr. Johnson, did you conduct any sort of inquiry?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Did anybody instruct you to do anything in response to this September 1, 2006, letter?

1 MR. PATTERSON: Same objection. Same caution
2 with respect to communications with the client.

3 THE WITNESS: Yes.

4 BY MR. JOLLY:

5 Q. What were you instructed to do?

6 MR. PATTERSON: Again, same objection about
7 revealing any confidential information between attorney
8 and client.

9 THE WITNESS: To respond.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1 demonstrated his dishonesty through the timing of this
2 letter.

3 If I recall correctly, he was contacted a few
4 days before this, I think it was, by Mike McKee.

5 "We hear you're in Melaleuca. Is that true?"

6 "I am insulted," says Ford, "I would never have
7 anything to do with them. I am insulted you would even
8 ask," and then two or three or four days later, he sends
9 this letter out, and -- and -- and immediately -- almost
10 immediately or immediately he's using it in -- in
11 competition. So I recognized it for what it was
12 propaganda.

13

14

15

16

REDACTED

17

18

19

20

21

22

23 Q. All right. And so Exhibit 26 is the letter
24 that you are referring to at page HL 49 of Exhibit 25;
25 correct?

1 A. Yes.

2 Q. You state, "On its face, the letter seems
3 sincere."

4 Did you believe Mr. Ford was sincere at the
5 time he wrote this letter?

6 A. No.

7 Q. What about reading Mr. Ford's letter causes you
8 to question his sincerity?

9 A. It's not about the letter. It's about the way
10 the -- the timing and the way of the -- the timing of
11 the resignation, the timing of the letter, and the way
12 it was used as propaganda.

13 Q. Did you do any investigation into front-loading
14 as a result of Robert Ford's letter?

15 A. No.

16 Q. Did Herbalife do any investigation as a result
17 of Robert Ford's letter?

18 A. No. We were always monitoring such things as
19 front-loading. We didn't need Ford and

20 Q. What did

21 A. -- and -- and the -- the idea that a
22 President's Team member earning the kind of money he was
23 earning would have an epiphany, when he heard Anthony
24 Powell, I think, is just such crap that nobody in his
25 right mind would believe it.

1 So, no. I -- I recognize it for what it is, an
2 opportunistic propaganda piece pretending to be a
3 heartfelt -- you know.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Do you believe it was -- would be improper of Robert Ford to use his resignation letter to Mr. Johnson to solicit Herbalife distributors?

A. I think it was improper to solicit Herbalife distributors, and I think it was improper in terms of pretext. I think that's misleading to try and put all this information out as a -- you know, a -- just an honest resignation and so on when, in fact, it's a sales piece. So I think it's -- it's wrong on both scores.

Q. So it's wrongful because it's -- of the pretext, and it's wrongful because he's improperly soliciting Herbalife distributors?

A. Right.

Q. And that's because he's -- he's violating

1 Rule 8-A; correct?

2 A. He's doing that and he's -- he -- and may also
3 be using lineage information to get the information out.
4 He may also be using it as a -- as a part of his
5 campaign to intimidate. I -- you know, but -- but just
6 the fact of handing the letter to a distributor is
7 wrongful in those respects. It's also wrongful in other
8 respects that we haven't chosen to sue about.

9 Q. Okay. But

10 A. Now, the DSA codes

11 Q. -- limiting -- go ahead.

12 A. -- don't remember the DSA guideline, but the
13 DSA code -- the DSA code, actually, in the United
14 States, makes it wrongful to unfairly denigrate another
15 MLM. And, certainly, there's unfair denigration going
16 on.

17 Q. Well, is it improper if everything in this
18 letter is true?

19 A. I -- I happen to think it is. I -- I think
20 it -- it's -- it's -- it's a false pretense. I think,
21 first of all, it's improper to be soliciting at all.
22 Okay?

23 All right. Separate and apart from that, I
24 I think it's inappropriate to say, "This is my -- well,
25 let me share with you my epiphany and -- and how I came

1 to this realization, and I brought it to the attention
2 of the CEO," and all of rest of that.

3 It's -- it's -- you know, it -- it's -- it's
4 false in that respect. It's a -- as I think I say in
5 here, it's -- it's propoganda parading as a -- as a
6 resignation.

7 Q. And page 2 of Exhibit 25 -- I'm sorry -- on
8 page HL 49 of Exhibit 25, the September 25th letter you
9 wrote to Mr. Ford

10 A. I am sorry. Page two of the letter or page one
11 of the letter?

12 Q. No. It's page 49.

13 A. Page 49.

14 Q. Okay. Are you there?

15 A. Yes.

16 Q. So page 49, Exhibit 25, the third paragraph
17 down states, "The letter fails to state that your
18 resignation came after you were contacted by Herbalife
19 officials about rumors you had signed up in Melaleuca or
20 were about to do so in violation of the TAB Team
21 agreement dated January 29, 1996."

22 Did I read that okay?

23 A. Yes.

24 Q. All right. Who is the officials that

25 A. I think it was Mike McKee.

1 Q. So the officials at Herbalife that had
2 contacted Robert Ford was Mike McKee?

3 A. I think so.

4 Q. Anyone else?

5 A. I think -- that's the only one I remember at
6 this time.

7 Q. When was the last time you talked to Mike McKee
8 about that contact, if ever?

9 A. Probably September of 2006.

10

11

12

13

14

15

16

17

REDACTED

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. All right. Other than Rule 8-A, are there any other rules or provisions or Herbalife agreements or publications or rules that state that an Herbalife distributor who leaves must build a new following?

A. Other than the rule that says that they can't solicit Herbalife distributors?

Q. Yes.

A. No. I don't think -- not that I can recall.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. All right. Well, what I am asking you is if your testimony earlier was that Herbalife doesn't keep track of retail sales; correct?

A. It doesn't keep track of -- it doesn't keep track of the sales price in which distributors resell the product.

Q. Okay.

A. There is such a thing as price fixing. These are independent contractors. They can sell at whatever price they want in most countries, including the

1 United States.

2 Q. All right.

3 A. So -- so we do not get that information.

4 Q. All right. And -- and so Herbalife

5 A. So we can estimate.

6 Q. Okay. So Herbalife's estimate is based upon
7 the retail -- suggested retail price; correct?

8 A. Yes.

9 Q. Okay. So if 50 percent of the buyers of
10 Herbalife products are discount buyers, then by default,
11 that estimate would be incorrect; correct?

12 A. I am not quite sure about that. I mean, it
13 you know, they are getting a discount or they're getting
14 a rebate. Okay. Whether it's a sale of the full price
15 and then -- and the rebate is not part of the full
16 price, you'd have to talk to an accountant about it.

17 Q. Okay. But Herbalife has no way of knowing the
18 actual retail sales; correct?

19 A. Correct.

20

21

22

REDACTED

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. So it's not a violation of Rule 8-A to -- for Robert Ford to work with Melaleuca and to work with Herbalife?

A. That's right.

Q. Is there any other rule that -- is that -- is there any rule that allows

MR. PATTERSON: Well, up to a certain point.

THE WITNESS: Well, the -- the mere fact that, you know, he wants to do -- I think I testified before, if he wanted to do Herbalife in the morning and Melaleuca -- oh, I see -- in -- in the afternoon, you said under the rules, that's fine. As long as he doesn't rule -- violate 8-A or 8-B or any other rule. Okay.

8-A, we've talked about. 8-B is, you know, you bring people into an Herbalife meeting and then you start selling them Melaleuca, you know. We call it bandwagoneering in the business, freeloading. When you get to be a TAB Team candidate, then we do ask you to become exclusive. And that's set forth in the TAB Team agreement. They either agree to it, or they don't agree

1 to it.

2 Q. So TAB Team, meaning they would do commissions
3 or royalty overrides or production bonuses?

4 A. Not if -- if -- what -- they -- being a TAB
5 Team member is -- one of the benefits of that, of being
6 a TAB Team member, is that they can receive royalty
7 overrides and bonuses, production bonuses.

8 Q. So supervisors can work for both companies?

9 A. They can work for a hundred companies. And by
10 the way, 8-A is narrower than Melaleuca's rule in -- in
11 the following respect: 8-A prohibits the sale of direct
12 selling products or engaging -- promoting another direct
13 selling company or MLM, whereas Melaleuca's rule
14 prohibits the sale of any products, direct selling, not
15 direct selling.

16 MR. JOLLY: Could you read that back?

17 (The record was read.)

18 BY MR. JOLLY:

19 Q. So your belief is defendants are not prohibited
20 from working with another company under Rule 8-A;
21 correct?

22 A. Correct. What is it in Rule 8-A that might
23 even raise a question?

24
25

REDACTED

170

PAUL GREENBERG

BARKLEY
Court Reporters

1

2

3

4

5

6

7

8

REDACTED

9

10

11

12

13

14

15

16

17

18

19

Q. All right. Well, going back to the independent business, why doesn't Herbalife caution people, like, on the first page of the agreement, "Look, if you leave, the friends and family you bring over, you're not taking them with you"?

24

A. This is not about friends and family. They Ford and Roth and these people are calling people they

25

1 never spoke to before and saying, "We got your
2 information off of lineage and we are going to take your
3 livelihood away."

4 So you -- you may -- you may use before, you
5 know, a sympathetic audience, you know, the sister or
6 the neighbor, but that's not what's going on here. This
7 is -- this is stealing the livelihood of -- of other
8 people using -- using extortion, using confidential
9 information.

10 Q. I am asking on the -- the noncompete, the
11 nonsolicitation.

12 A. There is no noncompete.

13 Q. Rule 8-A -- you agree Rule 8-A prohibits the
14 solicitation of anybody in the center of influence by
15 by a former Herbalife distributor for a period of a
16 year?

17 A. No.

18 Q. Okay. You know, what is "the center of
19 influence"?

20 A. The center of influence might be your mother,
21 your sister, people -- friends close to you, people you
22 have influence with, the center. They -- they are not
23 Herbalife distributors.

24 Q. If you sold them Herbalife products or they
25 became Herbalife distributors, then you can't touch them

1 for a year; correct?

2 A. That's right.

3 Q. And that's under Rule 8-A?

4 A. Right. By the way, in Melaleuca's rules,
5 there's neither you nor anyone in your household can
6 solicit anybody. Ours is you or your spouse. Once
7 again, Herbalife

8 MR. JOLLY: Motion to strike as nonresponsive.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Well, do you know if Herbalife calculates an independent distributor's royalty overrides, when they make that calculation, does it take into account retail sales?

A. No, except indirectly through the ten-customer, 70 percent sale, but it doesn't know the amount of retail sales that are being made.

Q. Okay. Are

A. But -- but -- and it's also -- I think it's

1 based on the retail price. I mean, there -- the points
2 are stated in terms of retail price generally. And so
3 the -- let's say, it's five percent is being paid. I
4 think it's five percent of the retail price. But I
5 think your question was different and that was -- well,
6 yes, but do you know actually what the products were
7 that were in that bundle, what they were sold for to
8 whoever bought them

9 Q. Right.

10 A. -- and consumed them, and the answer is, no,
11 we -- we don't know that.

12 Q. Okay. And the -- the royalty override is not
13 based upon a -- an actual retail transaction between the
14 distributor and the distributor's customer?

15 A. Not directly, no.

16 Q. Now, when I say "retail sales," is it fair to
17 say that, under Herbalife's rules, retail sales means a
18 sale to a non-Herbalife distributor?

19 A. No.

20 Q. What does that mean?

21 A. Well, it depends which rule. I mean, people
22 misuse the term or use it, "retail sales," in many ways.
23 And so the ten-customer rule, for example, which talks
24 about retail customers, I think that is to
25 nonparticipants, nondistributors. But as you're

1 learning, distributors are consumers. They are
2 customers, and sales to them, I think, is a -- could be
3 a retail sale. It -- it depends, you know, where the
4 term's being used. It's a little confusing.

5 For example, we don't allow -- when I say
6 direct selling is a sale away from the retail location,
7 then that would seem to suggest there's no retail sales
8 at all. But it's away from a retail location, a store.
9 So the ten-customer rule is for nondistributors.

10 Is that what you were going to?

11 Q. Yes.

12 A. Okay.

13

14

15

16

17

18

REDACTED

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. When do you think Rule 8-A was promulgated by Herbalife?

A. In its present form?

Q. Yes.

A. In 2003 approximately, 2004 maybe.

1 Q. Okay. There was a rule -- previous rule, 8-B.
2 Do you recall that?

3 A. Don't know. I -- sort of sounds familiar.

4 Q. I may have a document that can help us. Let's
5 see.

6 MR. JOLLY: I am going to hand you a document
7 that I will now mark as Exhibit 29.

8 (Exhibit No. 29 was marked for
9 identification by the reporter and is
10 attached herewith.)

11 BY MR. JOLLY:

12 Q. Have you seen that document before?

13 A. This particular one with this information
14 filled in? No. I don't know.

15 Q. Well, just the form itself?

16 A. I think I have seen this one before, yeah.

17 MR. JOLLY: All right. And for the record,
18 this is identified as HL 370.

19 BY MR. JOLLY:

20 Q. Now, Exhibit 29 has some boxes under the word
21 "Policy."

22 Do you see that?

23 A. Yes.

24 Q. And it says in the -- the second box, "Career
25 Manual (USA -- but only for solicitation that allegedly

1 occurred after September 1, 2006 -- otherwise, Rule 8-B
2 above applies.)"

3 Does that refresh your recollection on when
4 Rule 8-A came into effect?

5 A. No, but I have no reason to believe that this
6 is wrong.

7 Q. All right. So, in fact, the rules that were
8 attached to the motion for preliminary injunction
9 were -- were effective as -- do you recall what date?
10 The -- the rules that were provided in connection with
11 the motion for preliminary injunction?

12 A. No, I don't recall.

13 Q. Okay. So if Rule 8-A came into effect after
14 September 1, 2006, that wouldn't bind persons who had
15 left Herbalife prior to September 1, 2006?

16 MR. PATTERSON: Objection.. Asks for a legal
17 conclusion as to who it would bind or not bind.

18 THE WITNESS: All right. I think it would bind
19 only people who were still with us on September 1 of
20 2006.

21 BY MR. JOLLY:

22 Q. So if Jason Fisher had left prior to
23 September 1, 2006, he couldn't violate Rule 8-A;
24 correct?

25 A. He could if he -- well, no. He wouldn't be

1 bound by 8-A, the -- the new rule. The person that he
2 induced to -- the one that he solicited and induced to
3 do something might be in violation of the new rule.

4 Q. I don't understand. How so?

5 A. Well, suppose -- suppose Ford was personally
6 sponsored by Fisher in Herbalife. So Fisher sponsoring
7 Ford into Melaleuca would not violate 8-A as to Fisher.
8 It would violate Ford's agreements with Herbalife, his
9 TAB Team agreement, which is exclusive to Herbalife.
10 And if Ford is participating as a -- partnering with
11 Fisher in soliciting other people who were going to be
12 violating the new rule, 8-B -- or 8-A

13 Q. 8-A.

14 A. -- then Fisher is involved as a partner,
15 coconspirator, so on, and something which violates the
16 new rule.

17 But on its face, I mean, I am not sure what
18 your -- how -- whether your question was limited or not,
19 but Fisher starts off being bound by that rule that was
20 in effect when he left.

21 Q. Okay. And based on this form, is it your
22 belief that Rule 8-A did not come into effect until
23 after September 1, 2006?

24 A. Well, if this form is correct, then that's what
25 I would believe. But I -- I don't know if this form is

1 correct.

2 Q. Okay. Do you know who prepared this form?

3 A. No.

4 Q. Okay. You've seen this in the ordinary course
5 and scope of your business at Herbalife?

6 A. I have seen forms that look like this. Whether
7 it's an 8-A, 8-B, TAB Team thing or not, I don't know.

8

9

10

11

12

13

14

15

REDACTED

16

17

18

19

20

21

22

23

24

25

222

PAUL GREENBERG

BARKLEY
Court Reporters

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. So if Kathy Orr sells to her neighbor, and when she sells to her neighbor, she does this distributor application form and writes that information down in her computer and then calendars the -- every week you follow up -- after she leaves Herbalife, does that -- does Herbalife contend that her information becomes the that she typed into her computer, becomes the trade secret of Herbalife?

A. To the exclusion of her?

Q. Yes.

A. I -- I'd have to think about that. It calls and it calls for a legal conclusion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. All right. But she would be prohibited under Rule 8-A from contacting those people that she put on her own independent list?

A. For a year.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. When did the ten-customer rule go into effect?

A. Before I got to the company.

Q. Has it changed?

A. I don't think it's changed since I got to the

1 company -- since I've been at the company.

2 Q. Has the method of enforcement of the
3 ten-customer rule changed in the last, let's say, three
4 years?

5 A. I can't answer -- within the last three years?

6 Q. Yes.

7 A. May I answer within the time that I have been
8 with the company?

9 Q. Yes.

10 A. So that would be 2002; so six years.

11 Q. Okay.

12 A. I think the -- I don't know the -- I don't
13 think the method has changed. I think we've increased
14 the number of audits.

15 Q. When did you increase

16 A. We may have made other changes to improve it.
17 I don't know. But that would be several years ago.
18 Probably -- probably three years ago.

