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15 *Attorneys for Plaintiff*

16  
 17 **UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

19 ABDUL AWAD, Individually and on  
 20 Behalf of All Others Similarly Situated,

21 Plaintiff,

22 v.

24 HERBALIFE LTD., MICHAEL O.  
 25 JOHNSON, DESMOND WALSH, JOHN  
 DESIMONE, and RICHARD GOUDIS,

26 Defendants.

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Abdul Awad (“Plaintiff”), individually and on behalf of all other  
2 persons similarly situated, by his undersigned attorneys, for his complaint against  
3 defendants, alleges the following based upon personal knowledge as to himself and  
4 his own acts, and information and belief as to all other matters, based upon, *inter alia*,  
5 the investigation conducted by and through his attorneys, which included, among  
6 other things, a review of the defendants’ public documents, conference calls and  
7 announcements made by defendants, United States Securities and Exchange  
8 Commission (“SEC”) filings, wire and press releases published by and regarding  
9 Herbalife Ltd. (“Herbalife” or the “Company”), analysts’ reports and advisories about  
10 the Company, and information readily obtainable on the Internet. Plaintiff believes  
11 that substantial evidentiary support will exist for the allegations set forth herein after a  
12 reasonable opportunity for discovery.  
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17 **NATURE OF THE ACTION**  
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19 1. This is a federal securities class action on behalf of a class consisting of  
20 all persons other than defendants who purchased or otherwise acquired Herbalife  
21 securities between May 4, 2010 and April 11, 2014, both dates inclusive (the “Class  
22 Period”), seeking to recover damages caused by defendants’ violations of the federal  
23 securities laws and to pursue remedies under § 10(b) of the Securities Exchange Act  
24 of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder against the  
25 Company and certain of its top officials.  
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1           2.     Herbalife is a network marketing company that sells weight management,  
2 nutritional supplement and personal care products. The Company sells its products  
3 globally through a network of independent distributors, which are typically  
4 individuals with little marketing expertise that were induced by the Company to  
5 purchase the Company's products in the hope that they would be able to resell the  
6 product to other consumers or distributors. Herbalife also sells literature and  
7 promotional materials to these distributors.  
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11           3.     Throughout the Class Period, Defendants made materially false and  
12 misleading statements regarding the Company's business, operational and compliance  
13 policies. Specifically, Defendants made false and/or misleading statements and/or  
14 failed to disclose that: (i) the Company's operations were based on a pyramid scheme  
15 whereby its distributors generate revenue by recruiting other distributors rather than  
16 selling Herbalife's diet and nutritional products to the general public; (ii) the  
17 Company engaged in deceptive trade practices where it unduly pressured its members  
18 to purchase more products to resell as one of its "distributors"; and (iii) as a result of  
19 the above, the Company's financial statements were materially false and misleading at  
20 all relevant times.  
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24           4.     On December 19, 2012, CNBC reported that Bill Ackman ("Ackman"),  
25 Founder and Chief Executive Officer of Pershing Square Capital Management, L.P.  
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1 (“Pershing”) considers Herbalife to be a pyramid scheme after spending a year  
2 researching the Company’s fundamentals.

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4 5. On this news, Herbalife stock declined \$5.16 per share, or over 12%, to  
5 close at \$37.34 per share on December 19, 2012.

6  
7 6. On December 20, 2012, Ackman conducted a presentation concerning  
8 Herbalife at the Sohn Investment Conference where he affirmed his conclusion that  
9 Herbalife is a pyramid scheme as its distributors make more money by recruiting  
10 other distributors than selling the Company’s products to the general public.  
11 Specifically, Ackman alleged that since the founding of the Company, approximately  
12 1.9 million distributors have failed to make any money from selling Herbalife  
13 products, costing them a net loss of \$3.8 billion.

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16 7. On this news, Herbalife stock declined an additional \$10.07 per share, or  
17 over 27%, over the next two trading sessions, to close at \$27.27 per share on  
18 December 21, 2012.

19  
20 8. On January 9, 2013, the New York Times reported that the Securities and  
21 Exchange Commission had opened an investigation into the Company.

22  
23 9. On January 15, 2014, a leading Chinese newspaper reported that Nu Skin  
24 Enterprises, Inc. (“Nu Skin”), a company that operates in the same industry and uses a  
25 similar business model as Herbalife, was an illegal pyramid scheme in China, and  
26 employs unlawful and immoral business practices in violation of PRC law.  
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1           10.    Then, on January 16, 2014, Nu Skin disclosed that its business practices  
2 were indeed under investigation by Chinese authorities, stating in relevant part:

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4                   We are aware that Chinese regulators have now initiated  
5 investigations to review issues raised by recent news reports. The  
6 government regularly monitors all businesses in this rapidly  
7 growing marketplace, and as is our practice, we will continue to  
8 communicate openly with regulators to address any questions they  
9 may have.

10           11.    On this news, Herbalife stock, over the two trading days of January 15,  
11 2014, and January 16, 2014, declined \$9.16 or over 11%, to close at \$71.63.

12           12.    On January 23, 2014, U.S. Senator Edward J. Markey of Massachusetts  
13 sent letters to federal regulators, including the SEC and the FTC urging them to  
14 investigate Herbalife. Mr. Markey also sent a letter to Herbalife's chief executive,  
15 Michael O. Johnson asking several questions about the company's business, including  
16 pointed requests that reflected the concerns raised by Ackman in December 2012.  
17 Some of the questions asked in the letter to Herbalife include: (1) "How much profit  
18 (net earnings after expenses) can the average distributor expect to make from retailing  
19 to non-distributors (i.e., people who are not directly involved in Herbalife  
20 themselves)?"; and (2) "What's the correct number of sales outside the network as a  
21 percentage of total sales" for each of the last five years and information on these sales  
22 measured by product, quantity and dollars.

