

WEST VIRGINIA

DIANA MEY,
Plaintiff, Individually And On Behalf
Of A Class Of All Persons and Entities
Similarly Situated

V.

HERBALIFE INTERNATIONAL, INC.,
THOMAS STILES, PAMELA STILES,
NANCY WILLIS AND DANA WILLIS,

Defendants

CERTIFIED TO BE A TRUE AND EXACT
COPY OF THE ORIGINAL.

CIVIL ACTION NO. 01-C-263M

U.S. DISTRICT COURT
FILED AT WHEELING, WV
AUG 12 2003
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

COMPLAINT - CLASS ACTION

In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "unrestricted telemarketing . . . can be an intrusive invasion of privacy . . ." 47 U.S.C. § 227, Congressional Statement of Findings #5. Specifically, in enacting the TCPA, Congress outlawed telemarketing via unsolicited automated or pre-recorded telephone calls, finding:

"Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy."

"Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call . . . is the only effective means of protecting telephone consumers from this nuisance and privacy invasion."

47 U.S.C. § 227, Congressional Statement of Findings ##10 and 12.

This consumer class action concerns widespread institutional disregard for the TCPA by Herbalife International, Inc. ("Herbalife"), a well-known multi-level marketing organization that markets and distributes health care products via a distribution network. Upon information and belief, over the past four years, hundreds of thousands of unsolicited pre-recorded telephone calls have been made by or on behalf of Herbalife, and with the knowledge, consent, approval and/or acquiescence of Herbalife, to residential phone numbers throughout West Virginia, as part of a campaign to promote Herbalife products and recruit distributors, all in violation of the TCPA and the privacy rights of citizens of West Virginia.

THE PARTIES

1. Diana Mey ("Plaintiff" or "Ms. Mey"), files this complaint on behalf of herself and all persons similarly situated.
2. Ms. Mey at all times relevant to this Complaint was a resident of Wheeling, Ohio County, West Virginia.
3. Defendant, Herbalife, is a corporation organized and existing under the laws of the State of Nevada having its principal place of business at 1800 Century Park East, Los Angeles, California.
4. Defendants, Pamela and Thomas Stiles, reside at RD2 Parkway Estates, New Cumberland, West Virginia 26047. Mr. and Mrs. Stiles engaged in illegal telemarketing practices throughout the State of West Virginia to promote Herbalife.
5. Defendants Nancy and Dana Willis reside at 2949 Oaklawn Street, Columbus, Ohio. Mr. and Mrs. Willis engaged in illegal telemarketing practices throughout the State of West Virginia to promote Herbalife.

THE LEGAL BASIS OF THE CLASS CLAIMS

6. This class action arises from the repeated violation by the defendants of federal law prohibiting privacy violations via invasive telemarketing practices.

7. The claims of Ms. Mey and the class of persons represented by Ms. Mey arise pursuant to the provisions of the TCPA which prohibits unreasonable invasions of privacy via certain telemarketing practices.

8. The TCPA prohibits the use of an unsolicited pre-recorded phone message to advertise the sale of goods and services. 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200.

9. The TCPA also explicitly requires that all artificial or prerecorded telephone messages shall, at the beginning of the message, state clearly the identity of the business, individual or other entity initiating the call and shall state clearly the telephone number or address of such business or entity. 47 U.S.C. § 227(d)(3)(A).

10. The TCPA, 47 U.S.C. § 227(b)(3), further provides a private right of action in state court, as follows:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or (C) both such actions.

11. Ms. Mey brings this action individually and as the representative of all members of a class pursuant to Rule 23 of the West Virginia Rules of Civil Procedure.

12. None of the class members are believed to have individual claims in excess of \$50,000.

HERBALIFE'S DISTRIBUTION NETWORK

13. Herbalife is a multi-level marketing organization that markets and distributes products via a distribution network of over one million distributors.
14. Herbalife compensates each distributor through a structure of bonus and commission payments based upon the amount of product purchased by both the distributor and those recruited to Herbalife by the distributor (the "down-line").
15. Distributors who reach a monthly volume threshold are promoted to the Supervisor level.
16. Supervisors who maintain monthly volume requirements are paid royalties on the product purchased by their down-line.
17. By meeting various volume and recruitment targets, Supervisors can ascend in the Herbalife hierarchy from World Team, Global Expansion Team, Millionaire Team and President's Team.
18. The President's Team includes an additional five levels, the highest being the Chairman's Club.
19. Herbalife delegates to President Team members the responsibility and authority to recruit and train new distributors, to develop and distribute training materials, and to conduct training seminars for distributors.
20. Herbalife works closely with President Team members to develop and implement new strategies for increasing sales and distributor productivity throughout the entire distributor organization.
21. President Team members have the opportunity to obtain a bonus which, in part, is based upon their participation in Herbalife sponsored training and motivational events.

22. Herbalife involves its President Team members in sales, training, motivation and strategic planning efforts.

HERBALIFE'S CONTROL OVER THEIR AGENTS

23. Herbalife has, at all times, had the right to control its distributors as evidenced by the following facts:

- a. All distributors purchase extensive training materials from Herbalife which teaches distributors how to establish, market and grow their Herbalife business.
- b. Follow up training is provided to distributors by Herbalife via frequent training seminars, phone conferences, web sites, voice mail and an individual sponsor network.
- c. Herbalife provides its distributors with scripts of exactly what distributors should say when promoting Herbalife products.
- d. All Herbalife distributors contractually agree to abide by Herbalife's Code of Conduct, rules, regulations and procedures, as a condition of being approved as an Herbalife distributor.
- e. Herbalife has, at all times, had the right to control and discipline its distributors for violating Herbalife's rules, regulations, policies and procedures as amended from time to time by Herbalife at its discretion.
- f. Herbalife requires its distributors to hold trade secrets in confidence for three years after termination.
- g. During the term of the distributorship, and for three years following termination, Herbalife distributors are barred from participating in a "competing business or business activity."
- h. Herbalife, in its absolute discretion, may immediately suspend and/or terminate a distributor upon written notice with cause.

- i. Herbalife, in its absolute discretion, may immediately suspend and/or terminate a distributor upon 30 days written notice without cause.
- j. Herbalife charges each distributor an "annual processing fee". A copy of the terms an Herbalife distributorship must abide by are attached at **Tab A**.
- k. Herbalife specifically controls and regulates the manner in which distributors market Herbalife products via its "U.S. Internet, Mail Order And Lead Generation Regulations", a copy of which is attached at **Tab B**.

**HERBALIFE PROMOTES USE OF AUTO-DIALERS TO
GENERATE NEW LEADS**

24. Beginning in 1999, several top Herbalife distributors, including but not limited to Anthony Powell, Doran Andry, John Beall, Tarun Juneja, Craig Tsutakawa, Caroline Tsutakawa, Brett Bartholomew, Stephen Coombs and Deborah Coombs (collectively, the "Herbalife Agents"), began to publish and distribute materials promoting the use of illegal telemarketing tactics to recruit new Herbalife distributors and to sell Herbalife product.

25. The Herbalife Agents, at all relevant times, were members of Herbalife's President's Team or Chairman's Club.

26. Specifically, the Herbalife Agents actively promoted the use of computer auto-dialers¹ by Herbalife distributors, to make hundreds of thousands if not millions, of automated pre-recorded telemarketing calls to residential homes throughout West Virginia. Attached at **Tab C** is a booklet developed by the Herbalife Agents, that encourages Herbalife distributors (at pages 8, 28, 29, and 32) to utilize a four line "Auto Dialer" as part of a 90 day action plan to recruit new Herbalife distributors.

¹ An "auto-dialer" is a computer that can be programmed to continuously call residential phone lines and leave an automated pre-recorded message.

27. Such calls were made via random dialing and without the consent of the recipient of the pre-recorded call.

28. Such calls were made to consumers having no prior business relationship with Herbalife.

29. Such calls were made to residential phone numbers for the commercial purpose of recruiting new Herbalife distributors and selling Herbalife inventory.

30. The Herbalife Agents actively promoted the use of illegal pre-recorded telemarketing at Herbalife training seminars.

31. In the Spring of 2000, at an Herbalife training seminar, the Herbalife Agents promoted the purchase by Herbalife distributors of auto-dialers manufactured by In Touch.

32. This manufacturer specifically advertised a "Herbalife Distributor Special" on its auto-dialers which it represented was capable of contacting 4,000 homes per day and generating 30 to 50 new leads a day. A copy of the auto-dialer promotional materials of In Touch Systems, Inc. are attached at **Tab D**.

33. The Herbalife agents actively promoted the use of pre-recorded telemarketing via "TouchFon Herbalife Corporate Communications Network", a voice message service which Herbalife made available to its distributors as a training tool in regards to Herbalife product, business development and marketing.

34. The Herbalife Agents actively promoted the use of pre-recorded telemarketing via a web-site made available to those Herbalife distributors recruited by the Herbalife Agents.

35. This web-site was another tool used by Herbalife to help distributors sell product and recruit new distributors.

36. The Herbalife Agents promoted the illegal use of auto-dialers by coordinating with auto-dialer manufacturers who, in turn, offered special discounts to Herbalife distributors.

37. One particular auto-dialer manufacturer even called its product the "HerbaDialer" and contained a direct link to Herbalife's web site under Herbalife's corporate name and trademark.

38. This manufacturer promoted that its auto-dialer was "used by Herbalife distributors throughout the world" and could be used "as an outbound lead generation tool to stimulate your Herbalife distribution network."

39. This manufacturer invited others to "join the many Herbalife distributors that are streamlining and building their networks" and offered special auto-dialer "discounts for the Herbalife team." A copy of the auto-dialer promotional materials of TTI.Net/Psychosoft Corporation are attached at **Tab E**.

40. Another auto-dialer manufacturer also clearly displayed the Herbalife corporate name and logo above the banner "Welcome Herbalife Independent Distributors", promoted the use of auto-dialers it called "Herba-Dialer" systems, and even invited Herbalife distributors to "contact our Herbalife representative Lance Poole and find out what our company can truly do for your Herbalife company."

41. Finally, this web-site contained a testimonial from an Herbalife distributor as to the positive effect the use of the "Herba-Dialer" had on the distributor's business as they had been running the auto-dialer "6 days a week from 8 AM to 9 PM". A copy of the auto-dialer promotional materials of Bates Ventures are attached at **Tab F**.

**HERBALIFE PROFITS DIRECTLY FROM ILLEGAL
TELEMARKETING VIA HERBATEL**

42. For a monthly fee, Herbalife offers its distributors phone service via its affiliate Herbatel.

43. Herbalife derives compensation from each pre-recorded telemarketing phone call made by its agents or representatives over the Herbatel network.

44. In this manner, Herbalife benefits financially both from the business derived from its telemarketing practices, and from the pre-recorded phone calls themselves.

45. Through its access to Herbatel phone records, Herbalife either knew or should have known that its distributors were using auto-dialers to make hundreds of thousands, if not millions, of automated or pre-recorded phone calls, each month, to residential homes promoting Herbalife.

**CONSUMERS COMPLAIN ABOUT HERBALIFE'S
TELEMARKETING TACTICS**

46. For at least the past three years, consumers have been complaining directly to Herbalife that its distributors were engaging in illegal telemarketing in violation of the TCPA. In response to such complaints, Herbalife generally responded that it was not responsible for the telemarketing actions of its purported "independent agents" over which it allegedly did not exercise control.

47. Upon information and belief, despite having knowledge that a number of its distributors were engaged in illegal telemarketing, and having the ability to discipline such distributors, Herbalife failed to take action to cause such conduct to cease into the future.

**FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE
CLASS PLAINTIFF**

48. On December 7, 2000 at 1:38 p.m., the defendant Pamela Stiles caused a pre-recorded telemarketing call to be sent to the home of Ms. Mey.

49. The true purpose of the call was to promote the sale and distribution of Herbalife products and to recruit new Herbalife distributors for the sale of such products.

50. In violation of the TCPA, the pre-recorded call failed to disclose that the call was being made on behalf of Herbalife, and also failed to disclose that the call was being made for the purpose of encouraging the sale and distribution of Herbalife products.

51. The pre-recorded call was sent without first obtaining Ms. Mey's consent.

52. Ms. Mey had no prior business relationship with either Herbalife or Pamela and Thomas Stiles.

53. Ms. Stiles, one of many Herbalife distributors in West Virginia, and one of thousands of Herbalife distributors across the United States, has admitted in deposition testimony under oath, that during the single month of December of 2000, her business made approximately 20,000 Herbalife pre-recorded telemarketing calls to primarily West Virginian residential phone lines.

54. Over a three month period of time from 2000 into 2001, Ms. Stiles admitted, in deposition testimony under oath, that she made over 50,000 pre-recorded telemarketing calls to residential homes primarily in West Virginia.

55. Ms. Stiles has admitted under oath that none of the individuals she called via her auto-dialer consented to the solicitation.

56. Ms. Stiles has admitted under oath that she had no prior business relationship with any of the individuals she called via her auto-dialer.

57. Upon information and belief, Ms. Stiles engaged in pre-recorded telemarketing on behalf of Herbalife based upon advice generated by her immediate sponsor and the Herbalife Agents.

58. During the afternoon of December 10, 2002, the defendants Nancy and Dana Willis caused an unsolicited pre-recorded telemarketing call to be sent to the home of Ms. Mey.

59. On March 31, 2003, the defendants Nancy and Dana Willis caused another unsolicited pre-recorded telemarketing call to be sent to the home of Ms. Mey.

60. The true purpose of the calls were to promote the sale and distribution of Herbalife products and to recruit new Herbalife distributors.

61. Ms. Mey had no prior business relationship with either Herbalife or Nancy and Dana Willis.

62. The pre-recorded messages failed to disclose that the calls were being made on behalf of Herbalife, and also failed to disclose that the calls were initiated for the purpose of encouraging the sale and distribution of Herbalife products.

63. Upon information and belief, the same pre-recorded telemarketing messages were sent to thousands, if not tens of thousands of residents of West Virginia.

JOINT VENTURE

64. At all relevant times, the defendants Thomas and Pam Stiles were engaged in a contractual association with Herbalife to carry out a single business enterprise for profit.

65. To carry out this joint venture, Herbalife and Thomas and Pam Stiles combined their property, money, effects, skill and knowledge.

66. At all relevant times, the defendants Nancy and Dana Willis were engaged in a contractual association with Herbalife to carry out a single business enterprise for profit.

67. To carry out this joint venture, Herbalife and Nancy and Dana Willis combined their property, money, effects, skill and knowledge.

CLASS ALLEGATIONS

68. The Plaintiff brings this action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated throughout the State of West Virginia.

69. The class of persons represented by Ms. Mey is defined as:

All residents of West Virginia, with no prior business relationship with the defendants, to whom the defendants initiated or caused to be initiated, unsolicited pre-recorded phone messages promoting Herbalife goods or services, on or after April 22, 1999.

70. The class as defined above shall not include any judge, court personnel, counsel, or their immediate family members who may have received the pre-recorded telemarketing calls at issue.

71. The class can be identified by phone records, CD Rom, disc or database, maintained by the defendants and/or their employees, representatives or agents.

72. On information and belief, the potential class members number in the hundreds of thousands, and will constitute a class so numerous that joinder of all class members is impracticable.

73. Ms. Mey is a member of the class.

74. There are questions of law and fact common to Ms. Mey and to the proposed class, including but not limited to the following:

- a. Whether the defendants violated the TCPA and FCC promulgating regulations, by engaging in unsolicited telemarketing via pre-recorded message.

- b. Whether the pre-recorded messages sent by the defendants constitute unsolicited advertisements.
- c. Whether the Plaintiff and the members of the class are entitled to statutory damages as a result of the defendants' actions.

75. Ms. Mey's claims are typical of the claims of the class.

76. Ms. Mey is an adequate representative of the class because her interests do not conflict with the interests of the class, she will fairly and adequately protect the interests of the class, and she is represented by counsel skilled and experienced in class actions.

77. The actions of the defendants are generally applicable to the class as a whole and to Ms. Mey.

78. Common questions of law and fact predominate over questions affecting only individual members of the class and a class action is the superior method for fair and efficient adjudication of the controversy.

79. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

80. The damages in this case are set by statute and preclude the necessity of a case-by-case assessment of damages by the court.

81. Ms. Mey is unaware of any litigation concerning this controversy already commenced by others against the defendants who meet the criteria for class membership described above. Ms. Mey is capable of and is willing to represent the other members of the class.

**COUNT I: NEGLIGENT VIOLATION OF THE TCPA
SENDING UNSOLICITED PRECORDED PHONE MESSAGES**

82. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

83. The defendants negligently caused pre-recorded telemarketing solicitations to be sent to Ms. Mey's home, and to the homes of other members of the class, in violation of the TCPA and the FCC's promulgating regulations.