19 Q. So it's your understanding or -- strike that.

20 It's your belief that the audit numbers were
21 increased in approximately 2006?

22 A. Give or take a year or two.

23 Q. Okay. And why was that?

24 A. I reviewed ten-customer procedures and decided
25 to increase the amount to -- little additional

1 insurance.

2 Q. Prior to 2006, how many customer audits were
3 conducted on the ten-customer rule -- strike that.

4 A. I don't -- I don't have a recollection.

5 Q. Okay. So let me reask the question, because I
6 blew it entirely, but we are almost there. We are
7 close.

8 So prior to 2006, how many ten-customer rule
9 audits were performed while you were at Herbalife?

10 A. I don't -- I don't know how many were done
11 prior, and I am not sure I -- I remember the number now.
12 What we did is we took a look at the -- some of the
13 consent decrees that were entered in by the -- to do
14 with the -- entered into between the FTC and various
15 companies that had any sort of ten-customer, and what
16 we've looked to see what percentage of distributors the
17 FTC wanted those people -- those companies to -- to
18 to do, and we just adopted that number to be on the safe
19 side.

20 That -- that actually, I felt, was more than
21 needed, since those were companies that were found by
22 the FTC to have violated the FTC act, but I thought we'd
23 would be on the safe side by using that percentage.

24
25

REDACTED

247

PAUL GREENBERG

BARKLEY
Court Reporters

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Okay. What is the ten-customer rule?

A. May I refer to it?

Q. Certainly.

A. Okay. It's the -- you can find it in two places.

Q. Rule 20-C.

A. One is the certificate we ask them to -- that's probably the best place to go, is to Rule 20-C. Rule 20

Q. Which one are you using, Exhibit 30, or are you using 28?

A. Oh.

Q. Okay. Thirty.

A. Thirty -- 20-C, yeah, you were right. Ten retail customers ruling, "The distributor must personally make sales to at least ten separate retail customers each month to qualify and/or receive royalty overrides and the TAB Team production bonus or other bonuses paid by Herbalife. If the commission" -- "if the distributor fails to timely provide confirmation to Herbalife of these ten retail customers, the royalty override and the production bonus earnings will not be

1 paid to the distributor."

2 Then if you look a little higher up in the book
3 is the form that we require. I don't know where it is.

4 Do you have the original from which this was
5 made, because I find it easier to use that. Do you have
6 the original from which this was made?

7 MR. PATTERSON: I don't have it with me.

8 THE WITNESS: It would be

9 BY MR. JOLLY:

10 Q. Page 42.

11 A. -- 42.

12 "The ten retail customers rule means that you
13 must make not less than one sale at retail to each of
14 ten customers during a given month. The customers can
15 be new or repeat customers." Okay.

16 Q. Is there any reason why Herbalife doesn't ask
17 for the names and addresses of customers in -- in its
18 ten-customer rule form here on page 42 of Exhibit 30?

19 A. Yes.

20 Q. Why?

21 A. Because it's -- we ask -- it's available when
22 we ask for it. They are obligated to retain this
23 information, collect this information, retain it. We
24 have a lot of distributors. We have supervisors that
25 are receiving compensation. And it's an unnecessary

1 bunch of documents coming back and forth to require them
2 to provide all of this.

3 Q. But you agree you could make space on this form
4 for the names of ten customers?

5 A. We could, but, no, not on this form. It would
6 require a second page. And I think this is done
7 electronically to some extent, and we have no need for
8 that information.

9 Q. You think that

10 A. These are -- these are -- remember, these are
11 independent contractors, not employees. And one of the
12 things we have to do is to avoid them becoming employees
13 for tax and other purposes, unemployment compensation,
14 like, various liability, and all of the rest of that.
15 Okay. And we have -- we have -- I think it makes sense
16 not to require this information until we want to do an
17 audit.

18 Okay. Because provide -- requiring them to
19 provide this information regularly might very well be
20 the kind of, you know, something that pushes it into
21 employee versus an independent contractor. You -- you
22 expect your employee to tell you who did you -- who did
23 you sell to -- who did they sell to, what hours did they
24 work, and all the rest of that. We don't intend them to
25 be employees. We can't have them be employees. So this

1 is the industry standard, is -- is -- is to provide
2 them -- to collect this information.

3 Q. All right.

4 A. I -- I think there was a time when we had them
5 send in this information by sending the receipts, and we
6 loaded a warehouse full of this stuff, you know. It was
7 unnecessary. We are all trying to reduce paper. And
8 so -- so it's not necessary, and it's inadvisable to
9 require them to provide this information.

10 Q. Unless you conduct the audit?

11 A. Unless we conduct an audit, then -- then they
12 are required to provide us information.

13 Q. Other than the -- the audit that gets
14 conducted, Herbalife does not know the names of the
15 customers of the -- of its distributors?

16 A. Unless there's a drop shipment to the customer,
17 that's correct.

18 Q. Unless there's

19 A. Or a complaint.

20 Q. Or a complaint, but -- and it's -- Herbalife
21 doesn't want the name -- the -- the names of -- of all
22 of its distributors' customers; correct?

23 A. When you go to a Subway franchise to get a
24 sandwich -- okay -- does Subway Doctor company in
25 Connecticut know the names of the people who bought

1 their sandwich yesterday? No. They are independent
2 businesses.

3 Q. Okay. So then Herbalife, other than in an
4 audit or maybe a complaint setting, doesn't know the
5 addresses of -- of its distributors' customers unless
6 there's a drop shipment?

7 A. Correct.

8 Q. All right.

9 A. Or a complaint.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. All right. And you agree, under Rule 8-A, a distributor who leaves Herbalife will be prohibited from doing business with those customers, the identities of which you don't know?

A. If they learned of the customer in the course of their Herbalife distributorship.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. All right. When did the 70 percent rule go into effect?

A. Before I got there.

Q. Has it changed since 2006?

A. I don't know.

Q. Has enforcement of the 70 percent rule increased after 2006?

A. I -- I don't know whether we've had more cases, fewer cases. I don't know.

Q. Do you know how many 70 percent rule audits there have been since 2006?

A. No.

Q. Who at Herbalife would know?

A. I don't know.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Has Herbalife performed any studies to determine whether or not its enforcement of Rule 20-C is effective?

A. Effective?

Q. Yes.

A. In terms of what?

Q. Its working.

A. What -- what do you mean, "working"?

Q. Well, meaning, that every distributor is selling to -- who receives a bonus or commission or royalty override is selling to ten retail customers.

A. Well, when we do an audit and we find out that -- if we do an audit and we find out that they give us a false certificate, then -- then we know they have given us a false certificate and we act accordingly, sanction for giving us a false certificate.

Okay. But the ten customers, 70 percent rules -- where -- where do they come from? What do they -- what do they do? Historically, they come from an Amway decision where the commission felt that several factors, buyback rule, 70 percent, ten-customer, were effective in that context to mitigate against finding inventory loading. We are not concerned if there's inventory loading going on. In part, because we are

1 vigilant to whether they -- inventory loading is going
2 on when we get a -- we -- we -- if we get excessive
3 buybacks in an organization, if we get complaints that
4 somebody's been loaded -- you know, somebody's loading,
5 that -- that's how we determine whether there's
6 inventory loading going on. We get very few complaints
7 like that.

8 And the ten-customer rule is more important,
9 primarily, because we want to facilitate retail sales.
10 We want to encourage retail sales, but the retail
11 selling -- we -- we asked about who the biggest income
12 recipient is, and I think it's Bareleas. That's all
13 based on retail sales, nutrition clubs. I mean, there's
14 more retail selling going on than -- than -- than ever.

15 That's -- this is not about inventory. This is
16 about -- okay. So -- so going to the ten-customer, we
17 look at the ten-customer and the 70 percent, not only in
18 connection with the ten-customer audits, but in
19 connection with the President's Team qualification
20 procedure, which, you know, may -- I don't know if it's
21 in the book or not, but if somebody's rising to the
22 level of becoming a President's Team member or a
23 Chairman's Club member, we look at their business
24 practices. We look at their ten-customer. We look at
25 what they -- what they have bought and sold to see

1 whether they are doing something inappropriate, whether
2 they are -- they are buying more inventory than they
3 should, in order to qualify for a bonus, in order to
4 qualify for -- for elevation or -- or did they, you
5 know, what we call "stacking," some market manipulation.

6 What I am saying is that we -- we are very
7 aware of the -- in addition to the ten-customer rule, we
8 are -- we are -- we are very aware of situations, when
9 situations come, and vigilant when situations come,
10 which involve excessive selling, excessive buying,
11 inventory loading, which is what the ten-customer and
12 70 percent

13 Q. You mentioned the buyback rule. Okay. Does
14 in order for a distributor to return his inventory to
15 Herbalife, the distributor must terminate his
16 distributorship; correct?

17 A. Correct.

18 Q. So they can't return their inventory if
19 without giving up their entire Herbalife business.
20 True?

21 A. Right.

22 Q. And if they -- if they want to return their
23 inventory to Herbalife under the buyback policy, they
24 have to give up their right to purchase product at a
25 discount; right?

1 A. Well, they -- they can -- I think they can
2 subsequently join as a distributor in the same -- under
3 the same as they were before.

4 Q. Actually, I think the form says they have to
5 permanently resign their distributorship. Do you recall
6 that?

7 A. Permanently resign?

8 Q. Yes.

9 A. Well, let's see.

10 Q. Let's look at it. Starts with page 44.

11 A. Page 44. Permanently resign. Okay.

12 Q. In order to get Herbalife to buy back a
13 distributor's inventory, they have to obtain a notarized
14 document; right?

15 A. Where does it say "notarized"?

16 Q. It's right -- one of the

17 A. I think previously we required notarization.

18 Q. No longer requires notarization?

19 A. I think it no longer does. The notarization
20 was as some sort of precaution against somebody
21 resigning somebody else, forging, and terminating
22 somebody's distributorship, some upline person who
23 wanted to benefit from it or something, and they felt
24 notarization was a good idea. And we've -- we've
25 changed that to make it easier. To merely make a

1 notarization wasn't much protection against fraud,
2 and -- and I think if you compare our buyback forms and
3 procedures, they are more prominent, more clear, and
4 more legible, more available, than any other multilevel
5 marketing company.

6 Q. Now, the -- the buyback -- it doesn't fit
7 also -- if I want Herbalife to buy back inventory that I
8 overpurchased -- let's say, I bought \$2,000 worth too
9 much -- I would have to give up my right to royalty
10 overrides, commissions, and bonuses; correct?

11 A. Well, you -- you stated it better before you
12 this is a protection where somebody wants to get out of
13 the business. They want to get out of the business, the
14 Herbalife business, and they want to get rid of
15 inventory that they bought.

16 Q. So -- but

17 A. Okay. So -- so

18 Q. They give up their commissions, bonuses, and
19 royalty overrides to have Herbalife

20 A. What royalty, commissions, and overrides?
21 Meaning, for the -- for the sales period after they are
22 no longer distributors?

23 Q. Yes.

24 A. Right.

25 Q. And they

1 A. They are no longer distributors.

2 Q. And so to have Herbalife buy back the product,
3 they have to give up the right to future commissions
4 on -- on their own downline; correct?

5 A. It's not their downline.

6 Q. Okay.

7 A. They are no longer active in the business.
8 This is not a security. It's not a passive investment,
9 a stock certificate. It's an active business. Okay.
10 And so if they leave the business, then they don't
11 receive income based on future sales

12 Q. Right. And but

13 A. -- of people of -- that they brought to the
14 table and of -- and that -- and that other people
15 brought to the table.

16 Q. Very good.

17 A. They are not motivating these people. They are
18 not training them. They are not encouraging them. They
19 are gone.

20 Q. But to get Herbalife to buy back their
21 inventory, they have to give up those things; correct?

22 A. We -- Herbalife only buys back under the law,
23 under the -- the custom in the business, under the rules
24 of the Direct Selling Association at various places.
25 The buyback is something that is -- is not afforded in

1 any other business that I am familiar with. It is -- it
2 is an extra benefit or protection to distributors who
3 want to leave the business.

4 Okay. Does -- does a Buick dealer have the
5 right to sell back his cars when he closes up his
6 distributor, sell it back to General Motors? No. I
7 can't think of any other business that affords this
8 benefit.

9 Q. All right. So

10 A. And so they are saying, "Look, I want out. For
11 whatever reason, I want out. Would you please buy back
12 our -- what I have here in inventory?"

13 We say, "Sure."

14 Q. Okay. Now, the buyback is -- is done at
15 at -- but the person who's requesting the buyback is now
16 bound by Rule 8-A to not solicit under the terms of
17 Rule 8-A for a year; correct?

18 A. They are bound whether they do a buyback or
19 not.

20 Q. Okay. So if they

21 A. They're bound, because they were a distributor.

22 Q. But if they ask for a buyback, they are then
23 bound not to go out into a competing business

24 A. No. No.

25 Q. -- with their lineage?

1 Q. Okay.

2 A. -- about eBay.

3 What -- do you remember the eBay rules

4 Q. No.

5 A. -- number?

6 Well, let me just state it as a possibility. I
7 am not sure that the no sale on eBay rule applies to a
8 former distributor. Okay. So -- but I don't know that
9 was a big part of your question. What was the big
10 question?

11 Q. The big part is they give up their right to
12 royalty overrides, they give up the right to receive any
13 income, and the right to do business for a year with
14 their own lineage?

15 A. Whatever reason they have for terminating

16 Q. Yeah.

17 A. -- the distributorship, if they terminate the
18 distributor, they have terminated their income rights.

19 Q. Okay. Under the

20 A. They are no longer actively doing the business.
21 They are no longer entitled to compensation.

22 Q. And when there's a -- a buyback, it's not a
23 hundred percent of their money they receive back;
24 correct?

25 A. Correct.

1 Q. Okay.

2 A. -- about eBay.

3 What -- do you remember the eBay rules

4 Q. No.

5 A. -- number?

6 Well, let me just state it as a possibility. I
7 am not sure that the no sale on eBay rule applies to a
8 former distributor. Okay. So -- but I don't know that
9 was a big part of your question. What was the big
10 question?

11 Q. The big part is they give up their right to
12 royalty overrides, they give up the right to receive any
13 income, and the right to do business for a year with
14 their own lineage?

15 A. Whatever reason they have for terminating

16 Q. Yeah.

17 A. -- the distributorship, if they terminate the
18 distributor, they have terminated their income rights.

19 Q. Okay. Under the

20 A. They are no longer actively doing the business.
21 They are no longer entitled to compensation.

22

23

REDACTED

24

25

1 Q. They don't receive their shipping cost; right?

2 A. Right.

3 Q. And the shipping costs are 11 percent?

4 A. I don't -- I'll take your word for it.

5 Q. Okay. And then they also only receive
6 90 percent of the purchase price?

7 A. Correct.

8 Q. And they -- they also have to pay to have the
9 product shipped back to Herbalife?

10 A. Right.

11 Q. All right. So if a -- a distributor spends,
12 let's say, \$1,000 buying some inventory, essentially,
13 they will end up with a little over \$700 in the buyback.
14 Is that accurate?

15 A. Well, I am -- you know, I am not -- do you want
16 me to do the math? I have to make the assumptions that
17 you're right on shipping and handling.

18 Q. Does Herbalife make a profit on shipping and
19 handling, to your knowledge?

20 A. I am not sure what I -- if I understand what
21 you mean by "shipping and handling." I see on the order
22 form packing and handling, seven percent, and order
23 shipping charge, X percent -- I mean, a blank percentage
24 fee. I don't know where the percentage comes from.

25 Oh, I guess it's over here. So, you know, some

1 of this is out-of-pocket, you know, and some -- some of
2 it is our cost of packaging and handling. I don't know
3 what the answer is to that.

4 Q. Okay.

5 A. Okay. But, you know, keep in mind, that they
6 are not required to -- this is an option on their part,
7 on the part of the distributor. They are not required
8 to sell it back to the company.

9
10
11

12 REDACTED

13
14
15
16

17 Q. Now, on the -- going back to the buyback, the
18 distributors are not obligated to buy back product from
19 the -- from their -- let's say, call them "terminating
20 distributor" downline; right?

21 A. I think that's correct.

22 Q. Is there a penalty to a distributor in the
23 event of a buyback?

24 A. Well, we clawback -- it is a term entitled,
25 "clawback," c-l-a-w-b-a-c-k -- any compensation they

1 received as a result of the -- of the shipment that's
2 being returned. Plus we -- we monitor to see whether
3 there's an excessive amount of that going on, which
4 would indicate that they -- that they may be inventory
5 loading, and then there may be sanctions.

6 Q. When a distributor terminates, they receive a
7 letter from Herbalife, acknowledging the termination?

8 A. I don't know.

9 Q. Okay. Do you know whether or not distributors
10 are advised in their distributor termination letter that
11 they are entitled to a repurchase, if they desire?

12 A. I -- you mean if -- if they are terminated by
13 the company, or if they quit?

14 Q. If they quit.

15 A. I don't know that. But they -- it's very
16 prominent, as I said before, in the rules and on the Web
17 site. Buyback is right there. Anybody can find it.