23  
24           13.    Senator Markey urged both the FTC and SEC to examine whether  
25 Herbalife was a legitimate multilevel marketing Company, whose revenues are  
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1 ultimately generated by sales to the general public; or whether Herbalife was a  
2 pyramid scheme, whose revenues were dependent on continuous recruitment of other  
3 distributors, which were ultimately left sustaining substantial losses on their purchases  
4 of the Company's weight loss products. To highlight evidence that Herbalife may  
5 indeed operate as a pyramid scheme, Senator Markey pointed to instances where  
6 residents of Massachusetts suffered crushing financial setbacks as a result of the  
7 Company's marketing practices. According to the Senator, one family in Norton,  
8 MA lost \$130,000 from its investments in the Company's products. Another woman  
9 said she was pressured to recruit family members and spend more money to buy more  
10 Herbalife products so she could qualify as a "supervisor" in the Herbalife system.  
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15 14. On this news, Herbalife stock declined \$7.61 per share, or over 10%, to  
16 close at \$65.92 per share on January 23, 2014.  
17

18 15. On April 11, 2014, the Financial Times reported that the United States  
19 Department of Justice and Federal Bureau of Investigation had opened a criminal  
20 probe of Herbalife. On this news, shares of Herbalife spiraled downward from \$59.84  
21 to \$51.48, more than 13%.  
22

23 16. As a result of defendants' wrongful acts and omissions, and the  
24 precipitous decline in the market value of the Company's securities, Plaintiff and  
25 other Class members have suffered significant losses and damages.  
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**JURISDICTION AND VENUE**

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2 17. The claims asserted herein arise under and pursuant to Sections 10(b) and  
3 20(a) of the Exchange Act (15 U.S.C. § 78j(b) and 78t(a)) and Rule 10b-5  
4 promulgated thereunder (17 C.F.R. § 240.10b-5).  
5

6 18. This Court has jurisdiction over the subject matter of this action pursuant  
7 to § 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.  
8

9 19. Venue is proper in this District pursuant to §27 of the Exchange Act, 15  
10 U.S.C. §78aa and 28 U.S.C. §1391(b), as Herbalife’s principal place of business is  
11 located within this District.  
12

13 20. In connection with the acts, conduct and other wrongs alleged in this  
14 Complaint, defendants, directly or indirectly, used the means and instrumentalities of  
15 interstate commerce, including but not limited to, the United States mail, interstate  
16 telephone communications and the facilities of the national securities exchange.  
17  
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19 **PARTIES**

20 21. Plaintiff as set forth in the attached Certification, acquired Herbalife  
21 securities at artificially inflated prices during the Class Period and has been damaged  
22 upon the revelation of the alleged corrective disclosures.  
23

24 22. Defendant Herbalife is a Cayman Islands corporation with principal  
25 executive offices located in this District. Herbalife’s common stock trades on the  
26 New York Stock Exchange (“NYSE”) under the ticker symbol “HLF.”  
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1           23. Defendant Michael O. Johnson (“Johnson”) served at all relevant times  
2 as the Company’s the Chairman of the Board of Directors (“Board”) and Chief  
3 Executive Officer.  
4

5           24. Defendant Desmond Walsh (“Walsh”) served at all relevant times as the  
6 Company’s President.  
7

8           25. Defendant John DeSimone (“DeSimone”) served at all relevant times as  
9 the Company’s Chief Financial Officer.  
10

11           26. Defendant Richard Goudis (“Goudis”) served at all relevant times as the  
12 Company’s Chief Operating Officer.  
13

14           27. The defendants referenced above in ¶¶ 23 - 26 are sometimes referred to  
15 herein as the “Individual Defendants.”  
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## **SUBSTANTIVE ALLEGATIONS**

  
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### **Background**

  
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19           28. Herbalife is global network marketing company that sells weight  
20 management, nutritional supplement, energy, sports & fitness products and personal  
21 care products. The Company purports to offer science-based products in four principal  
22 categories: weight management, targeted nutrition, energy, sports & fitness and Outer  
23 Nutrition. Weight management, targeted nutrition, energy, sports & fitness and Outer  
24 Nutrition accounted for 62.5%, 22.8%, 4.9% and 4.3% of its net sales in fiscal year  
25 2011, respectively. The Company is one of the largest network marketing companies  
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1 in the world with net sales of approximately \$4.07 billion for the fiscal year ended  
2 December 31, 2012.

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4 **Materially False and Misleading**  
5 **Statements Issued During the Class Period**

6 29. On May 3, 2010, after the market closed, Herbalife issued a press release  
7 announcing its financial and operating results for the quarter ended March 31, 2010.  
8 For the quarter, the Company reported net income of \$51.9 million, or \$0.83 diluted  
9 earnings per share (“EPS”) and net sales of \$619 million, as compared to net income  
10 of \$41.5 million, or \$0.67 diluted EPS and net sales of \$522 million for the same  
11 period a year ago.  
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14 30. On May 3, 2010, the Company filed a quarterly report for the period  
15 ended March 31, 2010 on Form 10-Q with the SEC, which was signed by Defendant  
16 DeSimone, and reiterated the Company’s previously announced quarterly financial  
17 results and financial position. In addition, the Form 10-Q contained signed  
18 certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants  
19 Johnson and DeSimone, stating that the financial information contained in the Form  
20 10-Q was accurate and disclosed any material changes to the Company’s internal  
21 control over financial reporting.  
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25 31. On August 2, 2010, Herbalife issued a press release announcing its  
26 financial and operating results for the quarter ended June 30, 2010. For the quarter,  
27 the Company reported net income of \$81.9 million, or \$1.32 diluted EPS and net sales  
28

1 of \$688.8 million, as compared to net income of \$48.3 million, or \$0.77 diluted EPS,  
2 and net sales of \$571.8 million for the same period a year ago.

3  
4 32. On August 2, 2010, the Company filed a quarterly report for the period  
5 ended June 30, 2010 on Form 10-Q with the SEC, which was signed by Defendant  
6 DeSimone, and reiterated the Company's previously announced quarterly financial  
7 results and financial position. In addition, the Form 10-Q contained signed  
8 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
9 financial information contained in the Form 10-Q was accurate and disclosed any  
10 material changes to the Company's internal control over financial reporting.  
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14 33. On November 1, 2010, Herbalife issued a press release announcing its  
15 financial and operating results for the quarter ended September 30, 2010. For the  
16 quarter, the Company reported net income of \$75.7 million, or \$1.22 diluted EPS, and  
17 net sales of \$688.4 million, as compared to net income of \$57.9 million, or \$0.91  
18 diluted EPS, and net sales of \$600.2 million for the same period a year ago.  
19

20  
21 34. That same day, the Company filed a quarterly report for the period ended  
22 September 30, 2010 on Form 10-Q with the SEC, which was signed by Defendant  
23 DeSimone, and reiterated the Company's previously announced quarterly financial  
24 results and financial position. In addition, the Form 10-Q contained signed  
25 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
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1 financial information contained in the Form 10-Q was accurate and disclosed any  
2 material changes to the Company's internal control over financial reporting.

