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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 _____, Individually and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 HERBALIFE LTD., MICHAEL O.
16 JOHNSON, AND JOHN G.
17 DESIMONE,

18 Defendants.

Case No:

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

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20
21 Plaintiff _____ (“Plaintiff”), by Plaintiff’s undersigned attorneys, individually
22 and on behalf of all other persons similarly situated, alleges the following based upon
23 personal knowledge as to Plaintiff’s own acts, and information and belief as to all
24 other matters, based upon, *inter alia*, the investigation conducted by and through
25 Plaintiff’s attorneys, which included, among other things, a review of Defendants’
26 (defined below) public documents, conference calls and announcements made by
27 Defendants, United States Securities and Exchange Commission (“SEC”) filings,
28 wire and press releases published by and regarding Herbalife Ltd. (“Herbalife” or the

1 “Company”), and information readily obtainable on the Internet. Plaintiff believes
2 that substantial evidentiary support will exist for the allegations set forth herein after
3 a reasonable opportunity for discovery.

4 **NATURE OF THE ACTION**

5 1. This is a federal securities class action brought on behalf of a class
6 consisting of all persons and entities, other than Defendants and their affiliates, who
7 purchased or otherwise acquired the securities of Herbalife from August 6, 2015 to
8 March 2, 2016, inclusive (the “Class Period”), seeking to recover compensable
9 damages caused by Defendants’ violations of federal securities laws (the “Class”).

10 **JURISDICTION AND VENUE**

11 2. The claims asserted herein arise under and pursuant to Sections 10(b)
12 and 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5
13 promulgated thereunder (17 C.F.R. § 8 240.10b-5).

14 3. This Court has jurisdiction over the subject matter of this action pursuant
15 to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

16 4. Venue is proper in this District pursuant to §27 of the Exchange Act, 15
17 U.S.C. §78aa and 28 U.S.C. §1391(b), as Herbalife maintains its corporate executive
18 offices this District.

19 5. In connection with the acts, conduct and other wrongs alleged in this
20 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of
21 interstate commerce, including but not limited to, the United States mail, interstate
22 telephone communications and the facilities of the national securities exchange.

23 **PARTIES**

24 6. Plaintiff _____, as set forth in the attached Certification, acquired
25 Herbalife securities at artificially inflated prices during the Class Period and was
26 damaged upon the revelation of the alleged corrective disclosures.

27 7. Defendant Herbalife is a nutrition company, which develops and sells
28 weight management, healthy meals and snacks, sports and fitness, energy and

1 targeted nutritional products, and personal care products. Herbalife is a Cayman
2 Islands corporation with corporate executive offices located in Los Angeles,
3 California. Herbalife's common stock trades on the New York Stock Exchange
4 ("NYSE") under the ticker symbol "HLF."

5 8. Defendant Michael O. Johnson ("Johnson") served as the Company's the
6 Chairman of the Board of Directors ("Board") and Chief Executive Officer at all
7 relevant times.

8 9. Defendant John DeSimone ("DeSimone") served as the Company's
9 Chief Financial Officer at all relevant times.

10 10. The defendants referenced above in ¶¶ 8 – 9 are sometimes referred to
11 herein as the "Individual Defendants."

12 11. Defendant Herbalife and the Individual Defendants are referred to
13 herein, collectively, as the "Defendants."

14 12. Each of the Individual Defendants:

- 15 a) directly participated in the management of the Company;
- 16 b) was directly involved in the day-to-day operations of the
17 Company at the highest levels;
- 18 c) was privy to confidential proprietary information concerning the
19 Company and its business and operations;
- 20 d) was involved in drafting, producing, reviewing and/or
21 disseminating the false and misleading statements and information
22 alleged herein;
- 23 e) was aware of or recklessly disregarded the fact that the false and
24 misleading statements were being issued concerning the
25 Company; and
- 26 f) approved or ratified these statements in violation of the federal
27 securities laws.

1 overcome the challenges of elimination of field sales for sales leader
2 qualifications, Mexico is now demonstrating meaningful and
encouraging improvement in certain key metrics.