18

19

20

21

REDACTED

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, LENA MESCALL, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 13018 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript [xx] was [] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated: February 24, _____, 2009

10

11

Lenafmes call

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

HERBALIFE INTERNATIONAL)	
OF AMERICA, INC., a)	
Nevada corporation,)	
)	
Plaintiff,)	No. CV 072529
)	GF (FMOx)
vs.)	
)	
ROBERT E. FORD and JULIA)	
A. FORD, husband and)	
wife; BRUCE H. ROTH and)	
NANCY A. ROTH, husband)	
and wife; JEFF ORR and)	
KATHY ORR, husband and)	
wife; DIANNA N. THOMPSON;)	
and JASON FISHER,)	
)	
Defendants.)	

DEPOSITION OF MIKE McKEE

February 18, 2009

Lisa DiGiovanni, CSR # 11969
⊕ 277315

BARKLEY
Court Reporters

(212) 808-8500 New York
(702) 366-0500 Las Vegas

(310) 207-8000 Los Angeles
(915) 922-5777 Sacramento
(858) 455-5444 San Diego

(949) 955-0400 Irvine
(408) 885-0550 San Jose
(951) 686-0606 Riverside

(415) 433-5777 San Francisco
(760) 322-2240 Palm Springs
(818) 702-0202 Woodland Hills

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

HERBALIFE INTERNATIONAL)	
OF AMERICA, INC., a)	
Nevada corporation,)	
)	
Plaintiff,)	No. CV 072529
)	GF (FMOx)
vs.)	
)	
ROBERT E. FORD and JULIA)	
A. FORD, husband and)	
wife; BRUCE H. ROTH and)	
NANCY A. ROTH, husband)	
and wife; JEFF ORR and)	
KATHY ORR, husband and)	
wife; DIANNA N. THOMPSON;)	
and JASON FISHER,)	
)	
Defendants.)	

Deposition of MIKE MCKEE, taken on behalf of
the defendants, at 555 W. Fifth Street,
Los Angeles, California, commencing at
8:56 a.m., Wednesday, February 18, 2009,
before Lisa DiGiovanni, RPR, Certified
Shorthand Reporter No. 11969.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Okay. Did you ever talk to Michael Johnson
and -- well, strike that.

Have you ever talked to Michael Johnson?

A. Yes.

1 Q. Did you talk to Michael Johnson about the
2 defendants proselytizing?

3 A. No.

4 Q. Did you talk to Michael Johnson about any
5 subject relating to why you believe the defendants
6 have been sued in this case?

7 A. Let's go back to the other question where I
8 said no. I don't have any recollection of ever
9 talking to Michael Johnson about this at all, any --
10 any part about it. Michael Johnson and I don't have
11 these kinds of conversations.

12 Q. Did you and Mr. Zimmer talk to Michael
13 Johnson together about proselytizing by the
14 defendants?

15 A. Not that I recall.

16 Q. Do you recall any conversation between you
17 and Mr. Zimmer where Michael Johnson was present and
18 you were talking about the reasons the defendants
19 might be sued in this case?

20 A. None that I recall.

21

22

REDACTED

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Were you ever at a President's Team meeting with Kathy Orr where you talked to her about the attrition problem at Herbalife?

A. I don't recall.

Q. Do you know what "the attrition problem" means at Herbalife?

A. No. Maybe you can define it more for me.

1 Q. Have you ever heard the term "attrition"?

2 A. Yes.

3 Q. Have you ever heard the term "attrition" in
4 connection with the Herbalife business opportunity?

5 A. Sure.

6 Q. And what does that mean?

7 A. Means how many people drop out every year.

8 Q. And how many people, to your knowledge,
9 drop out every year?

10 A. I don't know the numbers.

11 Q. Is it greater than 10 percent?

12 A. Without knowing the numbers, I would rather
13 not answer. I do not know the numbers.

14 Q. Who at Herbalife would know the answer?

15 A. Our stat department that I would go to to
16 pull any of that information.

17 Q. Have you ever heard from distributors that
18 90 percent is the attrition rate?

19 A. No.

20 Q. Have you ever heard from distributors that
21 greater than 50 percent is the attrition rate?

22 A. I don't recall if I've heard that or not.

23

24

REDACTED

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Have you ever heard any Herbalife TAB Team member state that the attrition rate is as high as 90 percent?

A. No.

REDACTED

1 REDACTED

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. All right. Going back to the resignation letter of Robert Ford, do you believe that Robert Ford was of the opinion that the attrition level at Herbalife was high?

A. I don't have a belief one way or the other what Robert believed.

Q. Okay. That Paragraph 4 says at the last sentence, "I had to bring in about four supervisors a month knowing that three would never make it."

Did I read that correctly?

A. You read it correctly, yes.

Q. Thank you.

Did -- do you have an opinion as to -- well, strike that.

Do you have any information that what Mr. Ford is saying is untrue?

A. Yeah.

Q. So what information do you have?

A. We've got lots of people that have made it without getting four supervisors a month.

Q. But the statement here is that out of the

1 four supervisors, three would not make it. Does
2 that sound correct?

3 A. No.

4 Q. So three would make it?

5 A. I don't know. It depends on -- I guess it
6 depends on the person who is signing up the
7 supervisors whether or not they'd make it.

8 Q. Okay.

9 A. Got a lady in Texas, you know, she signs up
10 four supervisors and she keeps four supervisors.
11 You know, if you talk to some -- it varies. Just
12 like we talked about A to Z on the distributor
13 types, I think that's going to also play with the
14 averages here. Quite frankly, people have all
15 gotten to where they're at in this company with the
16 same exact products and the same exact marketing
17 plan, and I think the only difference ever is the
18 effort of the person.

19 Q. Have you ever heard Michael Johnson say
20 that 50 percent of the buyers at Herbalife cease
21 buying after the first year?

22 A. I don't recall.

23 Q. Would that shock you?

24 A. No. I guess it depends how long it takes
25 somebody to get the results that they're looking

1 for. And we've got, you know, when we talked about
2 the type of products, you know, weight loss products
3 versus products that maybe people want to stay on
4 for life for health, heart health. If I'm on for
5 weight loss and I achieve my results, there's no
6 telling that that person is going to stay around.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Have you seen the product on eBay?

A. Yes.

Q. A lot of product on eBay, isn't there?

A. Everybody's product is on eBay.

Q. And is an e-mail sale considered a retail customer sale?

A. I don't know how to answer that.

1 Q. Okay. Are there rules that prohibit --

2 A. I don't think we have a way. We don't have
3 a way to measure -- to my knowledge, we don't have a
4 way to measure retail sales. Sale could be -- so I
5 don't know how to answer the eBay question.

6 Q. So Herbalife doesn't have a way to measure
7 the retail sales because it doesn't gather retail
8 sales information from its distributors?

9 A. The 10-customer form -- again, it's not my
10 area of expertise. So I don't know if there's
11 another way beyond the 10-customer form. There may
12 be. I'm personally not aware of it.

13 Q. Did you ever hear complaints from
14 distributors relating to sales on e-mail?

15 A. Yes.

16 Q. What did you hear?

17 A. They said, "Our products are on eBay.
18 Can't you get them off?"

19 Q. Why did they care? Do you know?

20 A. Probably because they thought somebody was
21 going to offer -- in some cases, they were offering
22 a better price than what the distributor was
23 offering. The one thing I would respond to them, if
24 there was a better price on eBay, then what they
25 don't know from eBay is, No. 1, they don't have our

1 money back guarantee, because you don't know how old
2 those products are on eBay. Somebody could be
3 selling products from five years ago on eBay, and
4 how is somebody going to purchase from eBay when
5 they don't know the source of those products?

6 Q. Do you know why distributors -- strike
7 that.

8 Do you know why distributors put their
9 products on eBay?

10 A. No.

11 Q. Do you believe that distributors who
12 qualified for royalty overrides place their products
13 on eBay?

14 MR. PATTERSON: Objection. Calls for
15 speculation. No foundation.

16 THE WITNESS: I don't know why they would
17 because they can earn 50 percent retail profit on
18 the products. I don't know why they would give away
19 money.

20 Q. BY MR. JOLLY: Had you ever heard that
21 distributors were placing product that they obtained
22 from Herbalife in order to qualify for the royalty
23 override on eBay?

24 MR. PATTERSON: Objection. Calls for
25 speculation. Calls for hearsay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE WITNESS: Have I ever heard -- repeat the question.

Q. BY MR. JOLLY: Did any distributor ever tell you, "I put my product on eBay because I needed to get my royalty override checks, so I bought some from Herbalife"?

A. No.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. All right. Referring to Paragraph 2 of the letter, Exhibit 26, the letter states in the second sentence, "The retail price is being established on eBay, which is often below 50 percent of Herbalife's suggested retail price."

1 Do you see that?

2 A. Yes.

3 Q. Did I read that correctly?

4 A. Yup.

5 Q. Did you hear from any distributor at any
6 time that the retail price was being established on
7 eBay?

8 A. No.

9 Q. Did you hear from any distributor at any
10 time that persons were selling below the 50 percent
11 of Herbalife's suggested retail price on eBay?

12 A. I think the comment there's people selling
13 at below the 50 percent retail price on eBay.

14 Q. Yes.

15 A. Not distributors.

16 Q. Okay.

17 A. So I don't know that I heard distributors
18 because nobody ever gave me -- my thing would have
19 been give me the distributor's name. I think a lot
20 of times on eBay, they're not distributors. They're
21 people just that got it from somewhere and are
22 selling on eBay.

23 Q. Where do you think they would get it from?

24 A. They would have to get it from customers
25 that didn't have results or, you know, could be

1 distributors that left the business and maybe had
2 leftover inventory. I don't know.

3 Q. You, yourself, have been on eBay and
4 observed products being sold on eBay?

5 A. Yes. Not a regular practice. I've been on
6 there a couple times. I'm very computer unsavvy.
7 I've seen them on.

8

9

10

11

REDACTED

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Did you ever train any distributors on the filling out of the 10-customer form?

A. No.

Q. Have you ever trained any persons -- as vice president of sales for North America and the link between GET Team members and Herbalife, have you ever trained anybody about what the 70-percent rule means?

1 A. No.

2 Q. Of these --

3 A. I do as vice president tell them that they
4 need to read the rules in the rule book.

5 Q. Okay.

6 A. I'm not going to get on a call and spend
7 time going over rules. That would be like the
8 deposition today; right? You know, I want to talk
9 about exciting stuff. I'm the sales end of it.

10

11

12

13

REDACTED

14

15

16

17

18

19

20

21

12:30 22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Did -- in all of these 500 or 1,000 training events that you've been to for Herbalife, did you ever hear anyone talk about the 70-percent rule and explain to you what it meant?

A. Not that I can recall.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Do you know what a retail sale is?

A. I would -- I would classify retail sales as sales of a product to a customer.

Q. Okay. And as vice president of the sales for Herbalife in North America, do you believe a retail sale is a sale of a product to a retail customer?

A. Retail is the sale of a product to a customer, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. So if a distributor wants to have the inventory repurchased, they could ask Herbalife to do that; correct?

A. It's my understanding that's the case, yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Have you ever talked to Michael Johnson about this case?

A. No.

Q. Have you ever talked to Michael Johnson on the subject of poaching?

A. No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. What relationship do royalty overrides have to retail sales to customers who are not Herbalife independent distributors?

A. What relationship do royalty overrides have to customers?

Q. To retail sales.

A. If there weren't any retail sales, nobody would be getting 2,500 in order to get their royalty override check. If there's no product being sold, nobody's going to get to the level of 2,500 to receive a royalty. So I guess that's the relation. There's gotta be retail going on; otherwise the thing stops in two months.

Q. So if there's no retail, that's a bad thing; right?

A. Absolutely.

Q. People don't make money; right?

A. People have to love our products. That's what we sell. If we weren't selling and retailing products, then there is no royalty to be made.

REDACTED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. But there's no requirement to -- for retail sales in order to grow to the level where you can receive royalty overrides; correct?

A. But it's not a -- it's an impossibility to not have the retail happening.

Q. Why do you think that?

A. Because you can't just -- you can't sell nothing to get to the 2,500, to get your royalty check.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REDACTED

Q. Does Herbalife ever sell its products in the U.S. based on retail price?

A. Does Herbalife?

Q. Yes.

A. Or do the distributors?

Q. The company.

A. I don't understand the question.

Q. Herbalife doesn't have, like, sell its products at grocery stores?

A. No.

Q. So it's not out selling products retail; correct?

A. No.

DEPOSITION OFFICER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, Lisa DiGiovanni, hereby certify:

I am a duly qualified Certified Shorthand Reporter in the State of California, holder of Certificate Number CSR 11969 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a true record

/ / /

1 of the testimony given by the witness. (Fed. R. Civ. P.
2 30(f)(1)).

3 Before completion of the deposition, review of
4 the transcript [XX] was [] was not requested. If
5 requested, any changes made by the deponent (and
6 provided to the reporter) during the period allowed, are
7 appended hereto. (Fed. R. Civ. P. 30(e)).

8

9 Dated: February 20th, 2009

10

11

Lisa Di Giovanni

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MORRISON | FOERSTER

#-1262
555 WEST FIFTH STREET
LOS ANGELES
CALIFORNIA 90013-1024
TELEPHONE: 213.892.5200
FACSIMILE: 213.892.5454
WWW.MOFO.COM

MORRISON & FOERSTER LLP
NEW YORK, SAN FRANCISCO,
LOS ANGELES, PALO ALTO,
SAN DIEGO, WASHINGTON, D.C.
NORTHERN VIRGINIA, DENVER,
SACRAMENTO, WALNUT CREEK
TOKYO, LONDON, BEIJING,
SHANGHAI, HONG KONG,
SINGAPORE, BRUSSELS

January 7, 2009

Writer's Direct Contact
213.892.5561
NThomas@mofocom

By Email

John B. Stephens
Stephens Friedland LLP
4695 MacArthur Court, Suite 310
Newport Beach, CA 92660

Cameron M. Jolly
Mixon Jolly LLP
575 Anton Boulevard, Suite 670
Costa Mesa, California 92626-1910

Re: *Herbalife v. Ford*

Dear John and Cameron:

Happy New Year to both of you. I hope you both had a good holiday.

I write concerning several outstanding discovery issues. First, the second of the three PDF files you produced on December 17 named "Box 2 of 3" is corrupt and will not open. Please send us a replacement set of these documents either in paper format, single page TIFF images with a load file, or single document pdfs. The production format you used for the December 17 production of a single pdf containing many individual documents is not workable as there is no way to determine where each document begins and ends.

Second, we would like to review the documents in Robert and Julia Ford's possession listed in the document attached to John's December 17 email. Please let us know if someone can review the documents, presumably at John's office, sometime next week.

Third, other than the documents discussed in the previous paragraph, can you each confirm that each of your clients has produced all documents responsive to Herbalife's document requests, as narrowed during our meet and confer discussions? Also, can you please let us know by bates number which documents were produced by which Defendant?

la-1010444

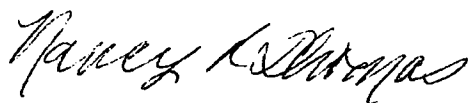
Cameron M. Jolly
John B. Stephens
January 7, 2009
Page Two

Fourth, you should have received Herbalife's written response to each Defendant's set of document requests, which we served on Monday. We expect to produce responsive documents on or before Monday, January 12.

Fifth, I can confirm that we represent Lilith Nix, Geri Cvitanovich-Dubie, and Gregory Probert for purposes of this action. We are authorized to accept service of a subpoena for Mr. Probert. We do not represent Anthony Powell or Stefan Graziani.

Finally, we will check on Ms. Miller's availability for January 28-30.

Very truly yours,



Nancy R. Thomas

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
18 NANCY A. ROTH, husband and wife; JEFF
19 ORR and KATHY ORR, husband and wife;
DIANNA N. THOMPSON; and JASON
FISHER,

20 Defendants.
21

22 AND RELATED CROSS-CLAIM.
23

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEESS

DEFENDANT AND
COUNTERCLAIMANT JASON
FISHER'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.

24
25
26
27
28

FISHER'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant JASON FISHER
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant JASON
6 FISHER ("FISHER"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

- 1 a. the date such document was prepared;
2 b. the person who authored or prepared the document;
3 c. the recipient of the document;
4 d. the type of document (e.g., memo, letter, etc.);
5 e. the general subject matter of the document; and
6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
10 b. the date the statement was made;
11 c. the person who made the statement; and
12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18
19 **INTERROGATORIES**

20 **INTERROGATORY NO. 20:**

21 State the percentage of YOUR new, independent distributors who remain active after one
22 year.

23 **INTERROGATORY NO. 21:**

24 State the percentage of YOUR new, independent distributors who "drop out" within their
25 first year.

26
27
28

1 **INTERROGATORY NO. 22:**

2 With respect to YOUR new, independent distributors, describe in detail the amount and
3 timing of any financial obligations those new distributors are required to incur.

4 **INTERROGATORY NO. 23:**

5 State the amount in dollars in HERBALIFE products that YOUR independent distributors
6 are required to purchase to achieve Supervisor status.