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4 35. On February 22, 2011, Herbalife issued a press release announcing its  
5 financial and operating results for the quarter and year ended December 31, 2010. For  
6 the quarter, the Company reported net income of \$81 million, or \$1.31 diluted EPS  
7 and net sales of \$738.4 million, as compared to net income of \$55.7 million or \$0.88  
8 diluted EPS and net sales of \$630.9 million for the same period a year ago. For the  
9 year, the Company reported net income of \$290.5 million, or \$4.67 diluted EPS and  
10 net sales of \$2.7 billion, as compared to net income of \$203 million, or \$3.22 diluted  
11 EPS, and net sales of \$2.3 billion for the same period a year ago.

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15 36. That same day, the Company filed an annual report for the period ended  
16 December 31, 2010 on Form 10-K with the SEC, which was signed by, among others,  
17 Defendants Johnson and DeSimone, and reiterated the Company's previously  
18 announced annual financial results and financial position. In addition, the Form 10-K  
19 contained signed certifications pursuant to SOX by Defendants Johnson and  
20 DeSimone, stating that the financial information contained in the Form 10-K was  
21 accurate and disclosed any material changes to the Company's internal control over  
22 financial reporting.

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26 37. The Company represented the following in relevant part concerning its  
27 Network Marketing Program:  
28

1 We are focused on building and maintaining our distributor network by  
2 offering financially rewarding and flexible career opportunities through  
3 sales of quality, innovative and efficacious products to health conscious  
4 consumers. We believe the income opportunity provided by our network  
5 marketing program appeals to a broad cross-section of people throughout  
6 the world, particularly those seeking to supplement family income, start a  
7 home business or pursue entrepreneurial, full or part-time, employment  
8 opportunities. Our distributors, who are independent contractors, can  
9 profit from selling our products and can also earn royalties and bonuses  
10 on sales made by the other distributors whom they recruit to join their  
11 sales organizations.

12 \*\*\*

13 To become a distributor in most markets, a person must be sponsored by  
14 an existing distributor and must purchase an International Business Pack,  
15 or IBP. The IBP is a distributor kit available in local languages. The  
16 product and literature contents in the kits vary slightly to meet individual  
17 market needs. An example is the large size U.S. IBP, which costs \$90.95  
18 and includes a canister of Formula 1 shake mix, two bottles of nutritional  
19 supplements, Herbal Concentrate (Tea), *Liftoff*® (an energy drink), and  
20 Hand Sanitizer, along with a handy tote, booklets describing us, our  
21 compensation plan and rules of conduct, various training and promotional  
22 materials, distributor applications and a product catalog. The smaller U.S.  
23 version costs \$54.95 and includes sample products, a handy tote, and  
24 essentially the same print and promotional materials as included in the  
25 larger kit version. To become a sales leader, or qualify for a higher level,  
26 including the Qualified Producer level introduced in October 2009,  
27 distributors must achieve specified volumes of product sales or earn  
28 certain amounts of royalty overrides during specified time periods and  
must re-qualify for the levels once each year. To attain sales leader status,  
a distributor generally must be responsible for sales of products  
representing at least 4,000 volume points in one month or 2,500 volume  
points in two consecutive months. An additional optional qualification,  
introduced globally in October 2009, allows for a distributor to achieve  
sales leader level by personally placing orders with Herbalife that  
accumulate to 5,000 Volume Points within 12 months.

1           38. On May 2, 2011, Herbalife issued a press release announcing its financial  
2 and operating results for the quarter ended March 31, 2011. For the quarter, the  
3 Company reported net income of \$87.6 million, or \$1.41 diluted EPS, and net sales of  
4 \$795 million, as compared to net income of \$51.9 million, or \$0.83 diluted EPS and  
5 net sales of \$619 million for the same period a year ago.  
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8           39. On May 2, 2011, the Company filed a quarterly report for the period  
9 ended March 31, 2011 on Form 10-Q with the SEC, which was signed by Defendant  
10 DeSimone, and reiterated the Company's previously announced quarterly financial  
11 results and financial position. In addition, the Form 10-Q contained signed  
12 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
13 financial information contained in the Form 10-Q was accurate and disclosed any  
14 material changes to the Company's internal control over financial reporting.  
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17           40. On August 1, 2011, Herbalife issued a press release announcing its  
18 financial and operating results for the quarter ended June 30, 2011. For the quarter,  
19 the Company reported net income of \$111.2 million, or \$0.88 diluted EPS, and net  
20 sales of \$879.7 million, as compared to net income of \$82.2 million, or \$0.65 diluted  
21 EPS, and net sales of \$688.8 million for the same period a year ago.  
22  
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24           41. That same day, the Company filed a quarterly report for the period ended  
25 June 30, 2011 on Form 10-Q with the SEC, which was signed by Defendant  
26 DeSimone, and reiterated the Company's previously announced quarterly financial  
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1 results and financial position. In addition, the Form 10-Q contained signed  
2 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
3 financial information contained in the Form 10-Q was accurate and disclosed any  
4 material changes to the Company's internal control over financial reporting.  
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6  
7 42. On October 31, 2011, Herbalife issued a press release announcing its  
8 financial and operating results for the quarter ended September 30, 2011. For the  
9 quarter, the Company reported net income of \$108 million, or \$0.87 diluted EPS, and  
10 net sales of \$895 million, as compared to net income of \$78.9 million, or \$0.63  
11 diluted EPS and net sales of \$688.4 million for the same period a year ago.  
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14 43. That same day, the Company filed a quarterly report for the period ended  
15 September 30, 2011 on Form 10-Q with the SEC, which was signed by Defendant  
16 DeSimone, and reiterated the Company's previously announced quarterly financial  
17 results and financial position. In addition, the Form 10-Q contained signed  
18 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
19 financial information contained in the Form 10-Q was accurate and disclosed any  
20 material changes to the Company's internal control over financial reporting.  
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23  
24 44. On February 21, 2012, Herbalife issued a press release announcing its  
25 financial and operating results for the quarter and year ended December 31, 2011. For  
26 the quarter, the Company reported net income of \$105.4 million, or \$0.86 diluted EPS  
27 and net sales of \$884.6 million, as compared to net income of \$86.3 million or \$0.69  
28