3 For the second quarter, 75% of sales leaders qualified through the 4K
4 cumulative method compared to 20% during the same period last year.
5 ***And new Members with activity increased by 14% during the second***
6 ***quarter.*** Another market worth noting is Brazil, which had a relatively
7 strong second quarter. Compared to the 15% decline in the first quarter
8 year-over-year comparison, volume points declined just 1% in the
second quarter. And in both June and July, Brazil experienced volume
point growth compared to the prior-year period.

9 [Emphasis added].

10
11 18. On November 3, 2015, the Company held an investor conference call
12 after the market closed to discuss its financial results for the third quarter, ended
13 September 30, 2015.

14 19. During the November 3rd investors conference call, Defendant Johnson
15 stated the following with regards to the growth of Company's customer and
16 distributor base:

17 ***We are also seeing growth in the number of new members placing***
18 ***orders in all six regions. For example, this quarter the number of***
19 ***active new members in our North American region was up 33%***
20 ***compared to a decline of 16% in the second quarter.*** These are both
21 compared to the prior year period. ***This is good news. As it represents***
22 ***the first time in North America since quarter one 2014 that new***
23 ***members with volume has grown versus the prior year period. On a***
worldwide basis, excluding China, the total number of new active
members was up 21% compared to the prior year period.

24 ***This is more good news, as it compares to just a 1% increase between***
25 ***quarter two 2014 and the second quarter of this year.*** This group is
26 important, because history tells us that new members who are
27 immediately active and engaged are more likely to achieve their goals
28 and remain with Herbalife in the long run. Improving trends in both our
financials and member metrics reflect the attitude and effort of our

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senior sales leaders and the increased focus of our members on creating personalized experiences for new customers and new members alike.

* * *

Engagement levels are incredibly high. *Average active sales leaders are up versus prior year, new members with activity are up in every region, both compared to prior year and sequentially.* More people are ordering from the company than ever before. And finally, just as you know me – those of you know me, I'm very passionate about our company. We got to start today with two pretty amazing calls, one to congratulate a 35 year employee of Herbalife and that is just amazing to know that the legacy of this company continues to be incredibly strong. This employee started in a little tiny office on 251 Robinson, Boulevard here in Los Angeles and today we're in 91 markets, almost \$5 billion in sales strong. And the growth that he has seen and the growth that we've seen in the company continue to give us an incredible confidence about the future.

[Emphasis added].

20. During the November 3rd investors conference call, Defendant DeSimone stated the following with regards to the growth of Company's customer and distributor base:

Worldwide new members with activity excluding China grew 21% in the third quarter compared to the prior year period and improved sequentially against an increase of only 1% in the second quarter of 2015. This shift is showing us that despite total number of new members being slightly down, those new members coming into the business are more engaged, active and productive.

* * *

Importantly, as Michael already mentioned, *for the first time since the first quarter of 2014, active new members in the U.S. grew versus the prior year period. Active new members were up 33% compared to the same quarter last year. And this compares to a decline of 16% in Q2 and a decline of 28% in Q1.* We continue to be encouraged by this

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trend. Similar to the second quarter, *volume points in Brazil declined 1% in the third quarter compared to the prior year and new members with activity grew 65% compared to last year.*

* * *

In addition, the percentage of volume from one-month and two-month qualifiers has decreased from 16% in 2014 to 2% in the third quarter this year, showing a continued acceptance of the changes implemented last year and earlier this year. *The percentage of new members with activity in Mexico increased by 29% compared to the prior year, up from 14% growth in Q2.*

* * *

For the quarter volume points in EMEA grew 10% compared to last year and new members with activity increased 34% compared to the prior year. Russia, the region's largest market, returned to volume point growth in the third quarter. It reported a volume increase of 4% compared to the prior year and local currency growth of 19%. Despite the ongoing difficult economic circumstances in the market, we believe that the market has adjusted to the 14% price increase implemented earlier this year.

[Emphasis added].