7 **INTERROGATORY NO. 24:**

8 State the average amount in dollars that YOUR new, independent distributors purchase
9 from YOU in their first year.

10 **INTERROGATORY NO. 25:**

11 State the average profit margins that the YOUR independent distributors realize on retail
12 sales of YOUR products.

13

14 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

15

16

By: 

17

18

John Stephens, Attorney for Defendants
and Counterclaimants ROBERT E. FORD,
JULIA A. FORD, BRUCE H. ROTH,
NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 20, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT JASON FISHER'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001

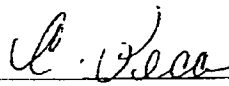
VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 20, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
18 NANCY A. ROTH, husband and wife; JEFF
19 ORR and KATHY ORR, husband and wife;
DIANNA N. THOMPSON; and JASON
20 FISHER,

21 Defendants.

22 AND RELATED CROSS-CLAIMS.
23

) CASE NO.: CV 072529 GF (FMOx)

) HON. GARY A. FEESS

) DEFENDANT AND
) COUNTERCLAIMANT JULIA A.
) FORD'S SECOND SET OF
) INTERROGATORIES TO PLAINTIFF
) AND COUNTER DEFENDANT
) HERBALIFE INTERNATIONAL OF
) AMERICA, INC.

24
25
26
27
28

JULIA FORD'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant JULIA A. FORD
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 JULIA A. FORD ("FORD"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

1

JULIA FORD'S SECOND SET OF INTERROGATORIES TO HERBALIFE

- 1 a. the date such document was prepared;
2 b. the person who authored or prepared the document;
3 c. the recipient of the document;
4 d. the type of document (e.g., memo, letter, etc.);
5 e. the general subject matter of the document; and
6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
10 b. the date the statement was made;
11 c. the person who made the statement; and
12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18

19

INTERROGATORIES

20

INTERROGATORY NO. 19:

21

State the average annual earnings for each of the past five (5) years for Herbalife
22 independent distributors who reach the level of Supervisor.

23

INTERROGATORY NO. 20:

24

State the average annual earnings for each of the past five (5) years for Herbalife
25 independent distributors who qualify for "World Team" status.

26

27

28

1 **INTERROGATORY NO. 21:**

2 State the average annual earnings for each of the past five (5) years for Herbalife
3 independent distributors who qualify for "Global Expansion Team" status.

4 **INTERROGATORY NO. 22:**

5 State the average annual earnings for each of the past five (5) years for Herbalife
6 independent distributors who qualify for "Millionaire Team" status.

7 **INTERROGATORY NO. 23:**

8 State the average annual earnings for each of the past five (5) years for Herbalife
9 independent distributors who qualify for "President's Team" status.

10 **INTERROGATORY NO. 24:**

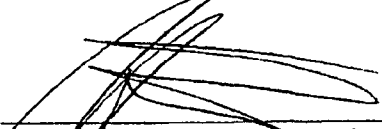
11 State the average annual earnings for each of the past five (5) years for Herbalife
12 independent distributors who qualify for "Chairman's Club" status.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

By:


John Stephens, Attorney for Defendants
and Counterclaimants ROBERT E. FORD,
JULIA A. FORD, BRUCE H. ROTH,
NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 30, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT JULIA A. FORD'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.	Cameron M. Jolly, Esq.
Nancy R. Thomas, Esq.	Mixon Jolly LLP
Morrison & Foerster LLP	575 Anton Blvd., Suite 670
555 West Fifth Street	Costa Mesa, CA 92626
Los Angeles, CA 90013	Telephone: (714) 885-7000
Telephone: (213) 892-5200	Facsimile: (714) 885-7001
Facsimile: (213) 892-5454	

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 30, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE



1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
18 NANCY A. ROTH, husband and wife; JEFF
19 ORR and KATHY ORR, husband and wife;
DIANNA N. THOMPSON; and JASON
20 FISHER,

21 Defendants.

22 AND RELATED CROSS-CLAIMS.
23

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEESS

**DEFENDANT AND
COUNTERCLAIMANT BRUCE H.
ROTH'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.**

24
25
26
27
28

BRUCE ROTH'S SECOND SET OF INTERROGATORIES TO HERBALIFE

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18
19 **INTERROGATORIES**

20 **INTERROGATORY NO. 24:**

21 Describe in detail the efforts taken by YOU to advise YOUR independent distributors of
22 the impact that the non-solicitation provisions of the DISTRIBUTOR AGREEMENTS or rules
23 (including Rule 8-A) could have on YOUR independent distributors' ability to do business after
24 the independent distributors leave HERBALIFE.

25
26
27
28

1 PROPOUNDING PARTY: Defendant and Counterclaimant BRUCE H. ROTH
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 BRUCE H. ROTH ("ROTH"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

1 **INTERROGATORY NO. 25:**

2 Describe in detail the efforts taken by YOU to advise YOUR independent distributors of
3 the impact that the non-competition provisions of the DISTRIBUTOR AGREEMENTS or rules
4 (including Rule 8-A) could have on YOUR independent distributors' ability to do business after
5 the independent distributors leave HERBALIFE.

6

7 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

8

9

By: 

10

John Stephens, Attorney for Defendants
and Counterclaimants ROBERT E. FORD,
JULIA A. FORD, BRUCE H. ROTH,
NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 20, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT BRUCE H. ROTH'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001


VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnite Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 20, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
18 NANCY A. ROTH, husband and wife; JEFF
19 ORR and KATHY ORR, husband and wife;
DIANNA N. THOMPSON; and JASON
20 FISHER,

21 Defendants.

22 AND RELATED CROSS-CLAIMS.
23

) CASE NO.: CV 072529 GF (FMOx)

) HON. GARY A. FEES

) **DEFENDANT AND
COUNTERCLAIMANT NANCY A.
ROTH'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.**

24
25
26
27
28

NANCY ROTH'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant NANCY A. ROTH
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant NANCY
6 A. ROTH ("ROTH"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:

28

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18
19 **INTERROGATORIES**

20 **INTERROGATORY NO. 14:**

21 Do YOU contend that YOUR DISTRIBUTOR AGREEMENTS prohibited the
22 DEFENDANTS from contacting all prospective and actual Herbalife customers after the
23 DEFENDANTS left HERBALIFE?

24 **INTERROGATORY NO. 15:**

25 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
26 DEFENDANTS from contacting all prospective and actual Herbalife customers after the
27 DEFENDANTS left HERBALIFE, please state all facts that support YOUR contention.

28

1 **INTERROGATORY NO. 16:**

2 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibit the DEFENDANTS
3 from contacting all prospective and actual Herbalife customers after the DEFENDANTS left
4 HERBALIFE, please state the legal basis (including all statutes, decisional law, common law,
5 and commentary) upon which YOU base YOUR contention.

6 **INTERROGATORY NO. 17:**

7 Do YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
8 DEFENDANTS from contacting Herbalife customers with whom the DEFENDANTS had a pre-
9 existing relationship after the DEFENDANTS left Herbalife?

10 **INTERROGATORY NO. 18:**

11 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
12 DEFENDANTS from contacting Herbalife customers with whom the DEFENDANTS had a pre-
13 existing relationship after the DEFENDANTS left Herbalife, please state all facts that support
14 YOUR contention.

15 **INTERROGATORY NO. 19:**

16 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
17 DEFENDANTS from contacting Herbalife customers with whom the DEFENDANTS had a pre-
18 existing relationship after the DEFENDANTS left Herbalife, please state the legal basis
19 (including all statutes, decisional law, common law, and commentary) upon which YOU base
20 YOUR contention.

21 **INTERROGATORY NO. 20:**

22 Do YOU contend that the DISTRIBUTOR AGREEMENTS prohibited DEFENDANTS
23 from contacting all other Herbalife independent distributors after the DEFENDANTS left
24 Herbalife?

25
26
27
28

1 **INTERROGATORY NO. 21:**

2 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited DEFENDANTS
3 from contacting all other Herbalife independent distributors after the DEFENDANTS left
4 Herbalife, please state all facts that support YOUR contention.

5 **INTERROGATORY NO. 22:**

6 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited DEFENDANTS
7 from contacting all other Herbalife independent distributors after the DEFENDANTS left
8 Herbalife, please state the legal basis (including all statutes, decisional law, common law, and
9 commentary) upon which YOU base YOUR contention.

10 **INTERROGATORY NO. 23:**

11 Do YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
12 DEFENDANTS from contacting other Herbalife independent distributors with whom the
13 DEFENDANTS had a pre-existing relationship after the DEFENDANTS left Herbalife?

14 **INTERROGATORY NO. 24:**

15 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
16 DEFENDANTS from contacting other Herbalife independent distributors with whom the
17 DEFENDANTS had a pre-existing relationship after the DEFENDANTS left Herbalife, please
18 state all facts that support YOUR contention.

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28

1 **INTERROGATORY NO. 25:**

2 If YOU contend that the DISTRIBUTOR AGREEMENTS prohibited the
3 DEFENDANTS from contacting other Herbalife independent distributors with whom the
4 DEFENDANTS had a pre-existing relationship after the DEFENDANTS left Herbalife, please
5 state the legal basis (including all statutes, decisional law, common law, and commentary) upon
6 which YOU base YOUR contention.

7
8 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

9
10
11 By: 

John Stephens, Attorney for Defendants
and Counterclaimants ROBERT E. FORD,
JULIA A. FORD, BRUCE H. ROTH,
NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 20, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT NANCY A. ROTH'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001


VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 20, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
BRUCE H. ROTH, NANCY A. ROTH,
7 DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15 ROBERT E. FORD and JULIA A. FORD,
16 husband and wife; BRUCE H. ROTH and
17 NANCY A. ROTH, husband and wife; JEFF
18 ORR and KATHY ORR, husband and wife;
19 DIANNA N. THOMPSON; and JASON
20 FISHER,

21 Defendants.

22 AND RELATED CROSS-CLAIMS.
23

) CASE NO.: CV 072529 GF (FMOx)

) HON. GARY A. FEESS

) **DEFENDANT AND
COUNTERCLAIMANT DIANNA N.
THOMPSON'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.**

24
25
26
27
28

DIANNA THOMPSON'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant DIANNA N. THOMPSON
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 DIANNA N. THOMPSON ("THOMPSON"), requests that Plaintiff and Counter Defendant
7 HERBALIFE INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full,
8 in writing and under oath, the following interrogatories, within thirty (30) days after service of
9 the requested interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:

28

1

DIANNA THOMPSON'S SECOND SET OF INTERROGATORIES TO HERBALIFE

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18
19 **INTERROGATORIES**

20 **INTERROGATORY NO. 12:**

21 Do YOU contend that the sale of HERBALIFE products on eBay violates YOUR
22 policies?

23 **INTERROGATORY NO. 13:**

24 If YOU contend that the sale of HERBALIFE products on eBay violates YOUR policies,
25 describe in detail all steps YOU take to discourage and/or prohibit such sales.

26
27
28

1 **INTERROGATORY NO. 14:**

2 Do YOU contend that the sale of Herbalife products on eBay violates YOUR
3 DISTRIBUTOR AGREEMENTS?

4 **INTERROGATORY NO. 15:**

5 If YOU contend that the sale of Herbalife products on eBay violates YOUR
6 DISTRIBUTOR AGREEMENTS, describe in detail all steps YOU take to discourage and/or
7 prohibit such sales.

8 **INTERROGATORY NO. 16:**

9 Do YOU contend that Herbalife independent distributors own and operate their own
10 businesses?

11 **INTERROGATORY NO. 17:**

12 Do YOU contend that YOUR independent distributors' businesses (including customer
13 lists, goodwill, and downline distributors) belong to Herbalife?

14 **INTERROGATORY NO. 18:**

15 If YOU contend that YOUR independent distributors' businesses (including customer
16 lists, goodwill, and downline distributors) belong to Herbalife, please state all facts that support
17 YOUR contention.

18 **INTERROGATORY NO. 19:**

19 If YOU contend that YOUR independent distributors' businesses (including customer
20 lists, goodwill, and downline distributors) belong to Herbalife, please state the legal basis
21 (including all statutes, decisional law, common law, and commentary) upon which YOU base
22 YOUR contention.

23 **INTERROGATORY NO. 20:**

24 If YOU contend that YOUR independent distributors' businesses (including customer
25 lists, goodwill, and downline distributors) belong to Herbalife, please describe in detail how you
26 communicated this to YOUR independent distributors.

27
28

1 **INTERROGATORY NO. 21:**

2 Please describe in detail all incentives (including monetary and nonmonetary) provided to
3 YOUR independent distributors for recruiting new Herbalife independent distributors.

4 **INTERROGATORY NO. 22:**

5 For each of the past five years, please state the percentage of YOUR independent
6 distributors' total income from Herbalife that was earned for enrolling new distributors.

7 **INTERROGATORY NO. 23:**

8 Please describe in detail the measures taken by YOU to ensure that YOUR products are
9 sold to bona fide retail consumers.


10 **INTERROGATORY NO. 24:**

11 Please describe in detail the measures taken by YOU to ensure that YOUR independent
12 distributors comply with YOUR retail sales requirements.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

By: 
John Stephens, Attorney for Defendants
and Counterclaimants ROBERT E. FORD,
JULIA A. FORD, BRUCE H. ROTH,
NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 30, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT DIANNA N. THOMPSON'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for ^{overnite} Federal Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 30, 2009, at Newport Beach, California.



Carolyn Peca

PROOF OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
ROBERT E. FORD, JULIA A. FORD,
6 BRUCE H. ROTH, NANCY A. ROTH,
7 DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

14 vs.

16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
18 NANCY A. ROTH, husband and wife; JEFF
19 ORR and KATHY ORR, husband and wife;
DIANNA N. THOMPSON; and JASON
FISHER,

20 Defendants.

22 AND RELATED CROSS-CLAIMS.
23

) CASE NO.: CV 072529 GF (FMOx)

) HON. GARY A. FEES

) **DEFENDANT AND
COUNTERCLAIMANT ROBERT E.
FORD'S SECOND SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.**

28

ROBERT FORD'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant ROBERT E. FORD
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Two

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 ROBERT E. FORD ("FORD"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:

- 23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

18
19 **INTERROGATORIES**

20 **INTERROGATORY NO. 19:**

21 Please describe in detail the steps taken to verify and substantiate YOUR claims about
22 YOUR independent distributors' income and lifestyle as reflected in statements on YOUR
23 website.

24 **INTERROGATORY NO. 20:**

25 Please describe in detail the steps taken to verify and substantiate YOUR claims about
26 YOUR independent distributors' income and lifestyle as reflected in statements in YOUR
27 publications.

28

1 **INTERROGATORY NO. 21:**

2 Please describe in detail the steps taken to verify and substantiate YOUR claims about
3 YOUR independent distributors' income and lifestyle as reflected in statements in YOUR annual
4 report.

5 **INTERROGATORY NO. 22:**

6 Please describe in detail the steps taken to verify and substantiate YOUR claims about
7 YOUR independent distributors' income and lifestyle as reflected in statements in YOUR S.E.C.
8 filings.

9 **INTERROGATORY NO. 23:**

10 Please state the name of each Herbalife independent distributor who YOU contend left
11 Herbalife due to illegal conduct by any of the DEFENDANTS.

12 **INTERROGATORY NO. 24:**

13 For each Herbalife independent distributor who YOU contend left Herbalife due to illegal
14 conduct by any of the DEFENDANTS, state the revenue that Herbalife received from sales by
15 that independent distributor in the year before that independent distributor terminated their
16 Herbalife distributorship.

17 **INTERROGATORY NO. 25:**

18 For each Herbalife independent distributor who YOU contend left Herbalife due to illegal
19 conduct by any of the DEFENDANTS, state the net profit that Herbalife received from sales by
20 that independent distributor in the year before that independent distributor terminated his or her
21 Herbalife distributorship.

22 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

23
24 By: _____

25 John Stephens, Attorney for Defendants
26 and Counterclaimants ROBERT E. FORD,
27 JULIA A. FORD, BRUCE H. ROTH,
28 NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On ^{Feb} ~~January~~ 2, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT ROBERT E. FORD'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001


VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Federal Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on ~~January~~ ^{February} 2, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

*Read 2/19/09
OEP*

1 Cameron M. Jolly, Esq. (SBN # 132541)
2 MIXON | JOLLY, LLP
3 575 Anton Blvd., Suite 670
4 Costa Mesa, CA 92626
5 Telephone: (714) 885-7000
6 Facsimile: (714) 885-7001
7 Email: cjolly@mixonjollylaw.com

8 Attorney for Defendants and Counterclaimants
9 JEFF ORR and KATHY ORR

10 IN THE UNITED STATE DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 HERBALIFE INTERNATIONAL OF AMERICA, INC., a Nevada Corporation,
13 Plaintiff,

14 vs.

15 ROBERT E. FORD and JULIA A. FORD,
16 husband and wife; BRUCE H. ROTH and
17 NANCY A. ROTH, husband and wife;
18 JEFF ORR and KATHY ORR, husband
19 and wife; DIANNA N. THOMPSON; and
20 JASON FISHER,
21 Defendants.

CASE NO.: CV 072529 GF (FMOx)
HON. GARY A. FEESS

DEFENDANT AND
COUNTERCLAIMANT KATHY ORR'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF AND COUNTER
DEFENDANT HERBALIFE
INTERNATIONAL OF AMERICA, INC.