1 diluted EPS and net sales of \$738.4 million for the same period a year ago. For the  
2 year, the Company reported net income of \$412.6 million, or \$3.30 diluted EPS and  
3 net sales of \$3.5 billion, as compared to net income of \$299.2 million, or \$2.37 diluted  
4 EPS and net sales of \$2.7 billion for the same period a year ago.  
5

6  
7 45. On February 21, 2012, the Company filed an annual report for the period  
8 ended December 31, 2011 on Form 10-K with the SEC, which was signed by, among  
9 others, Defendants Johnson and DeSimone, and reiterated the Company's previously  
10 announced annual financial results and financial position. In addition, the Form 10-K  
11 contained signed certifications pursuant to SOX by Defendants Johnson and  
12 DeSimone, stating that the financial information contained in the Form 10-K was  
13 accurate and disclosed any material changes to the Company's internal control over  
14 financial reporting.  
15  
16

17  
18 46. The Company represented the following in relevant part concerning its  
19 Network Marketing Program:

20 We are focused on building and maintaining our distributor network by  
21 offering financially rewarding and flexible career opportunities through  
22 sales of quality, innovative and efficacious products to health conscious  
23 consumers. We believe the income opportunity provided by our network  
24 marketing program appeals to a broad cross-section of people throughout  
25 the world, particularly those seeking to supplement family income, start a  
26 home business or pursue entrepreneurial, full or part-time employment  
27 opportunities. Our distributors, who are independent contractors, can  
28 profit from selling our products and can also earn royalties and bonuses  
on sales made by the other distributors whom they recruit to join their  
sales organizations.

1 \*\*\*

2 Our products are distributed through a global network marketing  
3 organization comprised of approximately 2.7 million independent  
4 distributors in 79 countries as of December 31, 2011, including China  
5 where, due to regulations, our sales are conducted through Company  
6 operated retail stores, sales representatives, sales officers and independent  
7 service providers. In China, in the areas where we have a direct selling  
8 license, our representatives, officers and independent service providers  
9 can sell Herbalife product outside the retail establishments. In addition to  
10 helping our distributors achieve their goals of health and wellness through  
11 use of our products, we offer our distributors, who are independent  
12 contractors, attractive income opportunities. Distributors may earn income  
13 on their own sales and can also earn royalties and bonuses on sales made  
14 by the distributors in their sales organizations. We believe that our  
15 products are particularly well-suited to the network marketing distribution  
16 channel because sales of weight management and health and wellness  
17 products are strengthened by ongoing personal contact and coaching of  
18 retail consumers by distributors. We believe our continued commitment to  
19 developing innovative, science-based products will enhance our ability to  
20 attract new distributors as well as increase the productivity and retention  
21 of existing distributors. Furthermore, our international sponsorship  
22 program, which permits distributors to sponsor distributors in other  
23 countries where we are licensed to do business and where we have  
24 obtained required product approvals, provides a significant advantage to  
25 our distributors in developing and growing their businesses.

26 47. On April 30, 2012, Herbalife issued a press release announcing its  
27 financial and operating results for the quarter ended March 31, 2012. For the quarter,  
28 the Company reported net income of \$108.2 million, or \$0.88 diluted EPS, and net  
sales of \$964.2 million, as compared to net income of \$88 million, or \$0.70 diluted  
EPS and net sales of \$795 million for the same period a year ago.

48. On April 30, 2012, the Company filed a quarterly report for the period  
ended March 31, 2012 on Form 10-Q with the SEC, which was signed by Defendant



1 DeSimone, and reiterated the Company's previously announced quarterly financial  
2 results and financial position. In addition, the Form 10-Q contained signed  
3 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
4 financial information contained in the Form 10-Q was accurate and disclosed any  
5 material changes to the Company's internal control over financial reporting.  
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8 49. On May 1, 2012, the Company held an analyst conference call to discuss  
9 its first quarter 2012 financial results. During the Q&A session, David Einhorn,  
10 Chairman of Greenlight Capital Re. Ltd. asked a series of questions:  
11

12 Einhorn: I got a couple questions for you. First is, how much of the sales  
13 that you've made, in terms of final sales, are sold outside the network, and  
14 how much are consumed within the distributor base?

15 Walsh: So David, we have a 70% custom rule, which is – which  
16 effectively says that 70% of all products is sold to consumers or actually  
17 consumed by distributors for their own personal use. So obviously, what  
18 we've seen with nutrition clubs is that we now have visibility for the first  
19 time to our customers. You know that we reported on this call for the first  
20 time the number of commercial clubs around the world, which is in excess  
21 of 30,000, so that has given us visibility to the tremendous amount of  
22 products that are being sold directly to the consumers, and we see that as a  
23 growing trend in our business.

24 Einhorn: So what is the percentage that actually sold to consumers that are  
25 not distributors?

26 Walsh: So we don't have an exact percentage, David, because we don't  
27 have visibility to that level of detail.

28 Einhorn: Do you have an approximation?

Walsh: So well, again, going back to our 70% rule, we believe that it's  
that 70% or potentially in excess of that.

1 Einhorn: Okay. What is the incentive for a supervisor to sign somebody  
2 up to become a distributor as opposed to – if they’re just going to  
3 consume for themselves – as opposed to just selling them the product for  
4 the markup. How does the distributor – how does a supervisor come out  
better?

5 Walsh: Sure, And so, I think there’s two reasons for that. So we know  
6 from our business today that many of our future supervisors and business  
7 builders come in as customers and then they become distributors. So the  
8 benefit from a supervisor is the ability for greater retention of that  
customer/distributor because they are now earning a 25% discount.

9 The second issue is that it preserves lineage. So obviously, if I sign you  
10 up, David, as a distributor, my hope and my expectation is that based on  
11 the tremendous product result that you’re going to achieve, that you’ll  
12 have friends and families go to you and say, gosh, David, you look great,  
13 what are you on; you’re going to respond and say, “I’m on Herbalife.”  
14 And that will encourage you to say, wow, maybe this is a business  
15 opportunity I could be interested in. So the benefit for me as your  
16 supervisor is, one the discount that that you would get and therefore my  
17 greater likelihood of retaining you as a permanent customer; and  
18 secondly, the hope that at some stage, you will decide to do the business  
19 and, therefore, that you are already in my lineage and as part of my group.

