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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANA BOSTICK, a California Resident,
ANITA VASKO, a Pennsylvania
resident, JUDI TROTTER, a Washington
resident, BEVERLY MOLNAR, a
Pennsylvania Resident, CHESTER
COTE, a Vermont resident, on behalf of
themselves and all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

HERBALIFE INTERNATIONAL OF
AMERICA, INC., a Nevada Corporation,
HERBALIFE INTERNATIONAL, INC.,
a Nevada Corporation, HERBALIFE
LTD., a Cayman Islands Corporation,

Defendants.

Case No. CV 13-02488 BRO (RZx)

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING CLASS ACTION
SETTLEMENT,
CONDITIONALLY CERTIFYING
THE SETTLEMENT CLASS,
PROVIDING FOR NOTICE AND
SCHEDULING ORDER**

Hon. Beverly Reid O’Connell

Complaint filed: April 8, 2013

1 WHEREAS, Plaintiffs Dana Bostick, Anita Vasko, Judi Trotter, Beverly
2 Molnar and Chester Cote, et al., (“Plaintiffs” or “Class Representatives”) in this
3 action entitled *Dana Bostick, et al. v. Herbalife International of America, Inc., et*
4 *al.*, Case No. 13-cv-02488 BRO (RZx) (the “Action”) and Herbalife International
5 of America, Inc., Herbalife International, Inc., Herbalife Ltd. (“Defendants” or
6 “Herbalife”) have entered into a Stipulation of Settlement, filed October 31, 2014
7 (the “Stipulation”), after lengthy arms-length settlement discussions;

8 AND, WHEREAS, the Court has received and considered the Stipulation,
9 including the accompanying exhibits;

10 AND, WHEREAS, the Parties have made an application, pursuant to Federal
11 Rules of Civil Procedure, Rule 23(e), for an order preliminarily approving the
12 settlement of this Action, and for its dismissal with prejudice upon the terms and
13 conditions set forth in the Stipulation;

14 AND, WHEREAS, the Court has reviewed the Parties’ application for such
15 order, and has found good cause for the same.

16 NOW, THEREFORE, IT IS HEREBY ORDERED:

17 **I. THE SETTLEMENT CLASSES ARE CERTIFIED**

18 1. The Court has subject matter and personal jurisdiction over the Class
19 Plaintiffs, all members of the settlement classes provisionally certified below, and
20 the Defendants.

21 2. Pursuant to the class action criteria of Federal Rules of Civil Procedure
22 23(a) and 23(b)(2), the Court provisionally certifies, for settlement purposes only,
23 a Rule 23(b)(2) Settlement Class, from which exclusions shall not be permitted,
24 consisting of all persons who are or were Herbalife distributors or members in the
25 United States at any time during the period from April 2009 until the Settlement
26 Preliminary Approval Date, except that this Class does not include the named
27 Defendants, their employees, family members, and any distributor or member who
28

1 is or has been a member of Herbalife's President's Team, Founder's Circle,
2 Chairman's Club, Millionaire Team, or GET Team.

3 3. Pursuant to the class action criteria of Federal Rules of Civil Procedure
4 23(a) and 23(b)(3), the Court provisionally certifies, for settlement purposes only,
5 a Rule 23(b)(3) Settlement Class, from which exclusions shall be permitted,
6 consisting of all persons who are or were Herbalife distributors or members in the
7 United States at any time during the period from April 2009 until the Settlement
8 Preliminary Approval Date, except that this Class does not include the named
9 Defendants, their employees, family members, and any distributor or member who
10 is or has been a member of Herbalife's President's Team, Founder's Circle,
11 Chairman's Club, Millionaire Team, or GET Team. Also excluded from the Rule
12 23(b)(3) class are all Herbalife members or distributors who have agreed to be
13 subject to the arbitration provisions of the Arbitration Agreement for Disputes
14 Between Members and Herbalife contained in the Member Application Agreement
15 revised during or after September 2013.