21. During the November 3rd investors conference call, Defendant DeSimone had the following exchanges with securities analysts with regards to the growth of Company's customer and distributor base:

April Scee - CRT Capital Group LLC

Yeah. Hi. Thanks. Just a question or two on the organic. First for the guidance for the fourth quarter, I just want to make sure that I understand it. When you're looking at the range of 1.6% to 4.6%, how do I think about that when you are faced with an easier comp in the fourth quarter, and then also on a 12-month basis, when we are sort of plugging in the math, I have trouble getting to your numbers and conversely on

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the fiscal 2016 guidance. The 7% to 10% sounds like a pretty good acceleration. I know you've talked about a lot of the things moving in the right direction. But what's driving your confidence in the 7% to 10%. What would be the big risk there or the potential upside that we might be looking at from the moving pieces perspective?

John G. DeSimone - Chief Financial Officer

Well, I'll take it from end to beginning. I'll take your last question first. So for next year, we are seeing a dramatic improvement in engagement levels with our member base, which we plug into our models to use to project the next couple years of volume by country. And it's based on active members and active members are dramatically improved in the third quarter from where they were in the second quarter and the first quarter, and I'll give you some big picture numbers. First I will deal with the whole company ex-China and then have some particular countries. *But active new members in Q1 of this year was down 4%. In Q2, it was up 1% and Q3, it was up 21%. So dramatic increase.*

In the U.S., in Q1 it was down 28%; in Q2, down 17% and Q3, up 33%. So now when new members coming are engaged, there's a cycle in the model that pushes them up for at least a couple of years and you get the benefit for a couple of years. So this goes into next year's model. Now some of next year is dealing with last year's new members, right, which is why next year, the beginning of the year, you get a balancing effect and you get more of an acceleration towards the back half of next year. Is that...?

[Emphasis added].

22. On February 25, 2016, the Company held an investor conference call after the market closed to discuss its financial results for the fourth quarter and full year 2015.

23. During the February 25th investors conference call, Defendant DeSimone stated the following with regards to growth of Company's customer and distributor base:

1 This imposed a one-time drag on our sales leader retention rates in 2015.
2 We're very encouraged by the continued positive impact that we believe
3 consumption based business methods are having on our member metrics.
4 **Worldwide active new members, excluding China, was up 16.7% in the**
5 **quarter compared to the prior year fourth quarter, and up 8.3% for the**
6 **full year.** We continue to see broad-based improvement in active new
7 member numbers, and are optimistic about this positive trend, and its
8 impact in our business.

9 Moving on to our market highlights, the U.S. has shown sequential
10 volume point trend improvement throughout the year improving from
11 year-over-year decline in the first three quarters of 2015 to being
12 essentially flat in the fourth quarter compared to the fourth quarter of
13 2014. **We continue to be encouraged by the improved levels of new**
14 **member engagement in the U.S. with new members up 15% and active**
15 **new members up 71% compared to the same quarter 2014.** Mexico was
16 also a highlight in the quarter as volume was up 4% compared to the
17 prior year period despite the imposition of a 16% VAT on many of our
18 products.

19 Notwithstanding this positive trend in the quarter, we expect the 16%
20 VAT increase to have a lingering impact on sales until the changes are
21 annualized in the third quarter of 2016. The impact of this is included in
22 our guidance. **With respect to the trend of active new sales members in**
23 **Mexico, it improved sequentially in Q4 and throughout the year, and**
24 **was up 32% in the fourth quarter compared to the fourth quarter of**
25 **2014.** China continues to demonstrate strong business performance and
26 fundamentals through its focus on customers, daily consumption and the
27 continued promotion of a healthy active lifestyle. In the fourth quarter,
28 China's volume grew 30% compared to the prior year period.

Turning to EMEA, as an early adopter of the marketing plan
enhancements, the region continues to perform well. **For the fourth**
quarter, volume points in EMEA grew 14%, and active new members
were up 44%, both compared to the prior year period. Although volume
points in Russia were flat for the quarter, local currency net sales in
Russia increased 14.6%. For the quarter, volume points for the Asia
Pacific region grew 2% compared to the prior year period despite Korea
volume declining 31% compared to last year's fourth quarter. **Excluding**

1 *Korea, active new members in Asia Pacific were up 35%,*
2 *demonstrating the continual engagement of new members in the*
3 *region.* Fourth quarter volume points in Brazil were down 10% as
4 macroeconomic headwinds continue to be a challenge.

5 [Emphasis added].