20 Einhorn: Right. But just so I understand this clearly, if I sell to a  
21 customer – I bought at – I’m a supervisor; I buy at a 50% discount; I sell  
22 to a customer; I make 50 points, if he pays the full price. If he signs up as  
23 a distributor and buys it himself, I get - he gets a 25% discount, and I get  
24 seven points as a royalty. Is that how it works?

25 Walsh: No, you would get – you would get the other 25%.

26 Einhorn: I’d get 25% plus the 7.

27 Walsh: So unless you’re in royalties, you would simply earn in the  
28 difference. So you earn a 50% discount, you’re selling at a 25% discount,  
and so the difference between the two.

Einhorn: Right

1 Walsh: Is your profit is on that sale.

2 Einhorn: Right, So if he signs up as a distributor and buys it for himself  
3 from Herbalife, I still get the 25%?

4 Walsh: That is correct.

5  
6 Einhorn: Okay. Good. One last question. When you had your previous  
7 10-K, you disclosed three groups of distributors at the low-end. You  
8 called 29% self consumers, 57% small retailers, and 14% potential sales  
9 leaders. And then that disclosure did not repeat in the subsequent 10-K.  
10 So I've got two questions. First of all, how do you track that and how do  
11 you characterize and know which ones are which? And second, why did  
12 you stop disclosing that in the last 10-K? Is that something that you've  
13 stopped tracking or just stopped disclosing?

14 DeSimone: David, hi. This is John. The criteria for grouping distributors  
15 into different classes was based off of their volume purchases, and we're  
16 making assumptions that people below a certain volume weren't doing the  
17 business, they were buying self-consumption – and I don't remember the  
18 exact amounts, but I can get it to you after the call – is how we delineated  
19 between the three classes.

20 And one- the reason we took it out of the 10-K is a change in CFO from  
21 Rich to me. I didn't view it as valuable information to the business or to  
22 the investors. However, we can easily provide the exact same breakout  
23 going forward if you'd like....

24 50. As a result of Einhorn's stated skepticism regarding the Company's  
25 business model, Herbalife declined \$14.02 per share or nearly 20%, to close at \$56.30  
26 per share on May 1, 2012. The stock declined an additional \$10.10 per share or  
27 nearly 18%, to close at \$46.20 per share on May 3, 2012.

28 51. On July 30, 2012, Herbalife issued a press release announcing its  
financial and operating results for the quarter ended June 30, 2012. For the quarter,

1 the Company reported net income of \$133.4 million, or \$1.10 diluted EPS, and net  
2 sales of \$1 billion, as compared to net income of \$111.2 million, or \$0.88 diluted EPS  
3 and net sales of \$879.7 million for the same period a year ago.  
4

5 52. On July 30, 2012, the Company filed a quarterly report for the period  
6 ended June 30, 2012 on Form 10-Q with the SEC, which was signed by Defendant  
7 DeSimone, and reiterated the Company's previously announced quarterly financial  
8 results and financial position. In addition, the Form 10-Q contained signed  
9 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
10 financial information contained in the Form 10-Q was accurate and disclosed any  
11 material changes to the Company's internal control over financial reporting.  
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15 53. On October 29, 2012, Herbalife issued a press release announcing its  
16 financial and operating results for the quarter ended September 30, 2012. For the  
17 quarter, the Company reported net income of \$117.8 million, or \$1.04 diluted EPS,  
18 and net sales of \$1 billion, as compared to net income of \$108 million, or \$0.87  
19 diluted EPS and net sales of \$895 million for the same period a year ago.  
20  
21

22 54. That same day, the Company filed a quarterly report for the period ended  
23 September 30, 2012 on Form 10-Q with the SEC, which was signed by Defendant  
24 DeSimone, and reiterated the Company's previously announced quarterly financial  
25 results and financial position. In addition, the Form 10-Q contained signed  
26 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
27  
28

1 financial information contained in the Form 10-Q was accurate and disclosed any  
2 material changes to the Company's internal control over financial reporting.  
3

4 **THE TRUTH BEGINS TO EMERGE**

5 55. On December 19, 2012, CNBC reported that Ackman considers  
6 Herbalife to be a pyramid scheme after spending a year researching the Company's  
7 fundamentals.  
8

9 56. On this news, Herbalife stock declined \$5.16 per share, or over 12%, to  
10 close at \$37.34 per share on December 19, 2012.  
11

12 57. On December 20, 2012, Ackman conducted a presentation concerning  
13 Herbalife at the Sohn Investment Conference, alleging that the Company has been  
14 misrepresenting sales figures, misleading distributors about potential earnings and  
15 selling a commodity product at inflated prices. Ackman said that since the founding  
16 of the Company, approximately 1.9 million distributors have failed to make any  
17 money from selling Herbalife products, costing them about \$2,000 each in the process  
18 for supplies, training and sales leads, for a total net loss of \$3.8 billion. Ackman  
19 concluded that Herbalife is a pyramid scheme as its distributors make more money by  
20 recruiting other distributors than selling the Company's products to the general public.  
21 Moreover, the top 1% of Herbalife distributors earn a greater share of total  
22 commissions compared to other multi-level marketing companies.  
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1           58. On this news, Herbalife stock declined \$10.07 per share, or over 27%,  
2 over the next two trading sessions, to close at \$27.27 per share on December 21, 2012.

3  
4           59. On January 18, 2013, Herbalife issued a press release announcing its  
5 financial and operating results for the quarter and year ended December 31, 2012. For  
6 the quarter, the Company reported net income of \$117.8 million, or \$1.05 diluted EPS  
7 and net sales of \$1.1 billion, as compared to net income of \$105.4 million or \$0.86  
8 diluted EPS and net sales of \$884.6 million for the same period a year ago. For the  
9 year, the Company reported net income of \$477.2 million, or \$4.05 diluted EPS and  
10 net sales of \$4.07 billion, as compared to net income of \$412.6 million, or \$3.30  
11 diluted EPS and net sales of \$3.45 billion for the same period a year ago.  
12  
13  
14

15           60. On February 19, 2013, the Company filed an annual report for the period  
16 ended December 31, 2012 on Form 10-K with the SEC, which was signed by, among  
17 others, Defendants Johnson and DeSimone, and reiterated the Company's previously  
18 announced annual financial results and financial position. In addition, the Form 10-K  
19 contained signed certifications pursuant to SOX by Defendants Johnson and  
20 DeSimone, stating that the financial information contained in the Form 10-K was  
21 accurate and disclosed any material changes to the Company's internal control over  
22 financial reporting.  
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25

26           61. The Company represented the following in relevant part concerning its  
27 Network Marketing Program:  
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Our products are distributed through a global network marketing organization comprised of approximately 3.2 million independent distributors, many of whom are simply discount customers, operating in 88 countries as of December 31, 2012. In China, due to local regulations, our sales are conducted through Company operated retail stores, sales representatives, sales officers and independent service providers; in the areas where we have a direct selling license, our representatives, officers and independent service providers can sell Herbalife product outside of the retail establishments.