84. The TCPA provides for statutory damages in the amount of a minimum of \$500 for each negligent violation of the TCPA.

**COUNT II: KNOWING VIOLATION OF THE TCPA
SENDING UNSOLICITED PRECORDED PHONE MESSAGES**

85. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

86. The defendants knowingly caused pre-recorded telemarketing solicitations to be sent to Ms. Mey's home, and to the homes of other members of the class, in violation of the TCPA and the FCC's promulgating regulations.

87. The TCPA provides for statutory damages in the amount of \$1,500 for each knowing violation of the TCPA.

**COUNT III: VIOLATION OF THE TCPA
NEGLIGENT FAILURE TO IDENTIFY SOURCE AND PURPOSE
OF PRE-RECORDED CALL**

88. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

89. The defendants negligently caused pre-recorded telemarketing solicitations to be sent to Ms. Mey's home, and to the homes of other members of the class, which failed to identify

the source and purpose of the call in violation of the TCPA and the FCC's promulgating regulations.

90. The TCPA provides for statutory damages in the amount of \$500 for each negligent violation of the TCPA.

**COUNT IV: VIOLATION OF THE TCPA
KNOWING FAILURE TO IDENTIFY SOURCE AND PURPOSE
OF PRE-RECORDED CALL**

91. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

92. The defendants knowingly caused pre-recorded telemarketing solicitations to be sent to Ms. Mey's home, and to the homes of other members of the class, which failed to identify the source and purpose of the call in violation of the TCPA and the FCC's promulgating regulations.

93. The TCPA provides for statutory damages in the amount of \$1,500 for each knowing violation of the TCPA.

**COUNT V: INJUNCTIVE RELIEF
TO BAR FUTURE TCPA VIOLATIONS**

94. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

95. The TCPA expressly authorizes injunctive relief to prevent further violations of the Telephone Consumer Protection Act.

96. The Plaintiff, acting on behalf of the Class, respectfully petitions this Court to order all defendants, including but not limited to Herbalife, its employees, agents or independent distributors, to immediately cease engaging in unsolicited telemarketing in violation of the TCPA.

**COUNT VI: INJUNCTIVE RELIEF
PRESERVATION OF EVIDENCE**

97. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

98. Herbalife, the Herbalife Agents, Pamela Stiles and Thomas Stiles, Nancy Willis and Dana Willis, or their agents, have custody and control of the business records and other information necessary to identify the members of the class including names and telephone numbers. Unless immediate injunctive relief is ordered, it is feared that the defendants will alter, erase, delete, destroy or otherwise dispose of the records in their possession which are necessary to identify each recipient of the pre-recorded messages sent by defendants. For this reason, the Plaintiff petitions the Court for an order enjoining Herbalife, the Herbalife Agents, Pamela Stiles, Thomas Stiles, Nancy Willis and Dana Willis, and their agents, or anyone acting on their behalf, from altering, deleting or destroying any documents or records which could be used to identify the members of the class.

PRAYER FOR RELIEF

WHEREFORE, on behalf of herself and the other members of the class, the Plaintiff prays for the following relief:

1. That all defendants be restrained from engaging in future telemarketing in violation of the TCPA.
2. That all defendants, and their agents, or anyone acting on their behalf, be immediately restrained from altering, deleting or destroying any documents or records which could be used to identify the members of the class.

3. That this Court certify the claims of the named plaintiff and all other persons similarly situated as class action claims as provided by Rule 23 of the West Virginia Rules of Civil Procedure.

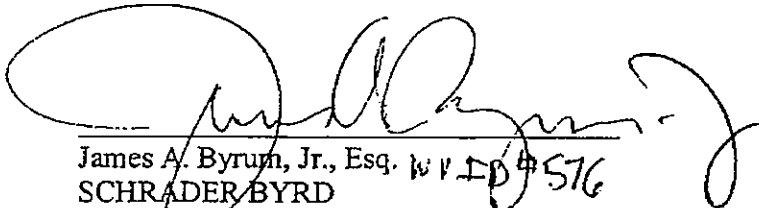
4. That the named plaintiff and the other members of the class action so certified be awarded statutory damages for each separate violation of the TCPA by the named defendants.

5. That the named plaintiff and the members of the class be granted such other and further relief as is just and equitable under the circumstances.

THE CLASS PLAINTIFF REQUESTS A JURY TRIAL AS TO ALL CLAIMS OF THE COMPLAINT SO TRIABLE

DIANA MEY

By her attorneys,



James A. Byrum, Jr., Esq. WV ID # 576
SCHRADER BYRD
& COMPANION, PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, West Virginia
Phone: (304) 233-3390

Edward A. Broderick, Esq.
SHLANSKY & BRODERICK, LLP
1011 Beacon Street, Suite 2
Brookline, MA 02446
Phone: (617) 738-7080
Fax: (617) 738-5003

Robert L. Hamer, Esq.
Matthew P. McCue, Esq.
MIRICK, O'CONNELL, DEMALLIE &
LOUGEE, LLP
100 Front Street
Worcester, MA 01608-1477
Phone: (508) 791-8500
Fax: (508) 791-8502

Dated:

Upon acceptance of this application by HERBALIFE, and prior thereto while the undersigned applicant for a Distributorship (hereinafter called Distributor) is selling Herbalife products, Distributor agrees:

1. Distributor will operate his/her own business, will buy Herbalife products for cash, will promote their sale and will abide by all of Herbalife's rules, regulations, policies and procedures as amended from time to time, including those set forth in the Herbalife International Business Opportunity Manual (hereinafter called the Herbalife Career Book) which are hereby incorporated by reference.
2. Distributor is an independent contractor (for all purposes, including tax and otherwise), and is not an employee, legal representative or agent of Herbalife or of any other Herbalife Distributor.
3. Herbalife, insofar as it is reasonably possible, will sell for cash to Distributor, Herbalife products in whatever quantity Distributor may require.
4. For a period of three (3) years after termination of this agreement Distributor will hold in confidence any trade secrets, formulas, sales and distribution systems, business information, and literature which Distributor acquired during the term of this agreement and will not use directly or indirectly such items. For such period Distributor also agrees not to enter or participate in a competing business or business activity.
5. Distributor will operate his/her business at all times in such manner as to enhance the reputation of Herbalife and its trade name.
6. (a) Herbalife may in its absolute discretion immediately suspend and/or terminate the Distributorship by notice in writing to the Distributor in the event that Herbalife has reasonable grounds for believing that the Distributor has breached any provision of this agreement or the rules as set forth in the Herbalife Career Book.
(b) Herbalife may in its absolute discretion and for any reason whatsoever suspend and/or terminate this agreement on thirty (30) days written notice to the Distributor which it is agreed shall be sufficient notice.
7. This Distributorship may not be assigned without the written consent of Herbalife, which consent can be withheld by Herbalife in its absolute discretion.
8. Distributor understands that the signing of this agreement and his or her purchase of an International Business Pack (IBP) are all that are needed to become a Distributor, and he or she hereby acknowledges receipt of this IBP. If within ninety (90) days the Distributor decides not to continue as a Distributor, he or she shall submit to Herbalife, a written, notarized resignation; he or she must then return the IBP to his or her original Sponsor, who will provide a pro rata refund, i.e., a refund only for those unused IBP contents that are still in good and resalable condition, less a handling charge as determined by Herbalife. Distributor understands that after acceptance by Herbalife of a notarized letter of resignation, the Distributor and/or spouse must wait one year before re-applying for, or participating in, another Herbalife Distributorship.
9. Herbalife shall not be liable for any incidental or consequential damages caused by its breach, cancellation or suspension of this agreement, whether or not the possibility for such damages is known to Herbalife.
10. This agreement is binding upon and inures to the benefit of the parties, their heirs and successors in interest. If any provision of this agreement is found to be unenforceable or invalid, the validity of the remaining provisions shall not be affected.
11. Distributor acknowledges that subject to the rules contained in the Herbalife Career Book there will be an annual processing fee associated with this Distributorship.
12. Distributor will make no claims about any product, which have not been approved in writing by the Company. Distributor will make no medical claims regarding any product. Distributor will direct all customers to read the label of all products containing ephedrine prior to purchase or consumption. Distributor will advise customers under the care of a physician or with a chronic condition to consult with a physician prior to purchase of any product containing ephedrine. Distributor will refer any person who makes a complaint about side effects arising from a product containing ephedrine to a physician or a licensed qualified health care professional.

EXHIBIT

A



**U.S. INTERNET, MAIL ORDER
AND LEAD GENERATION REGULATIONS**

Effective May 28, 2001

These regulations apply to distributor web sites, mail order programs, lead generation programs and associated practices as specifically referenced below. These regulations are for the United States of America and Canada only. A "System" is a method whereby an Herbalife distributor markets and advertises video or audio tapes, sales aids, training aids, computer programs, web sites, lead generation material, or training seminars, etc., of distributor origin – as opposed to Herbalife created materials. In essence, a "System" is the selling of a method and materials created by a distributor or others to do our business. The materials used or created by the distributor which are not official Herbalife materials are referred to as "tools." In addition distributors are permitted to develop and operate their own web sites in order to conduct their own Herbalife business. These web sites may, in some cases, be part of an overall mail order program (in which case they are specifically subject to both Internet and mail order regulations) or System or may operate independently (in which case they are specifically subject to the Internet regulations).

Distributors who are in violation of any of these rules and regulations are subject to suspension of their buying privileges and/or their Royalty Override and Production Bonus checks or termination of their distributorship.

In order to protect the business for everyone, it is necessary that distributors be aware of and adhere to all of the Herbalife Rules and Regulations, including the following:

General Provisions

Governing All Systems, Including Internet,

Mail Order, and Lead Generation Programs

1. All Herbalife Rules and Regulations as set forth in the Application of Distributorship, Career Book and any other publications, announcements and communications provided from time to time to distributors by Herbalife are applicable to and must be adhered to in connection with all Systems, including distributor Web Sites, Mail Order and Lead Generation programs.

2. Distributors must comply with all federal, state, and local laws, regulations and guidelines, including those issued by the Federal Trade Commission and Postal Authority in the operation of their Systems, including all Web Sites, Mail Order and Lead Generation programs and all materials and tools they produce and distribute in connection therewith.
3. All statements made in connection with any System, including those made on the Internet and in Mail Order and Lead Generation programs must be truthful and not misleading to consumers.
4. Distributors may use weight loss, product, and/or income testimonials or photographs on their Web Sites and in their Mail Order materials and Lead Generation programs or other tools provided they have obtained signed releases for their use (including use on the Internet if a Web Site is involved), verifiable substantiation for all testimonials and the materials are otherwise in compliance with Herbalife's Rules and Regulations.
5. All weight loss, product, and income testimonials should reflect current information. Permanent weight loss should not be implied unless the weight loss has been maintained for at least two years.
6. The disclaimer "Results Not Typical" shall appear in a minimum of 8 point type on the bottom of each page on which any weight loss, product, or income testimonials appear. This disclaimer must stand alone without any modifications.
7. Distributors may not make any medical claims with respect to Herbalife products. They may make structure/function claims, *i.e.*, the product may "assist" or "support" a particular organ function. No curative claims may be made.
8. Distributor Web Sites and Mail Order materials or other tools may use pictures or descriptions of the Herbalife products that are contained in any of the Herbalife sales material or literature that is available for sale or distribution from Herbalife, except for sales material or literature specifically identified by the Company as not to be reproduced.
9. Distributor Web Sites and Mail Order materials or other tools may not use any portion of the Marketing Plan and Rules of Conduct and Distributor Policies sections of the Herbalife Career Book/IBO.
10. When using Herbalife sales materials or literature, Distributor Web Sites and Mail Order materials or other tools may only use those sales materials or literature currently sold or provided by Herbalife. All literature and images that are taken from Herbalife materials must be used in their entirety and may not be edited or have language or text added or omitted.

11. Herbalife regularly modifies its existing product and sales materials. Distributors are required to routinely update their Web Sites and Mail Order materials and other tools to reflect current information. In all cases, Distributors must make all required changes to update their Web Sites and Mail Order Materials within 10-days notice from the Company.
12. When using Herbalife's audio or video recordings, Distributor Web Sites and Mail Order materials and other tools may only use those Herbalife-produced audio and video recordings that are provided for sale by the Company. Recordings of HBN broadcasts, Herbalife meetings, conference calls, or other communications by the Company may not be used without the prior written approval of the Company.
13. Distributors may produce their own audio and video recordings for use on their Web Sites and in their Mail Order materials or other tools provided they have obtained signed releases from all participants and the recordings are in compliance with all Herbalife rules and regulations and all applicable laws.
14. Distributor Web Sites and Mail Order materials or other tools may offer the Herbalife business opportunity; however, they must clearly indicate that the business opportunity is a result of selling Herbalife products and must not imply that there is opportunity strictly from recruiting others into the business.
15. Distributor Web Sites and Mail Order materials and other tools must not imply or require any purchase by any Applicant other than an unaltered, official Herbalife Distributor Kit (IBP). Likewise, as a sponsor, a distributor is required to train and support all their downline distributors and may not imply or require a distributor to achieve a certain level in the marketing plan to receive such training and support.
16. Distributors who sell decision packages, Mail Order materials, or any other System must comply with all applicable consumer protection laws. At a minimum, there must be a full 90-day money back guarantee on the entire cost of the decision package and any Mail Order materials or other tools, including shipping and handling, regardless of whether the items returned are used or unused. A full refund must be made to the purchaser within 7 days of receipt of the items returned.
17. The cost of any decision packages may not exceed the value of the provided materials or shall not be greater than \$40.00, without the prior written approval of Herbalife.
18. Distributors may not offer payment of referral fees in any form (including rebates, bonuses, or otherwise) for the recruitment of Distributors, the entry of Distributors into the Herbalife marketing plan at a specific level, or for the sale of Mail Order materials or other tools.

19. Distributor Systems, including Web Sites, Mail Order, Lead Generation programs, or other tools, shall be strictly for the purpose of selling Herbalife products, building the Herbalife business, or Distributor training. Distributors may charge only for Herbalife products, sales materials offered for sale by the Company, the International Business Pack (IBP), or for actual materials provided, which should be sold at cost. Distributors should not sell materials for profit and may not charge a fee for any sales methodology, system, or service.
20. Distributors may allow the use of their Systems, including any Web Site, Mail Order, Lead Generation program, or other tools, by their downline distributors down to the next qualified President's Team level. Distributors may charge their downline a reasonable fee for using their Web Site, provided the fee does not exceed the cost for the development, setup, and maintenance of the Web site for the downline distributor.
21. Distributors may not allow distributors who are not in their downline organization or who are below their downline qualified President's Team member to use their Systems, including any Web Site, Mail Order materials, Lead Generation programs, or other tools unless they obtain a written authorization from the qualified President's Team member allowing their use by his/her downline organization. If a signed authorization is obtained, the distributor making the above items available may only distribute them to the President's Team member providing the authorization. Distributors may not distribute directly or indirectly to any other downline other than their own as specified above. If an outside vendor is used for distribution of materials, the vendor may not be owned, financed, or controlled by any distributor, either directly or indirectly.
22. For purposes of these rules, a qualified President's Team member is a President's Team member who has completed his qualification or re-qualification for President's Team in the last 12 months.

INTERNET REGULATIONS FOR DISTRIBUTOR WEB SITES

23. Distributors may not use the name "Herbalife" or any of its trademarks, trade names, or product names in their domain name (URL) which could create confusion with the Company.
24. Distributors may link their Web Sites to:
 - a. Herbalife's official Home Page or any Web Site created or maintained by the Company (*i.e.*, Visit Herbalife's Official Home Page at <http://www.herbalife.com>);
 - b. Any Web Site maintained by them to promote the Herbalife business opportunity and/or products; and

- c. Any Web Site that will assist Distributors in promoting the Herbalife business opportunity and/or products so long as such Web Site is in no way connected to any religious or political organization and will in no way denigrate Herbalife's trade names, trademarks, product names, or business reputation.
25. Distributor Web Sites may be registered on and linked from Internet search engines.
26. Distributors may maintain advertisements on their Web Sites and may advertise on any other Web Site so long as such Web Site is in no way connected to any religious or political organization and will in no way denigrate Herbalife's trade names, trademarks, product names, or business reputation.
27. "Spamming" is strictly prohibited. Spamming is the sending of multiple copies of the same message in an attempt to bulk or "junk" e-mail persons who have not specifically stated or requested to receive unsolicited e-mail.
28. Distributors must maintain a "Privacy Statement" on their Web Sites that informs consumers whether or not personal information is being collected about them and how such information will be used. They should provide consumers with an opportunity to prohibit the dissemination of such information. If any consumer requests that their personal information not be shared, they must refrain from sharing such information.
29. Distributors may use the phrase "Herbalife Independent Distributor" to identify themselves, provided the words appear in the same font size as the surrounding text and that the word "Herbalife" is in plain block letters (not the trademarked ® symbol of Herbalife). This phrase may not be used in the Web Site domain name (URL).
30. Distributors who conduct the Herbalife business internationally via their Web Sites must comply with all applicable international laws, including consumer privacy regulations, as well as Herbalife's advertising rules for each foreign country.