6 24. The statements referenced in ¶¶ 16 – 23 above were materially false
7 and/or misleading because they misrepresented and failed to disclose the following
8 adverse facts pertaining to the Company’s business, operations, and prospects, which
9 were known to Defendants or recklessly disregarded by them. Specifically,
10 Defendants made false and/or misleading statements and/or failed to disclose that: (1)
11 the growth of Herbalife’s customer and distributor base provided in certain of
12 Herbalife’s 2015 earnings calls were overstated; and (2) as a result, Defendants’
13 statements about the Herbalife’s business, operations and prospects were materially
14 false and misleading and/or lacked a reasonable basis at all relevant times.

15 The Truth Emerges

16 25. On March 3, 2016, the Company filed a Form 8-K with the SEC
17 revealing that it had overstated the growth of its customer and distributor base, stating
18 in part:

19 **Item 7.01. Regulation FD Disclosure.**

20
21 On March 1, 2016, Herbalife Ltd. (the “Company”) identified errant
22 information regarding the Company’s new “Active New Member”
23 metric that was provided on certain of the Company’s 2015 earnings
24 calls, as outlined in greater detail in the tables below. The Company
25 began tracking this non-financial metric in 2015 in connection with
26 certain marketing plan changes and discussed it for the first time on its
27 second quarter 2015 earnings call. However, database scripting errors
28 led to both (i) the errant inclusion of additional categories of data in
calculating the metric for parts of 2015 which were not included in the
2014 and prior period calculations and (ii) quarterly aggregation issues
which created variances from period-to-period depending on when the

1 greatest level of activity occurred during the relevant period. The
 2 Company did not discover these errors earlier because it had limited
 3 visibility into the likely rate of change in this metric upon its first use.
 4 The Company has taken corrective action regarding these issues. No
 5 information regarding this non-financial metric has been included in any
 6 of the Company's periodic reports filed with the Securities and
 Exchange Commission and the errors do not impact the Company's
 historical consolidated financial statements.

7 The tables below, organized by the relevant earnings call, provide more
 8 detailed information regarding the errant information provided with
 9 respect to the Active New Member metric and the information as
 10 corrected. Contemporaneous with the furnishing of this Current Report
 11 on Form 8-K, the Company is also posting to its Investor Relations
 12 webpage updated copies of the transcripts for the earnings calls
 referenced below with annotations identifying and correcting the errant
 information.

13 ***Earnings Call for the Fourth Quarter and Full Year 2015 held on February 25, 2016***

<u>Information</u>	<u>As originally quoted</u>	<u>Correct value</u>
15 “Worldwide, active new members’ excluding China was up 16.7 16 percent in the quarter” – <i>comparing the 4th quarter of 2015 vs. the 4th quarter of 2014</i>	16.7%	3.2%
17 “[Worldwide active new members, excluding China] up 8.3 percent for the full year.” – <i>and comparing full year 2015 vs. full year 2014</i>	8.3%	3.4%
18 “[U.S.] active new members up 71 percent compared to the same 19 quarter 2014”— <i>comparing the 4th quarter of 2015 vs. the 4th quarter of 2014</i>	71.0%	30.7%
20 “With respect to the trend of active new sales members in Mexico, it 21 improved sequentially in Q4 and throughout the year and was up 32 percent in the Fourth Quarter compared to the Fourth Quarter of 2014.”	32.0%	34.1%
22 “[EMEA] active new members were up 44 percent” – <i>comparing the 4th quarter of 2015 vs. the 4th quarter of 2014</i>	44.0%	17.7%
23 “Excluding Korea, active new members in Asia-Pacific were up 35 24 percent” – <i>comparing the 4th quarter of 2015 vs. the 4th quarter of 2014</i>	35.0%	30.4%

25 ***Earnings Call for the Third Quarter of 2015 held on November 3, 2015***

<u>Information</u>	<u>As originally quoted</u>	<u>Correct value</u>
26 “We’re also seeing growth in the number of new members placing 27 orders in all six regions.” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	All regions saw growth	All regions excluding APAC saw growth in the 3rd quarter 2015 vs. the 3rd quarter 2014