In addition to helping our distributors and their customers achieve their goals of health and wellness through consumption of our products, we offer our distributors, who are independent contractors, a potential income opportunity. Distributors may earn income on their own retail sales and can also earn commissions, such as royalties and bonuses, based on purchases of our products made by their sales organization for consumption or resale.

\*\*\*

To become a distributor in most markets, a person must be sponsored by an existing distributor and must purchase an International Business Pack, or IBP. The IBP is a distributor kit available in local languages which typically includes product samples, a handy tote, booklets describing us, our compensation plan and rules of distributor conduct, various training and promotional materials, distributor applications and a product catalog. The cost of an IBP varies by market and provides a low cost entry for incoming distributors. IBPs have no Volume Point value and therefore do not generate any distributor compensation and cannot be used for distributor qualifications or recognition purposes under the Company's marketing plan. Volume Points are point values assigned to each of our products for use by the Company to determine a distributor's sales achievement level. We assign a Volume Point value to a product when it is first introduced into a market and the value is unaffected by subsequent exchange rate and price changes. The specific number of Volume Points assigned to a product, generally consistent across all markets, is based on a Volume Point to suggested retail price ratio for similar products in the market.

\*\*\*



1 To become a sales leader, or qualify for a higher level, distributors must  
2 achieve specified volume thresholds of product sales or earn certain  
3 amounts of royalty overrides during specified time periods and must re-  
4 qualify once each year. To attain sales leader status, a distributor generally  
5 must be responsible for sales of products representing at least 4,000  
6 volume points in one month or 2,500 volume points in two consecutive  
7 months. An additional optional qualification, introduced globally in  
8 October 2009, allows for a distributor to achieve sales leader level by  
9 personally placing orders with Herbalife that accumulate to 5,000 volume  
10 points within 12 months.

11 62. On April 29, 2013, Herbalife issued a press release announcing its  
12 financial and operating results for the quarter ended March 31, 2013. For the quarter,  
13 the Company reported net income of \$118.8 million, or \$1.10 diluted EPS and net  
14 sales of \$1.1 billion, as compared to net income of \$108.2 million, or \$0.88 diluted  
15 EPS and net sales of \$964.2 million for the same period a year ago.

16 63. That same day, the Company filed a quarterly report for the period ended  
17 March 31, 2013 on Form 10-Q with the SEC, which was signed by Defendant  
18 DeSimone, and reiterated the Company's previously announced quarterly financial  
19 results and financial position. In addition, the Form 10-Q contained signed  
20 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
21 financial information contained in the Form 10-Q was accurate and disclosed any  
22 material changes to the Company's internal control over financial reporting.  
23

24 64. On July 29, 2013, Herbalife issued a press release announcing its  
25 financial and operating results for the quarter ended June 30, 2013. For the quarter,  
26 the Company reported net income of \$143.2 million, or \$1.34 diluted EPS, and net  
27 sales of \$1.1 billion, as compared to net income of \$108.2 million, or \$0.88 diluted  
28 EPS and net sales of \$964.2 million for the same period a year ago.



1 sales of \$1.2 billion, as compared to net income of \$133.4 million, or \$1.10 diluted  
2 EPS and net sales of \$1 billion for the same period a year ago.

3  
4 65. That same day, the Company filed a quarterly report for the period ended  
5 June 30, 2013 on Form 10-Q with the SEC, which was signed by Defendant  
6 DeSimone, and reiterated the Company's previously announced quarterly financial  
7 results and financial position. In addition, the Form 10-Q contained signed  
8 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
9 financial information contained in the Form 10-Q was accurate and disclosed any  
10 material changes to the Company's internal control over financial reporting.  
11  
12

13  
14 66. On October 28, 2013, Herbalife issued a press release announcing its  
15 financial and operating results for the quarter ended September 30, 2013. For the  
16 quarter, the Company reported net income of \$142 million, or \$1.32 diluted EPS, and  
17 net sales of \$1.2 billion, as compared to net income of \$117.8 million, or \$1.04 diluted  
18 EPS and net sales of \$1 billion for the same period a year ago.  
19

20  
21 67. That same day, the Company filed a quarterly report for the period ended  
22 September 30, 2013 on Form 10-Q with the SEC, which was signed by Defendant  
23 DeSimone, and reiterated the Company's previously announced quarterly financial  
24 results and financial position. In addition, the Form 10-Q contained signed  
25 certifications pursuant to SOX by Defendants Johnson and DeSimone, stating that the  
26  
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1 financial information contained in the Form 10-Q was accurate, and disclosed any  
2 material changes to the Company's internal control over financial reporting.

3  
4 68. On January 15, 2014, a leading Chinese newspaper reported that Nu Skin  
5 Enterprises, Inc. ("Nu Skin"), a company that operates in the same industry and uses a  
6 similar business model as Herbalife, was an illegal pyramid scheme in China, and  
7 employs unlawful and immoral business practices in violation of PRC law.

8  
9 69. Thereafter, on January 16, 2014, Nu Skin disclosed that its business  
10 practices were indeed under investigation by Chinese authorities, stating in relevant  
11 part:  
12

13 We are aware that Chinese regulators have now initiated  
14 investigations to review issues raised by recent news reports. The  
15 government regularly monitors all businesses in this rapidly  
16 growing marketplace, and as is our practice, we will continue to  
17 communicate openly with regulators to address any questions they  
18 may have.

19 70. On this news, Herbalife stock, over the two trading days of January 15,  
20 2014, and January 16, 2014, declined \$9.16 or over 11%, to close at \$71.63.