MAIL ORDER AND LEAD GENERATION REGULATIONS

31. The "first" sale of Mail Order or Lead Generation materials or other tools should be accompanied by or follow an Herbalife product order. No subsequent sale of Mail Order or Lead Generation materials or other tools may be made to the same distributor for twenty-one (21) days after delivery of the first order.

32. There must be a full 90-day money back guarantee offered by the selling distributor for the entire cost of all Mail Order or Lead Generation materials or other tools, including shipping and handling. Therefore, a purchaser may return all Mail Order materials purchased within the last 90 days for a refund of the entire purchase amount. This refund provision must be provided to the prospective purchaser at the time of their initial purchase.

Newest Way To WEALTH

WORK AT HOME

with Mail Order & Inventory



Quick Start Workbook

EXHIBIT
C

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ACTION STEPS!

After completing each section, check off the steps you have done on the Action Step Worksheet (pg.8). If you finish early, move onto the next section and get a jump-start on your business. **Never wait-Take Action Immediately!!!**

Complete the following 5 steps within your first 72 hours

- 1. Open your Distributorship Package and look over the contents. Locate the **Application for International Distributorship**. This is the 4-part form with two registration cards attached to the top. Remove the cards for your use (you will need your ID No. when ordering products from Herbalife). Fill out **ONLY** the top portion and **SIGN & DATE** the bottom. Make a copy of the application for your records. Send the entire application to us by Express or Priority Mail in the enclosed, self-addressed envelope provided. We will fill in the rest of the information, send it into Herbalife, and send you your copy for your file.
- 2. Register for your next NWTW Advanced Training. See Forms on Demand for registration form (pg. 10).
- 3. **Get on the products!**
Watch the **Personalize Your Program Video** then listen to the **Product Training Tool Belt Call** (pg. 9). You will find instructions for your program in this guide (pgs. 44-47), and you should also talk with your mentor. Make sure the instructions are clear. **Build your first 30-day story**. This is critical, as you will use it throughout your Herbalife career. Weigh, measure, and take a before picture. **Learn to package your product story** (pg. 48). In addition, listen to **Getting Started and Packaging Your story Retail Tool Belt calls 19 and 20** (pg. 9). **Initiate your HAP order (Herbalife Advantage Program) with Herbalife**. See the HAP order form in your International Business Pack.
- 4. **Sign up for the TouchFON system** (pg. 19). Make sure your sponsor and up-line TAB team members are listed on your application. This provides for instant and economical communication with Herbalife NWTW, as well as your down-line and up-line. After you are notified of your number, dial the number, enter the PIN given and go through the activation process prompts.
- 5. **Listen to the Tool Belt calls 3, 4 & 5** (pg. 9). **Hand out your Friendship CD's** that came in your Distributor kit (pgs. 32-34). It is possible to do * \$5,000-\$10,000 of business in just a couple of days. Work with your mentor to hand these out and take your business to the next level immediately!!!

PLEASE COMPLETE ACTION STEPS 1-5 BEFORE PROCEEDING WITH THE NEXT STEPS

*Results are not typical and do not represent the income of every individual distributor.

Complete the following 5 steps within the next 48 hours

- 11. **Open a separate personal checking account for your business.** You will need to have your mailbox address printed on your checks.
- 12. **Set up your merchant account.** This will allow you to accept credit cards and checks by phone (pg.16)
- 13. **Get a separate residential phone line installed in your home for your business** (you will need to have 3 way calling, call waiting, and voice messaging). **Set up a fax machine.** Fax machines are very inexpensive these days. You can use the same phone line at first or go to www.efax.com to receive faxes through your computer.
- 14. **Get a tape recorder to record telephone calls and tool belt calls.** Go to **Radio Shack** to obtain a telephone recorder suitable for recording training calls.
- 15. **Get an appointment book** (Week at a Glance is recommended). Immediately record dates and times of all training calls, live trainings and other big events.

Set up your 3-ring binder (this will be your "mobile" office). You will need to include the following in clear sheet protectors and have each one tab divided: scripts (refer to Forms on Demand pg.10), lead tracking forms, live training schedules (Forms on Demand pg.10), important phone numbers (pg.49), copies of ads, 20K plan (pgs. 26-27), action plan worksheets (pg.8), recruiting plan worksheet (pg.32). In the back of your binder include 1-31 dividers and pocket dividers (one pocket for each day of the month). This allows you to keep track of your daily appointments.

**PLEASE COMPLETE THROUGH ALL ACTION STEPS BEFORE
PROCEEDING WITH THE NEXT STEPS**

Action Step Worksheet

Last Name _____ First Name _____ Herbalife ID# _____ Herbalife Pin# _____
 Address _____ City _____ State _____ Zip _____
 Home# _____ Work# _____ Fax# _____ TouchFon# _____
 Email _____ Cell# _____ Other _____
 Date Distributorship _____ Date Supervisor _____

Steps for a New Distributor

First 5 Steps (first 72 hours)

- Distributorship Application
- NWTW Advanced Training / STS
- Get on Products
- Sign up for TouchFON
- Tool Belt calls 3-5
- Friendship CDs
- (Fax to Mentor When Complete)

Second 5 Steps (next 72 hours)

- Set up voice mailbox 1 & 2
- Set up pager notification
- Get a P.O. Box
- Order NWTW Membership Package
- Get materials for recruiting
- Order stamp
- Tool Belt calls 8-14
- (Fax to Mentor When Complete)

Last 5 Steps (next 48 hours)

- Open separate checking acct.
- Merchant acct./ checks by ph.
- Extra phone line / fax
- Get tape recorder
- Get appointment book
- Set up 3-ring binder
- (Fax to Mentor When Complete)

World Team in the First Month

- Review 20K Plan
- Three methods of marketing
- Focus Group / Recruiting Plan
- Tool Belt calls 15-18 / 3-Ways with Mentor
- Why World Team the 1st 30-Days?
- Complete Worksheet

- Understands the concept of retailing and recruiting
- Understands the concept of re-investing back into the business to build the team
- Totally clear on the 20k Plan and the 15 Action Steps
- Understands the importance of the NWTW website (This can increase your business by 25%)

Personal goals (your "why") _____
 Income goals - 3 Months _____ 6 Months _____ 1 Year _____ 2 Years _____

90 Day Plan - Recruiting Action

VP Commitment

- 10,000
- 15,000
- 20,000

Establish 3 methods of marketing that will produce a minimum of 200 requested books per week. Start building a team immediately. You will retail through your recruiting efforts! For each distributorship you move, you'll ship an Advanced Program and make a \$100.00 profit. For fastest growth, re-invest this money along with your box order profits back into your recruiting system until you are doing the 20K Plan. Set yourself up to be in the next Focus Group. Circle the volume amount that you are committing to and pick 3 of the 7 methods in that category. Remember, these are only minimum amounts. You can do more!

| Mailing Lists | Signs | Ads | Friendship CD's | Hot Pockets/Pull Tabs | Flyers | Auto Dialer |
|-------------------|---------|-----------|-----------------|-----------------------|-----------|-------------|
| 2,000 (names/mo.) | 400/mo. | 8-10/wk. | 10/wk. | 300/wk. | 5,000/wk. | 4 Lines |
| 3,000 (names/mo.) | 600/mo. | 12-18/wk. | 10/wk. | 300/wk. | 5,000/wk. | 4 Lines |
| 5,000 (names/mo.) | 800/mo. | 20-30/wk. | 10/wk. | 300/wk. | 5,000/wk. | 4 Lines |

Retail Plan To generate cash flow to help fund your business, you should immediately set up a retail plan of action. Remember, your goal is to generate cash through retailing while you build your residual income through recruiting. Spend your time where it counts! For retailing, we suggest that you send 1000-2000 retail postcards per month.

The Newest Way To Wealth

PHONE (253) 854-0595

1004 CENTRAL AVE. S.
KENT, WA 98032

FAX: (253) 854-6242

FORMS ON DEMAND

THE NEWEST WAY TO WEALTH FORMS ARE NOW AVAILABLE THROUGH OUR FORMS ON DEMAND SYSTEM!!

CONTACT US 24 HOURS A DAY AT (801) 526-8735

| <u>M#</u> | <u>DESCRIPTION</u> |
|-----------|--|
| 1. | FORMS ON DEMAND MENU |
| 2. | RULES & REGULATIONS, CHECKS BY PHONE FORM & AGREEMENT |
| 3. | TOOLS FOR SUCCESS, SUPPLEMENTS & MISC FORMS (BLANK BOOKS, LEAD BOXES, TAPES, BUTTONS, SHIRTS, SIGNS, ETC) |
| 4. | LEAD GENERATION/RETAIL MAILING LISTS & STATISTICS |
| 5. | PRINTED LEAD BOOKS & SAMPLE PRINT PLATE |
| 6. | PLATINUM, GOLD, SILVER & QUICK PICK PACKAGE |
| 7. | MONTHLY UPDATE |
| 8. | PRODUCTION BASED BONUS CLAIM FORM |
| 9. | RECRUITING SCRIPTS |
| 10. | RETAIL SCRIPTS |
| 11. | 20K PLAN, NEW SUPERVISOR 5 STEPS & ACTION STEPS WORKSHEET |
| 12. | SAMPLE SUPERVISOR ORDERS THROUGH HERBALIFE |
| 13. | ADVANCED TRAINING REGISTRATION FORMS & SCHEDULE |

The Newest Way To WEALTH

Phone: (253) 854-0595

1004 Central Ave. S.
Kent, WA 98032

Fax: (253) 854-6242

NWTW QUICK PICK MEMBERSHIP PACKAGE ORDER FORM

Platinum Package:

Printed "Work From Home" Booklets
Lead Generation Tools
15 sets of First Package material
5 sets of Second Package material
5 Friendship Pack CDs
1 set of Follow Up Postcards
1 Training Kit

Gold Package:

1,000 Blank "Work From Home" Booklets
Lead Generation Tools
15 sets of First Package material
5 set of Second Package material
5 Friendship Pack CDs
1 set of Follow Up Postcards
1 Training Kit

Silver Package:

200 Blank "Work From Home" Booklets
Lead Generation Tools
7 sets of First Package materials
3 sets of Second Package materials
5 Friendship Pack CDs
1 set of Follow Up Postcards
1 Training Kit

Above packages include assorted promotional items for personal use

| Item # | Description | Price | Weight | Qty | Total Price |
|--------|------------------|----------|----------------------------|-----|-------------|
| P-0003 | Platinum Package | \$999.00 | 1 @ 51 lbs. 2 @ 54 lbs. | | |
| P-0004 | Gold Package | \$672.00 | 1 @ 34 lbs. 1 @ 54 lbs. | | |
| P-0002 | Silver Package | \$360.00 | 1 @ 34 lbs. | | |

| | | | |
|--|------------|--|--|
| PIP TO: Address Change Requested Personal Name: | | TouchFon: () | Subtotal |
| Business Name: | | Fax Number: () | Sales Tax: 8.8% (WA Residents Only) |
| Address: (No P.O. Boxes) | | Business Number: () | |
| City: | | Organizational Ref. #: (check one) <input type="checkbox"/> 103 Graham <input type="checkbox"/> 109 Combs <input type="checkbox"/> 115 Austin <input type="checkbox"/> 105 Juneja <input type="checkbox"/> 111 Blurton/Smith <input type="checkbox"/> 116 Werzberger <input type="checkbox"/> 106 Beall <input type="checkbox"/> 112 LA Campbell <input type="checkbox"/> 117 DeBrabender <input type="checkbox"/> 107 Powell <input type="checkbox"/> 113 Andry | Shipping Type (3 Day Select Only) |
| State: | Zip Code: | Herbalife® ID #: | 3 DAY SELECT INCLUDED |
| Phone Number: | | Sponsor Name: | Method of Payment: (check one) <input type="checkbox"/> Check/Money Order <input type="checkbox"/> Check By Phone (Please fax copy of Checks By Phone form with order) <input type="checkbox"/> Credit Card (Enter information below) |
| Mail Address (required): | Time Zone: | Upline Tab Team Member: | |
| Total: | | | TOTAL |

Card #: _____ Exp. Date: _____
 Signature: _____

YOU MUST ATTACH: HERBALIFE DISTRIBUTOR APPLICATION, SUPERVISOR ORDER (5000/4000 VP) THE NEWEST WAY TO WEALTH AGREEMENT, PRINT PLATE

Your Platinum or Gold Package must be ordered no more than (60) days after your Distributor Application date. Useable merchandise is 100% refundable, except printed books, if returned within 90 days of receipt.

NOTE: The Newest Way To Wealth **MUST** have a completed Agreement form on file before processing any orders! You do not have to use the Lead Generation system to become a Herbalife Distributor or Supervisor. You can get started for the cost of a Distributor Kit.

JJ Johnson
111 1st ST.
One, MN 11111
www.one.com

1-800-111-1111

www.one.com

Use print quality originals in above area: Locate and replace the address with your return address with web address (if applicable) in 12 pt. (Times New Roman Bold). Locate and replace Phone in 24 pt. (Times New Roman Bold) with web address (if applicable) in 18 pt. (Times New Roman Bold).

Use this form when submitting the \$75 plate charge for having 2000 or more books printed.

Remember what you put above the dividing line will be printed on your books!

There are no refunds on printed lead books.

Note: This order is for Qty. _____ books

Send _____ boxes for (Name): JJ Johnson

Business Name: _____

Return Address: 111 1st ST. _____

Contact Phone: 111-111-1111

City, State, Zip: One, MN 11111 _____

The Newest Way To WEALTH

1004 Central Ave. S.

Phone: (253) 854-0595

Kent, WA 98032

Fax: (253) 854-6242

Phone Check Template

We are now able to accept your check over the phone using our Checks By Phone System. The bank draft we create will have all the same numbers as your check, and you'll get the cancelled draft with your bank statement and other cancelled checks at the end of the month. If you have your check handy, you can do this in less than 1 minute.

| | | |
|---------------------------------|-----------------------|---------------|
| (1) Your Name | (4) First Bank of USA | (6) 0523 |
| (2) Your Address | (5) Bloomington, IL | |
| (3) Your City, State, Zip | (7) 70-70262711 | 12/31/98 |
| Pay To The Order of _____ | | \$ _____ (8) |
| | | _____ Dollars |
| Memo: (9) | (10) _____ | |
| C005023C A271170264A 123423423C | | |
| (6) | (11) | (12) |

- (1) Name or Company on check: _____
- (2) Address: _____
- (3) City, State, Zip: _____
- Phone / Fax: _____
- (4) Bank Name: _____
- (5) Bank City / State: _____
- (6) Check Number: _____
- (7) A.B.A. Number: _____ (usually 2 digits, in example above it would be "70")
- (8) Amount of Check: _____
- (9) This check is for: _____
- (10) Authorized by: _____ (person authorized to give check info)
- (11) Transit Number _____ (always 9 digits beginning with 0,1,2, or 3)
- (12) Account Number: _____

Additional Comments or Special Instructions:

Instant Graphics and Design

www.instantgraphicsanddesign.com
2950-1 E. Broadway Rd., Phoenix, AZ 85040
Fax: 602-304-1496 Phone: 602-304-1439

18x24 Signs are \$1.25ea., shipped Ground Delivery out the door in 2-3 working days....**GUARANTEED** (shipping not included).

12x18 signs \$1.80 (uncut on 18x24 piece of plastic).

All orders must be in increments of 100 (e.g. 100, 200, 300, etc.)

Web sites may be included on any Work At Home sign below.

*****Add your email address for automatic shipment notification*****

Please make this a monthly standing order

Two color red and black
WORK AT HOME
UP \$1500/MO PART TIME
TO \$5000/MO FULL TIME
MAIL ORDER
800-679-8598

Ph# _____
 18x24 12x18
 White Yellow
Qty. _____

One color black
**OWN A COMPUTER?
PUT IT TO WORK!**
\$25-\$75/hr. PT/FT
800-238-8037
www.BackHome4u.com

Ph# _____
 18x24 12x18
 White Yellow
Qty. _____

One color black
WORK AT HOME
UP \$500-\$1500/PART-TIME
TO \$2000-\$5000/FULL-TIME
MAIL ORDER-INTERNET
800-215-6578

Ph# _____
 18x24 12x18
 White Yellow
Qty. _____

Two color red and black
**I LOST 40 lbs
IN 2 MONTHS**
800-985-DIET
FREE SAMPLE

Ph# _____
 18x24 12x18
 White Yellow
Qty. _____

No P.O. boxes or C.O.D. accepted. Please attach credit card billing address if different than shipping address below.