1	“For example this quarter the number of active new members and our North American region was up 33 percent” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	33.0%	1.8%
2			
3	“[North America active new members] a decline of 16 percent in the second quarter.” – <i>comparing the 2nd quarter of 2015 vs. the 2nd quarter of 2014</i>	-16.0%	-15.4%
4	“This is good news as it represents the first time in North America since quarter one 2014 that new members with volume have grown versus the prior year period.” – <i>comparing the third quarter of 2015 against the prior quarter that had most recently experienced positive YOY growth in Active new members for North America</i>	First positive YOY increase since the first quarter of 2014	First positive YOY increase since the second quarter of 2014
5			
6			
7			
8	“On a worldwide basis excluding China the total number of new active members was up 21 percent compared to the prior-year period.” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	21.0%	8.7%
9			
10	“This is more good news as it compares to just a 1 percent increase in between Q2 2014 and the second quarter of this year.” – <i>comparing the 2nd quarter of 2015 vs. the 2nd quarter of 2014</i>	1.0%	3.7%
11			
12	“Worldwide new members with activity, excluding China, grew 21 percent in the third quarter” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	21.0%	8.7%
13			
14	“[Worldwide active new members, excluding China] compared to the prior-year period and improve sequentially against an increase of only 1 percent in the second quarter of 2015.” – <i>comparing the 2nd quarter of 2015 vs. the 2nd quarter of 2014, and sequential comparison between the 2nd quarter of 2015 vs. the 3rd quarter of 2015</i>	1.0%	3.7%
15			
16			
17	“for the first time since the first quarter of 2014 active new members in the U.S. group versus the prior-year period.” – <i>comparing the most recent quarter which resulted in positive YOY growth in Active new members for the U.S.</i>	First positive YOY increase since the first quarter of 2014	First positive YOY increase since the second quarter of 2014
18			
19	“[U.S.] Active new members were up 33 percent compared to the same quarter last year.” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	33.0%	0.8%
20			
21	“[U.S.] And this compares to . . . a decline of 28 percent in Q1.” – <i>comparing the 1st quarter of 2015 vs. the 1st quarter of 2014</i>	-28.0%	-27.1%
22			
23	“[Brazil] new members with activity were 65 percent compared to last year.” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	65.0%	71.9%
24			
25	“[Mexico] compared to the prior year up from 14 percent growth in Q2.” – <i>comparing the 2nd quarter of 2015 vs. the 2nd quarter of 2014</i>	14.0%	21.7%
26			
27	“[EMEA] new members with activity increase 34 percent compared to the prior year” – <i>comparing the 3rd quarter of 2015 vs. the 3rd quarter of 2014</i>	34.0%	10.2%
28			
	Information	As originally quoted	Correct value
	“[Worldwide excluding China is] active new members in Q1 of	-4.0%	-1.7%

1 this year was down 4 percent;” - comparing the 1st quarter of 2015
vs. the 1st quarter of 2014

2 “[Worldwide excluding China] in Q2 it was up 1 percent;” – 1.0% 3.7%
comparing the 2nd quarter of 2015 vs. the 2nd quarter of 2014

3 “[Worldwide excluding China] in Q3 of was up 21 percent. So 21.0% 8.7%
4 dramatic increase.” – comparing the 3rd quarter of 2015 vs. the
3rd quarter of 2014

5 “In the U.S. in Q1 it was down 28 percent” - comparing the -28.0% -27.1%
1st quarter of 2015 vs. the 1st quarter of 2014

6 “[U.S.] in Q2 is down 17 percent” – comparing the 2nd quarter of -17.0% -16.0%
7 2015 vs. the 2nd quarter of 2014

8 “[U.S.] in Q3 up 33 percent.” – comparing the 3rd quarter of 2015 33.0% 0.8%
vs. the 3rd quarter of 2014

9 “New members with activity are up in every region both compared All regions saw YOY New members with
10 vs. the 3rd quarter of 2014 and a sequential comparison between growth and sequential activity were up in every
11 the 2nd quarter of 2015 vs. the 3rd quarter of 2015 improvement. region with the
12 exception of APAC, and
13 new members with
14 activity was sequentially
up from the 2nd quarter
of 2015 to the 3rd
quarter of 2015 only in
the SAMCAM region.

