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JAMESON BABBITT STITES & LOMBARD, P.L.L.C.
HENRY C. JAMESON, WSBA #05676
SEAN T. DURBIN, WSBA #29321
999 Third Avenue, Suite 1900
Seattle, WA 98104-4001
Telephone: (206) 292-1994
Fax: (206) 292-1995

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

NOV 29 2000 ZG

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

MARK R. MCDONALD (BAR NO. 137001)
MORRISON & FOERSTER LLP
555 West Fifth Street
Suite 3500
Los Angeles, California 90013-1024
Telephone: (213) 892-5200

Attorneys for Defendant
HERBALIFE INTERNATIONAL OF AMERICA, INC.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON MCDOWELL,

Plaintiff,

v.

HERBALIFE INTERNATIONAL OF AMERICA,
INC.,

Defendant.

No. **C00-20112**

NOTICE OF REMOVAL OF ACTION UNDER
28 U.S.C. §1446(B) (DIVERSITY)

TO PLAINTIFF JASON MCDOWELL, HIS ATTORNEY OF RECORD AND TO THE
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON:

PLEASE TAKE NOTICE that Defendant Herbalife International of America, Inc.
("Herbalife"), hereby removes to this Court the state court action described below,

NOTICE OF REMOVAL OF ACTION - 1

1 pursuant to 28 U.S.C. §§ 1441 and 1446. This Court has original jurisdiction pursuant to
2 28 U.S.C. § 1332.

3 PLEASE TAKE FURTHER NOTICE that a true and correct copy of this Notice of
4 Removal Under 28 U.S.C. §1446(b) (Diversity) is being served and filed promptly with the
5 Clerk of the Superior Court of the State of Washington for King County as an Exhibit to the
6 Notice of Removal of Action to Federal Court being filed in that court.

7 **PROCEDURAL FACTS**

8 1. On October 30, 2000, an action was commenced in the Superior Court of the
9 State of Washington in the County of King, entitled *JASON MCDOWELL, Plaintiff, vs.*
10 *HERBALIFE INTERNATIONAL OF AMERICA, INC., Defendants*, as Case Number 00-2-
11 27773-3SEA. A copy of the complaint is attached hereto as "Exhibit A."

12 2. Herbalife was served with the summons and complaint on November 1, 2000.
13 A copy of the summons, showing the date of service, is attached hereto as "Exhibit B" as
14 required by 28 U.S.C. § 1446 (a).

15 3. This Notice of Removal is filed within thirty days after receipt by Defendants
16 of the initial pleading and summons, as required by 28 U.S.C. § 1446(b).

17 4. No other process, pleadings or orders have been served on Herbalife in this
18 action.

19 5. A copy of this Notice of Removal is being served upon counsel for Plaintiff,
20 James D. Nelson, 800 Financial Center, 1215 Fourth Avenue, Seattle, Washington, 98161-
21 1090.

22 **DIVERSITY JURISDICTION**

23 A. **COMPLETE DIVERSITY EXISTS**

24 6. Plaintiff Jason McDowell has alleged he resides in the State of Washington.
25 See Complaint, ¶ 1, Exhibit A hereto. Herbalife was at the time the Complaint was filed,
26

NOTICE OF REMOVAL OF ACTION - 2

1 and at all relevant times has been, Incorporated under the laws of the State of California,
2 and has its principal place of business in California. There is, therefore, complete diversity
3 between the parties.

4 B. AMOUNT IN CONTROVERSY EXCEEDS \$75,000

5 7. Although Plaintiff has failed to indicate in his Complaint the amount of
6 damages sought, Herbalife has a good faith belief Plaintiff seeks more than \$75,000 in this
7 action because he has informed Herbalife that, as a result of its alleged breach of contract,
8 he has incurred damages of several hundred thousand dollars per year for several years

9 Dated: November __, 2000

10 JAMESON BABBITT STITES & LOMBARD,
11 P.L.L.C.

12
13 By: 

14 Henry C. Jameson, WSBA #05676
Sean T. Durbin, WSBA #29321

15 MORRISON & FOERSTER LLP
16 Mark R. McDonald, CSBA 137001
17 555 West Fifth Street, Ste. 3500
18 Los Angeles, CA 90013-1024
19 Telephone: (213) 892-5200
20 Fax: (213) 892-5454

21 Attorneys for Defendant
22 HERBALIFE INTERNATIONAL
23 OF AMERICA, INC.

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26 NOTICE OF REMOVAL OF ACTION - 3

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PROOF OF SERVICE

I Valerie Cheetham, declare as follows:

I am a legal secretary with the law firm of Jameson Babbitt Stites & Lombard, P.L.L.C., over the age of 18 years, a resident of the state of Washington, and not a party to this lawsuit.