16 4. With respect to the Rule 23(b)(2) Settlement Class, the Court
17 preliminarily finds that the prerequisites for a class action under Rules 23(a) and
18 (b)(3) of the Federal Rules of Civil Procedure have been met, in that: (a) the Class
19 is so numerous that joinder of all individual Class Members in the Action is
20 impracticable; (b) there are questions of law and fact common to the Class and
21 those common questions of law and fact predominate over any individual
22 questions; (c) the claims of the Class Representatives are typical of the claims of
23 the Class; (d) the Class Representatives and Class Counsel will fairly and
24 adequately represent the interests of the Class; and (e) final injunctive relief or
25 corresponding declaratory relief is appropriate respecting the Class as a whole.

26 5. With respect to the Rule 23(b)(3) Settlement Class, the Court
27 preliminarily finds the prerequisites for a class action under Rules 23(a) and (b)(3)
28 of the Federal Rules of Civil Procedure have been met, in that: (a) the Class is so

1 numerous that joinder of all individual Class Members in the Action is
2 impracticable; (b) there are questions of law and fact common to the Class and
3 those common questions of law and fact predominate over any individual
4 questions; (c) the claims of the Class Representatives are typical of the claims of
5 the Class; (d) the Class Representatives and Class Counsel will fairly and
6 adequately represent the interests of the Class; and (e) a class action is superior to
7 other available methods for the fair and efficient adjudication of the controversy.

8 6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
9 hereby appoints the Plaintiffs in the Action as Class Representatives of the Rule
10 23(b)(2) Settlement Class and the Rule 23(b)(3) Settlement Class (collectively, the
11 “Settlement Classes”).

12 7. Having considered the factors set forth in Rule 23(g)(1) of the Federal
13 Rules of Civil Procedure, the Court hereby appoints Philip D. Dracht, Scott M.
14 Petersen, and Jason W. Hardin of Fabian & Clendenin, P.C., and Thomas G. Foley,
15 Jr. and Robert A. Curtis of Foley, Bezek, Behle & Curtis LLP as Class Counsel to
16 represent the Settlement Classes.

17 **II. THE STIPULATION IS PRELIMINARILY APPROVED AND FINAL**
18 **APPROVAL SCHEDULE SET**

19 8. The Court hereby preliminarily approves the Stipulation and the terms
20 and conditions of settlement set forth therein, subject to further consideration at the
21 Final Approval Hearing described below.

22 9. The Court has conducted a preliminary assessment of the fairness,
23 reasonableness, and adequacy of the Stipulation. Based on this preliminary
24 evaluation, the Court finds that: (i) the Class Settlement Agreement is fair,
25 reasonable, and adequate, and within the range necessary for preliminary approval;
26 (ii) the Class Settlement Agreement appears to have been negotiated, as far as this
27 Court can discern, in good faith at arm’s length between experienced attorneys
28 familiar with the legal and factual issues of this case; and (iii) with respect to the

1 forms of notice of the material terms of the Class Settlement Agreement to all class
2 members for their consideration and reaction, that notice is appropriate and
3 warranted.

4 10. The Court therefore preliminarily approves the proposed settlement as
5 set forth in the Stipulation.

6 11. Pursuant to the Federal Rules of Civil Procedure, Rule 23(e) the Court
7 will hold a settlement hearing (the “Final Approval Hearing”) on May 11, 2015,
8 at 1:30 pm the Courtroom of the Honorable Beverly R. O’Connell, United States
9 District Court for the Central District of California, Courtroom 14, 312 North
10 Spring Street, Los Angeles CA 90012 for the following purposes:

11 a) finally determining whether the Settlement Classes meet all
12 applicable requirements of Federal Rules of Civil Procedure, Rule 23 and, thus, the
13 Class claims should be certified for purposes of effectuating the Settlement;
14 determining whether the proposed Settlement of the Action on the terms and
15 conditions provided for in the Agreement is fair, reasonable and adequate and
16 should be approved by the Court;

17 b) considering the application of Class Counsel for an award of
18 Attorneys’ Fees and Expenses as provided for under the Stipulation;

19 c) considering the application of Plaintiffs and Other Plaintiffs for
20 service awards to the class representatives as provided for under the Stipulation;

21 d) considering whether the Court should enter the Proposed Final
22 Judgment and Order Approving Settlement;

23 e) considering whether the release by the Class Members of the
24 Released Claims as set forth in the Stipulation should be provided; and

25 f) ruling upon such other matters as the Court may deem just and
26 appropriate.