22 AND RELATED CROSS-CLAIMS.
23
24

25
26
27
28

KATHY ORR'S FIRST SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant KATHY ORR

2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE
3 INTERNATIONAL OF AMERICA, INC.

4 SET NUMBER: One

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 KATHY ORR ("ORR"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("HERBALIFE"), answer separately, in full, in
8 writing and under oath, the following interrogatories, within thirty (30) days after service
9 of the requested interrogatories.

10 **DEFINITIONS**

11 A. "COMPLAINT" means the complaint filed by Herbalife International of
12 America, Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx)
13 pending in United States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International
16 of America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning,
18 commenting on, connected with, discussing, describing, analyzing, evidencing,
19 contradicting, explaining, showing, reflecting, setting forth, dealing with, comprising,
20 consisting of, containing, constituting, resulting from, recording, or in any way relevant
21 to a particular subject, in whole or in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that
23 person's:

- 24 a. full name;
25 b. present home or business address; and
26 c. present business affiliation and present position held therein.
- 27
28

1

KATHY ORR'S FIRST SET OF INTERROGATORIES TO HERBALIFE

1 E. "IDENTIFY" when used in reference to a document, means to specify the

2 following:

- 3 a. the date such document was prepared;
- 4 b. the person who authored or prepared the document;
- 5 c. the recipient of the document;
- 6 d. the type of document (e.g., memo, letter, etc.);
- 7 e. the general subject matter of the document; and
- 8 f. the person who has custody of the document.

9 F. "IDENTIFY" when used in reference to a statement, means to specify the

10 following:

- 11 a. the content of the statement;
- 12 b. the date the statement was made;
- 13 c. the person who made the statement; and
- 14 d. the person (or persons) that heard the statement.

15 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements,
16 Distributor Agreements, and Confidentiality and Non-Disclosure Agreements with
17 HERBALIFE's distributors.

18 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth,
19 Jeff and Kathy Orr, Jason Fisher, and Dianna Thompson.

20 I. "COMMUNICATION(S)" shall mean any transfer of information, whether
21 oral, written, electronic, or by any other means.

22

23 **INTERROGATORIES**

24 **INTERROGATORY NO. 1:**

25 Please state the average out-of-pocket cost required for YOUR distributors to
26 become Supervisors.

27 **INTERROGATORY NO. 2:**

28

1 For each of the past five (5) years, please state the percentage of product sales
2 that were generated from Supervisor orders.

3 **INTERROGATORY NO. 3:**

4 Please IDENTIFY all COMMUNICATIONS with President's Team members
5 regarding distributors who are leaving HERBALIFE to join Melaleuca.

6 **INTERROGATORY NO. 4:**

7 Please IDENTIFY all COMMUNICATIONS with Chairman's Club members
8 regarding distributors who are leaving YOU to join Melaleuca.

9 **INTERROGATORY NO. 5:**

10 For each of the past five (5) years, please state the percentage of YOUR net
11 sales that are paid as commissions.

12 **INTERROGATORY NO. 6:**

13 Please describe in detail how compensation and/or commissions are paid to
14 YOUR distributors.

15 **INTERROGATORY NO. 7:**

16 Please describe in detail YOUR extended reports, including, but not limited to
17 how those extended reports are generated and the content of those extended reports.

18 **INTERROGATORY NO. 8:**

19 Please state the expected lifetime value of YOUR retail customers.

20 **INTERROGATORY NO. 9:**

21 Please state YOUR net worth.

22 **INTERROGATORY NO. 10:**

23 Please describe in detail all steps taken by YOU to protect YOUR trade secrets.

24 **INTERROGATORY NO. 11:**

25 Please state average gross compensation for YOUR supervisors in the United
26 States for the year 2006.

27 ///

28

1 **INTERROGATORY NO. 12:**

2 Please state average gross compensation for YOUR supervisors in the United
3 States for the year 2007.

4 **INTERROGATORY NO. 13:**

5 Please state average gross compensation for YOUR supervisors in the United
6 States for the year 2008.

7 **INTERROGATORY NO. 14:**

8 State all facts that support YOUR contention that Kathy Orr used Confidential
9 Information that she obtained through registration logs for Herbalife sponsored
10 distributor training.

11 **INTERROGATORY NO. 15:**

12 State all facts that support YOUR contention that Jeff Orr used Confidential
13 Information that he obtained through registration logs for Herbalife sponsored distributor
14 training.

15 **INTERROGATORY NO. 16:**

16 State all facts that support YOUR contention that Kathy Orr violated numerous
17 Herbalife Policies.

18 **INTERROGATORY NO. 17:**

19 State all facts that support YOUR contention that Jeff Orr violated numerous
20 Herbalife Policies.

21 **INTERROGATORY NO. 18:**

22 State all facts that support YOUR contention that Kathy Orr violated the terms of
23 the Tab Team Agreement.

24 **INTERROGATORY NO. 19:**

25 State all facts that support YOUR contention that Jeff Orr violated the terms of
26 the Tab Team Agreement.

27 ///

28

1 **INTERROGATORY NO. 20:**

2 State all facts that support YOUR contention that Kathy Orr violated the terms of
3 the DISTRIBUTOR AGREEMENT.

4 **INTERROGATORY NO. 21:**

5 State all facts that support YOUR contention that Jeff Orr violated the terms of
6 the DISTRIBUTOR AGREEMENT.

7 **INTERROGATORY NO. 22:**

8 State all facts that support YOUR contention that YOU have policies which
9 expressly prohibit DEFENDANTS from directly or indirectly soliciting any of YOUR
10 Distributors to join, promote, sell or purchase products of any competing direct sales
11 company during and for one year after termination of their relationship with YOU.

12 **INTERROGATORY NO. 23:**

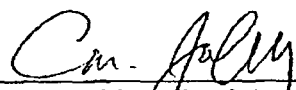
13 State all facts that support YOUR contention that YOU have policies which
14 expressly prohibit DEFENDANTS from directly or indirectly soliciting any of YOUR
15 Distributors to join, promote, sell or purchase products of any competing direct sales
16 company during and for one year after termination of their relationship with YOU.

17 **INTERROGATORY NO. 24:**

18 State all facts that support YOUR contention that DEFENDANTS were privy to
19 YOUR trade secrets.

20 Dated: February 6, 2009

MIXON | JOLLY, LLP

21
22 By: 
23 Cameron M. Jolly, Attorney for
24 Defendants and Counterclaimants
25 JEFF ORR and KATHY ORR
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 575 Anton Blvd., Suite 670, Costa Mesa, CA 92626.

On February 6, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT KATHY ORR'S FIRST SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

John B. Stephens, Esq.
Stephens Friedland LLP
4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
Telephone: (949) 468-3200
Facsimile: (949) 468-3201

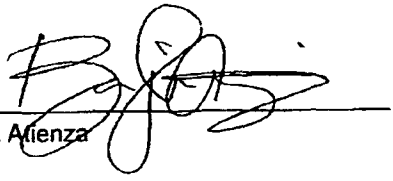
VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Costa Mesa, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnite Express pick up at Costa Mesa, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 6,, 2009, at Costa Mesa, California.


Ben Affenza

CERTIFICATE OF SERVICE

*Rec'd 2/10/09
@CFP*

1 Cameron M. Jolly, Esq. (SBN # 132541)
2 MIXON | JOLLY, LLP
3 575 Anton Blvd., Suite 670
4 Costa Mesa, CA 92626
5 Telephone: (714) 885-7000
6 Facsimile: (714) 885-7001
7 Email: cjolly@mixonjollylaw.com

8 Attorney for Defendants and Counterclaimants
9 JEFF ORR and KATHY ORR

10 IN THE UNITED STATE DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 HERBALIFE INTERNATIONAL OF AMERICA, INC., a Nevada Corporation,
13 Plaintiff,

14 vs.

15 ROBERT E. FORD and JULIA A. FORD,
16 husband and wife; BRUCE H. ROTH and
17 NANCY A. ROTH, husband and wife;
18 JEFF ORR and KATHY ORR, husband
19 and wife; DIANNA N. THOMPSON; and
20 JASON FISHER,
21 Defendants.

CASE NO.: CV 072529 GF (FMOx)
HON. GARY A. FEESS

DEFENDANT AND
COUNTERCLAIMANT JEFF ORR'S
FIRST SET OF INTERROGATORIES TO
PLAINTIFF AND COUNTER
DEFENDANT HERBALIFE
INTERNATIONAL OF AMERICA, INC.

22 AND RELATED CROSS-CLAIMS.
23
24
25
26
27
28

JEFF ORR'S FIRST SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant JEFF ORR

2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE

3 INTERNATIONAL OF AMERICA, INC.

4 SET NUMBER: One

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 JEFF ORR ("ORR"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("HERBALIFE"), answer separately, in full, in
8 writing and under oath, the following interrogatories, within thirty (30) days after service
9 of the requested interrogatories.

10 **DEFINITIONS**

11 A. "COMPLAINT" means the complaint filed by Herbalife International of
12 America, Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx)
13 pending in United States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International
16 of America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning,
18 commenting on, connected with, discussing, describing, analyzing, evidencing,
19 contradicting, explaining, showing, reflecting, setting forth, dealing with, comprising,
20 consisting of, containing, constituting, resulting from, recording, or in any way relevant
21 to a particular subject, in whole or in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that
23 person's:

- 24 a. full name;
25 b. present home or business address; and
26 c. present business affiliation and present position held therein.
- 27
28

- 1 E. "IDENTIFY" when used in reference to a document, means to specify the
2 following:
3 a. the date such document was prepared;
4 b. the person who authored or prepared the document;
5 c. the recipient of the document;
6 d. the type of document (e.g., memo, letter, etc.);
7 e. the general subject matter of the document; and
8 f. the person who has custody of the document.

- 9 F. "IDENTIFY" when used in reference to a statement, means to specify the
10 following:
11 a. the content of the statement;
12 b. the date the statement was made;
13 c. the person who made the statement; and
14 d. the person (or persons) that heard the statement.

15 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements,
16 Distributor Agreements, and Confidentiality and Non-Disclosure Agreements with
17 HERBALIFE's distributors.

18 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth,
19 Jeff and Kathy Orr, Jason Fisher, and Dianna Thompson.

20 I. "COMMUNICATION(S)" shall mean any transfer of information, whether
21 oral, written, electronic, or by any other means.

22

23 **INTERROGATORIES**

24 **INTERROGATORY NO. 1:**

25 Please state the total number of YOUR Supervisors at year end for each of the
26 past five (5) years.

27 ///

28

1 **INTERROGATORY NO. 2:**

2 Please state the total number of President's Team distributors at year end for
3 each of the past five (5) years.

4 **INTERROGATORY NO. 3:**

5 For each of the past five (5) years, please state the total number of YOUR
6 Supervisors who earned monthly commissions.

7 **INTERROGATORY NO. 4:**

8 For each of the past five (5) years, please state the average monthly income of
9 YOUR Distributors.

10 **INTERROGATORY NO. 5:**

11 For each of the past five (5) years, please state the median monthly income of
12 YOUR Distributors.

13 **INTERROGATORY NO. 6:**

14 Please state how YOU define the distributor level of "Supervisor."

15 **INTERROGATORY NO. 7:**

16 Please state how YOUR distributors achieve and/or maintain the level of
17 "Supervisor."

18 **INTERROGATORY NO. 8:**

19 Please state how YOU define the distributor level of "Fully Qualified Supervisor."

20 **INTERROGATORY NO. 9:**

21 Please state the percentage of YOUR sales that are actually made to retail
22 customers.

23 **INTERROGATORY NO. 10:**

24 Please describe in detail how YOU calculate "Supervisor Retention," as
25 referenced in YOUR annual reports.

26 ///

27 ///

28

1 **INTERROGATORY NO. 11:**

2 For each of the past five (5) years, please state YOUR "Supervisor Retention"
3 rate.

4 **INTERROGATORY NO. 12:**

5 For each of the past five (5) years, please state the percentage of YOUR sales
6 that were equal to or greater than \$2,500 product point orders.

7 **INTERROGATORY NO. 13:**

8 For each of the past five (5) years, please state the percentage of YOUR sales
9 that were equal to or greater than \$4,000 product point orders.

10 **INTERROGATORY NO. 14:**

11 State all facts that support YOUR contention that Jeff Orr used YOUR trade
12 secrets.

13 **INTERROGATORY NO. 15:**

14 State all facts that support YOUR contention that Kathy Orr used YOUR trade
15 secrets.

16 **INTERROGATORY NO. 16:**

17 State all facts that support YOUR contention that Jeff Orr breached a contract
18 with YOU.

19 **INTERROGATORY NO. 17:**

20 State all facts that support YOUR contention that Kathy Orr breached a contract
21 with YOU.

22 **INTERROGATORY NO. 18:**

23 State all facts that support YOUR contention that Jeff Orr misappropriated YOUR
24 trade secrets.

25 **INTERROGATORY NO. 19:**

26 State all facts that support YOUR contention that Kathy Orr misappropriated
27 YOUR trade secrets.

28

1 **INTERROGATORY NO. 20:**

2 State all facts that support YOUR contention that Jeff Orr misrepresented that
3 Melaleuca is not a multi-level marketing company, as a part of his effort to wrongfully
4 compete with YOU.

5 **INTERROGATORY NO. 21:**

6 State all facts that support YOUR contention that Kathy Orr misrepresented that
7 Melaleuca is not a multi-level marketing company, as a part of her effort to wrongfully
8 compete with YOU.

9 **INTERROGATORY NO. 22:**

10 State all facts that support YOUR contention that Jeff Orr misrepresented that
11 Melaleuca's products are safe and non-toxic, as a part of his effort to wrongfully
12 compete with YOU.

13 **INTERROGATORY NO. 23:**

14 State all facts that support YOUR contention that Kathy Orr misrepresented that
15 Melaleuca's products are safe and non-toxic, as a part of her effort to wrongfully
16 compete with YOU.

17 **INTERROGATORY NO. 24:**

18 State all facts that support YOUR contention that Jeff Orr misrepresented that no
19 selling of product is required by Melaleuca, as a part of his effort to wrongfully compete
20 with YOU.

21 **INTERROGATORY NO. 25:**

22 State all facts that support YOUR contention that Kathy Orr misrepresented that
23 no selling of product is required by Melaleuca, as a part of her effort to wrongfully
24 compete with YOU.

25 ///

26 ///

27 ///

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: February 6, 2009

MIXON | JOLLY, LLP

By: *C. M. Jolly*
Cameron M. Jolly, Attorney for
Defendants and Counterclaimants
JEFF ORR and KATHY ORR

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 575 Anton Blvd., Suite 670, Costa Mesa, CA 92626.

On February 6, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT JEFF ORR'S FIRST SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

John B. Stephens, Esq.
Stephens Friedland LLP
4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
Telephone: (949) 468-3200
Facsimile: (949) 468-3201

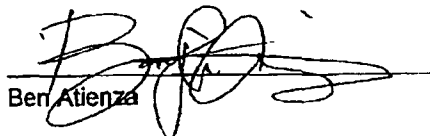
VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Costa Mesa, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Costa Mesa, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 6, at Costa Mesa, California.


Ben Atienza

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
BRUCE H. ROTH, NANCY A. ROTH,
7 DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
NANCY A. ROTH, husband and wife; JEFF
18 ORR and KATHY ORR, husband and wife;
19 DIANNA N. THOMPSON; and JASON
FISHER,

20 Defendants.
21

22 AND RELATED CROSS-CLAIMS.
23

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEESS

DEFENDANT AND
COUNTERCLAIMANT JULIA A.
FORD'S THIRD SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.

24
25
26
27
28

JULIA FORD'S THIRD SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant JULIA A. FORD
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Three

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 JULIA A. FORD ("FORD"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full, in writing and
8 under oath, the following interrogatories, within thirty (30) days after service of the requested
9 interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:
23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
17 Kathy Orr, Jason Fisher, and Dianna Thompson.

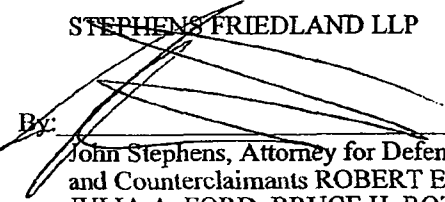
18 **INTERROGATORIES**

19 **INTERROGATORY NO. 25:**

20 State the amount of money YOU paid to former Herbalife independent distributors in
21 2006 to repurchase their inventory after they resigned their distributorship.

22 Dated: February 9, 2009

STEPHENS FRIEDLAND LLP

23
24 By: 
25 John Stephens, Attorney for Defendants
26 and Counterclaimants ROBERT E. FORD,
27 JULIA A. FORD, BRUCE H. ROTH,
28 NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On February 10, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT JULIA A. FORD'S THIRD SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.	Cameron M. Jolly, Esq.
Nancy R. Thomas, Esq.	Mixon Jolly LLP
Morrison & Foerster LLP	575 Anton Blvd., Suite 670
555 West Fifth Street	Costa Mesa, CA 92626
Los Angeles, CA 90013	Telephone: (714) 885-7000
Telephone: (213) 892-5200	Facsimile: (714) 885-7001
Facsimile: (213) 892-5454	

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
Facsimile: (949) 468-3201
4

5 Attorney for Defendants and Counterclaimants
ROBERT E. FORD, JULIA A. FORD,
6 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER
7

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF
11 AMERICA, INC., a Nevada Corporation,

12 Plaintiff,

13 vs.
14

15
16 ROBERT E. FORD and JULIA A. FORD,
17 husband and wife; BRUCE H. ROTH and
NANCY A. ROTH, husband and wife; JEFF
18 ORR and KATHY ORR, husband and wife;
19 DIANNA N. THOMPSON; and JASON
FISHER,

20 Defendants.
21

22 AND RELATED CROSS-CLAIMS.
23

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEESS

DEFENDANT AND
COUNTERCLAIMANT DIANNA N.
THOMPSON'S THIRD SET OF
INTERROGATORIES TO PLAINTIFF
AND COUNTER DEFENDANT
HERBALIFE INTERNATIONAL OF
AMERICA, INC.