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Fax: _____ Telephone: _____
Email Address: _____
Web Address on sign: _____

Method of Payment:
 Visa MC Discover AMEX
_____ exp: _____

Signature: _____

Recruiting Voice Mail Information

For recruiting, you will need 2 separate voice mail boxes:

- A. **Voice Mail #1** is used for advertising (*signs, newspaper ads, etc.*). Make sure you request a number beginning with 800 or 888 and if available, get a vanity number ending in RICH, WORK, etc.
- B. **Voice Mail #2** is printed on the inside back cover of the NWTW lead generation booklet for prospects to call and order the \$45.00 decision package.

Communications of America (800) 454-5930

Note: For every 5 paid (active) referrals, you get one free voice mailbox. Make sure you put your personal mentor as the referral for your first voice mailbox. Your second voice mailbox counts as one of your referrals. **Ask them to remove the hang up feature from both mailboxes.**

\$15 Installation Fee

Option A

\$49.95 per month (1,000 free minutes monthly)
7.9 cents a minute for any minutes beyond 1,000

Option B

\$29.95 per month (400 free minutes monthly)
9.9 cents a minute for any minutes beyond 400

Option C

\$19.95 per month (168 free minutes monthly)
11.9 cents a minute for any minutes beyond 168

- A. Voice Mailbox #1 (*used to order the booklet*), request script download code 7424
- B. Voice Mailbox #2 (*used for the inside back cover of the booklet*), request script download code 0777

1. USE THE PRODUCTS:

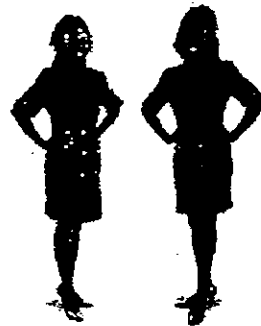


"Herbalife is a blessing to our whole family!"*

Darlene F. was really worried about being overweight, fatigued and having stomach problems. Nothing seemed to help," she says.

"At 178 pounds, I knew if I lost weight I would feel much better."

Darlene soon lost a total of 43 pounds and 15 inches-and went from a "tight" size 13/14 to a size 7/8!



Vickie D., a registered nurse and mother of one. "The demands of nursing drained me. Every time I sat down, I'd start to nod off. And no one bothered to tell me I was getting fat." "Because I'm a nurse, I was skeptical at first. But I figured I had two choices: continue feeling horrible and buying bigger clothes-or lose some weight!" she explains.

"Immediately, I started feeling more energy-waking up before the alarm clock rang, eyes brighter, no headaches. I also started getting smaller around the waist!" People consistently remark that I look 10 years younger than I really am. I'm so thankful for Herbalife."*



Mirna D. never knew what it was like to be slim. And by the fall of 1995, she had reached an all-time high of 195 pounds. As soon as I'd lose the weight, I'd gain it back."

"In a period of four months, I went from a size 14 to a size 6."



At 119 pounds and wearing a size 6, Marlo no longer dreads shopping for clothes.*

Marlo weighed 179 pounds and wore a size 16.



**The weight-loss testimonials presented are applicable to the individuals depicted and are not a guarantee of your weight-loss nor are they typical.*

In addition, look at the following statistics from the medical experts:

70 % of people die from HEART ATTACK, CANCER AND STROKE

50% of those deaths can be directly related to DIETARY CAUSES

70% of doctor visits have a DIETARY ISSUE that either causes or aggravates a medical condition

Even worse, obesity is growing at well over 30% per year and America is literally eating itself to death. Billions and billions of dollars are spent annually on health problems directly associated with diet.

The Problem For People Is They Can't Change Their Eating Habits.

**They WANT and CRAVE:
*Junk Food, Sugars, Salts
Carbohydrates and Breads***

The reason why our products sell so well is **YOU CAN STILL EAT THE FOOD TYPES YOU WANT AND LOSE WEIGHT.** People don't have to show extraordinary discipline. So...

You can Have Your Cake And Eat It Too!

Currently, the Nutrition Industry has annual sales of approximately \$45 Billion and more people are becoming concerned about diet, nutrition and natural herbal-based products. We again tap into the "baby-boomer" market. These individuals want to look younger and experience better health.

The Personal Care Industry currently commands annual sales of \$72 Billion. It is one of the fastest growing in the world! We have an entire personal care product line including body care, hair care, skin care and a comprehensive set of natural herbal-based solutions.

**3. TEACH OTHERS TO BE SUCCESSFUL
THROUGH NWTW'S EXCLUSIVE 20K PLAN**

**For fastest growth in this business,
we recommend that you follow the
attached**

**20 K PLAN
Duplicate Out the Gate!**

THE GOAL IS . . .

200 Books Per Week =
10 First Package Orders Per Week =
40 First Package Orders Per Month =
Minimum of \$800 PROFIT per Month (\$20/each)

40 First Package Orders =
12 Distributorships Per Month =
Minimum of \$1200 PROFIT per Month (\$100/each)

12 Distributorships Generates 4 Supervisors
Each Placing 4000 VP + 1000 VP at 50% =
\$1500 PROFIT per Month (\$375/each)

For Achieving 20,000 VP each month
\$400 PROFIT per Month

***20 K Plan generates an approximate
\$4000* PROFIT per Month!***

*Results are not typical and do not represent the income of every individual distributor.

The Newest Way To Wealth

FOCUS GROUP OUTLINE

Listen to the Focus Group Call (732) 463-6310 #2

Reasons To Join

The focus group provides a vehicle to help each member move up the marketing plan fast. The focus group plan can take a brand new Supervisor to Presidents Team in 18 months. Focus Group members are averaging 3-5 times the production of the average supervisor in Herbalife®. This definitely puts you on the "fast track to success."

Concept

To move each Partner from this level to Business Builder within the second or third 90-day period and to be able to duplicate this same format throughout all levels. This is the process of "standardization" – everyone at every level doing exactly the same thing, using the same materials and the same daily methods of operation. The focus group also provides a vehicle to help each partner move up the marketing plan.

Focus Group Mission Statement

Purpose

To establish a plan of action and a level of commitment from each Supervisor participating in the program. This is a "set goal" program designed to move participating Supervisors to the next level of the Herbalife® marketing plan.

Commitment

Each participant will commit to one of three levels of production, 10,000, 15,000, or 20,000 per month, to be attained in a 90-day period of time. This volume will be achieved through a consistent level of activity aimed at retailing and recruiting over a 90 day period. You will monitor your activity and your results with the Retailing and Recruiting Plan Worksheets (Pgs. 31-32).

Function

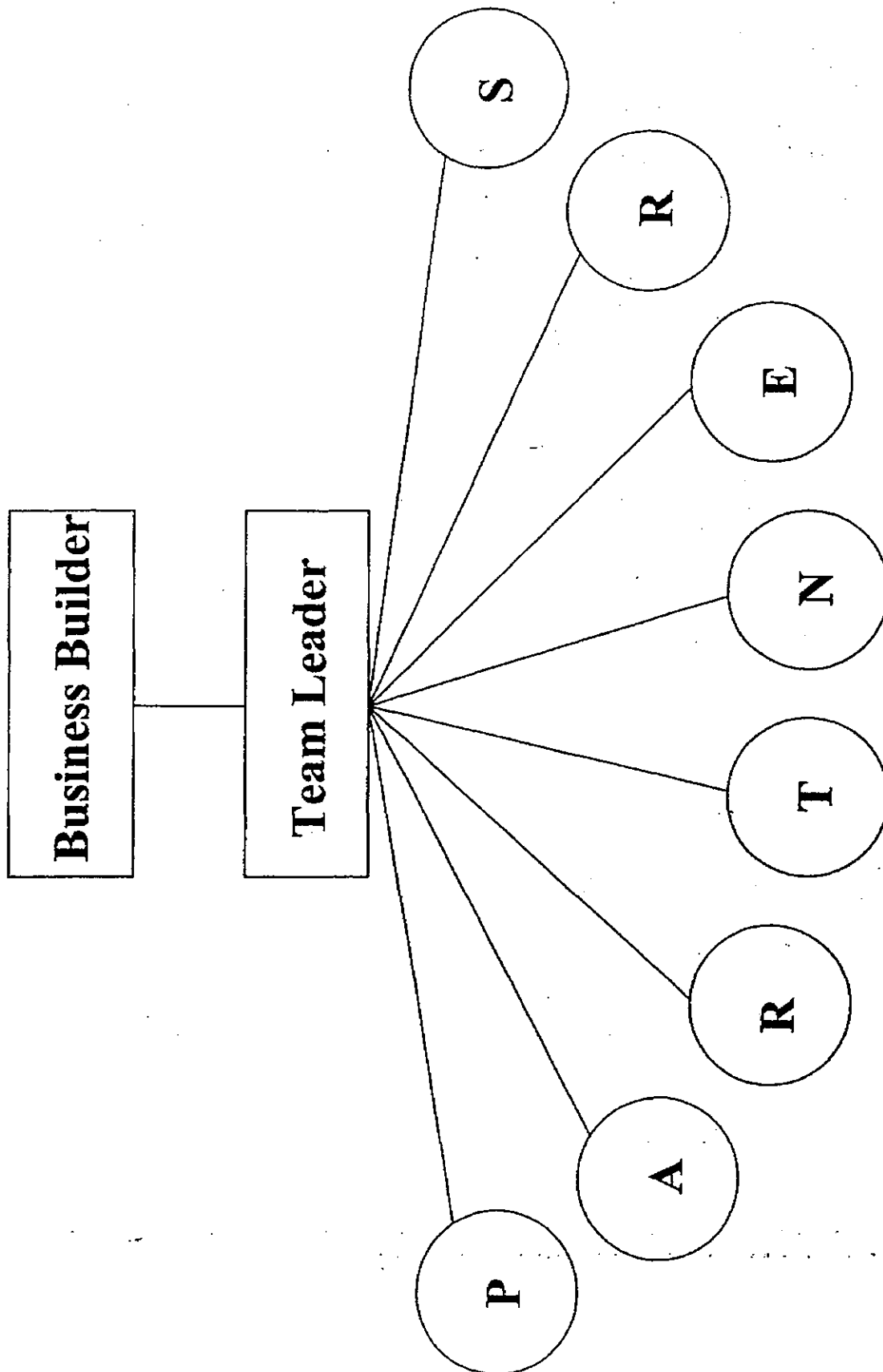
Each Focus Group is based on three levels of participation – a Business Builder, a Team Leader, and two to seven Partners.

The methods used in this system for retailing and recruiting are as follows:

| <u>Recruiting</u> | | | | <u>Friendship</u> | | <u>Pull-Tabs/</u> | |
|----------------------------|-----------------------------|---------------------|-------------------|--------------------------|---------------------------|--------------------------|----------------------|
| <u>Volume Point</u> | <u>Mailing Lists</u> | <u>Signs</u> | <u>Ads</u> | <u>CD's</u> | <u>Hot Pockets</u> | <u>Flyers</u> | <u>Dialer</u> |
| 10,000 | 2,000/mo | 400/mo | 8-10/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |
| 15,000 | 3,000/mo | 600/mo | 12-18/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |
| 20,000 | 5,000/mo | 800/mo | 20-30/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |

| <u>Retailing Level</u> | <u>Signs</u> | <u>Ads</u> | <u>Hot Pock.</u> | <u>Pull-Tabs</u> | <u>Fliers</u> | <u>Post Cards</u> | <u>Button</u> |
|-------------------------------|---------------------|-------------------|-------------------------|-------------------------|----------------------|--------------------------|----------------------|
| Casual | 100/mo | 2-3/wk | 75/wk | 75/wk | 1000/wk | 500/mo | 10-15/wk |
| Medium | 200/mo | 4-5/wk | 150/wk | 150/wk | 2500/wk | 1000/mo | 20-30/wk |
| Fast | 400/mo | 6-8/wk | 300/wk | 300/wk | 5000/wk | 2000/mo | 40-60/wk |

FOCUS GROUP



WEEKLY RECRUITING PLAN

WEEK BEGINNING:

NAME:

| Recruiting Plan | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday | Totals | MTD Totals |
|-----------------------------------|---------------|----------------|------------------|-----------------|---------------|-----------------|---------------|---------------|-------------------|
| Ads | | | | | | | | | |
| Signs | | | | | | | | | |
| Dialer | | | | | | | | | |
| Mailings | | | | | | | | | |
| Friendship CD Distribution | | | | | | | | | |
| Other (Flyers, Hot Pockets) | | | | | | | | | |
| Personal Time | | | | | | | | | |
| Recruiting Activity | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday | Totals | MTD Totals |
| Ads | | | | | | | | | |
| Signs | | | | | | | | | |
| Dialer | | | | | | | | | |
| Mailings | | | | | | | | | |
| Friendship CD Distribution | | | | | | | | | |
| Other (Flyers, Hot Pockets) | | | | | | | | | |
| Personal Time | | | | | | | | | |
| Booklet Requests | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday | Totals | MTD Totals |
| Ads | | | | | | | | | |
| Signs | | | | | | | | | |
| Dialer | | | | | | | | | |
| Free Report Downloads | | | | | | | | | |
| Other (Flyers, Hot Pockets) | | | | | | | | | |
| Total Booklet Requests | | | | | | | | | |
| Results | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday | Totals | MTD Totals |
| Boxes Ordered | | | | | | | | | |
| Zero Calls | | | | | | | | | |
| Boxes Shipped | | | | | | | | | |
| 1 st Package Downloads | | | | | | | | | |
| Total Boxes Shipped | | | | | | | | | |
| 1 st Package Calls | | | | | | | | | |
| 2 nd Package Calls | | | | | | | | | |
| New Distributors | | | | | | | | | |
| New Supervisors | | | | | | | | | |
| Total Personal Volume | | | | | | | | | |

| VP Commitment | Mailing Lists | Signs | Ads | Friendship CD's | Hot Pockets / Pull Tabs | Flyers | Dialer |
|---------------------------------|---------------|--------|----------|-----------------|-------------------------|----------|---------|
| 10,000 <input type="checkbox"/> | 2,000/mo | 400/mo | 8-10/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |
| 15,000 <input type="checkbox"/> | 3,000/mo | 600/mo | 12-18/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |
| 20,000 <input type="checkbox"/> | 5,000/mo | 800/mo | 20-30/wk | 10/wk | 300/wk | 5,000/wk | 4 lines |

Please circle your commitment level and your three methods of advertising

**I lost 40 lbs.
in just
2 months.**

Lose 5 to 100+lbs.

GAIN ENERGY

RESULTS GUARANTEED!

FREE SAMPLES

**EARN UP TO \$500- \$1,500
PART TIME FROM YOUR HOME**

()

WWW.

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()

WWW.

WELCOME TO
THE NEWEST WAY TO WEALTH
MAIL-ORDER/INTERNET
WORK FROM HOME PROGRAM!!!

STEP 1. Review the Getting Started Training Materials (Training Levels 1, 2, & 3)

STEP 2. Write down your questions on a separate sheet of paper.

STEP 3. Call your mentor at _____ to review the info. and take your next step.