27 12. The Court may adjourn the Final Approval Hearing and later
28 reconvene such hearing without further notice to the Class Members.

1 13. The Parties may further modify the Stipulation prior to the Final
2 Approval Hearing so long as such modifications do not materially change the
3 terms of the settlement provided thereunder. The Court may approve the
4 Stipulation with such modifications as may be agreed to by the Parties, if
5 appropriate, without further notice to Class Members.

6 14. Class Members must file and serve any objections to the proposed
7 settlement no later than forty-nine (49) days prior to the Final Approval Hearing,
8 including any memorandum and/or submissions in support of said objection, which
9 deadline will be set forth in the Class Notice.

10 15. Any application for an award of Attorneys' Fees and Expenses and/or
11 Plaintiffs service awards must be filed with the Court and served at least sixty-
12 three (63) days prior to the Final Approval Hearing.

13 **III. THE COURT APPROVES THE FORM AND METHOD OF CLASS**
14 **NOTICE**

15 16. The Court determines that notice should be provided to members of
16 the Rule 23(b)(3) Settlement Class and Rule 23(b)(2) Settlement Class, but that
17 exclusion rights should be afforded only to members of the Rule 23(b)(3)
18 Settlement Class as to their participation in the Rule 23(b)(3) Settlement Class.

19 17. The Court approves, as to form and content, the proposed Notice of
20 Class Action Settlement and Publication Notice (collectively the "Class Notice"),
21 which are exhibits 1 and 2, respectively, to the Stipulation.

22 18. The Court finds that the distribution of Class Notice substantially in
23 the manner and form set forth in paragraph [22] of this Order and the Stipulation
24 meet the requirements of Federal Rules of Civil Procedure, Rule 23 and due
25 process, is the best notice practicable under the circumstances, and shall constitute
26 due and sufficient notice to all persons entitled thereto.

27 19. The Court approves the designation of KCC LLC to serve as the
28 Court-appointed Claims Administrator for the Settlement. The Claims

1 Administrator shall disseminate Class Notice and supervise and carry out the
2 notice procedure, the processing of Claims, and other administrative functions, and
3 shall respond to Class Member inquiries, as set forth in the Stipulation and this
4 Order under the direction and supervision of the Court.

5 20. The Court directs the Claims Administrator to establish a Settlement
6 Website, making available copies of this Order, Class Notice, Opt-Out Form, and
7 Claim Form that may be downloaded and submitted online or by mail, the
8 Stipulation and all Exhibits thereto, frequently asked questions, a toll-free hotline,
9 and such other information as may be of assistance to Class Members or required
10 under the Stipulation. The Claim Form shall be made available to Class Members
11 through the Settlement Website and on the websites of Class Counsel, at their
12 options, no later than the Notice Date as defined below, and continuously
13 thereafter through the Claims Deadline.

14 21. The Court directs Defendants to provide to the Claims Administrator
15 with distributor or member identification numbers, e-mail addresses, and mailing
16 addresses as may be required by the Claims Administrator for all Class Members,
17 to the extent that such information is reasonably available to Defendants in a form
18 that would be usable by the Claims Administrator.

19 22. The Claims Administrator is ordered to substantially complete
20 dissemination of the Class Notice no later than sixty (60) days before the Final
21 Approval Hearing (the "Notice Date").

22 23. The Court approves the proposed Notice Program for giving notice to
23 the Settlement Class directly (using e-mail and post cards), and through the
24 establishment of a settlement website, as more fully
25 described in the Notice Program. The Notice Program, in form, method, and
26 content, complies with the requirements of Rule 23 and due process, and
27 constitutes the best notice practicable under the circumstances. The Court hereby
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1 directs the Parties and the Claims Administrator to complete all aspects of the
2 Notice Program no later than [28 Days after entry of this Order, 2014].