24
25
26
27
28

DIANNA THOMPSON'S THIRD SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant DIANNA N. THOMPSON
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: Three

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 DIANNA N. THOMPSON ("THOMPSON"), requests that Plaintiff and Counter Defendant
7 HERBALIFE INTERNATIONAL OF AMERICA, INC. ("Herbalife"), answer separately, in full,
8 in writing and under oath, the following interrogatories, within thirty (30) days after service of
9 the requested interrogatories.

10 **DEFINITIONS**

11 A. "COMPLAINT" means the complaint filed by Herbalife International of America,
12 Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx) pending in United
13 States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International of
16 America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning, commenting
18 on, connected with, discussing, describing, analyzing, evidencing, contradicting, explaining,
19 showing, reflecting, setting forth, dealing with, comprising, consisting of, containing,
20 constituting, resulting from, recording, or in any way relevant to a particular subject, in whole or
21 in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that person's:

- 23 a. full name;
24 b. present home or business address; and
25 c. present business affiliation and present position held therein.

26 E. "IDENTIFY" when used in reference to a document, means to specify the
27 following:
28

- 1 a. the date such document was prepared;
- 2 b. the person who authored or prepared the document;
- 3 c. the recipient of the document;
- 4 d. the type of document (e.g., memo, letter, etc.);
- 5 e. the general subject matter of the document; and
- 6 f. the person who has custody of the document.

7 F. "IDENTIFY" when used in reference to a statement, means to specify the
 8 following:

- 9 a. the content of the statement;
- 10 b. the date the statement was made;
- 11 c. the person who made the statement; and
- 12 d. the person (or persons) that heard the statement.

13 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements, Distributor
 14 Agreements, and Confidentiality and Non-Disclosure Agreements with HERBALIFE's
 15 distributors.

16 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
 17 Kathy Orr, Jason Fisher, and Dianna Thompson.

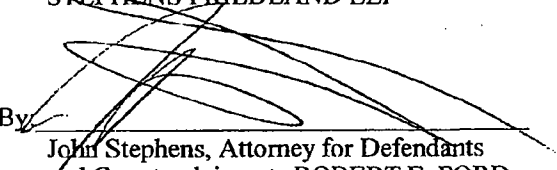
18 **INTERROGATORIES**

19 **INTERROGATORY NO. 25:**

20 State the amount of money YOU paid to former Herbalife independent distributors in
 21 2007 to repurchase their inventory after they resigned their distributorship.

22 Dated: February 9, 2009

STEPHENS FRIEDLAND LLP

23
 24
 25 By: 
 26 John Stephens, Attorney for Defendants
 27 and Counterclaimants ROBERT E. FORD,
 28 JULIA A. FORD, BRUCE H. ROTH,
 NANCY A. ROTH, DIANNA N.
 THOMPSON and JASON FISHER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On February 10, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT DIANNA N. THOMPSON'S THIRD SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001


VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Federal Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 10, 2009, at Newport Beach, California.



Carolyn Peca

PROOF OF SERVICE

1 MIXON JOLLY, LLP
2 Cameron M. Jolly, Esq.
3 575 Anton Blvd., Suite 670
4 Costa Mesa, CA 92626
5 Telephone: (714) 885-7000
6 Facsimile: (714) 885-7001
7 Email: cjolly@mixonjollylaw.com

8 Attorney for Defendants and Counterclaimants
9 JEFF ORR and KATHY ORR

10 IN THE UNITED STATE DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 HERBALIFE INTERNATIONAL OF
13 AMERICA, INC., a Nevada Corporation,

14 Plaintiff,

15 vs.

16
17 ROBERT E. FORD and JULIA A. FORD,
18 husband and wife; BRUCE H. ROTH and
19 NANCY A. ROTH, husband and wife;
20 JEFF ORR and KATHY ORR, husband
and wife; DIANNA N. THOMPSON; and
JASON FISHER,

21 Defendants.

22
23 AND RELATED CROSS-CLAIMS.
24

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEES

DEFENDANT AND
COUNTERCLAIMANT KATHY ORR'S
SECOND SET OF INTERROGATORIES
TO PLAINTIFF AND COUNTER
DEFENDANT HERBALIFE
INTERNATIONAL OF AMERICA, INC.

25
26
27
28

KATHY ORR'S SECOND SET OF INTERROGATORIES TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant KATHY ORR
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE
3 INTERNATIONAL OF AMERICA, INC.
4 SET NUMBER: One

5 Pursuant to Federal Rule of Civil Procedure 33, Defendant and Counterclaimant
6 KATHY ORR ("ORR"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("HERBALIFE"), answer separately, in full, in
8 writing and under oath, the following interrogatories, within thirty (30) days after service
9 of the requested interrogatories.

10 DEFINITIONS

11 A. "COMPLAINT" means the complaint filed by Herbalife International of
12 America, Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF (FMOx)
13 pending in United States District Court of California, Central District, Western Division.

14 B. "YOU" or "YOUR" means Plaintiff Herbalife International of America, Inc.,
15 Responding Party herein, and any employee, agent or affiliate of Herbalife International
16 of America, Inc.

17 C. "REFER TO" or "RELATE TO" means pertaining to, mentioning,
18 commenting on, connected with, discussing, describing, analyzing, evidencing,
19 contradicting, explaining, showing, reflecting, setting forth, dealing with, comprising,
20 consisting of, containing, constituting, resulting from, recording, or in any way relevant
21 to a particular subject, in whole or in part, and either directly or indirectly.

22 D. "IDENTIFY" when used in reference to a person, shall mean to list that
23 person's:

- 24 a. full name;
25 b. present home or business address; and
26 c. present business affiliation and present position held therein.

27
28

1

KATHY ORR'S SECOND SET OF INTERROGATORIES TO HERBALIFE

- 1 E. "IDENTIFY" when used in reference to a document, means to specify the
2 following:
3 a. the date such document was prepared;
4 b. the person who authored or prepared the document;
5 c. the recipient of the document;
6 d. the type of document (e.g., memo, letter, etc.);
7 e. the general subject matter of the document; and
8 f. the person who has custody of the document.

- 9 F. "IDENTIFY" when used in reference to a statement, means to specify the
10 following:
11 a. the content of the statement;
12 b. the date the statement was made;
13 c. the person who made the statement; and
14 d. the person (or persons) that heard the statement.

15 G. "DISTRIBUTOR AGREEMENT(S)" means Tab Team Agreements,
16 Distributor Agreements, and Confidentiality and Non-Disclosure Agreements with
17 HERBALIFE's distributors.

18 H. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth,
19 Jeff and Kathy Orr, Jason Fisher, and Dianna Thompson.

20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTERROGATORIES

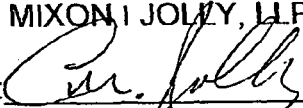
INTERROGATORY NO. 25:

State the amount of money YOU paid to former Herbalife independent distributors in 2008 to repurchase their inventory after they resigned their distributorship.

Dated: February 9, 2009

MIXON | JOLLY, LLP

By: _____


Cameron M. Jolly, Attorney for
Defendants and Counterclaimants
JEFF ORR and KATHY ORR

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 575 Anton Blvd., Suite 670, Costa Mesa, CA 92626.

On February 10, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT KATHY ORR'S SECOND SET OF INTERROGATORIES TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

John B. Stephens, Esq.
Stephens Friedland LLP
4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
Telephone: (949) 468-3200
Facsimile: (949) 468-3201


VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Costa Mesa, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Costa Mesa, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 10, 2009, at Costa Mesa, California.



CAROLYN MCHARDY PECK

CERTIFICATE OF SERVICE

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 Todd G. Friedland, Bar No. 187022
4695 MacArthur Court, Suite 310
3 Newport Beach, CA 92660
Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5
6 Attorney for Defendants and Counterclaimants
ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8
9 IN THE UNITED STATE DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11
12 HERBALIFE INTERNATIONAL OF
AMERICA, INC., a Nevada
13 Corporation,

14 Plaintiff,

15 vs.

16 ROBERT E. FORD and JULIA A.
17 FORD, husband and wife; BRUCE H.
18 ROTH and NANCY A. ROTH, husband
19 and wife; JEFF ORR and KATHY
20 ORR, husband and wife; DIANNA N.
21 THOMPSON; and JASON FISHER,

22 Defendants.
23
24

25 AND RELATED CROSS-CLAIM.
26
27
28

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEES

DEFENDANT AND
COUNTERCLAIMANT ROBERT
FORD'S SECOND SET OF
REQUESTS FOR PRODUCTION
TO PLAINTIFF AND COUNTER-
DEFENDANT HERBALIFE
INTERNATIONAL OF AMERICA,
INC.

ROBERT FORD'S SECOND SET OF REQUESTS FOR PRODUCTION TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant ROBERT FORD
2 RESPONDING PARTY: Plaintiff and Counter-Defendant HERBALIFE
3 INTERNATIONAL OF AMERICA, INC.
4 SET NUMBER: Two
5

6 Pursuant to Federal Rule of Civil Procedure 34, Defendant and
7 Counterclaimant ROBERT FORD ("R. FORD" or "Propounding Party"), requests
8 that Plaintiff and Counter-Defendant HERBALIFE INTERNATIONAL OF
9 AMERICA, INC. ("HERBALIFE" or "Responding Party"), produce and permit
10 inspection and copying of the documents described below.

11 The documents requested shall be made available for inspection and/or
12 copying within thirty (30) days of service of these requests at Stephens Friedland
13 LLP, 4695 MacArthur Court, Suite 310, Newport Beach, CA 92660.

14 This request may be complied with by mail provided the responding party
15 submits copies of the documents requested to Plaintiff's attorney of record on or
16 before the date listed above for copying and/or inspection, accompanied by a
17 declaration stating that the documents are true and exact copies, and may be used
18 in place of originals.

19 **INSTRUCTIONS**

20 1. The relevant time period for each request, unless otherwise specified
21 is December 1, 1989 to the present.

22 2. In answering the Requests, Responding Party must furnish all
23 information available to Responding Party or subject to Responding Party's
24 reasonable inquiry, including information in possession of Responding Party's
25 attorneys, accountants, advisors, or other persons directly or indirectly employed
26 by or connected with Responding Party and anyone else otherwise subject to
27
28

1 Responding Party's control, and all information communicated to Responding
2 Party by others.

3 3. If any Request cannot be responded to in full, Responding Party
4 should respond to it to the extent possible, specify the reason for Responding
5 Party's inability to provide a complete response to the Request, and state whatever
6 information and knowledge it has regarding the unanswered portion.

7 4. Whenever, in the course of responding to these Requests, documents
8 are called for that are not within the possession, custody or control of the person
9 executing these responses, Responding Party is to provide the name, address, and
10 telephone number of each person having possession, custody or control of such
11 documents and to identify each such writing or document within the possession,
12 custody or control of such party.

13 5. If any document requested was formerly in Responding Party's
14 possession, custody or control and has since been lost or destroyed, Propounding
15 Party requests that Responding Party:

- 16 (a) describe in detail the nature of the document and its content;
17 (b) identify the person(s) who prepared, generated, or authorized
18 preparation the document, and if applicable, the person to
19 whom the document was sent;
20 (c) specify the date on which the document was prepared,
21 transmitted, or both; and
22 (d) specify the date on which the document was lost or destroyed,
23 and if destroyed, the conditions of or reasons for such
24 destruction, and identify the person(s) requesting and
25 performing the destruction.
26
27
28

1 D. "COUNTERCLAIMANT(S)" means, collectively, defendants and
2 counterclaimants Robert E. Ford, Julia A. Ford, Bruce H. Roth, Nancy A. Roth,
3 Dianna N. Thompson, Jason Fisher, Jeff Orr and Kathy Orr.

4 E. "DOCUMENT(S)" means the original master and any copies of any
5 copies of any tangible information in YOUR possession, custody, or control. The
6 term "DOCUMENT" includes information stored, recorded, transmitted, or
7 received in any form, including but not limited to: (a) any written, typed, printed,
8 photocopied or graphic material of any kind or nature; (b) any tangible form of
9 communication or representation, including letters, words, pictures, sounds, or
10 symbols, or any combination thereof; (c) any other tangible thing by which
11 information or data is stored, including any drawing, film, microfilm, graph, chart,
12 photograph, videotape, tape recording, phone-record, mechanical or electrical
13 sound recording, or transcript thereof; (d) any retrievable data, whether in
14 computer storage, carded, punched, taped, coded or stored electrostatically,
15 electromagnetically, or otherwise; and (e) any other data compilation or tangible
16 thing from which information can be obtained. If a "DOCUMENT" is stored in
17 any electronic form, production of a printed copy of the "DOCUMENT" will
18 suffice in response to these requests. Without limiting the generality of the
19 foregoing, the term "DOCUMENT" includes contracts, agreements, forms,
20 memoranda, assignments, licenses, minutes, minute books, agenda, books of
21 account, orders, purchase orders, invoices, receipts, statements, computation
22 sheets, work sheets, spread sheets, accounting entries, notebooks, diaries, journals,
23 calendars, appointment books, reports, photographs, diagrams, graphs, drawings
24 of any kind, videotapes, audiotapes, tracings, blueprints, microfilm, photostats,
25 sketches, charts, catalogues, brochures, abstracts, resumes, advertising and
26 promotional literature, bulletins, newsletters, cables, telegrams, telephone
27 messages, voicemails, text messages, letters, correspondence, notes, summaries,
28

1 jottings, notices, faxes, e-mails, instructions, recitals, test data, reports, records,
2 files, studies, indices, charts, tabulations, books, ledgers, audits, maps, visual and
3 sound reproductions, computer files and data. The term "DOCUMENT" includes
4 all non-identical copies of a DOCUMENT, including draft copies and copies with
5 hand-written notations or modifications, and a "DOCUMENT" includes all
6 modifications or amendments to a "DOCUMENT."

7 F. The term "COMMUNICATIONS" shall mean and include every
8 manner or means of disclosure, transfer, or exchange, and every disclosure,
9 transfer or exchange of information, whether orally or by DOCUMENTS, or
10 whether face-to-face, by telephone, mail, facsimile, personal delivery, overnight
11 delivery, or otherwise.

12 G. "REFER TO" or "RELATE TO" or "RELATING TO" means
13 pertaining to, mentioning, commenting on, connected with, discussing, describing,
14 analyzing, evidencing, contradicting, explaining, showing, reflecting, setting forth,
15 dealing with, comprising, consisting of, containing, constituting, resulting from,
16 recording, or in any way relevant to a particular subject, in whole or in part, and
17 either directly or indirectly.

18 H. The term "INCOME CLAIM" means any oral, visual or written
19 representation to an existing or prospective DISTRIBUTOR, or to the that states
20 or suggests a specific level or range of potential or actual sales, expenses, income,
21 gross or net profits, or a presentation of facts that suggests or from which any such
22 existing or prospective DISTRIBUTOR or member of the public could infer a
23 specific level or range of sales, expenses, income or profits, including but not
24 limited to testimonials.

25 I. The term "DISTRIBUTORSHIP" means the business relationship
26 evidenced by a HERBALIFE distributor agreement, including but not limited to
27
28

1 the following levels: "Distributor," "Supervisor," "World Team," "Global
2 Expansion Team," "Millionaire Team," or "President's Team."

3 J. The term "DISTRIBUTOR" means a person who owns and/or
4 operates, or has owned and/or operated a DISTRIBUTORSHIP.

5 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

6 **REQUEST FOR PRODUCTION NO. 41:**

7 All DOCUMENTS RELATING TO YOUR efforts to prevent DEFENDANTS
8 from contacting or doing business with HERBALIFE customers or
9 DISTRIBUTORS.

10 **REQUEST FOR PRODUCTION NO. 42:**

11 All DOCUMENTS RELATING TO YOUR efforts to inform YOUR
12 DISTRIBUTORS about the non-solicitation clauses in the DISTRIBUTION
13 AGREEMENTS.

14 **REQUEST FOR PRODUCTION NO. 43:**

15 All DOCUMENTS RELATING TO YOUR efforts to inform YOUR
16 DISTRIBUTORS about the non-competition clauses in the DISTRIBUTION
17 AGREEMENTS.