15 **Earnings Call for the Second Quarter of 2015 held on August 5, 2015**

16 Information	As originally quoted	Correct value
17 “New members [in Mexico] with activity increased by 14 percent 18 during the second quarter” – comparing the 2 nd quarter of 2015 vs. the 2 nd quarter of 2014	14.0%	21.7%

19 26. On this news, the Company’s shares fell \$3.96 per share or over 7%
20 from its previous closing price to close at \$52.42 per share on March 3, 2016,
21 damaging investors.

22 27. As a result of Defendants’ wrongful acts and omissions, and the
23 precipitous decline in the market value of the Company’s securities Plaintiff and
24 other Class members have suffered significant losses and damages.

PLAINTIFF’S CLASS ACTION ALLEGATIONS

1
2 28. Plaintiff brings this action as a class action pursuant to Federal Rule of
3 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
4 purchased or otherwise acquired Herbalife securities during the Class Period (the
5 “Class”); and were damaged upon the revelation of the alleged corrective disclosure.
6 Excluded from the Class are Defendants herein, the officers and directors of the
7 Company, at all relevant times, members of their immediate families and their legal
8 representatives, heirs, successors or assigns and any entity in which Defendants have
9 or had a controlling interest.

10 29. The members of the Class are so numerous that joinder of all members is
11 impracticable. Throughout the Class Period, Herbalife securities were actively traded
12 on the NYSE. While the exact number of Class members is unknown to Plaintiff at
13 this time and can be ascertained only through appropriate discovery, Plaintiff believes
14 that there are hundreds or thousands of members in the proposed Class. Record
15 owners and other members of the Class may be identified from records maintained by
16 Herbalife or its transfer agent and may be notified of the pendency of this action by
17 mail, using the form of notice similar to that customarily used in securities class
18 actions.

19 30. Plaintiff’s claims are typical of the claims of the members of the Class as
20 all members of the Class are similarly affected by Defendants’ wrongful conduct in
21 violation of federal law that is complained of herein.

22 31. Plaintiff will fairly and adequately protect the interests of the members
23 of the Class and has retained counsel competent and experienced in class and
24 securities litigation. Plaintiff has no interests antagonistic to or in conflict with those
25 of the Class.

26 32. Common questions of law and fact exist as to all members of the Class
27 and predominate over any questions solely affecting individual members of the Class.
28 Among the questions of law and fact common to the Class are:

- 1 • whether the federal securities laws were violated by Defendants' acts as
2 alleged herein;
- 3 • whether statements made by Defendants to the investing public during
4 the Class Period misrepresented material facts about the business,
5 operations and management of Herbalife;
- 6 • whether the Individual Defendants caused Herbalife to issue false and
7 misleading financial statements during the Class Period;
- 8 • whether Defendants acted knowingly or recklessly in issuing false and
9 misleading financial statements;
- 10 • whether the prices of Herbalife securities during the Class Period were
11 artificially inflated because of the Defendants' conduct complained of
12 herein; and
- 13 • whether the members of the Class have sustained damages and, if so,
14 what is the proper measure of damages.

15 33. A class action is superior to all other available methods for the fair and
16 efficient adjudication of this controversy since joinder of all members is
17 impracticable. Furthermore, as the damages suffered by individual Class members
18 may be relatively small, the expense and burden of individual litigation make it
19 impossible for members of the Class to redress individually the wrongs done to them.
20 There will be no difficulty in the management of this action as a class action.

21 34. Plaintiff will rely, in part, upon the presumption of reliance established
22 by the fraud-on-the-market doctrine in that:

- 23 • Defendants made public misrepresentations or failed to disclose material
24 facts during the Class Period;
- 25 • the omissions and misrepresentations were material;
- 26 • Herbalife securities are traded in an efficient market;
- 27 • the Company's shares were liquid and traded with moderate to heavy
28 volume during the Class Period;

- 1 • the Company traded on the NYSE and was covered by multiple analysts;
- 2 • the misrepresentations and omissions alleged would tend to induce a
- 3 reasonable investor to misjudge the value of the Company's securities;
- 4 and
- 5 • Plaintiff and members of the Class purchased, acquired and/or sold
- 6 Herbalife securities between the time the Defendants failed to disclose or
- 7 misrepresented material facts and the time the true facts were disclosed,
- 8 without knowledge of the omitted or misrepresented facts.