3 24. The Claims Administrator will file with the Court by no later than
4 twenty-eight (28) days prior to the Final Approval Hearing, proof that Notice was
5 provided in accordance with the Stipulation and this Order, as well as proof that
6 notice was provided to the appropriate State and federal officials pursuant to the
7 Class Action Fairness Act, 28 U.S.C. § 1715.

8 25. The costs of the Class Notice, processing of Claims, creating and
9 maintaining the Settlement Website, and all other Claims Administrator and Notice
10 and Claim Administration Expenses shall be paid out of the Settlement Fund in
11 accordance with the applicable provisions of the Stipulation.

12 **IV. PROCEDURE FOR CLASS MEMBERS TO PARTICIPATE IN THE**
13 **SETTLEMENT**

14 26. All Class Members shall be bound by all determinations and
15 judgments in the Action concerning the Settlement, whether favorable or
16 unfavorable to the Settlement Classes.

17 27. The Court approves the Parties' proposed form of the Claim Form.
18 Any Class Member who wishes to receive money from the Settlement shall
19 complete a Claim Form in accordance with the instructions contained therein and
20 submit it to the Claims Administrator no later than sixty-three (63) days after the
21 date of this Order ("Claims Deadline"). Such deadline may be further extended
22 without notice to the Class by Court order.

23 28. The Claims Administrator shall have the authority to accept or reject
24 Claims in accordance with the Stipulation, including the Claims Protocol.

25 29. The Claims Administrator shall an e-mail or letter explaining the
26 rejection of the Claim, within fourteen (14) days from the close of the Claims
27 Deadline.

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1 30. The Claims Administrator shall disclose the amount of each claimant's
2 Business Opportunity Claim Award and each claimant's Product Return Payment
3 within ninety-one (91) days after this Order.

4 31. Any Class Member may enter an appearance in the Action, at his or
5 her own expense, individually or through counsel. All Class Members who do not
6 enter an appearance will be represented by Class Counsel.

7 **V. PROCEDURE FOR REQUESTING EXCLUSION FROM THE RULE**
8 **23(b)(3) SETTLEMENT CLASS**

9 32. Any person falling within the definition of the Rule 23(b)(3)
10 Settlement Class may, upon his or her request, be excluded from the Rule 23(b)(3)
11 Settlement Class. Any such person must submit a completed Request for Exclusion
12 to the Clerk of the Court postmarked or delivered no later than forty-nine (49) days
13 before the Final Approval Hearing (the "Opt Out Date"), as set forth in the Class
14 Notice. Requests for Exclusion purportedly filed on behalf of groups of persons are
15 prohibited and will be deemed to be void; no Settlement Class Member may
16 exclude any other Settlement Class Member from the Settlement Class.

17 33. Any Member of the Rule 23(b)(3) Settlement Class who does not send
18 a completed, signed Request for Exclusion to the Clerk of the Court postmarked or
19 delivered on or before the Opt Out Date will be deemed to be a Class Member for
20 all purposes and will be bound by all further orders of the Court in this Action and
21 by the terms of the Settlement, if finally approved by the Court. The written
22 Request for Exclusion must request exclusion from the Rule 23(b)(3) Settlement
23 Class, must be personally signed by the potential Class Member and include a
24 statement indicating that the person is a member of the Class. All persons who
25 submit valid and timely Requests for Exclusion in the manner set forth in the
26 Stipulation shall have no rights under the Stipulation and shall not be bound by the
27 Stipulation or the Final Judgment and Order Approving Settlement.

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1 34. A list reflecting all Requests for Exclusions shall be filed with the
2 Court by Defendants at or before the Final Approval Hearing.

3 35. No person falling within the definition of the Rule 23(b)(2) Settlement
4 Class may be excluded from the Rule 23(b)(2) Settlement Class.