18 **REQUEST FOR PRODUCTION NO. 44:**

19 All DOCUMENTS RELATING TO YOUR efforts to prevent the sale of
20 HERBALIFE products on eBay by YOUR DISTRIBUTORS.

21 **REQUEST FOR PRODUCTION NO. 45:**

22 All DOCUMENTS RELATING TO COMMUNICATIONS with your
23 DISTRIBUTORS (including President's Team members) RELATING TO this
24 lawsuit.
25
26
27
28

1 **REQUEST FOR PRODUCTION NO. 46:**

2 All DOCUMENTS that support YOUR contention that YOUR
3 DISTRIBUTORS' businesses, including goodwill and customer lists, belong to
4 YOU.

5 **REQUEST FOR PRODUCTION NO. 47:**

6 All DOCUMENTS RELATING TO any out-of-pocket expenses that new
7 DISTRIBUTORS are required to incur when they join HERBALIFE.

8 **REQUEST FOR PRODUCTION NO. 48:**

9 All DOCUMENTS RELATING TO rewards or bonuses offered to YOUR
10 DISTRIBUTORS who enroll or recruit new DISTRIBUTORS to HERBALIFE.

11 **REQUEST FOR PRODUCTION NO. 49:**

12 All DOCUMENTS, including promotional materials, used to encourage
13 YOUR DISTRIBUTORS to enroll new HERBALIFE DISTRIBUTORS.

14 **REQUEST FOR PRODUCTION NO. 50:**

15 All DOCUMENTS, including COMMUNICATIONS, RELATING TO
16 YOUR efforts to ensure that YOUR products are sold to bona fide retail
17 consumers.

18 **REQUEST FOR PRODUCTION NO. 51:**

19 All DOCUMENTS RELATING TO how YOUR DISTRIBUTORS are
20 compensated when new DISTRIBUTORS join HERBALIFE.

21 **REQUEST FOR PRODUCTION NO. 52:**

22 All DOCUMENTS RELATING TO how YOU ensure compliance with
23 YOUR retail sales requirements.

24 **REQUEST FOR PRODUCTION NO. 53:**

25 All DOCUMENTS RELATING TO YOUR 10-customer rule.
26
27
28

1 **REQUEST FOR PRODUCTION NO. 54:**

2 All DOCUMENTS RELATING TO YOUR "random audit" procedure.

3 **REQUEST FOR PRODUCTION NO. 55:**

4 All DOCUMENTS RELATING TO YOUR retention rate for new
5 DISTRIBUTORS.

6 **REQUEST FOR PRODUCTION NO. 56:**

7 All DOCUMENTS RELATING TO YOUR efforts to verify claims about
8 YOUR DISTRIBUTORS' income and lifestyle that are made on YOUR website,
9 YOUR publications, YOUR annual reports, and YOUR SEC filings.

10 **REQUEST FOR PRODUCTION NO. 57:**

11 All DOCUMENTS that support YOUR contention that DEFENDANTS are
12 not permitted to solicit or recruit other HERBALIFE DISTRIBUTORS.

13 **REQUEST FOR PRODUCTION NO. 58:**

14 All DOCUMENTS that support YOUR contention that DEFENDANTS are
15 not permitted to compete with HERBALIFE upon termination of their
16 DISTRIBUTION AGREEMENTS.

17 **REQUEST FOR PRODUCTION NO. 59:**

18 HERBALIFE's Annual Reports for the years 2005 to the present.

19 **REQUEST FOR PRODUCTION NO. 60:**

20 Robert E. Ford's Extended Lineage Report for January 2002.

21 **REQUEST FOR PRODUCTION NO. 61:**

22 The Extended Lineage Report for each COUNTERCLAIMANT for
23 December 2005.

24 **REQUEST FOR PRODUCTION NO. 62:**

25 Each COUNTERCLAIMANT's Monthly Extended Lineage Report from
26 January 2002 to the termination of their HERBALIFE DISTRIBUTORSHIP.
27
28

1 **REQUEST FOR PRODUCTION NO. 63:**

2 The Extended Lineage Report for each DEFENDANT for their last full
3 month with HERBALIFE (i.e. for Robert E. Ford and Julia A. Ford, the Extended
4 Lineage Report for August 2006).

5 **REQUEST FOR PRODUCTION NO. 64:**

6 The Extended Reports for December 2004, December 2005, December
7 2006, and December 2007 for each COUNTERCLAIMANT.

8 **REQUEST FOR PRODUCTION NO. 65:**

9 Monthly Royalty Statements for Alanna Ford from January 2006 through
10 December 2008.

11 **REQUEST FOR PRODUCTION NO. 66:**

12 The Extended Lineage Report for December 2006 for the following
13 individuals: James Faber, Elizabeth Klucken, Dean Mandryk, Caryle Justesen,
14 Jack Gibson, Dave Schmaman, Cindy O'Connell, Susan Krueger, Karrie McClain,
15 Anthony Powell, John Beall, Debbie Rasch, Mette Hyldgaard Smith, Susan
16 Peterson, Steve Combs, Michael Katz, Marianne Troy, Kevin Garver, Renee
17 Steger, Maurice Smith, Olivia Bridges, Leslie Stanford, Cheryl Wisdom, Dan
18 Caldwell, Dwayne Norris, Shawn Dahl, Moe Matthews, Nancy Franks, Miriam
19 Bischoff, Tammy Porter, Lilith Nix, Kathy Davis, Alan Dava Buyum, Katie Carr,
20 Gerie Cvitanovich-Dubie, and RoxAnna Chauvenna.

21 **REQUEST FOR PRODUCTION NO. 67:**

22 The "10 Customer" forms for January 2005 to December 2008 for the
23 following individuals: James Faber, Elizabeth Klucken, Dean Mandryk, Caryle
24 Justesen, Jack Gibson, Dave Schmaman, Cindy O'Connell, Susan Krueger, Karrie
25 McClain, Anthony Powell, John Beall, Debbie Rasch, Mette Hyldgaard Smith,
26 Susan Peterson, Steve Combs, Michael Katz, Marianne Troy, Kevin Garver, Renee
27

28

1 Steger, Maurice Smith, Olivia Bridges, Leslie Stanford, Cheryl Wisdom, Dan
2 Caldwell, Dwayne Norris, Shawn Dahl, Moe Matthews, Nancy Franks, Miriam
3 Bischoff, Tammy Porter, Lilith Nix, Kathy Davis, Alan Dava Buyum, Katie Carr,
4 Gerie Cvitanovich-Dubie, and RoxAnna Chauvenna.

5 **REQUEST FOR PRODUCTION NO. 68:**

6 The "10 Customer" forms for January 2005 to December 2008 for all
7 DEFENDANTS.

8 **REQUEST FOR PRODUCTION NO. 69:**

9 Extended Reports for December 2004, December 2005, December 2006,
10 and December 2007 for the following individuals: James Faber, Elizabeth
11 Klucken, Dean Mandryk, Caryle Justesen, Jack Gibson, Dave Schmaman, Cindy
12 O'Connell, Susan Krueger, Karrie McClain, Anthony Powell, John Beall, Debbie
13 Rasch, Mette Hyldgaard Smith, Susan Peterson, Steve Combs, Michael Katz,
14 Marianne Troy, Kevin Garver, Renee Steger, Maurice Smith, Olivia Bridges,
15 Leslie Stanford, Cheryl Wisdom, Dan Caldwell, Dwayne Norris, Shawn Dahl,
16 Moe Matthews, Nancy Franks, Miriam Bischoff, Tammy Porter, Lilith Nix, Kathy
17 Davis, Alan Dava Buyum, Katie Carr, Gerie Cvitanovich-Dubie, and RoxAnna
18 Chauvenna.

19 **REQUEST FOR PRODUCTION NO. 70:**

20 All DOCUMENTS, including tape recordings, RELATING TO the
21 telephone conversation on December 8, 2006 between Kathy Orr and Tami Porter
22 which is referenced on HL 000081.

23 **REQUEST FOR PRODUCTION NO. 71:**

24 All DOCUMENTS, including audio files and the file known as
25 "voice_msg_1180409635.wav," RELATING TO the voice mail received by Gina
26 Kraus from Christie O'Halloran which is referenced on HL 000086.
27

28

1 **REQUEST FOR PRODUCTION NO. 72:**

2 All DOCUMENTS RELATING TO DISTRIBUTOR applications that were
3 processed by YOUR employee, Connie Bond, in 2005 and 2006 and that
4 contained fraudulent information.

5 **REQUEST FOR PRODUCTION NO. 73:**

6 All DOCUMENTS, including COMMUNICATIONS, with YOUR
7 DISTRIBUTORS (including President's Team or Chairman's Club members)
8 RELATING TO YOUR DISTRIBUTORS leaving HERBALIFE to join
9 Melaleuca.

10 **REQUEST FOR PRODUCTION NO. 74:**

11 The HERBALIFE Statement of Average Gross Compensation for U.S.
12 Supervisors for the years 2006 to the present.

13 **REQUEST FOR PRODUCTION NO. 75:**

14 All DOCUMENTS RELATING TO an "Important Notice" about Rule 8-B.

15 **REQUEST FOR PRODUCTION NO. 76:**

16 All DOCUMENTS IDENTIFIED in YOUR responses to the
17 DEFENDANTS' Special Interrogatories.

18 **REQUEST FOR PRODUCTION NO. 77:**

19 All DOCUMENTS RELATING TO YOUR retention of DISTRIBUTORS
20 in the United States between 2005 and 2007.

21 **REQUEST FOR PRODUCTION NO. 78:**

22 All DOCUMENTS evidencing all new HERBALIFE Supervisors in the
23 United States between 2005 and 2007.

24 **REQUEST FOR PRODUCTION NO. 79:**

25 All DOCUMENTS evidencing re-qualification of all HERBALIFE
26 Supervisors in the United States between 2005 and 2007.
27
28

1 **REQUEST FOR PRODUCTION NO. 80:**

2 All DOCUMENTS evidencing all new HERBALIFE DISTRIBUTORS in
3 the United States between 2005 and 2007.

4 **REQUEST FOR PRODUCTION NO. 81:**

5 All DOCUMENTS evidencing re-qualification of all HERBALIFE
6 DISTRIBUTORS in the United States between 2005 and 2007.

7 **REQUEST FOR PRODUCTION NO. 82:**

8 All DOCUMENTS IDENTIFYING the members of HERBALIFE's
9 President's Team in December 2006.

10 **REQUEST FOR PRODUCTION NO. 83:**

11 All DOCUMENTS IDENTIFYING YOUR orders in the United States of
12 \$2,500 volume points or higher from January 2005 to December 2008.

13 **REQUEST FOR PRODUCTION NO. 84:**

14 All DOCUMENTS RELATING TO agreements between YOU and the
15 COUNTERCLAIMANTS, including, but not limited to all Tab Team Agreements,
16 Distributor Agreements, and Confidentiality and Non-Disclosure Agreements.

17 **REQUEST FOR PRODUCTION NO. 85:**

18 All DOCUMENTS, including COMMUNICATIONS, RELATING TO
19 cease and desist demands made by YOU to the COUNTERCLAIMANTS.

20 **REQUEST FOR PRODUCTION NO. 86:**

21 All DOCUMENTS, including COMMUNICATIONS, RELATING TO any
22 alleged misconduct by any of the COUNTERCLAIMANTS.

23 **REQUEST FOR PRODUCTION NO. 87:**

24 All DOCUMENTS RELATING TO contracts that YOU allege were
25 interfered with by COUNTERCLAIMANTS.
26
27
28

1 **REQUEST FOR PRODUCTION NO. 88:**

2 The HERBALIFE Sales and Marketing Plan.

3 **REQUEST FOR PRODUCTION NO. 89:**

4 All DOCUMENTS RELATING TO YOUR compensation structure for
5 YOUR DISTRIBUTORS.

6

7 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

8

9

10

By: 

11

John Stephens, Attorney for

12

Defendants and Counterclaimants

13

ROBERT E. FORD, JULIA A.

14

FORD, BRUCE H. ROTH, NANCY

15

A. ROTH, DIANNA N. THOMPSON

16

and JASON FISHER

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 30, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT ROBERT FORD'S SECOND SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF AND COUNTER-DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for ^{Overnite} ~~Federal Express~~ pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 30, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE

Recd 2/9/09
ceef

1 Cameron M. Jolly, Esq. (SBN # 132541)
2 MIXON | JOLLY, LLP
3 575 Anton Blvd., Suite 670
4 Costa Mesa, CA 92626
5 Telephone: (714) 885-7000
6 Facsimile: (714) 885-7001
7 Email: cjolly@mixonjollylaw.com

8 Attorney for Defendants and Counterclaimants
9 JEFF ORR and KATHY ORR

10 IN THE UNITED STATE DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

12 HERBALIFE INTERNATIONAL OF AMERICA, INC., a Nevada Corporation,
13 Plaintiff,

14 vs.

15 ROBERT E. FORD and JULIA A. FORD, husband and wife; BRUCE H. ROTH and
16 NANCY A. ROTH, husband and wife;
17 JEFF ORR and KATHY ORR, husband and wife; DIANNA N. THOMPSON; and
18 JASON FISHER,
19 Defendants.

CASE NO.: CV 072529 GF (FMOx)
HON. GARY A. FEESS

DEFENDANT AND COUNTERCLAIMANT KATHY ORR'S FIRST SET OF REQUESTS FOR PRODUCTION TO PLAINTIFF AND COUNTER-DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.

20 AND RELATED CROSS-CLAIMS.

1 PROPOUNDING PARTY: Defendant and Counterclaimant KATHY ORR

2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE

3 INTERNATIONAL OF AMERICA, INC.

4 SET NUMBER: One

5 Pursuant to Federal Rule of Civil Procedure 34, Defendant and
6 Counterclaimant KATHY ORR (“KATHY ORR” or “Propounding Party”),
7 requests that Plaintiff and Counter-Defendant HERBALIFE INTERNATIONAL
8 OF AMERICA, INC. (“HERBALIFE” or “Responding Party”), produce and
9 permit inspection and copying of the documents described below.

10 The documents requested shall be made available for inspection and/or
11 copying within thirty (30) days of service of these requests at Mixon Jolly LLP,
12 575 Anton Blvd., Suite 670, Costa Mesa, CA 92626.

13 This request may be complied with by mail provided the responding party
14 submits copies of the documents requested to Plaintiff’s attorney of record on or
15 before the date listed above for copying and/or inspection, accompanied by a
16 declaration stating that the documents are true and exact copies, and may be used
17 in place of originals.

18 *INSTRUCTIONS*

19 1. The relevant time period for each request, unless otherwise specified
20 is December 1, 2002 to the present.

21 2. In answering the Requests, Responding Party must furnish all
22 information available to Responding Party or subject to Responding Party’s
23 reasonable inquiry, including information in possession of Responding Party’s
24 attorneys, accountants, advisors, or other persons directly or indirectly employed
25 by or connected with Responding Party and anyone else otherwise subject to
26 Responding Party’s control, and all information communicated to Responding
27 Party by others.
28

1 3. If any Request cannot be responded to in full, Responding Party
2 should respond to it to the extent possible, specify the reason for Responding
3 Party's inability to provide a complete response to the Request, and state whatever
4 information and knowledge it has regarding the unanswered portion.

5 4. Whenever, in the course of responding to these Requests, documents
6 are called for that are not within the possession, custody or control of the person
7 executing these responses, Responding Party is to provide the name, address, and
8 telephone number of each person having possession, custody or control of such
9 documents and to identify each such writing or document within the possession,
10 custody or control of such party.

11 5. If any document requested was formerly in Responding Party's
12 possession, custody or control and has since been lost or destroyed, Propounding
13 Party requests that Responding Party:

- 14 (a) describe in detail the nature of the document and its content;
15 (b) identify the person(s) who prepared, generated, or authorized
16 preparation the document, and if applicable, the person to
17 whom the document was sent;
18 (c) specify the date on which the document was prepared,
19 transmitted, or both; and
20 (d) specify the date on which the document was lost or destroyed,
21 and if destroyed, the conditions of or reasons for such
22 destruction, and identify the person(s) requesting and
23 performing the destruction.

24 6. If Responding Party withholds from production any document on the
25 ground that it is protected by any privilege or by the work product doctrine,
26 provide a privilege log containing the following information:
27
28

- 1 (a) the date of the document, or if undated, the approximate date
2 Responding Party believes the document was prepared;
3 (b) the identity of the author(s);
4 (c) the identity of any person(s) to whom the document was sent or
5 delivered;
6 (d) the identity of any person(s) who received copies of the
7 document;
8 (e) the title of the file in which the document was contained,
9 whether in a hard file or electronic file or directory;
10 (f) the identity of any person(s) who prepared or maintained the
11 file;
12 (g) the subject of the document; and
13 (h) the specific privilege claimed.

14 DEFINITIONS

15 A. "COMPLAINT" means the complaint filed by Herbalife International
16 of America, Inc. in the above captioned matter, Civil Case No. CV 07 2529 GAF
17 (FMOx) pending in United States District Court of California, Central District,
18 Western Division.

19 B. "YOU" or "YOUR" or "HERBALIFE" means Plaintiff Herbalife
20 International of America, Inc., Responding Party herein, and any employee, agent
21 or affiliate of Herbalife International of America, Inc.

22 C. "MELALEUCA" means Melaleuca, Inc., an Idaho corporation,
23 referred to the COMPLAINT, and where appropriate, includes any product sold by
24 Melaleuca, Inc. and any person working for Melaleuca, Inc.