I further declare that on the ___ day of November, 2000, I deposited with ABC Legal Messenger Service for office service upon attorneys for plaintiff a copy of (1) this Notice of Removal of Action Under 28 U.S.C. §1446(B), (2) a copy of Notice of Defendant's Filing of Notice to Remove Civil Action to Federal Court, and (3) a copy of Notice to Adverse Party of Removal to Federal Court at their address below:

James D. Nelson
Betts, Patterson & Mines
800 Financial Center
1215 Fourth Avenue
Seattle, Washington 98161-1090

Attorneys for Plaintiff
JASON MCDOWELL

I declare under penalty of perjury under the laws of the State of Washington and the United States that the above is true and correct.

DATED: November 29, 2000, at Seattle, Washington.

Valerie Cheetham
Valerie Cheetham

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00 OCT 30 PM 2:30
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Honorable Linda Lau

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JASON MCDOWELL,

Plaintiff,

vs.

HERBALIFE INTERNATIONAL OF
AMERICA, INC.,

Defendant

NO. 00-2-27773-3SEA

AMENDED COMPLAINT

COMES NOW plaintiff Jason McDowell, and for claims against defendant Herbalife International of America, Inc., alleges as follows.

- 1 Plaintiff Jason McDowell ("McDowell") resides at 4710 East Mercer Way, Mercer Island, King County, Washington
- 2 On information and belief, defendant Herbalife International of America, Inc ("Herbalife") is a Delaware corporation having its principal place of business at 9800 South Cienega Boulevard, Los Angeles, California.
- 3 Pursuant to RCW 4.28.185, Herbalife is subject to suit in the State of Washington because Herbalife does business in the State of Washington and this suit arises out of Herbalife's business in the State of Washington.
- 4 Pursuant to RCW 4.12.025, venue is appropriate in King County, Washington because Herbalife transacts business in King County, Washington.

1 5. Pursuant to KCLR 82, this case must be heard at Seattle because McDowell
2 resides in the City of Mercer Island.

3 6. Herbalife sells weight-management, nutritional, and personal care products.
4 Herbalife sells its products exclusively through independent Herbalife distributors.

5 7. Herbalife is a network marketing company, meaning that an Herbalife
6 distributor may multiply his or her earnings by sponsoring additional Herbalife distributors
7 from whose sales he or she also earns commissions. Amway is an example of a network
8 marketing company.

9 8 McDowell became an Herbalife distributor in approximately 1988. McDowell
10 signed an Application for Distributorship, which Herbalife accepted. The parties' contract
11 incorporated the then-applicable Herbalife Rules of Conduct & Distributor Policies.

12 9. Under Rule 4-A, an individual is limited to one distributorship under one
13 sponsor. Under Rule 7-E, a distributor who resigns or whose distributorship is terminated
14 must wait one year before becoming a distributor again under another sponsor (As of April
15 1995, the waiting period was two years.) Under Rule 11-C, a distributor who wishes to
16 change sponsors must obtain the consent of his original sponsor, his royalty-receiving "up
17 line" distributors, and Herbalife.

18 10 In approximately January 1993, Anthony Powell became an Herbalife
19 distributor in the McDowell distributorship

20 11. In approximately April 1995, Herbalife allowed Powell to change Herbalife
21 sponsors. Powell did not wait two years before becoming a distributor again under another
22 sponsor Herbalife and Powell did not obtain McDowell's consent to this change of sponsors.
23 Similarly, Herbalife and Powell did not obtain Powell's other royalty-receiving "up line"
24 distributors' consent to this change of sponsors.

25

1 12. McDowell was working in Europe when Powell changed sponsors. Upon
2 returning from Europe in approximately 1997, McDowell heard a rumor that Powell had
3 changed sponsors and contacted Herbalife. In response, Herbalife's representatives
4 repeatedly assured McDowell that Herbalife knew nothing about the matter. McDowell
5 persisted. Finally, on August 25, 1999, Herbalife admitted that Herbalife had allowed Powell
6 to change sponsors in 1995.