If you have any problems contact technical support at:
support@ebusinessforyou.net

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NUTRITION PRODUCT INFORMATION HOTLINE MENU
FROM A TOUCH TONE PHONE DIAL (801) 526-8461
AND PRESS THE MESSAGE # YOU WANT TO HEAR

| | <u>MESSAGE #</u> | <u>PRODUCTS</u> |
|---|------------------|---|
| Our Cellular Nutrition Programs meet all needs: weight management, nutrition enhancement, athletics, young and mature | 1 | Formula 1 Protein Drink Mix; Formula 2 Multivitamins, & Formula 3 Cell Activator |
| | 2 | Bulk & Muscle Formula Protein Drink Mix |
| | 3 | Health & Fitness Formula Protein Drink Mix |
| | 4 | Kindermins |
| | 5 | Dinomins |
| | 6 | Dinoshake |
| | 7 | Longetics Formula Adult Protein Drink Mix; Longetics Multivitamin-Mineral & Herbal Chewable Tablet; |
| Targeted products for optimum health: | 8 | Kosher Products |
| | 9 | Schizandra Plus |
| Antioxidants | 10 | RoseOx |
| | 11 | Extreme C Tablets/Chewables |
| | 12 | Herbal Aloe Drink/Concentrate |
| Fiber/Cleansing | 13 | Florafiber |
| | 14 | Activated Fiber |
| | 15 | 21 Day Herbal Cleansing Program |
| Cardiovascular Health | 16 | Herbalifeline |
| | 17 | Mega Garlic Plus |
| | 18 | Cardio Toconox |
| | 19 | Women's Choice |
| Woman's Health | 20 | Tang Kuei Plus |
| | 21 | Women's Advantage with DHEA |
| | 22 | Xtra-Cal |
| | 23 | Ultimate Prostate Formula |
| Men's Health | 24 | Male Factor 1000 |
| | 25 | Optimum Performance |
| | 26 | N.R.G. |
| Alertness & Anti-aging | 27 | Ultimate Gingko |
| | 28 | Mega Ginseng |
| | 29 | Ocular Defense Formula |
| | 30 | Joint Support with Glucosamine |
| | 31 | Sleep Now with Melatonin |
| Natural Relaxation | 32 | Herbal Calmative |
| | 33 | K8 |
| | 34 | St. John's Wort with Uplifting Herbs |
| Immune Support | 35 | Echinacea Plus |
| | 36 | Zinc & Echinacea Throat Lozenges |
| | 37 | Herbal Throat Spray |
| Thermojetics Weight Management Program | 38 | Thermojetics Original Green |
| | 39 | Thermojetics Green & Beige |
| | 40 | Thermojetics Herbal Concentrate |
| | 41 | Thermojetics Yellow |
| | 42 | Thermo-Bond |
| | 43 | Cell-U-Loss |
| | 44 | Aminogen |
| | 45 | Performance Protein Powder |
| Weight-Loss Accelerators | 46 | Thermojetics Protein Bar |
| | 47 | Mentabalance |
| | 48 | CarboGuard |
| | 49 | Waferfull Chewable Wafers |
| | 50 | Chew Slim Gum |
| "GOLD" HPLC Diet Program | 51 | Herbalife Gold HPLC Program Concepts * |
| | 52 | Herbalife Gold HPLC Shake * |
| | 53 | Herbalife Gold HPLC Soups & Juices * |
| | 54 | Herbalife Gold HPLC Bars * |
| | 55 | Herbalife Gold Thermojetics Gold * |



***INDICATES NEWLY ADDED PRODUCTS**

CUSTOMER CARE PACKAGE

NOTE: The purpose of the following Customer Care Package is to help you support the new customer or distributor in using the products correctly to achieve their desired weight/health goals.

Each page has a specific function and should be included, in it's entirety, along with any program a new customer receives and is summarized as follows:

- Customer Care Cover Letter and Referral program instructions
- Follow up program
- Weight Chart/Water chart
- Daily Gold Instruction sheet
- Daily Green Instruction sheet

You will also want to include the following inexpensive supplies to ensure your customer's success, and to encourage product reorder. All should be ordered from the Herbalife order department:

- Program (products)
- Small Tablet Box
- Tape Measure
- Herbalife Business Card
- Sample(s) (*optional*)
- Brochures
- Personalize Your Program Video
- Receipt
- Work From Home Booklet

Please remember that as a Distributor your responsibility to the new Distributor and customer is to explain the program and to do conscientious follow up with them to ensure that they are using the products correctly and achieving the results that they want. **This customer care pack is essential for good customer care and follow up, however, it is imperative that you study the Customer Care section in your Herbalife Manual and familiarize yourself on how to do good follow up with customers and how to handle troubleshooting.**

Please keep these original documents as your master copy. You can insert your name and phone number where applicable.

ULTIMATE EPHEDRA FREE GREEN WEIGHT LOSS PROGRAM

Case# 03-cv-00015-EP Document 2 Filed 08/12/05 Page 46 of 63 PageID #: 53

Drink at least one glass of water hourly. Snack on protein sources or HPLC snacks (ask counselor).
NOTE: These instructions are for the ULTIMATE WEIGHT LOSS Program. If you are on the Quick Start or Advanced Program, you will not have all the products listed below. Please call your counselor/mentor for changes and for any questions you may have.

BREAKFAST:

- Formula 1 - 2 T. in Skim Milk, Soy Milk, or Juice
- Formula 2-Multivitamin - 1 tablet
- Formula 3-Cell Activator - 2 capsules
- Cellulose-Cellulite Buster - 1 tablet

To Make Herbal Concentrate:

1½ tsp. to 1 quart cold water
& sprinkle crystal light to taste.

10:00 AM

- Thermo Green - 1 tablets
- Thermo Beige - 1 tablet
- 1 glass of Herbal Concentrate (*drink slowly*)

LUNCH

- Formula 1 - 2 T. in Skim Milk, Soy Milk, or Juice
- Eat a Salad (*optional*)
- Formula 2 - 1 tablet
- Formula 3 - 1 capsule
- Cellulose - 1 tablet

3:00 PM

- Thermo Green - 1 tablets
- Thermo Beige - 1 tablet
- 1 glass water/Concentrate (*drink slowly*)

DINNER

- Eat a balanced meal (*for maximum results, eat a high protein, low carb meal*)
- Formula 2 - 1 tablet
- Formula 3 - 1 capsule
- Cellulose - 1 tablet
- Aminogen - 1 tablet
- Thermobond (Fat Grabber) 1-3 tablets

7:00- 8:00 PM OR BEFORE BED

- Thermo Yellow- (Snooze 'n Lose) - 1 tablet
- DO NOT SKIP MEALS. BE CONSISTENT WITH TABLET USAGE. It is OK to have a glass of RED or WHITE WINE a couple of times a week. NO BEER or FANCY MIXED DRINKS PLEASE!

NOTE: IF YOU ARE HUNGRY YOU WILL NEED TO ADJUST YOUR GREEN AND BEIGE USAGE AND MAY NEED PERFORMANCE PROTEIN POWDER ADDED TO YOUR SHAKE. ASK YOUR COUNSELOR. IF YOU ARE CONSTIPATED, DISCONTINUE THE THERMOBOND AND INCREASE STRENGTH OF HERBAL CONCENTRATE.

PRODUCT STORY WORKSHEET

Listen to the Packaging Your Story Call (732) 463-6313 #2

“Hi, my name is _____ and before Herbalife I ……….”

List your previous conditions (overweight, health, energy)

“I found the products ……….”

Through a friend, from a business opportunity, from a flyer, etc.

“I felt my energy go up on the ……….”

How soon did you feel it?

“Now my ……….”

List any improvements to the above list.

“And the best part is I’ve lost / gained…….”

List the biggest change last.

_____ Sizes!

_____ Inches!

_____ Pounds!

“And I feel ……….”

SMILE, ZIP IT, and SIT DOWN!

NOTE: If it’s not necessary to say, then it’s necessary not to say it.

How to Generate Leads with InTouch

Generate up to 30 to 50 leads per day.

Imagine if you had the ability to find 30 to 50 leads every day? We're talking about pre-qualified, HOT prospects. Supply your downline or others in your organization with leads to fuel rapid growth. Sell leads to your group or rent line usage to other businesses. This is not a guarantee, but many of our customers report these type of responses.



No more rejection!

The fastest way to build a network marketing organization. Have your own computerized "telemarketer" working for you 12 hours a day who doesn't take coffee breaks and never calls in sick! How many times have you sat in your office and wondered who you could call or go see to make a presentation? This is your answer! Does it get results? Absolutely, Positively.



How does it work?

InTouch comes with a CD that contains every residential listing in your region of the US. Simply choose the area to dial and InTouch will call every phone number with your message. InTouch automatically dials 4000+ numbers every day and automatically plays your message and records responses from those who are interested in what you're offering. When someone answers the phone your message begins playing. Example:

Hello!, We are doing a search in this area for people who would like to earn full or part time income working from home. To hear more about how you can earn an extra income from home, please press the 0 key on your phone. (The called party presses 0) Thank you. In the last 12 months we have shown literally hundreds of people across the U.S. how to start their own home based mail order and internet business, From New York to San Diego and from Miami to Los Angeles. Now we're in this area. Mail order is one of the fastest growing industries today. It is a 306 billion dollar industry and we need help now! If you have one hour a day you can earn an extra income without interfering with anything you are presently doing. The more hours you have the more money you can make. If you are teachable, honest and would like to start working from home we are looking for 25 to 50 people in this area to train in the next 90 days. To receive our FREE "work from home" booklet in the mail, please state your name and address after the tone. Thank you for your time. Have a great day!



If an answering machine answers, a different message can play:

"Hi this is Bob. Sorry I missed you. I'm calling to let you know about a great income opportunity in your area. If you have just a few extra hours per week, you can earn an unlimited income working from home. If you're interested, please give me a call at 555-1234. I look forward to hearing from you!"



Imagine thousands of people listening to your message every day! Imagine, at the end of the day, having 30 to 50 people who've said "Yes".

HERBALIFE DISTRIBUTOR SPECIAL: For a limited time, as an Herbalife distributor, you pay only \$500.00 down and \$140.00 per month for 24 months! What you'll get is a used, 4-line phone interface board with a 6 month warranty and InTouch software... the best phone messaging software on the market today, plus lifetime technical support. Simply plug the card into an available ISA slot in your computer, install the InTouch software and your ready to start making calls.

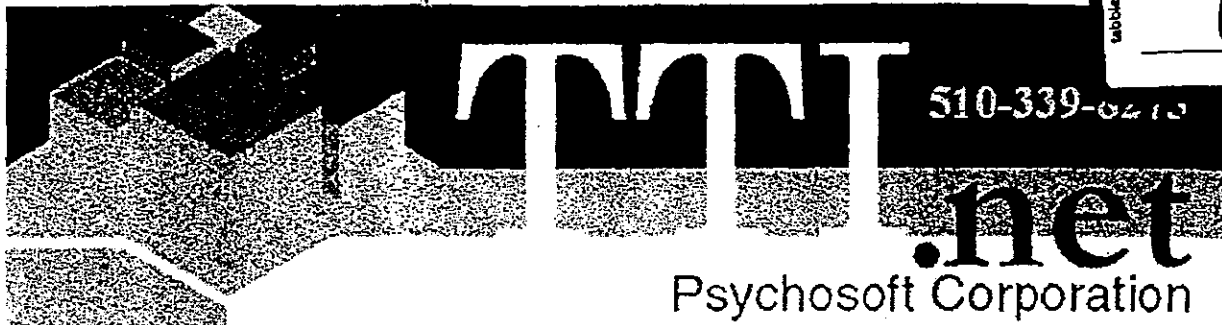
InTouch.

Call 505-623-3660



"The system of choice for good business."





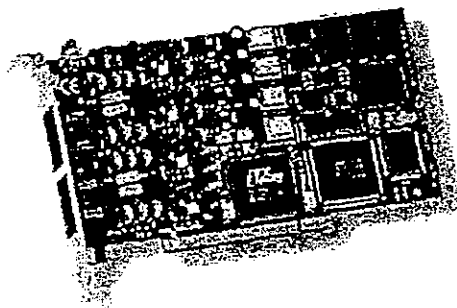
Herbalife®

Unlimited Long Distance

Auto Dialer



- Home
- Company
- Products
- News
- VARS
- Support
- FTP



Herbal Dialer Lead Generation Voice Mail System

Used by Herbalife® distributors throughout the world, the Herbal Dialer is a multiple line hardware and software solution for auto dialer, lead generation, voice mail, phone tree dialing and interactive voice response (IVR) applications. With the Herbal Dialer, you can run inbound and outbound applications simultaneously. You can use it as an inbound system to take sales and provide information about Herbalife products, and you can use it as an outbound lead generation tool to stimulate your Herbalife distribution network.

The Herbal Dialer system controls from 2 - 96 standard telephone lines in a single PC. The base package includes the PowerVoice 2 (2 port) or PowerVoice 4 (four port) telephony card with a Lifetime Warranty in systems using the Dialogic Proline 2V and Dialog/4 telephony cards. Herbal Dialer comes with comprehensive documentation and the Herbal Dialer Windows visually oriented application generator. (Digitally-based T1 systems are available!)

Dialer & Outbound Telemarketing*

Use the Herbal Dialer perform your outbound work. Just follow these simple steps:

1. **Create Your List** (randomly from a prefix or a CD). Numbers can be imported from virtually any source (Word, Excel, DBase III & IV, Goldmine, CD Databases, DeLorme)
2. **Select Your Script** from our selection of predefined applications. [[Click-Here](#)] for a list of the predefined scripts (scenarios) that come with the Herbal Dialer for Windows application generator.
3. **Record Your Message.**
4. **Schedule times and days of week for your calls.**
5. **Start Dialing!**
6. **View your Results!**

Phone Tree Dialer Uses

Outbound telemarketing and notification can be used for lead generation and notifications to Herbalife® distributors, clients and affiliates. Herbal Dialer can also be used for group hotlines, collection systems, membership systems, surveys, polling - any application that quickly needs to contact large numbers of people. Easily create your own automated call center.

- **GENERATE LEADS** for your Herbalife® products (find new distributors for products you promote)
- **Provide Product Information** (inbound & outbound)
- **Take Orders** (automatically - without the need for you to be there)
- **Inform** (distributors, friends, associates and customers)
- **Notify** (distributors and customers about meetings, gatherings, new products)
- **Build** (your distribution network)

Important Dialer Features

- **Hours of Operation:** Courteously set your days and hours for dialing.
- **Do-Not-Call List:** Automatically allow callers to place themselves on the Do-Not-Call list.
- **Quick Disconnect:** Free up the called party's line as soon as they hang-up.
- **True Answer(tm):** Accurately recognize answering machines and (if you want) play your message immediately when their message ends. If you want, you can use one message for answering machines, and another for live answers. Also, accurately recognize fax machines, intercept tones, and modems.
- **Multiple Response Types:** It is your choice to get responses via either recorded messages or digits pressed by called parties.
- **Database Dialer:** Herbal Dialer automatically places calls from your company's database of telephone numbers. It can also easily import numbers from an outside source or your favorite CD (Phone Search USA, X-Map, etc.).
- **Prefix Dialing:** Just insert one of your local prefixes or an area code and the prefix in that area code you want to dial, and Herbal Dialer will randomly dial all 10,000 numbers of your desired prefix.
- **Call Logging:** Herbal Dialer logs completed calls, and retries busy and non-

answered numbers.

- **Increase Productivity:** Run multiple applications simultaneously on different lines.
- **Direct Transfer:** Route connected calls to a live operator. (Requires Centrex, 3-WAY calling, PBX or Hybrid-Key system)

Voice Mail & Call Processing

Herbal Dialer includes a full-featured voice mail system that allows as many as 10,000 users. The Herbal Dialer package includes powerful features such as:

- Message Forwarding
- Call Screening
- ACD (Automatic Call Distribution)
- Message Notification (Voice and Pager)
- Message Time and Date Stamp
- Group Message Distribution
- Call Transfer (Smart and Tone)
- Remote Access & Remote Customization
- Pager Support (Voice/Tone and Display)

The COMPLETE Herbal Dialer package includes Herbal Dialer software for Windows XP, Herbal Dialer 2 or 4 telephony card, color documentation, FREE software updates, two hours of installation assistance, three hours of FREE technical support, and our FREE script writing service (which is by far the most important element of any outbound dialing system). For additional information - *feel free to download our manual from the link directly below:*

Herbal Dialer Manual

Herbal Dialer is also available in a turnkey configuration with Herbal Dialer hardware & software and Windows XP fully installed in a fully functional computer with an Intel processor. And we can configure any Turnkey system to your exact specifications.

Join the many Herbalife distributors that are streamlining and building thier networks.

Email or call us at: **510-339-8275**

Find out how you can achieve your goals. Contact us now! *Discounts* for the Herbalife® team.

Questions

Sales Quote

[Home](#) | [Company](#) | [Products](#) | [News](#) | [Vars](#) | [Support](#) | [FTP Files](#) | * [Legal](#)

* It is important that you determine the legality of automatic announcing and automated dialing applications for use in your specific locale. Some applications may not be allowed where you live or places that you want to dial into. Laws vary from country to country, state to state, and in certain areas, city to city. It is the sole responsibility of the developer and user of an automated outbound application to ascertain legality of that application prior to its use. Psychosoft Corporation assumes no liability for misuse of the equipment it manufactures and sells. To assist customers and prospective customers in finding information on laws related to automated dialing and announcing equipment, we suggest that you go to our [Telemarketing Laws](#) page.

The "Herbalife" logo is a trademark of Herbalife International of America, Inc., or its affiliates. Psychosoft Corporation claims no affiliation with [Herbalife International of America](#).

— Email: sales@tti.net — Phone: (510) 339-8275 — Fax: (510) 339-3387 —
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EXHIBIT
F

Bates Ventures



1 (888) 206-3450

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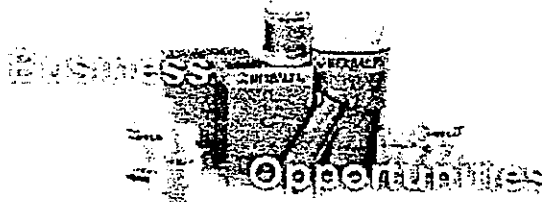
[FAQ's](#)

[Request Info](#)

Welcome Herbalife Independent Distributors!