25 D. "COUNTERCLAIMANT(S)" means, collectively, defendants and
26 counterclaimants Robert E. Ford, Julia A. Ford, Bruce H. Roth, Nancy A. Roth,
27 Dianna N. Thompson, Jason Fisher, Jeff Orr and Kathy Orr.

1 E. "DOCUMENT(S)" means the original master and any copies of any
2 copies of any tangible information in YOUR possession, custody, or control. The
3 term "DOCUMENT" includes information stored, recorded, transmitted, or
4 received in any form, including but not limited to: (a) any written, typed, printed,
5 photocopied or graphic material of any kind or nature; (b) any tangible form of
6 communication or representation, including letters, words, pictures, sounds, or
7 symbols, or any combination thereof; (c) any other tangible thing by which
8 information or data is stored, including any drawing, film, microfilm, graph, chart,
9 photograph, videotape, tape recording, phone-record, mechanical or electrical
10 sound recording, or transcript thereof; (d) any retrievable data, whether in
11 computer storage, carded, punched, taped, coded or stored electrostatically,
12 electromagnetically, or otherwise; and (e) any other data compilation or tangible
13 thing from which information can be obtained. If a "DOCUMENT" is stored in
14 any electronic form, production of a printed copy of the "DOCUMENT" will
15 suffice in response to these requests. Without limiting the generality of the
16 foregoing, the term "DOCUMENT" includes contracts, agreements, forms,
17 memoranda, assignments, licenses, minutes, minute books, agenda, books of
18 account, orders, purchase orders, invoices, receipts, statements, computation
19 sheets, work sheets, spread sheets, accounting entries, notebooks, diaries, journals,
20 calendars, appointment books, reports, photographs, diagrams, graphs, drawings
21 of any kind, videotapes, audiotapes, tracings, blueprints, microfilm, photostats,
22 sketches, charts, catalogues, brochures, abstracts, resumes, advertising and
23 promotional literature, bulletins, newsletters, cables, telegrams, telephone
24 messages, voicemails, text messages, letters, correspondence, notes, summaries,
25 jottings, notices, faxes, e-mails, instructions, recitals, test data, reports, records,
26 files, studies, indices, charts, tabulations, books, ledgers, audits, maps, visual and
27 sound reproductions, computer files and data. The term "DOCUMENT" includes
28

1 all non-identical copies of a DOCUMENT, including draft copies and copies with
2 hand-written notations or modifications, and a "DOCUMENT" includes all
3 modifications or amendments to a "DOCUMENT."

4 F. The term "COMMUNICATIONS" shall mean and include every
5 manner or means of disclosure, transfer, or exchange, and every disclosure,
6 transfer or exchange of information, whether orally or by DOCUMENTS, or
7 whether face-to-face, by telephone, mail, facsimile, personal delivery, overnight
8 delivery, or otherwise.

9 G. "REFER TO" or "RELATE TO" or "RELATING TO" means
10 pertaining to, mentioning, commenting on, connected with, discussing, describing,
11 analyzing, evidencing, contradicting, explaining, showing, reflecting, setting forth,
12 dealing with, comprising, consisting of, containing, constituting, resulting from,
13 recording, or in any way relevant to a particular subject, in whole or in part, and
14 either directly or indirectly.

15 H. The term "INCOME CLAIM" means any oral, visual or written
16 representation to an existing or prospective DISTRIBUTOR, or to the that states
17 or suggests a specific level or range of potential or actual sales, expenses, income,
18 gross or net profits, or a presentation of facts that suggests or from which any such
19 existing or prospective DISTRIBUTOR or member of the public could infer a
20 specific level or range of sales, expenses, income or profits, including but not
21 limited to testimonials.

22 I. The term "DISTRIBUTORSHIP" means the business relationship
23 evidenced by a HERBALIFE distributor agreement, including but not limited to
24 the following levels: "Distributor," "Supervisor," "World Team," "Global
25 Expansion Team," "Millionaire Team," or "President's Team."

26 J. The term "DISTRIBUTOR" means a person who owns and/or
27 operates, or has owned and/or operated a DISTRIBUTORSHIP.
28

1 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

2 **REQUEST FOR PRODUCTION NO. 1:**

3 All DOCUMENTS that comprise training materials that YOU provide to
4 persons who train distributors at HERBALIFE events.

5 **REQUEST FOR PRODUCTION NO. 2:**

6 All DOCUMENTS that were broadcast on the Herbalife Broadcast
7 Network.

8 **REQUEST FOR PRODUCTION NO. 3:**

9 All videotapes of materials that were broadcast on the Herbalife Broadcast
10 Network.

11 **REQUEST FOR PRODUCTION NO. 4:**

12 All DOCUMENTS that comprise deposition transcripts in the Nancy
13 Jacobs, et al, vs. Herbalife International, Inc., et al, case number CV 02-1431 PA
14 (RCx).

15 **REQUEST FOR PRODUCTION NO. 5:**

16 All transcripts of depositions taken in the Nancy Jacobs, et al, vs. Herbalife
17 International, Inc., et al, case number CV 02-1431 PA (RCx).

18 **REQUEST FOR PRODUCTION NO. 6:**

19 All DOCUMENTS that comprise video or audio files that YOU provide to
20 persons who train HERBALIFE distributors at STS or other events.

21 **REQUEST FOR PRODUCTION NO. 7:**

22 All DOCUMENTS that comprise video or audio files that YOU provide to
23 persons who train at HERBALIFE sponsored distributor training sessions.

24 **REQUEST FOR PRODUCTION NO. 8:**

25 All DOCUMENTS that YOU provide to persons who train at HERBALIFE
26 sponsored distributor training sessions.

27 ///

1 **REQUEST FOR PRODUCTION NO. 9:**

2 All DOCUMENTS that consist of graphic presentations or Powerpoint
3 presentations that YOU provide to persons who train at HERBALIFE sponsored
4 distributor training sessions.

5 **REQUEST FOR PRODUCTION NO. 10:**

6 All DOCUMENTS that reflect the attendance at HERBALIFE sponsored
7 distributor training sessions for the past 5 years.

8 **REQUEST FOR PRODUCTION NO. 11:**

9 All DOCUMENTS that comprise business forms that YOU provide to
10 YOUR distributors for use in connection with their independent Herbalife
11 distributorships, including but not limited to customer receipts, sales receipts,
12 invoices, order forms, accounting forms, questionnaires, sign up sheets, purchase
13 orders, acknowledgements, and confirmations. This request does not seek forms
14 that have been filled out or contain customer or distributor information.

15 **REQUEST FOR PRODUCTION NO. 12:**

16 All DOCUMENTS that comprise the literature contained in YOUR IBP or
17 distributor kit for each year starting in 2004 through the present.

18 **REQUEST FOR PRODUCTION NO. 13:**

19 All versions of the IBP sold by YOU during the period of January 1, 2004
20 through the present date.

21 **REQUEST FOR PRODUCTION NO. 14:**

22 All versions of the distributor kit sold by YOU during the period of
23 January 1, 2004 through the present date.

24 **REQUEST FOR PRODUCTION NO. 15:**

25 All DOCUMENTS RELATING TO any disciplinary actions YOU have
26 taken against any Herbalife independent distributor for violating any of the
27
28

1 10 customer rule (Rule 20-C) the buyback rule, the seventy percent rule (Rule 20-
2 D) or any other policy or rule RELATING TO retail sales requirements.

3 **REQUEST FOR PRODUCTION NO. 16:**

4 All DOCUMENTS RELATING TO YOUR enforcement of the 10 customer
5 rule (Rule 20-C), the buyback rule, the seventy percent rule (Rule 20-D) or any
6 other policy or rule RELATING TO retail sales requirements.

7 **REQUEST FOR PRODUCTION NO. 17:**

8 All DOCUMENTS RELATING TO any analysis or report RELATING TO
9 whether YOUR rules or policies RELATING TO retail sales requirements
10 (including, without limitation, the 10 customer rule (Rule 20-C), the seventy
11 percent rule (Rule 20-D) or the buyback rule) are effective.

12 **REQUEST FOR PRODUCTION NO. 18:**

13 All DOCUMENTS (including reports, memoranda and/or analyses)
14 RELATING TO the percentage of purchases made by Herbalife independent
15 distributors in the last five days of the month as opposed to earlier in the month.
16 (Date restriction is January 1, 2006 through the present day.)

17 **REQUEST FOR PRODUCTION NO. 19:**

18 All DOCUMENTS that show the percentage of Herbalife products that are
19 sold to an ultimate user of the product that is not an Herbalife independent
20 distributor. (Date restriction is January 1, 2006 through the present day.)

21 **REQUEST FOR PRODUCTION NO. 20:**

22 All DOCUMENTS RELATING TO reports, analyses and/or memoranda
23 prepared by YOU or any consultant hired by YOU to determine the percentage of
24 Herbalife's products that are sold to an ultimate user of the product that is not an
25 Herbalife independent distributor. (Date restriction is January 1, 2006 through the
26 present day.)

1 **REQUEST FOR PRODUCTION NO. 21:**

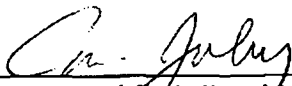
2 All DOCUMENTS RELATING TO YOUR efforts to prevent inventory
3 loading by Herbalife independent distributors.

4 **REQUEST FOR PRODUCTION NO. 22:**

5 All DOCUMENTS RELATING TO YOUR efforts to encourage retail sales
6 to customers that are not Herbalife independent distributors.

7
8
9 Dated: February 6, 2009

MIXON | JOLLY, LLP

10
11 By: 
12 Cameron M. Jolly, Attorney for
13 Defendants and Counterclaimants
14 JEFF ORR and KATHY ORR
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 575 Anton Blvd., Suite 670, Costa Mesa, CA 92626.

On February 6, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT KATHY ORR'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

John B. Stephens, Esq.
Stephens Friedland LLP
4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
Telephone: (949) 468-3200
Facsimile: (949) 468-3201

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Costa Mesa, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Costa Mesa, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on February 6, 2009, at Costa Mesa, California.


Ben Atienza

1 STEPHENS FRIEDLAND LLP
John B. Stephens, Bar No. 142718
2 4695 MacArthur Court, Suite 310
Newport Beach, CA 92660
3 Telephone: (949) 468-3200
4 Facsimile: (949) 468-3201

5 Attorney for Defendants and Counterclaimants
6 ROBERT E. FORD, JULIA A. FORD,
7 BRUCE H. ROTH, NANCY A. ROTH,
DIANNA N. THOMPSON and JASON FISHER

8 IN THE UNITED STATE DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 HERBALIFE INTERNATIONAL OF)
11 AMERICA, INC., a Nevada Corporation,)

12 Plaintiff,)

13 vs.)

14)
15)
16 ROBERT E. FORD and JULIA A. FORD,)
17 husband and wife; BRUCE H. ROTH and)
18 NANCY A. ROTH, husband and wife; JEFF)
19 ORR and KATHY ORR, husband and wife;)
FISHER,)

20 Defendants.)

21)
22 AND RELATED CROSS-CLAIM.)
23)

CASE NO.: CV 072529 GF (FMOx)

HON. GARY A. FEESS

**DEFENDANT AND
COUNTERCLAIMANT ROBERT
FORD'S FIRST SET OF REQUEST FOR
ADMISSIONS TO PLAINTIFF AND
COUNTER DEFENDANT HERBALIFE
INTERNATIONAL OF AMERICA, INC.**

24
25
26
27
28

ROBERT FORD'S FIRST SET OF REQUEST FOR ADMISSIONS TO HERBALIFE

1 PROPOUNDING PARTY: Defendant and Counterclaimant ROBERT FORD
2 RESPONDING PARTY: Plaintiff and Counter Defendant HERBALIFE INTERNATIONAL
3 OF AMERICA, INC.
4 SET NUMBER: One

5 Pursuant to Federal Rule of Civil Procedure 36, Defendant and Counterclaimant
6 ROBERT FORD ("FORD"), requests that Plaintiff and Counter Defendant HERBALIFE
7 INTERNATIONAL OF AMERICA, INC. ("HERBALIFE"), either admit or deny each request
8 set forth below, under oath, within thirty (30) days after service of the requests for admissions.

9 DEFINITIONS

10 A. "YOU" or "YOUR" or "HERBALIFE" means Plaintiff Herbalife International of
11 America, Inc., Responding Party herein, and any employee, agent or affiliate of Herbalife
12 International of America, Inc.

13 B. "DEFENDANTS" means Robert and Julia Ford, Bruce and Nancy Roth, Jeff and
14 Kathy Orr, Jason Fisher, and Dianna Thompson.

15
16 REQUESTS FOR ADMISSIONS

17 REQUEST NO. 1:

18 Admit that YOU knew that, while they were HERBALIFE independent distributors,
19 DEFENDANTS established relationships with prospective and actual customers while operating
20 their independent businesses.

21 REQUEST NO. 2:

22 Admit that YOU knew that, while they were HERBALIFE independent distributors,
23 DEFENDANTS established relationships with other HERBALIFE independent distributors who
24 were recruited by the DEFENDANTS while operating their independent businesses.

1 **REQUEST NO. 3:**

2 Admit that when the DEFENDANTS terminated their relationship with HERBALIFE,
3 YOU intended to disrupt the DEFENDANTS' relationships with their prospective and actual
4 customers.

5 **REQUEST NO. 4:**

6 Admit that when the DEFENDANTS terminated their relationship with HERBALIFE,
7 YOU intended to prevent DEFENDANTS from recruiting other HERBALIFE independent
8 distributors.

9 **REQUEST NO. 5:**

10 Admit that YOUR independent distributors instruct new distributors that actual compliance
11 with HERBALIFE's retail sales rules is not necessary.

12 **REQUEST NO. 6:**

13 Admit that YOUR 10-customer rule is easily circumvented.

14 **REQUEST NO. 7:**

15 Admit that YOU allow YOUR independent distributors to circumvent YOUR 10-customer
16 rule.

17 **REQUEST NO. 8:**

18 Admit that YOUR "random audit" procedure is easily circumvented.

19 **REQUEST NO. 9:**

20 Admit that YOU allow YOUR independent distributors to circumvent YOUR "random
21 audit" procedure.

22 **REQUEST NO. 10:**

23 Admit that YOUR reported retail sales of YOUR products, as reported to YOUR investors,
24 are substantially less than the actual retail sales.
25
26
27
28

1 **REQUEST NO. 11:**

2 Admit that YOUR reported retail sales of YOUR products, as reported to the S.E.C., are
3 substantially less than the actual retail sales.

4 **REQUEST NO. 12:**

5 Admit that YOUR reported retail sales of YOUR products, as reported to YOUR
6 independent distributors, are substantially less than the actual retail sales.

7 **REQUEST NO. 13:**

8 Admit that approximately 90% of all YOUR non-supervisor independent distributors leave
9 HERBALIFE in any given year.

10 **REQUEST NO. 14:**

11 Admit that, in 2006, YOUR President's Team members did not earn on average \$611,094
12 annually.

13 **REQUEST NO. 15:**

14 Admit that YOUR publications state that HERBALIFE does not prohibit a new,
15 independent distributor from working with another company.

16 **REQUEST NO. 16:**

17 Admit that YOUR publications state that YOUR independent distributors, including YOUR
18 Supervisors, may voluntarily terminate their distributor agreements with YOU at any time.

21 Dated: January 30, 2009

STEPHENS FRIEDLAND LLP

24 By: _____

25 John Stephens, Attorney for Defendants
26 and Counterclaimants ROBERT E. FORD,
27 JULIA A. FORD, BRUCE H. ROTH,
28 NANCY A. ROTH, DIANNA N.
THOMPSON and JASON FISHER

CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of Orange, State of California, and not a party to the within action. My business address is 4695 MacArthur Court, Suite 310, Newport Beach, California 92660.

On January 20, 2009, I served true copy(ies) of the following document(s) described as: **DEFENDANT AND COUNTERCLAIMANT ROBERT FORD'S FIRST SET OF REQUEST FOR ADMISSIONS TO PLAINTIFF AND COUNTER DEFENDANT HERBALIFE INTERNATIONAL OF AMERICA, INC.** on the interested parties, by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Charles Patterson, Esq.
Nancy R. Thomas, Esq.
Morrison & Foerster LLP
555 West Fifth Street
Los Angeles, CA 90013
Telephone: (213) 892-5200
Facsimile: (213) 892-5454

Cameron M. Jolly, Esq.
Mixon Jolly LLP
575 Anton Blvd., Suite 670
Costa Mesa, CA 92626
Telephone: (714) 885-7000
Facsimile: (714) 885-7001

VIA U.S. MAIL: I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice and such envelope(s) would be deposited with the U.S. postal service on that same date with postage thereon fully prepaid, at Newport Beach, California. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

VIA OVERNIGHT MAIL: By placing a true and correct copy in the receptacle for Overnight Express pick up at Newport Beach, California to be delivered next business day.

VIA PERSONAL SERVICE: By causing true and correct copies to be personally delivered.

VIA E-MAIL/ELECTRONIC TRANSMISSION: Based on court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I hereby certify that I am employed in the office of a member of the Bar of this court at whose direction the service was made. I hereby certify under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 20, 2009, at Newport Beach, California.



Carolyn Peca

CERTIFICATE OF SERVICE