21 71. On January 23, 2014, U.S. Senator Edward J. Markey of Massachusetts  
22 sent letters to federal regulators, including the SEC and the FTC urging them to  
23 investigate Herbalife. Mr. Markey also sent a letter to Herbalife's chief executive,  
24 Michael O. Johnson asking several questions about the company's business, including  
25 pointed requests that reflected the concerns raised by Ackman in December 2012.  
26 Some of the questions asked in the letter to Herbalife included: (1) "How much profit  
27  
28

1 (net earnings after expenses) can the average distributor expect to make from retailing  
2 to non-distributors (*i.e.*, people who are not directly involved in Herbalife  
3 themselves)?”; and (2) “What’s the correct number of sales outside the network as a  
4 percentage of total sales” for each of the last five years and information on these sales  
5 measured by product, quantity and dollars. Moreover, Senator Markey pressed the  
6 FTC and SEC to investigate whether Herbalife operated a pyramid scheme, providing  
7 specific examples of deceptive and harmful trade practices occurring in  
8 Massachusetts.

9  
10  
11  
12 72. On this news, Herbalife stock declined \$7.61 per share, or over 10%, to  
13 close at \$65.92 per share on January 23, 2014.

14  
15 73. On April 11, 2014, the Financial Times reported that the United States  
16 Department of Justice and Federal Bureau of Investigation had opened a criminal  
17 probe of Herbalife. On this news, shares of Herbalife spiraled downward from \$59.84  
18 to \$51.48, more than 13%.

19  
20 74. The statements referenced in ¶¶ 29-54 and 59-67 above, were materially  
21 false and/or misleading because they misrepresented and failed to disclose the  
22 following adverse facts, which were known to defendants or recklessly disregarded by  
23 them, including that: (i) the Company operated a pyramid scheme whereby its  
24 distributors primarily generated revenue by recruiting other distributors rather than  
25 selling Herbalife’s diet and nutritional products to the general public; (ii) the  
26  
27  
28

1 Company engaged in deceptive trade practices as it unduly pressured its customers to  
2 purchase more products to resell as one of its “distributors”; and (iii) as a result of the  
3 above, the Company’s financial statements were materially false and misleading at all  
4 relevant times.  
5

6 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**  
7

8 75. Plaintiff brings this action as a class action pursuant to Federal Rule of  
9 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who  
10 purchased or otherwise acquired Herbalife securities during the Class Period (the  
11 “Class”); and were damaged upon the revelation of the alleged corrective disclosures.  
12 Excluded from the Class are defendants herein, the officers and directors of the  
13 Company, at all relevant times, members of their immediate families and their legal  
14 representatives, heirs, successors or assigns and any entity in which defendants have  
15 or had a controlling interest.  
16  
17  
18

19 76. The members of the Class are so numerous that joinder of all members is  
20 impracticable. Throughout the Class Period, Herbalife securities were actively traded  
21 on the NYSE. While the exact number of Class members is unknown to Plaintiff at  
22 this time and can be ascertained only through appropriate discovery, Plaintiff believes  
23 that there are hundreds or thousands of members in the proposed Class. Record  
24 owners and other members of the Class may be identified from records maintained by  
25 Herbalife or its transfer agent and may be notified of the pendency of this action by  
26  
27  
28

1 mail, using the form of notice similar to that customarily used in securities class  
2 actions.

3  
4 77. Plaintiff's claims are typical of the claims of the members of the Class as  
5 all members of the Class are similarly affected by defendants' wrongful conduct in  
6 violation of federal law that is complained of herein.

7  
8 78. Plaintiff will fairly and adequately protect the interests of the members of  
9 the Class and has retained counsel competent and experienced in class and securities  
10 litigation. Plaintiff has no interests antagonistic to or in conflict with those of the  
11 Class.  
12

13  
14 79. Common questions of law and fact exist as to all members of the Class  
15 and predominate over any questions solely affecting individual members of the Class.  
16 Among the questions of law and fact common to the Class are:

- 17
- 18 • whether the federal securities laws were violated by defendants' acts  
19 as alleged herein;
  - 20 • whether statements made by defendants to the investing public during  
21 the Class Period misrepresented material facts about the business,  
22 operations and management of Herbalife;
  - 23 • whether the Individual Defendants caused Herbalife to issue false and  
24 misleading financial statements during the Class Period;
  - 25
  - 26
  - 27
  - 28

- 1 • whether defendants acted knowingly or recklessly in issuing false and
- 2 misleading financial statements;
- 3
- 4 • whether the prices of Herbalife securities during the Class Period were
- 5 artificially inflated because of the defendants' conduct complained of
- 6 herein; and
- 7
- 8 • whether the members of the Class have sustained damages and, if so,
- 9 what is the proper measure of damages.
- 10

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

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

- 22 • defendants made public misrepresentations or failed to disclose
- 23 material facts during the Class Period;
- 24
- 25 • the omissions and misrepresentations were material;
- 26
- 27 • Herbalife securities are traded in an efficient market;
- 28

- 1 • the Company's shares were liquid and traded with moderate to heavy
- 2 volume during the Class Period;
- 3
- 4 • the Company traded on the NYSE and was covered by multiple
- 5 analysts;
- 6
- 7 • the misrepresentations and omissions alleged would tend to induce a
- 8 reasonable investor to misjudge the value of the Company's
- 9 securities; and
- 10
- 11 • Plaintiff and members of the Class purchased, acquired and/or sold
- 12 Herbalife securities between the time the defendants failed to disclose
- 13 or misrepresented material facts and the time the true facts were
- 14 disclosed, without knowledge of the omitted or misrepresented facts.
- 15

16 82. Based upon the foregoing, Plaintiff and the members of the Class are  
17 entitled to a presumption of reliance upon the integrity of the market.  
18

19 **COUNT I**

20 **(Against All Defendants For Violations of**  
21 **Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

22 83. Plaintiff repeats and realleges each and every allegation contained above  
23 as if fully set forth herein.  
24

25 84. This Count is asserted against defendants and is based upon Section  
26 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
27 thereunder by the SEC.  
28

1           85. During the Class Period, defendants engaged in a plan, scheme,  
2 conspiracy and course of conduct, pursuant to which they knowingly or recklessly  
3 engaged in acts, transactions, practices and courses of business which operated as a  
4 fraud and deceit upon Plaintiff and the other members of the Class; made various  
5 untrue statements of material facts and omitted to state material facts necessary in  
6 order to make the statements made, in light of the circumstances under which they  
7 were made, not misleading; and employed devices, schemes and artifices to defraud in  
8 connection with the purchase and sale of securities. Such scheme was intended to,  
9 and, throughout the Class Period, did: (i) deceive the investing public, including  
10 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and  
11 maintain the market price of Herbalife securities; and (iii) cause Plaintiff and other  
12 members of the Class to purchase or otherwise acquire Herbalife securities and  
13 options at artificially inflated prices. In furtherance of this unlawful scheme, plan and  
14 course of conduct, defendants, and each of them, took the actions set forth herein.  
15  
16  
17  
18  
19

20           86. Pursuant to the above plan, scheme, conspiracy and course of conduct,  
21 each of the defendants participated directly or indirectly in the preparation and/or  
22 issuance of the quarterly and annual reports, SEC filings, press releases and other  
23 statements and documents described above, including statements made to securities  
24 analysts and the media that were designed to influence the market for Herbalife  
25 securities. Such reports, filings, releases and statements were materially false and  
26  
27  
28



1 misleading in that they failed to disclose material adverse information and  
2 misrepresented the truth about Herbalife's finances and business prospects.