7 13. By allowing Powell to change sponsors in violation of its own Rules of
8 Conduct & Distributor Policies, Herbalife breached its contract with McDowell

9 14. By failing to tell McDowell the truth in response to his repeated inquiries,
10 Herbalife actively concealed its breach from McDowell.

11 15. McDowell has been and continues to be proximately and substantially
12 damaged by Herbalife's breach of contract in an amount to be proven at the time of trial
13 herein

14 WHEREFORE, having stated claims against Herbalife, McDowell respectfully prays
15 as follows.

16 1 To have and recover a money judgment against Herbalife in an amount to be
17 proven at the time of trial herein;

18 2 To have an recover his costs of suit, including a reasonable attorneys' fee;


19 3. To have his pleadings amended to conform to the proof offered at the time of
20 trial herein; and

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4. For such further favorable relief as the Court deems just and appropriate
DATED this 30th day of October, 2000.

BETTS, PATTERSON & MINES, P.S.

By 
James D. Nelson, WSBA #11134
Attorneys for Plaintiff Jason McDowell

Honorable Linda Lau

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JASON MCDOWELL,
Plaintiff,
vs
HERBALIFE INTERNATIONAL OF AMERICA, INC.,
Defendant

NO. 00-2-27773-3SEA
SUMMONS

TO: Herbalife International of America, Inc

A lawsuit has been started against you in the above-entitled court by the above-named plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and serve a copy upon the undersigned attorney for the plaintiff within 60 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment entitles plaintiff to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned attorney, you are entitled to notice before a default judgment may be entered.

EXHIBIT "B"

SUMMONS

PS528/103400 1756/61330001

- 1 -

BETTS
PATTERSON
& MINES, P.S.
800 Rainier Center
1215 Fourth Avenue
Seattle, Washington 98161 1090
(206) 292-0580

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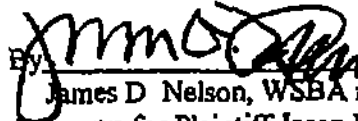
You may demand that plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to CR 4 of the Superior Court Civil Rules of the State of Washington.

DATED this 27th day of October, 2000.

BETTS, PATTERSON & MINES, P.S.


By _____

James D. Nelson, WSBA #11134
Attorneys for Plaintiff Jason McDowell

SUMMONS

96528/102400 1756/63250001

**BETTS
PATTERSON
& MINES, P.S.**

800 Financial Center
1215 Fourth Avenue
Seattle, Washington 98161-1090
(206) 291-9966



CT System

Service of Process Transmittal Form
Los Angeles, California

11/01/2000

Via Federal Express (2nd Day)

TO: ROBERT A SANDLER General Counsel
HERBALIFE INTERNATIONAL, INC
1800 CENTURY PARK EAST
CENTURY CITY, CA 90067-1501

RECEIVED

NOV 12 2000

LEGAL DEPARTMENT

RE: PROCESS SERVED IN CALIFORNIA

FOR HERBALIFE INTERNATIONAL OF AMERICA, INC. Domestic State: Ca

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

- 1. TITLE OF ACTION: Jason McDowell vs Herbalife International of America, Inc.
- 2. DOCUMENT(S) SERVED: Summons, Amended Complaint, Case Information Cover Sheet, Case Assignment Designation, Order, Plt's First Requests for Production, Exhibits
- 3. COURT: Superior Court of Washington for King County
Case Number 0022777333EA
- 4. NATURE OF ACTION: Amended Complaint for alleged breach of contract, etc.
- 5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Los Angeles, California
- 6. DATE AND HOUR OF SERVICE: By Process server on 11/01/2000 at 13:10
- 7. APPEARANCE OR ANSWER DUE: Within 60 days
- 8. ATTORNEY(S): James D. Nelson
Beets, Paterson & Mines, P.C.
(209) 292-9988
800 Financial Center
1216 Fourth Avenue
Seattle, WA 98161-1090

9. REMARKS:

SIGNED: CT Corporation System
 PER: Jare J. Keprios /MS
 ADDRESS: 818 West Seventh Street
 Los Angeles, CA 90017
 SOP WS 0003277251

Information furnished on this transmittal form is recorded for CT Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.