5 **VI. PROCEDURE FOR OBJECTING TO THE SETTLEMENT**

6 36. Any Class Member who desires to object either to the Settlement, the
7 award of Attorneys' Fees and Expenses, or Plaintiffs service awards must timely
8 file with the Clerk of this Court and timely serve on the Parties' counsel identified
9 below by hand or first-class mail a notice of the objection(s) and proof of
10 membership in the Class and the grounds for such objections, together with all
11 papers that the Class Member desires to submit to the Court no later than forty-nine
12 (49) days prior to the Final Approval Hearing (the "Objection Date"). A Class
13 Member may not both object and request exclusion. If a Class Member submits
14 both a request for exclusion and an objection, the request for exclusion will be
15 controlling and the objection will be deemed improperly made. The Court will
16 consider such objection(s) and papers only if such papers are received on or before
17 the Objection Date provided in the Class Notice, by the Clerk of the Court and by
18 Class Counsel and Defendants' counsel. Such papers must be sent to each of the
19 following persons:

20 Thomas G. Foley
21 FOLEY BEZEK BEHLE & CURTIS, LLP
22 15 West Carrillo Street
23 Santa Barbara, CA 93101
24 Telephone: (805) 962-9495
25 tfoley@foleybezek.com

26 Scott M. Petersen
27 FABIAN & CLENDENIN
28 215 South State Street, Suite 1200
 Salt Lake City, UT 84151-0210
 Telephone: (801) 531-8900
 spetersen@fabianlaw.com

1 Joseph F. Kroetsch
2 BOIES, SCHILLER & FLEXNER LLP
3 333 Main Street
4 Armonk, NY 10504
5 Telephone: (914) 749-8300
6 jkroetsch@bsfllp.com

7 Mark T. Dooks
8 BIRD MARELLA P.C.
9 1875 Century Park East, 23rd Floor
10 Los Angeles, CA 90067-2561
11 Telephone: (310) 201:2100
12 mtd@birdmarella.com

13 37. All objections must include: (a) a heading which refers to the Action,
14 Dana Bostick, et al. v Herbalife International of America, Inc., et al., Case No. 13-
15 cv-02488 BRO (RZx) (Central District, CA.); (b) the objector's name, address,
16 telephone number and, if represented by counsel, of his/her counsel (the objector's
17 actual residential address must be included); (c) a statement that the objector was an
18 Herbalife distributor or member during the Class Period; (d) a statement whether
19 the objector intends to appear at the Final Approval Hearing, either in person or
20 through counsel; (e) all grounds for the objection, accompanied by any legal
21 support for the objection known to the objector or his/her counsel; (f) copies of any
22 papers, briefs, or other documents upon which the objection is based; and (g) the
23 objector's dated, handwritten signature (an electronic signature or an attorney's
24 signature are not sufficient). Each person submitting an objection must state
25 whether he or she (or his or her attorney) intends to appear at the Final Approval
26 Hearing. No objection will be valid unless all of the information described above is
27 included. The Court will determine on a properly noticed motion, if necessary,
28 whether any counsel may depose any objector to assess whether the objector has
standing.

38. All objections must be filed with the Clerk and served on the Parties' counsel as set forth in paragraph 36 above no later than the Objection Date.

1 Objections received after the Objection Date will not be considered at the Final
2 Approval Hearing.

3 39. Attendance at the Final Approval Hearing is not necessary; however,
4 any Class Member wishing to be heard orally with respect to approval of the
5 Settlement, the application for an award of Attorneys' Fees and Expenses, or the
6 application for Plaintiffs service awards, is required to provide written notice of
7 their intention to appear at the Final Approval Hearing no later than the Objection
8 Date as set forth in the Class Notice by (i) filing a notice of intention to appear with
9 the Court; (2) serve a copy upon Class Counsel and Counsel for the Defendants no
10 later than the Objection deadline; and (iii) comply with all other requirements of the
11 Court for such an appearance. Class Members who do not oppose the Settlement,
12 the application for an award of Attorneys' Fees and Expenses, or the application for
13 Plaintiffs service awards need not take any action to indicate their approval. A
14 person's failure to submit a written objection in accordance with the Objection Date
15 and the procedure set forth in the Class Notice waives any right the person may
16 have to object to the Settlement, the award of Attorneys' Fees and Expenses, or
17 Plaintiffs service awards, or to appeal or seek other review of the Final Judgment
18 and Order Approving Settlement.