3  
4 87. By virtue of their positions at Herbalife, defendants had actual  
5 knowledge of the materially false and misleading statements and material omissions  
6 alleged herein and intended thereby to deceive Plaintiff and the other members of the  
7 Class, or, in the alternative, defendants acted with reckless disregard for the truth in  
8 that they failed or refused to ascertain and disclose such facts as would reveal the  
9 materially false and misleading nature of the statements made, although such facts  
10 were readily available to defendants. Said acts and omissions of defendants were  
11 committed willfully or with reckless disregard for the truth. In addition, each  
12 defendant knew or recklessly disregarded that material facts were being  
13 misrepresented or omitted as described above.  
14  
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16

17  
18 88. Defendants were personally motivated to make false statements and omit  
19 material information necessary to make the statements not misleading in order to  
20 personally benefit from the sale of Herbalife securities from their personal portfolios.  
21

22 89. Information showing that defendants acted knowingly or with reckless  
23 disregard for the truth is peculiarly within defendants' knowledge and control. As the  
24 senior managers and/or directors of Herbalife, the Individual Defendants had  
25 knowledge of the details of Herbalife's internal affairs.  
26  
27  
28

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

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

1 Class known the truth, they would not have purchased or otherwise acquired said  
2 securities, or would not have purchased or otherwise acquired them at the inflated  
3 prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and  
4 the Class, the true value of Herbalife securities was substantially lower than the prices  
5 paid by Plaintiff and the other members of the Class. The market price of Herbalife  
6 securities declined sharply upon public disclosure of the facts alleged herein to the  
7 injury of Plaintiff and Class members.  
8  
9

10  
11 92. By reason of the conduct alleged herein, defendants knowingly or  
12 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and  
13 Rule 10b-5 promulgated thereunder.  
14

15 93. As a direct and proximate result of defendants' wrongful conduct,  
16 Plaintiff and the other members of the Class suffered damages in connection with  
17 their respective purchases, acquisitions and sales of the Company's securities during  
18 the Class Period, upon the disclosure that the Company had been disseminating  
19 misrepresented financial statements to the investing public.  
20  
21

22 **COUNT II**

23 **(Violations of Section 20(a) of the**  
24 **Exchange Act Against The Individual Defendants)**

25  
26 94. Plaintiff repeats and realleges each and every allegation contained in the  
27 foregoing paragraphs as if fully set forth herein.  
28

1           95. During the Class Period, the Individual Defendants participated in the  
2 operation and management of Herbalife, and conducted and participated, directly and  
3 indirectly, in the conduct of Herbalife’s business affairs. Because of their senior  
4 positions, they knew the adverse non-public information about Herbalife’s  
5 misstatement of income and expenses and false financial statements.  
6  
7

8           96. As officers and/or directors of a publicly owned company, the Individual  
9 Defendants had a duty to disseminate accurate and truthful information with respect to  
10 Herbalife’s financial condition and results of operations, and to correct promptly any  
11 public statements issued by Herbalife which had become materially false or  
12 misleading.  
13  
14

15           97. Because of their positions of control and authority as senior officers, the  
16 Individual Defendants were able to, and did, control the contents of the various  
17 reports, press releases and public filings which Herbalife disseminated in the  
18 marketplace during the Class Period concerning Herbalife’s results of operations.  
19 Throughout the Class Period, the Individual Defendants exercised their power and  
20 authority to cause Herbalife to engage in the wrongful acts complained of herein. The  
21 Individual Defendants therefore, were “controlling persons” of Herbalife within the  
22 meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in  
23 the unlawful conduct alleged which artificially inflated the market price of Herbalife  
24 securities.  
25  
26  
27  
28



1 other costs; and

2 D. Awarding such other and further relief as this Court may deem just and  
3  
4 proper.

5 **DEMAND FOR TRIAL BY JURY**

6 Plaintiff hereby demands a trial by jury.

7  
8 Dated: April 14, 2014

**GLANCY BINKOW & GOLDBERG LLP**

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**CERTIFICATION PURSUANT  
TO FEDERAL SECURITIES LAWS**

1. I, ABDUL AAL AWAD, make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 (“Securities Act”) and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 (“Exchange Act”) as amended by the Private Securities Litigation Reform Act of 1995.

2. I have reviewed a Complaint against Herbalife Ltd. (“Herbalife” or the “Company”), and authorize the filing of a comparable complaint on my behalf.

3. I did not purchase or acquire Herbalife securities at the direction of plaintiffs counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.

4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Herbalife securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.

5. To the best of my current knowledge, the attached sheet lists all of my transactions in Herbalife securities during the Class Period as specified in the Complaint.

6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.

7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.

8. I declare under penalty of perjury that the foregoing is true and correct.

*Awad* APRIL 12, 2014  
Executed (Date)

*Awad*  
(Signature)

ABDUL AAL AWAD  
(Type or Print Name)



HERBALIFE INTERNATIONAL, INC.

Awad, Abdul

**LIST OF PURCHASES AND SALES**

<b>DATE</b>	<b>PURCHASE OR SALE</b>	<b>NUMBER OF SHS/UTS</b>	<b>PRICE PER SH/UT</b>
12/06/2013	PUR	100	\$74.3300
12/30/2013	PUR	150	\$77.3000
01/24/2014	PUR	100	\$63.2600
01/28/2014	SLD	100	\$62.0500
02/19/2014	SLD	100	\$66.6201
03/03/2014	SLD	50	\$65.5600