9 35. Based upon the foregoing, Plaintiff and the members of the Class are
10 entitled to a presumption of reliance upon the integrity of the market.

11 36. Alternatively, Plaintiff and the members of the Class are entitled to the
12 presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of*
13 *the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants
14 omitted material information in their Class Period statements in violation of a duty to
15 disclose such information, as detailed above.

16 **COUNT I**

17 **Violations of Section 10(b) of The Exchange Act and Rule 10b-5**
18 **Against All Defendants**

19 37. Plaintiff repeats and realleges each and every allegation contained above
20 as if fully set forth herein.

21 38. This Count is asserted against Defendants and is based upon Section
22 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
23 thereunder by the SEC.

24 39. During the Class Period, Defendants engaged in a plan, scheme,
25 conspiracy and course of conduct, pursuant to which they knowingly or recklessly
26 engaged in acts, transactions, practices and courses of business which operated as a
27 fraud and deceit upon Plaintiff and the other members of the Class; made various
28 untrue statements of material facts and omitted to state material facts necessary in

1 order to make the statements made, in light of the circumstances under which they
2 were made, not misleading; and employed devices, schemes and artifices to defraud
3 in connection with the purchase and sale of securities. Such scheme was intended to,
4 and, throughout the Class Period, did: (i) deceive the investing public, including
5 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
6 maintain the market price of Herbalife securities; and (iii) cause Plaintiff and other
7 members of the Class to purchase or otherwise acquire Herbalife securities at
8 artificially inflated prices. In furtherance of this unlawful scheme, plan and course of
9 conduct, Defendants, and each of them, took the actions set forth herein.

10 40. Pursuant to the above plan, scheme, conspiracy and course of conduct,
11 each of the Defendants participated directly or indirectly in the preparation and/or
12 issuance of the annual reports, SEC filings, press releases and other statements and
13 documents described above, including statements made to securities analysts and the
14 media that were designed to influence the market for Herbalife securities. Such
15 reports, filings, releases and statements were materially false and misleading in that
16 they failed to disclose material adverse information and misrepresented the truth
17 about Herbalife's finances.

18 41. By virtue of their positions at Herbalife, Defendants had actual
19 knowledge of the materially false and misleading statements and material omissions
20 alleged herein and intended thereby to deceive Plaintiff and the other members of the
21 Class, or, in the alternative, Defendants acted with reckless disregard for the truth in
22 that they failed or refused to ascertain and disclose such facts as would reveal the
23 materially false and misleading nature of the statements made, although such facts
24 were readily available to Defendants. Said acts and omissions of Defendants were
25 committed willfully or with reckless disregard for the truth. In addition, each
26 defendant knew or recklessly disregarded that material facts were being
27 misrepresented or omitted as described above.

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1 42. Defendants were personally motivated to make false statements and omit
2 material information necessary to make the statements not misleading in order to
3 personally benefit from the sale of Herbalife securities from their personal portfolios.

4 43. Information showing that Defendants acted knowingly or with reckless
5 disregard for the truth is peculiarly within Defendants' knowledge and control. As the
6 senior managers and/or directors of Herbalife, the Individual Defendants had
7 knowledge of the details of Herbalife's internal affairs.

8 44. The Individual Defendants are liable both directly and indirectly for the
9 wrongs complained of herein. Because of their positions of control and authority, the
10 Individual Defendants were able to and did, directly or indirectly, control the content
11 of the statements of Herbalife. As officers and/or directors of a publicly-held
12 company, the Individual Defendants had a duty to disseminate timely, accurate, and
13 truthful information with respect to Herbalife's businesses, operations, future
14 financial condition and future prospects. As a result of the dissemination of the
15 aforementioned false and misleading reports, releases and public statements, the
16 market price of Herbalife securities was artificially inflated throughout the Class
17 Period. In ignorance of the adverse facts concerning Herbalife's business and
18 financial condition which were concealed by Defendants, Plaintiff and the other
19 members of the Class purchased or otherwise acquired Herbalife securities at
20 artificially inflated prices and relied upon the price of the securities, the integrity of
21 the market for the securities and/or upon statements disseminated by Defendants, and
22 were damaged thereby.