Herbalife distributorships are among some of the fastest growing industries in America today. They combine the winning formula of great products with the drive of independent business persons like yourself; it's no small wonder that this new business is growing fast.

Herbalife products span the entire spectrum of health and well being. Cellular nutrition, weight management, mood enhancers, healthy aging and much more!



WinFax PRO
Winfax Pro 10.0 Dual
line capacity



ACT 2000
Manage your
contacts efficiently

DIAL
JJJO
JJJG
JJJI
JJJC

Intel Dialogic
Full line of Dialogic
voice and fax
boards

So, how does this effect you and what part does Bates Technologies and the Herba-Dialer play?

It's simple: we provide marketing solutions to help your business reach thousands of people per day with nothing more than a few mouse clicks.



We have a customized solution just for you. Our Herba-Dialer systems use the latest in software technology to allow you to contact over 4000 people per day for any number of purposes. Would you like to introduce those people to your Herbalife product line? Or perhaps sign them up as your reseller and increase your base profit? You will only speak to people who have REQUESTED to learn more about Herbalife. The uses are completely up to you; our systems main goal is flexibility... for your products, your company and much more!

We have so much more information, that you'd be reading for few hours just to review all. We encourage you to contact our Herbalife representative Lance Poole and find out what our company can truly do for your Herbalife company.

Contact us today! 1(888) 206-3450

Here's What Bruce and Ruth have to say about the Herba-Dialer

We would personally like to thank you and your employees for your outstanding

service, professionalism, and expertise, since the purchase and use of our Herba-Dialer. The time given by Doug Phelps, and Lance Poole, Director of Sales and Marketing, to explain and help us decide whether the Herba-Dialer was the right way to proceed with our business is greatly appreciated. Because of the time and effort of your well-trained representatives and technicians, the Herba-Dialer with the Mine-IT system has become the largest lead generator of our business. The ease of operation, to include the ability to pre-program time, dates, and pre-recorded scripts, allows us to concentrate on other aspects of our business with knowledge and confidence that your system is working for us on its own. It is a definite benefit to our business to be able to leave town for several days and know that leads are being generated consistently. It is like having a twelve-hour stenographer for six days a week. We love the freedom it gives us to work on other methods of advertising, as well. "The Price is Right," is an understatement, we love the affordability. Thanks for the financing your company assisted us with, and also, say hello to Greg. He has been very helpful.

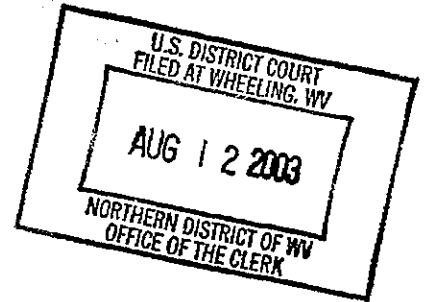
The training and support given by your company is to be commended. We have never contacted your company with a problem or a question without being made to feel like we were considered to be a very important part of your business. The expertise of you and your employees has made the setup and operation of our Mine-IT extremely simple for someone of our limited computer knowledge. I did confer with a colleague about his Auto-Dialer and it took him a month to get it up and running because of its complicated system and lack of support from the company he bought it from, and it was more expensive. His experience really made us appreciate being able to just plug our system in and start it up, as well as the excellent support we have received from Bates Technologies. Additionally, now that we do have a working knowledge of the Mine-IT system, the 234-page manual with step-by-step instructions has allowed us to answer most of our own questions rather than needing to take the time to call your company.

We have been running the Mine-IT system 6 days a week from 8 AM to 9 PM except on holidays, and have had great results with it. We have one supervisor and several more that are in the screening stage because of our Herba-Dialer. During June of last year, we had 497 free information requests, more than any of our other methods for advertising that we are using at the current time. In short, our Herba-Dialer is absolutely one of the reasons our business is expanding, and we are so incredibly successful!

Sincerely,

Bruce and Ruth

IN THE CIRCUIT COURT OF OHIO COUNTY
WEST VIRGINIA



DIANA MEY,

Plaintiff, Individually And On Behalf
Of A Class Of All Persons Similarly
Situated

V.

HERBALIFE INTERNATIONAL, INC.,
THOMAS STILES, PAMELA STILES,
NANCY WILLIS AND DANA WILLIS,

Defendants

CIVIL ACTION NO. 01-C-263M

FILED
AUG 12 2003
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

This consumer class action seeks to enforce federal telemarketing law known as the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. This suit has been brought against Herbalife International, Inc. ("Herbalife"), a well-known multi-level marketing organization that markets and distributes health care products via a nation-wide distribution network. The class complaint alleges that in West Virginia, and across the United States, Herbalife and its agents, have engaged in illegal telemarketing in an effort to promote Herbalife and to recruit new distributors to Herbalife. This matter is appropriate for class certification as Herbalife and its agents have engaged in a standard and uniform pattern of misconduct; class members are easily identified by phone records; and the statutory damages set forth pursuant to the TCPA negate the need for an individual assessment of damages for each class member. For these reasons, as set forth in detail in the accompanying Memorandum of Law, the Plaintiff's Motion For Class Certification should be granted.

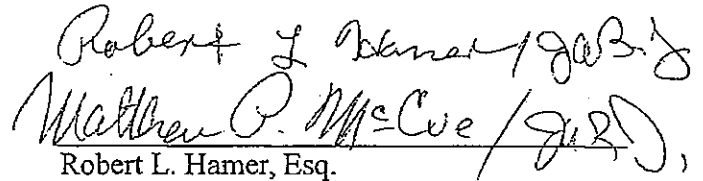
2

DIANA MEY

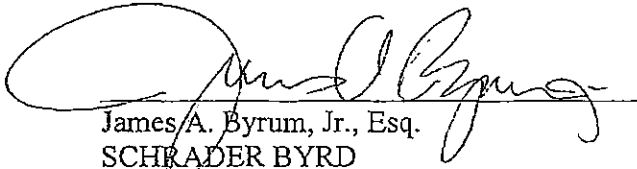
By her attorneys,



Edward A. Broderick, Esq.
SHLANSKY & BRODERICK, LLP
1011 Beacon Street, Suite 2
Brookline, MA 02446
Phone: (617) 738-7080
Fax: (617) 738-5003



Robert L. Hamer, Esq.
Matthew P. McCue, Esq.
MIRICK, O'CONNELL, DEMALLIE &
LOUGEE, LLP
100 Front Street
Worcester, MA 01608-1477
Phone: (508) 791-8500
Fax: (508) 791-8502



James A. Byrum, Jr., Esq.
SCHRADER BYRD
& COMPANION, PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, West Virginia
Phone: (304) 233-3390

Dated:

IN THE CIRCUIT COURT OF OHIO COUNTY
WEST VIRGINIA

DIANA MEY,

Plaintiff, Individually And On Behalf
Of A Class Of All Persons Similarly
Situated

V.

HERBALIFE INTERNATIONAL, INC.,
THOMAS STILES, PAMELA STILES,
NANCY WILLIS AND DANA WILLIS,

Defendants

CIVIL ACTION NO. 01-C-263M

2003 JUN 16 PM 12 54
CLERK OF COURT
COURT HOUSE
MARTINSBURG

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

I. INTRODUCTION

In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "unrestricted telemarketing . . . can be an intrusive invasion of privacy . . ." 47 U.S.C. § 227, Congressional Statement of Findings #5. Specifically, in enacting the TCPA, Congress outlawed unsolicited telemarketing advertisements via automated or pre-recorded telephone calls, finding:

"Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy."

"Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call . . . is the only effective means of protecting telephone consumers from this nuisance and privacy invasion."

47 U.S.C. § 227, Congressional Statement of Findings ##10 and 12.

In response to the public's demand that telemarketing via pre-recorded computer be strictly regulated, Congress enacted the TCPA which, in relevant part, prohibits the use of automated, pre-recorded phone message device to deliver unsolicited advertisements ("Auto-Dialer Calls"). 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200. The TCPA also explicitly requires that all prerecorded telephone messages shall, at the beginning of the message, state clearly the identity of the business, individual or other entity initiating the call and shall state clearly the telephone number or address of such business or entity. 47 U.S.C. § 227(d)(3)(A). The TCPA, 47 U.S.C. § 227(b)(3), further provides a private right of action in state court, as follows:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each violation, whichever is greater, or (C) both such actions.

This consumer class action concerns widespread institutional disregard for the TCPA by Herbalife International, Inc. ("Herbalife"), a well-known multi-level marketing organization that markets and distributes health care products via a distribution network. Over the past years, it is suspected that millions of Auto-Dialer Calls have been initiated by or on behalf of Herbalife, and with the knowledge, consent, approval and/or acquiescence of Herbalife, to residential phone numbers throughout the United States, as part of a campaign to promote Herbalife products and recruit distributors, all in violation of the TCPA and the privacy rights of citizens of the United States.

II. FACTUAL BACKGROUND

A. Herbalife Delegates To Top Distributors Recruitment and Sales Responsibilities

Herbalife¹ is a huge multi-level marketing organization that markets and distributes products via a distribution network of over one million distributors.² In 2001, Herbalife reported current assets of \$514 million.³ The key to Herbalife's operations is its distributors. Herbalife compensates each of its distributors through a structure of bonus and commission payments based upon the amount of product purchased by both the distributor and those recruited to Herbalife by the distributor (the "down-line").⁴ Distributors who reach a monthly volume threshold are promoted to the Supervisor level. Supervisors who maintain monthly volume requirements are paid royalties on the product purchased by their down-line. By meeting various volume and recruitment targets, Supervisors can ascend in the Herbalife hierarchy from World Team, Global Expansion Team, Millionaire Team and President's Team.⁵ Herbalife delegates to President Team members the responsibility and authority to recruit and train new distributors, to develop and distribute training materials, and to conduct training seminars for distributors.⁶ Herbalife works closely with President Team members to develop and implement new strategies for increasing sales and distributor productivity throughout the entire distributor organization.⁷ Herbalife involves its President Team members in sales, training, motivation and strategic planning efforts.⁸

¹ www.Herbalife.com

² Tab A. Herbalife International, Inc., Form 10-k 12/31/01, pg. 4.

³ Tab B. Herbalife International, Inc., Form 10-Q 6/30/02, pg. 2.

⁴ Tab A. Herbalife International, Inc., Form 10-k 12/31/01, pg. 5.

⁵ Id.

⁶ Id. at pg. 6.

⁷ Id.

⁸ Id.

B. Herbalife Distributes Print Materials Encouraging Illegal Use of Auto-Dialers

Beginning in approximately 1999, Herbalife President Team members, including but not limited to Anthony Powell, Doran Andry, John Beall, Tarun Juneja, Craig Tsutakawa, Caroline Tsutakawa, Brett Bartholomew, Stephen Coombs and Deborah Coombs (collectively, the "Herbalife Agents"), began to publish and distribute materials promoting the use of illegal telemarketing tactics to recruit new Herbalife distributors and to sell Herbalife product. Herbalife was aware of such efforts. Specifically, the Herbalife Agents distributed printed materials which actively promoted the use of computer auto-dialers by Herbalife distributors.⁹ Such distributors, in turn, initiated hundreds of thousands if not millions of Auto-Dialer Calls to residential homes throughout West Virginia and the entire United States. Such calls were initiated without the prior express consent of the recipient of the pre-recorded calls. Such calls were initiated to consumers having no prior business relationship with Herbalife. Such calls were initiated to residential homes for the commercial purpose of recruiting new Herbalife distributors and selling Herbalife inventory.

C. Illegal Use of Auto-Dialers Promoted At Herbalife Seminars

In addition to distributing print materials encouraging illegal telemarketing, the Herbalife Agents actively promoted the use of illegal telemarketing at Herbalife training seminars. For example, in the Spring of 2000, at an Herbalife training seminar, the Herbalife Agents promoted the purchase by Herbalife distributors of auto-dialers manufactured by a company called In

⁹ Attached at Tab C is the booklet developed by the Herbalife Agents, that encourages Herbalife distributors (at pages 8, 28, 29, and 32) to utilize a four line "Auto Dialer" as a "lead generation" tool. This document was produced by the defendant Pamela Stiles in discovery. This document is also attached at Exhibit A to the Affidavit of former Herbalife distributor, Michelle Mikolis (Mikolis Affidavit"). The Mikolis Affidavit is attached at Tab D.

Touch.¹⁰ This manufacturer specifically advertised a “Herbalife Distributor Special” on its auto-dialers which it represented was capable of contacting 4,000 homes per day and generating 30 to 50 new leads a day. This manufacturer, to date, continues to advertise auto-dialer discounts to Herbalife distributors at www.goInTouch.Com/nwtw.

Another auto-dialer manufacturer also clearly displayed the Herbalife corporate name and logo above the banner “Welcome Herbalife Independent Distributors,” promoted the use of auto-dialers it called “Herba-Dialer” systems, and even invited Herbalife distributors to “contact our Herbalife representative Lance Poole and find out what our company can truly do for your Herbalife company.” This web-site also contained a testimonial from an Herbalife distributor as to the positive effect the use of the “Herba-Dialer” had on the distributor’s business as they had been running the auto-dialer “6 days a week from 8 AM to 9 PM.”¹¹

Yet another auto-dialer manufacturer also called its product the “HerbaDialer” and contained a direct link to Herbalife’s web site under Herbalife’s corporate name and trademark. This manufacturer promoted that its auto-dialer was “used by Herbalife distributors throughout the world” and could be used “as an outbound lead generation tool to stimulate your Herbalife distribution network.” This manufacturer invited others to “join the many Herbalife distributors that are streamlining and building their networks” and offered special auto-dialer “discounts for the Herbalife team.”¹²

¹⁰ Tab D, Mikolis Affidavit at ¶¶ 11-17 and Exhibit B to Mikolis Affidavit. A copy of the auto-dialer promotional materials of In Touch Systems, Inc. are attached at Tab E.

¹¹ A copy of the promotional materials of Bates Ventures are attached at Tab F.

¹² A copy of the auto-dialer promotional materials of TTI.Net/Psychosoft Corporation are attached at Tab G.

D. Illegal Use of Auto-Dialers Promoted On "TouchFon", Herbalife's Communication's System, And On An Affiliated Web-Site

The Herbalife agents also actively promoted the use of pre-recorded telemarketing via "TouchFon Herbalife Corporate Communications Network," a voice message service which Herbalife made available to its distributors as a training tool in regards to Herbalife product, business development and marketing. The Herbalife Agents also actively promoted the use of pre-recorded telemarketing via a web-site made available to those Herbalife distributors recruited by the Herbalife Agents.¹³

E. Via Its Phone Company Herbatel, Herbalife Profits Directly From Illegal Telemarketing

For a monthly fee, Herbalife offers its distributors phone service via its affiliate Herbatel. Herbalife derives compensation from each pre-recorded telemarketing phone call initiated by its agents or representatives over the Herbatel network. In this manner, Herbalife benefits financially both from the business derived from its telemarketing practices, and from the pre-recorded phone calls themselves. Through its access to Herbatel phone records, Herbalife either knew or should have known that its distributors were using auto-dialers to make hundreds of thousands, if not millions, of automated or pre-recorded phone calls, each month, to residential homes promoting Herbalife.¹⁴

F. Herbalife's Illegal Telemarketing Practices Are National In-Scope

The scale of Herbalife's illegal telemarketing scheme is enormous. Even at this early stage of the litigation, and without the benefit of discovery, Herbalife distributors initiating Auto-Dialer Calls to promote Herbalife goods and to recruit new Herbalife distributors have been

¹³ Tab D, Mikolis Affidavit at ¶¶18.

¹⁴ Tab H, Deposition of Pam Stiles, Volume 1 at pp 60-63; Volume 2, at pp 171-173. Ms. Stiles testified that that she used Herbatel to make Auto-Dialer Calls and that Herbalife made money off of each call initiated via Herbatel.

located in West Virginia, New Jersey, New Hampshire, Ohio, Illinois, Texas, California and Utah.¹⁵ Given the scope of Herbalife's illegal telemarketing practice, the ultimate number of residential homes who were the recipients of Herbalife's Auto-Dialer Calls will likely run into the millions.