19 40. Any Settlement Class Member who fails to comply with Paragraphs
20 34-37 (and as detailed in the Notice) will not be permitted to object to the Class
21 Settlement Agreement at the Final Approval Hearing, will be foreclosed from
22 seeking any review of the Class Settlement Agreement by appeal or other means,
23 will be deemed to have waived his, her, or its objections, and will be forever barred
24 from making any objections in the Action or any other related action or proceeding.
25 All members of the Settlement Class, except those members of the Settlement Class
26 who submit timely Requests for Exclusion, will be bound by all determinations and
27 judgments in the Litigation, whether favorable or unfavorable to the Settlement
28 Class.

1 41. Pending the final determination of whether the Settlement should be
2 approved, the Settlement Class Representatives and all Settlement Class Members
3 are hereby stayed and enjoined from commencing, pursuing, maintaining,
4 enforcing, or prosecuting, either directly or indirectly, any Released Claims in any
5 judicial, administrative, arbitral, or other forum. Nothing herein will prevent any
6 Settlement Class Member, or any person actually or purportedly acting on behalf of
7 any Settlement Class Member(s), from taking any actions to stay or dismiss any
8 Released Claim(s). This injunction is necessary to protect and effectuate the Class
9 Settlement Agreement, this Preliminary Approval Order, and the Court's flexibility
10 and authority to effectuate the Class Settlement Agreement and to enter Judgment
11 when appropriate, and is ordered in aid of this Court's jurisdiction and to protect its
12 judgments. This injunction does not apply to any person who files a request for
13 exclusion pursuant to Paragraphs 32 and 33 of the Order.

14 42. If the Class Action Settlement is not approved or consummated for any
15 reason whatsoever, the Class Action Settlement and all proceedings in connection
16 with the Class Action Settlement will be without prejudice to the right of
17 Defendants or the Class Representatives to assert any right or position that could
18 have been asserted if the Class Settlement Agreement had never been reached or
19 proposed to the Court, except insofar as the Class Settlement Agreement expressly
20 provides to the contrary. The certification of the Settlement Class for settlement
21 purposes will not be considered as a factor in connection with any subsequent class
22 certification issues.

23 43. Reasonable Procedures to Effectuate the Settlement. Counsel are
24 hereby authorized to use all reasonable procedures in connection with approval and
25 administration of the Class Settlement that are not materially inconsistent with this
26 Order or the Stipulation, including making, without further approval of the Court,
27 minor changes to the form or content of the Notice and Claim Form and other
28 exhibits that they jointly agree are reasonable and necessary. The Court reserves the

1 right to approve the Class Settlement Agreement with such modifications, if any, as
 2 may be agreed to by the parties without further notice to the members of the
 3 Settlement Class.

4 44. Schedule of Future Events. Accordingly, the following are the
 5 deadlines by which certain events must occur unless otherwise ordered:

6 7 8 9	10 Business Days After this Order	Herbalife shall deposit \$15,000,000.00 into an escrow account established by the Claims
10 11	28 Days after this Order	Deadline to provide Settlement Class Notice
12 13 14	63 Days after this Order	Deadline for Settlement Class Members to Submit a Claim Form
15 16 17	91 Days after this Order	Deadline for Claims Administrator to disclose amount of each claimant's Business Opportunity Claim Award and/or Product Return Payment.
18 19	98 Days after this Order	Deadline for Class Plaintiffs' Motion for Attorneys' Fees and Incentive Awards
20 21 22	112 Days after this Order	Deadline for Settlement Class Members to file Objections or submit Requests for Exclusion
23 24 25 26 27	133 Days after this Order	Deadline for Parties to File the following: (1) List of Settlement Class Members who Made Timely and Proper Requests for Exclusion; (2) Proof of Settlement Class Notice and CAFA Notice; and (3) Motion and Memorandum in Support of Final Approval, including responses to any Objections.
28	161 Days after this	Final Approval Hearing in Courtroom

Order – May 11, 2015	Final Approval Hearing In Courtroom 14
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IT IS SO ORDERED.

Dated: December 2, 2014



Hon. Beverly Reid O'Connell
United States District Court Judge