23 45. During the Class Period, Herbalife securities were traded on an active
24 and efficient market. Plaintiff and the other members of the Class, relying on the
25 materially false and misleading statements described herein, which the Defendants
26 made, issued or caused to be disseminated, or relying upon the integrity of the
27 market, purchased or otherwise acquired shares of Herbalife securities at prices
28 artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other

1 members of the Class known the truth, they would not have purchased or otherwise
2 acquired said securities, or would not have purchased or otherwise acquired them at
3 the inflated prices that were paid. At the time of the purchases and/or acquisitions by
4 Plaintiff and the Class, the true value of Herbalife securities was substantially lower
5 than the prices paid by Plaintiff and the other members of the Class. The market price
6 of Herbalife securities declined sharply upon public disclosure of the facts alleged
7 herein to the injury of Plaintiff and Class members.

8 46. By reason of the conduct alleged herein, Defendants knowingly or
9 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and
10 Rule 10b-5 promulgated thereunder.

11 47. As a direct and proximate result of Defendants' wrongful conduct,
12 Plaintiff and the other members of the Class suffered damages in connection with
13 their respective purchases, acquisitions and sales of the Company's securities during
14 the Class Period, upon the disclosure that the Company had been disseminating
15 misrepresented financial statements to the investing public.

16 **COUNT II**

17 **Violations of Section 20(a) of The Exchange Act** 18 **Against The Individual Defendants**

19 48. Plaintiff repeats and realleges each and every allegation contained in the
20 foregoing paragraphs as if fully set forth herein.

21 49. During the Class Period, the Individual Defendants participated in the
22 operation and management of Herbalife, and conducted and participated, directly and
23 indirectly, in the conduct of Herbalife's business affairs. Because of their senior
24 positions, they knew the adverse non-public information about Herbalife's current
25 financial position and future business prospects.

26 50. As officers and/or directors of a publicly owned company, the Individual
27 Defendants had a duty to disseminate accurate and truthful information with respect
28

1 to Herbalife’s business practices, and to correct promptly any public statements
2 issued by Herbalife which had become materially false or misleading.

3 51. Because of their positions of control and authority as senior officers, the
4 Individual Defendants were able to, and did, control the contents of the various
5 reports, press releases and public filings which Herbalife disseminated in the
6 marketplace during the Class Period concerning the Company’s business, operational
7 and accounting policies. Throughout the Class Period, the Individual Defendants
8 exercised their power and authority to cause Herbalife to engage in the wrongful acts
9 complained of herein. The Individual Defendants therefore, were “controlling
10 persons” of Herbalife within the meaning of Section 20(a) of the Exchange Act. In
11 this capacity, they participated in the unlawful conduct alleged which artificially
12 inflated the market price of Herbalife securities.

13 52. Each of the Individual Defendants, therefore, acted as a controlling
14 person of Herbalife. By reason of their senior management positions and/or being
15 directors of Herbalife, each of the Individual Defendants had the power to direct the
16 actions of, and exercised the same to cause, Herbalife to engage in the unlawful acts
17 and conduct complained of herein. Each of the Individual Defendants exercised
18 control over the general operations of Herbalife and possessed the power to control
19 the specific activities which comprise the primary violations about which Plaintiff
20 and the other members of the Class complain.

21 53. By reason of the above conduct, the Individual Defendants are liable
22 pursuant to Section 20(a) of the Exchange Act for the violations committed by
23 Herbalife.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

26 A. Determining that the instant action may be maintained as a class action
27 under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the
28 Class representative;

1 B. Requiring Defendants to pay damages sustained by Plaintiff and the
2 Class by reason of the acts and transactions alleged herein;

3 C. Awarding Plaintiff and the other members of the Class prejudgment and
4 post-judgment interest, as well as her reasonable attorneys' fees, expert fees and other
5 costs; and

6 D. Awarding such other and further relief as this Court may deem just and
7 proper.

8 **DEMAND FOR TRIAL BY JURY**

9 Plaintiff hereby demands a trial by jury.

10
11 Respectfully submitted,

12 **THE ROSEN LAW FIRM, P.A.**

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