G. Herbalife Controls Its Agents And Provides Them With Tools And Training

For years, consumers who complained to Herbalife about the illegal telemarketing practices of Herbalife distributors were told that distributors are "independent contractors" allegedly beyond Herbalife's control.¹⁶ Contrary to Herbalife's assertion that its distributors are "independent contractors," evidence uncovered to date, even without the benefit of class discovery, indicates the exact opposite to be true. Herbalife has, at all times, had the right to control its distributors as evidenced by the following:

- All distributors purchase extensive training materials from Herbalife which directs distributors as to how to establish, market and grow their Herbalife business.¹⁷
- Follow up instruction is provided to distributors by Herbalife via frequent training seminars, phone conferences, web sites, voice mail and an individual sponsor network.¹⁸
- Herbalife provides its distributors with scripts of exactly what distributors should say when promoting Herbalife products.¹⁹
- All Herbalife distributors contractually agree to abide by Herbalife's Code of Conduct, rules, regulations and procedures, as a condition of being approved as an Herbalife distributor.²⁰

¹⁵ Tab I, Affidavit of Joe Shields; Tab J, Affidavit of Richard Zelma; Tab K, Affidavit of Jeff Mitchell, Tab L, Affidavit of Wayne Strang, Tab M, Affidavit of Christina McGugan, Tab N, Affidavit of Donald Davis.

¹⁶ Tab I at ¶¶11, 12, 14, 17, 18, 19 and attachments 1-11.

¹⁷ Tab H, Stiles Deposition, V1 at pp 12-13; 77-78; V2 at pp 97-99. Tab D, Mikolis Affidavit at ¶¶3-8.

¹⁸ Tab H, Stiles Deposition, V1 at pp 12-13; 77-78; V2 at pp 97-99. Tab D, Mikolis Affidavit at ¶¶3-8.

¹⁹ Tab H, Stiles Deposition, V1 at pp 30. Tab D, Mikolis Affidavit at ¶25.

²⁰ Tab H, Stiles Deposition, V2 at pp 97-99. Tab D, Mikolis Affidavit at ¶9. A true and accurate copy of Herbalife's Code of Conduct provided to Ms. Stiles by Herbalife, and produced in discovery, is attached at Tab O.

- Herbalife has, at all times, had the right to control and discipline its distributors for violating Herbalife's rules, regulations, policies and procedures as amended from time to time by Herbalife at its discretion.²¹
- Herbalife, in its absolute discretion, may immediately suspend and/or terminate a distributor upon written notice with cause.²²
- Herbalife, in its absolute discretion, may immediately suspend and/or terminate a distributor upon 30 days written notice without cause.²³
- Herbalife maintains an internal "Distributor Compliance Department" that investigates and sanctions distributors for violating Herbalife's Code of Conduct.
- In the past, Herbalife has taken definitive action when it learned that distributors were placing recruiting and sales posters on public property and utility poles in violation of local code restrictions.²⁴
- Herbalife specifically controls and regulates the manner in which distributors market Herbalife products via its "U.S. Internet, Mail Order And Lead Generation Regulations".²⁵

Finally, and perhaps most significantly, in late May of 2003, *after* the plaintiff's Motion to Amend Complaint to assert a class action was filed and pending, Herbalife dramatically reversed course and issued new telemarketing regulations prohibiting its distributors from using Auto-Dialers to promote Herbalife and its products.²⁶ Herbalife's own conduct, in this regards, is the best and most direct evidence of the fact that Herbalife has the right and ability to control its agents.

It cannot be disputed that Herbalife provides its distributors with the tools and instruction necessary to sell Herbalife product. Sales are closely managed by Herbalife itself. Herbalife unquestionably has the ability to direct, control and discipline its distributors- when it chooses to

²¹ Id.

²² Id.

²³ Id.

²⁴ A true and accurate copy of distributor sign posting policy, found on Herbalife's web-site, is attached at Tab P.

²⁵ A true and accurate copy of Herbalife's "U.S. Internet, Mail Order And Lead Generation Regulations" are attached at Tab Q. This document can be down-loaded from Herbalife's web-site at www.herbalife.com.

do so. Even the limited evidence gathered in this case, pre-suit, overwhelmingly indicates that Herbalife's distributors are *agents* and not *independent contractors*.²⁷ Herbalife is liable for the illegal telemarketing practices of its agents.

III. Facts Particular To The Class Plaintiff

On December 7, 2000 at 1:38 p.m., the defendant Pamela Stiles caused a pre-recorded telemarketing call to be sent to the home of Ms. Mey. In her deposition testimony, Ms. Stiles admitted the text of her pre-recorded message was as follows:

Hello, we need your help. Would you like to work from home and put your computer to work? We are an international company of 20 years and currently operate in 50 countries. I would like to send you out a free 13

²⁶ A copy of Herbalife's new Telemarketing Rules is attached at Tab R. This document can be down-loaded from Herbalife's web-site at www.herbalife.com.

²⁷ Under West Virginia law, the defense of "independent contractor" is disfavored. As noted by the West Virginia Supreme Court in *Sipple v. Starr*, 205 W.Va. 717, 721, 520 S.E.2d 884 (1999):

The frequent, and often baseless, invocation of the independent contractor defense has eroded the confidence of courts in its applicability. Like the child who always places blame for an accident on a sibling or imaginary friend, the defendant employing the independent contractor defense must combat the reasonable cynicism of his audience.

It is quite natural that a business entity would employ what it deems to be an "independent contractor" in an effort to limit its exposure to damages as much as possible; a business entity naturally will do everything legal to externalize its costs while increasing its profits. But society also has an interest in seeing that the costs of a particular activity are borne by those who profit from that activity.

The party raising the "independent contractor" defense has the burden of establishing they neither controlled, nor had the right to control the work, and if there is a conflict in the evidence and there is sufficient evidence to support a finding of the jury, the determination is a question for the jury. *Sipple v. Starr*, 205 W.Va. at 721.

page informational booklet. If you are interested in receiving a free booklet please press 1 now, if you are not interested, please press 2 now.²⁸

Ms. Stiles admitted that her Herbalife supervisor, Karen Forbes, advised her to start using an auto-dialer to solicit new business.²⁹ Ms. Forbes instructed Ms. Stiles as to the operation of the auto-dialer.³⁰ Ms. Stiles also admitted that her Herbalife supervisor, Karen Forbes, instructed her as to the use of CD Rom discs to make Auto-Dialer Calls to residential homes promoting Herbalife product.³¹ Ms. Stiles admitted that her Herbalife supervisor, Karen Forbes³², even gave her the above scripted message to utilize when initiating Auto-Dialer Calls to residential homes. Ms. Stiles admitted that the true purpose of the call was to promote the sale and distribution of Herbalife products and to recruit new Herbalife distributors for the sale of such products.³³ Ms. Stiles admitted that her Auto-Dialer Calls failed to disclose they were being initiated on behalf of Herbalife, and also failed to disclose the calls were initiated for the purpose of promoting the sale and distribution of Herbalife products.³⁴ Ms. Stiles admitted that her Auto-Dialer Call to Ms. Mey was initiated without Ms. Mey's prior express consent. Ms. Stiles admitted that she had no prior business relationship with Ms. Mey.

²⁸ Ms. Stiles admitted at deposition that individuals who responded to her Auto-Dialer Call, were sent the document attached at Tab S. This document was replete with testimonials as to the large amount of money that could be earned via a mail order work at home opportunity. Nowhere in this "free" brochure is it even disclosed that the business opportunity is in fact Herbalife. Ms. Stiles admitted that individuals interested in learning more about the "opportunity" were then charged a fee of \$45 for Herbalife's International Business Plan, which contained additional testimonials and a distributorship agreement. Tab H, Stiles Deposition at V1 12-15; V2. Distributors then spent additional sums to purchase their inventory of Herbalife merchandise they would, in turn, sell to others. Id. Michelle Mikolis, a former Herbalife distributor, paid \$36.00 for her "starter package", an additional \$299 for more Herbalife materials, and finally an additional \$5,500 in inventory and advertising to establish her Herbalife business. Tab D, Mikolis Affidavit at ¶¶3-8.

²⁹ Tab H, V1 at pg. 21-23.

³⁰ Tab H, V. 2 at pg. 146.

³¹ Tab H, V1 at pg. 23.

³² Tab H V2 at pg. 134.

³³ Tab H, V1 at pg. 36, 41; V2 at 188.

³⁴ Tab H, V1 at pp. 22-23.

Ms. Stiles, one of many Herbalife distributors in West Virginia, and one of many thousands of Herbalife distributors across the United States, has admitted in deposition testimony that during the single month of December of 2000, she initiated approximately 20,000 Auto-Dialer Calls to primarily West Virginian residential phone lines.³⁵ Over a three-month period of time from 2000 into 2001, Ms. Stiles admitted, in deposition testimony that she initiated many more thousands of Auto-Dialer Calls to residential homes primarily in West Virginia. Ms. Stiles has acknowledged that none of the individuals she called via her auto-dialer consented to the solicitation.³⁶ Ms. Stiles has acknowledged through her testimony that she had no prior business relationship with any of the individuals she called via her auto-dialer.³⁷

During the afternoon of December 10, 2002, the defendants Nancy and Dana Willis³⁸ caused an Auto-Dialer Call to be sent to the home of Ms. Mey. On March 31, 2003, the defendants Nancy and Dana Willis caused another Auto-Dialer Call to be sent to the home of Ms. Mey. The true purpose of these calls was to encourage the sale and distribution of Herbalife products through the recruitment of new Herbalife distributors. Ms. Mey had no prior business relationship with either Herbalife or Nancy and Dana Willis. The pre-recorded messages failed to disclose that the calls were initiated on behalf of Herbalife, and also failed to disclose that the calls were initiated for the purpose of promoting or encouraging the sale of Herbalife products.³⁹ Upon information and belief, the same pre-recorded telemarketing messages were sent to thousands, if not hundreds of thousands of residents of West Virginia.

³⁵ Tab H, V1 at pg. 84

³⁶ Tab H, V2 at pg. 188.

³⁷ Id.

³⁸ The web-site for Nancy and Dana Willis' Herbalife distributorship is <http://newwealth4u.com/db/db.aspx>.

³⁹ Class Complaint at ¶¶58-62.

IV. THE ASSERTED CLASS ACTION

Ms. Mey brings this action pursuant to Rule 23 of the West Virginia Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated throughout the United States or, in the alternative, the State of West Virginia. The class of persons represented by Ms. Mey may be defined either as:

- A. All residents of the United States of America, with no prior business relationship with the defendants, to whom the defendants initiated or caused to be initiated, unsolicited pre-recorded phone messages promoting Herbalife goods or services, on or after March 6, 1997; or
- B. All residents of West Virginia, with no prior business relationship with the defendants, to whom the defendants initiated or caused to be initiated, unsolicited pre-recorded phone messages promoting Herbalife goods or services, on or after March 6, 1997.⁴⁰

V. CLASS CERTIFICATION SHOULD BE GRANTED BECAUSE THE REQUIREMENTS OF RULE 23(a) ARE SATISFIED

It is well-settled in West Virginia that, as long as the prerequisites to class certification set forth in Rule 23 are met, a case should be allowed to proceed on behalf of the class proposed by a plaintiff. See *W.Va.R.Civ. 23*; *Mitchem v. Melton*, 167 W.Va. 21, 277 S.E.2d 895, 899 (1981) ("If the requirements of Rule 23 are met, then the Class should be allowed). Rule 23 is also to be interpreted flexibly by the court and given a liberal construction in favor of class certification. *Black v. Rhone-Poulenc, Inc.*, 173 F.R.D. 156, 169 (S.D.W.Va. 1996).

This case should be certified as a class action under Rule 23 because it satisfies the requirements of W.Va.R.C.P. Rule 23(a) (*i.e.*, numerosity, commonality, typicality and adequacy of representation) and also satisfies the requirements of Rule 23(b)(3). *Jefferson County Bd. of*

Education v. Jefferson County Educ. Ass'n, 183 W.Va. 15, 393 S.E.2d 653 (1990)(party who seeks class action has burden of proving that the prerequisites of Rule 23 have been satisfied); *Burks v. Wymer*, 172 W.Va. 478, 307 S.E.2d 647 (1983)(setting forth factors to consider upon motion for class certification). For purposes of class certification, "the allegations contained in the complaint are assumed to be true". *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974); *Gammon v. GC Serv. Ltd. Partnership*, 162 F.R.D. 313, 317 n. 4 (N.D. Ill. 1995). In addition, the Rule 23 requirements should be "liberally" construed and "any doubts concerning maintenance of a class action should be resolved in favor of such action." *Green v. Wolf Corp.*, 406 F.2d 291, 298 (2nd Cir. 1968) (same); see also *Brown v. Cameron-Brown Co.* 92 F.R.D. 32, 49 (E.D. Va. 1982) ("Generally, there appears to be an acceptance that where doubts exist as to the advisability of proceeding with a class action they should be resolved in favor of class certification."); *Davis v. Avco*, 371 F.Supp. 782, 791 (N.D. Ohio 1980) ("[A]ny error, if there is to be one, should be committed in favor of allowing the class action"). Certification of the class is to be maintained as "early in the proceedings as may be practicable." *Cleckley, Davis & Palmer, Litigation Handbook On West Virginia Rules Of Civil Procedure*, Rule 23, §23(a), pg. 472 (Juris Publishing, 2002),

A. The Proposed Class Satisfies The Numerosity Requirement

The first requirement of Rule 23 that must be satisfied before a class can be certified is that the persons constituting the class are so numerous as to make it impracticable to bring them all before the court. *Jefferson County Bd. of Education v. Jefferson County Educ. Ass'n*, 183 W.Va. 15, 393 S.E.2d 653 (1990); *Burks v. Wymer*, 172 W.Va. 478, 307 S.E.2d 647 (1983). The

⁴⁰ This case was first filed as an individual consumer claim on March 6, 2001. Herbalife was placed on notice of the filing of the claim shortly after it was filed. The Statute of Limitations for a claim pursuant to the Telephone Consumer Protection Act is four years. 28 U.S.C. §1658.

test for impracticability requires a showing that it would be “difficult” or “inconvenient” to join all members. *Mitchem v. Melton*, 167 W.Va. 21, 277 S.E.2d 895 (1981). Where the exact size of the class is unknown, but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied. *Orantes-Hernandez v. Smith*, 541 F.Supp. 351, 370 (C.D.Cal. 1982). Courts have held that a rebuttable presumption of numerosity exists when it is established that the class size is between 25-30 members. *Cleckley, Davis & Palmer, Litigation Handbook On West Virginia Rules Of Civil Procedure*, Rule 23, §23(a), pg. 451-452 (Juris Publishing, 2002), citing *Rodger v. Electronic Data Systems Corp.*, 160 F.R.D. 532 (E.D.N.C. 1995).

Here, Herbalife’s distributor, Pamela Stiles (“Ms. Stiles”), has already testified that she used an auto-dialer to initiate Auto-Dialer Calls on behalf of Herbalife from June of 2000 through August of 2001.⁴¹ During the month of December 2000, alone, Ms. Stiles admitted to initiating approximately 20,000 Auto-Dialer Calls on behalf of Herbalife residents primarily of West Virginia, in an effort to sell Herbalife product and recruit new Herbalife distributors.⁴²

It is likely that Nancy and Dana Willis initiated many more thousands of Auto-Dialer Calls to homes in West Virginia, and throughout the country. Evidence gathered to date indicates that many other Herbalife distributors are similarly engaged in initiating Auto-Dialer Calls throughout the United States, in an effort to sell Herbalife product and recruit new Herbalife distributors.⁴³

⁴¹ Tab H, V1 at pp. 21 and 35; V2 at pg. 132.

⁴² Tab H, V1 at pg. 35, V2 at pg. 132.

⁴³ Tabs I-N.

As attested to in the attached affidavits⁴⁴, for several years now, Herbalife agents have been using auto-dialers to initiate illegal Auto-Dialer Calls promoting Herbalife to residential homes across the country. Due to the national scope of Herbalife's misconduct, it is expected that the class members will ultimately number into the millions. Accordingly, the "numerosity" requirement of Rule 23(a)(1) is well satisfied.

B. The Proposed Class Satisfies The Commonality Requirement

Rule 23(a)(2) requires that the party seeking certification establish that there are questions of law or fact common to the class. *Burks v. Wymer*, 172 W.Va. 478, 307 S.E.2d 647 (1983). See, *Cleckley, Davis & Palmer, Litigation Handbook On West Virginia Rules Of Civil Procedure*, Rule 23, §23(a), pg. 451-452 (Juris Publishing, 2002). The commonality requirement for class certification requires that class members suffer common deprivation and that class issues are subject to generalized proof. *Id.* Professor Newberg explains:

Rule 23(a)(2) does not require that all questions of law or fact raised in the litigation be common. The test or standard for meeting the Rule 23(a)(2) prerequisite is qualitative rather than quantitative- that is, there need be only a single common issue to all members of the class. Therefore, this requirement is easily met in most cases.

¹ Herbert Newberg & Alba Conte, *Newberg On Class Actions*, §3.01, 3-49-3-50 (3d ed. 1992 & June 2002 supplement)(Hereinafter, "*Newberg On Class Actions* at ___").

The class TCPA claims involve common questions of law (whether Herbalife's transmission of Auto-Dialer Calls to residential homes throughout West Virginia and the entire United States are in violation of the TCPA). Herbalife's expected defenses will also apply

⁴⁴ *Id.*

equally to all class members.⁴⁵ Here, it is alleged that similar (if not identical) unsolicited, pre-recorded, automated telemarketing calls from Herbalife and its Agents promoting Herbalife products through the recruitment of new Herbalife distributors were initiated to all class members. Commonality is particularly evident where, as here, the defendant's are alleged to have directed standardized conduct toward the putative class members. Thus, commonality is satisfied.

C. The Proposed Class Satisfies The Typicality Requirement

Rule 23(a)(3) requires that the party seeking certification establish that the claim of the class plaintiff arises from the same unlawful conduct as that conduct experienced by the other members of the class. In other words, the claim of the class plaintiff must be "typical" of the claims of the rest of the class. Professor Newberg characterizes the typicality requirement as follows:

[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if his or her claims are based on the same legal theory. When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.

Newberg On Class Actions at §3.13, 3-71 to 3-78.

This requirement demands a common-sense inquiry into whether the incentives of the plaintiffs are aligned with those of the class, and is meant to ensure that representative parties will adequately represent the class. *See Baby Neal v. Casey*, 43 F.3d 48, 55 (3rd Cir. 1994). Representative claims need not be identical to those of the rest of the class; instead, there must be

⁴⁵ Herbalife is expected to argue that (1) the TCPA is unconstitutional; (2) the TCPA does not apply in West Virginia; (3) the pre-recorded calls are mere "employment offers" and not solicitations prohibited by the TCPA, and (4) that its distributors are not "agents" but are "independent contractors" beyond its control.

similar legal and remedial theories underlying the representative claims and the claims of the class. See *Jenkins v. Raymark Industries*, 782 F.2d 468, 472 (5th Cir. 1986); see also *Baby Neal*, 43 F.3d at 58 (stating that "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories").

Here, the interests of Ms. Mey, as class representative, are squarely aligned with those of the class members, as their interests are virtually identical. Identical pre-records were initiated to all members of the class by Herbalife or its agents, in violation of the TCPA. Further inquiry in to the nature and extent of calls, the degree of intrusion in to the affairs of the class members, or any other details beyond the mere initiation of the calls themselves, is not required under the TCPA and therefore not relevant. The class representative seeks statutory damages provided by the TCPA, not actual damages or compensatory that might involve some variation, so the damages sought are identical for each class member. Ms. Mey's claim is typical because it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and is based on the same legal theory as the members of the class.

D. The Adequacy Of Representation Requirement Is Satisfied

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." The adequacy of representation involves two related concerns, ensuring that both the class representative, as well as class counsel, are adequate to represent the interests of all class members. This last of the initial preconditions to class certification requires that the named plaintiff have no conflicts of interest with class members and that she prosecute the action vigorously on behalf of the class. *Newberg On Class Actions* at §3.21-§3.26. As stated by the United States Supreme Court in *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997):

The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent. “[A] class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.”

Id. at 625-26, 117 S. Ct. at 2250-51. *See also* 7A WRIGHT, MILLER, & KANE, *supra*, § 1766, at 302-303 (stating that “the general standard is that the representatives must be of such character as to assure the vigorous prosecution or defense of the action so that the members’ rights are certain to be protected”).

Ms. Mey has demonstrated her desire and ability to protect the interests of the class members by investigating, filing and vigorously prosecuting this lawsuit to date. Ms. Mey is a well known consumer advocate⁴⁶ who has elected not to solely pursue an individual claim in this matter, but to stand up for all consumers, throughout the nation, who are similarly aggrieved, in an effort to obtain a remedy for all consumers, and to put an end to Herbalife’s illegal telemarketing tactics.

Secondly, the class action rule seeks to assure that counsel is adequate to represent the class. *See Secretary of Labor v. Fitzsimmons*, 805 F.2d 682, 697 (7th Cir. 1986) (en banc) (stating that adequacy of representation includes adequacy of attorneys representing class); *Newberg On Class Actions* at §3.24, 3-133 to 3-134 (second prong of Rule 23(a)(4) is court satisfaction that a class action will be vigorously prosecuted on behalf of the purported class). Factors in this analysis include the vigor of counsel, experience, and diligence. *See Central Wesleyan College v. W.R. Grace & Co.*, 143 F.R.D. 628, 637 (D.S.C. 1992), *aff’d*, 6 F.3d 177 (4th Cir. 1993). *See also Baby Neal v. Casey*, 43 F.3d 48, 55 (3rd Cir. 1994) (explaining that adequacy of representation assures “that the attorneys for the class

representatives are experienced and qualified to prosecute the claims on behalf of the entire class”).

The qualifications of counsel demonstrate that counsel are adequately qualified to represent the interests of the class. Class counsel have sufficient experience with class actions, complex litigation, and specifically the TCPA in a class action litigation context to provide the required level of representation.⁴⁷

VI. CLASS CERTIFICATION SHOULD BE GRANTED BECAUSE THE REQUIREMENTS OF RULE 23(b) ARE SATISFIED

A. Common Questions Of Law And Fact Predominate And Support Class Certification

Rule 23(b)(3) of the West Virginia Rules of Civil Procedure provides that an action may be maintained as a class action if the prerequisites of Rule 23(a) are satisfied, and the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The predominance test requires that the court determine whether the members of the class seek a remedy to a common legal grievance, and whether the common questions of law or fact central to the litigation are common to all class members.

“It is only where . . . predominance exists that economies can be achieved by means of the class-action device.” Federal Rule 23 Committee Note, *supra*, 39 F.R.D. at 103. . . . *See also* 7A WRIGHT, MILLER, & KANE, *supra*, § 1777, at 518-19 (stating that “the predominance test really involves an attempt to achieve a balance between the value of allowing individual actions to be instituted so that each person can protect his own

⁴⁶ For years, Ms. Mey has been a nationally recognized consumer advocate opposed to illegal telemarketing. Her story is told at www.dianamey.com.

⁴⁷ Tab T, Affidavits of counsel as to qualifications.

interests and the economy that can be achieved by allowing a multiple party dispute to be resolved on a class action basis”).

Here, common questions predominate. All class members received virtually identical unsolicited automated commercial phone calls from Herbalife and its Agents. The common question to all class members is whether such calls violated the TCPA. The only legal and factual issues that exist in this case are common to the class. Thus, common issues predominate.

B. Proceeding Via Class Certification Is The Superior Method of Adjudication

As a further condition to maintaining a class action, Rule 23(b)(3) requires that the trial court find that the class action procedure is “superior” to other types of litigation. This test requires the court to compare the class action vehicle with other potential methods of litigation. Proceeding via class action in this matter is superior to any other method of litigation and by far the most efficient and economical means of dispatching justice.

First, damages are fixed by statute. Courts have noted that statutory claims with fixed damage awards, like TCPA claims, are ideal for class certification.⁴⁸

⁴⁸ “Where the damages are capable of mathematical or formula computation, the class action comes rather close to an ideal one and there is certainly no question of the lack of ‘predominance’ of the common questions.” *Windham v. American Brands, Inc.*, 565 F.2d 59, 68 n.22 (4th Cir. 1977) (quoting Practising Law Institute, *Current Problems In Federal Civil Practice* at 491(1975)); *compare Hooters; supra* (common issues predominate “because the TCPA imposes a minimum of \$500.00 in damages for each violation”). *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439 (N.D.Cal. 1994) (statutory damage claims are appropriate for class certification due to enhanced ease of damage calculations); *Montelongo v. Meese*, 803 F.2d 1341, 1351 (5th Cir. 1986) (“[T]he liquidated damages awards obviated the need to resolve individual questions of reliance and damages”); *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1309 (9th Cir. 1990) (certifying class action for statutory damages under the Migrant And Seasonal Agricultural Worker Protection Act based on ease of calculating fixed statutory damages); *Haywood*, 109 F.R.D. at 583-84 (same - class action appropriate because statutory damage claims broke down into a “mechanical task, capable of mathematical formula or calculation”); *Rodriguez*, 166 F.R.D. at 479 (same); *Blackie v. Barrack*, 545 F.2d 891, 905 (9th Cir. 1975) (class certification appropriate where damages calculation is “virtually a mechanical task”); *Rios v. Marshall*, 108 F.R.D. 395, 410 (S.D.N.Y. 1983) (same -- damages easily calculated on a “group basis”); *Lennon v. First Nat. Bank of Arizona*, 21 Ariz.App. 306, 518 P.2d 1230, 1234 (App.1974) (same -- “damages sought here would be liquidated”).

Second, certification of a class is a superior method of adjudication particularly where, as here, the individual class claims are small and private enforcement via class action serves the public interest. *Walton v. Franklin Collection Agency, Inc.*, 2000 WL 52740 (N.D.Miss. 2000). See *Lake v. First Nationwide Bank*, 156 F.R.D. 615 (E.D. Pa. 1994)(where statutory damages are too low to attract an attorney to represent the plaintiff, and the other requirements for class certification are met, there is a basis for permitting a class action); *Berkley v. United States*, 45 Fed.Cl. 224 (1999)(small claims that will not likely be pursued should be eligible for class action status); *D'Alauro v. G. C. Services, Ltd.*, 168 F.R.D. 451 (E.D.N.Y. 1996)(class actions are appropriate where the usual criteria are met and the statutory damages are too low to create an incentive for plaintiffs to pursue their claims).

These principles are particularly applicable to the instant case and weigh heavily in favor of class certification as the most superior method of adjudication. The TCPA provides for statutory damages of between \$500 and \$1,500 per violation. Enforcement of this statute, however, requires individual consumers to initiate litigation and incur its attendant costs and sacrifice. As many consumers have experienced throughout the country, TCPA cases are vigorously opposed by the telemarketing industry.⁴⁹ The prospect of recovering \$500 per pre-recorded call in statutory damages is too low for most people to promote prosecution of an individual suit under the TCPA. Thus, the instant case falls squarely within the public policy considerations which favor class actions to address the type of statutory violation at issue here.

⁴⁹ As the affidavit of Joseph Shields, attached at Tab I attests, Herbalife aggressively defends against illegal telemarketing claims. They will first claim they have no control over their "independent distributors". They then invoke legal fiction and argue that the Auto-Dialer Calls are merely employment inquiries, and not commercial solicitations barred by the TCPA. They finally threaten consumers with cross claims of "malicious prosecution" if consumers proceed with their TCPA claim directly as to Herbalife. Tab I at ¶¶11-21 and attachments 1-11.

Third, an analysis as to whether a class action is the superior means to proceed pursuant to W.Va.R.Civ.P. 23(b)(3)(B) requires that the trial court be notified of any litigation actually pending by or against members of the class. Apparently due to the costs and time involved in asserting individual TCPA claims, few consumers have sought to hold Herbalife accountable for the illegal telemarketing practices of Herbalife's agents. Those who have sought to enforce their rights, have met an obstinate response from Herbalife's legal department.

Class counsel is aware of no TCPA litigation pending against Herbalife in West Virginia. Class counsel is aware of only a handful of individual consumer telemarketing claims being asserted against Herbalife nationwide. Class counsel is not aware of any class actions pending against Herbalife for illegal telemarketing practices.

Finally, in assessing whether class certification is the "superior" method to adjudicate the litigation, Rule 23(b)(3)(C) and (D) requires that the Court consider the desirability of proceeding via class action in contrast to allowing individual claims to proceed on their own, including an assessment of the difficulties in managing the dispute as a class action. As to these elements of the analysis, class certification is obviously the preferred course to pursue. Herbalife is believed to have committed *millions* of violations of the TCPA. The individual litigation of such a phenomenal number of claims would obviously consume a vast amount of judicial resources in trial courts across the nation. The misconduct in this case flows from standard Herbalife telemarketing practices which are factually uniform as to each individual class member. Each is basically the same case. Damages are set by statute and will be simple to apply. Management issues in regards to this class action will be minimal. Class adjudication of this dispute is by far the most efficient and effective means to address Herbalife's alleged nationwide illegal telemarketing practices.

VII. NATIONWIDE CLASS CERTIFICATION OF TCPA CLASS ACTIONS

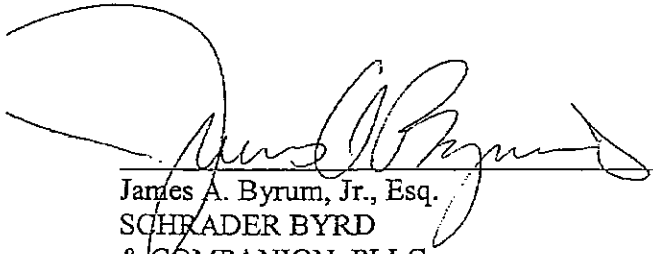
Finally, it is important to note that a growing number of trial courts across the country have scrutinized and approved consumers' use of the class action vehicle to combat rampant illegal telemarketing. These decisions provide substantial guidance to this court as to the manner in which the class allegations at issue can be handled in an efficient manner. See *ESI Ergonomic Solutions, LLC v. United Artists Theatre Circuit, Inc., et al.*, 203 Ariz. 94, 50 P.3d 844 (Ariz. App. 2002)(reversing and remanding trial court decision denying motion for class certification of TCPA claim); *Hooters of Augusta, Inc. v. Nicholson, et. al.*, Order Granting Class Certification and affirmed, 245 Ga.App. 363, 537 S.E.2d 468 (2000) (holding that TCPA claims properly brought in state court and were proper basis of class action); *James E. Girards v. Inter-Continental Hotels Corporation*, Order Granting Class Certification, Dallas County, Texas, District Court, 192nd District Case No. 01-3456-K (September 18, 2002); *Marine Technologies, Inc. v. DirecTV, Inc.*, State of Maryland, County of St. Mary's, Case No. 01-635 (order certifying plaintiff's TCPA class dated October 24, 2002, since dismissed on other grounds); *Bruce Levitt v. Fax.com. Inc.*, State of Maryland, County of Baltimore, Case No. 24-C-01-002218 (December 24, 2002 Certification Order, since dismissed on other grounds); *J. Greg Coontz, et al. v. Nextel Communications, Inc., et al.*, State of Texas, District Court of Johnson County, Case No. C200100349 (order certifying plaintiff's TCPA class dated October 15, 2002); *Golden Seal Termite and Pest Control Company, et al. v. PrimeTV, L.L.C.*, State of Indiana, County of Marion, Cause No. 49C01-0112-CP-3010 (order certifying plaintiff's TCPA class dated August 29, 2002); *Chaudhry v. Bonneville International Corp., d/b/a KDGE/KZPS*, (Dist. Ct. Tex., March 10, 1997) (Consent Order approving Class Settlement); *Biggerstaff v. Ramada Inn-Coliseum*, Case No. 98-CP-10-4-4722 in the Charleston County Court of Common Pleas, South

Carolina (Feb. 3, 2000 class certification order); *Biggerstaff v. Marriott International, Inc.*, 99-CP-10-001366, (C.P. S.C.) (Feb 20, 2000 class certification order); *Kondos v. Lincoln Property Co.*, No. 00-08709-H (D.C. Tex.) (July 12, 2001 class certification order); *WPS, Inc. v. Lobel Financial, Inc.*, No 01CP402029 (C.P. S.C.) (Oct. 15, 2001 class certification order).⁵⁰

VIII. CONCLUSION

For the above reasons, the plaintiff Diana Mey, on behalf of herself and all other similarly situated, respectfully requests that this Honorable Court certify the above-captioned matter as a class action as proposed in the Draft Order attached to Plaintiff's Motion For Class Certification.

⁵⁰ These decisions are attached at Tab U.



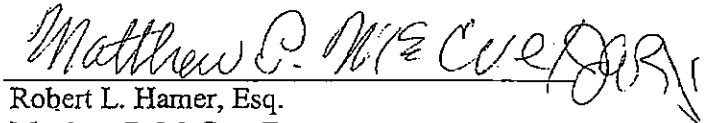
James A. Byrum, Jr., Esq.
SCHRADER BYRD
& COMPANION, PLLC
The Maxwell Centre
32-20th Street, Suite 500
Wheeling, West Virginia
Phone: (304) 233-3390

DIANA MEY

By her attorneys,



Edward A. Broderick, Esq.
SHLANSKY & BRODERICK, LLP
1011 Beacon Street, Suite 2
Brookline, MA 02446
Phone: (617) 738-7080
Fax: (617) 738-5003



Robert L. Hamer, Esq.
Matthew P. McCue, Esq.
MIRICK, O'CONNELL, DEMALLIE &
LOUGEE, LLP
100 Front Street
Worcester, MA 01608-1477
Phone: (508) 791-8500
Fax: (508) 791-8502

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